

# SCHMALZ AUSTRALIA PTY LTD ENTERPRISE AGREEMENT 2023

## 1. TITLE

This Agreement shall be known as the Schmalz Australia Pty Ltd Enterprise Agreement 2023.

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### **3. APPLICATION AND INCIDENCE OF AGREEMENT**

3.1. This Agreement shall apply at the establishment of Schmalz Australia Pty Ltd at 25 Turbo Drive Bayswater Vic 3153 and shall apply to all employees of Schmalz Australia Pty Ltd engaged in work directly related to production that but for the Agreement would fall within classifications C13 to C10 of the Manufacturing and Associated Industries and Occupations Award 2020.

3.2. For the purposes of clarity this Agreement does not cover employees of Schmalz Australia Pty Ltd who undertake sales, administration, clerical, management or engineering work.

### **4. PARTIES BOUND**

4.1. The parties to this Agreement are:

- (a) Schmalz Australia Pty Ltd (**Employer**); and
- (b) All employees of Schmalz Australia Pty Ltd as specified in clause 3 above (**Employees**).

### **5. DURATION OF AGREEMENT**

5.1. This Agreement shall commence operation seven days after it is approved by the Fair Work Commission and shall remain in force for a period of four years from that date.

### **6. RELATIONSHIP BETWEEN THE NATIONAL EMPLOYMENT STANDARDS AND THIS AGREEMENT AND MODERN AWARD**

6.1. The National Employment Standards (NES) is a set of legislated minimum employment entitlements under the *Fair Work Act 2009 (Cth)* (**FW Act**). This Agreement shall be read and interpreted in conjunction with the National Employment Standards (NES) provided that where there is any inconsistency between this Agreement and the NES, the more beneficial provision to an employee shall take precedence.

6.2. This Agreement shall incorporate and be read and interpreted in conjunction with *Manufacturing and Associated Industries and Occupations Award 2020* provided that where there is any inconsistency between this Agreement and the Award, this Agreement shall take precedence to the extent of the inconsistency.

### **7. EFFECT OF AGREEMENT**

7.1. This Agreement will operate to the exclusion of any awards or other industrial agreements.

### **8. EMPLOYER AND EMPLOYEE DUTIES**

8.1. The employer may direct an employee to carry out such duties as are within the limits of the employee's skills, competence and training consistent with the classification structure provided that such duties are not designed to promote de-skilling.

8.2. The employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.

8.3. Any direction issued by the employer under this clause is to be consistent with the employer's responsibilities to provide a safe and healthy working environment.

## 9. FORMS OF EMPLOYMENT

### 9.1. Full-Time Employment

Any employee not specifically engaged as being a part-time or casual employee is for all purposes of this Agreement a full-time employee, unless otherwise specified in this Agreement.

### 9.2. Casual Employment

9.2.1 A casual employee is one engaged and paid as such. A casual employee for working ordinary time must be paid an hourly rate calculated on the basis of one thirty-eighth of the minimum weekly wage for the work being performed plus a casual loading of 25%. The loading constitutes part of the casual employee's 'all purpose rate'. This casual loading is paid in lieu of the employee/s entitlement to paid annual leave, paid personal/carers leave, paid public holidays and other entitlements not applicable to casual employment.

9.2.2 On each occasion a casual employee is required to attend work the employee must be paid for a minimum of four hours work. In order to meet their personal circumstances a casual employee may request and the employer may agree to an engagement for no less than three consecutive hours.

9.2.3 Where this Agreement refers to a penalty rate, overtime rate or shift loading as being calculated as a percentage of the ordinary hourly rate, that reference will (for a casual employee) instead be taken to be a reference to the casual ordinary hourly rate if the entitlement is applicable to a casual employee.

9.2.4 When engaging a casual employee, the Employer must inform the employee that they are engaged as a casual, the name of the Employer and their classification and rate of pay.

9.2.5 Offers and requests for conversion from casual employment to full-time or part-time employment are provided for in the NES.

### 9.3. Part-time Employment

9.3.1 An employee may be engaged to work on a part - time basis involving a regular pattern of hours which average less than 38 ordinary hours per week.

9.3.2 A part-time employee must be engaged for a minimum of four consecutive hours per day. In order to meet their personal circumstances, a part-time employee may request, and the employer may agree to an engagement for no less than 3 consecutive hours per day.

9.3.3 Before commencing part-time employment, the employee and employer must agree in writing:

- (a) on the hours to be worked by the employee, the days on which they will be worked and the commencing and finishing times for the work; and

- (b) on the classification applying to the work to be performed in accordance with the classification structure contained in this Agreement.

9.3.4 The terms of the agreement in clause 9.3.3 may be varied by consent in writing.

9.3.5 The agreement under clause 9.3.3 or any variation to it under clause 9.3.4 must be retained by the employer and a copy of the agreement and any variation to it must be provided to the employee by the employer.

9.3.6 Except as otherwise provided in this Agreement, a part-time employee must be paid for the hours agreed on in accordance with clauses 9.3.3 and 9.3.4.

9.3.7 The terms of this Agreement will apply pro rata to part-time employees on the basis that ordinary weekly hours for full - time employees are 38.

9.3.8 A part-time employee who is required by the employer to work in excess of the hours agreed under clauses 9.3.3 and 9.3.4 must be paid overtime in accordance with the Overtime in this Agreement.

9.3.9 Where the part-time employee's normal paid hours fall on a public holiday prescribed in the NES and work is not performed by the employee, such employee must not lose pay for the day. Where the part-time employee works on the public holiday, the part-time employee must be paid in accordance with the Public Holidays clause in this Agreement.

## **10. APPRENTICES**

(Refer Appendix A)

## **11. SCHOOL BASED APPRENTICES**

(Refer Appendix A)

## **12. MIXED FUNCTIONS**

- 12.1. An employee engaged for more than two hours during one day on duties carrying a higher rate than his or her ordinary classification shall be paid the higher rate for such day. If for two hours or less during one day he or she shall be paid the higher rate for the time so worked.

## **13. TERMINATION OF EMPLOYMENT**

Other than the provisions set out below Notice of Termination shall be in accordance with the provisions of the National Employment Standards

### **13.1. Notice of Termination by Employer**

- 13.1(a) In order to terminate the employment of an employee the employer must give to the employee the following notice:

**Period of Service**

**Period of Notice**

1 year or less	1 week
1 year and up to the completion of 3 years	2 weeks
3 years and up to the completion of 5 years	3 weeks
5 years and over	4 weeks

13.1(b) In addition to the notice in 13.1 employees over 45 years of age at the time of the giving of the notice with not less than two years' service, are entitled to an additional week's notice.

13.1(c) Payment in lieu of the notice prescribed in 13.1 must 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.

13.1(d) The required amount of payment in lieu of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period. That total must be calculated on the basis of:

- (i) the employee's ordinary hours of work (even if not standard hours); and
- (ii) the amounts ordinarily payable to the employee in respect of those hours, including (for example) allowances, loading and penalties; and
- (iii) any other amounts payable under the employee's contract of employment.

13.1(e) the period of notice in this clause does not apply:

- (i) in the case of dismissal for serious misconduct;
- (ii) to apprentices;
- (iii) to employees engaged for a specific period of time or for a specific task or tasks;
- (iv) to trainees whose employment under a traineeship agreement or an approved traineeship is for a specified period or is, for any other reason, limited to the duration of the agreement; or
- (v) to casual employees.

13.1(f) Termination provisions for apprentices are provided by the relevant State or Territory Training Authority.

## 13.2. Notice of Termination by Employee

13.2.1(a) The notice of termination required to be given by an employee shall be the same as that required of an employer, except that there is no additional notice based on the age of the employee concerned.

13.2.1(b) If an employee who is at least 18 years old does not give the period of notice required under clause 13.2, then the employer may deduct from wages due to the employee under this Agreement an amount that is no more than one week's wages for the employee.

13.2.1(c) If the employer has agreed to a shorter period of notice than that required under clause 13.2, then no deduction can be made under this clause.

