



# DECISION

*Fair Work Act 2009*

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

## Work Relations

(AG2014/6341)

## LOVISA ENTERPRISE AGREEMENT 2014

Retail industry

COMMISSIONER BULL

PERTH, 28 JULY 2014

*Application for approval of the Lovisa Enterprise Agreement 2014.*

[1] An application has been made for approval of an enterprise agreement known as the *Lovisa Enterprise Agreement 2014* (the Agreement). The application was made by Work Relations on behalf of the employer pursuant to s.185 of the *Fair Work Act 2009* (the Act). The Agreement is a single-enterprise agreement.

[2] The Commission wrote to the Applicant, Work Relations as a bargaining representative appointed by the Employer, Lovisa Pty Ltd and the Shop, Distributive and Allied Employees' Association (SDA), being a bargaining representative for the Agreement in relation to concerns it has with the Agreement. In particular, those concerns related to the Notice of Employee Representational Rights, ordinary span of hours, shift breaks and penalty rates.

[3] Correspondence was received from the Applicant on 16 and 24 July 2014.

### Notice of Employee Representational Rights

[4] On 3 July 2014, the Commission wrote to the Applicant advising it that the Notice of Employee Representational Rights (NERR) that had been filed with the application contained the following paragraph:

*“Lovisa gives notice that it is bargaining in relation to an enterprise agreement (the Bras N Things Enterprise Agreement 2014), which is proposed to cover employee that are covered by the Bras N Things Enterprise Agreement 2010.”*

(My emphasis)

[5] The reference in the NERR to the *Bras N Things Enterprise Agreement 2014* and the *Bras N Things Enterprise Agreement 2010* appeared to be the incorrect enterprise agreement name. The Commission requested the Applicant to provide correspondence outlining how the

requirements of s.174(1A) of the Act were met where the NERR gave notice of the incorrect agreement name.

[6] On 16 July 2014, the Applicant advised the Commission that the NERR does not intentionally modify the content or form of the notice but acknowledged that the errors are administrative and clerical by nature. The Applicant submits that the error was a result of two related companies (Lovisa Pty Ltd and Bras N Things Pty Ltd) rolling out proposed agreements at the same time.

[7] Correspondence was also received from the SDA on 16 July 2014, advising the Commission that it supported the Applicants submissions.

[8] I note that the NERR contains all of the content required under s.174(1A), however, an administrative error has resulted in the notice containing the incorrect agreement name.

[9] A Full Bench of the Commission in *Peabody Moorvale Pty Ltd v Construction, Forestry, Mining and Energy Union (CFMEU)* [2014 FWCFB 2042 has addressed additional material contained in the NERR. At paragraph 70, the Full Bench states:

*[70] Thirdly, where additional material is provided with the Notice and that material has the character of being, for example, misleading or intimidatory, then this will be relevant to the Commission's assessment of whether the enterprise agreement had been 'genuinely agreed' by the employees. However, it is not a basis for finding that a Notice has not been given in accordance with the Act.*

[10] Based on the submissions of the Applicant and the support of the SDA there is no evidence that the Agreement has not been genuinely agreed to or that the NERR is misleading to employees to be covered by the Agreement.

[11] Given the administrative nature of the error, I am satisfied that a notice pursuant to s.174(1A) of the Act has been given.

### **Penalty rates**

[12] In its correspondence to the Applicant, the Commission noted that the Agreement does not appear to provide penalty rates for hours worked on Saturday. The *General Retail Industry Award 2010* (the Award), being the relevant modern award for the purpose of the better off overall test provides a penalty payment of an additional 25% for ordinary hours worked on a Saturday and an additional 10% for casual employees. Further, the Agreement at clause 4.4 – **Sunday work**, provides that an employee who works on Sunday will be paid 150% of their ordinary rate of pay. The Award provides a penalty payment of an additional 100% for all hours worked on a Sunday. The Commission requested the Applicant provide correspondence outlining how employees were better off overall under the Agreement despite the Agreement providing for lesser penalties than the Award.

[13] The Applicant provided a number of indicative rosters and calculations to demonstrate that employees are better off overall under the Agreement when compared to the Award despite the lesser penalty rate for work performed on a weekend.

### **Undertakings**

Hours of work

[14] In its correspondence to the Applicant, the Commission noted that the Agreement does not appear to provide for a span of ordinary hours.

[15] An undertaking has been provided to the Commission that the ordinary span of hours will be those as provided at clause 27.2(a) of the Award.

Breaks between shifts

[16] Clause 4.3(g) of the Agreement provides that employees will receive a 10 hour break between the completion of work on one day and the commencement of work on the next day unless mutually agreed otherwise. In its correspondence, the Commission noted that the Award provided for 12 hour break which may be reduced to not less than 10 hours by mutual agreement.

[17] An undertaking has been provided to the Commission that breaks between shifts less than 12 hours are rare and where worked are done so with the agreement of the employee concerned.

[18] These undertakings are taken to be a term of the Agreement. A copy of the undertakings is attached at **Annexure A**.

[19] The undertakings were provided to the bargaining representative pursuant to s.190(4) of the Act. The bargaining representative the SDA has not advised of any concerns with the undertakings provided.

