

37/82

ON APPEAL

FROM THE SUPREME COURT OF

NEW SOUTH WALES

ADMINISTRATIVE LAW DIVISION

IN CAUSE NO. 605 of 1978

BETWEEN: NARICH PTY. LIMITED

Plaintiff (Appellant)

AND: THE COMMISSIONER OF PAY-ROLL TAX

Defendant (Respondent)

---

TRANSCRIPT RECORD OF PROCEEDINGS

VOLUME I

Solicitors for the Plaintiff (Appellant)

Baker & McKenzie  
50 Bridge Street,  
Sydney. N.S.W. Australia.

Tel. 231 5488

Solicitor for the Defendant (Respondent)

The State Crown Solicitor  
Goodsall Building,  
8-12 Chifley Square,  
Sydney. N.S.W. Australia.

Tel. 238 0555

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No. 1 - Summons

IN THE SUPREME COURT OF NEW SOUTH WALES

ADMINISTRATIVE LAW DIVISION

605 of 1978

NARICH PTY. LIMITED

Plaintiff

THE COMMISSIONER OF

PAY-ROLL TAX

Defendant

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SUMMONS

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BAKER & MCKENZIE  
Solicitors & Attorneys  
26th Floor,  
A.M.P. Centre  
50 Bridge Street  
SYDNEY N.S.W. 2000  
D.X. 218 Sydney  
Telephone: 231 5488  
(LGF)

The Plaintiff claims -

1. An order that its objection to the assessment of further tax under the Pay-roll Tax Act 1971 (as amended) set forth in a Notice of Objection against Assessment dated 24 August, 1978 be allowed.

10

2. Such further or other order as the nature of the case may require.

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.

1. Summons

Summons

Time: 17th October, 1978 at 9.30 a.m.

Place: Law Courts Building,  
Queen's Square,  
SYDNEY. N.S.W. 2000

Plaintiff: NARICH PTY. LIMITED  
13th Floor,  
309 Pitt Street,  
SYDNEY. N.S.W. 2000  
(Registered Office)

Plaintiff's Address for Service: C/- Messrs. BAKER AND MCKENZIE 10  
Solicitors and Attorneys  
26th Floor, A.M.P. Centre  
50 Bridge Street,  
SYDNEY. N.S.W. 2000  
D.X. 218 Sydney.

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

BRYAN JOHN KILLALEA 20  
BY HIS ASSOCIATE:

(Sgd.) Lindsay G. Foster  
.....

BRYAN JOHN KILLALEA  
Plaintiff's Solicitor  
C/- Messrs. Baker & McKenzie  
Solicitors and Attorneys  
26th Floor, A.M.P. Centre  
50 Bridge Street,  
SYDNEY N.S.W. 2000  
D.X. 218 Sydney 30

FILED: 5 October, 1978.

No. 2 - Affidavit of Richard Bruce Jamieson

IN THE SUPREME COURT OF NEW SOUTH WALES

ADMINISTRATIVE LAW DIVISION

No. 605 of 1978

NARICH PTY. LIMITED

Plaintiff

COMMISSIONER OF

PAY-ROLL TAX

Defendant

A F F I D A V I T

Deponent:

Richard Bruce  
Jamieson

Sworn:

20 December, 1979

Baker & McKenzie  
Solicitors,  
26th floor,  
A.M.P. Centre,  
50 Bridge Street,  
Sydney, 2000.

DX: 218  
Tel: 231.5488

(PTD/GCH)

On 20 December, 1979 I, RICHARD  
BRUCE JAMIESON of 53 Grampian  
Road, St. Helliers, Auckland,  
New Zealand, Company Director  
say on oath:

1. I am the Chairman of Direc-  
tors of Narich Pty. Limited

("Narich"). I was first appoin- 10  
ted a director on September 27,  
1974. Prior to that date I was  
involved in the operations of  
Narich although I had not been  
appointed a director of the  
company.

2. Narich was incorporated in  
the State of New South Wales on  
April 2, 1969. Its registered  
office and principal place of 20

business is situated at 13th  
Floor, 309 Pitt Street, Sydney.

3. Narich is and was at all  
material times the registered  
proprietor of the registered

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Affidavit of Richard Bruce  
3. Jamieson

business name "Weight Watchers" in New South Wales.

4. Narich has at all material times carried on business under the registered business name "Weight Watchers" in New South Wales pursuant to a Franchise Agreement between it and Weight Watchers International Inc. ("WWI") which is a corporation incorporated in Virginia in the United States of America and carrying on business in the State of New York. Now produced and shown to me and marked "RBJ1" is a copy of each of the Agreements relating to that franchise in respect of the period the subject of these proceedings, namely, November 1, 1973 to 10 June 30, 1977. The said Agreements are collectively referred to herein as "the Franchise Agreement".

5. Prior to my seeking a franchise from WWI in about 1966 I had not considered myself overweight nor had I attended Weight Watchers courses to reduce weight. At that time I was informed by Mrs. Lipsky representing WWI and verily believed that it was not the practice of that corporation to grant franchises to companies controlled by persons like myself who had had no previous personal involvement in the Weight Watchers programme and who had not lost more than 10 lbs weight in participating 20 in the Weight Watchers programme and maintained that loss.

6. Between 1966 and 1969 I had frequent discussions with representatives of WWI. During the course of those discussions I was informed by Mrs. Lipsky and other persons representing WWI, whose identity I do not now recall, and verily believed

that WWI was founded by one Jean Nidetch during the mid-1960's. I was also informed by one or more such persons and verily believed that Jean Nidetch, for much of her earlier life, was overweight and that she developed in conjunction with several friends who were also overweight what ultimately became the programme operated by WWI in the course of reducing and maintaining their own weight reduction.

7. I was informed by one or more of the persons referred to in the last preceding paragraph and verily believed that Jean Nidetch, who was then and still remains involved with WWI, that WWI believed that it was essential in the conduct of the Weight Watchers programme that those involved at all levels of it should also have had an overweight problem which they had resolved by the Weight Watchers programme. I was also informed by one or more of the said persons and verily believed that it was part of the programme developed by Jean Nidetch that the persons who sought to lose weight should meet together and encourage one another to persist with the programme.

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8. During the course of the discussions referred to in the preceding paragraphs of this Affidavit I was informed and verily believed that since it had been developed the Weight Watchers programme had been refined and improved as a result of developments in nutrition related to weight control. In my own experience since 1969 that programme has been further

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Affidavit of Richard Bruce  
Jamieson

improved and refined, and that is achieved, inter alia, by the distribution by WWI to Narich of literature and other material produced by or on behalf of WWI.

9. In 1969 Narich was granted the franchise referred to above only after I had procured the involvement of one Nancy Manning (formerly Nancy Richardson) in the business of Narich. Nancy Manning previously had been more than 10 lbs overweight but had reduced her weight and maintained that weight reduction by following the Weight Watchers programme.

10. For 6 months during 1968-1969 Nancy Manning and I attended 10 a training course for franchisees conducted by WWI in New York. During that course we were instructed in all aspects of the Weight Watchers programme and the conduct of Narich's business pursuant to the Franchise Agreement. We received instruction from the training director of WWI, nutritionists and dieticians, medical practitioners and psychologists. The course comprised theoretical instruction and practical work and experience.

11. Since the execution of the Franchise Agreement dated June 1, 1969 I have been in constant communication with WWI on be- 20 half of Narich. I have met representatives of WWI two or three times a year. Approximately once a year legal representatives of each of the companies have also met. At the various meetings that I have attended with representatives of WWI and that Narich's legal representatives have had with the legal

G. Harris

R.B. Jamieson

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Jamieson

representatives of WWI the Franchise Agreement and the operation of Narich pursuant to it has been reviewed in considerable detail. I have been informed from time to time by one or more of the representatives of WWI referred to above and verily believe that that company regards the adherence to the Weight Watchers programme by franchisees, including Narich, as essential to the protection and continued operation and development of WWI's business.

12. In addition to the meetings referred to in the last preceding paragraph I (or persons on my behalf employed by Narich) have communicated with representatives of WWI since the Franchise Agreement was first executed on approximately 3 or 4 times a week by telephone, letter or telex. WWI has regularly conducted seminars of franchisees in the United States and I have attended such seminars on behalf of Narich on a number of occasions. Since the first execution of the Franchise Agreement Narich has received from WWI a continuous stream of printed material dealing with recent developments, discoveries and changes in the Weight Watchers programme that it has been required to implement. Much of this material has been distributed by Narich to its lecturers.

13. Much of the printed material distributed by Narich to its lecturers is supplied to Narich for that purpose by WWI or printed by Narich under licence from WWI. In addition Narich produces and distributes to its lecturers other printed



material, most of which is first approved by WWI.

14. During the period 1 November, 1973 to 30 June, 1977 all Lecturers Handbooks distributed by Narich to its lecturers were first received by Narich from WWI.

15. Narich conducted the training of its lecturers during the period according to a method communicated by WWI to Narich and contained in the training handbook given by Narich to its lecturers.

16. Narich conducted its Weight Watchers programme during the period the subject of the proceedings pursuant to the Franchise Agreement by engaging lecturers who conducted meetings attended by persons who were overweight. Such persons (other than the lecturers) were called members. The lecturers were recruited from persons, who were still members (who had qualified as lifetime members), and who had succeeded in losing weight by following the Weight Watchers programme and who had received additional special training from Narich.

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17. During the period of time the subject of these proceedings until August, 1974 I was responsible for the conduct of Narich's business pursuant to the Franchise Agreement. On August 19, 1974 Narich appointed a General Manager to conduct this business and gradually over a period of about five months I handed over the conduct of that business to him. However I involved myself continuously throughout the period November 1, 1973 to June 30, 1977 in that business.

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G. Harris

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Affidavit of Richard Bruce  
8. Jamieson

18. Narich's business pursuant to the Franchise Agreement during the period the subject of these proceedings was conducted by various Area Managers responsible to the General Manager. In addition supervisors and clerical staff were employed by Narich in the business. Payroll tax has been paid in respect of the persons referred to in this paragraph during the relevant period.

19. From November 1, 1973 until some time in 1977 Narich engaged lecturers who signed an agreement in the form of that annexed and marked "A". Not all of those agreements are still 10  
in the possession of Narich. I have caused persons employed by Narich to search through the company's records and papers for all such agreements and have only been able to locate 118 of them. Now produced and shown to me and marked "RBJ2" is a bundle comprising the said agreements. I have caused employees of Narich to check the records of the Company to ascertain the number of lecturers engaged by the Company between November 1, 1973 and 1977 who, signed an agreement in the form of the said agreement and I have determined from an examination of those records that there were 146 such lec- 20  
turers. Many of those lecturers no longer conduct Weight Watchers meetings on behalf of Narich and some of them have subsequently executed an agreement in the form referred to below in paragraph 21 of this Affidavit.

20. During 1976 I became aware that a number of lecturers had

Affidavit of Richard Bruce  
Jamieson

executed a form of agreement that had been prepared by an employee of Narich but without its authority. A copy of that document is annexed and marked "B". I have caused persons employed by Narich to search through the company's records and papers for all such agreements and have only been able to locate 9 of them. Now produced and shown to me and marked "RBJ3" is a bundle comprising the said agreements. I have caused employees of Narich to check the records of the company to ascertain the numbers of lecturers engaged by the company who signed an agreement in the form of the said agreement and I have determined from that examination of those records that there were 9 such lecturers. None of the said agreements were executed on behalf of the Company. Narich does not regard itself as bound by those agreements. When I discovered that they had been executed by the lecturers concerned Narich arranged for 8 of those lecturers to execute an agreement in the form of the agreement referred to in paragraph 21 below. The remaining lecturer had at that time ceased conducting lectures on behalf of Narich. 10

21. During 1977 Narich reviewed the form of lecturers' agreement and adopted an agreement in the form annexed and marked "C" which it required all lecturers thereafter engaged by it to execute. I have caused employees of Narich to search through the Company's records and papers of all such agreements and have located 71 of them. Now produced and shown to

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me and marked "RBJ4" is a bundle comprising such agreements. I have caused employees of Narich to check the records of the Company to ascertain the numbers of lecturers engaged by the Company who had signed an agreement in the form of the said agreement and I have determined from an examination of those records that there were 71 such lecturers.

22. Throughout the period November 1, 1973 to June 30, 1977 I estimate that on an average I visited about one Weight Watchers meeting per month.

23. Throughout the above period lecturers recruited other members to become lecturers. As and when required such members, if considered suitable by supervisors employed by Narich, were invited to become trainee lecturers. Such persons then received instruction on how to conduct meetings or classes by one or more of the training manager, the area manager or a supervisor.

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24. Such trainee lecturers attended a course at the Narich office in Sydney or at some other suitable place on one night a week for about 2 months. The course was known as a training workshop.

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25. During the training workshop the trainee lecturers were given lectures and demonstrations and participated in lecturing practice. They were taught the technique of conducting Weight Watchers meetings and were given instruction in public speaking.

G. Harris

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Affidavit of Richard Bruce

11. Jamieson

26. During the training workshop the trainee lecturers were taught the Weight Watchers system of weight reduction and control and the food programme to be followed by members wishing to reduce their weight and maintain it at their respective goal weights. This is known as the Weight Watchers programme.

27. During the training workshops the trainee lecturers were instructed in the use to be made of the various publications and literature made available to them by Narich. Narich received much of the said material from WWI. Other material was prepared and distributed by Narich subject to the approval of WWI. At the end of 1973 these materials included:- 10

(a) A "legal" food list a copy of which is now produced and shown to me and marked "RBJ5";

(b) Tentative goal weight charts, a copy of which is now produced and shown to me and marked "RBJ6";

(c) A book entitled "The Memoir of a Successful Loser; The Story of Weight Watchers" by Jean Nidetch a copy of which is now produced and shown to me and marked "RBJ7";

(d) A pamphlet entitled "Nutrition, Weight Control and You!", a copy of which is now produced and shown to me and marked "RBJ8"; 20

(e) A set of notes entitled "You, The Weight Watchers Recorder and Weigher" a copy of which is now produced and shown to me and marked "RBJ9";

(f) A series of notes of lecture themes, copies of some

of which are now produced and shown to me and marked  
"RBJ10";

(g) A "Weight Watchers Programme Handbook" a copy of  
which is now produced and shown to me and marked "RBJ11";

(h) A "Weight Watchers Levelling Plan for Ladies, Men  
and Youths" a copy of which is now produced and shown to  
me and marked "RBJ12";

(i) A "Weight Watchers Maintenance Plan for Ladies, Men  
and Youths", a copy of which is now produced and shown to  
me and marked "RBJ13";

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(j) A "Lecturer's Handbook" a copy of which is now pro-  
duced and shown to me and marked "RBJ14";

(k) A lecturer's kit containing award pins and a date  
stamp which is now produced and shown to me and marked  
"RBJ15";

(l) Various printed forms to be used in connection with  
Weight Watchers meetings, copies of some of which are now  
produced and shown to me and marked "RBJ16".

I have checked the above material and although some of it  
bears a date later than 1973, to the best of my recollection  
the material issued in 1973 was substantially similar to that  
referred to in the relevant exhibits.

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At the training workshop trainee lecturers were instructed in  
the use of all of the above documents.

28. During the period November 1, 1973 to June 30, 1977 much

G. Harris R.B. Jamieson

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Jamieson

of the materials referred to in the last preceding paragraph were replaced from time to time. A substantial proportion of this material was replaced in the circumstances discussed in paragraph 12 above. As they were replaced the materials were distributed to lecturers engaged by Narich to be used by them in the place of the materials previously supplied to them. At the various training workshops conducted by Narich during the period the publications and other literature then in use by lecturers engaged by Narich were distributed to the trainee lecturers.

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29. Trainee lecturers were not paid for their attendance at training workshops although a payment was made to them as a reimbursement for travelling and other expenses incurred by them in attending the workshop.

30. After completion of the training workshop the lecturers then conducted Weight Watchers meetings throughout New South Wales but mainly in the Sydney, Newcastle and Wollongong areas. Other than the training workshops referred to in paragraphs 24 and 35 and the lecturers' meetings referred to in paragraph 36, lecturers rarely attended the Narich office in Sydney.

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31. During the period November 1, 1973 to June 30, 1977 the number of Weight Watchers meetings per week held throughout New South Wales varied depending upon the number of available lecturers and the number of members participating in the

Affidavit of Richard Bruce  
Jamieson

Weight Watchers programme. In the week ending June 30, 1977 there were 200 meetings conducted by approximately 89 lecturers throughout New South Wales and there were slightly more than 8,400 members participating in the Weight Watchers programme who attended those meetings. The lecturers were mainly female. Most Weight Watchers meetings were conducted during the evening substantially by persons who either engaged in full time employment or attended to domestic duties during the rest of the day.

32. Annexed and marked "D" is a summary of monthly fees deducted by lecturers engaged by Narich during the period November 1, 1973 to June 30, 1977 and paid to themselves their weighers, recorders and any other assistants used by them during their meetings. 10

33. Narich regularly distributed to lecturers engaged by it various bulletins, memoranda, copies of "Waistline" magazine, recipes and material replacing other material already in their possession. Now produced and shown to me and marked "RBJ17" is a bundle of documents comprising some of the documents just referred to. 20

34. Lecturers usually conducted Weight Watchers meetings in suburban locations in church or school halls and the like.

35. From time to time Narich held training workshops for lecturers who were already conducting Weight Watchers meetings. These were known as advanced training workshops and their



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purpose was to communicate new information and techniques about which Narich had been advised by WWI. The lecturers received no remuneration for attending such workshops but persons coming some distance were sometimes reimbursed for their expenses.

36. Each month except December Narich conducted a lecturers' meeting for about 2 hours. Most but not all lecturers attended those meetings. The lecturers were weighed and if they were over their goal weight by 2 lbs they were not permitted to conduct Weight Watchers meetings until they reduced their weight to their goal weight. The meeting was used as a forum to discuss common problems and to swap ideas. New training material was also distributed.

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37. From time to time a lecturer was unable to conduct his or her Weight Watchers meeting. In such circumstances he or she was often (but not always) replaced by another lecturer. Mostly such a lecturer contacted another lecturer known to him or her and arranged for that other one to conduct the meeting. The lecturer who was replaced then notified a supervisor of the replacement. In some cases if the lecturer could not arrange a replacement he or she sought the help of a supervisor. The supervisor either gave the lecturer the telephone number of a number of other qualified lecturers who that lecturer could approach to conduct the meeting, or alternatively, the supervisor found a replacement lecturer by ringing one or

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more qualified lecturers. No payment was received by the lecturer in respect of a lecture he or she was unable to conduct.

38. The hiring fee for the church hall or other place at which the Weight Watchers meeting was conducted was often paid for by the lecturer deducting the fee from the members' subscriptions collected at the meeting. A number of Weight Watchers meetings were conducted at Narich's offices in Sydney, Newcastle or Wollongong, and on other premises hired by Narich. In such circumstances no hiring fee was deducted and paid by the lecturers. 10

39. The method of conducting Weight Watchers meetings was provided for in documents issued to Narich pursuant to the franchise agreement and distributed to them at the training workshops referred to in paragraphs 24 and 35 above and also from time to time in the manner referred to in paragraph 36 above.

40. During the period ending some time late in 1975 lecturers conducted their meetings by reference to lecture themes similar to those comprised in Exhibit "RBJ10". 20

41. During the period referred to in the last preceding paragraph the method usually followed by lecturers in conducting their meetings was as set out in paragraphs 42 to 55 below.

42. Lecturers used the notes referred to in paragraph 40 to help them in the preparation of their meetings.

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Jamieson

43. The number of persons attending each Weight Watchers meeting varied but usually ranged from approximately 15 to 50.

44. Lecturers were assisted in conducting their meetings by a recorder and a weigher. Those persons were members of the class who were appointed by the lecturer from time to time. Recorders and weighers were members of the meeting who were participating in the course being conducted by the lecturer and who paid their weekly fees. The lecturer paid the recorder and weigher at the end of each meeting a payment described as an honorarium for their services.

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45. At about the appointed time for each meeting the members arrived. New members paid a joining fee to the recorder who sat at a desk in the meeting room. The new members also completed an application form with the help of the recorder. The membership fee varied depending upon the status of the applicant; students and persons receiving social security benefits paid less than the normal joining fee. As each member joined he or she was given an attendance book by the recorder.

46. Each week thereafter that the member attended a Weight Watchers meeting he or she presented the membership book to the recorder and paid the weekly fee which varied depending upon the status of the member; students and members receiving social security benefits paid a smaller fee than ordinary members and life members who were at goal weight did not pay any

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G. Harris

R.B. Jamieson

Affidavit of Richard Bruce

18. Jamieson

fee. When the members paid their weekly fees, the recorder stamped the attendance book to verify the member's attendance at the meeting. Payment of the weekly fee entitled the member to attend as many classes as he or she desired in the week whether conducted by the lecturer or by some other Weight Watchers lecturer. Members were required to pay weekly whether or not they attended a lecture in that week to encourage their regular attendance and adherence to the programme although each member was given three complimentary stamps per year, each entitling him or her to be absent from one weekly meeting. However there was no contractual obligation incurred by any member to continue paying once he or she discontinued attendance at meetings.

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47. After the recorder stamped the member's attendance book he or she also recorded the member's attendance on a card kept by the lecturer for that purpose. A supply of such cards was made available to each lecturer from time to time by Narich. The recorder then handed the card to the member who then presented himself to the weigher.

48. The weigher supervised the weighing of each member on scales supplied to the lecturer by Narich for that purpose. In turn Narich had obtained the scales from an American company approved by WWI. As each member was weighed the weigher recorded his or her weight on the member's attendance book and the attendance card kept by the lecturer.

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G.Harris

R.B. Jamieson

Affidavit of Richard Bruce  
Jamieson

49. As the members arrived at the meeting the recorder completed a tally sheet which was a printed document supplied to the lecturer by Narich. This document was based upon a document supplied to Narich by WWI. The recorder filled in on the tally sheet details of attendance of members, the amount of their subscriptions, and any money paid by them for purchases made by them of food scales approved by WWI, and reading matter given to the lecturer by Narich for sale on consignment. That reading matter was either published by WWI or under licence from that company. The recorder calculated the commission payable to the lecturer and the recorder in respect of such sales as well as the honoraria paid to the lecturer, the weigher and the recorder.

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50. As each member was weighed he handed to the lecturer his card and then sat down on one of the chairs provided.

51. The lecturer usually began each lecture by greeting those who were present and by introducing new members attending for the first time. The lecturer then discussed the theme she had prepared. During the course of this she might discuss recipes or her own experiences. The lecturer explained the programme handbook which had been distributed to members and was the same as the handbook Exhibit "RBJ11" hereto. The lecturer displayed products that were regarded as legal foods. She often used other visual displays prepared by her.

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52. Towards the end of the meeting, the lecturer read out the

members' cards noting their weight loss, if any, since the previous meeting.

53. The lecturer also presented various awards to members who had reached certain stages in the course of their weight reduction. For example, a recognition pin was awarded to members who had attended Weight Watchers meetings for 16 weeks and who had lost 10 lbs. The procedure for making these awards was provided for in the Lecturer's Handbook in the Chapter entitled "Award Presentations".

54. When a member's weight reduced to a weight 10 lbs above goal weight the lecturer handed the member a document called a "levelling plan" (Exhibit RBJ12 hereto) and instructed him or her in its use. This plan was designed to aid the member in the loss of the last few pounds until he or she reached goal weight. After goal weight was achieved, the lecturer handed the member a document called a "maintenance plan" (Exhibit RBJ13 hereto) and instructed him or her in its uses. This plan was designed to aid the member to maintain his or her goal weight while gradually increasing the amount of food consumed.

55. At the conclusion of each meeting the recorder usually handed the lecturer the tally sheet for checking and signature. The lecturer then signed the tally sheet.

56. Following each meeting the lecturer usually paid the hiring fee for the hall and also deposited the balance of moneys

Affidavit of Richard Bruce  
Jamieson

collected by him or her at the meeting at the branch of a bank for transmission to the credit of Narich at its bank. The lecturer then posted the duplicate deposit slip together with the completed tally sheet and any new member cards to Narich at its Sydney office.

57. Lecturers did not receive any payments from Narich but deducted any honorarium and commission payable to them in respect of their Weight Watchers meetings from the membership subscriptions received at the meetings conducted by them.

58. In late 1975 WWI introduced the eating management techniques programme consisting of 12 "modules". Now produced and shown to me and marked "RBJ18" is a copy of a set of such modules. Each of these modules is a document which contained matter to be discussed at each meeting by the lecturers. WWI gave that programme to Narich to be used by its lecturers.

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59. Shortly after these modules were received by Narich from WWI Narich conducted a number of training workshops attended by its lecturers at which the use of the modules was explained to the lecturers. At those workshops training guides were distributed to the lecturers. Narich received the training guides from WWI and printed additional copies for distribution. Now produced and shown to me and marked "RBJ19" is a set of these training guides.

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60. Subsequently WWI sent to Narich replacement pages for the

G. Harris

R.B. Jamieson

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Jamieson

Lecturers Handbooks and Narich distributed these to the lecturers. Now produced and shown to me and marked "RBJ20" is a Lecturers Handbook which includes these replacement pages.

61. The method whereby the lecturers conducted their Weight Watchers meetings after the introduction of the eating management techniques programme is described in the paragraphs numbered 43 to 50 above and in the paragraphs numbered 63 to 66 below.

62. Subject to the discontinuance of the use of lecture themes referred to above the lecturers continued to follow the form 10 described in paragraphs 51 to 57 above.

63. Modules were distributed to lecturers at one of the monthly meetings referred to in paragraph 36 above and sent to those lecturers who did not attend the meeting.

64. At each alternate Weight Watchers meeting a copy of the module to be discussed at that meeting was distributed by the lecturers to the members present. Cue cards were supplied to lecturers by Narich to help them direct their minds to the salient features of the module while they conducted their meetings. The cue cards had been previously supplied to 20 Narich by WWI. Now produced and shown to me and marked "RBJ21" is a set of cue cards for the module entitled "How to Tell When You Are Really Hungry".

65. On each alternate week a new module was introduced to the Weight Watchers meeting. In the intervening week the lecturer



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conducted what was called a feedback session and instead of introducing the module the lecturer discussed with the members their experiences in following out the programme specified in the module that the lecturer had introduced in the preceeding week.

66. It took each lecturer approximately 6 months to work through the presentation of the modules that made up the eating management techniques programme.

67. By notice of Assessment in writing dated 26 June, 1978, and received by the plaintiff on 28 June, 1978, the Commissioner of Pay-roll Tax informed the plaintiff that it was liable to pay further pay-roll tax for the period from 1 November 1973 to 30 June 1977 in the amount of \$26,901.00 together with additional tax payable under sub-section (5) of section 18 of the Pay-roll Tax Act. Annexed and marked "E" is a copy of the said Notice of Assessment.

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68. By notice of Objection Against Assessment dated 24 August 1978, and served on the Commissioner of Pay-roll Tax on 25 August 1978, the plaintiff objected to the assessment referred to in paragraph 67 above on the grounds more fully set out therein. Annexed and marked "F" is a copy of the said Notice of Objection Against Assessment.

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69. The further tax referred to in paragraph 67 above has been paid by the plaintiff to the Commissioner of Pay-roll Tax.

G. Harris

R.B. Jamieson

Affidavit of Richard Bruce  
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Jamieson

70. I respectfully request this Honourable Court to make the  
orders sought in the Summons filed herein.

Sworn by the deponent )  
at Sydney the 20th )  
day of December, 1979 )

R. B. Jamieson  
\_\_\_\_\_

G. Harris  
\_\_\_\_\_

"A"

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 197  
BETWEEN Narich Pty. Limited, a company having its Registered  
Office at C/- J.A. Douglas & Co., 21 Belmore Road, Randwick,  
and trading under the registered business name of "WEIGHT  
WATCHERS" of the one part AND  
of \_\_\_\_\_ (hereinafter called "the Lec-  
turer") of the other part.

WHEREAS:

(A) the company has as the result of its own operations and  
through its associations with overseas companies acquired  
skill and information in relation to the techniques, systems,  
methods, principles, programs and lecture courses concerned  
with weight reduction of individuals and the business techni-  
ques promotion publicity and administrative procedures con-  
nected therewith and the group therapy techniques and the  
controlled eating plans developed used and propagated in rela-  
tion thereto (which are collectively referred to hereafter as  
"weight control skills"); and

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(B) the Lecturer has agreed to act as a Lecturer at Weight  
Watchers classes and the Company has agreed to make available  
to her the "Weight Watchers Lecturers Handbook" containing  
material including the Program Food Plan for use as a Weight  
Watchers Lecturer and which the lecturer agrees contains in-  
formation which is and remains the property of the Company

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This and the following Six (6) pages is the annexure marked "A"  
referred to in the Affidavit of RICHARD BRUCE JAMIESON  
Sworn the 20th day of December, 1979.

G. Harris  
Solicitor

and forms part of weight control skills;

(C) the Lecturer agrees that the weight control skills include confidential information and matters of confidence the disclosure of which and the use of which outside the business of the Company would cause substantial loss and damage to the company.

NOW THIS AGREEMENT WITNESSETH

1. (a) The Lecturer will herself or by a substitute approved by the Company lecture one or more Weight Watchers classes as may from time to time be agreed between the parties to be held at such times and places as the Company may arrange.

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(b) The engagement shall be terminable on 1 weeks notice in writing given by either party and expiring at any time.

(c) If the Lecturer fails or refuses to carry out her duties or obligations as a Lecturer in a proper manner or if the weight of the Lecturer exceeds her goal weight the Company may terminate her engagement without notice.

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2. The Company will instruct the Lecturer in weight control skills as may be appropriate to the skill experience and ability of the Lecturer from time to time.

3. The Company will pay the Lecturer a fee for each lecture

Annexure "A" to Affidavit  
of Richard Bruce Jamieson

and agreed ancillary tasks calculated as follows or such other fees as may from time to time be agreed upon between the parties:-

During 1st year experience	- \$10.00	Plus 10 cents per paying member in excess of 40 members attending the class	
After 1 years experience	- \$11.00	Plus 10 cents per paying member in excess of 40 members attending the class	10
After 2 years experience	- \$13.00	Plus 10 cents per paying member in excess of 40 members attending the class	
After 3 years experience	- \$14.00	Plus 10 cents per paying member in excess of 40 members attending the class	
After 4 years experience	- \$15.00	Plus 10 cents per paying member in excess of 40 members attending the class	20
After more than 5 years experience	- \$16.00	Plus 10 cents per paying member in excess of 40 members attending the class	

4. The Lecturer is not an employee of the Company and shall perform her duties free from the direction and control of the Company provided she follow the Weight Watchers Lecturers Handbook distributed by Weight Watchers International Inc., of New York and she will attend without payment one Saturday Meeting of Lecturers per month at which she will inter alia be weighed. 30

Annexure "A" to Affidavit  
of Richard Bruce Jamieson

5. The Lecturer shall to the best of her ability:-
- (a) deliver the lectures and teach the Program and Levelling and Maintenance Plans,
  - (b) select and train sufficient recorders and weighers to properly conduct the lectures,
  - (c) ensure that the classes are properly organised and controlled,
  - (d) report to the Company upon the functioning of each class,
  - (e) pay her recorders and weighers and rental for the hall from the receipts of the class, 10
  - (f) account to the Company for fees and dues received from the members of each class at which she lectures and in this regard the Lecturer shall be the Company's agent for collection and shall as soon as possible thereafter deposit the nett receipts to the credit of the Company's account at the Bank of New South Wales, 60 Martin Place, Sydney,
  - (g) conduct the class so as to advance the welfare of the members according to the principles of Weight Watchers International Inc., 20
  - (h) contact by phone or call on members who have been absent from meetings.
6. The Lecturer undertakes that forthwith on the termination

of her engagement hereunder for whatever reason she will immediately return to the company her Weight Watchers Lecturers Handbook and all other documents supplied to her in connection with such engagement and any copies thereof.

7. The Lecturer shall not without the express written permission of the Company use copy reproduce or distribute or disclose to any person not entitled thereto:-

- (a) any material contained in the Weight Watchers Lecturers Handbook; or
- (b) any other material which comes into her possession as a Lecturer; or
- (c) any information concerning members of Weight Watchers which she acquires as a Lecturer.

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8. The Lecturer covenants with the Company as follows:-

- (a) during the continuation of her engagement hereunder and after its termination the Lecturer will not hold herself out in any way in relation to weight control skills as being associated with or acting on behalf of the Company or Weight Watchers International Inc., except in so far as she may be authorised by the Company to do so:
- (b) she will not during (i) her employment as a Lecturer or (ii) the period of 1 year after she ceased to be a Lecturer under this agreement (without the prior

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Annexure "A" to Affidavit  
of Richard Bruce Jamieson

approval of the Company in writing) solicit or deal  
with any persons:-

(i) who were members of any classes held or supervised by the Lecturer during such engagement,  
(ii) or with whom she was directly engaged at any time during a period of one (1) year preceding the date of termination of such engagement:  
in relation to the application or instruction in weight control skills for reward.

(c) she will not during the period of her engagement or thereafter disclose to any person any confidential information acquired from or in the engagement of the Company. 10

(d) that she will not (without the prior approval of the company in writing) herself or as agent employee or contractor on behalf of any other person, carry on any business relating to the application of weight control skills for reward in respect of any person within the area of a circle having a radius of two (2) miles from any place in which, as a lecturer contracted to the Company, she has carried out group therapy or given instruction in weight control skills. 20

9. The restrictions referred to in clause 8 (d) of this agreement shall have operation for the period of one year



Annexure "A" to Affidavit  
of Richard Bruce Jamieson

after the date on which the Lecturer ceases to be a Lecturer under this agreement.

10. The restrictions referred to in clauses 8 and 9 hereof and each of them shall have operation and are intended to have operation as separate and severable restrictions to the intent that each of them shall operate to the extent of the terms thereof as far as each of them lawfully may so do and the operation of any of such restrictions shall not be affected by the fact that any other of them may be or shall be of no force or effect.

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11. Where the context so admits words importing the feminine gender shall be read as also importing and including the male gender.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals on the date first hereinbefore written.

The Common Seal of NARICH PTY. LIMITED )  
)  
was hereunto affixed in the presence of:)

\_\_\_\_\_  
Signed Sealed and Delivered by the said )  
)  
Lecturer in the presence of: )

\_\_\_\_\_  
Director

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Annexure "B" to Affidavit  
of Richard Bruce Jamieson

"B"

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 197  
BETWEEN Narich Pty. Limited, a company having its Registered  
Office at 13th Floor, 309 Pitt Street, Sydney, N.S.W., and  
trading under the registered business name of "WEIGHT WATCHERS"  
of the one part AND  
of \_\_\_\_\_ (hereinafter called "the Lecturer")  
of the other part.

WHEREAS:

(A) the company has as the result of its own operations and 10  
through its associations with overseas companies acquired  
skill and information in relation to the techniques, systems,  
methods, principles, programs and lecture courses concerned  
with weight reduction of individuals and the business techni-  
ques promotion publicity and administrative procedures con-  
nected therewith and the group therapy techniques and the  
controlled eating plans developed used and propagated in rela-  
tion thereto (which are collectively referred to hereafter as  
"weight control skills"); and

(B) the Lecturer has agreed to act as a Lecturer at Weight 20  
Watchers classes and the Company has agreed to make available  
to her the "Weight Watchers Lecturers Handbook" containing  
material including the Program Food Plan for use as a weight  
Watchers Lecturer and which the Lecturer agrees contains in-  
formation which is and remains the property of the Company

This and the following Seven (7) pages is the annexure marked "B"  
referred to in the Affidavit of RICHARD BRUCE JAMIESON  
Sworn the 20th day of December, 1979.

G. Harris  
Solicitor

and forms part of weight control skills;

(C) the Lecturer agrees that the weight control skills include confidential information and matters of confidence the disclosure of which and the use of which outside the business of the company would cause substantial loss and damage to the company.

NOW THIS AGREEMENT WITNESSETH

1. (a) The Lecturer will herself or by a substitute approved by the Company lecture one or more Weight Watchers classes as may from time to time be agreed between the parties to be held at such times and places as the Company may arrange.

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(b) The engagement shall be terminable on 1 weeks notice in writing given by either party and expiring at any time.

(c) If the Lecturer fails or refuses to carry out her duties or obligations as a Lecturer in a proper manner or if the weight of the Lecturer exceeds her goal weight the Company may terminate her engagement without notice.

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2. The Company will instruct the Lecturer in weight control skills as may be appropriate to the skill experience and ability of the Lecturer from time to time.

3. The Company will pay the Lecturer a fee for each lecture

Annexure "B" to Affidavit  
of Richard Bruce Jamieson

and agreed ancillary tasks calculated as follows or such other fees as may from time to time be agreed upon between the parties:-

During 1st year experience	- \$10.00	Plus 10 cents per paying member in excess of 35 members attending the class	
After 1 years experience	- \$11.00	Plus 10 cents per paying member in excess of 35 members attending the class	10
After 2 years experience	- \$13.00	Plus 10 cents per paying member in excess of 35 members attending the class	
After 3 years experience	- \$14.00	Plus 10 cents per paying member in excess of 35 members attending the class	
After 4 years experience	- \$15.00	Plus 10 cents per paying member in excess of 35 members attending the class	20
After 5 years experience	- \$16.00	Plus 10 cents per paying member in excess of 35 members attending the class	
After more than 6 years experience	- \$18.00	Plus 10 cents per paying members in excess of 35 members attending the class.	30

Plus for every member reaching Lifetime Membership a Lecturer may claim 20¢. This amount to be substantiated by sending in members cards for Lifetime Membership.

IN ADDITION:-

Lecturers who have completed their 4th year of Lecturing are entitled to payment for 1 weeks "holiday" by mutual arrangement between their Area Manager and themselves.

You will be paid the regular lecturers honoraria for the meetings you will be missing during the week off. A Lecturer doing 3 meetings per week at \$14.00 per meeting would receive \$42.00. The rates of entitlement for subsequent years of lecturing are as follows:

After 5 years - 2 weeks @ \$16.00 per meeting - to be taken 10  
during the 6th year of service.

After 6 years - 3 weeks @ \$18.00 per meeting - to be taken  
during the 7th year of service.

As Lecturers are self employed it will be necessary for you to send in an expense sheet to your Area Manager stating "insufficient funds" at - (list all meetings missed) and the amount of honoraria due. A cheque for the amount will be sent from Head Office. It will be necessary to send the expense sheet in early so that payment will be received prior to your holiday.

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4. The Lecturer is not an employee of the Company and shall perform her duties free from the direction and control of the Company provided she follow the Weight Watchers Lecturers Handbook distributed by Weight Watchers International Inc., of New York and she will attend without payment one Saturday

Meeting of Lecturers per month at which she will inter alia  
be weighed.

5. The Lecturer shall to the best of her ability:-

- (a) deliver the Lectures and teach the Program and Levelling and Maintenance Plans,
- (b) select and train sufficient recorders and weighers to properly conduct the Lectures,
- (c) ensure that the classes are properly organised and controlled,
- (d) report to the Company upon the functioning of each class, 10
- (e) Pay her recorders and weighers and rental for the hall from the receipts of the class.
- (f) account to the Company for fees and dues received from the members of each class at which she lectures and in this regard the Lecturer shall be the Company's agent for collection and shall as soon as possible thereafter deposit the nett receipts to the credit of the Company's account at the Bank of New South Wales, 60 Martin Place, Sydney. 20
- (g) conduct the class so as to advance the welfare of the members according to the principles of Weight Watchers International Inc.
- (h) contact by phone or call on members who have been absent from meetings.

Annexure "B" to Affidavit  
of Richard Bruce Jamieson

6. The Lecturer undertakes that forthwith on the termination of her engagement hereunder for whatever reason she will immediately return to the Company her Weight Watchers Handbook and all other documents supplied to her in connection with such engagement and any copies thereof.

7. The Lecturer shall not without the express written permission of the Company use copy reproduce or distribute or disclose to any person not entitled thereto:-

- (a) any material contained in the Weight Watchers Lecturers Handbook; or
- (b) any other material which comes into her possession as a Lecturer; or
- (c) any information concerning members of Weight Watchers which she acquires as a Lecturer.

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8. The Lecturer covenants with the Company as follows:-

- (a) during the continuation of her engagement hereunder and after its termination the Lecturer will not hold herself out in any way in relation to weight control skills as being associated with or acting on behalf of the Company or Weight Watchers International Inc., except in so far as she may be authorised by the Company to do so;
- (b) she will not during (i) her employment as a Lecturer or (ii) the period of 1 year after she ceased to be a Lecturer under this agreement (without the prior

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approval of the Company in writing) solicit or deal  
with any persons:-

(i) who were members of any classes held or super-  
vised by the Lecturer during such engagement.

(ii) or with whom she was directly engaged at any  
time during a period of one (1) year preceding  
the date of termination of such engagement:

In relation to the application or instruction in  
weight control skills for reward.

(c) she will not during the period of her engagement or 10  
thereafter disclose to any person any confidential  
information acquired from or in the engagement of  
the Company.

(d) that she will not (without the prior approval of the  
Company in writing) herself or as agent employee or  
contractor on behalf of any other person, carry on  
any business relating to the application of weight  
control skills for reward in respect of any person  
within the area of a circle having a radius of two  
(2) miles from any place in which, as a Lecturer 20  
contracted to the Company, she has carried out group  
therapy or given instruction in weight control skills.

9. The restrictions referred to in clause 8 (d) of this  
agreement shall have operation for the period of one year



Annexure "B" to Affidavit  
of Richard Bruce Jamieson

after the date on which the Lecturer ceases to be a Lecturer under this agreement.

10. The restrictions referred to in clauses 8 and 9 hereof and each of them shall have operation and are intended to have operation as separate and severable restrictions to the intent that each of them shall operate to the extent of the terms thereof as far as each of them lawfully may so do and the operation of any of such restrictions shall not be affected by the fact that any other of them may be or shall be of force or effect.

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11. Where the context so admits words importing the feminine gender shall be read as also importing and including the male gender.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals on the date first hereinbefore written

The Common Seal of NARICH PTY. LIMITED )  
)  
was hereunto affixed in the presence of)

Director

Signed Sealed and Delivered by the said)  
)  
)

"C"

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 197  
BETWEEN Narich Pty. Limited, a company having its Registered  
Office at 13th Floor, 309 Pitt Street, Sydney, N.S.W, and  
trading under the registered business name of "WEIGHT WATCHERS"  
of the one part AND  
(hereinafter called "the Lecturer") of the other part.

WHEREAS:

(A) the Company has as the result of its own operations and  
through its associations with overseas companies acquired  
skill and information in relation to the techniques, systems,  
methods, principles, programs and lecture courses devised by  
its Doctors, Psychologists and Nutritionists, concerned with  
weight reduction of individuals and the business techniques  
promotion publicity and administrative procedures connected  
therewith and the group therapy techniques and the controlled  
eating plans developed used and propagated in relation thereto  
(which are collectively referred to hereafter as "weight con-  
trol skills"); and

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(B) the Lecturer has agreed to act as a Lecturer at Weight  
Watchers classes and the Company has agreed to hire to her  
the "Weight Watchers Lecturers' Handbook" containing material  
for guidance only including the Program Food Plan for use  
as a Weight Watchers Lecturer and which the Lecturer agrees  
contains information which is and remains the property of

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This and the following Seven (7) pages is the annexure marked "C"  
referred to in the Affidavit of RICHARD BRUCE JAMIESON  
Sworn the 20th day of December, 1979

G. Harris  
Solicitor

the Company and forms part of the weight control skills; and  
(C) the Lecturer agrees that the weight control skills include confidential information and matters of confidence the disclosure of which and the use of which outside the business of the Company would cause substantial loss and damage to the Company.

