



DECISION

Fair Work Act 2009

s.185 - Application for approval of a single-enterprise agreement

Woolworths Group Limited T/A Woolworths
(AG2018/6144)

WOOLWORTHS SUPERMARKETS AGREEMENT 2018

Retail industry

DEPUTY PRESIDENT GOSTENCNIK

MELBOURNE, 7 JANUARY 2019

Application for approval of the Woolworths Supermarkets Agreement 2018; consideration of approval requirements; consideration of undertakings; some undertakings accepted; satisfied approval requirements have been met; agreement with undertakings approved.

1. Introduction

[1] Woolworths Group Limited and Woolworths (South Australia) Pty Limited have made an agreement titled *Woolworths Supermarkets Agreement 2018* (Agreement) covering certain groups of their employees. Woolworths Group Limited is a bargaining representative for the Agreement and has applied under s.185 of the Act for the approval of the Agreement. Woolworths Group Limited and Woolworths (South Australia) Pty Limited are single interest employers within the meaning of s.172(5) of the *Fair Work Act 2009* (Act) and I will hereafter for convenience refer to them as “Woolworths”. The application was lodged on 1 November 2018 and was accompanied by a statutory declaration of Ms Jannifer Kerr, Workplace Relations Manager of Woolworths.

[2] The Shop Distributive and Allied Employees Association (SDA), the Australasian Meat Industry Employees Union (AMIEU), and The Australian Workers’ Union (AWU), collectively “the Unions”, are bargaining representatives for the Agreement and each gave notice wanting to be covered by the Agreement. The Unions have each lodged statutory declarations in support of the Agreement’s approval. The Retail and Fast Food Workers Union Incorporated (RAFFWU) is also a bargaining representative having been appointed by a number of employees in relation to the proposed agreement. RAFFWU opposes the approval of the Agreement on various bases.

[3] I have determined to approve the Agreement with undertakings. These are my reasons for doing so.

2. Background

[4] By way of background and factual context, the Agreement is the third enterprise agreement made by Woolworths under the Act. On 20 May 2010, Fair Work Australia (FWA) approved an enterprise agreement titled the *Woolworths National Supermarkets Agreement 2009* (2009 Agreement).¹ Much like the Agreement before me, the 2009 Agreement:

- was expressed not to cover “salaried Department Managers, Assistant Managers and Store Managers”;²
- made provision for non-salaried Department Managers and non-salaried Duty Managers;³
- made provision that a signed copy of the 2009 Agreement be available in a prominent and accessible place on a notice board;⁴ and
- required Woolworths to provide reasonable space on a notice board on which notices of relevant unions could be displayed.⁵

[5] In September 2011 and thereafter, Woolworths gave a notice of employee representational rights (NERR) for the commencement of bargaining for an enterprise agreement to replace the 2009 Agreement to employees to be covered by the replacement agreement. This was done by displaying the NERR on a notice board in each store.⁶

[6] On 25 October 2012 FWA, approved an enterprise agreement titled the *Woolworths National Supermarkets Agreement 2012* (2012 Agreement).⁷ Also much like the Agreement before me, the 2012 Agreement:

- was expressed not to cover salaried positions including but not limited to “Team Managers, Team Support, Duty Managers, Assistant Managers and Store Managers”;⁸
- made provision for non-salaried Department Team Managers and Duty Managers;⁹
- made provision for seven “*Retail Employee*” classifications as follows:
 - Retail Employee Grade 1;
 - Retail Employee Grade 2;
 - Retail Employee Grade 3 (including a Store Services Assistant);
 - Retail Employee Grade 3b;
 - Retail Employee Grade 4 (including Store Services Officer);
 - Retail Employee Grade 5 (including Qualified Trade Baker and a Qualified Trade Butcher); and

¹ [2010] FWAA 3820

² *Woolworths National Supermarkets Agreement 2009* - Clause 1.2.1(b)

³ Ibid clause 1.7.3.4 in respect of NSW and ACT; clause 1.7.4.5 in respect of QLD; and clause 1.7.6.6 in respect of SA and NT

⁴ Ibid clause 11.12.2

⁵ Ibid clause 11.12.1

⁶ Exhibit 2 at [88]

⁷ [2012] FWAA 9179

⁸ *Woolworths National Supermarkets Agreement 2012* – Clause 1.2.1(b)

⁹ Ibid clauses 1.7.5 and 1.7.7

- Retail Employee Grade 5b (including Qualified Tradesperson Team Support);¹⁰
- made provision that a signed copy of the 2012 Agreement be available in a prominent and accessible place on a notice board;¹¹ and
- required Woolworths to provide reasonable space on a notice board on which notices of relevant unions could be displayed.¹²

[7] In October 2014, Woolworths initiated or agreed to bargain for an enterprise agreement to replace the 2012 Agreement to apply to non-salaried employees employed in Woolworths' supermarkets.¹³ The precise date on which it did so is not readily apparent from the material in evidence.¹⁴ There is some difficulty in identifying a notification time that is referable to the NERR issued in 2014 (2014 NERR). This is because Ms Kerr, who was not employed in her current role in October 2014, was unable to give evidence about when Woolworths initiated bargaining or agreed to bargain. Nonetheless I consider that from the documents a notification time may be identified. It is clear that on or about 21 October 2014, Woolworths sent the 2014 NERR to its Store Managers with instructions for that notice to be placed on display on the same day that the Store Manager received the communication. The instruction was for the Store Manager to print the notice and "place on your noticeboard in clear view of employees" and to place "a second copy of the document in a prominent location within the store".¹⁵ The instruction also required the notice to be sent to the home addresses of employees who over the following two week period are on the leave or are not rostered to work.¹⁶ This step was to be completed by 27 October 2014.¹⁷

[8] Significantly, the information to Store Managers also advised that "Woolworths will soon be commencing negotiations on the *Woolworths National Supermarket Agreement 2015* which will cover non-salaried employees within your store".¹⁸ [Emphasis added]

[9] According to the evidence, on 24 October 2014 Woolworths asked its Store Managers to complete a survey which was titled "National Agreement – Notice of Representational Rights Confirmation".¹⁹ The purpose of the survey was to ensure that Store Managers had completed the actions concerning the posting of the 2014 NERR as required by the earlier instructions.²⁰ The results of the survey confirmed that the notices had been posted in accordance with the instruction.²¹

¹⁰ Ibid clauses 1.7.1, 1.7.2, 1.7.3, 1.7.5, 1.7.6 and 1.7.7

¹¹ Ibid clause 11.12.2

¹² Ibid clause 11.12.1

¹³ Exhibit 2 at [22]

¹⁴ Ibid; Transcript at PN142-PN145; Transcript at PN 1203

¹⁵ Exhibit 2 at Annexure JTK – 4

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Exhibit 2 at [25] and Annexure JTK – 4

²⁰ Exhibit 2 at [25]

²¹ Ibid, and Annexure JTK – 5

[10] The introductory paragraphs to the survey contained the following:

“On Tuesday, 21 October 2014 you were sent communication [National Agreement – Notice for Employees] regarding the upcoming negotiations for the Woolworths National Supermarket Agreement 2015.

As we are legally required by the Fair Work Act to notify our employees and advise them of their representational rights prior to commencing negotiations, Store Managers were requested to display a ‘Notice of employee representational rights’ document in store and ensure the document was posted to any employee not in store over the next two weeks.”²² [Emphasis added]

[11] It seems to me clear from the correspondence to Store Managers of 21 and 24 October 2014 that Woolworths believed it could not begin bargaining for a proposed agreement until it had given the notice. This is clear from the combined effect of the emphasised passages in the information sheet to Store Managers and in the survey. It is also clear from the evidence that on 12 November 2014 Woolworths commenced bargaining with the Unions for a proposed agreement.²³

[12] The definition of ‘notification time’ in s.173(2)(a) of the Act indicates that an employer’s agreement to bargain is a single event which happens at a particular point in time.²⁴ The same may be said of an employer initiating bargaining. An employer may agree to bargain expressly in writing or orally, or an employer may be inferred to have agreed to bargain through its conduct, such as by commencing to actually engage in bargaining in relation to a proposed enterprise agreement.²⁵ The issuing of a NERR may evidence that the employer has agreed to bargain, but the requirement to issue the NERR arises once the employer has agreed to bargain or has initiated bargaining – it is not a prerequisite for bargaining.²⁶ Whether an employer has agreed to bargain or has initiated bargaining in relation to a proposed enterprise agreement is a question of fact. A NERR is an indicator of employer intention but not necessarily the determining factor.²⁷

[13] Taken as a whole I consider that the documents show that Woolworths was as at 21 October 2014 intending to commence negotiations for a proposed agreement shortly. It was of the view (wrongly) that it could not commence negotiations until it had issued the 2014 NERR. It took the step of issuing the 2014 NERR on 21 October 2014. I consider that in doing so Woolworths initiated bargaining for a proposed agreement and that it did so on 21 October 2014. RAFFWU appears to accept that Woolworths “initiated bargaining in 2014”.²⁸ I am therefore satisfied that the notification time in relation to the proposed agreement to which the 2014 NERR relates is 21 October 2014.

²² Exhibit 2 at Annexure JTK – 5

²³ Exhibit 2 at [26] – [27]

²⁴ *Maritime Union of Australia v Maersk Crewing Australia Pty Ltd* [2016] FWC 1894 at [34]; *Transport Workers' Union of Australia v Hunter Operations Pty Ltd* [2014] FWC 7469 at [52]

²⁵ *Maritime Union of Australia v Maersk Crewing Australia Pty Ltd* [2016] FWC 1894 at [35]; *Transport Workers' Union of Australia v Hunter Operations Pty Ltd* [2014] FWC 7469 at [50]

²⁶ *Maritime Union of Australia v Maersk Crewing Australia Pty Ltd* [2016] FWC 1894 at [35]; *Transport Workers' Union of Australia v Hunter Operations Pty Ltd* [2014] FWC 7469 at [53]

²⁷ *Maritime Union of Australia v Maersk Crewing Australia Pty Ltd* [2016] FWC 1894 at [35]

²⁸ RAFFWU Outline of Submissions dated 7 December 2018 at [6] where second appearing

[14] Accordingly, on the material before me, the following is clear. The Unions were bargaining representatives for the proposed agreement. The notification time for the proposed agreement to which the 2014 NERR relates was 21 October 2014. Woolworths gave “non-salaried employees” working in its supermarkets the 2014 NERR by displaying the notice on a notice board in each supermarket.²⁹ It also sent the notice by mail to absent employees as earlier identified, and placed another copy of the notice in a prominent location in each supermarket.³⁰ Woolworths commenced negotiating with the Unions in their capacities as bargaining representatives for an agreement to replace the 2012 Agreement in November 2014.³¹ The 2012 Agreement passed its nominal expiry date on 30 June 2015.³²

[15] In October 2015, Woolworths made a decision to seek to extend coverage of the proposed replacement agreement to the non-salaried employees working in its “Metro Stores”.³³ Subsequently in November 2015, Woolworths gave non-salaried employees in the Metro Stores a NERR (2015 NERR). This was done by displaying the notice on a notice board in each Metro Store.³⁴ In that month Woolworths also commenced negotiating with the Unions in their capacities as bargaining representatives for the proposed replacement agreement.³⁵ RAFFWU also commenced as a bargaining representative to represent some employees in bargaining for the proposed replacement agreement.³⁶ No one has suggested that the 2015 NERR (save for the logo issue discussed below) was not given as required by the Act. I accept that it was.

[16] It appears that between 12 February 2016 and 6 February 2018 there were no bargaining meetings held between Woolworths, the Unions and RAFFWU for a replacement enterprise agreement.³⁷ Some drafting occurred during mid-2016 and there was no bargaining at all during late 2016 and throughout 2017.³⁸ It appears that by January 2018, Woolworths became concerned about a potential issue relating to logos appearing on the 2014 and 2015 NERRs.³⁹

[17] It also appears that between 18 January and 2 February 2018, Woolworths informed the Unions and RAFFWU that Woolworths was ceasing bargaining and that Woolworths would issue a new NERR.⁴⁰ It is apparent from the correspondence that Woolworths sent to the Unions and to RAFFWU on 29 January 2018, that the reason it was ceasing to bargain was because it had concerns as to the validity of the 2014 NERR.⁴¹ On 2 February 2018,

²⁹ Exhibit 2 at [23], [24] and [25]; Annexures JTK-3, JTK-4 and JTK-5; Exhibit 9 at Annexure LK-3

³⁰ Ibid

³¹ Exhibit 2 at [26]

³² *Woolworths National Supermarkets Agreement 2012* - clause 1.3.1; [2012] FWAA 9179 at [9]

³³ Exhibit 2 at [29]

³⁴ Ibid at [30] – [32]; Annexures JTK-6, JTK-7 and JTK-8; Exhibit 9 at Annexure LK-3

³⁵ Exhibit 2 at [33]

³⁶ Ibid at [40]

³⁷ Ibid at [34]

³⁸ Ibid at [35]

³⁹ Ibid at [41]

⁴⁰ Ibid at [42], [43] and [45]; Annexure JTK-10

⁴¹ Ibid at Annexure JTK-10

Woolworths informed the Unions and RAFFWU of an intention to recommence bargaining.⁴² Tentative arrangements for a bargaining meeting to occur on 14 February 2018 had been made some time in late January.⁴³ There does not appear to have been any issue raised by the Unions or RAFFWU at this time about this course of action. RAFFWU advised Woolworths on 23 January 2018 of the particular individuals to whom advice about the cessation of bargaining and any new NERR should be directed.⁴⁴

[18] As at February 2018, Woolworths employed over 107,000 employees in all States and Territories of Australia and operated 972 supermarkets and 37 Metro stores in Australia.⁴⁵

[19] Also in February 2018, Woolworths prepared a NERR (2018 NERR) which relevantly provided:

“Woolworths Group Limited and Woolworths South Australia Pty Limited gives notice that it is bargaining in relation to an enterprise agreement (Woolworths National Supermarket Agreement 2018) which is proposed to cover employees that are engaged in the classifications of Retail Employee Grades 1 to 5b (but excluding salaried positions, including but not limited to Team Managers, Team Support, Duty Managers, Assistant Managers and Store Managers) who are employed in supermarket retail businesses operated by Woolworths Group Limited and/or Woolworths South Australia Pty Limited in all States and Territories of Australia.”⁴⁶

[20] On 6 February 2018:

- Woolworths sent a document referred to as a “Store Management Action” sheet to each Store Manager of stores operated by Woolworths,⁴⁷ which relevantly provided:

“we require all stores to print the NERR document and place on your store’s designated Enterprise Agreement (EA) noticeboard, so that it is visible for all team members. Please ensure that your EA noticeboard is in a prominent position and that it has the capacity to display material . . .”

. . .

“Print and display the NERR document on the EA section of your noticeboard today (06/02). The NERR document should not be amended or covered in any way and must not be removed until the EA is finalised.”⁴⁸

⁴² Ibid at [46]; Annexure JTK-11

⁴³ Exhibit 3; Transcript at PN305-PN306

⁴⁴ Exhibit 3

⁴⁵ Exhibit 2 at [74]

⁴⁶ Ibid at [48]; Annexure JTK-12

⁴⁷ Ibid at [76]; Annexure JTK-21

⁴⁸ Ibid at Annexure JTK-21

- Woolworths sent a document titled “Product Withdrawal Notification” to each Store Manager, which relevantly provided:⁴⁹

“As per the “Enterprise Agreement Update” communications on the Store Comms portal this morning (Tuesday 6 February), all stores are required to print and display an Enterprise Agreement information poster and NERR document on the EA section of their noticeboards, and to arrange for letters to be sent to EA team members. We are utilising PWRM to ensure that this has occurred and capture sign off.

*Please capture the Store Withdrawal Recall and Confirmation of Action Checklist online within 1 hour of receipt of this notification in PWRM, to confirm that the actions required within the communication have been completed. Enter a quantity of zero within the checklist.”*⁵⁰

- Each Woolworths’ supermarket and Metro Store recorded displaying the 2018 NERR on at least one noticeboard in the store.⁵¹ Each Woolworths’ supermarket and Metro Store also returned a completed checklist.⁵²

[21] Woolworths says that as at 6 February 2018, there existed a standard process for communicating with employees, including the sending of written communications and materials to Store Managers and the posting of those communications and materials on team noticeboards.⁵³ I take the process to be no more than a method adopted by Woolworths to communicate with its employees. In short, the method involved sending relevant information to Store Managers and giving instructions to Store Managers about how and where to post the information and to communicate the fact that the information had been posted to employees during regular team huddles. The method also required Store Managers to confirm that they had carried out the instruction. It seems clear from the material in evidence that Store Managers are required *inter alia* to “[R]eview previous nights comms, comms portal...”⁵⁴ Woolworths used this process to communicate to employees matters relating to employment, including pay increases.⁵⁵ It was not the only method it used to communicate with its employees. Noticeboards were located in locations such as lunch rooms and in hallways leading to lunch rooms.⁵⁶ Woolworths says that noticeboards were, by reason of their location, in a conspicuous location and readily accessible to employees. I accept that this is so.

[22] In February 2018, the SDA and the AWU gave Woolworths a joint log of claims⁵⁷ which included the following claims:

“ . . .

⁴⁹ Ibid at [78]; Annexure JTK-23

⁵⁰ Ibid at Annexure JTK-23

⁵¹ Ibid at [78] and Annexure JTK-23; Exhibit 1 at Question 2.3

⁵² Ibid

⁵³ Exhibit 2 at [59]

⁵⁴ Ibid at Annexure JTK-17

⁵⁵ Ibid at [60] and [68] and Annexure JTK-19

⁵⁶ Ibid at [69], [70]-[72] and [79] – [80]

⁵⁷ Ibid at [106]

3. Abolish Level 1 classification.

...

11. A sign-on bonus on the date of a positive vote.

...

21. Delete clause 11.2, Dress Standards [of the 2012 Agreement] and insert equivalent GRIA uniform provisions (see GRIA clause 20.2, Special Clothing).

...”⁵⁸

[23] Woolworths agreed, as part of bargaining for the Agreement, to amend the classifications from the seven “Retail Employee” classifications in the 2012 Agreement, to align with six of the eight “Retail Employee” classifications contained in the *General Retail Industry Award 2010* (GRI Award). Woolworths also agreed to abolish the “Retail Employee Grade 1” classification⁵⁹.

[24] Woolworths also agreed:

- to pay a laundry allowance on top of a base rate of pay (in lieu of an all up rate);
- to use the language of the Retail Award to describe the payment of the laundry allowance; and
- to pay the laundry allowance in respect of preferred dress.⁶⁰

[25] Further Woolworths agreed to provide a sign-on payment to eligible team members (with part of the payment to be paid, in the form of gift cards, if the Agreement was made and the balance of the payment to be paid, in the form of a payroll payment, if the Agreement was approved by the Commission.⁶¹

[26] On 11 May 2018 RAFFWU wrote to Woolworths raising concerns in the context of an allegation that Woolworths was not meeting the good-faith bargaining requirements in s.228 of the Act. The particulars of the allegations included concerns about the distribution of “an invalid notice of employee representational rights” and “[N]ot taking all reasonable steps to give the notice, in the form required by the regulations, to each employee of a right to be represented by a bargaining representative”. RAFFWU identified that Woolworths had the means to readily give notices to each employees by way of its online portal.⁶²

[27] On 17 August 2018, Woolworths and the Unions reached an in principle agreement on the terms of the Agreement.⁶³

⁵⁸ Ibid and at Annexure JTK-25

⁵⁹ Ibid at [91] and [93]; Exhibit 1 at question 3.3

⁶⁰ Ibid at [149] – [150]

⁶¹ Ibid at [108]-[113]

⁶² Exhibit 4

⁶³ Exhibit 2 at [52]

[28] Woolworths established an enterprise agreement website which became accessible to employees on 10 September 2018 (EA Website).⁶⁴ Woolworths made available to employees through the EA Website:

- a document titled “Agreement Summary”.⁶⁵ The Agreement Summary provided *inter alia* that:

“After 7 months of negotiations with your bargaining representatives (SDA, AWU, AMIEU and RAFFWU), the proposed enterprise agreement ... is now ready for you to read and consider.

We listened to your Voice of Team feedback, and to your bargaining representatives and we hope that the new Agreement delivers on the areas that matter to you, our team members.”

...

“Role classifications have been aligned to the Award, with old Grade 1 deleted.”

...

“The allowances in the 2012 agreement have been streamlined into one national set of allowances that apply to everyone such as ... Laundry Allowance ... \$6.25 per week for FT ... \$1.25 per shift for PT and Casuals”.⁶⁶

- Something described as an “Agreement Summary” deck⁶⁷ which referred to the new classifications contained in the Agreement and stated that they were “*aligned*” to the GRI Award.⁶⁸ The Agreement Summary deck also provided:

“ ...

Team members can now tell Woolworths what fund they want to pay into, it just has to be with a company that has provides an approved MySuper product (it doesn’t have to be a MySuper fund though – just a company that has at least one approved MySuper product on offer.⁶⁹

...

Laundry allowance: Team members required to launder their preferred dress will be paid a laundry allowance. This will apply to all team members except bakers, as Woolworths has their whites professionally laundered for them. The laundry allowance is:

⁶⁴ Exhibit 1 at question 2.6

⁶⁵ Ibid at [155(b)]; Exhibit 1 at question 2.6 and at Attachment C; Exhibit 9 at Annexure LK-3, pp. 226-228

⁶⁶ Ibid

⁶⁷ Exhibit 2 at [155(a)]; Exhibit 1 at Attachment D; Exhibit 9 at Annexure LK-3, pp. 229-321

⁶⁸ Exhibit 1 at Attachment D p. 11

⁶⁹ Ibid at p. 20

- a. \$6.25 per week for full-time team members; and
- b. \$1.25 per shift for part-time and casual team members.

...⁷⁰

[29] Again in the context of an allegation that Woolworths was not meeting the good-faith bargaining requirements in s.228 of the Act, RAFFWU wrote to Woolworths on 2 September 2018 raising concerns *inter alia* that it was unable to properly respond to issues concerning the sign on payments because Woolworths had not provided it with information about the actual basis for the proportional calculation and distribution of the sign-on payment.⁷¹

[30] By correspondence dated 18 September 2018 RAFFWU raised concerns with Woolworths that the SDA was misrepresenting the terms of the proposed agreement by advising employees that the agreement included entitlements to a gift card valued up to \$295 and a sign-on package valued up to \$1100, and that the laundry allowance would be paid to all staff wearing preferred dress.⁷²

[31] By correspondence dated 21 September 2018 to RAFFWU, Woolworths replied as follows:

“Your letter raises concerns with information provided by the SDA to team members in relation to Wish Cards, sign-on bonuses and laundry allowance. However, the information is factually correct, and in our view does not constitute a misrepresentation. As per the agreement in principle for a proposed enterprise agreement reached with the SDA, AWU and AMIEU:

1. Woolworths will provide Wish Cards (gift cards) of up to \$299 in value to team members. We note that reference to Wish Cards has been removed from the latest draft agreement because the provision is not conditional upon the approval of the agreement by the Fair Work Commission. Woolworths intends to provide Wish Cards to team members before Christmas, regardless of the approval process.
2. Woolworths will be providing sign-on bonuses (or packages as your letter refers to) which (when combined with the Wish Card values) may amount to a total value of \$1,100. This issue is addressed in Appendix J of the draft agreement.
3. Woolworths will pay a laundry allowance to all team members, with the exception of bakers who have their uniforms are laundered professionally by Woolworths. This issue is addressed in clause 5 of the draft agreement.”⁷³

[32] Woolworths met with RAFFWU on 26 September 2018 to discuss aspects of the in-principle agreement. According to Woolworths this meeting allowed RAFFWU the opportunity to raise some proposals.⁷⁴ On 1 October 2018, Woolworths wrote to RAFFWU

⁷⁰ Ibid at p. 22

⁷¹ Exhibit 5

⁷² Exhibit 6

⁷³ Ibid

⁷⁴ Exhibit 2 at [130]

responding to its proposals.⁷⁵ An issue addressed in the correspondence was the laundry allowance.⁷⁶ The summary of RAFFWU's proposal and Woolworths' response is set out in the correspondence as follows:

“Where Woolworths requires a team member to launder any special uniform, dress or clothing the team member will be paid the following” with “In circumstances where Woolworths does not launder a team member's clothing then the team member will be paid the following”

...

“We have considered your proposal but we do not agree to amend the clause.

As discussed throughout our negotiations, Woolworths has elected to mirror the wording of the allowance clauses in the GRIA to ensure that we are meeting the minimum award requirements and to maintain consistency with the GRIA.

We have committed in writing to both you and to our team members that Woolworths will pay the laundry allowance to all of our team members (except for trade bakers whose uniforms are laundered by Woolworths) from the date the agreement commences to take effect.”⁷⁷

[33] The correspondence addressed RAFFWU's proposal to insert a clause into the Agreement about the provision of gift cards as follows:

“We have considered your proposal, but we do not agree to this proposal. This is because we have agreed to provide Wish Cards to our team members as a gift before Christmas. The Wish Cards will be provided as long as the vote is successful, but they are not subject to the FWC approving the agreement. It is for this reason that a clause about the Wish Cards is not required to be contained in the agreement.

We have made this commitment in writing to you and to our team members. You can rely on this and our previous letter to give your members comfort that Wish Cards will be provided to team members if there is a successful vote.”⁷⁸

[34] The correspondence also addressed RAFFWU's proposal as to the one-off cash payment as follows:

“Your proposal is that the amount of \$805 payable to eligible full-time team members as a one-off cash bonus should be maintained as the benchmark amount and be prorated based on their average hours worked during the period May, June and July 2018 (as opposed to prorated within brackets as currently proposed by Woolworths).

...

⁷⁵ Ibid at [131] and at Annexure JTK-28

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ Ibid

We have considered your proposal and we do not agree to change our offer in relation to the one-off cash bonus.

The bonus payments we have offered is our best and final offer, and the method we have applied to pro rata the bonus by hours worked within brackets rather than on the basis of average hours worked by each individual team member is reasonable in the circumstances.

This method provides administrative ease in circumstances where we are seeking to make a very large number of payments quickly, and it also provides financial security to the business in terms of budgeting for the payments.”⁷⁹

[35] Woolworths also wrote to the SDA on 2 October 2018 reminding it of the importance of accurate statements being made during its briefings of employees.⁸⁰

[36] Also on 2 October 2018, Woolworths sent an email to relevant employees informing them of the time, place and method of the vote and directing the employees to the EA Website which contained voting information.⁸¹ Information about the time place and method of the vote was also earlier posted on noticeboards in each Woolworths store on and from 27 September 2018.⁸² The EA Website was accessible by relevant employees using any device with access to the internet, including desktop computers, tablets and smartphones.⁸³ Information about the time, place and method of voting was also communicated through various information posters and stickers in the lunchroom of each Woolworths store on and from 27 September 2018 and a message about the voting time, place and method was communicated in a message included in relevant employees’ payslips commencing on and from 24 September 2018.⁸⁴ Relevant employees were advised that they could cast a vote at any time between 8:00 am (AEDT) on 11 October 2018 and 8:00 pm (AEDT) on 22 October 2018 through one of two voting methods either online or by telephone.⁸⁵

[37] On 6 October 2018, Woolworths displayed a post on a social media platform used by Woolworths, “Google +”. The post referred to the vote to approve the Agreement opening on 11 October 2018 and advised employees to “Check out the information on your stores EA noticeboard”.⁸⁶ Voting for the Agreement commenced on 11 October 2018.⁸⁷

[38] Before voting commenced, Woolworths took a number of steps to explain the terms of the Agreement and the effect of those terms to relevant employees. These steps included the following:

- Through the EA Website relevant employees were provided with links to the following material:

⁷⁹ Ibid

⁸⁰ Exhibit 2 at [142]; Annexure JTK-31

⁸¹ Exhibit 1 at question 2.5 and Attachment B

⁸² Ibid

⁸³ Ibid at question 2.6

⁸⁴ Ibid at question 2.5 and Attachment B

⁸⁵ Ibid at Attachment B

⁸⁶ Exhibit 9 at Annexure LK-3 p. 75

⁸⁷ Exhibit 2 at [53]; Exhibit 1 at question 2.8

- 'What is an EA?'- a brief description of an enterprise agreement and the bargaining process;
 - The Agreement in full;
 - 'Key highlights' - a brief summary of some of the main changes in the Agreement;
 - 'Your EA Explained' - a link to plain English explanatory materials on each clause and appendices A to K in the Agreement;
 - 'Read the FAQs' - a brief summary of answers to frequently asked questions by employees;
 - 'Comparison: EA vs the Award'- a detailed analysis of the Agreement against the GRI Award;
 - 'My Pay' - wages summaries for full-time, part-time and casual employees reflecting base rates of pay and applicable penalty rates for each classification in the Agreement and an explanation of 'TTR' and 'CTTR';
 - 'Schedule of Amendments' - schedule provided a comprehensive summary of all the corrections which had been made to the Agreement since it was first provided on 10 September 2018;
 - 'Other relevant material' - a document containing links to the materials incorporated by reference in the Agreement.⁸⁸
- The EA Website also contained information about where relevant employees could direct questions or seek further information about the Agreement.⁸⁹
 - Between 10 September 2018 to 22 October 2018 Woolworths conducted a number of 30 minute information sessions in store about the Agreement at which relevant employees could to attend.⁹⁰
 - Prior to the information sessions, Woolworths required Store Managers to attend a training session briefing Store Managers on the key terms in the Agreement and the effect of those terms. Store Managers were also given access to a recording of the training session. This training session was conducted to support Store Managers to answer employee queries.⁹¹
 - Relevant employees entering the internet voting page, would find links to the EA Website which contained all of the explanatory materials about the Agreement.⁹²
 - Woolworths also posted a video on Google+ of Mr Brad Banducci, Woolworths CEO and Ms Hayley Baxendale, Head of Workplace Relations providing an overview of the key terms included in the Agreement, advising that it contained increased penalty rates, above award rates of pay, better leave provisions, guaranteed annual wage increases, the retention of existing terms providing 15 minute rest breaks and voluntary work on public holidays. Relevant employees

⁸⁸ Exhibit 1 at question 2.6 and Attachments C, D, E, F, G & H

⁸⁹ Ibid at question 2.6

⁹⁰ Ibid

⁹¹ Ibid

⁹² Ibid

were directed to the EA Website, "WOW People Portal" or "SuccessFactors" for access to the Agreement and the explanatory materials.⁹³

[39] The written material discloses a comprehensive approach taken by Woolworths to explain the terms of the Agreement and the effect of those terms to relevant employees.

[40] Between 11 October to 22 October 2018, Woolworths published various material relating to the Agreement, including the following:

- An "Xpress EA" special edition newsletter which relevantly provided:

"What does it mean for me?

...

Laundry allowance

One off payments for eligible team members – up to \$805 paid in cash

One off Christmas WISH card for eligible team members – up to \$295

...

Superannuation paid into any fund of your choice that offers a MySuper product.⁹⁴

- A "Proposed Supermarkets Enterprise Agreement" sheet which relevantly provided:

"So what are the changes?

This is just a summary but includes:

A one-off payment of up to \$1,100 in cash and gift cards (based on hours worked and length of service for existing team members only).

...

A laundry allowance.

...

A clause allowing casuals to convert to part-time.

...

Have your superannuation paid into any fund that offers a MySuper product.⁹⁵

- A video involving the Chief Executive Officer and the Head of Workplace Relations in which it is said:

"The agreement also includes one-off bonus payments for eligible team members. . ."⁹⁶

⁹³ Ibid

⁹⁴ Exhibit 9 at Annexure LK-3, p. 57

⁹⁵ Ibid at p. 68

⁹⁶ Ibid at p. 36

- A message displayed on cash registers which relevantly stated:

“Your EA - one off bonus to eligible team members, above award wages, increased penalty rates, and more. Vote online eavote.com.au or phone 1300 837 024. Don’t miss out – voting closes Monday at 8pm.
- An “Information about Christmas Wish Cards” summary.⁹⁷
- An “Information about the One-Off Cash Bonus” summary.⁹⁸

[41] Voting to approve the Agreement closed on 22 October 2018.⁹⁹ A majority of employees employed at the time who cast a valid vote, voted to approve the Agreement.¹⁰⁰ The Agreement was made on that day.¹⁰¹

3. Preliminary Matters

[42] Before turning to consider the issues that are in contention as well as other agreement approval requirements, it is necessary that I say a few things about three matters concerning evidentiary issues that arose in the course of the hearing of the application.

[43] The first concerns a submission by RAFFWU which asked that I draw an adverse inference because of a failure by Woolworths to call certain witnesses who had direct knowledge about various background bargaining meetings, other relevant meetings and the general history of the process leading to the making of the Agreement. In particular the issue arose in the context of the manner of the giving of the 2014 NERRs and the validity of the survey said to have been completed by various managers about the giving of the notices.

[44] In *Jones v Dunkel*¹⁰² the High Court of Australia explained that an unexplained failure to call a witness or to produce evidence may lead to the drawing of an inference against a party who would be expected to call or rely upon such evidence. The so called “rule” in *Jones v Dunkel* is that an unexplained failure by a party to give evidence, to call a witness, or to tender documents or other evidence, may, not must, in appropriate circumstances lead to an inference that the uncalled evidence would not have assisted the party’s case.

[45] There are several elements that must be satisfied before an adverse inference may be drawn. First, the witness that was not called by a party was a person expected to be called by the party. Secondly, the evidence of the witness not called would shed light on a particular matter in issue. Thirdly, the failure to call the witness is not explained.

[46] It is to be observed, as Woolworths rightly submitted, that the manner in which the 2014 or 2015 NERR was given was not in issue in the proceedings, as identified by the written materials filed. The only issue that was raised by RAFFWU was whether the 2014 and

⁹⁷ Ibid at pp. 214-220

⁹⁸ Ibid at pp. 221-225

⁹⁹ Exhibit 2 at [53]; Exhibit 1 at question 2.8

¹⁰⁰ Ibid; Annexure JTK-13

¹⁰¹ Section 182(1) of the Act

¹⁰² (1959) 101 CLR 298

2015 NERRs contained impermissible content.¹⁰³ In such circumstances Woolworths would not have been expected to call any other witnesses save for Ms Kerr who, through a review of documents, was able to give an account of the manner of the giving of the notices.

[47] Woolworths would not have been expected to call Ms Lisa Humphries or Mr Ben Cummins when no issue over whether the 2014 or 2015 NERR was given to employees was raised. The manner of the giving of the 2014 and 2015 NERRs was evidenced through a documented system of directions to Store Managers about placing NERRs on noticeboards and of verifying compliance with the directions. That was evidence that could reasonably be expected to be given by Ms Kerr, who had knowledge of that system, accessed and reviewed the documents, and attached the documents to her witness statement. I accept Woolworths' submission that it is not necessary for a party to call additional evidence from another witness if the evidence actually called is sufficient to prove the fact. A party would not be expected to call additional evidence in those circumstances. Nor is it necessary for a party to call additional evidence from another witness who could only address a small factual matter when there are a multitude of factual disputes in proceedings.

[48] It is also relevant that there is no contrary evidence filed casting doubt on the giving of the 2014 or 2015 NERR by Store Managers placing them as directed on noticeboards, sending the NERRs to absent employees by mail, or which casts doubt on the accuracy of the verification material about the completion of the survey. It follows that I am not persuaded that, in these circumstances, I should draw any relevant adverse inference from the absence of these witnesses.

[49] The second matter concerns the various objections to the admission of evidence on the ground of hearsay were made by RAFFWU during the course of Ms Kerr's evidence. The objection is rejected as is the submission that I should attached little weight to the material said to be hearsay. My reasons are as follows. First it is to be observed that the Commission is not strictly bound by the rules of evidence. The material is probative of issues that require determination and should be accorded appropriate weight. All the more so in circumstances of an absence of any probative contradictory evidence casting doubt on the content of the material. Secondly, much of the hearsay objection is founded upon the documents about which Ms Kerr had no direct knowledge because she was not at the time of their creation, an employee of Woolworths. The documents to which objection was taken are, in my view, business records for the purposes of s.69 of the *Evidence Act 1995* and are therefore an exception to the hearsay rule. It seems to me clear enough that documents such as the 2014 or 2015 NERR, the written direction that the NERR be placed on the noticeboards and the response survey form part of Woolworths business records, including as part of an electronic file. The records are made and kept by Woolworths in the course of or for the purposes of its business.