[20] Upon review of the correspondence, indicative rosters and undertakings provided to the Commission, I am satisfied that employees are better off overall under the Agreement.

[21] I am satisfied that each of the requirements of ss. 186, 187, 188 and 190 of the Act as are relevant to the application for approval have been met.

[22] The SDA being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers this organisation.

[23] The Agreement is approved. In accordance with s.54(1) the Agreement will operate from 4 August 2014. The nominal expiry date of the Agreement is 31 March 2018.



COMMISSIONER

Annexure A



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23 July 2014

Chambers of Commissioner Bull  
Fair Work Commission  
Level 8, Tower Terrace  
80 William Street  
East Sydney, NSW 2011

Dear Commission,

Application for Approval of Lovisa Enterprise Agreement 2014 - AG2014/6341

Lovisa gives the following written undertakings with regards to the Lovisa Enterprise Agreement 2014:

1. Part 4 – Hours of Work, the ordinary span of hours will be those as provided at clause 27.2(a) of the General Retail Industry Award.
2. Part 4 – Hours of Work, and in particular, sub-clause 4.3(g), Lovisa has advised the Commission that breaks between shifts less than 12 hours are rare and where worked are done so with the agreement of the employee concerned.
3. Clause 4.6 – Overtime, Lovisa has advised the Commission that overtime is very rarely worked.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Damian Babic', with a long horizontal flourish extending to the right.

Damian Babic

Chief Operating Officer

PRIVATE AND CONFIDENTIAL

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

# Lovisa Enterprise Agreement 2014

Rollout Version, 23 April 2014

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## Part 1 Preliminary

### 1.1 Operation of Lovisa Enterprise Agreement

- (a) The Lovisa Enterprise Agreement will have application to all retail store team members of Lovisa who are classified within this Enterprise Agreement.
- (b) This Enterprise Agreement will commence at the start of the first pay cycle following its approval by Fair Work Commission. The Enterprise Agreement will nominally expire on 31 March 2018.
- (c) This is a comprehensive Enterprise Agreement and will not be read in conjunction with any Industrial Agreement or Industrial Award except as expressly provided for within this Agreement.
- (d) The National Employment Standards and this Enterprise Agreement combine to form the minimum conditions of employment for team members covered by this Enterprise Agreement.
- (e) A copy of this Enterprise Agreement and the National Employment Standards will be readily available to team members at each Lovisa retail outlet.

### 1.2 Definitions

- (a) 'continuous service' means service for any team member under a contract of employment that has not been terminated, or has been terminated and the team member has been re-employed by Lovisa within 3 months of the termination.
- (b) 'Enterprise Agreement' means the Lovisa Enterprise Agreement 2014.
- (c) 'immediate family' includes a partner, child, parent, grandparent, grandchild or sibling of the team member or a child, parent, grandparent, grandchild or sibling of a partner of the team member.
- (d) 'line manager' is the person that a team member reports to.
- (e) 'mutually agreed' within this Enterprise Agreement means agreement is taken to be granted by a team member if work subject to the mutual agreement is performed by the team member. If a team member is concerned that they have not mutually agreed they should immediately raise the concern via the Enterprise Agreement Grievance Procedure. If a team member indicates they have not mutually agreed to a matter or wishes to remove their mutual agreement this change will be made by Lovisa within 7 days.
- (f) 'ordinary hours' means 76 hours per 2 week cycle for a full time team member and between 6 hours and fewer than 76 hours in a 2 week cycle for a part time team member.
- (g) 'ordinary rate of pay' means the team member's wage rate as expressed in the wages section.
- (h) 'permanent team members' are full time team members and part time team members.
- (i) 'Lovisa' means the employer Lovisa Pty Ltd trading as Lovisa or its assignee (as provided for in the Fair Work Act) ABN 62 120 675 890.
- (j) 'SDA' means the Shop Distributive and Allied Employees' Association.

## Part 2 Employment Categories

### 2.1 Appointment or Change to the Nature of Employment

Every team member will be advised in writing at the time of their appointment, or at the time of any change to the nature of their appointment:

- (i) Whether they are a full time team member, a part time team member or a casual team member;
- (ii) Their team member classification;
- (iii) Their contract hours, if a part time team member;
- (iv) That there may be a requirement to work in more than 1 Lovisa store;
- (v) Their agreed days and hours of availability; and
- (vi) Any other specific terms of appointment.

## 2.2 Full Time Team Member

Full time team members are those team members engaged to work 76 hours per fortnightly cycle as their ordinary hours.

## 2.3 Part Time Team Member

- (a) Lovisa and a part time team member will agree, in writing, on set contract hours per 2 week cycle.
- (b) The set contract hours are to be between a minimum of 6 hours and a maximum fewer than 76 hours per 2 week cycle.
- (c) Part Time Flex Up: If a part time team member agrees to work in excess of their contracted hours, the part time team member will be paid their ordinary hourly rate of pay (including penalties where appropriate), and accrue Leave entitlements and superannuation, for any excess hours worked up to 76 hours in a 2 week cycle.
- (d) If in any fortnightly cycle a part time team member wishes to be rostered fewer ordinary hours they can make a request to store management to work less hours. If this request is approved the team member must complete a Leave Form to request the reduced hours be provided as either paid annual leave or unpaid leave.
- (e) Lovisa will see if it is possible to transfer to full time employment any part time team member who seeks full time employment and has been regularly and systematically working more than 70 hours per 2 week cycle over the previous 6 month period.

