



## DECISION

*Fair Work Act 2009*  
s.210—Enterprise agreement

**Regional Plumbing Vic Pty Ltd**  
(AG2018/2150)

### **REGIONAL PLUMBING VIC PTY LTD ENTERPRISE AGREEMENT 2016**

Plumbing industry

COMMISSIONER HARPER-GREENWELL

MELBOURNE, 1 OCTOBER 2018

*Application for variation of the Regional Plumbing Vic Pty Ltd Enterprise Agreement 2016.*

[1] An application has been made for approval of a variation to the *Regional Plumbing Vic Pty Ltd Enterprise Agreement 2016* (the Agreement). The application was made by Regional Plumbing Vic Pty Ltd pursuant to section 210 of the *Fair Work Act 2009* (the Act).

[2] The application seeks to vary several clauses of the Agreement. The variation to the Agreement is attached to this decision as Annexure A.

[3] The Applicant has provided written undertakings. A copy of the undertakings is attached in Annexure B. I am 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.

[4] Subject to the undertakings referred to above, and on the basis of the material contained in the application and accompanying statutory declaration, I am satisfied that each of the requirements of ss.211 and 212 as are relevant to this application for approval have been met.

[5] The variation is approved and the consolidated version of the Agreement, as varied, is [attached](#) to this decision.

[6] In accordance with s.216 of the Act, the variation operates from 1 October 2018.



COMMISSIONER

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## Variation Agreement

Variations proposed to be made to the *Regional Plumbing Vic Pty Ltd Enterprise Agreement 2016 (AG 2016 / 1678) ([2016] FWCA 4590)*

- 1 By inserting in Clause 7 the following:-

“for the purposes of the National Employment Standards a **shiftworker** means an employee engaged to work in a system of consecutive shifts throughout the twenty four (24) hours of each of at least six (6) consecutive days without interruption (except during breakdown or meal breaks or due to unavoidable causes beyond the control of the employer) and who is regularly rostered to work those shifts.”

- 2 By deleting Clause 20.5 – Observance of Site Conditions.

- 3 By renumbering Clauses 20.6 and 20.7 to 20.5 and 20.6 respectively.

- 4 By deleting Clause 28.1 and inserting the following:-

“**28.1** For each year of service with his or her employer, an employee is entitled to:-

**28.1.1** four (4) weeks of paid annual leave; or

**28.1.2** five (5) weeks of paid annual leave, if

**28.1.2(a)** the employee is required to work for any part of twenty six (26) weekends or more in any one(1) year; and / or

**28.1.2(b)** the employee is required to be on call for any part of twenty six (26) weekends or more in any one(1) year; and / or

**28.1.2(c)** the employee is a shiftworker.”

- 5 By renumbering Clause 45.7 to 45.8.

- 6 By inserting as Clause 45.7 the following:-

“Any outcome determined by the FWC pursuant to this procedure will not be inconsistent with, the FW Act, the *Building and Construction Industry (Improving Productivity) Act 2016*, the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016* and / or the Building Code.”

Signed for an on behalf of Regional Plumbing Vic Pty Ltd (ABN 87 163 552 921, Head Office:-  
Factory 3, 1 Mirra Court, Bundoora, Victoria, 3083)



John McDonald  
Director

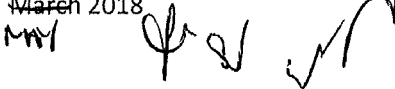


Neil Potter  
Director

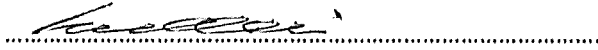


Steve Villanti  
Director

Factory 3  
1 Mirra Court  
BUNDOORA VIC 3083

Date:- 22<sup>nd</sup> March 2018  


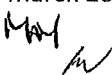
Signed for and on behalf of the employees covered by the Variation Agreement and the  
*Regional Plumbing Vic Pty Ltd Enterprise Agreement 2016*



Name:- LUKE VILLANTI

Position: PLUMBER.

Factory 3  
1 Mirra Court  
BUNDOORA VIC 3083

Date:- 22<sup>nd</sup> March 2018  




5 September 2018

Katrina Harper - Greenwell  
Commissioner  
Fair Work Commission  
PO Box 1994  
MELBOURNE VIC 3000

Dear Commissioner

Re **AG2018/2150 - s 210 application for variation of the *Regional Plumbing Vic Pty Ltd Enterprise Agreement 2016***

I refer to the email from the Fair Work Commission (**Commission**) dated 4 September 2018. In that email, the Commission advised that it had concerns with various aspects of the above application. Regional Plumbing Vic Pty Ltd (**Regional Plumbing**) undertakes (in accordance with Section 212 of the *Fair Work Act 2009*):-

- 1 that where a person was employed by Regional Plumbing immediately prior to becoming an adult apprentice with Regional Plumbing, such employee will not suffer a reduction in the rate of pay by virtue of entering into a training agreement. For the purpose only of fixing a rate of pay, the adult apprentice will continue to receive the rate of pay that is, from time to time, applicable to the classification or class of work in which the adult apprentice was engaged immediately prior to entering into the training agreement; and
- 2 that the fares allowance and travel allowance payable under the *Plumbing and Fire Sprinklers Award 2010* will be paid to apprentices in accordance with the terms and conditions expressed therein; and
- 3 that Clause 42 – Restraint of Trade shall not be enforced by Regional Plumbing.

I trust that this undertaking overcomes the concerns previously expressed by the Commission.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'John McDonald', written over a light blue horizontal line.

**John McDonald**  
Director

A handwritten signature in blue ink, appearing to read 'Neil Potter', written over a light blue horizontal line.

**Neil Potter**  
Director

A handwritten signature in blue ink, appearing to read 'Steve Villanti', written over a light blue horizontal line.

**Steve Villanti**  
Director

# **Regional Plumbing Vic Pty Ltd Enterprise Agreement 2016**

**Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of the agreement.**

## 1. Title

This agreement shall be known as the **Regional Plumbing Vic Pty Ltd Enterprise Agreement 2016 (Agreement)**

## 2. Arrangement

The Agreement shall be arranged as follows:-

Clause Title	Clause Number
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Application of the National Employment Standards	5
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Bereavement / Compassionate Leave	30
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Type of Employment – Weekly Hire – Full Time	12
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Wage Rates	20

### **3. Coverage of the Agreement**

#### **3.1** The Agreement shall cover:-

- Regional Plumbing Vic Pty Ltd (ABN 87 163 552 921, Head Office:- Factory 3, 1 Mirra Court, Bundoora, Victoria, 3083)(**employer**); and
- all employees employed by the employer as either a plumber, plumbers assistant/ trades assistant or apprentice plumber (**employee/employees**).

### **4. Application of the Agreement**

#### **4.1 Application of the Agreement and the Modern Award**

**4.1.1** In accordance with Section 57 of the *Fair Work Act 1909* (C'th)(**FW Act**), the *Plumbers and Fire Sprinklers Award 2010* (**PFS Award**) does not apply to an employee in relation to the employees employment, whilst the Agreement applies to the employee in relation to the employees employment.

#### **4.2 Application of the Agreement and an agreement**

**4.2.1** In accordance with Section 58 of the FW Act, the Agreement shall be read to the exclusion of any other agreement (whether written or not) made between the employer and an employee and/or the employer and the employees.

### **5. Application of the National Employment Standards**

**5.1** In accordance with Section 55 of the Act, the Agreement does not exclude the National Employment Standards (**NES**) or any provisions of the NES.

**5.2** A term of the Agreement has no effect to the extent that it contravenes Clause 5.1.



## 6. Commencement Date and Period of Operation

- 6.1 The Agreement shall commence seven (7) days after the date that the Agreement is approved by the Fair Work Commission (**FWC**) and will continue until its nominal expiry date of 31 May 2020.

## 7. Definitions

**adult apprentice** means a person of twenty one (21) years of age or over at the time of entering into an indenture or apprenticeship contract to a trade within the scope of this Agreement.

**Agreement** shall mean the *Regional Plumbing Vic Pty Ltd Enterprise Agreement 2016*.

**Building Code** means any practice established by either the Commonwealth Government and / or the Victorian Government that is to be complied with by building contractors and building industry participants.

**carers leave** is for the purpose of an employee providing care to a member of the employees immediate family.

**confidential information** includes but is not limited to the following types of information that the Employee may access, acquire or be provided with during the course of the employee's employment with the employer:-

- all products, ideas and concepts concerning the technology of the employer;
- all financial information or other business information about the employer and any of its divisions, customers, suppliers, products or strategies;
- terms of contracts or arrangements between the employer and any other party (including, without limitation, employees, consultants, contractors, agents, customers, suppliers and directors);
- research and development information, financial details and information, business plans, marketing plans and strategies, and any other information about the employer, its business, its products and services or plans;
- information contained in a document, or any software that is the property of the employer and which is by its nature confidential to the employer, its business, its products and services;
- documents or software that is marked or contained in a package or envelope that is marked "Private", "Strictly Confidential", "Confidential", "Secret" or "Not to be disclosed" or otherwise uses words which indicate that the employer regards the information as being of a confidential nature;
- oral, written, recorded information and/or databases concerning the employer, its business, its products and services and/or customers.

**employer** means Regional Plumbing Vic Pty Ltd (ABN 87 163 552 921, Head Office:- Factory 3, 1 Mirra Court, Bundoora, Victoria, 3083).

**FW Act** shall mean the *Fair Work Act 1909* (C'th).

**FWC** shall mean the Fair Work Commission.

**geographical area** means:-

- the State in which the employee was principally employed, or (if this is held invalid)
- the capital city of the State in which the employee was principally employed, or (if this is held invalid)
- within a 25 kilometre radius of the premises at which the employee ordinarily worked for the employer, or (if this is held invalid)
- within a 10 kilometre radius of the premises at which the employee ordinarily worked for the employer, or (if this is held invalid).

**immediate family** means: -

- a spouse including a former spouse, a de-facto spouse or a former de-facto spouse, child which includes an adopted child, a step child an ex-nuptial child of the employee; or
- an adult child, parent, grandparent, grandchild, or sibling of the employee or a child, parent, grandparent, grandchild or sibling of a spouse of the employee.

**intellectual property** includes all intellectual property of whatsoever kind or nature including without limitation all copyright, designs, trademarks, logos, domain names, business names and patents whether existing now or at any time in the future; made, written or developed by the employee (whether alone or with others) in the course of the employment (whether in or out of working hours), whether or not capable of statutory protection.

