



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty. Limited
(AG2018/750)

COLES SUPERMARKETS ENTERPRISE AGREEMENT 2017

Retail industry

DEPUTY PRESIDENT GOSTENCNIK

SYDNEY, 23 APRIL 2018

Application for approval of the Coles Supermarkets Enterprise Agreement 2017.

[1] Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty. Limited are related bodies corporate. They are single interest employers within the meaning of s.172(5) of the *Fair Work Act 2009* (Act). They have made an agreement titled *Coles Supermarkets Enterprise Agreement 2017* (Agreement) with certain of their employees. Coles Supermarkets Australia Pty Ltd is a bargaining representative for the Agreement and has applied under s.185 of the Act for the approval of the Agreement. I will hereafter refer to these related bodies corporate as “Coles”. The application was lodged on 1 March 2018 and was accompanied by a statutory declaration of Mr Courtney Dixon, Employee Relations Manager of Coles.

[2] The Australian Workers’ Union (AWU), the Australasian Meat Industry Employees Union (AMIEU), the Shop Distributive and Allied Employees Association (SDA) and the Transport Workers’ Union of Australia (TWU) (collectively “the Unions”) are bargaining representatives for the Agreement and each gave notice that it wanted to be covered by the Agreement and supported its approval. Ms Ann Wells, Supermarket Team Member and Ms Penelope Vickers, Team Leader are bargaining representatives for the Agreement and both have filed statutory declarations in support of the approval of the Agreement. Mr Danny Grkovic and Mr Kurt Bryant are also bargaining representatives for the Agreement but did not file a statutory declaration.

[3] The Retail and Fast Food Workers Union Incorporated (RAFFWU) indicated that it wished to be heard on the application. The RAFFWU made written submissions in relation to which response submissions by Coles and the SDA were made. All parties agreed that I deal with the matter on the papers. Except for the matters with which I will shortly deal, no issue concerning a pre-approval step, the coverage of the Agreement, the exclusion of the NES or any other approval requirement in relation to the Agreement has been raised or identified. On the material before me I am therefore satisfied that each of the other relevant matters set out in s.186 and s.187 of the Act which condition the exercise of the power to approve the Agreement have been satisfied.

[4] The RAFFWU raised two concerns with respect to the application, it submits that:

- (a) the Agreement does not pass the Better Off Overall Test (BOOT); and
- (b) the Agreement may not have been genuinely agreed to by employees.¹

[5] In respect of the first issue raised, the RAFFWU submits that the Agreement provides for a wage rate of 5c per hour more than the *General Retail Industry Award 2010* (Award). It says that this is by virtue of a new base rate applying (\$20.55 per hour for most adult staff) which incorporates the laundry allowance of \$1.25 per shift.² It says that for a new part-time adult store team member working three by 3 hour shifts per week during non-penalty times, amounts to 9 hours at \$20.55 or \$184.95. Under the Award such an employee would earn 9 hours at \$20.08 and three payments of laundry allowance or \$184.47. Such an employee would earn 48c per week more than the Award, equivalent to \$25 per annum.³

[6] The RAFFWU submits that the Agreement includes a term which purports to establish a standing consent to written variations to the contracted terms by oral or other agreement.⁴ Clause 4.1.4(d) states:

“Any agreement to vary the regular pattern of work will be made in writing before the varied hours commence. A variation under this subclause may be of a temporary (including adhoc or one off variations) or permanent nature. **A part-time team member can elect to provide written standing consent to vary their regular pattern of work in order to work additional hours at the rates of pay specified in clause 4.1.4(h), provided such standing consent may be withdrawn by the team member at any time.** (To avoid doubt, a team member who provides standing consent can still verbally refuse to work additional hours when offered on any occasion.) Such a variation in writing may be made by electronic means (this will include MyColes, One Team, E---mail and SMS).” [Emphasis added by RAFFWU]

[7] It says that since the application was made, Coles has implemented a program purportedly obtaining standing consent from staff. It submits that this term has the effect of a staff member agreeing to vary hours verbally rather than by written agreement.⁵ The Award provides for variations to contracted hours that would avoid overtime rates at clause 12.3 as follows:

“**12.3** Any agreement to vary the regular pattern of work will be made in writing before the variation occurs.”

[8] The RAFFWU says that this obligation is not perfunctory. It says that it was the mechanism determined by the Commission to allow an employer to pay an employee other than at overtime rates for hours worked in addition to contracted hours.⁶

[9] It says that in considering the BOOT, under the Agreement, Coles can come to an arrangement with an employee to not reduce variations to writing but still pay wages for hours

¹ RAFFWU Submissions dated 19 March 2018 at [6]

² Ibid at [9]

³ Ibid at [10]

⁴ Ibid at [12]

⁵ Ibid at [14]

⁶ Ibid at [15]

worked at rates lower than overtime rates.⁷ The RAFFWU submits that such an arrangement (where non-written variations permit wages to be paid for hours worked at rates lower than overtime rates) was considered by the Full Bench in *Duncan Hart v Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited T/A Coles and Bi Lo; The Australasian Meat Industry Employees Union v Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited T/A Coles and Bi Lo*⁸ where it was said “we also note that provisions of the Agreement, such as payment to part-timers for additional hours worked could amount to a detriment”. The provision considered in that case paid for additional hours worked at the casual rate of pay rather than the ordinary rate of pay that would otherwise apply as is the case in the Agreement.

[10] The RAFFWU submits that using the example above of a worker being financially better off by 48c per week, \$25 per year, if that worker worked a single 3 hour shift at non-penalty rate times with verbal consent rather than a written contractual variation, they would earn an additional \$61.65. That shift under the Award would be paid at overtime rates and attract laundry allowance. It would be paid \$20.08 by 3 hours by 150% plus \$1.25 in laundry allowance or \$91.61. The single shift impacts on the annual \$25 benefit by reversing it to a \$5 detriment compared to the Award terms.⁹

[11] The RAFFWU submits that the standing consent arrangement is a concoction to avoid the Award obligation of reducing each variation to writing. It says that it is beyond doubt that Coles will award any additional hours it wishes to offer to those who provide standing consent. Workers who wish to access such additional hours will, in effect, have to give standing consent. The structure then provides that variations are not agreed in writing as contemplated by the Award. This will maintain the current structure at Coles of awarding and arranging additional hours as voluntary overtime.¹⁰ The RAFFWU says that voluntary overtime is not a benefit to employees. An agreement containing a voluntary overtime clause must contain provisions that are more beneficial than the equivalent terms in the modern award or are not conferred by the modern award in order to meet the BOOT.¹¹

[12] The RAFFWU submits that the BOOT is not met and that Coles ought be requested to make an undertaking that the “standing consent” provisions will not be referred to, utilised or relied on by Coles.¹² The RAFFWU says that for the sake of completeness, it notes that the clause itself does not explicitly limit standing consent variations without written authority to voluntary overtime. It says that while this appears to be the intent of the provision, it arguably could be applied to permit other variations to the regular pattern of work – such as changes to the hours worked, and when they are worked – other than in writing.¹³

[13] Coles contends that clause 4.1.4(d) of the Agreement is not detrimental to employees and should be regarded as being beneficial.¹⁴ Coles contends that the only difference between the Award and the Agreement is that the Agreement allows for the variation, in the case of

⁷ Ibid at [16]

⁸ [2016] FWCFB 2887 at [29]

⁹ Ibid at [19]

¹⁰ Ibid at [20]

¹¹ Ibid at [21]

¹² Ibid at [24] – [25]

¹³ Ibid at [27]

¹⁴ Coles Submissions dated 28 March 2018 at [5]

additional hours only, to be made in writing in advance and then confirmed at a later time.¹⁵ It says that the Agreement confirms that an employee may withdraw their consent at any time and maintain the right to refuse to work additional hours on any occasion even if they have provided standing consent.¹⁶ In support of its contention, Coles relies on the Full Bench¹⁷ decision varying the part-time overtime provisions in the Award from “overtime is payable for all hours worked in excess of the agreed number of hours” to “all time worked in excess of the hours as agreed under clause 12.2 or varied under clause 12.3 will be overtime and paid for at the rates prescribed in clause 28.2 – Overtime (excluding shift work).”¹⁸ Coles posits that the standing consent clause in the Agreement minimises the administrative burden for Coles and employees who wish to work additional hours thus promoting flexibility. More importantly, Coles contends that part-time employees who do not wish to work additional hours and who would only work them when directed to do so, are still entitled to overtime penalties and are afforded the genuine agreement protections.¹⁹

[14] The SDA contends that the assertion by RAFFWU that the Agreement fails the BOOT because of clause 4.1.4(d) is “faint”.²⁰ It contends that the Award provides, *inter alia*, that a part-time employee and his or her employer must agree in writing on a regular pattern of work specifying the hours that are to be worked each day, the days to be worked and the commencing and finishing times on each of those days.²¹ Additionally, the Award provides that the regular pattern of work can be varied in writing and that a part-time employee is paid at ordinary time rates for hours worked that are agreed.²² The Award then provides that any time that is worked in excess of the hours that have been agreed to on commencement of employment or as varied, must be paid at overtime rates.²³ In support of its contention, the SDA also refer to the Full Bench decision that determined to vary the part-time overtime provisions in 2010 to ensure that part-time employees do not miss out on the opportunity to work additional hours because the Award required them to be paid at overtime rates.²⁴

[15] The SDA says that under clause 4.1.4(d), part-time employees are not required to work additional hours at ordinary time rates.²⁵ They say that the effect of the clause is that if a part-time employee wishes to work additional hours at the appropriate ordinary time rate, then by virtue of clause 4.1.4(d), they can do so and that such a position is the same as the Award.²⁶ The SDA contend that the only difference between the operation of the Agreement clause and the Award clause is administrative and allows Coles to implement a practical and logistically sound method of allowing part-time employees to work additional hours.²⁷

¹⁵ Ibid at [7]

¹⁶ Ibid

¹⁷ *General Retail Industry Award 2010* [2010] FWAFB 305

¹⁸ Coles Submissions dated 28 March 2018 at [10]

¹⁹ Ibid at [12]

²⁰ SDA Submissions dated 28 March 2018 at [6]

²¹ Ibid at [7]

²² Ibid at [8] – [9]

²³ Ibid at [9]

²⁴ Ibid at [10] – [12]

²⁵ Ibid at [14]

²⁶ Ibid

²⁷ Ibid at [15] – [16]

[16] The SDA contend that the standing consent provisions in the Agreement are a benefit to employees and provide a clear protection in that a formal record of an employee's wish to work additional hours must be maintained and that a part-time employee can refuse to work additional hours on any occasion.²⁸ Furthermore, the SDA submit that clause 4.1.4(d) does not operate to circumvent the payment of overtime penalties, but affords a part-time employee the opportunity to agree to working additional hours in advance and to verbally withdraw such an agreement at any point in time.²⁹

[17] Overall, the SDA say that the submission of RAFFWU is “a theoretical one divorced from any real understanding of the working conditions and wishes of employees who will be covered by the Agreement” and that their position does not appear “to [not] reflect the wishes of the relevant employees given them overwhelming majority of those employees who chose to vote, who voted in favour of the Agreement and who voted in favour despite the recommendation of RAF Inc. that they vote against the Agreement”.³⁰

[18] Ms Ann Wells contends that as to the standing consent concern, she believes that it is “one of the best offers that Coles have ever made, as it should all allow part-time team members to easily and seamlessly access the additional hours that they need, paid at ordinary hours or ordinary hours with penalties as the case may be. Those additional hours then produce extra superannuation and leave. At the pointy end of a Coles team members working life, and for those who have not been there it is hard to imagine, it is those additional hours, not whether they are paid at overtime rates or otherwise, that matter.”³¹

[19] In its reply submissions, RAFFWU contend that the standing consent provisions permit additional hours to be worked as voluntary overtime.³² RAFFWU say that by not reducing the variation to writing, it cannot be considered a contract variation and that a system which does not reduce such changes to a new written contract are inferior to the Award.³³ RAFFWU contend the result of the provision is that “a worker is supposedly agreeing in writing in advance *of even knowing what the contractual variation might be...*” and that “it is a furphy and ought not be entertained as anything other than a system of voluntary overtime – even on a case by case and consensual basis.”³⁴

[20] The provision in the Agreement is different to the Award provision but I do not consider it to be detrimental. I accept that the provision results in an easing of an administrative burden on Coles in achieving a flexibility for which provision is already made in the Award. An employee and Coles are able to agree on a variation contemplated by the Award but through a scheme involving less frequently executed written variation agreements. The existence of flexibility arrangements requiring written agreement provides both flexibility to an employer and safeguards to an employee. The requirement for a written agreement acts as both a safeguard and evidence of agreement. The Agreement requires the standing consent to be in writing. It also allows, without the burden of writing, for an employee to refuse to work particular hours on any occasion notwithstanding the earlier written consent. In the

²⁸ Ibid at [19]

²⁹ Ibid at [22]

³⁰ Ibid at [24]

³¹ Email from Ms Ann Wells to chambers dated 5 April 2018 at 2:05am

³² RAFFWU Submissions dated 3 April 2018 at [2] – [3]

³³ Ibid at [5]

³⁴ Ibid at [7]

result, the employee is not bound by the earlier written consent. The balance of flexibility and safeguards is preserved by the provision in the Agreement. I therefore do not consider that the provision affects negatively, the assessment of whether the Agreement passes the BOOT.

[21] As to the second issue, the RAFFWU says it was made aware by many employees of Coles that they had been advised by another bargaining representative of the effect of the Agreement³⁵, it says that it understands that the SDA was afforded substantial access to employees in the form of paid meetings, during the access period and ballot.³⁶ The RAFFWU says that with such arrangements in place, the information provided in those meetings is a relevant part of the information matrix upon which employees relied when voting on the Agreement.³⁷ It contends that it has been advised by many employees of Coles that they were told by representatives of the SDA that a “no vote” would result in, *inter alia*, the wages of workers being cut and/or workers returning to the Award. The RAFFWU says that this is demonstrably untrue and that examples of these misrepresentations was posted on Facebook by the SDA and subsequently was changed 4 days after the explicit misrepresentation was made.³⁸

[22] The RAFFWU also says that these misrepresentations were combined with hard copy materials which were liable to mislead. The series of materials carried headlines of “*Don’t Risk Falling Back to the Award.*”³⁹ The RAFFWU says that the materials mislead in that they provide no reference to the actual effect of a “no vote”, they are distributed before or during the ballot and carry a clear inference that not supporting the Agreement “risked” a “fall back” to the Award. Without the paid meetings where workers were told of the effect of a “no vote”, the meaning of “risk” would have been left to eighty thousand workers to determine (workers without the benefit of industrial or legal expertise).⁴⁰ The RAFFWU says that it raised concerns with Coles prior to the ballot taking place but understands that no substantive effort was made by Coles to ensure those employees who participated in the SDA workplace sessions held during paid time, were advised the true effect of a “no vote”.⁴¹

[23] Further, the hard copy SDA materials also identified that the Agreement guaranteed pay rises. It says that the heading boldly declared the Agreement would “ensure pay rises for everyone”, it says that this is not true and that while unusual, the Annual Wage Review could award no wage increase.⁴² It submits that to declare that the Agreement guarantees or ensures pay rises is patently false.⁴³

[24] Coles contends that the Agreement was genuinely agreed to by its employees. First, Coles contend that it cannot reasonably be expected to control the content of information that is provided by bargaining representatives and the manner in which a bargaining representative elects to communicate with its members is a matter for the bargaining representative.⁴⁴ Coles

³⁵ RAFFWU Submissions dated 19 March 2018 at [29]

³⁶ Ibid at [30]

³⁷ Ibid at [32]

³⁸ Ibid at [35], Annexure A

³⁹ Ibid at [36], Annexure B

⁴⁰ Ibid

⁴¹ Ibid at [39]

⁴² Ibid at [41]

⁴³ Ibid at [42]

⁴⁴ Coles Submissions dated 28 March 2018 at [17]

says that it cannot be held responsible for that which is out of their control. Secondly, Coles submits that s.180(5) of the Act imposes an obligation on the employer, not an employee bargaining representative, to take all reasonable steps to explain the terms of the agreement and that it discharged this obligation by providing clear and accurate information to employees of the consequences of a “no vote”.⁴⁵

[25] Coles contends that when it first became aware of the concerns in respect of the “no vote” that had been raised by RAFFWU it acted quickly by contacting the SDA and obtained an assurance that the SDA had an accurate and clear understanding of the “no vote”.⁴⁶ As to the Facebook post, Coles contends the SDA took a number of steps to rectify the misrepresentation that had been made as soon as it became aware of it and any misunderstanding as to reverting back to the Award would have been absolved.⁴⁷

[26] Thirdly, Coles contends that any representation made by the SDA that identified a risk that employees could revert back to the Award in the event of a “no vote” is accurate given the events that transpired between June 2017 and November 2017 when an application was made by a Coles employee to terminate the 2011 enterprise agreement.⁴⁸ Lastly, in respect of the concern raised by RAFFWU concerning the statement, “Ensure Pay Rises For Everyone”, Coles submits that this does not present a barrier to approving the Agreement because it was not in any way prepared, distributed or endorsed by Coles, the text beneath the heading clarifies that wage increases are dependent on the Annual Wage Review and that given the history of annual wage increases, it is more likely than not that future increases would be made.⁴⁹

[27] As to the second concern raised by RAFFWU, the SDA contends that that there was overwhelming support for the making of the Agreement with more than 90% of 50,000 employees voting in favour.⁵⁰ The SDA say that the case put forward by RAFFWU that there was no genuine agreement from the employees, particularly in the face of the overwhelming support for the Agreement, raises a vague assertion which should be afforded no weight.⁵¹

[28] As to the Facebook post, the SDA submit that four days after it became aware of the misrepresentation it clarified what it meant by “falling back to the Retail Award”, in a post in the Facebook thread to the following effect:

“Sean to clarify reverting back to the award is a risk. If the Coles EBA concludes with a no vote, it could then be up to Coles as to how they wish to proceed. There are a few options. Coles may decide to enter into further negotiations with the union, although they are not obliged to or required to by law. Or, they may continue to remain on the expired 2011 Agreement, or somebody can terminate the 2011 Agreement and employees would be under the General Retail Industry Award. If the Coles employees fall back onto the General Retail Industry Award then employees will lose all the additional conditions and entitlements of the old agreements which had been negotiated over time and which the SDA was able to maintain

⁴⁵ Ibid at [18]

⁴⁶ Ibid at [18(ii)]

⁴⁷ Ibid at [18(iii)]

⁴⁸ Ibid at [19]

⁴⁹ Ibid at [20]

⁵⁰ SDA Submissions dated 28 March 2018 at [29]

⁵¹ Ibid at [29]

in the negotiations for this proposal. These include superior rostering provisions, breaks, various leave provisions etc. This would also mean that the protected rate (that is the higher rate that current employees enjoy) would also disappear”⁵²

[29] The SDA acknowledge that it is not possible to know how many people saw the Facebook comment made by the Western Australian Branch, but submits that it is “safe to assume that it was a very small number” and more likely than not that those who participated in the discussion would have also seen the correction that was published four days later.⁵³ Similar to Coles, the SDA submit that it is curious that RAFFWU is concerned with employees reverting back to the Award given that the RAFFWU represented two Coles employees in the application to terminate the 2011 enterprise agreement.⁵⁴ In any event, the SDA say that such a consequence is not “fanciful” given there was a risk of reverting back to the Award if a majority of employees who voted on the Agreement was not successful.⁵⁵

[30] As to the wage increases, the SDA contend that it is clear from RAFFWU’s submissions that they concede that a wage increase is premised on the Annual Wage Review and thus their submission is without merit.⁵⁶

[31] As to the genuine agreement issue, Ms Wells says that her store manager arranged a positive event release of the material relating to the Agreement and the access was provided to the management team “at any time to answer questions, set aside a dedicated computer and phone for team members to consult Mycoles for information and to vote”.⁵⁷ Additionally, Ms Wells says that employees at her store were encouraged to vote and felt that Coles approached the process with a positive and trustworthy attitude.⁵⁸

[32] The AWU advised that it concurred with the submissions of the SDA in respect of the concerns raised by RAFFWU and did not wish to say anything further.⁵⁹

[33] The TWU, AMIEU, Mr Bryant and Ms Vickers all indicated that they did not wish to make submissions in response to the concerns raised by the RAFFWU. I was advised by Mrs Ivana Grkovic (Mr Grkovic’s mother) that Mr Grkovic is very unwell and was not in a position to make any submissions in respect of the consideration of approving the Agreement.⁶⁰

[34] It is firstly to be observed, save for criticism of some of the SDA’s written material, that the matters concerning representations made raised by the RAFFWU are raised on the basis of information provided to it by unidentified persons who are purported to be employees of Coles who will be covered by the Agreement in respect of the communications said to have been made by the SDA to these unidentified employees about the consequences of a “no vote”. The RAFFWU was given the opportunity to participate in an oral hearing but was

⁵² Ibid at [40]

⁵³ Ibid at [41]

⁵⁴ Ibid at [45] – [46]

⁵⁵ Ibid at [48]

⁵⁶ Ibid at [51] – [52]

⁵⁷ Email from Ms Ann Wells to chambers dated 5 April 2018 at 2:05am

⁵⁸ Ibid

⁵⁹ Letter from Steve Baker (Acting Branch Secretary) dated 29 March 2018

⁶⁰ Email from Mrs Ivana Grkovic dated 19 April 2018 at 8.46pm

content for me to determine the matter on the papers. There is no evidence about these communications much less is there any information which can properly be tested or to which the SDA could in fairness respond. Vague allegations made by unidentified persons given in submissions on a hearsay basis hardly provides a proper foundation to conclude that employees covered by the Agreement may not have genuinely agreed to it.

[35] Secondly, whilst it is true that Coles is required to take all reasonable steps to explain to relevant employees the terms of the agreement and their effect and that it cannot be held responsible for the communications of other bargaining representatives that cannot be the end of the matter.

[36] Information circulated by a bargaining representative about an agreement and its effect which is not accurate and which may have the consequence of misleading employees who will be covered by the agreement about its terms and the effect of those terms might, in appropriate circumstances, provide reasonable grounds for believing that the agreement may not have been genuinely agreed to by the relevant employees.

