



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Valspar Paint (Australia) Pty Ltd T/A Valspar Paint
(AG2019/885)

VALSPAR PAINT AUSTRALIA PTY LTD SOUTH AUSTRALIA/NORTHERN TERRITORY ENTERPRISE AGREEMENT

Retail industry

COMMISSIONER PLATT

ADELAIDE, 6 JUNE 2019

Application for approval of the Valspar Paint Australia Pty Ltd South Australia/Northern Territory Enterprise Agreement.

[1] An application has been made for approval of an enterprise agreement known as the *Valspar Paint Australia Pty Ltd South Australia/Northern Territory Enterprise Agreement* (the Agreement) pursuant to s.185 of the *Fair Work Act 2009* (the Act) by Valspar Paint (Australia) Pty Ltd T/A Valspar Paint. The agreement is a single enterprise agreement.

[2] The matter was allocated to my Chambers on 28 May 2019.

[3] On 4 June 2019, I conducted a telephone conference with the parties to seek clarification about aspects of the Agreement and invited the Applicant to address these matters including the provision of an undertaking.

[4] The Agreement was lodged 16 days after it was made. The delay is short and the Applicant has satisfactorily explained the delay. As such, pursuant to s.185(3)(b) of the Act I consider it fair to extend the time for making this application to 26 March 2019.

[5] The Applicant has submitted an undertaking in the required form dated 5 June 2019. The undertaking deals with the following topics:

- The Applicant has inserted a National Employment Standards (NES) precedence clause.

[6] A copy of the undertaking has been provided to the bargaining representatives and I have sought their views in accordance with s.190(4) of the Act. The bargaining representatives that responded, did not express any view on the undertaking.

[7] The undertaking appears to meet the requirements of s.190(3) of the Act and I have accepted it. As a result, the undertakings are taken to be a term of the Agreement.

[8] As the Agreement does not contain a flexibility term which meets the requirements of s.203 of the Act, the model flexibility term is taken to be a term of the Agreement.

[9] The “Shop, Distributive and Allied Employees Association (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) of the Act I note that the Agreement covers this organisation.

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

[11] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 days from the date of approval of the Agreement. The nominal expiry date is 30 December 2020.



COMMISSIONER

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**Valspar Paint Australia Pty Ltd South
Australia/Northern Territory Enterprise
Agreement**

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

Note - the model flexibility term is taken to be a term of this agreement and can be found at the end of the agreement.

Valspar Paint Australia Pty Ltd South Australia/Northern Territory Enterprise Agreement

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1. TITLE

This agreement shall be known as the **Valspar Paint Australia Pty Ltd South Australia/Northern Territory Enterprise Agreement** (the "Agreement").

2. DATES OF OPERATION AND TERMINATION OF PREVIOUS AGREEMENT

2.1 This Agreement will commence 7 days after approval by the Fair Work Commission and will operate until 30 December 2020.

3. PARTIES BOUND

The Parties to this Agreement are:

- (a) **Valspar Paint Australia Pty Ltd, and its successors ("Employer") and**
- (b) the employees of the Employer in the classifications set out in Schedule A & B employed in South Australia and Northern Territory (the "Employees")
- (c) **the Shop, Distributive and Allied Employees' Association**

4. DEFINITIONS

Whenever the following words or expressions are used in this Agreement, they shall have the meaning set out in this Section.

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

Award means the General Retail Industry Award 2010 (GRIA)

Casual Employee means an Employee employed to work on an hourly basis as provided by the Company and is not a full-time or part-time employee. The relevant provisions regarding rostering at clause 9.3 apply.

Company or Employer means Valspar Paint Australia Pty Ltd and its successors.

Continuous Service - Except as otherwise indicated, employment is deemed to be continuous despite:

- Absence of the Employee from work in accordance with any provision of this Agreement.
- Absence of the Employee from work for any cause by leave of the Employer.
- Absence from work on account of illness disease or injury.
- Absence with reasonable cause. Proof of such reasonable cause lies with the Employee.
- Interruption or termination of the Employee's service by an act or omission of the Employer with the intention of avoiding any obligation imposed by this Agreement, the Act or relevant Long Service Legislation.
- Interruption or termination of the Employee's service by the Employer, for any reason other than those referred to in this Definition if the Employee returns to the service of the Employer within two months of the date on which the service was interrupted or terminated.

Employee unless indicated otherwise means a Full-time Employee, a Part-time Employee or a Casual Employee.

Full-time Employee A full time employee shall be employed for 38 hours per week worked in any of the following forms:

- (a) 38 hours in one week;
- (b) 76 hours in two consecutive weeks;
- (c) 114 in three consecutive weeks; or
- (d) 152 hours in four consecutive weeks.

Part-time Employee means an employee employed for minimum ordinary hours of 10 per week worked in any of the following forms:

- (a) 10 hours in one week;
- (b) 20 hours averaged in two consecutive weeks;
- (c) 30 hours in three consecutive weeks; or
- (d) 40 hours averaged over four consecutive weeks;

as a part of a fixed roster and per the rostering provisions in clause 9.3.

NES means the National Employment Standards as contained in sections 59 to 131 of the *Fair Work Act 2009* (Cth)

SDA or Union means the Shop, Distributive and Allied Employees' Association.

Retail Sales Assistant is an Employee whose principal function is to make direct sales of paint and paint related products to customers and in doing so accepts or arranges payment for goods sold (see Schedule A).

5. ANTI DISCRIMINATION

The parties to this Agreement agree that:

- (a) it is their intention to achieve the principal object set out in section 3(e) of the *Fair Work Act 2009* (Cth), which is 'enabling fairness and representation at work and the prevention of discrimination by recognising the right to freedom of association and the right to be represented, protecting against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms'; and
- (b) any dispute concerning these provisions and their operation will be progressed initially under the dispute resolution procedure in this Agreement.

6. INTENT

This Agreement shall form the complete agreement covering all terms and conditions of employment of the Employees. It shall operate to the exclusion of any and all other agreements or awards that would otherwise apply or which may apply during the life of this Agreement, unless otherwise noted. Where a provision in the National Employment Standards is more beneficial than the terms in this Agreement, that provision shall prevail to the extent of any inconsistency. A copy of this Agreement and the NES will be easily available to all employees either in a prominent location at each store or through electronic means.

7. EMPLOYEES DUTIES

The Employees will diligently and faithfully perform all the duties and responsibilities of their employment in accordance with their Classification Definition set out in Schedule A and Schedule B, and such other duties as may reasonably be required from time to time. At the time of engagement the Employer will inform each Employee of the terms of their engagement and, in particular, whether they are to be full-time, part-time or casual.

Probationary Period. The first 6 months of an Employee's employment will be a probationary period. During the probationary period, employment may be terminated by either the Employee or the Employer giving of the other party 1 weeks' notice. The probationary period does not affect the qualifying period set by the Act.

An Employee may be required to work at other locations of the Employer from time to time or may be transferred to another location on an ongoing basis. If the Employee is transferred to another location of the Employer either on a permanent or on a temporary basis, the terms of this Agreement together with any allowances payable under the Award will continue to apply to the Employee.

