

**REGISTER OF  
ENTERPRISE AGREEMENTS**

**ENTERPRISE AGREEMENT NO:** EA04/4

**TITLE:** LHMU & Wendy's Home Services Enterprise Agreement 2003

**I.R.C. NO:** IRC3/6432

**DATE APPROVED/COMMENCEMENT:** 25 November 2003

**TERM:** 36

**NEW AGREEMENT OR  
VARIATION:** New

**GAZETTAL REFERENCE:** 13 February 2004

**DATE TERMINATED:**

**NUMBER OF PAGES:** 30

**COVERAGE/DESCRIPTION OF**

**EMPLOYEES:** The agreement applies to all employees employed by Wendy's Home Services Pty Ltd located at 74 The Terrace, Windsor NSW 2756, engaged in the classifications of WHS Relief Worker Grades 1 & 2, who fall within the coverage of the Miscellaneous Workers Home Care Industry (State) Award

**PARTIES:** Wendy's Home Services Pty Ltd -&- the Australian Liquor, Hospitality and Miscellaneous Workers Union, New South Wales Branch

# LHMU & WENDY'S HOME SERVICES ENTERPRISE AGREEMENT 2003

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**2. Application of Agreement**

This Agreement shall be binding upon:

- (a) Wendy's Home Services Pty Ltd
- (b) The Australian, Liquor, Hospitality and Miscellaneous Workers Union, NSW Branch
- (c) The employees of Wendy's Home Services Pty Ltd engaged to perform work covered by the classifications set out in clause 21 - Classifications of this Agreement.

### **3. Term of the Agreement**

This Agreement shall come into force on the date of approval by the Industrial Relations Commission of NSW and shall have a nominal expiry date three years after the date of such certification.

### **4. Relationship to Parent Award**

The Parent Award to this Agreement shall be the Miscellaneous Workers Home Care Industry (State) Award (NSW) ("the Parent Award") and any successor to that Award. Provided this Agreement shall operate to the complete exclusion the Parent Award.

### **5. Definitions**

"Employer" shall mean Wendy's Home Services Pty Ltd.

"Company" shall mean Wendy's Home Services Pty Ltd.

"Agreement" shall mean the LHMU & Wendy's Home Services Enterprise Agreement 2003 .

"Parent Award" shall mean the Miscellaneous Workers Home Care Industry (State) Award (NSW).

"Grade 1" shall mean WHS Relief Worker Grade 1.

"Grade 2" shall mean WHS Relief Worker Grade 2.

"WRWG1" shall mean WHS Relief Worker Grade 1.

"WRWG2" shall mean WHS Relief Worker Grade 2.

"ffpp" shall mean first full pay period to commence on or after.

"Voluntary Additional Hours" means hours worked in accordance with clause 16 of this Agreement that would otherwise be overtime under this Agreement.

"Union" shall mean the Australian Liquor, Hospitality and Miscellaneous Workers Union NSW Branch located at level 7, 187 Thomas Street Haymarket NSW.

"Day" means the 24 hour period commencing at 12:00am.

"Weekend" shall mean the forty-eight hour period commencing at 12:00am on any Saturday.

## **PART II - ENGAGEMENT OF EMPLOYEES**

### **6. Terms of Engagement**

6.1 For existing employees, within one month of certification of this Agreement, the Employer shall inform each employee in writing as to the terms of their engagement, and in particular whether they are a full-time, part-time, fixed term or casual employee. In respect to permanent employees such advice will include the minimum number of ordinary hours he or she is entitled to in any four-week period. New employees will receive written notification within one month of commencement of employment. An employee's classification will not be altered unless there is mutual agreement between the employer and employee concerned. Where a classification change is proposed and such agreement is not reached, clause 43, Grievance and Dispute Settlement Procedure shall apply.

6.2 Casuals shall receive such details in writing only on their initial engagement.

- 6.3 The Employer shall provide each employee with a job description outlining in a list the typical nature of the duties that the employee will be expected to perform, however such list need not be exhaustive.
- 6.4 All employees employed pursuant to this Agreement other than fixed term or casual employees shall be deemed to have ongoing employment.

#### **7. Full-Time Employees**

- 7.1 An employee not specifically engaged on a part-time, casual or fixed term basis shall be a full-time employee.
- 7.2 Full-time employees shall be paid a minimum of two hours on each day they work.
- 7.3 Full-time employees shall be paid an ordinary hourly rate equal to the amount prescribed in Table 1 of Part B, Monetary Rates of this Agreement, such hourly rate being inclusive of any first-aid allowance payable pursuant to the Parent Award.

#### **8. Part-Time Employees**

- 8.1 A part-time employee shall mean a person who works a specified number of regular days and/or minimum number of hours being less than those worked by a full-time employee in a four-week period.
- 8.2 Part-time employees shall be paid a minimum of two hours on each day they work.
- 8.3 Part-time employees shall be paid an ordinary hourly rate equal to the amount prescribed in Table 1 of Part B, Monetary Rates of this Agreement, such hourly rate being inclusive of any first-aid allowance payable pursuant to the Parent Award.
- 8.4 Part-time employees shall be entitled to all benefits under this Agreement on a pro rata basis.

#### **9. Fixed Term Employees**

- 9.1 A fixed term employee may be engaged to work on either a full-time or part-time basis:
- (a) for the completion of a specifically funded task(s) or project; not subject to recurrent funding; or
  - (b) to relieve an employee who is undertaking a specifically funded task(s) or project for a defined period; or
  - (c) to relieve in a vacant position arising from an employee taking leave in accordance with this Agreement; or
  - (d) for the temporary provision of specialist skills that are not available within the organisation for a specified period of time; or
  - (e) to fill short term vacancies during the recruitment and selection process resulting from the cessation of employment of a permanent employee;

Provided that the term shall not exceed 12 months in the case of (c), (d) or (e).

- 9.2 A fixed term employee shall not be employed to fill a position previously held by a permanent employee except under circumstances specified in 9.1 above.
- 9.3 This Agreement shall apply to a fixed term employee except to the extent that the Agreement expressly provides that it does not apply.

- 9.4 When offering employment on a fixed term basis, the employer shall advise the employee in writing of the temporary nature of the employment, the actual or expected duration of employment, and that employment beyond the period is not expected.
- 9.5 The employer and a fixed term employee may agree to the duration of the period of employment being extended once only, provided that any extension will not exceed six months.
- 9.6 If a fixed term employee is subsequently appointed to a full-time or part-time position with the employer, any period of the fixed term contract completed immediately prior to the commencement of the full-time or part-time position shall be recognised as service with the employer for calculating leave entitlements, provided that the employee has not taken or received payment in lieu of those leave entitlements.
- 9.7 Fixed term employees shall be paid a minimum of two hours on each day they work.

#### **10. Casual Employees**

- 10.1 A casual employee shall mean an employee engaged and paid as such.
- 10.2 A casual employee shall be paid an ordinary hourly rate equal to the amount prescribed in Table 2 of Part B, Monetary Rates of this Agreement, such hourly rate being inclusive of any payments due pursuant to the *Annual Holidays Act 1944* and any first-aid allowance payable pursuant to the Parent Award.
- 10.3 A casual employee shall be paid a minimum of one hour at the appropriate rate for each assignment. For the purposes of what constitutes an "assignment" a one-hour minimum payment will be made in respect of each service performed by an employee for which a separate charge is shown on an invoice to the client.