13.2.1(d) Any deduction made under this clause must not be unreasonable in the circumstances.

### 13.3. Summary Dismissal

The employer has the right to dismiss any employee without notice for serious misconduct and in such cases any entitlements under this Agreement are to be paid up to the time of dismissal only.

### 13.4. Transmission of business

Where a business is transmitted from one employer to another in regards to the provisions of clause 14 - Redundancy, the period of continuous service that the employee had with the transmitter or any prior transmitter is deemed to be service with the transmittee and taken into account when calculating notice of termination. However, an employee shall not be entitled to notice of termination or payment in lieu of notice for any period of continuous service in respect of which notice has already been given or paid for.

## 14. REDUNDANCY

Other than the provisions set out below Redundancy shall be in accordance with the provisions of the National Employment Standards.

### 14.1. Definitions

14.1(a) 'Business' includes trade, process, business or occupation and includes part of any such business.

14.1(b) 'Redundancy' occurs where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and that decision leads to the termination of employment of the employee, except where this is due to the ordinary and customary turnover of labour.

14.1(c) 'Transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and transmitted has a corresponding meaning.

14.1(d) 'Weeks' pay' means the ordinary time rate of pay for the employee concerned. Provided that such rate shall exclude:

- overtime
- penalty rates;
- disability allowances;
- shift allowances;
- special rates;
- fares and travelling time allowances;
- bonuses; and

- any other ancillary payments of a like nature.

#### 14.2. Redundancy pay

As of the operative date of this Agreement the Company will no longer be making contributions to Incolink and Protect. Redundancy pay will be paid at the rate of three (3) weeks for each completed year of service to a maximum of 30 weeks' pay, save that an employee made redundant with at least 1 year but less than 2 years of continuous service will be entitled to 4 weeks. Any amount that has been paid into the IncoLink and or Protect Fund on behalf of an individual employee up to the operative date of this Agreement will be deducted from that employee's redundancy payment.

#### 14.3. Transmission of business

The provisions of this clause are not applicable where a business is before or after the date of this Agreement, transmitted from the employer (in this subclause called the transmittor) to another employer (in this subclause called the transmittee), in any of the following circumstances:

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

#### 14.4. Employees exempted

This clause does not apply to:

- employees terminated as a consequence of serious misconduct that justifies dismissal without notice;
- probationary employees;
- apprentices;
- trainees;
- employees engaged for and where the engagement ends as a consequence of a specific period of time or for a specified task or tasks; or
- casual employees.

#### 14.5. Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate his/her employment during the period of notice set out in 13.1. In this circumstance the employee will be entitled to receive the benefits and payments they would have received under this clause had they remained with the employer until the expiry of the notice but will not be entitled to payment in lieu of notice.

#### 14.6. Transfer to Lower Paid Duties



Where an employee is transferred to lower paid duties by reason of redundancy the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new ordinary time rate for the number of weeks of notice still owing.

## **15. ABSENCE FROM DUTY**

- 15.1. Unless a provision of this Agreement states otherwise, an employee not attending for duty will lose their pay for the actual time of such non-attendance.

## **16. STANDING DOWN EMPLOYEES**

- 16.1. The employer may stand down an employee during a period in which the employee cannot be usefully employed because of one of the following circumstances:
- 16.1.1 Industrial action (other than industrial action organised or engaged in by the Employer);
  - 16.1.2 A breakdown of machinery or equipment, for reasons by which the Employer cannot be held responsible for the breakdown;
  - 16.1.3 A stoppage of work for any cause for which the Employer cannot reasonably be held responsible.
- 16.2. If the Employer stands down an Employee under one of the above circumstances, the Employer is not required to make payments to the Employee for that period.

## **17. ABANDONMENT OF EMPLOYMENT**

- 17.1. This clause operates subject to the NES.
- 17.2. The absence of an employee from work for a continuous period exceeding three working days without the consent of the employer and without notification to the employer shall be prima facie evidence that the employee has abandoned their employment.
- 17.3. Provided that if within a period of 14 days from their last attendance at work or the date of their last absence in respect of which notification has been given or consent has been granted an employee has not established to the satisfaction of the employer that they were absent for reasonable cause, they shall be deemed to have abandoned their employment.
- 17.4. Termination of employment by abandonment in accordance with this subclause shall operate as from the date of the last attendance at work or the last day's absence in respect of which consent was granted, or the date of the last absence in respect of which notification was given to the employer, whichever is the later.

## **18. PROTECTIVE CLOTHING**

- 18.1. Employees to be provided with overalls which are supplied and maintained by Hire Co and remain the property of Hire Co, or suitable shirts purchased and supplied by the Employer.
- 18.2. Each weekly hire employee shall be provided with an Australia made “Bluey” jacket, or agreed equivalent.
- 18.3. Each weekly hire employee shall be provided with a pair of safety footwear made to Australian Safety Standards.
- 18.4. All the equipment supplied within this clause shall be replaced on the basis of “fair wear and tear” and there shall be no provision of any cash payment in lieu of any item.
- 18.5. Where protective clothing is damaged, destroyed or soiled as a result of the employee performing any duty required by the Employer, the Employer will replacement, repair or clean such protective clothing.

**19. WAGES**

19.1. The following (adult) rates of pay shall apply under this Agreement:

Classification	Current hourly rate of pay	Hourly wage rate \$ per hour FFPPOA 1 January 2024 (5%)	Hourly wage rate \$ per hour FFPPOA 1 January 2025 (CPI or 2% whichever is greater) <sup>1</sup>	Hourly wage rate \$ per hour FFPPOA 1 January 2026 (CPI or 2% whichever is greater)	Hourly wage rate \$ per hour FFPPOA 1 January 2027 (CPI or 2% whichever is greater)
	\$	\$	\$	\$	\$
C13	\$35.49	\$37.26	\$38.01	\$38.77	\$39.55
C12	\$37.83	\$39.72	\$40.52	\$41.33	\$42.15
C11	\$39.99	\$41.99	\$42.83	\$43.69	\$44.56
C10 Electrician	\$43.28	\$45.44	\$46.35	\$47.28	\$48.23
C10 Boilermaker	\$47.84	\$50.23	\$51.24	\$52.26	\$53.31

- 19.2. Save for the allowances provided for in this Agreement, wage rates specified in 19.1 include payment for all other allowances payable to an employee under the Award.
- 19.3. Electricians who hold an A-Grade license will be entitled to a \$20.00 per week A-Grade license allowance. This allowance will be included in the employee’s hourly rate such that their hourly rate shall increase by \$0.52 per hour.
- 19.4. Classification - classifications are provided for in Appendix C.

**20. APPRENTICE RATES**

(Refer to Appendix B)

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<sup>1</sup> Figures calculated on 2%.

## 21. SUPERANNUATION

### 21.1. Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated below covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

### 21.2. Employer contributions

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

### 21.3. Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 21.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of 3 months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses (a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses (a) or (b) was made.

### 21.4. Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 21.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 21.2 and pay the amount authorised under clauses 21.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) AustralianSuper; or
- (b) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or
- (c) a superannuation fund or scheme which the employee is a defined benefit member of.

### 21.5. Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 21.2 and pay the amount authorised under clauses 21.3(a) or (b):

(a) Paid leave

While the employee is on any paid leave.

(b) Work related injury or illness

For the period of absence from work (subject to a maximum of 52 weeks in total) of the employee due to work related injury or work-related illness provided that:

(i) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with statutory requirements; and

(ii) the employee remains employed by the employer.

## **22. ALLOWANCES**

### 22.1. Motor Allowance

Where an employee reaches agreement with the employer to use his or her own motor vehicle on the employer's business, such employee shall be paid an allowance of 95 cents per kilometre travelled.

### 22.2. Meal Allowance

Refer to sub clause 25.11.

### 22.3. Tool Allowance - tradespersons and apprentices

The tool allowance has been incorporated into the wage rates provided for in clause 19.1 and is not paid as a separate allowance.

