DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Super Retail Group Services Pty Limited T/A Super Retail Group
(AG2018/6883)

SUPER RETAIL GROUP ENTERPRISE AGREEMENT 2018

Retail industry

DEPUTY PRESIDENT LAKE BRISBANE, 7 FEBRUARY 2020

Application for approval of the Super Retail Group Enterprise Agreement 2018

Introduction

[1] An application has been made under s.185 of the *Fair Work Act 2009* (the Act) for the approval of an enterprise agreement known as the *Super Retail Group Enterprise Agreement 2018* (the Agreement) by *Super Retail Group Services Pty Ltd* (the Applicant).

[2] The "parties" to the Agreement are:

- Super Cheap Auto Pty Ltd;
- SRG Leisure Retail Pty Ltd;
- Super Retail Group Services Pty Ltd;
- Rebel Sport Limited;
- subject to the exemptions listed in the Agreement, team members engaged by the above entities to perform work within the classifications contained in the Agreement; and
- The Shop Distributive and Allied Employees Association (the SDA).[1]

[3] Below I will firstly outline a relevant chronology of the matter upon it being lodged with the Fair Work Commission (the Commission). I will then outline the outstanding matters that require my determination. I will then consider those matters.

Chronology

[1] Agreement at [2].

[4] The Agreement was lodged for approval with the Commission on 10 December 2018.

[5] On 3 December 2018, the SDA filed with the Commission a Form F18 in relation to the application for approval of the Agreement. The SDA's Form F18 noted among other things; that it was a bargaining representative for the Agreement; that it did not at that stage support the approval of the Agreement but would support its approval if the Applicant provided certain undertakings; and that it wished to be covered by the Agreement.

[6] On 21 December 2018, the Retail and Fast Food Workers Union (the RAFFWU) sent an email to the Commission's Member Assist Team (the MAT). This email noted among other things; that the RAFFWU was of the belief that the Agreement was not capable of approval as (in its view) the Agreement did not satisfy the Better Off Overall Test (the BOOT) as some pay rates and conditions in the Agreement were less favourable than those in General Retail Industry Award (2010) (the Award); and that if there was a mention or conference to deal with the application for approval, then the RAFFWU wished to be included in such a mention or conference.

[7] On 6 February 2019, the MAT concluded its analysis of the Agreement and the Agreement was duly allocated to me on 7 February 2019 to determine whether it was capable of approval.

[8] On 1 March 2019, I held a conference with respect to this matter. The Applicant at this conference was represented by FCB Group Lawyers and I granted permission pursuant to s. 596 of the Act for the Applicant to be represented by FCB Group due to the complexity of the matters relevant to the approval or otherwise of the Agreement that remained outstanding. The SDA and the RAFFWU were also present at this conference. It was resolved at this conference that the Applicant would work through the issues identified by the MAT, the SDA and the RAFFWU, which, at that stage, it was suggested by the objectors, were making the Agreement incapable of approval. The intention of these discussions was to confine the issues that the Commission would ultimately have to consider regarding the approval or otherwise of the Agreement, some of which, it was hoped, could be addressed through the provision of undertakings by the Applicant.

[9] On 4 April 2019, I held a further conference for the parties to inform me on how the Applicant's discussions with the objectors were progressing. Following this conference, it was clear that the Applicant and the SDA were working together on the SDA's identified issues, some of which overlapped with the RAFFWU's identified issues. The Applicant was also working constructively on the MAT's identified issues independently of this process.

[10] On 8 May 2019, I held a further conference to receive an update me on how the Applicant's discussions with the objectors were progressing. Prior to this conference, the Applicant provided draft undertakings and modelling with respect to the issues that, in the objectors' view made the Agreement incapable of approval. At this conference, the RAFFWU also outlined its concerns with respect to the Agreement being capable of satisfying the genuine agreement requirement, pursuant to ss. 180(5) and 180(6) of the Act and the decision of the Full Court of the Federal Court in *One Key Workforce Pty Ltd v Construction, Forestry, Mining and Energy Union* [2018] FCAFC 77 (One Key).[2] At this conference I indicated to the

[2] *One Key Workforce Pty Ltd v Construction, Forestry, Mining and Energy Union* [2018] FCAFC 77.

parties that I was satisfied that the Applicant had resolved the issues that had been identified by the MAT.

[11] On 16 May 2019, the RAFFWU provided me with a further general submission on the genuine agreement matter and reiterated in this submission that the Agreement was not capable of approval. In response to the RAFFWU's further general submission, the Applicant provided a submission on 23 May 2019, addressing the matters raised by the RAFFWU relevant to the genuine agreement issue.

[12] On 10 June 2019, the Applicant wrote to my chambers requesting that further directions be issued in this matter to facilitate, in an expeditious manner, a determination on the BOOT issues identified by the SDA and the RAFFWU and the 'genuine agreement' issue being now pressed by the RAFFWU.

[13] On 11 June 2019, I issued directions to the parties requiring submissions from the SDA and the RAFFWU by no later than 4pm on 19 June 2019 on the issues which the objectors considered made the Agreement incapable of being approved. The directions asked for a response from the Applicant to the 'union' parties' submissions by 4pm on 26 June 2019 and indicated that a hearing to determine the outstanding matters that the 'union' parties suggested were making the agreement incapable of approval would be set down for early July.

[14] On 19 June 2019, the SDA confirmed that it still pressed four matters which it said made the Agreement incapable of approval, however, conceded that these issues may be satisfied by the Applicant providing further undertakings on these matters. Also on 19 June 2019, the RAFFWU pressed its submissions regarding the genuine agreement issues and also the BOOT issues.

[15] On 8 July 2019, the SDA provided a submission, prior to the scheduled hearing on 12 July 2019 that, upon further discussions with the Applicant and subject to undertakings that it understood the Applicant would be filing with the Commission on 10 July 2019, it now supported the application to approve the agreement. This support was also on the basis that the SDA did not have any objection to the approval on the basis of 'genuine agreement'. In other words, the SDA did not agree to the RAFFWU's submission regarding the Applicant being able to satisfy the 'genuine agreement' requirement per the decision in *One Key*.

[16] On 10 July 2019, the Applicant duly filed its submissions; in sum, addressing the RAFFWU's involvement in matter, the 'genuine agreement' issue and the BOOT issues. To assist the Applicant in its argument relevant to the BOOT issues, the Applicant also filed undertakings, which were the basis for the SDA now supporting the approval of the agreement.

[17] On 12 July 2019, I held a hearing in Brisbane to consider the application for approval. Rather than discussing the issues that were, as it was suggested by the RAFFWU, making the Agreement incapable of being approved, the hearing quickly transposed into a debate on the RAFFWU's involvement in the matter and whether I should exercise my discretion under s.590 of the Act to hear from the RAFFWU at all in relation to its concerns about whether or not the agreement was capable of being approved.

[18] I decided at the hearing, delivering short ex tempore reasons pursuant to s. 590 of the Act to permit the RAFFWU to continue its involvement in the matter relevant to the issues

that it had prosecuted to date, but limited only to those matters. These were: the 'genuine agreement' matter and the BOOT issues that the RAFFWU indicated were not satisfied by the Applicant providing undertakings.

[19] The Applicant then provided me with a submission that the Commission would benefit from the parties having more time to provide detailed submissions and evidence on these matters. I agreed with this submission and, with the consent of the parties, transposed the hearing into a conference to deal with the programming of submissions on these outstanding matters. I indicated at this conference, and in subsequent written directions sent to parties on the same day, that a submission would be invited from the parties in late August as to whether a further hearing would be required to test the evidence or whether I would be adequately informed so as to consider the submissions and evidence on the papers. No such submission was received from the parties on whether the remaining matters needed to be determined by hearing or on the papers.

[20] On 6 September 2019, my chambers sent out correspondence to the parties that indicated that I had determined that it was my preference that a hearing be held to test the evidence of the Applicant's witness, Michelle Leigh Hitchener (Ms Hitchener) who had, by this stage, filed two witness statements with the Commission relevant predominately to the 'genuine agreement' question. Earlier, the Applicant had informed my Associate that Ms Hitchener would be away for the month of September, so I indicated October to be a suitable month to conduct this hearing.

[21] On 19 September 2019, I held a conference to deal with the conduct of the hearing, including matters such as the date of the hearing, whether the RAFFWU intended on cross-examining Ms Hitchener, whether there was any further evidence that the Applicant intended to lead, and whether the RAFFWU was outside the scope of the its role in the matter that I had afforded it pursuant to s. 590 of the Act to be heard in this matter in relation to its submissions (which it flagged that it might). During the course of the conference, the Applicant made a concession that the Commission otherwise needed to be satisfied on the valid majority and casual cohort issues that Deputy President Mansini had recently grappled with in "the Kmart decision"[3], and that a submission on this point was relevant for the Commission's full consideration in this matter. The parties consented that the Applicant would provide a submission on this matter by no later than close of business on 2 October 2019 (but this timeframe was subsequently extended to close of business 10 October and was duly submitted on this day). As part of this submission, the Applicant provided evidence from a Ms Hollie Bromley, Workplace Relations Adviser at the Applicant, on the conduct and process of the Applicant during the access period, specifically on the Applicant achieving a valid majority of employees voting for the Agreement to be made.

[22] In the conciliatory nature of the conference on 19 September 2019, the RAFFWU did not press the necessity to cross-examine Ms Hitchener, but nevertheless indicated that it would be available should the Commission deem it appropriate to test the Applicant's evidence, or if a further conference was needed to clarify any other matter. It was therefore determined by consent that I would determine the matter on the papers and, if the evidence of Ms Hitchener required further examination, then I would list a hearing. My decision on whether or not to approve the agreement was thereafter reserved following this conference, and subject to the further matters arising from the Kmart decision.

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[3] Kmart Australia Ltd [2019] FWC 6105.

[23] This, however, is not the end of the chronology of this matter. On 11 November 2019, the Full Bench of the Commission handed down its decision on the Kmart decision [[2019] FWCFB 7599].[4] Later that week, on Friday 15 November, I invited submissions from the parties (and the RAFFWU) on the implications of this decision, specifically on the evidence of Ms Bromley. Parties duly filed their submissions in accordance with my directions that they be filed on 27 November 2019. My decision was thereafter reserved.

[24] In late December 2019, the Applicant and the SDA wrote to my chambers asking for a delay in the publishing of a decision until a time in late January. The rationale for this was that key HR personnel from the Applicant were away over the festive season, which would impede any implementation of the Agreement, should it be approved. I accepted this submission on face value, as did the SDA.

[25] I write this chronology to explicitly detail the steps that I and the MAT have taken since the Agreement was lodged with the Commission for approval. I have also itemised each step that the Commission and the parties have engaged in so as to demonstrate that there is no 'go slow' on agreement approvals, and that each step that the Commission has in dealing with agreement approvals, be it from Members such as myself, or the MAT, is a diligent one, so that we can ensure as best we can, agreements made are compliant with the Act.

The outstanding issues

[26] There are three outstanding issues that require my consideration and determination relevant to whether the Agreement must be approved. These are pressed now only by the RAFFWU. They are whether the Agreement:

- was 'genuinely agreed to' pursuant to ss.186(2)(a), 188(1)(a)(i) and 188(1)(c) of the Act and the decisions in *One Key* and *CFMEU v Ditchfield Mining Services Pty Ltd* [2019] FWCFB 4022 (Ditchfield); and

- was approved by a valid majority of employees employed at the time (given the casual cohort of employees); and

- satisfies the BOOT pursuant to s.193(1) of the Act.

[27] These issues will be duly considered.

Genuine agreement

Statutory provisions and relevant authorities

[28] Pursuant to ss.186(2)(a), 188(1)(a)(i) and 188(1)(c) of the Act, the Commission must be satisfied that the proposed agreement has been 'genuinely agreed to' by the employees covered by the proposed agreement. Specifically, the Commission must be satisfied that the employer has taken 'all reasonable steps' to ensure that the terms of the proposed agreement and their effect has been explained to the relevant employees in an appropriate manner, taking

[4] Appeal by Shop, Distributive and Allied Employees Association; Appeal by Kmart Limited t/a Kmart; Appeal by the Australian Workers' Union [2019] FWCFB 7599.

into account the particular circumstances and needs of the relevant employees (s. 180(5) of the Act).

[29] In its submissions, the Applicant, quoting in large part the decision of the Full Bench of the Commission in *Construction Forestry, Maritime, Mining and Energy Union v Ditchfield Mining Services* [2019] FWCFB 4022 (Ditchfield) (at [63] – [72]), outlines the relevant consideration from the relevant authorities that have turned their mind to what constitutes 'all reasonable steps' pursuant to s. 180(5) of the Act. These paragraphs in *Ditchfield*, in part, summarise Flick J's judgment at first instance in *Construction, Forestry, Maritime, Mining and Energy Union v One Key Workforce Pty Ltd* [2017] FCA 1266 on the 'all reasonable steps' requirement and are also derived from Deputy President Gostencnik's summary of the 'all reasonable steps' requirement in *BGC Contracting Pty Ltd* [2018] FWC 1466 (at [75 – 77]) and are, substantially, as follows:

(a) whether the employer has complied with the obligations in s.180(5) depends on the circumstances of the case;

(b) whether an employer has complied with s.180(5) requires the Commission to identify and assess the steps taken to ensure that the terms of the proposed agreement and their effect had been explained to the relevant employees;

(c) after considering the steps taken, the Commission must then consider whether:

  (i) the steps taken were *reasonable* in the circumstances; and

  (ii) these were *all* the reasonable steps that should have been taken in *the circumstances*.

(d) The Commission must then consider the content of the explanation given to ensure that the object of ensuring that (i) the terms of the proposed agreement and (ii) their effect, have been explained to the relevant employees in a manner that considers their particular circumstances and needs including their cultural and linguistic backgrounds and their age;

(e) the number and content of those steps comprising 'all reasonable steps' will depend on the circumstances. Some employers may, by reasons of the prevailing circumstances, need to take more or fewer steps than other employers with different agreements, facing different circumstances;

(f) the content of the explanation must enable to relevant employees to cast an informed vote, to know the content of the agreement and to enable them to understand how their terms and conditions might be affected by voting in favour of the agreement;

(g) in order to comply with s.180(5), an employer is not always required to identify detriments in an agreement against the relevant modern award or to provide an analysis between the agreement and the modern award, particularly in circumstances where an existing enterprise agreement applies to the employees in their employment with the employer. Where this is an existing enterprise agreement in place at the time of the explanation, it is relevant to have regard to the manner and content of the explanation of the changes made in the proposed agreement relative to the existing agreement; and

(h) an employer does not fail to comply with the obligation in s.180(5) merely because an employee does not understand the explanation provided.

[30] Further to (h) above, the Full Court in *One Key* at ultimately concluded that:

> "[172] Nevertheless, the primary judge was correct to find that the Commissioner fell into jurisdictional error by failing to have regard to the content and terms of the explanation OKW purportedly provided the employees before they cast their votes. In addition the Commissioner's decision was affected by jurisdictional error because he failed to appreciate that, **in determining whether the relevant employees had genuinely agreed to the Agreement he needed to consider whether they were likely to have understood its terms and effect**".

[31] The question therefore, with regard to 'genuine agreement', as was eruditely put by Deputy President Boyce in recent decision is: Are the employees 'likely' to have understood the terms and effect of the terms of the proposed enterprise agreement having regard to the steps taken to explain the enterprise agreement to them by the employer? The question is not: Did the employees actually understand or comprehend what was explained to them as a result of the reasonable steps taken?[5]

The evidence

[32] The Applicant relies on the witness statements of Ms Hitchener, Head of Workplace Relations for the Applicant, to support its submission that it took 'all reasonable steps' to ensure that the terms of the proposed agreement and their effect had been explained to the relevant employees in an appropriate manner.

[33] In Ms Hitchener's first witness statement, filed with the Commission on 7 August 2019 (First Hitchener Statement), Ms Hitchener outlines the steps taken, through documented evidence, to explain the nature and effect of the Agreement on the employees that would be covered by the Agreement. Annexed to the First Hitchener Statement are a number of supporting documents to assist the Commission with its consideration that 'all reasonable steps' were made by the Applicant to explain the terms of the Agreement to the relevant employees and the effect of the terms within the agreement. This documented evidence included copies of:

- the 'Communication Plan' for explaining the terms and effect of the Agreement to the Applicant's employees (MLH-9);
- communications for invitations to attend teleconferences for the Applicant's 'Leadership People' (HR leaders, store managers and area manages) to discuss the Agreement and how the terms of such would be communicated to all the employees of the (MLH-10);
- the 'Agreement Information Pack' states to intend to provide information and facilitate discussions [on the Agreement] between management and team members in each workplace (and stated to be displayed in prominent places in all workplaces

[5] Downer EDI Mining – Blasting Services Pty Ltd at [73].

of the Applicant where there would be employees covered by the Agreement (MLH-11)

- 'The FAQ's Document' providing an overview of the bargaining and voting process, general information of the key benefits to be achieved through the Agreement, and more comprehensive information concerning *the more substantial changes* in the Agreement, and their effect, proposed within the Agreement (stated to be displayed in every workplace and placed on the Applicant's intranet page) (MLH-12);

- 'The Key Changes Poster' providing an overview of the 15 most significant changes, both beneficial and potentially detrimental, to be achieved through the agreement (stated to be displayed in every workplace and on the Applicant's intranet page) (MLH-13);

- another poster which identified the top 5 benefits of the Agreement which identified 5 employee roster patterns and the impact that the Agreement would have on those employees (stated to be displayed in every workplace and on the Applicant's intranet page) (MLH-14);

- an email of 7 November 2018 from Ms Jane Kelly (Ms Kelly), Chief Human Resources Officer of the Applicant, sent to all of the Applicant's 'People Leaders' (HR leaders) reaffirming a direction that the 'People Leaders' were to have proactive conversations with team members to help them understand the nature and effect of the Agreement (MLH-15);

- an email of 8 November 2018 from Ms Kelly sent to all of the Applicant's 'Store and Clerical Leaders' (store managers and leaders of the clerical team) reaffirming a direction that the 'Store and Clerical Leaders' were to have proactive conversations with their team members to help them understand the nature and effect of the Agreement (MLH-16);

- an email of 12 November 2018 from Mr Peter Birtles, Managing Director of the Applicant, to all team members who would be covered by the Agreement, which, amongst other things, referring to the key benefits to be achieved through the Agreement, providing an overview of the voting process, providing hyperlinks to the Agreement and other supporting material, and encouraging team members to engage directly with HR and management should they require any support in understanding the terms and effects of the Agreement (MLH-17); and

- an email of 13 November 2018 from the EA team to all team members who would be covered by the Agreement, providing them with copies of the Agreement, associated documents, how to vote information and 'the FAQ's Document' (MLH-18).

[34] Other than this documentary evidence, the First Hitchener Statement also states that during the moderated telephone conference 'Store Managers' and 'People Leaders' were *instructed* to undertake team huddles, team meetings or 1:1's with their teams prior to the Agreement being voted on so that the terms of the Agreement and their effect could be

explained to the team members in a manner which provided them with a sufficient opportunity to review the Agreement and supporting materials, and ask questions if required.[6]

[35] The First Hitchener Statement further states that between 13 November 2018 and 18 November 2018, the Applicant *required* its 'Store Managers' and 'People Leaders' to conduct local meetings and 1:1 discussions in each workplace of the Applicant to discuss the terms and effect of the Agreement with the relevant team members.[7] It also states that these meetings would provide an opportunity for these team members to raise questions regarding the Agreement.[8] Ms Hitchener states that she understands that these meetings occurred in the manner described.[9]

[36] The First Hitchener Statement further states that – by nature of the work undertaken by the team members being customer service focussed – there was a high degree of proficiency in the English language amongst team members.[10] Ms Hitchener further states that despite this fact, 'Store Managers' and 'People Leaders' were instructed during teleconferences (see MLH-10) to take special consideration of any team members who may require additional assistance in understanding the terms and effect of the Agreement, together with those employees which may be absent from the workplace for any reason.[11]

[37] The First Hitchener Statement states that 'the FAQ' and 'Key Changes Poster' were used as the basis for which management would undertake team huddles, meetings or 1:1 conferences with their teams. Further evidence was led by Ms Hitchener that 'Area Managers' had oversight of the 'Store Managers' and 'People Leaders' to ensure that this communication process was occurring, and that no difficulties or errors in this process was reported by the 'Area Managers'. Evidence was also led that there was a dedicated telephone advisory service and generic email inbox for team members should they wish to ask for further information about the terms of the Agreement and their effect, or about the voting process. Ms Hitchener provides an example of the responsiveness of the generic email inbox whereby a response was issued to a particular enquiry from the HR Department of the Applicant within 1 hour and 10 minutes of the matter being raised (MLH-19).