[50] The third matter concerns a conversation between Senior Counsel for Woolworths and Ms Kerr while she was giving evidence after cross-examination had concluded. Before having the discussion with Ms Kerr, Senior Counsel for Woolworths had a discussion with Mr Cullinan, Secretary of RAFFWU, in which Mr Cullinan was advised that the discussion would occur. Mr Cullinan urged that I should disregard all of Ms Kerr's evidence given during re-examination because the discussion was inappropriate and the Commission should send a message that such conduct is inappropriate.

¹⁰³ RAFFWU Outline of Submissions dated 7 December 2018 at [4(a)], [8], [9], [16] and [19]

[51] I am not persuaded that is the case. The *Australian Bar Association Barristers' Conduct Rules* provide by Rule 72 as follows:

- “72. A barrister must not confer with any witness including a party or client called by the barrister on any matter related to the proceeding while the witness remains under cross examination, unless:
- (a) the cross-examiner has consented beforehand to the barrister doing so; or
 - (b) the barrister –
 - (i) believes on reasonable grounds that special circumstances (including the need for instructions on a proposed compromise) require such a conference;
 - (ii) has, if possible, informed the cross-examiner beforehand of the barrister’s intention to do so; and
 - (iii) otherwise does inform the cross examiner as soon as possible of the barrister having done so.” [Emphasis added]

[52] As is clear from the emphasised passage above the prohibition is confined to the period while the witness “remains under cross examination”. Cross examination of Ms Kerr had concluded by the time I adjourned the proceedings for the luncheon adjournment. The impugned discussion occurred during the luncheon adjournment and Mr Cullinan was given the courtesy of being informed beforehand. There is nothing inconsistent with that which occurred and the Bar Association conduct rules which governed the conduct. The evidence given by Ms Kerr during her re-examination is admitted as given.

4. Issues in contention

[53] RAFFWU raises four substantive issues. The first concerns the NERR and is in four parts by which RAFFWU contends:

- Woolworths distributed an invalid NERRs (the 2014 and 2015 NERRs) which contained additional content contrary to s.174(1A) of the Act;
- Woolworths did not cease or could not withdraw from bargaining and so there was not a new notification time. Consequently the 2018 NERR was given well after the time prescribed for the giving of a NERR by s.173(3) of the Act;
- Woolworths failed to all take reasonable steps as required by s.173(1) of the Act to give the 2018 NERR to the relevant employees as the 2018 NERR:
 - was placed “in some stores” on “inconspicuous noticeboards ... not readily accessed by employees or unknown to them”; and
 - was not given to relevant employees who were “salaried”.

[54] RAFFWU also raised concerns about the “notification time” in relation to the 2014 NERR and the manner of giving that notice.

[55] Secondly, RAFFWU says that the group of employees covered by the Agreement was not fairly chosen. This is because the Agreement covers some but not all of particular classes of employees. The Agreement does not cover some particular classes of employees if they are “salaried”.

[56] Thirdly, RAFFWU says I cannot be satisfied that the Agreement does not contain any unlawful terms as required by s.186(4) of the Act. This is because the Agreement contains terms that are said to be discriminatory terms as described in s.195. The Agreement is also said to contain an opt-out term which is an unlawful term described in s.194(ba).

[57] Fourthly, RAFFWU says that Woolworths misrepresented the benefit of the Agreement in relation to laundering allowances, sign on payments and gift cards. Presumably this is said to provide foundation for the proposition that there are other reasonable grounds for believing that the Agreement may not have been genuinely agreed to by the relevant employees. It is also said that this misrepresentation impacts on the explanation of the Agreement given to employees as required by s.180(5) of the Act and consequently the quality of satisfaction as to the requirement in s.186(2)(a) by reason of s.188(1)(a)(i).

[58] Fifthly, RAFFWU contends the Agreement does not pass the better of overall test (BOOT) because the Agreement contains a detriment to casual employees in the form of a restriction on the frequency with which a casual employee may apply for conversion to full time or part time employment.

[59] I deal with these and other matters in turn below.

4.1 Invalid NERR

[60] RAFFWU’s first objection relates to multiple NERRs issued by Woolworths and the consequences that are said to follow. As noted in the background, Woolworths first initiated bargaining or agreed to bargain for a proposed agreement on 21 October 2014 and it issued NERRs to various employees in 2014 and 2015. The 2015 NERR was given to “non-salaried employees” employed in “Metro Stores”. These notices were in documents which contained various Woolworths logos. Woolworths accepts that this is the case.¹⁰⁴ As noted already, the giving of the 2015 NERR was necessary because Woolworths wanted to expand the scope of coverage of the proposed agreement. RAFFWU contends that Woolworths took no steps to give employees a valid NERR within 14 days of the notification time, being the date upon which it initiated bargaining. RAFFWU also maintains the 2014 and 2015 NERRs are invalid because they each contained a Woolworths logo. RAFFWU maintains that as the 2014 and 2015 NERRs were not issued in accordance with the Act, the Commission cannot approve the Agreement.¹⁰⁵ During oral argument, RAFFWU also maintained that there was no identifiable notification time in respect of the 2014 NERR.¹⁰⁶ Given my finding earlier, this contention is rejected.

[61] RAFFWU also contends there is no new notification time in 2018 to support the 2018 NERR as Woolworths did not announce to any employee covered by the Agreement that it had uninitiated bargaining, withdrawn from bargaining or withdrawn its agreement to

¹⁰⁴ Woolworths Outline of Submissions dated 14 December 2018 at [75]

¹⁰⁵ RAFFWU Outline of Submissions dated 7 December 2018 at [6] – [9]

¹⁰⁶ Transcript at PN1020 – PN1026

bargain.¹⁰⁷ RAFFWU says the only statement made by Woolworths pertaining to the cessation of bargaining was in a letter Store Managers were directed to send to employees who were on leave in February 2018, which stated “in order to start a new process, Woolworths is formally ceasing to bargain.”¹⁰⁸ The next sentence referenced the new NERR and the restarting of bargaining. RAFFWU submits that the purported cessation of bargaining was communicated in the correspondence after the alleged commencement of a new bargaining process and that there is no evidence of this correspondence having been sent to any employee.¹⁰⁹ RAFFWU contends there was no other communication sent to employees and therefore there was no withdrawal from bargaining, let alone a genuine withdrawal. RAFFWU also submits that there was no direction given by Woolworths to remove the invalid NERRs from any workplace.¹¹⁰

[62] RAFFWU submits that the 2018 NERR is invalid as a result. RAFFWU also contends that Woolworths cannot simply un-initiate bargaining.¹¹¹ Bargaining had been initiated and the notification time had occurred. It says “the only mechanism available to an employer is to make an agreement”¹¹² and Woolworths did so on 22 October 2018 after an “invalid” NERR was issued in 2014. RAFFWU says on this basis alone, the Commission cannot approve the Agreement.¹¹³

[63] Before dealing with these contentions it is necessary to say something about the circumstances in which a NERR will be invalid and thus not support the making and/or approval of an enterprise agreement. That which constitutes the document that is a NERR is a question of fact.¹¹⁴ An employer may supply other information to employees at the same time as the employer issues a NERR, provided the information does not form part of the notice.¹¹⁵ An employer may issue more than one NERR over the course of bargaining.¹¹⁶ An employer that does not engage in bargaining for a prolonged period of time might be said to have withdrawn from bargaining and may subsequently initiate bargaining afresh.¹¹⁷ An employer that discovers that it has issued an invalid NERR may cease bargaining with its employees and may initiate bargaining afresh.¹¹⁸ When an employer seeks, or the bargaining parties have agreed to broaden the scope of coverage of a proposed agreement, a further NERR may also need to be issued. This is because the employer will be initiating bargaining or agreeing to bargain for a proposed agreement covering employees in the broader group.

¹⁰⁷ RAFFWU Outline of Submissions dated 7 December 2018 at [11]

¹⁰⁸ *Ibid* at [6]; Exhibit 9; Annexure LK-3 at p. 34

¹⁰⁹ *Ibid* at [10] – [14]

¹¹⁰ *Ibid* at [14]

¹¹¹ *Ibid* at [16] – [17]

¹¹² *Ibid* at [17]

¹¹³ *Ibid* at [18]

¹¹⁴ *Peabody Moorvale Pty Limited v CFMEU* [2014] FWCFCB 2042; (2014) 242 IR 210 at [69], [84]

¹¹⁵ RAFFWU Outline of Submissions dated 7 December 2018 at [68]-[70], [84]

¹¹⁶ *Re Uniline Australia Limited* [2016] FWCFCB 4969; (2016) 263 IR 81 at [113], [115]; *Re Australian Track Corporation Limited* [2016] FWCA 7012 at [69]-[70]; *Re Uniline Australia Limited* [2016] FWCFCB 4969; (2016) 263 IR 81 at [113], [115]; *Re Australian Track Corporation Limited* [2016] FWCA 7012 at [69]-[70] see also *AMOU v Harbour City Ferries Pty Limited* [2016] FWCFCB 1151 at [8]

¹¹⁷ *Re Uniline Australia Limited* [2016] FWCFCB 4969 at [53]-[54];

¹¹⁸ *Ibid* at [113]; *AMWU v Broadspectrum Australia Pty Limited* [2018] FWCFCB 6556 at [30]-[31]

[64] As already noted, Woolworths accepts that that both the 2014 and 2015 NERRs contained a relevant Woolworths' logo. It is arguable that this is a triviality with which s.174(1A) might not be concerned. I will return to this later in this decision.

[65] On the evidence, before 2 February 2018 there was a lengthy period (over 15 months) during which there was no apparent bargaining activity for the proposed agreement to which the 2014 and 2015 NERRs related. There were several circumstances which contributed to the cessation of bargaining during this period. These circumstances included the commencement of the four yearly modern review of the GRI Award; the decision of a Full Bench of the Commission to set aside the approval of the *Coles Store Team Enterprise Agreement 2014-17* on the basis that it did not pass the BOOT;¹¹⁹ the decision of a Full Bench of the Commission in relation to weekend and public holiday penalty rates in a number of hospitality and retail awards including the GRI Award;¹²⁰ and the subsequent judicial review of that decision by a Full Court of the Federal Court.¹²¹

[66] The bargaining parties had stopped bargaining. In these circumstances I do not accept that it was not open to Woolworths to determine it no longer wished to bargain for the proposed agreement. Moreover I do not accept that in the circumstances where it is apparent that the 2014 and 2015 NERRs which underpinned the proposed agreement that was the subject of bargaining might not be valid, that Woolworths could not stop bargaining. If the 2014 and 2015 NERRs were not valid the proposed agreement to which the NERRs related could never be made nor approved. Woolworths would be locked into perpetual bargaining without the possibility of an enterprise agreement being approved by the Commission and commencing operation. Bargaining under the scheme of the Act is undertaken for a proposed agreement with a view to the proposed agreement ultimately becoming an agreement that is approved by the Commission.

[67] In the face of that which Woolworths perceived to be an insurmountable procedural irregularity in the form of a non-compliant NERR, the scheme of the Act should not be construed so that in effect once an employer has agreed to bargain or has initiated bargaining, the employer can never no longer agree to bargain or cannot withdraw from bargaining. Such a construction would make an already difficult to navigate scheme unworkable. To the extent that it may be suggested that the capacity to withdraw from bargaining might be abused¹²², that suggestion is answered in two ways. First, the Act makes provision for various forms of redress including bargaining orders and majority support determinations.¹²³ Secondly, insofar as the identified abuse might be said to be used in a manner that would thwart a bargaining representative's capacity to obtain a protected action ballot order, that concern is misguided since the precondition to obtaining a protected action ballot order is *inter alia* the existence of an identified negotiation time¹²⁴, not any statement by an employer that it no longer wishes to bargain or on the giving of a NERR by the employer.¹²⁵

¹¹⁹ *Hart v Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited T/A Coles and Bi Lo* [2016] FWCFB 2887

¹²⁰ *4 Yearly Review of Modern Awards – Penalty Rates* [2017] FWCFB 1001

¹²¹ *Shop, Distributive and Allied Employees Association v AI Group and Ors* [2017] FCAFC 161

¹²² Transcript at PN1126.

¹²³ See Division 8 of Part 2 – 4

¹²⁴ See s.437(2A)

¹²⁵ See s.437(2A); See also discussion in *Maritime Union of Australia v Maersk Crewing Australia Pty Ltd* [2016] FWCFB 1894 at [37]-[47]

[68] On the evidence Woolworths informed the Unions and RAFFWU between 18 January and 2 February 2018, that it was ceasing bargaining. Woolworths did so because of concerns over an invalid NERR. Neither the Unions nor RAFFWU demurred. I consider that Woolworths was entitled to do so in the circumstances and as a consequence the 2014 and 2015 NERRs ceased to be operative and had no application in relation to the proposed agreement, which became the Agreement, when bargaining which Woolworths initiated on 2 February 2018, commenced.

[69] If I am wrong about this, it is not fatal to the approval of the Agreement. In my view, in these circumstances, Woolworths is entitled to rely upon the 2014 and 2015 NERRs. The mere presence of a company logo or company letterhead on a document containing a NERR does not in my opinion invalidate the NERR. I note there are conflicting first instance decisions on the matter.¹²⁶ I also note that the *Explanatory Memorandum to the Fair Work Amendment (Repeal of Four Yearly Review and Other Measures) Bill 2017*, in respect of the amendment to s.188 of the Act, gives as an example of a minor procedural or technical error “the inclusion of the employer’s company logo or letterhead on a Notice”.¹²⁷ It does not follow however that merely because this example is cited in the explanatory memorandum that the inclusion of a logo or company letterhead renders invalid a NERR. The example is merely responsive to the decisions noted earlier.

[70] Section 174(1A) of the Act is concerned with the content of the NERR. It is not concerned with the colour, design or format of the document on which an employer chooses to print the NERR. With all due respect to those who have held to the contrary, I do not consider that printing at NERR on a company letterhead or on paper containing a company logo invalidates the notice. Neither the letterhead nor the logo form part of the NERR. Neither a company logo nor letter head is additional content. Neither alters in any way the NERR as set out in the prescribed form. The inclusion of a NERR on a document that carries only a company letterhead or its logo is in every sense a triviality and one with which s.174(1A) is not concerned.

[71] If I am wrong in this conclusion, I would conclude the Agreement has nevertheless been genuinely agreed to by the employees covered by the Agreement because the content of the Woolworths’ logo in the 2014 and 2015 NERRs is in each case a minor procedural or technical error which was not likely to have disadvantaged the employees covered by the Agreement in relation to the requirements in s.173 and s.174 of the Act.¹²⁸

[72] The inclusion of Woolworths’ logo in both the 2014 and 2015 NERRs are in my view minor procedural or technical errors because though the inclusion of the relevant NERR in a document containing Woolworths logo was a deliberate act, the NERR included the logo erroneously in the sense that it was doubtless thought or not considered that such inclusion would not invalidate either notice. There is no suggestion that Woolworths intended to invalidate the notices or to mislead employees by including its logo in the 2014 or 2015 NERR. In this sense it was a minor technical error because the inclusion of the logo in the NERRs was not undertaken for the deliberate purpose or to deliberately seek to mislead any

¹²⁶ See, for example, *Re CQ Industries Pty Ltd T/A CQ Field Mining Services* [2017] FWC 5667; *Re DP World Brisbane Pty Ltd* [2016] FWC 385 and *Re DP World Melbourne Limited* [2016] FWC 386

¹²⁷ *Explanatory Memorandum to the Fair Work Amendment (Repeal of Four Yearly Review and Other Measures) Bill 2017* at [47]

¹²⁸ Section 188(2)

employee in relation to an employee's right to be represented in bargaining. All of the other requirements as the content of a NERR are contained in both the 2014 and 2015 NERRs. There is no other content. There is also no suggestion that any employee was unable to appoint, or did not know that he or she could appoint a bargaining representative by reason of the NERR being printed on a document containing Woolworths' logo. It is for these reasons employees covered by the Agreement are not likely to have been disadvantaged by reason only of the NERR having been printed on a document which also contains Woolworths' logo.

[73] It follows that RAFFWU's objection on this ground is rejected.

[74] It is clear from the evidence earlier noted that Woolworths gave the 2014 NERR to relevant employees between 21 and 27 October 2014 by a combination of placing the notice in clear view of employees on a noticeboard in the store and on at least one other prominent location within the store.¹²⁹ The 2014 NERR was also dispatched by post to the home address of any employee who was on various forms of leave or was not rostered over the two weeks following 21 October 2014. These steps are the kind contemplated for the purposes of giving a notice set out in subregulation 2.04(7) of the *Fair Work Regulations 2009* (FW Regulations). Given my earlier finding in relation to the notification time I am satisfied that the 2014 NERR was given to relevant employees as required by s.173(1) within the period specified in s.173(3). I will later deal with the import of giving a notice in accordance with subregulation 2.04(7) of the FW Regulations.

[75] On 11 November 2015, Woolworths advised non-salaried employees employed in its Metro Stores that it was proposing to expand the coverage of the proposed agreement to cover these employees.¹³⁰ It gave the 2015 NERR to the relevant employees using substantially the same method as noted in the preceding paragraph.¹³¹ It is not in contest that the 2015 NERR was validly given and I am so satisfied.

4.2 The 2018 NERR

[76] RAFFWU's alternative or further objection relates to the manner in which the 2018 NERR was "given" to relevant employees by Woolworths. RAFFWU contends the Commission cannot be satisfied that the requirements of the Act were met.¹³² That is because Woolworths did not take all reasonable steps to give the 2018 NERR to relevant employees employed at the notification time for the agreement as required by s.173(1). There are two bases for this contention.

[77] First, RAFFWU says that the 2018 NERR was not given to certain "salaried employees" because Woolworths contends that these employees are not covered by the Agreement. RAFFWU contends that salaried employees are covered by the Agreement.¹³³

[78] Secondly, the RAFFWU contends that Woolworths did not take all reasonable steps to give the 2018 NERR to relevant employees because Woolworths did not display the 2018 NERR in a conspicuous location. Its evidence is that Woolworths does not use the "team

¹²⁹ Exhibit 2 at Annexure JTK-4

¹³⁰ Exhibit 2 at Annexure JTK-7

¹³¹ Exhibit 2 at [31] – [32]

¹³² RAFFWU Outline of Submissions dated 7 December 2018 at [20]

¹³³ Ibid at [21]

room poster board” for communications between the employer and employees. It submits that the board is not a known place for the display of communications.¹³⁴ RAFFWU submits that:

“the modern supermarket workplace does not use poster boards to communicate important information to staff. Many poster boards are in areas not frequented by staff. Many stores do not require staff to “clock on” in team rooms. Important information is communicated in person, or by electronic means. Often [Woolworths] will use a combination of in person communication and electronic communication.”¹³⁵

[79] RAFFWU relies on the statement of Mr Loukas Kakogiannis, an employee of Woolworths, to seek to make good its point.¹³⁶ Mr Kakogiannis’ evidence was that simple daily messages are provided to him through a manager verbally and in person.¹³⁷ Mr Kakogiannis says that he expects all required communication from Woolworths to either be communicated to him in person by a manager or through the online mechanisms regularly used by Woolworths (SuccessFactors and WOW People).¹³⁸ As to the team room poster board, Mr Kakogiannis states that as a supervisor, he has never directed other staff to read printed notices on the team room poster board, and nor has he been directed by a manager to do so.¹³⁹ He says that he had not seen the 2018 NERR in his store before being asked by a representative of RAFFWU to locate it. Mr Kakogiannis says that he located the 2018 NERR on 26 February 2018.¹⁴⁰ Mr Kakogiannis says that in speaking with his co-workers, he is aware that many staff do not use the team room at his store. He states that employees clock-on on the shop floor, accessing the toilets does not require entering the team room, and that his store does not conduct team meetings within the team room.¹⁴¹ Mr Kakogiannis says “[I]t did not occur to me that my employer would give me a notice by putting it on this board... I have never used the board to receive such information”.¹⁴²

[80] RAFFWU contends that a failure to give a notice is exacerbated by placing it in an inconspicuous location not known by employees as places for such communications.¹⁴³

[81] As earlier noted, on 2 February 2018, Woolworths informed the Unions and RAFFWU that it intended to recommence bargaining. On this date, Woolworths initiated bargaining for the proposed agreement. This was the notification time for the proposed agreement within the meaning of s.173(2)(a) of the Act. On 6 February 2018, Woolworths gave the 2018 NERR to relevant employees employed at the notification time in the manner earlier described.

[82] The requirement in s.173(1) of the Act is to take “all reasonable steps to give” a NERR to relevant employees employed at the notification time. The evident purpose of the provision is to inform an employee who will be covered by the proposed agreement of

¹³⁴ Ibid at [22] – [25]

¹³⁵ Ibid at [28]

¹³⁶ Exhibit 9 at [3]

¹³⁷ Ibid at [7]

¹³⁸ Ibid at [15]

¹³⁹ Ibid at [16] – [17]

¹⁴⁰ Ibid at [21] - [22]

¹⁴¹ Ibid at [23]

¹⁴² Ibid at [24]

¹⁴³ RAFFWU Outline of Submissions dated 7 December 2018 at [29] – [30]

particular representational rights in relation to bargaining for the proposed agreement. It is also a condition precedent to asking employees to vote to approve an agreement.¹⁴⁴ A requirement or obligation to take “all reasonable steps” seems to me to require the identification of the steps a reasonable person would regard as reasonable in the circumstances that apply. Whether particular steps are reasonable will depend on the particular circumstances existing at the time the obligation arises. A requirement to take all reasonable steps does not extend to all steps that are reasonably open in some literal or theoretical sense.¹⁴⁵

[83] Section 173(5) allows for regulations to be made that prescribe how NERRs may be given. Regulation 2.04 of the FW Regulations prescribes various means by which an employer for a proposed enterprise agreement may give relevant employees a NERR. That regulation provides:

“REG 2.04 Notice of employee representational rights--how notice is given

- (1) For s.173(5) of the Act, each of the following is a manner in which the employer for a proposed enterprise agreement may give employees who will be covered by the agreement notice of the right to be represented by a bargaining representative for the agreement.
- (2) The employer may give the notice to the employee personally.
- (3) The employer may send the notice by pre-paid post to:
 - (a) the employee's residential address; or
 - (b) a postal address nominated by the employee.
- (4) The employer may send the notice to:
 - (a) the employee's email address at work; or
 - (b) another email address nominated by the employee.
- (5) The employer may send to the employee's email address at work (or to another email address nominated by the employee) an electronic link that takes the employee directly to a copy of the notice on the employer's intranet.
- (6) The employer may fax the notice to:
 - (a) the employee's fax number at work; or
 - (b) the employee's fax number at home; or

¹⁴⁴ Section 181(2) of the Act

¹⁴⁵ *The Maritime Union of Australia v Northern Stevedoring Services Pty Ltd* [2016] FWCFB 1926 ; *Bluescope Steel Ltd v The Australian Workers' Union, New South Wales* (2004) 137 IR 176 at [67]-[71]; *BGC Contracting Pty Ltd* [2018] FWC 1466 at [43]

(c) another fax number nominated by the employee.

(7) The employer may display the notice in a conspicuous location at the workplace that is known by and readily accessible to the employee.

(8) Subregulations (2) to (7) do not prevent the employer from using another manner of giving the notice to the employee.”¹⁴⁶

[84] The obligation to give the NERR is not an absolute one. It is expressed, as already observed, in qualified terms. The requirement is for the employer to take all reasonable steps to give the NERR to each relevant employee. Section 173(5) allows for regulations to be made which may prescribe how notices under subsection (1) may be given. Regulation 2.04 of the FW Regulations prescribes a number of ways in which an employer may give the NERR.

[85] One of the ways identified for giving a NERR is prescribed as follows:

“The employer may display the notice in a conspicuous location at the workplace that is known by and readily accessible to the employee”¹⁴⁷

[86] If an employer gives the NERR using this method, the employer will have satisfied the obligation to take all reasonable steps to give the NERR. That is because the employer will have given the NERR by using the method. Of course using this method will only be taken as having given the notice in respect of relevant employees who are at work during the relevant period within which the employer is required to give the notice following the notification time. But in respect of such employees the employer will have achieved the giving of the notice and in respect of these employees there is also no requirement in s.173(1) for a NERR, which has already been given by the employer, to be given again.

[87] As to the relevant employees to whom the notice must be given who are not in attendance at work during the relevant period, some other step or steps will need to be taken.

[88] I consider that by using one of the methods specified in regulation 2.04, an employer will satisfy the requirement in respect of any employee to whom has been given notice by the relevant means. As I have noted employees to whom a notice is not given or is unable to be given notice in that way will need to be given notice by another means which are limited to such means as are reasonable steps.

[89] When a notice is given using a method prescribed it is in my view unnecessary to show that that each employee to whom the notice was given using that method received the NERR or read it. It is only necessary to show that an employer undertook the relevant method for giving the notice specified in the FW Regulations.

[90] The evidence earlier set out establishes that as at 6 February 2018, Woolworths used noticeboards as part of its standard communication process with employees. Communication through the use of noticeboards informed employees of pay increases, exhibited copies of applicable enterprise agreements and facilitated the display of union notices. The evidence

¹⁴⁶ Regulation 2.04 of the *Fair Work Regulations 2009*

¹⁴⁷ *Ibid* at subregulation (7)

establishes that Woolworths used noticeboards in 2011 to give a NERR to relevant employees in connection with the proposed agreement that became the 2012 Agreement. Woolworths used the noticeboards to give to relevant employees the 2014 and 2015 NERRs. Ms Kerr also gave evidence that other related companies in the Woolworths Group used noticeboards to give notices of NERRs to employees.¹⁴⁸

[91] The evidence also establishes that in February 2018, Woolworths gave a direction to Store Managers to display the 2018 NERR on noticeboards in prominent locations and the Store Managers or those instructed by them completed a checklist to confirm that there had been compliance with the direction. Ms Kerr gave evidence, based on inquiries of large supermarkets and Metro Stores across multiple States and Territories conducted between 11 and 14 December 2018, that many stores displayed the 2018 NERR on noticeboards or locations near the finger scanner used by team members to sign on and sign off for each shift and some stores placed the 2018 NERR on the lunch room table or on the wall in the team room or the hall ways approaching the team room.¹⁴⁹

[92] Given Woolworths history of use of noticeboards as a form of communication with its employees it seems to me that it was appropriate for Woolworths to use noticeboards as the vehicle through which it would give relevant employees the 2018 NERR. That notice was displayed in conspicuous locations at the workplace that were known to relevant employees and these were readily accessible to employees as is set out in evidence. It follows that I consider that Woolworths displayed the 2018 NERR in a manner prescribed by subregulation 2.04(7) of the FW Regulations and so gave the 2018 NERR to team members for the purposes of s.173(1) of the Act. That Mr Kakogiannis and perhaps some other employees did not see the 2018 NERR when it was given, or that they might not have read it, does not detract from the fact that it was validly given by Woolworths using the method prescribed. This step satisfied subregulation 2.04(7).

[93] Ms Kerr's statutory declaration also sets out the steps Woolworths took to give the 2018 NERR to employees absent from the workplace. According to the statutory declaration Store Managers were directed to send the 2018 NERR "by post to the home address of every relevant team member on any form of leave or not rostered over the following two weeks (including, annual leave, long service leave, long-term sick leave, long-term workers compensation, unpaid leave, parental leave and long-term absence)."¹⁵⁰ As already noted Store Managers or those instructed by them completed a checklist to confirm that there had been compliance with the direction.¹⁵¹ This step satisfied subregulation 2.04(3).

[94] RAFFWU contends that Woolworths ought to have taken further or additional steps, for example by placing information on a website and some of the other steps that Woolworths has taken in relation to discharging obligations to make available and explain the terms of the Agreement and to notify employees of the of voting arrangements.

[95] The reasonableness of the steps taken and the question whether further steps ought to have been taken is to be determined by the factual circumstances faced by an employer at the time the obligation to give a NERR arose. An employer need not take every step available to

¹⁴⁸ Exhibit 2 at [86]

¹⁴⁹ Ibid at [83]

¹⁵⁰ Exhibit 1 at question 2.3

¹⁵¹ Ibid

it. In assessing whether Woolworths took all reasonable steps to give the 2018 NERR to relevant employees it is relevant to consider that it took the steps prescribed and that the number of employees in Woolworths business, which as earlier noted was in excess of 107,000 in February 2018. It is also relevant that the obligation must be discharged within 14 days of the notification time. I therefore consider that by using the methods prescribed as set out in the evidence, Woolworths took all reasonable steps to give relevant employees employed at the notification time the 2018 NERR.

[96] It follows that RAFFWU’s objection on this basis is rejected.

[97] As to whether the 2018 NERR ought to have been given to certain employees who are “salaried employees”, that issue is relevantly related to the question whether the group of employees covered by the Agreement was fairly chosen. I deal with that issue shortly. In any event it is clear that the number of “salaried” employees are excluded from the Agreement’s coverage. This is also clear from the scope of the proposed agreement described in the 2018 NERR. The obligation in s.173(1) is to give a NERR to employees employed at the notification time who “will be covered by the Agreement”. An employee who will not be covered by the Agreement need not be given a notice.

[98] In summary I conclude as follows:

- a. The 2014 and 2015 NERRs were valid notwithstanding they were printed on a document containing Woolworths logo;
- b. The 2014 and 2015 NERRs were given in accordance with the requirements in s.173 of the Act;
- c. If I am wrong about the validity of the 2014 or 2015 NERR then insofar as validity affects genuine agreement, I consider the Agreement has nevertheless been genuinely agreed to by the employees covered by the Agreement because the existence of the Woolworths’ logo in the documents containing the 2014 and 2015 NERRs is in each case a minor technical error which was not likely to have disadvantaged the employees covered by the Agreement in relation to the requirements in s.173 and s.174 of the Act;
- d. For the reasons stated I consider there was a new notification time in relation to the proposed agreement on 2 February 2018;
- e. The 2018 NERR was a valid notice given as required by s.173 of the Act; and
- f. If I am wrong about the invocation of a new notification time in relation to the 2018 NERR, then bargaining was continuing and the 2014 and 2015 NERRs support the Agreement.

4.3 Fairly chosen

[99] I turn next to consider whether the group of employees to be covered by the Agreement was fairly chosen. This was an issue that I raised with Woolworths during the directions hearing on 16 November 2018. Section 186 of the Act are relevantly provides:

“186 When FWA must approve an enterprise agreement--general requirements

Basic rule

(1) If an application for the approval of an enterprise agreement is made under section 185, FWA must approve the agreement under this section if the requirements set out in this section and section 187 are met.

Note: FWA may approve an enterprise agreement under this section with undertakings (see section 190).

...

Requirement that the group of employees covered by the agreement is fairly chosen

(3) FWA must be satisfied that the group of employees covered by the agreement was fairly chosen.

(3A) If the agreement does not cover all of the employees of the employer or employers covered by the agreement, FWA must, in deciding whether the group of employees covered was fairly chosen, take into account whether the group is geographically, operationally or organisationally distinct.”

[100] The coverage clause of the Agreement is as follows:

“1.2. Agreement coverage

a. This Agreement covers Woolworths and its employees who are employed in Woolworths retail supermarket operations in the classifications described in clause 3.3 and Appendix A of this Agreement (team members).

b. This Agreement does not cover Woolworths employees who work in salaried positions, including (but not limited to): salaried Team Managers, salaried Team Support, salaried Duty Managers, salaried Assistant Store Managers and salaried Store Managers.”¹⁵²

[101] Clause 3.3 of the Agreement deals with classifications and makes provision for “Team Manager” and “Duty Manager”.

[102] RAFFWU says the Agreement should not be approved as the group of employees covered by it was not fairly chosen.¹⁵³ It says this is so because employees engaged to perform the same work in the same store are able to be included in the group or excluded from the group based only on the method of contracted payment and that the same employee, performing the same work, could “fall in and out of coverage based on whether their contractual terms provide for a wage or a salary at any given time”.¹⁵⁴

[103] RAFFWU submits that the group of employees chosen by Woolworths is not geographically, operationally or organisationally distinct, which s.186(3A) of the Act requires the Commission to consider. It submits that upon examination of the position descriptions for each of the equivalent roles they are identical. For example the position description of a

¹⁵² Clause 1.2. of the Agreement

¹⁵³ RAFFWU Outline of Submissions dated 7 December 2018 at [46] – [47]

¹⁵⁴ Ibid at [48]

salaried Duty Manager (not covered by the Agreement) and a non-salaried Duty Manager (covered by the Agreement) are identical.¹⁵⁵

[104] In addition, RAFFWU contends that the Agreement’s exclusion of salaried employees “is expressly counter to the legislative scheme” and that the Agreement, through its use of non-salaried coverage, establishes unlawful opt-out terms prohibited by s.168(4) informed by s.194(ba). RAFFWU submits that s.194(ba) was specifically enacted by the Parliament to prohibit such an exclusion.¹⁵⁶ Section 194(ba) is as follows:

“194 Meaning of unlawful term

A term of an enterprise agreement is an *unlawful term* if it is:

...

(ba) a term that provides a method by which an employee or employer may elect (unilaterally or otherwise) not to be covered by the agreement; ...”

[105] RAFFWU contends that the Agreement cannot be approved by the Commission as it contains an unlawful term as described by s.194 of the Act.

