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FULL BENCH—Appeals against decision of Commission—

2015 WAIRC 01042

APPEALS AGAINST A DECISION OF THE COMMISSION IN MATTER NO. APPL 66 OF 2012 AND APPL 24 OF 2014 GIVEN ON 15 MAY 2015

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

FULL BENCH

CITATION	:	2015 WAIRC 01042
CORAM	:	THE HONOURABLE J H SMITH, ACTING PRESIDENT CHIEF COMMISSIONER A R BEECH ACTING SENIOR COMMISSIONER P E SCOTT
HEARD	:	WEDNESDAY, 28 OCTOBER 2015
DELIVERED	:	TUESDAY, 24 NOVEMBER 2015
FILE NO	:	FBA 4 OF 2015
BETWEEN	:	THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH
		Appellant
		AND
		PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA
		Respondent
		AND
FILE NO	:	FBA 5 OF 2015
BETWEEN	:	THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH
		Appellant
		AND
		PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA
		Respondent

ON APPEAL FROM:		
Jurisdiction	:	**Western Australian Industrial Relations Commission**
Coram	:	**Commissioner S J Kenner**
Citation	:	**[2015] WAIRC 00377; (2015) 95 WAIG 711**
File Nos	:	**APPL 66 of 2012 and APPL 24 of 2014**

CatchWords	:	Industrial Law (WA) - Applications to vary awards to restore relativities between classifications and as between classifications and the minimum wage - Compression of wage relativities - Orders sought to vary award rates to reflect percentage increases of adjustments to the state minimum wage - National Wage Decisions and State Wage Decisions considered - Applications dismissed at first instance - No error demonstrated
Legislation	:	*Industrial Relations Act 1979* (WA) s 6(ca), s 26, s 26(1)(a), s 26(1)(c), s 40, s 49, s 50, s 50A, s 50A(3), s 50A(3)(a)(ii), s 50A(7), s 51, s 51(2)
		Labour Relations Legislation Amendment Act 2006, Act No 36 of 2006 (WA) s 14, s 15
		Workplace Relations Act 1996 (Cth) s 88B(2)
Result	:	Appeals dismissed
Representation:		
Counsel:		
Appellants	:	Mr M T Ritter SC
Respondents	:	Mr D J Matthews
Solicitors:		
Appellants	:	W G McNally Jones Staff
Respondents	:	State Solicitor for Western Australia

Case(s) referred to in reasons:

Coal & Allied Operations Pty Ltd v Australian Industrial Relations Commission [2000] HCA 47; (2000) 203 CLR 194

Gronow v Gronow [1979] HCA 63; (1979) 144 CLR 513

House v The King [1936] HCA 40; (1936) 55 CLR 499

Public Transport Authority of WA v The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch [2006] WAIRC 04051; (2006) 86 WAIG 807

Robe River Iron Associates v The Amalgamated Metal Workers and Shipwrights' Union of Western Australia (1993) 73 WAIG 1993

The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch v Public Transport Authority [2006] WAIRC 03895; (2006) 86 WAIG 457

Case(s) also cited:

Commission's Own Motion v (Not Applicable) [2014] WAIRC 00471; (2014) 94 WAIG 641

Dornan v Riordan (1990) 95 ALR 451

On the Commission's Own Motion [2015] WAIRC 00435; (2015) 95 WAIG 679

Re Croser; Ex parte Rutherford [2001] WASCA 422; (2001) 25 WAR 170

The Australian Rail, Train and Bus Industry Union of Employees, West Australian Branch v Public Transport Authority of Western Australia [2015] WAIRC 00378; (2015) 95 WAIG 712

Trades and Labor Council of Western Australia v Minister for Consumer and Employment Protection [2006] WAIRC 04608; (2006) 86 WAIG 1633

Reasons for Decision

SMITH AP:

Introduction

1 These are two appeals instituted pursuant to s 49 of the *Industrial Relations Act 1979* (WA) (the Act) against decisions made by the Commission to dismiss applications brought by The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch (the union) in APPL 66 of 2012 and APPL 24 of 2014. The applications were made under s 40 of the Act to vary the *Railway Employees' Award No 18 of 1969* (the Railway Employees' Award) and the *Public Transport Authority Rail Car Drivers (Transperth Train Operations) Award 2006* (the Rail Car Drivers Award) pursuant to principle 10 of the State Wage Fixing Principles ([2014] WAIRC 00485; (2014) 94 WAIG 652). The applications were joined as they raised substantially the same issues ([2014] WAIRC 01031; (2014) 95 WAIG 711).

2 Principle 10 of the 2014 Principles provided:

> 10.1 An application or reference for a variation in wages which is not made by an applicant under any other Principle and which is a matter or concerns a matter to vary wages above or below the award minimum conditions may be made under this Principle. This may include but is not limited to matters such as equal remuneration for men and women for work of equal or comparable value.
>
> 10.2 Claims may be brought under this Principle irrespective of whether a claim could have been brought under any other Principle.

10.3 All claims made under this Principle will be referred to the Chief Commissioner for him to determine whether the matter should be dealt with by a Commission in Court Session or by a single Commissioner.

3 In both matters the union sought to restore relativities as at 2006. In particular, they sought to restore:

(a) wage relativity between classifications contained in the awards; and

(b) wage relativity of both awards to the minimum wage.

4 The applications were made on grounds that flat dollar adjustments to the awards since 2006 have compressed the classification relativities within the awards, and as against the state minimum wage. The variations sought by the union reflect the sum total percentage increases awarded to the state minimum wage since 2006. The union contended at first instance and on appeal that the effect of the compression of wage relativities in both awards has led to unfair wage structures and devalued employees' skills.

5 The respondent, the Public Transport Authority of Western Australia (the PTA), opposed the union's applications to vary the awards. It argued that:

(a) the union is effectively seeking to vary State Wage orders contrary to s 50A(7) of the Act to apply a percentage outcome, in substitution of the flat dollar amount determined by the Commission;

(b) the union's claims have failed to consider the wages paid to the employees covered by these awards under the various industrial agreements and orders since 2006;

(c) the awards have already been modernised once and the applications make no work value claims;

(d) the applications seek to increase the wage rates so that the awards will become a competitive base from which to bargain, which outcome is contrary to s 26 and the objects of the Act; and

(e) the variation to the awards would have a flow-on effect across the state government and the private sector, and would have the effect of undermining the considerations the Commission has had regard to in State Wage Decisions since 2006.

The union's evidence at first instance

6 The union tendered into evidence tables which it says show the compression of relativities in the awards relative to the award classifications and to the minimum wage (exhibit A1 and exhibit A2).

7 The union argued that wage relativities are essential to setting fair wage structures within any given award. This, it says, is because wage relativities reflect the responsibilities and skills of a job. As the relativities between classifications in both awards have compressed and relativities between the classifications contained in both awards have compressed to the minimum wage, it contends that this has led to unfair wage structures and has had the effect of devaluing skills. To restore the relativities it seeks that each State Wage Decision increases be applied as a percentage to increase the rates contained in each of the awards.

8 The table in exhibit A1 relates only to the rates of pay payable to a rail car driver in each year from 2006 until 2014. This table is as follows:

Year	Minimum Wage Prior to State Wage Order	Flat Dollar Rate Given in State Wage Order (SWO)	Minimum wage after State Wage Order	Flat Dollar Rate as Percentage increase given to minimum wage in SWO	Perth CPI to Year End	Actual Percentage increase to Railcar Drivers Award	Railcar Drivers Award Base Rate Prior to SWO	Railcar Drivers Award Base Rate After SWO	Railcar Drivers Award Base Rate if given same percentage increase in SWO as a minimum wage
2006	$484.40	$20	$504.40	4.13%	4.4%	2.13%	$940.00	$960.00	$978.82
2007	$504.40	$24	$528.40	4.76%	3.0%	2.5%	$960.00	$984.00	$1025.41
2008	$528.40	$29	$557.40	5.49%	3.7%	2.95%	$984.00	$1013.00	$1081.70
2009	$557.40	$12.30	$569.70	2.2%	2.1%	1.22%	$1013.00	$1025.30	$1105.50
2010	$569.70	$17.50	$587.20	3.08%	2.6%	1.71%	$1025.30	$1042.80	$1139.55
2011	$587.20	$19.90	$607.10	3.39%	2.9%	1.91%	$1042.80	$1062.70	$1178.18
2012	$607.10	$20.60	$627.70	3.4%	2.1%	3.4%	$1062.70	$1098.80	$1218.24
2013	$627.70	$18.20	$645.90	2.9%	2.9%	1.66%	$1098.80	$1117.00	$1253.57
2014	$645.90	$20.00	$665.90	3.1%	N/A	1.79%	$1117.00	$1137.00	$1292.43

*Sources" WAIRC Wage Case Site and Department of Treasury Consumer Price Index Archives
The figures in red show what the Railcar Drivers Base Rate should be if indexed in line with SWO percentages and not CPI
From 2006 – 2014 the minimum wage grew by 37.58% ($484.00 - $665.90)
From 2006 – 2014 the Railcar Drivers Award grew by only 20.95% ($940.00 - $1137.00)

9 The tables in exhibit A2 deal with each of the classifications in both awards and shows the rates of pay only in 2006 and 2014. These tables show the differences in internal relativities to each classification in the awards and to the minimum wage. These tables are as follows:

Compression of relative Award Classifications

	2006		2014					
RAILCAR DRIVERS AWARD	Base rate	% of drivers rate	Base rate	% of drivers rate	% Difference	MW as % of award class 06'	MW as % of award class 14'	Difference
Minimum Adult Wage	$484.40	51.53%	$665.90	58.57%	7.03%			
Trainee Railcar Drivers	$799.00	85.00%	$966.50	85.00%	0.00%	60.63%	68.90%	-8.27%
Railcar Drivers	**$940.00**	**100.00%**	**$1,137.00**	**100.00%**	0.00%	51.53%	58.57%	-7.03%
Driver Trainers	$996.00	105.96%	$1,194.90	105.09%	-0.87%	48.63%	55.73%	-7.09%
Driver Coordinators	$1,052.00	111.91%	$1,252.80	110.18%	-1.73%	46.05%	53.15%	-7.11%

	2006		2014					
RAILWAY EMPLOYEES AWARD	% of REA Level 4		% of REA Level 4		% Difference	MW as % of award class 06'	MW as % of award class 14'	Difference
Minimum Adult Wage	$484.40	73.57%	$665.90	78.73%	5.16%			
REA Level 1	$558.49	84.83%	$742.60	87.80%	2.97%	86.73%	89.67%	-2.94%
REA Level 2	$589.95	89.61%	$775.10	91.64%	2.03%	82.11%	85.91%	-3.80%
REA Level 3	$618.27	93.91%	$804.40	95.11%	1.20%	78.35%	82.78%	-4.43%
REA level 3A	$639.11	97.07%	$825.90	97.65%	0.57%	75.79%	80.63%	-4.83%
REA Level 4	**$658.38**	100.00%	**$845.80**	**100.00%**	0.00%	73.57%	78.73%	-5.16%
REA Level 5	$689.95	104.80%	$878.40	103.85%	-0.94%	70.21%	75.81%	-5.60%
REA Level 6	$715.81	108.72%	$905.20	107.02%	-1.70%	67.67%	73.56%	-5.89%
REA Level 7	$747.27	113.50%	$965.70	114.18%	0.67%	64.82%	68.96%	-4.13%
REA Level 8	$812.95	123.48%	$1,005.70	118.91%	-4.57%	59.59%	66.21%	-6.63%
REA Level 9	$845.60	128.44%	$1,039.40	122.89%	-5.55%	57.28%	64.07%	-6.78%
REA Level 10	$877.85	133.33%	$1,072.80	126.84%	-6.50%	55.18%	62.07%	-6.89%

10 The union points out that exhibit A2 shows that:

(a) the compression of internal wage relativities between classifications has removed the incentive for employees to train and be trained. It has also reduced the gains from acquiring skills and it follows that for higher skilled workers this means the value of their skills over time has been lost;

(b) the internal wage relativity between driver trainers and rail car drivers has eroded by 0.87%. This it says represents a 0.87% reduction in the value of a driver trainer's skills relative to a rail car driver;

(c) the internal wage relativity between driver coordinators and rail car drivers has eroded by 1.73% and this represents a 1.73% reduction in the value of a driver coordinator's skills relative to a rail car driver;

(d) for employees engaged under the Railway Employees' Award levels 5, 6, 8, 9 and 10 internal wage relativities have eroded in relation to the level 4 base rate. In particular, it shows that:

(i) level 5 lost 0.94% on its base rate to the level 4 base rate;

(ii) level 6 lost 1.70% on its base rate to the level 4 base rate;

(iii) level 8 lost 4.57% on its base rate to the level 4 base rate;

(iv) level 9 lost 5.55% on its base rate to the level 4 base rate; and

(v) level 10 lost 6.50% on its base rate to the level 4 base rate.

(e) conversely internal relativities between the base rate for levels 1, 2, 3, 3A and 7 have increased to that of the level 4 base rate as follows:

(i) level l gained 2.97% on its base rate to the level 4 base rate;

(ii) level 2 gained 2.03% on its base rate to the level 4 base rate;

(iii) level 3 gained 1.20% on its base rate to the level 4 rate; and

(iv) level 7 gained 0.67% on its base rate to the level 4 rate.

11 The contention which is central to the union's claims in respect of both awards is that it says the flat dollar increases awarded by each State Wage Decision from 2006 to 2014 have led to an erosion of relativities between the base rate in each award and the minimum wage. The extent of this erosion it says is demonstrated in the tables in exhibit A2 which shows the minimum wage as a percentage of each of the award classifications for the Rail Car Drivers Award and the Railway Employees' Award.

12 The union points out that exhibit A2 shows that the loss of relativity between the base rates contained in the Rail Car Drivers Award and the minimum wage as follows:

(a) trainee rail car drivers' base rate has got closer to the minimum wage by 8.27%;

(b) rail car drivers' base rate has got closer to the minimum wage by 7.03%;

(c) driver trainers' base rate has got closer to the minimum wage by 7.09%; and

(d) driver coordinators' base rate has got closer to the minimum wage by 7.11%.

13 It also makes a similar submission in respect of the Railway Employees' Award. It points out that there is a loss of relativity between the base rates contained in the Railway Employees' Award and the minimum wage as follows:

(a) level l base rate has got closer to the minimum wage by 2.94%;

(b) level 2 base rate has got closer to the minimum wage by 3.80%;

(c) level 3 base rate has got closer to the minimum wage by 4.43%;

(d) level 3A base rate has got closer to the minimum wage by 4.83%;

(e) level 4 base rate has got closer to the minimum wage by 5.16%;

(f) level 5 base rate has got closer to the minimum wage by 5.60%;

(g) level 6 base rate has got closer to the minimum wage by 5.89%;

(h) level 7 base rate has got closer to the minimum wage by 4.13%;

(i) level 8 base rate has got closer to the minimum wage by 6.63%;

(j) level 9 base rate has got closer to the minimum wage by 6.78%; and

(k) level 10 base rate has got closer to the minimum wage by 6.89%.

14 Thus, the flat dollar amounts awarded in the past have led to higher skilled workers under the Rail Car Drivers Award and the Railway Employees' Award falling closer to the minimum wage.

15 Three witnesses gave evidence on behalf of the union. Mr Paul Robinson, the secretary of the union, gave evidence about his opinion of the effect of flat dollar increases to the awards since 2006. He said the handing down of flat dollar increases based on a minimum wage in other awards is unfair to awards that have classifications set by skill level as the effect is to keep the rates of pay low. Mr Robinson spoke about rail car drivers returning to the Rail Car Drivers Award from early 2008 to late 2010 when they were unable to reach agreement with the PTA to enter into a new industrial agreement. The reason why the union decided to return to the award at that time was because the difference between the rates of pay in the industrial agreement that had expired and the award at that time was only about $2. Yet, returning to the award provided improved conditions to rail car drivers.

16 Mr Robinson said that if the applications to increase the rates of pay is granted, that the rates of pay specified in the awards would improve the bargaining process as that would put pressure on both parties to reach a new industrial agreement.

17 Mr John Harold Olding, the sub-branch secretary to the customer service area, gave evidence that there used to be a separate skills allowance in the award. That was merged into 'all up' rates of pay in an industrial agreement. When the award was modernised in 2006 the 'all up' rates became the rates of pay in the award. He said that since 2006 the rate of pay in the Railway Employees' Award has not provided a safety net for employees as the levels of award rates in the award have not kept up to date with the industrial agreement rates of pay. This he says has had an effect on the skills allowance which, has in effect, become diluted over time.

18 Mr Raymond Arthur Debenham, a rail car driver and had been until recently the rail car driver sub-branch secretary, gave evidence that the award must remain relative or relevant in that it must have competitive award rates to the industrial agreements because if the gap between the rates of pay are too big they will not be in a position to drive future bargaining with the PTA.

The PTA's evidence at first instance

19 The PTA did not call any witnesses to give evidence. It did, however, tender into evidence a number of exhibits, including exhibit R2 which is a comparative table of award weekly wage rates for the Rail Car Drivers Award and the Railway Employees' Award. This table shows the wage rates and internal relativities in 2006 and 2014. In the fourth last column it shows the amount of the award rates if a percentage of 25.93% was applied, being the rate of change in the consumer price index for Perth from 1 July 2006 to 1 July 2014. The third last column in the table shows the amount of the award rates if the 2006 percentage relativities were applied to the base rate of pay of each award (* reference rates). The second last column in the table shows the rates of pay that would be applied if 37.5% sought by the union were to be applied to the 2006 rates of pay. The rates sought by the union maintain internal relativities to 2006 rates by applying each increase in the State Wage as if each had been awarded by the Commission in Court Session as a percentage increase rather than a flat increase. The table in exhibit R2 is as follows:

AWARD WEEKLY WAGE RATES – COMPARATIVE TABLE

Award	Classification/ Level	Original Weekly Award Rates March 2006	Original Relativities	Current Actual Award Rates	Current Percentage Increases	Current Relativities	Award Rates if Increased by Cumulative Perth CPI (1/7/2006 to 1/7/2014) i.e. 25.93%	Award Rates if Relativities were adjusted based on reference Rates	Award Rates if Increased by Percentage Claimed by Applicant (i.e. 37.5 %)	Current Agreement Base Rates Paid -RCD and ITO Agreements - (Adjusted for 38 hour week)
Both	**Minimum Wage**	**$484.40**	**NA**	**$665.90**	**137.5%**	**NA**	**$610.00**	**NA**	**NA**	**NA**
RCD	Driver Coordinator	$1,052.00	111.9%	$1,252.80	119.1%	110.2%	$1,324.78	$1,272.47	$1,446.17	$1,524.60
RCD	Driver Trainer	$996.00	106.0%	$1,194.90	120.0%	105.1%	$1,254.26	$1,204.74	$1,369.19	$1,381.30
RCD	**Railcar Driver***	**$940.00**	**100.0%**	**$1,137.00**	**121.0%**	**100.0%**	**$1,183.74**	**$1,137.00**	**$1,292.21**	**$1,303.10**
RCD	Trainee Railcar Driver	$799.00	85.0%	$966.50	121.0%	85.0%	$1,006.18	$966.45	$1,098.38	$1,079.90
REA	Level 10	$877.85	133.3%	$1,072.80	122.2%	126.8%	$1,105.48	$1,127.75	$1,206.77	
REA	Level 9	$845.60	128.4%	$1,039.40	122.9%	122.9%	$1,064.86	$1,086.32	$1,162.44	
REA	Level 8	$812.95	123.5%	$1,005.70	123.7%	118.9%	$1,023.75	$1,044.37	$1,117.55	
REA	Level 7	$747.27	113.5%	$965.70	129.2%	114.2%	$941.04	$959.99	$1,027.26	
REA	Level 6	$715.81	108.7%	$905.20	126.5%	107.0%	$901.42	$919.58	$984.02	$1,051.48
REA	Level 5	$689.85	104.8%	$878.40	127.3%	103.9%	$868.73	$886.23	$948.33	$1,026.10
REA	**Level 4 ***	**$658.38**	**100.0%**	**$845.80**	**128.5%**	**100.0%**	**$829.10**	**$845.80**	**$905.07**	**$965.97**
REA	Level 3A	$639.11	97.1%	$825.90	129.2%	97.6%	$804.83	$821.04	$878.58	
REA	Level 3	$618.27	93.9%	$804.40	130.1%	95.1%	$778.59	$794.27	$849.93	$908.19
REA	Level 2	$589.95	89.6%	$775.10	131.4%	91.6%	$742.92	$757.89	$811.00	$866.41
REA	Level 1	$558.49	84.8%	$742.60	133.0%	87.8%	$703.31	$717.47	$767.75	$820.33

* Reference Rates

Relevant State Wage and National Wage Decisions which dealt with compression of relativities

20 Until 2006, s 51(2) of the Act (now repealed) required the Commission in Court Session, unless it was satisfied there were good reasons not to do so, to make a General Order to adjust the rate of wages paid in awards by the amount of change to wages in each National Wage Decision and adopt in whole or in part and with or without any modification any principle, guideline, condition or other matter having effect under the National Wage Decision. Section 51 was repealed by s 15 of the *Labour Relations Legislation Amendment Act 2006*, Act No 36 of 2006 (WA).

21 In 2006 and prior to s 51 being repealed there was no National Wage Decision as the power to make an order determining wages within the national system had been by legislative amendment to the *Workplace Relations Act 1996* (Cth) transferred to the Australian Fair Pay Commission.

22 The effect of compression by the award of flat dollar increases was comprehensively dealt with by a Commission in Court Session in 2006.

23 In the 2006 State Wage Decision the following observations were made by the Commission in Court Session and in various national wage decisions considered by the Commission in Court Session in that matter which are relevant to the disposition of issues raised in these appeals ([85] - [97]):

(a) flat dollar increases to minimum awards were consecutively awarded after 1991 ([85], [89]);

(b) considerations of cost are a ground for flat dollar increases ([85]);

(c) there is a tension between the maintenance of relativities and addressing the needs of the employees at the lower award levels ([87]);

(d) relativities remain an important determinant of the fairness of the minimum wage structure within awards. Awards cannot be fair unless they properly reflect the relative skills, responsibilities, etc of jobs covered by the award. Provision of skill-based career structures in awards is a significant way in which employees are encouraged to improve their skills, contribute to higher productivity and advance to higher wages ([86]);

(e) in 1997 the Australian Commission observed that percentage increases are a means of maintaining existing relativities in skill-based classification structures, but given the need to limit average weekly ordinary time earnings (AWOTE) and weighing the desirability of relativity preservation with the needs of the low paid flat dollar increases have been awarded by giving priority to the needs of the low paid ([86]);

(f) in 1998 and in 1999 the Australian Commission, after having regard to the fact that flat dollar increases distort vertical relativities by reducing relativities in percentage terms, tapered the amount of the flat dollar increases at the higher level. This approach and form of increases strikes the right balance between the competing equity of lessening the effect of compression and cost considerations ([87] - [88]);

(g) in 2001 the Australian Commission awarded three incremental flat dollar increases as a measure towards avoiding the further compression of relativities between job classifications (PR002001);

24 In 2006 the Commission in Court Session found:

(a) unlike the Australian Commission under the repealed s 88B(2) of the *Workplace Relations Act* ([92] - [97]) it is not expressly required to pay regard to the needs of the low paid; but such a consideration is implied as a matter the Commission can consider within the scope of the principal object in s 6(ca) of the Act, in s 26(1)(a) and the opening words of s 26(1)(c) where such a consideration is raised on the evidence before it ([94]);

(b) a flat dollar increase on this occasion will target the lower paid;

(c) although the Australian Commission held in September 1994 and in October 1995 that it would not grant applications to restore pre-existing relativities on the basis that such relativities have been compressed by flat dollar increases, this Commission is not necessarily bound to follow the Australian Commission decisions in respect of this issue;

(d) if any party to an award wishes in the future to address the issue that compression of wage rates since 1991 as a result of flat dollar arbitrated safety net adjustments has eroded skill-based career paths in awards or had any other detrimental effect at the industry or workplace level, it is open to them to do so in an application relating to a specific award under s 40 of the Act.

25 Within days of the 2006 State Wage Decision being delivered on 26 June 2006, s 14 of the *Labour Relations Legislation Amendment Act* came into operation on 4 July 2006. These amendments repealed the direct nexus between a National Wage Decision and a State Wage Decision. Section 14 enacted s 50A(3) of the Act which requires the Commission in Court Session when making a General Order to:

> In making an order under this section, the Commission shall take into consideration —
>
> (a) the need to —
>
> (i) ensure that Western Australians have a system of fair wages and conditions of employment;
>
> (ii) meet the needs of the low paid;
>
> (iii) provide fair wage standards in the context of living standards generally prevailing in the community;
>
> (iv) contribute to improved living standards for employees;
>
> (v) protect employees who may be unable to reach an industrial agreement;
>
> (vi) encourage ongoing skills development; and
>
> (vii) provide equal remuneration for men and women for work of equal or comparable value;
>
> (b) the state of the economy of Western Australia and the likely effect of its decision on that economy and, in particular, on the level of employment, inflation and productivity in Western Australia;
>
> (c) to the extent that it is relevant, the state of the national economy;
>
> (d) to the extent that it is relevant, the capacity of employers as a whole to bear the costs of increased wages, salaries, allowances and other remuneration;
>
> (e) for the purposes of subsection (1)(b) and (c), the need to ensure that the Western Australian award framework represents a system of fair wages and conditions of employment;
>
> (f) relevant decisions of other industrial courts and tribunals; and
>
> (g) any other matters the Commission considers relevant.

26 The Commission in Court Session did not revisit this issue in its 2007 State Wage Decision ([2007] WAIRC 00517; (2007) 87 WAIG 1487). Nor did it in 2008, although it did acknowledge submissions made to it regarding the compressing effect upon relativities of successive flat-dollar increases to award rates ([2008] WAIRC 00347; (2008) 88 WAIG 773 [43]).

27 The Commission in Court Session made no further observations about this issue until 2012 when it awarded a percentage increase to awards. It did so on two grounds. Firstly, because they 'appreciated' that past flat-dollar increases inevitably will have had the effect of compressing relativities between wage rates in awards and secondly there are employers and employees in Western Australia who are award-reliant ([2012] WAIRC 00346; (2012) 92 WAIG 557 [112]). I understand the term award-reliant to mean employers and employees who have not entered into industrial agreements.

28 In 2013, the Commission in Court Session simply said that ([2013] WAIRC 00347; (2013) 93 WAIG 467 [86]):

(a) on this occasion they favoured a flat-dollar increase rather than a percentage increase. This is in a large part due to the emphasis they wish to place upon those employees who are on the minimum wage or slightly above it, rather than those on higher award wages; and

(b) there was no direct evidence of issues having arisen from any compression of award relativities from past flat-dollar increases.

29 In 2014, they said that they again favoured a flat-dollar increase rather than a percentage increase because ([2014] WAIRC 00471; (2014) 94 WAIG 641 [103], [106]):

(a) they considered a flat increase targets those employees who are on a minimum wage or slightly above it;

(b) a flat increase has the potential to result in a lower overall cost to an employer compared to a percentage adjustment because the increase is not compounded when applied to award rates of pay;

(c) there was no direct evidence of issues having arisen from any compression of award relativities from past flat-dollar increases; and

(d) it is open to any party to seek to vary an award to address issues which arise from any compression of relativities.

30 After the decisions dismissing APPL 66 of 2012 and APPL 24 of 2014 were delivered, the Commission in Court Session delivered the 2015 State Wage Decision ([2015] WAIRC 00435; (2015) 95 WAIG 679). At [111] - [113] it found:

(a) flat-dollar increases to award rates of pay are generally preferred because a flat increase targets those employees who are on the minimum wage or slightly above it and has the potential to result in a lower overall cost to an employer compared to a percentage adjustment because the increase is not compounded;

(b) they were aware that over time flat-dollar increases compress award relativities;

(c) a percentage increase to award wages would be awarded. On this occasion, UnionsWA has demonstrated the level of compression at higher wages levels in the *Metal Trades (General) Award 1966*;

(d) awarding a percentage increase will give a greater increase to higher award rates than the minimum wage, and a corresponding cost to employers; and

(e) it is open to any party to seek to vary an award to address issues which arise from the compression of relativities.

Reasons for decision of the Commission at first instance

(a) Compression of wage relativities - principles

31 The learned Commissioner, hearing the applications the subject of these appeals, considered the observations of the Commission in Court Session in the State Wage Decision in 2006 ([2006] WAIRC 04608; (2006) 86 WAIG 1633), the State Wage Decisions in 2011 ([2011] WAIRC 00399; (2011) 91 WAIG 1008) and 2014 ([2014] WAIRC 00471; (2014) 94 WAIG 641). He then observed that the Commission in Court Session had found that it is open to any party to seek to vary an award to address issues which arise from any compression of relativities. The learned Commissioner also observed that:

(a) in successive State Wage Decisions the Commission in Court Session has recognised that awarding flat dollar increases to the state minimum wage and in turn, extending that increase to award wages generally, will have the effect of compressing relativities in awards; and

(b) since 2006, and except for 2012, the Commission in Court Session has awarded flat dollar increases to the state minimum wage. It has done so on the basis the flat dollar increases will tend to favour the lowest paid, and hence, is consistent with the Commission in Court Session meeting its statutory obligation to 'meet the needs of the low paid' under s 50A(3)(a)(ii) of the Act.

32 The learned Commissioner found that the Commission in Court Session has repeatedly said that in any case where it is contended that the compression of relativities in a particular award or awards has had a detrimental effect then an application can be made under s 40 of the Act to address it and be heard by a single Commissioner after conferring with the Chief Commissioner in accordance with principle 10.3 of the Principles.

33 The learned Commissioner then found, after having regard to principle 10 of the 2014 Principles, that there was no barrier to these matters being dealt with by an application under s 40 of the Act, consistent with the Principles. Further, he accepted, based on the materials before him, that in both awards there has been, since 2006, a degree of compression of relativities within the classifications prescribed by both awards. He then found that taking the original relativities in 2006 as the benchmark, the compression is relatively small for rail car drivers and is considerably greater for those from level 5 and above under the Railway Employees' Award. He also found for those in level 3A and below in the Railway Employees' Award, the relativity to the level 4 rate has somewhat improved over the same period. The learned Commissioner then said the question was in these matters whether this should be remedied and, if so, how.

(b) State minimum wage determination

34 The learned Commissioner found that he was not persuaded that there is any merit in the view that there should be established a nexus between cumulative state minimum wage movements, expressed in percentage terms, and the adjustment of all award classification rates in the awards.

35 In making this finding, the learned Commissioner had regard to the following matters:

(a) In making a State Wage Decision, the Commission in Court Session is required by s 50A to have regard to a number of statutory criteria set out in s 50A(3) of the Act.

(b) An important factor that the Commission in Court Session has paid particular attention to in the past, is the needs of the low paid.

(c) Despite the adoption of flat dollar adjustments to the state minimum wage in past years, there has never been any recognition by the Commission in Court Session of a direct relationship between equalising percentage adjustments in the state minimum wage and the adjustments of award rates of pay generally.

(d) If the union's claim to increase the base rates of pay in the awards by the cumulative percentage increase in the state minimum wage were to be granted, it is not difficult to envisage a flow of such applications to the

Commission, therefore having the potential to undermine the integrity of the state minimum wage adjustment process, and the specific criteria set out in s 50A(3) of the Act, in particular, the criteria of meeting the needs of the low paid.

(e) Exhibit R2 shows that for employees under the Railway Employees' Award up to level 7, the award wage rates have increased by more than the consumer price index from 2006 to 2014. If an objective of setting a minimum wage is to at least preserve the real value of wages, as referred to by the Commission in Court Session in the 1981 State Wage Case, then this objective is met in respect of this group of employees (State Wage Case (1981) 61 WAIG 1894). However, increases to the Railway Employees' Award levels 8 to 10 have achieved somewhat less than cumulative consumer price index over this time, but not substantially so.

(f) For rail car drivers, from 2006 to 2014, each of the classifications have received between 4.93% and 6.83% less than the cumulative consumer price index figure. However, some caution needs to be applied to the measurement of the consumer price index, depending on whether the year-end or through the year rate is used for comparison purposes. Further, the base rate of wage for the Rail Car Drivers Award employees, as at 2006, is substantially higher than it otherwise would have been, by reason of the incorporation of rates of pay previously applying under industrial agreements. Additionally, the rate was increased by the incorporation of the SERA allowance in the base rates.

(g) It is also significant to note that as exhibit R2 shows, the employees under both awards enjoy rates of pay, under their respective industrial agreements, with one or two exceptions, that are significantly higher than the respective rates of pay under the awards, adjusted for both cumulative consumer price index increases and the increases sought in the union's claim in these proceedings.