#### **11. Temporary Live-in Employee**

- 11.1 A temporary live-in employee shall mean a person who lives on the client's premises and such premises are available to be lived in for the period of time he or she is required to stay at the client's premises, such period being no less than 2 days. An employee on a sleepover shall not be deemed to be a temporary live-in employee.
- 11.2 The Employer shall ensure a temporary live-in employee is rostered off duty for a minimum of 8 days in any 4 week (28 day) period.
- 11.3 A temporary live-in employee will be provided with full board and lodging by the Employer, and no deductions will be made from the wages of an employee for the provision of such board and lodging.
- 11.4 The provisions of this Agreement relating to hours, shift work, weekend penalties, sleepover allowance, rest breaks and overtime shall not apply to a temporary live-in employee.
- 11.5 Temporary live-in employees shall be paid at the rate per day prescribed in Table 3, of Part B, Monetary Rates for each day he or she is on an assignment where he or she is required to live-in on a client's premises. Such daily rate is compensation for all hours the employee is required to be in attendance at the client's premises and is inclusive of any entitlement to a first-aid allowance under the Parent Award.
- 11.6 This clause shall apply where the Employer and employee have agreed in writing to the employee carrying out the temporary live-in assignment. While the Employer may indicate the potential length of the temporary live-in assignment in good faith, the Employer may extend or reduce the length of a temporary live-in assignment in accordance with the needs of the business and/or the client.

#### **12. Traineeships**

The parties to this Agreement shall observe the terms of the Training Wage Award (State) 2002 as amended.

### **PART III - HOURS OF WORK**

#### **13. Hours of Work**

- 13.1 The ordinary hours of work shall be no more than 152 hours in any four consecutive pay periods exclusive of meal breaks Monday to Sunday.
- 13.2 The hours of work on any day need not be worked continuously, and may be worked as a number of separate engagements in a number of locations. Where an employee performs several engagements in one day the time between engagements shall not be regarded as time worked, and travel time and expenses incurred to travel between locations for successive engagements shall not be payable.
- 13.3 No employee will be required to work in excess of twelve hours including overtime on any day, provided that sleepover hours shall not be included for the purposes of this subclause.

#### **14. Overtime**

- 14.1 Overtime means time worked with the prior authorisation of the Employer beyond the ordinary hours of work specified in Clause 13, Hours of Work of this Agreement.
- 14.2 Overtime shall be paid as follows:  
  
Time and one half for then first two hours  
Double time thereafter.
- 14.3 Part-time workers must work the full-time equivalent hours within the span of hours identified in 13.1 Hours of Work before overtime is payable.
- 14.4 For the purpose of calculating the payment of overtime, each day shall stand alone.
- 14.5 Employees may be required to work reasonable amounts of overtime.
- 14.6 The provisions of this clause shall not apply where the Employer and employee have reached a voluntary additional hours agreement pursuant to clause 16 - Voluntary Additional Hours.

#### **15. Time Off in Lieu of Payment for Overtime**

- 15.1 Time Off in lieu of payment for overtime
  - (a) Where a full-time, part-time or fixed term employee works overtime, the employee may, on and in respect to each individual occasion, request that in place of payment at the overtime rates stipulated at clause 14.2 of this agreement (where applicable), with the consent of the Employer, elect to take time off in lieu of payment for overtime at a time or times agreed with the Employer. The Employer shall not unreasonably withhold agreement to any such request. Details of any such agreement must be recorded in the Employer's time and wages records and shall include the time and date of the request, and name of the person to whom the request was made.
  - (b) Overtime taken as time off during ordinary hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
  - (c) An Employer shall, if requested by an employee, provide payment, at the rate provided for the payment of overtime in the Agreement, for any overtime worked under subclause (a) above where such time has not been taken within four weeks of accrual. Notwithstanding anything contained elsewhere in this subclause, on notice from the Employer, an employee must elect within six

months of accrual, whether to take overtime worked under (a) above as an overtime payment or as time off work at the ordinary time rate of pay.

## **16. Voluntary Additional Hours**

- 16.1 This clause is intended to:
- (a) Provide employees with access to additional income on a voluntary basis which they ordinarily would not have access to,
  - (b) To provide for voluntary coverage of specific client service requests as and when they arise,
  - (c) Not avoid the Company's overtime obligation to pay overtime pursuant to this Agreement for involuntary overtime hours,
  - (d) Allow the Company to better service the peaks and troughs of the industry.
- 16.2 An employee may request to work Voluntary Additional Hours and the Company may agree to such a request, providing that:
- (a) Such hours are available,
  - (b) The Voluntary Additional Hours worked by an employee must be paid at the employee's appropriate hourly rate exclusive of any overtime penalties, plus 10% of the employee's applicable ordinary hourly rate of pay exclusive of any penalty rates or loadings.
- 16.3 An employee's request to work Voluntary Additional Hours is to be made in writing in accordance with Appendix A of this Agreement.
- 16.4 An employee may elect to withdraw an Appendix A Agreement specified in subclause 16.3, by completing the withdrawal notice provided in Appendix B of this Agreement.
- 16.5 The working hour limits at Clause 16.8 of this Agreement are to be complied with.
- 16.6 The arrangements will not act to the detriment of a full-time employee's existing ordinary hours, except in circumstances beyond the Company's control.
- 16.7 The allocation and payment of Voluntary Additional Hours shall not result in the accrual of leave of any kind and are not counted as earnings for the purposes of superannuation contributions.
- 16.8 Working Limits
- An employee working Voluntary Additional Hours must not work more than 7 consecutive days unless the provisions of clause 20 - Breaks Between Shifts and Overtime have been observed.
- 16.9 A paid crib break of not less than 20 minutes will be allowed for a shift of more than four (4) consecutive Voluntary Additional Hours. A further paid crib break of not less than 20 minutes is to be allowed if a shift exceeds ten (10) consecutive Voluntary Additional Hours. Time allowed as crib time shall be counted as time worked and will be paid for as such.

## **17. Shift Work**

- 17.1 Shift Span Definitions
- (a) Evening Shift Span means any hours worked by a shift worker (other than sleepover hours) after 8.00pm and at or before 12.00 midnight Monday to Friday.

- (b) Night Shift Span means any hours worked by a shift worker (other than sleepover hours) after 12.00 midnight and at or before 6.30am Monday to Friday.
- (c) Saturday Shift Span means any time worked by a shift worker (other than sleepover hours) between midnight Friday and midnight Saturday.
- (d) Sunday Shift Span means any time worked by a shift worker (other than sleepover hours) between midnight Saturday and midnight Sunday.
- (e) A Gazetted Public Holiday Shift Span means any time during a whole-day public holiday gazetted for the State of NSW, worked by a shift worker between midnight on the night prior to the public holiday and midnight of the public holiday.

17.2 Definition of "Shift Worker"

- (a) A shift worker shall mean an employee whose ordinary hours of work occur during the shift spans defined in clause 17.1 of this Agreement.

17.3 Shift Span Loadings

- (a) A shift worker working during Evening Shift Span shall be paid a loading of 15% on their ordinary rate of pay for that part of such shift.
- (b) A shift worker who works during Night Shift Span shall be paid a loading of 30% on their ordinary rate of pay for that part of such shift.
- (c) A shift worker who works during Saturday Shift Span shall be paid a loading of 50% on their ordinary rate of pay for that part of such shift.
- (d) A shift worker who works during Sunday Shift Span shall be paid a loading of 75% on their ordinary rate of pay for that part of such shift.
- (e) A shift worker who works during a Gazetted Public Holiday Shift Span shall be paid a loading of 150% on their ordinary rate of pay for that part of such shift.