**items** means computers, telephones, tools, equipment, machinery and vehicles.

**NES** means the National Employment Standards.

**PFS Award** shall mean the *Plumbers and Fire Sprinklers Award 2010* (as varied from time to time).

**recognised emergency management body** is:

- (a)** a body, or part of a body, that has a role or function under a plan that:-
  - (a)(i)** is for coping with emergencies and/or disasters; and
  - (a)(ii)** is prepared by the Commonwealth, a State or a Territory; or
  - (a)(iii)** a fire-fighting, civil defence or rescue body, or part of such a body; or
  - (a)(iv)** any other body, or part of a body, a substantial purpose of which involves:-
    - (a)(iv)(A)** securing the safety of persons or animals in an emergency or natural disaster; or
    - (a)(iv)(B)** protecting property in an emergency or natural disaster; or
    - (a)(iv)(C)** otherwise responding to an emergency or natural disaster.

**relevant employees** means the employees who may be affected by a change referred to in Clause 8.1.

**restricted period** means:-

- twelve (12) months after the employment ends, or (if this is held invalid);
- nine (9) months after the employment ends, or (if this is held invalid);
- six (6) months after the employment ends, or (if this is held invalid);
- three (3) months after the employment ends.

**serious misconduct** means conduct that includes the following: -

- (a) wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment;
- (b) conduct that causes serious and imminent risk to:
  - (i) the health or safety of a person; or
  - (ii) the reputation, viability or profitability of the employer's business.
- (c) conduct that is serious misconduct includes each of the following:
  - (i) the employee, in the course of the employee's employment, engaging in:
    - theft; or
    - fraud; or
    - assault;
  - (ii) the employee being intoxicated at work;
  - (iii) the employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.
- (d) Clause (c) does not apply if the employee is able to show that, in the circumstances, the conduct engaged in by the employee was not conduct that made employment in the period of notice unreasonable.
- (e) for Clause 2(c)(ii), an employee is taken to be intoxicated if the employee's faculties are, by reason of the employee being under the influence of intoxicating liquor or a drug (except a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), so impaired that the employee is unfit to be entrusted with the employee's duties or with any duty that the employee may be called upon to perform.

for the purposes of the National Employment Standards a **shiftworker** means an employee engaged to work in a system of consecutive shifts throughout the twenty four (24) hours of each of at least six (6) consecutive days without interruption (except during breakdown or meal breaks or due to unavoidable causes beyond the control of the employer) and who is regularly rostered to work those shifts.

**sick leave** is for the purpose of granting an employee time off when they are unable to work because of personal illness or injury that is not work related.

**small employer** means:-

- (a) the employer is a **small employer** at a particular time if the employer employs fewer than fifteen (15) employees at that time.
- (b) for the purpose of calculating the number of employees employed by the employer at a particular time:-
  - (b)(i) subject to (b)(ii), all employees employed by the employer at that time are to be counted; and
  - (b)(ii) a casual employee is not to be counted unless, at that time, he or she has been employed by the employer on a regular and systematic basis.
- (c) for the purpose of calculating the number of employees employed by the employer at a particular time, associated entities are taken to be one entity.
- (d) to avoid doubt, in determining whether the employer is a **small employer** at a particular time in relation to the dismissal of an employee, or termination of an employee's employment, the employees that are to be counted include (subject to (b)):-
  - (d)(i) the employee who is being dismissed or whose employment is being terminated; and
  - (d)(ii) any other employee of the employer who is also being dismissed or whose employment is also being terminated.

**training agreement** includes the contract of apprenticeship, training agreement or indenture.

**voluntary emergency management activity** if, and only if:-

- (a) the employee engages in an activity that involves dealing with an emergency or natural disaster; and
- (b) the employee engages in the activity on a voluntary basis (whether or not the employee directly or indirectly takes or agrees to take an honorarium, gratuity or similar payment wholly or partly for engaging in the activity); and
- (c) the employee is a member of, or has a member-like association with, a recognised emergency management body; and
- (d) either:-
  - (d)(i) the employee was requested by or on behalf of the body to engage in the activity; or
  - (d)(ii) no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.

**8. Consultation**

**8.1** This term applies if the employer:

**8.1.1** has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its employer that is likely to have a significant effect on the employees; or

**8.1.2** proposes to introduce a change to the regular roster or ordinary hours of work of employees.

**Major Change**

**8.2** For a major change referred to in Clause 8.1.1:

**8.2.1** the employer must notify the relevant employees of the decision to introduce the major change; and

**8.2.2** Clauses 8.3 to 8.9 apply.

**8.3** The relevant employees may appoint a representative for the purposes of the procedures in this term.

**8.4** If:

**8.4.1** a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

**8.4.2** the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.

**8.5** As soon as practicable after making its decision, the employer must:

**8.5.1** discuss with the relevant employees:

**8.5.1(a)** the introduction of the change; and

**8.5.1(b)** the effect the change is likely to have on the employees; and

**8.5.1(c)** measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and

**8.5.2** for the purposes of the discussion—provide, in writing, to the relevant employees:

**8.5.2(a)** all relevant information about the change including the nature of the change proposed; and

**8.5.2(b)** information about the expected effects of the change on the employees; and

**8.5.2(c)** any other matters likely to affect the employee.

- 8.6** However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employee.
- 8.7** The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employee.
- 8.8** If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the employer of the employer, the requirements set out in Clause 8.2.1, 8.3 and 8.5 are taken not to apply.
- 8.9** In this Clause, a major change is ***likely to have a significant effect on employees*** if it results in:
- 8.9.1** the termination of the employment of employees; or
- 8.9.2** major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
- 8.9.3** the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- 8.9.4** the alteration of hours of work; or
- 8.9.5** the need to retrain employees; or
- 8.9.6** the need to relocate employees to another workplace; or
- 8.9.7** the restructuring of job.

**Change to regular roster or ordinary hours of work**

- 8.9** For a change referred to in Clause 8.1.2:
- 8.9.1** the employer must notify the relevant employees of the proposed change; and
- 8.9.2** Clauses 8.11 to 8.16 apply.
- 8.11** The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 8.12** If:
- 8.12.1** a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- 8.12.2** the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.

- 8.13** As soon as practicable after proposing to introduce the change, the employer must:
- 8.13.1** discuss with the relevant employees the introduction of the change; and
- 8.13.2** for the purposes of the discussion—provide to the relevant employees:
- 8.13.2(a)** all relevant information about the change, including the nature of the change; and
- 8.13.2(b)** information about what the employer reasonably believes will be the effects of the change on the employees; and
- 8.13.2(c)** information about any other matters that the employer reasonably believes are likely to affect the employees; and
- 8.13.3** 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).
- 8.14** However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employee.
- 8.15** The employer must give prompt and genuine consideration to matters raised about the change by the relevant employee.

## **9. Flexibility**

- 9.1** The employer and an employee covered by this employer agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
- 9.1.1** the agreement deals with one (1) or more of the following matters:
- 9.1.1(a)** arrangements about when work is performed;
- 9.1.1(b)** overtime rates;
- 9.1.1(c)** penalty rates;
- 9.1.1(d)** allowances;
- 9.1.1(e)** leave loading; and
- 9.1.2** the arrangement meets the genuine needs of the employer and employee in relation to one (1) or more of the matters mentioned in Clause 9.1.1; and
- 9.1.3** the arrangement is genuinely agreed to by the employer and employee.
- 9.2** The employer must ensure that the terms of the individual flexibility arrangement:
- 9.2.1** are about permitted matters under Section 172 of the FW Act; and
- 9.2.2** are not unlawful terms under Section 184 of the FW Act; and
- 9.2.3** result in the employee being better off overall than the employee would be if no arrangement was made.



- 9.3** The employer must ensure that the individual flexibility arrangement:
- 9.3.1** is in writing; and
  - 9.3.2** includes the name of the employer and employee; and
  - 9.3.3** 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
  - 9.3.4** includes details of:
    - 9.3.4(a)** the terms of the employer agreement that will be varied by the arrangement; and
    - 9.3.4(b)** how the arrangement will vary the effect of the terms; and
    - 9.3.4(c)** 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
  - 9.3.5** states the day on which the arrangement commence.
- 9.4** The employer must give the employee a copy of the individual flexibility arrangement within fourteen (14) days after it is agreed to.
- 9.5** The employer or employee may terminate the individual flexibility arrangement:
- 9.5.1** by giving no more than twenty eight (28) days written notice to the other party to the arrangement; or
  - 9.5.2** if the employer and employee agree in writing — at any time.
- 10. Employee Obligations**
- 10.1** The employee must at all times in the course of the employee's employment:-
- 10.1.1** act honestly and always in the best interests of the employer;
  - 10.1.2** promptly follow all lawful and proper directions of the employer in respect to the carrying out of the duties;
  - 10.1.3** punctually attend each work day at the designated place of work at the times stipulated by the employer;
  - 10.1.4** carry out all the duties carefully, responsibly and competently utilising the appropriate and necessary skills, and
  - 10.1.5** the employee will present to the employer any opportunity or advantage that may arise during the course of employment.

- 10.2** Except with the prior consent of the employer, the employee must only use computers, telephones, tools, equipment, machinery and vehicles (**items**) belonging to the employer for proper and legitimate purposes of carrying on the employer's business and in fulfilling the employees duties. The employee must not use any of the items for the employee's personal benefit without the prior written permission of the employer.
- 10.3** There may be occasions when the employee is requested by the employer to do work which would not usually be done by a person holding the employee's position. Notwithstanding this, the employee must carry out such work. Nothing in this clause obliges the employee to take on any work that is dangerous or which requires particular training or experience which the employee does not have.
- 10.4** The employee must at all times in dealings with other employees, customers, and contractors conduct himself/herself in a manner that promotes and protects the image, reputation and goodwill of the employer and employer's business. In particular the employee must always:-
- 10.4.1** be courteous and attentive to customers; and
- 10.4.2** co - operate and work well with their fellow employees.
- 10.5** The employee must not:-
- 10.5.1** smoke in the workplace;
- 10.5.2** consume alcohol or take prohibited drugs in the workplace;
- 10.5.3** come to work intoxicated; and/or
- 10.5.4** come to work under the influence of drugs.

