



DECISION

Fair Work Act 2009

s.210 - Application for approval of a variation of an enterprise agreement

ALDI Foods Pty Limited as General Partner of ALDI Stores (A Limited Partnership) T/A Aldi Stores (AG2015/7237)

ALDI PRESTONS AGREEMENT 2013

Retail industry

DEPUTY PRESIDENT BULL

SYDNEY, 16 DECEMBER 2016

Application for variation of the ALDI Prestons Agreement 2013 - opposed by the SDA - variation approved – BOOT considered – undertakings provided.

[1] An application has been made by ALDI Stores Pty Ltd as General Partner of ALDI Stores (A Limited Partnership) (ALDI) for the approval of a variation of an Enterprise Agreement known as the *ALDI Prestons Agreement 2013* (the Agreement). The application was made pursuant to s.210 of the *Fair Work Act 2009* (the Act).

[2] The Agreement is a single enterprise agreement, approved on 21 June 2013, with a nominal expiry date of 21 June 2017 and operates in the Australian Capital Territory and New South Wales.

[3] In the F23A – *Employer’s statutory declaration in support of variation of an enterprise agreement* accompanying the application, Mr Zalunardo, *Managing Director*, states that none of the classifications within the Agreement are altered by the variation.

[4] The classifications in the Agreement are listed as follows:

- Salaried store employees;
 - Store Manager,
 - Assistant Store Manager,
 - Store Management Trainee.
- Hourly rate employees/Store Assistants;
- Warehouse employees; and
- Transport and Distribution employees.

Variation

[5] The variation sought by the applicant relates to the application for approval of an enterprise agreement known as the *ALDI Minchinbury Agreement 2016* (*Minchinbury*

Agreement) which is also before the Fair Work Commission (the Commission). The variations are said to reflect the terms and conditions of the proposed *Minchinbury Agreement*. When the Agreement was first approved in 2013, Justice Boulton stated that the terms of the Agreement were substantially similar to those of the ALDI Minchinbury Agreement 2012.¹

Relevant legislation

[6] A vote of employees supporting the variation to the Agreement commenced on 10 December 2015 and concluded on 13 December 2015. The application to vary the Agreement was lodged on 24 December 2015, satisfying the 14 day time frame for lodgement prescribed under s.210(3)(a) of the Act.

[7] Section 211 of the Act specifies when the Commission must approve a variation of an enterprise agreement:

“Approval of variation by the FWC

(1) If an application for the approval of a variation of an enterprise agreement is made under section 210, the FWC must approve the variation if:

- (a) the FWC is satisfied that had an application been made under subsection 182(4) or section 185 for the approval of the agreement as proposed to be varied, the FWC would have been required to approve the agreement under section 186; and
- (b) the FWC is satisfied that the agreement as proposed to be varied would not specify a date as its nominal expiry date which is more than 4 years after the day on which the FWC approved the agreement;

unless the FWC is satisfied that there are serious public interest grounds for not approving the variation.”

(My underline)

[8] The F23A statutory declaration states that 983 out of the 1,443 employees, who cast a valid vote, supported the variation. Thus the majority of employees who cast a valid vote, voted to approve the variation. The Agreement covers 2,059 employees.

[9] The applicant stated that the variation to the Agreement made the terms and conditions of employment more beneficial. This included amending the Agreement to reflect pay increases since the commencement of the Agreement in 2013, and providing payment in lieu of annual leave loading upon termination of employment on a pro rata basis.

[10] The employer’s statutory declaration also stated that the variation made the terms and conditions of employment more beneficial than equivalent terms and conditions in the relevant reference instruments being the:

¹ [2013] FWCA 4028 at [2]

- *General Industry Retail Award 2010*;
- *Storage Services and Wholesale Award 2010*;
- *Road Transport and Distribution Award 2010*;
- *Manufacturing and Associated Industries and Occupations Award 2010*; and
- *Miscellaneous Award 2010*.

[11] The applicant further stated that the variation did not make any of the terms and conditions of employment less beneficial than they were before the Agreement was varied.