NOW THIS AGREEMENT WITNESSETH

1. (a) The Lecturer will herself or by a substitute approved by the Company lecture one or more Weight Watchers classes as may from time to time be agreed between the parties to be held at such times and places as the Company may arrange. The Lecturer shall ensure that any such substitute carries out all the obligations which this Agreement imposes on the Lecturer and shall be responsible for arranging payment of the substitute from the fees and dues received from the members of the class. 10
- (b) If the Lecturer fails or refuses to carry out her duties or obligations as a Lecturer in a proper manner or if the weight of the Lecturer exceeds her goal weight the Company may terminate her engagement without notice or, with the Company's permission, she may arrange a substitute Lecturer until these deficiencies have been corrected. 20

Annexure "C" to Affidavit  
of Richard Bruce Jamieson

2. The Company will pay the Lecturer a fee for each lecture and agreed ancillary tasks calculated as follows or such other fees as may from time to time be agreed upon between the parties:-

During 1st year experience	- \$10.00	Plus 10 cents per paying member in excess of 35 members attending the class	
After 1 years experience	- \$11.00	Plus 10 cents per paying member in excess of 35 members attending the class	10
After 2 years experience	- \$13.00	Plus 10 cents per paying member in excess of 35 members attending the class	
After 3 years experience	- \$14.00	Plus 10 cents per paying member in excess of 35 members attending the class	20
After 4 years experience	- \$15.00	Plus 10 cents per paying member in excess of 35 members attending the class	
After 5 years experience	- \$16.00	Plus 10 cents per paying member in excess of 35 members attending the class	
After more than 6 years experience	- \$18.00	Plus 10 cents per paying member in excess of 35 members attending the class	30

Plus for every member reaching Lifetime Membership a Lecturer may claim 20¢, this amount to be substantiated by sending in members' cards for Lifetime Membership.

Annexure "C" to Affidavit  
of Richard Bruce Jamieson

3. The Lecturer is not an employee of the Company but is an independent contractor and shall perform her duties free from the direction and control of the Company and she will attend without payment one Saturday Meeting of Lecturers per month at which she will inter alia be weighed.

4. The Lecturer shall to the best of her ability:-

- (a) deliver the lectures and teach the Programme and Plateau and Maintenance Plans;
- (b) select and train sufficient recorders and weighers to properly conduct the lectures; 10
- (c) ensure that the classes are properly organised and controlled;
- (d) report to the Company upon the functioning of each class;
- (e) account to the Company for fees and dues received from the members of each class at which she lectures and in this regard the Lecturer shall be the Company's agent for collection and shall as soon as possible thereafter deposit the nett receipts to the credit of the Company's account at the National Bank 20  
of Australasia Limited, 249 Pitt Street, Sydney;
- (f) conduct the class so as to advance the welfare of the members according to the principles of Weight Watchers International Inc.;

(g) contact by phone or call on members who have been absent from meetings.

5. The Lecturer shall be responsible for paying her recorders and weighers and the rental for the Hall for each class.

6. The Company agrees to rent to the Lecturer for the period of her engagement hereunder the "Weight Watchers Lecturers' Handbook" for a rental of \$5.00. The Lecturer undertakes that forthwith on the termination of her engagement hereunder for whatever reason she will immediately return to the Company her "Weight Watchers Lecturers' Handbook" and all other documents supplied to her in connection with such engagement and any copies thereof. When the said Handbook is returned in good condition, the Company will refund to the Lecturer the said rental of \$5.00.

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7. The Lecturer shall not without the express written permission of the Company use copy reproduce or distribute or disclose to any person not entitled thereto:-

(a) any material contained in the "Weight Watchers Lecturers' Handbook"; or

(b) any other material which comes into her possession as a Lecturer; or

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(c) any information concerning members of Weight Watchers which she acquires as a Lecturer.

8. From time to time the Company will make available to the

Lecturer books and other materials for purchase and resale by the Lecturer. She will pay the price of such books or products upon resale by her to members, and she shall be entitled to return any of them unsold to the company, without obligation to pay, at any time prior to the termination of this Agreement.

9. The Lecturer covenants with the Company as follows:-

- (a) during the continuation of her engagement hereunder and after its termination the Lecturer will not hold herself out in any way in relation to weight control skills as being associated with or acting on behalf of the Company or Weight Watchers International Inc., except in so far as she may be authorised by the Company to do so. 10
- (b) she will not during (i) her engagement as a Lecturer or (ii) the period of 1 year after she ceased to be a Lecturer under this agreement (without the prior approval of the Company in writing) solicit or deal with any persons:-
  - (i) who were members of any classes held or supervised by the Lecturer during such engagement. 20
  - (ii) or with whom she was directly engaged at any time during a period of one (1) year preceding the date of termination of such engagement.

Annexure "C" to Affidavit  
of Richard Bruce Jamieson

In relation to the application or instruction in  
weight control skills for reward;

(c) she will not during the period of her engagement or  
thereafter disclose to any person any confidential  
information acquired from or in the engagement of the  
Company;

(d) that she will not (without the prior approval of the  
Company in writing) herself or as agent employee or  
contractor on behalf of any other person, carry on  
any business relating to the application of weight  
control skills for reward in respect of any person  
within the area of a circle having a radius of two  
(2) miles from any place in which, as a Lecturer con-  
tracted to the Company, she has carried out group  
therapy or given instruction in weight control  
skills.

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10. The restrictions referred to in clause 9 (d) of this  
agreement shall have operation for the period of one year  
after the date on which the Lecturer ceases to be a Lecturer  
under this agreement.

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11. The restrictions referred to in clauses 9 and 10 hereof  
and each of them shall have operation and are intended to have  
operation as separate and severable restrictions to the intent  
that each of them shall operate to the extent of the terms  
thereof as far as each of them lawfully may so do and the



operation of any of such restrictions shall not be affected by the fact that any other of them may be or shall be of no force or effect.

12. Where the context so admits words importing the feminine gender shall be read as also importing and including the male gender.

IN WITNESS WHEREOF the parties hereunto set their hands and seals on the date first hereinbefore written

The Common Seal of NARICH PTY. LIMITED )  
was hereunto affixed in the )  
presence of )  
SECRETARY ) DIRECTOR  
Signed Sealed and Delivered by the )  
said Lecturer in the presence of: ) LECTURER  
WITNESS )

10

Annexure "D" to Affidavit  
of Richard Bruce Jamieson

"D"

NARICH PTY. LIMITED  
MONTHLY TOTAL FEES FOR LECTURE STAFF FOR PERIOD 1ST NOVEMBER  
1973 TO 30TH JUNE 1977

NOVEMBER	1973	10,222.01	
DECEMBER	1973	7,720.76	
JANUARY	1974	8,328.34	
FEBRUARY	1974	9,854.73	
MARCH	1974	10,618.49	
APRIL	1974	9,168.88	10
MAY	1974	9,608.49	
JUNE	1974	7,208.84	
JULY	1974	9,669.40	
AUGUST	1974	11,952.38	
SEPTEMBER	1974	9,892.70	
OCTOBER	1974	10,208.46	
NOVEMBER	1974	11,230.16	
DECEMBER	1974	10,835.85	
JANUARY	1975	10,184.18	
FEBRUARY	1975	11,579.12	
MARCH	1975	11,101.89	
APRIL	1975	11,012.74	
MAY	1975	14,008.60	
JUNE	1975	11,537.28	
JULY	1975	14,634.96	
AUGUST	1975	12,019.63	
SEPTEMBER	1975	12,868.25	
OCTOBER	1975	12,972.43	
NOVEMBER	1975	13,386.85	
DECEMBER	1975	11,084.75	30
JANUARY	1976	13,729.30	
FEBRUARY	1976	11,380.08	
MARCH	1976	12,895.80	
APRIL	1976	11,827.86	
MAY	1976	14,728.80	
JUNE	1976	12,433.70	
JULY	1976	16,185.25	
AUGUST	1976	13,228.92	
SEPTEMBER	1976	14,224.50	
OCTOBER	1976	17,928.59	40
NOVEMBER	1976	14,762.96	
DECEMBER	1976	13,658.91	
JANUARY	1977	13,521.80	
FEBRUARY	1977	14,174.25	
MARCH	1977	14,441.00	
APRIL	1977	18,925.35	
MAY	1977	16,381.24	
JUNE	1977	20,025.70	
TOTAL		<u>\$547,364.18</u>	

This is the annexure  
marked "D" referred to  
in the Affidavit of  
RICHARD BRUCE JAMIESON  
Sworn the 20th day of  
December, 1979

G. Harris  
Solicitor

Annexure "E" to Affidavit  
of Richard Bruce Jamieson

"E"

NEW SOUTH WALES GOVERNMENT

Pay-Roll Tax Office  
St. James Hall  
169 Phillip Street, Sydney 2000  
Box 5069, G.P.O. Sydney 2001

The Secretary,  
Narich Pty. Limited,  
P.O. Box A691,  
SYDNEY SOUTH. 2000

Our reference:

PW.KW

Your reference:

Telephone: 231 4966  
Extension:

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(Date Stamp  
received 28 June 1978)

NOTICE

You are hereby notified that an assessment has been made in accordance with section 18(2) of the Pay-roll Tax Act, 1971 and you are liable to pay Pay-roll Tax and additional tax as set out hereunder:

Assessed amount of wages for the period  
1st November 1973 to 31st August 1974  
upon which further tax ought to be levied.  
\$94,352.32

20

Assessed amount of wages for the period  
1st September 1974 to 30th June 1977 upon  
which further tax ought to be levied.  
\$453,102.94

Amount of further tax payable on assessed amounts - \$26,901.00  
Additional tax payable under Section 18(5) 53,802.00  
Total amount of tax payable \$80,703.00

Payment of the sum of \$80,703.01 being further tax and additional tax is required within fourteen (14) days of the date of this Notice.

30

Dated this 26th day of June, 1978.

(Sgd.) N.L. Hudson  
N.L. Hudson  
Delegate of the Commissioner of  
Pay-Roll Tax.

Annexure "E" to Affidavit  
50. of Richard Bruce Jamieson

This is the annexure marked "E" referred to in the Affidavit of RICHARD BRUCE JAMIESON Sworn the 20th day of December, 1979

G. Harris  
Solicitor

Annexure "E" to Affidavit  
of Richard Bruce Jamieson

Objection may be lodged against this assessment within sixty (60) days after the service of this Notice.

Any application for relief from payment of additional tax should be in writing and should state the basis on which the application for relief is made.

Notwithstanding any objection or application for relief, the total amount payable must be paid on or before the date specified otherwise the provisions of section 22 relating to penal tax will apply.

"F"

NEW SOUTH WALES

PAY-ROLL TAX ACT 1971

NOTICE OF OBJECTION AGAINST ASSESSMENT

NARICH PTY. LIMITED

File Number

NARICH PTY. LIMITED objects to the assessment of further tax which the Commission of Pay-Roll Tax claims by Notice of Assessment dated 26 June, 1978 ought to be levied upon an assessed amount of wages for the periods 1 November, 1973 to 31 August, 1974 and 1 September, 1974 to 30 June, 1977 respectively.

10

NARICH PTY. LIMITED claims that the assessment made by the Commissioner ought to be reduced by the excision of

- (a) \$94,352.32 claimed to be the assessed amount of wages for the period 1 November, 1973 to 31 August, 1974 upon which further tax ought to be levied.
- (b) \$453,102.94 claimed to be the assessed amount of wages for the period 1 September, 1974 to 30 June, 1977 upon which further tax ought to be levied.

20

The grounds upon which NARICH PTY. LIMITED relies are:

1. Neither the sums \$94,352.32 or \$453,102.94 nor any part of them were wages, salary, commission, bonuses or

Annexure "F" to Affidavit  
of Richard Bruce Jamieson

allowances paid or payable to an employee or alternatively  
to an employee as such.

- 2. Neither the said sums nor any part of them were:
  - (a) wages within the meaning of the Pay-Roll Tax Act,  
1971;
  - (b) wages liable to pay-roll tax under the said Act;
  - (c) taxable wages within the meaning of the said Act.

3. Alternatively, if the said sums or any part of them were  
wages or wages liable to pay-roll tax or taxable wages  
within the meaning of the said Act (which is denied)  
neither they nor any part of them were paid or payable  
by Narich Pty. Limited as the employer.

10

DATED 24th August, 1978

THE COMMON SEAL of NARICH )  
 )  
PTY. LIMITED was hereunto )  
 )  
 affixed by authority of the )  
 )  
 Board of Directors previously )  
 )  
 given and in the presence of: )

(Common Seal of Narich Pty.  
Limited)

(Sgd.) R. B. Jamieson  
.....  
Director

(Sgd.) D. J. McIntyre  
.....  
Secretary

ADDRESS FOR SERVICE OF NOTICES

20

C/- Messrs. Baker and McKenzie  
Solicitors and Attorneys  
26th floor, A.M.P. Centre  
50 Bridge Street,  
SYDNEY N.S.W. 2000  
D.X. 218 Sydney  
Telephone: 231 5488  
Ref: LGF

No. 3 - Affidavit of Beatrice Santea

IN THE SUPREME COURT OF NEW SOUTH WALES

ADMINISTRATIVE LAW DIVISION

605 of 1978

NARICH PTY. LIMITED

Plaintiff

COMMISSIONER OF

PAY-ROLL TAX

Defendant

---

A F F I D A V I T

---

Deponent: Beatrice  
Santea

Sworn: 23 October, 1979

Baker & McKenzie  
Solicitors,  
26th floor,  
A.M.P. Centre,  
50 Bridge Street,  
SYDNEY. N.S.W. 2000  
DX 218  
Phone: 231 5488  
PTD/GCH

G. Harris      B. Santea

On 23 October, 1979, I, BEATRICE  
SANTEA of 363 Sailors Bay  
Road, Northbridge in the State  
of New South Wales, Design  
Draftswoman say on oath:

1. I am an electrical design  
draftswoman and lighting design-  
ner. 10

2. I have been a Lecturer con-  
ducting Weight Watchers meetings  
since September, 1976. I am  
engaged to do this by Narich  
Pty. Limited ("Narich"). When  
I commenced lecturing I signed  
an agreement with Narich. I no  
longer have the copy of that  
agreement which I was given at  
the time. Although I have 20

searched through my records and  
papers, I am unable to find it.  
Annexed hereto and marked with  
the letter "A" is a copy of an  
agreement which I believe is in  
the same terms as the agreement

Affidavit of Beatrice  
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I signed when I commenced lecturing except that the agreement I signed was dated and had my name and address inserted in it.

3. At about the end of 1975 or the beginning of 1976 I considered that I was overweight and became a member of Weight Watchers and attended meetings with the intention of reducing my weight. I attended these meetings for about six months and followed the course conducted by the lecturer. I was successful in reducing my weight to what is called by members of Weight Watchers my "goal weight".

4. Some time after attaining my goal weight I accepted an invitation by Narich to become a lecturer and to conduct my own Weight Watchers meetings or classes.

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5. Before I commenced lecturing I was instructed how to conduct meetings or classes by the Narich Training Manager. I received this instruction at the Narich city office on one night a week for eight weeks. The course I attended was known as a Training Workshop. The workshop was attended by persons other than myself who were also preparing to become Weight Watchers lecturers and to conduct Weight Watchers classes or meetings.

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6. During the training workshop we were given lectures and demonstrations and participated in lecturing practice. We were taught how Weight Watchers meetings were to be conducted and given instruction in public speaking.

G. Harris

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7. During the training workshop we were instructed in the Weight Watchers system of weight reduction and control and the food programme to be followed by persons wishing to reduce their weight and maintain it at their respective goal weights. This is known as the "program". Now produced and shown to me and marked "BS-1" is a copy of the "Weight Watchers program handbook" which I was given during the training workshop.

8. During the training workshop I also received instruction in the presentation of "modules". A module is a document handed out to members attending Weight Watchers meetings and it contains the matter to be discussed at that meeting. Now produced and shown to me and marked "BS-2" is a module entitled "How to Manage Eating Out".

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9. During the training workshop I received various lecture notes. Now produced and shown to me and marked "BS-3" is a copy of the lecture notes I received at the training workshop that still remain in my possession. I may have received other lecture notes at the training workshop but have not been able to find them.

10. During the time that I attended that training workshop I was told that the procedures and techniques referred to in the lecture notes handed to me were to be regarded as an outline only and that I was to be at liberty to develop my own techniques and methods of delivering lectures. I was told that I

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should draw on my own experience and use incidents from that experience or from my observations in delivering lectures to the classes that I was to conduct.

11. At the completion of the training workshop I received a cheque for \$10 which was a reimbursement of travelling and other expenses incurred by me in attending the workshops. Subject to that payment I did not receive any other payment from Narich for attending the training workshops.

12. After I commenced lecturing to Weight Watchers meetings and throughout the period to June 30, 1977 I received various bulletins, circulars, magazines and other materials dealing with the subject matter of the lectures that I was conducting throughout that period. I regarded the material I received as useful aids to me in conducting my lectures and did not consider that I was under an obligation to use every item of material in delivering my lectures. I considered that the material was sent to me to enable me to use such of it that I found helpful in the presentation of my lectures at the Weight Watchers meetings. 10

13. During the period from about September 1976 to about March or April 1977 I used the lecture notes referred to in paragraph 9 above to help me in the preparation of the Weight Watchers meetings I conducted during that period. 20

14. In about March or April 1977 I received a book entitled  
G. Harris            B. Santea

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"Lecturers Handbook", which I no longer have in my possession. At about the same time I received a further "Weight Watchers Program Handbook" a copy of which is now produced and shown to me and marked "BS-4", and a "Lecturer's Program Teaching Guide" which is now produced and shown to me and marked "BS-4A". Subject to the qualification in the next sentence, I used the documents referred to in this paragraph to assist me in the preparation of my lectures from about the time I received them and did not thereafter refer to the documents given to me during and at the end of the training workshop. I am un- 10  
certain whether I used the two last mentioned documents before or after June 30, 1977.

15. When I first commenced holding Weight Watchers meetings I conducted them once a week for two or three months in a Church hall at Collaroy Plateau at about 7.00 p.m. for approximately one hour. From about November, 1976 until June 30, 1977 I conducted my Weight Watchers meetings once a week at about 5.30 p.m. in the Board Room in the Block House Building of the University Union at the University of N.S.W. Kensington.

16. The meeting at Collaroy Plateau had been conducted by 20  
another lecturer before I commenced holding classes there. To the best of my information and belief the hiring fee for the church hall was paid by Narich.

17. I began the meetings which were held at the University of N.S.W. in about November of 1976. My husband who worked

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at the University and was then a lifetime member of Weight Watchers approached the Students Union there for the purpose of establishing a Weight Watchers meeting on the campus. When the meetings began, he acted as my Recorder and Weigher. No hiring fee was paid for the use of the room in the University Union.

18. When I first commenced conducting the Weight Watchers meetings it took me longer to prepare for the meetings than it did for the meetings I conducted at about June 30, 1977. At the beginning of the period it took me varying times to prepare for the meetings. Sometimes I spent up to five hours in preparation. As I became more experienced in conducting the meetings my period of preparation reduced. I did not receive any fee from Narich for the period that I spent preparing for the Weight Watchers meetings that I conducted.

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19. During the period ending June 30, 1977 I prepared for the Weight Watchers meetings that I conducted at various times prior to the meetings when I had time available to me. I was not directed by Narich as to the amount of time nor the time at which I should prepare for my Weight Watchers meetings.

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20. On each day that I conducted a Weight Watchers meeting I arrived at the place where it was to be held some little time before the time of commencement for the meeting to set up the weighing scales and to display the various literature that I intended distributing or offering for sale to members

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attending the meeting. The time at which I arrived at the place where the meeting was to be held varied and depended upon my judgment of what I needed to do to have the meeting start at the prearranged time and also upon the time at which I finished my other commitments for that day prior to the meeting. I was not paid by Narich for any time spent by me in setting up the weighing scales and displaying the literature before each meeting.

21. I did not cancel any meeting during the period ending June 30, 1977. It is my belief that if I had cancelled or had not been able to conduct a meeting I would not have received my fee for that meeting.

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22. During the period to June 30, 1977 the Weight Watchers meetings conducted by me were attended by varying numbers of people but to the best of my recollection the average number was approximately fifteen at each meeting.

23. I was assisted in conducting the meetings by a recorder and a weigher. These were members of the class who were appointed by me from time to time. Before I appointed a member of the meeting I discussed it with the members during the meeting and asked one of them to volunteer for each of these jobs. I describe later in this affidavit the function that they performed at the meeting. Recorders and weighers were members of the meeting who were participating in the course that I conducted and who paid their weekly fees. However, I

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paid the recorders and weighers at the end of each meeting for their services being respectively \$4 and \$3.50.

24. At about the appointed time for each meeting the members arrived. New members paid a joining fee to the recorder who sat at a desk in the meeting room. They also completed an application form with the help of the recorder. The membership fee varied depending upon the status of the applicant; students and persons receiving social security benefits paid less than the normal joining fee. As each member joined he was given an attendance book by the recorder. Now produced and shown to me and marked "BS-5" is a copy of a membership application and attendance book.

10

25. Each week thereafter that the member attended a Weight Watchers meeting he or she presented the membership book to the recorder and paid the weekly fee which varied depending upon the status of the member; students and members receiving social security benefits paid a smaller fee than ordinary members and life members who were at goal weight did not pay any fee. When the members paid their weekly fees, the recorder stamped the attendance book to verify that member's attendance at the meeting. Payment of the weekly fee entitled the member to attend as many classes as he or she desired in the week whether conducted by myself or some other Weight Watchers Lecturer. Members were required to pay weekly whether or not they attended a lecture in that week to encourage their

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regular attendance and adherence to the program although each member was given three complimentary stamps per year each entitling him or her to be absent from one weekly meeting.

26. After the recorder stamped the member's attendance book he also recorded the member's attendance on a card kept by me for that purpose. A supply of such cards was made available to me from time to time by Narich. The recorder then handed the card to the member who then presented himself to the weigher.

27. The weigher's function was to supervise the weighing of each member on scales supplied to me by Narich for that purpose. As each member was weighed the weigher recorded his weight on the member's attendance book and the attendance card kept by me. 10

28. As the members arrived at the meeting the recorder completed a tally sheet which was a printed document supplied to me by Narich. The recorder filled in on the tally sheet details of the attendance of members, the amount of their subscriptions, and any money paid by them for purchases made by them of food weighing scales, reading matter and other material given to me by Narich for sale on consignment. 20

29. As each member was weighed he handed to me his card and then sat down on one of the chairs provided.

30. I began each lecture by greeting those who were present and by introducing new members attending for the first time.

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I then discussed the module that had been distributed to the members by the recorder as they entered the meeting place. In discussing it with them I encouraged them to participate by discussing my own experiences and by trying to get them to discuss their experiences as well. I tried to provoke the discussion by asking them questions about the subject matter of the module. I also used cue cards which I held in my hand for the purpose of directing my mind to the salient features of the module. Now produced and shown to me and marked "BS-6" is a set of cue cards for the module entitled "How to Manage Eating Out", Exhibit BS-2 hereto. 10

31. On each alternate week I introduced a new module to the meeting. In the intervening week I conducted what was called a feedback session and instead of introducing the module I discussed with the members their experiences in following out the program specified in the module that I had introduced in the preceding week.

32. After introducing the module or completing the feedback discussion I moved on to the next part of the meeting which was known as "card calling". I went through the cards of the members attending the meeting and read out the name of each person and their weight loss or gain since the preceding week. I congratulated members who had lost weight and encouraged the other members present to show their recognition of this achievement by applause. I sympathised with and encouraged members 20

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who had gained weight in the preceding week and encouraged them to discuss with the class and try and identify the reasons for their weight gain.

33. As each member joined a Weight Watchers class I determined for him or her his goal weight by reference to material made available to me by Weight Watchers, which are now produced and shown to me and marked "BS-7".

34. At the card calling part of each meeting I made a special point of congratulating members who had attended meetings for sixteen weeks and lost a minimum of ten pounds on the way to reaching their goal weight. If there was any such person who had lost the minimum ten pounds I presented him with a recognition pin and encouraged the other members present to show their appreciation by applause. 10

35. From time to time I also presented other awards or highlighted individual members' exceptional achievements when they achieved their goal weight.

36. I varied the way in which I conducted those meetings so that members would not become bored.

37. Narich supplied me with the modules that I distributed at my meetings. It took me approximately six months to work my way through the presentation of the modules in any particular course comprised by the modules Narich supplied to me. 20

38. When a member's weight reduced to a weight above goal weight prescribed by Narich I handed the member a document

Affidavit of Beatrice  
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called a "levelling plan" and instructed him or her in its use. Now produced and shown to me and marked "BS-8" is a copy of a "levelling plan".

39. I encouraged the members attending the meetings to look forward to a time when, having reached their respective goal weights, they would control food consumption so as to maintain their goal weight. I told them that the control of food consumption at that time incorporated many of the features used during the weight reduction period, but allowed additional foods to be added consistent with the stabilisation of their weight while allowing for a degree of increase in their intake of calories. As they reached goal weight I handed each member a booklet entitled "Weight Watchers Maintenance Plan" a copy of which is now produced and shown to me and marked "BS-9".

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40. At the conclusion of each meeting the recorder handed me the tally sheet for completion. It was completed by either the recorder or myself filling out and totalling all of the moneys received at the meeting and noting the amounts to be deducted including my fees and the amounts to be paid to the recorder and the weigher. I then signed the tally sheet and handed to the weigher and the recorder their fees and took the amount of my fees. Now produced and shown to me and marked "BS-10" is a copy of a blank tally sheet in the form used by me.

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41. Following each meeting I deposited the balance of moneys collected by me at the meeting at the National Bank to the credit of Narich at the Pitt Street, Sydney Branch of the bank. I then posted the duplicate deposit slip together with the completed tally sheet and any new member cards to Narich at its Head Office.

42. I did not receive any payments from Narich but deducted any fees payable to me in respect of the Weight Watchers meetings I conducted from the membership fees received at each meeting in the manner described above.

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43. I have acted as a substitute lecturer for another Weight Watchers Lecturer to the best of my recollection on only one occasion during the period ending June 30, 1977. The lecturer who usually conducted that Weight Watchers meeting was unable to do so and I discussed the module with that Weight Watchers class that that lecturer had intended discussing at the meeting. I conducted that meeting in the same way that I conducted my meetings as described above and deducted my lecturing fee from the membership fees collected at the meeting.

44. To the best of my recollection a supervisor employed by Narich attended a Weight Watchers meeting conducted by me on one occasion only during the period ending on June 30, 1977. That supervisor took no part in the meeting. At the end of the meeting the supervisor and I had a discussion about the way I conducted the meeting and the Supervisor made some

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suggestions about my technique and suggested that I consider them but did not suggest in any way that I was required to adopt any of them.

45. From time to time during the period ending June 30, 1977 I attended conferences and seminars and workshops conducted by Narich at which new information and techniques developed by or for it have been presented and explained to me and other lecturers. I was not paid for attendance on these occasions.

46. I became and have remained a lecturer at Weight Watchers meetings after I attained my goal weight and because I desired 10 to maintain it. By lecturing and encouraging others to do what I have done helps me to maintain my goal weight.

47. Narich does not deduct instalments for the payment of my income tax from the fees that I receive for conducting Weight Watchers lectures.

48. I receive a commission from Narich for selling cookbooks and other materials at Weight Watchers meetings. I also receive a commission for introducing people to the Hoylake Hotel at Leura. I am not required by Narich to promote any of these other activities but do so as and when I wish. I deduct my 20 commission from the membership fees received by me at the meetings.

49. I do not regard myself as an employee of Narich. I regard what I do as a hobby.

G. Harris

B. Santea

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Santea

SWORN by the deponent )  
 )  
at Sydney before me: )

(Sgd.) B. Santea

(Sgd.) G. Harris

Solicitor

Annexure "A" to Affidavit  
of Beatrice Santea

"A"

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 197  
BETWEEN Narich Pty. Limited, a company having its Registered  
Office at C/- J.A. Douglas & Co., 21 Belmore Road, Randwick,  
and trading under the registered business name of "WEIGHT  
WATCHERS" of the one part AND  
of \_\_\_\_\_ (hereinafter called "the Lecturer")  
of the other part.

WHEREAS:

(A) the company has as the result of its own operations and 10  
through its associations with overseas companies acquired  
skill and information in relation to the techniques, systems,  
methods, principles, programs and lecture courses concerned  
with weight reduction of individuals and the business techni-  
ques promotion publicity and administrative procedures connec-  
ted therewith and the group therapy techniques and the con-  
trolled eating plans developed used and propagated in relation  
thereto (which are collectively referred to hereafter as  
"weight control skills"); and

(B) the Lecturer has agreed to act as a Lecturer at Weight 20  
Watchers classes and the Company has agreed to make available  
to her the "Weight Watchers Lecturers Handbook" containing  
material including the Program Food Plan for use as a Weight  
Watchers Lecturer and which the Lecturer agrees contains in-  
formation which is and remains the property of the Company

This and the following six pages comprise annexure "A" to  
the Affidavit of BEATRICE SANTEA Sworn this 23rd day of  
October, 1979 Before me:  
G. Harris  
Solicitor

and forms part of weight control skills;

(C) the Lecturer agrees that the weight control skills include confidential information and matters of confidence the disclosure of which and the use of which outside the business of the company would cause substantial loss and damage to the company.

NOW THIS AGREEMENT WITNESSETH

1. (a) The Lecturer will herself or by a substitute approved by the Company lecture one or more Weight Watchers classes as may from time to time be agreed between the parties to be held at such times and places as the Company may arrange. 10
  - (b) The engagement shall be terminable on 1 weeks notice in writing given by either party and expiring at any time.
  - (c) If the Lecturer fails or refuses to carry out her duties or obligations as a Lecturer in a proper manner or if the weight of the Lecturer exceeds her goal weight the Company may terminate her engagement without notice. 20
2. The Company will instruct the Lecturer in weight control skills as may be appropriate to the skill experience and ability of the Lecturer from time to time.
  3. The Company will pay the Lecturer a fee for each lecture and agreed ancillary tasks calculated as follows or such

Annexure "A" to Affidavit  
of Beatrice Santea

other fees as may from time to time be agreed upon between  
the parties:-

During 1st year experience - \$10.00 Plus 10 cents per paying  
member in excess of 40  
members attending the  
class

After 1 years experience - \$11.00 Plus 10 cents per paying  
member in excess of 40  
members attending the  
class

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After 2 years experience - \$13.00 Plus 10 cents per paying  
member is excess of 40  
members attending the  
class

After 3 years experience - \$14.00 Plus 10 cents per paying  
member in excess of 40  
members attending the  
class

After 4 years experience - \$15.00 Plus 10 cents per paying  
member in excess of 40  
members attending the  
class

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After more than 5 years  
experience - \$16.00 Plus 10 cents per paying  
member in excess of 40  
members attending the  
class

4. The Lecturer is not an employee of the Company and shall  
perform her duties free from the direction and control of the  
Company provided she follow the Weight Watchers Lecturers  
Handbook distributed by Weight Watchers International Inc.,  
of New York and she will attend without payment one Saturday  
Meeting of Lecturers per month at which she will inter alia  
be weighed.

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The Lecturer shall to the best of her ability:-



Annexure "A" to Affidavit  
of Beatrice Santea

- (a) deliver the Lectures and teach the Program and Levelling and Maintenance Plans,
- (b) select and train sufficient recorders and weighers to properly conduct the lectures,
- (c) ensure that the classes are properly organised and controlled,
- (d) report to the Company upon the functioning of each class,
- (e) pay her recorders and weighers and rental for the hall from the receipts of the class, 10
- (f) account to the Company for fees and dues received from the members of each class at which she lectures and in this regard the lecturer shall be the Company's agent for collection and shall as soon as possible thereafter deposit the nett receipts to the credit of the Company's account at the Bank of New South Wales, 60 Martin Place, Sydney.
- (g) conduct the class so as to advance the welfare of the members according to the principles of Weight Watchers International Inc. 20
- (h) contact by phone or call on members who have been absent from meetings.

6. The Lecturer undertakes that forthwith on the termination of her engagement hereunder for whatever reason she will immediately return to the company her Weight Watchers

Annexure "A" to Affidavit  
of Beatrice Santea

Lecturers Handbook and all other documents supplied to her in connection with such engagement and any copies thereof.

7. The Lecturer shall not without the express written permission of the Company use copy reproduce or distribute or disclose to any person not entitled thereto:-

- (a) any material contained in the Weight Watchers Lecturers Handbook; or
- (b) any other material which comes into her possession as a Lecturer; or
- (c) any information concerning members of Weight Watchers which she acquires as a Lecturer. 10

8. The Lecturer covenants with the Company as follows:-

- (a) during the continuation of her engagement hereunder and after its termination the Lecturer will not hold herself out in any way in relation to weight control skills as being associated with or acting on behalf of the Company or Weight Watchers International Inc., except in so far as she may be authorised by the Company to do so;
- (b) she will not during (i) her employment as a Lecturer or (ii) the period of 1 year after she ceased to be a Lecturer under this agreement (without the prior approval of the Company in writing) solicit or deal with any persons:- 20

- (i) who were members of any classes held or

Annexure "A" to Affidavit  
of Beatrice Santea

or supervised by the Lecturer during such engagement,

- (ii) or with whom she was directly engaged at any time during a period of one (1) year preceding the date of termination of such engagement:

In relation to the application or instruction in weight control skills for reward.

- (c) she will not during the period of her engagement or thereafter disclose to any person any confidential information acquired from or in the engagement 10  
of the Company.
- (d) that she will not (without the prior approval of the Company in writing) herself or as agent employee or contractor on behalf of any other person, carry on any business relating to the application of weight control skills for reward in respect of any person within the area of a circle having a radius of two (2) miles from any place in which, as a Lecturer contracted to the Company, she has carried out group therapy or given instruction in weight control skills. 20

9. The restrictions referred to in clause 8 (d) of this agreement shall have operation for the period of one year after the date on which the Lecturer ceases to be a Lecturer under this agreement.

Annexure "A" to Affidavit  
of Beatrice Santea

10. The restrictions referred to in clauses 8 and 9 hereof and each of them shall have operation and are intended to have operation as separate and severable restrictions to the intent that each of them shall operate to the extent of the terms thereof as far as each of them lawfully may so do and the operation of any of such restrictions shall not be affected by the fact that any other of them may be or shall be of no force or effect.

11. Where the context so admits words importing the feminine gender shall be read as also importing and including the male gender.

10

IN WITNESS WHEREOF the parties have hereunto set their hands and seals on the date first hereinbefore written.

The Common Seal of NARICH PTY. LIMITED )  
 )  
was hereunto affixed in the presence of:) \_\_\_\_\_  
Director

\_\_\_\_\_  
Signed Sealed and Delivered by the said )  
 )  
Lecturer in the presence of: ) \_\_\_\_\_  
Lecturer

No. 4 - Transcript of evidence before His Honour  
Mr. Justice Woodward

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
ADMINISTRATIVE LAW )  
DIVISION )

No. 605/78

CORAM: WOODWARD, J.

MONDAY, 17TH NOVEMBER, 1980.

NARICH PTY. LIMITED v. COMMISSIONER OF PAYROLL TAX

MR SHAND, Q.C. with MR TREW appeared for the plaintiff.  
MR MASTERMAN, Q.C. with MR BRYSON appeared for the defendant.

MR. SHAND: If I might hand your Honour a copy of the relevant provisions of the Act. Part 3, s.6 deals with the subject - under Pt.3, liabilities of taxation; and in sub-s.1 and sub-s.10 it speaks of the "Wages liable to payroll tax ..."; and then there is sub-ss. deal with the locality of the wages. I do not think it is necessary to go into a detailed perusal of the Act, except to come back to sub-s.1 of the definitions section (reads) "... to any employee as such", and those last words are probably the significant ones for these purposes, and they bring in a wealth of authority on the subject. 10

The summons merely asks for an order (reads) and your Honour then is referred to the affidavits for the purpose of identifying the particular objection which is involved - annexure E to the affidavit of Richard Bruce Jamieson sworn 20th December, 1979; then the notice of the assessment, and it deals with two different periods, productive of a total figure of \$80,703.1. Annexure F is the notice of objection, and it merely seeks for these two figures to be excised, upon which the the tax is assessed, assigning the grounds relied upon, which we submit is in effect the matter in dispute. Grounds two and three really only get at the same problem under differing routes, under the provisions of the Act. 20 30

Your Honour, on the approach that we would seek to take to the matter the materials we would seek to put before the Court are material which we have filed in support of the summons, and they consist of the principal affidavit, the affidavit of Mr Jamieson, who is Chairman of Directors of the plaintiff; and the affidavit of Mrs Santea who is and was at the relevant time a lecturer. Mr Jamieson in effect is the founder of the business of Narich, and has been so since about

1969 and his affidavit indicates there has been a succession of agreements between the plaintiff company and lecturers from 1973 approximately, including one which your Honour will see referred to as being an unauthorised agreement, which he says was a form of agreement which came into existence and was used as a form of agreement by an employee of the company who has added certain provisions, but it is not signed by the company. We will be putting to your Honour that the appropriate forms of agreement for consideration are in effect those which are produced to him and marked R.B.J.2 and R.B.J.4, and they again appear as annexures A and C to the affidavit. There is a very large volume of documents associated with Mr Jamieson's affidavit, some of which are annexures, others which have been exhibited to him, and obviously some of the details are significant, other material is not, and it will be a matter for discussion no doubt as to what parts are considered relevant. Included in the material is the franchise between Weight Watchers Pty Limited and Narich; and quite a quantity of material really referred to in the affidavit consists of the advisory material supplied by the plaintiff to lecturers for the purpose of the lecturers making use of them at meetings which are held.

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Mrs Santea is put forward as being a typical lecturer during the period involved - and needless to say it would have been an onerous and repetitive task to put many lecturers and their material before the Court; that Mr Jamieson will depose that she is representative of the lecturers covered by the period during which wages have been paid and payroll tax assessed.

(Affidavit of Richard Bruce Jamieson sworn 20th December, 1979 now read by Mr Trew)

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(Photocopy of franchise agreement of 1st June, 1979, together with various supplementary agreements extending the area of the franchise and of the assignment tendered and marked Ex.A)

(Document, annexure R.B.J.2 tendered and marked Ex.B)

(Document, annexure R.B.J.3 tendered and marked Ex.C)

(Further bundle of agreements tendered. Three of the agreements objected to as being all dated after 1st July, 1977 - this part of tender not pressed. Sixty-eight agreements as above admitted and Marked Ex.D)

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(Three agreements abovementioned now M.F.I.1)

(Document, annexure R.B.J.5 tendered and marked Ex.E)

(Document -tentative goal weights - tendered and marked  
Ex.F)

(Booklet - Weight Watchers, by Jean Nidetch tendered,  
marked Ex.G)

(Pamphlet, annexure R.B.J.8 tendered and marked Ex.H)

(Document - set of weights - R.B.J.9, tendered and marked  
Ex.J)

(Copies of notes of lecture themes, R.B.J.10 tendered and  
marked Ex.K)

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(Weight Watchers Programme Handbook R.B.J.11 tendered and  
marked Ex.L)

(Weight Watchers Levelling Plan R.B.J.12 tendered and  
marked Ex.M)

(Weight Watchers Maintenance Plan, R.B.J.13 tendered and  
marked Ex.N)

(Lecturers' Handbook, R.B.J.14 tendered and marked Ex.O)

(Kit - award pins and date stamp, R.B.J.15 tendered and  
marked Ex.P)

(Various printed forms used in connection with Weight  
Watchers meetings, R.B.J. 16 tendered and marked Ex.Q)

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(Bundle of documents, R.B.J.17 tendered and marked Ex.R)

(Short adjournment)

(Mr Trew continues reading from par. 35 of Mr Jamieson's  
affidavit)

(Mr Masterman objects to pars. 40, 41 and 42, the last  
sentence of par. 44, pars. 51, 61 and 62)

HIS HONOUR: I propose to leave them for the moment. I will  
read them and not admit them into evidence until we can see  
what qualifying evidence is given in respect of them.

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(Mr Trew continues reading from Mr Jamieson's affidavit)

(Copy of training modules, R.B.J.18 tendered and marked Ex.S)

(Documents, R.B.J.19 tendered and marked Ex.T)

(Lecturers' Handbook, R.B.J.20 tendered and marked Ex.U)

(Cue cards, R.B.J.21 tendered and marked Ex.V)

(Affidavit of Mrs Beatrice Santea sworn 23rd October, 1979 now read by Mr Trew)

(Weight Watchers Programme Handbook tendered and marked Ex.W)

(Training module, B.S.2 tendered and marked Ex.X)

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(Training lecture notes, B.S.3 tendered and marked Ex.Y)

(Weight Watchers Handbook, B.S.4 tendered and marked Ex.Z1)

(Lecturers' Programme Teachers Guide, B.S.4A tendered and marked Ex.Z2)

(Membership application form and attendance book, B.S.5, tendered and marked Ex.AA)

(Set of cue cards, B.S.6, tendered and marked Ex.AB)

(Material supplied by Weight Watchers, B.S.7, tendered and marked Ex.AC)

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(Copy of levelling plan, B.S.8, tendered and marked Ex.AD)

(Weight Watchers reduction plan, B.S.9, tendered and marked Ex.AE)

(Blank tally sheet, as used by witness, R.B.J.10 tendered and marked Ex.AF)

(Luncheon adjournment)

BEATRICE SANTEA  
Sworn and examined:

MR SHAND: Q. Is your full name Beatrice Santea? A. Yes.

30



Q. You live at 363 Sailors Bay Road, Northbridge? A. Yes.

Q. Your occupation is that of a design draughtswoman and lighting designer? A. Yes.

Q. You swore an affidavit on 23rd October last year concerning this matter? A. Yes.

Q. You do now still carry on your work as a lecturer? A. Yes.

Q. I want to ask you about the period which concluded on 30th June, 1977, do you understand that? A. Yes.

Q. A few additional matters about that. First of all is there preparatory work that you do prior to going to the place where you conduct your lectures or that you did then? A. Yes. 10

Q. Would you tell us the sort of work you did and where you did it?

HIS HONOUR: Q. Remember, this is the time before July, 1977 that you are being asked about now? A. Yes. I had to prepare lectures as I conduct the class; I must know what I am talking about. I have to prepare the topic of that particular night, the module. I have tried always to do something interesting, so that members will not be bored. I had to read notes, accumulate different information to present a lecture which, as I said, is interesting. 20

MR SHAND: Q. But what material did you refer to for the purpose of preparing yourself for the lecture? A. I referred to some idea, the basic idea taken from some notes which had been given to me at the workshop, but basically I am trying to find the right answer in books that I have purchased, on human behaviour for instance, and trying to get also nutrition information.

Q. You spoke about books on human relations. Do you mean by that that some psychological approach was a matter that you attended to? A. Yes. 30

Q. So you obtained books by other authors - quite apart from the Weight Watchers lecturer? A. Yes.

Q. Who paid for that? A. I paid for that.

Q. Were you reimbursed by Narich? A. No.

Q. Did you do any pictorial work? A. I did as much as I can visually, so that members will leave the meeting with an

idea with a picture in their minds, of a summary of the topic, that is discussed on this night; and as you know it is better to absorb what you see than what you hear so I used the visual, which I did during the weekend, of course.

Q. When did you prepare the visuals? A. Well, the weekend before.

Q. Would you look at the documents I now show you? Are these examples of the visuals that you have prepared? A. Yes, part of them.

Q. These are ones that you had prepared presumably in the last year, are they? A. No, some are much older and at one time I even paid somebody to do something really pictorial, but then I realised that words mean more than pictures. 10

Q. Would you look at these and tell us whether they represent visuals you have prepared for these lectures, and whether they are partly those which you have used before July, 1977? A. Yes. I can say that this was. It is an old one, very old. That is to explain to them what is a module, which is like a brick in a structure, and each brick adds to the structure; and that is the way the modules help with the ability to learn how to cope. 20

Q. Can you tell us, where does the wording come from. Does the wording come from Narich? A. Yes, there is one here - "How to Get Help from Loved Ones and Friends". That is one of the modules that was given to the class.

Q. Was that one used by you before 30th June, 1977? A. Yes, definitely.

Q. Could you pick out any other used by you at that time? A. That is one, but I have made it again, because being used quite a while ago it became in a terrible condition, it was torn and so on, so I had to remake it. 30

(Visual sheet setting out modules tendered and marked Ex.AG)

(Further visual sheet tendered and marked Ex.AH)

Q. With regard to Ex.AH, where did that wording come from? A. That wording came from the lecture, and the manual, that particular one, and part of it from myself.

