DECISION

Fair Work Act 2009
s.185 - Application for approval of a single-enterprise agreement

Visy Paper Pty Ltd T/A Visy Recycling
(AG2012/7430)

VISY RECYCLING SMITHFIELD MRF EMPLOYEES' COLLECTIVE AGREEMENT, 2012

Waste management industry

COMMISSIONER CAMBRIDGE SYDNEY, 10 AUGUST 2012


[1] An application has been made for approval of an enterprise agreement known as the Visy Recycling Smithfield MRF Employees’ Collective Agreement, 2012 (the Agreement). The application was made pursuant to s.185 of the Fair Work Act 2009 (the Act). It has been made by Visy Paper Pty Ltd trading as Visy Recycling (the Employer). The Agreement is a single-enterprise agreement.

[2] The application was lodged at Sydney on 30 July 2012. The application included a Statutory Declaration of Karl Schroder made on behalf of the Employer and dated 27 July 2012, (the Declaration). The Declaration stated that the Agreement was made on 19 July 2012. Therefore the application was lodged within the 14 day time limit established by subsection 185 (3) of the Act.

[3] The application for approval was listed for Hearing in Chambers before Fair Work Australia (FWA) on 10 August 2012. I note that the Agreement contains a flexibility term at clause 30 and a consultation term at clause 29.

[4] Part 2-4 of the Act includes various procedural requirements that must be satisfied before FWA can approve of an enterprise agreement. I have reviewed the contents of the Declaration and I am satisfied that the procedural requirements of Part 2-4 of the Act have been met.

[5] I am satisfied that each of the requirements of ss.186, 187 and 188 of the Act as are relevant to this application for approval have been met.
The Agreement is approved. In accordance with subsection 54 (1) of the Act it will operate from 17 August 2012. The nominal expiry date of the Agreement as specified in clause 3 of the Agreement, is 10 August 2015.
10 July, 2012

VISY Smithfield MRF Employees’
Collective Agreement, 2012
1 Title

This Collective Agreement shall be known as the Visy Recycling Smithfield MRF Employees’ Collective Agreement, 2012.

2 Arrangement

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3 Duration and Operation of Agreement

This Collective Agreement ("Agreement") shall come into operation from the first full pay period commencing on, or after 7 days after its approval by Fair Work Australia ("FWA") and will nominally expire 3 years after the approval date.

It is the intention of the parties to commence discussions on the renewal of this Agreement not later than 01 April, 2015.

4 Parties Covered by the Collective Agreement

This Agreement shall cover:

a. Visy Recycling Smithfield MRF ("the Company") (ABN: 49 984 541 896) of 6 Herbert Place Smithfield NSW, 2164.

b. Employees of Visy Recycling Smithfield MRF at 6 Herbert Place Smithfield, New South Wales.

c. Any employee organisation (if any) that is noted in the approval decision of Fair Work Australia under s.201 (2) of the Act as an employee organisation covered by the Agreement.

5 Comprehensive Collective Agreement

This Collective Agreement regulates the terms and conditions of employment of employees covered by it and will operate to the total exclusion of any other industrial instrument including but not limited to a Modern Award or Transitional Instrument.

6 Classification Structure and Rates of Pay

6.1 Classifications

Employees shall be engaged under this Agreement in the classifications of:

(a) General Hand / Sorter

An employee who has been assessed as competent to perform and undertakes the following work activities:
• Labouring, plant cleaning, manual sorting of materials and other general duties as directed.

• As detailed in the related position description.

(b) Loader / Forklift Operator

An employee who possess a Forklift Drivers' Licence and has been assessed as competent by Visy to operate a Forklift and performs all work activities associated with the following:

• Operation of a forklift

• General Hand / Sorter

• As detailed in the related position description

OR

An employee who has been assessed as competent by Visy to operate a Loader and performs all work activities associated with the following:

• Operation of all materials handling equipment.

• General Hand / Sorter

• As detailed in the related position description.

6.2 Rates of Pay

(a) Wages shall be paid in accordance with Schedule 1 of this Agreement.

(b) Where an employee performs work of a higher grade/classification for an entire shift (or shifts), he or she shall be paid at the rate applicable to that higher grade/classification for those shifts.

7 Casual and Temporary Employment

7.1 Visy Recycling Smithfield MRF remains committed to the employment of a full-time and where necessary, a part-time, permanent workforce to meet its operational needs. Notwithstanding this commitment, the Company reserve its rights to engage, at its sole discretion, casual and/or temporary or fixed term employees as may be required from time to time.
7.2 A casual employee is one engaged and paid as such. A casual employee for working ordinary time will be paid the appropriate rate for their position classification as prescribed in Schedule 1 of this Agreement plus a casual loading of 25%.

7.3 On each occasion a casual employee is required to attend work the employee must be paid for a minimum of four hours work. In order to meet their personal circumstances a casual employee may request and the Company may agree to an engagement for less than the minimum of four hours.

7.4 When engaging a casual the Company must inform the employee that they are employed as a casual, stating by whom the employee is employed, the classification level and rate of pay and the likely number of hours required, without the employee being guaranteed to work those hours.

7.5 Casual conversion to full-time or part-time employment

Subject to a permanent position being available:

(a) A casual employee, other than an irregular casual employee, who has been engaged by the Company for a sequence of periods of employment under this Agreement during a period of six (6) months, has the right to elect to have their contract of employment converted to full-time or part-time employment if the employment is to continue beyond the conversion process.

(b) The Company must give the casual employee notice in writing of the provisions of clause 7.5 within four weeks of the employee having attained such period of six months.

(c) The employee retains their right of election under this clause even if the Company fails to comply with clause 7.5 (b)

(d) Any casual employee who does not elect to convert their contract of employment to full-time or part-time employment within four weeks of receiving written notice is deemed to have elected not to convert.