(c) Relativities, skill based career paths and minimum rates adjustment

36 The learned Commissioner observed that the setting of properly established minimum rates and the creation of appropriate relativities between classifications in an award are important features of the system of wage fixation. He also observed that as the system of wage fixing developed in the 1990s, with an even greater focus on enterprise level outcomes, awards became the safety net below which terms and conditions of employment could not be adjusted. Nonetheless, the structural efficiency principle process for awards, remained important to ensure awards constituted a modern award safety net.

37 He then pointed out that both awards were modernised in 2006. The Rail Car Drivers Award was made as a new award on 24 February 2006 (***The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch v Public Transport Authority*** [2006] WAIRC 03895; (2006) 86 WAIG 457). The Railway Employees' Award was substantially modernised, through major variations, and was the subject of an order of the Commission on 17 March 2006 (***Public Transport Authority of WA v The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch*** [2006] WAIRC 04051; (2006) 86 WAIG 807). Both awards were made and varied respectively, by consent.

38 The Railway Employees' Award incorporated appropriate relativities with the metal trades award classifications set at level 4 as the benchmark classification, pegged at 100% of the metal trades tradesperson's rate.

39 The learned Commissioner observed that the Rail Car Drivers Award replaced the then *Government Railways Locomotive Engineman's Award 1973*. New rates of pay were struck and the new award containing classifications that had been payable under industrial agreements previously applying. As there had been very substantial changes to the industry up to that time, many of the classifications in the former *Government Railways Locomotive Engineman's Award* were obsolete and were removed. Given the higher rates of pay in the new Rail Car Drivers Award, incorporating rates from prior industrial agreements, including the former SERA allowance, he observed that the base rates of pay were considerably higher than those in the former *Government Railways Locomotive Engineman's Award*. Thus, he found the safety net for the employees covered by this award is already elevated.

40 The learned Commissioner then had regard to a decision he made in an application for an enterprise order applying to rail car drivers in 2011. In that arbitration a substantial body of evidence and submissions were put before the Commission in relation to terms and conditions of employment for rail car drivers. In that matter he had found that the wage rate (cl 18.5 - cl 18.7 of the Enterprise Order [2011] WAIRC 00218; (2011) 91 WAIG 730):

(a) applicable to trainees should be 85% of the wage rate applicable to the classification of a rail car driver;

(b) for a driver trainee was to be 6% above the applicable base rate for a rail car driver; and

(c) for a driver coordinator was to be 17% above the applicable base rate for a rail car driver.

41 In the matters before him, he then observed that the principal contention of the union is that the base rates in the awards should be increased by the cumulative percentage increase in adjustments to the state minimum wage since 2006 and up to 2014 inclusive and that a substantial basis for each claim is to elevate the award base rates as a floor to bargain for an industrial agreement.

42 He found that the elevation of award base rates to achieve bargaining leverage is not a proper basis to restore award relativities. Further, he found that the purpose of restoration of relativities is to preserve the integrity of skill based career paths, based on the skills and responsibilities of classifications in an award. He then went on to observe that to the extent this factor may be relevant to the higher level classifications under the Railway Employees' Award, then any adjustment to relativities must be across the board, to preserve relativities and the integrity of the classification structure of the award and it was not open to the union to 'cherry pick', by only pursuing changes at the higher classification levels, whilst preserving the improvements in relativities at the lower classification levels. Thus, he found if there is to be a proper restoration of relativities it needs to reflect the structure of the award classifications, relative to the benchmark rate, as at 2006.

(d) The learned Commissioner's conclusion

43 The learned Commissioner accepted that compared to the original relativities established in the Railway Employees' Award when it was modernised in 2006 (in particular for the higher level classifications) there has been some erosion of relativities to the key classification level 4 rate of pay. Therefore, he accepted that on this basis, those in higher skilled positions may be seen to have had the value of their work, relative to the established skills related career paths, in award terms at least, diminished. He then found the established relativities of the Railway Employees' Award, as at 2006, was the appropriate structure based on the metal trades classifications relativity. Further, he found if there was to be any restoration of relativities then they are the appropriate benchmark.

44 In the case of rail car drivers, he found the relativities as at 2006 have changed somewhat in the current rate structure, but only slightly. They were revisited by him in the extensive arbitration in the enterprise order proceedings. The learned Commissioner then expressed the view that the appropriate relativities should be as he determined in the enterprise order, but as the parties do not seek the application of those relativities, then they should not apply.

45 Finally, he found that notwithstanding his preliminary conclusions in relation to the basis of any adjustment to relativities, given his rejection of the central contention underlying the union's claims, and the parties' supplementary submissions, the most appropriate course was to dismiss both applications. He did, however, note that he would expect future claims, if any, to also encompass work value considerations.

The grounds of appeal

46 The grounds of appeal in FBA 4 of 2015 are as follows:

2.1 The Commissioner erred in dismissing Appl 66 of 2012 (See 2015 WAIRC 00377) on the basis that there was no *'merit in the view that there should be established a nexus between cumulative [State Minimum Wage] movements, expressed in percentage terms, and the adjustment of all award classification rates in [the RCD Award]*' (Reasons for Decision at [67]).

2.2 The Commissioner erred in dismissing Appl 66 of 2012 in circumstances where he did not provide adequate reasons for deciding there was no '*merit in the view that there should be established a nexus between cumulative [State Minimum Wage] movements, expressed in percentage terms, and the adjustment of all award classification rates in [the RCD Award]*' (Reasons for Decision at [67]), in that the reasons provided did not support the conclusion reached.

2.3 The Commissioner erred in failing to properly decide the case of the Appellant in that having accepted there had been some erosion of relativities in the RCD Award (Reasons for Decision at [85]), the Commissioner did not decide whether that provided grounds upon which to vary the RCD Award, as sought by the Appellant, in the absence of the Appellant relying upon the outcome of the 'enterprise order proceedings' in 2010-2011 to restore the RCD Award based relativities (Reasons for Decision at [85]).

47 The grounds of appeal in FBA 5 of 2015 are as follows:

2.1 The Commissioner erred in dismissing Appl 24 of 2014 (See 2015 WAIRC 00377) on the basis that there was no '*merit in the view that there should be established a nexus between cumulative [State Minimum Wage] movements, expressed in percentage terms, and the adjustment of all award classification rates in [the RE Award]*' (Reasons for decision at [67]).

2.2 The Commissioner erred in dismissing Appl 24 of 2014 in circumstances where he did not provide adequate reasons for deciding there was no '*merit in the view that there should be established a nexus between cumulative [State Minimum Wage] movements, expressed in percentage terms, and the adjustment of all award classification rates in [the RE Award]*' (Reasons for decision at [67]), in that the reasons provided did not support the conclusion reached.

2.3 The Commissioner erred in dismissing Appl 24 of 2014 on the basis that the Appellant was trying to 'cherry pick' by only pursuing changes at the higher classifications levels in the RE Award, whilst preserving improvements in the relativities at the lower classification levels (Reasons for decision at [82]), when this was not the case of the Appellant, who sought orders which would preserve all of the classification relativities within the RE award.

2.4 The Commissioner erred in dismissing Appl 24 of 2014 in that he failed to properly decide the case of the Appellant as, having accepted there had been some erosion of relativities in the RE Award and that '*those in higher skilled positions may be seen to have had the value of their work, relative to the established skills related career paths, in award terms at least, diminished*' (Reasons for decision at [83]), the Commissioner did not decide whether there should be, or alternatively provide adequate reasons for rejecting a variation to the RE Award, on that ground, to restore and preserve the integrity of skill based career paths, based on the skills and responsibilities classifications in the RE award.

The union's submissions in this appeal

48 The basis of the applications before the Commission at first instance were that previous decisions of the Commission in Court Session in State Wage Decisions have indicated that there would be good grounds for the Commission to exercise its discretion under s 40 of the Act to vary an award if it were satisfied that:

(a) there had been a compression in the relativities in an award;

(b) the compression was caused by the flat dollar increases awarded in the State Wage Cases; and

(c) the compression of relativities either:

(i) eroded skill based career paths in awards; or

(ii) had any other detrimental effect at the industry or workplace level.

49 The union argues that flat dollar adjustments to each of the awards since 2006 have compressed the classification relativities within the awards and as against the state minimum wage. This, they say, has led to an unfair wage structure and devaluation of employees' skills. In particular, unfairness has arisen because:

(a) there is a compression of relativities between the state minimum wage and the rates of pay in each of the classifications in the awards;

(b) there has been a compression internally in each award between the classifications in each award; and

(c) award rate increases since 2006 as they apply to some classifications in the awards have not kept pace with the consumer price index.

50 In support of its argument, the union relies upon the observations made by the Commission in Court Session in the 2006 State Wage Case in which it adopted the observations of the Australian Industrial Relations Commission in the National Wage Case in 1997 in Print P1977 in which it held that relativities remain an important determinant of the fairness of the minimum wage structure within awards and it implicitly pointed out that:

(a) award rates cannot be fair if they do not properly reflect the relative skills, responsibilities, etc of jobs covered by an award;

(b) the provision of skill based career structures in awards is a significant way in which employees are encouraged to improve their skills, contribute to higher productivity and advance to higher wages; and

(c) it was no answer to leave it to workplace agreements to establish appropriate relativities.

51 In ground 1 of the appeals, the union contends that the learned Commissioner erred in dismissing the applications by finding there was no merit in the view that there should be a nexus between cumulative state minimum wage movements, expressed in percentage terms, and the adjustment of the classification rates in the two awards. It argues that this finding was quite simply wrong; that there is clearly merit in the readjustment of the two awards to reflect the percentage increases made to the state minimum wage. The merit is to address the unfair rates of pay by maintaining the relativity between the minimum wage and the classifications in each of the awards, so as to value the skills held by the employees and provide financial rewards for the career paths covered by the awards and classifications.

52 The errors made by the learned Commissioner, the union says, are as follows:

(a) The learned Commissioner erred in finding there was no merit in maintaining a nexus between the state minimum wage and the rates of pay in the classifications in the awards. One of the grounds he relied upon in making this finding was because it was envisaged that other unions may make similar applications to the Commission. The learned Commissioner was of the view that the applications had the potential to undermine the integrity of the state minimum wage adjustment process and the criteria of meeting the needs of the low paid. The learned Commissioner provided no explanation as to why he held this view. In any event, the needs of the 'low paid', to whom the minimum wage could apply, would not be affected if the applications were granted; to the contrary their interests are independent.

(b) The learned Commissioner erred in finding that the considerations in s 50A of the Act did not support the applications. These are not criteria governing award variation applications under s 40 of the Act. As the Commission in Court Session in the 2015 State Wage Case ([2015] WAIRC 00435; (2015) 95 WAIG 679 [113]) said:

> It is open to any party to seek to vary an award to address issues which arise from the compression of relativities. An application to do so does not undermine this, or previous State Wage Order decisions and can be dealt with by a single commissioner.

(c) The learned Commissioner erred in finding that the nexus argument had no merit because the employees covered by the awards had rates of pay in their respective industrial agreements which had been adjusted for cumulative consumer price index increases. The fact that employees had negotiated an industrial agreement, which took into account cumulative consumer price index increases, was not relevant to the issue about whether the award rates should have at least met the cumulative consumer price index increases. Thus, he took into account an irrelevant consideration.

(d) In any event, there was unfairness in the compression itself. In fact, some of the rates in the awards had not kept pace with the consumer price index.

(e) The learned Commissioner erred in finding that there was no merit in maintaining a nexus with the minimum wage because:

(i) he envisaged that other unions may make similar applications; and

(ii) the union's applications, if granted, had the potential to undermine the integrity of the state minimum wage adjustment process and the criteria of meeting the needs of the low paid.

The union argues these findings are speculative.

(f) The learned Commissioner clearly erred in finding that there was no merit in the view that there should be a nexus between cumulative state minimum wage movements, expressed in percentage terms, and the adjustment of the classification rates in the two awards, having accepted that the:

(i) setting of properly established minimum rates and the creation of appropriate relativities between classifications in an award were important features of the system of wage fixation;

(ii) objective of setting a minimum wage is to at least preserve the real value of wages;

(iii) levels 8, 9 and 10 classifications in the Railway Employees' Award had received less than cumulative consumer price index increases as a result of flat dollar increases being made to the Railway Employees' Award; and

(iv) classifications in the Rail Car Drivers Award received between 4.93% and 6.83% less than cumulative consumer price index increases as a result of flat dollar increases being made to the Rail Car Drivers Award.

(g) It is irrelevant that the base rate of wages for rail car driver employees in the award as at 2006 were substantially higher than it would otherwise have been, by reason of the incorporation of rates of pay previously applying under industrial agreements. Those rates of pay were properly set rates of pay made by an order of the Commission.

53 In ground 2 of the appeals, the union alleges that the Commission did not provide adequate reasons about why there was no merit in the view that there should be established a nexus between cumulative state minimum wage movements, expressed in percentage terms, and the adjustment of all award classification rates in the awards the subject of these proceedings. However, senior counsel informed the Commission that if they succeed on ground 1 of the appeals, then ground 2 does not raise anything additional. However, if ground 1 of the appeals is rejected and there is a finding that the learned Commissioner's reasons at first instance are accepted, ground 2 of the appeals fall away.

54 Ground 3 of FBA 4 of 2015 and ground 4 of FBA 5 of 2015 raise substantially the same issues. Ground 3 of FBA 4 of 2015 is raised in respect of the application to vary the Rail Car Drivers Award and ground 4 of FBA 5 of 2015 is raised in respect of the applications to vary the Railway Employees' Award. The union's argument is that, having been satisfied that there had been some erosion of the relativities in each award as a result of flat dollar increases to the award rates, the learned Commissioner did not decide whether that provided grounds upon which to vary the awards. By failing to do so, the learned Commissioner did not properly exercise his discretion and decide the case before him. In particular, it is contended that once the learned Commissioner was satisfied that the flat dollar adjustments had eroded the relativities and skill related career paths, he ought to have amended the awards in the terms sought by the union, to correct that erosion.

55 It is also argued in FBA 4 of 2015, that when considering the compression of rates in the Rail Car Drivers Award, the learned Commissioner did not examine the compression issue separate from his findings in respect of the relativities he had found in the Enterprise Order case that he had heard in 2010 and 2011. At [85] of his reasons for decision the learned Commissioner, based on the evidence and history of negotiations between the parties, determined that the appropriate relativities should be as set out in the Enterprise Order. He then found, in his view, but for the supplementary submissions of the parties, they provide a cogent basis upon which any award base relativities should be restored. The union's supplementary submissions were that the Enterprise Bargaining Order proceedings were to reassess wage structures on a work-value basis and that that assessment was not applicable to their current applications, which were to restore award relativities. Thus, it says, the learned Commissioner was effectively saying that, but for that submission, there would have been a cogent basis upon which award base relativities should be restored. The union says the error the learned Commissioner made is that having said that, he then did not go on to consider whether the compressed relativities within the award of itself was a reason to grant the application. In particular, it says that what was not analysed by the learned Commissioner was whether the compression of the relativities within the award was a sufficient reason for granting the application in FBA 4 of 2015.

56 Ground 3 of FBA 5 of 2015 is raised only in respect of the Railway Employees' Award. In this ground of appeal the union claims the learned Commissioner erred because he misunderstood or misapplied the union's case. In dismissing the application, the learned Commissioner relied in part on a finding that the union was 'cherry picking' and 'only pursuing changes at the higher classification levels' in the Railway Employees' Award. The union says the point the learned Commissioner was making is that exhibit A2 shows there had been over time an improvement in relativities between the adult minimum wage and level 1 to level 3A and level 7 and at level 5, level 6 to level 10 there had been a decrease. To draw such a conclusion from this fact, the union says, was an error. The union sought to restore the relativities between all classifications in the Railway Employees' Award and in doing so it sought an adjustment to the relativities in all classifications. It did not seek to 'cherry pick' so that the percentage increases only applied to the higher classification levels. At no point during the proceedings did the union seek to limit the variation applied to the higher classification levels.

Did the learned Commissioner err in dismissing the applications?

57 In each appeal the union accepts that the Commission's decision was discretionary. Thus, the appeals can only be allowed if an error of the type described in ***House v The King*** [1936] HCA 40; (1936) 55 CLR 499, 504 - 505 is identified.

58 In ***House v The King***, Dixon, Evatt and McTiernan JJ at 504 - 505 set out the relevant principles as follows:

> The manner in which an appeal against an exercise of discretion should be determined is governed by established principles. It is not enough that the judges composing the appellate court consider that, if they had been in the position of the primary judge, they would have taken a different course. It must appear that some error has been made in exercising the discretion. If the judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some material consideration, then his determination should be reviewed and the appellate court may exercise its own discretion in substitution for his if it has the materials for doing so. It may not appear how the primary judge has reached the result embodied in his order, but, if upon the facts it is unreasonable or plainly unjust, the appellate court may infer that in some way there has been a failure properly to exercise the discretion which the law reposes in the court of first instance. In such a case, although the nature of the error may not be discoverable, the exercise of the discretion is reviewed on the ground that a substantial wrong has in fact occurred.

59 An appeal against a discretionary decision cannot be allowed simply because the appellate body would not have made the same decision. The latitude may be considerable where the relevant considerations are confined only by subject matter and the object of the legislation which confers the discretion. However, because the decision-maker has some latitude, the correctness of the decision can only be challenged by showing error in the decision-making process: ***Coal & Allied Operations Pty Ltd v***

Australian Industrial Relations Commission [2000] HCA 47; (2000) 203 CLR 194 [19] - [21] (Gleeson CJ, Gaudron and Hayne JJ). It is well established that it is never enough that an appellate body, left to itself, would have arrived at a different conclusion, and when no error of law, mistake or fact is present, to arrive at a different conclusion which does not of itself justify reversal can be due to little else but a difference of view as to weight: ***Gronow v Gronow*** [1979] HCA 63; (1979) 144 CLR 513, 519 (Stephen J).

60 Whilst the learned Commissioner properly found that there is no barrier to the applications being dealt with under s 40 of the Act, his observation that the matters must be dealt with consistent with the Principles is not correct. The Principles are made each year by General Order by a Commission in Court Session as a State Wage Order pursuant to s 50 and s 50A of the Act. The making of a General Order requires more than the Commission act consistently with the Principles. The Commission is required to apply the Principles: ***Robe River Iron Associates v The Amalgamated Metal Workers and Shipwrights' Union of Western Australia*** (1993) 73 WAIG 1993, 1999 (Nicholson AP, Wallwork and Owen JJ agreeing). This error is not, however, material as principle 10 of the Principles expressly authorises any application to vary wages above or below the award minimum conditions. Although there is nothing in the Principles themselves that expressly provides for any pre-conditions that must be met or matters to be taken into account by the Commission when exercising the discretion to vary an award above or below the award safety, in successive State Wage Decisions the Commission in Court Session, when determining to award flat dollar increases to awards, have considered the potential effect of such a decision on award relativities and whether it is open to any party to an award to make an application to vary an award to restore pre-existing relativities.

61 When regard is had to the observations and findings made in each of the State Wage Decisions from 2006 to 2014, it is clear that the learned Commissioner did not err in finding that there has never been any recognition by the Commission of a direct relationship between equalising percentage adjustments in the state minimum wage and the adjustments of award rates of pay generally ([69], AB 76). To the contrary, it is patently clear from the observations and findings of the Commission in Court Session it has not considered the issue whether there should be established a nexus between cumulative minimum wage movements, expressed in percentage terms and the adjustment of award classifications in any award. In particular, the question whether there should be relativity between the rate of the minimum wage and any rates of pay in an award (other than the minimum wage itself) has not been considered. This point was properly conceded by senior counsel for the union at the hearing of the appeals.

62 Nor, with respect, is it open to imply in the reasoning of any of the State Wage Decisions since 2006 that in assessing any unfairness in compression of relativities in awards caused by flat dollar award increases it is open to rectify any compression by regard to the rate of the minimum wage. When percentage increases have been made to award rates on grounds to ameliorate compression in award classifications, the Australian Commission and the Commission in Court Session have not in their reasoning referred to or considered whether there should be established any relativity between the minimum wage and rates of pay of skill based classifications in awards. The issue that appears to have been considered in the wage decisions is whether internal relativities between classifications in skill based awards should be maintained and in that context they have considered whether in a particular wage decision a percentage increase should be awarded in that year to maintain existing relativities.

63 It is notable that in 1998 and 1999 the Australian Commission awarded lesser amounts of flat dollar increases to higher levels of classifications on grounds that this would lessen the effect of compression. This had the effect that those at higher classification levels received smaller increases than those at the lower levels. In 2001, the Australian Commission awarded higher amounts to higher levels of classification on grounds that it regarded such a measure as a means to avoid further compression. Why they adopted a different methodology in 2001 was not explained by the Australian Commission.

64 Consequently, I am not persuaded that the learned Commissioner erred in finding that there was no merit to allow the union's claims to increase the rates of pay in these awards by a cumulative percentage increase in the minimum wage. I am also not persuaded that he erred in finding that if the union's claims were allowed this would:

(a) potentially allow other applications seeking the same relief; that is, have the effect of what is colloquially known as 'flow-on'; and

(b) have the potential to undermine the integrity of the minimum wage adjustment process.

65 Whilst I do not necessarily agree that the applications if allowed by establishing this nexus would specifically undermine the needs of the low paid, I do agree that the relief sought by the union in these claims has the potential to undermine the integrity of the State Wage Decisions as the Commission in Court Session has in a number of successive decisions, when determining the amount of an increase to the minimum wage and to award rates of pay, taken into account and weighed a number of factors including the needs of the low paid, the capacity of employers to pay and compression of award rates of pay.

66 It is apparent from the reasoning given in the State Wage Decisions that when a flat dollar increase has been made to award rates of pay that the Commission in Court Session has determined on that occasion based on the evidence or the lack of evidence before it that the needs of the low paid and the need to minimise the effect of a particular increase on employers outweigh erosion of skill based career paths that could arise by the mere fact of compression of award rates.

67 The finding that if the union's claims were allowed, they could have the effect of opening the door to other applications is in my opinion a legitimate concern as the factual circumstances relied upon by the union raise no more than the mere fact of compression. The union's witnesses in their evidence merely expressed an opinion that the compression caused by flat-dollar increases had eroded skill levels. Yet, this evidence was merely supposition as since 2010, the award rates of pay have not applied as successive industrial agreements on an enterprise order have been in place. Thus, this evidence did not add to the information contained in exhibit A2. The real complaint of the union is that the flat-dollar increases have led to a widening in a gap over time between the rates of pay in industrial agreements and the award which could affect its ability to return to award pay and conditions if bargaining with the PTA for a replacement industrial agreement for either group of employees were to fail.

68 "The union also relies upon the evidence revealed in exhibit R2 that the award rates of employees covered by the Rail Car Drivers Award and railway employees level 7 and above under the Railway Employees' Award is less than the rates of pay if cumulative rates of the consumer price index from 1 July 2006 until 1 July 2014 were applied. This it says is unfair which in turn it says raises a sufficient ground to claim that since 2006 there is more than the mere compression of classifications in each award.

69 The fact that award rates for all classifications of rail car drivers and for classification levels 8, 9 and 10 of the Railway Employees' Award is less than the cumulative consumer price index increases, was not put forward by the union to justify an increase in the award rates sought by it and they did not seek orders to increase those rates of pay to a level that is equal to the rates of pay that would apply if the consumer price index for the relevant period of time were applied. As exhibit R2 demonstrates, the rates of pay sought by the union not only exceed the amounts beyond consumer price index increases, but it also seeks to increase the rates of pay of all classifications of the Railway Employees' Award.

70 As the learned Commissioner pointed out, the elevation of award base rates to achieve bargaining leverage is not a proper basis to restore award relativities. The union does not cavil with this finding in these appeals.

71 In these circumstances, the union's claim must fall away as it is unable to demonstrate that the learned Commissioner erred in the exercise of his discretion to dismiss the applications.

72 For these reasons, I am of the opinion that ground 2.1 of each appeal fails. Ground 2.2 of each appeal also fails. The reasons given by the learned Commissioner in rejecting the union's claim were clearly adequate.

73 For the same reasons, I am also of the opinion that ground 2.3 of FBA 4 of 2015 and ground 2.4 of FBA 5 of 2015 must fail. The difficulty with the union's claims in each matter is that the claims went beyond a claim of restoration of relativities of internal classifications. The union made it plain in proceedings at first instance and on appeal that they did not consent to award relativities being adjusted on any other basis other than the establishment of a nexus of relativities between cumulative State Wage minimum movements.

74 It should be noted, however, that if the union wishes to put a different case to the Commission for restoration of internal relativities, or a variation of rates of pay based upon cumulative increases in the consumer price index, or on grounds of a work value claim or claims, it is open to the union to make fresh applications to do so.

75 I am satisfied that ground 2.3 of FBA 5 of 2015 is made out as it is clear that the union was not seeking to 'cherry pick' by only pursuing changes at the higher classification levels of the Railway Employees' Award. Whilst I am satisfied that this ground of appeal is made out, I am not satisfied that this factual finding led the learned Commissioner into appealable error. As counsel for the PTA points out in the PTA's written submissions, this finding is obiter. The learned Commissioner had already decided that there was no basis for the making of the variations sought.

76 For these reasons, I am of the opinion that orders should be made to dismiss each of the appeals.

BEECH CC

77 I agree with Smith AP.

SCOTT ASC

78 I have had the advantage of reading in draft form the reasons of her Honour, the Acting President. I agree with those reasons and have nothing further to add.

2015 WAIRC 01043

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH
	APPELLANT
	-and-
	PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA
	RESPONDENT
CORAM	FULL BENCH
	THE HONOURABLE J H SMITH, ACTING PRESIDENT
	CHIEF COMMISSIONER A R BEECH
	ACTING SENIOR COMMISSIONER P E SCOTT
DATE	TUESDAY, 24 NOVEMBER 2015
FILE NO	FBA 4 OF 2015
CITATION NO	2015 WAIRC 01043

Result	Appeal dismissed
Appearances	
Appellant	Mr M T Ritter SC (of counsel)
Respondent	Mr D J Matthews (of counsel)

Order

This appeal having come on for hearing before the Full Bench on 28 October 2015, and having heard Mr M T Ritter SC (of counsel) on behalf of the appellant and Mr D J Matthews (of counsel) on behalf of the respondent, and reasons for decision having been delivered on 24 November 2015, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders that —

The appeal be and is hereby dismissed.

By the Full Bench

(Sgd.) J H SMITH,
Acting President.

[L.S.]

2015 WAIRC 01044

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH
	APPELLANT
	-and-
	PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA
	RESPONDENT
CORAM	FULL BENCH THE HONOURABLE J H SMITH, ACTING PRESIDENT CHIEF COMMISSIONER A R BEECH ACTING SENIOR COMMISSIONER P E SCOTT
DATE	TUESDAY, 24 NOVEMBER 2015
FILE NO	FBA 5 OF 2015
CITATION NO	2015 WAIRC 01044

Result	Appeal dismissed
Appearances	
Appellant	Mr M T Ritter SC (of counsel)
Respondent	Mr D J Matthews (of counsel)

Order

This appeal having come on for hearing before the Full Bench on 28 October 2015, and having heard Mr M T Ritter SC (of counsel) on behalf of the appellant and Mr D J Matthews (of counsel) on behalf of the respondent, and reasons for decision having been delivered on 24 November 2015, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders that —

The appeal be and is hereby dismissed.

By the Full Bench

(Sgd.) J H SMITH,
Acting President.

[L.S.]

FULL BENCH—Procedural Directions and Orders—

2015 WAIRC 01072

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES JUDITH (JUDE) MCCULLOCH

APPELLANT

-and-

AUSTRALIAN NURSING FEDERATION INDUSTRIAL UNION OF WORKERS PERTH

RESPONDENT

CORAM FULL BENCH
THE HONOURABLE J H SMITH, ACTING PRESIDENT
CHIEF COMMISSIONER A R BEECH
ACTING SENIOR COMMISSIONER P E SCOTT

DATE TUESDAY, 8 DECEMBER 2015

FILE NO. FBA 13 OF 2015

CITATION NO. 2015 WAIRC 01072

Result Directions issued

Order

HAVING heard the appellant and Mr M Clancy on behalf of the respondent, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders that —

1. The time for filing the appeal books in this appeal will be extended to Friday, 19 February 2016.
2. Three (3) copies of a written outline of submissions are to be filed by the appellant and a copy served upon the respondent by close of business Tuesday, 8 March 2016.
3. Three (3) copies of a written outline of submissions are to be filed by the respondent and a copy served upon the appellant by close of business Thursday, 17 March 2016.
4. The appeal be set down for hearing for a day on Wednesday, 30 March 2016 at 10:30 am at 111 St Georges Terrace, Perth.

By the Full Bench

(Sgd.) J H SMITH,
Acting President.

[L.S.]

2015 WAIRC 01028

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES THE GOVERNING COUNCIL OF KIMBERLEY TRAINING INSTITUTE

APPELLANT

-and-

MICHEL AMATI
C/- THE STATE SCHOOL TEACHERS' UNION OF W.A (INCORPORATED)

RESPONDENT

CORAM FULL BENCH
THE HONOURABLE J H SMITH, ACTING PRESIDENT
CHIEF COMMISSIONER A R BEECH
COMMISSIONER S J KENNER

DATE WEDNESDAY, 18 NOVEMBER 2015

FILE NO. FBA 11 OF 2015

CITATION NO. 2015 WAIRC 01028

Result	Order made to substitute the name of the respondent
Appearances	
Appellant	Mr D J Anderson (of counsel)
Respondent	Mr M Amati

Order

This appeal having come on for hearing before the Full Bench on 18 November 2015, and having heard Mr D J Anderson (of counsel) on behalf of the appellant and Mr M Amati on behalf of the respondent, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders that —

The name of the respondent be deleted and that be substituted therefor the name, The State School Teachers' Union of W.A. (Incorporated).

By the Full Bench

(Sgd.) J H SMITH,
[L.S.] Acting President.

PUBLIC SERVICE ARBITRATOR—Awards/Agreements—Variation of—

2015 WAIRC 01019

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
	RESPONDENT
CORAM	PUBLIC SERVICE ARBITRATOR
	ACTING SENIOR COMMISSIONER P E SCOTT
DATE	TUESDAY, 17 NOVEMBER 2015
FILE NO/S	P 3 OF 2015
CITATION NO.	2015 WAIRC 01019

Result	Award varied

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Ms C Moxey 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 Australia 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 13 November 2015.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
[L.S.] Public Service Arbitrator.

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 $203.00 to cover incidental personal expenses: Provided that an employee shall receive no more than one lump sum of $203.00 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 $572 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 $3,429.

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 $184.00.

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 $1,065.00 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	$10.80 per meal
Lunch	$13.30 per meal
Evening Meal	$15.95 per meal
Supper	$10.80 per meal

2015 WAIRC 01021

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	TUESDAY, 17 NOVEMBER 2015
FILE NO/S	P 5 OF 2015
CITATION NO.	2015 WAIRC 01021
Result	Award varied

Order

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

THAT the Country High School Hostels Authority Residential College Supervisory Staff Award 2005 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 13 November 2015.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
[L.S.] Public Service Arbitrator.

SCHEDULE

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

(c) An allowance of $572.00 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 $3,429.00.

2. Clause 24. – Removal Allowance: Delete subclause (1)(d) of this clause 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 $184.00.

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) of this clause and insert the following in lieu thereof:

(6) Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of $1,065 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 01023

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	TUESDAY, 17 NOVEMBER 2015
FILE NO/S	P 7 OF 2015
CITATION NO.	2015 WAIRC 01023

Result Award varied

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Ms C Moxey 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 13 November 2015.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
[L.S.] Public Service Arbitrator.

SCHEDULE

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

(4) If an officer whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the officer shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of $203.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of $203.00 in any one period of three (3) years.

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

(c) An allowance of $572.00 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 $3,429.00.

3. Clause 41. – Removal Allowance: Delete subclause (1)(d) of this clause 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 $184.00.

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) of this clause and insert the following in lieu thereof:

(6) Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of $1,065.00 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 13 November 2015)

Breakfast	$10.80 per meal
Lunch	$13.30 per meal
Evening Meal	$15.95 per meal
Supper	$10.80 per meal

2015 WAIRC 01024

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	TUESDAY, 17 NOVEMBER 2015
FILE NO/S	P 8 OF 2015
CITATION NO.	2015 WAIRC 01024

Result Award varied

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Ms C Moxey 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 13 November 2015.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
[L.S.] Public Service Arbitrator.

SCHEDULE

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

(c) An allowance of $572.00 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 $3,429.00.

2. Clause 38 – Removal Allowance: Delete subclause (1)(d) of this clause 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 $184.00.

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) of this clause and insert the following in lieu thereof:

(6) Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of $1,065.00 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 01025

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	TUESDAY, 17 NOVEMBER 2015
FILE NO/S	P 9 OF 2015
CITATION NO.	2015 WAIRC 01025

Result Award varied

Order

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

THAT the Government Officers (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 13 November 2015.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
[L.S.] Public Service Arbitrator.

