DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Apple Pty Limited
(AG2023/3058)

APPLE AUSTRALIA NATIONAL ENTERPRISE AGREEMENT 2023

Retail industry

JUSTICE HATCHER, PRESIDENT
DEPUTY PRESIDENT MASSON
COMMISSIONER CONNOLLY

SYDNEY, 9 OCTOBER 2023

Application for approval of the Apple Australia National Enterprise Agreement 2023.

Introduction

[1] An application has been made for approval of an enterprise agreement known as the *Apple Australia National Enterprise Agreement 2023* (Agreement). The application was made pursuant to s 185 of the *Fair Work Act 2009* (FW Act). It has been made by Apple Pty Limited (Apple). The Agreement is a single-enterprise agreement.

[2] A notice of employee representational rights was provided to employees on 3 August 2022. The notice complied with the requirements in reg 2.05 of the *Fair Work Regulations 2009* (Cth) (FW Regulations). Employees were provided with notice of the time, place and method of voting on 10 August 2023 and were provided with access to the proposed Agreement and information about the effects of the terms of the Agreement in the period from 10 to 18 August 2023. Voting occurred in the period from 18 to 20 August 2023 and a majority of those who voted approved the Agreement.

[3] The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (Amending Act) made a number of changes to the enterprise agreement approval requirements in Part 2-4 of the FW Act which commenced operation on 6 June 2023. By reason of the transitional arrangements for the Amending Act and the notification time for the Agreement of 3 August 2022, the genuine agreement requirements for agreement approval in Part 2-4 of the FW Act, as they were immediately before 6 June 2023, apply to the present application. Further, as the Agreement was made on 20 August 2023 the better off overall test (BOOT) provisions in Part 2-4 of the FW Act as amended on and from 6 June 2023 apply.

[4] Apple filed a statutory declaration in support of the application for approval of the Agreement made by Mr Bernard Ryan, its Employee and Labour Relations Director - Asia Pacific. The declaration states that the relevant awards for the purpose of the BOOT are the

General Retail Industry Award 2020[1] (Retail Award) and the *Clerks—Private Sector Award 2020*[2] (Clerks Award), both of which would be wholly excluded from application to employees covered by the Agreement by reason of clause 2.5 of the Agreement.

[5] Two unions, the Shop Distributive and Allied Employees' Association (SDA) and the Australian Municipal, Clerical and Services Union (ASU) acted as bargaining representatives for the Agreement. In Form 18 declarations provided by those two unions, both the SDA and ASU indicated that they supported approval of the Agreement, despite challenging Apple's characterisation of some contended benefits of the Agreement versus award entitlements. Apart from the two unions, there were also 107 other employee bargaining representatives, one of which was Retail and Fast Food Workers' Union Incorporated (RFFWU Inc), which acted as bargaining representative for a number of employees.

[6] The application for approval of the Agreement was referred to a Full Bench pursuant to ss 582 and 615 of the FW Act. Following review of the application by the Full Bench, correspondence was sent to Apple on 11 September 2023 which identified several concerns in relation to the Agreement including: the expiry date of the Agreement, the absence of a definition of a shiftworker for the purpose of the National Employment Standards (NES), deficiencies in the required flexibility term, and various BOOT concerns.

[7] In accordance with the Commission's directions, Apple responded to the Commission's concerns about the Agreement on 15 September 2023, as did the SDA. RFFWU Inc requested and was granted an extension of time within which to file their written submissions on 19 September 2023. Submissions were also filed by two other employee bargaining representatives, Karl Misso and Nathan Horton. Apple filed its submissions in reply on the morning of 25 September 2023. A hearing to deal with the Application was held on 25 September 2023 at which Apple and the SDA were granted permission to be legally represented pursuant to s 596(2)(a) of the FW Act.

[8] RFFWU Inc objects to approval of the Agreement but at the hearing was unable to identify which or how many of the employees who had nominated it as a bargaining representative did in fact oppose approval of the Agreement. It nonetheless opposes approval of the Agreement based on the following concerns:

(1) Apple made inaccurate representations to employees during the access period regarding the Apple Parental Leave entitlement under the Agreement.

(2) The Agreement has a significant number of detriments that, when assessed globally, cannot be overcome by its benefits, meaning that the Agreement fails to meet the better off overall test (BOOT) requirement in s 186(2)(d) and as detailed in ss 193 and 193A of the FW Act (as amended from 6 June 2023).

[9] As earlier stated, Mr Misso and Mr Horton, who were employee bargaining representatives, also filed submissions in accordance with the directions. They raised BOOT concerns in relation to some additional matters, those being the silence of the Agreement on travel time and travel cost reimbursement entitlements found in both the Retail Award and Clerks Award, the exemption of Apple Solutions Consultant Sales Team Members (ASC Team Members) in receipt of an Actual Rate of Pay at or above $80,000 per annum to an entitlement to payment of certain penalty rates under the Agreement, and the lack of guaranteed Sundays

off in circumstances where the Retail Award provides for one weekend off in every four week cycle.

[10] Apart from the matters raised by RFFWU Inc, Mr Misso and Mr Horton and the concerns raised in the Commission's correspondence of 11 September 2023, there are no other contested issues in respect of the approval of the Agreement. Leaving aside those matters, which we consider below, we are satisfied based on the material contained in the application and the accompanying Form F17 declaration made by Mr Ryan that the approval requirements in ss 186 and 187 of the FW Act, as relevant to the application, are met.

Genuine agreement

[11] RFFWU Inc contends that Apple made representations regarding the parental leave entitlement found at clause 77 of the Agreement that were misleading. Specifically, it submits that employees were told that the Agreement, if approved, would not result in changes to existing arrangements which it says provided for an entitlement to paid parental leave from Apple in addition to any statutory paid parental leave entitlement an employee may receive. Clause 77.9 of the Agreement provides that the entitlement to paid parental leave under the Agreement is to be paid 'concurrently with, not in addition to Government Parental Leave Pay'. RFFWU Inc submits this is contrary to the representations made by Apple and should be remedied by the provision of an undertaking.

