



# DECISION

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

**EG Fuelco (Australia) Limited T/A EG Australia**  
(AG2022/4780)

## **EG AUSTRALIA FUEL & CONVENIENCE ENTERPRISE AGREEMENT 2022**

Vehicle industry

COMMISSIONER LEE

MELBOURNE, 13 DECEMBER 2022

*Application for approval of the EG Australia Fuel & Convenience Enterprise Agreement 2022*

[1] An application has been made for approval of an enterprise agreement known as the *EG Australia Fuel & Convenience Enterprise Agreement 2022* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by EG Fuelco (Australia) Limited T/A EG Australia. The Agreement is a single enterprise agreement.

[2] On 1 December 2022 the Retail and Fast Food Workers Union Incorporated Trading as Retail and Fast Food Workers Union (RAFFWU) lodged a Form F18A. The RAFFWU raised concerns that the group to be covered by the purported Agreement was not fairly chosen. In particular, that the exclusion of persons merely because they are engaged as a salaried assistant store manager is contrary to the intention of the Act.

[3] The Applicant lodged submissions in response to the RAFFWU's concerns on 5 December 2022. The RAFFWU provided a response to the Applicant's submissions on 6 December 2022.

[4] I wrote to the parties on 6 December 2022 indicating that I had received the submission by the Applicant responding to the issues raised in the RAFFWU's Form F18A, and the further views of the RAFFWU. I did not seek any further submissions from any party. However, if any party wished to be heard in respect to the application, they were to advise my chambers by no later than close of business on Wednesday, 7 December 2022. No correspondence was subsequently received by my chambers from any party wishing to be heard.

[5] Having considered those submissions I am satisfied that the group of employees was fairly chosen. The group that are excluded from coverage, that is the salaried positions of Assistant Store Managers, Store Managers or higher classifications are similar to those excluded from coverage in the Woolworths Supermarkets Agreement 2018 (Woolworths Agreement) approved by Deputy President Gostencnik.<sup>1</sup> In that matter the Deputy President determined that the group was fairly chosen, notwithstanding the exclusion of those employees. That decision was the subject of an appeal, with the appeal grounds including alleged error on the part of the Deputy President in finding the group was fairly chosen. The full bench refused permission to appeal.<sup>2</sup>

[6] While I agree with RAFFWU that the Woolworths Agreement matter turns on its own facts, there was no particular issue raised which distinguishes this matter in any significant regard from the Woolworths Agreement decision.

[7] It is not apparent that the coverage of the Agreement was a significant issue in bargaining, if it was an issue at all. Nevertheless, the views of the RAFFWU are important as a bargaining representative. The views of the Australian Workers' Union and the Shop, Distributive and Allied Employees Association are also important. These Unions support approval and have not made any submissions on the fairly chosen point.

[8] The predecessor Agreement<sup>3</sup> excluded salaried positions of trainee site manager or higher classifications. The coverage for the Agreement before me has a differently framed exclusion as it includes salaried assistant store managers and salaried store managers or higher classifications. I agree with the submission of the Applicant that the effect of the exclusion provision in the predecessor Agreement was to exclude salaried Assistant Store managers as well as Store Managers and Trainee Site Managers<sup>4</sup> However, even if that is not correct, the change in coverage does not necessarily mean the group is not fairly chosen.

[9] There is no evidence or suggestion that the group chosen was one made as a means of manipulating the voter outcome. Nor is there evidence that it has had a negative impact on collective bargaining. No party suggests that the group was geographically, operationally, or organisationally distinct. This is certainly a relevant but not a decisive factor.<sup>5</sup>

[10] Overall, given the predecessor Agreement coverage has a similar, though not the same exclusion; the absence of evidence the group was chosen in order to manipulate the outcome or undermine collective bargaining; the fact that coverage did not feature as a significant factor, if at all during bargaining; and the views of the Australian Workers' Union and the Shop, Distributive and Allied Employees Association who support approval and have not taken issue with the coverage, I consider that although the group covered by the Agreement is not geographically, operationally or organisationally distinct, nevertheless taking into account the circumstances, the group of employees covered by the Agreement is fairly chosen.

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<sup>1</sup> [2019] FWCA 7

<sup>2</sup> [2019] FWCFB 2355

<sup>3</sup> [2013] FWCA 1473

<sup>4</sup> Applicant's Submissions 5 December 2022 at [13].

<sup>5</sup> [2019] FWCA 7 at 109

[11] The Employer has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement. The undertakings are taken to be a term of the Agreement.

[12] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

[13] Pursuant to s.205(2) of the Act, the model consultation term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[14] Pursuant to s.202(4) of the Act, the model flexibility term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[15] The Australian Workers' Union and the Shop, Distributive and Allied Employees Association being bargaining representatives for the Agreement, have given notice under s.183 of the Act that they want the Agreement to cover them. In accordance with s.201(2) I note that the Agreement covers the organisations.

[16] I observe that the following provisions are likely to be inconsistent with the National Employment Standards (NES):

- Clause 27.2.5 – Notice of Termination by the Company
- Clause 27.6 – Abandonment of Employment
- Clause 29.6.3 – Severance Pay
- Clause 29.10 – Team Members Exempted

However, noting the undertaking provided, I am satisfied the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[17] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 30 January 2023. The nominal expiry date of the Agreement is 31 January 2026.



COMMISSIONER

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## Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.:  
AG2022/4780

Applicant:  
EG Fuelco (Australia) Limited

Section 185 – Application for approval of a single enterprise agreement

### Undertaking – Section 190

I, Gerald Robert Richardson, Head of Employee Relations, have the authority given to me by EG Fuelco (Australia) Limited to give the following undertakings with respect to the EG Australia Fuel & Convenience Agreement 2022 ("the Agreement"):

1. This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.
2. For the purpose of section 87(1)(b) of the Act, a 'shiftworker' is a 7 day shiftworker who is regularly rostered to work on Sundays and public holidays.

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

  
\_\_\_\_\_  
Signature

1 December 2022  
\_\_\_\_\_  
Date



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

# EG AUSTRALIA FUEL & CONVENIENCE ENTERPRISE AGREEMENT 2022

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## 2. TITLE

This agreement may be referred to as the EG Australia Fuel & Convenience Enterprise Agreement 2022.

## 3. DURATION

This agreement shall operate from 30 January 2023 and will nominally expire on 31 January 2026.

## 4. INCIDENCE AND PARTIES BOUND

4.1. This Agreement shall be binding on:

- EG Fuelco (Australia) Limited, Level 39, 100 Miller Street, North Sydney NSW 2060 ("The Company"); and
- the Shop Distributive and Allied Employees Association of 53 Queen St Melbourne VIC 3000 ("Union"); and
- the Australian Workers' Union, Queensland Branch ("AWU") ("Union"); and
- Team members employed in EG Australia Fuel and Convenience sites in New South Wales, Australian Capital Territory, Queensland, Victoria, Tasmania, South Australia, Northern Territory and Western Australia, whether members of the Union or not.
- For the purposes of clarity, this Agreement will apply to persons employed within Fuel and Convenience stores in whose duties may include preparing or serving food or coffee as well as sale of fuel products to the public.

4.2. This Agreement shall operate to the complete exclusion of any award or agreement that may otherwise apply to team members covered by this Agreement, except where otherwise specified.

4.3. This Agreement shall not apply to:

- 4.3.1. Persons appointed to salaried positions of Assistant Store Manager, Store Manager or higher classification.
- 4.3.2. Persons employed under the Fast Food Industry Award 2020 and who are primarily engaged in the preparation, the receipt of orders, cooking, sale, serving or delivery of meals, snacks and/or beverages which are sold to the public primarily to take away.

## 5. WAGES

5.1. **Wage Rates**

The following base wage rates will apply:

- 5.1.1. Full or Part Time team members aged 20 years or over: \$24.1691 per hour



- 5.1.2. Junior team members will be paid the following percentages of the applicable adult rates above:

18 years and under	70%	\$16.9183 per hour
19 years	80%	\$19.3361 per hour

**5.2. Future Increases**

From 1 July 2023 and thereafter, the pay rates in this Agreement will be replaced by the equivalent rates in the Vehicle Repair, Services and Retail Award 2020 as amended from time to time. Future increases will take effect from the first full pay period on or after 1 July each year.

Should the Award rate of pay come 1 July 2023 fall below the base rate at the time of the operative date of this EA, then no team member will go backwards.

**5.3. Payment of Wages**

- 5.3.1. Team members will be paid for all time worked.
- 5.3.2. The Pay Week will be from Monday to Sunday. Any shift commencing at midnight shall be deemed to be a shift on the day occurring after midnight.
- 5.3.3. All wages due shall be paid fortnightly not later than Wednesday following the end of the pay period.
- 5.3.4. Wages must be paid by Electronic Funds Transfer into a bank or similar account nominated by the team member.
- 5.3.5. Where ordinary hours of a full-time team member fluctuate from week to week as a result of working a particular roster then wages shall be averaged over that cycle. In the case of full time team members working outside the spread of hours provided in Clause 9, 100% of the ordinary hourly rate shall be averaged over the cycle and additional penalties provided in Clause 9 shall be averaged so far as is practicable.
- 5.3.6. Payment of wages and other entitlements upon termination shall be made by E.F.T. in the next regular fortnightly pay cycle and within 14 days of termination.

**5.4. Flexibility of Work**

- 5.4.1. Subject to the provisions of this clause, the Company may direct a team member to carry out and the team member shall perform such duties as are either within the limits of the team member's skill, competence and training. Team members may also be required to perform duties under supervision for which training is being given.
- 5.4.2. Team members shall take all reasonable steps to achieve quality, accuracy and completion of any job or task assigned to the team member.
- 5.4.3. Team members shall not impose any restrictions or limitations on a reasonable review of work methods or standard work times. All reviews carried out by the Company will take into account the potential impact on Occupational Health and Safety. Where possible this will be done in consultation with the workforce.

## 5.5. Higher Duties

A team member appointed by the Company to perform work for which a higher rate than the team member's ordinary rate is prescribed by this Agreement shall be paid the higher rate designated below for the time so worked and if so engaged for more than two (2) hours shall be paid the higher rate for the whole of the day.