## 2.4 Casual Team Member

- (a) Casual team members are team members engaged as such and paid on an hourly basis.
- (b) The hourly rate of pay for casual team members is specified according to their classification in the wages and Classification part of this Enterprise Agreement. This rate of pay includes a casual loading component of 25%.
- (c) Due to the casual loading, casual team members have no entitlement to the provisions contained in: annual leave and personal leave although a casual team member will be provided the following in accordance with the National Employment Standards:
  - (i) Unpaid carers leave; where a team member needs to provide care or support to a member of the team member's immediate family, or a member of the team member's household, who requires care or support because of a personal illness or injury or an unexpected emergency; and
  - (ii) Unpaid compassionate leave; if a member of a team member's immediate family or household contracts or develops a personal illness or sustains an injury that poses a serious threat to their life, or passes away.

## 2.5 Fixed Period Contract

- (a) By mutual agreement Lovisa may engage full time team members and part time team members on a fixed period contract.
- (b) Prior to the appointment of a fixed period contract, the team member will be advised in writing of:
  - (i) The date of commencement;
  - (ii) The completion date of the fixed period contract\*;
  - (iii) Whether they are a full time team member or a part time team member on a fixed period contract;
  - (iv) Their weekly or hourly rate of pay; and
  - (v) Any other specific terms of appointment.

\*In cases where a team member is on a fixed period contract replacing someone on parental leave, or any other form of uncertain leave, the completion date may be varied with reasonable notice to end on the return of the team member being replaced.

- (c) An employee will not be engaged on a fixed period contract for a period of 1 week or less.
- (d) If an existing team member is contracted to work on a fixed period contract they will revert to their original contract at the conclusion of the fixed period contract.

## Part 3 Wages and Classification Structure

### 3.1 Functions and Duties

- (a) Team members will be required to undertake a varying range of duties and work as reasonably directed within the store. These may include duties of a manual nature and may include, but are not limited to:
- |                          |                                       |
|--------------------------|---------------------------------------|
| (i) Customer Service     | (ii) Stock Replenishment              |
| (iii) Merchandising      | (iv) Housekeeping and Cleaning Duties |
| (v) Administrative Tasks | (vi) Loss Prevention Procedures       |
| (vii) OH&S Procedures    | (viii) Audit Requirements             |
| (ix) Training            | (x) Stocktake                         |
- (b) These duties may change over time with the addition of other responsibilities or the performance of other duties as Lovisa may reasonably require to meet the operating needs of the store and will be within the limits of the team member's skills, competence and training.
- (c) The team member will work as part of their store team to ensure that productivity standards are achieved. The team member will conscientiously and diligently carry out these duties in respect of the Lovisa business and will use his or her best endeavours to promote and enhance the Lovisa business.

### 3.2 Lovisa Team Member

- (a) A Lovisa team member is a team member who is engaged as such and primarily employed in a retail role.
- (b) A Lovisa team member under the age of 21 years will receive junior rates of pay in accordance with the Lovisa Enterprise Agreement wage table.
- (c) When a Lovisa team member is required to be in charge of a store for a continuous period of more than 1 hour they will be paid the applicable Lovisa store supervisor hourly rate (plus penalties) for times so worked. This does not apply where a Lovisa team member is temporarily in charge during meal breaks.

### 3.3 Lovisa Store Supervisor

- (a) A Lovisa store supervisor is a team member who is engaged as such and primarily employed as a store supervisor and to perform general duties within their knowledge and training.
- (b) A store supervisor may be required to be in charge of a store, be responsible for opening and closing plus security of cash (as per level 3 of the modern retail award).

### 3.4 Lovisa Assistant Store Manager

- (a) Assistant store managers are team members appointed by Lovisa to the role of assistant store manager.
- (b) Assistant store managers will be appointed by Lovisa in stores where it is deemed by Lovisa that the role is operationally necessary.
- (c) Assistant store managers will support the store manager and assist with training and supervision of team members.

### 3.5 Lovisa Store Manager

A Lovisa store manager is a team member who is engaged as such and primarily employed as a store manager and to perform general duties within their knowledge and training.

### 3.6 Wage Structure

- (a) The ordinary rates of pay that will be applicable from the commencement of the Enterprise Agreement to the start of the first full pay period in July 2014 will be:

Enterprise Agreement Wage Table				
Classification	Relativity	Full time team members Average weekly rate	Permanent Hourly rate	Casual Hourly Rate
Team Member - 21 yrs & over	100%	\$736.86	\$19.39	\$24.23
Store Supervisor	104%	\$766.33	\$20.16	\$25.20
Assistant Store Manager	106%	\$781.07	\$20.55	N/A
Store Manager C	112%	\$825.28	\$21.71	N/A
Store Manager B	115.7%	\$852.54	\$22.43	N/A
Store Manager A	118.80%	\$875.38	\$23.03	N/A
Store Manager A+	128.40%	\$946.12	\$24.89	N/A

*\*Managers will be advised of their actual ordinary rate of pay*

- (b) For a Lovisa team member or store supervisor, under the age of 21, ordinary rate of pay will be calculated based on the following percentages of the relevant classifications ordinary rate of pay as set out in the Enterprise Agreement wage table:

16 years & under	50%
17 years	60%
18 years	70%
19 years	80%
20 years	90%

### 3.7 Wage Increases

Lovisa will increase the Enterprise Agreement wage table in 2014, 2015, 2016 and 2017 in accordance with determinations of Fair Work Commission for Retail Team member Level 1 in the General Retail Industry Award to be calculated as a percentage. (I.e. if the Retail Team member Level 1 rate increases by \$15.00 a week, the \$15.00 will be converted to a percentage with the Enterprise Agreement rates increasing by this percentage.) Any wage increase will apply from the first full pay period in July of the relevant year.