[12] While submitting that (unidentified) employees represented by RFFWU Inc had reported to it that inaccurate representations had been made by various Apple managers, no evidence of this was led by RFFWU Inc in support of that assertion. We observe that presentations[3] made to employees and written explanatory material[4] provided to employees during the access period specifically state that the parental leave entitlement under the Agreement operates as a top-up to, and not in addition to, any government parental leave pay entitlement an employee may receive. For example, the following explanation was available on Apple's intranet site in relation to the paid parental leave entitlement in the Agreement:

> You can take 16 weeks of Paid Parental Leave if you are a primary caregiver, or 6 weeks if you are non-primary caregiver, which includes superannuation. This will be a top up payment which includes any government parental leave pay you are eligible to receive…

[13] More is required than mere unsupported assertion by RFFWU Inc to make good its claim of misrepresentation by Apple of the Agreement parental leave entitlement to employees. That is particularly so in circumstances where the written explanatory material made available to employees during the access period makes clear that the paid parental leave under the Agreement operates as a top-up to and not in addition to any government parental leave pay entitlement an employee may receive. We are not persuaded on the material before us that Apple misrepresented the parental leave entitlement to employees as part of its explanation of the terms and the effects of the terms of the Agreement as required under s 180(5) of the FW Act. RFFWU Inc's objection to approval of the Agreement on this basis is rejected.

BOOT issues raised by employee bargaining representatives

Travel entitlements

[14] Mr Horton raised a concern that both the Retail Award and Clerks Award provide entitlements related to travel time and travel cost reimbursement while the Agreement, which does not incorporate the terms of those awards, is silent on travel entitlements. Mr Horton refers to clause 19.5 of the Retail Award, which provides for reimbursement of additional travel costs and payment for additional travel time when an employee is required to travel to and from a different work location. He also refers to clause 19.7 of the Clerks Award, which provides for payment of a living away from home allowance (LAFHA) where an employee is temporarily required to work away from their normal work location which requires them to stay overnight away from their normal place of residence.

[15] Mr Ryan acknowledged in Apple's Form F17 declaration at question 13 that the travel entitlements in the Retail Award are omitted from the Agreement along with several other entitlements in that award. Mr Ryan declared however that those award entitlements including travel time and cost reimbursement provisions are 'inapplicable' in Apple's operations. He also stated, in a witness statement made on 22 September 2023 that 'Apple does not require employees covered by the Agreement to work away from their usual place of work'. Mr Ryan's statements in this regard were not challenged by way of any evidentiary material that demonstrates that Apple requires employees to work away from their normal work location. In these circumstances we are not persuaded that the operational circumstances that would give rise to an entitlement to payment of the relevant travel entitlements under either the Retail Award or Clerks Award are 'reasonably foreseeable at the test time' (s 193A(6)). Consequently, we do not have regard to the absence of comparable provisions in the Agreement as a detriment that needs to be weighed in our BOOT assessment.

ASC Team Members penalty rate exemption

[16] Mr Misso raises a BOOT concern as to whether the exemption in the Agreement from the payment of certain penalty rates to ASC Team Members in receipt of 'Actual Rates of Pay' at or above $80,000 per annum is sufficiently compensated by that threshold level of remuneration. This item was also raised by the Commission in its 'concerns' correspondence of 11 September 2023. Relevantly, clauses 44 to 46 of the Agreement provide for a range of penalty payments for weekend work (clause 44), late night work (clause 45) and overtime (clause 46). Clause 48 of the Agreement then states as follows:

> **48. Exemption**
>
> 48.1 Clauses 44-46 are not applicable to ASC Team Members with an Actual Rate of Pay of $80,000 per annum or more (pro rata for Part Time ASC Team Members), which includes on target earnings, being the variable commission component of the ASC Team Member's Actual Rate of Pay.

[17] As can be seen, the effect of clause 48 is that ASC Team Members receiving an Actual Rate of Pay of $80,000 per annum or more would not be entitled to receive any weekend, late night or overtime penalty payments for work performed at times that would otherwise attract those penalty rates under the Agreement. Relevantly, 'Actual Rate of Pay' is defined in clause 1 of the Agreement as follows:

> **Actual Rate of Pay** means a Team Member's rate of pay (hourly or salaried) including any amount paid outside of this Agreement. The Actual Rate of Pay may be higher than the Minimum Rate of Pay in this Agreement but does not include any loadings, allowances or premiums in this Agreement.

[18] After providing initial modelling[5] to the Commission in response to the concern, Apple filed a third witness statement of Mr Ryan, supplementary submissions and revised modelling[6] on 5 October 2023 to address a further concern we had raised. The revised modelling provided a comparison of a week's earnings under the Agreement versus the Retail Award under the following four scenarios:

(1) Level 6 Retail Award compared with a Level 1 ASC Team Member on an $80,000 salary – actual 38-hour week roster;

(2) Level 8 Retail Award compared with a Level 2 ASC Team Member on an $80,000 salary – actual 38-hour week roster;

(3) Level 6 Retail Award compared with a Level 1 ASC Team Member – actual 38-hour week roster plus four hours' overtime on a Sunday; and

(4) Level 8 Retail Award compared with a Level 2 ASC Team Member – actual 38-hour week roster plus four hours' overtime on a Saturday.

[19] The modelling reveals that in each of the four scenarios, ASC Team Members in receipt of an Actual Rate of Pay of $80,000 per annum would enjoy a premium in their weekly earnings over what they would be otherwise entitled to receive under the Retail Award. The weekly earnings margin ranges from $99.21 (where four hours' overtime is worked by a Level 1 ASC Team Member) to $321.49 for a Level 2 ASC Team Member working their normal roster of 38 hours per week. While the scenarios modelled include two scenarios in which four hours of overtime is worked by Level 1 & Level 2 ASC Team Members, Mr Ryan states in his third witness statement that Apple does not require ASC Team Members to work hours in excess of their ordinary hours and that the nature of the work of ASC Team Members 'is not work which requires additional hours beyond their fixed hours.' Mr Ryan also states there is in his view no reason why that position should change.

[20] Apple submits that ASC Team Members are not required to work hours in excess of their ordinary hours and will rarely, if ever, work additional hours. Based on Mr Ryan's evidence, which we accept, it is not reasonably foreseeable for the purposes of ss 193A(6) & (6A) of the FW Act in conducting the BOOT assessment that ASC Team Members will work a pattern of work that requires them to work overtime at the direction of Apple. Based on the revised modelling, the weekly earnings margin of the Agreement's ASC Team Member classifications over their corresponding Retail Award classifications for rostered ordinary hours of work would exceed $300 a week for both Level 1 & 2 ASC Team Members in receipt of an Actual Rate of Pay of $80,000 per annum or more.