Grade	Role	Relativity
2	Team Member	100%
3	Assistant Store Manager	105%
4	Store Manager	115%

## 6. DEFINITIONS

- 6.1. "Act" means the Fair Work Act 2009, as amended from time to time.
- 6.2. "FWC" means Fair Work Commission.
- 6.3. "NES" means the National Employment Standards as defined under the Act.
- 6.4. "Ordinary Pay" for the purposes of this Agreement shall mean the level of remuneration for the team member's normal average weekly number of hours of work calculated at the ordinary time rate of pay exclusive of any penalties.
- 6.5. "Team member" has the same meaning as "Console Operator" under the Vehicle Repair, Services and Retail Award 2020.
- 6.6. "The Union" means the Shop Distributive and Allied Employees Association (SDA), and the Australian Workers Union ("AWU") (Qld Branch) in relation to its coverage of North Queensland.

## 7. EMPLOYMENT STATUS

### 7.1. Probationary Period

Employment of full-time and part-time team members will be subject to a 6-month probationary period.

### 7.2. Full Time

A full-time team member shall be employed for 38 ordinary hours per week, averaged over a maximum 4-week cycle.

### 7.3. Part Time

#### 7.3.1. A part time team member:

- is engaged to work less than 38 ordinary hours per week;
- has reasonably predictable hours of work; and
- receives, on a pro rata basis, equivalent pay and conditions to those of full-time team members.

#### 7.3.2. At the time of engagement, the Company and the part-time team member will agree in writing on the following:

- the hours worked each day;

- which days of the week the team member will work;
  - the actual starting and finishing times each day.
- 7.3.3. Any agreed variation to the hours of work will be recorded in writing, including via electronic means.
- 7.3.4. The minimum ordinary hours worked shall be 10 per week or 20 averaged over a 2 week cycle, or 40 averaged over a 4 week cycle as part of a fixed roster, unless otherwise requested by a team member and agreed to by the Company.
- 7.3.5. All time worked in excess of the hours agreed under clause 7.3.2 or varied under clause 7.3.3 will be paid as overtime.
- 7.3.6. For each ordinary hour worked, a part-time team member must be paid the minimum hourly rate and is entitled, on a pro-rata basis, to shift premiums where applicable.
- 7.3.7. Provisions in this Agreement applicable to full-time team members also apply to part-time team members except that a part-time team member is entitled to payment in respect of annual leave, public holidays, personal/carer's leave and jury service, arising from this Agreement on a proportionate basis calculated on the normal, ordinary hours the team member would have worked.
- 7.3.8. No part-time team member may be employed on more than 5 days per week other than at the request in writing of the team member concerned.
- 7.3.9. **Part Time- Additional Hours**
- 7.3.9.1. Notwithstanding the above provisions a part-time team member may be offered Additional Hours, and accept such hours on a voluntary basis. Such hours are in addition to a part-time team member's core rostered hours.
- 7.3.9.2. The working of part-time Additional Hours is subject to the following provisions:
- (a) Additional Hours are offered on a voluntary basis in addition to a part-time team member's core rostered hours, up to a maximum of 38 hours in any week.
  - (b) Additional Hours shall be paid at the appropriate part-time ordinary hours rate of pay, inclusive of any additional loadings and provisions provided in the clauses in paragraph 7.3.9.2(c) applicable to such hours.
  - (c) The working of Additional Hours operates subject to Clauses: 5 Wages; 10 Spread of Hours and Penalties; 11 Rosters; 12 Overtime; 13 Allowances; 14 Personal Leave; 15 Annual Leave; 22 Public Holidays; 31 Superannuation; and all other relevant clauses.
  - (d) Additional Hours shall not be worked so as to exceed the daily maximum hours or days elsewhere provided in this Agreement (as contained in clause 7.3.1) without the payment of overtime.
  - (e) All additional hours worked will count in the calculation of all leave entitlements.

- 7.3.9.3. For part-time team members who by mutual agreement accept additional hours at the ordinary rate of pay outside their normally rostered shifts must be recorded in writing, including by electronic means.

#### 7.4. **Casual**

- 7.4.1. A casual team member is a team member who is engaged and paid as a casual team member in accordance with Section 15A of the Act.
- 7.4.2. At the time of engagement, the Company will inform the team member that they are employed as a casual, stating the identity of the Company, the team member's classification level and rate of pay.
- 7.4.3. A casual team member must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.
- 7.4.4. **Offers and requests for casual conversion**  
Offers and requests for conversion from casual employment to full-time or part-time employment are provided for in the NES.

### 8. HOURS OF WORK

- 8.1. Ordinary hours of work will be worked at the option of the Company in either of the following ways provided the time worked on any day has exceeded 5 hours:
  - 8.1.1. continuously, on a daily basis, except for meal and morning or afternoon tea breaks taken at times determined at the Company's discretion; or
  - 8.1.2. continuously, on a daily basis, with 20 minutes during such hours each day or shift for crib, whilst maintaining customer service. The 20-minute crib break will be counted as time worked.
- 8.2. A team member who is working alone is entitled to close and secure the work site so as to attend the toilet.
- 8.3. Hours of work shall be continuous except for breaks.
- 8.4. **Prohibited employment for certain junior employees**  
A junior employee under the age of 18 years will not work unsupervised between the hours of 7.00 pm and 9.00 pm and must not be employed between the hours of 9.00 pm and 6.30 am.

### 9. BREAKS

- 9.1. **Meal Periods and Rest Breaks**
  - 9.1.1. Unpaid meal breaks will be not less than 30 minutes and not more than 60 minutes.
  - 9.1.2. Subject to the exceptions below, in clause 9.1.3, a team member will not be required to work for more than 5 hours without a meal break.
  - 9.1.3. The Company and the majority of team members in an establishment may agree that all employees in the establishment can be required to work up to 6 hours without a meal break.

- 9.1.4. In addition to a meal break, the Company may provide to a team member either a morning or afternoon tea break not exceeding 15 minutes. Where a break is unpaid it must not exceed 15 minutes duration. Where both a morning and an afternoon tea break are provided on the same day or shift, at least one of these breaks must be paid.
- 9.1.5. The Company may in appropriate circumstances reasonably require a team member to change the timing of a scheduled meal break or rest break to meet operational requirements.

**9.2. Working during or without a meal break**

- 9.2.1. A team member who works:
- (i) beyond 5 hours without a meal break (or beyond 6 hours where agreed in accordance with clause 9.1.3); or
  - (ii) during a meal break,
- will be paid at 150% of the minimum hourly rate for the time worked until a meal break is allowed.

- 9.3. Clauses 9.1 and 9.2 shall only apply where work is organised in accordance with 8.1.1 above.

**9.4. Overtime crib breaks**

- 9.4.1. A team member required to work overtime for more than one and a half hours after working ordinary hours will be allowed a crib break of 20 minutes before starting such overtime. The crib break will be paid at the minimum hourly rate.
- 9.4.2. A team member required to work overtime will be allowed a crib break of 20 minutes without deduction of pay after each 4 hours of overtime worked provided work continues after the crib break.
- 9.4.3. Where a day worker is required to work overtime on a Saturday, the first prescribed crib break if occurring between 10.00 am and 1.00 pm will be paid at the minimum hourly rate.
- 9.4.4. The Company and a team member may agree to any variation of clause 9.4 to meet the circumstances of the work in hand, provided that the Company will not be required to make any payment in respect of any time allowed in excess of 20 minutes.
- 9.4.5. Clause 9.4 will not apply to a team member working overtime on a Sunday or public holiday unless the employee is rostered to work any of their ordinary hours on that day.

**10. SPREAD OF HOURS & PENALTIES**

- 10.1. Ordinary hours may be rostered on any day at any time Monday to Sunday.
- 10.2. Subject to the other provisions of clause 8, ordinary hours of work of a team member will be an average of 38 hours per week (pro-rata for part-time team members), worked on not more than 5 days in any week, calculated on the following basis:
- 38 hours within a work cycle not exceeding 7 consecutive days;
  - 76 hours within a work cycle not exceeding 14 consecutive days;
  - 114 hours within a work cycle not exceeding 21 consecutive days;

- 152 hours within a work cycle not exceeding 28 consecutive days; or
- Any other work cycle during which a weekly average of 38 ordinary hours (pro-rata for part-time team members) is worked or may be determined by agreement between the Company and a team member or team members.

10.3. Subject to clause 10.5 a team member may not be required to work more than 10 ordinary hours per day.

10.4. The commencing time of any permanent team member's daily hours once fixed may vary from day to day in a week but not by more than 2 hours.

10.5. **Shifts in excess of 10 hours**

By agreement between the Company and the majority of team members at the site, arrangements involving the working of days or shifts in excess of 10 hours and up to 12 hours per day may be introduced subject to:

- (a) proper health monitoring procedures being introduced;
- (b) suitable roster arrangement being made;
- (c) proper supervision being provided;
- (d) adequate breaks being provided; and
- (e) a trial or review process being jointly implemented by the Company and the team members or their representatives.

10.6. **Shiftwork penalty rates**

10.6.1. Shiftwork penalty rates in clause 10.6.2 are not payable to a casual team member (see clause 10.9 for casual rates);

10.6.2. A team member working on afternoon or night shift will except on a Saturday, Sunday or a public holiday be paid an amount equal to the following relevant percentage of the appropriate minimum hourly rate:

Shift	% of minimum hourly rate
Night shift	130
Afternoon shift	118

10.6.3. A team member engaged on an afternoon or night shift which does not continue for at least 5 successive working days or such shorter work cycle (**Relevant Period**) as may be worked pursuant to clause 8—Hours of Work and rostering will be paid at 150% of the minimum hourly rate for each such shift.

10.6.4. Clause 10.6.3 is to be construed by reference to its history. This includes the construction of its predecessors and equivalent clauses in *Harris Daishowa (Australia) Pty Ltd v Construction, Forestry, Mining and Energy Union* H1081 Dec 1415/99 N Print S1369 at [14], [21], [23], [24], *Re Shift Work: Variation - Metal Trades Award* (1969) 129 CAR 239 at 244-5, *MTEA v AEU* (1938) 39 CAR 450 at 451-2 and the Board of Reference decision of JV Portus noted in Industrial Information Digest at 1202-3. Amongst other

things, this means – like the Award - that the phrase ‘does not continue’ in cl 10.6.3 concerns the continuity of the shift operations of the employer, not the continuity of the particular employee's shift patterns. It applies in respect of an afternoon or night shift which does not continue for the Relevant Period, as opposed to where the employee does not work a specified number of afternoon or night shifts in the Relevant Period.