[37] Although allowances may be made for hyperbole in the prosecution for and against a particular proposition, in this case for the approval of the Agreement, it should not be assumed that hyperbole which has the effect of wrongly describing an agreement's terms or their effect in a serious or significant way will be overlooked. However, I do not consider the circumstances of this application to be such a case. Having reviewed the extensive material lodged by Coles which sets out the explanations of the Agreement and its terms given to or made available to employees who will be covered by the Agreement together with the corrective steps taken by Coles and by the SDA in respect of some of the material that might not have been accurate, I am not persuaded that the material discloses that Coles did not meet its obligation under s.180(5) of the Act or that the inaccuracies in some of the SDA material were of such magnitude as to provide reasonable grounds for believing that the Agreement has not been genuinely agreed to by the employees. In the circumstances of this case based on the totality of the material before me I am satisfied that the employees genuinely agreed to the Agreement.

[38] Apart from these matters, I raised a number of concerns about the application and requested that Coles provide a response or undertakings to satisfy me as to the concerns raised. The concerns were as follows:

- (a) clause 9.6 of the Agreement, which expresses an employee's entitlement to personal leave in hours rather than days, may contravene s.96 of the Act, which provides that an employee is entitled to accrue 10 days of personal leave per annum;
- (b) the Agreement does not appear to offer employees a liquor licence allowance like that provided in clause 20.11 of the Award;
- (c) that any Supported Wage System (SWS) employees who are not entitled to the one off cash payment may not be better off overall under the Agreement;
- (d) clause 5.9 of the Agreement offers trainees "[l]evel 1 team member rates (including junior rates)", it is unclear how this provision is intended to operate and it is also unclear whether the Agreement is intended to cover trainees who would otherwise be

covered by the National Training Wage (NTW), and whether such trainees would be required to complete all training off-site or some on-site;

- (e) clause 5.1.3 of the Agreement, and to items A1.4(b)-(c) of Appendix A of the Agreement, which classify “skilled non-tradesperson[s]” and any “team member who is required to utilise the skills of a trade for the majority of the time in a week and who has completed Coles nominated training, but who has not completed an appropriate trades course and does not hold an appropriate Certificate III” as Level 3 team members. The Deputy President also refers to item A1.5(c) of Appendix A of the agreement, and to item B.4.3 of Schedule B of the Award, both of which classify “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” as a Level 4 employee; and
- (f) some indicative job titles listed in clause 5.1.3 of the Agreement- in particular ‘office in charge’ and ‘duty manager’, who are classified as Level 6 employees in the Agreement do not appear to reflect the classification descriptions listed in Appendix A of the Agreement, and may fall within Award classification descriptions for a higher classification level. If the classification matching provided by the employer is not accurate, some employees may receive rates of pay below equivalent Award rates of pay.

[39] As indicated above, I requested that Coles provide a response to a number of concerns I had regarding the content of the Agreement. My concerns and the relevant response provided by Coles are detailed below.

Personal Leave

[40] Section 186(2)(c) of the Act provides that, before approving an agreement, the Commission must be satisfied that “the terms of the agreement do not contravene section 55” of the Act, which provides, among other things, that enterprise agreements must not exclude, in whole or in part, the National Employment Standards.

[41] Clause 9.6.2 of the Agreement provides that a full-time employee is entitled to accrue 76 hours of personal leave per year of continuous service. Clause 9.6.3 of the Agreement provides that part-time employees accrue personal leave on a pro-rata basis. In light of the decision of the Full Bench of the Commission in *RACV Road Service Pty Ltd v Australian Municipal, Administrative, Clerical and Services Union*,⁶¹ this appeared to contravene s.96 of the Act, which provides that employees are entitled to accrue 10 days of personal leave per annum. As a result, I was concerned that the Agreement did not meet the requirements of s.186(2)(c) of the Act.

[42] Coles has undertaken that clause 9.6.2 of the Agreement will be applied in accordance with s.96 of the Act. This undertaking addresses my concern in relation to this issue. I am therefore satisfied that together with the undertaking, the Agreement terms do not contravene s.55 of the Act.

⁶¹ [2015] FWCFB 2881

Better Off Overall Test (BOOT)

[43] I was also concerned that the Agreement did not pass the BOOT and therefore did not meet the requirements of s.186(2)(d) of the Act. In relation to the BOOT, I raised the following concerns with the parties.

Liquor Licence Allowance

[44] The Agreement does not offer employees a liquor licence allowance. In contrast, clause 20.11 of the Award states that an employee who holds a liquor licence under a relevant State or Territory law will be paid an allowance of 3.1% of the standard rate per week (\$25.08 per week). Modelling performed by the Commission shows that an employee entitled to the liquor licence allowance would not be better off overall under the Agreement.

[45] Coles provided an undertaking to address this concern however, I was not initially satisfied that the undertaking sufficiently addressed the issue that had been raised. Coles provided a revised undertaking stating that “an employee who holds a liquor licence under a relevant State or Territory law will be paid a flat amount of \$25.08 per week.” The undertaking provided by Coles addresses my concerns in relation to this issue.

Supported Wage System (SWS) Employees

[46] The minimum rate of pay payable to an SWS employee under item 3.2 of Appendix C of the Agreement (\$84 per week) is equal to the minimum rate of pay payable to an SWS employee under Schedule C of the Award (also \$84 per week). The Agreement does not offer a Laundry allowance (\$6.25 per week or \$1.25 per shift as provided by clause 20.2(b) the Award). Further, the majority of the terms offered by the Agreement that are more beneficial than the Award either do not apply to SWS employees, or are conditional and therefore may not apply to particular employees in practice. As a result, I was concerned that SWS employees who were not entitled to the one off cash payment payable under clause 5.6.4 of the Agreement would not be better off overall under the Agreement.

[47] Coles has undertaken that it “will apply C3.2 and C9.3 as if references to \$84 are references to \$90.50”. As \$90.50 is higher than the sum of \$84 (minimum rate payable to SWS employees under the Award) and \$6.25 (weekly laundry allowance provided by the Award). The undertaking provided by Coles has addressed my concern in relation to this issue.

Trainees

[48] Clause 5.9 of the Agreement offers trainees “[l]evel 1 team member rates (including junior rates)”. Clause 5.5.1(c) of the Agreement states that Coles may employ “a trainee under the arrangements contained in the *General Retail Industry Award 2010* (as amended).” This appears to be a reference to the National Training Wage (NTW), and suggests that the trainees referred to in clause 5.9 of the Agreement are those who would otherwise be covered by the NTW. However, clause 5.5.1(c) of the Agreement does not contain information in relation to whether trainees would be required to complete all training off-site or some on-site, nor does the Agreement as a whole provide any further information regarding the work to be performed by trainees.

[49] As a result, it is unclear whether employees paid under clause 5.9 of the Agreement as made would be better off overall under the Agreement. Consequently, I sought further information regarding the intended operation of clause 5.9 of the Agreement, as well as further information regarding the trainees covered by the Agreement to whom clause 5.9 would apply.

[50] In response, Coles undertook that:

“Where, but for this Agreement, the National Training Wage would have applied to an employee, Coles undertakes that it will pay the higher of:

- the relevant wage rates as set out in subclause 5.9, or
- the relevant National Training Wage rate plus an additional 47 cents per hour.”

[51] The Agreement offers a minimum engagement period of three hours for part-time employees. If the above undertakings are accepted, a part-time trainee working such a shift would earn \$1.41 more under the Agreement than they would receive under the NTW. This is sufficient to compensate such an employee for the per shift laundry allowance of \$1.25 provided for by the Award.

[52] Further, as the undertaking offers trainees as a minimum 47 cents per hour above the relevant NTW rate of pay, whether an employee completes all of his or her training off-site or some on-site is no longer relevant for the purposes of the BOOT.

[53] As a result, the undertaking above addresses my concerns in relation to trainees.

Classification Matching

[54] In response to question 3.3 of the Form F17 submitted to the Commission, Coles stated that “[c]lassifications between the Award and the Agreement are the same except for Customer Service Agents who are classified under level 1 of the Award but level 3 of the Agreement.”

[55] This appears to be correct, with the following exceptions:

- “team member who is required to utilise the skills of a trade for the majority of the time in a week and who has completed Coles nominated training, but who has not completed an appropriate trades course and does not hold an appropriate Certificate III” (these employees appear to fall within the indicative job title “skilled non-tradesperson” listed in clause 5.1.3 of the Agreement)- these employees are classified as Level 3 employees under the Agreement (items A1.4(b)-(c) of Appendix A, the Agreement) but appear to be more appropriately classified as Level 4 employees under the Award (see item B.4.3 of Schedule B)
- “office in charge” and “duty manager” employees, (listed in clause 5.1.3 as indicative job titles for Level 6 employees). These job titles do not appear to reflect the classification descriptions listed in Appendix A of the Agreement, and may fall within Award classification descriptions for a higher classification level.

[56] If the classification matching provided by the employer was not accurate in relation to the above employees, these employees would receive rates of pay under the Agreement either below equivalent Award rates of pay, or not high enough to compensate for reductions in entitlements under the Agreement. Such employees would not be better off overall under the Agreement.

[57] I requested submissions from Coles to address my concerns in relation to this issue.

[58] In response, Coles undertook that “the following wording, contained in A1.4, will not be applied:

A team member who is required to utilise the skills of a trade (eg bakery) for the majority of the time in a week, and who has completed Coles nominated training, but who has not completed an appropriate trades course and does not hold an appropriate Certificate III

and instead it will be read as:

A team member principally performing skilled non-trade tasks (eg bakery), and who has completed the Coles Skilled Baker Program, or similar.”

[59] This undertaking addresses my concern in relation to skilled non-tradesperson employees.

[60] Coles also provided submissions regarding “duty manager” and “office in charge” employees.

[61] In relation to “office in charge” employees, Coles has submitted that “the equivalent Award classification is the Clerical Officer Level 3.” Appendix A of the Agreement includes Clerical Officer Level 3 as an indicative job title falling within the Agreement Level 6 classification. Schedule B of the Award also lists Clerical Officer Level 3 as an indicative Level 6 job title. The Agreement and the Award both define Clerical Officer Level 3 in substantially similar terms (see item A1.7(c)-(d) of App. A of the Agreement, and item B.6.3-B.6.4 of Schedule B of the Award).

[62] Coles has also submitted that:

“Office in Charges are expected to follow procedures and guidelines as established by Coles. They operate at store level, rather than across the organisation. They exercise limited initiative, discretion and judgement. An Office in Charge would refer complex queries and payroll tasks to the support team at Coles’ head office”

[63] I requested that Coles provide a position description for “office in charge” employees covered by the Agreement. The position description provided by Coles in response to my request showed, *inter alia*, that “office in charge” employees are not required to have employees who report to them either directly or indirectly.

[64] Having regard to the position description I am satisfied that “office in charge” employees perform the work of Clerical Officer Level 3 as defined in the Agreement and

Award. Coles' submissions, which I accept have addressed my concerns in relation to this issue.

[65] In relation to "duty manager" employees, Coles submitted that:

"A 'Duty Manager' referred to in B.6.2 of the Award is not equivalent to a 'Duty Manager' under the Agreement.

Coles Duty Managers report into full-time store managers and essentially act as "Assistant or Deputy or 2IC Shop Manager of a shop with Departments/Sections."

[66] In support of these submissions, Coles has provided a position description for "Store Department Manager (Store Support Manager/ Dry Goods Manager/ Customer Service Manager/ Dairy Manager/ Fresh Produce Manager/ Delicatessen Manager/ Bakery Manager/ Meat Manager/ **Duty Manager**)"*[Emphasis added]*.

[67] The position description shows that "Store Department Manager" employees, of which "Duty Manager" employees appear to form a sub-set, report to "Store Manager" employees.

[68] The position description lists "previous experience as a Department Manager 2IC or Management Trainee and/or comparable retail industry experience" and "Technical department knowledge in their department" as "Technical Knowledge & Job Specific Skills" required by "Store Department Manager" employees.

[69] The position description also lists "Team Engagement" as a major responsibility. The team referred to appears to be a department within a Coles Supermarket.

[70] In response to Coles' submissions on this issue, RAFFWU made submissions contending that "Duty Manager" employees should properly be considered as falling within the Award Level 8 classification definition.

[71] RAFFWU submitted that the position description provided by Coles was "generic" and "does not describe the work of a Duty Manager", and that it was RAFFWU's understanding that, "[w]hile they may often also be employed as a Department Manager, ... the actual Duty Manager role is to have responsibility for the entire store in a way not dissimilar from that of a Store Manager." RAFFWU also submitted that, when on duty, "Duty Manager" employees "are often the only manager responsible for a number of departments where Department Managers are not on duty (such as in the evenings)". As a result, RAFFWU submitted that "Duty Manager" employees "are performing work at a level higher than that of a Department Manager."

[72] RAFFWU also submitted, with reference to item B.6.2 of Schedule B of the Award, that the Award drew an equivalence between the role of "Manager" and "Duty Manager" by listing "Manager/Duty Manager in a shop without Departments/Sections (may be under direction of person not exclusively involved in shop management)" as an indicative job title for Level 6 employees. Moreover, RAFFWU submitted that the Award drew a distinction between the role of Duty Manager and the roles of department manager and assistant, deputy or 2IC shop manager, by also listing "Section/Department manager with 5 or more employees (including self)," and "Assistant or Deputy or 2IC Shop Manager of a shop with Departments/Sections" as separate indicative job titles for Level 6 employees.

[73] As a result, RAFFWU submitted that the inclusion of “[a] Shop Manager of a shop with Departments/Sections” in the list of indicative job titles for Level 8 employees in the Award should be read as indicating that “Duty Manager” employees in a shop with departments, such as Coles, should properly be classified as Level 8 employees under the Award.

[74] In response to RAFFWU’s submissions, Coles re-iterated its earlier submission that “Duty Manager” employees should properly be classified as Level 6 employees under the Award. The Applicant further submitted that:

- “‘indicative job titles’ are just that, ‘indicative’ rather than determinative”;
- RAFFWU’s submissions in relation to the Award failed to take into account that:
 - “The indicative job title is ‘Manager/Duty Manager’ not simply ‘Duty Manager’”; and that
 - “The Manager/Duty Manager “may be under direction of person not exclusively involved in shop management”. Taken in the negative, a Manager/Duty Manager, of a store without departments, who is under the direction of a person exclusively involved in shop management (ie. a store manager looking after just one store) would be at a lower classification lower than Retail Employee Level 6.” As a result, a “Duty Manager” employee, who reports to a Store manager employee cannot be considered to be a Level 8 employee under the Award.

[75] Finally, Coles submitted that “a Coles Duty Manager does not perform the same role as a Coles Store Manager”. Coles provided a list of responsibilities that “Store Manager” employees are required to undertake, but that “Duty Manager” employees are not required to undertake. These include “the setting of rosters each roster cycle”, being “accountable for remuneration costs, waste and mark downs for a store”, “planning, career development and product line decisions” and “the handling of customer feedback that has been escalated from the team”. Coles also submitted that “[w]ere an issue beyond normal business as usual to arise (such as a system outage or flooding), a Coles Duty Manager would contact the Coles Store Manager rather than making a decision themselves.”

[76] RAFFWU asserts that “the “may”” in “may be under direction of person not exclusively involved in shop management” is clearly not intended to be a requirement. Casting the provision in the negative is inappropriate.”

[77] RAFFWU also noted that Coles had submitted that “a Coles Duty Manager is responsible for the immediate in-person supervision of the store for a particular period of time.” RAFFWU contends that this should be viewed as an admission that “Duty Manager” employees hold greater responsibility than department manager employees.

[78] In light of the uncertainty concerning the responsibilities of a Duty Manager in the Agreement, I afforded Coles an opportunity to consider providing an undertaking to address those concerns. In response, Coles have provided an undertaking which outlines the definition and responsibilities of a Coles Duty Manager. The undertaking provided by Coles demonstrates the delineation between a “Duty Manager” and “Store Manager”. It is evident that a Coles “Duty Manager” is not responsible for the day to day operations of a store and

does not carry the same responsibility as that of a Store Manager. Moreover, given that a Duty Manager reports to a Store Manager it is difficult to reconcile how both positions can be classified as a Level 8 under the Award. I am satisfied that a Duty Manager as described in the undertaking is properly classified as a Level 6 under the Award and that the undertaking provided by Coles addresses the concerns that I held.

[79] All of the bargaining representatives were afforded an opportunity to raise any further submissions or objections to the revised undertakings that were provided by Coles. Aside from the objections that have been referred to above from RAFFWU, no bargaining representatives have raised any concerns with the submissions or undertakings provided by Coles.

[80] 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. The undertakings are accepted. Having regard to the undertakings, I am satisfied that the Agreement passes the BOOT.

[81] Subject to the undertakings referred to above, and on the basis of the material contained in the application and accompanying statutory declaration, I am satisfied that each of the requirements of ss.186, 187, and 190 as are relevant to this application for approval have been met.

[82] As indicated earlier, the Shop, Distributive and Allied Employees Association, The Australasian Meat Industry Employees Union, Transport Workers' Union of Australia and The Australian Workers' Union being bargaining representatives for the Agreement, have given notice under s.183 of the Act each organisation wants the Agreement to cover it. In accordance with s.201(2) and based on the statutory declarations provided by the organisations, I note that the Agreement covers the four aforementioned organisations.

[83] The Agreement with undertakings was approved on 23 April 2018 and, in accordance with s.54, will operate from 30 April 2018. The nominal expiry date of the Agreement is 30 April 2020.

DEPUTY PRESIDENT

Written Submissions

RAFFWU Outline of Submissions dated 19 March 2018, 3 April 2018, 18 April 2018 and 19 April 2018

Coles Outline of Submissions dated 28 March 2018, 16 April 2018, 18 April 2018 and 20 April 2018

SDA Outline of Submissions dated 28 March 2018

AWU Outline of Submissions dated 29 March 2018 and 19 April 2018

AMIEU Outline of Submissions dated 4 April 2018

TWU Outline of Submissions dated 6 April 2018

Mr Kurt Bryant and Ms Penny Vickers Outline of Submissions dated 4 April 2018

Ms Ann Wells Outline of Submissions dated 5 April 2018

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Annexure A

23 April 2018

Dear Deputy President,

AG2018/750 - Application for Approval of the Coles Supermarkets Enterprise Agreement 2017

I write in respect of correspondence from Member Assist dated 13 April.

Undertakings by Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited

9.6 Personal Leave

Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited undertake that subclause 9.6.2 will be applied in accordance with Section 96 of the *Fair Work Act 2009*.

Liquor Licence Allowance

Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited undertake that an employee who holds a liquor licence under a relevant State or Territory law will be paid a flat amount of \$25.08 per week.

Supported Wage System (SWS) employees

Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited undertake that it will apply C3.2 and C9.3 as if references to \$84 are references to \$90.50.

Trainees

Where, but for this Agreement, the National Training Wage would have applied to an employee, Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited undertake that it will pay the higher of:

- the relevant wage rates as set out in subclause 5.9, or
- the relevant National Training Wage rate plus an additional 47 cents per hour.

Level 3 Classification

Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited undertake that the following wording, contained in A1.4, will not be applied:

A team member who is required to utilise the skills of a trade (eg bakery) for the majority of the time in a week, and who has completed Coles nominated training, but who has not completed an appropriate trades course and does not hold an appropriate Certificate III

and instead it will be read as:

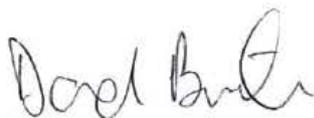
A team member principally performing skilled non-trade tasks (eg bakery), and who has completed the Coles Skilled Baker Program, or similar.

Duty Manager Definition

For the purposes of subclause 5.1.3, 'duty manager' means a Duty Manager who provides in-person supervision of routine store operations for a particular period of time when the Store Manager or other management are not physically present at the store. A Duty Manager reports to the Store Manager. A Duty Manager is not responsible for duties of the Store Manager such as:

- the setting of rosters for the Store (though they may be required to arrange replacements for absent team members from time to time);
- planning, ongoing career development, budgets or achievement of financial outcomes for the Store.

For and on behalf of Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited



David Andrew Brewster
Legal and Safety Director

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.

Coles Supermarkets Enterprise Agreement 2017

Table of Contents

PART 1 — APPLICATION AND OPERATION	6
1.1 Title	6
1.2 Coverage	6
1.3 Term of Operation	6
1.4 Definitions	6
1.5 No Extra Claims	8
1.6 National Employment Standards	8
1.7 Modern Award	8
Part 2 – WORKPLACE FLEXIBILITY:	8
2.1 Agreement Availability	8
2.2 Individual Flexibility Arrangements	8
Part 3 – CONSULTATION AND DISPUTE RESOLUTION	9
3.1 Consultation	9
3.2 Dispute Resolution	10
Part 4 – TYPES OF EMPLOYMENT AND TERMINATION OF EMPLOYMENT	11
4.1 Types of Employment	11
4.2 Termination of Employment	14
4.3 Redundancy	15
Part 5 – CLASSIFICATIONS AND WAGE RATES	16
5.1 Classifications	16
5.2 Minimum Hourly Rates	17
5.3 Top Up Payment Scheme	17
5.4 Junior Rates	20
5.5 Apprentices	20
5.6 Wage and Allowance increases	22
5.7 Payment of wages	22
5.8 Supported wage	23
5.9 Training wage	23
Part 6 - ALLOWANCES	23
6.1 Meal Allowance	23
6.2 Special Clothing	23
6.3 Excess travelling costs	23

6.4	<i>Cold work allowance</i>	24
6.5	<i>First aid allowance</i>	24
6.6	<i>Recall allowance</i>	24
6.7	<i>Higher duties</i>	24
6.8	<i>Location Allowances</i>	24
6.9	<i>Other allowances</i>	24
Part 7 - SUPERANNUATION		24
7.1	<i>Superannuation legislation</i>	24
7.2	<i>Employer contributions</i>	25
7.3	<i>Superannuation fund</i>	25
7.4	<i>Voluntary team member contributions</i>	25
7.5	<i>Absence from work</i>	25
7.6	<i>Salary Sacrifice</i>	25
Part 8 – ROSTERING AND HOURS OF WORK		26
8.1	<i>Hours of work</i>	26
8.2	<i>Rostering Principles</i>	26
8.3	<i>Rostering by employment type</i>	27
8.4	<i>Notification and changes to rosters</i>	28
8.5	<i>Overtime</i>	28
8.6	<i>Penalties</i>	30
8.7	<i>Shiftwork</i>	31
8.8	<i>Breaks</i>	32
8.9	<i>Rates not cumulative</i>	33
PART 9 — PUBLIC HOLIDAYS AND LEAVE		33
9.1	<i>Public Holidays</i>	33
9.2	<i>Annual Leave</i>	35
9.3	<i>Long Service Leave</i>	37
9.4	<i>Leave of Absence</i>	38
9.5	<i>Pre-approved Leave Arrangements</i>	38
9.6	<i>Personal Leave</i>	38
9.7	<i>Carer’s Leave</i>	39
9.8	<i>Compassionate Leave</i>	40
9.9	<i>Parental Leave and Related Entitlements</i>	41
9.10	<i>Pre-Natal Leave</i>	45
9.11	<i>Blood Donor Leave</i>	45

9.12	<i>Natural Disaster Leave</i>	46
9.13	<i>Jury Service Leave</i>	46
9.14	<i>Emergency Services Leave</i>	47
9.15	<i>Defence Service Leave</i>	47
9.16	<i>Domestic and Family Violence Leave</i>	48
9.17	<i>Time Off and Leave for Casual team members</i>	48
APPENDICES		49
<i>APPENDIX A – CLASSIFICATIONS</i>		49
A1.	<i>Job Titles and typical tasks</i>	49
<i>APPENDIX B – SAVED PROVISIONS</i>		53
B.1	<i>Voluntary work on a Sunday</i>	53
B.2	<i>Voluntary work after 6pm on a Saturday</i>	54
B.3	<i>Saved minimum hours per week</i>	54
B.4	<i>Saved provisions pick up</i>	54
B.6	<i>Buy-out of saved provisions</i>	54
B.7	<i>Part-time reduction of hours</i>	54
B.8	<i>Accident pay – Victoria only</i>	54
B.9	<i>Broken Hill Long Service Leave</i>	54
<i>APPENDIX C – SUPPORTED WAGE</i>		55
C1	<i>Team members employed under supported wage</i>	55
C2	<i>Eligibility criteria</i>	55
C3	<i>Supported wage rates</i>	55
C4	<i>Assessment of capacity</i>	56
C5	<i>Lodgement of SWS wage assessment agreement</i>	56
C6	<i>Review of assessment</i>	56
C7	<i>Other terms and conditions of employment</i>	56
C8	<i>Workplace adjustment</i>	56
C9	<i>Trial period</i>	56
<i>APPENDIX D -TOP UP PAYMENT SCHEME</i>		57
D1.	<i>Example calculations</i>	57
<i>APPENDIX E - IMPACT OF THE 4 YEARLY REVIEW ON THIS AGREEMENT</i>		61
<i>APPENDIX F – PENALTY RATES PR 593953</i>		62
<i>SIGNATORIES TO COLES SUPERMARKETS ENTERPRISE AGREEMENT 2017</i>		64

PART 1 — APPLICATION AND OPERATION

1.1 Title

This is the *Coles Supermarkets Enterprise Agreement 2017*.

