



## DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**Ali Baba Lebanese Cuisine Pty Ltd**  
(AG2019/884)

### **ALI BABA ENTERPRISE AGREEMENT 2019**

Fast food industry

COMMISSIONER HARPER-GREENWELL

MELBOURNE, 24 JUNE 2019

*Application for approval of the Ali Baba Enterprise Agreement 2019.*

[1] An application has been made for approval of an enterprise agreement known as the *Ali Baba Enterprise Agreement 2019* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Ali Baba Lebanese Cuisine Pty Ltd. The Agreement is a single enterprise agreement. The Agreement covers 35 employers as set out at Schedule A to the Agreement that are single-interest employers pursuant to s.172(5)(c) of the Act.

[2] The Employer has provided written undertakings. A copy of the undertakings is attached in Annexure A. 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.

[3] Subject to the undertakings referred to above, 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 does not cover all of the employees of the employer, however, taking into account the factors in Section 186(3) and (3A) I am satisfied that the group of employees was fairly chosen.

[4] The Agreement lodged contained errors at clauses 5.2.10, 14.2, 15.1(e), 36.1.1(a) and Schedule C clause 3. On 18 June 2019, the Applicant filed an amended version of the Agreement correcting this error. I am satisfied that the correction should be made and that it is appropriate to do so pursuant to s.586 of the Act.

[5] The Shop, Distributive and Allied Employees Association, being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[6] The Agreement was approved on 24 June 2019 and, in accordance with s.54, will operate from 1 July 2019. The nominal expiry date of the Agreement is 24 June 2023.



COMMISSIONER

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**Annexure A**

**IN THE FAIR WORK COMMISSION**

**FWC Matter No. AG2019/884**

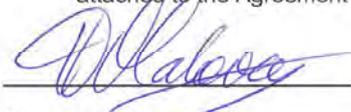
**Applicant: Ali Baba Lebanese Cuisine Pty Ltd and Retail Systems Group Pty Ltd  
Application for approval of the Ali Baba Enterprise Agreement 2019**

Section 185 – Application for approval of a single enterprise agreement

**Undertaking- Section 190**

I, Harry Malovany on behalf of Ali Baba Lebanese Cuisine Pty Ltd and Retail Systems Group Pty Ltd give the following undertakings with respect to the ALI BABA ENTERPRISE AGREEMENT 2019 ("the Agreement"):

1. I have the authority given to me by Ali Baba Lebanese Cuisine Pty Ltd and Retail Systems Group Pty Ltd to provide this undertaking in relation to the application before the Fair Work Commission.
2. Clause 28 of the Agreement will not be utilised by the company.
4. These undertakings are provided on the basis of issues raised by the Commissioner in the application before the Fair Work Commission (Commission), and will be attached to the Agreement if approved by the Commission.



Signature

HARRY MALOVANY

Name

GENERAL MANAGER

Title

14TH JUNE 2019

Date

## SCHEDULE C

### ALI BABA ENTERPRISE AGREEMENT 2019

#### 1. TITLE

This agreement shall be known as the Ali Baba Enterprise Agreement 2019.

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

## 2. COVERAGE

Subject to satisfying the relevant requirements of the Fair Work Act 2009 (Cth) ("the Act") This Agreement shall cover:

- Ali Baba Lebanese Cuisine Pty Limited;
- its subsidiaries and the franchisees and their associated companies listed in the attached Schedule A'
- any new franchisee who acquires a franchise through transmission of business from Ali Baba or a franchisee of Ali Baba, and all employees as defined; and
- The Shop, Distributive and Allied Employees' Association.

## 3. DATE AND PERIOD OF OPERATION AND NES

- 3.1 This agreement shall take effect 7 days after its approval by the FWC and will nominally expire four years from approval.
- 3.2 By no later than six weeks prior to the expiry of the term of this agreement the employer and the Union will commence negotiations regarding the terms and conditions of employment which are to apply after the expiry of the term of this agreement.
- 3.3 This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

## 4. DEFINITIONS

The following definitions are to be applied in interpreting the subsequent provisions of this agreement unless the context indicates otherwise.

Act	Unless the context provides otherwise, the Fair Work Act or any replacement to it.
Award	Fast Food Industry Award 2010.
Employee/s	All Team Members as defined but does not include employees classified as managers, trainee managers employees in any other managerial position.
Employer/s	Ali Baba Lebanese Cuisine Pty Ltd, as well as its subsidiaries and the franchisees and their associated companies listed in the attached Schedule A.
FWC	Fair Work Commission or its successors.
immediate family	means:  (a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or

(b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.

**Shift Supervisor** An employee other than a manager (of any description), placed in charge of running of shifts.

**Team Member/s** An employee principally engaged in one or more of the following activities:

- taking orders
- filling orders
- preparing food items
- selling food items
- delivering or organising the delivery of food items to customers or to the employer's outlets.

**Trainee Employee/s** An employee with less than 6 months service who has not yet completed training. Where an employee is re-engaged by an employer covered by this agreement, all prior service shall be recognised. Trainees will be paid the full applicable rate provided for in this Agreement.

**Union** The Shop, Distributive and Allied Employees' Association.

**Weekly Employee/s** A full-time or part-time employee engaged on a weekly contract of employment.

## **5. CONTRACTS OF EMPLOYMENT**

All employees covered by this agreement shall be employed on either a full-time, part-time or casual basis as follows:

### **5.1 Full-time Employees**

- 5.1.1 Full-time employees will be engaged by the week and work 38 hours per week.
- 5.1.2 Full-time employees will not be engaged for less than 5 consecutive hours per shift excepting for meal breaks.
- 5.1.3 Full-time employees will be paid an ordinary hourly rate equal to the appropriate weekly rate divided by 38.

### **5.2 Part-time Employees**

- 5.2.1 A part-time employee shall mean an employee engaged on a weekly contract of service who works from week to week between 8 and less than 38 hours varying in accordance with operational requirements, for not less than three hours per shift rostered in accordance with the provisions of clause 8, Hours and Rostering.

5.2.2 Part-time employees will be paid at an ordinary hourly rate equal to the appropriate weekly rate divided by 38.

5.2.3 Part-time employees shall be eligible for other benefits under this agreement on a proportionate basis, except for Leave to deal with Family and Domestic Violence which they are entitled to in its entirety. In calculating entitlements pursuant to this subclause all ordinary hours of a part-time employee shall be included in the calculation.

5.2.4 The employer acknowledges the benefits of part-time employment over casual employment for both the employer and the employee. The employer is thereby committed to greater use of part-time employees.

5.2.5 At the time of first being employed, Ali Baba and the part-time employee will agree in writing on a regular pattern of work, specifying at least:

- the number of hours worked each day;
- which days of the week the employee will work;
- the actual starting and finishing times of each day;
- that any variation will be in writing;
- that the minimum daily engagement is three hours; and
- the times of taking and the duration of meal breaks.

5.2.6 Any agreement to vary the regular pattern of work will be made in writing before the variation occurs. Any additional hours worked without this mutual agreement shall be paid as overtime. The requirement to make an agreement in writing and a variation agreement in writing is satisfied if the agreement is recorded by electronic means.