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 or from 13 November 2015)

Breakfast	$10.80 per meal
Lunch	$13.30 per meal
Evening Meal	$15.95 per meal
Supper	$10.80 per meal

2015 WAIRC 01018

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	TUESDAY, 17 NOVEMBER 2015
FILE NO/S	P 2 OF 2015
CITATION NO.	2015 WAIRC 01018

Result Award varied

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Ms C Moxey 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 13 November 2015.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
[L.S.] Public Service Arbitrator.

SCHEDULE

1. Clause 49. – Relieving Allowance: Delete subclause (1)(d) of this clause and insert the following in lieu thereof:

(d) If an officer whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the officer shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of $203.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of $203.00 in any one period of three (3) years.

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

(c) An allowance of $572.00 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 $3,429.00.

3. Clause 50. – Removal Allowance: Delete subclause (1)(d) of this clause 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 $184.00.

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) of this clause and insert the following in lieu thereof:

(6) Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of $1,065.00 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 first pay period commencing on or from 13 November 2015.)

Breakfast	$10.80 per meal
Lunch	$13.30 per meal
Evening Meal	$15.95 per meal

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

(Operative from the first pay period commencing on or from 13 November 2015.)

	Single	With Dependents
	$	$
Adelaide	$3,045	$4,150
Brisbane	$3,359	$4,480
Melbourne	$3,387	$5,010
Sydney	$5,259	$6,285

2015 WAIRC 01022

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	TUESDAY, 17 NOVEMBER 2015
FILE NO/S	P 6 OF 2015
CITATION NO.	2015 WAIRC 01022

Result Award varied

Order

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

THAT the Government Officers (Social Trainers) Award 1988 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 13 November 2015.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
[L.S.] Public Service Arbitrator.

SCHEDULE

1. Clause 45 – Relieving Allowance: Delete subclause (4) of this clause and insert the following in lieu thereof:

(4) If an employee whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the employee shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of $203.00 to cover incidental personal expenses: Provided that an employee shall receive no more than one lump sum of $203.00 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 $572.00 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 $3,429.00.

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 $184.00.

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 $1,065.00 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 first pay period commencing on or from 13 November 2015.)

Breakfast	$10.80 per meal
Lunch	$13.30 per meal
Evening Meal	$15.95 per meal

2015 WAIRC 01020

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	TUESDAY, 17 NOVEMBER 2015
FILE NO/S	P 4 OF 2015
CITATION NO.	2015 WAIRC 01020

Result Award varied

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Ms C Moxey 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 13 November 2015.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
[L.S.] Public Service Arbitrator.

SCHEDULE

1. Clause 5.7. – Relieving Allowance: Delete subclause 5.7.4 of this clause 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 $203.00 to cover incidental personal expenses: Provided that an employee shall receive no more than one lump sum of $203.00 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 $572 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 $3,429.

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 $184.00.

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 $1,065.00 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 01017

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	TUESDAY, 17 NOVEMBER 2015
FILE NO/S	P 1 OF 2015
CITATION NO.	2015 WAIRC 01017

Result Award varied

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Ms C Moxey 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 13 November 2015.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
[L.S.] Public Service Arbitrator.

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 $203.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of $203.00 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 $572.00 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 $3,429.00.

3. Clause 51. – Removal Allowance: Delete subclause (1)(d) of this clause 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 $184.00.

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) of this clause and insert the following in lieu thereof:

(6) Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of $1,065.00 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 first pay period commencing on or from 13 November 2015)

Breakfast	$10.80 per meal
Lunch	$13.30 per meal
Evening Meal	$15.95 per meal
Supper	$10.80 per meal

AWARDS/AGREEMENTS AND ORDERS—Variation of—

2015 WAIRC 00998

ELECTRICAL CONTRACTING INDUSTRY AWARD R 22 OF 1978

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES ELECTRICAL TRADES UNION WA

APPLICANT

-v-

NATIONAL ELECTRICAL & COMMUNICATIONS ASSOCIATION OF WA (INC), ELECTRICAL & COMMUNICATIONS ASSOCIATION OF WA (INC), ELECTRICAL GROUP TRAINING LTD

RESPONDENT

CORAM	COMMISSIONER S J KENNER
DATE	WEDNESDAY, 11 NOVEMBER 2015
FILE NO/S	APPL 134 OF 2015
CITATION NO.	2015 WAIRC 00998

Result	Award varied
Representation	
Applicant	Mr J Murie
Respondent	No Appearance

Order

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

THAT the "Electrical Contracting Industry" Award R 22 of 1978 be varied in accordance with the following schedule and that the variations in the attached Schedule shall have effect from the beginning of the first pay period on or after 5 November 2015.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

SCHEDULE

1. Clause 12. – Overtime: Delete paragraph (e) of subclause (2) of this Clause and insert in lieu thereof the following:

(e) (i) An employee required to work overtime for more than two hours without being notified on the previous day or earlier that they will be so required to work overtime shall be supplied with a meal by the employer or be paid $13.70 for such meal and for a second or subsequent meal if so required.

(ii) No such payments shall be made to any employee living in the same locality as their place of work who can reasonably return home for such meals.

(iii) If an employee to whom subparagraph (i) of paragraph (e) of subclause (2) hereof applies has, as a consequence of the notice referred to in that paragraph, provided themselves with a meal or meals and is not required to work overtime or is required to work less overtime than the period notified, they shall be paid for each meal provided and not required, $13.70.

2. Clause 18. – Special Rates and Provisions:

A. Delete subclauses (1), (2), (3), (4) and (5) of this Clause and insert in lieu thereof the following:

(1) Height Money: An employee shall be paid an allowance of $2.75 for each day on which they work at a height of 15.5 metres or more above the nearest horizontal plane, but this provision does not apply to linespersons.

(2) Dirt Money: An employee shall be paid an allowance of 56 cents per hour when engaged on work of an unusually dirty nature where clothes are necessarily unduly soiled or damaged or boots are unduly damaged by the nature of the work done.

(3) Grain Dust: Where any dispute arises at a bulk grain handling installation due to the presence of grain dust in the atmosphere and the Board of Reference determines that employees employed under this award are unduly affected by that dust, the Board may, subject to such conditions as it deems fit to impose, fix an allowance or allowances not exceeding 95 cents per hour.

(4) Confined Space: An employee shall be paid an allowance of 67 cents per hour when, because of the dimensions of the compartment or space in which they are working, the employee is required to work in a stooped or otherwise cramped position or without proper ventilation.

(5) Diesel Engine Ships: The provisions of subclauses (2) and (4) of this Clause do not apply to an employee when they are engaged on work below the floor plates in diesel engine ships, but the employee shall be paid an allowance of 95 cents per hour whilst so engaged.

B. Delete subclause (7) of this Clause and insert in lieu thereof the following:

(7) Hot Work: An employee shall be paid an allowance of 56 cents per hour when they work in the shade in any place where the temperature is raised by artificial means to between 46.1 and 54.4 degrees Celsius.

C. Delete subclauses (9), (10), (11) and (12) of this Clause and insert in lieu thereof the following:

(9) Percussion Tools: An employee shall be paid an allowance of 36 cents per hour when working a pneumatic riveter of the percussion type and other pneumatic tools of the percussion type.

(10) Chemical, Artificial Manure and Cement Works: An employee other than a general labourer, in chemical, artificial manure and cement works shall, in respect of all work done in and around the plant outside the machine shop, be paid an allowance calculated at the rate of $14.10 per week. The allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to any other allowance under this Clause.

(11) Abattoirs: An employee employed in and about an abattoir shall be paid an allowance calculated at the rate of $19.00 per week. The allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to any other allowance under this Clause.

(12) Phosphate Ships: An employee shall be paid an allowance of 85 cents for each hour they work in the holds 'tween decks of ships which, immediately prior to such work, have carried phosphatic rock but this subclause only applies if and for as long as the holds and 'tween decks are not cleaned down.

D. Delete subclause (19) of this Clause and insert in lieu thereof the following:

(19) An employee holding either a Third Year First Aid Medallion of the St. John Ambulance Association or a "C" Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties shall be paid $11.20 per week in addition to their ordinary rate.

E. Delete subclause (21) of this Clause and insert in lieu thereof the following:

(21) Nominee: A licensed electrical installer or fitter who acts as a nominee for an electrical contractor shall be paid an allowance of $70.10 per week.

3. Clause 27 – Grievance Procedure And Special Allowance: Delete subclause (3) of this Clause and insert in lieu thereof the following:

(3) (a) Subject to paragraph (e) of this subclause, a special allowance of $34.70 per week shall be paid as a flat amount each week except where direct action takes place.

(b) Provided that a general combined union meeting called by the Unions W.A., or any absence declared by the Commission under Section 44 as being an authorised absence, shall not be regarded as non-adherence to the disputes procedure Clause or affect the payment of this allowance.

(c) In the event of the need for a meeting not covered by the circumstances outlined by the above, a Union Official shall give 24 hours' notice to the employer and the reason for the meeting and $34.70 shall be paid.

(d) Any time which an employee is absent from work on annual leave, public holidays, bereavement leave or paid sick leave shall not affect the payment of this allowance.

(e) An apprentice shall be paid a percentage of $34.70 being the percentage which appears against their year of apprenticeship set out in subclause (4) of the First Schedule - Wages.

4. Clause 30 – Special Provisions – Western Power Corporation: Delete subclause (6) of this Clause and insert in lieu thereof the following:

(6) (a) An employee to whom the provisions of Clause 21. - Distant Work of this Award, applies who work at Muja and who elects not to live in Construction Camp Accommodation shall, subject to paragraph (b) of this

subclause, be paid a living-out allowance at the rate of $478.40 per week to meet the expenses reasonably incurred by the employee for board and lodging.

(b) (i) The allowance prescribed in paragraph (a) shall only apply to an employee while they continue to live with their spouse (including de facto partner) in accommodation provided by the employee.

(ii) The accommodation shall be of a reasonable standard.

(iii) The employee shall continue to maintain their original residence.

(iv) The employee shall satisfy the employer, upon request, that their circumstances meet the requirements of this subclause.

(v) Any dispute as to the application of this Clause shall be subject to discussion between the employer and the Union and, failing agreement, shall be referred to a Board of Reference for determination.

(c) Provided that the provisions of subclause (6) of Clause 21. - Distant Work of this Award shall not apply.

5. Clause 36 – Superannuation: Delete subparagraph (i) of paragraph (b) of subclause (2) of this Clause and insert in lieu thereof the following:

(i) For Apprentices not engaged on construction work, a weekly contribution calculated as 9.50% of the rate of pay prescribed in the First Schedule - Wages of this Award as follows:

Four Year Term		Three and a Half Year Term		Three Year Term	
1st Year	$30.74	Six Months	$30.74		
2nd Year	$40.20	Next Year	$40.20	1st Year	$40.20
3rd Year	$52.82	Next Year	$52.82	2nd Year	$52.82
4th Year	$62.28	Final Year	$62.28	3rd Year	$62.28

6. First Schedule - Wages:

A. Delete subclause (3) of this Schedule and insert in lieu thereof the following:

(3) Leading Hands - In addition to the appropriate rates shown in subclause (2) hereof a leading hand shall be paid -

(a) If placed in charge of not less than three and not more than ten other employees $29.20

(b) If placed in charge of more than ten and not more than twenty other employees $44.90

(c) If placed in charge of more than twenty other employees $57.90

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

(5) Tool Allowance:

(a) In accordance with the provisions of subclause (20) of Clause 18. – Special Rates and Provisions of this award the tool allowance to be paid is:

(i) $16.80 per week to such tradesperson, or

(ii) In the case of an apprentice a percentage of $16.80 being the percentage which appears against the apprentice's year of apprenticeship set out in subclause (4) of this schedule.

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

(6) Construction Allowance:

(a) In addition to the appropriate rates of pay prescribed in this Clause an employee shall be paid:

(i) $52.20 per week if the employee is engaged on the construction of a large industrial undertaking or any large civil engineering project.

(ii) $46.90 per week if the employee is engaged on a multi-storeyed building but only until the exterior walls have been erected and the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which the employee is required to work. A multi-storeyed building is a building which, when completed, will consist of at least five storeys.

(iii) $27.80 per week if the employee is engaged otherwise on construction work falling within the definition of construction work in Clause 5. - Definitions of this Award.

(b) Any dispute as to which of the aforesaid allowances applies to particular work shall be determined by the Board of Reference.

C. Delete subclauses (9) and (10) of this Schedule and insert in lieu thereof the following:

(9) Licence Allowance:

A tradesperson who holds and in the course of their employment may be required to use a current "A" Grade or "B" Grade licence issued pursuant to the relevant regulation in force at the date of this Award under the Electricity Act, 1945, shall be paid $24.80 per week.

(10) Commissioning Allowances:

An "Electrician Commissioning" as defined shall be paid at the rate of $37.90 per week in addition to rates prescribed in this schedule.

2015 WAIRC 01001

ELECTRICAL TRADES (SECURITY ALARMS INDUSTRY) AWARD, 1980

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	ELECTRICAL TRADES UNION WA
	APPLICANT
	-v-
	CHUBB ELECTRONIC SECURITY, WORMALD SECURITY CONTROLS, METROPOLITAN SECURITY SERVICES
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	WEDNESDAY, 11 NOVEMBER 2015
FILE NO/S	APPL 136 OF 2015
CITATION NO.	2015 WAIRC 01001

Result	Award varied
Representation	
Applicant	Mr J Murie
Respondent	No Appearance

Order

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

THAT the Electrical Trades (Security Alarms Industry) Award 1980 be varied in accordance with the following schedule and that the variations in the attached Schedule shall have effect from the beginning of the first pay period on or after 5 November 2015.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

SCHEDULE

1. Clause 5. – Definitions: Delete subclause (6) of this Clause and insert in lieu thereof the following:

(6) "Union" means the Electrical Trades Union WA.

2. Clause 11. – Overtime: Delete paragraph (f) of subclause (3) of this Clause and insert in lieu thereof the following:

(f) Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid $13.10 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required they shall be supplied with each such meal by the employer or be paid $9.00 for each meal so required.

3. Clause 15. – Special Rates and Provisions:

A. Delete subclauses (1), (2), (3) and (4) of this Clause and insert in lieu thereof the following:

(1) Height Money: An employee shall be paid an allowance of $2.95 for each day on which they work at a height of 15.5 metres or more above the nearest horizontal plane but this provision does not apply to linespersons nor to riggers and splicers on ships or buildings.

(2) Dirt Money: An employee shall be paid an allowance of 60 cents per hour when engaged on work of an unusually dirty nature where clothes are necessarily unduly soiled or damaged or boots are unduly damaged by the nature of the work done.

(3) Confined Space: An employee shall be paid an allowance of 76 cents per hour when, because of the dimensions of the compartment or space in which they are working, the employee is required to work in a stooped or otherwise cramped position or without proper ventilation.

(4) Hot Work: An employee shall be paid an allowance of 60 cents per hour when they work in the shade in any place where the temperature is raised by artificial means to between 46.1 and 54.4 degrees Celsius.

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

(6) Percussion Tools:

An employee shall be paid an allowance of 38 cents per hour when working a pneumatic rivetter of the percussion type and other pneumatic tools of the percussion type.

C. Delete subclauses (13) and (14) of this Clause and insert in lieu thereof the following:

(13) An employee, holding either a Third Year First Aid Medallion of the St. John Ambulance Association or a "C" Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties shall be paid $12.30 per week in addition to their ordinary rate.

(14) A Serviceperson - Special Class, a Serviceperson or an Installer who holds, and in the course of their employment may be required to use, a current "A" Grade or "B" Grade Licence issued pursuant to the relevant regulation in force on the 28th day of February, 1978 under the Electricity Act 1945 shall be paid an allowance of $24.80 per week.

4. Clause 28. – Wages: Delete subclauses (3), (4) and (5) of this Clause and insert in lieu thereof the following:

(3) (a) Where an employer does not provide a tradesperson with the tools ordinarily required by that tradesperson in the performance of their work as a tradesperson the employer shall pay a tool allowance of $17.10 per week to such tradesperson for the purpose of such tradesperson supplying and maintaining tools ordinarily required in the performance of their work as a tradesperson.

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

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

(d) A tradesperson shall replace or pay for any tools supplied by the employer if lost through their negligence.

(4) (a) In addition to the appropriate rates of pay prescribed in this Clause an employee shall be paid-

(i) $55.40 per week if they are engaged on the construction of a large industrial undertaking or any large civil engineering project.

(ii) $50.10 per week if they are engaged in a multi-storeyed building but only until the exterior walls have been erected and the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which they are required to work. A multi-storeyed building is a building which, when completed, will consist of at least five storeys.

(iii) $29.00 per week if they are engaged otherwise on construction work falling within the definition of construction work in Clause 5. - Definitions of this Award.

(b) Any dispute as to which of the aforesaid allowances apply to particular work shall be determined by the Board of Reference.

(c) An allowance paid under this subclause includes any allowance otherwise payable under Clause 15. - Special Rates and Provisions of this Award except the allowance for work at heights, the first aid allowance and the licence allowance.

(5) Leading Hand: In addition to the appropriate total wage prescribed in subclause (1) of this clause, a leading hand shall be paid -

(a)	If placed in charge of not less than three and not more than ten other employees	$31.50
(b)	If placed in charge of more than ten and not more than twenty other employees	$48.00
(c)	If placed in charge of more than twenty other employees	$61.90

5. Schedule Two – Named Parties to the Award: Delete this Schedule and insert in lieu thereof the following:

SCHEDULE TWO - NAMED PARTIES TO THE AWARD

Union Party to the Award

Electrical Trades Union WA

2015 WAIRC 01004

ELECTRONICS INDUSTRY AWARD NO. A 22 OF 1985

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	ELECTRICAL TRADES UNION WA
	APPLICANT
	-v-
	ACTION ELECTRONICS PTY. LTD., LION ELECTRONICS, ALDETEC PTY LTD
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	WEDNESDAY, 11 NOVEMBER 2015
FILE NO/S	APPL 139 OF 2015
CITATION NO.	2015 WAIRC 01004

Result	Award varied
Representation	
Applicant	Mr J Murie
Respondent	No Appearance

Order

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

THAT the Electronics Industry Award No. A 22 of 1985 be varied in accordance with the following schedule and that the variations in the attached Schedule shall have effect from the beginning of the first pay period on or after 5 November 2015.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

SCHEDULE

1. Clause 9. – Overtime: Delete paragraph (f) of subclause (3) of this Clause and insert in lieu thereof the following:

(f) Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid $12.25 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required the employee shall be supplied with each such meal by the employer or be paid $8.20 for each meal so required.

2. Clause 20. - Special Rates and Provisions:

A. Delete subclauses (1), (2), (3) and (4) of this Clause and insert in lieu thereof the following:

(1) Dirt Money: An employee shall be paid an allowance of 60 cents per hour when engaged on work of an unusually dirty nature where clothes are necessarily unduly soiled or damaged or boots are unduly damaged by the nature of the work done.

(2) Confined Space: An employee shall be paid an allowance of 75 cents per hour when, because of the dimensions of the compartment or space in which they are working, the employee is required to work in a stooped or otherwise cramped position or without proper ventilation.

(3) Hot Work: An employee shall be paid an allowance of 60 cents per hour when working in the shade in any place where the temperature is raised by artificial means to be between 46.1 and 54.4 degrees celsius.

(4) Height Money: An employee shall be paid an allowance of $2.80 for each day on which the employee works at a height of 15.5 metres or more above the nearest horizontal plane.

B. Delete subclauses (6), (7) and (8) of this Clause and insert in lieu thereof the following:

(6) Diesel Engine Ships: The provisions of subclauses (1) and (2) hereof do not apply to an employee when the employee is engaged on work below the floor plates in diesel engine ships, but the employee shall be paid an allowance of $1.01 per hour whilst so engaged.

(7) Percussion Tools: An employee shall be paid an allowance of 38 cents per hour when working pneumatic rivetter of the percussion type and other pneumatic tools of the percussion type.

(8) Chemical, Artificial Manure and Cement Works: An employee, other than a general labourer, in chemical, artificial manure and cement works, in respect of all work done in and around the plant outside the machine shop, shall be paid an allowance calculated at the rate of $15.20 per week. The allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to any other allowance under this clause.

C. Delete subclause (14) of this Clause and insert in lieu thereof the following:

(14) An employee holding either a Third Year First Aid Medallion of the St. John Ambulance Association or a "C" standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties shall be paid $11.80 per week in addition to their ordinary rate.

3. Clause 33. – Wages:

A. Delete subclause (2) of this Clause and insert in lieu thereof the following:

(2) Leading Hands:

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

(a)	If placed in charge of not less than three and not more than ten other employees	$31.10
(b)	If placed in charge of more than ten but not more than twenty other employees	$47.00
(c)	If placed in charge of more than twenty other employees	$61.20

B. Delete subclause (5) of this Clause and insert in lieu thereof the following:

(5) Tool Allowance

(a) Where an employer does not provide a technician, serviceperson, installer or an apprentice with the tools ordinarily required by that person in the performance of work as a technician, serviceperson, installer or an apprentice the employer shall pay a tool allowance of -

(i) $17.10 per week to such technician, serviceperson, installer; or

(ii) In the case of an apprentice a percentage of $17.10 being the percentage which appears against their year of apprenticeship in subclause (3) of this clause for the purpose of such technician, serviceperson, installer or apprentice applying and maintaining tools ordinarily required in the performance of work as a technician, serviceperson, installer or apprentice.

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

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

(d) A technician, serviceperson, installer or apprentice shall replace or pay for any tools supplied by the employer if lost through his negligence.

4. Clause 34. – Union Coverage: Delete this Clause and insert in lieu thereof the following:

34. - UNION COVERAGE

The unions party to this part of the award shall be the Electrical Trades Union WA (the ETU) and the Association of Draughting, Supervisory and Technical Employees, Western Australian Branch (ADSTE) provided that ADSTE shall not enrol or seek to enrol as members any employee bound by this Part of the award, except employees engaged in classifications above the classification of Electronic Serviceperson. Provided further, that the ETU may enrol or seek to enrol as members any employee engaged in any and all of the classifications in this Part of the award.

5. PART II – CONSTRUCTION WORK: Clause 5. – Special Rates and Provisions: Delete subclause (2) of this Clause and insert in lieu thereof the following:

(2) (a) The employer shall, where practicable, provide a waterproof and secure place on each job for the safekeeping of an employee's tools when not in use and an employee's working clothes and where an employee is absent from work because of illness or accident and has advised the employer to that effect in accordance with the provisions of Clause 11. - Sick Leave of PART I - GENERAL of this award the employer shall ensure that the employee's tools and working clothes are securely stored during their absence.

(b) Subject to paragraph (c) hereof where the employee's tools or working clothes are lost by fire or breaking and entering whilst securely stored in the place provided by the employer under paragraph (a) hereof the employer shall reimburse the employee for that loss but only up to a maximum of $353.40.

(c) The provisions of paragraph (b) hereof shall only apply with respect to tools and working clothes used by an employee in the course of their employment as set out in a list furnished to the employer at least twenty four hours before being lost by fire or theft and if the employee has reported any theft to the police.

6. PART II – CONSTRUCTION: Clause 10. – Wages: Delete subclauses (5), (6) and (7) of this Clause and insert in lieu thereof the following:

(5) Construction Allowances:

(a) In addition to the appropriate rates of pay prescribed in this clause an employee shall be paid -

(i) $54.70 per week if engaged on the construction of a large industrial undertaking or any large civil engineering projects.

(ii) $49.50 per week if engaged on a multi-storeyed building, but only until the exterior walls have been erected and the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which the employee is required to work. A multi-storeyed building is a building which, when completed, will consist of at least five storeys.

(iii) $28.90 per week if engaged otherwise on construction work falling within the definition of construction work in Clause 5. - Definitions of PART I - GENERAL of this award.

(b) Any dispute as to which of the aforesaid allowances apply to particular work shall be determined by the Board of Reference.

(6) Leading Hand:

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

(a)	If placed in charge of not less than three and not more than ten other employees	$31.10
(b)	If placed in charge of more than ten but not more than twenty other employees	$47.00
(c)	If placed in charge of more than twenty other employees	$61.20

(7) (a) Where an employer does not provide a Technician, Serviceperson, Installer or Apprentice with the tools ordinarily required by that Serviceperson, Technician or Installer in the performance of work as a Technician, Installer or Apprentice the employer shall pay a tool allowance of -

(i) $17.10 per week to such Technician, Serviceperson or Installer, or

(ii) In the case of an apprentice a percentage of $17.10 being the percentage referred to in subclause (3) of Clause 33. - Wages of PART I - GENERAL of this award,

for the purpose of such Technician, Serviceperson, Installer or Apprentice supplying and maintaining tools ordinarily required in the performance of work as a Technician, Serviceperson, Installer or Apprentice.

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

(c) An employer shall provide for the use of Technicians, Servicepersons, Installers and Apprentices all necessary power tools, special purpose tools and precision measuring instruments.

(d) A Technician, Serviceperson, Installer or Apprentice shall replace or pay for any tools supplied by the employer if lost through that person's negligence.

7. PART II – CONSTRUCTION: Clause 12 – Union Coverage: Delete this Clause and insert in lieu thereof the following:

12. - UNION COVERAGE

The Electrical Trades Union WA shall be the sole union able to enrol or seek to enrol as members, employees bound by this Part of the Award.

8. Third Schedule – Memorandum of Understanding: Delete the heading of this Clause and insert in lieu thereof the following:

THIRD SCHEDULE - MEMORANDUM OF UNDERSTANDING

Between the Electrical Trades Union WA

and

Employers in the Electronics Industry

9. Fourth Schedule – Names Parties to the Award: Delete this Clause and insert in lieu thereof the following:

FOURTH SCHEDULE - NAMED PARTIES TO THE AWARD

Union Parties

Electrical Trades Union WA.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers - Western Australian Branch.

2015 WAIRC 01000

ENGINEERING TRADES (GOVERNMENT) AWARD, 1967 AWARD NOS. 29, 30 AND 31 OF 1961 AND 3 OF 1962

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	ELECTRICAL TRADES UNION WA
	APPLICANT
	-v-
	THE MINISTER FOR WORKS, THE MINISTER FOR EDUCATION, THE MINISTER FOR HEALTH
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	WEDNESDAY, 11 NOVEMBER 2015
FILE NO/S	APPL 135 OF 2015
CITATION NO.	2015 WAIRC 01000

Result	Award varied
Representation	
Applicant	Mr J Murie
Respondent	Mr C Bretnall

Order

HAVING heard Mr J Murie on behalf of the applicant and Mr C Bretnall on behalf of the respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the Engineering Trades (Government) Award, 1967 Award Nos. 29, 30 and 31 of 1961 and 3 of 1962 be varied in accordance with the following schedule and that the variations in the attached Schedule shall have effect from the beginning of the first pay period on or after 5 November 2015.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

SCHEDULE

1. Clause 14. – Overtime:

A. Delete paragraph (e) of subclause (3) of this Clause and insert in lieu thereof the following:

(e) Subject to the provisions of paragraph (f) of this subclause, an employee required to work overtime for more than one hour shall be supplied with a meal by the employer or be paid $12.80 for a meal if, owing to the amount of overtime worked, a second or subsequent meal is required, they shall be supplied with each such meal by the employer or be paid $9.05 for each meal so required.

B. Delete paragraph (h) of subclause (3) of this Clause and insert in lieu thereof the following:

(h) An employee required to work continuously from 12 midnight to 6.30 a.m. and ordered back to work at 8.00 a.m. the same day shall be paid $5.95 for breakfast.

2. Clause 17. – Special Rates and Provisions:

A. Delete subclauses (1), (2), (3), (4) and (5) of this Clause and insert in lieu thereof the following:

(1) Height Money: An employee shall be paid an allowance of $2.75 for each day in which they work at a height of 15.5 metres or more above the nearest horizontal plane, but this provision does not apply to linespersons nor to riggers and splicers in ships or buildings.

(2) Dirt Money: Dirt Money of 57 cents per hour shall be paid as follows:-

(a) To employees employed on hot or dirty locomotives, or stripping locomotives, boilers, steam, petrol, diesel or electric cranes, or when repairing Babcock and Wilcox or other stationary boiler in site (except repairs on bench to steam and water mounting), or when repairing the conveyor gear in conduit of power houses and when repairing or overhauling electric or steam pile-driving machines and boring plants.

(b) Bitumen Sprayers - Large Units:

(i) To employees whilst engaged on work appertaining to the spraying of bitumen but exclusive of the standard chassis engine form the front end of the main tank to the back end of the plant. Provided that work on the compressor and its engines shall not be subject to dirt money.

(ii) To motor mechanics in the motor section for all work performed on the standard chassis from and including the sump to the rear end of the chassis, but excluding the engine and parts forward thereto unless the work is of a specially dirty nature, where clothes are necessarily unduly soiled or damaged

by the nature of the work done. Provided that to employees engaged as above on sprays of the Bristow type, dirt money of 64 cents per hour shall be paid.

(c) Bitumen Sprayers - Small Units:

(i) To employees for work done on main tank, its fittings, pump and spray arms.

(ii) To motor mechanics on work from and including the sump to the rear end of the chassis, but excluding the engine and parts forward thereto unless the work is of a specially dirty nature where clothes are necessarily unduly soiled or damaged by the nature of the work done.

(d) To employees on all other dirty tar sprays and kettles.

(e) Diesel Engines: Work on engines, or on gear box attached to engines, but excluding work on rollers (wheels) on which a diesel powered roller travels.

(f) Dirt Money shall only be paid during the stages of dismantling and cleaning and shall not cover employees who receive portions of the work after cleaning has taken place.

(g) Notwithstanding anything contained in the foregoing provisions, dirt money shall not be paid unless the work is of an exceptionally dirty nature where clothes are necessarily unduly soiled or damaged by the nature of the work done.

(3) Confined Space:

74 cents per hour extra shall be paid to an employee working in any place, the dimensions of which necessitate the employee working in an unusually stooped or otherwise cramped position, or where confinement within a limited space is productive of unusual discomfort.

(4) Any employee actually working a pneumatic tool of the percussion type shall be paid 37 cents per hour extra whilst so engaged.

(5) Hot Work: An employee shall be paid an allowance of 57 cents per hour while working in the shade in any place where the temperature is raised by artificial means to between 46.1 and 54.4 degrees Celsius.

B. Delete subclauses (8), (9), (10), (11), (12), (13), (14), (15) and (16) of this Clause and insert in lieu thereof the following:

(8) Any employee working in water over their boots or, if gumboots are supplied, over the gumboots, shall be paid an allowance of $1.75 per day.

(9) Employees using Anderson-Kerrick steam cleaning units or unit of a similar type on cranes or other machinery shall be paid an allowance of 57 cents.

(10) Well Work: Any employee required to enter a well nine metres or more in depth for the purpose in the first instance of examining the pump, or any other work connected therewith, shall receive an amount of $3.50 for such examination and $1.26 per hour extra thereafter for fixing, renewing or repairing such work.

(11) Ship Repair Work: Any employee engaged in repair work on board ships shall be paid an additional $6.30 per day for each day on which so employed.

(12) An employee shall, whilst working in double bottom tanks on board vessels, be paid an allowance of $2.42 per hour.

(13) An employee shall, whilst using explosive powered tools, be paid an allowance of 21 cents per hour, with a minimum payment of $1.55 per day.

(14) Abattoirs -

An employee employed in and about an abattoir shall be paid an allowance calculated at the rate of $19.70 per week. The allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to any other allowance under this clause. The allowance prescribed herein may be reduced to $18.40 with respect to any employee who is supplied with overalls by the employer.

(15) Employees engaged to iron ore and manganese or loading equipment at the Geraldton Harbour shall be paid an allowance of 61 cents per hour, with a minimum payment for four hours.

(16) Morgues -

An employee required to work in a morgue shall be paid 61 cents per hour or part thereof, in addition to the rates prescribed in this clause.

C. Delete subclause (19) of this Clause and insert in lieu thereof the following:

(19) An employee required to repair or maintain incinerators shall be paid $3.75 per unit.

D. Delete subclauses (21), (22), (23) and (24) of this Clause and insert in lieu thereof the following:

(21) (a) Subject to the provisions of this clause, an employee whilst employed on foundry work shall be paid a disability allowance of 43 cents for each hour worked to compensate for all disagreeable features associated with foundry work, including heat, fumes, atmospheric conditions, sparks, dampness, confined space and noise.

(b) The foundry allowance herein prescribed shall be in lieu of any payment otherwise due under this clause and does not in any way limit an employer's obligations to comply with all relevant requirements of Acts and Regulations relative to conditions in foundries.