1.2 Coverage

1.2.1 This Agreement shall cover and apply to:

- (a) Coles Supermarkets Australia Pty Ltd (ABN 45 004 189 708) and Bi-Lo Pty Limited (ABN 75 002 805 094); and
- (b) wages-paid team members who:
 - (i) are engaged by Coles under one of the classifications in subclause 5.1.3 and Appendix A of this Agreement to perform work in respect of Coles' Supermarket Retail Operations; and
 - (ii) for the purposes of Section 48 of the Act, would have been covered by the *General Retail Industry Award 2010* as at the time of approval of this Agreement.

1.2.2 So as to avoid doubt, this Agreement shall not cover or apply to any team member engaged by Coles for the purpose of working solely, or predominantly, within the Meat Department. This subclause does not exclude team members who may from time-to-time work in the Meat Department where they have been engaged for a purpose other than working solely or predominantly within the Meat Department.

1.2.3 This Agreement shall also not cover or apply to salaried Department Managers, Duty Managers, Team Leaders, Store Support Managers, Store Managers or other salaried managerial team members. It also excludes any team members (including clerical or administrative team members) principally based at a Store Support Centre.

1.2.4 Subject to a FWC note under s.201 of the Act, the Agreement will also cover:

- (a) the Shop, Distributive and Allied Employees' Association ("SDA"); and
- (b) the Australian Workers' Union (Queensland Branch) ("AWU").

1.3 Term of Operation

The Agreement will commence on 30 April 2018, or 7 days after approval by the FWC, whichever is the later. The nominal expiry date is 30 April 2020.

1.4 Definitions

1.4.1 "Act" means the *Fair Work Act 2009* (as amended).

1.4.2 "Adopted Child" for the purposes of adoption in clause 9.9 means a child who:

- (a) is 16 years or under on the day or expected day of placement for adoption;
- (b) will not have lived continuously with the team member for a period of 6 months or more at the day or the expected day of placement for adoption; and
- (c) is not (other than because of the adoption) a child or step-child of the team member or the team member's spouse.

1.4.3 "Agreement Pay Rate" means the average hourly pay rate as referred to in clause 5.3 and calculated on a weekly basis following commencement of this Agreement.

1.4.4 "Anniversary Year" means a year that commences on the anniversary of a team member's commencement date but that is separate to the meaning of continuous service.

1.4.5 "Base Rate of Pay" means the minimum hourly pay rate for a relevant classification stated in 5.2, or as adjusted by clauses 5.4, 5.5 or 5.8 as applicable.

1.4.6 "Child" means a child in respect of which:

- (a) a team member has given birth;

- (b) a team member's spouse has given birth;
 - (c) another person has given birth under a surrogacy or equivalent arrangement and in respect of whom a team member or the team member's spouse has been granted legal parental authority.
- 1.4.7 "Coles" and/or "Company" refers to either Coles Supermarkets Australia Pty Ltd and/or Bi-Lo Pty Limited as relevant or applicable.
- 1.4.8 "Concurrent Leave" means a period of time when both members of an Employee Couple take leave under subclause 9.9.3.
- 1.4.9 "Continuous service" for the purpose of leave accruals includes all service with Coles from the date of engagement, but will not include in any Anniversary Year of accrual:
- (a) Unauthorised absences of more than 1 week; or
 - (b) Authorised unpaid absences of more than 1 week.
- 1.4.10 "Current Spousal Relationship" means the relationship between a current married or de facto couple. It excludes the relationship between former spouses or de factos.
- 1.4.11 "Eligible Casual" for the purposes of clause 9.9 means a team member who:
- (a) has a reasonable expectation of ongoing work with Coles had it not been for the birth or adoption; and
 - (b) is engaged on a regular and systematic basis (i.e. at least 1 start per fortnight) for an ongoing period of at least 12 months immediately before starting parental leave; or
 - (c) was engaged on a regular and systematic basis for two engagements and the combined length of the first and second period of employment is 12 months subject to the following:
 - (i) the sequence of periods during the first period of employment was less than 12 months and the employment ended at the team member's initiative; and
 - (ii) the sequence of periods during the second period of employment started at least 3 months following the end of the first period of employment.
- 1.4.12 "Employee Couple" means a couple in a current spousal relationship where both individuals are currently employed (not necessarily by the same employer).
- 1.4.13 "FWC" means the Fair Work Commission or successor.
- 1.4.14 "Immediate Family Member" means a team member's:
- (a) spouse (including former, de facto and a former de facto spouse); or
 - (b) child, (including step, adopted, ex-nuptial or foster child); or
 - (c) parent (including step-parent); or
 - (d) father and mother-in-law; or
 - (e) grandparent (including grandparent-in-law); or
 - (f) grandchild (including grandchild of a spouse); or
 - (g) siblings; or
 - (h) brother and sister-in-law.
- 1.4.15 "Keeping in Touch Days" are days that allow a team member to attend work whilst on unpaid parental leave as defined in the Act.
- 1.4.16 "NES" means the National Employment Standards.
- 1.4.17 "Notice Board" may mean an electronic notice board, or equivalent, where accessible to relevant team members.
- 1.4.18 "Permanent team member" means either a full-time or part-time team member.
- 1.4.19 "Pre-parental Leave Position" means the position held by a team member:

- (a) immediately before starting leave or part-time employment under clause 9.9, whichever occurs first; or
- (b) immediately before transferring to a safe job under clause 9.9.

- 1.4.20 "Protected Pay Rate" means the rate of pay calculated under subclause 5.3.3(a)
- 1.4.21 "Spouse" includes a former spouse, a de facto spouse or a former de facto spouse, and for the avoidance of doubt includes persons in a same sex relationship.
- 1.4.22 "Supermarket Retail Operations" means the operations of Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited with regards to its retail business including supermarkets, online and home delivery services.
- 1.4.23 "SWS" means supported wage system.
- 1.4.24 "Team member" means an employee of Coles.
- 1.4.25 "Top Up Payment Scheme" means the scheme set out in clause 5.3.
- 1.4.26 "Tradesperson" means a team member who is qualified to perform a trade and is engaged to perform that trade.
- 1.4.27 "Union" means an organisation registered as such under the *Fair Work (Registered Organisations) Act 2009* that is entitled to represent the industrial interests of team members covered by this Agreement.

1.5 No Extra Claims

This Agreement is made in full and final settlement of all claims. Team members covered by this Agreement shall not pursue any further claims during the life of this Agreement relating to their conditions of employment, whether dealt with in this Agreement or not.

1.6 National Employment Standards

Notwithstanding anything contained in this Agreement, no team member covered by this Agreement will be disadvantaged against the terms of the NES.

1.7 Modern Award

Consistent with s.57 of the Act, the *General Retail Industry Award 2010* is displaced in its entirety by this Agreement except where clauses are explicitly incorporated by this Agreement.

Part 2 – WORKPLACE FLEXIBILITY:

2.1 Agreement Availability

Coles will ensure a copy of this Agreement will be easily available to all team members.

2.2 Individual Flexibility Arrangements

2.2.1 Coles and a team member 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 Coles and the team member in relation to 1 or more of the matters mentioned in subclause 2.2.1(a); and
- (c) the arrangement is genuinely agreed to by Coles and the team member.

2.2.2 Coles must ensure that the terms of the individual flexibility arrangement:

- (a) are about permitted matters under section 172 of the Act; and
- (b) are not unlawful terms under section 194 of the Act; and
- (c) result in the team member being better off overall than the team member would be if no arrangement was made.

2.2.3 Coles must ensure that the individual flexibility arrangement:

- (a) is in writing; and
- (b) includes the name of Coles and the team member; and
- (c) is signed by an authorised representative of Coles and the team member and if the team member is under 18 years of age, signed by a parent or guardian of the team member; 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 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
- (e) states the day on which the arrangement commences.

2.2.4 Coles must give the team member a copy of the individual flexibility arrangement within 14 days after it is agreed to.

2.2.5 Coles or the team member 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 Coles and the team member agree in writing - at any time.

Part 3 – CONSULTATION AND DISPUTE RESOLUTION

3.1 Consultation

3.1.1 Consultation regarding major workplace change

- (a) **Coles to notify**
 - (i) Where Coles 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, Coles must notify the team members who may be affected by the proposed changes and their representatives, if any.
 - (ii) Significant effects include termination of employment; major changes in the composition, operation or size of Coles' 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.
- (b) **Coles to discuss change**
 - (i) Coles must discuss with the team members affected and their representatives, if any, the introduction of the changes referred to in subclause 3.1.1(a), the effects the changes are likely to have on team members and measures to avert or mitigate the adverse effects of such changes on team members and must give prompt consideration to matters raised by the team members and/or their representatives in relation to the changes.
 - (ii) The discussions must commence as early as practicable after a definite decision has been made by Coles to make the changes referred to in subclause 3.1.1(a).
 - (iii) For the purposes of such discussion, Coles must provide in writing to the team members concerned and their representatives, if any, all relevant information about the changes including

the nature of the changes proposed, the expected effects of the changes on team member and any other matters likely to affect team members provided that Coles is not required to disclose confidential information the disclosure of which would be contrary to Coles' interests.

3.1.2 Consultation about changes to rosters or hours of work

- (a) This subclause should be read in conjunction with clause 8.4 (Notification and changes to rosters).
- (b) Where Coles proposes to change a team member's regular roster or ordinary hours of work, Coles must consult with the team member or team members affected and their representatives, if any, about the proposed change.
- (c) Coles must:
 - (i) provide to the team member or team members affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the team member's regular roster or ordinary hours of work and when that change is proposed to commence);
 - (ii) invite the team member or team members affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring, or study responsibilities); and
 - (iii) give consideration to any views about the impact of the proposed change that are given by the team member or team members concerned and/or their representatives.
- (d) The requirement to consult under this subclause does not apply where a team member has irregular, sporadic or unpredictable working hours.
- (e) These provisions are to be read in conjunction with other Agreement provisions concerning the scheduling of work and notice requirements.

3.2 Dispute Resolution

3.2.1 This term sets out procedures to settle a dispute:

- (a) about a matter arising under the agreement; or
- (b) in relation to the NES; or
- (c) concerning any other matter where the team member and Coles agree.

3.2.2 Both team members and Coles may appoint a representative of their choice for the purposes of the procedures in this term.

3.2.3 So as to avoid doubt, a Union may initiate a dispute under this clause on behalf of a Union member(s) in respect of whom they are entitled to represent the industrial interests.

3.2.4 In the first instance the team member(s) must try to resolve the dispute at the workplace level, by discussions between the team member or members and relevant supervisors and/or management.

3.2.5 If the dispute is still unresolved, after the team member puts the dispute in writing, an appropriate representative of Coles will assist in resolving the dispute. The team member may appoint a team member representative to represent them in relation to the dispute.

3.2.6 If the dispute is still unresolved, a senior representative of Coles or another authorised representative of Coles will become involved. The team member and/or their team member representative will meet as required with Coles' representatives.

3.2.7 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the FWC.

3.2.8 The FWC may deal with the dispute in 2 stages:

- (a) the FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and

- (b) if the FWC is unable to resolve the dispute at the first stage, the FWC may then arbitrate the dispute by declaration.
- 3.2.9 If the FWC arbitrates the dispute, it may also use the powers that are available to it under the Act.
- 3.2.10 A decision that the FWC makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, appeals may be made against the decision, as well as any appeal to the Federal Court on any question of law.
- 3.2.11 While the parties are trying to resolve the dispute using the procedures in this term:
 - (a) a team member must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
 - (b) a team member must comply with a direction given by Coles to perform other available work at the same workplace, or at another workplace, unless the work is not safe.
- 3.2.12 For disputes relating to changes to rosters under subclauses 3.1.2, 4.1.4(j) and 8.4 only, until the dispute is resolved work shall continue in accordance with the team member's roster such as it was immediately prior to the dispute arising. For the avoidance of doubt, for disputes not relating to changes to rosters, subclause 3.2.11 shall apply.

Part 4 – TYPES OF EMPLOYMENT AND TERMINATION OF EMPLOYMENT

4.1 Types of Employment

4.1.1 Team members under this Agreement will be employed in one of the following categories:

- (a) full-time team members;
- (b) part-time team members;
- (c) limited tenure team members; or
- (d) casual team members.

4.1.2 At the time of first being employed Coles will inform each team member of the terms of their engagement and, in particular, whether they are to be full-time, part-time, limited tenure or casual.

4.1.3 Full-time team members

A full-time team member is a team member who is engaged to work an average of 38 hours per week over a cycle of up to 4 weeks.

4.1.4 Part-time team members

- (a) A part-time team member is a team member who:
 - (i) works less than 152 hours per 4 week cycle;
 - (ii) works no less than 36 hours per 4 week cycle;
 - (iii) works no more than 38 hours per week; and
 - (iv) has reasonably predictable hours of work.
- (b) For part-time team members first employed immediately prior to the commencement of this Agreement their existing contractual entitlements for minimum hours over the four week cycle will continue to apply except where a team member and Coles agree otherwise.
- (c) At the time of first being employed, Coles and the part-time team member will agree, in writing, on a regular pattern of work, specifying at least:
 - (i) the hours worked each day;
 - (ii) which days of the week the team member will work;
 - (iii) the actual starting and finishing times of each day;
 - (iv) that any variation will be in writing;

- (v) minimum daily engagement is 3 hours; and
 - (vi) the times of taking and the duration of meal breaks.
- (d) Any agreement to vary the regular pattern of work will be made in writing before the varied hours commence. A variation under this subclause may be of a temporary (including ad-hoc or one off variations) or permanent nature. A part-time team member can elect to provide written standing consent to vary their regular pattern of work in order to work additional hours at the rates of pay specified in clause 4.1.4(h), provided such standing consent may be withdrawn by the team member at any time. (To avoid doubt, a team member who provides standing consent can still verbally refuse to work additional hours when offered on any occasion.) Such a variation in writing may be made by electronic means (this will include MyColes, One Team, E-mail and SMS).
- (e) A record of the agreement and any variations to it (including by way of standing consent) will be retained by Coles and provided to the team member. This may be provided by electronic means as noted above.
- (f) Coles is required to roster a part-time team member for a minimum of three consecutive hours on any shift.
- (g) A team member who does not meet the definition of a part-time team member and who is not a full-time team member or engaged as a limited tenure team member will be paid as a casual team member in accordance with subclause 4.1.6.
- (h) A part-time team member employed under the provisions of this subclause will be paid for ordinary hours worked at the hourly rate prescribed for the class of work performed. All time worked in excess of the hours as agreed under subclause 4.1.4(c) will be overtime and paid for at the rates prescribed in subclause 8.5.2. So as to avoid doubt, any variation under 4.1.4(d) will not attract overtime.
- (i) Coles recognises the importance of part-time team members. Subject to business needs and prerogative, Coles will endeavour to offer additional hours under subclause 4.1.4(d), where they are required, to part-time team members.
- (j) Rosters
- (i) The rostered hours of part-time team members may be altered at any time by mutual agreement between Coles and the team member, including any variations agreed under subclause 4.1.4(d).
 - (ii) Where not by mutual agreement, any permanent roster change will be provided with a minimum of 7 days' notice. Should the team member disagree with the roster change, they will be given a minimum of 14 days written notice instead of 7 days, during which time there will be discussions aimed at resolving the matter in accordance with clause 3.2 of this Agreement.
 - (iii) Rosters will not be changed except as provided in subclause 4.1.4(j) from week to week, or fortnight to fortnight, nor will they be changed to avoid any Agreement entitlements.
- (k) Agreement entitlements
- A part-time team member will be entitled to payments in respect of annual leave, public holidays, personal leave and compassionate leave arising under the NES or this Agreement on a proportionate basis. Subject to the provisions contained in this subclause all other provisions of the Agreement relevant to full-time team members will apply to part-time team members.
- (l) Right to Request increase to permanent minimum contractual hours
- Where a part-time team member has over a period of at least 12 months regularly worked a number of additional temporary hours under subclause 4.1.4(d), the team member may request in writing that Coles agree to increase their permanent minimum contractual hours. If Coles agrees to the request, the new agreement will be recorded in writing. Coles may refuse the request upon reasonable business grounds in writing.
- (m) Conversion of existing team members
- No full-time or casual team member will be transferred by Coles to part-time employment without the written consent of the team member. Provided that where such transfer occurs all leave entitlements accrued will be deemed to be continuous. A full-time team member who requests part-time work and is given

such work may revert to full-time employment on a specified future date by agreement with Coles and recorded in writing.

4.1.5 Limited Tenure

- (a) A limited tenure refers to a team member engaged on a full-time or part-time basis for a specific task or tasks and/or for a specific period of time.
- (b) The minimum duration of a limited tenure is 1 month. However, if the sole purpose of the limited tenure is to replace a team member on annual leave the minimum duration is 1 week.
- (c) The maximum duration of a limited tenure is 12 months. However, this maximum shall not apply if the sole purpose of the limited tenure is to replace a team member on parental leave.
- (d) Limited tenure employment shall be voluntary. Periods of limited tenure must not run consecutively and a limited tenure may be extended by agreement with the team member, in line with the relevant maximum duration, detailed in subclause 4.1.5(c).
- (e) Prior to the start of a limited tenure, the team member will be advised in writing:
 - (i) of the nature of the work;
 - (ii) the hours to be worked;
 - (iii) the Base Rate of Pay; and
 - (iv) the start and finish dates of their limited tenure employment.
- (f) Existing team members who are entitled to savings provisions contained in this Agreement will continue to be entitled to the applicable savings provisions whilst engaged on limited tenure.
- (g) At the end of the limited tenure period, an existing team member will revert to a position which is no less advantageous to the team member than that which existed immediately prior to the limited tenure commencing.
- (h) Where an existing team member is offered and accepts a limited tenure, such team member is not 'engaged under a contract of employment for a specified period of time' as referred to in s.386(2) of the Act but are continuing team members.
- (i) A team member who accepts a change to limited tenure will not be disadvantaged in respect to their terms and conditions of employment.
- (j) A limited tenure may be terminated by either the team member or Coles in accordance with subclause 3.1.1, clause 4.2 and clause 4.3.

4.1.6 Casual team members

- (a) A casual team member is a team member engaged as such.
- (b) A casual team member will be paid both the hourly rate payable to a full-time team member and an additional 25% of the Base Rate of Pay for a full-time team member.
- (c) Casual team members will be paid at the termination of each engagement or weekly or fortnightly in accordance with pay arrangements for full-time and part-time team members.
- (d) The minimum daily engagement of a casual is 3 hours.

4.1.7 Right to request casual conversion

Eligibility:

- (a) A casual team member who has over a calendar period of at least 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, they could continue to perform as a full-time or part-time team member, may request in writing to be converted to a full-time or part-time team member as follows:
 - (i) If they have worked an average of 38 or more hours a week in the period of 12 months' casual employment they may request to be converted to a full-time team member; or

- (ii) If they have worked at an average of less than 38 hours a week in the period of 12 months' casual employment they may request to be converted to a part-time team member consistent with the pattern of hours previously worked.

Conversion process:

Where agreed:

- (b) Where it is agreed that a casual team member may convert to full or part-time employment, such agreement shall be recorded in writing including details required under subclauses 4.1.2 and 4.1.4(c).
- (c) The date from which the conversion will take effect is the commencement of the next pay cycle following such agreement being reached unless otherwise agreed.

Where not agreed:

- (d) Coles may decline a request on reasonable business grounds in writing within 21 days of the request being made, after there has been consultation with the team member. Reasonable business grounds include but are not limited to:
 - (i) 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;
 - (ii) it is known or reasonably foreseeable that the regular casual team member'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 team member 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 team member'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 team member is available to work.

Notification and other matters:

- (e) A casual team member must not be engaged and/or re-engaged (which includes a refusal to re-engage), or have his or her hours reduced or varied, in order to avoid any right or obligation under this subclause.
- (f) Coles must provide a casual team member with a copy of the provisions of subclause 4.1.7 within the first 12 months of the team member's first engagement to perform work.