5.2.7 The agreement and any variation to it will be retained by Ali Baba and a copy given to the employee.

5.2.8 Ali Baba is required to roster a part-time employee for a minimum shift of three consecutive hours on any shift.

5.2.9 An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 5.3 – Casual employment.

5.2.10 A part-time employee employed under the provisions of this clause will be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed. All time worked in excess of the hours as agreed under clause 5.2.5 or varied under clause 5.2.6 will be overtime and paid for at the rates prescribed in clause 9.3 and 9.4-Overtime and penalty rates.

### 5.3 Casual Employees

5.3.1 Casual employees will be engaged by the hour and will receive payment for a minimum of 3 consecutive hours per engagement.

Casual employees will be paid at an ordinary hourly rate equal to the appropriate weekly rate divided by 38 plus a 25% loading.

The casual rate shall be increased to a total of 250% for all work performed on the holidays referred to in clause 14, Public Holidays.

5.3.2 The provisions of the following clauses shall not apply to casual employees:

- Public holidays (except as to subclauses 14.1, 14.2 and 14.3)
- Annual Leave
- Personal leave
- Defence Force leave
- Compassionate leave (except for unpaid compassionate leave)
- Carer's leave (except for unpaid carer's leave)
- Jury service (except as to unpaid jury service)
- Termination of employment - weekly employees
- Trade union training leave
- Redundancy and introduction of change - weekly employees

5.3.3 Upon engagement employees will be informed by the employer of their basis of engagement i.e. full-time, part-time or casual.

5.3.4 The maximum number of ordinary hours to be worked by a casual employee is 38 per week.

5.3.5 Right to request casual conversion

(a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.

(b) A regular casual employee is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this Agreement.

(c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.

(d) A regular casual employee who has worked less than equivalent full-time hours over the preceding 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.

(e) Any request under this subclause must be in writing and provided to the employer.

(f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer 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 employee.

(g) Reasonable grounds for refusal include that:

(i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this Agreement – that is, the casual employee is not truly a regular casual employee as defined in paragraph (b);

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

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

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

(h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.

(i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made. If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 31.2. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.

(j) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in this clause, the employer and employee must discuss and record in writing:

(i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and

(ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 5.2.

(k) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.

(l) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.

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

(n) Nothing in this clause obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.

(o) Nothing in this clause requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.

(p) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of this subclause within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of this subclause by 1 January 2019.

(q) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in clause 5.3.5(p).

5.4 National Employment Standards etc

Inclusion of the National Employment Standards or other terms of the Act in this agreement does not render them a term of the individual contract of employment except where the legislation provides otherwise.

**6. WEEKLY EMPLOYEE RATES OF PAY**

6.1 The base rates at approval is as set out below, with an additional 38 cents per week:

- 6.1.1 Level 1 - \$790.28
- 6.1.2 Level 2 - \$837.78
- 6.1.3 Level 3 (in charge of one or no persons) - \$850.68
- 6.1.4 Level 3 (in charge of two or more persons) - \$861.08

6.2 The minimum junior rates of pay will be the following percentages (Table A) of the rates prescribed for the appropriate classification in the Fast Food Industry Award 2010. No employee will be paid less than they would under the Award and an extra 1 cent an hour.

Table A	
	%
15 years of age and under	40
16 years of age	50
17 years of age	60
18 years of age	70
19 years of age	80
20 years of age	90
21 years of age and over	100

6.2 Shift Supervisors

6.2.1 Where a Shift Supervisor is offered to work an additional shift or shifts by the employer to perform ordinary team member duties, the Shift Supervisor may, by agreement with the employer, accept to work the additional shift at the appropriate Team Member rate of pay.

6.3 Weekly rates in this clause shall be rounded up to the nearest 10 cents.

6.4 Mobile Phones

Delivery employees shall not be required to provide a mobile phone as part of their duties. Where it is mutually agreed between the manager and employee beforehand that an employee will use their own mobile phone as part of their duties, the employee will be reimbursed the cost of calls incurred on the employer's behalf.

6.5 Extra rates in this agreement are in substitution for, not cumulative with, other rates arising under this agreement.

**7. ALLOWANCES**

7.1 All allowances payable under the Award will be payable in this Agreement.

7.2 At no time will an allowance be lower than its equivalent in the Award.

7.3 Allowances will be calculated to the nearest 5 cents, except for the travel allowance per kilometer rate which shall be to the nearest cent.

7.4 All allowances will be increased to reflect those in the Award, at no time will they fall below the relevant Award allowance. At approval the allowances are:

Clause	Allowance	f.f.p.p on or after the commencement of this agreement
7.5	Meal Allowance	\$12.91 at first instance \$11.66 at second instance
22.1 (a)	Travel Allowance (per kilometre)	\$ 0.78
21.3	Uniform Allowance	\$6.25 per week for a full-time employee or \$1.25 per shift for a part-time or casual employee (to a maximum of \$6.25)

7.5 Meal Allowance

(a) An employee required to work more than one hour of overtime after the employee's ordinary time of ending work, without being given 24 hours' notice, will be either provided with a meal or paid a meal allowance of \$12.91. Where such overtime work exceeds four hours a further meal allowance of \$11.66 will be paid. This amount will increase in accordance with the Fast Food Industry Award.

(b) No meal allowance will be payable where an employee could reasonably return home for a meal within the period allowed.

**8. HOURS AND ROSTERING**

8.1 All ordinary hours of work will be worked within a spread of eleven hours, inclusive of breaks, each day Monday to Sunday.

8.2 The maximum engagement an employee may be rostered on any shift shall be 11 hours exclusive of meal breaks.

8.3 All rosters for full-time employees shall provide for 152 hours over any 4 week cycle.

8.4 Rostered hours shall be worked on not more than 5 shifts in each week, provided that rostered hours may be worked on 6 shifts in one week if in the following week rostered hours are worked on not more than 4 shifts.

8.5 All employees must be rostered in such a way that they shall receive at least two consecutive days off each fortnight.

8.6 There shall be a minimum break of 10 hours between an employee's finishing time on one shift and commencing time on the next shift (including overtime). An employee who is not given a 10 hour break between engagements, shall be paid overtime at the rate of time and half for the first 2 hours and double time thereafter for any time worked during the second engagement, until such time as the employee is given a 10 hour break.

8.7 The employer shall determine a roster setting out the hours to be worked by each full-time and part-time employee in any week which shall be displayed seven days in advance. Employees may be required to sign in acceptance of their weekly hours. The roster shall not be varied within the 7 day period other than by mutual agreement.

8.8 Employees who repeatedly fail to give sufficient notice to the employer of their inability to work a rostered shift will be subject to disciplinary action in accordance with clause 32 Disciplinary Procedure.

8.8 The employer shall notify employees of the start and finish dates of the roster cycle.

8.9 A casual employee not advised of a cancelled shift at least one hour before the employee was to commence work, shall receive a payment of 3 hours pay.

8.10 The employer shall take into account an employee's study commitments when rostering, consistent with the outlet's operational needs and the availability of other staff.

8.11 (a) The following penalty rates are available under this Agreement:

<b>Time of the week</b>	<b>All employees</b>	<b>Full-time or Part-time</b>	<b>Casual</b>
Monday to Friday Midnight to 6 am	Ordinary Hourly Rates +	15%	40%
Monday to Friday 6am -10pm	Ordinary Hourly Rates +	-	25%
Monday to Friday 10pm - midnight	Ordinary Hourly Rates +	10%	35%
Saturday	Ordinary Hourly Rates +	25%	50%

(b) Penalty Rates on Sundays will be as follows:

(i) From 1 July 2018 to 30 June 2019 - A 35% loading will apply for all hours of work on a Sunday for full-time and part-time Level 1 employees. A 60% loading will apply for all hours of work on a Sunday for casual Level 1 employees (inclusive of the casual loading).

