



FAIR WORK
AUSTRALIA

DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Eureka Operations Pty Ltd
(AG2011/14282)

EUREKA OPERATIONS FUEL AND CONVENIENCE TEAM MEMBER AGREEMENT - 2011

Vehicle industry

COMMISSIONER GAY

MELBOURNE, 29 MAY 2012

Application for approval of the Eureka Operations Fuel and Convenience Team Member Agreement - 2011.

[1] This s.185 application seeks approval of a single-enterprise agreement, the *Eureka Operations Fuel and Convenience Team Member Agreement - 2011* (the Agreement). The application reflects the fact of agreement reached between the bargaining representatives, Eureka Operations Pty Ltd (the Employer, Eureka), the Shop, Distributive and Allied Employees Association (SDA), the Australian Workers' Union of Employees, Queensland (AWU) as to its members employed at sites in the Northern and Mackay Districts of Queensland (as defined in clause 3.1.12) and Mr F Mendez-Cortes, an appointed employee bargaining representative. The Agreement was approved at ballot by a majority of those amongst the 4528 employees eligible to cast a vote who exercised that right.

[2] In short summary, there have occurred since lodgement a number of conferences, with the bargaining representatives at Fair Work Australia, others amongst the bargaining representatives only and an extensive exchange of correspondence and telephone consultations between Fair Work Australia with the bargaining representatives. In the case of the telephone conversations between the Coles Supermarkets Australia Employee Relations Director, Ms F Walliss, acting for Eureka, and Fair Work Australia as presently constituted, such events occurred in the knowledge of the other bargaining representatives.

The Agreement

[3] It will be seen that should the Agreement be approved it would cover a large number of employees throughout Australia primarily performing duties as console operators and operating substantially from that vantage point what were once known as service stations, selling petroleum, diesel and oils and which also contain convenience stores, trading as 'Coles Express'.

The Background to the Undertaking

[4] Upon review of the Agreement it was necessary in my view to clarify the operation of a number of its provisions when regard was had for the entitlements and standards contained in the reference instrument, that is, the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* [MA000089] (the Award). It is unnecessary to set all of these out in detail as the great majority are taken up in the Undertaking ultimately given by Eureka and endorsed by the bargaining representatives and forming an attachment to this Decision. Perhaps one example will suffice.

Employees less than 18 years old

[5] The Agreement provides for a single classification of ‘Team Member’, the duties of which comprise that range of functions required of the console operator of a petrol, diesel and oil selling operation and which also include the sale of the many items found in most, but not all, Coles Express operations.

[6] The Agreement provides at clause 8.2 ‘Junior Team Member’, for rates of pay at the following percentages of the adult ‘team member’ rate.

Age	% Rate
18 years and under	70%
19 years	80%
20 years and over	100%

[7] At clause 14.2 the Award regulates various aspects of junior employment, some of which are clearly not relevant to the work to be performed under the Agreement. Clause 14.2 e) and f) of the Award however deal more generally with junior employment as follows:

“14.2

(e) A junior employee under the age of 18 years will not work unsupervised between the hours of 7.00 pm and 9.00 pm and must not be employed between the hours of 9.00 pm and 6.30 am.

(f) No employee under the age of 16 years will be required or permitted to work on afternoon or night shift.”

[8] No provision of the Agreement (which operates to the exclusion of the Award) reflects these aspects of the Award, set out above, which primarily are founded in occupational health and safety considerations including those relating to the receipt, handling and sale of petroleum, kerosene, diesel and oil.

[9] When this position and a number of further queries as to uncertainties over the operation of the Agreement were brought to notice, the Employer as indicated above has advised its preparedness to give a series of undertakings (for convenience now termed ‘the Undertaking’), including it will be seen, one that deals comprehensively with the matter of junior team members less than 18 years of age.

Part-time Employees

[10] The aspect of the Agreement the principal subject of the series of conferences held with the bargaining representatives and which led to further discussion between the

bargaining representatives and, in turn to yet further agreement, is the operation of clause 10.6.1 of the Agreement. That subclause provides:

“10.6 Flexible Hours Arrangement

10.6.1 In conjunction with, or in addition to any rostered start, a part-time team member may be offered additional hours on a voluntary basis, provided that such additional hours shall be offered:

- (a) in accordance with the relevant roster principles;*
- (b) on the basis that the additional hours worked will be ordinary hours worked for the purpose of all leave entitlements; and*
- (c) Such hours are worked on a voluntary basis and are paid at the Ordinary Hourly Rate as defined in clause 3.1.9 plus any penalty applicable as prescribed in clause 10.2 or 26.2.2.”*

[11] It is necessary to also set out clause 12 of the Award:

“12. Part-time employment

12.1 An employer may employ regular part-time employees in any classification in this award, provided that this clause will not apply to a person principally employed as a vehicle salesperson.

12.2 A regular part-time employee is an employee who:

- (a) works less than full-time hours of 38 per week;*
- (b) has reasonably predictable hours of work; and*
- (c) receives on a pro rata basis, equivalent pay and conditions to those of full-time employees who perform the same kind of work.*

12.3 At the time of being employed, the employer and the regular part-time employee will agree in writing on the following:

- (a) the hours worked each day;*
- (b) which days of the week the employee will work;*
- (c) the actual starting and finishing times each day;*
- (d) that any variation must be in writing;*
- (e) all time worked in excess of agreed hours is paid at overtime rates; and*
- (f) the times of taking and the duration of meal breaks.*

12.4 Any agreed variation to the hours of work will be recorded in writing.

12.5 All time worked in excess of the hours agreed under clause 12.3 or varied under clause 12.4 will be paid as overtime.”

The Part-time Demographic

[12] Of the 4528 employees to be covered by the Agreement, some 63.8% or 2889 employees are engaged as part-time team members. An understanding of the number of duty hours performed by the 2889 (but not their own actual fixed hours) can be achieved by considering them, broken into ascending ten hour weekly duty blocks up to 38 hours per week, as is set out in the chart below.

Agreed Part Time Hours

Less than 10 hours per week	236 part-time employees
10 hours and up to but not including 20 hours per week	1330 part-time employees
20 hours and up to but not including 30 hours per week	933 part-time employees
30 hours plus	390 part-time employees

[13] It can be immediately appreciated what a significant proportion of employees under the Agreement is constituted by the part-time cohort.

The Effect of Clause 10.6.1

[14] My concern was that on a fair reading, clause 10.6.1 of the Agreement provides a potential means whereby the present obligation under the Award [where part-time employees performing overtime are to be paid for such hours at the overtime rate], could be replaced by a capacity for them to be paid at ordinary time (see clause 10.6.1(c)). This would be highly relevant to Fair Work Australia being satisfied that, at the test time, each award covered part-time employee and each prospective award covered part-time employee whose employment would be regulated by the Agreement would be better off overall if the Agreement applied to the employee than if the Award applied (see s.193(1)).

The Award Provision

[15] That the Award provides for overtime to be payable for a part-time employee working additional hours is, in my view, abundantly clear when regard is had for clause 12 of the Award 'Part-time employment' and, specifically, the operation of subclauses 12.3, 12.4 and 12.5 set out above.

[16] At clause 12.3 the Award requires that, "At the time of being employed, the employer and the regular part-time employee will agree in writing" on a number of matters then specified. In addition to the Award's stipulation for the employer and the part-time employee to agree in writing on the hours to be worked each day, the days of the week to be worked, the time and duration of meal breaks and the actual starting and finishing times each day, it is necessary for the parties to have also included in their written agreement that all time worked in excess of agreed hours is paid at overtime rates (12.3 (e)). Where at some subsequent time it is agreed that the hours of the part-time employee are to be varied, clause 12.4 of the Award requires that that agreement must also be recorded in writing. As to the pay treatment of time worked in excess of the part-time employee's agreed hours, clause 12.5 reinforces 12.3(e) by

providing that all time worked in excess of the hours agreed under clause 12.3, or varied under clause 12.4, “will be paid as overtime”.

[17] These, and the other provisions at clause 12 of the Award, reflect the need for the careful establishment, by written agreement, of each part-time employee’s working regime based upon their standard, agreed hours at commencement, including for the vital purpose of setting the equivalency of part-time employees as to “pay and conditions to those of full time employees who perform the same kind of work” (clause 12.2(c)).

[18] Central to this is the fixation by written agreement of an individual part-time employee’s package of hours, days and duty times and a recognition that payment of all excess time consistent with clause 12 is a fundamental entitlement of all part-time employees under the Award. All such excess time pursuant to clause 12 is paid at overtime rates.

[19] My concern had been that when Eureka indicate to a part-time employee that work is available and sought by the employer to be worked, beyond the hours contained in the employee’s written agreement detailing their fixed pattern of work, by such an employee taking up the additional hours “on a voluntary basis”, the award entitlement to overtime could be replaced by the payment of ordinary time.

[20] Although not the subject of formal argument in this application, it is my preliminary view that a provision which had that result would be highly relevant, in the negative, in one’s application of the Better Off Overall Test.

[21] The decisions of at least two Full Benches are apposite; that of Fair Work Australia in *Bupa Care Services v P & A Securities Pty Ltd*, 15 April 2010 [2010] FWA FB 2762, and that of the Australian Industrial Relations Commission in *Re MSA Security Officers Certified Agreement* [2003] PR937654. Those Full Benches dealt, in various statutory contexts, with agreement approval where the matter of “employee preference” as to overtime or “volunteerism” was given as a basis for obviating or avoiding the making of overtime payments when the part-time employee’s fixed hours are to be exceeded by virtue of the performance of additional hours the employer desires to have worked. I would respectfully apply and follow those Full Benches.

Eureka Express to Not Apply Clause 10.6.1

[22] As events have transpired it is not necessary to consider whether the characterisation of an employee’s response to the employer’s available extra hours, “offered on a voluntary basis”, could in this case render ordinary time as conformable with the Award when one is to apply the Better Off Overall Test.

[23] This is because Eureka has indicated, as part of the package of undertakings, that it will not apply clause 10.6.1 of the Agreement and rather, Eureka has relevantly undertaken that:

- By agreement in writing, a part-time employee’s ordinary hours of work may be varied within the rostering provisions otherwise contained in clause 10 of the Agreement;

- That when so varied the part-time employee's ordinary hours will be paid at ordinary rates and will count as ordinary hours for the purposes of leave accrual (see the National Employment Standards, Division 6, s.87(2));
- Where there is no agreement in writing to vary a part-time employees hours of work the additional hours will be paid at overtime rates of pay.
- Where the part-time employee has agreed to vary their hours of work as set out above, overtime rates will apply to work in excess of the varied hours.

Material Supplementary to the Undertaking

[24] The Undertaking submitted in its final form on 28 May 2012 is acceptable because there can be no doubt the Award subclauses 12.3(d) and 12.4 permit such variation, although in my view it should be said that there exists scope for misapplication of these provisions. Notwithstanding such scope I have determined for reasons amplified below to accept the s.190 Undertaking provided in this case. In other circumstances one's view might well be different. In this case there is a sound basis upon which one can accept the Undertaking.

[25] I have, pursuant to s.190(4) sought the views of each person known to me to be a bargaining representative. In that regard the SDA and the AWU have agreed in writing with the Undertaking as has the employee bargaining representative Mr Freddy Mendez-Cortes.

[26] Accompanying, but not technically forming part of the Undertaking, signed as required by s.190(5), is correspondence of 10 May received from Eureka. The purpose of that correspondence was to have Fair Work Australia understand how the Agreement and particularly the Undertaking commented upon above, would be applied. I have accepted the Employer's declared intent and, accordingly, have relied upon the comments within the 10 May correspondence as supplementing, but not substituting for or forming part of, the Undertaking. I choose to record the important statement of intent proffered by Eureka.

The Eureka Statement of Intent

[27] Eureka advised Fair Work Australia that it is not envisaged that employees would frequently vary their ordinary hours in the above context; that it is the Employer's primary position to work according to its established rosters, but that ordinary hours may be sought to be varied to meet some exigency.

[28] As I have already observed it must be acknowledged that a part-time employee's ordinary hours can change by agreement and the contract of employment be varied accordingly. One can well appreciate the likely infrequency of such a change to a permanent employee's fixed hours, most particularly if, shortly after some event, the contract of employment is reverted; to put it back to the position obtaining prior to the exigency. Willy-nilly change to a part-time employee's agreed, ordinary hours to satisfy an employer's ad hoc or irregular need for additional hours and to have such additional hours qualify as, and paid as, ordinary hours could render the proper foundation of part-time employment a sham.

[29] It is clear to me that that is not the approach which is agreed upon by the parties in this case. The above comments are not to deny the obvious commonsense behind an employer or an employee approach to the other, seeking occasional alteration to the part-timer's contracted hours requiring a flexibility of approach due to an employer need or an employee's altered circumstance.

[30] It is in this context that Eureka's further assurances (referred to as a 'Statement' by the SDA in its 17 May 2012 written indication of support) should also be noted. Ms Walliss wrote to Fair Work Australia advising:

"I wish to assure you that the Company fully intends that any variation to a part time team member's ordinary hours of work will only occur where there is genuine agreement with the individual team member free from any undue influence. No-one will be coerced into making a decision to accept or decline the variation. The Company respects an individual part time team member's right to accept or decline a request to vary their ordinary hours of work on each occasion. The Company also recognises that should a part time team member decline to vary their ordinary hours of work any work performed outside of their ordinary hours of work will be paid at overtime rates of pay.