[12] The variation sought included changes to the following clauses:

4. Duration of the Agreement;
5. Operation of the Agreement;
12. Hours of Work;
13. Remuneration and Salary Sacrifice Arrangements;
18. General Leave Entitlements;
20. Personal/Carer's Leave;
31. Consultation;
32. Definitions; and

Schedule 5 - Salaried Store Employees- Fortnightly Pay Arrangements;
Schedule 6 - Hourly Rate Store Employees- Fortnightly Pay Arrangements;
Schedule 7 - Warehouse Employees- Fortnightly Pay Arrangements;
Schedule 8 - Transport and Distribution Employees-Fortnightly Pay Arrangements; and
Schedule 9 - List of Stores in Prestons Region.

[13] Most of the variations seek to reflect the terms and conditions of the *Minchinbury Agreement*, an agreement as stated above currently before the Commission for approval. The Shop Distributive and Allied Employees Association (SDA) have raised a jurisdictional objection based on the *Notice of Employee Representation Rights* (NERR) relating to the *Minchinbury Agreement*. The approval application for the *Minchinbury Agreement* was stayed awaiting a Full Court of the Federal Court decision concerning matters relating to the content of the NERR and reconciliation clauses.² It is noted that where a variation to an agreement is proposed as in this application, an NERR is not required to be supplied by an employer.

[14] The application stated that the SDA were covered by the Agreement.

[15] The SDA filed a Form F23B *Statutory declaration of employee organisation in relation to a variation of an enterprise agreement*. The statutory declaration stated that the SDA did not support the proposed variation and disagreed with the applicant's statutory declaration in support of the application. The SDA's objection related to the better off overall test (BOOT) which in its view, was not satisfied.

[16] In this matter, and the *Minchinbury Agreement* approval application, the SDA sought production of a number of documents from ALDI which it claimed were relevant to the assessment of the BOOT. The production of those documents was opposed by ALDI on the

² This decision was delivered on 29 November 2016, *Shop, Distributive & Allied Employees Association v ALDI Foods Pty Ltd* [2016] FCAFC 161

basis of relevance. The matter was subject to a hearing and a decision and Order delivered on 11 April 2016 granted, in part, the order for production of documents; [\[2016\] FWC 2299](#).

[17] Due to the extensive nature of the SDA's opposition to the Agreement's variation, the matter was listed for a hearing, in conjunction with the *Minchinbury Agreement* approval application.

[18] Leave was granted as per s.596(2)(a) of the Act for the parties to be represented. ALDI was represented by Mr Hatcher SC and Ms Perigo, the SDA by Ms Duffy of counsel assisted by Ms Fox. The SDA opposed the variation of the Prestons Agreement for similar reasons provided in its opposition to the approval of the *Minchinbury Agreement* with added opposition based on the content of the NERR form which as stated above is not a consideration in this application.

[19] Mr Zalunardo, the Managing Director of ALDI Stores Prestons Region, and Ms McNaughton, the bargaining representative for ALDI and a solicitor with Enterprise Law, both gave evidence on behalf of ALDI and were subject to cross examination.

[20] Ms Patena, a National Industrial Officer for the SDA, gave evidence on behalf of the SDA and was also subject to cross examination.

Submissions of the SDA

[21] In addition to the F23B statutory declaration filed by the SDA, the SDA provided written submissions on 1 February 2016 and 18 March 2016³ which elaborated on their objection to the variation of the Agreement and the approval of the *Minchinbury Agreement*. A statement from Phillip Walker, an SDA Industrial Officer, dated 16 March 2016, which commented on the hours worked by an anonymous employee at a Prestons' store, was also provided.

[22] The SDA opposed the Agreement's variation on a number of grounds including:

- the comparison classifications used by ALDI in applying the BOOT; and
- the indicative roster schedules filed by ALDI not accurately reflecting the real roster patterns of employees and as such, were said to be a 'generic template' used by ALDI.⁴

[23] The SDA advanced the argument that ALDI has filed similar indicative rosters in support of the approval of at least six agreements since 2012.⁵ The rosters submitted by ALDI neglect geographical region, trading hours and patterns of work.⁶ Subsequently, the SDA submitted that the BOOT could not be satisfied.

[24] The SDA questioned the veracity of Ms McNaughton's statutory declaration which stated that she has reviewed a variety of rosters in determining the BOOT.⁷

³ Exhibits R4 and R3

⁴ Exhibit R3 at [16], [24] and PN110

⁵ Exhibit R3 at [16]

⁶ Ibid.