[21] It follows from the above that we are not persuaded that the exemption found at clause 48 of the Agreement that operates in respect of ASC Team Members in receipt of an Actual Rate of Pay of $80,000 per annum is a detriment that must be weighed in our assessment of the BOOT. To the contrary, we are satisfied that ASC Team Members in receipt of an Actual Rate of Pay of $80,000 per annum would receive remuneration greater than they would otherwise be entitled to receive under the Retail Award based on the reasonably foreseeable pattern of work we have determined above. This weighs in favour of a finding that the BOOT is met in respect of ASC Team Members receiving an Actual Rate of Pay of $80,000 per annum or more.

Lack of guaranteed Sundays off

[22] Mr Misso has also raised a BOOT concern that some ASC Team Members would not have a guaranteed Sunday off under the Agreement in circumstances where clause 15.8(a) of the Retail Award provides that an employer must roster an employee who regularly works Sundays in such a way that they have three consecutive days off (including Saturday and Sunday) in each four-week cycle. Clause 15.8(a) of the Retail Award is to be contrasted with clause 42.1 of the Agreement which applies to ASC Team Members and provides as follows:

> **42. Hours of work**
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> 42.1. ASC Team Members work between 9am and 7pm on:
>
> a. Wednesday to Sunday if they are an Apple Solutions Consultant; or
> b. Tuesday to Saturday if they are an Area Sales Manager.

[23] Mr Misso submits that ASC Team Members who are Apple Solutions Consultants are the only employees within Apple that are engaged on regular working hours of Wednesday to Sunday. Moreover, they are also the only workgroup that does not have access to the additional leave benefit provided by Clause 65—Time Away Days of the Agreement which allows employees to take an additional five days paid leave per annum on a non-cumulative basis subject to approval which, if applied for in advance, will not be unreasonably refused. Mr Misso submits that ASC Team Members are forced to routinely use single days of annual leave to attend family and social events on weekends, resulting in a significant reduction of annual leave balances throughout the year.

[24] Apple accepts that the matter raised by Mr Misso is relevant to the Commission's BOOT consideration but contends that it does not weigh heavily having regard to a range of other benefits available to ASC Team Members including above award rates of pay, fixed days and hours of work, a day off in lieu for any public holiday which falls on a non-working day (as ASC employees do not work on Mondays under the Agreement and many public holidays fall on Mondays), and higher Saturday penalties compared to the Retail Award.

[25] We agree that the lack of guaranteed weekends off for ASC Team Members represents a detriment relative to the Retail Award. Even with the evolution of work and working hours arrangements over recent decades, available weekend leisure time remains an important feature of Australian society. This is clearly recognised in the modern awards that underpin employment arrangements for most Australians. This relevantly includes the Retail Award which, as stated above, requires employees regularly rostered on Sundays to have at least one weekend off in each four-week period. That beneficial award entitlement is not provided to Apple Solutions Consultants under the terms of the Agreement and consequently weighs against a finding that the BOOT is met in respect of employees engaged in that classification.

Part-time employment arrangements for retail employees

[26] RFFWU Inc contends that the Agreement fails to meet the BOOT in a key respect. It submits that while the Agreement creates a form of employment referred to as 'part-time employment' for retail workers, the Agreement would if approved actually abolish the form of employment known as part-time employment under the Retail Award. This is said to be because the Agreement's part-time provisions are better described as providing for 'Flexi-Insecure Employment' and do not have the features and protections found in the part-time employment

provisions of the Retail Award. RFFWU Inc contends that the effective abolition of part-time employment under the Agreement should be sufficient to cause the BOOT to not be met. In the alternative, it contends that, if we are against it on the 'automatic failure' point, the detriments of the 'part-time provisions' under the Agreement are not adequately offset by more beneficial provisions of the Agreement to satisfy the BOOT requirement.

[27] Before turning to the matters raised by RFFWU Inc in more detail it is useful to set out some of the part-time employment provisions as they apply to retail employees in Part 3 of the Agreement. The Agreement sets out at clauses 11.2 to 11.8 the form of engagement of part-time employees. The following provisions are most relevant to the present objection of RFFWU Inc:

> **11. Part Time**
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> . . .
>
> 11.2. On engagement, a Part Time Retail Team Member and Apple will agree in writing to a Contract Range. A Part Time Team Member will be scheduled to work at least the minimum and up to the maximum number of hours in their Contract Range each week, subject to providing their availability pursuant to clauses 12.4 - 12.8.
>
> 11.3. A Contract Range is one of the following:
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> a. 15 - 19 hours;
> b. 19 - 23 hours;
> c. 23 - 27 hours; or
> d. 27 - 32 hours.
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> . . .
>
> 11.5 A Part Time Retail Team Member's Contract Range will not change unless they request a change in writing and Apple agrees to the change.
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> . . .

[28] As is evident, part-time employees would be engaged under the Agreement based on working a particular contract range of hours (Contract Range). There are four Contract Ranges within which part-time retail employees may be engaged, although there is capacity for an employee to request and revoke an approved request to work fewer than 15 hours (clauses 11.5 to 11.7). The Contract Range provides certainty as to the minimum number of ordinary hours that a part-time employee may be required to work each week and also provides an upper limit of ordinary hours to be worked.

[29] The Agreement goes on to set out in detail the 'Availability' requirements for part-time employees, being the agreed span of days/hours within which a particular part-time employee may be rostered to work their Contract Range hours. Clauses 12.6 to 12-8 state as follows:

> **12. Availability - Part Time Retail Team Members**
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> …
>
> 12.4. Part Time Retail Team Members must notify Apple of their availability in accordance with Part 3 of this Agreement and the Australian Availability Policy. This will be the Part Time Retail Team Member's set availability.
>
> 12.5. All Part Time Retail Team Members will be scheduled within their set availability as provided for in Part 3 of this Agreement.

12.6 Part Time Retail Team Members must provide the following minimum availability for their Contract Range:

Contract Range	Days a week including both weekend days	Hours available each week
15-19	3	-At least 22 hours per week -No less than 4 consecutive hours in any day -At least 3 late night shifts per week
19-23	4	-At least 27 hours per week -No less than 6 consecutive hours in any day - At least 3 late night shifts per week
23-27	4	-At least 32 hours per week -No less than 6 consecutive hours in any day - At least 3 late night shifts per week
27-32	5	-At least 38 hours per week -No less than 7 consecutive hours in any day -At least 4 late night shifts per week

12.7. A Part Time Retail Team Member may provide different or less availability than what is required at clause 12.6, subject to their Apple Store's availability requirements and scheduling and operational needs (as detailed in the Australian Availability Policy).

12.8. If a Part Time Retail Team Member needs to change their set availability, they must inform Apple through Apple's Scheduling System with at least 6 weeks' notice. After amending their set availability in Apple's Scheduling System, Apple will schedule the Team Member in accordance with their updated set availability.