8. AIMS AND OBJECTIVES OF THE AGREEMENT

The aim of this Agreement, is that through the innovation, commitment and support of our Employees, we will maximise profits and shareholder value by supplying quality products that satisfy our customer needs in a safe, professional and friendly working environment.

9. HOURS OF WORK

9.1 Spread of Ordinary Time Hours

The ordinary time hours of work for a full time Employee will be an average of 38 per week, worked between the following specified days and times:

Monday	7.00am to 9.00pm
Tuesday	7.00am to 9.00pm
Wednesday	7.00am to 9.00pm
Thursday	7.00am to 9.00pm
Friday	7.00am to 9.00pm
Saturday	7.00am to 6.00pm
Sunday	9.00am to 6.00pm

9.2 Penalty Payments

All employees will receive the below listed penalty rate percentages_of the relevant agreement permanent rate of pay for each hour worked within the below spread of ordinary. At no time will the penalty rates paid under this Agreement be less than those payable under the General Retail Industry Award 2010:

<u>Spread of Ordinary Hours of Work</u>	<u>Permanent</u>	<u>Casual*</u>
Monday to Friday - 7am to 6pm	100%	125%
Monday to Friday – 6pm to 9pm**	120%	From 1 November 2018 to 30 September 2019 - 130% From 1 October 2019 to 29 February 2020 – 135% From 1 March 2020 to 30 September 2020 – 140% From 1 October 2020 to 28 February 2021 – 145% From 1 March 2021 – 150%
Saturday – 7am to 6pm**	120%	From 1 November 2018 to 30 September 2019 – 140% From 1 October 2019 to 29 February 2020 – 145% From 1 March 2020 – 150%
Sunday – 8am to 6pm**	150% or the award Sunday penalty on the relevant agreement ordinary rate, whichever is the higher.	175% or the award Sunday penalty on the relevant agreement ordinary rate, whichever is the higher.
Public Holidays	225%	250%

*Includes the 25% casual loading.

**Where trading hours extend beyond 9pm Monday to Friday or 6pm on Saturday or Sunday, the finishing time for ordinary hours on all days of the week will be 11pm.

9.3 Work Rosters

9.3.1 Full Time Employees Rosters

A Full Time Employee will be rostered for an average of 38 hours per week, worked in any of the following forms or by agreement over a longer period:

- (a) 38 hours in one week;
- (b) 76 hours in two consecutive weeks;
- (c) 114 hours in three consecutive weeks;
- (d) 152 hours in four consecutive weeks.

9.3.2 When rostering full-time employees the company will ensure that rosters comply with the following principles:

- (a) The minimum engagement for a Full Time employee shall be 4 hours per day;
- (b) A Full Time Employee will not be rostered for more than 48 hours in any one week.

9.3.4 Part-time Employee Rosters

(a) A part time employee shall be employed for minimum ordinary hours of 10 per week, or 20 averaged over a 2-week cycle, or 40 averaged over a 4-week cycle as a part of a fixed roster.

(b) The maximum ordinary hours worked by a part time employee shall be:

- i. Less than 38 hours in one week;
- ii. Less than 76 hours in two consecutive weeks;
- iii. Less than 114 hours in three consecutive weeks;
- iv. Less than 152 hours in four consecutive weeks.

as a part of a fixed roster.

(c) At the time of first being employed, the employer and the part-time employee will agree, in writing, on a regular pattern of work, specifying at least:

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

9.3.5 Part Time – Additional Hours

(a) Subject to 9.3.4 a part-time employee may be offered Additional Hours, and accept such hours on a voluntary basis. Such hours are in addition to a part-time employee's core rostered hours.

- (b)** The working of part-time Additional Hours is subject to the following provisions:
- (i) Additional Hours are offered on a voluntary basis in addition to a part-time employee's core rostered hours, up to a maximum of 38 hours in any week.
 - (ii) 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 9.2 applicable to such hours.
 - (iii) The working of Additional Hours operates subject to all other relevant clauses.
 - (iv) Additional Hours shall not be worked so as to exceed the daily maximum hours or days elsewhere provided in this Agreement without the payment of overtime.
 - (v) All additional hours worked will count in the calculation of all entitlements.
 - (vi) Where an employee has not agreed to additional hours in writing, such additional hours worked will be paid as overtime per clause 15.
- (c)** Any agreement to vary the regular pattern of work will be made in writing before the varied hours commence. A variation under this subclause may be of a temporary (including ad-hoc or one off variations) or permanent nature. A part-time employee can elect to provide written standing consent to vary their regular pattern of work in order to work additional hours at the rates of pay specified in clause 13, provided such standing consent may be withdrawn by the employee at any time. (To avoid doubt, an employee who provides standing consent can still verbally refuse to work additional hours when offered on any occasion.) Such a variation in writing may be made by electronic means (this will include E-mail and SMS).
- (d)** A record of the agreement and any variations to it (including by way of standing consent) will be retained by the Company and provided to the employee. This may be provided by electronic means as noted above.
- (e)** The Company is required to roster a part-time employee for a minimum of three consecutive hours on any shift.
- (f)** An employee who does not meet the definition of a part-time employee and who is not a full-time employee or engaged as a limited tenure employee will be paid as a casual employee in accordance with subclause 9.3.7.
- (g)** A part-time employee employed under the provisions of this subclause will be paid for ordinary hours worked at the hourly rate prescribed for the class of work performed. All time worked in excess of the hours as agreed under subclause 9.3.4(c) will be overtime and paid for at the rates prescribed in subclause 14. So as to avoid doubt, any variation under 9.3.5(c) will not attract overtime.
- (h)** The company recognises the importance of part-time employees. Subject to business needs and prerogative, the company will endeavour to offer additional hours under subclause 9.3.5(c), where they are required, to part-time employees.

9.3.6 Part-time Roster Changes

- (a)** A part-time employee's roster, but not the agreed number of hours, may be altered by the giving of notice in writing of seven days or in the case of an emergency, 48 hours, by the employer to the employee.
- (b)** The rostered hours of part-time employees may be altered at any time by mutual agreement between the employer and the employee.

- (c) Rosters will not be changed except as provided in clause 1.1(a) from week to week, or fortnight to fortnight, nor will they be changed to avoid any award entitlements.

9.3.7 Casual Employees

- (a) A casual employee shall be ready, willing and available to work the hours provided by the Company and shall be paid a minimum of 3 hours work per start.
- (b) A casual employee may be employed at ordinary casual rates for a maximum of 9 ordinary hours on any day, provided that for one day per week an employee can be rostered for 11 and 38 hours in any week, after which the provisions of Overtime per cl 15 shall apply.
- (c) Except as specifically provided elsewhere in this Agreement the 25% loading and other loadings payable to casual employees reflects the casual nature of their employment and encompasses and compensates casual employees for not being entitled to the leave entitlements specified in this Agreement.
- (d) Due to the casual loading, casual employees have no entitlement to the provisions contained in the Annual Leave and Personal Leave sections, although a casual employee is entitled to unpaid Carer's Leave and unpaid Compassionate Leave as provided for in the Personal Leave clause 17.
- (e) Casual employees, 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.
- (f) Start times may be changed by the Company if contact is made prior to the employee's arrival for work.