[106] It is first necessary to make some observations about the fairly chosen requirements in ss.186(3) and (3A) of the Act. The expression “the group of employees covered by the agreement” in s.186(3) refers to the whole class of employees to whom the agreement might in future apply, not the group of employees who actually voted on whether to make the agreement.¹⁵⁷ The reference in both ss.186(3) and (3A) to whether “the group of employees covered by the agreement was fairly chosen” is, in the case of an enterprise agreement, made with a group of employees, particularly a small group, a reference to a choice made by the employer.¹⁵⁸ A decision by a Commission Member as to whether the Member is satisfied that the group of employees covered by an agreement was “fairly chosen” involves a degree of subjectivity and the exercise of a very broad value judgment, and may be characterised as a discretionary decision.¹⁵⁹ The time for assessing whether the group of employees was fairly chosen is, relevantly for the purposes of the Agreement, the time the bargaining parties agreed on the scope or coverage of the proposed agreement or the time the bargaining parties commenced bargaining on a shared assumption as to scope.¹⁶⁰

[107] Once it has been established that an agreement does not cover all of the employees of the employer, the Commission will consider whether the group chosen is geographically,

¹⁵⁵ Ibid at [41] – [44]

¹⁵⁶ Ibid at [45]

¹⁵⁷ *Construction, Forestry, Mining, and Energy Union v John Holland Pty Ltd* [2015] FCAFC 16, (2015) 228 FCR 297 at [34]-[41]

¹⁵⁸ Ibid at [28]-[32]

¹⁵⁹ Ibid at [60]-[62]; *Cimeco Pty Ltd v Construction, Forestry, Mining, and Energy Union* [2012] FWAFB 2206, (2012) 219 IR 139 at [8]

¹⁶⁰ *Cimeco Pty Limited v CFMEU* [2012] FWAFB 2206; (2012) 219 IR 139 at [14]; *AMOU v Harbour City Ferries Pty Limited* [2016] FWCFB 1151 at [27]

operationally or organisationally distinct.¹⁶¹ Account must be taken of and weight given to whether the group chosen is geographically, operationally or organisationally distinct.¹⁶² Relevant to the issue of organisational distinctness, is the manner in which the employer has organised its enterprise to conduct its operations, the performance of duties that are qualitatively different and the existence of organisation structures.¹⁶³ However it is not necessary for the Commission to find that the proposed coverage represented a geographically, operationally or organisationally distinct group.¹⁶⁴ That the group of employees covered by the agreement is not a geographically, operationally or organisationally distinct group is not determinative of the question whether the group of employees was fairly chosen.¹⁶⁵ In such circumstances the question might be determined by asking whether there is an objective, as opposed to an arbitrary, discriminatory or subjective, basis for the group chosen to be covered by the agreement.¹⁶⁶

[108] Relevant also is the question whether there are legitimate business reasons for the group chosen,¹⁶⁷ as is the question of the coverage of previous enterprise agreements relating to the employer.¹⁶⁸ It is also evident that there is no singular way in choosing fairly the group of employees to be covered by the enterprise agreement.¹⁶⁹ Subject to the overriding qualification of “fairly”, the range of relevant considerations in assessing whether a group was fairly chosen is neither set out nor limited by s.186 of the Act. Considerations that are relevant is to be determined by reference to the objects of the Act and the evident purpose of the fairly chosen requirement in s.186 understood in the context of the enterprise agreement making and bargaining scheme for which the Act makes provision. It is for this reason that the Commission has considered relevant issues such as the coverage provisions of antecedent agreements which cover the same group of employees as well as the choice made by employees who are members of the group that is covered by the agreement.¹⁷⁰

[109] The evidence discloses that in February 2018, the SDA and the AWU gave to Woolworths a joint log of claims. The log of claims sought abolition of “Retail Employee

¹⁶¹ *Aerocare Flight Support Services Pty Limited v TWU* [2017] FWCFB 5826; (2017) 270 IR 385 at [26]; *Thiess Pty Limited v CFMMEU* [2018] FWCFB 2405 at [5], [25], [29], [52]

¹⁶² *Ibid*

¹⁶³ *Aerocare Flight Support Services Pty Limited v TWU* [2017] FWCFB 5826; (2017) 270 IR 385 at [26]; *Thiess Pty Limited v CFMMEU* [2018] FWCFB 2405 at [28], [32]

¹⁶⁴ *AMOU v Harbour City Ferries Pty Limited* [2016] FWCFB 1151 at [31]; *Aerocare Flight Support Services Pty Limited v TWU* [2017] FWCFB 5826; (2017) 270 IR 385 at [26]; *Thiess Pty Limited v CFMMEU* [2018] FWCFB 2405 at [26]; *AWU v BP Refinery (Kwinana) Pty Limited* [2014] FWCFB 1476 at [11]

¹⁶⁵ *Cimeco Pty Limited v CFMEU* (2012) 219 IR 139 at [20]; *CFMEU v Queensland Bulk Handling Pty Limited* [2012] FWAFB 7551 at [20]; *Re OneSteel Recycling Pty Limited* [2014] FWCFB 7560 at [22], [26]; *AMOU v Harbour City Ferries Pty Limited* [2016] FWCFB 1151 at [31]; *Aerocare Flight Support Services Pty Limited v TWU* [2017] FWCFB 5826; (2017) 270 IR 385 at [26]; *Thiess Pty Limited v CFMMEU* [2018] FWCFB 2405 at [26], [29];

¹⁶⁶ *Aerocare Flight Support Services Pty Limited v TWU* [2017] FWCFB 5826; (2017) 270 IR 385 at [26]; *Thiess Pty Limited v CFMMEU* [2018] FWCFB 2405 at [27], [46]

¹⁶⁷ See, for example, *AMOU v Harbour City Ferries Pty Limited* [2016] FWCFB 1151 at [33]; *MUA v MMA Offshore Logistics Pty Limited* [2017] FWCFB 660; (2017) 263 IR 81 at [82], [90]; *Thiess Pty Limited v CFMMEU* [2018] FWCFB 2405 at [27], [46]

¹⁶⁸ *Re OneSteel Recycling Pty Limited* [2014] FWCFB 7560 at [19], [26], [27]; *AMOU v Harbour City Ferries Pty Limited* [2016] FWCFB 1151 at [20]-[22]; *Aerocare Flight Support Pty Limited v TWU* [2017] FWCFB 5826; ; (2017) 270 IR 385 at [29], [30]

¹⁶⁹ *AWU v BP Refinery (Kwinana) Pty Limited* [2014] FWCFB 1476 at [14], [20]; *Re OneSteel Recycling Pty Limited* [2014] FWCFB 7560 at [23]

¹⁷⁰ See, for example, *AMOU v Harbour City Ferries Pty Limited* [2016] FWCFB 1151 at [21]-[22] and *AWU v BP Refinery (Kwinana) Pty Limited* [2014] FWCFB 1476 at [14]

Grade 1” from any agreement made, but did not seek to vary the classifications in the proposed agreement or the coverage of the proposed agreement. The evidence also establishes that the AMIEU did not seek to vary the coverage of the proposed agreement.¹⁷¹ RAFFWU maintains that it was seeking an agreement that covered all supermarket workers. Although it did not make a written claim about coverage of the proposed agreement, RAFFWU maintained that the issue of coverage was raised by it during bargaining meetings and that its desire for such an agreement was evident through its appointment as a bargaining representative by at least one “salaried manager” employed in Queensland.¹⁷² It is not suggested that the group of employees chosen is geographically, operationally or organisationally distinct from for example “salaried duty managers”. That this is not the case is relevant but not decisive. Having regard to the history of coverage earlier discussed I do not consider this to be a significantly weighty consideration speaking against a conclusion that the group of employees covered by the Agreement was fairly chosen. It is also evident that the coverage of the Agreement reflects the coverage of enterprise agreements made and approved in 2010 and 2012. In approving the 2009 and 2012 Agreements it must be accepted that the Member of the Commission approving the agreements was then satisfied that the group of employees was fairly chosen. There is no apparent undertaking that operated in relation to either agreement which would suggest that there was any concern that the group of employees was not fairly chosen. The Unions that are bargaining representatives for the proposed agreement bargained on the basis of the coverage contained in the Agreement and though RAFFWU might have been seeking a broader coverage there is no evidence which suggests, apart from the objection it now takes, that it considered the group expressed in the coverage to be anything other than fairly chosen. No correspondence was produced by RAFFWU to suggest otherwise. There is no evidence that coverage of the proposed agreement occupied any significant time during bargaining or that it was a seriously contentious issue between Woolworths and the various bargaining representatives during bargaining. That coverage was an issue agitated by one bargaining representative does not on its own mean that the scope contained in the Agreement, and on which all other bargaining representatives settled, covers a group of employees that was not fairly chosen.

[110] Moreover as Ms Kerr’s evidence discloses, the reason for the exclusion of salaried positions was traditional specification of coverage within Woolworths. It was not to manipulate the voting for the 2018 Agreement.¹⁷³ There is no suggestion that exclusion of salaried positions undermined collective bargaining, nor is there evidence of any impact on collective bargaining by the excluding salaried positions from coverage by the Agreement.

[111] Overall given the history of agreement coverage, the involvement in bargaining of professional and experienced bargaining representatives and the absence of any evidence of manipulation, I consider that notwithstanding that the group covered by the Agreement is not geographically, operationally or organisationally distinct, the group of employees covered by the Agreement was nevertheless fairly chosen.

4.4 Objectionable and unlawful terms

[112] Turning next to the issue whether a number of impugned terms of the Agreement (including whether in combination, the exclusion of certain salaried positions from coverage

¹⁷¹ Exhibit 2 at [97]

¹⁷² Transcript at PN 482 – PN 499

¹⁷³ Exhibit 2 at [98]

of the Agreement and the inclusion of the equivalent non-salaried positions), are unlawful terms.

[113] As noted earlier, RAFFWU contends that the Agreement contains unlawful terms and should therefore not be approved. In addition to the coverage clause of the Agreement, RAFFWU contends that clause J.1 of the Agreement is a discriminatory term within the meaning of s.195 of the Act, and therefore an unlawful term which renders the Agreement unable to be approved by s.194 of the Act.¹⁷⁴ Clause J.1 of the Agreement is as follows:

“J.1 One-Off Bonus Payment

J.1.1 Eligible team members will be entitled to a one-off bonus payment which will be payable as a cash bonus added to the team member’s pay (less applicable taxes) as set out in this clause.

J.1.2 In order to be eligible to receive the one-off bonus, team members must:

- (a) have been employed by Woolworths as of 1 July 2017;
- (b) remain employed by Woolworths as at 22 October 2018; and
- (c) be employed by Woolworths on the payment date.

J.1.3 The one-off bonus will be paid no later than 14 days from the date of the approval of this Agreement by the FWC, however Woolworths may make the payment earlier if it chooses.

J.1.4 The value of the one-off bonus payable to an eligible team member is based on two factors:

- (a) when the team member commenced employment with Woolworths; and
- (b) the team member’s average hours worked per week (over May, June and July in 2018).

Average Weekly Hours	Team members continuously employed on or earlier than 31 December 2016	Team members continuously employed since 1 January 2017 to 1 July 2017
38 (Full-time team members only)	\$805	\$380
More than 30	\$574	\$238.50
20 to 30	\$288	\$62.50
10 to 20	\$68	No cash bonus payable
1 to 10	No cash bonus payable	No cash bonus payable
Less than 1	No cash bonus payable	No cash bonus payable

J.1.5 Team members employed from 2 July 2017 onwards are not entitled to the one-off bonus payment.”

¹⁷⁴ RAFFWU Outline of Submissions dated 7 December 2018 at [50] - [51]

[114] RAFFWU submits that clause J.1 provides for employees to be paid a “one-off bonus payment” and notes the following:

- Employees who were employed after 1 July 2017 are not entitled to a bonus;¹⁷⁵
- Part time or casual employees who worked an average below 10 hours per week are not entitled to a bonus;¹⁷⁶
- Employees who were engaged prior to 1 July 2017 who are part time, are to receive no or a smaller bonus than an equivalent full-time employee;¹⁷⁷
- The scaling of payments is not proportionate to the hours worked (not pro-rata);¹⁷⁸
- Part time employees who worked an average of 38 hours per week are to be paid a substantially lower bonus than full time employees who also worked 38 hours per week in the same period;¹⁷⁹ and
- Part-time or casual employees who worked 19 hours (half that of a full-time employee) are entitled to a disproportionately reduced payment when compared with full time employees, or no payment if they were employed after 1 July 2017.¹⁸⁰

[115] RAFFWU says that on its analysis, employees who are not full time are to be paid a bonus which will be disproportionately lower than what will be paid to full time employees. It further submits that there are distinctly different employee demographics for those who are full time and those who are not. RAFFWU submits that the critical demographic characteristics are gender and age.¹⁸¹

[116] RAFFWU submits that according to the Reserve Bank of Australia, women, young workers and older workers are far more likely to be engaged in part time work.¹⁸² Data provided by Woolworths confirms that the Agreement coverage includes:

- 57.3% women;
- 29.9% under the age of 21; and
- 83.2% non full time employees.¹⁸³

[117] Data provided by Woolworths¹⁸⁴ also confirms the total number of employees who are due to receive a bonus in each category of hours, further divided to show both gender and age characteristics as follows:

¹⁷⁵ Ibid at [52]

¹⁷⁶ Ibid at [55]

¹⁷⁷ Ibid at [53]

¹⁷⁸ Ibid

¹⁷⁹ Ibid at [54]

¹⁸⁰ Ibid at [56]

¹⁸¹ Ibid at [59] – [60]

¹⁸² Ibid at [63]

¹⁸³ Exhibit 1 at question 2.10 and question 4.3

¹⁸⁴ Exhibit 2 at Annexure JTK-30

Average weekly hours, gender & continuous service

Average weekly hours	Female		Male	
	Continuously employed on or earlier than 31 December 2016	Continuously employed since 1 January to 1 July 2017	Continuously employed on or earlier than 31 December 2016	Continuously employed since 1 January to 1 July 2017
less than 1 hour	666	45	592	46
1 to 10 hours	5938	989	4951	871
10 to 20 hours	12431	1143	7532	927
20 to 30 hours	11895	585	5808	463
more than 30 hours	5245	148	2572	153
Full time (38)	7408	83	6529	173

Average weekly hours, age group & continuous service

Average weekly hours	20 years & under		21 - 64 years		65 years & over	
	Continuously employed on or earlier than 31 December 2016	Continuously employed since 1 January to 1 July 2017	Continuously employed on or earlier than 31 December 2016	Continuously employed since 1 January to 1 July 2017	Continuously employed on or earlier than 31 December 2016	Continuously employed since 1 January to 1 July 2017
less than 1 hour	235	51	1012	38	11	2
1 to 10 hours	4574	1424	6148	431	167	5
10 to 20 hours	4893	1047	14544	1021	526	7
20 to 30 hours	1904	279	15408	766	391	3
more than 30 hours	333	41	7303	260	181	
Full time (38)	207	24	13388	232	342	

[118] As to young workers, RAFFWU notes the following:

- Of those employed between 1 January 2017-1 July 2017, 62.6% of those who will not receive any bonus are under the age of 21;¹⁸⁵
- Of those covered by the Agreement, 29.9% are under the age of 21 however 54.9% of those employees who were employed after 1 July 2017, and not entitled to a bonus, are under the age of 21;¹⁸⁶
- In total, 44.2% of those to be covered by the Agreement are not entitled to any form of bonus, and yet 76.5% of employees under the age of 21 will not be paid a bonus;¹⁸⁷ and
- Despite 12.7% of employees being paid the highest category bonus (full time employees), only 0.6% of employees under the age of 21 are engaged as full time employees and therefore entitled to the highest category bonus.¹⁸⁸

[119] RAFFWU contends that on its analysis, employees under the age of 21 are far more likely than any other apparent age group to not have the benefit of the highest category bonus and to not be paid a bonus at all. It contends that this would likely extend to workers in their early twenties, however the material produced does not provide this information.¹⁸⁹

[120] RAFFWU also relied on the profile of retail industry employees discussed in the *Penalty Rates Case*¹⁹⁰. That is, such employees “more likely to be female, younger (under 25 years), work part-time hours, be employed on a casual basis” and likely to be low paid.¹⁹¹ The Full Bench noted that the sectorial average for part-time employees was 16.1 hours.¹⁹² RAFFWU contends that employees under the Agreement who are working the sectorial average are some of the most disadvantaged by the bonus scheme, in comparison to a pro-rated payment based on hours worked. It says those engaged prior to 2017 will receive an 80% reduction from an equivalent pro-rated payment, and for those engaged after 2017 they will receive a 100% reduction when compared with an equivalent pro-rated payment.¹⁹³

¹⁸⁵ RAFFWU Outline of Submissions dated 7 December 2018 at [71]

¹⁸⁶ Ibid at [73]

¹⁸⁷ Ibid at [74]

¹⁸⁸ Ibid at [75]

¹⁸⁹ Ibid at [81]

¹⁹⁰ [2017] FWCFB 1001

¹⁹¹ Ibid at [80]; RAFFWU Outline of Submissions dated 7 December 2018 at [77]

¹⁹² [2017] FWCFB 1001 at [1439] and Table 59

¹⁹³ RAFFWU Outline of Submissions dated 7 December 2018 at [78]

[121] RAFFWU contends that s.195 of the Act applies to both direct and indirect discrimination. It contends that Parliament’s intention was to prevent persons from creating schemes which would compensate one category of employee less based on an attribute. It also recognises that a reasonableness test can be inferred in any such assessment. RAFFWU submits that a scheme that pays part time employees a disproportionately less amount than full time employees based on their mode of employment will unfairly disadvantage female employees.¹⁹⁴ RAFFWU also contends that there is no reasonable basis for this discrimination.¹⁹⁵ It says on this basis the Commission cannot approve the Agreement.¹⁹⁶

[122] It is unnecessary for present purposes to determine whether “discriminates” in s.195 of the Act extends to indirect discrimination. It is sufficient to note that there is conflicting relevant authority on the point emanating from single judges of the Federal Court of Australia and indeed from decisions of this tribunal.¹⁹⁷ For the purposes of considering whether the impugned term is a discriminatory term, I will assume without deciding that “discriminates” in s.195 extends to terms that indirectly discriminate in the sense described by Dawson and Toohey JJ in *Waters v Public Transport Corporation*¹⁹⁸:

“...indirect discrimination occurs where one person appears to be treated just as another is or would be treated but the impact of such “equal” treatment is that the former is in fact treated less favourable than the latter.”¹⁹⁹

[123] As a Full Bench of the Commission recently noted in *Budd v Australian Federal Police*²⁰⁰ by reference to the High Court’s judgment in *Street v Queensland Bar Association*²⁰¹, the legal concept of discrimination (including indirect discrimination) does not extend to different treatment appropriate to a relevant difference and that differential treatment or differential impact which is reasonable in the circumstance will not be discriminatory.²⁰²

[124] There are a number of answers to the criticism raised by RAFFWU that the impugned term is a discriminatory term. Accepting that women and younger workers constitute a preponderance of the types of workers who are part-time employees employed by Woolworths and therefore are affected by the impugned term, I am not persuaded on the

¹⁹⁴ Ibid at [79]

¹⁹⁵ Ibid at [81]

¹⁹⁶ Ibid at [83]

¹⁹⁷ *Shop Distributive and Allied Employees’ Association v National Retail Association (No 2)* [2012] FCA 480 (Tracey J); *Klein v Metropolitan Fire and Emergency Services Board* [2012] FCA 1402 (Gordon J); See also *Qantas Airways Limited* [2013] FWCA 8454, in which Commissioner Johns said at [7]: “The Commission accepts that indirect discrimination falls within the scope of sections 194 and 195 of the FW Act”. In *Application by Commissioner for Public Employment* [2010] FWAA 9372, Vice President Lawler assumed without deciding, that a reference in s.195 to “discriminates” extends to indirect discrimination. In *Australian Catholic University Limited T/A Australian Catholic University* [2011] FWA 3693, the Vice President said at [14]: “I am inclined to the view that the notion of discrimination in s.195 extends to indirect discrimination because that construction would seem to be a construction that better furthers the objects of the FW Act”; *Bissett C in University of Melbourne Enterprise Agreement 2013* [2014] FWCA 1133 at [51]-[54] followed *Shop Distributive and Allied Employees’ Association v National Retail Association (No 2)*

¹⁹⁸ (1991) 173 CLR 349

¹⁹⁹ Ibid at 392

²⁰⁰ [2018] FWCFB 6095

²⁰¹ (1989) 168 CLR 461

²⁰² Ibid at [61] – [63]

evidence that there is a differential impact on these workers compared to older workers and men who are also part-time employees affected by the impugned term. The evidence included an analysis prepared by Woolworths of impact based on hours worked, gender and age.²⁰³ I accept the analysis. Based on the analysis I am unable to discern any meaningful differential impact of the impugned term based on age or gender.

[125] Moreover the differential treatment of employees brought about by the impugned term is as a consequence of the hours worked and the period of service rendered. The method of calculation is not strictly pro-rata of hours. The relevant employees in each pool, which is based on a spread of hours, receive a portion of a final total predetermined pool of money set aside for the sign on bonus.²⁰⁴ The impugned term makes payment conditional on being employed at, before or after a particular time, and is distributed on a proportion to the hours worked by individual employees within a span. These considerations are said to reflect issues of contribution to the business of Woolworths made by the various employees, and I agree.

[126] The essence of the RAFFWU's concern about the sign on bonus is one of fairness. A pro-rata distribution is fair, the method chosen by Woolworths is unfair. That may be so, but without more it does not amount to indirect discrimination. If an unfair term operates upon a class of employees comprising younger and older workers, males and females, in essentially the same way, that is the negative impact is essentially the same on each member of the class then it does not discriminate. It might well have been fairer for the amounts to have been distributed on a strictly pro-rata basis but it does not follow that the method is discriminatory. The differential treatment or impact brought about by the conditions attaching to the impugned terms is differential treatment or impact that is in any event appropriate having regard to the circumstances of the employment, namely the hours worked and the period of service given. In other words, if there is differential treatment, the differential treatment or impact is reasonable. The method selected for the distribution of the sign on bonus is not perfectly fair, but it nevertheless has a justifiable basis connected with contribution to the business through hours worked and period of service rendered. This is reasonable and appropriate in the circumstances. It is not suggested that the impugned term directly discriminates. I accept that it does not.

[127] For these reasons I am satisfied that the impugned term is not an unlawful term.

[128] Returning then to the question whether the nature of the coverage of the agreement amounts to, in effect an opt-out clause which is an unlawful term as described in s.194(ba) of the Act.

[129] As appears to me to be evident from the terms of s.194(ba), a term of an enterprise agreement will be an unlawful term if the term "provides a method" by which an employee or employer may elect (unilaterally or otherwise) not to be covered by an agreement.

[130] It is firstly to be observed that the coverage clause and in particular the exclusion of identified employees from coverage clause does not, in terms provide either a "method" unilaterally or otherwise to opt-out, nor is there expressly any method by which an employee or Woolworths "may elect" not to be covered by the Agreement. Secondly the coverage

²⁰³ Exhibit 8

²⁰⁴ Transcript at PN569-PN570; PN864-PN865

provisions of the Agreement do not permit, in the sense of authorising, conduct that may lead to an opting out of coverage of the Agreement.

[131] That an employee is promoted or elects to accept an offer of this employment in another classification of employment which is not covered by the Agreement is not in my view a method nor an election to opt-out of coverage of the Agreement.

[132] An employee covered by the Agreement accepts that which would in effect be a new contract of employment in relation to a new position within Woolworths, that employee would cease to be covered by the Agreement in relation to the new employment because the new employment was not covered by the Agreement to begin with. The cessation of coverage would not occur because the Agreement provided for some method by which the employee could elect to opt-out of coverage, rather the cessation of coverage occurred because the position into which the employee has moved was never covered by the Agreement. As ss.53(1) and (6) of the Act make clear, an enterprise agreement covers an employee if the Agreement is expressed to cover the employee, and where an agreement is expressed to cover an employee, that is a reference to the Agreement “covering the employee in relation to particular employment”.

[133] I am therefore satisfied that the coverage provision of the Agreement is not an unlawful term.

4.5 Misrepresentation of benefits

[134] RAFFWU contends that in Woolworths’ material encouraging workers to vote for the Agreement, it represented that it would pay a “laundering allowance” to employees other than bakery employees (whose uniforms are laundered by Woolworths).²⁰⁵ The relevant term of the Agreement is as follows:

“5.2. Allowance Table

Allowance	Application
Special clothing allowance	<p>Where a team member is required to wear or use protective gear, this will be provided, maintained, repaired, laundered and replaced (when required) by Woolworths. Woolworths will train team members in the appropriate use of protective gear.</p> <p>Examples of protective gear are:</p> <ul style="list-style-type: none"> ▪ Gum boots for work in wet areas ▪ White coats for meat team members, also available to seafood team members on request ▪ Hats and sunscreen lotion for outdoor work ▪ Insulated gloves and insulated parka for cold and freezer areas <p>Where Woolworths requires a team member to wear special clothing such as a uniform, dress or other clothing then Woolworths will reimburse the cost of purchasing such clothing and the cost of replacement items when replacement is due to wear and tear. This will not apply where the special clothing has been supplied or paid for by Woolworths.</p> <p>Woolworths will never require a team member to wear any clothing which is revealing or offensive.</p> <p>Where Woolworths requires a team member to launder any special uniform, dress or clothing, the team member will be paid the following applicable allowance:</p> <p>(a) For a full-time team member, \$6.25 per week.</p> <p>(b) For a part-time or casual team member, \$1.25 per shift.</p>

²⁰⁵ RAFFWU Outline of Submissions dated 7 December 2018 at [84]

[135] RAFFWU contends that Woolworths applies a “preferred dress” policy which arguably does not fall within the scope of the GRI Award and according to information contained on the Fair Work Ombudsman’s website, may not amount to “special uniform”.²⁰⁶ RAFFWU expresses concern that because the preferred dress policy may allow an employee to wear and launder clothing which is not a special uniform, dress or clothing, in those circumstances, Woolworths may not be obliged to pay the laundering allowance. Should this be the operation of the term, RAFFWU submits that the terms and benefits of the Agreement which relate to the laundering allowance may have been misrepresented.²⁰⁷

[136] RAFFWU also has concerns regarding gift cards which were represented to employees as a benefit of the Agreement and that there was a benefit of a “one off payment of up to \$1100...” included in the Agreement. However, RAFFWU submits that the Agreement does not contain any gift card benefit.²⁰⁸

[137] RAFFWU contends that each of these misrepresentations is likely to have misled employees in relation to the Agreement. As the misrepresentations form part of the explanation provided by Woolworths to employees about the terms of the Agreement and the effect of those terms, Woolworths may not have complied with s.180(5) with the consequence that there cannot be satisfaction as to s.188(1)(a).²⁰⁹ The misrepresentation also provides other reasonable grounds for believing that the Agreement was not genuinely agreed to by the relevant employees.²¹⁰

[138] In summary then, RAFFWU contends two misrepresentations were made by Woolworths. One concerns laundry allowance, the other concerns the provision of a sign-on payment. There are two issues raised by these contentions, namely whether there was a misrepresentation of all, and if so, what was the likely impact of the misrepresentation on the quality or genuineness of the making of the Agreement which was given expression through the vote of relevant employees. There are a number of relevant matters that may be taken into account as to the latter. Some of these matters include whether the employee bargaining representatives put, or had a reasonable opportunity to put, a corrective statement to employees or a statement asserting the position of the bargaining representative to employees.²¹¹ Where a statement made is actually a misrepresentation, it is relevant to consider whether the any misrepresentation concerning the content or effect of the agreement was significant or trivial.²¹² It may also be relevant to consider whether by reason of any misrepresentation it could be said that employees were reasonably likely or expected to have been misled into voting for an agreement. That is if they had known the true position, would it have been likely that the employees would not have voted for the agreement.²¹³

²⁰⁶ Ibid at [86]

²⁰⁷ Ibid at [87]

²⁰⁸ Ibid at [88] – [89]

²⁰⁹ Ibid at [91] – [92]

²¹⁰ See s.188(1)(c)

²¹¹ See, for example, *ASU v Yarra Valley Water Corporation* [2013] FWCFB 7453; (2013) 232 IR 440 at [30]; *TWU v Transit (NSW) Services Pty Limited* [2016] FWCFB 997 at [19];

²¹² See, for example, *ASU v Yarra Valley Water Corporation* [2013] FWCFB 7453 at [29]

²¹³ See, for example, *ASU v Yarra Valley Water Corporation* [2013] FWCFB 7453; (2013) 232 IR 440 at [28]; *Re Centre for Non-Violence* [2015] FWCA 4196 at [61], [65], [67], [68]; *Re KCL Industries Pty Limited* [2016] FWCFB 3048; (2016)

[139] Moreover any communication that is said to have been a misrepresentation must be considered in the context of the totality of communications and explanations provided by an employer to the employees. In other words a statement that is said to amount to a misrepresentation should not be viewed in isolation for the purposes of making an assessment as to the genuineness of the agreement made.²¹⁴

[140] The relevant part of the laundry allowance provision of the Agreement at issue provides:

“Where Woolworths requires a team member to launder any special uniform, dress or clothing, the team member will be paid the following applicable allowance:

- (a) For a full-time team member, \$6.25 per week; and*
- (b) For a part-time or casual team member, \$1.25 per shift.”*

[141] This provision appears to be the same as clause 20.2(b) of the GRI Award and appears to be responsive to a claim or request made by the SDA and AWU as the evidence to which earlier reference has been made discloses.

[142] It is not in contention that Woolworths intended by its communications to employees to convey to them that it would be paying the laundry allowance pursuant to the Agreement in respect of uniforms, dress or clothing, that Woolworths required employees to launder.

[143] Central to RAFFWU’s concern is that Woolworths’ preferred dress policy by which employees are encouraged to wear clothing of preferred type, style and colour whilst at work, is not a “special uniform, dress or clothing” for the purposes of clause 5.2 of the Agreement.

[144] According to the evidence given by Ms Kerr, Woolworths has agreed to pay and intends to pay the laundry allowance in respect of preferred dress.²¹⁵ Ms Kerr’s evidence was also that Woolworths has prepared its payroll system to enable it to pay the laundry allowance.²¹⁶

[145] There is no suggestion that Woolworths does not intend to pay the laundry allowance in respect of preferred dress as set out in its policy. The evidence also discloses other communications to employees which make this point clear. For example, the Agreement Summary Deck to which earlier reference has been made provided the following:

“Laundry allowance: Team members required to launder their preferred dress will be paid a laundry allowance. This will apply to all team members except bakers, as Woolworths has their whites professionally laundered for them. The laundry allowance is:

257 IR 266 at [29]-[30]; *Re BGC Consulting Pty Limited* [2018] FWC 1466 at [161]; *Re Coles Supermarkets Australia Pty Limited* [2018] FWCA 2283 at [36]

²¹⁴ *Re BGC Consulting Pty Limited* [2018] FWC 1466 at [158]; *Re Coles Supermarkets Australia Pty Limited* [2018] FWCA 2283 at [37]

²¹⁵ Exhibit 2 at [149], [151] – [153] and [158]

²¹⁶ *Ibid* at [159]

- a. \$6.25 per week for full-time team members; and
- b. \$1.25 per shift for part-time and casual team members.”²¹⁷

[146] Also, the SDA summary document provided the following in respect of laundry allowance:

“New laundry allowance payable to everyone in preferred dress”

...

“The new Agreement contains a laundry allowance that will be paid to all employees who wear a uniform or preferred dress and launder it at home. (This will not apply to Bakery team members if their uniform is laundered by the company).

<i>Casual / Part Time</i>	<i>\$1.25 per shift</i>
<i>Full-time</i>	<i>\$6.25 per week.</i> ” ²¹⁸

[147] There is also correspondence passing between Woolworths and the bargaining representatives about laundry allowance being payable on preferred dress.²¹⁹ In addition it appears that RAFFWU was aware of Woolworths’ position on the payment of the laundry allowance by at least 1 October 2018.²²⁰ It thus had an opportunity to prepare and circulate its own communications if it considered there to have been a misrepresentation as to laundry allowance and there is no evidence that it took up the opportunity. There is no evidence of any employee having actually been misled and there is no evidence of any employee indicating that he or she would have voted differently had they been made aware of the misrepresentation alleged. In any event I am not persuaded that there has been a misrepresentation. There is clearly room for an argument that the provision in the Agreement does not require payment of a laundry allowance for the laundering of preferred dress. It seems to me however, given all of the correspondence to which reference has been made together with the fact that Woolworths is now on record as indicating a broad construction, that it would be hard pressed to argue in future that the provision has a more limited operation.

[148] Turning next to the sign on payment and gift card issues, which concern an allegation that Woolworths represented to employees at both the gift card and the one-off payment of up to \$1100 were benefits of the Agreement.²²¹ The gift card benefit is not a term of the Agreement.

[149] The evidence is that during the course of a bargaining for the Agreement, Woolworths and the Unions agreed, subject to eligibility, that employees would be provided with a sign-on payment in two forms – a cash payment and a Wish Card.²²² These bargaining parties also

²¹⁷ Exhibit 2 at [155(a)]; Exhibit 9 at Annexure LK-3 p. 250

²¹⁸ Ibid at Annexure JTK-35

²¹⁹ Ibid at [151] and at Annexure JTK-33

²²⁰ Ibid at [131]; Annexure JTK-28

²²¹ RAFFWU Outline of Submissions dated 7 December 2018 at [88]; Exhibit 9 at Annexure LK-3 p.68

²²² Exhibit 2 at [108] – [109]

agreed that the cash payment was contingent on the Agreement being approved and the gift card was contingent on the Agreement being made.²²³

[150] It is clear that Clause J1.4 in Appendix J of the Agreement makes provision for the payment of a one-off cash amount upon the approval of the Agreement. It makes no provision of gift cards to employees.

[151] The representations that were made did not in terms expressly state that either the one-off payment or the gift card was a term of the proposed agreement. They were expressed as benefits of the agreement. The suggestion of misrepresentation arises therefore by way of implication, that is, it was implicit from the communications that these benefits would be terms of the Agreement and that the total value of up to \$1100 would be a term of the Agreement. Clearly the representations made about the gift card and the one-off payment were not misrepresentation by reason of any words used by Woolworths or others to communicate the benefit to employees. Such representation as might have been made would arise because Woolworths did not communicate that the full maximum combined benefit would not be terms of the Agreement and therefore by implication, Woolworths was communicating that the benefits are terms of the Agreement. Even if this is so, it does not follow that the omission is a material one. First the provision of the gift card was conditional upon the Agreement being made. The Agreement has been made and according to the evidence the gift card has been provided to in excess of 87,970 employees who are eligible to receive one consistent with the conditions attaching to its provision.²²⁴ There is also some further validation for the allocation of additional gift cards occurring.²²⁵ Secondly the occasion for the payment of the sum of the sign on sum has not yet arrived but as noted above the Agreement made provision for it and if the Agreement is approved by the Commission those terms become operative and enforceable. Ultimately if the Agreement is approved then eligible employees will have received or will shortly thereafter receive the full benefit of the combined gift card (which they have already received) and the remainder of any eligible sign-on sum which is a term of the Agreement. In these circumstances, I am not persuaded that there are other reasonable grounds based on these two issues for believing that the employees did not genuinely agree to the Agreement. I am also not persuaded that Woolworths did not comply with s.180(5) of the Act.

[152] It should also be observed that there is evidence of communications in relation to the gift card which made it clear that the gift card was not conditional on the enterprise agreement being approved by the Commission but only conditional on the Agreement being made.²²⁶ It is also clear from the evidence earlier discussed that RAFFWU was aware that the gift card would not be a term of the Agreement and was aware that the maximum sum of \$1100 was a combined value since at least 18 September 2018²²⁷ and was aware of the position as to the maximum total value of the gift card and one-off payment.²²⁸ It had an opportunity to prepare and circulate its own communication. It posted on its Facebook page a copy of its

²²³ Ibid at [113]

²²⁴ Ibid at [145]

²²⁵ Transcript at PN111-PN113

²²⁶ Exhibit 2 at [143]; Exhibit 9 at Annexure LK-3 p. 215

²²⁷ Exhibit 6

²²⁸ Ibid

correspondence of 18 September 2018 to Woolworths about the subject.²²⁹ There is no evidence it took any other step to prepare and circulate communications about the matter.

[153] For the reasons stated the objections raised by RAFFWU which are based on the purported misrepresentations are also rejected.

4.6 Better off overall test – casual employees

[154] The substance of RAFFWU’s concerns relating to whether the Agreement passes the BOOT, is that any diminution in the GRI Award entitlements of casual employees by reason of the Agreement applying is unlikely to be offset because the Agreement provides negligible or no beneficial terms that are relevant to casual employees, and in particular the entitlement to apply for conversion to more secure work earlier than 6 months after an unsuccessful application.²³⁰

[155] In summary, the proper application of the BOOT requires a finding that each award covered employee and prospective employee would be better off under the agreement than under the relevant modern award.²³¹ The requirement that “each” such employee and prospective employee be better off overall is a rigorous one. The ordinary meaning of “each” is “every, of two or more considered individually or one by one”.²³² It follows that every award covered employee and prospective employee must be better off overall, with the corollary that if any such employee is not better off overall, the relevant enterprise agreement does not pass the BOOT.²³³

[156] A proper application of the BOOT also requires an overall assessment to be made. This requires the identification of terms which are more beneficial for an employee, terms which are less beneficial, and an overall assessment of whether an employee would be better off under the agreement.²³⁴

[157] It is uncontroversial that the Agreement contains a term that a casual employee is only permitted to make an application for conversion to part-time employment once every six months.²³⁵

[158] The GRI Award makes provision in clause 13.5 of the right to request casual conversion. The right is limited to those who are described as regular casual employees who have a particular pattern of work over the preceding 12 month period. Depending on the number of hours worked, a regular casual employee may apply to have their employment converted to full-time or part-time employment. A request made for a conversion may only be

²²⁹ Exhibit 6; Specifically Woolworths letter dated 21 September 2018

²³⁰ RAFFWU Outline of Submissions dated 7 December 2018 at [99]

²³¹ *Solar Systems Pty Ltd* [2012] FWAFB 6397 at [11]; *Hart v Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited; Australasian Meat Industry Employees Union, The v Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited* [2016] FWCFB 2887 at [6], [15]; *SDAEA v Beechworth Bakery Employee Co Pty Ltd* [2017] FWCFB 1664 at [11]

²³² *Macquarie Online Dictionary*

²³³ *Application by Aldi Foods Pty Limited as General Partner of ALDI Stores (A Limited Partnership) & Welsh and Others (Loaded Rates Agreements Case)* [2018] FWCFB 3610 at [100]

²³⁴ *ALDI Foods Pty Limited v Shop, Distributive & Allied Employees Association* [2017] HCA 53 at [92]; *Armacell Australia Pty Ltd* [2010] FWAFB 9985 at [41]; *Application by Aldi Foods Pty Limited as General Partner of ALDI Stores (A Limited Partnership) & Welsh and Others (Loaded Rates Agreements Case)* [2018] FWCFB 3610 at [112]

²³⁵ Clause 8.7(h) of the Agreement

refused on reasonable grounds after consultation with the applicant employee. The GRI Award sets out a non-exhaustive list of grounds for refusal that are reasonable grounds. The Agreement appears to limit the capacity of a casual employee to make application to only once every six months. There can be little doubt that this limitation is a detriment but it is not one that should be assessed in isolation. Application of a BOOT is not a line by line analysis and requires an overall assessment to be made. As Woolworths and the SDA have pointed out and as is clear from the terms of the Agreement, there are a range of more favourable terms for which provision is made in the Agreement that relate to casual employees compared to the GRI Award. These include:

- a higher base pay (by at least \$10 per 38 hour week) under the Agreement²³⁶ in comparison to the GRI Award;
- casual loading applies to the higher base pay under the Agreement;
- overtime penalty in clause 10.5 of the Agreement applies to the higher base pay provided thereunder;
- Saturday and Sunday penalty rates in clause 6.3 of the Agreement apply to the higher base pay provided thereunder;
- public holiday penalty rates in clause 19.2 of the 2018 Agreement apply to the higher base rate provided thereunder;
- a sign-on payment for casual employees that had average weekly hours above 10 hours per week (if employment commenced on or before 31 December 2016) or above 20 hours per week (if employment commenced between 1 January and 30 June 2017);²³⁷
- a longer paid rest break under the Agreement in clause 7 compared to clause 31.1(a) of the GRI Award;
- the Agreement, unlike the GRI Award, makes provision for “half pay” long service entitlements;²³⁸
- the Agreement, unlike the GRI Award allows for our change in rosters temporarily because of study or examinations;²³⁹
- the Agreement makes provision for casual employees who are 20 years of age to be paid the adult rate of pay;²⁴⁰ and
- casual employees are entitled to various forms of unpaid leave.²⁴¹

[159] It is accepted that not each of these benefits will apply in every case to every casual employee, nonetheless a number will clearly have universal operation. Taking all of this into account, I consider that each award covered casual employee and each prospective award covered casual employee would as at test time, be better off overall if the Agreement applied than if the GRI Award applied to that employee. RAFFWU’s objection on this ground is also rejected.