⁷ Exhibit R3 at [26]

[25] Ms Patena, on behalf of the SDA, provided a witness statement⁸ and gave evidence that questioned the accuracy of ALDI's position on the BOOT calculations.⁹ Furthermore, it was submitted that the calculations in relation to overtime undertaken by ALDI are said to be incorrect as they did not take into consideration overtime as stipulated in clause 29 of the *General Retail Industry Award 2010*¹⁰ (the GRIA).

[26] The SDA undertook an analysis of the actual rosters worked by employees at Minchinbury and Preston and concluded the following:

- Employees work on more than 6 consecutive days in one week;
- Shifts often exceed 10 hours in length;
- Split shifts occur;
- Employees incur less than a 10 hour rest period between shifts;
- Employees are regularly rostered outside the start and finish times provided for in the indicative roster.¹¹

[27] The SDA argued that employees at Preston stores would be 'worse off' under the Agreement than under the GRIA. The SDA submitted that the Agreement provided lesser standards than the GRIA in the following ways:

- No minimum break between shifts;
- No minimum engagement period;
- No spread of hours for store salaried employees;
- No entitlements to rest breaks;
- No continuous shift provisions;
- No guarantee as to the maximum days per week an employee can work and no assurance as to employees having consecutive days off.¹²

[28] The SDA submitted that the business review payments (BRP's) do not apply to Store Managers and Assistant Store Managers unless they are in a home store.¹³ BRP's don't apply to Store Manager Trainees or Store Assistants.¹⁴ Therefore, the SDA contended that ALDI's reliance on the BRP's was not a means of curing the deficiencies in the Agreement for Salaried Store Employees or Assistants.¹⁵

[29] The SDA also submitted that overtime should not be calculated on a daily basis,¹⁶ and that the actual rosters of employees indicate that they do not always receive the minimum break between shifts that the GRIA requires.¹⁷

⁸ Exhibit R1 Witness Statement of Ms. Patena

⁹ Exhibit R1 Witness Statement of Ms. Patena

¹⁰ SDA written submissions 18 March 2016, Exhibit R3 at [17]

¹¹ Ibid at [30]

¹² Ibid at [34]

¹³ Ibid at [6]

¹⁴ Ibid at [7]-[8]

¹⁵ Ibid at [9]

¹⁶ PN655

¹⁷ PN702

[30] Clause 13 of the Agreement - **Remuneration and Salary Sacrifice Arrangements** contains a provision for an employee to request a comparison of benefits between the relevant applicable Award and the Agreement if, during a nominated period, they consider they are not better off overall under the Agreement. The SDA submitted that this provision cannot cure a failure to pass the BOOT and does not relieve the Commission from being satisfied that the Agreement passes the BOOT. The SDA also raised issues with clause 20 of the Agreement **Personal/Carers Leave**, arguing the clause was in conflict with the NES, although, the written submissions on this point were directed to the application to approve the *Minchinbury Agreement* which contained the same clause.

Submissions of ALDI:

[31] ALDI provided written submissions dated 1 April and 13 May 2016 in support of their application. ALDI submitted that the BOOT requires a summation of the disadvantages and advantages under a proposed enterprise agreement and operates as an overall assessment of the Agreement.¹⁸ ALDI took issue with every ‘unsupported’ assertion concerning the BOOT raised by the SDA.¹⁹

[32] The rosters supplied by ALDI were stated to be indicative only, as rosters frequently change to meet the needs of the business.²⁰ Mr Hatcher submitted that the typical roster is not the roster employees typically work but is ‘indicative’ of the hours employees work. Hours worked by employees will fluctuate.²¹ Indicative rosters acknowledge that employees are working a variety of different hours of work. The exercise conducted by ALDI was to identify the boundaries within which the hours are worked.²² The SDA’s objections to the indicative rosters were said not to be founded upon any evidence or reasoned analysis.²³

[33] Ms Patena’s evidence was rejected by ALDI, in particular the replicating of the fortnightly roster over an 8 week period, as ALDI submitted the rosters do not replicate themselves.²⁴

[34] ALDI submitted that store management employees including Store Managers, Assistant Store Managers, and Store Management Trainees receive an additional week’s annual leave above the GRIA entitlement of 4 weeks annual leave.

[35] Mr Zalunardo gave evidence that there were an average of 17 employees in each store in the Prestons region. Each store has one Store Manager and then Assistant Managers and Trainee Managers.

[36] In respect of the ability of employees to request a comparison of benefits under the Agreement and the Award in clause 13 of the Agreement, ALDI submitted that this provided a greater entitlement than the relevant applicable Award.