4.2 Termination of Employment

4.2.1 Coles may terminate a Permanent team member's employment by giving written notice of termination as follows:

Period of continuous service	Minimum notice	
	Team members under 45	Team members 45 and over
1 year or less	1 week's	1 week's
More than 1 year up to 2 years	2 weeks'	2 weeks'
More than 2 years up to 3 years	2 weeks'	3 weeks'
More than 3 years up to 5 years	3 weeks'	4 weeks'
More than 5 years	4 weeks'	5 weeks'

4.2.2 The period of notice in this clause will not apply to team members at the natural ending of a limited tenure or team members terminated for serious misconduct, in accordance with the NES.

Notice of termination by a team member

4.2.3 A full-time or part-time team member can resign by giving 1 week's notice in writing. If a team member fails to give the required notice Coles may withhold from any monies due to the team member on termination under this Agreement or the NES, an amount not exceeding the amount the team member would have been paid under this Agreement in respect of the period of notice required by this subclause less any period of notice actually given by the team member.

Job search entitlement

4.2.4 Where Coles has given notice of termination to a team member, a team member must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the team member after consultation with Coles.

4.3 Redundancy

4.3.1 Except as otherwise provided for in this Agreement, redundancy is as provided for in the NES.

4.3.2 Discussions before terminations (to be read in conjunction with clause 3.1)

- (a) After Coles has made a definite decision that the job a team member has been doing will no longer be done by anyone (and this is not due to the ordinary and customary turnover of labour) and that decision may lead to termination of employment, Coles will hold discussions with:
 - (i) affected team members; and
 - (ii) the Union/s known to Coles as having members and who are entitled to represent the industrial interests of the team members concerned.
- (b) Discussions will take place as soon as practicable and will cover:
 - (i) the reasons for the proposed terminations;
 - (ii) the measures to avoid or minimise the termination;
 - (iii) the measures to mitigate the adverse effects on the team members concerned;
 - (iv) the number and categories of team members likely to be affected;
 - (v) the number of team members normally employed; and
 - (vi) when the terminations are likely to occur.
- (c) All relevant information will be provided in writing to the team member concerned and the Union/s as defined in subclause 4.3.2(a)(ii).
- (d) However, Coles will not be required to disclose confidential information which would negatively impact Coles' interests.

4.3.3 Transfer to lower paid duties

- (a) A team member transferred to a lower paid classification due to redundancy is entitled to the same notice as if their employment had been terminated. Coles can make payment instead of notice. Where this occurs the team member will be paid the difference between their former Base Rate of Pay and their new Base Rate of Pay for notice.

4.3.4 Team member leaving during notice period

- (a) A team member given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The team member is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

4.3.5 Job search entitlement

- (a) A team member given notice of termination in circumstances of redundancy must 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.
- (b) If the team member has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the team member must, at the request of Coles, 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.

- (c) This entitlement applies instead of subclause 4.2.4.

4.3.6 Amount of Redundancy pay

- (a) Instead of the table provided in Section 119(2) of the Act, the amount of redundancy pay will be as follows:

Period of continuous service	Redundancy pay scale	
	Team members under 45	Team members 45 and over
Less than 1 year	-	-
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 and more	16 weeks'	20 weeks'

4.3.7 Changing redundancy pay

- (a) Redundancy pay as provided in subclause 4.3.6 and notice of termination as provided in subclause 4.2.1, will not apply where there is a transfer of business and Coles obtains employment for a team member on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the team member's terms and conditions of employment with Coles immediately before the termination and the new employer recognises the team member's service with Coles.
- (b) Where other acceptable employment is found for a team member in a related entity of Coles, the team member's entitlements to personal leave, annual leave and long service leave will be transferred to the new business.

Coles may apply to the FWC to change the redundancy pay where Coles obtains other acceptable employment for a team member (unless there is a transfer of business).

Part 5 – CLASSIFICATIONS AND WAGE RATES

5.1 Classifications

5.1.1 All team members covered by this Agreement must be classified according to the structure set out in 5.1.3 and Appendix A Classifications. Coles must advise team members in writing of their classification, and/or job title if specifically referred to in subclause 5.1.3, and of any changes to their classification.

5.1.2 The classification by Coles must be according to the skill level or levels required to be exercised by the team member in order to carry out the principal functions of the employment as determined by Coles.

5.1.3 Classification levels and typical job titles:

Classification level	Typical job titles included in classification
Level 1 team member	Store team member, store cleaner, personal shopper
Level 2 team member	Store team member (ride on trolley collector), Coles Services vehicle operators
Level 3 team member	Skilled non-tradesperson, second in charge (non-trades), customer service agent
Level 4 team member	Baker, administration assistant, service supervisor (supervising

	up to 15 team members)
Level 5 team member	Service supervisor (supervising over 15 team members), second in charge (trades)
Level 6 team member	Office in charge, department manager/team leader (trades), department manager/team leader (non-trades), duty manager

5.2 Minimum Hourly Rates

5.2.1 Subject to clauses 5.3, 5.4, 5.5 and 5.8 team members employed under this Agreement will be paid the following minimum hourly rates of pay:

Classification	Per hour \$	Full-time weekly rate equivalent \$
Level 1 team member	\$20.55	\$780.90
Level 2 team member	\$21.04	\$799.52
Level 3 team member	\$21.37	\$812.06
Level 4 team member	\$21.79	\$828.02
Level 5 team member	\$22.68	\$861.84
Level 6 team member	\$23.02	\$874.76

5.2.2 Where, as a result of rounding, any difference exists between the weekly and hourly rate, the hourly rate listed above shall prevail.

5.3 Top Up Payment Scheme

5.3.1 Purpose

Coles recognises that notwithstanding the making of this new Agreement, there will be some circumstances where certain team members will have enjoyed a higher average rate of pay based on the particular hours that they had worked in the last 12 months, or lesser period of employment if applicable, prior to the making of this Agreement. Coles has developed this top up payment scheme in order to ensure that (as far as reasonably practicable) team members employed as at the date of a successful vote on this Agreement will continue to effectively receive at least the average rate of pay that they had previously received prior to the date of successful vote. Over time it is expected that the Top Up Payment Scheme will become less relevant following the increases to the hourly minimum rates under this Agreement. The terms in clause 5.3 govern how this top up payment scheme will apply.

5.3.2 Eligibility

- (a) This clause will apply to:
- (i) Permanent or limited tenure team members employed by Coles Supermarkets Pty Ltd or Bi-Lo Pty Ltd as at the date of a successful vote on this Agreement under a classification contained in the *Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Ltd Retail Agreement 2011* or under a classification in the *General Retail Industry Award 2010*;
 - (ii) casual team members employed by Coles Supermarkets Pty Ltd or Bi-Lo Pty Ltd under a classification contained in the *Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Ltd Retail Agreement 2011* or under a classification contained in the *General Retail Industry Award 2010* on or before the date of a successful vote on this Agreement and who worked at least one shift in the 3 months preceding the date of a successful vote on this Agreement and have not had a period of no shifts greater than 3 months, unless that was as a result of taking parental leave or another form of approved leave.
- (b) So as to avoid doubt, team members hired by Coles after the date of a successful vote on this Agreement will not be eligible for any top up payment under this clause.

5.3.3 Calculation of Top Up Payment:

- (a) A Protected Pay Rate will be determined by dividing the gross pay of a team member for a period of 12 months prior to the date of a successful vote on this Agreement (or lesser period of employment if applicable) by the total hours worked in that time.
- (b) For the purposes of calculating the Protected Pay Rate in subclause 5.3.3(a) the inclusions and exclusions outlined in subclause 5.3.6(a) will apply.
- (c) An Agreement Pay Rate will be determined on a weekly pay cycle basis by dividing the gross pay of the team member by the total hours worked in that week.
- (d) For the purposes of calculating the Agreement Pay Rate in subclause 5.3.3(c) the inclusions and exclusions outlined in 5.3.6(a) will apply.

5.3.4 Payment of Top Up Payment:

- (a) In any weekly pay cycle where the Protected Pay Rate exceeds the Agreement Pay Rate an eligible team member shall receive an additional gross payment of the difference between the Protected Pay Rate and the Agreement Pay Rate multiplied by the total number of hours worked by that team member, or in the case of paid leave, the total number of hours in respect of which the team member shall be paid, in that pay cycle week (less the amount of any Top Up Payment paid to the relevant team member within the previous 4 week period which was over and above the team member's entitlements under this clause). For the purposes of this calculation the inclusions and exclusions outlined in subclause 5.3.6(a) will apply.
- (b) Payment of any applicable top up payment due under this clause will be administered centrally.

5.3.5 Treatment of pay rises under clause 5.6

Where the hourly minimum rates in clause 5.2 are increased as a result of a pay rise as provided for in clause 5.6, the Protected Pay Rate referred to in subclause 5.3.3(a) for each eligible team member shall be increased in accordance with subclause 5.6.1 with the exception that the percentage to apply will be one half of the percentage applied to the rates in subclause 5.2.1.

5.3.6 Inclusions and Exclusions

- (a) The following table sets out items that are included and excluded in the calculations under subclause 5.3.3.

Leave or allowance	Will the penalty rate, overtime, leave or allowance (where received or taken) be taken into account when calculating the Protected Pay Rate?	Will the penalty rate, overtime, leave or allowance be included when calculating and comparing my weekly Agreement Pay Rate post 30 April 2018?
Penalty Rates, loading and Overtime		
Base rate of pay	Yes	Yes
Penalty rates (Saturday, Sunday, evenings, public holidays)	Yes	Yes
Overtime	Yes	Yes
Casual loading	Yes	Yes
Flex up loading	Yes	N/A
Leave		
Annual Leave	Yes	Yes
Annual Leave Loading	Yes	Not included for purposes of top up payment, but may be included in calculation of leave under subclause 9.2.11 for determining Agreement rate if applicable.
Paid Sick Leave	Yes	Yes
Unpaid Sick Leave	No	No

Paid Carer's Leave	Yes	Yes
Unpaid Carer's Leave	No	No
Paid Compassionate Leave	Yes	Yes
Unpaid Compassionate Leave	No	No
Jury Service Leave	Yes	Yes
Defence Force Service Leave	Yes	Yes
Emergency Services Leave	No	Yes
Natural Disaster Leave	Yes	Yes
Parental Leave	No. See subclause 5.3.6(b) below	No (where the team member is on unpaid parental leave). For the purposes of Coles Paid Parental will apply. See subclause 5.3.6(c) below.
Pre-natal Leave	Yes	Yes
Leave of absence	No. See subclause 5.3.6(b) below.	No.
Long Service Leave	No	Yes. See subclause 5.3.6(c) below.
Public Holidays	Yes	Yes (but only a payment where they either work the public holiday or are rostered to work that day)
Unpaid leave not covered above	No. See subclause 5.3.6(b) below.	No
Contractual changes		
Limited tenure	Yes	Yes
Change of contract	Most recent role applies	See subclause 5.3.7 below
Allowances		
Location and/or District Allowance	Yes	No
Meal Allowance	No	No
Travel Allowance	No	No
Other allowances	No	No
Higher duties	No	No.
In charge allowance	Yes	No
First Aid allowance	No	No
Dairy and Freezer allowance	No	No
Laundry allowance	Yes	No

(b) Where, due to parental leave, leave of absence or any other form of excluded leave in the last 12 months a full-time team member has less than 494 hours (pro-rata for part-time team members), or a casual team member less than 78 hours for calculation of the Protected Pay Rate, Coles will use the 3 month period of service prior to the period of leave to calculate the Protected Pay Rate. Based on those hours, the rate of pay applying as at the day before commencement of this Agreement will be applied to derive a Protected Pay Rate.

(c) Where a team member takes Long Service Leave, Coles paid parental leave or any other form of leave at half pay (or any other multiplier) the Protected Pay Rate shall be multiplied by the same multiplier for determining whether any top up payment is due under subclause 5.3.4.

5.3.7 Changes in pay or employment conditions

(a) The following table sets out how changes to employment conditions affect the entitlements set out in this clause:

Circumstance	Initiated by team member	Initiated by Coles
Change to a higher classification	Continues	Continues
Change to a lower classification	Discontinues	Continues
Change from part-time to full-time or vice versa	Continues	Continues

Change from full-time or part-time to casual or vice versa	Continues (see 5.3.7(b) below)	Continues (see 5.3.7(b) below)
Change of roster	Continues	Continues
Change of store	Continues	Continues
Termination of employment	Discontinues	Discontinues
Casual team member who works no shift in a 3 month period	Discontinues	Discontinues

- (b) Where a team member converts from casual to Permanent employment their Protected Pay Rate shall be adjusted by multiplying by 100 and dividing by 125. Where a team member converts from Permanent to casual employment their Protected Pay Rate shall be adjusted by multiplying by 125 and dividing by 100. This is to take account of casual loading.

5.3.8 Termination of employment:

- (a) Where there is a termination of employment and pay is made in lieu of notice the Top Up Payment Scheme will apply to calculating notice pay.
- (b) Where a team member's position is made redundant the Top Up Payment Scheme will not apply to calculating redundancy pay.

5.3.9 Worked examples

Worked examples are to be found in [Appendix D](#).

5.4 Junior Rates

5.4.1 Adult rates start at 20 years. Junior team members will be paid the following percentage of the appropriate wage rate in clause 5.2 :

Age	Percentages
19 years	80.5%
18 years	71%
17 years	61%
16 years	51%
Under 16 years	46.5%

5.5 Apprentices

5.5.1 In accordance with the relevant State or Territory Training Authority Coles may engage team members as:

- (a) an apprentice; or
- (b) a school-based apprentice; or
- (c) a trainee under the arrangements contained in the *General Retail Industry Award 2010* (as amended).

5.5.2 Apprenticeships (including competency based apprenticeships):

- (a) Apprentices will be paid at the following rates:

Competency level	Rate
Year 1	56% of Level 4 team member rate
Year 2	65.5% of Level 4 team member rate
Year 3	80.5% of Level 4 team member rate
Year 4	90% of Level 4 team member rate

- (b) Where a team member is undertaking a three year apprenticeship 100% of the Level 4 team member rate will apply in any fourth year.
- (c) The minimum Agreement rates of pay for apprentices aged 21 and over who commenced on or after 1 January 2014 and are in the first year of their apprenticeship must be 80% of the minimum rate for a Level 4 team member in clause 5.2, or the rate prescribed by subclause 5.5.2(a) for the relevant year of the apprenticeship, whichever is the greater.
- (d) The minimum Agreement rates of pay for adult apprentices who commenced on or after 1 January 2014 and are in the second and subsequent years of their apprenticeship must be the rate for the lowest adult classification in clause 5.2, or the rate prescribed by subclause 5.5.2(a) for the relevant year of the apprenticeship, whichever is the greater.
- (e) A team member employed by Coles under this Agreement immediately prior to entering into a training agreement as an adult apprentice with Coles must not suffer a reduction in their minimum wage by virtue of entering into the training agreement, provided that the team member has been employed by Coles 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. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 5.2 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

5.5.3 Rates of pay — school-based apprentices

A school-based apprentice may complete their apprenticeship on a part-time basis. School-based apprentices will be paid the relevant rate as provided in subclause 5.5.2, which is determined by the progress of their apprenticeship.

5.5.4 Apprentice conditions of employment

- (a) Except as provided in this clause or where otherwise stated, all conditions of employment specified in this Agreement apply to apprentices.
- (b) Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and such training requires an overnight stay, Coles must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from such training. Provided that this clause will not apply where the apprentice could attend an alternative Registered Training Organisation (RTO) and the use of the more distant RTO is not agreed between Coles and the apprentice.
- (c) For the purposes of subclause 5.5.4(b) above, excess reasonable travel costs include the total costs of reasonable transportation (including transportation of tools where required), accommodation costs incurred while travelling (where necessary) and reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work. For the purposes of this subclause, excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.
- (d) The amount payable by Coles under subclause 5.5.4(b) may be reduced by an amount the apprentice is eligible to receive for travel costs to attend block release training under a Government apprentice assistance scheme. This will only apply if an apprentice has either received such assistance or Coles has advised them in writing of the availability of such assistance.
- (e) All training fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks (excluding those textbooks which are available in Coles' technical library) for the apprenticeship, which are paid by an apprentice, shall be reimbursed by Coles within six months of the commencement of the apprenticeship or the relevant stage of the apprenticeship, or within three months of the commencement of the training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.

- (f) Coles may meet its obligations under subclause 5.5.4(e) by paying any fees and/or cost of textbooks directly to the RTO.
- (g) An apprentice is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.
- (h) Time spent by an apprentice in attending any training and/or assessment specified in, or associated with, the training contract is to be regarded as time worked for Coles for the purposes of calculating the apprentice's wages and determining the apprentice's employment conditions.
- (i) No apprentice will, except in an emergency, work or be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.

5.6 Wage and Allowance increases

5.6.1 The minimum rates of pay in clause 5.2 will increase as follows:

- (a) from the first Monday after 1 July 2018 at the rate of the percentage increase that is ordered by the FWC in its Annual Wage Review Decision taking effect July 2018;
- (b) from the first Monday after 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 as applied to the minimum rates applying at 30 June 2019.

5.6.2 Where an allowance under Part 6 of this Agreement has a direct correlation with an allowance under the *General Retail Industry Award 2010*, these will be increased in line with any Expense Related Allowance Order made by the FWC in relation to a specific *General Retail Industry Award 2010* allowance. Such increases will take effect on the first Monday following 1 July each year for the term of this Agreement.

5.6.3 The clauses referred to in 5.6.2 and the equivalent subclauses in the *General Retail Industry Award 2010* as at 1 October 2017 are:

Clause in this Agreement	Equivalent Subclause in <i>General Retail Industry Award 2010</i>
6.1	20.1
6.3	20.6
6.4	20.8
6.5	20.9
6.8	20.13

5.6.4 One off cash payment

- (a) Upon a successful vote for this Agreement being declared Coles will pay team members a one off cash payment as follows:
 - (i) eligible team members will be all team members covered by this Agreement who were hired by Coles on or before 30 June 2017, and who remain employed by Coles on the date of a successful vote being declared;
 - (ii) eligible full-time team members will be paid a sum of \$475 less applicable taxes;
 - (iii) eligible part-time and casual team members will be paid a pro-rata sum based on the amount payable to full-time team members and average hours worked between the 5th June and 1st October 2017 less applicable taxes;
 - (iv) For the avoidance of doubt, the maximum payment to any team member will be \$475 less applicable taxes.

5.7 Payment of wages

5.7.1 Wages will be paid weekly or fortnightly according to the actual hours worked each week or fortnight.

5.7.2 All wages shall be paid on a regular pay day. Coles must notify the team member in writing as to which day is the pay day. Where for any reason Coles wishes to change the pay day, then Coles shall provide at least 4 weeks' written notice to the team member of such change. This includes circumstances where the impact of public holidays may require Coles to change the pay day.

5.8 Supported wage

Supported wage arrangements for team members with a disability are contained in [Appendix C](#) of this Agreement.

5.9 Training wage

Trainees will be paid the Level 1 team member rate (including junior rates).

Part 6 - ALLOWANCES

6.1 Meal Allowance

6.1.1 A team member required to work more than one hour of overtime after the team member'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 \$17.92. Where such overtime work exceeds four hours a further meal allowance of \$16.23 will be paid.

6.1.2 No meal allowance will be payable where a team member could reasonably return home for a meal within the period allowed.

6.2 Special Clothing

Where Coles requires a team member to wear any protective or special clothing such as a uniform, dress or other clothing then Coles will reimburse the team member 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 Coles.

6.3 Excess travelling costs

6.3.1 Where a team member is required by Coles to move temporarily from one store to another for a period not exceeding three weeks, all additional transport costs so incurred will be reimbursed by Coles.

6.3.2 Travelling time reimbursement

(a) A team member who on any day is required to work at a place away from their usual place of employment, for all time reasonably 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 and also any fares reasonably incurred in excess of those normally incurred in travelling between their home and their usual place of employment.

(b) Where Coles 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.

(c) 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.

6.3.3 Team member Transfer reimbursement

Where Coles transfers a team member from one township to another, Coles 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.

6.3.4 Transport allowance

Where Coles requests a team member to use their own motor vehicle in the performance of their duties such team member will be paid an allowance of \$0.78 per kilometre.

6.3.5 Team member Transport reimbursement

(a) Where a team member commences and/or ceases work after 10.00 pm on any day or prior to 7.00 am on any day and the team member's regular means of transport is not available and the team member is

unable to arrange their own alternative transport, Coles will reimburse the team member for the cost of a taxi fare from the place of employment to the team member's usual place of residence. This will not apply if Coles provides or arranges proper transportation to and/or from the team member's usual place of residence, at no cost to the team member.

- (b) Provided always that a team member may elect to provide their own transport at their own cost.
- (c) Provided further that this subclause will not apply to team members engaged under the provisions of shift-work.

6.4 Cold work allowance

- (a) Team members 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 an allowance per hour, while so employed, of \$0.28.
- (b) A team member required to work in a cold chamber where the temperature is below 0°C will in addition to the allowance in 6.4(a) also be paid an allowance per hour, while so employed, of \$0.43.

6.5 First aid allowance

Where a team member who holds an appropriate first aid qualification is appointed by Coles to perform first aid duty they will be paid an extra of \$10.52 each week.

6.6 Recall allowance

- (a) Unless otherwise agreed a team member recalled to work for any reason, before or after completing their normal roster or on a day on which they did not work, will be paid at the appropriate rate for all hours worked with a minimum of three hours on each occasion.
- (b) The time worked will be calculated from the time the team member leaves home until the time they return home.

6.7 Higher duties

6.7.1 Team members engaged for more than two hours during one day or shift on duties carrying a higher Base Rate of Pay than their ordinary classification are to be paid the higher Base Rate of Pay for such day or shift. If engaged for two hours or less during one day or shift, the team member is to be paid the higher Base Rate of Pay for the time worked only.

6.7.2 This clause also applies when a team member is required on a temporary basis to undertake a Department Manager, Team Leader, Duty Manager or other managerial role.

6.8 Location Allowances

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 \$0.91.

6.9 Other allowances

From time to time the business may at its sole discretion decide to pay additional allowances to meet the commercial needs of Coles. These do not form part of this Agreement.

Part 7 - SUPERANNUATION

7.1 Superannuation legislation

7.1.1 Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992 (Cth)*, the *Superannuation Guarantee Charge Act 1992 (Cth)*, the *Superannuation Industry (Supervision) Act 1993 (Cth)* and the *Superannuation (Resolution of Complaints) Act 1993 (Cth)*, deals with the superannuation rights and obligations of Coles and team members.

