



# Western Australian Industrial Gazette

PUBLISHED BY AUTHORITY

Sub-Part 2

WEDNESDAY 25 FEBRUARY, 2015

Vol. 95—Part 1

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

95 W.A.I.G.

CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

## AWARDS/AGREEMENTS—Application for—

2015 WAIRC 00024

### LOCAL GOVERNMENT EMPLOYEES (WESTERN AUSTRALIA) AWARD 2011

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

WESTERN AUSTRALIAN MUNICIPAL, ROAD BOARDS, PARKS AND RACECOURSE  
EMPLOYEES' UNION OF WORKERS, PERTH

**APPLICANT**

-v-

SHIRE OF BODDINGTON AND OTHERS

**RESPONDENT**

**CORAM** COMMISSIONER J L HARRISON  
**DATE** FRIDAY, 23 JANUARY 2015  
**FILE NO/S** A 1 OF 2010  
**CITATION NO.** 2015 WAIRC 00024

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<b>Result</b>	Discontinued
<b>Representation</b>	
<b>Applicant</b>	Mr K Trainer as agent
<b>Respondents</b>	Mr M Fitz Gerald as agent and Mr S Kemp of counsel on behalf of local government authorities who have filed warrants Mr S White as agent and later Mr S Roffey as agent on behalf of local government authorities who have filed warrants Mr S Bibby and later Mr S Farrell on behalf of the Chamber of Commerce and Industry of Western Australia and as agent on behalf of local government authorities who have filed warrants Ms S McGurk and later Ms M Hammat on behalf of UnionsWA
<b>Objector</b>	Mr D Schapper of counsel and Mr W Wood on behalf of the Western Australian Municipal, Administrative, Clerical and Services Union of Employees

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### Order

This is an application for a new award to be known as the *Local Government Employees (Western Australian) Award 2011*.

The Commission convened a number of conferences for the purpose of conciliating between the parties.

At the conclusion of a conference held on 10 March 2011 the matter was adjourned indefinitely and an interim award issued via application A 2 of 2010.

After the Commission contacted the applicant to ascertain the status of the matter the applicant filed a *Form 14 – Notice of withdrawal or discontinuance* on 24 November 2014 in respect of the application and there is no objection to this application being discontinued.

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.

## PUBLIC SERVICE ARBITRATOR—Awards/Agreements—Variation of—

2015 WAIRC 00045

### CIVIL SERVICE ASSOCIATION WESTERN AUSTRALIA POLICE AUXILIARY OFFICERS' AWARD 2013

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

**APPLICANT**

-v-

COMMISSIONER OF POLICE, WESTERN AUSTRALIAN POLICE

**RESPONDENT**

**CORAM**

PUBLIC SERVICE ARBITRATOR  
ACTING SENIOR COMMISSIONER P E SCOTT

**DATE**

WEDNESDAY, 28 JANUARY 2015

**FILE NO/S**

P 6 OF 2014

**CITATION NO.**

2015 WAIRC 00045

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**Result** Award varied

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*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr C Bretnall 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 Civil Service Association Western Australian Police Auxiliary Officers' Award 2013 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 22nd day of January 2015.

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

[L.S.]

SCHEDULE

1. **Clause 6.6 – Relieving Allowance: Delete subclause (4) 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 \$200.00 to cover incidental personal expenses: Provided that an employee shall receive no more than one lump sum of \$200.00 in any one period of three years.
2. **Clause 6.12 – Removal Allowance: Delete subclause (1)(c) and insert the following in lieu thereof:**
  - (c) An allowance of \$564.00 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 \$3382.00.
3. **Clause 6.12 – Removal Allowance: Delete subclause (1)(d) and insert the following in lieu thereof:**
  - (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$194.00.  
  
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.

**4. Clause 6.12 – Removal Allowance: Delete subclause (6) 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 \$1050.00 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 4 years without the approval of the employer.

**5. Schedule A – Overtime Meal Rates: Delete the text of this Schedule and insert the following in lieu thereof:**Meals

Breakfast	\$10.60 per meal
Lunch	\$13.05 per meal
Evening Meal	\$15.65 per meal
Supper	\$10.60 per meal

2015 WAIRC 00046

**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  
ACTING SENIOR COMMISSIONER P E SCOTT

**DATE**

WEDNESDAY, 28 JANUARY 2015

**FILE NO/S**

P 7 OF 2014

**CITATION NO.**

2015 WAIRC 00046

**Result**

Award varied

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr C Bretnall as agent for the Country High School Hostels Authority, 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 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 22nd day of January 2015.

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

[L.S.]

SCHEDULE

**1. Clause 24. – Removal Allowance: Delete subclause (1)(c) and insert the following in lieu thereof:**

- (c) An allowance of \$564.00 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 Authority is satisfied that the value of household furniture, effects and appliances moved by the employee is at least \$3,382.00.

**2. Clause 24. – Removal Allowance: Delete subclause (1)(d) and insert the following in lieu thereof:**

- (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$194.00.

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 24. – Removal Allowance: Delete subclause (6) 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 \$1,050.00 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.

**2015 WAIRC 00044**

**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

**RESPONDENT**

**CORAM**

PUBLIC SERVICE ARBITRATOR

ACTING SENIOR COMMISSIONER P E SCOTT

**DATE**

WEDNESDAY, 28 JANUARY 2015

**FILE NO/S**

P 5 OF 2014

**CITATION NO.**

2015 WAIRC 00044

**Result**

Award varied

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr C Bretnall 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 22nd day of January 2015.

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

[L.S.]

SCHEDULE

**1. Clause 40. – Relieving Allowance: Delete subclause (4) 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 \$200.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of \$200.00 in any one period of three (3) years.

**2. Clause 41. – Removal Allowance: Delete subclause (1)(c) and insert the following in lieu thereof:**

- (c) An allowance of \$564.00 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 \$3,382.00.

**3. Clause 41. – Removal Allowance: Delete subclause (1)(d) and insert the following in lieu thereof:**

- (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$194.00.

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.

**4. Clause 41. – Removal Allowance: Delete subclause (6) 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 \$1,050.00 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.

**5. Schedule G – Overtime Allowance: Delete Part II of this schedule and insert the following in lieu thereof:****PART II – MEALS**

(Operative from the first pay period commencing on or from 22 January 2015)

Breakfast	\$10.60 per meal
Lunch	\$13.05 per meal
Evening Meal	\$15.65 per meal
Supper	\$10.60 per meal

**2015 WAIRC 00049****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 AND ANOTHER

**RESPONDENTS****CORAM**

PUBLIC SERVICE ARBITRATOR

ACTING SENIOR COMMISSIONER P E SCOTT

**DATE**

WEDNESDAY, 28 JANUARY 2015

**FILE NO/S**

P 11 OF 2014

**CITATION NO.**

2015 WAIRC 00049

**Result**

Award varied

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr C Bretnall 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 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 22nd day of January 2015.

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

[L.S.]

**SCHEDULE****1. Clause 38. – Removal Allowance: Delete subclause (1)(c) and insert the following in lieu thereof:**

- (c) An allowance of \$564.00 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 \$3,382.00.

**2. Clause 38. – Removal Allowance: Delete subclause (1)(d) and insert the following in lieu thereof:**

- (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$194.00.

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 38. – Removal Allowance: Delete subclause (6) 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 \$1,050.00 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.

**2015 WAIRC 00050**

**GOVERNMENT OFFICERS (INSURANCE COMMISSION OF WESTERN AUSTRALIA) 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

ACTING SENIOR COMMISSIONER P E SCOTT

**DATE**

WEDNESDAY, 28 JANUARY 2015

**FILE NO/S**

P 12 OF 2014

**CITATION NO.**

2015 WAIRC 00050

**Result**

Award varied

*Order*

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

THAT the Government Officers (Insurance Commission of Western Australia) Award, 1987 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 22nd day of January 2015.

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

[L.S.]

**SCHEDULE**

**Schedule C – Overtime Allowance: Delete PART II of this schedule and insert the following in lieu thereof:**

**PART II - MEALS**

(Operative from first pay period commencing on and from 22 January 2015)

Breakfast	\$10.60 per meal
Lunch	\$13.05 per meal
Evening Meal	\$15.65 per meal
Supper	\$10.60 per meal

2015 WAIRC 00043

**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

ACTING SENIOR COMMISSIONER P E SCOTT

**DATE**

WEDNESDAY, 28 JANUARY 2015

**FILE NO/S**

P 4 OF 2014

**CITATION NO.**

2015 WAIRC 00043

**Result**

Award varied

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr C Bretnall 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 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 22nd day of January 2015.

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

[L.S.]

**SCHEDULE****1. Clause 49. – Relieving Allowance: Delete subclause (1)(d) 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 \$200.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of \$200.00 in any one period of three (3) years.

**2. Clause 50. – Removal Allowance: Delete subclause (1)(c) and insert the following in lieu thereof:**

(c) An allowance of \$564.00 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 \$3,382.00.

**3. Clause 50. – Removal Allowance: Delete subclause (1)(d) and insert the following in lieu thereof:**

(d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$194.00.

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.

**4. Clause 50. – Removal Allowance: Delete subclause (6) 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 \$1,050.00 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.

**5. Schedule I - Clause 22. – Overtime Allowance: Delete PART II of this schedule and insert the following in lieu thereof:**

**PART II - MEALS**

(Operative from the beginning of first pay period on or after 22 January 2015.)

Breakfast	\$10.60 per meal
Lunch	\$13.05 per meal
Evening Meal	\$15.65 per meal

**6. Schedule O Annual Interstate Allowance Rates: Delete this schedule and insert the following in lieu thereof:**

(Operative from the beginning of first pay period on or after 22 January 2015.)

	Single	With Dependents
	\$	\$
Adelaide	\$3,011	\$4,103
Brisbane	\$3,312	\$4,417
Melbourne	\$3,352	\$4,958
Sydney	\$5,176	\$6,185

2015 WAIRC 00047

**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

ACTING SENIOR COMMISSIONER P E SCOTT

**DATE**

WEDNESDAY, 28 JANUARY 2015

**FILE NO/S**

P 8 OF 2014

**CITATION NO.**

2015 WAIRC 00047

**Result** Award varied

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr C Bretnall as agent for the Disability Services Commission, 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 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 22nd day of January 2015.

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

[L.S.]

SCHEDULE

**1. Clause 45. – Relieving Allowance: Delete subclause (4) 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 \$200.00 to cover incidental personal expenses: Provided that an employee shall receive no more than one lump sum of \$200.00 in any one period of three (3) years.

**2. Clause 46. – Removal Allowance: Delete subclause (1)(c) and insert the following in lieu thereof:**

(c) An allowance of \$564.00 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 \$3,382.00.

**3. Clause 46. – Removal Allowance: Delete subclause (1)(d) and insert the following in lieu thereof:**

(d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$194.00.

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.

**4. Clause 46. – Removal Allowance: Delete subclause (6) 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 \$1,050.00 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.

**5. Schedule E. – Overtime Allowance: Delete PART II of this schedule and insert the following in lieu thereof:**

**PART II - MEALS**

(Operative from the beginning of first pay period on or after 22 January 2015.)

Breakfast	\$10.60 per meal
Lunch	\$13.05 per meal
Evening Meal	\$15.65 per meal

**2015 WAIRC 00048**

**JUVENILE CUSTODIAL OFFICERS' AWARD**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

**APPLICANT**

-v-

COMMISSIONER, DEPARTMENT OF CORRECTIVE SERVICES AND ANOTHER

**RESPONDENTS**

**CORAM**

PUBLIC SERVICE ARBITRATOR

ACTING SENIOR COMMISSIONER P E SCOTT

**DATE**

WEDNESDAY, 28 JANUARY 2015

**FILE NO/S**

P 10 OF 2014

**CITATION NO.**

2015 WAIRC 00048

**Result** Award varied

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr C Bretnall 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 Juvenile Custodial Officers' Award 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 22nd day of January 2015.

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

[L.S.]

**SCHEDULE**

**1. Clause 5.7. – Relieving Allowance: Delete subclause 5.7.4 and insert the following in lieu thereof:**

5.7.4 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 \$200.00 to cover incidental personal expenses: Provided that an employee shall receive no more than one lump sum of \$200.00 in any one period of three years.

2. **Clause 5.8. – Removal Allowance: Delete subclause 5.8.1(3) and insert the following in lieu thereof:**
- (3) An allowance of \$564.00 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 \$3,382.
3. **Clause 5.8. – Removal Allowance: Delete subclause 5.8.1(4) and insert the following in lieu thereof:**
- (4) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$194.00.
- 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.
4. **Clause 5.8. – Removal Allowance: Delete subclause 5.8.6 and insert the following in lieu thereof:**
- 5.8.6 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 \$1,050.00 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.

2015 WAIRC 00042

## PUBLIC SERVICE AWARD 1992

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

## PARTIES

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

APPLICANT

-v-

CHEMISTRY CENTRE (WA) AND OTHERS

RESPONDENTS

## CORAM

PUBLIC SERVICE ARBITRATOR  
ACTING SENIOR COMMISSIONER P E SCOTT

## DATE

WEDNESDAY, 28 JANUARY 2015

## FILE NO/S

P 3 OF 2014

## CITATION NO.

2015 WAIRC 00042

## Result

Award varied

*Order*

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr C Bretnall 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 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 22nd day of January 2015.

(Sgd.) P E SCOTT,  
Acting Senior 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 \$200.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of \$200.00 in any one period of three (3) years.
2. **Clause 51. – Removal Allowance: Delete subclause (1)(c) and insert the following in lieu thereof:**
- (c) An allowance of \$564.00 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 \$3,382.00.

**3. Clause 51. – Removal Allowance: Delete subclause (1)(d) and insert the following in lieu thereof:**

- (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$194.00.

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.

**4. Clause 51. – Removal Allowance: Delete subclause (6) 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 \$1,050.00 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.

**5. Schedule H – Overtime Allowance: Delete PART II of this schedule and insert the following in lieu thereof:****PART II – MEALS**

(Operative from the beginning of first pay period on or after 22 January 2015)

Breakfast	\$10.60 per meal
Lunch	\$13.05 per meal
Evening Meal	\$15.65 per meal
Supper	\$10.60 per meal

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## AWARDS/AGREEMENTS AND ORDERS—Variation of—

2015 WAIRC 00109

**PUBLIC TRANSPORT AUTHORITY RAIL CAR DRIVERS (TRANSPERTH TRAIN OPERATIONS) AWARD 2006**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH

**APPLICANT**

-v-

PUBLIC TRANSPORT AUTHORITY

**RESPONDENT**

**CORAM** COMMISSIONER S J KENNER  
**DATE** TUESDAY, 3 FEBRUARY 2015  
**FILE NO/S** APPL 29 OF 2014  
**CITATION NO.** 2015 WAIRC 00109

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<b>Result</b>	Award varied
<b>Representation</b>	
<b>Applicant</b>	Mr K Singh and with him Mr P Robinson
<b>Respondent</b>	Ms J Allen-Rana and with her Ms V Annese

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*Order*

HAVING heard Mr K Singh and with him Mr P Robinson on behalf of the applicant and Ms J Allen-Rana and with her Ms V Annese on behalf of the respondent and by consent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the Public Transport Authority Rail Car Drivers (Transperth Train Operations) Award 2006 be varied in accordance with the following schedule and that such variation shall have effect on or from 19 September 2014.

[L.S.]

(Sgd.) S J KENNER,  
 Commissioner.

SCHEDULE

- 1. Clause 3.3. - Meal and Rest Breaks: Delete paragraph (b) of subclause 3.3.2 of this clause and insert the following in lieu thereof:**
- (b) The employer shall provide such employee a meal allowance of \$12.35 to cover the cost associated with the purchase of foods associated with the taking of a second crib.
- The above allowance will be adjusted in accordance with the official movements in the Consumer Price Index (CPI) - Food (Perth) as measured for the preceding 12 months at the end of the March quarter by the Australian Bureau of Statistics.
- 2. Clause 4.3. - Suburban Electric Railcar Allowance: Delete paragraph (a) of subclause 4.3.1 of this clause and insert the following in lieu thereof:**
- 4.3.1 (a) An employee qualified in the operation of electric suburban railcars and who, for any shift or part of a shift is rostered to work as driver on the suburban rail system shall, for the whole of that shift, be paid the following allowance in addition to the appropriate rate of pay.
- |                  | Rate per week |
|------------------|---------------|
| (1) First Year   | \$38.90       |
| (2) Thereafter   | \$39.20       |
| (3) Special Case | \$39.80       |
- 3. Clause 5.1 – Shift Work: Delete subclause 5.1.1 of this clause and insert the following in lieu thereof:**
- 5.1.1 The employer may, if the employer so desires, work any part of its business on shifts in accordance with the following provisions;
- (a) On an afternoon shift which commences before 1800 hours and the ordinary time of which concludes at or after 1830 hrs, an employee will be paid an allowance of \$2.64 an hour on all time paid at ordinary rate.
- (b) On a night shift, which commences at or between 1800, and 0359 hours, an employee will be paid an allowance of \$3.07 an hour on all time paid at ordinary rate.
- (c) On an early morning shift, which commences at or, between 0400 and 0530, an employee will be paid an allowance of \$2.64 an hour on all time paid at ordinary rate.
- (d) In addition to the hourly shift work allowance, an employee will be paid an allowance of \$3.07 for any shift where the ordinary time commences or finishes at or between 0101 hours and 0359 hours.
- (e) In calculating the allowance under this clause, broken parts of an hour less than thirty minutes on any shift shall be disregarded and thirty minutes to fifty-nine minutes paid as one hour.
- (f) The above allowances will be adjusted by a percentage derived from the State Wage General Order as amended or superseded, applied to the key classification rate of REA4 of the Railway Employees Award No 18 of 1969, using the procedure stated in ROUNDING OF ALLOWANCES (87 WAIG 1502).
- 4. Clause 5.2. - Temporary Transfer Allowance: Delete subclause 5.2.1 of this clause and insert the following in lieu thereof:**
- 5.2.1 When an employee in the metropolitan area is required to work at another metropolitan depot other than the depot at which the employee is stationed the following shall apply:
- (a) When the distance the employee is required to travel from the employee's usual place of residence to the depot where the employee is temporarily working is greater than the distance the employee is required to travel from his usual place of residence to the employee's home depot, the employee shall be paid an allowance of \$1.69 per kilometre in both directions for the extra distance the employee is required to travel. Such allowance as specified in this paragraph is in recognition of the cost and time taken for the extra distance to be travelled.
- The allowance referred to above will be adjusted from time to time in accordance with the Department of Transport Taxi Industry Board (as renamed or superseded) metropolitan weekday daytime taxi fare distance rate per km.
- (b) When the period of relief is for one week or less the allowance of \$7.10 per shift shall be paid in recognition of the disruption to the employee's normal roster.
- The above allowance will be adjusted by a percentage derived from the State Wage General Order as amended or superseded, applied to the key classification rate of REA4 of the Railway Employees Award No 18 of 1969, using the procedure stated in ROUNDING OF ALLOWANCES (87 WAIG 1502).
- 5. Clause 5.3. - On Call Allowance: Delete subclause 5.3.1 of this clause and insert the following in lieu thereof:**
- 5.3.1 Employees on call outside the ordinary hours of duty will be paid an allowance of \$3.93 per hour for all time on call.
- The above allowance will be adjusted by a percentage derived from the State Wage General Order as amended or superseded, applied to the key classification rate of REA4 of the Railway Employees Award No 18 of 1969, using the procedure stated in ROUNDING OF ALLOWANCES (87 WAIG 1502).

2015 WAIRC 00106

**PUBLIC TRANSPORT AUTHORITY (TRANSWA) AWARD 2006**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST  
AUSTRALIAN BRANCH**APPLICANT**

-v-

PUBLIC TRANSPORT AUTHORITY

**RESPONDENT****CORAM**

COMMISSIONER S J KENNER

**DATE**

TUESDAY, 3 FEBRUARY 2015

**FILE NO/S**

APPL 27 OF 2014

**CITATION NO.**

2015 WAIRC 00106

**Result**

Award varied

**Representation****Applicant**

Mr K Singh and with him Mr P Robinson

**Respondent**

Ms J Allen-Rana and with her Ms V Annese

*Order*

HAVING heard Mr K Singh and with him Mr P Robinson on behalf of the applicant and Ms J Allen-Rana and with her Ms V Annese on behalf of the respondent and by consent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the Public Transport Authority (Transwa) Award 2006 be varied in accordance with the following schedule and that such variation shall have effect on or from 19 September 2014.

(Sgd.) S J KENNER,  
Commissioner.

[L.S.]

SCHEDULE**1. Clause 5.1 - Shift Work: Delete this clause and insert the following in lieu thereof:**

## 5.1 - SHIFT WORK

- 5.1.1 On an afternoon shift which commences before 1800 hours and the ordinary time of which concludes at or after 1830 hrs, an employee will be paid an allowance of \$2.58 an hour on all time paid at ordinary rate.
- 5.1.2 On a night shift, which commences at or between 1800 and 0359 hours, an employee will be paid an allowance of \$2.97 an hour on all time paid at ordinary rate.
- 5.1.3 On an early morning shift, which commences at or between 0400 and 0530, an employee will be paid an allowance of \$2.58 an hour on all time paid at ordinary rate.
- 5.1.4 In addition to the hourly shift work allowance, an employee will be paid an allowance of \$2.97 for any shift where the ordinary time commences or finishes at or between 0101 hours and 0359 hours.
- 5.1.5 In calculating the allowance under this clause, broken parts of an hour less than thirty minutes on any shift shall be disregarded and thirty minutes to fifty-nine minutes paid as one hour.
- 5.1.6 The above allowances will be adjusted by a percentage derived from the State Wage General Order as amended or superseded, applied to the key classification rate of REA4 of the Railway Employees Award No 18 of 1969, using the procedure stated in ROUNDING OF ALLOWANCES (87 WAIG 1502).

**2. Clause 5.2 - Temporary Transfer Allowance:****A. Delete subclause 5.2.1 of this clause and insert the following in lieu thereof:**

- 5.2.1 When an employee in the metropolitan area is required to work at another metropolitan depot other than the depot at which the employee is stationed the following shall apply:
- (a) When the distance the employee is required to travel from the employee's usual place of residence to the depot where the employee is temporarily working is greater than the distance the employee is required to travel from his usual place of residence to the employee's home depot, the employee shall be paid an allowance of \$1.69 per kilometre in both directions for the extra distance the employee is required to travel. Such allowance as specified in this paragraph is in recognition of the cost and time taken for the extra distance to be travelled, and in addition:
- (b) When the period of relief is for one week or less the allowance of \$7.10 per shift shall be paid in recognition of the disruption to the employee's normal roster.

**B. Delete subclause 5.2.2 of this clause and insert the following in lieu thereof:**

5.2.2 Clause 5.2.1(a) will be adjusted in accordance with changes to the Department of Transport Taxi Industry Board (as reorganised, renamed or superseded) metropolitan weekday daytime taxi fare distance rate per km.

Clause 5.2.1(b) will be adjusted by a percentage derived from the State Wage General Order as amended or superseded, applied to the key classification rate of REA4 of the Railway Employees Award No 18 of 1969, using the procedure stated in ROUNDING OF ALLOWANCES (87 WAIG 1502).

**3. Clause 5.3 – On Call Allowance: Delete subclause 5.3.1 of this clause and insert the following in lieu thereof:**

5.3.1 Employees directed by the employer to be on call outside the ordinary hours of duty will be paid an allowance of \$4.27 per hour for all time on call.

That allowance will be adjusted by a percentage derived from the State Wage General Order as amended or superseded, applied to the key classification rate of REA4 of the Railway Employees Award No 18 of 1969, using the procedure stated in ROUNDING OF ALLOWANCES (87 WAIG 1502).

**4. Clause 5.5 - Away From Home And Meal Allowances: Delete subclause 5.5.2 of this clause and insert the following in lieu thereof:**

5.5.2 Railcar Drivers, Coordinator and Road Coach Operators will be paid an allowance to reimburse the costs of meals and incidentals when on roster and required to stay overnight away from home. This allowance will be calculated on the time between booking on and booking off from the home depot at the rate of \$28.20 for each 8 hour period and, where less than 8 hours is worked, at the rate of \$7.00 for each 2 hour period or part thereof worked.

2015 WAIRC 00107

**RAILWAY EMPLOYEES' AWARD NO. 18 OF 1969**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH

**APPLICANT**

-v-

PUBLIC TRANSPORT AUTHORITY, THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS WESTERN AUSTRALIAN BRANCH, ELECTRICAL TRADES UNION WA

**RESPONDENT****CORAM** COMMISSIONER S J KENNER**DATE** TUESDAY, 3 FEBRUARY 2015**FILE NO/S** APPL 28 OF 2014**CITATION NO.** 2015 WAIRC 00107

<b>Result</b>	Award varied
<b>Representation</b>	
<b>Applicant</b>	Mr K Singh and with him Mr P Robinson
<b>First respondent</b>	Ms J Allen-Rana and with her Ms V Annese
<b>Second respondent</b>	No appearance
<b>Third respondent</b>	No appearance

*Order*

HAVING heard Mr K Singh and with him Mr P Robinson on behalf of the applicant, Ms J Allen-Rana and with her Ms V Annese on behalf of the first respondent and there being no appearance by the second and third respondents and by consent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the Railway Employees' Award No. 18 of 1969 be varied in accordance with the following schedule and that such variation shall have effect on or from 19 September 2014.

(Sgd.) S J KENNER,  
Commissioner.

[L.S.]

SCHEDULE**1. Clause 4.3 – Experience Allowance: Delete this clause and insert the following in lieu thereof:**4.3. - EXPERIENCE ALLOWANCE

Employees classified at levels 4 to 7 inclusive shall be paid the following allowance as part of the ordinary base rate of pay for all purposes:

After 12 months service with the employer - \$ 6.20

After 24 months service with the employer - \$ 12.70

The above allowances will be adjusted by a percentage derived from the State Wage General Order as amended or superseded, applied to the key classification rate of REA4 of the Railway Employees Award No 18 of 1969, using the procedure stated in ROUNDING OF ALLOWANCES (87 WAIG 1502).

**2. Clause 4.4 – Tool Allowance: Delete paragraph (a) of subclause 4.4.1 of this clause and insert the following in lieu thereof:**

- (a) Where the employer does not provide a tradesperson or an apprentice with the tools ordinarily required by that trades person or apprentice in the performance of work as a tradesperson or as an apprentice the employer shall pay a tool allowance of \$15.60 per week to such tradesperson/apprentice.

The above allowance will be adjusted by a percentage derived from the State Wage General Order as amended or superseded, applied to the key classification rate of REA4 of the Railway Employees Award No 18 of 1969, using the procedure stated in ROUNDING OF ALLOWANCES (87 WAIG 1502).