(ii) From 1 July 2019 - A 25% loading will apply for all hours of work on a Sunday for full-time and part-time Level 1 employees. A 50% loading will apply for all hours of work on a Sunday for casual Level 1 employees (inclusive of the casual loading).

(iii) Sunday Work for Level 2 and 3 employees - A 50% loading will apply for all hours of work on a Sunday for full-time and part-time Level 2 or 3 employees. A 75% loading will apply for all hours of work on a Sunday for casual Level 2 or 3 employees (inclusive of the casual loading).

(c) The penalty rates in this Agreement will reflect those in the Fast Food Industry Award 2010 at any time with an additional 1 cent per hour.

(d) No employee will be paid less under this Agreement than they would under the Award and an additional 1 cent per hour.

## 9. OVERTIME

9.1 Subject to the following, employees shall work reasonable overtime as required by the employer:

9.1.1 An employee may refuse to work reasonable overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:

- 9.1.1(a) any risk to employee health or safety;
- 9.1.1(b) the employee's personal circumstances including any family responsibilities;
- 9.1.1(c) the needs of the workplace or enterprise;
- 9.1.1(d) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
- 9.1.1(e) any other relevant matter.

- 9.2 The overtime shall be calculated on a daily basis.
- 9.3 Except where otherwise provided, authorised overtime shall be payable at time and one half of the ordinary rate for the first 2 hours and double the ordinary rate thereafter as follows:
- where an employee works more than 11 hours (excluding meal breaks) on any day.
  - where an employee works in excess of 5 shifts per week (or 6 shifts or 4 shifts worked pursuant to subclause 8.4, Hours and Rostering, or more than 6 consecutive shifts over adjoining weeks other than by mutual agreement).
  - where a casual employee works in excess of 38 hours per week.
  - where a full-time employee works in excess of 38 rostered hours per week.
  - where a full time employee works in excess of 152 hours in a 4 week cycle.
  - where a part-time employee works in excess of 38 rostered hours per week, subject to clause 5.2.5.
  - where an employee is required to work outside the spread of 11 hours on any day.
  - where an employee is required to start work before they have completed an interval of at least 10 consecutive hours rest from their previous finishing time.
  - where an employee (other than a casual) works at times other than those for which the employee was rostered to work.
- 9.4 (a) All overtime worked on a Sunday will be 200% or 250% on a public holiday calculated from the ordinary time rate, or the Award equivalent, whichever is higher.
- (b) The rate of overtime for casual employees shall be 175% of the ordinary hourly rate of pay for the first two hours on any one day and 225% of the ordinary hourly rate of pay thereafter, except on a Sunday which shall be 225% of the ordinary hourly rate of pay and 275% on a Public Holiday (inclusive of the casual loading), or the Award equivalent, whichever is higher.
- 9.5 All work on a day that a weekly employee is rostered off shall be paid for at the rate of double time with a minimum payment as for three hours worked.
- 9.6 An employee called in to work overtime on a Sunday or public holiday that is not continuous with ordinary hours shall receive a minimum payment as for 3 hours worked. Such hours will be worked in accordance with the reasonable overtime provisions of the Award.
- 9.7 By mutual agreement an Individual Flexibility Arrangement may be made so that time off may be taken in lieu of payment for overtime provided that:
- Time off shall be calculated at the penalty equivalent.

- The employee is entitled to a fresh choice of payment or time off on each occasion overtime is worked.
- Time off must be taken within 6 months of the working of overtime, or it shall be paid out.

## 10 BREAKS

### 10.1

Breaks will be given as follows:

<b>Hours worked</b>	<b>Rest break</b>	<b>Meal break</b>
Less than 4 hours	No rest break	No meal break
4 hours but less than 5 hours	One 10 minute rest break	No meal break
5 hours but less than 9 hours	One 10 minute rest break	One meal break of at least 30 minutes but not more than 60 minutes
9 hours or more	One or two 10 minute rest breaks, with one taken in the first half of the work hours and the second taken in the second half of the work hours, two rest breaks will be given unless a second meal break is provided	One or two meal breaks of at least 30 minutes but not more than 60 minutes

- The timing of the taking of a rest break or meal break is intended to provide a meaningful break for the employee during work hours.
- An employee cannot be required to take a rest break or meal break within one hour of commencing or ceasing work. An employee cannot be required to take a rest break(s) combined with a meal break.
- The time of taking rest and meal breaks and the duration of meal breaks form part of the roster and are subject to the roster provisions of this award.
- Rest breaks are paid breaks and meal breaks are unpaid breaks.
- An employee cannot work more than five hours without a meal break.

## 11 PAYMENT OF WAGES

11.1 Wages shall be paid fortnightly or weekly in arrears at the employer's option.

- 11.2 Payment may be made by Electronic Funds Transfer into a bank account nominated by the employer, or by cash or cheque at the employer's option.
- 11.3 The employer shall pay wages within three days of the end of each pay period.
- 11.4 Employees shall be supplied each pay period with a statement detailing the calculation of their wages and the deductions made from their wages. Information to be provided shall include annual leave balances where the employer's payroll system is able to provide this.

## **12 SUPERANNUATION**

- 12.1 On behalf of eligible employees, the employer will make monthly superannuation contributions of (currently) 9.5% of the employee's Ordinary Time Earnings or such other percentage consistent with the Superannuation Guarantee (Administration) Act 1992 (Cth), on behalf of eligible employees.
- 12.2 The employer will pay such contributions into the employee'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 an employee 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.
- 12.3 The employer will not permit funds other than REST to promote superannuation products to employees either in store or through internal systems.
- 12.4 Employees can nominate any superannuation fund that offers an approved MySuper product in accordance with the Superannuation Industry (Supervision) Act 1993 (Cth). An employee can nominate their fund of choice by completing the applicable form.
- 12.5 An employee can change their superannuation fund nomination at any time during their employment with the employer by notifying the employer in writing using the applicable form.
- 12.6 Further information about superannuation is set out in Schedule D.

## **13 TRAINING**

- 13.1 The employer will provide training to each employee. Employees are required to apply themselves conscientiously to training.
- 13.2 The employer shall keep a tracking sheet for each employee undertaking training which shall record the dates they commenced training and the employee's training status. The sheet shall be available to the employee upon request.
- 13.3 Employees will be issued with certificates at the successful completion of each stage of training.

## 14 PUBLIC HOLIDAYS

14.1 For the purposes of this agreement, the following days shall be public holidays:

Christmas Day  
Boxing Day  
New Year's Day  
Australia Day  
Good Friday  
Easter Saturday  
Easter Monday  
Anzac Day  
Labour Day or Eight Hour Day  
The Birthday of the Reigning Sovereign

14.2 Except where 14.3 applies:

(a) When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on the following Monday.

(b) When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on the following Monday or Tuesday respectively.

(c) When New Year's Day or Australia Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on the next Monday.

14.3 Where throughout a State or Territory public holidays are declared, prescribed legislated or gazetted on days or part-days other than those set out in subclauses 14.1 and 14.2 above, those days shall constitute additional holidays for the purpose of this agreement.