10.6.5. Except at regular changeover of shift, a team member will not be required to work more than one shift in each 24 hours.

10.6.6. For the purposes of clause 10.6.2:

(a) **afternoon** shift means a shift commencing after noon and not later than 6.00 pm

(b) **night** shift means a shift commencing after 6.00 pm and not later than 4.00 am

10.6.7. Payments prescribed by clause 10.6 will stand alone and will not be included for any other purpose of this Agreement.

#### 10.7. **Daylight saving**

For work performed which spans the start or finish of a system of daylight saving as prescribed by relevant State or territory legislation, a team member will be paid according to adjusted time (i.e. the time on the clock at the beginning of work and the time on the clock at the end of work).

#### 10.8. **Ordinary hours on Saturdays, Sundays and public holidays**

10.8.1. A permanent team member will be paid the following penalty rates for all ordinary hours worked by the team member during the following periods:

- Saturday work until noon—100% of the minimum hourly rate;
- Saturday work after noon—150% of the minimum hourly rate;
- Sunday work—150% of the minimum hourly rate; and
- Public holidays—200% of the minimum hourly rate.

10.8.2. Payments prescribed by clause 10.8 will stand alone and will not be included for any other purpose of this Agreement.

10.8.3. Despite the provisions of clause 10.8.1, where a team member covered by clause 10.8 works a night shift which finishes on Saturday morning, the relevant night shift penalty in clause 10.6 will continue to apply for that portion of the shift falling on Saturday morning. If that Saturday is a public holiday then the public holiday rate in clause 10.8.1 will apply instead of the relevant night shift penalty rate in clause 10.6 for that portion of the shift falling on the public holiday.

#### 10.9. **Casual team members**

Casual team members will be paid at the following rates:

Monday to Friday		Saturdays, Sundays and public holidays		Overtime—additional payment <sup>1</sup>	
% of relevant rate	\$	% of relevant rate	\$	% of relevant rate	\$
131.75%	31.84	171.87%	41.54	73.40%	17.74

<sup>1</sup> Overtime is payable for any hours worked in excess of 10 hours per day or an average of 38 hours per week and is paid in addition to the appropriate rate

### 11. **ROSTERS**

#### 11.1. **Full Time and Part Time team members**

- 11.1.1. Weekly team members (Full-Time and Part-Time) shall be notified in writing of their weekly and daily working hours 14 days in advance.
- 11.1.2. Rosters may be changed by agreement or by the giving of 14 days' notice or such lesser notice as may be agreed.
- 11.1.3. When establishing or changing rosters, the Company will have regard for family or caring responsibilities, study commitments and for whether or not the team member has safe transport home. "Family" in this context means "immediate family" as defined in Clause 14.5.2 of this Agreement, or a member of the team member's household.

#### 11.2. **Casual team members**

- 11.2.1. Casual team members, where practicable, shall be notified in writing, not later than Saturday of each week, of the anticipated days and hours of work for the following week.
- 11.2.2. Casual team members who are rostered to work a specific number of hours on a day and who are sent home early shall be paid for the full number of hours rostered.
- 11.2.3. Start times may be changed by the Company if contact is made prior to the team member's arrival for work.
- 11.2.4. Casual team members shall be given appropriate consideration for taking necessary time off to attend studies, exams etc. This will not prejudice their ability to retain their casual status.

#### 11.3. **Training**

- 11.3.1. From time to time the Company may direct team members to undertake training and team members will be paid for this time in accordance with this clause.
- 11.3.2. Training must be undertaken during a team member's shift.



## 12. OVERTIME

### 12.1. Definition of overtime

For a permanent team member overtime is any time worked outside their ordinary hours as prescribed by clause 10.

### 12.2. Overtime rates—permanent team members

A permanent team member who works overtime must be paid the overtime rates as follows:

For overtime worked on	% of minimum hourly rate
Monday to Saturday—first 3 hours	150
Monday to Saturday—after 3 hours	200
Sunday all day	200
Public holiday all day	200

### 12.3. Minimum payment for overtime on a Sunday or a public holiday

12.3.1. A permanent team member required to work overtime on a Sunday or on a public holiday must be paid for a minimum of 3 hours' work at the appropriate rate.

12.3.2. The extra rates in clause 12.2 are in substitution for and not cumulative upon the shiftwork penalty rates prescribed in Clause 10.6.2.

### 12.4. Overtime rates—casual team members

A casual team member who works in excess of 10 hours per day or 38 hours per week will be paid the at the appropriate rate in Clause 10.9.

### 12.5. Reasonable Overtime

12.5.1. The Company may require any team member to work reasonable overtime, at overtime rates other than on a public holiday (whether it be an actual or substitute Public Holiday), and such team member shall work overtime in accordance with such requirement.

12.5.2. When requiring overtime to be worked the Company will have regard for whether or not the team member has safe transport home.

12.5.3. A team member may refuse to work reasonable overtime in circumstances where the working of such overtime would result in the team member working hours which are unreasonable, having regard to:

- the team member's personal circumstances including any family responsibilities;
- the notice (if any) given by the Company of the overtime and by the team member of his or her intention to refuse it; and
- any other relevant matters.

#### 12.6. **Time Off In Lieu**

Time off in lieu of payment for overtime may be provided if a team member so elects and it is agreed by the Company.

- 12.6.1. Such time off in lieu must be taken at a mutually convenient time and within 28 days of the overtime being worked or, where agreed between the team member and the Company, may be accumulated and taken as part of annual leave.
- 12.6.2. Time off in lieu must equate to the overtime rate. For example, if the team member works one hour of overtime and elects to take time off in lieu of payment the time off would equal one and a half hours or, where the rate of pay for overtime is double time, two hours.
- 12.6.3. The Company shall, if requested by a team member, provide payment at the rate provided for the payment of overtime in the Agreement, for any overtime worked where such time off has not been given within 28 days of accrual.

#### 12.7. **Call Back**

Where team members are called back to work for some unforeseen emergency, including the resetting of alarms, the team member shall be paid overtime at the appropriate rate for a period of not less than two hours on each occasion, inclusive of travelling time to and from the team member's home.

### 13. ALLOWANCES

#### 13.1. **Meal allowance**

- 13.1.1. A meal allowance of \$15.21 per meal is payable to a team member who is required to work overtime for more than one and a half hours and was not notified of the requirement to work overtime on the previous day or earlier.
- 13.1.2. The meal allowance is not payable if the company supplies the team member with a meal, or if the team member lives in the same locality as the workplace and can reasonably return home for meals.
- 13.1.3. Unless the company advises a team member on the previous day or earlier that the amount of overtime will include more than one meal, the Company will provide a second meal and/or subsequent meal or pay a meal allowance to the team member for the second and/or subsequent meal.
- 13.1.4. If a team member has been notified that they will be working overtime and has provided a meal or meals but is not required to work overtime or is required to work less overtime than the amount advised, the team member will still be paid the meal allowance.
- 13.1.5. Clause 13.1 will not apply to a team member working overtime on a Sunday or a public holiday unless the team member is rostered to work any of their ordinary hours on that day.

### **13.2. Travelling time**

- 13.2.1. Where a team member is required on any day to perform ordinary work away from a location where the team member normally works, the team member will:
- 13.2.1.1. if required to work normal working hours be paid at the minimum hourly rate for extra time spent when travelling, except on Saturdays, Sundays and public holidays which will be paid at 150% of the minimum hourly rate;
  - 13.2.1.2. if travelling in the company's business time, do so without loss of wages;
  - 13.2.1.3. if using their own means of transport with the approval of the company for travelling to or from outside jobs or venues, be paid the amount of excess fares which the team member would have incurred using public transport unless there has been an arrangement with the Company for a regular allowance; and
  - 13.2.1.4. if required by the Company to use their own vehicle on the company's business, be paid an allowance of \$0.91 per kilometre travelled.
- 13.2.2. The maximum travelling time to be paid will be 12 hours out of any period of 24 hours, or when a sleeping berth is provided by the Company for all night travel, 8 hours out of every 24 hours.

### **13.3. Transfer of employment**

A team member who is:

- engaged in one locality to work in another; or
- sent other than at their own request from their usual locality to another for employment which can reasonably be regarded as permanent, involving a change of residence,

will be paid for time spent travelling between such localities and expenses for a period not exceeding 3 months, provided that the payment of expenses will cease after the team member has taken up permanent residence or found alternative accommodation at the new location.

### **13.4. Accommodation and meals**

- 13.4.1. Where a team member is required to travel in circumstances requiring the team member to stay away from home overnight the team member, except to the extent that arrangements may be made for expenses to be charged to the Company, will be reimbursed for expenses reasonably incurred for accommodation and meals.
- 13.4.2. Expenses for the purpose of clause 13.4 means:
- (i) All reasonable fares and expenses incurred whilst travelling including a meal allowance of \$15.21 per meal.
  - (ii) A reasonable allowance to cover the cost incurred for board and lodging.

**13.5. Allowance Rate Increases**

The allowance rates specified in clauses 13.1.1, 13.2.1.4 and 13.4.2 (i) will be adjusted in line with the equivalent allowance in the Vehicle Repair, Services and Retail Award 2020 from time to time.

**13.6. WA Location Allowance**

The General Order issued annually by the Western Australian Industrial Relations Commission (2021 WAIRC 00167 and any subsequent orders) with respect to Location Allowances shall apply to all team members engaged under the terms of this Agreement at relevant workplaces in locations specified in Appendix A of the Order. Notwithstanding this, to be entitled to payment for the rate for a "dependant" or "partial dependant" as defined in Appendix A, the team member shall forward to the Company upon engagement and, thereafter, at each twelve month anniversary of hire, a statutory declaration (or other such reasonable proof) that the team member has dependants or partial dependants. Failure to provide such proof shall entitle the Company to pay the team member the minimum rate prescribed by Clause 1 of Appendix A of the Order.

**14. PERSONAL LEAVE**

Full time and part-time team members are entitled to personal leave in accordance with the Act. Full time and part-time team members are also entitled to personal leave under this clause to the extent that it provides a greater benefit than the Act. The leave benefits in this clause are inclusive of, and not in addition to, any entitlement to personal leave under the Act arising in respect of the same circumstances.

**14.1. Amount of leave**

For each year of service with the Company (other than periods of employment as a casual team member of the Company), a team member is entitled to 11 days of paid personal/carer's leave.