²³⁶ Clause 4.1(a) of the Agreement

²³⁷ Clause J1.4 of the Agreement

²³⁸ Clause 18.6(b)(i) of the Agreement

²³⁹ Clause 8.6(f) of the Agreement

²⁴⁰ Clause 4.4 of the Agreement compared with Clause 18 of the Award

²⁴¹ Clause 18.3, 18.4 and 18.5 of the Agreement

5. Approval requirements

[160] Woolworths has filed, in support of its application for the approval of the Agreement, a statutory declaration made by Ms Kerr (Exhibit 1) and a statement of Ms Kerr (Exhibit 2) addressing various of the requirements in ss.186 and 187 of the Act. Section 186(1) of the Act provides that if an application for the approval of an enterprise agreement is made, relevantly in this case, under s.185, the Commission must approve the agreement if the requirements set out in ss.186 and 187 are met.

[161] The first of these requirements is that the Commission must be satisfied that the Agreement has been genuinely agreed to by the employees covered by the Agreement. Section 188 relevantly provides:

“188 When employees have genuinely agreed to an enterprise agreement

(1) An enterprise agreement has been genuinely agreed to by the employees covered by the agreement if the FWC is satisfied that:

(a) the employer, or each of the employers, covered by the agreement complied with the following provisions in relation to the agreement:

(i) subsections 180(2), (3) and (5) (which deal with pre approval steps);

(ii) subsection 181(2) (which requires that employees not be requested to approve an enterprise agreement until 21 days after the last notice of employee representational rights is given); and

(b) the agreement was made in accordance with whichever of subsection 182(1) or (2) applies (those subsections deal with the making of different kinds of enterprise agreements by employee vote); and

(c) there are no other reasonable grounds for believing that the agreement has not been genuinely agreed to by the employees.”

[162] I am satisfied for the reasons earlier stated and based on the material contained in Exhibits 1 and 2, and the documents which are annexed thereto, that Woolworths complied with ss.180(2), (3) and (5) and 181(2).

[163] According to Exhibit 1, at the time Woolworths asked relevant employees to vote to approve the Agreement, there were 109,429 employees who were employed who would be covered by the Agreement. Of that voting cohort, 67,774 employees cast a valid vote, and 63,363 voted to approve the Agreement. Plainly, a majority of employees employed at the time who cast a valid vote, voted to approve the Agreement. There is no suggestion that the employees who were asked to vote to approve the Agreement did not meet the description in s.182(1), nor is it suggested that there are employees who met that description but were not asked to vote to approve the Agreement. I am therefore satisfied, based on the material contained in Exhibit 1, that the Agreement was made in accordance with s.182(1).

[164] The extent that it is necessary to rely on the 2014 and 2015 NERRs, for the reason earlier stated, I am satisfied as required by s.188(2) that the Agreement has been genuinely agreed to by the employees covered by the Agreement.

[165] I have already dealt with an issue raised concerning there are other reasonable grounds for believing that the Agreement has not been genuinely agreed to by the relevant employees. For the reasons stated I rejected the issue raised. Apart from that issue I am not aware or, nor did any person suggest there were any other reasonable grounds for so believing. I am therefore satisfied that the Agreement has been genuinely agreed to by the employees covered by the Agreement. The requirement in s.186(2)(a) is therefore met.

[166] As this is not a multi-enterprise agreement, the requirement in s.186(2)(b) does not apply. The requirement in s.186(2)(c) concerns the identification of any terms in the Agreement which contravene s.55 of the Act. Section 55(1) provides that an enterprise agreement must not exclude any provision of the National Employment Standards (NES). That section also deals with the interaction between terms of an enterprise agreement and the NES. The NES is contained in Part 2 – 2 (ss.55 to 131 of the Act).

[167] On my review of the Agreement there are no terms which could be said to contravene s.55 of the Act. Moreover clause 1.5 b of the Agreement contains an NES precedence clause which makes clear that to the extent that there is an inconsistency between the Agreement and the NES and the NES provides a greater benefit, then the NES provision will apply to the extent of that inconsistency. I am therefore satisfied that the requirement in s.186(2)(c) is met.

[168] Section 186(2)(d) is concerned with whether the Agreement passes the BOOT. I have already dealt with and rejected an objection that the Agreement does not pass the BOOT in respect of casual employees.

[169] Before the hearing of the application for the approval of the Agreement, I caused to be raised with Woolworths (with copies of the correspondence to the other bargaining representatives) my concerns that the Agreement may not pass the BOOT in two respects. The first concerned the position of adult apprentices under the Agreement compared to under the GRI Award. Woolworths has proffered an undertaking directed to the concern raised which is set out at paragraph 2 of Annexure JTK – 40 to Exhibit 2.

[170] The second issue concerned the rates of pay for trainees under the Agreement compared to under the GRI Award. Woolworths has proffered an undertaking directed to the concern raised which is set out at paragraph 3 of Annexure JTK – 40 to Exhibit 2. A revised undertaking has since been given which provides:

“3. Under clause 4.7 of the Agreement a Trainee will be paid an hourly rate which is at all times at least 1.25% above the minimum rate prescribed in Schedule E of the *Miscellaneous Award 2010* for the Trainee's classification. For the purpose of the approval of the Agreement the hourly rates payable to Trainees under the Agreement upon commencement of the Agreement shall be:

Modern Award Classification	Agreement Classification	Agreement Rate
Wage level A part-time trainee completed year 12 with 3 years out of schooling	Retail employee level 1 (trainee)	\$21.88
	Retail employee level 2 (trainee)	\$21.88
	Clerical Assistant Level 1 (trainee)	\$21.88

[171] The power of the Commission to accept an undertaking in relation to the approval of an enterprise agreement is dealt with in s.190 of the Act. Section 190 is engaged relevantly if an application for approval of an agreement has been made under s.185 and the Commission has a concern that the agreement does not meet the requirements set out in ss.186 and 187.²⁴² It is uncontroversial in relation to the Agreement that there is an application for its approval under s.185 and that I have concerns that the Agreement does not meet, the requirement in s.186(2)(d) of the Act.

[172] Section 190(2) confers discretion on the Commission to approve an agreement under s.186 if satisfied that acceptance of the undertaking, subject to the fetters in s.190(3), meets the concern. It is clear, therefore, that the undertaking proffered must meet the concern that the Agreement does not meet one or more of the identified requirements set out in ss.186 and 187 of the Act. The relevant requirement here, about which there is a concern, is the requirement that the Agreement pass the BOOT.

[173] By s.190(3), the Commission may only accept a written undertaking if satisfied that the effect of accepting the undertaking is not likely to cause financial detriment to any employee covered by the agreement or result in a substantial change of the agreement. Section 190(4) prevents the Commission from accepting an undertaking unless it has sought the views of each person who the Commission knows is a bargaining representative for the agreement. Finally, an undertaking that is proffered must meet the signing requirements prescribed by regulations.²⁴³

[174] The process for proffering, accepting undertakings, assessing whether an accepted undertaking meets the requisite concern, and considering whether to approve an enterprise agreement may be summarised, chronologically as follows:

- First, there must be made an application for approval of an enterprise agreement.
- Secondly, the Commission must have a concern that the agreement does not meet one or more of the requirements set out in ss.186 and 187 of the Act. It should go without saying that the relevant concern needs to be identified by the Commission and communicated to the applicant for the approval of the agreement, and where the applicant is a bargaining representative for the agreement which is not the employer, also communicated to the employer or employers covered by the agreement. Only an employer or employers covered by an agreement can give an undertaking.
- Thirdly, there must be a written undertaking from one or more of the employers covered by the agreement and that undertaking must meet the signing requirements.
- Fourthly, the Commission must assess and be satisfied that the effect of accepting the undertaking is not likely to cause financial detriment to any employee covered by the agreement or result in substantial changes to the agreement.

²⁴² Section 190(1)

²⁴³ Section 190(5)

- Fifthly, before accepting an undertaking the Commission must seek the views of known bargaining representatives for the agreement.
- Sixthly, if the undertaking is accepted the Commission must be satisfied that the accepted undertaking meets its concern before it may approve the agreement.
- Seventhly, there is a residual discretion to be exercised whether to approve the agreement with the undertaking that has been accepted and that meets the identified concern.

[175] The undertakings referred to above meet my concern. These undertakings do not cause any financial detriment to any employee covered by the Agreement nor do they result in any substantial change to the Agreement. I have sought the views of the known bargaining representatives for the Agreement. The SDA, AMIEU & AWU each advised that they supported the undertakings.²⁴⁴ RAFFWU has advised that it does not have any views about the undertakings.²⁴⁵ I accept the undertakings.

[176] On 3 December 2018, I received an unsolicited submission from Mr Allen Truslove, who described himself as an actuary and statistician, concerning one aspect of the superannuation clause of the Agreement. His submission did not disclose, as his website does, that the majority of his “client work involves financial consulting and certification of Self Managed Super Funds”.²⁴⁶ The submission was provided to Woolworths and to the bargaining representatives. No-one suggested that I should take the submission into account. I propose not to take it into account but would in any event note the submission:

- makes a number of assertions unsupported by any evidence;
- asserts generalised detriments associated with funds into which superannuation contributions are made which:
 - concern insurance cover and potential fees; and
 - does not take account of differential earnings;
- does not compare the superannuation clause of the Agreement to the superannuation clause in the GRI Award; and
- does not:
 - consider the other beneficial terms in the Agreement compared to the GRI Award;
 - attach any weight to those terms; or
 - seek to balance the bargaining terms against the claimed detriment.

[177] The submission is of no assistance. No party appearing before me suggested the Agreement did not pass the BOOT by reason of the superannuation clause. I do not consider that it does not pass the BOOT.

[178] Save for the matters identified it is not suggested in respect of any other employees and I am satisfied based on the assessment conducted, *vis-a-vis* all other award covered

²⁴⁴ Email from the SDA to Chambers on 3 January 2019 at 1.36pm; Email from the AMIEU to Chambers on 3 January 2019 at 1.56pm; Email from AWU to Chambers on 3 January 2019 at 2.31pm

²⁴⁵ Email from RAFFWU to Chambers on 2 January 2019 at 5.43pm

²⁴⁶ See <http://www.truslove.com.au/Services.htm>

employees and prospective award covered employees that the Agreement passes the BOOT. Taking into account the undertakings I am satisfied the Agreement passes the BOOT. The requirement in s.186(2)(d) is therefore met.

[179] As I have already noted, the Agreement does not cover all of Woolworths' employees. Neither is the group of employees covered by the agreement geographically, operationally organisationally distinct. Nevertheless for the reasons earlier stated, I am satisfied the group of employees covered by the Agreement was fairly chosen. The requirement in s.186(3) taking into account s.186(3A) is therefore met.

[180] Section 186(2)(d) requires a consideration whether the Agreement contains any unlawful terms. Save for the matters earlier identified, I am satisfied that the Agreement does not contain any unlawful terms. As to the matters identified, I am satisfied that those terms are not unlawful terms for the reasons already stated. Section 186(2)(d) is therefore met.

[181] The requirement in s.186(4A) concerns outworker terms and does not arise in respect of the Agreement.

[182] The Agreement specifies a nominal expiry date being four years from the date the Agreement is approved by the Commission. The requirement in s.186(5) is therefore met.

[183] Clause 22 of the Agreement contains a dispute resolution term. It allows the Commission to settle disputes about matters arising under the Agreement and in relation to the NES. It also allows for the representation of employees covered by the Agreement for the purposes of the procedure. The requirement in s.186(6) is therefore met.

[184] There is no material before me, nor has it been suggested by any person making a submission in relation to the Agreement, that the approval of the Agreement would be inconsistent with or undermine good faith bargaining by one or more of the bargaining representatives for the proposed Agreement. There is also no scope order in operation. I am therefore satisfied that the requirement in s.187(2) is met.

[185] The requirement in s.187(3) has no application to this Agreement since it concerns a multi-enterprise agreement.

[186] Section 187(4) requires the Commission to be satisfied as referred to in any of the provisions of Subdivision E of Division 4 (ss.196-200). Sections 197-200 have no application in relation to the Agreement.

[187] Section 196 of the Act is concerned with ensuring that a shiftwork employee who is covered by an enterprise agreement and is entitled to an additional week's leave under the NES because an award that is in operation and covers an employee, describes that employee as a shiftworker for the purposes of the NES, continues to be so entitled when the agreement is in operation. When s.196 applies, the Commission must be satisfied that an enterprise agreement also defines or describes the employee as a shiftworker for the purposes of the NES.

[188] Clause 32.2 of the GRI Award defines or describes the kind of employee that is a shiftworker for the purposes of the NES. Such an employee is covered by the Agreement. Section 196 is therefore engaged. Clause 13.9 of the Agreement defines or describes such an

employee as a shiftworker for the purposes of the NES in the same terms as the GRI Award. I am satisfied therefore that the Agreement defines or describes the employee as a shiftworker for the purposes of the NES. The requirement in s.187(4) is met.

[189] The requirements in ss.187(5) and (6) have no application as the Agreement is not a greenfields agreement.

[190] Section 202 of the Act requires an enterprise agreement to include a flexibility term that enables an employee and his or her employer to agree to an arrangement varying the effect of the agreement in relation to the employee and the employer, in order to meet the genuine needs of the employee and the employer. Such a term must comply with the content requirements set out in s.203. Clause 23 of the Agreement contains a flexibility term. Clause 23.2(e)(i) provides that Woolworths or a team member may terminate individual flexibility agreement by giving no more than 13 weeks' written notice to the other party to the arrangement. Although this clause is consistent with the individual flexibility provision in the GRI Award prior to the amendment made on 1 November 2018, it is inconsistent with the content requirement set out in s.203(6)(a). That provision requires that a flexibility term must require an employer to ensure that any flexibility arrangement agreed to under the term must be able to be terminated by either the employee, or the employer, giving written notice of not more than 28 days.

[191] Woolworths proffered an undertaking which is contained at paragraph 5 of Annexure JTK – 40 to Exhibit 2 in order to rectify the issue of notice. Unfortunately as s.190 makes clear, the undertakings provisions only apply if the Commission has concerns that the agreement does not meet the requirements set out in ss.186 and 187 of the Act. Neither of these sections deal with or make reference to the requirement that there be a flexibility term in the Agreement. An undertaking to rectify deficiencies in a flexibility term is not capable of acceptance. The Act sets out the consequence of their not being a flexibility term as required by s.202(1). As s.202(1)(b) makes clear the flexibility term that is required to be included in an agreement is one that, *inter alia* complies with s.203. The flexibility term contained in clause 23 of the Agreement does not comply with that section in the manner identified. As a consequence pursuant to s.202(4), the model flexibility term is taken to be a term of the Agreement.

[192] Section 205 requires that an enterprise agreement include a term that requires an employer to which the agreement applies to consult with employees about a major workplace change that is likely to have a significant effect on the employees. The term must also require consultation about a change to an employee's regular roster or ordinary hours of work, and must allow for the representation of employees for the purposes of the consultation.

[193] Clause 21 of the Agreement sets out a consultation term. Clause 9.2 of the Agreement also deals with consultation about changes to the standard roster. Because of the reference to consultation about "the standard roster" it appears that this provision is limited to consultation with full-time and part-time employees.²⁴⁷ Casual employees appear not to be covered by the obligation to consult about regular roster or ordinary hours of work changes. Consequently the consultation terms do not comply with the requirement in s.205(1A) in respect of casual employees. Woolworths proffered an undertaking in paragraph 4 of Annexure JTK – 40 to

²⁴⁷ See Appendix K of the Agreement in which "Standard roster" is defined to mean "a full-time or part-time team member's agreed standard roster arrangements, being the days and times when the team member is required to work"

Exhibit 2 in order to address the issue. As with undertakings concerning flexibility term, an undertaking cannot be accepted in respect of a deficient consultation term. The Act sets out the consequence. As the consultation term of the Agreement does not meet the requirements in s.205(1A), the model consultation term is taken to be a term of the Agreement.

6. Conclusion

[194] Woolworths has provided written undertakings. A copy of the undertakings is attached in Annexure A. I have accepted the undertakings. As I have already noted I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement and the views of known bargaining representatives were sought.

[195] With the undertakings attached to this decision and marked as Annexure A and for the reasons stated, 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 Agreement is approved.

[196] For the reasons earlier stated, pursuant to s.201(1) the model flexibility term under subsection 202(4) and the model consultation term under subsection 205(2) are taken to be terms of the Agreement.

[197] Each of the SDA, AMIEU and AWU is an employee organisation that has given notice under subsection 183(1) that the organisation wants the Agreement to cover it. Accordingly, pursuant to s.201(2) I note that the Agreement covers the SDA, AMIEU and AWU.

[198] The date of the approval is the 7 January 2019 and in accordance with s.54, the Agreement will operate from 14 January 2019. The nominal expiry date of the Agreement is 6 January 2023.

The image shows a circular seal of the Fair Work Commission. The seal features a central emblem with a figure on horseback, surrounded by the text "THE SEAL OF THE FAIR WORK COMMISSION". A blue ink signature is written over the seal, extending from the top left towards the bottom right.

DEPUTY PRESIDENT

Appearances:

HJ Dixon SC and AB Gotting of Counsel for the Applicant.

D Bruno of Counsel for the Shop, Distributive and Allied Employees Association.

J Cullinan for the Retail and Fast Food Workers Union Incorporated.

K Rogers for The Australasian Meat Industry Employees Union.

J Harding for The Australian Workers' Union.

Hearing details:

2018.
Sydney:
December 19, 20.

Submissions:

Applicant, dated 14 December 2018
Retail and Fast Food Workers Union Incorporated, dated 7 December 2018
Shop, Distributive and Allied Employees Association, dated 14 December 2018 and 19
December 2018

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG2018/6144

Applicant: Woolworths Group Limited and Woolworths (South Australia) Pty Ltd

Section 185 – Application for approval of a single enterprise agreement

Undertaking- Section 190

I, Jannifer Kerr, Workplace Relations Manager for Woolworths Group Limited and Woolworths (South Australia) Pty Ltd give the following undertakings with respect to the Woolworths Supermarkets Agreement 2018 ("the Agreement"):

1. I have the authority given to me by Woolworths Group Limited and Woolworths (South Australia) Pty Ltd (Woolworths) to provide this undertaking in relation to the application before the Fair Work Commission.
2. Under clause 4.5(b) of the Agreement, an existing team member who enters into an Apprenticeship Agreement with Woolworths as an adult apprentice will not suffer a reduction in their base rate of pay by virtue of entering into the Apprenticeship Agreement, provided that the team member has been employed by Woolworths for at least six months as a full-time team member or twelve months as a part-time team member or regular and systematic casual team member immediately prior to commencing the apprenticeship.
3. Under clause 4.7 of the Agreement, a Trainee will be paid an hourly rate which is at all times at least 1.25% above the minimum rate prescribed in Schedule E of the *Miscellaneous Award 2010* for the Trainee's classification. For the purpose of the approval of the Agreement the hourly rates payable to Trainees under the Agreement upon commencement of the Agreement shall be:

Modern Award Classification	Agreement Classification	Agreement Rate
Wage level A part-time trainee completed year 12 with 3 years out of schooling	Retail employee level 1 (trainee)	\$21.88
	Retail employee level 2 (trainee)	\$21.88
	Clerical Assistant Level 1 (trainee)	\$21.88

4. These undertakings are provided on the basis of concerns raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature

28/12/2018



Woolworths Supermarkets Agreement 2018

Note - the model consultation and flexibility terms are taken to be terms of this agreement. This agreement is to be read together with an undertaking given by the employer. The undertaking is also taken to be a term of this agreement. A copy of these terms can be found at the end of the agreement.

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1. About this Agreement

1.1. This Agreement

This is the Woolworths Supermarkets Agreement 2018 (this **Agreement**). It takes effect from 7 January 2019 or 7 days after this Agreement is approved by the **FWC**, whichever is later. This Agreement is a national Agreement and will apply in all States and Territories of Australia. The nominal expiry date of this Agreement will be 4 years from the date of approval by the FWC.

1.2. Agreement coverage

- a. This Agreement covers **Woolworths** and its employees who are employed in Woolworths retail supermarket operations in the classifications described in clause 3.3 and Appendix A of this Agreement (**team members**).
- b. This Agreement does not cover Woolworths employees who work in salaried positions, including (but not limited to): salaried Team Managers, salaried Team Support, salaried Duty Managers, salaried Assistant Store Managers and salaried Store Managers.

1.3. Trade Unions

- a. Subject to the **FWC** making a note of such coverage upon the approval of this Agreement, this Agreement covers the following **registered organisations** (hereafter referred to as **trade unions**):
 - i. the Shop, Distributive and Allied Employees' Association (**SDA**).
 - ii. the Australian Workers' Union (Queensland Branch) (**AWU**) in relation to its coverage of North Queensland.
 - iii. in respect of meat departments, the SDA, the AWU and the Australasian Meat Industry Employees' Union (**AMIEU**).

1.4. Display of this Agreement and communications

- a. A signed copy of this Agreement, and a copy of the **NES** will be available on Woolworths' intranet, and a hard copy available in each store break room and Store Manager's office.
- b. Woolworths will provide reasonable space on a notice board (for example, in each relevant store) for the display of any SDA or AWU notices authorised by the relevant Branch Secretary to enable communication of matters related to this Agreement.

1.5. Relationship with Modern Award and National Employment Standards

- a. Consistent with the **Fair Work Act**, while this Agreement applies to a team member, the relevant modern award does not apply at the same time.
- b. The **NES** are a set of 10 legislated minimum employment standards. The entitlements and benefits provided in this Agreement are inclusive of, and not in addition to, any benefit or entitlement under the NES and Fair Work Act. This Agreement will be read and interpreted in conjunction with the NES. Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit to the team member, the NES provision will apply to the extent of the inconsistency.

2. Woolworths policies

2.1. Woolworths standards and policies

- a. Woolworths aspires to be a great place to work and a great place to shop. We are all responsible for contributing to an environment where everyone at Woolworths is treated with dignity, courtesy and respect. To ensure we do the right thing by our teams, our customers and our communities, Woolworths has standards and policies that we expect our team members to follow at all times.
- b. All team members at Woolworths are required to read, understand and follow the Woolworths Code of Conduct and all applicable Woolworths policies. However, such policies are not incorporated into this Agreement or any team member's contract of employment. The Code of Conduct and all policies are available on the Woolworths intranet, and may be updated from time to time.
- c. Woolworths policies cover matters including (but not limited to) work health and safety, personal appearance, bullying, harassment, discrimination, workplace behaviours, diversity and inclusion, team member benefits and leave.
- d. Any team member who has a question about any Woolworths policy can speak to their manager or contact **Woolworths People Advisory**.

2.2. Work health and safety

- a. Woolworths is committed to a safety culture where safety is everyone's responsibility, and Woolworths expects everyone to work together to make Woolworths a safe place to work and shop.
- b. Woolworths is committed to ensuring, so far as is reasonably practicable, the health and safety of team members while at work, and also that its business doesn't create risks to others (including other workers and customers). This includes the physical workplace (including entry and exit, and during renovations), the equipment team members use and the processes they follow. Woolworths must consult with team members and their relevant trade union, identify and manage risks, and provide relevant safety training for team members.
- c. While at work, team members will take reasonable care for their own health and safety, will comply, so far as they're reasonably able, with any reasonable safety directions and policies, and will ensure that their actions (or failures to act) won't affect the health and safety of others.
- d. Where Woolworths has workplace health and safety representatives who require training under relevant legislation, Woolworths will provide paid leave to team members to attend training. Where Woolworths requires a team member to hold a first aid qualification, Woolworths will provide first aid training or pay the cost of first aid training.
- e. Woolworths is also committed to working with team members to help them return to safe and sustainable work after a work injury or illness. Woolworths will consult with team members and, if the team member so chooses, their trade union representative, about their rehabilitation program.
- f. Nothing in clause 2.2 operates to remove, lessen, diminish or otherwise affect in any way whatsoever the operation and application of applicable work health and safety and workers compensation laws.

2.3. Team member safety and security

- a. Where practicable Woolworths will provide lockers for team members to store their belongings. Lockers will be maintained in good working order.
- b. If a team member has a safety concern when leaving the store after dark the team member can request, and Woolworths will provide, a safe escort to their mode of transport. In addition, where practicable, a team member will be permitted to move their vehicle closer to the entrance before dark.
- c. Further information in relation to security is set out in Appendix I.

2.4. Respectful workplace

- a. Woolworths encourages a workplace culture where people are treated with respect. All team members are expected to follow Woolworths policies in relation to expected workplace behaviour. Woolworths expects team members to treat their fellow team members, customers and others with dignity, courtesy and respect.
- b. Behaviours such as harassment (including sexual harassment), workplace bullying, violence and unlawful discrimination are unacceptable and will not be tolerated at Woolworths. Any instances of inappropriate workplace behaviour should be reported to Woolworths – team members are encouraged to speak up if something is not right. Woolworths will take complaints seriously and handle them in accordance with our policies and procedures. This may include an investigation and the taking of disciplinary action.

2.5. Diversity and inclusion

Woolworths values diversity and aims to ensure that team members feel included, valued, respected and empowered. Woolworths is committed to providing equal employment opportunity to team members.

2.6. Reporting an issue

Team members should always feel free to ask questions, provide feedback and to speak up when they feel that something isn't right. Team members can speak to their manager, contact Woolworths People Advisory or consult the Code of Conduct for more reporting options.

3. Starting work and classifications

3.1. Terms of engagement

- a. When a team member starts working at Woolworths, Woolworths will inform each team member:
 - i. Whether they are employed on a full-time, part-time or casual basis;
 - ii. What their classification is;
 - iii. For full-time and part-time team members, what their **standard roster** is – including the days, times and hours for that team member; and
 - iv. Their base rate of pay.

3.2. Probationary period

Full-time and part-time team members are subject to a 6-month probationary period when they commence employment with Woolworths. Woolworths or the team member can end the team member's employment by giving 1 weeks' notice during the probationary period.

3.3. Classifications

- a. Woolworths will classify all team members who are covered by this Agreement according to the structure that is contained in Appendix A of this Agreement. Woolworths will advise team members of their classification, and of any changes to their classification or job title, in writing.
- b. The classification by Woolworths will be according to the skill level (or levels) that are required to be used by the team member in order to perform the principal functions of their employment as determined by Woolworths.
- c. Woolworths will not require any team member, regardless of their classification, to clean toilets unless the team member has been specifically engaged by Woolworths in a cleaning role.
- d. Below is a summary of the classifications and some of the example job titles that are included in each classification:

Woolworths Store Teams – All Departments	
Classification	Examples of job titles within this classification
Retail Employee Level 1	Team Member Stocktake Team Member Store Cleaner Trolley Collector (no ride-on equipment) Personal Shopper Store Security/Loss Prevention Officer
Retail Employee Level 2	Trolley Collector (ride-on equipment)
Retail Employee Level 3	Team Support Stocktake Team Support/Team Leader Skilled non-tradesperson
Retail Employee Level 4	Service Supervisor (up to 15 team members)
Retail Employee Level 5	Service Supervisor (more than 15 team members)
Retail Employee Level 6	Team Manager Duty Manager
Tradesperson Level 4	Qualified Tradesperson (e.g. Qualified Baker or Butcher)
Tradesperson Level 5	Qualified Tradesperson Team Support
Clerical Assistant Level 1	Clerical Assistant
Clerical Officer Level 2	Store Services Assistant
Clerical Officer Level 3	Store Services Officer

4. Wages and superannuation

4.1. Base Rates of Pay

- a. The following base rates of pay apply from the first full pay period after the commencement of this Agreement:

Classification	Base Rate of Pay (Hourly)	Weekly Wage Rate Equivalent (Base Rate of Pay x 38 Hours)
Retail Employee Level 1	\$21.05	\$799.90
Retail Employee Level 2	\$21.55	\$818.90
Retail Employee Level 3	\$21.89	\$831.82
Retail Employee Level 4	\$22.32	\$848.16
Retail Employee Level 5	\$23.23	\$882.74
Retail Employee Level 6	\$23.70	\$900.60
Tradesperson Level 4	\$23.20	\$881.60
Tradesperson Level 5	\$23.59	\$896.42
Clerical Assistant Level 1	\$21.05	\$799.90
Clerical Officer Level 2	\$22.20	\$843.60
Clerical Officer Level 3	\$23.29	\$885.02

- b. The weekly wage rate equivalent above is for information only – where any difference exists between the hourly rate and the weekly rate (for example, due to rounding), the hourly rate will prevail.
- c. Casual team members will be paid the base rate of pay plus a casual loading of 25% for all hours worked. This 25% loading is instead of paid leave (with the exception of paid long service leave). A casual team member is not entitled to be paid a penalty on a penalty, and the rates set out in the penalty rates table in clause 6.3 are inclusive of the 25% casual loading.

4.2. Temporary transition rates

Certain team members are eligible to receive temporary transition rates of pay described in Appendix C.

4.3. Increases to base rates of pay

Base rates of pay will increase annually in accordance with the table below. Base rate increases will take effect from the first full pay period on or after 1 July in each applicable year:

Date of Increase (First full pay period on or after)	Increase Amount
1 July 2019	At the rate of the percentage increase that is ordered by the FWC in its Annual Wage Review Decision taking effect July 2019.
1 July 2020	At the rate of the percentage increase that is ordered by the FWC in its Annual Wage Review Decision taking effect July 2020.
1 July 2021	At the rate of the percentage increase that is ordered by the FWC in its Annual Wage Review Decision taking effect July 2021, plus an additional \$0.03 per hour.
1 July 2022	At the rate of the percentage increase that is ordered by the FWC in its Annual Wage Review Decision taking effect July 2022, plus an additional \$0.05 per hour.

4.4. Junior rates

Any team member who is a Retail Employee Level 1 or Clerical Assistant Level 1 and who is under the age of 20 will receive the following percentage of the base rate of pay for their relevant classification:

Age	% of Base Rate of Pay
16 years and under	50%
17 years	60%
18 years	70%
19 years	80%
20 years	100%

4.5. Apprentices

- a. Any team member who is completing a trades apprenticeship will receive the Tradesperson Level 4 base rate of pay at the following percentage rates as they progress through the stages of their apprenticeship. Further details in relation to apprentices are contained in Appendix D.

Stage of Apprenticeship	% of Tradesperson Level 4 Base Rate of Pay
Stage 1	60%
Stage 2	70%
Stage 3	85%
Stage 4	90%
When Trade Qualified	100%

- b. An adult apprentice is an apprentice who is 20 years of age or older at the commencement of their apprenticeship. An adult apprentice will be paid the higher of the Retail Employee Level 1 base rate or the relevant percentage of the Tradesperson Level 4 base rate for the current stage of their apprenticeship. This applies to apprentices joining Woolworths or existing team members who choose to commence an apprenticeship when they are already employed by Woolworths.
- c. Stages of entry, exit and progression requirements for apprentices:

Stage 1	Entry: Nil entry requirements. Exit: No exit point at this stage.
Stage 2	Entry: An apprentice enters Stage 2 on attainment of 25% of the total competency points for the relevant AQF Certificate III qualification specified in the training plan. Exit: No exit point at this stage.
Stage 3	Entry: An apprentice enters Stage 3 on attainment of 50% of the total competency points for the relevant AQF Certificate III qualification specified in the training plan. Exit: No exit point at this stage.
Stage 4	Entry: An apprentice enters Stage 4 on attainment of 75% of the total competency points for the relevant AQF Certificate III qualification specified in the training plan. Exit: Upon the attainment of 100% of the total competency points of the relevant AQF Certificate III specified in the training plan.
Trade Qualified:	An apprentice is trade qualified upon the attainment of 100% of the total competency points of the relevant AQF Certificate III qualification, resulting in the attainment of the qualification.

4.6. School-based apprentices

Pay arrangements for team members who are undertaking school-based apprenticeships are set out in Appendix D of this Agreement.

4.7. Traineeship wages

Team members undertaking a Traineeship (**Trainees**) will be paid in accordance with clause 4.1 of this Agreement for the appropriate classification. Trainees will be classified in the same way as other team members who are not undertaking a Traineeship. All Trainees who complete their Traineeship will be offered ongoing employment at no less than the hours they worked as Trainees. Further entitlements and obligations of Trainees are set out in Appendix D of this Agreement.

4.8. Supported wages

Supported wage arrangements for team members with a disability are set out in Appendix H of this Agreement.

4.9. Payment of wages

- a. Wages for the week (Monday to Sunday) will be paid on the same day of each week by electronic funds transfer, within 3 days of the end of each pay period. Woolworths will only change the pay day if there is a public holiday that impacts bank trading. Woolworths will then give team members at least 4 weeks' written notice specifying the changed pay day, which will be as close to the normal pay day as possible.
- b. Wages will be paid according to the actual hours worked each week, less applicable tax. In the case of full-time team members who work a 6/4 roster (6 days in one week, 4 days in the next) or an RDO roster, wages will be averaged for the 4-week cycle.
- c. Where employment ends and a team member is owed pay on termination, such payment will be made on the next pay day or within 7 days of the date of termination.

4.10. Superannuation

- a. On behalf of eligible team members, Woolworths will make monthly superannuation contributions of (currently) 9.5% of the team member's **Ordinary Time Earnings** or such other percentage consistent with the *Superannuation Guarantee (Administration) Act 1992 (Cth)*.
- b. Woolworths will pay such contributions into the team member's nominated superannuation fund, or if no nomination has been made, into the default fund which is the Retail Employees Superannuation Trust (**REST**) which is an industry superannuation fund for the retail industry. If a team member wants to nominate REST as their fund of choice, no choice form is required, and contributions will be made into REST as the default fund.
- c. Team members can nominate any superannuation fund that offers an approved MySuper product in accordance with the *Superannuation Industry (Supervision) Act 1993 (Cth)*. A team member can nominate their fund of choice by completing the applicable form.
- d. A team member can change their superannuation fund nomination at any time during their employment with Woolworths by notifying Woolworths in writing using the applicable form.
- e. The Meat Industry Employees Superannuation Fund (**MIESF**) is an industry superannuation fund for the meat industry and team members may nominate MIESF as their fund of choice.
- f. Further information about superannuation is set out in Appendix B.

5. Allowances and reimbursements

5.1. Payment of allowances and reimbursements

- a. Allowances and reimbursements are extra payments made to eligible team members for specific purposes. Allowances and reimbursements will be paid at the same time as wages are paid, unless otherwise specified.
- b. The allowance rates and reimbursement rates below are effective from the first full pay period after this Agreement takes effect. The amounts payable must never be less than the equivalent allowances and reimbursements in the *General Retail Industry Award*.
- c. To receive payment of a reimbursement, a team member must provide Woolworths with evidence of the relevant expenditure and state the amount being claimed as a reimbursement. Where required under Woolworths policies and procedures, team members will use the relevant expense claims system for submitting reimbursement claims.
- d. The allowances and reimbursements that apply under this Agreement are provided in the tables below.