### 22.4. Travel allowance and entitlements

All employees required to work at another site, including casuals, shall be paid \$18.75 per day travel allowance, unless provided with a Company vehicle.

### 22.5. Excess Travelling and Fares

An employee who on any day or from day to day is required to work at a job away from his or her accustomed workshop or depot will, at the direction of the employer, present himself or herself for work at such job at the usual starting time, but for all time reasonably spent in reaching and returning from such job (in excess of the time normally spent in travelling from his or her home to such workshop or depot and returning) he or she will be paid travelling time, and also any fares reasonably incurred in excess of those normally incurred in travelling between his or her home and such workshop or depot.

### 22.6. Payment for Travelling

- (1) The rate of pay for travelling time is ordinary rates, except on Sundays and holidays when it will be time and a half.
  - (2) The maximum travelling time to be paid for is 12 hours out of every 24 hours, or when a sleeping berth is provided by the employer for all-night travel, eight hours out of every 24.
- 22.7. Employees who are required to work in the country or interstate and are required to live away from home will be paid a \$100 allowance for all meals and personal expenses each night away.
- 22.8. Reasonable accommodation expenses are to be paid by the company.
- 22.9. Employees are responsible for supplying the employer with all receipts that are required to be paid by the company.

## **23. PAYMENT OF WAGES**

### **23.1. Period of Payment**

- (a) Wages shall be paid weekly or fortnightly, either:
  - (i) according to the actual ordinary hours worked each week or fortnight; or
  - (ii) according to the average number of ordinary hours worked each week or fortnight.
- (b) Any other period as agreed between the company and an individual employee or the Employer and the majority of employees.

### **23.2. Method of Payment**

Wages shall be paid by electronic funds transfer into the employee's bank (or other recognised financial institution) account.

### **23.3. Absences from Duty Under an Averaging System**

Where an employee's ordinary hours in a week are greater or less than 38 hours, and such employee's pay is averaged to avoid fluctuating wage payments, the following shall apply:

- (a) The employee will accrue a "credit" for each day he or she works ordinary hours in excess of the daily average.
- (b) The employee will not accrue a "credit" for each day of absence from duty (other than on annual leave, long service leave, public holidays, paid sick leave, workers' compensation, paid bereavement leave, paid carers' leave, paid training leave, or jury service).
- (c) An employee absent for part of a day (other than on annual leave, long service leave, public holidays, paid sick leave, workers' compensation, paid bereavement leave, paid carers' leave, paid training leave or jury service) shall accrue a proportion of the "credit" for the day, based upon the proportion of the working day that the employee was in attendance.

## 24. ORDINARY HOURS OF WORK

### 24.1. Ordinary Hours of Work - Day Workers

- (a) Subject to sub-clause 24.2, the ordinary hours of work for day workers are to be an average of 38 per week but not exceeding 152 hours in 28 days.
- (b) The ordinary hours of work may be worked on any day or all of the days of the week, Monday to Friday. The days on which ordinary hours are worked may include Saturday and Sunday subject to agreement between the Employer and the majority of employees concerned. Agreement in this respect may also be reached between the Employer and an individual employee.
- (c) The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer between 6.00 am and 6.00 pm. The spread of hours (i.e. 6.00am to 6.00 pm) may be altered by up to one hour at either end of the spread, by agreement between the Employer and the majority of employees concerned or in appropriate circumstances, between the employer and an individual employee.
- (d) Any work performed outside the spread of hours is to be paid for at overtime rates. However, any work performed by an employee prior to the spread of hours which is continuous with ordinary hours for the purpose, for example, of getting the plant in a state of readiness for production work is to be regarded as part of the 38 ordinary hours of work.
- (e) Where agreement is reached in accordance with 24.1(b) the minimum rate to be paid for a day worker for ordinary time worked between midnight on Friday and midnight on Saturday shall be time and a half.
- (f) Where agreement is reached in accordance with 24.1(b) the minimum rate to be paid for a day worker for ordinary time worked between midnight on Saturday and midnight on Sunday shall be double time

### 24.2. Methods of Arranging Ordinary Working Hours.

- (a) Subject to the Employer's right to fix the daily hours of work for day workers from time to time within the spread of hours referred to in 24.1(c) and the Employer's right to fix the commencing and finishing time of shifts from time to time, the arrangement of ordinary working hours is to be by agreement between the Employer and the majority of employees in the enterprise or part of the enterprise concerned. This does not preclude the Employer reaching agreement with individual employees about how their working hours are to be arranged.
- (b) Matters upon which agreement may be reached include:
  - (i) how the hours are to averaged within a work cycle
  - (ii) the duration of the work cycle for day workers provided that such duration shall not exceed 3 months
  - (iii) rosters which specify the starting and finishing times of working hours
  - (iv) a period of notice of a rostered day off which is less than four weeks

- (v) substitution of rostered days off
- (vi) accumulation of rostered days off
- (vii) arrangements which allow for flexibility in relation to the taking of rostered days off
- (viii) any arrangements of ordinary hours which exceed 8 hours in any day

#### 24.3. Rostered Days Off

- a) Employees, (subject to the employer's agreement), may work a 20 day/Rostered Day Off (RDO) cycle, the ordinary hours of work will be an average of 38 hours per week over a 4 week (20 day) cycle. In the cycle, the employee shall work a total of 152 ordinary hours. The standard working day is 7.6 hours. The standard RDO accrual working day is 7.6 hours plus 0.4 of an hour. The 0.4 of an hour is banked to be taken as an RDO at the agreed time. For an employee to receive full payment for the RDO he/she must have banked 19 x .4 hours. The Employer will not top up non-banked time for an RDO.
- b) A maximum of six rostered days off can be accumulated at any one time and will be taken as agreed between the Employer and the employee. Any accumulated but not taken rostered days off will be paid out at the request of the employee at the rate that applies to ordinary hours of work, i.e. time for time.
- c) The Employer reserves the right to move the day of an RDO for operational reasons with at least seven days notice to affected employee/s.

#### 24.4. Make Up Time

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

24.5. An individual may by agreement with the Employer arrange his/her hours so that the individual may accumulate time to take off at a time suitable to both the Employer and the individual. At any time, this accumulated time may be paid out at ordinary rate of pay by agreement between the Employer and the individual employee.

#### 24.6. Meal Breaks

- (a) An employee shall not be required to work for more than five hours without a break for a meal except in the following circumstances:
  - (a) In cases where canteen or other facilities are limited to the extent that meal breaks must be staggered and as a result it is not practicable for all employees to take a meal break within five hours, an employee will not be required to work for more than six hours without a break for a meal break.
  - (b) By agreement between an Employer and an employee or the majority of employees in an enterprise or part of an enterprise concerned, an employee or employees may be required to work in excess of five hours but not more than six hours at ordinary rates of pay without a meal break.

- (b) The time of taking a scheduled meal break or rest break by one or more employees may be altered by the Employer if it is necessary to do so in order to meet a requirement for continuity of operations.
- (c) The Employer may stagger the time of taking a meal and rest breaks to meet operational requirements.
- (d) Subject to 24.6(a), an employee shall work during meal breaks at the rate of pay applying to the employee immediately prior to the scheduled meal break whenever instructed to do so for the purpose of making good breakdown of plant or upon routine maintenance of plant which can only be done while the plant is idle.
- (e) Except as provided in this subclause, and except where any alternative arrangement is entered into by agreement between the Employer and employees concerned, an employee must be paid as follows for all work done during meal hours and thereafter until a meal break is taken:
  - a) except in circumstances referred to in sub-clause (b): 150% of the ordinary hourly rate;
  - b) where the unpaid meal break is during ordinary time on a Saturday or Sunday: 200% of the ordinary hourly rate.