Q. So you have used some of your own wording on that? A. Yes.

Q. Any other particular ones there that you can date back to that period? A. I am not sure. I am sorry. But during 1977 that was one of them, but I cannot tell you for sure whether it was before June or after. The others are more recent, one year or two years ago.

(Further visual sheet tendered and marked Ex.AJ)

Q. Where did you get the wording from for that last one, Mrs Santea? A. I made it up.

Q. Were you paid for the time you spent preparing these documents before lectures? A. No Sir. 10

Q. I want to ask you whether you can give us any examples about actual expenses that you incurred in preparing for lectures at that time. Were there such matters? A. Well, preparing the lecture itself, the material, gathering material. If I saw in a magazine something which was interesting I would buy that particular magazine; plus those books I told you about. I would say also at the beginning at that particular time, I spent on tapes, because I was not quite sure of myself at the beginning and I wanted to listen to those tapes, to get an idea how well my voice would get across to the class. 20  
Of course I have still some of those tapes, plus the correcting of the food diary sheet from the members, which at that particular time took much longer than it does now.

Q. Can we pause there. I want to show you a document called a Programme and Maintenance Diary bearing a recent date. Was the form in which these details appear used in a period we are talking about? A. Yes.

Q. And filled out in the same way? A. Yes.

Q. And examined by you in the same way? A. Yes, this is not checked. That is the way I would get a food diary from a member. It has not been checked by me yet. 30

(Document - programme and maintenance diary tendered and marked Ex.AK)

Q. The members were given their diet charts and instructions about their diet, were they, by you? A. Yes.

Q. And then they returned those diaries in order for you to be able to judge whether they had followed your instructions? A. Yes; mainly to see whether they understood - because it is very important that they understand the food programme.

Q. And you checked those diaries and commented in due course on them? A. Yes.

Q. Any other expenses that you incurred in that period of time in the preparation for your lectures, and the work that followed them? A. Well, mainly I would say because of time, because of spending so much time of a weekend I had to hire someone to help me with the housework as I am permanently employed.

Q. And throughout the period of your work as a lecturer have you been employed in the occupation you have described in your evidence? A. Yes, always. 10

Q. And that is a forty hour week, no doubt? A. Well, thirty-six.

Q. Do you have to make phone calls for your lecturing purposes? A. I make quite often, in the beginning mainly, phone calls. If a member was in arrears, and regularly attended the classes and didn't come for a couple of weeks, I would have to contact the member and find out whether it was from sickness or she wanted to give up. But I never claimed.

Q. Transport expenses going to and from lectures, were they met by you? A. Yes. 20

Q. Did you have expenses involved in preparing yourself by way of dress or grooming, hairdressing and things like that, for the purpose of your lectures? A. I don't think it applies to me, because in my permanent job I have to be always the way I am now, because I am meeting people always.

Q. In that early period I am talking about did you on occasion pay the rent for the hall that was used by you? A. No, never.

Q. And one other matter: did you travel overseas in the early period for the purpose of aiding you with further training or assistance in your lecturing? A. Well, I travelled overseas but not at that particular time. 30

#### CROSS-EXAMINATION

MR MASTERMAN: Q. When you say, at that particular time, Mrs Santea, to what date are you referring? A. Up to June 1977. But I travelled 18 months ago.

Q. Does that period up to 30th June, 1977 have any particular significance for you? A. In which respect?

Q. Well, when you are asked to recall a period before 30th June, 1977, does that date have any significance - A. I can recollect what happened. I know for sure I didn't travel at that particular time.

Q. And did you have to check back on any records of your own?  
A. Yes.

Q. Do you have for example, copies of your income tax return for 30th June, 1977? A. Yes.

Q. Do you have that with you? A. No, I didn't think that I was on trial. 10

Q. But you have looked at that though? A. Yes.

Q. And what income did it show for the year ended 30th June, 1977, from this activity? A. Very little.

Q. What do you mean by that? A. Well, because I didn't look at that particular one; it was in addition to my income from my job; and considering that I had so many expenses the remainder would not have been more than I would say at that particular time - I was paid \$11 a meeting, so that makes \$22 a week, which is I think quite a small amount, compared to my income from my job. 20

Q. I am just trying to get things in perspective, if I can, you did look at your return for the purpose of giving evidence?  
A. All I was asked was. I have not been asked to produce my income tax or anything like that, so until that time I didn't know if it is important.

Q. But did you look at it, or did you not look at it? A. I know that I declared money from Weight Watchers.

Q. But either before swearing your affidavit or coming to give evidence here did you look at your income tax return for the year ending 30th June, 1977, for the purposes of this case? A. Not really, I have looked before, but not recently. 30

Q. Do you mean that you looked at it when you prepared the return? A. Exactly. I didn't look at it recently, when I come to Court.

Q. So that you didn't look at your income tax return for the year ended 30th June, 1977 for the purpose of preparing your affidavit? A. That is another year ago. Yes, I did look, but I didn't look at it recently.

Q. So you did look at it in connection with preparing your affidavit? A. Yes, but I didn't look recently; that means before coming to Court, or a week before.

HIS HONOUR: Q. And the affidavit was made over a year ago?  
A. Yes.

MR MASTERMAN: Q. How many weeks did that return show that you had worked prior to 30th June, 1977? A. I became a lecturer in 1976, September.

Q. Do you understand what I am asking you? A. Yes, so these are the weeks from September 1976 until June 1977. 10

Q. Is that what your return shows? A. That is right.

Q. Do you have some slip or some thing that shows you commenced as a lecturer at September 1976? A. Just the agreement with Narich.

Q. Do you remember the date? A. After I had done the workshop in 1976, I finished the workshop, I started work and at a particular time I signed an agreement. At that particular time I was paid \$10 per meeting and that was the only proof that I would have but considering that there is another agreement which has been signed later on I didn't think that I should keep the first one, but there is a copy of the first agreement although it doesn't bear my signature. 20

Q. Have you got a copy of your affidavit in front of you?  
A. No.

Q. I wonder if I might have the court copy. A. It is in my --

HIS HONOUR: Just a minute, just answer the questions as they are put to you.

MR MASTERMAN: Might the witness either have her own copy of the affidavit -- 30

HIS HONOUR: There is the original affidavit. Would you pass that to the witness.

MR MASTERMAN: Q. Would you like to look at that affidavit?  
A. Yes.

Q. Just read to yourself par. 2? A. Yes.

Q. Is that true? A. Yes, it is true.

Q. Did you say anything in that affidavit in that paragraph or anywhere about signing two agreements? A. No, because when that particular agreement was signed we referred to the period when only one agreement was in force, which has a copy attached.

Q. The copy that is attached is not dated, is that right?  
A. Yes, it isn't right - it is right because I don't have my agreement as it has been superseded by the second one.

Q. The second one was signed later, was it? A. Yes.

Q. In some different form? A. Similar to this one but there are different honorariums and mainly, the main points are the same. There are differences, for instance that here the starting is \$10 per week plus 10 cents per paying member in excess of 40 members. The new one is I believe \$11 and 10 cents in excess of 35 members. 10

Q. Have you recently seen the new one? A. No.

Q. How did you by reference to any agreement, and I may have misunderstood you, determined that you signed the original agreement in September 1976? A. Because it is when I finished my workshop and I was sent to work. 20

Q. What I was seeking to get from you, without taking too long about it, do you have any document, either some receipt or wages slip or copy of a tax return or anything that shows that you worked with Weight Watchers since September 1976? Do you have any piece of paper which would verify that you worked with Weight Watchers between September 1976 and the end of June 1977? A. From Weight Watchers?

Q. Yes. A. No I don't.

Q. Do you have any record of your own which would show that?  
A. My record, considering that I am not paid by cheque or am not - I take my honorarium from the class income so there could not be any record. 30

Q. That class income by the way you would regard as belonging to Narich? A. Of course.

Q. It would be correct to say that you are paid out of moneys which belong to Narich? A. I was entitled to retain out of the deposit, nett deposit, for Narich my honorarium after paying also the recorder and the weigher.

Q. Are you suggesting that those moneys that you deducted

were not payments received by you from moneys belonging to Narich? (Objected to: allowed: read). A. I would consider that they are, there was payment but I consider myself a freelance. I am not considering myself employed by Narich in any way.

HIS HONOUR: Q. I don't think that you ever maintained that the moneys did not belong to Narich? A. Of course I maintain that the income from the class was due to Narich. I was paid for that particular meeting as a freelance. I don't know, as I said. I have never in the agreement and everywhere it said I am not an employee of Narich, I am an employee of another firm. 10

MR MASTERMAN: Q. By the way, you said in answering the question before, you went on to add the theme that we have had already several times from you that there was a payment. I think you said in answer to the question that his Honour formulated you recognise there was a payment? A. There is a payment for services rendered.

Q. From Narich? A. From Narich.

Q. Not from the class members, from Narich? A. No, because the members paid to Narich. 20

Q. Yes, and the moneys you deducted were deducted from moneys belonging to Narich? (Objected to).

HIS HONOUR: Q. That is your view, that is what you believe? A. That is right.

MR MASTERMAN: Q. That they belonged to Narich, is that your belief, that is the question? A. I was doing a job now --

Q. Did you believe that they belonged to Narich or not? A. Of course they belonged to Narich, the income of classes, and I believe that it is normal that people pay for whatever they are getting. 30

Q. What did you mean in par. 42 of your affidavit when you said "I didn't receive any payments from Narich"? Is that your formulation or someone else's? A. No, that is the way I understood, a payment from Narich would have been a cheque, the way I am paid in the office. The way I am taking an honorarium is different to my way of understanding but that could be my bad English.

Q. In your income tax return did you show the moneys received as received from Narich? A. No, additional income. 40



Q. Not showing from whom they were received? A. No.

Q. Did you write this out yourself, this affidavit? A. Yes.

Q. You wrote it out in your own handwriting? A. Yes, I wrote it and then I had it checked and I rewrote.

HIS HONOUR: Q. I suppose there was some editing went on somewhere along the line? A. Of course.

MR MASTERMAN: Q. Going back to these dates when did you sign the second agreement that you have told us about? A. It is after June 1977.

Q. Much after? A. Yes.

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Q. How much after? A. I didn't think I should remember so many dates, I am terribly sorry that I can't answer.

Q. How long had you been carrying on lecturing duties when you signed this second agreement? A. I believe two years, but I am not sure.

Q. Your belief is you signed an agreement -- ? A. In 1978.

Q. In 1978, and your belief is that you signed an agreement at or about the time you started working as a lecturer, is that right? A. Yes.

Q. Then two years went by? A. Yes.

20

Q. And then you signed -- ? A. Yes.

Q. Another agreement? A. Because that one was superseded.

Q. Were you told why it was superseded? A. I didn't question.

Q. You just signed what was put in front of you? A. I read before I signed and I didn't think that there was very much difference so I just signed.

Q. How did it come to you, the second one, in the mail?

A. Yes, in the mail, we had it in -- I had it for I don't know how many days to examine, to read. I think it is after June 1977.

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Q. I thought you said it was in 1978? A. That is what I said, so I believe that we discussed a certain period of time up to June 1977.

Mrs Santea, xx.

(Mr Masterman called for agreement of 3rd July, 1977, signed by Mrs Santea. Mr Shand produced agreement and indicated that it was dated 4th July, 1977).

Q. Would you look at this document, is that the second agreement that you say you signed? A. No, it couldn't be that one.

Q. It couldn't be that one, you said? A. That was a different one with different rates.

Q. Do you think you might have signed a third agreement, is that what you are saying, or may be that is the first agreement you signed? A. No, the first agreement was when I started to lecture. That was something that happened after I finished the workshop. 10

HIS HONOUR: Q. What is the date of that agreement? A. 4th July, 1977.

Q. That doesn't quite fit in, does it, with what you were telling me beforehand? A. It is definitely that --

Q. That doesn't fit in with what you were telling me before, does it? A. I just try to remember because --

Q. Can you answer me that?

HIS HONOUR: Give her a chance to remember. Madam, you may be blamed for telling an untruth but you cannot be blamed for having a bad memory. 20

WITNESS: I can't remember because when I would sign an agreement for a job, a job where I am employed, where I have to do everything, I have to start at a certain time, I have to go home at a certain time and I have obligations towards that company and the company has some obligation towards me - it is generally with such an agreement you keep track, you remember, it is very important. For something which you do occasionally - as I said, I maintain as a hobby and I didn't pay very much attention to that agreement. 30

HIS HONOUR: Just a moment, I interrupted you, Mr. Masterman. I think, Madam, it is desirable that you answer the question. Don't make any explanation. If an explanation is required somebody will ask you for it. You are explaining why you can't remember. No one has asked you that. If you can't remember you just say "I can't remember" and there is no other problem. Wait for the next question.

WITNESS: 4th July.

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HIS HONOUR: Q. Is that the situation, and I do not want you to take me as suggesting this to you so that you should agree with me, but is the position that perhaps you don't remember?  
A. It is.

HIS HONOUR: That is your answer to the question.

MR MASTERMAN: Q. You do remember that the first agreement that you signed provided for \$10 in the first year? A. Yes.

Q. And the next agreement provided for an increased rate, you did mention it I think. What was the increased rate?

A. I think \$11, I found something not mine but my husband's. 10

Q. You are quite clear in your own mind, as you said in evidence, and I am not challenging this, that the first agreement that you signed had a provision for the payment of \$10 during your first year per lecture plus commission? A. Yes.

Q. What I am suggesting to you, Mrs Santea, is that this is the first agreement that you signed. Would you look at it again and just look at par. 2? A. Yes, I have seen, I looked at it.

Q. That is the first agreement you signed, is it not? A. I can't remember. It could be but I know that I started lecturing in September 1976. 20

Q. It may be that you signed this agreement later, after you had been working for some time - that is the agreement that you have in front of you dated 4th July, 1977 - is that a possibility? A. It is, but I can't remember.

Q. Perhaps you could tell me what parts of the handwriting in this agreement are yours? A. My signature.

Q. That is on p.5 under the word lecturer there is a signature is that yours? A. My signature, yes.

Q. Whose signature is the one to the left, do you know that? 30  
A. A witness, Estelle Gough.

Q. Do you know Estelle Gough? A. I knew her.

Q. Who was she? A. She was a training manager, area manager.

Q. She was the area manager? A. Yes.

Q. Did she train you? A. No, I was trained by somebody else. I was trained by Lynne Harris who was at that particular time the training manager.

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Q. Who was the training manager, Lynne Harris, is that right?

A. Yes, and the time was in 1976.

Q. Let's stay with this agreement. It was signed in front of your area manager? A. Yes.

Q. Does that help you to tell where it was signed? A. I don't know, I can't remember.

Q. Did she visit your home? A. I believe it was at Narich but I can't be sure.

Q. The second agreement you told us was different in some respects than this one, is that right? A. Yes.

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Q. It didn't have the \$10 in it, it had some higher figure? What was another difference? A. The 35 member commission, above 35 members instead of 40.

(Mr Masterman called for any agreement or copy agreement relating to Beatrice Santea prior to 4th July, 1977: not produced).

Q. Let me put this to you again, so far as you are in the witness box now and have had the opportunity to think about it, this may well be the first agreement that you signed?

A. It may be but I'm not sure.

20

Q. In all events you are also not sure as to whether you in fact signed your first agreement when you commenced lecturing or whether it might have been at some later period, that is what you have told us? A. It is exactly what I would like to tell you, I can't remember. I know that I have signed two agreements.

Q. Do you agree with me, there is nothing in your affidavit about signing two agreements? A. No, because it refers to the --

Q. Secondly, you say in par.2 that, "The document with the letter A is a copy of an agreement which I believe is in the same terms as the agreement I signed when I commenced lecturing". I think you told me that you are not really sure now whether you did sign an agreement when you commenced lecturing, is that right? A. I was under the impression that I did but maybe that isn't the one. It is a long time ago.

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Q. Remembering what his Honour said, there may be some doubt now in your mind as to whether this agreement of 4th July, 1977, was the first you signed? A. Yes.

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Q. And whether in fact accidentally your paragraph 2 which suggests you may have signed the agreement at the time you commenced lecturing, that could be wrong? A. It could be.

Q. You mentioned your area manager being Gough? A. Yes, Estelle Gough.

Q. You had come to know her in carrying out your duties? A. Yes, I knew her.

Q. When you say your area manager, what did, as I understand it, her area cover? A. Sydney.

Q. The whole of the Sydney area was her area? A. Yes. 10

Q. What were the occasions on which you came into contact with her? A. At lecturers' meetings which is more or less of advanced training, which happens every month --

Q. Does she give those lectures? A. Yes.

Q. So you sit in the class? A. Yes.

Q. I am talking about this period at or about the signing of this agreement? A. Yes.

Q. You would sit in class and she would lecture you, among other things, on the way to give your lectures, is that a fair statement? A. Yes. 20

Q. That is one contact you had with her. What else? A. May I just, thinking --

Q. What other contact did you have with her? A. No other contact. What I would like to tell --

Q. If it is in response to the question -- ? A. Sorry, your Honour. That is exactly what I mean, because as I recall, thinking of that period of time, I believe that Lyn Harris was the area manager and Estelle Gough was one of the supervisors. That is the way - because thinking back, I think at that particular time Lyn Harris was the area manager and Estelle Gough was one of the supervisors. 30

Q. Lyn Harris was your area manager, is that right? A. Yes.

Q. In your belief? A. Or training manager, whichever title.

Q. If you are unsure or your memory is not very reliable, do not hesitate to tell us that. Do you believe that Lyn Harris was your first area manager? A. Yes.

HIS HONOUR: Q. Could I interpose a question. Who is the senior between the area manager and the supervisor? A. The area manager.

Q. So that when the lady, Harris, was the area manager, she was Senior to the lady Gough, who was the supervisor? A. Exactly, your Honour.

MR MASTERMAN: Q. Your memory is, is it now, and this is what you wanted to change, that Lynn Harris monthly gave you these lectures in how you should conduct your lectures, is that right? A. Yes, when she was not available that was Estelle Gough. 10

Q. And it was Lynn Harris whose area was the whole of Sydney? A. Yes.

Q. Your only contact with her was when she gave you the lectures on how to conduct your lectures? A. Yes, and the workshop.

Q. What was the first type when she was instructing you on how you should lecture, what were they called? A. That was a workshop.

Q. I suppose you were told, were you not, that the Weight Watchers in America claimed trade secrets and confidentiality for the system of lectures. Were you told that? A. Well, it is in the agreement that there are different items which should be kept secret and that means not duplicated and distributed, but kept within the classes. 20

Q. And the method of conducting the classes was one of these secret, confidential information things? A. I don't think so, sir.

Q. That was the workshop, what was the other type of activity you mention? A. The Lecturers' meetings, which is a meeting which occurs monthly. 30

Q. So, that is two a month? A. No, once a month.

Q. But, I am sorry, there is a workshop -- ? A. No, there was a workshop in the beginning.

HIS HONOUR: Q. That is part of the initial tuition? A. Yes, Your Honour.

MR MASTERMAN: Q. Then there is a lecturers' meeting once a month? A. Yes.

Q. Lyn Harris, did she give those lectures - did she preside at those meetings? A. Yes, and as I said --

HIS HONOUR: Q. If she was available? A. Yes, your Honour.

Q. If she was not available, Miss Estelle Gough came in?  
A. Yes.

MR MASTERMAN: Q. You said Estelle Gough was one of your supervisors. Did you have several at the same time? A. There are many supervisors because Sydney is quite large and one supervisor cannot cover the whole area.

Q. But did you hear the question? A. Did I have any other supervisors, yes. 10

Q. Did you have one or more than one supervisor at the same time? A. Well, in which respect, sir? I don't understand.

Q. You have told us your area manager? A. Yes.

Q. And that you said of Estelle Gough that she was one of your supervisors. I wanted to get it clear that you had a succession of different supervisors at different times or whether one at any time or whether you had, or might have had, several supervisors at the one time? A. Another one would be Joy Covell. 20

Q. Do you understand what I am trying to ask you? A. There are several supervisors.

Q. Who supervised you? A. Only once was I supervised during the meeting, and that was by Joy Covell.

Q. Was Estelle Gough one of your supervisors or not? A. Well, she was one of the supervisors. There are so many and she goes from town to town to a class to assist to give their discussions.

HIS HONOUR: Q. I suppose, to supervise? A. Exactly, but it is not one. 30

MR MASTERMAN: Q. It is not one? So, while you knew at the time of signing this agreement, for example, that you had an area manager you are telling the court that you did not have, at that time, one supervisor? A. Well, I think I misunderstood the question. I am talking about supervisors who work and do that particular job not my supervisor.

Q. Let me put this to you; you have heard this said, haven't

you; know your chain of command. You have heard that, haven't you, at these meetings? It is not the first time you have heard that expression? A. Yes.

Q. It is the first time you have heard that expression.

A. Yes.

Q. Let me put this to you; who was immediately above you in the hierarchy? (Objected to) A. The supervisor (question allowed).

Q. Did you mention a name? A. I said there were always several supervisors.

10

Q. I can appreciate that there would be several supervisors for the Sydney area? A. Yes, and the supervisors replaced the area manager when the area manager is not available for different lecturers' meetings. That could be anybody.

HIS HONOUR: Q. Madam, there was one area manager for Sydney, you told us? A. Yes.

Q. How many supervisors for that area? A. Six, seven.

Q. Did each supervisor have a separate portion of that area or were they distributed over the whole area to go from one place to another as they were told? A. That's right.

20

MR MASTERMAN: Q. So, what contact had you had with Estelle Gough before you signed that agreement? A. In the office, at a lecturers' meeting.

Q. Lyn Harris had trained you and then Estelle Gough had presided over the monthly lecturers' meeting, have I got that correct? A. When Lyn Harris wasn't available, because she went to the States at certain times.

Q. Approximately when, and I appreciate you have got some problems of memory which you have told his Honour about, did this Joy Covell make her appearance as your supervisor?

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A. Just after we opened the class at the University of New South Wales.

Q. Approximately when do you say she visited your class?

A. It would have been November 1976, December 1976.

Q. Had you ever met her before? A. Yes.

Q. Where had you met her? A. Assisting at different lecturers' meetings. There are so many lecturers.



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Q. You mean lectures for lecturing staff? A. Yes.

Q. And you had met her at one of those? A. Yes.

Q. Did you have any notice that she was going to sit in your class or did she just turn up? A. No, she just came and sat in the class.

Q. What did she say after the class? A. Oh, she told me that particular area should be --

Q. Try and use the words you recollect she used. What did she say to you after the class? A. "The lecturer went all right. Take a bit more time on the food programme for the explanation or so".

10

Q. She said, "Your lectures went all right"? A. Yes.

Q. Was she not more enthusiastic than that? A. No, I just started. She could not have been more enthusiastic.

Q. There were some deficiencies that you were conscious of yourself? A. Yes I was.

Q. Did she point to some of them? A. Yes, she did.

Q. What did she say? A. She said, "If you think you could improve that particular area or if you think it is necessary for that particular class, because each class has its own specific."

20

Q. When you said, "This particular area" -- (Objected to).

HIS HONOUR: Q. Have you answered the last question? A. I answered that Joy Covell came to the class. She sat in the class and after we finished the meeting she said, "Everything went all right. I think you should expand the food programme." That was all.

MR MASTERMAN: Q. Correct me if I am wrong, but did you say you felt you had some deficiencies and that she referred to some of these? A. Well, as I said, the supervisor comes to the classes to find out if there are real great deficiencies and they just mention to lecturers, but if the lecturer feels that this is not --

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Q. You were giving evidence, can you appreciate the difference between giving evidence about the occasion when this Joy Covell came and other occasions or a generality of occasions? I am asking you about when she came to your class, do you appreciate that? A. Yes.

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Mrs Santea, xx.

Q. Were you conscious that you had a number of deficiencies in your lecturing method? You told me that, didn't you?

A. Yes, one.

Q. You only had one lecturing deficiency? A. Yes.

Q. And if you said previously that you had lecturing deficiencies, you did not really mean that? A. Deficiency.

Q. So, you believe that before you said, "Deficiency" is that your belief? A. Yes.

Q. Is that your belief, that you used the singular? A. Yes, I meant to use the singular, I am sorry.

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Q. What is your current belief? Do you now believe you used the singular or you used the plural? A. I believe I used the plural, but as I pointed out she mentioned only one deficiency.

Q. What did she say to you, recollecting to the best of your recollection what she said? A. "if you think you could improve, expand the food programme, well it would be much better, but it is up to you to do so, because you know the class and the specific of that class better.

Q. What are you referring to as the food programme? A. I refer to that during the one hour that we have to spend. We have to spend about 15 minutes in explaining or reviewing one segment of the food programme, which is 'the booklet, which we give to the members. So, we remind them and review and expand that particular segment - one particular segment per lecture.

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Q. So, one segment of the class -- A. Yes.

Q. Is on the food programme? A. Yes.

Q. That is what they tell you in the lecturers' classes, they tell you to devote one segment to the food programme? A. Well, 15 minutes.

Q. They tell you to devote 15 minutes to the food programme?

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A. Yes, lately. It was less before.

Q. They told you a somewhat less time before, is that right?

A. Yes.

Q. Do you recollect how much they told you before? A. About 10 minutes.

Q. They have now changed that from 10 minutes to 15 minutes, is that right? A. Yes.

Q. (Ex. Z2 shown). There is something here called the lecturer's programme teaching guide. This guide is designed to complement the food plan, is that what we are talking about?

A. Yes.

Q. That is the segment that was 10 minutes, you were told, and now you have been told it is 15 minutes? A. Yes.

Q. This is said to be, "This guide is designed to complement the food plan." Was there handed up something that was called a food plan or was it called something else? A. Food programme.

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Q. (Ex. W shown). Is that the food plan or food programme?

A. Yes, programme.

Q. For 10 minutes or 15 minutes, whatever was the applicable period you had been told, you would develop some portion of that? A. Yes, for instance, if you look at vegetables you take one called A and you have to talk about that particular segment, but you will not find it in this one.

Q. What page were you referring to? A. To the vegetables.

Q. You are talking about vegetables on p.4? A. Yes, and if we call them "unlimited" you had to tell them about the different vegetables which are unlimited - whether there is any restriction or not and it also suggests some ways of preparing them.

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Q. How would you know whether there was any restriction or not? A. Because they are unlimited.

Q. That didn't take very long to tell them that? A. No, that's true, but on the other hand there are people who don't read properly.

Q. So, you have to read it over to them and tell them that unlimited means what it says? A. No, not only that, but sometimes we had additions to this.

30

Q. You mean you got some document which told you that a new food had been put on the unlimited list? A. Yes, that's right. Sometimes there are new foods put on the list.

Q. And you get some notification from Weight Watchers or the area manager or your office telling you that a new food had been put on the unlimited list? A. Yes.

Q. That would authorise you to talk about it in your class?

A. That's right.

Q. You had no discretion of your own, did you, to put new foods on the unlimited list? A. No, I am not a nutritionist.

Q. Even if you had been, this was closely controlled, was it not, what foods were unlimited? A. I would not take it upon my responsibility to tell members about food, anything else, but what has been done through research.

Q. This research that you were entitled to refer to, was not research that you might have found in some book you bought at Angus and Robertson? A. No.

Q. It was research communicated to you by Weight Watchers? 10  
A. Yes.

Q. That is all you could tell them about, wasn't it? A. Yes.

Q. You couldn't say: I bought a new book at Angus and Robertson and they say you can eat as many strawberries as you like? You couldn't tell the class about that? A. No, I couldn't and I wouldn't.

Q. Because this whole system was closely controlled? A. As I said, the food is something which is very important in weight loss and as we were getting the information we were passing it onto the members. It is different with the other 20  
part of the lecture.

Q. We will come to that in due course, but just to get it clear, and I think we have, so far as the food section is concerned, you had to obey orders as to what you could include in the various categories? A. "Obey orders"?

Q. Obey directives? A. Pass onto the members the information that I got - the information I was getting.

Q. And to help them understand it, is that right? A. Of course.

Q. To take a food which was unlimited - what is something 30  
that is unlimited? A. Celery.

Q. You could tell them what does unlimited mean and you can eat as much of that? A. Yes, at any time that you like.

Q. So just to get it clear, you could tell them that they could have as much celery as they like? A. Yes.

Q. Because that is what unlimited meant, and your job was to take a segment of that and explain what it meant? A. Yes.

Q. What other segments, what other category. We have taken unlimited food? A. I can't even recall this one because it is so old.

Q. What about yoghurt? A. No, not in this one.

Q. But you got the direction later on about yoghurt? A. Yes, you have that in the new food teaching code.

Q. You are referring to Ex.Z2, is that right? A. Yes, that is the one given to us later.

Q. When you received that, Exhibit Z2, for example, you then were free to tell your classes about recipes for homemade yoghurt? A. Yes. 10

Q. If you found a good recipe for yoghurt from one of these other books that you purchased, that did not come from Weight Watchers, that Mr Shand asked you about; say, you went down to Angus & Robertson and there was a very interesting recipe for making yoghurt, will you be free to tell the class about that? A. There is something I would like to -

Q. Do you have any difficulty in answering that question yes or no? A. No.

Q. Could you answer that yes or no? A. No; but the books were not nutrition books that I purchased. 20

Q. The answer is No, you were not free to tell them about some new yoghurt recipe that you thought was interesting? A. No, because there are books, cook books.

Q. Because there are what? A. Cook books, Weight Watchers Cook Books.

Q. You could only utilise the authorised version, that is the Weight Watchers method, is that right? A. May I answer a little bit - may I explain all this? I gave the classes a few recipes of mine, I was not restricted. 30

Q. Was this an exception to your general procedure? A. No, if I found that they were good recipes and I thought they were helpful.

Q. Where did you get these from? A. From my Romanian cook-book and I adopted the Weight Watchers method.

Q. Did you ask for permission about this? A. No.

- Q. Did they know about it? A. Yes.
- Q. How did they know about it? A. Because we discussed it at one of the lecturer's meetings and I said that I gave that particular recipe, and everybody was pleased.
- Q. Who did you tell that to? A. I told the supervisors.
- Q. Who was that? A. Goodness me, probably Joy Covell and Estelle Gough.
- Q. Are they still with the company? A. Not Estelle Gough.
- Q. Where is she now? A. I don't know.
- Q. Is Lynn Harris still with the company? A. Not to my knowledge. 10
- Q. Is Joy Covell still with the company? A. Yes.
- Q. Is she your present supervisor? A. Yes, she is one of the supervisors.
- Q. When you said that your Hungarian recipe was cooked in accordance with the Weight Watchers method, what did you mean by that? A. Because I had to order and change everything that was fried into just being boiled.
- Q. And was this the unlimited foods? A. Yes.
- Q. So that was the exception where you were allowed to do what you liked in relation to unlimited foods? A. I would not say so. I gave every recipe, like a fish recipe, which are altered from my Romanian cookbook. 20
- Q. Did you tell the supervisors about that? A. Yes.
- Q. Did you alter the cooking to the Weight Watchers method?  
A. Yes, exactly.
- Q. That was the segment that was originally ten minutes and it was increased to 15 minutes? A. Yes.
- Q. How long did that segment deal with that particular - dealing with that particular module take? A. That was not really set - it was up to me. 30
- Q. Could you answer the question. How long did it take?  
A. Half an hour; twenty minutes to half an hour.

Q. Are you suggesting that that is not within the time limits provided for in the Weight Watchers method? (Objected to)

HIS HONOUR: Could you ask the question?

MR MASTERMAN: Q. Are you suggesting to the court that there is no time limit provided for in respect of segments devoted to modules? A. It is not - no, it is not specifically set.

HIS HONOUR: Q. You mean no time is specifically set? A. No.

MR MASTERMAN: Q. Is your memory on this, do you believe, accurate? or is this maybe a matter in which your memory is also a bit shaky? A. No.

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Q. Would you be free - do you regard yourself as free to use 40 minutes, in a segment of 40 minutes, for the module? A. Yes, if the class is very small.

Q. You mentioned the time of an hour, did you? A. Yes.

Q. That is your normal time or was it your normal time for the class lecture proper? A. Yes.

Q. Does that include any deduction? A. Yes.

Q. And a summary at the end? A. That is part of the module.

Q. What do you mean by the answer "That is part of the module"? A. The module has an introduction, and you have the lead-in, then is the module explained and in summary at the end.

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Q. Do you agree that you have been told this, "Each module is intended as a means of constructively using from 10 to 30 minutes of every class"? A. Yes.

Q. That was in one of the documents produced by you, is it not? A. Yes, that is right.

Q. So far as the modules are concerned, how many of them are there? A. At the moment?

Q. How many of them were there when you prepared, as you told the court, AG? A. About 17; 16 or 17, I never counted them.

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Q. And did you do them in any order that you felt like, when you felt like it? A. No, there was a certain order.

Q. There was a certain order that you were directed to take, is that what you mean? A. Yes, the whole of Australia followed the same order.

Q. The order directed by Weight Watchers or Narich? A. We have got to supply all the modules.

Q. But someone else presumably told you the order in which you should take them? A. There is an order - and there is a reason if I have - if I can explain it.

Q. Yes feel free. A. Because members do not attend one class only. There might be members who might go to different classes. If I will decide to do one module on a particular week and another lecturer would do a different one, and so on, there would be no continuity for the member. So a member should have the same module whenever and wherever he or she was to go. That is the same module being explained the same week. 10

Q. While a member can join at any phase of the module programme, do you regard as any present module as starting off the system? A. Not really, because they come in sequence after a while. A particular one - the first one will come after a few months. 20

Q. Is there a break at Christmas and do you start again with a new module, the first module? A. Sometimes they change. For instance now we have to change the module so that it will suit the season.

Q. By the way, I think it means, and one may ordinarily take it to mean - is the first module "How to get set"? A. In the list, yes.

Q. That is conventionally regarded as the beginning of the programme? A. No. 30

Q. So, there is a schedule of modules, the order of modules which is laid down by Narich for the whole of Australia and you to follow, is that correct? A. Yes.

Q. And indeed there is some sort of complicated form there when there is a legal holiday, when your class would have been discussing the module. Do you recollect from your memory what was to happen to your class if you were to discuss a particular module you could get, for example, and it was a holiday; Anzac Day or something like that. You don't recall? A. No, I don't think so. 40



Q. Do you deny that there is a provision? A. I believe there is a sequence and we have special themes and we develop. We do not have any modules, for instance, for Christmas. We have to develop our lectures.

Q. I am sorry, the question is, do you deny that there is a procedure to be followed when a class falls on a legal holiday, a class at which you would have been otherwise for discussion of a particular module which other classes in the same week will discuss but because of the holiday the class is cancelled. Do you know that there is a specific direction about what to do when that happens, or you don't know? A. I don't know. I did not - all I can say, if I may, is that during the holidays, the Christmas holidays, there are no specific modules. That is all I can say. 10

Q. Have you ever had the experience of having to give a lecture on Anzac Day? And it being cancelled? A. No.

Q. Were you - by the way, you work a 35 hour week; with whom are you employed? A. A consulting engineer.

Q. With a firm of consulting engineers? A. Yes.

Q. Who approached you to give evidence in this case? By whom was the first approach made to you? A. It is very hard to remember. I think that Mr Harris - 20

Q. First approached you? A. I think the first time Estelle Gough mentioned to me -

Q. I am sorry. The question is, who first approached you to give evidence? A. Estelle Gough when she was still with the firm.

Q. Were you - had you won any awards or anything for lecturing? Had you been particularly a distinguished lecturer? A. No. Awards I won in my profession. 30

Q. Going back to the structure of the classes, are you free to, after dealing with a module, to determine yourself what would be the subject matter of the next week's lecture? A. It was always a feed-back week.

Q. When you say that it was always a feed-back, you are instructed by Narich and at the lecturer's meetings, that following a module meeting, the next week you will have a feed-back meeting? A. Of course, that is logical.

Q. Whether it is logical or not, you are not free to depart from that order, are you? A. That is the way we can assess members progress.

Q. Are you free to depart from the practice as directed by Narich of having a feedback meeting, the class immediately following a module meeting? A. No.

Q. And I suppose you will agree that feedback meetings, of course, are significantly different from module meetings?  
A. Yes.

\*Q. There are different procedures you are taught to follow in respect of the two different types of meetings, is there not? A. I have done workshops - 10

Q. I am sorry, can you answer the question yes or no and if you feel in need to amplify it, do so, but can you answer the question yes or no? A. The question was if the meetings, the feedback meetings are different, and they are different.

(Above question marked with asterisk read)

WITNESS: Yes.

MR MASTERMAN: Q. And those procedures, those different procedures you are taught, aren't you? A. Yes, at the workshop. 20

Q. You are given directions as to how to carry out the two different types of meetings? A. A skeleton, yes.

Q. Is another segment of the meeting called "Card calling"?  
A. Yes.

Q. Is that included in the hour or does that precede the hour that you mention? A. No, it is at the end, towards the end of the hour.

Q. What is "card calling"? A. Reading cards, class cards of members and commencing on their success and encouraging if they had an unsuccessful week, and contributions from the class to encourage them and so on. 30

Q. You know this intimately, no doubt but who does the card calling? A. I do.

Q. Give us an illustration of the card calling? A. Right. "Jean, you lost quite a good amount of weight this week which would be your most successful day. Would you like to share your success with the class?" and so on.

Q. To do that presumably you have got something from the member or is that from the weigh-in? A. From the weigh-in.

Q. Does that take place prior to the hour? A. Yes.

Q. And that is carried out by the Weigher, if the weigher is there? A. Yes.

Q. Do you have the result of the weigh-in in front of you? A. Yes, that is right.

Q. You said that the card calling is towards the segment, towards the end? A. Yes.

Q. Is it the last segment or the second last segment? A. It was the last segment but it is different now. 10

Q. They have changed that too? A. Yes.

Q. So that card calling in accordance with the directions you were given when you first started was at the end? And now Narich has changed that and it is somewhere else, is that right? A. It is interspaced through the meeting, not a special section for card calling, not a special segment for card calling. It is while talking to the members and discussing, you ask "How much did you lose" and so on.

Q. When you first started it was the last segment? A. Yes. 20

Q. And you had a card in your hand? A. Yes.

Q. And a pen in your hand? A. Not really.

Q. Not really. Were you taught and told to have a pen in your hand? A. I have to have a card in my hand because I have to read the names to know who I was talking to.

Q. "Always call cards with a pen in your hand so you could write any appropriate comments in the end column", ever told that? A. Never used it.

Q. Ever told it? A. I was given, I was not told. I was given the instructions, I never practised. 30

(Witness stood down)

(Further hearing adjourned to 10 am on Tuesday, 18th November 1980)

Mrs Santea, xx., resumed

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
ADMINISTRATIVE LAW )  
DIVISION )

No. 605/78

CORAM: WOODWARD, J.

NARICH PTY. LIMITED v. COMMISSIONER OF PAYROLL TAX

SECOND DAY: TUESDAY, 18TH NOVEMBER, 1980

BEATRICE SANTEA

On former oath:

CROSS-EXAMINATION resumed:

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MR MASTERMAN: Q. Mrs Santea - by the way, did you check on your income tax returns for the year ended 30th June 1977 last night? A. I didn't find the copy, that is the answer - but I can answer further.

Q. You looked for it and didn't find it, is that the position?  
A. Yes.

Q. Now when you were giving oral evidence in answer to questions asked by Mr Shand you produced some visuals, did you?  
A. Yes.

Q. And I take it that you would agree that you were instructed in the training classes on the use of visual aids? A. If we felt -

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Q. Could you answer that question: were you instructed in the use of visual aids in your training classes? A. Yes.

Q. And the subject matter was how to develop and use a visual aid, was it not? A. No.

Q. Did you initially have any difficulty in the utilisation of visual aids, yourself? A. Yes.

Q. And you were urged that if you could not work with visuals to change your thinking from "I can't", through "I won't" to "I will". That was the message you were given, was it not?  
A. Not to me.

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Q. Were you told that "Any visual which reinforces the spoken message can be used"? A. Yes.

107. Mrs Santea, xx.

Q. You were told that? A. Yes.

Q. And were you told that you need not use visuals every week but that they should be used occasionally, to add interest to the class. Is that what you were told? A. Yes.

Q. (Approaches) I am showing you part of exhibit S. Would you agree that this is one of the modules that we have been talking about? A. Yes.

Q. "How to break the chain" was one of the 16 or 17 modules that were in use when you commenced lecturing, is that right? A. Yes.

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Q. You had had nothing to do with any of the earlier lecture themes when you commenced lecturing - modules had taken over the other methods of lecturing? A. Yes.

Q. In the instructions that you were given on how to develop a visual, were you told that in reading through a module you should determine which of the following you wished to emphasize during your class discussion - the modules objective, certain key words in the module, a main point discussed in the module. Were you told that, or something like that, in your instructions? A. Similar.

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Q. And you developed yourself, did you, a visual about this module "How to break the chain"? A. Part of it, as I said yesterday.

Q. But in accordance with your instructions which you had been given you developed a visual on this module? A. Yes sir.

Q. Is that a correct description of what you did? A. Yes.

Q. Would you look at Exhibit AH as well as the module "How to break the chain"? A. Yes.

Q. And would you tell me whether Exhibit AH is the visual that you developed from the module "How to break the chain", in accordance with the instructions you had been given. Is that right? A. No.

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Q. You did not do that in accordance with the instructions you had been given? A. No.

Q. What I suggest to you is that you took certain key words in the module? A. Exactly.

Q. Did you do that? A. Yes.

Q. Well, that was in accordance with your instructions, was it not? A. Well.

Q. To take certain key words in the module. Was that your instructions or not your instructions? A. To use the module to form a visual.

Q. Were you told that one of the ways you might develop a module was to take certain key words in the module? A. Yes; suggestions.

Q. What are you saying about suggestions? A. Suggestions from the module; like "Wait until the food has been swallowed".

10

Q. You object to those words being described as key words, do you? A. No. It is the whole act, it is not one word.

Q. What I am suggesting is that you were told that one way of developing a visual was to use certain key words from a module; and I am putting to you that that is what you have done in Exhibit AH? A. Yes, and added to it.

Q. You were told that your visuals might be - one of the form of visuals you might use was a poster-type? A. Yes.

Q. And is that what Exhibit AH is? A. I would say it was.

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Q. And you were given instructions as to how materials were to be used for a poster, were you not? A. Yes.

Q. And you were given instructions as to where to put it, were you not? A. No.

Q. Do you deny that you were given any instructions as to where to put the visual in the classroom. A. I do deny that.

Q. Now in that visual the first words you have used are "Wait three minutes before starting to eat"? A. Yes.

Q. And do you disagree with me that they are key words, taken from certain italicised words in the module? A. They are part of the module.

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Q. Would you like to look at page 4 for me, of the module. On page 4 you have got block letters - "First step" - and you have taken from the words following the first step the words "Wait three minutes before starting to eat"? A. Yes.

Q. And that is directly taken from italicised words in the module? A. Yes, what I thought was essential.

Q. And that is in accordance with your instructions as to how to prepare a visual, is it not, Mrs Santea? A. I have to use my own discretion. I don't say "Grab your utensils", for instance as I considered it immaterial.

Q. So you used your discretion to select the words "Wait three minutes before starting to eat". Is that what you say?  
A. Yes, that's right.

Q. That is what you were told to do; was it not; to select the key words which you wished to emphasize? A. Yes, that was my discretion.

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Q. Now the second words, going across the page in the direction of your arrow, there appears "You put a bite of food in your mouth"? A. Yes.

Q. And you have taken all but three of those words from the second step, which is italicised on page 4? A. Yes.

Q. Where there appears, "You put food in your mouth", and you have substituted "You put a bite of food in your mouth"?  
A. Yes - (Objected to - allowed).

Q. Your task that you were given - and I will put it again - was to prepare a visual setting out certain key words from the module. Do you agree with that? A. From the theme discussed.