5.2. Allowance Table

Allowance	Application
<p>Special clothing allowance</p>	<p>Where a team member is required to wear or use protective gear, this will be provided, maintained, repaired, laundered and replaced (when required) by Woolworths. Woolworths will train team members in the appropriate use of protective gear.</p> <p>Examples of protective gear are:</p> <ul style="list-style-type: none"> ▪ Gum boots for work in wet areas ▪ White coats for meat team members, also available to seafood team members on request ▪ Hats and sunscreen lotion for outdoor work ▪ Insulated gloves and insulated parka for cold and freezer areas <p>Where Woolworths requires a team member to wear special clothing such as a uniform, dress or other clothing then Woolworths will reimburse the cost of purchasing such clothing and the cost of replacement items when replacement is due to wear and tear. This will not apply where the special clothing has been supplied or paid for by Woolworths.</p> <p>Woolworths will never require a team member to wear any clothing which is revealing or offensive.</p> <p>Where Woolworths requires a team member to launder any special uniform, dress or clothing, the team member will be paid the following applicable allowance:</p> <p>(a) For a full-time team member, \$6.25 per week.</p> <p>(b) For a part-time or casual team member, \$1.25 per shift.</p>
<p>Cold work allowance</p>	<p>Fridge Allowance: Woolworths team members who are principally employed on any day to enter cold chambers and/or to stock and refill refrigerated storages such as dairy cases or freezer cabinets will be paid a cold work allowance of \$0.29 per hour, while so employed.</p> <p>Freezer Allowance: Woolworths team members who are required to work in a cold chamber where the temperature is below 0°C will also be paid (in addition to the Fridge Allowance above) a Freezer Allowance of \$0.44 per hour (a total of \$0.73 per hour), while so employed.</p> <p>“Required to work in a cold chamber” means completing designated tasks such as cleaning, de-frosting or rearranging stock within a back-of-house freezer room.</p>
<p>First aid allowance</p>	<p>Where a team member holds an appropriate first aid qualification and is appointed by Woolworths to perform first aid duty they will be paid an allowance of \$10.89 each week.</p>
<p>Transport allowance</p>	<p>Where Woolworths asks a team member to use their own motor vehicle in the performance of their duties, the team member will be paid an allowance of \$0.79 per kilometre.</p>
<p>Recall allowance</p>	<p>Unless otherwise agreed, where a team member is called back to work for any reason before or after completing their normal rostered shift or on a day that they did not work (for example, for some unforeseen emergency, including needing to reset an alarm), the team member will be paid at the appropriate rate for all hours worked with a minimum of 3 hours on each occasion.</p> <p>The time worked will be calculated from the time the team member leaves home until the time they return home, taking a direct route. Team members may be required to provide evidence of the time taken.</p>
<p>Higher duties allowance</p>	<p>Team members engaged for more than 2 hours during 1 day or shift on duties carrying a higher rate than their ordinary classification are to be paid the higher rate for such day or shift.</p> <p>If engaged for 2 hours or less during 1 day or shift on duties carrying a higher rate than their ordinary classification, the team member is to be paid the higher rate for the time they worked on those duties only.</p>
<p>Liquor licence allowance</p>	<p>A team member who is required by law or by Woolworths to hold a liquor licence will be paid an extra \$25.96 per week.</p>
<p>Broken Hill allowance</p>	<p>A team member in the County of Yancowinna in New South Wales (Broken Hill) will in addition to all other payments be paid an hourly allowance for the exigencies of working in Broken Hill of \$0.94.</p>

5.3. Reimbursement Table

Reimbursement	Application
Travelling time reimbursement	<p>Where Woolworths requires a team member to work at a place away from their usual place of employment, all time spent in reaching and returning from such place (in excess of the time normally spent in travelling from their home to their usual place of employment and returning), will be paid travelling time. In addition, any fares reasonably incurred in excess of those normally incurred in travelling between their home and their usual place of employment will be reimbursed.</p> <p>Where Woolworths provides transport from a pick-up point, a team member will be paid travelling time for all time spent travelling from such pick-up point and returning to such pick-up point.</p> <p>The rate of pay for travelling time will be the base rate of pay, except on Sundays and public holidays when it will be time and a half.</p>
Excess travelling costs reimbursement	<p>Where Woolworths asks a team member to move from one store to another for a temporary period that is less than 3 weeks, all additional transport costs over and above the team member's usual transport costs will be reimbursed by Woolworths.</p>
Relocation of team member reimbursement	<p>If Woolworths relocates a team member's role from one store to another store, and the distance between the two stores is such that it reasonably requires the team member to relocate their place of residence, then Woolworths will be responsible for and will pay the whole of the moving expenses, including fares and transport charges, for the team member and the team member's family who reside with the team member at the time of the transfer.</p>
Transport of team members reimbursement	<p>Where:</p> <ul style="list-style-type: none"> • a team member (who is not engaged as a shiftworker under this Agreement) starts or finishes work after 10.00pm, or prior to 7.00am on any day; and • the team member's regular means of transport is not available; and • following reasonable attempts to do so, the team member is unable to arrange their own alternative transport; <p>then Woolworths will reimburse the team member for the cost of a taxi or ride-share fare from the place of employment to the team member's usual place of residence.</p> <p>This will not apply if Woolworths provides or arranges proper transportation to and/or from the team member's usual place of residence, at no cost to the team member.</p> <p>Provided always that a team member may elect to provide their own transport.</p>

6. Hours of work and penalty rates

6.1. Hours of work

- a. The ordinary hours of work for all team members (other than shift workers) may be worked within the following span of hours:

Monday to Friday	7:00am to 11:00pm
Saturday	7:00am to 11:00pm
Sunday	9:00am to 11:00pm

- b. Hours worked outside the span of hours in clause 6.1.a may be treated as part of the team member's ordinary time, by agreement between Woolworths and a team member, provided that:
- i. The team member receives the applicable penalty rates set out in the penalty rates tables in clauses 6.2 or 6.3, which are equivalent to the appropriate overtime rate; and
 - ii. Woolworths or the team member may withdraw their agreement to this arrangement by giving at least 28 days written notice.

- c. The hourly rates of pay (including penalty rates) that will apply for each hour of work performed are set out below:

6.2. Penalty Rates Table: Full-time and part-time team members

Days of the Week	Hours	Full-time and part-time rates of pay
Monday, Tuesday, Wednesday, Thursday, Friday	7:00am to 6:00pm	Base rate
	6:00pm to 11:00pm	Base rate +25%
Saturday	7:00am to 11:00pm	Base rate + 25%
Monday through Saturday	11:00pm to 7:00am	First 3 hours: Base rate + 50% Additional hours in this span over 3 hours: Base rate + 100%
Sunday	Midnight to 9.00am	Base rate + 100%
	9:00am to 11:00pm	From 1 January 2019 to 30 June 2019: Base rate + 80%
		From 1 July 2019 to 30 June 2020: Base rate + 65%
		From 1 July 2020: Base rate + 50%
11:00pm to midnight	Base rate + 100%	

6.3. Penalty Rates Table: Casual team members

Days of the Week	Hours	Casual rates of pay (penalty rates are inclusive of 25% casual loading)
Monday, Tuesday, Wednesday, Thursday, Friday	7:00am to 6:00pm	Base rate +25%
	6:00pm to 11:00pm	From 7 January 2019 to 30 September 2019: Base rate +30% From 1 October 2019 to 29 February 2020: Base rate + 35% From 1 March 2020 to 30 September 2020: Base rate + 40% From 1 October 2020 to 28 February 2021 Base rate + 45% From 1 March 2021 Base rate + 50%
Saturday	7:00am to 11:00pm	From 7 January 2019 to 30 September 2019: Base rate + 40% From 1 October 2019 to 29 February 2020: Base rate + 45% From 1 March 2020: Base rate + 50%
Monday through Saturday	11:00pm to 7:00am	First 3 hours: Base rate + 75% Additional hours in this span over 3 hours: Base rate + 125%
Sunday	Midnight to 9.00am	Base rate + 125%
	9:00am to 11:00pm	From 7 January 2019 to 30 June 2019: Base rate + 85%
		From 1 July 2019: Base rate + 75%
11:00pm to midnight	Base rate + 125%	

6.4. Award Mirroring - Sunday penalty rates

Sunday penalty rates in this Agreement will move in line with the *General Retail Industry Award*. If the same Sunday penalty rates in the *General Retail Industry Award* are increased or decreased, the corresponding increase or decrease will apply to the Sunday penalty rates in this Agreement from the first full pay period after that Award is amended by the FWC.

7. Breaks

7.1. Meal and rest breaks table – All team members

- a. A rest break (sometimes called a “tea break”) is a 15-minute paid break that counts as time worked.
- b. A meal break is a 30 to 60-minute unpaid break that doesn’t count as time worked, except for shiftworkers.
- c. Meal breaks for shiftworkers are paid and count as time worked.
- d. Breaks will be agreed and taken as follows:

Time Worked Per Shift	Rest Break (Paid)	Meal Break (Unpaid)
Less than 4 hours	No rest break	No meal break
4 hours and up to and including 5 hours	1 x 15-minute rest break	No meal break
More than 5 hours but less than 7 hours	1 x 15-minute rest break	1 x 30 to 60 minutes as agreed
7 hours or more, but less than 10 hours	2 x 15-minute rest breaks	1 x 30 to 60 minutes as agreed
10 hours or more	2 x 15-minute rest breaks	2 x 30 to 60 minutes as agreed

7.2. Break time principles

- a. A team member will not work more than 5 consecutive hours without a meal break (unless taking an early mark under clause 7.2.d).
- b. A rest break will be counted and paid as time worked. The specified duration of the break includes any travel time to and from the place where the team member will take their break.
- c. Breaks are not to be taken within 1 hour of starting or finishing work, except where the team member has requested an “early mark” as per clause 7.2.d. Team members will not be required to take a rest break within 1 hour of taking a meal break.
- d. At the request of a team member, and by agreement with Woolworths, a team member who is rostered to work a shift, which is a minimum of 5 hours and a maximum of 6 hours, may request to take their unpaid meal break immediately prior to the end of their shift. If this request is approved, the team member will not be required to stay at or return to the workplace at the end of their break (effectively, the team member can use the break as an “early mark”).
- e. A team member whose shift has a majority of ordinary hours after 10:00pm but before 6:00am (but is not a shiftworker) will be entitled to a paid crib break of 30 minutes duration when working more than 5 hours. This is instead of an unpaid meal break.
- f. A full-time, part-time or casual team member will not be required to work on a register for more than 8 hours on any one shift.
- g. Team members can take a toilet break or have a drink of water regardless of an entitlement to a rest break, subject to it not impacting on customer service. Team members working in serviced areas may keep bottled water with them, subject to any food safety requirements.

7.3. Breaks between work periods

- a. All team members will be granted a 12-hour rest period between the completion of work on one day and the commencement of work on the next day. Work includes any reasonable additional hours or overtime.
- b. Where a team member recommences work without having had 12 hours off work then the team member will be paid at double the rate they would be entitled to until such time as they are released from duty for a period of 12 consecutive hours off work without loss of pay for ordinary time hours occurring during the period of such absence.
- c. By agreement between Woolworths and a team member or team members the period of 12 hours may be reduced to not less than 10 hours. "By agreement" will include where a team member has accepted a standard roster that includes 10-hour breaks between work periods.

8. Rosters and rostering principles

8.1. Standard rosters for full-time and part-time team members

- a. At the start of their employment, full-time and part-time team members will be given an agreed standard roster which will specify:
 - i. The number of ordinary hours to be worked each week (the team member's **contract hours**);
 - ii. The days of the week that the work is to be performed; and
 - iii. The starting and finishing times of work for each day of the week on which work is to be performed.
- b. Woolworths will display the roster for each team member for each day of the week and will retain copies of rosters for at least 12 months, and this can be done in hard copy or electronically.

8.2. Rostering principles – Full-time team members

- a. A full-time team member will be rostered for an average of 38 hours per week, worked in any of the following forms (or over a longer averaging period by agreement between Woolworths and the team member):
 - i. 38 hours in 1 week;
 - ii. 76 hours in 2 consecutive weeks;
 - iii. 114 hours in 3 consecutive weeks; or
 - iv. 152 hours in 4 consecutive weeks.
- b. A standard roster for a full-time team member must meet the following principles:

Rostering Principle	Team member entitlement
Minimum number of hours per day	4 hours
Maximum number of hours per day	9 hours (with up to 11 hours on 1 day each week)
Maximum number of engagements per day	1
Minimum break between shifts	12 hours (or 10 hours by written agreement – see clause 7.3)
Maximum number of days each week	5 days (or 6 days in one week, if no more than 4 days the next week)
Maximum number of consecutive days worked	6 days
Consecutive days off	2 consecutive days off per week or 3 consecutive days off in a fortnight (or alternative arrangements by written agreement). At least once each fortnight: The 2 consecutive days off are either Fri/Sat, Sat/Sun or Sun/Mon (or alternative arrangements by written agreement). A team member who regularly works Sundays: 3 consecutive days off (including a Saturday and Sunday) once each 4 weeks (unless the team member requests alternative arrangements in writing).

Maximum number of hours in a 4-week roster cycle	152 hours
Maximum days in a 4-week roster cycle	19 days (or 20 by written agreement)

- c. All rosters for full-time team members will provide 152 ordinary hours on not more than 19 working days in any 4-week cycle unless specific agreement exists between Woolworths and the team member to work a 20-day standard roster. Where a full-time team member is working a 20-day roster, such roster will include either:
- i. one shorter day a fortnight (less than 4 hours on one day);
 - ii. one shorter day a week (less than 6 hours on one day); or
 - iii. a slightly shorter day every day (7.6-hour day on every day rostered).
- d. A 19-day standard roster should not be unnecessarily different to an alternative 20-day roster.
- e. Any team member working a 20-day standard roster can elect at any time to convert to a 19-day roster by giving Woolworths 4 weeks' notice.
- f. Any request to vary arrangements for the number of rostered days off in a row must be in writing to and approved by Woolworths. The team member can terminate such agreement by giving 4 weeks' written notice to Woolworths.

8.3. Rostering principles – Part-time team members

- a. A standard roster for a part-time team member must meet the following principles:

Rostering principle	Team member entitlement
Minimum number of hours per day	3 hours
Maximum number of hours per day	9 hours (with up to 11 hours on 1 day each week)
Maximum number of engagements per day	1
Minimum break between shifts	12 hours (or 10 hours by written agreement – see clause 7.3)
Maximum number of hours each week	38 hours
Maximum number of days each week	Up to 5 days (or 6 days in 1 week, if no more than 4 days the next week)
Maximum number of consecutive days worked	6 days
Consecutive days off	2 consecutive days off per week or 3 consecutive days off in a fortnight (or alternative arrangements by written agreement). At least once each fortnight: 2 consecutive days off which are either Fri/Sat, Sat/Sun or Sun/Mon (or alternative arrangements by written agreement). A team member who regularly works Sundays: 3 consecutive days off (including a Saturday and Sunday) once each 4 weeks (unless the team member requests alternative arrangements in writing).
Maximum number of hours in a 4-week roster cycle	144 hours
Maximum days in a 4-week roster cycle	20 days

- b. A part-time team member's contract hours will be an agreed number of hours, between 40 and 144 hours per 4-week cycle.
- c. Any request to vary arrangements for the number of rostered days off in a row must be in writing to and agreed by Woolworths. The team member can terminate such agreement by giving 4 weeks' written notice to Woolworths.

8.4. Part-time flex-up – additional hours

- a. In addition to working their contract hours as per their standard roster, a part-time team member can be offered additional hours based on the operational needs of Woolworths (**additional hours**). Additional hours may change with operational needs and are not guaranteed to be offered. The team member may accept the additional hours on the terms below, or the team member can decline the additional hours without penalty.
- b. Additional hours are offered on a voluntary basis in addition to the team member's existing standard roster, and a team member may accept additional hours up to a maximum of 38 hours (contract hours + additional hours combined) in any 1 week. The team member needs to provide their consent to the additional hours in writing before the additional hours are worked.
- c. A part-time team member can choose to provide standing consent and their personal availability (in writing) in order to work additional hours, provided such standing consent may be varied or revoked by the team member at any time. Such a variation or revocation in writing may be made by electronic means including by email or via an application. A record of the agreement and any variations to it (including by way of standing consent) will be retained by Woolworths and provided to the team member on request. This may be provided by electronic means as noted above. For clarity, the provision of standing consent and availability does not require a team member to accept additional hours (even if those hours fall within their stated availability) and they may continue to decline any additional hours that may be offered.
- d. Additional hours will be paid at the team member's base rate of pay and treated as ordinary hours for all other purposes of this Agreement, including any penalty rates or loadings applicable to the hours worked, the payment of superannuation, applicable leave accrual, and for the purposes of allowances and breaks.
- e. A part-time team member will not be rostered to work a total number of hours (contract hours + additional hours combined) in excess of 144 hours in any 4-week cycle without the payment of overtime rates.
- f. In the event a part-time team member cannot work any agreed additional hours due to illness or injury, the team member is entitled to use personal leave in accordance with clause 14.
- g. Subject to appropriate skills and availability, and all things being equal, any extra hours of work will be offered to part-time team members before they are offered to casual team members (where practicable).

8.5. Permanent increase in contract hours or conversion to full-time employment

- a. Once a part-time team member has been working additional hours for at least 1 year, the team member can elect to increase their contract hours by the average number of additional hours worked each week in the previous 52 weeks (excluding any hours worked as part of a fixed-term contract arrangement under clause 12, and excluding any time rostered outside of this Agreement).
- b. Woolworths will then increase the team member's contract hours and adjust the team member's standard roster to add the new hours at times and days suitable to the team member, subject to the operational needs of Woolworths.
- c. A team member can elect to increase their contract hours on a yearly basis at the end of each further 52-week period if the team member is continuing to accept additional hours on top of their contract hours.
- d. In exceptional circumstances that have given rise to a period where Woolworths does not have additional hours to roster (including a renovation or refurbishment, a natural disaster or the entry of new competition), Woolworths can delay the implementation of an increase to a team member's contract hours by up to 3 months.
- e. If, under this provision, a part-time team member works additional hours and over a period of time increases their contract hours to 36 hours per week, and they work 36 hours per week for 1 year, then the team member may elect to become a full-time team member working 38 hours per week.

8.6. Rostering principles – Casual team members

- a. Casual team member hours of work must meet the following principles:

Rostering principle	Team member entitlement
Minimum number of hours per day	3 hours
Maximum number of hours per day	9 hours (with up to 11 hours on one day each week)
Maximum number of engagements per day	1
Minimum break between shifts	12 hours (or 10 hours by written agreement, see clause 7.3)

Maximum number of hours each week	38 hours
Maximum number of days each week	Up to 5 days (or 6 days in one week by mutual agreement, provided that a casual team member will not work more than 20 starts in one 4-week cycle)
Maximum number of consecutive days worked	6 days

- b. Where practical, Woolworths will notify casual team members of their anticipated days and hours of work for the following week at least 5 days before the start of the week.
- c. If a casual team member's roster is not made available in accordance with clause 8.6.b, Woolworths will tell the team member about their roster as soon as possible – including notifying the team member in person, by phone, voicemail, text message, email or via an application, or any other method of communication the team member prefers.
- d. Shift start times may only be changed if Woolworths contacts the team member before they have arrived for the start of the shift.
- e. Once a roster has been communicated to a casual team member, where that roster changes and the change affects a casual team member, then Woolworths must let the team member know about the change as efficiently as practicable which may be in person, by phone, voicemail, text message, email or via an application or any other method of communication that the team member prefers.
- f. If a casual team member needs to temporarily change their availability to not be rostered to attend to studies or exams they may notify Woolworths and be given appropriate consideration for roster changes without prejudice to being rostered to work again in the future.

8.7. Casual conversion to permanent employment

- a. For the purposes of this clause 8.7, a **regular casual team member** is a Woolworths casual team member who has, over a period of at least 12 months, worked a pattern of ordinary hours on an ongoing basis which, without significant adjustment, the team member could continue to perform as a full-time or part-time team member under the provisions of this Agreement.
- b. A regular casual team member who has worked an average of 38 or more ordinary hours a week in the period of 12 months' casual employment may request to have their employment converted to full-time employment.
- c. A regular casual team member who has worked an average of at least 10 hours per week but less than 38 ordinary hours per week in the period of 12 months casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- d. Any request for casual conversion must be provided to Woolworths in writing.
- e. Where a regular casual team member requests to convert to full-time or part-time employment, Woolworths may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the team member.
- f. Reasonable grounds for refusal include:
 - i. Where it would require a significant adjustment to the casual team member's hours of work in order for the team member to be engaged as a full-time or part-time team member in accordance with the provisions of this Agreement – that is, the casual team member is not truly a regular casual team member as defined in clause 8.7.a;
 - ii. Where it is known or reasonably foreseeable that:
 - A. the team member's position will cease to exist within the next 12 months;
 - B. the hours of work which the team member is required to perform will be significantly reduced in the next 12 months;
 - C. there will be a significant change in the days and/or times at which the team member's hours of work are required to be performed in the next 12 months; or
 - D. the team member's availability will change significantly in the next 12 months.
- g. Where Woolworths refuses a request to convert, Woolworths must advise the team member of Woolworths' reasons for refusal within 21 days, in writing. Where the team member does not agree with Woolworths' decision, the team member can use the dispute resolution process in clause 22 of this Agreement.
- h. A regular casual team member who is eligible can only make a request for conversion once every 6 months.

- i. Where it is agreed that a casual team member will have their employment converted to full-time or part-time employment as provided for in this clause, Woolworths will provide the team member with the following information:
 - i. the form of employment to which the team member will convert – that is, full-time or part-time employment;
 - ii. if it is agreed that the team member will become a part-time team member, the matters referred to in clause 8.1.a; and
 - iii. The date the conversion will take effect (which will be the commencement of the next pay cycle following agreement being reached, unless otherwise agreed).
- j. Once a casual team member has converted to full-time or part-time employment, the team member may only revert to casual employment with the written agreement of Woolworths.
- k. Nothing in this clause obliges a regular casual team member to convert to full-time or part-time employment or to make a request to convert. Woolworths cannot require a regular casual team member to convert to full-time or part-time employment, however Woolworths may at any time offer any casual team member an available full-time or part-time role. Nothing in this clause requires Woolworths to increase the hours of a regular casual team member seeking conversion to full-time or part-time employment.
- l. A casual team member must not be engaged and/or 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.
- m. Woolworths will provide all new casual team members with a copy of the provisions of this clause (which can include giving the team member a copy of this Agreement, or a link to an electronic copy of this Agreement) within the first 12 months of their engagement with Woolworths. A casual team member's right to convert is not affected if Woolworths does not give them a copy of the clause or Agreement as required by this clause.

9. Roster changes

9.1. Change of Standard Roster

- a. At times Woolworths will need to make changes to standard rosters. When contemplating such roster changes, Woolworths will be mindful of the team member's needs, including family or carer responsibilities, secondary and tertiary study commitments, religious observance, safe transport home, and any genuine organised sporting commitments which the team member is actively competing in.
- b. Woolworths will not frequently change a team member's standard roster.
- c. Woolworths will give the team member at least 7 days' notice of a change to their standard roster, however by agreement between a team member and Woolworths, a roster may be changed on less than 7 days' notice.
- d. Woolworths will consult with a team member about a proposed standard roster change by providing the impacted team member with information about the proposed change and inviting the team member to provide their views on the impact of the proposed change. Woolworths' consultation obligations are set out in clause 9.2 of this Agreement.
- e. If a team member disagrees with a proposed change to their standard roster, they will be given at least 14 days' notice instead of 7 days' notice, and during that time there will be discussions between the team member and Woolworths aimed at resolving the dispute about the roster change in accordance with the dispute resolution procedure in clause 22. In the meantime, the team member's roster remains unchanged until the dispute is resolved.
- f. Where a team member's roster is changed for a once only event and the roster reverts to the previous pattern the following week, any extra work done by the team member as a result of the roster change will be paid at overtime, except where the change is by mutual agreement.
- g. Standard rosters will not be changed for the purpose of avoiding any entitlements under this Agreement.
- h. Any team member who is eligible to do so may make a request for flexible working arrangements as provided for in the NES.

9.2. Woolworths consultation obligations when making roster changes

- a. Where Woolworths proposes to introduce a change to the standard roster of a team member or team members, Woolworths must notify the relevant team member(s) of the proposed change.
- b. The relevant team member(s) may appoint a trade union or another person as their representative for the purposes of the procedures in this clause.

- c. Woolworths must recognise a team member's (or team members') representative, if:
 - i. a relevant team member appoints, or relevant team members appoint, a representative for the purposes of consultation; and
 - ii. the team member or team members advise Woolworths of the identity of the representative.
- d. As soon as practicable after proposing to introduce the change, Woolworths must:
 - i. discuss with the relevant team member the introduction of the change; and
 - ii. for the purposes of the discussion-- provide to the relevant team members:
 - A. all relevant information about the change, including the nature of the change;
 - B. information about what Woolworths reasonably believes the effects of the change on the team members will be;
 - C. information about any other matters that Woolworths reasonably believes are likely to affect the team members; and
 - D. invite the relevant team members to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- e. However, Woolworths is not required to disclose confidential or commercially sensitive information to the relevant team members.
- f. Woolworths must give prompt and genuine consideration to matters raised about the change by the relevant team members.
- g. For the purposes of this clause, relevant team member means the team members who may be affected by the change being proposed.
- h. If a part-time team member accepts additional hours under clause 8.4, this does not constitute a change to their standard roster for the purposes of this clause.

9.3. Night work roster changes – bakery and replenishment only

- a. Where a team member is a **bakery production team member** who works **night work**, or a **replenishment team member** who works night work (but who is not a shiftworker), this clause will apply.
- b. If a team member's roster is changed and the change reduces or eliminates the team member's night work, and that reduction or elimination of night work results in a decrease in the team member's total ordinary weekly earnings, then:
 - i. Woolworths will pay the team member the difference between their ordinary weekly earnings prior to the roster change and their ordinary weekly earnings after the roster change for a period of 8 weeks from the date of the roster change (and Woolworths may elect to pay this payment in a single lump sum instead of over 8 weeks); and
 - ii. If the team member's roster change results in the same or higher ordinary weekly earnings, then no additional payment is payable by Woolworths.
- c. This clause does not apply to shiftworkers or to any team member who voluntarily converts to becoming a shiftworker.
- d. For the purposes of this clause:
 - i. **Bakery production team member** means a team member whose primary duties are baking production and/or pastry cooking.
 - ii. **Replenishment team member** is a team member whose primary duties are replenishing and maintaining stock (sometimes referred to as night fill).
 - iii. **Night work** means ordinary hours of work between 10pm and 6am.

10. Overtime

10.1. Reasonable Overtime

- a. Woolworths can require a team member to work reasonable overtime at overtime rates in accordance with this clause.
- b. A team member can refuse to work overtime where working overtime would be unreasonable having regard to:
 - i. the team member's health and safety;
 - ii. the team member's personal circumstances including any family responsibilities;

- iii. the needs of the workplace;
- iv. the amount of notice given by Woolworths in relation to working overtime and the amount of notice given by the team member of their intention to refuse overtime;
- v. any other relevant matter.

10.2. Overtime for full-time team members

- a. Full-time team members will be paid overtime rates for all hours worked outside of the rostering principles in clause 8.2, including for all hours worked:
 - i. in excess of 152 hours per 4-week cycle in accordance with the roster provisions of this Agreement;
 - ii. in excess of 19 days per 4-week cycle (for team members on a 19-start roster) or 20 days per 4-week cycle (for team members on a 20-start roster);
 - iii. in excess of 9 hours in one day unless the day is their permitted 11-hour day for the week;
 - iv. outside the span of hours in clause 6.1.a, unless worked in accordance with clause 6.1.b.
- b. Clause 7.3 applies to hours worked without a 12-hour break between completion of work on one day and commencement of work on the next day.

10.3. Overtime for part-time team members

- a. Part-time team members will be paid overtime for all hours worked outside of the rostering principles in clause 8.3, including for all hours worked:
 - i. In excess of 144 hours per 4-week cycle in accordance with the roster provisions of this Agreement;
 - ii. In excess of 9 hours in one day unless the day is their permitted 11-hour day for the week;
 - iii. In excess of 38 hours in any one week;
 - iv. Outside the span of hours in clause 6.1.a, unless worked in accordance with clause 6.1.b;
 - v. In excess of a team member’s contract hours except as provided for in clause 8.4 (flex-up).
- b. Clause 7.3 applies to hours worked without a 12-hour break between completion of work on one day and commencement of work on the next day.

10.4. Overtime for casual team members

- a. Casual team members will be paid overtime for all hours worked:
 - i. in excess of 38 ordinary hours per week or, where the casual team member works in accordance with a roster, in excess of 38 ordinary hours per week averaged over the course of the roster cycle;
 - ii. in excess of 9 hours in one day unless the day is their permitted 11-hour day for the week;
 - iii. outside the span of hours in clause 6.1.a, unless worked in accordance with clause 6.1.b.
- b. Clause 7.3 applies to hours worked without a 12-hour break between completion of work on one day and commencement of work on the next day.

10.5. Overtime rates of pay

- a. Overtime is calculated on a daily basis. Overtime rates are as follows:

Full-time and part-time team members		
Day	First 3 hours of overtime % of ordinary rate	Subsequent hours of overtime % of ordinary rate
Monday to Saturday inclusive	150%	200%
Sunday	200%	200%
Public Holidays	250%	250%

Casual team members (includes Casual Loading)		
Day	First 3 hours of overtime % of ordinary rate	Subsequent hours of overtime % of ordinary rate
Monday to Saturday inclusive	175%	225%
Sunday	225%	225%
Public Holidays	275%	275%

10.6. Overtime meal allowance

- a. A team member who is required to work more than one hour of overtime after their ordinary finish time, without being given 24 hours' notice, will be provided with a meal or paid a meal allowance of \$18.29.
- b. If the overtime worked exceeds 4 hours, a further meal allowance of \$16.57 will be paid.
- c. The meal allowances payable under this clause must never be less than the equivalent allowances in the *General Retail Industry Award*.

10.7. Time off in lieu of overtime (TOIL)

- a. A team member can elect, with the agreement of Woolworths, to take time off in lieu (**TOIL**) of payment for overtime.
- b. The period of TOIL the team member can take will be taken at the overtime equivalent. For example, if a team member worked 1 hour of overtime on a weekday, the overtime payment would have been 150% of the ordinary rate – equivalent to 1.5 hours of ordinary work. Therefore, the team member gets 1.5 hours of TOIL for 1 hour of overtime worked.
- c. The TOIL must be taken within 6 months after the overtime is worked at a time or times agreed by the team member and Woolworths. If the TOIL has not been taken within 6 months of the overtime being worked, Woolworths will pay the TOIL to the team member.
- d. The team member can request, at any time after reaching an agreement to take TOIL, to be paid the TOIL instead.
- e. If a team member has a TOIL balance at the time of the end of their employment with Woolworths, the TOIL must be paid to the team member as part of their termination payments.
- f. Each period of overtime worked will “stand alone” and the team member can opt to take the overtime payment or TOIL on each separate occasion as they so choose, provided the choice is promptly communicated to Woolworths in writing.

11. Shiftwork

11.1. Application of shiftwork clause

- a. This clause will apply only to team members specifically employed as **shiftworkers** under this Agreement.
- b. For the avoidance of doubt, this clause does not apply to a team member who is not specifically employed as a shiftworker even if they work additional hours or overtime.

11.2. Shiftwork definition—other than baking production team members

- a. For the purposes of this clause **shiftwork** means a shift starting at or after 6:00pm on one day and before 5:00am on the following day.
- b. Shiftwork does not include a shift which starts and finishes on the same day within the span of ordinary hours specified in clause 6.1.a.
- c. All time between the actual commencing time and the actual ceasing time on any shift will count and will be paid for as time worked.

11.3. Rates of pay for shiftwork

	Full-time and Part-time rate	Casual rate (inclusive of casual loading)
Shiftwork between midnight Sunday and midnight Friday	Base rate + 30%	Base rate + 55%
Shiftwork on a Saturday	Base rate + 50%	Base rate + 75%
Shiftwork on a Sunday	From 7 January 2019 to 30 June 2019 Base rate + 95%	From 7 January 2019 to 30 June 2019 Base rate + 120%
	From 1 July 2019 to 30 June 2020 Base rate + 90%	From 1 July 2019 to 30 June 2020 Base rate + 115%
	From 1 July 2020 Base rate + 75%	From 1 July 2020 Base rate + 100%

Shiftwork on a Public Holiday (Voluntary)	Public Holiday rates apply	Public Holiday rates apply
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- a. Where a team member volunteers to work on a public holiday shift then the provisions set out in clause 19 (Public Holidays) will apply for all hours of the shift. For the purposes of this clause, where a shift falls partly on a public holiday, the shift which commences on the public holiday will be regarded as the public holiday shift. If the team member does not volunteer to work on a public holiday shift such team member will be entitled to be absent without loss of pay.
- b. Where it is agreed between Woolworths and the majority of team members at any given Woolworths store who are engaged under the provisions of this clause, another shift may be substituted for the shift which commences on the public holiday as the public holiday shift and in such instance the provisions of clause 19 (Public Holidays) relating to such holiday will apply only to the day so substituted.

11.4. Baking production team members – early morning shifts

- a. A **baking production team member** means a shiftworker who is engaged primarily in the bakery department and who is producing baked goods.
- b. Rates of pay for baking production team members are as follows:

	Full-time and Part-time rate	Casual rate (inclusive of casual loading)
Early Morning shift - shifts commencing at or after 2.00am and before 6.00am		
Monday to Friday	Base rate + 12.5%	Base + 37.5%
Saturday	Base rate + 50%	Base + 75%
Sunday	Base + 100%	Base + 125%
Public Holiday	Public Holiday rates apply	Public Holiday rates apply
Night Shift - shifts commencing prior to 2.00am		
Monday to Friday	Base rate +30%	Base + 55%
Saturday	Base rate + 50%	Base + 75%
Sunday	Base + 100%	Base + 125%
Public Holiday	Public Holiday rates apply	Public Holiday rates apply

- c. These allowances apply instead of shiftwork allowances and overtime payments for all hours up to 38 hours per week and 9 hours per day.

11.5. Rest breaks and meal breaks

Notwithstanding clause 7 (Breaks) all rest pauses and meal breaks taken by shiftworkers are paid breaks and form part of the hours of work.

11.6. Rosters

- a. Woolworths will not vary shiftwork rosters to avoid the provision of public holiday entitlements for shiftworkers.
- b. Rosters of shiftworkers cannot be arranged to have the shiftworker work both shiftwork and non-shiftwork in the same week.

11.7. Conversion to shiftwork

- a. A team member who is not currently employed as a shiftworker for the purposes of this clause may become a shiftworker if Woolworths offers the team member the opportunity to convert to shiftwork and the team member agrees. Woolworths cannot require an existing team member to change their current employment status to that of a shiftworker.

12. Temporary or fixed-term engagement

12.1. Fixed-term or temporary engagements

- a. Woolworths can employ new team members or existing team members on a fixed-term part-time or full-time contract for the purpose of temporarily covering the absence of an existing part-time or full-time team member (for example, while a permanent team member is on parental or annual leave). Entry into a fixed-term contract is voluntary, and Woolworths will provide team members with basic terms and conditions of a fixed-term contract before it is entered into, including the proposed start and end dates.
- b. A fixed-term contract may be between 2 and 52 weeks in duration. A parental leave cover fixed-term contract can be up to 104 weeks in duration.
- c. A team member on a fixed-term part-time or full-time contract will receive all of the benefits that apply to permanent team members under this Agreement.
- d. Where an existing team member accepts a fixed-term contract, they will continue to accrue all of their entitlements for the duration of the fixed term based on the number of hours worked. At the conclusion of the fixed-term contract the existing team member is entitled to return to their previous position without disadvantage and without breaking continuity of employment.
- e. Where a casual team member accepts a fixed-term contract for part-time or full-time employment, they will accrue all appropriate entitlements however any outstanding annual leave balance at the end of the fixed term will be paid to the team member if they revert to casual status.
- f. Hours worked on a fixed-term contract do not count when calculating average weekly hours for the purposes of casual or part-time conversion under clauses 8.5 and 8.7 of this Agreement.

13. Annual leave

13.1. Annual leave entitlements

- a. Except as otherwise provided for in this Agreement, annual leave is provided for in the NES. Annual leave accrues progressively during each year as follows:

Full-time team members	4 weeks of paid annual leave for each year of continuous service.
Part-time team members	4 weeks of annual leave for each year of continuous service calculated on a pro-rata basis based on their ordinary hours of work. For example, a part-time team member who works 20 hours per week for 1 year will accumulate 80 hours of annual leave that year – the equivalent of 4 weeks work for that team member.
Casual team members	Not entitled to annual leave. Casual team members receive a 25% casual loading in lieu of paid leave entitlements.