(c) For the purpose of this subclause foundry work shall mean:

(i) Any operation in the production of castings by casting metal in moulds made of sand, loam, metal moulding composition or other material or mixture of materials, or by shell moulding, centrifugal casting or continuous casting; and

(ii) Where carried on as an incidental process in connection with and in the course of production to which paragraph (i) of this definition applies, the preparation of moulds and cores (but not in the making of patterns and dies in a separate room), knock-out processes and dressing operations, but shall not include any operation performed in connection with:

(aa) Non-ferrous die casting (including gravity and pressure):

(bb) Casting of billets and/or ingots in metal mould;

(cc) Continuous casting of metal into billets;

(dd) Melting of metal for use in printing;

(ee) Refining of metal.

(22) An electronics tradesperson, an electrician - special class, an electrical fitter and/or an armature winder or an electrical installer who holds and in the course of employment may be required to use a current "A" grade or "B" grade licence issued pursuant to the relevant regulation in force on the 28th day of February, 1978 under the Electricity Act, 1948 shall be paid an allowance of $24.00 per week.

(23) Where an employee is engaged in a process involving asbestos and is required to wear protective equipment, i.e: respiratory protection in the form of a high efficiency class H particulate respirator and/or special clothing, a disability allowance of 78 cents per hour shall be paid for each hour or part thereof that such employee is so engaged.

(24) Towing Allowance: A Level 1, 2 or 3 Tradesperson who drives a tow truck towing an articulated bus in traffic shall be paid an allowance of $5.45 per shift when such duties are performed. This allowance shall be payable irrespective of the time such work is performed and is not subject to any premium of penalty additions.

E. Delete subclauses (26), (27), (28) and (29) of this Clause and insert in lieu thereof the following:

(26) First Aid Allowance: A worker, holding either a Third Year First Aid Medallion of the St John Ambulance Association or a "C" Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties, shall be paid $11.80 per week in addition to their ordinary rate.

(27) Polychlorinated Biphenyls

Employees required to remove or handle equipment or fittings containing polychlorinated biphenyls (PCBs) for which protective clothing must be worn shall, in addition to the rates and provisions contained in this Clause, be paid an allowances of $2.42 per hour whilst so engaged.

(28) Nominee Allowance:

A licensed electrical fitter or installer who acts as a nominee for the employer shall be paid an allowance of $20.90 per week.

(29) Hospital Environment Allowance:

Notwithstanding the provisions of this clause, the following allowances shall be paid to maintenance employees employed at hospitals listed hereunder:

(a) (i) $16.80 per week for work performed in a hospital environment; and

(ii) $5.60 per week for disabilities associated with work performed in difficult access areas, tunnel complexes, and areas with great temperature variation at -

Princess Margaret Hospital

King Edward Memorial Hospital

Sir Charles Gairdner Hospital

Royal Perth Hospital

Fremantle Hospital

(b) $12.30 per week for work performed in a hospital environment at -

Kalgoorlie Hospital

Osborne Park Hospital

Albany Hospital

Bunbury Hospital

Geraldton Hospital

Mt. Henry Hospital

Northam Hospital

Swan Districts Hospital

Perth Dental Hospital

(c) $8.10 per week for work performed in a hospital environment at -

Bentley Hospital	Derby Hospital
Narrogin Hospital	Port Hedland Hospital
Rockingham Hospital	Sunset Hospital
Armadale Hospital	Broome Hospital
Busselton Hospital	Carnarvon Hospital
Collie Hospital	Esperance Hospital
Katanning Hospital	Merredin Hospital
Murray Hospital	Warren Hospital
Wyndham Hospital	

3. First Schedule - Wages:

A. Delete subclause (5) of this Schedule and insert in lieu thereof the following:

(5) (a) In addition to the rates contained in subclauses (2) and (3) hereof, employees designated in classifications C 14 to C 7 inclusive shall receive an all-purpose industry allowance of $19.00.

(b) This allowance shall be paid in two instalments, as follows:

(i) $9.50 of the allowance shall be paid after the first 12 months of Government service; and

(ii) the remaining $9.50 - totalling $19.00 - shall be paid on completion of 24 months of Government service.

(c) The industry allowance shall be adjusted in accordance with any movements to the wage prescribed in subclause (2) hereof, as follows:

(i) The increase shall apply to the 'plus 24 months of service' rate;

(ii) The increase is to be rounded to the nearest ten cents;

(iii) The rate is to be divided by two to calculate instalments in accordance with subparagraphs (i) and (ii) of paragraph (b) hereof, provided that the instalment rates are not expressed in less than ten cents amounts; and

(iv) In the event of such an equal division of the industry allowance not resulting in the rates being expressed in less than ten cent amounts, as provided in subparagraph (iii) hereof, the division shall be unequal and weighted to the 12 months' service instalment.

B. Delete subclause (8) of this Schedule and insert in lieu thereof the following:

(8) (a) Leading Hands

A tradesperson placed in charge of three or more other employees shall, in addition to the ordinary rate, be paid per week:

	$
If placed in charge of not less than three and not more than 10 other employees	30.50
If placed in charge of more than 10 and not more than 20 other employees	46.50
If placed in charge of more than 20 other employees	59.60

(b) Any tradesperson moulder employed in a foundry where no other jobbing moulder is employed shall be paid at the rate prescribed for leading hands in charge of not less than three and not more than 10 other employees.

(c) A Certificated Rigger or Scaffolder on ships and buildings, other than a Leading Hand, who, in compliance with the provisions of the Occupational Health, Safety and Welfare Act and Regulations 1988, is responsible for the supervision of not less than three other employees, shall be deemed to be a Leading Hand and be paid at the rate prescribed for a Leading Hand in charge of not less than three and not more than ten other employees.

(d) In addition to any rates to which an employee may be entitled under this clause a Mechanic-in-Charge, employed by the Department of Conservation and Land Management in the following towns, shall be paid per week –

	$
Manjimup, Collie	74.40
Harvey, Dwellingup, Mundaring, Yanchep	37.00
Ludlow, Nannup, Margaret River, Kirup, Walpole, Pemberton	18.80
Jarrahdale	18.80

C. Delete subclauses (10), (11) and (12) of this Schedule and insert in lieu thereof the following:

(10) Construction Allowance

(a) In addition to the appropriate rate of pay prescribed in subclause (1) hereof, an employee shall be paid -

(i) $53.20 per week if engaged on the construction of a large industrial undertaking or any large civil engineering project;

(ii) $48.00 per week if engaged on a multi-storeyed building but only until the exterior walls have been erected, the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which he/she is required to work. A "multi-storeyed building" is a building which, when completed will consist of at least five storeys.

(iii) $28.30 per week if engaged otherwise on construction work falling within the definition of construction work in Clause 5. - Classification Structure and Definitions of this Award.

(b) Any dispute as to which of the aforesaid allowances applies to particular work shall be determined by the Western Australian Industrial Relations Commission.

(c) Any allowance paid under this subclause includes any allowance otherwise payable under Clause 17. - Special Rates and Provisions of this Award.

(11) Tool Allowance

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

(i) $16.80 per week to such tradesperson; or

(ii) In the case of an apprentice a percentage which appears against the relevant year of apprenticeship in this Schedule,

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

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

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

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

(12) Drilling Allowance

A driller using a Herbert two-spindle sensitive machine to drill to a marked circumference shall be paid an additional $2.79 per hour whilst so engaged.

4. Fifth Schedule – Building Management Authority Wages and Conditions:

A. Delete paragraphs (c), (d) and (e) of subclause (5) of this Schedule and insert in lieu thereof the following:

(c) In addition to the wage rates provided in paragraph (a) hereof, electricians employed by the Building Management Authority will receive an all-purpose payment of $31.90 per week.

(d) In addition to the wage rates prescribed in paragraph (a) hereof, by agreement between the employer, the employee and the Union, evidenced in writing, a Mechanical Fitter and a Refrigeration Mechanic may receive 25% loading in lieu of overtime payments.

(e) Leading hand electricians who are required to perform duties over and above those normally required of leading hands shall be paid an all-purpose allowance of $42.90 per week in addition to the relevant leading hand rate prescribed in subclause (8) of the First Schedule – Wages of this Award.

B. Delete subclause (7) of this Schedule and insert in lieu thereof the following:

(7) Computing Quantities:

An employee, other than a leading hand, who is required to compute or estimate quanitites of materials in respect of work performed by others, shall be paid $4.50 per day, or part thereof, in addition to the rates otherwise prescribed in this award.

2015 WAIRC 01003

GATE, FENCE AND FRAMES MANUFACTURING AWARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	ELECTRICAL TRADES UNION WA
	APPLICANT
	-v-
	CAI FENCES PTY. LTD., DBS FENCING, WOODFORD GATEMAKERS PTY. LTD.
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	WEDNESDAY, 11 NOVEMBER 2015
FILE NO/S	APPL 138 OF 2015
CITATION NO.	2015 WAIRC 01003

Result	Award varied
Representation	
Applicant	Mr J Murie
Respondent	No Appearance

Order

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

THAT the Gate, Fence and Frames Manufacturing Award be varied in accordance with the following schedule and that the variations in the attached Schedule shall have effect from the beginning of the first pay period on or after 5 November 2015.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

SCHEDULE

1. Clause 7. – Overtime: Delete paragraph (f) of subclause (3) of this Clause and insert in lieu thereof the following:

(f) Subject to the provisions of paragraph (h) of this subclause, an employee required to work overtime for more than two hours, shall be supplied with a meal by the employer or be paid $12.00 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required the employee shall be supplied with such meal by the employer or paid $8.30 for each meal so required.

2. Clause 14. – Special Rates and Provisions:

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

(1) Dirt Money: An employee shall be paid an allowance of 59 cents per hour when engaged on work of an unusually dirty nature where clothes are necessarily unduly soiled or damaged or boots are unduly damaged by the nature of the work done.

(2) Confined Space: An employee shall be paid an allowance of 74 cents per hour when, because of the dimensions of the compartment or space in which the employee is working, the employee is required to work in a stooped or otherwise cramped position or without proper ventilation.

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

(4) An employee, holding a Third Year First Aid Medallion of the St. John Ambulance Association appointed by the employer to perform first aid duties, shall be paid $12.10 per week in addition to the ordinary rate.

3. First Schedule - Wages:

A. Delete subclause (2) of this Schedule and insert in lieu thereof the following:

(2) Leading Hand: In addition to the appropriate rate of wage prescribed in subclause (1) of this clause a leading hand shall be paid:

(a)	If placed in charge of not less than three and not more than ten other employees	$31.70
(b)	If placed in charge of more than ten but not more than twenty other employees	$48.70
(c)	If placed in charge of more than twenty other employees	$62.80

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

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

(i) $17.70 per week to such tradesperson, or

(ii) In the case of an apprentice a percentage of $17.70 being the percentage which appears against the year of apprenticeship in subclause (a) of subclause (3) of this Schedule.

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

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

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

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

4. Fourth Schedule – Named Parties to the Award: Delete this Schedule and insert in lieu thereof the following:

FOURTH SCHEDULE - NAMED PARTIES TO THE AWARD

Union party

Electrical Trades Union WA

2015 WAIRC 01008

METAL TRADES (GENERAL) AWARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	ELECTRICAL TRADES UNION WA
	APPLICANT
	-v-
	ANODISERS WA, DARDANUP BUTCHERING COMPANY, CRANE ALUMINIUM SYSTEMS
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	WEDNESDAY, 11 NOVEMBER 2015
FILE NO/S	APPL 140 OF 2015
CITATION NO.	2015 WAIRC 01008

Result	Award varied
Representation	
Applicant	Mr J Murie
Respondent	No Appearance

Order

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

THAT the Metal Trades (General) Award be varied in accordance with the following schedule and that the variations in the attached Schedule shall have effect from the beginning of the first pay period on or after 5 November 2015.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

SCHEDULE

1. Clause 3.2 – Overtime: Delete paragraph (6) of subclause 3.2.3 of this Clause and insert in lieu thereof the following:

(6) Subject to the provisions of 3.2.3(7), an employee required to work overtime for more than two (2) hours shall be supplied with a meal by the employer or be paid $13.15 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required, the employee shall be supplied with each such meal by the employer or be paid $8.95 for each meal so required.

2. Clause 4.8 - Wages and Supplementary Payments:

A. Delete subclause 4.8.2(1) of this Clause and insert in lieu thereof the following:

4.8.2 (1) Leading Hands:

In addition to the appropriate total wage prescribed in this clause, a leading hand shall be paid per week –

		$
(a)	If placed in charge of not less than three and not more than 10 other employees	31.20
(b)	If placed in charge of more than 10 and not more than 20 other employees	47.70
(c)	If placed in charge of more than 20 other employees	61.70

B. Delete subclause 4.8.6(1) of this Clause and insert in lieu thereof the following:

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

(a) $17.10 per week to such tradesperson; or

(b) in the case of an apprentice a percentage of $17.10 being the percentage which appears against the year of apprenticeship in 4.8.3;

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

C. Delete subclause 4.8.7 of this Clause and insert in lieu thereof the following:

4.8.7 An employee employed in rock quarries, limestone quarries or sand pits shall be paid an allowance of $27.60 per week to compensate for dust and climatic conditions when working in the open and for deficiencies in general amenities and facilities, but an employee so employed for not more than three days shall be paid on a pro rata basis.

This subclause shall not apply to employees employed by Cockburn Cement Limited.

3. Clause 5.2 – Special Allowances and Facilities: Delete this Clause and insert in lieu thereof the following:

5.2 - SPECIAL ALLOWANCES AND FACILITIES

5.2.1 Height Money: An employee shall be paid an allowance of $2.80 for each day on which the employee works at a height of 15.5 metres or more above the nearest horizontal plane, but this provision does not apply to linespeople nor to riggers and splicers on ships and buildings.

5.2.2 Dirt Money: An employee shall be paid an allowance of 61 cents per hour when engaged on work of an unusually dirty nature where clothes are necessarily unduly soiled or damaged or boots are unduly damaged by the nature of the work done.

5.2.3 Grain Dust: Where any dispute arises at a bulk grain handling installation due to the presence of grain dust in the atmosphere and the Board of Reference determines that employees employed under this Award are unduly affected by that dust, the Board may, subject to such conditions as it deems fit to impose, fix an allowance or allowances not exceeding $1.03 per hour.

5.2.4 Confined Space: An employee shall be paid an allowance of 74 cents per hour when, because of the dimensions of the compartment or space in which the employee is working, the employee is required to work in a stooped or otherwise cramped position, or without proper ventilation.

5.2.5 Diesel Engine Ships: The provisions of 5.2.2 and 5.2.4 do not apply to an employee when the employee is engaged on work below the floor plates in diesel engine ships, but the employee shall be paid an allowance of $1.03 per hour whilst so engaged.

5.2.6 Boiler Work: An employee required to work in a boiler which has not been cooled down shall be paid at the rate of time and one-half for each hour or part of an hour so worked in addition to any allowance to which the employee may be entitled under 5.2.2 and 5.2.4.

5.2.7 Hot Work: An employee shall be paid an allowance of 61 cents per hour when the employee works in the shade in any place where the temperature is raised by artificial means to between 46.1º and 54.4º Celsius.

5.2.8 (1) Where in the opinion of the Board of Reference, the conditions under which work is to be performed are, by reason of excessive heat, exceptionally oppressive, the Board may –

(a) Fix an allowance, or allowances, not exceeding the equivalent of half the ordinary rate;

(b) Fix the period (including a minimum period) during which any allowance so fixed is to be paid; and

(c) Prescribe such other conditions, relating to the provision of protective clothing or equipment and the granting of rest periods, as the Board sees fit.

(2) The provisions of 5.2.8(1) do not apply unless the temperature in the shade at the place of work has been raised by artificial means beyond 54.4 degrees Celsius.

(3) An allowance fixed pursuant to 5.2.8(1) includes any other allowance which would otherwise be payable under this clause.

5.2.9 Tarring Pipes: The provisions of 5.2.2 and 5.2.4 do not apply to an employee engaged in tarring pipes in the Cast Pipe Section but the employee shall, in lieu thereof, be paid an allowance of $1.00 per day whilst so engaged.

5.2.10 Percussion Tools: An employee shall be paid an allowance of 36 cents per hour when working a pneumatic rivetter of the percussion type and other pneumatic tools of the percussion type.

5.2.11 Chemical, Artificial Manure and Cement Works: An employee, other than a general labourer, in chemical, artificial manure and cement works, in respect of all work done in and around the plant outside the machine shop, shall be paid an allowance calculated at the rate of $15.20 per week. The allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to any other allowance under this Clause.

5.2.12 Abattoirs and Tallow Rendering Works: An employee, employed in and about an abattoir or in a rendering section of tallow works, shall be paid an allowance calculated at the rate of $19.80 per week. The allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to receive any other allowance under this Clause.

5.2.13 An employee who is employed at a timber sawmill or is sent to work at a timber sawmill shall be paid for the time there engaged a disability allowance equivalent to what the majority of the employees at the mill receive under the appropriate award. The allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to receive any other allowance under this clause with the exception of that prescribed in 5.2.1 - Height Money.

5.2.14 Phosphate Ships: An employee shall be paid an allowance of 87 cents for each hour the employee works in the holds or 'tween decks of ships which, immediately prior to such work, have carried phosphatic rock, but this subclause only applies if and for as long as the holds and 'tween decks are not cleaned down.

5.2.15 An employee who is sent to work on any gold mine shall be paid an allowance of such amount as will afford the employee a wage not less than they would be entitled to receive pursuant to the award which would apply if such employee was employed in the gold mine concerned.

5.2.16 An employee who is required to work from a ladder shall be provided with an assistant on the ground where it is reasonably necessary for the employee’s safety.

5.2.17 The work of an electrical fitter shall not be tested by an employee of a lower grade.

5.2.18 Special Rates Not Cumulative: Where more than one of the disabilities entitling an employee to extra rates exists on the same job, the employer shall be bound to pay only one rate, namely – the highest for the disabilities prevailing. Provided that this subclause shall not apply to confined space, dirt money, height money, or hot work, the rates for which are cumulative.

5.2.19 Protective Equipment:

(1) An employer shall have available a sufficient supply of protective equipment (as, for example, goggles (including anti-flash goggles), glasses, gloves, mitts, aprons, sleeves, leggings, gumboots, ear protectors, helmets, or other efficient substitutes thereof) for use by employees when engaged on work for which some protective equipment is reasonably necessary.

(2) An employee shall sign an acknowledgement when issued with any article of protective equipment and shall return that article to the employer when finished using it or on leaving employment.

(3) An employee to whom an article of protective equipment has been issued shall not lend that article to another employee and if the employee does both employees shall be deemed guilty of wilful misconduct.

(4) An article of protective equipment which has been used by an employee shall not be issued by the employer to another employee until it has been effectively sterilised but this paragraph only applies where sterilisation of the article is practicable and is reasonably necessary.

(5) Adequate safety gear (including insulating gloves, mats and/or shields where necessary) shall be provided by employers for employees required to work on live electrical equipment.

5.2.20 (1) Subject to the provisions of this Clause, an employee whilst employed on foundry work shall be paid a disability allowance of 43 cents for each hour worked to compensate for all disagreeable features associated with foundry work including heat, fumes, atmospheric conditions, sparks, dampness, confined spaces, and noise.

(2) The foundry allowance herein prescribed shall also apply to apprentices and un-apprenticed juniors employed in foundries; provided that where an apprentice is, for a period of half a day or longer, away from the foundry for the purpose of receiving tuition, the amount of foundry allowance paid to the employee shall be decreased proportionately.

(3) The foundry allowance herein prescribed shall be in lieu of any payment otherwise due under this Clause and does not in any way limit an employer's obligations to comply with all relevant requirements of Acts and Regulations relative to conditions in foundries.

(4) For the purpose of this subclause 'foundry work' shall mean -

(a) Any operation in the production of castings by casting metal in moulds made of sand, loam, metal, moulding composition or other material or mixture of materials, or by shell moulding, centrifugal casting or continuous casting; and

(b) Where carried on as an incidental process in connection with and in the course of production to which 5.2.20(4)(a) applies, the preparation of moulds and cores (but not in the making of patterns and dies in a separate room), knock out processes and dressing operations, but shall not include any operation performed in connection with -

(i) Non-ferous die casting (including gravity and pressure);

(ii) Casting of billets and/or ingots in metal moulds;

(iii) Continuous casting of metal into billets;

(iv) Melting of metal for use in printing;

(v) Refining of metal.

5.2.21 An employee, holding a Third Year First Aid Medallion of the St. John Ambulance Association or a "C" Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties, shall be paid $12.00 per week in addition to the employee's ordinary rate.

5.2.22 An electronics tradesperson, an electrician - special class, an electrical fitter and/or armature winder or an electrical installer who holds and, in the course of employment may be required to use, a current "A" Grade or "B" Grade licence issued pursuant to the relevant Regulation in force on the 28th day of February, 1978 under the *Electricity Act 1945*, shall be paid an allowance of $24.70 per week.

4. Part 2 - Construction Work: Clause 13. – Wages: Delete subclauses 13.4, 13.5 and 13.6 of this Clause and insert in lieu thereof the following:

13.4 Construction Allowances

(1) In addition to the appropriate rates of pay prescribed in this clause an employee shall be paid -

(a) $55.10 per week if the employee is engaged on the construction of a large industrial undertaking or any large civil engineering project.

(b) $49.60 per week if the employee is engaged on a multi-storeyed building, but only until the exterior walls have been erected and the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which such employee is required to work. A multi-storeyed building is a building which, when completed, will consist of at least five storeys.

(c) $29.10 per week if the employee is engaged otherwise on construction work falling within the definition of construction work in Clause 1.6 - Definitions and Classification Structure of PART 1 - GENERAL of this Award.

(2) Any dispute as to which of the aforesaid allowances apply to particular work shall be determined by the Board of Reference.

13.5 Leading Hands

In addition to the appropriate total wage prescribed in this clause a leading hand shall be paid:

		$
(1)	If placed in charge of not less than three (3) and not more than ten (10) other employees	31.20
(2)	If placed in charge of more than ten (10) and not more than twenty (20) other employees	47.70
(3)	If placed in charge of more than twenty (20) other employees	61.70

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

(a) $17.10 per week to such tradesperson; or

(b) In the case of an apprentice a percentage of $17.10 being the percentage which appears against their year of apprenticeship in 4.8.3 of Clause 4.8 - Wages and Supplementary Payments of PART 1 - GENERAL (subject to Clause 12.2 - Apprentices of PART 2) of this Award,

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

(2) Any tool allowance paid pursuant to 13.6(1) shall be included in, and form part of, the ordinary weekly wage prescribed in this clause.

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

(4) A tradesperson or an apprentice shall replace or pay for any tools supplied by their employer if lost through their negligence.

5. Part 2 – Construction Work: Clause 15.1 - Special Allowances And Provisions:

A. Delete paragraph (2) of subclause 15.1.2 of this Clause and insert in lieu thereof the following:

(2) Subject to 15.1.3 where the employee's tools or working clothes are lost by fire or breaking and entering whilst securely stored in the place provided by the employer under 15.1.2(1) the employer shall reimburse the employee for that loss but only up to a maximum of $922.70.

B. Delete subclause 15.1.4 of this Clause and insert in lieu thereof the following:

15.1.4 An Electronics Tradesperson, an Electrician Special Class, an Electrical Fitter and/or Armature Winder or an Electrical Installer who holds, and in the course of employment may be required to use, a current "A" Grade or "B" Grade licence issued pursuant to the relevant regulation in force on the 28th day of February 1978 under the *Electricity Act 1945*, shall be paid an allowance of $24.70 per week (rate from 11/4/90).**6. Part 2 – Construction Work: Clause 15.4 - Special Provision - Western Power: Delete subclause 15.4.2 of this Clause and insert in lieu thereof the following:**

15.4.2 In addition to the wage otherwise payable to an employee pursuant to the provisions of PART 2 - CONSTRUCTION WORK of this Award, an employee (other than an apprentice) shall be paid –

(1) $2.46 per hour for each hour worked if employed at Muja;

(2) $1.44 per hour for each hour worked if employed at Kwinana;

(3) A safety footwear allowance of twelve (12) cents per hour for each hour worked to compensate for the requirement to wear approved safety footwear which is to be maintained in sound condition by the employee. Failure to wear approved safety footwear or to maintain it in sound condition as determined by the employer shall render the employee liable to dismissal.

7. Clause 18. - Named Parties: At the end of this clause, delete "Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch**" and insert in lieu thereof the following:**

Electrical Trades Union WA

2015 WAIRC 01002

RADIO AND TELEVISION EMPLOYEES' AWARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	ELECTRICAL TRADES UNION WA
	APPLICANT
	-v-
	HILLS INDUSTRIES LTD., CANBERRA TELEVISION SERVICES, INDOOR AMUSEMENT GAMES CO.
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	WEDNESDAY, 11 NOVEMBER 2015
FILE NO/S	APPL 137 OF 2015
CITATION NO.	2015 WAIRC 01002

Result	Award varied
Representation	
Applicant	Mr J Murie
Respondent	No Appearance

Order

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

THAT the Radio and Television Employees' Award be varied in accordance with the following schedule and that the variations in the attached Schedule shall have effect from the beginning of the first pay period on or after 5 November 2015.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

SCHEDULE

1. Clause 9. – Overtime: Delete paragraph (f) of subclause (3) of this Clause and insert in lieu thereof the following:

(f) Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid $13.10 or a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required they shall be supplied with each such meal by the employer or be paid $8.85 for each meal so required.

2. Clause 29. – Wages:

A. Delete subclause (2) of this Clause and insert in lieu thereof the following:

(2) Leading Hands:

In addition to the appropriate total wage prescribed in subclause (1) of this Clause a leading hand shall be paid:

		$
(a)	If placed in charge of not less than three and not more than ten other employees	31.10
(b)	If placed in charge of more than ten and not more than twenty other employees	47.30
(c)	If placed in charge of more than twenty other employees	61.20

B. Delete subclause (5) of this Clause and insert in lieu thereof the following:

(5) (a) Where an employer does not provide a Serviceperson, Installer, Assembler or an apprentice with the tools ordinarily required by that Serviceperson, Installer, Assembler or apprentice in the performance of their work as a Serviceperson, Installer, Assembler or as an apprentice the employer shall pay a tool allowance of:-

(i) $17.00 per week to such Serviceperson, Installer or Assembler; or

(ii) In the case of an apprentice a percentage of $17.00 being the percentage which appears against their year of apprenticeship in subclause (3) of this Clause,

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

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

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

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

3. Third Schedule – Named Parties to the Award: Delete this Schedule and insert in lieu thereof the following:

THIRD SCHEDULE - NAMED PARTIES TO THE AWARD

Union Party

Electrical Trades Union WA

2015 WAIRC 01027

RETAIL PHARMACISTS' AWARD 2004

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	ON THE COMMISSION'S OWN MOTION
CORAM	CHIEF COMMISSIONER A R BEECH
DATE	WEDNESDAY, 18 NOVEMBER 2015
FILE NO/S	APPL 151 OF 2015
CITATION NO.	2015 WAIRC 01027

Result Named party deleted from award

Order

WHEREAS registration of the Salaried Pharmacists' Association Western Australian Union of Workers (the Union) was cancelled by the Full Bench of this Commission on and from 16 April 2015 ([2015] WAIRC 00311);

AND WHEREAS the Union is a named party to the Retail Pharmacists' Award 2004 (the Award);

AND WHEREAS on 28 October 2015 the Commission wrote to the named parties of the Award and the bodies listed in s 29A(2)(a)(i) of the *Industrial Relations Act 1979* (the Act), advising of its intention to amend the Award by deleting the Union as a named party to the Award;

AND WHEREAS these parties and bodies were given the opportunity to advise the Commission by 11 November 2015 if they wished to be heard in relation to the proposed amendment;

AND WHEREAS there was no advice from any party or body wishing to be heard;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred on me under s 40B of the Act hereby order –

THAT the *Retail Pharmacists' Award 2004* be varied in accordance with the following schedule and that such variation have effect from the date of this order.

(Sgd.) A R BEECH,
[L.S.] Chief Commissioner.

SCHEDULE

1. Clause 14. – Named Parties, Subclause 14.1 – Named Parties to the Award: Delete subclause 14.1.1 of this subclause and insert the following in lieu thereof:

14.1.1 The parties to this award are:

(a) The Health Services Union of Western Australia (Union of Workers); and

(b) The respondent employers listed below

Friendly Societies Chemist of Victoria Park
553 Albany Hwy
VICTORIA PARK WA 6100

Amazon Drive Chemist
Shop 6 Beechboro Shopping Centre
161 Amazon Drive
BEECHBORO WA 6063

Bruce Rock Pharmacy
46 Johnson Street
BRUCE ROCK WA 6418

Bullcreek Pharmacy
Shop 1 Bullcreek Shopping Centre
South Street
BULLCREEK WA 6149

Connolly Pharmacy
Shop 7 Connelly Shopping Centre
Country Club Boulevard
CONNOLLY WA 6027

Floreat Drive - In Pharmacy
Shop 3
1 Flynn Street
CHURCHLANDS WA 6018

Garden City Pharmacy
Shop 120 Garden City Shopping Centre
Risely Street
BOORAGOON WA 6154

Geraldton Amcal Pharmacy
Shop 16 Stirlings Shopping Centre
54 Sanford Street
GERALDTON WA 6530
Grange Pharmacy
Grange Medical Centre
7 - 9 Grange Drive
COOLOONGUP WA 6168
Healthsense Pharmacy Waikiki
Shop 19 Waikiki Village Shopping Centre
Read Street
WAIKIKI WA 6169
Jacobsons Guardian Pharmacy
21 Bay View Terrace
CLAREMONT WA 6027
Joondalup Drive Pharmacy
Unit 7 The Gateway
103 Joondalup Drive
EDGEWATER WA 6027
Manning Drive-In Pharmacy
Shop 5
59 Ley Street
COMO WA 6150
Morrison Road Drive - In Pharmacy
Shop 4 Darling Ridge Shopping Centre
309 Morrison Road
SWANVIEW WA 6056
Nightingales Pharmacy Erskine
Shop 4-5 Erskine Central Shopping Centre
Old Coast Road
MANDURAH WA 6210
North Street Pharmacy
Unit 1, 40 Great Northern Highway
MIDLAND WA 6056
Pharmacy 777 Karratha
Shop 33 Karratha Village Shopping Centre
Sharpe Street
KARRATHA WA 6714
Pharmacy Help Mandurah
Peel Health Campus
110 Lakes Road
MANDURAH WA 6210
Priceline Pharmacy Perth
810 Hay Street
PERTH WA 6000
South Perth 7 Day Chemist
143 Canning Highway
SOUTH PERTH WA 6151

Southern Cross Pharmacy
11a Antares Street
SOUTHERN CROSS WA 6426
Terry White Chemist Karrinyup
Shop F 137 - 138 Karrinyup Shopping Centre
Karrinyup Road
KARRINYUP WA 6018
Terry White Chemist Mount Hawthorn
Shop 16 - 17 Mount Hawthorn Plaza
148 Scarborough Beach Road
MOUNT HAWTHORN WA 6016
The McKenzie Street Dispensary
274 Cambridge St
WEMBLEY WA 6014
Twaddles Amcal Chemist
8 - 12 Fortune Street
NARROGIN WA 6312

2015 WAIRC 01012

WA GOVERNMENT HEALTH SERVICES ENGINEERING AND BUILDING SERVICES AWARD 2004

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	ELECTRICAL TRADES UNION WA
	APPLICANT
	-v-
	THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S7 OF THE HOSPITAL AND HEALTH SERVICES ACT 1927 AS THE HOSPITALS FORMALLY COMPRISED IN THE METROPOLITAN HEALTH SERVICES BOARD, PEEL HEALTH SERVICES BOARD AND WA COUNTRY HEALTH SERVICES, AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS WESTERN AUSTRALIAN BRANCH, THE PLUMBERS AND GASFITTERS EMPLOYEES' UNION OF AUSTRALIA, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	THURSDAY, 12 NOVEMBER 2015
FILE NO/S	APPL 133 OF 2015
CITATION NO.	2015 WAIRC 01012

Result	Award varied
Representation	
Applicant	Mr J Murie
Respondent	Mr B Chapman

Order

HAVING heard Mr J Murie on behalf of the applicant and Mr B Chapman on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the WA Government Health Services Engineering and Building Services Award 2004 be varied in accordance with the following schedule and that the variations in the attached Schedule shall have effect from the beginning of the first pay period on or after 5 November 2015.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

SCHEDULE

1. Clause 19. – Leading Hand Allowance: Delete subclause (1) of this Clause and insert in lieu thereof the following:

(1) An employee placed in charge of 3 or more other employees shall, in addition to the employee's ordinary salary, be paid –

(a) Not less than 3 and not more than 10 other employees - $45.70 per week;

(b) More than 10 and not more than 20 other employees - $61.40 per week;

(c) More than 20 other employees - $76.70 per week.

2. Clause 23. – Special Rates and Provisions:

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

(1) Disability Allowances

(a) Except as otherwise provided in this clause, the annual base salaries prescribed in this Award incorporate a commuted allowance which is in full substitution for all disability allowances and other special rates and provisions which are contained in any of the awards named in Clause 1. – Title, as at the date of registration of this Award.