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Q. I am sorry. Do you disagree with the proposition that what you were doing was to take certain key words from the module? A. And add some others.

Q. Yes. Let us go to the next one, three. You have added "A bite of" in the second block, and then from the second step also you have taken "Your utensils down on the plate", and you have substituted "set" for "put". Is that a fair description of what you have done? A. "Put the utensils down on your plate".

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Q. What I am putting to you is that you have taken from the italicised words the words "Put your utensils down on the plate" and you have substituted the word "set" for the word "put", and otherwise you have included that in your visual - (Objected to).

Q. So you have not substituted "set" at all? A. No. I made up the visual. That is the main point.

Q. What I am suggesting to you is that you acted in accordance with the instructions you were given for the preparation of visual aids? A. Yes.

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Q. And (4), you have taken more words out of the second step, have you not? A. Yes.

Q. Exactly. A. Yes.

Q. Mr Shand I think made something of the "v". Was that a spelling error or was there some ingenuity in the word "swallowed"? -

HIS HONOUR: Q. Do you see the mistake? A. (Reads).  
"Swallowed".

MR MASTERMAN: Q. You have made a spelling error, have you not - which we all do? A. Maybe.

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HIS HONOUR: Q. But you see it now? A. No.

Q. How do you spell "swallowed"? A. "Swallowed".

Q. Is there not a difference between V and W? A. Yes. I make spelling mistakes sometimes.

Q. What is your national language? A. Roumanian.

MR MASTERMAN: Q. And there was no play upon the word "loved"?  
A. No.

Q. And then you more or less repeated, in five and six, did you, the step of picking up your utensils and taking another bite of food? A. Yes. That was not in the module, that was a follow up, I think.

20

Q. Well, it was suggested in the module that you do this each time, was it not? A. Yes. But people do not practice.

Q. And the whole point of the visual is to emphasize the key words, is it not? A. Yes.

Q. By the way, in your affidavit you have annexed an undated and unsigned agreement. Do you recall that? A. Yes, I do.

Q. And you have given evidence now about your doubts about that? A. Yes. I didn't realise that it was dated later than I thought it was.

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Q. So you have been thinking about that overnight, and your belief is that the signed agreement that you had yesterday, which is part of m.f.i.1 - you have been thinking about that overnight, and you believe that was the agreement you first signed? A. Yes.



Q. And there would be no reason for altering or faking the date, you believe that to be the date on which you signed, the date which is at the top? A. Yes; but as I said, it is a long time.

Q. And your present belief is that you signed the first agreement that you signed on the 4th July 1977? A. Yes sir.

Q. I think you told us in your affidavit about a lecturer's handbook, at some stage? Do you remember telling us about that? A. Yes.

Q. Would you look at Exhibit U. It has a front page which has 1976 at the front; it has got a table of contents, and you will notice the second last one "visual aids"? A. Yes.

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Q. Do you remember that in your lecturer's handbook that you got, that it had something on visual aids? A. I didn't have that particular one, I had the following one.

Q. What do you mean by that? A. This particular handbook has been replaced, and I got a different one, which still had the visual aids chapter.

Q. Do you mean you never got that one? A. I do not have it in my possession any more, but I have the following one, which was a little bit later given to me.

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Q. But you have got that and read it? A. Not really.

Q. What, you had been taught from it in the classes. Is that it? A. In the classes of eight nights, it was very hard to cover the whole instructions.

Q. I think you told us - and correct me if I am wrong - that you were told that "Any visual which reinforces the spoken message" could be used? A. That's right.

Q. And you were told that if you could not work with visuals you should in effect change your attitude? A. No.

30

Q. You were not told anything about going from "I can't" to "I won't"? to "I will"? A. No. I learned from the modules, how to lecture.

Q. But there were no modules in doing a visual? A. No, but I changed it from "I can't" to "I won't" and "I will", and how to get set.

Q. And you were told how to develop a visual, and to exercise

certain key words in the module? A. We were told how to use visuals, but not very much how to make them. They were just examples shown to us. There was not time.

Q. Well, you were given this book, or a book like it, which had that sort of thing in it? A. Yes. That is the outline of what you had to do, whether I do it exactly or not.

Q. In your lectures and instructions you were told that there were three types of classes that you were to give, were you not - lectures or classes. You understand that both, do you?

A. Like, the module presentation, the feedback and the link-up. 10

Q. So there were three types of classes, the module presentation, the feedback class and the link up class? A. Yes.

Q. The first one that you have referred to, Exhibit AG, the first visual, that is merely is it not the titles of modules - it sets out 16 or so modules, merely by their titles. Is that right? A. Exactly. May I?

Q. I think Mr Shand can ask you any questions if he wants to.

A. I added that. I should have removed it.

HIS HONOUR: Madam, would you just answer the question. 20

MR MASTERMAN: Q. Where did you put this in the class - up front? A. Yes. Near where I sit - where I stood, I mean.

Q. For what type of class was this used? A. In a link up.

Q. And the purpose of a link up class, so you were instructed, was to link up a number of modules together? A. To review.

Q. So you put the titles of all the modules so you could point to them during the course of your link up class, is that so? A. Yes.

Q. I was perhaps a little puzzled about the timing. There was 16 modules - A. I never counted them. 30

Q. Then you are instructed to have a feedback class after each module presentation class? A. Yes.

Q. And that is Australia-wide and in accordance with the directions from Narich, Australia-wide - (Objected to).

HIS HONOUR: Q. Can you answer that question? A. Well, it is what I was to believe, that members coming from one city

to another would have the followup of what they had before. It might not be, maybe it applies to different states only.

MR MASTERMAN: Q. Well, you were told, you recollect, that it was Australia-wide. Is that right? A. No. I know about New South Wales for sure.

Q. It was New South Wales-wide, that the same module would be dealt with in the same week, and then followed by a feedback the next week? A. Yes.

Q. Now the link up classes occurred when, according to the pattern you were given? A. Every year, about three or four months. 10

Q. Now if there were 16 modules and 16 feedback classes, one gets to 32 weeks? A. Yes.

Q. And what, two link up classes? A. No, three. Three, two sessions. That means there are two weeks of link ups.

Q. So there are six link up classes, to be added to the 32, which gives you 38 weeks. Is that roughly the pattern? A. Yes, roughly.

Q. You were given instruction, were you not, on the lecturer's job responsibilities? A. Yes. 20

Q. And that topic was dealt with in the book that you were given, do you recollect?

HIS HONOUR: Q. When you say book, you are referring to the handbook, are you?

MR MASTERMAN: Yes, your Honour.

HIS HONOUR: Q. Do you understand that, Mrs Santea? A. There are also a few sheets I believe, which were given to me after the workshops.

Q. But you understand that Mr Masterman is referring to the handbook when he talks about the book? A. Yes your Honour. 30

MR MASTERMAN: Q. And the objective of the instructions that you were given on lecturers' job responsibilities was to give an overall view of the lecturers' responsibilities? A. Yes.

Q. And you were told that that book, or manual, set out in depth how to carry out specific areas of your lecturers' responsibilities, but the topic of lecturers' job

responsibilities dealt with the overall picture. Is that what you were told? A. Yes.

Q. And under the heading of lecturers' job responsibilities you were told about preparation for the class, is that right?

A. That is correct.

Q. And you of course had to know which module was to be discussed with your class each week? A. Yes.

Q. And you had to live the module yourself, before presenting the class, is that right? A. Yes sir.

Q. And complete the charts in the module? A. Yes. 10

Q. And what, in relation to the last module we were discussing, which is "how to break the chain" - would you look at that again and tell me, where does the chart appear in that module? A. It appears at the end, the last page.

Q. And a chart is something that the person living the module has to fill in, or should fill in? A. Yes.

Q. We were talking about the instructions you were given on lecturers' responsibilities; and we were talking about the preparation for class, and you were told to live the module, and to complete the chart yourself? A. Yes. 20

Q. So that was something that you had to have done, before you gave the lecture? A. Yes.

Q. Then you were told to plan your class preparation, a lead in - that is one of the defined segments, is it not? A. Yes. It is one of my own choice.

Q. Is a lead in one of the defined segments? A. Yes.

Q. And you were told that you had to have a visual in the class, and you had to prepare that. You were told that, were you not, to prepare the visual before class, not for example to draw it up on the blackboard as you were going? A. Oh yes, I can do that if I want to, if I have a blackboard. 30

Q. But were you told that if you were going to have a visual in the class, to have it prepared before going to class?

A. I would say, no, I was not told.

HIS HONOUR: Q. Were you told that in any document, in any writing - A. Only in the manual.

MR MASTERMAN: Q. And no doubt this would not apply to you, as you have told us yesterday but were you told, when you were a trainee, or during the lectures to lecturers, were you told to check your grooming before you left home? Were the lecturers while you were there told that that was important?

A. No.

Q. And that your clothes were to be clean and pressed? A. I don't recall being told something like that.

Q. But does this ring a bell - and I am sure this does not apply to you - but there were other potential lecturers there as well. Did they tell you to use a deodorant and a mouth freshener before leaving home? A. No, oh no.

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Q. Did they tell you to have an extra pair of hosiery?

A. No sir.

Q. Well, they did tell you before you left home - A. But no deodorant or mouthwashes.

Q. And were you told that prior to the class the clerk and the weigher - were you given instructions on what to do, and what to set up? A. Very little.

Q. Then during the class you were given, with this lecturer's overall job, you were told to begin the class on time, were you not? A. Yes.

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Q. At Collaroy what was the time that you had to begin?

A. Seven o'clock.

Q. And on how many days a week did you give it? A. Once a week.

Q. And that I think you have told us in your affidavit was an existing class? A. Yes.

Q. And the time was fixed and the day fixed, when you took over? A. Yes sir.

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Q. Did you have any occasion, either there or later, where you, through illness or the demands of your other jobs, you were unable to make your class? A. No sir.

Q. You have never had to use a substitute, yourself? A. No sir; not at that particular time.

Q. You had been told what to do, had you not, namely, that you had to get in touch with the office? A. The supervisor.

Q. You had to get in touch with the supervisor - at the office, or at home? A. At her own home.

Q. So you were told that the class had to begin on time? A. Yes.

Q. You didn't have any discretion about starting it 30 minutes late, without getting permission? A. No. It is a time, and members know the time, and that is when they come.

Q. Now the next thing was to welcome back the regular members. You would welcome each week the regular members? A. I welcomed the class.

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Q. That was a general welcome, was it? A. Exactly.

Q. And then the next step you were told was to welcome certain other members by name? A. Yes.

Q. Which members were you told to welcome by name, which type of members? A. If for instance a lifetime member would come to class for weighing in, and I knew the member, I would say - how are you Jean? Did you have a good month? And so on.

Q. Visiting members. Were you instructed to welcome by name? A. If they were staying at the class.

Q. Yes, and you were told to welcome them by name? A. Yes.

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Q. And rejoining members, you were told to give a welcome by name too - somebody who had been away for a period and come back - A. That is not a rejoin.

Q. Well, what is a rejoining? A. A rejoining member is a member who has been before a member of Weight Watchers, interrupted it on his or her own desire, and then decides to rejoin. It is like a new member.

Q. And you might not know them before? A. Of course not.

Q. And your instructions were to welcome each member by name? A. Yes.

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Q. And you would say - welcome, Jean Smith, who has rejoined us after a year? A. I would welcome to the class a new member.

Q. And they would stand up, would they? A. No.

Q. And the next step I suppose you were told in the structure

of the class was that you would present awards to appropriate members. Was that the next step in the class? A. Yes.

Q. What sort of awards would you present? A. Well, a member who had attended 16 weeks and lost a minimum of 10lbs was rewarded with a recognition pin for his effort. A member on his goal weight was given his goal pin, and a member reaching lifetime membership was given his booklet and congratulations.

Q. And that took place after the welcome, and before you conducted the module, feedback or link up presentation? A. Yes.

Q. And that is what you were told to do? A. Most of the time. 10

Q. Now the structure of the module and feedback weeks, at least, followed a pattern, I want to suggest to you, in accordance with your instructions. Firstly a planned lead in? A. A lead in is something to create interest, attention, concentration.

HIS HONOUR: Q. Public speakers usually start off with a funny story? A. I tried to do that, sometimes.

MR MASTERMAN: Q. And then there would be discussion of the module concepts, and charting? A. Yes. 20

Q. And then you would get commitments from members, would you. Was that the next step, to get commitments from members? A. Commitments occasionally occurred.

Q. What is a commitment? A. A pledge.

Q. In front of the whole class? A. A commitment could be made anytime. If for instance a member comes to the class and while waiting to be weighed talks to the lecturer and tells the lecturer - I have had a terrible week. I have been to a particular party; I could not stop eating, and I have done all the things I should not do. Then you try to be kind and then ask the member - do you think you would be going to another party this week - yes I would - do you think you could be a little bit better, have only half of what you had at the last party - something like that. So a commitment could be made person to person, as well as in class; but it is not something that a member should do, unless the member wishes. 30

Q. The next step was the review of the food programme segments that you told us about yesterday? A. Yes.

Q. That was a segment that was increased. They originally

told you it was to be 10 minutes, but they later told you it was to be 15? A. Yes; but that was later on.

Q. But they told you it was to be 10 minutes, when you joined?  
A. Yes.

Q. And then at the end of the module presentation segment, there was a planned summary? A. Yes.

Q. And did you use cue cards? A. No, only at the beginning.

Q. You were told that you could use cue cards? A. If I wished to.

Q. What other tool did you use, in the summary? A. The visual, if it contains something, as the one you showed me, which had a spelling mistake. 10

Q. Then you told us yesterday about card calling, that that originally was a particular time in the class, according to the instructions, but later it was throughout the class - card calling? A. Exactly.

Q. And did you encourage the use of diaries? A. Yes, very much.

Q. And that is what you were told to do? A. No.

Q. You were not ever told to encourage the use of diaries?  
A. I was given that as a tool, but I was not told to encourage the use. 20

Q. So you decided to do that on your own, that you decided to make a special effort to encourage the use of diaries?  
A. Yes.

Q. It was a matter that you were not told, but which you decided to do? A. Yes.

Q. And then there were some other mechanical things to do, to complete the class time? A. Yes. There was the card calling at the end of the class, calling the successes. 30

Q. Did you request the new and joining members to come to the front of the room for presentation? A. No. That was after everybody else left. That was when the class was finished and everybody else finished the job, that I talked to the new members. That was programme - orientation.

Q. You were told that lecturers had other responsibilities,



including attendance and participation in staff meetings. You were told that was one of your responsibilities? A. Lecturers?

Q. Yes. You were told that was one of your responsibilities, to attend those meetings? A. Yes.

Q. One other thing you may be able to assist us with - the clerk, he or she did the tally sheet, did he? A. Yes.

Q. You have a blank one - you produced BS10 which I think you told us was a later form. AF. You produced one and I think you said that was a somewhat later form than when you started - or if I misunderstood something I thought you said - would you look at that document? (approached). A. Yes, that is true. 10

Q. Can I show you as part of Ex.Q a tally sheet. This had been produced by Narich earlier in the case. Now is that a class tally sheet of the sort that you saw? A. Yes, but still probably we use different tally sheets because they were still available because at that particular time when I started there was not that particular area of total losses and total gains - (Pointing to the middle of the sheet).

Q. You do not know whether this was an earlier one than the one you had? A. No, I think that is a later one than the one I have used at Collaroy for instance. 20

Q. Yes, well you do not know one way or the other, is that the position? A. Well, it is what I recall. That particular segment has been added to.

Q. I do not know that it matters but for the sake of accuracy you are now looking at Ex. AF? A. That is right.

Q. And we have to make this understandable on the transcript. I show you part of Ex. Q which is a class tally sheet and is a class location number A79-2-4. Do you know what it means? A. Yes. I know. 30

Q. What does it mean? A. That is class No.79.

Q. Yes. A. 2 is the day, Monday and 4 is the time, evening.

Q. And the date there given on this presentation document which Narich have put forward is, using the American system, 13th February, 1977, is that right? A. Yes.

Q. And you say that today's losses and today's gains which appear in that document that I was giving you the particulars of were added after Ex. AF which you produced - or did I

misunderstand you? A. Yes, well that was the first tally sheet that I used.

Q. AS was - is that right? A. Yes.

Q. Now the clerk would write down some particulars. There would be lifetime members? A. Yes.

Q. Who at the time only paid \$2 - is that right? A. They still pay \$2.

Q. Then there would be a separate category of rejoined members? A. Yes.

Q. Who then paid \$3.50? A. Yes.

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Q. And current members? A. Yes.

Q. Current scholarships - they are at a discounted rate, are they? A. Yes.

Q. The current members were then paying \$3.50 per class and the current scholarship \$2.50? A. Yes.

Q. Now see if I can understand it - we are merely taking it as a sample - do I understand from that there are 104 people at that class? A. No, there were 104 stamps at that class.

Q. How many were there at the class? A. 108 because there were new members.

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Q. The second column? A. Shows the number of people.

Q. 108 in that class? A. Number of attendant stamp issues which correspond to that particular number here.

Q. And we have here what is pleased to be described as the lecturers honorarium? A. Yes.

Q. And at the bottom - B. McDonald? A. Yes.

Q. That is the lecturer? A. Yes.

Q. And that is where your name would be filled in in your class? A. Yes.

Q. By the way, just for information at Collaroy approximately how many did you have attending a usual class if you can describe it as that? A. Less than 15.

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Q. And at the University of N.S.W. what was their usual class?

A. At that particular time up to 15.

HIS HONOUR: Q. 15 or 50? A. 15

MR MASTERMAN: Q. Now the receipts would be added up as it is described, what, the gross income? A. Yes.

Q. And then there would be filled in by the recorder, was it, or - ? A. Yes.

Q. Details of the amounts that were deducted - that right? A. Yes.

Q. And there is "bank immediately"? A. Yes, and lecturer's number. 10

Q. And "office use only" with some sort of signature. Did you ever have occasion when there was some error in the calculations brought to your knowledge? A. No.

Q. You have told us that the topic of lecturer's job responsibilities which you were taught was to give an overall view of the lecturer's responsibility but there were more detailed lectures in respect of particular topics and can I suggest that one of those particular topics of which you were given lectures as to how to conduct your classes was module presentation? A. That was in workshop. 20

Q. And in the workshop you were given lectures on how to prepare plan and evaluate your module discussion - is that right? A. No.

Q. Were you given lectures on module presentation? A. If I may say, the way it has been - if I have permission to explain?

Q. Yes. The question is - but if you need to explain it - were you given instructions on the topic of module presentation? You may be able to answer that yes or no. If you feel you cannot, you are entitled to give an explanation as to why you cannot give that sort of answer. A. I would say no. 30

Q. You were not given lectures in module presentation?

HIS HONOUR: Q. You agree with that - you understand that this has to be taken down? A. I understand. We were given a module and we had to present. That was the procedure.

MR MASTERMAN: Q. If I may show you this book which at the

bottom of the page headed module presentation - (Ex.U) - there is to date the personal action plan consists of the following modules. There is then set out how to get set, how to keep track, how to break the chain and it continues over with modules which are set out. Just looking at this on the first page, was that the order in which you were directed to give modules? A. That is the order in which we were given the supply of modules for the classes.

Q. Yes, but was the order - the N.S.W. order of presentation which you told us was standard? A. Yes, at that time. 10

Q. Was that the order? A. At that particular time.

Q. In other words you started with how to get set - putting it this way - how to keep track followed how to get set?

A. Yes.

Q. And so on? A. Yes.

HIS HONOUR: Q. But that order was returned, do I gather, because you were given the module for how to get set before you were given the module for how to keep track? A. Yes.

Q. So that you could not really present a module until you received it? A. Exactly. 20

Q. And the order of the presentation of the module therefore depended upon the order in which they came to the lecturer?

A. Yes.

MR MASTERMAN: Q. And how did you get them? A. I had to go and get a supply.

Q. From Narich? A. Yes.

Q. So you would pick up in your early days that you told us about, 15? A. Well, more than 15.

HIS HONOUR: Q. Enough for your class? A. That is right.

Q. Then at the class you would present a copy of the module to every member? A. No, at the beginning of class I would give to each member a copy of the module. 30

MR MASTERMAN: Q. If I can turn over and help you follow what I am pointing to. I am turning over two pages to what is called "elements of a module presentation, 5". What I would suggest to you is that you were told that the body of a module presentation must include certain elements, firstly

a discussion of the philosophy of the module and its objective. Were you told that or something like that? A. I read that mainly.

Q. Were you told or did you read that the body of a module presentation must include a discussion of the tasks recommended in each module including charting? A. Yes.

Q. Were you told that the body of a module presentation must include a discussion of how members must apply these tasks to their life situation? A. Yes.

Q. Were you told that the body of a module presentation must include the obtaining of commitments from the members to try at least one of the module tasks during the forthcoming week? A. No. 10

Q. You were told, were you, to aim for that, but that you did not have to always do that? A. No, it was not something that we had to do or try to do.

Q. Well, you are not suggesting the obtaining of commitments was something that you thought of? A. Oh no, no.

Q. Well, what were you told about the obtaining of commitments as part of the module presentation? A. Commitments should be left to the desire of members. If they did not wish to make commitments, it is their decision, their choice. 20

Q. Yes, but - A. We might suggest but not force to do anything.

Q. Yes, but were you told that you should attempt to obtain commitments or at least mention the subject of commitments? A. Mention.

Q. You were told to mention the subject of commitments? A. I read about the commitments.

Q. But in none of your lectures or the lectures to you or workshops - you do not recollect being told about obtaining commitments in those lectures? A. Only later on. 30

Q. Well, you were given, were you not, help in determining what was the philosophy of a particular module. They were all analysed for you, were they? A. Oh yes.

Q. And you were told what the philosophy and the objective of the module was in some detail and your task was to present that philosophy and module, the philosophy and objective of that module to the class? A. That was a guideline.

Q. Yes, but that was one of the things that you had to do, wasn't it, to discuss the philosophy of the module and its objectives? A. Yes.

Q. In the documents that you have produced - (Ex.Y) - you have got a training guide - how to conduct feedback week? A. Yes.

Q. I take it you have read that? A. A long time ago.

Q. Yes and it formed part of the material on which you lectured in your training sessions? A. Yes.

Q. And you were given an outline for conducting the feedback classes, were you not? A. Yes. 10

Q. Let us see if you were told these things - perhaps beginning with the usual greeting and brief warm up. Were you told something like that? A. That is something usual.

Q. You were told to distribute the module to new members and those who were absent the previous week - were you told to do that? A. Yes, that is normal.

Q. Yes, but you were told to do it? A. I read it.

Q. Were you told to ask every member to contribute - firstly members who were successful can tell how they did it? A. If they wanted to, to share their experience. 20

Q. Yes, but it was part of the instructions that you were given in relation to conducting feedback classes, that you were to get contributions from members? A. Yes.

Q. And one of the types of contributions you were instructed to endeavour to obtain were from members who were successful as to how they did it? A. Exactly.

Q. And from members who experienced difficulty in reaching the self management goal for the week, who were told to get them to share their problems with others in search of a solution. Is that right? A. Yes, if they wished. 30

Q. Yes, but you were told to endeavour to get the members who felt difficulties to share their problems with the others? A. Yes.

Q. And members who felt that they had solved the problems were asked to share their techniques? A. They were encouraged.

Q. Encouraged? A. Not asked.

Q. You were asked to encourage them? A. They were encouraged. If they did not want to they did not have to.

Q. But they were encouraged because you had been trained to encourage them? A. I am terribly sorry but I must add that I have been a member of a Weight Watchers class. I was familiar with all the procedures. I contributed for about 6 months in that class. I knew exactly what was happening.

Q. (Ex. T) So that after you had asked or endeavoured to get members to contribute did you show the class your own completed chart? A. Yes. 10

Q. From the week's module? A. Yes.

Q. That was the next step - and discuss your own experiences stating what you had learned yourself? A. Yes.

Q. And how helpful it was to keep track of your progress and the changes which you experienced? A. That is true.

Q. Then did you select several members who had charted for several days to discuss what they learned? A. No.

Q. You did not do that? A. No.

Q. Were you ever told to do it? A. No. 20

Q. I have got your documents. Select several members who charted for several days to discuss what they learned etc. - you read that I take it? A. Yes sir but if there were not any members who charted how could I ask some to discuss it?

Q. But you would find out, would you, as part of the conduct of a feedback class whether any members had charted - that is filled in the charts in the module presentation? A. Yes, if they were willing to say.

Q. And having given your own experience? A. Yes.

Q. Having bared your experiences? A. Yes. 30

Q. The next step was to try and encourage others to bare their experiences? A. Yes.

Q. And you encouraged - your aim was anyway to encourage several members who had carried out the charts themselves to talk about their experiences in charting? A. I just ask and if no one charted I can ask anything -

Q. But if someone had? A. It does not occur.

Q. Never occurs? A. They might chart but they want to keep that for themselves. It is their privilege.

Q. Have you ever had a member of a class who charted and who has been prepared to discuss his own experiences? A. Yes, lately, but very few.

Q. At all events you are instructed to endeavour to get them to talk about their - A. To suggest.

Q. To talk about their charting, yes, then you would talk generally to members about the difficult task involved in changing behaviour? A. Oh yes. 10

Q. And would you make then a fresh effort to encourage those members who did not keep a chart to do so the following week? A. Yes, I mentioned.

Q. Well, this was part of the feedback, wasn't it? A. Yes.

Q. Those that had not done it in the first week you were not handing out a module in the feedback week? A. No.

Q. So you made a fresh effort to get them to chart in the next ensuing weeks, is that right? A. Yes.

Q. So you rarely at this period got success in members telling you about their experiences - for example, that Mary told you she had learned to eat slower or something, or how to eat slower. Would you get that? A. Yes. 20

Q. And they learned how to make the dinner more satisfying - something like that? A. Yes.

Q. You would get those responses, would you? A. Yes.

Q. And you would conclude with a recapitulation of the individual learning experiences of the members of the group?

A. No, I would recap or review the summary of the module and also create expectation for the following one in the following week. 30

Q. So you were told, were you, to close with a preview of next week's module? A. I learned that in class.

Q. Do you say that you were never told to close with a preview of next week's module -



HIS HONOUR: Q. When you say you learnt that in class, you learnt that when you were doing the training class? A. No, when I was a member, when I was losing weight.

MR MASTERMAN: Q. And you never heard any supervisor or area manager tell you that you should close the feedback classes with a preview of next week's module? A. No.

Q. Did you read that? A. I read that.

Q. You read it in this document? A. Yes, that's right.

Q. And there was other material you were given in relation to feedback classes and how to conduct them? A. I don't know except for the lecturer's manual which is probably a little bit more. 10

Q. Now the final type of class was the link-up class?  
A. Yes.

Q. Perhaps without going into detail, you were instructed as to how to go about the link-up classes, were you not?  
A. It is a review.

Q. Yes, but you were told a bit more than that, weren't you?  
A. I read more about it than I was told.

Q. Well, there was a specific topic, was there not, of link-up classes. You read about how to prepare for and conduct link-up class discussions - is that right - and I think as you told us before, link-up weeks are two weeks of review from the segment of modules from the personal action plan, is that right? A. Yes. 20

Q. I think you told us - and just refresh my recollection - that the visual with the names of the titles of the modules was prepared by you for use in a link-up class? A. Yes.

Q. And you were told, were you not, at page 4 of the link-up class topic, that there were two ways of handling link-up week presentation, that you could present all of the modules in the first week and treat the second week as a feedback week. That was one of the alternatives you were told?  
A. Yes. 30

Q. Or you were told you could present some of the modules the first week and some the second week? A. Yes.

Q. Dividing it roughly into two? A. Yes.

Q. Which of those two alternatives which you were instructed to carry out did you carry out? A. I generally review all these modules of one segment and the following week I try so that members could recollect or the member what it was all about and the following week of link-up I tried to discuss and find out if it helped some of the members or not.

Q. Now you told us you started with Collaroy Plateau and that had, did it, a number as a class? A. That I cannot recall.

Q. But it had a specific number? A. Yes.

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Q. Which was kept in the Narich - A. Well, we had to fill in the tally sheet, the class number, but I cannot recall.

Q. Yes, you were given the class number by somebody, weren't you? A. Yes.

Q. Who were you told about the class number by? A. By the supervisor - no, I am terribly sorry, that was Lyn Harris, Collaroy Plateau, that particular night.

Q. Class No. so-and-so, time and - A. No, it was not necessary because a lecturer was before there, so there were copies of tally sheets which contained the class number. I was told only the time and the address of course.

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Q. Were you given the tally? A. They were there.

Q. That is the recorder collected them or something like that? A. Yes.

Q. By the way, you told us you were a draftsman? A. No, a draftswoman.

Q. A drafts person? A. A design draftswoman.

Q. Did you undertake technical training of some sort?  
A. Yes.

Q. Where was that? A. Sydney Technical College.

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Q. And did you have some part-time lecturers there, or were they all full-time, or didn't you know? A. Where?

Q. At the Sydney Technical College? A. When I learnt.

Q. As a student. A. When I was a student they were after hours, and they were before that time that we are talking about. 1963.

Q. After a while you told us you moved from Collaroy Plateau to the University of N.S.W. I think you told us in your affidavit that your husband had some connection with the University of N.S.W. Is that right? A. He works there.

Q. What is his position there? A. Does it matter? In that case, if it does I will answer it. It is no secret. He is a professional officer.

Q. Starting from scratch, I suppose you developed the idea, did you, that it might be a good place to try Weight Watcher's classes? A. Yes. May I? 10

Q. Well, I was asking you that question and you said Yes. My learned friend can ask further questions later on. What steps did you take to obtain approval from Narich about conducting Weight Watchers classes at the University of N.S.W.? Who did you speak to first? A. I spoke to - Joy Covell came to a meeting at the University movement that we had with the activities director.

HIS HONOUR: Q. That was not a meeting of Weight Watchers? A. No there was a meeting to arrange the meeting for Weight Watchers. 20

MR MASTERMAN: Q. Presumably - you know I am just trying to imagine what took place - you rang Joy, she just did not arrive at a meeting? A. No.

HIS HONOUR: Q. You invited her to come along? A. Yes.

MR MASTERMAN: Q. Did you suggest to her "I think it might be a good idea to try Weight Watchers at the University of N.S.W."? A. Yes.

Q. And she said, "That sounds a good idea" or something like that? A. Yes.

Q. And in a sense you had her preliminary permission to go ahead with the idea. Is that as you understood the position, that you had her preliminary approval to go ahead? A. Of course. 30

Q. And you arranged some meeting there with the appropriate authorities? A. Yes.

Q. And you brought - suggested that she come along? A. She had to come along.

Q. Why did she have to come along? A. Because I am only a lecturer and I am doing only a very little job.

HIS HONOUR: Q. She was then what, a supervisor? A. Supervisor.

MR MASTERMAN: Q. Well, things progressed and Narich, through Joy Covell, agreed to you conducting classes there? A. Yes.

Q. And the class got a number? A. Yes, A74.

Q. It got a time? A. 5.30

Q. And it got a day? A. Tuesday, today.

(Mr Shand indicated that the witness was in difficulties in the afternoon after 3 p.m.)

WITNESS: I have a class at the University today. I have to go home and take everything that I take with me and I have to go and open the class. 10

HIS HONOUR: Q. And you have to be there at half past 2?  
A. No, I have to be there at 5 o'clock but I have to go home first at Northbridge and take everything and then go to the University.

MR MASTERMAN: I won't be more than half an hour at the outside.

MR SHAND: Q. That will give two hours to get home and back to the University? A. Yes. 20

HIS HONOUR: You can go at 3 p.m. or as soon after as we can get.

(Luncheon adjournment.)

ON RESUMPTION:

MR MASTERMAN: Q. (Refers to Ex.T) Now I think I asked you some questions - I suggested to you that the Weight Watchers' techniques were secret and matters in which the lecturers were - and you in particular - told to keep secret and as a matter of confidence? A. Yes.

Q. You agree with that, do you? A. Yes. 30

Q. And you were told that the teaching material was handed out on that basis? A. Yes.

Q. Perhaps if I can show you Ex.Y and read that. "How to use Eating Management Techniques" - it is on a number of documents

I think, but to whom were you told that you had to return the material when you ceased as a lecturer? A. To Narich.

Q. So even though you were told the property is the property of Weight Watchers, in fact you had to return it to Narich, is that right? A. Yes.

Q. Now that was said when this sort of material was handed out, was it? A. At the end of the workshop.

Q. Yes, that the material handed out was to be handed to Narich upon termination or handed back to Narich, is that right? Now would it be true to say that you have been a successful lecturer? A. Well, that is my appreciation.

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HIS HONOUR: Q. That is what you think? A. It is what I think, yes.

Q. You are able to make that judgment by comparison with what you see of other lecturers? A. No, I have not the opportunity.

MR MASTERMAN: Q. To see other lecturers? A. No.

Q. You feel yourself you have been a happy and successful lecturer? A. Yes, I do.

Q. And you have enjoyed yourself? A. I am very much satisfied of the work.

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Q. Do you qualify with what I say to you - you enjoy yourself? A. Yes.

Q. It is a hobby? A. It is a hobby.

Q. And I suppose you hardly think of it as work? A. Exactly.

Q. And I suppose that attitude to it colours your view as to whether you are an employee or not, the fact that you regard it as a hobby? A. Yes.

Q. In the agreement you signed it refers to a fee you are entitled to get? A. Yes.

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Q. And the fee increases the longer you have been with the company, is that right? A. Yes.

Q. And then there is also in addition a commission rate?  
A. If I sell anything or if the class is larger than 35, 40.

Q. Is your current class more than that, though? A. Only, at the moment?

Q. Yes. A. Yes, one of the classes.

Q. And you would describe what you receive as a lecture fee I suppose, would you, in accordance with the agreement, a lecture fee? A. Honorarium.

Q. Yes, well that is what I was coming to. What I want to suggest to you - the description of it as an honorarium is a complete sham, is it not? You know the expression sham?

A. No.

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Q. What you do receive is a lecture fee, isn't it? A. Well, what is the difference?

Q. Well, you tell me what you mean by an honorarium?

A. What is sham? Is the wrong term.

Q. Tell us what you understand by an honorarium? A. An honorarium is not a fixed payment. It varies and it is given to a qualified person doing a certain job. A fee is related I would say more to time.

Q. The amount that you deduct when the class has been completed you regard yourself as entitled to deduct pursuant to your agreement? A. Yes.

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Q. And it is laid down in the agreement how much you get?

A. That's right.

Q. And you would not regard it as a gift or gratuity, would you? A. I never thought of that.

Q. Did anybody tell you why you had to describe it or why it might be an advantage to describe it as an honorarium? A. No, never.

Q. Do you take the point his Honour is making - ex gratia is the same as honorarium? A. Yes, as I recall of my lay Latin.

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Q. I am sure you will not mind my putting this to you. You are a very intelligent woman, are you? A. I don't know.

Q. And you would agree with me, would you not, that it is completely incorrect to describe the money that you deduct as an ex gratia payment? A. I don't know.

HIS HONOUR: Q. Do you know the meaning of the words "ex gratia"? A. Yes, out of grace or goodwill.

Q. Goodness of the heart? A. Yes.

MR MASTERMAN: Q. Not remuneration for the services that you have rendered? A. There is a way of compensation I would say.

Q. Yes, but that is different, isn't it? Commission is a remuneration for a service rendered, isn't it? You would not describe a commission as ex gratia? A. No.

Q. What I want to suggest to you is that there is nothing about this payment ex gratia that you deserve it, you are entitled to it under the agreement? A. It is set down in the agreement and, yes.

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Q. Were you ever told why it was? A. No.

Q. Was it suggested it might help with payroll tax if they described it as an honorarium? A. No.

Q. Nobody told you why it was described as an honorary?  
A. It was described in the sheet as an honorary.

Q. You were telling me yesterday about how you were approached to give evidence. You first mentioned a Mr Harris?

A. No, I first mentioned Estelle Gough and then -

Q. (Page 21 of the transcript) "Q. Who approached you to give evidence in this case, by whom was the first approach made to you? A. It is very hard to remember, I think Mr Harris" and then you said "I think the first time Estelle Gough mentioned, Estelle Gough when she was first with the firm".

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Q. Was there a Mr Harris? A. No, Mr George Harris.

Q. Who is he? A. A solicitor.

Q. He was not the first person, Estelle Gough approached you first? A. Yes.

Q. You don't know where she is at the moment? A. How would I know, she left the company, I don't know.

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Q. The supervisor originally, Joy Covell, is with the company still? A. Yes.

Q. At all events Estelle Gough approached you? A. Yes.

Q. Did she tell you she was looking for witnesses for a case?  
A. Would I be willing to witness if a case would be coming up and I said -

Q. Did she say why you were to be selected? A. No she didn't, she asked me will I be prepared to help her with my testimony.

Q. Did she tell you she was seeking other lecturers or just you? A. I didn't ask, I don't know.

Q. Can you recall what you can of the full conversation?  
A. It is a long time ago.

Q. Approximately how long ago was it? A. I would say two years or more.

Q. Did she tell you the nature of the case? A. No.

Q. Did she tell you what were the issues in it? A. No. 10

Q. Did she tell you to write something out in handwriting?  
A. No.

Q. Did you write out anything in handwriting? A. No, except for the affidavit that I have written but not before that.

Q. You told me earlier you regarded what you did as a hobby?  
A. Yes.

Q. You regarded that as an important element in determining whether you are an employee? (Objected to; allowed).

Q. What I am suggesting to you is that you regarded the fact that you looked upon your lecturing as a hobby as an important factor in your opinion as to whether you were an employee or not? A. I do. 20

Q. Indeed in your affidavit at par. 49 you said: "I do not regard myself as an employee of Narich, I regard what I do as a hobby". A. Yes.

Q. It is because you regard what you do as a hobby that you regard yourself as an employee of Narich, is it not? A. No, I regard myself as not being an employee of Narich.

Q. What I am suggesting is that in forming the opinion that you set forth in par. 49 that I have read to you: "I do not regard myself as an employee of Narich, I regard what I do as a hobby" the opinion that you are not an employee flows from, I am suggesting, the fact that you regard what you do as a hobby? A. Not only that. 30

Q. But primarily that? A. I can expand it if you wish.

Q. Is that a primary factor? A. That is a hobby.



Q. And that factor you regard as important in relation to regarding yourself as not an employee? A. Yes.

Q. In relation to the various classes that we have discussed, the module presentation, the feedback and the link up classes there is a series of defined segments that you have been instructed to carry out in your class, is that correct? A. Yes.

Q. I suggest the arrangement between you and Narich is that you should conduct those classes in accordance with the directions that I have referred you to in relation to module presentation, link up classes and feedback classes? A. Yes, according to the outline. 10

Q. Weight Watchers lectures are a system, are they not?  
A. I believe Weight Watchers is a fantastic idea.

Q. I think you mentioned one of the features is that somebody from Griffith in New South Wales who does a module one week if he or she is in Sydney can go to a class in Sydney the next week and there will be a feedback class in relation to that module?  
A. Exactly.

HIS HONOUR: Q. In continuity thereafter? A. Exactly.

MR MASTERMAN: Q. The classes are structured in a particular way which is uniform throughout the state? A. I don't know, I have never been to any other class. 20

Q. You told me that you were not free to vary without permission the day or time of the class? A. Of course not.

Q. You also told me you were not free to vary the particular module scheduled for presentation at a particular class?  
A. For the members' benefit.

Q. At least in those matters you are, would you not agree, subject to the direction of Narich? (Objected to; disallowed by his Honour in that form). 30

(Witness stood down)

(Discussion ensued in the absence of the witness)

BEATRICE SANTEA,  
recalled on former oath:

MR MASTERMAN: Q. (Shown agreement dated 4th July, 1977) Would you read cl.3? (Complied). What I want to suggest to you firstly is that you do not perform your duties free from

Mrs Santea, xx.

the direction or control of the company? (Objected to on the ground of relevance; allowed by his Honour). A. Some, not all.

Q. Some of your duties you perform subject to the direction and control of the company and others you do not, does that summarise your answer? A. Yes.

Q. To say that you perform all your duties free from the direction and control of the company would not be correct? (Objected to; objection upheld by his Honour).

HIS HONOUR: Q. I gathered from what you had said that because you consider your engagement, and I use that as a neutral sort of word, with the plaintiff company as being a hobby this you regard as an important factor, in your view, that you are not an employee of the plaintiff company?  
A. Yes.

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Q. Do you understand what I am putting to you? A. Yes.

Q. Why? A. Because if, for instance, for my job permanent position that I have during the day, if I would work as many hours I would probably be paid four or five times what I get for a meeting from Narich because I could go from the office, leave the office at 4.30 in a very tired state of mind and thinking I have to cross the Bridge by car and get to a meeting how am I going to do and I get there and I feel all refreshed and I feel all enthusiastic and I make a break between my fully technical work and doing something completely different and that is the reason that I feel that helping others the way it helped me that is a hobby. I enjoy doing it and when somebody comes to me and tells me "I succeeded in doing this or that, I followed the module, I understood it" I feel that I achieved something, that I helped that person and it is not the \$16, \$14 or \$10 if I would to put the time that I spend that would mean at least ten hours between six and ten hours of preparation, plus I get to the meeting, a meeting which starts at 5.30, I am there at 5 o'clock or earlier and I leave at 8.30. So you do not do something like that for just money, for a material profit.

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(Mrs Santea now excused from further attendance unless required.)

RICHARD BRUCE JAMIESON  
Sworn and examined:

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MR SHAND: Q. Your full name is Richard Bruce Jamieson?  
A. Yes.

Mrs Santea, xx., excused  
137. R. B. Jamieson, x.

R. B. Jamieson, x.

Q. You live at 53 Grampian Road St. Helliers Auckland, New Zealand? A. Yes.

Q. You are a company director and the chairman of directors of the plaintiff company? A. Yes.

Q. And you are aware of course of the affidavit that you swore on the 28th December 1979 in these proceedings? A. Yes.

Q. First of all are you aware that annexed to your affidavit there are three documents, purporting to be in the form of agreements, the second one of which is referred to in your affidavit as having been unauthorised, is that so? A. Yes. 10

Q. And the first and third of which you refer to I think as agreements properly and regularly used by your company with lecturers? A. Yes.

Q. Now about the unauthorised agreement. Who was it who was responsible for its use, without authority - (Objected to).

Q. Who is the person who effected the use of the form of agreement without authority of the company - (Objected to - allowed) A. David Kettlestring.

Q. He was in what position at the time? A. He was the accountant at the time. 20

Q. And what position did you hold in the company at that time? A. Managing Director.

Q. Was there at the time a general manager? A. No.

Q. Who then was - and if more than one say so - Mr. Kettlestring's superior? A. I was.

Q. Were you aware at any time before you became aware of the execution of that form of agreement by a number of lecturers, were you at all aware of its use in that form? A. No.

Q. Had you given any authority at all for the use of an agreement in that form? A. No. 30

Q. Now with regard to the other two agreements - would you look at annexure B to your affidavit. Would you look at that document which was exhibited to your affidavit and marked RVJ3, and tell us which of the provisions there you are referring to when you indicate that they were without authority of the company - (Objected to - rejected).

Q. Can you see anything in that agreement which you say is different from the agreement which you regarded in 1976 as being the authorised agreement? A. Point by point, or just generally?

Q. (Mr Masterman indicates that he has no objection to Mr Shand leading on this point).

Q. Well, would you look at page 2. Was there a section on that page which is in fact different? A. I guess it would be the portion at the bottom, "As lecturers are self-employed it would be necessary ..."

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HIS HONOUR: Q. Do you see the words near the centre of the page - "in addition"? A. Yes.

Q. And do you see what comes immediately after it? A. Yes. "Lecturers are to complete their fourth year" etcetera.

Q. One week's holiday. Does that help? A. That section is not in B.

MR SHAND: Q. I think it is common ground it is not in A?  
A. Yes.

HIS HONOUR: Q. And it is not in C? A. Right. But the numbers do not run concurrently either, when you are comparing A with B.

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MR SHAND: Q. So far as that section you have referred to is concerned, on page 2, under the heading "In addition", did you as managing director give anyone authority for the execution of an agreement containing that passage, or that section, by lecturers, or by the company? A. No.

