

6/80

IN THE PRIVY COUNCIL

No. **33** of 1979.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES

COURT OF APPEAL

IN PROCEEDINGS NO. C.A. 191 OF 1978

BETWEEN:

MAX COOPER & SONS PTY. LIMITED

Appellant and Cross-Respondent  
(Plaintiff)

AND:

THE COUNCIL OF THE CITY OF SYDNEY

Respondent and Cross-Appellant  
(Defendant)

## TRANSCRIPT RECORD OF PROCEEDINGS

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SOLICITORS FOR THE APPELLANT  
AND CROSS-RESPONDENT

Dare Reed,  
Level 7,  
25 Bligh Street,  
SYDNEY. 2000

By their Agents:

Denton, Hall & Burgin,  
3 Gray's Inn Place,  
Gray's Inn,  
LONDON, WC1R 5EA U.K.

SOLICITORS FOR THE RESPONDENT  
AND CROSS-APPELLANT

D.G. Barr,  
Solicitor to the Council of  
the City of Sydney,  
60 Martin Place,  
SYDNEY. 2000

By his Agents:

Linklaters & Paines,  
Barrington House,  
59-67 Gresham Street,  
LONDON. EC2 V 7JA U.K.

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(Plaintiff)

AND: THE COUNCIL OF THE CITY OF SYDNEY  
Respondent and Cross-Appellant  
(Defendant)

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TRANSCRIPT RECORD OF PROCEEDINGS

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Annexure "A" to the Affidavit  
of Arthur Ashley Cooper

competent Authority or Tribunal in respect of the Works the subject of this contract, and

(2) That it shall not have been granted in pursuance of an express provision existing in a relevant Award at the date of tender, and

(3) That the contractor shall have taken all reasonable and proper steps to oppose the granting of the special allowance including (if that course should appear warranted) any appeal that may be possible from the order granting the same.

10

Notification

.10 The Contractor shall include in any claim for payment under this provision notification of the date nature and authority for variation in award or other condition resulting in an alteration to labour index.

Date of Effect

.11 Where due to the effective date of variation in the labour index, the index applies to part only of the period for which the value of work completed is determined then the adjustment shall be calculated in the same proportion as the part is to the period.

20

Where variations in the labour index are retrospective these shall be the subject of a separate adjustment to the date of commencement of the variation.

Materials Index

.12 The index for materials shall be the PRICE INDEX OF MATERIALS USED IN BUILDING OTHER THAN HOUSE-BUILDING - SPECIAL PURPOSE INDEX FOR SYDNEY published by the Australian Bureau of Statistics or such other index as is stated in the schedule.

30

(In a contract for housing the index used shall be the PRICE INDEX OF MATERIALS USED IN HOUSE BUILDING - ALL GROUPS SYDNEY).

The month used will be the latest available at the date of tender or at the date of claim irrespective of the month to which it applies. Indexes when first published by the Bureau are provisional and subject to revision. The index first published for each month will be used in relation to this clause and no adjustment will be made if provisional indexes are subsequently revised.

Alteration to Basis of Indexes

40

.13 Where there is a substantial change in the basis of either the Labour Index or the Material Index such that its use would result in adjustments to the value of work completed which are inequitable then that index will no longer be used for the purpose of this provision and instead the related

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
COMMON LAW DIVISION )  
 )  
COMMERCIAL LIST )

No. 835 of 1977

MAX COOPER & SONS PTY. LIMITED

Plaintiff

THE COUNCIL OF THE CITY OF SYDNEY

Defendant

SUMMONS

The Plaintiff claims:

10

1. DECLARATION THAT:

On the proper construction of paragraph 6 of Annexure "A" to an Agreement between the Plaintiff and the Defendant dated the 31st March 1976, relating to the construction of a building on the corner of Kent and Druitt Streets, Sydney, and in applying the "rise and fall" formulae set forth therein the following matters are required to be taken into account:-

(a) Increases in the amounts payable for fares pursuant to State and Federal Awards.

20

(b) Increases in the cost of the provision of annual holidays and/or the payment of holiday pay pursuant to the Annual Holidays (Amendment) Act, 1974, and in the payment of a loading of 17½% thereon pursuant to State Awards.

(c) The provision in clause 27 of the National Building Trades Construction Award for the payment of sick leave.

Summons

- (d) Increases in the cost of meeting payroll tax payable pursuant to the Payroll Tax Act, 1971.
- (e) Increases in the cost of effecting workers compensation insurance.
- (f) Increases in the cost of the provision of long service benefits pursuant to the Long Service Payment Act, 1974.
- (g) Increases in the cost of the provision and payment of accident pay pursuant to the Building Trades Injuries Award made on the 21st May, 1971, and subsequent variations thereto and the incorporation thereof in clause 28 of the said National Award. 10

- 2. Order that the Defendant pay the Plaintiff's costs herein.
- 3. Such other order or orders as the Court may direct.

TO: The Defendant of Town Hall, Sydney, N.S.W.

If there is no attendance before the Court by you or by your counsel or solicitor at the time and place specified below, the proceedings may be heard and you will be liable to suffer judgment or an order against you in your absence. 20

Before any attendance at that time you must enter an appearance in the Registry.

Time: Thursday 10th day of March 1977.

Place: Supreme Court, Queens Square, Sydney.

Plaintiff: Max Cooper & Sons Pty. Limited

Plaintiff's Solicitor: Robert Ian Grant,  
Messrs. Dare Reed Martin & Grant,  
187 Macquarie Street,  
Sydney.

Summons

Plaintiff's  
Address for  
Service:

14th Level,  
187 Macquarie Street,  
Sydney.

Address of  
Registry:

Sydney.

R.I. Grant

-----  
Plaintiff's Solicitor

Filed: 11 Feb 1977

(L.S.)

10

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
COMMON LAW DIVISION )  
 )  
COMMERCIAL LIST )

No. 835 of 1977

MAX COOPER & SONS PTY. LIMITED

Plaintiff

THE COUNCIL OF THE CITY OF SYDNEY

Defendant

AFFIDAVIT

On the 8th day of February 1977, ARTHUR ASHLEY COOPER of 10

says on oath:-

1. I am the Managing Director of the Plaintiff herein.
2. On the 31st day of March 1976, the Plaintiff entered into an agreement with the Defendant providing for the completion by the Plaintiff for the Defendant of the construction of an office building on the corner of Kent and Druitt Streets, Sydney. A true copy of the said agreement is exhibited to me at the time of swearing this Affidavit and marked with the letter "A".
3. The date of closing of tenders referred to in paragraph 6 of Annexure "A" to the said Agreement (hereinafter referred to as "paragraph 6") was the 12th November, 1974. The Plaintiff commenced the works referred to in the said Agreement on or about the 12th December, 1974, and the works will shortly be completed. 20
4. The Plaintiff claims that since the 12th day of November 1974, and during the progress of the work referred to in the said Agreement alterations have occurred by way of increases

Affidavit of Arthur Ashley  
4. Cooper

to the actual cost to the Plaintiff in performing the contract (in the provision of labour and materials) as a consequence of alteration in the average hourly wage as defined in paragraph 6 or the equivalent monetary alteration

A. Cooper



C. Felton

-2-

due to changes in standard working hours and other conditions of employment arising from statute, statutory regulation or award or order of an Industrial Tribunal in the manner hereinafter set forth.

10

5. There have been increases in the average hourly wage as defined in paragraph 6.

6. There have been increases in fares pursuant to an Award made on the 11th December 1974, by the Industrial Commission of New South Wales and incorporated in clause 15.11 of the National Building Trades Construction Award made on the 12th March 1975 (hereinafter referred to as the "National Award").

20

There was a further increase by way of variation of the National Award on the 18th February 1976.

7. By reason of the said increases in the said average hourly wage there have been increases in the cost of the provision of annual holidays to employees and/or the payment of holiday pay pursuant to the Annual Holidays (Amendment) Act 1974 and in the payment of a loading of 17½% thereon pursuant to several State Awards made by the Industrial Commission of New South Wales.

Affidavit of Arthur Ashley  
Cooper

8. After the 12th November 1974, and until the date of the National Award there was no statutory or other provision for a separate payment by way of sick leave for employees. The award wages payable to employees pursuant to the awards listed in paragraph 6 contained a component referable to compensation for sick leave. The National Award by clause 27 thereof made provision for the payment of sick leave on full award wages for 40 hours for 11 months commencing on the 1st March 1975, and 80 hours per annum after 1st February 1976. 10

9. By reason of increases in the said hourly wage there have been increases in payroll tax on wages pursuant to the Payroll Tax Act, 1971.

10. There have been increases in the cost of effecting Workers Compensation Insurance pursuant to Section 18 of the

A. Cooper



C. Felton

-3-

Workers Compensation Act, 1926. The increases have been due to increases in the said average hourly wage and also due to increases in the rates of premium pursuant to amendments contained in Schedules to the Workers Compensation (Further Amendment) Act, 1975. 20

11. There have been increases in the cost of the provision of long service benefits pursuant to the Long Service Payment Act, 1974. The increases were pursuant to Regulation No. 298 of 1975 made pursuant to the said Act.

12. By reason of increases in the said average hourly wage

Affidavit of Arthur Ashley  
Cooper

there have been increases in the cost of provision and/or payment of public holiday pay and picnic day pay pursuant to the Awards listed in paragraph 6 which were subsequently incorporated in the said National Award.

13. By reason of the increases in the said average hourly wage there have been increases in the provision and payment of accident pay pursuant to the Building Trades Injuries Award made on the 21st day of May 1971, and variations thereto on the 22nd October 1971, and 29th June 1973, and the incorporation thereof in clause 28 of the National Award.

10

14. I have been engaged in the building industry for the past forty years. The terms "loadings" and "pay loadings" are commonly used in the industry generally and by builders, architects and quantity surveyors. In their common usage in the industry they include the payment of or provision for fares, annual leave and holidays, sick leave, long service leave, payroll tax, workers' compensation insurance, accident pay, statutory holiday pay and picnic day pay.

20

15. On or about the 31st March 1976, the Plaintiff submitted to the architects named in the said Agreement a claim for increases in Award rates of pay and pay loadings. A copy of the said claim is exhibited to me at the time of swearing this affidavit and marked with the letter "B". Subsequently the Plaintiff submitted to the said architects claims for progress payments and by way of example I refer to the last.

A. Cooper



C. Felton

Affidavit of Arthur Ashley

7. Cooper

Affidavit of Arthur Ashley  
Cooper

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progress claim made by the Plaintiff a copy whereof is exhibit-  
ed to me at the time of swearing this affidavit and marked with  
the letter "C". The architects issued progress certificates in  
accordance with the said Agreement consequent upon the claims  
for progress payments made by the Plaintiff. The amounts so  
certified were less than the progress amounts claimed by the  
Plaintiff but were in excess of the amounts representing the  
value of the works executed together with the full amount  
claimed in the progress claims as referable to wage increases.  
The architects have acknowledged to the Plaintiff that the  
amount of the excess certified was referable to the other in-  
creases (but without specifying which of them) referred to in  
the said submission.

10

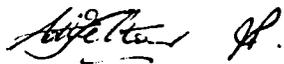
16. I respectfully request that the orders sought by the  
Plaintiff be made by this Honourable Court.

SWORN at Sydney on the )  
day hereinbefore )  
mentioned before me: )

A. Cooper

20

C. Felton JP



A Justice of the Peace

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
COMMON LAW DIVISION )  
 )  
COMMERCIAL LIST )

No. 835 of 1977

MAX COOPER & SONS PTY. LIMITED

Plaintiff

THE COUNCIL OF THE CITY OF SYDNEY

Defendant

AFFIDAVIT

On the 15th day of April, 1977, ARTHUR ASHLEY COOPER of 10  
44 Beechworth Rd. Pymble says on oath:-

1. I refer to my Affidavit sworn on the 8th day of February  
1977 and in particular to paragraph 14 thereof.

2. (a) The Building Industry Advisory Council of New South  
Wales has issued Special Conditions of Contract (or  
Subcontract) including a provision for "loading  
factors" and exhibited to me at the time of swearing  
this Affidavit and marked with the letter "A" is a  
copy of the said Special Conditions of Contract in-  
cluding the formulae for loading factors issued in 20  
1975. AC. CF.

(b) The Commonwealth Department of Works which is also  
known as the Department of Housing and Construction  
includes "rise and fall" formulae in building contracts  
with builders engaged by it and exhibited to me at  
the time of swearing this Affidavit and marked with  
the letters "B" and "C" are two such typical "rise

Affidavit of Arthur Ashley  
9. Cooper

Affidavit of Arthur Ashley  
Cooper

and fall" formulae incorporated in contracts for the construction of the Camperdown Rehabilitation Centre on the 12th March, 1974, and for the Commonwealth State Law Courts in 1970. Also exhibited to me and marked with the letter "D" is the relevant portion of the form of contract adopted by the said Commonwealth Department of Works in respect of its building projects to be read in conjunction with the "rise and fall" formulae exhibited hereto and marked with the letters "B" and "C".

10



C. Felton JP

-2-

- (c) The State Department of Public Works includes "rise and fall" formulae in building contracts with builders engaged by it, and exhibited to me at the time of swearing this Affidavit and marked with the letter "E" is a copy of the relevant portion of such building contracts adopted and used by the said Department including the "rise and fall" formulae.
- (d) The Institute of Quantity Surveyors has issued in the journal called the "Building Economist" on or about March 1976, a document entitled "Monthly Building Cost Index" and a copy thereof is exhibited to me at the time of swearing this Affidavit and marked with the letter "F".

20

AC. CF.

Affidavit of Arthur Ashley  
Cooper

10.



ANNEXURE "A"

BUILDING INDUSTRY ADVISORY COUNCIL OF N.S.W.

SPECIAL CONDITION OF CONTRACT (OR SUB-CONTRACT)

COST ADJUSTMENT PROVISION

General

.01 The Contract Sum shall be adjusted by the following method to compensate for the alterations in cost of labour and materials.

Labour - Materials Ratio

.02 The value of the Net Contract Sum completed from time to time shall be assumed to be made up of a labour component and a material component and the percentage for each stated in the schedule. If there is no statement in the schedule then the percentages shall be deemed to be 45% for labour and 55% for material. 10

Calculation of Adjustments

.03 The labour and material components of the value of work completed shall each be varied in the same proportion as their respective indexes have varied since the date of tenders according to the following formulae: 20

WHERE:

$$L\% \cdot V \times \frac{Lc-Lt}{Lt} + M\%V \times \frac{Mc-Mt}{Mt} = A$$

V = Value of the work completed for period  
Lt = Labour index at the date of tender  
Lc = Labour index at the date of claim  
Mt = Material index at the date of tender  
Mc = Material index at the date of claim 30  
L% = Percentage of V which is assumed to be labour  
M% = Percentage of V which is assumed to be material  
A = Adjustment to value of work completed

Contract Sum and Net Contract Sum

.04 "Contract Sum" shall mean the monetary sum stated in the Contract. "Net Contract Sum" shall mean the contract sum less amounts included for prime cost sums, contingency sums, provisional sums or like monetary provisions, Quantity Surveyors fees, and any other sum which it has been agreed will be adjusted on a different basis. 40

Annexure "A" to the Affidavit  
of Arthur Ashley Cooper

Value of Work Completed

.05 The value of work completed shall be that portion of the Net Contract Sum and those authorised variations thereto priced as at the date of tender represented by work executed during the period for which such value is to be stated. Where an architect is employed such value shall be determined from time to time by the Architect. The date of claim shall be the last day of the period during which the work was executed. Variations which are not priced as at the tender date shall be subject to separate adjustment as from the date upon which they are priced.

10

Date of Tender

.06 The date of tender for the purpose of this clause shall be midnight between Sunday and Monday of the calendar week immediately preceding the week in which tenders closed, or in the absence of tenders, the week in which the accepted offer was submitted by the Contractor.

Labour Index

20

.07 The Labour Index shall be the average of the hourly ordinary rates of wages of the following classes of employees as provided by the Awards mentioned herein and each including by way of a loading the factors set out in clause .08.

- (1) CARPENTER: National Building Trades Construction
- (2) BRICKLAYER: Award 1975
- (3) PLASTERER:
- (4) PAINTER:
- (5) PLUMBER: Plumbers & Gasfitters (State) Award
- (6) SKILLED LABOURER: Builders Labourers (Construction on Site) (Federal) Award

30

or such other award or awards as are set out in the schedule.

If for any reason all or any of the abovementioned awards become irrelevant or obsolete then there shall be substituted those awards which are appropriate.

The index shall be initially calculated at the date of tender to the third nearest decimal point and upon the change of any hourly rate or loading.

continued overleaf

40

This is the Annexure marked "A" referred to in the annexed Affidavit of ARTHUR ASHLEY COOPER sworn the 15th day of April, 1977, before me:

C. Felton  
A Justice of the Peace

2.

Loading Factors

.08 The cost factors in clause .07 shall be those which are of general application throughout the relevant trade or industry payable to or in respect of those classes of employees referred to in clause .07 (or stated in the schedule). The factors shall be stated in the schedule and shall include (unless already included in the award hourly ordinary rate):

10

(1) Annual Holidays

The cost of holidays being the annual cost of leave entitlement including any bonus or loading of a similar nature divided by the number of ordinary hours available for work in a year.

(2) Workers Compensation Insurance

Workers compensation insurance at the minimum premium rate for each of those employees specified in clause .07 prescribed under the Workers Compensation Act of N.S.W. 1926.

(3) Payroll Tax

Payroll tax at the rate provided in the Payroll Tax Act 1971 or any other tax of a similar nature levied directly on the wages paid.

20

(4) Paid Sick Leave

Paid sick leave calculated at the rate at which entitlement to employees accrues under the award.

(5) Long Service Charge

Long service charge at the rate prescribed under the Building and Construction Industry Long Service Payments Act (1974).

(6) Fares and Travelling Time

The hourly equivalent of the weekly allowance for fares and travelling.

30

(7) Other Costs

Any allowance levy or benefit hereafter required by law to be made or granted and which can be calculated as an hourly rate.

Site Allowances

.09 The ordinary rate of wages and average hourly rate shall not be adjusted by reason of any special allowance made to employees working on a particular site. The additional cost to the Contractor due to payment of any such allowance together with 10% thereof shall be reimbursed to the Contractor from time to time subject to the following conditions.

40

(1) That the allowance shall have been granted by a

Annexure "A" to the Affidavit  
of Arthur Ashley Cooper

competent Authority or Tribunal in respect of the Works the subject of this contract, and

(2) That it shall not have been granted in pursuance of an express provision existing in a relevant Award at the date of tender, and

(3) That the contractor shall have taken all reasonable and proper steps to oppose the granting of the special allowance including (if that course should appear warranted) any appeal that may be possible from the order granting the same. 10

Notification

.10 The Contractor shall include in any claim for payment under this provision notification of the date nature and authority for variation in award or other condition resulting in an alteration to labour index.

Date of Effect

.11 Where due to the effective date of variation in the labour index, the index applies to part only of the period for which the value of work completed is determined then the adjustment shall be calculated in the same proportion as the part is to the period. 20

Where variations in the labour index are retrospective these shall be the subject of a separate adjustment to the date of commencement of the variation.

Materials Index

.12 The index for materials shall be the PRICE INDEX OF MATERIALS USED IN BUILDING OTHER THAN HOUSE-BUILDING - SPECIAL PURPOSE INDEX FOR SYDNEY published by the Australian Bureau of Statistics or such other index as is stated in the schedule. 30

(In a contract for housing the index used shall be the PRICE INDEX OF MATERIALS USED IN HOUSE BUILDING - ALL GROUPS SYDNEY).

The month used will be the latest available at the date of tender or at the date of claim irrespective of the month to which it applies. Indexes when first published by the Bureau are provisional and subject to revision. The index first published for each month will be used in relation to this clause and no adjustment will be made if provisional indexes are subsequently revised.

Alteration to Basis of Indexes

.13 Where there is a substantial change in the basis of either the Labour Index or the Material Index such that its use would result in adjustments to the value of work completed which are inequitable then that index will no longer be used for the purpose of this provision and instead the related 40

Annexure "A" to the Affidavit  
of Arthur Ashley Cooper

component (Labour or Material) of the value of work completed shall be varied in the same way as the actual cost of carrying out the work differs from the prices upon which the tender was based.

BUILDING INDUSTRY ADVISORY COUNCIL OF N.S.W.

DATE \_\_\_\_\_

COST ADJUSTMENT PROVISION SCHEDULE

N.S.W. - County of Cumberland, Northumberland or Camden PROJECT

Classification and Award	(b)		(c)		(d)		(e)		Loaded Hourly Wage
	Award Hourly Rate	Holiday & Sick Pay Loading	Hourly Pay	Workers Compensation Premium %	Payroll Tax %	Combined (d) & (e) % on (c)	Long Service Charge 3% on (a)	Fares and Travelling Allowance	
CARPENTER & JOINER National Building Trades Construction Award 1975									
BRICKLAYER									
PAINTER									
PLASTERER									
PLUMBER Plumbers & Gas Fitters (State) Award									
SKILLED LABOURER Builders Labourers (Construction on Site) (Federal) Award									

AVERAGE OF LOADED HOURLY WAGE = \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

Ordinary hours in a year = 52 weeks x 40 hours = 2080  
 Less 4 weeks annual leave = 4 weeks x 40 hours = 160  
 Public Holidays and Picnic Day 10 days x 8 hours = 80  
ORDINARY HOURS AVAILABLE FOR WORK IN A YEAR = 1840

HOLIDAY PAY LOADING  
 Annual Leave 4 weeks x 40 hours 160  
 Annual leave loading 17.5% x 160 hours 28  
 hourly equivalent  
 Loading  $\frac{188}{1840} \times 100 = 10.2174\%$

HOLIDAY AND SICK PAY LOADING  
 Annual leave 4 weeks x 40 hours 160  
 Annual Leave loading hourly equivalent 17.5% x 160 hours 28  
 Sick pay entitlement 5 days x 8 hours 40  
 Loading  $\frac{228}{1840} \times 100 = 12.3913\%$

BUILDING INDUSTRY ADVISORY COUNCIL OF N.S.W.

COST ADJUSTMENT PROVISION SCHEDULE

DATE \_\_\_\_\_

PROJECT \_\_\_\_\_

LABOUR/MATERIAL RATIO

Labour Component of Net Contract Sum (L) \_\_\_\_\_ %

Material Component of Net Contract Sum (M) \_\_\_\_\_ %

MATERIAL INDEX

The Material Index for this Contract is

CALCULATION OF ADJUSTMENTS

For this Contract

Lt = \_\_\_\_\_

Mt = \_\_\_\_\_

L% = \_\_\_\_\_

M% = \_\_\_\_\_



This is the Annexure marked "C" referred to in the annexed Affidavit of ARTHUR ASHLEY COOPER sworn the 15th day of April, 1977, before me:

C. Felton JP



A Justice of the Peace

ANNEXURE "C"  
1970  
THE SCHEDULE OF RISE AND FALL: COMMONWEALTH STATE LAW COURTS  
MAIN SPECIFICATION (cont'd)

Classifi- cation (1)	Award (2)	Allowances			Loadings			Award Wage +Allowances +Loadings (11)		
		Weekly Wage Rate (3)	Tool Allow (4)	Fares and Trav. Allow. (5)	Industry or Const. Allow. (6)	Award Weekly Wage & Allow. (7)	Annual Leave 6.12% Payroll Tax 2.5% (8)		Workers Compen- sation Insce. (10)	
Builders Labourer	Builders Labourers (Construction on site) Award, 1962 (Federal) - Clause 8 Margins - Classifications (4).	62.75	-	F 3.00 TA 4.00	3.25	7 3.000	4,460	1.825	2.920	82.205
Bricklayer	Carpenters & Joiners & Bricklayers Construction Award (State) - Clause 3 Wages (ii) Bricklayer	69.20	0.70	F 3.00 TA 4.118	3.25	80.268	4,913	2.007	3.211	90.399
Carpenters Including Joiners	Carpenters & Joiners & Bricklayers Construction Award (State) - Clause 3 Wages (i) Carpenters	70.00	1.50	F 3.00 TA 4.133	3.25	81.883	5,011	2.047	8.205	92.216
Plumber	Plumbers & Gasfitters Award (State) - Clause 4, Wages Part 'A' - (a)	70.80	1.50	F 3.00 TA 4.147	3.25	82.697	5,061	2.067	3.308	93.133

ALL AS THE RELEVANT AWARDS AND STATUTORY REGULATIONS  
WHICH WERE APPLICABLE ON THE 19TH OCTOBER, 1970.

1970

THE SCHEDULE OF RISE AND FALL: COMMONWEALTH STATE LAW COURTS  
 MAIN SPECIFICATION (cont'd)

Classifi- cation (1)	Award (2)	Weekly Wage Rate (3)	Allowances		Award Weekly Wage & Allow. (7)	Loadings			Award Wage +Allowances +Loadings (11)	
			Tool Allow (4)	Fares and Trav. Allow. (5)		Industry or Const. Allow. (6)	Annual Payroll Tax 2.5% (9)	Workers' Compen- sation Insc. (10)		
Plasterer	Plasterers, etc., Award (State) - Clause 3 - Wages	69.20	1.50	3.00 2.08	3.25	81.068	4.961	2.026	3.243	91.298
Painter	Painters, etc., Award (State) - Clause 3 - Wages part 'A' - (a)	68.00	0.30	3.00 4.23	3.25	78.683	4.815	1.967	3.147	88.612
			SEE OVER							

AVERAGE ON SITE LOADED WEEKLY WAGE = TOTAL : 537.545 = \$89.645 TOTAL 537.863

6

THE SCHEDULE OF RISE AND FALL:

TENDERS CLOSED:		CONTRACTOR:									
Classification	Award	Weekly Wage Rate	Tool Allow	Fares and Trav. Allow.	Industry or Const. Allow.	Award Weekly Wage & Allow.	Annual Leave 9.79%	Loadings Payroll Tax 5%	Workers' Compensation Insc.	%	Award Weekly Wage + Allowances + Loadings
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Builders Labourer	Builders Labourers (Construction on site) Award, 1962 (Federal) - Clause 8 Margins - Classifications (3)										
Bricklayer	Carpenter & Joiners & Bricklayers Construction Award (State) - Clause 3 Wages (ii) Bricklayer										
Carpenters including Joiners	Carpenters & Joiners & Bricklayers Construction Award (State) - Clause 3 Wages (i) Carpenters										
Plumbers	Plumbers & Gasfitters Award (State) - Clause 4, Wages Part "A" - (a)										
Plasterer	Plasterers, etc., Award (State) - Clause 3 - Wages										
Painter	Painters, etc., Award (State) - Clause 3 - Wages part "A" - (a)										

AVERAGE ON SITE LOADED WEEKLY WAGE = TOTAL \$ \_\_\_\_\_ TOTAL \$ \_\_\_\_\_

This the annexure marked "D" referred to in the annexed Affidavit of ARTHUR ASHLEY COOPER sworn the 15th day of April, 1977 before me:

  
C. Felton

A Justice of the Peace.  
Annexure "D" to the Affidavit  
22. of Arthur Ashley Cooper

SECTION 1 OF PRELIMINARY CLAUSES1.01 TYPE OF CONTRACT

The Contract shall be for a lump sum including any monetary provisions specified. (See Condition No. 39 of the General Conditions of Contract).

1.02 VARIATIONS IN WAGE RATES  
AND MATERIAL COSTS

Rise and Fall adjustments in respect of labour and materials shall be made in accordance with the provisions of the following Special Conditions. 10

The Contract Price, for the purposes of this Special Condition, shall be deemed to be based on the wage rates, hours of labour, conditions of employment and loadings in force as at midnight on Monday of the week immediately preceding the week in which tenders close and a payment in accordance with and subject to the provisions of clauses (3) and (4) of this Special Condition shall be made in respect of any change in awards, allowances or loadings not then effective including changes made retrospective to become effective before the date defined herein. 20

Whenever the terms hereafter defined in this clause occur in this Special Condition, they shall mean as follows:-

"the average on-site loaded weekly wage" is as shown in the schedule being the average of the weekly wage rate, allowances and loadings of the class or classes of employees and their respective awards as indicated in the schedule hereto calculated as shown in the schedule as at the date defined in clause 1 of this Special Condition.

"the weekly wage rate" means forty times the ordinary hourly rate of wages prescribed in the relevant award for an adult male employee of the class mentioned in the said schedule. 30

"the adjusted average on-site loaded weekly wage" means the average on-site loaded weekly wage calculated in the manner aforesaid but adjusted by substituting for the amounts as set out in the schedule the amounts as changed by the variations of the kind mentioned in clauses (3) and (4) hereof which shall have taken effect after the date defined in clause (1) hereof. 40

"the hourly rate of wages" means the amount so prescribed in the relevant award as varied by variations of the kind mentioned in clauses (3) and (4) hereof.

Annexure "D" to the Affidavit  
of Arthur Ashley Cooper

"the hours of labour" means the number of ordinary hours of labour per week prescribed in the respective awards for the class or classes of employees mentioned in the schedule as changed by variations of the kind mentioned in clauses (3) and (4) of this Special Condition.

3.

1.02 VARIATIONS IN WAGE RATES  
AND MATERIAL COSTS (CONT'D) 10

"the contract completion date" means -

the date specified in the contract for the completion of the whole of the works, or

where an extension of the time for completion of the works has been granted by the Director of Works in accordance with the provisions of Condition 35 of the General Conditions of Contract and the Director has directed that the contract price shall continue to be varied in respect of work done during the extended time, the date for completion of the whole of the works as so extended 20

whichever shall be the later.

"net contract price" means the amount mentioned in the agreement between the Commonwealth and the Contractor less any amounts included therein for provisional sums, prime cost items and contingency sums as varied in accordance with the provisions of the contract and less any amounts included in respect of Statutory and Professional fees, public risk insurance premiums and premiums in respect of insurance of the works, but adjusted by the price of any provisional quantities included in the Specification the correct measurement of which has become known and adjustments made under the provisions of Condition 39 (3) of the General Conditions of Contract. 30

"the uncompleted portion of the net contract price" means the amount calculated by deducting from the Net Contract Price -

the value, as determined by the Director of Works from time to time, of work covered by the Net Contract Price that has been completed as at the date on which any variation of the kind referred to in clauses (3) and (4) hereof occurs; 40

and

the value of work covered by the Net Contract Price that has been omitted by direction of the Director of Works PROVIDED THAT if any work covered by the Net Contract Price shall be directed by the Director of Works to be omitted after the date of any adjustment of the contract price made in pursuance of the provisions of clauses (3) and (4) of this Special Condition, then any such adjustment shall be appropriately amended in respect of the work subsequently directed to be omitted.

10

4.

1.02 VARIATIONS IN WAGE RATES  
AND MATERIAL COSTS (CONT'D)

(3) If by reason of any Statute, award, judgment, determination, order or rule of a court, industrial board or other statutory authority (but not by registration of an agreement) there shall be any variation after the date defined in clause (1) hereof in the rates of wages or allowances payable to, or loadings applicable to such payments or the hours of labour to be worked by the class or classes of employees mentioned in the schedule hereto under the awards mentioned therein and such variation is of general application throughout the industry covered by the relevant award mentioned in the said Schedule, the net contract price shall be adjusted by increase or decrease as the case may be by an amount representing sixty per cent (60%) of the amount which bears the same proportion to the uncompleted portion of the net contract price as at the date when any such variation shall have become effective or the difference between the adjusted average on-site loaded weekly wage consequent upon such variation and the average on-site loaded weekly wage bears to the average on-site loaded weekly wage.

20

30

(4) Any variation in the hours of labour shall be incorporated in the adjusted average on-site loaded weekly wage in a manner to be determined by the Director of Works.

(5) The value of variations to the works ordered at rates in a Bill of Quantities or Schedule of Prices shall be adjusted by increase or decrease as the case may require in accordance with the provisions of this Special Condition and, for the purpose of clause 3, the net value of such works and the uncompleted portion of such net value shall be determined by the Director of Works.

40

(6) Variations to the works ordered by the Director of Works

Annexure "D" to the Affidavit  
of Arthur Ashley Cooper

which are not at rates in a Bill of Quantities or Schedule of Prices shall not be subject to the provisions of this Special Condition unless it is so agreed at the time the extra works are ordered.