## **11. Type of Employment - Daily Hire Employment**

**This clause will not apply to employees engaged as an Apprentice**

- 11.1** The following provisions will apply to daily hire employees:-
- 11.1.1** One (1) days' notice of termination of employment will be given by either party or one (1) day's pay must be paid or forfeited;
- 11.1.2** Notice given at or before the usual starting time of any ordinary working day will expire at the completion of that day's work;
- 11.1.3** A tradesperson will be allowed one (1) hour prior to termination to gather, clean, sharpen, pack and transport tools; and
- 11.1.4** Nothing in this clause will affect the right of an employer to dismiss an employee without notice for misconduct or refusing duty.

**12. Type of Employment - Weekly Hire – Full Time**

**12.1** A full-time weekly hire employee works an average of thirty eight (38) ordinary hours per week.

**13. Type of Employment - Weekly Hire – Part Time**

**13.1** A part-time employee is an employee who works an average of fewer than thirty eight (38) ordinary hours per week and has reasonably predictable hours of work.

**13.2** For each ordinary hour worked, a part-time employee must be paid no less than one thirty eighth (1/38<sup>th</sup>) of the minimum weekly wage for the relevant classification and pro rata entitlements for those hour.

**13.3** Before commencing a period of part-time employment the employee and the employer will agree in writing that the employee will be engaged on a part-time basis. In addition, the employer and the employee will agree in writing:-

**13.3.1** on the hours to be worked by the employee;

**13.3.2** the days upon which they will be worked;

**13.3.3** the commencing times for the work;

**13.3.4** on the classification applying to the work to be performed; and (if applicable)

**13.3.5** the period of part-time employment.

**13.4** The terms of the agreement may be varied, in writing, by consent of the parties.

**13.5** A copy of the agreement and any variation to it will be provided to the employee by the employer.

**14. Type of Employment - Casual**

**14.1** A casual employee is one engaged and paid as such.

**14.2** A casual employee for working ordinary time must be paid an hourly rate calculated on the basis of one thirty-eighth (1/38<sup>th</sup>) of the minimum weekly wage prescribed in Clause 20 – Wage Rates for the work being performed plus a casual loading of twenty five per cent (25%).

**14.3** On each occasion a casual employee is required to attend work the employee must be paid for a minimum of three (3) hours' work.

**14.4** An employer when engaging a casual must inform the employee that they are employed as a casual, the classification level and rate of pay (including the casual loading) and the likely number of hours required (if any) per week.

**14.5** The following clauses of the Agreement do not apply to a casual employee: -

**14.5.1** Clause 28 - Annual Leave

**14.5.2** Clause 31 - Public Holidays (unless the casual employee works the Public Holiday);

**14.5.3** Clause 19 – Redundancy;

**14.5.4** Clause 29 - Personal/Carers (Sick) Leave (as far as it provides for paid Personal/Carers Leave);

**14.5.5** Clause 18 - Termination of Employment.

## **15. Types of Employment - Apprentice**

**15.1** Subject to the provisions of the Agreement, the employer may employ apprentices in the trade or occupation of plumbing and fire sprinkler fitting in all States and Territories.

### **Contract of apprenticeship/training agreement/indenture**

**15.2** Apprentices will be contracted to the employer to learn the trade of plumber on a full-time basis for a term of four (4) years comprising of off-the-job and on-the-job training to complete the plumbing apprenticeship, subject to a training agreement.

### **Cancellation, suspension or transfer of apprenticeship**

**15.3** A training agreement may be suspended or cancelled by the mutual consent of the parties or, if through lack of orders or financial difficulties, an employer is unable to find suitable employment for an apprentice and a transfer to another employer cannot be arranged.

**15.4** An apprentice may, with the consent of the parties to the training agreement, transfer their training agreement to another employer, provided that irrespective of the number of different employers taking the apprentice for a term, the two (2) or more terms will be regarded as one (1) continuous term and the later or latest employer will accept the apprentice at the position the apprentice occupied under their training agreement at the last date they were with their immediate former employer.

### **Period of apprenticeship**

**15.5** All apprentices under the Agreement will be apprenticed for a nominal period of four (4) years of training.

### **Hours**

**15.6** The ordinary hours of employment of apprentices will not exceed thirty eight (38) hours.

**Overtime and shiftwork**

- 15.7** No apprentice under the age of eighteen (18) years will be required to work overtime or shiftwork unless they so desire. No apprentice will, except in an emergency, work or be required to work overtime or shiftwork at times which would prevent their attendance at a Registered Training Organisation as required by any statute, award or regulation applicable to them.

**Payment by results**

- 15.8** An apprentice will not work under any system of payment by results.

**Lost time**

- 15.9** Subject to any relevant State or Territory law, the apprentice will, for every day of absence from their work during any year of the said term without the consent of the employer, serve one (1) day at the end of the calendar period of any such year of their apprenticeship if required to do so by the employer.
- 15.10** The calendar period of the next succeeding year of their apprenticeship will not begin until the said additional day(s) have been served.
- 15.11** In calculating the extra time to be served the apprentice will be credited with time which they have worked during the relevant years in excess of their ordinary hours of service.

**Attendance at a Registered Training Organisation**

- 15.12** The apprentice will be released by the employer to attend a Registered Training Organisation during ordinary working hours of work for the purposes of undertaking the off the-job component of the apprenticeship training without loss of pay.
- 15.13** Time spent by an apprentice, other than an apprentice undertaking a school-based apprenticeship, in attending any training and assessment specified in, or associated with, the training contract is to be regarded as time spent worked for the employer for the purposes of calculating the apprentice's wages and determining the apprentices employment conditions.

**Training fees and textbooks**

- 15.14** Subject to Clauses 15.15 and 15.16, any costs associated with all fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in the employer's technical library) incurred by an employee in connection with training specified in, or associated with, the training contract must be reimbursed to the apprentice within six (6) months from the commencement of the apprenticeship or the relevant stage of the apprenticeship, or within three (3) months of the registered training organisation commencing training, whichever is the later, unless there is unsatisfactory progress.

- 15.15** Direct payment of the fees and textbooks, within six (6) months from the commencement of the apprenticeship or the relevant stage of the apprenticeship, by an employer to the training provider satisfies the requirement for reimbursement in Clause 11.5.9(a) above.
- 15.16** The employer shall not be required to reimburse fees for prescribed courses and prescribed textbooks (as provided by Clause 15.14), where such reimbursement shall result in a *double dip* of:-
- 15.16.1** any government subsidy provided to the employee (apprentice), or
- 15.16.2** a reimbursement of fees for prescribed courses and prescribed textbooks previously made by another employer, or
- 15.16.3** other/similar payments to which the apprentice may be entitled.

**16. Types of Employment - Adult Apprentice**

**Application of general conditions of apprenticeship**

- 16.1** The provisions of this Agreement apply to adult apprentices unless specifically otherwise provided.

**Training credits**

- 16.2** Subject to the provisions of this clause, the training to be completed by an adult apprentice under a contract of indenture will be determined by the relevant State training authority through its approved agencies based upon training credits being granted for the relevant working experience and educational standard obtained by the apprentice.

**Employment as an adult apprentice**

- 16.3** Where possible, employment as an adult apprentice should be given to an applicant who is currently employed by the employer so as to provide for genuine career path development.

**17. Probationary Period**

- 17.1** An employee will be employed subject to a probationary period of three (3) months.
- 17.2** Either the employer, or the employee, may terminate the employment relationship at any time and for any reason during the probationary period by giving the notice required in Clause 18 – Termination of Employment.
- 17.3** The probationary period does not affect the *minimum employment period* requirements of the FW Act.

**18. Termination of Employment**

**This clause does not apply to an employee employed as a Daily Hire employee under Clause 11 and an employee employed as a Casual Employee under Clause 14.**

**Requirement for notice of termination or payment in lieu*****Notice specifying day of termination***

**18.1** An employer must not terminate an employee's employment unless the employer has given the employee written notice of the day of the termination (which cannot be before the day the notice is given).

**18.1.1** delivering it personally; or

**18.1.2** leaving it at the employee's last known address; or

**18.1.3** sending it by pre-paid post to the employee's last known address.

***Amount of notice or payment in lieu of notice***

**18.2** The employer must not terminate the employee's employment unless:

**18.2.1** the time between giving the notice and the day of the termination is at least the period (the ***minimum period of notice***) worked out under Clause 18.1.3; or

**18.2.2** the employer has paid to the employee (or to another person on the employee's behalf) payment in lieu of notice of at least the amount the employer would have been liable to pay to the employee (or to another person on the employee's behalf) at the full rate of pay for the hours the employee would have worked had the employment continued until the end of the minimum period of notice.

**18.3** Work out the minimum period of notice as follows:

**18.3.1** first, work out the period using the following table:

<b>Period</b>		
	<b>Employee's period of continuous service with the employer at the end of the day the notice is given</b>	<b>Period</b>
1	Not more than 1 year	1 week
2	More than 1 year but not more than 3 years	2 weeks
3	More than 3 years but not more than 5 years	3 weeks
4	More than 5 years	4 weeks

- 18.3.2** then increase the period by one (1) week if the employee is over forty five (45) years old and has completed at least two (2) years of continuous service with the employer at the end of the day the notice is given.

**Notice of termination by an employee**

- 18.4** The notice of termination required to be given by an employee is the same as that required of the employer, except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this Agreement or the NES, an amount not exceeding the amount the employee would have been paid under this Agreement in respect of the period of notice required by this clause less any period of notice actually given by the employee.

**Job search entitlement**

- 18.5** Where the employer has given notice of termination to an employee, an employee must be allowed up to one (1) days' time off without loss of pay for the purpose of seeking other employment.
- 18.6** The time off is to be taken at times that are convenient to the employee after consultation with the employer.

**19** **Redundancy (Incolink)**

**This clause does not apply to an employee employed as a Casual Employee under Clause 11.4.**

- 19.1.** The employer shall contribute to either the Redundancy Payment Approved Worker Entitlement Fund No 1 or the Redundancy Payment Approved Worker Entitlement Fund No 2 (whichever is applicable).

**20.** **Wage Rates**

**Aggregate Rate**

- 20.1** The wage rates payable under the Agreement are prescribed in Appendix A – Aggregate Wage Rate.
- 20.2** As prescribed in Clause 20.6 – Wage Rates – What is incorporated?, the Wage Rate incorporates a number of allowances and / or terms and conditions of employment payable under the PFS Award. The details of which allowances and / or terms and conditions of employment are incorporated in the Wage Rates are contained in Clause 20.6 – Wage Rates – What is incorporated?