9.3.8 Right to request casual conversion

- (a) A person engaged by as a regular casual employee may request that their employment be converted to full-time or part-time employment.
- (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this Agreement.
- (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
- (d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- (e) Any request under this subclause must be in writing and provided to the Company.
- (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the Company may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.

(g) Reasonable grounds for refusal include that:

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

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

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

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

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

(i) Where the Company refuses a regular casual employee's request to convert, the Company must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made. If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 27. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.

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

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

(ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clauses 9.3.4 and 9.3.5.

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

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

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

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

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

(p) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of this subclause within the first 12 months of the employee's first engagement to perform work.

(q) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in clause 9.3.8(p).

9.3.9 Temporary Contracts

- (a) The Company may engage in the use of temporary contracts on either a Full Time or Part Time basis. A temporary contract may be used where permanent employees, including Assistant Store Managers and Store Managers are on annual leave, parental leave or other forms of leave. A temporary contract may also be engaged when replacing an employee who has been appointed to their duties in a temporary capacity.
- (b) A temporary contract is a contract where an employee is engaged for a specific period of not more than 52 weeks (or up to 104 weeks where replacing an employee on Parental Leave) and not less than 2 weeks at any one engagement, provided that such periods shall not run consecutively. Provided further that the minimum engagement be not less than one week when the sole purpose is the replacement of an employee on annual leave or a defined period of personal leave of one week or more.
- (c) An employee on a temporary contract shall receive all the benefits that apply to a permanent weekly employee and shall be paid a proportionate annual leave entitlement at the time of termination of the temporary contract.
- (d) It shall be voluntary for an existing employee to accept temporary Full Time or Part Time contracts.
- (e) If an existing employee is contracted to work on a short term contract they will revert to their original position at the conclusion of the short term contract.

9.3.10 General Rostering Principles

- (a) An employee may be rostered to work up to a maximum of nine ordinary hours on any day, provided that for one day per week an employee can be rostered for 11 hours.
- (b) Hours of work on any day will be continuous, except for rest pauses and meal breaks.
- (c) An employee will be rostered on no more than 5 days per week, except a maximum of 6 days in one week provided that 4 days are worked in the following week. Ordinary hours and any reasonable additional hours may not be worked over more than six consecutive days.
- (d) When establishing or changing rosters, the Company will have regard for family responsibilities, study commitment, and for whether or not the employee has safe transport home.
- (e) In retail establishments employing on a regular basis 15 or more employees per week, unless specific agreement exists to the contrary between an employer

and an employee, the employee will not be required to work ordinary hours on more than 19 days in each four week cycle.

9.3.11 Break between shifts

- (a) All employees will be granted a 10 hour rest period between the completion of work on one day and the commencement of work on the next day. Work includes any reasonable additional hours or overtime.
- (b) Where an employee recommences work without having had 10 hours off work then the employee will be paid at double the rate they would be entitled to until such time as they are released from duty for a period of 10 consecutive hours off work without loss of pay for ordinary time hours occurring during the period of such absence.

9.3.12 Consecutive days off

- (a) Ordinary hours will be worked so as to provide an employee with two consecutive days off each week or three consecutive days off in a two week period.
- (b) This requirement will not apply where the employee requests in writing and the employer agrees to other arrangements, which are to be recorded in the time and wages records. It cannot be made a condition of employment that an employee make such a request.
- (c) An employee can terminate the agreement by giving four weeks' notice to the employer.

9.3.13 Employees regularly working Sundays

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

9.3.14 Notification of rosters

- (a) The employer will exhibit staff rosters on a notice board, which will show for each employee:

9.3.14.1 the number of ordinary hours to be worked each week;

9.3.14.2 the days of the week on which work is to be performed; and

9.3.14.3 the commencing and ceasing time of work for each day of the week.

- (b) The employer will retain superseded notices for twelve months. The roster will, on request, be produced for inspection by an authorised person.
- (c) Due to unexpected operational requirements, an employee's roster for a given day may be changed by mutual agreement with the employee prior to the employee arriving for work.

- (d) Any permanent roster change will be provided to the employee in writing with a minimum seven days' notice. Should the employee disagree with the roster change, they will be given a minimum of 14 days written notice instead of seven days, during which time there will be discussions aimed at resolving the matter in accordance with Clause 27.
- (e) Where an employee's roster is changed with the appropriate notice for a once-only event caused by particular circumstances not constituting an emergency, and the roster reverts to the previous pattern in the following week, then extra work done by the employee because of the change of roster will be paid at the overtime rate of pay.
- (f) An employee's roster may not be changed with the intent of avoiding payment of penalties, loading or other benefits applicable. Should such circumstances arise the employee will be entitled to such penalty, loading or benefit as if the roster had not been changed.

10. OPERATION OF 38-HOUR WEEK

The following options will be available to determine the manner in which Full-time Employees are to work their ordinary time hours:

- A fixed or rotating day off in each four (4) week period, or by the working of a 10 hour day for each of the 4 days as directed by the Employer in any week; or
 - A shorter working day of not more than 4 hours work in ordinary time on one day in each two (2) week period;
 - A shorter working day of not more than 6 hours work in ordinary time on one day in each week;
 - Shorter working days of not more than 7.6 hours work in ordinary time on any day.
- 10.1** In the event of a dispute arising concerning the method of operation of the 38-hour week to be applied in a particular establishment to an Employee or Employees of that establishment, the dispute will be dealt with in accordance with Clause 27 (Dispute Settlement Procedure).
- 10.2** The Employer may with the agreement of the individual Employee(s) concerned substitute the day or part day that the Employee is/are to take off. A substituted day or part day is to be arranged and taken as soon as practicable and in any event prior to the next rostered day or part day off.
- 10.3** An Employee may with the agreement of the Employer substitute the day or part-day that the Employee is to take off. A substituted day or part-day is to be taken as soon as practicable and in any event prior to the next rostered day or part-day off.
- 10.4** The Employer may seek a specific written agreement with an Employee for an alternative method of implementing the 38-hour week in accordance with this Section at any time during the employment of an Employee, including at the time of engagement of a new Employee. Such an agreement may include a provision whereby the Employee may not be rostered on for more than 20 starts in a (4) four week period.

11. MEAL BREAKS

- 11.1 An Employee will not work more than 5 hours continuously without an interval for a meal or an interval for a paid tea break when overtime is worked.
- 11.2 An Employee who works more than 5 hours in any one-day shall be allowed an unpaid meal break of a minimum of 30 minutes and a maximum of 60 minutes to be taken between 11.30am and 2.30pm, unless mutually agreed otherwise, provided the Employee resumes work after such meal break.
- 11.3 In cases where meal breaks must be staggered to meet the Employer's operational requirements, and it is therefore not practicable to allow all Employees a meal break within 5 hours of commencing work, an Employee will not be required to work more than 6 hours without a meal break.
- 11.4 All Employees shall receive a paid morning or afternoon break not exceeding 10 minutes, but Employees commencing their lunch break before 12.00 noon shall be allowed a 20 minute paid afternoon tea break and Employees commencing their lunch break at 2.00pm or later shall be allowed a 20 minute paid morning tea break.