**14.2. Accrual of leave**

A team member's entitlement to paid personal/carer's leave accrues progressively during a year of service (other than periods of employment as a casual team member of the Company) according to the team member's ordinary hours of work and accumulates from year to year.

14.3. Part Time team members shall be entitled to Personal Leave on a pro-rata basis. Where the number of hours worked vary throughout the course of the year, entitlements to Personal Leave shall be calculated upon the average number of hours worked during the year of accrual.

14.4. A team member's unused Personal Leave entitlement from any year shall accrue to the following year.

14.5. Personal leave is available to a permanent team member for:

- personal illness or injury; or,
- to provide care or support to a member of the team member's immediate family or household who requires care or support due to a personal illness, or injury; or who requires care or support due to an unexpected emergency affecting the member.

14.5.1. The entitlement to use personal leave in accordance with this subclause is subject to the team member being responsible for the care of the person concerned, and the person

concerned being either a member of the team member's immediate family or household.

14.5.2. The term "**immediate family**" includes:

- A spouse (including former spouse, a de facto spouse and a former de facto spouse) of the team member. A de facto spouse means a person who lives with the team member as the partner of the team member on a bona fide domestic basis, although not legally married to that person.
- A child or an adult child (including an adopted child, a stepchild or an ex nuptial child or a child for which the team member is a guardian) parent, grandparent, grandchild or sibling of the team member or spouse of the team member.

14.6. Permanent team members are entitled to use 24 hours of their accrued Personal Leave entitlement per year to attend to personal matters including pre-natal medical appointments.

14.7. Permanent team members may take Personal Leave on an hourly or daily basis as required and subject to approval.

14.8. Personal leave is subject to the following conditions and limitations:

- (a) It is expected that the team member will, as far as possible, inform the Company of the inability to attend for work prior to the commencing time, and as far as may be practicable, state the reason for the absence and the estimated duration of the absence;
- (b) Notwithstanding the Fair Work Act 2009, team members will be entitled to 2 single shift absences per year without having to produce proof of illness, except if the absence is before or after a public holiday.

On all other occasions of absence the team member will provide evidence to the satisfaction of the Company, and provide such documentation as required by the Company, that he/she was unable to attend for work on the day or days for which the personal leave is claimed.

Documentation means:

- (i) if it is reasonably practicable to do so - a medical certificate issued by a registered health practitioner as defined in the Act;
- (ii) if it is not reasonably practicable to provide the Company with a medical certificate, a statutory declaration made by the team member shall suffice.
- (c) The Company need not make any payment for any time a team member is absent from work without producing satisfactory evidence in support of a request for paid personal leave.
- (d) The documentation must meet the requirements of the Fair Work Act 2009.

**14.9. Unpaid Carer's Leave for Casuals**

A casual team member is entitled to a period of up to 3 days unpaid carer's leave for each occasion that a member of the team member's immediate family or household requires care and support due to that person being ill, injured or affected by an unexpected emergency.

## 15. ANNUAL LEAVE

- 15.1. All full time team members are entitled to 152 hours annual leave, exclusive of Public Holidays, on ordinary pay.
  - 15.1.1. All full-time team members in Broken Hill shall be entitled to accrue an additional period of annual leave equal to 38 hours over the course of each 12 months of continuous service (with the additional leave accruing at the rate of 3.116 hours per month of continuous service).
- 15.2. Part time team members are entitled to a pro-rata quantum of annual leave based on the provisions of paragraph 15.1., above excluding hours worked as overtime.
  - 15.2.1. Part-time team members in Broken Hill shall accrue an additional period of annual leave on a pro-rata basis relative to their weekly ordinary hours.
- 15.3. The Company shall pay to a team member their ordinary time earnings and applicable loadings for the period of absence, in the normal weekly pay cycle.
- 15.4. At the time of taking annual leave, full time or part time team members shall be entitled to an additional loading of 17.5% on the rate of wages prescribed in Clause 5 of this Agreement.

Provided that, if the amount to which the team member would have been entitled by way of loadings for certain ordinary hours (not including time on a public holiday) which the team member would have worked during the period of the holiday exceeds the loading calculated in accordance with this subclause 15.4, then that amount shall be paid to the team member in lieu of the loading.
- 15.5. Any annual leave not taken will be paid out on termination of employment or resignation.
- 15.6. A team member and the Company may agree to defer payment of annual leave loading in respect of single day absences, until at least 5 consecutive annual leave days are taken.
- 15.7. Consideration will be given to team member's leave requests to assist in leave coinciding with a spouse's leave.
- 15.8. Where any public holiday provided by this Agreement falls within the period of a team member's annual leave that period of leave shall be increased by one day for each such public holiday.
- 15.9. **Annual Leave Re-crediting**

A team member who would otherwise be eligible for Personal leave or Compassionate leave during a period of Annual Leave will have their Annual Leave re-credited for that period of Personal leave or Compassionate leave. The annual leave will be re-credited subject to the team member satisfying the notification requirements of the applicable leave.

To facilitate the re-crediting of annual leave it will be necessary for the Company to deduct the value of annual leave loading for the period of leave re-credited from the team member's weekly earnings.
- 15.10. Where possible, Annual Leave requests submitted by team members will be considered and responded to within a 2-week period from the date that the Line Manager received the request.

#### 15.11. **Cashing Out of Annual Leave**

A team member, who has an accrued annual leave entitlement in excess of 8 weeks, may make an application to 'cash out' a period of annual leave. The Company may approve such application, at its discretion, subject to the following:

- (a) The team member must retain a paid annual leave entitlement of no less than 8 weeks;
- (b) Each 'cashing out' of annual leave must be by a separate agreement, in writing, between the Company and the team member;
- (c) The team member must be paid the amount that would have been payable had the team member taken that period of leave; and
- (d) The team member's annual leave entitlement will be reduced accordingly.

#### 15.12. **Annual leave at half pay**

- 15.12.1. The Company wants to support team members to take additional time off and so we offer the option of taking annual leave "at half pay" up to a maximum of 8 weeks.
- 15.12.2. When a team member applies for leave "at half pay" they are applying for a period of paid leave and an equal period of unpaid leave. These periods of leave are taken one after the other, and pay for the paid leave period is spread over the full leave period.
- 15.12.3. This means that while team members are on leave "at half pay" they will:
  - (a) receive their normal annual leave entitlement pay spread over the total period of their absence; and
  - (b) accrue half of the leave they would normally accrue (because they are only accruing for the paid half of the leave period).
  - (c) Annual leave "at half pay" leave must be taken in 2 week increments to a maximum of 4 periods, i.e. 8 weeks in total (which would use 4 weeks of accrued annual leave).
- 15.12.4. Where a public holiday occurs during a period of annual leave, the public holiday shall be added to the period of leave.

#### 15.13. **Excessive accrued annual leave**

- 15.13.1. A team member has an excessive leave accrual if the team member has accrued more than 8 weeks paid annual leave.
- 15.13.2. The Company or a 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.
- 15.13.3. Subject to 15.13.4, if the Company has genuinely tried to reach agreement with a team member but agreement is not reached (including because the team member refuses to confer), the Company may direct that team member in writing to take one or more periods of paid annual leave.

- 15.13.4. The team member must take paid annual leave in accordance with the Company's written notice given in 15.13.3 where:
- (a) the team member's remaining accrued entitlement to paid annual leave is not less than 6 weeks;
  - (b) the Company must not require the team member to take any period of paid annual leave of less than one week;
  - (c) the Company must not require the team member to take a period of paid annual leave beginning less than 8 weeks or more than 12 months, after the direction is given; and
  - (d) the direction must not be inconsistent with any leave arrangement agreed between the Company and the team member.
- 15.13.5. Subject to 15.13.6, if a team member has genuinely tried to reach agreement with the Company, but agreement is not reached (including because the Company refuses to confer), the team member may give written notice to the Company requesting to take one or more periods of paid annual leave.
- 15.13.6. The Company must grant the paid annual leave requested by the team member's written notice given in 15.13.5 where:
- (a) the team member has had excessive leave accrual for more than 6 months at the time of giving the notice;
  - (b) the team member has not been given a direction in accordance with 15.13.3 that when any other paid annual leave arrangements are taken into account, would eliminate the team member's excessive leave accrual;
  - (c) the notice given by the team member in 15.13.5. does not, if granted, result in the team member's remaining accrual entitlement to paid annual leave being at any time less than 6 weeks when other paid annual leave arrangements are considered;
  - (d) the notice does not provide for the team member to take any period of paid annual leave of less than one week or 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;
  - (e) the notice is not be inconsistent with any leave arrangement agreed by the Company and the team member; and
  - (f) the period of leave requested does not crossover with the Christmas/New Year or Easter holiday periods.

## 16. LONG SERVICE LEAVE

Entitlements to Long Service Leave for team members covered by this Agreement shall be in accordance with the relevant State or Territory legislation, as applicable. Team members may take Long Service Leave at half pay for double the leave.



## 17. PARENTAL LEAVE

17.1. Team members are entitled to parental leave in accordance with the Act. Team members are also entitled to parental leave under this clause to the extent that it provides a greater benefit than the Act. The leave benefits in this clause are inclusive of, and not in addition to, any entitlement to parental leave under the Act arising in respect of the same circumstances.

17.2. Parental leave provides team members with unpaid leave to provide primary or share in the care of their newborn or newly adopted child.

### 17.3. Key Elements of Parental Leave

- (a) Maternity leave is taken by a female team member who is pregnant.
- (b) Partner's leave is taken by a team member whose partner has given birth to a child.
- (c) Adoption leave is taken by a team member when they have adopted a child.
- (d) Parental leave applies even if the child is stillborn.

### 17.4. Team members' parental leave entitlement

Employment Category	Length of Service	Parental Leave Entitlement
Permanent team member	12 months' continuous service	104 unpaid weeks, including any paid leave entitlement taken
Casual team member	12 months' continuous service worked on a regular and systematic basis	104 unpaid weeks

### 17.5. Parental Leave and Other Leave

Team members may choose to take annual and/or long service leave entitlement as part of their parental leave period. A permanent team member may choose to access annual leave in place of unpaid leave.

### 17.6. Leave Accruals

The accrual of a team member's annual, sick and carer's leave is suspended for their period of unpaid leave.

### 17.7. Leave for Pre-Natal or Pre-Adoption Appointments

A permanent team member who is pregnant may access sick leave from their personal leave entitlement for medical appointments associated with pregnancy or adoption.