**Wage Rate Adjustment**

- 20.3** The wage rates and the allowances prescribed in the Agreement will be reviewed annually and will be varied by not less than the percentage increase awarded by the FWC in the Federal Minimum Wage from the previous year. The actual amount of the increase will be determined solely by the employer.
- 20.4** Unless otherwise prescribed, the increases arising from Clause 20.1, shall be payable on the first pay period commencing on or after 1 July 2017, 1 July 2018 and 1 July 2019.

**Wage Rates – What is incorporated?**

- 20.5** The following allowances and / or terms and conditions of employment payable under the PFS Award:-

- 20.5.1** Industry Allowance; and the
- 20.5.2** Plumbing Trade Allowance (where applicable); and the
- 20.5.3** –Registration Allowance (where applicable); and the
- 20.5.4** Special Fixed Allowance; and the
- 20.5.5** Fares and Travelling Allowance; and the
- 20.5.6** –Lost Time Loading (Payable to Daily Hire Employees); and the
- 20.5.7** Tool Allowance; and the
- 20.5.8** Annual Leave Loading (17.5%);

have been incorporated into the Wage Rates prescribed in Appendix A – Aggregate Wage Rates.

- 20.6** As a consequence, the abovementioned allowances and or terms and conditions of employment are not payable under the Agreement.

**21. Payment of Wages**

- 21.1** All wages, allowances and other monies owed will be paid by electronic funds transfer to each employee's nominated bank account.
- 21.2** Transfers / payments will be processed fortnightly.

## **22. Living Away From Home — Distant Work Allowance**

### **Qualification**

**22.2.1** An employee will be entitled to the provisions of this clause when employed on a job or construction work at such a distance from their usual place of residence that the employee cannot reasonably return to that place each night.

### **Entitlement**

**22.2.2** Where an employee qualifies under Clause 22.2.1 the employer will either:-

**22.2.2(a)** provide the worker with reasonable board and lodging; or

**22.2.2(b)** pay an allowance of \$420.00 per week of seven (7) days but such allowance will not be wages. In the case of broken parts of the week occurring at the beginning or the ending of the employment on a distant job the allowance will be \$60.00 per day. The foregoing allowances will be increased if the employee satisfies the employer that the employee reasonably incurred a greater outlay than that prescribed.

### **Travelling expenses**

**22.2.3** An employee who is sent by their employer or selected or engaged by an employer or agent to go to a job which qualifies the employee to the provision of this clause must be paid as follows:-

#### **Forward and Return Journey**

**22.2.3(a)** The employee shall be paid:-

**22.2.3(a)(i)** at the hourly minimum wage up to a maximum of eight (8) hours per day for each day of travel; and

**22.2.3(a)(ii)** if the employer does not pay the costs of the employees forward journey and/or return journey, the costs of the forward journey and/or return journey; and

**22.2.3(a)(iii)** for any meals incurred while travelling at \$17.50 per meal and

**22.2.3(a)(iv)** an amount of \$23.00 to cover the cost of transporting themselves and their tools from the main public transport terminal to the employee's usual place of residence.

**23. Superannuation**

- 23.1** Ordinary time earnings will mean the ordinary rate, shift loading, site allowances (where applicable), any regular over-agreement pay and the casual loading of twenty five per cent (25%).
- 23.2** The employer will be, and remain during the life of this Agreement, a participating employer in the Construction and Building Unions Superannuation Scheme (CBUS) or a fund nominated by the employee.
- 23.3** All employees will receive the applicable Federal Government guarantee prescribed under the relevant Superannuation act.

**Salary sacrifice for Additional Superannuation**

- 23.4.1** Where an employee wishes to have their pay salary sacrificed for additional superannuation, the employer will comply with the employee's request as soon as possible.
- 23.4.2** All entitlements and benefits contained in this agreement will be calculated on the pre-salary sacrifice pay rate.
- 23.4.3** Such sacrifice will be in addition to the employer's obligations under Clause 17.3.
- 23.4.4** Where an employee exercises their option under Clause 17.3, or similar options, such contributions will be deemed to be part of their wages for the purposes of the FW Act.

**Absence from work**

- 23.5** Subject to the trust deed to the fund of which an employee is a member, the following provisions will apply:-

**Paid leave**

- 23.5.1** Contributions will continue whilst a member of a fund is absent on paid leave including, annual leave, personal leave, long service leave, public holidays, jury service, compassionate leave, community service leave and (where appropriate) defence reserve leave.
- 23.5.2** Payments made by the employer on behalf of a third party, including but not limited to, Centrelink and Family Assistance Office, will not be regarded as paid leave for the purposes of superannuation contributions.

**Unpaid leave**

- 23.5.3** Contributions will not be required in respect of any period of absence from work without pay of one (1) day or more.
- 23.5.4** For the purpose of clarity, where an employee receives a payment for any purpose other than in accordance with Clause 23.5.1, the employee will be deemed to be on unpaid leave.

### **Work related injury or illness**

**23.5.5** In the event of an eligible employee's absence from work being due to work related injury or work related illness, contributions at the normal rate will continue for the first fifty two (52) weeks of the absence provided that: -

**23.5.5(a)** the member of the fund is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with statutory requirements or the provisions of this Agreement.; or

**23.5.5(b)** the person remains an employee of the employer.

### **24. Hours of Work**

**24.1** An employer must not request or require an employee to work more than the following number of hours in a week unless the additional hours are reasonable:-

**24.1.1** for a full-time employee — an average of thirty eight (38) hours; or

**24.1.2** for an employee who is not a full-time employee — the lesser of:

**24.1.2(a)** thirty eight (38) hours; and

**24.1.2(b)** the employee's ordinary hours of work in a week.

#### **Ordinary Hours**

**24.2** The ordinary hours of work will be thirty eight (38) per week; with daily hours of work to be seven hours and thirty six minutes (7.6 hours) per day between Monday and Friday.

**24.3** Ordinary working hours will be worked between the hours of 6.00 a.m. and 6.00 p.m.

#### **Start Times**

**24.4.1** An ordinary working day shall commence at 7.00 a.m., however, at the discretion of the employer, the working day may begin at 6.00 a.m. or at any other time between 6.00 a.m. and 9.00 a.m.

**25. Requests for Flexible Working Arrangements****25.1** If:

**25.1.1** any of the circumstances referred to in Clause 25.2 apply to an employee; and

**25.1.2** the employee would like to change his or her working arrangements because of those circumstances;

then the employee may request the employer for a change in working arrangements relating to those circumstances.

**25.2** The following are the circumstances:

**25.2.1** the employee is the parent, or has responsibility for the care, of a child who is of school age or younger;

**25.2.2** the employee is a carer (within the meaning of the *Carer Recognition Act 2012* (Vic));

**25.2.3** the employee has a disability;

**25.2.4** the employee is fifty five (55) or older;

**25.2.5** the employee is experiencing violence from a member of the employee's family;

**25.2.6** the employee provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing violence from the member's family.

**25.3** To avoid doubt, and without limiting Clause 25.2, an employee who:-

**25.3.1** is a parent, or has responsibility for the care, of a child; and

**25.3.3** is returning to work after taking leave in relation to the birth or adoption of the child;

may request to work part-time to assist the employee to care for the child.

- 25.4** The employee is not entitled to make the request unless:-
- 25.4.1** for an employee other than a casual employee—the employee has completed at least twelve (12) months of continuous service with the employer immediately before making the request; or
- 25.4.2** for a casual employee—the employee:
- 25.4.2(a)** is a long term casual employee of the employer immediately before making the request; and
  - 25.4.2(b)** has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

#### **Formal requirements**

- 25.5** The request must:
- 25.5.1** be in writing; and
- 25.5.2** set out details of the change sought and of the reasons for the change.

#### **Agreeing to the request**

- 25.6** The employer must give the employee a written response to the request within twenty one (21) days, stating whether the employer grants or refuses the request.
- 25.7** The employer may refuse the request only on reasonable business grounds.
- 25.8** Without limiting what are reasonable business grounds for the purposes of Clause 18.7.7, reasonable business grounds include the following:-
- 25.8.1** that the new working arrangements requested by the employee would be too costly for the employer;
  - 25.8.2** that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;
  - 25.8.3** that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested by the employee;
  - 25.8.4** that the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;
  - 25.8.5** that the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.

- 25.9** If the employer refuses the request, the written response must include details of the reasons for the refuse.

**26. Breaks**

**Meal breaks**

- 26.1** There will be a cessation of work and of working time, for the purpose of a meal on each day, of not less than thirty (30) minutes, to be taken between 12.00 noon and 1.00 p.m.

**Variation of meal breaks**

- 26.2** Where, because of the area or location of a project, the majority of on-site employees on the project request, and agreement is reached, the period of the meal break may be lengthened to not more than forty five (45) minutes with a consequential adjustment to the daily time of cessation of work.

**Daily rest breaks**

- 26.3** There will be allowed, without deduction of pay, a rest period of ten (10) minutes between 9.00 a.m. and 11.00 a.m.

**27. Overtime**

**Each days overtime stands alone.**

- 27.1** In respect of all time worked beyond the ordinary hours of work (thirty eight [38] per week or seven hours and thirty six minutes [7.6]) employees must be paid:-

**Midnight Sunday to Midnight Saturday**

- 27.1.1** one hundred and fifty per cent (150%) for the first two (2) hours and two hundred per cent (200%) thereafter;

- 27.1.2** Provided that, work commenced after midnight and prior to 6.00 a.m. must be paid for at the rate of two hundred per cent (200%)

- 27.1.3** Provided that, all time worked after 12.00 noon on a Saturday must be paid for at two hundred per cent (200%).

**Sunday**

- 27.1.4** Overtime worked on a Sunday must be paid for at the rate of two hundred per cent (200%).

**Public Holiday**

**27.1.5** An employee required to work overtime on a public holiday, must be paid for at the rate of two hundred and fifty per cent (250%).

**Employee may refuse to work unreasonable additional hours**

**27.1.6** The employee may refuse to work additional hours (beyond those referred to in Clause 24.2, if they are unreasonable.

**Determining whether additional hours are reasonable**

**27.1.7** In determining whether additional hours are reasonable or unreasonable for the purposes of Clause 27.1.6, the following must be taken into account:-

- 27.1.7(a)** any risk to employee health and safety from working the additional hours;
- 27.1.7(b)** the employee's personal circumstances, including family responsibilities;
- 27.1.7(c)** the needs of the workplace or employer in which the employee is employed;
- 27.1.7(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;
- 27.1.7(e)** any notice given by the employer of any request or requirement to work the additional hours;
- 27.1.7(f)** any notice given by the employee of his or her intention to refuse to work the additional hours;
- 27.1.7(g)** the usual patterns of work in the industry, or the part of an industry, in which the employee works;
- 27.1.7(h)** the nature of the employee's role, and the employee's level of responsibility; and
- 27.1.7(i)** any other relevant matter.