7.1.2 The rights and obligations in these clauses supplement those in superannuation legislation.

7.2 Employer contributions

Coles will make such superannuation contributions to a superannuation fund for the benefit of a team member as required by the relevant legislation.

7.3 Superannuation fund

7.3.1 Coles will make the superannuation contribution to one fund for the team member.

7.3.2 The default Superannuation fund will be the Retail Employees Superannuation Trust.

7.3.3 A team member may elect in writing to have their superannuation paid into an alternative complying fund.

7.4 Voluntary team member contributions

7.4.1 Subject to the governing rules of the relevant superannuation fund, a team member may, in writing, authorise Coles to pay on behalf of the team member a specified amount from the post-taxation wages of the team member into the same superannuation fund as Coles makes the superannuation contributions provided for in clause 7.3.

7.4.2 A team member may adjust the amount they have authorised Coles to pay from their wages from the first of the month following the giving of three months' written notice to Coles.

7.4.3 Coles must pay the amount authorised under clause 7.3 no later than 28 days after the end of the month in which the deduction authorised under clause 7.3 was made.

7.4.4 These voluntary contributions are in addition to and do not offset Coles' obligation to pay superannuation under clause 7.2.

7.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, Coles must also make the superannuation contributions provided for in clause 7.2 and pay the amount authorised under clause 7.3:

7.5.1 Paid leave—while the team member is on any paid leave;

7.5.2 Work-related injury or illness—for the period of absence from work (subject to a maximum of 52 weeks) of the team member due to work-related injury or work-related illness provided that:

- (a) the team member is receiving workers compensation payments or is receiving regular payments directly from Coles in accordance with the statutory requirements; and
- (b) the team member remains employed by Coles.

7.6 Salary Sacrifice

7.6.1 A team member may by agreement with the Company:

- (a) participate in a salary sacrifice program in relation to Superannuation or any other benefit agreed to by the Company; and
- (b) receive wages payable under this Agreement minus the amount diverted into contributions under this program.

7.6.2 This clause is intended to be for the team member's benefit without imposing additional costs to the Company.

7.6.3 Any request for salary sacrifice will be in the form decided by the Company.

7.6.4 A team member will receive the benefit and wages under this clause instead of wages and other amounts payable under this Agreement.

7.6.5 A team member who takes any paid leave will receive the benefit and wages under this clause instead of wages and other amounts payable under this Agreement.

7.6.6 For all other purposes, after taking into account the deductions above, a team member will not receive less than the rate specified in clause 5.2 for their relevant classification.

7.6.7 These salary sacrifice contributions are in addition to and do not offset Coles' obligation to pay superannuation under clause 7.2.

- 7.6.8 For the purposes of the Top up scheme outlined in clause 5.3;
- (a) Any entitlement to payment due under subclause 5.3.4 shall be considered to be wages for the purposes of payment of superannuation contributions under clauses 7.2 and 7.3; and
 - (b) Any calculations under subclauses 5.3.3 and 5.3.4 will be based on a team member's wages before any salary sacrifice made under this clause.

Part 8 – ROSTERING AND HOURS OF WORK

8.1 Hours of work

- 8.1.1 All parties to this agreement recognise the 24 hour 7 day a week nature of Coles' supermarket operations.
- 8.1.2 This clause does not operate to limit or increase or in any way alter the trading hours of Coles as determined by the relevant State or Territory legislation.
- 8.1.3 **Ordinary hours**
- (a) Ordinary hours may be worked within the following spread of hours:.

Days	Spread of hours
Monday to Friday, inclusive	7am – 11pm
Saturday	7am – 11pm
Sunday	9am – 11pm

- (b) Hours of work on any day will be continuous, except for rest and meal breaks.
- 8.1.4 **Maximum ordinary hours on a day**
- A team member may be rostered to work up to a maximum of nine ordinary hours on any day, provided that for one day per week a team member can be rostered for 11 hours.

8.2 Rostering Principles

- 8.2.1 Except by written agreement between Coles and a team member, team members will not be required to work ordinary hours on more than 19 days in each four week cycle.
- 8.2.2 **Substitute rostered days off (RDOs)**
- (a) Coles, with the agreement of the majority of team members concerned, may substitute the day or half day a team member is to take off in accordance with a roster arrangement for another day or half day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.
 - (b) By agreement between Coles and a team member, another day may be substituted for the day that team member is to be rostered off.
- 8.2.3 **Accumulation of RDOs**
- By agreement between Coles and a team member, the rostered day off may be accumulated up to a maximum of five days in any one year. Such accumulated periods may be taken at times mutually convenient to Coles and the team member.
- 8.2.4 A roster period cannot exceed four weeks.
- 8.2.5 Ordinary hours will be worked on not more than five days in each week, provided that if ordinary hours are worked on six days in one week, ordinary hours in the following week will be worked on no more than four days.
- 8.2.6 **Consecutive days off**
- (a) Ordinary hours will be worked so as to provide a team member with two consecutive days off each week or three consecutive days off in a two week period.

- (b) This requirement will not apply where the team member requests in writing and Coles agrees to other arrangements, which are to be recorded in the time and wages records. It cannot be made a condition of employment that a team member make such a request.
- (c) A team member can terminate the agreement by giving four weeks' notice to Coles.

8.2.7 Ordinary hours and any reasonable additional hours may not be worked over more than six consecutive days.

8.2.8 Team members regularly working Sundays

- (a) A team member who regularly works Sundays will be rostered so as to have three consecutive days off each four weeks and the consecutive days off will include Saturday and Sunday.
- (b) This requirement will not apply where the team member requests in writing and Coles agrees to other arrangements which are to be recorded in the time and wages records. It cannot be made a condition of employment that a team member make such a request.
- (c) A team member can terminate the agreement by giving four weeks' notice to Coles.

8.3 Rostering by employment type

8.3.1 Rostering Principles for Full-time team members

Rosters for full-time team members must comply with the following:

Rostering Provision	Requirement
Maximum number of hours per day	9 hours provided that one day per week can be rostered for 11 hours
Minimum breaks between shifts	12 hours or 10 by agreement
Maximum number of days per 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 every week or 3 consecutive days per fortnight, unless otherwise agreed in accordance with subclause 8.2.6(b) above
Weekends off for regular Sunday workers	At least 1 in 4, being a 3 day break including a Saturday and Sunday, unless otherwise varied by agreement
Maximum number of hours in 4 week roster cycle	152 hours
Maximum number of days in 4 week roster cycle	19 days or 20 by agreement.

8.3.2 Rostering Principles for Part-time team members

Rosters for part-time team members must comply with the following:

Rostering Provision	Requirement
Minimum number of hours per day	3 hours
Maximum number of hours per day	9 hours provided that one day per week can be rostered for 11 hours
Minimum breaks between shifts	12 hours or 10 by agreement
Maximum number of days per 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 every week or 3 consecutive days per fortnight, unless otherwise agreed in accordance with subclause 8.2.6(b) above
Weekends off for regular Sunday workers	At least 1 in 4, being a 3 day break including a Saturday and Sunday, unless otherwise varied by agreement
Maximum number of hours in 4 week roster cycle	Less than 152 hours
Maximum number of days in 4 week roster cycle	19 days or 20 by agreement

8.3.3 Rostering Principles for Casual team members

Casual team members' hours of work must comply with the following:

Rostering provision	Requirement
Minimum number of hours per day	3 hours
Maximum number of hours per day	9 hours provided that one day per week can be rostered for 11 hours
Minimum breaks between shifts	12 hours or 10 by agreement
Maximum number of days per 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
Maximum number of days in 4 week roster cycle	19 days or 20 by agreement

8.4 Notification and changes to rosters for Permanent team members

8.4.1 This clause is to be read in conjunction with subclause 3.1.2.

8.4.2 Coles will make available for team members a roster, which will show for each team member:

- (a) the number of ordinary hours to be worked each week;
- (b) the days of the week on which work is to be performed; and
- (c) the commencing and ceasing time of work for each day of the week.

8.4.3 Coles will retain superseded notices for twelve months. The roster will, on request, be produced for inspection by an authorised person.

8.4.4 Due to unexpected operational requirements, a team member's roster for a given day may be changed by mutual agreement with the team member prior to the team member arriving for work.

8.4.5 Any permanent roster change will be provided to the team member in writing with a minimum seven days' notice. Should the team member disagree with the roster change, they will be given a minimum of 14 days written notice instead of seven days, during which time there will be discussions aimed at resolving the matter in accordance with clause 3.2 of this Agreement.

8.4.6 Where a team member's roster is changed with the appropriate notice for a once-only event caused by particular circumstances not constituting an emergency, and the roster reverts to the previous pattern in the following week, then extra work done by the team member because of the change of roster will be paid at the overtime rate of pay.

8.4.7 A team member's roster may not be changed with the intent of avoiding payment of penalties, loading or other benefits applicable. Should such circumstances arise the team member will be entitled to such penalty, loading or benefit as if the roster had not been changed.

8.4.8 When establishing or changing a roster, Coles will have regard for the family or caring responsibilities, and study commitments of the team member, and whether the team member has safe transport home.

8.4.9 A Permanent team member may arrange to swap an individual shift with another team member. Any arrangement to swap a shift must be:

- (a) genuinely agreed to by both team members; and compliant with all provisions of this Agreement; and
- (b) not result in any additional expense to Coles; and
- (c) approved by the Store Manager or the Manager on Duty at least the day prior to the start of the shift. By agreement between the team members and the Company, less notice may apply.

8.5 Overtime

8.5.1 Reasonable overtime for team members

- (a) Subject to subclause 8.5.1(b) Coles may require a team member to work reasonable overtime at overtime rates in accordance with the provisions of this clause.

- (b) A team member may refuse to work overtime in circumstances where the working of such overtime would result in the team member working hours which are unreasonable having regard to:
 - (i) any risk to team member health and safety;
 - (ii) the team member's personal circumstances including any family or study responsibilities;
 - (iii) the needs of the workplace or enterprise;
 - (iv) the notice (if any) given by Coles of the overtime and by the team member of their intention to refuse it; and
 - (v) any other relevant matter.

8.5.2 Payment for overtime for full-time and part-time team members

- (a) Hours worked in excess of the ordinary hours of work, outside the spread of hours (except for shiftwork) as defined in subclause 8.1.3(a), or roster conditions prescribed in clauses 8.1, 8.2 and 8.3 are to be paid at time and a half for the first three hours and double time thereafter.
- (b) Hours worked by part-time team members in excess of the agreed hours in subclause 4.1.4(c) or as varied under subclause 4.1.4(d) will be paid at time and a half for the first three hours and double time thereafter.
- (c) The rate of overtime on a Sunday is double time, and on a public holiday is double time and a half.
- (d) Overtime is calculated on a daily basis.

8.5.3 Overtime for casual team members

- (a) A casual team member may be offered work which qualifies as overtime. They shall be entitled to be paid at the overtime rates set out in subclause 8.5.3(b) in the following circumstances:
 - (i) Where they work in excess of 38 hours per week; or
 - (ii) They work outside of the spread of hours (except for shiftwork) as defined in subclause 8.1.3(a); or
 - (iii) Where they work in excess of 9 hours per day, provided that one day per week a casual team member may work 11 hours without attracting overtime rates.
- (b) Hours paid at overtime rates are to be paid at 175% of the Base Rate of Pay (including casual loading) for the first three hours and 225% of the Base Rate of Pay (including casual loading) thereafter, except the rate of overtime on a Sunday is 225% of the Base Rate of Pay (including casual loading), and on a public holiday it is 275% of the Base Rate of Pay (including casual loading).

8.5.4 Time off instead of payment for overtime

- (a) A team member, other than a casual, and Coles may agree to the team member taking time off instead of being paid for a particular amount of overtime that has been worked by the team member.
- (b) The period of time off that a team member is entitled to take is equivalent to the overtime payment that would have been made.

EXAMPLE: By making an agreement under subclause 8.5.4(a) a team member who worked 2 overtime hours at the rate of time and a half is entitled to 3 hours' time off.

- (c) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the team member and Coles.
- (d) If the team member requests at any time, to be paid for overtime covered by an agreement under subclause 8.5.4 but not taken as time off, Coles must pay the team member for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (e) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in subclause 8.5.4(c), Coles must pay the team member for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.

- (f) Coles must not exert undue influence or undue pressure on a team member in relation to a decision by the team member to make, or not make, an agreement to take time off instead of payment for overtime.
- (g) A team member may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by Coles and the team member, instead of being paid for overtime worked by the team member. If Coles agrees to the request then subclause 8.5.4 will apply for overtime that has been worked.

Note: If a team member makes a request under section 65 of the Act for a change in working arrangements, Coles may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

- (h) If, on the termination of the team member’s employment, time off for overtime worked by the team member to which subclause 8.5.4 applies has not been taken, Coles must pay the team member for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under subclause 8.5.4.

8.5.5 Overtime may be treated as ordinary hours by agreement

- (a) Where Coles and the team member agree, hours worked outside the spread of hours in 8.1.3(a) may be counted as part of the team member’s ordinary weekly hours so long as the team member receives the applicable overtime rate as set out in this clause.
- (b) Coles or the team member may withdraw agreement to an arrangement made under subclause 8.5.5(a) by giving 28 days written notice or with shorter notice where mutually agreed.

8.6 Penalties

8.6.1 The following penalties shall apply in addition to the Base Rate of Pay set out in clause 5.2 for ordinary hours worked:

Day of week	Time of day	Full and part-time team members	Casual team members (including casual loading)
Monday – Friday	6pm – 11pm	25%	25%
Saturday	7am – 6pm	25%	35%
Saturday	6pm – 11pm	25%	25%
Sunday	9am - 11pm	95% (from the first Monday following 1 July each year this penalty will transition in line with the percentages outlined in the FWC determination PR 593953) (see Appendix F)	95% (from the first Monday following 1 July each year this penalty will transition in line with the percentages outlined in the FWC determination PR 593953) (see Appendix F)
Public Holidays	7am - 11pm, unless on a Sunday in which case 9am – 11pm applies.	125%	150%

8.6.2 By mutual agreement of the team member and Coles, the team member (other than a casual) may be compensated for a particular public holiday by either:

- (a) An equivalent day or equivalent time off instead without loss of pay. The time off must be taken within four weeks of the public holiday occurring, or it shall be paid out; or
- (b) An additional day or equivalent time as annual leave.

8.6.3 The team member and Coles are entitled to a fresh choice of payment or time off by agreement on each occasion work is performed on a public holiday.

8.6.4 If no agreement can be reached on the method of compensation, the default arrangement shall be as per subclause 8.6.1.

8.7 Shiftwork

8.7.1 Application of clause

- (a) This clause will apply only to persons specifically engaged by Coles as shiftworkers under this Agreement.
- (b) This clause does not apply to a team member who is engaged by Coles as a non shiftworker and who does additional hours or overtime.

8.7.2 General operation of the Agreement with respect to shiftworkers

Unless specifically modified by or contrary to the operation of this clause all provisions of this Agreement apply to shiftworkers.

8.7.3 Shiftwork definition—other than baking production team members

- (a) For the purposes of this clause shiftwork means a shift starting at or after 6.00 pm on one day and before 5.00 am on the following day.
- (b) Shiftwork does not include a shift which starts and finishes on the same day within the following hours:

(A) Monday to Friday:	Between 7am and 11pm
(B) Saturdays:	Between 7am and 11pm
(C) Sundays:	Between 9am and 11pm.
- (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.

8.7.4 Rate of pay for shiftwork

- (a) Any shiftwork performed between midnight Sunday and midnight Friday will be paid at the rate of 130% (155% for casuals) of the Base Rate of Pay.
- (b) Any shiftwork performed on a Saturday will be paid at the rate of 150% (175% for casuals) of the Base Rate of Pay.
- (c) Any shiftwork performed on a Sunday will be paid at the rate of 200% (225% for casuals) of the Base Rate of Pay.
- (d) Where a team member elects to work on a public holiday shift then the provisions set out in subclause 8.6.1 will apply for all hours of the shift.
- (e) 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. Provided that if the team member elects not to work on a public holiday shift such team member will be entitled to be absent without loss of pay.
- (f) Provided that in any shop where it is mutually agreed between Coles and the majority of team members engaged under the provisions of this clause another shift may be substituted for the shift which commences on the holiday as the holiday shift and in such instance the provisions of subclause 8.6.1 relating to such holiday will apply only to the day so substituted.

8.7.5 Baking production team members –Early morning shifts

- (a) A baking production team member who commences a shift at or after 2:00 am and before 6:00 am will be paid at the rate of 112.5% (137.5% for casuals) of the Base Rate of Pay.
- (b) A baking production team member who commences a shift prior to 2:00 am will be paid at the rate of 130% (155% for casuals) of the Base Rate of Pay.
- (c) The rates of pay for Saturday, Sunday and public holidays will be the same as for other shiftworkers.
- (d) These allowances apply instead of shiftwork allowances and overtime payments for all hours up to 38 hours per week and nine hours per day.

8.7.6 Rest breaks and meal breaks

Notwithstanding the provision of subclause 8.8.1(a) all rest pauses and meal breaks taken by shiftworkers are paid breaks and form part of the hours of work.

8.7.7 Rosters

- (a) Shiftwork rosters cannot be varied so as to avoid the provision of the public holiday entitlements of shiftworkers.
- (b) Rosters of shiftworkers cannot be arranged so as to have the shiftworker work both shiftwork and non shiftwork in the same week.

8.8 Breaks

8.8.1 Breaks during work periods

- (a) Breaks will be given as follows:

Hours worked	Rest break (paid)	Meal break (unpaid except for shiftworker)
Work less than 4 hours	No rest break	No meal break
Work 4 hours or more but no more than 5 hours	One 15 minute rest break including walk time	No meal break
Work more than 5 hours but less than 7 hours	One 15 minute rest break including walk time	One meal break of at least 30 minutes but not more than 60 minutes.
Work 7 hours or more but less than 10 hours	Two 15 minute rest breaks including walk time, with one taken in the first half of the work hours and the second taken in the second half of the work hours.	One meal break of at least 30 minutes but not more than 60 minutes.
Work 10 hours or more	Two 15 minute rest breaks including walk time, with one taken in the first half of the work hours and the second taken in the second half of the work hours.	Two meal breaks each of at least 30 minutes but not more than 60 minutes.

- (b) The timing of the taking of a rest break or meal break is intended to provide a meaningful break for the team member during work hours.
- (c) A team member cannot be required to take a rest break or meal break within one hour of commencing or ceasing of work. A team member cannot be required to take a rest break(s) combined with a meal break.
- (d) No team member can work more than 5 hours without a meal break.
- (e) 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 Agreement.
- (f) Rest breaks are paid breaks and meal breaks (except for shiftworkers) are unpaid breaks.

- (g) The Agreement flexibility clause can be utilised to permit variations to this clause by agreement between Coles and team members.

8.8.2 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 Coles and a team member or team members the period of 12 hours may be reduced to not less than 10 hours.

8.9 Rates not cumulative

In order to avoid doubt, unless stated otherwise, no rates are cumulative or compounding.

PART 9 — PUBLIC HOLIDAYS AND LEAVE

9.1 Public Holidays

9.1.1 Other than as noted in this clause, public holidays are as provided for in the NES.

9.1.2 In 2018 the NSW Picnic Day (First Tuesday in November or on any other day agreed to by the Union) shall be observed as a public holiday. The day shall be treated as an additional day off or pay in lieu. Work on this day will not attract public holiday penalty rates.

9.1.3 Coles and a majority of team members may agree to substitute another day for a public holiday. If either the public holiday or the substitute day is worked, except in the case of the 2018 NSW Picnic Day (clause 9.1.2), public holiday penalties must be paid. If both days are worked, one day at the election of the team member must be paid at public holiday rates.

9.1.4 Work on a public holiday:

- (a) A team member cannot be required, but may volunteer to work on any public holiday as provided for in this clause.
- (b) Where a store opens for trade on a public holiday, team members who would normally be rostered to work may request to work the day (or part thereof) and shall be paid the appropriate penalty for time so worked. Coles may decide to decline such a request if there is no operational need for the team member to work.

9.1.5 Work on Easter Sunday and after 6pm on Christmas Eve and New Year's Eve.

- (a) Where it is not a public holiday, work on Easter Sunday, after 6pm on Christmas Eve and after 6pm on New Year's Eve is voluntary subject to the following:
 - (i) at least 4 weeks prior team members must advise Coles that they do not want to work;
 - (ii) Coles will start a process to see if any permanent team members do not want to work their rostered hours, advising team members that work is voluntary;
 - (iii) in deciding whether or not to work team members are asked to consider our customers' expectations and business operational requirements;
 - (iv) permanent team members rostered to work and who do not want to work, may;
 - (A) access annual leave; or
 - (B) if they have insufficient annual leave accrued, request to have their ordinary hours, at the sole discretion of Coles, re-rostered in the 4 week cycle as part of their ordinary hours and paid the Base Rate of Pay and applicable penalties; or

- (C) if they have insufficient annual leave, and Coles is unable to re-roster their hours, take unpaid leave;
- (v) where this occurs, at least 7 days prior the Company will ask for volunteers to work; and
- (vi) if there are not enough volunteers to work Coles may require a team member to work their rostered shift so that a reasonable staffing level is reached.

Public Holiday Non-working day entitlement

Team members eligible for the non-working day entitlement

9.1.6 The following team members will be eligible for the non-working day entitlement:

- (a) full-time team members;
- (b) part-time team members rostered to work 20 starts in any 4 week cycle; and
- (c) part-time team members rostered to work on different days each week and the public holiday falls on a day of the week that the team member works in any week of their roster cycle.

Non-working day entitlement

9.1.7 Subject to subclause 9.1.8, where a team member’s non-working day falls on a public holiday, by mutual agreement, an eligible team member will receive one of the following entitlements:

- (a) an additional day’s pay; or
- (b) another day off with pay with their next period of annual leave; or
- (c) another day off with pay in the week prior to the public holiday; or
- (d) another day off with pay within 28 days after the public holiday.

If agreement cannot be reached within 28 days after the public holiday, part 9.1.7(a) will apply.

Public holidays that do not attract non-working day entitlements

9.1.8 Non-working day entitlements do not apply to:

- (a) additional public holidays that are declared, prescribed or legislated for a public holiday specified in the NES; or
- (b) any new “one-off” public holidays that are declared, prescribed or legislated (i.e. a public holiday not occurring annually).

For example – Boxing Day (26 December) falls on a Saturday and an additional public holiday is declared, prescribed or legislated on the following Monday. The non-working day provision in subclause 9.1.7 will apply to Boxing Day (26 December) but will not apply to the following Monday.