### 3.8 Superannuation

- (a) Superannuation contributions will be made monthly by Lovisa to REST in accordance with the requirements of the Superannuation Guarantee Legislation.
- (b) A team member may make personal superannuation contributions in addition to those made by Lovisa on the following understanding:
- (i) The team member may either choose to make before or after tax superannuation contributions.
  - (ii) If a team member makes after-tax contributions, the team member may receive a government superannuation co-contribution.
  - (iii) If a team member chooses to make before tax contributions (i.e. Salary Sacrificing) this contribution may lead to a reduction in the team members ordinary rate of pay, by an amount equivalent to the team members' before tax contribution. Upon receipt of written authorisation from the team member, Lovisa will commence making these additional payments, via payroll deductions, into REST on behalf of the team member. A team member may vary the amount of their additional contributions on up to one occasion per annum (unless mutually agreed otherwise).

- (c) In circumstances where a team member seeks to have their superannuation contributions paid into an alternative fund they can make a written request to Lovisa. Lovisa will consider any requests on its individual merits and on a case-by-case basis.
- (d) Any existing team member who, at the commencement of this Enterprise Agreement, is having contributions directed to a superannuation fund other than REST will be able to elect to continue to have their superannuation contributions made to the pre-existing fund.

## Part 4 Hours of Work

### 4.1 Team Member Availability

A team member's times and days of availability will be agreed at the time of employment. If for any reason a team member wishes to alter these days and times of availability this must be discussed with the team member's line manager. This request will be considered in line with the operational requirements of Lovisa. Where agreed by Lovisa this may lead to a change in the team member's days and times of availability. As part of this agreement, it may be necessary to change the team member's employment category, classification and/or ordinary hours.

### 4.2 Rosters

- (a) Lovisa will draw up a roster for each fortnightly pay cycle. This fortnightly roster will be made available 4 days in advance of the fortnightly pay period that it applies to.
- (b) Once a roster is made available, changes to the roster may be made by Lovisa if the team member concerned agrees.
- (c) A copy of the roster will be made available to each team member in a place accessible to team members in each Lovisa store.
- (d) Lovisa require all team members be available to work during Lovisa's official stocktakes unless a team member is excused from the work due to exceptional circumstances or other operational reasons.
- (e) Where a team member has a regular roster or normal working hours which Lovisa seeks to change, Lovisa will consult with the team member about the change, including providing the team member information about the change, inviting the team member to comment on the change and genuinely considering the team member's comments.

### 4.3 Hours of Duty

- (a) A team member will be rostered to work their ordinary hours per fortnightly roster cycle.
- (b) A team member will not be rostered to work for more than 12 hours per shift (inclusive of unpaid breaks) unless mutually agreed otherwise.
- (c) A team member will not be rostered to work for less than 3 consecutive hours per shift although 2 hours may apply where the team member is rostered for team member training sessions or undertaking stocktakes.
- (d) A team member will not be rostered to work ordinary hours on more than 10 days during any fortnightly roster cycle.
- (e) A full time team member will have 2 consecutive days off once every week or 3 consecutive days off once every 2 weeks unless mutually agreed otherwise.
- (f) A full time team member will be rostered off for a minimum of one weekend each month, unless mutually agreed otherwise.
- (g) A 10 hour break must be observed between the completion of one day's work and the commencement of the next day's work.

### 4.4 Sunday Work

When a team member works on Sunday the team member will be paid 150% of their ordinary rate of pay for each hour worked on this day. Such work will form part of the team member's normal cycle of hours.

### 4.5 Late Night Work

When a team member works between the hours of 10pm and 7am between Monday to Friday the team member will be paid 150% of their ordinary rate of pay for each hour worked between those hours. Such work may form part of the team member's normal cycle of hours.

#### 4.6 Overtime

- (a) Any work done that falls outside the conditions set in the Hours of Work part of this Enterprise Agreement, except for Part Time Flex Up, will be classified as overtime.
- (b) Lovisa will only require a team member to work reasonable overtime.
- (c) Overtime is only payable if the team member's line manager approves the overtime prior to the commencement of the overtime.
- (d) Overtime will be paid at the rate of 150% of the team member's ordinary rate of pay for the first 2 hours on each day that overtime is worked and 200% thereafter. All overtime worked on a Sunday will be paid at the rate of 200%.