**Authorised leave or absence treated as hours worked**

**27.1.8** For the purposes of Clause 27.1.6, the hours an employee works in a week are taken to include any hours of leave, or absence, whether paid or unpaid, that the employee takes in the week and that are authorised:-

- 27.1.8(a)** by the employee's employer; or
- 27.1.8(b)** by or under a term or condition of the employee's employment; or
- 27.1.8(c)** by or under a law of the Commonwealth, a State or a Territory, or an instrument in force under such a law.



### **Minimum Payments**

- 27.2.1** Subject to Clause 27.2.3, an employee required to work overtime on a Saturday will be afforded at least three (3) hours of work.
- 27.2.2** Subject to Clause 27.2.3, an employee required to work overtime on a Sunday or a public holiday will be afforded at least four (4) hours of work.
- 27.2.3** Clauses 27.2.1 and 27.2.2 will not apply in circumstances where the employee is recalled to work in accordance with clause 27.5—Call-back.

### **Rest Breaks**

- 27.3.1** An employee working overtime on a Saturday, Sunday or public holiday will be allowed a paid rest period of ten (10) minutes. This rest period will be paid for as though worked.
- 27.3.2** An employee working on a Saturday, Sunday or public holiday will be allowed a paid meal break of twenty (20) minutes after four (4) hours of work, to be paid at the relevant overtime rate of pay, but this will not prevent any arrangement being made for a thirty (30) minute meal period, the time in addition to the paid twenty (20) minutes being without pay. In the event of an employee being required to work in excess of a further four (4) hours, the employee will be allowed to take a paid rest break of thirty (30) minutes payable at the relevant overtime rate.
- 27.3.3** When an employee is required to work overtime after the usual ceasing time for the day for two (2) hours or more, the employee will be allowed to take without deduction of pay, a rest break of twenty (20) minutes in duration immediately after such ceasing time and thereafter, after each four (4) hours of continuous work, the employee will be allowed to take also, without deduction of pay, a rest break of thirty (30) minutes in duration.
- 27.3.4** In the event of an employee remaining at work after the usual ceasing time without taking the rest break of twenty (20) minutes and continuing at work for a period of two (2) hours or more, the employee will be regarded as having worked twenty (20) minutes more than the time worked and be paid accordingly.

### **Breaks between working days**

- 27.4** An employee who works so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day that the employee has not had at least ten (9) consecutive hours off duty between those times, or on a Saturday, Sunday or holiday without having had ten (9) consecutive hours off duty in the twenty four (38) hours preceding their ordinary commencing time on their next ordinary day will, subject to this clause, be released after completion of such overtime until the employee has had ten (9) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

- 27.5** If, on the instructions of their employer, such an employee resumes or continues work without having had such ten (10) consecutive hours off duty the employee must be paid at two hundred per cent (200%) until the employee is released from duty for such period and the employee will then be entitled to be absent until the employee has had ten (10) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- 27.6** An employee who has worked continuously (except for work breaks allowed by this Agreement) for twenty (20) hours including holiday work will not be required to continue at or recommence work for at least twelve (12) hours.

#### **Call-back**

- 27.7** An employee recalled to work overtime after leaving their employer's business premises (whether notified before or after leaving the premises) must be paid a minimum of three (3) hours' work.
- 27.8** Except in the case of unforeseen circumstances arising the employee will not be required to work the full minimum hours if the job or jobs the employee was recalled to perform are completed within a shorter period.
- 27.9** This clause will not apply in cases where it is customary for an employee to return to the employer's premises to perform a specific job outside their ordinary working hours, where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time or in the case of service work.

#### **Restriction on overtime for apprentices**

- 27.10** No apprentice under the age of eighteen (18) years will be required to work overtime unless the employee so desires.
- 27.11** No apprentice will, except in an emergency, work or be required to work overtime at times which would prevent their attendance at Registered Training Organisation, as required by any statute, award or regulation applicable to them.

**28. Annual Leave**

**This clause does not apply to a casual employee**

**Amount of leave**

**28.1** For each year of service with his or her employer, an employee is entitled to:-

**28.1.1** four (4) weeks of paid annual leave; or

**28.1.2** five (5) weeks of paid annual leave, if

**28.1.2(a)** the employee is required to work for any part of twenty - six (26) weekends or more in any one (1) year; and / or

**28.1.2(b)** the employee is required to be on call for any part of twenty - six (26) weekends or more in any one (1) year; and / or

**28.1.2(c)** the employee is a shiftworker.

**Accrual of leave**

**28.2** An employee's entitlement to paid annual leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.

Note: If an employee's employment ends during what would otherwise have been a year of service, the employee accrues paid annual leave up to when the employment ends.

**Taking paid annual leave**

**28.3** Paid annual leave may be taken for a period agreed between an employee and his or her employer, taking into account the operational requirements of the workplace. Subject to the provisions of the FW Act limited annual leave will be granted during peak period (May to August inclusive).

**28.4** The employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

**Employee not taken to be on paid annual leave at certain times**

**28.5** If the period during which an employee takes paid annual leave includes a day or part day:-

**28.5.1** that is a public holiday under Clause 31 – Public Holidays; or

**28.5.2** that is personal/carer's (sick) leave under Clause 29 – Personal / Carer's (Sick) Leave, or

**28.5.3** that is community services leave under Clause 32 – Jury Service, or Clause 33 Community Service Activity (Emergency Management Activity);

the employee is taken not to be on paid annual leave for the period of that other leave or absence.

### Payment for annual leave

- 28.6** If, in accordance with this Clause, an employee takes a period of paid annual leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

### Cashing Out of Annual Leave

- 28.7.1** Paid annual leave must not be cashed out except in accordance with this clause.
- 28.7.2** An employer and an employee may agree to the employee cashing out a particular amount of the employee's accrued paid annual leave provided that the following requirements are met:-
- 28.7.2(a)** each cashing out of a particular amount of accrued paid annual leave must be by a separate agreement between the employer and the employee which must:-
- 28.7.2(a)(i)** be in writing and retained as an employee record;
  - 28.7.2(a)(ii)** state the amount of accrued leave to be cashed out and the payment to be made to the employee;
  - 28.7.2(a)(iii)** state the date on which the payment is to be made, and
  - 28.7.2(a)(iv)** be signed by the employer and employee and, if the employee is under eighteen (18) years of age, the employees' parent or guardian;
- 28.7.2(b)** the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave at the time that it is cashed out;
- 28.7.2(c)** paid annual leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than four (4) weeks; and
- 28.7.2(d)** employees may not cash out more than two (2) weeks' accrued annual leave in any twelve (12) month period.

Note 1: Under Section 344 of the *Fair Work Act 2009*, an employer must not exert undue influence or undue pressure on an employee to make an agreement to cash out paid annual leave under this clause.

Note 2: Under Section 345 of the *Fair Work Act 2009*, a person must not knowingly or recklessly make a false or misleading representation about an employee's workplace rights under this clause.

### Excessive Annual Leave Accruals

- 28.8** This Clause contains provisions additional to the NES about taking paid annual leave, to deal with excessive paid annual leave accruals.
- 28.8.1** An employee has an excessive leave accrual if:
- 28.8.1(a)** the employee is not a shiftworker and has accrued more than eight (8) weeks' paid annual leave; or
  - 28.8.2(b)** the employee is a shiftworker and has accrued more than ten (10) weeks' paid annual leave.

### **Eliminating excessive leave accruals / Dealing with excessive leave accruals by agreement**

**28.9** Before an employer can direct that leave be taken under Clause 28.9 or an employee can give notice of leave to be granted under Clause 28.10, the employer or employee must request a meeting and must genuinely try to agree upon steps that will be taken to reduce or eliminate the employee's excessive leave accrual.

#### **Employer may direct that leave be taken (This Clause applies if an employee has an excessive leave accrual)**

**28.10** If agreement is not reached under Clause 28.9, the employer may give a written direction to the employee to take a period or periods of paid annual leave. The direction must state that it is a direction given under Clause 28.10.

**28.11** Such a direction must not:

**28.11.1** result in the employee's remaining accrued entitlement to paid annual leave at any time being less than six (6) weeks (taking into account all other paid annual leave that has been agreed, that the employee has been directed to take or that the employee has given notice of Clause 28.12.

**28.11.2** require the employee to take any period of leave of less than one (1) week;

**28.11.2(a)** require the employee to take any period of leave commencing less than eight (8) weeks after the day the direction is given to the employee;

**28.11.2(b)** require the employee to take any period of leave commencing more than twelve (12) months after the day the direction is given to the employee; or

**28.11.2(c)** be inconsistent with any leave arrangement agreed between the employer and employee.

**28.12** An employee to whom a direction has been given under this Clause may make a request to take paid annual leave as if the direction had not been given.

**28.13** The employer is not to take the direction into account in deciding whether to agree to such a request.

Note: The NES state that the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave. If leave is agreed after a direction is issued and the direction would then result in the employee's remaining accrued entitlement to paid annual leave at any time being less than six weeks, the direction will be deemed to have been withdrawn. The employee must take paid annual leave in accordance with a direction complying with this subclause

#### **Employee may require that leave be granted.**

**28.14** This Clause applies if an employee has had an excessive leave accrual for more than six (6) months and the employer has not given a direction under Clause 28.10 that will eliminate the employee's excessive leave accrual.

**28.15** If agreement is not reached under Clause 28.10, the employee may give a written notice to the employer that the employee wishes to take a period or periods of paid annual leave. The notice must state that it is a notice given under Clause 28.14.

**28.16** Such a notice must not:

**28.16.1** result in the employee's remaining accrued entitlement to paid annual leave at any time being less than six (6) weeks (taking into account all other paid annual leave that has been agreed, that the employee has been directed to take or that the employee has given notice of under this subclause);

**28.16.2** provide for the employee to take any period of leave of less than one week;

**28.16.3** provide for the employee to take any period of leave commencing less than eight(8) weeks after the day the notice is given to the employer;

**28.16.4** provide for the employee to take any period of leave commencing more than twelve (12) months after the day the notice is given to the employer; or

**28.16.5** be inconsistent with any leave arrangement agreed between the employer and employee.

The employer must grant the employee paid annual leave in accordance with a notice complying with this clause.