(b) Polychlorinated Biphenyls: Employees required to remove or handle equipment or fittings containing polychlorinated biphenyls (PCBs), for which protective clothing must be worn, shall be paid an allowance of $2.31 for each hour or part thereof whilst so engaged.

(c) Asbestos:

(i) Employees required to use materials containing asbestos or to work in close proximity to employees using such materials shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority.

(ii) Employees engaged in a work process involving asbestos who are required to wear protective equipment, i.e. respiratory protection in the form of a high efficiency class H particulate respirator and/or special clothing, shall be paid an allowance of $0.77 per hour for each hour or part thereof whilst so engaged.

(d) Furnace Work

Employees engaged in the construction or alteration or repairs to boilers, flues, furnaces, retorts, kilns, ovens, ladles, steam generators, heat exchangers and similar refractory work or on underpinning shall be paid $1.67 per hour or part thereof whilst so engaged.

(e) Construction Allowance

(i) In addition to the appropriate rate of pay prescribed in Appendix A. – Salaries of this Award, an employee shall be paid –

(aa) $50.50 per week if engaged on the construction of a large industrial undertaking or any large civil engineering project;

(bb) $45.60 per week if engaged on a multi-storey building but only until the exterior walls have been erected, the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which he/she is required to work. A "multi-storey building" is a building which, when completed, shall consist of at least five stories.

(cc) $26.90 per week if engaged otherwise on Construction Work.

(ii) The rates specified in paragraph (1)(e)(i) shall be discounted by $20.80 per week, the amount of the commuted allowance granted under paragraph (1)(a) of this subclause.

(f) Asbestos Eradication

(i) This subclause shall apply to employees engaged in the process of asbestos eradication on the performance of work within the scope of this Award.

(ii) For the purposes of this clause "asbestos eradication" means work on or about buildings, involving the removal or any other method of neutralisation of any materials which consist of, or contain asbestos.

(iii) All aspects of asbestos work shall meet as a minimum standard the provisions of the National Health and Medical Research Council codes, as varied from time to time, for the safe demolition/removal of asbestos based materials.

Without limiting the effect of the above provision, any person who carried out asbestos eradication work shall do so in accordance with the legislation/regulations prescribed by the appropriate authorities.

(iv) An employee engaged in asbestos eradication (as defined) shall receive an allowance of $1.66 per hour worked in lieu of rates prescribed in paragraph (1)(c) of Clause 23. – Special Rates and Provisions.

(v) Respiratory protective equipment, conforming to the relevant parts of the appropriate Australian Standard (i.e. 1716 "Specification of Respiratory Protective Devices") shall be worn by all personnel during work involving eradication of asbestos.

(g) Where more than one of the disabilities entitling an employee to extra rates exists on the same job the employee shall be paid only the highest rate for the disabilities so prevailing.

B. Delete paragraph (b) of subclause (3) of this Clause and insert in lieu thereof the following:

(b) Permit Work

Any licensed plumber called upon by the Employer to use the licence issued to him/her by the Metropolitan Water Supply, Sewerage and Drainage Board for a period in any one week shall be paid $19.70 for that week in addition to the rates otherwise prescribed.

C. Delete paragraphs (d), (e) and (f) of subclause (3) of this Clause and insert in lieu thereof the following:

(d) Scaffolding Certificate Allowance

A tradesperson who is the holder of a scaffolding certificate or rigging certificate issued by an accredited training provider and is required to act on that certificate whilst engaged on work requiring a certified person shall be paid $0.62 per hour or part thereof, in addition to the rates otherwise prescribed in this Award.

(e) Nominee Allowance

A licensed electrical fitter or mechanic who acts as nominee for the Employer shall be paid an allowance of $19.70 per week.

(f) Setter Out

A setter out (other than a leading hand) in a joiner's shop shall be paid $5.95 per day in addition to the rates otherwise prescribed.

3. Clause 25. – Overtime: Delete paragraph (a) of subclause (7) of this Clause and insert in lieu thereof the following:

(a) An employee required to work 2 hours or more overtime continuous with their rostered hours, which necessitates taking a meal break, shall be paid a meal allowance of $13.90 for each meal so required or may be provided with a meal ticket.

Provided that this sub-clause shall not apply to an employee notified on the previous day of the previous day of the requirement to work such overtime.

4. Appendix A – Salaries: Delete subclause (1) of this Appendix and insert in lieu thereof the following:

(1) Rates of Pay

Subject to this Appendix, employees shall be paid the rates of pay specified in the following table in accordance with the level to which they are from time to time classified.

	Level	Percentage Relativity to C10 Trades-person	Award Base Weekly – Metal, Engineering and Associated Industries Award, 1998 Part I.	Supple-mentary Payment	State Wage Order Adjustment	Minimum Rate	Additional Payment	Annualised Weekly Allowances and Loading	Commuted Overtime and Mobility Allowance (Salary Increase for value for money trade-offs in award safety net of conditions)	Salary
Carpenter	Building Tradesperson Level 04	100	365.20	52.00	361.70	778.90	12.40	104.80	12.00	47372
	Building Tradesperson Level 05	105	383.50	54.60	362.90	801.00	13.04	105.20	12.00	48579
	Building Tradesperson Level 06	110	401.70	57.20	364.00	822.90	13.68	105.50	12.00	49771
	Building Tradesperson Level 07	115	420.00	59.80	363.10	842.90	14.22	105.70	12.00	50852
	Building Tradesperson Level 08	120	438.20	62.40	364.30	864.90	14.86	87.70	12.00	51095
	Building Tradesperson Level 09	125	456.50	65.00	365.40	886.90	15.50	88.20	12.00	52302
Painter	Building Tradesperson Level 04	100	365.20	52.00	361.70	778.90	12.40	81.30	12.00	46146
	Building Tradesperson Level 05	105	383.50	54.60	362.90	801.00	13.04	81.60	12.00	47348
	Building Tradesperson Level 06	110	401.70	57.20	364.00	822.90	13.68	81.80	12.00	48534
	Building Tradesperson Level 07	115	420.00	59.80	363.10	842.90	14.22	82.10	12.00	49621
	Building Tradesperson Level 08	120	438.20	62.40	362.10	862.70	14.86	64.10	12.00	49749
	Building Tradesperson Level 09	125	456.50	65.00	365.40	886.90	15.50	64.60	12.00	51071
Plasterer	Building Tradesperson Level 04	100	365.20	52.00	361.70	778.90	12.40	99.20	12.00	47080
	Building Tradesperson Level 05	105	383.50	54.60	362.90	801.00	13.04	99.50	12.00	48282
	Building Tradesperson Level 06	110	401.70	57.20	364.00	822.90	13.68	100.00	12.00	49484
	Building Tradesperson Level 07	115	420.00	59.80	363.10	842.90	14.22	100.30	12.00	50571
	Building Tradesperson Level 08	120	438.20	62.40	364.30	864.90	14.86	82.20	12.00	50808
	Building Tradesperson Level 09	125	456.50	65.00	365.40	886.90	15.50	82.50	12.00	52004
Plumber	Building Tradesperson Level 04	100	365.20	52.00	361.70	778.90	12.40	127.60	12.00	48561
	Building Tradesperson Level 05	105	383.50	54.60	362.90	801.00	13.04	127.80	12.00	49758
	Building Tradesperson Level 06	110	401.70	57.20	364.00	822.90	13.68	128.10	12.00	50949
	Building Tradesperson Level 07	115	420.00	59.80	363.10	842.90	14.22	128.40	12.00	52037
	Building Tradesperson Level 08	120	438.20	62.40	364.30	864.90	14.86	110.50	12.00	52284
	Building Tradesperson Level 09	125	456.50	65.00	365.40	886.90	15.50	110.80	12.00	53481

	Level	Percentage Relativity to C10 Trades-person	Award Base Weekly – Metal, Engineering and Associated Industries Award, 1998 Part I.	Supple-mentary Payment	State Wage Order Adjustment	Minimum Rate	Additional Payment	Annualised Weekly Allowances and Loading	Commuted Overtime and Mobility Allowance (Salary Increase for value for money trade-offs in award safety net of conditions)	Salary
Other Building employees not elsewhere classified	Building Employee Entrant Level	78	284.86	40.56	354.48	679.90	9.68	72.30	14.00	40475
	Building Employee Level 1	82	299.46	42.64	355.40	697.50	10.20	72.50	14.00	41430
	Building Employee Level 2	87	319.18	45.45	356.67	721.30	10.87	72.70	14.00	42717
	Building Employee Level 3	92	337.44	48.05	357.91	743.40	11.51	73.00	14.00	43919
	Building Employee Level 4	100	365.20	52.00	361.70	778.90	12.40	73.40	14.00	45838
Mechanical Fitter, Motor Mechanic, Refrigeration Fitter & other engineering trades employees not elsewhere classified	Engineering Employee Level 14	78	284.86	40.56	354.48	679.90	14.68	71.10	14.00	40673
	Engineering Employee Level 13	82	299.46	42.64	355.40	697.50	15.40	71.30	14.00	41639
	Engineering Employee Level 12	87.4	319.18	45.45	356.67	721.30	16.47	71.50	14.00	42947
	Engineering Employee Level 11	92.4	337.44	48.05	357.91	743.40	17.41	71.80	14.00	44164
	Engineering Tradesperson Level 10	100	365.20	52.00	361.70	778.90	18.80	88.70	12.00	46866
	Engineering Tradesperson Level 09	105	383.50	54.60	362.90	801.00	19.70	89.00	12.00	48081
	Engineering Tradesperson Level 08	110	401.70	57.20	364.00	822.90	20.70	89.20	12.00	49286
	Engineering Tradesperson Level 07	115	420.00	59.80	363.10	842.90	21.60	89.50	12.00	50392
	Engineering Tradesperson Level 06	125	456.50	65.00	367.60	889.10	23.50	71.90	12.00	51983
	Engineering Tradesperson Level 05	130	474.80	67.60	366.60	909.00	24.40	72.20	10.00	52980
Electrical Fitter/ Mechanic	Engineering Tradesperson Level 10	100	365.20	52.00	361.70	778.90	18.80	112.20	12.00	48092
	Engineering Tradesperson Level 09	105	383.50	54.60	362.90	801.00	19.70	112.50	12.00	49307
	Engineering Tradesperson Level 08	110	401.70	57.20	364.00	822.90	20.70	112.90	12.00	50523
	Engineering Tradesperson Level 07	115	420.00	59.80	363.10	842.90	21.60	113.10	12.00	51623
	Engineering Tradesperson Level 06	125	456.50	65.00	365.40	886.90	23.50	95.30	12.00	53089
	Engineering Tradesperson Level 05	130	474.80	67.60	366.60	909.00	24.40	95.70	10.00	54206

AWARDS/AGREEMENTS AND ORDERS—Interpretation of—

2015 WAIRC 01013

INTERPRETATION OF CLAUSE 15 (4)(B) OF THE DEPARTMENT OF HEALTH MEDICAL PRACTITIONERS (METROPOLITAN HEALTH SERVICES) AMA INDUSTRIAL AGREEMENT 2013

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	AUSTRALIAN MEDICAL ASSOCIATION (WA) INCORPORATED
	APPLICANT
	-v-
	MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER SECTION 7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1927 AS THE METROPOLITAN HEALTH SERVICE
	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT
DATE	FRIDAY, 13 NOVEMBER 2015
FILE NO/S	APPL 110 OF 2015
CITATION NO.	2015 WAIRC 01013

Result	Application dismissed
Representation	
Applicant	Mr S Bibby
Respondent	Mr D Matthews of counsel

Order

WHEREAS this is an application for interpretation pursuant to Section 46 of the *Industrial Relations Act 1979*; and

WHEREAS on 21 April and 9 June 2015 the Commission convened conferences for the purpose of conciliating between the parties; and

WHEREAS at the last such conference the parties agreed to enter into negotiations in an attempt to resolve the matter; and

WHEREAS on 12 November 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.

(Sgd.) P E SCOTT,
[L.S.] Acting Senior Commissioner.

INDUSTRIAL MAGISTRATE—Claims before—

2015 WAIRC 01075

WESTERN AUSTRALIAN INDUSTRIAL MAGISTRATES COURT

CITATION	**:**	2015 WAIRC 01075
CORAM	**:**	INDUSTRIAL MAGISTRATE G. CICCHINI
HEARD	**:**	ON THE PAPERS
DELIVERED	**:**	WEDNESDAY, 9 DECEMBER 2015
FILE NO.	**:**	M 153 OF 2014
BETWEEN	**:**	DAYLE SOMERS
		CLAIMANT
		AND
		S.E.T.S ENTERPRISES PTY LTD
		FIRST RESPONDENT
		KEVIN JAMES BROADBENT
		SECOND RESPONDENT

Catchwords	**:**	Respondents' application for costs - Claimant wholly unsuccessful as against each respondent - Whether proceedings instituted without reasonable cause - Whether claimant's acts or omissions were unreasonable, causing the respondents to incur costs - Whether the award of costs is appropriate
Legislation	**:**	*Fair Work Act 2009*
Instruments	**:**	Miscellaneous Award 2010 [MA000104]
Result	**:**	Application for costs refused
Case(s) referred to in Reasons	**:**	***Telum Civil (Qld) Pty Limited v Construction, Forestry, Mining and Energy Union*** [2013] FWCFB 2434 ***Williams v MacMahon Mining Services Pty Ltd*** [2010] FCA 1321 ***Fair Work Ombudsman v Devine Marine Group Pty Ltd & Others*** [2014] FCA 1365 ***Dalglish v MDRN Pty Ltd (No 2)*** [2014] 287 FLR 227 ***Direct Freight Express Pty Ltd v King*** [2015] FCCA 1006 ***Aitken v Virgin Blue Airlines and Vandeven v Virgin Blue Airlines*** [2013] FCCA 2031 ***Somers v S.E.T.S Enterprises Pty Ltd and another*** [2015] WAIRC 00953 ***Construction, Forestry, Mining and Energy Union v Clarke*** [2008] 170 FCR 574 ***Cerin v ACI Operations Pty Ltd & Ors*** [2015] FCCA 2762 ***Suda Ltd v Sims (No 2)*** [2014] FCCA 190 ***Chileshe v E & M Business Trust*** [2014] FCCA 1381 ***Reeve v Ramsey Health Care Australia Pty Ltd (No 2)*** [2012] FCA 1322 ***Construction, Forestry, Mining and Energy Union v Corinthian Industries (Australia) Pty Ltd (No 2)*** [2014 FCA 351 ***Melbourne Stadium Ltd v Sautner*** [2015] FCAFC 20

REASONS FOR DECISION AS TO COSTS

Background

1 On 22 October 2015 I dismissed the claimant's action against each respondent. My reasons for doing so are set out in ***Somers v S.E.T.S Enterprises Pty Ltd and another*** [2015] WAIRC 00953. Following the delivery of my reasons for decision the respondents made a costs application which was adjourned to enable the provision of written submissions. The parties agreed that I should determine the issue of costs on the papers.

2 These are my reasons with respect to costs.

Grounds for Making the Application

3 The respondents argue that they were, in defending the claim, forced to incur considerable unnecessary costs ($43,307.00). They say that the claimant's claim was fundamentally misconceived when considered in light of the decision in ***Telum Civil (Qld) Pty Limited v Construction, Forestry, Mining and Energy Union*** [2013] FWCFB 2434 (***Telum***).

4 To avoid the cost of the trial the respondents' solicitors, the day prior to the trial commencing, wrote to the claimant's solicitors and made a counter-offer to settle the claim as follows:

> *Your client is relying on the case of Williams v MacMahon Mining Services Pty Ltd [2010] FCA 1321. The Full Bench in Telum Civil (Qld) Pty Ltd v CFMEU [2013] FWCFB 2434 (**Telum case**) expressly said:*
>
> > *"[That] case is concerned with a different statutory context and Barker J's decision does not assist in the proper construction of the expression "casual employee" in s.123(1)(c) of the FW Act."*
>
> *As clearly stated in my clients' Outline of Submissions, the Telum case is wholly apposite for the proper construction of section 86 of the Fair Work Act 2009 (Cth), and therefore, the case that your client relies upon does not assist him.*

As you are aware, section 570 of the Fair Work Act 2009 (Cth) allows my clients to seek their costs if:

(a) the Court is satisfied that your client instituted the proceedings vexatiously or without reasonable cause; or

(b) the Court is satisfied that your client's unreasonable act or omission caused my client to incur costs.

If my clients are successful, my clients will be seeking costs.

In the circumstances, I am instructed by my clients to:

1. *reject your client's offer;*
2. *make the following without prejudice offer to your client, in full and final settlement of all matters between the parties, open for acceptance until **4:00pm, Wednesday, 5 August 2015**:*
   a. *your client discontinue his claim and there be no order as to costs; and*
   b. *the parties sign a Deed of Settlement and Release, to be prepared by us, that includes mutual releases, indemnities, obligations of confidentiality and non-disparagement clauses.*

If this offer is not accepted by your client and the matter proceeds to trial and your client receives a result less favourable than this offer, my client intends to pursue your client for indemnity costs pursuant to section 570(2)(b) of the Act.

In the matter of Daglish v MDRN Pty Ltd (No. 2) [2014] FCCA 1969, it was accepted that an applicant's failure to accept a reasonable offer was an 'unreasonable act or omission' for the purposes of section 570(2)(b) of the Act.

*Please provide your client's response to this offer by **4:00pm, Wednesday, 5 August 2015**.*

5 The claimant did not accept the offer to settle and the matter proceeded to trial.

6 Ultimately the court accepted the respondents' arguments. It followed ***Telum*** and held that ***Williams v MacMahon Mining Services Pty Ltd*** [2010] FCA 1321 (***Williams***) had no bearing on the proper construction of the meaning of 'casual employee'.

7 The respondents contend that when considered in the context of the case, the claimant's claim had no prospect of success and that it was unreasonable for him to have refused the settlement proposal. Further the claimant was on notice that the non-acceptance of the offer would, in a future costs application, be argued to be an unreasonable act or omission as contemplated by s 570(2)(b) of the Fair Work Act (FW Act).

8 The respondents assert that a number of authorities including ***Dalglish v MDRN Pty Ltd (No 2)*** [2014] 287 FLR 227 (***Dalglish***), ***Direct Freight Express Pty Ltd v King*** [2015] FCCA 1006 [14] - [15] and [28] - [34] (***King***), and ***Aitken v Virgin Australia Airlines and Vandeven v Virgin Australia Airlines (No 2)*** [2013] FCCA 2031 [31] (***Vandeven***) support their case for costs.

9 In addition they say that the claimant has done other things (constituting unreasonable acts or omissions) which have resulted in the respondents incurring unnecessary additional costs. The acts or omissions complained of are as follows:

a) Not complying with time frames set by the court with respect to the lodgement of discovery, witness statements, outline of submissions and notice of cross-examination;

b) Failing to seek an extension of time for compliance with the court's orders;

c) Failing to properly plead his claim;

d) Introducing further and better disclosure on the morning of the first day of trial;

e) The abandonment of part of his claim only two days prior to the commencement of the trial; and

f) Unnecessarily cross-examining witnesses.

10 The second respondent contends that the claim made against him as director of the first respondent was entirely misconceived and unnecessary. He asserts also that the claim against him was not prosecuted and that his situation is not dissimilar to the fourth respondent in ***Cerin v ACI Operations Pty Ltd & Ors*** [2015] FCCA 2762 [84] - [85] (***Cerin***), where a costs order was made against a worker who, at trial, failed to prosecute his claim against the senior manager of the respondent employer.

Claimant's Position

11 The claimant argues that merely because he failed to establish his claim does not mean that he instituted the proceedings vexatiously or without reasonable cause. He submits that his argument relating to the application of ***Williams*** was with respect to a point of law that could not be viewed as clearly settled.

12 Further, when considering the entirety of the evidence, the issues could not be seen as so clear as to afford the claimant with no prospect of success in the action. There were numerous facts and issues in dispute that required the making of findings.

13 The claimant further denies that his acts or omissions were unreasonable. He says that the late lodgement of documents did not materially affect the conduct of the trial and further denies that his case was not properly pleaded. He contends that it was clear throughout that he was asserting that he was not a 'casual employee'.

14 He says also that his refusal to discontinue the action on the basis that each party bears its own costs was not an unreasonable act particularly in the context of the proceedings. His non-acceptance of the offer of settlement was not as exceptional or unreasonable so as to warrant a costs order being made.

15 With respect to the second respondent he argues that the interrelationship between the first and second respondents was such as to draw the second respondent's liability for the purpose of s 550 and s 546 of the FW Act. If he had been successful against the first respondent it would have been open for the court to have ordered the second respondent to pay a penalty.

16 Further and in any event, there is no evidence to suggest that the second respondent incurred legal costs independently of the first respondent. All aspects of the claim were identical for both respondents.

17 Finally, the claimant disputes the amount claimed and says that the issue of quantum should be dealt with at a taxation of costs, only if a costs order is made against the claimant.

Determination

18 Section 570 of the FW Act provides:

> ***570 Costs only if proceedings instituted vexatiously etc.***
>
> *(1) A party to proceedings (including an appeal) in a court (including a court of a State or Territory) in relation to a matter arising under this Act may be ordered by the court to pay costs incurred by another party to the proceedings only in accordance with subsection (2) or section 569 or 569A.*
>
> *Note: The Commonwealth might be ordered to pay costs under section 569. A State or Territory might be ordered to pay costs under section 569A.*
>
> *(2) The party may be ordered to pay the costs only if:*
>
> *(a) the court is satisfied that the party instituted the proceedings vexatiously or without reasonable cause; or*
>
> *(b) the court is satisfied that the party's unreasonable act or omission caused the other party to incur the costs; or*
>
> *(c) the court is satisfied of both of the following:*
>
> *(i) the party unreasonably refused to participate in a matter before the FWC;*
>
> *(ii) the matter arose from the same facts as the proceedings.*

19 Section 570(2)(c) is not relevant to my considerations. Similarly s 569 and s 569A of the FW Act do not have any application in this instance.

20 Section 570(1) of the FW Act provides that a costs order is entirely discretionary, subject however to the constraints imposed by s 570(2). Section 570(2) of the FW Act ensures that litigants involved in proceedings under the FW Act are not exposed to a costs order being made against them save in limited circumstances (see ***Suda Ltd v Sims (No 2)*** [2014] FCCA 190 (***Suda***) per Lucev J at [20]).

21 Section 570(2) of the FW Act provides protection. If a claimant believes, in good faith that a set of facts exist that entitles him or her to a legal remedy, then he or she will not be exposed to an adverse costs order if either:

a) the evidence leads a court to make a different finding as to the facts (see ***Chileshe v E & M Business Trust*** [2014] FCCA 1381 at [39]); or

b) he or she is mistaken about the application of the law to those facts.

22 In ***Suda***, Lucev J repeated what was said in ***Construction, Forestry, Mining and Energy Union v Clarke*** [2008] 170 FCR 574 (***Clarke***), that the court ought not exercise its discretion to award costs (under s 570(2) of the FW Act) *'with too much haste'*. The discretion to award costs must be considered against the policy behind s 570(2) of the FW Act, which is to ensure that workers are not dissuaded from taking legitimate action to recover entitlements because of the prospect of a costs order being made.

Were the Proceedings Instituted Without Reasonable Cause?

23 The respondents assert that the claimant initiated the proceedings without reasonable cause.

24 In ***Reeve v Ramsay Health Care Australia Pty Ltd (No 2)*** [2012] FCA 1322 Barker J said at [10]:

> *It is now well accepted that one way of testing whether a proceeding is instituted 'without reasonable cause', for the purpose of a provision such as s 570, is to ask whether upon the facts apparent to the applicant at the time of instituting the proceeding, there were no substantial prospects of success. If success depends upon resolution in the applicant's favour of one or more arguable points of law, it is inappropriate to say that the proceeding was instituted 'without reasonable cause'. But where on the applicant's own version of the facts it is clear the proceeding must fail, it may be said that it lacks a reasonable cause…*

25 The pivotal issue at trial was whether the claimant was a casual employee. The respondents argued that the issue could (applying ***Telum***) only be determined on a proper construction of the award definition of 'casual employee'. The claimant argued however that whether or not he was a casual employee could not be determined outside of common law principles. The claimant argued that although the Miscellaneous Award 2010 [MA000104] provides that 'a casual employee is one engaged as such', common law principles nevertheless need to be considered in determining whether he was engaged as a casual employee. In ***Fair Work Ombudsman v Devine Marine Group Pty Ltd & Others*** [2014] FCA 1365 White J at [141] and [142] recognised that such contention was capable of argument (albeit that he did not accept it). In the circumstances it cannot be said that the issue is so well settled that it did not permit argument.

26 In ***Construction, Forestry, Mining and Energy Union v Corinthian Industries (Australia) Pty Ltd (No 2)*** [2014] FCA 351, his Honour Pagone J said (at [8]) that:

> *To exercise the discretion conferred by [s 570(2) (a) of the FW Act] the Court must be satisfied that the claims were relevantly, instituted without reasonable cause. This is not established merely because a party fails in the claims: R v Moore; ex parte Federated Miscellaneous Workers Union of Australia [1978] HCA 51; (1978) 140 CLR 470, 473. The*

relevant provisions reflect 'a policy of protecting a party instituting proceedings from liability for costs' and costs will rarely be awarded unless justified by exceptional circumstances: see Kangan Batman Institute of Technology and Further Education v Australian Industrial Relations Commission (2006) 156 FCR 275 at [60]. In Kangan Batman Institute it was said by the Full Court at [60] that 'a proceeding will be instituted without reasonable cause if it has no real prospects of success, or was doomed to failure'. In Kanan v Australian Postal and Telecommunications Union (1992) 43 IR 257 Wilcox J indicated at 264 that one way of testing whether the proceeding was instituted 'without reasonable cause' was to ask whether, upon the facts apparent to the Claimant at the time of instituting the proceeding, there was no 'substantial prospect of success'.

His Honour went on to say that a proceeding lacks a reasonable cause where it is clear that it must fail on the claimant's own version of events.

27 At [9] his Honour said:

Section 570(2)(a) imposes a high threshold to be established before costs can be awarded, and the threshold may be difficult to meet where the complaint concerns forensic judgments made together with other forensic judgments which would not meet the threshold. The test in s 570(2)(a) is, relevantly, whether the claim was instituted "vexatiously or without reasonable cause". Applications under s 570(2)(a) are not occasions for courts to be invited to second guess forensic decisions made by litigants, but to compensate a party for costs incurred by them in defending proceedings which were instituted vexatiously or without reasonable cause.

28 The respondents contend that the claim has been brought vexatiously because the claim was so obviously untenable or manifestly groundless as to be utterly hopeless, or in the alternative, the claim was brought without reasonable cause because on the claimant's own version of events his claim could not succeed and was doomed to fail. With respect, I do not agree with those contentions.

29 The legal issues were not so clear cut that they were not open to argument. Despite having signed an employment contract which stated that he was a casual employee and notwithstanding that he was told by the second respondent that he was engaged as a casual, the claimant nevertheless believed because of the way the parties conducted themselves that he was not in fact a casual. That belief was not based on some fanciful notion but rather on common law principles which he thought applied to him. The claimant was ultimately unsuccessful because he was mistaken about the application of the law to his circumstances.

30 I am not satisfied that the claim was instituted without reasonable cause. The claimant genuinely believed that he was not a casual employee and took action accordingly. The fact that he was unsuccessful in his claim does not mean that there are exceptional circumstances which justify the award of costs. Costs do not simply follow the event.

Did the Claimant Commit an Unreasonable Act or Omission Causing Cost?

31 The respondents submit that if the court is unwilling to award costs pursuant to s 570(2)(a) of the FW Act, then in the alternative it should make an order pursuant to s 570(2)(b) of the FW Act. Two reasons are advanced to support the contention. The first being the claimant's conduct in the proceedings and secondly, the claimant's refusal to settle the claim on the basis proposed by the respondents.

32 In ***Suda*** his Honour Lucev J, in dealing with s 570(2)(b) of the FW Act, adopted what was said by the Full Court of the Federal Court of Australia in ***Clarke*** at 382 per Tamberlin, Gyles and Gilmour JJ. Their Honours observed that the exercise of the discretion is not necessarily engaged because:

a) a party does not conduct litigation efficiently;

b) a concession is made late;

c) a party may have acted in a different or timelier fashion; or

d) a party adopted a genuine but misguided approach.

33 Those observations are apposite in this case. Even if the respondents' contentions concerning the way in which the claimant ran his case were held to be correct, it should not result in the making of a costs order against him particularly given that the making of costs order requires exceptional circumstances. I do not accept that all the deficiencies referred to by the claimant either singularly or in combination were of such exceptional nature that it would warrant the making of a costs order against him.

34 The second independent basis upon which the respondents say that the claimant acted unreasonably was his refusal to accept the offer of settlement made on 5 August 2015. There are a number of authorities, including ***Dalglish***, ***King***, ***Vandeven*** and ***Melbourne Stadium Ltd v Sautner*** [2015] FCAFC 20 (***Sautner)*** which confirms that a failure to accept a reasonable offer of settlement may constitute an unreasonable act or omission. However it will not always be the case that the failure to accept a reasonable offer constitutes an unreasonable act. In ***Sautner*** their Honours Tracey, Gilmour, Jagot and Beach JJ observed at [168] that *'Calderbank letters presupposed the existence of a "costs jurisdiction". No such jurisdiction existed (subject to s570(2)) where claims are made under the Fair Work Act'.*

35 In the present case, no offer of money was made in the context of the claim seeking in excess of $24,000. The respondents invited the claimant to discontinue his claim in which case, they would not pursue costs. I observe that that offer was made late (the day before the trial was due to commence) in circumstances where the proceeding, which had been protracted, was ready for trial. The offer made was never likely to have been accepted at such a late stage, particularly in circumstances where the claimant would have been aware that a costs order against him, although possible, was in light of the authorities, unlikely. In my view, the offer that was made was not reasonable in the context of the timeline of the case and the refusal to accept the offer was not an unreasonable act which would give rise to the making of a costs order. Even if the offer was reasonable its rejection in the context of the timing of the offer was not an unreasonable act.

Claim for Costs by the Second Respondent

36 The second respondent was the person who facilitated the claimant's employment by the first respondent. The second respondent negotiated the terms of the employment agreement and was the face of the first respondent. The second respondent's acts and those of the company were largely one and the same.

37 If the claimant had been successful in his claim as against the first respondent, then it would have been arguable that the second respondent in some way by act or omission had directly or indirectly been knowingly concerned in, or party to, the contravention (s 550(2)(c) of the FW Act) and therefore taken to have contravened the civil remedy provision (s 550(1) of the FW Act). In those circumstances, the claim against the second respondent was legitimately brought.

38 The second respondent relies on what Simpson J said in ***Cerin*** to support his claim for costs. In that matter his Honour observed that the applicant had, at trial, failed to prosecute his claim against the employer's senior manager and concluded that the claim against him was vexatious and made without reasonable cause. The factual circumstances that gave rise to his Honour's decision to award costs were unexplained in his Honour's reasons.

39 The claim made against the second respondent in this matter was neither vexatious nor, for the reasons stated previously, initiated without reasonable cause. ***Cerin*** is clearly distinguishable in that the acts or omissions of the first and second respondents in this matter were intertwined. Had the claimant been successful against the first respondent, the second respondent could conceivably had orders made against him. Further and in any event there was never any failure to prosecute this claim against the second respondent. Having said that I acknowledge that the claimant struggled to identify the precise legal foundation for his claim against the second respondent but that does not mean that it did not exist.

Discretion

40 Section 570(1) of the FW Act makes it clear that the award of costs is entirely discretionary. The exercise of discretion must take into account the merits of the claim and the way in which the litigation was conducted. All of those factors need to be considered in the context of the policy behind s 570 of the FW Act, which is to ensure that workers are not dissuaded from making genuine claims because of the prospect of an adverse costs order being made, and further that costs orders are exceptional in nature.

41 In this matter I am satisfied that the claimant was genuine in making his claim and reasonably believed he had a legitimate claim against the respondents. Ultimately he was unsuccessful because he was mistaken as to the application of the law. In the circumstances, the claimant should not be subject to an adverse costs order. Irrespective of s 570(2) of the FW Act my general discretion under s 570(1) of the FW Act is exercised in refusing the costs application.