I note also that any dispute regarding the variation of their hours of work of part-time team members can be raised via the dispute resolution procedure contained in clause 30 of the Agreement.

I trust this clarifies the Company's position and satisfies your remaining concern regarding the variation of a part time team member's hours of work."

[31] Fortified by Ms Walliss' assurances, I have accepted the Undertaking which is now attached to the Agreement.

[32] In accepting the Employer's Undertaking I have also accepted that it is not likely to either cause financial detriment to an employee or result in substantial changes to the Agreement (s.190(3)). I note that under s.191 of the Act the Undertaking is taken to be a term of the Agreement. A copy of the Undertaking is attached to the Agreement.

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

[34] The SDA and the AWU being bargaining representatives for the Agreement have given notice under s.183 of the Act that they wish to be covered by the Agreement. In accordance with s.201(2) of the Act I note that the Agreement covers these organisations.

[35] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 5 June 2012. The nominal expiry date of the Agreement is 30 June 2015.

COMMISSIONER

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28 May 2012

Commissioner Gay
Fair Work Australia
11 Exhibition Street
Melbourne VIC 3000

Dear Commissioner Gay,

Re: Eureka Operations Pty Ltd Fuel and Convenience Agreement 2011 - AG2011/14282

Eureka Operations Pty Ltd hereby undertakes in the application of the Eureka Operations Pty Ltd Fuel and Convenience Agreement 2011 that:

1. Team members under the age of 18 years of age will not be engaged to work between the hours of 9pm and 6.30am or to work unsupervised between the hours of 7pm and 9pm.
2. The positions deemed by the Company to be pay ranged in clause 1.3 of the Agreement refer to the positions of Site Manager and Assistant Site Manager.
3. Where a matter remains unresolved under clause 30.2.3 of the dispute resolution clause, if the team member is not a member of the Union (as defined) then the team member (or their representative) may refer the matter to an appropriate representative of the Company.
4. The Company will not rely on or apply clause 10.1.7b) of the Agreement.
5. Clause 26.2.2 should be read as excluding the references to 'rostered' and instead should be read as referring to 'performs work'. i.e. *If a full time or part time team member performs work on a day to be observed as a public holiday, then all work performed on the public holiday shall be paid at double time (excluding work performed on Christmas Day (25th December), all work performed will be paid at double time.*

Casual team members will be paid the public holiday rates as provided in clause 8.1.3 when work is performed on a public holiday or on Christmas Day (25th December).
6. To clarify the application of clause 10.3.2 (f), a part time team member who has accepted and worked additional hours in accordance with clause 10.1.13 or undertaking 8 below is entitled to be paid overtime where such work is in excess of the provisions listed in parts (a) to (e) inclusive and part (g) of this clause.
7. The Company will not seek to roster part time team members to work more than 38 hours per week or to provide part time team members with additional hours in excess of 38 hours per week without the payment of overtime. As such, instead of the 44 hours per week specified in clauses 10.1.7(a) and 10.3.2(b) 38 hours per week will be applied for part time team members.

8. The Company will not apply clause 10.6.1 of the Agreement. Instead, a part time team member's hours of work may be varied in accordance with the following:

By agreement in writing a part time team member's ordinary hours of work may be varied within the rostering provisions contained in clause 10 of the Agreement.

Where a team member has agreed to vary their ordinary hours, these hours (as varied) will be paid at ordinary rates of pay, and will also count as ordinary hours for the purposes of leave accrual.

Where there is no agreement in writing to vary a part time team member's hours of work the additional hours will be paid at overtime rates of pay.

Where the team member has agreed to vary their hours of work overtime rate of pay will apply to work in excess of the varied hours.

Yours sincerely,



Fiona Walliss
Senior Employee Relations Advisor
Coles

**Eureka Operations Pty Ltd
Fuel & Convenience**

Team Member Agreement

2011



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1. PARTIES TO THE AGREEMENT

1.1 This Agreement is made between *Eureka Operations Pty Ltd* (hereinafter referred to as "the Company") and the *Shop, Distributive and Allied Employees' Association* ("SDA").

This Agreement shall also be binding upon the Australian Workers' Union of Employees, Queensland ("AWU") in respect of team members employed in stores in the Northern and Mackay Districts (as defined in clause 3.1.12).

1.2 This Agreement covers those classifications of Eureka Operations Pty Ltd team members specified in this Agreement at clause 9.2 in all locations operated by Eureka Operations Pty Ltd.

1.3 This Agreement does not cover those positions deemed by the Company to be Pay Ranged (for example, Site Managers and Assistant Site Managers).

2. TITLE

2.1 This Agreement will be known as the ***Eureka Operations Fuel and Convenience Team Member Agreement - 2011*** ("Agreement").

3. DEFINITIONS

3.1 For the purposes of this Agreement the following definitions will apply:

3.1.1 Core Hours are those minimum hours of work agreed between the part time team member and the Company for which the part time team member will be rostered over a four (4) week cycle.

3.1.2 Average weekly ordinary hours – shall mean the total ordinary hours worked during the preceding 12 months (or lesser period if not employed for twelve (12) months) divided by the number of weeks during which the ordinary hours have been worked.

3.1.3. Casual Team Member shall mean a team member covered by the classifications in clause 9.2, engaged by the Company on an hourly basis with a minimum engagement as specified in clauses 10.1.7 or 35.

3.1.4. Company means Eureka Operations Pty Ltd.

3.1.5. Continuous Service shall for the purposes of all entitlements include all service with the Company from the date of engagement as a team member, but shall not include in any anniversary year:

(a) Unauthorised absences of more than one week.

(b) Authorised unpaid absences of more than one week.

(c) Any authorised unpaid absence of more than one week due to sickness.

3.1.6 Crib Break - shall mean paid time during which a Team Member may take a break whilst maintaining customer service.

3.1.7 Meal Break - shall mean an unpaid meal break.

- 3.1.8 Ordinary hours of work means and includes those hours of work which are within the hours of work contained in clause 10 of this Agreement.
- 3.1.9 Ordinary Hourly Rate of Pay – shall mean the ordinary weekly rate of pay as prescribed in clause 8.1.2 of this Agreement divided by 38.
- (i) Time and a Half means the ordinary weekly rate of pay in clause 8.1.2. divided by 38 plus fifty (50) per cent;
 - (ii) Double Time means the ordinary weekly rate of pay in clause 8.1.2. divided by 38 plus one hundred (100) per cent;
 - (iii) Double time and half means the ordinary weekly rate of pay in clause 8.1.2. divided by 38 plus one hundred and fifty (150) per cent;
- 3.1.10 Policies and Procedures mean the policies and procedures of Coles and Company, which may be amended from time to time.
- 3.1.11 Permanent Team Member – shall mean a full-time or part-time employee covered in this Agreement in those classifications in clause 9.2, engaged by the Company on a permanent basis to work an agreed number of ordinary hours, between a minimum of 24 hours and a maximum of 152 hours in any four (4) week cycle.
- 3.1.12 Northern and Mackay district is defined as the area commencing at the sea-coast at 24 degrees 30 minutes of south latitude, thence by that parallel of latitude bearing true west to 151 degrees of each longitude, thence by that degree of longitude bearing true south to 25 degrees of south latitude; thence by that parallel of latitude bearing true west to the western border of the State of Queensland; thence by the western border of the state, bearing true north to 22 degrees 30 minutes of south latitude; thence by that parallel of latitude bearing true east to 147 degrees of east longitude; thence by that degree of longitude bearing true north to 22 degrees of south latitude; thence by that parallel of latitude bearing true east to the sea-coast; thence by the sea-coast southerly to the point of commencement and including the islands adjacent to the Coast within that area excluding the Local Government Areas of Rockhampton and Gladstone.
- 3.1.13 Union - shall mean the Shop, Distributive and Allied Employees' Association or the Australian Workers' Union of Employees, Queensland.

4. OBJECTIVES OF THE AGREEMENT – PRODUCTIVITY, FLEXIBILITY AND EFFICIENCY

- 4.1. The parties agree that the objective of this Agreement should be to increase the productivity, flexible operation, efficiency and prosperity of the Company.
- 4.2. The provisions of this Agreement are aimed at providing the basis for continued, secure and flexible employment through:
- 4.2.1. All Team Members working co-operatively as a team.
 - 4.2.2. The monitoring of performance, attitude and results to ensure that the Company continuously improves productivity and exceeds customer service standards with the aim of achieving or exceeding best practice.
 - 4.2.3. The creation of a safe work environment that fosters teamwork and co-operation amongst team members at all levels of the Company.

- 4.2.4. Team members working flexibly; performing a full range of tasks as directed.
- 4.2.5. Team members understanding and accepting Company policies, procedures, behavioural standards and safety objectives necessary to ensure a safe and efficient operation.
- 4.2.6. Flexible employment and rostering options which allow team members, as far as practicable, to balance work and family responsibilities.
- 4.3 The parties to this Agreement accept that it is important to create a positive impression to customers. Team Members and the Union recognise that the Company has a store dress standard policy, which all Team Members must actively support.

5. PERIOD OF OPERATION

- 5.1 This Agreement commences 7 days following approval by Fair Work Australia and will remain in force until 30 June 2015.

6. RELATIONSHIP TO AWARD AND OTHER INDUSTRIAL INSTRUMENTS

- 6.1. This Agreement operates to the exclusion of and supersedes all federal and state Awards and Agreements with the following exceptions;
 - 6.1.1. Terms and conditions as set out in the modern awards for National Training Wage conditions; however, traineeship wages are governed by clauses 8.1. and 10.3 of this Agreement.
 - 6.1.2. The general order from the Western Australian Industrial Relations Commission concerning location allowances in 8.4.3, shall apply.

7. NO EXTRA CLAIMS

- 7.1 It is agreed by the parties that for the duration of this Agreement:
 - 7.1.1 Team Members covered by this Agreement and the Union will not pursue any extra wage claims, whether Award or over Award;
 - 7.1.2 Team Members and/or the Union and the Company will not seek any changes to conditions of employment
- 7.2 For the sake of clarification, this clause is not intended to limit the ability of the Company to make changes (whether structural or otherwise) in accordance with the provisions of this Agreement.
- 7.3 With the exception of state or territory long service leave legislation and the National Training Wage, it is intended that this Agreement will cover the field of the employment relationship of Team Members of the Company.

8. WAGES

8.1 Wage Rates

8.1.1 The wage rates payable to team members (excluding junior team members – clause 8.2) shall come into force from the first full pay period on or after the dates detailed below:

8.1.2 Weekly Rates of Pay Wages Table: Permanent Team Member, twenty (20) years of age and over.

Classification	1-Oct-11	1-Jul-12	1-Jul-13	1-Jul-14
Team Member*	\$706.26	\$730.28	\$755.84	\$783.05

** Pro-rata for part time team members according to rostered hours worked.*

8.1.3 Hourly rates of Pay - Wage Table: Casual team members, twenty (20) years of age and over

	1-Oct-11	1-Jul-12	1-Jul-13	1-Jul-14
Monday to Friday	\$23.33	\$24.12	\$24.97	\$25.87
Weekends & Public Holidays (except Christmas day)	\$30.33	\$31.36	\$32.45	\$33.62
Christmas Day (25 December)	\$34.76	\$35.94	\$37.19	\$38.53
Overtime *	\$13.23	\$13.68	\$14.16	\$14.67

** The penalty for overtime work is paid in addition to the applicable casual hourly rates of pay, as listed above.*

Casual team members shall be entitled to overtime if such work is authorised where they work in excess of:

- ten (10) hours per day; or
- thirty-eight (38) hours per week or
- 152 hours per four (4) week roster cycle; or
- twenty (20) days in any four (4) week roster cycle; or
- six (6) consecutive days; or
- where less than a ten (10) hour break between rostered hours, except as provided for in clauses 10.1.11 and 10.1.13.

8.2 Junior Team Member

8.2.1. The minimum weekly wage rates for a junior team member shall be determined on the basis of the following percentages of the adult rates of pay, as prescribed in clauses 8.1.2 and 8.1.3:

8.2.2. Junior Team Member Wages Table;

Age	% Rate
18 years and under	70%
19 years	80%
20 years and over	100%

8.2.3 Any wage increase due to a team member, because of an increase in the team member's age, shall apply from the first full pay period following the date of the team member's birthday.

8.3 Payment of Wages

8.3.1. At the option of the Company, wages shall be paid weekly or fortnightly in arrears and within three (3) working days following the end of each pay period, provided that where a public holiday falls between the end of the pay period and the normal pay day, wages may be paid within four (4) working days from the end of the pay period.

8.3.2. Payment of wages is to be made by electronic funds transfer into an account at a financial institution nominated by the Team Member.

8.4 Allowances

8.4.1 Travel Allowance

(a) Permanent team members will receive the payments as set out in sub clause (c) below when required to temporarily work at a location other than work locations nominated in accordance with clause 10.1.12.

Payment will be calculated on the number of kilometres travelled to the temporary work locations from the nearest work locations nominated in accordance with clause 10.1.12.