¹⁸ Exhibit A6 at [16]

¹⁹ Ibid at [12]

²⁰ Exhibit A6 at [17]

²¹ Affidavit of Ms. McNaughton Exhibit A1 at [10] and ALDI submissions PN570

²² PN116

²³ Exhibit A6 at [19]

²⁴ PN400

[37] Clause 20 of the Agreement - **Personal/Carer's Leave** requires employees to notify the employer before the start of their rostered shift that they will be absent and to state the nature of their illness/injury. This was said to be consistent with the NES which allows for an agreement to provide for terms relating to the kind of evidence that an employee must provide in order to be entitled to paid personal/carers leave.²⁵ The requirement to provide a medical certificate in certain circumstances was said to be a term that may be included in an enterprise agreement pursuant to s.107(5) of the Act.²⁶

[38] It was put by ALDI that clause 20 does not detract from the NES as it does not burden employees with a more onerous obligation to consult their employer.²⁷ It was submitted that a requirement to notify prior to a rostered shift is less onerous than the NES provision of "as soon as practical".²⁸

[39] Mr Hatcher on behalf of ALDI stated that personal/carers leave would not be refused if notice could not reasonably be provided before the commencement of a shift.²⁹

[40] Following the hearing, the parties were provided with the opportunity to provide further written submissions. The SDA raised concerns with the application of the BOOT in respect of employees not receiving a 12 hour break between shifts, non-provision of consecutive days off in a roster and the working of overtime outside the spread of hours³⁰.

[41] The SDA continued to maintain that the revised roster calculations provided by ALDI were not reflective of the 'real worked roster' for Store Managers, Assistant Store Managers and Store Management Trainees.

[42] ALDI also provided the Commission with further submissions and refuted the submission from the SDA that classifications of Store Manager on a 45 hour contract, Assistant Store Manager 45 hour contract, Store Management Trainee 38 hour contract year 1 and 2 do not meet the BOOT.

[43] ALDI repeated that it does not have a system of fixed rosters where employees work the same hours each week. The rosters are prepared at a store level having regard for the needs of the store and its employees. ALDI submitted that its evidence on this matter was unchallenged.³¹

[44] It was put by ALDI that the fact that the SDA had shown that on some occasions employees worked hours at odds with the indicative rosters, did not establish that the rosters are not indicative or that the hours in the period examined by the SDA are indicative of hours the employees work generally.

[45] ALDI also rely on s.193(7) of the Act which states:

²⁵ S.107(5)

²⁶ Exhibit A4 at [8]

²⁷ Ibid

²⁸ S.107(2)(a)

²⁹ PN887

³⁰ SDA email of 28 April 2016

³¹ See Affidavit of MS McNaughton 20 January 2016 Exhibit A1 at [11]

“FWC may assume employee better off overall in certain circumstances

193(7) For the purposes of determining whether an enterprise agreement passes the better off overall test, if a class of employees to which a particular employee belongs would be better off if the agreement applied to that class than if the relevant modern award applied to that class, the FWC is entitled to assume, in the absence of evidence to the contrary, that the employee would be better off overall if the agreement applied to the employee.”

[46] ALDI submitted that in the absence of evidence to the contrary, the Commission is entitled to assume that if a class of employees are better off overall then all employees in the class are better off overall.³²

[47] ALDI relied on the BOOT being applied as an overall test, where regard must be held for the additional week of annual leave provided for salaried employees and the BRP’s available to specified managerial employees of which a nominated amount is non-discretionary.³³ ALDI submitted that the BRP’s actually paid were well in excess of that guaranteed under the Agreement for the purposes of the BOOT.³⁴

[48] It was submitted that the SDA analysis is flawed as it uses the most inefficient basis to cost the rosters for the purposes of the BOOT, i.e. the method used in allocating overtime.³⁵

[49] On the basis of the impending Federal Full Court decision mentioned above, this approval decision and other ALDI agreement approval decisions were placed on hold. The decision has now been handed down; see *Shop, Distributive & Allied Employees Association v ALDI Foods Pty Ltd* [2016] FCAFC 161. I am satisfied that the ratio of the decision does not raise any matters that impact on this approval decision.