- b. Where a public holiday in the place where the team member works falls on a day of paid annual leave, that day or part day is treated as a public holiday (day or part day off with pay based on the team member's base rate of pay) and will not be deducted from their annual leave entitlement.

13.2. Taking annual leave

- a. Annual leave will be taken at a time mutually agreed by Woolworths and the team member. Woolworths will respond to an annual leave request within 4 weeks. Consideration will be given to team members requests for leave to coincide with their partner or spouses' leave. Team members are encouraged to plan and notify Woolworths of their annual leave as far as possible in advance.
- b. Annual leave will be taken in either:
 - i. A single period of 4 weeks; or
 - ii. Such other periods as may be mutually agreed.
- c. Provided that a team member may elect, with the consent of Woolworths, to take annual leave in single days, not exceeding 5 days in any anniversary year, except where a team member applies to Woolworths, in writing, for additional single days.

13.3. Excessive accrued annual leave

- a. The purpose of annual leave is to ensure team members take time for a break, to rest and relax. Woolworths encourages team members to plan for and take leave annually and to avoid accruing excessive leave. A team member has an excessive annual leave accrual if the team member has accrued more than 8 weeks' paid annual leave (or more than 10 weeks' paid annual leave for a shiftworker).
- b. If a team member has an excessive annual leave accrual, Woolworths or the team member may initiate discussions to genuinely try to reach agreement on how to reduce or eliminate the excessive annual leave accrual.
- c. Appendix F sets out the process for Woolworths to direct a team member who has excessive annual leave accrual to take paid annual leave, and also the process for a team member to require Woolworths to grant a paid leave request to the team member.

13.4. Payment of annual leave and annual leave loading

- a. A team member will receive payment for annual leave in their normal pay cycle during the leave period.
- b. During a period of annual leave taken by a team member, the team member (other than a team member who is a shiftworker under this Agreement) will receive annual leave loading calculated at 17.5% of their base rate of pay, or the relevant weeknight and weekend penalty rates - whichever is greater but not both.
- c. During a period of annual leave taken by a team member who is a shift worker under this Agreement, the team member will receive leave loading calculated at 17.5% of their base rate of pay or their shift loading - whichever is greater but not both.

13.5. Annual leave on termination of employment

Full-time and part-time team members will be paid their accrued but untaken annual leave (plus applicable leave loading) on the termination of their employment.

13.6. Cashing out of annual leave

- a. A team member who has an accrued annual leave entitlement in excess of 4 weeks, may make an application to 'cash out' a period of paid annual leave. Woolworths may approve such application subject to the following:
 - i. The team member must retain a paid annual leave entitlement of at least 4 weeks;
 - ii. Each 'cashing out' of annual leave must be by a separate agreement, in writing, between Woolworths and the team member. If the team member is under 18 years of age, the request must also be signed by the team member's parent or guardian;
 - iii. The team member will be paid the amount that would have been payable had the team member taken that period of leave;
 - iv. The team member's annual leave entitlement will be reduced accordingly; and
 - v. A maximum of 2 weeks accrued paid annual leave may be cashed out in any period of 12 months.

13.7. Annual leave "at half pay"

- a. Woolworths wants to support team members to take additional time off and so we offer the option of taking annual leave "at half pay".
- b. When a team member applies for leave "at half pay" they are applying for a period of paid leave and an equal period of unpaid leave. These periods of leave are taken one after the other, and pay for the paid leave period is spread over the full leave period.
- c. This means that while team members are on leave "at half pay" they will:
 - i. receive their normal annual leave entitlement pay spread over the total period of their absence; and
 - ii. accrue half of the leave they would normally accrue (because they are only accruing for the paid half of the leave period).
- d. Annual leave "at half pay" leave must be taken in 2 week increments to a maximum of 4 periods, i.e. 8 weeks in total (which would use 4 weeks of accrued annual leave).
- e. Team members can take annual leave "at half pay" if:
 - i. all accessible long service leave has been exhausted; and
 - ii. they have 8 weeks accrued annual leave or less.

- f. Public holidays that fall during the paid annual leave half of a leave “at half pay” period will be paid in accordance with clause 13.1.b. Public holidays that fall during the unpaid half of a leave “at half pay” period will be unpaid.

13.8. Illness/Injury or accessing other leave during annual leave

- a. A team member who is ill or injured during a period of annual leave (and would not have been fit for work), or who is entitled to any other leave under this Agreement or the NES (except unpaid leave) may apply to have annual leave re-credited for the period of illness or injury, or for the period that the team member was entitled to be on other leave, upon the team member producing documentation in accordance with clause 14.3 below, or by producing documentation in accordance with the relevant leave clause in this Agreement.
- b. To facilitate the re-crediting of annual leave it will be necessary for Woolworths to deduct the value of any leave loading (in the form of the 17.5% loading, or penalty rates, or shift loading paid in accordance with clause 13.4) for the period of leave re-credited from the team member’s weekly earnings. This may occur in a current or future pay cycle.

13.9. Additional Week

For the purpose of the additional week of annual leave provided for shiftworkers in the NES, a shiftworker is a seven-day shiftworker who is regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for seven days a week.

13.10. Close-down

If reasonable alternative work cannot be found, Woolworths may require a team member to take annual leave as part of a close-down of its operations, or part of its operations. If this is required, Woolworths must give the team member at least 4 weeks’ notice before the period of leave is to commence.

14. Personal and carer’s leave

14.1. Personal leave entitlement

- a. Full-time and part-time team members are entitled to take personal leave when they are unable to attend work on a day that they are rostered to work, due to a personal illness or injury.
- b. A full-time team member is entitled to 10 days paid personal leave per year in accordance with the NES plus 1 additional paid day, 11 days per year in total. Part-time team members are entitled to 11 days paid personal leave calculated on a pro-rated basis in accordance with their ordinary hours of work. Casual team members are not entitled to paid personal leave.
- c. Personal leave accrues progressively. Unused personal leave accumulates from year to year, but is not paid out on termination of employment for any reason.
- d. When paid personal leave is taken, team members will be paid their base rate of pay for the hours normally rostered to work. Penalty rates are not applied.
- e. A team member is not entitled to paid personal leave for any period in respect of which they are entitled to workers’ compensation.

14.2. Taking paid personal leave

If a team member is not fit to attend work due to a personal illness or injury, where practicable they should notify their Store Manager or relevant supervisor as soon as they can prior to the start of their shift. Woolworths appreciates being given notice to enable the shift to be filled or other operational changes to be made. When notifying Woolworths, the team member should advise the nature of the illness or injury (if it is reasonable to do so) and the estimated duration of the team member’s absence.

14.3. Documentation

- a. Before making a payment to a team member in respect of paid personal leave, Woolworths may require a team member to provide evidence in support of their absence as follows:

Period of Absence in any calendar year (Paid and unpaid Personal Leave)	Documentation that may be required
First and second single shift absences	No documentation required unless the shifts fall on a day before or after a public holiday, in which case the rule below applies.
Any period of sick leave falling on the day before or after a public holiday	A medical certificate issued by a qualified medical practitioner, or if not reasonably practicable, a statutory declaration.

Two or more consecutive shifts	A medical certificate issued by a qualified medical practitioner, or if not reasonably practicable, a statutory declaration.
Third single shift, and any subsequent absences	A medical certificate issued by a qualified medical practitioner, or if not reasonably practicable, a statutory declaration.

14.4. Carer's leave

- a. Full-time and part-time team members may also use their accrued personal leave entitlements to take paid time off for the purpose of providing care and support for an **immediate family member** or a member of the team member's household who requires care or support because of personal illness, or injury of the person, or an unexpected emergency affecting the person.
- b. Unpaid carer's leave can be taken when the team member's entitlement to paid personal leave (if any) has been exhausted. Unpaid carer's leave may be taken as a single, unbroken, period of 2 days, or two separate periods of 1 day each, or any separate periods totalling 2 days to which Woolworths and the team member agree. The 2 days unpaid carer's leave may be taken per occasion. Casual team members are entitled to unpaid carer's leave. Unpaid carer's leave may be extended by agreement with Woolworths.
- c. A team member must notify Woolworths as soon as is reasonably practicable of their need to take carer's leave, providing the anticipated duration of leave and a satisfactory explanation for the need to take leave.

14.5. Leave entitlements exhausted

In any year where a team member has exhausted their paid personal leave but requires time off due to an extended illness or to provide care in accordance with clause 14.4 above, the team member may choose to use any paid TOIL they have earned and/or accrued annual leave.

15. Compassionate leave

15.1. Compassionate leave entitlement

- a. Full-time and part-time team members are entitled to paid compassionate leave as follows:

Where the absence is due to:	The maximum number of days of paid compassionate leave per occasion will be:
The death of a team member's spouse, parent, child, brother or sister	5 days
The death of a team member's parent-in-law, brother or sister-in-law, grandparent, grandparent-in-law, grandchild, son-in-law, daughter-in-law, de-facto parent-in-law, cousin, uncle, aunt, niece, nephew, or Godparent	3 days
The death of a member of the team member's household	2 days
Attending the funeral of a significant other	1 day
Spending time with a team member's spouse, child, parent, brother or sister, grandparent, grandchild, or a child, parent, brother or sister, grandparent, grandchild of a spouse of the team member, or a member of the team member's household, who has a personal illness or sustains a personal injury that poses a serious threat to his or her life	2 days (which can be taken as a single unbroken period of 2 days or 2 non-consecutive days as agreed)

- b. For the purposes of this clause 15.1:
 - i. **Child** means a team member's natural or adopted child, step-child or any child that the team member has care or custody of as a result of a Court or guardianship order.
 - ii. **Spouse** means a current or former spouse.
- c. In addition to the entitlement above, a team member will be entitled to 2 days paid leave to attend the funeral of a parent, spouse, child, brother or sister, where the team member travels outside Australia or more than 400km, one way, either interstate or within the same state
- d. In addition to the entitlement above, a team member will be entitled to 2 days unpaid leave to attend the funeral of a relative other than a parent, spouse, child, brother or sister, where the team member travels outside Australia or more than 400km, one way, either intrastate or interstate.

- e. Upon request by Woolworths in order to be entitled to paid compassionate leave, a team member must provide as soon as reasonably practicable any written evidence Woolworths reasonably requires of the illness, injury or death, and which otherwise meets the requirements of the Fair Work Act.
- f. Any paid compassionate leave will be paid at the team member's base rate of pay for the hours normally rostered to work.
- g. Casual team members will be entitled to be absent for 2 unpaid shifts where a team member's immediate family member or member of the team member's household dies or contracts or develops an illness or injury that poses a serious threat to their life.

16. Parental leave (including pre-natal leave)

16.1. Entitlement to parental leave

- a. Parental leave supports team members who provide primary care or share in the care of their new-born or newly adopted child.
- b. Team members are entitled to parental leave in accordance with the Fair Work Act and Woolworths policies, as both are amended from time to time:
 - i. The Fair Work Act contains minimum legal entitlements that apply to all team members.
 - ii. *Woolworths Parental Leave Policy* provides additional entitlements, including paid leave for eligible team members and other benefits.
- c. Any team member who may need to take parental leave should first read the current Woolworths Parental Leave Policy, and then refer to the Fair Work Act.
- d. For clarity, the *Woolworths Parental Leave Policy* is not incorporated into this Agreement.
- e. If *Woolworths Parental Leave Policy* is rescinded or reduced, the minimum parental leave entitlements set out in Appendix G will apply. The Appendix provides guaranteed minimum standards for team members under this Agreement.

16.2. Pre-natal leave and pre-adoption leave

- a. A full-time or part-time team member who is pregnant or about to adopt a child, or whose spouse or partner is pregnant or about to adopt a child, may access their personal/carer's leave entitlement or unpaid leave for medical appointments associated with pregnancy or pre-adoption.
- b. Where possible, team members should arrange appointments as close as possible to the start or end of their ordinary rostered hours.
- c. The team member will provide Woolworths with notice as soon as practicable on each occasion of their requirement to take pre-natal or pre-adoption leave for pre-natal or pre-adoption appointments.
- d. Team members may be required to provide Woolworths with proof of attendance at a medical appointment in accordance with the evidence requirements in clause 14.3.
- e. The actual time taken off to attend each appointment will be deducted from the team member's accrued personal/carer's leave entitlement and will be paid at the team members ordinary hours rate of pay. Such leave of absence will not break the team member's continuity of employment.

17. Family and domestic violence leave

17.1. Purpose of family and domestic violence leave

Woolworths recognises that team members who experience family and domestic violence may need additional support to deal with the impact of the family and domestic violence, particularly to make arrangements for their safety and the safety of others, attend medical appointments, court appointments, access police services and related activities which are impractical for a team member to deal with outside of their ordinary hours of work.

17.2. Entitlement to paid and unpaid leave

- a. Each year, a full-time team member is entitled to 5 days' paid leave and 5 days' unpaid leave to deal with family and domestic violence. A part-time team member has an entitlement to 5 days of paid leave on a pro-rata basis, and 5 days of unpaid leave (not pro-rated) per year. Casual team members are entitled to 5 days' unpaid leave per year.
- b. The entitlement:
 - i. is available in full at the start of each 12-month period of the team member's employment;

- ii. does not accumulate from year to year;
 - iii. (where the leave is paid leave) is paid at the team member's base rate of pay for the hours normally rostered to work; and
 - iv. is not paid out on termination of employment if unused.
- c. A team member may take any combination of paid or unpaid family and domestic violence leave to deal with family and domestic violence if the team member:
- i. is experiencing family and domestic violence; and
 - ii. needs to do something to deal with the impact of family and domestic violence (for example, making arrangements for their safety or the safety of others (including relocation), attending urgent court hearings, or accessing police services) and it is impractical for the team member to attend to it outside of their ordinary hours of work.
- d. Leave may be granted for the purpose of seeking medical, legal or police assistance, for counselling, relocation or other directly related activities.
- e. In the event a team member has exhausted their entitlement to paid leave under this clause, they may access other paid leave, including personal leave, carer's leave or annual leave whether or not they have used their unpaid leave under this clause. If they have used their unpaid leave, they may take an unpaid leave of absence.
- f. A team member who supports a person experiencing family or domestic violence may take personal/carer's leave (as per clause 14) to accompany them to court or hospital or to mind children.
- g. Team members are required to notify their Manager of such absence on the first day of absence if prior notice is not possible. If possible, the team member should indicate the expected duration of the period of leave. Where not appropriate to notify their Manager, or if a team member does not feel comfortable doing so in a particular circumstance, a team member should instead notify Woolworths People Advisory or the relevant Culture & People Partner/Manager.
- h. Woolworths may request reasonable supporting evidence in relation to any leave taken under this clause. This may include documentation from the Police Service, a Court, a Doctor, District Nurse, Maternal and Child Health Care Nurse, a Family Violence Support Lawyer, Lawyer or any other reasonable form of evidence.
- i. In order to provide support and a safe work environment for a team member experiencing family and domestic violence, Woolworths will consider any reasonable request from a team member for:
- i. changes to their spread of hours or pattern of hours and/or shifts;
 - ii. job redesign or change of duties;
 - iii. relocation to a suitable location within Woolworths;
 - iv. any other appropriate measures including those available under existing provisions for flexible working arrangements.

17.3. Confidentiality

All personal information concerning matters of family and domestic violence will be kept confidential and may only be used internally, or disclosed externally in exceptional circumstances and where it is imperative to maintain the safety of the team member and/or co-workers.

17.4. Family and domestic violence definitions

- a. For the purposes of this clause 17:
- i. **family and domestic violence** means violent, threatening or other abusive behaviour by a family member of a team member that seeks to coerce or control the team member and causes them to be fearful.
 - ii. **family member** means:
 - A. a spouse (or former spouse), de facto partner (or former de facto partner), child, parent, grandparent, grandchild or sibling of the team member; or
 - B. a child, parent, grandparent, grandchild or sibling of a spouse (or former spouse) or de facto partner (or former de facto partner) of the team member; or
 - C. a person related to the team member according to Aboriginal or Torres Strait Islander kinship rules.

18. Other leave entitlements

18.1. Blood Donor Leave

- a. A full-time or part-time team member who is absent during ordinary hours of work for the purpose of donating blood 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.
- b. The team member will arrange for the absence to be on a day suitable to Woolworths and be as close as possible to the start or finish of their ordinary hours of work. The team member will notify Woolworths as soon as possible of the proposed date and time of the absence and will provide satisfactory proof of attendance at a recognised blood donation service upon Woolworths request.

18.2. Jury service

- a. Team members are entitled to leave of absence and payment for any period of jury service in accordance with the NES and relevant state/territory legislation, provided that:
 - i. Where Woolworths is required to pay a team member for time spent performing jury service, payment will be made for the whole of the absence required and not limited to the first 10 days of absence.
 - ii. A team member who is engaged in jury service for more than 2 hours on a given day will not be required to complete their normal rostered shift on that same day.
 - iii. If a team member is engaged in jury service, they will not be required to complete more than 5 days of jury service and work combined in any week (for example if a team member attends 4 days of jury service, they can only be required to work 1 day in that week).
 - iv. If a team member is taking paid leave and during the period of paid leave they are required to serve on a jury, the paid leave for the time served on the jury will be recredited to the team member (less any leave loading or penalties paid).

18.3. Defence forces leave

- a. A full-time or part-time team member will be allowed paid time off of up to a maximum of 2 weeks per calendar year to attend Defence Forces approved training camps, and Woolworths will pay the team member the difference between the payment received for their attendance at such training camp and the base rate of pay they would have received during that period.
- b. To receive payment, a team member must provide Woolworths proof of attendance and proof of the Defence Forces rate of pay and total payment received for the time spent in training.
- c. Team members seeking to take Defence Forces Leave must provide notice to Woolworths at least 1 month prior to the period of training. The notice should detail the start and finish dates for training.
- d. Casual team members are entitled to unpaid defence forces leave.

18.4. Emergency service leave

- a. Full-time and part-time team members engaged in voluntary emergency services activities that are coordinated through a recognised emergency management body (such as state emergency services, rescue and firefighting) will be entitled to up to 2 weeks per year paid time off. During this period of leave, team members will be paid their base rate of pay for the hours normally rostered to work. Any other period of emergency service leave will be unpaid, in accordance with the NES.
- b. It will be the responsibility of the team member to keep Woolworths informed about the time off needed to attend to emergency duties. To receive payment, a team member must provide Woolworths proof of engagement in emergency services activities.
- c. Paid time off for emergencies that are not local will be limited to 2 days but may be increased depending upon the nature of the emergency, e.g. major bushfire.
- d. Casual team members are entitled to unpaid emergency service leave.

18.5. Natural disaster leave

- a. Where a cyclone warning or a state of emergency is declared, or where flooding, snowstorms, earthquake or bushfires occur, or are imminent, team members will be allowed to leave work to care for their family or property where there is a genuine risk.
- b. A full-time or part-time team member is to receive up to 3 days paid leave at their base rate of pay if there is a reasonable and justified reason that a team member is unable to attend work due to a natural disaster.

- c. Casual team members are entitled to unpaid natural disaster leave.

18.6. Long service leave

- a. Team members are entitled to long service leave in accordance with applicable State or Territory legislation.
- b. In addition:
 - i. Where the applicable State or Territory legislation does not permit long service leave at half pay, a team member may request to access unpaid leave equivalent to the period of long service leave requested in order to double the period of absence.
 - ii. State and Territory legislation may provide that where a public holiday falls during a team member's period of taking paid long service leave, they are entitled to be re-credited that day of long service leave. Under this Agreement, where the applicable State or Territory legislation does not provide for such re-crediting, Woolworths will re-credit the long service leave.
 - iii. Long service leave for team members employed in the County of Yancowinna in New South Wales (Broken Hill) will be in accordance with the Long Service Leave Act 1955 (NSW) except that the rate of leave accrual will be 1.3 weeks of leave per year of service instead of the rate of accrual specified in the Long Service Leave Act 1955 (NSW).

18.7. Leave of absence

- a. A full-time or part-time team member may apply to take an unpaid leave of absence of one week's duration or more.
- b. Unpaid leave will mean an approved leave of absence, which may include, but is not limited to:
 - i. leave for unforeseen personal circumstances such as long-term illness,
 - ii. planned additional time off such as for school holidays or overseas travel.
- c. Except for a leave of absence to attend study commitments, all available paid annual and long service leave entitlements must be taken prior to the period of absence, or in the case of an absence related to an illness or injury, all paid personal leave entitlements must be exhausted first.
- d. Where a full-time or part-time team member takes an authorised unpaid leave of absence, subject to legislative requirements all entitlements to annual leave, personal leave or long service leave will not accrue from the date of commencing such leave to the date of returning from such leave. Such leave will not break continuity of employment.

19. Public holidays

19.1. Working or not working on public holidays

- a. In this Agreement, **public holiday** has the same meaning as in the NES.
- b. Working on a public holiday is voluntary. A team member cannot be required to work but may volunteer to work on any public holiday as provided for in this clause.
- c. Team members who would normally be rostered to work may volunteer to work on a public holiday (or part of it) and will be paid the relevant penalty rate for any time so worked. Woolworths may decline any request to volunteer if there is no operational need for the team member to work on a public holiday. All team members are entitled to be absent from work on a day or part-day that is a public holiday in the place where the team member works, and cannot be required to work if they do not volunteer to work.
- d. Woolworths may or may not open for trade on public holidays. If Woolworths is trading on a public holiday, Woolworths may communicate to team members that it is seeking volunteers. Woolworths is not obliged to roster all team members who volunteer on a public holiday, and will roster team members based on operational needs.
- e. If a public holiday or a part public holiday is substituted to another day or part day by a law of a State or Territory the substituted day or part day is a public holiday and the original day or part day is not a public holiday.
- f. Depending on whether a team member works on a public holiday or not, the following entitlements will apply:

	If the team member WORKS on the public holiday:	If the team member is ABSENT on the public holiday:
Full-time or part-time team member whose standard roster WOULD include the public holiday as a working day:	Hours worked are paid at public holiday penalty rates OR team member can request TOIL or an equivalent day of annual leave instead	Day off is paid at ordinary base rate of pay for the rostered working day as per the team member's standard roster (without penalty rates or loadings)
Full-time or part-time team member whose standard roster would NOT include the public holiday as a working day:	Hours worked are paid at public holiday penalty rates OR team member can request TOIL or an equivalent day of annual leave instead	Unpaid
Casual team member (does not have a standard roster)	Hours worked are paid at public holiday penalty rates	Unpaid

- g. Woolworths must not change a team member's standard roster to avoid or reduce a public holiday penalty payment. If this occurs, the team member will be entitled to the payment or benefit of the public holiday they would have received but for the roster change.

19.2. Public holiday penalty rates

- a. The following penalty rates apply for hours worked on public holidays:

Team member	Public Holiday Pay Rate
Full-time and part-time team members	Base rate + 125%
Casual team members	Base rate + 150% (inclusive of casual loading)

- b. These rates apply instead of any rates in the tables in clauses 6.2 and 6.3, and instead of any shift work or bakery production team rates in clause 11.

19.3. Time off in lieu (TOIL)

- a. By mutual agreement between Woolworths and a part-time or full-time team member, instead of receiving penalty rates for working on a public holiday, the team member can be compensated for working a particular public holiday by either:
- i. An equivalent day or equivalent time off in lieu without loss of pay. The time off must be taken within 28 days of the public holiday occurring or it will be paid out; or
 - ii. An additional day or equivalent time added to their annual leave balance.
- b. The team member and Woolworths are entitled to agree a new choice of payment or time off by agreement on each occasion work is performed on a public holiday. If no agreement can be reached on the method of compensation, the default arrangement shall be the payment of penalty rates.

19.4. Engagement across two days

For the purposes of this clause, where a shift falls partly on a public holiday, a shift that commences on the public holiday shall be regarded as the public holiday shift. Provided that a team member who is not required to work or who elects not to work on a public holiday shift shall be entitled to be absent without loss of pay.

19.5. Part-day public holidays

- a. A part-day public holiday is a public holiday that has been gazetted to start and end within a defined part of a day (e.g. 7pm to midnight on a given day).
- b. Full-time and part-time team members will receive public holiday benefits under this clause 19 in respect of their hours of work normally rostered or actually worked during the part of the day specified as a public holiday. For casual team members working on a part-day public holiday, public holiday benefits only apply to work performed during the part of the day specified as the public holiday.
- c. However, minimum daily engagement rostering principles in clauses 8.2, 8.3 and 8.5.e must still be met in respect of any overall engagement or shift on the day (e.g. it is possible to have a 3-hour engagement for a casual or part-time team member from 5:00 pm to 8:00 pm, in which case, assuming the holiday is from 7:00 pm to midnight, clause 19.1.f will only apply to the hour from 7:00 pm to 8:00 pm).

19.6. Voluntary work on Christmas Eve, New Year's Eve and Easter Sunday

- a. Work after 6pm on Christmas Eve, after 6pm on New Year's Eve and on Easter Sunday (except where they are a public holiday and are completely voluntary), will be voluntary provided there are enough volunteers to meet Woolworths operational needs, subject to the following:
 - i. team members not wanting to work at these times will inform Woolworths at least 4 weeks in advance. At the same time, Woolworths will start to assess the number of team member volunteers that will be required to work; and
 - ii. if there are not enough volunteers Woolworths will first ask casual team members to work the hours, and will then ask full-time and part-time team members.
- b. Where Woolworths is open for trade and a team member takes the benefit of this clause in order to take time off instead of working a normally rostered shift or part of a normally rostered shift on Easter Sunday or after 6pm on New Year's Eve or Christmas Eve, the time is unpaid time and the team member will only be paid for hours actually worked. A team member can request to take paid annual leave for the hours *not* worked.

20. Ending employment

20.1. Notice of termination of full-time and part-time team members by Woolworths

- a. Woolworths will provide the following period of written notice before terminating the employment of a full-time or part-time team member, unless terminating their employment for serious misconduct:

Period of continuous service	Period of Notice
Less than 1 year	1 week
1 year or more, but less than 2 years	2 weeks (3 weeks if team member is over 45 years old)
2 years or more, but less than 5 years	3 weeks (4 weeks if team member is over 45 years old)
5 years and over	4 weeks (5 weeks if team member is over 45 years old)

- b. Woolworths may choose to pay the team member instead of notice for all or part of the notice period (in which case the team member will be paid for hours they would have worked during the period of notice that is paid in lieu and will not be required to work for that part of the notice period).
- c. The period of notice in this clause does not apply to casual team members, or to fixed-term contract team members engaged for a specific period of time or for a specific task or tasks (unless their employment ends with notice before their specified end date). Casual employment can be terminated without notice.
- d. The employment of team members engaged for a specific period or on a temporary basis will end automatically at the conclusion of the specific period unless:
 - i. the team member's employment ends prior to the conclusion of the specified period in accordance with the above termination notice provisions; or
 - ii. unless the team member was an existing team member before the specific period in which case they will revert to their previous employment status.
- e. Where Woolworths has given notice of termination to a team member, the team member will be allowed (if requested) to take up to the equivalent of 1 day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times convenient to the team member after consultation with Woolworths.

20.2. Team member resignation

- a. Unless otherwise agreed by Woolworths, full-time and part-time team members need to give Woolworths the same amount of notice of resignation as Woolworths needs to give them (in the above table), except that the additional week of notice based on the age of the team member does not apply. A team member can request to give less notice, and Woolworths will not unreasonably refuse such a request.
- b. If a team member fails to give the required period of notice, Woolworths can deduct from the team member's final pay their base rate of pay for the hours they would usually work during the weeks' notice not given. This deduction is from the team member's pay, not their NES entitlements.
- c. Casual team members can resign without notice.

20.3. Termination for serious misconduct

In the case of serious misconduct, a team member may be immediately dismissed, with no notice or pay in lieu of notice.

20.4. Abandonment of employment

- a. If a team member fails to attend work for more than 3 working days or shifts in a row without notification or explanation, Woolworths may deem that the team member has abandoned their employment, but Woolworths will only do so after it has made genuine and reasonable attempts to contact the team member to confirm their intentions. For example, Woolworths may try to contact the team member by telephone, email, instant message or post.
- b. If, following genuine and reasonable attempts to make contact with the team member, Woolworths has been unable to make contact with the team member then Woolworths may deem that the team member has abandoned their employment and their employment will cease, with the termination taken to be at the initiative of the team member.

20.5. Statement of service

On request, Woolworths will provide a statement of service confirming a former team member's employment commencement and termination date, and the team member's last job classification. Team members who have been employed by Woolworths for less than 1 month are not entitled to a statement of service.

20.6. Redundancy

- a. A redundancy occurs when Woolworths has decided it does not need a team member's job to be done by anyone, except where this is due to the ordinary and customary turnover of labour. This may happen when Woolworths introduces new technology, slows down due to lower sales, closes down a part of or all of its business, relocates or restructures.
- b. Where Woolworths has made a definite decision that it no longer needs a job to be done by anyone, and that decision may result in the termination of a team member's employment, Woolworths must follow the consultation process outlined in clause 21.
- c. The information Woolworths must provide under clause 21 will include:
 - i. relevant information about the proposed redundancies, including reasons for the proposed redundancies;
 - ii. the roles, and the number of roles of team members that are likely to be affected;
 - iii. the number of team members normally employed; and
 - iv. the time period over which the redundancies will take effect;

provided that Woolworths is not required to disclose any confidential or commercially sensitive information to team members.

- d. The discussions that will be had under clause 21 will include:
 - i. any reasons for the proposed redundancies;
 - ii. measures taken to avoid or minimise job losses; and
 - iii. measures to mitigate any adverse effects of job losses on the team members concerned.

20.7. Redundancy Pay

- a. In addition to the period of notice required for termination of employment (clause 20.1), in the event a permanent team member's role is made redundant and their employment is terminated as a result, they will be entitled to the following redundancy pay:

Period of Continuous Service	Number of Weeks' Pay	
	Team member under the age of 45	Team member aged 45 or over
Less than 1 year	Nil	Nil
1 year but less than 2 years	4 weeks	5 weeks
2 years but less than 3 years	7 weeks	8.75 weeks
3 years but less than 4 years	10 weeks	12.5 weeks
4 years but less than 5 years	12 weeks	15 weeks
5 years but less than 6 years	14 weeks	17.5 weeks
6 years or more	16 weeks	20 weeks

- b. "**Weeks' pay**" for the purposes of redundancy pay means the team member's **Ordinary Time Earnings**.

20.8. Transfer to lower paid duties

Where a team member is transferred to lower paid duties by reason of redundancy, the same period of notice must be given before the transfer as the team member would have been entitled to if their employment had been terminated. Woolworths may choose to implement the transfer earlier and pay the team member the difference between their former base rate of pay and the base rate of pay for the number of weeks of notice still owing. Woolworths may, at its discretion, make a payment of an amount equal to the difference between the team member's former base rate of pay and the new lower base rates of pay for both the period of notice and for a period equal to the number of weeks' severance pay that the team member would have been entitled to if their employment had been terminated.

20.9. Team member leaving during the notice period

If a team member who has been given notice of termination due to redundancy chooses to cease employment before their notice period has come to an end, they may do so and will receive the same benefits and payments due to them under this clause as if they had remained employed until the end of their notice period; but will not be entitled to payment instead of notice for the remainder of the notice period and will only accrue leave until their last day of employment.

20.10. Job search entitlement

- a. A team member who has been given notice of termination in circumstances of redundancy will be allowed up to 1 day of time off without loss of pay during each week of notice for the purpose of seeking other employment. This clause applies instead of clause 20.1.e.
- b. If the team member has been allowed paid leave for more than 1 day during the notice period for the purpose of seeking other employment, the team member must, if requested by Woolworths, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose, a statutory declaration is sufficient.

20.11. Change to redundancy pay

- a. Where there is a transfer of business, redundancy pay (as per clause 20.7) and notice of termination (as per clause 20.1) will not apply where Woolworths obtains employment for a team member in the transferred business or another Woolworths Group Limited related entity on terms and conditions that are substantially similar to, and overall no less favourable than, the team member's terms and conditions of employment immediately before the termination, including the requirement that the new employer recognises the team member's service with Woolworths.
- b. Where Woolworths finds such other employment for a team member, the team member's entitlements to personal leave, annual leave and long service leave will be transferred to the new employer.

20.12. Variation of redundancy pay for other employment or incapacity to pay

- a. In circumstances other than a transfer of business, if Woolworths:
 - i. obtains other acceptable employment for the team member; or
 - ii. cannot pay an amount of redundancy pay;

then Woolworths can apply to the FWC and the FWC may determine that the amount of redundancy pay is reduced to a specified amount (which may be nil) that the FWC considers appropriate, and the amount of redundancy pay payable to a team member under clause 20.7 will be so reduced.

21. Workplace changes and consultation

21.1. Consultation regarding major workplace change

This clause does not apply to changes to rosters or hours of work, which is covered under clause 9.

21.2. Woolworths to notify team member

- a. Where Woolworths has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on team members, Woolworths must notify the team members who may be affected by the proposed changes and their trade unions, if any.
- b. Significant effects include termination of employment; major changes in the composition, operation or size of the Woolworths 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 or locations; and the restructuring of jobs. Provided that where this Agreement makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

- c. The relevant team members may appoint a trade union or other person as their representative for the purposes of this clause.
- d. Woolworths must recognise a team member's (or team members') representative, if:
 - i. a relevant team member appoints, or relevant team members appoint, a representative for the purposes of consultation; and
 - ii. the team member or team members advise Woolworths of the identity of the representative.

21.3. Woolworths to discuss change

- a. As soon as practicable after proposing to introduce the change, Woolworths must:
 - i. discuss with the relevant team member(s) and their trade unions, if any:
 - A. the introduction of the change referred to in clause 21.2.a;
 - B. the effects the changes are likely to have on team members; and
 - C. measures that Woolworths is taking to avert or mitigate the adverse effects of such changes on team members
 - ii. for the purposes of the discussion—provide, in writing, to the relevant team members:
 - A. all relevant information about the change, including the nature of the change; and
 - B. information about what Woolworths reasonably believes will be the effects of the change on the team members; and
 - C. information about any other matters that Woolworths reasonably believes are likely to affect the team members; and
 - D. an invitation to relevant team members to give their views about the impact of the change.
- b. However, Woolworths is not required to disclose confidential or commercially sensitive information to the relevant team members.
- c. Woolworths must give prompt and genuine consideration to matters raised about the change by the relevant team members.
- d. For the purposes of this clause, **relevant team member** means the team members who may be affected by the proposed change.

22. Resolving disputes

22.1. Parties to discuss

- a. A dispute between a team member (or team members) and Woolworths, including a dispute in relation to
 - i. a matter arising under the Agreement; or
 - ii. the NES;
 should be discussed in first instance at the workplace level between the team member (or members) and their relevant supervisors or management.
- b. At any stage, Woolworths and a team member or team members may appoint another person to accompany and/or represent them for the purposes of this clause, including a trade union listed in clause 1.3.
- c. If the dispute remains unresolved, the dispute may be referred to Woolworths People Advisory for it to be escalated to an appropriate representative of Woolworths to assist in resolving the dispute, which may be a more senior member of management or a representative from the Woolworths Culture & People team.
- d. If, following escalation under clause 22.1.c, the dispute remains unresolved then the matter may be referred to a senior representative of Woolworths (such as the relevant Employee Relations Manager, Head of Workplace Relations or General Manager) for further discussions.

22.2. Referral to FWC

- a. If the dispute still remains unresolved, then either party may refer the dispute to the FWC for resolution.
- b. The FWC may deal with a dispute in two stages:
 - i. the FWC will first attempt to resolve the dispute through conciliation;
 - ii. where the matter cannot be resolved by conciliation, at the request of one or both parties, the FWC may arbitrate the dispute.
- c. In any proceedings before the FWC pursuant to this clause, the FWC may take any or all of the following actions in order to resolve the dispute:
 - (i) Convene conciliation conferences of the parties or their representatives at which the FWC is present;
 - (ii) Require the parties or their representatives to confer among themselves at conferences at which the FWC is not present;
 - (iii) Request but not compel a person to attend and/or give evidence at proceedings;
 - (iv) Request but not compel a person to produce documents;
 - (v) Where either party requests, make recommendations about particular aspects of a matter about which they are unable to reach agreement.
- d. Any determination by the FWC following an arbitration must be in writing and must give reasons for the determination.
- e. In the exercise of its functions under this clause, the FWC must not issue interim orders, 'status quo' orders or interim determinations.
- f. The parties are entitled to be represented, including by legal representatives, in any proceedings under this clause.
- g. If the FWC arbitrates a dispute, any determination made by the FWC is a decision for the purposes of Division 3 of Part 5.1 of the Fair Work Act and can be appealed.