## **25. OVERTIME**

### **25.1. Payment for Working Overtime**

- (a) Except as provided for in 23.1(d), 23.8 and 23.9, for all work done outside ordinary hours on any day, the overtime rates of pay are time and a half for the first two hours and double time thereafter until the completion of the overtime work.
- (b) For the purposes of this clause "ordinary hours" means the hours worked in an enterprise, fixed in accordance with clause 22 of this Agreement.
- (c) The hourly rate, when computing overtime, is to be determined by dividing the appropriate weekly rate by 38, even in cases when an employee works more than 38 ordinary hours in a week.
- (d) 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.
- (e) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
- (f) 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 paragraph (d) of this subclause where such time has not been taken within four weeks of accrual.
- (g) In computing overtime each day's work shall stand alone.

### **25.2. Requirement to Work Reasonable Overtime**



- (a) Subject to sub-clause (b) an employer may require an employee to work reasonable overtime at overtime rates.
- (b) 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 having regard to:
  - a) any risk to employee health and safety from working the additional hours;
  - b) the employee's personal circumstances, including family responsibilities;
  - c) the needs of the workplace or enterprise in which the employee is employed;
  - d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
  - e) any notice given by the employer of any request or requirement to work the additional hours;
  - f) any notice given by the employee of his or her intention to refuse to work the additional hours;
  - g) the usual patterns of work in the industry, or the part of an industry, in which the employee works;
  - h) the nature of the employee's role, and the employee's level of responsibility;
  - i) whether the additional hours are in accordance with averaging terms inserted pursuant to section 63 of the Act, that applies to the employee; and
  - j) any other relevant matter.

### 25.3. 'One in, All in' does not Apply

The assignment of overtime by an Employer to an employee is to be based on specific work requirements and the practice of "one in, all in" overtime must not apply.

### 25.4. Rest Period after Overtime

- (a) When overtime work is necessary it must, wherever reasonably practicable, be so arranged that employees have at least 10 consecutive hours off duty between the work of successive working days.
- (b) An employee (other than a casual employee) who works so much overtime between the termination of his or her ordinary work on one day and the commencement of their ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between those times must, subject to this sub-clause, be released after completion of the overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (c) If on the instructions of the employer an employee resumes or continues work without having had the 10 consecutive hours off duty the employee must be paid at double rates until he or she is released from duty for such period. The employee is

then entitled to be absent until he or she has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the absence.

- (d) By agreement between the employer and individual employee, the 10 hour break provided for in this clause may be reduced to a period no less than 8 hours.

#### 25.5. Call Back

An employee recalled to work overtime after leaving the employer's enterprise (whether notified before or after leaving the enterprise) is to be paid for a minimum of four hours work at the rate of time and one half for the first three hours and double time thereafter. There are a number of conditions which apply to this provision:

- (a) Where an employee is required to regularly hold himself or herself in readiness for a call back he or she will be paid for a minimum of three hours work at the appropriate overtime rate. This is subject to 25.6 which deals with the conditions for standing by.
- (b) If the employee is recalled on more than one occasion between the termination of their ordinary work on one day and the commencement of their ordinary work on the next ordinary working day he or she shall be entitled to the three or four hour minimum overtime payment provided for in this subclause for each call back. However, in such circumstances, it is only the time which is actually worked during the previous call or calls which is to be taken into account when determining the overtime rate for subsequent calls.
- (c) Except in the case of unforeseen circumstances arising, an employee will not be required to work the full three or four hours as the case may be if the job he or she was recalled to perform is completed within a shorter period.
- (d) This sub-clause does not apply in cases where it is customary for an employee to return to the enterprise to perform a specific job outside the employee's ordinary working hours or where the overtime is continuous (subject to a meal break) with the commencement or completion of ordinary working time.
- (e) Overtime worked in the circumstances specified in this subclause is not to be regarded as overtime for the purpose of 23.4, Rest Periods After Overtime, when the actual time worked is less than three hours on the call back or on each call back.

#### 25.6. Standing By

Subject to any custom prevailing at an enterprise, where an employee is required regularly to hold himself or herself in readiness to work after ordinary hours, the employee is to be paid standing by time at the employee's ordinary rate of pay for the time he or she is standing by.

#### 25.7. Saturday Work

A day worker required to work overtime on a Saturday shall be afforded at least four hours work or paid for four hours at the rate of time and one half for the first two hours and double time thereafter, except where the overtime is continuous with overtime commenced on the previous day.

#### 25.8. Sunday Work

Employees required to work overtime on Sundays shall be paid for a minimum of three hours work at double time. The double time is to be paid until the employee is relieved from duty.

25.9. Public Holiday Work

A day worker required to work overtime on a public holiday must be paid 250% of the ordinary hourly rate until the employee is relieved from duty with a minimum payment of 3 hours.

25.10. Rest Break

- (a) An employee working overtime must be allowed a rest break of 20 minutes without deduction of pay after each four hours of overtime worked if the employee is to continue work after the rest break.
- (b) Where a day worker is required to work overtime on a Saturday, Sunday or Public Holiday or on a rostered day off, the first rest break will be paid at the employee's ordinary rate of pay.
- (c) Where overtime is to be worked immediately after the completion of ordinary work on a day and the period of overtime is to be more than one and a half hours, an employee, before starting the overtime is entitled to a rest break of 20 minutes to be paid at ordinary rates.
- (d) An employer and employee may agree to any variation of this subclause to meet the circumstances of the work in hand provided that the employer is not required to make any payment in excess of or less than what would otherwise be required under this sub-clause.

25.11. Meal Allowance

- (a) An employee is entitled to a meal allowance of \$16.81 on each occasion that the employee is entitled to a rest break in accordance with sub-clause 25.10, except in the following circumstances:
  - (i) if the employee is a day worker and was notified no later than the previous day that they would be required to work such overtime;
  - (iii) if the employee lives in the same locality as the enterprise and could reasonable return home for meals;
  - (iv) if the employee is provided with an adequate meal by the Employer.
- (b) If an employee has provided a meal or meals on the basis that he or she has been given notice to work overtime and the employee is not required to work overtime or is required to work less than the amount advised, he or she shall be paid the prescribed meal allowance for the meal or meals which he or she has provided but which are surplus.

**26. ANNUAL LEAVE**

26.1. Annual leave is provided for in the NES. Annual leave does not apply to a casual employee.

26.2. Definition of shiftworker

For the purpose of the additional week of annual leave provided for in section 87(1)(b) of the Act, a **shiftworker** is a 7 day shiftworker who is regularly rostered to work on Sundays and public holidays.

### 26.3. Payment for annual leave

NOTE: Where an employee is receiving over-Agreement payments such that the employee's base rate of pay is higher than the rate specified under this Agreement, the employee is entitled to receive the higher rate while on a period of paid annual leave (see sections 16 and 90 of the Act).

- (a) Instead of the **base rate of pay** as referred to in section 90(1) of the Act, an employee under this Agreement, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.
- (b) Subject to clause (c), the wages to be paid must be worked out on the basis of what the employee would have been paid under this Agreement for working ordinary hours during the period of annual leave, including allowances, loadings and penalties paid for all purposes of the Agreement, first aid allowance and any other wages payable under the employee's contract of employment including any over-Agreement payment.
- (c) Subject to clause 26.4, the employee is not entitled to payments in respect of overtime, shift loading, weekend penalty rates, special rates or any other payment which might have been payable to the employee as a reimbursement for expenses incurred.

### 26.4. Annual leave loading

- (a) During a period of annual leave an employee must also be paid a loading calculated on the wages prescribed in clause 26.3.
- (b) The loading must be as follows:
  - (i) Day work  
An employee who would have worked on day work only had they not been on leave must be paid a loading equal to **17.5%** of the wages prescribed in clause 26.3 or the relevant weekend penalty rates, whichever is the greater but not both.

### 26.5. Conversion to hourly entitlement

An employer may reach agreement with the majority of employees concerned to convert the annual leave entitlement in section 87 of the Act to an hourly entitlement for administrative ease (i.e. 152 hours for a full-time employee entitled to 4 weeks of annual leave and 190 hours for a shiftworker as defined in clause 26.2).

