



## DECISION

*Fair Work Act 2009*

s.185—Enterprise agreement

s.222—Enterprise agreement

### **Skout Solutions Pty Ltd**

(AG2020/353)

### **SKOUT SOLUTIONS INDUSTRIAL ENTERPRISE AGREEMENT 2019**

Electrical contracting industry

DEPUTY PRESIDENT CLANCY

MELBOURNE, 7 APRIL 2020

*Applications for approval of the Skout Solutions Industrial Enterprise Agreement 2019 and the termination of the Skout Solutions Industrial Enterprise Agreement 2016.*

[1] An application pursuant to s.185 of the *Fair Work Act 2009* (the Act) has been made for the approval of an enterprise agreement known as the *Skout Solutions Industrial Enterprise Agreement 2019*. It has been made by Skout Solutions Pty Ltd (Skout).

[2] There is also a related application before me. Pursuant to s.222 of the Act, Skout has also applied to the Commission for approval of the termination of the *Skout Solutions Industrial Enterprise Agreement 2016*. This Agreement was approved by the Commission on 14 March 2017, commenced operation from 21 March 2017 and has a nominal expiry date of 14 March 2021.

[3] Skout says it has engaged in a process whereby it asked its workforce to undertake a simultaneous vote to terminate the *Skout Solutions Industrial Enterprise Agreement 2016* and, at the same time, approve the *Skout Solutions Industrial Enterprise Agreement 2019*.

[4] It is therefore convenient to deal with the two applications together.

#### **Application for approval to terminate the Skout Solutions Industrial Enterprise Agreement 2016**

[5] It was open to Skout, as the employer covered by the *Skout Solutions Industrial Enterprise Agreement 2016* (the 2016 Agreement), to request the employees covered by that agreement to approve the proposed termination by voting for it.<sup>1</sup>

[6] Before making the request, Skout was required to:

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<sup>1</sup> *Fair Work Act 2009* s.220(1).

- take all reasonable steps to notify the employees of the time and place at which the vote would occur and the voting method that would be used;<sup>2</sup> and
- give the employees a reasonable opportunity to decide whether they wanted to approve the proposed termination of the 2016 Agreement.<sup>3</sup>

[7] Mr Matthew Berry, General Manager of Skout, made a statutory declaration on 20 March 2020 in support of the application for the approval of the termination of the 2016 Agreement (the termination statutory declaration). Having regard to the contents of the termination statutory declaration and those of the statutory declaration in support of the application for the approval of the Agreement (the approval statutory declaration), also made by Mr Berry on 20 March 2020, I am satisfied these obligations were fulfilled. In particular, I find that Mr Berry has declared in these two statutory declarations:

- At an information session for employees held on 18 December 2019, he said words to the following effect:
  - that while the 2016 Agreement did not expire until March 2021, Skout proposed to terminate the 2016 Agreement and replace it with a new agreement so that conditions in the new agreement could commence and Skout could both retain long term clients and offer better job security;
  - a vote was going to take place in which the employees could vote in favour of terminating the 2016 Agreement and simultaneously vote to replace it with the new agreement;
  - if the vote was not successful, the 2016 Agreement would remain on foot; and
  - if the vote was successful, the 2016 Agreement would be terminated and would be replaced by the new agreement, subject to its approval by the Commission.
- Employees were issued with information regarding the times and methods of electronic voting that would be used via an email sent to them on 20 January 2020.
- A range of documents were provided to employees on each of 20, 22 and 23 January 2020 with information about the proposal and the vote.
- Information sessions were held with employees on 22 and 23 January 2020, which covered matters such as the differences between the 2016 Agreement and the proposed new agreement.
- Between 22 and 29 January 2020, he made individual phone calls to all employees during which he reiterated that the vote was a one-step process that would deal with both the 2016 Agreement and the proposed new agreement.

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<sup>2</sup> Ibid s.220(2)(a).

<sup>3</sup> Ibid s.220(2)(b).

[8] Further, I am satisfied that the termination of the 2016 Agreement was agreed to because a majority of employees who cast a valid vote approved the termination.<sup>4</sup> In this regard, Mr Berry declared that Skout’s proposal was put to a vote on 30 January 2020, at which time 56 out of the 74 Skout employees voted and 52 of these employees voted in favour of approving the the *Skout Solutions Industrial Enterprise Agreement 2019* and terminating the 2016 Agreement.

[9] This having occurred, Skout was obligated to apply to the Commission for approval of the termination.<sup>5</sup> It has done so by making application with the accompanying statutory declaration required by the *Fair Work Commission Rules 2013*.<sup>6</sup> However, with the application to terminate the 2016 Agreement not having been made within 14 days after 30 January 2020, I must consider whether in all the circumstances, it is fair to extend that 14 day period to 23 March 2020.<sup>7</sup>

[10] I have had regard to the fact that there was a joint process employed that involved both voting whether to terminate an existing agreement and approving a proposed new agreement and the result was that a majority of employees endorsed these outcomes. I have also noted that the application for the approval of the *Skout Solutions Industrial Enterprise Agreement 2019* was made within the requisite time period and am prepared to accept the explanation from Skout that the accompanying requirement to make application to terminate the 2016 Agreement was overlooked. In all the circumstances, I am satisfied it is fair to extend the time for the making of the application to terminate the 2016 Agreement to 23 March 2020.

[11] It is useful to set out s.223 of the Act, which requires the Commission to terminate the 2016 Agreement if it is satisfied of the matters set out therein:

**“223 When the FWC must approve a termination of an enterprise agreement**

If an application for the approval of a termination of an enterprise agreement is made under section 222, the FWC must approve the termination if:

- (a) the FWC is satisfied that each employer covered by the agreement complied with subsection 220(2) (which deals with giving employees a reasonable opportunity to decide etc.) in relation to the agreement; and
- (b) the FWC is satisfied that the termination was agreed to in accordance with whichever of subsection 221(1) or (2) applies (those subsections deal with agreement to the termination of different kinds of enterprise agreements by employee vote); and
- (c) the FWC is satisfied that there are no other reasonable grounds for believing that the employees have not agreed to the termination; and

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<sup>4</sup> Ibid s.221(1).

<sup>5</sup> Ibid s.222(1).

<sup>6</sup> Ibid s.222(2) and Rule 26(1) of the *Fair Work Commission Rules 2013*.

<sup>7</sup> *Fair Work Act 2009* s.223(3)(b).

(d) the FWC considers that it is appropriate to approve the termination taking into account the views of the employee organisation or employee organisations (if any) covered by the agreement.”

[12] As I have outlined in [7] above, I am satisfied that Skout complied with s.220(2) in relation to the 2016 Agreement (s.223(a)). Further, as outlined in [8], I am satisfied that the termination of the 2016 Agreement was agreed to in accordance with s.221(1) of the Act (s.223(b)) and additionally, I am satisfied based on the material before me that there are no other reasonable grounds for believing that the Skout employees have not agreed to the termination (s.223(c)). Turning to s.223(d), I consider it appropriate to approve the termination and note there are no employee organisations covered by the 2016 Agreement.