[30] By comparison, the Retail Award contains the following relevant part-time employee provisions:

10. Part-time employees

10.1 An employee who is engaged to work for fewer than 38 ordinary hours per week and whose hours of work are reasonably predictable, is a part-time employee.

10.2 An employer may employ part-time employees in any classification defined in Schedule A —Classification Definitions.

10.3 This award applies to a part-time employee in the same way that it applies to a full-time employee except as otherwise expressly provided by this award.

10.4 A part-time employee is entitled to payments in respect of annual leave and personal/carer's leave on a proportionate basis.

10.5 At the time of engaging a part-time employee, the employer must agree in writing with the employee on a regular pattern of work that must include all of the following:

(a) the number of hours to be worked on each particular day of the week (the guaranteed hours); and

(b) the times at which the employee will start and finish work each particular day; and

(c) when meal breaks may be taken and their duration.

NOTE: An agreement under clause 10.5 could be recorded in writing including through an exchange of emails, text messages or by other electronic means.

10.6 Changes to regular pattern of work by agreement

The employer and the employee may agree to vary the regular pattern of work agreed under clause 10.5 on a temporary or ongoing basis, with effect from a future date or time. Any such agreement must be recorded in writing:

(a) if the agreement is to vary the employee's regular pattern of work for a particular rostered shift – before the end of the affected shift; and

(b) otherwise – before the variation takes effect.

…

10.8 For any time worked in excess of their guaranteed hours agreed under clause 10.5 or as varied under clause 10.6 or clause 10.11, the part-time employee must be paid at the overtime rate specified in Table 10—Overtime rates.

10.9 The minimum daily engagement for a part-time employee is 3 consecutive hours.

10.10 Changes to regular pattern of work by employer

(a) An employee's regular pattern of work agreed under clause 10.5 or 10.6, other than the employee's guaranteed hours, may be changed by the employer giving the employee 7 days, or in an emergency 48 hours, written notice of the change.

(b) However, the regular pattern of work of a part-time employee must not be changed from week to week or fortnight to fortnight or to avoid any award entitlements. If the employer does so, the employee must be paid any award entitlements as if the regular pattern of work had not been changed.

[31] An examination of the Agreement's part-time provisions reveals differences with the Retail Award provisions in some key respects, those being:

- An agreement reached between Apple and a part-time employee on commencement of their employment is not on the specific hours, start/finish times, and days on which the agreed hours are to be worked per clause 10.5 of the Retail Award, but rather agreement is reached on the Contract Range of hours which may be rostered within the employee's notified span of hours of availability.

- The actual days, total hours, and start/finish times of a part-time employee's hours of work would not be confirmed until publication of a roster four weeks in advance, although there would be certainty that the hours to be worked would be within the Contract Range and would be rostered within the notified availability per clauses 12.4 to 12.8 of the Agreement.

[32] RFFWU Inc also seeks to distinguish the Agreement's part-time provisions from the Retail Award provisions in several other respects. The distinctions drawn appear in part to proceed on the premise that the Retail Award provisions provide absolute certainty for a part-time employee in relation to their agreed hours of work such that they cannot be changed other than by agreement. That is not the case, however, as is evident by the effect of clause 10.10 of

the Retail Award which would allow an employer to notify an employee of changes to their start/finish times (within the Retail Award span of hours) and meal breaks with seven days' notice, or less in an emergency.

[33] While the Retail Award provisions do provide certainty on the 'guaranteed hours' (clause 10.5(a)), they do not assure that start/finish times and meal breaks are not changed within the Retail Award span of hours in a manner that causes inconvenience to an employee in terms of other commitments including, for example, caring responsibilities. That is to be contrasted with the Agreement provisions whereby the Contract Range of hours to be worked can only be rostered within an employee's notified availability. We also note that clause 12.1 of the Agreement provides for four weeks' visibility of employees' rosters which cannot be changed other than at the request of an employee or by agreement. This is also to be contrasted with clause 10.10 of the Retail Award which allows change of part-time employees' hours of work (except for Guaranteed Hours) with only seven days' notice. In our view and contrary to RFFWU Inc's submissions, the part-time provisions in the Agreement do provide for reasonably predictable hours of work, and changes to the hours of work are agreed to be within the Contract Range subject to notified availability.

[34] It follows from the foregoing that we do not accept RFFWU Inc's characterisation of the Agreement provisions as creating 'insecure' employment. While the Agreement provisions would unquestionably provide Apple with greater flexibility in the rostering of part-time employees, both as to the number of hours to be worked each week (subject to falling within the Contract Range), the start/finish times and the days on which those hours may be worked (subject to the employee's notified availability), there remains a guaranteed minimum number of hours for a part-time employee as well as an upper limit of hours. We also note that, under the Agreement, part-time employees must have a minimum of 15 hours' work per week (unless they request to work fewer hours under clause 11.6 of the Agreement), whereas the effective weekly minimum under the Retail Award is only three hours (clause 10.9). We do not accept the characterisation of the Agreement's part-time arrangements as being akin to casual employment where there is no certainty from week to week regarding the hours of work that may be offered.

[35] Returning to RFFWU Inc's primary submission that the claimed 'abolition' of part-time employment arrangements under the Agreement should result in the automatic failure of the BOOT, we disagree for the following reasons.

[36] First, RFFWU Inc's reliance on the *Loaded Rates Agreements*[7] decision in support of its contention is misconceived. In that decision the Full Bench determined that while Aldi's part-time employment system departed from the Retail Award provisions, it did not follow that it was simply not permitted and therefore failed the BOOT. The Full Bench went on to state that the proper basis for comparison of the part-time arrangements under the proposed Aldi agreement for the purposes of the BOOT was that of a casual employee engaged under the Retail Award.[8] That conclusion was however based on the operation of the then clause 12.6 of the Retail Award, which is no longer contained in the award, which stated as follows:

> 12.6 An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 13.