(7) Any adjustments associated with a variation or new prescription relating to conditions of employment, allowances or loadings not specifically set out in the schedule hereto or otherwise provided for herein or from any form of overhead or similar charge raised on the wages, allowances, etc. referred to herein, are expressly excluded from any adjustment under these provisions. 10

(8) In the event of the Contractor failing to complete the whole of the works on or before the contract completion date he shall not in respect of any work done after that date be entitled to any increase in the contract price by reason of the provisions hereinbefore set forth but nevertheless in respect of such work the contract price shall continue to be subject to decrease by reason of variations of the kind mentioned in clause 3 hereof which occur after the contract completion date and result in the adjusted average on-site loaded weekly wage being less than the average on-site loaded weekly wage. 20

(9) Where an extension of the time for completion of the works is granted by the Director of Works in accordance with the provisions of Condition 35 of the General Conditions of Contract, the Director of Works may direct that the contract price shall continue to be varied in the manner set forth in clause 3 hereof in respect of work done during such extended time. 30

5.  
1.02 VARIATIONS IN WAGE RATES  
AND MATERIAL COSTS (CONT'D)

All claims for payment arising under this Special Condition shall be lodged by the Contractor with the Director of Works not later than 28 days after a variation occurs in the weekly wage rate, with hours of labour, allowances or loadings, or within such extended time as the Director of Works shall allow in writing. Such claims shall contain all relevant information as to the basis and calculation of the amount claimed. The Commonwealth shall not be liable to pay any claim or claims for payment which are received by the Director of Works after the expiration of the period stated herein. 40

In the case of the undermentioned portions of the work in respect of which the Director of Works nominates a Sub-Contractor

Annexure "D" to the Affidavit  
of Arthur Ashley Cooper

which are not at rates in a Bill of Quantities or Schedule of Prices shall not be subject to the provisions of this Special Condition unless it is so agreed at the time the extra works are ordered.

(7) Any adjustments associated with a variation or new prescription relating to conditions of employment, allowances or loadings not specifically set out in the schedule hereto or otherwise provided for herein or from any form of overhead or similar charge raised on the wages, allowances, etc. referred to herein, are expressly excluded from any adjustment under these provisions. 10

(8) In the event of the Contractor failing to complete the whole of the works on or before the contract completion date he shall not in respect of any work done after that date be entitled to any increase in the contract price by reason of the provisions hereinbefore set forth but nevertheless in respect of such work the contract price shall continue to be subject to decrease by reason of variations of the kind mentioned in clause 3 hereof which occur after the contract completion date and result in the adjusted average on-site loaded weekly wage being less than the average on-site loaded weekly wage. 20

(9) Where an extension of the time for completion of the works is granted by the Director of Works in accordance with the provisions of Condition 35 of the General Conditions of Contract, the Director of Works may direct that the contract price shall continue to be varied in the manner set forth in clause 3 hereof in respect of work done during such extended time. 30

5.  
1.02 VARIATIONS IN WAGE RATES  
AND MATERIAL COSTS (CONT'D)

All claims for payment arising under this Special Condition shall be lodged by the Contractor with the Director of Works not later than 28 days after a variation occurs in the weekly wage rate, with hours of labour, allowances or loadings, or within such extended time as the Director of Works shall allow in writing. Such claims shall contain all relevant information as to the basis and calculation of the amount claimed. The Commonwealth shall not be liable to pay any claim or claims for payment which are received by the Director of Works after the expiration of the period stated herein. 40

In the case of the undermentioned portions of the work in respect of which the Director of Works nominates a Sub-Contractor

26. Annexure "D" to the Affidavit  
of Arthur Ashley Cooper

Establish reference lines for placement of external walling in relation to building alignments, each storey and in relation to verticality each storey

27. Annexure "D" to the Affidavit  
of Arthur Ashley Cooper

Annexure "E"

SPECIAL CONDITION OF CONTRACT

RISE AND FALL ADJUSTMENTS - MATERIALS

1. Subject to the clauses that follow the Contractor shall be entitled to a payment or shall pay or allow to the Principal an amount calculated in accordance with this Special Condition.
2. For the purpose of this Special Condition the Interpretation of Terms shall be as follows:

(a) 'The Formula' means:

10

$$\frac{\text{the difference between PMI and OMI}}{\text{TMI}} \times V \times 55\%$$

wherein

"TMI" is the Tender Materials Index and is the Materials Index first published for the month in which tenders close,

"PMI" means the Present Materials Index and is the Materials Index first published for the month immediately preceding the month which includes the date at which V is computed,

20

"OMI" means the Obsolete Materials Index and is the Materials Index first published for the month immediately preceding the month for which PMI is first published,

PROVIDED THAT if in terms of the above definitions the month of publication of OMI and/or PMI precedes the month of publication of TMI then OMI and/or PMI shall be taken as TMI.

(b) "V" means the Value of Uncompleted Work.

(c) "Materials Index" means the Wholesale Price Index of Materials, applicable to Sydney, which is nominated in the schedule hereunder, and is one of the Group Indexes published monthly by the Australian Bureau of Statistics as part of the Wholesale Price Index of Materials Used in Building Other Than House Building.

30

Annexure "E" to the Affidavit  
of Arthur Ashley Cooper

The Group Index applicable  
to this contract is:  
Item No. ....  
Hereunder

Title of Group Index

(i)	All groups
(ii)	Special purpose index
(iii)	Mechanical Services components
(iv)	Electrical installation materials
(v)	Aluminium products

10

of Uncompleted Work' means, subject to the provisions  
of clauses 3(c) and 3(d), resulting from  
t + e - o - p - r wherein:

"t" means the accepted tender price;

"e" means the value of any authorised extra or increase in  
the dimensions or extent of the works computed in  
accordance with the contractual provisions relating to  
variations; 20

"o" means the value of any authorised omission or decrease  
in the dimensions or extent of the works computed  
in accordance with the contractual provisions relating  
to variations;

1

This is the Annexure marked "E" referred to in the annexed  
Affidavit of ARTHUR ASHLEY COOPER sworn the 15th day of April,  
1977, before me:



C. Felton JP  
A Justice of the Peace

30

Annexure "E" to the Affidavit  
of Arthur Ashley Cooper

"p" means the total value included in the contract for Provisional Sums, Monetary (including Contingency) Sums, Prime Cost Items and any portion of the contract price in respect of which provision is made for adjustment of rise and fall on an actual basis (including the value of fluorescent light fittings where the supplier and prices have been nominated in the contract).

10

"r" means the value of work done under the contract, including advance payments computed as at the first day of the month.

PROVIDED THAT:

(i) in respect of "e", "o" and "r" the value shall include those sums which have, in reference to any provisional quantities, become ascertainable by measurement and shall exclude the value of all items included under "p" and adjustments thereto, and all previous applications of the formula;

20

(ii) The Superintendent shall determine the values ascribed to "e", "o", "p" and "r" respectively.

3. (a) The Formula shall be applied in respect of each change in the Materials Index and subject to the provisions of Clause (5) of this Special Condition, the Contractor in respect of the amount resulting from the application of The Formula:

(i) shall be entitled to receive a payment of that amount if the Materials Index has increased, or

30

(ii) shall pay or allow that amount to the Principal if the Materials Index has decreased PROVIDED THAT:

(b) In respect of each variation, falling within the categories of "e", and "o", the appropriate value of work contained therein, which is priced at unit rates in the Priced Bill of Quantities or Schedule of Rates or otherwise at rates applicable at the date tenders closed, shall have rise and fall adjustments calculated in accordance with The Formula in respect of each change in the Materials Index occurring between the date tenders closed and the date of the authorisation of the variation;

40

and

- (c) extra works which are not priced at unit rates in the Priced Bill of Quantities or Schedule of Rates or otherwise at rates applicable at the date tenders closed, shall not be subject to the provisions of this Special Condition unless it is so agreed at the time the extra works are authorised;

and

10

- (d) in applying The Formula the Superintendent may exclude the value of "e" and "o" from the Value of Uncompleted Work and make separate calculations under The Formula in respect of "e" and "o".

- 4. In the event that the Contractor fails to complete the works by the date stipulated in the contract including authorised extensions The Formula -

- (a) shall be applied to increases or decreases in the Materials Index occurring before that date;

- (b) shall not be applied to increases or decreases occurring in the Materials Index after that date. 20

- 5. Subsequent to a change in the Materials Index, payments to the Contractor under this Special Condition will be made from time to time and at periods determined by the Superintendent after consideration of the value of work completed.

- 6. Calculations made in accordance with the provisions of this Special Condition, including the calculation of the Value of Uncompleted Work, may be recalculated by the Superintendent prior to the issue of the Final Certificate. 30

2.

#### SPECIAL CONDITION OF CONTRACT

##### RISE AND FALL ADJUSTMENTS - LABOUR

- 1. Subject to the clauses that follow the Contractor shall be entitled to a payment or shall pay or allow to the Principal an amount calculated in accordance with this Special Condition.
- 2. For the purpose of this Special Condition the Interpretation of Terms shall be as follows:

Annexure "E" to the Affidavit  
of Arthur Ashley Cooper

(a) 'The Formula' means:

$$\frac{\text{the difference between PW and OW}}{\text{TW}} \times V \times 35\%$$

wherein,

"PW" means the Present Average Wage Rate and is the new Average Wage Rate,

"OW" means the Obsolete Average Wage Rate and is the wage rate existing immediately before the Present Average Wage Rate,

10

"TW" means the Average Wage Rate existing at the Adjusted Tender Date, and

"V" means the Value of Uncompleted Work.

(b) 'Schedule' means the Schedule marked "R" annexed hereto.

(c) 'Average Wage Rate' as incorporated in PW, OW and TW means the sum resulting from the addition of column 11 of the Schedule divided by the sum resulting from the addition of the number of classifications of labour nominated in column 1 of the Schedule.

20

(d) 'Award or Other Variation' means a variation, to any relevant award nominated in the Schedule, which becomes payable after the Adjusted Tender Date, results in a change in the Average Wage Rate, is made by reason of any statute or any award, judgement, determination, order or rule of a Court, Industrial Board or other Statutory Authority and is of general application throughout the relevant industry in the State or Territory in which the works are to be executed and is not exclusively related to a particular contract or contractor or to a particular construction site PROVIDED THAT it shall not include:

30

- any portion of any wage and allowance; and
- any provision affecting ordinary working hours; and
- any provision affecting the number of weeks of annual holidays and of sick leave;

which may be paid or allowed under an arrangement in force at the Adjusted Tender Date but which at that

40

Annexure "E" to the Affidavit  
of Arthur Ashley Cooper

date is not included in the relevant award or awards listed in the Schedule or in any relevant statutory provision notwithstanding that after the aforesaid date the value thereof or its equivalent is included in such relevant award or awards or statutory provision.

- (e) 'Loaded Weekly Wage' means the Loaded Weekly Wage in column 11 opposite each classification of labour nominated in column 1 of the Schedule PROVIDED THAT it shall: 10
- (i) be adjusted to include variations in the wages, allowances and loadings specified in the Schedule, and any additional allowance (not being a variation to any allowance incorporated in the relevant award at the Adjusted Tender Date), where such variations and additional allowances become payable under an Award or Other Variation provided also that any variation in the loading for Workers' Compensation and Payroll Tax shall be determined by the Principal having regard to the rates applied by the Government Insurance Office of N.S.W. for the appropriate Trade Classifications in respect of Workers' Compensation and to the rate applied by the Government of N.S.W. in respect of Payroll Tax; 20
  - (ii) Exclude long service leave and any form of overhead or similar charge raised or levied on wages which is not specified in the Schedule; 30
  - (iii) Incorporate an Award or Other Variation affecting the number of working hours constituting one working week in the manner prescribed by the Principal and not otherwise.

3

- (f) 'Adjusted Tender Date' means midnight seven days before the midnight immediately preceding the date on which tenders close.
- (g) 'Value of Uncompleted Work' means, subject to the provisions of clauses 3(c) and 3(d), the sum resulting from  $t + e - o - p - r$  wherein: 40
- "t" means the accepted tender price;
- "e" means the value of any authorised extra or

Annexure "E" to the Affidavit  
of Arthur Ashley Cooper

increase in the dimensions or extent of the works computed in accordance with the contractual provisions relating to variations;

"o" means the value of any authorised omission or decrease in the dimensions or extent of the works computed in accordance with the contractual provisions relating to variations;

"p" means the total value included in the Contract for Provisional Sums, Monetary (including Contingency) Sums, Prime Cost Items and any portion of the Contract price in respect of which provision is made for adjustment of rise and fall on an actual basis (including the value of fluorescent light fittings where the supplier and prices have been nominated in the Contract). 10

"r" means the value of work done under the Contract including advance payments, computed as at the date on which the Average Wage Rate changes; 20

PROVIDED THAT:

(i) in respect of "e", "o" and "r" the value shall include those sums which have, in reference to any provisional quantities, become ascertainable by measurement and shall exclude the value of all items included under "p" and adjustments thereto, and all previous applications of The Formula;

(ii) The Superintendent shall determine the values ascribed to "e", "o", "p" and "r" respectively. 30

3. (a) The Formula shall be applied in respect of each change in the Average Wage Rate which results from an Award or Other Variation including any such change which is made retrospective and, subject to the provisions of Clause (6) of this Special Condition, the Contractor in respect of the amount resulting from the application of The Formula:

(i) shall be entitled to receive a payment of that amount if the Average Wage Rate has increased, or

(ii) shall pay or allow that amount to the Principal if the Average Wage Rate has decreased. 40

PROVIDED THAT the Principal shall prescribe the

Annexure "E" to the Affidavit  
of Arthur Ashley Cooper

manner in which the change in the Average Wage Rate is included in the Schedule and PROVIDED FURTHER THAT:

- (b) In respect of each variation, falling within the categories of "e", and "o", the appropriate value of work contained therein, which is priced at unit rates in the Priced Bill of Quantities or Schedule of Rates or otherwise at rates applicable at the Adjusted Tender Date, shall have rise and fall adjustments calculated in accordance with The Formula in respect of each change in the Average Wage Rate occurring between the Adjusted Tender Date and the date of the authorisation of the variation; 10

and

- (c) extra works which are not priced at unit rates in the Priced Bill of Quantities or Schedule of Rates or otherwise at rates applicable at the Adjusted Tender Date, shall not be subject to the provisions of this Special Condition unless it is so agreed at the time the extra works are authorised; 20

and

- (d) in applying The Formula the Superintendent may exclude the value of "e" and "o" from the Value of Uncompleted Work and make separate calculations under The Formula in respect of "e" and "o".

4. In the event that the Contractor fails to complete the works by the date stipulated in the Contract including authorised extensions The Formula -

- (a) shall be applied to increases or decreases in the Average Wage Rate occurring before that date; 30

4

- (b) shall not be applied to increases or decreases occurring in the Average Wage Rate after that date.

Within one month of any change in the Average Wage Rate the Contractor shall notify the Superintendent in writing of -

- (a) the nature and the authority for the change and its effective commencement date and -

Annexure "E" to the Affidavit  
of Arthur Ashley Cooper

(b) the sum resulting from the application of The Formula which shall be supported by full details of all calculations

provided however, that if the Contractor fails to notify the Superintendent as required the Superintendent may apply The Formula.

Subsequent to a change in the Average Wage Rate, payments to the Contractor under this Special Condition will be made from time to time and at periods determined by the Superintendent after consideration of the value of work completed.

10

Calculations made in accordance with the provisions of this Special Condition, including the calculations of the Value of Uncompleted Work, may be recalculated by the Superintendent prior to the issue of the Final Certificate.

RISE AND FALL SCHEDULE - ARCHITECTURAL WORKS  
 Columns 3 to 9 inclusive shall be based  
 SOLELY on the relevant Award provisions  
 Schedule "R"

1. Classification of Labour applicable to the Contract: ITEM No. i to vi Hereunder:-	2. Title of Award	3. Number of Weekly Hours on which Award is based.	*4. Award Wage on Weekly basis.	*5. Weekly Tool Allowance.	*6. Weekly Industry Allowance	7. Sub-total being the addition of Columns 4, 5 & 6	*8. Loading on Column 7 for Statutory Holidays, Annual Leave & Sick Leave.	*9. Weekly Allowance for Fares and Traveling Time.	10. Loading on Columns 7 & 9 for W/Comp. & P.R. Tax	11. Loaded Weekly Wages
i	Carpenter National Building Trades Construction Award.									
ii	Bricklayer National Building Trades Construction Award.									
iii	Plumber Plumbers and Gasfitters (State) Award.									
iv	Plasterer National Building Trades Construction Award									
v	Painter National Building Trades Construction Award									
vi	Unskilled Labourer Builders Labourers (Construction on Site) (Federal) Award									
	TOTALS: 6									\$

Average Wage Rate (as defined in Clause 2(c))

\$ (To be calculated to the THIRD Decimal place without reference to the FOURTH Decimal place and inserted in the Contract prior to completion of the Agreement).

\*If an Hourly Rate is used as the basis of determining the amount in Column 4 and if that Rate has already allowed for any or all of the Factors in Columns 5, 6, 8 & 9 then Columns 5, 6, 8 & 9 shall not be completed in respect of the relevant Allowance.

Annexure "F" to the Affidavit  
of Arthur Ashley Cooper

MONTHLY BUILDING COST INDEX

A	B	C	D	E	F	G
Period	Melbourne On Site Loaded Building Wage	Wage Index Jan. 1963 = 100	Building Materials Index 1966-67 = 100	Building Materials Index Nov. 1962 = 100	Combined Wage and Materials Index 1962 = 100	Building Economic Cost Index 1963 = 100
1973 April	116.3	226.7	131.9	149.6	202.5	146.7
May	121.5	236.7	133.0	150.8	210.2	150.6
June	121.5	236.7	134.9	153.0	210.5	151.0
July	121.5	236.7	136.7	155.0	210.9	151.7
Aug.	125.9	245.2	138.5	157.0	217.6	155.1
Sept.	131.1	255.4	139.2	157.8	225.3	158.2
Oct.	131.1	255.4	140.0	158.7	225.9	159.8
Nov.	131.1	255.4	141.5	160.4	226.1	160.2
Dec.	131.3	255.8	142.8	161.9	226.4	160.6
1974 Jan.	137.4	267.6	144.3	163.6	235.5	164.0
Feb.	137.4	267.6	145.9	165.4	235.9	165.5
Mar.	137.4	267.6	147.2	166.9	236.4	165.5
April	147.1	286.5	153.3	173.8	250.2	172.2
May	167.4	326.1	158.1	179.3	282.5	182.5
June	169.0	329.2	162.3	184.0	284.2	187.8
July	169.0	329.2	166.2R	188.4R	Discontinued	191.2PR
Aug.	169.1R	329.4R	168.5	190.7		194.1PR
Sept.	169.8R	330.8R	170.8	193.7		197.1PR
Oct.	179.5	349.7	173.5	196.7		203.1R
Nov.	183.4	357.3	175.8R	199.3R		206.4R
Dec.	186.1	362.5	177.9R	201.7R		209.3R
1975 Jan.	185.1}† 223.6}	362.5	180.7	204.9	Discontinued	210.1R
Feb.	223.6R	362.5	184.1R	208.7R		212.1R
Mar.	228.0R	369.6R	186.1	211.0		216.1PR
April	228.6R	370.6R	187.8R	212.9R		218.6PR
May	242.0R	392.3R	188.8R	214.1R		225.0PR
June	242.0R	392.3R	190.4	215.9		226.0PR
July	260.1	421.7	192.0	217.7		235.7R
Aug.	262.0	424.8	195.1	221.2		235.1R
Sept.	268.6	435.5	197.2	223.6		239.0
Oct.	270.9	439.3	200.8	227.7		241.1
Nov.	270.9	439.3	N.A.	N.A.		242.1
Dec.	266.6	432.2	N.A.	N.A.		243.1

P Provisional.  
† Amended method of calculation--See Index Definitions.

R Revised.

N.A. Not Available.

INDEX DEFINITIONS

Column B: The Melbourne Average On-Site Loaded Building Wage. (The loading includes all items automatically varied by State Wage Awards including payroll tax, holiday pay, rest pauses, tool allowances, workers' compensation insurance, fares and travelling allowances.)

After January 1975 The National Building Trade Construction Award for Melbourne has been used in lieu of the State Wages Award. 10

Column C: The Melbourne Average On-Site Loaded Building Wage to Bases 1947-48 = 179 and January 1963 = 100.

Column D: The Commonwealth Wholesale Price Index of Materials Used in Building other than House Building - weighted average of six State capital cities - to Base 1966-67 = 100.

Column E: Building Materials Index based until January 1969 upon an equal combination of the original Commonwealth Metals and Materials Indices. Since January 1969 the Commonwealth Wholesale Price Index of Materials Used in Building other than House Building as defined in Column D has been used converted to Base November 1962 = 100. 20

Column F: Combined Wage and Materials Index in the combination of Materials 3 to Wages 7, the Materials Index having a two months' lag.

Column G: The Building Economist Cost Index in the combination of Materials 3 to Wages 2, the Wages Index adjusted for productivity and the Materials Index having a two months' lag.

This is the Annexure marked "F" referred to in the annexed Affidavit of ARTHUR ASHLEY COOPER sworn the 15th day of April, 1977, before me: 30



C. Felton J.P.

---

A Justice of the Peace

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
COMMON LAW DIVISION )  
 )  
COMMERCIAL LIST )

No. 835 of 1977

CORAM: YELDHAM, J.  
Friday, 31st March, 1978.

MAX COOPER & SONS PTY. LIMITED

v.

THE COUNCIL OF THE CITY OF SYDNEY

MR. MORLING Q.C. with MR. STRASSER appeared for the Plaintiff. 10  
MR. CULLEN Q.C. with MR. MACFARLAN appeared for the Defendant.

-----

(Mr. Morling opened to his Honour.)

(By consent summons amended.)

(Affidavit of Dr. A.A. Cooper sworn 8th February, 1978  
read.)

(Clause 6 on p. 3 of annexure A to the contract tendered  
and marked Exhibit "A".)

(Bundle of documents relating to the Carpenters & Joiners  
and Bricklayers Construction (State) Award tendered and  
marked Exhibit "B".) 20

MR. MORLING: That tender gives an accurate statement of the  
award conditions qua that award as at 12th November, 1974,  
and shows one amendment thereafter.

(Bundle of Gazette Notifications relating to the Painters  
(State) Award, tendered and marked Exhibit "C".)

(Bundle of documents relating to the Plumbers & Gasfitters  
(State) Award, tendered, marked Exhibit "D".)

(Bundle of documents relating to the Plasterers (State)  
Award, tendered, marked Exhibit "E".)

(Builders Labourers (Construction on Site) Federal Award, 30  
tendered, marked Exhibit "F".)

MR. MORLING: The awards referred to in pars. 1, 2, 3 and 5 of the rise and fall clause, that is to say the Carpenters & Joiners and Bricklayers Award, the Painters Award, and the Plasterers Award, were all superseded in 1975 by a new Federal Award, called the Building Tradesmen Federal Award, and that new award, I understand, so to speak incorporated the provisions of the three former State awards. We have simply not been able to obtain, because they are out of print, copies of that award, but I am instructed that the document which I will now tender, which is called the Building Tradesmen (State) Construction Award is in identical terms to the Federal 1975 Award. If I had it here I would tender it. If my friend has a copy, I am happy to tender his copy. My instructions are the same course was followed in the Whittle Case, and a copy of this award was used.

10

HIS HONOUR: Are you content with that Mr. Cullen?

MR. CULLEN: That would be subject to check. If it is a counterpart, I do not object.

HIS HONOUR: It will be noted this award is tendered, and is said to be a counterpart of the relevant Federal Award, which in 1975 superseded the awards referred to in pars. 1, 2, 3 and 5 of the Rise and Fall clause. Mr. Cullen consents to the tender subject to checking to ensure that it is identical.

20

(State counterpart of the Building Tradesmen Federal Award, tendered and marked Exhibit "G".)

MR. CULLEN: We have no objection to the facts stated. There will be issue as to the question of the increases in the average hourly rates as the matters which come within the second leg of the argument. We have indicated we would be objecting to cl. 14, and that includes the clause in the affidavit of 15th April 1977.

30

HIS HONOUR: What is the relevance of 14 Mr. Morling?

MR. MORLING: This is a matter of real substance. This is the critical ground for distinguishing the clause from those previously considered by the courts. The last two lines under the first section read --- (read). The purpose of this paragraph and all the material in the second affidavit is to put before the court what we submit is admissible evidence as to the meaning of the words "Pay Loadings".

HIS HONOUR: It may be better to admit this subject to relevance and hear argument later.

40

MR. CULLEN: Yes. There is also clause 15. The other matter relating to pars. 5 - 13 is this, we did seek that the changes relied upon should also be tendered.

HIS HONOUR: I will note that Mr. Cullen objects to pars. 14 and 15 of this affidavit. As they appear to raise questions of substance, I think the better course is to admit them subject to objection, and I will determine in due course and at the end of the matter whether and to what extent they are relevant, and if so, in what way.

MR. MORLING: Could my friend indicate what the objections are?

MR. CULLEN: Yes. Fourteen is basically on relevance. Shortly it would be on relevance, because the issues raised go to the question of its relevance to these procedures. They are briefly 10 that the issue as to the meaning of "Loading" in the industry raises the question of the relationship between the builder and my client, who is not engaged in the building industry. We will be relying on the judgment in Forres & Scottish Flax Co. in relation to that, where this seeks to establish that both parties, as I understand the purpose of the evidence, were agreed as to a special meaning of the word "loading". I will be dealing with that later on.

The basis upon which that evidence is given is contained in the second affidavit, indicating the types of loading factors to which clause 14 relates. A look at the loading factors referred to in the annexures to the second affidavit indicates that it is dealing with a different context so far as "loading" is used in this clause, clause 6. They refer to all items covered on matters of adjustment whereas in this particular clause "pay loadings" is set out amongst award rates of pay, holidays, et cetera. We would be submitting that the word "loading" in this agreement has nothing to do with what common usage amongst builders might be in relation to the particular- 20 ised contracts which have been put forward in evidence. We submit under those circumstances they are inadmissible and not 30 relevant and are not words that have common usage in the industry that could have relevance in this contract.

On 15 the architect acts perhaps in a dual capacity, as agent, and in an independent capacity, and in the role in which this evidence was given he was in the certifying capacity. If this evidence is being put as we assume on the basis of some admission by my client, we suggest what the architect in his certifying capacity may have said is not relevant to the interpretation of this, and we submit in no way does that evidence 40 assist.

(Documents which were exhibited and marked "B" to the affidavit of Dr. Cooper of 8th February, and which are referred to in par. 15, tendered. Tender objected to. Admitted subject to objection and marked Exhibit "H".)

(Documents which were Exhibit "C" the affidavit of Dr. Cooper of 8th February tendered. Tender objected to. Admitted subject to objection and marked Exhibit "J".)

MR. MORLING: The only purpose of the tender is this, that they are further evidence of what persons in the trade take to be the meaning of "pay loadings". The second affidavit, if it is admissible, indicates what "pay loadings" means.

(Counsel addressed.)

(Mr. Morling stated he wished to read the affidavit of Dr. A.A. Cooper, sworn 15th April, 1974.)

HIS HONOUR: It will be noted that Mr. Morling seeks to read the affidavit of Dr. Cooper of 15th April, 1977. It is objected to in its entirety by Mr. Cullen on the ground principally of relevance. I will take the same course in relation to it and allow it subject to objection. 10

(Typed sheet setting out the names of the members of the Building Industry Advisory Council of N.S.W. tendered. Tender objected to. Admitted subject to objection and marked Exhibit "K".)

HIS HONOUR: It will be admitted subject to the overall objection as to relevance by Mr. Cullen, who is to have the opportunity to check the accuracy of it.

MR. MORLING: That is the whole of the plaintiff's evidence. 20

HIS HONOUR: Mr. Cullen, do you wish to cross-examine any of the deponents?

MR. CULLEN: No.

HIS HONOUR: Have you any evidence?

MR. CULLEN: Yes.

(Letter from the plaintiff to the architects dated 31st March, 1976 tendered, marked Exhibit 1.)

MR. MORLING: I understand it was conveyed to my friend yesterday we would not object to this tender on the basis it was agreed we did not have a policy of insurance to cover accident pay. I would like that noted. 30

HIS HONOUR: Mr. Cullen, do you have any objection to it being stated from the Bar Table that the plaintiff is a self insurer in relation to what I understand is the difference between Workers' Compensation payments, and the full entitlement of an injured worker, which I suppose is called accident pay?

MR. CULLEN: We will accept that statement, but we still press the tender.

HIS HONOUR: I have already admitted it. In connection with

Exhibit 1 it will be noted it is agreed that the plaintiff was at all material times a self insurer in relation to accident pay, which I am told is the difference between the Workers' Compensation entitlement of an injured worker, and the ordinary rate of pay.

(Extract from the relevant awards of the rates of pay tendered, marked Exhibit 2.)

(Document showing compilation of changes in the relevant awards since the date of the tender, tendered, marked Exhibit 3.)

10

HIS HONOUR: Is that all the evidence for the defendant, Mr. Cullen?

MR. CULLEN: Yes.

(Counsel addressed.)

HIS HONOUR: Going to the summons, am I concerned with fares?

MR. CULLEN: We suggest no, because there has been a demonstrable increase in fares in the awards.

HIS HONOUR: It is conceded that increases in fares should be taken into account. I will have these matters noted. It is conceded that par. (a) in the summons, namely "Fares" refers to a matter which should be taken into account however I consider the clause. What about annual holidays?

20

MR. CULLEN: We would be submitting that the only relevant matter to be taken into account on holiday pay would be in relation to the loading of 17½%.

HIS HONOUR: And (c), sick leave?

MR. CULLEN: On the same basis, only in relation to any shown increases in sick leave, but not because of any increases in the hourly rate of pay which is payable.

HIS HONOUR: Payroll tax is in dispute. Workers compensation is in dispute. What about (f), long service leave?

30

MR. CULLEN: I think our case is there has been no change in long service leave benefits.

HIS HONOUR: Do you agree with that, Mr. Morling?

MR. MORLING: No, we say in our affidavit there is a change by regulation. It seems to me the question whether or not there has been an increase can be determined by the arbitrator.

HIS HONOUR: If there has been an increase, what about it, Mr. Cullen?

MR. CULLEN: If there has been a demonstrable increase we would be again bound by the High Court decision.

HIS HONOUR: It is agreed in relation to (f), long service leave, if there has been an increase of such leave, and this is in dispute, that in accordance with the High Court decision it would be something to be taken into account, and whether or not there has been such an increase can be determined by the arbitrator. What about (g), accident pay?

MR. CULLEN: Accident pay is at issue. We would be submitting there has been no change in accident pay since the making of the tender. 10

HIS HONOUR: Let us assume there had been.

MR. CULLEN: If there had been an increase we would be at issue, because there has been no decision as yet in relation to accident pay.

HIS HONOUR: Thank you. That clears the air.

(Counsel addressed.)

(Decision reserved.)

ANNEXURE A referred to in Contract No. 46943 between The Council of the City of Sydney and Max Cooper and Sons Pty Ltd for the completion of TOWN HALL HOUSE dated 31st March 1976.

The pages of this annexure are numbered one to eight inclusive.

page three

6. RISE AND FALL CLAUSE

Amounts calculated in accordance with this clause are adjustments for fluctuations in cost of labour and material which are used in the performance of this Contract.

Where, after the date of closing of tenders, and during the progress of the work alterations occur in the actual cost to the contractor in performing the contract as a consequence of alteration in the average hourly wage as hereinafter defined or the equivalent monetary alteration due to a change in standard working hours or any other conditions of employment arising from any statute, statutory regulation or award or order of an Industrial tribunal 10

THEN FOR EACH CENT OF SUCH ALTERATION TO THE AVERAGE HOURLY WAGE THERE SHALL BE ADDED TO OR DEDUCTED FROM THE CONTRACT SUM AN AMOUNT REPRESENTING 0.295% OF THE VALUE OF THE UNCOMPLETED PORTION OF THE CONTRACT AS AT THE DATE OF ANY SUCH ALTERATION. 20

The Clause will apply to all alterations in Award Rates of pay, pay loadings, holidays, etc. unless contrary to case law.

- (a) The average hourly wage shall be the average of the hourly rate of pay for the listed workmen. The workmen listed and their relevant awards are:

page four 30

(The rates shown are the rates as at the date of tender, 12th November, 1974).