[13] Accordingly, with the conditions in s.223 having been satisfied, I must approve the termination of the 2016 Agreement.

### **Application for approval of the Skout Solutions Industrial Enterprise Agreement 2019**

[14] As outlined in at [1] above, an application has been made for the approval of an enterprise agreement known as the *Skout Solutions Industrial Enterprise Agreement 2019* (the Agreement) pursuant to s.185 of the Act. The Agreement is a single enterprise agreement.

[15] The Agreement does not cover all of the employees of Skout, however, taking into account the factors in s.186(3) and s.186(3A) I am satisfied that the group of employees was fairly chosen.

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

[17] Subject to the undertakings referred to above, and on the basis of the material contained in the application and accompanying statutory declaration, I am satisfied that each of the requirements of ss 186, 187, 188 and 190 as are relevant to this application for approval have been met.

### **Conclusions**

[18] The termination of the *Skout Solutions Industrial Enterprise Agreement 2016* is approved. Pursuant to s.224 of the Act, the termination takes effect from 14 April 2020.

[19] The *Skout Solutions Industrial Enterprise Agreement 2019* is approved and, in accordance with s.54, will operate from 14 April 2020. The nominal expiry date of the *Skout Solutions Industrial Enterprise Agreement 2019* is 8 April 2024.



DEPUTY PRESIDENT

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## Annexure A



IN THE FAIR WORK COMMISSION

Matter No: AG2020/353

Section 185 – Application for approval of a single enterprise agreement

### UNDERTAKING – SECTION 190

Skout Solutions Pty Ltd, provides the following undertakings with respect to the Skout Solutions Industrial Enterprise Agreement 2019, ("the Agreement"):

1. Casual employees who, but for the Agreement, would be covered by the Hydrocarbons Industry (Leaststream) Award 2020 ("Hydrocarbons Award"), shall be paid no less than 1 day per engagement. For the avoidance of any doubt, 1 day shall be a minimum 7.6 hour shift for each engagement.
2. Casual employees who, but for the Agreement, would be covered by the Manufacturing and Associated Industries and Occupations Award 2010, the Electrical, Electronic and Communications Contracting Award 2010 or the Building and Construction Onsite Award 2010 shall be paid no less than a 4 hour minimum for each engagement.
3. Part time employees covered by the Agreement, will be offered a minimum 4 hour shift per engagement.
4. Sub-clause 18.9 (a) of the Agreement will be amended so the words "50% shift loading for their Ordinary Hours" will be replaced with the words "50% shift loading for the first two Ordinary Hours thereof and 100% loading for their Ordinary Hours thereafter". The rest of the sub-clause will not be affected.
5. These undertakings will come into effect on the date the Fair Work Commission approves the Agreement.

For and on behalf of Skout Solutions Pty Ltd by:

A handwritten signature in blue ink, appearing to read "Matthew Berry", is written over a horizontal line.

Matthew Berry, General Manager, Skout Solutions Pty Ltd

Date: 6 April 2020

**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.**



## **Skout Solutions Industrial Enterprise Agreement 2019**



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## **1. TITLE**

This Agreement shall be known as the *Skout Solutions Industrial Enterprise Agreement 2019*.

## **2. COVERAGE AND APPLICATION OF AGREEMENT**

### **2.1** This Agreement shall cover and apply to:

- (a) Skout Solutions Pty Ltd (ABN 40 614 706 526); and
- (b) any Employee of the Company engaged to perform work for a Client involving repair, replacement, renovation, rehabilitation, maintenance, earth works, civil works, concrete works, electrical services, infrastructure, power or water, fabrication, preassembly, assembly, disassembly, construction, breakdowns, shutdowns, outages, turnarounds, access of any type including by rope, preparatory, repair, modification, pre-commissioning, commissioning, decommissioning, hook up, hook-up and commissioning, completions, local service upgrades, minor capital or capital works and all associated and similar miscellaneous industrial works for all nature of work listed above within the Commonwealth of Australia (onshore and offshore).

### **2.2** Notwithstanding clause 2.1, this Agreement shall not cover or apply to any managerial, supervisory, hospitality, administrative or clerical Employees.

## **3. MODERN AWARDS AND REPLACEMENT OF EXISTING ENTERPRISE AGREEMENT**

- 3.1 Consistent with section 57 of the Act the Modern Awards that would otherwise apply to Employees covered by this Agreement are displaced in their entirety by this Agreement except where clauses of the Award are explicitly incorporated by this Agreement.
- 3.2 This Agreement rescinds and replaces the Skout Solutions Industrial Enterprise Agreement 2016 from the commencement date of this agreement

## **4. TERM OF OPERATION**

This Agreement shall commence operation 7 days after it is approved by the Fair Work Commission and shall have a nominal expiry date 4 years from the date of approval by the Fair Work Commission.

## **5. NO EXTRA CLAIMS**

This Agreement is made in full and final settlement of all claims. Employees covered by this Agreement shall not pursue any further claims during the life of this Agreement relating to their conditions of employment, except where consistent with the terms of this Agreement.

## **6. NATIONAL EMPLOYMENT STANDARDS**

The National Employment Standards (NES) apply to all employees as a minimum standard. Where there is an inconsistency between the NES and a clause of this agreement, the NES will apply and the clause of the agreement will not apply, except to the extent that the clause of the agreement provides for a more beneficial outcome for employees than the NES.

## 7. BUILDING CODE

Although not incorporated into this Agreement, this Agreement operates subject to the terms of the Building Code.

## 8. DEFINITIONS

"Act" means the *Fair Work Act 2009* (Cth) or successor Commonwealth legislation.

"Agreement" means the Skout Solutions Industrial Enterprise Agreement 2016.

"Building Code" means the Building Code 2016 as in force from time to time.

"Company" and "Employer" means Skout Solutions Pty Ltd (ABN 40 614 706 526).

"Client" means a client of Skout Solutions Pty Ltd. It also, for purposes of this Agreement, includes indirect Clients whereby Skout may have a direct contractual relationship with one Company but ultimately performs work for an indirect Client that may be the direct Client or Client's Client of the company with which Skout has a direct contractual relationship.

"Distant on-hire point" means the Company specified point of mobilisation to FIFO/DIDO Work closest to the Employee's Usual Place of Residence at the time of engagement. An Employee's Distant on-hire point will be stipulated in writing to the Employee by the Company prior to engagement.

"Employee" means, unless otherwise stated, a Skout Solutions Pty Ltd employee covered by this Agreement.

"FWC" means Fair Work Commission or successor.

'General building and construction and metal and engineering construction sectors' has the same meaning as clause 34.1 in the Building and Construction General On-site Award 2010.

"Immediate family" means a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.

"Majority" means, for the purposes of an agreement with Employees, greater than 50%.

"NES" means the National Employment Standards as provided in the Act.

"Remote Work" means work where an Employee is required by the Company to work on a FIFO or DIDO basis and the location of the work is remote from centres of population.