9.1.9 In relation to subclause 9.1.7 a “day” means the following:

Team member category	Meaning of a “day”
Full-time team members working 19 days in any 4 week cycle	8 hours (152 hours ÷ 19 days)
Full-time team members working 20 days in any 4 week cycle subject to subclause 8.3.1 [agreement to work 20]	7.6 hours (152 hours ÷ 20 days)
Part-time team members	Average number of hours per day in the 4 week cycle prior to the public holiday (Total number of hours in the 4 week cycle ÷ days worked in the 4 week cycle)

Impact of the 4 Yearly Review on subclauses 9.1.6 to 9.1.9

9.1.10 Subclauses 9.1.6 to 9.1.9 will have no operation unless the FWC, in AM 2014/301, makes an order or determination to include a ‘non-working day public holiday entitlement’ within the *General Retail Industry Award 2010*. A ‘non-

working day public holiday entitlement' will not be considered to have been included in the *General Retail Industry Award 2010* unless the FWC varies the Award to include a term that substantially reflects the principles of the *Public Holiday Test Case* in respect of a non-working day public holiday entitlement.

9.2 Annual Leave

- 9.2.1 Except as otherwise provided for in this Agreement annual leave is provided for in the NES.
- 9.2.2 Full-time team members will be entitled to 4 weeks (152 hours) of annual leave for each year of continuous service.
- 9.2.3 Part-time team members will be entitled to annual leave on a pro-rata basis.
- 9.2.4 Annual leave accrues progressively during each year.
- 9.2.5 Annual leave will be taken by mutual agreement between Coles and the team member.
- 9.2.6 Accrued annual leave will be approved and taken by the team member each Anniversary Year in accordance with subclause 9.2.5.
- 9.2.7 Where possible a full-time team member is to be given preference to take their non-working day in conjunction with annual leave, or to move their non-working day so that it adjoins a period of annual leave.
- 9.2.8 Where a public holiday as outlined in clause 9.1 falls within a period of annual leave, that day(s) or part-day is treated as a public holiday (day or part-day off with pay based on a team member's ordinary rostered hours) and will not be deducted from their annual leave entitlement.
- 9.2.9 If a team member's period of annual leave includes a period of any other leave (other than unpaid parental leave), the team member is taken not to be on annual leave for the period of that other leave or absence. The other leave will be taken in accordance with the applicable leave provisions in this Agreement.
- 9.2.10 **Definition of shiftworker for annual leave purposes**
- For the purpose of the additional week of annual leave provided for in the NES s.96, 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.
- 9.2.11 **Annual leave loading**
- (a) During a period of annual leave a team member will receive a loading calculated on the rate of pay prescribed in 5.2 of this Agreement. Annual leave loading is payable on leave the team member has accrued.
- (b) The loading will be as follows:
- (i) Day work
- Team members who would have worked on day work only had they not been on leave—17.5% or the relevant penalty rates, whichever is the greater but not both.
- (ii) Shiftwork
- Team members who would have worked on shiftwork had they not been on leave—a loading of 17.5% or the shift loading (including relevant weekend penalty rates) whichever is the greater but not both.
- 9.2.12 **Annual leave in advance**
- (a) Coles and a team member may agree in writing to the team member taking a period of paid annual leave before the team member has accrued an entitlement to the leave.
- (b) An agreement must:
- (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
- (ii) be signed by an authorised representative of Coles and the team member and, if the team member is under 18 years of age, by the team member's parent or guardian.
- (c) Coles must keep a copy of any agreement under subclause 9.2.12 as a team member record.

- (d) If, on the termination of the team member's employment, the team member has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under subclause 9.2.12 Coles may deduct from any money due to the team member on termination an amount equal to the amount that was paid to the team member in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

9.2.13 Close-down

Coles may require a team member to take annual leave as part of a close-down of its operations, or part of its operations, by giving at least four weeks' notice.

9.2.14 Excessive leave accruals: general provision

Note: Subclauses 9.2.14 to 9.2.17 contain provisions, additional to the NES, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Act.

- (a) A team member has an excessive 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 9.2.10).
- (b) If a team member has an excessive leave accrual, Coles 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) Subclause 9.2.15 sets out how Coles may direct a team member who has an excessive leave accrual to take paid annual leave.
- (d) Subclause 9.2.16 sets out how a team member who has an excessive leave accrual may require Coles to grant paid annual leave requested by the team member.

9.2.15 Excessive leave accruals: direction by Coles that leave be taken

- (a) If Coles has genuinely tried to reach agreement with a team member under subclause 9.2.14(b) but agreement is not reached (including because the team member refuses to confer), Coles may direct the team member in writing to take one or more periods of paid annual leave.
- (b) However, a direction by Coles under subclause 9.2.15(a):
 - (i) 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 (whether made under subclause 9.2.14, 9.2.15 or 9.2.16 or otherwise agreed by Coles and the team member) are taken into account; and
 - (ii) must not require the team member to take any period of paid annual leave of less than one week; and
 - (iii) 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
 - (iv) must not be inconsistent with any leave arrangement agreed by Coles and the team member.
- (c) The team member must take paid annual leave in accordance with a direction under subclause 9.2.15(a) that is in effect.
- (d) A team member to whom a direction has been given under subclause 9.2.15(a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in subclause 9.2.15(d) may result in the direction ceasing to have effect. See subclause 9.2.15(b)(i).

Note 2: Under Section 88(2) of the Act, Coles must not unreasonably refuse to agree to a request by the team member to take paid annual leave.

9.2.16 Excessive leave accruals: request by team member for leave

- (a) If a team member has genuinely tried to reach agreement with Coles under subclause 9.2.14(b) but agreement is not reached (including because Coles refuses to confer), the team member may give a written notice to Coles requesting to take one or more periods of paid annual leave.
- (b) However, a team member may only give a notice to Coles under subclause 9.2.16(a) if:

- (i) the team member has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (ii) the team member has not been given a direction under subclause 9.2.15(a) that, when any other paid annual leave arrangements (whether made under subclause 9.2.14, 9.2.15 or 9.2.16 or otherwise agreed by Coles and the team member) are taken into account, would eliminate the team member's excessive leave accrual.
- (c) A notice given by a team member under subclause 9.2.16(a) must not:
- (i) 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 (whether made under subclause 9.2.14, 9.2.15 or 9.2.16 or otherwise agreed by Coles and the team member) are taken into account; or
 - (ii) provide for the team member to take any period of paid annual leave of less than one week; or
 - (iii) 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
 - (iv) be inconsistent with any leave arrangement agreed by Coles and the team member.
- (d) A team member is not entitled to request by a notice under subclause 9.2.16(a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by subclause 9.2.10) in any period of 12 months.
- (e) Coles must grant paid annual leave requested by a notice under subclause 9.2.16(a).

9.2.17 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under subclause 9.2.17.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under subclause 9.2.17.
- (c) Coles and a team member may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the team member.
- (d) An agreement under subclause 9.2.17 must state:
 - (i) the amount of leave to be cashed out and the payment to be made to the team member for it; and
 - (ii) the date on which the payment is to be made.
- (e) An agreement under subclause 9.2.17 must be signed by an authorised representative of Coles and the team member and, if the team member is under 18 years of age, by the team member's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the team member taken the leave at the time the payment is made.
- (g) An agreement must not result in the team member's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) Coles must keep a copy of any agreement under subclause 9.2.17 as a team member record.

9.3 Long Service Leave

9.3.1 Team members are entitled to long service leave in accordance with the relevant State or Territory legislation.

9.3.2 A team member may request to access long service leave on the basis of double the time at half pay. Provided that the team member will not accrue any more leave than they would have had they taken long service leave on normal pay. Requests will not be unreasonably refused.

9.4 Leave of Absence

9.4.1 A leave of absence is an approved period of unpaid leave 1 weeks' duration or more, which can be requested by the team member provided that:

- (a) the maximum period of absence on any one occasion is 12 months;
- (b) all outstanding paid leave entitlements the team member is eligible to apply for are taken prior to the period of absence (unless otherwise agreed); and
- (c) the absence will not break continuity of service.

9.4.2 Coles may approve a leave of absence for reasons such as:

- (a) studying commitments requiring time to attend exams or participate in annual school holidays;
- (b) travelling overseas or interstate for an extended period;
- (c) to care for an ill or injured close relative; or
- (d) returning to study on a full-time basis.

9.4.3 During a period of unpaid leave annual leave, sick/carer's leave and long service leave accruals are frozen.

9.5 Pre-approved Leave Arrangements

9.5.1 A Permanent team member (excluding a Department Manager/Team Leader) may, by agreement with Coles, take pre-approved leave to enable the team member to meet individual circumstances subject to the following:

- (a) the guaranteed periods of leave will be set for at least the following 12 months as agreed between the team member and Coles. The guaranteed periods of leave and/or the 12 month period may be changed by agreement;
- (b) the guaranteed periods of leave may be taken as paid leave (i.e. annual leave or long service leave) or unpaid leave. If unpaid leave is taken of one week or more then the team member's entitlements to annual leave, sick/carer's leave and long service leave will be frozen from the start date of the unpaid leave;
- (c) the team member and Coles will agree on the hours of work in any 4 week cycle. Hours of work will be in accordance with the rostering principles as provided in clauses 8.1, 8.2, 8.3 and 8.5;
- (d) the team member may agree to work during a guaranteed period/s of leave. Payment for these hours will be at the team member's Base Rate of Pay including any applicable penalties;
- (e) leave cannot be taken during the last 2 weeks of December; and
- (f) the team member and Coles will review annually the guaranteed periods of leave.

9.5.2 A team member may withdraw from this arrangement by providing 3 months' notice (or less as agreed). The ending of this arrangement will not alter the team member's employment status (i.e. part-time or full-time).

9.6 Personal Leave

Entitlement

9.6.1 A Permanent team member is entitled to personal leave when they are unable to attend work as rostered due to a personal illness or injury.

9.6.2 Full-time team members accrue 76 hours of paid personal leave for each year of continuous employment.

9.6.3 Part-time team members accrue personal leave on a pro-rata basis.

9.6.4 Personal leave accrues progressively.

Notification

9.6.5 Wherever practicable, the team member will notify the Store Manager (or if the Store Manager is not present, the Manager on duty) prior to the start of their shift of:

- (a) their inability to attend for work;

- (b) as far as reasonable, the nature of the illness or injury; and
- (c) the estimated duration of the absence.

Documentation

9.6.6 The following documentation rules apply:

Period of absence in any Anniversary Year	Is supporting documentation required?
1st and 2nd single shift	No, unless the team member is absent the day before or day after a public holiday when Coles will require a medical certificate issued by a duly qualified medical practitioner or statutory declaration to receive payment.
3rd single shift and any further single shifts	At the Manager's discretion, a medical certificate issued by a duly qualified medical practitioner or statutory declaration may be requested to receive payment.
2 consecutive shifts or more	Yes, a medical certificate issued by a duly qualified medical practitioner or statutory declaration will be required to receive payment.
The day before or day after a public holiday	

9.6.7 The documentation rules above also apply when a team member takes unpaid personal leave.

Payment

9.6.8 Personal leave will be paid at the team member's Base Rate of Pay for the hours normally rostered to work. The penalties in subclauses 8.5.5, 8.6.1, 8.7.4 and 8.7.5 do not apply.

Personal leave and workers' compensation

9.6.9 A team member will not be entitled to paid personal leave for any period where they are entitled to Workers' Compensation.

9.7 Carer's Leave

Entitlement

9.7.1 A Permanent team member is entitled to use their accrued personal leave entitlement (refer to clause 9.5) for when a member of their immediate family (as provided in subclause 1.4.14) or household requires care or support due to:

- (a) that person being ill or injured; or
- (b) an unexpected emergency.

9.7.2 Team members taking carer's leave is on the basis that they are the most suitable person, in the circumstances, to provide such care or support.

Unpaid carer's leave

9.7.3 Permanent and casual team members are entitled up to 2 days' unpaid carer's leave for each occasion that a member of their immediate family (as provided in subclause 1.4.14) or household requires care or support due to:

- (a) that person being ill or injured; or
- (b) an unexpected emergency.

9.7.4 The 2 days can be taken as a continuous period, or any separate periods as agreed between Coles and the team member.

9.7.5 Permanent team members are only entitled to unpaid carer's leave once their paid carer's leave (in accordance with subclause 9.7.1) has been used.

Notification

9.7.6 As soon as is reasonably practicable, the team member will provide Coles with notice of:

- (a) their intention to take carer's leave;
- (b) a satisfactory explanation of the reason for the leave; and

- (c) the estimated duration of absence.

Documentation

9.7.7 Reasonable proof of absence may be required by Coles to approve payment.

Payment

9.7.8 Carer’s leave will be paid at the team member’s Base Rate of Pay for the hours normally rostered to work. The penalties in subclauses 8.5.5, 8.6.1, 8.7.4 and 8.7.5 do not apply.

Make-up time

9.7.9 By agreement team members may work ‘make-up time’ during ordinary hours. This is when a team member takes time off during ordinary hours, and works those hours at a later time. Where a team member takes make-up time all rostering provisions in this Agreement apply.

9.8 Compassionate Leave

9.8.1 Entitlement - Permanent team members

Circumstance	Entitlement
The death of their father, mother (including stepfather and stepmother), guardian, partner (including de facto or same sex), child (including step and foster children).	Maximum of 5 paid shifts. If a team member does not attend the funeral where it takes place outside of Australia, they will be entitled to payment for 2 shifts. However, if the team member can justify their requirement for additional time, they will be entitled to a maximum of 5 paid shifts.
The death of their grandparent, grandchild, brother, or sister.	Maximum of 3 paid shifts If a team member does not attend the funeral where it takes place outside of Australia, they will be entitled to payment for 2 shifts. However, if the team member can justify their requirement for additional time, they will be entitled to a maximum of 3 paid shifts.
The death of their parent-in-law, grandparent-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law or member of the team member’s household.	Maximum of 2 paid shifts.
Where a member of the team member’s immediate family (as provided in subclause 1.4.14) or household suffers a serious illness or injury	2 paid shifts for the purposes of spending time with that person (either as a continuous period or single shifts). This is for each occasion and can be taken at any time while the illness or injury persists.

Permanent team members required to travel

- 9.8.2 If a Permanent team member attends the funeral of a relative detailed in subclause 9.8.1 and is required to travel:
- (a) interstate or more than 500 kilometres, the team member will be entitled to receive an additional 2 unpaid shifts; or
 - (b) outside of Australia, the team member will be entitled to receive an additional 2 unpaid weeks’.

9.8.3 Entitlement - casual team members

Circumstance	Entitlement
Where a member of the team member’s immediate family (as provided in subclause 1.4.14) or household dies or contracts or develops an illness or injury that poses a serious threat to their life.	2 unpaid shifts

Documentation

- 9.8.4 Team members will provide Coles with:
- (a) proof of death, illness or injury to the satisfaction of Coles; and
 - (b) proof of attendance in the case of a funeral outside Australia.

Payment

- 9.8.5 Compassionate leave will be paid at the team member’s Base Rate of Pay for the hours normally rostered to work. The penalties in subclauses 8.5.5, 8.6.1, 8.7.4 and 8.7.5 do not apply.

9.9 Parental Leave and Related Entitlements

Entitlement

- 9.9.1 A team member may take unpaid parental leave for:
- (a) the birth of a Child; or
 - (b) the placement of an Adopted Child with the team member for adoption;
- where the team member has or will have responsibility for the care of the Child or Adopted Child, the entitlement to unpaid parental leave, including on a shared basis, is as follows:

	Period of continuous service	Maximum entitlement
Full-time and part-time	6 months	26 weeks
Full-time and part-time	12 months	104 weeks
Eligible casual	12 months	104 weeks

- 9.9.2 If each parent is taking parental leave at separate times the combined leave cannot exceed the maximum entitlement in subclause 9.9.1. The combined leave must be taken in a single continuous period.

Parents in an Employee Couple taking leave at the same time

- 9.9.3 Parents who are part of an Employee Couple can take up to 8 weeks unpaid parental leave at the same time (concurrent leave). This leave can be taken in separate periods. Each period must be at least 2 weeks (unless otherwise agreed). Such leave is deducted from the team member’s parental leave entitlement.

Unpaid pre-adoption leave

- 9.9.4 Regardless of the team member’s length of continuous service, the team member may take 2 days unpaid pre-adoption leave to attend any interviews or examinations required for the adoption of an Adopted Child (or more by agreement). However, Coles may require the team member to take any paid leave entitlement before accessing unpaid leave under this clause.

Notification and documentation

- 9.9.5 At least 10 weeks before the expected birth of a Child or placement of a Child, a team member must provide the following, where relevant, when taking parental leave:

A medical certificate from a duly qualified medical practitioner

- Stating:
- the team member is pregnant; or
 - name of the team member’s spouse and that she is pregnant; or
 - that another person is pregnant with a Child on behalf of the team member or the team member’s spouse; and
 - expected date of birth.

Written notice

- Stating:
- the period of parental leave;
 - the expected date of the birth or adoption;
 - any period of parental leave requested or taken by the team member’s spouse where in an Employee Couple (including Concurrent Leave); and

- who will be the primary care giver and for what period of time.

- 9.9.6 Team members who are taking leave at the same time (Concurrent Leave) under subclause 9.9.3 need to provide at least 10 weeks' notice to Coles of their first period of leave. For any future periods of leave being taken at the same time, a team member needs to provide at least 4 weeks' notice.
- 9.9.7 At least 4 weeks before the birth of a Child or the placement of an Adopted Child, a team member must confirm, in writing, the start and end dates for the parental leave.
- 9.9.8 Where the team member cannot give the appropriate notice because it is not possible to do so (for example the birth occurs earlier than expected) the team member can still take leave but must give notice and evidence as soon as practicable.

Special maternity leave

- 9.9.9 A pregnant team member eligible for unpaid parental leave may take unpaid special maternity leave if the team member is not fit for work due to:
- (a) a pregnancy-related illness; or
 - (b) her pregnancy ending within 28 weeks of the expected date of birth, other than by the birth of a living child.
- 9.9.10 If a team member has not started maternity leave and she suffers a pregnancy-related illness, the team member may take paid personal leave before taking unpaid special maternity leave.
- 9.9.11 If a team member takes special maternity leave due to a pregnancy-related illness, the leave will end when the either the pregnancy ends or the illness ends, whichever occurs first.
- 9.9.12 Special maternity leave, or paid personal leave taken as special maternity leave, does not reduce the team member's total unpaid parental leave entitlement.
- 9.9.13 As soon as possible, the team member will notify Coles:
- (a) that she is taking special maternity leave; and
 - (b) the estimated duration.
- 9.9.14 A medical certificate may be requested by Coles.

Work in the 6 weeks before the birth

- 9.9.15 If a pregnant team member wants to continue to work in the 6 weeks before the expected birth, Coles may request a medical certificate to be provided that states whether the team member is fit for work.
- 9.9.16 If the team member is fit for work the medical certificate must also state whether it is inadvisable for the team member to continue in her current position because of:
- (a) pregnancy-related illness or risks; or
 - (b) hazards connected with the position.
- 9.9.17 If a team member is on paid no safe job leave under subclause 9.9.21 during the 6 week period before the expected birth, Coles can request a further medical certificate to be provided within 7 days that states whether she is fit for work.
- 9.9.18 Coles may require a team member to start unpaid parental leave as soon as practicable if:
- (a) she does not provide the medical certificate within 7 days of the request; or
 - (b) the medical certificate states she is not fit for work.

A safe job

- 9.9.19 If a pregnant team member provides a medical certificate stating:
- (a) she is fit for work; and

- (b) it is inadvisable for her to continue in her current position during a stated period because of pregnancy-related illness or risks or hazards connected with that position

the team member will be transferred to an appropriate safe job with no change to the team member's terms and conditions of employment.

- 9.9.20 The team member will continue to be paid at the same Base Rate of Pay plus any applicable penalties, allowances or overtime that she was paid in her position immediately before she was transferred to an appropriate safe job. The team member and Coles can agree on a different working hours.
- 9.9.21 If an appropriate safe job is not available, the team member may take no safe job leave immediately. This leave is in addition to any other leave entitlements.
- 9.9.22 Payment for no safe job leave for team members who are entitled to unpaid parental leave will be at the team member's Base Rate of Pay for their ordinary hours of work. The penalties in subclauses 8.5.5, 8.6.1, 8.7.4 and 8.7.5 do not apply.
- 9.9.23 No safe job leave will end when the following occurs (whichever is first):
 - (a) if the period of leave connected with the birth of a Child starts; or
 - (b) at the end of the pregnancy; or
 - (c) if the team member provides a medical certificate stating she is not fit for work.

When parental leave starts

- 9.9.24 If the pregnant team member takes unpaid parental leave, it has to start:
 - (a) on the birth of the Child; or
 - (b) up to 6 weeks before the expected birth (or earlier by agreement).
- 9.9.25 If the team member is not pregnant and is:
 - (a) the parent taking the unpaid parental leave; or
 - (b) taking adoption leave;

the leave may start anytime from the birth of the Child or placement of the Adopted Child.
- 9.9.26 When parents take leave at the same time (concurrent leave) it can start:
 - (a) on the birth of the Child or placement of the Adopted Child; or
 - (b) earlier than this date by agreement; or
 - (c) later than this date but within 12 months of the birth of the Child or placement of the Adopted Child.
- 9.9.27 The spouse can start unpaid parental leave within 12 months after the birth of the child or placement of the Adopted Child if:
 - (a) they have responsibility for the care of the Child or Adopted Child; and
 - (b) their spouse is not a team member.

Other leave during unpaid parental leave

- 9.9.28 A team member can take annual or long service leave during unpaid parental leave. Any leave taken is deducted from the team member's total parental leave entitlement.
- 9.9.29 Personal/carer's leave and compassionate leave is not available during unpaid parental leave.

Casual work during unpaid parental leave

- 9.9.30 An eligible team member may request to be engaged on a casual basis during a period of unpaid parental leave. A team member cannot work on a casual basis if they are:
 - (a) receiving a government paid parental leave payment; or
 - (b) intend to receive a government paid parental leave payment during the period of parental leave and has not received the final payment as yet.

- 9.9.31 A team member's request to be engaged on a casual basis is in addition to the team member's entitlement to 'keeping in touch' days under the Act.
- 9.9.32 Eligible team members will not accrue any leave except for long service leave when working casually during unpaid parental leave.
- 9.9.33 Work will not extend the period of parental leave beyond the original period of leave approved.
- 9.9.34 Any work performed will be paid at the casual rate as provided in subclause 4.1.6(b).

