

**REGISTER OF
ENTERPRISE AGREEMENTS**

ENTERPRISE AGREEMENT NO: EA04/252

TITLE: Darrell Lea Chocolate Shops Pty Enterprise Bargaining Agreement, 2003-2006

I.R.C. NO: IRC4/3337

DATE APPROVED/COMMENCEMENT: 21 June 2004

TERM: 24

**NEW AGREEMENT OR
VARIATION:** New

GAZETTAL REFERENCE: 1 October 2004

DATE TERMINATED:

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COVERAGE/DESCRIPTION OF

EMPLOYEES: The agreement applies to the employees at all Darrell Lea Chocolate Shops, including 160 and 200 Rocky Point Road, Kogarah NSW 2127 and 3 Brooks Road, Ingleburn NSW 2565, who fall within the coverage of the Confectioners (State) Award, Miscellaneous Workers' - General (State) Award, Metal, Engineering and Associated Industries (State) Award, and the Storemen and Packers General (State) Award

PARTIES: Darrell Lea Chocolates -&- the Australian Liquor, Hospitality and Miscellaneous Workers Union, New South Wales Branch, Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch, National Union of Workers, New South Wales Branch

DARRELL LEA CHOCOLATE SHOPS PTY LTD CERTIFIED AGREEMENT 2003 - 2006

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1. Title

This agreement shall be known as the Darrell Lea Chocolate Shops Pty Ltd Enterprise Bargaining Agreement, 2003 - 2006.

2. Scope Application and Parties Bound

2.A APPLICATION

This Agreement shall apply at all Darrell Lea Chocolate Shops, including 160 and 200 Rocky Point Road, Kogarah NSW 2217 and 3 Brooks Road, Ingleburn NSW 2565 and to all employees who are bound by the terms and conditions of the Confectioners (State) Award, Miscellaneous Workers General Services State Award; Metal, Engineering and Associated Industries (State) Award and the Storeman and Packers General State Award.

2.B PARTIES BOUND

This Agreement shall be binding on Darrell Lea Chocolate Shops Pty Limited ACN 000 498 386 and the Unions set out below and all employees whether members of the Union or not who are employed pursuant to the terms and conditions of the Confectioners (State) Award, Miscellaneous Workers General Services State Award; Metal, Engineering and Associated Industries (New South Wales) Award and the Storeman and Packers General State Award.

- (i) Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU) (Confectionery and Maintenance Employees)
- (ii) National Union of Workers (NUW) NSW Branch; (Warehouse Employees)
- (iii) Liquor, Hospitality & Miscellaneous Union (LHMU); (Cleaning Employees)

2.C DURATION OF THE AGREEMENT

This Agreement shall operate from the date of certification and remain in force until 30th of June 2006.

2.D RENEGOTIATION

The employer and the unions agree to commence negotiations for a replacement agreement no later than 4 months prior to the expiry of this agreement.

The employer and the unions agree that they shall bargain collectively in relation to any matter, whether arising from this agreement or not, and in relation to the renewal, extension, variation or renegotiation of this agreement.

2.E RELATIONSHIP TO PARENT AWARDS

- (i) This agreement shall be read wholly in conjunction with the Confectioners State Award and the Metal, Engineering & Associated Industries (State) Award, the Storeman and Packers General State Award and the Miscellaneous Workers General Services State Award. Where there is any inconsistency between this agreement and the Award this agreement shall take precedence to the extent of any inconsistency.
- (ii) Existing over award payments and conditions of employment shall continue to apply as if they were a term of this agreement except where the expressly stipulated terms of this agreement provide otherwise.
- (iii) An employee commencing his or her employment with the employer after the date on which this agreement comes into operation shall be employed in accordance with the terms of the agreement.
- (iv) The employer and the Unions agree that no employee, including apprentices and trainees, shall be employed other than under the terms of this agreement. To avoid doubt, this means that no employee shall be offered an Australian Workplace Agreement during the life of this Agreement.
- (v) Any facilitative arrangement in the Award introduced as a result of any award simplification case, shall not be used during the life of this agreement except by agreement between the company and the Unions party to this agreement.
- (vi) Existing arrangements for all breaks under the current Award and Agreements will remain in place for the life of this Agreement.

2.F NO EXTRA CLAIMS

It is a term of this Agreement that the parties bound by the Agreement shall not pursue any extra claims for the life of the Agreement.

3. Objectives of the Agreement

- (i) To enable Darrell Lea to better compete in the Australian market against both locally produced and imported confectionery.
- (ii) To enable Darrell Lea to develop a viable export business. This will be achieved by improvements in quality, delivery performance and cost of goods.
- (iii) To develop the skills of all Darrell Lea employees through the provision of structured training and career path opportunities.
- (iv) To provide more flexibility in working arrangements that recognise the special needs of Darrell Lea as an enterprise and also the needs of Darrell Lea employees.
- (v) To further develop the human relations environment for employees of Darrell Lea.
- (vi) To preserve employment opportunities within Darrell Lea subject to general economic conditions and conditions in specific sectors such as confectionery and specialist retailing.

Note: It is not the intention of this Agreement to reduce plant crewing.

4. Employment Security

The employer shall take steps to ensure that the enterprise has the benefit of a stable and committed workforce.

Such steps shall include:

- (i) Minimising the likelihood of redundancies for the life of this agreement;
- (ii) Measures to increase the security of employment;
- (iii) Measures to increase the security of employee's entitlements;
- (iv) Increased investment in the productive capacity of the enterprise;
- (v) Measures aimed at ensuring that new employees are recruited with the aim of reducing the level of unemployment in the occupations, trades, industries or callings specified in the Awards;
- (vi) Employment of apprentices and trainees;
- (vii) Maintaining a direct employee/employer relationship with employees.

5. Continuous Improvement

Continuous improvement in all areas is critical to the success of the site. The parties have an ongoing commitment to Continuous Improvement.

Continuous improvement will be promoted as a means of improvements to quality, safety and factory performance.

Employees will be trained in the skills necessary to operate in a team environment.

All employees will be trained in continuous improvement skills and be given the opportunity to practice such skills.

6. Company Key Performance Areas/Indicators

Employees agree to support, cooperate and assist in practical ways the Company to achieve best practice and performance improvement in the following keys areas:

Sales	OH&S
Quality	Rehabilitation
Customer Satisfaction	Lost Time Injury Frequency Rates
Productivity	Absenteeism

and other areas that may from time to time be agreed by the parties to require improvement.

To achieve this, discussions will occur at the Delegates/Consultative Committee and information such as performance benchmarks and agreed improvement targets will be prepared quarterly to be distributed to all employees.

7. Delegates Committee

- (i) Consultative Procedures

The parties to this agreement recognise the value of consultation as a fundamental means of communication and decision making. To be effective, consultation must occur between the industrial parties (union and management), between management, employees and their representatives.

The parties recognise that there are advantages in the formation of a site delegates committee comprising all elected delegates.

The development of effective participative/consultative practices is important in the process of change and will lead to advantages for both the Company and Employees. It is therefore agreed that participative/consultative arrangements will be applied at Darrell Lea Chocolates as follows:

Provision will be made for the delegates committee to hold monthly paid meetings on Company premises during working hours. The monthly meeting will be in two parts, with the second part of the meeting attended by management representatives.

Officials of the Union are invited to attend committee meetings.

(ii) Functions

The Delegates Committee may discuss measures including:

Future plans including product development

Introduction of major capital works

Introduction of new technology, machines, associated layout, training, job numbers and skill requirements

Training

Improvements to system of training

The Company's affirmative action policy and program and equality of opportunity within the workplace

Affirmative action/Equal opportunity

Managements practices and organisational change

Industrial issues and industrial disputes, provided that the industrial disputes should be addressed via the first step of the Disputes Settlement Procedure prior to being

Occupational Health and Safety Issues. While not distracting from the functions of the OH&S Committee, the delegates Committee may discuss current OH&S issues. If an issue has not been before the committee it will be referred back to an OH&S committee member.