A copy of these Parental Leave provisions will be placed on the People Portal and updated regularly in line with legislative changes.

17.8. On request, the Company will provide a team member with a copy of the Parental Leave provisions.

17.9. Team members may be engaged, on a strictly voluntary basis, on a casual basis, except while on a period of paid Parental Leave under a Government scheme, during periods of Parental Leave.

Such engagements shall be paid at the appropriate hourly rate in lieu of all Leave entitlements and shall not be included as service for any such accruals and will not extend the period of Parental Leave beyond the originally approved period of Leave.

- 17.10. A full time team member returning to work after taking Parental Leave will be entitled to return to work as a part time team member if it is their preference to do so, subject to the Company's operational requirements.
- 17.11. On returning to work after Parental Leave due consideration will be given to the team member's family responsibilities when establishing their roster times. Subject to the Company's operational requirements team members returning to work after Parental Leave will have the right to return to the roster they worked immediately before commencing a period of Parental Leave.

## 18. COMPASSIONATE LEAVE

Full time and part time team members are entitled to compassionate leave in accordance with the Act. Full time and part time team members are also entitled to compassionate leave under this clause to the extent that it provides a greater benefit than the Act. The leave benefits in this clause are inclusive of, and not in addition to, any entitlement to compassionate leave under the Act arising in respect of the same circumstances.

- 18.1. Full time and part time team members are entitled to a maximum of 5 days paid compassionate leave on each occasion a team member is required to be absent from work due to the death of the team member's spouse (including de facto spouse), parent (including step parents, parents-in-law, and foster parent), child (including foster child, step child or stillborn child), brother, sister, or guardian.
- 18.2. A maximum of 3 days paid leave on each occasion the full time or part time team member is absent from work due to the death of the team member's brother in law, sister-in-law, ex-spouse, grandparents, grandparents-in-law, grandchildren, uncle, aunt, niece, nephew, cousins, or de-facto parents in law.
- 18.3. A maximum of 2 days paid leave on each occasion the full-time or part-time team member is absent from work due to the death of a member of the team member's household.
- 18.4. Full-time and part-time Team Members may take up to 3 days of compassionate leave if the team member or their spouse or defacto partner has had a miscarriage (before 20 weeks of pregnancy).
- 18.5. In addition to the provisions above, a full-time and part-time team member is entitled to a maximum of 3 days paid Compassionate leave for the purposes of spending time with a person who is a member of the team members immediate family or household and has a personal illness or injury that poses a serious threat to his/her life.
- 18.6. In addition to the above a team member shall be entitled to 2 days paid leave to attend the funeral of a parent, spouse or child where the team member travels outside Australia or more than 400km one way, either intrastate or interstate.
- 18.7. Proof of such death shall be furnished by the team member to the satisfaction of the Company, together with proof of attendance in the case of a funeral outside Australia.

- 18.8. In instances where a period of compassionate leave is taken by an team member for the purpose of spending time with a member of the team member's immediate family or household in circumstances as defined above, compassionate leave may be taken as a single unbroken period of 2 days, or 2 separate periods of 1 day each, or any separate periods of up to 2 days to which the team member and the Company agree.
- 18.9. Upon request by the Company, a team member must provide documentation as soon as reasonably practicable to be entitled to paid compassionate leave. Documentation means any written evidence the Company reasonably requires of the illness, injury or death of the member.
- 18.10. The documentation must meet the requirements of the Fair Work Act 2009.

## 19. FAMILY AND DOMESTIC VIOLENCE LEAVE

The Company recognises that family violence affects many people in Australia. We understand that family violence can impact our team members and their ability to contribute effectively at work. At EG Australia, we want to create a safe, respectful, inclusive and supportive work environment and provide team members who are experiencing family violence with tailored and appropriate support.

Entitlements to Family and Domestic Violence Leave for team members covered by this Agreement shall be in accordance with the NES.

## 20. LEAVE OF ABSENCE

- 20.1. Subject to relevant State legislation, where a full-time or part-time team member proceeds on authorised unpaid leave of absence of one week's duration or more, all entitlements to annual leave, personal leave, or long service leave will be frozen from the date of commencing such leave to the date of returning from such leave.
- 20.2. Provided that:
  - 20.2.1. Such unpaid leave is taken in accordance with Company Policy and approved prior to the commencement of such absence.
  - 20.2.2. Such absence shall not break continuity of employment for the team member concerned.

## 21. BLOOD DONORS

- 21.1. A full time or part time team member shall be entitled to be absent with pay for up to 2 hours, on not more than 4 occasions each year for the purpose of donating blood.
- 21.2. Provided that the absence shall be on a day suitable to the Company and it be as close as possible to the beginning or ending of ordinary working hours.
- 21.3. The team member shall notify the Company as soon as possible of the date and time the team member is required to donate blood and that upon request shall provide proof, satisfactory to the Company, of the actual attendance of the team member at a recognised place for the purpose of donating blood.

## 22. JURY SERVICE

A full time and part time team member's entitlement to jury service pay will be in accordance with the Act. Full time and part time team members are also entitled to jury service pay under this clause to the extent that it provides a greater benefit than the Act. The benefits in this clause are inclusive of, and not in addition to, any entitlement to jury service pay under the Act arising in respect of the same circumstances.

- 22.1. A full time or part time team member required to attend Jury Service during his/her ordinary working hours, shall be paid an amount equal to the difference between the amount paid for his/her attendance at jury service and his/her ordinary pay for that period, inclusive of any penalties.
- 22.2. A team member shall notify the Company as soon as possible of the date upon which he/she is required to attend for jury service and upon request, shall provide proof, satisfactory to the Company, of his/her attendance on jury service and of the amount received.
- 22.3. While on jury service, a team member will not be required to attend work until completion of jury service.
- 22.4. A team member on a roster including weekend work shall be given time off without loss of pay so that the combination of consecutive jury and work days does not exceed 5 days per week.
- 22.5. A team member required to attend for jury service during a period of annual leave will, upon producing satisfactory evidence of attendance, be credited with annual leave for the period for which jury service was attended.

## 23. PUBLIC HOLIDAYS

- 23.1. All full-time and part-time team members, including temporary weekly team members, shall be entitled to the following public holidays without deduction of pay:
  - 23.1.1. New Years Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and
  - 23.1.2. Labour Day, Anzac Day and King's Birthday as prescribed in the relevant States, Territories and localities.
- 23.2. The following days shall be taken in addition to the days specified in subclause 23.1:
  - 23.2.1. In WA, Foundation Day (as prescribed in WA);
  - 23.2.2. In the ACT, Canberra Day (as prescribed in the ACT); and in addition, Family and Community Day as prescribed in the ACT;
  - 23.2.3. In NSW, Picnic Day (which shall be the first Tuesday in November each year); and
  - 23.2.4. In Queensland, Exhibition Day or the appropriate Regional Show Day (as prescribed in Queensland).
  - 23.2.5. In Victoria, in addition Melbourne Cup Day (as prescribed in VIC). Provided that where a local day is declared or prescribed or legislated in the locality outside the metropolitan area and Melbourne Cup Day is not declared or prescribed or

legislated in the locality then the local day shall be taken as a Public Holiday in lieu of Melbourne Cup Day.

- 23.2.6. In South Australia, in addition Adelaide Cup Day (as proclaimed in SA). Part-day holidays on Christmas Eve and New Year's Eve (if those part-days are legislated, proclaimed or gazetted).
- 23.2.7. In Tasmania, in lieu of Easter Saturday, Royal Hobart Regatta Day (south of Oatlands) (as declared in TAS) or Recreation Day (as declared in TAS and where Hobart Regatta Day is not declared), but not both.
- 23.2.8. In NT, in addition Picnic Day (as declared in NT).
- 23.2.9. Provided that a day, or kind of day, that is excluded by the Act or the Fair Work Regulations (Regulations), will not be counted as a public holiday for the purpose of this clause 23.2.
- 23.3. All full-time and part-time team members, including temporary weekly team members, shall be entitled without deduction of pay to an additional public holiday or part-day holiday in a State or Territory or locality when such public holiday or part-day holiday is declared, prescribed or legislated by the authority of the Commonwealth, State or Territory Government and such declared, prescribed or legislated holiday or part-day holiday is to be observed generally throughout the State, Territory or a locality.
- 23.4. **NSW, ACT, SA, NT, Queensland and WA:**
- Work on a public holiday is voluntary for all team members. However, where sufficient staffing levels are not attained for a public holiday, the Company may direct a team member to work their normal roster (or part thereof) on the public holiday. Provided that, the Company must take into account the team member's family responsibilities and any other reasonable grounds the team member may have for not working on that public holiday, when requiring a team member to work in accordance with this clause.
- 23.5. **Victoria and Tasmania:**
- Work on a public holiday is voluntary for all team members.
- 23.6. If a full or part time team member elects to work, or is directed to work in accordance with subclause 23.4, on any of the public holidays named above (with the exception of Picnic Day), he or she shall be paid at the relevant rate in clause 10.8 for all time worked with a minimum payment as for three hours.
- 23.6.1. Casual team members working on any of the public holidays named above (with the exception of Picnic Day) shall be paid at the relevant rate in Clause 10.9 with a minimum payment as for three hours. Casual team members shall not be entitled to Picnic Day.
- 23.6.2. Picnic Day shall be treated as paid time off or pay in lieu but work performed on that day shall not attract public holiday penalty rates.
- 23.6.3. Where a weekly team member volunteers to work on Picnic Day, such team member shall be entitled to the following provisions:
- another day off without loss of pay;

- such alternate day shall be given and taken not later than 28 days after the Picnic Day on a day mutually agreed between the Company and the team member;
- where a team member's employment terminates prior to the taking of such alternate day, the team member shall receive an additional day's pay on termination.
- Provided that in no circumstances shall a team member forfeit their entitlement to the additional holiday and should such extenuating circumstances arise where the day is not taken as prescribed above it must be given and taken on a day without loss of pay added to the team member's next period of annual leave.

23.6.4. Team members on Annual Leave or Long Service Leave on Picnic Day shall have an additional day added to their next period of annual leave.

23.7. A:

- full time team member, or
- part time team member working 20 starts per four-week cycle or an alternating roster,

whose non-working day falls on a holiday, shall be paid by mutual agreement either:

- (i) payment of an additional day's wages,
- (ii) addition of one day to the team member's annual holidays; or
- (iii) another day may be allowed off with pay to the team member within twenty-eight days after the holiday falls, or during the week prior to the holiday.
- (iv) For the purpose of this paragraph for full-time team members "day" shall mean 8 hours and for part time team members the average daily hours for the days worked over that 20-day cycle. Provided that this sub clause shall not apply to Anzac Day, and Easter Saturday in the case of a team member who works only Monday to Friday.