17.4 The shift span loadings shall only apply to that part of the shift which is within the defined shift span, and shall not apply to the part of the shift (if any) which falls outside the defined shift span.

**18. Informing Employees About Hours of Work**

18.1 The Company shall inform an employee of the requirement to attend work as early as practicable in the circumstances.

18.2 The Employer shall attempt to fix the time of duty in a flexible way to meet the needs of the client and the employee where practicable, and attempt to minimise travel between clients as far as practicable.

**19. Meal Breaks**

19.1 The Employer permits employees to take an unpaid meal break of not less than thirty minutes where he or she will be working more than five hours continuously.

19.2 Subject to 19.4, where the Employer directs an employee to work more than 5 hours continuously without a meal break, any time worked in excess of five hours shall be paid for at overtime rates set out in clause 14.2 of this Agreement.

- 19.3 Nothing in this clause should be deemed to mean that an employee would be deprived of, nor deprive themselves of a meal break, simply because of pressure of general work.
- 19.4 Where an employee may be required to have his or her meal on the premises, including to have a meal with a client or clients, (for example, where an employee can't leave his/her post/assignment/client) such time shall be paid at single time rates and is counted as time worked, and 19.1 does not apply. An employee may be regarded as having his or her meal with a client if they having their meal while the client is present, but the client need not be having a meal at the same time.

## **20. Breaks Between Shifts and Overtime**

- 20.1 With the exception of temporary live-in workers and employees on a sleepover, employees required to continue work after their normal ceasing time at the end of any day must have a rest period of ten (10) consecutive hours before again starting work the next day. Such ten (10) hour break may be reduced to a minimum of eight (8) hours by mutual agreement between the Company and employee concerned. Any such agreement between the employer and an employee is intended to be on a one-off basis and must be recorded in the Employers' time and wages records and shall include the time and date of the request, and the name of the person to whom the request was made.
- 20.2 Employees directed to resume or continue work without having received a break in accordance with 20.1 shall be paid at the overtime rates set out in Clause 14, Overtime until they are released from duty. They will then be entitled to be absent for a period of ten (10) (or as agreed between the Employer and employee pursuant to subclause 20.1) consecutive hours without loss of pay.
- 20.3 The provisions of 20.1 and 20.2 shall not apply to any sleepover whether or not that sleepover is connected with an ordinary rostered shift.

## **PART IV - CLASSIFICATIONS, WAGES AND SUPERANNUATION**

### **21. Classifications**

- 21.1 A WHS Relief Worker Grade 1 shall mean an employee engaged to carry out less complex respite or personal care duties for a client than would be performed by a WHS Grade 2 employee. Indicative conditions of clients requiring the care of a WHS Relief Worker Grade 1 are that they may suffer minor symptoms of conditions such as dementia, Alzheimer's Disease, Down Syndrome and/or suffer a minor physical or intellectual disability and/or exhibit challenging or unpredictable behaviour occasionally only. The duties required of a WHS Relief Worker Grade 1 include but are not limited to:

#### Monitoring and Supervision

General monitoring of the client's well being.  
The client may be capable of being left unsupervised.

#### Housekeeping

When in the home setting, housekeeping as required.

#### Showering/Bathing

Assisting client to shower/bath self or totally showering/bathing client except where client has severely limited/uncontrollable body movements.

Assisting with mobility or transferring to and from shower/bath except with clients who have severely limited/ uncontrollable body movements.

Assisting or transferring client to commode chair except where client has severely limited/ uncontrollable body movements.

Supervising children's bath

Bathing a baby

Total bed bath/ sponge

Toileting

Helping people to the toilet

Assisting people to use the toilet by loosening clothing

Assisting client to change own incontinence and sanitary pads

Changing clients urinary incontinence pads

Assisting clients with bottles

Assisting self-catheterisation by holding mirror or positioning legs except where there is severely limited/uncontrollable body movements

Changing babies, nappies, toileting children

Menstrual Care

Assisting with menstrual care

Skin Care

All skin care eg. application of cream, rubbing pressure areas with lotions

Hair Care

All hair care

Limited care of nails

Shaving:

Where there are uncontrollable body movements use electric razors only

All other shaving - electric razors recommended

All dressing/undressing or assistance with dressing/undressing except where there is severely limited/uncontrollable body movements

Oral Hygiene

Assisting client with their own care of teeth or dentures

Care of teeth and dentures for the client by using tooth brush/tooth paste/oral solutions only

Oral Medication

Assisting client with or administering liquid medicines, pills, powders, nose and eye drops

Transferring/Mobility

Transferring client in and out of bed/ chair. Care and assisting with mobility

Assisting clients to turn or sit up

Fitting of Aids/Appliances

Such as splints and callipers

Assistance With Eating

Assisting where there are no eating difficulties

### Additional Duties

A Grade 1 may be required to perform the duties of a Grade 2. Such requirement shall not automatically entitle the employee to promotion to Grade 2. Clause 23 Higher Duties, and clause 22 Classification Placement and Incremental Advancement apply.

- 21.2 A WHS Relief Worker Grade 2 shall mean an employee engaged to carry out more complex respite or personal care duties for a client than would be performed by a WHS Grade 1 employee. Indicative conditions of clients requiring the care of a Wendy's Relief Worker Grade 2 are that they may suffer advanced symptoms of conditions such as dementia, Alzheimer's Disease, Down Syndrome and/or suffer a severe physical or mental disability and/or exhibit challenging or unpredictable behaviour regularly. In addition to the duties of a WHS Relief Worker Grade 1, the duties required of a WHS Relief Worker Grade 2 include but are not limited to:

### Monitoring and Supervision

The client will usually require continual supervision or assistance.  
The client may not be capable of being left unsupervised.

### Showering/Bathing

Showering/Bathing adults and children with severely limited/ uncontrollable body movements.  
Total bed bath/sponge where there is severely limited/ uncontrollable movements or serious comfort/ health consideration

### Toiletting

Assisting in placement, removal, emptying, care and cleaning of sheaths and leg baths  
Assisting with indwelling catheterisation by changing collection bag and cleaning around the insertion site  
Changing or assisting with urinary diversion - colostomy and drainage bags  
All bowel management except changing babies nappies and toiletting children  
Continual caring of someone with bowel incontinence including washing person and changing bowel incontinence pads

### Menstrual Care

Changing tampons and sanitary pads

### Skin Care

Changing dressings on pressure areas, ulcers, burns, wounds, cuts and grazes  
Application of treatment creams to genital area

### Nasal Care

Cleaning noses

### Grooming

All dressing/undressing where there are severely limited/ uncontrollable body movements

### Medication

Suppositories

## Transferring/Mobility

Assisting clients to turn/sit where clients can offer limited/ no assistance with weight bearing  
Using mechanical aids to lift and transfer clients  
Assisting client with transfers/ mobility where:  
Client can offer limited/ no assistance with weight bearing  
Particularly careful handling is required because of the client's health/disability  
Some lifting or physically awkward movement is involved for staff in the transfer/mobility

## Assistance With Eating

Assisting with eating where a risk of choking, vomiting or other eating difficulty is involved

Palliative care.