[37] As to RFFWU Inc's further submission that clause 8 of the Retail Award acts as a barrier to the engagement of employees other than on the basis set out in that clause, that submission

is similarly misconceived. If RFFWU Inc's position were correct, it seems to us that parties would be unable to negotiate in the context of enterprise bargaining any changes to award provisions to meet the circumstances of individual employers and employees. That would not in our view be consistent with the following object of the scheme of enterprise bargaining in the FW Act:

> … to provide a simple, flexible and fair framework that enables collective bargaining in good faith, particularly at the enterprise level, for enterprise agreements that deliver productivity benefits…[9]

[38] We reject RFFWU Inc's submission that the Agreement's part-time provisions would be inconsistent with the object of providing 'job security' which was recently inserted into the FW Act.[10] For the reasons set out above, we are not persuaded that the Agreement's part-time provisions are likely to diminish job security or create insecure employment. To the contrary, it appears to us that introduction of the proposed part-time arrangements and the additional flexibility provided would support the creation and maintenance of permanent employment rather than encourage casual employment. Consequently, approval of the Agreement including such provisions would not in our view conflict with that object of the FW Act and would arguably achieve other objects of the FW Act including providing flexibility for businesses and promoting productivity.

[39] RFFWU Inc further contends that the Agreement, if approved, would fundamentally alter the nature of casual conversion to permanent employment in circumstances where the relevant sections of the FW Act refer to part-time employment which it contends is not provided for by the Agreement. Taken at its highest, this is not in truth a BOOT issue but rather appears to be a contention that the approval requirement in s 186(2)(c) of the FW Act is not met because the Agreement excludes the NES. We do not accept the contention that the effect of the Agreement would be to deny future casual employees of Apple the job security 'promised to them by the NES' on conversion to permanent employment. The submission is speculative and hypothetical in circumstances where according to Apple's Form F17 declaration, at the time of the ballot for approval of the Agreement there were no casuals employed that would be covered by the Agreement. We also refer to our earlier view that we are not persuaded that the part-time provisions in the Agreement would be likely to create insecure employment or diminish job security as contended by RFFWU Inc.

[40] For the reasons set out above we do not accept RFFWU Inc's submission that the nature of the part-time provisions in the Agreement should lead to an automatic conclusion that the Agreement fails to meet the BOOT. Of course, we accept however that a 'global assessment' is required to be undertaken when assessing whether the Agreement meets the BOOT, necessarily requiring an assessment and weighing of the more beneficial and detrimental provisions under the Agreement versus the Retail Award and the Clerks Award. To the extent that the Agreement's part-time provisions may create a detriment, that must be weighed in our overall BOOT assessment. It is to that we now turn in considering RFFWU Inc's alternate submission that the Agreement's part-time provisions create a detriment that is not adequately compensated for or offset by more beneficial provisions.

[41] The submissions of RFFWU Inc may be shortly summarised as follows. First, the 'thinnest margin' between the Agreement classifications covering retail workers and the comparable Award classification of 13.8 per cent is inadequate and a much greater loading is required to compensate for the 'Flexi-Insecure Employment'. Secondly, the additional hours

worked above the minimum hours provided by a Contract Range should be compensated by way of an overtime payment. Thirdly, the structure of availability of part-time employees is foreign to the Retail Award and those hours of availability are not compensated under the Agreement. Using the example of an employee with a Contract Range of 19 to 23 hours, they would need to be available for up to 27 hours each week under the Agreement which means they must be available for up to eight hours of non-rostered time. RFFWU Inc submits that this is equivalent to requiring a loading of 42 per cent to compensate for that availability.

[42] We readily accept that the part-time provisions of the Agreement provide additional flexibility for Apple to roster part-time employees within the Contract Range of hours. However, that flexibility operates within the limits of notified availability of an employee. Apple would be unable to roster ordinary hours of a part-time employee outside their notified availability, which is to be contrasted with the Retail Award where the start/finish times and meal breaks of a part-time employee may be altered unilaterally by an employer to any times within the daily span of ordinary hours with seven days' notice, or less in an emergency. The Retail Award does not provide for compensation in circumstances of such a change in ordinary hours of work occurring.

[43] The further point to be made is that part-time employees under the Agreement would not, contrary to RFFWU Inc's submission, need to hold themselves in readiness each week for potentially up to an additional eight hours in the case of the example cited above. Under the terms of the Agreement, part-time employees would receive notice of their roster four weeks in advance and such a roster could only be changed on request of or by agreement of an employee.

[44] Notwithstanding our comments above, we do accept that under the terms of the Agreement, a part-time employee may be required to work up to four additional hours above their minimum Contract Range hours. Assuming, for the sake of argument, that the *minimum* Contract Range Hours are to be equated with the guaranteed hours under clause 10.5(a) of the terms of the Retail Award, it may be accepted that the Retail Award would treat these additional hours as overtime whereas the Agreement does not.

[45] However, even assuming this premise of RFFWU Inc's contention is correct, it has not demonstrated that this causes any overall detriment to arise. RFFWU Inc provided no financial modelling to demonstrate the existence of any financial detriment. We note that the minimum margin between the Agreement and Retail Award retail worker classifications rates of pay is 13 per cent (and for most classifications is considerably higher than this). Further, where ordinary hours above the minimum Contract Range hours are rostered, those additional hours attract superannuation contributions and penalty rates payable for Saturday work which are significantly higher than under the Retail Award. The combination of these factors alone leads us to be satisfied that, even considering the overtime provisions that would otherwise apply to hours required to be worked above Guaranteed Hours under the Retail Award, part-time employees covered by Part 3 of the Agreement are better off overall. That conclusion may be reached even without taking into account the range of other benefits for which the Agreement provides, particularly the enhanced leave benefits (which we discuss further below).

Commission BOOT concerns

Retail Award – span of hours

[46] The Commission's correspondence of 11 September 2023 identified a concern that the Agreement does not provide a span of hours for Retail Team Members (clause 11). That is to be contrasted with clause 15.1 of the Retail Award which provides spans of hours of 7:00 am – 9:00 pm Monday to Friday, 7:00 am – 6:00 pm Saturday and 9:00 am – 6:00 pm Sunday. The absence of a span of hours may present a BOOT concern for some of the lower-paid employees under the Agreement when compared to the Retail Award.

[47] Apple in responding to this concern provided modelling[11] that compared the effective hourly rates of pay between the classifications of Level 3 under the Retail Award ($25.68) and Level 1 in the Agreement ($29.23) that would apply across the week including the effect of shift and weekend penalty rates. The classification used in the modelling represents the smallest margin between Agreement and Retail Award classification base rates, that margin being 13 per cent. Apple's modelling identified that there were only two hourly periods across the week where an employee would receive more if they were paid under the Retail Award, those periods being from 6:00 am – 7:00 am and 9:00 pm – 10:00 pm on a Monday – Friday. The difference in pay for those two periods were respectively $9.29 and $1.98 according to the modelling.