14.4 Full-time and part-time employees who as part of their roster cycle work on a day on which any of the above holidays fall, and who are not required by the employer to work any part of their ordinary hours on such public holiday, shall be deemed to have worked the number of hours the employee would have worked had the day not been a holiday.

14.5 An employer and a majority of employees may agree to substitute another day for a public holiday. If an employee works on either the public holiday or the substitute day public holiday penalties apply. If both days are worked, the public holiday penalties must be paid on one day chosen by the employee.

14.6 Excepting where it has been agreed to change the day a holiday is observed, all work done on any of the holidays prescribed in this clause shall be paid at the rate of 225% for weekly employees, with a minimum payment as for three hours. The casual rate shall be increased to a total of 250% for all work performed on the holidays referred to in this clause.

14.7 A full-time employee whose non-working day falls on a public holiday will receive by mutual agreement -

(a) another day off in lieu to be taken within twenty-eight days of the holiday;

(b) an additional day's pay; or

- (a) another day off in lieu to be taken within twenty-eight days of the holiday;
- (b) an additional day's pay; or
- (c) an extra day added to annual leave

The above shall not apply to Anzac Day when it falls on a weekend.

- 14.8 Where a part-time employee regularly working 5 days per week is rostered on different days of the week so that the employee is required from time to time to work ordinary hours on the day of the week on which one of the above holiday falls, and the employee's rostered day off coincides with any of the above holidays prescribed in this clause, such employee shall receive one day's additional pay at ordinary rates on the next succeeding pay day.
- 14.9 In addition to the above holidays, full-time and part-time employees not required by the employer to work any part of the employee's ordinary hours on the first Tuesday in November or such other day as is agreed with the State Branch of the Union for a state, territory or locality shall be entitled to an additional holiday without loss of pay, which shall be known as the Union Picnic Day. Those full-time, part-time employees required to work on this day shall in lieu of the above provisions be permitted to take an alternative day off within 28 days or have an additional day to be taken with the employee's next period of annual leave but shall not in any circumstances, including termination or failure to take the day within the required period, forfeit these entitlements.
- 14.10 For the purpose of this clause, 'day' shall mean the averaged number of daily hours worked by the employee in the four weeks immediately prior to the day on which the holiday falls.

## **15 PART-DAY PUBLIC HOLIDAYS**

- 15.1 Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this Agreement relating to public holidays to the extent of the inconsistency:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
  - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.
  - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.



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16.10 During a period of annual leave a weekly employee will receive a loading of 17½ percent of the weekly rate for each week taken or the penalties they would have usually been entitled to, whichever is greater but not both. At no point will an employee's pay be reduced due to taking annual leave.

16.12 Payment in lieu of annual leave shall not be made by the employer and not be accepted by the employee except in accordance with all requirements of this clause.

16.13 Cashing out of annual leave

16.13.1 Paid annual leave must not be cashed out except in accordance with an agreement under clause 16.13.

16.13.2 Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 16.13.

16.13.3 An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.

16.13.4 An agreement under clause 16.13 must state:

- (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
- (ii) the date on which the payment is to be made.

16.13.5 An agreement under clause 16.13 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

16.13.6 The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.

16.13.7 An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.

16.13.8 The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.

16.13.9 The employer must keep a copy of any agreement under clause 16.13 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 16.13.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 16.13.

Note 3: An example of the type of agreement required by clause 16.13 is set out at Schedule E. There is no requirement to use the form of agreement set out at Schedule E.

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**17. PAID PERSONAL / CARER'S LEAVE**

17.1 Amount of leave

For each year of service with the employer, an employee (other than a casual) is entitled to 10 days of paid personal/carer's leave. Part-time employees shall receive a pro rata entitlement in accordance with subclause 5.2.3 of Clause 5, Contracts of Employment.

17.2 Accrual of leave

An employee's entitlement to paid personal/carer's leave accrues progressively during a year of service according to the employee's ordinary hours of work each completed 4 week period, and accumulates from year to year.

17.3 Payment of leave

An employee may take paid personal/carer's leave at ordinary rates for the number of hours rostered to be worked by the employee on that day if the leave is taken:

17.3.1 because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or

17.3.2 to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of -

17.3.1(a) a personal illness, or personal injury, affecting the member; or

17.3.1(b) an unexpected emergency affecting the member; or

17.3.3 because a parent, spouse or child of the employee dies, in which case the total of compassionate leave and personal/carer's leave may be up to a total of 5 days.

17.4 Where personal/carer's leave is exhausted, the employee may use annual leave by agreement with the employer.

17.5 Leave shall not be paid for any period that the employee is entitled to workers' compensation.

17.6 If the period during which an employee takes paid personal/carer's leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid personal/carer's leave on that public holiday.

17.7 To enable the employer to efficiently conduct business and offer quality service to customers, it is required that employees give as much notice as possible that they will be absent from work on personal/carer's leave. In any event they shall notify their employer wherever reasonably practicable prior to their commencing time on the first day of absence and advise their anticipated date of return.

17.8 Supporting Evidence Requirements

The employer may require an employee to produce proof that would satisfy a reasonable person on occasions when an employee is absent from work on personal/carer's leave. Other than for the first two single day absences in any one year, the employee may be required to produce such evidence.

17.9 Disciplinary Process

An employee who has clearly demonstrated a pattern of abuse of the use of his or her personal / carer's leave entitlements, including failing to observe the notice requirements under 17.7 or failing to submit supporting evidence as provided for in clause 17.8, may be subject to disciplinary action in accordance with clause 32 - Disciplinary Procedure.

## 18 UNPAID LEAVE

18.1 An  (including a casual) may take unpaid carer's leave for a particular  if the leave is taken to provide care or support as referred to in 17.3.2, subject to the evidence requirements in 17.8.

18.2 An  may take unpaid carer's leave for a particular  as:

18.2.1 a single continuous period of up to 2 days; or

18.2.2 any separate periods to which the  and his or her  agree.

18.3 An  cannot take unpaid carer's leave during a particular period if the  could instead take paid personal/carer's leave.

18.4 Otherwise, employees may by agreement with the employer, take unpaid periods of leave of more than one week and up to 12 months without breaking their continuity of employment. All accrued entitlements, including long service (except as provided for in State or Territory legislation), annual and sick leave and public holidays will be frozen from the date of commencing unpaid leave until the date of return.

## 19 DEFENCE FORCES & COMMUNITY SERVICES LEAVE

19.1 Defence Force Services Leave

19.1.1 Subject to operational requirements, an employee, other than a casual, shall be allowed unpaid leave or paid leave using accrued annual or long service leave entitlements to attend Defence Forces Reserve approved training where the absence is reasonable having regard to all the circumstances.

19.1.2 Employees seeking to take Defence Force Services Leave must provide notice to the employer at least one month prior to the period of training. The notice should detail the start and finish dates for training.

*NOTE - see also the provisions of the Defence Reserve Service (Protection) Act 2001*

19.2 Community Services Leave

- 19.2.1 Employees carrying out of a voluntary emergency management activity shall be permitted to take unpaid leave, or paid leave using accrued annual or long service leave entitlements, where the absence is reasonable having regard to all the circumstances.
- 19.2.2 The provisions of Division 8 of Part 2-2 of the Act shall be used in interpreting the provisions of this sub-clause.