Q. I want to deal now with the other two forms of agreement, which are annexures A and C to your affidavit. Would you look at those? So far as the agreement annexure A is concerned your affidavit indicates from 1st November 1973 until some time in 1977 Narich engaged lecturers who signed that form of agreement. You have said that. What was it, if anything, which occurred in particular about 1977, quite apart from annexure B which you have been talking about, which brought about the use of annexure C? A. Are you referring to the fact that we had some difficulty with the unions, etcetera?

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Q. In fact I am. Would you tell us what occurred? A. At this point one of the unions attempted to unionise all our people, and attended one of our meetings on a Saturday and insisted on addressing the meeting of lecturers, and the

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lecturers did not wish to be interviewed by these people, or spoken to, and they suggested they should give them two minutes to see what they had to say, and then for them to leave; and they objected to their being unionised - (Objected to - question now withdrawn).

Q. Mr. Jamieson, when was it that this union incident occurred, could you tell us? A. I can't place the exact date. I think it was a Saturday.

Q. What year? A. It must have been in 1973, I should imagine. 10

Q. I want to ask you now, before the commencement of the use of the document which is annexure A, and which you said started in 1973, was there some form of agreement used between your company and the lecturers? A. Yes.

Q. And from a date in 1973 was there a change in the form of the document which is annexure A? A. Yes.

Q. And what I want to ask you is, did something happen in 1973 which caused you to decide upon the change to annexure A, from the previous agreement? A. Yes.

Q. Were you present during the incident or incidents which happened then, or not? A. Yes. 20

Q. Would you tell us then what happened? A. There was an attempted unionisation, so I - (Objected to).

Q. Would you tell us what first of all you witnessed being said or heard at that time, Mr. Jamieson? A. Two persons from a union came to a meeting, forced their entry and wished to speak to the meeting of Ladies at that meeting; and the ladies gave them time, after which they asked them to leave.

Q. Who were the ladies? A. The lecturers who were present that day, the Sydney Lecturers. 30

HIS HONOUR: Q. Was this meeting being held here or in New Zealand? A. Yes. In the ironworkers building.

MR SHAND: Q. Did you hear what those union people said? A. Yes.

Q. Tell us what they said? A. They wanted them to become part of their union; and all of the ladies objected very strongly and said - tell us what you have got to say and then leave. And I asked the ladies present after the meeting

whether this was what they wanted or not, and they said no; but I didn't attempt to see if we could become associated with a union, with a friendly manner, and I contacted the Hospitals Union; and I didn't want to go along that line, because they talked about a closed shop, a specific amount of money coming back to us, and it didn't seem very savoury to us, because it included the persons who attended at the meeting, and some of those persons made very little money, and they would have exhausted their resources for the year. So then I investigated another course, and this included what the English Weight Watchers had been doing - (Objected to - allowed). 10

Q. You need not go into detail about that, but you looked to see what they had been doing. And then did you take any steps?

A. Yes, we virtually copied their format - (Objected to - allowed).

Q. Yes. A. And another reason was, because I guess at the time we were growing very rapidly, and opening -

HIS HONOUR: Q. Another reason for what? A. Another reason for changing the documentation, your Honour. We were growing very quickly at the time, and to hold meetings in very diverse places - Mount Isa, Alice Springs, way out in the back, where we cannot monitor what people do, hardly at all; and so far as their payment was concerned, many of them had to wait six weeks to get their money if a meeting was held today, and so this therefore seemed a far more practical method of getting them their money and organising the whole Weight Watchers group, so they operated independently and got their money on the spot, - and we operated from Port Hedland and Weipa, and we feel we have an obligation to the public to try and open provided we get a request to open, and provide as many of our facilities as we can; and that was probably an equal reason why we tried to arrange it in that way. 20 30

MR SHAND: Q. Would you look specifically at annexure A, page 2, clause 4, and the opening words of that clause. Can you tell us which if not both of the two reasons you have given in your mind prompted the use of those words. You have told us of two reasons why your company decided to adopt this form of agreement, which is annexure A, one of which related to the union incident, and the other related to the convenience of payment to lecturers in the outback. Can you tell us whether either of those reasons, or both, prompted the use of the opening words in clause 4? A. Yes, I imagine so. If she is not going to be an employee of the company, which is what is what is stated there, and she was not going to be an employee of the company any longer, we were not going to pay her from head office, she was going to take her own money. 40

Q. You have given two reasons, one related to the people being forced to join a union and the other reason to do with the outback. Now which of those reasons prompted the use of the opening words in clause 4? A. So the unionisation situation could not happen.

Q. Now so far as annexure C is concerned, do you have that before you? A. Yes.

Q. Are you aware of differences between the provisions of that form of Agreement and annexure A, which you have just been looking at? A. Yes, there is a difference. 10

Q. Are you aware, looking at it now, of the differences between this form of agreement, as to parts of it, from annexure A, which was the one earlier used, which you have previously been looking at? A. Yes. There are differences between the two agreements.

Q. Are you presently aware of the specific differences, as you look at the agreement now? A. I am not clear on this. Is there some specific part of it or is it the total thing. Which part am I supposed to comment on.

(Witness stood down) 20

(Further hearing adjourned to 10 a.m. Wednesday 19th November 1980.)

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
ADMINISTRATIVE LAW )  
DIVISION )

No. 605 of 1978

CORAM: WOODWARD, J.

NARICH PTY. LIMITED v. COMMISSIONER OF PAYROLL TAX

THIRD DAY: WEDNESDAY, 19TH NOVEMBER, 1980

RICHARD BRUCE JAMIESON  
On former oath:

Examination continued:

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MR SHAND: Q. Mr Jamieson, since the adjournment yesterday you have applied your mind, have you not, to the factors which you had in mind in or about 1973 which were influential in the bringing about of the introduction of the 1973 agreement, which is annexure A, is it not? A. Yes.

Q. And I think certain documents have been found which relate to those considerations, but I will come to those later. What factors do you remember now which were influential in the introduction of the 1973 agreement? A. That document was produced as a result of the meeting in Sydney where a union official came to the meeting and endeavoured to interest our ladies in becoming members of their union -

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Q. I need not take you further into that for the present. Could you deal now with any other factors which were influential? A. The organisation was growing quite quickly at that time and spreading throughout the country areas, and it was necessary I felt to alter the arrangement so that the organisation could be better operated by - as employees, we didn't visit those people hardly at all, and as independent contractors we felt that they would have more responsibility about what they had to do, and that this would help them do a better job, because we saw so little of them; and additionally there were the logistic problems of just simply paying these people - some of them were receiving - maybe a part time person helping for half an hour might get \$1 or something, and it was necessary to produce a cheque and send this out, and it was usually done on a monthly basis, because the amounts were so small; and we found this a far better way of getting the money into the hands of the people more quickly. They did their job and they got their money, and they didn't have to wait a month, or six weeks in some cases, before they received their remuneration.

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Q. Could you tell us the cost involved to a small company in sending these moneys to the lecturers to places wherever they may be, either in the cities or further out in the country?

A. Yes. The cost of doing this was fairly substantial. There was a great amount of work involved. It seemed a far easier matter and more practical to do it the other way, for them to take their money out of the meetings so that they got it immediately. There had been a lot of complaints about cheques going astray, problems with the places, people not getting their money; and this just seemed a more practical way to do it, and we got advice as to what other people were doing, and we decided to copy that. 10

Q. You mentioned yesterday that you had reference to the method or system used in England with the Weight Watchers operation, with regard to the use of lecturing staff and the payment of them? A. I wrote and asked. What do you do, you know, because we are growing. You are already bigger than we are. How do you handle this problem? And they wrote back and told us what they had done.

Q. And you told us yesterday that you had adopted the English system? A. Yes, almost exactly, I think. 20

Q. I show you a photocopy of a letter dated 6th July 1973. Is that a copy of a letter you received in reply to your enquiry to the English company? A. It seems like a page is missing.

Q. Nonetheless do you recognise it as including the first two pages of the letter from England? A. Yes. It relates to some other matters too, but basically all about that.

Q. Do you know where the remaining page or pages are? A. No. The original must be somewhere too. 30

Q. So far is that all your company has been able to find? A. Yes.

Q. And I take it you can have further enquiries or searches made to see if the total document can be produced? A. Yes.

HIS HONOUR: Q. The registered office of your company is in Australia, is it not? A. Yes, 309 Pitt Street.

Q. And you have given your address as New Zealand? A. That is where I reside, your Honour.

Q. Are any of the company records in New Zealand? A. No, not at all. 40

Q. So that you would expect to find them, if they are in existence, at the company's registered office? A. Yes, we would.

Q. Have you made a search? A. I believe the company secretary has done this, your Honour; and he is present here.

MR SHAND: Q. Mr Jamieson, were you influenced by the contents of this letter which has been handed to his Honour, in the decision made as to the form of the agreement introduced in 1973? A. I think very much so, yes.

(Copy letter dated 6th July 1973 from Weight Watchers England to the plaintiff tendered and marked Exhibit AL)

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Q. Now was there another factor involved in the move to the 1973 agreement; something that had happened in the preceding period? A. Yes. Another point was, as is mentioned in that letter I guess, was the P.A.Y.E., the deduction of this, and the people that had very little money coming to them, it was a costly affair, and they were maybe earning \$2 or \$3 and there was no need to take a deduction out and fill a form in, and maybe they only worked once and didn't work again; and this was a large amount of work for the money involved, and this was one reason; and additionally there was the restrictive covenant regarding a lecturer should she see fit to set up in opposition to us, and I think the mileage figure was reduced down to two miles.

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Q. Had the latter matter come up in a form of litigation in which the company had been involved in the Equity Court of this State, which resulted in a judgment of Helsham, J.? A. Yes. (Objected to).

(Copy of judgment of Helsham, J., of 4th November, 1971 - Narich Pty. Limited v. Cullen - tendered and marked Exhibit AM.)

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Q. Mr Jamieson, were there any other factors which you recall influenced you in moving to the agreement introduced in 1973? A. I can't think of any others.

Q. As you recall, was the desire or intention to avoid payroll tax something that influenced your mind at that time in the introduction of the 1973 agreement? A. No, never.

Q. I want to ask you whether there was a Mr Bruce Hocking employed by your company around about that time? A. Yes.

Q. What position did he hold? A. He was the managing director, then. 40

Q. And were Baker and McKenzie the solicitors for the company at that time? A. Yes.

Q. Do you recall whether a barrister was briefed to advise on the subject of the 1973 agreement? A. Yes, I believe so.

Q. Who was it? A. I would have thought it would be Mr Dey.

Q. I am going to show you a brief which was delivered to counsel, Mr Dey, for the purpose of that advice, and I show you one page in it, which is the second page - (Objected to - allowed).

Q. Would you read the document to yourself, Mr Jamieson. Were you aware of the existence of that document in 1973 or thereabouts? A. I don't think so. 10

Q. Were you aware of its being included in a brief to counsel on the subject of being advised on the 1973 agreement - (Objected to - allowed).

Q. Were you aware of that document being included in a brief to counsel to advise in 1973 upon the 1973 agreement? A. I was not.

(Brief to counsel, 1973, tendered - objected to - admitted and marked Exhibit AN).

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Q. Now you dealt yesterday with the incident involving the use for a limited period of what I choose to call the unauthorised form of agreement, so I won't deal with that again. After the efforts made to recall that form of the agreement, what form of the agreement continued thereafter to be used? A. The original form.

Q. And by that you mean - A. "A".

Q. That is, 1973 agreement? A. Yes.

Q. Did a time come, to your recollection, when the company positively and intentionally ceased to pay payroll tax? A. Yes. 30

Q. Do you remember when that was? A. Well, it came about - my memory - (Objected to).

HIS HONOUR: Q. Was it a refusal to pay payroll tax in relation to anybody, or was it a limited refusal?

MR SHAND: Q. Did the company cease to pay payroll tax in respect of certain items at some time, according to your recollection? A. Yes.

R. B. Jamieson, x.

Q. First of all, when was it? A. It was in 1973 - I don't know the date.

Q. You do not remember the precise month perhaps, or not. If you do not remember, say so? A. No, I don't think so.

Q. In 1973 had a new employee been taken on by your company, in a high executive position? A. Yes. Mr McIntyre.

Q. What position did he take up? A. The accountant. We had not had an in-house accountant prior to that time, and Mr McIntyre became an in-house; and we had our accountancy work done in Randwick.

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Q. And after his arrival in 1973 do you recall him saying anything to you on the subject of payroll tax? A. Yes.

Q. Do you remember when that was, with any precision? A. No, I am sorry.

Q. What did he say to you? A. Well, what he told me was - (Objected to - allowed). What he said to me was. He had just arrived, and having gone through this form of payment to the lecturers, there was not any reporting in our office as to how much they were getting, and the people who had been doing the payroll tax came to him and said -

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HIS HONOUR: Q. What did he say to you? A. He said - the girls out there don't know how to figure out the payroll tax on the money the lecturers take, and they wondered how they were going to do it; and I have pointed out to them that they do not have to collect the payroll tax any longer, because they are now independent contractors.

MR SHAND: Q. Well, you know that your company ceased to collect payroll tax in respect of lecturers? A. Yes.

Q. Do you know whether the cessation of payment followed that conversation that you have mentioned? A. I should think so, yes.

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Q. Can you recall now in respect of what categories of people payroll tax ceased to be paid, and over what area? A. Well, it ceased to be paid in respect of the lecturers -

Q. Just in New South Wales, or elsewhere as well? A. No, throughout Australia, - or wherever we were at that time.

Q. Any other people in respect of whom it ceased to be paid, at that time? A. People at the meetings, the recorders and the weighers, and their assistants.

147. R. B. Jamieson, x.

Q. I want to take you forward to a point in time now to about 1976 - 1977. Did you receive information about contacts between officers of the payroll tax commissioner and your company, at about that time? A. Do you mean, had we been approached by the -

Q. Yes. A. I believe there had been a visit.

Q. I am speaking now of the time after these unauthorised agreements had been pulled back. Do you recall any action being taken with regard to the drawing up of a new agreement then? A. Yes. I think the difficulty was that - (Objected to).

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Q. Do you remember some action being taken with the intention, or possible intention, of drawing up a new agreement? A. Yes.

Q. And do you recall that your company's solicitors were engaged for that purpose? A. Yes.

Q. And that advice was received - (Objected to - allowed)  
A. Yes.

Q. And do you recall that a form of agreement resulted from that? A. Yes.

Q. And what was the description that has been given to that form of agreement, in these proceedings? A. "C".

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Q. Annexure C to your affidavit. You were aware, I take it to some extent, of what steps had been taken as a result of that agreement? A. Yes.

Q. And in that instance the subject of payroll tax was of some influence, as you recall it, in the drawing up of that new agreement? A. Yes, it was; but it was not the main reason.

Q. What do you recall as being the main reason? A. There had been some, I guess, erosion you would say of the position with independent contractors, and we sought to strengthen the position of the lecturers, to protect them - ~~this-is-what-they-wanted~~- (Last portion of answer objected to - to be struck out.)

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Q. Now through from 1973, when there was the cessation of paying payroll tax that you have mentioned, until 1977 when the agreement annexure C came into use, had your company continued not to pay payroll tax in respect of the lecturers and the others that you have mentioned? A. Yes, we had not paid payroll tax.

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HIS HONOUR: Q. Well, I suppose I can assume that up until some date in 1973 some payroll tax had been paid in respect of some employees or some persons who were lecturers? A. I think up until that date it had been paid on everyone.

Q. Whether they were lecturers or other employees of the company? A. Yes.

Q. And then it was decided - on that particular date, whatever it be, it was decided that no further payroll tax would be paid in respect of lecturers? A. Correct.

Q. And then a time came, no doubt in 1977, or following 1977, when an assessment was made upon the company for the payment of payroll tax in respect of the lecturer? A. I believe something of that nature did come to hand at some stage, yes. 10

HIS HONOUR: And this is, I take it then, Mr Shand, the assessment to which the objection is made in these proceedings?

MR SHAND: Yes your Honour.

Q. I want to take you now to portions of your affidavit dealing with the period from December 1973 onwards, and through to the 30th June 1977. I want to find out from you firstly what time observation, if any, you made of the procedures that went on in lecturers' meetings. During that period did you attend any? A. Yes. 20

Q. Can you give us an idea of how often you did attend them, and over what geographical area - and I mean by lecturers' meetings meetings attended by members presided over by members? A. In those days I used to travel interstate, and I attended meetings in New South Wales and interstate, when I was interstate, but mostly in New South Wales, and probably at the rate of about one very three or four weeks or so.

Q. And does that apply during the period of which I have just been speaking? A. Yes. 30

Q. And during the course of you attending those meetings were they always the same lecturers, or different ones or what? A. Oh, different meetings, different lecturers.

Q. And what did you do when you attended those meetings? A. I generally stayed for the course of the meeting, which was usually about an hour and a half or so, and observed what took place at the meeting, and possibly offered some criticisms, or listened to the lecturers' problems, and endeavoured to attend to them. 40

Q. Were you, to a certain extent anyway, aware of the contents of the lecturers' handbook? A. Yes, to a certain extent.

Q. And were you aware of any additional materials which were issued in the form of bulletins to the lecturers? A. Probably about 1975 I think, we introduced the modules.

HIS HONOUR: Q. And was it your practice at that stage to read those documents? A. The material would come in from the United States, your Honour, and I read them and passed them on to the person who was going to disseminate, give that information out to other people.

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MR SHAND: Q. And in respect of that material which came in from the United States, to your knowledge was it altered at all before it was sent out to the lecturers, or not? A. We reprinted it here, to improve the format, but the basis of that material was not altered; but since then we have Australianised it -

HIS HONOUR: Q. What do you mean by that? A. Well, they are very self analytical, your Honour, the Americans, and we have probably tried to water it down a little.

(Short adjournment)

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MR SHAND: Q. Now from the observations that you have made by attendance at these meetings during the period I have been asking you about, have the lecturers followed the procedures which appear or have appeared during that period in the handbook - (Objected to, counsel addressed, question read; disallowed).

Q. I want to show you Ex. U, in particular for example the section entitled, "lecturers job responsibilities" and as part of that a section headed, "During the class". Now it appears there that there is a number of steps in sequence which are set for as to what the lecturer should do. Do you see this?

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A. Yes.

Q. On the occasions when you have attended lectures - (Withdrawn).

Q. Can you tell us whether according to your recollection the handbook appeared in that form during the period we are concerned with? A. New York issue these from time to time and they are normally, you know there have been some revisions as to programme, it is altered.

Q. Yes? A. I am sure if this is the handbook which was current during 1973, 1977.

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Q. Yes? A. It says on the front here 1976. There does not seem to be any indication as to when this was printed.

Q. Well it seems to have 1976 on it so - ?

HIS HONOUR: Q. It would not have been printed 1975 and dated 1976, would it? A. It could have been. This is done in pencil. I was looking for the printer's mark. Here it is. It was in 1976. It was from New York so it was current during that period. It was just folded over there.

MR SHAND: Q. When you attended and observed lectures during 1976 did you observe the procedure carried out by the lecturer during the class? I think that is the expression used? 10  
A. Yes.

Q. And can you tell us whether it did or whether it did not exactly follow the procedure which is laid down in that book - (Objected to, allowed) A. This is intended as a guideline - (Objection).

Q. You must answer my question. Did the procedure you observed being followed by the lecturer exactly comply with those steps or not? A. I do not think ever exactly.

Q. And on any occasion when you observed that the lecturer had not complied with those requirements did you take any action? A. It would possibly be that you just changed the sequence - 20

HIS HONOUR: Q. No, but did you take any action, first of all, in the course of the lecture? A. No, probably not.

Q. Have you any recollection of having taken any action in the course of the lecture? A. Yes, in the event she had stated something incorrectly, in the end, after everybody had gone I would have taken notes and said, "Look, I suggest you might try this". 30

MR SHAND: Q. As to a change in sequence on an occasion when you observed she changed that sequence, for example, did you take any action either by way of discipline or anything of that kind - (Objection, question read).

HIS HONOUR: Q. If there was a change of sequence, that is referred to - do you understand? A. Yes.

Q. Do you recollect then whether you took any action. It depends upon your recollection. The answer to that might be that you do not have any recollection of a change in sequence.



MR SHAND: Q. Do you remember occasions upon which the exact sequence laid down on that page there was not followed?

A. Yes.

Q. Do you remember an occasion or occasions? A. Yes.

Q. Singular or plural? A. Yes, I remember occasions.

Q. And in respect of those occasions did you take any action in respect of a lecturer of a disciplinary kind or any other action upon noting the change in sequence? A. No.

HIS HONOUR: Q. Just before you take that back - have you any recollection of having at any time in the course of a lecture interrupted the proceedings with a view to correcting, or for the purpose of correcting or in the course of correcting the lecturer? A. No your Honour.

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MR SHAND: Q. Now there are some further sections in this portion of the handbook following immediately after what I have shown you, namely a heading, "After the Class". Have you observed what has happened after the class in the case of lecturers during the period we are talking about? A. I normally stay for the whole meeting, yes, so I would be there after the class.

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Q. And have you observed whether or not in those circumstances a lecturer followed the procedure laid down in this handbook under the heading, "After the Class" which I show you now? A. I have read that.

Q. Yes, the question is have you observed during the occasions you have mentioned respects in which the lecturer did not follow those procedures with precision? A. There may have been times, yes.

Q. Can you recall taking any action of a disciplinary or corrective kind on such occasions as those? A. If some of those things have not been done, yes. I would have had to.

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Q. What about a change in sequence? A. A change of sequence does not matter so much.

Q. You mentioned some of those things which ones do you refer to? A. If they did not go through the food programme with the new people, that is basic. If there's people on maintenance plan and they had not been explaining the food programme, that would be very important. And the maintenance plan and the plateau plans, that would have to be explained to people who had graduated onto those plans.

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She might not sort of stay and put the lights out or something like that maybe. She might not have put the supplies away either. She is usually fairly busy with her members and that is left to the others who usually do that.

Q. Well, if there were occasions when you drew to the attention of the lecturer matters of some criticism on your part of what she had done, what were the topics upon which you made such comment - (Objected to, allowed).

Q. Do you remember the question? A. May I have it again please - (question read) It would normally be probable - 10

HIS HONOUR: Q. Can you remember the topic, not what was said about them, but can you remember the topics? A. Had they not performed some of the tasks like reading cards and had they not gone through the maintenance programme, the plateau plan - if there were people there. Had not spent sufficient time or explaining the food programme to new people, yes, I would probably draw that to her attention.

MR SHAND: Q. Were there other aspects that you noted involving some departures from the sequence or ritual upon which you made decisions not to draw your attention to them - (Objected to; allowed) A. Yes. 20

Q. What matters do you tell us? A. Well, if they had changed the sequence or something of that nature I would not bother commenting because this would - (Objection).

HIS HONOUR: Q. Are you saying that your action depended upon the degree of the failure to adhere to these notes? A. Probably the importance of what a method or explained may be not enough or correctly or whatever. More than that the body of the lecture was correct, the main thrust of it was right. I did not wish to be pinpricking about it at all. 30

MR SHAND: Q. Now would you turn to the page just beyond where you are in that handbook headed, "7 - other responsibilities" on the right hand page? A. Yes.

Q. You see reference there to staff meetings and staff training workshops in A and B? A. Yes.

Q. Did you attend any of those functions during the period?  
A. Regularly.

Q. And by the way, who attended staff meetings? A. Well, what they are saying there, this is an American publication and I think they mean lecturers' meetings. 40

Q. In the case of the staff meetings held by Narich, who attended those? A. I would refer to the people who work in the office as being the staff. We refer to the meetings of the lecturers each month as lecturers' meetings.

HIS HONOUR: Q. And that document in front, that whole book is called a lecturers' handbook, is it not? A. Yes, it is your Honour.

MR SHAND: Q. Did you have such things as staff training workshops, if you understand what that expression means in terms of Narich's operation? A. Yes.

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Q. Who attended those? A. Trainee lecturers and the person training them was normally the area manager or a supervisor.

Q. You are aware of the fact I think that the agreements - I think both agreements annexure N and agreement annexure C refers to lecturers attending monthly lecturers' meetings. I think that is what they are called? A. Yes.

Q. Were they for all lecturers - and I mean for instance in every part of New South Wales - lecturers' monthly meetings which they could attend? A. These meetings were held at that time in Sydney and Newcastle, Wollongong. Relating to the other outback territories they were held from time to time as best we could get those people together, some only once or twice a year because they were too dispersed.

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Q. Then can you tell us whether to your knowledge all lecturers in New South Wales during that period attended monthly lecturers' meetings or not? A. Well they could not all, no. The city people did.

Q. Was any action taken by way of discipline or correction or termination in respect of lecturers' who did not attend monthly meetings? A. No, they were encouraged to attend but they were not penalised for not attending.

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Q. Would you look at the previous page in the handbook which is headed "During the week"? A. During the class?

Q. Do you see par. 6? A. Yes.

Q. To your knowledge was action taken to verify whether those steps were taken by lecturers? A. I am sorry, would you repeat the question?

Q. To your knowledge was action taken to verify whether lecturers followed each of those steps that are laid down? A. Yes, I would say so.

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Q. And what was the system to your knowledge which was used for that purpose? Who was involved in it? A. Any reports that were not filled in would become obvious from the office and they would be asked about those.

HIS HONOUR: Q. Who would be asked about them? A. The lecturers would be asked why they had not sent in particular forms that were necessary for our compilation of records and so on. The supervisor, area managers would be more or less making sure the majority of these things were done. Most of them - the awards, the lecturer would make sure she had her awards anyhow. They would - she would report any difficulties with the hall to make it comfortable for herself and the members. 10

MR SHAND: Q. Did you issue instructions to the supervisors as to what they would do upon their attending meetings presided over by lecturers? A. Yes.

Q. During this period? A. Yes.

Q. What instructions did you issue. A. They would have a format to follow when they attended a meeting and in fact I think there was a form they filled in at that time on which they had to check things like the lecturers' dress, how she addressed the meeting etc. etc. It was a fairly long form and it covered most of the aspects of the meeting so that she could make a report on the meeting and then discuss it usually with the lecturer after the meeting when all the members had gone and if any one could help her by constructive criticism. 20

Q. And following the supervisor doing that, did she have a function with regard to reporting back about the meeting?

A. Yes, usually came in at this stage - I would have looked at her reports, probably not every one but definitely a sampling to see what was happening in the field and what they were reporting. 30

Q. And what action, if any, did you take during that period upon seeing the sample of these reports? A. It would be done to give you a general impression of what the lecturers were saying and doing at the meetings and how they were conducting themselves. I doubt whether it would be anything specific. If it was something outstanding the supervisor would have taken the care of it at the meeting in conjunction with the lecturer. She would probably mention that to me if she had had to do anything of a firm nature. 40

Q. In that handbook that you have there there is a section that deals with module presentation. It appears about three

pages beyond the one of lecturers' job responsibility?

A. Yes, I have it.

Q. First of all, can you recall when modules were introduced?

A. 1975, some time in 1975, I do not think I can give you the exact month.

Q. I do not think we need the exact month. If you can do it readily, by all means? A. I am sorry.

Q. And in this section of the handbook there appears not only a statement of the modules under their title as part of the personal action plan, but if you will see about four pages further over in a page headed, "Module presentation 5", the elements of a module presentation are set out? A. Yes.

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Q. Now did you on occasions of your attendance see a module presentation and hear it? A. Yes.

Q. And on the occasions that you did see and hear it did the lecturer precisely comply with the presentation laid out there?

A. No, not initially. The introduction of the modules were resisted, shall we say, by the majority of the lecturers in that it is fairly complex. It encompasses the psychological aspect and many of them did not believe - you see, what has to happen, they have to believe in it themselves and do it themselves and actually find it works for themselves better than they can actually teach it to others and some were not convinced they were. So some of them taught it rather badly or either taught it rather badly and some older ladies still feel that way about it.

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Q. What action, if any, did you take or instruct to be taken on ascertaining during that period that some of the lecturers were not following that presentation? A. We ran advanced workshops and things of this nature to try and encourage them to do it because it was required that we do it by the parent company in New York and did our best to try and do it. We realised it was going to require a lot of patience to introduce it properly.

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Q. Did you on occasions witness presentation of a module which was in fact the presentation, but did not follow these procedures in the sequence and respects set out there? A. Yes.

Q. Where that happened was any action taken to correct discipline or otherwise deal with the lecturer? A. Yes, we actually would have tried to encourage her to improve her delivery of the module and that it had some definite benefits for the member and to encourage her to do it so that she

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believed in it. If she became convinced that it worked for her, then she would see it worked for others and that is how we set about trying it. It was a long process.

Q. You see under that same heading about one-quarter of the way down the page the words appear in addition to the body of the presentation the presentation must include - and then there are six items that follow. Do you see that? A. Yes.

Q. Did you on occasions see any one of those missed out - (Objected to, allowed).

Q. Did you on occasion see anyone or perhaps more of those missed out? A. Yes. 10

Q. Can you remember an example of any you saw missed out?  
A. Well, the obvious one is the visual because it is "if desired" and that entails a fair amount of work on the part of the lecturer to do it at home and design something. The balance of them - I am sorry, yes, the other one would be point 5 which I think the lead-in, they would do the human interest story visuals. Some did card calling, and that nearly always happened. Reference to other subjects. Modules, this is the part if they were familiar with it, why they could not do it. 20

Q. On any occasion when they missed out one or another of those items did you take action or not - (Objected to, withdrawn).

Q. For instance, take number 5, reading reference to other modules concepts and other steps which relate directly to the module being presented - did you take action upon becoming aware that that had been left out? A. Yes.

Q. What sort of action? A. Well, once again we would try and encourage the lecturer to put more effort into her modules and the concept of the modules because of their ability to help people lose weight. 30

Q. In respect of the omission of any of the steps in the module presentation, to your knowledge has a lecturer at any stage had her services or her agreement terminated? A. No.

Q. Take for instance the link-up classes which are referred to just a few pages before the modules presentation. Did you attend such classes during that period at times? A. Yes.

Q. Did you notice that there is a long paragraph at the bottom of the page? A. Yes. 40

Q. Which includes - (Objected to, allowed).

Q. Would you look at that paragraph and tell us whether you can now see that a number of steps are referred to in it?

A. Yes.

Q. Did you attend link-up classes during the period? A. Yes.

Q. Can you recall whether at those classes you observed whether or not those steps were all observed or whether there was departure from them - (Objected to, allowed) A. Yes, I did.

Q. You noticed what? A. That they were not always, they did not do all these things. 10

Q. Did you take any action when you noticed that? A. The same as I mentioned previously. I would tend to encourage them to study their modules more and become more conversant with them because they were valuable.

HIS HONOUR: Q. Would any of this have happened during the period you have referred to when there was difficulty in inducing the lecturers to go to the module and adopt the module system? A. Yes you Honour, it extended for quite some two years. In fact there are still some lecturers who have been with us some ten years or more who really do not believe in the module. It has been quite a contentious point. 20

Q. And they are still with the company? A. They are still with the company, absolutely, yes.

MR SHAND: Q. Would you just go back a little further in the note book to the heading which is "lead-in"? A. Yes.

Q. And you see that there is an explanation of objective and rationale at the top of the page? A. Yes.

Q. And then there is a further explanation in the chunky paragraph near the middle of the page? A. Yes. 30

Q. And at the end of that paragraph there is a reference in the words, "Expanded it in your own words using one or a combination of the following methods"? A. Yes.

Q. Did you attend lectures during that period when you saw or heard a lead-in being used? A. Yes.

Q. And did you notice that that procedure was followed or not followed, that is the procedure from (1) to (11) bearing in

mind that the words above are one or a combination of the following methods? A. Yes, there were occasions when these things were not followed.

Q. And any action taken by you when you noticed that?

A. Once again, encouragement and shown to do the thing properly.

Q. Did you give any instructions for instance to the supervisors for the purpose of their attending these meetings as to what they should do in relation to adherence to those procedures (1) to (11), for instance, or departure from them?

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A. Yes.

Q. What instructions did you give? A. To try and encourage the lecturers to follow them.

Q. In case there is a doubt about a previous answer you gave, I think in answer to his Honour you said some lecturers still do not believe in the modules and you were asked whether they were still with the company and you said they were. Do you remember that? A. Yes.

Q. What have you noticed about whether they still now follow the modules or not - (Objected to, allowed) A. I am sorry, would you mind repeating it again?

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Q. In effect have you noticed whether they now follow the module or not, those people?

HIS HONOUR: Q? Are you speaking about New South Wales?

A. Always, your Honour, yes.

Q. You answered a question of mine earlier which indicated you had in mind some lecturers who still had not been encouraged to follow the module system and they were still with the company? A. Yes.

Q. Now it is about those people Mr Shand is questioning you?

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A. Yes.

MR SHAND: Q. The question is whether you have noticed as at now they follow the module or do not follow the module presentation? A. The majority of them do now, for some years down the track, yes, and the newer ones coming in are more amenable to learning the modules.

HIS HONOUR: Q. Are there any now with the company who do not follow the module system? A. There are some that do not follow it as it should be followed, but they do it in their own way, very much in their own way.

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MR SHAND: Q. Would you look back at the introduction to this handbook which consists of two pages? A. I have that.

Q. And you noticed the last paragraph in it and in particular the last sentence of the last paragraph? A. Yes.

Q. So far as your instructions are concerned, that is to supervisors and on occasions when you attend the meetings - so far as your advice to lecturers is concerned, does that last sentence play any part in what you tell them?

HIS HONOUR: I do not follow that question.

MR SHAND: That you can add the personal touch, your Honour. 10

WITNESS: Should I answer that?

MR SHAND: Q. Yes? A. Yes, that is the intention with all of the teaching, that they are there as a guide. The lecturer has to inject her personality into what she delivers at the meeting. This is basic to the concept of Weight Watchers.

HIS HONOUR: Q. I notice that you have in the course of your evidence constantly used the word "she" as if there were no male lecturers. Are there any male lecturers? A. Unfortunately, not enough. There's about 3 or 4 percent your Honour. 20

MR SHAND: Q. You did make reference quite a few minutes ago to the parent company in New York. Do you remember that?  
A. Yes.

Q. First of all, what company are you referring to? A. Weight Watchers International Inc.

Q. Does it in any way own Narich? A. No.

Q. I wanted to produce you to the relationship between the parent company, as you call it, and Narich - (Shown Ex. A). You are familiar I think, no doubt not with every word of this franchise agreement, but with its terms generally? A. Yes. 30

Q. I want to take you over to a section of it on p. 13 being cl.6? A. Yes.

Q. If you would not mind just reading through the various portions of cl.6 for the moment - (Objected to, allowed).

Q. Clause 6 in terms refers to what, on their face, appear to be obligations on Narich to comply with certain requirements.

I want to ask you whether in each case the plaintiff company, during the period we are concerned with, complied with those requirements. I want to take your -

HIS HONOUR: How is this relevant?

(Mr Shand addressed his Honour).

(Luncheon adjournment).

ON RESUMPTION

(Mr Shand addressed his Honour. Mr Masterman indicated he would not consider the course Mr Shand proposed to take as being inappropriate. His Honour admitted the evidence subject to objection).

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MR SHAND: Q. Can I refer you again to cl.6 of the franchise agreement. I just want you again to make sure you have it in the forefront of your mind to run your eye over the particular provisions of it? A. I think I am reasonably familiar with it.

Q. Hesitate before you answer this question for the moment. I want to ask you firstly a compendious question. Are there any respects in which during the relevant period the plaintiff company has not followed the requirements that are set out in cl.6? A. Yes, it would have been.

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Q. Can you point to the particular respects and to the particular subclauses which are relevant to that answer? A. One in particular would be 6.8. No advertising or promotion material methods etc., should be used unless it is approved in writing by the franchisor. We would not have adhered to that. It is just not practicable.

Q. Any others? A. Although with six point 9 we always endeavour to get lecturers to sign agreements during this period there were times when some did not sign them. They were in the minority of course.

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Q. Was that by accident or design? A. A little of both at times.

Q. Whose design would it have been? A. They did not agree to sign.

Q. But you never had any employees, did you? A. The Americans refer to employees. We refer to them as independent contractors.

HIS HONOUR: Q. Then 6.9 would not apply to you though if your independent contractors were independent and not employees? A. Our independent contractors still have to execute a non-competition agreement your Honour.

MR SHAND: Q. The agreement in any event was, as its first page indicates, made on 1st June, 1969. Is that so? A. Yes, that's right. This refers to - yes.

Q. Are there any respects in which during that period your company did not comply with cl.6? A. Yes, there was another instance because -

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Q. Which one? A. It is sort of in 6.5 where it says that we should not sell certain things other than - we have always sold cookbooks at the meetings and that is not permitted elsewhere and I think that is what that says - "No product - "

HIS HONOUR: Q. You are talking to yourself at the moment, are you? A. Yes. As I understand it anyhow, whether that states that or not, really we are not permitted to sell cookbooks at the meeting, but we always have.

Q. What was that? A. At the meetings themselves. We are really only permitted to sell food scales for weighing the food, but we have always sold cookbooks and I do not think we are supposed to.

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Q. Where does that say you are not supposed to sell them at the meeting? A. I don't know whether it does or not.

MR SHAND: Q. You say you did sell the cookbooks? A. Yes, the franchisor is New York.

Q. Yes? A. They did not sell cookbooks, neither did they allow any of their franchisees in the United States, but they allowed us to.

Q. How did you come by that knowledge? A. They stated this to me several times. "Keep it quiet because you are not supposed to". I think that is all I can see there.

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Q. Was there any other respect that you would point to non-compliance - (No answer).

MR MASTERMAN: I think the witness has already answered that question no.

HIS HONOUR: Q. What is the position, is there any other? A. No, I don't think so.

MR SHAND: Q. Did Weight Watchers New York send representatives out to survey your operations during that period? A. Yes.

Q. To your knowledge did they attend lecturers' meetings?  
A. Yes.

Q. Did you have any discussions with them about the question of compliance with the provisions of cl.6 of the agreement?  
A. Yes.

HIS HONOUR: Q. No notice has been given to you since 1969 - perhaps that is not a relevant date - but no notice has been given to you by the franchisor, since you had the franchise to your knowledge drawing your attention to any breach of the franchise agreement? A. No.

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MR SHAND: Q. Just a few matters that arose yesterday or the day before. Has it come to your notice that lecturers are recommending foods other than the list of food submitted to them in bulletins or in the lecturers' handbook - (Objected to - allowed).

Q. Did it come to your notice that any lecturers were using methods of cooking other than those specifically laid down in the Weight Watchers material, for instance a European method of cooking food? A. Not to my knowledge, no.

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Q. To give you an example - that a European method of cooking had been used but adapted or altered to the Weight Watchers method, perhaps being boiled rather than fried - anything like that - (Objected to, allowed). A. Not that I know of, no.

Q. Now would you tell us whether there were instructions given by you or at your direction as to the circumstances under which a lecturer could alter or vary the time or place of her meetings? A. Yes, the board guide, the morning herald - (Objected to, allowed).

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Q. Were there any instructions of which you are aware as to whether or not the time and place of a lecturers' meetings could be altered? A. Yes, they could be altered.

Q. Were there any instructions given, that is what I am asking you.

HIS HONOUR: Q. Not what were the instructions, but were any instructions given? A. Yes, I would say there were.

MR SHAND: Q. Were they written or were they oral? A. I think they would have been more oral. I do not think it was a written thing.

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Q. Did you give any instructions yourself? A. I am sure I have, yes, at some stage.

Q. We are speaking of the relevant period. Can you remember what instructions, if any, you gave concerning any procedure which related to the change of time or place of meetings by a lecturer? A. It stands to reason and common sense - (objection).

Q. It is either an instruction or it is not an instruction. Did you give any instructions laying down hours? A. Yes.

Q. Any procedures relating to that being done? A. Yes, a meeting could be done - (Objected to, allowed). 10

Q. Can you tell us, if you gave such instructions, to whom you gave them? A. A lecturer.

Q. Does that mean that it happened once, or did it happen more than once? A. It happened more than once; and when a question was asked of me, I gave the instructions.

Q. All right. What instruction did you give? A. That the starting time of a meeting could be varied, to suit the general public coming to the meeting, the members, if that is what they wanted - within reason, I mean - 20

Q. Yes. Is that what you remember of such instructions?  
A. Yes.

Q. Did you ever give an instruction that the time of a lecturer's meeting could not be varied without your approval, or the company's approval? A. I don't remember issuing that instruction.

Q. Did you give any instructions, whether they be written or oral, about procedures necessarily involved in changing the place of such meetings? A. Yes.

Q. Were they written or oral? A. I would say they were written. 30

Q. Do you know where that writing is? A. It should be - no, I don't.

Q. Do you believe the company still has it or not? A. It should have, yes. It would need to be delivered to new people, new lecturers, trainee lecturers.

Q. Do you think it might be findable? A. Yes.

MR SHAND: Subject to what I hope, about finding the document I have just referred to, that is the evidence in chief of Mr Jamieson.

CROSS-EXAMINATION

MR MASTERMAN: Q. You mentioned that representatives of Weight Watchers International visit Australia from time to time?  
A. Yes.

Q. And that company is concerned very much to ensure that its system is being followed? A. Yes. To me it is, yes.

Q. And in the franchise agreement which my friend has referred you at some length, particularly to clause 6 thereof, there is a reference to a "unique programme developed and prescribed by the franchisors, which is presented in a unique manner in these classes". Do you remember that? A. Yes. May I read that? 10

Q. Do you see that part I have just referred to? A. Yes.

Q. And I suppose you would agree with me that this is a fundamental belief of Weight Watchers that has been reiterated to you over and over again? A. Yes.

Q. And one might even call it, an article of faith? A. Yes.

Q. So their concern was to ensure that this unique programme was presented in their unique manner, in classes in Australia? A. Yes. 20

Q. And I think you have told us that they came to Australia from time to time to see that that was happening? A. Yes.

Q. Not no doubt through any doubt about your adherence to the programme, but as they told you, did they not, to ensure that the system was being observed here? A. Yes. The programme base, yes.

Q. And that the programme was being presented in the classes?  
A. Yes. 30

Q. And they, I think you told us that actually these representatives actually sat in the classes from time to time?  
A. Yes.

Q. And how many of them came at a time - two or three? A. No. There is usually one person.

Q. And he or she would sit in on a number of classes, in different areas? A. Yes. Very often they were training people,

coming out to impart new knowledge, and while they were here they would take that opportunity to go and visit meetings and see what was happening.

Q. And they reported to you, I take it, as to whether their unique method of presenting their unique programme was being observed? A. Yes.

Q. And in general I take it they told you that they were satisfied that it was? A. Yes, they did.

Q. Now you have looked particularly at clause 6, commencing at p. 13, and I don't want to go over that ground. There was one question that his Honour asked that I should I think follow up while we are here. On p.15, in reference to 6.9 his Honour suggested to you, or asked you - and I do not use the exact words - that you had no obligation to have the lecturers execute non competitive agreements or be given special training, and as I recollect your answer you said, yes, you did, that you regarded yourself as obliged to have lecturers sign non competition agreements? A. That is correct, yes. 10

Q. And why do you regard yourself as obliged by the franchise agreement to have your lecturers sign non competition agreements? A. In the event that they were to decide to set up in competition to us, that we would have some threat to stop them. 20

Q. I appreciate that that might be a reason why you might want them to sign such an agreement; the question I directed myself to was, why you regarded yourself as being under an obligation to have them execute such agreements? A. It is part of the documents. It is one of the clauses I endeavour to abide by.

Q. So that what you are telling us is that you regarded 6.9 of the franchise agreement as applying to your lecturers? A. Points 1 and 2, yes. 30

Q. The effect of that clause was to require you to have your lecturers sign these agreements. Is that right? A. Could you repeat that, please?

Q. To sign the non competition agreements? A. Yes.

Q. And you regarded that obligation as continuing? A. Yes.

Q. And indeed you, as a franchisee, have taken this agreement very seriously? A. I think so, yes. We have endeavoured to abide by all the clauses, wherever practicable. 40

Q. And when a clause was irksome you were, or you would endeavour to incorporate a change in it? A. Not really. Some of them just were not - we could not abide by them, and we did our best.