- 1. Carpenter (Carpenter & Joiners & Bricklayers' Construction (State) Award) \$3.45
- 2. Bricklayer (Carpenters & Joiners & Bricklayers' Construction (State) Award) \$3.43
- 3. Painter (Painters' (State) Award) \$3.38
- 4. Plumber (Plumbers and Gas Fitters' State Award) \$3.50

Exhibit "A" - Clause 6 of  
Annexure "A" to Contract

5. Plasterer (Plasterers' (State) Award) \$3.45
6. Builder's Labourer (Builders Labourers'  
(Construction on Site) (Federal) Award) \$3.12

The value of the uncompleted portion of the contract shall be determined from time to time by the Architect and shall not include any amounts for Quantity Surveyors' Fees, Contingency Sums, Prime Cost Allowances or Monetary Sums, or any sum for which a separate Rise and Fall agreement is included.

10

CARPENTERS AND JOINERS AND BRICKLAYERS, CONSTRUCTION  
(STATE) AWARD

Industrial Registrar's Office, Sydney, 20th December, 1972.  
THE following award of the Industrial Commission is published in  
accordance with the provisions of the Industrial Arbitration  
Act, 1940, as amended.

K.R. FETHERSTON,  
Industrial Registrar. 10

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INDUSTRIAL ARBITRATION ACT, 1940, AS AMENDED  
Friday, the 3rd day of November, 1972  
Application by the Building Workers' Industrial Union of  
Australia, New South Wales Branch, Industrial Union of Employees

No. 324 of 1972

Industrial Commission of New South Wales

Before Mr Justice Sheehy

Carpenters and Joiners and Bricklayers, Construction (State)  
Award

Basic Wage for Adult Males: \$41.10 per week. 20

1. Basic Wage

This award, in so far as it fixes rates of wages for  
adult males, is made by reference and in relation to a basic  
wage for adult males of \$41.10 per week.

The said basic wage for adult males is the basic wage  
designated in paragraph (a) of subsection (2) of section 54 of  
the Industrial Arbitration Act, 1940, as amended.

The said basic wage is subject to alteration in accordance  
with the provisions of sub-section (2) of section 57 of the said  
Act. 30

2. Hours

(i) The ordinary working hours shall not exceed forty per  
week to be worked eight hours per day between the hours of 7.30  
a.m. and 5 p.m., Monday to Friday, inclusive: Provided that by  
agreement between the employer and his employees the working  
day may begin at 6 a.m. or at any other time between that hour

Exhibit "B" - Carpenters &  
Joiners & Bricklayers

48. Construction (State) Award

Exhibit "B" - Carpenters &  
Joiners & Bricklayers  
Construction (State) Award

and 8 a.m., and the working time shall then begin to run from the time so fixed.

(ii) Three-quarters of an hour shall be allowed for meals, which shall not be counted as time worked, from 12 noon until 12.45 p.m., Monday to Friday, inclusive, or at such earlier time as may be mutually agreed upon.

(iii) Where carpenters and joiners or bricklayers are employed in any industry (other than the building industry) which is subject to any award or industrial agreement covering various classes of employees engaged in that industry the hours and working days of carpenters and joiners or bricklayers shall be those prescribed for the employees generally in that industry in lieu of the hours prescribed by this award. 10

(iv) There shall be allowed, without deduction of pay, a rest period of ten minutes between 9 a.m. and 11 a.m., or at such earlier time as may be mutually agreed upon.

1180

20

N.S.W. INDUSTRIAL GAZETTE - 20 December, 1972. (Vol. 187.)

3. Wages

(i) Carpenters: The ordinary hourly rate of wages of a carpenter and joiner shall be adjustable with changes in the basic wage for adult males and shall be the rate calculated as follows:

(a) by multiplying the sum of the basic wage and margin of \$31.60 by  $52/49.4$  to load the wage to provide for payment for one week and three days follow the job and one week's sick leave per annum. 30

(b) by adding to the sum calculated under paragraph (a) above  $2.9/40$ ths of the sum of the basic wage and margin as compensation for excess travelling time to and from places of work in the Building Industry;

(c) by adding to the sum of the amounts calculated under paragraphs (a) and (b) above \$1.80 for tool allowance \$4.25 for industry allowance, \$4.30 special allowance and dividing the total amount by 40 to reduce it to an hourly rate. The hourly rate shall be calculated to the nearest cent other than when the calculation comes to an exact half cent and in such case this 40

Exhibit "B" - Carpenters &  
Joiners & Bricklayers

49. Construction (State) Award

Exhibit "B" - Carpenters &  
Joiners & Bricklayers  
Construction (State) Award

exact half cent shall be the hourly rate.

The ordinary hourly rate calculated in accordance with paragraphs (a) and (b) and (c) of this subclause is \$2.30 per hour.

(ii) Bricklayers: The ordinary hourly rate of wages for a bricklayer shall be adjustable with changes in the basic wage for adult males and shall be the rate calculated as follows: 10

- (a) by multiplying the sum of the basic wage and margin of \$31.60 by 52/49.4 to load the wage to provide for payment for one week and three days follow the job and one week's sick leave per annum.
- (b) by adding to the amount calculated under paragraph (a) above 2.9/40ths of the sum of the basic wage and margin as compensation for excess travelling time to and from places of work in the Building Industry;
- (c) by adding to the sum of the amounts calculated under paragraphs (a) and (b) above 85 cents for tool allowance, \$4.25 for industry allowance and \$4.30 special loading and dividing the total amount by 40 to reduce it to an hourly rate. The hourly rate shall be calculated to the nearest cent other than when the calculation comes to an exact half cent and in such cases this exact half cent shall be the hourly rate. 20

The ordinary hourly rate calculated in accordance with paragraphs (a) and (b) and (c) of this subclause is \$2.28 per hour. 30

(iii) (a) The ordinary hourly rate of wages for a carpenter and joiner employed by contractors and such sub-contractors as may be engaged by them on the Snowy Mountains Hydro-Electric Undertaking shall be adjustable with changes in the basic wage for adult males and shall be \$2.38 per hour.

(b) The employees referred to in paragraph (a) of this subclause shall not be entitled to any payment under clause 5, Wet Weather, of this award.

NOTATION: As from the beginning of the first pay period to commence in November, 1973, the margins shall be increased by \$2.40 per week and the loadings adjusted as provided for within this clause. 40

31st March, 1976.

WvdW/PW

Ancher, Mortlock, Murray & Woolley Pty. Ltd.,  
Architects,  
10 Ridge Street,  
NORTH SYDNEY. N.S.W. 2060

Attention - Mr. J. Odell

Dear Sir,

Re: TOWN HALL HOUSE PROJECT  
RISE AND FALL CLAIMS

10

Please find enclosed our claim for increases in Award Rates of pay and pay loadings from the date of tender, all in accordance with Clause 6 of Annexure "A" of our Agreement and Conditions of Contract.

The Rise and Fall formula in our Agreement is labour based and provides the necessary vehicle for the calculations to be made for the loading increases on wages as stipulated in our contract.

Such alterations to the wages have been converted to an equivalent monetary sum as is stated in the formula.

20

We request that an adjustment be made to the Contract Sum for the amount of \$694,747.81, in accordance with this submission.

Yours faithfully,  
MAX COOPER & SONS PTY. LIMITED

(Dr.) A.A. COOPER  
MANAGING DIRECTOR

Encl:

This and the next forty-eight pages comprise Annexure 'B' of the Affidavit sworn by ARTHUR ASHLEY COOPER on the 8th day of February, 1977, before me:

30

C. Felton J.P.  
A Justice of the Peace

TOWN HALL HOUSE

RISE & FALL CLAIMS FROM  
12th NOVEMBER 1974, UNTIL  
1st FEBRUARY 1976.

MASTER SUMMARY.

TOWN HALL HOUSE

NOTE: THIS SUBMISSION SUPERCEDES ALL PREVIOUS CLAIMS  
SUBMITTED WITH REGARD TO RISE AND FALL ADJUSTMENTS  
AND CANCELS THE FOLLOWING SUBMISSIONS.

10

- (i) Rise and Fall Claim No. 1 submitted 30th April, 1975.
- (ii) Rise and Fall Claim No. 2 submitted 30th April, 1975.
- (iii) Rise and Fall Claims due to Wage Increases submitted  
10th February, 1976.
- (iv) Rise and Fall Claims due to Fare Increases, submitted  
10th February, 1976.

These claims contained minor inaccuracies, which have been  
rectified in this submission.

The amounts of the uncompleted portion of the contract at the  
date of any wage or other relevant wage allowance or loading  
increases have been adjusted in accordance with your Certifi-  
cates of Works completed.

20

Exhibit "H"

TOWN HALL HOUSE

Nett Value of uncompleted portion of Builders Work at the dates shown.

The amounts exclude any adjustments to the Contract sum and variations, including the interim work deduction, will be dealt with in a separate submission of additions and omissions.

21.11.74	Nett Value of uncompleted portion of Builders' Work	\$2,515,624	
28.11.74	"	"	\$2,515,624
1. 1.75	"	"	\$2,495,624
1. 2.75	"	"	\$2,418,403
1. 3.75	"	"	\$2,354,948
9. 5.75	"	"	\$2,069,764
15. 5.75	"	"	\$2,049,764
1. 7.75	"	"	\$1,807,555
1. 9.75	"	"	\$1,548,641
18. 9.75	"	"	\$1,428,641
1. 2.76	"	"	\$1,096,390

Exhibit "H"

TOWN HALL HOUSE  
SUMMARY OF RISES & FALLS IN WAGE LOADINGS

1.	21/11/74 Accident Pay	= \$ 12,253.71	
2.	28/11/74 Fares etc.	= \$ 30,116.27	
3.	1/ 1/75 Workers Comp. Com./Law, Acc.Pay	= \$ 40,393.57	
4.	1/ 2/75 Long Service Leave	= \$ 52,979.23	
5.	1/ 3/75 Sick Pay etc.	= \$ 50,075.36	
6.	9/ 5/75 Workers Comp, Com./Law, Acc. Pay	= \$145,287.60	
7.	15/ 5/75 Loading Incrs. on Pay Incrs.	= \$ 6,711.34	10
8.	1/ 7/75 Credit Workers Comp. etc.	== \$(37,850.17)	
9.	1/ 9/75 Loading Incrs. on Pay Incrs.	= \$ 4,828.43	
10.	18/ 9/75 Loading Incrs. on Pay Incrs.	= \$ 4,005.45	
11.	1/ 2/76 Sick Pay etc.	= \$ <u>30,747.68</u>	
		<u>\$339,548.47</u>	

DISSECTION OF LOADINGS -

	<u>%</u>			
1.	Workers Comp. & Com. Law Ins.	37.43%	= \$127,092.99	
2.	Accident Pay	13.55%	= \$ 46,008.82	
3.	Long Service Leave	17.46%	= \$ 59,285.16	
4.	Sick Leave	21.76%	= \$ 73,885.75	20
5.	Fares	<u>9.80%</u>	= \$ <u>33,275.75</u>	
	<u>LOADINGS - TOTAL</u>	<u>100.00%</u>	= <u>\$339,548.47</u>	

SUMMARY OF WAGE INCREASES -

1.	Claim 1A Wage Increase 28/11/74	= \$ 48,854.68	
2.	Claim 2A Wage Increase 1/ 3/75	= \$116,655.64	
3.	Claim 3A Wage Increase 15/ 5/75	= \$ 71,805.80	
4.	Claim 4A Wage Increase 1/ 9/75	= \$ 64,148.46	
5.	Claim 5A Wage Increase 18/ 9/75	= \$ 53,734.76	
	<u>WAGES - TOTAL</u>	= <u>\$355,199.34</u>	
	<u>TOTAL - INCREASE - WAGES &amp; LOADINGS</u>	= <u>\$694,747.81</u>	30

Exhibit "H"

TOWN HALL HOUSE.

WAGE INCREASES FROM  
12TH NOVEMBER 1974, UNTIL  
1ST FEBRUARY 1976.

TOWN HALL HOUSE  
SUMMARY OF RISE AND FALL CLAIMS  
RELATED TO WAGE INCREASES ONLY

SUMMARY

WAGE INCREASES

10

CLAIM 1A	WAGE INCREASES	28.11.74	\$ 48,854.68
CLAIM 2A	WAGE INCREASES	1. 3.75	\$116,655.64
CLAIM 3A	WAGE INCREASES	15. 5.75	\$ 71,805.80
CLAIM 4A	WAGE INCREASES	1. 9.75	\$ 64,148.46
CLAIM 5A	WAGE INCREASES	18. 9.75	\$ 53,734.76
			<u>\$355,199.34</u>

TOWN HALL HOUSE

APPENDIX "A" - WEEKLY WAGE INCREASES

WEEKLY WAGE RATES FOR BUILDERS LABOURERS AND TRADESMEN IN THE STATE OF N.S.W.  
(NOTE) THE RATES BELOW EXCLUDE FARES AND ANY OTHER ALLOWANCES

	12.11.74 (Tender)	28.11.74	1.3.75	15.5.75	1.9.75
Builders Labourers	\$125.00	\$127.20	\$135.90	\$140.40	\$146.10
Bricklayer	\$137.20	\$140.00	\$146.00	\$150.80	\$156.40
Carpenter Incl. Joiner	\$138.00	\$140.80	\$146.80	\$151.60	\$157.20
Plumber	\$140.00	\$143.20	\$149.60	\$154.40	\$160.00
Plasterer	\$138.00	\$140.40	\$146.40	\$151.20	\$156.80
Painter	\$135.20	\$137.60	\$144.80	\$149.60	\$155.20
TOTAL	\$813.40	\$829.20	\$869.50	\$898.00	\$931.70
AVERAGE WEEKLY WAGE	Average Weekly Wage \$813.40 ÷ 6 = <u>\$135.5667</u>	Average Weekly Wage \$829.20 ÷ 6 = <u>\$138.20</u>	Average Weekly Wage \$869.50 ÷ 6 = <u>\$144.9167</u>	Average Weekly Wage \$898.00 ÷ 6 = <u>\$149.6667</u>	Average Weekly Wage \$931.70 ÷ 6 = <u>\$155.2833</u>

Exhibit "H"

PROJECT: TOWN HALL HOUSE DATE: 28.11.74

APPENDIX: "A" AWARD WAGES

CLAIM: 1A AWARD WAGE INCREASES

Nett Contract Value of the uncompleted work as at 28.11.74 \$2,515,624

	<u>AS AT 12.11.74</u>	<u>AS AT 28.11.74</u>	
Average of 6 Trades:	\$135.5667	\$138.20	
Increase:	\$ 2.6333 ÷ 40 =	\$0.06583 per hour	
Calculation:	\$ 2,515,624 x .295% x 6.583 =	\$48,854.68	10

PROJECT: TOWN HALL HOUSE DATE: 1.3.75

APPENDIX: "A" AWARD WAGES

CLAIM: 2A NATIONAL BUILDING TRADES AWARD OF 1975.

Nett Contract Value of the uncompleted work as at 1.3.75 \$2,330,011

	<u>AS AT 28.11.74</u>	<u>AS AT 1.3.75</u>	
Average of 6 Trades:	\$138.20	144.9167	
Increase:	\$6.7167 ÷ 40 =	\$0.16792 per hour	
Calculation:	\$2,354,948 x .295% x 16.792 =	\$116,655.64	

PROJECT: TOWN HALL HOUSE DATE: 15.5.75 20

APPENDIX: "A" AWARD WAGES

CLAIM: 3A NATIONAL WAGE CASE

Nett Contract Value of the uncompleted work as at 15.5.75 \$1,967,766

	<u>AS AT 1/3/75</u>	<u>AS AT 15/5/75</u>	
Average of 6 Trades:	\$ 144.9167	149.6667	
Increase:	\$ 4.75 ÷ 40 =	\$0.11875 per hour	
Calculation:	\$2,049,764 x .295% x 11.875 =	\$71,805.80	

Exhibit "H"

PROJECT: TOWN HALL HOUSE DATE: 1.9.75

APPENDIX: "A" AWARD WAGES

CLAIM: 4A 2ND STAGE OF THE NATIONAL BLDS. TRADES AWARD INCREASES

Nett Contract Value of the uncompleted work as at 1.9.75 \$1,493,659

	<u>AS AT 15/5/75</u>	<u>AS AT 1/9/75</u>	
Average of 6 Trades:	\$149.6667	155.2833	
Increase:	$\$5.6166 \div 40 =$	\$0.140415 per hour	10
<u>Calculation:</u>	<u>\$ 1,548,641 x .295% x 14.0415 = \$64,148.46</u>		

PROJECT: TOWN HALL HOUSE DATE: 18.9.75

APPENDIX: "A" AWARD WAGES

CLAIM: 5A INDEXATION AND AWARD WAGE INCREASES

Nett Contract Value of the uncompleted work as at 18.9.75 \$1,321,677

	<u>AS AT 1/9/75</u>	<u>AS AT 18/9/75</u>	
Average of 6 Trades:	\$155.2833	\$160.3833	
Increase:	$\$5.10 \div 40 =$	\$0.1275 per hour	
<u>Calculation:</u>	<u>\$1,428,641 x .295% x 12.75 = \$53,734.76</u>		

PROJECT: ----- DATE:

APPENDIX: -----

CLAIM:

Nett Contract Value of the uncompleted work as at \$

Average of 6 Trades:	\$
Increase:	\$
<u>Calculation:</u>	<u>\$</u>

Exhibit "H"

PROJECT:

Date:

APPENDIX:

CLAIM:

Nett Contract Value of the uncompleted work as at \$

	_____	_____
Average of 6 Trades:	\$	
Increase:	\$	
Calculation:	\$	

-----

PROJECT:

Date:

APPENDIX:

10

CLAIM:

Nett Contract Value of the uncompleted work as at \$

	_____	_____
Average of 6 Trades:	\$	
Increase:	\$	
Calculation:	\$	

WAGE DISSECTIONS

- (1). AWARD WAGE
- (2). FARES
- (4). ANNUAL LEAVE
- (6). LONG SERVICE LEAVE
- (7). WORKERS' COMPENSATION
- (8). COMMON LAW
- (9). PUBLIC RISK
- (10). STATUTORY HOLIDAYS & PICNIC DAY 10
- (11). PAYROLL TAX
- (14). ACCIDENT PAY
- (18). SICK LEAVE
- (19). BEREAVEMENT LEAVE

STATUTORY CHARGES

- (4). Annual Leave is based on Wages Item (1) only.
- (5). Crib Time N/A
- (6). Long Service Leave is based on Wages Item (1) only.
- (7). Workers' Compensation is based on Items (1), (2), (4), (6), (10) & (18). 20
- (8). Common Law is based on Workers' Compensation.
- (9). Public Risk Insurance N/A
- (10). Statutory Holidays and Picnic Day is based on Wages Item (1) only.
- (11). Payroll Tax N/A
- (12). Non-productive time N/A
- (13). Height and dirt money N/A
- (14). Accident Pay is 25% on cost of Workers' Compensation (Item 7)
- (18). Sick Leave is based on Wages only (Item 1). 30
- (19). Bereavement Leave is based on Wages only (Item 1).

Exhibit "H"

PERCENTAGE LOADINGS ON HOURLY WAGES

Page 1 THE AWARDS EXISTING AT THE DATE OF TENDER 12/11/74.

Page 2 THE NATIONAL BUILDING TRADES AWARD 1/3/75 - 1/2/76  
INTRODUCTION OF ONE WEEK SICK LEAVE PER ANNUM.

Page 3 THE NATIONAL BUILDING TRADES AWARD OF 1975 INCREASE  
OF THE SICK LEAVE PROVISION, FROM ONE WEEK TO TWO  
WEEKS LEAVE AS FROM 1ST FEBRUARY, 1976.

- o o o -

Exhibit "H"

LOADINGS ON HOURLY WAGE AS AT THE DATE OF TENDER 12/11/74

AVAILABLE NORMAL WORKING HOURS PER ANNUM

365 days	-	(104 Sat. + Sun.)	=	2088 hours
a) Four weeks annual leave	=	160 hours		
b) Nine Public Holidays	=	72 hours		
c) One Picnic Day	=	<u>8</u> hours	=	<u>240 hours</u>
<u>AVAILABLE NORMAL WORKING HOURS PER ANNUM</u>				<u>1848 hours</u>

Four Weeks' Annual Leave = 160 hours

∴ Loadings on hourly wage =  $\frac{160}{1848} \times 117\frac{1}{2}\%$  = 10.173% 10

Statutory Holidays & Builders Picnic Day = 9 + 1 = 10 days = 80 hours

∴ Loadings on hourly wage =  $\frac{80}{1848} \times 100\%$  = 4.329%

Exhibit "H"

NATIONAL BUILDING TRADES AWARD - AS FROM 1/3/75 TO 1/2/76

AVAILABLE NORMAL WORKING HOURS PER ANNUM

365 days - (104 Sat + Sun)	= 2088 hours
<u>Deduction</u> a) Four weeks annual leave	= 160 hours
b) Nine Public Holidays	= 72 hours
c) One Picnic Day	= 8 hours
d) Sick Leave	= <u>40 hours</u>
	= <u>280 hours</u>
<u>AVAILABLE NORMAL WORKING HOURS PER ANNUM</u>	= <u><u>1808 hours</u></u>

LOADINGS ON HOURLY WAGE

10

- (1) Four Weeks' Annual Leave = 160 hours
- ∴ Loading on hourly wage =  $\frac{160}{1808} \times 117\frac{1}{2}\%$  = 10.3982%
- (2) Statutory Holidays & Builders Picnic = 80 hours
- ∴ Loading on hourly wage =  $\frac{80}{1808} \times 100\%$  = 4.4247%
- (3) Sick Leave
- As per sheet attached = 40 hours
- ∴ Loading on hourly wage =  $\frac{40}{1808} \times 100\%$  = 2.2123%

20

Exhibit "H"

NATIONAL BUILDING TRADES AWARD - AS FROM 1/2/76

AVAILABLE NORMAL WORKING HOURS PER ANNUM

365 days - (104 Sat + Sun) = 2088 hours

Deduction a) Four weeks annual leave = 160 hours

b) Nine Public Holidays = 72 hours

c) One Picnic Day = 8 hours

d) Sick Leave = 80 hours = 320 hours

AVAILABLE NORMAL WORKING HOURS PER ANNUM = 1768 hours

LOADINGS ON HOURLY WAGE

10

(1) Four Weeks' Annual Leave = 160 hours

∴ Loading on hourly wage =  $\frac{160}{1768} \times 117\frac{1}{2}\%$  = 10.6335%

(2) Statutory Holidays & Builders Picnic = 80 hours

∴ Loading on hourly wage =  $\frac{80}{1768} \times 100\%$  = 4.5249%

(3) Sick Leave

As per sheet attached = 80 hours

∴ Loading on hourly wage =  $\frac{80}{1768} \times 100\%$  = 4.5249%

20

Exhibit "H".

1. ACCIDENT PAY AWARD CONDITIONS
2. SICK PAY CONDITIONS CL. 27 OF THE NATIONAL BUILDING TRADES AWARD OF 1975.

ACCIDENT PAY

The first judgment with regard to Accident Pay was made during a compulsory conference on the 21st May, 1971 before Mr. Justice J. Sheehy. This judgment was made on a dispute between the Building Trades Union and the Master Builders' Association on a claim that Building Tradesmen should receive full pay during the periods that they are off duty on Workers' Compensation. A copy of this judgment is enclosed. 10

The Building Trades dispute award was gazetted in the N.S.W. Industrial gazette on the 30th June, 1971 and relates to the judgment made on Friday, 21st May, 1971.

A further judgment was made now called the Building Trades Injuries Award. This judgment is an amplification on the previous award of the 21st May, 1971 and was handed down by Justice Beattie and others on the 22nd October, 1971.

This award rescinds and replaces the award made by Judge Sheehy of May, 1971 and clearly identifies the provisions of the award. 20

Several items in these two awards should be noted, in particular item 2 and 3 of the award made on the 21st May, 1971 and item 2 (a), 2 (c) and 5 of the award made on the 22nd October, 1971.

In essence, both awards place liability upon the employer to cover the employee for the difference of the moneys he would have received on ordinary pay and the amount he receives under Workers' Compensation for a period of 26 weeks from the date of injury. The loading is also adjustable proportionately with changes in the award as referred to in item 3 of the first judgment. 30

The Building Trades Industry Award was further varied on the 29th June, 1973 and was subsequently incorporated in the National Building Trades Construction Award of the 1st March, 1975 by Justice Elizabeth Evatt (Refer Cl. 28).

In all of the abovementioned cases, it is clear that in whichever way payment is made to comply with the award, additional costs are involved either directly by payment to the menas noted in the first judgment or alternatively by a provision 40

Exhibit "H"

made by the employer or through an Insurance Policy in the same way as Workers' Compensation.

The liability is placed upon the employer to provide payment should an accident occur.

We therefore claim that the awards have increased the actual cost of employment to the employer and is therefore claimable under the Rise and Fall formula in our opinion.

27. SICK LEAVE (THE NATIONAL BUILDING TRADES CONSTRUCTION AWARD 1975)

10

27.1 An employee other than a casual employee as defined who is absent from his work on account of personal illness or on account of injury by accident, other than that covered by Workers' Compensation, shall be entitled to leave of absence, without deduction of pay, subject to the following conditions and limitations:

(a) He shall within 24 hours of the commencement of such absence inform the employer of his inability to attend for duty, and, as far as practicable, state the nature of the injury or illness and the estimated duration of the absence.

20

(b) He shall prove to the satisfaction of his employer (or in the event of dispute a Board of Reference) that he was unable on account of such illness or injury to attend for duty on the day or days for which sick leave is claimed.

(c) Subject to 27.1 (d) of this sub-clause he shall not be entitled in any year, whether in the employ of one employer or more to be entitled to leave of absence in excess of 80 hours of working time, such year to commence on the 1st February, 1976. In the interim year of 1975, an employee shall be entitled to sick leave entitlements phased in on a pro-rata basis calculated in the following manner:

30

Commencing 1st March, 1975 6 hours 40 minutes  
Commencing 1st day of each calendar month  
thereafter of 1975 and 1st January, 1976  
3 hours 20 minutes per month.

(d) On or after the 1st February, 1976 an employee commencing employment shall accrue sick leave entitlement at the rate of 6 hours 40 minutes per month for the remainder of his first year. Provided that where on or after 1st February, 1976 an employee has

40

Exhibit "H"

completed one year of continuous employment with an employer he shall be credited with 80 hours sick leave entitlement at the beginning of his second year of continuous employment.

- 27.2 In the case of an employee who claims to be allowed paid sick leave in accordance with this clause for an absence of one day only such employee if in the year he has already been allowed paid Sick Leave on more than one occasion for one day only, shall not be entitled to payment for the day claimed unless he produces to the employer a certificate of a duly qualified medical practitioner that in his, the medical practitioner's opinion, the employee was unable to attend for duty on account of personal illness or injury. Provided that an employer may agree to accept from the employee a Statutory Declaration, stating that the employee was unable to attend for duty on account of personal illness or injury in lieu of a medical certificate. 10

Nothing in this sub-clause shall limit the employer's rights under 27.1 (b) hereof. 20

- 27.3 Sick leave with an employer shall accumulate from year to year so that any balance of the period specified in 27.1 (c) and (d) hereof which in any year has not been allowed to an employee by that employer as paid Sick Leave may be claimed by the employee and subject to the conditions herein prescribed shall be allowed by that employer in a subsequent year, without diminution of the Sick Leave prescribed in respect of that year. Provided that sick leave which accumulates pursuant to this sub-clause shall be available to the employee for a period of six years but for no longer from the end of the year in which it accrues. 30

27. SICK LEAVE (Cont'd)

- 27.4 Any sick leave for which an employee may become eligible under this award by reason of service with one employer shall not be cumulative upon sick leave for which the employee may become eligible by reason of subsequent service with another employer.
- 27.5 If an employee is terminated by his employer and is re-engaged by the same employer within a period of six months then the employee's unclaimed balance of sick leave shall continue from the date of re-engagement. In such 40

Exhibit "H"

case the employee's next year of service will commence, after a total of twelve months has been served with that employer excluding the period of interruption in service from the date of commencement of the previous period of employment or the anniversary of the commencement of the previous period of employment, as the case may be.

Exhibit "H"

RISE AND FALL CALCULATIONS  
ON ALLOWANCES AND LOADINGS

TOWN HALL HOUSE

TENDER 12TH NOVEMBER, 1974

RISE & FALL FORMULA CALCULATIONS

CALCULATION OF AVERAGE HOURLY WAGE RATE AS AT DATE OF TENDER -

			<u>per hr.</u>	
Carpenter			\$3.45	
Bricklayer			\$3.43	10
Painter			\$3.38	
Plasterer			\$3.45	
Plumber			\$3.50	
Builders' Labourers				
Rigger	3.355			
Scaffolder	3.265			
Skilled	3.090			
Unskilled	<u>2.709</u>			
	\$12.500	- Av. =	<u>3.125</u>	
		<u>TOTAL</u> =	<u>\$20.335</u>	20
∴ <u>AVERAGE OF SIX WAGE GROUPS</u>			=	<u>\$ 3.389166/hr.</u>
<u>NOTE - AVERAGE FARES ALLOWANCE</u>			=	<u>\$ 5.00/wk.</u>

(1)

WAGES AND ALLOWANCES AT THE DATE OF TENDER

MAX COOPER & SONS PTY. LIMITED

WAGE DISSECTIONS AS AT 12/11/74

(Note: The numerals used in brackets are for internal coding purposes only)

Classification	Award	Hourly Rate	Award Weekly Wage (1)	Fares (2)	Annual Leave & Loadings (4)	Long Service (6)	Workers Comp. Insur. (7)	Common Law 22½% + 5% on W.C. (8)	Public Risk Insur. (9)	Stat. Hol. & Picnic Day 4,329½ (10)	Payroll Tax 5½ (11)	Accident Pay 25% on W.C. (14)	Sick Leave (18)	Bereavement Leave (19)	Weekly Award W + Allow + Loadi
BUILDERS' LABOURERS	Builders' Labs. (Const. on Site) Award (Federal)	3.125	125.00	5.00	10.173½ (4)	0.625 (6)	13.2331 (8.9%)	3.7896 (8)	- (9)	5.41 (10)	- (11)	3.3097 (14)	- (18)	- (19)	169.0934
BRICKLAYER	Carpent. & Joiners & Bricklayers Const. Award (State) Bricklayer	3.43	137.20	5.00	13.96 (4)	0.686 (6)	14.4879 (8.9%)	4.1471 (8)	- (9)	5.94 (10)	- (11)	3.6219 (14)	- (18)	- (19)	185.0429
CARPENTERS INCL. JOINERS	Carpent. & Joiners & Bricklayers Const. Award (State) Carpenters	3.45	138.00	5.00	14.04 (4)	0.69 (6)	14.5693 (8.9%)	4.1704 (8)	- (9)	5.97 (10)	- (11)	3.6423 (14)	- (18)	- (19)	186.0820
PLUMBER	Plumbers & Gasfitters Award (State)	3.50	140.00	5.00	14.24 (4)	0.70 (6)	6.7396 (4.06%)	1.9292 (8)	- (9)	6.06 (10)	- (11)	1.6849 (14)	- (18)	- (19)	176.3537
PLASTERER	Plasterers, etc. Award (State)	3.45	138.00	5.00	14.04 (4)	0.69 (6)	14.5693 (8.9%)	4.1704 (8)	- (9)	5.97 (10)	- (11)	3.6423 (14)	- (18)	- (19)	186.0820
PAINTER	Painters, etc. Award (State)	3.38	135.20	5.00	13.75 (4)	0.676 (6)	6.0659 (3.78%)	1.7363 (8)	- (9)	5.85 (10)	- (11)	1.5164 (14)	- (18)	- (19)	169.7946
<u>ALL TRADES</u>	<u>AVERAGE TOTALS</u>	<u>3.389166</u>	<u>135.5667</u>	<u>5.00</u>	<u>13.7917</u>	<u>0.6778</u>	<u>11.6118</u>	<u>3.3238</u>	<u>N/A</u>	<u>5.8667</u>	<u>N/A</u>	<u>2.9029</u>	<u>-</u>	<u>-</u>	<u>178.7414</u>

Exhibit "H"

TOWN HALL HOUSE

WAGES AND ALLOWANCES AT THE DATE OF TENDER - 12/11/74

Total Average Loaded Wage of 6 trades  
as at 12/11/74 = \$178.7414/wk.

Base Average Wage rate of 6 trades as  
at 12/11/74 = \$135.5667/wk.

Value of Loadings at 12/11/74 = \$ 43.1747/wk.