### 26.6. Electronic funds transfer (EFT) payment of annual leave

Despite anything else in this clause, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

### 26.7. Direction to take annual leave during shutdown

- (a) This clause applies if an employer:

- (i) intends to shut down all or part of its operation for a particular period for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned (**temporary shutdown period**); and
  - (ii) wishes to require affected employees to take paid annual leave during that period.
- (b) The employer must give the affected employees 28 days' written notice of a temporary shutdown period, or any shorter period agreed between the employer and the majority of relevant employees.
  - (c) The employer must give written notice of a temporary shutdown period to any employee who is engaged after the notice is given under sub-clause 1.1(b) and who will be affected by that period, as soon as reasonably practicable after the employee is engaged.
  - (d) The employer may direct the employee to take a period of paid annual leave to which the employee has accrued an entitlement during a temporary shutdown period.
  - (e) A direction by the employer under sub-clause 1.1(d):
    - (i) must be in writing; and
    - (ii) must be reasonable.
  - (f) The employee must take paid annual leave in accordance with a direction under sub-clause 1.1(d).
  - (g) In respect of any part of a temporary shutdown period which is not the subject of a direction under sub-clause 1.1(d), an employer and an employee may agree, in writing, for the employee to take leave without pay during that part of the temporary shutdown period.
  - (h) An employee may take annual leave in advance during a temporary shutdown period in accordance with an agreement under clause 26.12.
  - (i) In determining the amount of paid annual leave to which an employee has accrued an entitlement, any period of paid annual leave taken in advance by the employee, in accordance with an agreement under clause 26.12, to which an entitlement has not been accrued, is to be taken into account.
  - (j) Clauses 26.9 to 26.11 do not apply to a period of annual leave that an employee is required to take during a temporary shutdown period in accordance with clause 26.7.

26.8. Leave on termination

On termination of employment, an employee must be paid for annual leave accrued that has not been taken at the appropriate rate calculated in accordance with clause 26.3.

26.9. Excessive leave accruals: general provision

NOTE: Clauses 26.9 to 26.11 contain provisions, additional to the NES, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Act.

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 26.2).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 26.10 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 26.11 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

26.10. Excessive leave accruals: direction by employer that leave be taken

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 1.1(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under clause 1.1(a):
  - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 26.9, 26.10 or 26.11 or otherwise agreed by the employer and employee) are taken into account; and
  - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
  - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under clause 1.1(a) that is in effect.
- (d) An employee to whom a direction has been given under clause 1.1(a) may request to take a period of paid annual leave as if the direction had not been given.

26.11. Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 1.1(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under clause 1.1(a) if:
  - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and

- (ii) the employee has not been given a direction under clause 1.1(a) that, when any other paid annual leave arrangements (whether made under clause 26.9, 26.10 or 26.11 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under clause 1.1(a) must not:
- (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 26.9, 26.10 or 26.11 or otherwise agreed by the employer and employee) are taken into account; or
  - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
  - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
  - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under clause 1.1(a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 26.2) in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under clause 1.1(a).

#### 26.12. Annual leave in advance

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
  - (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
  - (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

The employer must keep a copy of any agreement under clause 26.12 as an employee record.

- (c) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 26.12, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

#### 26.13. Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 26.13.

- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 226.13.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 26.13 must state:
  - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
  - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 26.13 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 26.13 as an employee record.

## **27. PUBLIC HOLIDAYS**

- 27.1. Other than the provisions set out in this clause, the entitlements to Public Holidays available to employees covered by this Agreement will be as per the National Employment Standards (NES).
- 27.2. An employee is entitled to be absent from his or her employment on a day or part-day that is a public holiday in the place where the employee is based for work purposes.
- 27.3. However, an employer may request an employee to work on a public holiday if the request is reasonable.
- 27.4. If an employer requests an employee to work on a public holiday, the employee may refuse the request if:
  - (a) the request is not reasonable; or
  - (b) the refusal is reasonable.
- 27.5. In determining whether a request, or a refusal of a request, to work on a public holiday is reasonable, the following must be taken into account:
  - (a) the nature of the employer's workplace or enterprise (including its operational requirements), and the nature of the work performed by the employee;
  - (b) the employee's personal circumstances, including family responsibilities;



- (c) whether the employee could reasonably expect that the employer might request work on the public holiday;
- (d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;
- (e) the type of employment of the employee (for example, whether full-time, part-time, casual or shiftwork);
- (f) the amount of notice in advance of the public holiday given by the employer when making the request;
- (g) in relation to the refusal of a request—the amount of notice in advance of the public holiday given by the employee when refusing the request;
- (h) any other relevant matter.

#### 27.6. Prescribed Holidays

- (a) A full-time employee under this Agreement is entitled to the following public holidays, without loss of pay:
  - New Year Day
  - Australia Day
  - Good Friday
  - Easter Saturday
  - Easter Sunday
  - Easter Monday
  - Anzac Day
  - King's Birthday
  - Labour Day or Eight Hours' Day
  - Christmas Day
  - Boxing Day
  - Melbourne Cup Day
  - AFL Grand Final Eve
- (b) Substitution of Certain Public Holidays Which Fall on a Weekend
  - (i) Where Christmas Day falls on a Saturday or a Sunday, 27 December shall be observed as the public holiday in lieu of the prescribed day.
  - (ii) Where Boxing Day falls on a Saturday or a Sunday, 28 December shall be observed as the public holiday in lieu of the prescribed day.
  - (iii) Where New Year's Day or Australia Day falls on a Saturday or a Sunday, the following Monday shall be observed as the public holiday in lieu of the prescribed day.
  - (iv) Where Anzac Day falls on a Saturday or Sunday, the following Monday shall be observed as the public holiday in lieu of the prescribed day.
- (c) Substitution of Public Holidays by Agreement at the Enterprise

- (i) By agreement between the employer and the majority of employees in the relevant enterprise or section of the enterprise, an alternative day may be taken as the public holiday in lieu of any of the prescribed days.
  - (ii) An employer and individual employee may agree to the employee taking another day as the public holiday in lieu of the day which is being observed as the public holiday in the enterprise or relevant section of the enterprise.
- (d) Where in a State or Territory or locality within a State or Territory an additional public holiday is proclaimed or gazetted by the authority of the Commonwealth Government or of a State or Territory Government and such proclaimed or gazetted holiday is to be observed generally by persons throughout that State or Territory or locality thereof, other than persons covered by Federal awards, or where such a proclaimed or gazetted day is, by any required judicial or administrative order, to be so observed, then such day shall be deemed to be holiday for the purposes of this Agreement for employees covered by this Agreement who are employed in the State, Territory or locality in respect of which the holiday has been proclaimed or ordered as required.

27.7. Payment for absence on public holiday

- (a) If, in accordance with this provision, an employee is absent from his or her employment on a day or part-day that is a public holiday, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work on the day or part-day.
- (b) Note: If the employee does not have ordinary hours of work on the public holiday, the employee is not entitled to payment under this section. For example, the employee is not entitled to payment if the employee is a casual employee who is not rostered on for the public holiday, or is a part-time employee whose part-time hours do not include the day of the week on which the public holiday occurs.

27.8. Payment for Time Worked on a Public Holiday

- (a) Day workers required to work on a public holiday shall be paid for a minimum of three hours work at double time and one half. The double time and a half is to be paid until the employee is relieved from duty.

27.9. 'Rostered Day Off' Falling on a Public Holiday

- (a) Where a rostered day off falls on public holiday, the next working day after the public holiday will be taken as the rostered day off.

## 28. PERSONAL/CARERS LEAVE

28.1. The entitlements to Personal Leave, including sick leave and carer's leave available to employees covered by this Agreement will be as per the National Employment Standards (NES).

28.2. Employee must give notice

- (a) The employee must as soon as is reasonably practicable, (which may be a time after the leave has started) inform the Employer (supervisor) by phone (not text) of his/her inability to attend for duty and as far as practicable state the nature of the injury or illness and the estimated duration of the absence.

28.3. Evidence supporting claim.

- (a) The employee must, if required by the Employer, establish by production of proof according to the provisions of the NES such as a medical certificate or statutory declaration that the employee was unable to work because of injury or personal illness.