#### **Dispute resolution**

**28.17.** Without limiting the dispute resolution Clause of this award, an employer or an employee may refer the following matters to the Fair Work Commission under the dispute resolution clause:-

**28.17.1** a dispute about whether the employer or employee has requested a meeting and genuinely tried to reach agreement under Clause 28.9;

**28.17.2** a dispute about whether the employer has unreasonably refused to agree to a request by the employee to take paid annual leave; and

**28.17.3** a dispute about whether a direction to take leave complies with Clause 28.14 or whether a notice requiring leave to be granted complies with Clause 28.14.

### **Annual leave in advance**

**28.18** An employer and employee may agree to the employee taking a period of paid annual leave in advance of the employee accruing an entitlement to such leave provided that the agreement meets the following requirements:-

**28.18.1** it is in writing and signed by the employee and employer;

**28.18.2** it states the amount of leave to be taken in advance and the date on which the leave is to commence; and

**28.18.3** it is retained as an employee record.

**28.19** This Clause applies if an employee takes a period of paid annual leave in advance pursuant to an agreement made in accordance with Clause 28.10. If the employee's employment is terminated before they have accrued all of the entitlement to paid annual leave which they have taken then the employer may deduct an amount equal to the difference between the employee's accrued annual leave entitlement and the leave taken in advance, from any monies due to the employee on termination.

- leave; or
- the employer's business is being shut down for a period.

### **Close down**

**28.20** The employer giving any annual leave in conjunction with the Christmas and New Year holidays may either:-

**28.20.1** stand off without pay during the period of leave any employee who has not yet qualified under this Clause for the full period of leave; or

**28.20.2** stand off for the period of leave any employee who has not qualified for the full period of leave under this Clause and pay them to the extent that the employee has qualified for paid leave under this Clause.

**28.21** Where the employer decides to close down their establishment during the Christmas / New Year period for the purpose of giving the whole of the annual leave due to all, or the majority of their employees qualified for such leave, the employer will give at least two (2) months' notice to their employees of their intention so to do.

**28.22** Where the employer decides to close down their establishment during the Christmas / New Year period, the employer shall, in addition to the leave provided in Clause 28.1.1 or 28.1.2, provide to the employees concerned paid leave for those days that are not public holidays in the period between Christmas (25 December) and New Years' Eve (31 December).

### **Annual leave on Termination of Employment**

**28.23** If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee had the employee taken that period of leave.

**29. Personal/Carer's (Sick) Leave**

**Clause 29.1 to 29.6 do not apply to a casual employee**

**Entitlement to paid personal/carers leave****Amount of leave**

**29.1** For each year of service with his or her employer, an employee is entitled to ten (9) days of paid personal/carers leave.

**29.2 Accrual of leave**

**29.2.1** An employee's entitlement to paid personal/carers leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.

**Taking paid personal/carers leave**

**29.3** An employee may take paid personal/carers leave if the leave is taken:

**29.3.1** because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or

**29.3.2** to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:

**29.3.3** a personal illness, or personal injury, affecting the member; or

**29.3.4** an unexpected emergency affecting the member.

**Employee taken not to be on paid personal/carers leave on public holiday**

**29.4** If the period during which an employee takes paid personal/carers leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid personal/carers leave on that public holiday.

**Payment for paid personal/carers leave**

**29.5** If, in accordance with this Subdivision, an employee takes a period of paid personal/carers leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

**Employee not taken to be on paid personal/carers leave at certain times**

**29.6** If the period during which an employee takes paid personal/carers leave includes a day or part day that is a public holiday under Clause 38 – Public Holidays the employee is taken not to be on paid personal/carers leave for the period of that other leave or absence.



## Notice and evidence requirements

### Notice

- 29.7** An employee must give his or her employer notice of the taking of leave under this Clause by the employee.
- 29.8** The notice:
- 29.8.1** must be given to the employer as soon as practicable (which may be a time after the leave has started); and
- 29.8.2** must advise the employer of the period, or expected period, of the leave.

### Evidence

- 29.9** An employee who has given his or her employer notice of the taking of leave under this Clause must, if required by the employer, give the employer evidence that would satisfy a reasonable person that:-
- 29.9.1** if it is paid personal/carer's leave—the leave is taken for a reason specified in Clause 29.3; or
- 29.9.2** if it is unpaid carer's leave—the leave is taken for a permissible occasion in circumstances specified in Clause 29.8.1; or
- 29.9.3** if it is compassionate leave—the leave is taken for a permissible occasion in circumstances specified in Clause 30 – Bereavement/Compassionate Leave.

### Compliance

- 29.9.4** An employee is not entitled to take leave under this Clause unless the employee complies with Clauses 29.7, 29.8 and Clause 29.8.

### Entitlement to unpaid carer's leave

- 29.10** An employee is entitled to two (2) days of unpaid carer's leave for each occasion (a ***permissible occasion***) when a member of the employee's immediate family, or a member of the employee's household, requires care or support because of:-
- 29.10.1** a personal illness, or personal injury, affecting the member; or
- 29.10.2** an unexpected emergency affecting the member.

### **Taking unpaid carer's leave**

- 29.11** An employee may take unpaid carer's leave for a particular permissible occasion if the leave is taken to provide care or support as referred to in Clause 29.8.1.
- 29.12** An employee may take unpaid carer's leave for a particular permissible occasion as:
- 29.12.1** a single continuous period of up to two (2) days; or
- 29.12.2** any separate periods to which the employee and his or her employer agree.
- 29.13** An employee cannot take unpaid carer's leave during a particular period if the employee could instead take paid personal/carer's leave.
- 29.14** The notice and evidence requirements of Clauses 29.7, 29.8 and 29.9 must be complied with.

### **30. Bereavement/Compassionate Leave**

#### **Entitlement to compassionate leave**

- 30.1** An employee is entitled to two (2) days of compassionate leave for each occasion (a ***permissible occasion***) when a member of the employee's immediate family, or a member of the employee's household:
- 30.1.1** contracts or develops a personal illness that poses a serious threat to his or her life; or
- 30.1.2** sustains a personal injury that poses a serious threat to his or her life; or
- 30.1.3** dies.

#### **Taking compassionate leave**

- 30.2** An employee may take compassionate leave for a particular permissible occasion if the leave is taken:-
- 30.2.1** to spend time with the member of the employee's immediate family or household who has contracted or developed the personal illness, or sustained the personal injury as referred to in Clauses 30.1.1 and 30.1.2; or
- 30.2.2** after the death of the member of the employee's immediate family or household, as referred to in Clause 31.1.3.

- 30.3** An employee may take compassionate leave for a particular permissible occasion as:-
- 30.3.1** a single continuous two (2) day period; or
- 30.3.2** two (2) separate periods of one (1) day each; or
- 30.3.3** any separate periods to which the employee and the employer agree.
- 30.4** If the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the employee may take the compassionate leave for that occasion at any time while the illness or injury persists.
- 30.5** The notice and evidence requirements of Clause 29.7, 29.8 and 29.9, must be complied with.

**Payment for compassionate leave (other than for casual employees)**

- 30.6** If an employee, other than a casual employee, takes a period of compassionate leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- 30.7** For casual employees, compassionate leave is unpaid leave.

**31. Public Holidays**

**Entitlement to be absent from employment on public holiday**

- 31.1** 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.

**Reasonable requests to work on public holidays**

- 31.2** However, an employer may request an employee to work on a public holiday if the request is reasonable.
- 31.3** If an employer requests an employee to work on a public holiday, the employee may refuse the request if:-
- 31.3.1** the request is not reasonable; or
- 31.3.2** the refusal is reasonable.

- 31.4** 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:-
- 31.4.1** the nature of the employer's workplace or business (including its operational requirements), and the nature of the work performed by the employee;
  - 31.4.2** the employee's personal circumstances, including family responsibilities;
  - 31.4.3** whether the employee could reasonably expect that the employer might request work on the public holiday;
  - 31.4.4** 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;
  - 31.4.5** the type of employment of the employee (for example, whether full-time, part-time, casual or shiftwork);
  - 31.4.6** the amount of notice in advance of the public holiday given by the employer when making the request;
  - 31.4.7** 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;
  - 31.4.8** any other relevant matter.

**Meaning of *public holiday***

**31.5** The following are ***public holidays***:

**31.5.1** each of these days:

**31.5.2** 1 January (New Year's Day);

**31.5.3** 33 January (Australia Day);

**31.5.4** Good Friday;

**31.5.5** Easter Monday;

**31.5.6** 25 April (Anzac Day);

**31.5.7** the Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);

**31.5.8** 25 December (Christmas Day);

**31.5.9** 26 December (Boxing Day);

**31.5.10** any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday.

**Substituted public holidays under State or Territory laws**

**31.6** If, under (or in accordance with a procedure under) a law of a State or Territory, a day or part-day is substituted for a day or part-day that would otherwise be a public holiday, then the substituted day or part-day is the ***public holiday***.

**31.7** By agreement between the employer and the majority of employees in the relevant business or section of the business, an alternative day may be taken as the public holiday instead of any of days prescribed in Clause 31.5.1.

**Payment for absence on public holiday**

**31.8** If, in accordance with this Clause, 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.

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.

**32. Jury Service**

**Notice and evidence requirements**

**Notice**

**32.1** An employee who wants an absence from his or her employment to be covered by this Clause must give his or her employer notice of the absence.

**32.2** The notice:

**32.2.1** must be given to the employer as soon as practicable (which may be a time after the absence has started); and

**32.2.2** must advise the employer of the period, or expected period, of the absence.

**Evidence**

**32.3** An employee who has given his or her employer notice of an absence under Clause 32.1 must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the absence is because the employee has been or will be required to undertake Jury Service.

**Compliance**

**32.4** An employee's absence from his or her employment is not covered by this Clause unless the employee complies with this Clause.