[38] Ms Hitchener's second witness statement, filed with the Commission on 30 August 2019 (Second Hitchener Statement), outlines, for the purposes of the genuine agreement matter, the steps that the Applicant takes to explain the terms of the current enterprise agreement *Super Retail Group Enterprise Agreement 2012* (the Current Agreement), to the Applicant's workforce.

[39] In the Second Hitchener Statement, Ms Hitchener brings to the Commission's attention the requirement of the Current Agreement to be accessible to all employees (clause 5 of the Agreement).[12]

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[6] First Hitchener Statement at [60].

[7] Ibid at [65].

[8] Ibid.

[9] Ibid.

[10] Ibid at [66].

[11] Ibid.

[12] Second Hitchener Statement at [10].

[40] The Second Hitchener Statement also provides documentary evidence of the induction process for new staff, including copies of:

- the template casual 'Super Retail Group Contract of Employment' which Ms Hitchener all employees are employed under (MLH-23);
- the retail induction manual for permanent employees which references "employment conditions" (MLH-24);
- the retail induction manual for casual employees which references "pay, work hours" and entitlements (MLH-25);
- the "Retail Cheat Sheet", an 8-page summary document of the main terms and conditions contained within the Current Agreement (MLH-26); and
- a copy of a screenshot of the Applicant's intranet displaying where the Current Agreement, induction manuals, supporting material and the "Retail Cheat Sheet" are located on the Applicant's intranet (MLH-27).

[41] Other than this documentary evidence, the Second Hitchener Statement also states that;

- discussions occur with candidates during the interview process about the terms and conditions of employment;[13]
- each employee (including casual employees) receives a welcome email with a copy of their contract of employment and a copy of the Current Agreement; [14]
- terms of the Current Agreement are explained to all employees during the induction period;[15] and
- given the requirements of managing a younger workforce, the need may arise, on occasion, to provide additional support and assistance in the explanation of tasks, expectations and entitlements (under the Current Award) so as to ensure their understanding.[16]

The RAFFWU's submissions

[42] The RAFFWU submitted that the Commission cannot be satisfied, on the material filed, that the Applicant took all reasonable steps to explain the terms of the Agreement or the effect of the terms of the Agreement.[17]

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[13] Ibid at [12].

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] Written submissions of the RAFFWU dated 28 August 2019.

[43] The broad submissions of the RAFFWU in support of its above position can be summarised as follows:

- the Applicant's workforce is transient, or, as put by the RAFFWU, it is "highly likely more than half the workforce…was not employed by the applicants at the time the last agreement was voted on";[18]
- the Applicant's workforce is young (39% being under the age of 21 years of age);[19] and
- the Agreement is complex, with 53 pages and 268 clauses.[20]

[44] Specifically, the RAFFWU submitted inter alia that:

- "…the FAQ document exposes that the vast majority of terms simply were not explained – at all";[21]
- [t]here was no analysis comparing any Award term to the Agreement;[22]
- [t]here was no detailed analysis comparing the terms of the Agreement with the extant enterprise agreement.[23]
- [t]here was no explanation of the terms of the Agreement themselves;[24]
- …changes such as expanding the definition of fixed term contracts to include maximum term contracts, changing the definition of casual employment, the grounds for store transfer, the elimination of accident make up pay in Victoria and the elimination of an entitlement to specific parental leave with it being moved to a changeable policy were not explained;[25]
- no explanation was provided about a payment for compulsory training;[26]
- nothing was explained to employees about travel time in the taking of rest breaks.[27]

[45] In summary, the RAFFWU submitted that "*there is no evidence before the Commission that all reasonable steps were taken. To the contrary, large parts of a complex document were simply not explained, no explanation drawing comparison with the Award*

[18] Ibid at [6].

[19] Ibid.

[20] Ibid at [7].

[21] Ibid at [15].

[22] Ibid.

[23] Ibid.

[24] Ibid.

[25] Ibid at [16].

[26] Ibid at [18].

[27] Ibid at [21].

occurred, and the only comparison to the extant agreement was limited to very few terms and deficient."[28]

The Applicant's submissions

[46] Other than relying on the evidence of Ms Hitchener in its submission that it took reasonable steps to explain the terms and effect of the Agreement to its workforce, the Applicant provides a further submission that all of the steps taken to explain the terms of the Agreement and their effect were reasonable in the circumstances.[29]

[47] In summary, the Applicant's position with respect to the 'all the steps being reasonable" submission is that:

- because its [the Applicant's] employees are not employed at a single location, the Applicant necessarily adopted both mass communication and local communication methods in a structured and targeted manner, to explain the terms of the proposed agreement and their effect;[30]

- [t]he FAQ document and posters explained the key terms of the proposed agreement and their effects;[31]

- [the] 'People Leaders' were coached and instructed to conduct team and one-on-one messages to reinforce these messages;[32]

- … "there is a very high proficiency in the English language amongst team members required as part of the job to communicate regularly with customers, there are no special circumstances requiring the translation of the content of … explanations;[33]

- "since 2003, [the Applicant's] team members have been employed under successive workplace instruments. A modern award has not ever been applied to any team member that would be covered by the proposed agreement. There have been very minimal practical changers to the form, content and effect of the industrial instruments between the Super Retail Group Enterprise Agreement 2012 and the Agreement."[34]

- unlike the circumstances in *One Key* and *Ditchfield*, the Applicant's "large workforce [is] accustomed to having their terms and conditions of employment regulated under enterprise agreements and represented by the SDA as a default bargaining representative which is a large, well-resourced and sophisticated union."[35]

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[28] Ibid at [24].

[29] Written submissions of the Applicant dated 7 August 2019.

[30] Ibid at [16(a)].

[31] Ibid.

[32] Ibid.

[33] Ibid at [16(b)].

[34] Ibid at [16(c)].

[35] Ibid.

Satisfaction as to the "genuine agreement" requirement under s.180(5)

[48] The facts and circumstances, along with the nature of any explanation given, mean that what constitutes "all reasonable steps" necessarily varies. The term "all reasonable steps" does not give rise to the requirement for "perfection".[36] The assessment is, therefore, a value judgment.[37] There are no absolute rules about what is required in every circumstance by an Applicant to have done, or not to have done.[38] Compliance with s. 180(5) and ss.186(2)(a), 188(1)(a)(i) and 188(1)(c) of the Act varies in each case.[39]

[49] The matter before me does not share a number of material facts and circumstances that were before the Federal Court in *One Key* or before the Full Bench of the Commission in *Ditchfield*. I will firstly briefly explore this proposition.

[50] For one, the workforce that would be covered by the Agreement in this matter is presently covered by the Current Agreement. This case is not one where employees are moving from a modern award that applies to them to an enterprise agreement. The impacted employees are all moving from an enterprise agreement that has passed its nominal expiry date to a new enterprise agreement. The Commission must be satisfied that the Agreement satisfies the BOOT, however, for practical purposes, the employees, if the Agreement is approved, would be moving from the Current Agreement to the Agreement. If the Agreement was voted down or cannot be approved by me, the employees would carry on being covered by the Current Agreement. This approach, as was submitted by the Applicant, has been the way in which the Applicant and its workforce have engaged with their employment terms and conditions since 2003. The material consideration, therefore, is whether the Applicant took all reasonable steps to explain the terms and their effect of the Agreement to the employees from the position that they are currently at with the Current Agreement. This is unlike what the Federal Court had to consider in *One Key*, and circumstances before the Full Bench in *Ditchfield*.

[51] There are two further material distinctions between this case and *One Key*. For example in *One Key*, unlike in this case, there was:

- no bargaining (which provides at least some interaction between the workforce (or a bargaining representative on its behalf and the employer on employment terms and conditions); and

- an agreement covering classifications in 11 awards with the 3 employees who were voting on the agreement only working in classifications under 2 awards of those 11.

[52] The above circumstances are sufficiently different to the matter before me and what were considered material considerations for the 'all reasonable steps' consideration in *One Key*.

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[36] *CFMEU v Shamrock Civil Pty Ltd* [2018] FWCFB 1722 at [36].

[37] Downer EDI Mining – Blasting Services Pty Ltd at [63].

[38] Ibid.

[39] Ibid.

[53] Another material factor, I find, is the size and configuration of the Applicant's workforce. In this regard, I agree with the Applicant's submission that, due to the Applicant having approximately 600 retail establishments geographically dispersed in every state and territory of Australia (employing some 10,145 employees), it necessarily adopted both mass and local communication methods to explain the terms of the proposed agreement and their effect, which accords with a submission of the Applicant. This circumstance is unlike the very small workforce in *One Key* or the geographically isolated workforce in *Ditchfield*, where, for example in *Ditchfield*, a Mine Manager was based full time on site and available to discuss the agreement in that case with the relevant employees.

[54] On this basis, I would further consider that the question as to whether 'all reasonable steps' were taken is different in this matter as opposed to the circumstances in *One Key* and *Ditchfield*. Or to put it more clearly, the Applicant in this instance, due to the size of its workforce and the geographic dislocation of its workforce, should, in my consideration, be afforded the appropriate regard in the Commission's satisfaction that it took 'all reasonable steps' to explain the terms of the Agreement and their effect to its workforce.

[55] I also agree with the Applicant's submission that there was, or would likely be, a high proficiency in the English language amongst its team members who would be covered by the Agreement. This is due to the nature of the work performed by the employees who would be covered by the Agreement. I accept the submission that there were no special circumstances requiring the content of the explanations to be translated for any employee, given the inherent requirement of outfacing customer service roles in Australian companies to be proficient in the English language (and no evidence of such request was duly made and/or denied). This supports the view that the Applicant undertook "all reasonable" steps, at least, in the manner of its communication with its employees. It does not speak to the substance of the explanation.

[56] Further, I place consideration on the evidentiary material that I have before me. Due to protracted process undertaken in considering this matter, I have had the benefit of receiving two very detailed witness statements from Ms Hitchener, which have enabled me to consider the "all reasonable steps" question holistically and with evidence over and above the statement provided for in the Applicant's Form F17. I have permitted a contradictor to make submissions in relation to that evidence, which I have equally considered thoroughly.

[57] Finally, there is at least some merit in the submission (that it is worth noting) that there was "a large, well-resourced and sophisticated union" (as put by the Applicant), the SDA, representing a significant portion of the Applicant's workforce in the bargaining and voting process. While the obligation under the Act is solely on the employer to satisfy the 'all reasonable steps' requirement to explain the terms of the Agreement and their effect, the inclusion of a union in the case before me is, unlike the circumstances in *One Key* and *Ditchfield* (where there was no default bargaining representative), and therefore no other entity contradicting the employer in bargaining, or more relevantly, no other entity communicating to the workforce about what the terms and conditions would be in those matters with respect to the Agreement. Whilst not necessarily a consideration for me and by no means determinative, it is worth noting. The SDA supports the approval of the Agreement.

[58] I am satisfied on the evidence before me, and the circumstances in this case, that 'all reasonable steps' were taken by the Applicant to *explain the terms* of the Agreement to the Applicant's employees.

[59] This satisfaction, with regard to the *explanation of terms*, is based on the evidence before the Commission that:

- there was a comprehensive communication plan (with subsequent and regular teleconferences with 'Leadership People' to check-in on the implementation of this plan) to communicate the terms of the Agreement to the workforce and this communication plan was, on the evidence, discharged and enacted in full.[40]

- the communication plan (referred to above) included discussions between management and team members in each workplace (including on a 1-1 and team-level basis), and there was clear direction provided to the 'People Leaders' to have proactive discussions with the relevant employees in the workforce to explain the Agreement;[41]

- the documentary material being, the 'Agreement Information Pack', the 'FAQ's Document', the 'Key Changes Poster' demonstrate an explanation of the terms of the Agreement and outline the substantial changes between the Current Agreement and the Agreement. These documents were, on the evidence, prominently displayed in all of the Applicant's stores and were on the Applicant's intranet page which was accessible for all employees of the Applicant.

- the email sent by Mr Peter Birtles, Managing Director of the Applicant, on 12 November 2018 provided a link to all employees of the Agreement, other information, and encouraged the team members to engage directly with HR and management should they require support in relation to understanding the Agreement;[42]

- the email sent by the EA team on 13 November 2018 to all employees provided them with a copy of the Agreement and also included the 'FAQ's document';[43] and

- there was a dedicated telephone advisory service and generic email service for any employee of the Applicant's to enquire further about any of the information or the material.[44]

[60] That said, the Full Bench of the Commission in *Ditchfield* goes further and spells out, relevantly, that consideration is also required about what, if any, explanation has been given to employees about the effect of those terms at paragraphs [75] – [79]:

> *"[75] That information might be sufficient to support satisfaction that the terms of the Agreement were relevantly explained, but it says nothing about what if any explanation had been given to employees about the effect of those terms.*

[40] First Hitchener Statement at [44].

[41] See for example the First Hitchener Statement at [60], [62], [68] – [69].

[42] Ibid at [63].

[43] Ibid at [64].

[44] Ibid at [61].

[76] The Deputy President's conclusion as to satisfaction in relation to s.180(5) of the Act is at [58] of the Decision, which is earlier set out in this decision. At [52] of the Decision, the Deputy President distinguishes the decision in One Key Workforce (No 2). The Deputy President reasoned that in One Key Workforce (No 2) there were no face-to-face meetings, the agreement for approval covered classifications in 11 awards, and the three employees voting on the agreement only worked across two awards and could not give informed consent in regard to occupations and industries in which they did not work. He concluded that those circumstances, or anything similar, do not exist in this application.

[77] So much is correct, but, respectfully, there are further matters that require consideration. In One Key Workforce (No 2), the Full Court made several observations about the quality of the explanation required in order to comply with s.180(5) of the Act, and the Commission's approach to assessing compliance. It is important to remember that the Full Court said of the Commission's approach that

> *"[i]n order to reach the requisite state of satisfaction that s.180(5) had been complied with, the Commission was required to consider the content of the explanation and the terms in which it was conveyed, having regard to all the circumstances and needs of the employees and the nature of the changes made by the Agreement". [Full Bench's emphasis, citations omitted]*

[78] As to the absence of information about the content of the explanation that had been given, the Full Court observed, inter alia, that

> *"[t]he absence of that information meant that the Commission was not in a position to form the requisite state of satisfaction. Put differently, without knowing the content of the explanation, it was not open to the Commission to be satisfied that all reasonable steps had been taken to ensure that the terms and their effect had been explained to the employees who voted on the Agreement or that they had genuinely agreed to the Agreement". [Full Bench's emphasis, citations omitted]*

[79] As should be evident from the terms of s.180(5) of the Act, the content of the explanation required is twofold. First, there must be an explanation of the terms of the Agreement. Secondly, the effect of those terms must be explained."

[61] The Commission is therefore required to consider *the content* of the explanation and the terms in which it was conveyed having regard to all the circumstances and needs of the employees and the nature of the changes made by the Agreement.

[62] A review of the evidentiary material confirms, and I find, that the Applicant has explained *the effect of* the terms of the Agreement to its employees. The explanation of the terms is not perfect, but it is nevertheless, on my finding, sufficient to satisfy the statutory requirements. I have come to this conclusion for the following (non-exhaustive) reasons:

- The 'FAQ Document',[45] a copy of which was provided to all employees of the Applicant via email, available on the Applicant's intranet and posted in prominent positions in all of the Applicant's stores, provides the employees of the Applicant

[45] First Hitchener Statement (MLH – 12).

with substantial information about the changes from the Current Agreement to the Agreement, including outlining many benefits for making the Agreement, but explaining – as a detriment – why public holiday and overtime rates would be going down. The 'FAQ Document' also explains, among other things:

- the top five benefits in the Agreement including: increases to pay; the introduction of Saturday penalty rates; new travel and laundry allowances and paid tea breaks increasing to 15 minutes);
- other benefits including: that the rates are more than 5% higher than the General Retail Industry Award 2010; that minimum shift times for casuals and for training would be 3 hours; there being greater flexibility to accrue annual leave prior to taking it; expanding the definition of immediate family to acknowledge long term arrangements of foster children; and access to all of Super Retail Group's benefits including team member discounts and paid parental leave;
- the effect of the laundry and travel allowances;
- why different employees are receiving different pay increases and which employees are receiving higher pay increases;
- why Saturday rates are going up;
- the new span of ordinary hours; and
- why the term of the Agreement is now 4 years.

- the 'Key Changes Document',[46] a copy of which was available on the Applicant's intranet and posted in prominent positions in all of the Applicant's stores, similarly provides the employees of the Applicant with substantial information about the changes from the Current Agreement to the Agreement, including outlining many benefits for making the Agreement. The 'Key Changes Document' also explains, among other things, the changes from the Current Agreement to the Agreement, including:
  - the inclusion of Saturday penalties [in the Agreement];
  - the inclusion of late night and Saturday penalties for casuals;
  - the introduction of a laundry and travel allowance (and an explanation of same);
  - the increase of paid tea breaks to 15 minutes;
  - increased minimum shifts for casuals and mandatory training to 3 hours;
  - an increase in Sunday penalties, then a decrease (disclosing a detriment)

[46] First Hitchener Statement (MLH – 13).

- outlining the maximum permissible hours;
- the span of ordinary hours changing (consistent with the explanation in the 'FAQ Document';
- the meal allowance increasing;
- the removal of Victorian Accident Make Up Pay (and explaining why it is being removed) but also grandfathering this provision for those covered under it (disclosing a detriment);
- that all training is considered voluntary, unless specified otherwise (and signalling that compulsory training is paid for);
- the inclusion of casual conversion clauses;
- the inclusion of secondment provisions; and
- that the Agreement is for a term of 4 years, not 3.

- the posters, stated to have been prominently displayed in the stores of the Applicant, also serve to explain the effect of the Agreement, focussing mainly on the benefits of a vote in favour.[47]
- another poster which identified the top 5 benefits of the Agreement and identified 5 common employee roster patterns and the impact that the Agreement would have on those employees, stated to be displayed in every workplace and on the Applicant's intranet page, provides an explanation of the changes that would occur under the Agreement as against the Current Agreement;[48] and
- team meetings and 1:1 face-to-face meetings were had with team members to explain to them further the terms and effect of the Agreement and what the changes all meant in practical terms.[49]

[63] It must be said that these communications focus primarily on explaining the beneficial changes between the Current Agreement and the Agreement. However, as the Full Bench reflected on in *Ditchfield*, there is no express legislative requirement for an employer to raise any less beneficial provisions of an agreement with employees in providing an explanation as to the terms of an agreement or the effect of those terms…"[m]uch will depend on the circumstances of a given case".

[64] The RAFFWU have, for the Commission's benefit, tried to be helpful in identifying, in its view, some less favourable terms in the Agreement vis-à-vis the Current Agreement, which it suggests were not explained. Expressly, this includes, in the RAFFWU's submission, the Agreement (vis-à-vis the Current Agreement) expanding the definition of fixed term

[47] First Hitchener Statement at [52].

[48] First Hitchener Statement (MLH – 14)

[49] See for example the First Hitchener Statement at [60], [62], [68] – [69].

contracts to include maximum term contracts, changing the definition of casual employment, changing the grounds for store transfer, the elimination of accident make up pay in Victoria, and the elimination of a specific parental leave entitlement, with it being moved to a changeable policy and more." I wish to make some brief comments on what the RAFFWU have identified.

[65] The RAFFWU's submission of the 'Elimination of Accident Make Up Pay in Victoria' not being explained is without merit. Firstly, the Applicant confirms, in its Key Changes Document', that all those who are presently covered by this entitlement would be grandfathered by this clause. Secondly, and in any event, the Applicant discloses that this provision is being removed in the Agreement (and why), which the Applicant outlines is consistent with changes to the Award (see the 'Key Changes Document").[50] The RAFFWU's submission in this regard, and the veracity in which it is argued, is disingenuous in light of the clear documentary evidence provided by the Applicant that it was made known to the workforce that this entitlement would be going, in line with the Award, with an explanation as to why this would be the case.

[66] With respect to RAFFWU's submission on regarding the Applicant not explaining the "expan[sion] of the definition of fixed term contracts to include maximum term contracts", I find this submission similarly lacking in merit. For all intents and purposes with respect to how 'fixed term contract' and 'maximum term contract' should be interpreted in the Agreement, I consider a maximum term contract to be fixed term contract. There is no distinction made in this clause or in any definitional section of the Agreement which distinguishes these two contractual arrangements. They are practically one and the same. This submission is a red-herring as the definitional change is of no consequence to the workforce. Any explanation to the workforce, in my view, would have only confused them, as the drafting of this clause may have done to the RAFFWU, and admittedly, to me, on first reading.