#### 4.7 Breaks

- (a) Unless mutually agreed otherwise, paid rest break and unpaid meal break entitlements are:

<u>Working Hours</u>	<u>Paid Rest Break</u>	<u>Unpaid Meal Break</u>
4 and up to 5 hours in a shift:	10 minutes	n/a
More than 5 and less than 7 hours in a shift:	10 minutes	40 minutes*
7 and up to 9 hours in a shift:	2 x 10 minutes	40 minutes*
More than 9 hours in a shift:	2 x 10 minutes	2 x 40 minutes*

\*The length of this unpaid meal break may be shortened to 30 minutes by mutual agreement or taken as 2 x 30 minute unpaid breaks (if working more than 9 hours).

- (b) Breaks are to be taken as determined by Lovisa in a manner that does not impact on the operational requirements of the business.
- (c) A team member will not work for more than 5 continuous hours without an unpaid meal break. A team member will not be provided a break within one hour of their starting or finishing time.

#### 4.8 Public Holidays

- (a) The public holidays recognised by Lovisa are:

- New Year's Day
- Good Friday
- ANZAC Day
- Boxing Day
- Any other day declared or proclaimed by a State or Territory Government to be observed within the State or Territory or within a region of the State or Territory
- Australia Day
- Easter Monday
- Christmas Day

- (b) A full-time team member or a part time team member who regularly works 10 days per 2 week cycle, whose rostered day off falls on a public holiday must, either:
  - (i) Be paid an extra day's pay; or
  - (ii) Be provided with an alternative day off within 28 days; or
  - (iii) Receive an additional day's annual leave.
- (c) If a public holiday falls on a day a part time team member is normally rostered to work (ie they have worked the day 3 out of the previous 4 weeks), and they do not work, the part time team member must, either:
  - (i) Be paid an extra day's pay (an average of their working days in the previous 4 weeks); or
  - (ii) Be provided with an alternative day off within 28 days; or
  - (iii) Receive an additional day's annual leave.
- (d) If any team member works on a public holiday the team member will be paid 250% of their ordinary rate of pay.

## 4.9 Flexible Work Arrangements

- (a) A team member with at least 12 months continuous service who:
- (i) Is a parent or guardian, or has the responsibility for the care, of a child who is school age or younger;
  - (ii) Is a carer (as defined in the Carer Recognition Act 2010)
  - (iii) Has a disability;
  - (iv) Is 55 or older;
  - (v) Is experiencing family or domestic violence; or
  - (vi) Is caring for or supporting an immediate family member or household member who requires care or support because of family or domestic violence
- May make a request in writing to Lovisa for a change in working arrangements. This could include changes to hours of work, patterns of work and changes in location of work.
- (b) To be eligible a team member must have at least 12 months' continuous service.
- (c) Requests from the team member need to be in writing. The only reason Lovisa will not agree to the request is on reasonable business grounds. Lovisa will provide a response to any request within 21 days and if Lovisa is not in a position to agree to the request they will provide the team member with an explanation of why in their response.

## Part 5 Leave

### 5.1 Personal Leave

- (a) Permanent team members will be entitled to 10 days' personal leave per year, accruing progressively on ordinary hours of work (and, where applicable, flex-up hours for a part time team member).
- (b) Personal leave is sick leave and carers leave.
- (c) If a team member requires personal leave they must personally contact their line manager as soon as reasonably practical. Notification of a personal leave absence via text messages or email etc. is not acceptable.
- (d) Team members are not entitled to be paid for their accumulated personal leave on termination.
- (e) Authorised personal leave, whether paid or unpaid, does not break a team member's continuity of service.
- (f) For a team member to be paid for a personal leave absence, in situations where evidence of the leave is required, Lovisa must have received the evidence required in this Enterprise Agreement prior to the end of the pay cycle. If this information is not received by the end of the pay cycle the team member will not be paid for the day(s) until the certificate is produced. Instead, the team member will be paid for the personal leave in the pay run following the receipt by Lovisa of the required information.

#### Sick Leave

- (g) Sick leave may be used when a team member is not well enough to work because of a personal illness or injury.
- (h) Where the team member is sick, Lovisa requires evidence of the need for the leave via a medical certificate, if it is reasonably practicable to do so, otherwise a statutory declaration, dated at the time of absence for:
- (i) Absences in excess of one day; or
  - (ii) On a single day absence if it occurs either side of a non-working day.
- (i) Where a team member has a recurring pattern of sick leave, Lovisa may require that future sick leave be supported by written evidence as reasonably required by Lovisa.

#### Carers Leave

- (j) Carers leave may be used when a team member needs to provide care or support to a member of the team member's immediate family, or a member of the team member's household, who requires care or support because of a personal illness or injury or an unexpected emergency.
- (k) Where the team member is taking carers leave, Lovisa may require evidence of the need for the leave via a medical certificate or a statutory declaration. In the case of an unexpected emergency Lovisa may require a statutory declaration.
- (l) Unpaid carers leave of 2 days per occasion is available to team members who have exhausted their accrued personal leave.

#### Domestic Violence Leave

- (m) Lovisa is committed to providing support to team members who experience domestic violence and will treat all such matters with confidentiality.
- (n) A permanent team member experiencing domestic violence may access personal leave to attend to court, medical appointments and other activities directly related to domestic violence (eg counselling).
- (o) A permanent team member who supports a person experiencing domestic violence may take carer's leave to accompany them to court, to hospital, or to mind children.
- (p) A team member may be required to produce suitable evidence that domestic violence has occurred such as a document issued by the police service, a court, a doctor, a district nurse, a lawyer or in a statutory declaration.