Q. But what I am suggesting to you is that you treated this agreement very seriously, and that you did abide by all but the most minor clauses? A. I think there were some major ones that we were unable to abide by too, particularly in the earlier periods. I think it is more than minor, you see the advertising situation is fairly paramount, in our operation.

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Q. What I was leading on to; 6.9 was a bit irksome to you, because it applied, as you read it, to staff, did it not - (Objected to).

Q. What I am suggesting to you is that it was irksome in so far as it applied to staff? A. Well, it didn't apply to staff, it applied to the lecturers.

Q. See if I can refresh your recollection - not that I disagree with your latter statement - (Objected to).

Q. "A franchisee shall call each of the employees of the franchisee ..." Do you see that? A. Yes.

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Q. What I want to suggest to you is that you sought to change that, so that the words "each of the employees" did not apply to staff at head office, but applied to lecturers - (Objected to, allowed). A. I am not quite sure what you are asking me I am sorry.

Q. Are you telling me that you did not believe that the words "each of the employees of the franchisee" applied to others employed by you? A. Yes; but what I was meaning was that the people who work in the office, a non competition agreement, we never asked them to sign that sort of agreement, and they were employees. It was only the lecturers that we asked to sign anything, and they were not employees. We didn't ask our employees to sign a non competition agreement; the non competition agreement only relates to people who have the expertise to teach the Weight Watchers programme, and the people in the office do not have that expertise - well, there is one lady in there who does have that expertise, but she has signed it as a lecturer, but not as a staff member.

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Q. Well, was this clause subsequently amended? A. I can't answer that.

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Q. Well, just look to the agreement of 3rd March 1975, and in particular to clause 6 on p.8? A. "Employees engaged", etc?



Q. Does that refresh your recollection that the agreement was varied? A. Yes. It appears to be there, yes.

Q. Well, this paragraph 6 was to make clear that the continuing original franchise agreement did not apply to office staff?

A. Yes. I think what they are doing there is clarifying what they expected in fact for us, as opposed to what applied to them.

Q. But you regarded yourself, did you not, as continuing under an obligation to execute non competition agreements for the lecturers? A. Yes.

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Q. And by reason of s.6.9, as modified by this clause? A. I do not understand some of that; but yes, I think that is what it says.

Q. There may have been some problem about area, restraint of trade. Was there some difference about a particular area in the United States? A. I cannot answer that.

Q. The position continued throughout the period with which we are concerned that you, Narich, regarded yourself as under an obligation, a contractual obligation, with the franchisee, to ensure that lecturers signed non competition agreements? A. Yes.

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Q. Firstly in the period with which we are concerned did you have the one area manager for Sydney? A. For New South Wales.

Q. There was an area manager for New South Wales? A. Yes.

Q. What was his name? A. Her name was Estelle Gough.

Q. Do you know where she is at the moment? A. I don't. She left our employ about two years ago.

Q. Where did she come from originally? A. Sydney; and then she went up to Rockhampton and then she came back to Sydney. She was from Rockhampton, I think.

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Q. Who was Lynne Harris? A. Lynne Harris was introduced to me by Estelle Gough, and she joined the organisation quite a number of years ago.

Q. What position did she hold in the period 1973 till the end of 1977? A. I am not quite sure of the times, but she joined the company and became a full time person, working from the office, and working under Estelle Gough; and she eventually became, she acquired the title of trainer in due course - that

was probably about four years ago, I imagine; and as such her job was to train area managers, and to a lesser extent lecturers, and she would go to New York to receive new information, programme changes and things of this nature, and come back and pass them on to the staff.

Q. Did she sit in on lectures from time to time? A. She was a person who had lost weight on the programme, she was a member of Weight Watchers; she had had quite a large weight loss, and as a consequence of that she trained as a lecturer, and she became full time staff.

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Q. And was it part of her duties to from time to time sit in on lectures and see how the persons conducted their meetings?  
A. Yes.

Q. Was she described as a supervisor, or what? A. That, I should imagine, is how it went. She did work in the office most of the time, probably in the evenings spending her time training meetings, and in the latter period she became a trainer and she would advise how to handle this information, and she travelled round quite a lot, in fact she travelled overseas.

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Q. And one of her tasks was to evaluate how the lecturer performed in class? A. Yes.

Q. And Joy Covell? A. Yes, she is still currently employed.

Q. And in 1973 through to 1977, what was her position? A. I think in 1973 she would have been a lecturer. I think she became a supervisor full time about four or five years ago.

Q. And as a supervisor she attended classes to evaluate the performance of the lecturer? A. Yes.

Q. And that is one of the important functions of a supervisor?  
A. Yes.

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Q. How many supervisors did you have during the period from 1973 to 1977? A. I am sorry, I cannot answer that with any accuracy; but I am sure I could find out and produce that.

MR SHAND: Q. Do you mean, over the whole period? A. It varied. It was less in 1973, and as the organisation grew bigger there would be more.

MR MASTERMAN: Q. There would be a greater need for more supervisors as the number of classes grew? A. That is true.

Q. And it would be true I suppose to say that quite apart from their own reasons for wanting to keep a tab on the lecturing performance your obligations to your franchisor played a part in your having supervisors attend lecturing classes?

A. Yes. The supervisor's job is to do that, and basically train on the spot as well. She does training on the spot.

HIS HONOUR: Q. That is not training herself? A. Training other people on the spot. With new lecturers she would go out and help her and hold her hand for a time and give her confidence. She may also train a recorder or a weiger, if a lecturer needed some help. It is very much in the help category. 10

MR MASTERMAN: Q. We were given an example yesterday of the food programme segments of the class being originally 10 minutes, and then the lecturers being instructed to increase that to 15 minutes. Do you recollect that? A. Yes. The food part is very important, that is what it is all about.

Q. But do you recollect it being 10 minutes, and then - ?

A. I do not recollect it being that rigid.

Q. And then instructions being given to increase it to 15 minutes? A. Not specifically, but it could be. 20

Q. You would not deny that that happened? A. No.

Q. Well, would it be within the functions of the supervisors, as you understand them, if they were attending a meeting to say - you should spend more time on the food programme segment? A. I think so, yes, definitely.

Q. By the way, was there a uniform direction about whether the lecturer should stand during the class, or was he or she entitled to sit? A. I do not think there are any seats at the front of the class. She would have to address the meeting. 30

Q. Are you suggesting that it was only because there were no seats that she could not sit? A. It would depend on the programme. Sometimes she could sit, but some of those meetings have hundreds of people.

Q. Mr Jamieson, you do not dispute that there was an instruction for lecturers that they should stand during the class?

A. No. I don't think we ever said they are allowed to sit, no.

Q. I am suggesting to you that the instructions were given that they should stand throughout the class, period? A. That was probably normal - 40

Q. Not only that it was probably normal, I am suggesting that it was a direction, or an instruction given? A. If you are asking me is it written in somewhere, I am not sure. It would seem logical that they should stand, to me, and I do not remember seeing it put on a piece of paper that they must.

Q. Or orally, during one of these lecture classes that you attended? A. Yes, it is possible.

Q. That they must stand? A. Yes.

Q. I know you are remote from these things, but smoking - lecturers were directed, were they not, that they must not smoke during the class? A. Many of the halls have a sign saying no smoking, but yes, I would assume that they should not smoke during the lecture. 10

Q. But let us assume there was no direction, your instructions to the lecturers were that they should not smoke during the class? A. Yes. I would imagine that that would be correct, yes.

Q. And I have mentioned some names to you. Can you tell me the names that you recollect of supervisors - and we will limit them to New South Wales - New South Wales supervisors during the period with which we are concerned? A. Yes. Another may have been Pat Hilda. At that period probably the rest of them would have been part time supervisors, not full time; and one name that comes to mind is Jillian Wright. 20

Q. When you say part time that would be apart from the office, not in particular - ? A. Not merely from the office. You would see them in the office occasionally, but they are out further, these part time ones, and we do not see them that often.

Q. And their job was to lecture the part time lecturers? A. Yes, and assist the lecturer on the spot. 30

Q. That was their main function? A. Yes. I think we always endeavoured to get across to the lecturer that the supervisor is not a person to come in and give you a hard time, she is there to help you, she is a senior lecturer, and her job is to assist you and help you.

Q. You are not suggesting that she was not a supervisor, within the meaning of that term? A. I am suggesting that she was a bit of both.

Q. You have mentioned supervisors' reports? A. Yes. 40

Q. Would the company have supervisors' reports for the period with which we are concerned? A. Possibly, yes.

Q. Are you prepared to see if there are, and bring them along on the next occasion? A. Yes.

Q. You told us about the supervisors in relation to attending classes. You told us you yourself once every three to four weeks do I recollect, attended a class? A. Yes.

Q. From 1973 till 30th June 1977? A. Yes, more regularly in 1973 than 1977, as more people have come into the organisation I have had less contact with the field as it has grown bigger. 10

Q. Do you keep a diary? A. No I am not a very formal person I am afraid.

Q. Once every three to four weeks during 1973? A. Lesser towards 1977 as things became bigger and grew quickly.

Q. You delegated that function to others in the organisation? A. Yes.

Q. You gave some evidence to the Court about your observations in this period? A. Yes.

Q. Can you remember the names of any lecturers whose classes you attended? A. Yes people in those days were still around, like Letty Stevenson. 20

Q. How many times did you sit in her classes? A. It is too long ago but I should imagine maybe twice a year. Valma McDonald is another. I mainly remember these names because some of them are still around.

Q. You told my friend you remember occasions when the sequences were not exactly followed? A. Yes the lecturers tend to be fairly - they do their own delivery and sequence, some of them - question time puts things out of sequence often too. 30

Q. You said you remember occasions and my friend said "Occasion or occasions". Do you recollect that and you said "Occasions plural"? A. Yes.

Q. Did you mean by that that when you were answering those questions you could recollect any specific meeting or meetings. Did you have some? A. It is very different to put the two things together.

Q. When you were giving that evidence did you recollect one, two or more meetings where that has happened? A. I don't think specifically, I just remember having gone to meetings and there was always questions arising and answers to be given and suggestions to be made. That is why you went, because the lecturers like to see you and ask you questions and ask you how you felt about their performance and if you can contribute anything constructive to help them do their lectures better.

Q. Do you remember any single occasion on which the sequence was not followed? A. Specifically? 10

Q. Yes. A. I don't think I can.

Q. Any particular lecturer? A. No.

Q. When was the last time you attended a class meeting?

A. In New South Wales or - ?

Q. In Australia? A. We have meetings in our office.

Q. I am sorry, can you answer the question. Do you recollect

- A. I attended a meeting six weeks ago.

Q. A class given by a lecturer? A. Yes but I didn't stay for the full meeting, I sat through part of it. 20

Q. When was the last full class meeting, a meeting conducted by a lecturer that you attended? A. When I sat through the whole thing?

Q. Yes? A. It may be one or two years ago. I have been away in New Zealand and attended meetings there and in Hawaii.

Q. I notice you give your address St. Helliers, Auckland New Zealand? A. Yes.

Q. Is that where your home is? A. Yes.

Q. When you gave some evidence about some of the lecturers still with the company not believing in the module system, did you have in recollection some class meeting conducted by a particular lecturer you can tell the Court about? A. Yes. it is fairly common knowledge there is one particular lecturer but I haven't attended her meetings recently. 30

Q. What is the name of the lecturer? A. That would be Valma McDonald.

Q. When was the last lecture of hers you attended? A. It

may be three years or more. She works in the office a couple of days a week doing telephone answering and it has always been a standing joke to say to her - I believe more recently she says "I am following the modules although I do them entirely my own way". She is lecturer number 13, she has been with us over 10 years.

HIS HONOUR: Q. You mean the number, the batting order of how long they've been there? A. Yes, how long she has been there.

MR MASTERMAN: Q. I notice the fees are graduated in accordance with experience? A. Yes. 10

Q. The lecturing fee - leaving the class, the commission element out of it, it goes up year by year? A. That's correct.

Q. And among other things is that an attempt to encourage a long term relationship between Narich and its lecturers?

A. Partly, we copied what the Americans did in the first instance and they had a graduated scale which we basically copied. I suppose that is one of the intentions. Normally the older lecturers should be generally speaking more experienced lecturers. 20

Q. From Narich's point of view it is of advantage is it not, to have lecturers who have been with the company a relatively long time? A. In most instances yes.

Q. And some of the lecturers have remained with you a number of years? A. Yes.

Q. Why is the lecture fee described as a honorarium in the tally sheets? A. That seemed to be a descriptive name, for what it was.

Q. What do you mean by that? A. Well it wasn't wages, it seemed to be a term that fitted with the fact that they were independent contractors, an amount of money that they took - they took all the money and then took their honorarium and after whatever was left with disbursements, rent and that, it was given to us. 30

Q. What do you understand by the term "honorarium"? A. I think it is normally associated with meetings of some sort, I am not clear of its correct meaning.

Q. Do you equate it with an ex gratia payment? A. Can you define ex gratia payment for me please?

Q. You are not suggesting it is an amount that the lecturers are not entitled to, vis-a-vis Narich? A. No it is something that is due to them.

Q. (Question marked \* on page 74 read by court reporter)

A. No.

Q. The tally sheets are completed and returned to the central office? A. Yes.

Q. And there is a space for an office uses space if you understand. There is an office uses space in the particular tally sheet? A. May I see one? 10

Q. You haven't seen one? A. Yes I have but I can't exactly -

Q. (Witness shown class tally sheet, part of Exhibit Q).

A. I see "office use only", bottom right hand corner.

Q. And those sheets are all returned to Narich's head office, is that right? A. Yes.

Q. And someone presumably checks them? A. They are spot checked, not all checked.

Q. When they are spot checked what does that mean, the arithmetic and the like is added up? A. She does different checks on different ones, so as to get a sampling type of situation. If she may find something wrong she may go back and do them all I suppose. 20

Q. What happens when it is found a lecturer had deducted too much? A. When it is found it is pointed out to her.

HIS HONOUR: Q. Does that mean it may not always be found?

A. No it is not your Honour, through the sampling system. In fact we have one case in point now for three years it has been done purposely, we haven't found it.

MR MASTERMAN: Q. An example dealing with purposeful over deduction but an erroneous deduction perhaps, miscalculation or misunderstanding, what is the step that takes place, she is told to adjust it? A. No most instances if she is making a mistake it would be pointed out to her. 30

Q. And not told to put back what she took erroneously too much? A. I am sure that doesn't happen. It is difficult once taken to ask for it back.



Q. Who is the person who carries this out? A. It is Alberta I believe, I don't know her other name.

Q. Carrying out this task during this period? A. I don't know who it was in 1973 to 1977.

HIS HONOUR: Q. As a matter of interest, you don't then reconcile your cash position at the bank with what it ought to be, from the -- A. Yes your Honour they do check the total as against the bank deposit slip, to see they match. Although there was one instance that wasn't done for almost a year.

Q. Wasn't checked for almost a year? A. Yes, we have had some difficulties with our accounts department over the years and still have some but that amount is checked. 10

MR MASTERMAN: Q. I may have misunderstood you but were you suggesting to the Court that the P.A.Y.E. system was applicable to lecturers in 1973? A. No I think what I was suggesting was that one of the reasons for making the change was to simplify the office work we had to do and by doing what we did we avoided having to deduct the P.A.Y.E. payments.

Q. You are not suggesting with the amount commonly paying lecturers in 1973 or 1972 for that matter, there was any obligation to deduct P.A.Y.E. deductions from their wages? A. I may be wrong but I understood we did. Some were doing six to seven meetings per week at times and it would add to a large amount of money with commissions. I may be getting confused. I mentioned this to our accountant and he didn't say no. I know in New Zealand we have the problem and we have to deduct it from a dollar and have approached the department there on this to try. 20

Q. I was going to suggest the P.A.Y.E. system had no application whatsoever to the general run of lecturers who were lecturing two, three or four times a week in 1972 and 1973? A. That may be correct, I may have misunderstood but I thought it was the same case here as New Zealand, the P.A.Y.E. 30

Q. A few questions again about this period relating to your advertising. Do you use television advertising? A. We have in the last three years, maybe four, possibly since 1977.

Q. You were engaging in television advertising you believe? A. I think that was maybe the year we started.

Q. Before that and continuing during the whole of the period, various forms of national press advertising? A. Newspaper, magazine and radio. 40

Q. Could you indicate the extent of your advertising budget during that period? A. It is about 8% of the gross.

Q. Can you put some approximate figure on your annual advertising budget in the period 1973 to 1977 in Australia? A. It may have been between \$100,000 and \$200,000 a year each year.

Q. Firstly your company Narich paid for that advertising?  
A. Yes.

Q. What was advertised, was it the Weight Watchers programme?  
A. The main thrust of all our advertising has been showing people before and after. 10

Q. Did it have a telephone number or an address? A. It sometimes had a telephone number, normally didn't have an address.

Q. Normally had a telephone number? A. Yes.

Q. So the purpose of this advertising was to attract potential class members, potential lecture class members? A. Yes.

Q. Because that is your primary source of revenue is it not, the fees paid by class members? A. Yes for Weight Watchers, not Narich, depends on certain use.

Q. In relation to the Weight Watchers activities carried on by Narich, the primary source of revenues was the fees received from class members? A. Yes. 20

Q. And the advertising was intended to and did, elicit telephone calls to you in New South Wales, your Sydney office?  
A. Yes.

Q. I take it in your Sydney office in the period with which we are concerned, there was a record of all the classes in New South Wales? A. Yes, certainly Sydney.

Q. And the classes have each a specific number? A. Yes.

Q. And they each had a day and a time allocated to them? A. Yes. 30

HIS HONOUR: Q. You say the classes each had a number, you mean a number of members or an identifying number? A. An identifying number.

MR MASTERMAN: Q. Just to show you this particular class tally sheet from Exhibit Q, there is a class location number at the top? A. Yes.

Q. Could you tell us what that is? A. A 79 is the class location, the figure 2 is the day on which it is held and the figure 4 is the time. Day 2 is Monday, number 4 is the fourth time slot which is the evening meeting.

Q. That A 79 is in some record in Narich's office or was?  
A. Yes.

Q. You are not suggesting these class times could be varied without reference to Narich by the lecturers are you?  
A. Some are.

Q. Are you suggesting they are entitled to do that or does it occur in breach of instructions? A. No it is basically common sense to hold the meeting - like country towns and things of that nature - when the people can get there. There are times one, two, three and four which is morning, afternoon, twilight and evening. Basically evening is 7 p.m. and it could be 6.30 or 7.30 p.m. Twilight is usually 5.30 but if the factory shuts at 4 p.m. it will probably be 4.30 p.m. and they do vary. 10

Q. The position so far as instructions Narich gives to its lecturers, if they want to change they have to seek permission and have to notify Narich of any change? A. They don't have to seek permission but have to notify us or we would give out the wrong information. The "MATE" means morning, afternoon, twilight and evening and the majority of the evening meetings are held at 7 p.m. but they do vary between 6.30 and 7.30 because of the buses and things of this nature, discretion. The reverends sometimes stipulate to be out by 9 p.m. so you have to bring it forward a bit. She doesn't ask but tells us so we won't give out the wrong information. 20

Q. Then the persons who ring up in response to this advertisement are told of the nearest class location or what? A. Yes you usually ask them where they live and look up the sheet to see what is the closest. 30

Q. In that way the classes are filled? A. Yes.

Q. When a lecturer resigns from her position as lecturer, to use a neutral term, what happens to the class? A. Another lecturer would take it.

Q. That is the lecturer retiring would be expected and instructed to inform Narich that she was no longer going to or prepared to give the class? A. Yes if she was going to leave permanently she would tell us that. 40

Q. And Narich would then allocate another lecturer to that class? A. Yes.

Q. And Narich would be training a pool of lecturers? A. It is continuous.

Q. When a whole meeting place became unavailable, what procedures were laid down then to the lecturer to follow? (Objected to).

Q. I want you to assume this situation, the lecturer is told the hall henceforth will not be available, is there any procedure laid down for her to follow? A. She would endeavour to find another hall, or try to get that hall at a different time. If it wasn't available at all she would seek to locate one as close to that hall as possible.

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Q. I suggest she is required to inform the supervisor? A. She would probably do that as well, yes, and the supervisor would probably help her endeavour to find a hall and may know of something as she travels around a lot.

(Further hearing adjourned to between 3rd and 13th February, 1981, to be fixed.)

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
ADMINISTRATIVE LAW )  
DIVISION )

No. 605 of 1978

CORAM: WOODWARD, J.

NARICH PTY. LIMITED v. COMMISSIONER OF PAYROLL TAX

FOURTH DAY: TUESDAY, 6TH OCTOBER, 1981

(Mr. Young, Q.C., announced his appearance with Mr Bryson for the Commissioner of Payroll Tax).

(Mr Shand sought leave to ask Mr Jamieson some further questions in chief in relation to Mrs Santea's affidavit as to procedures involved in lecturers operations. No objection).

10

RICHARD BRUCE JAMIESON  
(Recalled) Sworn and examined:

MR SHAND: Q. Recently, at the suggestion of myself, have you read the affidavit sworn by Mrs Santea in these proceedings? A. Yes.

Q. Have you also read the evidence she gave in the witness box? A. Yes.

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Q. You have done so for the purpose of formulating in your own mind a view as to whether the procedures she described and the practices that she described she has followed, accord with your own knowledge of those practices as followed by lecturers? A. Yes.

Q. In particular, during the period we are concerned with from 1973 through to 1977, approximately? A. Yes.

Q. What do you say as to whether the description she has given of those procedures and practices do accord with the procedures and practices followed by lecturers during the period I have mentioned? A. They seem to follow those procedures. -

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(Continuing cross-examination)

MR YOUNG: Q. You have also, I take it re-read your evidence from last time? A. Yes.

Q. You will remember on p. 70 about four questions from the bottom, you were asked how many supervisors you had during the period 1973 to 1977. Your answer was "I am sorry, I cannot answer that with any accuracy, but I am sure I could find out and produce that" Have you been able to help in that regard?

A. I have been told this morning that something was sent to me on Friday but I did not get it, so I still don't know.

MR SHAND: We have a document.

(Document produced: tendered by Mr Young: objected to on the basis of relevance).

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HIS HONOUR: Q. You are aware of this document? A. No, I have not seen it. I was supposed to get a copy over the weekend. Someone forgot to give it to me. I didn't know I was supposed to get it, so I didn't ask for it. I have had discussions with Mr McIntyre this morning, who indicated to me part of what was involved.

(Document admitted subject to objection and marked Ex.1).

MR YOUNG: Q. Would you like to have a look at this document? (Witness handed Ex.1) Are you familiar with the handwriting on that document, to be able to say who prepared it? A. Looks like Mr McIntyre.

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Q. Mr McIntyre is your accountant? A. Yes.

Q. You were giving an explanation for the organisation during the whole of the period covered by that document? A. Yes.

Q. Does what is on the document accord with your recollection of who the supervisors were during that period? A. I would say that is correct, yes.

Q. The document would tend to show that the number of full time supervisors gradually decreased from 6 to 4 during the period 1973 to 1975. Is there any reason for that? A. Some of those people that were supervisors were moved Interstate. One became an area manager in Western Australia.

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Q. I think you said at p.70, second last question, when Mr Masterman asked you "There would be a greater need for supervisors as the number of classes grew?" and you answered "That is true". Exhibit 1 seems to suggest the reverse? A. It depends whether they are part time or full time. In the initial stages most of these supervisors would be part time because the work would not be great. As time progressed and the membership grew, they would probably become full time supervisors, or someone else would. That would be the trend -

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some full time supervisors - but then eventually part time supervisors and then full time supervisors again. It would grow in that manner.

Q. It did not between 1973 and 1977?

HIS HONOUR: Q. What is your recollection? A. My recollection would be that is the way it would happen.

Q. Mr Young said that is not the way it happened? A. I have forgotten.

Q. That is why I asked you "What is your recollection"?

A. I should have imagined they would have increased in the way I have suggested, from part timers they would have become full timers doing more work. I am not quite sure which are part timers and which are full timers. There is quite a list of names. 10

MR YOUNG: Q. As far as Sydney is concerned, the list contains six names during the period, and I will call them Mrs for the sake of identification, you are familiar with Mrs Hilder who seems to be employed throughout the period as a full time supervisor? Are you familiar with that lady? A. Yes, she is an area manager. 20

Q. Mrs Lane seems to have been employed as a full time supervisor from the start of the period to January 1975? A. Yes.

Q. Then there was a Mrs Holden who comes in for three months from the start of the period, to January 1974? A. Yes.

Q. Then Mrs McDonald who starts at the commencement of the period through to December 1976? A. Yes. Is she categorised as a fulltime?

Q. Full time supervisor from 1973 through to the end of 1976? A. Yes.

Q. She remained with the organisation after December 1976? A. Yes, she is still there. 30

Q. What capacity does she have at the moment? A. She is just a lecturer, she does not act as a supervisor any more.

Q. Mrs Covell, that is the same Joy Covell we have been talking about in evidence? A. Yes.

Q. February 1975 she seems to have commenced and goes through to the end of the period as a supervisor full time? A. She is still there.

Q. What role at the moment? A. Same role.

Q. Mrs Wright commenced in August 1976 and goes through to the end of the period. Do you remember that lady? A. Yes, she has just resigned.

Q. In Newcastle for a while there was a Mrs Fraser from 1973 to 1974 as a full time supervisor? A. Yes.

Q. At the same time, in Newcastle there was a Mrs Phillips who also seemed to stop as a part time supervisor in November 1974. Do you remember that? A. I remember her name. It may be - I didn't remember she was a full time supervisor. 10

Q. Then there does not seem to be anyone, part time or full time, working at Newcastle till August 1975. Does that accord with your memory? A. I can remember some problems happened up there, yes, that could be so, yes. We had some difficulties.

Q. In Gosford a Mrs Stonestreet seemed to be a supervisor for the whole period? A. Yes.

Q. Mrs Davis was at Newcastle part time from August 1975 to April 1977, do you remember her? A. Yes.

Q. Mrs Faulkner at Wollongong from April 1975 to the end of the period? A. Yes. 20

Q. Can you remember anybody else that was employed in that period as a supervisor full time or part time? A. I cannot, no.

Q. November 1973, it is true there were six full time supervisors, Mesdames Hilda, Lane, Holden, McDonald in Sydney; Fraser in Newcastle and Stonestreet in Gosford? A. Yes.

Q. At the end of the period in June 1977 there is only Mrs Hilda, Mrs Covell and Mrs Wright in Sydney and Mrs Stonestreet in Gosford, a total of four? A. Yes.

Q. So far as part time people were concerned, at the beginning 30 of the period there was Mrs Phillips in Newcastle, at the end of the period Mrs Faulkner in Wollongong, one in each case, did the business expand between 1973 and 1977? A. Yes, except possibly in Newcastle where there were some difficulties.

Q. How is it that the number of supervisors fell from 6 full time to 4 full time in that period? A. Some of those people went Interstate to other jobs as area managers.



Q. Did the business expand in New South Wales during that period? A. It would have expanded less in New South Wales than elsewhere. It would have expanded, but it would have expanded less. We started in New South Wales so that is the oldest State, Victoria, then we opened Queensland, Western Australia, South Australia and so on.

Q. There was still expansion in New South Wales during that period? A. Yes.

Q. The number of supervisors required by the company seems to have fallen from 6 to 4? A. I would say probably Mavis Holden was being trained into a position to be transferred to Western Australia. Mavis Holden went to Western Australia as the area manager. (Witness shown Ex.1). That is the only one that went Interstate. I am not quite sure. Something happened to Mrs Lane, she became very ill and she left at some stage during that period. I am not quite sure of the date. 10

Q. You said to Mr Shand, p.76, about the number of supervisors, "It varied, it was less in 1973 and as the organisation grew bigger there would be more". Then Mr Masterman asked you "There would be a greater need for more supervisors as the number of classes grew? A. That is true". That does not appear to be accurate, does it? A. No, at this stage, no, but you do not always have available people to appoint as supervisors, they don't have experience. If you don't, these others have to carry the work load until someone is available or willing to take the position. 20

If I were to look at the situation today, I don't know the figures accurately because I am not that closely involved with the organisation any longer at the day to day level, we have an area manager, I think we have two or three full timers and a couple of part timers, in fact in the State it may be greater than that. I think during that period we went through some difficulties. There were people going Interstate, one lady got ill that I can see there. I don't know - I can't remember at that time who the area manager was. One of those people possibly became an area manager instead of being a supervisor, but would still be doing part of that job. It may be a period of change. For a period there may have been a lower number, but generally speaking as the organisation grew we required more. 30 40

Q. Why did you require more as the organisation grew? A. It spread into the country in a lot of instances. Our initial impact was in the City and as we spread into the country it was necessary to have people disseminate the information to people in the country. For instance, Broken Hill people cannot come here, so we need to send someone out there.

Q. In the period 1973 to 1977, there was no country expansion beyond Gosford, Wollongong and Newcastle, is that right? A. I cannot say that with accuracy because we would have been in some small country towns. The expansion depends on the availability of people who maybe are moving to a specific place. We did some training by mail where in certain instances it is possible to do this. People in the country were trained by mail and came into the city for a workshop then went back to the country where we did not see them very often.

The programme changes so much, it is in a constant state of flux, the eating programme, that we have to let people know what the changes are, therefore someone has to go out there to the country people and have a meeting and let them know the changes in the programme.

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Q. That is a supervisor's job? A. Yes.

Q. If the supervisor does not do it, who does it? A. The area manager may do it from time to time. The area managers run the State then supervisors work under her and have areas or districts of the State that they are responsible for, making sure that things run according to the tenets, the formula we use.

20

Q. How do the supervisors go about making sure things run according to the tenets? Do they have meetings every so often? A. From time to time, yes.

Q. Regular meetings? A. Supervisors' meetings are probably on the basis of twice a year.

Q. "Supervisors' meetings" means a meeting of supervisors? A. A supervisor conducting a meeting with lecturers in her area to inform them of what changes are taking place from time to time.

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Q. Supervisors are also responsible for distribution of material to lecturers? A. Yes, in certain circumstances. Most of the stuff goes out via normal couriers and so on. The supervisor is not a courier, but if she were going to a particular meeting or area she would probably take whatever people required in the area. Most of it is done by T.N.T. or whatever, the normal carrying people.

Q. Exhibit Q., which is headed "order form supplies", p.2 seems to be headed "Area manager's and area supervisor's supplies". Are you familiar with that form? A. I think I would be yes. (Witness shown copy of document).

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Q. That gave me the impression it was the supervisor who requisitioned materials and had them available for distribution amongst her flock, is that right or not? A. The facts of the matter - really the area managers make requisitions for material to go to the various Interstate Head Offices. From those areas generally the lecturers request what they require, and in the instances where they would attend a meeting, they would normally pick it up at that meeting; or if they were inaccessible it would be sent to them; or if a supervisor was going out in that area she would probably take it for her. 10

Q. I assume in the case of modules, they are either despatched on a certain day to lecturers, or lecturers pick them up on a certain day? A. It is normally done when they attend lecturers' meetings. Most of the lecturers get their supply at the lecturers' meeting. They are made up by the storeman on the Friday, they usually come in on the Saturday and load their car up and they go away with them.

Q. The storeman, on the Friday, puts together their orders and that would include the next set of modules? A. Yes, whatever was required for the coming month. 20

Q. Plus some requested items? A. Yes.

Q. A lady might run out of pencils or goal awards or something like that, and when she does that she sends in a form to someone, or rings someone up, or how does it work? A. Normally she would supply a form, if it was urgent she would probably ring in distress.

Q. She sends the form to whom? A. Normally to the area office. It would be processed to Sydney, Melbourne, Adelaide, Brisbane or Perth.

Q. She sends her form for supplies to the area office, not necessarily to the supervisor? A. Not necessarily, no. If it were something urgent, probably the supervisor would end up taking it to her. If it were something non-urgent it would probably be put aside, processed and she would pick it up when she attended the lecturers' meetings. 30

Q. Most of them attend the meetings to pick up their supplies? A. It is not mandatory but the majority of them do realise that the information gained at the meeting is beneficial to them in conducting their meetings.

Q. They do not pay for these supplies, do they? A. No. 40

HIS HONOUR: You mean the lecturers?

MR. YOUNG: Q. The Lecturers do not pay? A. No.

HIS HONOUR: Q. Is pay-roll tax paid in respect of supervisors? A. Yes.

MR. YOUNG: Q. There was another matter in the transcript, on p.72 at the end. You were asked by Mr. Masterman, "Would the company have supervisors reports for the period with which we are concerned? A. Possibly, yes. Q. Are you prepared to see if there are and bring them along on the next occasion? A. Yes". When you read through the transcript, did you see that question? A. Yes.

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Q. Have you looked to see if there any any supervisors reports for the period in question, on file? A. I have. There must not be any. We have not been able to find any, and none have been given to me.

Q. Have you looked, yourself? A. No.

Q. Have you directed anyone to look for them? A. No, I believe Mr McIntyre looked. I do not have any, so I assume there are not any. They are not things that are kept for any length of time at all.

Q. Is there any set practice in relation to keeping documents? 20  
A. The information is really only current, so once it was seen and read, somebody might make a note of something that needed to be brought to the attention of a lecturer, and probably the report would be dispensed with.

There is no strict directive on it that you must dispose of it or that you must keep it. In most instances, there is no point in keeping it.

Q. Is it fair to say you do not know one way or the other whether these reports are in the office or not? As far as you can see, Mr McIntyre looked for them? A. I believed we looked 30  
for them. I do not think we were able to find any for that period.

Q. One of your lecturers, you said, was lecturer No. 13, had there for a long long time. Would you keep a file on her from the time she started as to whether she was a good performer, poor performer or what? A. Generally speaking it is run fairly loosely. I think No 13 is Valma McDonald. Even I see Valma from time to time and I know she is a damned good lecturer. Nobody goes near her very much because she has been there so long and does it so well, we don't see very much of her. 40

Q. How do you know she does it so well? A. Reputation, I guess.

Q. How do you know she has the reputation? A. Supervisors visit her from time to time. She probably knows more than they do. You can tell by the figures. We know what the figures of each meeting are each week. You can tell by the figures if they are holding their members, and if they are holding their members you can assume they are doing a good job.

Q. When a new group starts off, the area office has to allocate a lecturer, does it not? A. Generally what happens is, a lecturer when she comes out of workshop will start with one meeting and usually she will want to work around her home, close by, so she does not have to travel too far, and she will have a suggestion to us as to where she could start. She usually would find the hall and let us know where the meeting was so we can let the public know where to go. 10

Q. Let us come to Mrs Santea. Initially she took the meeting at Collaroy Plateau. That seemed to be a pre-existing group. I assume short of a lecturer. I take it after her training someone in the area office made a decision that Mrs Santea should go to that meeting? A. Yes, it sounds as if somebody left and she was replacing somebody, or whatever. 20

Q. Then, later on, Mrs Santea approached the organisation and suggested there was scope for a new group at the University of New South Wales, which was started off, so Mrs Santea had two groups. I take it that someone would have said to themselves in the area office, at that time, "Well, Mrs Santea is all right, she is a good lecturer, we can trust the public to another one of her lectures"; or, if that had not been the case, one would have said "It is a good site, the University of New South Wales, but we cannot use Mrs Santea, she is no good". Is that the thought process that would occur at head office? A. Yes, she probably would not have been lecturing at all if she was not any good. If she was satisfactory, certainly, we encourage them to take two or three meetings. 30

Q. Are any records kept as to whether they are satisfactory or not? Do you have a lecturer card showing her good points and bad points? A. Not to my knowledge, in that period. The supervisor would go to the meeting and probably fill in a form - we have had various changes from that, but at that time there was almost surely a time she filled in a form, and she sort of went down and ticked things whether she was good or bad, what needed bringing to her attention, maybe she did 40

not mention something. After the meeting she would draw her aside and say "Don't forget to say so and so and so and so". Otherwise, she would say "Very good, that was excellent".

Q. Suppose she goes back two months later and finds what the supervisor has suggested has not borne fruit with the lecturer?  
A. If it was serious she would draw it to her attention again and perhaps ask her to come back into the workshop and do a little more training and brush up on it then.

Q. If the lecturer was re-educated, she would be all right. If she was not re-educated, she would not have a class the next year? A. I don't really know. Lecturers are tremendously co-operative. We are all working for the one purpose and generally they would follow the tenets as they are set out. It is a successful formula and it works only when the disciplines are observed. Therefore, they are generally in the mood to abide by the disciplines, realising if they do not it does not work. 10

Q. In practice the disciplines and tenets are in fact observed throughout the State by the lecturers? A. In varying degrees. There are some, I think, 400 or 500 lecturers in Australia and it is not easy to have them all - they are not automatons. Every personality is different. They are given a basic programme to follow and it is interpreted in as many different ways as there are personalities. You cannot stereotype it, and they all do say things in a different way and interpret them differently. 20

The staffing situation with supervisors is such that we do not brow beat them, or overly attend their meetings - as long as the gist of the message is getting across - usually you can tell. If the meeting is losing weight they are doing it correctly. If the numbers are growing and attendance is staying up - at the bottom of the tally sheet there is always the plus and minus, how much were the gains for the week, how much were the losses for the week. You can tell by that whether the lecturer is being successful or not. 30

Q. If she is successful, you assume there is substantial compliance with the tenets in the syllabus? A. That would be so, yes. The personalities come into it a lot. If you have one with a great personality, she gets a tremendous following and they do anything she says. Others are not as strong a personality. They are not as successful. 40

Q. Certainly, encouragement and instructions are held out to lecturers who are not following the tenets? A. We offer as much help as they wish to take advantage of.

Q. That process usually does achieve success? A. Generally, yes. I think after 12 years we are still a reasonably successful organisation.

Q. After 12 years, each Weight Watchers Lecture is in substantial compliance with the tenets of the organisation? A. I think that is so, yes.

Q. People can start Weight Watchers lectures at any stage in the cycle? A. They can start at any time in the 52 weeks of the year. It is a continuous thing.

Q. Once a lady has been appointed lecturer at a particular spot, she continues giving the lectures at that spot forever, until she resigns? A. It would be a matter of - if she wished to change or move somewhere else we would endeavour to accommodate her or help her to change, if she wished. In other words, we would find another lecturer to take that meeting - if she lived in a different district and she wanted to move. 10

If the meeting were to be unsuccessful, it would indicate that area may have a meeting too close to it or something, and therefore that meeting possibly should be closed and another opened somewhere else. Through discussion with that lecturer who knows that area best, we come to some agreement as to where it should be opened. We take her suggestions because she knows the area best. 20

Q. Usually you take her suggestions, and on some occasions you would not? A. Usually we do. If we can see some reason why it would not be successful there, we would point that out.

Q. In every job or profession there are people who show great promise and turn out to be failures. I take it that happens amongst your lecturers? A. Yes, sometimes. People can find when they get into lecturing it is not what they wanted to do. They might find the time involved is too great for them. 30

Q. In many other jobs you find people with tremendous enthusiasm but no real know-how. I take it, from time to time you get a lecturer in that category? A. Yes.

Q. I take it when that happens the supervisor encourages that person to give it away? Is that how it works? A. Usually these trends would make themselves obvious during the training session. If a person is successful in becoming a lecturer and graduating and so forth, normally they go on from there and would take meetings. The amount of time they would continue lecturing for would vary. Some of them have been there from the beginning. Some of them - due to the multitude of reasons 40

that people move, or husbands, whatever, the problem may be - they might last a month. It is the whole spectrum of time.

Q. You have given a number of illustrations where the lady herself wanted to give it away. There would be some situation, maybe not many, where the area manager might think for the good of the organisation the lady ought to not do the lectures. In that situation, I put to you she would encourage the lecturer concerned to give the lecturing away? A. It would only be after exhausting all other efforts to assist the lady that would happen. There is a lot of time involved in training a lady. We feel we have been very successful afterwards having been able to help them achieve what they desire, to become a lecturer. 10

Q. On the odd occasion, if all else fails that is what happens? A. Yes, I do not doubt by mutual agreement we would come to an understanding it would be better they did not carry on with lecturing. I think it would be pretty obvious by that time.

Q. The mutual agreement would be the supervisor's suggestion that the lady should give it away? A. I think at times that could have been suggested to some lecturers, yes. 20

Q. If the worst came to the worst, you could always start up another group close to the unsuccessful lecturer's home and gradually starve her of customers? A. No, we would never do that. I suppose some people might think of doing that, but we have a different relationship with our lecturers. It is not that type of relationship.

HIS HONOUR: Q. That would be something like stabbing a person in the back? A. Yes. We would not entertain doing that, no.

MR YOUNG: Q. You never get a situation where there would be a renegade who has infiltrated her way into your system and started to teach her own? A. I think that is a different situation. If someone decided to leave the organisation and set up in opposition in those areas, we have a responsibility to our members to continue. We would put a new lecturer into that meeting, and the renegade lecturer would probably go somewhere else and start her meeting. 30

Q. You would say a lecturer who presented her own material instead of Weight Watchers material was setting up in opposition? A. While she was still part of the Weight Watchers - while she was still a lecturer - 40

Q. Let us hypothesise this situation. Suppose Mrs Smith goes



through the programme and gives a class, and she used 50 per- cent of the material and says something like this, "Well, I have tried that, it doesn't work too well, what I suggest you do instead of eating liver you eat lambs fry"? A. I do not think that has ever happened.

Q. I am putting that situation when you have a lecturer who is not going to present the official line but is going to suggest her own. In that situation I take it you would need to take drastic action to preserve the tenets of the programme? A. This is a fictional case? 10

Q. This is a hypothetical case. A. We would certainly have to ask her why she was not following the programme, because we know the programme is successful. It has been successful to her, she has proved it to herself "Why are you using something different?".

I think the only instance I can think of where anything of that nature has happened, there was one person who was very religious and started to introduce a great deal of religious material to our meetings and we had to speak to her about it and she changed what she was doing. She realised it was an organisation to help people lose weight, and that is all we did. 20

Q. Supposing that lady said "No, I really believe my mission in life is to do what I am doing and I won't repent", in that situation, for the good of the programme you would have to remove her? A. We would have to do something, yes.

Q. You would have to stop her giving classes? A. I would say so, yes.

Q. You might do that by court process or by putting her students elsewhere? A. If she wished to do what she wanted to do, I would say she would go off and do it, and we would put a new lecturer in. Generally the members would be dissatisfied with what they were receiving and would ask about something that could be done about their lecturer. 30

HIS HONOUR: Q. Have you had this happen? A. No, just the one instance where that lady did introduce some religious matter into the meeting, upon us speaking to her she realised she was there to speak about losing weight and not about other matters, especially things that are so far away from losing weight. 40

MR YOUNG: Q. If there was a situation where a lady did not change her mind, you would have an obligation to the students to remove that lady? A. We would replace her.

Q. You have no doubt at all that is what you would do, replace her? A. All else failing and all the other things, yes, there would be nothing left to do but replace her.

Q. When someone enrolls in a Weight Watchers course they contact the area office, normally, is that the way it works?

A. In most instances, I think most people go directly to the meeting. Today the meeting halls are very well known. That type of question, normally someone would ring the office to find out where the meeting was because they would not have known. A lot of new members are brought by existing members who know where the hall is. 10

Q. Once they join the programme they pay so much per week, is that the way it works? A. Yes.

Q. They pay whether they attend the lecture or whether they do not attend, is that right? A. If they join this week and do not attend for five or six weeks, when they come back in five or six weeks time they would re-join again. They would not pay for the meetings in between.

Say somebody joined this week then did not come the next week but came the next week, they would pay for the missed meeting. They work out which is the least cost, to pay for the missed meeting or to re-join. That is part of the discipline. 20

Q. I show you part of Ex.R., sheet headed "In case you've wondered why", re-printed from "The Weigh" magazine in Salt Lake City. During that period that was what lecturers were to say to those members that queried them, having paid for meetings they missed? Would that be right? A. I guess by way of explanation, yes.