(b) Where a team member uses their private vehicle on authorised Company business, the allowances detailed in (c) of this clause will apply.

(c) Table of Travel Allowances:

Effective from the first full pay period on or after:	1-Oct-11	1-Jul-12	1-Jul-13	1-Jul-14
Vehicles less than 2000cc	\$0.65 / KM	\$0.67 / KM	\$0.70 / KM	\$0.72 / KM
Vehicles greater than 2000cc	\$0.77 / KM	\$0.79 / KM	\$0.82 / KM	\$0.85 / KM

8.4.2 Meal Allowance

- (a) Permanent team members shall be entitled to the payment of a meal allowance if required to work more than one and half (1.5) hours of overtime after the time of ending a rostered shift, where less than twenty-four (24) hours notice of such overtime has been given.
- (b) The meal allowance amount shall be paid in accordance with the table below and shall come into force from the first full pay period on or after the specified dates:

1-Oct-11	1-Jul-12	1-Jul-13	1-Jul-14
\$12.58	\$13.01	\$13.46	\$13.95

8.4.3 Location Allowance

- (a) Western Australian Location Allowances
 - (i) The Western Australian Location allowances are paid on a weekly basis to those full time team members (pro rata for part time and casual team members) employed in those towns that attract a location allowance outlined in the general order issued by the Western Australian Industrial Relations Commission, in addition to wages prescribed in clauses 8.1 and 8.2.
 - (ii) The weekly location allowance is based upon a 38 hour week. Team members with less than 38 hours per week shall receive a pro rata location allowance. This allowance shall increase in line with the General Order issued by the Western Australia Industrial Relations Commission from time to time.
 - (iii) Where wages are paid fortnightly the location allowance (as shown in Appendix D) will be shown as fortnightly allowances.
- (b) Northern Territory Location Allowances
 - (i) In addition to wages prescribed in clause 8 of this agreement the following location allowances will be paid to those full time team members (pro rata for part time and casual team members) employed in the following areas.
 - (ii) North of the 20th parallel of South Latitude – at a rate of \$16.60 per week.
 - (iii) South of the 20th parallel of South Latitude – at a rate of \$6.70 per week.
 - (iv) No location allowance is payable during the period of annual leave or other leave. However, the allowance is payable during leave on a public holiday.

- (v) The allowance is based upon hours of thirty-eight (38) per week. Those team members with less than thirty-eight (38) agreed core hours will receive the allowance pro rata to their core hours.

8.4.4 Call Outs

Where a team member is required by the Company to attend a site outside of trading hours, they will be paid:

- a) For the time taken to attend the site (including travel time to and from their home to the site). If this is less than the applicable minimum engagement in clause 10.1.7, then the team member will be paid for the minimum engagement.
- b) At the overtime rates and conditions in clause 10.3.3 for permanent team members. The rate for casual team members is specified in clause 8.1.3.

9. EMPLOYMENT

9.1 Categories of Employment

9.1.1. A full time team member is a permanent employee engaged to work 152 hours over a four (4) week cycle.

9.1.2. A part time team member is a permanent team member engaged to work an agreed core number of hours.

- (a) A part time team member, employed prior to 13 December 2008, may be engaged to work an agreed core number of hours between a minimum of twenty-four (24) hours and a maximum of one hundred and forty-eight (148) hours over a four (4) week cycle.

Notwithstanding this, such team member is able to work in accordance with sub-clause 9.1.2 (b) if he/she requests to do so and the Company agrees.

- (b) A part time team member, employed after 13 December 2008, shall be engaged to work an agreed core number of hours of either:
 - (i) A minimum of forty (40) hours and a maximum of one hundred and forty-eight (148) hours over a four (4) week cycle; or
 - (ii) A minimum of one (1) shift per week, which can be a minimum of six (6) hours in duration.
- (c) The agreed core hours of work may be varied in accordance with clause 10, Hours of Work, Rostering Principles and Overtime.

9.1.3. A casual team member is a team member employed on a casual basis and is paid as such in lieu of all leave entitlements with the exception of clause 15, long service leave and clause 18, parental leave.

9.2 Classification

- 9.2.1. Team Member – is a team member who is trained to undertake all aspects of work in a Company location.

9.3 Probationary Status of New Team Members

- 9.3.1. On joining the Company a permanent team member shall be engaged on a probationary period not exceeding three (3) months. During this three (3) month period a permanent team member's employment may be terminated with one week's notice.

9.4 Merit Selection

- 9.4.1. In respect of promotions, reclassifications and reassignments of positions all Team Members will be selected for positions on the basis of merit and at the sole discretion of the Company.

9.5 Responsibilities and Duties

- 9.5.1. It is expected that Team Members will:
- (a) As a condition of employment to work honestly, diligently, and to the best of their ability, serve, promote and protect the interests of the Company.
 - (b) Not undertake any private trading or other employment that could affect their ability to properly and safely perform their position or could result in a conflict of interest between the Team Member and the Company. Team members cannot be employed by any direct fuel competitor of the Company whilst employed by the Company.
- 9.5.2. All team members may be required by the Company, at the Company's discretion and cost, to be multi-skilled and to undertake any level of training necessary to facilitate that multi-skilled requirement, broaden their skills or increase their productivity.
- 9.5.3. Team members may be required to work in any area of a Company location and to undertake any duties as reasonably required by the Company.
- 9.5.4. Team members may be required to assist in the training of other team members, labour hire employees and contractors as it is deemed necessary or required by the Company.
- 9.5.5. The requirements of this clause shall all be subject to safe work practices and commensurate with the team member's training, skill and competence to perform such duties, responsibilities or directions in a satisfactory and safe manner.

9.6 Saved Existing Team Members

- 9.6.1. These provisions set out those conditions of employment for team members who were employed by the Company prior to 13 December 2005 and continue to be employed.

9.6.2. For the purpose of this clause 'existing team member' shall mean a full time, part time and casual team member employed by the Company immediately prior to 13 December 2005.

9.7 Existing Casual Team Members

9.7.1 A casual team member employed prior to 13 December 2005 may remain a casual team member. However, by mutual agreement between the team member and the Company a team member may seek to convert to a full time or part time team member.

9.7.2 If a casual team member decides and the Company agrees to convert the team member to a full time or part time team member, the terms of this agreement will apply from the day of conversion.

9.8 Existing Part-time Team Members

9.8.1 Part-time team members employed prior to 13 December 2005, will maintain their minimum daily engagement of three (3) hours.

9.8.2 Part-time team members employed prior to 13 December 2005, will not be subject to clause 10.6.2. Decreasing agreed core hours.

9.9 Introduction of Saved Margin for Full-Time and Part Time Team members

9.9.1 The provisions in this clause outline protections for those existing full time and part time team members employed by the Company prior to 13 December 2005 and who received loadings, penalties and Allowances under the Federal Vehicle Industry Repair, Services and Retail Award 2002 ("the relevant Award").

9.9.2 The team member Saved Margin ensures that permanent team members employed prior to 13 December 2005 continue to receive wage increases and maintain their current level of remuneration when compared against the conditions in this agreement. Team members Saved Margin shall be calculated in the following way;

- (a) The Saved hourly margin shall be calculated on the permanent team member's roster arrangements immediately prior to 13 December 2005 on the following basis:
 - (i) Determine the weekly dollar amount of the team member's ordinary rate of pay from the relevant Award plus any penalties and loadings, for rostered hours of work and divided by the team member's average weekly ordinary hours; and
 - (ii) Compare the amount determined in paragraph 9.9.2.(i) above to the team member's relevant rate specified in this Agreement, which would apply to the same roster.

- (b) Where:
 - (ii) the relevant Agreement rate for a permanent team member is greater than the Award rate determined in paragraph 9.9.2.(i) above, then the Agreement rate shall apply to the team member; or
 - (iii) the relevant Agreement rate for a permanent team member is less than the Award rate determined in paragraph 9.9.2.(i) above, then the team member shall be deemed to be a Saved Margin Team Member, and shall accordingly receive the higher amount determined in paragraph 9.9.2.(i), together with increases over the life of the Agreement, as defined in clause 9.9.3.
- (c) Permanent Team members with a saved margin will be converted to an hourly saved margin rate and recorded in the payroll system.
- (d) The Saved Margin is paid in addition to the hourly rate applicable under the Agreement subject to 9.9.3 except:
 - (i) For the calculation if overtime is worked; or
 - (ii) For the calculation of leave loading,

In which case the agreement rate is applicable and saved margin will not be paid.
- (e) Permanent team members to whom a saved margin applies are 'Saved existing team members' that are employed as full time or part time. Team members to whom a saved margin does not apply will be paid rates of pay and terms and conditions in accordance with this Agreement.

9.9.3. Wage Increases.

- (a) The following pay increases are applicable to saved full time team members (pro rata for part time) employed prior to 13 December 2005:
- (b) First increase payable – 1 October 2011.

Full time team members (pro rata for part time) will receive a minimum of 50% of the 1 October 2011 increase converted to an hourly amount. The remaining percentage of the 1 October 2011 increase will be converted to an hourly amount and will be absorbed into any Saved Margin.
- (c) Second increase payable on 1 July 2012.

Full time team members (pro rata for part time) will receive a minimum of 50% of the 1 July 2012 increase converted to an hourly amount. The remaining percentage of the 1 July 2012 increase will be converted to an hourly amount and will be absorbed into any Saved Margin.

- (d) Third increase payable on 1 July 2013.

Full time team members (pro rata for part time) will receive a minimum of 50% of the 1 July 2013 increase converted to an hourly amount. The remaining percentage of the 1 July 2013 increase will be converted to an hourly amount and will be absorbed into any Saved Margin.

- (e) Fourth increase payable on 1 July 2014.

Full time team members (pro rata for part time) will receive a minimum of 50% of the 1 July 2014 increase converted to an hourly amount. The remaining percentage of the 1 July 2014 increase will be converted to an hourly amount and will be absorbed into any Saved Margin.

9.9.4 General Provisions

- (a) Provided further that team members employed prior to 13 December 2005 shall not be intentionally terminated to provide for new team members earning a lower rate of pay under this Agreement.
- (b) Rosters shall not be changed or other team members utilised in place of saved team members merely for the purpose of avoiding these Savings Provisions.
- (c) The saved margin will continue to apply until absorbed by the wage increases as outlined in clause 9.9.3 above. If a team member seeks to change their roster hours permanently from award penalty hours to agreement penalty hours then the saved margin will no longer apply. E.g. changing from night shift to day shift the saved penalty no longer would apply but changing the shift from Monday night to Tuesday night would continue to have the saved rate apply.

9.9.5 Saved Margin Buy-Out

Where there is mutual agreement between the Company and the team member, the Company can make a payment to such team member to buy-out an entitlement to a saved margin as above. The team member shall respond to any offer by the Company to buy-out the entitlement with 14 days of the offer being made. Where a buy-out has occurred, such team member will no longer have an entitlement to the saved margin that has been bought out.

The SDA are to be informed of the offer to the team member if they are a member of the Union.

10. HOURS OF WORK, ROSTERING PRINCIPLES AND OVERTIME

10.1 Hours of Work

- 10.1.1 The parties to this agreement acknowledge that the Company requires full flexibility in its operation and accordingly may require its stores to operate twenty-four (24) hours per day, seven (7) days per week.