**29. COMPASSIONATE LEAVE.**

- 29.1. The entitlements to Compassionate leave available to employees covered by this Agreement will be as per the National Employment Standards (NES).
- 29.2. The employee must also comply with the notice and evidence requirements of sub clause 28.2 and 28.3 of this Agreement.

**30. COMMUNITY SERVICE LEAVE**

- 30.1. The entitlements to Community Service Leave available to employees covered by this Agreement will be as per the National Employment Standards (NES).

**31. PARENTAL LEAVE**

- 31.1. The entitlements to Parental leave available to employees covered by this Agreement will be as per the National Employment Standards (NES).

**32. LONG SERVICE LEAVE**

- 32.1. The provisions of the *Long Service Leave Act 2018 (Vic)* as amended from time to time shall apply.

**33. DISPUTE SETTLEMENT PROCEDURE**

- 33.1. In the event of a dispute in relation to a matter arising under this Agreement and or the National Employment Standards (NES), in the first instance the parties will attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor and, if such discussions do not resolve the dispute, the matter shall be referred to more senior levels of management as appropriate.
- 33.2. A party to the dispute may appoint another person, organisation or association to accompany or represent them in relation to the dispute.
- 33.3. If a dispute in relation to a matter arising under the Agreement is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, the dispute may be referred to the Fair Work Commission (FWC) for resolution by mediation and/or conciliation and where necessary arbitration.

- 33.4. If arbitration is necessary the FWC may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective. Any outcome determined under this clause cannot be inconsistent with the Construction Code of Practice and Guidelines or inconsistent with legislative obligations.
- 33.5. It is a term of this Agreement that while the dispute resolution procedure is being conducted work shall continue in accordance with this Agreement and the employment contract unless an employee has a reasonable concern about an imminent risk to his or her health or safety.
- 33.6. The decision of the FWC will bind the parties, subject to either party exercising a right of appeal against the decision to a Full Bench.

#### **34. CONSULTATION**

- 34.1. This term applies if the employer:
- (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
  - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

##### Major change

- 34.2. For a major change referred to in paragraph 32.1(a):
- (a) the employer must notify the relevant employees of the decision to introduce the major change; and
  - (b) sub-clauses 34.3 to 34.9 apply.
- 34.3. The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 34.4. If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.
- 34.5. As soon as practicable after making its decision, the employer must:
- (a) discuss with the relevant employees:
    - (i) the introduction of the change; and
    - (ii) the effect the change is likely to have on the employees;
- and

- (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
  - (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
    - (i) all relevant information about the change including the nature of the change proposed; and
    - (ii) information about the expected effects of the change on the employees; and
    - (iii) any other matters likely to affect the employees.
- 34.6. However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 34.7. The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 34.8. If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph 32.2(a) and sub-clauses 32.3 and 32.5 are taken not to apply.
- 34.9. In this term, a major change is likely to have a significant effect on employees if it results in:
- (a) the termination of the employment of employees; or
  - (b) major change to the composition, operation or size of the employer’s workforce or to the skills required of employees;
- or
- (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (d) the alteration of hours of work; or
  - (e) the need to retrain employees; or
  - (f) the need to relocate employees to another workplace; or
  - (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

- 34.10. For a change referred to in paragraph 32.1(b)
- (a) the employer must notify the relevant employees of the proposed change; and
  - (b) sub-clauses 32.11 to 32.15 apply.
- 34.11. The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 34.12. If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.
- 34.13. As soon as practicable after proposing to introduce the change, the employer must:
- (a) discuss with the relevant employees the introduction of the change; and

- (b) for the purposes of the discussion—provide to the relevant employees:
  - (i) all relevant information about the change, including the nature of the change; and
  - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
  - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees;

and

- (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

34.14. However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

34.15. The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.

34.16. 32.16 In this term:

**relevant employees** means the employees who may be affected by a change referred to in sub-clause 32.1.

## 35. AGREEMENT FLEXIBILITY

35.1. An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

- (a) the agreement deals with 1 or more of the following matters:
  - (i) arrangements about when work is performed;
  - (ii) overtime rates;
  - (iii) penalty rates;
  - (iv) allowances;
  - (v) leave loading; and
- (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
- (c) the arrangement is genuinely agreed to by the employer and employee.

35.2. The employer must ensure that the terms of the individual flexibility arrangement:

- (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
- (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
- (c) result in the employee being better off overall than the employee would be if no arrangement was made.

35.3. The employer must ensure that the individual flexibility arrangement:

- (a) is in writing; and
- (b) includes the name of the employer and employee; and
- (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
- (d) includes details of:

- (i) the terms of the enterprise agreement that will be varied by the arrangement; and
  - (ii) how the arrangement will vary the effect of the terms; and
  - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- (e) states the day on which the arrangement commences.

35.4. The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

35.5. The employer or employee may terminate the individual flexibility arrangement:

- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
- (b) if the employer and employee agree in writing — at any time.

### 36. SIGNATURES

**For Schmalz Australia Pty Ltd at 25 Turbo Drive, Bayswater, Victoria, 3153**

Signatory Name: \_\_\_\_\_

Signatory Address: \_\_\_\_\_

Basis of signatory's authority to sign the Agreement \_\_\_\_\_

\_\_\_\_\_

**Signature:** \_\_\_\_\_ **..... Date** \_\_\_\_\_

**For the Employees of Schmalz Australia Pty Ltd**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

**Signature:** \_\_\_\_\_ **..... Date** \_\_\_\_\_

Basis of signatory's authority to sign the Agreement \_\_\_\_\_

\_\_\_\_\_

## APPENDIX A - APPRENTICES

1. The terms of this Agreement will apply to apprentices, including adult apprentices, except where it is otherwise stated or where special provisions are stated to apply. Apprentices may be engaged in trades or occupations provided for in this clause where declared or recognised by an Apprenticeship Authority.

Subject to appropriate State legislation, an employer shall not employ an unapprenticed junior in a trade or occupation provided for in this clause.

2. Apprenticeship Authority shall mean in Victoria the State Training Board of Victoria.
3. In order to undertake trade training in accordance a person must be a party to a contract of apprenticeship or a training agreement in accordance with the requirements of the Apprenticeship Authority or State legislation. The employer shall provide and/or provide access to, training consistent with the contract or training agreement without loss of pay.
4. An Apprenticeship may be cancelled or suspended only in accordance with the requirements of the contract of apprenticeship or training agreement and the requirements of State legislation and the Apprenticeship Authority.
5. The probationary period of an apprentice shall be as set out in the training agreement or contract of apprenticeship consistent with the requirement of the apprenticeship authority and with State legislation but shall not exceed three months.
6. Apprentices attending technical colleges or schools or registered training organisations or TAFE and presenting reports of satisfactory progress shall be reimbursed all fees paid by them.

Except as provided in this clause or where otherwise stated all conditions of employment specified in this Agreement shall apply to apprentices. Notice of termination and redundancy provisions shall not apply to apprentices. The ordinary hours of employment of apprentices shall not in each enterprise exceed those of the relevant tradesperson.

- (i) Apprenticeships under this Agreement are competency based. The actual time taken to complete an apprenticeship will therefore vary depending upon factors such as the intensity of training and the variety of work experience.
- (ii) The nominal period of the apprenticeship shall be four years however this period may be varied as follows:
  - To make up for lost time as set out in sub-clause 7 of this Appendix; and/or
  - With the approval of the relevant State/Territory Apprenticeship Authority, to recognise prior learning including vocational education and training in school, pre-apprenticeship programs and other prior learning, the nominal period of the contact may be shortened to reflect the proportion of the competencies already acquired.
  - It may be extended by up to 6 months in stage 3 and 12 months in stage 4 in the advanced engineering tradesperson apprenticeship where required to complete the competencies.