Consultation with team members on unpaid parental leave

- 9.9.35 Where Coles has made a decision which will have a significant effect on the status, pay or location of the team member's pre-parental leave position, Coles must take all reasonable steps to give the team member information about, and an opportunity to discuss, the effect of the decision on their position. Where relevant this subclause should be read in conjunction with the general consultation clauses set out in clause 3.1 and subclause 4.3.2.

Extending parental leave

- 9.9.36 Where a team member who has 12 months continuous service has originally applied for:
 - (a) less than 52 weeks leave, if eligible, the team member may extend their leave up to a total of 52 weeks (or more by agreement); or
 - (b) 52 weeks leave, if eligible, the team member may extend their leave up to a total of 104 weeks.
- 9.9.37 Where a team member extends their leave they must provide 4 weeks' written notice before the original leave ends, including:
 - (a) the team member's original leave and the new end date; and
 - (b) any amount of unpaid parental leave their spouse has taken or will take.

Coles must respond in writing within 21 days.

Shortening parental leave

- 9.9.38 A team member may shorten their leave by agreement with Coles by giving 4 weeks' written notice (or less by agreement).

Return to work after cancellation of unpaid parental or adoption leave

- 9.9.39 Where the placement of a Child for adoption does not occur or continue the team member must notify Coles as soon as reasonably practicable. The team member will return to work within 4 weeks' of notifying Coles on a date chosen by Coles.
- 9.9.40 If a team member has started unpaid parental leave and loses their child during the period of leave, they may return to work, on an agreed date, within 4 weeks of the return to work date requested by the team member.

Returning to work from unpaid parental leave

- 9.9.41 At least 4 weeks before the end of the parental leave, a team member must notify Coles, in writing, of their intention to return to work.
- 9.9.42 A team member will be entitled to their pre-parental leave position unless it no longer exists in which case clause 4.3 will apply.
- 9.9.43 A casual team member will be re-engaged as a casual team member when returning to work.

Pre-parental leave position

- 9.9.44 A team member returning to work part-time will return to their pre-parental leave position. However, if this is not possible the team member will be placed in another position under this Agreement as nearly comparable in status and pay to the Pre-parental Leave Position..
- 9.9.45 A team member with at least 12 months continuous service before starting part-time work after the birth or placement of a child has the right to return to their pre-parental leave position:
 - (a) at the end of the period of such part-time work; or

- (b) at the end of any following periods of part-time work if there is more than one period.

Temporary Part-time Work Agreement

- 9.9.46 The following team members may work part-time for one or more periods:
 - (a) a pregnant team member; or
 - (b) a team member who has returned to work following the birth or placement of the child until the child's second birthday or the second anniversary of the placement.
- 9.9.47 A team member may work part-time under this clause regardless of any other clause in the Agreement that limits the circumstances and terms of part-time employment.
- 9.9.48 A team member who is a parent of a child who is of school age or younger may request for Flexible Working Arrangements as provided for in the NES.
- 9.9.49 Before starting a period of part-time work under this clause, a Part-time Work Agreement will be agreed to in writing and Coles will confirm the following:
 - (a) that the team member may work part-time;
 - (b) the period of part-time employment;
 - (c) the team member's classification for this period; and
 - (d) the team member's roster.
- 9.9.50 The terms of the Part-time Work Agreement may be varied:
 - (a) by agreement; or
 - (b) in accordance with the rostering principles as provided in subclauses 8.2, 8.3 and 8.4.
- 9.9.51 Coles will provide a copy of the Part-time Work Agreement, and any variation to it, to the team member and will also retain copies for its records.

9.10 Pre-Natal Leave

Entitlement

- 9.10.1 A Permanent team member who is pregnant may access personal leave or carer's leave to attend medical appointments associated with their pregnancy.
- 9.10.2 A Permanent team member whose partner is pregnant may access carer's leave to attend medical appointments with their partner.
- 9.10.3 Where possible, team members should arrange appointments as close as possible to the start or end of their ordinary rostered hours.

Notification

- 9.10.4 The team member will provide Coles with reasonable notice of their requirement to take pre-natal leave.

Documentation

- 9.10.5 Team members may be required to provide Coles with proof of attendance in accordance with the relevant leave type being accessed (i.e. clause 9.5 or clause 9.6).

Payment

- 9.10.6 The actual time taken to attend each appointment will be deducted from the team member's accrued personal leave or carer's leave entitlement.
- 9.10.7 Pre natal leave will be paid at the team member's Base Rate of Pay for the hours normally rostered to work. The penalties in subclauses 8.5.5, 8.6.1, 8.7.4 and 8.7.5 do not apply.

9.11 Blood Donor Leave

Entitlement

9.11.1 For the purpose of donating blood, a Permanent team member will be entitled to take:

- (a) a maximum of 2 hours on each occasion; and
- (b) a maximum of 4 separate absences each calendar year.

9.11.2 The absence must be:

- (a) on a day suitable to Coles; and
- (b) at a time as close as possible to the start or end of the team member's ordinary rostered hours.

Notification

9.11.3 Team members will notify Coles of the date and time as soon as possible.

Documentation

9.11.4 Team members will provide Coles with:

- (a) proof of their attendance; and
- (b) proof of the duration of their attendance.

Payment

9.11.5 In addition to a team member's Base Rate of Pay a team member will receive the penalty payment(s) and allowances that they would have received for their ordinary rostered hours had they not been on blood donor leave.

9.12 Natural Disaster Leave

Team members leaving work

9.12.1 A team member will be allowed to leave work where a cyclone warning is announced, or there is a natural disaster (e.g. flooding or bushfires) which:

- (a) poses a genuine threat to a team member's property; or
- (b) creates a need for a team member to care for a member of their household; or
- (c) poses a genuine threat to a team member gaining access to their home (e.g. road closures).

Team members unable to attend

9.12.2 Where a Permanent team member is unable to attend for work as rostered due to a cyclone warning or a natural disaster, the team member may request access to natural disaster leave. Requests will not be unreasonably refused provided that there are no reasonable alternative arrangements which would allow a team member to attend work such as:

- (a) the team member being able to work their rostered shift at an alternative surrounding store; and/or
- (b) alternative transport being available; and/or
- (c) any other reasonable alternative arrangements made by Coles.

Payment

9.12.3 Permanent team members are entitled to access up to 3 paid days (pro-rata for part-time team members) at the team member's Base Rate of Pay for the hours normally rostered to work. The penalties provided in subclauses 8.5.5, 8.6.1, 8.7.4 and 8.7.5 do not apply. This leave does not accumulate from year to year.

9.13 Jury Service Leave

Entitlement

9.13.1 Team members will be entitled to time off when required to attend for jury service.

Notification

9.13.2 Team members will provide Coles with notice as soon as practicable.

Rostering

- 9.13.3 All team members attending for jury service (including selection) are not required to attend work on that day. The combination of consecutive jury and work days will not exceed the maximum days provided in subclauses 8.2 and 8.3.

Documentation

- 9.13.4 To receive payment, team members will provide Coles with:
- (a) proof of their requirement to attend jury service;
 - (b) proof of attendance; and
 - (c) proof of jury fees received for such service.

Payment

- 9.13.5 Permanent team members will be paid the difference between jury service fees received and their Base Rate of Pay, plus penalty payments that they would have received for their ordinary rostered hours had they not been on jury service.
- 9.13.6 Permanent team members required to attend for jury service during annual leave will be entitled to have their annual leave entitlement re-credited, as provided in subclause 9.2.9.
- 9.13.7 Casual team members may be entitled to payment, in accordance with the relevant State or Territory legislation.

9.14 Emergency Services Leave

Entitlement

- 9.14.1 Permanent and casual team members involved in recognised voluntary emergency services (such as SES and firefighting) will be entitled to time off to attend to emergency management activities.
- 9.14.2 Emergency services leave for Permanent team members attending emergencies in the local area will not be unreasonably restricted by Coles or unreasonably accessed by the team member.
- 9.14.3 Permanent team members attending emergencies not in the local area are entitled to a maximum of 2 paid days. Coles may approve additional paid leave, depending on the seriousness of the emergency (e.g. major bushfire).

Notification

- 9.14.4 Team members will provide Coles with notice as soon as practicable and keep Coles informed about the time off needed.

Documentation

- 9.14.5 Permanent team members will provide Coles with supporting documentation as evidence of their attendance.

Payment

- 9.14.6 Payment for Permanent team members will be at their Base Rate of Pay for the hours normally rostered to work. The penalties provided in subclauses 8.5.5, 8.6.1, 8.7.4 and 8.7.5 do not apply.
- 9.14.7 Casual team members can access unpaid emergency services leave.

9.15 Defence Service Leave

Entitlement

- 9.15.1 Team members who are Defence Reservists will be entitled to be absent from work to undertake all types of Defence service.

Notification and documentation

- 9.15.2 Team members must provide notice to Coles at least 1 month prior to the period of leave. The notice should detail the start and finish dates for training.

Payment

- 9.15.3 Permanent team members who are required to attend full-time training to prepare for Defence service will be paid the difference between the payment received in respect of their attendance and the team member's Base Rate of Pay for the hours normally rostered to work.
- 9.15.4 For other types of Defence service Permanent team members are entitled to unpaid Defence service leave.
- 9.15.5 Casual team members are entitled to unpaid Defence service leave.

9.16 Domestic and Family Violence Leave

Coles recognises that team members who experience domestic or family violence may need additional support to recover, settle, organise children, attend doctor's appointments, court appointments and related activities. Coles will make every effort to provide such support and will treat such matters with confidentiality.

Entitlement

- 9.16.1 A Permanent team member experiencing domestic or family violence may:
 - (a) access paid domestic and family violence leave of 2 days per year (pro-rata for a part-time team member) at the team member's Base Rate of Pay for the hours normally rostered to work. The penalties provided in subclauses 8.5.5, 8.6.1, 8.7.4 and 8.7.5 do not apply. This leave does not accumulate from year to year;
 - (b) access personal leave, carer's leave, annual leave or leave of absence.

Leave may be granted for the purpose of seeking medical and legal assistance, for counselling, relocation or other directly related activities.
- 9.16.2 A team member who supports a person experiencing family or domestic violence may take carer's leave (as per clause 9.7) to accompany them to court or hospital or to mind children.
- 9.16.3 In order to support and provide a safe work environment to a team member experiencing family or domestic violence Coles will consider any reasonable request for:
 - (a) changes to their spread of hours or pattern of hours and/or shifts;
 - (b) job redesign or change of duties;
 - (c) relocation to a suitable location within the company;
 - (d) any other appropriate measures including those available under existing provisions for family friendly and flexible working arrangements.

Notification

- 9.16.4 Team members are required to notify the Store Manager of such absence on the first day of absence if prior notice is not possible. Where not appropriate to notify the Store Manager in a particular circumstance, a team member should instead notify the Regional People & Culture Manager.

Documentation

- 9.16.5 Coles may request reasonable supporting 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 may be accepted.

Confidentiality

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

Payment for other forms of leave taken under this clause

- 9.16.7 Where a team member accesses other forms of leave under subclause 9.16.1(b), such leave will be paid in accordance with the type of leave being taken by the team member.

9.17 Time Off and Leave for Casual team members

- 9.17.1 Appropriate consideration will be given to requests by casual team members to take time off for studies, exams, holidays, etc. Time off for these reasons will not impact the team member's casual status.

9.17.2 Casual team members are entitled to access the following leave:

- (a) carer's leave as provided in subclause 9.7.3;
- (b) compassionate leave as provided in subclause 9.8.3;
- (c) defence service leave as provided in subclause 9.15.5;
- (d) emergency services leave as provided in subclause 9.14.7;
- (e) jury service leave as provided in subclause 9.13.7;
- (f) parental leave as provided in clause 9.9.

APPENDICES

APPENDIX A – CLASSIFICATIONS

A1. Job Titles and typical tasks

A1.1. So as to avoid doubt, a team member who has been provided with suitable training and/or has suitable knowledge or experience may be required to undertake tasks at a classification other than that which they are principally employed under. This will be in accordance with clause 6.7 if applicable.

A1.2. Level 1 Team member

- a. A team member performing one or more of the following functions in Supermarket Retail Operations:
- 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, including conducting customer tastings;
 - 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;
 - Clerical Assistants functions Level 1; or
 - work which is incidental to or in connection with any of the above.
- b. Team members 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.
- c. Indicative job titles which are usually within the definition of a Level 1 Team member are:
- shop assistant;

- clerical assistant;
 - check-out operator;
 - store worker;
 - reserve stock hand;
 - driver;
 - LPO;
 - store greeter;
 - assembler;
 - ticket writer (not qualified);
 - trolley collector;
 - telephone order salesperson;
 - demonstrator and/or merchandiser not elsewhere classified (including a demonstrator and/or merchandiser who is not a direct employee of the retailer).
- d. Clerical assistant means a team member accountable for clerical and office tasks as directed within the skill levels set out.
- e. Team members 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.
- f. Such team members 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.
- g. Team members at this level are responsible and accountable for their own work within established routines, methods and procedures and the less experienced team member's work may be subject to checking at all stages. The more experienced team member may be required to give assistance to less experienced team members in the same classification.
- h. Indicative typical duties and skills at this level may include:
- 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 Level 2.

A1.3. Level 2 Team member

- a. A team member performing work in Supermarket Retail Operations at a higher skill level than a Level 1 team member.
- b. Indicative job titles which are usually within the definition of a Level 2 team member include:
- forklift operator;
 - ride on equipment operator.

A1.4. Level 3 Team member

- a. A team member performing work in Supermarket Retail Operations at a higher level than a Level 2 team member.

- b. Indicative of the tasks which might be required at this level are the following:
- supervisory assistance to a designated section manager or team leader;
 - opening and closing of premises and associated security;
 - security of cash; or
 - a team member who is required to utilise the skills of a trade (eg bakery) for the majority of the time in a week, and who has completed Coles nominated training, but who has not completed an appropriate trades course and does not hold an appropriate Certificate III.
 - The totality of duties and responsibilities that make up the role of a customer service agent employed within the online department.
- c. Indicative job titles which are usually within the definition of a Level 3 team member include:
- senior salesperson;
 - cook (not qualified) in a cafeteria;
 - skilled non-tradesperson;
 - senior LPO, including an armed LPO;
 - LPO supervisor;
 - customer service agent;
 - designated second-in-charge of a section (i.e. senior sales assistant);
 - designated second-in-charge to a service supervisor.

A1.5. Level 4 Team member

- a. A team member performing work in Supermarket Retail Operations at a higher level than a Level 3 team member.
- b. Indicative of the tasks which might be required at this level are the following:
- management of a defined section/department;
 - supervision of up to 4 sales staff (including self);
 - stock control;
 - buying/ordering requiring the exercise of discretion as to price, quantity, quality etc.;
 - a team member who is required to utilise the skills of a trades qualification for the majority of the time in a week; or
 - clerical functions Level 2.
- c. Indicative job titles which are usually within the definition of a Level 4 Team member include:
- a team member who is required to utilise the skills of a trades qualified person for the majority of the time in a week. This includes: baker, pastry cook, florist;
 - a team member 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, or who has equivalent experience and is deemed by Coles to be competent in the trade;
 - a shiftwork supervisor;
 - section/department manager with up to 2 team members (including self);
 - service supervisor of up to 15 team members;
 - nightfill supervisor/leader.
- d. Clerical officer Level 2 characteristics:

- this level caters for the team members who have had sufficient experience and/or training to enable them to carry out their assigned duties under general direction;
 - team members 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 team member to exercise limited judgment and initiative within the range of their skills and knowledge;
 - the work of these team members may be subject to final checking and as required progress checking. Such team members may be required to check the work and/or provide guidance to other team members at a lower level and/or provide assistance to less experienced team members at the same level.
- e. Indicative typical duties and skills at this level may include:
- reception/switchboard duties as in Level 1 and in addition responding to enquiries as appropriate, consistent with the acquired knowledge of the organisation's operations and services, and/or where presentation and use of interpersonal skills are a key aspect of the position;
 - 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;
 - maintenance of records and/or journals including initial processing and recording relating to the following:
 - i. reconciliation of accounts to balance;
 - ii. incoming/outgoing cheques;
 - iii. invoices;
 - iv. debit/credit items;
 - v. payroll data;
 - vi. petty cash Imprest System;
 - vii. letters etc.
 - computer application involving use of a software package which may include one or more of the following functions:
 - i. create new files and records;
 - ii. spreadsheet/worksheet;
 - iii. graphics;
 - iv. accounting/payroll file;
 - v. 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.

A1.6. Level 5 team member

- a. A team member performing work at a higher level than a Level 4 team member.
- b. Indicative job titles which are usually within the definition of a Level 5 team member include:
 - a tradesperson in charge of other tradespersons within a section or department;
 - service supervisor (more than 15 team members).

A1.7. Level 6 Team member

- a. A team member performing work in or in connection with Supermarket Retail Operations at a higher level than a Level 5 team member.
- b. Indicative job titles which are usually within the definition of a Level 6 Team member include:
 - section/department manager with 5 or more team members (including self);
 - assistant or deputy or 2ic shop manager of a shop with departments/sections;
 - clerical officer level 3.
- c. Clerical officer Level 3 characteristics:
 - team members at this level have achieved a standard to be able to perform specialised or non-routine tasks or features of the work. Team members require only general guidance or direction and there is scope for the exercise of limited initiative, discretion and judgment in carrying out their assigned duties;
 - such team members 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 team members in Levels 1 and 2 and would be able to train such team members by means of personal instruction and demonstration.
- d. Indicative typical duties and skills at this level may include:
 - 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 developed for a micro personal computer or a central computer resource to either/or:
 - i. create new files and records;
 - ii. maintain computer based records management systems;
 - iii. identify and extract information from internal and external sources;
 - iv. use of advanced word processing/keyboard functions.
 - arrange travel bookings and itineraries; make appointments; screen telephone calls; respond to invitations;
 - application of specialist terminology/processes in professional offices.

APPENDIX B – SAVED PROVISIONS

B.1 Voluntary work on a Sunday

B.1.1 Ordinary hours of work on a Sunday will be voluntary for all team members who were engaged in:

- a. a store at the time when Sunday trading lawfully commenced (or commences in the future) in that store; or
- b. a store which, immediately prior to 2 March 1997, could not lawfully trade on a Sunday; or
- c. NSW/ACT immediately prior to December 1991; or
- d. Victoria immediately prior to 1 December 1996; or
- e. any other States and Territories immediately prior to 2 February 1994.

B.1.2 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 Coles 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.

B.2 Voluntary work after 6pm on a Saturday

Where a store does not trade after 6pm on a Saturday, work after this time will be voluntary for all existing team members engaged in such store when trading after 6pm on a Saturday becomes legal.

B.3 Saved minimum hours per week

Part-time team members engaged prior to 7 February 1994 who were entitled to a minimum of 12 rostered hours per week (48 hours averaged over a 4 week cycle) shall have this minimum provision maintained for the life of this Agreement.

B.4 Saved provisions pick up

Eligible team members under 1.10 of Appendix A under the *Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited Retail Agreement 2011* will continue to receive their preserved amount. The preserved amount will continue to be reduced by 50% of future wage rises payable under this Agreement until it has been fully absorbed.

- B.5 Where a team member can demonstrate that a saved provision in the *Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited Retail Agreement 2011* applied to them and it is not contained in this Agreement such saved provision will continue to apply to the team member. This includes saved job titles.

B.6 Buy-out of saved provisions

By mutual agreement, Coles can make a payment to a team member to buy-out an entitlement to a saved provision in this Agreement. The team member will respond to any offer by Coles to buy-out the entitlement within 7 days of the offer being made. Where a buy-out has occurred, such team member will no longer have an entitlement to the saved provision that has been bought out.

B.7 Part-time reduction of hours

For team members whose hours were reduced under either subclause 5.3.8 of the *Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Ltd Retail Agreement 2011* the following shall apply:

- a. Such team members will have preference to additional permanent hours that become available in their store ahead of part-time team members who had no reduction in hours, casual team members and new part-time team members. Such team members will also have preference to additional hours that are not permanent.

B.8 Accident pay – Victoria only

Team members employed continuously from immediately before the commencement of this Agreement shall continue to be eligible to receive accident pay whilst in receipt of compensation payable under the *Accident Compensation Act 1986* (as amended) as follows:

- a. The Company will make-up the difference between the accident compensation payment payable under the *Accident Compensation Act 1986* (as amended) and the team member's usual weekly pay for the average rostered hours worked by the team member at the time of the accident.
- b. 'Usual weekly pay' in relation to this clause will exclude additional remuneration by the way of attendance bonus payments, shift premiums, overtime payments, fares and travelling allowance, special rates or other similar payments.
- c. This payment made by the Company will be limited to a maximum of 39 weeks.
- d. This clause shall not apply in respect of an injury suffered during the first 7 consecutive days (including non-working days) on which the team member is incapacitated

B.9 Broken Hill Long Service Leave

Long Service Leave provisions for team members who at the commencement of this Agreement were employed at the Coles store in Broken Hill, and continue to be employed at the Coles store in Broken Hill, shall be as per the

New South Wales *Long Service Leave Act 1955*, provided that Long Service Leave will accrue on the basis of 1.3 weeks per year of service.

APPENDIX C – SUPPORTED WAGE

C1 Team members employed under supported wage

C1.1 This schedule 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 this agreement.

C1.2 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 a 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.

C2 Eligibility criteria

C2.1 Team members 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 team member is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

C2.2 This schedule does not apply to any existing team member who has a claim against Coles 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.

C3 Supported wage rates

C3.1 Team members to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed capacity (see clause C4) %	Relevant minimum wage (as percentage of classifications in clause 5.2
10	12
20	22
30	31.5
40	41.5
50	51
60	61
70	71

80	80.5
90	90

- C3.2 Provided that the minimum amount payable must be not less than \$84 per week.
- C3.3 Where a team member's assessed capacity is 10%, they must receive a high degree of assistance and support.

C4 Assessment of capacity

- C4.1 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 SWS by an approved assessor, having consulted Coles and the team member and, if the team member so desires, a Union which the team member is eligible to join.
- C4.2 All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by Coles as a time and wages record in accordance with the Act.

C5 Lodgement of SWS wage assessment agreement

- C5.1 All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the team member, must be lodged by Coles with the FWC.
- C5.2 All SWS wage assessment agreements must be agreed and signed by the team member and Coles parties to the assessment. Where a Union which has an interest in the award is not a party to the assessment, the assessment will be referred by the FWC to the Union by certified mail and the agreement will take effect unless an objection is notified to the FWC within 10 working days.