#### 5.2 Compassionate Leave

- (a) Upon the death of a parent, partner or child of a team member the team member is entitled to 5 days' paid Compassionate Leave. Upon the death of any other immediate family member or a member of a team member's household the team member is entitled to 2 days' paid compassionate leave.
- (b) If a member of a team member's immediate family or household contracts or develops a personal illness or sustains an injury that poses a serious threat to their life, the team member will be entitled to 2 days' paid compassionate leave.
- (c) The team member may be required to provide evidence of the requirement to take compassionate leave to the reasonable satisfaction of Lovisa.
- (d) Requests for unpaid compassionate leave for extended family members or extensions to the length of compassionate leave will be considered by Lovisa on a case-by-case basis.

#### 5.3 Annual Leave

- (a) Permanent team members will be entitled to 4 weeks' paid annual leave per annum accruing progressively on ordinary hours of work (and, where applicable, flex-up hours for a part time team member).
- (b) The taking of annual leave is subject to the operational requirements of Lovisa and the approval for the leave having been authorised in writing. Lovisa will not unreasonably refuse any annual leave requests.
- (c) Team members are encouraged to take 4 weeks' annual leave per year and to not accrue more than 8 weeks of leave.
- (d) Where a recognised public holiday occurs during any period of a full time team member's annual leave the public holiday will not be counted as a day of annual leave.
- (e) Any accrued annual leave entitlement will be paid to the team member upon termination of employment.
- (f) Annual leave payments will be made in the normal pay cycle as if the team member had been working. Team members will be paid for Annual leave at their ordinary rate of pay.
- (g) Annual leave loading of 17.5% will be paid on annual leave payments.
- (h) For operational reasons team members will not be able to take annual leave in December or up to the 5<sup>th</sup> of January although no Annual leave requests will be unreasonably refused.
- (i) A team member may elect, in writing, to cash out a particular portion of their Annual leave. Lovisa may agree to the request if it meets their operational requirements. Paid annual leave will not be cashed out if it would result in the team member's remaining annual leave accruals being less than 4 weeks.
- (j) Lovisa may require a team member to take annual leave by giving at least four weeks' notice in the following circumstances:
  - (i) As part of a close-down of its operations; or
  - (ii) Where more than eight weeks' leave is accrued.
- (k) If, during a period of annual leave, a team member takes another form of paid leave (eg personal leave) or unpaid community services leave the team member will be re-credited their annual leave for the period of the other leave. For the annual leave to be re-credited the team member must provide reasonable evidence of the need to take the other form of leave.

#### 5.4 Unpaid Leave

- (a) Lovisa will consider team member requests for unpaid leave. Reasons for unpaid leave may include a team member requesting time off for study, to travel or other personal reasons.

- (b) The granting of unpaid leave will be on a case-by-case basis at the complete discretion of Lovisa.
- (c) Whilst on unpaid leave all entitlements to annual leave, personal leave, long service leave or superannuation will be frozen from the date of commencing such leave to the date of returning from such leave.
- (d) Such absence shall not break continuity of employment for the team member concerned.

### 5.5 Long Service Leave

All team members covered by the Enterprise Agreement will be entitled to long service leave in accordance with the provisions of their State or Territory long service leave act or commission order.

### 5.6 Parental Leave

- (a) Team members will be provided parental leave in accordance with the National Employment Standards, including transfer to safe work (where applicable), paid or unpaid no safe job leave if appropriate work is not available, unpaid special maternity leave and concurrent leave provisions. In summary:
  - (i) Both parents have the right to separate periods of up to 24 months of unpaid leave associated with the birth of a baby (or adoption of a child).
  - (ii) To be entitled the team member must have at least 12 months' continuous service and have reasonable responsibility for the care of the child.
- (b) Whilst on parental leave, as a primary care giver, a permanent team member may be employed by Lovisa on a separate employment contract as a casual team member. This can only occur on Lovisa receiving a written request from the team member concerned and on the understanding that the arrangement does not in any way impact on the team member's accruals, entitlements or permanent employment contract unless Lovisa terminates the contract of employment due to misconduct reasons. Lovisa will offer hours of work to such a team member subject to the normal principles of a casual engagement and Lovisa operational requirements. A permanent team member on parental leave may not work on a separate casual contract during that period where the team member is receiving the Federal Government parental leave payment.
- (c) On request Lovisa will provide a team member a summary of the parental leave National Employment Standard (eg the Parental Leave fact Sheet as published by the Fair Work Ombudsman).

### 5.7 Community Service Leave

- (a) A team member who engages in an eligible community service is entitled to be absent from employment to engage in the activity plus reasonable travel associated with the activity and reasonable rest time following the activity.
- (b) Eligible community service includes:
  - (i) Jury service;
  - (ii) Voluntary emergency management activity\*; or
  - (iii) Any activity prescribed by the regulations to the Fair Work Act.