Better off Overall Test (BOOT)

[50] Section 193(1) of the Act defines the BOOT in the following manner;

“193(1) An enterprise agreement that is not a greenfields agreement *passes the better off overall test* under this section if the FWC is satisfied, as at the test time, that each award covered employee, and each prospective award covered employee, for the agreement would be better off overall if the agreement applied to the employee than if the relevant modern award applied to the employee.”

[51] Sub section s.186(2)(d) of the Act provides that in order to approve an agreement the Commission must be satisfied that the agreement passes the (BOOT).

[52] The BOOT is to be applied at the test time³⁶ as opposed to when the Agreement is made.³⁷

³² ALDI submissions 13 May 2016 at [8]

³³ See Schedule 1 of the Agreement

³⁴ ALDI submissions 13 May 2016 at [14]

³⁵ ALDI submissions 13 May 2016 at [11]

³⁶ S.193(1)

³⁷ S.182(1)

[53] The Full Bench in *Armacell Australia Pty and Others*³⁸ stated in respect of the BOOT:

“The BOOT, as the name implies, requires an overall assessment to be made. This requires identification of terms which are more beneficial for an employee, terms which are less beneficial and an overall assessment of whether an employee would be better off under the agreement.”³⁹

[54] In *Re McDonald’s Australia Enterprise Agreement 2009*⁴⁰ the Full Bench held that the role of the Commission includes facilitating enterprise agreements:

“[13] The appellants emphasised the facilitative aspects of these objectives. We agree that these objectives place the primary role for making enterprise agreements on the parties to those agreements and their representatives and that the role of Fair Work Australia (FWA) [as it was then known] includes facilitating the making of enterprise agreements. In general we believe that the requirements for approval should be considered in a practical, non-technical manner and that reasonable efforts should be made to clarify matters with the parties and consider undertakings to clarify or remedy concerns to the extent that these may be available under s.190 of the Act.”⁴¹

Undertakings

[55] Section 190 of the Act allows the Commission to approve an enterprise agreement with undertakings if it has a concern that the agreement does not meet the requirements set out in s.186 with respect to the BOOT. In *Re BUPA Care Services*,⁴² the Full Bench of the Commission noted that the employer must be given an opportunity, in light of s.190 to address any identified concerns.

[56] During the first listing of this matter ALDI provided a verbal undertaking regarding employees not working split shifts which was confirmed in writing.⁴³ Further written undertakings were received on 10 August 2016. The SDA were provided with a copy of these undertakings by the applicant.⁴⁴ On 31 October 2016, ALDI provided a further undertaking increasing rates of pay for Store Assistants working 5 out of 7 days. The SDA was provided with a copy of all undertakings and invited to make any comment,⁴⁵ and these comments have been taken into consideration by the Commission. The undertakings were provided by ALDI to address the Commission’s concerns regarding the BOOT and those raised by the SDA.

Rest breaks

³⁸ [2010] FWAFB 9985

³⁹ Ibid at [41].

⁴⁰ [2010] FWAFB 4602

⁴¹ Ibid at [13].

⁴² [\[2010\] FWAFB 2762](#)

⁴³ Received on 13 May 2016

⁴⁴ Received on 12 August 2016

⁴⁵ On 3 November 2016, the SDA were invited to make any comment on the 31 October undertaking. On 4 November 2016, the SDA were invited by the Commission to make any comment on the applicant’s undertakings of 13 May, and 10 August 2016.

[57] An undertaking relating to the provision of rest breaks was received on 10 August 2016. Hourly Rate Store employees and Store Management Trainees will be granted at least a 10 hour rest break between the completion of work on one day and the commencement of work on the next day (attendance of employees at store meetings will be disregarded for the purposes of the rest break).

[58] Where Hourly Rate Store employees have not received the 10 hour break they will receive double time until the break is taken, without loss of pay, where the break occurs during ordinary time hours.

[59] Where Store Management Trainees have not received the 10 hour break, they will receive double the Bankable Hourly Rate of a Store Assistant working any 5 out of 7 days until the break is taken, without loss of pay and where the break occurs during ordinary time hours.

Business review payments

[60] In respect to the non-discretionary and guaranteed component of the business review payments in the Agreement an undertaking was provided to increase the non-discretionary component of the BRP. The undertaking⁴⁶ provides that:

- Store managers working 50 hours per week will receive a minimum of \$570 per fortnight.
- Assistant store managers working 50 hours a week will receive a minimum of \$440 per fortnight.
- Assistant store managers and store managers engaged to work an average of less than 50 hours per week will receive a pro rata payment.