## **22. Classification Placement and Incremental Advancement**

- 22.1 The Company shall classify each of its employees in accordance with Clause 21, Classifications. Performing a number of the duties of a Grade 2 shall not automatically entitle a Grade 1 to promotion to Grade 2. An employee wishing to be promoted to Grade 2 may apply to the Company. Classification as a Grade 2 is subject to the agreement of the Company and the employee being advised in writing that he/she is to be classified as Grade 2.
- 22.2 An employee shall be appointed to the first year of the appropriate Grade with the following exceptions:
- (a) A full-time, part-time or fixed term WHS Relief Worker Grade 1 with a relevant post-secondary qualification of two or more full-time equivalent years shall be appointed to 'Year 2 and Thereafter' of the Grade;
  - (b) A full-time, part-time or fixed term WHS Relief Worker Grade 2 with a relevant post-secondary qualification of two or more full-time equivalent years shall be appointed at least at year 2 of the Grade;
- 22.3 Full-time, part-time, and fixed-term employees shall move from level to level within a Grade after each 12 months continuous service. Casual employees shall not progress from level to level within a Grade.

## **23. Higher Duties**

- 23.1 A Grade 1 employee who is called upon by the Company to perform the duties of a Grade 2 under this Agreement for at least 38 hours in any one week (Monday to Sunday) shall be paid for the hours on which those duties are performed at a rate not less than the minimum rate prescribed for Grade 2 year 1 provided that the employee and Employer have agreed in advance that the duties are those of a Grade 2 and such claims be made by the employee within one month of the cessation of the performance of such duties and further provided that payment for any higher duties performed shall not result in the employee being paid at a lower rate than his or her ordinary classification rate of pay.
- 23.2 For full-time, part-time or fixed-term employees, where a public holiday falls within a period referred to in 23.1, the public holiday shall be considered as time worked in the higher classification.
- 23.3 A Grade 2 employee may be required to perform the work of a Grade 1 and when required to do so shall not suffer any reduction in his/her wage.

- 23.4 The payment paid in 23.1 shall be considered to be the employee's ordinary rate of pay for all purposes while ever the employee is in receipt of the higher duties payment.
- 23.5 The Employer will not schedule work deliberately for the purposes of avoiding payment at a higher grade due under this subclause.

#### **24. Superannuation**

- 24.1 The Employer shall contribute to a superannuation fund as specified in 24.4 on behalf of each eligible employee, such superannuation contributions as required to comply with the *Superannuation Guarantee (Administration) Act 1992* as amended from time to time.
- 24.2 Employer to Participate in Fund:
- (a) The Employer shall make application to a Fund as specified in 24.4 to become a participating Employer in such a Fund and shall become a participating Employer upon acceptance by the Trustee of such a Fund.
  - (b) The Employer shall provide each employee who is not a member of the Fund with a membership application form upon commencement of employment.
  - (c) Each employee shall be required to complete the membership application and the Employer shall forward the completed application to the Fund by the end of the calendar month of commencement of employment.
  - (d) At the commencement of employment an employee shall nominate which of the funds identified in subclause 24.4, Superannuation Contributions shall be made.
  - (e) An employee wishing to change funds to another fund identified at sub clause 24.4 may do so once only per year, such nomination to be in writing and received by the employer no later than 1st May each year, and shall take effect from the first pay period commencing after the completion of that financial year.
- 24.3 Additional Employee Superannuation Contributions:
- (a) By agreement in writing between an employee and the Employer, an employee may make contributions to a Fund as specified in 24.4 in addition to those made by the Employer.
  - (b) Where an employee wishes to make additional contributions, the agreement pursuant to clause 24.3(a) must authorise the Employer to pay into the Fund, from the employee's wages, a specified amount in accordance with the Fund trust deed and rules.
  - (c) After an agreement is reached pursuant to clause 24.3(a), an Employer who receives written authorisation from the employee, must commence making payments into the Fund on behalf of the employee within 14 days of receipt of the authorisation.
  - (d) It is acknowledged that any agreement pursuant to this subclause may result in an employee receiving a gross ordinary hourly rate of pay less than those prescribed by Part B, Monetary Rates due to some of that ordinary hourly rate of pay being contributed to the superannuation on behalf of the employee in lieu of that amount being paid to the employee as wages.
- 24.4 The "Fund" shall mean the GIO Business Super Plan or the Health Employees Superannuation Trust Australia constituted by deed made 30 July 1987.

- 24.5 By agreement between the Employer and employee concerned, superannuation contributions may be made to any Fund other than those identified in subclause 24.4 provided the fund is a complying fund and there must be a written agreement to that effect between the Employer and the employee concerned.

## **25. Payment of Wages**

- 25.1 All wages shall be paid weekly by electronic funds transfer.
- 25.2 Wages shall be paid during working hours on the Thursday immediately following the end of each pay period. The payday may be changed with the agreement of a majority of the employees.
- 25.3 In the case of electronic funds transfer, wages shall be transferred to the nominated account by midnight on the nominated payday.
- 25.4 Upon termination, wages and any other monetary entitlement due to an employee shall be paid on the normal Thursday payday.
- 25.5 An Employer may deduct from amounts due to an employee such amounts as authorised in writing by the employee and deductions of income tax required to be made to the Australian Taxation Office and any deductions required to be made pursuant to a Court Order.
- 25.6 Employees are required to provide completed copies of timesheets to the Employer by close of business on Mondays.

## **26. Salary Packaging**

- 26.1 Where agreed between the Employer and a full-time or part-time employee, the Employer may offer salary packaging in respect of salary. Subject to 26.4 neither the Employer nor the employee may be compelled to enter into a salary packaging agreement. For the purposes of this clause, the term "salary" shall be taken to mean the gross remuneration payable to employees pursuant to this Agreement.
- 26.2 Salary packaging shall mean that an employee will have part of their salary packaged into a fringe benefit which does not constitute a direct payment to the employee but is payable to a bona fide third party.
- 26.3 The terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise available under the Agreement and shall be subject to the following provisions:
- (a) the Employer shall ensure that the structure of any agreed remuneration package complies with taxation and other relevant legislation;
  - (b) where there is an agreement to salary package, the agreement shall be in writing and made available to the employee;
  - (c) the employee shall have access to details of the payments and transactions made on their behalf. Where such details are maintained electronically, the employee shall be provided with a printout of the relevant information;
  - (d) the Employer has the right to vary or withdraw from a salary packaging agreement and/or withdraw from offering salary packaging in the event of amendments to legislation that are detrimental to, or increase the costs of, salary packaging arrangements;
  - (e) in the event that the Employer withdraws from a salary packaging agreement, the individual employee's salary will revert to that specified in Part B - Monetary Rates of this Agreement;

- (f) notwithstanding any of the above arrangements, the Employer or employee may cancel any salary packaging agreements by the giving of one month's notice of cancellation to the other party;
  - (g) the calculation of entitlements concerning occupational superannuation and annual leave loading on annual leave pursuant to Clause 33.2, Annual Leave, will be based on the value of the employee's total salary as outlined in Part B, Monetary Rates of this Agreement;
  - (h) unless there is agreement between the Employer and the employee to the contrary, all salary packaging arrangements shall cease during any period of leave without pay, including periods of unpaid sick leave.
- 26.4 The provisions of this clause shall apply to full-time and part-time employees. Provided casual employees who have been engaged by the Company for a sequence of periods over any 12 month period may require the Employer to salary package any gross remuneration payable pursuant to this Agreement in relation to the employee making additional superannuation contributions only.

## **27. Time and Pay Records**

- 27.1 The Company shall keep time and pay records relating to employees in accordance with the provisions of the *Industrial Relations Act 1996* (NSW). Such time and pay records will usually be kept at the place where business is carried out.
- 27.2 Such records shall be kept for a period of at least 7 years.
- 27.3 The Employer shall provide each employee with a written statement showing the gross wages, the amount deducted for taxation purposes and particulars of other deductions made that have been part of the calculated net amount paid.