"Site" means the precincts, premises, location or establishment where the Company has a contract to perform such work or a company depot.

## 9. DISPUTE SETTLEMENT PROCEDURE

### Procedure Application

9.1 This term sets out procedures to settle a dispute:

- (a) about a matter arising under the Agreement; or
- (b) in relation to the National Employment Standards; or
- (c) concerning any other matter where the Employee and the Employer agree.

9.2 Both Employees and the Employer may appoint a representative of their choice for the purposes of the procedures in this term.



- 9.3 In the first instance, the Employee(s) must try to resolve the dispute at the workplace level, by discussions between the Employee or Employees and relevant supervisors and/or management.
- 9.4 If discussions at the workplace level do not resolve the dispute both parties to the dispute may agree to refer the matter to the Fair Work Commission.
- 9.5 The Fair Work Commission may deal with the dispute in 2 stages:
- (a) the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - (b) if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then arbitrate the dispute by declaration.
- 9.6 If the Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Act.
- 9.7 A decision that the Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Division 3 of Part 5.1 of the Act. Therefore, appeals may be made against the decision, as well as any appeal to the Federal Court on questions of law.
- 9.8 While the parties are trying to resolve the dispute using the procedures in this term:
- (a) an Employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety;
  - (b) an Employee must comply with a direction given by the Company to perform other available work at the same workplace, or at another workplace, unless the work is not safe, and
  - (c) all procedures under this clause end (whether in progress or not) at the time at which the Employee who is party to the dispute ceases to be an Employee.

## **10. ENTERPRISE FLEXIBILITY**

- 10.1 All Employees will carry out lawful directions and duties that are within their skill, competency and training provided that the Employee can perform the work directed in a safe manner.
- 10.2 In addition to 10.1, an Employee (other than a casual) may be required by the Company, due to operational reasons, to transfer to another role, where an Employee holds suitable skills to do so, or location, either temporarily or permanently. Without limiting the scope of this clause, an Employee (other than a casual) may be required to move between onshore and offshore work locations or between day work and shift work as required on provision of provision of 2 days' notice (or shorter if by agreement).
- 10.3 If an employee refuses a direction under clause 10, and the movement amounts to or is considered a reasonable and suitable transfer or redeployment, the employee will be terminated with the applicable notice period applying.

## **11. INDIVIDUAL FLEXIBILITY**

- 11.1 The Company and an Employee engaged under this Agreement may agree to make an individual flexibility agreement (IFA) to vary any of the terms of this Agreement including, but not limited to those relating to:
- (a) arrangements about how, where and when work is performed;
  - (b) overtime (additional hours) rates;

- (c) penalty rates;
  - (d) allowances; and
  - (e) annual leave and leave loading.
- 11.2 An IFA made in accordance with clause 11.1 must be made to meet the genuine needs of the Company and the Employee, and must be genuinely agreed to by both.
- 11.3 The Company will ensure that the terms of the IFA:
- (a) are about permitted matters under section 172 of the FW Act;
  - (b) are not unlawful terms under section 194 of the FW Act; and
  - (c) result in the Employee being better off overall than they would have been had no IFA been made.
- 11.4 The Company will ensure that the IFA:
- (a) is in writing;
  - (b) includes the name of the Company and the Employee;
  - (c) is signed by the Employee (or in the case of an employee who is under the age of 18 years of age, their parent or guardian) and the Company; and
  - (d) includes details of:
    - 1. the terms of the Agreement that will be varied by the IFA;
    - 2. how the IFA will vary the effect of the terms;
  - (e) how the Employee will be better off overall in relation to the terms and conditions of employment as a result of the IFA; and
  - (f) states the day on which the IFA will commence.
- 11.5 The Company will provide the Employee with a copy of the IFA within 14 days after it is agreed to.
- 11.6 The Company or the Employee may terminate the IFA:
- (a) by giving no less than 28 days written notice to the other party to the IFA; or
  - (b) in writing at any time, by agreement between the Company and the Employee.

## **12. CONSULTATION**

- 12.1 For the purposes of this clause:
- (a) Employees may be represented by a person of their choice;
  - (b) nothing shall be taken to require the Company to disclose confidential or commercially sensitive information as part of its obligations under this clause.

### Major Change

- 12.2 Where the Company has made a definite decision to introduce a major change that will be likely to have a significant effect on Employees the Company will consult with affected Employees about measures to avoid or mitigate the effects of the changes on the Employees. Major change will not include changes already contemplated and provided for by this Agreement.

### Change to Regular Roster or Hours of Work



- 12.3 Where the Company has made a definite decision to change the Employees' regular roster or ordinary hours of work, the Company will:
- (a) provide information to the Employees about the change;
  - (b) invite the Employees to give their views about the impact of the change, including any impact in relation to their family or caring responsibilities; and
  - (c) consider any views provided by the Employees about the impact of the change.

### **13. CONTRACT OF EMPLOYMENT**

- 13.1 Employees may be engaged on either a full-time, part-time, casual, or fixed or maximum term or project-specific contract of employment.
- 13.2 Full-time Employee means an Employee who works an average of 38 hours a week.
- 13.3 Part-time Employee means an Employee who is employed as such, who normally works an average of less than 38 hours per week.
- 13.4 Casual Employee means an Employee who is engaged and paid as such. A Casual Employee will be paid for Ordinary Hours a 25% casual loading in addition to the Ordinary Time Rate prescribed for their classification. Where there is an entitlement to overtime or other penalty rates, the 25% loading based on the Ordinary Time Rate will also be paid (i.e. time and a half would mean 175% of the Ordinary Time Rate). The casual loading is paid in lieu of any entitlement to redundancy pay, paid public holidays, paid annual leave, paid personal leave or other forms of paid leave or other entitlements usually afforded to full-time Employees.
- 13.5 A casual employee can be terminated by providing a minimum of one hour's notice.
- 13.6 Right to request casual conversion**
- 13.6.1 A person engaged by an employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
- 13.6.2 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 award.
- 13.6.3 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.
- 13.6.4 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.
- 13.6.5 Any request under this subclause must be in writing and provided to the employer.
- 13.6.6 Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- 13.6.7 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 the award – that is, the casual employee is not truly a regular casual employee as defined in paragraph 13.6.2);
- (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.

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

13.6.9 Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made. If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 9.

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 employee's hours of work will be fixed in accordance with clause 6 of this agreement (NES), National Employment Standards.

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

13.6.11 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.

13.6.12 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.

13.6.13 Nothing in this clause obligates 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.

13.6.14 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.

13.6.15 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.

A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in paragraph 13.6.15

## **14. PROBATION**

- 14.1 All new Employees (excluding casual Employees) will be engaged on a probationary period of 3 months. Without limiting the operation of clause 15, during the probation period, either party can terminate the employment by giving 1 weeks' notice or payment in lieu of notice (in the case of the Company). Failure to provide this notice will result in the payment in lieu, or forfeiture, of monies equivalent to a week's wages.