23.8. Time off in lieu of payment of the penalty rate prescribed for work on a public holiday pursuant to this clause may be provided if a team member so elects and it is agreed by the Company.

23.8.1. Such time off in lieu must be taken at a mutually convenient time and within four weeks of the public holiday or, where agreed between the team member and the Company, may be accumulated and taken as part of annual leave.

23.8.2. Time off in lieu must equate to the penalty rate. For example, if the team member works three hours on a public holiday and the additional penalty rate is double time and the team member elects to take time off in lieu of payment the time off would equal 6 hours.

23.8.3. **Part-Day Public Holidays for Christmas Eve or New Year's Eve**

Benefits under this clause 23 for any part-day public holiday for Christmas Eve or New Year's Eve will only be extended to full-time or part-time team members in respect of work ordinarily rostered or work performed, and for casual team

members in respect of work performed, during the part of the day specified as a holiday.

The relevant penalty rate as prescribed in sub clause 10.8 or 10.9 will apply only to work performed during the part of the day specified as a public holiday, and no minimum payment is required for that part of the day. However, minimum daily engagement provisions elsewhere in this Agreement must still be met in respect of any overall engagement or shift on the day (e.g. it is possible to have a three hour engagement for a casual or part-time team member from 5:00 pm to 8:00 pm, in which case, assuming the holiday is from 7:00 pm to midnight, public holiday benefits will only be extended in respect of the hour from 7:00 pm to 8:00pm).

- 23.9. Provided the reasonable requirements of staffing levels for a site are met, requests by weekly team members to not be rostered to work and to take accrued annual leave on Easter Sunday shall not be unreasonably refused. Provided that where the Company is unable to obtain sufficient volunteers to work, the Company can direct a team member to work the team member's normal roster. This provision does not apply in any State, Territory or locality if Easter Sunday is declared, prescribed or legislated as a public holiday by or under a law of the State or Territory or is designated as a public holiday in that State, Territory or locality under sub clause 23.3.

## 24. NATURAL DISASTER LEAVE

- 24.1. Where there is a natural disaster (e.g. flooding, cyclones or bushfires) or a yellow alert is announced or is imminent, which poses a genuine threat to a team member's property or creates a need for the team member to care for their children, the team member will be allowed to leave work.
- 24.2. Under the circumstances specified in 24.1 fulltime and part-time team members will be paid up to 5 days natural disaster leave if there is a reasonable and justified reason that a team member is unable to attend work due to a natural disaster or yellow alert.

## 25. DEFENCE FORCE SERVICES LEAVE

Full time and part time team members are entitled to community service leave in accordance with the Act. Full time and part time team members are also entitled to community service leave under this clause and clause 26 to the extent that it provides a greater benefit than the Act. The leave benefits in this clause and clause 26 are inclusive of, and not in addition to, any entitlement to community service leave under the Act arising in respect of the same circumstances.

- 25.1. A full time or part time team member shall be allowed leave of up to 2 weeks maximum per calendar year to attend Defence Forces Reserve approved training camps.
- 25.2. During such leave, full time or part time team members who are required to attend 48 time training shall be paid an amount equal to the difference between the payment received in respect of their attendance at the camp and the amount of ordinary time earnings they would have received for working ordinary time during that period.
- 25.3. To receive payment, a team member shall provide to the Company proof of attendance and proof of Defence Forces Reserve rate of pay and total payment received for the time spent in training.

- 25.4. Team members seeking to take Reserve Forces Leave must provide notice to the Company at least 1 month prior to the period of training. The notice should detail the start and finish dates for training.

## 26. EMERGENCY SERVICES LEAVE

- 26.1. Full time and part time team members involved in recognised voluntary services including SES and fire fighting shall be entitled to up to 2 weeks paid time off to attend to emergency situations.
- 26.2. It shall be the responsibility of the team member to keep the Company informed about the time off needed to attend to emergency duties.
- 26.3. To receive payment, a team member shall provide the Company proof of attendance to the emergency situation.

## 27. TERMINATION OF EMPLOYMENT

- 27.1. For the purposes of this clause termination of employment shall include terminations with or without notice.

### 27.2. Notice of Termination by the Company

- 27.2.1. In order to terminate the employment of a team member the Company shall give to the team member the following notice:

Period of Continuous Service	Period of Notice
Less than 1 year	1 week
1 year but less than 3 years	2 weeks
3 years but less than 5 years	3 weeks
5 years and over	4 weeks

- 27.2.2. In addition to the notice in clause 27.2.1 hereof, team members over 45 years of age at the time of the giving of the notice with not less than two years of continuous service, shall be entitled to an additional week's notice.
- 27.2.3. Payment in lieu of the notice prescribed in clause 27.2.1 and 27.2.2 hereof shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- 27.2.4. In calculating any payment in lieu of notice the wages a team member would have received in respect of the ordinary hours of work during the period of notice had his or her employment not been terminated (even if they are not standard hours) and the amounts ordinarily payable to the team member in respect of those hours including allowances and loading and penalties and other amounts payable under the team member's contract of employment shall be used.



- 27.2.5. The period of notice in this clause shall not apply where a team member has been guilty of misconduct, or in the case of casual team members, apprentices or team members engaged for a specific period of time or for a specific task or tasks.

**27.3. Notice of Termination by team member**

- 27.3.1. The notice of termination required to be given by a team member shall be the same as that required of the Company, save and except that there shall be no additional notice based on the age of the team member concerned. Provided that the Company at its sole discretion may waive the requirement for a team member to give notice of termination.
- 27.3.2. Subject to financial obligations imposed on the Company by any Act, if a team member fails to give notice the Company shall have the right to withhold monies due to the team member with a maximum amount equal to the ordinary time rate of pay for the period of notice from any money due to the team member under this Agreement.

**27.4. Time Off During Notice Period**

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

**27.5. Statement of Employment**

The Company shall, upon receipt of a request from a team member whose employment has been terminated, provide to the team member a written statement specifying the period of his/her employment and the classification of or the type of work performed by the team member.

**27.6. Abandonment of Employment**

The absence of a team member from work for a continuous period exceeding 3 working days, without the consent of the Company and without notification to the Company, shall be taken that the team member has abandoned his/her employment and the Company will be entitled to treat the employment as having been terminated.

**28. INTRODUCTION OF CHANGE**

**28.1. Company's Duty to Notify**

- 28.1.1. Where the Company 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, the Company shall notify the team members who may be affected by the proposed changes and, in the case of Union members, their Union.
- 28.1.2. "Significant effects" include termination of employment, major changes in the composition, operation or size of the Company's 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 the matters referred to herein, an alteration shall be deemed not to have significant effect.

## **28.2. Company's Duty to Discuss Change**

- 28.2.1. The Company shall discuss with the team members affected and, in the case of Union members, their Union, inter alia, the introduction of the changes referred to in clause 28.1. Company's Duty To Notify, above, the effects the changes are likely to have on team members, measures to avert or mitigate the adverse effects of such changes on team members and shall give prompt consideration to matters raised by the team members in relation to the changes.
- 28.2.2. The discussions shall commence as early as practicable after a definite decision has been made by the Company to make the changes referred to in clause 28.1.1 above.
- 28.2.3. For the Purpose of such discussion, the Company shall provide in writing to the team members concerned and, in the case of Union members, their Union, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on team members and any other matters likely to affect team members provided that any the Company shall not be required to disclose confidential information the disclosure of which would be detrimental to the Company's interests.

## **29. REDUNDANCY**

### **29.1. Discussions before Terminations**

- 29.1.1. Where the Company has made a definite decision that the Company no longer wishes team members to do the job they have been doing to 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, the Company shall hold discussions with the team members directly affected and, in the case of Union members, their Union.
- 29.1.2. The discussions shall take place as soon as is practicable after the Company has made a definite decision which will invoke the provision of subclause 29.1.1 hereof and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the team members concerned.
- 29.1.3. For the purposes of the discussion the Company shall, as soon as practicable, provide in writing to the team members concerned and, in the case of Union members, their Union all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of team members likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that the Company shall not be required to disclose confidential information the disclosure of which would be detrimental to the Company's interests.

**29.2. Transfer to Lower Paid Duties**

Where a team member is transferred to lower paid duties for reasons set out in sub clause (a) hereof the team member shall be entitled to the same period of notice of transfer as he/she would have been entitled to if his/her employment had been terminated, and the Company may at the Company's option make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

**29.3. Transmission of Business**

29.3.1. Where a whole or part of the Company's business is before, on or after the date of this Agreement transmitted from the Company (in this sub clause called "the transmitter") to another Company (in this sub-clause called "the transmittee") and a team member who at the time of such transmission was a team member of the transmitter in that business becomes a team member of the transmittee:

29.3.1.1. the continuity of the employment of the team member shall be deemed not to have been broken by reasons of such transmission, and

29.3.1.2. the period of employment, which the team member has had with the transmitter or any prior transmitter, shall be deemed to be service of the team member with the transmittee.

29.3.1.3. In this sub-clause "business" includes trade, process, business or occupation and includes part of any such business and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

**29.4. Time off Working During Notice Period**

29.4.1. During the period of notice of termination given by the Company a team member shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

29.4.2. 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 shall, at the request of the Company, be required to produce proof of attendance at an interview or he/she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

**29.5. Notice To Centrelink**

Where a decision has been made to terminate team members in the circumstances outlined in sub-clause 29.1 hereof the Company shall notify the Centrelink thereof as soon as possible giving relevant information including the number and categories of the team members likely to be affected and the period over which the terminations are intended to be carried out.

**29.6. Severance Pay**

29.6.1. In addition to the period of notice prescribed for ordinary termination in Clause 27. Termination of Employment of this Agreement a team member whose employment

is terminated for reasons set out in sub-clause 29.1 hereof shall be entitled to the following amount of severance pay in respect of a continuous period of service.