## **PART V - ALLOWANCES AND AMENITIES**

### **28. Sleepovers**

- 28.1 Sleepover means a continuous period of six and one half hours from 12am to 6:30am during which an employee is required to sleep at the workplace and be available to deal with any urgent situation which cannot be dealt with by another employee or be dealt with after the end of the sleepover period.
- 28.2 The Employer shall take all reasonable steps to enable the employee to sleep on the premises including the provision of a bed with privacy. Access to a bathroom, toilet and a meal room shall be provided free of charge to the employee.
- 28.3 An employee shall only sleep over where there is an agreement between the employee and the Employer and a sleepover shall always consist of six and one half continuous hours.
- 28.4 Where an employee is on a sleepover, the employee shall be paid at the sleepover hourly rate prescribed in Table 4 of Part B, Monetary Rates for all time during the six and one half hour sleepover period. Such rates are compensation for the sleepover and for all necessary work up to two hours duration during the sleepover period. Where an employee necessarily works in excess of two hours during the sleepover period the entire six and one half hour sleepover period shall be paid at the employee's ordinary hourly rate in lieu of the sleepover hourly rate.

Hours worked during any sleepover period shall not be deemed to constitute part of the employee's ordinary hours of work, nor are they deemed to be overtime hours.

- 28.5 An employee on a sleepover shall not be required to work more than eight hours before, and/or more than eight hours after a sleepover, unless the Employer and employee mutually agree to allow longer working hours for the purpose of providing more continuous leisure time to employees in any four week period. Such an agreement is intended to operate on a one-off basis and must be recorded in the Employer's time and wages records and shall include the time and date of the request, and the name of the person to whom the request was made.
- 28.6 Where such an arrangement as outlined in subclause 28.5 is made the Employer must ensure that the arrangement does not adversely affect the health and safety of the employee(s) involved.

### **29. Travel Allowance**

- 29.1 Where employees are required by their Employer to use their motor vehicle in the course of their duty, they shall be paid an amount set out in Table 5 of Part B Monetary Rates per kilometre travelled during such use. Such allowance shall not be payable for any travel incurred between successive engagements/assignments or job locations.

### **30. Expenses**

- 30.1 An employee required to stay away from home overnight shall be reimbursed the cost of pre-approved board, lodging and meals. Reasonable proof of expenses incurred is to be provided by the employee to the Employer.
- 30.2 An Employer shall reimburse all reasonable expenses, including the cost of telephone calls, necessarily incurred by an employee in carrying out their duties subject to reasonable proof of the expenses being incurred being supplied to the Employer. It is the intention of the parties to this Agreement that an employee will not be reimbursed for any expenses incurred for confirming or organising attendance at any assignment.
- 30.3 This Clause does not apply to employees who are engaged on sleepover.

### **31. Amenities**

- 31.1 The Employer shall periodically check that the client's premises contain reasonable toilet and washing facilities for the use of employees in each workplace.
- 31.2 The Employer shall supply and maintain reasonable heating and cooling appliances for the safe and healthy functioning of the workplace.
- 31.3 The Employer shall periodically check that the client's premises contain reasonable facilities for the heating and taking of meals, including a table and chairs, boiling water, a refrigerator, a suitable place for the storing of utensils and supplies and a sink and running water.
- 31.4 The Employer shall periodically check that the client's premises contain a rest area well furnished.
- 31.5 The Employer shall periodically check that check that the client's premises are maintained so that amenities are safe and hygienic and to a reasonable standard.

## **PART VI - LEAVE**

### **32. Sick Leave**

- 32.1

- (a) In the event of a full-time, part-time or fixed term employee becoming sick and unfit for duty and certified as such by a duly qualified medical practitioner, they shall be entitled to 76 hours leave on full pay for each year of service.
  - (a) Such leave shall be available from the beginning of each year of service.
  - (b) For the purpose of this clause, illness shall include stress and mental ill health.
- 32.2 The Employer may dispense with the requirements of a medical certificate where the absence does not exceed two consecutive days or where in the Employer’s opinion circumstances are such not to warrant such requirement.
- 32.3 Each employee shall take all reasonably practicable steps to inform the Employer of their inability to attend for work and as far as possible state the estimated duration of the absence. Where practicable such notice shall be given within 24 hours of the commencement of such absence.
- 32.4 If the full period of sick leave as described above is not taken in any year, such portion as is not taken shall be cumulative up to five years. There shall be no payment of portions of sick leave not taken on retirement or termination.
- 32.5 Where an employee has, in accordance with this clause, taken sick leave, the employee shall not be required to work any ordinary hours other than those previously scheduled so as to avoid or minimise the requirement on an Employer to provide paid sick leave.

**33. Annual Leave**

- 33.1 Full-time and part-time employees shall be entitled to annual leave after each twelve months of continuous service.
- 33.2 The amount of such annual leave for full-time employees shall be in accordance with the following table:

Number of Sundays per annum on which ordinary time worked	Total Annual Leave (weeks / working days)
0-6	4 / 0
7-10	4 / 1
11-16	4 / 2
16 / 20	4 / 3
21 / 26	4 / 4
26 +	4 / 5

- 33.3 Fixed term employees engaged for more than 12 months are entitled to annual leave in accordance with 33.2. Fixed term employees engaged for less than 12 months are entitled to be paid annual leave on a pro rata basis at the end of their term of employment.
- 33.4 By mutual agreement between the Employer and employee annual leave entitlements may be paid prior to taking such leave or in regular instalments on normal paydays during the period of such leave. Details of any such agreement must be recorded in the Employer’s time and wages records and shall include the time and date of the request, and the name of the person to whom the request was made. Unless the Employer and employee make an agreement as provided for in this subclause all wages shall be paid to the employee concerned in the pay immediately preceding the annual leave.
- 33.5 All other provisions of the *Annual Holidays Act 1944* shall apply.

**34. Annual Leave Loading**

- 34.1 In this clause the *Annual Holidays Act 1944* is referred to as "the Act".
- 34.2 Before an employee takes their annual leave they shall be paid the following in addition to their normal weekly pay (exclusive of shift penalties) for the period of annual leave taken:
- Either:
- (a) A loading of 17.5% of their normal weekly pay (exclusive of shift penalties),
- Or
- (b) An average of the shift loadings earned by the employee concerned pursuant to clause 17 Shift Work during the month immediately preceding the annual leave.
- Whichever is the greater amount. Provided where an employee ordinarily works shift work pursuant to clause 17, the employer will not schedule work deliberately for the purposes of avoiding leave loading due under paragraph (b) of subclause 34.2 of this clause.
- 34.3 The loading is payable in addition to the pay for the period of leave given and taken and due to the employee under the Act and this Agreement.
- 34.4 No loading is payable to an employee who takes annual leave wholly or partly in advance. Where an employee continues in employment until the day when they would have been entitled under the Act to annual leave then the loading calculated in accordance with 34.2 becomes payable for such leave taken wholly or partly in advance.
- 34.5 Where, in accordance with the Act, the Employer's establishment or part of it is temporarily closed down for the purpose of giving an annual holiday or leave without pay to the employees a loading as calculated in 34.2 will be paid to employees entitled to leave under the Act. Employees not entitled to leave under the Act shall be paid a proportion of the loading based on the period of completed weeks service prior to the close down divided by 52.
- 34.6 Where the employment of an employee is terminated for a cause other than misconduct and at the time of termination the employee has not been given and has not taken the whole of any annual leave to which they are entitled they shall be paid a loading calculated in accordance with 34.2 for such leave.
- 34.7 No loading is payable on the termination of an employee's employment except as provided for in 34.6.