**3. Clause 4.5 - Leading Hands: Delete this clause and insert the following in lieu thereof:**4.5. - LEADING HANDS

Leading Hands shall be paid the following rate per week:

- (a) Class 3  
When in charge of not less than three and not more than ten others, paid \$28.90 extra per week
- (b) Class 2  
When in charge of more than 10 but fewer than twenty others, paid \$43.50 extra per week
- (c) Class 1  
When in charge of more than twenty others, paid \$56.00 extra per week

The above allowances will be adjusted by a percentage derived from the State Wage General Order as amended or superseded, applied to the key classification rate of REA4 of the Railway Employees Award No 18 of 1969, using the procedure stated in ROUNDING OF ALLOWANCES (87 WAIG 1502).

**4. Clause 4.6. - Electrical Licence Allowance: Delete this clause and insert the following in lieu thereof:**4.6. - ELECTRICAL LICENCE ALLOWANCE

An electronics tradesperson, an electrical fitter and/or armature winder or an electrical installer who holds and in the course of his or her employment may be required to use a current "A" grade or "B" grade licence issued pursuant to the relevant regulation in force in the 28th day of February, 1978 under the Electricity Act, 1948 shall be paid an allowance of \$20.60 per week.

The above allowance will be adjusted by a percentage derived from the State Wage General Order as amended or superseded, applied to the key classification rate of REA4 of the Railway Employees Award No 18 of 1969, using the procedure stated in ROUNDING OF ALLOWANCES (87 WAIG 1502).

**5. Clause 5.1 – On Call Allowances: Delete subclause 5.1.2 - On Call Allowance of this clause and insert the following in lieu thereof:**

## 5.1.2 On Call Allowance

An employee who is directed by the Head of Branch or other duly authorized officer to be available on call outside the ordinary hours of duty as prescribed in Part 3 of this Award, shall be paid an On Call allowance of \$4.27 per hour.

The above allowance will be adjusted by a percentage derived from the State Wage General Order as amended or superseded, applied to the key classification rate of REA4 of the Railway Employees Award No 18 of 1969, using the procedure stated in ROUNDING OF ALLOWANCES (87 WAIG 1502).

**6. Clause 5.3 - After Hours Contact: Meals and Expenses:****A. Delete subclause 5.3.1 – Meal Breaks of this clause and insert the following in lieu thereof:**

## 5.3.1 Meal Breaks

- (a) An employee who having responded to a call is unable to return to the employee's home during a recognized meal period for a meal shall be supplied with a meal or be paid a meal allowance of \$10.70 as provided under this Award.

The above allowance will be adjusted in accordance with the official movements in the Consumer Price Index (CPI) - Food (Perth) as measured for the preceding 12 months at the end of the March quarter by the Australian Bureau of Statistics.

(b) For the purpose of this sub-clause recognized meal periods shall be defined as:

Breakfast	0530 hours to 0730 hours
Lunch	1200 hours to 1400 hours
Dinner	1700 hours to 1900 hours

**B. Delete subclause 5.3.2 – Other Expenses of this clause and insert the following in lieu thereof:**

5.3.2 Other Expenses

- (a) The employer shall supply mobile phones or other equipment as needed, to employees for the purpose of meeting after hours contact requirements. Where mobile phones are not provided, necessary and reasonable telephone costs may be reimbursed to employees on production of receipts e.g. connections; rental and call costs.
- (b) Provided such claims are authorized by the Head of Branch before the employee incurs that expense, and provided such calls are in connection with Public Transport Authority business. The employer has the discretion to reimburse other reasonable expenses incurred by the employee where these are necessarily incurred due to after hours contact requirements. To claim additional expenses requires prior authorization from the Head of Branch and the employee must be able to produce receipts.

**7. Clause 5.4. - Away from Home Allowances:**

**A. Delete subclause 5.4.2 of this clause and insert the following in lieu thereof:**

5.4.2 Where sub clause 5.4.1. applies, the employee shall be paid an allowance of \$46.50 per day except when the accommodation includes dining facilities and meals, in which case an allowance of \$34.80 per day shall be paid.

The above allowances will be adjusted by a percentage derived from the State Wage General Order as amended or superseded, applied to the key classification rate of REA4 of the Railway Employees Award No 18 of 1969, using the procedure stated in ROUNDING OF ALLOWANCES (87 WAIG 1502).

**B. Delete subclause 5.4.5 of this clause and insert the following in lieu thereof:**

5.4.5 When an employee is required by the employer to attend a training course, seminar or other such meeting which involve an overnight stay away from the employee's home or lodging, the employee, at the discretion of the employer, may be provided with accommodation and meals and if so provided shall be paid an incidental allowance of \$12.25 per day.

The above allowance will be adjusted by a percentage derived from the State Wage General Order as amended or superseded, applied to the key classification rate of REA4 of the Railway Employees Award No 18 of 1969, using the procedure stated in ROUNDING OF ALLOWANCES (87 WAIG 1502).

**8. Clause 5.6. - Travelling Time – Traffic: Delete subclauses 5.6.2 and 5.6.3 of this clause and insert the following in lieu thereof:**

5.6.2 When the distance the employee is required to travel from the usual place of residence to the depot where the employee is temporarily working is greater than the distance the employee is required to travel from the usual place of residence to the employees home depot, the employee shall be paid an allowance of \$1.69 per kilometre in both directions for the extra distance the employee is required to travel.

Such allowance as specified in this paragraph is in recognition of the cost and time taken for the extra distance travelled. It will be adjusted from time to time in accordance with changes to the Department of Transport Taxi Industry Board (as reorganised, renamed or superseded) metropolitan weekday Tariff 1 rate per km.

5.6.3 When the period of relief is for one week or less an allowance of \$7.10 per shift shall be paid in recognition of the disruption to the employee's normal roster. This allowance is in addition to that provided in sub clause 5.6.2.

The above allowance will be adjusted by a percentage derived from the State Wage General Order as amended or superseded, applied to the key classification rate of REA4 of the Railway Employees Award No 18 of 1969, using the procedure stated in ROUNDING OF ALLOWANCES (87 WAIG 1502).

**9. Clause 5.7. - Meal Allowance: Delete this clause and insert the following in lieu thereof:**

5.7. - MEAL ALLOWANCE

5.7.1 Refreshment Allowance

An employee employed in the actual running of trains whose shift is extended by more than two hours and the total duration of the shift exceeds ten hours, shall be paid a refreshment allowance of \$5.40 where:

- (a) Notification of the requirement to work an extended shift was not given prior to the finish of the preceding shift; and
- (a) The employee is not entitled to a meal allowance as prescribed elsewhere in this Award.

The above allowance will be adjusted in accordance with the official movements in the Consumer Price Index (CPI) - Food (Perth) as measured for the preceding 12 months at the end of the March quarter by the Australian Bureau of Statistics.

## 5.7.2 Meal Allowance

Where an employee is required to work beyond ordinary rostered hours without being notified on the previous day, the employee shall be provided with a meal or be paid \$10.70 in lieu where:

- (a) The employee is in an Other Than Traffic position, and is required to so work for more than 1 hour, or until after 1800 hours; or
- (b) The employee is in a Traffic classification, and the rostered hours of duty have been extended by more than one hour beyond the recognised meal period.

The above allowance will be adjusted in accordance with the official movements in the Consumer Price Index (CPI) - Food (Perth) as measured for the preceding 12 months at the end of the March quarter by the Australian Bureau of Statistics.

**10. Clause 5.8. - Shifts and/or Night Work Allowance - (Six - Day Shift Work): Delete subclause 5.8.1 of this clause and insert the following in lieu thereof:**

5.8.1 The employer may, if the employer so desires, work any part of the establishment on shift work as part of the 38 ordinary hours per week, Monday to Saturday. The employer shall consult affected employees beforehand, and notify the Union of the intention to introduce shift work. The employer shall post the shift work roster at least 14 days in advance of the start date.

- (a) On an afternoon shift, which commences before 1800 hrs and the ordinary time of which concludes at or after 1830 hours will be paid an allowance of \$2.58 an hour on all time paid at the ordinary rate.
- (b) On a night shift, which commences at or between 1800 hours and 0359 hours, will be paid an allowance of \$2.97 an hour on all time paid at ordinary rate.
- (c) On an early morning shift, which commences at or between 0400 hours and 0530 hours, will be paid an allowance of \$2.58 an hour for all time paid at ordinary rate.
- (d) In addition to the hourly shift work allowance an employee will be paid an allowance of \$2.97 for any shift where the ordinary time commences or finishes at or between 0101 hours and 0359 hours.
- (e) The provisions of subparagraphs (a) to (d) of this clause will not apply to employee's continuously on shifts, which start and finish between 1800 and 0600 hours. These employees will be paid night work allowance for ordinary paid time on duty between those hours at the rate of \$3.07 per hour.

The above allowances will be adjusted by a percentage derived from the State Wage General Order as amended or superseded, applied to the key classification rate of REA4 of the Railway Employees Award No 18 of 1969, using the procedure stated in ROUNDING OF ALLOWANCES (87 WAIG 1502).

- (f) Provided that shift penalties do not apply to Saturday and Sunday hours, which are paid as follows: ordinary hours on Saturday are paid with a 50% loading in accordance with subclause 3.3.2(c), additional hours on Saturdays are paid at double time in accordance with subclause 3.3.2(b) and all time on Sunday is paid at double time in accordance with subclause 3.3.2(a).

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## AGREEMENTS—Industrial—Retirement from—

2015 WAIRC 00113

### NOTICE

#### AG 157 OF 2002

#### ALTONE CONTINENTAL AND SDA AGREEMENT 2002

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 2 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Altone Continental and SDA Agreement 2002, No. AG 157 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 2<sup>nd</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

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2015 WAIRC 00114

**NOTICE****AG 167 of 2002****BEVERLEY FOUR SQUARE SUPERMARKET AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 3 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Beverley Four Square Supermarket and SDA Agreement 2002, No. AG 167 of 2002 on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 2<sup>nd</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00116

**NOTICE****AG 177 of 2002****BINDOON GENERAL STORE AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 4 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Bindoon General Store and SDA Agreement 2002, No. AG 177 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 2<sup>nd</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00117

**NOTICE****AG 184 of 2002****BRIDGETOWN MINI MART AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 5 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Bridgetown Mini Mart and SDA Agreement 2002, No. AG 184 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 2<sup>nd</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00118

**NOTICE****AG 214 of 2002****BROADWATER MINI MART AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 6 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Broadwater Mini Mart and SDA Agreement 2002, No. AG 214 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 2<sup>nd</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00119

**NOTICE****AG 211 of 2002****CADOUX TRADERS AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 7 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Cadoux Traders and SDA Agreement 2002, No. AG 211 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 2<sup>nd</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00120

**NOTICE****AG 161 of 2002****CAVERSHAM STORE AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 8 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Caversham Store and SDA Agreement 2002, No. AG 161 of 2002 on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 2<sup>nd</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00121

**NOTICE****AG 162 of 2002****CHERRIES FINE FOOD SUPER MART AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 9 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Cherries Fine Food Super Mart and SDA Agreement 2002, No. AG 162 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00125

**NOTICE****AG 117 of 2001****CHICKEN TREAT DUNSBOROUGH SDA AGREEMENT 2001**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 10 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Chicken Treat Dunsborough SDA Agreement 2001, No. AG 117 of 2001, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00126

**NOTICE****AG 118 of 2001****CHICKEN TREAT KATANNING SDA AGREEMENT 2001**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 11 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Chicken Treat Katanning SDA Agreement 2001, No. AG 118 of 2001, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00127

**NOTICE****AG 116 of 2001****CHICKEN TREAT NARROGIN SDA AGREEMENT 2001**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 12 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Chicken Treat Narrogin SDA Agreement 2001, No. AG 116 of 2001, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00129

**NOTICE****AG 115 of 2001****CHICKEN TREAT PADBURY SDA AGREEMENT 2001**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 13 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Chicken Treat Padbury SDA Agreement 2001, No. AG 115 of 2001, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00130

**NOTICE****AG 119 of 2001****CHICKEN TREAT ROCKINGHAM SDA AGREEMENT 2001**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 14 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Chicken Treat Rockingham SDA Agreement 2001, No. AG 119 of 2001, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00143

**NOTICE****AG 175 of 2002****CHIDLOW GROWERS MART AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 15 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act.

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Chidlow Growers Mart and SDA Agreement 2002, No. AG 175 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00144

**NOTICE****AG 166 OF 2002****CRANBERRIES AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 16 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act.

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Cranberries and SDA Agreement 2002, No. AG 166 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00145

**NOTICE****AG 213 OF 2002****CRISP'S CORNER STORE AND NEWSAGENCY AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 17 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act.

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Crisp's Corner Store and Newsagency and SDA Agreement 2002, No. AG 213 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00146

**NOTICE****AG 185 OF 2002****ESSENTIALS SUPERMARKET OF SOUTH PERTH AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 18 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act.

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Essentials Supermarket of South Perth and SDA Agreement 2002, No. AG 185 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00147

**NOTICE****AG 138 OF 2002****FOODLAND AMELIA HEIGHTS AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 19 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act.

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Foodland Amelia Heights and SDA Agreement 2002, No. AG 138 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00148

**NOTICE****AG 123 OF 2002****FOODLAND BAYSWATER (BEECHBORO ROAD) AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 20 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act.

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Foodland Bayswater (Beechboro Road) and SDA Agreement 2002, No. AG 123 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00149

**NOTICE****AG 132 OF 2002****FOODLAND BAYSWATER (WHATLEY CRESCENT) AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 21 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act.

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Foodland Bayswater (Whatley Crescent) and SDA Agreement 2002, No. AG 132 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00150

**NOTICE****AG 127 OF 2002****FOODLAND BINDOON AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 22 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act.

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Foodland Bindoon and SDA Agreement 2002, No. AG 127 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 5<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00151

**NOTICE****AG 122 OF 2002****FOODLAND BODDINGTON AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 23 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act.

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Foodland Boddington and SDA Agreement 2002, No. AG 122 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 5<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00152

**NOTICE****AG 136 OF 2002****FOODLAND DOWERIN AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 24 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act.

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Foodland Dowerin and SDA Agreement 2002, No. AG 136 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 5<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00153

**NOTICE****AG 129 OF 2002****FOODLAND LESMURDIE AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 25 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act.

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Foodland Lesmurdie and SDA Agreement 2002, No. AG 129 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 5<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00154

**NOTICE****AG 126 OF 2002****FOODLAND MANNING AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 26 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act.

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Foodland Manning and SDA Agreement 2002, No. AG 126 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 5<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00155

**NOTICE****AG 141 OF 2002****FOODLAND MERREDIN AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 27 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act.

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Foodland Merredin and SDA Agreement 2002, No. AG 141 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 5<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00122

**NOTICE****AG 128 of 2002****FOODLAND MUKINBUDIN AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 28 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Foodland Mukinbudin and SDA Agreement 2002, No. AG 128 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00123

**NOTICE****AG 164 of 2002****FOODLAND RAVENSTHORP AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 29 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Foodland Ravensthorp and SDA Agreement 2002, No. AG 164 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00128

**NOTICE****AG 130 OF 2002****FOODLAND TARCOOLA AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 30 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Foodland Tarcoola and SDA Agreement 2002, No. AG 130 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00131

**NOTICE****AG 140 of 2002****FOODLAND TOODYAY AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 31 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Foodland Toodyay and SDA Agreement 2002, No. AG 140 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00132

**NOTICE****AG 134 OF 2002****FOODLAND WAGIN AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 32 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Foodland Wagin and SDA Agreement 2002, No. AG 134 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00134

**NOTICE****AG 216 of 2002****FOODYS EXPRESS AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 33 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Foodys Express and SDA Agreement 2002, No. AG 216 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00135

**NOTICE****AG 174 OF 2002****FRESH FOOD CORNER SUPERMARKET AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 34 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Fresh Food Corner Supermarket and SDA Agreement 2002, No. AG 174 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00136

**NOTICE****AG 171 of 2002****GLEN FORREST SUPERMARKET AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 35 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Glen Forrest Supermarket and SDA Agreement 2002, No. AG 171 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00137

**NOTICE****AG 172 of 2002****HALL'S CREEK CARAVAN PARK AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 36 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Hall's Creek Caravan Park and SDA Agreement 2002, No. AG 172 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00138

**NOTICE****AG 187 OF 2002****HANNAN'S FOODMART AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 37 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act.

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Hannan's Foodmart and SDA Agreement 2002, No. AG 187 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00139

**NOTICE****AG 169 OF 2002****JOHN'S FOOD AND LIQUOR STORE AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 38 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act.

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the John's Food and Liquor Store and SDA Agreement 2002, No. AG 169 of 2002, on and from the 21<sup>st</sup> day of February 2015.

DATED at Perth this 4<sup>th</sup> day of February 2015

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00058

**NOTICE****AG 212 OF 2002****KAM FOOD & NEWS CENTRE SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 39 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Kam Food & News Centre and SDA Agreement 2002, No. AG 212 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00059

**NOTICE****AG 158 OF 2002****KENDENUP STORES AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 40 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Kendenup Stores and SDA Agreement 2002, No. AG 158 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00060

**NOTICE****AG 159 OF 2002****KIMBERLEY SUPA VALUE STORE AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 41 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Kimberley Super Value Store and SDA Agreement 2002, No. AG 159 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00061

**NOTICE****AG 182 OF 2002****KIRKWOOD FOOD STORE & DELICATESSEN AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 42 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Kirkwood Food Store & Delicatessen and SDA Agreement 2002, No. AG 182 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00062

**NOTICE****K-MART WESTERN AUSTRALIA DISTRIBUTION CENTRES AGREEMENT, NO. AG 100 OF 1996**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 44 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the K-Mart Western Australia Distribution Centres Agreement, No. AG 100 of 1996, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00063

**NOTICE****K-MART WESTERN AUSTRALIA DISTRIBUTION CENTRES ENTERPRISE AGREEMENT NO. AG 16 OF 1995**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 43 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the K-Mart Western Australia Distribution Centres Enterprise Agreement, No. AG 16 of 1995, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00064

**NOTICE****AG 186 OF 2002****LAVERTON STORES AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 45 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Laverton Stores and SDA Agreement 2002, No. AG 186 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 29<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00065

**NOTICE****AG 215 OF 2002****LIONEL ST MARKETS AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 46 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Lionel St Markets and SDA Agreement 2002, No. AG 215 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00066

**NOTICE****AG 210 OF 2002****LITTLE BUCKS SUPERMARKET AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 47 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Little Bucks Supermarket and SDA Agreement 2002, No. AG 210 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00067

**NOTICE****AG 178 OF 2002****MARIELLA'S CONTINENTAL DELI AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 48 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Mariella's Continental Deli and SDA Agreement 2002, No. AG 178 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00068

**NOTICE****AG 170 OF 2002****MCDONALD WHOLESALERS AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 49 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the McDonald Wholesalers and SDA Agreement 2002, No. AG 170 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00069

**NOTICE****AG 6 OF 2003****MIDLAND JUNCTION FRESH MARKETS AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 50 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Midland Junction Fresh Markets and SDA Agreement 2002, No. AG 6 of 2003, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00070

**NOTICE****AG 209 OF 2002****MJ AND VD QUINLAN AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 51 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the MJ and VD Quinlan and SDA Agreement 2002, No. AG 209 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00071

**NOTICE****AG 183 OF 2002****MUIR'S FRESH FOOD SUPERMARKET AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 52 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Muir's Fresh Food Supermarket and SDA Agreement 2002, No. AG 183 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00072

**NOTICE****AG 217 OF 2002****MURDOCH DRIVE CONTINENTAL SUPER DELI AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 53 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Murdoch Drive Continental Super Deli and SDA Agreement 2002, No. AG 217 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00073

**NOTICE****AG 160 OF 2002****NOAKES STORE DENMARK AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 54 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Noakes Store Denmark and SDA Agreement 2002, No. AG 160 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00075

**NOTICE****AG 7 OF 2003****PEMBERTON GENERAL STORE AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 56 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Pemberton General Store and SDA Agreement 2002, No. AG 7 of 2003, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00076

**NOTICE****AG 181 OF 2002****PERENJORI SUPERMARKET AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 57 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Perenjori Supermarket and SDA Agreement 2002, No. AG 181 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00077

**NOTICE****AG 145 OF 2002****PIONEER STORE AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 58 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Pioneer Store and SDA Agreement 2002, No. AG 145 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00078

**NOTICE****AG 21 OF 2003****PORT HEDLAND TRUCK STOP AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 59 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Port Hedland Truck Stop and SDA Agreement 2002, No. AG 21 of 2003, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00199

**NOTICE****AG 208 OF 2002****P.R. & B.M. HARRINGTON AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 55 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the P.R. & B.M. Harrington and SDA Agreement 2002, No. AG 208 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00079

**NOTICE****AG 180 OF 2002****R & E GENERAL STORE AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 60 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the R & E General Store and SDA Agreement 2002, No. AG 180 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00080

**NOTICE****RIVER ROOSTER BROOME AGREEMENT NO. AG 271 OF 1996**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 61 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the River Rooster Broome Agreement No. AG 271 of 1996, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00081

**NOTICE****RIVER ROOSTER BUNBURY AGREEMENT NO. AG 264 OF 1996**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 62 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the River Rooster Bunbury Agreement No. AG 264 of 1996, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00082

## NOTICE

**RIVER ROOSTER BUSSELTON/DUNSBOROUGH AGREEMENT NO. AG 285 OF 1996**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 63 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the River Rooster Busselton/Dunsborough Agreement No. AG 285 of 1996, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00083

## NOTICE

**RIVER ROOSTER CARNARVON AGREEMENT NO. AG 270 OF 1996**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 64 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the River Rooster Carnarvon Agreement No. AG 270 of 1996, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00084

## NOTICE

**RIVER ROOSTER MERRIWA AGREEMENT NO. AG 268 OF 1996**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 65 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the River Rooster Merriwa Agreement No. AG 268 of 1996, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00085

**NOTICE****RIVER ROOSTER NARROGIN AGREEMENT NO. AG 265 OF 1996**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 66 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the River Rooster Narrogin Agreement No. AG 265 of 1996, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00086

**NOTICE****AG 165 OF 2002****SOUTH PERTH FOOD MART AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 67 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the South Perth Food Mart and SDA Agreement 2002, No. AG 165 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00087

**NOTICE****AG 173 OF 2002****SUPA VALU CAPEL AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 68 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Supa Valu Capel and SDA Agreement 2002, No. AG 173 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00088

**NOTICE****AG 131 OF 2002****SUPA VALU DONGARA AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 69 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Supa Valu Dongara and SDA Agreement 2002, No. AG 131 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00089

**NOTICE****AG 139 OF 2002****SUPA VALU HAMILTON HILL AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 70 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Supa Valu Hamilton Hill and SDA Agreement 2002, No. AG 139 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00090

**NOTICE****AG 137 OF 2002****SUPA VALU HIGH WYCOMBE AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 71 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Supa Valu High Wycombe and SDA Agreement 2002, No. AG 137 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00091

**NOTICE****AG 8 OF 2003****SUPA VALU HUNTINGDALE AND SDA AGREEMENT 2002**  
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 72 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Supa Valu Huntingdale and SDA Agreement 2002, No. AG 8 of 2003, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00092

**NOTICE****AG 133 OF 2002****SUPA VALU INNALOO AND SDA AGREEMENT 2002**  
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 73 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Supa Valu Innaloo and SDA Agreement 2002, No. AG 133 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00093

**NOTICE****AG 125 OF 2002****SUPA VALU KELMSCOTT AND SDA AGREEMENT 2002**  
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 74 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Supa Valu Kelmscott and SDA Agreement 2002, No. AG 125 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00094

**NOTICE****AG 135 OF 2002****SUPA VALU OCEAN REEF AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 75 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Supa Valu Ocean Reef and SDA Agreement 2002, No. AG 135 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00095

**NOTICE****AG 124 OF 2002****SUPA VALU STIRLING AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 76 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Supa Valu Stirling and SDA Agreement 2002, No. AG 124 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00096

**NOTICE****AG 121 OF 2002****SUPA VALU WILLETTON AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 77 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Supa Valu Willetton and SDA Agreement 2002, No. AG 121 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00097

**NOTICE****AG 179 OF 2002****THREE SPRINGS GENERAL STORE AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 78 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Three Springs General Store and SDA Agreement 2002, No. AG 179 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00098

**NOTICE****AG 22 OF 2003****TOP VALU SUPERMARKET AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 79 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Top Valu Supermarket and SDA Agreement 2002, No. AG 22 of 2003, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00099

**NOTICE****AG 168 OF 2002****TRADE WINDS SUPERMARKET AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 80 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Trade Winds Supermarket and SDA Agreement 2002, No. AG 168 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00100

**NOTICE****AG 163 OF 2002****WUNDOWIE ONE STOP AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 81 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Wundowie One Stop and SDA Agreement 2002, No. AG 163 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00101

**NOTICE****AG 176 OF 2002****WYNDHAM SUPERMARKET AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 82 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the Wyndham Supermarket and SDA Agreement 2002, No. AG 176 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

2015 WAIRC 00102

**NOTICE****AG 188 OF 2002****YORK MINI MART AND SDA AGREEMENT 2002**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 83 of 2015

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Shop Distributive and Allied Employees' Association of Western Australia will cease to be a party to the York Mini Mart and SDA Agreement 2002, No. AG 188 of 2002, on and from the 21<sup>st</sup> day of February 2014.

DATED at Perth this 30<sup>th</sup> day of January 2015.

[L.S.]

(Sgd.) S BASTIAN,  
Registrar.