Conclusion

42 The costs application is refused.

G. CICCHINI
INDUSTRIAL MAGISTRATE

UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—

2015 WAIRC 01047

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	**:**	2015 WAIRC 01047
CORAM	**:**	COMMISSIONER J L HARRISON
HEARD	**:**	WEDNESDAY, 11 NOVEMBER 2015
DELIVERED	**:**	WEDNESDAY, 25 NOVEMBER 2015
FILE NO.	**:**	B 110 OF 2015
BETWEEN	**:**	PETER CHRISTIE Applicant AND STEELFAB ENGINEERING PTY LTD T/AS STEELFAB WATER SOLUTIONS Respondent

Catchwords	**:**	Industrial Law (WA) - Contractual benefits claim - Entitlements under contract of employment - Payment of wages - Application for an order that the Commission refrain from further hearing of this application - Application for stay order dismissed
Legislation	**:**	*Industrial Relations Act 1979* s 26(1)(a), s 27(1)(a) and s 29(1)(b)(ii) *Fair Work Act 2009* s 323 *Corporations Act 2001*
Result	**:**	Application for stay order dismissed

Representation:

Applicant	:	Mr P Mullally (as agent)
Respondent	:	Mr G McCorry (as agent)

Case(s) referred to in reasons:

Paulownia Saw Milling, Timber Supplies and Manufacturing Pty Ltd (ACN 081 463 452) v Warren Ian Jones (2001) 81 WAIG 2715

Robe River Iron Associates v Amalgamated Metal Workers and Shipwrights Union of Western Australia (1987) 68 WAIG 4

The Commissioner of Police of Western Australia v AM [2010] WASCA 163; 91 WAIG 1

Voth v Manildra Flour Mills Pty Ltd (1990) 71 CLR 538

Reasons for Decision

1 On 17 July 2015 Peter Christie (the applicant) lodged this application claiming he is owed $90,575.28 in unpaid wages under his contract of employment with Steelfab Engineering Pty Ltd t/as Steelfab Water Solutions (the respondent). The respondent claimed that this application should be dismissed as the applicant has been paid all of his contractual entitlements.

2 The Commission convened a conciliation conference on 2 September 2015. After the conference the applicant provided copies of his bank statements to the respondent. In response the respondent was to file a *Form 5 – Notice of answer* setting out why the applicant is not owed the wages he is claiming but instead of filing a notice of answer to this application the respondent sought an order permanently staying this application. A hearing was listed to deal with this preliminary issue under s 27(1)(a) of the *Industrial Relations Act 1979* (the Act).

Submissions

Respondent

3 The respondent seeks a permanent stay of the proceedings on the basis that the Commission is an inappropriate forum for these proceedings to be conducted and the respondent argues that to proceed with this application is an abuse of process. The respondent relies on the authority of ***Voth v Manildra Flour Mills Pty Ltd*** (1990) 71 CLR 538 [30] whereby the High Court ruled that a court can dismiss or stay proceedings which are oppressive, vexatious or an abuse of process.

4 The respondent argues that proceeding with this application is not in the public interest and unjust as the applicant was in control of the respondent's operations and had authority to disburse the respondent's funds in order to meet its contractual and statutory obligations during the period the applicant claims he was not paid the wages he is seeking. The respondent submits that the Commission should have regard to the witness statements of Ms Karen Hagen the respondent's Accounts Administrator and Mr Phillip Furey the respondent's General Manager which demonstrate that when the applicant was in charge of the respondent's operations its accounts were in disarray.

5 The applicant's failure not to pay his remuneration caused the respondent to be in breach of its obligations under s 323 of the *Fair Work Act 2009* (FW Act) and to trade whilst insolvent. As a result the respondent may have claims against the applicant in respect of his negligent or reckless conduct whilst he was in charge of the respondent's operations. The respondent's creditors also have potential claims against the respondent and the applicant under the *Corporations Act 2001* arising from the applicant's breach of statutory duties by trading whilst insolvent.

6 The respondent acknowledges that the Commission has jurisdiction to deal with this application but the Commission cannot deal with counterclaims made by the respondent and its creditors because the Commission cannot make orders for the applicant to compensate the respondent or the respondent's creditors for losses and damage suffered as a result of the applicant's actions. The respondent and its creditors would have to commence separate proceedings against the applicant litigating similar facts and such an obligation would be unfairly burdensome, prejudicial or damaging to the respondent and its creditors.

7 The applicant can bring his claim in other jurisdictions which can deal with all matters in dispute between the parties. The applicant can lodge an application in the Industrial Magistrates Court for a contravention of s 323 of the FW Act or the Federal Circuit Court and Federal Court. As the respondent will suffer an injustice if this application proceeds the Commission is an inappropriate forum for the applicant's claims to be litigated and these proceedings should be permanently stayed.

Applicant

8 The applicant argues that there is no basis for the Commission to permanently stay this application. There is no dispute that the applicant's claim can be dealt with by the Commission and the applicant has the right to have his application heard and determined and he is ready to proceed with his application against the respondent and have his claims to the payment of his wages determined.

9 The applicant relies on the authorities of ***The Commissioner of Police of Western Australia v AM*** [2010] WASCA 163; 91 WAIG 1 and ***Paulownia Saw Milling, Timber Supplies and Manufacturing Pty Ltd (ACN 081 463 452) v Warren Ian Jones*** (2001) 81 WAIG 2715 in support of his claim that as this application is not frivolous or vexatious it should proceed.

10 In support of the applicant's claim that the Commission should deal with this application he argues that to-date the respondent has not lodged any defence to this application nor have counterclaims been lodged or other proceedings been commenced by the respondent or its creditors against the applicant in any other jurisdiction.

Consideration

11 Section 27(1)(a) of the Act provides that the Commission can refrain from further hearing of a matter. This discretion is to be exercised taking into account the obligations on it under s 26(1)(a) of the Act (see ***Robe River Iron Associates v Amalgamated Metal Workers and Shipwrights Union of Western Australia*** (1987) 68 WAIG 4, 6).

12 After carefully considering the submissions of each party I decline to issue an order staying this application. I find that it is in the public interest for this application to proceed as it is my view that when taking into account equity, good conscience and substantial merit the applicant has the right to have his matter heard by the Commission and in my view the applicant will suffer an injustice if he is unable to do so. There is no dispute that the Commission has the power to deal with this s 29(1)(b)(ii) application. It is also the case the applicant is ready to proceed with his claims against the respondent and no evidence has been adduced by the respondent of any specific detriment the respondent will suffer if this application is heard by the Commission. The respondent has only identified suffering a potential injustice if this matter is listed for hearing. No counterclaim against the applicant has been lodged by the respondent with respect to this application in this jurisdiction, nor has the respondent or its creditors commenced any proceedings against the applicant in any other jurisdiction.

13 An order will issue dismissing the respondent's application to stay the hearing of this application.

2015 WAIRC 01046

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	PETER CHRISTIE
	APPLICANT
	-v-
	STEELFAB ENGINEERING PTY LTD T/AS STEELFAB WATER SOLUTIONS
	RESPONDENT
CORAM	COMMISSIONER J L HARRISON
DATE	WEDNESDAY, 25 NOVEMBER 2015
FILE NO/S	B 110 OF 2015
CITATION NO.	2015 WAIRC 01046

Result	Application for stay order dismissed
Representation	
Applicant	Mr P Mullally (as agent)
Respondent	Mr G McCorry (as agent)

Order

HAVING HEARD Mr P Mullally as agent on behalf of the applicant and Mr G McCorry as agent on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders –

THAT the application for a stay order be and is hereby dismissed.

(Sgd.) J L HARRISON,
[L.S.] Commissioner.

2015 WAIRC 01031

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	**:**	2015 WAIRC 01031
CORAM	**:**	CHIEF COMMISSIONER A R BEECH
HEARD	**:**	WEDNESDAY, 4 NOVEMBER 2015
DELIVERED	**:**	THURSDAY, 19 NOVEMBER 2015
FILE NO.	**:**	B 125 OF 2015
BETWEEN	**:**	MR JOHNNY GIRONS
		Applicant
		AND
		FMC TECHNOLOGIES AUSTRALIA LIMITED
		ABN: 21 004 030 317
		Respondent

CatchWords	:	Industrial Law (WA) - contractual benefits - Annual salary - whether paid hourly - whether entitled to be paid for accrued time off untaken - whether entitled to responsibility bonus
Legislation	:	Industrial Relations Act 1979 s 29(1)(b)(ii)
Result	:	Application dismissed
Representation:		
Applicant	:	Mr J Girons
Respondent	:	Ms T Firios and Ms G Delvalle

Case(s) referred to in reasons:

Director General, Department of Education v. United Voice WA [2013] WASCA 287; (2013) 94 WAIG 1

Shacam Transport Pty Ltd v Damien Cole Pty Ltd [2013] WAIRC 00872; (2013) 93 WAIG 1628

Case(s) also cited:

Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd [2004] HCA 52; (2004) 219 CLR 165

Pacific Carriers Ltd v BNP Paribas (2004) 218 CLR 451

Reasons for Decision

1 Mr Girons was employed by FMC Technologies (FMC) as a Field Service Technician from 15 July 2013 to 15 May 2015. He claims over the period of his employment he has not been paid $44,755.70 gross to which he is entitled under his contract of employment. FMC disputes Mr Giron's claim and says that he has been paid correctly and has misunderstood the terms of his contract of employment.

2 Mr Girons and FMC have agreed that his entire application should be decided by the Commission using week 33 of 2015 as an example. If Mr Girons shows that some, or all, of his claim for week 33 is correct, then the Commission's decision will be applied to the balance of his application; if Mr Girons does not show that his claim for week 33 is correct, then his entire application will be dismissed.

3 Mr Girons and FMC Technologies also agreed that the Commission may decide this matter on the papers, with an opportunity being given to make an oral submission to clarify any matter. Accordingly, Mr Girons made written submissions regarding week 33, FMC Technologies made written submissions in reply and Mr Girons was given the opportunity to make a written reply to any matter raised by FMC Technologies not covered in his submissions.

4 It was agreed that the Commission will accept into evidence the 'Letter of understanding' (LOU) dated 9 July 2013 and the 'Fluid Control Policy' (FCP) dated 1 August 2013 as constituting the terms of Mr Girons' contract of employment. Both Mr Girons and FMC made brief oral submissions clarifying their written submissions.

The applicable law

5 The *Industrial Relations Act, 1979* (WA) allows an employee to bring a claim to the Commission that his employer has denied him a benefit to which he is entitled under his contract of employment. It is not disputed that Mr Girons was an employee, that he was employed pursuant to a contract of employment, and that the matters to which he claims to be entitled are 'benefits'.

6 Whether Mr Girons is entitled to the benefits he claims turns upon the proper interpretation of the LOU and the FCP. The ascertainment of the terms of a contract, whether oral or in writing, always turns on the words used by the parties, and the construction of the words used by the parties are to be judged objectively (*Director General, Department of Education -v- United Voice WA* [2013] WASCA 287; (2013) 94 WAIG 1; *Shacam Transport Pty Ltd v Damien Cole Pty Ltd* [2013] WAIRC 00872; (2013) 93 WAIG 1628 per Smith AP at [43], referring to *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* [2004] HCA 52; (2004) 219 CLR 165 where the Full Court of the High Court said at [40]:

> This Court, in *Pacific Carriers Ltd v BNP Paribas* (2004) 218 CLR 451, has recently reaffirmed the principle of objectivity by which the rights and liabilities of the parties to a contract are determined. It is not the subjective beliefs or understandings of the parties about their rights and liabilities that govern their contractual relations. What matters is what each party by words and conduct would have led a reasonable person in the position of the other party to believe. References to the common intention of the parties to a contract are to be understood as referring to what a reasonable person would understand by the language in which the parties have expressed their agreement. The meaning of the terms of a contractual document is to be determined by what a reasonable person would have understood them to mean. That, normally, requires consideration not only of the text, but also of the surrounding circumstances known to the parties, and the purpose and object of the transaction (*Pacific Carriers Ltd v BNP Paribas* at 461-462 [22]).

Week 33

Claim re hourly rate

7 It is agreed that in week 33 Mr Girons worked 12 hours per day over six days. It is also agreed that the correct hourly rate in week 33 is $33.1733.

8 Mr Girons claims that he should be paid for the 12 hours per day at $33.1733 per hour. He points to his payslip which, relevantly, states:

Pay elements

Description	Rate	Hours	Value
Normal	33.1733	65.00	2156.26

9 Mr Girons points to cl 6.3 which states that the typical schedule for offshore and onshore worksites includes up to 12 hours per day with a minimum 30 minute break for lunch. He says that there is no salary rate mentioned for 12 hours per day.

10 In reply, FMC says that as Mr Girons was a regular full time employee there was no mechanism for him to be paid for all hours worked as if he was a casual employee. Mr Girons was paid on the basis of 162.5 working hours per month. Over 12 months, that amounts to 1,950 annual hours. The 1,950 annual hours equates to 37.5 hours per week over the 52 weeks of the year. 37.5 hours per week equates to 7.5 hours per working day. Mr Girons' annual base salary in week 33 was $64,688 per year.

11 FMC points out that Mr Girons' hourly rate of $33.1733 multiplied by 1,950 hours equals his annual base salary of $64,688. Mr Girons' claim to be paid for an eight hour day is incorrect because it amounts to 40 hours per week and, over the year, to 2080 annual hours; when this is multiplied by the hourly rate it would give him an annual base salary of $69,000 per year.

12 I find as follows. Whether Mr Girons should be paid for 12 hours at the hourly rate will depend upon the terms of his contract of employment. The relevant terms of the LOU are as follows:

4. REMUNERATION

4.1 You will be paid an annual gross base salary of AUD $62,500 per annum.

4.2 Your base salary will be reviewed annually as part of FMC's Performance Management program.

4.3 Your salary will be paid monthly, two weeks in advance and two weeks in arrears, on the 15th of each month by Electronic Funds Transfer into your nominated account at a bank, building society or credit union.

5.4(sic) Your final pay upon termination of your employment shall be paid to you in the normal pay period on or after the last day of work, provided you have returned all Company property.

5.5(sic) The Company may deduct from your wages, or any monies owing, any amount it is authorised or required to deduct, including any overpayment of remuneration.

[It is agreed that in the 2014 annual salary review, Mr Girons was awarded a salary increase on 1 July 2014 and $64,688 is the annual base salary which is relevant to week 33.]

6. HOURS OF WORK

6.1 The usual working hours required by the Company are 8 hours per day, 5 days per week, to meet business demands. Your salary includes a component in recognition of this requirement and no further payment will be made. You are also entitled to an unpaid 30 minute break for lunch. Hours worked exceeding this requirement will be compensated as stated in section 7.

6.2 On occasion you will be required to work away from your HBA at onshore or offshore work sites, at the Company's discretion Monday to Sunday (inclusive of Public Holidays), dependent on customer requirements. Onshore and offshore worksites are defined as locations outside our HBA. You will be compensated for onshore and offshore work in accordance with the Bonus Policy, attached to this contract.

6.3 The typical schedule for offshore and onshore work sites includes up to 12 hours per day with a minimum 30 minute break for lunch.

7. ADDITIONAL HOURS

7.1 You may be required by the Company to work outside your usual hours of work from time to time to meet business demands.

For additional hours worked in your HBA, the following penalties will be paid:

a) 1.5 times the base rate of pay**:**

- After 8 hours of work per day, Monday to Sunday.

b) 2 times the base rate of pay:

- After 11 hours of work per day, Monday to Sunday.

d) Weekly "On call" pay – 11 hours at salary rates.

e) Actual "Call out" rates

- Monday to Friday: Minimum of 4 hours
- Saturday: Minimum of 4 hours at 1.5 times base rate of pay.
- Sunday & Public holiday: Minimum of 4 hours at double time.
- All actual times will be captured in a Log book which will be countersigned daily by the Workshop Supervisor.

7.2 If you are required to work additional hours at Company appointed offshore and onshore work sites, payment will be as per the Bonus Policy.

7.3 All additional hours must be recorded on your timesheet and are subject to approval by the Country Manager or a designee.

7.4 FMC Technologies supports the development of its employees and as such will require and encourage employees to attend training and development courses from time to time. Where such a course would fall outside ordinary hours, attendance will be paid at your base rate of pay and no additional penalties will be paid.

7.5 For the purpose of this contract, the base rate of pay is defined as the salary divided by 12 divided by 173.3.

13 The above terms provide for an annual base salary (4.1) which is to be paid monthly, 2 weeks in advance and 2 weeks in arrears (4.3). The usual working hours required by the company to meet business demands are set out, and also that the salary includes a component in recognition of this requirement, that no further payment will be made and that hours worked exceeding this requirement will be compensated as stated in section 7(6.1).

14 Those words viewed in the contract as a whole show that the annual base salary is payment for the usual working hours required by the company. That this is so is shown by the express provision that the annual base salary expressly includes a component in recognition of those usual working hours and that no further payment will be made.

15 In other words, Mr Girons' pay for working the usual working hours required by the company is the annual salary paid to him on a monthly basis. Any additional hours he works beyond the usual working hours are not covered by the annual base salary; additional hours worked are paid for by the payment which is set out section 7 in addition to the annual salary, provided that additional hours worked offshore and onshore will be paid for as per the Bonus Policy.

16 This conclusion, that the annual base salary, paid monthly, is the payment to Mr Girons for the usual working hours required by the company, follows naturally from the wording used in the LOU. I think that is what a reasonable person would understand the wording to mean.

17 The LOU provides that the usual working hours required are 8 hours per day, 5 days per week (6.1). FMC says that the standard hours at FMC are actually 7.5 hours per day, not 8 hours and FMC has been paying Mr Girons on that basis. In my view, it is not necessary to resolve whether the usual working hours required are 8 hours per day or 7.5 in order to decide Mr Girons' claim for week 33 because Mr Girons' claim is that he should be paid for each hour he worked in week 33 at the hourly rate. Mr Girons says he should be paid $33.1733 per hour for the 12 hours per day for 6 days that he actually worked in week 33.

18 Mr Girons points to section 6.3 which says the typical schedule for offshore and onshore work sites includes 12 hours per day and states, correctly, that there is no salary rate mentioned for 12 hours per day. Does that mean therefore he is entitled under his contract of employment to be paid $33.1733 per hour for the 12 hours per day for 6 days that he actually worked in week 33?

19 The answer to this question lies in the LOU and the FCP read as whole. To concentrate only upon section 6.3 is to ignore sections 4, 6.1, 6.2, and 7 and the offshore bonus in the FCP. The 12 hours per day he worked in week 33 include the 8 hours (or according to FMC the 7.5 hours) per day which are the usual working hours required by the company and for which he is paid by his annual base salary. If, as he claims, all 12 hours are to be paid for at an hourly rate, there would not be any need for the LOU to provide for an annual salary for the usual working hours required by the company.

20 Importantly, there is no provision in the LOU for the usual working hours required by FMC to be paid hourly. In fact, the LOU does not mention an hourly rate as such. The only place in the LOU which can be said to create an hourly rate is in section 7.5 which provides for a 'base rate of pay' as follows:

> 7.5 For the purpose of this contract, the base rate of pay is defined as the salary divided by 12 divided by 173.3.

21 Two things should be noted.

22 First, section 7.5 does not refer to the 'hourly rate' – it refers to a 'base rate of pay'. the formula results in an hourly rate (which for week 33 is agreed to be $33.1733), but it is called the base rate of pay.

23 Second, the LOU says the base rate of pay is created 'for the purpose of this contract'. What 'purpose' in the contract requires a base rate of pay? A base rate of pay is mentioned in only one place: in section 7 Additional Hours where penalties are prescribed to be paid for working outside the usual hours of work and these penalties are expressed to be in multiples of the 'base rate of pay'. Therefore, one purpose in the contract for which a base rate of pay is needed is to calculate the penalty payments of 1.5 or 2 times that base rate of pay for additional hours worked in the home base area.

24 However, there is no other purpose in the LOU where the base rate of pay is mentioned or is needed. There is no other purpose in the contract which requires the base rate of pay. Other sections which provide for annual leave, personal leave, sick leave, carer's leave, compassionate leave, public holidays and long service leave, do not state that payment for them is by reference to a base rate of pay. Importantly for Mr Girons' claim to be entitled to be paid for the 12 hours per day at $33.1733 per hour, section 6, including 6.3, does not say that the usual working hours required by FMC are paid hourly at the base rate of pay.

25 Therefore, the only 'purpose' for which the contract requires the base rate of pay is the calculation of penalty payments in cl 7 – Additional Hours, not as payment for the usual working hours required in section 6 Hours of Work.

26 That does not mean the LOU does not provide for the payment of the usual working hours required in section 6 Hours of Work. It does provide for it. It prescribes an annual salary of $64,688, paid monthly which includes a component in recognition of those usual working hours. To the extent that those usual hours were exceeded in week 33 on offshore and

onshore work sites, the additional hours are paid for by an offshore bonus. In other words, when Mr Girons asks 'Where does it say that I'm not entitled to get paid over these 8 hours of work?', the correct answer is that it says he is entitled to be paid over these 8 hours of work by the annual salary.

27 As FMC submits, in my view correctly, if the usual working hours in week 33 were paid hourly, ie the 8 hours per day claimed, or 40 hours per week, multiplied by $33.1733, it would give Mr Girons an annual salary of $69,000 which would not be correct. It is a strong indication that the contract of employment does not provide for the 12 hours per day in week 33 to be paid hourly as Mr Girons claims.

28 For those reasons, Mr Girons' claim that he is entitled to be paid for the 12 hours per day in week 33 at $33.1733 per hour is not made out.

Claim re bonus allowance while away

29 The bonus allowance claimed by Mr Girons is agreed by FMC and it has been paid. It is not a claim that requires to be determined by the Commission.

Claim for payment for days off work not taken

30 Mr Girons claims that he is entitled to be paid for 6 days' time off accrued but not taken.

31 It is agreed that in week 33, Mr Girons was entitled to 0.5 days off work for every day spent offshore or away from a home base. Mr Girons was away from home base in week 33. He acknowledges that there is no explanation, in hours, of what '0.5 day' means, and neither is there an explanation of an hourly rate. He points out that the contract does not say that the days in lieu are actually lost.

32 He uses the base rate of $33.1733 per hour for 8 hours a day to quantify his claim that he should be paid at termination for the 0.5 days off work to which he is entitled but which he was not able to take.

33 FMC states that time off in lieu is designed to be a time-off benefit to allow the employee to have time off work without any deductions from accrued statutory leave entitlements. It is not designed to be a benefit to be paid on top of normal salary. When taken, the employee is paid at normal hours for the period as if they were working normal hours. It is calculated as a half-day entitlement which is 3.75 hours, being half of the 7.5 hour working day. Time off in lieu is not paid out on termination as are other leave entitlements.

34 I find as follows. Whether Mr Girons should be paid on termination any accrued time off not taken will depend upon the terms of his contract of employment. Mr Girons' entitlement to time off in lieu is contained in the FCP. It states as follows:

> Time Off
>
> For personnel on a contract other than 28/28 contracts the following will apply:
>
> For every day spent offshore or away from their home base, the employee will receive 0.5 days off work. For any SIT or chargeable work done in home base no time off is accrued unless weekend or statutory holidays are being worked.
>
> Service Technician Personnel are required to take their accrued leave immediately after returning from a job unless the Country Manager or Designee determines otherwise. Once accrued leave is taken, the employee must be available again for duties unless annual leave has been approved. If the Service Technician Personnel is asked to work again within their "Time Off", they will be compensated with a "day in lieu" for the leave days not taken.
>
> Company reserves the right to call back personnel as required and the employee must be given sufficient notice and must be agreed by both parties.

35 I find that in week 33 Mr Girons was entitled to 0.5 days off work without loss of pay for each of the 6 days. I also accept his submission that he did not take this time as leave because he was not given the opportunity to do so due to the workload. Does that mean that he is entitled to be paid at termination for the time off accrued but not taken?

36 The Time Off provision in the FCP above does not state that time off accrued but not taken is to be paid out at termination of employment. Nor does it state so elsewhere in the FCP. Nor in the LOU. The termination provisions in section 24, where they do refer to what is to be paid at termination, refer to '…only the monies earned through your date of discharge' (24.1) or 'payment for time worked' (24.7).

37 Mr Girons says that nowhere in the contract or bonus policy does it say he loses his payment if denied the option of using it by FMC. However, the FCP does not entitle him to payment; it entitles him to time off. He would be correct if he said that nowhere in the LOU or FCP does it say he is entitled to be paid in lieu of time off if he is denied the option of taking it by FMC, and that is the difficulty with this claim.

38 The language in the FCP for the entitlement is to '0.5 days off work'. This is, as FMC submits, an entitlement to paid time off work. The words are plain in their meaning. The words are not ambiguous. There is no provision for untaken time off to be paid for at termination. The language of the FCP should be understood in the light of its industrial context and purpose. In this case, the language is for time off work, not for payment for time off work if it cannot be taken.

39 For Mr Girons' claim to be successful, it would be necessary to find that it is implied that any untaken accrued time off will be paid out on termination. But it is difficult to imply a term into a contract of employment. It is possible to imply a term into a contract that is not there, but only in restricted circumstances. Generally, a court will only be able to imply a term in a contract in the following circumstances, some of which overlap:

> (1) it must be reasonable and equitable;

(2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it;

(3) it must be so obvious that 'it goes without saying';

(4) it must be capable of clear expression;

(5) it must not contradict any express term of the contract.

40 Can a term be implied into the FCP that untaken accrued time off will be paid for at termination? Such a term could be clearly expressed, it might even be reasonable and equitable, although that is not certain, but such a term would not be so obvious that it goes without saying and nor is it necessary to give the FCP business efficacy.

41 In some cases, an accrued entitlement to paid time off work which is not taken is paid out on termination, as is the case with untaken annual leave; and sometimes an accrued entitlement to paid time off work is not paid out on termination, as is the case with carer's leave. It is not the case that all accrued paid time off work untaken at termination is to be paid out. Payment of untaken accrued time off is not so obvious that it goes without saying and the FCP is effective without such a term. No term can be implied into the FCP that untaken accrued time off will be paid at termination.

42 As neither the LOU nor FCP say that any untaken accrued time off will be paid at termination, then Mr Girons has no entitlement under his contract of employment to be paid for it. For those reasons, this claim is not made out.

Claim re supervision allowance

43 Mr Girons states that in week 33 he was on an oil and gas offshore rig. He was the first technician in Australia working for the Fluid Control Division offshore. No-one knew how to do the job before he did it and he basically set up the inspection process himself. No-one knows the work more than he does. There were no other FMC technicians on this job in week 33. Three customer's employees were onsite, and following his instructions to speed up the inspection process, he had to supervise this inspection job by himself and that there is a supervision allowance of $50 per day for doing so. The job was perhaps even a coordinator job, but it was actually supervising the job.

44 FMC states that this claim refers to a responsibility bonus. It points out that the responsibility bonus is applicable to service supervisors and Mr Girons was not employed as a service supervisor. Mr Girons was employed as a service technician. Further, due to the remote location of most worksites where service technicians may or may not work with their FMC colleagues, the service technician is required to be able to work autonomously and perform end-to-end duties including customer liaison, product rebuilding, inspection and testing and so on. It often sends employees by themselves to work autonomously and they have to interact with FMC customers so the customers understand the new piece of equipment. The customers will not be familiar with the equipment and they need a service technician to explain how it works. In FMC's view, inspection activity is nothing above what a service technician usually does.

45 I find as follows. The FCP contains a Responsibility Bonus as follows:

> Responsibility Bonus
>
> Service Supervisors are deemed competent and authorized by the Country Manager to perform additional tasks and will be entitled to claim an additional $50.00 AUD each day they perform in the role of Service Supervisor.
>
> This allowance is payable only when the job requirements are performed to the satisfaction of the Company and the customer. The Country Manager or designee has the responsibility for the implementation and interpretation of this.

46 The Responsibility Bonus is applicable to service supervisors who are deemed competent and authorised by the Country Manager to perform additional tasks. Mr Girons agrees that a service supervisor is different from a service technician. He was a service technician, not a service supervisor. That is an insurmountable problem for his claim.

47 Even if I accept that the work he performed is as Mr Girons has described it, the issue is not whether Mr Girons deserves to be paid the Responsibility Bonus – it is whether he is entitled to it under the FCP. The words used in the FCP are to be judged objectively. The words 'service supervisor' are clear and unambiguous. Even if it could be interpreted that the words 'service supervisor' also mean a service technician doing the work Mr Girons has described, and I do not think they can be, the service supervisor also has to be deemed competent and be authorised by the Country Manager to perform additional tasks. That describes a process which is necessary before a service supervisor is entitled to be paid the Responsibility Bonus. Mr Girons does not say that this process has been applied to him and I find that it has not.

48 As Mr Girons was a service technician, not a service supervisor, he was not entitled under his contract of employment to be paid the Responsibility Bonus. Accordingly, this claim is not made out.

Conclusion

49 For the above reasons, none of Mr Girons' claims for week 33 are made out. On the evidence, FMC has paid Mr Girons correctly in accordance with his contract of employment.

50 An order now issues dismissing his application. In accordance with the agreed understanding about how Mr Girons' application is to be dealt with, the order has the effect that his entire application is dismissed.

2015 WAIRC 01032

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	MR JOHNNY GIRONS
	APPLICANT
	-v-
	FMC TECHNOLOGIES AUSTRALIA LIMITED
	ABN: 21 004 030 317
	RESPONDENT
CORAM	CHIEF COMMISSIONER A R BEECH
DATE	THURSDAY, 19 NOVEMBER 2015
FILE NO/S	B 125 OF 2015
CITATION NO.	2015 WAIRC 01032

Result	Application dismissed
Representation	
Applicant	Mr J Girons
Respondent	Ms T Firios and Ms G Delvalle

Order

HAVING HEARD Mr J Girons on his own behalf and Ms T Firios and with her Ms G Delvalle on behalf of the respondent;

AND HAVING given Reasons for Decision;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby order:

THAT this claim be, and is hereby dismissed.

(Sgd.) A R BEECH,
[L.S.] Chief Commissioner.

2015 WAIRC 01036

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	**:**	2015 WAIRC 01036
CORAM	**:**	COMMISSIONER J L HARRISON
HEARD	**:**	THURSDAY, 29 OCTOBER 2015
DELIVERED	**:**	MONDAY, 23 NOVEMBER 2015
FILE NO.	**:**	U 63 OF 2015
BETWEEN	**:**	MICHAEL MARTIN KENNELLY
		Applicant
		AND
		JASON PAUL PYMM
		Respondent

Catchwords	**:**	Industrial Law (WA) - Termination of employment - Harsh, oppressive or unfair dismissal claim - Whether Commission has jurisdiction - Name of the respondent the applicant undertook work for - Whether a trading corporation - Commission satisfied respondent is a trading corporation - Application dismissed
Legislation	**:**	*Industrial Relations Act 1979* s 27(1) and s 29(1)(b)(i)
		Fair Work Act 2009 s 12, s 13, s 14(1)(a) and s (26)
Result	**:**	Dismissed
Representation:		
Applicant	**:**	In person
Respondent	**:**	Mr J Pymm

Case(s) referred to in reasons:

Bridge Shipping Pty Ltd v Grand Shipping SA and Anor [1991] 173 CLR 231

Rai v Dogrin Pty Ltd (2000) 80 WAIG 1375

Reasons for Decision

1 This application was lodged on 20 April 2015 by Michael Martin Kennelly (the applicant) under s 29(1)(b)(i) of the *Industrial Relations Act* (the Act). Mr Kennelly claims that he was unfairly dismissed on 25 March 2015 by Jason Paul Pymm (the respondent).

2 At a conference held on 9 June 2015 Mr Pymm raised two preliminary issues. Mr Pymm claimed that the applicant was a contractor to the respondent and not an employee and the named respondent to this application was incorrect. Following the conference Mr Pymm advised the Commission that the entity the applicant worked for was Mine Site Fencing Australia Pty Ltd as trustee for The Pymm Family Trust. If this is the entity the applicant worked for and if it is a trading corporation this application is subject to the *Fair Work Act 2009* (the FW Act) and the Commission is unable to deal with this application even if the applicant was an employee of the respondent.

3 The parties were requested to provide submissions as to their respective claims.

4 On 8 September 2015 Mr Pymm provided a statutory declaration stating the following:

> In response to the request made by Commissioner J L Harrison, I confirm Michael Kennelly was a contractor to Mine Site Fencing Australia Pty Ltd between the (sic) 31 July 2014 to 18 February 2015.
>
> Mine Site Fencing Australia Pty Ltd is an Australian Registered Business.
>
> > Business Name: The Trustee For The Pymm Family Trust | Entity: Trust
> >
> > T/As Mine Site Fencing Australia
> >
> > T/As Maintenance 4 Mines Australia
>
> As confirmation and evidence of the type of trading corporation as referred to earlier, I herewith attach (a) a copy of the front page of the Trust tax return for FY 2014/15 (the period for which Mr Michael Kennelly was contracting to Mine Site Fencing Australia) and (b) a copy of the compilation report prepared by A I Clynk & Associates for me as the director of the trustee company.

5 On 24 September 2015 the applicant provided a statutory declaration stating that Mr Pymm had many registered businesses and the respondent was an individual/sole trader. The applicant stated that he sent invoices to Jason Pymm at Minesite Fencing Aust (sic) and the applicant was paid by Mine Site Fencing Australia. The applicant claims that the Australian Securities and Investments Commission (ASIC) database shows the respondent's business name is Mine Site Fencing Australia and this business is conducted by an individual.