Period of Continuous Service	Severance Pay	
	Under 45 years	45 years and over
Less than one year	Nil	Nil
1 year but less than 2 years	4 weeks' pay	5 weeks' pay
2 years but less than 3 years	7 weeks' pay	8.75 weeks' pay
3 years but less than 4 years	10 weeks' pay	12.5 weeks' pay
4 years but less than 5 years	12 weeks' pay	15 weeks' pay
5 years but less than 6 years	14 weeks' pay	17.5 weeks' pay
6 years and over	16 weeks' pay	20 weeks' pay

29.6.2. "Weeks' pay" means the ordinary time rate of pay for the team member concerned.

29.6.3. Provided that the severance payments shall not exceed the amount that the team member would have earned if employment with the Company had proceeded to the team member's normal retirement date.

29.6.4. For the purpose of this clause, continuity of service shall be calculated in the manner prescribed under any applicable legislation.

#### 29.7. **Team member Leaving During Notice Period**

A team member whose employment is terminated for reasons set out in sub-clause 29.1 hereof may terminate his/her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he/she remained with the Company until the expiry of such notice. Provided that in such circumstances the team member shall not be entitled to payment in lieu of notice.

#### 29.8. **Incapacity to Pay**

The Company, in a particular redundancy case, may make application to FWC to have the general severance pay prescription varied on the basis of the Company's incapacity to pay.

#### 29.9. **Alternative Employment**

The Company, in a particular redundancy case, may make application to FWC to have the general severance pay prescription varied if the Company obtains acceptable alternative employment for a team member.

#### 29.10. **Team Members Exempted**

This part shall not apply where employment is terminated as a consequence of misconduct, in the case of casual team members, apprentices, or team members engaged for a specific period of time or for a specified task or tasks.

**29.11. Team Members with Less than 1 Years' Service**

This clause shall not apply to team members with less than one year's continuous service and the general obligation on the Company should be no more than to give relevant team members an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate, the obtaining by the team members of suitable alternative employment.

**30. ACCIDENT PAY**

**30.1. Definitions**

For the purpose of clause 30, the following definitions will apply.

- (a) Accident pay means a weekly payment made to a team member by the Company that is the difference between the weekly amount of compensation paid to a team member pursuant to the applicable workers' compensation legislation and the weekly amount that would have been received had the employee been on paid personal leave at the date of injury (not including over award payments).
- (b) Injury will be given the same meaning and application as applying under the applicable workers' compensation legislation covering the Company.

**30.2. Entitlement to accident pay**

- (a) The Company must pay accident pay where a team member suffers an injury and weekly payments of compensation are paid to the employee under the applicable workers' compensation legislation.
- (b) A team member will only be entitled to payment under clause 30 while the employee remains in employment of the Company. However, the Company must not terminate the employment of the employee to avoid any payment under clause 30.

**30.3. Notice of injury**

When a team member receives an injury for which the employee claims to be entitled to payment under clause 30, the employee shall give notice in writing of the injury to the Company as soon as reasonably practicable after receiving the injury. Notice can be given by a representative of the employee.

**30.4. Maximum period**

The maximum period or aggregate of periods of accident pay to be made by the Company shall be 26 weeks for any one injury. The 26 week period commences from the first day of incapacity for work, which may be subsequent to the date of injury.

**30.5. Pro rata payments**

For a period of less than one week, accident pay (as defined) will be calculated on a pro rata basis.

**30.6. Return to work**

If a team member entitled to accident pay under clause 30 returns to work on reduced hours or to perform modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of such work.

**30.7. When not entitled to payment**

- (a) A team member will not be entitled to any payment under clause 30 in respect of any period of paid annual leave or long service leave, or for any paid public holiday.
- (b) A team member will not be entitled to any payment under clause 30 in respect of any injury during the first 5 normal working days of incapacity.
- (c) A team member will not be entitled to any payment under clause 30 for any incapacity occurring during the first 3 weeks of employment, unless such incapacity continues beyond the first 3 weeks of employment. If the incapacity continues beyond the first 3 weeks of employment then the provisions of clause 20 will apply to the period of incapacity after the first 3 weeks.
- (d) A team member will not be entitled to any payment under clause 20 for industrial diseases contracted by gradual process, or injuries subject to recurrence, aggravation or acceleration unless the employee has been employed with the Company at the time of the incapacity for a minimum period of one month.

**30.8. Medical examination**

- (a) In order to receive accident pay a team member shall conform to the requirements of the applicable workers' compensation legislation relating to medical examination.
- (b) If:
  - (i) a medical referee gives a certificate in accordance with the applicable workers' compensation legislation as to the condition of the employee and fitness for work, or specifies work for which the employee is fit; and
  - (ii) this work is made available by the Company; and
  - (iii) the employee refuses the work or fails to commence the work;the provisions of clause 30 will cease to apply to the employee from the date of refusal or failure to commence the work.

**30.9. Redemptions**

In the event that a team member receives a lump sum payment in lieu of weekly payments under the applicable workers' compensation legislation, the liability of the Company to pay accident pay will cease from the date the employee receives that payment.

**30.10. Damages independent of the Acts**

Where the employee recovers damages from the Company or from a third party in respect of the said injury independently of the applicable workers' compensation legislation, such employee will be liable to repay to the Company the amount of accident pay which the

Company has paid under clause 30 and the employee will not be entitled to any further accident pay thereafter.

**30.11. When payments cease**

All rights to payment under clause 30 will cease on the death of a team member.

**30.12. Changes to rates in workers' compensation legislation**

The amount of accident pay payable under clause 30 shall not increase in the event that there are any changes to compensation rates under the applicable workers' compensation legislation.

**30.13. Engagement of employee**

Upon commencement of employment, a team member may be required to declare all workers' compensation claims made in the previous 5 years. In the event of false or inaccurate information being deliberately and knowingly declared the Company may require the employee to forfeit entitlement to payment under clause 20.

**30.14. Casual employees**

For a casual employee the weekly payment referred to in clause 20.1(a) will be calculated using the employee's average weekly ordinary hours with the Company over the previous 12 months or, if the employee has been employed for less than 12 months by the Company, the employee's average weekly ordinary hours over the period of employment with the Company. The weekly payment will include casual loading but will not include over award payments.

**30.15. No obligation to take out insurance**

Nothing in clause 30 requires an Company to insure against liability for the payment of benefits under clause 30.

## **31. SUPERANNUATION**

**31.1. Superannuation legislation**

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 the Company and team members. Under superannuation legislation individual team members generally have the opportunity to choose their own superannuation fund. If a team member does not choose a superannuation fund, any superannuation fund nominated in the Agreement covering the team member applies.

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

**31.2. Company contributions**

The Company must make such superannuation contributions to a superannuation fund for the benefit of a team member as will avoid the Company being required to pay the superannuation guarantee charge under superannuation legislation with respect to that team member.

### 31.3. **Voluntary team member contributions**

- (a) Subject to the governing rules of the relevant superannuation fund, a team member may, in writing, authorise their Company to pay on their behalf a specified amount from the post-taxation wages of the team member into the same superannuation fund as the Company makes the superannuation contributions provided for in clause 31.2.
- (b) a team member may adjust the amount the team member has authorised their Company to pay from their wages from the first of the month following the giving of three months' written notice to their Company.
- (c) The Company must pay the amount authorised under clauses 31.3(a) or 31.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 31.3(a) or 31.3(b) was made.

### 31.4. **Superannuation fund**

Unless, to comply with superannuation legislation, the Company is required to make the superannuation contributions provided for in clause 31.2 to another superannuation fund that is chosen by the team member, the Company must make the superannuation contributions provided for in clause 31.2, and pay the amount authorised under clauses 31.3(a) or 31.3(b), to:

- (a) Retail team members Superannuation Trust (REST); or
- (b) any superannuation fund to which the Company was making superannuation contributions for the benefit of its team members before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or
- (c) a superannuation fund or scheme which the team member is a defined benefit member of.

### 31.5. **Absence from work**

Subject to the governing rules of the relevant superannuation fund, the Company must also make the superannuation contributions provided for in clause 31.2 and pay the amounts authorised under clauses 31.3(a) or 31.3(b):

- (a) Paid leave—while the team member is on any paid leave;
- (b) 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:
  - (i) the team member is receiving workers compensation payments or is receiving regular payments directly from the Company in accordance with the statutory requirements; and
  - (ii) the team member remains employed by the Company.

## 32. **STAND-DOWN PROCEDURE**

The Company may deduct payment for any day a team member cannot usefully be employed because of any strike, or through any breakdown of machinery or any stoppage of work by any cause arising out of such strike and for which the Company cannot be held responsible. This does not break the continuity of employment of the team member for the purpose of any entitlements.



### 33. DISPUTE AND GRIEVANCE PROCEDURE

- 33.1. If a dispute relates to:
- (a) a matter arising under the agreement; or
  - (b) the National Employment Standards;
- this term sets out procedures to settle the dispute.
- 33.2. A team member who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- 33.3. In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the team member or team members and relevant supervisors and/or management.
- 33.4. If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission.
- 33.5. The Fair Work Commission may deal with the dispute in 2 stages:
- 33.5.1. the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - 33.5.2. if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
    - (i) arbitrate the dispute; and
    - (ii) make a determination that is binding on the parties.
- Note: If Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Act.
- A decision that Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.
- 33.6. While the parties are trying to resolve the dispute using the procedures in this term:
- 33.6.1. 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
  - 33.6.2. a team member must comply with a direction given by the Company to perform other available work at the same workplace, or at another workplace, unless:
    - (i) the work is not safe; or
    - (ii) applicable occupational health and safety legislation would not permit the work to be performed; or

- (iii) the work is not appropriate for the team member to perform; or
- (iv) there are other reasonable grounds for the team member to refuse to comply with the direction.

33.7. The parties to the dispute agree to be bound by a decision made by Fair Work Commission in accordance with this term.

#### 34. PROPERTY - DEBT TO COMPANY

- 34.1. The team member shall take all reasonable care in the use of and for the protection of any property belonging to or in the care of the Company. On termination of employment or upon a request to do so, the team member shall return, in good condition, (subject, to fair wear and tear), any property in his/her possession and belonging to the Company.
- 34.2. In the event of termination of employment it is agreed that deductions from the final pay may be made for any unreturned goods, protective clothing and/or tools, provided in the course of work, or other debt owing to the Company as a result of this Agreement, whatsoever it may be.
- 34.3. Any dispute arising under this clause shall be resolved through the Dispute and Grievance Procedure of this Agreement.