**INDUSTRIAL MAGISTRATE—Claims before—**

2015 WAIRC 00018

**WESTERN AUSTRALIAN INDUSTRIAL MAGISTRATES COURT**

<b>CITATION</b>	:	2015 WAIRC 00018	
<b>CORAM</b>	:	INDUSTRIAL MAGISTRATE G. CICCHINI	
<b>HEARD</b>	:	WEDNESDAY, 19 NOVEMBER 2014, THURSDAY 20 NOVEMBER 2014 AND WEDNESDAY, 26 NOVEMBER 2014	
<b>DELIVERED</b>	:	WEDNESDAY 21 JANUARY 2015	
<b>FILE NO.</b>	:	M 47 OF 2013	
<b>BETWEEN</b>	:	HUGH SUTHERLAND ROGERS	<b>CLAIMANT</b>
		AND	
		J-CORP PTY LTD	<b>RESPONDENT</b>
<b>FILE NO.</b>	:	M 48 OF 2013	
<b>BETWEEN</b>	:	ANDJELKO BUDIMLICH	<b>CLAIMANT</b>
		AND	
		J-CORP PTY LTD	<b>RESPONDENT</b>

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<b>Catchwords</b>	:	Claimants assert entitlement to four weeks' paid annual leave per year of service as full-time employees under the <i>Minimum Conditions of Employment Act 1993</i> (WA), the <i>Workplace Relations Act 1996</i> (Cth), and the <i>Fair Work Act 2009</i> (Cth); Whether accrued annual leave should have been paid on termination of employment; Whether the Claimants, engaged as Sales Consultants by the Respondent, were remunerated wholly by commission or percentage reward; Whether the Claimants were entirely remunerated by incentive-based payments; Whether the Claimants took annual leave in any event; Whether the claims fall outside the limitation periods; Whether annual leave accrued during periods of leave taken; Whether the quantum claimed was appropriately calculated.
<b>Legislation</b>	:	<i>Industrial Relations Act 1979</i> (WA) <i>Minimum Conditions of Employment Act 1993</i> (WA) <i>Minimum Conditions of Employment Regulations 1993</i> (WA) <i>Workplace Relations Act 1996</i> (Cth) <i>Fair Work Act 2009</i> (Cth) <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Cth) <i>Fair Work Regulations 2009</i> (Cth) <i>Acts Interpretation Act</i> (Cth)
<b>Instruments Referred to in Judgement</b>	:	Vehicle Manufacturing, Repair, Services and Retail Award 2010 (MA000089) Real Estate Industry Award 2010 (MA000106)
<b>Cases Referred to in Judgement</b>	:	<i>David John Hignett v Joburne Pty Ltd</i> (2000 WAIRC 01598) <i>Gregory Oats v Sanders Executive Pty Ltd</i> (1999) 79 WAIG 3543 <i>ACE Insurance Limited v Trifunovski (No 2)</i> [2012] FCA 793
<b>Result</b>	:	Claims not proven
<b>Representation</b>	:	
Claimants	:	Mr P Mullally (Agent), of Workclaims Australia, appeared for the Claimants
Respondent	:	Mr A Power (Counsel), instructed by Squire Patton Boggs, appeared for the Respondent

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### REASONS FOR DECISION

#### Background

- 1 Mr Hugh Sutherland Rogers (Mr Rogers) and Mr Andjelko Budimlich (Mr Budimlich) are former employees of J-Corp Pty Ltd (the Respondent). Mr Rogers worked for the Respondent from 24 December 1993 until his dismissal on 18 December 2012. Mr Budimlich commenced working for the Respondent on 19 May 1997 and resigned from that employment on 2 November 2011. Mr Rogers and Mr Budimlich were both employed as sales consultants and sold the Respondent's home building products. They were paid on commission, based on results.
- 2 Mr Rogers and Mr Budimlich claim that they were, upon the cessation of their employment, not paid for periods of untaken annual leave. Mr Rogers claims that he is entitled to the payment of 76 weeks' of untaken annual leave. Mr Budimlich claims he is entitled to the payment of 56 weeks' of untaken annual leave.
- 3 The Respondent, for reasons which will be outlined later in these Reasons for Decision, denies both claims.

#### Statutory Framework

- 4 The claims are founded on the relevant industrial legislations that governed Mr Rogers' and Mr Budimlich's employment. There was, during the material period, changing legislation. There is no dispute that the employment of Mr Rogers and Mr Budimlich can be recognised as fitting into three relevant periods which are identified by the legislation governing their employment at the time:

PERIOD 1	PERIOD 2	PERIOD 3
Western Australian legislation <i>Minimum Conditions of Employment Act 1993</i>  (up until 26 March 2006)	Commonwealth legislation <i>Workplace Relations Act 1996</i>  (27 March 2006 to 30 June 2009)	Commonwealth legislation <i>Fair Work Act 2009</i>  (1 July 2009 onwards)

- 5 When the *Workplace Relations Act 1996* (Cth) (WR Act) commenced, the *Minimum Conditions of Employment Act 1993* (WA) (MCE Act) became, under Schedule 8 of the WR Act, a Notional Agreement Preserving State Awards (NAPSA). Given that Mr Rogers' and Mr Budimlich's conditions of employment had been governed by the MCE Act when the NAPSA came into operation (Schedule 8: section 31(b)), Mr Rogers, Mr Budimlich and the Respondent became bound by the NAPSA (Schedule 8: section 32(1)). It was a term of the NAPSA that accrued annual leave under the MCE Act was preserved (Schedule 8: sections 34(2) and (3)). When the *Fair Work Act 2009* (FW Act) repealed the WR Act and came into operation, any accrued rights were not affected by the repeal of the WR Act (see section 8, *Acts Interpretation Act* (Cth)). The NAPSA became a WR Act instrument and continued in existence pursuant to Schedule 3 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth). Consequently, accrued entitlements were preserved and carried forward.

#### Reasons for Denying the Claims

- 6 The Respondent denies the claims for the following reasons:
  - **Ground 1**  
For the period of employment during which the MCE Act applied, Mr Rogers and Mr Budimlich were not employees within the meaning of that Act because they were paid wholly by commission or percentage reward.
  - **Ground 2**  
For the period that the WR Act applied, Mr Rogers and Mr Budimlich were not entitled to be paid annual leave on the basis that annual leave is paid by reference to the employee's basic periodic rate of pay (section 235(1), WR Act) which excludes incentive-based payments (section 178, WR Act). Mr Rogers and Mr Budimlich were remunerated entirely by incentive-based payments.
  - **Ground 3**  
Further and in any event, Mr Rogers and Mr Budimlich have taken annual leave. Any claim for the payment of unpaid annual leave runs from the time such leave was taken. The limitation periods contained in the *Industrial Relations Act 1979* (WA) (the IR Act) and the WR Act have the effect of making part of the claims statute barred.
  - **Ground 4**  
Mr Rogers and Mr Budimlich took annual leave and were remunerated in the same way as they would otherwise be remunerated during periods of work, being by payment of commission.
  - **Ground 5**  
Mr Rogers and Mr Budimlich have not accrued the amount of leave asserted, and the rate of pay applicable to annual leave not taken is not that which they assert.
- 7 The Respondent also raised a sixth ground of defence but for reasons given during the course of the Trial, was not permitted to pursue that ground.

## **Evidence**

### **Mr Rogers**

- 8 On 25 December 1993, Mr Rogers entered into a written agreement with the Respondent. The agreement, entitled *Finance and Housing Consultants Agreement (for Individual Acting as a Consultant)* (Rogers Agreement), provided that Mr Rogers was engaged to secure clients and to sign contracts for home construction.
- 9 Clause 19 of the Rogers Agreement provided:
- “19.1 *The relationship between the parties hereto shall be that of the Company and an independent consultant, and nothing herein shall be deemed to comprise a contract of employment or a partnership, joint venture or any other than an association between the Company and the Consultant other than an association between the Company and an independent contractor.*”
- 10 It was agreed by the parties that Mr Rogers would be remunerated by commission in accordance with the Commission Schedule set out in *Annexure A* of the Rogers Agreement. In addition to outlining the commission payable, the Commission Schedule also contained the following provision:
- “*Holidays are to be paid quarterly.*”
- 11 The source for that reference was Clause 6.5 of the Rogers Agreement, which provided:
- “6.5 *In addition to the remuneration commission referred to herein the Company shall pay to the Consultant on a quarterly basis a holiday pay allowance as set out in the commission schedule.*”
- 12 The reference to holidays in the Commission Schedule was contextually incongruent with the balance of the Schedule which inter alia sets out the rate of commission payable. The “holiday pay allowance” provision within the Schedule does not set out any particular rate.
- 13 Mr Rogers’ evidence is that his remuneration was primarily, but not wholly, based on commission. In addition to commission payments received he was also paid long service leave and superannuation throughout his employment.
- 14 Mr Rogers testified that he worked full-time for the Respondent and was not permitted to work for others. All of his “leads” were owned by the Respondent. The Respondent allocated Mr Rogers an office, a desk phone, and a computer (from 2007 onwards). Mr Rogers was provided with keys to the Respondent’s building, enabling him access to it as required.
- 15 Mr Rogers says that his remuneration package during Period 1 consisted of commission payments, lump sum bonuses and overseas trips. He also received salary continuance insurance through the Respondent’s superannuation scheme, however, that ceased in around August 2003. In 2005, Mr Rogers had a dispute with the Respondent concerning bonus payments. It suffices to say, that that dispute was resolved.
- 16 On 17 December 2010, Mr Rogers was granted long service leave. He took that leave between 13 July 2011 and 20 August 2011 and was paid for it.
- 17 Following his dismissal, Mr Rogers commenced an action claiming that he was unfairly dismissed. That action was resolved.
- 18 Mr Rogers subsequently initiated this claim, in which he initially sought payment in the sum of \$55,176.00, being payment equivalent to 76 weeks’ of unpaid annual leave, calculated on a gross weekly income of \$726.00.
- 19 Following the receipt of discoverable documents, Mr Rogers submitted that his entitlement was that of \$120,549.68, rather than the amount originally claimed. Mr Rogers’ position was that commissions paid to him in December 2012 significantly increased his total earnings in his final 12 months of employment with the Respondent. His total gross earnings for that period were \$82,481.27, equating to a gross weekly income of \$1,586.18. At the commencement of the Trial, I was advised by Mr Rogers’ agent that his claim would not be one for \$120,549.68, but rather an amount of \$44,387.00. That calculation was based on the weekly rate of \$584.05, as had been outlined in Mr Rogers’ Amended Particulars of Claim lodged on 18 February 2014.

### **Mr Budimlich**

- 20 On 21 May 1997, Mr Budimlich entered into a written contract entitled *Agreement for Home Building Sales Consultants* (Budimlich Agreement). The Budimlich Agreement provided that Mr Budimlich would be remunerated based on commissions in accordance with the *Commission Schedule for Consultants Holding Real Estate Sales Person’s Licence* (Budimlich Commission Schedule) in Annexure A. The terms of Mr Budimlich’s remuneration were governed by Clause 6 of the Budimlich Agreement. Relevantly, Clause 6.2 provided:
- “6.2 *The Consultant acknowledges that the total of all remuneration payable under this contract is earned as commission only and that the Minimum Conditions of Employment Act (1993) has no application whatsoever.*”
- 21 Mr Budimlich says that his remuneration was primarily, but not wholly, based on commission. He was paid superannuation, long service leave and a range of incentive-based payments. Mr Budimlich was paid in accordance with a *Sales Award and Incentive Scheme* which the Respondent operated. He was the Respondent’s representative of the year for four years running and was paid additional incentive-based lump sums of \$5,000.00, \$8,000.00, \$10,000.00 and \$8,000.00 for those respective years. The incentive-based lump sum payments were subject to tax deductions and were paid to Mr Budimlich in the normal course of his regular remuneration.

- 22 Mr Budimlich also received other small incentive-based payments in the form of gift vouchers, restaurant vouchers and cash. A number of other incentive-based payments such as quarterly prizes valued at between \$2,000.00 and \$5,000.00 were also received.
- 23 In the financial year ending 30 June 2004, Mr Budimlich achieved over \$15,000,000.00 in net sales turnover. In light of that achievement, he subsequently asked the Respondent to build a family home for him at cost price. The Respondent refused, but gave Mr Budimlich a 10% discount on the standard retail price.
- 24 Mr Budimlich last worked for the Respondent on 8 August 2011. He then went on 12 weeks' long service leave and on completion of that leave on 2 November 2011, resigned from his employment.
- 25 At the time that Mr Budimlich's employment came to an end he had been earning an equivalent of a gross weekly wage of \$2,971.12. He therefore claims 56 weeks of annual leave based on his average weekly earnings of \$2,971.12, totalling \$166,382.72.

#### **Mr Kelvin Ryan**

- 26 Mr Kelvin Ryan is the Executive General Manager of the Respondent. Mr Ryan first joined the Respondent in 2003, in that same capacity, but left in 2005. He returned to the Respondent in 2009, originally as a contractor but was then reappointed as Executive General Manager in August 2010. Mr Ryan also concurrently holds the position of Executive General Manager of the Respondent's associated company, B.G.C. Residential Pty Ltd (BGC).
- 27 Both the Respondent and BGC operate a number of different housing brands to cater for all sections of the housing market. Mr Ryan is responsible for the overall management of both companies, and the Branch Managers report to him. He had the management responsibility for both Mr Rogers and Mr Budimlich, each of whom he knew personally, and spoke to them two to three times a month.
- 28 Mr Ryan said that the only requirement placed on Mr Rogers and Mr Budimlich was that they attend a weekly sales meeting and that they, when required, attend one of the Respondent's display homes for up to 14 hours per week. They otherwise had the freedom to decide which hours they worked.
- 29 Mr Ryan asserts that in accordance with the Budimlich Agreement, Mr Budimlich's remuneration was by commission only, with superannuation and long service leave having been paid in accordance with statutory requirements. Mr Budimlich was not paid a retainer. The more he sold, the more he earned.
- 30 Mr Ryan pointed out that the commission rate would increase in accordance with what was set out in the Budimlich Commission Schedule. Achieving a higher commission rate is commonly known as "bonusing". In other words, if someone had "bonused" or "made bonus" that particular month, it meant that they had attained the higher commission rates referred to in the Commission Schedule of their Agreement.
- 31 Another type of additional commission or incentive-based payment included a quarterly award referable to the amount of gross sales achieved in the previous quarter. In 2008, a payment of \$1,500.00 was achieved for 15 or more gross sales per quarter, and \$5,000.00 for 25 or more gross sales.
- 32 Another form of incentive-based payment was an annual award derived solely from the number of sales achieved in the previous year. The award was a monetary award, payable on the proviso that the entire sales team and the individual achieved a sales target. In 2008, an award of \$20,000.00 was paid when the individual had achieved 60 net sales in that year. There were prizes also for second and third highest achieving sales consultants.
- 33 From time to time, other ad-hoc discretionary incentives were offered to encourage greater performance. Those incentives included rewards such as vouchers, restaurant vouchers, and the payment of holiday travel costs. An additional commission structure was in place for those consultants who achieved a very high dollar value in sales. Mr Budimlich achieved that in 2002.
- 34 Mr Ryan agrees that Mr Budimlich received a 10% discount on the build of a new home as part of an incentive, but says that did not occur until June 2007.
- 35 Turning to Mr Rogers, Mr Ryan points out that he too was paid on a commission only basis. He says that the reference in Clause 6.5 of the Rogers Agreement to a holiday pay allowance was a drafting error because there is no provision for any holiday pay allowance. Neither Mr Rogers nor any other consultant was ever paid a holiday pay allowance.
- 36 Mr Rogers was not paid a retainer or other payment, not being commissions, other than the statutory payment of superannuation and long service leave.
- 37 The additional commission arrangements in the form of "bonusing" applied to Mr Rogers, however, other additional commissions or arrangements in his area of sales was the exception rather than the rule. Mr Rogers only received three additional payments in the 13 year period from 1993 until 2006.
- 38 Mr Ryan said that as commission only employees, as opposed to salaried employees, Mr Budimlich and Mr Rogers were given a high degree of autonomy over when and how they carried out their work. In practice, they were more akin to independent contractors than to employees. Mr Rogers and Mr Budimlich were able to take any amount of leave they wanted, without formally applying for it or requesting permission from their Manager.
- 39 Further, the Respondent imposed a company-wide shutdown at Christmas time. There was a requirement for all staff to take annual leave during that shutdown period. The office and all display homes attended by the Respondent's sales representatives were closed during the Christmas shut down period. In fact, display homes sometimes remained closed for a week or two beyond the shutdown period. Mr Budimlich and Mr Rogers would have been on leave for at least those two weeks each year.
- 40 Mr Ryan says that throughout his employment, Mr Rogers took regular time off to go to his farm. In speaking with Mr Rogers, he would often tell Mr Ryan that he was going to his farm.

**Ms Tonya Miller**

- 41 Ms Tonya Miller is the Organisational Development Manager, employed by BGC. Ms Miller works for BGC and its associated company, the Respondent. She is responsible for organisational development, strategic recruitment, staffing and subcontract issues relating to the Respondent.
- 42 In preparation for the Trial of these claims, Ms Miller caused the interrogation of the Respondent's data management systems. That task was done by Mr Adam Stafford, Manager, Forensic Services at BDO Corporate Finance (WA) Pty Ltd (BDO). Mr Stafford also interrogated the laptop computer which had been supplied to Mr Rogers.
- 43 Of relevance to these matters, Mr Stafford was instructed to recover:
- any information relating to payments made to Mr Budimlich or Mr Rogers from the Respondent's Oracle data base; and
  - any information or documents on the Respondent's server indicating when Mr Rogers or Mr Budimlich took annual leave.
- 44 In furtherance of his instructions, Mr Stafford produced a written report dated 7 August 2014. With the assistance of that report, Ms Miller searched for documents relating to the taking of annual leave by Mr Budimlich and Mr Rogers. In that regard, Ms Miller found emails sent to Mr Rogers between January 2008 and September 2012, emails sent by current employees of the Respondent in which Mr Rogers' or Mr Budimlich's names appeared, and Minutes of sales meetings in which the names of Mr Budimlich or Mr Rogers appeared. Ms Miller also caused a search to be made of the computerised client log record to ascertain any record of annual leave taken by Mr Budimlich or Mr Rogers.
- 45 It suffices to say that the searches produced evidence of email correspondence and forms of other communication in which Mr Rogers, in corresponding with clients, indicated the taking of annual leave. Evidence was also produced showing that Mr Rogers and Mr Budimlich had, at various times, taken time off work in order to travel overseas.

**Ms Nancy Burgess**

- 46 The only other person called to give viva voce evidence was Ms Nancy Burgess. Ms Burgess is the Respondent's Payroll Manager. She has held that position since 1995. In Ms Burgess' statement, dated 15 November 2013 and produced to this Court, she stated that during her employment with the Respondent, all sales representatives employed by the Respondent were paid on a commission only basis. Their pay was contingent upon results achieved. In addition, and in accordance with statutory requirements, sales representatives were paid long service leave and superannuation.
- 47 Ms Burgess' evidence is that in the last 12 months of his employment, Mr Rogers earned \$30,370.81 (gross), which equated to a weekly average earning figure of \$584.05 (gross). Other than superannuation and long service leave, Mr Rogers did not receive additional payments during that period. It was Ms Burgess' evidence also that Mr Rogers' long service leave payment of \$2,520.00, received on termination representing a gross weekly income of \$726.00, was incorrectly calculated because that figure included a commission payment that fell just outside of the 12 month period prior to Mr Rogers' termination.
- 48 Ms Burgess testified that in the 12 month period prior to his employment ceasing, Mr Budimlich earned \$154,498.25 (gross), equating to a gross weekly income of \$2,971.12. Mr Budimlich did not receive any other payment for that year excepting superannuation and long service leave.
- 49 In a Supplementary Statement made by Ms Burgess on 11 March 2014, she said that it had been her understanding that the Respondent was unable to access any commission summary statements prior to 1999 because of commission software changes that occurred in 1996 and then again in 1999. However, with the assistance of expert investigators, Mr Rogers' commission summary statements for the period from 14 June 1996 to 21 September 1999 were retrieved. Those documents were discovered to Mr Rogers and produced to the Court.
- 50 Two of the documents disclosed to Mr Rogers on 20 November 2013 were:
- a) a payslip for the period ending 29 March 1996 (Exhibit 12); and
  - b) a commission summary statement dated 27 March 1996 (Exhibit 13).
- 51 Although Ms Burgess did not create those records, she concedes that the documents appear to reflect the payment of annual leave to Mr Rogers between September 1994 and March 1996.
- 52 By analysing those documents, Ms Burgess has extrapolated that, with one exception, the annual leave payments made to Mr Rogers between 19 September 1994 and 30 November 1997 were equivalent to 1/13<sup>th</sup> of the total commission paid for the quarter. Put another way, the payments were equivalent to one week of the total commission earned during the quarter.
- 53 Finally, Ms Burgess addressed the issue of the introduction of new consultant agreements in March 1996. The new agreements produced were in the form of that signed by Mr Budimlich in May 1997 (Exhibit 15).
- 54 Although the Respondent does not have a record of Mr Rogers having entered into a new written consultant's agreement in 1996, the changes introduced in the new consultant agreements were nevertheless applied to him from that time. The commission structure in the 1993 written agreement (Rogers Agreement) was replaced.
- 55 In the 1993 Rogers Agreement, commission was payable based on the number of homes sold, which became conditional during each quarter. However, in 1996, commission became payable on the number of homes sold, which became unconditional during each month.
- 56 When cross-examined, Ms Burgess conceded that the Respondent did not keep any records relating to Mr Rogers or Mr Budimlich, or any other sales consultants taking annual leave.

### **Other Evidence**

57 The Witness Statements of Mr Daniel Calcei (dated 8 August 2014), Mr Michael Cassidy (dated 7 August 2014), Mr Adam Stafford (dated 8 August 2014), and Mr Michael Vermaes (dated 8 August 2014) were, by consent, admitted into evidence (Exhibit 27).

### **Statement of Mr Daniel Calcei**

58 Mr Calcei, a Senior Analyst with BDO, described his role in examining the Lenovo Thinkpad Laptop computer which had been supplied to and used by Mr Rogers. He used an analysis computer and forensic software to make an exact copy of all of the data which was stored on the hard-drive of the laptop computer used by Mr Rogers.

### **Statement of Mr Michael Cassidy**

59 Mr Cassidy is the Associate Director for BDO and oversees the Forensic Service Team. He received the subject laptop computer from Ms Miller and asked Mr Calcei to process and acquire forensic images from it.

### **Statement of Mr Adam Stafford**

60 Mr Stafford is the Manager, Forensic Services at BDO. He assists clients with the extraction, identification and analysis of information from computers, mobile phones and other electronic devices.

61 On 15 May 2014, Mr Stafford was instructed by Ms Miller to undertake an examination of the forensic images of the Respondent's data systems and of the laptop computer which had been assigned to and used by Mr Rogers. He was instructed inter alia, to search for any data relating to payments made to Mr Rogers or Mr Budimlich by the Respondent, and to allow a search of data systems to be undertaken to locate any documents relating to the taking of annual leave by Mr Rogers or Mr Budimlich.

62 On the completion of his examination, Mr Stafford prepared a report which detailed the work undertaken and his observations of the data examined. The report was dated 7 August 2014 and is before this Court, forming part of Exhibit 27.

### **Statement of Mr Michael Vermaes**

63 Mr Vermaes is employed by Realognita.com Pty Ltd (Realognita) as a Systems Administrator. Realognita designs, builds and maintains the Respondent's information technology infrastructure. Realognita has been providing that service for the Respondent since 2006. Mr Vermaes' evidence is that Mr Rogers' and Mr Budimlich's email accounts were deleted approximately two months after they respectively ceased working for the Respondent. Consequently, the only emails relevant to Mr Rogers and/or Mr Budimlich which remain on the Respondent's server are those which were sent or received from current employees of the Respondent. The only other email records available are those found on the hard-drive of the laptop computer which had been supplied to and used by Mr Rogers. Copies of all data (including emails) contained on the Respondent's files and database servers were provided to BDO.

### **Issues**

64 Mr Rogers and Mr Budimlich bear the onus of proving, on the balance of probabilities, that:

1. in each instance they were entitled to the payment of annual leave;
2. annual leave was not taken during their employment; and
3. no payment of annual leave entitlements were received either during their employment or upon cessation thereof.

### **Determination**

65 Industrial laws constantly evolve to meet the changing political and economic environment. What may be considered the appropriate standard today, may not have been the appropriate standards applicable five, ten or 20 years ago.

66 Indeed, the evolving nature of industrial laws is well demonstrated in these matters before me. The relevant industrial legislation moved from State legislation, in the form of the MCE Act in Period 1, to Commonwealth legislation, in the form of the WR Act in Period 2 and the FW Act in Period 3.

67 The various pieces of legislation reflect that there has been a change in how employees who are paid wholly by commission are treated. While it was the case that they were not treated as employees for the purposes of the MCE Act, they now, in some instances are treated as employees for the purpose of the application of the *National Employment Standards* (NES).

68 To some extent, both now and in the past, the fact that one is remunerated by commission imports differing standards and working conditions. Such is self-evident in the MCE Act, the WR Act, and the FW Act and in some Modern Awards such as the Vehicle Manufacturing, Repair, Services and Retail Award 2010 (MA000089) and the Real Estate Industry Award 2010 (MA000106) (Real Estate Award).

69 Mr Rogers and Mr Budimlich were remunerated by commission and consequently the Respondent treated them differently to other employees who were not remunerated in the same way. They were not required to work any particular spread of hours. They could come and go from the Respondent's office as they pleased. Subject to them attending some sales meetings, they were not controlled as to how and when they did their work. Mr Rogers' and Mr Budimlich's remuneration was, without doubt, results driven. If they did not sell any product they could not be remunerated. They were not paid a retainer or any other form of base payment, and they could have conceivably worked for extended periods without pay.

70 Despite Clause 19.1 of the Rogers Agreement and Clause 6.2 of the Budimlich Agreement, the Respondent does not deny the existence of an employment relationship and it is clear that nothing contained in those clauses could change what was fundamentally an employment relationship.

- 71 Prior to the introduction of the NES in the FW Act, there was no singular set of minimum standards applying. Indeed, standards such as the provision of annual leave were very much dependent upon the particular contract of employment and the applicable industrial legislation and/or instruments in force.
- 72 Mr Budimlich's contract of employment did not contain any provision for the taking of annual leave and Clause 6.2 of the Budimlich Agreement reflects that he was not to be considered an "employee" for the purpose of the applicability of certain minimum standards of his employment.
- 73 Mr Rogers' situation was somewhat different. Although his contract of employment did not contain any provision for the taking of annual leave, the Rogers Agreement did nevertheless, provide for the payment of a holiday pay allowance (Clause 6.5). Indeed, Mr Rogers was paid a holiday pay allowance until 1996, when a different contractual regime was applied to him. Exhibit 13 establishes that Mr Rogers was paid an annual leave allowance on a quarterly basis, at least for the period September 1994 until March 1996. The quantum of holiday pay allowance received each quarter was dependent upon commissions earned. For example, the amounts received in that regard fluctuated from \$102.35 for the quarter March to May 1995, to \$2,726.24 for the quarter September to November 1995. It is also self-evident that, with one exception which is unexplained, each of the other quarterly payments made represented 1/13<sup>th</sup> of the commissions earned for the quarter. The quarterly pay represented one weeks' pay. Consequently, Mr Rogers received four weeks' holiday pay over a year. How much he received was completely aligned to, and dependent upon, commissions earned. It will be obvious that if Mr Rogers had not achieved sales and earned commissions, he would not have been paid a holiday pay allowance. The payment was entirely results driven.
- 74 Given that the Rogers Agreement and the Budimlich Agreement did not otherwise provide for the taking of annual leave and/or payment for untaken annual leave upon cessation of employment, it will be necessary to examine the relevant industrial legislation which governed Mr Rogers' and Mr Budimlich's employment to determine whether their claims are supported.
- 75 It will be appropriate to consider each period separately.

**Period 1 - MCE Act**

- 76 The MCE Act expressly excludes from its coverage persons who are paid on a results basis.
- 77 The meaning of "employee" is found in section 3(1) of the MCE Act, which provides:

***"3. Terms used***

(1) ....

*employee means a person who is an employee within the meaning of the IR Act, but does not include a person who belongs to a class of persons prescribed by the regulations as persons not to be treated as employees for the purposes of this Act;*

..."