Any other matter raised by union or management which may impact on the union membership.

The parties agree that the Darrell Lea Chocolates Delegates Committee will work co-operatively to assist in the introduction of change to:

Improve job security and career opportunities for employees

Assist in identifying training opportunities and developing training plans
Improve the communication, consultative and decision making process within the company

Increase productivity, quality, efficiency and hygiene

Reduce waste costs

Increase competitiveness of manufacturing

Improve working conditions, amenities and environment

(iii) In the specific area of employee development.

The Delegates Committee will work with the Company in the development of a competency based training program designed to meet the Company's predicted and planned training needs for employees covered by this Agreement. The requirements of the training plans shall be a guiding determinant of a number of employees undertaking training. The Company's objective is that all skills acquired, wherever possible, will be accredited and transferrable.

The Delegates Committee will monitor the implementation of the plan including the application and selection process and will administer the appeals mechanism to deal with issues arising out of the training process.

The Delegates Committee will be involved in regular reviews of training plans.

(iv) Minutes

Minutes of the delegate committee/management meeting shall be circulated to committee members for verification prior to being posted on notice boards. Every effort shall be made to have the minutes publicised within five (5) working days of the meeting and a copy of the minutes will be sent the AMWU Branch office. The minutes shall include:

Attendees at the meeting

Summary of the issues

Recommendations, time frames and who is responsible for follow up

Time frame for consideration of deferred items

(v) Preparation and Report Back

Delegates should have adequate time and access to their membership:

Prior to committee meetings to prepare their response and input

Following committee meetings, to report back to members when necessary on issues discussed, or to report back to union Organisers

To attend to other committee business

Delegates will have access to telephone, fax, photocopier, pigeonhole, email and lockable filing cabinets to enable the committee to securely keep records

8. Protection of Employee Entitlements

Darrell Lea agrees to set aside contributions to the National Entitlements Security Trust (NEST) as follows:

Darrell Lea will commence making Annual Leave and Long Service Leave entitlement contributions to NEST commencing financial year 2005 for the purposes of Annual Leave and for Long Service Leave earned after the 1st of July 2004.

Long Service Leave:

Long Service Leave entitlement contributions will be made following the completion of 5 years service. Contributions will not be made retrospectively. Contributions that protect employees Long Service Leave entitlements will be made from the 1 July 2004.

The Company will contribute 1 week's entitlement on or around the 1 July 2004 and then two weeks per year from 1 July 2005 until full entitlement is protected.

Annual Leave

A 'cap' of six weeks annual leave will apply in terms of Annual Leave entitlement contributions. The contributions will be made for the purposes of annual leave as follows:

Year 1 (2005) 2 weeks

Year 2 (2006) 2 weeks

Year 3 (2006) 2 weeks

Management will try to ensure that a minimum two weeks annual leave is taken per annum from future accruals, in order that annual leave contributions to NEST during the life of this agreement do not exceed 6 weeks.

9. Contract of Employment

The following elements of the Contract of Employment will remain in place for the term of this agreement.

9.A PROBATIONARY EMPLOYMENT

Darrell Lea may initially engage full time, part time or seasonal employees for a probationary period of 6 weeks.

The employee will be advised in advance that employment is probationary.

- (i) A probationary employee is for all purposes of the awards a full-time or part-time employee.
- (ii) Probationary employment forms part of an employee's period of continuous service for all purposes of the award.
- (iii) The probationary period will only apply on one occasion, on the initial engagement of any employee.

9.B CONFECTIONERS - DEFINITIONS OF EMPLOYMENT

- (i) Weekly employees - Employees will be directly employed by Darrell Lea. Employment shall be by the week. Any employee other than those engaged as casuals shall be deemed to be employed by the week.
- (ii) "Seasonal" employees - Employees who will be directly employed by Darrell Lea on a short term basis. "Seasonal" employees are employed to cover the periods of excess production demand associated with Easter and Christmas or other periods requiring additional sustained short term employment, and will be employed for a fixed term of no less than four(4) weeks and no longer than 9 months except by consultation and agreement. They will be informed of the approximate term of employment at interview and will be advised in writing of this approximate term and their classification on appointment. When permanent employees are required, these positions will be filled from the "seasonal" employee pool, except by consultation. In addition to all other entitlements, pro rata payment shall apply in respect to annual leave and sick leave. Annual leave will be paid on termination with the 17.5% loading. Public Holidays will be paid as they fall due.
- (iii) Permanent Part-Time - Employees will be directly employed by Darrell Lea. Ordinary hours will not be less than 20 per week and not more than 35. All entitlements for Annual Leave, sick leave, long service leave and public holidays will be paid on a prorata basis. The classification and hourly rate will be consistent with the duties performed.

Before commencing any part-time employment, the employee and employer must agree:

- (1) Upon the hours to be worked by the employee, the days upon which they will be worked and the commencing and finishing times for the work;
- (2) The terms of this agreement may be varied by consent.
- (3) The terms of this agreement or any variation to it shall be in writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.

Overtime

A part-time employee who is required by the employer to work in excess of the hours agreed upon in accordance with 9B(iii) (1) and (2) shall be paid overtime in accordance with the Confectioners (State) Award.

- (iv) Part Time "Seasonal" Employee - part time employees who will be directly employed by Darrell Lea on a short term basis.

"Seasonal" part time employees are employed to cover the periods of excess production demand associated with Easter and Christmas or other periods requiring additional sustained, short term employment, and will be employed for a fixed term of no less than four weeks and no longer than nine (9) months except by consultation and agreement.

Ordinary hours will not be less than 20 per week and no more more than 35. The classification and hourly rate will be consistent with the duties performed. Employees will be informed of the approximate term of employment at interview and will be advised in writing of the approximate term and their classification upon appointment.

In addition to all other entitlements, pro rata payment shall apply in respect to annual leave and sick leave. Annual Leave will be paid on termination with the 17.5% loading. Public Holidays will be paid as they fall due.

Conditions of Part Time Employment contained at clause 9B (iii) 1, 2and 3 shall apply.

- (v) Casual Employment - Casuals will be employed directly by Darrell Lea. Casuals may only be employed to perform irregularly occurring work or to replace permanent employees who are absent. A casual will be paid the site rate for the classification under which they are employed plus the casual loading contained in the State Awards.

Engagement shall be for a minimum of 4 hours on any day.

The casual rate plus the appropriate shift allowance shall apply if employed on shift work.

Casual Employees are not entitled to sick leave and public holidays.

Annual Leave will be paid in accordance with the *Annual Leave Act*.

Long Service Leave is in accordance with the *Long Service Leave Act*.

The following conditions will also apply to casual employees and consultation at Delegate Committee prior to engagement:-

Casual Employment and Consultation Procedures:

Casuals will be used to perform "Irregularly occurring work" the term irregular in this context means that a person's employment is casual when they are employed for short terms to cover for periods of absenteeism such as sickness, annual leave and workers compensation. Consultation will occur with the relevant delegate regarding the requirement for casual labour to cover for these periods. Employment of casuals at times other than the above can only occur if management meets the conditions set out below. A casual will not be

employed work on Saturday or Sunday and cannot replace employees at the end of normal shifts when overtime may have been available unless weekend and other overtime cannot be filled by the regular or seasonally employed workforce.

Casual employees will be directly employed by Darrell Lea and will be paid site rates of pay plus casual loading as contained in the Confectioners (State) Award.

At times during the year other than the "normal seasons" a casual pool of no more than 10% of the permanent workforce may be used to assist in preparation of products for sales promotions. However, prior to their employment management will consult with delegates through the existing Delegates Committee and provide information on the numbers of casuals to be employed on any one day, the hours of work for each casual, the location within the factory of the work to be performed and the proposed duration of employment.

Management will access from the Marketing Department the "Promotions and Events Calendar" available in January each year. Through the Delegates Committee members will plan and agree in advance, where it is known, for the employment of casuals.