Split shifts

[61] ALDI provided an undertaking in relation to split shifts due to concerns raised by the SDA. The undertaking states that the ordinary hours worked for Salaried Store Employees and Hourly Rate Store Employees on any day will be continuous except for work breaks and meal breaks.⁴⁷

[62] ALDI have further advised that when formulating the undertaking with respect to split shifts, it has had regard to the holding of management meetings with Salaried Store and Store Employees. ALDI has submitted that there are no more than 7 meetings per year with each meeting not lasting more than 1.5 hours in duration.⁴⁸ Where the employees are required to attend these meetings, the meetings form part of their ordinary hours of work. As such, an undertaking has been provided in respect of store meetings.

Store meetings

[63] ALDI have provided an undertaking regarding employees attending store meetings. The undertaking states that where employees attend store meetings, whether concurrent with a

⁴⁶ Undertaking of 13 May 2016

⁴⁷ Undertaking of 13 May 2016

⁴⁸ Written submissions of 1 April 2016 at [30] and 13 May 2016 at [16]

period of work or otherwise, they will be paid their ordinary rate of pay and any period of attendance will count towards their ordinary weekly hours as if worked.⁴⁹

Rates of Pay Store Assistants

[64] The hourly rate of pay for Store Assistants working any 5 out of 7 days is increased by way of an undertaking from \$23.40 per hour to \$24.00 per hour.⁵⁰

Determination

[65] The undertakings provided by ALDI referred to above are fundamental in addressing the Commission's concerns, including those raised by the SDA in relation to the BOOT.

[66] In respect of consecutive days off for employees I have not been able to identify this as a serious BOOT issue. I note that the Award allows for the employee/employer to agree to other arrangements outside the requirement to have two consecutive days off each week or three consecutive days off in a two week period.⁵¹

[67] Enterprise agreements are able to include terms that are ancillary or incidental to the NES provided they are not detrimental to an employee when compared to the NES.⁵² I am not convinced that the Personal/Carer's Leave clause in the Agreement for the reasons advanced by ALDI is contrary to the NES. These provisions reflect those contained in the existing Prestons Agreement approved by the Commission on 21 June 2013.

[68] Clause 13 of the Agreement - *Remuneration and Salary Sacrifice Arrangements* and the 'reconciliation' reference, allow an employee to request a comparison of benefits between the relevant applicable Award and the Agreement if they consider they are not better off overall under the Agreement. The provision is contained in the existing approved agreement. The SDA describes this clause as inadequate in overcoming BOOT issues. The majority decision of the Federal Full Court in *Shop, Distributive & Allied Employees Association v ALDI Foods Pty Ltd*⁵³ referring to the reconciliation provisions as a 'makegood' clause expressed concern with the wording of the clause and in particular to its failure to ensure that an employee is better off, as opposed to ensuring that the Award entitlements were received.

[69] I have not taken this provision of the Agreement into consideration on the basis that I am satisfied that the Agreement passes the BOOT without the need for a 'reconciliation' clause. A 'reconciliation' clause would, in my view, only be a relevant consideration for the Commission where an agreement passes the BOOT based on the facts and circumstances available at the test time, however there is a possibility that unknown factors may alter this outcome for some employees. I am not satisfied that such a clause is required in this instance to pass the BOOT.

⁴⁹ Undertaking of 13 May 2016

⁵⁰ Undertaking of 31 October 2016

⁵¹ Clause 28.11 of the Award

⁵² S.55(4)

⁵³ [2016] FCAFC 161

[70] The Commission is required to consider the overall benefits to an employee or prospective employee employed under the Agreement compared to the relevant award. The Agreement variation application in my analysis does not result in a failure of the BOOT. Furthermore, nothing in the application suggests that the approval of the variation raises serious public interest grounds as per s.211(1).

[71] I am satisfied that by accepting the undertakings the Agreement passes the BOOT. The undertakings do not result in a substantial change to the varied Agreement nor cause any financial detriment to employees as per s.212(3).

[72] The undertakings are taken to be a term of the Agreement. A copy of the undertakings is attached at **Annexures A, B and C** of this Decision and should be brought to the attention of employees.

[73] I am satisfied that each of the requirements of ss.210 and 211 of the Act as are relevant to this application for approval of a variation of an enterprise agreement have been met.