This represents a loading of  $\frac{\$43.1747}{\$135.5667} \times 100\% =$  31.8475%

10

(2)

MAX COOPER & SONS PTY. LIMITED

INCREASE IN ACCIDENT PAY PROVISION FROM  
25% TO 32½% OF WORKERS' COMPENSATION

WAGE DISSECTIONS AS AT 21/11/74

(Note: The numerals used in brackets are for internal coding purposes only)

Classification	Award	Hourly Rate	Award Weekly Wage (1)	Fares (2)	Annual Leave & Loadings 10.173% (4)	Long Service 0.5% (6)	Workers Comp. Insur. (7)	Common Law 22½% + 5% on W.C. (8)	Public Risk Insur. (9)	Stat. Hol. & Picnic Day 4.32% (10)	Payroll Tax 5% (11)	Accident Pay 32½ on W.C. (14)	Sick Leave (18)	Recreation Leave (19)	Weekly Award W. + Alice + Loadir
BUILDERS' LABOURERS	Builders' Labs. (Const. on Site) Award (Federal)	3.125	125.00	5.00	12.72	0.625	(8.9%) 13.2391	3.7896	-	5.41	-	4.3027	-	-	170.0864
BRICKLAYER	Carpent. & Joiners & Bricklayers Const. Award (State) Bricklayer	3.43	137.20	5.00	13.96	0.686	(8.9%) 14.4879	4.1471	-	5.94	-	4.7085	-	-	186.1295
CARPENTERS INCL. JOINERS	Carpent. & Joiners & Bricklayers Const. Award (State) Carpenters	3.43	138.00	5.00	14.04	0.69	(8.9%) 14.5693	4.1704	-	5.97	-	4.7350	-	-	187.1747
PLUMBER	Plumbers & Gasfitters Award (State)	3.50	140.00	5.00	14.24	0.70	(4.06%) 6.7396	1.9292	-	6.06	-	2.1903	-	-	176.8591
PLASTERER	Plasterers, etc. Award (State)	3.45	138.00	5.00	14.04	0.69	(8.9%) 14.5693	4.1704	-	5.97	-	4.7350	-	-	187.1747
PAINTER	Painters, etc. Award (State)	3.38	135.20	5.00	13.75	0.676	(3.78%) 6.0659	1.7363	-	5.85	-	1.9714	-	-	170.2496
<u>ALL TRADES</u>	<u>AVERAGE TOTALS</u>	<u>3.3891</u>	<u>135.5667</u>	<u>5.00</u>	<u>13.7917</u>	<u>0.6778</u>	<u>11.6118</u>	<u>3.3238</u>	<u>N/A</u>	<u>5.8667</u>	<u>N/A</u>	<u>3.7738</u>	<u>-</u>	<u>-</u>	<u>179.6123</u>

Exhibit "H"

TOWN HALL HOUSE 21/11/74

Increased Loading due to increases in Accident Pay Provisions  
from 25% to 32½% on Workers Compensation Premiums.

Average Loaded Wage of 6 trades as at 21.11.74 = \$179.6123

Base Average Wage as at 21.11.74 = \$135.5667

VALUE OF LOADINGS AS AT 21/11/74 = \$ 44.0456

This represents a loading of  $\frac{\$44.0456}{\$135.5667} \times 100\%$  = 32.4899%

Exhibit "H"

CALCULATIONS FOR - "THE EQUIVALENT MONETARY ALTERATION DUE TO A CHANGE IN ANY OTHER CONDITION OF EMPLOYMENT ARISING FROM ANY STATUTE". ETC. ETC.....

Loading on Productive Wages as at date of Tender (12/11/74) = 31.8475%

Av. Hourly Wage Rate (12/11/74) = \$3.389166

Loaded Average Hourly Wage Rate - Av. Wage (12/11/74) = \$3.389166/hr

+ Loading 31.8475% = \$1.079364 10

Loaded Rate (12/11/74) Base = \$4.46853/hr

(a) Loading Increase 21/11/74

Increase in Loading for Accident Pay Provision from 25% to 32½% on Workers Compensation Increased Loading 21/11/74 = 32.4899%

Average Hourly Rate as at 12/11/74 = \$3.389166

+ New Loading 32.4899% at 21/11/74 = \$1.101136

New Loaded Rate/hr. at 21/11/74 = \$4.490302/hr.

Base Loaded Rate/hr. at 12/11/74 = \$4.46853

Increase/hr. = 0.021772 20

% Increase on Base Loaded Rate/hr.

$\frac{0.021772}{4.468530} \times 100\%$  = 0.4872%

Equivalent Monetary Increase at 21/11/74 = \$0.016512

= 0.4872% x \$3.389166 = 1.6512 ¢

% Increase on Uncompleted Work -

= 1.6512 ¢ x 0.295 = 0.487104%

Value of Uncompleted Work

As at 21/11/74 = \$2,515,624

Increase in Contract Sum - 30

= 1.6512 ¢ x 0.295% x \$2,515,624

= \$12,253.71

(4)

Exhibit "H"

Note:

CALCULATIONS CHECK -

Av. Base Hourly Rate = \$3.389166/hr.

+ Equiv. Monetary Incr. at 21/11/74 = \$0.016512/hr.

\$3.405678/hr.

+ Base Loading 31.8475% at 12/11/74 = \$1.084623/hr.

NEW AV. LOADED RATE AT 21/11/74 = \$4.490301/hr.

Av. Base Hourly Rate = \$3.389166/hr.

+ New Loading @ 32.4899% at 21/11/74 = \$1.101136/hr.

10

NEW AV. LOADED RATE AT 21/11/74 = \$4.490302/hr.

(5)

MAX COOPER & SONS PTY. LIMITED

AVERAGE WAGE INCREASES 28/11/74

WAGE DISSECTIONS AS AT 28/11/74

(Note: The numerals used in brackets are for internal coding purposes only)

Classification	Award	Hourly Rate	Award Weekly Wage	Fares	Annual Leave & Loadings	Long Service	Workers Comp. Insur.	Common Law	Public Risk Insur.	Stat. Hol. & Picnic Day	Payroll Tax	Accident Pay	Sick Leave	Recreation Leave	Weekly Award w + Allowance + Load
BUILDERS' LABOURERS	Builders' Labs. (Const. on Site) Award (Federal)	3.18	127.20	7.00	10.173% (4)	0.5% (6)	(8.9%) 13.6422	22 1/2% + 5% on W.C. (8)	(9)	4.329% (10)	5% (11)	32 1/2% on W.C. (14)	(18)	(19)	175.2636
BRICKLAYER	Carpent. & Joiners & Bricklayers Const. Award (State) Bricklayer	3.50	140.00	7.00	14.2422	.7	(8.9%) 14.9523	4.2802	-	6.0606	-	4.8595	-	-	192.0948
CARPENTERS INCL. JOINERS	Carpent. & Joiners & Bricklayers Const. Award (State) Carpenters	3.52	140.80	7.00	14.3236	.704	(8.9%) 15.0342	4.3036	-	6.0952	-	4.8862	-	-	193.4468
PLUMBER	Plumbers & Gasfitters Award (State)	3.58	143.20	7.00	14.5677	.716	(4.06%) 6.9704	1.9954	-	6.1991	-	2.2654	-	-	182.914
PLASTERER	Plasterers, etc. Award (State)	3.51	140.40	7.00	14.2829	.702	(8.9%) 14.9932	4.2919	-	6.0779	-	4.8728	-	-	192.6207
PAINTER	Painters, etc. Award (State)	3.44	137.60	7.00	13.998	.688	(3.78%) 6.2462	1.788	-	5.9567	-	2.0301	-	-	175.307
<u>ALL TRADES</u>	<u>AVERAGE TOTALS</u>	3.455	138.20	7.00	14.0591	.691	11.9731	3.4273	N/A	5.9827	N/A	3.8913	-	-	185.2245

Exhibit "H"

TOWN HALL HOUSE - 28/11/74 - AWARD WAGE INCREASES (FARES ETC.)

Increases in Award Wages for all 6 trades

Average Loaded Wage of 6 trades at 28/11/74 = \$185.2245/wk.

Average Wage at 28/11/74 (\$3.455/hr.) = \$138.20/wk.

TOTAL LOADINGS AT 28/11/74 = \$ 47.0245/wk.

This represents a loading of  $\frac{\$47.0245}{138.20} \times 100\%$  = 34.0264%

Increased Loading at 28/11/74 = 34.0264%

Average Hourly Rate as at 28/11/74 = \$ 3.455/hr. 10

+ New Loading @ 34.0264% = \$ 1.175612/hr.(+)

NEW LOADED RATE PER HOUR = \$ 4.630612/hr.

Less Base Loaded Rate/hr. at 12/11/74 = \$ 4.468530/hr.(-)

INCREASE IN LOADED HOURLY RATE = \$ 0.162082/hr.

% INCREASE ON BASE LOADED RATE/HR.

=  $\frac{0.162082}{4.468530} \times 100$  = 3.6271%

MONETARY & EQUIV. MONETARY INCREASES -

= \$3.389166 x 3.6271% = \$0.122928

Less Wage Rise Claimed = \$0.065834 20

TOTAL EQUIV. MONETARY INCREASE = \$0.057094

Less Equiv. Mon. Incr. 21/11/74 = \$0.016512

BALANCE EQUIV. MONETARY INCREASE RE FARES ETC. = \$0.040582

% INCREASE ON CONTRACT SUM -

= 4.0582 ¢ x 0.295 = 1.197169%

UNCOMPLETED WORK AS AT 28/11/74 - = \$2,515,624

INCREASE ON CONTRACT SUM -

\$2,515,624 x 1.197169% = \$ 30,116.27

Exhibit "H"

NOTE:

CALCULATIONS CHECK -

Av. Base Hourly Rate	= \$3.389166/hr.
+ Wage Rise 28/11/74	= 0.065834
+ Equiv. Monetary Increases	= 0.057094
	<u>3.512094/hr.</u>
+ Base Loading <u>31.8475%</u>	= <u>1.118514</u>
<u>NEW AV. LOADED RATE 28/11/74</u>	= <u><u>\$4.630608/hr.</u></u>

Av. Base Hourly Rate	= \$3.389166/hr.	10
+ Wage Rise 28/11/74	= 0.065834	
	<u>3.455000/hr.</u>	
+ New Loading 34.0264%	= <u>1.175612</u>	
<u>NEW AV. LOADED RATE 28/11/74</u>	= <u><u>\$4.630612/hr.</u></u>	

(7)

MAX COOPER & SONS PTY. LIMITED

1/1/75 15% INCREASE IN WORKERS COMPENSATION PROVISIONS

WAGE DISSECTIONS AS AT 1/1/75

(Note: The numerals used in brackets are for internal coding purposes only)

Classification	Award	Hourly Rate	Award Weekly Wage	Fares	Annual Leave & Loadings	Long Service	Workers Comp. Insur.	Common Law	Public Risk Insur.	Stat. Hol. & Picnic Day	Payroll Tax	Accident Pay	Sick Leave	Recreation Leave	Weekly Award + Allowance + Loading
			(1)	(2)	(4)	(6)	(7)	(8)	(9)	(10)	(11)	32% on W.C.	(18)	(19)	
BUILDERS' LABOURERS	Builders' Labs. (Const. on Site) Award (Federal)	3.18	127.20	7.00	12.94	.636	(10.235%) 15.6885	4.491	-	5.5065	-	5.0988	-	-	178.5608
BRICKLAYER	Carpent. & Joiners & Bricklayers Const. Award (State) Bricklayer	3.50	140.00	7.00	14.2422	.7	(10.235%) 17.1951	4.9221	-	6.0606	-	5.5884	-	-	195.7084
CARPENTERS INCL. JOINERS	Carpent. & Joiners & Bricklayers Const. Award (State) Carpenters	3.52	140.80	7.00	14.3236	.704	(10.235%) 17.2893	4.9491	-	6.0952	-	5.6191	-	-	196.7803
PLUMBER	Plumbers & Gasfitters Award (State)	3.58	143.20	7.00	14.5677	.716	(4.669%) 8.0159	2.2946	-	6.1991	-	2.6052	-	-	184.5985
PLASTERER	Plasterers, etc. Award (State)	3.51	140.40	7.00	14.2829	.702	(10.235%) 17.2422	4.9356	-	6.0779	-	2.6038	-	-	196.2444
PAINTER	Painters, etc. Award (State)	3.44	137.60	7.00	13.998	.688	(4.347%) 7.1831	2.0562	-	5.9567	-	2.3345	-	-	176.8165
<u>ALL TRADES</u>	<u>AVERAGE TOTALS</u>	3.455	138.20	7.00	14.0591	.691	13.7691	3.9415	N/A	5.9827	N/A	4.475	-	-	188.1182



MAX COOPER & SONS PTY. LIMITED

INTRODUCTION OF THE BUILDING & CONSTRUCTION  
INDUSTRY LONG SERVICE PAYMENTS ACT NO. 98, 1974

WAGE DISSECTIONS AS AT 1/2/75

(Note: The numerals used in brackets are for internal coding purposes only)

Classification	Award	Hourly Rate	Award Weekly Wage	Fares	Annual Leave & Loadings	Long Service	Workers Comp. Insur.	Common Law	Public Risk Insur.	Stat. Hol. & Picnic Day	Payroll Tax	Accident Pay	Sick Leave	Benefit Leave	Weekly Award 1/2 + Allcc + Loadin
			(1)	(2)	(4)	(6)	(7)	(8)	(9)	4.329% (10)	5% (11)	32 1/2% on N.C.	(18)	(19)	
BUILDERS' LABOURERS	Builders' Labs. (Const. on Site) Award (Federal)	3.18	127.20	7.00	12.94	3.816	(10.235%) 16.014	4.584	-	5.5065	-	5.205	-	-	182.2655
BRICKLAYER	Carpent. & Joiners & Bricklayers Const. Award (State) Bricklayer	3.50	140.00	7.00	14.24	4.20	(10.235%) 17.553	5.024	-	6.0606	-	5.705	-	-	199.7826
CARPENTERS INCL. JOINERS	Carpent. & Joiners & Bricklayers Const. Award (State) Carpenters	3.52	140.80	7.00	14.3236	4.224	(10.235%) 17.649	5.052	-	6.0952	-	5.736	-	-	200.8798
PLUMBER	Plumbers & Gasfitters Award (State)	3.58	143.20	7.00	14.57	4.296	(4.669%) 8.183	2.342	-	6.1991	-	2.659	-	-	188.4491
PLASTERER	Plasterers, etc. Award (State)	3.51	140.40	7.00	14.2829	4.212	(10.235%) 17.601	5.038	-	6.078	-	5.72	-	-	200.3319
PAINTER	Painters, etc. Award (State)	3.44	137.60	7.00	13.998	4.128	(4.347%) 7.333	2.099	-	5.9567	-	2.383	-	-	180.4977
<u>ALL TRADES</u> <u>- 6</u>	<u>AVERAGE TOTALS</u>		138.20	7.00	14.0591	4.146	14.0555	4.0232	N/A	5.9827	N/A	4.568	-	-	192.0345

Exhibit "H"

TOWN HALL HOUSE - 1/2/75

Introduction of the Building and Construction Industry Long Service Payments Act. No. 98, 1974.

3% Long Service Compulsory Payments to the Long Service Leave Division of the Builders Licensing Board applicable from 1/2/76.

Average Loaded Wage of 6 trades at 1/2/75 = \$192.0345/wk.

Average Wage at 1/2/75 = \$138.20/wk.

TOTAL LOADINGS AT 1/2/75 = \$ 53.8345/wk.

This represents a loading of -  $\frac{53.8345}{138.20} \times 100\% = \underline{38.954\%}$  10

Increased Loading at 1/2/75 equals 38.954%

Average Hourly rate as at 1/2/75 = \$ 3.455/hr.

+ New Loading @ 38.954% = \$ 1.34586/hr.

New Loaded Rate Per Hour 1/2/75 = \$ 4.80086/hr.

Less Base Loaded Rate/hr. at 12/11/74 = \$ 4.46853/hr.

INCREASE IN LOADED HOURLY RATE = \$ 0.33233/hr.

% INCREASE ON BASE LOADED HOURLY RATE -

=  $\frac{0.33233}{4.468530} \times 100\%$  = 7.43710%

MONETARY & EQUIV. MONETARY INCREASES - 20

= \$3.389166 x 7.43710% = \$ 0.252055

Less Wage Rise Claimed = 0.065834

\$ 0.186221

Less Equiv. Monetary Increases  
21/11/74, 28/11/74. & 1/1/75 = 0.111961

BALANCE EQUIV. MONETARY INCREASE  
RE LONG SERVICE LEAVE ETC. = \$ 0.074260

% INCREASE ON CONTRACT SUM -

=  $7.4260 \text{ ¢} \times 0.295$  = 2.190670%

Uncompleted Work as at 1/2/75 - = \$ 2,418,403 30

INCREASE ON CONTRACT SUM  
= \$2,418,403 x 2.190670% = \$52,979.23

(9)

MAX COOPER & SONS PTY. LIMITED

THE NATIONAL BUILDING TRADES CONSTRUCTION  
AWARD 1975.

WAGE DISSECTIONS AS AT 1/3/75

(Note: The numerals used in brackets are for internal coding purposes only)

Classification	Award	Hourly Rate	Award Weekly Wage	Fares	Annual Leave & Loadings	Long Service	Workers Comp. Insur.	Common Law	Public Risk Insur.	Stat. Hol. & Picnic Day	Payroll Tax	Accident Pay	Sick Leave	Maternity Leave	Weekly Award W. + Allow. + Loading
			(1)	(2)	(4)	(6)	(7)	(8)	(9)	(10)	(11)	(14)	(18)	(19)	
BUILDERS' LABOURERS	Builders' Labs. (Const. on Site) Award (Federal)	3.40	135.90	7.00	14,1312	4.077	(10.235%) 17.0149	4.8706	-	6.0132	-	5.5299	3.0065	-	197.5433
BRICKLAYER	Carpent. & Joiners & Bricklayers Cons. Award (State) Bricklayer	3.65	146.00	7.00	15.1814	4.38	(10.235%) 18.3229	5.2450	-	6.4601	-	5.9550	3.23	-	211.7744
CARPENTERS INCL. JOINERS	Carpent. & Joiners & Bricklayers Const. Award (State) Carpenters	3.65	146.80	7.00	15.2646	4.404	(10.235%) 18.4194	5.2726	-	6.4955	-	5.9863	3.2477	-	212.8901
PLUMBER	Plumbers & Gasfitters Award (State) Carpenters	3.74	149.60	7.00	15.5557	4.488	(4.669%) 8.5566	2.4494	-	6.6194	-	2.7809	3.3096	-	200.3596
PLASTERER	Plasterers, etc. Award (State)	3.66	146.40	7.00	15.2230	4.392	(10.235%) 18.3711	5.2588	-	6.4778	-	5.9706	3.2388	-	212.3321
PAINTER	Painters, etc. Award (State)	3.62	144.80	7.00	15.0566	4.344	(4.347%) 7.7206	2.2101	-	6.4070	-	2.5092	3.2034	-	193.2509
<u>AVERAGE TOTALS</u>		3.62	144.9166	7.00	15.0688	4.3474	14.7343	4.2178	N/A	6.4122	-	4.7887	3.206	-	204.6918

Exhibit "H"

TOWN HALL HOUSE - 1/3/75

NATIONAL BUILDING TRADES CONSTRUCTION AWARD OF 1975

This Award introduces Sick Leave (Clause 28), Bereavement Leave (Clause 29) and now also incorporates Accident Pay (Clause 28), which was previously contained in the Building Trades Injuries Award (Variation) of 29th June, 1974.

NOTE: Bereavement Leave is not included in this claim.

Average Loaded Wage of 6 trades at 1/3/75	=	\$204.6918/wk.	
Average Wage at 1/3/75	=	\$ <u>144.9166</u> /wk.	10
<u>TOTAL LOADINGS AT 1/3/75</u>	=	\$ <u>59.7752</u> /wk.	

This represents a loading of =  $\frac{59.7752}{144.9166} \times 100\% = \underline{41.248\%}$

Increased Loading at 1/3/75 equals 41.248%

Average hourly rate as at 1/3/75, ( $\$144.9166 \div 40$ ) = \$ 3.622916/hr.

+ New Loading @ 41.248% = \$ 1.4943803/hr.

NEW LOADED RATE PER HOUR 1/3/75 = \$ 5.1172963/hr.

Less Base Loaded Rate/hr. at 12/11/74 = \$ 4.468530/hr (-)

INCREASE IN LOADED HOURLY RATE = \$ 0.6487663/hr.

<u>% INCREASE ON LOADED HOURLY RATE -</u>			20
= $\frac{0.6487663}{4.468530} \times 100\%$	=	<u>14.51850%</u>	

MONETARY & EQUIV. MONETARY INCREASES

= \$3.389166 x 14.51850% = \$ 0.492056

Less Wage Rise Claimed = \$ 0.065834

\$ 0.426222

Less Wage Rise Claimed = \$ 0.167920

\$ 0.258302

<u>Less Equiv. Monetary Increases</u> 21/11/74, 28/11/74, 1/1/75 & 1/2/75	=	\$ <u>0.186221</u>	30
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<u>BALANCE EQUIV. MONETARY INCREASE RE SICK LEAVE ETC.</u>	=	\$ <u>0.072081</u>	
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% INCREASE ON CONTRACT SUM -

= 7.2081 ¢ x 0.295 = 2.126389%

UNCOMPLETED WORK AS AT 1/3/75 = \$ 2,354,948

INCREASE ON CONTRACT SUM

= \$2,354,948 x 2.126389% = \$ 50,075.36

(10)

MAX COOPER & SONS PTY. LIMITED  
WAGE DISSECTIONS AS AT 9/5/75

9/5/75 50% INCREASE EMPLOYEES WORKERS  
 COMPENSATION PAYOUT BENEFITS  
 (REFER ACT 44)

(Note: The numerals used in brackets are for internal coding purposes only)

Classification	Award	Hourly Rate	Award Weekly Wage (1)	Fares (2)	Annual Leave & Loadings 10.3982% 3% (4)	Long Service (6)	Workers Comp. Insur. (7)	Common Law 22 1/2% + 5% on W.C. (8)	Public Risk Insur. (9)	Stat. Hol. & Picnic Day 4.4247% (10)	Payroll Tax 5% (11)	Accident Pay 32 1/2% on W.C. (14)	Sick Leave 2.2123% (18)	Bereave- ment Leave (19)	Weekly Award W. + Alice + Loadi-
BUILDERS' LABOURERS	Builders' Labs. (Const. on Site) Award (Federal)	3.40	135.90	7.00	14,1312	4,077	(15,3525) 26,1189	7,4766	-	6,0132	-	8,4886	3,0065	-	212,2120
BRICKLAYER	Carpent. & Joiners & Bricklayers Const. Award (State) Bricklayer	3.65	146.00	7.00	15,1814	4,38	(15,3525) 27,9802	8,0094	-	6,4601	-	9,0936	3,23	-	227,3347
CARPENTERS INCL. JOINERS	Carpent. & Joiners & Bricklayers Const. Award (State) Carpenters	3.65	146.80	7.00	15,2646	4,404	(15,3525) 28,1276	8,0516	-	6,4955	-	9,1415	3,2477	-	228,5325
PLUMBER	Plumbers & Gasfitters Award (State)	3.74	149.60	7.00	15,5557	4,488	(7,0035) 13,0666	3,7404	-	6,6194	-	4,2466	3,3096	-	207,6263
PLASTERER	Plasterers, etc. Award (State)	3.66	146.40	7.00	15,223	4,392	(15,3525) 28,0539	8,0305	-	6,4778	-	9,1175	3,2388	-	227,9335
PAINTER	Painters, etc. Award (State)	3.62	144.80	7.00	15,0566	4,344	(6,5205) 11,7898	3,3749	-	6,4070	-	3,8317	3,2034	-	119,8074
<u>ALL TRADES</u> 6	<u>AVERAGE TOTALS</u>	3.62	144,9166	7.00	15,0688	4,3475	22,5228	6,4492	N/A	6,4122	-	7,3199	3,206	-	217,2411

Exhibit "H"

TOWN HALL HOUSE - 9/5/75

INCREASE IN WORKERS COMPENSATION PREMIUMS (50%) AND EMPLOYEES  
PAYOUT BENEFITS

(REF. ACT. 44)

Average Loaded Wage of 6 trades at 9/5/75	= \$217.2411/wk.	
Average Wage at 9/5/75	= \$144.9166/wk.	
<u>TOTAL LOADINGS AT 9/5/75</u>	= \$ 72.3245/wk.	
This represents a loading of $\frac{72.3245}{144.9166} \times 100\%$	= 49.9076%	10
Increased Loading at 9/5/75 equals 49.9076%		
Average hourly rate at 9/5/75 (\$144.9166 ÷ 40)	= \$ 3.622916/hr.	
+ New Loading @ 49.9076%	= \$ 1.8081104	
<u>New Loaded Rate per hour 9/5/75</u>	= \$ 5.4310264/hr.	
<u>Less Base Loaded Rate/hr. at 12/11/74</u>	= \$ 4.468530/hr.	
<u>INCREASE IN LOADED HOURLY RATE</u>	= \$ 0.9624964/hr.	
<u>% INCREASE ON BASE HOURLY RATE -</u>		
= $\frac{0.9624964}{4.468530} \times 100\%$	= 21.53940%	
<u>MONETARY &amp; EQUIV. MONETARY INCREASES -</u>		20
= \$3.389166 x 21.53940%	= \$ 0.730006	
<u>Less Wage Rise Claimed</u>	= \$ 0.065834	
	\$ 0.664172	
<u>Less Wage Rise Claimed</u>	= \$ 0.167920	
	\$ 0.496252	
<u>Less Equiv. Monetary Increases</u> 21/11/74, 28/11/74,, 1/1/75, 1/2/75 & 1/3/75	= \$ 0.258302	
<u>BALANCE EQUIV. MONETARY INCREASE RE WORKERS COMP. ETC.</u>	= \$ 0.237950	30
<u>% INCREASE ON CONTRACT SUM -</u>		
= 23.7950 ¢ x 0.295	= 7.019525%	
<u>UNCOMPLETED WORK AS AT 9/5/75</u>	= \$2,069,764	
<u>INCREASE ON CONTRACT SUM</u>		
= \$2,069,764 x 7.019525%	= \$145,287.60	

(11)

MAX COOPER & SONS PTY. LIMITED

NATIONAL WAGE CASE 15/5/75

WAGE DISSECTIONS AS AT 15/5/75

(Note: The numerals used in brackets are for internal coding purposes only)

Classification	Award	Hourly Rate	Award Weekly Wage	Fares	Annual Leave & Loadings	Long Service	Workers Comp. Insur.	Common Law	Public Risk Insur.	Stat. Hol. & Picnic Day	Payroll Tax	Accident Pay	Sick Leave	Decease-ment Leave	Weekly Award Max. + Allow. + Loadings
			(1)	(2)	(4)	(5)	(7)	(8)	(9)	(10)	(11)	32% on W.C.	(18)	(19)	
BUILDERS' LABOURERS	Builders' Labs. (Const. on Site) Award (Federal)	3.51	140.40	7.00	14,5991	4.212	(15.3525%) 26,9482	7.714	-	6.2123	-	8.7582	3.1061	-	218.9499
BRICKLAYER	Carpent. & Joiners & Bricklayers Const. Award (State) Bricklayer	3.77	150.80	7.00	15.6805	4.524	(15.3525%) 28,8847	8.2626	-	6.6724	-	9.3811	3.3361	-	234.5214
CARPENTERS INCL. JOINERS	Carpent. & Joiners & Bricklayers Const. Award (State) Carpenters	3.79	151.60	7.00	15.7637	4.548	(15.3525%) 29,0121	8.3048	-	6.7078	-	9.429	3.3538	-	235.7192
PLUMBER	Plumbers & Gasfitters Award (State)	3.86	154.50	7.00	16.0548	4.632	(7.0035%) 13,4701	3.8559	-	6.8317	-	4.3778	3.4158	-	214.0381
PLASTERER	Plasterers, etc. Award (State)	3.78	151.20	7.00	15.7221	4.536	(15.3525%) 28,9384	8.2837	-	6.6901	-	9.045	3.345	-	235.1203
PAINTER	Painters, etc. Award (State)	3.74	149.60	7.00	15.5557	4.488	(6.5205%) 12,1655	3.4828	-	6.6194	-	3.9538	3.3096	-	206.1744
<u>ALL TRADES</u> ÷ 6	<u>AVERAGE TOTALS</u>	3.7417	149.6667	7.00	15.5626	4.49	23.2332	6.6506	N/A	6.6223	N/A	7.5509	3.3111	-	224.0874

Exhibit "H"

TOWN HALL HOUSE - 15/5/75

NATIONAL WAGE CASE - INCREASES

Average Loaded Wage of 6 trades at 15/5/75	=	\$224.0874/wk.	
Average Wage at 15/5/75	=	<u>\$149.6667/wk.</u>	
		\$ 74.4207/wk.	
This represents a loading of $\frac{74.4207}{149.6667} \times 100\%$	=	<u>49.7242%</u>	
Loading at 15/5/75 equals <u>49.7242%</u>			
Average Hourly Rate at 15/5/75	=	\$ 3.7417/hr.	10
+ New Loading @ 49.7242%	=	<u>\$ 1.86053/hr.</u>	
<u>NEW LOADED RATE PER HOUR 15/5/75</u>	=	<u>\$ 5.60223/hr.</u>	
<u>Less Base loaded rate/hr.</u>	=	<u>\$ 4.468530/hr.</u>	
<u>INCREASE IN LOADED HOURLY RATE</u>	=	<u>\$ 1.1337/hr.</u>	
<u>% INCREASE ON BASE HOURLY RATE -</u>			
= $\frac{1.1337}{4.468530} \times 100\%$	=	<u>25.37070%</u>	
<u>MONETARY &amp; EQUIV. MONETARY INCREASES -</u>			
= \$3.389166 x 25.37070%	=	\$ 0.859855	
<u>Less Wage Rise Claimed</u>	=	<u>\$ 0.065834 -</u>	20
		\$ 0.794021	
<u>Less Wage Rise Claimed</u>	=	<u>\$ 0.167920</u>	
		\$ 0.626101	
<u>Less Wage Rise Claimed</u>	=	<u>\$ 0.118750 -</u>	
		\$ 0.507351	
<u>Less Equiv. Monetary Increases</u> 21/11/74, 28/11/74, 1/1/75, 1/2/75, 1/3/75, 9/5/75	=	<u>\$ 0.496252</u>	-
<u>BALANCE EQUIV. MONETARY INCREASE RE LOADINGS</u>	=	<u>\$ 0.011099</u>	
<u>% INCREASE ON CONTRACT SUM</u>			30
= 1.1099 ¢ x 0.295	=	<u>0.327420%</u>	
<u>UNCOMPLETED WORK AS AT 15/5/75</u>	=	<u>\$2,049,764</u>	
<u>INCREASE ON CONTRACT SUM -</u>			
= \$2,049,764 x 0.327420%	=	<u>\$ 6,711.34</u>	

(12)

MAX COOPER & SONS PTY. LIMITED

1/7/75 10% REDUCTION IN WORKERS COMPENSATION PROVISIONS

WAGE DISSECTIONS AS AT 1/7/75

(Note: The numerals used in brackets are for internal coding purposes only)

Classification	Award	Hourly Rate	Award Weekly Wage (1)	Fares (2)	Annual Leave & Loadings (4)	Long Service (6)	Workers Comp. Insur. (7)	Common Law (8)	Public Risk Insur. (9)	Stat. Hol. & Picnic Day (10)	Payroll Tax (11)	Accident Pay (14)	Sick Leave (18)	Bereavement Leave (19)	Weekly Award + Allowance + Loadin
BUILDERS' LABOURERS	Builders' Labs. (Const. on Site) Award (Federal)	3.51	140.40	7.00	14,5991	4.212	(13.8172%) 24,2533	6.9426	-	6.2123	-	7.8824	3.1061	-	214.6078
BRICKLAYER	Carpent. & Joiners & Bricklayers Const. Award (State) Bricklayer	3.77	150.80	7.00	15.6805	4.524	(13.8172%) 25.9782	7.4363	-	6.6724	-	8.443	3.3361	-	229.8705
CARPENTERS INCL. JOINERS	Carpent. & Joiners & Bricklayers Const. Award (State) Carpenters	3.79	151.60	7.00	15.7637	4.548	(13.8172%) 26.1109	7.4743	-	6.7078	-	8.4861	3.3538	-	231.0446
PLUMBER	Plumbers & Gasfitters Award (State)	3.86	154.40	7.00	16.0548	4.632	(6.3031%) 12.1231	3.4703	-	6.8317	-	3.94	3.4158	-	211.8677
PLASTERER	Plasterers, etc. Award (State)	3.78	151.20	7.00	15.7221	4.536	(13.8172%) 26.0445	7.4554	-	6.6901	-	8.4645	3.345	-	230.4576
PAINTER	Painters, etc. Award (State)	3.74	149.60	7.00	15.5557	4.488	(5.8684%) 10.9489	3.1342	-	6.6194	-	3.5584	3.3096	-	204.2142
<u>ALL TRADES</u>	<u>AVERAGE TOTALS</u>	3.7417	149.6667	7.00	15.5627	4.49	20.9099	5.9856	N/A	6.6223	N/A	6.7958	3.311	-	220.3438