Casuals positions will be considered for permanent positions following six (6) months accrued employment. However, any full time position with the Company will be offered in the first instance to "seasonal" employees, these positions will be advertised internally. If a "seasonal" employee is not appointed then the position will be open to casual employees to apply.

Genuine attempts by all members of the Delegates Committee to reach agreement on the employment of casuals will be made in accordance with the above conditions.

Any disputes that arise from the implementation of this clause will be addressed in accordance with Clause 19 Disputes Settlement Procedures of this agreement.

9.C ENGINEERING EMPLOYEES

- (i) Weekly Employees - all employees engaged in regular mechanical and electrical maintenance work and/or approved project work shall be directly employed by Darrell Lea on a weekly basis.
- (ii) Contractors Agreement - the parties to this agreement confirm their commitment to permanent employment and agree to the following criteria regarding the engagement of contract labour in the Engineering Department:

Definitions:

Employee - This means a direct employee of Darrell Lea, employed in the maintenance section of the Engineering or Manufacturing Department and engaged in mechanical, electrical and/or project work.

Contractor -This means an employee of a Labour Agency under an Award and registered Agreement on weekly hire and who is directly supervised by Darrell Lea personnel.

Maintenance -Shall include the keeping of plant and equipment in repair, in operation or in running condition as constructed, installed or manufactured to meet production requirements.

Project - Shall include but not be limited to replacement or changes to plant, machinery and installation of new production equipment, to the commissioning stage and shall also include construction, relocation, demolition and refurbishment of buildings, plant, machinery and equipment.

Darrell Lea shall employ maintenance employees to carry out regular maintenance work associated with the efficient running of its production operations. Any warranty work will be the responsibility of the supplier of equipment.

Contractors may be hired for maintenance only to cope with seasonal peak, planned annual overhauls, absenteeism, long service leave, sick leave. Contractors will not be hired specifically for regular on line work without consultation without the Union delegates and work crew.

Contractors hired for mechanical maintenance shall wherever possible be financial members of the appropriate trade union.

Contracted mechanical and electrical maintenance staff required to supplement the normal base maintenance crew would be sourced from an organisation which has a registered Minimum Rates EBA with the AMWU.

On occasions where specialist and/or overseas labour is to be utilised, the delegates shall be advised. Maintenance employees will work with these contractors as appropriate to ensure an ongoing knowledge is acquired for the maintenance of equipment.

Contractors will leave the site immediately if the maintenance department takes Industrial action but only provided that the consultation process has been exhausted. Engineering management will inform contractors to cease work and undertake to do so.

Contractors doing maintenance will fully abide by the Company's normal requirements for starting, finishing and break times as well as the duration of breaks.

Contractors will be paid no less than employees of the same classification plus casual loading where required.

An agreed list of Labor Agencies will be updated and maintained in consultation with delegates. Darrell Lea undertakes to provide reasonable notice of any change required to the agreed list.

Delegates will be allowed access to contractors so that AMWU membership can be recorded.

Darrell Lea undertakes to request of service contract companies that AMWU members be given preference for visits to the site. Should this not be possible the parties accept that normal work of this type shall proceed without prejudice or precedence.

In the interests of building an environment that enhances quality maintenance the parties are committed to ensuring that all tradesmen must be qualified in their area of expertise. Should any issues arise in regard to this, the delegate will inform Engineering Management immediately so that the issue can be quickly resolved.

9.D WAREHOUSE EMPLOYEES

Warehouse employees shall be employed in accordance with the provisions of the Storeman and Packers General State Award. Weekly Employees: employees will be directly employed by Darrell Lea. Employment shall be by the week. Any employee other than those engaged as casuals shall be deemed to be employed by the week.

9.E TERMINATION OF EMPLOYMENT

Termination of employment shall be in accordance with the relevant Parent Award.

9.F ROSTERED DAYS OFF

R.D.O.'s will be rostered annually through the delegates committee.

The Roster for the following year will be completed in draft form by September 30th each year.

The draft RDO Roster will be posted for employee consideration and feed back.

The Final Roster will be agreed by October 30th each year.

Rostered Day Off will be taken on a monthly basis (12 RDO's per year) and the RDO will be on a designated day Monday or Friday unless mutually agreed and attached to a Public Holiday.

Where an employee is requested to work on a RDO to meet production requirements such as Licorice production an alternate RDO will be agreed at the time.

Where alternate RDO's cannot be taken a maximum of five (5) RDO's may be banked.

9.G PAYROLL DEDUCTIONS

The company agrees to deduct union fees for members of the Australian Manufacturing Workers Union, the National Union of Workers NSW Branch and Liquor Hospitality & Miscellaneous Union when authorised by an employee.

9.H OVERTIME

Darrell Lea will use their best endeavours to ensure that employees do not work unreasonable amount of overtime and that overtime on the site is allocated on a fair and equitable basis.

People whose primary job is working on the lines will get the first option for overtime.

On jobs where rotation occurs (i.e. packing), people are selected from the list of "available for overtime" people. If someone is unavailable for overtime it goes to the next down the list and around to the top again.

If there is insufficient numbers of people on this list, then other departments are asked.

Darrell Lea may require an employee to work reasonable overtime at overtime rates.

An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.

For the purposes of this clause what is unreasonable or otherwise will be determined having regard to:

- any risk to employee health and safety;

- the employee's personal circumstances including any family and carer responsibilities;

- the needs of the workplace or enterprise;

- the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and

- any other relevant matter.

9.I EARLY MORNING SHIFT

Any shift commencing between 4.00am and 6.30am inclusive will have a shift loading of 12.5% applying to the ordinary rate of pay.

9.J NIGHT SHIFT ALLOWANCE

Shift Allowance for Confectionery employees working on the night shift is 20% at March 2003 in accordance with the Confectionery State Award.

The shift loading will be increased to 25% on January 1st 2006 or by any award variation which may occur during the life of this agreement.

9.K LABOUR FLEXIBILITY

Dependant on the needs of the Company, employees in some work areas will be invited to make themselves available for Afternoon and/or Night shift work at the request of the Company. In recognition of employees availability to work on alternative shifts, when required a permanent increment of \$15.00 per week will be paid. This will be called a Flexibility Allowance. Normal shift penalties and notice periods will be as per the Award. Enrolment in the system will be completely voluntary. Periodic re-enrolment to renew availability will be required.

Initially this could apply to the following areas but not exclusively to these areas:

Enrobers

HiBoil cooking/Marshmallow

Main Kitchen

9.L MOVEMENT OF STAFF BETWEEN SHIFTS

In order to maintain flexibility at times of increased or decreasing production and to accommodate the introduction of new technology the Company from time to time may need employees to move to other shifts. The parties recognise that employees establish life-styles that they and their families become accustomed to.

Movement of staff between shifts will therefore be a voluntary arrangement and subject to discussions at the Delegates Committees where the parties will address crewing requirements and the reason for any proposed changes. A minimum four (4) weeks notice will be given to employees who agree to changing shifts. Employees moving from shifts that attract penalties such as night and afternoon shift will have their wages protected for twelve (12) weeks from the commencement of the agreed notice period.

Effectively this gives the employee twelve (12) weeks salary maintenance and sufficient time to prepare and adjust to their new conditions of employment (i.e. four (4) weeks notice and eight (8) weeks salary maintenance).

The move across to another shift is by mutual agreement. However, genuine efforts must be made to avoid a redundancy situation arising.

9.M SUPERANNUATION AND SALARY SACRIFICE

- (i) The company shall make on behalf of each employee contributions in accordance with the *Superannuation Guarantee Act*. Current rate SGC = 9%

Employee Contributions

Employees who may wish to make contributions to the Fund additional to those being paid by the Employer shall be entitled to authorise the Employer to pay into the Fund from the employee's wage amounts specified by the employee.