- 78 Regulation 3 of the Minimum Conditions of Employment Regulations 1993 (MCE Regulations) states:

***"3. Persons who are not employees for purposes of Act***

*The classes of persons set out in Schedule 1 are prescribed as persons who are not to be treated as employees for the purposes of the Act."*

- 79 Schedule 1 of the MCE Regulations contains the following:

***Schedule 1***

[reg. 3]

***Persons who are not employees for the purposes of the Act***

***1. Persons paid wholly by commission***

*Persons whose services are remunerated wholly by commission or percentage reward.*

..."

- 80 For Mr Rogers and Mr Budimlich to succeed in their claims with respect to Period 1, they must prove, on the balance of probabilities, that they were not remunerated wholly by commission or percentage reward.
- 81 Mr Rogers and Mr Budimlich assert that they received a range of payments other than commission. These included superannuation payments, long service leave payments, and a number of different incentive-based payments, all of which were not commission based.
- 82 It is convenient at this point to deal with the issue of the payment of statutory based entitlements such as superannuation and long service leave. In that regard, there is established authority that the payment of statutory based entitlements, including superannuation and long service leave, are not relevant to determining whether a person is paid by commission or percentage reward for the purposes of the MCE Act.
- 83 In *Gregory Oats v Sanders Executive Pty Ltd* (1999) 79 WAIG 3543 (*Oats*), the majority of the Full Bench of the Western Australian Industrial Relations Commission (WAIRC) determined that superannuation and long service leave payments did not alter the claimant's position as a person remunerated wholly by commission. Such was confirmed by the Full Bench of the WAIRC in *David John Hignett v Joburne Pty Ltd* (2000 WAIRC 01598) at 13 (*Hignett*).
- 84 Clearly, the payment of long service leave and superannuation does not affect consideration of whether persons are remunerated wholly by commission or percentage reward.

- 85 The Rogers Agreement and the Budimlich Agreement provide for remuneration that is results based. Their contracts provided for remuneration in the form of commission in accordance with the Commission Schedules in their respective Agreements.
- 86 Mr Rogers says that his remuneration was primarily, but not wholly, commission based. Apart from the payment of statutory based entitlements, he also received lump sum bonuses, overseas trips, and other benefits such as salary continuance insurance.
- 87 The salary continuance insurance which was taken out by the Respondent for Mr Rogers' benefit in the early part of his employment did not constitute remuneration. There was no payment made to Mr Rogers in that regard. It was insurance cover provided by his employer. It constituted a benefit falling outside remuneration. Not all benefits received in employment are remunerative in nature.
- 88 It is obvious that all payments received by Mr Rogers in addition to commissions, which were lump sum bonuses, overseas trips and the payment of a holiday pay allowance, were all incentive-based payments.
- 89 The same can be said for Mr Budimlich, who in addition to commissions, received incentive-based payments in the form of lump sum bonuses, quarterly prizes, small payments, gift vouchers, restaurant vouchers, higher commission rates, and target payments.
- 90 There is established authority that such incentives form part of remuneration by commission or percentage reward, thereby removing the recipients from within the definition of employee for the purposes of the MCE Act.
- 91 Commission takes many forms and payments on results are not to be construed narrowly. If they were, the intended exclusion of this class of employee from the MCE Act would not occur, and that would be contrary to the intention of the MCE Act (see *Oats* (supra) per Fielding SC, at page 3545).
- 92 In determining whether the bonus payments re-characterised a real estate agent's status under the MCE Act, the majority of the Full Bench of the WAIRC in *Hignett* (supra) interpreted the term "commission" broadly. Senior Commissioner Fielding noted at paragraphs 55, 57 and 58:
- "55... The bonus was not fixed by reference to a percentage of the sales income, as was the case for the regular commission... but a fixed sum which varied depending on the range or level of gross income from sales achieved..."*
- "57... Such evidence as there was suggests that the additional payments made to the Appellant by way of bonuses and prizes were as the learned Industrial Magistrate postulated indeed in the nature of additional commission. They were payments determined by and based on results. Such evidence as there was suggests that the magnitude of those additional payments varied with the level of income from sales, albeit on the basis of scales of income rather than as a direct percentage of the income. They were in a very real sense pro rata payments because they varied with the level of income from sales effected on behalf of the Respondent. Instead of being based on a percentage of the value of the sales they were based on a scale which in turn was regulated by the value of the sales. They were only "flat payments" to the extent that they were based on a particular scale."*
- "58... I adhere to the view I expressed in *Oates v Sanders Executive Pty Ltd* (1999) 79 WAIG 3543 at 3545 that a commission can take many forms. It does not have to be a percentage-based reward. Indeed, that is evident from the provisions of the Minimum Conditions of Employment Regulations 1993 which clearly imply that remuneration by commission need not involve remuneration by percentage reward. As explained in *Drielsma v Manifold* [1894] 3 Ch 100 the expression "commission" is not a term of art but is "primâ facie the payment made to an agent for agency work, usually according to a scale - it may be an ad valorem scale, but not necessarily an ad valorem scale" (per Davey LJ at 107). In my assessment that aptly fits the description of the additional payments in question on this occasion."*
- 93 A similar approach was taken by Chief Commissioner Coleman who in the same decision said, at paragraph 50:
- "The characterisation of the sales awards of bonus prize as a "piggy back commission" correctly identifies the nature of the payment. However the fact that this additional level of remuneration was a flat payment and was not calculated on a pro rata basis does not in my view render the circumstance of employment not wholly by commission or percentage reward. The sales award albeit a flat payment was dependent on the level of gross income derived from sales secured by the salesperson. It was wholly dependent on the attainment of a threshold level of income calculated as percentage reward. Within the context of the Minimum Conditions of Employment Act and indeed in commerce generally "commission" comprehends the payment on the basis other than percentage reward or pro rata payment. It is the attainment of a sale which attracts payment be that on a flat fee or percentage of the price. Here there was no entitlement to payment other than by the outcome of sales. That was clearly the intention of the parties; the nature of the additional flat payment on top of the percentage reward did not alter that nor did it bring the arrangement within the scope of the Minimum Conditions of Employment Act for the calculation of annual leave."*
- 94 Bearing in mind what was said in *Hignett* I find that payments received from the Respondent by Mr Rogers and Mr Budimlich, other than the statutory based entitlements, were incentive-based. They were achieved on sales results. Other rewards such as prizes, overseas trips, vouchers, discounts and the like, were all based on incentive results. These incentives of the kind considered in *Hignett* were part of a reward scheme, based on Mr Rogers and Mr Budimlich reaching particular sales targets, or were otherwise inextricably linked to commission and were included in their remuneration.
- 95 I find that Mr Rogers and Mr Budimlich were not "employees" for the purposes of the MCE Act. It follows that they have, in each instance, failed to establish an entitlement to annual leave for Period 1.

**Period 2 - WR Act**

- 96 I preface my consideration of the claims with respect to Period 2 by noting that the forms of remuneration received by Mr Rogers and Mr Budimlich remained relatively constant throughout Periods 1, 2 and 3. The way that they were remunerated in Period 2 is much the same as they were remunerated in Period 1 and in Period 3.
- 97 It is against that background that I turn to consider whether they had an entitlement to annual leave during Period 2.
- 98 Division 4 of Part 7 of the WR Act governs annual leave entitlements. Within sub-division A of Part 7 of the WR Act, section 227 provides that Division 4 of the WR Act applies to all employees other than casual employees. Subdivision B of Part 7 of the WR Act guarantees the provision of annual leave and, subject to conditions, permits the cashing out of annual leave entitlements.
- 99 Subdivision C of Part 7 of the WR Act creates the rules about the accrual, crediting, accumulation, payment and the taking of annual leave. Section 235, within subdivision C, provides:

***“235 Annual leave—payment rules***

- (1) *If an employee takes annual leave during a period, the employee must be paid a rate for each hour (pro-rated for part hours) of annual leave taken that is no less than the rate that, immediately before the period begins, is the employee’s basic periodic rate of pay (expressed as an hourly rate).*
- (2) *If the employment of an employee who has not taken an amount of accrued annual leave ends at a particular time, the employee must be paid a rate for each hour (pro-rated for part hours) of the employee’s untaken accrued annual leave that is no less than the rate that, immediately before that time, is the employee’s basic periodic rate of pay (expressed as an hourly rate).”*

- 100 The Respondent argues that, by virtue of section 235(2) and section 178 of the WR Act, an entitlement to annual leave does not include incentive-based payments and the remuneration by commission of Mr Rogers and Mr Budimlich is excluded from calculation, thereby resulting in no annual leave entitlement.
- 101 Payment of annual leave can only be made based on the employee’s **basic periodic rate of pay** (see section 235(1) of the WR Act).
- 102 **Basic periodic rate of pay** is defined in section 178 of the WR Act as follows:

*“basic periodic rate of pay means a rate of pay for a period worked (however the rate is described) that does not include incentive-based payments and bonuses, loadings, monetary allowances, penalty rates or any other similar separately identifiable entitlements. The meaning of basic periodic rate of pay is also affected by section 210.”*

- 103 I note that section 210 of the WR Act is not material to the matters before me.
- 104 In view of the meaning given to **basic periodic rate of pay** and the fact that Mr Rogers and Mr Budimlich received incentive-based payments and bonuses, their remuneration did not fall within the definition of **basic periodic rate of pay**. They are therefore excluded from the payment of annual leave.
- 105 In *ACE Insurance Limited v Trifunovski (No 2)* [2012] FCA 793 (*ACE Insurance*), Perram J concluded at paragraphs 52 to 58 that, pursuant to sections 235 and 178 of the WR Act, an insurance sales representative paid on a commission only basis had no entitlement to payment for annual leave under the WR Act. Perram J said that incentive-based payments were excluded from the definition, and that the employee had no entitlement to the payment of annual leave.
- 106 Mr Rogers and Mr Budimlich invite me not to follow what was said in *ACE Insurance* (supra) on the basis that the observations are obiter and are, in any event, wrong.
- 107 In my view, the conclusion reached is not obiter. Perram J, in *ACE Insurance* (supra) said at paragraphs 57 and 58:
- “57 ... *In my opinion the commission payments received by Mr Perez were, as Combine submitted, ‘incentive-based payments’ and hence excluded from this definition. ...”*
- “58 *It follows that Mr Perez has no entitlement for this period. ...”*
- 108 His Honour specifically considered and determined the issue of the meaning and effect of the term **basic periodic rate of pay**.
- 109 I am bound by the decision of Perram J and intend to follow it. Consequently, I find that Mr Rogers and Mr Budimlich had no entitlement to payment for annual leave during Period 2.

**Period 3 - FW Act**

- 110 The entitlement to annual leave is provided for in Part 2-2, Division 6 of the FW Act. The provisions came into force on 1 July 2009. Section 86 of the FW Act provides that Division 6 applies to all employees other than casual employees. Section 87(1) of the FW Act states that for each year of service, an employee is entitled to four weeks of paid annual leave. In some circumstances, not relevant to these claims, five weeks of annual leave are provided.
- 111 Section 87(2) of the FW Act provides that annual leave accrues progressively during a year of service and from year to year. Sections 88 and 89 of the FW Act stipulate how and when annual leave may be taken.

112 Section 90 of the FW Act provides:

**“90 Payment for annual leave**

- (1) *If, in accordance with this Division, an employee takes a period of paid annual leave, the employer must pay the employee at the employee’s base rate of pay for the employee’s ordinary hours of work in the period.*
- (2) *If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee had the employee taken that period of leave.”*

113 The term **base rate of pay** is defined in Division 4, within section 16(1) of the FW Act, to mean:

**“16 Meaning of base rate of pay**

*General meaning*

- (1) *The **base rate of pay** of a national system employee is the rate of pay payable to the employee for his or her ordinary hours of work, but not including any of the following:*
- (a) *incentive-based payments and bonuses;*
  - (b) *loadings;*
  - (c) *monetary allowances;*
  - (d) *overtime or penalty rates;*
  - (e) *any other separately identifiable amounts.*

...”

114 Mr Rogers and Mr Budimlich were award/agreement free national system employees and there was no agreement as to their “ordinary hours of work”. As full-time employees, section 20(2)(a) of the FW Act operated to prescribe their ordinary hours of work to be 38. Despite the fact that their ordinary hours of work are determinable they are nevertheless in difficulty in establishing their respective claims with respect to Period 3.

115 I observe that section 86 within Division 6, Part 2-2 of the FW Act applies to all employees other than casual employees. However, when section 90(1) of the FW Act is considered in context of the definition of **base rate of pay** in section 16(1), it is apparent that employees remunerated by incentive-based payments are excluded from the entitlement. That is because their base rate of pay is incapable of determination. Incentive-based payments and bonuses cannot be used to calculate a rate for the purposes of annual leave entitlements.

116 That approach is in keeping with how employees remunerated only by commission have been treated in the past. The fact that they have been and continue to be treated differently is unsurprising. The way they are remunerated is entirely different to how most employees are paid. Such incongruity creates a barrier to the application of certain benefits such as annual leave.

117 Having said that, I observe that their exclusion from such benefits can be overridden. Some employees who are paid only by commission and/or other incentives and who are covered by Modern Awards, such as the Real Estate Award are entitled to annual leave payments notwithstanding their mode of remuneration. That is because the Real Estate Award makes provision that they be treated as “pieceworkers” for the purposes of acquiring and taking annual leave. There is provision in the FW Act and the Fair Work Regulations 2009 for pieceworkers to be paid annual leave. If it were not for the specific provisions in the Real Estate Award, employees remunerated by commission and or other incentive-based payment would not have had an entitlement to paid annual leave.

118 Given that Mr Rogers and Mr Budimlich were award free, their position in Period 3 was no different to their position in Period 2. A base rate of pay was incapable of calculation, and as a result, annual leave payments could not be made and were unavailable to them. The same reasoning that was advanced in *ACE Insurance* (supra) applies to Mr Rogers and Mr Budimlich with respect to Period 3.

119 I find that upon cessation of employment, the Respondent had no liability to Mr Rogers and Mr Budimlich with respect to alleged untaken annual leave entitlements. Annual leave entitlements had not accrued and were not payable in any event.

120 Given what I have said, it follows that the claims cannot succeed.

121 For the sake of completeness, I will nevertheless address the other issues raised at the Trial.

**Was Annual Leave Taken?**

122 It is common ground that Mr Rogers and Mr Budimlich at various times, including the Christmas period, took time off work. Breaks were taken to travel overseas and for other reasons.

123 The Respondent’s operations closed for about two weeks at Christmas each year. It is common ground that Mr Rogers and Mr Budimlich were not required to attend the Respondent’s office or display homes during such periods. The Respondent says that Mr Rogers and Mr Budimlich treated that time away from the office as annual leave. Mr Rogers and Mr Budimlich on the other hand, say that despite the closure of the office and display centres they continued to work from their homes.

124 Ms Miller produced copies of a number of emails passing between Mr Rogers and his clients, in which Mr Rogers refers to himself being on annual leave during the Christmas closure. Indeed, part of Exhibit 26 and in particular documents marked TM21, TM22 and TM23, demonstrate that Mr Rogers was unavailable during such closures.

- 125 So far as Mr Budimlich is concerned, he testified that on most but not all Christmas breaks, he made himself available and had the office phone diverted to his mobile phone so that he could answer any queries that might arise.
- 126 Given the lack of employment records pertaining to the taking of leave, it is impossible to determine exactly how much leave Mr Rogers and Mr Budimlich took, and when it was that such leave was taken. The fact that no employment records were kept is unsurprising, given that Mr Rogers and Mr Budimlich were treated differently to wages or salaried employees. As Mr Ryan observed, they could come and go as they pleased and their leave and other working arrangements were neither monitored nor controlled. In reality, they were treated in much the same way that independent contractors would be treated.
- 127 The question which remains however, is whether the leave taken by Mr Rogers and Mr Budimlich can be characterised as “annual leave”?
- 128 “Annual leave” is an entitlement enacted by statute enabling an employee to take paid time off work for rest and recreation. The mechanics of how much time is allowed, when leave can be taken, and how much is payable whilst on leave is governed by statute.
- 129 An employee is remunerated for work performed. If work is not performed an entitlement to remuneration does not exist. However in some instances an employee may be paid his or her wages despite not having worked. Statutory provisions facilitate, subject to conditions, the payment of entitlements such as sick leave, annual leave; parental leave and so on and that is the case notwithstanding that work has not been performed.
- 130 The Respondent says that all leave taken by Mr Rogers and Mr Budimlich was in the form of paid annual leave. Mr Rogers and Mr Budimlich say that any leave taken, other than approved long service leave, was leave without pay.
- 131 As previously indicated, the Respondent asserts that Mr Rogers and Mr Budimlich took paid annual leave. It points out that whilst on leave their remuneration continued, albeit that their pay was calculated on results. The pay they received whilst on leave was by way of commission which had previously been earned. The Respondent says that because Mr Rogers and Mr Budimlich were paid whilst on annual leave they should not be paid out in lieu on termination.
- 132 I reject that argument. The fact that Mr Rogers and Mr Budimlich may have been paid commissions and/or incentive-based payments whilst on leave did not turn that leave into paid annual leave.
- 133 Despite the fact that Mr Rogers and Mr Budimlich may have characterised any leave taken during Christmas closure periods as annual leave it did not mean they took annual leave. The attribution of a label does not change the fundamental character of something. One cannot turn into paid annual leave something which is intrinsically not of that character. Payments received by them whilst on leave had nothing to do with them being on leave. Any payments made by the Respondent at such times were not for the purpose of annual leave entitlements but rather to satisfy the Respondent’s liability with respect to commissions already earned. Payments received at those times were wholly unconnected with any leave taken and were not made in contemplation of, or for the purposes of, annual leave. Such payments would have been received in any event, irrespective of whether Mr Rogers and Mr Budimlich were on leave.
- 134 The leave variously taken by Mr Rogers and Mr Budimlich was nothing more than leave taken by agreement, consent or custom for which they were not otherwise remunerated. Any leave taken at such times and most others was in the form of unpaid leave.

### **Limitation**

- 135 The Respondent submits that for Period 1 and Period 2, to the extent that annual leave was taken but not paid prior to 26 March 2007, Mr Rogers or Mr Budimlich cannot now seek to recover the amounts allegedly underpaid. That is because of the time limitation provisions contained in subsection 83A(2) of the IR Act and subsections 719(6) and (9) and section 720 of the WR Act. The Respondent submits that any entitlement to payment arose at the time leave was taken and not at termination. The time for bringing a claim started each time there was a failure to make payment for annual leave taken.
- 136 The Respondent’s argument is contingent upon my finding that annual leave was taken by Mr Rogers and Mr Budimlich. Given that I have found that any leave taken was not in the form of annual leave, it follows that the limitation argument raised by the Respondent cannot succeed.
- 137 If Mr Rogers and Mr Budimlich had been entitled to annual leave under the MCE Act, the WR Act and the FW Act, then given the statutory framework to which I have earlier referred, their entitlement under the MCE Act and the WR Act would have crystallised and been payable upon the termination of employment pursuant to section 90(2) of the FW Act. That was when the cause of action accrued. The obligation to pay at termination commenced the six year limitation period. Consequently, the claims are within time.

### **Accrual Defence**

- 138 The Respondent submits that any periods of unpaid leave do not count as service for the purposes of the accrual of annual leave.
- 139 The argument needs to be considered in the context of the prevailing statutory provisions at the times that the unpaid leave was taken.

### **MCE Act**

- 140 Section 23 of the MCE Act provides:

“23. ***Paid annual leave, entitlement to***

- (1) *An employee, other than a casual employee, is entitled for each year of service, to paid annual leave for the number of hours the employee is required ordinarily to work in a 4 week period during that year, up to 152 hours.*

(2) ...

(2a) ...

*In subsection (1), year does not include any period of unpaid leave. ...*

141 Each period of unpaid leave taken by Mr Rogers and Mr Budimlich during the period of the MCE Act does not constitute service under section 23 for the purposes of calculating their entitlement to paid annual leave.

#### **WR Act**

142 Subdivision B of Division 4 (Annual Leave), section 232(2) of the WR Act provides that:

“(2) *An employee is entitled to accrue an amount of paid annual leave, for each completed 4 week period of continuous service with an employer, of 1/13 of the number of nominal hours worked by the employee for the employer during that 4 week period.*”

143 Under this section, there is provision for the calculation of an employee’s annual leave entitlement, which accrues in respect of the nominal hours, and which forms the basis for the annual leave entitlement guarantee.

144 Section 229(4A) of the WR Act provides that, in calculating “nominal hours worked”, periods of unpaid leave do not count as service.

145 Section 229(4A) states:

“(4A) *For the purposes of subparagraphs (1)(b)(i) and (4)(a)(ii), a period of authorised unpaid leave or unauthorised leave does not count as service in relation to an employee except:*

(a) *as expressly provided by:*

(i) *a term or condition of the employee’s employment; or*

(ii) *a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory; or*

(b) *as prescribed by the regulations.*”

146 None of the exceptions in section 229(4A)(a) or (b) have application in these matters.

147 The result is that as periods of unpaid leave do not form part of an employee’s nominal hours worked, annual leave does not accrue during periods of unpaid leave. Such periods must therefore be discounted from Mr Rogers’ and Mr Budimlich’s annual leave accrual calculations.

#### **FW Act**

148 Section 87 of the FW Act provides:

*“Amount of leave*

(1) *For each year of service with his or her employer, an employee is entitled to:*

(a) *4 weeks of paid annual leave; or*

...”

149 Section 22 of the FW Act provides:

“(1) *A period of service by a national system employee with his or her national system employer is a period during which the employee is employed by the employer, but does not include any period (an **excluded period**) that does not count as service because of subsection (2).*

(2) *The following periods do not count as service:*

(a) *any period of unauthorised absence;*

(b) *any period of unpaid leave or unpaid authorised absence, other than:*

(i) *a period of absence under Division 8 of Part 2-2 (which deals with community service leave); or*

(ii) *a period of stand down under Part 3-5, under an enterprise agreement that applies to the employee, or under the employee’s contract of employment;*  
*or*

(iii) *a period of leave or absence of a kind prescribed by the regulations;*

(c) *any other period of a kind prescribed by the regulations.*

...”

150 None of the periods of unpaid leave taken by Mr Rogers or Mr Budimlich fall within any of the exceptions set out in subsections 22(2)(b)(i) or (iii) or (c) of the FW Act. Accordingly, those periods do not constitute service for the purposes of calculating Mr Rogers’ and Mr Budimlich’s entitlement to annual leave under section 87 of the FW Act.

151 I agree with submissions made that the periods Mr Rogers and Mr Budimlich took off, albeit in the form of unpaid leave or other authorised absence, cannot be taken into account for the purpose of calculating annual leave.

152 I do not intend to delve into the documentary evidence to determine how much unpaid leave was taken by Mr Rogers and Mr Budimlich. Neither party has attempted to reconcile how much leave has been taken. For my purposes, it is sufficient that I rule on the principle rather than embark on quantifying what leave has been taken and how that impacts upon the amounts claimed. If necessary that can be addressed later.

**Rate of Pay**

153 Mr Rogers and Mr Budimlich have, in quantifying their claims, used a weekly rate based on their respective average earnings for the 12 month period prior to the cessation of their employment. Given that the Respondent has used the same rate to pay Mr Rogers and Mr Budimlich their long service leave entitlements, it seems to accept that such is appropriate. Indeed, it is the only feasible method of calculation.

154 If I am wrong in my conclusions that the MCE Act, the WR Act and the FW Act exclude Mr Rogers and Mr Budimlich from annual leave entitlements, then the amounts claimed should be allowed, subject to adjustments being made to account for unpaid leave taken, during which time, service did not accrue.

**Result**

155 Each claim will be dismissed.

**G. CICCHINI  
INDUSTRIAL MAGISTRATE**

2015 WAIRC 00023

**WESTERN AUSTRALIAN INDUSTRIAL MAGISTRATES COURT**

**CITATION** : 2015 WAIRC 00023  
**CORAM** : INDUSTRIAL MAGISTRATE G. CICCHINI  
**HEARD** : WEDNESDAY, 14 JANUARY 2015  
**DELIVERED** : THURSDAY, 22 JANUARY 2015  
**FILE NO.** : CP 1 OF 2014  
**BETWEEN** : WILLIAM ALAN BASSETT, DEPARTMENT OF COMMERCE

**COMPLAINANT**

AND

MMG (WA) PTY LTD TRADING AS JURIEEN IGA ACN 115 257 139

**ACCUSED**

**Legislation** : *Children and Community Services Act 2004*  
*Sentencing Act 1995*

**Result** : Conviction entered, penalty imposed

**Representation**

Prosecution : Mr J Lee (Counsel)  
 Accused : Mr G Paull (Counsel)

**Sentencing Remarks**

(These sentencing remarks were delivered extemporaneously on 14 January 2015 and have been edited from the transcript)

- 1 The Accused, MMG (WA) Pty Ltd trading as Jurien IGA is charged under section 190(1) of the *Children and Community Services Act 2004*, on the basis that between 14 August 2014 and 24 August 2014 at Jurien Bay, it employed a child under 15 years of age in a business, trade or occupation.
- 2 The Accused has pleaded guilty to that offence at the earliest opportunity.
- 3 The Accused concedes that at the material time the child in question was 11 years of age. It also admitted that the child worked the following shifts:
  - Thursday, 14 August 2014 between 4.00pm and 6.15pm;
  - Saturday, 16 August 2014 between 9:00am and 3.30pm;
  - Sunday, 17 August 2014 between 10:00am and 3.10pm;
  - Saturday, 23 August 2014 between 10:00am and 6.30pm; and
  - Sunday, 24 August 2014 between 10:00am and 6.30pm.