- 11.5** For the avoidance of doubt, the meal and rest breaks of the GRIA apply as below:

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

12. ALLOWANCES

- (a) Where the Employer requires an Employee to work overtime, and the Employee is provided with less than 24 hours' notice of the requirement to work overtime, and who does so for more than one hour after working ordinary hours shall either be supplied with an adequate meal or paid the relevant allowance in the GRIA, currently that is \$18.29. Where such overtime work exceeds four hours a further meal allowance will be paid, currently that is \$16.57. The meal allowance will be paid to the Employee in the next available pay period.
- (b) Employees engaged for more than two hours during one day or shift on duties carrying a higher rate than their ordinary classification are to be paid the higher rate for such day or shift. If engaged for two hours or less during one day or shift, the employee is to be paid the higher rate for the time worked only.
- (c) Employees employed prior to the approval of this Agreement, fulfilling the role of Retail Third in Charge (3IC) will receive the following payments:
- (i) An initial payment upon the approval of the Agreement of \$339.00 plus superannuation. The 3IC rate of pay shall remain at \$869.76 per week with an addition of \$38 to a total of \$907.76;
 - (ii) A second payment at the 1st anniversary of the approval of the agreement of

\$574.08 plus superannuation. The 3IC rate of pay shall remain at \$869.76 per week with an addition of \$38 to a total of \$907.76.

- (d) Any allowance payable under the Award is incorporated into this Agreement.
- (e) The special clothing laundry allowance at clause 20.2(b) of the Award is incorporated into the base rate of this Agreement and so will not be separately payable.

13. WAGES

13.1 From the first pay period following approval of this Agreement with the Fair Work Commission, Employees will be paid an hourly rate of \$ 23.23. This will be aligned to Level Three on the General Retail Industry Award (GRIA), refer to Position Description 'Retail Sales Assistant – Level Three'

13.2 New employees when commencing employment with Valspar Paints will start at Retail Sales Assistant Level One. During this time will be trained how to serve customers, tint paint, and presentation of stock. This will be aligned to Level One of the General Retail Industry Award (GRIA), refer to Position Description 'Retail Sales Assistant – Level One'

Retail Sales Assistant Level One will commence employment on a weekly rate of \$848.98; and

2.5% increase on the first anniversary of approval to a weekly rate of \$870.20

Retail Sales Assistants Level One will remain at this level of classification for a maximum of six months of employment before transitioning to Retail Sales Assistant Level Three. If the Employee and Valspar Management mutually agree in writing the Employee may remain at Level One after the first six months of employment, or move to Retail Sales Assistant Level Three within the first six months of employment.

13.3 The following increases will be made during the life of the Agreement:

- 1.5% increase upon approval to a weekly rate of \$882.81; and
- 2.5% increase on the first anniversary of approval to a weekly rate of \$904.88.

13.4 Employees will be paid weekly by electronic funds transfer into a bank account, building society or credit union account of the Employee's choice.

13.5 Junior Employees. Junior Employees will receive a pay rate based on the percentages defined below as applied to the hourly rate of pay specified in paragraphs 13.1, 13.2 and 13.3 above.

- Under 17 years of age....70%
- 17 years of age85%
- 18 years of age100%

14. OVERTIME

14.1 Where an Employee works on any one day in excess of the maximum number of ordinary hours as prescribed in Clause 9 (Hours of Work) of this Agreement, the Employee will be paid overtime rates for the hours in excess of the maximum permitted for that day.

- 14.2 Where an Employee works outside the spread of ordinary hours as set out in Clause 10 (Operation of 38 Hour Week) of this Agreement, the Employee will be paid overtime for the excess hours worked.
- 14.3 If the Employer utilises a 7-day cycle to implement the 38-hour week, overtime will be paid to an Employee who works in excess of 38 hours over the relevant 7-day cycle period.
- 14.4 If the Employer utilises a 14-day cycle to implement the 38-hour week, overtime will be paid to an Employee who works in excess of 76 hours over the relevant 14-day cycle period.
- 14.5 If the Employer utilises a 21-day cycle to implement the 38-hour week, overtime will be paid to an Employee who works in excess of 114 hours over the relevant 21-day cycle period.
- 14.6 If the Employer utilises a 28-day cycle to implement the 38-hour week, overtime will be paid to an Employee who works in excess of 152 hours over the relevant 28-day cycle period.
- 14.7 Overtime is paid at the rate of time and one-half for the first 3 hours of overtime worked on any one day, and at double time for any hours in excess of three (3) hours of overtime worked on any one day.
- 14.8 Where an Employee works overtime on a Sunday, the Employee will be paid at the rate of double time for all time worked. Where overtime is worked on a public holiday the Employee will be paid at the rate of double time and a half for all time worked.
- 14.9 Where the Employer and an Employee mutually agree, the Employee may be allowed Time Off In Lieu (TOIL) of payment for overtime. TOIL may be accumulated and taken off work at a mutually agreed time with the Employer. In this case, TOIL will be calculated at the overtime equivalent. **EXAMPLE:** By making an agreement under clause 14 an employee who worked 2 overtime hours at the rate of time and a half is entitled to 3 hours' time off.

15. PUBLIC HOLIDAYS

15.1. The following days will be regarded as public holidays:

- (a) New Years Day;
- (b) Australia Day;
- (c) Labour Day (8 hour day);
- (d) Good Friday;
- (e) Easter Saturday;
- (f) Easter Monday;
- (g) Anzac Day;
- (h) Queen's Birthday (Birthday of Sovereign);
- (i) Christmas Day; and
- (j) Boxing Day (Proclamation Day in South Australia).

15.2. The following days will be taken in addition to the days named above, or in lieu of where stated:

South Australia - Adelaide Cup;