[48] The SDA contends that there are inaccuracies in Apple's modelling that have the effect of understating the payments an employee would receive under the Retail Award for work performed during periods that fall outside the normal span of hours, those periods being:

- Monday to Friday 0:00 – 7:00;
- Monday to Friday 21:00 – 24:00;
- Saturday 0:00 – 7:00; and
- Saturday 18:00 – 24:00.

[49] The SDA agrees, however, that on an overall assessment the Agreement still passes the BOOT notwithstanding this.

[50] RFFWU Inc also makes a number of submissions in relation to the span of hours issue:

- Hours worked outside the span of hours under the Retail Award would not only attract overtime penalty rates but would also attract the 'reasonable overtime' requirement protection which does not apply under the Agreement.

- Full-time workers have no capacity to limit the time when they work ordinary hours and may be rostered to work on any day not identified as 'not worked'. While a higher penalty rate may apply for certain hours it is a manifest detriment to be rostered without consultation, without agreement and at any time on any given days.

- The 12-hour break between work on one day and the next under the Retail Award has been changed to provide for a 12-hour break between shifts in the Agreement. The Agreement would allow Apple to roster workers for a 10-hour shift overnight without consultation and there would also be no right for an employee to refuse unreasonable overtime.

[51] The following may be said about the above submissions. Contrary to RFFWU Inc's submissions, the Agreement does allow Retail Team Members to refuse to work 'unreasonable overtime' (clause 16.4) and also requires Apple to consult with employees in relation to changes

to the 'regular schedule or ordinary hours of work of Team Members' (Schedule D – Consultation). We are prepared to accept, however, that the lack of a span of hours for Retail Team Members in the Agreement means that there will be certain hours of work where Retail Team Members at lower classification levels would receive less under the Agreement than if they were engaged under the Retail Award. Those hours of work for which Retail Award earnings would be greater than under the Agreement are concentrated either before or after those hours of work which, according to Mr Ryan, constitute 90 per cent of scheduled work hours, being:

- 7:00 am – 9:00 pm on weekdays; and
- 7:00 am – 7:00 pm on weekends.[12]

[52] The detriment to which we have referred is one that the SDA itself concedes Apple employees would only experience for short periods at certain times, those times falling outside the normal operational hours Mr Ryan states are overwhelmingly worked by staff. In these circumstances we are satisfied that the incidence of working such hours is likely to be low and consequently the detriment is to be given limited weight in our assessment of the BOOT.

Retail Award – maximum daily hours

[53] In its correspondence of 11 September 2023, the Commission also raised a BOOT concern that under the Agreement, Retail Team Members and ASC Team Members could be rostered to work up to a maximum of 10 hours per shift (clauses 12.15 and 43.5). The Commission's concern arose in respect of the lower-paid employees under the Agreement as compared to the Retail Award which, at clause 15.4 provides for maximum ordinary hours per shift of nine hours, with the exception that under clause 15.5 employees may be rostered to work up to 11 ordinary hours on one day per week.

[54] In responding to the concern, Mr Ryan gave evidence that most rostered shifts are between five and 8.5 hours long, that all rostered shifts are 10 hours or less and that he saw no reason why typical shift lengths would change in the foreseeable future.[13] Apple also provided modelling[14] which compared earnings under the Agreement against the Retail Award for shifts of nine, 10 and 11 hours in length. In calculating earnings under the Retail Award, the modelling assumed that overtime penalty rates would apply to hours worked in excess of nine hours. Using the Retail Team Member classification under the Agreement (Level 1) with the smallest margin (of 13 per cent) over the comparable Retail Award classification (Level 3), the modelling revealed that earnings under the Agreement were superior to those under the Retail Award for each of the shift lengths used in the analysis.

[55] We are satisfied that the modelling provided by Apple demonstrates that the maximum shift length of 10 hours under the Agreement does not create a detriment relative to the Retail Award in circumstances where the higher base wage rates under the Agreement adequately compensate for the overtime penalty rates that would otherwise apply under the Retail Award.

Clerks Award – span of hours

[56] The Commission also raised a concern that a Level 1 AppleCare Team Member who consistently worked a pattern of work permitted by the Agreement but that fell outside the span of hours provided by the Clerks Award may not be better off overall. The Clerks Award provides at clause 13.3 for a span of hours of 7:00 am – 7:00 pm Monday to Friday and 7:00

am – 12:30 pm on Saturdays, which can be moved by up to one hour forward or back by agreement pursuant to clause 13.4. All hours worked on Sundays would accordingly be considered overtime under the Clerks Award. In contrast, the Agreement provides for the following broader span of hours:

- 7:00 am – 8:00 pm Monday to Sunday for AppleCare employees (clause 19.1);
- 7:00 am – 9:00 pm Monday to Sunday for Retail Customer Care (RCC) Team Members in Sales and Service (clause 28.1);
- 9:00 am – 6:00 pm Monday to Saturday for RCC Team Members in Online Personal Sessions (clause 28.1);
- 7:30 am – 8:00 pm Monday to Friday for People Planning Operations Team Members (clause 36.1); and
- 9:00 am – 6:00 pm Monday to Friday for Facilities and Administration employees (clause 50.1).

[57] To address the identified concern Apple has proposed the following undertaking:

> 2. Notwithstanding clauses 22.2, 30.2 and 51.2 of the Agreement:
>
> (a) Level 1 and Level 2 Casual AppleCare Team Members, Level 1 Casual Retail Customer Care Team Members and Level 1 Casual Facilities and Administration Team Members who work on a Sunday; and
>
> (b) Level 1 and Level 2 Part Time AppleCare Team Members and Level 1 Part Time Retail Customer Care Team Members who work less than three days a week that includes a Sunday,
>
> will be paid for time worked on a Sunday an amount per hour no less than the hourly rate payable for their relevant classification under the *Clerks—Private Sector Award 2020* (as amended from time to time).

[58] The detriment to which we have referred particularly affects lower-paid classifications in circumstances where the premium employees enjoy on weekdays under the Agreement versus the Clerks Award due to higher base rates of pay is offset by the higher overtime penalty rate that would apply on a Sunday under the Clerks Award. We are satisfied that where an employee is rostered to work three or more shifts including a Sunday, the higher base rates for ordinary hours worked under the Agreement are sufficient to offset the lower Sunday earnings they would receive under the Agreement versus the Clerks Award. That however is unlikely to be the case where an employee is rostered to work only two shifts in a week, one of which falls on a Sunday. Proposed Undertaking 2, if accepted would remedy that concern.