\*This includes an activity that involves dealing with an emergency or a natural disaster; and the activity is voluntary; and the team member is a member of the recognised management body; and the team member was requested to engage in the activity (or it was reasonable for them to assume a request would be made).
- (c) A team member must provide Lovisa notice of the leave as soon as practicable including notification of the expected period of the leave. Lovisa may require a team member to provide them reasonable evidence they have been engaging in an eligible community service activity.
- (d) Team members will not be paid for community service leave except for jury service.
- (e) For jury service: Lovisa may require the team member to provide Lovisa reasonable evidence the team member has taken all necessary steps to obtain any amount of jury service pay to which the team member is entitled (even if it is nil). A team member is not entitled to be paid for jury service unless the team member provides the requested evidence. If the team member provides the evidence the total amount payable is reduced by the total amount of jury service pay.

## Part 6 Contract of Employment

### 6.1 Termination of Employment

- (a) Every team member will be engaged on a fortnightly basis terminable by the following table (or if Lovisa wish on the making of the relevant payment in lieu of notice):

<u>Team member's Continuous Service</u>	<u>Period of Notice</u>
Less than 1 year	1 week
1 and less than 3 years	2 weeks
3 and less than 5 years	3 weeks
5 years and over	4 weeks

- (b) If a team member fails to give notice or work the required notice Lovisa is not obliged to pay the team member for the period of notice not worked and may withhold any period of notice from the team member's final pay (not including annual leave payments).
- (c) Lovisa may decide to terminate a team member's employment prior to the end of the notice period. If so, the team member will be paid for the notice period in lieu of notice.
- (d) If a team member is over 45 years of age and has had at least 2 years' continuous service they will receive an extra 1 week's notice.
- (e) Any team member who is guilty of serious misconduct may be instantly dismissed and will only be paid up to the time of dismissal.

### 6.2 Payment of Wages

- (a) Wages will be paid weekly by way of Electronic Funds Transfer in arrears. The transfer will be made within 4 working days of the end of the pay period and Lovisa will pay any costs associated with such transfer.
- (b) Termination payments will be made by way of Electronic Funds Transfer within 4 working days of the end of the termination pay period and Lovisa will pay any costs associated with such transfer.

### 6.3 Individual Flexibility Arrangement

- (a) Lovisa and a team member may agree on an individual flexibility arrangement (IFA).
- (b) An IFA will not include unlawful terms. The team member must genuinely wish to enter the IFA and must be better off overall all as a result of entering the IFA.
- (c) Lovisa and a team member may agree to make an IFA to vary the effect of terms of this Enterprise Agreement if the IFA deals with 1 or more of the following matters:
- (i) Arrangements about when work is performed; and
  - (ii) Overtime rates.
- (d) Any IFA must be in writing and include:
- (i) An explanation of each term of the Enterprise Agreement that is to be varied;
  - (ii) The ability for either Lovisa or the team member to provide 4 weeks' notice of withdrawal from the IFA;
  - (iii) Detail on how the application of each term has been varied by agreement between Lovisa and the team member;
  - (iv) Detail on how the IFA will mean a team member is better off overall in relation to the individual team member's terms and conditions of employment;
  - (v) The date the IFA commences to operate; and
  - (vi) Signatures from Lovisa and the team member (if the team member is under 18 the IFA will also be signed by parent/guardian).
- (e) A copy of the IFA will be provided to the team member by Lovisa within 14 days of the IFA having been signed.

#### 6.4 Workplace Consultation

- (a) Lovisa will consult with the SDA and team members (including those team members on leave) about any major workplace changes that are likely to have a significant effect on the team members.
- (b) A team member will be entitled, on request, to have representation for the purposes of consultation regarding the major workplace change.

#### 6.5 Termination, Change and Redundancy

Lovisa will adhere to the Termination Change and Redundancy National Employment Standard at the time of redundancy.

#### 6.6 Grievance Procedure

- (a) Step 1: A grievance between a team member and Lovisa about a matter(s) arising under the Enterprise Agreement or the National Employment Standards must be discussed at the first instance by the team member with their line manager.
- (b) Step 2: If the matter is not settled the team member may raise the matter with their Area/Regional Manager.
- (c) Step 3: If the matter is not settled the team member may raise the matter with their State/National Sales Manager.
- (d) Step 4: If the matter is not settled the team member may raise the matter with the Lovisa HR manager or CEO.
- (e) Step 5: If the matter still cannot be resolved the team member may refer it to Fair Work Commission for conciliation and only after all reasonable attempts to settle the matter by conciliation have failed, for arbitration.
- (f) Until the grievance procedure is completed work as usual must continue in accordance with the direction of Lovisa. No party will be prejudiced by this continuance of work.
- (g) Any party to a grievance may request that a person attend and represent them at any step(s) of the process. The representative may be an official from the SDA.
- (h) The parties must co-operate to ensure these procedures are followed as quickly as reasonably practical.

#### 6.7 Dress Code and Appearance Standards

- (a) Lovisa takes great pride in its professionalism. An extension of Lovisa' professionalism is the requirement that team members must always present themselves, for and during work, in a professional and business-like manner.
- (b) If a team member does not meet these requirements they may be directed to not start or cease work, without pay, until such time as the team member is dressed to the required standard.