- 15.3.** Where in a State, Territory or locality, public holidays are declared or prescribed on days or part-days other than those set out in sub-clauses 15.1 and 15.2 above, those days are additional public holidays for the purposes of this Agreement.
- 15.4.** Without limiting the operation of sub-clause 15.5 below, if the days set out in sub-clause 1.1 are substituted by another day as a result of an Act or Proclamation of a State or Territory government (substituted public holiday), then:
- (a)** the provisions of sub-clauses 15.7 and 15.8 will apply to the substituted public holiday; and
 - (b)** the holiday which has been substituted will be regarded as a non-holiday and retail employees rostered to work on that day will be paid at the rates ordinarily applicable to that day.
- 15.5.** When:
- (a)** Christmas Day is a Saturday or Sunday a holiday in lieu of that day will be observed on 27 December;
 - (b)** Boxing Day is a Saturday or Sunday a holiday in lieu of that day will be observed on 28 December;
 - (c)** New Year's Day or Australia Day is a Saturday or Sunday a holiday in lieu of that day will be observed on the next Monday.
- 15.6.** Work on a public holiday is voluntary.
- 15.7.** Where a store does not open for trade on Easter Sunday, and a permanent retail employee would have been rostered to work on the day, they shall be entitled to payment for the day based on their appropriate wages applicable to a Sunday trading day, not at the Public Holiday rate.
- 15.8.** A full time or part time retail employee who works on a public holiday will be paid at the rate of 225% with a minimum payment for 3 hours work.
- 15.9.** A casual retail employee who works on a public holiday will be paid at the rate of 250% with a minimum payment for 3 hours work.
- 15.10.** A full time retail employee whose rostered day off falls on a designated public holiday will receive either:
- (a)** an additional day's ordinary pay; or
 - (b)** an additional day of leave.
- 15.11.** A full-time or part-time retail employee who works an average of 5 days per week and whose non-working day falls on a public holiday, will receive either:
- (a)** an additional day's ordinary pay; or
 - (b)** an additional day of time off in lieu to be taken within 30 days of its accrual. If the additional day of time off in lieu is not taken within 30 days it will be paid as an additional day's ordinary pay.

15.12. Where a part-day public holiday is declared or prescribed between 7.00pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this Agreement relating to public holidays to the extent of the inconsistency:

(a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.

(b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.

(c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.

(d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00pm and midnight, but as a result of having a rostered day off (RDO) provided under this Agreement, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.

(e) Excluding annualised salaried employees to whom clause F.1(f) applies, where an employee works any hours between 7.00pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this Agreement for those hours worked.

(f) Where an employee is paid an annualised salary under the provisions of this Agreement and is entitled under this Agreement to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00pm and midnight.

16. ANNUAL LEAVE

This clause only applies to Full-time and Part-time Employees.

16.1 Entitlement to Annual Leave

(a) An Employee will accrue, be credited with and be entitled to take annual leave in accordance with the Act.

(b) *Payment on termination*

If the Employee(s)' employment ends, accrued but untaken annual leave will be paid out at the time of the Employee's departure or at such other suitable time agreed between the Employee and the Employer. The amount paid will be calculated on the basis of what the employee would have been paid had they taken annual leave.

(c) Employee(s) will receive annual leave loading on any untaken annual leave paid out at termination.

- For an existing Employee, existing leave entitlements are retained and available in the course of this Agreement.
- Full time Employees are entitled to twenty (20) days annual leave for each completed year of service (less the period of annual leave). Part-time Employees are entitled to annual leave on a pro rata basis.
- Annual leave accrues from the date of commencement of employment. Where a full time Employee has had service in a part time capacity during the completed year of service, then the Employee's annual leave entitlements will be calculated on a pro-rata basis.

16.2 Annual Leave Exclusive of Public Holidays

- The annual leave prescribed by this clause is exclusive of the Public Holidays named in this Agreement.
- If a Public Holiday falls within any Employee's period of approved annual leave, the period of leave will be increased by one day for each Public Holiday.

16.3 Personal Leave When on Annual Leave

- Where an Employee is ill while on annual leave, and the illness is such that it would have caused the Employee to be absent from duty had the Employee not been on annual leave, the Employee is entitled to be granted payment of personal leave.
- An Employee seeking payment of personal leave under this entitlement is required to produce evidence which would satisfy a reasonable person to the Employer as soon as reasonably practicable upon resuming work after their annual leave, stating that the Employee would have been unable to attend or remain at their normal place of work if the Employee had been required to do so.

16.4 Payment for Annual Leave

- Prior to proceeding on annual leave, an Employee is entitled to be paid for the period of leave at their ordinary weekly wage as prescribed by Clause 13 (Wages), plus a Leave Loading of 17.5 per cent (or the relevant weekend penalty rates (whichever is greater but not both) and for all days added to the period of leave in the place of Public Holidays.

16.5 Direction to take annual leave

- If an employee has accrued more than 8 weeks' paid annual leave the employer and employee may seek to reach a mutual agreement on how to deal with the excessive leave accrual.
- If after this step, the parties are unable to reach mutual agreement as to how to deal with the excessive leave accrual, the employer may direct an employee to take annual leave if:
 - (i) the employee is left with at least 6 weeks accrued annual leave;
 - (ii) the employee cannot be required to take any period of paid annual leave of less than one week;
 - (iii) the employee is given at least 8 weeks' notice and the period is within 12 months of the direction; and
 - (iv) the direction is not inconsistent with any leave arrangement agreed by the employer and employee.

16.6 Excessive leave accruals; request by employee for leave

- When an employee has accrued excessive leave and has not come to a mutual agreement with the employer, the employee may give written notice to the employer requesting to take one or more periods of paid annual leave.
- Such a notice must not result in the employee's remaining accrued paid annual leave being less than 6 weeks. It must also comply with the requirements given in 16.5 above.

16.7 Cashing out Annual Leave

- An employee who has accrued more than 4 weeks paid annual leave entitlement may request in writing to cash out a particular amount of the accrued paid annual leave. Each request must be made in writing for each separate occasion in which annual leave is cashed out and signed by the employer and employee. If the employee is under 18 years of age the agreement must be signed by the employee's parent or guardian. The employer must keep a copy of any agreement as an employee record.
- Each agreement must state the amount of leave to be cashed out and the payment to be made to the employee for it and the date on which the payment is to be made.
- The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks. No agreement can result in the employee's accrued entitlement to paid annual leave being less than 4 weeks.
- The amount payable for each period of cashed out paid annual leave accrual is the amount the employee would have been paid had they taken the leave. That is to say inclusive of annual leave loading and/or the applicable weekend penalty rates.

17. PERSONAL LEAVE

- 17.1 Full time and part-time employees are entitled to personal leave in accordance with the Act. Full time and part-time employees 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.
- 17.2 A full time employee shall be entitled to 10 days per year of personal leave. Part time employees will be calculated on a pro rata basis. An employee's unused leave entitlement of up to 10 days will continue into the following year.
- 17.3 Personal leave is available to a permanent employee for:
- a. personal illness or injury; or,
 - b. to provide care and support to a member of the employees immediate family or household who requires care or support due to personal illness or injury or who requires care or support due to an unexpected emergency affecting the member.
- 17.4 The entitlement to use personal leave in accordance with this subclause is subject to the person concerned being either a member of the employee's immediate family or household.
The term "**immediate family**" includes:
- (a) A spouse (including a de facto spouse) of the employee. A de facto spouse means a person who lives with the employee as the partner of the employee on a bona fide domestic basis, although not legally married to that person.
 - (b) A child (including an adopted child, a foster child, a stepchild or an ex nuptial child or a child who is the subject of a permanent care order and for which the employee is a guardian) parent, grandparent, grandchild or sibling of the employee.
- 17.5 Permanent employees may take Personal Leave on an hourly or daily basis as required and subject to approval.
- 17.6 Personal leave is subject to the following conditions and limitations:
- (a) The employee will, as soon as practicable, inform the Company by phone call 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, employees 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 or 2 consecutive rostered days off.
- On all other occasions of absence the employee will provide a medical certificate or 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 employee may suffice.
- (c) If the Company begins to see a pattern in absences or regular time off the employee in question can be case managed, in accordance with Company policy.
- (d) The Company need not make any payment for any time an employee is absent from work without producing satisfactory evidence in support of a request for paid personal leave.
- (e) The documentation must meet the requirements of the Fair Work Act 2009.