[67] I find also the RAFFWU's submission regarding a lack of explanation regarding the change to the casual employment definition to be baseless. If anything, it can be said that the employer is merely doing housekeeping work with respect to this definition. It confirms an entirely unremarkable proposition that casuals employees are employed on "an hourly basis, without an expectation of regular, systematic or long-term employment", and notes that "a 25% casual loading" is payable on a casual's base rate, a similarly unremarkable observation.

[68] The store transfer provision identified by the RAFFWU is largely the same as it was in the Current Agreement, with the inclusion of an arguably more beneficial term for employees that any store transfer, or relocation, will be considered in light of an employee's residence and not where they presently work (as is the case in the Current Agreement). If an employee resides on the Gold Coast, but works in a Brisbane store of the Applicant's, any relocation would firstly consider stores of the Applicant's in the Gold Coast. I do not see this as a clause, in these circumstances, as one requiring explanation in any manner of detail.

[69] With regard to the parental leave policy being changed from a right under the Agreement to a changeable policy and this not being explained, there is some merit in this submission, and this has required my consideration and further exploration. Having undertaken this, I am satisfied that this change was not necessarily required to be expressly

[50] First Hitchener Statement (MLH – 13).

outlined to the team members for three reasons: firstly, the clause is more inclusionary (altering the word maternal to parental), secondly, the clause is remarkably more beneficial for employees in that it confers a right to paid parental leave after one year of continuous service (and not two which is the case under the Current Agreement) and thirdly, as has been explained to me, the terms between the parental leave policy as under the Agreement and what was in the Current Agreement are entirely the same otherwise, that is, for practical purposes, nothing changes for the employees. I am satisfied for these reasons that there need not be a forensic explanation into this change. As for any concern about it being a changeable policy, as opposed to an entitlement under an agreement, I note that any change to a policy must be done through extensive consultation with the workforce, and thus the affected employees are afforded protection in this way.

[70] I have referred to the other changes between the Current Agreement and the Agreement otherwise not identified by the RAFFWU and am satisfied that the Applicant took "all reasonable steps" to explain the terms of the Agreement and their effect to its employees, given the circumstances.

Did a valid majority of employees employed at the time voted in favour of the Agreement?

Statutory provisions and relevant authorities

[71] The Commission must be satisfied under subsection 181(1) and subsection 182(1) of the Act that a valid majority of employees employed at the time voted in favour of an agreement for an agreement to be approved.

[72] Subsection 181(1) of the Act states as follows:

> **"181 Employers may request employees to approve a proposed enterprise agreement**
>
> (1) [Employers may request employees to approve a proposed enterprise agreement]
>
> An employer that will be covered by a proposed enterprise agreement may request the employees employed at the time who will be covered by the agreement to approve the agreement by voting for it.
>
> … "

[73] Subsection 182(1) of the Act states as follows:

> **"182 When an enterprise agreement is made**
>
> *Single-enterprise agreement that is not a greenfields agreement*
>
> (1) If the employees of the employer, or each employer, that will be covered by a proposed single-enterprise agreement that is not a proposed greenfields agreement have been asked to approve the agreement under subsection 181(1), the agreement is ***made*** when a majority of those employees who cast a valid vote approve the agreement.

[74] A decision of the Full Bench of the Commission in [2019] FWCFB 7599 (the Kmart Full Bench decision) recently clarified the consideration that the Commission must have with regard to subsections 181(1) and 182(1) of the Act.

[75] The Applicant to these proceedings provides a succinct outline, which I view as correct, of the *Kmart Full Bench's* substantial decision (at [31 – 40]) and [43], which I outline below (in summary):

- the proper construction of s. 181(1) of the Act is that the relevant employees entitled to cast a valid vote in relation to the approval of the enterprise agreement are the employees employed by the employer during the access period and immediately before (and perhaps upon) the commencement of the voting period;

- to the extent that persons who were not employed during the access period were allowed to cast a vote, such an error is only relevant if it could have affected the overall result that a valid majority of employees had approved the making of the enterprise agreement.

The evidence of Ms Hollie Bromley

[76] In aiding the Commission's satisfaction that a valid majority of employees employed at the time voted in favour of the Agreement, a witness statement was submitted by Ms Hollie Bromley (Bromley Statement), a Workplace Relations Coordinator at the Applicant.

[77] The Bromley Statement states that Ms Bromley's tasks included conferring with the Applicant's outsourced ballot service provider, CorpVote Pty Ltd (CorpVote). Ms Bromley details the engagement process with CorpVote at some length.[51]

[78] Relevantly, however, Ms Bromley states as follows:

> ***"Provision of employee data***
>
> *23. I have reviewed my emails, and the Super Retail Group's Systems, and can confirm that employee data was provided to CorpVote in the following manner:*
>
> *i. on 9 November 2018 an initial voter roll was provided to CorpVote which provided the details of 10,016 team members who were employed by Super Retail Group at the time and would be covered by the Agreement;*
>
> *ii. on 17 November 2018 a subsequent voter roll was provided to CorpVote which provided the details of 152 new starters, as well as identifying 22 employees whose employment had subsequently ceased.*
>
> *24. The information provided to CorpVote, as outlined above, contained the data of 10,146 team members who were considered to be employed and covered by the agreement at the time. I have recently been informed that the information provided by CorpVote indicated that there were 10,145 eligible employees. I have no knowledge as to how this small discrepancy arose although can confirm that at no time prior to or*

[51] Bromley Statement at [7] – [22].

during the Voting Period did CorpVote confirm the total number of eligible employees which would have enabled the discrepancy to be identified.

25. *Despite the established processes contained within Voter Ballot Process and Ballot Plan no further information was provided to CorpVote concerning new starters and or terminations from 17 November 2018.*

...

28. *Having considered this matter, I cannot offer any explanation as to why new starter/termination information was not provided to CorpVote after 17 November 2018 as intended, other than being a case of genuine oversight and administrative error.*

New Starter/Termination Employee Data

29. *I have recently received Super Retail Group's Systems and can confirm that:*

    i. *5 team members commenced working for Super Retail Group, and actually performed a shift, in the period of 17 November 2018 to 19 November 2018 inclusive. The data relating to these employees was not provided to CorpVote;*

    ii. *44 team members commenced working for Super Retail Group, and actually performed a shift, within the voting period. The data relating to these employees was not provided to CorpVote; and*

    iii. *75 team members ceased working for Super Retail Group between 17 November 2018 and 26 November 2018. The data relating to these employees was initially provided to CorpVote, however, CorpVote was not subsequently informed that the employment of these employees ceased.*

30. *My review undertaken confirms that due to genuine oversight or administrative error 49 team members commenced working for Super Retail Group and performed a shift between 17 November 2018 and 26 November 2018, however, their details were not included in the voter roll information provided to CorpVote.*

31. *My review undertaken also confirms that due to genuine oversight or administrative error the details of 75 team members were provided to CorpVote, however, their employment with Super Retail Group ceased between 17 November 2019.*

Casual Employees Employed at the Time of the Vote

32. *I have also recently undertaken a review of the casual team member data provided to CorpVote.*

33. *Data concerning a total of 6,904 casual team members was provided to CorpVote on the dates outlined above. I have recently been informed that the information provided by Super Retail Group to the Fair Work Commission identified that there were 7,048 casual employees who were eligible to vote, I have no knowledge as to where this*

figure was sourced, however, I have reviewed the data provided to CorpVote and can confirm that data relating to 6,904 casual team members was provided.

34. *Further assessment indicates that of those casual team members, a total of 2,100 did not work a shift during the Voting Period (**Casual Cohort**).*

35. *A further assessment of the Casual Cohort was undertaken of the e-Tivity time and attendance system to determine those team members within the Casual Cohort who worked during the period of 12 – 19 November inclusive (Access Period).*

36. *The assessment undertaken indicates that a total of 726 casual team members who make up the Casual Cohort worked at least one shift during the Access Period.*

37. *A further assessment undertaken indicates that a total of 945 casual team members who make up the Casual Cohort worked at least one shift in the 3 months before the beginning of the Access Period."*[52]

Applicant's submissions

[79] The Applicant submitted that, in accordance with s. 180(4) of the Act, the access period began on 12 November 2018 and ended on 19 November 2018. The voting period for the Agreement began on 20 November 2018 and ended on 26 November 2018.[53]

[80] According to the Applicant, there would be two classes of employees which may be affected (for the purposes of the valid majority assessment) in light of the Kmart Full Bench decision, based on the Bromley Statement.[54]

[81] These would be, according to the Applicant, the 5 employees who commenced working for the Applicant and performed a shift between 17 November 2018 and 19 November 2018 (i.e. during a part of the access period) but did not have the opportunity to cast a valid vote to approve the Agreement. It would also be the 75 employees who ceased working for the Applicant between 17 November 2018 and 26 November 2018 (which overlaps with the access period (17 November 2018 – 19 November 2018) but had been wrongly included in the voter roll (although the exact number who had ceased employment during the access period is not clear) and therefore may have cast a valid vote to approve the Agreement.[55]

[82] The Applicant submitted that the Kmart Full Bench decision found that, nonetheless, where an employer has wrongly allowed some employees to vote, or wrongly excluded some employees from exercising such an opportunity, if it would not have made a difference to whether a valid majority of employees employed at the time of the access period had approved the agreement, then the Commission may still approve the Agreement.[56]

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[52] Ibid at [23] – [37].

[53] Written submissions of the Applicant dated 27 November 2019 at [6].

[54] Ibid at [7].

[55] Ibid.

[56] Ibid at [9].

[83] To this effect, the Applicant's submissions are that during the ballot, 5,376 employees casted a valid vote and 5,015 employees voted to approve the Agreement. The Applicant thereafter submitted that given the small number of employees who were either wrongly included or excluded from casting a vote, it is clear that it would have made no difference to whether a majority of employees had voted in favour of the Agreement.[57]

The Applicant's submissions on the casual cohort issue

[84] The Applicant submitted, with regard to the casual cohort issue, and based on the evidence of Ms Bromley, that 1,374 casuals could be considered ineligible to vote on the basis that they were "on the books" but did not work during the voting period as well as the access period. On this point, the Applicant submitted that in the event that these 1,374 casual employees are deemed ineligible to vote, and assuming that all such persons voted to approve the agreement, at the time of the vote 4,002 employees would have cast a valid vote (amounting to a 40% participation rate) with 3,641 employees voting to approve of the agreement (91% approval rating).[58]

[85] The Applicant concluded its submission by saying that even if the Commission deducted the ineligible broader pool from the voting cohort and, assuming all ineligible persons voted and had voted to approve the Agreement, the Agreement was still approved by a valid majority of employees eligible to vote. Or, put another way, the inclusion of ineligible casual employees who were not employed at the time of the vote in the voting cohort made no practical difference to the outcome of the vote.[59]

The SDA's submissions

[86] The SDA's submissions with regard to the valid majority issue is substantially on all fours with the Applicant's submissions.

The RAFFWU's submissions

[87] After the Bromley Statement had been filed with the Commission, the RAFFWU relevantly submitted the following with respect to the valid majority matter:[60]

> **"Net Too Wide**
>
> 3. *Contrary to the submission of the SDAEA, the evidence does not disclose the number of casual employees who worked during the access period. This is a foundational element in the determination of the employees who were employed at the time. That foundation flows from Swinburne, Norton and Kmart.*
>
> 4. *The evidence identifies that there were 10,145 employees purportedly employed at the time. Some 6,904 of those employees were casual team members. 2,100 of those persons did not work a shift during the voting period which was the period from the*

[57] Ibid at [10].

[58] Written submissions of the Applicant dated 10 October 2019 at [12] – [14].

[59] Ibid at [15].

[60] Written submissions of the RAFFWU dated 27 November 2019 at [3] – [13].

close of the access period to the close of the vote. 726 of the 2,100 worked at least one shift during the access period.

5. *There is no evidence of the number of persons employed on a casual basis who were in the 6,904 and **did not work** in the access period. We know that the Applicant erroneously considered all "active" casual employees as being "employed and covered by the agreement at the time."*

6. *The evidence of the applicant is that it has no specific policy or requirement for the determination of an "active casual". It is manifestly clear that it must include persons who did not undertake work during the access period. We can derive from the evidence of the applicant that 1,374 of the 2,100 'casual cohort' who did not work during the voting period also did not work during the access period.*

7. *The only evidence before the Fair Work Commission is that 726 of the 6,904 persons engaged on a casual basis did perform work during the access period. It is patently clear at least 1,374 of the remaining 6,178 did **not** work during the access period. This leaves 4,804 persons for whom the Fair Work Commission cannot know whether they worked during the access period.*

8. *The applicant seeks for the Fair Work Commission to consider the group of 6,178 as employed on an ongoing basis contrary to Norton. The evidence simply doesn't permit such an inference.*

9. *5,015 are said to have voted in favour of the agreement. We know 1,374 persons were offered votes who were not entitled to vote. There is no evidence of the status of 4,804 other persons as to their entitlement to vote. In circumstances where the Fair Work Commission cannot be satisfied that 6,178 persons were entitled to vote having been given a vote, we submit the agreement cannot be approved.*

Net Too Narrow

10. *In relation to the "net too narrow" issue, the evidence directly discloses that 5 persons were excluded from voting despite being engaged during the access period. This evidence is express*[7].

11. *Contrary to the submission of SDAEA and the Applicant*[8]*, Kmart does not stand for the proposition that casting the net too narrow "creates no impediment to approval". To the contrary, the specific appeal ground put before the Kmart appeal was not found and the original decision with respect that issue not overturned.*

12. *To the contrary, in the Kmart decision the Full Bench went to some length to identify the particular importance of employees who commence work during the access period to be included in the vote process. RAFFWU notes neither SDAEA nor the applicant identify the paragraph in Kmart they purport stands for the permissibility of casting the net to narrow.*

13. *We submit that by casting the net too narrow, the applicant fatally harmed its application. To put it another way, the agreement was not made with the employees employed at the time.*

…"

Consideration

[88] Put simply, I accept the submissions of the Applicant and the SDA. I accept their construction of the Kmart Full Bench decision over that of the RAFFWU.

[89] The access period for the purposes of the proposed agreement was 12 November 2018 – 19 November 2018 (inclusive). The voting period of the proposed agreement was 20 November 2018 to 26 November 2018.

[90] I accept the evidence of Ms Bromley that 5 employees who commenced working for the Applicant during the access period were not afforded the opportunity to vote.

[91] I also accept the evidence of Ms Bromley that 75 employees who ceased their employment with the Applicant in the period of time during the access period and the voting period (17 November 2018 – 26 November 2018) may have been entitled to vote if they had worked at some point during the access period (between 12 November 2018 and 17 November 2018).

[92] According to my interpretation of the Kmart Full Bench decision at [31], an employer's *request* to employees to approve an agreement as contemplated by s. 181(1) of the Act *"is a single act or event which occurs at the end of the access period and immediately prior to (or perhaps upon) the commencement of the voting process."*

[93] At [33] of the Kmart Full Bench decision, the Full Bench preferred a construction of the Act that employees employed at the *time* of the request encompassed those employees employed throughout the whole of the access period.

[94] The decision by *Kmart* to include employees on the roll of eligible voters employed outside of the access period, both prior to its commencement and in the period after the request to approve was made (and the ballot had commenced) was not fatal to *Kmart* application for approval. At [43] the Full Bench stated as follows:

> *"In relation to that element of the genuine agreement requirement in s 188(1)(b), there remains an issue to be dealt with arising from the fact that Kmart erroneously included in the voting cohort persons employed after the start of the voting process on 21 November 2018 up to 28 November 2018 who had not been employed immediately before the commencement of the voting process or during the access period. It is necessary to consider whether this error is capable of affecting the conclusion that a majority of employees who were eligible to vote in accordance with s 181(1), and who voted, cast a valid vote to approve the Agreement. The reported outcome of the vote (in the Form F17 statutory declaration of Ms White) was that 23,110 employees voted, and 21,191 of those voted in favour of approval of the Agreement. We were advised by senior counsel for Kmart, and we accept, that its records disclosed that 1,422 employees who were employed after the voting process commenced but had not been employed at the time of the request/access period were included in the voting cohort. That being the case, it is clear that Kmart's error could not have affected the overall*

result and that the Agreement was made in accordance with s 182(1).” (emphasis added)

[95] While not expressly considered by the Kmart Full Bench decision, I accept the SDA’s submission that, a fortiori, a similar conclusion could be drawn by the Commission if employees were excluded to vote (through error), but otherwise this number [of excluded employees] could not have affected the overall result of the Agreement.[61]

[96] I therefore accept the Applicant’s submission that the exclusion of 5 employees from voting, who otherwise could have voted, and the inclusion of 75 employees to vote, who otherwise may have not have been entitled to vote, is not, of itself, fatal to me being satisfied that the Agreement was made in accordance with s. 182(1).

[97] With respect to the casual cohort, I also accept the Applicant’s and the SDA’s submissions over the RAFFWU’s.

[98] I accept the evidence of Ms Bromley that 6,904 casual employees were permitted to vote on whether to approve the Agreement.[62] Ms Hitchener evidence is also to this effect.[63]

[99] I accept the evidence of Ms Bromley that 2,100 casual employees make up the casual cohort,[64] or 2,156 if I take the evidence of Ms Hitchener.[65]

[100] The Full Bench in *Kmart*, in the paragraph extracted above, ultimately found that on the evidence before them, the voting error could not have effected the overall result. As such, the Full Bench was satisfied that the Agreement was made in accordance with s.182(1) of the Act. The Full Bench have not included the mathematics that have led to their conclusion.

[101] However, assuming the worst case scenario, on Ms Hitchener’s evidence, 2,202 casual employees did not work, for whatever reason, during the access period and were not entitled to vote. Removing this entire group from the voting, results in the total number of votes received equalling 3,174 and the total number of votes in favour equalling 2,813. This is an approval rate of 88.63%.

[102] On the casual cohort consideration, I do not consider that this class of employee has altered the outcome of the Applicant achieving a valid majority, pursuant to s. 182(2) of the Act. Ultimately, therefore, I am satisfied that a valid majority of employees employed at the time voted in favour of the Agreement.

[103] Further, and in the alternative, the Kmart Full Bench decision ultimately did not address Deputy President Mansini’s finding at first instance that a ‘minor technical or procedural error’ under s. 188(2)(a) of the Act only arises if there is a deliberate decision not to comply with the requirements of the Act. Ultimately, I find that I have a sufficient basis to be satisfied that the Applicant did not make a deliberate decision to wrongly include

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[61] Written submissions of the SDA dated 27 November 2019 at [12].

[62] Bromley Statement at [33].

[63] Witness Statement of Michelle Leigh Hitchener dated 24 January 2020 at [9].

[64] Bromley Statement at [34].

[65] Witness Statement of Michelle Leigh Hitchener dated 24 January 2020 at [9].

employees on, or wrongly exclude employees from, the voter roll, but that the discrepancies merely arose out of inadvertent errors.

[104] I therefore conclude that the Applicant's errors in relation to the voting cohort were minor technical or procedural in nature and did not impact on whether a valid majority of eligible employees had voted in favour of the Agreement. I rely upon s. 188(2) in my satisfaction that the Agreement has been "genuinely agreed to".

BOOT

[105] Section 193 of the Act deals with the BOOT. It reads:

> **"193 Passing the better off overall test**
>
> *When a non greenfields agreement passes the better off overall test*
>
> (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.
>
> *FWC must disregard individual flexibility arrangement*
>
> (2) If, under the flexibility term in the relevant modern award, an individual flexibility arrangement has been agreed to by an award covered employee and his or her employer, the FWC must disregard the individual flexibility arrangement for the purposes of determining whether the agreement passes the better off overall test.
>
> *When a greenfields agreement passes the better off overall test*
>
> (3) A greenfields agreement passes the better off overall test under this section if the FWC is satisfied, as at the test time, that 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.
>
> *Award covered employee*
>
> (4) An award covered employee for an enterprise agreement is an employee who:
>
> (a) is covered by the agreement; and
>
> (b) at the test time, is covered by a modern award (the relevant modern award) that:
>
> (i) is in operation; and
>
> (ii) covers the employee in relation to the work that he or she is to perform under the agreement; and

(iii) covers his or her employer.

Prospective award covered employee

(5) A prospective award covered employee for an enterprise agreement is a person who, if he or she were an employee at the test time of an employer covered by the agreement:

(a) would be covered by the agreement; and

(b) would be covered by a modern award (the relevant modern award) that:

(i) is in operation; and

(ii) would cover the person in relation to the work that he or she would perform under the agreement; and

(iii) covers the employer.

Test time

(6) The test time is the time the application for approval of the agreement by the FWC was made under section 185.

FWC may assume employee better off overall in certain circumstances

(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."