### **35. Long Service Leave**

See *Long Service Leave Act 1955*.

### **36. Calculation of Continuous Service**

See *Long Service Leave Act 1955*.

### **37. Public Holidays**

- 37.1 For the purposes of this clause, the following shall be taken as public holidays on the days so gazetted: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day, or any holiday duly proclaimed and observed as a public holiday within the area in which the service is situated.
- 37.2 Gazetted public holidays shall be allowed to full-time, part-time and fixed term employees on full pay on those days on which they are normally required to work.

- 37.3 Where an employee is requested, agrees and does work on a public holiday, the employee shall at the discretion of the employee;
- (a) be paid for all hours worked on the public holiday at the rate of double time and one half;
  - or
  - (b) for permanent employees, choose to take the equivalent time off and in such case the employee would receive their ordinary pay for the day and the equivalent time off for the actual time worked;
  - or
  - (c) for permanent employees, subject to mutual agreement between the employee and the Employer, aggregate the equivalent time off with annual leave entitlements.
- 37.4 Where a permanent employee, whose shift includes a gazetted public holiday, who is then not required by the Employer to work that gazetted public holiday, shall have a day added to their annual holidays, or be paid a days pay additional to their weekly wage.

### **38. Personal/Carer's Leave**

#### **38.1 Use of Sick Leave**

- (a) An employee with responsibilities in relation to a class of person set out in (c) (ii) who needs their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement for absences to provide care and support for such persons when they are ill.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
  - (i) the employee being responsible for the care or support of the person concerned; and
  - (ii) the person concerned being:
    - (a) a spouse of the employee; or
    - (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
    - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
    - (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or

- (e) a relative of the employee who is a member of the same household, where for the purpose of this paragraph:
  - 1. "relative" means a person related by blood, marriage or affinity
  - 2. "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
  - 3. "household" means a family group living in the same domestic dwelling.
- (d) An employee shall, wherever practicable, give the Employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence.

#### 38.2 Unpaid leave for family purpose

- (a) An employee may elect, with the consent of the Employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 38.1 (c) (ii) above who is ill.

#### 38.3 Annual leave

- (a) To give effect to this clause, but subject to the *Annual Holidays Act 1944*, an employee may elect, with the consent of the Employer, to take annual leave not exceeding five days in single day periods in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in 38.3 (a) above, shall be exclusive of any shutdown period provided for elsewhere under this Agreement.
- (c) An employee and Employer may agree to defer payment of the annual leave loading in respect of single days absences, until at least five consecutive annual leave days are taken.

#### 38.4 Time Off in lieu of payment for overtime

- (a) An employee may elect, with the consent of the Employer, to take time off in lieu of payment for overtime at a time or times agreed with the Employer.
- (b) Overtime taken as time off during ordinary hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
- (c) An Employer shall, if requested by an employee, provide payment, at the rate provided for the payment of overtime in the Agreement, for any overtime worked under subclause (a) above where such time has not been taken within four weeks of accrual. Notwithstanding anything contained elsewhere in this subclause, on notice from the Employer, an employee must elect within six months of accrual, whether to take overtime worked under (a) above as an overtime payment or as time off work at the ordinary time rate of pay.

#### 38.5 Make-up time

An employee may elect, with the consent of their Employer, to work "make-up time", under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the Agreement, at the ordinary rate of pay.

### **39. Bereavement Leave**

- 39.1 An employee other than a casual employee shall be entitled to up to two days Bereavement Leave without deduction of pay on each occasion of the death of a person prescribed in 39.3 below.

- 39.2 The employee must notify the Employer as soon as practicable of the intention to take Bereavement Leave and will, if required by the Employer, provide to the satisfaction of the Employer proof of death.
- 39.3 Bereavement Leave shall be available to the employee in respect of the death of a person in relation to whom the employee could have utilised Clause 38.1 Personal/Carer's Leave, provided that for the purpose of Bereavement Leave, the employee need not have been responsible for the care of the person concerned.
- 39.4 An employee shall not be entitled to Bereavement Leave under this clause during any period in respect of which the employee has been granted other leave.
- 39.5 Bereavement Leave may be taken in conjunction with other leave available under Clauses 38.2, 38.3, 38.4 and 38.5, Personal/Carer's Leave. Where such other available leave is to be taken in conjunction with Bereavement Leave, consideration will be given to the circumstances of the employee and the reasonable operational requirements of the Employer.

#### **40. Parental Leave**

See *Industrial Relations Act 1996* (NSW).

#### **41. Leave Without Pay**

On application by an employee, an Employer may grant the employee leave without pay for any purpose.

#### **42. Jury Service**

- 42.1 A full-time, part-time or fixed term employee required to attend for jury service during their ordinary working hours shall be reimbursed by the Employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on jury service.
- 42.2 An employee shall notify the Employer as soon as possible of the date upon which they are required to attend for jury service. Further the employee shall give the Employer documentary proof of their attendance, the duration of such attendance and the amount received in respect of such jury service.

### **PART VII - GRIEVANCE AND DISPUTE SETTLING PROCEDURE, TERMINATION, ORGANISATIONAL CHANGE AND REDUNDANCY**

#### **43. Grievance and Dispute Settling Procedure**

Any dispute or grievance arising in the workplace other than a dispute or grievance arising directly from the Employer's concern about an employee's work performance or conduct shall be dealt with in the following manner: -

- (a) In the first instance, the employee shall attempt to resolve the grievance internally with the Employer.
- (b) The employee may bring an appropriate support person (which may include a delegate or official of the Union) to, or be represented in, any meetings with the Employer and the Employer may bring an appropriate support person (which may include Employers First™, a State Peak Council for employers) to, or be represented in, any meetings with the employee.
- (c) Any meeting will be held as soon as possible after notification by the employee or their representative of the grievance or dispute or within a time frame agreed between both parties.

- (d) While the above procedure is being followed work shall continue normally. No party shall be prejudiced as to the final settlement by the continuation of work.
- (e) In the event of failure to resolve the grievance or dispute amicably between the parties, either party may refer the matter to the Industrial Relations Commission of NSW.

**44. Termination of Employment**

44.1 Nothing in this clause shall prevent the summary dismissal of an employee for misconduct. This clause shall not apply to casual employees.

44.2

- (a) Except for misconduct, justifying summary dismissal, the services of an employee shall be terminated by the Employer only by notice as prescribed by the following:

Years of Continuous Service	Notice Required
Not more than 1 years	at least one week
More than 1 but not more than 3 years	at least two weeks
More than 3 but not more than 5 years	at least three weeks
More than 5 years	at least four weeks

- (b) Where an employee is over 45 years of age they shall receive in addition to the above table, one week's extra notice, provided the employee has had two years service.
- (c) Nothing in this clause shall prevent the Employer from giving payment in lieu of, and equal in value to, the period of notice in 44.2(a).

44.3 An employee other than a casual employee may terminate their service by giving the Employer two weeks notice or by forfeiture of two weeks pay in lieu of notice, provided that one week's notice or forfeiture in lieu of notice shall apply during the first year of employment.

**45. Organisational Change and Redundancy**

45.1 Application

- (a) This clause shall apply in respect of full-time and part-time persons employed under this Agreement.
- (b) If the Employer employs more than 15 employees immediately prior to the termination of employment of employees, in the terms of 45.4.
- (c) Notwithstanding anything contained elsewhere in this Agreement, this clause shall not apply to employees with less than one year's continuous service, and the general obligation on the Employer shall be no more than to give such employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.
- (d) Notwithstanding anything contained elsewhere in this Agreement, this clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to ordinary and customary turnover of labour.