## **15. TERMINATION OF EMPLOYMENT**

### Notice Period

- 15.1 Except in the case of summary dismissal or clause 14, the Company may terminate the employment of an Employee (other than a casual) by providing the following notice in writing:

Employee's Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- 15.2 In addition to the notice given in sub-clause 15.1, Employees who are over 45 years of age at the time at the end of the day on which the notice is given and who have not less than two years' continuous service shall be entitled to an additional week's notice.

### Termination of Employment by Employee

- 15.3 The notice of termination required to be given by an Employee is the same as that required of the Company except that there is no requirement on the Employee to give additional notice based on the age of the Employee concerned.

### Summary Dismissal

- 15.4 Notwithstanding the provisions of sub-clauses 15.1 and 15.2 the Company has the right to dismiss any Employee without notice for serious misconduct and in such cases any entitlements applying under this Agreement are paid up until the time of dismissal only. In the case of termination for serious misconduct no notice period is payable.

### Reasonable Inquiries

- 15.5 If an employee is absent from work for 3 or more consecutive days, where the whole of absence is not authorized or explained, or occurs without notification to the employer given before or as soon as practicable after the first day of the absence commences the employer shall take reasonable steps to:
- b) contact the employee
  - c) provide the employee with an opportunity to explain the absence from work; and

- d) give genuine consideration to any explanation provided by the employee.
- e) If after following the above process the employer is unable to contact the employee and return them to their duties, the employee may commence disciplinary procedures which may result in enacting clause 15.1 of this agreement and subsequently culminate in terminating the employee from their position.

## **16. REDUNDANCY**

Employees are entitled to redundancy / severance pay in accordance with the Act.

## **17. DAY WORK**

### Ordinary Hours of Work

- 17.1 The ordinary hours of work will be 38 per week averaged over a period of up to 4 weeks to be worked Monday to Sunday, between the hours of 6.00 a.m. and 6.00 p.m., up to a maximum of 12 hours per day (or 10 hours per day where the Construction allowance in clause 21.3 applies). Provided that the spread of hours may be altered by up to 1 hour by agreement with an individual Employee or with the majority of Employees in the plant, section or sections concerned.

### Rostering

- 17.2 Ordinary Hours will generally be worked within an established roster pattern for the specific site or Client as determined by the Company.
- 17.3 The roster pattern for the specific site or location may require Employees to work reasonable additional hours, including on weekends and public holidays, in order to meet the operational requirements of the Company and/or Client. This may, at the discretion of the Company, include compressed roster cycles with a cycle of rest and recreation constituting non-working time or rostered days off.
- 17.4 The Company and an Employee or group of Employees may develop, by agreement, innovative work arrangements that provide better use of hours available for work and provide quality of life advantages and productivity improvements, provided that any such arrangement will not result in terms and conditions less favourable than this Agreement.
- 17.5 Notwithstanding sub-clause 17.4 and unless the Employee agrees to a shorter period, the Company may vary an Employee's rostered working hours by providing 48 hours' notice.

### Breaks

- 17.6 The Company will provide a 30-minute unpaid break. Work breaks may be staggered by the Company or required to be taken earlier to meet operational requirements, provided that such breaks will not occur earlier than 3 hours after the commencement of the duty and an Employee will not be required to perform more than 5 hours' work without being provided with a break either under this sub-clause or sub-clause.
- 17.7 Should Employees be unable to take the break provided for in sub-clause 17.6, they will be paid at the rate of double the Ordinary Time Rate until such break is taken. This sub-clause does not apply where a majority of Employees have agreed to take their work break at another time consistently with the needs of the Company or Client.
- 17.8 Employees will be allowed a paid morning rest break of 15 minutes duration (starting at the time the Employee ceases work and concluding at the time the Employee is ready to recommence work at the physical location of the work rather than the time the Employee reaches or leaves the crib room – where this is unreasonable, the Company and Employee will



agree to an alternative arrangement). Where the rostered hours are for 10 hours or more, then the rest period may be extended to 30 minutes without deduction of pay.

17.9 Subject to Client and Company approval, and in consultation with the workforce engaged at a particular Client site or location, taking into account fatigue management, hygiene and operational requirements, a rest break can be taken as follows:

- (a) At the crib hut – this will be paid at the applicable Ordinary Time Rate; or
- (b) At the actual work location/station – this will be paid at double the Ordinary Time Rate for the duration of the rest break.

#### Weekends and Public Holidays

17.10 Ordinary Hours of work on a Saturday will be subject to the following penalty rates and conditions with a minimum 3 hours of duty or payment of 3 hours:

- (a) First 2 hours – time and a half of the Ordinary Time Rate;
- (b) After the first 2 hours OR any hours worked after 12 noon – double the Ordinary Time Rate; and
- (c) All work performed on a Saturday following Good Friday will be paid at the rate of double time and a half of the Ordinary Time Rate with a minimum duty or payment of 4 hours.

17.11 Ordinary Hours worked on a Sunday will be paid at double the Ordinary Time Rate with a minimum duty or payment of 4 hours.

17.12 Ordinary Hours worked on a Public Holiday will be paid at double time and a half of the Ordinary Time Rate with a minimum duty or payment of 4 hours.

## **18. SHIFT WORK**

### Definitions

18.1 For the purposes of this Agreement, the following is shift work:

- (a) Afternoon Shift means any shift finishing at or after 7pm and at or before midnight;
- (b) Night Shift means any shift finishing after midnight and at or before 8am;
- (c) Permanent Night Shift means a shift of which the Employee:
  - (1) Remains on night shift for a longer period than 4 consecutive weeks; or
  - (2) Works night shift only; or
  - (3) Works a shift cycle that involves more than or equal to 2/3rds of working time being performed as night shift (i.e. less than 1/3rd of working time is performed as day work or shift work that is not night shift).
- (d) Where more than one allowance or penalty rate may apply to the Ordinary Time Rate, only the highest applicable allowance or penalty rate will apply.

### Ordinary Hours of Work

18.2 The Ordinary Hours of work for shift workers will not exceed an average of 38 hours per week over a period of up to 4 weeks to be worked Monday to Sunday up to a maximum of 12 hours per shift (or 10 hours per shift where the Construction allowance in clause 21.3 applies).

### Rostering

18.3 Shifts will be worked according to a shift roster which will specify the commencing and finishing

times of each shift. The roster may be changed by providing the affected Employees with 48 hours' notice, except if the Employee agrees on a shorter period.

- 18.4 Different rosters will be required from time to time and will be subject to Client, contract and logistical circumstances. The number of hours worked each day within these rosters shall vary from Client to Client. This may include rosters based on a compressed cycle of worked days, followed by a cycle of non-working time or rostered days off.
- 18.5 The roster pattern for the specific project may require Employees to work reasonable additional hours, including Weekends and Public Holidays, in order to meet the operational requirements of the Company or Client and may include a cycle of rest and recreation.