17.7 Unpaid Carer's Leave for Casuals

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

17.8 Unpaid Carer's Leave

An employee is entitled to 2 days of unpaid carer's leave for each occasion (a permissible occasion) when a member of the employee's immediate family, or a member of the employee's household, requires care or support because of:

- (a) a personal illness, or personal injury, affecting the member; or
- (b) an unexpected emergency affecting the member.

17A. COMMUNITY SERVICES LEAVE

Community Services Leave as provided for in the NES is incorporated into this Agreement.

18. LONG SERVICE LEAVE

Employees shall be entitled to long service leave, subject to, and in accordance with the provisions of the relevant legislation. The provisions of that legislation are not incorporated into this Agreement.

19. PARENTAL LEAVE

After 52 weeks of continuous employment with the Company, Employees are entitled to parental leave in accordance with the Act

20. COMPASSIONATE LEAVE

Employees will be entitled to compassionate leave in accordance with the Act. Under the Act, Employees are entitled to paid leave of 2 days for each occasion that a member of the Employee's immediate family or household has a personal illness or injury that poses a serious threat to his or her life, or dies.

In the event where compassionate leave in the Company Policy is more generous. the Company policy shall apply.

- In the event further time off is required beyond the above allowance, time off may be taken by mutual agreement on the basis of accrued annual leave.
- Compassionate Leave is paid in accordance with the Employee's rate of pay and roster that they would have worked.
- Employees who experience bereavement outside of their immediate family and wish to request leave, will notify their respective manager of the circumstances of the bereavement and anticipated absence. The manager may at his/her discretion approve the leave to be taken as annual leave.

The Employer may request proof of the relationship and/or proof of injury, illness or attendance at the funeral.

- Compassionate Leave is non accumulative.
- Casual employees are entitled to unpaid compassionate leave in accordance with this clause.

21. PAYMENT OF WAGES

21.1 The Employer will pay wages weekly (usually Wednesday) to Employees by means of Electronic Funds Transfer (EFT) into the Employee's nominated bank accounts.

21.2 The Employer will supply each Employee a payslip with each pay that shows the calculation of gross earnings, deductions in detail and amount of net pay.

22. PRODUCT KNOWLEDGE NIGHTS

The Employee's attendance at product knowledge nights arranged by the Employer is optional. When Employees do attend, their attendance is unpaid.

23. DISCIPLINARY PROCEDURE

Where the Company believes that a suspected breach of Company policy has occurred, or where an Employee's conduct or performance is not satisfactory, the Company may take any one or more of the following steps:

Counselling:

The Employee may be counselled and may elect to have an appropriate Employee representative present.

Key improvement areas are to be identified, and a review date is to be set and a further meeting to be held at that time to review performance during the agreed review period.

If the Employee's poor performance or conduct is sufficiently serious to warrant a first warning or if the Employee fails to improve after being counselled, the Employee may receive a first warning.

First Warning: The Supervisor or Manager will meet with the Employee (and Employee representative if requested) and will inform the Employee that he/she is being given a first warning and the reason for doing so. A "Notice of Warning to Employee" Form (standard form) is to be completed and copies distributed as follows:

- The Employee;
- The respective supervisor, and
- The Human Resources Manager (filing/retention)

Every effort will be made to counsel the Employee in an attempt to alter their behaviour or performance in such a way as to prevent further disciplinary action being taken.

If the Employee's poor performance or conduct is sufficiently serious, or if the Employee fails to improve after receiving a first warning, the Employer may issue a second warning.

Second Warning: The same procedure as detailed above. The Employee will be informed of the next stage in the disciplinary procedure. If the Employee's poor performance or conduct is sufficiently serious to warrant a final warning or if the Employee fails to improve after receiving a second warning, the Employer may issue a final warning.

Final Warning: This warning will again be carried out (in the presence of an Employee representative if requested) and will be a written warning advising the Employee that any further occurrences may result in dismissal. Copies of this letter will be given to the Employee, Employee's Supervisor and Human Resources Department (for filing/retention).

Notice of Termination: The Company may dismiss an Employee by giving the Employee notice or payment in lieu of notice in accordance with clause 26 of this Agreement

Serious Misconduct: Employees may be summarily dismissed for serious and willful misconduct. Examples are:

- An intentional act which places at serious risk the safety of themselves or another Employee;
- Smoking in non-designated smoking areas;
- Assault;
- Theft;
- Fighting;
- Refusal of a reasonable and lawful direction;
- Willful damage to Company's or other Employee's property;
- Consuming illegal drugs or intoxicating liquor during working hours or on Company premises;
- Possession of illegal drugs during working hours or on Company premises; and
- Bullying and harassment or other inappropriate conduct.

24. TERMINATION OF EMPLOYMENT

24.1 Notice of Termination by Employer

In order to terminate the employment of an Employee the Employer will give the Employee the following notice:

Period of continuous service	Period of notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4weeks

- In addition to the above, Employees over 45 years of age at the time of the giving notice with not less than 2 years' continuous service shall be entitled to additional notice of one week.
- Payment in lieu of notice shall be made if the appropriate notice period is not given. Employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

- The period of notice in this Section shall not apply in the case of dismissal for conduct that justifies summary dismissal.

24.2 Notice of Termination by Employee

Employees have the right to terminate their employment at any time, subject to the terms and conditions of their employment.

- Full-time and Part-time Employees are required to provide to the Employer a minimum of one weeks' notice of their intention to terminate their employment.

24.3 Statement of Employment

The Employer will, upon receipt of a request from an Employee whose employment has been terminated, provide the Employee with a written statement specifying the period of employment and the classification of or the type of work performed by the Employee.

24.4 Payment in Lieu

- If the Employer makes payments in lieu for all or any of the period of notice prescribed, then the period for which such payment is made shall be treated as service for the purposes of computing any service-related entitlement of the Employee arising pursuant to this Agreement.
- Where the employment of an Employee is terminated in accordance with the notice prescribed in this Clause, the Employer and Employee may by mutual agreement waive the whole or part of the period of notice.

25. REDUNDANCY

Redundancy may arise as a result of structural changes within the Company, where existing Employee skills no longer meet the operational business requirements, or through decline in or lack of work resulting in the requirement for fewer Employees.

25.1 Selection Criteria

- When the need to make a redundancy is established, there will be consultation between the Employer and the Employee(s) concerned to discuss the areas or skills that the Company considers essential for its future operational requirements.
- Essential Employees from those areas, or those with the required skills will be excluded from redundancy. Volunteers will then be called for and In the case of insufficient numbers the Employer will retrench an Employee on the basis of merit. In the event that excessive volunteers are provided, the Employer will select the persons to be retrenched on the basis or merit.