C6 Review of assessment

- C6.1 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.

C7 Other terms and conditions of employment

- C7.1 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 schedule will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

C8 Workplace adjustment

- C8.1 Coles wishing to employ a person under the provisions of this schedule must take reasonable steps to make 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 workers in the area.

C9 Trial period

- C9.1 In order for an adequate assessment of the team member's capacity to be made, Coles may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- C9.2 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.
- C9.3 The minimum amount payable to the team member during the trial period must be no less than \$84 per week.
- C9.4 Work trials should include induction or training as appropriate to the job being trialled.
- C9.5 Where Coles and the 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 C4.

APPENDIX D -TOP UP PAYMENT SCHEME

D1. Example calculations

D1.1 The following are examples of how the Top Up Payment Scheme referred to in clause 5.3 works in practice with a number of typical rosters and circumstances:

D1.2 Example A - Peter – full-time team member

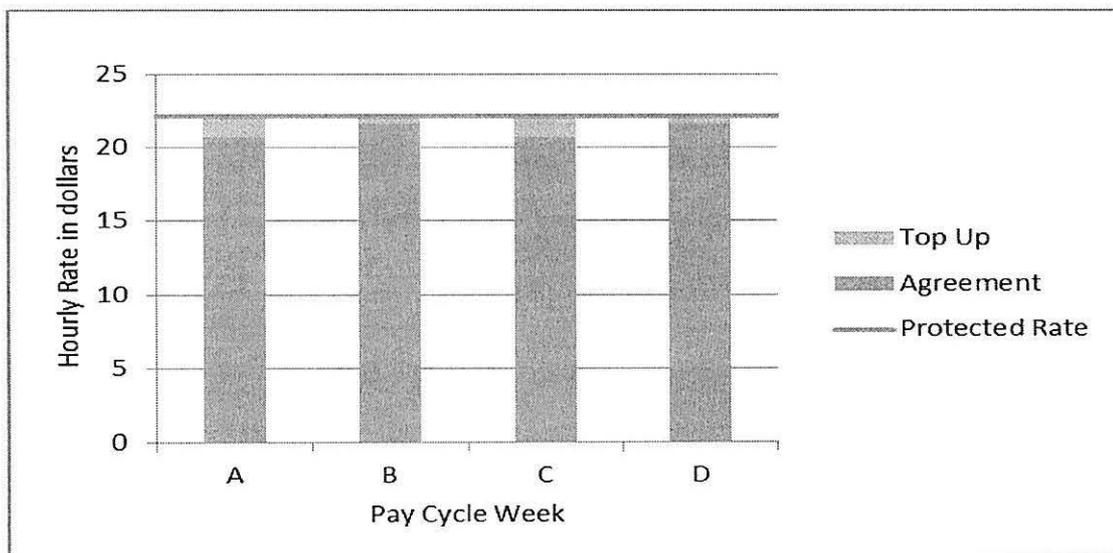
Peter has for the past year worked 7am – 3pm Monday to Thursday one week and 7am – 3pm Monday to Thursday, 6:30am – 3pm Friday the next, due to him having school age children. His partner drops them off at school and he picks them up. He also works 2 out of 4 Saturdays from 11am till 8pm.

During the 12 months before the new Agreement commenced he worked 1900 hours and took 76 hours of annual leave for a total 1976 hours earning him \$43,625.35. The 2 weeks of annual leave is included in the calculation. This gives him a protected rate of \$22.08.

Peter continues to work the same shifts after the commencement of this Agreement, and asks that he continue to receive two consecutive days off per fortnight as that suits his personal circumstances. In an example 4 week cycle he earns the following Agreement rates

Pay cycle week	Agreement Rate
Week A (M-Fri):	\$20.69
Week B (M-Thu plus Sat):	\$21.63
Week C (M-Fri):	\$20.69
Week D (M-Thu plus Sat):	\$21.63

In each of these examples, as Peter predominantly works at times where no penalties are payable, he earns less under this Agreement than he would have previously. He therefore benefits from a top up that brings him up to the higher average hourly rate that he was paid prior to the successful vote on this Agreement:



Applying this to the 38 hours that he worked each week his pay is topped up each pay cycle week by the following amounts in addition to his pay under this Agreement:

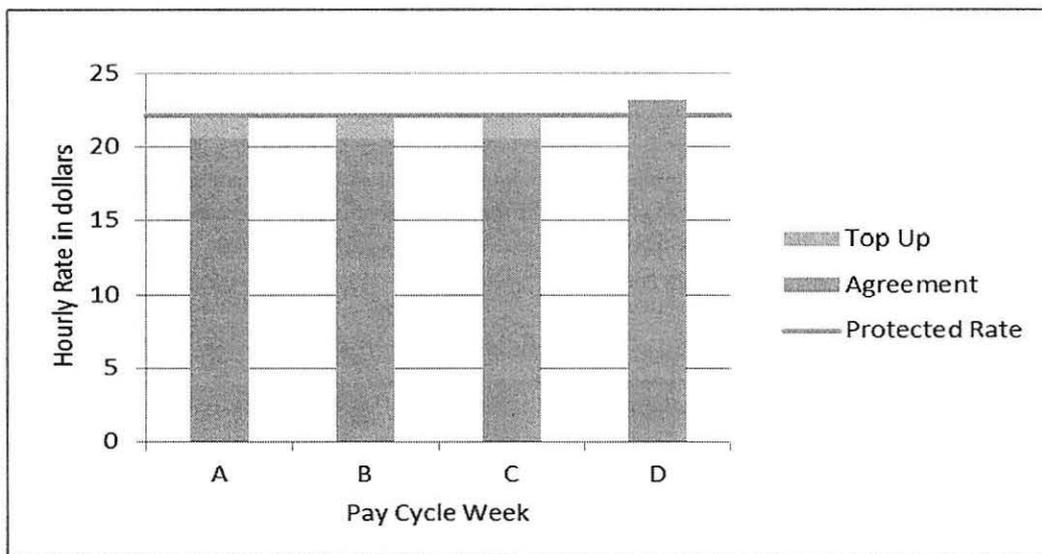
Pay cycle week	Amount
Week A	$\$(22.08-20.69) \times 38 = \52.82
Week B	$\$(22.08-21.63) \times 38 = \17.10
Week C	$\$(22.08-20.69) \times 38 = \52.82

Week D $\$(22.08-21.63) \times 38 = \17.10

Approximately 6 months after the commencement of this Agreement Peter becomes unwell and takes 4 weeks off. The first 3 of these are paid sick leave but for the 4th week he has exhausted his sick leave and has no other leave entitlements available. He returns to work on the Thursday and Saturday of that week. This results in the following Agreement rates:

Pay cycle week	Agreement Rate
Week A:	\$20.55
Week B:	\$20.55
Week C:	\$20.55
Week D:	\$23.20

In weeks A-C the Agreement rate is lower than the Protected rate and Peter received a top up. In week D, the days that Peter was on unpaid sick leave are excluded from the calculation of the Agreement rate, and the average Agreement rate that he earned for the 15.5 hours that he worked is more than the protected rate. No top up is therefore payable in that week.



Applying this to the eligible hours in each week his pay is topped up each pay cycle week by the following amounts in addition to his pay under this agreement;

Pay cycle week	Amount
Week A	$\$(22.08-20.55) \times 38 = \58.14
Week B	$\$(22.08-20.55) \times 38 = \58.14
Week C	$\$(22.08-20.55) \times 38 = \58.14
Week D	Nil

D1.3 Example B – Jane - Casual team member

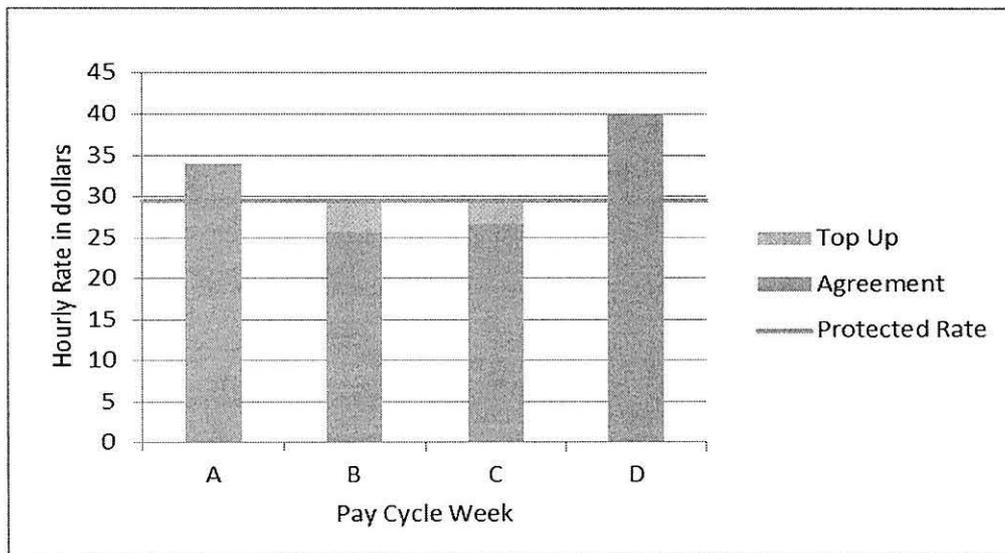
Jane is currently studying at University and has been working on a casual contract of employment for Coles for the past 2 years, mostly working weekends and some evenings during the week. At Christmas she has generally picked up more hours.

Over the last year she worked 520 hours in total, and her gross pay including penalties was \$15,349.20. This gives her a protected rate of \$29.52, including casual loading.

Jane continues to work predominantly weekends and evenings as she continues with her study and she earns the following Agreement rates in an example 4 week cycle, again including casual loading;

Pay cycle week	Agreement Rate
Week A (Saturday 12-4pm and Sunday 12-4pm)	\$33.91
Week B (Tuesday and Thursday 6pm-10pm)	\$25.69
Week C (Friday 6pm – 10pm and Sat 12-4pm)	\$26.72
Week D (Sunday 12-4pm)	\$40.07

In these examples, as Jane is working both at times where she benefits from enhanced penalties under this Agreement and at times when she does not, she sometimes earns more and sometimes less under this Agreement than she would have previously. When she earns less she benefits from a top up that brings her up to the higher average hourly rate that she was paid prior to the successful vote on this Agreement:



Applying this to the hours that she worked each week her pay is topped up each pay cycle week by the following amounts in addition to her pay under this Agreement:

Pay cycle week	Amount
Week A	Nil
Week B	$$(29.52-25.69) \times 8 = \30.64
Week C	$$(29.52-26.72) \times 8 = \22.40
Week D	Nil

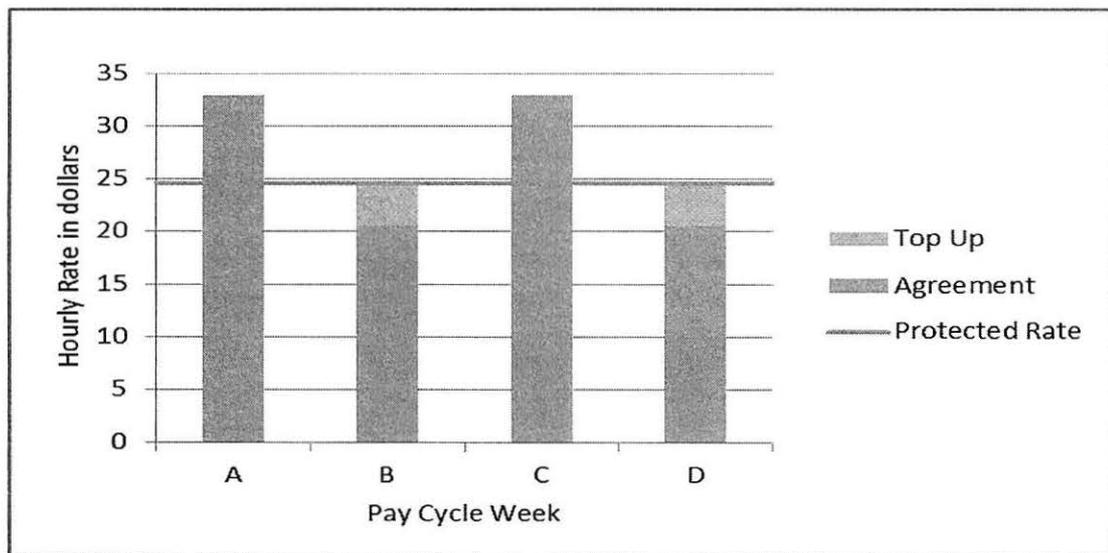
D1.4 Example C – Sam – P/T employee 16 hours

Sam has custody of her children on an alternating week with her ex-partner, with the swap over being on a Saturday morning. Sam therefore works quite different rosters on alternate weeks. In week A the children are with the ex-partner and Sam works Saturday and Sunday 12-8:30pm. In week B the children are with her and she works during school hours Tuesday – Friday 11am – 3pm. Then in weeks C and D this pattern repeats.

During the 12 months before the new Agreement commenced Sam took a 3 month leave of absence. This is not included in the calculation. In the remaining 9 months that she worked she worked 624 hours and earned \$15,351 including penalties. This gives her a protected rate of \$24.60.

Because of the changing times that she works, sometimes Sam benefits from the higher penalty rates that are payable under this Agreement compared to what was in place before and sometimes she does not. This means that she earns the following agreement rates in an example 4 week cycle;

Pay cycle week	Agreement rate
Week A	\$32.88
Week B	\$20.55
Week C	\$32.88
Week D	\$20.55



Applying this to the hours that she worked each week her pay is topped up each pay cycle week by the following amounts in addition to his pay under this Agreement:

Pay cycle week	Amount
Week A	Nil
Week B	$$(24.60-20.55) \times 16 = \64.80
Week C	Nil
Week D	$$(24.60-20.55) \times 16 = \64.80

Sam is also one of the store’s first aiders. This allowance is not factored in the Top Up Payment Scheme and is paid outside of that as part of her pay under this Agreement.

APPENDIX E - IMPACT OF THE 4 YEARLY REVIEW ON THIS AGREEMENT

- E1. As at the time team member's voted to approve this Agreement, there are a number of outstanding matters before the FWC that relate to applications brought under s.156 of the Act seeking to vary the *General Retail Industry Award 2010*.
- E2. The purpose of the arrangements set out in this Appendix is to provide a mechanism to give effect to changes that are made to the *General Retail Industry Award 2010* resulting from the outcome of the proceedings identified in clause E3.
- E3. This Appendix applies to the following proceedings:
- a. **Casual Penalty Rates (Monday-Friday) Proceedings:** The application before the FWC to increase penalty rates for casual employees working evenings Monday to Friday after 6pm from 0% (125% of the full-time Base Rate of Pay, including casual loading) to 25% (150% of the full-time Base Rate of Pay, including casual loading)(see cl.29.4(a) of the *General Retail Industry Award 2010*).
 - b. **Casual Penalty Rates (Saturday) Proceedings:** The application before the FWC to increase penalty rates for casual employees working Saturday between 7am and 6pm (or 11pm in the case of retailers falling within cl.27.2(b)(iii)) from an additional 10% (135% of the full-time Base Rate of Pay, including casual loading) to 25% (150% of the full-time Base Rate of Pay, including casual loading) (see cl.29.4(b) of the *General Retail Industry Award 2010*).
 - c. **Shiftwork Penalty Rates Proceedings:** The application before the FWC to reduce penalty rates for shiftworkers working on Sundays from 200% (225% for casuals) to 150% (175% for casuals)(see cl.30.3(c) of the *General Retail Industry Award 2010*).
- E4. Apart from the proceedings identified in E3, Appendix E will not apply to any other proceedings whatsoever.
- E5. In respect of the Casual Penalty Rates (Monday-Friday) Proceedings, if the terms of subclause 29.4(a) of the *General Retail Industry Award 2010* are varied as a result of that proceeding, casual team members will from the Operative Date be entitled to the penalty rates provided under the amended subclause 29.4(a) of the *General Retail Industry Award 2010* or subclause 8.6.1 of the Agreement, whichever entitlement is greater.
- E6. In respect of the Casual Penalty Rates (Saturday) Proceedings, if the terms of subclause 29.4(b) of the *General Retail Industry Award 2010* are varied as a result of that proceeding, casual team members will from the Operative Date be entitled to the penalty rates provided under the amended subclause 29.4(b) of the *General Retail Industry Award 2010* or subclause 8.6.1, whichever entitlement is greater.
- E7. In respect of the Shiftwork Penalty Rates Proceedings, if the terms of subclause 30.3(c) of the *General Retail Industry Award 2010* are varied as a result of that proceeding, team members will from the Operative Date cease to be entitled to the penalty rates provided in subclause 8.7.4(c) of this Agreement and will instead be entitled to the penalty rate provided under the amended subclause 30.3(c) of the *General Retail Industry Award 2010* or 150% (175% for casuals), whichever entitlement is greater.
- E8. In order to allow the parties to have appropriate notice of any changes to the Agreement made pursuant to this Appendix, the 'Operative Date' is the day that the relevant change to the *General Retail Industry Award 2010* takes effect or 60 days from the date on which a published judgment or decision is issued confirming the substance of the change, whichever period is greater.
- E9. Notwithstanding anything else in this Agreement, any change to a team member's penalty rates made in accordance with this Appendix can only have prospective operation. Under no circumstances will this Appendix operate in such a way to allow for retrospective operation of any kind.

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DETERMINATION

Fair Work Act 2009
s.156—4 yearly review of modern awards

4 yearly review of modern awards—Penalty Rates (AM2014/305)

GENERAL RETAIL INDUSTRY AWARD 2010 [MA000004]

Retail industry

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT CATANZARITI
DEPUTY PRESIDENT ASBURY
COMMISSIONER HAMPTON
COMMISSIONER LEE

MELBOURNE, 21 JUNE 2017

Penalty rates – public holiday penalty rates – Sunday penalty rates.

A. Further to the decisions issued by the Fair Work Commission,¹ the above award is varied as follows:

1. By deleting clause 29.4(c) and inserting the following:

(c) Sunday work

(i) From 1 July 2017 to 30 June 2018

A penalty payment of an additional 95% loading will apply for all hours worked by a full-time or part-time employee on a Sunday. A penalty payment of an additional 95% loading will apply for all hours worked by a casual employee on a Sunday (inclusive of the casual loading).

(ii) From 1 July 2018 to 30 June 2019

A penalty payment of an additional 80% loading will apply for all hours worked by a full-time or part-time employee on a Sunday. A penalty payment of an additional 85% loading will apply for all hours worked by a casual employee on a Sunday (inclusive of the casual loading).

(iii) From 1 July 2019 to 30 June 2020

A penalty payment of an additional 65% loading will apply for all hours worked by a full-time or part-time employee on a Sunday. A penalty

MA000004 PR593953

payment of an additional 75% loading will apply for all hours worked by a casual employee on a Sunday (inclusive of the casual loading).

(iv) From 1 July 2020

A penalty payment of an additional 50% loading will apply for all hours worked by a full-time or part-time employee on a Sunday. A penalty payment of an additional 75% loading will apply for all hours worked by a casual employee on a Sunday (inclusive of the casual loading).

3. By deleting clause 29.4(d)(i) and inserting the following:

- (i) Work on a public holiday must be compensated by payment of an additional 125% for all hours worked by a full-time or part-time employee. A penalty payment of an additional 150% will apply for all hours worked by a casual employee (inclusive of the casual loading).

B. This determination comes into operation from 1 July 2017. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after 1 July 2017.

PRESIDENT

¹ 23 February 2017 [2017] FWCFB 1061; 17 March 2017 [2017] FWCFB 1551; 5 June 2017 [2017] FWCFB 3001 and 21 June 2017 [2017] FWCFB 3334

SIGNATORIES TO COLES SUPERMARKETS ENTERPRISE AGREEMENT 2017

Signed for and on behalf of Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited (ABN 45 004 189 708):

Signature:

Print Full Name: David Andrew Brewster

Address: 800 Toorak Road, Hawthorn East VIC 3123

Authority to sign: Director

Date: 28/2/18

Witnessed by:

Signature:

Print Full Name: COURTNEY JON DIXON

Address: 800 TOORAK ROAD, HAWTHORN EAST, VICTORIA 3123

Date: 28/02/2018

Signed for and on behalf of The Shop, Distributive and Allied Employees' Association in their capacity as an Employee Bargaining Representative:

Signature:

Print Full Name: GERARD ANDREW DWYER

Address: Level 6, 53 QUEEN STREET, MELBOURNE, 3000

Authority to sign: NATIONAL SECRETARY, TREASURER

Date: 28 - 02 - 2018

Witnessed by:

Signature:

Print Full Name: LOURDES L STA BARBARA

Address: 5 DARA CRESCENT GLENMORE PARK NSW 2745

Date: 28/02/2018

Signed for and on behalf of The Australian Workers Union in their capacity as an Employee Bargaining Representative:

Signature:

Print Full Name: Stephen Baker

Address: 12/333 Adelaide Street, Brisbane QLD 4000

Authority to sign: Branch Secretary (Acting)

Date: 26-2-18

Witnessed by:

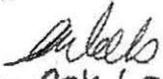
Signature:

Print Full Name: Samantha Stokes

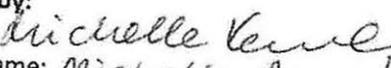
Address: 12/333 Adelaide Street, Brisbane QLD 4000

Date: 26-2-18

Signed as a representative of covered employees in their capacity as an Employee Bargaining Representative:

Signature: 
Print Full Name: ANN EMMA WELLS
Address: 4/7 MOSRIATH AVE, NOWRA, NSW 2541
Authority to sign: COLES EMPLOYEE AND EMPLOYEE BARGAINING REPRESENTATIVE
Date: 26/2/18

Witnessed by:

Signature: 
Print Full Name: Michelle Anne Keane
Address: 3/96 Victoria Crescent, Mt Albert, VIC, 3127
Date: 26/2/18

Signed as a representative of covered employees in their capacity as an Employee Bargaining Representative:

Signature: 
Print Full Name: Penelope Alice Vickers
Address: C/- Coles Mt Ommaney, 171 Dandenong Road, Mt Ommaney Qld 4074
Authority to sign: Coles Employee and Employee Bargaining Representative
Date: 28 February 2018

Witnessed by:

Signature: 
Print Full Name: Allen Leslie Truslove
Address: Level 2, 710 Collins Street, Docklands Vic 3008
Date: 28 February 2018