Exhibit "H"

TOWN HALL HOUSE - 1/7/75

10% REDUCTION IN WORKERS COMPENSATION PROVISION

Average Loaded Wage of 6 trades at 1/7/75	=	\$220.3438/wk.	
Average Wage at 1/7/75	=	<u>\$149.6667/wk.</u>	
		\$ 70.6771/wk.	
This represents a loading of $\frac{70.6771}{149.6667} \times 100\%$	=	47.2229%	
Loading at 1/7/75 equals		47.2229%	
Average Hourly Rate at 1/7/75	=	\$ 3.7417/hr.	10
+ New Loading @ 47.2229%	=	\$ 1.76694/hr.	
		<u>\$ 5.5086/hr.</u>	
<u>Less Base Loaded Rate/hr.</u>	=	<u>\$ 4.46853/hr.</u>	
<u>INCREASE IN LOADED HOURLY RATE</u>	=	<u>\$ 1.040109/hr.</u>	
<u>% INCREASE ON BASE HOURLY RATE -</u>			
= $\frac{1.040109}{4.468530} \times 100\%$	=	<u>23.27630%</u>	
<u>MONETARY &amp; EQUIV. MONETARY INCREASES -</u>			
= \$3.389166 x 23.27630%	=	\$ 0.788872	
<u>Less Wage Rise Claimed</u>	=	<u>\$ 0.065834</u>	20
		\$ 0.723038	
<u>Less Wage Rise Claimed</u>	=	<u>\$ 0.167920</u>	
		<u>\$ 0.555118</u>	
<u>Less Wage Rise Claimed</u>	=	<u>\$ 0.118750</u>	
		\$ 0.436368	
<u>Less Equiv. Monetary Increases</u> 21/11/74, 28/11/74, 1/1/75, 1/2/75, 1/3/75, 9/5/75 & 15/5/75	=	<u>\$ 0.507351</u>	
<u>BALANCE EQUIV. MONETARY DECREASE</u> <u>RE WORKERS COMPENSATION ETC.</u>	=	<u>-\$ 0.070983</u>	30
<u>% DECREASE ON CONTRACT SUM -</u>			
= 7.0983 ¢ x 0.295	=	<u>2.093998%</u>	
<u>UNCOMPLETED WORK AS AT 1/7/75</u>	=	<u>\$ 1,807,555</u>	
<u>DECREASE ON CONTRACT SUM -</u>			
\$1,807,555 x 2.093998%	=	<u>-\$ 37.850.17</u>	

(13)

MAX COOPER & SONS PTY. LIMITED

1/9/75

2nd STAGE OF THE NATIONAL BUILDING TRADES AWARD  
INCREASES

WAGE DISSECTIONS AS AT 1/9/75

(Note: The numerals used in brackets are for internal coding purposes only)

Classification	Award	Hourly Rate	Award Weekly Wage (1)	Fares (2)	Annual Leave & Loadings (3)	Long Service (4)	Workers Comp. Insur. (5)	Common Law (6)	Public Risk Insur. (7)	Stat. Hol. & Picnic Day (8)	Payroll Tax (9)	Accident Pay (10)	Sick Leave (11)	Bereavement Leave (12)	Weekly Award Wage + Allowance + Loading (13)
BUILDERS' LABOURERS	Builders' Labs. (Const. on Site) Award (Federal)	3.6525	146.10	7.00	15.1918	4.383	(13.8172) 25.1986	7.2132	-	6.4645	-	8.1895	3.2322	-	222.9728
BRICKLAYER	Carpent. & Joiners & Bricklayers Const. Award (State) Bricklayer	3.91	156.40	7.00	16.2628	4.692	(13.8172) 26.9069	7.7022	-	6.9202	-	8.7447	3.46	-	238.0888
CARPENTERS INCL. JOINERS	Carpent. & Joiners & Bricklayers Const. Award (State) Carpenters	3.93	157.20	7.00	16.346	4.716	(13.8172) 27.0396	7.7402	-	6.9556	-	8.7879	3.4777	-	239.2630
PLUMBER	Plumbers & Gasfitters Award (State)	4.00	160.00	7.00	16.6371	4.80	(6.3031) 12.5467	3.5915	-	7.0795	-	4.0777	3.5397	-	219.2722
PLASTERER	Plasterers, etc. Award (State)	3.92	156.80	7.00	16.3044	4.704	(13.8172) 26.9733	7.7212	-	6.9379	-	8.7663	3.4689	-	238.676
PAINTER	Painters, etc. Award (State)	3.88	155.20	7.00	16.1380	4.656	(5.8684) 11.3433	3.2471	-	6.8671	-	3.6866	3.4335	-	211.5716
ALL TRADES	AVERAGE TOTALS	3.8821	155.2833	7.00	16.1467	4.6585	21.6681	6.2026	N/A	6.8708	N/A	7.0421	3.4353	-	228.3074

Exhibit "H"

TOWN HALL HOUSE - 1/9/75

2ND STAGE OF THE NATIONAL BUILDING TRADES AWARD INCREASES

Average Loaded Wage of 6 Trades at 1/9/75	=	\$228.3074/wk.	
Average Wage at 1/9/75	=	<u>\$155.2833/wk.</u>	
		<u>\$ 73.0241/wk.</u>	
This represents a loading of $\frac{73.0241}{155.2833} \times 100\%$	=	47.0263%	
Loading at 1/9/75 equals 47.0263%			
Average hourly rate at 1/9/75	=	\$ 3.8821/hr.	10
+ New Loading @ 47.0263%	=	\$ 1.825607/hr.	
		<u>\$ 5.707707/hr.</u>	
<u>Less Loaded Base Rate/hr.</u>		<u>\$ 4.46853/hr.</u>	
<u>INCREASE IN LOADED HOURLY RATE</u>	=	<u>\$ 1.239177/hr.</u>	
<u>% INCREASE ON BASE HOURLY RATE -</u>			
= $\frac{1.239177}{4.468530} \times 100\%$	=	\$ 27.73120%	
<u>MONETARY &amp; EQUIV. MONETARY INCREASES -</u>			
= \$3.389166 x 27.73120%	=	\$ 0.939856	
<u>Less Wage Rise Claimed</u>	=	\$ 0.065834	20
		<u>\$ 0.874022</u>	
<u>Less Wage Rise Claimed</u>	=	\$ 0.167920	
		<u>\$ 0.706102</u>	
<u>Less Wage Rise Claimed</u>	=	\$ 0.118750	
		<u>\$ 0.587352</u>	
<u>Less Wage Rise Claimed</u>	=	\$ 0.140415	
		<u>\$ 0.446937</u>	
<u>Less Equiv. Monetary Increases &amp; Decreases</u> 21/11/74, 28/11/74, 1/1/75, 1/2/75, 1/3/75, 9/5/75, 15/5/75 & 1/7/75	=	<u>\$ 0.436368</u>	30
<u>BALANCE EQUIV. MONETARY INCR. RE LOADINGS</u>	=	<u>\$ 0.010569</u>	
<u>% INCREASE ON CONTRACT SUM -</u>			
= 1.0569 ¢ x 0.295	=	<u>0.311785%</u>	
<u>UNCOMPLETED WORK AS AT 1/9/75</u>	=	\$ 1,548,641	
\$1,548,641 x 0.311785%	=	\$ 4,828.43	

(14)

MAX COOPER & SONS PTY. LIMITED      18/9/75 INDEXATION AWARD WAGE INCREASES

WAGE DISSECTIONS AS AT 18/9/75

(Note: The numerals used in brackets are for internal coding purposes only)

Classification	Award	Hourly Rate	Award Weekly Wage	Fares	Annual Leave & Loadings	Long Service	Workers Comp. Insur.	Common Law	Public Risk Insur.	Stat. Hol. & Picnic Day	Payroll Tax	Accident Pay	Sick Leave	Carve-out Leave	Weekly Award Wa + Allow + Loadin
BUILDERS' LABOURERS	Bullders' Labs. (Const. on Site) Award (Federal)	3.7675	150.70	7.00	10.39822 (4)	3% (6)	(13.81722) 25.9616 (7)	22 1/2% + 5% on W.C. (8)	(9)	4.4077% (10)	5% (11)	32 1/2% on W. (14)	2.2123% (18)	(19)	229.7237
BRICKLAYER	Carpent. & Joiners & Bricklayers Const. Award (State) Bricklayer	4.04	161.60	7.00	16.8035	4.848	(13.81722) 27.7694	7.9491	-	7.1503	-	9.0251	3.5751	-	245.7205
CARPENTERS INCL. JOINERS	Carpent. & Joiners & Bricklayers Const. Award (State) Carpenters	4.06	162.40	7.00	16.8867	4.872	(13.81722) 27.9021	7.9871	-	7.1857	-	9.0682	3.5928	-	246.8946
PLUMBER	Plumbers & Gasfitters Award (State)	4.13	165.20	7.00	17.1778	4.956	(6.3031%) 22.9401	3.7041	-	7.3069	-	4.2055	3.6547	-	226.1478
PLASTERER	Plasterers, etc. Award (State)	4.05	162.00	7.00	16.8451	4.86	(13.81722) 27.8357	7.9681	-	7.168	-	9.0466	3.5839	-	246.3074
PAINTER	Painters, etc. Award (State)	4.01	160.40	7.00	16.6787	4.812	(15.86844) 11.7056	3.3519	-	7.0972	-	3.8056	3.5485	-	218.4035
<u>ALL TRADES</u>	<u>AVERAGE TOTALS</u>	4.0096	160.3833	7.00	16.677	4.8115	22.3531	6.3987	N/A	7.0965	N/A	7.2647	3.5481	-	235.5329

Exhibit "H"

TOWN HALL HOUSE - 18/9/75

INDEXATION AWARD WAGE INCREASES

Average Loaded Wage of 6 Trades at 18/9/75	= \$235.5329/wk.	
Average Wage at 18/9/75	= \$160.3833/wk.	
	<u>\$ 75.1496/wk.</u>	
This represents a loading of $\frac{75.1496}{160.3833} \times 100\%$	= <u>46.8562%</u>	
Loading at 18/9/75 equals	<u>46.8562%</u>	
Average hourly rate at 18/9/75	= \$ 4.0096/hr.	10
+ New Loading @ 46.8562%	= \$ 1.878746	
	<u>\$ 5.888346/hr.</u>	
<u>Less Loaded Base Rate</u>	= \$ 4.46853/hr.	
<u>INCREASE IN LOADED HOURLY RATE</u>	<u>\$ 1.419816/hr.</u>	
<u>% INCREASE ON BASE HOURLY RATE -</u>		
= $\frac{1.419816}{4.468530} \times 100\%$	= <u>31.773600%</u>	
<u>MONETARY &amp; EQUIV. MONETARY INCREASES -</u>		
= \$3.389166 x 31.773600%	= \$ 1.076860	
<u>Less Wage Rise Claimed</u>	= \$ 0.065834	20
	<u>\$ 1.011026</u>	
<u>Less Wage Rise Claimed</u>	= \$ 0.167920	
	<u>\$ 0.843106</u>	
<u>Less Wage Rise Claimed</u>	= \$ 0.118750	
	<u>\$ 0.724356</u>	
<u>Less Wage Rise Claimed</u>	= \$ 0.140415	
	<u>\$ 0.583941</u>	
<u>Less Wage Rise Claimed</u>	= \$ 0.127500	
	<u>\$ 0.456441</u>	
<u>Less Equiv. Monetary Increases &amp; Decreases</u>		30
21/11/74, 28/11/74, 1/1/75, 1/2/75, 1/3/75,		
9/5/75, 15/5/75, 1/7/75 & 1/9/75	= \$ 0.446937	
<u>BALANCE EQUIV. MONETARY INCR. RE LOADINGS</u>	= \$ 0.009504	
<u>% INCREASE ON CONTRACT SUM</u>		
= 0.9504 ¢ x 0.295	= <u>0.280368%</u>	
<u>UNCOMPLETED WORK AS AT 18/9/75</u>	= <u>\$1,428,641</u>	
<u>INCREASE ON CONTRACT SUM</u>		
\$1,428,641 x 0.280368%	= \$ 4,005.45	

(15)

MAX COOPER & SONS PTY. LIMITED

1/2/76

INTRODUCTION OF ONE ADDITIONAL 1 WEEK SICK LEAVE FROM 1st FEBRUARY, 1976 IN ACCORDANCE WITH THE NATIONAL BUILDING TRADES AWARD OF 1975.

WAGE DISSECTIONS AS AT 1/2/76

(Note: The numerals used in brackets are for internal coding purposes only)

Classification	Award	Hourly Rate	Award Weekly Wage	Fares	Annual Leave & Loadings	Long Service	Workers Comp. Insur.	Common Law	Public Risk Insur.	Stat. Hol. & Picnic Day	Payroll Tax	Accident Pay	Sick Leave	Benefit Leave	Weekly Award + Allowance + Loadin
BUILDERS' LABOURERS	Builders' Labs. (Const. on Site) Award (Federal)	3.7675	150.70 (1)	7.00 (2)	10.6335% (4)	3% (6)	13.8172% (7)	22% + 5% on W.C. (8)	(9)	4.5249% (10)	5% (11)	32% on W.F. (14)	4,5249 (18)	(19)	234.6027
BRICKLAYER	Carpent. & Joiners & Bricklayers Const. Award (State) Bricklayer	4.04	161.60	7.00	17.1837	4.848	13.8172% (7)	8.1182	-	7.3122	-	9.2172	7.3122	-	250.9521
CARPENTERS INCL. JOINERS	Carpent. & Joiners & Bricklayers Const. Award (State) Carpenters	4.06	162.40	7.00	17.2688	4.872	13.8172% (7)	8.1571	-	7.3484	-	9.2613	7.3484	-	252.1523
PLUMBER	Plumbers & Gasfitters Award (State)	4.13	165.20	7.00	17.5665	4.956	6.3031% (7)	3.7831	-	7.4751	-	4.2952	7.4751	-	230.9669
PLASTERER	Plasterers, etc. Award (State)	4.05	162.00	7.00	17.2263	4.86	13.8172% (7)	8.1377	-	7.3303	-	9.2393	7.3303	-	251.5524
PAINTER	Painters, etc. Award (State)	4.01	160.40	7.00	17.0561	4.812	5.8684% (7)	3.4232	-	7.2579	-	3.8866	7.2579	-	223.0526
<u>ALL TRADES</u>	<u>AVERAGE TOTALS</u>	4.0096	160.3833	7.00	17.0544	4.8115	22.8289	6.5348	N/A	7.2572	N/A	7.4194	7.2572	-	240.5465



PS/PW

17th January, 1977.

Ancher, Mortlock & Woolley Pty. Limited,  
Architects,  
10 Ridge Street,  
NORTH SYDNEY. N.S.W. 2060

Attention: Mr. J. Cooke

Dear Sir,

Re: TOWN HALL HOUSE  
PROGRESS CLAIM NO. 29.

We enclose herewith our Progress Claim No. 29 in the sum of \$886,764.06 for the work carried out on the above project.

10

We look forward to receipt of your Certificate in the above amount.

Yours faithfully,  
MAX COOPER & SONS PTY. LIMITED

G.M. CONNERY  
PROJECT MANAGER

Encl:

This and the next Twenty-Three pages comprise Annexure 'C' of the Affidavit sworn by ARTHUR ASHLEY COOPER on the 8th Day of February, 1977, before me:

20



C. Felton J.P.

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A Justice of the Peace

TOWN HALL HOUSE

PROGRESS CLAIM NO. 29 (14.1.77)

SUMMARY

ADVANCE	ITEM	ARCHITECT'S VALUATION CERTIFICATE 33	BUILDER'S VALUATION	BUILDER'S CLAIM NO 29	Q.S. VALUATION
	SCHEDULE A.				
6,174,358.91	NOMINATED SUBCONTRACT WORK IN PROGRESS.	6,544,308.84	6,678,222.62	133,913.78	6,644,308.00
	SCHEDULE B.				
103,000.00	EXPENDITURE AGAINST PROVISIONAL AMOUNTS	230,365.61	257,243.96	26,878.35	248,715.00
	SCHEDULE C.				
10,000.00	UNEXPENDED P.C.'S.	NIL	NIL	NIL	—
	SCHEDULE D.				
2,515,623.09	BASE BUILDERS WORK	2,276,871.96	2,390,627.39	113,755.43	2,308,442.00
	SCHEDULE E.				
NIL	VARIATIONS	144,571.55	252,641.45	108,069.90	160,142.00
	SCHEDULE F.				
NIL	CONTRACT ADJUSTMENTS	1,079,619.28	1,583,765.88	504,146.60	1,106,083.00
60,000.00	CONTINGENCY	NIL	NIL	NIL	
8,892,982.00	CERTIFICATE NO. 33.	10,275,737.24	11,162,501.30	886,764.06	10,530,130.00
	LESS RETENTION	<250,000.00>	<250,000.00>		
		10,025,737.24	10,912,501.30		10,280,130.00
	LESS CERTIFICATES	1-33	10,025,737.24		
	PROGRESS CLAIM	NO 29	886,764.06		

TOWN HALL HOUSE  
PROGRESS CLAIM NO. 29 (14.1.77)  
SCHEDULE A.1

AMOUNT	ITEM	ARCHITECT'S VALUATION CERTIFICATE 23.	BUILDER'S VALUATION	BUILDER'S CLAIM	Q.S. VALUATION
310,000.00	PRECAST CONCRETE	C/W 231,763.98 VAR 12,086.71 R&F 145,079.60 388,930.29	388,930.29	NIL	
19,406.00	PRESTRESSING	C/W 18,103.00 R&F 2,006.15 20,109.15	20,109.15	NIL	
91,000.00	ALUMINIUM WINDOWS	C/W 78,137.00 VAR 5,045.00 STOR 8,422.20 R&F 73,004.25 164,608.45	164,608.45	NIL	
5,980.00	ARMOURPLATE GLASS	C/W 146,403.25 VAR 23,966.04 R&F C/W 59,910.40 R&F VAR 7,762.12 238,041.81	238,041.81	NIL	
153,274.00	ROOF MEMBRANE	C/W 149,234.00 VAR 32,666.00 R&F 5,022.00 186,922.00	186,922.00	NIL	
ALL SCHEDULE "B"	BRONZE WINDOWS (AQUILA)	7,500.00	18,000.00	500.00	

TOWN HALL HOUSE  
PROGRESS CLAIM NO. 29 (14.1.77)  
SCHEDULE A.2

QUANTITY	ITEM	ARCHITECT'S VALUATION CERTIFICATE 33.	BUILDER'S VALUATION	BUILDER'S CLAIM	Q.S. VALUATION
160,750.00	MASONRY REPAIR	c/w 98,413.00 VAR 4,428.00 RAF 28,385.00 131,226.00	c/w 111,341.00 VAR 6,709.57 RAF 35,124.91 153,175.48	21,949.48	
356,000.00	HYDRAULICS	c/w 338,508.00 VAR 71,067.00 RAF 51,790.00 461,365.00	346,779.38 72,088.68 52,471.00 471,339.06	9,974.06	
189,000.00	METAL CEILINGS	c/w 145,948.00 VAR 18,767.00 RAF c/w 110,244.00 RAF 526.60 Var 275,485.60	c/w 160,948.00 VAR 27,767.00 RAF c/w 120,459.72 RAF 1,042.41 Var 310,217.13	34,731.53	
207,352.00	SPECIAL CEILINGS	c/w 105,522.00 VAR 6,130.00 RAF 25,404.00 137,056.00	c/w 122,350.00 6,130.00 34,970.00 163,950.00	26,894.00	
210,000.00	AIR CONDITIONING	c/w 841,429.00 VAR 29,062.00 RAF 573,966.00 1,444,457.00	1,444,457.00	NIL	

TOWN HALL HOUSE  
PROGRESS CLAIM NO. 29 (14.1.77)  
SCHEDULE A.3

AMOUNT	ITEM	ARCHITECT'S VALUATION CERTIFICATE 33.	BUILDER'S VALUATION	BUILDER'S CLAIM	Q.S. VALUATION
183,028.00	LIFTS & ESCALATORS	c/w 714,417.00 VAR INCL. R&F 489,945.00 1,204,362.00	1,204,362.00	NIL	
562,000.00	ELECTRICAL SERVICES	c/w 503,540.00 VAR INCL. R&F 221,405.00 724,945.00	747,309.00	22,264.50	
593,047.91	N.S.C RISE & FALL	INCL.	INCL.	INCL.	
8,367.00	FIXED LOUVRES	c/w 3,641.00 VAR 1,840.00 R&F c/w 1,492.54 R&F VAR 10.10 6,983.64	9,876.75	2,893.11	
48,000.00	FIRE SERVICES	c/w 167,582.00 VAR 181,595.00 R&F 196,404.00 545,582.00	545,582.00	NIL	
85,595.00	FOOD CONTRACT	520.00	520.00	NIL	
9,104.00	COOL ROOMS	6,222.00	6,222.00	NIL	

TOWN HALL HOUSE  
 PROGRESS CLAIM NO. 29 (14.1.77)  
 SCHEDULE A.4

ALLOWANCE	ITEM	ARCHITECT'S VALUATION CERTIFICATE 83	BUILDER'S VALUATION	BUILDER'S CLAIM	Q.S. VALUATION
	EXPOSED AGGREGATE	c/w 77,000.00			
140,000.00	PAVING	REF 6,327.00			
		83,327.00	83,327.00	NIL	15,000.00
32,965.00	EXTERNAL RAILINGS	c/w 30,000.00	30,000.00	NIL	
110,000.00	COMPUTER ROOM A/C	c/w 32,575.00			
		VAR INCL.			
		REF 1,259.00			
		33,834.00	33,834.00	NIL	
	PARTITIONS (MOYLE)	c/w 11,781.86	21,781.86	10,000.00	
	COMPUTER FLOOR	c/w 11,300.00			
		REF —			
		11,300.00	11,300.00	NIL	
230,000.00	JOINERY (FISCHER'S)	c/w 11,500.00			
		REF 1,450.00			
		12,950.00	12,950.00	NIL	
	JOINERY (COMMERCIAL FURNISHERS)	c/w 14,000.00	14,000.00	NIL	
	JOINERY (Wdg)	c/w 668.00	668.00	NIL	

TOWN HALL HOUSE  
PROGRESS CLAIM NO. 29 (14.1.77)  
SCHEDULE A.5

LOVANCE	ITEM	ARCHITECT'S VALUATION CERTIFICATE 33.	BUILDER'S VALUATION	BUILDER'S CLAIM	Q.S. VALUATION
5,000.00	RUBBISH CONTAINERS	c/w 1,100.00	1,100.00	NIL	
14,968.00	HARDWARE (J. JAMES)	c/w 17,500.60	c/w 17,882.69 RdF 4,224.91 <u>22,107.60</u>	4,607.60	
↓	KLEENEX DISPENSERS (KIMBORLI MARK)	c/w 712.80	712.80	NIL	
⊕ TO ELECTRICAL SERV.	SECURITY SERVICES	c/w 6,762.00 RdF 337.49 <u>7,099.49</u>	7,099.49	NIL	
15,000.00	LANDSCAPING (SPECTRUM)	c/w 9,000.00	9,000.00	NIL	
480,000.00	CARPET	c/w 314,685.20 RdF 41,986.55 <u>356,671.75</u>	356,671.75	NIL	
25,000.00	GRAPHICS (PAINT MONOGRAPHS)	SEE SCHEDULE "B"	—	—	
↓	GRAPHICS (LETTERING IND)	c/w 48.00	48.00	NIL	
6,174,358.91		6.54	133,913.7		

TOWN HALL HOUSE  
PROGRESS CLAIM NO. 29 (14.1.77)  
SCHEDULE B.1

AWANCE	ITEM	ARCHITECT'S VALUATION CERTIFICATE 33	BUILDER'S VALUATION	BUILDER'S CLAIM	Q.S. VALUATION
10,000.00	REMEDIAL WORK				
	AMENDED CLAIMS 1-7	90,318.51	90,318.51		
	8	21,582.27	21,582.27		
	9	3,401.38	3,401.38		
	10	5,075.43	5,075.43		
	11	5,446.57	5,446.57		
	12	6,273.23	6,395.14		
	13	NIL	1,162.04		
	14	604.12	604.12		
	15	4,008.56	4,347.49		
	16	416.53	416.53		
	17	6,788.00	6,969.30		
	18	5,466.01	5,638.61		
	19	NIL	7,560.37		
		149,380.61	158,932.96	9,552.35	
8,000.00	CRANE EXPENDITURE	21,600.00	21,600.00	NIL	
25,000.00	LEVEL 6 BRIDGE				
	V 77	7,900.00	10,000.00	2,100.00	

TOWN HALL HOUSE  
PROGRESS CLAIM NO. 29 (14.1.77)  
SCHEDULE B.2

AMOUNT	ITEM	ARCHITECT'S VALUATION CERTIFICATE 33	BUILDER'S VALUATION	BUILDER'S CLAIM	Q.S. VALUATION
50,000.00	ALTERATIONS TO THE EXISTING TOWN HALL				
	CLAIMS 2-7	29,522.00	36,393.88	6,871.88	
	V92	724.00	724.00	NIL	
	V96	2,389.00	2,289.00	NIL	
	V97	1,209.00	1,209.00	NIL	
	V127	NIL	300.00	300.00	
	SOUTH COLONNADE SERVICE TRENCH	3,000.00	5,000.00	NIL	
	V151	NIL	769.89	769.89	
	V152	NIL	1,090.95	1,090.95	
10,000.00	LEVEL 6 TILING				
	V41	3,669.00	3,923.03	254.03	
	LEVEL 6 FINISHES				
	V106	8,816.00	10,000.00	1,184.00	
	V114	1,856.00	2,400.00	544.00	
	V115	NIL	4,511.25	4,511.25	
	SHOULD BE IN SCHEDULE A. GRAPHICS:				
	PAINT MONDRIALS.	300.00	NIL	<300.00>	
103,000.00		230,3	257,243.96	26,878.35	





TOWN HALL HOUSE  
PROGRESS CLAIM NO. 29 (14.1.77)  
SCHEDULE E

LOWANCE	ITEM	ARCHITECT'S VALUATION CERTIFICATE 33.	BUILDER'S VALUATION	BUILDER'S CLAIM	Q.S. VALUATION
	WAGES PAID ON				
NIL	COUNCIL'S BEHALF	15,000.00	15,000.00	NIL	
NIL	INSURANCE CLAIM	29,112.50	29,112.50	NIL	
NIL	VARIATIONS TO BUILDER'S WORK AS ATTACHED SCHEDULE				
	(+) ADDITIONS	236,801.77	341,698.12		
	(-) DEDUCTIONS	<205,546.72>	<208,169.17>		
		31,255.05	133,528.95	102,273.90	
	COMMISSION ON				
NIL	N.S.C VARIATIONS	69,204.00	75,000.00	5,796.00	
NIL	BUILDER'S WORK				
NIL	N.S.C VARIATIONS	NIL	NIL	NIL	
NIL	INTERIM ADMIN ADJUSTMENT	REFER TO	VARIATION	SCHEDULE.	
NIL		144,571	252,641.45	108,069.90	

TOWN HALL HOUSE  
PROGRESS CLAIM NO. 29 (14.1.77)

SCHEDULE F.1

ALLOWANCE	ITEM	ARCHITECT'S VALUATION CERTIFICATE 33.	BUILDER'S VALUATION	BUILDER'S CLAIM	Q.S. VALUATION
	COMMISSION ON				
NIL	EXCESS EXPENDITURE FOR PROVISIONAL SUMS	50,400.00	83,193.12	32,793.12	
	DELAY COSTS				
NIL	MCS LETTER 16.6.76	204,906.25	204,906.25		
	"	96,677.00	96,677.00		
	"	42,579.00	42,579.00		
	27.7.76	100,100.00	129,000.00		
	15.11.76	NIL	1,540.00		
	"	NIL	17,200.00		
		444,262.25	491,902.25	47,640.00	
NIL	RISE & FALL ON BASE BUILDER'S WORK				
ALT <sup>N</sup> TO AWARD WAGE	28.11.74				
	1.3.75				
	15.5.75				
	1.9.75				
	18.9.75				
	18.2.76		SEE ATTACHED SCHEDULE		
	15.5.76				
	18.6.76				
	24.6.76				
	19.8.76				
	22.11.76				
		408,512.15	438,236.40	29,724.25	

TOWN HALL HOUSE  
PROGRESS CLAIM NO. 29 (14.1.77)  
SCHEDULE F.2

ALLOWANCE	ITEM	ARCHITECT'S VALUATION CERTIFICATE 33.	BUILDER'S VALUATION	BUILDER'S CLAIM	Q.S. VALUATI
ALT <sup>N</sup> TO STAT	STATUTORY LOADINGS 21.11.74				
	28.11.74				
	1.1.75				
	1.2.75				
	1.3.75				
	9.5.75				
	15.5.75				
	1.7.75				
	1.9.75				
	18.9.75				
	1.2.76				
	18.2.76				
	15.5.76				
	18.6.76	SEE ATTACHED SCHEDULE			
	24.6.76				
	1.7.76				
	19.8.76				
	22.11.76				
		92,966.00	378,737.83	285,766.83	
NIL	"RISE & FALL ON DELAY COSTS"				
	AWARD WAGES	48,832.97	83,807.97	34,975.00	
	STATUTORY LOADINGS	13,602.00	42,374.26	28,772.26	
		62,434.97	126,182.23	63,747.26	



Exhibit "J"

Rise & Fall (Award Wage Increases)

im	Date of Increase	(A) Value of Uncompleted Work	(B) R & F Claim	(C) B/A%	(A-D) x (C)
	28.11.74	2,515,624	48,854.68	1.94%	46,378.16
	1. 3.75	2,354,948	116,655.64	4.95%	110,382.62
	15. 6.75	2,049.764	71,805.80	3.5%	67,366.88
	1. 9.75	1,548,641	64,148.46	4.14%	63,575.70
	18.9. 75	1,428.641	53,734.76	3.76%	49,017.05
	18.2. 76	1,036.391	70,446.77	6.8%	61,974.86
	15.5. 76	889,787	25,482.89	2.864%	21,903.61
	18.6. 76	756,823	5,954.40	0.787%	4,972.48
	24.6. 76	751,691	1,860.47	0.247%	1,547.94
	19.8. 76	694.228	13,557.58	1.953%	11,117.10
	22.11.76		<u>\$472,501.45</u>	<u>30.941%</u>	<u>\$438,236.40</u>

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(D) UNCOMPLETED WORK VALUE = 2,515,623.00  
2,390,627.00  
(D) \$124,996.00

Exhibit "J"

Rise and Fall (Statutory Increases)

im	Date of Increase	(A) Value of Uncompleted Work	(B) R & F	(C) B/A%	(A-D)x(C)
	21.11.74	2,515,624	12,253.71	0.487%	11,642.35
	28.11.74	2,515.624	30,116.27	1.197%	28,615.81
	1.1.75	2,495,624	40,393.57	1.619%	38,380.47
	1.2.75	2,418,403	52,979.23	2.19%	50,225.61
	1.3.75	2,354,948	50,075.36	2.126%	47,408.78
	9.5.75	2,069,764	145,287.60	7.02%	136,522.71
	15.5.75	2,049,764	6,711.34	0.327%	6,293.99
	1.7.75	1,807,755	-(37,850.17)	-2.094%	(35,236.97)
	1.9.75	1,548,641	4,828.43	0.31%	4,413.30
	18.9.75	1,428,641	4,005.45	0.28%	3,650.21
	1.2.76	1,096,390	30,747.68	2.80%	27,199.03
	18.2.76	1,036,391	6,901.36	0.666%	6,069.89
	15.5.76	889,787	2,539.83	0.28%	2,141.41
	18.6.76	756,823	11,343.98	1.49%	9,414.22
	24.6.76	751,691	1,518.76	0.20%	1,253.39
	1.7.76	745,276	47,175.03	6.32%	39,201.70
	19.8.76	694,228	1,993.90	0.27%	1,536.93
			<u>\$411,021.33</u>	<u>25.488%</u>	<u>\$378,732.83</u>