25.2 Notice

Notice will be provided to those weekly (permanent full time and part time) Employees who are to be made redundant as follows:

- 4 weeks:
- 5 weeks where an Employee is over 45 years of age;

The Employer may make payment in lieu of some or all of the notice period whenever an Employee is made redundant.

25.3 Alternative Employment Instead of Redundancy

If the Employer offers alternative employment and an Employee accepts alternative employment he/she will continue to be entitled to the provisions of this Clause for a maximum period of 12 weeks if the Employee's employment is terminated. If at any time during that 12 week period the Employee leaves the Employer, or the Employer decides that the Employee is not suited to the job, then the redundancy benefits detailed in this Clause will apply.

25.4 Redundancy Payments

Where an Employee is made redundant, the Employer will make payment as follows:

- 4 weeks severance pay.
- 4 weeks pay for each completed year of service.
- Weekly (permanent) Employees with less than 12 months service will receive the same benefit as a weekly Employee with 12 months service.
- Redundancy payments will be capped at 52 weeks maximum payment.
- An Employee who has been made redundant will have the option of participating in an outplacement program provided by the Employer. Where an Employee accepts this option the Employee will forfeit a total of one week from their total severance pay to meet the cost of the outplacement program.
- AH payments made under this Clause will be made at an Employee's ordinary time rate of pay.

25.5 Payment in Lieu Treated as Service

- If an Employer makes payment in lieu of all or any of the period of notice prescribed in this Clause, then the period for which such payment is made shall be treated as service for the purposes of calculating any service-related entitlements of the Employee arising pursuant to this Agreement and shall be deemed to be service with the Employer for the purposes of the relevant Long Service Leave legislation applicable to the Employee's State.

25.6 Transfer to Lower Paid Duties

- Where an Employee whose job has become redundant accepts an offer of alternative work by the Employer and the rate of pay is less than the rate of pay for the former position, the Employee shall be entitled to the same period of notice of the date of commencement of work in the new position as if the employment had been terminated, and the Employer may at the Employer's option, make payment in lieu thereof of an amount equal to the difference between the former rate of pay and the new lower rate for the number of weeks of notice still owing.

25.7 Other Issues

- A detailed statement of entitlements will be supplied to Employees together with a Statement Of Service setting out the Employee's employment record and reason for termination of employment.

- During the period of notice of termination given by the Employer an Employee will 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.
- This Clause will not apply where employment is terminated for a reason other than the Employee's position is redundant, where the Employer obtains alternative employment for the Employee, where the business or part of the business of the Company in which the Employee works is transmitted to a new Employer within the meaning of clause 26.8, or in the case of casual Employees or Employees engaged for a specific period of time or for a specified task or tasks.

25.8 Transmission of business

The provisions of this clause are not applicable where the business or part of the business of the Company in which the Employee works is transmitted to a new employer and either:

- (i) the Employee accepts employment with the new employer which recognizes the period of continuous service which the Employee had with the Company and any prior transmitter to be continuous service of the Employee with the new employer; or
- (ii) the Employee rejects an offer of employment with the new employer:
 - in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the Employee at the time of ceasing employment with the Company; and
 - which recognizes the period of continuous service which the Employee had with the Company and any prior transmitter to be continuous service of the Employee with the new employer.

26. SUPERANNUATION

Employer obligations under the Superannuation Guarantee Act shall be met by payment of contributions into the Retail Employees Superannuation Trust (R.E.S.T.) Fund or PLUM. The employer will not permit employees to take superannuation contributions as wages.

Employees may elect to remain with the default fund or choose their superannuation fund in accordance with the Federal Government's superannuation choice legislation.

The Employer will contribute superannuation on behalf of Employees covered by this Agreement in line with the relevant legislation.

27. DISPUTE SETTLEMENT PROCEDURE

The parties agree that any dispute arising under this agreement or the NES must be dealt with in the following manner:

- (a) The matter must first be discussed by the aggrieved employee(s) directly with his or her immediate Line Manager.
- (b) If the matter remains unresolved, it must be next discussed with the Line Manager's Manager and a representative from the Company's Human Resources department.
- (c) A meeting must then occur between the employee and the Company.
- (d) If the matter remains in dispute, it must next be submitted to the Fair Work Commission (FWC) for conciliation.

- (e) If this matter remains unresolved in conciliation conducted by FWC, then the employee or either party to this Agreement may refer the dispute to the Fair Work Commission for arbitration. Subject to any rights of appeal or review which a party may have, a decision by the Fair Work Commission will be final and binding on the parties.
- (f) The decision of FWC will be binding on the parties to the extent that neither party appeals the decision to the Full Bench within 21 days.
- (g) Until the matter is resolved by agreement, conciliation or arbitration, the status quo before the dispute arose will be maintained and work will continue without disruption. No party is to be prejudiced as to the final settlement by the continuance of work in accordance with this procedure.
- (h) At any stage during the process, an employee is entitled to have a person attend and represent them at any step of the process. This representative may be an official of the SDA.

28. CONFIDENTIALITY

- 28.1 Business, commercial, trade, marketing, financial and personnel information, know-how, client and customer lists, technology, administrative and production processes and procedures, documents, notes, memoranda, records, data and any other information (in whatever form, and however it may be reproduced), (the "Confidential Information") forms part of the business of the Company.
- 28.2 Arising out of and/or during the course of employment the Employee will become privy to the Confidential Information.
- 28.3 The Employee agrees that the Confidential Information, or any part of it:
 - (a) will be kept strictly confidential;
 - (b) will not, without the prior written consent of the Company be disclosed or divulged to anyone (a person, company or any other entity) in any manner whatsoever;
 - (c) will not, without the prior written consent of the Company be copied or reproduced in any way;
 - (d) will be used properly and exclusively for the performance of job duties and responsibilities;
 - (e) will be stored securely and safely when not in use;
 - (f) remains the absolute and exclusive property of the Company.

29. DOMESTIC AND FAMILY VIOLENCE LEAVE

This clause applies to all employees, including casuals.

29.1 Definitions

- (a) In this clause:

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

family member means:

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

- (b) A reference to a spouse or de facto partner in the definition of family member in clause 29.2(a) includes a former spouse or de facto partner.

29.2 Entitlements to leave

An employee is entitled to 2 days' paid leave and 5 days' unpaid leave to deal with family and domestic violence, as follows:

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

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

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

29.3 Taking leave

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

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

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

29.4 Service and continuity

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

29.5 Notice and evidence requirements

(a) Notice

An employee must give their employer notice of the taking of leave by the employee under clause 29. The notice:

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

(b) Evidence

An employee who has given their employer notice of the taking of leave under

clause 29 must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 29.4.

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

29.6 Confidentiality

- (a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 29.6 is treated confidentially, as far as it is reasonably practicable to do so.
- (b) Nothing in clause 29 prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

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

29.7 Compliance

An employee is not entitled to take leave under clause 29 unless the employee complies with clause 29.