- 4 The child was remunerated in an appropriate way. There is no issue in respect of the remuneration of the child. The child worked as a retail assistant at the store where her mother was and I presume, continues to be, the Assistant Manager. At all times whilst the child worked within the store her movements were supervised by her mother. Although it is clearly the case that there was not a family business situation occurring, the fact that the child was under the supervision of her mother is significant.
- 5 The Complainant says that the gravamen of the offending behaviour lies in the fact that the child was very young and that it should have been apparent to the employer that the employment of such a young child was not appropriate. The employer should have informed itself of the fact that there were laws prohibiting the employment of such young children.
- 6 The law exists to promote the welfare of children. Parliament has promoted an object of the legislation to be that children do not work in certain circumstances thereby enabling them to achieve an appropriate balance in their lives. There is no need for me to repeat what I have said in previous cases concerning the objects of the Act. I acknowledge that those matters to which the Prosecutor has referred concerning the objects of the legislation, as I have discussed in earlier cases, apply equally to this case.
- 7 In this matter I accept that the employment of the child occurred in circumstances where there was not a wilful defiance of the law. I accept that the event occurred by way of the Accused's ignorance of the law. When the Accused became aware of the difficulties, it immediately ceased employing the child and cooperated fully with the investigating authority. It clearly rectified the position immediately.
- 8 Although I accept that there was some potential risk of harm to the child, as there always is in a workplace, the actual risk in this particular case was minimal. Clearly, as things transpired, there was no actual exposure of the child to any particular difficulty.
- 9 The child's employment was of short duration. That is a matter of significance. It follows that there are substantial mitigating factors to be considered. The substantial mitigating factors loom large in this matter. The Complainant itself accepts that the offending is at the lower end of the scale and I accept that that is an accurate reflection of what has occurred.
- 10 The only aggravating factor in this case is that of the very young age of the child. I have stated earlier that the child was very young. Clearly, the employment of a very young child offends the objects of the Act which seek to create an environment in which children are not working at a very young age.
- 11 The Accused has submitted, in written submissions and again today, that the Court might consider dealing with the matter without the imposition of a penalty. I accept that there is provision within the *Sentencing Act 1995* for that to occur in appropriate cases. Section 46 of the *Sentencing Act 1995* enables this Court not to impose a sentence if it considers the circumstances of the offence are trivial or technical. If that threshold consideration is met and having regard to other factors, the imposition of a sentence may not eventuate. The threshold issue to be determined in this instance is whether the offence can be characterised as trivial or technical.
- 12 The offence is not trivial given the young age of the child. Nor is it technical. The prerequisites that would enable me to release the Accused without sentence simply do not exist.
- 13 It is important that in imposing a penalty, the Court not only have regard to the specific deterrent effect on the penalty. I accept that there is little to be gained by specific deterrence in this case. The Court must also have regard to the general deterrent aspect of sentencing. In these sorts of cases it is important to send a message not only to the Accused but others within the industry. The importance of the general deterrent aspect of the penalty should not be overlooked.
- 14 It is important that the Accused and others realise that laws prohibiting the employment of children are there for a reason and are to be strictly adhered to.
- 15 The very fact that the maximum penalty for a corporation is set at a \$120,000.00 is reflective of the seriousness of the offence. Section 6 of the *Sentencing Act 1995* requires the Court to have regard to the seriousness of the offence. The seriousness of the offence is required to be measured against the maximum penalty provided in the legislation. The higher the penalty, the more serious the offence.
- 16 Every case will turn on its own facts. Every circumstance will be different. The Court must always impose a penalty which is commensurate with the offending behaviour.
- 17 Generally speaking, for a first offender, without substantial mitigating factors the starting point for a penalty would be in the region of 10% of the maximum. However, in this particular instance, in my view, there are some very substantial mitigating factors to which I have already referred. Those factors significantly reduce the culpability of the Accused and reduce the penalty which would otherwise have been appropriate.
- 18 Taking into account the very substantial mitigating factors, including the short duration of offending and the fact that the child was not exposed to harm, and that the child's mother supervised her, I would have thought that the appropriate penalty in respect of this offence is that of \$3,000.00. In applying that penalty I recognise that the child worked for a period without a recreational break.
- 19 I am required by section 9AA of the *Sentencing Act 1995* to discount the penalty for an early plea of guilty. The Accused has entered a plea of guilty at the earliest possible opportunity and in that regard should be given the maximum discount that is provided, being 25%. In light of that reduction made pursuant to section 9AA of the *Sentencing Act 1995*, the ultimate fine will be that of \$2,250.00.

20 In my view, that penalty is commensurate with the offending behaviour and is sufficient to send to the Accused and others the message that these offences, even committed in circumstances of inadvertence and without wilful defiance of the law, will nevertheless result in the imposition of a penalty.

**G. CICCHINI**

**INDUSTRIAL MAGISTRATE**

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## UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—

**2015 WAIRC 00033**

<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION HUGH BERRYMAN-BROOK	<b>APPLICANT</b>
	-v- DIRECTOR GENERAL, DEPARTMENT OF EDUCATION	<b>RESPONDENT</b>
<b>CORAM</b>	COMMISSIONER S M MAYMAN	
<b>DATE</b>	TUESDAY, 27 JANUARY 2015	
<b>FILE NO/S</b>	U 217 OF 2014	
<b>CITATION NO.</b>	2015 WAIRC 00033	

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<b>Result</b>	Application discontinued
<b>Representation</b>	
<b>Applicant</b>	Mr D Stojanoski
<b>Respondent</b>	Mr D Matthews

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*Order*

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979*;  
AND WHEREAS on 25 November 2014 the Commission convened a conference for the purpose of conciliating between the parties;  
AND WHEREAS at the conclusion of the conference agreement was reached between the parties;  
AND WHEREAS on 17 December 2014 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.) S M MAYMAN,  
Commissioner.

**2015 WAIRC 00035**

<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION MATTHEW LINDSAY BLICK	<b>APPLICANT</b>
	-v- ALAN DESMOND	<b>RESPONDENT</b>
<b>CORAM</b>	COMMISSIONER S M MAYMAN	
<b>DATE</b>	TUESDAY, 27 JANUARY 2015	
<b>FILE NO/S</b>	B 150 OF 2014	
<b>CITATION NO.</b>	2015 WAIRC 00035	

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<b>Result</b>	Application discontinued
<b>Representation</b>	
<b>Applicant</b>	Mr M L Blick
<b>Respondent</b>	Mr T Carmady (of counsel)

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*Order*

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the *Industrial Relations Act 1979* (WA);  
 AND WHEREAS on 20 August 2014 the Commission convened a conference for the purpose of conciliating between the parties;  
 AND WHEREAS at the conclusion of the conference agreement was reached between the parties;  
 AND WHEREAS on 23 January 2015 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* (WA), hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,  
Commissioner.

**2015 WAIRC 00031**

**PARTIES**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
MAURICE BOND

**APPLICANT**

-v-

DIRECTOR OF EDUCATION

**RESPONDENT**

<b>CORAM</b>	COMMISSIONER S M MAYMAN
<b>DATE</b>	TUESDAY, 27 JANUARY 2015
<b>FILE NO/S</b>	U 196 OF 2013
<b>CITATION NO.</b>	2015 WAIRC 00031

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<b>Result</b>	Application discontinued
<b>Representation</b>	
<b>Applicant</b>	Mrs L Bond
<b>Respondent</b>	Ms E McAdam

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*Order*

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979*;  
 AND WHEREAS on 22 January 2014, 25 February 2014, 24 March 2014, 3 June 2014 and 8 August 2014 the Commission convened conferences for the purpose of conciliating between the parties;  
 AND WHEREAS at the conclusion of the conferences no agreement was reached between the parties;  
 AND WHEREAS on 30 December 2014 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.) S M MAYMAN,  
Commissioner.

2015 WAIRC 00157

**PARTIES** WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
ROBERTO CALDARONI

**APPLICANT**

-v-

SERGIO'S PAINTING SERVICE

**RESPONDENT**

**CORAM** COMMISSIONER J L HARRISON  
**DATE** FRIDAY, 6 FEBRUARY 2015  
**FILE NO/S** U 229 OF 2014, B 229 OF 2014  
**CITATION NO.** 2015 WAIRC 00157

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**Result** Discontinued  
**Representation**  
**Applicant** In person  
**Respondent** Mr S Fernandes

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*Order*

These are applications pursuant to s 29(1)(b)(i) and (ii) of the *Industrial Relations Act 1979*.

The Commission listed a conference on 28 January 2015 for the purpose of conciliating between the parties.

On 27 January 2015 the applicant advised the Commission that the matters had been resolved and the conference was vacated.

On 28 January 2015 the applicant filed a *Form 14 - Notice of withdrawal or discontinuance* and the respondent consents to the matters being discontinued.

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

THAT these applications be, and are hereby discontinued.

[L.S.]

(Sgd.) J L HARRISON,  
Commissioner.

2015 WAIRC 00034

**PARTIES** WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
MRS KAY FRY

**APPLICANT**

-v-

COMMUNITY LIVING ASSOCIATION INC.

**RESPONDENT**

**CORAM** COMMISSIONER S M MAYMAN  
**DATE** TUESDAY, 27 JANUARY 2015  
**FILE NO/S** U 216 OF 2014  
**CITATION NO.** 2015 WAIRC 00034

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**Result** Application discontinued  
**Representation**  
**Applicant** No appearance  
**Respondent** No appearance

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*Order*

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979* (WA);  
 AND WHEREAS on 15 December 2014 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* (WA), hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,  
 Commissioner.

**2015 WAIRC 00029**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

KYLIE NICOLE LAWSEN

**APPLICANT**

-v-

WINUN NGARI ABORIGINAL CORPORATION

**RESPONDENT**

**CORAM** COMMISSIONER S M MAYMAN

**DATE** TUESDAY, 27 JANUARY 2015

**FILE NO/S** U 37 OF 2014

**CITATION NO.** 2015 WAIRC 00029

**Result** Application discontinued

**Representation**

**Applicant** Ms K Lawsen

**Respondent** Mr G Power (as agent) and Ms S Murphy

*Order*

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979*;  
 AND WHEREAS on 24 March 2014, 16 May 2014 and 13 November 2014 the Commission convened conferences for the purpose of conciliating between the parties;  
 AND WHEREAS at the conclusion of the conference held on 13 November 2014 agreement was reached between the parties;  
 AND WHEREAS on 30 December 2014 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.) S M MAYMAN,  
 Commissioner.

**2015 WAIRC 00141**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

RAYMOND RONALD LUMLEY

**APPLICANT**

-v-

BRUCE DOUGLAS HAVILAH AS TRUSTEE FOR THE PERTH LAW UNIT TRUST TRADING  
 AS HAVILAH LEGAL

**RESPONDENT**

**CORAM** ACTING SENIOR COMMISSIONER P E SCOTT

**DATE** THURSDAY, 5 FEBRUARY 2015

**FILE NO/S** B 181 OF 2014

**CITATION NO.** 2015 WAIRC 00141

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<b>Result</b>	Application dismissed
<b>Representation</b>	
<b>Applicant</b>	Mr R Lumley of counsel
<b>Respondent</b>	Mr B Havilah of counsel

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*Order*

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and  
 WHEREAS on the 15<sup>th</sup> day of October 2014 the Commission convened a conference for the purpose of conciliating between the parties; and  
 WHEREAS at the conclusion of that conference the parties reached an agreement in principle; and  
 WHEREAS on the 16<sup>th</sup> day of January 2015 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 dismissed.

[L.S.]

(Sgd.) P E SCOTT,  
 Acting Senior Commissioner.

**2015 WAIRC 00140**

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
<b>PARTIES</b>	RAYMOND RONALD LUMLEY	<b>APPLICANT</b>
	-v-	
	BRUCE DOUGLAS HAVILAH AS TRUSTEE FOR THE PERTH LAW UNIT TRUST TRADING AS HAVILAH LEGAL	<b>RESPONDENT</b>
<b>CORAM</b>	ACTING SENIOR COMMISSIONER P E SCOTT	
<b>DATE</b>	THURSDAY, 5 FEBRUARY 2015	
<b>FILE NO/S</b>	U 181 OF 2014	
<b>CITATION NO.</b>	2015 WAIRC 00140	

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<b>Result</b>	Application dismissed
<b>Representation</b>	
<b>Applicant</b>	Mr R Lumley of counsel
<b>Respondent</b>	Mr B Havilah of counsel

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*Order*

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and  
 WHEREAS on the 15<sup>th</sup> day of October 2014 the Commission convened a conference for the purpose of conciliating between the parties; and  
 WHEREAS at the conclusion of that conference the parties reached an agreement in principle; and  
 WHEREAS on the 16<sup>th</sup> day of January 2015 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 dismissed.

[L.S.]

(Sgd.) P E SCOTT,  
 Acting Senior Commissioner.

2015 WAIRC 00038

**PARTIES** WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
ANDREA MAGNATERRA **APPLICANT**

-v-  
CHRISTOPHER JOHNSON CJ CONCRETING **RESPONDENT**

**CORAM** COMMISSIONER S M MAYMAN  
**DATE** WEDNESDAY, 28 JANUARY 2015  
**FILE NO/S** B 142 OF 2014  
**CITATION NO.** 2015 WAIRC 00038

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**Result** Application discontinued  
**Representation**  
**Applicant** Mr A Magnaterra  
**Respondent** No appearance

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*Order*

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the *Industrial Relations Act 1979*;  
AND WHEREAS on 18 August 2014 the Commission convened a conference for the purpose of conciliating between the parties;  
AND WHEREAS the respondent failed to attend the conference;  
AND WHEREAS the matter was listed for hearing on 23 September 2014;  
AND WHEREAS the respondent failed to attend the hearing;  
AND WHEREAS on 9 January 2015 the applicant advised the Commission in writing from Italy that he no longer wished to proceed 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.) S M MAYMAN,  
Commissioner.

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2015 WAIRC 00030

**PARTIES** WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
MARGARET E. R. MCGUIRE **APPLICANT**

-v-  
YORGUM ABORIGINAL CORPORATION **RESPONDENT**

**CORAM** COMMISSIONER S M MAYMAN  
**DATE** TUESDAY, 27 JANUARY 2015  
**FILE NO/S** U 160 OF 2014  
**CITATION NO.** 2015 WAIRC 00030

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**Result** Application discontinued  
**Representation**  
**Applicant** Mrs M McGuire  
**Respondent** Ms B Pole (of counsel)

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*Order*

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

AND WHEREAS on 25 September 2014, the Commission convened a conference for the purpose of conciliating between the parties;

AND WHEREAS at the conclusion of the conference agreement was reached between the parties;

AND WHEREAS on 19 January 2015 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* (WA), hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,  
Commissioner.

2015 WAIRC 00014

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
<b>PARTIES</b>	DISMAS NGEYO	<b>APPLICANT</b>
	-v-	
	DR RON CHALMERS, DIRECTOR GENERAL, DISABILITY SERVICES COMMISSION	<b>RESPONDENT</b>
<b>CORAM</b>	COMMISSIONER J L HARRISON	
<b>DATE</b>	MONDAY, 19 JANUARY 2015	
<b>FILE NO/S</b>	U 228 OF 2014	
<b>CITATION NO.</b>	2015 WAIRC 00014	
<b>Result</b>	Discontinued	
<b>Representation</b>		
<b>Applicant</b>	In person	
<b>Respondent</b>	Ms L Wiese	

*Order*

This is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979*.

The Commission listed a conference on 15 January 2015 for the purpose of conciliating between the parties.

On 12 January 2015 the applicant filed a *Form 14 - Notice of withdrawal or discontinuance* and the conference was vacated.

The respondent consents to the matter being discontinued.

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.

2015 WAIRC 00028

**PARTIES** WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
ANDREW NOAD **APPLICANT**

-v-  
STEVE COTCHIN  
BUTLER INTERIORS PTY LTD **RESPONDENT**

**CORAM** ACTING SENIOR COMMISSIONER P E SCOTT  
**DATE** FRIDAY, 23 JANUARY 2015  
**FILE NO/S** U 176 OF 2014  
**CITATION NO.** 2015 WAIRC 00028

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**Result** Application dismissed

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*Order*

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and  
WHEREAS on the 20<sup>th</sup> day of January 2015 the Commission convened a conference for the purpose of conciliating between the parties; and  
WHEREAS following discussions during the conference the applicant advised that he wished to discontinue the application; and  
WHEREAS the respondent consented to the application being discontinued; and  
NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, and by consent, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,  
Acting Senior Commissioner.

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2015 WAIRC 00016

**WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

**CITATION** : 2015 WAIRC 00016  
**CORAM** : ACTING SENIOR COMMISSIONER P E SCOTT  
**HEARD** : MONDAY, 8 DECEMBER 2014, TUESDAY, 9 DECEMBER 2014  
**DELIVERED** : TUESDAY, 20 JANUARY 2015  
**FILE NO.** : B 135 OF 2014  
**BETWEEN** : ANJA ROSSOUW  
Applicant  
AND  
PETA BENNETT INVESTMENTS PTY LTD  
Respondent

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**CatchWords** : Denied contractual entitlements – Summary dismissal for serious misconduct – Payment in lieu of notice – Contract of employment – Interpretation of contractual terms – Breach of employment contract – Condonation

**Legislation** : *Industrial Relations Act 1979* s 29(1)(b)(ii)  
*Pharmacy Act 2010* s 57

**Result** : Application dismissed

**Representation:**

**Applicant** : Mr B Dawkins of counsel

**Respondent** : Ms S Owen as agent

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*Reasons for Decision*

- 1 The Commission has previously issued reasons for decision on a preliminary issue in this application ([2014] WAIRC 01129).
- 2 The applicant claims that following her dismissal she was denied the benefit of pay in lieu of notice as required by her contract of employment as a Pharmacist In Charge at Pharmacy 777 Mandurah Carpark Chemist. The respondent says that the applicant was summarily dismissed for serious misconduct and accordingly no notice is due.

**The applicant's evidence**

- 3 The applicant gave evidence that she started work for the respondent on 4 November 2013 and on that day, Rebecca Hicks, the Pharmacy Manager, met with her and went through the respondent's policies, contained in the TEAM MEMBER HANDBOOK Induction Training (exhibit R1). She says Ms Hicks did not go through the smoking policy in that document in any detail because Ms Hicks said to her that she, the applicant, did not seem like a smoker, and continued without the applicant answering her. Ms Hicks told the applicant that she was totally against pharmacists smoking, so the applicant says she did not mention that she smoked. The smoking policy is in the following terms:

**Smoking**

Our Pharmacy promotes good health to the Mandurah Community, and counsels customers on the benefits of not smoking and how to get help to quit the habit. It is the management's view that it is unprofessional and unacceptable for you to be seen smoking whilst in uniform and would prefer that you did not smoke whilst in uniform and preferably did not smoke at all. Your message of health and well being will be significantly undermined by the public seeing you smoke.

Exhibit R1, 15

- 4 The applicant says that around the next day, she spoke to Peta Bennett, a director of the respondent, about not having a good signal on her telephone but that she needed to be contactable by furniture removalists who were bringing her furniture from South Australia. She says that Ms Bennett told her that it was fine to go outside the pharmacy to get a better signal.
- 5 On 9 November 2013, the applicant says, she left the pharmacy momentarily and the Pharmacy Manager told her she was not to leave the pharmacy.
- 6 The applicant says that she was not given any lunch breaks and was not told where or how she could have a cigarette if she wanted one.
- 7 On 10 November 2013, the applicant says she had to go to her car to get a work-related document, a 'MedCheck' form. She says she first checked if there were any customers in the store. She says she 'got in trouble for this'.
- 8 On 12 November 2013, the applicant attended a meeting with Ms Hicks and Ms Bennett. They discussed incidents of her leaving the pharmacy. According to the applicant, they also discussed the applicant's claim that she was being bullied by other employees, including that one employee had apparently verbally abused her by saying that she is 'the worst pharmacist I have ever worked with'. The applicant says that Ms Bennett apologised for the treatment the applicant has received, saying that the other employees were resistant to change.
- 9 They also discussed another allegation against the applicant. Based on the evidence before me, I conclude that this allegation did not form any part of the basis for the decision to dismiss. It is also highly prejudicial to the applicant. In those circumstances, I merely record that this allegation was discussed, without detailing the nature of the allegation.
- 10 The applicant says that she felt that she was being unfairly treated by Ms Hicks in that meeting, but felt reassured that Ms Bennett would treat her fairly. She says that at the end of the meeting, Ms Bennett told her not to worry, that everything would be okay and she would be given another chance. The meeting ended at around 12.30 pm. The applicant then went home, changed and attended for work at around 2.00 pm.
- 11 Approximately two and a half hours later, Ms Hicks arrived at the pharmacy and informed her that her contract was terminated, that Ms Bennett and Ms Hicks had had further discussions and changed their minds about her continuing in employment.
- 12 The applicant says that on 13 November 2013, at 1.13 pm, she sent a text message to Ms Bennett requesting payment for the notice period. On 15 November 2013, she received a text message from Ms Bennett saying that the paperwork had been sent to her. On 19 November 2013, the applicant received a letter from Ms Bennett dated 14 November 2013, in the following terms:

This letter is to confirm the outcome of the investigation into allegations of misconduct which we discussed with you at the meeting on November 12 which was attended by you and Rebecca Hicks and Peta Bennett at our Perth office.

During the meeting we discussed your professional responsibility to be in the pharmacy at all times and that it had become apparent to us that you had failed to do this on several occasions.

You have vacated the pharmacy premises on a number of occasions on Saturday November 9 and Sunday November 10. This was particularly distressing to us given that Rebecca Hicks attended the Pharmacy on her rostered day off at the request of Pharmacy staff. It was explained to you this was unacceptable behaviour[sic], and less than 30 minutes after this visit, you proceeded once again to leave the store with customers present, unsupervised and unattended.

During our discussion, you did not provide a satisfactory or convincing explanation for this behavior[sic].

Further it was discussed with you that we had examples of your failure to provide counselling and advice to clients in the sale of scheduled medicines, which require specific Pharmacist intervention. This was a serious breach of your professional obligations and in direct conflict with our Pharmacies[sic] Policies and Procedures for the provision of excellent customer care.

The meeting was agerned[sic] at this time.

Later that day in Mandurah, after seeking advice and reviewing your responses to our concerns, Rebecca Hicks (Manager) met you at the Pharmacy with Jessica White (Pharmacist) to explain that we considered these incidents were consistent with serious misconduct.

We explained during the meeting, that your conduct during these incidents:

- was wilful or deliberate behaviour by you that is inconsistent with the continuation of your contract of employment.
- caused a serious and imminent risk to the health or safety of the pharmacy.
- you refused to carry out a lawful and reasonable instruction that was consistent with your contract of employment.

We consider that your actions constitute serious misconduct warranting summary dismissal.

You will find attached payment for any accrued entitlements and outstanding remuneration, including superannuation, up to and including the date of this letter.

Exhibit A3

- 13 The applicant says that during her induction, she did not go through the Team Member Induction Training – Carpark Chemist Mandurah (exhibit R1) document in detail with Ms Hicks, that it was rushed through and Ms Hicks asked her 'you would have seen this before, haven't you', to which the applicant says she answered 'yes', so she signed the document (ts 25). In her evidence, the applicant said that she understood the policy and signed it on that basis (ts 26), although she did not have a chance to go through it, she signed it and flicked to the next page.
- 14 The applicant said in cross examination that she was not sure if she left the pharmacy once or twice on 9 November 2013. She denies that she left the pharmacy to have a cigarette, but left to go to the car to get the MedCheck form to read for the next day, and thought that while she was out, she might as well have a cigarette. She acknowledged that the previous day, Ms Hicks told her not to leave the pharmacy, but she had to go out to get the form.
- 15 During the applicant's cross examination, the respondent played a video recording from the closed circuit television camera outside the pharmacy. The applicant agreed that the recording of 10 November 2013 at 1841 hours to 1843 hours shows her leaving the pharmacy and she has a cigarette in her hand. The applicant is seen in uniform. She then returns to the pharmacy, but has no document in her hands. On being asked about this, she said that she went to the car to look for the MedCheck form, but it was not in the car as she initially thought (ts 34). This appears to be the first occasion on which the applicant, having said she went to the car to get the MedCheck form, said that in fact the form was not in the car.
- 16 Under cross examination the applicant also said that when Ms Hicks instructed her not to leave the pharmacy, the applicant said she was sorry but explained that she did not know it was a requirement. She indicated to the Commission that there was some confusion in her mind because Ms Bennett had told her that it was fine to step outside the pharmacy to get a better telephone signal, and that if she was receiving conflicting instructions she would comply with that of her employer, Ms Bennett.
- 17 The applicant also gave evidence that in the meeting on 12 November 2013, after she had provided her explanation, she believed that Ms Bennett and Ms Hicks 'took on board' what she had said (ts 31).
- 18 The applicant also agreed that by signing the contract of employment, she agreed to its terms; including policies and procedures, such as what would happen if she committed any breach of the contract, including by intentional disobedience or dishonesty which destroyed the relationship of trust and confidence between the employer and the applicant (ts 31).

#### **The respondent's evidence**

- 19 Chelsea Irene Ralph, a pharmacy assistant employed by the respondent for approximately two and a half years, gave evidence that she worked at the Carpark Pharmacy on 9 and 10 November 2013. She said that on 9 November 2013, the applicant told her that she needed to get something from her car. Ms Ralph says that she asked the applicant if there were any customers in the store and the applicant said that there were not. Ms Ralph says that she subsequently noticed that there were in fact two customers waiting to be served, one of whom called out to be served.
- 20 Ms Ralph gave evidence that the applicant frequently left the shop for about two to three minutes at a time, at approximately hourly intervals, leaving the shop approximately five times on each of the shifts on 9 and 10 November 2013.
- 21 Ms Ralph gave evidence that she had been told by her manager that the pharmacist in charge of the shop, on shift alone as pharmacist, is not allowed to leave the pharmacy. She said that there are facilities, including a toilet, within the shop so there is no need for the pharmacist to leave. If there is anything the pharmacist needs from outside the shop, the pharmacy assistants do all the running around for them. No other pharmacist with whom Ms Ralph has worked has ever set foot outside of the shop during the shift. They take their breaks when the shop is not busy, and never leave the shop.
- 22 Virginia Stanford, also a pharmacy assistant with the respondent, gave evidence that on Sunday, 10 November 2014, she started work at 4.00 pm. This was the first occasion she had met the applicant. When Ms Stanford arrived, Ms Hicks was speaking with the applicant about some earlier incident.
- 23 During that shift, she observed the applicant leave the pharmacy on one occasion.
- 24 Ms Stanford said that in the three and a half years she has worked as a pharmacy assistant, she has never had any of her colleagues go out on smoke breaks while she has been working. It is not usual for people to be given smoke breaks. She said the pharmacist does not leave, noting that there is a toilet within the pharmacy.

- 25 Ryan Davey is Ms Bennett's husband. He gave evidence of having overheard a telephone conversation on speakerphone, initiated by Ms Bennett to the applicant at around 6.00 pm on 12 November 2013. Ms Bennett advised the applicant that the conversation was on speakerphone and that Mr Davey was present. Mr Davey said that Ms Bennett advised the applicant that she had committed breaches of her employment contract by leaving the pharmacy during her rostered shift and being dishonest about leaving and about smoking. She offered the applicant the opportunity to admit the breaches.
- 26 The applicant admitted that she had left the pharmacy during her work shift, which she had previously denied, but denied that she had had a cigarette while she was outside. Ms Bennett then informed the applicant that there was security camera footage clearly showing her having a cigarette outside the pharmacy, and the applicant admitted that she did have a cigarette.
- 27 Mr Davey says that Ms Bennett then advised the applicant that due to the applicant's serious misconduct, she had no option but to terminate the contract. The applicant asked to be given another chance and said it was not fair to be terminated over these events. Ms Bennett advised her that the termination stood due to the applicant having previously been dishonest when asked about the events, and the events being serious breaches.
- 28 The applicant then said that the contract had not been discussed in detail with her, to which Ms Bennett responded that it had, and that it was the employee's responsibility to read the employment contract before signing it. The applicant continued to plead her case and ask for another chance. Ms Bennett said that the pharmacy could not keep her employed due to her dishonesty of denying she had left the pharmacy during her shift and denying smoking during her shift, and that the termination stood.