- 10.1.2 Permanent team members will be provided with a roster seven (7) days in advance.
- 10.1.3 Where changes in rostering are required for permanent team members, the Company will give seven (7) days notice of the requirement to change rosters. Where unforeseen circumstances occur, less than seven (7) days notice may be given to enable the store to continue to operate.
- Should a permanent team member disagree with any permanent roster change, they shall be provided with a minimum fourteen (14) days' written notice in lieu of seven (7), during which time there shall be discussions aimed at resolving the matter in accordance with clause 30 - Dispute Settlement Procedure, as provided in this Agreement.
- 10.1.4 Notwithstanding clause 10.1.3 above, a team member's roster may be changed by mutual agreement without the need for such notice.
- 10.1.5 Team members may swap rostered hours with other team members in the same store provided;
- (i) It is by mutual agreement between team members concerned; and
 - (ii) The Company management have approved the swap of hours before they occur;
 - (iii) Team members concerned will receive the benefits and pay for the actual hours worked.
- 10.1.6 Ordinary hours of work can be worked on any day from Monday through to and including Sunday from 12 midnight for a period of twenty-four (24) hours.
- 10.1.7 (a) A four (4) hour minimum daily engagement applies to full time team members. Three (3) hours minimum start will apply to part time and casual team members. Team Members may work up to ten (10) ordinary hours per day (exclusive of unpaid breaks) and a maximum of forty-eight (48) hours a week for full-time team members, forty-four (44) hours in a week for part-time team members and thirty-eight (38) hours in a week for casual team members.
- (b) In any week of December, January, school holidays and at Easter the maximum weekly hours will be forty-eight (48) hours in a week for part-time team members in accordance with subclause 10.6.1.
- 10.1.8 A team member may be rostered to a maximum of six (6) consecutive days.
- 10.1.9 A team member may be rostered to a maximum of twenty (20) days in any four (4) week cycle.
- 10.1.10 Team members will be rostered to receive two (2) consecutive days off in a week or three (3) consecutive days off in a fortnight provided that:
- (a) The days off referred to need not be consecutive if a team member, who has been employed by the Company for more than 3 months, requests this in writing and the Company agrees. The Company shall retain this written request and in the event of a dispute will forward a copy to the relevant SDA Branch Secretary, if the team member requests this; and

- (b) A team member may revoke in writing, with four (4) weeks' notice, any request made and will then have their consecutive days off entitlement restored by the Company; and
 - (c) At no time may the Company make such a request a condition of employment or of changed employment status.
- 10.1.11 Team members will receive a minimum break between engagements of ten (10) hours. Provided that where there is mutual agreement, a lesser break can apply if the team member has worked less than six (6) hours continuously (excluding meal breaks), or where two (2) starts are worked in one day in accordance with Clause 10.1.13.
- 10.1.12 Team members may be engaged to work at more than one (1) work location as follows:
 - (a) The Company will nominate and advise such work locations through discussions with the Team Member. The team member may request to vary the work locations and the Company may agree to the request. Such variations will be in writing.
 - (b) Team members who do not work at more than one site may request to work at more than one site. Any agreement with the Company will be in writing.
- 10.1.13 By agreement a part-time or casual team member may be engaged to work two (2) starts each day to cover unforeseen circumstances, provided that:
 - (a) There are no more than two (2) starts on any one (1) day;
 - (b) The minimum daily engagement of three (3) hours applies to both starts provided that the total ordinary hours worked for that day is not more than ten (10) hours.
- 10.1.14 When establishing or changing a roster, the Company will have regard for the family responsibilities and study commitments of the team member and whether the team member has safe transport home.
- 10.1.15 Requests for flexible working arrangements
 - (a) A team member who is a parent or has responsibility for the care of a child may request a change to their working arrangements to assist the team member to care for the child subject to:
 - (i) permanent team members having completed at least 12 months of continuous service immediately prior to making the request; or
 - (ii) casual team members being a long term casual immediately prior to making the request and the team member has a reasonable expectation of ongoing employment on a regular and systematic basis; and
 - (ii) the child must be under school age or under 18 if the child has a disability.

- (b) A team member's request must be in writing and must set out the details of the change sought and the reasons for the change. The relevant Manager must reply in writing within 21 days stating whether the request is granted or refused and if refused the reasons for refusal.

10.2 Penalty Payments

The following penalty payments apply to permanent team members:

- 10.2.1 Work between Midnight and 6am Monday to Friday (inclusive) shall be paid at the ordinary hourly rate plus 30%.
- 10.2.2 All ordinary hours worked between midnight Friday and 12-noon Saturday shall be paid at the ordinary hourly rate plus 30%. All ordinary hours worked from 12-noon Saturday to midnight Saturday shall be paid at the ordinary hourly rate plus 50%.
- 10.2.3 All ordinary hours worked on Sunday shall be paid at the ordinary hourly rate plus 50%.
- 10.2.4 The above penalty payments will not be taken into account in the calculation of overtime or in the calculation of any allowance, nor will they be paid with respect to any work for which any other form of penalty payment is made under this Agreement.

10.3 Overtime

- 10.3.1 Team members will be required to work reasonable overtime, and will be entitled, where overtime is authorised, to payment at appropriate overtime rates.
- 10.3.2 Permanent team members shall be entitled to overtime if such work is authorised where they work in excess of:
 - (a) ten (10) hours per day or;
 - (b) forty-eight (48) hours per week for full time team members and 44 hours for part time team members (48 hours per week where a part time team member has been offered and accepted additional hours of work in any week of December, January, at Easter and during school holidays in accordance with clause 10.1.7(b)) or;
 - (c) 152 hours per four (4) week roster cycle for a full time team member and 148 hours for a part-time team member;
 - (d) twenty (20) days in any four (4) week roster cycle;
 - (e) six (6) consecutive days;
 - (f) Overtime does not apply where a part-time team member has accepted and worked additional hours in accordance with clause 10.6 or clause 10.1.13; or
 - (g) Where less than a ten (10) hour break between rostered hours, except as provided for in clauses 10.1.11 and 10.1.13.

- 10.3.3 Authorised overtime will be paid to permanent team members at the following rates:
- (a) Monday to Saturday all authorised overtime will be paid at time and a half for the first three (3) hours and double time there after;
 - (b) Sunday: paid at double time;
 - (c) Public Holiday: paid at double time;
 - (d) Christmas Day (25th December each year) at double time and a half.
- 10.3.4 Each day will stand-alone (i.e. overtime will be treated on a daily basis and will be non-cumulative).
- 10.3.5 Casual team members shall be entitled to overtime in accordance with the terms and conditions in clause 8.1.3.

10.4 Time off in lieu of overtime

- 10.4.1 By agreement with the Company, a team member may elect to take time off in lieu of overtime provided:
- (a) Any such agreement is reached prior to working the overtime; and
 - (b) The time off in lieu of overtime will be calculated at the overtime equivalent; and;
 - (c) Time off in lieu of overtime must be taken at a time convenient to the Company, within forty-two (42) days of working the overtime.

10.5 Breaks

- 10.5.1 At the option of the Company, a team member working continuous hours shall be granted either:
- (i) Meal and rest breaks, in accordance with clause 10.5.2; or
 - (ii) Crib breaks, in accordance with Clause 10.5.3.
- 10.5.2 Meal and Rest Breaks
- (a) A team member shall be entitled to an unpaid meal break after five (5) hours continuous work, or by mutual agreement the team member may take a meal break after six (6) hours work. Meal breaks shall be unpaid and for not less than thirty (30) minutes and not more than sixty (60) minutes in duration.
 - (b) A team member shall also be entitled to a paid rest break of ten (10) minutes duration if rostered to work more than four (4) hours. This break is to be taken within the first four (4) hours worked and at a time assigned by the Company. Customer service should not be interrupted as a result of this break.
 - (c) A further ten (10) minute paid rest break shall be provided to a team member if rostered to work 7.5 hours or more, provided that this second paid rest break is taken after the first four (4) hours of work are completed and at a time assigned by the Company. Customer service should not be interrupted as a result of this break.

- (d) The Company may reasonably require a team member to change the timing of a scheduled meal break or rest break to meet operational requirements, but shall comply with the other provisions for taking such breaks.

10.5.3 Crib Breaks

In lieu of providing meal and rest breaks as defined above in sub-clause 10.5.2 above, the Company may provide team members, who are rostered to work continuously for more than five (5) hours, with a paid twenty (20) minute crib break, during which time customer service must be maintained. Such break(s) shall be counted as time worked.

Where there are two or more team members working at the site (including the Site Manager or Assistant Site Manager), a team member may take their crib break away from the counter. The team member may be asked to assist with maintaining customer service where there is an unforeseen safety or security need at the site or where there is a large influx of customers.

10.6 Flexible Hours Arrangement

10.6.1 In conjunction with, or in addition to any rostered start, a part-time team member may be offered additional hours on a voluntary basis, provided that such additional hours shall be offered:

- (a) in accordance with the relevant roster principles;
- (b) on the basis that the additional hours worked will be ordinary hours worked for the purpose of all leave entitlements; and
- (c) Such hours are worked on a voluntary basis and are paid at the Ordinary Hourly Rate as defined in clause 3.1.9 plus any penalty applicable as prescribed in clause 10.2 or 26.2.2.

10.6.2 Decreasing agreed core hours:

- (a) A part time team member's core hours may be reduced due to the operational need of the Company, by up to a maximum of 20% per anniversary year provided that:
 - (i) two (2) weeks' notice of such reduction is given to the team member concerned; and
 - (ii) hours are not reduced below twenty-four (24) hours over a four (4) week cycle.
 - (iii) Where additional permanent hours become available in the work locations at the time where a team member who had his/her previous hours worked reduced, then that team member will have preference ahead of team members who had no reduction in hours and new team members, to the additional hours of work.

11. SICK LEAVE

11.1 Sick Leave Entitlement

- 11.1.1 A team member, other than a casual, is entitled to sick leave in circumstances where the team member cannot attend work as rostered due to a personal illness, or injury, of the team member.
- 11.1.2 A full-time team member is entitled to seventy-six (76) hours of paid sick leave (pro-rata for part-time team members) upon commencement of employment and thereafter upon the anniversary of each year of continuous service.
- 11.1.3 Payment whilst on paid sick leave will be at the team member's ordinary hourly rate of pay for the hours normally rostered to work.
- 11.1.4 A team member shall not be entitled to paid sick leave for any period in respect of which they are entitled to Workers' Compensation.

11.2 Notification and Documentation Requirements Sick Leave

- 11.2.1 Team members who are unable to attend for work as scheduled, due to either illness or injury must:
 - (a) Where practical, notify their manager on duty, four (4) hours prior to the commencement of their hours of their inability to attend for duty and, as far as reasonable, the nature of the illness or injury and the estimated duration of the absence.
 - (b) During extended absences, greater than one (1) week, contact their Manager weekly and advise them of the expected date of return to work.
- 11.2.2 A full-time or part-time team member shall be entitled to two (2) single shift absences without a medical certificate or statutory declaration in any anniversary year. Provided that for any additional single shift absences, at the Manager's discretion, evidence may be requested to receive payment.

For all absences of two (2) or more consecutive days sick leave, the team member must provide a medical certificate. If it is not reasonably practicable for the team member to provide a medical certificate, a statutory declaration may be provided.

A medical certificate from a registered health practitioner or statutory declaration shall be deemed satisfactory evidence to receive payment.

Where a team member is absent on the day before or the day after a public holiday the Company requires satisfactory evidence that the absence was caused through illness or injury. A medical certificate from a duly qualified medical practitioner or statutory declaration shall be required to receive payment.

- 11.2.3 Where possible, team members shall schedule planned medical appointments outside of work hours. Sick Leave for planned medical appointments must be notified to the Team Member's manager as far in advance of the planned leave commencement as possible, and an Application for Leave form completed and submitted.

12. CARERS/FAMILY LEAVE

Carer's leave is for the purpose of meeting caring responsibilities as outlined in this clause.

12.1 Paid Carer's Leave

A team member, other than a casual, is entitled to use their accrued sick leave entitlement in circumstances where the team member cannot attend work as rostered due to the need to provide care or support to a member of the team member's immediate family, or a member of the team member's household:

- (a) who requires care or support due to a personal illness, or injury, of the member; or
- (b) who requires care or support due to an unexpected emergency affecting the member.

Entitlement to carer's leave is on the basis that the team member seeking carer's leave is the most suitable person, in the circumstances, to provide such care or support.

12.2 Annual Paid Carer's Leave

Where a full-time or part-time team member has taken seventy-six (76) hours' paid carer's leave (pro rata amount for part-time team members) in an anniversary year an additional 7.6 hours' paid carer's leave (pro rata for part-time team member members) may be accessed. This leave is not deducted from the team member's accrued sick leave and is not available for the use of sick leave. This leave for each anniversary year will stand-alone and is not cumulative.

12.3 Unpaid Carer's Leave

- (a) A team member (including a casual team member) is entitled to a period of up to two (2) days' unpaid carer's leave for each occasion that a member of the team member's immediate family or household requires care and support due to that person being ill, injured or affected by an unexpected emergency. The two (2) days can be taken in a single continuous period of up to 2 days or any separate periods as agreed between the Company and the team member.
- (b) A permanent team member is only entitled to unpaid carer's leave once their paid carer's leave in accordance with clauses 12.1 and 12.2 has been used.

12.4 Notification and Documentation Requirements

- (a) The team member will provide the Company with notice as soon as is reasonably practicable of their intention to take carer's leave, a satisfactory explanation of the reason for the leave and the estimated duration of absence.
- (b) Reasonable proof of absence may be required by the Company to grant carer's leave.

12.5 Immediate Family Member

For the purposes of this clause, immediate family member shall include spouse (including former, de facto, a former de facto spouse and same gender partner), child, (including adult, step, adopted, ex nuptial or foster child), parent (including step-parent), father-in-law, mother-in-law, grandparent, grandparent-in-law, grandchild, brother, sister, brother-in-law, and sister-in-law of the team member.

12.6 Make-up Time

- (a) A team member may elect, with the consent of the Company, to work 'make-up time', under which the team member takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the Agreement.

For example: a team member may take three (3) hours off during their rostered shift on a Monday for personal reasons, by agreement with their manager, but will work an additional three (3) hours that week to make up the time. Their pay would not vary in that week providing that all three (3) hours are worked as ordinary hours in accordance with clause 10 – Rostering Principles. Regard should also be had for clauses elsewhere in this Agreement which deal with meal breaks, rest pauses, meal allowances and overtime.

13. COMPASSIONATE LEAVE

- 13.1.1 A maximum of five (5) days paid Compassionate Leave will be granted (on production of satisfactory evidence) to full-time or part-time team members on each occasion of the death in Australia of a team member's spouse or child. "Child" includes foster or step child". "Spouse" includes de-facto spouse and same gender partner.
- 13.1.2 A maximum of three (3) days paid Compassionate Leave will be granted (on production of satisfactory evidence) to full-time or part-time team members on each occasion of the death in Australia of the team member's parent, sister, brother, step-child, grandparent, grandchild or parent-in-law. "Parent" includes step and foster parents.
- 13.1.3 A maximum of one (1) paid shift to attend the funeral of other close relatives may be granted to full-time or part-time team members (on production of satisfactory evidence).
- 13.1.4 In addition to the compassionate leave entitlement in clauses 13.1.1, 13.1.2 and 13.1.3 above, a team member is entitled to an additional two days of unpaid compassionate leave for the purpose of attending a funeral overseas. If further unpaid leave is required, a team member may apply for an unpaid leave of absence in accordance with clause 16 which shall not be unreasonably withheld.