[106] The BOOT is an evaluative determination, not to be conducted via a line by line analysis.[66] It is an assessment that requires consideration of the advantages and disadvantages of an enterprise agreement to award covered employees and prospective award covered employees. There will invariably be some advantages to making an agreement, as there will likely be some disadvantages. An enterprise agreement may pass the BOOT even if some award benefits have been reduced, so long as they are more than offset by the benefits of the enterprise agreement.[67] Ultimately the application of the BOOT is a matter that involves the exercise of discretion and it is a value judgment.[68]

[107] The Agreement contains terms which are more beneficial than the Award. As the Applicant readily communicated during the bargaining process, access and voting period to its

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[66] *SDA v Beechworth Bakery Employee Co Pty Ltd T/A Beechworth Bakery* [2017] FWCFB at [12]; *Armaceli Australia Pty Ltd* [2010] FWAFB 9985 at [41].

[67] *Re Australia Western Railroad Pty Ltd T/A ARG – A QR Company* [20111] FWAA 8555 at [8]; *NTEIU v University of New South Wales* [2011] FWAFB 5163 at [47].

[68] *TWU v Jarman Ace Pty Ltd* [2018] FWCFB 7097 at [28].

employees, pay rates above the Award (albeit in some cases only modestly), allowances for laundry and travel, paid tea breaks increasing to 15 minutes, and increased Sunday penalties.

[108] Subject to the undertakings provided (wherein the Applicant consulted with great vigour with the SDA to draft [the undertakings]), I am satisfied that the Agreement passes the BOOT.

[109] However, to further assist in my satisfaction, the RAFFWU acted as a contradictor in highlighting, in its view, a number of issues which, it submitted, the Commission would benefit from taking a closer look at in order to be satisfied that the Agreement indeed passes the BOOT. The RAFFWU remains of the view that the Commission cannot be satisfied that the Agreement passes the BOOT due to these issues. I will duly consider each one below and outline why I am satisfied the Applicant satisfies the BOOT. In my determination, I have concluded that some items in the Agreement are not better off as against the Award, however, these are offset by those things which are.

BOOT Analysis

The Agreement analysed against the Award

The RAFFWU BOOT objection	**Applicant's submissions and determination**
<u>THE RAFFWU OBJECTION 1</u> THE WAGE RATES PROVIDED UNDER THE AGREEMENT (AT THE TEST TIME) PAY VERY LITTLE ABOVE THE AWARD.	On the Applicant's evidence and on the analysis conducted by the MAT (and by the RAFFWU's own concession), the Commission is satisfied that all employees will be paid at a higher rate wage under the Agreement than under the Award. Determination: Commission is satisfied with regard to Objection 1. This weighs positively in the Commission's BOOT assessment.
<u>The RAFFWU Objection 2</u> The Agreement is detrimental due to the loss of specific rest and meal breaks in the Award, including: - The right to not to be required to take a rest or meal break within one hour of commencing or ceasing work (clause 31.1) without any equivalent protection other than the first rest break not being within the first hour of work; - The right to have the time of taking rest and meal	The Award states that *"an employee cannot be required to take a rest break or meal break within one hour of commencing or ceasing of work."* The Applicant submitted that the failure of an employer to strictly observe the conditions of c.31.1(c) of the Award does not give rise to the requirement to pay overtime and as such the Applicant submitted that any variation [of the Agreement] against the Award is a neutral consideration when the Commission considers the BOOT. The Applicant submitted that the Agreement states that a rest break cannot be taken within the first hour of work, and that meal breaks should be taken within the first 5 hours of commencing work "…and after the first rest break." According to the Applicant, the terms of the Agreement accord with the Award, insofar as it is not possible for an employee to be required to take a meal or

breaks and the duration of meal breaks forming part of the roster and subject to the roster provisions of the Award (clause 31.1(e)) without any equivalent protection and a specific acknowledgement that they may be changed other than by agreement or following consultation; and - The exacerbating of the elements above by the *permitting* of combined breaks.	rest break within the first hour of commencing work. I accept this submission. The Applicant then submitted that the Agreement states that a meal break is to be taken within the 5 hours of commencing work. It goes on to say that while an employee may technically be able to take a meal break within the last hour of ceasing work, this is practically limited to employees working of between 5 and 6 hours in duration. In this regard, the Applicant submitted that in the overwhelming majority of circumstances it will not be possible for a meal break to be taken within the last hour of ceasing work. Practically, while this submission does make sense, there is ultimately a detriment under the Agreement as against the Award which I will give due weight in my determination. With regard to the issue about rest breaks possibly being taken within the last hour of ceasing work, the Applicant submitted that the timing of rest breaks is generally at the election of employees, subject to the approval of the needs of the business. The Applicant then submitted that an employer's failure to provide breaks in accordance with the Award does not give an entitlement to overtime and as such, this matter should be viewed as a neutral BOOT consideration. I do not accept this submission. With regard to the timing of rest and meal breaks not forming part of the roster conditions, the Applicant submitted that the failure of the employer to strictly observe the rostering conditions of the Award does not give rise to the requirement to pay overtime, and as such, should be a neutral consideration. I do not accept this submission. Determination: Regarding all of these submissions, I do accept the RAFFWU's submission that explanations from the Applicant on the timing of meal and rest breaks have only been made relevant to there being a financial detriment to the employees. There is clearly a change from the conditions in the Agreement and the Award, wherein the Award prescribes certain rights for employees on the time they can take meal breaks. The changed Agreement, may, result in a possible detriment (not financially) employees under the Agreement. This weighs negatively for the Applicant in the Commission's BOOT assessment.
<u>The RAFFWU Objection 3</u> The Agreement is detrimental as	The Award states that a higher duties allowance is payable where *"employees [are] engaged for more than two hours during one day or shift on duties carrying a*

there are no higher duties rights when an employee is required to cover a manager on a meal break.	*higher rate for such day or shift. If engaged for two hours or less during one day or shift, the employee is to be paid the higher rate for the time worked only."* The Applicant submitted that under the terms of the Award, a higher duties allowance is only payable where a Level 1 retail employee performs the duties of a Level 3 retail employee by undertaking the following duties: (a) Supervisory assistance to a designated section manager or team leader; (b) Opening and closing of premises and associated security; (c) Security of cash; or (d) Fitting of surgical corset. The Applicant submitted on this issue that retail employees covered by the Agreement are not involved in providing supervisory assistance to a designated section manager or team leader and are not required to fit surgical corsets. Accordingly, according to the Applicant, a higher duties allowance would only be payable where a retail team member is responsible for the opening and closing of a retail establishment, or where an employee is responsible for the security of cash. I accept this submission. The Applicant submitted that the RAFFWU is incorrect in its application of the Award in that the absence of a manger for an unspecified meal break would not require a team member to be practically appointed as an Assistant Store Manager or Store Manager for that period that would necessitate the payment of a higher duties allowance. According to the Applicant, during such absence, team members would undertake the duties and responsibilities of their associated classification in the absence of a nominated manager. I accept this submission. Further to the above, the Applicant submitted that undertakings 13 and 14 it has filed with the Commission confirm that retail members engaged under the Agreement shall not be required to perform duties to perform duties typically associated with a retail employee Level 2 or Level 4 – 8, and that for the avoidance of doubt, the payment of the Shift Supervisor Allowance, under the Agreement, is equivalent to circumstances where a Level 1 employee undertakes duties associated with a Level 3 employee under the Award. I accept this submission.

	Determination: Commission is satisfied that an employee would not be required to perform the duties of an Assistant Store Manager or Store Manager for a period of an unspecified meal break. Even if the Commission was not and still could not be satisfied that employees would not be required to perform these duties, the undertakings provided by the Applicant ensure that no employee not worse off than what they would be under the Award. This is a neutral BOOT consideration.
The RAFFWU Objection 4 The Agreement lacks a base right to a 12 hour break between shifts and puts in a requirement to apply for and be granted such a right.	The Award states at clause 31.2(a)(b) that an employee shall be granted a 12 hour break between the finishing of work on day and the commencement of work on the next day, otherwise an employee is entitled to double pay until they are released for the requisite 12 hour period. The Award allows for the 12-hour period to be reduced to 10 hours by "…agreement between an employer and an employee or employees." Determination: The Commission is satisfied that the duration of breaks between shifts is a matter than may be varied through the bargaining on, voting on and making of an enterprise agreement. This issue weighs neutrally in the Commission's BOOT assessment.
The RAFFWU Objection 5 Certain undertakings provided by the Applicant are not sufficient with regard to: - offsetting casual loading - compulsory training meetings of less than 3 hours not being paid as overtime - two consecutive days off per week (or 3 per fortnight) cast as "requestable" rather than default; - generally a failure to replicate Award classifications and classifications rights. - casual conversion provisions,	With regard to the offsetting casual loading concern, I am satisfied that the deletion of clause 16 from the Agreement pursuant to undertaking 2 deals with this issue. Determination: offsetting casual loading clause is not an issue. With regard to the compulsory training meetings issue, undertaking 14 states as follows: "Compulsory training sessions or team meetings will be limited to one training session or team meeting per month up to two hours duration. Full-time employees will be paid at the ordinary rate of pay even if the training session ot team meeting extends beyond ordinary hours. Where a training session or team meeting takes place on a part-time employee's normal working day, but extends beyond ordinary hours, the employee will be paid at overtime rates for the period of the training session or team meeting that extends beyond ordinary hours. Casual employees will be paid at overtime rates for any period of a training session or team meeting that extends beyond ordinary hours. Determination: The Applicant provided modelling to the Commission that employees who undertook training would be better off to the value of $142.46 - $78.98 per

	month. I accept this evidence and that this weighs positively in the Commission's BOOT assessment. With regard to the 2 consecutive days off per week (or 3 per fortnight submission, undertaking 5 now states: "In the alternative to the provisions of clause 17(e)(i) you may request to work your ordinary hours so that you would be provided with two consecutive days off each week or three consecutive days off in a two week period. Any such request will not be refused by the Company. Determination: Commission is satisfied that this undertaking is now consistent with the Award provisions. With regard to a failure to replicate award classifications and classification rights, undertakings 17 and 18 state that: Retail Team members engaged under the Agreement shall not be required to perform tasks or duties typically associated with a Retail Employee Level 2 or 4-8 under the General Retail Industry Award 2010 as at the date of this undertaking (17); and For the avoidance of doubt, the duties of a Shift Supervisor, as referenced at clause 220-222, is equivalent to that of a Retail Employee Level 3 under the General Retail Industry Award 2010 as at the date of this undertaking (18). With regard to the casual conversion provisions, the Commission accepts that the Agreement's casual conversion clause at 174 is marginally different to the Award's. There may be some detriment, but it is negligible, based on undertakings 15 and 16 which in large way assist the Commission in its satisfaction that there is no considerable detriment to employees. Determination: The Commission is satisfied that undertakings 15 and 16 satisfy the Commission that any detriment with respect to this clause is negligible in the BOOT consideration.

[110] While I have determined that meal breaks and the casual conversion clauses are items not better off in the Agreement as compared to the Award, ultimately, employees are made, in my view, better off overall by the increased pay rates and the added allowances as compared to the Award. Overall, the Commission is satisfied that the Agreement passes the BOOT in accordance with s. 193 of the Act.

Conclusion

[111] The RAFFWU's involvement in this matter has, at times, assisted the Commission in determining whether the Agreement must be approved. I am now satisfied that the Agreement has been made according to the relevant statutory considerations.

[112] For abundant clarity, the Agreement is approved subject to undertakings, I approve the Agreement. I am satisfied that each of the requirements of ss. 186, 187, 188 and 190 as are relevant to this application for approval have been met. The SDA is an employee organisation that will be covered by the Agreement.

[113] The Agreement, in accordance with s. 54 of the Act, will operate from 14 February 2020. The nominal expiry date of the Agreement is 7 February 2024.

DEPUTY PRESIDENT

Appearances

Mr Mark Healy and Mr Michael Seck of counsel, instructed by Mr Nick Tindley and Mr Wes O'Donnell of the law firm, FCB Group Lawyers for the Applicant.

Mr Robert Tonkli for the SDA.

Mr Josh Cullinan for the RAFFWU (given leave to be heard under s. 590 of the Act).

Hearing Date

12 July 2019 in Brisbane

Final Written Submissions

27 November 2019

<AE507015 PR716516>

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of the agreement.

Super Retail Group Enterprise Agreement 2018

SUPER RETAIL GROUP ENTERPRISE AGREEMENT 2018

Section 1

Who does this agreement apply to?

What is the title of the agreement?

1. This agreement shall be known as the Super Retail Group Enterprise Agreement 2018.

Who does this agreement apply to?

2. The parties to this agreement are:

   (a) Super Cheap Auto Pty Ltd; and

   (b) SRG Leisure Retail Pty Ltd; and

   (c) Super Retail Group Services Pty Ltd; and

   (d) Rebel Sport Limited

   (collectively referred to as "the **Employers**", "**us**" "**our**" or "**we**"); and

   (e) subject to the exceptions listed in this agreement, team members engaged by the Employers to perform work within the classifications contained within this agreement ("**you**" or "**your**"); and

   (f) The Shop Distributive and Allied Employees Association ("**SDA**").

3. For the avoidance of doubt, this agreement does not cover or apply to:

   (a) any salaried team member not covered in the classifications within this agreement including, but not limited to, Store Management and Support Office roles;

   (b) team members employed on a fixed or maximum term contract of employment and not performing work within the classifications contained within this agreement; and

   (c) any team member who performs Set-up Work in a specialised or leadership role within a Set-up Team including, but not limited to, Team Member (Safety Champion); Team Member (Forklift); Senior Team Member; Assistant Store Improvement Manager; Store Improvement Manager; and Senior Store Improvement Manager.

4. Subject to the Act and except where this agreement expressly provides otherwise, this agreement operates to the exclusion of any other agreement, award, or industrial instrument.

When will this agreement commence and when will it expire?

5. This agreement will become operative 7 days from the date on which the Fair Work Commission (**FWC**) approves it and will continue to operate for 4 years from the date it is approved by the FWC.

6. A copy of this agreement will be made accessible to you in your workplace by hard and/or soft copy.

7. The parties agree that up until the nominal expiry date of this agreement:

   (a) they will not pursue any extra wage claims;

   (b) they will not seek any changes to conditions of employment;

   (c) this agreement will cover all matters or claims, which could otherwise be the subject of protected action; and

   (d) they will not engage in any industrial action, in relation to the performance of any work covered by this agreement, other than as permitted by the Act.

Payment of wages

What is your entitlement to Superannuation?

8. You will be entitled to superannuation in accordance with the federal superannuation guarantee legislation on the following basis:-

   (a) the default superannuation fund will be the Retail Employees Superannuation Trust (**REST**). We will pay superannuation contributions into this default fund unless you direct us otherwise in writing;

   (b) you may elect in writing to have your superannuation paid into an alternative complying fund of your choice; and

   (c) superannuation contributions will not be made into more than one fund.

How will your wages be paid?

9. Your wages for the week Sunday to Saturday will be paid on the same day of each week by Electronic Funds Transfer ('EFT').

10. Payment of wages may be altered from a weekly to a fortnightly basis if we provide you with a minimum of 3 months' notice of the change. If you are employed by us at the time we move to a fortnightly pay, then you will be paid one week in advance with that additional one week of pay able to be phased out progressively over a maximum period of 5 months, at the rate of one day after each completed month.

11. We will pay wages within 3 days of the end of each pay period, unless there is a public holiday the day before the normal payday, when wages can be paid within 4 days from the end of the pay period.

12. We have the authority to deduct any pre-payments made from any money which is owed to you, if your employment ends before you have earned the pre-paid amounts.

13. Should there be any discrepancy in your pay for a particular week or fortnight, then we will rectify that discrepancy within a reasonable time period.

What will you be paid?

14. You will be paid the rates of pay and other entitlements specified at Appendix A.

15. For casual team members, the rate of pay specified at Appendix A is inclusive of a 25% casual loading. You shall receive a casual loading which is paid in lieu of payments for annual leave, redundancy pay and other entitlements associated with permanent employment.

16. If a casual employee is determined to be a permanent employee, the Company can reduce the amount of back dated permanent employment entitlements owing by the value of the casual loading previously paid to that employee.

Section 6

Hours of work

What are your ordinary hours of work?

17. Your ordinary hours of work:

(a) will be 152 hours in a 4 week period if you are employed on a full time basis;

(b) will be up to a maximum of 152 hours over a 4 week period if you are employed on a part time basis, provided that you may not work 152 hours in a 4 week period in 2 or more consecutive 4 week periods;

(c) may not be worked on more than 10 days in a 2 week period;

(d) may not be worked on more than 6 consecutive days;

(e) will be rostered so that you have a minimum of at least 2 consecutive days off in a 2 week period unless there is mutual agreement otherwise. At least once in a 4 week period these 2 consecutive days will be on a Saturday and Sunday unless there is mutual agreement otherwise. An employee who regularly works Sundays will be rostered so as to have three consecutive days off each four weeks and the consecutive days off will include Saturday and Sunday.

(f) for retail team members, may be worked up to a maximum of 9 hours on any day, exclusive of unpaid breaks, provided that for one day per week a team member can be rostered for 11 hours;

(g) for administration team members, may be worked up to a maximum of 10 hours on any day, exclusive of unpaid breaks;

(h) must be a minimum of 12 hours per week (48 hours per 4 week cycle) if you are employed on a part time basis unless there is mutual agreement otherwise;

(i) must be at least 4 hours per shift if you are employed on a full time basis and at least 3 hours per shift if you are employed on a part time or casual basis;

(j) will, subject to clause 17(k), be worked in one continuous shift, save for any rest and meal breaks provided for in this agreement. Despite this, if you are a Retail team member you may be required to attend a training session on the same day on which you have worked a shift. If you are required to attend such a training session this will not count as an additional shift for any purpose under this agreement;

(k) despite clause 17(j) above, you may request to be rostered for more than one shift in a day, and we may agree to this request provided that:

(i) there are no more than two shifts worked each day;
(ii) a minimum of three hours' work applies for each of the two shifts;
(iii) a minimum break of not less than two hours applies between the two shifts;
(iv) the second shift may be worked in an alternate location to the one in which you worked your first shift;
(v) the maximum number of hours work per day as prescribed in clauses 17(f) & (g) above will apply;

(vi) where an additional shift occurs on any day, a 10 hour break will be observed between the cessation of work for the second shift and the commencement of work on the next day;

(vii) the arrangement will remain voluntary and may be revoked by you at any time; and

(viii) the additional shift will not be regarded as an additional "day worked" for the purposes of this Agreement.

(l) must be worked within the following hours:

Retail	7am to 11pm, Monday to Saturday; and 9am to 11pm Sunday
Administrative	7am to 7pm, Monday to Friday 7am to 12.30pm Saturday

What if you work outside of your ordinary hours?

18. Any hours worked in excess of your ordinary hours of work as per clause 17 (a-g), or outside of the span or ordinary hours set out in clause 17(l), will be considered to be overtime. Overtime must be authorised by us prior to being worked.

19. If you are required to work overtime then you will either:

(a) be paid at the applicable overtime rate for your classification specified at Appendix A; or

(b) if you are employed on a full time or part time basis then you may take time off in lieu instead of receiving any payment for this overtime subject to the following conditions:

(i) you must submit your request for time off in lieu of payment for overtime to your direct Manager. The request must be in writing in the form approved by us. On that form you will be required to specify when you were required to work the overtime and when you wish to take the time off in lieu;

(ii) we have the discretion of whether or not to approve the request;

(iii) for each hour of overtime that you work you will be entitled to receive:

- 1.5 hours of time in lieu (up to three hours on any given day);
- 2 hours of time in lieu for each hour worked beyond three hours on any given day and all overtime hours worked on a Sunday; and
- 3 hours of time in lieu for each hour of overtime worked on a public holiday.

(iv) the time off in lieu must be taken within 60 days of working the overtime or it will be paid out.

Example

A full time Team Member is required to work a minimum of 152 hours over a 4 week period. If you work 155 hours in that period you will be paid at the applicable overtime rate, or you may request to take time in lieu and will be credited with 4.5 hours (3 hours x1.5 = 4.5 hours) time in lieu to be taken at a time in accordance with this agreement. In the event that tine in lieu is not taken within 60 days it will be paid out as 3 hours of the applicable overtime rate.

20. If you do not have at least 10 consecutive hours rostered off between the end of the ordinary hours that you work on one day and the commencement of the ordinary hours that you work on the next day, then any further hours that you work until you have had at least 10 consecutive hours rostered off will be paid at double time until a 10 hour break is provided. An employee may request in writing that at least 12 consecutive hours rostered off between shifts be provided which will not be refused by the Company.