- (ii) An employee may request their rate of pay to be reduced by the amount which they elect in writing to sacrifice each pay period. This will enable the Company to make Superannuation contribution equal to this amount for the benefit of the employee to the fund elected from those named below. This reduction in pay for Superannuation purposes will be known as a "salary sacrifice" arrangement. This contribution will be treated as an employer contribution and taxed accordingly.
- (iii) Employee may review their salary sacrifice arrangements once in every twelve (12) month period. The Company recommends employees seek independent financial advice before making a decision to make Superannuation by salary sacrifice.
- (iv) For all payments of annual leave, long service leave and other paid leave, overtime, termination and redundancy payments the pre-salary sacrifice rate of pay shall apply.
- (v) On a monthly basis the Employer, employee and salary sacrifice contributions will be forwarded to the Darrell Lea Superannuation Fund or the relevant industry fund listed below:

Food Industry Superannuation Trust (FIST) - Confectionery employees

Superannuation Trust of Australia (STA) - Maintenance employees

9.N WORKERS COMPENSATION

Workers Compensation payments will be paid at the employee's ordinary hours hourly rate. This will include shift allowance for employees regularly employed as a shift worker.

Other provisions of the *Workers Compensation Act* will apply.

9.O REHABILITATION

The Company is committed to the rehabilitation of injured employees and to the provision of return to work plans. All Union Delegates will undergo initial Rehabilitation training by a Workcover Authority approved trainer. Delegates will also undertake an annual refresher course within one (1) months of the anniversary of their initial training and will be able to assist with the development of Rehabilitation policies and assist employee with return to work plans.

10. Introduction of Change; Discussions Before Redundancy; Redundancy Provisions

10A INTRODUCTION OF CHANGE

(i) Employer's duty to notify

Where the employer is planning to introduce major changes in production program, organisation, structure or technology that are likely to have significant effects of employees, whether or not a decision has been made the employer shall notify the employees who may be affected by the proposed changes and their union.

"Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the award makes provisions for alterations of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

(ii) Employer's duty to discuss change.

The employer shall discuss with the employees affected and their union, inter alia, the introduction of the changes, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their union in relation to the changes.

The discussions with employees affected and their union shall commence as early as practicable.

For the purposes of such discussion, the employer shall provide in writing to the employees concerned and their union, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

The employer shall provide information in languages other than English for employees of non-English speaking background.

10.B DISCUSSIONS BEFORE REDUNDANCIES

The company shall endeavour to minimise the likelihood of redundancy during the life of this agreement. However, should redundancies become necessary following the discussions in accordance with Clause 10(i) of this agreement, discussions shall take place in accordance with the award and this EBA, as soon as is

practicable after the employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone.

For the purpose of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and the union all relevant information about the proposed terminations, the reason for the proposed terminations, the number and categories of employees likely to be effected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. The discussions will address measures to avert or mitigate the adverse effects of redundancy and the employer will give prompt consideration to matters raised by the employee, delegates and their union. Redundancy to the extent practicable, will be on a voluntary basis.

Any disputes arising from the implementation of this clause or a Redundancy programme will be resolved in accordance with Clause 19 , Dispute Settlement Procedures of this Agreement.

10.C REDUNDANCY PAYMENTS AND BENEFITS

(i) Severance and Redundancy Payment

Each employee made redundant will receive four (4) weeks payment at the current rate. This provision only applies to those employees with twelve (12) months continuous service with the employer.

(ii) Period Of Notice

Each employee with at least three (3) months continuous service (excluding casual employees) will receive four (4) weeks notice of redundancy. Employees over the age of 45 will be entitled to one additional week of notice.

The Company may elect not to give an employee notice of termination and pay in lieu of notice instead.

(iii) Service Payments

Redundant employees with one (1) or more year of continuous service shall receive four (4) weeks payment for each year of service up to a maximum of 72 weeks. This payment will be made on a pro-rata basis for part years service based on completed months of service.

(iv) Sick Leave

An employees sick leave balance will be paid out at the ordinary rate of pay (excluding shift loading).

(v) Pro-rata Long Service Leave

Consistent with the *New South Wales Long Service Leave Act*, pro-rata Long Service Leave payments shall apply to employees with five (5) years or more service, based on completed months of service.

(vi) Annual Leave/Annual Leave Loading

All annual leave entitlements will be paid out together with annual leave loading. Pro-rata annual leave will be calculated for the final year of service.

(vii) Superannuation

The terms and conditions of the relevant Superannuation Trust Deed will be observed in all respects.

The Company will provide details of their obligations under the relevant Superannuation.

The Company undertakes not to offset any of the redundancy payments received by employees against final superannuation benefits received.

(viii) Other Benefits Of Redundancy

An employee becoming redundant in accordance with this agreement shall, during their period of notice, be given reasonable time of without loss of pay to attend job interviews provided it is established to the satisfaction of the employer that the application for time off is genuine, prior notice is given and the time is mutually agreed.

(ix) Alternative Employment

Employees will be provided with reasonable paid time off for the purpose of attending interviews or other legitimate job search activities. Subject to substantiation of interview attendance, this may be up to eight (8) hours per week.

In addition, the Company will provide all reasonable advice, guidance and assistance to employees facing retrenchment to ensure they are able to maximise opportunities available to them. Counselling on job search techniques, resume preparation and interview skills will also be provided by a recognised external, professional provider.

A Certificate of Service will be provided to each employee on the day of termination stating the employee's length of service, most recent position in the company and reason for termination.

(x) Financial Planning Services

The Company recognises that superannuation and termination payments, taxation considerations, etc. are governed by complex legislation. The company will arrange for a Financial Planning Seminar to be conducted by agreed financial consultants.

Attendance at these seminars is voluntary and at no cost to employees. Apart from covering the subjects listed above in more detail, the financial counsellors will also assist employees with the necessary paperwork if they wish to roll-over their benefits.

(xi) Centerlink Information

The Company will arrange for representatives of this department to provide on-site seminars and a follow-up service for relevant employees.

(xii) Transfers and Reclassifications

Where an alternative position exists within the site which is within the same field of work and at the same or higher rate of pay and similar conditions of employment, the positions shall be offered to relevant employees who have not indicated a preference in separating from the Company.

Where an alternative position exists within the site for which no employees of similar skills applies, the Company shall offer employment to employees within the same field of work and provide the necessary training to enable the work to be undertaken in a safe manner.

Where an employee elects to transfer into an alternative position on site, any option of retrenchment which has been provided in writing to an employee will remain open for a period of three (3) months, provided that the company will be deemed to have met all commitments in respect to notification and consultation under this agreement.

10.D REDUNDANCY PROVISIONS FOR TOTAL PLANT CLOSURE

The company recognises that there are circumstances particular to plant closures which must be taken into account when an announcement of such major change occurs. The company undertakes to discuss such issues with the parties should such a need arise.

11. Transmission of Business

In the event of a Transmission of Business the provisions of this agreement will bind the new employer and cover all or part of the work.

- (i) It is agreed that in the event that a transmission of business is to occur in order to protect employees accrued entitlements in the event of the transmittee being declared bankrupt or going into liquidation or voluntary administration, that the transmitter will pay employees accrued entitlements into the agreed fund between the AMWU and Darrell Lea. N.E.S.T
- (ii) The accrued entitlements will be calculated to the date on which the transmission of business will occur. Entitlements will be calculated in accordance with this agreement.
- (iii) The accrued entitlements to be paid into the agreed fund will be:
 - Long Service Leave
 - Serverance/Redundancy Pay
 - Annual Leave (plus annual leave loading where applicable)
 - Sick Leave
- (iv) Further, the parties agree that in the event of a transmission of business, the parties will meet before the transmission takes effect to monitor the implementation of this sub clause and the company further agrees that any information relating to the financial viability of the company will be tabled at the meeting.