### Consideration

- 29 The provisions of the contract of employment dealing with summary termination say:

#### Termination

Carpark may immediately terminate your employment by notice to you in writing if you at any time commit any serious or persistent breach of this contract including, without limitation, intentional disobedience, inappropriate conduct or behaviour, dishonesty, serious or persistent breach of duty or serious or persistent neglect.

### Assessment of the evidence

- 30 I prefer the evidence of witnesses other than the applicant where there is conflict. The evidence of the witnesses other than the applicant was unshaken. However, the applicant was less than frank and was inclined to make excuses or to blame others. For example, it is clear that the applicant used, as a pretext for leaving the pharmacy, that she needed to collect the MedCheck form from her car. Yet she had not previously disclosed this excuse to her employer, and it was only in cross examination when it was put to her that she had returned without the form that she said that it was not in the car. Further, it is clear that she left the pharmacy more than once on that day and it could not have been to get the MedCheck form on each occasion.
- 31 There are other instances of the applicant's lack of honesty in her dealings with the respondent which were brought out in the evidence. For example, during the induction, when Ms Hicks took the applicant through the policies and commented that she did not seem like a smoker, so there was no need to deal with that aspect, the applicant chose not to disclose that, in fact, she is a smoker. She knew from Ms Hicks' following comments that she was opposed to pharmacists smoking, so she remained silent and signed the bottom of the page setting out the smoking policy.
- 32 Further, Ms Hicks explained to her that she was required to remain in the pharmacy. She then says that Ms Bennett said she could step out of the pharmacy if she was having trouble getting a signal for her phone when she was expecting calls about her furniture delivery. Yet when Ms Hicks told her again, after she had left the pharmacy against previous instructions, that she was not to leave the pharmacy, instead of clarifying the conflicting instructions she had received, the applicant chose to accept that which suited her best and to ignore the most recent instruction of her manager, having now been so instructed on a number of occasions. Also, the applicant has not suggested that she left the pharmacy for the purpose of getting a telephone signal, nor did she use this explanation to Ms Hicks.
- 33 Further, when asked about leaving the pharmacy and smoking, having had an opportunity to admit that she had smoked, the applicant denied smoking until told by Ms Bennett in the telephone conversation that there was security footage of her smoking.
- 34 Therefore, I find that the applicant knew that there was a policy dealing with smoking, and that it was frowned upon by her manager. She knew that the policy, which she acknowledged she was bound by and which she signed, required her not to smoke while in uniform, yet she did so.
- 35 I find that the applicant was told and knew that she was not to leave the pharmacy during her shift, yet she did so on numerous occasions, even after being told not to do so.
- 36 I find that she was not honest with her employer about her reasons for leaving the pharmacy or about the smoking.
- 37 I accept the evidence of Ms Ralph that the applicant left the pharmacy when there were customers present. Ms Ralph and Ms Stanford both gave evidence that there is no need for the pharmacist to leave the pharmacy. Both gave evidence that from their experience it was unprecedented for the pharmacist to leave the premises.
- 38 I also find that, as conceded by the applicant, these issues were put to her in a meeting with Ms Bennett and Ms Hicks on 12 November 2013, that she had an opportunity to provide her own explanation and that Ms Bennett and Ms Hicks 'took on board' what she had said. The applicant left the meeting and at around 2.00 pm commenced work.

- 39 At around 4.30 pm, Ms Hicks informed the applicant that her contract was terminated. Although the applicant asserts that she was not told until 19 November 2013, when she received correspondence from the respondent (exhibit A3), that her dismissal was for serious misconduct, I accept the evidence of Mr Davey that at around 6.00 pm on the day of the termination, 12 November 2013, during the telephone conversation with the applicant, Ms Bennett told the applicant explicitly that the dismissal was because the applicant had committed serious breaches of the employment contract due to dishonesty relating to leaving the pharmacy and smoking, and that the dismissal was due to serious misconduct. That the applicant subsequently sent a text message to Ms Bennett seeking payment for the notice period does not alter that.
- 40 Therefore, I find that the decision to dismiss for serious misconduct was made and conveyed to the applicant on the day of the dismissal, 12 November 2013, and was not an invention following the applicant's request to be paid in lieu of notice.

#### **The reasons for dismissal**

- 41 Neither Ms Bennett nor Ms Hicks gave evidence. Therefore, there is no first hand evidence of the reasons for dismissal. However, the applicant gave evidence of the issues raised with her in the meeting with Ms Bennett and Ms Hicks on the day of the dismissal, which included incidents of the applicant leaving the pharmacy contrary to instructions. There is also Mr Davey's evidence of what he heard Ms Bennett tell the applicant in the telephone conversation at around 6.00 pm on the day of the dismissal, which was that it was due to serious breaches of the employment contract due to leaving the pharmacy and dishonesty about that and about smoking. There is also the letter of dismissal (exhibit A3) which referred to the requirement to remain in the pharmacy at all times and that the applicant had failed to do so on several occasions. The letter also referred to a failure to provide counselling and advice to clients in the sale of scheduled medicines. There was no other evidence of this latter issue being a justification for the dismissal. Further, that issue was not put to the applicant in her evidence.
- 42 In those circumstances, I conclude that the reasons for dismissal were the applicant's conduct in leaving the pharmacy on numerous occasions contrary to instructions, and her dishonesty about that and about smoking.

#### **Summary dismissal for serious misconduct**

- 43 The position of pharmacist is a responsible one, dealing with drugs and with the health of members of the community. When a pharmacist is in charge of a pharmacy, they are responsible for the personal supervision of the pharmacy during that time. Section 57 of the *Pharmacy Act 2010* requires that the person in whose name the pharmacy is registered and the person appointed to have overall responsibility for the pharmacy business is to ensure that the pharmacy business is carried on under the personal supervision of a pharmacist at all times. In *Godwin Ekhayeme v B D Kirk & C E McElwee trading as Fountain Chemmart Pharmacy* [2013] WAIRC 00304; (2013) 93 WAIG 526, Beech CC dealt with a pharmacist who had been summarily dismissed for serious misconduct in circumstances including that he had left the premises without authorisation, leaving the pharmacy without a qualified pharmacist in attendance. This constituted serious misconduct in that case.
- 44 As noted by Kirby J in *Concut Pty Ltd v Worrell* [2000] HCA 64 [51]:

4. It is, however, only in exceptional circumstances that an ordinary employer is entitled at common law to dismiss an employee summarily. Whatever the position may be in relation to isolated acts of negligence, incompetence or unsuitability, it cannot be disputed (statute or express contractual provision aside) that acts of dishonesty or similar conduct destructive of mutual trust between the employer and the employee, once discovered, ordinarily fall within the class of conduct which, without more, authorises summary dismissal. Exceptions to this general position may exist in trivial breaches of the express or implied terms of the contract of employment. Other exceptions may arise where the breaches are ancient in time or where they have been waived in the past, although known to the employer. Some breaches may be judged irrelevant to the duties of a particular employee and an ongoing relationship with the employer. But these exceptional cases apart, the establishment of important, relevant instances of misconduct, such as dishonesty on the part of an employee like Mr Wells, will normally afford legal justification for summary dismissal. Such a case will be classified as amounting to a relevant repudiation or renunciation by the employee of the employment contract, thus warranting summary dismissal.

See also *Blyth Chemicals Ltd v Bushnell* [1933] HCA 8; (1933) 49 CLR 66, 82.

- 45 In this case, the applicant was dismissed for matters going to intentional disobedience and persistent breaches of duty and for dishonesty. These are set out in the contract as being circumstances under which the respondent may summarily dismiss. The letter of dismissal states that at the meeting on 12 November 2013, there was a discussion about the applicant's professional responsibility to be in the pharmacy at all times and that she had failed to do so on several occasions. Less than 30 minutes after a visit by Ms Hicks to the shop, when it had been explained to the applicant that it was unacceptable behaviour, she had again left the pharmacy unsupervised. It said that her explanations were unsatisfactory and unconvincing; that her conduct during the incidents was wilful and deliberate, and inconsistent with the continuation of the contract of employment; it caused serious and imminent risk to health and safety and that she refused to carry out a lawful and reasonable instruction that was consistent with her contract of employment. The letter said that these actions constituted serious misconduct warranting dismissal.
- 46 I also note Mr Davey's evidence about the telephone conversation between Ms Bennett and the applicant, where Ms Bennett explained to the applicant that there were issues relating to her leaving the pharmacy and being dishonest about leaving and about smoking, which constituted breaches of her contract of employment.
- 47 In all of those circumstances, I find that it has been demonstrated that the applicant's conduct in repeatedly leaving the pharmacy contrary to instructions, which placed her employer in breach of the obligations imposed by s 57 of the *Pharmacy Act*, was in serious breach of the requirements of her contract of employment. This, combined with her lack of honesty over both leaving the pharmacy and the smoking, struck at the heart of a contract involving a pharmacist responsible for a pharmacy. In these circumstances, issues of trust are highly significant and not trivial.

**Condonation**

- 48 Following the meeting between the applicant, Ms Bennett and Ms Hicks, the applicant was permitted to work for a period of some two and a half hours, apparently in charge of the pharmacy, until Ms Hicks arrived and advised the applicant that her employment was terminated. The respondent says that this did not amount to condonation but was to allow consideration of the applicant's explanation and to allow them to view the CCTV footage. The respondent also says that this is a small business without a dedicated human resources department. There was no one to fill in, and Ms Hicks went back to the pharmacy as soon as possible in the circumstances.
- 49 If an employer condones the employee's misconduct, then the right to summarily dismiss the employee will be treated as having been waived (*Federal Supply and Cold Storage Co of South Africa v Angehrn* (1910) 103 LT 150; *Re Clarke and Metropolitan Meat Industry Board* [1967] AR(NSW) 16, 25; *Mills v Industrial Fish Tasmania Pty Ltd* (1993) 49 IR 416, 429).
- 50 It is for the applicant who relies upon condonation to prove that the employer had full knowledge of the employee's conduct, that with that knowledge the employer retained the employee in service and, having made that election, deliberately abandons the right to summarily dismiss (*Rankin v Marine Power International Pty Ltd* (2001) 107 IR 117; *Carter v The Dennis Family Corporation* [2010] VSC 406 per Habersberger J [124]). In *Rankin*, the applicant was given three months' notice and permitted to continue in employment, subject to closer supervision. The Court concluded that the respondent had not waived its right to terminate without notice but made it clear that the termination was for cause and that it was doing so on notice to enable him to finalise the project of which he had intimate knowledge.
- 51 In Sappideen's *Macken's Law of Employment* (7<sup>th</sup> ed, 2011), the authors note that if strikers were accepted back at work but subject to facts relating to the strike being established by an enquiry or with a reservation of rights to terminate when all facts were investigated, acceptance back at work would not constitute a waiver of the employer's right to dismiss (*Haddow v Inner London Education Authority* [1979] ICR 202 at 207, 208).
- 52 In this case, it is quite clear that the relationship of trust and confidence between the applicant and the respondent had been breached in a serious way by the applicant. The respondent allowed the applicant to work unsupervised for a period of two and a half hours. However, I take account of the circumstances of this case including the need for the respondent to consider the information before it, and make a decision. The respondent operates a small business. I conclude that allowing the applicant to work for two and a half hours in circumstances where she had been told in clear terms that she was not to leave the pharmacy, that this did not constitute a condonation of the conduct.
- 53 Therefore, I conclude that the dismissal was properly summary for serious misconduct and according to the contract of employment, no pay in lieu of notice is due.
- 54 The application is to be dismissed.

2015 WAIRC 00017

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

ANJA ROSSOUW

**APPLICANT**

-v-

PETA BENNETT INVESTMENTS PTY LTD

**RESPONDENT****CORAM**

ACTING SENIOR COMMISSIONER P E SCOTT

**DATE**

TUESDAY, 20 JANUARY 2015

**FILE NO/S**

B 135 OF 2014

**CITATION NO.**

2015 WAIRC 00017

**Result**

Application dismissed

*Order*

HAVING heard Mr B Dawkins of counsel on behalf of the applicant and Ms S Owen as agent on behalf of the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,  
Acting Senior Commissioner.

2015 WAIRC 00032

**PARTIES** WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
TRISTAN SAMPI  
**APPLICANT**

**-v-**  
PULYURUNGU ENTERPRIZES  
**RESPONDENT**

**CORAM** COMMISSIONER S M MAYMAN  
**DATE** TUESDAY, 27 JANUARY 2015  
**FILE NO/S** B 161 OF 2014  
**CITATION NO.** 2015 WAIRC 00032

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**Result** Application discontinued  
**Representation**  
**Applicant** Ms M Wolfenden  
**Respondent** No appearance

*Order*

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the *Industrial Relations Act 1979* (WA);  
AND WHEREAS on 3 September 2014 and 26 September 2014 conferences between the parties were convened;  
AND WHEREAS at the conclusion of the conference held on 26 September 2014 no agreement was able to be reached between the parties;  
AND WHEREAS on 15 January 2015 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* (WA), hereby orders:

THAT this application be, and is hereby discontinued.

(Sgd.) S M MAYMAN,  
Commissioner.

[L.S.]

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2015 WAIRC 00055

**PARTIES** WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
SIMON SMITH  
**APPLICANT**

**-v-**  
THE DEPARTMENT OF EDUCATION (WA)  
**RESPONDENT**

**CORAM** ACTING SENIOR COMMISSIONER P E SCOTT  
**DATE** MONDAY, 2 FEBRUARY 2015  
**FILE NO/S** U 200 OF 2014  
**CITATION NO.** 2015 WAIRC 00055

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**Result** Application dismissed  
**Representation**  
**Applicant** Mr S Smith on his own behalf  
**Respondent** Mr D Matthews of counsel

*Order*

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and  
WHEREAS the matter was listed for a Directions hearing on the 28<sup>th</sup> day of October 2014; and

WHEREAS by emails dated the 29<sup>th</sup> and 30<sup>th</sup> days of January 2015 the applicant advised that he did not wish to continue with his application and that he was agreeable to the Commission issuing an order of dismissal 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 dismissed.

[L.S.]

(Sgd.) P E SCOTT,  
Acting Senior Commissioner.

**2015 WAIRC 00056**

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
<b>PARTIES</b>	SIMON SMITH	<b>APPLICANT</b>
	-v-	
	THE DEPARTMENT OF EDUCATION (WA)	<b>RESPONDENT</b>
<b>CORAM</b>	ACTING SENIOR COMMISSIONER P E SCOTT	
<b>DATE</b>	MONDAY, 2 FEBRUARY 2015	
<b>FILE NO/S</b>	B 200 OF 2014	
<b>CITATION NO.</b>	2015 WAIRC 00056	

<b>Result</b>	Application dismissed
<b>Representation</b>	
<b>Applicant</b>	Mr S Smith on his own behalf
<b>Respondent</b>	Mr D Matthews of counsel

*Order*

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

WHEREAS the matter was listed for a Directions hearing on the 28<sup>th</sup> day of October 2014; and

WHEREAS by emails dated the 29<sup>th</sup> and 30<sup>th</sup> days of January 2015 the applicant advised that he did not wish to continue with his application and that he was agreeable to the Commission issuing an order of dismissal 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 dismissed.

[L.S.]

(Sgd.) P E SCOTT,  
Acting Senior Commissioner.

**2015 WAIRC 00142**

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
<b>PARTIES</b>	HELEN TEW	<b>APPLICANT</b>
	-v-	
	MS SHARYN O'NEILL, DIRECTOR GENERAL, DEPARTMENT OF EDUCATION	<b>RESPONDENT</b>
<b>CORAM</b>	ACTING SENIOR COMMISSIONER P E SCOTT	
<b>DATE</b>	THURSDAY, 5 FEBRUARY 2015	
<b>FILE NO/S</b>	U 179 OF 2014	
<b>CITATION NO.</b>	2015 WAIRC 00142	

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<b>Result</b>	Application dismissed
<b>Representation</b>	
<b>Applicant</b>	Ms L Carbone of counsel
<b>Respondent</b>	Mr R Andretich of counsel

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*Order*

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and  
 WHEREAS on the 23<sup>rd</sup> day of September 2014 the Commission convened a conference for the purpose of conciliating between the parties; and  
 WHEREAS at the conclusion of that conference the parties agreed to engage in further discussions; and  
 WHEREAS on the 15<sup>th</sup> day of January 2015 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 dismissed.

[L.S.]

(Sgd.) P E SCOTT,  
Acting Senior Commissioner.

**2015 WAIRC 00025**

<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION BARRY YARDLEY	
	-v-	
	ASPHAR SURVEY GROUP PTY LTD	<b>APPLICANT</b>
		<b>RESPONDENT</b>
<b>CORAM</b>	COMMISSIONER J L HARRISON	
<b>DATE</b>	FRIDAY, 23 JANUARY 2015	
<b>FILE NO/S</b>	B 39 OF 2013	
<b>CITATION NO.</b>	2015 WAIRC 00025	

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<b>Result</b>	Dismissed
<b>Representation</b>	
<b>Applicant</b>	In person
<b>Respondent</b>	Mr D Murray and Mr A Asphar

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*Order*

This is an application pursuant to s 29(1)(b)(ii) of the *Industrial Relations Act 1979* (the Act).

The Commission convened a number of conferences with respect to this matter. Following a conference held on 20 March 2014 the matter was to be set down for hearing.

On 2 July 2014 the respondent advised the Commission that the respondent was under administration.

On 8 July 2014 the Commission wrote to the applicant stating that as the respondent was under administration this application would remain open for 90 days and the applicant was to advise the Commission if he wished to proceed with his application. The applicant did not do this, so the Commission wrote to the applicant on 17 October 2014 requesting that he advise his intentions with respect to this application but he did not do so.

A status conference was convened on 15 December 2014. At the end of the conference the applicant was given a further 14 days to advise the Commission if he wished to proceed with his application and he was informed that if nothing was heard from him at the end of this period the matter would be listed for a show cause hearing as to whether the matter should be dismissed. The applicant did not contact the Commission by 29 December 2014.

On 8 January 2015 the matter was listed for a show cause hearing on 23 January 2015 and the applicant was advised that non-attendance by him at these proceedings in person or by telephone will result in an order issuing dismissing the application.

On 23 January 2015 the applicant e-mailed the Commission prior to the hearing but he did not advise the Commission of any reason why this application should not be dismissed.

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

THAT this application be and is hereby dismissed.

[L.S.]

(Sgd.) J L HARRISON,  
Commissioner.

### SECTION 29(1)(b)—Notation of—

	<b>Parties</b>	<b>Number</b>	<b>Commissioner</b>	<b>Result</b>
Gerald Vallis	Richards Energy Services (David Richards)	B 195/2014	Commissioner S J Kenner	Discontinued
Kendall Thomson	Moët Hennessy Australia	B 210/2014	Chief Commissioner A R Beech	Discontinued
Phillip Joe Bruce	Regal Cement and Sales Pty Ltd	U 212/2014	Chief Commissioner A R Beech	Withdrawn
Yung Utomo Tjia	Ensign a Spotless Company	U 241/2014	Chief Commissioner A R Beech	Discontinued

### CONFERENCES—Matters referred—

2015 WAIRC 00027

#### DISPUTE RE ROSTER CHANGES

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE AUSTRALIAN NURSING FEDERATION, INDUSTRIAL UNION OF WORKERS PERTH  
**APPLICANT**

-v-

THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S 7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1927 (WA) AS KING EDWARD MEMORIAL HOSPITAL  
**RESPONDENT**

**CORAM**

ACTING SENIOR COMMISSIONER P E SCOTT

**DATE**

FRIDAY, 23 JANUARY 2015

**FILE NO/S**

CR 2 OF 2014

**CITATION NO.**

2015 WAIRC 00027

<b>Result</b>	Order issued
<b>Representation</b>	
<b>Applicant</b>	Ms F Dimovski
<b>Respondent</b>	Mr M Aulfrey of counsel

*Order*

WHEREAS this is a matter referred for hearing and determination; and

WHEREAS on Thursday, 2 October 2014, the Commission issued a declaration and orders in determination of the matter ([2014] WAIRC 01086); and

WHEREAS on Wednesday, 21 January 2015, the applicant advised the Commission that 'a roster review [had] been conducted resulting in a unanimous yes vote' and indicating that the applicant would now file a Notice of discontinuance; and

WHEREAS the matter having been resolved in accordance with the terms of the order in the matter, [2014] WAIRC 01086, the Commission is of the view that it is now appropriate to issue an order to dismiss the application.

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

THAT further to the order of 2 October 2014 ([2014] WAIRC 01086), the matter be and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,  
Acting Senior Commissioner.

2015 WAIRC 00054

**DISPUTE RE ALLEGED UNFAIR DISCIPLINARY PROCESS  
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

**CITATION** : 2015 WAIRC 00054

**CORAM** : ACTING SENIOR COMMISSIONER P E SCOTT

**HEARD** : BY WRITTEN SUBMISSIONS 22 DECEMBER 2014, 24 DECEMBER 2014,  
15 JANUARY 2015, 16 JANUARY 2015

**DELIVERED** : MONDAY, 2 FEBRUARY 2015

**FILE NO.** : CR 34 OF 2014

**BETWEEN** : THE STATE SCHOOL TEACHERS' UNION OF WESTERN AUSTRALIA  
(INCORPORATED)

Applicant

AND

THE GOVERNING COUNCIL OF KIMBERLEY TRAINING INSTITUTE

Respondent

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**CatchWords** : Matter Referred for Hearing and Determination pursuant to s 44 – Termination of employment – Breach of discipline – Delegation of power – Whether the dismissal was made without legal authority – Whether the decision maker had the necessary delegated authority or subdelegation

**Legislation** : *Industrial Relations Act 1979* s 44  
*Public Sector Management Act 1994* s 23, s 29, s 29(1)(g), s 33, s 33(3), s 33(5)  
*Vocational Education and Training Act 1996* s 35, s 37, s 42(1), s 42(2), s 45(1), s 45(2), s 46(1), s 46(2)

**Result** : No effective delegation of power

**Representation:**

**Applicant** : Mr M Amati and later Mr D Scaife (of counsel)

**Respondent** : Mr D Anderson (of counsel)

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*Reasons for Decision*

- 1 This matter relates to the dismissal of Mr James Alex Petticrew who was employed by the respondent as a Lecturer Maritime Security at Kimberley Training Institute.
- 2 Mr Petticrew was dismissed with effect from 9 April 2014 following a disciplinary process which found that he had breached discipline. The decision to dismiss was made by the respondent's Managing Director, Ms Karen Dickinson.
- 3 By letter dated 12 May 2014, Ms Dickinson advised Mr Petticrew that all findings made against him in relation to the disciplinary matter were withdrawn. Mr Petticrew was informed that he was therefore reinstated and that his continuity of service was maintained. However, Ms Dickinson informed Mr Petticrew that the suspected breach of discipline process would continue, and that she had delegated her responsibility under the Kimberley Training Institute's Disciplinary Policy to her colleague, Ms Julie Kean and that she, Ms Dickinson, would no longer be involved. She noted that Ms Kean had not been involved in the disciplinary matter to date.
- 4 Following a disciplinary process undertaken by Ms Kean, Mr Petticrew was dismissed on 6 November 2014. The decision to dismiss was contained in a letter signed by Ms Kean dated that day. Although that letter is not before me, it seems to be common ground that Ms Kean made the decision to dismiss.
- 5 The matter of Mr Petticrew's dismissal was the subject of an application for a conference under s 44 of the *Industrial Relations Act 1979* (the Act). The matter was not resolved in conciliation and was referred for hearing and determination on 26 November 2014. In the referral, the applicant claims that the process culminating in the dismissal was unfair, oppressive, biased and prejudiced. A number of grounds are cited including grounds relating to the impact and seriousness of Mr Petticrew's alleged conduct; a lack of rigour in the investigative process; disputes as to the facts, and other matters. In particular, the referral includes a claim that 'the respondent's purported dismissal of Mr Petticrew was made without legal authority as the person who made the decision did not have the appropriate power.'
- 6 The parties agreed that this last issue ought to be dealt with prior to the remainder of the grounds, and that it ought to be done on the papers.

### The applicant's case

- 7 The applicant says that Ms Kean does not have the necessary delegated authority, or alternatively, the necessary subdelegation, from Ms Dickinson in whom the power to dismiss rests. Therefore, the applicant says, the dismissal is a nullity, or alternatively its unlawfulness ought to be construed as a limb contributing to the harsh, oppressive or unfair way Mr Petticrew was dismissed.
- 8 The applicant refers to the provisions of the *Public Sector Management Act 1994* (the PSM Act) and the *Vocational Education and Training Act 1996* (the VET Act) as demonstrating the lack of proper delegation or subdelegation of power to Ms Kean to make the decision to dismiss Mr Petticrew.

### The respondent's case

- 9 The respondent says that the Managing Director of the College is also the chief executive officer (CEO) of the Kimberley Training Institute and has the functions of managing director delegated by the Governing Council of the College as well as those functions conferred upon the CEO under s 29 of the PSM Act. A CEO may also delegate any power or duty under the PSM Act.
- 10 The respondent also says that the Managing Director has delegated her power and responsibilities, set out in the respondent's Disciplinary Policy, to Ms Kean and that that is evidenced in writing in the letter to Mr Petticrew dated 12 May 2014. It says that it is clear by the letter to Mr Petticrew that 'there was an attempt at compliance with section 33(3) of the PSM Act to evidence that delegation in writing'.

### The letter of 12 May 2014

- 11 The letter to Mr Petticrew dated 12 May 2014 sets out that Ms Dickinson has withdrawn all previous findings made against Mr Petticrew in relation to the disciplinary matter. She advises that he is reinstated to his substantive position effective immediately and confirms that his continuous service has been maintained. However, the disciplinary process is to continue. The letter goes on to say:

However, in continuing to deal with the suspected breach of discipline as a disciplinary matter, I have made the decision to delegate my responsibilities under the Kimberley Training Institute's Disciplinary Policy to my colleague, Ms Julie Kean. I have sought Ms Kean's assistance in conducting the disciplinary process from hereon in and I will no longer be involved.

Ms Kean has not been involved in the disciplinary matter to date and therefore I reasonably expect that Ms Kean will write to you in due course to seek any further response that you may wish to give in respect of the breach of discipline allegation. Following any response by you an independent investigator may be appointed in the event that the allegation or particulars of the allegation remain disputed or not admitted.