30 CONSULTATION

30.1 Consultation regarding major workplace change

(a) Employer to notify

(i) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.

(ii) Significant effects include termination of employment; major changes in the composition, operation or size of the employer'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 employees to other work or locations; and the restructuring of jobs. Provided that where this Agreement makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

(b) Employer to discuss change

(i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 30.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.

(ii) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 30.1(a).

(iii) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

30.2 Consultation about changes to rosters or hours of work

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

31 Agreement flexibility

31.1 Notwithstanding any other provision of this Agreement, an employer and an individual employee may agree to vary the application of certain terms of this Agreement to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- (a) arrangements for when work is performed;
- (b) overtime rates;
- (c) penalty rates;
- (d) allowances; and
- (e) leave loading.

31.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.

31.3 The agreement between the employer and the individual employee must:
(a) be confined to a variation in the application of one or more of the terms listed in clause 31.1; and

(b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

31.4 The agreement between the employer and the individual employee must also:
(a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;

(b) state each term of this Agreement that the employer and the individual employee have agreed to vary;

(c) detail how the application of each term has been varied by agreement between the employer and the individual employee;

(d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and

(e) state the date the agreement commences to operate.

31.5 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

31.6 Except as provided in clause 31.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

31.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

31.8 The agreement may be terminated:

(a) by the employer or the individual employee giving 13 weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or

(b) at any time, by written agreement between the employer and the individual employee.

Note: If any of the requirements of s.144(4), which are reflected in the requirements of this clause, are not met then the agreement may be terminated by either the employee or the employer, giving written notice of not more than 28 days (see s.145 of the *Fair Work Act 2009* (Cth)).

31.9 The notice provisions in clause 31.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An

agreement entered into before that date may be terminated in accordance with clause 31.8(a), subject to four weeks' notice of termination.

31.10 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this Agreement.

31A. Requests for flexible working arrangements

31A.1 Employee may request change in working arrangements

Clause 31A applies where an employee has made a request for a change in working arrangements under s.65 of the Act.

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

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

Note 3: Clause 31A is an addition to s.65.

31A.2 Responding to the request

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

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

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

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

31A.3 What the written response must include if the employer refuses the request

Clause 31A.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 31A.2.

- (j) The written response under s.65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- (k) If the employer and employee could not agree on a change in working arrangements under clause 31A.2, the written response under s.65(4) must:

- (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and
- (ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

31A.4 What the written response must include if a different change in working arrangements is agreed

If the employer and the employee reached an agreement under clause 31A.2 on a change in working arrangements that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

31A.5 Dispute resolution

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 31A, can be dealt with under clause 27 —Dispute Resolution.

32. Signatures

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



Date

26/3/19

Matt Crossingham
Sales & Marketing Director
Level 3, 2 Burbank Place
Baulkham Hills, NSW 2153
A person duly authorised by the
employer to sign on the employer's
behalf



Date

26th of March 2019

Schedule A

Table 1

Classification Definitions

Job Title – Retail Sales Assistant – Level One	
Job Purpose – Provide daily sales and service functions to Decorator Centre customers (trade and retail).	
Reports to – Store Manager	
Key Result areas (Responsibilities) <ol style="list-style-type: none"> 1. Achieve Stores sales budgets. 2. Excellence in Customer Service. 3. Merchandising and Promotion support. 4. Tinting of Paint Product. 5. Company OH&S Policy and legal obligations are adhered to. 6. Stock control. 7. Calling Store Based Territory Accounts 8. Other tasks which are included in the General Retail Award up to including Level 1. 	Key Performance Indicators <ol style="list-style-type: none"> 1. As per Sales Budget. 2. Meet customer's expectations 3. Maintain store presentation in line with Company promotional and merchandise standards. 4. Adhere to company policies and procedures whilst meeting customer's expectations 5. Legal and Company Policy compliance to relevant legislation. 6. Apply Company policy to all movement of stock in and out of SDC
Education, Skills / Competencies and Experience <ul style="list-style-type: none"> • Self Motivated & organised. • Communication skills. • Computer Knowledge & Awareness. • Conflict Resolution skills. • Results focused. 	
Financial and Operating Limits / Assets controlled <ul style="list-style-type: none"> • Sales discounts to company policy. 	
Staff Reporting to this position <ul style="list-style-type: none"> • Nil 	Interacts with <ul style="list-style-type: none"> • All Sales and Admin Staff • Customers • Supplier representatives

Schedule B

Table 1

Classification Definitions

Job Title – Retail Sales Assistant – Level Three	
Job Purpose – Provide daily sales and service functions to Decorator Centre customers (trade and retail) as well as providing assistance in the day-to-day management of the Store.	
Reports to – Store Manager	
Key Result areas (Responsibilities) <ol style="list-style-type: none"> 1. Achieve Stores sales budgets. 2. Excellence in Customer Service. 3. Merchandising and Promotion support. 4. Tinting of Paint Product. 5. Company OH&S Policy and legal obligations are adhered to. 6. Stock control. 7. Calling Store Based Territory Accounts 8. Daily operational activities including store security, till balancing and banking, staffing rosters. 9. Other tasks which are included in the General Retail Award up to including Level 3. 	Key Performance Indicators <ol style="list-style-type: none"> 1. As per Sales Budget. 2. Meet customer's expectations 3. Maintain store presentation in line with Company promotional and merchandise standards. 4. Adhere to company policies and procedures whilst meeting customer's expectations 5. Legal and Company Policy compliance to relevant legislation. 6. Apply Company policy to all movement of stock in and out of SDC
Education, Skills / Competencies and Experience <ul style="list-style-type: none"> • Self Motivated & organised. • Communication skills. • Computer Knowledge & Awareness. • Conflict Resolution skills. • Results focused. 	
Financial and Operating Limits / Assets controlled <ul style="list-style-type: none"> • Sales discounts to company policy. 	
Staff Reporting to this position <ul style="list-style-type: none"> • Nil 	Interacts with <ul style="list-style-type: none"> • All Sales and Admin Staff • Customers • Supplier representatives

IN THE FAIR WORK COMMISSION

FWC Matter No. AG2019/885

Applicant: Valspar Paint (Australia) Pty Ltd

Application by Valspar Paint (Australia) Pty Ltd T/A Valspar Paint

Section 185 – Application for approval of a single enterprise agreement

Undertaking- Section 190

I, Samuel Whittleston, HR Manager SA & WA on behalf of Valspar Paint (Australia) Pty Ltd give the following undertakings with respect to the Valspar Paint Australia Pty Ltd South Australia / Northern Territory Enterprise Agreement ("the Agreement"):

1. I have the authority given to me by Valspar Paint (Australia) Pty Ltd to provide this undertaking in relation to the application before the Fair Work Commission.
2. This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between the Agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.
3. These undertakings are provided on the basis of issues raised by the Commissioner in the application before the Fair Work Commission (Commission), and will be attached to the Agreement if approved by the Commission.



Signature

Samuel Whittleston

Name

HR Manager SA

Title

5th June 2019

Date

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.