12. Classification Structure and Training

12A CLASSIFICATION

- (i) Darrell Lea and the AMWU (the parties) have agreed and included a competency based classification structure and pay relativities in this agreement at Clause 13
- (ii) These parties have agreed to the implementation of the classification structure and the provision of competency based training in accordance with the process at Clause 12B of this agreement.
- (iii) These parties have further agreed that during the life of the agreement to work towards a transition from the current wage rates to new wage rates in accordance with the percentage relativities of the classification structure at Clause 13.2 and following agreement between the parties for those relativities and the new wages rates to be implemented with the next Darrell Lea Enterprise Agreement.
- (iv) The structure is in accordance with National Standards and based on the competency standards for the Food & Confectionery Industry and Metal Engineering Industry and the principles of recognition of prior learning.
- (v) Reclassification for Tradespersons shall be in accordance with the relevant provisions of the Metal, Engineering and Associated Industries Award.

- (vi) It is agreed that the following stages will be completed during the life of the agreement for confectionery workers and the parties shall use their best endeavours to have the implementation process finalised before 30th September 2004.

Note:- In line with the Company's equal opportunity policy this classification structure must not be gender based.

12.B GUIDELINES FOR IMPLEMENTING THE CLASSIFICATION STRUCTURE

Stage 1: Implementation Committee Set up and Briefing Process

The parties at 12A (i) of this agreement will meet and agree on a recognised and accredited Industry Body (i.e. The Food Industry Group or MISTAS for the provision of professional assistance to facilitate the implementation of the competency based classification structure and Food Industry Training package.

The site AMWU delegates with nominated plant management and additional shop floor confectionery workers (as required to ensure departments are adequately represented) and AMWU official will form a committee to oversee the identification and implementation of the site Confectionery Competency Matrix. This group meets regularly during the life of the project and disbands at it's end.

The ongoing development of training for the site will be managed by the site Delegate committee working with the Company in accordance with Clause 7(iii) Employee Development.

Briefing sessions are held with the Implementation Committee and all site employees before commencing stage 2. These will be conducted by the implementation facilitator.

Stage 2: Implementation Committee Conference.

All Implementation Committee members participate in conference to:

- Discuss employee expectations;
- Develop a training and continuous improvement culture;
- Discuss workplace competencies and the Qualifications Framework;
- Identify site competencies from the Food Processing Training Package;
- Develop an employee briefing/validation methodology;
- Develop time -lines for implementation;
- Determine career progression methodology.

This conference will be facilitated by the agreed accredited industry body.

Stage 3: Task Analysis

All relevant work instructions, processes, RISK related procedures (Standard Operations Procedures (SOP's), safe-work, HACCP) and company policy are considered to determine the skills required of all personnel on the site. Relevant site expertise (Quality Assurance, Engineering, Health and Safety personnel) should be consulted during this investigation.

To assist in the validation process, all functions and tasks are expressed in the language of the site. The outcome of this process is presented in a written report. This process will be managed by the agreed facilitator. The outcome of this stage is a comprehensive task profile for each work area.

Stage 4: Competency Matching

The tasks identified are then matched with relevant nationally endorsed industry competency standards. This process will be managed by the facilitator. The process may also identify the need to develop specialist enterprise competencies where they do not otherwise exist.

Stage 5: Employee Validation

Copies of the competency document are made available to all employees for their validation. The validation should take no longer than four weeks.

Stage 6: Key Competency Validation

The Implementation committee validate the final competency document

Stage 7: Qualifications Matrix

The Implementation committee and the agreed and accredited Training Provider (i.e. TAFE) identifies and develops a suite of resources to support on-the-job training as well as other training delivery methods for the site.

Additional accredited modules can be added to the matrix to provide a full qualification for each classification, should employees wish to pursue this option. All resources are to be selected from nationally accredited and recognised programs wherever possible.

This process ensures that all employees have greater options in pursuing their development and career plans with site management.

Stage 8: Implementation Workshop

All Implementation Committee members participate in a workshop to:

- Develop an employee briefing methodology;

- Develop time -lines for assessment;

- Develop the assessment methodology including Recognition of Prior Learning;

- Determine training resource requirements;

Stage 9: Workplace Briefing

Implementation Committee members and plant management communicate the qualification matrix and assessment methodology to the Chief Operations Officer (CEO) and all site personnel.

Stage 10: Implementation

The Implementation Committee will consider the "Food Preservers Award, Award Restructuring Implementation Manual" and/or the "Metal and Engineering Industry Award, Competency Implementation Guide" as models for implementation.

Stage 10.1: Assessment

All employees are assessed against the key competencies identified at their level. All prior learning acquired on or off-the-job and relevant qualification will be given due consideration and recognised during this process. The assessment process is overseen by the Implementation Committee within the guidelines of this policy, and the National Food Industry Training Council Ltd (NFITC) "Assessment Framework for the Food and Beverage Processing Industry" document.

Stage 10.2: Translation to the New Classification Structure

The parties to the agreement through the delegate committee will meet and review the outcome of all employee assessments and determine how employees will transfer to the new classification structure. No employee will suffer any loss of pay as a result of the translation to the Competency based classification structure.

Management will transfer employee to the new classification structure through the agreed process. Any disputes about classifications levels will be addressed by the Delegates Committee in accordance with the Grievance Procedure contained in this Agreement.

Stage 11: Career Path Access and Availability

Career path opportunities will be made available to all employees, however these will depend on the needs of Darrell Lea. In determining career path opportunities the company (management) in consultation with the site Delegates Committee will consider the following: Skills required, Operation, Budgetary constraints, employee aspirations, Time lines.

Stage 12: Career Counselling

The company seeks to ensure that all employees meet the competency requirements of their classification and where practicable, have access to training opportunities in other classifications or job functions.

All employees seeking to further their training may do so in accordance with the site training plan and budget.

12.C TRAINING

The Company agrees to provide training to all employees in the certificate of Food Processing:

Training shall be provided by the Company and as required the agreed training provider. Employees may make application prior to October 2004 to undertake the training. Whilst the company shall make the training available to all employees, it is not compulsory to undertake this training.

Where an employee undertakes this training or any other at the request of the employer such training shall as far as practicable be conducted during the employee's usual working time.

Where it is necessary for the employee to attend training outside of the employee's usual working time the employee shall be paid for such attendance and extra travel time as if the employee had worked.

Fees, materials or any other reasonable costs associated with the training shall be paid by the employer. This shall apply equally to apprentices, trainees, or other similar categories of persons engaged by the employer except where agreement to allow otherwise is reached with the relevant union.

All apprentices and trainees shall continue to receive paid training. Such training shall meet the requirements of the Award and Industry Training Advisory Board, resulting in an accredited national qualification.

1. NEW CLASSIFICATION STRUCTURE AND WAGES RATES

Confectionery & Maintenance Employees

Level	% Relativity	Equivalent Classification	Wages
11	125%	C6	To be determined
10	115%	C7 Trade Certificate + 36 Modules	To be determined

9	110%	C8	To be determined
8	105%	Trade Certificate + 12 Modules C9	To be determined
7	100%	C10 Trade Certificate or Food Industry Certificate 3 = 9 additional specialist/optional units	To be determined
6	96%	+ 4 core units from Certificate 3	To be determined
5	92.4%	Food Industry Certificate 2 Total of 7 Specialist/optional units C11	To be determined
4	89.9%	+ 5 core units from Certificate 2	To be determined
3	87.4%	Food Industry Certificate 1 = 4 additional specialist/optional units C12	To be determined
2	82%	4 core units of certificate 1 C13	To be determined
1	78%	38 hours structured induction training C14	To be determined

The parties agree to work towards a transition from the levels contained in the Confectionery Award to the above new classification structure during the life of this agreement and the implementation of the above pay relativities and new agreed wage rates in the next Darrell Lea Enterprise Agreement. The above levels can be attained through recognition of prior learning for current employees.

14. Wage and Allowance Increases

14.A WAGE INCREASE

A wage increase of 4% is payable to all employees (backdated) from July 4th, 2003 plus a further 4.5% increase payable from July the 3rd, 2004 and 5% payable from July 3rd 2005.