#### 45.2 Introduction of Change

- (a) Where the Employer has made a definite decision to introduce changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the Employer shall notify the employees who may be affected by the proposed changes and the Union to which they belong.
- (b) "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 Agreement makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.

#### 45.3 Employer's duty to discuss change

- (a) The Employer shall discuss with the employees affected and the Union, inter alia, the introduction of the changes referred to in 45.2(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the Union in relation to the changes.
- (b) The discussion shall commence as early as practicable after a definite decision has been made by the Employer to make the changes referred to in 45.2(a).
- (c) For the purpose of such discussion, the Employer shall provide to the employees concerned and the 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 adversely affect the Employer.

#### 45.4 Discussions before termination

- (a) Where an Employer has made a definite decision that they no longer wish the job the employee has been doing to be done by anyone, pursuant to 45.2(a), and that decision may lead to the termination of employment, the Employer shall hold discussions with the employees directly affected and with the Union.
- (b) The discussions shall take place as soon as is practicable after the Employer has made a definite decision which will invoke the provision of 45.4(a) and shall cover any reasons for the proposed termination, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.
- (c) For the purpose of the discussion the Employer shall, as soon as practicable, provide to the employees concerned and the Union all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any Employer shall not be required to disclose confidential information the disclosure of which would adversely affect the Employer.

#### 45.5 Notice for changes in production, program, organisation or structure

This subclause sets out the provisions to be applied to terminations by the Employer for reasons arising from "production", "program", "organisation" or "structure" in accordance with 45.2(a).

- (a) In order to terminate the employment of an employee the Employer shall give to the employee the following notice:

Period of Continuous Service	Period of Notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (b) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, shall be entitled to an additional week's notice.
- (c) Payment in lieu of the notice above shall be made if the appropriate notice of period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

45.6 Notice for technological change

This subclause sets out the notice provisions to be applied to terminations by the Employer for reasons arising "technologically" in accordance with 45.2(a).

- (a) In order to terminate the employment of an employee the Employer shall give to the employee three months notice of termination.
- (b) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (c) The period of notice required by this subclause to be given shall be deemed to be service with the Employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any Act amending or replacing either of these Acts.

45.7 Time off during the notice period

- (a) During the period of notice of termination given by the Employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purposes of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the Employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent.

45.8 Employee leaving during the notice period

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause as those to which the employee would have been entitled had the employee remained with the Employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

45.9 Statement of employment

The Employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

45.10 Notice to Centrelink

Where a decision has been made to terminate the employment of employees, the Employer shall notify Centrelink thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

45.11 Employment Separation Certificate

The Employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an "Employment Separation Certificate" in the form required by Centrelink.

45.12 Transfer to lower paid duties

Where an employee is transferred to lower paid duties for reasons set out in 45.2(a), the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, and the Employer may at the Employer's option make payment in lieu thereof an amount equal to the difference between the former ordinary time rate of pay and the new ordinary time rates for the number of weeks of notice still owing.

45.13 Severance Pay

Where an employee is to be terminated pursuant to 45.4 of this clause, subject to further order of the Industrial Relations Commission of NSW the Employer shall pay the employee the following severance pay in respect of a continuous period of service:

- (a) If an employee is under 45 years of age, the Employer shall pay in accordance with the following scale:

Years of Service	Under 45 Years of Age Entitlement
Less than 1 year	nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

- (b) Where an employee is 45 years or over, the entitlement shall be in accordance with the following scale:

Years of Service	45 Years of Age and over Entitlement
Less than 1 year	nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

- (c) "Weeks Pay" means the all purpose rate of pay for the employee concerned at the date of termination, and shall include, in addition to the ordinary rate of pay, over-Agreement payments, shift penalties and allowance, paid in accordance with the Agreement.

#### 45.14 Incapacity to Pay

- (a) Subject to an application by the Employer and further order of the Industrial Relations Commission of NSW, the Employer may pay a lesser amount (or no amount) of severance pay than that contained in 45.13.
- (b) The Commission shall have regard to such financial and other resources of the Employer concerned as the Commission thinks relevant, and the probable effect paying the amount of severance pay in 45.13 will have on the Employer.

#### 45.15 Alternative employment

Subject to an application by the Employer and further order of the Industrial Relations Commission of NSW, the Employer may pay a lesser amount (or no amount) of severance pay than that contained in 45.13 if the Employer obtains acceptable alternative employment for an employee.

## **PART VIII - MISCELLANEOUS PROVISIONS**

### **46. Occupational Health and Safety**

See *Occupational Health and Safety Act 2000* (NSW).

### **47. Protective Clothing and Safety Equipment**

- 47.1 Where the Employer requires an employee to wear protective clothing or a uniform such protective clothing or uniform as is reasonably required shall be provided and, as necessary, repaired and replaced by the Employer. Any issue of protective clothing or uniforms shall remain the property of the Employer.
- 47.2 Where the Employer provides safety equipment it shall be used by the employees.
- 47.3 Where the Employer provides safety equipment the Employer shall maintain such equipment to the required standard and where necessary replace such equipment.

### **48. Anti-Discrimination**

- 48.1 It is the intention of the parties bound by this Agreement to seek to prevent and eliminate discrimination in the workplace on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibility as a carer.
- 48.2 Accordingly, in fulfilling their obligations under the dispute resolution procedure, the parties must take all reasonable steps to ensure that neither the Agreement provisions nor their operation are directly or indirectly discriminatory in their effects.
- 48.3 The Company is committed to preventing unlawful behaviour that serves to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 48.4 Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation,

- (b) a party to this Agreement from pursuing matters of unlawful discrimination in any state or federal jurisdiction.

NOTE:

- (a) The Employer and employees may be subject to NSW State and Commonwealth anti-discrimination legislation
- (b) This clause is not intended to create legal rights.

#### **49. Posting of Agreement**

A copy of this Agreement shall be kept at the Employer's office, where it is available to employees. On commencement of employment, each employee shall be given a copy of this Agreement.

#### **50. Labour Flexibility**

An Employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training.

#### **51. No Extra Claims**

There shall be no extra claims made while this Agreement is in operation.

#### **52. On-Call Allowance**

- 52.1 Employees may be requested to be on call in order to maintain out of hours services. An employee who agrees to be on call will be taken to be on-call where the Company has specifically advised him/her that as a result of being on-call he/she is expected to remain available to receive telephone calls regarding issues arising at the workplace.
- 52.2 Employees required to be on-call shall be paid \$15.00 per 24 hour period or for any part of that 24 hour period. This amount shall increase by 3% on the first full pay period to commence on or after 10 August 2004 and by 3% on the first full pay period to commence on or after 10 August 2005.
- 52.3 Where an employee is required to attend the workplace when on-call the employee shall be paid a minimum of two hours pay at the appropriate overtime rate, as in clause 14 - Overtime for such time so recalled, provided that the employee shall not be required to work the full two hours if the work is completed in a shorter period.

#### **53. Union Rights**

- 53.1 An employee appointed Union Delegate shall upon notification thereof to the employer, be recognised as the accredited representative of the Australian Liquor, Hospitality and Miscellaneous Workers Union and he or she shall be allowed the necessary opportunity during office hours to interview the employer or the employer's representative on matters affecting employees whom he or she represents and approach employees regarding union matters provided the conduct of the business is not affected. Provided the Company shall only be required to recognise a maximum of one Union Delegate per 100 employees for the purposes of this Clause.
- 53.2 For the purposes of Clause 53.1 only, the employer shall, subject to the approval of the office manager, allow the delegate reasonable access to office equipment such as photocopiers, facsimile machines and computer terminals in relation to union business, provided that such access is not disruptive to normal office procedures. The employer shall not unreasonably withhold approval.