## **20 LEAVE TO DEAL WITH FAMILY AND DOMESTIC VIOLENCE**

20.1 This clause applies to all employees, including casuals.

20.2 Definitions

(a) In this clause:

family and domestic violence means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

family member means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
- (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

(b) A reference to a spouse or de facto partner in the definition of family member in clause 20.2(a) includes a former spouse or de facto partner.

20.3 Entitlements to unpaid leave

An employee is entitled to 5 days' unpaid leave to deal with family and domestic violence, as follows:

- (a) the leave is available in full at the start of each 12 month period of the employee's employment; and
- (b) the leave does not accumulate from year to year; and
- (c) is available in full to part-time and casual employees.

Note: 1. A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the employer.

2. The employer and employee may agree that the employee may take more than 5 days' unpaid leave to deal with family and domestic violence.

20.4 Taking unpaid leave

An employee may take unpaid leave to deal with family and domestic violence if the employee:

- (a) is experiencing family and domestic violence; and

(b) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

Note: The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

#### 20.5 Service and continuity

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service.

#### 20.6 Notice and evidence requirements

##### (a) Notice

An employee must give their employer notice of the taking of leave by the employee under clause 20. The notice:

- (i) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
- (ii) must advise the employer of the period, or expected period, of the leave.

##### (b) Evidence

An employee who has given their employer notice of the taking of leave under clause 20 must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 20.4.

Note: Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

#### 20.7 Confidentiality

(a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 20.6 is treated confidentially, as far as it is reasonably practicable to do so.

(b) Nothing in clause 20 prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information

#### 20.8 Compliance

An employee is not entitled to take leave under clause 20 unless the employee complies with clause 20.

## 21 UNIFORMS

- 21.1 Where the employer requires an employee to wear any protective or special clothing such as a uniform, dress or other clothing, the employer will reimburse the employee for any cost of purchasing such clothing and the cost of replacement items when replacement is due to normal wear and tear. This provision will not apply where the special clothing is supplied and/or paid for by the employer. This will also apply to any equipment the employer requires the employee to utilise in their duties.
- 21.2 Employees shall maintain all items in a clean, presentable and safe condition and are entitled to the relevant laundry allowance in the Fast Food Industry Award 2010.
- 21.3 Where an employee is required to launder any special uniform, dress or other clothing, the employee will be paid the following applicable allowance:
- (i) For a full-time employee – \$6.25 per week;
  - (ii) For a part-time or casual employee – \$1.25 per shift.

## 22 REIMBURSEMENT OF TRAVELLING EXPENSES

- 22.1 Where at the employer's direction employees are required to temporarily transfer from one of the employer's establishments to another, they shall be entitled to the following:
- (a) Any additional fare costs for using public transport,  
or  
any additional costs for private kilometrage, calculated on the basis of the amount per kilometre set out in the table at clause 7, Allowances.
  - (b) Payment of any additional travelling time at the ordinary time earnings rate except on Sunday and Public Holidays when payment shall be at time and one half.  
  
Provided that such payments shall cease when the employee has been permanently transferred to the establishment.
- 22.2 Where an employee agrees to use their private vehicle on Company business the allowance detailed in 22.1(a) above shall apply.

## 23 LONG SERVICE LEAVE

- 23.1 As per State or Territory legislation except as provided under clause 18 of this agreement.

## 24 COMPASSIONATE LEAVE

- 24.1 When a member of the employee's immediate family (i.e. the employee's spouse, parent, step-parent, foster-parent, son-in-law, daughter in law, parent-in-law, grandparent, grandparent-in-law, child, foster-child, step-child, grandchild, brother or

sister), or a member of the employee's household -

- 24.1.1 contracts or develops a personal illness that poses a serious threat to his or her life; or
- 24.1.2 sustains a personal injury that poses a serious threat to his or her life; or
- 24.1.3 dies;

the employee shall be entitled to take compassionate leave for each such occasion, which shall not exceed three shifts. (Note extra leave may be available under the personal/carer's leave provisions upon the death of a parent, spouse or children of the employee).

24.2 The employee may take compassionate leave if the leave is taken -

24.2.1 to spend time with the member of the employee's immediate family or household who has contracted or developed the personal illness, or sustained the personal injury; or

24.2.2 after the death of the member of the employee's immediate family or household referred to above.

24.3 A full-time, part-time employee shall be entitled to take paid leave for each such occasion. A casual employee's entitlement is to unpaid leave only.

24.4 The leave may be taken as -

24.4.1 a single continuous period of up to 3 days; or

24.4.2 up to 3 separate periods of 1 day each; or

24.4.3 any separate periods to which the employee and his or her employer agree.

24.5 If the occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the employee may take the compassionate leave for that occasion at any time while the illness or injury persists.

24.6 Proof of the occasion shall be provided by the employee to the satisfaction of the employer, together with proof of attendance in the case of a funeral outside Australia.

24.7 Upon the death of an aunt or uncle, a full-time or part-time employee shall be entitled to paid compassionate leave based upon ordinary time earnings which shall not exceed 1 shift for attendance at the funeral. Proof of such death may be required by the employer.

24.8 There shall be no entitlement to leave under this clause where an employee is absent from work on another form of approved leave.

## **25 PARENTAL LEAVE AND FLEXIBLE WORK ARRANGEMENTS**

25.1 Full-time employees, part-time employees and casual employees engaged on a regular and systematic basis who have at least twelve months continuous service shall be

entitled to Parental Leave (unpaid Maternity, Paternity and Adoption Leave and the right to work part-time with the consent of the employer) in accordance with the National Employment Standards (NES).

25.2 Disputes over an employers refusal of an employees request to work flexible hours or return to work on a part-time basis under the NES shall be dealt with in accordance with clause 31 – Disputes Procedure.

25.3 Employee may request change in working arrangements

Clauses 25.3 to 25.7 applies where an employee has made a request for a change in working arrangements under s.65 of the Act.

Note 1: Section 65 of the Act provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in s.65(1A).

Note 2: An employer may only refuse a s.65 request for a change in working arrangements on 'reasonable business grounds' (see s.65(5) and (5A)).

Note 3: Clauses 25.3 to 25.7 are an addition to s.65.

25.4 Responding to the request

Before responding to a request made under s.65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to:

- (a) the needs of the employee arising from their circumstances;
- (b) the consequences for the employee if changes in working arrangements are not made; and
- (c) any reasonable business grounds for refusing the request.

Note 1: The employer must give the employee a written response to an employee's s.65 request within 21 days, stating whether the employer grants or refuses the request (s.65(4)).

Note 2: If the employer refuses the request, the written response must include details of the reasons for the refusal (s.65(6)).

25.5 What the written response must include if the employer refuses the request

Clause 25.5 applies if the employer refuses the request and has not reached an agreement with the employee under clause 25.4.

- (a) The written response under s.65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- (b) If the employer and employee could not agree on a change in working arrangements under clause 25.4, the written response under s.65(4) must:
  - (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and

(ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

25.6 What the written response must include if a different change in working arrangements is agreed

If the employer and the employee reached an agreement under clause 25.4 on a change in working arrangements that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

25.7 Dispute resolution

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clauses 25.3 to 25.7 can be dealt with under clause 31 – Dispute resolution.