14.B ALLOWANCE INCREASE

Allowances will be increased yearly by 3% and paid in increments with the wage increases. This will apply to the following allowances:

Allowance	July 2003	July 2004	July 2005
a Meal Money - per meal	\$9.35	\$9.48	\$9.76
b Laundry - per week	\$5.67	\$5.85	\$6.02

c	Forklift - per hour	\$0.63	\$0.65	\$0.67
d	Boiler - per week	\$18.53	\$19.10	\$19.67

Meal and forklift allowances above reflect the highest rate of the underpinning awards, they will be increased by the 3% increases or any award variation which ever is the greater.

As part of this Enterprise Agreement, employees have agreed to support, cooperate and assist Darrell Lea in practical ways to achieve best practice and performance improvement in agreed key areas as identified in Clause 6.

14.C FIRST AID ALLOWANCE

The First Aid Allowance will recognise the three levels of competency for the levels of First Aid Certification held.

The Company will nominate the number of First Aiders required at the nominated levels:

	July 2003	July 2004	July 2005
Senior First Aider	\$12.73 per week	\$13.11 per week	\$13.50 per week
Advanced F.A.	\$16.97 per week	\$17.48 per week	\$18.00 per week
OH&S F.A.	\$21.21 per week	\$21.85 per week	\$22.51 per week

Senior First Aider - 5 only required

Advanced First Aider - 3 only required

OH&S First Aider - 3 only required

15. Leave Provisions

15.A ANNUAL LEAVE

Annual Leave shall be in accordance with the *Annual Leave Act* and the relevant parent award.

15.B LONG SERVICE LEAVE

Long Service Leave will be in Accordance with the *NSW Act (1955)*

15.C SICK LEAVE

- (i) The normal entitlement of employees to sick leave will be 5 days per annum during the first year of employment and 10 days per annum for subsequent years.
- (ii) At the discretion of the employer and with the agreement of the employee at the time of the sick leave anniversary date, any entitlements in excess of two years' entitlement may be paid out at the existing rate of pay.
- (iii) Employees who choose to continue to accumulate their sick leave entitlements will be paid out on termination, resignation or retirement for that portion of the entitlement in excess of two years' accumulation.

15.D PARENTAL LEAVE

As provided by the *NSW Industrial Relations Act 1996* employees are entitled to 52 weeks unpaid parental leave in connection with the birth or Adoption of a child.

Definitions:

Maternity Leave - Maternity Leave is taken by female employees during or after pregnancy. The period of maternity leave available is up to 52 weeks.

Paternity Leave - Paternity Leave is taken by the father or partner. Short Paternity leave is for one week after the child is born or pregnancy is terminated.

Extended Paternity Leave is available when the partner is to be the primary carer of the child or children.

Special Maternity Leave - Special Maternity Leave is taken to recover from a terminated pregnancy when the child is still born or when the mother is ill because of the pregnancy.

Adoption Leave - Adoption leave may be taken by either partner in connection with the adoption of a child under the age of 5 years.

Access to these provisions shall be constant with Part 4, Division 1 Parental Leave in accordance with the *NSW Industrial Relations Act 1996*.

Paid Parental Leave

In addition to the minimum provisions previously outlined Darrell Lea hence leave provisions that provide employees with an entitlement of up to 6 weeks paid maternity/paternity leave subject to the following:

- (i) The employee must have 30 months continuous service with Darrell Lea.
- (ii) Female employees applying for maternity leave shall provide the employer with the following:
 - (a) A Doctor's Certificate confirming the pregnancy and the expected date of birth.
 - (b) 4 Weeks notice in writing of the intention to commence leave and the approximate date of return.
- (iii) Employees accessing paternity leave shall provide the employer with the following:
 - (a) At least 4 weeks prior to taking leave produce a Medical Certificate naming the employees spouse and confirming the pregnancy.
 - (b) Written notice of the intention to take leave including the dates proposed to start and end the period of leave.
- (iv) Leave shall be paid without leave loading.

15.E BEREAVEMENT LEAVE

An employee shall be entitled to a maximum of two (2) days leave without loss of pay on each occasion of the death of a close immediate relative such as parent, parent-in-law, partner, sibling, child or grandparent.

15.F JURY SERVICE LEAVE

Employees required to attend for jury service during their normal working hours should suffer no loss of pay and shall be reimbursed by the Company an amount equal to the difference between the amount paid in respect of their absence for such jury service and the amount of wage they would have received in respect of the

ordinary hours they would have worked had they not been on jury service. Employees shall notify the Company as soon as possible of the date upon which they are required to attend for jury service. Further, employees shall notify the Company proof of attendance, the duration of such attendance and the amount received in respect of such jury service before the Company will make payment.

15.G BLOOD DONORS LEAVE

Darrell Lea have agreed to make arrangements with the Blood Bank for the mobile Blood Bank to visit the site. Employee donating blood will not be financially disadvantaged and allowed sufficient paid time to ensure OH&S requirements are adhered to.

15.H UNION PICNIC DAY

- (i) (a) Union Picnic Day shall, for the purposes of this Agreement be regarded as a holiday for employees who are financial members of the union/s. The union Picnic Day shall be on such day as is agreed between the Company and the union/s.
- (b) The union/s shall advise the Company of financial members as at the time of the Union Picnic Day. Such advice must be given at least two weeks prior to the Union Picnic Day.
- (ii) Where an employee, who is not a financial member of the union/s, is required to work on Union Picnic Day, the employee shall be entitled to be paid ordinary pay for the normal working day.
- (iii) Employees who are not financial members of the union/s and who are not required by the Company to work on Union Picnic Day, may apply to the Company to take annual leave, time off in lieu of overtime, leave without pay, such other leave as may be approved by the Company or may be required by the Company to make up time.

15.I UNION TRAINING - PAID LEAVE

It is agreed that, as has been customary, Darrell Lea will not unreasonably refuse requests for paid leave for appropriate employees to attend Union training courses, seminars or conferences. Darrell Lea requests that the seasonal nature of the business be taken into account on the timing of this leave and that reasonable notice is given.

16. Site Policies

16.A ANTI - DISCRIMINATION

It is the intention of the parties to this Agreement to achieve the principals of the *Industrial Relations Act 1996* (the Act) through respecting and valuing the diversity of the workforce and as a result the Company agrees to not discriminate against an employee in his/her employment or terminate the employee's employment for reasons that include the employee's race, colour, sex, sexual preference, age, physical or mental disability, work-related injury, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

16.B EMPLOYMENT PROCEDURES

Darrell Lea will abide by the principles and practices that underpin Equal Employment Opportunities (EEO). EEO includes recruitment, promotion and access to training in order to advance an employee's career. We will not discriminate on the basis of ethnicity, age, gender, sexual preference, political or religious beliefs or membership of a union or other organisation.

16.C SITE SAFETY

The parties to this agreement are committed to achieving excellence in Occupational Health and Safety. As part of this commitment Darrell Lea will maintain an effective OH&S Committee following legislative requirements.

16.D CODE OF CONDUCT

All employees of Darrell Lea Chocolate Shops Pty Ltd are expected to observe the highest standards of ethics, integrity and behaviour during the course of their employment with the Company.

16.E WORK PRACTICES

(i) Smoking Breaks

Smoking will take place only during an employee's designated breaks and in designated smoking area. This is a Policy of Darrell Lea which applies to all employees.

(ii) Standard Operating Procedures (SOP)

It is agreed to work to SOP where they exist. It is also agreed that, where appropriate SOPs will be jointly developed. Where this is inappropriate, say because of the specialised technical content-operators must be fully involved in the trial operation of the SOP. While improvements to SOP will be welcomed and encouraged, any variation from SOP must be authorised on each occasion. The level of authorisation required will be included in the SOP.

(iii) Work Breaks

There will be defined breaks specified by duration and frequency, it is recognised that certain work areas and shifts may have different break requirements because of, for example, work routines, temperatures, etc. details of agreed breaks will be defined during the life of this Agreement.