Clerks Award – Sunday penalties

[59] We identified a further BOOT issue for some casual employees engaged to work ordinary hours on a Sunday. The concern applies specifically to employees at lower classification levels in the AppleCare and RCC teams who may be required to work ordinary hours on a Sunday. The Agreement provides for the payment of a lesser penalty rate of 150 per cent for ordinary hours worked on Sundays compared to the Clerks Award, which provides for a penalty rate of 200 per cent for ordinary hours of work on a Sunday. Proposed Undertaking 2 set out at [57] above would, if accepted, address the detriment we have identified by ensuring that casual employees at Level 1 and 2 in the AppleCare and RCC teams would receive no less

than the relevant Clerks Award earnings for ordinary hours of work on a Sunday if they worked fewer than three shifts in a particular week and those included a Sunday shift.

Overall BOOT assessment and conclusion

[60] The Agreement provides for wage rates for permanent and casual employees that are between 6 and 147.22 per cent above the Retail Award and between 9.6 and 95.28 per cent above the Clerks Award. There are also a range of other terms and conditions in the Agreement that are either more beneficial than the awards and NES or not conferred by the awards. For permanent employees, these include:

- a guaranteed minimum wage increase of two per cent annually or the minimum award increase determined by the Commission in its Annual Wage Review, whichever is the greater;
- more beneficial redundancy entitlements;
- guaranteed minimum part-time engagement of 15 hours per week;
- minimum shift engagement of four consecutive hours for retail employees;
- higher penalty rate for Saturday work of 150 per cent compared to the Retail Award's 125 per cent, and 250 per cent on a public holiday compared to 225 per cent under the Retail Award;
- overtime to be paid at 150 per cent for the first two hours (not three hours as under the Retail Award) and 200 per cent for every hour after;
- 15-minute paid meal breaks rather than the 10 minutes provided under the Retail Award;
- an additional five days' non-cumulative Time Away leave per annum, although not applicable to AppleCare, ASC or RCC Team Members;
- leave accrual for part-time employees on their maximum Contract Range hours; and
- up to 10 days' paid community service leave, two days' paid study leave, 16 weeks' paid parental leave top-up pay to government paid parental leave entitlement for a primary caregiver, 10 days' gender affirmation leave, jury service leave top-up payment, additional paid compassionate leave per occasion and for a wider set of circumstances, personal leave available for a wider range of purposes, and up to 20 days' additional paid Family Care leave to care for a spouse, domestic partner, child or parent with a serious illness or to attend activities or appointments relating to adopting a child or fostering to adopt a child.

[61] We note that Fixed Term Employees (as defined in clause 1—Definitions) are entitled to the terms and conditions that apply to part-time or full-time Team Members unless specifically excluded in the Agreement. The Agreement excludes Fixed Term Employees from

the benefits conferred by Clause 65—Time Away Days (additional five days' leave per annum), Clause 68—Paid Family Care Leave (additional 20 days' carers leave), Clause 72—Community Service Leave, Clause 75—Study Leave, Clause 76—Gender Affirmation Leave and Clause 77—Apple Parental Leave.

[62] The Agreement also contains a range of less beneficial entitlements or omits provisions found in the Retail Award and Clerks Award. Those entitlements include:

- while part-time retail employees have guaranteed minimum hours of work under the Contract Range, Apple has the flexibility to roster their hours up to the maximum hours in their Contract Range within the window of notified available hours, so these employees will not necessarily have a regular pattern of work;

- maximum daily hours for Retail Team Members under the Agreement are 10 hours, versus nine hours under the Retail Award;

- the Agreement does not contain a span of hours for retail workers, which results in some hours of work attracting a lesser penalty payment than the Retail Award;

- meal allowance and motor vehicle allowance are less than the Retail Award entitlements;

- Sunday penalty rates for ordinary hours of work for AppleCare and RCC employees are 150 per cent compared to 200 per cent under the Clerks Award;

- ASC Team Members who earn $80,000 per annum (pro rata for part-time employees) or more including any bonus or commission are not entitled to penalty or shift rates for work on weekends, late night work or overtime;

- ASC Team Members are not guaranteed at least one weekend off in each four-week period; and

- a range of conditions and entitlements in the Retail Award and Clerks Award are also omitted as they would not apply in Apple's operations, including travel entitlements, LAFHA, apprentice and junior rates, supported wage system and national training wage, cold work, moving expenses and clothing and footwear allowance.

[63] We have considered several of the above-referred detriments earlier in our decision and are satisfied of the following:

- The travel time and cost reimbursement allowances in the Retail Award and Clerks Award are not applicable to Apple's operations. We also accept that the other omitted entitlements to which we have referred above would have no application within Apple's operations if the Awards were to apply.

- Despite the penalty rate exemption under clause 48 of the Agreement, ASC Team Members in receipt of an Actual Rate of Pay at or above $80,000 per annum would still receive greater remuneration under the Agreement than under the Retail

Award. That conclusion is based on the reasonably foreseeable pattern of work of ASC Team Members working their rostered ordinary hours of work only and not being directed to work overtime.

- The absence of a span of hours in respect of employees covered by Part 3 of the Agreement means that some hours that may be worked by those employees attract a lesser penalty rate than would apply under the Retail Award. We attach limited weight to the detriment as those hours would fall outside Apple's normal operational hours, be limited in incidence and be offset by higher base rates of pay, Saturday and overtime penalty rates.

- The greater maximum shift length of 10 hours under the Agreement versus nine hours under the Retail Award creates a detriment but is offset by the effect of higher base rates and penalty rates under the Agreement.

- The Sunday penalty rate detriment arising in respect of AppleCare and RCC Team Members has been addressed by the provision of Proposed Undertaking 2 which would, if accepted, remedy our concern. No bargaining representative opposed acceptance of the undertaking and we are satisfied that that it would be unlikely to cause financial detriment to any employee covered by the Agreement or result in substantial change.

- The detriments of lesser meal and motor vehicle allowances are likely to be of limited impact and are accorded limited weight.

- The part-time provisions in Part 3 of the Agreement give rise to a detriment in that employees, while guaranteed a minimum number of hours within their agreed Contract Range, may be required to work up to an additional four hours above that minimum within their notified availability. Those additional hours under the Retail Award would attract overtime penalty rates. We are however satisfied that the detriment is offset by higher base rates of pay which are at least 13 per cent higher under the Agreement, superannuation is payable on those additional ordinary hours worked and higher rates apply to both Saturday work and overtime under the Agreement.