Q. That was the sort of explanation the lecturers were encouraged to tell members who asked the questions? A. Yes. I think the important thing - the most important reason is that which I mentioned a little while ago, the discipline. It has always been in there for discipline. We have had many discussions with our parent group as to trying to change this situation. As a matter of fact, at this time we are making a change. 30

Q. The period in question, apart from the reason of discipline was also the economic reason that whether the member was there or not costs were incurred by the organisation in servicing her? A. Yes, that is true but in my mind the main reason - I would prefer a system where they paid as they went, but unfortunately if they had it they would come one week and might not come for six. We are not sure, it is one of those 40

actuarial things. We have a system where they pay dues if they do not attend, and therefore they are more likely to attend.

Q. If a lecturer had 20 members, she would need to be supplied with 20 modules? A. She would have more than that. She would always have a supply that was going to do her for the period until she gets the supply next time.

Q. The supply would be based upon the number of enrolments?  
A. There is always an excess.

Q. Whether the member attends, the organisation and lecturer have to prepare for her, have the material available for her because she should be there? A. You can say that, yes. 10

Q. That would be right, would it not? A. Yes.

Q. You spoke a minute ago about discipline. What happens to lecturers who start putting on weight? Is that a cause for removal, or encouragement or discipline? A. Most lecturers realise what they are selling is weight loss and if they do not look the part it is not possible for them to stand up in front of their members with any conscience at all.

Q. Again, you used the word "most". Is it an occasional problem? A. There are some members of Weight Watchers who have a lifetime battle with their weight. We are naturally sympathetic with that fact. Every encouragement is given to stay at their goal weights in various ways. The problem arises if they have a weight problem, then somebody substitutes for them. They stand down their meeting and arrange for a substitute. 20

Q. I take it this would come to the attention of the area office through the supervisor? A. Usually they attend lecturers meetings and would be weighed.

Q. The lecturer attends the lecturers meeting, is weighed, and she has put on weight to too high a degree, someone suggests she should stand down until she reduces? A. No, she would be given a period of time to reduce it. Usually the averages are very slight, she might be within a pound or two and she would be given that week, normally, to adjust her weight. 30

Q. Would the supervisor tell her something? A. Usually the area manager or supervisor would be conducting that meeting and they know what the rules are. The lecturers know what the rules are. 40

Q. The rules are what is this connection? If you are over your goal weight you have to stand down? A. It has to be this period we are talking about? The rules change from time to time. I would say at that time they were allowed a two pound average and they were allowed a week to remedy it. If it was not remedied after a week they would have to arrange for a sub - for their meeting.

Q. The rules were they could not attend and lecture if after a week of over weighing they were not the proper weight? A. That is right.

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Q. The area manager or supervisor would arrange for a substitute? A. The lecturer usually arranged for someone.

Q. If she could not find someone, the area manager assisted? A. We would then try and assist, because we have more phone numbers.

Q. Once the lady had gone back to her normal weight she would re-attend as a lecturer? A. Yes.

Q. If she didn't - ? A. Well, she would not be able to come back.

Q. The period in question was shortly after you received the letter from England, Ex.AL, as to how the English have dealt with problems of a similar nature to yours? A. Would you say that again?

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Q. The period in question, November 1973 to June 1977, shortly after you received a letter from the English organisation as to how they dealt with similar problems as what you were having? A. Yes.

Q. I take it when you saw Ex.AL, I take it you could see the way the English went about things could benefit the Australian organisation? A. Yes.

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Q. Apart from the savings of accounting staff, etc., I take it there was no difference before and after the changeover in the way the lectures were given, would that be right? A. The actual delivery of the lectures?

Q. Yes? A. No, I should not think there would be - no.

Q. There was a change with respect to where the member paid her money? A. Yes.

Q. Before the change she paid Head Office? A. Yes.

Q. After the change she paid the lecturer, who after deductions remitted the monies? A. Yes. Before the change all the money came into Head Office. After the change she took out her honoraries, whatever else she was entitled to, commissions, etc., and sent us the balance.

Q. In some cases the lecturer also deducted the hall rent, and in other cases she did not, depending on the arrangement in relation to the rental of the hall? A. Yes.

Q. Would it be fair to say the only changes before and after the implementation of what I would call the English system, is where the member paid her money and the accounting procedures at Head Office? A. Would you say that again? 10

Q. The only change that happened after adoption of what I would call the English system is that the monies were paid to the lecturer instead of Head Office and there may be some accounting adjustment at Head Office, otherwise things functioned as they did before? A. I think that is right, yes.

HIS HONOUR: Q. You spoke about the rules. Were there any rules over the relevant period other than what was set out in the agreements that were executed between the company and the lecturer? A. I suppose, yes, there would be in that there would be memos that would indicate proper conduct and a variety of - the agreement itself really - I suppose it does not go into detail on operation. 20

Q. You mention the word "Rules". I wondered where those rules are? A. I suppose when I am saying "Rules" I am probably using the wrong word. I am probably referring to the programme as it has been formulated by the people in the United States. The successful formula. I have used the word "Rules" instead of saying "programme" or "formula". I am really referring I think, to the programme, the programme as it has been devised and produced to help people lose weight. 30

Q. There is a distinction between the programme that is imposed upon the member and requirements imposed, or maybe imposed, upon the lecturer? A. Yes. In that case, yes, she has certain rules to abide by.

Q. Where were those rules to be found? A. For the most part in the lecturer's manual in, I suppose, "Guide Lines as to Address", how she dresses, how she should conduct herself at a meeting, procedures. I think they would all be encompassed in the lecturer's manual. 40

MR YOUNG: (By leave) Q. The rule about lecturers not being

R. B. Jamieson, xx.

more than a certain weight, is that found in the lecturer's hand book, or where is that to be found? A. I believe it is in the agreement but it goes out in memos, probably it is - we remind people about it fairly regularly.

MR SHAND: The manual is Exhibit U.

(Witness retired and excused)

(Case for the plaintiff closed).

(No further evidence for the defendant).

(Mr Shand addressed his Honour).

No. 5 - Judgment of His Honour Mr. Justice Woodward

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
ADMINISTRATIVE LAW )  
DIVISION )

No. 605 of 1978

CORAM: WOODWARD, J.

6TH NOVEMBER, 1981

NARICH PTY. LIMITED v. COMMISSIONER OF PAY-ROLL TAX

JUDGMENT

HIS HONOUR: The plaintiff was incorporated in the State of  
New South Wales on the 2nd April, 1969. It is and has been 10  
at all material times the registered proprietor in Australia  
of the registered business name "Weight Watchers" and has car-  
ried on business under that name in New South Wales pursuant  
to a franchise agreement between it and Weight Watchers  
International Inc. ("Weight Watchers") which is a corporation  
incorporated in Virginia in the United States of America and  
carrying on business in the State of New York. A franchise  
agreement was made on the 1st June, 1969 and has been varied  
from time to time. The agreement has imposed upon the plain-  
tiff certain obligations. The continuance of the franchise 20  
depends upon the observance by the plaintiff of the terms of  
this agreement. To a large extent observance of the terms of  
the agreement is in the hands of the company's employees and  
staff, particularly the lecturers. The obligations to observe  
the terms of the franchise agreement must therefore, in some  
way, be imposed upon those persons in whose hands is reposed

Judgment of His Honour Mr  
198. Justice Woodward

the obligation of observing them. How this is done is a matter for the plaintiff. If this can be done effectively only by the plaintiff imposing obligations upon persons which render those persons employees, this does not avoid the necessity of pay roll tax being paid by the plaintiff in respect of such persons.

The first franchise agreement recited that Weight Watchers was engaged in the business of helping people to reduce excess weight and maintain weight losses. To do this Weight Watchers and its franchisees have conducted classes in which people (called "members") are taught how to change their eating habits. A unique programme (called "the programme") developed and prescribed by Weight Watchers is presented in a unique manner in these classes. It has developed an extensive network of classes throughout America and several areas elsewhere. It has expended a large amount of time and money to develop valuable trade secrets and techniques relating to the operation of such classes. Certain of such trade secrets and techniques have been disclosed in confidence to the plaintiff and others will be disclosed to it in the future. Weight Watchers owns and has registered various trade-marks and service marks throughout the world.

The document further recited that Weight Watchers classes were conducted by "lecturers" specially trained in the use of the franchisor's unique methods and these methods and the



products and services marketed by it are closely identified by the public with Weight Watchers. This has been attained as the result of extensive expenditure of time effort and money resulting in the attainment of great value for the goodwill they represent.

Weight Watchers markets specially prepared foods, literature and materials, publishes a unique magazine of special interest to people concerned with weight control, and is continually engaged in investigating and developing various business activities designed to enable people to enjoy normal activities while fully adhering to the programme.

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By the agreement Weight Watchers granted to the plaintiff a non-assignable franchise to use the trade marks, trade secrets and techniques referred to. Weight Watchers classes were to be conducted by the plaintiff only at locations within the geographical area described (at that time comprising New South Wales and Victoria in Australia). While the agreement remained in effect the franchisor would not conduct classes within the territory nor give anyone other than the franchisees the right to do so. The franchise granted was limited to the operation of Weight Watchers classes. The plaintiff had no right to use any of the trade marks, trade secrets, methods or techniques for any other purpose whatsoever or to grant sub-franchises or sub-licences (clause 1).

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The plaintiff recognised the validity, originality, value,

goodwill and the sole ownership by the franchisor of the methods, systems, ideas and programmes now or hereafter used. The plaintiff agreed to use the trade marks in connection with the conduct of the business with respect to which the franchise was granted and undertook not to use, print or authorise the printing of any literature or material of any kind containing the trade marks except with the franchisor's written permission. Upon termination of the agreement the plaintiff agreed to discontinue immediately all use of the trade marks etc. (clause 5).

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In order to maintain uniform standards of operation, which were essential for the protection of (i) the goodwill of the Weight Watchers Organisation, (ii) the value of any of the trade marks, and (iii) the members of the public who became members of Weight Watchers, the plaintiff agreed to comply with a number of conditions of which the following are relevant:-

- (A) Only the unique programme and techniques developed by the franchisor to help people lose and control weight shall be presented in classes conducted by the plaintiff.
- (B) Such presentation is to be made strictly in accordance with the Licensee Rules and Regulations promulgated from time to time by the franchisor.
- (C) The plaintiff will not represent itself, directly or indirectly, to be an authority in the field of medicine

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- or nutrition nor give any medical or nutritional advice or aid and will only disseminate information about the programme, menus, recipes and other information which conforms to the programme.
- (D) No products or services will be sold, offered for sale, or distributed without charge in classes operated by the plaintiff other than products or services substantially similar to those sold, offered for sale or distributed without charge in Weight Watchers classes.
- (E) The plaintiff will utilise only the Lecturers' Manual and the Clerks' and Weighers' Manual published by the franchisor for the guidance of the employees of the plaintiff. 10
- (F) No advertising of promotional materials or methods will be used in newsletters distributed by the plaintiff unless first approved in writing by the franchisor.
- (G) The plaintiff will cause each of its employees to be given the special training prescribed in the Licensee Rules and Regulations, and to execute non-competition agreements in the prescribed form.
- (H) The plaintiff will issue a membership attendance book prenumbered by the franchisor to each member who joins classes and will follow the uniform prescribed attendance system. 20
- (I) The plaintiff will maintain a uniform system of book keeping records and permit representatives of the franchisor

to enter its premises to perform inspections of its operations and records.

(J) The plaintiff will comply fully with all relevant rules and regulations.

(K) The plaintiff will supervise the business the subject of the franchise by appointing as managing director a person possessing certain qualifications. Such person will personally supervise the operations of the business.

(L) The personal weight of each employee of the plaintiff coming in contact with the public, including inter alia each lecturer will not exceed 2 pounds more than the "goal weight" prescribed for such employee for more than fourteen consecutive days (clause 6). 10

The plaintiff concedes recognition of the fact that any classes conducted by it are part of a large network and so failure by the operator of a single class to comply with the terms of the agreement between that operator and the franchisor could cause irreparable damage to all other Weight Watchers classes. Therefore in the event of a breach or threatened breach, and, if the agreement has been terminated, the franchisor will become entitled to an immediate injunction. (clause 20). 20

The business carried on by the plaintiff in Australia and the franchisor and the performance of the work by "lecturers" cannot easily be classified. In some way it resembles Alcoholics Anonymous.

Weight Watchers has for some years carried on in America a business of encouraging overweight persons to pursue a course of conduct resulting in such persons (called members) losing excess weight. Persons are encouraged to become members of Weight Watchers and in return for the payment of a fee are advised and encouraged by lecturers in meetings to pursue a programme resulting in weight reduction and continuing to maintain such reduced weight. It was as a result of the agreement referred to that the plaintiff was able to establish a similar programme in Australia with certain resultant financial benefits. 10

It appears that the philosophy upon which Weight Watchers was developed in the United States was that it was essential in the conduct of the Weight Watchers Programme that those involved at all levels should also have had an over-weight problem which they had resolved by following a programme of behaviour. It was part of the programme that the persons who sought to lose weight should meet regularly and encourage one another to persist with it.

Since the programme has been developed it has been refined 20 and improved as a result of developments in nutrition related to weight control. To some extent such development and refinement in this country has been achieved by the distribution by Weight Watchers to the plaintiff of literature and other material produced by or on behalf of Weight Watchers.

Richard Bruce Jamieson became a Director of the plaintiff company on the 27th September, 1974, and is now the Chairman of Directors of that company.

In 1968-1969 Jamieson and Nancy Manning attended a training course for franchisees conducted by Weight Watchers in New York during which course instruction was given in all aspects of the Weight Watchers Programme and the conduct of the plaintiff's business pursuant to the proposed franchise agreement. Instruction was received from the Training Director of Weight Watchers, nutritionists and dietitians, medical practitioners and psychologists. The course comprised theoretical instruction and practical work and experience.

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Since the execution of the franchise agreement referred to, Jamieson has been in constant communication with Weight Watchers on behalf of the plaintiff. He has met representatives of Weight Watchers two or three times each year, and on a number of occasions at meetings between representatives of the plaintiff and of Weight Watchers, the franchise agreement and the operation of the plaintiff pursuant to it has been reviewed in considerable detail.

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Constant communication has been maintained between the plaintiff and Weight Watchers on approximately three or four times a week by telephone, letter or telex. Seminars have been conducted by Weight Watchers in the United States and

these have been attended by Jamieson on behalf of the plaintiff on a number of occasions.

Since the franchise agreement was first executed the plaintiff has received from Weight Watchers a continuous supply of printed material dealing with recent developments, discoveries and changes in the Weight Watchers programme which it has been required to implement.

The plaintiff has engaged the services of a number of lecturers who give lectures to members in New South Wales and other States of the Commonwealth encouraging such members to continue in the Weight Watchers programme with a view to weight reduction and to the ultimate financial benefit of the plaintiff. 10

A considerable quantity of printed material is distributed by the plaintiff to its lecturers comprising material supplied to the plaintiff for that purpose by Weight Watchers or printed by the plaintiff under licence from Weight Watchers. In addition the plaintiff produces and distributes to its lecturers other printed material much of which is first approved by Weight Watchers. 20

Lecture handbooks are distributed by the plaintiff to its lecturers and during the period 1st November, 1973, to 30th June, 1977, all such handbooks so distributed were first received by the plaintiff from Weight Watchers.

During this period the plaintiff conducted the training of

its lecturers according to a method communicated by Weight Watchers to the plaintiff and set out in the training handbook given by the plaintiff to its lecturers.

During the said period which is the period the subject of these proceedings (the relevant period) the plaintiff conducted a Weight Watchers programme by engaging lecturers who conducted meetings attended by persons who were over-weight (called members). Lecturers were recruited from persons, who were still members and who had qualified as life time members, who had succeeded in losing weight by following the Weight Watchers programme and who received additional special training from the plaintiff. 10

The plaintiff's business pursuant to the franchise agreement during the relevant period, was conducted by various area managers responsible to the general manager. In addition supervisors and clerical staff were employed by the plaintiff in the business. It has not been disputed that such persons are employees.

The lecturers engaged by the plaintiff have been required to sign an agreement to which I will subsequently refer. 20

Throughout the period lecturers recruited other members to become lecturers. As and when required such members, if considered suitable by supervisors employed by the plaintiff, were invited to become trainee lecturers. Such persons then received instructions on how to conduct meetings, or classes



by one or more of the training managers, the area manager or a supervisor. Such trainee lecturers attended a training workshop at the plaintiff's office in Sydney or at some other suitable place on one night a week for about two months.

During attendance at the training workshop the trainee lecturers were given lectures and demonstrations and participated in lecturing practices. They were taught the technique of conducting Weight Watchers meetings and were given instruction in public speaking. They were also taught the Weight Watchers system of weight reduction and control and the programme to be followed by members wishing to reduce their weight and maintain it at their respective goal weights. This is known as the Weight Watchers programme. 10

The trainees were instructed in the use to be made of various publications and literature supplied by the plaintiff, as previously stated. This material was extensive and the trainees were instructed in the use of all the relevant documents.

From time to time during the relevant period much of this material was replaced and upon replacement was distributed to lecturers in substitution for that previously supplied. Similar new material was also distributed to lecturers. 20

Trainee lecturers were not paid for their attendance at training workshops although travelling and other expenses incurred by them in attending the workshop were re-imbursed.

Except as hereafter mentioned lecturers rarely attended the plaintiff's office in Sydney.

During the relevant period the number of meetings held per week throughout New South Wales varied. In the last week of the period there were 200 meetings conducted by approximately 89 lecturers throughout the State and slightly more than 8,400 members participated in the programme and attended those meetings. The lecturers were mainly female. Most of the meetings were conducted during the evening substantially by persons who either engaged in full time employment or attended to domestic duties during the rest of the day. 10

Lecturers usually conducted meetings in suburban locations in church and school halls and similar places. From time to time the plaintiff held re-training workshops, their purpose being to communicate new information and techniques about which the plaintiff had been advised by Weight Watchers. The lecturers received no remuneration for attending such workshops but persons coming some distance were sometimes reimbursed for their expenses.

Each month except December, the plaintiff conducted a lecturers' meeting for about two hours. Most but not all lecturers attended those meetings, they were weighed and if they were over their goal weight by two pounds they were not permitted to conduct meetings until they reduced their weight to their goal weight. Common problems were discussed at 20

such meetings and new training material was also distributed.

If a lecturer became unable to conduct a Weight Watchers meeting he or she was not always but sometimes replaced by another lecturer. Mostly this was done by arrangement between the lecturers. If this could not be arranged then the help of a supervisor was sought. In that event the supervisor found a replacement and no payment was received by the lecturer in respect of the lecture that he or she was unable to conduct.

The fees for members' subscriptions were collected at the meeting by the lecturer. The lecturer was assisted by a weigher and by a recorder. The hiring fee for the premises where the meeting was conducted was often paid by the lecturer deducting the fee from the members' subscriptions collected at the meeting. Where a meeting was conducted at the plaintiff's offices or other premises hired by the plaintiff no hiring fee was deducted and paid by the lecturer.

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The method of conducting the meetings was provided for in documents issued to the plaintiff pursuant to the franchise agreement and distributed to lecturers at the training workshops. And also from time to time by direct supply.

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The number of persons attending each meeting varied but usually ranged from approximately fifteen to fifty. The recorder and weigher were members of the class present at a meeting who were appointed by the lecturer from time to time. The lecturer paid their weekly fees at the end of each meeting

in the form of an honorarium for their services. As each member joined a programme he or she was given an attendance book by the recorder. Thereafter, at each meeting attended, the member presented the membership book to the recorder and paid the weekly fee which varied depending upon the status of the member.

The recorder stamped the member's attendance book to verify attendance. Payment of the weekly fee entitled the member to attend as many classes as desired in the week whether conducted by the same or another lecturer. Members were required to pay weekly whether they attended or not. There was no contractual obligation incurred by any member to continue paying once attendance at meetings was discontinued.

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The recorder also recorded the members' attendance on a card kept by the lecturer for that purpose. A supply of such cards was made available to each lecturer from time to time by the plaintiff. The recorder then handed the card to the member who presented himself to the weigher.

Scales were supplied to the lecturer by the plaintiff and the weigher supervised the weighing of each member on those scales. The plaintiff had obtained the scales from an American company approved by Weight Watchers. As each member was weighed the weight was recorded on the member's attendance book and on the attendance card kept by the lecturer.

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The plaintiff supplied to each lecturer a tally sheet and

as members arrived at the meeting the recorder completed such sheet. This document was based upon a document supplied to the plaintiff by Weight Watchers. The recorder completed on the tally sheet details of attendance of members, the amount of their subscriptions, any money paid by them for purchases made by them of food scales approved by Weight Watchers and reading matter given to the lecturer by the plaintiff for sale on consignment. That reading matter was either published by Weight Watchers or under licence from it. The recorder calculated the commission payable to the lecturer and the recorder 10 in respect of such sales as well as the honoraria paid to the lecturer, the weigher and the recorder.

The conduct of each meeting followed a pattern no doubt set by the plaintiff and although supervisors in the early stages of a lecturer's training attended and offered criticism it would appear that generally the lecturer was left to conduct the meeting in accordance with a scheme propounded to the lecturer by the plaintiff. There is no doubt that if a lecturer failed to conduct a meeting in accordance with standards set by the plaintiff a report from the supervisor might well 20 have resulted in the lecturer ceasing to occupy the position. There is however nothing to suggest that the lecturer was required to conduct a meeting in a particular fashion. On the other hand the very scheme of the Weight Watchers programme was such that it must be adhered to and lecturers would be

required to adhere to it for the conduct of the meetings.

The lecturer presented various awards to members who had reached certain stages in the course of their weight reduction. At some stage in the proceedings the lecturer provided encouragement for members by reading the members' cards noting their weight loss if any since the previous meeting. Although the lecturer prepared a theme for discussion at the meeting that theme was in accordance with the directions of the plaintiff. She or he displayed products that were regarded as "legal foods" and often used other visual displays prepared by her or him. 10

Upon reaching 10 lbs., above goal weight the lecturer handed to the successful member a document called a levelling plan and instructed him or her in its use. This was designed to aid the member in the loss of the last few pounds until goal weight was attained.

At the conclusion of each meeting the recorder usually handed the lecturer the tally sheet for checking and signature. The lecturer then signed the tally sheet. Following the meeting the lecturer paid the hiring fee for the hall where necessary, and, after making all due deductions, deposited the balance of monies collected by him or her at the meeting to a bank branch for transmission to the credit of the plaintiff at its bank. Thereupon the lecturer posted the duplicate deposit together with the completed tally sheet and any new 20

member cards to the plaintiff at its Sydney Office.

Lecturers did not receive any payments from the plaintiff but deducted any honoraria and commission payable to them in respect of their Weight Watchers meeting from the membership subscriptions received at the meetings conducted by them.

In late 1975 Weight Watchers introduced an "Eating Management Techniques Programme" consisting of twelve "modules". Each module was a document which contained matter to be discussed at each meeting by the lecturers. Weight Watchers gave that programme to the plaintiff to be used by its lecturers. Shortly after the introduction of this programme the plaintiff conducted a number of training workshops attended by its lecturers at which the use of the modules was explained. Training guides were distributed to the lecturers. The plaintiff received these guides from Weight Watchers and printed additional copies for distribution. Replacement pages were received by the plaintiff from time to time from Weight Watchers for distribution to the lecturers and this was effected. 10

At each alternate Weight Watchers meeting a copy of the module to be discussed at that meeting was distributed by the lecturers to the members present. Cue cards were supplied by Weight Watchers to the plaintiff for the lecturers. The purpose of these cards was to help the lecturers direct their minds to the salient features of the module while they conducted their meetings. 20

In the intervening week the lecturer conducted what was called a "Feed Back" session and, instead of introducing a module, the lecturer discussed with the members their experiences in following out the programme specified in the module that the lecturer had introduced in the preceding week. It took each lecturer approximately six months to complete the presentation of the modules that made up the programme.

Previous reference has been made to agreements signed by lecturers engaged by the plaintiff. A somewhat detailed examination both of the agreements and their history is necessary. 10

From the 1st November, 1973, until some time in 1977 lecturers were engaged by the plaintiff who signed agreements in similar form.

The agreement was expressed to be made between the plaintiff, trading under the registered business name of "Weight Watchers" and the particular lecturer. In the recitals it referred to the acquisition by the plaintiff of skill and information in relation to the techniques, systems, methods, principles, programmes and lecture courses concerned with 20 weight reduction of individuals and the business techniques, promotion, publicity, and administrative procedures connected therewith and the group therapy techniques and the controlled eating plans developed, used and propagated in relation thereto, collectively referred to as Weight Control Skills. It



referred to the fact that the lecturer had agreed to act as a lecturer at Weight Watchers classes and the company had agreed to make available to the lecturer the Weight Watchers Lecturers Handbook containing material, including the programme food plan, for use as a Weight Watchers Lecture which contained information which the lecturer agreed was and remained the property of the plaintiff and formed part of weight control skills. The recitals also referred to the agreement of the lecturer that the weight control skills included confidential information and matters of confidence the disclosure and the use of which, outside the business of the company, could cause substantial loss and damage to it. 10

The agreement provided in numbered paragraphs as follows:-

1. (a) The lecturer will herself or by a substitute approved by the plaintiff lecture one or more Weight Watchers classes as may from time to time be agreed between the parties to be held at such times and places as the company may arrange.
- (b) The engagement shall be terminable on one week's notice in writing given by either party and expiring at any time. 20
- (c) If the lecturer fails or refuses to carry out her duties or obligations as a lecturer in a proper manner or the weight of the lecturer exceeds her goal weight the company may terminate her engagement without notice.
2. The company will instruct the lecturer in weight control skills as may be appropriate to the skill experience and ability of the lecturer from time to time. 30
3. The company will pay the lecturer a fee for each lecture and agreed ancilliary tasks calculated in the

manner stated in the clause. Dependent upon the experience of the lecturer with the company the fee increases from \$9 to \$16 and in addition the lecturer receives 10¢ for every paying member in excess of 40 attending the class.

4. The lecturer is not an employee of the plaintiff and shall perform her duties free from the direction and control of the plaintiff providing she follows the Weight Watchers Lecturers Handbook distributed by Weight Watchers of New York and she will attend without payment one Saturday meeting of lecturers per month at which she will, inter alia, be weighed. 10
5. The lecturer shall to the best of her ability
  - (a) Deliver the lectures and teach the programme and levelling and maintenance plans.
  - (b) Select and train sufficient recorders and weighers to properly conduct the lectures.
  - (c) Ensure that the classes are properly organised and controlled.
  - (d) Report to the company upon the functioning of each class. 20
  - (e) Pay her recorders and weighers and rental for the hall from the receipts of the class.
  - (f) Account to the company for fees and dues received from the members of each class at which she lectures and in this regard the lecturer shall be the company's agent for collection and shall as soon as possible thereafter deposit the nett receipts to the credit of the company's account at a nominated bank. 30
  - (g) Conduct the class so as to advance the welfare of the members according to the principles of Weight Watchers International Inc.
  - (h) Contact by 'phone or call on members who have been absent from meetings.
6. The lecturer undertakes that forthwith on the termination of her engagement for whatever reason, she will

immediately return to the company her Weight Watchers Lectures Handbook and all other documents supplied to her in connection with such engagement and any copies thereof.

7. The lecturer shall not without the express written permission of the plaintiff use copy reproduce or distribute or disclose to any person not entitled thereto certain specified information.

Clause 8 of the agreement contains a number of covenants restricting the behaviour of the lecturer both during the term of the agreement and following its termination.

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This agreement continued in force until 1977. It could be terminated in one of two circumstances. Either party could terminate it on one week's notice in writing expiring at any time or without notice by the plaintiff if the lecturer failed or refused to carry out her duties or obligations as a lecturer in a proper manner or if the weight of the lecturer exceeded her goal weight. So far as the plaintiff was concerned the difference was not significant. With justification the agreement could be terminated without notice and if no justification existed or the plaintiff did not purport to rely upon justification, termination required one week's notice expiring at any time.

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During 1976 it was ascertained that a number of lecturers had executed a form of agreement prepared by an employee of the plaintiff but without the plaintiff's authority. Investigation revealed that there were only nine such lecturers and only nine such agreements were signed. None of the agreements

were executed on behalf of the company and the existence of those documents is not relevant to the present problem.

During April 1977 the plaintiff reviewed the form of lecturers' agreement and adopted a form of agreement which was varied somewhat from the form previously in use.

The differences between the two agreements are as follows:-

1. In the recitals in two instances some additional words were added. In the recital referring to the Weight Watchers Lecturers Handbook, from the previous statement that the company had agreed to make the book available to the lecturer, the book being stated to contain material which was then enumerated, the recital is altered to read that the company has agreed to hire to the lecturer the handbook containing material "for guidance only".

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2. Clause 1(a) contains the following addition:-

"The lecturer shall ensure that any such substitute carries out all the obligations which this agreement imposes on the lecturer and shall be responsible for arranging payment of the substitute from the fees and dues received from the members of the class."

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3. Clause 1(b) of the former agreement has been deleted and the former clause 1(c) has become clause 1(b) with the addition of the following words:-

"or, with the company's permission she may arrange a substitute lecturer until these deficiencies have been corrected."

4. The provisions for payment in clause 3 have been amended to include provision for a payment of \$18.00 fee after more than six years' experience, and clause 3 has become clause 2.
5. Clause 2 of the earlier agreement has been deleted and clauses 2, 3 and 4 deal with the subject matter previously dealt with in the earlier agreement by clauses 3, 4 and 5.
6. The earlier clause 4, which has become clause 3 and which commenced with the statement that the lecturer is not an employee of the company has added after that statement the words "but is an independent contractor". The earlier clause also has deleted from it the words "provided she follow the Weight Watchers Lecturers Handbook distributed by Weight Watchers International Inc. of New York".
7. Clause (e) has been taken from paragraph 5 and become a separate paragraph numbered 5 in the new agreement. The phraseology has been slightly altered so as to state that "the lecturer shall be responsible for paying".

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The other alterations to which I need not refer are not relevant to the present problems.

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An assessment was made in accordance with s.18(2) of the Pay-Roll Tax Act, 1971, against the plaintiff in respect of tax claimed to be due to the defendant for the period from the 1st November, 1973, to the 30th June, 1977. Such assessment was made on the 26th June, 1978.

On the 24th August, 1978, an objection to the payment of such tax was lodged on the grounds that no part of the monies upon which the assessment was based were wages, salary, commission, bonuses or allowances paid or payable to an employee or to an employee as such, not being wages within the meaning of s.3 of the Pay-Roll Tax Act, 1971. It was further claimed that if the said monies or any part of them were wages or wages liable to pay-roll tax or taxable wages within the meaning of the said Act (which was denied) no part of such monies was paid or payable by the plaintiff as the employer.

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The tax is claimed by the defendant to arise from the payment by the plaintiff to certain "Lecturers" as employees of the plaintiff as consideration paid by it to such lecturers in respect of duties performed by them in the employ of the plaintiff in the course of its business.

Evidence was given on behalf of the plaintiff by one Beatrice Santea, a design draftsman and lighting designer in full employment, who has been a lecturer conducting Weight Watchers meetings since September, 1976. When she commenced lecturing she signed an agreement in terms similar to that of the document annexed to the affidavit of Mr Jamieson and marked with the letter "C" and similar to the agreement the terms of which I have first described. Mrs Santea deposed to the contents of an affidavit on the 23rd October, 1979 which was filed on behalf of the plaintiff.

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She in late 1975, became a member of Weight Watchers and, following a course of meetings extending over a period of about six months and having reached her goal weight, accepted an invitation by the plaintiff to become a lecturer and to conduct her own Weight Watchers meetings or classes.

Before she commenced lecturing she was instructed by the plaintiff's training manager how to conduct meetings or classes and received this instruction at the plaintiff's city office on one night a week for eight weeks. This course was known as a training workshop. It was attended by other persons preparing to become Weight Watchers lecturers. During the training workshop she was given lectures and demonstrations and participated in lecturing practice. She was taught with others how the meetings were to be conducted and given instruction in public speaking. She, with others, was instructed in the Weight Watchers system of weight reduction and control, and the food programme to be followed by persons wishing to reduce their weight and maintain it at their respective goal. This procedure was known as the "programme" and during the course of the instruction she was given a copy of the "Weight Watchers Programme Handbook".

During this training period she received instruction in the presentation of "modules", she also received various lecture notes and was instructed that the procedures and techniques referred to in the lecture notes were to be regarded as

an outline only and that she was to be at liberty to develop her own techniques and methods of delivering lectures. She was told that she should draw on her own experience and use incidents from that experience or from her observations in delivering lectures. At the completion of the training workshop she received a cheque for \$10.00 as reimbursement for travelling and other expenses incurred by her in attending the workshop.

After she commenced lecturing to Weight Watchers meetings she received various bulletins, circulars, magazines and other materials dealing with the subject matter of the lectures that she was conducting. She regarded the material she received as useful aids to her in conducting her lectures but did not consider that she was under an obligation to use every item of material in delivering her lectures.

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In about March or April, 1977, she received a book entitled "Lecturers' Handbook", another one called "Weight Watchers Program Handbook" and a "Lecturers Program Teaching Guide".

When she first commenced holding Weight Watchers meetings she conducted them about once a week for two or three months in a church hall at Collaroy Plateau at about 7 p.m. for approximately one hour. From about November, 1976 until June 30th, 1977, she conducted the meetings once a week at about 5.30 p.m. in the boardroom in the Blockhouse Building of the University Union at the University of New South Wales,

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Kensington. To the best of her information and belief the hiring fee for the church hall at Collaroy Plateau was paid by the plaintiff. She began the meetings which were held at the University of New South Wales in about November of 1976. Her husband, who worked at the University and was then a life time member of Weight Watchers, secured the use of the premises at the University. When the meetings began he acted as her recorder and weigher. No hiring fee was paid for the use of the room in the University Union.

When Mrs Santea commenced conducting meetings it took her 10  
longer to prepare than it subsequently did. At first it took her varying times to prepare for the meetings, sometimes as long as five hours. As she became more experienced the preparation time diminished. She did not receive any fee from the plaintiff for the period that she spent in preparations. She was not at any time directed by the plaintiff as to the time to be used in or at which she should prepare for her Weight Watchers meetings. Before each meeting time was spent in setting up the premises. Her time of arrival at the premises varied and depended upon her judgment of what was needed to 20  
be done prior to commencement of the meeting at the pre-arranged time. She was not paid by the plaintiff any fee for the time spent in setting up weighing scales and displaying literature prior to the commencement of each meeting. She has, at no time, been required to cancel any meeting because

of indisposition on her part. The average number of people who have attended a meeting lectured by her has been about fifteen. She described the procedure adopted at meetings.

As each member joined a Weight Watchers class the lecturer determined the appropriate goal weight by reference to material provided by Weight Watchers. It was considered an achievement to attend meetings for sixteen weeks and lose a minimum of ten pounds of weight. Any such person was presented with an award. Other awards were also presented from time to time where considered appropriate and in accordance with certain guidelines. The conduct of the meetings was varied from time to time so as to diminish the boredom of the members. Other meetings were held intermittently throughout the period and in all the presentation of a series of modules took approximately six months. 10

As a member's weight reduced he or she was handed a document called a levelling plan which was prescribed by the plaintiff and in which the member received instruction from the lecturer. As goal weight was reached a member received a booklet entitled "Weight Watchers Maintenance Plan" on which the lecturer gave additional instruction. 20

At the completion of each meeting the recorder handed the tally sheet to the lecturer for completion.

The lecturer did not receive any payments directly from the plaintiff but deducted any fees payable to her in respect

of the meetings that she conducted from the membership fees received at each meeting as previously described. These were calculated in accordance with the relevant agreement.

A supervisor employed by the plaintiff attended a Weight Watchers meeting conducted by Mrs Santea to the best of her recollection once only during the period ended on the 30th June, 1977. That supervisor took no part in the meeting. At the end of the meeting the supervisor and Mrs Santea discussed the conduct of the meeting and the supervisor made some suggestions about the lecturer's technique and suggested that the lecturer consider them but did not suggest in any way that she was required to adopt any of them. 10

From time to time during the period ending June 30th, 1977 Mrs Santea attended conferences, seminars and workshops conducted by the plaintiff at which new information and techniques developed by or for it were presented and explained to her and other lecturers. She was not paid for attendance on these occasions. The plaintiff did not deduct instalments for the payment of her income tax from the fees that she received for conducting the lectures. She received a commission from the plaintiff for selling cook books and other material at Weight Watchers meetings. She also received a commission for introducing people to the Hoy Lake Hotel at Leura. She was not required by the plaintiff to promote any of these other activities but did so as and when she wished. She 20

deducted her commission from the membership fees received by her at the meetings.

She concluded her affidavit by saying:-

"I do not regard myself as an employee of the plaintiff. I regard what I do as a hobby."

Mrs Santea was called to the witness box. At her full time occupation she worked approximately thirty-six hours per week. In the course of preparing herself for the lectures which she gave on behalf of the plaintiff company she purchased books on human behaviour and made an effort to obtain nutri- 10  
tion information. She also, for the purposes of the lectures, prepared what she described as "visuals" which are documentary illustrations prepared with a view to holding the attention of the members in the course of a meeting and rendering more easy to absorb the information which she was imparting to them. She referred to a number of the modules issued by the plain-  
tiff and supplied to her for the purpose of her lectures. One visual was produced which had been used by her in the course of her explanation to the members in meetings of the signifi- 20  
cance of the modules and how they together formed a programme. The preparation of these documents and of her lectures was done in her own time and she received no payment in respect thereof from the plaintiff. She spent money in the purchase of magazines and time in reading them and also in the preparation of tapes which she used and prepared for the recording

of her lectures. She explained in some detail the time and attention given by her to the preparation of material for and the lectures at which it was used. At no time did she ever pay the rent of the hall used by her for the purposes of any meeting. The expenses of travelling to and from lectures were her own responsibility.

She was cross-examined at considerable length by counsel for the defendant. Much of this was directed at establishing that in the course of her occupation as a lecturer she was directly under the control supervision and direction of the plaintiff. This was disputed both by the plaintiff and by her. She had originally been a member of Weight Watchers and had attended classes as a result of which she succeeded in weight reduction. She was invited to and did in September, 1976, become a lecturer.

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The class income collected by her from which after making deductions for her own fee and other authorised matters she regarded as belonging to the plaintiff. She did not consider herself employed by the plaintiff and the money she received was payment for services rendered. It was her belief that the money received by her from which her entitlement was deducted belonged originally to the plaintiff. During the period following her engagement the area manager was Lynne Harris who trained her and Estelle Gough was one of the supervisors. Her only contact with Lynne Harris was when she gave

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the lectures on how to conduct her lectures in the course of the training workshop.

A lecturers' meeting was held once a month and this was attended by the witness. Only once was she supervised during a meeting and that was by one Joy Covell. On that occasion Miss Covell sat in the class and, at the conclusion and not in the presence of the members, offered suggestions of a constructive nature in relation to the conduct of the class.

The witness was shown a lecturers' programme teaching guide which was part of the material supplied to her for the purposes of her lecturing. From time to time she was notified in relation to permissible foods some of which were included on what she referred to as "the unlimited list". She had no discretion of her own to add foods to this list, she not being a nutritionist. The information supplied to her was as the result of research conducted by Weight Watchers. She had no authority to inform the class as to the advantages concerning foods of her own initiative nor would she do so. She said that the choice of food was something that was important in weight loss and as she received the information she would pass it on to the members. It was different however with other portions of the lecture. In answer to a suggestion that she was obeying orders she replied that she was passing onto the members the information that was given to her.

She provided to the classes from time to time recipes of

her own. She did not seek permission for this but the relevant officers of the plaintiff were aware of the situation.

She dealt with the modules in an order in accordance with the directions of the plaintiff but this was an order that was applied and followed for the whole of Australia. The purpose of this was that if a member should move from one area to another he or she could attend another class in the knowledge that in that class the modules were being dealt with in the same order as before. She agreed that there was a schedule of modules and the order in which they were dealt with was laid down by the plaintiff for the whole of Australia.

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There were generally three types of meetings held in the course of the lectures. One meeting dealt with the particular module in the order in which it was intended to deal with it. The following week was what was called a Feed Back meeting and discussion was had resulting from the experience of the members following the previous meeting at which a module was discussed. Every alternate meeting thereafter dealt firstly with a module and then the following meeting with a feed back. She was not free to depart from the practice as directed by the plaintiff of having a feed back meeting at the class immediately following the module meeting.

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She had been taught in her training that there were different procedures to be followed in respect of the two different types of meetings. These directions however as to how

to carry out the two different types of meetings were skeleton directions only.

There was a third type of class referred to as a Link Up meeting. The purpose of this was to link up and review a number of modules which had already been discussed. In all there were about eighteen meetings dealing with modules interspersed with a similar number of feed back meetings. There were then at appropriate intervals about six link up meetings at each of which approximately three module classes and three feed back classes were dealt with and "linked up".

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Extensive instructions were given as to the development in a lecture of a module, the use of visuals, cue cards and other material. Much of the instruction was to some extent elementary and the purpose of the cross-examination was to establish and it did, that in the preparation of the visual aids and in the presentation of the material at each lecture the lecturer was confined to and was acting in accordance with instructions from which there was no right of deviation.

Some of the instruction appeared to me to be necessary in order to produce a person competent to convey the necessary information in a lecture, in the fashion, advised by the plaintiff, the officers of which from experience were satisfied was the best method in which to achieve the required object. No doubt the proof of the pudding was in the eating. The failure or success of the lecture must become apparent to

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the plaintiff and if the lecturer was not achieving success then under the terms of the agreement the services of that lecturer could be terminated. There was nothing to suggest, however, that the plaintiff by any of its officers, be they area manager or supervisor, sought to interfere from time to time, by the issue of directives with the method in which the lecturers conducted the meetings. It did no more than to say, in effect, to the lecturers "we have had experience in this field. This is what we tell you you should do in order to achieve success. It is up to you to follow it. If you are not successful then we can dispense with your services upon a week's notice. If you follow our instructions you will succeed. If you succeed your services will not be terminated." If, therefore, the lecturers in following the instructions given to them in their training had success it must be because they had complied with the directions because they, the lecturers, had realised from the results that the outlines and instructions given to them were capable of producing the required results. I am satisfied that the plaintiff had the right or power to direct the lecturers how to conduct their classes.

It may be said that there was no difference between the directions, instructions and advices given by the plaintiff and the advice given in a number of publications dealing with the subject of how to win friends and influence people and

that to accord with those instructions produced a result which in the end was a satisfactory one.

It may be said that the lecturers were employees because having been directed to have a module class followed in the next week by a feed back class with the procedure repeated for six weeks at the end of which it is followed by a link up class they had, in following that procedure, accepted the situation that they were bound to observe the directions of the plaintiff. On the other hand it may well be that what appeared to be given in the form of a direction was nothing more than advice which the plaintiff realised would be found by the lecturer to be good advice once it was given an opportunity to work and that to conform with it thereafter was nothing more than an admission that it was the best way, in the circumstances, to conduct the lectures. That does not, in my view, turn the relationship existing between the plaintiff and the lecturer from that of employer and employee. 10

That the procedure was both logical and sensible because amongst other reasons it enabled a person joining the programme to be sure of continuity if moving about the state, or indeed Australia, was not the only reason why the lecturer adhered to it. Perhaps the lecturer felt he or she had little alternative but to do so. 20

Much of the cross-examination dealt with the minutiae of the instructions given in the handbook. The lack of

supervision at the meetings rather indicated an assurance on the part of the plaintiff that it needed only to tell the lecturers what they should do in order to secure adherence to the directions. Many of the directions were to some extent elementary and unnecessary. For example to be told that the class was to begin on time would seem to be a fundamental instruction not likely to be ignored without instruction if the lecturer was determined to make a success of his or her obligation. To be told to welcome new members, to welcome them by name, to encourage older members in their successes, 10 to sympathise with them in their failures, would, to most people, seem unnecessary. However the constant repetition of this would ensure no doubt, in the long run, that there would be no failures that would do harm to the programme.