#### Breaks

- 18.6 A paid work break of 30 minutes may be taken no later than 5 hours after the commencement or at another time by agreement between the Company and a majority of relevant Employees.

#### Shift Loadings

- 18.7 Shift loadings are applied to Ordinary Hours only, overtime hours are subject to clause 19.

- 18.8 Afternoon / night shift – more than 5 successive shifts:

- (a) Where an Employee is employed continuously (inclusive of Public Holidays) for at least 5 shifts, in addition to the Ordinary Time Rate, the Employee will be paid a loading of 15% of their Ordinary Time Rate for Ordinary Hours worked during afternoon and night shifts.
- (b) Sub-clause (a) does not apply to afternoon and night shifts worked on a Saturday, Sunday or Public Holiday.

- 18.9 Afternoon / night shift – less than 5 successive shifts:

- (a) Employees who work on any afternoon or night shift which does not continue for at least 5 successive afternoons or nights will be paid a 50% shift loading for their Ordinary Hours and the relevant overtime rates for all hours worked beyond Ordinary Hours.
- (b) Sub-clause (a) does not apply for afternoon and night shifts worked on a Saturday, Sunday or Public Holiday.

- 18.10 Permanent Night Shift

- (a) Employees who work Permanent night shift, in addition to the Ordinary Time Rate, will be paid a loading of 30% of their Ordinary Time Rate for Ordinary Hours worked during afternoon and night shifts.

- 18.11 For the purposes of this clause:

- (a) Saturday Shift means a shift where the majority of hours are worked between midnight on Friday and midnight on Saturday;
- (b) Sunday Shift means a shift where the majority of hours are worked between midnight on Saturday and midnight on Sunday; and
- (c) Public Holiday Shift means a shift where the majority of hours are worked on a Public Holiday (as set out in this Agreement).

- 18.12 The following shift allowances apply to Ordinary Hours of Shift Work performed on weekends and Public Holidays:

- (a) Saturday Shift – one and a half the Ordinary Time Rate;
- (b) Sunday Shift – double the Ordinary Time Rate;



- (c) Public Holiday Shift – double and a half the Ordinary Time Rate.

## **19. OVERTIME**

### Obligation to work overtime

- 19.1 All hours worked by Employees beyond their Ordinary Hours of work on any day or averaged roster cycle or outside the spread of hours shall be treated and paid as overtime.
- 19.2 Employees, working either Day Work or Shift Work, agree to work reasonable overtime as required by the Employer.
- 19.3 All overtime is subject to approval by the Company (or a designated representative) prior to commencement. Unapproved overtime will not attract any payment.
- 19.4 Where more than 1 allowance or penalty rate may apply to the Ordinary Time Rate, only the highest allowance or penalty rate will apply.

### Overtime penalties

- 19.5 All overtime hours worked by Employees Monday to Friday, will be paid at time and a half for the first 2 hours and double time thereafter.
- 19.6 All overtime hours worked by Employees on a Saturday will be paid at time and a half for the first 2 hours and double time thereafter. Any overtime worked on a Saturday after 12 noon will be paid at double time. Overtime that is not continuous with Ordinary Hours will have a minimum duty or payment on a Saturday for overtime of 3 hours, provided that for the Saturday after Good Friday the minimum will be 4 hours.
- 19.7 All overtime hours worked by Employees on Sunday shall be paid at double time for all time worked. Overtime that is not continuous with Ordinary Hours will have a minimum duty or payment on a Sunday for overtime of 4 hours.
- 19.8 All overtime hours worked on a Public Holiday will be paid at double time and a half of the Ordinary Time Rate with a minimum duty or payment of 4 hours.

### Rest after Overtime

- 19.9 Employees are entitled to a minimum of 10 consecutive hours off duty between the termination of a work day or shift and the commencement of the next work day or shift. If an Employee works such overtime that there is less than 10 hours off duty, the Employee is entitled to be absent, without loss of pay for Ordinary Working Time occurring during such absence until they have had 10 consecutive hours off.
- 19.10 Sub-clause 19.9 will apply in the case of an Employee who is working an afternoon or night shift as if 8 hours were substituted for 10 hours when overtime is worked for the purpose of changing shift rosters or where a night or afternoon shift work does not report for duty and a day worker is required to replace them.

### Call Back

- 19.11 If an Employee is called back to work after they have left the Workplace at the conclusion of a shift, they will be paid a minimum of 4 hours at double the Ordinary Time Rate. Subsequent recalls, during the same twenty-four-hour period as the first recall, will be paid based on the actual time worked and will not attract an additional 4 hours minimum.

## 20. CLASSIFICATIONS AND WAGE RATES

20.1 Persons employed at any one of the following Classification Levels will be an employee who management has determined has the necessary certification, qualifications and skills so as to adequately perform the tasks required to satisfactorily complete the job. Wages for each classification will be as follows for work performed:

Level	Description	Ordinary Time Rate
Level 1a	An employee required to undertake labouring duties under general supervision with less than 12 months relevant industry experience.	22.21
Level 1	An Employee having the skills, qualifications and competency and required to exercise the following skills under limited supervision, including but not limited to: <ul style="list-style-type: none"> <li>• Trades Assistant</li> <li>• Dogman</li> <li>• Rigger (&lt;12 mths experience)</li> <li>• Scaffolder (&lt;12 mths experience)</li> <li>• Forklift Driver 10 tonnes or less</li> <li>• Labourer</li> <li>• Stores person</li> <li>• Industrial Cleaner</li> <li>• Traffic Controller</li> </ul>	23.04
Level 2	An Employee having the skills, qualifications and competency and required to exercise the following skills, including but not limited to: <ul style="list-style-type: none"> <li>• Rigger Intermediate</li> <li>• Scaffolder Intermediate</li> <li>• Insulator (no-trade)</li> </ul>	24.91
Level 3 – Semi Skilled	An Employee having the skills, qualifications and competency and required to exercise the following skills, including but not limited to: <ul style="list-style-type: none"> <li>• Concrete Finisher</li> <li>• Concrete pump operator and concrete cutting or drilling machine operator</li> <li>• Crane license &lt; 10 tonnes</li> <li>• Fibreglasser</li> <li>• Forklift Driver &gt; 10 tonnes</li> <li>• Form worker</li> <li>• Painter/Blaster (non-trade)</li> <li>• Rigger advanced</li> <li>• Scaffolder advanced</li> <li>• Steel – Fixer</li> <li>• Multi ticketed Rigger, Scaffolder &amp; Dogman</li> <li>• Plant &amp; equipment operator</li> </ul>	25.95