21. If you are required to work more than one hour of overtime (as defined in clause 18) immediately prior to commencing or immediately after finishing working your ordinary hours, without being given notice of at least three hours prior to commencing your shift, then you will be entitled to a meal allowance of $18.29 provided that the meal allowance will only be paid once on any particular day. No casual employee will be required to work more than 4 hours overtime without receiving at least three hours advance notification prior to the commencement of the shift.

Example

If you are rostered to work 9 hours on a particular day, and you actually work in excess of 10.5 hours on that day, and we didn't give you at least 3 hours' notice prior to commencing your shift of the need to work the overtime, you are entitled to a meal allowance. If you only work 10 hours the allowance does not apply.

How many overtime hours can you be required to work?

22. You can be required to work a reasonable amount of overtime hours.

23. When determining whether the amount of overtime that you are required to work is reasonable, we will take all relevant factors into account. Those factors may include, but are not limited to, the following:

(a) any risk to your health and safety that might reasonably arise if you worked the overtime;

(b) your personal circumstances (including family responsibilities);

(c) the operational requirements of your workplace;

(d) any notice given by us of the requirement or request that you work the overtime;

(e) any notice given by you of your intention to refuse to work the overtime;

(f) whether any of the overtime hours are on a public holiday; and

(g) your hours of work over the 4 weeks immediately before you are required to work the overtime.

What breaks are you entitled to?

24. You are entitled to the following breaks:

Length of Shift	Break Entitlement During the Period of the Shift
0 to less than 4 hours	➢ No breaks
4 hours to 5 hours	➢ 15 minute paid break (including walking time)
More than 5 hours to less than 7 hours	➢ 15 minute paid break (including walking time) ➢ 30 minute unpaid break (this may be increased to up to 60 minutes by mutual agreement)
7 hours or more	➢ Two 15 minute paid breaks (including walking time) ➢ 30 minute unpaid break (this may be increased to up to 60 minutes by mutual agreement)
10 hours or more	➢ Two 15 minute paid breaks (including walking time) ➢ Two 30 minute unpaid breaks (this may be increased to up to 60 minutes by mutual agreement)

25. Wherever practicable you will be provided with a reasonably predictable and consistent time for the taking of your meal and rest breaks along the following lines:

Break Type	Indicative time of taking break
First rest break	After first hour of work, within first 4 hours of work and prior to meal break
Meal break	Within first 5 hours of commencing work and after first rest break
Second rest break	After the meal break

You understand that these indicative times may be delayed due to operational needs on a particular day.

26. If you work 7 consecutive hours or more on a particular day, you may choose, with our agreement, to combine your breaks.

27. If you are rostered to work a 6 hour shift you may request not to take a meal break. Such requests will be subject to approval from us. If you make such a request and it is approved by us you will be entitled to an additional 15 minute rest break, which will, unless unforeseen operational needs or emergencies arise, be taken between the 2nd and 4th hours of your shift.

If you are employed on a part time basis what are your regular hours?

28. If you are employed on a part time basis, then before commencing we will tell you what your core ordinary hours will be. Core ordinary hours will be the guaranteed number of ordinary hours that you will be required to work over a 4 week period, provided:

(a) these core hours will be regular and systematic;

(b) we may vary the days on which you work your core ordinary hours, and may roster you by agreement to work hours in excess of your core ordinary hours, in accordance with clauses 31-33;

(c) in a roster cycle you may agree to work additional hours at the appropriate rate of pay in lieu of overtime. We will record your agreement to work additional hours by variation to the roster, however, additional hours must comply with clause 17 otherwise overtime will apply;

(d) you may request to reduce your core ordinary hours. Such request will be granted provided it does not interfere with operational requirements; and

(e) changes to core ordinary hours may also occur by mutual agreement.

29. If you are employed on a part time basis and have, for a period of 12 months or more, been working, on a regular and systematic basis, a roster of hours that is in excess of your core ordinary hours you may request in writing to increase your core ordinary hours to the level of those regular and systematic hours. We will not unreasonably refuse such a request.

Example *A part time team member whose core ordinary hours are 12 per week has over the past 12 months been working a regular and systematic roster which involves them working 22 hours per week (in some weeks the team member also works some additional hours over the 22 hours to meet operational needs). The team member can, at the end of the 12 month period request that their core hours be increased to 22 per week, and we will not unreasonably refuse the request. Examples of where a refusal will generally be reasonable are if the team member is working the additional hours due to long term absence of another team member or where the store at which the team member works is experiencing challenges in attracting and retaining team members.*

When can your roster be changed?

30. If you are employed on a full time or part time basis you will be provided with a regular roster setting out your starting and ceasing time for each day.

31. If you are employed on a full time or part time basis then after consultation with you, your roster may be changed:

(a) by mutual agreement at any time; or

(b) by us giving you 7 days' notice in writing; or

(c) by us giving you 14 days' notice in writing if we are satisfied that you require the additional notice on genuine and reasonable grounds such as family responsibilities, transport et cetera.

32. Due to unexpected operational requirements, a team member's roster for a given day may be changed with less notice than stated above, by mutual agreement with the team member, prior to the team member arriving for work.

33. If you:

(a) are employed on a permanent basis within the retail classifications of this agreement: and

(b) we give you notice (as per clause 31) to alter your roster to include less than two consecutive days off each week;

Then we will, during consultation over the roster change, give special consideration to any reasonable concerns that you may have about changing your roster to include less than 2 consecutive days off each week. We will not unreasonably refuse to accommodate any reasonable concerns.

34. If you are employed on a casual basis, you are not entitled to a fixed roster. Your rostered hours may be varied with one hour's notice prior to the scheduled commencement of your shift. For the purpose of this clause, if we have made reasonable attempts to contact you to notify you of the change to your hours at least one hour prior to the commencement of your shift this will be deemed to amount to one hour's notice. Should you not be provided one hour's notice you will be paid one hour at your casual base rate of pay.

35. Casual rosters will be posted seven days in advance of the roster commencing. If changes are made to the roster within 48 hours of the commencement time of a shift we will make reasonable attempts to contact you to advise you of the changes.

36. If your stores trading change to include Sunday trade, the following conditions will apply:

(a) you and other team members at the workplace will be asked to volunteer to work on the Sunday;

(b) if there are not enough volunteers, we may require you to work on the Sunday; and

(c) clauses 36 (a) & (b) will not apply to you if you are employed on a casual basis. In such cases you may be required to work on the Sunday.

37. Your roster may not be changed with the intent of voiding payment of penalties, loadings or other applicable benefits. Should such circumstances arise you will be entitled to such penalty, loading or benefit as if the roster had not been changed.

Leave

What is your entitlement to Long Service Leave?

38. You are entitled to long service leave in accordance with the relevant State or Territory legislation.

39. When taking an entitlement to long service leave, you may, subject to approval by us, decide to take double the leave at half the pay.

What are your Parental Leave entitlements?

40. Your Parental Leave entitlements will be as per the National Employment Standards (**NES**).

41. You will be entitled to a maximum total amount of Parental Leave of 104 weeks.

42. On return from a period of Parental Leave, you will be entitled to request an alteration to your working arrangements up until the child reaches school age, subject to the following conditions:

    (a) the request must be made to us in writing and must specify the requested alterations to your working arrangements; and

    (b) the request must be approved by us and a written response will be provided within 21 days of receipt. We will not unreasonably refuse such a request, however to be approved we must conclude that it is operationally and financially viable for us to have you return to work on a part time basis for the number of core ordinary hours that you have requested and on the days of the week that you wish to work those hours on. It may be that we can approve your request to return to work on a part time basis however we may not be able to accommodate the number of core ordinary hours that you have requested and/or the days that you have requested to work them on. If this occurs then we will notify you of our inability to provide you with these hours and attempt to reach agreement with you on a suitable alternative.

Super Retail Group Paid Parental Leave Scheme

43. If you are a full time or part time team member, have met the notification requirements of the NES, have completed one year continuous service with us and have commenced parental leave you will be entitled to participate in the paid parental leave scheme in accordance with the Super Retail Group Paid Parental Leave Policy as applicable from time to time.

44. You should refer to the Super Retail Group Paid Parental Leave Policy to determine your eligibility to participate in the scheme and your entitlement to paid parental leave for Primary and Secondary carers.

Your entitlement to Annual Leave

Accrual of leave

45. If you are employed on a full time or part time basis you will accrue 4 weeks of annual leave for each year of paid service.

46. Your annual leave entitlement will accrue on the basis of 1/13th of the number of ordinary hours worked during each pay period.

Example *If you are a part time team member and work 26 ordinary hours in one week, you will accrue 2 hours of annual leave for that week.*

47. You will accrue annual leave when you are on paid leave, but will not continue to accrue annual leave when you are on a period of unpaid leave.

Taking leave

48. Annual leave will be taken at a time mutually agreed between you and us. You are required to complete an application for your leave. We will respond to annual leave applications within 14 days, specifying that either the leave has been granted, refused, or, if a response cannot be given within 14 days, setting out when such response will be provided to you by us. We will not unreasonably delay our response. You must not make any travel plans prior to receiving confirmation from us that your leave has been approved.

49. We will not unreasonably refuse any request for annual leave, however annual leave will generally not be granted during Peak Needs (see Definitions).

50. We may, by giving you 4 weeks' notice, direct you to take annual leave if:

    (a) the direction to take leave is for a period of not less than 1 week;

    (b) you have at least 8 weeks leave accrued and will retain a balance of at least 6 weeks after the leave is taken; or

    (c) we are closing down our operations for a period (for example, an annual shut down period or a temporary closure for refurbishment). If you do not have enough accrued annual leave to cover all or part of the close down period, you may be required to take leave without pay.

Example *If you have 9 weeks of annual leave accrued then we may direct you to take 3 weeks of that leave.*

51. Before directing you to take leave in accordance with clause 50 we will discuss with you whether there is any reason for your excessive leave accrual. If we are satisfied there is a legitimate reason for the excessive leave accrual we will work with you to develop a leave plan for the following 12 months with a view to reducing your leave balance.

52. For the purpose of clause 50(b), if you are employed on a part time basis the six weeks of accrued annual leave will be based on the average number of ordinary hours you have worked in the previous 12 months.

Payment for leave

53. When you take paid annual leave you will be paid for the ordinary hours that you would normally have worked for us during the period of your leave. Those hours will be paid for at your Base Rate. You will also be paid an additional amount of 17.5%, or the relevant weekend penalty rates, whichever is the greater but not both, as annual leave loading.

54. When you take annual leave you will receive payment for that leave on an ongoing basis during the leave in the normal pay cycle. You may request to be paid upon the commencement of your leave which will be considered and not unreasonably refused.

55. Your annual leave does not include any public holidays which fall during the annual leave period, provided those public holidays fall on days that you would have ordinarily worked had you not been on annual leave.

Example *If you are a part time team member and you are rostered to work for 20 hours per week at the time that you will be taking two weeks annual leave, you will be paid for 40 hours leave, as well as leave loading, over those two weeks, provided you have accrued sufficient leave to cover this.*

56. If your employment ceases for any reason and you have an accrued balance of annual leave at the time, then it will be paid out to you at your Base Rate in the pay cycle following the cessation of your employment.

Cashing out leave

57. We recognise that the taking of annual leave is important to your wellbeing and we encourage you to take annual leave. You are, however, entitled to forgo an entitlement to paid annual leave that you have accrued, and instead be paid for that leave, subject to the following conditions:

    (a) you must not cash out an amount of paid annual leave that would result in your remaining accrued annual leave being less than 4 weeks;

    (b) each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing; and

    (c) you must be paid in lieu of the amount of annual leave that you forgo, the same amount that you would have received if you had taken the leave at the time of making the election.

Your entitlement to Personal / Carer's Leave

Accrual of leave

58. Permanent employees shall be provided with paid personal/carer's leave to be used in circumstances set out in clauses 62 and 63.

59. If you are employed on a full time basis you will accrue 10 days of paid personal / carer's leave for each year of paid service. If you are employed on a part time basis you will accrue paid personal / carer's leave on a pro rata basis based on your ordinary hours of work. Casual employees are not entitled to paid personal/carer's leave.

60. Your personal / carer's leave entitlement accumulates from year to year and will accrue on the basis of 1/26th of the number of ordinary hours worked each pay period.

Example
If you are a part time team member and work 26 ordinary hours in one week, you will accrue 1 hour of personal / carer's leave for that week. Whereas if you work 12 ordinary hours in one week, you would accrue 0.46 hour of personal / carer's leave for that week.

61. You will accrue personal / carer's leave when you are on paid leave, but will not continue to accrue personal / carer's leave when you are on a period of unpaid leave.

Taking leave

62. You are entitled to take personal/carer's leave if:

    (a) you are suffering from a personal illness or injury that means you are unable to attend work (sick leave); or

    (b) you are providing care and support for a member of your immediate family or household who requires that care and support because of:

        (i) a personal illness or injury affecting the member; or
        (ii) an unexpected emergency affecting the member (carer's leave).

63. Employees may utilise paid personal/carer's leave in circumstances where they are experiencing domestic and family violence in accordance with the Super Retail Group Support for Victims of Domestic and Family Violence Policy as applicable from time to time.

Payment for leave

64. When you take paid personal/carer's leave you will be paid for such leave at your Base Rate for the ordinary hours that you would have worked on that day or days. You are not entitled to be paid out any accrued paid personal /carer's leave on termination of your employment.

Unpaid Carer's Leave

65. Employees, including casual employees, are entitled to 2 days unpaid carer's leave for each occasion when a member of the employee's immediate family, or a member of the employee's household requires care and support for the circumstances outlined in clauses 62 and 63.

Notice and evidence

66. In order to take personal / carer's leave you must:

    (a) verbally notify your direct manager as soon as reasonably practicable that you will not be attending work and advise them of the period of leave you expect to take; and

    (b) if requested, supply evidence that would satisfy a reasonable person (for example, a medical certificate from a registered medical practitioner) as evidence of your entitlement to the leave.

67. If you are unable to provide a medical certificate, or your absence is for carer's leave, we may require you to provide a statutory declaration setting out the reason why you were unable to attend work.

68. You will generally be required to supply satisfactory evidence to substantiate your absence if:

    (a) you have taken more than 5 days personal/carer's leave without a medical certificate or other satisfactory evidence in any one year;

    (b) you are absent for 2 or more consecutive working days;

    (c) you are absent due to illness or injury and have exhausted all personal/carer's leave entitlements (and are not receiving workers compensation payments);

    (d) you are absent on a day before or after a public holiday or day on which you are not required to work; or

    (e) we have concerns about the genuineness of your claim for personal/carer's leave. For example, where we have identified that there is a pattern to your personal leave. Without limiting this, it may include where you have had the same day of the week off sick on 3 or more occasions without providing satisfactory evidence.

69. A member of your '**immediate family**' means:

    (a) your spouse, child, foster child, parent/step-parent, grandparent/step-grandparent, grandchild/step-grandchild, sibling/step-sibling or your guardian;

    (b) a child, parent/step-parent, grandparent/step-grandparent, grandchild/step-grandchild, sibling/step-sibling or guardian of your spouse.

70. For the purposes of Personal / Carers leave '**Foster child**' means a child who is formally placed with you on a permanent/long term care arrangement and includes immediate/crisis, short term or respite care arrangements.

71. '**Close immediate family**' means your spouse, sibling, child or parent, or the child of your spouse.

72. '**Household**' includes your relatives or other persons who ordinarily live in the same domestic dwelling.

73. **'Spouse'** includes the following:

(a) a former spouse;

(b) a de facto spouse;

(c) a former de facto spouse,

irrespective of whether the persons are of the same gender or different genders.

74. **'Child'** includes an adopted child, stepchild, an ex-nuptial child, and an adult child

Your entitlement to Compassionate Leave

75. If you are a full time or part time team member you are entitled to 2 days paid compassionate leave on each occasion if a member of your immediate family or household, as defined in this agreement or a foster child of yours:

(a) contracts or develops a personal illness or sustains a personal injury that poses a serious threat to his or her life; or

(b) passes away.

76. If you are a full or part time team member you will be entitled to up to an additional 3 days paid compassionate leave where a member of your close immediate family passes away.

77. If you are a casual team member you are entitled to compassionate leave in accordance with clause 75 and 76 on an unpaid basis.

78. If you are a full or part time team member you will be paid compassionate leave at your Base Rate of pay for the ordinary hours you would have worked on the day or days.

79. If you are required to travel interstate for the purpose of compassionate leave you will be entitled to access 2 days annual leave, or if you are a casual team member 2 days unpaid leave.

80. To substantiate your absence, you may be required to supply evidence that would satisfy a reasonable person.

Community Service Leave & Public Holidays

What is your entitlement to Emergency Services Leave?

81. Subject to our approval you are entitled to 3 days paid per calendar year for the purpose of Emergency Services Leave.

82. Emergency Services Leave applies if you are required to carry out duties with the State Emergency Service, Country Fire Authority or other recognised emergency service organisation in an emergency situation.

83. At our discretion, we may approve additional days of Emergency Services Leave until you are able to return to work. Any additional days of Emergency Services Leave will be unpaid leave unless you choose to access any of your accrued annual leave or long service leave entitlements.

84. Emergency Services Leave is not cumulative nor will it be paid out on termination of your employment.

What if you are required to attend for Jury Service?

85. If you are employed on a full time or part time basis you will be allowed leave of absence during any period when you are required to attend for jury service.

86. If you are allowed a leave of absence for jury service, then during that leave of absence you will be paid the difference between:

    (a) the jury service fees that you are receiving; and

    (b) your Ordinary Time Earnings for the period that you are attending jury service.

87. You will be required to provide us with proof of the jury service fees that you received and also proof of your requirement to attend and your attendance at jury service.

88. You must give us notice of the requirement for you to attend jury service as soon as practicable after receiving notification to attend.

89. If you are on jury service then you will not be required to attend work until the completion of that jury service. However, if jury service on any day is less than four hours and your ordinary rostered hours of work would otherwise be worked later or earlier in the day, you are expected to report for work for your normal rostered hours less the time spent on jury service.

90. If your roster at the time of being required to attend for jury service includes weekend work, you will be given time off without loss of pay so that the combination of consecutive jury and ordinary work days does not exceed the number of days on which you would normally be required to work ordinary hours in that week.

What is your entitlement to Blood Donor Leave?

91. If you are employed on a full time or part time basis and you are absent with our approval during ordinary working hours for the purpose of donating blood, then you will not suffer any deduction of pay up to a maximum of 2 hours on each occasion and subject to a maximum of 4 separate absences for the purpose of donating blood each calendar year.

92. If you are intending to donate blood, you must arrange in advance for your absence to be on a day suitable to us and to be as close as possible to the beginning or ending of your ordinary working hours.

93. To be entitled to blood donor leave you will provide proof of attendance at a recognised place for the purpose of donating blood and the duration of such attendance.

94. If you are intending to donate blood you will notify us as soon as possible of the time and date upon which you are requesting to be absent.

What is your entitlement to Study Leave?

95. You may apply for unpaid study leave up to 2 weeks per calendar year for the purpose of preparing for and participating in exams and assignments.

96. Study leave may be taken in a continuous period or in single day absences.

97. Study leave does not include any training that you are directed by us to undertake.

98. You must make a written application for study leave at least 1 month in advance.

99. We will endeavour wherever possible to accommodate your request for study leave. However, in the granting of study leave, such factors as your attendance record, as well as the store's operational requirements, will be taken into account.

100. Any period of unpaid study leave will not count as service for the calculation of other leave entitlements under this agreement.

What if there is a Natural Disaster?

101. Subject to our approval, you will be entitled to up to 3 days paid leave in any calendar year for the purpose of natural disaster leave.

102. To be eligible for natural disaster leave you must be unable to attend work because of a natural disaster. A natural disaster may include a flood, cyclone, storm surge or fire.

103. You will be paid natural disaster leave at your Base Rate of pay for the ordinary hours you would have worked on the day or days.

104. At our discretion, we may approve additional days of natural disaster leave until you are able to return to work. Any additional days of natural disaster leave will be unpaid leave unless you choose to access any of your accrued annual leave or long service leave entitlements.

105. Natural disaster leave is not cumulative nor will it be paid out on termination of your employment.

What is your entitlement to Defence Force Reserves Leave?

106. We may approve you to take up to 2 weeks leave in any calendar year for the purpose of Defence Force Reserves leave.

107. To be eligible for Defence Force Reserves leave you must be a member of the Australian Defence Force Reserves and such leave must be for the purpose of participating in training camps, or equivalent continuous duty.

108. Defence Force Reserves leave will be unpaid leave unless you choose to access any of your accrued annual leave or long service leave entitlements.

109. At our discretion, we may approve additional days of Defence Force Reserves leave. Any additional days of Defence Force Reserves leave will be unpaid leave unless you choose to access any of your accrued annual leave or long service leave entitlements.

110. If you request Defence Force Reserves leave, you must furnish evidence of your entitlement to such leave before we will approve it.