22.3. Continuation of work

While the dispute resolution procedure is engaged, work will continue as normal and as before the dispute arose in accordance with this Agreement unless a team member has a reasonable concern about an imminent risk to their health and safety. Subject to applicable work health and safety legislation, a team member must not unreasonably fail to comply with a direction by Woolworths to perform work, whether at the same or another workplace, that is safe and appropriate for the team member to perform.

23. Individual Flexibility Arrangements

23.1. Making an individual flexibility arrangement

- a. Woolworths and any team member whose employment with Woolworths has commenced, and is covered by this Agreement, may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:
 - i. the agreement deals with one or more of the following matters: arrangements about when work is performed; overtime rates; penalty rates; allowances; leave loading; and
 - ii. the arrangement meets the genuine needs of Woolworths and team member in relation to one or more of the matters set out in paragraph 23.1.a.i; and
 - iii. the arrangement is genuinely agreed to by Woolworths and team member without coercion or duress.

23.2. Terms of the individual flexibility arrangement

- a. Woolworths must ensure that the terms of the individual flexibility arrangement:
 - i. are about permitted matters under section 172 of the Fair Work Act; and
 - ii. are not unlawful terms under section 194 of the Fair Work Act; and
 - iii. result in the team member being better off overall than the team member would be if no arrangement was made.
- b. Woolworths must ensure that the individual flexibility arrangement is in writing, includes the name of Woolworths and the team member and is signed by Woolworths and the team member, and also by their parent/guardian if they are under 18 years of age.
- c. Woolworths must ensure that the written individual flexibility arrangement includes details of:
 - i. the terms of the Agreement that will be varied by the arrangement;
 - ii. how the arrangement will vary the effect of the terms;
 - iii. how the team member will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - iv. the date on which the arrangement commences.
- d. Woolworths must give the team member a copy of the individual flexibility arrangement within 14 days after it is agreed to. Woolworths will also retain a copy.
- e. Woolworths or team member may terminate the individual flexibility arrangement:
 - i. by giving no more than 13 weeks' written notice to the other party to the arrangement; or
 - ii. if Woolworths and team member agree in writing--at any time.



Appendices



Appendix A: Classifications

A.1 Classification Table

The table below sets out the classifications that apply to this Agreement.

<p>Retail Employee Level 1</p>	<p>1. An employee performing one or more of the following functions in Woolworths retail supermarket operations:</p> <ul style="list-style-type: none"> ○ the receiving and preparation for sale and or display of goods in or about any shop; ○ the pre-packing or packing, weighing, assembling, pricing or preparing of goods or provisions or produce for sale; ○ the display, shelf filling, replenishing or any other method of exposure or presentation for sale of goods; ○ the sale or hire of goods by any means; ○ the receiving, arranging or making payment by any means; ○ the recording by any means of a sale or sales; ○ the wrapping or packing of goods for despatch and the despatch of goods; ○ the delivery of goods; ○ window dressing and merchandising; ○ loss prevention; ○ demonstration of goods for sale; ○ the provision of information, advice and assistance to customers; ○ the receipt, preparation, packing of goods for repair or replacement and the minor repair of goods; ○ all directly employed persons engaged in retail stores in cleaning, store greeting, security, lift attending, store cafeterias and food services; or ○ work which is incidental to or in connection with any of the above. <p>2. Retail Employees will undertake duties as directed within the limits of their competence, skills and training including incidental cleaning. The cleaning of toilets is not incidental cleaning except in the case of a take away food establishment.</p> <p>3. Indicative job titles which are usually within the definition of a Retail Employee Level 1 are:</p> <ul style="list-style-type: none"> ○ Shop Assistant, ○ Check-out Operator, ○ Store Worker, ○ Reserve Stock Hand, ○ Driver, ○ LPO, ○ Photographic Employee, ○ Store Greeter, ○ Assembler, ○ Ticket Writer (Not Qualified), ○ Trolley Collector, ○ Telephone Order Salesperson, ○ Door-to-door Salesperson, or Retail Outdoor Salesperson, and, ○ Demonstrator and/or Merchandiser not elsewhere classified (including a Demonstrator and/or Merchandiser who is not a direct employee of the retailer).
<p>Retail Employee Level 2</p>	<p>1. An employee performing work in Woolworths retail supermarket operations at a higher skill level than a Retail Employee Level 1.</p> <p>2. Indicative job titles which are usually within the definition of a Retail Employee Level 2 include:</p> <ul style="list-style-type: none"> ○ Forklift Operator, ○ Ride on Equipment Operator.
<p>Retail Employee Level 3</p>	<p>1. An employee performing work in Woolworths retail supermarket operations at a higher level than a Retail Employee Level 2.</p> <p>2. Indicative of the tasks which might be required at this level are the following:</p> <ul style="list-style-type: none"> ○ Supervisory assistance to a designated section manager or team leader, ○ Opening and closing of premises and associated security, ○ Security of cash, or ○ Utilising a specific skill in a trades department that requires specific training to Woolworths' standards. <p>3. Indicative job titles which are usually within the definition of a Retail Employee 3 include:</p> <ul style="list-style-type: none"> ○ Skilled non-tradesperson ○ Machine operators, ○ 2IC to Dept Manager, ○ Senior Salesperson, ○ Driver Selling Stock, ○ Cook (Not Qualified) in a cafeteria, ○ Senior LPO, including an armed LPO,

	<ul style="list-style-type: none"> ○ LPO Supervisor, ○ Designated second-in-charge of a section (i.e. senior sales assistant), ○ Designated second-in-charge to a service supervisor, or ○ Person employed alone, with responsibilities for the security and general running of a shop.
Retail Employee Level 4	<p>1. An employee performing work in Woolworths retail supermarket operations at a higher level than a Retail Employee Level 3.</p> <p>2. Indicative of the tasks which might be required at this level are the following:</p> <ul style="list-style-type: none"> ○ Management of a defined section/department, ○ Supervision of up to 15 sales staff (including self), ○ Stock control, or ○ Buying/ordering requiring the exercise of discretion as to price, quantity, quality etc. <p>3. Indicative job titles which are usually within the definition of a Retail Employee 4 include:</p> <ul style="list-style-type: none"> ○ An Assistant, Deputy, or 2IC Shop Manager of a shop without Departments, ○ A Shiftwork Supervisor, ○ Section/Department manager with up to 2 employees (including self), ○ Service Supervisor of up to 15 employees, ○ Nightfill Supervisor/Leader.
Retail Employee Level 5	<p>1. An employee performing work in or in connection with in Woolworths retail supermarket operations at a higher level than a Retail Employee Level 4.</p> <p>2. Indicative job titles which are usually within the definition of a Retail Employee 5 include:</p> <ul style="list-style-type: none"> ○ Service Supervisor (more than 15 employees).
Retail Employee Level 6	<p>1. An employee performing work in or in connection with Woolworths retail supermarket operations at a higher level than a Retail Employee Level 5.</p> <p>2. Indicative job titles which are usually within the definition of a Retail Employee 6 include:</p> <ul style="list-style-type: none"> ○ Section/Department manager with 5 or more employees (including self), ○ Manager/Duty Manager in a shop without Departments/Sections (may be under direction of person not exclusively involved in shop management), ○ Assistant or Deputy or 2IC Shop Manager of a shop with Departments/Sections.
Clerical Assistant Level 1	<p>Clerical Assistant Level 1 means an employee accountable for clerical and office tasks as directed within the skill levels set out.</p> <p>1. Employees at this level may include the initial recruit who may have limited relevant experience. Initially work is performed under close direction using established practices, procedures and instructions.</p> <p>2. Such employees perform routine clerical and office functions requiring an understanding of clear, straightforward rules or procedures and may be required to operate certain office equipment. Problems can usually be solved by reference to established practices, procedures and instructions.</p> <p>3. Employees at this level are responsible and accountable for their own work within established routines, methods and procedures and the less experienced employee's work may be subject to checking at all stages. The more experienced employee may be required to give assistance to less experienced employees in the same classification.</p> <p>4. Indicative typical duties and skills at this level may include:</p> <ul style="list-style-type: none"> ○ reception/switchboard, e.g. directing telephone callers to appropriate staff, issuing and receiving standard forms, relaying internal information and initial greeting of visitors; ○ maintenance of basic records; ○ filing, collating, photocopying etc; ○ handling or distributing mail including messenger service; ○ recording, matching, checking and batching of accounts, invoices, orders, store requisitions etc; or ○ the operation of keyboard and other allied equipment in order to achieve competency as prescribed in Clerical Officer Level 2.
Clerical Officer Level 2	<p>1. Clerical Officer Level 2 means an employee accountable for clerical and office tasks as directed within the skill levels set out.</p> <ul style="list-style-type: none"> ○ This level caters for the employees who have had sufficient experience and/or training to enable them to carry out their assigned duties under general direction. ○ Employees at this level are responsible and accountable for their own work which is performed within established guidelines. In some situations, detailed instructions may be necessary. This may require the employee to exercise limited judgment and initiative within the range of their skills and knowledge. ○ The work of these employees may be subject to final checking and as required progress checking. Such employees may be required to check the work and/or provide guidance to other employees at a lower level and/or provide assistance to less experienced employees at the same level. <p>2. Indicative typical duties and skills at this level may include:</p> <ul style="list-style-type: none"> ○ Reception/switchboard duties as in Level 1 and in addition responding to enquiries as appropriate,

	<p>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.</p> <ul style="list-style-type: none"> ○ Operation of computerised radio/telephone equipment, micro personal computer, printing devices attached to personal computer, dictaphone equipment, typewriter. ○ Word processing, e.g. the use of a word processing software package to create, format, edit, correct, print and save text documents, e.g. standard correspondence and business documents. ○ Stenographer/person solely employed to take shorthand and to transcribe by means of appropriate keyboard equipment. ○ Copy typing and audio typing. ○ Maintenance of records and/or journals including initial processing and recording relating to the following: reconciliation of accounts to balance; incoming/outgoing cheques; invoices; debit/credit items; payroll data petty cash; letters etc. ○ Computer application involving use of a software package which may include one or more of the following functions: create new files and records; spreadsheet/worksheet; graphics; accounting/payroll file; following standard procedures and using existing models/fields of information. ○ Arrange routine travel bookings and itineraries, make appointments. ○ Provide general advice and information on the organisation's products and services, e.g. front counter/telephone.
<p>Clerical Officer Level 3</p>	<p>1. Clerical Officer Level 3 means an employee accountable for clerical and office tasks as directed within the skill levels set out.</p> <ul style="list-style-type: none"> ○ Employees at this level have achieved a standard to be able to perform specialised or non-routine tasks or features of the work. Employees 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. ○ Such employees may be required to give assistance and/or guidance (including guidance in relation to quality of work and which may require some allocation of duties) to employees in Levels 1 and 2 and would be able to train such employees by means of personal instruction and demonstration. <p>2. Indicative typical duties and skills at this level may include:</p> <ul style="list-style-type: none"> ○ Prepare cash payment summaries, banking report and bank statements; calculate and maintain wage and salary records; follow credit referral procedures; apply purchasing and inventory control requirements; post journals to ledger. ○ 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. ○ Apply one or more computer software packages to: create new files and records; maintain computer-based records management systems identify and extract information from internal and external sources; use of advanced word processing/keyboard functions. ○ Arrange travel bookings and itineraries; make appointments; screen telephone calls; respond to invitations; organise internal meetings on behalf of executive(s); establish and maintain reference lists/personal contact systems for executive(s). ○ Application of specialist terminology/processes in professional offices.
<p>Tradesperson Level 4</p>	<p>1. A qualified retail tradesperson performing work in Woolworths retail supermarket operations at a higher level than a Retail Employee Level 3.</p> <p>2. Indicative of the tasks which might be required at this level are the following:</p> <ul style="list-style-type: none"> ○ An employee who is required to utilise the skills of a trades qualification for the majority of the time in a week. <p>3. Indicative job titles which are usually within the definition of a Tradesperson 4 include:</p> <ul style="list-style-type: none"> ○ An employee who is required to utilise the skills of a trades qualified person for the majority of the time in a week. This includes: Butcher, Baker, Pastry Cook, Florist. ○ An employee who has completed an appropriate trades course or holds an appropriate Certificate III and is required to use their qualifications in the course of their work.
<p>Tradesperson Level 5</p>	<p>1. A qualified retail tradesperson performing work in or in connection with Woolworths retail supermarket operations at a higher level than a Retail Employee Level 4.</p> <p>2. Indicative job titles which are usually within the definition of a Tradesperson Level 5 include: A tradesperson (e.g. butcher, baker, pastry cook or florist) in charge of other tradespersons within a section or department.</p>

Appendix B: Superannuation

B.1 Entitlement to superannuation

- B.1.1** Team members 18 years of age and over who earn \$450 or more per month in **ordinary time earnings**, and any team member under the age of 18 who works 30 hours or more per week and earns \$450 or more per month in ordinary time earnings are eligible to receive superannuation contributions. If the superannuation legislation changes during the term of this Agreement to widen eligibility for superannuation contributions, Woolworths will pay superannuation to any team member who becomes eligible.
- B.1.2** Woolworths will make superannuation contributions on behalf of eligible team members in accordance with the relevant legislation.

B.2 Absence from Work

- B.2.1** Subject to the governing rules of the relevant superannuation fund, Woolworths must also make the superannuation contributions provided for in clause 4.10 and pay the amount authorised under clause B.3:
- (a) while an eligible team member is on any paid leave;
 - (b) for the period of absence from work (subject to a maximum of 52 weeks) of the eligible team member due to work-related injury or work-related illness provided that:
 - (i) the team member is receiving workers compensation payments or is receiving regular payments directly from Woolworths in accordance with the statutory requirements; and;
 - (ii) the team member remains employed by Woolworths and is eligible to receive superannuation.

B.3 Additional Superannuation Contributions – Post Tax

An eligible team member can make their own post-tax superannuation contributions or can direct Woolworths in writing to set up regular post-tax contributions to the same superannuation fund that the team member's superannuation is paid into, this must be done in writing using the form provided on the Woolworths intranet.

B.4 Additional Superannuation Contributions - Salary Sacrifice

- B.4.1** An eligible team member may direct Woolworths to pay a portion of their wages as additional superannuation contributions (salary sacrifice contributions) into the team member's nominated superannuation fund (which must be the same fund that their superannuation contributions under clause 4.10 are paid into).
- B.4.2** A team member who wishes to make salary sacrifice contributions must direct Woolworths in writing to make such contributions using the form provided on the Woolworths intranet or such other form or application as advised by Woolworths.
- B.4.3** Upon receiving written direction, Woolworths will commence making the salary sacrifice contributions on a monthly basis on behalf of the team member.
- B.4.4** A team member may vary the amount of their salary sacrifice contributions not more than twice per year. A team member can commence, vary or cease salary sacrifice contributions at any time during a financial year, and must do so in writing using or such form or application as advised by Woolworths.

B.5 Additional superannuation and relationship with wages

- B.5.1** Any amount paid by Woolworths on behalf of the team member under clause B.3 or B.4 is deemed to be paid in satisfaction of Woolworths obligation to pay the team member's wages set out in the Agreement.
- B.5.2** It will not be a breach of this Agreement if the actual wages paid to the team member fall below the rates set by this Agreement solely because of the payment of additional superannuation contributions under this clause on a pre-tax basis. Where a team member elects to salary sacrifice; overtime rates, loadings, termination payments and superannuation contributions made by Woolworths on the team member's behalf will be based on the team member's pre-salary sacrifice wage.

Appendix C: TTR and CTTR

C.1 Temporary Transition Rates (TTR) – Full-time and part-time team members

- C.1.1 This Agreement provides a different hourly pay rate and penalty rate structure to our previous enterprise agreement, the *Woolworths National Supermarket Agreement 2012 (2012 EA)*. This Agreement transitions Woolworths wage structure into closer alignment with the *General Retail Industry Award*.
- C.1.2 To support eligible team members during this transition period, they will be paid a special rate on certain hours worked with the aim that they receive at least the amount they would have been paid for those hours under the 2012 EA. This special rate is referred to in this Agreement as the Temporary Transition Rate, or **TTR** for short.
- C.1.3 The TTR is a guaranteed rate of pay for the applicable hours. It is calculated by adding a “top up” to the base rate of pay, bringing the total hourly rate to the TTR amount for those hours. For example, to achieve a TTR of \$22.20 for a Level 1 Retail Employee, \$1.15 would be added to the team member’s base rate of \$21.05.
- C.1.4 A team member entitled to the TTR will not have their roster changed, nor will they be replaced by a new team member who is not eligible for the TTR, to avoid the payment of the TTR.

C.2 Application of the TTR

- C.2.1 The TTR will be payable to any full-time or part-time team member covered by this Agreement who was employed by Woolworths Supermarkets or Metro stores, and to whom the 2012 EA applied before 23 October 2018. These team members are referred to in this clause as **TTR Team Members**. (Note that the clause below deals with the Casual Temporary Transition Rate or CTTR). Team members employed by Woolworths on and from 23 October 2018 onwards will not be eligible to receive the TTR. Team members employed by Metro stores who were paid under the *General Retail Industry Award* and not the 2012 EA are not eligible to receive the TTR.
- C.2.2 The TTR only applies for hours worked (including part-time flex up hours) by TTR Team Members during the following periods (the **TTR Span**):

Monday	7:00am to 6:00pm
Tuesday	7:00am to 6:00pm
Wednesday	7:00am to 6:00pm
Thursday	7:00am to 6:00pm
Friday	7:00am to 6:00pm

- C.2.3 The TTR does not apply outside of these hours, and therefore it does not apply on weekends or at night. The TTR does not apply on public holidays, or during hours worked as overtime during the TTR Span (the relevant public holiday penalty rate or overtime rate will apply instead). Hours worked outside the TTR Span are paid at the base rate of pay plus any applicable penalties or loadings.
- C.2.4 The TTR will continue to be paid to a TTR Team Member until that team member’s base rate of pay for the same hours meets or exceeds the TTR. For example, if following an annual wage increase the TTR is \$22.75 and the base rate of pay for the same hours is \$22.80, the TTR will no longer apply and the TTR Team Member will be paid the base rate of pay from the time the wage increase becomes effective.

C.3 Rates payable

C.3.1 The TTR that applies will depend on a TTR Team Member’s classification under the 2012 EA immediately before this new Agreement took effect. The **TTR Matrix** below sets out the relevant TTR for each eligible TTR Team Member:

TTR Matrix

Team Member’s classification/role under the 2012 EA	2012 EA Grade	Starting TTR
Trolley Collector / Cleaner	Grade 1	\$22.20*
Store Team Member	Grade 2	\$22.20*
Store Services Assistant	Grade 3	\$23.40
Skilled Non-Trades	Grade 3	\$23.40
Team Support	Grade 3	\$23.40
Team Support Skilled Non-Trade	Grade 3b	\$23.75
Store Services Officer	Grade 4	\$24.15
Team Manager / Leader	Grade 4	\$24.15
Tradesperson	Grade 5	\$25.25
Team Support - Tradesperson	Grade 5b	\$26.02
Duty Manager	Grade 5b	\$26.02

*In Western Australia only, the starting TTR for Grade 1 and 2 is \$22.50, not \$22.20

Junior Rates TTR Matrix

Grade 1 and 2 under the 2012 EA	Starting TTR All states and territories except WA	Starting TTR WA only
16 years of age and under	\$11.10	\$11.25
17 years of age	\$13.32	\$13.50
18 years of age	\$15.54	\$15.75
19 years of age	\$17.76	\$18.00

C.3.2 The above rates are national rates except for the Retail Employee Level 1 rate, which is \$22.20 for all States and Territories excluding Western Australia. The TTR for Retail Employee Level 1 in Western Australia is \$22.50.

C.3.3 The “Starting TTR” set out in column 3 of the TTR Matrix and column 2 of the Junior Rates TTR Matrix will be increased annually at the same time as the base rates of pay in this Agreement are increased. The applicable TTR increase will be one half of the percentage increase that is applied to the base rates of pay under this Agreement, capped at a maximum of 1.75%. For example, if the base wage rate is increased by 2%, the TTR will be increased by 1%. Woolworths will publish an updated TTR Matrix and Junior Rates TTR Matrix annually with the new rates.

C.4 TTR and taking leave

C.4.1 The TTR is payable when a TTR Team Member takes approved paid leave during the TTR Span as follows:

Leave Type	Application of TTR to leave types
Annual Leave	TTR + Leave Loading Or Base + Penalties Whichever is higher.
Personal and Carer's Leave	TTR
Compassionate Leave	TTR
Parental Leave	TTR
Family & Domestic Violence Leave	TTR
Blood Donor	If leave taken during TTR hours, then TTR applies. Blood donor leave is "non deduction in pay".
Jury Service	TTR, less the amount received by way of jury service fee.
Defence Forces	TTR
Natural Disaster	TTR
Emergency Services	TTR
Long Service	TTR applies where LSL would normally be calculated based on base rate of pay. In States/Territories where LSL is based on average earnings, TTR paid to the team member should be factored in to the calculation as it forms part of earnings.
Public Holiday	TTR if rostered but not worked.

C.5 Casual Temporary Transition Rate (CTTR)

C.5.1 The Casual Temporary Transition Rate or CTTR has the same purpose as the TTR but it is specific to eligible casual team members.

C.5.2 The CTTR is a guaranteed rate of pay for the applicable hours for eligible team members. It is calculated by adding a "top up" to the base rate of pay after the casual loading has been applied, bringing the total hourly rate to the CTTR amount for all relevant hours.

C.5.3 For example, to achieve a CTTR of \$26.62 for a Level 1 Retail Employee, \$0.31 would be added to the team member's base rate of \$26.31 (which includes casual loading of 25%), to total the CTTR of \$26.62. The CTTR only applies during times where no penalties apply (other than the 25% casual loading)

C.5.4 Woolworths will not engage or cease to re-engage a casual team member eligible for the CTTR for the purpose of avoiding payment of the CTTR.

C.6 Application of the CTTR

C.6.1 The CTTR will be payable to any casual team member covered by this Agreement who was employed by Woolworths and to whom the 2012 EA applied before 23 October 2018. These team members are referred to in this clause as **CTTR Team Members**. Casual team members employed by Woolworths on and from 23 October 2018 onwards will not be eligible to receive the CTTR.

- C.6.2** The CTTR only applies for hours worked by CTTR Team Members during the time periods where there are no additional penalties payable over and above the 25% casual loading (the **CTTR Span**). The CTTR Span is as per the following table:

Monday	7:00am to 6:00pm
Tuesday	7:00am to 6:00pm
Wednesday	7:00am to 6:00pm
Thursday	7:00am to 6:00pm
Friday	7:00am to 6:00pm

Note: Until 1 October 2019, the CTTR Span for Retail Employee Level 6 (Duty Managers only), Tradesperson Level 4 and Tradesperson Level 5 will be Monday to Friday 7:00am to 11:00pm.

- C.6.3** The CTTR does not apply outside of these hours. The CTTR does not apply on public holidays or during hours worked as overtime during the CTTR Span (the overtime rate applies instead). Hours worked outside the CTTR Span are paid at the base rate of pay plus any applicable penalties or loadings.
- C.6.4** The CTTR will continue to be paid to a CTTR Team Member until that team member's base rate of pay plus applicable casual loading for the same hours meets or exceeds the CTTR, or until the nominal expiry date of this Agreement - whichever comes first. For example, if following an annual wage increase the CTTR is \$22.75 and the base rate of pay for the same hours is \$22.80, the CTTR will no longer apply and the CTTR Team Member will be paid the base rate of pay plus the casual loading from the time the wage increase became effective.
- C.6.5** Where a casual team member is entitled to long service leave, CTTR applies where long service leave would normally be calculated based on base rate of pay. In States/Territories where long service leave is based on average earnings, CTTR paid to the team member should be factored in to the calculation as it forms part of earnings.

C.7 Rates payable

- C.7.1** The CTTR that applies will depend on a CTTR Team Member's classification under the 2012 EA immediately before this new Agreement took effect. The **CTTR Matrix** below sets out the relevant CTTR for each eligible CTTR Team Member:

CTTR Matrix

Team Member's classification/role under the 2012 EA	2012 EA Grade	Starting CTTR
Trolley Collector / Cleaner	Grade 1	\$26.62*
Store Team Member	Grade 2	\$26.62*
Store Services Assistant	Grade 3	\$28.08
Skilled Non-Trades	Grade 3	\$28.08
Team Support	Grade 3	\$28.08
Team Support Skilled-Non-Trade	Grade 3b	\$28.51
Store Services Officer	Grade 4	N/A – new rate is higher
Team Manager / Leader	Grade 4	N/A – new rate is higher
Tradesperson	Grade 5	\$30.31
Team Support - Tradesperson	Grade 5b	\$31.21
Duty Manager	Grade 5b	\$31.21

*In Western Australia only, the starting CTTR for Grade 1 and 2 is \$27.00, not \$26.62

Junior Rates CTTR Matrix

Grade 1 and 2 under the 2012 EA	Starting CTTR All states and territories except WA	Starting CTTR WA only
16 years of age and under	\$13.32	\$13.50
17 years of age	\$15.98	\$16.20
18 years of age	\$18.65	\$18.90
19 years of age	\$21.31	\$21.60

C.7.2 The CTTR set out in Column 3 of the CTTR Matrix will be increased annually at the same time as the base rates of pay in this Agreement are increased. The applicable CTTR increase will be one half of the percentage increase that is applied to the base rates of pay under this Agreement, capped at a maximum of 1.75%. For example, if the base wage rate is increased by 2%, the CTTR will be increased by 1%. Woolworths will publish an updated CTTR Matrix annually with the new CTTR rates.

C.7.3 For clarity, the CTTR will apply to the travelling time allowance rate for Stocktake Team members who are eligible to receive CTTR under this Agreement.

C.8 TTR and CTTR when employment changes

C.8.1 The following table sets out the treatment of a team member's entitlement to TTR and CTTR in relation to scenarios where employment changes:

Scenario:	Treatment of TTR:
TTR Team Member is promoted to a higher classification.	Team member will receive the new base rate and higher TTR for the new classification, until the TTR catches up to the former base rate of pay for the new classification.
TTR Team Member is demoted to or steps down to a lower classification.	Team member will receive the new lower base rate and the lower TTR for the new classification, until the TTR catches up to the former base rate of pay for the new classification.
TTR Team Member changes from permanent to casual employment.	Team member entitled to the applicable CTTR instead of the TTR.
CTTR Team Member changes from casual to permanent.	Team member entitled to the TTR instead of the CTTR.
TTR Team Member becomes a salaried team member.	TTR ceases to apply when this Agreement ceases to apply to a salaried team member.
Salaried team member becomes a team member under the Agreement (permanent or casual).	TTR or CTTR does not apply as the team member was not covered by the 2012 EA at eligibility date.
When a TTR Team Member or CTTR Team Member works higher duties.	The TTR or CTTR for the higher duties will be applied.
Upon termination of employment or redundancy.	TTR or CTTR is used for the purpose of calculating termination entitlements.

Appendix D: Traineeships and Apprenticeships

D.1 Traineeship

"**Trainee**" means a team member who is bound by a Traineeship Agreement.

"**Traineeship**" means a system of training which has been approved by the State Training Authority.

A Trainee shall be engaged as a full-time or a part-time team member for the nominal duration period as set down by the relevant State or Territory Training Authority. By agreement in writing, and with the consent of the relevant State or Territory Training Authority, Woolworths and the Trainee, may vary the duration of the Traineeship and the extent of approved training, provided that any Agreement variance is in accordance with the relevant Traineeship scheme.

D.2 Apprenticeship

"**Apprentice**" means a team member who is bound by an Apprenticeship Agreement.

"**Apprenticeship**" means a system of training which has been approved by the State Training Authority.

Apprentices shall be engaged as a full-time team member entering the trades of, Baking, Breadmaking, Pastry Cooking, or Butchering and shall not exceed 4 years and such persons shall be bound by Indentures in accordance with the relevant provisions of the appropriate Act and this Agreement.

D.3 Training Conditions

D.3.1 The Trainee or Apprentice shall attend an approved training course or training program prescribed in the Traineeship or Apprenticeship Agreement or as notified to the trainee/apprentice by the relevant State or Territory Training Authority in accredited and relevant Traineeship Schemes or Registered Training Organisation, without loss of wages or continuity of employment.

D.3.2 A Traineeship or Apprenticeship shall not commence until the relevant Traineeship/Apprenticeship Agreement, made in accordance with a Traineeship/Apprenticeship Scheme, has been signed by Woolworths and the trainee/apprentice and lodged for registration with the relevant State or Territory Training Authority.

D.3.3 Woolworths shall ensure that the Trainee or Apprentice is permitted to attend the training course or program provided for in the Traineeship or Apprenticeship Agreement and shall ensure that the Trainee/Apprentice receives the appropriate on-the-job training.

D.3.4 Woolworths shall provide a level of supervision in accordance with the Traineeship/Apprenticeship Agreement during the traineeship/ apprenticeship period.

D.4 Overtime and Shiftwork

D.4.1 No Trainee or Apprentice shall work overtime on their own unless consistent with the provisions of this Agreement. No Apprentice will (except in an emergency) work or be required to work overtime at times which would prevent their attendance at training consistent with their Apprenticeship Agreement.

D.4.2 No Trainee or Apprentice shall work shiftwork unless the parties to a Traineeship Scheme agree that such shiftwork makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week but must average over the relevant period no less than the amount of training required for non-shiftwork Trainees.

D.4.3 All other terms and conditions of this Agreement that are applicable to the Trainee or Apprentice shall apply unless specifically varied by this Agreement.

D.5 Employment Conditions

D.5.1 Apprentices and Trainees shall be team members engaged in accordance with the relevant provisions of the appropriate Act and this Agreement. The following provisions shall apply in respect of apprentices/trainees:

- (a)** Apprenticeship/Traineeship Terms - Every contract of Apprenticeship or Traineeship shall be in the terms as set down by the relevant State or Territory Training Authority.
- (b)** College Fees and Text Books – College fees and the cost of prescribed text books for instruction of each trainee/apprentice shall be paid by Woolworths for each year of the trade course or period of apprenticeship or traineeship or correspondence course.
- (c)** Time Off – Any Apprentice or Trainee who is given time off during ordinary working hours for the purpose of attending at a college or other required off job venue for instruction and fails to attend without reasonable cause shall not be paid for such time off.
- (d)** Accommodation and Meals – Where a team member is required to attend block release training at

college and away from home accommodation is required for the duration of the block release training, this accommodation may be provided by Woolworths or the team member shall be reimbursed by Woolworths the difference between the appropriate statutory amount as prescribed by the State or Training Authority and the cost of reasonably comfortable accommodation and meals approved by Woolworths.

- (e) Provided that the total monies paid by the statutory scheme and Woolworths is no more than the cost of reasonably comfortable accommodation and meals approved by Woolworths.
- (f) If the Vocational Training Assistance (**VTAS**) rate of reimbursement is substantially increased Woolworths and the relevant Trade Union agree to review the rate of reimbursement.
- (g) Travelling Expenses and Fares – Woolworths shall either provide transport or shall reimburse to the Trainee/Apprentice all fares reasonably incurred in attending the college. Where transport, other than the use of a private vehicle is available, trainees/apprentices shall be encouraged to use such transport and all fares incurred shall be reimbursed.
- (h) Where such transport is not readily available and private transport has to be used the trainee/apprentice shall be paid no less than the difference between the VTAS rate and the travelling allowance.

D.6 Commitment to ongoing employment

D.6.1 Upon the successful completion of a Traineeship or Apprenticeship (excluding School Based Traineeships/Apprenticeships) and meeting Woolworths's performance criteria and competencies, the team member shall be offered ongoing permanent employment with Woolworths for at least as many hours as they spent on the job (on an average per week basis) during their Traineeship or Apprenticeship. Such period of apprenticeship or traineeship shall be counted as service for the purpose of the Agreement or any other legislative entitlements.

D.6.2 When offering ongoing employment at the completion of the Traineeship or Apprenticeship Woolworths will give consideration to the distance required to be travelled by the team member, however, Woolworths will retain the right to nominate the location of the store.

D.7 School Based Apprentices

D.7.1 This clause applies to school-based apprentices. A school-based apprentice is a team member who is undertaking an apprenticeship in accordance with this clause while also undertaking a course of secondary education.

D.7.2 A school-based apprenticeship may be undertaken in the trades covered by this Agreement under a training agreement or contract of training for an apprentice declared or recognised by the relevant State or Territory authority.

D.7.3 The relevant minimum wages for full-time junior and adult apprentices provided for in clause 4.5 of this Agreement, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.

D.7.4 For the purposes of clause D.7.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is 25% of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.

D.7.5 A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.

D.7.6 For the purposes of this clause, off-the-job training is structured training delivered by a **Registered Training Organisation** separate from normal work duties or general supervised practice undertaken on the job. The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed six years.

D.7.7 School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each two years of employment as an apprentice or at the rate of competency-based progression provided in this Agreement.

D.7.8 If an apprentice converts from school-based to full-time, the successful completion of competencies (if provided for in this Agreement) and all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.

D.7.9 School-based apprentices are entitled pro rata to all of the other conditions in this Agreement.

Appendix E: Stocktake Team

E.1 Stocktake Team

E.1.1 A **stocktake team member** is a casual team member who is specifically employed by Woolworths as part of the mobile stocktake team that primarily completes stocktaking activities.

E.2 Travel and Allowances

E.2.1 The allowances and reimbursements in clause 5 apply to stocktake team members unless varied in this Appendix.

E.2.2 Where Woolworths provides a coach/bus to transport stocktake team members from a pick-up point to the location where work will be performed, team members will be paid travel time for time spent travelling by coach/bus from the pick-up point to the work location and again from the work location back to the pick-up point. Travel time is paid at the team member's base rate of pay (except on Sundays and public holidays when it will be time-and-a-half), and does not count as time worked for the purposes of calculating overtime.

Where travel time plus hours worked on a single coach/bus trip day exceeds 10 hours in total, team members shall be entitled to a daily meal allowance of \$18.50 for that day. This meal allowance shall never be less than the overtime meal allowance provided for in the *General Retail Industry Award*.

E.3 New South Wales and Australian Capital Territory Stocktake Team

E.3.1 The following arrangements apply exclusively to stocktake team members operating in New South Wales and the Australian Capital Territory:

- (a) A NSW/ACT stocktake team member will not use their own vehicle for more than 30 kilometres per day (round trip) without payment of the travel allowance.
- (b) When travelling to provincial country stores, NSW/ACT stocktake team members will be paid their base rate of pay for time spent travelling beyond the following suburbs:

Sydney Area	Newcastle Area	Wollongong Area
Waterfall	Maitland	Kiama
Rosemeadow/Camden	Kurri Kurri	Bulli Lookout
Emu Plains	Swansea	Wilton
Berowra	Raymond Terrace	Robertson
Kurrajong	Williamtown	

- (c) However, where overnight accommodation is arranged by Woolworths, NSW/ACT stocktake team members are not entitled to payment for travel time from the accommodation location to a store, or from a store to the accommodation location where the accommodation and store are within the same town, including travel time where coach travel to and from a pick-up point is provided by Woolworths.

E.4 Accommodation

E.4.1 Where Woolworths arranges accommodation for team members who are required to be away from home overnight for work purposes, Woolworths will ensure that:

- (a) Not more than 2 team members shall share a room;
- (b) All shared rooms must have 2 separate beds, which cannot be bunk beds or sofa beds.

Appendix F: Excess Annual Leave

F.1 Excessive Accrued Annual Leave

- (a) A team member has an excessive annual leave accrual if the team member has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by subclause 11 of this Agreement).
- (b) If a team member has an excessive leave accrual, Woolworths or the team member may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause F.2 sets out how Woolworths may direct a team member who has an excessive leave accrual to take paid annual leave.
- (d) Clause F.3 sets out how a team member who has an excessive leave accrual may require Woolworths to grant paid annual leave requested by the team member.

F.2 Excessive leave accruals: direction by Woolworths that leave be taken

F.2.1 If Woolworths has genuinely tried to reach agreement with a team member under clause 13.3 but agreement is not reached (including because the team member refuses to confer), Woolworths may direct the team member in writing to take one or more periods of paid annual leave.

F.2.2 However, a direction by Woolworths under clause F.2.1:

- (a) is of no effect if it would result at any time in the team member's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements are taken into account;
- (b) must not require the team member to take any period of paid annual leave of less than 1 week;
- (c) must not require the team member to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
- (d) must not be inconsistent with any leave arrangement agreed by Woolworths and the team member.