#### 35. OTHER EMPLOYMENT

- 35.1. Team members must not, without the written consent of the Company, undertake other paid employment which will conflict with the interests of the Company, or which may impair their ability to complete their normal work, to the full satisfaction of the Company.
- 35.2. Any dispute arising under this clause shall be resolved through the Dispute and Grievance Procedure of this Agreement.

#### 36. UNIONS RIGHTS AND RECOGNITION

##### 36.1. **Union Recognition and Union Membership**

The Company recognises the Shop, Distributive and Allied Employees Association (SDA) and the Australian Workers Union (AWU) in North Queensland as being the registered Unions that represent employees who are covered by this agreement. This representation will extend to all terms and conditions of employment covered by this agreement.

The Company undertakes, upon authorisation, to deduct Union membership dues as levied by the Union in accordance with its rules from the pay of employees who are members of the Union. Such monies collected will be forwarded to the appropriate branch of the Union at the beginning of each month together with all necessary information to enable the reconciliation and crediting of subscriptions to members' accounts.

The Company shall provide a noticeboard or section of a notice board for the display of official Union notices. Such Union notices shall be shown to management prior to placement on the noticeboard.

### 36.2. **Re-negotiation of Enterprise Agreement**

The parties agree to meet and consider bargaining discussions at the approach of the nominal expiry date for a new enterprise agreement.

## 37. NO EXTRA CLAIMS

It is agreed that there shall be a no-extra claims commitment during the life of this Agreement from the Union(s), team members and the Company covered by this Agreement.

## 38. DRESS AND PRESENTATION STANDARDS

- 38.1. The Company, having regard to the nature of the industry, the work to be performed and the comfort of the team member, shall have the right to determine a code of dress for each team member including colour of clothing.
- 38.2. The Company image is an important responsibility borne by all team members. To this end, when at work, team member's presentation, grooming and dress shall be in a neat, tidy, business-like manner at all times.
- 38.3. The Company has a preferred dress code and may supply team members with branded clothing from time to time. Wearing of branded items is not compulsory for team members so long as they otherwise comply with the dress standards outlined in the preferred dress code. Where the company actually requires team members to wear a specific uniform, the following will apply:
  - 38.3.1. Where the Company requires a team member to wear a special uniform as a condition of employment, the Company must reimburse the employee for the cost of purchasing and cleaning the uniform.
  - 38.3.2. Clause 38.3.1 does not apply where the uniform is supplied and cleaned free of cost by the Company.
  - 38.3.3. Where the uniform is supplied by the Company without cost and cleaned free of cost to the team member, the uniform will remain the property of the Company.
- 38.4. Any team member who, without due cause, is not satisfactorily dressed when in attendance at the workplace may be directed to cease work without pay until such time as the team member is dressed to the required standard.
- 38.5. The Company shall not be harsh or unreasonable in applying clause 38.4 above.
- 38.6. Any unresolved dispute on dress requirement may be referred to the FWC for resolution.

## 39. PROTECTIVE CLOTHING

- 39.1. Where it is agreed the work performed by a team member is of a dirty, wet or obnoxious nature, suitable protective clothing and/or footwear shall be supplied and as necessary laundered by the Company.
- 39.2. In the absence of agreement the matter may be referred to FWC to determine.

- 39.3. Where a team member is required to work in the sun the Company shall provide protective hats and sunscreen lotion.

#### 40. FIRST AID KIT

In each site where team members are regularly employed, the Company shall provide and continuously maintain, at a place or places reasonably accessible to all team members, an adequate first aid kit.

#### 41. LOCKERS

Where practicable, the Company shall provide locker accommodation for each team member. Lockers, where provided shall be maintained in good working order

#### 42. TEAM MEMBER CAR PARKING

The Company permits a team member to park on the forecourt in a marked car park space. This allows for team members to safely access their vehicle upon exiting the site.

If there is no marked car space on the forecourt, and the team member is arriving for, or leaving from, a shift in the dark, the Company permits the team member to park on the forecourt, where it does not impact on customer service or become a safety hazard.

#### 43. ACCESS TO ACCRUED ENTITLEMENTS

Upon request team members will be entitled to be given information relating to their accrued entitlements.

#### 44. ANTI DISCRIMINATION

- 44.1. The Company and its team members are committed to preventing and eliminating discrimination in accordance with all relevant State and Commonwealth Anti-Discrimination legislation. In summary, this legislation prevents discrimination on the basis of:

Race	Family responsibilities	Pregnancy	Religion
Colour	National extraction	Social origin	Marital status
Sex	Sexual preference	Political opinion	
Age	Physical or mental disability		

- 44.2. Nothing in this provision is to be taken to affect any different treatment, which is specifically exempted under the relevant State and Commonwealth anti-discrimination legislation.

#### 45. EQUAL EMPLOYMENT OPPORTUNITY

- 45.1. The Company is totally committed to providing equal employment opportunity for every team member in all spheres of employment.
- 45.2. The Company is totally committed to providing an environment in which team members can work without distress or interference caused by any form of harassment.
- 45.3. All team members will be provided with a copy of each Policy and receive training from the Company in relation to Equal Employment Opportunity and Harassment.

## 46. OCCUPATIONAL HEALTH AND SAFETY

- 46.1. The Company and its team members are committed to achieving and maintaining healthy and safe working conditions in all the Company workplaces by abiding by all relevant Occupational Health and Safety legislation.
- 46.2. This commitment will have the following objectives:
- (i) To control workplace hazards at their source.
  - (ii) To reduce the incidence and costs of occupational injury and disease.
  - (iii) To provide an occupational rehabilitation system for workers affected by occupational injury or illness.
- 46.3. The Company is committed to enabling all team members to receive appropriate OH&S Training. Occupational Safety representatives will be given paid leave to attend appropriate OH&S training courses as stipulated in the relevant State legislation.
- 46.4. The Company shall establish a consultative process for the Occupational Rehabilitation of team members affected by Occupational Injury and Illness. This process shall include the Union where requested by the team member. This process aims to return these team members to their pre-injury status within the community, their families and their employment.
- 46.5. Where any proposed changes to equipment, substances or work practices may reasonably be expected to affect team member's health and safety or when a decision is made to renovate a site, the Company will consult with the team members concerned, the Health and Safety representatives, the Site Safety Committee and the Union. This consultation will aim to identify and resolve potential health and safety problems. This clause does not require the Company to provide information about a team member bound by this Agreement to the Union to the extent that doing so would be contrary to the Act and its Regulations.
- 46.6. The Company will provide chairs for those team members working in sites where there is not sufficient space to sit down in a back room and have a break. The chair will be suitable for use during meal/rest breaks where the team member needs to maintain customer service. However, the chair is not to be used whilst serving customers.

## SIGNATURES

Signed for and on behalf of **EG (Fuelco) Australia Ltd** by its authorised representative:

  
\_\_\_\_\_  
Name: Gerald Richardson

Position: Head of Employee Relations

Address: Level 39, 100 Miller Street,  
North Sydney NSW 2060

Date: 14 November 2022

Signed for and on behalf of the **Shop Distributive and Allied Employees Association** by its authorised representative:

\_\_\_\_\_  
Name: \_\_\_\_\_

Position: \_\_\_\_\_

Address: 53 Queen St, Melbourne VIC 3000

Date: \_\_\_\_\_ November 2022

Signed for and on behalf of the **Australian Workers Union, Queensland** by its authorised representative:

\_\_\_\_\_  
Name: \_\_\_\_\_

Position: \_\_\_\_\_

Address: 13th Floor, 333 Adelaide  
Street,  
Brisbane, QLD 4000

Date: \_\_\_\_\_ November 2022

## SIGNATURES

Signed for and on behalf of **EG (Fuelco) Australia Ltd** by its authorised representative:



Name: Gerald Richardson

Position: Head of Employee Relations

Address: Level 39, 100 Miller Street,  
North Sydney NSW 2060

Date: 14 November 2022

Signed for and on behalf of the **Shop Distributive and Allied Employees Association** by its authorised representative:



Name: GERARD DWYER

Position: NATIONAL SECRETARY-TREASURER

Address: 53 Queen St, Melbourne VIC 3000

Date: 14 November 2022

Signed for and on behalf of the **Australian Workers Union, Queensland** by its authorised representative:



Name: Stacey Schinnerl

Position: QLD Branch Secretary

Address: 13th Floor, 333 Adelaide  
Street,  
Brisbane, QLD 4000

Date: 16th November 2022

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## Schedule 2.3—Model consultation term

(regulation 2.09)

### Model consultation term

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

#### *Major change*

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



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

*Change to regular roster or ordinary hours of work*

- (10) For a change referred to in paragraph (1)(b):
  - (a) the employer must notify the relevant employees of the proposed change; and
  - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.

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- (12) If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.
- (13) As soon as practicable after proposing to introduce the change, the employer must:
- (a) discuss with the relevant employees the introduction of the change; and
  - (b) for the purposes of the discussion—provide to the relevant employees:
    - (i) all relevant information about the change, including the nature of the change; and
    - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
    - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
  - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:
- relevant employees*** means the employees who may be affected by a change referred to in subclause (1).

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## Schedule 2.2—Model flexibility term

(regulation 2.08)

### Model flexibility term

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
  - (a) the agreement deals with 1 or more of the following matters:
    - (i) arrangements about when work is performed;
    - (ii) overtime rates;
    - (iii) penalty rates;
    - (iv) allowances;
    - (v) leave loading; and
  - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
  - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
  - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
  - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
  - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
  - (a) is in writing; and
  - (b) includes the name of the employer and employee; and
  - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - (d) includes details of:

- (i) the terms of the enterprise agreement that will be varied by the arrangement; and
    - (ii) how the arrangement will vary the effect of the terms; and
    - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
  - (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
  - (b) if the employer and employee agree in writing—at any time.

IN THE FAIR WORK COMMISSION

FWC Matter No.:  
AG2022/4780

Applicant:  
EG Fuelco (Australia) Limited

Section 185 – Application for approval of a single enterprise agreement

## Undertaking – Section 190

I, Gerald Robert Richardson, Head of Employee Relations, have the authority given to me by EG Fuelco (Australia) Limited to give the following undertakings with respect to the EG Australia Fuel & Convenience Agreement 2022 ("the Agreement"):

1. This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.
2. For the purpose of section 87(1)(b) of the Act, a 'shiftworker' is a 7 day shiftworker who is regularly rostered to work on Sundays and public holidays.

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



\_\_\_\_\_  
Signature

1 December 2022  
\_\_\_\_\_  
Date