What is your entitlement to Domestic and Family Violence Leave?

111. We are committed to providing support to team members that experience domestic or family violence and will treat all such matters with confidentiality.

112. If you are employed on a full time or part time basis you may, with our approval, seek to access your accrued Personal/Carer's Leave if you are experiencing family or domestic violence. We will not unreasonably withhold access to accrued Personal/Carer's Leave if you are experiencing domestic or family violence.

113. You may seek to access your accrued Personal/Carer's Leave if you need time off work for medical or legal assistance, court appearances, counselling, relocation, or to make other safety arrangements.

114. If you are employed on a full time or part time basis and are supporting a member of your immediate family who is experiencing family or domestic violence, you may with our consent, access your accrued Personal/Carer's Leave to accompany them to court or hospital or to mind children.

115. You may be required to provide reasonable evidence to support your application to access Personal/Carer's leave because you are experiencing domestic violence such as a medical certificate, a document issued by the police service or a court, or a statutory declaration.

116. In addition all team members are entitled to 5 days' unpaid leave to deal with family and domestic violence, as follows:

    (a) such leave is available in full at the start of each 12 month period of the employee's employment; and

    (b) does not accumulate from year to year.

Public Holidays

What is the definition of public holiday?

117. For the purpose of this agreement, the following days shall be public holidays:

- 1 January (New Year's Day);
- 26 January (Australia Day);
- Good Friday;
- Easter Monday;
- 25 April (Anzac Day);
- 25 December (Christmas Day);
- the Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
- 26 December (Boxing Day); and
- any other day declared to be a public holiday by or under a law of the State or Territory in which the team member is principally engaged to perform work, other than a day, or kind of day, that is excluded by the regulations made for the purposes of the Act from counting as a public holiday, and
- if, in any calendar year, only 10 public holidays have been declared as public holidays in a particular State or Territory, then one additional day as follows:
  - in Western Australia– Easter Saturday;
  - in New South Wales – the first Tuesday in November;
  - in all other states and territories – a day nominated by us.

118. If, under a law of a State or Territory, a day or part-day is substituted for a day or part-day that would otherwise be a public holiday because of clause 117, then the substituted day or part-day is the public holiday. Where such substitution occurs, the entitlements set out in this agreement will apply on the substituted day only, and the actual day set out in clause 117 above will be treated as an ordinary working day and will not attract public holiday rates.

119. If, under a law of a State or Territory, a day or part-day is declared to be an additional day for a day or part-day that is a public holiday because of clause 117, the additional day will not attract the benefits listed in clause 123 of this Agreement.

What are your public holiday entitlements?

120. All team members are entitled to a day off on a public holiday without loss of pay however, team members may be requested to work on a public holiday.

121. If you are required to work on a public holiday:

(a) you will be paid for any ordinary hours that you work on the day at the public holiday rate for your classification; and

(b) if you are employed on a permanent basis and unless you agree otherwise, you will be rostered to work at least the same number of ordinary hours that you would ordinarily be required to work on that day of the week if it were not a public holiday. If we provide you with a lesser number of ordinary hours on the public holiday, then the difference in hours will be paid to you at your Base Rate; and

(c) if you are required to work overtime on a public holiday then those overtime hours will be paid for at 300% of the applicable Base Rate for a permanent team member.

Example

If you are a full time team member, and usually work 7.6 hours per day, but only work 6 hours on a public holiday, you will be entitled to be paid for 6 hours at the public holiday rate for your classification and 1.6 hours at your Base Rate.

122. If you are not required to work on a public holiday you will receive the entitlement in clause 123, provided:

(a) you are a full time team member; or

(b) you are a part time team member and:

(i) you are rostered to work 16 shifts in a 4 week cycle; and

(ii) you are rostered to work on different days each week and the public holiday falls on a day of the week that the team member works in any week of their roster cycle.

123. You will receive one of the following entitlements by mutual agreement (for the public holiday or the substituted day, but not both), provided your working situation applies to clause 122:

(a) an additional day's wages; or

(b) another day off without loss of pay within 60 days of the public holiday or during the week prior to the public holiday; or

(c) if mutual agreement cannot be reached, an additional day's wages.

124. The entitlements outlined in clauses 122 and 123 above will not apply if you work your ordinary hours on Monday to Friday only and the public holiday falls on a Saturday or Sunday.

125. For the purposes of clause 123, a 'day' will mean:

(a) 7.6 hours if you are employed on a full time basis; and

(b) if you are employed on a part time basis, the average number of ordinary hours worked per day in the 4 weeks prior to the public holiday.

126. If you are on approved leave without pay directly before and after a Public Holiday then the Public Holiday is unpaid.

Work on public holidays

127. You acknowledge that given the nature of our business it is necessary for us to trade on public holidays and to meet operational demands we require work to be performed on those days.

128. At least 21 days in advance, we will call for volunteers to work during the following times:

(a) on a public holiday; and

(b) on any day that is declared under a law of a State or Territory to be a Substituted Day; and

(c) after 6pm on either:

- 24 December; or
- 31 December.

129. If after calling for volunteers as per clause 128, there are insufficient volunteers to meet our operational needs, then subject to clause 130 we may require you to work during these times. When deciding whether or not to require you to work at these times we will consider the number of holidays that you have been given off in the past in comparison with other team members in your workplace.

130. If you are required to work on a public holiday listed in clause 117, then you may refuse to do so only if you have reasonable grounds for refusing such a request. When considering whether or not you have reasonable grounds for refusing such a request, we will have regard to those factors as set out in the Act.

131. The 21 days' notice specified in clause 128 will be shortened if the declaration of the public holiday occurs less than 21 days before the date of the public holiday.

132. If the Christmas Day public holiday is substituted to a day other than 25 December any work performed on 25 December will be paid at the same rate as overtime.

Termination, Redundancy and Consultation

What notice is required to terminate your employment?

133. If you are a permanent team member, your employment may be terminated by either us or you giving at least the following notice in writing or payment in lieu (based on the amount you would have received had you continued working during your notice period, including penalties, loadings, allowances and other separately identifiable entitlements):

Your period of continuous service	Notice required
1 year or less	1 week
More than 1 year and up to 3 years	2 weeks
More than 3 years and up to 5 years	3 weeks
More than 5 years	4 weeks

134. If you are 45 years of age or older with at least two years of continuous service then we must give you one extra week of notice if we terminate your employment.

135. If you terminate your employment and do not give us the right amount of notice, we can withhold an amount from your final pay equal to the Ordinary Time Earnings that you would have earned for the period of notice that you failed to give. We may agree to reduce the amount of notice that you are required to give us.

136. There is no requirement for us to give you notice of termination:

(a) if you are employed on a casual basis; or

(b) if you are employed on a fixed term or fixed task basis; or

(c) where your employment is terminated because of serious misconduct (for example: drunkenness, theft, fraud, assault, refusal to carry out a lawful and reasonable instruction, conduct that causes a serious and imminent risk to health and safety, or the reputation, viability, or profitability of our business);

(d) if you are a team member to whom a training arrangement applies and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement and the employment is terminated at the end of that period.

Abandoning your employment

137. If you are absent from work for 3 or more consecutive shifts, without our consent and without notification to us, you may be deemed by us to have abandoned your employment. Subject to reasonable endeavours by us to contact you and there being no genuine reason for your failure to notify us, the we will be entitled to treat the employment as having been terminated at your initiative.

What is our duty to consult over the introduction of major changes?

138. Where we have made a definite decision to introduce major changes in production, program, organisation, structure of technology that are likely to have significant effects on team members, we will notify those team members.

139. "Significant effects" include termination of employment, major changes in the composition, operation or size of our workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of team members to other work locations and the restructuring of jobs. An exception to these cases will be where this agreement makes provision for alterations of any of the matters referred to in this clause. In those cases the alteration will be deemed not to have significant effect.

140. We will discuss with the team members affected the introduction of the changes referred to in clause 138, the effects that the changes are likely to have on team members and measures to avert or mitigate the adverse effects of such changes on team members.

141. The discussions between us and affected team members will commence as early as practicable after a definite decision has been made by us to make the changes referred to in clause 138.

142. For the purposes of the discussions, we will provide in writing to the team members concerned all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on team members and any other matters likely to affect team members, provided that we will not be required to disclose any confidential information.

143. The parties may appoint a representative for the purposes of this consultation process.

What is our duty to consult over roster changes?

144. We will consult team members about a proposed change to their regular roster or ordinary hours of work.

145. When consulting team members about a change to their regular roster or ordinary hours of work, we must:

    (a) provide information to team members, and their representatives (if any), about the change; and

    (b) invite team members and their representatives (if any) to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities, study commitment and concerns in relation to safe transportation home); and

(c) give prompt, genuine and proper consideration to any views about the impact of the change that are given by the team members or their representatives (if any).

What if your position is made redundant?

146. Unfortunately sometimes it is necessary to terminate someone's employment because their position has been made redundant.

147. If you are employed on a full time or part time basis and your position becomes redundant then our preferred option is to transfer you to an acceptable alternative position rather than terminating your employment. If this occurs you will not be entitled to any severance pay, but if you are employed on a full time or part time basis you will be entitled to be given notice of the change, in accordance with the notice periods in either clause 133 or 134. If the alternative position is a lower paid position then your ordinary time rate will be maintained at the higher rate for the notice period.

148. Subject to clauses 147 and 149, if your employment is terminated because your position was made redundant, then you will be entitled to be paid severance pay in accordance with the following table:

Less than 1 year	Nil	Nil
1 year but not more than 2 years	4 weeks' pay	5 weeks' pay
More than 2 years but not more than 3 years	7 weeks' pay	8.75 weeks' pay
More than 3 years but not more than 4 years	10 weeks' pay	12.5 weeks' pay
More than 4 years but not more than 5 years	12 weeks' pay	15 weeks' pay
More than 5 years but not more than 6 years	14 weeks' pay	17.5 weeks' pay
More than 6 years	16 weeks' pay	20 weeks' pay

149. Severance payments will be calculated based on your Ordinary Time Earnings.

150. Subject to clause 151, if we make the decision to terminate your employment because your position is made redundant, then you will be allowed up to one day's time off without loss of pay during each week of the notice period for the purpose of seeking other employment. If you have been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, you will, at our request, be required to produce proof of attendance at an interview or you will not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

151. You will not be entitled to severance payments specified at clause 148, or the entitlement contained within clause 150, if:

(a) you are employed on a casual basis;

(b) you are employed on a fixed term or fixed task basis;

(c) the Fair Work Commission makes an order to that effect;

(d) any of the employers that are party to this agreement offer you employment in an alternative position and that offer contains terms and conditions that are substantially similar to and no less favourable, considered on an overall basis, than the terms and conditions applicable to you immediately prior to your original position being made redundant.

(e) the business or part of the business is transmitted from us ("current employer") to another entity ("the new employer"), and:

(i) you receive an offer of employment from the new employer; and
(ii) that offer contains terms and conditions that are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to you at the time of ceasing employment with us; and
(iii) the offer provides that the new employer will recognise the period of continuous service that you had with us to be continuous service with the new employer.

Other conditions

Will you be supplied with clothing?

152. Upon the commencement of your employment, and each new year, you will receive clothing items in line with your division's dress code policy as amended from time to time. This policy does not form part of this agreement.

153. If as a result of fair wear and tear, you require an additional replacement clothing item then you may approach your immediate Manager with your request. You may be provided with up to 2 additional replacement clothing items per year.

154. Where you are provided with and required to wear and launder any special uniform, you will be paid the following applicable allowance:

    (a) for a full-time employee—$6.25 per week; or

    (b) for a part-time or casual employee—$1.25 per shift.

155. The allowance referred to at clause 154 is not payable where team members wear items of fashion or apparel which does not contain a logo, insignia or reference to any Employer (for example, team members employed to work at Rebel Sport who wear items of fashion or sporting apparel typically sold in that retail establishment).

156. We take your safety seriously and if in the course of completing your assigned duties you are required to wear personal protective equipment (**PPE**), including but not limited to gloves, safety goggles, apron etc, this will be supplied to you at no cost. If you believe that you require additional PPE in order to safely perform your role, which has either not been supplied or requires replacement, you may approach your immediate Manager with your request, which will be reasonably considered.

Are you entitled to a team member discount?

157. We will offer you a team member discount.

158. The conditions that apply to the team member discount will be as per our policy as amended from time to time. This policy does not form part of this agreement.

Can you be employed on a Supported Wage?

159. You may be engaged under the Supported Wage System in accordance with the Full Bench Decision of the Australian Industrial Relations Commission of 10 October 1994 (Print L 5723). This decision specifies the conditions that will apply to team members who because of the effects of a disability are eligible for a supported wage.

160. You should contact our HR Department for a copy of the relevant decision.

161. If you are employed under the Supported Wage System you will be paid the rates of pay applicable at the time of employment. The 10% minimum rate level will reflect all national wage increases that have occurred.

First Aid Training

162. No team member shall be required to perform first aid duties, however, we may cover the cost of any first aid training course for you if requested.

What if you attend a training session?

163. We will provide all necessary training and development throughout your employment necessary for you to be successful in your role. In addition, we will also provide voluntary training from time to time where you may elect to participate to improve your skills or product knowledge. All training will be considered voluntary unless specifically communicated as being compulsory.

164. You will be given at least one weeks' notice of the requirement to attend a training session or team meeting that is outside your ordinary hours of work.

165. If you are directed to attend a compulsory training session or team meeting you will be entitled to the minimum shift payment clause 17. This will not count as an additional shift for any purpose under this agreement.

166. For all training sessions and team meetings that are voluntary, that is not specifically declared as compulsory, and you choose to attend, then you will receive no payment or allowance for attending. It will be entirely at your discretion as to whether or not you decide to attend. If you decide not to attend, we will not treat you less favourably than a team member who decides to attend, because of your decision.

167. If a compulsory training session or team meeting takes place on your normal working day, you will be paid at the ordinary rate of pay even if the training session or team meeting extends beyond ordinary hours.

Can you be transferred to another workplace?

168. We may transfer you, either upon a temporary or permanent basis, to another one of our workplaces without your agreement so long as it is within a reasonable commute of your primary place of residence. Your transportation requirements will be taken into consideration.

What if you are required to travel for work purposes?

169. If you are required to use your own car for work purposes (not including travel between your primary place(s) of work and home), you will be paid an allowance of $0.78 per kilometre . You will also be reimbursed for any reasonable and additional expenses associated with this work related travel, for example tolls and parking fees.

170. If you are required to temporarily work at a place away from your usual employment you will be paid:

    (a) an allowance of $0.78 per kilometre for the additional kilometres you travel in your own car to the temporary place of work (not including the normal distance that you would have travelled between your home and your primary place(s) of work;

    (b) for all time reasonably spent in reaching and returning from such place (in excess of the time normally spent in reaching and returning from such place (in excess of the time normally spent in travelling from your home to your usual place of employment and returning); and

(c) any fare reasonably incurred in excess of those normally incurred in travelling between your home and your usual place of employment.

171. If you request to work temporarily at a place away from your usual place of employment you shall not be entitled to the benefits contained at clause 170.

Our commitment to maximising permanent employment opportunities

172. The parties are committed to maximising permanent employment.

173. Where we consider that existing rostered hours of work can be conveniently combined to provide permanent employment, we will arrange for those team members that are employed on a casual basis, who are willing and able to commence on a full time or part time basis to fill any available permanent positions. However, the team member who is employed on a casual basis must be deemed by us to have the knowledge, skills and abilities to be able to perform in the permanent position before it is offered to them.

174. Casual employees who have in the preceding period of 12 months worked a regular and systematic pattern of hours on an ongoing basis, without significant adjustment, may request to have their employment converted to full time or part time employment.

(a) You must submit your request in writing to your immediate Manager which should specify the role sought and further information concerning your general availabilities for work.

(b) We will reasonably consider any such request and provide a response, in writing, within 21 days from the date the request was made. We will only refuse a request upon reasonable business grounds.

(c) Where we are able to accommodate your request we will confirm the details in a revised Contract of Employment.

(d) We will make all reasonable efforts to provide new employees with information concerning their right to request casual conversion within 12 months from the commencement of their employment.

Can you be employed on a qualifying period?

175. If you are employed on a full time or part time basis then you will be on a qualifying period for the first 6 months of your employment with us. If you are on unpaid leave during any of this period, then your qualifying period will be extended by the amount of leave that you have taken during that first 6 month period.

176. This clause does not affect any applicable minimum employment period under the Act.

Can you be employed on a fixed or maximum term contract?

177. You may be employed for a fixed term or maximum term. Such an arrangement will be for a maximum period of 52 weeks, or 104 weeks for parental leave replacement contracts.

178. If you were employed by us immediately prior to commencing a fixed term or maximum term contract, then if that arrangement ends of its own fruition (at the pre-determined end date) or for operational reasons, then we will offer you continued employment in the same employment type and classification level as you were previously employed in prior to entering into the fixed or maximum term arrangement. If we are unable to accommodate this redeployment then you will be paid severance pay in accordance with clause 148 of this agreement.

179. If you have accrued annual leave at a higher ordinary time rate whilst on fixed or maximum term contract than your Base Rate applying immediately prior to entering into the fixed or maximum term contract, then at the conclusion of the fixed or maximum term contract you will be paid out the difference between the value of the annual leave accrued whilst on the contract and the value of the annual leave that you would have accrued during that same period if you had not accepted the fixed term or maximum term contract.

Set-Up Team

180. During the course of your employment either we, or you, may request to undertake Set-up Work within a dedicated Set-up Team upon a short term basis. When working in a Set-up Team you will continue to perform some of the tasks and functions which are covered by this agreement.

181. There is no obligation on you to perform Set-up Work if requested to do so.

182. Where you agree to work as part of a Set-up Team your terms and conditions of employment will remain as per this agreement, however, depending on the nature of the set-up operations at the time we may provide you with entitlements and benefits which exceed those contained within this agreement. Any such additional entitlements will be confirmed in writing prior to you commencing Set-up Work.

183. Upon the conclusion of your assignment with the Set-up Team you will resume your usual role.

184. For the avoidance of doubt, any team member covered by this agreement who performs Set-up work in a specialised or leadership role within the Set-up Team including, but not limited to, Team Member (Safety Champion); Team Member (Forklift); Senior Team Member; Assistant Store Improvement Manager; Store Improvement Manager; and Senior Store Improvement Manager will not be covered by the terms of this agreement when performing that work.

Dispute resolution procedure

What types of disputes does this procedure apply to?

185. The dispute resolution procedure in this section applies to disputes about matters arising under this agreement or the National Employment Standards between us and team member(s).

186. In this section, 'parties' means a party to the dispute or the parties to the dispute.

187. The parties may separately appoint a representative of their choosing for the purposes of the procedures in this section.

The parties must firstly attempt to resolve the dispute at the workplace level

188. Firstly, there must be a genuine attempt to resolve any disputes at the workplace level between the team member(s) involved and their immediate Supervisor(s).

189. If the dispute remains unresolved or it is inappropriate for the matter to be dealt with between the team member(s) involved and their immediate Supervisor(s), there must be a genuine attempt to resolve the dispute via discussions between the team member(s) involved and their next level of management.

190. If the dispute remains unresolved, there must be a genuine attempt to resolve the dispute via discussions between the team member(s) involved and our Human Resource representative.

What is the process if the dispute cannot be resolved at the workplace level?

191. If the dispute is unable to be resolved at the workplace level, and all of the steps referred to in clauses 188 to 190 have been taken, either party to the dispute may refer the matter(s) in dispute to the Fair Work Commission.

192. The FWC may deal with the dispute in 2 stages:
    (a) The FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
    (b) if the FWC is unable to resolve the dispute at the first stage, the FWC may then:
        (i) arbitrate the dispute; and
        (ii) make a determination that is binding on the parties.

Whilst the dispute is being resolved

193. While the dispute is being resolved, work must continue as usual.

Flexibility term

194. Notwithstanding any other provision of this agreement, we may agree with you to vary the application of certain terms of this agreement to meet the genuine needs of us and you on an individual basis. Those terms relate to the following:

(a) arrangements for when work is performed;

(b) overtime rates;

(c) penalty rates;

(d) allowances; and

(e) leave loading.

195. We are required to ensure that any individual flexibility arrangement agreed under this clause:

(a) is about matters that are permitted under the Act;

(b) does not include a term that would be an unlawful under the Act;

(c) is in writing, names the parties to the individual flexibility arrangement and is signed by us and you and, if you are under 18 years of age, your parent or guardian;

(d) states each term of this agreement that the parties have agreed to vary;

(e) details how the application of each term has been varied by agreement between the parties;

(f) has been genuinely made without coercion or duress;

(g) results in you being better off overall than you would have been if no individual flexibility arrangement had been agreed to;

(h) details how the individual flexibility arrangement results in you being better off overall;

(i) states the date upon which the individual flexibility arrangement commences to operate; and

(j) specifies that the arrangement may be terminated:
    (i) by either party giving not more than 28 days' notice of termination, in writing, to the other party; or
    (ii) at any time, by written agreement between you and us.