6 As there was insufficient information to determine the correct name of the entity the applicant worked for and if it was a trading corporation the matter was set down for hearing to deal with these issues.

7 Section 14(1)(a) of the FW Act defines a national system employer as a constitutional corporation so far as it employs an individual and s 13 of the FW Act defines a national system employee as an individual employed by a national system employer. Section 12 of the FW Act defines constitutional corporations as corporations which are trading or financial corporations formed within the limits of the Commonwealth. Section 26 of the FW Act states that it applies to the exclusion of all state or territory industrial laws that would otherwise apply to a national system employee or employer including the Act. If the respondent is a trading corporation the jurisdiction of the Commission to deal with the applicant's unfair dismissal claim is therefore excluded.

8 The issues to be determined in this matter are the correct name of the respondent, whether the respondent is incorporated, the character of the activities carried on by the respondent at the relevant time and whether the respondent was engaged in significant and substantial trading activities of a commercial nature such that it can be described as a trading corporation.

The correct name of the respondent

9 The applicant stated that he sent his invoices to Mine Site Fencing Australia because his brother-in-law, who also worked for the respondent, told him this was the name of his employer. The applicant relies on the following documents in support of his claim that he was employed by Mine Site Fencing Australia:

1. Australian Business Register report listing current details for ABN 48 100 829 326 as at 6 July 2015 showing business names as Maintenance 4 Mines Australia and Mine Site Fencing Australia and the trading name as Mine Site Fencing Australia.
2. Extract from ASIC database dated 6 July 2015 for Business Name Details of Mine Site Fencing Australia.
3. Extract from ASIC database dated 6 July 2015 for Business Name Details of Maintenance 4 Mines Australia.
4. A copy of a letter dated 10 January 2014 from the Australian Taxation Office confirming goods and services tax registration details for The Trustee for The Pymm Family Trust.
5. A copy of a letter dated 3 January 2014 from the Australian Business Register confirming an Australian Business Number for The Trustee for The Pymm Family Trust.

10 Mr Pymm stated that Mine Site Fencing Australia Pty Ltd as trustee for The Pymm Family Trust trades as Mine Site Fencing Australia and Maintenance 4 Mines Australia. Mine Site Fencing Australia Pty Ltd as trustee for The Pymm Family Trust is

therefore the respondent to this application and this was the entity which contracted with the applicant to undertake work during the relevant period and this entity paid the applicant's invoices. Only one tax return was filed by Mine Site Fencing Australia Pty Ltd as trustee for The Pymm Family Trust which trades as Mine Site Fencing Australia and Maintenance 4 Mines Australia and this is confirmed in the tax returns filed for this entity in the 2014 and 2015 financial years.

11 Mr Pymm relies on the following documents:

1. An ASIC Certificate of Registration of a Company for Mine Site Fencing Australia Pty Ltd issued on 8 November 2013.
2. A copy of a letter from the Australian Business Register providing an Australian Business Number for Mine Site Fencing Australia Pty Ltd and a letter from the Australian Taxation Office providing a Tax File number for Mine Site Fencing Australia Pty Ltd.
3. A document titled 'Deed of Retirement and Appointment of Trustee, The Pymm Family Trust' dated 29 January 2014.
4. Extract from The Pymm Family Trust T/As Mine Site Fencing Australia T/As Maintenance 4 Mines Australia Financial Report for the year ended 30 June 2014.
5. Extract from The Pymm Family Trust T/As Mine Site Fencing Australia T/As Maintenance 4 Mines Australia Financial Report for the year ended 30 June 2015.
6. Extract from The Pymm Family Trust tax return for 2014 (sighted in full).
7. Extract from The Pymm Family Trust tax return for 2015 (sighted in full).

12 I have reviewed the documentation provided by Mr Pymm and the applicant and I have considered their submissions. The applicant sent his invoices to Mine Site Fencing Australia and he claims this is the name of the respondent. I find that the documents provided by Mr Pymm demonstrate that the correct name of the respondent is Mine Site Fencing Australia Pty Ltd as trustee for The Pymm Family Trust which trades as Mine Site Fencing Australia and Maintenance 4 Mines Australia and not Mine Site Fencing Australia. I find that this is the entity the applicant worked for and paid the applicant's invoices. Given the Commission's powers under s 27(1) of the Act and as it is appropriate for the respondent to be correctly named, I will issue an order that Jason Paul Pymm be deleted as the named respondent in this application and be substituted with Mine Site Fencing Australia Pty Ltd as trustee for The Pymm Family Trust (see ***Rai v Dogrin Pty Ltd*** (2000) 80 WAIG 1375 and ***Bridge Shipping Pty Ltd v Grand Shipping SA and Anor*** [1991] 173 CLR 231).

13 I find that the respondent's main purpose is to provide services to the mining industry with the aim of generating a profit. There was no dispute and I find that the respondent provides services to the mining industry including organising fly-in-fly-out workers to undertake fencing and maintenance work on mine sites in Western Australia in particular at Rio Tinto sites and the applicant worked for the respondent undertaking shut down work and fencing at a range of these mine sites. As the respondent is an incorporated entity which trades with a view to making a profit I find that it is a trading corporation subject to the jurisdiction of the FW Act. The Commission therefore does not have jurisdiction to deal with the applicant's claim for unfair dismissal.

14 An order will issue dismissing this application.

2015 WAIRC 01049

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	MICHAEL MARTIN KENNELLY
	APPLICANT
	-v-
	MINE SITE FENCING AUSTRALIA PTY LTD AS TRUSTEE FOR THE PYMM FAMILY TRUST
	RESPONDENT
CORAM	COMMISSIONER J L HARRISON
DATE	THURSDAY, 26 NOVEMBER 2015
FILE NO/S	U 63 OF 2015
CITATION NO.	2015 WAIRC 01049

Result	Dismissed
Representation	
Applicant	In person
Respondent	Mr J Pymm

Order

HAVING HEARD the applicant on his own behalf and Mr J Pymm on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders –

1. THAT the name of the respondent be deleted and Mine Site Fencing Australia Pty Ltd as trustee for The Pymm Family Trust be substituted in lieu thereof.

2. THAT this application otherwise be and is hereby dismissed.

(Sgd.) J L HARRISON,
[L.S.] Commissioner.

2015 WAIRC 01076

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	JACQUELINE MUSK
	APPLICANT
	-v-
	MENTAL HEALTH LAW CENTRE INC
	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT
DATE	WEDNESDAY, 9 DECEMBER 2015
FILE NO/S	U 159 OF 2015
CITATION NO.	2015 WAIRC 01076
Result	Application dismissed

Order

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

WHEREAS on 6 November 2015 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 7 December 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.

(Sgd.) P E SCOTT,
[L.S.] Acting Senior Commissioner.

2015 WAIRC 01082

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	ERIC SPENCE
	APPLICANT
	-v-
	RIGGING RENTALS P/L
	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT
DATE	WEDNESDAY, 9 DECEMBER 2015
FILE NO/S	B 238 OF 2014
CITATION NO.	2015 WAIRC 01082
Result	Application dismissed

Order

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

WHEREAS on 9 December 2015, the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at that conference, the parties reached agreement in respect of the application and agreed that their agreement should be reflected in an order of the Commission; and

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

1. THAT the respondent pay to the applicant the amount of $16,551.79 gross of tax, being made up of:
   (a) $14,012.54 for annual leave;
   (b) $1,331.19 for compulsory superannuation contributions in relation to annual leave;
   (c) $893.13 for superannuation on other entitlements;
   (d) $183.45 for superannuation on other entitlements; and
   (e) $131.48 for superannuation on other entitlements.
2. THAT should the amounts in order 1(c), 1(d) or 1(e) already have been paid, they are not due.
3. THAT payment in Order 1 above is to be made by close of business on Friday, 11 December 2015, into the applicant's bank account.
4. THAT payment in Order 1 above is in full and final settlement of all amounts due to the applicant arising from this application.
5. THAT the application be, and is otherwise hereby dismissed.

(Sgd.) P E SCOTT,
[L.S.] Acting Senior Commissioner.

2015 WAIRC 01010

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	**:**	2015 WAIRC 01010
CORAM	**:**	COMMISSIONER J L HARRISON
HEARD	**:**	WEDNESDAY, 28 OCTOBER 2015
DELIVERED	**:**	THURSDAY, 12 NOVEMBER 2015
FILE NO.	**:**	U 95 OF 2015, B 95 OF 2015
BETWEEN	**:**	UWE ZAHRADNIK Applicant AND CAFE SATURN Respondent

Catchwords	**:**	Industrial Law (WA) - Termination of employment - Contractual benefits claim - Whether agreement reached to settle applications - Whether order should issue in terms of settlement - Agreement reached to settle applications - Order issued in terms of settlement
Legislation	**:**	*Industrial Relations Act 1979* s 27(1), s 29(1)(b)(i), s 29(1)(b)(ii) and s 32
Result	**:**	Order issued
Representation:		
Applicant	**:**	In person
Respondent	**:**	Mr N Dissanayake

Case(s) referred to in reasons:

Bridge Shipping Pty Ltd v Grand Shipping SA and Anor [1991] 173 CLR 231

Diana Elizabeth Downs-Stoney v Derbarl Yerrigan Health Service (2004) 84 WAIG 2612

Rai v Dogrin Pty Ltd (2000) 80 WAIG 1375

Reasons for Decision

1 On 22 June 2015 Uwe Zahradnik (the applicant) lodged applications in the Commission under s 29(1)(b)(i) and (ii) of the *Industrial Relations Act 1979* (the Act) against Cafe Saturn (the respondent). The applicant claims he was unfairly dismissed by the respondent on 16 June 2015 and that he was denied benefits under his contract of employment including the payment of notice, underpayment of salary and the non-payment of overtime and penalty rates.

2 The respondent did not file a response to these applications.

3 The respondent operates Cafe Saturn in West Perth and the applicant was employed as the Head Chef of Cafe Saturn between 21 May 2015 and 16 June 2015.

4 When the respondent did not attend a conciliation conference held on 27 August 2015 the Commission's Associate telephoned the respondent's representative Mr Nimendra Dissanayake and he agreed to attend the conference by telephone. The Commission understands that an agreement was reached at this conference between Mr Dissanayake on behalf of the respondent and the applicant to settle these applications and the Commission's Associate recorded the terms of this agreement. This agreement provided that the respondent would pay the applicant an amount contained in an email he sent to Mr Dissanayake on 16 June 2015 plus 50% of this amount and after this quantum was paid to the applicant these applications would be discontinued. Mr Dissanayake was required to verify the exact amount the respondent would pay the applicant in settlement of these applications the following day but instead of doing so Mr Dissanayake emailed the Commission stating that he had decided that the respondent would not pay the applicant the quantum he had agreed to pay the applicant at the conference.

5 A copy of the applicant's email dated 16 June 2015 was forwarded to the Commission by Mr Dissanayake after the conference and this email states that the applicant requested that the respondent pay him $2,155.77 in outstanding wages (exhibit R1).

6 As it seemed that an agreement was reached between the parties at the conference held on 27 August 2015 in settlement of these applications a hearing was listed to confirm whether an agreement was reached to settle these applications and whether an order should issue in the terms of this agreement.

Name of the respondent

7 It became apparent during the hearing that the respondent was incorrectly named. Given the Commission's powers under s 27(1) of the Act and as it is appropriate for the respondent to be correctly named, I will issue an order that Cafe Saturn be deleted as the named respondent in these applications and be substituted with Sonka Family Trust trading as Cafe Saturn (the respondent) (see ***Rai v Dogrin Pty Ltd*** (2000) 80 WAIG 1375 and ***Bridge Shipping Pty Ltd v Grand Shipping SA and Anor*** [1991] 173 CLR 231).

Evidence

Applicant

8 The applicant gave evidence that at the conference held on 27 August 2015 Mr Dissanayake agreed to pay him $2,155.77 plus 50% of this amount based on the figure contained in the email he sent to the respondent on 16 June 2015 (exhibit R1). This amount related to a claim for payment of hours worked by the applicant but not paid by the respondent (132 hours x $21.6346 per hour minus $700 paid to the applicant by the respondent). When this amount was paid he would then withdraw both applications.

Respondent

9 Mr Dissanayake gave evidence that at the conference held on 27 August 2015 he agreed to pay the applicant $2,155.77 in full and final settlement of both applications. The day after the conference he changed his mind about making this payment because on reflection he did not believe he owed the applicant payment for the hours he claimed he had worked and had not been paid.

10 After the hearing the parties were given the opportunity to comment on the summary completed by the Commission's Associate which recorded the outcome of the conference and the agreement reached between the parties. Neither party responded to this opportunity to make further submissions.

Consideration

11 In ***Diana Elizabeth Downs-Stoney v Derbarl Yerrigan Health Service*** (2004) 84 WAIG 2612 [42] – [53] Smith C set out the relevant law confirming that the Commission may issue an order in the terms of an agreement reached at a s 32 conference with respect to applications made under s 29(1)(b)(i) and (ii) of the Act.

12 In my view the Commission should issue an order in the terms of the agreement reached between the applicant and Mr Dissanayake at the conference held on 27 August 2015. There was no dispute between the parties and I find that an agreement to settle these applications was reached between the applicant and Mr Dissanayake on behalf of the respondent at the conference held on 27 August 2015 in compromise of these applications. I find that at this conference an agreement was reached between the respondent and the applicant that the respondent would pay the applicant $3,233.65 gross in full and final settlement of these applications ($2,155.77 plus $1,077.88 which is 50% of this amount). This amount was based on the amount the applicant requested the respondent pay him contained in the applicant's email to Mr Dissanayake dated 16 June 2015. I reject Mr Dissanayake's evidence that he agreed to pay the applicant $2,155.77 at the conference held on 27 August 2015 as the weight of evidence is against him in this regard. I find that the sum agreed to be paid by the respondent to the applicant in settlement of these applications at the conference held on 27 August 2015 was $3,233.65 gross as the summary of the agreement reached between the applicant and the respondent completed by the Commission's Associate confirms that the parties agreed that the respondent would pay the applicant $3,233.65 and this is in accord with the applicant's evidence about the terms of the agreement he reached with Mr Dissanayake at the conference.

13 I find that there is no substance to Mr Dissanayake's assertion that he was disadvantaged because the respondent was unaware of these applications and he was unprepared for the conference held on 27 August 2015 and I find that any issue related to the respondent not being aware of these applications is solely due to Mr Dissanayake's actions. I find that the respondent was given notice that these applications had been lodged and I find that Mr Dissanayake was aware that the Commission tried to contact him about these applications but he chose not to respond. The Commission's records confirm that on 25 June 2015 the applicant sent copies of these applications to the respondent by registered mail to 'Attn. Nim Dissa', Cafe Saturn at Shop 4, City West Shopping Centre, Sutherland St, West Perth WA 6005 which is where Cafe Saturn is located. However, this registered letter was returned to the Commission marked 'unclaimed'. On 8 July 2015 the Commission's Registrar sent a letter to the respondent to Cafe Saturn at Shop 4, City West Shopping Centre, Sutherland Street, West Perth WA 6005 about filing a response to these applications and this letter was not returned to the Commission. On 24 July 2015 the Commission rang Mr Dissanayake's mobile number and left a message to contact the Commission but he did not respond and this message was left on the same telephone number Mr Dissanayake used to participate in the conference held on 27 August 2015. On 24 July 2015 the Commission sent a letter to Mr Dissanayake at Cafe Saturn notifying the respondent of the conference listed for 27 August 2015 and included with this notification were the documents the applicant had attempted to serve on the respondent by registered post on 25 June 2015 which had been returned to the Commission unclaimed. This notification was not returned to the Commission. Additionally, Mr Dissanayake did not raise any issue about attending the conference held on 27 August 2015 by telephone and he did not cite any disadvantage when he participated in this conference.

14 A declaration will issue that the parties have compromised these s 29(1)(b)(i) and (ii) applications and an order shall issue that the respondent pay the applicant $3,233.65 gross in settlement of these applications.

15 A Minute of Proposed Order will now issue.

2015 WAIRC 01016

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	UWE ZAHRADNIK
	APPLICANT
	-v-
	SONKA FAMILY TRUST TRADING AS CAFE SATURN
	RESPONDENT
CORAM	COMMISSIONER J L HARRISON
DATE	TUESDAY, 17 NOVEMBER 2015
FILE NO/S	U 95 OF 2015, B 95 OF 2015
CITATION NO.	2015 WAIRC 01016

Result	Order issued
Representation	
Applicant	In person
Respondent	Mr N Dissanayake

Order

HAVING HEARD the applicant on his own behalf and Mr N Dissanayake on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby:

1. ORDERS THAT the name of the respondent be deleted in these applications and Sonka Family Trust trading as Cafe Saturn be substituted in lieu thereof.
2. DECLARES THAT the parties reached an agreement in compromise of these applications on 27 August 2015.
3. ORDERS THAT the respondent pay Uwe Zahradnik the sum of $3,233.65 gross within 14 days of the date of this order.

(Sgd.) J L HARRISON,
[L.S.] Commissioner.

2015 WAIRC 01066

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	**:**	2015 WAIRC 01066
CORAM	**:**	COMMISSIONER J L HARRISON
HEARD	**:**	MONDAY, 16 NOVEMBER 2015
DELIVERED	**:**	MONDAY, 7 DECEMBER 2015
FILE NO.	**:**	B 58 OF 2015
BETWEEN	**:**	JASON ZHOU Applicant AND CURTIN UNIVERSITY Respondent

Catchwords	**:**	Industrial Law (WA) - Contractual benefits claim - Entitlements under contract of employment - Claim for payment of wages, annual leave, superannuation, sick leave and medical expenses - Preliminary issue - Whether applicant was an employee or independent contractor - Principles applied - Applicant found not to be an employee - Commission lacks jurisdiction - Application dismissed
Legislation	**:**	*Industrial Relations Act 1979* s 29(1)(b)(ii) *Limitation Act 2005*
Result	**:**	Dismissed
Representation:		
Applicant	**:**	In person
Respondent	**:**	Ms J van den Herik and Mr A Kemp

Case(s) referred to in reasons:

Western Australian Builders' Labourers, Painters and Plasterers Union of Workers v R B Exclusive Pools Pty Ltd trading as Florida Exclusive Pools (1996) 77 WAIG 4

Reasons for Decision

1 On 15 April 2015 Jason Zhou (the applicant) filed this application under s 29(1)(b)(ii) of the *Industrial Relations Act 1979* (the Act) claiming that he is owed benefits under his contract of employment with Curtin University (the respondent). The respondent disputes that it owes the applicant the benefits he is seeking and argues that he was not an employee of the respondent.

Background

2 The applicant claims he was a full time employee working in China as the respondent's Regional Marketing Manager between January 2005 and February 2015. The applicant claims that he represented and promoted the respondent in China and he assisted in placing overseas students at Curtin University. The applicant maintains that even though he was employed by the respondent for approximately 10 years he was never paid any wages.

3 The applicant is claiming the following benefits:

1. Wages - outstanding salary in the amount of $800,000 based on an annual salary of $80,000 over 10 years.
2. Annual leave - unpaid annual leave in the amount of $72,297.70. This is based on an entitlement of four weeks annual leave per year and includes annual leave loading of 17.5%. The applicant claims he never took annual leave.
3. Superannuation – unpaid superannuation in the amount of $136,000. This is based on the respondent's standard superannuation entitlement of 17% over the applicant's 10 years of service.
4. Sick leave – an entitlement to 40 weeks of sick leave based on four weeks sick leave per year. The applicant claims he never took any sick leave and he is currently suffering stress due to being treated unfairly by the respondent. The applicant did not specify which days he had taken as sick leave.
5. Medical expenses – an amount of approximately $10,000 covering the periods he was unwell in China and Australia.

4 The respondent argues that it had a contractor relationship under a contract for service with the applicant and an entity associated with the applicant, Xin Nan Real Estate Development Co Ltd (Xin Nan), between 15 June 2006 and December 2008. During this period the respondent paid the applicant a monthly fee plus expenses to recruit students in China to study at

Curtin University. The terms of the contractual arrangement between the applicant, Xin Nan and the respondent were contained in two unsigned Representative Agreements.

Evidence

Applicant

5 The applicant gave evidence that when he commenced employment with the respondent in January 2005 the respondent did not provide him with a written contract of employment. The applicant stated that whilst working full time for the respondent between January 2005 and February 2015 he made several approaches to the respondent about the payment of his salary and entitlements owed to him but he did not receive any response.

6 The applicant relies on the following documents which he claims confirm that he was an employee of the respondent:

1. A memorandum from the College of Economics, Qingdao University China (undated) (exhibit A1).
2. A letter dated 2 May 2007 from Tom Hands, Manager, International relations, The Sydney Campus of Curtin University of Sydney (exhibit A2).
3. Six letters from organisations in support of the applicant's application for Australian Citizenship (exhibit A3): (1) letter dated 24 April 2007 from Peter Ironmonger; (2) letter dated 27 April 2007 from BJ Zhuang; (3) letter dated 25 April 2007 from Shirley Pan; (4) letter dated 24 April 2007 from James Xu; (5) letter (undated) from Yu Zhang; and (6) letter dated 18 April 2007 from Li Min.
4. An email the applicant sent to Irina Lobeta-Ortega in 2008 which he claims confirms that the respondent allocated him an email address (exhibit A4).
5. A letter dated 5 May 2007 addressed 'To Whom It May Concern' from Mr Walter Ong, Dean, International Student Admissions re Mr Senjie Zou, supporting his application for Australian Citizenship (exhibit A5).
6. A document containing extracts from emails which are undated and incomplete between the applicant and Walter and Celia Cornwell regarding a 2005 visit by Professor Kevin McKenna to Shanghai and a document written in Mandarin dated 27 July 2007 (exhibit A6).
7. A badge with the name 'Jason Zou, Curtin University of Technology' which the applicant says was provided to him in 2005 by Mr Ong who interviewed him for his position with the respondent (exhibit A7).

7 Under cross-examination the applicant gave evidence that he worked almost every day of the year for the respondent over the 10 years he claimed he was employed by the respondent. The applicant denied that he had seen or signed two Exchange of Letters between the applicant and the respondent, which appear to have been signed by the applicant, and he claimed he had never seen the two unsigned Representative Agreements between the respondent and Jason Zou trading as Xin Nan (exhibits R1 to R4). The applicant stated that he is not the owner or operator of Xin Nan and he has never heard of this company. When asked about the Foreign Payment forms with the creditor name 'Yong Ming Zou', which the respondent relies on as confirmation of the payments it made to the applicant, the applicant stated that this is not his name and he does not know who this person is despite there being a reference to 'Jason Zhou or Zou' in brackets after the name of 'Yong Ming Zou' on the forms. Under re-examination the applicant maintained that payments the respondent made to him were not received by him as payments in Chinese currency cannot be transferred to China from overseas.

Respondent

8 Ms Bronwyn Bartsch has worked for the respondent since 2012 and she is currently the respondent's Acting Director of Curtin International. As part of this role she oversees the respondent's overseas representatives, including representatives who work in China. Ms Bartsch gave evidence that when she reviewed the respondent's records it was apparent from this documentation that the applicant was never an employee of the respondent. The respondent also did not have a personnel file for the applicant as would normally be the case when a person was an employee of the respondent.

9 Ms Bartsch stated that the documents held by the respondent relating to the applicant show that the applicant was a contractor to the respondent between June 2006 and December 2008. Ms Bartsch stated that two Representative Agreements between the applicant, Xin Nan and the respondent confirming this were not signed by the applicant despite repeated requests for him to do so. Ms Bartsch gave evidence that one of the reasons the respondent terminated its arrangement with the applicant was because the applicant refused to sign the Representative Agreements. The respondent had copies of invoices presented for payment by the applicant in line with the terms of the Representative Agreements and Ms Bartsch confirmed that payments the respondent made to the applicant had been received into the account nominated by the applicant as the respondent's financial area received confirmation of this from its clearing house system via email.

10 Ms Bartsch stated that the following documents retained by the respondent confirm the respondent's relationship with the applicant as a contractor. These documents include:

1. Exchange of Letters dated 19 May 2006 signed by Professor McKenna and Jason Zou (exhibit R1).
2. Curtin University of Technology Representative Agreement (unsigned) dated 10 May 2007 between the respondent and Mr Jason Zou trading as Xin Nan (exhibit R2).
3. Exchange of Letters dated 19 December 2007 signed by Professor McKenna and Jason Zou (exhibit R3).
4. Curtin University of Technology Representative Agreement (unsigned) dated 19 May 2008 between the respondent and Mr Jason Zou trading as Xin Nan (exhibit R4).
5. Letter dated 1 September 2008 to Mr Jason Zou at Xin Nan from Professor McKenna giving notice that its Representative Agreement with the applicant was to be terminated (exhibit R5).

6. Four documents titled 'Allonge Foreign Payments' with invoices attached relating to payments to creditor Yong Ming Zhou (Jason Zhou) authorised by the respondent on 14 January 2009 (exhibit R6).

7. Summary prepared by the respondent of Claims and Cash Advances for Jason Zou in the period December 2007 to May 2008 (exhibit R7).

8. Email exchanges in the period 28 February 2008 and 12 January 2009 variously between Jason, Joshua Lim, Justin Herrington, Shiau Lin and David Lee (exhibit R8).

Submissions

Applicant

11 The applicant claims that he was employed by the respondent because he had a Curtin University name badge and the respondent allocated him an email address. The applicant also relies on letters in support of his application for Australian Citizenship which recognise his work with the respondent. As the applicant worked for the respondent as an employee over 10 years he is entitled to have his claims for benefits due to him dealt with by the Commission.

Respondent

12 The respondent submits that the Commission has no jurisdiction to deal with this application as the applicant was never employed by the respondent. This application is also over the six year time limit for lodging this claim (see *Limitation Act 2005*).

13 The respondent's relationship with the applicant and Xin Nan was a fee for service arrangement which commenced on 15 June 2006. The applicant was engaged as a third party contractor to the respondent under the company name Xin Nan and the applicant was paid a monthly fee for this service as well as costs associated with his work when he provided invoices to the respondent.

14 The respondent paid the applicant under the terms of the respondent's Representative Agreement with the applicant. Clause 9. – Curtin Representative's Payment Claims and Clause 10. – Invoices for the International Office refer to an annual fee for service payment to the applicant which indicates a contract for service relationship between the applicant and the respondent and not a contract of service relationship. Clause 19. – Status of Parties of the Representative Agreement also supports the respondent's claim that the applicant was a contractor to the respondent. This clause in part reads as follows:

> **19.1** Each Party enters this Agreement as independent contractor. Nothing in this Agreement creates any other relationship between them including any relationship of partnership, agency, trust, joint venture or otherwise.
>
> Nothing in this Agreement will constitute or deem an employee of one Party to be an employee or responsibility of the other Party.

15 The respondent's arrangement with the applicant ceased at the respondent's initiative on 1 December 2008 under the notice provisions of the Representative Agreement between the applicant and the respondent. The respondent terminated its contract with the applicant by giving 90 days' notice under Clause 12. - Termination of Agreement of the Representative Agreement on 1 September 2008 and all contractual arrangements between the applicant and the respondent ceased with this notice of termination.

16 The respondent denies the applicant had an email address of J.Zou@curtin.edu.au and even if such an address was issued to him by the respondent having a Curtin University email address is not evidence of an employment relationship. Additionally, the emails provided by the applicant in support of his claim that he was an employee are not in their original form, they are undated and without headers and are incomplete. They also appear to be edited and cannot be relied upon to show an ongoing employment relationship.

Consideration

Witness Credit

17 I closely observed the applicant whilst he gave his evidence. In my view the applicant was evasive at times when giving his evidence and I find that the evidence he gave lacked credibility and substance. For example, I do not accept the applicant's claim that when he worked for the respondent over a period of 10 years he worked almost every day and did so without the payment of any wages or reimbursement of costs incurred by him during this period as this is implausible and borders on being fanciful. His claim that he worked for the respondent over this lengthy period is also not supported by any documentation tendered by the applicant. In contrast, I found the evidence given by Ms Bartsch to be clear, direct and forthright. Her evidence was supported by documentation tendered by the respondent in these proceedings which directly contradicts and is at odds with the evidence given by the applicant. In the circumstances, and as I have no confidence in the veracity of the evidence given by the applicant, I accept the evidence of Ms Bartsch and the documentation relied on by the respondent where there is any conflict.

Was the applicant an employee of the respondent?

18 If the applicant was not employed by the respondent under a contract of service then the Commission has no jurisdiction to deal with the applicant's claim that he was denied benefits under his contract of employment and the applicant must demonstrate on the balance of probabilities that he was an employee of the respondent (***Western Australian Builders' Labourers, Painters and Plasterers Union of Workers v R B Exclusive Pools Pty Ltd trading as Florida Exclusive Pools*** (1996) 77 WAIG 4 at 8 per Fielding SC).

19 Given my views on witness credit I reject the applicant's claim that he was an employee of the respondent between January 2005 and February 2015. I find that there was no credible evidence before the Commission or any documentation in support of the applicant's claim that he was an employee of the respondent for approximately 10 years. Even though the applicant has a name badge issued by the respondent this does not confirm that he was an employee of the respondent, nor does the existence

of an email account in the applicant's name related to the respondent demonstrate an employee/employer relationship, if one was allocated to the applicant by the respondent. As I accept the respondent's evidence and related documentation I find that the applicant worked with the respondent under a contract for service between 15 June 2006 and December 2008 under the terms contained in the two signed Exchange of Letters and the two unsigned Representative Agreements (exhibits R1 to R4). The Representative Agreements expressly confirm that the contractual arrangement between the applicant and the respondent during this period was a contract for service between the parties to this application. In support of my conclusion that the applicant was a contractor to the respondent I accept the respondent's evidence that it paid the applicant a monthly fee in accordance with the terms of the Representative Agreements as well as expenses due to the applicant to his nominated bank account after he forwarded invoices for costs he incurred whilst working as a contractor to the respondent (see exhibits R6 and R7).

20 Even if the applicant was employed under a contract of service with the respondent between June 2006 and December 2008, which I do not concede, the applicant is unable to bring a claim of denied contractual benefits for this period as this application was lodged on 15 April 2015 which is outside of the six year time limit for lodging a claim of this nature.

21 As the applicant was never an employee of the respondent employed under a contract of service an order will issue dismissing this application for want of jurisdiction.

2015 WAIRC 01065

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	JASON ZHOU
	APPLICANT
	-v-
	CURTIN UNIVERSITY
	RESPONDENT
CORAM	COMMISSIONER J L HARRISON
DATE	MONDAY, 7 DECEMBER 2015
FILE NO/S	B 58 OF 2015
CITATION NO.	2015 WAIRC 01065

Result	Dismissed
Representation	
Applicant	In person
Respondent	Ms J van den Herik and Mr A Kemp

Order

HAVING HEARD the applicant on his own behalf and Ms J van den Herik and Mr A Kemp on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders –

THAT this application be and is hereby dismissed.

(Sgd.) J L HARRISON,
[L.S.] Commissioner.