13.2 Entitlement Due to Serious Illness/Injury

- 13.2.1 A full-time or part-time team member is entitled to a period of two (2) shifts of paid compassionate leave (either as a continuous period or as single shifts of leave) for

the purposes of spending time with a member of the team member's immediate family (as defined in clause 12.5) or a member of the team member's household who has contracted or sustained a personal illness/injury that poses a serious threat to his or her life.

- 13.2.2 Team members may access this entitlement for each occasion of serious illness/injury.
- 13.2.3 Leave taken pursuant to sub-clause 13.2.1 can be taken at any time while the illness or injury persists.
- 13.2.4 On production of satisfactory evidence, payment whilst on leave will be at the team member's ordinary time earnings.
- 13.2.5 A casual team member is entitled to two (2) days of unpaid Compassionate Leave where a member of their immediate family (as defined in clause 12.5) or their household dies or contracts or develops an illness or injury that poses a serious threat to their life.

14. ANNUAL LEAVE

14.1 Entitlement

- 14.1.1 Full time team members are entitled to 152 hours of annual leave for each year of continuous service. A team member's entitlement to annual leave accrues progressively during each year.
- 14.1.2 Part time team are entitled to annual leave on a pro-rata basis.
- 14.1.3 Annual leave shall be taken at a time mutually agreed upon between the team member and the Company, and be taken within one (1) year of the leave falling due.

Where a team member wishes to change the agreed period of leave, the team member and the Company must mutually agree to the new period of leave.

- 14.1.4 The Company may, subject to adequate notice, direct the team member to take annual leave if the annual leave accrual is more than the equivalent annual leave accrual of twelve (12) months continuous employment.
- 14.1.5 A permanent team member taking annual leave shall receive the ordinary hourly rate of pay plus a loading of 17.5 per cent for the applicable hours of leave taken.
- 14.1.6 Upon request, a team member taking approved annual leave will be paid in advance of the leave being taken.
- 14.1.7 Where a public holiday as outlined in clause 26, Public Holidays, to which the team member is entitled falls within a period of Annual Leave, that day is treated as a public holiday (day off with pay, based on ordinary hours of work and will not be deducted from their annual leave entitlement).
- 14.1.8 If the period during which a team member takes annual leave includes a period of any other leave (other than unpaid parental leave), the team member is taken not to be on paid annual leave for the period of that other leave or absence. The other

leave will be taken in accordance with the applicable leave provisions in this Agreement.

- 14.1.9 When the employment of a permanent team member terminates, the team member shall be paid out any outstanding accrued Annual Leave, calculated at the team member's ordinary hourly rate of pay, as at the date of termination.

14.2. Cashing out of Annual Leave

- 14.2.1 A full time team member may, with the agreement of the Company, request in writing to cash out up to two (2) weeks of his or her accrued annual leave entitlement during each twelve (12) month period (pro rata for part time team members). Annual leave cannot be cashed out in advance of it being credited to the team member.
- 14.2.2 Cashed out annual leave will be paid at the team member's ordinary hourly rate of pay including any applicable penalties for their ordinary rostered hours, as at the date the election is made, plus a loading of 17.5 per cent for the applicable hours being cashed out.
- 14.2.3 This cashing out of annual leave shall be made so that the team member must have a minimum of one hundred and fifty-two (152) hours annual leave entitlement (or pro rata for part-time team members) remaining after the cash out has occurred. This clause will not affect the team member's right to reasonable rest and recreation.

15. LONG SERVICE LEAVE

Team members will be entitled to long service leave in accordance with State or Territory Long Service Leave legislation applicable to the location where the Team Member is working.

16. UNPAID LEAVE OF ABSENCE

- 16.1 Full-time and part-time team members who have completed fifty-two (52) weeks continuous service with the Company are eligible to apply for unpaid Leave of Absence. Granting of such leave must be authorised by the Company. The maximum period of absence on any one occasion may be up to twelve (12) months.

Whilst not exhaustive, unpaid Leave of Absence may be granted for one of the following reasons:

- a team member who is studying and requires time to attend exams or participate in annual school holidays;
- a team member who wishes to travel overseas for an extended period;
- a team member who requires time off to care for a sick or injured close relative;
- a team member who wishes to return to studies on a full-time basis.

All outstanding paid leave entitlements the team member is eligible to apply for must be taken prior to the period of absence, unless otherwise agreed.

Where a full-time or part-time team member proceeds on authorised unpaid Leave of Absence of one (1) week's duration or more, all entitlements to Annual Leave, Sick leave or Long Service Leave will be frozen from the date of commencing leave to the date of returning from such leave.

Such absence shall not break continuity of employment for the team member concerned.

17. JURY SERVICE

- 17.1. If a permanent team member is called for jury service, the team member must notify the Company as soon as possible. Where a team member is not excused from such service, the Company will pay the difference between the team member's normal ordinary earnings and the amount received in respect of Jury service.
- 17.2. Where a team member is excused from jury service, they will not be expected to return to work for any hours on the same day unless the team member requests, and the Company agrees to, the team member returning to work.
- 17.3. To receive payment for jury service in accordance with clause 17.1, a Team Member must provide to the Company:
- (a) proof of their requirement to attend jury service; and
 - (b) proof of actual attendance; and
 - (c) proof of jury fees received for such service.
- 17.4. As provided in clause 14.1.8 the team member's annual leave entitlement shall be re-credited for any period that they are required to attend for jury service during annual leave, subject to appropriate proof.

18. PARENTAL LEAVE

- 18.1 Parental leave (unpaid maternity, paternity or adoption leave) shall apply to permanent team members with twelve (12) months' continuous service and only apply to eligible casual team members as per Appendix A (Parental Leave) clause 1.13, of this Agreement.
- 18.2 Provided that, if a team member has six (6) months' continuous service, the team member will be entitled to a combined total of twenty-six (26) weeks Parental Leave in accordance with the provision of Appendix A.

19. PRE-NATAL LEAVE

A full-time or part-time team member:

- (a) who is pregnant may access Sick Leave for the purpose of attending medical appointments associated with the pregnancy; or
- (b) Carer's Leave for the purpose of attending medical appointments associated with the pregnancy with their partner.

Where possible team members should arrange appointments as close as possible to the beginning or ending of their ordinary working hours.

The team member is to provide reasonable notice to the Company of their requirement to attend an appointment.

The Company may require the team member to provide proof of attendance in accordance with the evidence requirements of clause 11.2 (Sick Leave) or clause 12.4 (Carer's Leave).

Sick Leave/Carer's Leave will be deducted from the team member's accrued entitlement based on the actual time taken to attend each appointment.

20. DEFENCE FORCE SERVICES LEAVE

- 20.1 A permanent or casual team member can take leave to attend Defence Forces Reserve approved training. The team member must provide the Company with four (4) weeks' notice prior to the training.
- 20.2 Upon proof of attendance and payment, the Company will reimburse the difference between the payment received for attendance at the training and the amount of ordinary time earnings the team member would have received during that period.
- 20.3 Casual team members are entitled to unpaid Defence Force Services Leave.

21. EMERGENCY SERVICES LEAVE

- 21.1 A team member involved in recognised voluntary services e.g. SES, fire fighting, are entitled to time off to attend to emergency situations. Paid time off for permanent team members (with proof of attendance) shall be at ordinary time rates to attend to emergency situations for up to a maximum of three (3) days per local situation or two (2) days per annum for non-local situations.
- 21.2 These may be increased depending upon the nature of the emergency, for example major bushfires, subject to the relevant manager's approval, to a maximum of five (5) days per occasion.
- 21.3 Casual team members are entitled to unpaid Emergency Services Leave.

22. NATURAL DISASTER LEAVE

Where a yellow alert (Western Australia) or Cyclone Warning (Queensland or Northern Territory) is announced for cyclones, or there is a natural disaster (e.g. flooding or bushfires), which poses a genuine threat to a team member's property or creates a need for a team member to care for their children, the team member shall be allowed to leave work. In such circumstances, permanent team members can access up to two (2) paid days leave, non cumulative, per annum (pro rata for part time team members).

23. BLOOD DONOR LEAVE

- 23.1 Permanent team members are entitled to paid leave (with proof of attendance) of up to two (2) hours per occasion, up to a maximum of four (4) occasions each anniversary year, for the purposes of donating blood.
- 23.2 The Company must be notified in advance of taking the leave. The leave will be taken on a day suitable to the Company and be as close as possible to the start or end of the team member's hours.

24. TRADE UNION TRAINING LEAVE

- 24.1. Subject to the following conditions, elected Union Delegate(s) or appointed Union Representative(s) shall be granted leave with pay to attend courses conducted or approved by the SDA which are designed to promote good industrial relations and industrial efficiency:
 - 24.1.1 No more than five (5) paid shifts shall be granted in any store in any calendar year.
 - 24.1.2 No more than one (1) team member in a Company retail area shall be on such leave at any time.
 - 24.1.3 Untaken paid leave shall not accrue from year to year or be transferred from one store to another.
- 24.2 Applications to attend courses shall be in writing and shall include details of the type and content of the course to be attended and the dates upon which the course is to be conducted. Applications shall be made not less than one calendar month before the intended course, or such lesser period as may be agreed between the Company, the Union and the team member concerned.
- 24.3 Once received, applications shall be approved by a relevant Company Retail Area Manager or above, subject to the Company's ability to maintain normal store operating requirements and clause 24.1.2 above.
- 24.4 Only team members who have completed six (6) months continuous service with the Company shall be eligible for leave pursuant to this clause.
- 24.5 Leave granted pursuant to this clause shall count as service for all purposes of this Agreement.
- 24.6 Any team member on paid leave in accordance with this clause shall receive the ordinary rate of pay for the period of absence.
- 24.7 Team members attending a training session shall not be required to work a shift on that day.
- 24.8 The Company shall not be required to pay any other costs associated with such leave.
- 24.9 On completion of the course the team member shall, in order to be paid, provide proof satisfactory to the Company of their attendance at the course, and upon

request, inform the Company of the nature of the course and their observations of the course.

25. LAWFUL DIRECTIONS AND WORK PRACTICES

25.1. Lawful Directions and Duties

25.1.1. The parties to this Agreement agree that workplace flexibility is a condition of employment of all team members. All team members that are employed by the Company under the provisions of this Agreement, and on that basis each team member will carry out reasonable and lawful directions and duties that are within their skill, competency and training provided that the team member is capable of performing the work in a safe manner, as they may be called upon to do from time to time on a permanent basis.

26. PUBLIC HOLIDAYS

26.1.1. Permanent team members shall be entitled, without loss of pay, to the following public holidays, New Year's Day, Australia Day, Good Friday, Easter Saturday (except Tasmania), Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day.

26.1.2. Permanent team members will be entitled to another day in addition to the days named in clause 26.1.1. above, or in lieu of where stated, as follows:

- (a) NSW – the first Tuesday in November;
- (b) VIC – Melbourne Cup Day. Provided that Melbourne Cup Day is taken as a public holiday in lieu of a local day being proclaimed or gazetted in a locality outside the metropolitan area;
- (c) SA – Adelaide Cup Day;
- (d) TAS – in lieu of Easter Saturday, Show Day, and in addition Hobart Regatta Day (south of Oatlands) or Recreation Day (where Regatta Day is not observed);
- (e) ACT – Canberra Day;
- (f) WA – Foundation Day;
- (g) NT – Picnic Day;
- (h) QLD – Exhibition (Peoples) Day or the appropriate regional show day.

26.1.3 Permanent team members shall be entitled without loss of pay to an additional public holiday in a State or Territory or locality when such public holiday is proclaimed, legislated or gazetted by the authority of the Commonwealth Government or of a State or Territory Government and such proclaimed, legislated or gazetted holiday is to be observed generally by persons throughout the State or Territory or a locality.

- 26.1.4 If a day (or part day) is substituted by the law of a State or Territory then the substituted day (or part day) is the public holiday and the original day is not a public holiday.
- 26.1.5 If the Commonwealth, State or Territory Government proclaims, legislates or gazettes an additional day for one (1) of the days in clauses 26.1.1. and 26.1.2. then these additional days will be taken as public holidays on the day proclaimed, legislated or gazetted.

26.2 Work and Rates of Pay on Public Holidays and Christmas Day (25 December)

26.2.1 Work on a Public Holiday

- (a) Work performed on a public holiday will be voluntary.
- (b) The Company will call for volunteers at least 4 weeks prior to a public holiday. Volunteers can nominate to work at a different site/s. Where more team members volunteer than required, preference will be given to the team member/s who are normally rostered to work these hours.
- (c) Where an insufficient number of team members have volunteered to work on the public holiday, the Company may reasonably request a team member to work their normal rostered shift. A team member may refuse the request if he or she has reasonable grounds for doing so, including but not limited to religious or family reasons.
- (d) The arrangements in clause 26.2.1 (a), (b) and (c) will also apply to Christmas Day (25 December) where it is not a public holiday.