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(D) UNCOMPLETED WORK VALUE = 2,515,623.00  
2,390,627.00

(D) \$124,996.00

NOMINATED SUB-CONTRACTOR

DESCRIPTION	A		C	D	E	F	(F-A) x 5%
	SUB-CONTRACTOR.	P.C. IN CONTRACTS					
HYDRAULICS	NISBOLD SURPLUS	256,000.00	INITIAL LET INCORP FULL SCOPE OF WORK.			471,339.06	5,766.95
MECHANICAL	M/H/S	1,210,000.00	921,479.00			1,444,457.00	11,722.85
FIRE		248,500.00	226,407.00			545,582.50	14,879.10
ELECTRICAL		562,000.00	559,150.00			747,309.50	9,265.45
LIFTS	JOHNS WAYLEND	933,028.00	729,124.00			1,204,362.00	13,566.70
WINDOWS	AGUILA	91,000.00	81,170.50			164,608.45	3,680.42
PRESTRESSING	VSC	19,406.00	18,103.00			20,109.15	35.16
FOOTING	ALPOK	153,274.00	153,274.00			186,922.00	1,652.40
HARDWARE	J JAMES	14,968.00	14,968.05			22,107.60	356.98
SUSPENDED CEILING	CEMAC	189,000.00	174,291.00			310,217.13	6,060.86
ARMOUR PLATE	UETRO	155,980.00	156,606.00			238,041.81	4,103.09
PRECAST CONCRETE	EPW	310,000.00	236,013.98			388,130.21	3,946.51
REMEDIAL WORK	BUILDER.	10,000.00				158,932.95	7,446.65
CRANE EXPEND	BUILDER	8,000.00				21,600.00	680.00

TOWN HALL HOUSE  
VARIATIONS TO BUILDER'S WORK

VARIATION NUMBER	TOTAL VARIATION ADDITION	ARCHITECT'S VALUATION TO CERTIFICATE NO. 34		BUILDER'S VALUATION IN PROGRESS CLAIM 29.		VARIANCE	
		ADDN.	DEDN.	ADDN.	DEDN.	ADDN.	DEDN.
1	A 298.27			298.27			
2	A 782.47			782.47			
3	A 918.20			918.20			
4	A 99.07			99.07			
5	A 113.44			113.44			
6	A 298.90			298.90			
7	A 687.54			687.54			
8	A 1,227.40			1,158.83			
9	A 1,152.40			1,121.91			
10	A 1,146.71			1,076.41			
11	A 86.65			86.65			
12	A 128.73			126.48			
13	A 1,719.01			1,719.01			
14	A 1,111.01			1,050.00			
15	2,904.22			2,904.22			
16	A 305.49.			305.49			
17	A 519.93			205.60			
18	A 2,342.68			2,100.00			
19	1,549.59			1,500.00			
20	A 1,123.04			1,123.04			
21	4,314.02			3,400.00			
22	A 821.55			821.55			
23	A 1,457.65			1,457.65			
24	A 2,191.31			2,191.31			
25	A 853.13			853.13			
26	A 3,420.18			3,200.00			
27	A (418.56)			—	418.56		
28	35,465.65			30,000.00			
29	A 332.81			320.60			
30	A 481.92			481.92			
31	A 769.92			769.92			
32	A 2,918.70			2,918.70			
33	A 1,600.56			1,600.56			

65905.03

TOWN HALL HOUSE  
VARIATIONS TO BUILDER'S WORK

VARIATION NUMBER	TOTAL VARIATION ADDITION	ARCHITECT'S VALUATION TO CERTIFICATE NO. 34		BUILDER'S VALUATION IN PROGRESS CLAIM 29		VARIANCE	
		ADDN.	DEDN.	ADDN.	DEDN.	ADDN.	DEDN.
34	10,133.35			5,200.60			
35	8,301.73			7,630.60			
36	A 906.60			906.60			
37	A 539.88			539.88			
38	A 109.80			109.80			
39	A 158.98			158.98			
40	A			16,074.08	9,967.76		
41	4,097.24			Schedule "B"			
42	1,180.71			1,180.71			
43	A 81.59			81.59			
44	NIL						
45	A 1,503.55			1,503.55			
46	A 178.42			178.42			
47	A 136.46			100.00			
48	1,748.71			1,748.71			
49	A 78.01			78.01			
50	A 325.61			325.61			
51	A 5,534.56			5,534.56			
52	A 765.09			765.09			
53	A 100.00			100.00			
54	A 1,807.45			1,807.45			
55	A 862.77			862.77			
56	A 285.57			285.57			
57	A <125,267.54>				125,267.54		
58	A 143.77					INCLUDED	SCHEDULE E*
59	A 2,590.16			2,590.16			
60	A 842.02			842.02			
61	15,680.97			15,680.97			
62	24,164.82			SCHEDULE "B"		CRANE EXPENDITURE	
63	752.00			752.00			
64	A 19.11			19.11			
65	A 103.86			103.86			
66	A 278.06			278.06			

131,342.59

TOWN HALL HOUSE  
VARIATIONS TO BUILDER'S WORK

VARIATION NUMBER	TOTAL VARIATION ADDITION	ARCHITECT'S VALUATION TO CERTIFICATE NO. 34		BUILDER'S VALUATION IN PROGRESS CLAIM 29		VARIANCE	
		ADDN.	DEDN.	ADDN.	DEDN.	ADDN.	DEDN.
67	3,447.28			3,447.28			
68	A 1,958.61			1,958.61			
69	A 763.97			763.97			
70	A 2,585.71			2,585.71			
71	NIL			—	—		
72	A 382.54			382.54			
73	410.97			410.97			
74	NIL			—	—		
75	A 814.83			814.83			
76	A 75.65			75.65			
77	38,333.09			SCHEDULE "B"	—	LEVEL 6 BRIDGE	
78	A 3,240.08			3,240.08			
79	9,728.89			9,728.89			
80	A 1,974.68			1,974.68			
81	A <sup>&lt; 4,031.25 &gt;</sup> 5,643.75			5,643.75	4,031.25		
82	A 1,389.70			1,389.70			
83	A 13,574.00			1,000.00			
84	A 5,467.08			5,467.08			
85	116.07			116.07			
86	JOINTS TO EXPOSE AGGREGATE REINFORC			1,000.00		QUANTITY TO BE SITE MEASURED.	
87	A <sup>20,957.73</sup> < 575.46 >			20,957.73	575.46		
88	A 414.57			414.57			
89	A 161.85			161.85			
90	A 679.94			679.94			
91	3,304.97			3,304.97			
92	1,421.04			SCHEDULE "B"		WORK INSIDE E.T.H.	
93	A 1,108.70			1,108.70			
94	1,728.57			1,728.57			
95	5,061.99			5,061.99			
96	8,927.87			SCHEDULE "B"		WORK INSIDE E.T.H.	
97	4,914.41			SCHEDULE "B"		WORK INSIDE E.T.H.	
98	—			—	—		
99	891.23			891.23			

205,651.95

TOWN HALL HOUSE  
VARIATIONS TO BUILDER'S WORK

VARIATION NUMBER	TOTAL VARIATION ADDITION	ARCHITECT'S VALUATION TO CERTIFICATE NO. 34		BUILDER'S VALUATION IN PROGRESS CLAIM 29		VARIANCE	
		ADDN.	DEDN.	ADDN.	DEDN.	ADDN.	DEDN.
100	2,531.43			1,764.94			
101	323.83			323.83			
102	208.60			208.60			
103	1,021.27			750.00			
104	8,982.59			8,982.59			
105	16,806.90			16,806.90			
106	12,159.17			SCHEDULE "B"	—	LEVEL 6	FINISHES
107	PRIVACY REO.			—	62,135.38	NOT YET	FINALISED
108	661.07			SCHEDULE "B"	—	LEVEL 6	BRIDGE, E.T.H.
109	A 173.42			173.42			
110	A 96.51			96.51			
111	2,424.52			2,424.52			
112	2,404.62			2,404.62			
113	6,131.20			3,978.16			
114	3,680.15			SCHEDULE "E"	—	LEVEL 6	FINISHED
115	4,511.25			SCHEDULE "E"	—		
116	A 2,224.69			2,224.69			
117	183.61			183.61			
118	216.31			216.31			
119	254.59			254.59			
120	759.72			759.72			
121	A 410.82			410.82			
122	1,446.50			1,300.00			
123	A 517.87			517.87			
124	A 24,462.68			24,000.00			
125	1,154.37			1,154.37			
126	nil			—	—		
127	930.81			SCHEDULE "B"	—	WORK INSIDE	E.T.H.
128	59.43			59.43			
129	10,110.52			—	—	5 CHANGE	WINDOWS
130	3,757.81			3,757.81			
131	A 323.35			323.35			
132	A 1,307.82			1,307.03			

280,035.64

TOWN HALL HOUSE

VARIATIONS TO BUILDER'S WORK

VARIATION NUMBER	TOTAL VARIATION ADDITION	ARCHITECT'S VALUATION TO CERTIFICATE NO.		BUILDER'S VALUATION IN PROGRESS CLAIM		VARIANCE	
		ADDN.	DEDN.	ADDN.	DEDN.	ADDN.	DEDN.
133	A 189.83			189.83			
134	2,891.77			2,891.77			
135	A 1,630.64			1,630.64			
136	829.11			829.11			
137	446.29			446.29			
138	906.37			906.37			
139	488.15			488.15			
140	A 550.98			550.98			
141	260.47			260.47			
142	1,636.92			1,636.92			
143	A 299.87			299.87			
144	60.52			60.52			
145	5TH COUENAPS SERVICE TRENCH			SCHEDULE "B"		NOT YET WORK INSIDE	FINALISED - E.T.H.
146	1,686.22			1,686.22			
147	7,366.30			7,366.30			
148	1,996.43			1,996.43			
149	361.43			361.43			
150	3,055.67			3,055.67			
151	769.89			SCHEDULE "B"		L6 BRIDGE	E.T.H.
152	1,090.95			SCHEDULE "B"		L6 BRIDGE	E.T.H.
153	1,451.98			1,451.98			
154	494.68			494.68			
155	628.98			628.98			
156	6,144.97			6,144.97			
157	475.95			475.95			
158	PIPE PROOF LIFT - WELL BEAMS			7,000.00		NOT YET	FINALISED
159	112.59			112.59			
160	501.45			501.45			
161	171.53			171.53			
162	390.63			390.63			
163	95.24			95.24			
164	442.12			442.12			
165	28.64			28.64			

322,631.37



B.I.A.C. stands for Building Industrial Advisory Council, an association which under its present constitution has the aim of furthering the general interests of the building industry. The Council is made up of the Master Builders' Association of N.S.W., the Royal Australian Institute of Architects, N.S.W. Chapter, the Institute of Quantity Surveyors, N.S.W. Chapter, the Association of Consulting Engineers of Australia, N.S.W. Chapter, the Building Sub-Contractors Organisation of N.S.W., the Public Works Department of N.S.W. and the Commonwealth Department of Construction. There is a Governing Council on which each of the constituent members is represented.

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MAX COOPER & SONS PTY. LIMITED  
BUILDING AND CIVIL ENGINEERING CONTRACTORS  
(ESTABLISHED 1905)

Registered Office and Joinery Works  
87 DARLING STREET, EAST BALMAIN, N.S.W. 2041

DIRECTORS:  
A.A. COOPER, M. Build., Ph.D. (N.S.W.),  
A.S.T.C. (Bldg.) (Q.S.), Q.R.V.  
J.L. COOPER, A.S.T.C. (Bldg.), A.A.I.B.  
A.D. COOPER, F.A.I.B.

TELEPHONES: 82 0451  
82 5088  
After Hours 337 2859

10

WvdW/PW

31st March, 1976.

ANCHER MORTLOCK		& WOOLLEY PTY. LTD.	
Date	- 1 APL 1976	Job No.	.....
To			File
Seen			

Ancher, Mortlock, Murray & Woolley Pty. Ltd.,  
Architects,  
10 Ridge Street,  
NORTH SYDNEY. N.S.W. 2060.

Attention - Mr. J. Odell

Dear Sir,

Re: TOWN HALL HOUSE PROJECT  
RISE AND FALL CLAIMS

Please find enclosed our claim for increases in Award Rates  
of pay and pay loadings from the date of tender, all in  
accordance with Clause 6 of Annexure "A" of our Agreement and  
Conditions of Contract. 20

The Rise and Fall formula in our Agreement is labour based  
and provides the necessary vehicle for the calculations to be  
made for the loading increases on wages as stipulated in our  
contract.

Such alterations to the wages have been converted to an  
equivalent monetary sum as is stated in the formula.

We request that an adjustment be made to the Contract Sum for  
the amount of \$694,747.81, in accordance with this submission. 20

Yours faithfully,  
MAX COOPER & SONS PTY. LIMITED

A. Cooper  
(Dr.) A.A. COOPER  
MANAGING DIRECTOR

Encl.

Exhibit 1 - Letter from  
122. Plaintiff, 31.3.1976.

## ACCIDENT PAY

The first judgment with regard to Accident Pay was made during a compulsory conference on the 21st May, 1971 before Mr. Justice J. Sheehy. This judgment was made on a dispute between the Building Trades Union and the Master Builders' Association on a claim that Building Tradesmen should receive full pay during the periods that they are off duty on Workers' Compensation. A copy of this judgment is enclosed.

The Building Trades dispute award was gazetted in the N.S.W. Industrial gazette on the 30th June, 1971 and relates to the judgment made on Friday, 21st May, 1971. 10

A further judgment was made now called the Building Trades Injuries Award. This judgment is an amplification on the previous award of the 21st May, 1971 and was handed down by Justice Beattie and others on the 22nd October, 1971.

This award rescinds and replaces the award made by Judge Sheehy of May, 1971 and clearly identifies the provisions of the award.

Several items in these two awards should be noted, in particular item 2 and 3 of the award made on the 21st May, 1971 and item 2 (a), 2 (c) and 5 of the award made on the 22nd October, 1971. 20

In essence, both awards place liability upon the employer to cover the employee for the difference of the moneys he would have received on ordinary pay and the amount he receives under Workers' Compensation for a period of 26 weeks from the date of injury. The loading is also adjustable proportionately with changes in the award as referred to in item 3 of the first judgment.

The Building Trades Industry Award was further varied on the 29th June, 1973 and was subsequently incorporated in the National Building Trades Construction Award of the 1st March, 1975 by Justice Elizabeth Evatt (Refer Cl. 28). 30

In all of the abovementioned cases, it is clear that in whichever way payment is made to comply with the award, additional costs are involved either directly by payment to the men as noted in the first judgment or alternatively by a provision made by the employer or through an Insurance Policy in the same way as Workers' Compensation.

The liability is placed upon the employer to provide payment should an accident occur. 40

We therefore claim that the awards have increased the actual cost of employment to the employer and is therefore claimable under the Rise and Fall formula in our opinion.

TOWN HALL HOUSE 21/11/74

Increased loading due to Increases in Accident Pay Provisions  
from 25% to 32½% on Workers Compensation Premiums.

Average Loaded Wage of 6 trades as at 21.11.74 = \$179.6123

Base Average Wage as at 21.11.74 = \$135.5667

VALUE OF LOADINGS AS AT 21/11/74 = \$ 44.0456

This represents a loading of  $\frac{\$44.0456}{\$135.5667} \times 100\% = 32.4899\%$

COMPONENTS OF AVERAGE AWARD HOURLY WAGE

AT CLOSE OF TENDERS

1. CARPENTER

CARPENTER & JOINER & BRICKLAYERS' CONSTRUCTION  
(STATE) AWARD

Clause 3 - "Wages":

Basic Wage	\$ 47.80
Margin	<u>59.70</u>
	<u>107.50</u>

Loading to provide for payment of one week & three days follow the job and one week & three day sick leave per annum 10

X 52 ÷ 48.8 114.55

Loading to provide for compensation for excess travelling time to and from place of work 20

107.50 X 2.9 ÷ 40 7.79

Tool Allowance	1.80
Industry Allowance	4.25
Special Allowance	<u>9.60</u>

\$ 137.99 per week = 3.45  
per hour

Not included in computation of the average wage:

1. Excess fares (clause 13)
2. Annual leave entitlement (Annual Holidays Act, 1944)
3. Annual leave loading (clause 4A)
4. Sick leave (no sick leave entitlement then provided for) 30
5. Payroll tax (Payroll Tax Act, 1971)



Exhibit 2 - Rates of pay  
from Relevant Awards

- 5. Payroll tax (Payroll Tax Act, 1971)
- 6. Workers Compensation premiums (Workers Compensation Act, 1926)
- 7. Long Service Leave (Long Service Leave Act, 1955)
- 8. Accident pay (Building Trades - Injuries Award, Clause 4)

3. PAINTERS

PAINTERS' (STATE) AWARD

Clause 3 - "Wages":

	\$	10
Basic Wage	47.80	
Margin	<u>59.70</u>	
	<u>107.50</u>	

Loading for 1 week follow  
the job and eight days  
sick leave

X 52 ÷ 49.4 113.16

Loading to provide  
compensation for excess  
travelling time to and  
from places of work

107.50 X 2.9 ÷ 40 7.79

Tool Allowance .30

Industry Allowance 4.25

Special Allowance 9.60

135.10 per week = 3.38  
per hour

Not included in computation of the average wage:

- 1. Excess fares (clause 8) 30
- 2. Annual leave entitlement (Annual Holidays Act, 1944)
- 3. Annual leave loading (clause 17B)
- 4. Sick leave (no sick leave entitlement then provided for)



Exhibit 2 - Rates of pay  
from Relevant Awards

- 3. Annual leave loading (clauses 31A and 31B)
- 4. Sick leave (no cik leave entitlement then provided for)
- 5. Payroll Tax (Payroll Tax Act, 1971)
- 6. Workers Compensation premiums (Workers Compensation Act, 1926)
- 7. Long Service Leave (Long Service Leave Act, 1955)
- 8. Accident pay (Building Trades - Injuries Award, Clause 4)

5. PLASTERER 10

PLASTERERS' (STATE) AWARD

Clause 3 - "Wages":

	\$	
Basic Wage	47.80	
Margin	<u>59.70</u>	
	<u>107.50</u>	

Loading to provide for  
one week and 3 days  
follow the job and one  
week and 3 days sick  
leave

X 52 ÷ 48.8 114.55

20

Loading to provide  
compensation for excess  
travelling time to and  
from places of work

107.50 X 2.9 ÷ 40 7.79

Tool Allowance 1.80

Industry Allowance 4.25

Special Allowance 9.60

\$ 137.99 per week = 3.45  
per hour

30

Exhibit 2 - Rates of pay  
from Relevant Awards

Not included in computation of average award wage:

1. Excess fares (clause 13)
2. Annual leave entitlement (Annual Holidays Act, 1944 and Clause 31)
3. Annual leave loading (Clause            )
4. Sick leave (no sick leave entitlement then provided for)
5. Payroll tax (Payroll Tax Act, 1971)
6. Workers Compensation premiums (Workers Compensation Act, 1926) 10
7. Long Service Leave (Long Service Leave Act, 1955)
8. Accident pay (Building Trades - Injuries Award, Clause 4)

Exhibit 2 - Rates of pay  
from Relevant Awards

6. BUILDERS LABOURERS

Builders Labourers' (Construction on Site) (Federal)  
Award

Clause 3 - "Wages"

	<u>Group 1</u>	<u>Group 2</u>	<u>Group 3</u>	<u>Group 4</u>	
Basic Wage	47.80	47.80	47.80	47.80	
Margin	58.70	55.50	49.30	38.80	
	<u>106.50</u>	<u>103.30</u>	<u>97.10</u>	<u>86.60</u>	10
Loading for 1.6 weeks follow the job and 1.6 weeks sick leave					
X 52 ÷ 48.8	113.48	110.07	103.47	92.28	
Loading to provide for excess travelling time to and from place of work in the building industry					
2.9 ÷ 40	7.72	7.49	7.04	6.28	20
Industry Allowance	4.25	4.25	4.25	4.25	
Special Allowance	8.80	8.80	8.80	8.80	
Per Week	<u>134.25</u>	<u>130.61</u>	<u>123.56</u>	<u>111.61</u>	
Per Hour	<u>3.356</u>	<u>3.265</u>	<u>3.09</u>	<u>2.79</u>	

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Exhibit 2 - Rates of pay  
from Relevant Awards

Average Group 1	3.356
" 2	3.265
" 3	3.090
" 4	2.790
	<hr/>
	12.501 ÷ 4 = \$3.12

Not included in computation of average award wage:

1. Excess fares (Clause 20)
2. Annual leave entitlement (Annual Holidays Act, 1944 and Clause 38). 10
3. Annual leave loading not then provided for.
4. Sick leave (no sick leave entitlement then provided for).
5. Payroll tax (Payroll Tax Act, 1971).
6. Workers Compensation premiums (Workers Compensation Act, 1926).
7. Long Service Leave (Long Service Leave Act, 1955).
8. Accident Pay (Clause 10).

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
COMMON LAW DIVISION )  
 )  
COMMERCIAL LIST )

835 of 1977.

CORAM: YELDHAM J.

27th APRIL, 1978.  
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MAX COOPER AND SONS PTY. LIMITED

v.

THE COUNCIL OF THE CITY OF SYDNEY

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JUDGMENT

HIS HONOUR: The plaintiff and defendant were parties to a building contract dated 31st March, 1976 whereby the plaintiff, a builder, agreed to erect for the defendant, the Council of the City of Sydney, a multi-storey building at the rear of the Sydney Town Hall. The date upon which tenders closed was 12th November, 1974 and the plaintiff actually entered upon the execution of the works the subject of the later contract on or about 12th December, 1974. Dr. Cooper, the managing director of the plaintiff, said in an affidavit sworn on 8th February, 1977 that "the work will shortly be completed". Clause 6 of annexure "A" to the contract (which was obviously signed long after the work was begun) was in these terms:

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"RISE AND FALL CLAUSE

Amounts calculated in accordance with this clause are adjustments for fluctuations in cost of labour and material which are used in the performance of this Contract.

Judgment of his Honour,  
133. Mr. Justice Yeldham

Where, after the date of closing of tenders, and during the progress of the work alterations occur in the actual cost to the contractor in performing the contract as a consequence of alteration in the average hourly wage as hereinafter defined or the equivalent monetary alteration due to a change in standard working hours or any other conditions of employment arising from any statute, statutory regulation or award or order of an Industrial tribunal

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THEN FOR EACH CENT OF SUCH ALTERATION TO THE AVERAGE HOURLY WAGE THERE SHALL BE ADDED TO OR DEDUCTED FROM THE CONTRACT SUM AN AMOUNT REPRESENTING 0.295% OF THE VALUE OF THE UNCOMPLETED PORTION OF THE CONTRACT AS AT THE DATE OF ANY SUCH ALTERATION.

The Clause will apply to all alterations in Award Rates of pay, pay loadings, holidays, etc. unless contrary to case law.

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- (a) The average hourly wage shall be the average of the hourly rate of pay for the listed workmen. The workmen listed and their relevant awards are:

(The rates shown are the rates as at the date of tender, 12th November, 1974).

- |                                                                                    |        |    |
|------------------------------------------------------------------------------------|--------|----|
| 1. Carpenter (Carpenter & Joiners & Bricklayers' Construction (State) Award)       | \$3.45 |    |
| 2. Bricklayer (Carpenters & Joiners & Bricklayers' Construction (State) Award)     | \$3.43 | 30 |
| 3. Painter (Painters' (State) Award)                                               | \$3.38 |    |
| 4. Plumber (Plumbers and Gas Fitters' State Award)                                 | \$3.50 |    |
| 5. Plasterer (Plasterers' (State) Award)                                           | \$3.45 |    |
| 6. Builder's Labourer (Builders Labourers' (Construction on Site) (Federal) Award) | \$3.12 |    |

The value of the uncompleted portion of the contract shall be determined from time to time by the

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Architect and shall not include any amounts for Quantity Surveyors' Fees, Contingency Sums, Prime Cost Allowances or Monetary Sums, or any sum for which a separate Rise and Fall agreement is included".

Paragraphs 5-13 of Dr. Cooper's affidavit, which were not the subject of challenge, were in these terms:

"5. There have been increases in the average hourly wage as defined in paragraph 6. 10

6. There have been increases in fares pursuant to an Award made on the 11th December 1974, by the Industrial Commission of New South Wales and incorporated in clause 15.11 of the National Building Trades Construction Award made on the 12th March 1975 (hereinafter referred to as the "National Award"). There was a further increase by way of variation of the National Award on the 18th February 1976.

7. By reason of the said increases in the said average hourly wage there have been increases in the cost of the provision of annual holidays to employees and/or the payment of holiday pay pursuant to the Annual Holidays (Amendment) Act 1974 and in the payment of a loading of 17½% thereon pursuant to several State Awards made by the Industrial Commission of New South Wales. 20

8. After the 12th November 1974, and until the date of the National Award there was no statutory or other provision for a separate payment by way of sick leave for employees. The award wages payable to employees pursuant to the awards listed in paragraph 6 contained a component referable to compensation for sick leave. The National Award by clause 27 thereof made provision for the payment of sick leave on full award wages for 40 hours for 11 months commencing on the 1st March 1975, and 80 hours per annum after 1st February 1976. 30

9. By reason of increases in the said hourly wage there have been increases in payroll tax on wages pursuant to the Payroll Tax Act, 1971.

10. There have been increases in the cost of effecting Workers Compensation Insurance pursuant to Section 18 of the Workers Compensation Act, 1926. The increases have been due to increases in the said average hourly wage and also due to increases in the rates of premium pursuant to amendments contained in Schedules to the Workers Compensation (Further Amendment) Act, 1975. 40

11. There have been increases in the cost of the provision of long service benefits pursuant to the Long Service Payment Act, 1974. The increases were pursuant to Regulation No. 298 of 1975 made pursuant to the said Act.

12. By reason of increases in the said average hourly wage there have been increases in the cost of provision and/or payment of public holiday pay and picnic day pay pursuant to the Awards listed in paragraph 6 which were subsequently incorporated in the said National Award.

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13. By reason of the increases in the said average hourly wage there have been increases in the provision and payment of accident pay pursuant to the Building Trades Injuries Award made on the 21st day of May 1971, and variations thereto on the 22nd October 1971, and 29th June 1973, and the incorporation thereof in clause 28 of the National Award".

By its summons the plaintiff claimed declarations that on the proper construction of the "rise and fall" clause and in the events which have occurred the following matters are required to be taken into account in applying the formula:

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- "(a) Increases in the amounts payable for fares pursuant to State and Federal Awards.
- (b) Increases in the cost of the provision of annual holidays and/or the payment of holiday pay pursuant to the Annual Holidays (Amendment) Act, 1974, and in the payment of a loading of 17½% thereon pursuant to State Awards.
- (c) The provision in clause 27 of the National Building Trades Construction Award for the payment of sick leave.
- (d) Increases in the cost of meeting payroll tax payable pursuant to the Payroll Tax Act, 1971.
- (e) Increases in the cost of effecting workers compensation insurance.
- (f) Increases in the cost of the provision of long service benefits pursuant to the Long Service Payment Act, 1974.

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Judgment of his Honour,  
Mr. Justice Yeldham

- (g) Increases in the cost of the provision and payment of accident pay pursuant to the Building Trades Injuries Award made on the 21st May, 1971, and subsequent variations thereto and the incorporation thereof in clause 28 of the said National Award".

The plaintiff did not seek any quantification of the sums to which it claimed to be entitled in the event that one or more of the matters referred to was declared to be required to be taken into account under the clause, and it indicated that this could be left either to the agreement of the parties or to the determination of an arbitrator. 10

Senior counsel for the defendant conceded that increases in the amounts payable for fares pursuant to the relevant awards should be taken into account (paragraph (a) of the summons); so also the payment of a loading of 17½% in relation to holiday pay (portion of par. (b) of the summons); and increases in sick leave and in long service leave which may be demonstrated, occurring otherwise than as a consequence of increases in the relevant award rates of pay (i.e. the average hourly wage as defined). These concessions were made in the light of the decision of the High Court of Australia in T.C. Whittle Pty. Limited v. T. & G. Mutual Life Society Limited (unreported, December 1977). There the "rise and fall" clause, so far as is relevant, was in these terms: 20

"A2.52 Rise and Fall

The Contract shall be subject to Rise and Fall which shall apply from the date of submission of the Contract Sum Offer to the Proprietor. 30

Judgment of his Honour,  
Mr. Justice Yeldham

For the purposes of calculating the actual Rise and Fall the following formula will be applied to the Builder's own work and the Sub-Trades.

The following formula shall be used:

'Where, after the date of closing of tender, and during the progress of the work, alterations occur in the actual cost to the Contractor in performing the Contract as a consequence of alterations in the average award weekly wage as hereinafter defined or the equivalent monetary alteration due to a change in standard working hours or any other conditions of employment arising from any statute, statutory regulations or award or order of an industrial tribunal, then for each ten cents and proportion thereof of such alteration to the average award weekly wage, there shall be added to or deducted from the Contract sum an amount representing the percentage as stated in the Builder's submission of the value of the uncompleted portion of the Contract'. 10 20

The amount to be added or deducted shall be calculated in the following manner:

The average award weekly wage shall be the average of the 40 hour rate of pay for the listed workmen. The workmen listed and their relevant awards are:

1. Carpenters (Carpenters and Joiners and Bricklayers Construction (State) Award).
2. Bricklayer (Carpenters and Joiners and Bricklayers Construction (State) Award).
3. Painter (Painters (State) Award). 30
4. Plumbers (Plumbers and Gasfitters (State) Award).
5. Plasterers (Plasterers (State) Award).
6. A skilled Labourer (Builder's Labourers' (Contraction on site) (Federal) Award).

'The value of the uncompleted portion of the Contract shall be determined from time to time by the Architect and shall not include any amounts for Contingency Sums, Prime Cost Allowances or Monetary Sums, specialist sub contractors, suppliers and previous Rise and Fall adjustments'." 40

Judgment of his Honour,  
Mr. Justice Yeldham

It will be observed that such clause differs from that in the present case in two principal respects, apart from the use of an "average award weekly wage" as contrasted with an "average hourly wage".

The first difference is that clause 6 in the present contract recites that "amounts calculated in accordance with this clause are adjustments for fluctuations in cost of labour and material which are used in the performance of this contract". In the agreement with which the High Court was concerned the opening paragraph was "the contract shall be subject to rise and fall which shall apply from the date of submission of the Contract Sum Offer to the proprietor". The second principal difference, and that upon which the plaintiff placed considerable reliance, was the inclusion in the present contract of the words "the clause will apply to all alterations in award rates of pay, pay loadings, holidays, etc. unless contrary to case law". The words which I have underlined are those which are critical to the plaintiff's argument, at least in relation to some aspects of its claim. Both counsel agreed that, whatever the final five words may mean, they do not affect the construction of the clause.

In T.C. Whittle Pty. Limited v. T. & G. Mutual Life Society Limited (ante) Barwick C.J., with whom Mason J. and Murphy J. agreed held that changes occurring after the close of tenders in conditions of employment of employees in the classifications used in the computation of the average wage

in respect of annual holiday loading, additional annual holidays, excess fare allowances, sick leave and long service leave entitlements and height money were within the terms of the rise and fall clause. His Honour held also that the cost of increased workers' compensation benefits was not within it, a conclusion with which Mason J. agreed but from which Murphy J. dissented.