Level 4 – Base Trade	<p>An Employee having the skills, qualifications and competency and required to exercise the following skills, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Boilermaker</li> <li>• Crane license &gt; 10, &lt; 120 tonnes</li> <li>• Electrical Tradesperson</li> <li>• Electrical Fitter</li> <li>• Electrical Installer</li> <li>• Licensed plumber</li> <li>• Mechanical Fitter</li> <li>• Pipe Fitter</li> <li>• Tube Fitter</li> <li>• Painter/Blaster (trade)</li> <li>• Linesperson</li> <li>• Tradesperson - all other (including, but not limited to, carpentry, refractory and building tradespersons)</li> <li>• Welder</li> <li>• Sheet metal work (trade)</li> </ul>	28.03
Level 5 – Special class trade	<p>An Employee having the skills, qualifications and competency and required to exercise the following skills, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Crane license &gt; 120 tonnes</li> <li>• Electrical Tradesperson – special class</li> <li>• Instrument Tradesperson</li> <li>• Mechanical Tradesperson – special class</li> <li>• Surveyor</li> <li>• Welder Special Class</li> <li>• Coded Welder</li> </ul>	30.10
Level 6 – Advance trade	<p>An Employee having the skills, qualifications and competency and required to exercise the following skills, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Instrumentation and Controls Tradesperson</li> <li>• Dual Trade Electrical Instrument</li> <li>• Coded Welder Certificate 10</li> </ul>	32.18

#### Apprentices

20.2 The percentage of the Level 4 rate for each stage of Apprenticeship is as follows:

Year of Apprenticeship	Other than Adult Apprentice	Adult (aged 21+)
Stage 1	55%	80%
Stage 2	65%	82%
Stage 3	75%	85%
Stage 4	90%	90%

Notwithstanding anything else in clause 20, Employees who commence an Adult Apprenticeship (someone aged over 21yrs) with the Company shall not be paid less than the full time trade's assistant rate (Level 1).

## 21. ALLOWANCES

### Leading Hand Allowance

- 21.1 An employee specifically appointed in writing by the Company and performing the duties of a leading hand will be paid a flat per hour rate of \$1.03 per hour. The appointment of an Employee to supervise or direct or be in charge of another Employee or Employees will be at the discretion of the Employer. Should the Employer no longer require an Employee to supervise or direct or be in charge of another Employee or Employees, the Employee will be advised of this in writing and the Leading Hand Allowance will no longer be payable.

### Meal Allowance

- 21.2 Where an Employee is required to work more than 2 hours overtime (not including breaks) before or after Ordinary Hours and the Employee was not notified by the Company prior to the end of the Employee's last shift of the requirement to work overtime, a meal will be provided by the Company or alternatively a meal allowance of \$15.38 shall be paid.

### Construction Allowance

- 21.3 An Employee engaged to perform construction work will receive an all-purpose allowance of \$3.08 per hour. This additional rate will be regarded as part of the Ordinary Time Rate for all purposes. For the purposes of this sub-clause, 'construction work' shall mean a circumstance where the *Building and Construction General On-site Award 2010* would have applied but for this Agreement. Where an Employee is engaged to perform 'general building and construction and metal and engineering construction sectors' work and their shift begins before 6am or at or after 11am on a weekday, this allowance will be \$5.13 per hour instead.

### Electrical Allowance

- 21.4 An Employee engaged to perform electrical services work or who is required by the Company to hold an Electrical license (or equivalent) will receive an all-purpose allowance of \$1.13 per hour. This additional rate will be regarded as part of the Ordinary Time Rate for all purposes. For the purposes of this sub-clause, 'electrical services work' shall mean a circumstance where the *Electrical, Electronic and Communications Contracting Award 2010* would have applied but for this Agreement.

### First Aid Allowance

- 21.5 An Employee who holds a current Senior First Aid Certificate or Occupational First Aid Certificate and is appointed in writing by the Company to undertake first aid duties will be paid a flat rate allowance of \$3.11 per day.

### Underground Allowance

- 21.6 An Employee who is required to work underground will be paid an additional minimum flat rate allowance of \$17.10 per week. Provided that an Employee is required to work underground for no more than 4 days or shifts in any ordinary week, must be paid an additional minimum \$2.98 per day or shift.

### Confined Space

- 21.7 An Employee who is required to work in a confined space must be paid a minimum additional all-purpose allowance of \$0.91 per hour or part thereof. Confined space means a place the dimensions or nature of which necessitate working in a cramped position or without ventilation or as otherwise defined by the Company.



#### Fumes

- 21.8 An Employee required to work in a place where fumes of sulphur or other acid or other offensive fumes are present must be paid an allowance which will be such rates as are agreed upon between the Employee or the majority of Employees and the Employer.

#### Furnace Work

- 21.9 An Employee engaged in the construction of, or alteration or repairs to, boilers, flues, furnaces, retorts, kilns, ovens, ladles, and similar refractory work must be paid an additional minimum all-purpose allowance of \$1.93 per hour. This additional rate will be regarded as part of the Ordinary Time Rate for all purposes.

#### Acid Work

- 21.10 An Employee required to work on the construction of or repairs to acid furnaces, acid stills, acid towers and all other acid resisting brickwork must be paid an additional \$1.93 per hour as an all-purpose allowance. This additional rate will be part of the Ordinary Time Rate for all purposes.

#### Travel (except for Remote Work)

- 21.11 Where an Employee is directed by the Company to commence work at a site other than the employees normal place of work, which is less than 50 radial kilometres from the depot, the Employee will be entitled to the amount of no less than \$11.28 for each day that the Employee is required to do so.
- 21.12 Where the Employee is directed by the Company to commence work at a site other than at the Employee's depot which is greater than 50 radial kilometres from the Employee's depot, the Employee will be entitled to the amount of no less than \$22.55 for each day that the Employee is required to do so.
- 21.13 The above allowances will not apply if the Employee is provided with transport by the Company at the Company's cost, or the travel distance from the Employee's residence to the alternate location is less than the distance between the Employee's residence and their usual place of work.
- 21.14 So as to avoid doubt, an Employee will only be entitled to either allowance in sub-clauses 21.11 and 21.12, not both. Sub-clauses 21.11 and 21.12 will not apply where clause 25 applies.

#### Board and Lodging

- 21.15 Subject to the remainder of this clause, at the Company's sole discretion, an Employee who is directed by the Company to live in a location that is not their Usual Place of Residence on each day may be provided with either:
- (a) Company or Client provided accommodation and messing, or if that is unavailable, reasonable board and lodgings; or
  - (b) A Living Away From Home Allowance (LAFHA) of no less than \$503.40 per complete week of work.
- 21.16 Payment of LAFHA will be in accordance with the prevailing ATO guidelines at the time to enable the Employee to provide their own messing and/or accommodation and will be made in lieu of Company provided messing and/or accommodation. Concessional taxation treatment will only be applied subject to the Employee providing any documentation (including a declaration of their Usual Place of Residence) as required by the ATO in connection with LAFHA.