26.2.2 Rates of Pay on Public Holidays and Christmas Day (25th December)

If a full-time or part-time team member is rostered to work on a day to be observed as a public holiday, then all work performed on the public holiday shall be paid at double time (excluding work performed on Christmas Day (25th December)). Where a permanent team member is rostered to work on Christmas Day (25 December), all work performed will be paid at double time and a half.

Casual team members will be paid the public holiday rates as provided in clause 8.1.3 when rostered to work on a public holiday or on Christmas Day (25th December).

26.3 Hours of work that fall over two (2) days

- 26.3.1. Where a permanent team member's rostered hours falls before and/ or after a public holiday, those hours worked on the public holiday will be paid at public holiday rates, those hours of the shift that are worked outside of the public holiday will be paid at normal rate of pay for those hours.

26.4. Permanent Team Members working non-standard hours

- 26.4.1. The following team members will be entitled to be paid an additional days wages (or time off in lieu) (subject to the exclusions in clause 26.4.3.) where a public holiday falls on a day the team member is not rostered to work:

- (a) Full-time team members;
 - (b) Part-time team members who work an average of five (5) days a week;
- 26.4.2 For the purpose of clause 26.4.1. "Day off" shall mean the average number of hours rostered per day by the team member in the four (4) week cycle prior to the public holiday.
- 26.4.3 A permanent team member who works a standard Monday to Friday roster shall not receive compensation for Easter Saturday or Anzac Day when it falls on a Saturday or Sunday.

27. OCCUPATIONAL HEALTH AND SAFETY

27.1 Application of State Laws

- 27.1.1. The Company, team members and the Union, will honour their obligations and duties under any applicable law relating to workplace health and safety; and the rights and duties of any persons or authority who has any power relating to the monitoring, implementation, inspection, enforcement or prosecution of any matter arising under such laws; and the operation and application of such laws.
- 27.1.2. The parties to the agreement are committed to maintaining and improving a safe and healthy working environment for all team members and other persons in Company stores. This includes the reporting and resolution of safety hazards in a timely manner.
- 27.1.3. A breach of OH&S requirements, policies and/or procedures by a team member will be regarded as a breach of the team members' conditions of employment and in the event of a serious breach may result in the termination of employment.

27.2. Apparel, Equipment and Personal Protective Equipment

- 27.2.1 All team members must wear prescribed work apparel in the workplace at all times. The Company will provide appropriate personal protective clothing and equipment. All team members must use only prescribed equipment, tools and personal protective equipment and clothing, which they are trained to utilise.

27.3 Mobile Telephones

- 27.3.1. Team members may not use mobile telephones in the workplace without the express approval of the Company.

27.4 Fitness for Duty

- 27.4.1 The Company, team members and the Union endorse a work environment that is drug and alcohol free and is also free of smoking. No Team Member shall attend work if their ability to perform their job safely is adversely affected by alcohol, prescription or other legal medication or illegal drugs or other chemical substances.

27.4.2 Team members are required to attend work in a fit state to perform their duties to established safety and work performance standards. A team member's ability to work must not be adversely affected by alcohol and/or drugs and the team member shall remain unaffected throughout the course of work. Team members that present themselves that are not fit for work will be refused the right to work.

27.5 Accident Pay - Victorian Stores only.

27.5.1 If following an injury a team member receives compensation under the applicable State legislation, then that compensation payment shall be increased by the Company to the amount of the usual weekly rate for the average rostered hours worked by the team member at the time of the accident. This payment made by the Company will be limited to a maximum of thirty-nine (39) weeks.

27.5.2. The provisions of this Clause shall not apply in respect of any injury during the first seven consecutive days (including non-working days) of incapacity.

28. TERMINATION OF EMPLOYMENT

28.1 In the event that a team member's actual performance is less than the standard required by the Company or contrary to Company policies, procedures and standards, the team member may be counselled by management to assist in meeting the standards.

28.2 Where counselling and appropriate warning/s do not result in performance improving to meet required standards, the team member's employment may be terminated.

28.3 Termination

28.3.1 Should the Company wish to terminate a permanent team member, the team member must be provided with notice in writing. The following is the minimum period of notice that will be provided:

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

28.3.2 Permanent team members over forty-five (45) years of age, with two (2) or more year's continuous service at the time of termination, will receive an additional week's notice.

28.3.3 Where all or part of the relevant period of notice is not provided, the team member is entitled to payment in lieu of notice for the relevant notice period or part thereof not provided by the Company.

28.3.4 Payment in lieu of notice is to be calculated using a team member's weekly ordinary time earnings including any applicable loadings, allowances, overtime or penalties for the hours the team member would have worked had their employment continued until the end of the minimum period of notice.

28.3.5 The period of notice in this Clause does not apply in the case of: dismissal for conduct that justifies instant dismissal, including but not limited to theft, fraud, and assault.

28.4 Notice of Termination by the Permanent Team Member

28.4.1 The notice of termination required to be given by a permanent team member is the same as that required of the Company except that team members 45 years and over are not required to provide an additional weeks' notice.

28.4.2 Subject to the relevant State or Territory long service leave provisions, if a team member fails to give notice, or to work out the full period of notice, the Company has the right to withhold moneys due to the team member under this Agreement to a maximum amount equal to the ordinary time earnings for the period of notice required.

28.4.3 At the team member's request, and at the discretion of the Company, part or all of the period of notice required by a team member may be waived and the team member paid to the date of termination only.

28.5 Time off during notice period

28.5.1 Where the Company has given notice to a team member of its intention to terminate the team member's employment, the team member may where convenient, be allowed up to one day off without loss of pay, for the purpose of seeking other employment. Such time off is to be taken at times that are convenient to the team member after consultation with their Manager.

28.6 Statement of employment

28.6.1 The Company will, when requested, provide the team member with a written statement specifying the period of their employment and the classification of or the type of work performed by the team member.

28.7 Summary Dismissal

28.7.1 Nothing in this clause limits the ability of the Company to terminate a team member for serious and wilful misconduct. In such cases, clause 28.3.1 does not apply. In such cases the team member may be summarily dismissed on the authority of their Manager.

28.8 Abandonment of Employment

28.8.1 Where a team member is absent from work for a continuous period exceeding three working shifts without the consent of the Company and without notification to the Company it shall taken that the team member has abandoned their employment.

28.8.2 Termination of employment by abandonment in accordance with this subclause shall:

- (a) operate as from the date of the last attendance at work; or
- (b) the last day of approved absence; or

- (c) the date of the last absence in respect of which notification was given to the Company; whichever is the later.

29. ROLE CHANGE AND EMPLOYMENT SECURITY

29.1 Purpose

The Company, team members and the Union acknowledge that from time to time it may be necessary for the Company to relocate work or Team Members to other stores, to redeploy Team Members to other jobs or locations or retrain individuals within its business or alternatively to reduce the overall size of its workforce.

29.2 Application

- 29.2.1 This clause applies to all permanent team members covered by this Agreement. It does not apply to team members whose employment is terminated for reasons other than redundancy.

29.3 Relocation

- 29.3.1 The Company may relocate permanent team members to another Company location provided that the following requirements are met:

- (a) The Company is satisfied that the terms and conditions of employment of the team member are overall no less favourable to those prior to the relocation;
- (b) the location to which the team member is to be relocated must be either a reasonable distance or reasonable travelling time from either their current location or their place of residence; and
- (c) the team member's continuity of employment will be maintained.

The above requirements will also apply where acceptable alternative employment is found for a team member in a related entity of the Company.

29.4 Redeployment and Retraining

- 29.4.1 The Company may redeploy permanent team members either to other suitable positions at the team member's current location or to another location provided that the following requirements are met:

- (a) The Company is satisfied that:
 - (i) the position to which the team members is to be redeployed is within the Team Members skills, competency and/or knowledge; and
 - (ii) the terms and conditions of employment of the team member in the new position must be overall no less favourable than those just prior to the relocation;
- (b) Where the team member's skill, competency and/or knowledge does not match the position requirements then the Company will offer appropriate training to ensure the team member is able to perform the duties of the position.

- (c) If the team member is redeployed to another store, it must be either a reasonable distance or reasonable travelling time from either their current location or their place of residence; and
- (d) The team member's continuity of employment will be maintained.

29.5 Redundancy and Retrenchment

- 29.5.1 Where the Company has made a definite decision to declare positions redundant, the Company will consult with affected permanent team members and the Union about the redundancies and the reasons for them as soon as practicable after making the decision.
- 29.5.2 As an alternative to redundancy, the Company may relocate, redeploy and/or retrain team members in accordance with the processes in clauses 29.3 and 29.4.
- 29.5.3 In addition to the provision of notice (or a payment in lieu of notice) and any other benefits payable on termination, a team member who is retrenched in accordance with this clause will be paid a severance benefit calculated as follows:

Period of continuous service	Severance pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

- 29.5.4 For the purposes of this clause "Weeks' pay", will include the average weekly earnings paid to the team member, excluding overtime, allowances or other penalty payments.
 - (a) Team members who are retrenched under this clause will also be provided with:
 - (b) Reasonable time without loss of pay to attend employment counselling or job interviews.
- 29.5.5 A certificate of service, including the reason for termination will be provided.

29.6 Transfer of Business

- 29.6.1 Where a business is before or after the date of this agreement, transferred from the Company (in this subclause called the "first employer") to another employer (in this subclause called the "second employer") and a team member who at the time of

such transfer was a full-time or part-time team member of the first employer in that business becomes a team member of the second employer:

- (a) the continuity of the employment of the team member shall be deemed not to have been broken by reason of such transfer;
- (b) the period of employment which the team member has had with the first employer or any prior first employer shall be deemed to be service of the team member with the second employer; and
- (c) the severance and other benefits in this clause do not apply to a team member.

29.6.2 In this subclause, "business" includes trade, process, business or occupation and includes part of any such business and "transfer" includes the sale, conveyance, assignment or succession whether by agreement or by operation of law and "transferred" has a corresponding meaning.

30. DISPUTE SETTLEMENT PROCEDURE

30.1 Every effort must be made to amicably settle any dispute concerning the application of this agreement, the National Employment Standards (as amended) or matters arising from the Agreement which may arise by direct consultation with the Team Member(s) concerned.

30.2 To facilitate the settlement of any such dispute or personal grievance, the following communication process will apply:

30.2.1 The dispute will, wherever possible, first be discussed between the aggrieved team member and their Manager with the joint intent of achieving a satisfactory outcome.

30.2.2 If the dispute remains unresolved, the team member(s), together with their nominated representative and an appropriate representative of the Company, will meet to attempt to satisfactorily resolve the issue. A nominated representative includes a representative of the Union (e.g. Union Delegate/Union Organiser).

30.2.3 Should the matter remain unresolved the case may be referred to the Branch Secretary of the Union and an appropriate representative of the Company.

30.2.4 While the dispute is being discussed, all work will continue, subject to the responsibility of the Company to provide a safe and healthy working environment.

30.2.5 If the matter remains unresolved, it is open to either party to refer the dispute or grievance to Fair Work Australia for conciliation and/or arbitration.

31. ANTI-DISCRIMINATION

31.1 It is the intention of the parties to this Agreement to assist in the achievement of objective in section 351 of the Fair Work Act 2009), by respecting and valuing the

diversity of the workforce helping to prevent and eliminate discrimination on the basis of:

Race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

31.2 Accordingly, in fulfilling their obligations under the Disputes Resolution Procedure in this Agreement, the parties to this Agreement shall make every reasonable endeavour to ensure that the Agreement provisions and operation are neither directly or indirectly discriminatory in their effects.

31.3 Nothing in this Clause is to be taken to affect:

31.3.1 Any different treatment (or treatment having different effects) which is not unlawful under Commonwealth or State anti-discrimination legislation;

31.3.2 The payment of different wages for team members who have not reached a particular age, unless prescribed by legislation; and

31.3.3 A team member, Company or registered organisation pursuing matters of discrimination in any State or Federal jurisdiction including by application to the Human Rights and Equal Opportunity Commission.

32. SUPERANNUATION

Refer to Appendix B.

33. WORKERS ELIGIBLE FOR A SUPPORTED WAGE

Refer to Appendix C.

34. ABILITY TO SALARY SACRIFICE BY COMPANY AUTHORISATION

34.1.1 Objectives of Clause

(i) This clause provides for a team member to request an alternative system for the payment of wages. It is intended that the flexibility provided by this clause will be of benefit to team members without imposing additional costs on the Company.

(ii) Team members will be able to participate in a salary sacrifice program in relation to Superannuation or any other benefit agreed to by the Company. Team members are not obliged to participate in this program.