The suggestion that cue cards be used is one that need not be made to any successful public speaker. It might not be the first thing to occur to an embryonic lecturer on the subject of how to lose weight but does not amount to such direction and control as to make the person the author of the suggestion the employer of the person to whom the sugges- 20 tion is made.

In the course of the cross-examination reference was made of the use of the word "instruction". If the word is used as meaning a direction to a person which must be obeyed it is different from the use of the word in a sense which suggests

that a person is being instructed in the use, for example, of a mathematical formula, a public relations approach or a musical instrument.

The witness expressed the view that much of what was called instruction was really the provision of a guide line and this was a way in which it could be viewed.

Many lecturers in teaching institutions have the right to determine the manner in which they are to deliver the lectures on the particular subject matter allotted to them. They cannot choose the place or time and, once the subject matter is determined on what they are to deliver the lecture. However that does not make them employees of the institution. They do not receive detailed instruction on how to give the lecture. With a lecturer engaged by Weight Watchers however an assumption cannot be made that such person knows the subject matter until taught and, amongst other things, it is important that they be taught the elements of delivering the lecture, maintaining the interest of the members and the goodwill of the programme and obtaining the results that are essential for the programme which, after all, is, from the point of view of the plaintiff, an exercise in making profit. 10 20

Whether the lecture fee is described as an honorarium, an ex gratia payment or in another neutral fashion is of no consequence. There is no doubt that it was the intention both of the plaintiff and the lecturer that the lecturer be not

labelled an employee of the plaintiff. What the plaintiff sought to do was, by a series of instructions and supply of information, to ensure that its operation, which had then proved to be successful, would continue to be so, that its popularity would increase, that it would have considerable goodwill and support in the area in which, to it, such support would be profitable and that that object be achieved by encouraging its lecturers upon whom such success depended to behave in a fashion which would do nothing to diminish the likelihood of such success. The payment of pay-roll tax as such was no concern of the lecturers. The agreement was not intended as a sham. The lecturers were not parties to a sham. 10

Mrs Santea said that she did not regard herself as being an employee of the plaintiff. Her cross-examination ended with the following questions being put to her:-

"Q. In relation to the various classes that we have discussed the module presentation, the feed back and the link up classes there is a series of defined segments that you have been instructed to carry out in your class, is that correct? A. Yes. 20

Q. I suggest the arrangement between you and Narich is that you should conduct those classes in accordance with the directions that I have referred you to in relation to module presentation, link up classes and feed back classes? A. Yes, according to the outline ...

Q. You told me you were not free to vary without permission the day or time of the class? A. Of course not.

Q. You also told me you were not free to vary the particular module scheduled for presentation at a particular class? A. For the members' benefit." 30

She conceded that some of the duties performed by her were not free from the direction or control of the plaintiff company.

Richard Bruce Jamieson the Chairman of Directors of the plaintiff company also gave evidence. He had deposed to the contents of an affidavit which had been filed on behalf of the plaintiff. He gave evidence concerning the use of agreements that had been signed by the lecturers to which reference has already been made. He said that an agreement was introduced because certain unions in New South Wales had attempted to induce the lecturers to become members and indeed had insisted upon addressing a meeting of the lecturers on one occasion. The lecturers rejected the approach and the witness then contacted the Hospitals' Union. The procedures involved however were such as to make it from his point of view and from that of the lecturers undesirable to have the lecturers join the union. He investigated other courses including what the English Weight Watchers had been doing. He said that virtually the English format was copied. Another reason for changing the documentation was because of the delay involved in the lecturers receiving their money if it had to be sent to them from the company after the collections at the meetings had been forwarded to the head office. These were part of the reasons for the statement in the original document in clause 4 that the lecturer was not an employee of the company.

The franchise agreement to which I referred earlier referred, in the recitals, to the conduct of classes by lecturers specially trained in the use of the franchisor's unique methods. The plaintiff in it agreed inter alia, that the personal weight of each of its employees coming into contact with the public, including each lecturer would not exceed a limit prescribed for such employee for more than fourteen consecutive days. This reference could have occurred at a time when the distinction between employee and independent contractor was not important in relation to lecturers.

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In 1973 agreement was produced as a result of the meeting in Sydney with the union officials. Also the organisation was growing, spreading to country areas and problems arose in the paying of these people. By allowing them to collect the fees and deduct their money they got it quicker and he said it was felt that as independent contractors they would have more responsibility. This would help them to do their job better. To employ the lecturers and pay them salaries involved substantial cost delay in getting their money and there were complaints at times about cheques going astray.

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Jamieson made enquiries from the English Weight Watchers and as a result of a letter from them dated the 6th July, 1973, their system was adopted almost exactly. To adopt a P.A.Y.E. system of deduction was a costly affair and would have involved a large amount of work for the small quantity of money involved.

Moreover as a result of a judgment of Helsham, J. on the 4th November, 1971, problems arose about enforcing the restrictive covenant. The scheme of engaging the lecturers as independent contractors was not done with any desire or intention to avoid pay-roll tax.

Because of the probability of union problems if the lecturers were to remain employees advice was sought from Mr Dey, of counsel (as he was then) as to the method of engagement of the lecturers as independent lecturers. It was only after the engagement of Mr McIntyre as an accountant that following his advice the plaintiff ceased any further to pay pay-roll tax until ultimately assessed by the Commissioner in relation to the lecturers. Thereupon pay-roll tax ceased to be paid in respect of the lecturers, the recorders and the weighers and their assistants. 10

From 1973 to 1977 Mr Jamieson made it a practice to attend meetings given by the lecturers. He generally stayed for the course of the meeting. He was aware of the contents of the lecturers' handbook. While attending a lecture he did not interfere with the lecturer during the course of it. If a mistake was made or if the sequence was not followed as recommended in the handbook or if there was some other deviation he would speak to the lecturer after the meeting but on no occasion was action of a disciplinary nature ever taken against the lecturer. Nor did he interrupt the proceedings with a view 20



to correction. He frequently attended lecturers' monthly meetings. All lecturers in New South Wales could not regularly attend such lectures but those that could did. They were encouraged to attend but not penalised for not attending. If lecturers' reports were not completed they would be questioned about them but no disciplinary action was taken.

If a supervisor attended a lecturer's meeting she would on occasions report back to head office concerning the meeting. As a rule no action would be taken on any such report. The module system was introduced in 1975 and was resisted by a number of the lecturers in the early stages of such introduction. Efforts were made to try and encourage the lecturers to accept it and it was realised that a lot of patience would be required to introduce it properly. It was a long process to convert all the lecturers into accepting the situation but at no time was any weight brought to bear on the lecturers to do so. Efforts were made however to encourage lecturers to believe in what they were doing and so improve their delivery of the module to the meeting. At no time was any lecturer threatened with termination of services of agreement. There are still a few of the lecturers who do not accept the module system. They however are still with the company.

Instructions have been given from time to time to the supervisors to try and encourage the lecturers to follow instructions given in the handbook. Despite all this there are

still some who do not follow it as it should be followed.  
The instructions in the handbook are, as with all the teaching  
there, to be used as a guide.

The time and place of lecturers' meetings could be altered  
although instructions were given at times laying down the  
hours. The starting time of a meeting could however be varied  
to suit the general public coming to the meeting - such varia-  
tion would be within reason.

Only the lecturers were required to sign the non-competition  
agreements. Staff members were not. 10

Directions were given for example that the lecturer should  
stand while lecturing and that she should not smoke during it.  
This might be viewed as a reasonable request rather than an  
instruction failure to comply with which might result in dis-  
missal.

The time of the meetings could be altered but as Mr  
Jamieson pointed out it was basically commonsense to hold the  
meetings on the dates and as near as possible to the times  
advertised. Permission does not have to be sought to change  
the time so long as the head office was notified. This avoids 20  
head office giving out wrong information when questioned about  
the time of the meeting. If a hall became unavailable for  
the meeting the lecturer would endeavour to find another one  
although may seek the assistance of a supervisor who perhaps  
had more information. Factually it appeared to me from the

evidence of Mr Jamieson that these lecturers were in a position somewhat different from that of an employee. The instructions generally that were given to them would be accepted by reasonable persons in the position of the lecturers as common-sense advice as to how to make a success of what they were doing.

Pay Roll Tax was introduced by the Federal Parliament in the Pay Roll Tax Assessment Act, 1941 which was described as "an Act relating to the imposition assessment and collection of tax upon the payment of wages."

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The Act provided that unless the contrary intention appears:-

"'employer' means any person who pays or is liable to pay any wages and includes -

- (a) The Crown in the right of state;
- (b) A municipal corporation or other local Government Body or a public authority constituted under any State award;
- (c) Any public authority constituted under any Act or under any law in force in a territory of the Commonwealth the wages paid by which are not paid out of the consolidated revenue fund;" and .....

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'wages' means any wages, salary, commission, bonuses or allowances paid or payable (whether at piece work rates or otherwise and whether paid or payable in cash or in kind) to any employee as such and, without limiting the generality of the foregoing, includes -

- (a) Any payment made under any prescribed classes of contracts to the extent to which that payment is attributable to labour;
- (b) Any payment made by a company by way of remuneration to a director of that company;
- (c) Any payment made by way of commission to an insurance or time-payment canvasser or collector; and

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- (d) The provision by the employer of meals or sustenance or the use of premises or quarters as consideration or part consideration for the employee's services;"

Section 12 provides that a tax imposed by the Pay Roll Tax Act, 1941 shall be levied and paid on all wages paid or payable by any employer in respect of any period of time occurring after the 30th June, 1941. Pay Roll Tax shall be paid by the employer who pays or is liable to pay wages.

In 1971 the New South Wales Government enacted the Pay Roll Tax Act No. 22 of 1971 which was described as:-

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"An act to impose a tax upon employers in respect of certain wages; to provide for the assessment and collection of the tax; and for purposes connected therewith."

Section 3 of that Act provided that in the Act, except insofar as the context or subject matter otherwise indicates or requires:-

"'employer' means any person who pays or is liable to pay any wages and includes the Crown in right of the State of New South Wales.

and

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'wages' means any wages, salary, commission, bonuses or allowances paid or payable (whether at piece work rates or otherwise and whether paid or payable in cash or in kind) to an employee as such and, without limiting the generality of the foregoing, includes -

- (a) Any amount paid or payable by way of remuneration to a person holding office under the Crown in right of the State of New South Wales or in the service of the Crown in right of the State of New South Wales;
- (b) Any amount paid or payable under any prescribed classes of contracts to the extent to which that payment is attributable to labour;
- (c) Any amount paid or payable by a company by way of remuneration to a director or member of the governing body of that company;

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- (d) Any amount paid or payable by way of commission to an insurance or time-payment canvasser or collector; and
- (e) The provision by the employer of meals or sustenance or the use of premises or quarters as consideration or part consideration for the employee's services."

Section 6 provides that the wages liable to pay roll tax under the Act are wages that are paid or payable by an employer after the month of August, 1971.

Section 7 provides for the imposition of the relevant tax. 10

The instant litigation involves a determination of whether the lecturers having entered into agreements with the plaintiff are employees and, as such, recipients of wages within the meaning of the Pay Roll Tax Act, 1971 so as to render the plaintiff liable to the payment of pay roll tax assessed upon the payments received by those persons from the plaintiff.

It is relevant to determine whether the Act requires the existence of the relationship of employer and employee between the plaintiff and the recipients of the monies referred to.

The title of the Act states that its purpose is to impose a tax upon employers in respect of certain wages. Although employer and wages are defined by s.3 of the Act, no definition is given of employee and the only relevant appearance of that word is in the definition of wages when it refers to certain payments being paid or payable "to an employee as such". An employer means any person who pays or is liable to pay any wages. Wages is defined to mean "any wages salary commission bonuses or allowances paid or payable to an employee as such". 20

The definition is then extended without limiting the generality of the foregoing, to include five categories.

An early difficulty is confronted in determining the significance of the use of the word "employer". It has on occasions been contended that in order to render a person liable to pay roll tax under the Act, there must exist between him and the person in respect of whom the tax is chargeable a relationship of master and servant or as it is now more commonly known employer and employee.

The matter first received the attention of the High Court 10  
in a reported decision of Federal Commissioner of Taxation v.  
J. Walter Thompson (Australia) Pty. Limited (1944) 69 C.L.R.  
227. That case concerned the application of the provisions  
of the Federal Pay Roll Tax Assessment Act 1941-1942 and con-  
tained provisions substantially similar to the ones relevant  
to this case. The definitions both of employer and wages are  
similar in all material respects.

In Thompson's case a company presenting radio plays en-  
gaged for each play artists suitable for the various parts  
and made with each artist a contract whereby the artist was to 20  
receive a fee for the performance but no fees for rehearsals  
and was obliged to attend rehearsals, and a right to cancel  
was reserved to the company if the artist's work should not be  
satisfactory to the producer. The production of the plays  
required extensive control of the artists during both

rehearsals and the final performance. The Commissioner decided that the payments were wages within the meaning of the Act. The Board of Review unanimously held that the relation between the company and the artists was that of master and servant not of independent contractors. The majority held however that the payments were not wages within the meaning of the Act. The High Court held that the relationship between the company and each artist was that of employer and employee and not that of independent contractors and that the fee paid to him was wages as defined by the Act. Tax under the Act was therefore payable 10 in respect of such fees. Whether it was assumed that the relationship of employer and employee was requisite or that no attention was given to this matter is not clear.

Latham, C.J. at p.229 said:-

"The application of the Act depends upon the existence of an employer-employee relation - a relation which I am unable to distinguish from that of master and servant."

His Honour then at length dealt with the provisions therein involved in the test necessary to be applied in order to determine whether a man be a servant or an independent contractor. 20 In the course of his judgment his Honour referred to the definition of a servant in the American Restatement of the Law, Vol.1, Agency, page 483 which definition he found to be in accordance with the law of this country (page 233).

In dealing with the question as to whether the monies paid to the artists were or were not wages his Honour reached the

the conclusion that in the Act the word "wages" should be held to include any remuneration paid or payable to an employee as a reward for his services as an employee. (page 234)

In the following year a similar point arose before the High Court in Queensland Stations Pty. Limited v. Federal Commissioner Taxation (Drovers' case) (1945) 70 C.L.R. 539. In that case a drover agreed with the owner of cattle to serve in the capacity of a drover, to drive certain cattle to a place of destination, to obey and carry out instructions and devote the whole of his time, energy and ability to droving the stock. His remuneration was a fixed sum per head of cattle delivered. As drover he was bound to find the men, plant, horses and rations necessary and pay all wages in connection therewith. It was held that the payments made to the drover were not wages within the meaning of the Act of 1941 and that the company was not liable to pay roll tax in respect of these payments. The Court appears to have reached the conclusion that the relationship between the owner and the drover was that of "employer and independent contractor". That there was some doubt about the accuracy of the judgment in a previous decision of Logan v. Gilchrist Watt & Cunningham (1927) 33 A.L.R. 321 is of no consequence to the matter now under discussion. It was contended for the Commissioner that the contract created the relationship of employer and employee and that payments made to the drovers thereunder were therefore payments of



wages. Latham, C.J. followed his statement in Thompson's case that application of the Act depended upon existence of an employer-employee - that is a master-servant relationship.

Dixon, J. (as he then was) also gave attention to the question (pages 551-553) and came to the conclusion that the contract did not create the relation of master and servant or employer and employee but appeared rather to be a contract for the performance of a service for one party by another. He referred to a number of authorities in support of his conclusion. At no time in the proceedings did there appear to be any doubt that in order for the Commissioner to succeed such relationship had to be established. It is difficult to believe that the Court in either of the two cases to which I have referred would have overlooked the proposition that the existence of such a relationship was unnecessary.

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The matter again came to the High Court before Stephen, J. in Commissioner of Taxation v. Barrett and Others (1973) 129 C.L.R. 395. That was an appeal under s.40 of the Pay Roll Tax Assessment Act 1941 and the question to be decided was whether a firm of land agents in South Australia who retained salesmen to find purchasers for land entrusted to the firm for sale was liable to pay roll tax in respect of commissions paid to the salesmen. His Honour held that in the circumstances the salesmen were employees of the firm and hence the payments of commission to them were wages within the meaning of the Act.

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His Honour stated the definition of wages (at page 400)  
and then said:-

"Since the remuneration of salesmen is by way of commis-  
sion, a form of payment specifically referred to in the  
definition of 'wages', the only question is whether  
amounts of commission paid to salesmen are paid to per-  
sons who bear to the respondents the relationship of  
employees; if so those amounts will be paid to employees  
'as such'."

His Honour then at some length discussed the application of 10  
the principles which have been evolved in determining over  
the years whether the relationship between an employer and  
those engaged in working for him is that of master and servant  
or employer and independent contractor. He referred to the  
two cases already quoted by me and to the decision in *Zuijs v.  
Worth Bros. Pty. Limited* (1955) 93 C.L.R. 561 in dealing with  
the application of the test of control over the manner in  
which work is done.

He adverted to the decision of the Board of Review and  
before discussing it said (at page 403):- 20

"The Act is entitled 'An Act relating to the imposition,  
assessment and collection of a tax upon the payment of  
wages' and central to its operation is the selection of  
an 'employer' as the person liable to tax and of 'all  
wages paid or payable' as the subject matter of the tax.  
'Employer' is defined in terms of he who pays wages and  
'wages' are in turn defined as various types of payments  
paid 'to any employee as such.'"

His Honour then at some length discussed what he described  
as a number of circumstances which pointed to the conclusion 30  
that the salesmen were employees and so he ultimately decided.

In the course of argument reference has been made to some of the dicta in the case of *Murdoch v. Commissioner of Pay Roll Tax (Vic.)* (1980) 54 A.L.J.R. 502. In that matter a testator by his Will directed that there be distributed amongst employees of a business in such proportions as his trustees should think fit a certain sum of money. The trustees of the will conducted the business and as such were the employers of the recipients of the benefits provided by the directions in the Will. The respondent Commissioner assessed the appellant to tax in respect of these payments as being wages within the meaning of s.3 of the appropriate Victorian Act. Its terms resembled those of the New South Wales similar Act. It was held by the majority of the Court (Gibbs, J. as he then was dissenting) that the payments in question were wages within the meaning of s.3 of the Act. The appellants were in fact the employers of the persons to whom the payments were made and these payments were made from nett profits only to employees of the business. The criteria adopted by the appellants in making the payments supported a conclusion that these were paid to employees "as such" within the meaning of the definition. It was not material that in making the payments the appellants acted in obedience to a trust contained in a Will. The payments also answered the description of bonuses as the term was used in the definition of wages in the section. It was therefore held that the Commissioner was correct

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in assessing the payments as subject to pay roll tax.

Gibbs, J., dissented on the basis that the Act was not intended to tax payments made under trusts generally created and that a payment made to a beneficiary who is an employee cannot rightly be characterised as remuneration for services rendered. In the early part of his judgment his Honour said (at page 503):-

"In the present case the appellants, who made the payments, were the employers of the recipients. It is therefore unnecessary to consider the effect of the definition of 'employer' as any person who pays 'wages', which seems to make it unnecessary that the relationship of employer and employee in accordance with common law principles should exist between the payer and the payee. Where that relationship does exist, however, the critical question is 'whether the payment is one which the employer makes to the employee because of something done in the service of the employer'; W.A. Flick & Co. Pty. Ltd. v. Federal Commissioner of Taxation (1959) 103 C.L.R. 334 at p.339"

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In a joint judgment Mason, Murphy and Wilson JJ. said at page 507:-

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"In our opinion, the solution to the problem is to be found in the application of the provisions of the Act to the particular circumstances of the case. In our opinion, such legal character of the payments as may be deducted from the terms of the will are not determinative. In other words, the Act, like all taxing statutes, takes a pragmatic line. So understood, in order to attract the tax the payments must satisfy three requirements: they must be paid by the employer; they must answer the description of 'wages' as defined; and they must be paid to employees as such. Mr Merralls drew attention to the definition in the Act of 'employer' as tending to denude the term of any significance beyond the fact that it refers to any person by whom wages are paid. On the other hand, the concept of 'wages' would seem necessarily to ground the relationship of payor and payee in that of master and servant. In any event, we find the first requirement to be satisfied. The appellants were in fact the employers of those

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who received the payments, and it is not to the point that in doing so they may have acted in obedience to a trust."

The comments of Gibbs, J., which I have quoted express nothing more than a doubt in his mind as to whether the relationship of employer and employee in accordance with common law principles should exist. His was the only dissenting judgment and in placing any reliance upon the comments quoted it must be remembered that they are no more than obiter. The joint judgment which I have quoted in the statement which was also obiter seemed to entertain less doubt in requiring the relationship of payor and payee to be grounded in that of master and servant. 10

In *Sentry Life Insurance Limited v. Commissioner Pay Roll Tax* (1979) 79 A.T.C. 4586 the question for decision was whether payments to insurance agents by way of commission were wages within the meaning of the Federal Act. Sheppard, J., held that the relevant Act was principally aimed at imposing tax on wages and salaries in the true sense and the paragraphs of the definition of "wages" are best construed as covering payments to persons who carry on activities which have a similarity to those of true employees. The only decision of those to which I have referred to above that was cited by his Honour in judgment was that of Stephen, J. in *Barrett's case*. From that decision the Commissioner appealed to the Court of Appeal which upheld the Commissioner's appeal: (1980) 2 N.S.W. L.R. 898. 20

It held that the definition of wages expressed to include "any

amount paid or payable by way of commission to an insurance or time payment canvasser or collector included persons working under a contract as well as employees strictly so called." Such a finding prompted counsel for the Commissioner in the instant litigation to contend that a finding of the existence of the relationship of employer and employee at common law was not necessary to impose liability upon the plaintiff for payroll tax and that the plaintiff could still be so liable without such a finding as the definitions of employer and wages covered situations where there was no relationship of employer and employee in accordance with the common law principles. 10

In the Sentry Insurance case the only decision above referred to that was cited in the judgments was Murdoch's case to which Reynolds, J.A., referred. Although Barrett's case was cited in argument no reference was made to it in the judgment. It appears to have been conceded that in none of the instances included in the agreed statements of fact in that case was the recipient of the commission an employee of the payee in accordance with common law principles. His Honour said at page 900:- 20

"It was argued to this Court that as properly understood the definition of 'wages' only covers cases where the payment is made to an employee as such. I am unable to perceive any substance in this submission. It appears to me that the plain contentment of the definition is that in certain cases payments made to persons who are not employees in accordance with common law principles

are intended to fall within the definition. I respectfully agree with the observation of Gibbs, J., in Murdoch's case ...."

His Honour quoted portion of such observations which I have already set out above.

It would appear that the earlier decisions of the High Court were not brought to the attention of the Court of Appeal and although Barrett's case was cited to the Court it was not dealt with in the judgment. Reynolds, J.A. must have taken the view that it was not significant that the observations of Gibbs, J., to which he referred were obiter and not supported by the other Judges of the Court. Although the comments in the joint judgment of Mason, Murphy and Wilson, J.J., was also obiter it is clear that it was the view of Their Honours that in order to attract tax the payments must be paid by the employer to employees as such. Undoubtedly it was their view that the concept of wages seemed necessarily to ground the relationship of payor and payee in that of master and servant. Their Honours may not have taken the view that there was no substance in the submission made to the Court of Appeal. Glass, J.A., did not give an independent judgment on this aspect of the case but merely stated that for the reasons given by Reynolds, J.A., he held that the paragraph included "persons working under a contract as well as employees strictly so called". That decision I understand is under appeal to the Privy Council.

It seems to me that on the point raised by Mr Young I am bound by the decisions of the High Court. For the reasons which I have referred to above in relation to the decision of Stephen, J., in Barrett's case and the obiter expressed by the majority of the Court in Murdoch's case and with respect to the decision of the Court of Appeal I would in any event if I had the freedom to do so prefer the conclusion which I have reached. I therefore reject the submission of Mr Young and hold that the relationship that must exist between the payor and the payee of the money sought to be brought to tax is that of employer and employee and not any other. In so holding I mean that the existence of the relationship must be found in accordance with the principles of common law.

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This brings me then to the question of whether or not the relationship between the plaintiff and the lecturers engaged by it was that of employer and employee. If it was not, whether it was one of independent contractor or falls within some other classification is not for me to decide. The law as it now stands requires me to decide in the first instance, if the Commissioner is to succeed, that the relationship of employer and employee exists.

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The existence of such relationship has been the subject of dispute for a long time and numerous tests have been stated in a number of decisions both in this country and in England.



In *Performing Rights Society Limited v. Mitchell and Booker Limited* (1924) 1 K.B. at 767 McCardie, J., said that in order to determine whether a man be a servant or an independent contractor "the final test, if there be a final test, and certainly the test to be generally applied, lies in the nature and degree of detailed control over the person alleged to be a servant." This was the test applied by Latham, C.J., in *Walter Thompson* (supra).

In the *Drovers'* case (supra) where it was held that the relationship between the owner and the drover was that of "employer and independent contractor" Latham, C.J., at page 545, after referring to the relevant facts said:-

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"If the work to be done by one person for another is subject to the control and direction of the latter person in the manner of doing it, the person doing the work is a servant and not an independent contractor, and prima facie his reward would be wages."

Even if the relationship had been that of master and servant it was held that the payment could not be said to be a salary, a commission, a bonus or an allowance.

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At page 546 his Honour said:-

"But even if 'is required' the court to hold that the relationship of master and servant exists in the present case .... it does not follow .... that the payment made to the drover in consideration of the fulfilment by him of his contract was a payment by way of wages.

The application of the Act .... depends upon the existence of an employer-employee i.e., a master-servant-relationship. This is shown by the fact that 'wages' is defined so as to include only payments made 'to any employee as such.' But 'employer', for the purposes of

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of the Act, is not defined so as to bring all employers within this term. 'Employer' is defined (section 3) as meaning 'any person who pays or is liable to pay wages.' Unless the moneys payable to the drovers are 'wages' such moneys are not liable to tax."

And further on page 547:-

"A person may be an employee and yet payments made to him by an employer may not be wages."

Dixon, J., (at p.551) was of the view that the contract did not create the relationship of employer and employee. 10

In 1949 the test of the existence of the relation of master and servant in relation to an application under the Workers' Compensation Act was still whether the contract placed the supposed servant subject to the control of the employer in the course of executing the work not only as to what he should do but how he should do it. The question was not whether in practise the work was in fact done subject to a direction and control exercised by an actual supervisor or whether an actual supervision was possible but whether ultimate authority over the man in the performance of his work was in the employer 20 so that he was subject to the latter's order and directions: Humberstone v. Northern Timber Mills (1949) 79 C.L.R. 389 at 404; approved in Zjuis. (infra).

In Zjuis v. Worth Bros. Pty. Limited (1955) 93 C.L.R. 561, an acrobat was engaged by the proprietors of an itinerant circus for an indefinite period at an agreed weekly sum to give, with a companion, an acrobatic display on the trapeze at each performance and to appear in the grand parade. It

was held that a finding that by reason of its nature the work was performed under an independent contract and not under a contract of service could not be sustained. The provisions of the Workers' Compensation Act therefore applied. It was further held that, in the circumstances, the arrangement presented elements characteristic of a contract of service.

In its judgment the Court dealt at some length with the criteria relied upon in determining whether the arrangement was a contract of service or an independent contract. A distinction was made between a contract for services and a contract of service. It was said that the law does not use the appropriate test in order to ascertain whether in fact the employee's work to be done is susceptible of control and direction by the employer; it is in order to ascertain whether a relation exists between the two men. It was concluded that in the instant case what had been proved in evidence all pointed to the conclusion that the relation between the parties was that of master and servant. This may follow from the power of selection, the form of the remuneration (wages), the right in the master to suspend or dismiss, the right to superintend and control the manner in which the servant fulfills his obligation. All pointed to the existence of the relationship.

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In the last quoted case it was said that a weekly hiring for an indefinite period to do a defined task (a trapeze

artist) on the premises of the other party as an integral portion of a spectacle under his general management and control would appear to present elements characteristic of a contract of service (page 569). The Court stated that a false criterion was involved in the view that if, because the work to be done involves the exercise of a particular art or special skill or individual judgment or action, the other party could not in fact control or interfere in its performance, that shows that it was not a contract of service but an independent contract (at page 570). No difference in principle existed 10 between the situation of a teacher in a school or a trained hospital nurse. It was a totally wrong application of principle to distinguish between them. They were both working under a contract of service. In that case, it was said, the test to determine whether a contract of service existed was not in order to ascertain whether in fact the employee's work to be done was susceptible of control and direction by the employer but in order to ascertain whether a relation existed between the two men. What matters is lawful authority to command so far as there is scope for it. Although from its 20 very nature an acrobatic performance must be executed upon the unhampered responsibility of the performers that does not remove the relationship from the category of master and servant. (page 571).

In Zjuis' case the following provided indicia of the

employee situation: The power of selecting the person engaged existed in the master. The fact that the remuneration took the form of wages. The right in the master to suspend or dismiss for misconduct. The right to superintend and control the manner in which the servant fulfilled his obligation. The act took a place in the programme as directed by the defendant. The measures of safety to be observed, the number, time and the manner of the rehearsals, the customs of the performers, the place where they dressed and their conduct both before the audience and otherwise were all matters naturally calling for control. 10

The fact that the performance of a task depends on a natural gift or on some acquired accomplishment does not necessarily mean that the performer cannot be a servant. The nature of the task is not conclusive (see page 572-573).

In *Neale v. Atlas Products (Vic.) Pty. Limited* (1954) 94 C.L.R. 419 it was relevant to ascertain whether roof tilers who were paid under a contract to fix roof tiles received payment of salary or a wage from which amounts should be deducted by the payee to cover income tax liability. It was held that the tilers were independent contractors. Referring to similar cases the Court said (at page 426):- 20

"In many such cases the payments stipulated for may be said to be payments made under a contract wholly or substantially for the labour of the person to whom the payments are made, though it is a simple matter to conceive examples of the former class where remuneration

might be said to be substantially for the hire of plant or equipment: see, e.g. *Humberstone v. Northern Timber Mills* (supra) and *Wright v. Attorney General for the State of Tasmania* (1954) 94 C.L.R. 409.

In any such cases, however, the critical question will be one of fact, but no such question arises in the present case for if the tradesmen, in any of the instances under review, were free to carry out the contractual work themselves or to engage others to perform it for them, either in whole or in part, the payments received by any particular tradesman were in no sense made under a contract for his labour." 10

It is suggested that because the duties of the lecturer may be performed by a substitute the relationship does not exist. However the substitute must be approved by the plaintiff and while no guideline is given it would be clear that the plaintiff is not required to approve any nomination made by the lecturer. No doubt latitude would be given by the company in relation to times and places of the classes but the lecturer is bound on the face of the agreement to lecture to a class at a time and place arranged by the plaintiff. 20

The lecturer must carry out her duties or obligations as a lecturer in a proper manner and cannot fail to do so without control and without the risk of her engagement being terminated. Her weight must not be excessive.

While the company undertakes to instruct the lecturer in "weight control skills" it is only in such skills as the company may consider appropriate to the skill experience and ability of the lecturer from time to time.

Whether there is to be placed upon the relationship a 30

particular label consequent upon the statement in the agreement that the lecturer "is not an employee of the company" is not relevant in the circumstances there being no ambiguity or uncertainty as to the true relationship which does exist. (See Massey v. Crown Life Insurance Co. (1977) W.L.R. 676; Australian Mutual Provident Society v. Chaplin (1978) 52 A.L.J.R. 407). The statement that the lecturer shall perform her duties free from the direction and control of the company is subject to a proviso which renders the statement of such freedom, valueless. The price of such freedom is that she follows the Weight Watchers' Lecturers' Handbook distributed by the American company and will attend without payment once per month at a Saturday meeting of the lecturers at which she will be weighed.

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The duties imposed upon her by the agreement are set out in Clause 5 and these I have stated above.

It is not denied by the plaintiff that it has sought to avoid the relationship arising between it and the lecturers for reasons some of which are dissociated from the obligation to pay tax. The requirement in clause 5 that the lecturer is to select and train recorders and weighers whom she is to pay does not make them her employees or her an independent contractor. Her obligation is not to pay both those persons and the rental for the hall but to do so from the receipts of the class. She cannot be said to rent the hall when the lectures

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are being held for the benefit of the plaintiff which arranges the time and place of the lecture and is entitled to the balance of the receipts of the class after deducting therefrom the fees payable to her, the recorders and weighers and those where appropriate for the rental of the hall. If by any chance the receipts from the class were insufficient to meet all those payments no obligation is imposed upon her to make those payments either then or at any subsequent time out of her own pocket. It is to be noted also that for the receipt of fees and dues from the members she is nominated as the company's agent for collection.

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In Barrett's case (supra) Stephen, J., at page 402 said:-

"A new test has been applied which involves the question whether or not a man's work is done as an integral part of another's business or is only accessory to it; whether, to put it in slightly different terms, the person in question is performing the relevant services as a person in business on his own account; it suffices to refer to the judgment of Pennycuik V.C., in Fall v. Hitchen (1973) 1 W.L.R. 286, in which recent authorities are reviewed and to the article in the Modern Law Review Vol. 31 (1968) p. 408.

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Whether or not this new test which still involves the question of control as a factor, does more than re-state the question rather than providing an answer to it may be in doubt: Atyah Vicarious Liability (1967) p. 38."

If one were to apply that test there could be no doubt that in this case the relationship of employer and employee is established. However it does not require the application of that test to establish such.

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Admittedly the lecturer is not engaged to work for a



minimum period or during specific hours or for a regular salary. While the plaintiff may not have, in the true sense, first call upon the services of the lecturer, it is inherent in the arrangement that the lecturer would be required to be available for regular meetings for the purpose of maintaining control over the attendance and activities of the members of particular classes. The plaintiff provides all the teaching aids although the lecturers are encouraged to inject individuality into the method of presentation of some of the material to the members at lectures. Whilst I do not in the circumstances of this case favour the choice of an alternative between the relationship being that of employer and employee on the one hand or independent contractor on the other, it seems to me that the lecturer cannot be said to be a person who is performing services in business on her own account and, with respect to counsel for the plaintiff, I see no real indicia of this. With respect, I agree with Pennycuick that the expression "contract of service" appears to be coterminus with the expression "employment" and that therefore the plaintiff is an employer of each lecturer within the meaning of the Act. 10 20

As in Barrett's case while the lecturers are given scope for individual initiative they remain very much a part of the plaintiff's organisation, they are subject to control in respect of the matters I have referred to. As Stephen, J., found in that case, I am satisfied in this case that while there is

little evidence of detailed supervision:-

".... its absence is not so much an indication of lack of the right to control as of an efficiently organised business in which financial incentives and good relations with responsible, carefully selected staff take the place of close supervision but without in any way affecting the subsisting relationship of employer and employee."  
(page 405)

Contrary however to the facts in that case there is not a great deal of resemblance between the salesmen there and the lecturers in this case in relation to the relationship of employment. This however is principally due to the fact that there is considerable distinction between a real estate salesman and a lecturer in Weight Watchers and little imagination is required to perceive where the difference lies. I have refrained from referring to the matter of their remuneration until I come to deal with the meaning of the expression "wages" in the Act. 10

Stephen, J., in Barrett's case (page 402), in dealing with the test that I have earlier referred to involving the question of whether the work done is an integral part of another's business or is only ancillary to it referred to a comment made by Mackenna, J., in Ready Mixed Concrete (South East) Limited v. Minister of Pensions and National Insurance (1968) 2 Q.B. 497. In that case the point in issue was whether the owner of a motor truck used to carry concrete for a company marketing and selling concrete was an employee or an independent contractor. The contract between the parties declared the 20

truck owner to be an independent contractor and provided for payment at mileage rates in return for which the truck owner would carry concrete at his own expense. The relevant Minister determined the truck owner to be an employed person and from this finding he appealed. It was held by Mackenna, J., that if the contractual rights created the relationship of master and servant, a declaration by the parties that it was otherwise was irrelevant. It was further held that if (a) the servant agreed in consideration of a wage or other remuneration to provide his own work and skill in the performance of some service for his master, (b) the servant agreed expressly or impliedly that, in performance of the service he would be subject to the control of the other party sufficiently to make him the master, and (c) the other provisions of the contract were consistent with it being a contract of service, a contract of service existed. An obligation to do work subject to the other party's control was not invariably a sufficient condition of a contract of service, and, if the provisions of the contract as a whole were inconsistent with the contract being a contract of service, it was some other kind of contract.

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In relation to the agreement of the servant to provide his own work and skill His Lordship took the view that freedom to do a job either by one's own hands or by another's was inconsistent with a contract of service although a limited or

occasional power of delegation may not be. The control referred to in the second condition included the power of deciding the thing to be done, the way in which it should be done, the manner to be employed in doing it and the time when and the place where it was to be done. Such right need not be unrestricted.

Although the third condition was expressed in the positive namely that the other provisions were consistent with it being a contract of service His Lordship interpreted it as meaning that there existed no provisions inconsistent with the nature of a contract of service. 10

With respect to his Lordship I do not agree that the existence of provisions inconsistent with the nature of a contract of service is sufficient. They must be, as a whole, inconsistent with the existence of such a contract. This I think His Lordship recognises when he says (at page 517):-

"If the provisions of the contract as a whole are inconsistent with its being a contract of service, it will be some other kind of contract and the person doing the work will not be a servant." 20

In dealing with the case in question His Lordship concluded that if the obligations on the driver were more consistent with a contract of carriage than a contract of service, the relationship was not that of employment. If he has the ownership of the assets, a chance of making a profit, and the responsibility to risk the loss, he, to that extent, would be

unlike a servant. If as in that case the owner of the truck chose another driver the question could arise and may be solved by the answer to the further question of whom was that other driver the servant. The only other comment of His Lordship that may be thought to be relevant to my conclusion is that payment by results may tend to prove independence and payment by time the relationship of master and servant.

During the relevant period one hundred and forty-six were engaged by the company who signed an agreement in the form of that referred to above.

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There was imposed upon every lecturer a number of obligations as to the manner in which the lecture was to be conducted, the information to be imparted to the members and an obligation not to exceed a specified weight. With the right to terminate such as it was the plaintiff was clearly able to control not only the task allotted to the lecturer but the manner in which the task was performed. It is of no consequence in my mind that disciplinary steps were not taken on occasions when they could have been. Whether the plaintiff had the view that it was in a better position by not taking disciplinary action against a lecturer who did not "toe the line" is of no consequence. The authorities show that insofar as control is necessary to establish the relation of employer and employee, it is the right to control that matters although the "employer" may never need to exercise it. It is the

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existence of the right which probably enables the employer to ensure that the employee will accept the control.

Having decided that the relationship existing between the plaintiff and the lecturers was one of employer and employee, there still remains for decision the question of whether the plaintiff was a person who paid or was liable to pay any wages (as defined) to any employee as such. There is no doubt that although the relationship may exist the payment need not necessarily be wages (Drovers' case supra per Latham, C.J. at 547). In Thompson's case (supra) Latham, C.J. referred to the fact 10 that the majority of the Board of Review, though of opinion that the relation between the company and the artists was not that of independent contractor, were nevertheless of the opinion that the monies paid were not wages. As was the position in this case the money paid was described as a "fee" and that it was paid for "a single performance (after rehearsals)". His Honour referred to the definition of wages in Stroud's Judicial Dictionary, 2nd. ed. (1903) vol.3 p.2206 where it was stated "it would therefore seem that 'wages' are the personal earnings of labourers and artisans." 20

"The use of the word 'fee' cannot be regarded as more than one element to be taken into account in determining the true character of the payments made. If a fee is really a reward for services rendered by a servant then it falls within the category of wages or possibly salary. Where the engagement is for a period, is permanent or substantially permanent in character, and is for other than manual or relatively unskilled labour, the remuneration is generally called a salary. But no precise line can be

Judgment of His Honour Mr  
Justice Woodward

drawn between wages and salary. The fees in the present case would not naturally be called salaries but, in my opinion, remuneration for the services of a servant which is not salary is comprehended within the term 'wages'....

In my opinion, in the Pay Roll Tax Assessment Act (Federal) the word 'wages' should be held to include any remuneration paid or payable to an employee as a reward for his services as an employee." (Per Latham, C.J. *ibid* pages 233-234)

In my view the monies received by the lecturers in respect 10  
of their services rendered at each meeting were monies paid by  
the plaintiff as employer of each of them to each of them as  
employees in respect of services rendered by them as such and  
come within the ordinary definition of wages. I therefore  
disallow the plaintiff's Notice of Objection Against Assess-  
ment dated 4th August, 1978. I dismiss the summons and I  
order the plaintiff to pay the defendant's costs.

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I certify that this and the 72  
preceding pages are a true copy  
of the reasons for judgment herein  
of His Honour, Mr Justice Woodward.

(Signed)  
Associate

Dated 6/11/81

Judgment of His Honour Mr  
270. Justice Woodward

No. 6 - Minute of Order of His Honour  
Mr Justice Woodward

IN THE SUPREME COURT OF NEW SOUTH WALES

ADMINISTRATIVE LAW DIVISION

No. 605 of 1978

NARICH PTY. LIMITED

Plaintiff

THE COMMISSIONER OF

PAYROLL TAX

Defendant

ORDERS OF HIS  
HONOUR MR  
JUSTICE WOODWARD

Baker & McKenzie  
Solicitors  
50 Bridge Street  
SYDNEY NSW 2000

DX: 218  
Tel: 231 5488

The Court orders that :

1. That the plaintiff's  
Notice of Objection Against  
Assessment dated 4th  
August 1978 be disallowed.
2. That the summons be dis-  
missed. 10
3. That the plaintiff pay  
the defendant's costs.

Ordered: 6 November 1981

Entered: 13 May, 1982

By the Court

(I.S.).

A. W. ASHE (S'gd)  
Registrar

271. Minute of Order of His  
Honour Mr Justice Woodward



No. 7 - Order granting final leave to appeal

IN THE SUPREME COURT OF NEW SOUTH WALES

ADMINISTRATIVE LAW DIVISION

No. 605 of 1978

NARICH PTY. LIMITED

Plaintiff

THE COMMISSIONER OF

PAYROLL TAX

Defendant

---

ORDER OF HIS  
HONOUR MR JUSTICE  
LEE

---

Baker & McKenzie  
Solicitors,  
50 Bridge Street,  
SYDNEY. NSW 2000  
DX: 218  
Tel: 231 5488  
(GCH)

The Court orders that:

1. Final leave to appeal to Her Majesty in Council from the judgment of this Court of 6 November, 1981 is granted to the plaintiff.

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2. The costs of this motion are costs of the appeal.

ORDERED: 23rd February, 1982

ENTERED: 4th March, 1982

By the Court  
A. W. ASHE  
Registrar

No. 8 – Certificate of Prothonotary as to  
correctness of Record

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

ADMINISTRATIVE LAW DIVISION

No. 605 of 1978

NARICH PTY. LIMITED

Plaintiff (Appellant)

COMMISSIONER OF

PAY-ROLL TAX

Defendant (Respondent)

CERTIFICATE VERIFYING

VERIFYING TRANSCRIPT

RECORD

I, ALYSON WENDY ASHE of Sydney, in the State of New South Wales, Registrar, Administrative Law Division, of the Supreme Court of the said State DO HEREBY CERTIFY that the pages numbered 1 – 446 and forwarded herewith contain a true copy of all documents relevant to the appeal by the Appellant NARICH PTY. LIMITED to her Majesty in Council from the Judgment of the Honourable Mr. Justice Woodward given and made herein on the 6th day of November, 1981 so far as the same have relation to the matters of the said appeal together with the reasons for the said Judgment given by the Honourable Mr. Justice Woodward and an Index of all the documents included in the record which true copy is remitted to the Privy Council pursuant to the Order of Her

Majesty in Council on the 20th day of December,  
in the year of Our Lord, One thousand, nine hun-  
dred and fifty-seven.

BAKER & MCKENZIE  
Solicitors,  
50 Bridge Street,  
Sydney. N.S.W. 2000.

231 5488  
DX 218 Sydney.  
GCH

Dated

*6 August*  
~~June~~, 1982.

(L.S.)

(Sgd) A. W. ASHE  
Registrar  
Administrative Law Division,  
Supreme Court of New South  
Wales

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