(iv) Production Line Palletising Of Product

The parties re-affirm the commitment to ongoing use of confectioners in this area. The practice of Palletising and stacking for later storage, output from the production lines which may terminate in the store, shall continue.

(v) Clocking on and off

All employees to "clock off" if leaving the site during the employee working hours of a working day.

Staff to "clock on" only when they are ready to commence work i.e. car parked and changed into working clothes and no earlier than 20 minutes before the designated starting time.

Staff to be at their place of work ready for work at the designated starting time

Staff to "clock off" at the designated finishing time but prior to changing from work clothes and moving vehicles from the car park.

Note: Special provisions for afternoon shift have been implemented to provide security for employee's cars and reduction of noise.

16.F EMPLOYEE UNIFORMS

A policy regarding the issue of uniforms will be developed with the Delegate Committee during the life of this agreement.

17. Union Officials and Union Delegates

- (i) A official or officer of the union/s may enter the employer's establishment during working hours for the purpose of conducting union business and matters incidental to union business. Union officials are to sign in at reception, relevant management will be notified.

Wherever possible, the Union officials or site delegates will advise Darrell Lea of on site visits by providing 24 hours notice.

- (ii) The employer shall recognise appointed union delegates in the enterprise upon notification by the union to which the employee belongs. The delegate shall have access to the rights and facilities in the AMWU Union Delegates Charter contained at Clause 18 of this Agreement.

18. Delegates Charter

The parties recognise the importance that training plays in the development of Union Delegates and the creation of a positive industrial relations climate.

An employee elected as union delegate in the shop or department in which he/she is employed shall upon notification thereof to the Company be recognised as the accredited representative of the Union to which he/she belongs. An accredited union delegate shall be allowed the necessary time during working hours to interview the Company or its representative on matters affecting employees whom he/she represents.

An accredited union delegate shall be allowed a reasonable period of time during working hours to interview a duly accredited union official of the union to which he/she belongs on legitimate union business.

The Company commits to not unreasonably refuse leave to Union Delegates to attend union accredited training courses, seminars or conferences. This leave will be paid by the Company on the basis of no loss of normal income, that is, an employee will receive normal pay as per the shift cycle normally worked.

Where it is necessary for a delegate to attend on-site meetings outside of their normal working hours, overtime provisions will apply.

Rights And Responsibilities Of a Union Delegate

A Union Delegate shall have the right to move freely within the workplace for the purpose of consulting members in relation to negotiations with management in any matter affecting the employment of members.

After obtaining approval from his immediate manager, a Union delegate shall have the right to approach or be approached by a member of the union for the payment of union dues or other payments or to discuss any matter related to the members employment at any time during normal working hours. This approval shall not unreasonably be withheld.

After obtaining approval from site management a Union delegate shall have the right to call paid meetings of members and for those members to attend, on matters affecting the employment of members at the workplace.

To assist Organisers and Union delegates in communication of issues affecting the site (other than EBA negotiations) up to five paid information sessions per year may be held. Meetings are to be scheduled with a minimum of seven days notice unless otherwise agreed between the parties. The time required for meetings will be discussed between the parties.

Union delegates shall have the right to investigate and solve problems and grievances of their members.

Attend delegates meetings dealing with matters affecting union issues. Members of the delegates committee are to have access to a telephone, photocopier, fax machine, email and a suitable record storage area to enable them to keep records, union circular's and efficiently carry out their union responsibilities.

The Company shall provide a lockable notice boards of reasonable dimensions to be erected in a prominent positions in the establishment upon which accredited union representatives shall be permitted to post formal union notices and information.

19. Disputes Settlement Procedure

19.A The following procedure for the avoidance or resolution of disputes shall apply. The mechanism and procedures for resolving industrial disputes will include, but not be limited to the following:

- (i) The employee/s concerned will first discuss their concern with their immediate supervisor.
- (ii) If the matter is not resolved a meeting will be arranged between the employee, delegate and supervisor.
- (iii) If the matter is not resolved at such a meeting the parties will arrange further discussions involving more senior management and the relevant union official.
- (iv) If the matter is not resolved at such a meeting the parties may refer the matter to a more senior level of management and a more senior union official. In the event there is no agreement to refer the matter to a more senior level or it is agreed that such a reference would not resolve the matter, the parties may jointly or individually refer the matter to the New South Wales Industrial Relations Commission for assistance in resolving the matter.
- (v) During the discussions, the "status quo" shall remain and work shall proceed normally in accordance established custom and practice. "Status quo" shall mean the situation existing immediately prior to the dispute or the matter giving rise to the dispute.

19.B In order to facilitate the procedure in 19(A)

- (i) The party with the grievance must notify the other party at the earliest opportunity of the problem;
- (ii) Throughout all stages of the procedure all relevant facts must be clearly identified and recorded;
- (iii) Sensible time limits must be allowed for completion of the various stages of discussion. However, the parties must cooperate to ensure that the dispute resolution procedures are carried out as quickly as possible;
- (iv) Employee/s may seek advice from the Union delegate in relation to any grievance.
- (v) Employee/s should notify their immediate supervisor should they need to leave the line to discuss any issue with the delegate;

19.C Whilst the parties are attempting to resolve the matter through conciliation the parties will continue to work in accordance with the Award, this Agreement and established custom and practice, unless the employee has reasonable concern about an imminent risk to their health and safety. Subject to the relevant provision of the State Occupational Health and Safety Laws, if the employee has a reasonable concern about the imminent risk to their safety, the employee must not unreasonably fail to comply with a direction by the company to perform other available work, that is safe and appropriate for the employee to perform.

19.D Conciliation regarding disputes and potential disputes arising out of the operation of this clause will be dealt with by the New South Wales Industrial Relations Commission or as otherwise agreed between the parties.

20. Individual Grievance Procedure

Every individual employee may raise a grievance regarding any aspect of their employment with management. This grievance should be resolved and co-operatively to the mutual satisfaction of all concerned. The resolution may involve discussions with other employees, union officials, management and any other people who can facilitate resolution.

Where an individual grievance is not resolved in accordance with the process outlined above then the dispute procedure will be enacted.

21. Disciplinary Procedure

21.A GENERAL POLICY

- (i) The disciplinary procedure is directed towards correcting and/or improving an employee's conduct on occasions when that conduct is contrary to Company rules and requirements. The disciplinary procedure, in the majority of situations, shall be used to assist an employee to understand and accept the Company rules and requirements. The procedure is designed to correct and/or improve employee behaviour to achieve a high quality, safe and efficient work environment.
- (ii) (b) The Company disciplinary procedure consists of the following stages:

Counselling: Informal

Formal

Warnings: 1st written

2nd written

Final written

Dismissal

- (iii) Investigation, interview and dispute resolution procedures.

The individual circumstances of each case will determine the level of discipline required.

Warnings will be considered to have lapsed after 6 months for steps 1, 2, 3 and after one year for step 4.

21.B APPLICATION

The disciplinary procedure should be applied:

Promptly - with a minimum of delay

Consistently regardless of who is involved

Objectively focusing on the behaviour, not the employee

21.C PROCEDURAL FAIRNESS

Throughout the application of the disciplinary procedure an employee will be provided with the opportunity to present his or her view of the situation and the reasons for his or her conduct.

At any stage beyond informal counselling during the disciplinary process, the employee will be accompanied by the Union Delegate, unless specifically declined by the employee. The warning will note where an employee elects not to have the Union delegate present

21.D ADMINISTRATION

The responsibility for the administration of the disciplinary procedure belongs with the employee's immediate manager. This requires managers to clearly understand company rules and requirements, also to inform their employees of these rules and requirements and ensure facts are correctly presented and accurate.

A written record of the application of all levels of the disciplinary procedure (except informal counselling) will be made and placed on an employee's personal file with a copy to be made available to the employee.

