

[2022] FWCA 3560 [Note: An appeal pursuant to s.604 (C2022/8109) was lodged against this decision.]



# DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**Norman McMahon Patches Pty Ltd T/A Patches Asphalt**  
(AG2022/4059)

## **PATCHES ASPHALT ENTERPRISE AGREEMENT 2022 - 2025**

Asphalt industry

DEPUTY PRESIDENT BOYCE

SYDNEY, 13 OCTOBER 2022

*Application for approval of the Patches Asphalt Enterprise Agreement 2022 - 2025*

[1] An application has been made for approval of an enterprise agreement to be known as the *Patches Asphalt Enterprise Agreement 2022 - 2025* (**Agreement**). The application was made pursuant to s.185 of the *Fair Work Act 2009* (**Act**). It has been made by Norman McMahon Patches Pty Ltd (**Employer**). The Agreement is a single enterprise agreement.

### Undertakings

[2] The Employer has provided written undertakings dated 12 October 2022. Those undertakings are attached at **Annexure A** to this decision and become terms of the Agreement. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement (as compared to the relevant provisions of the *Asphalt Industry Award 2020*), and that the undertakings will not result in substantial changes to the Agreement.

### Conclusion

[3] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 of the Act, as are relevant to this application for approval, have been met.

[4] I am satisfied the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 20 October 2022. The nominal expiry date of the Agreement is 20 October 2025.



DEPUTY PRESIDENT

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## Annexure A

### THE FAIR WORK COMMISSION

**FWC Matter No.:**

AG2022/4059

**Applicant:**

Norman McMahon Patches Pty Ltd Trading as Patches Asphalt

**Section 185 – Application for approval of a single enterprise agreement**

### Undertaking – Section 190

I, Christine McMahon, Office Manager, have the authority given to me by Patches Asphalt to give the following undertakings with respect to the Patches Asphalt Enterprise Agreement 2022-2025 ("the Agreement"):

1. In addition to clause 34 "Annual Leave" of the Agreement, the following subclause applies:

For the purpose of the additional week of annual leave provided for in the NES and 87(1)(b) of the Fair Work Act, a shift worker is a 7-day shift worker who is regularly rostered to work on Sundays and public holidays. In line with the company's employment categories (clause 17), Patches Asphalt does not engage any employees as shift workers.

2. Remove the following from the Agreement:

34.2 Permanent full-time employees will receive twenty (20) days paid annual leave per year.

And replace with:

34.2 Permanent full-time employees will receive four (4) weeks of paid annual leave for each year of service.

3. Remove the table from clause 23.1 of the agreement and replace with:

Wages Classification		
Level	Classification Description	Hourly Rate
1	<ul style="list-style-type: none"> <li>• New Employee – General Labourer (No Bitumen Experience, No Leadership or First Aid Responsibilities)</li> </ul> <p><i>Rate is inclusive of applicable industry and inclement weather allowance and leave loading</i></p>	\$23.70

2	<ul style="list-style-type: none"> <li>• General Labourer/Hand</li> <li>• Traffic Controller (Level 1)</li> <li>• Multi-Tyre Roller Operator (Sealing and Asphalt Patching)</li> <li>• Hand Bar Operator (Emulsion and Cutback)</li> <li>• Medium Rigid (MR) Driver (Including Crew Cabs)</li> <li>• Coring Machine Operator</li> <li>• Steel Drum Rollers (Patching Work)</li> <li>• Spotters</li> </ul> <p><i>Rate is inclusive of applicable first aid, industry and inclement weather allowance and leave loading</i></p>	\$25.35
3	<ul style="list-style-type: none"> <li>• Experienced Rake Hand – Asphalt</li> <li>• Traffic Controller (Level 2)</li> <li>• Level Hand (Fully Competent)</li> <li>• Frontend Loader, Skid steer, Tractor Broom Operator</li> <li>• Heavy Rigid (HR) Driver</li> <li>• Bitumen Sprayer Trainee Operator (DG licence)</li> </ul> <p><i>Rate is inclusive of applicable first aid, industry and inclement weather allowance and leave loading</i></p>	\$26.30
4	<ul style="list-style-type: none"> <li>• Penciller – Asphalt and Sealing Operations</li> <li>• Paver Operator</li> <li>• Profiler Operator</li> <li>• Suction Broom Operator (Fully Competent)</li> <li>• Cockerell Spreader Driver (Fully Competent)</li> </ul> <p><i>Rate is inclusive of applicable first aid, industry, inclement weather and leading hand allowance and leave loading</i></p>	\$27.60
5	<ul style="list-style-type: none"> <li>• Leading Hand</li> <li>• Heavy Combination (HC) Driver</li> </ul>	\$28.65

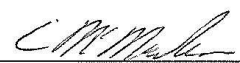
	<ul style="list-style-type: none"> <li>Sprayer Operator (Fully Competent - HC and DG licences)</li> </ul> <p><i>Rate is inclusive of applicable first aid, industry, inclement weather and leading hand allowance and leave loading</i></p>	
6	<ul style="list-style-type: none"> <li>Foreman</li> <li>Senior Bitumen Sprayer Operator</li> </ul> <p><i>Rate is inclusive of applicable first aid, industry, inclement weather and leading hand allowance and leave loading</i></p>	\$30.00
7	<ul style="list-style-type: none"> <li>Senior Forman (minimum of technical qualification) – Asphalt, Sealing</li> <li>Workshop Fitter / Mechanic</li> </ul> <p><i>Rate is inclusive of applicable first aid, industry, inclement weather and leading hand allowance and leave loading</i></p>	\$31.50

4. In addition to clause 28 “Ordinary Working Hours” of the Agreement, the following subclause applies:

When an employee is required to commence work prior to 5am, they will be paid at their normal hourly rate plus a 15% loading.

5. Any monies withheld pursuant to Clause 19.7 of the Agreement shall not include or be withheld from any NES leave entitlements paid out upon termination.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

Signature 

Date 12-10-2022