#### 6.8 Mobility of Employment

- (a) To cater for the changing needs of the business or to improve a team member's employment prospects or opportunities within the business, a team member may be required, where reasonable, to work in an alternative store to the store that is their primary work location.
- (b) Where a team member is required to work in a store other than their primary work location, they will be entitled to any additional fare costs for using public transport and be paid for additional travelling time. If public transport is not available and the team member uses their own vehicle the Travel Allowance will apply for any extra kilometers the team member is required to travel to the alternative store.
- (c) Where a team member requests to work in a store, other than their primary work location, additional fare costs, travelling time and the Travel Allowance will not be payable.
- (d) Each team member will have a primary work location designated by Lovisa. This primary work location may only be changed where Lovisa intends such change to be for more than 3 months' duration.

#### 6.9 Travel Allowance

- (a) Lovisa will reimburse any authorised travel costs incurred by team members for work purposes. Authorised travel is travel at the request of Lovisa for the purposes of company business and is outside a team member's normal travel to and from work. Where an employee wants to work in a store, other than their normal store, additional fare costs, travelling time and the travel allowance will not be payable.
- (b) For motor vehicles the travel allowance will be 82 cents per kilometre.

- (c) For payment to be made relevant authorisation must be received from the team member's area manager prior to the travel.

#### 6.10 First Aid Allowance

Where a team member who holds an appropriate first aid qualification is appointed by Lovisa to perform first aid duty the team member will be paid an additional 1.3% of their ordinary rate of pay for each hour they are required to perform first aid duty.

#### 6.11 Meal Allowance

If a team member is required to work more than 1 hours overtime, without the team member being notified the day prior of the requirement, the team member will be entitled to a meal allowance of \$17.50.

#### 6.12 Abandonment of Employment

If a team member does not report to work for 3 consecutive rostered working days, excluding approved Leave absences; Lovisa will be entitled to assume the team member has abandoned his/her employment. As a result the team member will be deemed to have resigned their employment without notice effective from their last day of work or their last authorised day of absence, whichever is the latter.

#### 6.13 Suspension of Employment

- (a) If on reasonable grounds Lovisa suspects that a team member has been involved in serious misconduct Lovisa may, if an investigation is required, suspend the team member on full pay in order that Lovisa can properly investigate the alleged serious misconduct. No suspension will take place without the approval of the general manager (or his or her delegate).
- (b) If a team member is suspended the team member is not to attend or contact any Lovisa workplace during the investigation nor contact or communicate with any Lovisa team members without the consent of the general manager (or his or her delegate). This consent will not be unreasonably denied in instances where the team member needs to contact other team members to assist in the preparation of their response to the alleged serious misconduct.

#### 6.14 Confidentiality

A team member must not use or disclose any confidential information (as defined in this clause), unless the team member has Lovisa' prior written permission to do so. 'confidential information' means any information arising from or in connection with the business of Lovisa or its Related Bodies Corporate, which is not in the public domain, including budgets, business plans, finances, marketing strategies, pricing policy and any other information which reasonably appears to be confidential.

#### 6.15 District Allowance

A team member employed prior to the approval of the 2013 Enterprise Agreement who works in one of the towns named locations in Western Australia Retail Award\*and in the Northern Territory will receive a District Allowance as follows:

Full time Team Member	Part Time Team Member	Casual Team Member
Weekly Rate	Hourly Rate	Hourly Rate
\$16.17	\$0.43	\$0.51

\*The applicable locations in Western Australia are those locations named at clause 39 of the Western Australian Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977.

#### 6.16 Savings Provision

A team member who, prior to the commencement of this Enterprise Agreement, was performing the role, on a permanent or temporary basis, of a store supervisor and is under the age of 21 years, will continue to be paid the adult rate of 104% when they perform the role of store supervisor.

## Signature Section

Signed for Lovisa:

D. Amunobasi (Print Name)

[Signature] (Signature)

COO (Position)

2-6-14 (Date)

Address:

1-45 Camberwell Road  
Hawthorn East Vic 3123

A duly authorised executive of Lovisa

Signed for SDA:

J. DE BRUYN (Print Name)

[Signature] (Signature)

NATIONAL SECRETARY (Position)

3/6/14 (Date)

Address:

Level 6, 53 Queen Street  
Melbourne, Victoria

A duly authorised official of the SDA



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e info@lovisa.com.au

**lovisa.com.au**

23 July 2014

Chambers of Commissioner Bull

Fair Work Commission

Level 8, Tower Terrace

80 William Street

East Sydney, NSW 2011

Dear Commission,

Application for Approval of Lovisa Enterprise Agreement 2014 - AG2014/6341

Lovisa gives the following written undertakings with regards to the Lovisa Enterprise Agreement 2014:

1. Part 4 – Hours of Work, the ordinary span of hours will be those as provided at clause 27.2(a) of the General Retail Industry Award.
2. Part 4 – Hours of Work, and in particular, sub-clause 4.3(g), Lovisa has advised the Commission that breaks between shifts less than 12 hours are rare and where worked are done so with the agreement of the employee concerned.
3. Clause 4.6 – Overtime, Lovisa has advised the Commission that overtime is very rarely worked.

Yours Sincerely

Damian Babic

Chief Operating Officer

PRIVATE AND CONFIDENTIAL