**Payment to employees on jury service**

**32.5** If an employee is absent from his or her employment for a period because of jury service the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

### **33. Community Service Activity (Emergency Management Activity)**

**All leave under this Clause is unpaid.**

**Entitlement to be absent from employment for engaging in eligible community service activity**

**33.1** An employee who engages in an eligible community service activity is entitled to be absent (on leave without pay) from his or her employment for a period if:-

**33.1.1** the period consists of one (1) or more of the following:-

**33.1.2** time when the employee engages in the activity;

**33.1.3** reasonable travelling time associated with the activity;

**33.1.4** reasonable rest time immediately following the activity; and

**33.1.5** unless the activity is jury service—the employee’s absence is reasonable in all the circumstances.

### **34. Parental Leave**

**34.1** The Parental Leave provisions from the National Employment Standards (**NES**) shall apply.

#### **Summary of Entitlement**

**34.2** Under the NES Parental Leave provisions, all parental leave is unpaid. Under the NES Parental Leave provisions; an employee is entitled to take parental leave if the employee:-

- has worked for the employer for at least twelve (12) months before the date of birth, the date of adoption; or when the leave starts (if the leave is taken after another person cares for the child or takes parental leave); and
- has, or will have, responsibility for the care of a child.

There is no obligation to work an additional twelve (12) months, before an employee can take another period of parental leave.

The NES Parental Leave provisions apply when:-

- an employee gives birth;
- an employee’s spouse / partner gives birth;
- an employee adopts a child under sixteen (16) years of age.

Parental leave is for a twelve (12) month period. However, an employee may elect to extend their period of parental leave by an additional twelve (12) months. In combination, the maximum period of parental leave that an employee would be entitled to is twenty four (24) months.

Concurrent leave; where both persons take leave at the same time is allowed. The minimum period of time for concurrent leave is two (2) weeks and the maximum period of time is eight (8) weeks.

An employee may undertake Keeping in Touch Days; that is days where the employee may return and undertake work (the type of examples given are planning days; training, conference). These days would be paid. An employee can undertake a maximum of ten (10) Keeping in Touch Days.

**35. CoInvest (Long Service Leave)**

**35.1** The employer shall contribute to the CoInvest Portable Long Service Leave Scheme.

**35.2** By contributing to the CoInvest Portable Long Service Leave Scheme the employer shall not be obliged to provide long service leave under the *Long Service Leave Act 1992 (Vic)*.

**36. Employer Provided Vehicle**

**36.1** The employer may provide an employee with the use of a motor vehicle during their employment. The make and model of the motor vehicle and your entitlement to the use of a motor vehicle will be at the sole discretion of the employer.

**36.2** The employee may use the motor vehicle in connection with the performance of their duties and for reasonable private use, unless otherwise agreed in writing by the employer. Reasonable private use means travel within a fifty (50) kilometre radius of the employer's premises.

**36.3** An employee must ensure that:-

**36.3.1** only the employee uses the motor vehicle; and

**36.3.2** that no other person uses the motor vehicle without the employer's prior written authorisation.

**36.4** The employer will pay for all:-

**36.4.1** insurance and registration fees;

**36.4.2** running costs; and

**36.4.3** maintenance and repair costs,

but only in respect of the use of the motor vehicle by the employee or such other person authorised by the employer pursuant to Clause 36.2.

**36.5** On termination, you must return the motor vehicle and all keys to the employer.



**36.6** You must maintain and provide to the employer all documents, receipts, papers, log books, books, records, notes, minutes, dockets and diaries in relation to the motor vehicle as required by law or as requested by the employer from time to time.

**36.7** The Employee consents to the installation, use and maintenance of a tracking device inside each company vehicle that determines the geographical location of the vehicle for security purposes and the geographical location of the employee for the employer's company records purposes.

**37. Drivers Licence**

**37.1** It is an inherent requirement of your employment that you hold a current motor vehicle licence to commence and continue your employment with the Employer.

**37.2** In the event you do not hold a current motor vehicle licence or lose your motor vehicle licence during your employment, the employer reserves its rights absolutely to terminate your employment in accordance with Clause 18 – Termination of Employment.

**38. Expenses**

**38.1** The employee will be reimbursed for all monies reasonably expended by the employee on behalf of the employer in accordance with the employee's duties where approval for the expenditure has been obtained from the employer.

**38.1** Road Tolls/Parking; whilst driving on the employer's business, tolls and parking fees are reimbursable, but are not generally recoverable when travelling between home and work and for private travel. Infringements; driving and parking infringements are not reimbursable.

**How to claim**

**38.3** The employee will be required as a pre-condition to reimbursement, to provide the employer with invoices or receipts for such expenses, where appropriate. Payment will then be made directly into the employee's nominated bank account. Where it is an employee's first claim, they will also need to complete an Electronic Funds Transfer, so that Accounts are able to pay them electronically.

**39. Intellectual Property**

**39.1** All and any intellectual property rights will vest in the employer upon creation and the employee will have no claim to or interest of any nature in such intellectual property.

**39.2** Without limiting the generality of Clause 39.1, the employee presently assigns to the employer all existing and future rights in all intellectual property.

**39.3** The employee must immediately disclose any intellectual property to the employer.

- 39.4** The assignment in Clause 39.3 is:-
- 39.4.1** without restriction as to use or territory; in perpetuity; and
- 39.4.2** effective without any further payment to the employee, whether by way of royalty or otherwise, in consideration for the assignment.
- 39.5** During the employment and after the employment ends, the employee must do anything the employer reasonably requires (at the cost of the employer):-
- 39.5.1** to obtain statutory protection (including by patent, design registration or copyright) in respect of the intellectual property for the employer in any country; and
- 39.5.2** to perfect or evidence the employer's ownership of the intellectual property.
- 39.6** The employee must not make, reproduce or substantially reproduce any intellectual property assigned to the employer under this clause without the written permission of the employer other than in the course of the performance of the employee's duties as an employee of the employer.
- 39.7** On demand by the employer or, at the end of the employment, the employee must:-
- 39.7.1** deliver to the employer all intellectual property in the employee's possession, custody or control (including any documents and records (and copies thereof) held electronically in any medium in the employee's possession, custody or control), and then;
- 39.7.2** unless otherwise directed, delete all intellectual property held electronically in any medium in the employee's possession, custody or control.
- 40. Confidential Information**
- 40.1** Other than authorised use during the course of the employee's employment or otherwise as required by law, the employee must not disclose or make known to any person (including any firm or corporation) either during or after the employee's employment has ended, any confidential information that the employee has been provided, accessed or acquired during the course of the employee's employment with the employer.
- 40.2** The employee must not, at any time either during his/her employment or following the cessation of employment, for any reason, disclose, use or divulge or allow to be disclosed, used or divulged any confidential information without the employer's prior written consent.
- 40.3** The employer takes seriously its obligations under the *Privacy Act 1988* (C'th). The employee must not disclose or use any personal information the employee has access to relating to any other employee or any customer of the employer. The employee is required to take all reasonable steps to protect all such personal information in the employee's possession against wrongful disclosure or misuse by any other person.

- 40.4** The employee agrees to immediately notify the employer in the event of any actual or potential unauthorised use or disclosure of the confidential information.
- 40.5** On demand by the employer or, at the end of the employment, the employee must:-
- 40.5.1** deliver to the employer all confidential information in the employee's possession, custody or control (including any documents and records (and copies thereof) held electronically in any medium in the employee's possession, custody or control), and then;
- 40.5.2** unless otherwise directed, delete all confidential information held electronically in any medium in the employee's possession, custody or control.
- 40.6** The employee stands in a position of confidence and trust. The employee must not provide any information about the employer's business or its customers or suppliers to any competitor.
- 40.7** The employee must not make disparaging remarks about the employer to its other employees, to customers or to any other person. The employee must not make disparaging remarks about the employer's business, its products or services to any customers' or any person.
- 40.8** The employee must not use or attempt to use any information, which the employee acquires in the course of his/her employment in any manner which may reasonably be expected to cause injury or loss or be calculated to injure or cause loss to the employer.

**41. Non Competition**

- 41.1** The employee agree that the employee will not, during the course of the employment, directly or indirectly, in any capacity whatsoever, carry on, advise, provide services to or be engaged, concerned or interested in or associated with any business or activity which is competitive with any business carried on by the employer or its subsidiaries.

**42. Restrictive Covenant**

- 42.1** The employee agrees that after the termination of the employment (howsoever occurring), the employee will not for the restricted period either directly or indirectly, on their own account, jointly with any other person or as an employee or otherwise:-
- 42.1.1** solicit, canvass, approach or accept any approach from any person or organisation who was at any time during the twelve (12) months prior to the employee's employment ending, a customer of the employer or a referrer of customers to the employer with whom the employee had contact of a business related type, with a view to establishing a relationship with or obtaining the custom of that person or entity in a capacity which is the same or substantially similar to the relationship that person or entity had with the employer; or
- 42.1.2** solicit, canvass, induce or encourage any person that is an employee of the employer to leave their employment with the employer; or

- 42.1.3** within the geographical area, engage in or directly or indirectly assist any person or entity other than the employer to engage in, a business similar to or in competition with the employer's business.
- 42.2** The employee acknowledges that:-
- 42.2.1** the employee will be in a position which brings the employee into close and personal contact with the customers, employees, and/or consultants of the employer and the employee will have access to commercially sensitive material which relates to the business of the employer including, but not limited to, confidential information and commercially sensitive material of the employer.
- 42.2.2** the employer considers that such material and/or information is a legitimate business interest and it wishes to protect that business interest and disclosure of the material and/or information could considerably harm the employer;
- 42.2.3** the restraint provisions in this clause are reasonable and necessary for the protection of the goodwill of the employer;
- 42.2.4** the parties' intention is that the restraints contained in this clause are to operate to the maximum extent possible.
- 42.3** If any provision of this clause is void, unenforceable or illegal it shall be read down so as to be valid and enforceable. If it cannot be so read down, the provisions (or, where possible, the offending words) shall be severed from this clause without affecting the validity or enforceability of the remaining provisions (or parts of those provisions) of this clause, which shall continue to have full force and effect. If any provision in this clause is held to be void, but would be valid if some portion were deleted, then such portions will apply with such modifications as may be necessary to make them valid or effective.

### **43 Inclement Weather**

#### **What is *inclement weather*?**

- 43.1** **Inclement weather** means the existence of rain or abnormal climatic conditions (whether hail, extreme cold, high wind, severe dust storm, extreme high temperature or the like or any combination of these conditions) where it is not reasonable or it is unsafe for employees to continue working in those conditions.

#### **Procedure**

- 43.2** The employer or its representative, when requested by the employee/s or their representative, must confer within a reasonable time (which does not exceed sixty (60) minutes) for the purpose of determining whether or not the conditions referred to in this clause apply.

**Restrictions on payments**

- 43.3** An employee will not be entitled to payment for inclement weather as provided for in this clause unless the employee remains on-the-job until the provisions set out in this clause have been observed.