34.1.2 Flexible Remuneration

(i) A team member may, by mutual agreement with the Company:

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

- (ii) A team member, whose request is accepted by the Company, will receive the benefit and wages prescribed under this clause in lieu of wages and other amounts payable under this Agreement.
- (iii) Any request under 34.1.2 (i) above will be in the form prescribed by the Company.
- (iv) A team member who takes any paid leave shall receive the benefit and wages prescribed under this clause in lieu of wages and other amounts payable under this Agreement.
- (v) Any other Agreement payment, including termination payments, calculated by reference to the team members wages as provided in this Agreement will be calculated by reference to the total of wages and benefits provided in Clause 8.1 Wage Rates unless this Clause specifically provides otherwise.
- (vi) Each team member participating in benefits available under this clause shall receive written confirmation of relevant information including the post arrangement gross wage rates, net wage rates and any other payment that may be affected by the arrangement.
- (vii) Written confirmation as specified in sub-clause 34.1.2(vi) above shall be provided upon any adjustment to pre-arrangement wage rates under this Agreement or reclassification.
- (viii) For all other purposes, after taking into account the deductions made pursuant to sub-clause 34.1.2 (i) above a team member shall not receive less than the rate specified in Clause 8.1 Wage Rates, of this Agreement for the relevant classification for the team member.

34.1.3 Changes to Flexible Remuneration

- (i) The Company may amend the provisions of benefits under the program covered by this Clause in the event of changes in State or Federal legislation.
- (ii) In the event that amendment to these remuneration arrangements is to be implemented, the Company will provide team members with notice of not less than 2 months unless the amendments arise from circumstances outside the Company's control, in which case, a shorter notice period may apply.

34.1.4 Contributions

A team member may choose to vary the amount of their contribution at 3 monthly intervals.

35. TRAINING OR INFORMATION/COMMUNICATION SESSIONS

All team members may be engaged for the purpose of training or information/communication sessions to a maximum of 6 occasions per annum. For any session all full-time, part-time and casual team members may be engaged for a minimum of

2 hours for this purpose. Attendance at such training or information/ communication session shall be voluntary.

Attendance at a training or information/ communication session will not constitute an additional 'start' for the purpose of this Agreement. Payment for attendance will attract any applicable penalty rates but not overtime rates.

36. INTRODUCTION OF MAJOR CHANGE

36.1 Company's duty to notify

- (a) Where the Company has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on team members, the Company shall notify the team members who may be affected by the proposed changes and the Union.
- (b) "Significant effects" include termination of employment, major changes in the composition, operation or size of the workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of team members to other work or locations and the restructuring of jobs. Provided that where the Agreement makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.

36.2 Company's duty to discuss change

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

37. INDIVIDUAL FLEXIBILITY ARRANGEMENT

Refer to Appendix E.

17. SIGNATORIES

Rachel McIver.

Rachel McIver
National HR manager

Signed by a duly authorised representative on behalf of
Eureka Operations Pty Ltd

Date: 28 Nov. 2011

J. de Bruyn

Joseph de Bruyn
National Secretary

Signed by a duly authorised representative on behalf of
Shop, Distributive and Allied Employees Association

Date: 7/12/11

William P Ludwig

William P Ludwig
Secretary

Signed by a duly authorised representative on behalf of
Australian Workers' Union of Employees, Queensland

Date: 6/12/11

APPENDIX A – PARENTAL LEAVE

1 PARENTAL LEAVE

1.1 Definitions

- 1.1.1 **Maternity leave** means parental leave taken by a female Team Member who is pregnant or the parent of a child.
- 1.1.2 **Paternity leave** means parental leave taken by a male Team Member who is the parent of a child.
- 1.1.3 **Adoption leave** means parental leave taken by a male or female Team Member on the adoption of a child.
- 1.1.4 **Child** for the purposes of Maternity Leave and Paternity Leave means a child of the Team Member under school age.
- 1.1.5 **Child** for the purposes of Adoption Leave means a person who:
- (a) is, or will be, under 16 as at the day of placement, or the expected date of placement; and
 - (b) has not, or will not have, lived continuously with the team member for a period of 6 months or more as at the day of placement, or the expected day of placement, of the child; and
 - (c) is not (otherwise than because of the adoption) a child or step child of the Team Member or the Team Member's spouse.
- 1.1.6 In relation to maternity or paternity leave, **spouse** includes a de facto or former spouse.
- 1.1.7 In relation to adoption leave, **spouse** includes a de facto spouse but does not include a former spouse.
- 1.1.8 **Male Team Member** means an employed male who is caring for a child born of his spouse or a child placed with the team member for adoption purposes.
- 1.1.9 **Female Team Member** means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
- 1.1.10 **Former position** means the position held by a female or male team member immediately before proceeding on leave or part-time employment under this appendix whichever first occurs or, in the case of a team member transferred to a safe job in accordance with clause 1.3.6 of this appendix, the position she held immediately before such transfer. If such position no longer exists and there are other positions for which the team member is suitably qualified and the duties of which he or she is capable of performing, former position shall mean a position as nearly comparable in status and pay to that of the position first mentioned in the definition.
- 1.1.11 **Continuous service** means service under an unbroken contract of employment and includes:

- (a) Any period of leave taken in accordance with this appendix;
- (b) Any period of part time employment worked in accordance with this appendix; or
- (c) Any period of leave or absence authorised by the Company or by the Agreement.

1.2 Basic Entitlement

- 1.2.1 After twelve (12) months' continuous service, parents are entitled to a combined total of 104 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. Additional unpaid leave may be available, as provided in 1.7 of this appendix.
- 1.2.2 Parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take an unbroken period of up to 8 weeks at the time of the birth or placement of the child.
- 1.2.3 Team members with less than twelve (12) months' service:
 - (a) Full-time and part-time team members', who are unable to take parental leave due to having less than twelve (12) months' service, are able to apply for leave of absence.
 - (b) Provided that, if a team member has six (6) months' continuous service, the team member will be entitled to a combined total of twenty-six (26) weeks Parental leave in accordance with the provisions of this appendix.

1.3 Maternity leave

- 1.3.1 A team member must provide notice to the Company in advance of the expected date of commencement of parental leave. The notice requirements are:
 - (a) at least ten (10) weeks prior - advise the Company of the expected date of birth (included in a certificate from a registered medical practitioner stating that the team member is pregnant); and
 - (b) at least four (4) weeks prior - of the date on which the team member proposes to commence parental leave and the period of leave to be taken.
- 1.3.2 When the team member gives notice under 1.3.1(a) of this appendix the team member must also provide a statutory declaration stating particulars of any period of paternity leave sought by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- 1.3.3 A team member will not be in breach of this appendix if failure to give the stipulated notice is occasioned by the birth of the child occurring earlier than the expected date.
- 1.3.4 Where a team member continues to work within the six (6) week period immediately prior to the expected date of birth the Company may require the team member to provide a medical certificate stating that she is fit to work.

1.3.5 Special Maternity Leave

- (a) Where the pregnancy of a team member not then on maternity leave terminates within twenty-eight (28) weeks of the expected date of birth, other than by the birth of a living child, the team member may take unpaid special maternity leave and sick leave of such periods as a registered medical practitioner certifies is necessary.
- (b) Where a team member is suffering from an illness not related to the direct consequences of the confinement, a team member may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.
- (c) Where a team member not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave, as a registered medical practitioner certifies as necessary before her return to work. The aggregate of unpaid special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 104 weeks.

1.3.6 Transfer to a safe job

Where a team member is pregnant and, in the opinion of a registered medical practitioner, the team member is fit for work but it is inadvisable for the team member to continue at her present position because of illness or risks arising out of the pregnancy or hazards connected with that position, the team member will be transferred to an appropriate safe job, at the team member's ordinary time earnings including any applicable loadings, allowances, overtime or penalties with no other change to the team member's terms and conditions of employment.

If there is no appropriate safe job available, the team member may take a period of paid leave ('no safe job leave') immediately, in accordance with the following:

- (a) such leave is in addition to any other leave entitlement the team member has;
- (b) is taken at the team member's ordinary time earnings for their ordinary hours of work; and
- (c) no safe job leave ends at the earliest of whichever of the following times is applicable:
 - (i) the period of leave connected with the birth of a child starts; or
 - (ii) the end of the pregnancy; or
 - (iii) the team member provides the Company with a medical certificate stating that the team member is not fit for work.

1.4 Paternity Leave

- 1.4.1 A team member will provide to the Company at least ten (10) weeks prior to each proposed period of paternity leave:

- (a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of birth, or states the date on which the birth took place; and
- (b) written notification of the dates on which he proposes to start and finish the period of paternity leave; and
- (a) a statutory declaration stating:
 - he will take that period of paternity leave to become the primary care giver of a child; and
 - particulars of any period of maternity leave sought or taken by his spouse; and
 - that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

1.4.2 The team member will not be in breach of 1.4.1 of this appendix if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

1.5 Adoption Leave

1.5.1 The team member will notify the Company at least 10 weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. A team member may commence adoption leave prior to providing such notice where, through circumstances beyond the control of the team member, the adoption of a child takes place earlier.

1.5.2 Before commencing adoption leave, a team member will provide the Company with a statutory declaration stating:

- (a) the team member is seeking adoption leave to become the primary care giver of the child; and
- (b) particulars of any period of adoption leave sought or taken by the team member's spouse; and
- (c) that for the period of adoption leave the team member will not engage in any conduct inconsistent with their contract of employment.

1.5.3 The Company may require a team member to provide confirmation from the appropriate government authority of the placement.

1.5.4 Where the placement of child for adoption with a team member does not proceed or continue, the team member will notify the Company immediately and the Company will nominate a time not exceeding 4 weeks from receipt of notification for the team member's return to work.

1.5.5 A team member will not be in breach of 1.5.1 of this appendix as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.

- 1.5.6 A team member seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The team member and the Company should agree on the length of the unpaid leave. Where agreement cannot be reached, the team member is entitled to take up to two (2) days-unpaid leave. Where paid leave is available to the team member, the Company may require the team member to take such leave instead.

1.6 Return to work after cancellation of parental leave

- 1.6.1 Where a team member has commenced parental leave and loses their child during the period of leave, a team member may return to work at any time, as agreed between the Company and the team member provided that the date of return to work is at least 4 weeks' after the Company has given notice in writing to the team member.

1.7 Variation of period of parental leave

- 1.7.1. Where a team member has originally applied for less than 104 weeks leave, the team member may extend their leave up to an aggregate of 104 weeks by providing the Company with not less than 4 weeks' notice.
- 1.7.2. A team member may shorten their period of leave by agreement with the Company, by giving not less than 4 weeks' notice.

1.8 Parental leave and other entitlements

- 1.8.1. A team member may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements, which they have accrued subject to the total amount of leave not exceeding 104 weeks.

1.9 Voluntary work whilst on parental leave

- 1.9.1. By agreement between a team member and the Company, a team member may be engaged as a casual team member during a period of parental leave except if the team member:

- (a) is receiving government paid parental leave payments; or
- (b) intends to receive government paid parental leave payments during their period of parental leave, and has not received the final payment.

A team member may commence casual work while on parental leave after they have received their last government paid parental leave payment.

- 1.9.2. Hours worked as a team member under this appendix:

- (a) Will be paid at the appropriate casual rate;
- (b) Will not be included for the purposes of accruing any leave entitlements with the exception of long service leave;
- (c) Will count as service for the purposes of long service leave accrual;

- (d) Will not extend the period of parental leave beyond the approved period of leave.

1.10. Returning to work after a period of parental leave

- 1.10.1. A team member will notify of their intention to return to work after a period of parental leave at least 4 weeks prior to the expiration of the leave.
- 1.10.2. By agreement between the Company and a team member, a team member is able to return on fewer hours than their contracted hours prior to going on parental leave, for a period up to the child's 2nd birthday (or 2nd anniversary of placement), as provided for in 1.13 of this appendix.
- 1.10.3. A team member will be entitled to the position that they held immediately before proceeding on parental leave. In the case of a team member transferred to a safe job pursuant to 1.3.6 of this appendix, the team member will be entitled to return to the position they held immediately before such transfer.
- 1.10.4. Where such position no longer exists but there are other positions available that the team member is qualified for and is capable of performing, the team member will be entitled to a position as nearly comparable in status and pay to that of their former position.
- 1.10.5. The Company will consider the family responsibilities of the team member who is returning to work when considering the team member's roster.

Notwithstanding the above, a team member who is a parent of a child may request in writing for a change in working arrangements if the child is under school age or under 18 if disabled. Such change is subject to the terms of clause 10.1.15 of this Agreement.

1.11 Consultation with team members on unpaid parental leave

If a team member is on unpaid parental leave and the Company makes a decision that will have a significant effect on the status, pay or location of the team member's pre-parental leave position, the Company must take all reasonable steps to give the team member information about, and an opportunity to discuss, the effect of the decision on that position.

1.12 Replacement Team Members

- 1.12.1 A replacement team member is a team member specifically engaged or temporarily promoted or transferred, as a result of a team member proceeding on parental leave.
- 1.12.2 Before the Company engages a replacement team member the Company must inform that person of the temporary nature of the employment and of the rights of the team member who is being replaced.

1.12. Part Time Work

The following provisions apply to permanent team members only.

1.13.1 Entitlement

With the agreement of the Company:

- (a) A male team member may work part time in one or more periods at any time from the date of birth of the child until its 2nd birthday or, in relation to adoption, from the date of placement of the child until the 2nd anniversary of the placement.
- (b) A female team member may work part time in one (1) or more periods while she is pregnant where part time employment is, because of the pregnancy, necessary or desirable.
- (c) A female team member may work part time in one (1) or more periods at any time from the date of birth of the child until the child's 2nd birthday provided the conditions in 1.3.4 of this appendix are met.
- (d) In relation to adoption a female team member may work part time in one or more periods at any time from the date of the placement of the child until the 2nd anniversary of that date.
- (e) A team member may work part time in relation to a gradual return to core hours of work on return from parental leave until the child's 2nd birthday (or 2nd anniversary of the child's placement in the case of adoption).