196. We will give you a copy of the individual flexibility arrangement within 14 days after it is agreed to.

197. The individual flexibility arrangement must not require the approval or consent of a person other than us and you (unless you are under 18 years of age in which case approval of your parent or guardian is required).

198. The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between you and us contained in any other term of this enterprise agreement.

Union matters

Trade Union Training Leave

199. Union Delegates of the SDA shall be granted up to six days leave with pay each calendar year, not cumulative, to attend courses conducted or approved by the SDA which are designed to promote good industrial relations.

200. The application to us must be in writing and include the nature, content and duration of the course to be attended.

201. The granting of leave pursuant to this clause shall be subject to the team member, or SDA, giving not less than 4 weeks' notice of the days on which the course will be held and the venue of such course.

202. Leave of absence granted pursuant to this clause, shall count as service for all purposes of this agreement.

203. A team member may be required to satisfy us of attendance at the course to qualify for payment of leave.

204. Unless we agree otherwise, the leave may not be taken during the following times:

    (a) the three week period immediately prior to Christmas Day;

    (b) the three week period immediately after Christmas Day;

    (c) the week immediately preceding and subsequent to Easter Sunday;

    (d) during stocktake;

    (e) during new store set ups and refurbishments; or

    (f) a time when the Union Delegate cannot be released from work due to extraordinary circumstances as agreed between us and the Branch Secretary of the Relevant Union that the Union Delegate represents.

Union Delegates

205. No more than one Union Delegate shall be appointed per Area Manager group of stores. We recognise the Union Delegates who are appointed by the SDA as performing the function of on-site representative of the SDA, noting that their duty as a team member is paramount.

206. Delegates' on-site business:

    Union Delegates will be allowed, subject to prior notification to their supervisor or manager, reasonable paid time (up to 2 hours per month) during their ordinary working hours to conduct legitimate on-site business of the SDA with workers including the collection of information from workers. Union Delegates shall have reasonable access to resources to perform their role, including a private meeting room and access to a telephone, fax machine, email, intranet and photocopier.

Provided that:

(a) it is for the purpose of genuine business of the SDA;

(b) it does not unduly interfere with the work of the Union Delegate and / or any other team member;

(c) it will not oblige us to make any payment to the Union Delegate for any period in which they are engaged in industrial action (whether or not such action is protected); and

(d) if it involves the Union Delegate having to stop work, the Union Delegate has provided us with prior notice of the intention to stop work and the precise nature of the SDA's business that they are stopping work to attend to;

207. We may withdraw or withhold the Union Delegate's access to and use of our email system where:

(a) the Union Delegate accesses or uses our email system for any purpose other than to directly communicate with the SDA or a Union Delegate of the SDA;

(b) the Union Delegate accesses or uses our email system other than in accordance with our policy on *'Acceptable Use of Email and Internet Services'* as amended by us from time to time (this policy does not form part of this agreement);

(c) the Union Delegate has not gained prior approval from their immediate supervisor to spend time accessing or using our email system;

(d) the time spent by the Union Delegate accessing and using our email system becomes disruptive to normal operations or our email system; or

(e) management has not received at least 4 weeks' notice from the SDA that the Union Delegate requires access to our email system.

Union Meetings

208. Team members attending Union meetings on site will be granted paid release for up to two hours ordinary time annually for these meetings, subject to the following conditions:

(a) the SDA may only convene two (2) such paid union meetings in that particular premises in each calendar year;

(b) the SDA must give our Human Resource Manager at least 7 days prior notice of the paid union meeting. Such paid union meetings will only take place once we have given our prior agreement to the time and date of the meeting. We will not unreasonably refuse to agree on a time and date for such a meeting;

(c) only those team members that are, or are eligible to become, members of SDA are permitted to attend the paid union meeting; and

(d) such paid union meetings will not unduly interfere or disrupt the performance of work.

Notice Board

209. We will allow the Union Delegate to place formal notices of the SDA that have been approved by us, on notice boards within the area that they represent.

Payroll Deductions

210. Where written authority is provided by the team member, we will deduct membership fees from the team member's wages or salary and remit them, along with a schedule of such contributions, to the SDA, or any other nominated organisation, at monthly intervals. The team member authorises us to deduct fees when the team member completes a payroll deduction form/process.

Renegotiation of Agreement

211. The Employers, team members and the SDA ("the parties") agree to commence negotiations for a new enterprise agreement to succeed this agreement at least 3 months before the nominal expiry date of this agreement. The parties intend to conclude these negotiations prior to the nominal expiry date.

212. Despite clause 211 the parties agree that there shall be no obligation to commence negotiations for a new enterprise agreement, or continue with negotiations if commenced, during the months of November, December and January being our busy trading period.

213. These negotiations will be conducted on a collective basis between the parties.

Classifications

Retail Classifications

Retail Team Member

214. If you are employed as a Retail Team Member you may be required to work in connection with a retail establishment or as part of an events team. Team Members will usually work under general supervision but are still expected to be willing and able to work without direct supervision and to make your own decisions when necessary.

215. Expectations of Super Retail Group Team Members include the following:

- Ability to communicate effectively;
- Complete all training requirements for your position;
- Possess detailed stock knowledge;
- Follow reasonable management instruction;
- Abide by company policies and procedures; and
- Perform your role within safety guidelines.

216. Super Retail Group Team Members will be required to undertake a varying range of responsibilities. These responsibilities may include, but are not limited to:

(i) Customer Service	(ii) Stock Work & Replenishment
(iii) Merchandising	(iv) Housekeeping and Incidental Cleaning
(v) Administrative Tasks	(vi) Asset Protection
(vii) WHS Procedures	(viii) Audit Requirements
(ix) Training	(x) Stocktake
(xi) Point of Sale Operation	(xii) Goods Receipting
(xiii) Fulfilment of Online Orders	(xiv)Product Fitment, Assembly, Installation or Removal
(xv) Assembly and Installation of Shelving and Retail Displays	

217. Responsibilities may include work of a manual nature.

218. These responsibilities may change over time with the addition of other responsibilities as we may reasonably require in order to meet the operating needs of the business and will be within the limits of the team member's skills, competence or training.

219. The team member will work as part of a team to ensure that productivity standards are achieved. The team member will conscientiously and diligently carry out responsibilities in respect of the Super Retail Group business and will use his or her best endeavours to promote and enhance the Super Retail Group business.

Shift Supervisor

220. Where the management team are absent from a store (other than an absence on a work break i.e. meal or rest break) or when performing duties away from the store, we may offer, and you may accept, a temporary appointment to the duty of Shift Supervisor.

221. Whilst appointed to the classification of Shift Supervisor, you could be required to perform any of the duties of a Retail Team Member and any of the following:

- supervising the store and the team members;
- opening and / or closing the store.

222. Holding store keys is not determinative of being appointed to the classification of Shift Supervisor.

Qualified Bike Mechanic (or equivalent)

223. As a Qualified Bike Mechanic (or equivalent) you will need to:

- hold a current qualification in bike mechanic operations; or
- have at least 2 years' experience as a bike mechanic and have been assessed by us as being competent in this function.

224. As a Qualified Bike Mechanic you will be expected to perform all of the duties of a Retail Team Member, and your duties will also include:

- servicing and repair of bikes;
- customer service (including processing of sales at Point of Sale);
- maintaining a clean and safe workshop;
- building of bikes for shop floor;
- ordering of parts and accessories;
- managing workshop bookings;
- maintenance of workshop tools and equipment; and
- assisting other team members with technical questions.

Administrative Team Member Classifications

225. The administrative team member classifications only apply to you if you are employed by us in a position whose primary responsibilities include administration tasks.

Administrative Team Member Level 1

226. An Administrative Team Member Level 1 may have limited relevant experience. Initially work is performed under close direction using established practices, procedures and instructions.

Tasks indicative of an Administrative Team Member Level 1 include:

- reception, directing calls, issuing and receiving standard forms, relaying internal information and initial greeting of visitors;
- maintenance of basic records;
- filing, collating, photocopying etc; and
- handling or distributing mail including messenger service.

Administrative Team Member Level 2

227. An Administrative Team Member Level 2 has had sufficient experience and/or training to enable them to carry out their assigned duties under general direction. Whilst they are responsible and accountable for their own work, in some situations detailed instructions may be necessary. The work of these team members may also be subject to final checking and as required progress checking.

Tasks indicative of an Administrative Team Member Level 2 include:

- reception as in Level 1 and in addition responding to enquiries as appropriate, consistent with the acquired knowledge of the organisation's operations and services, and/or where presentation and use of interpersonal skills are a key aspect of the position.
- computer use including key software programs (eg. Word, Excel, Powerpoint)
- maintenance of records relating to the following:
    - reconciliation of accounts;
    - invoices;
    - payroll data;
    - letters etc; and
- provide general advice and information on the organisation's products and services, e.g. front counter/telephone.

Administrative Team Member Level 3

228. An Administrative Team Member Level 3 is able to perform specialised or non-routine tasks or features of the work. Team members require only general guidance or direction and there is scope for the exercise of limited initiative, discretion and judgment in carrying out their assigned duties.

Tasks indicative of an Administrative Team Member Level 3 include:

- prepare financial reports
- cash payment summaries
- banking report and bank statements;
- maintain wage and salary records;
- provide specialised advice and information on the organisation's products and services;
- respond to client/public/supplier problems within own functional area utilising a high degree of interpersonal skills; and
- experienced computer use including key software programs (eg. Word, Excel, PowerPoint)

Administrative Team Member Level 4

229. An Administrative Team Member Level 4 has achieved a level of organisation or industry specific knowledge sufficient for them to give advice and/or information to the organisation and clients in relation to specific areas of their responsibility. They would require only limited guidance or direction and would normally report to more senior staff as required. Whilst not a pre-requisite, a principal feature of this level is supervision of team members in lower levels in terms of responsibility for the allocation of duties, co-ordinating work flow, checking progress, quality of work and resolving problems.

Tasks indicative of an Administrative Team Member Level 4 are:

- executive support services which may include the following: maintain executive diary; attend organisational meetings and take minutes;
- able to prepare financial/tax schedules, calculate costings and/or wage and salary requirements; complete personnel/payroll data for authorisation; reconciliation of accounts to balance.
- advise on/provide information on one or more of the following:
    - employment conditions
    - workers compensation procedures and regulations;
    - superannuation entitlements, procedures and regulations; and
- experienced computer use including key software programs (e.g. Word, Excel, PowerPoint)

Section 12

Definitions/Interpretation

230. '**Act**' means the *Fair Work Act 2009*, as varied from time to time.

231. The words '**you**', '**your**' and '**yourself**' are to be interpreted as referring to team members to whom this agreement applies.

232. The words '**us**', '**our**' or '**we**' are to be interpreted as referring to the applicable Employer listed in section 1 of this agreement.

233. '**Base Rate**' means your ordinary time rate as set out in Appendix A (Wages) but does not include:

    (a) your Sunday rate;

    (b) your public holiday rate; or

    (c) any other penalties, loadings or allowances.

234. '**Casual**' means being employed on an hourly basis without any expectation of regular, systematic or long-term employment. Casual team members are paid a loaded Base Rate, which includes a 25% casual loading, to compensate for the fact that they are not entitled to annual leave, paid personal/carer's leave, paid parental leave, paid compassionate leave, notice of termination, redundancy benefits, and other attributes of permanent employment.

235. '**Delegate Areas**' means each of our Regional or Area Manager group of stores.

236. '**Ordinary hours**' means those hours that you work that are within ordinary hours as defined in clause 17 of this agreement.

237. '**Mutual Agreement**' means agreement between you and us, as the context requires.

238. '**Ordinary Time Earnings**' means the number of ordinary hours that you are normally required to work during the period in question, multiplied by your Base Rate.

239. '**Permanent basis**' means either a full time or part time basis.

240. '**Peak Needs**' means:

    (a) the 4 weeks prior to, and the 2 weeks following, Christmas each year;

    (b) during stocktake each year;

    (c) the week prior to, and the week following, Easter each year; and

    (d) during new store set ups and refurbishments.

241. '**Relevant Union**' means the SDA for team members that are, or are eligible to become, members of the SDA.

242. **'Set-up Team'** means team members who are assigned to perform Set-up Work.

243. **'Set-up Work'** means work related to the establishment or commissioning of a new store, de-commissioning of a closed store and/or the refurbishment or reconfiguration of an existing store.

244. **'Team member'** means employees to whom this agreement applies.

245. **'Union Delegate'** means a team member:

(a) who has been duly elected or appointed by their Relevant Union, in accordance with the Relevant Unions rules, as that Relevant Union's delegate for one of the Relevant Union's Delegate Areas; and

(b) who is employed by us to work in the Delegate Area that they represent.

Signatories

SIGNED FOR AND ON BEHALF OF THE EMPLOYERS

Jane Kelly
Signature of authorised person

Jane Kelly
Full name

751 Gympie Road Lawnton Qld 4501
Address

Chief Human Resources Office – Spicer Retail Group.
Authority to sign the Agreement

SIGNED FOR AND ON BEHALF OF: SHOP DISTRIBUTIVE & ALLIED EMPLOYEES' ASSOCIATION

Signature of authorised person

GERARD ANDREW DWYER
Full name

Level 6, 53 QUEEN STREET, MELBOURNE
Address

National Secretary-Treasurer
Authority to sign the Agreement

SIGNED FOR AND ON BEHALF OF:

Signature of authorised person

Full name

Address

Authority to sign the Agreement

Appendix A

Wages

Retail Wages

246. If you are employed as a Retail Team Member you will be paid the following gross hourly wage rates from the commencement of this agreement:

Full Time and Part Time – Retail Team Member							
	Base Rate	Late Night Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Overtime - First 3 hours)	Overtime - After 3 hours
16 years and under	$10.93	$13.02		$18.73	$23.41	$15.62	$20.81
At 17 years	$13.11	$15.62		$22.48	$28.09	$18.74	$24.97
At 18 years	$15.30	$18.22		$26.22	$32.77	$21.86	$29.13
At 19 years	$18.57	$20.82		$29.96	$37.45	$24.98	$33.29
At 20 years *(employed by SRG for 6 months or less)*	$21.85	$26.02		$37.45	$46.81	$31.22	$41.61
At 20 years *(employed by SRG for more than 6 months)*							
At 21 Years and above *(adult)*							

Casual – Retail Team Member							
	Base Rate	Late Night Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Overtime - First 3 hours)	Overtime - After 3 hours
16 years and under	$13.66	$13.66	$14.58	$19.26	$26.01	$18.22	$23.42
At 17 years	$16.39	$16.39	$17.49	$23.10	$31.21	$21.86	$28.09
At 18 years	$19.12	$19.12	$20.40	$26.95	$36.41	$25.49	$32.77
At 19 years	$23.22	$23.22	$23.31	$30.79	$41.60	$29.13	$37.45
At 20 years *(employed by SRG for 6 months or less)*	$27.32	$27.32	$29.13	$38.49	$52.00	$36.41	$46.80
At 20 years *(employed by SRG for more than 6 months)*							
At 21 Years and above *(adult)*							

247. If you are employed as a Retail Team Member you will be paid the following gross hourly wage rates from the first full pay cycle on or after 1 July 2019:

Full Time and Part Time – Retail Team Member							
	Base Rate	Late Night Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Overtime - First 3 hours)	Overtime - After 3 hours
16 years and under	$11.26	$13.41		$17.69	$24.12	$16.09	$21.44
At 17 years	$13.50	$16.09		$21.23	$28.93	$19.30	$25.72
At 18 years	$15.75	$18.76		$24.76	$33.75	$22.51	$30.00
At 19 years	$18.67	$21.44		$28.29	$38.57	$25.72	$34.29
At 20 years *(employed by SRG for 6 months or less)*	$22.50	$26.79		$35.36	$48.20	$32.15	$42.85
At 20 years *(employed by SRG for more than 6 months)*							
At 21 Years and above *(adult)*							

Casual – Retail Team Member							
	Base Rate	Late Night Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Overtime - First 3 hours)	Overtime - After 3 hours
16 years and under	$14.07		$15.02	$18.76	$26.79	$18.76	$24.12
At 17 years	$16.88		$18.01	$22.51	$32.15	$22.51	$28.93
At 18 years	$19.69		$21.01	$26.26	$37.50	$26.26	$33.75
At 19 years	$23.34		$24.01	$30.00	$42.85	$30.00	$38.57
At 20 years *(employed by SRG for 6 months or less)*	$28.13		$30.00	$37.50	$53.56	$37.50	$48.20
At 20 years *(employed by SRG for more than 6 months)*							
At 21 Years and above *(adult)*							

248. Owing to a decision at Fair Work Commission handed down on 1st October 2018, there are additional rate changes for Casual Retail Team Members for Late Night and Saturday hours. These changes occur twice per annum in addition to the July rate changes.

(a) The following rate changes take effect from 1 October 2019 to 28 February 2020:

Casual – Retail Team Member	Late Night Rate	Saturday Rate
16 years and under	$14.48	$15.55
At 17 years	$17.37	$18.66
At 18 years	$20.26	$21.76
At 19 years	$23.34	$24.87
At 20 years *(employed by SRG for 6 months or less)*	$28.93	$31.08
At 20 years *(employed by SRG for more than 6 months)*		
At 21 Years and above *(adult)*		

(b) The following rate changes take effect from 1 March 2020 to 30 June 2020:

Casual – Retail Team Member	Late Night Rate	Saturday Rate
16 years and under	$15.02	$16.09
At 17 years	$18.01	$19.30
At 18 years	$21.01	$22.51
At 19 years	$24.01	$25.72
At 20 years *(employed by SRG for 6 months or less)*	$30.00	$32.15
At 20 years *(employed by SRG for more than 6 months)*		
At 21 Years and above *(adult)*		

249. If you are employed as a Retail Team Member you will be paid the following gross hourly wage rates from the first full pay cycle on or after 1 July 2020:

Full Time and Part Time – Retail Team Member							
	Base Rate	Late Night Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Overtime - First 3 hours)	Overtime - After 3 hours
16 years and under	$11.56	$13.81		$16.57	$24.84	$16.57	$22.08
At 17 years	$13.87	$16.57		$19.88	$29.80	$19.88	$26.49
At 18 years	$16.17	$19.33		$23.18	$34.76	$23.18	$30.90
At 19 years	$18.79	$22.08		$26.50	$39.73	$26.50	$35.32
At 20 years *(employed by SRG for 6 months or less)*	$23.11	$27.60		$33.11	$49.65	$33.11	$44.14
At 20 years *(employed by SRG for more than 6 months)*							
At 21 Years and above *(adult)*							

Casual – Retail Team Member							
	Base Rate	Late Night Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Overtime - First 3 hours)	Overtime - After 3 hours
16 years and under	$14.45	$15.47	16.57	$19.33	$27.60	$19.33	$24.84
At 17 years	$17.33	$18.55	19.88	$23.19	$33.11	$23.19	$29.80
At 18 years	$20.22	$21.64	23.19	$27.04	$38.62	$27.04	$34.76
At 19 years	$23.49	$24.73	26.49	$30.90	$44.14	$30.90	$39.73
At 20 years *(employed by SRG for 6 months or less)*	$28.88	$30.90	33.11	$38.62	$55.16	$38.62	$49.65
At 20 years *(employed by SRG for more than 6 months)*							
At 21 Years and above *(adult)*							

250. Owing to a decision at Fair Work Commission handed down on 1st October 2018, there are additional rate changes for Casual Retail Team Members for Late Night and Saturday hours. These changes occur twice per annum in addition to the July rate changes.