- 53.3 The employer shall supply a notice-board in a prominent position in the Employer's office for the use of the Union and its delegates.
- 53.4 A current copy of the Agreement shall be permanently placed on or near such notice-board.
- 53.5 The Employer shall not be liable for wages in respect of time spent conducting business as a union delegate except where agreed between the Employer and employee.
- 53.6 Deductions of Union Membership Fees
- 53.6.1 Upon receipt of a Union Deduction Authority Form which has been properly signed by an employee the employer shall deduct union fees from the wages due to said employee and shall remit agreed amounts so deducted to the Union on a monthly basis, together with a list of the names of the employees from whose wages deductions have been made.
- 53.6.2 The employer shall deduct Union membership fees (not including fines or levies) from the pay of any employee, provided that:
- (a) the employee has authorised the employer to make such deductions in accordance with subclause 53.6.1 herein;
  - (b) the Union shall advise the employer of the amount to be deducted for each pay period applying at the employer's workplace and any changes to that amount.
  - (c) deduction of union membership fees shall only occur in each pay period in which payment has or is to be made to an employee; and
- 53.6.3 The employee's authorisation shall be in writing and shall authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union's rules) that the Union advises the employer to deduct. Where the employee passes any such written authorisation to the Union, the Union shall not pass the written authorisation on to the employer without first obtaining the employee's consent to do so. Such consent may form part of the written authorisation.
- 53.6.4 Monies so deducted from employees' pay shall be remitted to the Union on a monthly basis together with all necessary information to enable the reconciliation and crediting of subscriptions to employees' membership accounts, and the Employer shall be entitled to retain up to 2.5 per cent of the monies deducted.
- 53.6.5 The Union shall advise the employer of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice shall be in the form of a schedule of fees to be deducted. The Union shall give the employer a minimum of two months' notice of any such change.
- 53.6.6 An employee may at any time revoke in writing an authorisation to the employer to make payroll deductions of Union membership fees.
- 53.6.7 Where an employee who is a member of the Union and who has authorised the employer to make payroll deductions of Union membership fees resigns his or her membership of the Union in accordance with the rules of the Union, the Union shall inform the employee in writing of the need to revoke the authorisation to the employer in order for payroll deductions of union membership fees to cease.

## **PART B - MONETARY RATES**

**Table 1 - Full-Time, Part-Time And Fixed Term Employee Hourly Rates Of Pay**

	WHS Relief Worker Grade 1			WHS Relief Worker Grade 2		
	From f.f.p.p Date of Certification of this Agreement \$ per hour	From f.f.p.p 10 August 2004 \$ per hour	From f.f.p.p 10 August 2005 \$ per hour	From f.f.p.p Date of Certification of this Agreement \$ per hour	From f.f.p.p 10 August 2004 \$ per hour	From f.f.p.p 10 August 2005 \$ per hour
Year 1	13.95	14.37	14.80	14.65	15.09	15.54
Year 2	14.61	15.05	15.50	15.62	16.09	16.57
Year 3	15.26	15.71	16.18	16.32	16.81	17.31
Year 4	15.97	16.44	16.93	17.10	17.44	17.96

**Table 2 - Casual Employee Hourly Rates Of Pay**

WHS Relief Worker Grade 1			WHS Relief Worker Grade 2		
From f.f.p.p Date of Certification of this Agreement \$ per hour	From f.f.p.p 10 August 2004 \$ per hour	From f.f.p.p 10 August 2005 \$ per hour	From f.f.p.p Date of Certification of this Agreement \$ per hour	From f.f.p.p 10 August 2004 \$ per hour	From f.f.p.p 10 August 2005 \$ per hour
17.35	17.87	18.41	18.20	18.75	19.31

**Table 3 - Temporary Live-In Employee Daily Rates Of Pay**

WHS Relief Worker Grade 1			WHS Relief Worker Grade 2		
From f.f.p.p Date of Certification of this Agreement \$ per day	From f.f.p.p 10 August 2004 \$ per day	From f.f.p.p 10 August 2005 \$ per day	From f.f.p.p Date of Certification of this Agreement \$ per day	From f.f.p.p 10 August 2004 \$ per day	From f.f.p.p 10 August 2005 \$ per day
200.00	206.00	212.00	210.00	216.00	222.00

**Table 4 - Sleeper Hourly Rate Of Pay**

WHS Relief Worker Grade 1			WHS Relief Worker Grade 2		
From f.f.p.p Date of Certification of this Agreement \$ per hour	From f.f.p.p 10 August 2004 \$ per hour	From f.f.p.p 10 August 2005 \$ per hour	From f.f.p.p Date of Certification of this Agreement \$ per hour	From f.f.p.p 10 August 2004 \$ per hour	From f.f.p.p 10 August 2005 \$ per hour
12.00	12.35	12.70	12.00	12.35	12.70

**Table 5 - Travel Allowance**

From f.f.p.p Date of Certification of this Agreement Cents/km	From f.f.p.p 10 August 2004 Cents/km	From f.f.p.p 10 August 2005 Cents/km
50	52	54

## SIGNATORIES

For and on behalf of Wendy's Home Services Pty Ltd

(Print Name)

(Signature)

in the presence of:

(Print Name of Witness)

(Signature of Witness)

Signed for and on behalf of The Australian Liquor, Hospitality And Miscellaneous Workers Union New South Wales Branch

(Print Name)

(Signature)

in the presence of:

(Print Name of Witness)

(Signature of Witness)

## **APPENDIX A**

### EMPLOYEE'S AUTHORISATION NOTICE

Employees written authorisation to enter an arrangement to work Voluntary Additional Hours pursuant to the LHMU & Wendy's Home Services Enterprise Agreement 2003 ('the Agreement').

#### Section I

I, an Employee of Wendy's Home Services Pty Ltd hereby elect to work, at my discretion, additional hours which would otherwise be paid for as overtime hours pursuant to the Agreement, on the basis that I will be paid at the rate applicable under Clause 16.2 of the Agreement.

I understand that the Company does not have to, either at all or on any particular occasion or occasions, accept my request.

This authorisation does not force me to work Voluntary Additional Hours when such hours are offered nor does any such refusal on my part preclude me from being offered Voluntary Additional Hours at the next opportunity. I do understand, and accept however that three (3) refusals on my part to do Voluntary Additional Hours may result in my name being placed at the bottom of the roster of staff available to work Voluntary Additional Hours.

There is also no compulsion, nor penalty on me to work the maximum number of hours allowed per day, week or fortnight under this Agreement.

I acknowledge that I may withdraw my Authorisation to work Voluntary Additional Hours at any time by the giving of 1 month's notice in writing in accordance with the Employees Withdrawal Notice Form contained in Appendix B of the Agreement. Thereafter any overtime I work will be paid for in accordance with Clause 14 of the Agreement.

Signature of Employee    Date of Signing

## **APPENDIX B**

### **EMPLOYEE'S WITHDRAWAL NOTICE**

I,    wish to exercise my discretion to withdraw my request to work Voluntary Additional Hours pursuant to the LHMU & Wendy's Home Services Enterprise Agreement 2003 .

I acknowledge that the withdrawal of my request to work Voluntary Additional Hours may result in a decrease in the amount of overtime I am offered, but that any overtime which is offered will be paid in accordance with clause 14 of the Agreement.

Signature of Employee

Date of Signing