In the course of his judgment the Chief Justice said: 10

" ... it is both central and fundamental to the understanding and operation of the clause that the average wage is a notional concept, its amount being constructed from the financial specifications of a series of industrial awards and of statutes regulating the terms of industrial employment. These are relevantly the conditions of employment current at the date of the closing of tenders. The relevant alterations and conditions of employment must, in my opinion, be of a like character. That means, in my opinion, the change to be allowed must be a change in the obligations of the employer towards the employee in the employment or a change in the entitlement of the employee to action by the employer in the employment. The relevant changes in the conditions of employment must be by statutory instrument or industrial award and, in my opinion, be general in nature, i.e. be operative as to all employees who fall within the area intended to be regulated. This does not mean that they must in fact be availed of by all employees or all or any employees all the time. To apply or be available to all employees who come within the classification, description, or category specified in the statutory instrument or award will suffice ... Then it seems to me that the changes to be relevant must be operative in respect of one or more of the classifications of employment which were used to construct the average wage; but not necessarily be exclusive to those classifications or to any of them. ... The point I wish presently to make is that the clause does not require the computation of the amount of the resultant increase in the appellant's actual cost of construction or in the actual amount payable by him as a result of the alterations. The condition of the clause seems to me to be satisfied if the alteration is operative at all in relation to employment by

the appellant in the performance of the contract of employees in any of the classifications used in the computation of the average wage ... in my opinion the equivalent monetary alteration in the clause means a change in the average wage equivalent to the financial extent of the change in conditions of employment. The meaning is best observed, in my opinion, if the clause is read as 'the monetary alterations in the average wage equivalent to the change in working conditions'. 10  
It does not mean ... that the change must be equated to a direct alteration in the average wage. In particular it does not mean that the change must be directly expressible in weekly terms. ... but the relevant changes in conditions of employment are not limited to changes in those conditions of employment which were used to construct the average wage. ... What the clause requires is that there should be a change in the conditions of employment which brings about a monetary alteration which can be expressed through an alteration of the average wage. That wage is not a wage in fact being paid: as I have emphasized, it is but a notional wage. But its amount is conceived as variable by reason of changes in the conditions of employment ... As I have said, the change in the notional wage does not require application to any employee: nor is it necessary to determine what is the precise financial consequence to the appellant of the change. The only elements in the operation of the clause are the change in the notional wage and the application of the formula, provided that the change is calculated to have generally a financial impact on the appellant's actual cost of performing the contract. 20  
Of course, the alteration in conditions of employment must be capable of expression through an alteration of the average wage". 30

His Honour then proceeded to deal separately with the various changes claimed by the appellant in that case (the builder) to satisfy the specification of the clause. Only 40  
the alteration in workers' compensation benefits were held to be excluded as they did not qualify as changes in the conditions of employment of any of the classifications of employees used in the computation of the average wage. The Chief Justice observed that they were "changes in the conditions

which are consequential upon the employment of workers' but the obligation to pay workers' compensation does not ... form part of the contract of employment". Changes in payroll tax were not within the matters under consideration by the High Court, but counsel in the present case agreed, and in my opinion properly, that they would have been dealt with, in the light of the construction of the relevant clause, in precisely the same way as changes in the cost of compensation payable under the Workers' Compensation Act. 10

Evidence placed before me established that the components of each of the six listed awards which were relevant to the computation of the average hourly wage as defined in the rise and fall clause were: the basic wage, tradesman's margin, follow the job and sick leave loadings, a loading to compensate for excess travelling time, tool allowance, industry allowance and special allowance. Specifically there was not included in such computation any allowance for excess fares, annual leave entitlement, annual leave loading, payroll tax, workers' compensation premiums, long service leave or accident pay. In 1975 the various State awards listed in clause 6, with the exception of the Plumbers' and Gasfitters' (State) Award, were superseded by the Building Tradesmen (Federal) Award which merely incorporated the provisions of the awards which it replaced. 20

I propose to deal, firstly, with the arguments relating to accident pay. By 12th November, 1974, on which date

tenders closed, each of the relevant awards referred to in clause 6 made provision for "accident pay" which, at least in most cases, was the weekly payment of an amount representing the difference between workers' compensation received by a worker whilst injured and the rate of wage prescribed for such worker for the week in question, such payment being for a maximum of twenty-six weeks from the date of injury, assuming the incapacity lasted for that time. Provision was made, at least in most of the awards, for the employee to re-pay such accident pay to his employer in the event of his recovering damages for his injury. Counsel agreed that the only relevant alteration to the obligation of the plaintiff to pay accident pay after 12th November, 1974 and until the termination of work under the contract arose as a direct consequence of increases in the average hourly wage as defined. 10

Mr. Cullen, senior counsel for the defendant, submitted that accident pay is supplementary to and similar in character to workers' compensation payments (and he referred to Ex parte Master Builders' Association of New South Wales; Re Industrial Commission of New South Wales (1971) 1 N.S.W.L.R. 655 at 665); that in consequence it falls within "the workers' compensation area of the relationship between employer and employee"; and that any alteration in respect of it is not "a change in the obligations of the employer towards the employee in the employment or a change in the entitlement of the employee to action by the employer in the employment" 20

Judgment of his Honour,  
Mr. Justice Yeldham

(per Barwick C.J., (ante)). He argued, alternatively, that if a change in the period during which an employee was entitled to accident pay did come within the formula for which clause 6 provides, it is nonetheless not sufficient in a case where there is no such change for the plaintiff to demonstrate merely an increase in its liability for such pay resulting only from an increase in the average hourly wage as defined. He submitted that such an increase would in any event fall within the first limb of the formula (which refers to alterations in the actual cost to the contractor as a consequence of alteration in the average hourly wage as defined) and that in such circumstances to take into account the additional cost derived from the payment of increased accident pay to persons not productively engaged would constitute double accounting. Hence, he argued, not only in the case of accident pay but also in relation to annual holidays, sick leave and the like, if the only relevant alteration flows from increased award rates of pay which go to make up the average hourly wage, that alteration cannot be within the expression "the equivalent monetary alteration due to a change in the standard working hours or any other conditions of employment ...". In support of this argument reliance was placed upon views which I expressed in Travelodge (N.T.) Pty. Limited v. Austin-Anderson (Australia) Pty. Limited unreported, 6th August, 1976). However, in the light of the argument in the present case and with the guidance afforded

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Judgment of his Honour,  
144. Mr. Justice Yeldham

Judgment of his Honour,  
Mr. Justice Yeldham

by the High Court in the decision referred to, I do not think it is possible to lay down a general rule in terms of that contended for on behalf of the defendant. It is plain that, in the case of accident pay, to take the matter presently under consideration, it would be open to an arbitrator to hold that an alteration had occurred in the actual cost to the builder in performing the contract because he is obliged, as a result of increases in the average hourly wage, to pay increased sums to employees who have been injured and who in consequence are making no contribution to the performance of the work. An example which Mr. Morling, senior counsel for the plaintiff, gave in the course of argument demonstrated that, an increase of, for example, twenty per cent. in the average hourly wage could, in an appropriate case, give rise to a substantially larger percentage increase in the accident pay component of the total wage payable to the worker. See also Re Sanders Constructions Pty. Limited & Anor. 1969 Q.S.R. 29 at 31-2 to which Mr. Morling referred.

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In my opinion alterations in accident pay do come within the tests propounded by Barwick C.J. in T.C. Whittle Pty. Ltd. v. T. & G. Mutual Life Society Limited (ante) for inclusion within the rise and fall clause. This conclusion is not affected by any differences between the provisions there under consideration and clause 6 in the present case. I do not regard the cost to the contractor of making payments of this nature to injured workers to be merely ancillary to and in

Judgment of his Honour,  
145. Mr. Justice Yeldham

the same category as the cost to it of premiums for the provision of workers' compensation payments. Rather is it in the nature of sick leave, changes in which were said by the High Court to be within the formula. In every other respect I consider that it comes within the tests to which the Chief Justice of the High Court referred. In addition I conclude that, insofar as it can be demonstrated that alterations have occurred in the actual cost to the contractor in performing the contract by reason of changes in provisions required to be made for accident pay, even though arising solely from alterations in the average hourly wage as defined, such alterations will cause the formula in clause 6 to come into operation.

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I turn now to consider the arguments in relation to increases in workers' compensation premiums and in the cost of meeting payroll tax. The former was and the latter admittedly would have been excluded by the High Court upon the construction of the clause there under consideration. On behalf of the plaintiff it was argued that the express provision that the clause would apply "to all alterations in ... pay loadings ..." bring these items within it.

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Mr. Cullen submitted that only those loadings and allowances expressly taken into account in the computation of the hourly rate of pay under the specified awards, the nature of which I have earlier set out, are envisaged by the words

relied upon by the plaintiff. This, if correct, would clearly exclude alterations in premiums for workers' compensation and in payroll tax. I should here observe that Barwick C.J., in the case referred to, rejected the submission that the relevant changes in conditions of employment, to which the clause there under consideration adverted, were "limited to changes in those conditions of employment which were used to construct the average wage". Implicit in Mr. Cullen's submission was the argument that the reference to "pay loadings" was redundant because, if such submission was correct, alterations in award rates of pay giving rise to alterations in the average hourly wage would necessarily reflect "all alterations in ... pay loadings" as so construed.

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Mr. Cullen submitted that if it was intended that the formula should include within it alterations of the type now under consideration the parties would have clearly and affirmatively so stated, and this they did not do. He argued that the overriding concept of the clause was that it should relate either to alterations in cost consequential upon changes in the average hourly wage or to equivalent monetary alterations due to a change in standard working hours or other conditions of employment, and that a provision appearing later in the clause, saying that it will apply to "all alterations in ... pay loadings", does not and cannot alter or affect those fundamental requirements.

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Paragraph 14 of the affidavit of Dr. Cooper, which I

Judgment of his Honour,  
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permitted to be read subject to an objection that it was irrelevant, which was taken by senior counsel for the defendant, was in these terms:

"I have been engaged in the building industry for the past forty years. The terms "loadings" and "pay loadings" are commonly used in the industry generally and by builders, architects, and quantity surveyors. In their common usage in the industry they include the payment of or provision for fares, annual leave and holidays, sick leave, long service leave, payroll tax, workers' compensation insurance, accident pay, statutory holiday pay and picnic day pay".

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A second affidavit by the same deponent, to the whole of which objection was also taken and which I allowed to be read subject to objection, dealt with the same matter in some detail and added documentary support to it. The deponent was not cross-examined and there was no evidence to the contrary called by the defendant. Mr. Cullen objected that to permit such evidence to be given and to allow it to govern the construction of the expression "pay loadings" would be inconsistent with the clause because the latter clearly referred only to those loadings which were relevant to the computation of the average wage, and the meaning of the expression in the circumstances was not ambiguous or uncertain. Counsel supported the objection also by submitting that the evidence was inconsistent with the clause, giving it its ordinary or natural meaning, as it plainly dealt only with wage alterations or alterations in conditions of employment and not with "loadings" such as the incidence of workers' compensation

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premiums or payroll tax. He submitted also that the defendant was really in the position of a private building owner and hence cases upon which Mr. Morling relied and to which I will refer were of no application. He relied upon a passage appearing in Phipson on Evidence (12th Edition) at par. 2066 and upon Lord Forres v. Scottish Flax Co. Ltd. (1943) 2 All E.R. 366, which was cited in Phipson, as authority for the proposition that "where the ordinary meaning of the words was clear a trade usage was rejected where it was known only to the buyers, and the seller was not engaged in the trade". 10

Mr. Morling submitted that the evidence was admissible and, if admitted, of telling importance in the construction of the clause because it demonstrated the true meaning to be given to the expression "pay loadings" having regard to its usage in the building trade.

In Appleby v. Pursell (1973) 2 N.S.W.L.R. 879 the Court of Appeal held that extrinsic evidence was admissible as to the special meaning of the words "push" and "stack" in a contract for the clearing of land. Reynolds J.A., at pages 888-9 said: 20

"This was not a case in which it was sought to import an additional term into a written contract by reason of custom and usage, but, to interpret the actual words used, having regard to their usage in the context of the particular trade. The respondent sought to provide by evidence an appropriate dictionary for the words used, having regard to the subject matter involved. To a person unassociated with rural pursuits in Australia and in particular land clearing, it would be but speculation to interpret them. Extrinsic evidence was needed and it is no answer to say that 30

Judgment of his Honour,  
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'push' and 'pushed' are plain ordinary English words. No matter how plain to the ordinary reader is the apparent sense of the word, evidence is admissible to show that it bore a different meaning in the instrument".

His Honour cited with approval a passage from the judgment of Blackburn J. in Myers v. Sarl (1860) 3 E. & E. 306 at 319-20, namely:

"It is a prima facie presumption that, if the parties to such a contract use expressions which bear a peculiar meaning in the trade, they use them in that peculiar meaning; which can be ascertained only by parol evidence. I do not think that it is necessary, in order to render such evidence admissible, that there should be any ambiguity on the face of the phrase which has to be construed ... That I take to be the true rule of law upon the subject; but when it is shewn that a term or phrase in a written contract bears a peculiar meaning in the trade or business to which the contract relates, that meaning is, prima facie, to be attributed to it ...".

In Bowring and Walker Pty. Ltd. v. Jackson's Corio Meat Packing (1965) Pty. Ltd. (1972) 1 N.S.W.L.R. 277 at 280-1 Macfarlan J., in construing a contract for the sale of meat, permitted evidence to be given of relevant extrinsic circumstances known to both parties before the contract and also a practice in the industry, in aid of the interpretation of disputed clauses in it. His Honour cited with approval from Salmond and Williams on Contracts, 2nd ed., at pages 148-149 a passage which, inter alia, was in these terms:

"Extrinsic evidence may show for example that certain words in the instrument are used not in their ordinary or popular sense but in some special or technical sense established in the commercial market or in the particular locality in which the contract was made. For contracting parties are presumed to use the language of the market or the locality in which they

deal with one another, even though this differs from the ordinary usage of English speech".

Reliance was placed also on Attorney-General for the Isle of Man v. Moore (1938) 3 All E.R. 263 at 267 where Lord Wright, speaking for the Judicial Committee of the Privy Council, said:

"There remains the question whether this shale can be held to be covered by the specific words 'flagg, state or stone'. The principles to be applied in determining such a question have now been established by decisions of the House of Lords dealing with words of reservation in the Railways Clauses Act and other similar Acts. After some conflict of judicial opinion it has been finally established ... that this type of question is an issue of fact to be decided according to the particular circumstances of the case, the duty of the court being to determine what the words meant in the vernacular of mining men, commercial men and land owners at the relevant time ... Such an issue is necessarily an issue of fact, because it must depend on evidence of the actual user of the words - that is, the way in which they were in practice used by the classes of persons enumerated".

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Mr. Morling argued that it was not necessary that any ambiguity upon the face of the document should be shown; that the contract is a commercial document between a large builder on the one hand and a large public authority, one of those principal functions was the consideration of building applications and the supervision of the construction of buildings, on the other; that the parties chose to insert in the rise and fall clause an expression which, as the evidence shows, was notoriously used by bodies and institutions, both public and private and at Federal and State levels, in the sense to which Dr. Cooper deposed; that if it did not have the effect

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of expanding the operation of the rise and fall clause to include matters within the ordinary meaning of "pay loadings" but which would not, on the clause as construed in the High Court, have been within its operation, then its presence in the clause was entirely redundant; and that the opening words of clause 6, which referred to "adjustments for fluctuations in cost of labour and material", read in conjunction with the later sentence referring to "pay loadings", emphasized that the parties were concerned to deal with all fluctuations in cost, notwithstanding that some of them did not qualify as changes in the conditions of employment of any of the classifications of employees used in the computation of the average wage.

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It is apparent that whatever construction is placed upon the sentence referring to "pay loadings" some redundancy must occur, and there was no necessity to stipulate that the clause would apply to alterations in "holidays" because the earlier part of the clause properly construed, plainly does apply to it. So also in relation to "award rates of pay", unless it is sought to include alterations in awards other than those taken into account in computation of the average hourly wage.

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Although I have not found the matter easy to resolve, I have finally come to the conclusion that the extrinsic evidence tendered is admissible for reasons adverted to in the cases to which I have referred. The defendant is not itself engaged in the building trade, but I think that it is in

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essence in the situation of a contracting party which would necessarily be aware of the peculiar meaning the words in question had in the building trade. It was itself the local government body to which came all applications for building approval within the City of Sydney and it would necessarily be familiar with the notorious meaning which the expression "pay loadings" bore and was used by most, if not all, professional bodies and persons associated with that trade. I do not think that the evidence tendered was in any way inconsistent with the terms of the clause, nor is the ordinary meaning of the words clear so that the court may interpret them unassisted by the evidence of their meaning in the building trade. 10

I am of the opinion that such evidence demonstrates that the parties to the agreement expressly brought within clause 6 fluctuations in all matters included within the concept of "pay loadings" notwithstanding that, but for such words, they would not have been within it. Their effect is to distinguish the clause in the present case, so far as payroll tax and workers' compensation premiums are concerned, from that under consideration by the High Court. I conclude that alterations occurring in the actual cost to the plaintiff in performing the contract as a consequence of alterations in these two items even though they are not alterations in conditions of employment of relevant employees are, by virtue of the use of the words referred to, brought within the rise and fall clause. 20

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This conclusion would apply also to accident pay which, for reasons unassociated with the meaning of "pay loadings" I have already held to be within it.

The remaining question is whether increases in the cost of the provision of annual holidays, of sick leave and of long service leave occurring only by reason of alterations in the average hourly wage and not as a result of any other variation in the entitlement to them are within the clause or whether, 10 because alterations in the average hourly wage are in any event taken into account by reason of the first limb of clause 6, the matters referred to should not be considered under the second limb of it. I have already referred to the argument with regard to accident pay. The construction which I have given to the clause in the light of the use of the expression "pay loadings" makes it apparent that all alterations in holiday pay, sick leave and long service leave benefits which result in alterations in the actual cost to the contractor of performing the contract are within the formula. In view of 20 the decision of the High Court to which I have referred this would be the construction also of the clause if the expression "pay loading" did not have the effect which I have held that it has. I do not think it is sufficient to exclude such matters from consideration by saying that the alteration in the average hourly wage has itself fallen under the first portion of the second paragraph of the clause. If, but only if, it can be demonstrated that alterations have occurred in

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Mr. Justice Yeldham

the actual cost to the contractor in performing the contract because rises in the average hourly wage as defined have increased its obligations to its employees in matters such as holiday pay etc. is the contractor entitled to have such alterations taken into account in the operation of the formula. No doubt some duplication in those circumstances will occur, but it is important to recall that clause 6 is but a formula which is directed to giving the contractor some compensation 10 for increases in cost of labour and materials but which is not, and probably could not be, one by which the total cost outlay of the contractor is recompensed or which excluded, with mathematical certainty, duplications in its operation. It is not a clause of any great precision but is designed to allow for "adjustments for fluctuations in the cost of labour and materials" which result in alterations in the actual cost to the contractor of performing the contract.

I therefore make the declarations sought in paragraphs 1(a) - (g) inclusive of the plaintiff's summons and I specify 20 that such declarations relate not only to alterations resulting otherwise than from alterations in the average hourly wage as defined in clause 6 of annexure "A" to the contract but also from alterations in such average hourly wage provided that it can be demonstrated that they have altered the actual cost to the contractor in performing the work. I order the defendant to pay the plaintiff's costs.

Judgment of his Honour,  
155. Mr. Justice Yeldham

Judgment of his Honour,  
Mr. Justice Yeldham

I certify that the twenty-three preceding  
pages are a true copy of the reasons for  
judgment herein of The Honourable  
Mr. Justice Yeldham.

E. Carr  
Associate

Date 27-4-78.

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )

No. 835 of 1977.

MAX COOPER & SONS PTY. LIMITED

Plaintiff

THE COUNCIL OF THE CITY OF  
SYDNEY

Defendant

O R D E R

The Court declares that:

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On the proper construction of paragraph 6 of Annexure "A" to an Agreement between the Plaintiff and the Defendant dated the 31st day of March, 1976 relating to the construction of a building on the corner of Kent and Druitt Streets, Sydney and in applying the "rise and fall" formula set forth therein the following matters are required to be taken into account.

(a) Increases in the amounts payable for fares pursuant to State and Federal Awards.

(b) Increases in the cost of the provision of annual holidays and/or the payment of holiday pay pursuant to the Annual Holidays (Amendment) Act, 1974, and in the payment of a loading of 17½% thereon pursuant to State Awards.

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(c) The provision in Clause 27 of the National Building Trades Construction Award for the payment of sick leave.

Order of his Honour,  
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- (d) Increases in the cost of meeting payroll tax payable pursuant to the Payroll Tax Act, 1971.
- (e) Increases in the cost of effecting workers compensation insurance.
- (f) Increases in the cost of the provision of long service benefits pursuant to the Long Service Payment Act, 1974.
- (g) Increases in the cost of the provision and payment 10  
of accident pay pursuant to the Building Trades Injuries Award made on the 21st May, 1971, and subsequent variations thereto and the incorporation thereof in Clause 28 of the said National Award.

The Court specifies that such declarations relate not only to alterations resulting otherwise than from alterations in the average hourly wage as defined in Clause 6 of Annexure "A" to the Contract but also from alterations in such average hourly wage provided that it can be demonstrated that they have altered the actual 20  
cost to the Contractor in performing the work.

The Defendant to pay the Plaintiff's costs.

ORDERED: 27th April, 1978.

ENTERED: 10th July, 1978.

By the Court

.....  
DEPUTY REGISTRAR

158. Order of his Honour,  
Mr. Justice Yeldham

IN THE SUPREME COURT OF NEW SOUTH WALES

COURT OF APPEAL DIVISION

Appellant: THE COUNCIL OF THE CITY OF SYDNEY

Respondent: MAX COOPER & SONS PTY. LIMITED

MAX COOPER & SONS PTY. LIMITED

Plaintiff

The proceedings appealed from were heard on 31st March, 1978 and decided upon 27th April, 1978.

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THE COUNCIL OF THE CITY OF SYDNEY

Defendant

The Appellant appeals from the decision of His Honour Mr. Justice Yeldham.

NOTICE OF APPEAL

GROUNDS:

1. That His Honour was in error in holding that alterations in accident pay came within the tests propounded by Barwick, C.J. in T.C. Whittle Pty. Limited -v- T. & G. Mutual Life Society Limited for inclusion within the rise and fall clause and that His Honour's conclusion was not affected by any differences between the provisions there under

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consideration and clause 6 in the case before His Honour.

2. That His Honour was in error in concluding that, in so far as it can be demonstrated that alterations have occurred in the actual cost to the Contractor in performing the contract by reason of changes in provisions required to be made for accident pay, even though arising solely from alterations in the average hourly wage as defined, such alterations would cause the formula in clause 6 to come into operation.

3. That His Honour was in error in holding that the extrinsic evidence tendered in relation to the meaning of "pay loadings" was admissible.

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4. That His Honour was in error in holding that the Appellant, because it was itself the Local Government body to which came all applications for building approval within the City of Sydney, would necessarily be familiar with what His Honour held to be the notorious meaning which the expression "pay loadings" bore and was used by most, if not all, professional bodies and persons associated with the building trade.

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5. That His Honour was in error in holding that alterations occurring in the actual cost to the Respondent in performing the contract as a consequence of alterations in Payroll Tax and Workers' Compensation premiums, even though they were not alterations in conditions of employment of relevant employees, were, by virtue of the use of the words "all alterations in ..... pay loadings ....." brought within the rise

and fall clause.

6. That His Honour was in error in holding that accident pay was, inter alia, for the reasons referred to in the last preceding paragraph hereof, within the operation of the rise and fall clause.

7. That His Honour was in error in holding that if it could be demonstrated that alterations had occurred in the actual cost to the Contractor in performing the contract because rises in the average hourly wage as defined had increased its obligations to its employees in matters such as holiday pay etc., the Contractor would be entitled to have such alterations taken into account in the operation of the rise and fall formula.

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8. That His Honour was in error in inferring that it was conceded by the Appellant that the words "unless contrary to Case Law" appearing in the rise and fall clause did not affect that meaning of the clause as a whole.

9. That His Honour should have held that the words "unless contrary to Case Law" excluded changes in Payroll Tax, Workers' Compensation premiums and accident pay from the operation of the formula.

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10. That His Honour was in error in holding, expressly or by inference, that increases in fares, entitlement, increases in annual holiday entitlement, the introduction of a holiday pay loading, increases in sick leave entitlements and increases in long service entitlements each fell within the operation

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of the rise and fall clause.

11. That His Honour should have declined to make any of the declarations sought by the Respondent in its Summons.

ORDERS SOUGHT:

1. An Order that the summons be dismissed.

2. An Order that the Respondent pay the Appellant's costs of the proceedings at first instance.

3. An Order that the Respondent pay the Appellant's costs of this Appeal.

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Appeal papers will be settled on 6th July, 1978 at 10.15 a.m. in the Registry of the Court of Appeal.

FILED: 23 MAY 78

D.G. Barr  
.....  
Appellant's Solicitor

Notice of Appeal

To the Respondent,           MAX COOPER & SONS PTY. LIMITED  
87 Darling Street, Balmain

Before you take any step in these proceedings you must  
enter an appearance in the Registry.

Appellant:                    THE COUNCIL OF THE CITY OF SYDNEY of  
Town Hall, Sydney Square, Sydney, 2000.

Solicitor:                    D.G. BARR, C/o Dawson Waldron,  
60 Martin Place, Sydney, N.S.W. 2000

Appellant's address  
for Service:                C/o D.G. BARR, 60 Martin Place, Sydney    10  
N.S.W. 2000.

Address of Registry:        Law Courts Building, Queen's Square,  
Sydney, N.S.W. 2000.

A handwritten signature in black ink is written over a circular, textured stamp. A long, thin line extends from the top right of the signature towards the upper right corner of the page.

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
COURT OF APPEAL )

C.A. 191 of 1978  
C.L. 835 of 1977

CORAM: MOFFITT, P.  
GLASS, J.A.  
MAHONEY, J.A.

THURSDAY, 17TH MAY, 1979.

MAX COOPER & SONS PTY. LIMITED v.  
THE COUNCIL OF THE CITY OF SYDNEY

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MOFFITT, P: I agree with the judgment of Glass, J.A.

I add some observations which provide alternate reasons which support his conclusion in relation to Workers' Compensation and Payroll Tax.

First, even if the construction of "pay loadings" in its context ought to be regarded as involving a question of fact, this Court in deciding that question is not in a position inferior to that of the trial judge and in my view the proper conclusion and reasoning is as stated by Glass, J.A.

Warren v. Coombes & Anor. H. Ct. 13th March, 1979 as yet unreported).

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Second, in my view the so-called rider does not have the independent operation contended for on behalf of the contractor. It serves two purposes. First it emphasizes the wide terms of the two earlier alternate subject matters which are required ingredients in the escalation formula. Then it limits these subject matters by the words, whatever they mean, "unless contrary to case law". Indeed, as will be seen, it is likely that the emphasis first referred to is only an

incident of the purpose of the rider which is to provide the latter limitation. Resolution of this refinement however is not critical to the view I express ultimately. The essentials of the alternate subject matters upon which alone the formula can operate are first stated. The rider and the definition of average hourly rates which then follow serve to define elements in the preceding subject matters but do not provide an independent subject matter. This is apparent 10 if the subjects of the rider ("award rates of pay", "holidays", "etc.") other than the subject now relevant ("pay loadings") are considered. Thus the initial words of the rider "This clause shall apply to all alterations" when put with the first subject ("award rates of pay") are not intended to introduce a new subject matter, at least in respect of that matter. The preceding formula would still be applicable and would need to be applied so that the rider applied to this subject must assume and require there can be found in the alteration of the award rates of pay some alteration in the 20 average hourly rate or the equivalent monetary alterations (as further defined in the preceding words) so the one cent formula can be applied. In so far as it is not already apparent from the preceding formula (and I think it already is), the rider makes it clear the preceding subject matters apply to all alterations in award rates pay which fall within the formula. More importantly in this instance, (award rates of pay), the draftsman is seeking to make it clear that there

are excluded from the formula any variation of an award which is invalid because of a Court decision upon or applying to it. It is not in point to determine the precise meaning of the words "contrary to case law" or how they might be applied to award rates of pay or to any of the other subjects of the rider or whether they could ever apply to all or to a particular subject matter and the rider. It is clear the draftsman and by imputation the parties wished to exclude alterations which were vitiated in some way so that their invalidity was demonstrated by a decision upon or in relation to them. By the agreement the parties were tying escalation to a wide range of alterations to costs by a formula which depended on what was done by others in relation to particular categories of employees. The earlier provision in terms was sufficient to exclude private arrangements general or otherwise within the six categories of employees by employers such as over award payments or holiday provision outside awards etc. The rider whether for a real reason or for more abundant caution is directed to exclude also alterations which have been formalised so as to arise from "any statute, statutory regulations or award or order of an industrial tribunal" and which are otherwise within the formula but are invalid by reason of some decision of undefined authorities or courts. 10 20

Similar conclusions as to the meaning and intended purpose of the rider can be derived from a consideration of its operation in relation to "holidays" and "etc". The rider

ensures that provided they fall within the earlier subject matters and formula, all alterations in relation to holidays are included in the provision which precedes the formula. It does not mean that a new subject is introduced, so that alteration in holidays which did not arise under a statute, statutory regulation or award or order of an industrial tribunal could be the subject of an escalation. It does mean of course that, if a regulation making extra holiday pro- 10 vision were found to be invalid by a court, that alteration would be excluded. The use of "etc." is appropriate to definition of what went before and inappropriate to provide a third subject matter.

In this context the rider in its reference to "pay loadings" should be given a similar construction. It is all "pay loadings" that are included but which are excluded if contrary to case law, but they must otherwise fall within the earlier part of the clause so that because of the nature of a pay loading it is only such as change conditions of employ- 20 ment. In any event the meaning given to "pay loadings" by this construction is the true meaning of those words as found by Glass, J.A. without resort to this alternate approach to the construction just outlined.

I agree with the conclusions and orders proposed by Glass, J.A.

Reasons for Judgment of the  
President Mr. Justice Moffitt

I Certify that the 4 preceding pages are  
a true copy of the reasons for judgment  
herein of The Honourable Mr. Justice Moffitt.

Date 17th May 1979

Associate  
C. Lindsay

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
COURT OF APPEAL )

C.A. 191 of 1978  
C.L. 835 of 1977

CORAM: MOFFITT, P.  
GLASS, J.A.  
MAHONEY, J.A.

THURSDAY, 17TH MAY, 1979.

MAX COOPER & SONS PTY. LIMITED v. THE COUNCIL  
OF THE CITY OF SYDNEY

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JUDGMENT

GLASS, J.A.: In this appeal we are concerned with a dispute between Max Cooper & Sons Pty. Limited (the builder) and The Council of the City of Sydney (the proprietor) as to those increases in the builder's costs during the performance of the contract which may be taken into account under an escalation clause contained in the agreement between them. By summons heard before Yeldham, J. on 31st March and determined on the 20th April, the builder sought an order that the clause on its proper construction applied to costs increases relative to fares, sick leave, long service leave, annual holidays, accident pay, workers' compensation premiums and payroll tax. It sought only a ruling in principle and made no attempt to establish by evidence the extent to which the contract sum should be augmented on account of cost increases. The trial judge held that the formula contained in the escalation clause applied to each of the seven separate matters. The proprietor on appeal has contended that on its proper construction the

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formula applies to none of them.

The clause around the construction of which all the argument revolved was couched in the following terms:

"RISE AND FALL CLAUSE

Amounts calculated in accordance with this clause are adjustments for fluctuations in cost of labour and material which are used in the performance of this Contract.

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Where, after the date of closing of tenders, and during the progress of the work alterations occur in the actual cost to the contractor in performing the contract as a consequence of alteration in the average hourly wage as hereinafter defined or the equivalent monetary alteration due to a change in standard working hours or any other conditions of employment arising from any statute, statutory regulation or award or order of an Industrial tribunal.

THEN FOR EACH CENT OF SUCH ALTERATION TO THE AVERAGE HOURLY WAGE THERE SHALL BE ADDED TO OR DEDUCTED FROM THE CONTRACT SUM AN AMOUNT REPRESENTING 0.295% OF THE VALUE OF THE UNCOMPLETED PORTION OF THE CONTRACT AS AT THE DATE OF ANY SUCH ALTERATION.

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The Clause will apply to all alterations in Award Rates of pay, pay loadings, holidays, etc. unless contrary to case law.

- (a) The average hourly wage shall be the average of the hourly rate of pay for the listed workmen. The workmen listed and their relevant awards are:

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(The rates shown are the rates as at the date of tender, 12th November, 1974).