F.2.3 The team member must take paid annual leave in accordance with a valid direction under clause F.2.1.

F.2.4 A team member to who has been directed to take leave may request to take a period of paid annual leave as if the direction had not been given, and this may result in the direction ceasing to have effect if it reduces the team member's leave balance.

F.3 Excessive leave accruals: request by team member for leave

F.3.1 If a team member has genuinely tried to reach agreement with Woolworths under subclause 13.3, but agreement is not reached (including because Woolworths refuses to confer), the team member may give a written notice to Woolworths requesting to take one or more periods of paid annual leave.

F.3.2 However, a team member may only give a notice to Woolworths under clause F.3.1 if:

- (a) the team member has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
- (b) the team member has not been given a direction under clause F.2.1 that, when any other paid annual leave arrangements are taken into account, would eliminate the team member's excessive leave accrual.

F.3.3 A notice given by a team member under clause F.3.1 must not:

- (a) if granted, result in the team member's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements are taken into account; or
- (b) provide for the team member to take any period of paid annual leave of less than 1 week; or
- (c) provide for the team member to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
- (d) be inconsistent with any leave arrangement agreed by Woolworths and the team member.

- F.3.4** A team member is not entitled to request by a notice under clause F.3.1 more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 11 of this Agreement) in any period of 12 months.
- F.3.5** Woolworths must grant paid annual leave requested by a notice under clause F.3.1.

Appendix G: Parental Leave

G.1 Purpose of this appendix

- G.1.1 The Fair Work Act requirements always apply to team members as stated in the Act.
- G.1.2 Woolworths policy applies to team members. It is generally more generous than the Fair Work Act provisions, but it sits outside this Agreement and can be changed by Woolworths.
- G.1.3 If that ever happens and team member entitlements fall below those stated in this Appendix, team members are protected by and can rely upon the minimum guaranteed parental leave entitlements set out below.

G.2 Minimum provisions

- G.2.1 Full-time and part-time team members with at least 12 months continuous service are entitled to take 52 weeks, or up to 104 weeks on request, of unpaid parental leave. Team members can choose to take annual leave or long service leave as part of their total 104 week parental leave period. When a team member is on unpaid parental leave, they do not accrue annual leave or personal/carers leave.
- G.2.2 Casual team members with at least 12 months continuous service are entitled to take up to 104 weeks of unpaid parental leave.
- G.2.3 Team members are entitled to return to the position they held before they took parental leave (not including any "safe employment" position that was held during pregnancy). If the position held by the team member before their parental leave no longer exists due to structural changes, Woolworths will work with the team member to redeploy them to a comparable position (in pay and status).
- G.2.4 Team members returning to work from parental leave may request, and Woolworths may agree, to return on fewer hours than their contract provided before they went on parental leave, either permanently or for a period of time up to their child's second birthday. Any request made by a team member for a flexible return to work will be considered, taking into account the team member's position and the operational needs of the business.
- G.2.5 A team member may return to work earlier than expected by agreement with Woolworths. In these circumstances, Woolworths may not be in a position to return the team member to the position they were in before commencing parental leave in situations where a replacement team member has been contracted to perform their role. In such circumstances, the team member will return to an alternative role and revert to their prior role on or before their original expected date of return to work.
- G.2.6 Team members should apply for parental leave at least 10 weeks before their anticipated due date or date of adoption, and at least 4 weeks' notice of their intention to return to work or extend their period of leave.

G.3 Provisions

- G.3.1 Parents may take up to 3 weeks of unpaid parental leave together immediately after the birth or placement of their child.
- G.3.2 If a team member has a pregnancy-related illness or has been pregnant and the pregnancy has ended due to the loss of the baby within 28 weeks before the anticipated date of birth, the team member is entitled to take unpaid parental leave for the period specified by the team member's medical practitioner.
- G.3.3 By agreement between Woolworths and a team member, a team member may be engaged to perform work on a casual basis during periods of parental leave.
 - (a) Such work will:
 - (i) be paid at the appropriate casual hourly rate;
 - (ii) not be included for the purposes of accruing any leave entitlements other than service for the purposes of long service leave accrual, where the number of casual starts will be added to the team member's service.
 - (iii) not extend the period of parental leave beyond the approved period of leave.
 - (b) Team members in receipt of payments under the Australian Government's Parental Leave Pay program may risk losing eligibility for such payments by working while on parental leave, and should make enquiries with the Government before deciding to perform work.

- G.3.4** When a team member is pregnant and, in the opinion of a registered health practitioner (set out in a medical certificate), the team member is fit for work but advises against the team member performing her usual duties because of pregnancy-related illness or risks, or because of hazards connected with those usual duties, then Woolworths will either transfer the team member to a safe job (with no other changes to the team member's terms and conditions or employment); or if it is not reasonably practicable to transfer the team member to a safe job, then the team member will commence paid leave. This paid leave will be in addition to any leave entitlement the team member has, the team member will be paid as though they were on annual leave, and the period of paid leave ends on the earlier of:
- (a) the end of the period of illness or risk as specified in the medical certificate; or
 - (b) the end of the day before the child's date of birth; or
 - (c) the end of the day before the end of the pregnancy (if the pregnancy ends other than with the birth of a living child).
- G.3.5** Where a team member has been engaged to replace another team member who is on parental leave, such replacement team member will be informed of the temporary nature of their engagement and made aware of the rights of the team member on parental leave.
- G.3.6** A team member's line manager should consider a team member's family responsibilities when determining the return to work arrangements of a team member returning from parental leave. Where a team member wishes to return to work on different terms and conditions (for example, fewer hours per week) then Woolworths will genuinely consider any such requests and work with the team member to agree to suitable arrangements which will be documented in writing and a copy provided to the team member.

Appendix H: Supported wages

H.1 Introduction

H.1.1 This appendix defines the conditions which will apply to team members who, because of the effects of a disability, are eligible for a supported wage under the terms of the *General Retail Industry Award* and this Agreement.

H.1.2 In this appendix:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991 (Cth), as amended from time to time, or any successor to that scheme

relevant minimum wage means the minimum wage prescribed in this award for the class of work for which an team member is engaged

supported wage system (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

SWS wage assessment agreement means the document in the form required by the Department of Social Services that records the team member's productive capacity and agreed wage rate

H.2 Eligibility criteria

H.2.1 Team members covered by this appendix will be those who are unable to perform the range of duties to the competence level required within the class of work for which the team member is engaged under this Agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

H.2.2 This appendix does not apply to any existing team member who has a claim against Woolworths which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of team members who are injured in the course of their employment.

H.3 Supported wage rates

H.3.1 Team members to whom this appendix applies will be paid the applicable percentage of the relevant wage rate according to the following table:

Assessed capacity %	Relevant wage %
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

H.3.2 Provided that the minimum amount payable must be not less than \$86 per week, or such other minimum amount as specified in the General Retail Industry Award.

H.3.3 Where a team member's assessed capacity is 10%, they must receive a high degree of assistance and support.

H.4 Assessment of capacity

- H.4.1** For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the team member will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted Woolworths and team member and, if the team member so desires, a trade union which the team member is eligible to join.
- H.4.2** All assessments made under this appendix must be documented in an SWS wage assessment agreement and retained by Woolworths as a time and wages record in accordance with the Act.

H.5 Lodgement of SWS wage assessment agreement

- H.5.1** All SWS wage assessment agreements under the conditions of this appendix, including the appropriate percentage of the relevant minimum wage to be paid to the team member, must be lodged by the Woolworths (or its agent) with the Fair Work Commission.
- H.5.2** All SWS wage assessment agreements must be agreed and signed by the team member (and their parent or guardian, if required) and Woolworths as parties to the assessment. Where a trade union is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the trade union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

H.6 Review of assessment

- H.6.1** The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

H.7 Other terms and conditions of employment

- H.7.1** Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Team members covered by the provisions of this appendix will be entitled to the same terms and conditions of employment as other workers covered by this Agreement on a pro rata basis.

H.8 Workplace adjustment

- H.8.1** If Woolworths employs team members under the conditions in this appendix, Woolworths will take reasonable steps to make and required changes in the workplace to enhance the team member's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other team members in the area.

H.9 Trial period

- H.9.1** In order for an adequate assessment of the team member's capacity to be made, Woolworths may employ a person under the provisions of this appendix for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- H.9.2** During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- H.9.3** The minimum amount payable to the team member during the trial period must be no less than \$86 per week.
- H.9.4** Work trials should include induction or training as appropriate to the job being trialled.
- H.9.5** Where Woolworths and team member wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause H.4.

Appendix I: Security Guidelines

I.1 Security related matters

- I.1.1 These guidelines deal with situations where a team member is being investigated by Woolworths for engaging in a suspected dishonest practice (eg theft).
- I.1.2 These guidelines recognise that Woolworths has a right to protect its property and that team members have a right to be afforded due process and be treated with respect.

I.2 Interviewing team members

- I.2.1 Woolworths has a right to conduct interviews with team members that it reasonably believes have engaged in a dishonest practice.
- I.2.2 Before asking questions of the team member, Woolworths will caution the team member in the following terms:
"You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence".
- I.2.3 After giving this caution, Woolworths will invite the team member to have a witness attend the interview. The witness must be chosen by the team member, but cannot be a person involved in the subject of the interview.
- I.2.4 During the course of the interview, everyone involved will conduct themselves in a courteous manner toward one another.
- I.2.5 Where a security investigation involves a team member remaining on the premises outside of the team member's working time, the team member shall be paid overtime, for all time so spent.
- I.2.6 As a general principle, team members who have been interviewed with regards to a security matter should not be transferred to another work place (unless they agree), have a change of duties or sustain any disciplinary action until the security investigation has been completed.

I.3 Cash shortages

- I.3.1 Team members whose duties involve the handling of money shall not be held responsible for the repayment of any shortages. This provision shall not affect Woolworths' right to take such disciplinary or legal action as it considers necessary.

I.4 Security checks of bags, parcels and/or lockers

- I.4.1 Woolworths is entitled to conduct routine security checks of staff bags and/or parcels at points of exit and entry used by staff.
- I.4.2 Individual security checks of bags, parcels and/or lockers shall not take place unless the team member concerned is present, or the team member has given permission for such search to take place in his or her absence.
- I.4.3 Where a search or check is to take place in the team member's absence, the team member may nominate some other responsible team member to be present during such proposed search or check.

I.5 Team member entrances and exits

- I.5.1 Team members must use the designated staff entrances and exits while entering or leaving the store during such times as the team member is rostered to work. Woolworths shall not require a team member to use staff entrances and exits in a store when a team member wishes to enter the store as a customer on rostered days off, or during periods of annual or long service leave or other leave.

Appendix J: Saved and Transitional Provisions

J.1 One-Off Bonus Payment

J.1.1 Eligible team members will be entitled to a one-off bonus payment which will be payable as a cash bonus added to the team member's pay (less applicable taxes) as set out in this clause.

J.1.2 In order to be eligible to receive the one-off bonus, team members must:

- (a) have been employed by Woolworths as of 1 July 2017;
- (b) remain employed by Woolworths as at 22 October 2018; and
- (c) be employed by Woolworths on the payment date.

J.1.3 The one-off bonus will be paid no later than 14 days from the date of the approval of this Agreement by the FWC, however Woolworths may make the payment earlier if it chooses.

J.1.4 The value of the one-off bonus payable to an eligible team member is based on two factors:

- (a) when the team member commenced employment with Woolworths; and
- (b) the team member's average hours worked per week (over May, June and July in 2018).

Average Weekly Hours	Team members continuously employed on or earlier than 31 December 2016	Team members continuously employed since 1 January 2017 to 1 July 2017
38 (Full-time team members only)	\$805	\$380
More than 30	\$574	\$238.50
20 to 30	\$288	\$62.50
10 to 20	\$68	No cash bonus payable
1 to 10	No cash bonus payable	No cash bonus payable
Less than 1	No cash bonus payable	No cash bonus payable

J.1.5 Team members employed from 2 July 2017 onwards are not entitled to the one-off bonus payment.

J.2 Accident Make Up Pay – Victoria Only

J.2.1 This clause only applies to team members who were continuously employed in the State of Victoria on or before 22 October 2018.

J.2.2 If, following an accident, a team member who is eligible according to clause J.2.1 receives compensation under the *Accident Compensation Act 1985* (VIC), then that compensation payment shall be increased by Woolworths to the amount of the usual weekly rate for the rostered hours worked by the team member at the time of the accident. This payment made by Woolworths will not apply during the first 10 normal working days of incapacity and will be limited to a maximum of 39 weeks.

J.3 Working Weekends and Extended Trading Hours

J.3.1 Under the *Woolworths National Supermarket Agreement 2012*, certain team members had the benefit of provisions that prevented them from being required to work on certain days. Ordinary hours of work on specified days will continue to be voluntary for all team members described in the summary table below:

Clause of 2012 EA	Place	Who has the benefit	Benefit
13.1.1.3	Victoria	Team members continuously employed in meat operations in Victoria since before 26 September 2011 who were not paid under Schedule A wages.	Sunday work, work before 5am and after 9pm Monday to Friday and work before 6am and after 6pm on Saturdays is voluntary.
13.2.1.3	Tasmania	Team members continuously employed in meat operations in Tasmania since before 9 November 2010.	May be rostered for 1 Sunday in each 4-week cycle, and all other Sunday work is voluntary.

13.3.5	Victoria	Team members (excluding team members employed in meat operations) continuously employed in Victoria since before 3 November 1993.	Sunday work is voluntary.
13.4.3	New South Wales and Australian Capital Territory	Team members continuously engaged in NSW or ACT supermarket operations since prior to 25 October 1991.	Sunday work is voluntary.
13.4.8	New South Wales and Australian Capital Territory	Team members continuously engaged in NSW or ACT supermarket operations since prior to 1 October 1995.	Saturday and Sunday work after 6:00pm is voluntary.
13.5.1	Queensland	Team members continuously engaged in QLD supermarket operations since prior to 27 February 1995.	Sunday work is voluntary.
13.5.2	Queensland	Team members continuously engaged in QLD supermarket operations since prior to 1 August 2002.	Woolworths will comply with the requirements of the <i>Trading (Allowable Hours) Act 1990 (QLD)</i> .
13.6.5	Western Australia	Team members continuously employed in WA supermarket operations since prior to 10 November 1997.	Sunday work is voluntary.
13.6.6	Western Australia	Team members continuously employed in WA supermarket operations since prior to 10 November 1997.	Saturday nights after 6:00pm are voluntary.
13.6.8	Western Australia	Team members continuously employed in WA meat units since 2008 who were covered by the <i>Woolworths Limited Western Australia Supermarkets and the Australasian Meat Industry Employees' Union Agreement 2002</i> .	Team members cannot be required to work in ordinary time on a Sunday.
13.7.1	South Australia and Northern Territory	Team members continuously employed in South Australia or the Northern Territory between 3 June 1997 and 4 June 2000, and who are employed in stores that did not trade Sundays as at 5 June 2000	Team members have a right to refuse to work ordinary time on a Sunday.
13.7.1.2	South Australia and Northern Territory	Team members continuously employed in South Australia or the Northern Territory prior to 2 June 1997, and who are employed in stores that did not trade Sundays as at 2 June 1997	Team members have a right to refuse to work ordinary time on a Sunday.
13.7.1.4	Broken Hill	Full-time and part-time team members employed prior to 4 July 1994.	Extended trading hours are voluntary but team members can be required to work at least one late night and one Saturday in each 2-week period.
13.7.1.5 & 13.7.8.1	South Australia	South Australian meat unit team members employed under the <i>Woolworths (SA) Pty Ltd Meat Agreement 1996</i> as at 18 October 1998.	Sunday work is voluntary. Cannot be required to work more than 1 in 2 Saturdays as ordinary time unless the team member volunteers to do so.
13.8.2	Tasmania	Team members continuously employed in Tasmanian supermarket operations (excluding meat) prior to 1 December 2002.	Sunday work is voluntary.

J.3.2 If a team member has accepted to work at times otherwise protected above they are deemed to have waived the benefit of this clause and can be rostered to work ordinary hours at those times. Where a team member has agreed for a limited period to work these hours the team member's right to refuse to work these hours remains unchanged.

J.3.3 Where a team member is transferred:

- (a) at their request to a store where Sunday trading is already lawful, Sunday work will no longer be voluntary for that team member at the new store; or

- (b) by Woolworths from a non-Sunday trading store, to a store where Sunday trading is already lawful, Sunday work will remain voluntary for that team member at the new store unless they elect to work on Sundays in which case they are deemed to have waived the benefit of this clause.

J.4 Part-time reduction of hours

J.4.1 For team members whose hours were reduced under either subclause 4.6.2.10 of the Woolworths National Supermarket Agreement 2012, where additional permanent hours become available in the store and the team member has proven and demonstrated skills and competencies for the position where the hours have become available, then that team member will have preference to the additional hours of work ahead of other part-time team members who have had no reduction in hours, casual team members, and new part-time team members.

J.5 Meat department team members

J.5.1 Under the *Woolworths National Supermarket Agreement 2012*, certain meat department team members had the benefit of provisions that prevented them from being required to work more than a certain proportion of hours outside of the meat department. These exceptions will continue to apply for all team members described in the summary table below:

Clause of 2012 EA	Place	Who has the benefit	Benefit
13.1.2.2	Victoria	Team members continuously employed in meat operations in Victoria since before 26 September 2011.	Such team members may work up to 49% of their contract hours (or 49% of hours for casuals) in the main body of the supermarket (i.e. not the meat department) on the same pay rates following prior discussion with the team member and their representative (if any).
13.6.8	Western Australia	Team members continuously employed in WA meat units since 2008 who were covered by the <i>Woolworths Limited Western Australia Supermarkets and the Australasian Meat Industry Employees' Union Agreement 2002</i> .	Such team members, where they are qualified butchers, apprentice butchers or full-time meat packers, cannot be required to work in any other department in the supermarket other than the meat department. Part-time meat packers may be offered hours outside of the meat department but have the right to refuse such hours.
13.7.10	South Australia	Meat unit employees who as at 1 June 2000 were employed under the conditions of the <i>Woolworths (SA) Pty Ltd Mead Certified Agreement 1998</i> . This does not apply to butchers or apprentice butchers.	Meat packers and cabinet attendants may be required to work in produce, service deli, bake house, seafood or longlife departments within the store under exceptional circumstances only, and will be paid the applicable hourly rate for the relevant classification for all hours so worked. Meat packers and cabinet attendants cannot be rostered outside of the meat unless they are a part-time team member and have requested additional hours, in which case such additional hours may be worked anywhere in a store.

J.6 Victorian "Schedule A" Meat Team Members

J.6.1 Team members who had the benefit of clause 3.1.2 in the *Woolworths National Supermarket Agreement 2012* (often called "Victorian Meat Schedule A" team members) will no longer be entitled to the special provisions or wage rates of Schedule A in clause 3.1.2 of the *Woolworths National Supermarket Agreement 2012*. In order to ensure these team members do not incur a reduction in take-home pay, they will be entitled to receive the following Schedule A Phase Out Allowance in addition to their ordinary weekly earnings:

- (a) From the commencement date of this Agreement until 30 June 2019 - \$50 per week;
- (b) From 1 July 2019 to 30 June 2020 - \$35 per week;
- (c) From 1 July 2020 to 30 June 2021 - \$20 per week;
- (d) From 1 July 2021 – the allowance ceases.

J.6.2 If a team member who is a Victorian Meat Schedule A team member under this clause is promoted to a higher grade or changes roles voluntarily within Woolworths, this allowance will cease to apply to them from the date of their change in employment status.

J.6.3 For the avoidance of doubt, Woolworths, the AMIEU and the SDA will agree on a list of named team members who are eligible to receive this allowance as and from the commencement date of this Agreement, and eligible team members will be notified of their eligibility.

J.7 Victorian “Schedule B” Meat Team Members

J.7.1 Team members who had the benefit of clause 13.1 in the *Woolworths National Supermarket Agreement 2012* (often called “Victorian Meat Schedule B” team members) will no longer be entitled to the special provisions or wage rates of Schedule B in clause 3.1 or the penalty rates in clause 13.1 of the *Woolworths National Supermarket Agreement 2012*. In order to ensure these team members do not incur a reduction in take-home pay, they will be entitled to receive the following Schedule B Phase Out Allowances in addition to their base rates of pay on Saturdays and Sundays as follows:

Period that allowance applies:	Saturdays (Full-time team members only) Additional allowance per hour	Sundays (Full-time, part-time and casual team members) Additional allowance per hour
From commencement of Agreement until 1 July 2019	\$15.00	\$8.50
1 July 2019 to 30 June 2020	\$12.50	\$8.50
1 July 2020 to 30 June 2021	\$10.00	\$8.50
1 July 2021 to 30 June 2022	\$7.25	\$6.50
From 1 July 2022	\$4.50	\$4.50

J.7.2 If a team member who is a Victorian Meat Schedule B team member under this clause is promoted to a higher grade or changes roles voluntarily within Woolworths, this allowance will cease to apply to them from the date of their change in employment status.

J.7.3 For the avoidance of doubt, Woolworths, the AMIEU and the SDA will agree on a list of named team members who are eligible to receive this allowance as and from the commencement date of this Agreement, and eligible team members will be notified of their eligibility.

J.8 Northern Territory Bakers

J.8.1 Team members who are qualified trade bakers in the Northern Territory previously paid under clause 3.1.3 in the *Woolworths National Supermarket Agreement 2012* (**Eligible NT Bakers**) will no longer be entitled to the special provisions or wage rates provided in the *Woolworths National Supermarket Agreement 2012*. In order to ensure these team members do not incur a reduction in take-home pay, they will be entitled to receive the following NT Bakers Phase Out Allowance in addition to their ordinary weekly earnings:

- (a) From the commencement date of this Agreement until 30 June 2019 - \$50 per week;
- (b) From 1 July 2019 to 30 June 2020 - \$40 per week;
- (c) From 1 July 2020 to 30 June 2021 - \$30 per week;
- (d) From 1 July 2021 – \$20 per week.

J.8.2 If a team member who is an Eligible NT Baker under this clause is promoted to a higher grade or changes roles voluntarily within Woolworths, this allowance will cease to apply to them from the date of their change in employment status.

J.8.3 For the avoidance of doubt, Woolworths and the SDA will agree on a list of named team members who are eligible to receive this allowance as and from the commencement date of this Agreement, and Eligible NT Bakers will be notified of their eligibility.

J.9 Union Picnic Day (NSW)

J.9.1 Full-time and part-time team members in NSW whose roster includes the first Tuesday in November will be entitled to Union Picnic Day on the first Tuesday in November in 2019, 2020 and 2021 only. Union Picnic Day will not apply in 2022.

J.9.2 Union Picnic Day in NSW will be treated as paid time off or time off in lieu (TOIL), but work performed on the day will not attract public holiday penalty rates.

J.9.3 TOIL will be taken as another day off without loss of pay, not later than 28 days after the Union Picnic Day in NSW on a day mutually agreed by Woolworths and the team member. If TOIL is not taken within 28 days, or if the team member’s employment terminates prior to the taking of such TOIL, the TOIL will be paid out to the team member.

J.9.4 Eligible team members who are on annual leave or long service leave for Union Picnic Day will have an additional day added to their annual leave.

J.10 Union Picnic Day for meat team members in Victoria

J.10.1 Union picnic day for meat team members in Victoria will apply in 2019 only. It will be an additional public holiday in Victoria for meat team members on the third Monday in January 2019 (or, if the team member elects, the third Wednesday in January 2019).

J.11 District Allowances – Western Australia

J.11.1 Weekly allowances that once applied to specific districts in Western Australia are no longer applicable to Woolworths and will be phased out under this Agreement as follows:

- (a) Any team member employed by Woolworths on or after 23 October 2018 will not be entitled to receive a Western Australia district allowance.
- (b) Team members who received a Western Australia district allowance under the *Woolworths National Supermarket Agreement 2012* may continue to receive the same weekly district allowance, subject to annual reductions until the allowance is absorbed and subject to the team member working in the eligible district and meeting the requirements of clause J.11.1(c), in accordance with the following table:

Location	Type	Before EA Commencement	On Commencement	From 1 July 2019	From 1 July 2020	From 1 July 2021	From 1 July 2022
Esperance	Single	\$6.20	\$0 – allowance ceases	N/A	N/A	N/A	N/A
	Dependant	\$12.40	\$0 – allowance ceases	N/A	N/A	N/A	N/A
Kalgoorlie	Single	\$9.10	\$0 – allowance ceases	N/A	N/A	N/A	N/A
	Dependant	\$18.20	\$5.80	\$0 – allowance ceases	N/A	N/A	N/A
Kambalda	Single	\$9.10	\$0 – allowance ceases	N/A	N/A	N/A	N/A
	Dependant	\$18.20	\$9.10	\$2.70	\$0 – allowance ceases	N/A	N/A
Carnarvon	Single	\$17.60	\$8.50	\$2.10	\$0 – allowance ceases	N/A	N/A
	Dependant	\$35.20	\$26.10	\$19.70	\$13.20	\$6.70	\$0 – allowance ceases
Newman	Single	\$20.50	\$11.40	\$5.00	\$0 – allowance ceases	N/A	N/A
	Dependant	\$41.00	\$31.90	\$25.50	\$19.00	\$12.50	\$5.90
Port Hedland	Single	\$29.70	\$20.60	\$14.20	\$7.70	\$0 – allowance ceases	N/A
	Dependant	\$59.40	\$50.30	\$43.90	\$37.40	\$30.90	\$24.30
Broome	Single	\$34.30	\$25.20	\$18.80	\$12.30	\$5.80	\$0 – allowance ceases
	Dependant	\$68.60	\$59.50	\$53.10	\$46.60	\$41.40	\$33.50
Wickham	Single	\$34.30	\$25.20	\$18.80	\$12.30	\$5.80	\$0 – allowance ceases
	Dependant	\$68.60	\$59.50	\$53.10	\$46.60	\$40.10	\$33.50
Derby	Single	\$35.70	\$26.60	\$20.20	\$13.70	\$7.20	\$0 – allowance ceases
	Dependant	\$71.40	\$62.30	\$55.90	\$49.40	\$42.90	\$36.30
Karratha	Single	\$35.90	\$26.80	\$20.40	\$13.90	\$7.40	\$0 – allowance ceases
	Dependant	\$71.80	\$62.70	\$56.30	\$49.80	\$43.30	\$36.70

- (c) To be eligible to receive the dependant allowance, the team member must have a dependant spouse or de facto partner (or child if there is no spouse or de-facto partner), except if the dependant also receives a district allowance payment as part of his or her own employment (whether with Woolworths or not) in which case only the single allowance is payable. Team members claiming the dependant allowance will be required to complete a statutory declaration in a form required by Woolworths, confirming their eligibility for the dependant allowance upon the commencement of this Agreement and again once every 12 months.

J.12 Buy-out and end of saved provisions

J.12.1 Woolworths and a team member can mutually agree to Woolworths making a payment to the team member to “buy-out” an entitlement to a saved provision under this Agreement. Where a buy-out takes place, the team member will no longer be entitled to the provision that has been bought out.

J.12.2 When a team member entitled to a saved provision ceases employment with Woolworths or ceases to be covered by this Agreement, they lose the benefit of any applicable saved provision and will not be entitled to the saved provision again if they return to employment with Woolworths or are covered by this Agreement again.

Appendix K: Dictionary

Agreement means this enterprise agreement, as per clause 1.1.

Continuous service for the purpose of leave accruals includes all service with Woolworths from the date of engagement, but not including:

- (a) any unauthorised absences of 1 week or more;
- (b) authorised unpaid leave(s) of absence of 1 week or more; or
- (c) authorised unpaid leave(s) of absence of 1 week or more due to illness or accident.

Contract hours means the agreed minimum number of hours per week that Woolworths must provide to a part-time team member, for example this could be 10 hours per week or 20 hours per week.

Day, daily means a day of the week, midnight to midnight.

Fair Work Act means the Fair Work Act 2009 (Cth).

FWC means the Fair Work Commission of Australia.

Immediate Family Member means a team member's spouse, child, parent, brother or sister, grandparent, or grandchild; or any other minor person whom a team member has custody or care of as a result of a Court order.

"in writing" has its usual meaning, and includes "in writing" by electronic means, for example in an email or an electronic document or record created, sent and received through a software application

NES means the National Employment Standards, contained in the Fair Work Act.

Ordinary Time Earnings has the meaning set out by the Australian Taxation Office's ruling (SGR2009/2, 1 July 2009) on Ordinary Time Earnings.

Ordinary Weekly Earnings means a part-time or full-time team member's ordinary earnings for a week of ordinary hours worked as part of their typical standard roster, consisting of their base rate of pay plus any penalty rates or loadings they would normally receive for working those ordinary hours (not including any flex up worked, overtime or allowances paid). In other words, a team member's normal "take home pay" for a regular week's work.

RDO means a rostered day off.

Registered organisation means an employer or employee association that has become registered pursuant to the *Fair Work (Registered Organisations) Act 2009* (Cth).

Retail Supermarket Operations means Woolworths retail business, including supermarkets, online and home delivery services (but does not include Woolworths Support Office or above-store operations).

Spouse means a domestic partner (including a same-sex partner), whether married or de-facto.

Standard roster means a full-time or part-time team member's agreed standard roster arrangements, being the days and times when the team member is required to work.

Team members where used in this Agreement has the meaning in clause 1.2(a) and means an employee of Woolworths covered by this Agreement regardless of their job title.

Trade Union means the following registered organisations:

- a) the Shop, Distributive and Allied Employees' Association (**SDA**);
- b) the Australian Workers' Union (Queensland Branch) (**AWU**) in relation to its coverage of North Queensland.
- c) in respect of meat departments, the SDA, the AWU and the Australasian Meat Industry Employees' Union (**AMIEU**).

Week, weekly means a standard week starting Monday and ending Sunday.

Woolworths means Woolworths Group Limited ABN 88 000 104 675 of 1 Woolworths Way, Bella Vista NSW 2153 and Woolworths (South Australia) Pty Ltd ABN 34 007 873 118 of 599 Main North Road, Gepps Cross SA 5094.

Woolworths Intranet means internal internet pages provided by Woolworths for team members to access Woolworths information.

Woolworths People Advisory is a team providing people advice and support, nationally to Woolworths Team Members and Line Managers. People Advisory can be contacted by telephone or online query, details available on Woolworths' intranet.

Appendix L: Index by Topic/Key Word

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Signature Pages

Signatories to the Agreement

Signed for and on behalf of **Woolworths Group Limited**

..... (Signature)

1 November 2018..... (Date)

Coryn Katsikogianis..... (Name)

Chief People Officer..... (Title)

1 Woolworths Way, Bella Vista..... (Address)

Who is duly authorised to sign this Agreement on behalf of Woolworths Group Limited.

Signed for and on behalf of **Woolworths (South Australia) Pty Limited**

..... (Signature)

1 November 2018..... (Date)

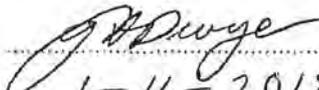
Coryn Katsikogianis..... (Name)

Chief People Officer..... (Title)

1 Woolworths Way, Bella Vista..... (Address)

Who is duly authorised to sign this Agreement on behalf of Woolworths (South Australia) Pty Limited.

Signed for and on behalf of the Shop, Distributive and Allied Employees' Association

..... (Signature)
1-11-2018..... (Date)

Gerard Dwyer

National Secretary/Treasurer

Level 6, 53 Queen Street, Melbourne VIC 3000

Who is duly authorised to sign this Agreement on behalf of the Shop, Distributive and Allied Employees' Association.

Signed for and on behalf of the Australian Workers' Union

..... (Signature)
1/11/18..... (Date)
STEPHEN BAKER..... (Name)
BRANCH SECRETARY..... (Title)

Level 12, 333 Adelaide Street, Brisbane QLD 4000

Who is duly authorised to sign this Agreement on behalf of the Australian Workers' Union.

Signed for and on behalf of the Australasian Meat Industry Employees' Union

..... (Signature)
..... (Date)

Graham Smith

Federal Secretary

227 Henley Beach Road, Torrensville SA 5031

Who is duly authorised to sign this Agreement on behalf of the Australasian Meat Industry Employees' Union.

Signed for and on behalf of the **Shop, Distributive and Allied Employees' Association**

..... (Signature)

..... (Date)

Gerard Dwyer

National Secretary/Treasurer

Level 6, 53 Queen Street, Melbourne VIC 3000

Who is duly authorised to sign this Agreement on behalf of the Shop, Distributive and Allied Employees' Association.

Signed for and on behalf of the **Australian Workers' Union**

..... (Signature)

..... (Date)

..... (Name)

..... (Title)

Level 12, 333 Adelaide Street, Brisbane QLD 4000

Who is duly authorised to sign this Agreement on behalf of the Australian Workers' Union.

Signed for and on behalf of the **Australasian Meat Industry Employees' Union**

..... (Signature)

..... (Date)

Graham Smith

Federal Secretary

227 Henley Beach Road, Torrensville SA 5031

Who is duly authorised to sign this Agreement on behalf of the Australasian Meat Industry Employees' Union.



The fresh food people

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG2018/6144

Applicant: Woolworths Group Limited and Woolworths (South Australia) Pty Ltd

Section 185 – Application for approval of a single enterprise agreement

Undertaking- Section 190

I, Jannifer Kerr, Workplace Relations Manager for Woolworths Group Limited and Woolworths (South Australia) Pty Ltd give the following undertakings with respect to the Woolworths Supermarkets Agreement 2018 ("the Agreement"):

1. I have the authority given to me by Woolworths Group Limited and Woolworths (South Australia) Pty Ltd (Woolworths) to provide this undertaking in relation to the application before the Fair Work Commission.
2. Under clause 4.5(b) of the Agreement, an existing team member who enters into an Apprenticeship Agreement with Woolworths as an adult apprentice will not suffer a reduction in their base rate of pay by virtue of entering into the Apprenticeship Agreement, provided that the team member has been employed by Woolworths for at least six months as a full-time team member or twelve months as a part-time team member or regular and systematic casual team member immediately prior to commencing the apprenticeship
3. Under clause 4.7 of the Agreement, a Trainee will be paid an hourly rate which is at all times at least 1.25% above the minimum rate prescribed in Schedule E of the *Miscellaneous Award 2010* for the Trainee's classification. For the purpose of the approval of the Agreement the hourly rates payable to Trainees under the Agreement upon commencement of the Agreement shall be:

Modern Award Classification	Agreement Classification	Agreement Rate
Wage level A part-time trainee completed year 12 with 3 years out of schooling	Retail employee level 1 (trainee)	\$21.88
	Retail employee level 2 (trainee)	\$21.88
	Clencal Assistant Level 1 (trainee)	\$21.88

4. These undertakings are provided on the basis of concerns raised by the Fair Work Commission in the application before the Fair Work Commission



Signature

28/12/2018

Schedule 2.3—Model consultation term

(regulation 2.09)

Model consultation term

- (1) This term applies if the employer:
 - (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
 - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

- (2) For a major change referred to in paragraph (1)(a):
 - (a) the employer must notify the relevant employees of the decision to introduce the major change; and
 - (b) subclauses (3) to (9) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;the employer must recognise the representative.
- (5) As soon as practicable after making its decision, the employer must:
 - (a) discuss with the relevant employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the employees; and
 - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and

- (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the change on the employees; and
 - (iii) any other matters likely to affect the employees.
- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- (9) In this term, a major change is ***likely to have a significant effect on employees*** if it results in:
 - (a) the termination of the employment of employees; or
 - (b) major change to the composition, operation or size of the employer’s workforce or to the skills required of employees; or
 - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - (d) the alteration of hours of work; or
 - (e) the need to retrain employees; or
 - (f) the need to relocate employees to another workplace; or
 - (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

- (10) For a change referred to in paragraph (1)(b):
 - (a) the employer must notify the relevant employees of the proposed change; and
 - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.

- (12) If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.
- (13) As soon as practicable after proposing to introduce the change, the employer must:
- (a) discuss with the relevant employees the introduction of the change; and
 - (b) for the purposes of the discussion—provide to the relevant employees:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
 - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
 - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:
- relevant employees*** means the employees who may be affected by a change referred to in subclause (1).

Schedule 2.2—Model flexibility term

(regulation 2.08)

Model flexibility term

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - (a) the agreement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
 - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
 - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the employer and employee; and
 - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - (d) includes details of:

- (i) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the employer and employee agree in writing—at any time.