## 26 JURY SERVICE

26.1 A full-time or part-time employee shall be allowed leave when required to attend for jury service. During such leave, the employee shall be paid the difference between the jury service fees received and the employee's ordinary time earnings (including loadings where applicable) as if working.

26.2 To receive payment, an employee shall provide to the employer:

26.2.1 proof of their requirement to attend jury service,

26.2.2 proof of actual attendance,

26.2.3 proof of jury fees received for such service.

26.3 The employee shall give the employer notice of such requirement to attend as soon as practicable after having received notification to attend for jury service.

26.4 The employer will not require the employee to attend for duty before or after attending for jury service so that the period of jury service and working time combined would exceed 8 hours per day or 5 days per week.

## 27 TERMINATION OF EMPLOYMENT - WEEKLY EMPLOYEES

27.1 The employer must not terminate an employee's employment unless the employer has given the employee written notice of the day of the termination (which cannot be before the day the notice is given).

27.2 An employer is required to give employees the following period of notice on termination, or the equivalent period of wages shall be paid in lieu:

**Length of service**  
1 year and less

**Notice entitlement**  
1 week

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More than 1 year and up to 3 years	2 weeks
More than 3 years and up to 5 years	3 weeks
More than 5 years	4 weeks

Employees over the age of 45 years are entitled to one extra week's notice if they have more than 2 years of continuous service with the employer.

- 27.3 Employees are required to give the employer one week's notice, or the equivalent period of wages shall be forfeited.
- 27.4 Probationary employees may terminate or be terminated without notice by either party during the first calendar month of their employment.
- 27.5 Where the employer has given notice of termination to an employee, an employee shall be allowed up to one shift off without loss of pay for the purpose of seeking other employment. The time off shall be taken at a mutually agreeable time.
- 27.6 Nothing in this clause shall affect an employer's right to dismiss an employee without notice as set out in clause 32, Disciplinary Procedure in which case an employee shall be entitled to be paid only to the time of instant dismissal.
- 27.7 Payment in lieu of notice shall be calculated using an employee's weekly ordinary time earnings.
- 27.8 Termination pay shall be paid on the next pay day after termination.
- 27.9 The employer shall, when requested, provide to the employee a written statement specifying the period of their employment and the classification of or the type of work performed by the employee.

**28 ABANDONMENT OF EMPLOYMENT**

Employees absent from work for a period of three consecutive days without the consent of the employer or without notification to the employer shall be deemed to have terminated employment without notice, unless the employee was unable, through no fault of his/her own, to notify the employer. The employer shall make all reasonable efforts to contact the employee prior to treating the employment as terminated.

**29 CONTINUITY OF EMPLOYMENT**

With regard to service related entitlements of employees provided in this agreement, service shall be deemed to be continuous upon the sale or transfer of a business from one employer party to another who continues to employ the particular employee. No severance or redundancy payments will be required to be made where the employee continues to be employed on no less advantageous conditions.

30 COPY OF AGREEMENT

A copy of this agreement and the NES shall be provided to employees, one to each establishment and will be posted in a conspicuous place.

**31 DISPUTES PROCEDURE**

**31.1 Defined terms**

In this clause:

(a) "Party" means the Company, the union or a team member or team members involved in the dispute and "Parties" means either or all of them;

(b) "Team Member Representative" means a fellow team member from the same work location or, if relevant, a union representative from a union to which the team member is eligible to belong or any other person that a team member chooses to represent them.

**31.2 Dispute resolution procedure**

31.2.1 If a dispute arises about this agreement, the NES (including subsections 65(5) or 76(4)), or any other work-related matter (including a dispute about whether a workplace right(s) have been breached), the parties to the dispute will attempt to resolve the dispute at the workplace level.

31.2.2 If the matter cannot be resolved, a party may refer the dispute to the Fair Work Commission for resolution. In resolving a dispute, the FWC may:

(a) Use any of its powers (including arbitration powers);

(b) And without limiting (a) above, where the matter in dispute concerns a decision made by the employer, FWC may conduct a merits review and stand in the shoes of the employer and make a fresh decision to resolve the dispute.

31.2.3 Union members are entitled to be represented by their union. Non-members are entitled to be represented by a representative of their choice. The employer shall recognise the representative for all purposes involved with the resolution of the dispute and shall allow them to perform their role as representative.

31.2.4 The parties to the dispute and their representatives must act in good faith in relation to the dispute.

31.2.5 While the dispute is being resolved, the parties will abide by the status quo as it existed immediately before the subject matter of the dispute arose. However, the employer may direct an employee to perform different work or work at a different location, on full pay, if it is reasonable to do so to protect the safety, health or welfare of employees.

31.2.6 Subject to any stay or appeal, the parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this term.

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## 32 DISCIPLINARY PROCEDURE

- 32.1 Formal disciplinary action for dealing with substandard performance or misconduct involving employees shall be in accordance with the following procedure:

### Counselling and Retraining

Where an employee's performance is substandard in the employer's opinion, formal disciplinary action should only be undertaken after the employee has had the opportunity of counselling and/or retraining and also a review of expected performance standards.

In cases where an employee's performance continues to be substandard in the employer's opinion, the following steps will apply:

### Step One: Initial Warning

Usually, an initial written or verbal warning will be issued in cases of continued substandard performance or minor misconduct.

### Step Two: Final Written Warning

Usually, a final written warning will be issued in cases where substandard performance continues after the employee has previously received an initial warning, or for minor misconduct, or for serious misconduct where instant dismissal is not warranted.

### Step Three: Dismissal

Dismissal will usually follow when the employee has failed to comply with the final written warning.

### Instant Dismissal

The employer may dismiss an employee without notice for serious misconduct at work .

- 32.2 All written warnings shall be placed on the employee's personnel file. The employee shall be requested to sign the warning. The employee shall be entitled to a copy of a warning upon request.
- 32.3 Warnings for substandard performance should include an improvement plan for the employee, stating the time frame for sustained improvement to occur.
- 32.4 The employee or employer, may require the presence of a representative or witness at the disciplinary interview.

## 33 SAFETY

- 33.1 Parties agree that safety in the workplace and the avoidance of injuries is of prime importance. The employer will ensure that adequate safety training is provided to



36.2.3 result in the employee being better off overall than the employee would be if no arrangement was made.

36.3 The employer must ensure that the individual flexibility arrangement:

36.3.1 is in writing; and

36.3.2 includes the name of the employer and employee; and

36.3.3 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

36.3.4 includes details of -

36.3.4(a) the terms of the enterprise agreement that will be varied by the arrangement; and

36.3.4(b) how the arrangement will vary the effect of the terms; and

36.3.4(c) 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

36.3.4(d) states the day on which the arrangement commences.

36.4 The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

36.5 The employer or employee may terminate the individual flexibility arrangement -

36.5.1 by giving no more than 28 days written notice to the other party to the arrangement; or

36.5.2 if the employer and employee agree in writing – at any time.

## 37 CONSULTATION

### Model consultation term

37.1 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*

37.2 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.

37.3 The relevant employees may appoint a representative for the purposes of the procedures in this term.

37.4 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.

37.5 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.

37.6 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

37.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

37.8 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.

37.9 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*

- 37.10 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.
- 37.11 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 37.12 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.
- 37.13 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).
- 37.14 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 37.15 The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 37.16 In this term:
- relevant employees* means the employees who may be affected by a change referred to in subclause (1).