- (iii) Notwithstanding the nominal period, the apprenticeship shall be completed in a shorter period when:
- the qualification specified in the Training Agreement is successfully completed; and
  - the apprentice has the necessary practical experience to achieve competency in the skills covered by the Training Agreement. The determination as to whether this condition has been met shall be by agreement between the Registered Training Organisation, the employer and the apprentice. Where there is a disagreement concerning this matter the matter may be referred to the relevant State/Territory Apprenticeship Authority for determination; and
  - the requirements of the relevant State/Territory Apprenticeship Authority and any requirements of the Manufacturing Industry Skills Council in respect to demonstration of competency and any minimum necessary work experience requirements are met; and
  - In respect to trades where there are additional licensing or regulatory requirements under State legislation, when these requirements are met.
- (iv) The wage rates applying to apprenticeships based on competency based training progression are provided for in Appendix B.

## 7. Lost Time

Apprentices are required to serve an additional day for each day of absence during each year of their apprenticeship, except in respect of absences due to annual leave or long service leave. The following year of their apprenticeship does not commence until the additional days have been worked. However, any time that has been worked by the apprentice in excess of their ordinary hours shall be credited to the apprentice when calculating the amount of additional time that needs to be worked in the relevant year.

## SCHOOL BASED APPRENTICES

### Definition

This sub-clause applies to school based apprentices. A school based apprentice is a person who is undertaking an apprenticeship in accordance with this sub-clause while also undertaking a course of secondary education.

### Wage rates

The hourly rates for full-time junior and adult apprentices, as set out in Appendix B.

### Off-the-job training

A school based apprentice is allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.

For the purposes of this sub-clause, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on-the-job.

## APPENDIX B - APPRENTICES RATES

Rates for Apprentices are established on the following basis:

	<b>Column 1</b> <b>Completed Year 10 or less</b>	<b>Column 2</b> <b>Completed Year 11</b>	<b>Column 3</b> <b>Completed Year 12</b>	<b>Column 4</b> <b>Adult (i.e. over 21 years of age)</b>
<b>Stage 1</b>	42% of the C10 trades rate	80% of the unapprenticed junior rate under this Agreement for an 18 year old	The relevant rate applicable to a trainee commencing after year 12 under the National Training Wage Award Skill Level A.	National Training Wage Traineeship Skills Level B exit rate.
<b>Stage 2</b>	55% of the C10 trades rate	55% of the C10 trades rate	The relevant rate applicable to a trainee commencing at year 12 plus one year under the National Training Wage Award Skill Level A.	C14
<b>Stage 3</b>	75% of the C10 trades rate	75% of the C10 trades rate	75% of the C10 rate	C13
<b>Stage 4</b>	88% of the C10 trades rate	88% of the C10 trades rate	The relevant adult apprentice rate.	C12

## APPRENTICE RATES – COMPETENCY BASED PROGRESSION

The conditions for progression to each stage are set out in the following table.

### Engineering Tradesperson

Where the training plan provides for the completion of a relevant AQF 3 qualification:

Stage of Apprenticeship	Entry, Exit and Progression Requirements
<b>Stage 1</b>	<b>Entry</b> Nil entry requirements <b>Exit</b> There is no exit point at this stage.
<b>Stage 2</b>	<b>Entry</b> An apprentice enters Stage 2: <ul style="list-style-type: none"> <li>• on attainment of 25% of the total competency points for the relevant AQF Certificate III qualification specified in the training plan ; or</li> <li>• 12 months* after commencing the apprenticeship;</li> </ul> whichever is earlier. <b>Exit</b> There is no exit point at this stage *See note below.
<b>Stage 3</b>	<b>Entry</b> An apprentice enters Stage 3: <ul style="list-style-type: none"> <li>• on attainment of 50% of the total competency points for the relevant AQF Certificate III qualification specified in the training plan; or</li> <li>• 12 months* after commencing Stage 2;</li> </ul> whichever is earlier. <b>Exit</b> There is no exit point at this stage
<b>Stage 4</b>	<b>Entry</b> An apprentice enters Stage 4: <ul style="list-style-type: none"> <li>• on attainment of 75% of the total competency points for the relevant AQF Certificate III qualification specified in the training plan; or</li> <li>• 12 months * after commencing Stage 3;</li> </ul> whichever is earlier. <b>Exit</b> Upon the attainment of 100% of the total competency points for the relevant AQF Certificate III qualification specified in the training plan an apprentice will exit with the relevant AQF Certificate III qualification

## Higher Engineering Tradesperson

Where the training plan provides for the completion of a relevant AQF 4 qualification:

Stage of Apprenticeship	Entry, Exit and Progression Requirements
<b>Stage 1</b>	<p><b>Entry</b> Nil entry requirements</p> <p><b>Exit</b> There is no exit point at this stage.</p>
<b>Stage 2</b>	<p><b>Entry</b> An apprentice enters Stage 2:</p> <ul style="list-style-type: none"> <li>• on attainment of 25% of the total competency points for the relevant AQF Certificate IV qualification specified in the training plan; or</li> <li>• 12 months* after commencing the apprenticeship;</li> </ul> <p>whichever is earlier.</p> <p><b>Exit</b> There is no exit point at this stage.</p>
<b>Stage 3</b>	<p><b>Entry</b> An apprentice enters Stage 3:</p> <ul style="list-style-type: none"> <li>• on attainment of 50% of the total competency points for the relevant AQF Certificate IV qualification specified in the training plan; or</li> <li>• 12 months* after commencing Stage 2;</li> </ul> <p>whichever is earlier.</p> <p><b>Exit</b> Upon the attainment of 75% of the total competency points for the relevant AQF Certificate IV qualification specified in the training plan an apprentice will exit with the relevant AQF Certificate III qualification.</p>
<b>Stage 4</b>	<p><b>Entry</b> An apprentice enters Stage 4:</p> <ul style="list-style-type: none"> <li>• on attainment of 75% of the total competency points for the relevant AQF Certificate IV qualification specified in the training plan or</li> <li>• 12 months* after commencing Stage 3</li> </ul> <p>whichever is earlier.</p> <p><b>Exit</b> Upon the attainment of 100% of the total competency points for the relevant AQF Certificate IV qualification specified in the training plan an apprentice will exit with the relevant AQF Certificate IV qualification</p>

## ADVANCED ENGINEERING TRADESPERSON

Where the training plan provides for the completion of a relevant AQF 5 qualification:

Stage of Apprenticeship	<i>Entry, Exit and Progression Requirements</i>
<b>Stage 1</b>	<p><b>Entry</b> Nil entry requirements.</p> <p><b>Exit</b> There is no exit point at this stage.</p>
<b>Stage 2</b>	<p><b>Entry</b> An apprentice enters Stage 2:</p> <ul style="list-style-type: none"> <li>• on attainment of 25% of the total competency points for the relevant Diploma of Engineering qualification specified in the training plan ; or</li> <li>• 12 months* after commencing the apprenticeship;</li> </ul> <p>whichever is earlier.</p> <p><b>Exit</b> There is no exit point at this stage.</p>
<b>Stage 3</b>	<p><b>Entry</b> An apprentice enters Stage 3:</p> <ul style="list-style-type: none"> <li>• on attainment of 50% of the total competency points for the relevant Diploma of Engineering qualification specified in the training plan; or</li> <li>• 12 months* after commencing Stage 2;</li> </ul> <p>whichever is earlier.</p> <p><b>Exit</b> Upon the attainment of 75% of the total competency points for the relevant AQF Diploma qualification specified in the training plan an apprentice may exit with the relevant AQF Certificate III and/or AQF Certificate IV qualification.</p>
<b>Stage 4</b>	<p><b>Entry</b> An apprentice enters Stage 4</p> <ul style="list-style-type: none"> <li>• On the attainment of 75% of the total competency points for the relevant AQF Diploma specified in the training plan; or</li> <li>• 12 months * after commencing Stage 3, subject to clause 4.2.6(j)(ii);</li> </ul> <p>whichever is earlier.</p> <p><b>Exit</b> Upon the attainment of 100% of the total competency points for the relevant AQF Diploma qualification specified in the training plan an apprentice will exit with a relevant AQF Diploma Qualification.</p>

An apprentice who completes a Diploma of Engineering Qualification and where the qualification is relevant to the employment he or she shall be paid 95% of the C5 rate in the first year after completion of the apprenticeship and subsequently at the C5 rate.