Applicant's submissions, 22 December 2014, Appendix 3

### Consideration

#### *Delegation of power*

- 12 In addressing the issue of the validity of the exercise of power and regarding delegation, Gibbs CJ in *Dainford Limited v Smith and Another* (1984 – 1985) 155 CLR 342, 349, said that the question to be answered is 'whether the power has been exercised by the person upon whom it has been conferred and whether it has been exercised in the manner and within the limits laid down by the statute conferring the power'.
- 13 The term 'delegate' as a noun, has been defined by Creyke and McMillan as:

*Delegate*: The term 'delegate' nowadays describes a person or officer to whom a power or function has been delegated, by written instrument signed by the principal, pursuant to an authority to delegate conferred by legislation. The scope of authority of the delegate will be set out in the instrument of delegation: it may replicate that of the principal, or be hedged with limitations or conditions (for example, that the delegate can only make decisions under a particular provision of the legislation, of a certain kind, or below a prescribed monetary limit). Within those limits, the delegate acts independently. For instance, as a general rule a decision-maker – whether principal or delegate – cannot act at the direction or behest of another person. Similarly, as illustrated in *Re Reference [under Section 11 of Ombudsman Act 1976 for an Advisory Opinion; Ex parte Director-General of Social Services]*, it is expected that a delegate will sign a decision in his or her own name and not in the name of the principal.

Creyke R and McMillan J, *Control of Government Action* (2005) 418

- 14 In *Re Reference* (1979) 2 ALD 86, 93, Brennan J noted that:

An act done in purported exercise of a statutory power is valid if the act falls within the statutory provision which confers the power. Prima facie an act will not fall within the statute unless it be done by the person in whom the statute reposes the power (whom I shall call 'the authority'). Validity is thus dependent upon the identity of the authority and the doer of the act.

- 15 Therefore, where a statute vests in a person a particular power, the exercise of that power by a delegate will only be valid if the power has been validly delegated in the first instance (*Glenn Ross v Peter Conran, Director General, Department of Premier and Cabinet* [2013] WAIRC 00152).

- 16 The question in this matter is whether Ms Kean had the authority to exercise the power to dismiss, which was conferred on Ms Dickinson. This delegation or subdelegation is not merely an internal administrative arrangement, but includes the power to dismiss an employee or officer. It is a significant matter.

### **Subdelegation**

- 17 I conclude that there has been no subdelegation of the managing director's power to dismiss in accordance with the VET Act. I do so for the following reasons.
- 18 The respondent is a governing council of a college established under s 35 of the VET Act. The functions of the college are set out in s 37 of the VET Act. Each college established under the VET Act has a governing council with authority to perform the functions of the college and govern its operations and affairs (s 42(1)). The functions of the governing council include that 'it may do all things necessary or convenient to be done for or in connection with the performance of its functions' (s 42(2) VET Act). The governing council is the employing authority of employees by virtue of s 5(1)(c)(ii) and (iii) of the PSM Act.
- 19 A chief executive officer is to be appointed under Part 3 of the PSM Act for each college (s 46(1) VET Act), and the chief executive officer is called the managing director of the college (s 46(2) VET Act).
- 20 The governing council may delegate the performance of all or any of its functions under the VET Act, with an exception which is not relevant here, to the managing director of the college (s 45(1) VET Act).
- 21 In this case, the governing council signed a formal document headed Instrument of Delegation 2, 1999, in which it has delegated '[t]he powers and duties of the College as an employing authority' under the PSM Act 'to the person holding or acting in the office of the Managing Director of the College' (applicant's submissions 22 December 2014, appendix 2).
- 22 The managing director of the college, to whom a function under s 45(1) of the VET Act has been delegated, 'may subdelegate that function to a person employed by the college with the approval of the governing council but not otherwise' (s 45(2)).
- 23 I note in passing that the Kimberley Training Institute's Staff Disciplinary Policy and Process (the policy) provides that if 'the Managing Director becomes aware that a conflict of interest may exist if he or she were to decide the matter, it is to be referred to the Institute Governing Council for determination' (Section B – The Investigation Process [3.5]).
- 24 Section 29(1)(g) of the PSM Act provides that, subject to that Act 'and any other written law relating to his or her department or organisation' (emphasis added), as a chief executive officer under Part 3 of the PSM Act, the managing director of the college has functions including 'to manage and direct employees' of the college including the responsibility for termination of the employment of those employees.
- 25 Section 33 of the PSM Act provides that, *subject to any other written law*, a CEO may delegate any power of the CEO to another employee (emphasis added).
- 26 Therefore, the power to dismiss, held by the managing director, as a CEO, under the PSM Act is subject to any other written law relating to the college, that is the VET Act, and the power to delegate under the PSM Act is subject to the provisions of the VET Act insofar as it deals with delegation of power. In this case, that means that the power to terminate employment, which the governing council, as employing authority, has delegated to the managing director, can be subdelegated, but only with the approval of the governing council (s 45(2) VET Act).
- 27 There is no evidence of such a subdelegation of the managing director's power to terminate employment having been the subject of approval by the governing council. The terms of s 45(2) of the VET Act, that there may be a subdelegation 'with the approval of the governing council *but not otherwise*', make that approval mandatory (emphasis added).
- 28 Therefore, where the managing director has purported to subdelegate to Ms Kean the power to deal with Mr Petticrew's disciplinary process and to terminate his employment in accordance with the policy of the respondent, this subdelegation is without proper authority, and the decision to dismiss is not valid.

### **Delegation under the PSM Act**

- 29 If I am wrong and the power to delegate arises from s 33 of the PSM Act, and that this overrides the VET Act, then I note the following.
- 30 Section 33 of the PSM Act provides for a chief executive officer or chief employee to delegate any power or duty to another person. Relevantly, it provides:
- (1) Subject to any other written law, a chief executive officer or chief employee may delegate any power or duty of the chief executive officer or chief employee under another provision of this Act to —
    - (a) a public service officer; or
    - (b) any other employee; or
    - ...
  - (3) The delegation must be in writing and signed by the chief executive officer or chief employee.
  - (4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
  - (5) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

- (6) If a power or duty is delegated under subsection (1), the power or duty is, when exercised or performed by the delegate, to be taken to be exercised or performed by the person who delegated it.
- (7) Nothing in this section limits the ability of the chief executive officer or chief employee to perform a function through an officer or agent.
- 31 The PSM Act does not prescribe a particular form of words or formal document for the purposes of effecting a delegation. From my knowledge of public sector matters, the usual practice is for there to be a document or register within the documentation of a department or organisation which records the formal delegations and the period to which each applies. As noted earlier, appendix 2 to the applicant's submission of 22 December 2014 is a formal Instrument of Delegation under the PSM Act. It sets out the particular delegation of the Governing Council of the College of the powers and duties of the College as an employing authority under the PSM Act; to whom the delegation is made, in this case the Managing Director of the College; its duration; the date and the signature for the Governing Council. Therefore, one could assume that the respondent has some proper processes and documentation for formal delegations.
- 32 The applicant also included within its supplementary submissions of 15 January 2015 the terms of the Instrument of Delegation made under the PSM Act, s 23, by the Public Sector Commissioner to each Chief Executive Officer and each employee directed by him to act in the office of Chief Executive Officer, delegating particular powers, and that instrument of delegation contains further details of the terms of that delegation and is dated. This provides another example of the form a delegation may take.
- 33 The requirements under legislation are for a formal delegation of power to be recorded and signed (s 33(3) of the PSM Act). The terms of the delegation need to be specified (s 33(5)). (See also Creyke and McMillan, that the delegation 'may replicate that of the principal, or be hedged with limitations or conditions'.)
- 34 The only evidence of there being a delegation of any of Ms Dickinson's powers or duties to Ms Kean is that set out in the letter of 12 May 2014 to Mr Petticrew in which she says, 'I have made the decision to delegate my responsibilities under the Kimberley Training Institute's Disciplinary Policy to my colleague, Ms Julie Kean.' This constitutes evidence that a decision to delegate has been made. The respondent says that this is evidence of an attempt to delegate and does not argue that this is a matter of substance over form.
- 35 As noted earlier, the delegation of a power to dismiss is a serious matter. I find that the advice in the letter to Mr Petticrew that a decision had been made to delegate does not meet the requirements of s 33 of the PSM Act in that it is advice that a decision to delegate has been made, it is not the delegation itself. It does not set out the scope or limits of the delegation, although the letter suggests that the scope of the delegation is all of the Managing Director's responsibilities under the policy. There is no evidence of the delegation being the subject of any formal instrument of delegation as with the delegation by the governing council to the managing director, nor is there other evidence that the delegation is recorded in the organisation's records or of any communication between Ms Dickenson and Ms Kean of the delegation.
- 36 I conclude that whilst, as the respondent says, the letter of 12 May 2014 is an attempt by the managing director to delegate the power to dismiss to Ms Kean, it is not actually a delegation nor is it evidence of the delegation, rather it is evidence of a decision to make that delegation. It does not meet the formal requirements for a delegation to be made.

### Conclusions

- 37 Therefore, in respect of the first issue raised in this matter referred for hearing and determination, I conclude that there is no effective delegation of power and accordingly the decision to dismiss has not been validly made, or alternatively, it constitutes a ground for the decision to dismiss being harsh, oppressive or unfair.

## CONFERENCES—Notation of—

Parties		Commissioner	Conference Number	Dates	Matter	Result
Commission's Own Motion	Health Services Union of Western Australia (Union of Workers), The Minister for Health in his incorporated capacity under s.7 of the Hospitals and Health Services Act 1927 (WA) as the Hospitals former comprised in Metropolitan Health Board	Scott A/SC	PSAC 16/2014	18/07/2014 22/07/2014 24/07/2014 30/07/2014	Application on the Commission's Own Motion concerning negotiations for an Enterprise Bargaining Agreement	Concluded

Parties		Commissioner	Conference Number	Dates	Matter	Result
Health Services Union of Western Australia (Union of Workers)	Minister for Health The Minister for Health is incorporated as the WA Country Health Service under section 7 of the Hospitals and Health Services Act 1927 (WA) and has delegated all the powers and duties as such to the Chief Executive Officer of the Department of Health, known as the Director of Health	Scott A/SC	PSAC 26/2014	28/10/2014	Dispute re treatment of union members	Concluded
The Australian Medical Association (Western Australia) Incorporated	The Minister for Health incorporated as the Board of the hospitals formerly comprised in the Metropolitan Health Service Board, under s.7 of the Hospitals and Health Services Act 1927 WA), as Party to the Department of Health Medical Practitioners (Metropolitan Health Services) AMA Industrial Agreement 2013	Mayman C	PSAC 6/2014	20/03/2014 14/08/2014	Dispute re alleged bullying	Discontinued

## PROCEDURAL DIRECTIONS AND ORDERS—

2015 WAIRC 00019

### WESTERN AUSTRALIAN PHARMACY ASSISTANTS AWARD 2014

#### WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

THE PHARMACY GUILD OF WESTERN AUSTRALIA (ORGANISATION OF EMPLOYERS),  
ROYAL STREET CHEMMART PHARMACY GREG'S DISCOUNT CHEMIST CANNING  
BRIDGE, KOJONUP PHARMACY

**APPLICANT**

-v-

(NOT APPLICABLE)

**RESPONDENT**

**CORAM**

ACTING SENIOR COMMISSIONER P E SCOTT

**DATE**

WEDNESDAY, 21 JANUARY 2015

**FILE NO/S**

A 1 OF 2014

**CITATION NO.**

2015 WAIRC 00019

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<b>Result</b>	Consent Order issued
<b>Representation</b>	
<b>Applicant</b>	Mr A Drake-Brockman of counsel and with him Mr B Jackson of counsel
<b>Shop, Distributive and Allied Employees' Association of Western Australia</b>	Mr S Millman of counsel

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*Order*

WHEREAS this is an application for a new award to be known as the *Western Australian Pharmacy Assistants Award 2014* pursuant to Section 37 of the *Industrial Relations Commission Act 1979*; and

WHEREAS the parties have provided a minute of consent order, signed by each counsel, and the Commission has formed the opinion that such a consent order is appropriate to issue;

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

THAT the report back conference listed on Wednesday the 28<sup>th</sup> day of January 2015 at 10.30 am be relisted on a day during the period 2 to 6 February 2015.

[L.S.]

(Sgd.) P E SCOTT,  
Acting Senior Commissioner.

**2014 WAIRC 01323**

<b>PARTIES</b>	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION KENDALL THOMSON	<b>APPLICANT</b>
	-v-	
	KELLIE HIGGINS	<b>RESPONDENT</b>
<b>CORAM</b>	CHIEF COMMISSIONER A R BEECH	
<b>DATE</b>	TUESDAY, 9 DECEMBER 2014	
<b>FILE NO/S</b>	B 210 OF 2014	
<b>CITATION NO.</b>	2014 WAIRC 01323	

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<b>Result</b>	Name of respondent amended
<b>Representation</b>	
<b>Applicant</b>	Ms K Thomson (by written correspondence)
<b>Respondent</b>	Ms A Graham (by written correspondence)

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*Order*

WHEREAS on 18 November 2014, Ms Thomson applied to change the name of the respondent by deleting "Kellie Higgins" and substituting "Moët Hennessy Australia";

AND WHEREAS on 24 November 2014, Ms Graham, on behalf of Moët Hennessy Australia, advised that there was no objection to this amendment;

AND WHEREAS the Commission considers that granting the application will result in Ms Thomson's former employer being correctly identified;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred on me under s 27(1)(m) of the *Industrial Relations Act 1979* hereby order -

THAT the name of the respondent "Kellie Higgins" be deleted and "Moët Hennessy Australia" be inserted in lieu thereof.

[L.S.]

(Sgd.) A R BEECH,  
Chief Commissioner.

**2015 WAIRC 00124**

**REVIEW OF IMPROVEMENT NOTICE**

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

**PARTIES**

FEWSTONE PTY LTD T/A CITY BEACH

**APPLICANT**

-v-

COMMISSIONER LEX MCCULLOCH WORKSAFE WA

**RESPONDENT**

**CORAM** COMMISSIONER S M MAYMAN  
**DATE** WEDNESDAY, 4 FEBRUARY 2015  
**FILE NO/S** OSHT 1 OF 2015  
**CITATION NO.** 2015 WAIRC 00124

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**Result** Order issued  
**Representation**  
**Applicant** Ms J Hart (of counsel)  
**Respondent** Ms S Duce (of counsel)

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*Order*

WHEREAS this matter was listed for a Directions hearing before the Occupational Safety and Health Tribunal (the Tribunal) on 2 February 2015;

AND WHEREAS having considered it necessary to give directions for the expeditious and just hearing and determination of this matter;

AND WHEREAS the Tribunal understands the applicant and the respondent have submitted by consent the orders to issue; and

THEREFORE having regard for the *Occupational Safety and Health Act 1984*, I the undersigned, pursuant to the powers conferred on me under the *Industrial Relations Act 1979* hereby order –

1. By no later than 4:00 pm on Wednesday 11 February 2015 the respondent provide discovery and allow immediate inspection and taking of copies of the following categories of documents:
  - a) Any documents reviewed, considered or relied upon by the respondent in the preparation of, during the course of, or at the conclusion of his review of Improvement Notice 64000646 (the Improvement Notice);
  - b) Notes or supporting documents relied upon by Inspector Testar, in the preparation of, during the course of or at the conclusion of Inspector Testar's inspection of the applicant's premises on 9 December 2014 resulting in the issue of the Improvement Notice;
2. By no later than 4:00 pm on Wednesday 25 February 2015 the applicant provide discovery and allow immediate inspection and taking copies of categories of documents to be agreed between the parties.
3. By no later than 4:00 pm on Tuesday 3 March 2015 the respondent file and serve any witness statement to be relied upon including production of copies of any documents to be relied upon by the respondent.
4. By no later than 4:00 pm on Monday 9 March 2015 the applicant file and serve any witness statement to be relied upon, including production of copies of any documents to be relied upon by the applicant.
5. The respondent file and serve written submissions by no later than 4:00 pm on Friday 20 March 2015.
6. The applicant file and serve written submissions by no later than 4:00 pm on Friday 27 March 2015.
7. The matter is listed for a 2-day hearing for 8 to 9 April 2015 inclusive in Perth.

8. There will be an inspection of the applicant's premises on a date to be determined by the Tribunal.
9. The applicant has liberty to issue witness summons with an early return date of Monday 16 February 2015 for production of, and inspection of documents.
10. Either party has liberty to apply.

(Sgd.) S M MAYMAN,  
Commissioner.

[L.S.]

### INDUSTRIAL AGREEMENTS—Notation of—

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
Building and Engineering Trades (Government) General Agreement 2015 AG 23/2014	16/01/2015	The Acting Executive Director Labour Relations, Department of Commerce, AS AUTHORISED AGENT FOR THE APPLICANTS LISTED in schedule a	The Construction, Forestry, Mining and Energy Union of Workers and others	Commissioner J L Harrison	Agreement registered
Shire of Kondinin Municipal Collective Enterprise Agreement 2014 AG 25/2014	16/01/2015	Western Australian Municipal Administrative, Clerical and Services Union of Employees (WASU)	Shire of Kondinin	Commissioner J L Harrison	Agreement registered
WA Health Engineering and Building Services Industrial Agreement 2015 AG 24/2014	16/01/2015	The Minister for Health in his incorporated capacity under s.7 of the Hospitals and Health Services Act 1927 (WA) as the Hospitals formerly comprised in the Metropolitan Health Service Board, the Peel	Electrical Trades Union of WA AND OTHERS	Commissioner J L Harrison	Agreement registered

### NOTICES—Cancellation of Awards/Agreements/Respondents—under Section 47—

2015 WAIRC 00105

#### NOTICE

#### WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends, by order, to cancel the following award, namely the -

#### **CEREAL PROCESSING, EXTRACTING AND MANUFACTURING AWARD NO. 26 OF 1970**

on the grounds that in its view there is no employee to whom the award applies.

The award applies to employees in WA employed in the manufacture from linseed, linseed oil, linseed meal, grain or any other substances of food or licks for cattle, sheep, horses, dogs, poultry and other animals and/or in the crushing, grinding, preparation, or handling of such foods or licks and the manufacture of yeast, starch and gluten.

Any person who has a sufficient interest in the matter may, within 30 days of the date of the publication of this notice, object to the Commission making such order.

Please quote File No. Appl 84/2015 on all correspondence.

DATED at Perth this 23rd day of January 2015.

(Sgd.) S BASTIAN,  
Registrar.

[L.S.]

## EMPLOYMENT DISPUTE RESOLUTION ACT 2008—Notation of—

The following were matters before the Commission under the Employment Dispute Resolution Act 2008.

Application Number	Award, order or industrial agreement varied	Parties		Commissioner	Matter	Dates	Result
APPL 47/2014	N/A	About Childcare Pty Ltd	Rebecca Shellum	Beech CC	Request for mediation re employment issues	7/01/2015	Agreement reached

## RECLASSIFICATION APPEALS—Notation of—

File Number	Appellant	Respondent	Commissioner	Decision	Finalisation Date
PSA 4/2014	Luciana Burrow	Chief Executive Officer Western Australian Museum	Kenner C	Discontinued	Not Applicable

## OCCUPATIONAL SAFETY AND HEALTH ACT—Matters Dealt With—

2015 WAIRC 00057

### REVIEW OF IMPROVEMENT NOTICES

#### THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

**CITATION** : 2015 WAIRC 00057  
**CORAM** : CHIEF COMMISSIONER A R BEECH  
**HEARD** : TUESDAY, 20 JANUARY 2015, TUESDAY, 27 JANUARY 2015  
**DELIVERED** : MONDAY, 2 FEBRUARY 2015  
**FILE NO. BETWEEN** : OSHT 3 OF 2014  
 REECE PTY LTD  
 Appellant  
 AND  
 THE WORKSAFE WESTERN AUSTRALIA COMMISSIONER  
 Respondent

**CatchWords** : Occupational Safety and Health Act 1984 - Further review by Tribunal under s 51A – Jurisdiction - Whether a referral can refer more than one improvement notice for further review - Relevant context and nature of the review by WorkSafe Western Australia Commissioner and further review by Tribunal - Interpretation of s 51A(1) – Amendment of referral - Documentary discovery

**Legislation** : Occupational Safety and Health Act 1984 (WA) s 51, s 51(1), (5) & (6), s 51A, s 51A(1) & (5), s 51I, s 51I(1), Industrial Relations Act 1979 (WA) s 27(1), Interpretation Act 1984 s 10, Industrial Relations Commission Regulations 2005 (WA) r 20, r 97

**Result** : Declaration made that a referral of more than one improvement notice is valid and orders issued for amendment and documentary discovery

**Representation:**  
**Counsel:**  
**Appellant** : Ms M Saraceni  
**Respondent** : Ms A Crichton-Browne  
**Solicitors:**  
**Appellant** : Lander & Rogers

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

*Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* [2009] HCA 41; (2009) 239 CLR 27

*Attorney General for Western Australia v Her Honour Judge Schoombee* [2012] WASCA 29

*Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, WA Branch v Burswood Resort (Management) Limited* (1995) 75 WAIG 1801

*Board of Bendigo Regional Institute of Technical and Further Education v Barclay* [2012] HCA 32; (2012) 86 ALJR 1044

*Lacey v Attorney General of Queensland* [2011] HCA 10; (2011) 242 CLR 573

*Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; (1998) 194 CLR 355

*WorkSafe Western Australia Commissioner v Anthony and Sons Pty Ltd T/A Oceanic Cruises* [2006] WAIRC 05438

*WorkSafe Western Australia Commissioner v The Original Croissant Gourmet Pty Ltd* [2007] WAIRC 01273

*Wormald Security Australia Pty Limited v Peter Rohan* (1994) 74 WAIG 2

*Reasons for Decision*

- 1 On 24 December 2014 Reece Pty Ltd (Reece) lodged Form 7 – Notice of Referral to the Occupational Safety and Health Tribunal (the Tribunal) to the Registry of the Commission. The purpose of the referral is described as:

An application to review Improvement Notices 9000627, 90006228 and 90006235 pursuant to s 51A of the *Occupational Safety and Health Act 1984*.

- 2 Attached to it was a one page schedule of the grounds upon which the referral was made.  
 3 When the referral was listed for a directions hearing on 20 January 2015 a number of preliminary issues were raised and hearing was relisted on 27 January 2015 when the Tribunal reserved its decision.

**Background**

- 4 Three Improvement Notices numbered 90006227, 90006228 and 90006235 were issued by Inspector Mott to Reece on 27 October 2014. The notices state as follows:

**“Improvement Notice 90006227**

1. In relation to: inappropriate workplace culture and behaviour  
 at 11 PACKARD ST JOONDALUP 6027 on 24 Oct 2014

I have formed the opinion that you are contravening section 19(1) of the Occupational Safety and Health Act 1984 and the grounds for my opinion are:

My investigation revealed you are the employer at this work environment. During my investigation, discussions and review of documents I identified that during 2013 to October 2014 some employees at the work environment have reported being exposed to inappropriate workplace behaviour including swearing, being locked in toilets, having objects thrown at them, and having their personal effects hidden from them, which may give rise to a psychological injury or harm to health. Discussion with employer representatives and employees indicated the workplace has an accepted culture of practical joking and inappropriate behaviour that does not adhere to the company's stated values. The identified inappropriate workplace behaviour has not been appropriately addressed through the workplaces disciplinary or performance management policies. It is practicable to have an appropriate system in place and to apply policies and procedures in a consistent manner.

You are required to remedy the above by no later than 12 Dec 2014 at 1700 hours.

2. You are directed to take the following measures: see attached improvement notice

In consultation with employees develop a set of explicit expected workplace behaviours that reflect the company's values and display in prominent places in the workplace. Ensure all employees are aware of the expected behaviours and review these behaviours with employees on at least a biannual basis. In addition review the effectiveness of the current policies and procedures in place to address inappropriate workplace behaviour taking into account recent experiences at the workplace.

For guidance refer to the Code of Practice for Violence, Aggression and Bullying at Work 2010 P25 onwards.”

**“Improvement Notice 90006228**

1. In relation to: Supervisor Training  
 at 11 PACKARD ST JOONDALUP 6027 on 24 Oct 2014

I have formed the opinion that you are contravening section 19(1) of the Occupational Safety and Health Act 1984 and the grounds for my opinion are: My investigation revealed you are the employer at this work environment. During my investigation, discussions and review of documents I identified that during 2013 to October 2014 some employees at the work environment have reported being exposed to inappropriate workplace behaviour including swearing, being locked in toilets, having objects thrown at them, and having their personal affects hidden from them and this type of behaviour is known to have an effect on a persons psychological health. The workplace has an accepted culture of practical joking and inappropriate behaviour that does not adhere to the companies stated values and the inappropriate workplace behaviour has not been appropriately managed by supervisors. It is practicable to manage this behaviour.

You are required to remedy the above by no later than 30 Jan 2015 at 1700 hours.

2. You are directed to take the following measures: Provide training to all supervisors and managers as appropriate to enable them to identify inappropriate workplace behaviour, to intervene early to address the inappropriate behaviour, to promote an acceptable workplace culture by modeling appropriate behaviours, to appropriately apply policies and procedures, and how to have difficult conversations with employees.”

**“Improvement Notice 90006235**

1. In relation to: employee information on respectful workplace behaviour  
at 11 PACKARD ST JOONDALUP 6027 on 24 Oct 2014

I have formed the opinion that you are contravening section 19(1) of the Occupational Safety and Health Act 1984 and the grounds for my opinion are: My investigation revealed you are the employer at this work environment. During my investigation, discussions and review of documents I identified that during 2013 to October 2014 some employees at the work environment have reported being exposed to inappropriate workplace behaviour including swearing, being locked in toilets, having objects thrown at them, and having their personal affects hidden from them and this behaviour is know to effect a persons psychological health. The workplace has an accepted culture of practical joking and inappropriate behaviour that does not adhere to the companies stated values. It is practicable to provide employees with information, instruction and training on respectful workplace behaviour.

You are required to remedy the above by no later than 30 Jan 2015 at 1700 hours.

2. You are directed to take the following measures: Provide training to all employees on a bi-annual basis to enable them to identify respectful and appropriate workplace behaviour, to identify inappropriate behaviour, to be able to raise any concerns with workplace behaviour as soon as identified, to be able to address at the lowest level initially inappropriate behaviour, and to promote an acceptable workplace culture by modelling appropriate behaviours.”

- 5 Reece sought a review of those Notices by the WorkSafe Western Australia Commissioner pursuant to s 51 of the *Occupational Safety and Health Act 1984* (WA) (the OSH Act). On 18 December 2014 the WorkSafe Western Australia Commissioner wrote a letter to Reece’s solicitors. The letter is headed:

Review of Improvement Notices 90006227, 90006228 & 90006235.

- 6 The first five paragraphs of the letter refer to the three notices. There then follows a heading for Improvement Notice 90006227 followed by two paragraphs; a heading for Improvement Notice 90006228 and three paragraphs; and a heading for Improvement Notice 90006235 followed by three paragraphs. The letter concludes with a heading “Further information” which contains information “[i]n relation to practicable measures to address the above-mentioned hazards...”. It is followed by a heading “Display of the notices and this letter” with a direction to Reece to display a copy of the letter and the notices it modifies in a prominent place at the workplace affected by the notices. Finally, there is a heading “Further review” which informs Reece of its right to seek a review of the decisions by the Tribunal. It states that requests for further review must be made “within seven days of the issuance of this letter”.
- 7 The following preliminary issues were raised by WorkSafe and Reece.