### 38 TRADE UNION TRAINING LEAVE

- 38.1 The employer may at its discretion grant paid or part paid or unpaid leave for duly elected or appointed union delegates to attend training courses or programs conducted or approved by the Union.
- 38.2 Written requests to attend training seminars by delegate(s) shall be made to the employee's direct management between four and eight weeks prior to the date of

commencement of the course. Where possible, the maximum amount of notice shall be given. If less than four weeks notice is given, leave need not be granted by the employer.

- 38.3 Except in the case of a new store opening, only employees who have completed six months continuous service with the employer shall be eligible for leave pursuant to this clause.
- 38.4 Leave granted pursuant to this clause shall count as service for all purposes of this agreement.
- 38.5 On completion of the course the employee shall, upon request, provide to the employer proof of their attendance at the seminar, and an outline of the course content.
- 38.6 Employees granted leave pursuant to this clause shall, upon request, inform the employer after the completion of the seminar of the nature of seminar and their observations on it.

### **39. SEXUAL HARASSMENT**

- 39.1 It is acknowledged that sexual harassment in the workplace is totally unacceptable and the parties undertake to take whatever steps are necessary to prevent such practices.
- 39.2 The employer shall immediately investigate any complaint and every endeavour made to resolve the matter promptly.

### **40. UNION DELEGATE**

An employee elected or appointed as Union delegate in the establishment in which he or she is employed shall upon written notification by the Union organiser to the employer's local management representative be recognised as the accredited representative of the Union.

### **41. UNION RECOGNITION AND UNION MEMBERSHIP**

- 41.1 The employer recognises the Shop, Distributive and Allied Employees Association as being a Union that has representation of employees who are covered by this agreement. This representation will extend to all terms and conditions of employment covered by this agreement.
- 41.2 All employees, including new employees at the point of recruitment, shall be given an application form for membership of the Union together with a statement of the employer's policy positively promoting freedom of association.
- 41.3 The employer undertakes upon authorisation to deduct Union membership dues as levied by the Union in accordance with its rules from the pay of employees who are members of the Union. Such monies collected will be forwarded to the appropriate Branch of the Union at the beginning of each month together with all necessary information to enable the reconciliation and crediting of subscriptions to members' accounts.

## 42 SAVINGS PROVISION

(a) Existing employees at the date of this agreement coming into operation shall not suffer a reduction in their weekly wage, their ordinary hourly rate (including Sunday penalty) or any existing allowance or benefit solely as a result of the introduction of this agreement.

Existing employees will not be replaced by other employees earning a lower rate solely as a result of the introduction of this agreement.

(b) Existing employees at the date of this agreement coming into operation working in Queensland shall continue to have the following benefits:

- I. Part-time employees shall continue to work a minimum of 10 hours weekly;
- II. The minimum rates of wages payable to junior Employees will be calculated using the following percentages:

14 years old	52.25%
15 years old	52.25%
16 years old	52.25%
17 years old	62.25%
18 years old	72.25%
19 years old	82.25%
20 years old	97.25%
21 years old	100%

- III. Blood donor leave will be available as follows:
  - a. A Full-Time or Part-Time Employee who is absent during ordinary working hours for the purpose of donating blood, will not suffer any deduction of pay, including any allowances and penalty payments the Employee would have received had they been at work, up to a maximum of 2 hours on each occasion and subject to a maximum of 4 separate absences each calendar year.
  - b. An Employee must attempt to donate blood outside working time. If that is not possible, the Employee must arrange for such leave to be taken on a day suitable to the Manager and be as close as possible to the beginning or end of the ordinary working hours.
  - c. The Employee must first provide proof of attendance, and of the duration, to the satisfaction of the Manager.
  - d. The Employee must notify their Manager as soon as possible, of the date and time upon which they are requesting to take such leave.

43. SIGNATURES

Julia Fox  
Authority: National Assistant  
Secretary  
Level 6, 53 Queen Street Melbourne  
An authorised officer of an  
association which has been  
authorised to enter into this  
Agreement



\_\_\_\_\_

Date

26/3/19  
\_\_\_\_\_

Name  
Title  
Address  
Capacity  
A person duly authorised by the  
employer to sign on the employer's  
behalf

HARRY MAROVANY  
GENERAL MANAGER  
29 WILLIAMSON ROAD INGLEBURN NSW

Date

25/3/19



\_\_\_\_\_

**SCHEDULE A**

Ali Baba Lebanese Cuisine P/L	37008600495
Ali Baba Belconnen ACT Pty Ltd	83134614896
Agnaz Pty Ltd ATF Agnaz Family Trust	59876697305
AKA Bros Co Pty Ltd as Trustee for AKA Bro Discretionary Trust	92347747122
Annapurna Group of Traders and Investors Pty Ltd	44160073772
Aroush Pty Ltd	93617739410
Artavid Pty Ltd	46066211354
Barry Thomas & Kerry Leigh Cumpstay	68410297767
D&R (AUS) Pty Ltd	59624892815
ER Trading Pty Ltd	79162324978
Evan Mannan , Rajvinder Singh Chang & Parminder Kour Shillon	72372786524
Fortune Strategic Investments Pty Ltd	68601052822
Frew Pty Ltd	48068499785
Guzel Kebabs Pty Ltd	52154923850
Hanna Trading Pty Ltd	49168518509
HR & Co Pty Ltd	630511867
Jafari Pty Ltd	16606199884
Jess Stores Pty Ltd ATF D.A Naidu Family Trust	30998255112
Karta Purakh Pty Ltd	97607538714
Khalid Ismail	92090612201
Khan Brothers & Sons Pty Ltd	78613446763
M&B Kebabs Pty Ltd	99164164578
Michelle Richards Enterprises Pty Ltd	49163990159
MJSV Pty Ltd	11616879728
Rangan Pty Ltd	86069198090
RDY Pty Ltd	74620825845
RKV Pty Ltd	88149817836
RNSSS Pty Ltd	88614357685
Stephen Crighton & Temmy Lestari as Trustee for the Temmy & Steve Food Services	71326029971
Tariqul Hassan	12277983757
The Aristocrat Trading Pty Ltd	72614576260
Vaikunta Investments Pty Ltd	63162685378
Valleyview Enn Pty Ltd	28602593359
YH Father & Son Pty Ltd	80168355897
Yousaf Mohammad	95664070873

## **SCHEDULE B: SUPPORTED WAGE SYSTEM**

### **1. Workers Eligible for a Supported Wage**

This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this agreement. In the context of the schedule, the following definitions will apply:

- 1.1 “Supported Wage System” means the Commonwealth Government system to promote employment for people who cannot work at full agreement wages because of a disability, as documented in [Supported Wage System: Guidelines and Assessment Process].
- 1.2 “Accredited 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.
- 1.3 “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, as amended from time to time, or any successor to that scheme.
- 1.4 “Assessment instrument” means the form 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.

### **2. Eligibility Criteria**

Employees covered by this schedule 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 employee 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.

The schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers’ compensation legislation or any provision of this agreement relating to the rehabilitation of employees who are injured in the course of their current employment.

The schedule does not apply to employers in respect of their facility, programme, undertaking service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the Act, or if a part only has received recognition, that part.