SECTION 29(1)(b)—Notation of—

Parties		Number	Commissioner	Result
Dave Scott	TRL Services	B 148/2015	Commissioner S J Kenner	Discontinued
David Yohan Selvaratnam	Halden Mc Donald	U 48/2015	Commissioner S J Kenner	Discontinued
Mervyn Ian Voysey	Tanami Gold NL	B 55/2015	Commissioner S J Kenner	Discontinued
Mervyn William Annear	The Shire of Laverton	U 109/2015	Chief Commissioner A R Beech	Discontinued
Mr Adrian Kneale	Public Transport Authority of Western Australia	U 132/2015	Commissioner S J Kenner	Discontinued
Mr Nicholaas Salmon Louw	Beyond Cement & Tool Sales Pty Ltd (ABN 15 163 866 537)	U 130/2015	Commissioner S J Kenner	Discontinued
Ms Arlia Fleming	Lesley Kirkwood Women's Law Centre WA Inc	B 118/2015	Chief Commissioner A R Beech	Discontinued

Parties		Number	Commissioner	Result
Ms Coleen Vidler	WA Sporting Car Club Inc.	U 165/2015	Commissioner S J Kenner	Discontinued
Samvedna Singh	Copharmacy	U 145/2015	Commissioner S J Kenner	Discontinued
Stephen Grant Donaldson	Trent Raymond (GM Human Relations) Bevchain	B 155/2015	Chief Commissioner A R Beech	Discontinued

CONFERENCES—Matters arising out of—

2015 WAIRC 00983

DISPUTE RE TERMS OF PUBLIC TRANSPORT AUTHORITY SALARIED OFFICERS INDUSTRIAL AGREEMENT 2014

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION	**:**	2015 WAIRC 00983
CORAM	**:**	COMMISSIONER S J KENNER
HEARD	**:**	TUESDAY, 18 AUGUST 2015, FRIDAY, 11 SEPTEMBER 2015, WRITTEN SUBMISSIONS 18 & 22 SEPTEMBER, 27 OCTOBER 2105
DELIVERED	**:**	TUESDAY, 3 NOVEMBER 2015
FILE NO.	**:**	C 17 OF 2015
BETWEEN	**:**	WESTERN AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES Applicant AND PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA Respondent

Catchwords	**:**	*Industrial Law (WA) - Dispute regarding terms of Public Transport Authority Salaried Officers Industrial Agreement 2014 - Whether clauses 3.3.2 and 5.3.7 of the Agreement are ambiguous - Whether employees are entitled to a minimum overtime payment of three hours' pay when rostered for "on call" or "availability" - Relevant provisions are not ambiguous - Employees that are rostered for "on call" or "availability" have a legitimate expectation that they may be required to perform additional work - Employees only entitled to payment for those hours recalled to duty when rostered for "on call" or "availability" - Recommendation issued*
Legislation	**:**	*Industrial Relations Act 1979 (WA)*
Result	**:**	Recommendation isssued
Representation:		
Counsel:		
Applicant	**:**	Mr G Upham
Respondent	**:**	Mr S Lawton and with him Mr R Farrell

Case(s) referred to in reasons:

Codelfa Construction Pty Ltd v State Rail Authority of NSW (1982) 149 CLR 337

Kucks v CSR Ltd (1996) 66 IR 182

Health Services Union of Western Australia (Union of Workers) v the Director General of Health (2013) 93 WAIG 1

Case(s) also cited:

Reasons for Recommendation

1 In accordance with the agreement of the parties to this application, the Commission has consented to assisting in the resolution of the present dispute which relates to the interpretation of clauses 3.3.2 and 5.3.7 of the Public Transport Authority Salaried Officers Industrial Agreement 2014. The question which arises on the application is whether employees, members of the Union, employed in the Authority's Information Technology section, should receive a minimum overtime payment of three hours' pay when they are rostered for "on call" or "availability", or whether they are only entitled to payment for hours actually worked.

2 The parties agreed for the Commission to initially determine whether the relevant provisions of the Agreement are ambiguous or not. If not, the parties have invited the Commission to make recommendations as to the meaning of the relevant provisions

of the Agreement which are in dispute, which will be accepted by them. If the Commission's view of the relevant provisions of the Agreement is that they are ambiguous, then the Commission will refrain from further considering the issue, and the matter will need to be formally determined in an appropriate application.

3 In connection with their positions on the issue, both parties filed helpful written submissions. Both parties submitted that the terms of the Agreement in issue are not ambiguous and are in clear terms, and support their respective contentions.

4 It would be helpful at this point to set out the two clauses, they being cls 3.3.2 and 5.3.7 of the Agreement. They are as follows:

> 3.3.2 Recalled to Duty: Employees brought on duty outside their Ordinary Working Hours shall, except where such duty is continuous with their ordinary shift, be paid for all such time, with a minimum of three hours' pay at the rate applicable to the day.
>
> …
>
> 5.3.7 Where an Employee rostered for "on call" or "availability" and is recalled to duty during the period for which the Employee is on "out of hours contact" then the Employee shall only receive payment for those hours recalled to duty in accordance with subclause 3.8 - Overtime: All Employees and subclause 3.12 Overtime: Operational Employees of this Agreement.

5 In summary, the parties' submissions were as follows. For the Union, it was contended that both cl 3.3.2 and 5.3.7 should be read together. The Union submitted that the circumstances arising in this present dispute, relate to where employees are required to return to duty by logging on to their computers and performing work. It does not relate to the situation where an employee is required to answer a simple telephone call. Furthermore, the Union contended that as the clauses should be read together, then the nett effect of the interpretation which the Union urged is, that employees who are rostered for "on call" or "availability" and are recalled to duty, should receive the minimum payment of three hours as prescribed by cl 3.3.2, at the rate specified by cl 5.3.7. This is because both clauses deal with recall to duty and are to be read consistently.

6 The Union accepted that if during a period of three hours for which an employee is claiming a minimum payment, the employee is recalled again, there would be no obligation on the employer to make a further minimum three hour payment.

7 For the Authority, it was contended that the terms of cl 5.3.7 read with cl 3.3.2 of the Agreement, are not ambiguous. Clause 5.3.7 is a specific provision of the Agreement which applies only to those employees "rostered for on call" or "availability". On the other hand, cl 3.3.2 of the Agreement is a general provision relating to a recall to duty for employees who are not rostered for "on call" or "availability". Furthermore, from the terms of cl 5.3.7, the Authority contended that the language makes it clear that it is only the payment provided by cl 5.3.7 which applies, given the words used are "the Employee shall *only* receive payment…" (my emphasis).

8 The Authority further submitted that it would be an absurd construction for an employee rostered as on call, who only receives a short telephone call, to be entitled to a separate three hour payment for each such "recall to duty".

9 Interpretation is a text based activity. It is the text of the relevant instrument that must be considered, before considering any other materials. If the language of an instrument is, in accordance with its ordinary and natural grammatical or technical meaning, clear and unambiguous, then it is not permissible to have regard to extrinsic materials to aid in construction: *Codelfa Construction Pty Ltd v State Rail Authority of NSW* (1982) 149 CLR 337. Furthermore, it is well settled that for the purposes of construing industrial instruments, such as awards and industrial agreements, a generous approach to interpretation should be applied, such that "meanings which avoid inconvenience or injustice may reasonably be strained for": *Kucks v CSR Ltd* (1996) 66 IR 182; *Health Services Union of Western Australia (Union of Workers) v the Director General of Health* (2013) 93 WAIG 1.

10 I do not consider, consistent with the submissions of the parties, that the relevant provisions of the Agreement are ambiguous. Accordingly, I proceed to express my view as to their interpretation.

11 Whilst I understand the basis for the interpretation adopted by the Union, in my opinion, when read within the Agreement as a whole, the Authority's approach to interpretation is to be preferred. Both cls 3.3.2 and 5.3.7 of the Agreement deal with the situation where employees are required to return to their duties outside of their ordinary or normal hours of work. There is however, in my opinion, on the basis of the ordinary and natural meaning of the language used in both clauses, a significant difference. In the case of cl 3.3.2 this provision has application where employees are "brought on duty outside their ordinary Working Hours". That is, it is reasonably clear that the clause applies to the circumstance of an employee who has completed their ordinary working hours, without any expectation of a return, and is requested to return to duty by the employer. In cases where that does occur, and such duty is not continuous with their ordinary working day, then a minimum payment is to be made. This provision appears to be a general one applicable to all employees who are requested to return to duty, having completed their ordinary working shift, without any expectation of further work being required.

12 On the other hand, cl 5.3.7 appears to be a specific provision having application to employees who are "rostered for 'on call' or 'availability'" and are then required to attend for duty. The difference between the two provisions in my opinion is that the language of cl 5.3.7 is such that employees, by being rostered, are put on notice that they may be required to attend for duty if required. There is a legitimate expectation that they may be required to perform additional work. I agree with the Authority's view, that this is a specific provision applying to the specific circumstance of employees rostered for this type of possible recall, as opposed to the general provision where employees may be brought back on to duty, without any expectation of such a requirement, after the conclusion of their ordinary working day.

13 Furthermore, in cl 5.3.7, the reference to "the employee shall *only* receive payment for those hours recalled to duty" without any reference to the minimum three hour payment applicable by cl 3.3.2, tends to strongly suggest that both clauses are intended to be read disjunctively, and not cumulatively. If it was the intention that an additional minimum payment of three hours at overtime rates also apply to someone rostered for out of hours contact under cl 5.3.7, then it would have been

relatively easy for such words to be included in the clause. There is no reference to any minimum overtime payment specified in either cls 3.8 or 3.12 of the Agreement.

14 Finally, at my direction, my Associate wrote to the parties to raise another matter in relation to the interpretation question. That refers to the possible impact, if any, of cl 3.8.5 of the Agreement. It provides that no overtime payments are to be made for any actual time worked on a day of less than 30 minutes. Periods of up to five minutes each day are not to count in total overtime worked in a weekly period. The Authority contended that there is no 30 minute threshold applicable to the affected employees but there is a five minute threshold, calculated weekly. The Union submitted that the reference to cl 3.8 in cl 5.3.7 relates to the rate of payment only. I consider that the Union submission is correct. In my view, the effect of the reference to cl 3.8 in cl 5.3.7 is to the rate of pay applicable for the time an employee is so recalled. Clause 5.3.7 refers to "payment for *those hours* recalled to duty". This means in my view, all the time involved in the recall is to be paid at overtime rates, without any period of exclusion.

15 Accordingly, in my opinion, employees the subject of the present dispute are entitled to be paid in accordance with cl 5.3.7 of the Agreement for all time worked, when rostered for "on call" or "availability". I so recommend.

CONFERENCES—Matters referred—

2015 WAIRC 00757

DISPUTE RE TERMINATION OF EMPLOYMENT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH
	APPLICANT
	-v-
	THE PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	TUESDAY, 28 JULY 2015
FILE NO.	CR 11 OF 2015
CITATION NO.	2015 WAIRC 00757

Result	Direction issued
Representation	
Applicant	Mr M Burns of counsel
Respondent	Mr D Matthews of counsel

Direction

HAVING heard Mr M Burns of counsel on behalf of the applicant and Mr D Matthews of counsel on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby directs –

(1) THAT the herein applications be listed and heard together.

(2) THAT each party shall give informal discovery by serving its list of documents by 18 August 2015.

(3) THAT inspection of documents shall be completed by 25 August 2015.

(4) THAT the parties file an agreed statement of facts (if any) no later than 3 days prior to the date of hearing.

(5) THAT an inspection of the workplace by the Commission be arranged and conducted on a date to be fixed.

(6) THAT the matter be listed for hearing for 3 days.

(7) THAT the parties have liberty to apply on short notice.

(Sgd.) S J KENNER,
Commissioner.

[L.S.]

2015 WAIRC 01029

DISPUTE RE TERMINATION OF EMPLOYMENT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH
	APPLICANT
	-v-
	THE PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	WEDNESDAY, 18 NOVEMBER 2015
FILE NO/S	CR 11 OF 2015
CITATION NO.	2015 WAIRC 01029

Result	Discontinued by leave
Representation	
Applicant	Mr C Fogliani of counsel
Respondent	Mr D Matthews of counsel

Order

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

THAT the application be and is hereby discontinued by leave.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2015 WAIRC 00758

DISPUTE RE TERMINATION OF EMPLOYMENT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH
	APPLICANT
	-v-
	THE PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	TUESDAY, 28 JULY 2015
FILE NO.	CR 12 OF 2015
CITATION NO.	2015 WAIRC 00758

Result	Direction issued
Representation	
Applicant	Mr M Burns of counsel
Respondent	Mr D Matthews of counsel

Direction

HAVING heard Mr M Burns of counsel on behalf of the applicant and Mr D Matthews of counsel on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby directs –

(1) THAT the herein applications be listed and heard together.

(2) THAT each party shall give informal discovery by serving its list of documents by 18 August 2015.

(3) THAT inspection of documents shall be completed by 25 August 2015.

(4) THAT the parties file an agreed statement of facts (if any) no later than 3 days prior to the date of hearing.

(5) THAT an inspection of the workplace by the Commission be arranged and conducted on a date to be fixed.

(6) THAT the matter be listed for hearing for 3 days.

(7) THAT the parties have liberty to apply on short notice.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

2015 WAIRC 01030

DISPUTE RE TERMINATION OF EMPLOYMENT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH
	APPLICANT
	-v-
	THE PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA
	RESPONDENT
CORAM	COMMISSIONER S J KENNER
DATE	WEDNESDAY, 18 NOVEMBER 2015
FILE NO/S	CR 12 OF 2015
CITATION NO.	2015 WAIRC 01030

Result	Discontinued by leave
Representation	
Applicant	Mr C Fogliani of counsel
Respondent	Mr D Matthews of counsel

Order

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

THAT the application be and is hereby discontinued by leave.

(Sgd.) S J KENNER,
[L.S.] Commissioner.

CONFERENCES—Notation of—

Parties		Commissioner	Conference Number	Dates	Matter	Result
Australian Medical Association (WA) Incorporated	Minister for Health (in his incorporated capacity under section 7 of the Hospitals and Health Services Act 1927 as the Metropolitan Health Service)	Scott A/SC	PSAC 29/2015	N/A	Dispute re EOIs	Discontinued
Commissioner Wayne Gregson Department of Fire and Emergency Services	Kevin Jolly State Secretary United Firefighters Union of Australia West Australian Branch	Scott A/SC	C 1/2015	20/01/2015	Dispute re bans	Concluded

Parties		Commissioner	Conference Number	Dates	Matter	Result
Director General Department of Education	State School Teachers' Union of WA	Scott A/SC	C 40/2015	20/11/2015 23/11/2015	Dispute re alleged requirements imposed on teachers	Concluded
Independent Education Union of Western Australia, Union of Employees	Ms Jessica Vidoni Manager People and Development Tranby College	Harrison C	C 38/2015	30/10/2015	Dispute re redundancies	Discontinued
The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch	Public Transport Authority of Western Australia	Kenner C	C 27/2015	22/10/2015	Dispute re decision on finding and penalty applied to union member	Discontinued
The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch	Public Transport Authority of Western Australia	Kenner C	C 42/2015	N/A	Dispute re alleged unreasonable instructions of union member	Discontinued

PROCEDURAL DIRECTIONS AND ORDERS—

2015 WAIRC 01035

DISPUTE RE ALLEGED REQUIREMENTS IMPOSED ON TEACHERS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES DIRECTOR GENERAL
DEPARTMENT OF EDUCATION

APPLICANT

-v-

STATE SCHOOL TEACHERS' UNION OF WA

RESPONDENT

CORAM ACTING SENIOR COMMISSIONER P E SCOTT

DATE FRIDAY, 20 NOVEMBER 2015

FILE NO. C 40 OF 2015

CITATION NO. 2015 WAIRC 01035

Result Recommendation issued

Recommendation

WHEREAS this is an application for a conference pursuant to s 44 of the *Industrial Relations Act 1979*, in which the Director General says that a number of teachers at Perth Modern School, members of the State School Teachers' Union of W.A. (the Union) refuse to provide comments in student reports regarding the Advocacy program; and

WHEREAS the comments are due, as part of reports to parents regarding students, to be issued by the end of the week ending 27 November 2015; and

WHEREAS the issue of the comments in reports regarding the Advocacy program was the subject of a grievance lodged by 13 teachers on 18 June 2015; and

WHEREAS the parties entered into a process, including consultation with the teachers, for the resolution of the grievance; and

WHEREAS the Director General says that the grievance was resolved as a result of that process; the teachers were provided with appropriate resources and assistance to undertake the reports; it was understood that teachers would undertake those reports, and that following invitations by the Principal and Deputy Principal for any concerns to be raised, no concerns were raised; and

WHEREAS on 18 November 2015, the Union advised the Principal of Perth Modern School that, in effect, nine of the teachers involved in the grievance are not required to write comments for the Advocacy program and are of the view that the status quo is to not provide comment, pending the decision of the Commission in CR 15 of 2014; and

WHEREAS the Union's local representative, Mr Bertram, asserts that he is unable to find any invitation to raise concerns which the Principal says were issued, and he provides other information about his reason for not raising any issues in any event; and

WHEREAS Mr Bertram says that he discussed the matter of the grievance being unresolved with the Union's General Secretary some three to four weeks ago, the General Secretary was out of the country at the time and it was agreed between them that they would await her return before raising the issue; and the matter was further delayed by Mr Bertram being away on leave, and the matter had not been raised with the Principal until 18 November 2015; and

WHEREAS the Commission notes the importance of comments being included in student reports to parents regarding the Advocacy program; notes that the parties have engaged in a process of consultation in an endeavour to resolve the grievance; that additional resources were provided to the teachers to assist in undertaking the reporting; that the Union has not advised the Director General or the Principal of there being any unresolved aspect of the grievance until immediately before the reports are due; that the decision in CR 15 of 2014 is not likely to be issued prior to the reports being due; that teachers other than those nine of the 13 involved in the grievance have not indicated any concerns regarding providing the reports; and

WHEREAS the Commission is of the view that it may assist in the resolution of the dispute that a Recommendation issue that the Union use its best endeavours to encourage the teachers at Perth Modern School who have indicated that they will not provide comments in reports on students in the Advocacy program to agree to undertake the reports on this occasion on the basis of good will.

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

> THAT the State School Teachers' Union of W.A. (Incorporated) use its best endeavours through its officers and representatives to encourage teachers at Perth Modern School who have indicated an unwillingness to provide comments in student reports to parents in regard to the Advocacy program to agree to provide such comments on this occasion on the basis of good will.

(Sgd.) P E SCOTT,
[L.S.] Acting Senior Commissioner.

2015 WAIRC 01063

DISPUTE RE CLAUSE 9.1 (C) AND (D) - MODES OF EMPLOYMENT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	HEALTH SERVICES UNION OF WESTERN AUSTRALIA (UNION OF WORKERS) **APPLICANT** **-v-** THE DIRECTOR GENERAL OF HEALTH AS DELEGATE OF THE MINISTER OF HEALTH IN HIS INCORPORATED CAPACITY UNDER SECTION 7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1927 (WA) **RESPONDENT**
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT
DATE	FRIDAY, 4 DECEMBER 2015
FILE NO.	PSAC 24 OF 2015
CITATION NO.	2015 WAIRC 01063

Result	Recommendation issued

Recommendation

WHEREAS this is an application made pursuant to Section 44 of the *Industrial Relations Act 1979* in which the applicant says that three former employees of the respondent (the employees) employed on fixed term contracts over several years at Swan Kalamunda District Hospital should be entitled to the transition payment due to the closure of the hospital; and

WHEREAS taking account of:

- the employees' particular and unique circumstances; and
- the information available suggesting strongly that the respondent's intention from soon after the initial contracts was to create positions for which they would be eligible for permanency; and
- there being difficulty in obtaining information as to why that never proceeded; and
- the three employees having been disadvantaged by the respondent's failure to advertise or formalise the positions; and

WHEREAS otherwise the employees appear to meet the tests that would entitle them to the Transition payment under Regulation 40 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*;

NOW THEREFORE, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby recommends:

THAT the respondent make the Transition payment under Regulation 40 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* to Ms Gail Conlan, Ms Lisa Vagg and Ms Robyn Hamilton.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
[L.S.] Public Service Arbitrator.

2015 WAIRC 01077

DISPUTE RE CLAUSE 31 OF WA HEALTH - HSUWA - PACTS - INDUSTRIAL AGREEMENT 2014

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	HEALTH SERVICES UNION OF WESTERN AUSTRALIA (UNION OF WORKERS)
	APPLICANT
	-v-
	THE DIRECTOR GENERAL OF HEALTH AS DELEGATE OF THE MINISTER OF HEALTH IN HIS INCORPORATED CAPACITY UNDER SECTION 7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1927 (WA)
	RESPONDENT
CORAM	PUBLIC SERVICE ARBITRATOR
	COMMISSIONER J L HARRISON
DATE	WEDNESDAY, 9 DECEMBER 2015
FILE NO	PSAC 15 OF 2015
CITATION NO.	2015 WAIRC 01077

Result	Application for interim orders dismissed
Representation	
Applicant	Mr C Panizza and Ms K Heal
Respondent	Ms R Sinton and Mr M Aulfrey (of counsel)

Order

This application was lodged on 31 July 2015 under s 44 of the *Industrial Relations Act 1979* (the Act) concerning a number of issues in dispute between the applicant and the respondent. One of the applicant's claims was that the respondent was unlawfully and unreasonably directing its members including Social Workers employed at Fiona Stanley Hospital (FSH) to wear uniforms. The applicant was also concerned about the respondent threatening employees with disciplinary action in relation to this issue.

The Commission convened a number of conferences and many issues in dispute were settled. However the parties did not reach agreement on the issue of Social Workers being required to wear uniforms. At a conference held on 12 November 2015 the respondent requested that the Commission issue the following interim orders (the Orders).

1. That Social Workers employed at Fiona Stanley Hospital (FSH) resume the wearing of uniforms according to the lawful directions of their line managers at FSH and according to the status quo that existed at FSH prior to and during the raising of this dispute, until 31 March 2016.
2. That the parties have liberty to apply in relation to this order.

After the parties provided written submissions about whether the Orders should issue a conference was convened on 12 November 2015 to hear further from the parties. As the applicant gave further documentation to the respondent after this conference the respondent provided further submissions with respect to this information.

Submissions

Respondent

The applicant is not complying with clause 56.1 of the dispute resolution procedure of the *WA Health – HSUWA – PACTS – Industrial Agreement 2014* (the Agreement) as Social Workers are not observing the status quo by wearing uniforms as provided for in clause 56.3(b) of the Agreement whilst the Commission deals with this dispute. Also no occupational safety and health (OSH) reports have been filed by Social Workers about having to wear uniforms despite the policy about filing these reports being well-known to the applicant's members.

On 16 October 2015 and without consultation or warning FSH Social Workers voted to ignore the directive to wear uniforms and Social Workers decided that they would determine if it is clinically appropriate to wear uniforms. The respondent submits that from October 2014 Social Workers at FSH were wearing uniforms provided by the respondent under clause 31.1(b) of the Agreement as instructed and after this vote when they decided they would determine if wearing a uniform was appropriate only half of the approximately 50 Social Workers at FSH have been wearing uniforms.

The respondent claims that Social Workers have a duty of care to identify themselves. Social Workers are also breaching the Code of Ethics 2010 by not wearing uniforms as they are not complying with the respondent's directive to wear a uniform.

There is a requirement on all Allied Health employees to wear uniforms at FSH in the Emergency Department which is a volatile work area as this assists with easy identification of staff members, it is professional to do so, it is a team building exercise and it avoids damaging employees' clothes.

Industrial relations is deteriorating at FSH due to this conflict. Social Workers who are wearing their uniforms at FSH are being intimidated and pressured by the applicant not to wear their uniforms and this bullying is damaging the relationship between the applicant and the respondent at FSH.

The Incident Forms relied on by the applicant exaggerate the extent of the problem concerning Social Workers wearing uniforms. The complaints are mainly from one area containing disaffected Social Workers (Maternity, Paediatrics and Neonatal), many of the complaints are repetitious, 32 of the 56 complaints relate to wearing a logo which is optional for Social Workers and no harm to a Social Worker or client has resulted from any of the complaints lodged. Five of the 56 complaints did not relate to wearing a uniform and none of the 32 incident reports have been reported to the respondent as OSH incidents.

Applicant

The applicant opposes the Orders being issued.

The respondent's direction that Social Workers wear a uniform is unlawful as it compromises the safety and health of social workers, it breaches client safety and confidentiality and this direction places Social Workers in conflict with the Australian Association of Social Workers Practice Standards 2013 and Code of Ethics 2010. One of the key responsibilities of a Social Worker is to abide by the Code of Ethics 2010 which provides that Social Workers are to act in the best interests of clients, in a safe manner and in a culturally appropriate manner which is not discriminatory. Wearing an identifying uniform constitutes a risk to the health and safety of Social Workers, it breaches client confidentiality and compromises client welfare. It also contradicts the terms of the FSH Social Worker Job Description Form. Further, Social Workers had not been wearing uniforms long before this dispute was lodged in the Commission as Social Workers commenced working at FSH in significant numbers in February 2015.

In seeking the Orders which do not allow Social Workers to exercise their professional discretion with respect to wearing a uniform the respondent is behaving in an inconsistent manner with respect to its own policies and procedures because the Orders place Social Workers in an unsafe environment.

The OSH reporting system at FSH does not adequately address the safety concerns of Social Workers both on behalf of their clients and for Social Workers. In the absence of a suitable reporting mechanism the applicant created an Incident/Issue Reporting Form to assist Social Workers to articulate the risks associated with wearing uniforms. These forms provide numerous examples of client interaction where client safety and confidentiality has been compromised due to the identifying nature of wearing a uniform. Of particular concern is the safety of women who report family and domestic violence. The respondent has been aware of OSH issues related to Social Workers wearing uniforms as concerns about this issue have been raised by email with the Director Allied Health Services pre and post February 2015. The applicant relies on 32 reports from 20 Social Workers detailing incidents which took place or raising concerns about wearing uniforms between January and November 2015 and these reports provide examples of situations where the wearing of uniforms by Social Workers compromised their safety and that of their clients.

Social Workers wear duress alarms in Mental Health, Maternity, State Rehabilitation Service (Acquired Brain Injury) and the Emergency Department at FSH which confirms that they are exposed to violence and aggression.

The applicant disputes that its officials are bullying or pressuring Social Workers at FSH not to wear uniforms.

Consideration

I find that this dispute concerns an industrial matter as it relates to the working conditions of Social Workers at FSH. I am also of the view that the Commission has the power to issue the Orders being sought by the respondent as s 44(6)(ba)(i) of the Act allows for interim orders to issue to prevent the deterioration of industrial relations in respect of the matter in question until conciliation or arbitration has resolved that matter.

After carefully considering the parties' submissions with respect to this matter and when taking into account equity and fairness and s 26 considerations I have decided that it is not appropriate in all of the circumstances that the Orders being sought by the respondent should issue.

Without reaching a concluded view on the merits of the claim made by the applicant that Social Workers should not wear uniforms I find that it is appropriate that Social Workers should have discretion about wearing a uniform until this issue has been finalised. In reaching this conclusion I have taken into account that a significant number of Social Workers working at FSH have had serious concerns for their safety and that of their clients since February 2015 as a result of being required to wear a uniform. I also find that these concerns are not limited to a small group of disaffected Social Workers in one area as argued by the respondent as issues were raised and incident reports were completed by almost half of the Social Workers working at FSH and these Social Workers work in at least four different sections of FSH. In deciding not to issue the Orders it is my view that any concerns the respondent has about any deterioration of industrial relations at FSH, if this is happening at the workplace, will be alleviated.

NOW THEREFORE having heard Mr C Panizza and Ms K Heal on behalf of the applicant and Ms R Sinton and Mr M Aulfrey (of counsel) on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT the application for interim orders be and is hereby dismissed.

(Sgd.) J L HARRISON,
Commissioner,
[L.S.] Public Service Arbitrator.

2015 WAIRC 01051

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES JAMES RICHARD GARRATT

APPLICANT

-v-

LEGACY FUND OF PERTH INC

RESPONDENT

CORAM CHIEF COMMISSIONER A R BEECH
DATE FRIDAY, 27 NOVEMBER 2015
FILE NO/S U 99 OF 2015
CITATION NO. 2015 WAIRC 01051

Result Order issued
Representation (by written correspondence)
Applicant Mr B Douglas, of counsel
Respondent Mr B Jackson, of counsel

Order

WHEREAS the parties have conferred and agreed upon the manner in which this application should proceed;

AND WHEREAS the Commission is of the view that it is appropriate that an order issue in the terms of the agreement reached;

AND HAVING HEARD Mr B Douglas, of counsel for the applicant and Mr B Jackson, of counsel for the respondent, both by written correspondence;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred on me under s 27(1)(o) of the *Industrial Relations Act 1979*, and by consent, hereby order:

1. THAT the conciliation conference listed on 30 November 2015 be vacated;
2. THAT on or before Monday, 21 December 2015 the respondent's solicitors will write to the applicant's solicitors outlining the allegations against the applicant. The Commission need not be copied in on this correspondence;
3. THAT on or before Friday, 15 January 2016 the applicant's solicitors will reply to the respondent's solicitors addressing the allegations against the applicant. The Commission need not be copied in on this correspondence; and
4. THAT the application otherwise be adjourned and may be relisted at the request of either party.

(Sgd.) A R BEECH,
[L.S.] Chief Commissioner.

INDUSTRIAL AGREEMENTS—Notation of—

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
Public Transport Authority/ ARTBIU (Transit Officers) Industrial Agreement 2015 AG 19/2015	10/11/2015	Public Transport Authority of Western Australia	Australian Rail Tram and Bus Industry Union of Employees West Australian Branch	Commissioner S J Kenner	Agreement registered

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
St. Andrew's Grammar School (Enterprise Bargaining) Agreement 2014 AG 20/2015	1/12/2015	The Independent Education Union of Western Australia, Union of Employees; St Andrews Greek Orthodox Grammar School; United Voice WA	(Not applicable)	Commissioner J L Harrison	Agreement registered

NOTICES—Appointments—

2015 WAIRC 01079

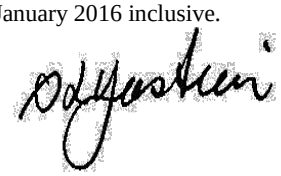
Designation of Officers

Sections 85(9) and 99D

Industrial Relations Act 1979

In my capacity as the Chief Executive Officer of the Department of the Registrar within the meaning of section 7 of the *Industrial Relations Act 1979*; and

Pursuant to sections 85(9) and 99D of the *Industrial Relations Act 1979*, **I DESIGNATE** the person nominated, being Sally Leeanne Anderson to be the CLERK OF THE COURT for the WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT to exercise the powers conferred under the *Industrial Relations Act 1979* or any other written laws, for the period 4 January – 29 January 2016 inclusive.



SUSAN BASTIAN

CHIEF EXECUTIVE OFFICER

REGISTRAR

DEPARTMENT OF THE REGISTRAR

7 December 2015

2015 WAIRC 01080

Designation of Officers

Sections 81D and 99D

Industrial Relations Act 1979

In my capacity as the Chief Executive Officer of the Department of the Registrar within the meaning of section 7 of the *Industrial Relations Act 1979*; and

Pursuant to sections 81D and 99D of the *Industrial Relations Act 1979* **I DESIGNATE** the person nominated, being Sally Leeanne Anderson to be the CLERK OF THE INDUSTRIAL MAGISTRATES COURT of Western Australia to exercise the powers conferred under the *Industrial Relations Act 1979* or any other written laws for the period 4 January – 29 January 2016 inclusive.

SUSAN BASTIAN

CHIEF EXECUTIVE OFFICER

REGISTRAR

DEPARTMENT OF THE REGISTRAR

7 December 2015

2015 WAIRC 01078

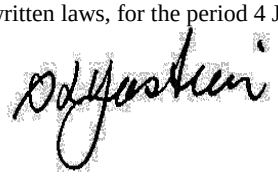
Designation of Officers

Section 93(1AC)

Industrial Relations Act 1979

In my capacity as the Chief Executive Officer of the Department of the Registrar within the meaning of section 7 of the *Industrial Relations Act 1979*; and

Pursuant to section 93(1AC) of the *Industrial Relations Act 1979*, **I DESIGNATE** the person nominated, being Sally Leeanne Anderson, AS A DEPUTY REGISTRAR to exercise the powers conferred under the *Industrial Relations Act 1979* or any other written laws, for the period 4 January – 29 January 2016 inclusive.



SUSAN BASTIAN

CHIEF EXECUTIVE OFFICER

REGISTRAR

DEPARTMENT OF THE REGISTRAR

7 December 2015

2015 WAIRC 01081

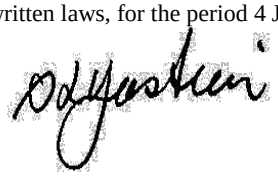
Designation of Officers

Sections 93(I) and 99D

Industrial Relations Act 1979

In my capacity as the Chief Executive Officer of the Department of the Registrar within the meaning of section 7 of the *Industrial Relations Act 1979*; and

Pursuant to sections 93(I) and 99D of the *Industrial Relations Act 1979*, **I DESIGNATE** the person nominated being SUSANE HUTCHINSON to be the REGISTRAR to exercise the powers conferred under the *Industrial Relations Act 1979* or any other written laws, for the period 4 January – 29 January 2016 inclusive.



SUSAN BASTIAN

CHIEF EXECUTIVE OFFICER

REGISTRAR

DEPARTMENT OF THE REGISTRAR

7 December 2015

ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL—Notation of—

The following were matters before the Commission sitting as the Road Freight Transport Industry Tribunal pursuant to s 38 of the *Owner-Drivers (Contracts and Disputes) Act 2007* that settled prior to an order issuing.

Parties		Commissioner	Application Number	Dates	Matter	Result
GJC Holdings Pty Ltd	Wetter the Better Pty Ltd T/as Cowan Contracting	Kenner C	RFT 26/2015	N/A	Dispute re outstanding payments	Discontinued
GJC Holdings Pty Ltd	Jessie Cowan Contracting	Kenner C	RFT 28/2015	N/A	Dispute re outstanding payments	Discontinued
K.F Watts & L.A Watts	Bonnie Rock Transport Pty Ltd T/A ASCO Transport & Logistics	Kenner C	RFT 14/2015	8/10/2015	Dispute re outstanding payments	Discontinued
Praneil Deeplaul T/as Safrica Logistics	Owens Transport Pty Limited	Kenner C	RFT 12/2015	18/08/2015	Dispute re alleged termination of contract	Discontinued