**Jurisdiction**

- 8 WorkSafe submits that every Improvement Notice forms a separate proceeding and requires a separate decision by the Tribunal. The orders available to the Tribunal are prescribed by s 51A(5)(a) to (c) of the OSH Act. The Tribunal cannot carry out one review and make one review order in relation to a group of notices. Accordingly, the referral to the Tribunal in Form 7 is one referral which can refer only one Improvement Notice to the Tribunal for review; to the extent that it purports to refer all three Improvement Notices for review, it is invalid.
- 9 WorkSafe submits further that it is not open now to Reece to refer the other two Improvement Notices to the Tribunal for review as Reece is now out of time to do so. The powers given to the Tribunal in s 27(1)(n) of the *Industrial Relations Act 1979* (the IR Act) and s 51I(1) of the OSH Act is a power able to be exercised only when the Tribunal already has jurisdiction in relation to a matter; as the referral in this matter can apply to only one Improvement Notice, the Tribunal does not have the jurisdiction to review the other two Improvement Notices.
- 10 In reply, Reece submits that the referral to the Tribunal under s 51A is against the decision of the WorkSafe Western Australia Commissioner’s review of the three Improvement Notices. This decision was one letter in which the Commissioner makes reference to the three Improvement Notices. The history of the three Improvement Notices is that they were issued on the same day by the same Inspector and they each allege a breach of the same s 19(1) of the OSH Act; the request for an internal review under s 51(1) of the OSH Act made by Reece on 21 November 2014 was by way of one application; and the WorkSafe Western Australia Commissioner gave notice in writing of his decision on the reference and the reasons in one notice, being the letter of 18 December 2014.
- 11 Reece submits that the three Improvement Notices have been dealt with concurrently and without any confusion or complaint even by WorkSafe. There is no reason, or no justifiable reason, why they should not continue to be dealt with under one reference albeit separate reasons for decision being given for each notice. Reece submits that in these circumstances there is no prohibition in initiating one reference to the Tribunal for more than one Improvement Notice.
- 12 Reece also refers to the Tribunal not being a court of pleadings saying that the Tribunal has a statutory requirement that any claims before it be dealt with with as little formality as circumstances permit and according to equity, good conscience and the substantial merits of the case without regards to technicalities or legal forms.
- 13 Reece refers to an authority cited by WorkSafe, *The WorkSafe Western Australia Commissioner v The Original Croissant Gourmet Pty Ltd* [2007] WAIRC 01273 where the reference for review was one reference of two Improvement Notices.

### Consideration

14 Sections 51 and 51A of the OSH Act are as follows:

#### 51. Review of notices by Commissioner

- (1) An improvement notice or prohibition notice may, in accordance with this section, be referred for review to the Commissioner by —
  - (a) the person issued with the notice; or
  - (b) the employer (if any) of the person issued with the notice.
- (2) A reference under subsection (1) may be made in the prescribed form —
  - (a) in the case of an improvement notice, within the time specified in the notice as the time before which the notice is required to be complied with;
  - (b) in the case of a prohibition notice, within 7 days of the issue of the notice or such further time as may be allowed by the Commissioner.
- [(3), (4) *deleted*]
- (5) On the reference under this section of an improvement notice or a prohibition notice for review, the Commissioner shall inquire into the circumstances relating to the notice and may —
  - (a) affirm the notice; or
  - (b) affirm the notice with such modifications as seem appropriate; or
  - (c) cancel the notice,
 and, subject to section 51A, the notice shall have effect or, as the case may be, cease to have effect, accordingly.
- (6) The Commissioner shall give to the person that referred the matter for review, and to any other person that was entitled under subsection (1) to refer the notice for review, a notice in writing of the decision on the reference and of the reasons for that decision.
- (6a) In dealing with a reference for the review of a prohibition notice the Commissioner may refer to an expert chosen by the Commissioner such matters as appear appropriate and may accept the advice of that expert.
- (7) Pending the decision on a reference under this section for the review of a notice, the operation of the notice 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 Commissioner.

#### 51A. Review of notices by Tribunal

- (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 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; or
  - (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) *deleted*]

- (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.

15 Whether the one referral to the Tribunal validly refers the three Improvement Notices depends upon a proper interpretation of s 51A(1). Statutory construction begins with a consideration of the text itself and may require consideration of the context including the general purpose and policy of the provisions: *Board of Bendigo Regional Institute of Technical and Further Education v Barclay* [2012] HCA 32; (2012) 86 ALJR 1044. In *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory*

**Revenue** [2009] HCA 41; (2009) 239 CLR 27 at [47] Hayne, Heydon, Crennan and Kiefel JJ said the following about the task of statutory construction:

This Court has stated on many occasions that the task of statutory construction must begin with a consideration of the text itself. Historical considerations and extrinsic materials cannot be relied on to displace the clear meaning of the text. The language which has actually been employed in the text of legislation is the surest guide to legislative intention. The meaning of the text may require consideration of the context, which includes the general purpose and policy of a provision, in particular the mischief it is seeking to remedy.

- 16 The objective of statutory construction is to give the words of the statutory provision the meaning which the legislature is taken to have intended them to have: *Attorney General for Western Australia v Her Honour Judge Schoombe* [2012] WASCA 29 per Martin CJ at 29 citing *Project Blue Sky Inc & Ors v Australian Broadcasting Authority* [1998] HCA 28; (1998) 194 CLR 355 at [78]; *Lacey v Attorney-General of Queensland* [2011] HCA 10; (2011) 242 CLR 573 at [43].
- 17 The text of s 51A(1) is that a person issued with a notice of decision who under s 51(6) may, if not satisfied with the decision, refer the matter to the Tribunal for further review. The word “matter” in s 51A(1) is critical to the issue raised by WorkSafe.
- 18 The person who refers the matter to the Tribunal for further review is the person issued with notice of a decision under s 51(6), and who is not satisfied with that decision. The matter in s 51A(1) therefore takes its character from the Commissioner’s decision under s 51(6) although s 51A(1) does not say that it is the WorkSafe Western Australia Commissioner’s decision which is referred to the Tribunal for further review. The matter referred to the Tribunal for further review under s 51A(1) is the matter about which the decision of the WorkSafe Western Australia Commissioner was made.
- 19 The decision of the WorkSafe Western Australia Commissioner referred to in s 51(6) is a decision on the reference to the Commissioner for review under s 51(1). Section 51(1) provides that an Improvement Notice may be referred for review to the Commissioner. It follows that the decision of the WorkSafe Western Australia Commissioner in s 51(6) is the decision on the referral of an Improvement Notice for review to him under s 51(1).
- 20 Therefore the “matter” which is referred to the Tribunal for further review in s 51A(1) is the matter of the review of the Improvement Notice which was the subject of the decision of the Commissioner in s 51(6). This conclusion is reinforced by the duty on the Tribunal in s 51A(5) to inquire into the circumstances relating to the notice.
- 21 This conclusion is also consistent with authority. In *WorkSafe Western Australia Commissioner v Anthony and Sons Pty Ltd T/A Oceanic Cruises* [2006] WAIRC 05438, the Full Bench of the Commission dealt with an appeal against a declaration made by the Tribunal that it had the power to consider an application to extend the seven day period for lodging a s 51A referral. In the course of dealing with the appeal the Full Bench referred to s 51A(1) of the Act and at [38] stated that:

“... the “matter” is the non-satisfaction with the [WorkSafe Western Australia Commissioner]’s decision under s 51(6) of the OSH Act, of the person who has been issued with the notice of the decision”.
- 22 In *The WorkSafe Western Australia Commissioner v The Original Croissant Gourmet Pty Ltd* (op cit) the Full Bench dealt with an appeal against a decision of the Tribunal. In the course of dealing with that appeal, the Full Bench stated the applicable legislation and the procedure which had been followed in the matter at first instance. The Full Bench noted that an Improvement Notice or Prohibition Notice may be referred for review to the WorkSafe Western Australia Commissioner in s 51(1) of the OSH Act and noted in [85] that the scope of the review by the WorkSafe Western Australia Commissioner is to inquire into the circumstances relating to the Improvement Notice which has been issued.
- 23 The Full Bench noted at [86] that each of the Commissioner’s powers under s 51(5) are about, and are directed to, the notice, being the Improvement Notice which has been issued. The Full Bench noted:

“In this case, the subject of the referral to the [WorkSafe Western Australia Commissioner] was the first and second improvement notices.”
- 24 The Full Bench then considered the further review by the Tribunal. At [90] the Full Bench stated:

As stated the “decision” of the [WorkSafe Western Australia Commissioner] may be referred for further review to the Tribunal under s 51A of the OSH Act. It is that “decision” which is the “matter” referred to in s 51A(1) and (2) of the OSH Act... The “notice” of the appellants referred to in s 51A(1) and s 51(6) of the OSH Act is the notice of the decision rather than the decision itself.
- 25 The Full Bench referred to s 51A(5) which provides that the Tribunal shall inquire into the circumstances relating to the notice, this being the same expression as used in s 51(5). In the opinion of Ritter AP, within whom the other members of the Full Bench agreed, the word “notice” referred to is the Improvement, or Prohibition Notice as the case may be, as opposed to the notice of decision of the WorkSafe Western Australia Commissioner provided for in s 51(6) of the OSH Act. An inquiry into the circumstances relating to the Improvement Notice is thus required. At [94] the Full Bench noted that the Tribunal in effect is to inquire into the circumstances relating to the Notice to see if the WorkSafe Western Australia Commissioner’s decision about the justified ability of the Inspector forming the opinion he did is in turn justified.
- 26 In this case, the decision of the WorkSafe Western Australia Commissioner under s 51(6) was the decision resulting from the Commissioner’s inquiry into the circumstances relating to the three improvement notices which had been referred to him for review under s 51(1). The ‘matter’ which s 51A(1) permits to be referred to the Tribunal for further review is the review of those three Improvement Notices which had been referred to the WorkSafe Western Australia Commissioner for review under s 51(1).
- 27 WorkSafe submits that each Improvement Notice forms a separate proceeding. However, I am not persuaded that a proper construction of s 51 and s 51A supports that conclusion. Section 51 provides that an improvement notice or prohibition notice may be referred for review to the WorkSafe Western Australia Commissioner. In any written law, words in the singular number include the plural and vice versa (*Interpretation Act 1984*, s 10). Accordingly, by s 51(1), an improvement notice or

notices may be referred for review to the WorkSafe Western Australia Commissioner. That is what happened in this case. The text of s 51A(1) does not require the further review of each improvement notice to be a separate proceeding.

- 28 WorkSafe submits further that the decision of the WorkSafe Western Australia Commissioner under s 51(6) in this case was in reality three decisions and not one decision. That is correct and follows from the requirement in s 51(5) that the Commissioner inquire into the circumstances of each notice referred to him for review. It does not follow however that s 51A(1) requires each decision to be separately referred to the Tribunal by a separate referral. It requires only that the matter, in this case the review of the three Improvement Notices referred to the Commissioner, be referred to the Tribunal.
- 29 WorkSafe also submits that each Improvement Notice requires the Tribunal to make a separate decision relating to it and this is a further reason why every Improvement Notice forms a separate proceeding. While I consider it is correct that the further review of each Improvement Notice by the Tribunal pursuant to s 51A(5) will require a separate decision, it does not follow that each decision requires a separate or discrete referral to do so. Once the Tribunal has the jurisdiction to deal with the matter, it has the broad powers in s 27 of the IR Act and s 51I of the OSH Act available to it. Those powers do not restrict the Tribunal to issuing only one of the decisions in s 51A(5) when it inquires into the circumstances relating to each Improvement Notice in the matter referred to it for further review. Further, if necessary in a particular case, it has the power in s 27(1)(s) to divide any matter before it and may issue a decision in s 51A(5) in relation to each divided matter. Whether the use of that power is necessary will depend upon the circumstances of the case.
- 30 For the foregoing reasons I find that the referral to the Tribunal in this matter which embraces all three Improvement Notices is a valid referral under s 51A(1) of the OSH Act.

#### **Amendment of the Referral**

- 31 Reece seeks a number of amendments to be made to the referral.

#### *Amendment of the text of the referral*

- 32 The Notice of Referral prepared by Reece, through its legal representatives, stated that it was:

An application to review Improvement Notices 9000627, 90006228 and 90006235 pursuant to s 51A of the *Occupational Safety and Health Act 1984*.

- 33 Reece filed an amended Notice of Referral on 23 January 2015 and seeks an order amending the referral accordingly. The amendment will amend the referral so that it says:

An application to review the decision of the WorkSafe Western Australia Commissioner made on 18 December 2014 in relation to his review of the issuing of Improvement Notices 90006227, 90006228 and 90006235 on 27 October 2014, pursuant to s.51A of the *Occupational Safety and Health Act 1984*.

- 34 The Notice of Referral refers to Improvement Notice “9000627”. The correct number is 90006227 and Reece seeks an amendment to correct the number. My understanding is that WorkSafe does not object to the amendment once the Tribunal has determined that the referral is properly before it. In my view, it will simply correct a typographical error. There is no suggestion of any detriment to WorkSafe if the amendment is granted. It is appropriate to do so and the amendment is granted.
- 35 The Notice of Referral states that it is an application to review the Improvement Notices pursuant to s 51A of the OSH Act. Granting the application to amend the text of the referral in the manner now sought will not change the fact that it was, and is, a referral to the Tribunal under s 51A of the OSH Act. Although a referral under s 51A is not in form “an application to review” an improvement notice, the referral was in substance Reece exercising its right under s 51A for a further review by the Tribunal of the review it had sought under s 51 by the WorkSafe Western Australia Commissioner. There is no detriment to WorkSafe if the amendment is granted and it is appropriate to do so.

#### *Amendment of the grounds of the referral*

- 36 There are three grounds in the referral. The first ground is that the Inspector did not have reasonable grounds to form an opinion about the matters set out in nine subparagraphs. The second ground is that the Inspector inappropriately issued three separate improvement notices alleging the “same inappropriate behaviour”. The third ground is that the Inspector inappropriately issued three separate improvement notices relying on the same alleged inappropriate behaviour to then stipulate three separate ways to rectify the same alleged contravention of the OSH Act.
- 37 Reece seeks to amend the grounds. In relation to ground one, Reece seeks to insert as a preamble to the existing ground a reference to the WorkSafe WA Commissioner’s decision as follows:

1. The Commissioner was not justified in holding that on the evidence available to him that there were reasonable grounds for Inspector Mott to have been justified in forming her opinion that on 24 October 2014, the Appellant was that day contravening s 19(1) of the *Occupational Safety and Health Act 1984*.

- 38 There then follow nine subparagraphs (although numbered only to (viii) there are two numbered (vi)) which are in most respects identical to the nine subparagraphs in the current grounds. The existing subparagraphs (v) and (vi) refer to ‘psychological harm’ and the proposed subparagraphs (v) and (vi) refer to ‘psychological injury’. Existing subparagraph (vii) commences with the words ‘there was a risk of physical harm’ and the second proposed subparagraph (vi) commences with the words ‘it may give rise to harm to health’.

- 39 It is not apparent that WorkSafe will suffer any detriment if the grounds are amended accordingly. The amendments do not introduce a new ground. The amendments are sought early in the proceedings before the Tribunal. Given that the grounds in the referral appear to be directed to saying that the Inspector did not have reasonable grounds to form the opinion on the matters the Inspector set out, it is appropriate that the subparagraphs do accurately repeat the matters about which the Inspector did form an opinion. The amendments will be granted.

- 40 A further amendment will separately identify each Improvement Notice and the WorkSafe Western Australia Commissioner's decision in relation to that improvement notice. The amendment repeats those of the eight subparagraphs which Reece considers are relevant to each the further review of each notice. It also states the relief sought in relation to each notice.
- 41 In my view the further amendment does not introduce a new ground and is more an amendment of form than of substance. It will clarify the application of an existing ground to each improvement notice. The further amendment is sought early in the proceedings before the Tribunal. It is appropriate that Reece states with clarity the basis of the further review it seeks and the relief it seeks in relation to the three Improvement Notices. In my view, it is appropriate that the further amendment be granted.
- 42 Accordingly, an Order will issue that the Notice of Referral be amended in accordance with the amended Notice of Referral filed on 23 January 2015.

#### Discovery of documents

- 43 Reece has made an oral application for discovery of documents. Reece submits that on a review under s 51A of the OSH Act, the onus is on the Commissioner to justify his decision because the matters he relied on are known only to him, and it refers to *Wormald Security Australia Pty Limited v Peter Rohan* (1994) 74 WAIG 2. To enable Reece to properly prepare its case on the review it needs access to or copies of documents. The documents it seeks should be discovered and made available for inspection as they are necessarily required to fairly dispose of the proceedings, are in the interest of a fair hearing and access to them is necessary for a proper preparation of each party's case.
- 44 WorkSafe proposes that the Tribunal issue an Order that Reece prepare a list of discoverable documents in an approved form and file and serve documents, and make them available for inspection followed by WorkSafe doing the same.
- 45 I deal with the differences between the parties on this topic as follows. The Tribunal has the power pursuant to s 27(1)(o) of the IR Act and s 51I(1) of the OSH Act to make an order for the discovery and production of documents. The directions sought by Reece will require WorkSafe to discover documents in seven categories. Those categories include the employment file, including a curriculum vitae or similar, of the Inspector and the training and attendance records for the Inspector with respect to or any way connected to bullying in the workplace. They include guidelines, brochures and bulletins published by WorkSafe relating to bullying in the workplace; manuals, policies, procedures, guidelines, brochures and similar used internally by WorkSafe relating to identifying and enforcement action in connection with bullying in the workplace; queries, notifications or complaints made by or on behalf of staff of Reece employed at its Joondalup store for the period 1 January 2013 to 20 October 2014; the Inspector's notes, records and files relating to the appellant's Joondalup store for that period and any files held by WorkSafe with respect to the appellant's Joondalup store covering that period.
- 46 In my view, the categories of documents in Reece's proposed Order are, in most cases, impermissibly broad. I am not persuaded that the Inspector's personal employment file or personnel training and attendance records with respect to or in any way connected to bullying in the workplace is relevant to the further review of the Improvement Notices. Although it was submitted that there may be documents in the Inspector's personal employment file which may show she has a professional qualification relevant to the opinion she has formed as stated in the Improvement Notices, I have not found this persuasive. The competence or personal qualifications of the Inspector are not raised in the grounds for review. General guidelines, brochures and bulletins or similar published to the public relating to bullying, or manuals policies and procedures and similar used internally by WorkSafe relating to identifying and enforcement action in connection with bullying in the workplace, is in my view far too broad a description. WorkSafe referred to the breadth of some categories as potentially oppressive and I consider that is likely to be so.
- 47 Further, the basis for the submission that the categories of documents sought by Reece are necessary because the onus is on the WorkSafe Western Australia Commissioner to justify his decision is not supported by the authority cited. In the *Wormald Security* case, which dealt with legislation other than the OSH Act, the majority (Franklin J with whom Ipp J agreed) held at [4] that there is no onus on the person seeking the review to establish that the improvement or prohibition notice should not have issued, either in the form in which it did or at all. Rather, Franklin J observed that on a reference to the Commission (now the Tribunal) under the legislation in existence at that time, the Commissioner is required and obliged to inquire into the circumstances relating to the notice. Those provisions, in the opinion of Franklin J, made it clear that the review is directed to establishing, on whether on the evidence available to the Commissioner, the Inspector was justified in forming the opinion in question. Nicholson J held that it is quite inconsistent with an inquiry into the circumstances relating to the issuance of a notice for there to be an onus on the recipient of the notice to establish why the notice should be set aside. There is nothing in the decision to support the submission that there is an onus on the WorkSafe Western Australia Commissioner to justify his decision.
- 48 By s 51A(5) of the OSH Act the Tribunal is to inquire into the circumstances relating to the notice and may then take one of the steps set out in the balance of that subsection. I am unable to hold on the limited material before me that there is an onus on the WorkSafe Western Australia Commissioner as Reece alleges. I am not inclined to grant the Order for discovery sought by Reece, including requiring WorkSafe to discover documents to Reece prior to Reece discovering documents to WorkSafe, for the reason it advances.
- 49 In general terms, the purpose of documentary discovery is to provide each party to an action with access before trial to the relevant documents in the hands of his opponent so avoiding trial by ambush, saving costs and encouraging settlement in proper cases (*Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, WA Branch v Burswood Resort (Management) Limited* (1995) 75 WAIG 1801, 1805. Discovery, production and inspection of documents are not available as rights, it is only if the Commission, and in this case the Tribunal, considers it appropriate in a particular case. An order for discovery should relate to those documents in the parties' possession, custody or power that relate to a matter in question in the further review of the Improvement Notices: r 20 of the *Industrial Relations Commission Regulations 2005* (the Regulations). In my view, an Order should issue that requires each side to discover to the other by a

date to be set, documents in their possession, custody or power relevant to an issue in the proceedings. Where appropriate, the confidentiality of a person's identity is to be maintained.

- 50 An Order will issue that Reece and WorkSafe each prepare a list of discoverable documents in an approved form and that each serve the list on the other on a date to be set. The date may be the subject of a written submission from the parties by way of speaking to the minutes. Parties can request in writing that they be provided with copies of documents referred to on the list and requested documents are to be provided within five days of a request being made. The proposed orders 3 and 4 of WorkSafe's minute of proposed order are not necessary because they repeat what is already a requirement on the parties by operation of the Regulations. By r 97 the provisions of r 20 apply to the referral of a matter to the Tribunal and therefore it is not necessary to require parties in an order to comply with the regulations.

- 51 A minute of an Order now issues.

#### General

- 52 The referral will be re-allocated within the Commission for the Commissioner designated under the IR Act s 16(2A) to hear and determine. Any programming Orders which need to be made to facilitate the hearing are more appropriately dealt with after the re-allocation.

2015 WAIRC 00133

### REVIEW OF IMPROVEMENT NOTICES

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

#### PARTIES

REECE PTY LTD

APPELLANT

-v-

THE WORKSAFE WESTERN AUSTRALIA COMMISSIONER

RESPONDENT

#### CORAM

CHIEF COMMISSIONER A R BEECH

#### DATE

WEDNESDAY, 4 FEBRUARY 2015

#### FILE NO/S

OSHT 3 OF 2014

#### CITATION NO.

2015 WAIRC 00133

#### Result

*Declaration made that a referral of more than one improvement notice is valid and orders issued for amendment and documentary discovery*

#### Representation

##### Appellant

Ms M Saraceni, of counsel

##### Respondent

Ms A Crichton-Browne, of counsel

#### *Declaration and Order*

HAVING HEARD Ms M Saraceni (of counsel) on behalf of Reece Pty Ltd and Ms A Crichton-Browne (of counsel) on behalf of the WorkSafe Western Australia Commissioner, I the undersigned, pursuant to the powers conferred under sections 51I and 51A of the *Occupational Safety and Health Act 1984* (the OSH Act), s 27(1)(l) and (o) of the *Industrial Relations Act, 1979* and r 20 of the *Industrial Relations Commission Regulations 2005* hereby –

1. DECLARE that the referral to the Tribunal in this matter which embraces all three Improvement Notices is a valid referral under s 51A(1) of the OSH Act.
2. ORDER that the referral be amended as follows:
  - (a) By deleting the words 'An application to review Improvement Notices 9000627, 90006228 and 90006235 pursuant to s 51A of the *Occupational Safety and Health Act 1984*' and inserting:
 

'An application to review the decision of the WorkSafe Western Australia Commissioner made on 18 December 2014 in relation to his review of the issuing of Improvement Notices 90006227, 90006228 and 90006235 on 27 October 2014 pursuant to s 51A of the *Occupational Safety and Health Act 1984*'
  - (b) By deleting the grounds attached to the referral and inserting the grounds attached to the Minute of Proposed Amended Reference filed by Reece Pty Ltd on 23 January 2015.
3. ORDER –
  - (a) THAT Reece Pty Ltd and the WorkSafe Western Australia Commissioner each prepare a list of discoverable documents in an approved form and that each serve the list on the other on or by 2:00pm on Wednesday, 18 February 2015.

- (b) THAT either party may request in writing that they be provided with a copy of a document referred to on the list and requested documents are to be provided within five days of a request being made.
- (c) THAT where appropriate the confidentiality of a person's identity is to be maintained.
- (d) THAT the parties have liberty to apply to vary the terms of this order.

(Sgd.) A R BEECH,  
Chief Commissioner.

[L.S.]

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## VOCATIONAL EDUCATION AND TRAINING ACT 1996—Appeals dealt with—

2015 WAIRC 00015

### APPEAL AGAINST THE REFUSAL TO TERMINATE A TRAINING CONTRACT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

**PARTIES**

ABOUT CHILDCARE PTY LTD

**APPELLANT**

-v-

DEPARTMENT OF TRAINING AND WORKFORCE DEVELOPMENT OF WESTERN AUSTRALIA, REBECCA SHELLUM

**RESPONDENTS**

**CORAM**

ACTING SENIOR COMMISSIONER P E SCOTT

**DATE**

TUESDAY, 20 JANUARY 2015

**FILE NO/S**

APA 3 OF 2014

**CITATION NO.**

2015 WAIRC 00015

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**Result**

Application dismissed

*Order*

WHEREAS this is an appeal pursuant to Section 60G(4) of the *Vocational Education and Training Act 1996*; and  
WHEREAS on the 16<sup>th</sup> day of January 2015 the appellant filed a Notice of Discontinuance in respect of the appeal;  
NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this appeal be, and is hereby dismissed.

(Sgd.) P E SCOTT,  
Acting Senior Commissioner.

[L.S.]

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## ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL—Matters Dealt With—

2014 WAIRC 01231

### DISPUTE RE OUTSTANDING PAYMENTS

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

**PARTIES**

GABELIC TRANSPORT PTY LTD

**APPLICANT**

-v-

SEA TO SUMMIT TRANSPORT PTY LTD

**RESPONDENT**

**CORAM**

COMMISSIONER S J KENNER

**DATE**

THURSDAY, 30 OCTOBER 2014

**FILE NO/S**

RFT 17 OF 2014

**CITATION NO.**

2014 WAIRC 01231

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<b>Result</b>	Order issued
<b>Representation</b>	
<b>Applicant</b>	Mr G Ferguson
<b>Respondent</b>	Mr S Melia and with him Ms T Melia

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*Consent Order*

HAVING heard Mr G Ferguson on behalf of the applicant and Mr S Melia and with him Ms T Melia on behalf of the respondent and by consent the Tribunal, pursuant to the powers conferred on it under the Owner-Divers (Contracts and Disputes) Act 2007, hereby orders –

THAT the respondent pay to Gabelic Transport Pty Ltd the sum of \$32,830.24 by 1 December 2014.

[L.S.]

(Sgd.) S J KENNER,  
Commissioner.

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