An employee who is under 21 years of age on the expiration of his or her apprenticeship and thereafter works as a minor in the occupation to which he or she has been apprenticed shall be paid at not less than the adult rate prescribed for the classification.

### **ADULT APPRENTICE RATES OF PAY**

Where a person was employed by the employer immediately prior to entering into a Contract of Training or Training Agreement as an adult apprentice with that employer, such person shall not suffer a reduction in the rate of pay by virtue of entering into a Contract of Training or Training Agreement.

For the purpose only of fixing a rate of pay the adult apprentice shall continue to receive the rate of pay that applies to the classification or class of work in which the adult apprentice was engaged immediately prior to entering into the contract of indenture.

### **UNAPPRENTICED JUNIOR RATES OF PAY**

The minimum weekly wage rates for unapprenticed juniors, shall be:

#### **Unapprenticed Juniors**

<b>Age</b>	<b>% of C13 Level</b>
	%
Under 16 years of age	36.8
At 16 years of age	47.3
At 17 years of age	57.8
At 18 years of age	68.3
At 19 years of age	82.5
At 20 years of age	97.7

### **TRAINEE RATES OF PAY**

Trainees engaged under this Agreement shall be paid the appropriate wage rate set out in Schedule G of the *Manufacturing and Associated Industries and Occupations Award 2020* (as amended from time to time) which is not incorporated into this Agreement.

## APPENDIX C - CLASSIFICATION DEFINITIONS

### CLASSIFICATION STRUCTURE

#### CLASSIFICATION DESCRIPTIONS

##### A1. Wage Group: C13

- (a) Engineering/Manufacturing Employee - Level II
- (i) An Engineering/Manufacturing Employee - Level II is an employee who has completed up to three months structured training so as to enable the employee to perform work within the scope of this level.
- (ii) An employee at this level performs work above and beyond the skills of an employee at the C14 level and to the level of their skills, competence and training:
- works in accordance with standard operating procedures and established criteria;
  - works under direct supervision either individually or in a team environment;
  - understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults;
  - understands and utilises basic statistical process control procedures;
  - follows safe work practices and can report workplace hazards.

##### A2. Wage Group: C12

- (a) Engineering/Manufacturing Employee - Level III
- (i) An Engineering/Manufacturing Employee - Level III is an employee who has completed an Engineering Production Certificate I or Certificate II in Engineering or equivalent so as to enable the employee to perform work within the scope of this level.
- (ii) An employee at this level performs work above and beyond the skills of an employee at the C13 level and to the level of their skills, competence and training:
- is responsible for the quality of their own work subject to routine supervision;
  - works under routine supervision either individually or in a team environment;
  - exercises discretion within their level of skills and training;
  - assists in the provision of on - the - job training.

##### A3. Wage Group: C11

- (a) Engineering/Manufacturing Employee - Level IV
- (i) An Engineering/Manufacturing Employee - Level IV is an employee who has completed an Engineering Production Certificate II or Certificate II in Engineering - Production Technology or equivalent so as to enable the employee to perform work within the scope of this level.

- (ii) A Laboratory Tester is an employee who has completed a Certificate II, or equivalent, in Sampling or Measurement so as to enable the employee to perform work within the scope of this level.
- (iii) An employee at this level performs work above and beyond the skills of an employee at the C12 level and to the level of their skills, competence and training:
  - works from complex instructions and procedures;
  - assists in the provision of on - the - job training;
  - co-ordinates work in a team environment or works individually under general supervision;
  - is responsible for assuring the quality of their own work;
  - in a laboratory the employee performs basic/simple routine tests under close supervision and communicates results of those tests to the appropriate personnel.

#### A4. Wage Group: C10

##### (a) Engineering/Manufacturing Tradesperson - Level I

- (i) An Engineering/Manufacturing Tradesperson - Level I is an employee who holds a trade certificate or tradespersons rights certificate or equivalent as an:
  - Engineering Tradesperson (Electrical/Electronic) - Level I;
  - Engineering Tradesperson (Mechanical) - Level I;
  - Engineering Tradesperson (Fabrication) - Level I;
  - Furnishing Industry Tradesperson Level I;
  - Floor Finisher and/or Floor Coverer Tradesperson;
  - or equivalent;

and is able to exercise the skills and knowledge of the engineering trade so as to enable the employee to perform work within the scope of this level.

- (ii) An Engineering/Manufacturing Tradesperson - Level I works above and beyond an employee at the C11 level and to the level of their skills, competence and training:
  - understands and applies quality control techniques;
  - exercises good interpersonal and communications skills;
  - exercises keyboard skills at a level higher than the C11 level;
  - exercises discretion within the scope of this classification level;
  - performs work under limited supervision either individually or in a team environment;
  - operates lifting equipment incidental to their work;
  - performs non - trade tasks incidental to their work;
  - performs work which while primarily involving the skills of the employee's trade is incidental or peripheral to the primary task and facilitates the completion of the whole task, provided that such incidental or peripheral work does not require additional formal technical training;
  - inspects products and/or materials for conformity with established operational standards.

##### (b) Engineering/Manufacturing Systems Employee - Level V



- (i) An Engineering/Manufacturing Systems Employee - Level V is an employee who, while still being primarily engaged in Engineering/Manufacturing work applies the skills acquired through the successful completion of an Engineering Production Certificate III or Certificate III in Engineering - Production Systems or equivalent in the production, distribution, or stores functions so as to enable the employee to perform work within the scope of this level.
- (ii) An Engineering/Manufacturing Employee works above and beyond an employee at the C11 level and to the level of their skills, competence and training:
  - understands and applies quality control techniques;
  - exercises good interpersonal communications skills;
  - exercises discretion within the scope of this classification level;
  - exercise keyboard skills at a level higher than the C11 level;
  - performs work under limited supervision either individually or in a team environment;
  - inspects products and/or materials for conformity with established operational standards.

A5. Wage Group: C9

(a) Engineering/Manufacturing Tradesperson - Level II

- (i) An Engineering/Manufacturing Tradesperson - Level II is an:
  - Engineering Tradesperson (Electrical/Electronic) - Level II; or
  - Engineering Tradesperson (Mechanical) - Level II; or
  - Engineering Tradesperson (Fabrication) - Level II; or
  - Furnishing Industry Tradesperson Level 2; or
  - equivalent.

who has completed the minimum training requirements C10 + 20% towards a Diploma of Engineering or equivalent or Certificate III in Engineering - Technician, or Certificate III in Laboratory Skills, or Certificate III in Manufacturing Technology, provided that the minimum experience required for a Technology Cadet has been completed, or 50% towards a Diploma of Engineering, or equivalent

- (ii) An Engineering/Manufacturing Tradesperson - Level II works above and beyond a tradesperson at the C10 level and to the level of their skills and competence and training performs work within the scope of this level:
  - exercises discretion within the scope of this classification;
  - works under limited supervision either individually or in a team environment;
  - understands and implements quality control techniques;
  - provides trade guidance and assistance as part of a work team;
  - operates lifting equipment incidental to their work;
  - performs non - trade tasks incidental to their work.

(b) Engineering/Laboratory Technician - Level I

- (i) An Engineering/Laboratory Technician - Level I is an employee who has the equivalent level of training of the C9 level Engineering/Manufacturing Tradesperson or equivalent so as to enable the employee to apply skills within the scope of this level. The skills exercised by the Engineering/Laboratory

Technician - Level I are in the technical field including draughting, planning or technical tasks, including in a laboratory, requiring technical knowledge.

- (ii) At this level the employee is engaged on routine tasks in the technical field. In a laboratory the employee performs basic laboratory duties using written, spoken or diagrammatic instructions and/or basic quality control assurance procedures and techniques under general supervision - either individually or in a team environment.