1.13.2 Return to former position

- (a) A team member who has had at least 12 months' continuous service with the Company immediately before commencing part time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.
- (b) Nothing in (a) hereof shall prevent the Company from permitting the team member to return to his or her former position after a second or subsequent period of part time employment.

1.13.3 Effect of Part Time employment on continuous service

- (a) Commencement of part time work under this appendix, and return from part time work to full time work under this appendix, shall not break the continuity of service or employment.

1.13.4 Pro rata entitlements

- (a) Subject to the provisions of this appendix and the matters agreed to in accordance with 1.13.7 of this appendix, part time employment shall be in accordance with the provisions of this Agreement that shall apply pro rata.

1.13.5 Transitional arrangements - Annual Leave

- (a) A team member working part time under this appendix shall be paid for and take any leave accrued in respect of a period of full time employment, in

such periods and manner as specified in the annual leave provisions of this Agreement, as if the team member were working full time in the class of work the team member was performing as a full time team member immediately before commencing part time work under this appendix.

- (b) A full time team member shall be paid for and take any annual leave accrued in respect of a period of part time employment under this appendix, in such periods and manner as specified in this Agreement, as if the team member were working part time in the class of work the team member was performing as a part time team member immediately before resuming full time work.
- (c) Provided that, by agreement between the Company and the team member, the period over which the leave is taken may be shortened to the extent necessary for the team member to receive pay at the team member's current rate.

1.13.6 Transitional arrangements - Sick Leave

A team member working part time under this appendix shall have sick leave entitlements which have accrued under this Agreement (including any entitlement accrued in respect of previous full-time employment) converted into hours. When this entitlement is used, whether as part time team member or as a full time team member, it shall be debited for the ordinary hours that the team member would have worked during the period of absence.

1.13.7 Part Time work agreement

- (a) Before commencing a period of part time employment under this appendix the team member and the Company shall agree:
 - That the team member may work part time;
 - Upon the hours to be worked by the team member, the days upon which they will be worked and commencing times for the work;
 - Upon the classification applying to the work to be performed; and
 - Upon the period of part time employment.
- (b) The terms of this agreement may be varied by consent.
- (c) The terms of this agreement or any variation to it shall be put in writing and retained by the Company. The Company shall provide a copy of the agreement, and any variation to it, to the team member.
- (d) The terms of this agreement shall apply to the part time employment.

1.13.8 Termination of employment

- (a) The employment of a part time team member under this Appendix may be terminated in accordance with the provisions of this Agreement but may not be terminated by the Company because the team member has exercised or proposes to exercise any rights arising under this Appendix or has enjoyed or proposes to enjoy any benefits arising under this Appendix.

- (b) The termination entitlements payable to a team member whose employment is terminated while working part time under this Appendix, or while working full time after transferring from part time under this Appendix, shall be calculated by reference to the full time rate of pay at the time of termination and by regarding all service as a full time team member as qualifying for a termination entitlement based on the period of full time employment and all service as a part time team member on a pro rata basis.

1.13.9 Extension of hours of work

The Company may request, but not require, a team member-working part time under this appendix to work outside or in excess of the team member's ordinary hours of duty provided for in accordance with 1.13.7 of this appendix.

1.13.10 Nature of Part Time

Where possible, a team member returning to work on part time under this provision shall perform the work of his or her former position. Where this is not possible, the work shall be work otherwise performed under this Agreement.

1.13.11 Inconsistent Agreement Provisions

A team member may work part time under this appendix irrespective of any other provision of this Agreement, which limits or restricts the circumstances in which part time employment may be worked or the terms upon which it may be worked including provisions prescribing a minimum or maximum number of hours a part time team member can work.

1.13.12 Replacement Team Members

- (a) A replacement team member is a team member specifically engaged as a result of a team member working part time under this appendix.
- (b) A replacement team member may be employed on a part time basis. Subject to this appendix, 1.13.5 to 1.13.8 and 1.13.11 of this appendix apply to the part time employment of a replacement team member.
- (c) Before the Company engages a replacement team member under this appendix, the Company shall inform the person of the temporary nature of the employment and of the rights of the team member who is being replaced.
- (d) Unbroken service as a replacement team member shall be treated as continuous service for the purposes of 1.1.11 of this appendix.

1.13 Eligible casual team members

- 1.13.1 A casual team member is entitled to Parental Leave in accordance with the provisions of this clause provided that:

- (i) They are employed on a regular and systematic basis for an ongoing period of employment for at least 12 months immediately preceding when the team member proposes to proceed on Parental Leave; and
- (ii) have, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.

For the purposes of this sub-clause, a regular casual shall mean a casual who has had at least 1 start per week or fortnight.

1.13.2 On return from Parental Leave, the casual team member shall be engaged as a casual team member in accordance with Clause 9.1.3, casual team members, of the Agreement.

1.13.3 Nothing in this clause shall operate to vary the nature of employment of the casual team member or affect the team member's rights or entitlements following return from Parental Leave in accordance with this clause.

APPENDIX B – SUPERANNUATION

- 2.1 Superannuation for team members employed under this Agreement shall be governed by the provision of the Superannuation Guarantee (Administration) Act 1992 (as amended) and the applicable regulations provided that:
 - 2.1.1. All superannuation entitlements shall be directed on a monthly basis to the Superannuation Fund REST. Team members employed prior to 13 December 2005, who have superannuation entitlements forwarded to other superannuation funds, can continue. By agreement, team members employed prior to 13 December 2005 may decide to enrol into REST.
 - 2.1.2. The ability to opt in and out of the fund as provided within the Superannuation Guarantee (Administration) Act 1992 (as amended) and the applicable regulations shall not apply; and
 - 2.1.3. For the purposes of superannuation, reference to ordinary time earnings shall have the meaning as currently defined by the Superannuation Guarantee Ruling 2009/2.
 - 2.1.4. The Company may, in accordance with its policies and procedures allow team members to participate in a salary sacrifice program in relation to superannuation contributions. This is detailed in clause 34, Ability to Salary Sacrifice by Company Authorisation.
 - 2.1.5. A Team Member may make personal contributions to REST or their other fund (as per 2.1.1 above), in addition to those contributions made by Coles Express. A Team member must authorise Coles Express in writing to pay into the fund, from the team member's wages, a specified amount. Coles Express will then forward any such contributions on a monthly basis to REST.

APPENDIX C – WORKERS ELIGIBLE FOR A SUPPORTED WAGE

- 3.1 This Clause defines the conditions, which will apply to team members who because of the effects of a disability are eligible for a supported wage under the terms of this Agreement. In the context of this Clause, the following definitions will apply:
- 3.1.1 'Supported Wage System' means the Commonwealth Government System to promote employment for people who cannot work at full Agreement wages because of a disability, as documented in "[Supported Wage System: Guidelines and Assessment Process]".
- 3.1.2 'Accredited Assessor' means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
- 3.1.3 'Disability Support Pension' means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.
- 3.1.4 'Assessment instrument' means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the persons to be employed under the Supported Wage System.
- 3.2 Eligibility Criteria
- 3.2.1 Team members covered by this Clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the team member is engaged under this Agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.
- 3.2.2 (The Clause does not apply to any existing team member who has a claim against the Company, which is subject to the provisions of workers' compensation legislation, or any provision of this Agreement relating to the rehabilitation of team members who are injured in the course of their current employment).
- 3.2.3 The Agreement does not apply to employers in respect of their facility, programme, undertaking service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the Act, or if a part only has received recognition, that part.
- 3.3 Supported Wage Rates
- 3.3.1 Team members to whom this Clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this Agreement for the class of work, which the person is performing according to the following schedule:

<u>Assessed Capacity (Subclause (d))</u>	<u>% Of prescribed Agreement rate</u>
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall be not less than \$75.00 per week. This amount will be increased in accordance with the annual Supported Wage decision).

** Where a person's assessed capacity is 10%, they shall receive a high degree of assistance and support.*

3.4 Assessment of Capacity

3.4.1 For the purpose of establishing the percentage of the Agreement rate to be paid to a team member under this Agreement, the productive capacity of the team member will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

- (i) The Company and the SDA parties to the Agreement, in consultation with the team member or, if desired by any of these;
- (ii) The Company and an accredited Assessor from a panel agreed by the parties to the Agreement and the team member.

3.5 Lodgement of Assessment Instrument

3.5.1 All assessment instruments under the conditions of this Clause, including the appropriate percentage of the Agreement wage to be paid to the team member shall be lodged by the Company with the Registrar of the Industrial Relations Commission.

3.5.2 All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where the SDA which is party to the Agreement, is not a party to the assessment, it shall be referred by the Registrar to the SDA by certified mail and shall take effect unless an objection is notified to the Registrar within 10 working days.

3.6 Review of Assessment

3.6.1 The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

3.7 Other Terms and Conditions of Employment

3.7.1 Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Team members covered by the provisions of the Clause will be entitled to the same terms and conditions of employment as all other workers covered by this Agreement paid on a pro rata basis.

3.8 Workplace Adjustment

3.8.1 If the Company is wishing to employ a person under the provisions of this Clause shall take reasonable steps to make changes in the workplace to enhance the team member's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

3.9 Trial Period

3.9.1 In order for an adequate assessment of the team member's capacity to be made, the Company may employ a person under the provisions of this Clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.

3.9.2 During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

3.9.3 The minimum amount payable to the team member during that period shall be no less than \$75.00 per week. This amount will be increased in accordance with the annual Supported Wage decision.

3.9.4 Work trials should include induction or training as appropriate to the job being trialled.

3.9.5 Where the Company and a team member wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (3.4) hereof.

APPENDIX D – WA LOCATION ALLOWANCES

The location allowances specified in the relevant General Order of the Western Australian Industrial Relations Commission shall apply to team members engaged under this Agreement where work is performed in the locations specified in that General Order as amended from time to time.

The following weekly location allowances were effective from the first full pay period on or after 1 July 2011:

Agnew	\$19.70	Onslow	\$34.00
Argyle	\$52.20	Pannawonica	\$25.60
Balladonia	\$20.10	Paraburdoo	\$25.40
Barrow Island	\$34.00	Port Hedland	\$27.30
Boulder	\$8.30	Ravensthorpe	\$10.40
Broome	\$31.50	Roebourne	\$37.80
Bullfinch	\$9.20	Sandstone	\$19.70
Carnarvon	\$16.20	Shark Bay	\$16.20
Cockatoo Island	\$34.60	Shay Gap	\$17.10
Coolgardie	\$8.30	Southern Cross	\$9.20
Cue	\$20.20	Telfer	\$46.50
Dampier	\$27.40	Teutonic Bore	\$19.70
Denham	\$16.20	Tom Price	\$25.40
Derby	\$32.80	Westonia	\$10.10
Esperance	\$5.80	Whim Creek	\$32.50
Eucla	\$22.00	Wickham	\$31.50
Exmouth	\$28.70	Wiluna	\$19.90
Fitzroy Crossing	\$39.70	Wittenoom	\$44.60
Goldsworthy	\$17.10	Wyndham	\$49.00
Halls Creek	\$45.80	Yalgoo	\$21.80
Kalbarri	\$6.90		
Kalgoorlie	\$8.30		
Kambalda	\$8.30		
Karratha	\$32.80		
Koolan Island	\$34.60		
Koolyanobbing	\$9.20		
Kununurra	\$52.20		
Laverton	\$20.10		
Learmouth	\$28.70		
Leinster	\$19.70		
Leonora	\$20.10		
Madura	\$21.10		
Marble Bar	\$50.40		
Meeberrie (Murchison)	\$21.10		
Meekatharra	\$17.10		
Menzies	\$21.20		
Mount Magnet	\$21.70		
Mundrabilla	\$21.60		
Newman	\$18.90		
Norseman	\$17.20		
Nullagine	\$50.30		

APPENDIX E – INDIVIDUAL FLEXIBILITY ARRANGEMENT

4.1.1 The Company and a team member covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of one or more of the following matters:

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

to meet the genuine needs of the Company and the team member.

4.1.2 The individual flexibility arrangement must be genuinely agreed to by the Company and the team member.

4.1.3 The Company 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 team member being better off overall than the team member would be if no arrangement was made.

4.1.4 The Company must ensure that the individual flexibility arrangement:

- (a) is in writing; and
- (b) includes the name of the Company and the team member; and
- (c) is signed by the Company and the team member and if the team member is under eighteen (18) years of age, signed by a parent or guardian of the team member; and
- (d) includes details of:
 - (i) the terms of the Agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the team member will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- (e) states the day on which the arrangement commences.

4.1.5 The Company must give the team member a copy of the individual flexibility arrangement within fourteen (14) days after it is agreed to.

- 4.1.6 The Company or team member may terminate the individual flexibility arrangement:
- (a) by giving no more than twenty-eight (28) days written notice to the other party to the arrangement; or
 - (b) the Company and the team member agree in writing - at any time.