When an employee disagrees with a formal counselling or formal warning, a request to review the disciplinary action may be made by the employee to the next level of line management.

21.E DISCIPLINARY PROCESS

1. Informal Counselling

This step should be most frequently used to outline relevant Company rules and requirements and identify training needs to assist to correct employees' misinterpretation or unacceptable behaviour.

Continued informal counselling for the same or similar conduct by the employee could progress to formal counselling. The need to progress to formal counselling will be established by the manager and will include consideration of the employee's conduct, the frequency of informal counselling and the employee's response to previous informal counselling.

2. Formal Counselling

This step requires a detailed discussion of an employee's inappropriate conduct and how the conduct is contrary to relevant company rules and requirements, any underlying reasons for the conduct and a participative commitment to correct and/or improve the area of concern.

The procedure involves discussion of the following matters with the employee:

- (i) What is required of the employee,
- (ii) Where and how the employee's conduct does not comply with relevant company rules and requirements,
- (iii) What needs to be done by the employee to meet company rules and requirements and appropriate steps which may assist the employee,
- (iv) The likely results of failure to meet company rules and requirements,
- (v) The date to review the employee's conduct.

Formal counselling should be seen to be clearly understood to be an assistance and education function within the disciplinary procedure. Where consensus cannot be reached the Manager will refer the matter for discussion to more Senior Management.

3. Formal Written Warnings

(a) 1st Written Warning

Where an employee continues with inappropriate conduct after the formal counselling level, or engages in misconduct of a minor nature, the manager should investigate the matter through the proper process and establish any underlying reasons for the conduct and a participative commitment to correct and/or improve the area of concern, where warranted, issue a first written warning and advise the employee that it will be recorded on their personal file.

The procedure involves clearly indicating to the employee (in presence of the union delegate) the following which will be documented on the counselling form:

- (i) What is required of the employee,
- (ii) Where and how the employee's conduct does not comply with relevant company rules and requirements,

- (iii) What is done by the employee to meet company rules and requirements and appropriate steps which may assist the employee,
- (iv) The likely results of failure to meet company rules and requirements,
- (v) The date to review the employee's conduct. All counselling/warnings to be reviewed at 1, 5 months. The outcome of the reviews will be documented and provided to the employee.
- (vi) The duration for which this warning will remain effective - six months.
- (vii) At the final review the company will outline in writing the expectation required of the employee to ensure that there is not confusion in the future.
- (viii) A copy of the counselling/warning should be given to the employee and the delegate.

(b) Second Written Warning:

Where an employee continues with inappropriate conduct after the first written warning, or engages in misconduct of a minor nature, the manager should investigate the matter through the proper process and establish any underlying reasons for the conduct and a participate commitment to correct and/or improve the area of concern, where warranted, issue a second written warning and advise the employee that it will be recorded on their personal file.

The procedure involves clearly indicating to the employee (in presence of the union delegate) the following which will be documented on the counselling form:

- (i) What is required of the employee,
- (ii) Where and how the employee's conduct does not comply with relevant company rules and requirements,
- (iii) What is done by the employee to meet company rules and requirements and appropriate steps which may assist the employee,
- (iv) The likely results of failure to meet company rules and requirements,
- (v) The date to review the employee's conduct. All counselling/warnings to be reviewed at 1, 5 months. The outcome of the reviews will be documented and provided tot he employee.
- (vi) The duration for which this warning will remain effective - six months.
- (vii) At the final review the company will outline in writing the expectation required of the employee to ensure that there is not confusion in the future.
- (viii) A copy of the counselling/warning should be given to the employee and the delegate.

4. Final Warning:

Where an employee fails to meet Company rules and requirements after formal warnings or engages in misconduct of a more serious nature, the program manager should where warranted issue a final warning.

Final warning is the last step before an employee is dismissed and is accompanied by a written advice to the employee.

The procedure for a final warning involves a review of the relevant disciplinary procedure to date or the misconduct and the offer to the employee of the opportunity to provide an explanation. This step should

involve the Human Resource Department, the manager or nominee and the union delegate and will include a written advice of final warning to the employee.

The written advice of final warning issued to the employee will contain the following information:

- (i) a statement that the letter is written advice of a final warning,
- (ii) definition of the inappropriate conduct by the employee with reference to the relevant Company rules and requirements,
- (iii) a detailed chronological summary of relevant disciplinary procedure to date,
- (iv) specific change required in the employees' conduct,
- (v) a statement that failure to achieve the specific change could lead to dismissal,
- (vi) the warning will be reviewed at 1, 6 and 12 months,
- (vii) the outcome of the review will be documented and provided to the employee,
- (viii) the duration for which this warning will remain effective twelve months,
- (ix) at the twelve months review the company will outline in writing the expectation required of the employee to ensure that there is no confusion in the future and a copy should be given to the employee and the delegate.

5. Dismissal

- (i) Where an employee fails to meet the requirements clearly identified in the written advice of final warning or engages in serious misconduct, the manager may seek dismissal of the employee.
- (ii) Prior to the termination a full investigation will be conducted through the agreed process.

If dismissal is sought after this process, the manager will involve the Human Resources Manager and union delegate to provide the employee with the opportunity to respond to the manager's written statement on the reason for dismissal.

- (iii) The purpose of the review and investigation is to ensure the factual basis of such action and the fair treatment of employees.
- (iv) Upon a decision of intended dismissal, the employee will be given written advice of the reason for dismissal, the nature of the dismissal as either summary or with due notice and the employees avenues of recourse through their union or government instrumentalities.
- (v) Should there be at this stage a dispute between the parties due to the application of this procedure, or the intention to dismiss an employee, the dispute will be resolved in accordance with Clause 19 of this agreement.

6. Investigation, Interview and Dispute Resolution Procedure

- (i) Investigation Process

The union delegate will be present unless specifically requested otherwise by the employee. The delegate and the individual will be advised of the facts of the matter being investigated.

The union delegate and the individual will after being informed about the matter under investigation be allowed time to discuss the issue prior to further discussion with management.

Any record of the meeting must be agreed by the delegate, the individual and Site Senior Management. Any disagreed matter should be recorded separately.

If as a result of the initial investigation an employee is to be suspended or terminated, a letter outlining the reason for suspension or intended termination will be given to the employee and a copy sent to the AMWU.

The AMWU will respond within 48 hours (where possible) to set a meeting date to review the matter.

If the matter is in dispute following the review process the provision of the Dispute Settlement Procedures will apply.

(ii) Process for discussions with Witnesses:

The Union delegate will be present unless specifically requested otherwise by the employee. The delegate and the individual will be advised of the facts of the matter being investigated.

The union delegate and the individual will be allowed time to advise the employee of their rights and answer any questions they may have prior to further discussions with management

Any record of the meeting must be agreed by the delegate, the individual and Site Senior Management . Any disagreed matters should be recorded separately.

(iii) Dispute Resolution Procedure

Should the application of this Disciplinary procedure give rise to a dispute between the parties the Dispute Settling Procedure of this Agreement will be utilised to resolve the dispute.

Whilst the procedure is being followed the Status Quo will remain. No termination will be affected and work shall proceed normally in accordance with this Agreement.

In accordance with the Dispute Settling Procedure of this agreement it is open to either of the parties to notify the New South Wales Industrial Relations Commission.

SIGNATORIES TO THE AGREEMENT

Signed for and on behalf of

Darrell Lea Chocolate Shops Pty Ltd

Greg J Park
(Name)

(Signature)

Dated this

day of

2004

Signed for and on behalf of the

Automotive, Food, Metals, Engineering
Printing and Kindred Industries Union

Paul Bastian
(Name)

(Signature)

Dated this

day of

2004

Signed for and on behalf of the
National Union of Workers

Derrick Belan
(Name)

(Signature)

Dated this

day of

2004

Signed for and on behalf of the
Liquor, Hospitality & Miscellaneous Union

Jim Lloyd
(Name)

(Signature)

Dated this

day of

2004