### **3. Supported Wage Rates**

Employees to whom this schedule applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this agreement for the class of work which the person is performing, according to the following schedule:

<u>Assessed capacity rate</u>	<u>% of prescribed agreement</u>
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

Provided that the minimum amount payable shall be not less than **\$86.00** per week (or as amended) and where a person's assessed capacity is 10%, they shall receive a high degree of assistance and support.

4. Assessment of Capacity

For the purpose of establishing the percentage of the agreement rate to be paid to an employee under this agreement, the productive capacity of the employee will be assessed after consultation with the employee in accordance with the Supported Wage System and documented in an assessment instrument by either:

- the employer and the union, or
- the employer and an accredited Assessor.

5. Assessment Instrument

All assessment instruments shall be agreed and signed by the parties to the assessment.

6. Review of Assessment

The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

7. Other Terms and Conditions of Employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of the schedule will be entitled to the same terms and conditions of employment as all other workers covered by this agreement paid on a pro rata basis.

8. Workplace Adjustment

An employer wishing to employ a person under the provisions of this schedule shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of the job duties, working time arrangements and work organisation in consultation with other workers in the area.

9. Trial Period

- 9.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provision of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- 9.2 During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- 9.3 The minimum amount payable to the employee during the trial period shall be no less than **\$86.00** per week (or as amended).
- 9.4 Work trials should include induction or training as appropriate on the job being trialled.
- 9.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under clause 4, Assessment of Capacity.



“Small employer” means an employer who employs fewer than 15 employees.

Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee’s normal retirement date.

The payments do not apply under the situations under s.122 of the Act, that is, where –

- 3.1 the employer obtains other acceptable employment for the employee; or
- 3.2 where in a transfer of employment situation, if the second (new) employer recognises the employee’s service with the first (old) employer or
- 3.3 the employee rejects an offer of employment made by another employer (the second employer ) that:
  - is on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the employee's terms and conditions of employment with the first employer immediately before the termination;
  - and recognises the employee's service with the first employer; and
  - (a) had the employee accepted the offer, there would have been a transfer of employment in relation to the employee.

#### 4. Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in clause 1 above may terminate his or her employment during the period of notice and, if so, shall be entitled to the same benefits and payment under this schedule had he or she remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

#### 5. Time Off During Notice Period

- 5.1 During the period of notice of termination given by the employer an employee shall be allowed up to one day’s time off without loss of pay during each week of notice for the purpose of seeking other employment.
- 5.2 If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or they shall not receive payment for the time absent.
- 5.3 For this purpose a statutory declaration will be sufficient.

#### 6. Employees Exempted

7. This schedule shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees or employees engaged for a specific period of time or for a specified task or tasks.

## **SCHEDULE D - Superannuation**

### **D1 Entitlement to superannuation**

D1.1 Employees who are over the age of 18 and over who earn more than \$450 or more per month in ordinary time earnings, and any employee under the age of 18 who works more than 30 hours or more per week and earns more than \$450 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, the employer will pay the higher contribution.

D1.2 The employer will make superannuation contributions on behalf of eligible employees in accordance with the relevant legislation.

### **D.2 Absence from Work**

D.2.1 Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 12 and pay the amount authorised under clause D.3:

- (a) while an eligible employee is on any paid leave;
- (b) for the period of absence from work (subject to a maximum of 52 weeks) of the eligible employee due to work-related injury or work-related illness provided that:

D.2.2 the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and;

D.2.3 the employee remains employed by the employer and is eligible to receive superannuation.

### **D3 Additional Superannuation Contributions - Post Tax**

D3.2 An eligible employee can make their own post-tax superannuation contributions or can direct the employer in writing to set up regular post-tax contributions to the same superannuation fund that the employee's superannuation is paid into, this must be done in writing using the form provided on the portal on the intranet.

### **D4 Additional Superannuation Contributions - Salary Sacrifice**

D4.1 An eligible employee may direct the employer to pay a portion of their wages as additional superannuation contributions (salary sacrifice contributions) into the employee's nominated superannuation fund (which must be the same fund that their superannuation contributions under clause 12 are paid into).

D4.2 An employee who wishes to make salary sacrifice contributions must direct the employer in writing to make such contributions using the form provided on the employer's intranet or such other form or application as advised by the employer.

D4.3 Upon receiving written direction, the employer will commence making the salary sacrifice contributions on a monthly basis on behalf of the employee.

D4.4 An employee may vary the amount of their salary sacrifice contributions not more than twice per year. An employee 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 the employer.

D5 Additional superannuation and relationship with wages

D5.1 Any amount paid by the employer on behalf of the employee under clause 12 or Schedule D is deemed to be paid in satisfaction of the employer obligation to pay the employee's wages set out in the Agreement.

D5.2 It will not be a breach of this Agreement if the actual wages paid to the employee 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 an employee elects to salary sacrifice; overtime rates, loadings, termination payments and superannuation contributions made by the employer on the employee's behalf will be based on the employee's pre-salary sacrifice wage.

**SCHEDULE E – Agreement to Cash Out Annual Leave**

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

The employer and employee agree to the employee cashing out a particular amount of the employee's accrued paid annual leave:

The amount of leave to be cashed out is: \_\_\_\_ hours/days

The payment to be made to the employee for the leave is: \$\_\_\_\_\_ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Include if the employee is under 18 years of age:

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

**SCHEDULE F – Classifications**

**F.1 Employee Level 1**

**F.1.1** An employee engaged in the preparation, the receipt of orders, cooking, sale, serving or delivery of meals, snacks and/or beverages which are sold to the public primarily to take away or in food courts in shopping centres.

**F.1.2** A Level 1 employee will undertake duties as directed within the limits of their competence, skills and training including incidental cleaning and cleaning of toilets.

**F.2 Employee Level 2**

An employee who has the major responsibility on a day to day basis for supervising Level 1 employees and/or training new employees or an employee required to exercise trade skills.

**F.3 Employee Level 3**

An employee appointed by the employer to be in charge of a shop, food outlet, or delivery outlet.

**IN THE FAIR WORK COMMISSION**

**FWC Matter No. AG2019/884**

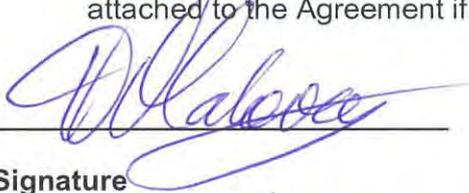
**Applicant: Ali Baba Lebanese Cuisine Pty Ltd and Retail Systems Group Pty Ltd  
Application for approval of the Ali Baba Enterprise Agreement 2019**

Section 185 – Application for approval of a single enterprise agreement

**Undertaking- Section 190**

I, Harry Malovany on behalf of Ali Baba Lebanese Cuisine Pty Ltd and Retail Systems Group Pty Ltd give the following undertakings with respect to the ALI BABA ENTERPRISE AGREEMENT 2019 ("the Agreement"):

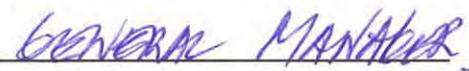
1. I have the authority given to me by Ali Baba Lebanese Cuisine Pty Ltd and Retail Systems Group Pty Ltd to provide this undertaking in relation to the application before the Fair Work Commission.
2. Clause 28 of the Agreement will not be utilised by the company.
4. These undertakings are provided on the basis of issues raised by the Commissioner in the application before the Fair Work Commission (Commission), and will be attached to the Agreement if approved by the Commission.



**Signature**



**Name**



**Title**



**Date**