1. Carpenter (Carpenter & Joiners & Bricklayers' Construction (State) Award) \$3.45
2. Bricklayer (Carpenters & Joiners & Bricklayers' Construction (State) Award) \$3.43
3. Painter (Painters' (State) Award) \$3.38

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Reasons for Judgment of his  
Honour Mr. Justice Glass

- |                                                                                    |        |
|------------------------------------------------------------------------------------|--------|
| 4. Plumber (Plumbers and Gas Fitters' State Award)                                 | \$3.50 |
| 5. Plasterer (Plasterers' (State) Award)                                           | \$3.45 |
| 6. Builders' Labourer (Builders Labourers' (Construction on Site) (Federal) Award) | \$3.12 |

The value of the uncompleted portion of the contract shall be determined from time to time by the Architect and shall not include any amounts for Quantity Surveyors' Fees, Contingency Sums, Prime Cost Allowances or Monetary Sums, or any sum for which a separate Rise and Fall agreement is included". 10

The reason why the clause establishes a relationship between one cent alteration to the average hourly wage and 0.295% of the value of the uncompleted portion of the contract can be mathematically deduced. The average of the tradesman hourly rates is \$3.389. .0295% expresses as a percentage the ratio which 1 cent bears to that figure. There was evidence which showed that the individual hourly rates of pay determined by the award in respect of the selected tradesman had been based upon the following components: basic wage, margin, follow the job and sick leave loading, loading for excess travelling time, tool allowance, industry allowance and special allowance. Accordingly each of the seven cost factors in respect of which the parties were in contention had been excluded in computing the award wages upon which the average hourly wage had been based. None of the seven cost components in dispute related to standard working hours. It followed that the builder was obliged to contend that the changes in each of 20 30

them were included in the words "equivalent monetary alteration due to a change .... in any other conditions of employment" or alternatively were covered by the terms of the rider. Since various arguments have been put which individually apply to some heads of claim and not others, it will be necessary to consider them in different groups.

Fares, Sick Leave pay and Long Service Leave.

The ruling which the builder seeks under this head concerns 10  
the applicability of the formula to increases in its costs  
which have occurred independently of wage increases as a  
result of the increases in entitlement of workers to such  
allowances. We have been asked to assume that the builder  
can prove that awards or statutes since the agreement have  
granted increased benefits by way of fares, sick leave and  
long service leave. In T.C. Whittle Pty. Ltd. v. T. & G.  
Mutual Life Society Ltd. 52 A.L.J.R. 173 the High Court was  
concerned to construe an escalation clause in a building con-  
tract which was for present purposes identical. It was ruled 20  
that the relevant requirement of the clause was "that there  
should be a change in the conditions of employment which  
brings about a monetary alteration which can be expressed  
through an alteration of the average wage" (178). The deci-  
sion then held specifically that this requirement was satis-  
fied in the case of increases which had occurred in the award  
allowances for excess fares, sick leave and long service  
leave. It has been submitted on behalf of the owner that this

decision should be distinguished on evidentiary grounds. It was put that there were factors present in Whittle's case which are absent here which permitted the expression of these alterations in monetary terms. For the builder it has been submitted that a comparison of the documents before Yeldham J. and those before Sheppard J. (so far as can be deduced from his judgment and that of the High Court) reveals no material differences. So far as I can see, no difference appears. It will, however, be sufficient to say that provided the evidence of the builder shows, as it did in Whittle's case, that the financial effects of these alterations can be expressed by means of an equivalent alteration in the average wage the clause applies to them. 10

Annual holiday and accident pay.

The ruling which the builder seeks under this head relates to cost increases which are entirely derivative. It is not claimed that the entitlement of workers in respect of annual holidays or accident pay has been extended. What is claimed is that the cost to the builder of providing holidays for employees and disbursing accident pay to them has been increased by an increase in the hourly rate of pay due to them when they are working. In the Whittle case the Court was not concerned at all with accident pay and the annual holiday leave and loading with which it dealt involved increases granted by statute independently of the hourly wage. The High Court decision is, however, relevant in providing 20

express authority for the conclusion that annual holiday was a matter falling within the expression "conditions of employment". This counsel for the proprietor was not disposed, except in a formal way, to contest. He argued, however, that accident pay was not so included placing reliance upon the view expressed by Barwick C.J. that "the obligation to pay workers' compensation does not, in my opinion, form part of the contract of employment" (Ibid at 179). In my opinion accident pay is to be distinguished from workers' compensation benefits and assimilated to sick leave. The obligation of an employer pursuant to the provisions of an award to pay to his employee the difference between the weekly amount of compensation due under the Workers' Compensation Act and the weekly rate payable under the appropriate award is in my view part of "the obligations of the employer towards the employee in the employment" (177). 10

The principal ground, however, upon which the proprietor resisted the ruling sought by the builder with respect to these two matters depended upon considerations not adverted to in the High Court. According to this argument, even if entitlement to holiday pay and accident pay both form part of the conditions of employment, an equivalent monetary alteration due to a change in these conditions occurs within the meaning of the clause only when the entitlement is independently increased. If the increase, as here, is merely derivative or consequential upon an increase in the hourly rate, 20

there is no relevant monetary alteration within the meaning of the clause as properly construed.

For the proprietor it was argued that when an increase in the hourly rate is applied as a percentage to the value of the uncompleted portion of the contract, the builder receives a proportionate increase in his contract sum which has been costed so as to include provision for accident pay and holiday pay. If the increase were to be applied to the contract sum a second time because of a change in the cost of holiday and accident pay consequent upon an increase in the hourly rate, the builder would be receiving the benefit of the increase twice. For the builder it was argued that the formula was not intended to produce an accurate calculation of the builder's increased costs. If a certain duplication did sometimes result, this was inevitable and would do no more than compensate him for other increased costs which under the formula were not recoverable. I am of opinion that the clause upon its proper construction does not apply to those increases in the builder's costs which arise only in a derivative or consequential way. The formula is so constructed that each ten cents increase in the average hourly wage produces a 2.95% increase in the sum payable for work not yet done. That sum, forming as it does part of the whole contract sum, included provision not only for the hourly wage but also for all the other conditions of employment (including accident pay and holiday pay) which were omitted from its computation.

When the contract sum is adjusted under the formula to reflect, for example, a ten cent increase in the average hourly wage, all the components of the value of uncompleted work including accident and holiday pay will also be subjected to a 2.95% increase. The clause does not in my view authorise them to be increased a second time by applying to the value of unfinished work a formula which expresses the extent to which the cost of holiday pay and accident pay have been increased 10  
by the rise in the average hourly wage. The duplication which on the builder's construction would necessarily arise, if this were done, would represent overcompensation to him. No employee can simultaneously receive an hourly wage on the one hand and accident or holiday pay on the other. I do not think that the clause should be given a construction which contradicts this basic fact. It was part of the "background, the context, the market in which the parties were operating" and was for that reason part of the surrounding circumstances to which regard should be paid in construing the language 20  
employed, Reardon Smith Line Ltd. v. Hansen-Tangen (1976) 1 W.L.R. 989 at 995-6. There is a second reason in my view why the claims under this head should not be upheld. If a worker's entitlement to holiday pay is by statute extended from two weeks to three weeks - see Annual Holidays (Amendment) Act 1958 - there is an original or independent increase in the builder's costs in that respect and there is a change in the conditions of employment within the meaning of the

clause. If, on the other hand, the entitlement to holidays is unchanged but a change in the relevant hourly wage takes place, there is doubtless a derivative or consequential increase in the cost of providing a condition of employment. But in my view it does not produce a change in a condition of employment within the meaning of the formula.

Workers' Compensation and Payroll Tax.

Having regard to the reasoning in Whittle, the builder did not submit that these items were comprised within the phrase "conditions of employment". But it did contend that they were included in the escalation clause by virtue of the rider viz. "This clause will apply to all alterations in Award Rates of pay, pay loadings, holidays etc. unless contrary to case law". This the proprietor disputed. The builder made it clear that cost increases claimed in respect of payroll tax were entirely derivative. Increases in the cost of effecting workers' compensation insurance, however, were in part derivative and in part original or independent.

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The first question then is whether expenditure on account of workers' compensation and payroll tax falls within the rider. This question was resolved by Yeldham J. in favour of the contractor by holding that each was included within the expression 'pay loading'. In so deciding, he acted upon the affidavit evidence of Dr. Cooper which was not challenged by any cross examination or opposed by any contrary evidence. It was to the following effect:

"I have been engaged in the building industry for the past forty years. The terms "loadings" and "pay loadings" are commonly used in the industry generally and by builders, architects, and quantity surveyors. In their common usage in the industry they include the payment of or provision for fares, annual leave and holidays, sick leave, long service leave, payroll tax, workers' compensation insurance, accident pay, statutory holiday pay and picnic day pay".

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He also had before him certain documents emanating from various authorities in the building trade such as the Building Industry Advisory Council, the Commonwealth Department of Works, the State Department of Works and the Institute of Quantity Surveyors. The proprietor argued that all the evidence was inadmissible. I consider, however, that extrinsic evidence was properly received to elucidate the sense in which the words "pay loadings" were used in the building trade, Appleby v. Purcell (1973) 2 N.S.W.L.R. 879. What the evidence establishes, however, is far from clear. The deponent, for example, makes no distinction between loadings and pay loadings. The suggestion is made that they are used widely and interchangeably. The documents, however, do not bear this out. None of them uses the term pay loading. They contain many references to loadings to the award weekly wage and it is clear that both payroll tax and workers' compensation are treated as loadings of that kind. There are provisions in them under which the "loaded weekly wage" is to be adjusted by prescribing the manner in which variations in the loading for workers' compensation and payroll tax shall be determined. There are also references in them to loading

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factors and cost factors both of which are treated as including workers' compensation and payroll tax.

The impression made on my mind by this material is two-fold. First, it is common to make specific provision for the impact upon a builder's costs of changes in these two respects. Second, the term "loading" is sometimes used to describe payments made in respect of employees e.g. payroll tax and workers' compensation. The same term is sometimes used to describe some payments made to workers e.g. statutory holiday, annual leave and sick leave. On the other hand, other payments made to workers are described not as loadings but allowances e.g. fares, tool allowance and industry allowance. In the result I conclude that while evidence of trade usage shows that both payroll tax and workers' compensation are embraced within the meaning of "loadings" it is entirely silent on the question whether they are comprehended within the meaning of "pay loadings". To determine this question one is remitted to the rider itself. I am impressed by the submission for the owner that the use of pay as an adjective to qualify loading must receive some recognition. The meaning which it conveys to my mind is that the term "pay loadings" denotes those loadings which are paid to the worker and does not include costs such as payroll tax and workers' compensation which are paid with respect to workers and not to them. That it was used in this sense also derives support from the words with which it is associated. Noscitur a sociis. Award rates

of pay and holidays are undoubtedly payments made to the employee.

"Unless contrary to case law" constitutes a proviso of baffling obscurity. For the builder it was argued that it was to be construed as meaning "unless contrary to the principles of wage fixation laid down by industrial tribunals", case law being a reference to the national wage case. For the owner, on the other hand, it was submitted that the rider 10 was added before the construction of the industry clause had been considered in Whittle either at first instance or on appeal. Its intention was to stipulate that the three cost factors specified were to be included among the conditions of employment unless the Courts when they came to construe the clause, ruled to the contrary effect. I find neither of these submissions persuasive. Since, however, I have concluded that neither workers' compensation nor payroll tax are within the meaning of pay loadings it is unnecessary to consider whether the proviso has the effect of excluding them from the 20 denotation properly attributable to such words. It was put to us on behalf of the builder that the decision of Yeldham J. that pay loadings included payroll tax and workers' compensation was a finding of fact which was open to him on the evidence and should therefore not be disturbed on appeal. Reliance was placed on the statement in Australian Gas Light Co. v. The Valuer General 40 S.R. 126 at 137-8 that the meaning of a word is a question of fact. However, that statement

Reasons for Judgment of his  
Honour Mr. Justice Glass

to which incidentally much respectable authority can be  
opposed, is concerned only with the meaning of a word in a  
statute. The relevant rule for present purposes is that the  
construction of words in a contract is a question of law and  
appellate courts are both entitled and required to give effect  
to their own conclusions. It follows that the cost increases  
with respect to workers' compensation (both original and  
derivative) and the derivative cost increases with respect to 10  
payroll tax are outside the purview of the clause since these  
heads of cost fall neither within the phrase "conditions of  
employment" nor within the rider. So far as these costs are  
derivative only they are further excluded by reason of the  
construction of the clause adopted in dealing with annual  
holiday and accident pay.

I would therefore propose that the appeal be allowed and  
the orders made below be set aside and declarations made in  
accordance with the views expressed in this judgment. The  
parties should bring in short minutes of order. The respon- 20  
dent is to pay the costs of the appeal and, if qualified,  
should have a certificate under the Suitors' Fund Act. The  
plaintiff should recover one quarter of the costs of the  
trial.

I Certify that this and the twelve preceding  
pages are a true copy of the reasons for  
judgment herein of The Honourable Mr. Justice  
Glass.

Date 17th May 1979.

Margaret G. Newby  
Associate

181. Reasons for Judgment of his  
Honour Mr. Justice Glass

IN THE SUPREME COURT )  
 )  
OF NEW SOUTH WALES )  
 )  
COURT OF APPEAL )

C.A. 191 of 1978  
C.L. 835 of 1977

CORAM: MOFFITT, P.  
GLASS, J.A.  
MAHONEY, J.A.

17th May 1979

MAX COOPER & SONS PTY. LIMITED v. THE COUNCIL  
OF THE CITY OF SYDNEY

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JUDGMENT

MAHONEY, J.A.: The council of the City of Sydney ("the Council") called for tenders for the building of an office building at the rear of the Sydney Town Hall. The tenders closed on 12th November, 1974. The contract was awarded to Max Cooper & Sons Pty. Limited ("the builder"). Work commenced on 12th December, 1974, and, the Court was informed, has now been completed. The legal arrangements under which the builder commenced the work are not before the Court but a contract was signed between the parties on 31st March, 1976, during the course of the building work. It is the interpretation of that contract and in particular, the rise and fall clause contained in it, which is here in question.

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The contract provided for the Council to pay to the builder a lump sum (\$8,892,982) "or such other sum as shall become payable hereunder": cl. 2. That lump sum was, it may be inferred, calculated by reference to costs obtaining at the time when the tenders closed. Therefore the contract

Reasons for Judgment of his  
182. Honour Mr. Justice Mahoney

contained a rise and fall clause to take account of fluctuations in or in relation to the cost of labour and materials after that date. Such fluctuations did occur in respect of a number of items. These included fares, annual holidays, sick leave, payroll tax, workers' compensation insurance, long service leave benefits, and accident pay. The Court is asked to determine how the rise and fall clause operated in relation to such fluctuations.

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The terms of the rise and fall clause have been set out in the judgment of Glass, J.A. which I have had the opportunity of reading.

Certain general observations may be made as to the nature and operation of the clause. First, it does not purport to give to the builder the amount by which the cost to it of labour and materials (as the facts have shown) increased over that taken into account as at the date of closing of tenders. It provides an artificial formula and gives to the builder an amount calculated by reference to that formula.

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Second, the formula is based upon two things: the calculation in money terms of an "alteration in the average hourly wage"; and (where there has been such an alteration) the grant to the builder of an addition to the contract lump sum calculated as a percentage increase of the "value of the uncompleted portion of the contract as at the date of such alteration". The matters now before the Court require the Court to determine whether, in relation to each of the

increases in question, it is within the terms of the formula and (if it is) how the formula operates by reference to it. But certain observations are to be made as to the formula generally.

The increase given is an increase of a stated percentage of the value of the uncompleted portion of the contract as at the date of the relevant alteration for every one cent of such alteration. The assumption is apparently made that in such a way the builder will receive an amount which, with a sufficient degree of approximation, will equal the additional cost to it by reason of the relevant increases. The rise and fall clause is directed to giving to the builder only a rough measure of the increase in cost to the builder by reason of the relevant increases and is not, as a matter of drafting, precisely formulated so as to achieve this purpose. It contemplates that the actual cost to the contractor as a consequence of relevant alterations may occur by way of alteration of the average hourly wage or the equivalent monetary alteration due to a change of conditions of employment, but it then provides for the variation in the value of the uncompleted portion of the contract to take place by reference to "each cent of such alteration to the average hourly wage" only. It has been accepted in argument that for this purpose "the equivalent monetary alteration" due to change in conditions of employment is to be translated into an alteration of the average hourly wage for the purpose of enabling the variation

in the value of the uncompleted portion of the contract to be achieved.

I come now to examine more closely the "average hourly wage" as referred to in the rise and fall clause. This is the average of the hourly rates of the six categories of workmen listed in the rise and fall clause, based upon the amounts payable under the awards there referred to. However, the clause does not in terms show how those hourly rates were calculated. Awards for such workmen provide, not merely for the cash payments by way of wages, but also for the payment of additional amounts in cash for additional benefits. The manner in which the particular hourly rates specified in respect of each category of workmen were calculated was said to be of some significance for present purposes. This was accepted by Yeldham J. before whom the proceeding originally came. Evidence was tendered before his Honour and his Honour made findings in the following form:

"Evidence placed before me established that the components of each of the six listed awards which were relevant to the computation of the average hourly wage as defined in the rise and fall clause were: the basic wage, tradesman's margin, follow the job and sick leave loadings, a loading to compensate for excess travelling time, tool allowance, industry allowance and special allowance. Specifically there was not included in such computation any allowance for excess fares, annual leave entitlement, annual leave loading, payroll tax, workers' compensation premiums, long service leave or accident pay. In 1975 the various State awards listed in clause 6, with the exception of the Plumbers' and Gasfitters' (State) Award, were superseded by the Building Tradesmen (Federal) Award which merely incorporated the provisions of the awards which it replaced."

I take these findings to mean that, for example, where the rate for carpenters is shown in cl. 6 as \$3.45 per hour, that is the hourly equivalent of the rate established under the relevant award after adding together the basic wage component and the other matters as stated in his Honour's findings.

(The fact that the respective awards were superseded by the Building Trades (Federal) Award was not seen by the parties as of significance for present purposes and I shall proceed upon that basis).

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There are, on the face of the rise and fall clause, at least three ways in which there may be an "alteration" to the average hourly wage such as will operate to vary the contract sum: there may be an alteration in the average hourly wage as described in cl. 6; there may be "the equivalent monetary alteration" due to a change in working conditions arising from the matters referred to in the clause; and there may be an alteration in matters which are not included in the two matters to which I have referred, but which were otherwise within the "rider" (as it has been called), that is, that portion of the rise and fall clause which reads: "The Clause will apply to all alterations in Award Rates of pay, pay loadings, holidays, etc. unless contrary to case law".

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In relation to the first of these: on the judge's findings this kind of alteration will result if there be a rise in the amount of money paid in respect of each pay period

to the workmen in respect of the matters specified by the learned judge, i.e., if there is a change in the amount of money payable to the relevant workmen in respect of any of those specified matters.

As to the second: this will result from a fluctuation in the "standard working hours or any other conditions of employment" which occurs in the manner referred to in the clause and which is not such as itself to result in a change in the average hourly rate in the manner referred to above ("a conditions change"). On the face of it, difficulties may arise in determining what a conditions change is to represent in "cents". Cl. 6 operates, as I have said, only if and insofar as "any alteration" can be seen as leading to a particular number of "cents" "alteration to the average hourly wage". It is necessary, then, in respect of any conditions change which is to result in an increase to the contract sum under the rise and fall clause, to find whether it is capable of being converted into an alteration of so many cents in the average hourly wage. This problem is made the more difficult because, although reference is made in the opening words of the rise and fall clause to alterations "in the actual cost to the contractor in performing the work ..." the clause does not purport to be a clause which calculates that alteration in costs. It does not operate, e.g., simply by reference to the number of carpenters employed by the builder at the particular time. Having regard to the learned judge's findings,

as set forth above, what the clause does is to require that, in respect of an individual carpenter or other appropriate workmen, a calculation is to be made as to the extent to which the relevant conditions change for a carpenter would represent a change in the average hourly wage in respect of such a person.

As to the third: the argument in relation to the effect of the rider has centred upon the term "pay loadings". It was not argued that the term was governed by the preceding words "Award Rates": those words would be inappropriate to govern "holidays, etc." and I do not think that they are to be seen as limiting the operation of "pay loading". It is therefore necessary to consider the meaning of those words, as such, and whether, in particular, they comprehend matters such as payroll tax and premiums for workers' compensation cover paid by the builder. 10

"Loadings" and "pay loadings", in their ordinary usage, have admittedly been seen as wide enough to comprehend some kinds at least of payments made to employees or workmen. The builder has submitted that the term, as here used, comprehends also payments made, not to employees or workmen, but to third parties. It has submitted that the term comprehends payments of the latter kind either according to its ordinary meaning or (alternatively) according to the extended meaning which the term is to take from its context in the present case. 20

In my opinion, the term is wide enough, in the present

context, to comprehend alterations in payroll tax and workers' compensation premiums, if and insofar as they comply with the requirements of the clause in the sense to which I shall refer.

The ordinary dictionary meaning of "load" comprehends extra or special burdens or payments. Terms such as "load" and "loadings" have been used in the context of industrial awards and of industrial law generally; see, e.g., *In re Municipal Employees (The Municipal Council of Sydney) Interim Award* (1950) A.R. 152 at p. 162; *The Australian Industrial Law Review*, 10th January, 1979, p. 10; 24th January, 1979, pp. 33, 34. The terms are also found in other contexts, e.g., in the context of insurance premiums and policies. I think the present context indicates that the term is wide enough to include the matters here in question. The clause is directed essentially to compensating the builder for alterations, insofar as they arise from the classes of things referred to in the clause, in the "cost of labour and material ...". The term "cost" is not in terms limited to cost which arises because of payments to employees or workmen only. I do not think that "cost" of labour should be read as limited to those costs which are represented only by amounts paid to the employees or workmen. Such a view of "cost" and "cost of labour" is not inconsistent with what was decided in the *Whittle* case, 52 A.L.J.R. 173. Barwick C.J., at p. 174D, held that workers' compensation benefits did not fall within

the rise and fall clause there in question, but his Honour did so for a reason not related to the meaning of "cost". In that case, as in the present case, the rise and fall clause operated only where there was an alteration in the actual cost "as a consequence of ..." matters falling within the categories there specified. The only category there relevant was "conditions of employment" and the Chief Justice held that an alteration in cost due to a rise in workers' compensation premiums did not occur "in consequence of an alteration in conditions of employment". In the present case, the question is whether the alteration in cost occurred because of an alteration in "pay loadings". If a change in workers' compensation payments may be (and is on the facts) within "pay loadings", then, in my opinion, it is an alteration in "cost" within the present clause. 10

On this basis, it is not necessary to consider whether the judge was correct in admitting evidence as to the meaning of "pay loadings" in the context here relevant. 20

I now come to consider the particular matters in issue in this appeal.

Fares: this matter was not argued before the learned judge. The evidence shows that there were increases in fares pursuant to an award of the Industrial Commission of New South Wales and a provision was incorporated in the National Building Trades Construction Award. There was a subsequent increase by way of variation. The builder claimed that this

was either a conditions change or that it falls within the rider.

In my opinion, it is a conditions change. In the Whittle case, Barwick C.J. held that the excess fare allowance fell within the rise and fall clause there in question and, at 179B-F, indicated why. In my opinion, the fares claim here is to be allowed upon the basis of similar reasoning.

Annual Holiday increases: it is not in contest but that, 10  
insofar as there have been relevant alterations in respect of annual holiday payments, these fall within the formula: see the Whittle case at p. 178G-179B. The contest here arises in relation to a different matter. When the hourly wage rate is raised, the amount to be paid as holiday pay also rises and the amount of holiday pay is calculated by reference to the rate of pay received by an employee while working and by a loading of 17½% and pursuant to several State Awards. The argument was that increases in the holiday pay which took place by reason of these loadings should not separately be 20  
seen as part of the "cost" upon which the rise and fall formula was to operate otherwise there would be, as it was described, "a doubling up".

What is in question was stated in the Affidavit of Mr. Cooper, para. 7 in the following terms:

"7. By reason of the said increases in the said average hourly wage there have been increases in the costs of the provision of annual holidays to employees and/or payment of holiday pay pursuant to the Annual Holidays (Amendment) Act 1974 and in the payment of a loading of 30

17½% thereon pursuant to several State Awards made by the Industrial Commission of New South Wales."

By reason of the increases in the average hourly wage, there will be an alteration of a number of cents and the formula will operate accordingly. There will be "a doubling up" if, for example, because of the quantum to be paid in respect of annual holidays and the other matters specified there are additional cents to be added to the average hourly wage (in the manner indicated by Barwick C.J. in the Whittle case) so that the rise and fall formula operate not merely on those cents added because of the increases in the average hourly wage but also upon those cents added because of the alteration in payments in respect of annual holidays and the other matters referred to. But cents will be added in respect of the latter matters (if they are to be added at all) only if the additional cost of the provision of annual holidays and those other matters is to be seen as an alteration in the actual cost of the contractor "as a consequence of alteration in any of the three matters specified in the rise and fall clause: that is, alterations in the average hourly wage, standard working hours or other conditions of employment, or the Rider. I do not see the cost of the provision in respect of annual holidays and the other matters as falling within any of these. It was not suggested to be the first. It is, in my opinion, not the second: there was not an alteration in the conditions of employment as such. If, for example, it

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had been newly provided that the loading in respect of annual holidays should rise from 17½% to 20% there would have been such an alteration. The fact that, because wages alone have increased, the amount paid on annual holidays is increased, is not in my opinion an alteration in the conditions of employment. Nor was it argued to be within the Rider.

I therefore do not see there is the problem of "doubling up" as the defendant suggested.

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Sick Leave: the facts said to give rise to the question in this regard are set out in para. 8 of Mr. Cooper's Affidavit as follows:

"8. After the 12th November, 1974, until the date of the National Award there was no statutory or other provision for a separate payment by way of Sick Leave for employees. The Award wages payable to employees pursuant to the awards listed in para. 6 contained a component referable to compensation for sick leave. The National Award by cl. 27 thereof made provision for the payment of sick leave on full award wages for 40 hours for eleven months commencing on 1st March, 1975, and 80 hours per annum after 1st February, 1976."

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The objection taken was that, granted this might constitute a conditions change, it was capable of quantification in such a way that the number of cents to be treated as added to the average hourly wage within the formula could be calculated. In the Whittle case, at p. 179, Barwick C.J., whilst recognising the difficulties involved, held the sick leave entitlement there in question to be capable of calculation. Notwithstanding the submissions of the defendant, I do not think a

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different conclusion should be reached in respect of the present matter.

Payroll Tax and Workers' Compensation: as I have said, these, in my opinion, fall at least within the Rider and the formula in the rise and fall clause should operate upon them accordingly.

Long Service Leave: the objection taken was only that these were not capable of the appropriate monetary expressions 10 and the decision in Whittle's case: at p. 179C-D, was said to be of no assistance. I do not accept that, of its nature, such an increase is not capable of the relevant monetary expression: the clause should in my opinion operate upon it.

Accident Pay: the evidence was that there had been increases in the provision and payment of accident pay pursuant to the award and its variations "by reason of the increases in the average hourly wage". It was submitted that this was not part of the "conditions of employment": I do not think that submission should be accepted. It was then 20 submitted that to allow it would be to allow "a doubling up" in the manner referred to in relation to holiday pay. If the clause operates in the manner to which I have referred I do not think there is any such "doubling up".

The submissions which were made generally to this Court differed in material respects from those made before Yeldham J. It may therefore be that the parties will desire to address this Court as to the form of Declaration to be made. In my

opinion, therefore, the appropriate order to be made is that the plaintiff bring in Short Minutes of the order to be made consequent upon the views expressed by this Court. The parties may then address such submissions to the Court as to the form of the order as they may feel appropriate.

In my opinion the plaintiff, as respondent before this Court, should have the costs of the Appeal.

I hereby certify that this and the preceding  
13 pages are a true copy of the reasons for  
judgment herein of His Honour Mr. Justice Mahoney.

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Associate.

Date: 16th May 1979

IN THE SUPREME COURT OF NEW SOUTH WALES

COURT OF APPEAL

C.A. 191 of 1978

C.L. 835 of 1977

MAX COOPER & SONS  
PTY. LIMITED

Plaintiff  
(Respondent)

THE COUNCIL OF THE  
CITY OF SYDNEY

Defendant  
(Appellant)

O R D E R

The Court Orders that:-

1. The Appeal be allowed.
2. The Declarations and Orders made at first instance be set aside.
3. The Respondent pay the Appellant's costs of the Appeal and, if qualified, have a Certificate under the Suitors' Fund Act. 10
4. The Appellant pay one quarter of the Respondent's costs of the trial.

The Court declares that:-

1. On the proper construction of Paragraph 6 of Annexure "A" to the contract between the Appellant and the Respondent dated 31st March, 1976 and relating to the construction of a building on the corner of Kent and DrUITT Streets, Sydney and in applying the "rise and fall" formula set forth therein:- 20

(1) The following matters are required to be taken into account:

- (a) Increases in the amounts payable for fares pursuant to State and Federal Awards.

(b) The provision in Clause 27 of the National Building Trades Construction Award for the payment of sick leave.

(c) Increases in the cost of the provision of long service benefits pursuant to the Long Service Payment Act, 1974,

insofar as such increases have, and such provision has, occurred independently of wage increases and as a result of increases in the entitlement of workers to such allowances. 10

(11) The following matters fall outside the purview of the said formula:-

(a) Increases in the cost of the provision of annual holidays and/or the payment of holiday pay pursuant to the Annual Holidays (Amendment) Act, 1974 and in the payment of a loading of 17½% thereon pursuant to State Awards.

(b) Increases in the cost of the provision and payment of accident pay pursuant to the Building Trades Injuries Award made on 21st May, 1971 and subsequent variations thereto and the incorporation thereof in Clause 28 of the said National Award, 20

insofar as such increases have not occurred as a result of increases in entitlement of workers to such allowances but only consequentially upon wage increases.

Order of the Court of Appeal

(111) The following matters fall outside the purview of the said formula:-

- (a) Increases in the cost of meeting payroll tax payable pursuant to the Payroll Tax Act, 1971.
- (b) Increases in the cost of effecting workers compensation.

ORDERED: 19th June, 1979.

ENTERED: 26th June 1979.

BY THE COURT

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J.A. Leslie (L.S.)

Registrar

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REGISTRAR

IN THE SUPREME COURT OF NEW SOUTH WALES

COURT OF APPEAL

THE COURT ORDERS:

C.A. 191 of 1978

C.L. 835 of 1977

MAX COOPER & SONS  
PTY. LIMITED

Appellant and  
Cross-Respondent  
(Plaintiff)

THE COUNCIL OF THE  
CITY OF SYDNEY

Respondent and  
Cross-Appellant  
(Defendant)

1. That final leave to appeal to Her Majesty in Council from the Judgment of this Court be and the same is hereby granted to the Plaintiff.

2. Upon the payment by the Appellant of the costs of preparation of the Transcript Record and dispatch thereof to England the sum of Fifty Dollars (\$50.00) deposited in the Court by the Appellant as Security for and towards the costs thereof be paid out of Court to the Appellant.

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ORDERED: 20 August 1979

ENTERED: 27 August 1979

O R D E R

BY THE COURT

J.A. Leslie (L.S.)  
REGISTRAR

J.A. LESLIE  
REGISTRAR

CERTIFICATE OF THE REGISTRAR OF THE COURT OF APPEAL  
OF THE SUPREME COURT OF NEW SOUTH WALES  
VERIFYING THE TRANSCRIPT RECORD OF PROCEEDINGS

I, JOHN ANTHONY LESLIE, Registrar of the Court of Appeal  
of the Supreme Court of New South Wales

DO HEREBY CERTIFY as follows:-

That this transcript record contains a true copy of  
all such Orders, Judgments and documents as have relation to  
the matter of this Appeal and a copy of the reasons for the  
respective Judgments pronounced in the course of the  
proceedings out of which the Appeal arose.

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That the Respondent herein has received notice of the  
Order of Her Majesty in Council giving the Appellant Special  
Leave to appeal to Her Majesty in Council AND has also  
received notice of the dispatch of this transcript record  
to the Registrar of the Privy Council.

DATED at Sydney in the State of New South Wales this  
11th day of September, One thousand  
nine hundred and seventy-nine.

J.A. Leslie

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Registrar of the Court of Appeal  
of the Supreme Court of New  
South Wales  
Certificate of Registrar  
Verifying Transcript  
200. Record of Proceedings