(a) The following rate changes take effect from 1 October 2020 to 28 February 2021:

Casual – Retail Team Member	Late Night Rate
16 years and under	$16.02
At 17 years	$19.22
At 18 years	$22.41
At 19 years	$25.61
At 20 years *(employed by SRG for 6 months or less)*	$32.01
At 20 years *(employed by SRG for more than 6 months)*	
At 21 Years and above *(adult)*	

(b) The following rate changes take effect from 1 March 2021 to 30 June 2021:

Casual – Retail Team Member	Late Night Rate
16 years and under	$16.57
At 17 years	$19.88
At 18 years	$23.19
At 19 years	$26.49
At 20 years *(employed by SRG for 6 months or less)*	$33.11
At 20 years *(employed by SRG for more than 6 months)*	
At 21 Years and above *(adult)*	

251. If you are employed as a Retail Team Member you will be paid the following gross hourly wage rates from the first full pay cycle on or after 1 July 2021:

Full Time and Part Time – Retail Team Member							
	Base Rate	Late Night Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Overtime - First 3 hours)	Overtime - After 3 hours
16 years and under	$11.85	$14.23		$17.07	$25.58	$17.07	$22.74
At 17 years	$14.21	$17.07		$20.47	$30.69	$20.47	$27.29
At 18 years	$16.58	$19.90		$23.88	$35.80	$23.88	$31.83
At 19 years	$18.95	$22.75		$27.29	$40.92	$27.29	$36.38
At 20 years *(employed by SRG for 6 months or less)*	$23.68	$28.42		$34.10	$51.14	$34.10	$45.46
At 20 years *(employed by SRG for more than 6 months)*							
At 21 Years and above *(adult)*							

Casual – Retail Team Member							
	Base Rate	Late Night Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Overtime - First 3 hours)	Overtime - After 3 hours
16 years and under	$14.81	$17.07		$19.91	$28.42	$19.91	$25.58
At 17 years	$17.77	$20.47		$23.88	$34.10	$23.88	$30.69
At 18 years	$20.72	$23.88		$27.86	$39.78	$27.86	$35.81
At 19 years	$23.69	$27.29		$31.83	$45.46	$31.83	$40.92
At 20 years *(employed by SRG for 6 months or less)*	$29.61	$34.10		$39.78	$56.82	$39.78	$51.14
At 20 years *(employed by SRG for more than 6 months)*							
At 21 Years and above *(adult)*							

252. If you are employed as a Retail Team Member you will be paid the following gross hourly wage rates from the first full pay cycle on or after 1 July 2022:

Full Time and Part Time – Retail Team Member							
	Base Rate	Late Night Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Overtime - First 3 hours)	Overtime - After 3 hours
16 years and under	$12.20	$14.65		$17.58	$26.35	$17.58	$23.43
At 17 years	$14.64	$17.58		$21.09	$31.61	$21.09	$28.11
At 18 years	$17.08	$20.50		$24.60	$36.88	$24.60	$32.78
At 19 years	$19.52	$23.43		$28.11	$42.14	$28.11	$37.46
At 20 years *(employed by SRG for 6 months or less)*	$24.40	$29.27		$35.12	$52.67	$35.12	$46.82
At 20 years *(employed by SRG for more than 6 months)*							
At 21 Years and above *(adult)*							

Casual – Retail Team Member							
	Base Rate	Late Night Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Overtime - First 3 hours)	Overtime - After 3 hours
16 years and under	$15.25	$17.58		$20.50	$29.27	$20.50	$26.35
At 17 years	$18.30	$21.09		$24.60	$35.12	$24.60	$31.61
At 18 years	$21.35	$24.60		$28.69	$40.97	$28.69	$36.88
At 19 years	$24.40	$28.11		$32.78	$46.82	$32.78	$42.14
At 20 years *(employed by SRG for 6 months or less)*	$30.50	$35.12		$40.97	$58.52	$40.97	$52.67
At 20 years *(employed by SRG for more than 6 months)*							
At 21 Years and above *(adult)*							

253. If you are appointed to the duty of Retail Team Shift Supervisor for 2 hours or less on a particular day, then you will receive the 2 hour allowance as set out in the table below. If you are appointed for more than 2 hours and less than 4 hours on a particular day, then you will receive the half day allowance as set out in the table below. If you are appointed to the duty of Retail Team Shift Supervisor for 4 or more hours on a particular day, or you are appointed to this duty between 6pm and 9pm on the night of late night trading, then you will receive the full day allowance for that day as set out in the table below:

	2 Hour Allowance	Half Day Allowance	Full Day Allowance
From the commencement of this agreement	$9.68	$19.37	$32.30
From the first full pay cycle on or after 1 July 2019	$9.83	$19.66	$32.78
From the first full pay cycle on or after 1 July 2020	$9.98	$19.95	$33.27
From the first full pay cycle on or after 1 July 2021	$10.13	$20.25	$33.77
From the first full pay cycle on or after 1 July 2022	$10.28	$20.55	$34.28

254. The allowance in clause 253 is not used in the calculation of any penalties or leave entitlements.

255. If you are employed as a Qualified Bike Mechanic (or equivalent) you will be paid the following rates of pay from the commencement of this agreement:

Full Time and Part Time Qualified Bike Mechanic (or equivalent)						
Base Rate	Late Night Rate	Ordinary Time Saturday Rate	Ordinary Time Sunday Rate	Ordinary Time Public Holiday Rate	Overtime First 3 Hours	Overtime After 3 Hours
$23.10	$27.06		$38.95	$48.68	$32.46	$43.27

Casual Qualified Bike Mechanic (or equivalent)						
Base Rate	Late Night Rate	Ordinary Time Saturday Rate	Ordinary Time Sunday Rate	Ordinary Time Public Holiday Rate	Overtime First 3 Hours	Overtime After 3 Hours
$28.88		$30.29	$40.02	$54.07	$37.86	$48.67

256. If you are employed as a Qualified Bike Mechanic (or equivalent) you will be paid the following rates of pay from the first full pay cycle on or after 1 July 2019:

Full Time and Part Time Qualified Bike Mechanic (or equivalent)						
Base Rate	Late Night Rate	Ordinary Time Saturday Rate	Ordinary Time Sunday Rate	Ordinary Time Public Holiday Rate	Overtime First 3 Hours	Overtime After 3 Hours
$23.79	$27.86		$36.76	$50.12	$33.43	$44.56

Casual Qualified Bike Mechanic (or equivalent)						
Base Rate	Late Night Rate	Ordinary Time Saturday Rate	Ordinary Time Sunday Rate	Ordinary Time Public Holiday Rate	Overtime First 3 Hours	Overtime After 3 Hours
$29.74		$31.20	$38.99	$55.69	$38.99	$50.12

257. Owing to a decision at Fair Work Commission handed down on 1st October 2018, there are additional rate changes for Casual Retail Team Members for Late Night and Saturday hours. These additional changes occur twice per annum in addition to the July rate changes.

(a) The following rate changes take effect from 1 October 2019 to 28 February 2020:

Casual – Qualified Bike Mechanic	Late Night Rate	Saturday Rate
	$30.09	$32.31

(b) The following rate changes take effect from 1 March 2020 to 30 June 2020:

Casual – Qualified Bike Mechanic	Late Night Rate	Saturday Rate
	$31.20	$33.43

258. If you are employed as a Qualified Bike Mechanic (or equivalent) you will be paid the following rates of pay from the first full pay cycle on or after 1 July 2020:

Full Time and Part Time Qualified Bike Mechanic (or equivalent)						
Base Rate	Late Night Rate	Ordinary Time Saturday Rate	Ordinary Time Sunday Rate	Ordinary Time Public Holiday Rate	Overtime First 3 Hours	Overtime After 3 Hours
$24.43	$28.69		$34.43	$51.63	$34.43	$45.89

Casual Qualified Bike Mechanic (or equivalent)						
Base Rate	Late Night Rate	Ordinary Time Saturday Rate	Ordinary Time Sunday Rate	Ordinary Time Public Holiday Rate	Overtime First 3 Hours	Overtime After 3 Hours
$30.53	$32.31	$34.43	$40.16	$57.36	$40.16	$51.63

259. Owing to a decision at Fair Work Commission handed down on 1st October 2018, there are additional rate changes for Casual Retail Team Members for Late Night and Saturday hours. These additional changes occur twice per annum in addition to the July rate changes.

(a) The following rate changes take effect from 1 October 2020 to 28 February 2021:

Casual – Qualified Bike Mechanic	Late Night Rate
	$33.28

(b) The following rate changes take effect from 1 March 2021 to 30 June 2021:

Casual – Qualified Bike Mechanic	Late Night Rate
	$34.43

260. If you are employed as a Qualified Bike Mechanic (or equivalent) you will be paid the following rates of pay from the first full pay cycle on or after 1 July 2021:

Full Time and Part Time Qualified Bike Mechanic (or equivalent)						
Base Rate	Late Night Rate	Ordinary Time Saturday Rate	Ordinary Time Sunday Rate	Ordinary Time Public Holiday Rate	Overtime First 3 Hours	Overtime After 3 Hours
$25.04	$29.55		$35.46	$53.17	$35.46	$47.27

Casual Qualified Bike Mechanic (or equivalent)						
Base Rate	Late Night Rate	Ordinary Time Saturday Rate	Ordinary Time Sunday Rate	Ordinary Time Public Holiday Rate	Overtime First 3 Hours	Overtime After 3 Hours
$31.30	35.46		$41.37	$59.08	$41.37	$53.18

261. If you are employed as a Qualified Bike Mechanic (or equivalent) you will be paid the following rates of pay from the first full pay cycle on or after 1 July 2022:

Full Time and Part Time Qualified Bike Mechanic (or equivalent)						
Base Rate	Late Night Rate	Ordinary Time Saturday Rate	Ordinary Time Sunday Rate	Ordinary Time Public Holiday Rate	Overtime First 3 Hours	Overtime After 3 Hours
$25.37	$30.44		$36.52	$54.77	$36.52	$48.69

Casual Qualified Bike Mechanic (or equivalent)						
Base Rate	Late Night Rate	Ordinary Time Saturday Rate	Ordinary Time Sunday Rate	Ordinary Time Public Holiday Rate	Overtime First 3 Hours	Overtime After 3 Hours
$31.72	$36.52		$42.61	$60.85	$42.61	$54.77

262. For the purpose of this agreement *"Late Night Rate"* for retail wages payable to a Retail Team Member shall apply to ordinary hours worked after 6.00pm Monday – Friday.

Administration Wages

263. If you are employed within one of the Administrative classifications you will be paid the following gross hourly wage rates from the first full pay cycle after the commencement of this agreement:

Full Time and Part Time – Admin Team Member							Casual - Admin Team Member					
					Overtime						Overtime	
	Base Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Mon to Sat Inclusive (1st 2 hours)	Mon – Sat after 2 hours and Sun)	Base Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Mon to Sat Inclusive (1st 2 hours)	Mon – Sat after 2 hours and Sun)
Level 1	$21.80	$27.25	$43.59	$54.48	$32.70	$43.59	$27.25	$32.70	$49.03	$59.92	$38.14	$49.03
Level 2	$22.84	$28.09	$44.92	$56.25	$33.75	$45.00	$28.55	$33.70	$50.53	$61.76	$39.31	$50.53
Level 3	$24.17	$29.13	$46.58	$59.52	$35.71	$47.61	$30.21	$34.94	$52.40	$64.04	$40.76	$52.40
Level 4	$25.62	$30.58	$48.91	$63.11	$37.86	$50.49	$32.02	$36.69	$55.03	$67.25	$42.80	$55.03

264. If you are employed within one of the Administrative classifications you will be paid the following gross hourly wage rates from the first full pay cycle on or after 1 July 2019:

Full Time and Part Time – Admin Team Member							Casual - Admin Team Member					
					Overtime						Overtime	
	Base Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Mon to Sat Inclusive (1st 2 hours)	Mon – Sat after 2 hours and Sun)	Base Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Mon to Sat Inclusive (1st 2 hours)	Mon – Sat after 2 hours and Sun)
Level 1	$22.46	$28.07	$44.89	$56.11	$33.68	$44.89	$28.08	$33.68	$50.50	$61.72	$39.29	$50.50
Level 2	$23.52	$28.93	$46.27	$57.83	$34.71	$46.27	$29.40	$34.71	$52.05	$63.61	$40.49	$52.05
Level 3	$24.89	$30.00	$47.98	$59.97	$35.99	$47.98	$31.11	$35.99	$53.97	$65.96	$41.99	$53.97
Level 4	$26.38	$31.50	$50.38	$62.97	$37.79	$50.38	$32.98	$37.79	$56.68	$69.26	$44.09	$56.68

265. If you are employed within one of the Administrative classifications you will be paid the following gross hourly wage rates from the first full pay cycle on or after 1 July 2020:

Full Time and Part Time – Admin Team Member							Casual - Admin Team Member					
					Overtime						Overtime	
	Base Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Mon to Sat Inclusive (1st 2 hours)	Mon – Sat after 2 hours and Sun)	Base Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Mon to Sat Inclusive (1st 2 hours)	Mon – Sat after 2 hours and Sun)
Level 1	$23.25	$29.05	$46.46	$58.07	$34.86	$46.46	$29.06	$34.86	$52.27	$63.88	$40.66	$52.27
Level 2	$23.96	$29.94	$47.89	$59.85	$35.92	$47.89	$29.95	$35.92	$53.87	$65.83	$41.90	$53.87
Level 3	$25.55	$31.05	$49.66	$62.07	$37.25	$49.66	$31.94	$37.25	$55.86	$68.27	$43.45	$55.86
Level 4	$27.09	$32.60	$52.14	$65.17	$39.12	$52.14	$33.86	$39.12	$58.66	$71.69	$45.63	$58.66

266. If you are employed within one of the Administrative classifications you will be paid the following gross hourly wage rates from the first full pay cycle on or after 1 July 2021:

Full Time and Part Time – Admin Team Member							Casual - Admin Team Member					
					Overtime						Overtime	
	Base Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Mon to Sat Inclusive (1st 2 hours)	Mon – Sat after 2 hours and Sun)	Base Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Mon to Sat Inclusive (1st 2 hours)	Mon – Sat after 2 hours and Sun)
Level 1	$24.06	$30.07	$48.09	$60.10	$36.07	$48.09	$30.07	$36.07	$54.10	$66.11	$42.08	$54.10
Level 2	$24.80	$30.99	$49.56	$61.94	$37.18	$49.56	$30.99	$37.18	$55.75	$68.14	$43.37	$55.75
Level 3	$26.19	$32.13	$51.40	$64.24	$38.55	$51.40	$32.74	$38.55	$57.82	$70.66	$44.97	$57.82
Level 4	$27.77	$33.74	$53.97	$67.45	$40.48	$53.97	$34.71	$40.48	$60.71	$74.19	$47.23	$60.71

267. If you are employed within one of the Administrative classifications you will be paid the following gross hourly wage rates from the first full pay cycle on or after 1 July 2022:

Full Time and Part Time – Admin Team Member							Casual - Admin Team Member					
					Overtime						Overtime	
	Base Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Mon to Sat Inclusive (1st 2 hours)	Mon – Sat after 2 hours and Sun)	Base Rate	Saturday Rate	Sunday Rate	Public Holiday Rate	Mon to Sat Inclusive (1st 2 hours)	Mon – Sat after 2 hours and Sun)
Level 1	$24.78	$30.97	$49.53	$61.91	$37.16	$49.53	$30.98	$37.16	$55.72	$68.09	$43.34	$55.72
Level 2	$25.54	$31.92	$51.05	$63.80	38.29	$51.05	$31.92	$38.29	$57.43	$70.18	$44.67	$57.43
Level 3	$26.98	$33.10	$52.94	$66.16	$39.71	$52.94	$33.72	$39.71	$59.55	$72.78	$46.32	$59.55
Level 4	$28.60	$34.75	$55.59	$69.47	$41.70	$55.59	$35.75	$41.70	$62.53	$76.42	$48.64	$62.53

268. If you are a junior employee employed within one of the Administrative classifications you will be paid the appropriate percentage set out in the table below of the rate applicable to your classification:

Age	Percentage of Adult Rate
16 years and under	50%
17 years	60%
18 years	70%
19 years	85%
20 years	95%

TO: Fair Work Commission

Level 14, 66 Eagle Street

Brisbane, QLD 4000

UNDERTAKING

[AG2018/6883] *Super Retail Group Enterprise Agreement 2018 (Agreement)*

I am authorised to make this undertaking on behalf of Super Retail Group Services Pty Limited, together with all other entities specified at clause 2 of the Agreement (***Employer***).

The Employer makes the following undertaking under section 190 of the *Fair Work Act 2009* (*Cth*) (***Act***) in connection with the approval of the Agreement:

1. Clause 15 shall be deleted and replaced with:

   "For casual team members, the rate of pay specified in Appendix A is inclusive of a 25% casual loading, which is paid in lieu of payments for annual leave, redundancy pay and other entitlements associated with permanent employment."

2. Clause 16 shall be deleted.

3. Clause 17(b) shall be deleted and replaced with:

   "will be less than 152 hours over a 4 week period if you are employed on a part time basis."

4. Clause 17 (e) shall be deleted and replaced with:

   "(e) (i) will be rostered so that you have a minimum of at least 2 consecutive days off in a 2 week period unless there is a mutual agreement otherwise. At least once in a 4 week period these 2 consecutive days will be on a Saturday or a Sunday unless there is a mutual agreement otherwise; and

   (ii) a team member who regularly works Sundays will be rostered so as to have three consecutive days off each four weeks, and the consecutive days off will include a Saturday and a Sunday, unless there is a mutual agreement otherwise."

5. The following clause 17(m) shall be inserted:

   "In the alternative to the provisions of clause 17(e)(i) you may request to work your ordinary hours so that you would be provided with two consecutive days off each week or three consecutive days off in a two week period. Any such request will not be refused by the Company."

6. Clause 17(k) shall be deleted.

7. Clause 18 shall be deleted and replaced with:

   "Any hours worked in excess of your ordinary hours of work as per clause 17(a) – (g) and (m), and outside of the span of ordinary hours set out in clause 17(l), will be considered to be overtime. Overtime must be authorised by us prior to being worked.

8. Clause 21 shall be deleted and replaced with:

   "If you are required to work more than one hour of overtime (as defined in clause 18) immediately prior to commencing or immediately after finishing working your ordinary

hours, without being given notice of at least 24 hours prior to commencing your shift, then you will be entitled to a meal allowance of $18.29. Where such overtime work exceeds four hours a further meal allowance of $16.57 will be paid. No casual employee will be required to work more than 4 hours overtime without receiving at least three hours advance notification prior to the commencement of the shift".

9. Clause 27 shall be deleted.

10. Clause 30 Shall be deleted and replaced with:

"*If you are employed on a full-time basis you will be provided with a regular roster setting out your starting and ceasing time for each day. If you are employed on a part-time basis at the time of first being employed, you and the Company will agree, in writing, on a regular roster settling out your starting and ceasing time for each day.*"

11. The entitlement to annual leave and personal/carer's leave under clauses 46 and 60 of the Agreement will accrue progressively during each year of service according to an employee's ordinary hours of work, and accumulates from year to year.

12. Clause 50 shall be deleted and replaced with:

"We may, by giving you 4 weeks' notice, direct you to take annual leave if:

(a) the direction to take leave is for a period of not less than 1 week and you have at least 8 weeks leave accrued and will retain a balance of at least 6 weeks after leave is taken; or

(b) we are closing down our operations for a period (for example, an annual leave shut down period or a temporary closure for refurbishment). If you do not have enough accrued leave to cover all or part of the close down period, you may be required to take leave without pay."

13. Clause 83 shall be deleted and replaced with:

"*Your Community Service Leave entitlement will be as per the NES and will not impact upon your eligibility for paid Emergency Services Leave in accordance with this Agreement*"

14. Clause 167 shall be deleted and replaced with:

"Compulsory training sessions or team meetings will be limited to one training session or team meeting per month for up to two hours duration. Full-time employees will be paid at the ordinary rate of pay even if the training session or team meeting extends beyond ordinary hours. Where a training session or team meeting takes place on a part-time employee's normal working day, but extends beyond ordinary hours, the employee will be paid at overtime rates for the period of the training session or team meeting that extends beyond ordinary hours. Casual employees will be paid at overtime rates for any period of a training session or team meeting that extends beyond ordinary hours."

15. For the purpose of considering a casual conversion request, "*reasonable business grounds*", as referenced at clause 174(b), for refusal include that:

    (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee;

    (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;

(iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or

(iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.

In undertaking its considerations in this regard the Company will rely on facts which are known or reasonably foreseeable. A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under this clause.

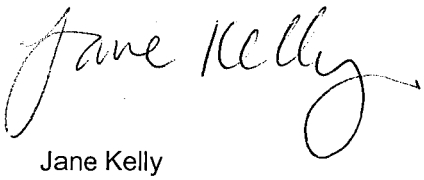
16. The following clause 174(e) shall be inserted:

"A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under this clause."

17. Retail Team Members engaged under the Agreement shall not be required to perform tasks or duties typically associated with a Retail Employee Level 2 or 4-8 under the General Retail Industry Award 2010 as at the date of this undertaking.

18. For the avoidance of doubt, the duties of a Shift Supervisor, as referenced at clause 220-222, is equivalent to that of a Retail Employee Level 3 under the General Retail Industry Award 2010 as at the date of this undertaking.

The Employer understands this undertaking will be taken to be a term of the Agreement pursuant to section 191 of the Act.

Signed: 

Name: Jane Kelly

Position: Chief Human Resources Officer

Date: 11 December 2019