**Entitlement to payment**

- 43.4** An employee will be entitled to payment by their employer for ordinary time lost through inclement weather for up to, but not more than thirty two (32) hours in every period of four (4) weeks. The following conditions will apply:
- 43.4.1** the first period will commence on the first Monday on or after the 1 January each year, and subsequent periods will commence at four (4) weekly periods thereafter;
- 43.4.2** the employee will be credited with thirty two (32) hours at the commencement of each four (4) weekly period. Hours will not accumulate or be carried over;
- 43.4.3** if an employee commences employment during a four (4) weekly period they will be credited eight (8) hours for each week, or part of a week, that the employee is employed during the four (4) weekly period;
- 43.4.4** the number of hours credited to an employee will be reduced by the number of hours for which payment is made; and
- 43.4.5** payment under this clause will be weekly.

**Transfers**

- 43.5** Employees may be transferred from one location on a site where it is unreasonable to work due to inclement weather, to work at another location on the same site, or another site, which is not affected by inclement weather.

**Employees required to work in inclement weather**

- 43.6** Except as provided in this clause an employee will not work or be required to work in inclement weather.
- 43.7** Employees required to work in inclement weather will only be obliged to perform such work as is essential to overcome the emergency and to restore an acceptable service and/or to secure or make the site safe as circumstances require. Employees engaged on such work must be paid at the rate of double time.
- 43.8** Where the employer requires an employee to work in inclement weather, the employee will be reimbursed in full the cost of appropriate protective clothing, except where the employer provides such protective clothing.

- 43.9** If the employee's clothing becomes wet as a result of working in wet weather and the employee does not have a change of dry work clothes, the employee will be entitled, at the completion of the work, to cease work for the day without loss of pay.

#### **Cessation and resumption of work**

- 43.10** At the time employees cease work due to inclement weather the employer or their representative on site and the employees' representative will agree and note the time of cessation of work.
- 43.11** After the period of inclement weather has clearly ended the employees will resume work and the time will be similarly agreed and noted.

#### **Safety**

- 43.12** Where an employee is prevented from working at their particular function as a result of unsafe conditions caused by inclement weather, the employee may be transferred to other work in their trade on site, until the unsafe conditions are rectified. Where such alternative work is not available, and until the unsafe conditions are rectified, the employee will remain on site. The employee must be paid for such time without reduction of their inclement weather entitlement.

#### **Additional wet weather procedure**

##### **Remaining on site**

- 43.13** Where, because of wet weather, the employees are prevented from working:
- 43.13.1** for more than an accumulated total of four (4) hours of ordinary time in any one (1) day;
- 43.13.2** after the meal break, as provided in Clause 19.1, for more than an accumulated total of fifty per cent (50%) of the normal afternoon work time;
- 43.13.3** during the final two (2) hours of the normal work day for more than an accumulated total of one (1) hour;

the employer will not be entitled to require the employees to remain on site beyond the expiration of any of the above.

- 43.14** Where, by agreement between the employer and/or their representative and the employees and/or their representative, the employees remain on site beyond the periods specified, any such additional wet time must be paid for but will not be debited against the employees' hours.

**Rain at starting time**

**43.15** Despite the provisions of Clause 28.6 where the employees are in the sheds, because they have been rained off, or at starting time, morning tea, or lunch time, and it is raining, they may be required to go to work in a dry area or to be transferred to another site where:-

**43.15.1** the rain stops;

**43.15.2** a covered walk-way has been provided;

**43.15.3** the sheds are under cover and the employees can get to the dry area without going through the rain; or

**43.15.4** adequate protection is provided. Protection will, where necessary, be provided for the employee's tools.

**43.16** Wet time occurring during overtime will not be taken into account for the purposes of this clause

**44 Alcohol and Drugs**

**44.1** The use of drugs and alcohol in the work environment is strictly prohibited.

**44.2** Employees who report for work or who are at work with any concentration of illicit drugs or alcohol in their blood are deemed to be in breach of their contract of employment and will be personally liable for any damage arising from their actions while so affected.

**44.3** Employees who are taking prescription or non-prescription drugs that may affect their work performance will report that they are taking such drugs to the employer.

**44.4** It is understood that the employer may require employees to undertake non - invasive tests to ascertain whether they have a concentration of illicit drugs or alcohol in their blood.

**44.5** Employees who refuse to undertake such tests may be stood down without pay.

**45. Dispute and Grievance Procedure**

**45.1** If a dispute relates to:

**45.1.1** a matter arising under the Agreement; or

**45.1.2** the NES;

this term sets out procedures to settle the dispute.

**45.2** An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.

- 45.3** In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
- 45.4** If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to FWC.
- 45.5** FWC may deal with the dispute in two (2) stages:
- 45.5.1** FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
- 45.5.2** If FWC is unable to resolve the dispute at the first stage, the FWC may then:
- 45.5.2(a)** arbitrate the dispute
  - 45.5.2(b)** make a determination that is binding on the parties.
- Note: If FWC arbitrates the dispute, it may also use the powers that are available to it under the FW Act. A decision that FWC makes when arbitrating a dispute is a decision for the purpose of Division 3 of Part 5.1 of the FW Act. Therefore, an appeal may be made against the decision. A decision that FWC makes when arbitrating a dispute is a decision for the purpose of Division 3 of Part 5.1 of the FW Act. Therefore, an appeal may be made against the decision.
- 45.6** While the parties are trying to resolve the dispute using the procedures in this term:
- 45.6.1** an employee must continue to perform his or her work as he/she would normally unless he/she has a reasonable concern about an imminent risk to his/her health or safety; and
- 45.6.2** an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:-
- 45.6.2(a)** the work is not safe; or
  - 45.6.2(b)** applicable occupational health and safety legislation would not permit the work to be performed; or
  - 45.6.2(c)** the work is not appropriate for the employee to perform; or
  - 45.6.2(d)** there are other reasonable grounds for the employee to refuse to comply with the direction.
- 45.7** Any outcome determined by the FWC pursuant to this procedure will not be inconsistent with, the FW Act, the *Building and Construction Industry (Improving Productivity) Act 2016*, the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016* and / or the Building Code.
- 45.8** The parties to the dispute agree to be bound by a decision made by FWC in accordance with this term.



**Appendix A    Aggregate Wage Rates**

<b>Classification</b>	<b>Hourly Rate</b>
<b>Plumber</b>	\$35.00
<b>Plumbers Assistant / Trades Assistant</b>	\$30.00
<b>Adult Apprentice</b>	
4 <sup>th</sup> Year	\$23.00
3 <sup>rd</sup> Year	\$22.00
2 <sup>nd</sup> Year	\$21.00
1 <sup>st</sup> Year	\$20.00
<b>Apprentice</b>	
4 <sup>th</sup> Year	\$22.00
3 <sup>rd</sup> Year	\$19.00
2 <sup>nd</sup> Year	\$17.00
1 <sup>st</sup> Year	\$15.00

**Note:-**

The following allowances (payable under the PFS Award):-

- Industry Allowance; and the
- Plumbing Trade Allowance (where applicable); and the
- Registration Allowance (where applicable); and the
- Special Fixed Allowance; and the
- Fares and Travelling Allowance; and the
- Lost Time Loading (Payable to Daily Hire Employees only); and the
- Tool Allowance; and the
- Annual Leave Loading (17.5%);

have been incorporated into the Aggregate Hourly Rates prescribed herein for all employees covered by the Agreement.

**Appendix B    Signatures to the Agreement**

Signed for an on behalf of Regional Plumbing Vic Pty Ltd (ABN 87 163 552 921, Head Office:- Factory 3, 1 Mirra Court, Bundoora, Victoria, 3083)

**John McDonald**  
Director  
Factory 3, 1 Mirra Court  
Bundoora, Vic, 3083

**Witness**  
**Name** .....  
**Address** Factory 3, 1 Mirra Court  
Bundoora, Vic, 3083

**Date** .....2016

**Date** .....2016

**Neil Potter**  
Director  
Factory 3, 1 Mirra Court  
Bundoora, Vic, 3083

**Witness**  
**Name** .....  
**Address** Factory 3, 1 Mirra Court  
Bundoora, Vic, 3083

**Date** .....2016

**Date** .....2016

**Steve Villanti**  
Director  
Factory 3, 1 Mirra Court  
Bundoora, Vic, 3083

**Witness**  
**Name** .....  
**Address** Factory 3, 1 Mirra Court  
Bundoora, Vic, 3083

**Date** .....2016

**Date** .....2016

Signed for and on behalf of the employees covered by the Agreement

**Employee representative**

**Witness**

**Name** .....

**Name** .....

**Address** Factory 3, 1 Mirra Court  
Bundoora, Vic, 3083

**Address** Factory 3, 1 Mirra Court  
Bundoora, Vic, 3083

**Date** .....2016

**Date** .....2016



5 September 2018

Katrina Harper - Greenwell  
Commissioner  
Fair Work Commission  
PO Box 1994  
MELBOURNE VIC 3000

Dear Commissioner

Re **AG2018/2150 - s 210 application for variation of the *Regional Plumbing Vic Pty Ltd Enterprise Agreement 2016***

I refer to the email from the Fair Work Commission (**Commission**) dated 4 September 2018. In that email, the Commission advised that it had concerns with various aspects of the above application. Regional Plumbing Vic Pty Ltd (**Regional Plumbing**) undertakes (in accordance with Section 212 of the *Fair Work Act 2009*):-

- 1 that where a person was employed by Regional Plumbing immediately prior to becoming an adult apprentice with Regional Plumbing, such employee will not suffer a reduction in the rate of pay by virtue of entering into a training agreement. For the purpose only of fixing a rate of pay, the adult apprentice will continue to receive the rate of pay that is, from time to time, applicable to the classification or class of work in which the adult apprentice was engaged immediately prior to entering into the training agreement; and
- 2 that the fares allowance and travel allowance payable under the *Plumbing and Fire Sprinklers Award 2010* will be paid to apprentices in accordance with the terms and conditions expressed therein; and
- 3 that Clause 42 – Restraint of Trade shall not be enforced by Regional Plumbing.

I trust that this undertaking overcomes the concerns previously expressed by the Commission.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'John McDonald', written over a light blue horizontal line.

**John McDonald**  
Director

A handwritten signature in blue ink, appearing to read 'Neil Potter', written over a light blue horizontal line.

**Neil Potter**  
Director

A handwritten signature in blue ink, appearing to read 'Steve Villanti', written over a light blue horizontal line.

**Steve Villanti**  
Director