- The lack of guaranteed Sundays off for ASC Team Members represents a non-monetary detriment given that penalty rates payable for Sunday work are the same under the Agreement compared to the Retail Award, that being 150 per cent. While we note that ASC Team Members are not entitled to Time Away Days under clause 65.1 of the Agreement which would partially offset the identified detriment, they do have the benefit of receiving Time Off in Lieu for public holidays that fall on an RDO (clause 47.5) which would either be a Monday or Tuesday for full-time staff.

[64] An enterprise agreement will be found to have passed the BOOT if the Commission is satisfied, that at the test time, each award covered employee and each reasonably foreseeable employee for the agreement would be better off overall if the agreement applied to the employee rather than if the award applied to the employee. The BOOT is not to be applied as a line-by-line test. Rather, it is a global assessment of the provisions in the agreement compared to the

relevant awards taking into account those provisions that are less beneficial and weighing them against those provisions that are more beneficial.

[65] Considering all the terms and conditions in the Agreement including the beneficial entitlements and detriments which we have outlined above and the undertakings which we have accepted, we are satisfied that the Agreement passes the BOOT as required by s 186(2)(d) of the FW Act. In reaching our conclusion we have had particular regard to the higher rates of pay and range of increased leave entitlements conferred by the Agreement which, we consider, are such as to leave each award covered employee and reasonably foreseeable employee better off overall when compared to the awards at test time.

Other Commission concerns

[66] In the Commission's correspondence to Apple on 11 September 2023, a concern was raised that clause 2.3 of the Agreement states that the expiry date is four years from the operative date, whereas s 186(5) of the FW Act states that the expiry date of an Agreement cannot be more than four years from the date of approval. In responding, Apple have proposed an undertaking which addresses our concern. Proposed Undertaking 1 states as follows:

> Clause 2.3 of the Agreement: The Agreement's nominal expiry date is 4 years from the date the Agreement is approved by the Fair Work Commission.

[67] The Commission also raised a concern regarding clause 64 of the Agreement which provides for an additional week's leave for shiftworkers. Because the Agreement does not define a shiftworker for the purposes of the NES as per clause 28.2 of the Retail Award and clause 32.2 of the Clerks Award, we observed that this may be inconsistent with s 196 of the FW Act.

[68] In submissions addressing that concern, Apple points out that both the Retail Award and the Clerks Award similarly define a shiftworker for the purpose of the NES, that being 'a shiftworker regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for 7 days a week'. Apple further submits that there are no employees in their business that would be covered by the relevant shiftworker definitions in the awards as Apple does not roster shifts continuously over 24 hours a day, seven days a week.

[69] Apple and RFFWU Inc made some submissions from the bar table at the hearing before us on the incidence of employees being required to work 'night shifts' for various reasons including for the purpose of supporting new product launches. Without needing to resolve the actual incidence of such patterns of work, we are prepared to accept that there may be limited circumstances where employees may be required to work overnight. That does not however establish, and no evidence was led to the effect, that Apple rosters continuous shifts over 24 hours a day, seven days a week. Nor is it reasonably foreseeable in our view that such patterns of work are likely. In these circumstances we are satisfied that there are no employees that would be covered and defined under the relevant award as a shiftworker for the purpose of the NES.

[70] Finally, the Commission's correspondence of 11 September 2023 identified that clause 6 of Schedule C to the Agreement provides that an individual flexibility agreement (IFA) can be terminated by giving no more than 13 weeks' written notice to the other party to the

arrangement. This is inconsistent with s 203(6)(a) of the FW Act which provides that an IFA must be able to be terminated by either the employee, or the employer, giving written notice of not more than 28 days. Apple's response accepted that, in accordance with s 202(4), the model flexibility term will be inserted into the Agreement if it is approved.

Conclusion

[71] Apple has provided written undertakings, which we have earlier identified. A copy of the undertakings is attached in Annexure A. We are satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement. We accept the undertakings on the basis that they address particular concerns as discussed above. They will be taken to be a term of the Agreement.

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

[73] Pursuant to s 202(4) of the Act, the model flexibility term prescribed by the FW Regulations is taken to be a term of the Agreement.

[74] The SDA and the ASU, being bargaining representatives for the Agreement, have given notice under s 183 of the Act that they want the Agreement to cover them. In accordance with s 201(2) we note that the Agreement covers these organisations.

[75] The Agreement is approved and, in accordance with s 54 of the Act, will operate from the first day of the first full pay period on or after 23 October 2023. The nominal expiry date of the Agreement is 9 October 2027 (being four years from the approval date).

PRESIDENT

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Annexure A

IN THE FAIR WORK COMMISSION
Matter number **AG2023/3058**

Apple Pty Limited
Applicant

Application for approval of the *Apple Australia National Enterprise Agreement 2023*

UNDERTAKING

I, Bernard Paul Ryan, Director of Employee and Labour Relations Asia Pacific for **Apple** Pty Limited, have been authorised by Apple to give the following undertakings in relation to the Apple Australia National Enterprise **Agreement** 2023:

1. Clause 2.3 of the Agreement: The Agreement's nominal expiry date is 4 years from the date the Agreement is approved by the Fair Work Commission.

2. Notwithstanding clauses 22.2, 30.2 and 51.2 of the Agreement:

   (a) Level 1 and Level 2 Casual AppleCare Team Members, Level 1 Casual Retail Customer Care Team Members and Level 1 Casual Facilities and Administration Team Members who work on a Sunday; and

   (b) Level 1 and Level 2 Part Time AppleCare Team Members and Level 1 Part Time Retail Customer Care Team Members who work less than three days a week that includes a Sunday,

   will be paid for time worked on a Sunday an amount per hour no less than the hourly rate payable for their relevant classification under the *Clerks - Private Sector Award 2020* (as amended from time to time.

Signed 

[1] MA000004.

[2] MA000002.

[3] Form F17, Annexure M & O, Video presentation to employees.

[4] Form F17, Annexure N, Apple intranet page summaries of Agreement.

[5] Apple responses to the matters raised by the Commission, Annexure C, Apple Hearing Book at 538.

[6] Apple Supplementary Note, 5 October 2023.

[7] [2018] FWCFB 3610.

[8] Ibid at [136]-[137].

[9] *Fair Work Act 2009* (Cth) s 171(a).

[10] Ibid s 3(a); *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) s 346.

[11] Apple responses to the matters raised by the Commission, Annexure A, Apple Hearing Book at 534.

[12] Exhibit 1, Witness Statement of Bernard Paul Ryan, 15 September 2023 at [3]-[4].

[13] Ibid at [5]-[6].

[14] Apple responses to the matters raised by the Commission, Annexure B, Apple Hearing Book at 537.