[74] The variation to the Agreement is approved and, in accordance with s.216 of the Act, will operate on and from the date of this decision.



DEPUTY PRESIDENT

Appearances:

G Hatcher, SC, and A Perigo for ALDI.
A Duffy, Counsel, and J Fox for the SDA.

Hearing details:

2016.
Sydney,
April 22
August 4.

Further written undertakings received from ALDI on: 12 August 2016 and 31 October 2016

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Annexure A

IN THE FAIR WORK COMMISSION
Matter No AG 2015/7237

ALDI FOODS PTY LIMITED (ABN 086 210 139)
AS GENERAL PARTNER OF ALDI STORES (A LIMITED PARTNERSHIP)
Applicant

ENTERPRISE AGREEMENT ALDI PRESTONS 2013

ALDI undertakes that the ordinary hours of work for Salaried Store Employees and Hourly Rate Store Employees on any day will be continuous except for work breaks and meal breaks.

Notwithstanding the above undertaking, employees attending store meetings, whether concurrent with a period of work or otherwise, will be paid at their ordinary rate of pay and any period of attendance will count towards their ordinary weekly hours as if worked.

ALDI further undertakes to increase the non discretionary component of the Business Review Payment to be included in the calculation of the BOOT to the following amounts for each of the management classifications:

Assistant Store Manager 50 hours	a minimum \$440 per fortnight Business Review Payment
Store Manager 50 hours	a minimum \$570 per fortnight Business Review Payment

In accordance with Schedule 1 of the Agreement, Assistant Store Managers and Store Managers engaged to work an average of fewer than 50 hours per week will receive a pro rata Business Review Payment based on the proportion of hours worked to 50 hours.

Signed by
David Zalunardo
Managing Director, ALDI Stores, Prestons Region



For and on behalf of ALDI Foods Pty Limited
as General Partner of ALDI Stores (A Limited Partnership)

13 May 2016

Annexure B

IN THE FAIR WORK COMMISSION

No AG 2015/7237

ALDI FOODS PTY LIMITED (ABN 086 210 139)
AS GENERAL PARTNER OF ALDI STORES (A LIMITED PARTNERSHIP)

Applicant

ENTERPRISE AGREEMENT ALDI PRESTONS 2013

ALDI undertakes that Hourly Rate Store Employees and Store Management Trainees will be granted at least a 10-hour rest break between the completion of work on one day and the commencement of work on the next day. The attendance of employees at store meetings, whether concurrent with a period of work or otherwise, will be disregarded for the purposes of the said rest break.

Where an Hourly Rate Store Employee has not been granted at least a 10-hour rest break as described above, they will be entitled to double the rate they would be entitled to until such time as they are released from duty for a period of 10 hours off work without loss of pay for ordinary time hours occurring during the period of such absence.

Where a Store Management Trainee has not been granted at least a 10-hour rest break as described above, they will be entitled to double the Bankable Hourly Rate of a Store Assistant working any 5 out of 7 days until such time as they are released from duty for a period of 10 hours off work without loss of pay for ordinary time hours occurring during the period of such absence.

Signed by
David Zalunardo
Managing Director, ALDI Stores, Prestons Region



For and on behalf of ALDI Foods Pty Limited
as General Partner of ALDI Stores (A Limited Partnership)

10 August 2016

Annexure C

In the Fair Work Commission
Matter Number: AG2015/7235

ALDI FOODS PTY LIMITED (ABN 086 210 139)
AS GENERAL PARTNER OF ALDI STORES (A LIMITED PARTNERSHIP)
Applicant

ENTERPRISE AGREEMENT ALDI PRESTONS 2013

The hourly rate of pay for Store Assistants working any 5 out of 7 days increased from \$23.40 to \$24.00 per hour from 1 January 2016 as part of the remuneration review which is conducted on an annual basis.

ALDI undertakes:

1. That the rate of pay for Store Assistants working any 5 out of 7 days (referred to as the Bankable Hourly Rate for this classification in Schedules 2 and 6 of the Enterprise Agreement ALDI Prestons 2013) will be no less than \$24.00 per hour.

Signed by
David Zalunardo
Managing Director
ALDI Stores, Prestons Region



For and on behalf of ALDI Foods Pty Limited
as General Partner of ALDI Stores (A Limited Partnership)

31st October 2016