## **22. INCREASES DURING THE LIFE OF THE AGREEMENT**

The wage rates and allowances contained in clauses 20 and 21 (inclusive of any previous increases under this clause) shall increase by 2% on the first full pay period after the following dates:

- 1 December 2020
- 1 December 2021
- 1 December 2022

## **23. ABOVE AGREEMENT PAYMENTS**

- 23.1 During the life of this Agreement, the Company may offer additional payments over and above those outlined elsewhere in this Agreement. Where this occurs, the offer will be put in writing to each affected Employee as part of each Employee's individual contract of employment.
- 23.2 If an Employee accepts such an offer, the arrangement will be in full satisfaction of and in compensation for any obligation to otherwise make payments or provide benefits to the Employee for any entitlements and allowances which might otherwise apply to the Employee under this Agreement, provided that the total payments made to the Employee for the same designated work cycle and rostered hours of work are not less than the total value of the entitlements and allowances that would have otherwise apply to the Employee under this Agreement.

## **24. PAYMENT OF WAGES**

- 24.1 All monies paid pursuant to this Agreement shall be paid weekly or fortnightly by electronic transfer of funds into one account nominated by the Employee with a bank or other financial institution recognised by the Company.
- 24.2 Where the pay frequency for an Employee is to be changed between weekly and fortnightly or vice versa, the Company must consult with the Employee.
- 24.3 The Company shall have the right to deduct any amount required to be paid by the Employee under this clause for cases of incorrect or overpayment of wages or allowances. The deduction method will be discussed and agreed with the Employee.

## **25. REMOTE WORK**

- 25.1 The Company shall transport Employees by economy air transport from the Employees' designated Distant On-Hire Point to the work site at the commencement of employment, or at the commencement of their mobilisation, at the conclusion of employment or at the completion of their demobilisation. Employees shall be allowed a reasonable amount of baggage, (to the maximum allowed in economy air) in addition to any toolbox(s) which the Company requires the Employee to provide for the Employee's work on the site.
- 25.2 Employees whose Distant On-Hire Point is within driving distance of the Work Site, may be provided road transport by the Company or elect to drive in lieu of air travel on mobilisation and demobilisation. Where an Employee chooses to elect to drive, prior written permission from the Company must be obtained.
- 25.3 Upon mobilisation and demobilisation to the Project from the Distant On-Hire Point, Employees shall be paid the actual travel time at the Employee's Ordinary Time Rate (to a maximum of 8



hours);

- 25.4 Where an Employee's designated Distant On-Hire Point requires the Employee to arrange personal air travel from or to their Usual Place of Residence to the Distant On-Hire Point for the purposes of mobilisation or demobilisation;
- (a) The cost associated with this travel will be at the Employee's own expense; and
  - (b) Should the Employer fail to provide a minimum of 1 weeks' notice of any changes to mobilisation or demobilisation dates where these changes conflict with travel already purchased by the Employee; on application the Employee will be reimbursed the cost associated with either fees associated with a change in ticketing or a new flight, whichever is the lesser.
- 25.5 Where an Employee misses travel scheduled by the Company for reasons that are within the Employee's control and the Company incurs a fee or cost for the missed flight, the Company may seek to recover that money from the Employee.

## **26. STAND DOWN**

- 26.1 The Company may stand an Employee down, without pay, for any day or part of such day if the Employee cannot be usefully employed because of any:
- (a) shortage of work caused by any strike, ban, limitation, or restriction on the performance of work by any employee (including an employee not covered by this Agreement) or any union, association, or organisation;
  - (b) breakdown or failure of the Company's machinery which the Company could not reasonably have prevented;
  - (c) stoppage of work by any cause for which the Company cannot be held responsible, including Inclement Weather (except where clause 27 provides otherwise) and other forces of nature;
  - (d) failure by an Employee to attend for work without appropriate safety equipment, or where an employee is found to be working without appropriate safety equipment

## **27. INCLEMENT WEATHER**

- 27.1 Disruption to work is to be minimised during periods of Inclement Weather.
- 27.2 The Company, at its discretion, will formally declare any period of Inclement Weather.
- 27.3 During Inclement Weather, work will continue unless the Company's nominee determines it is not safe to do so.
- 27.4 An Employee operating machinery fitted with a functional weatherproof cab will be deemed to be working in an area not affected by Inclement Weather, subject to safe access to the machine and safe working conditions applying.
- 27.5 Where Inclement Weather has been declared and a concrete pour has already been commenced, Employees may be required to complete such concrete pour where it is safe to do so, to a stage of practical completion and in the case of wet weather shall be provided with adequate wet weather gear.
- 27.6 For the avoidances of doubt, the term practical completion in this context is to mean a point at which the Company determines that work may cease without impacting the quality of the finished product or creating future re- work requirements. In this case, such work will be paid at the rate of double the Ordinary Time Rate calculated to the next hour. Where more than one

allowance or penalty rate may apply to the Ordinary Time Rate only the highest applicable will apply.

- 27.7 Should Inclement Weather affect only a portion of a Workface or part of the Work Site, all Employees not affected will continue working, regardless of the fact that some Employees may be transferred to non-working activities.
- 27.8 The Company will advise when conditions are no longer inclement, and productive work will resume as soon as possible.
- 27.9 Payment for time lost following the declaration of Inclement Weather will be paid at the affected Employee's Ordinary Time Rate for the Ordinary Hours of work lost due to Inclement Weather up to a maximum of 32 hours in any 4-week period. For casual Employees, the Company may terminate the engagement where the casual has not been productively engaged for a period of four hours during the engagement. For the purposes of this sub-clause, engagement means an individual shift.
- 27.10 Employees will not be entitled to any payment for stoppages due to Inclement Weather outside of Ordinary Hours.

## **28. ANNUAL LEAVE**

- 28.1 Full time and part time Employees are entitled to 4 weeks (up to 152 hours) annual leave for each completed year of service in accordance with the NES. A part time Employee will accrue an entitlement to annual leave on a prorated basis based upon the proportion the number of hours worked each week.
- 28.2 Except as provided by the Act, annual leave accrues pro-rata on a weekly basis but does not accrue during any period of unpaid or unauthorised leave.
- 28.3 Annual leave can be taken:
  - (a) by the Employee requesting to take accrued annual leave and that request being approved by the Company. Leave approval is subject to the operational requirements of the workplace;
  - (b) the Company reasonably directing an employee to take accrued annual leave by giving a minimum of 2 weeks' notice.
- 28.4 Any untaken leave in one year cumulates to the next year. Untaken annual leave is paid out on termination.
- 28.5 Employees are not entitled to annual leave loading, which has been incorporated into the rates of pay.
- 28.6 Where the Company shuts down all or any part of the business Employees may be required to take accrued annual leave. If an Employee does not have sufficient accrued leave he/she may be required to take leave without pay.
- 28.7 By written agreement with the Company, an Employee may elect to cash out part of his/her accrued annual leave entitlement, provided that:
  - (a) the Employee maintains an annual leave balance of at least 4 weeks;
  - (b) the Employee and the Company signs a separate written agreement on each occasion that the Employee cashes out an amount of annual leave;
  - (c) the Employee is paid at least the amount that would have been paid to the Employee had the Employee taken the annual leave.
- 28.8 Shift worker means, for the purposes of entitlement to an additional week of annual leave



pursuant to ss.87(1)(b) and 196 of the Act:

- (a) For Employees who, but for this Agreement, would have had the *Building and Construction General On-site Award 2010* apply, an Employee engaged to work in a system of consecutive shifts throughout the 24 hours of each of at least six consecutive days without interruption (except during breakdown or meal breaks or due to unavoidable causes beyond the control of the employer) and who is regularly rostered to work those shifts;
- (b) For Employees who, but for this Agreement, would have had the *Electrical, Electronic and Communications Contracting Award 2010* apply, an employee regularly engaged to work in a system of consecutive shifts throughout the 24 hours of each of at least five consecutive days without interruption (except during breakdown or meal breaks or due to unavoidable causes beyond the control of the employer) and who is regularly rostered to work those shifts;
- (c) For Employees who, but for this Agreement, would have had the *Manufacturing and Associated Industries and Occupations Award 2010* apply, a seven day shift-worker who is regularly rostered to work on Sundays and public holidays;
- (d) For Employees who, but for this Agreement, would have had the *Hydrocarbons Industry (Upstream) Award 2010* apply, an employee engaged in an enterprise in which shifts are continuously rostered 24 hours per day, seven days per week and who is rostered regularly to work those shifts and works regularly on Sundays and public holidays.

28.9 This clause does not apply to casual Employees.

## **29. PERSONAL/CARER'S LEAVE**

- 29.1 For each year of continuous service, an Employee (except casuals) will progressively accrue ten days of Personal Leave based on their ordinary hours of work in accordance with the NES.
- 29.2 An Employee shall be entitled to take an amount of accrued paid personal leave if the Employee is unable to attend work:
- (a) on account of personal illness or injury; or
  - (b) because the Employee is required to provide care or support to a member of the Employee's immediate family or household who requires care or support as they are sick or injured or has an unexpected emergency.
- 29.3 To be entitled to paid personal leave, the Employee must give the Company:
- (a) if it is reasonably practicable to do so-a medical certificate; or
  - (b) if it is not reasonably practicable for the Employee to give the employer a medical certificate-a statutory declaration made by the Employee attesting to the matters set out above.
  - (c) This subsection does not apply to an Employee who could not comply with it because of circumstances beyond the Employee's control.
- 29.4 The Employee shall, as soon as is practicable, inform the Company of the inability to attend for duty, and, as far as is practicable, state the duties for which the Employee is unfit and the estimated duration of the absence.
- 29.5 The unused portions of the entitlement to paid personal leave in any one year shall accumulate from year to year. Accrued personal leave is not paid out on termination.
- 29.6 A Casual Employee is entitled to 2 days of unpaid carer's leave on each occasion as outlined in sub-clause 29.2(b) above, subject to the notice and evidence requirements outlined in sub-clauses 29.3 and 29.4 above.

### **30. COMPASSIONATE LEAVE**

Compassionate leave is provided for in the NES which, in summary, provides that an Employee is entitled to 2 days of compassionate leave for each occasion when a member of the Employee's immediate family, or a member of the employee's household; contracts or develops a personal illness that poses a serious threat to his or her life; sustains a personal injury that poses a serious threat to his or her life; or, dies.

### **31. PUBLIC HOLIDAYS**

Public holidays are provided for in the NES.

### **32. COMMUNITY SERVICE LEAVE**

Employees are entitled to Community Service Leave in accordance with the NES.

### **33. PARENTAL LEAVE**

Employees are entitled to Parental Leave in accordance with the NES.

### **34. LONG SERVICE LEAVE**

Employees are entitled to Long Service Leave pursuant to the provisions of any applicable long service leave legislation, including but not limited to, any applicable portable paid long service leave scheme.

### **35. DOMESTIC VIOLENCE LEAVE**

Employees are entitled to domestic violence leave in accordance with the NES.


### **36. SUPERANNUATION**

- 36.1 Superannuation contributions will be made sufficient to avoid a charge in accordance with the *Superannuation Guarantee (Administration) Act 1992* (Commonwealth).
- 36.2 For the purposes of this Agreement and the governing act, the ordinary time earnings base will be the Employee's rate of pay for time worked as ordinary hours (up to 38 hours per week).
- 36.3 Contributions will be paid into an eligible fund agreed nominated by the Employee. Provided that where an Employee does not nominate a fund, or the Company is unable to pay into that fund, contributions will be paid into a fund nominated by the Company that offers a MySuper product.




## SCHEDULE A – SIGNATORIES TO ENTERPRISE AGREEMENT


Signed for and on behalf of Skout Solutions Pty Ltd (ABN 40 614 706 526):

Signature:   
Print Name: Matthew Berry  
Address: Level 3, 509 St Kilda Rd, Melbourne, VIC, 3004  
Authority to sign: General Manager - Skout Solutions  
Date: 31/1/20

Witnessed by:  
Signature:   
Print Full Name: Matthew Magnihan  
Address: LVL 9, 90 Pacific Highway, North Sydney, 2060  
Date: 31/1/20

Signed for and on behalf of the Employees covered by this Agreement:

Signature:   
Print Name: ANDREW KNOWLES  
Address: 23-41 GALWAY AVE, MARLESTON SA 5033.  
Authority to sign: MAINTENANCE ELECTRICAL TECHNICIAN  
Date: 31/1/20

Witnessed by: Aliya Vannea Lam  
Signature:   
Print Full Name: Aliya Vannea Lam  
Address: 151 South Terrace Adelaide 5000  
Date: 31/01/2020



IN THE FAIR WORK COMMISSION

Matter No: AG2020/353

Section 185 – Application for approval of a single enterprise agreement

UNDERTAKING – SECTION 190

Skout Solutions Pty Ltd, provides the following undertakings with respect to the Skout Solutions Industrial Enterprise Agreement 2019, ("the Agreement"):

1. Casual employees who, but for the Agreement, would be covered by the Hydrocarbons Industry (Upstream) Award 2020 ("Hydrocarbons Award"), shall be paid no less than 1 day per engagement. For the avoidance of any doubt, 1 day shall be a minimum 7.6 hour shift for each engagement.
2. Casual employees who, but for the Agreement, would be covered by the Manufacturing and Associated Industries and Occupations Award 2010, the Electrical, Electronic and Communications Contracting Award 2010 or the Building and Constructions Onsite Award 2010 shall be paid no less than a 4 hour minimum for each engagement.
3. Part time employees covered by the Agreement, will be offered a minimum 4 hour shift per engagement.
4. Sub-clause 18.9 (a) of the Agreement will be amended so the words "50% shift loading for their Ordinary Hours" will be replaced with the words "50% shift loading for the first two Ordinary Hours thereof and 100% loading for their Ordinary Hours thereafter". The rest of the sub-clause will not be affected.
5. These undertakings will come into effect on the date the Fair Work Commission approves the Agreement.

For and on behalf of Skout Solutions Pty Ltd by:

A handwritten signature in blue ink, appearing to read "M. Berry", is written over a horizontal line.

Matthew Berry, General Manager, Skout Solutions Pty Ltd

Date: 6 April 2020