(e) Any casual employee who has a right to elect under this clause, on receiving notice under clause 7.5 (b) or after the expiry of the time for giving such notice, may give four weeks notice in writing to the Company that they seek to elect to convert their contract of employment to full-time or part-time employment, and within four weeks of receiving such notice the Company must consent to or refuse the election but must not unreasonably so refuse.

(f) Once a casual employee has elected to become and been converted to a full-time or part-time employee, the employee may only revert to casual employment by written agreement with the employer.
(g) An employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert their contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert their contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed on between the Company and employee.

(h) Following such agreement being reached, the employee converts to full-time or part-time employment.

7.6 Temporary Employees

(a) Employees may be engaged on a temporary or fixed term basis for a period not to exceed 12 months.

(b) Should a temporary or fixed term employee be offered permanent employment during, or immediately after the expiration of their period of temporary or fixed term employment, their service as a temporary or fixed term employee shall be regarded as continuous for the purpose of accrued entitlements.

8 Hours of Work – Day Work

8.1 Subject to Clauses 8.1 (a), 8.2 (b) 8.2 (c) and 8.2 (d) of this Clause, ordinary working hours shall be thirty eight (38) hours per week.

(a) Day work means any ordinary hours shift commencing in the period from 4:00am to 2:00pm on any Monday to Friday.

(b) An employees may be required to work ordinary hours on a Saturday and shall be paid at single time and one half for their grade/classification for the ordinary hours worked on that day; and/or

(c) An employee may agree to work ordinary hours on a Sunday and shall be paid at double time for their grade/classification for the ordinary hours worked on that day.

(d) An employee who agrees to work ordinary hours on a Saturday and/or a Sunday shall, unless they are worked as overtime, have two consecutive days off.

8.2 Subject to Clause 8.3 and Clause 9 of this Agreement, employees shall work 7.6 ordinary hours between 4:00am and 2:00pm, Monday to Friday inclusive; provided that the spread of ordinary hours may be altered by mutual agreement between the Company and the majority of those employees affected.
(a) The Company may, within the spread of ordinary hours set out at Clause 8.2, fix the starting and finishing times, but shall not alter these unless the affected employee(s) is given seven days' prior notice of such alteration.

(b) In the event of machine breakdown, the Company may, upon giving the affected employee(s) 12 hours’ notice, alter the commencing times of sufficient employees to enable the regular service to be maintained.

8.3 All employees, other than continuous shift workers, shall be allowed an unpaid meal break of 25 minutes at a time mutually agreed during each day or shift in the situation of continuous running.

8.4 An employee shall not be required to work more than five hours without a meal break. Continuous running during meal breaks may be undertaken at the Company’s discretion.

8.5 A paid 10 minute rest break shall be taken at a time mutually agreed.

9 Hours of Work – Shift Work

9.1 Shifts shall be worked as follows:

   (a) Afternoon shift means any ordinary hours shift commencing in the period from 2:00pm to midnight inclusive on any Monday to Sunday.

   (b) Night shift means any ordinary hours shift commencing in the period from midnight to 4:00am inclusive on any Monday to Sunday.

9.2 Work performed by an employee on a shift commencing on a Friday may continue into the Saturday for the remaining ordinary hours of work, which commenced on the Friday, without payment of penalty rates. This provision will also apply to shifts that commence on the day before a Public Holiday.

9.3 All shifts include a 10 minute paid rest break and a 25 minute unpaid meal break which shall be taken at a time mutually agreed.

9.4 Change from Shift Work to Day Work

Visy Recycling Smithfield MRF may change the roster of a shift worker from shift work to day work. In the first instance, Visy Recycling Smithfield MRF will seek to reach mutual agreement with the employee as to the date of the change. Failing agreement being reached between Visy Recycling Smithfield MRF and the employee, Visy Recycling Smithfield MRF may change the roster by giving the employee:

   (a) seven days’ notice of the change; or
(b) less than seven days' notice of the change provided that they are paid overtime rates for any such day in respect of which they were not given at least seven days' hours notice.

9.5 Change from Day Work to Shift Work

Visy Recycling Smithfield MRF may change the roster of a day worker from day work to shift work. In the first instance, Visy Recycling Smithfield MRF will seek to reach mutual agreement with the employee as to the date of the change. Failing agreement being reached between Visy Recycling Smithfield MRF and the employee, Visy Recycling Smithfield MRF may change the roster by giving the employee:

(a) seven days' notice of the change; or

(b) less than seven days' notice of the change provided that they are paid overtime rates for any such day in respect of which they were not given at least seven days' hours notice.

9.6 The provisions of Clause 9.4 and Clause 9.5 do not apply where:

(a) employees are asked to change shift solely for the purpose of providing training to them, or by them, and/or

(b) employees are required to provide short term (seven days, or less) emergency coverage for unexpected employee absences,

in which case, 48 hours notice of change of shift will apply.

9.7 Shift Allowances

Shift workers, whilst on afternoon or night shift, shall be paid an allowance as set out in Schedule 2.

9.8 Notwithstanding anything contained in this Clause, employees who work afternoon or night shift on a Saturday or Sunday will not be entitled to any shift loading, but will be paid at the rates for Saturday and Sunday work as set out at Clause 8.1 (b) or 8.1 (c) above.

10 Overtime

10.1 Employees may be required to work reasonable additional hours beyond their ordinary operating hours of work. An employee may refuse to work additional hours if they are unreasonable. In determining whether additional hours are reasonable or unreasonable, factors outlined in section 62(3) of the Fair Work Act, 2009 will be taken into account.
10.2 Any additional hours worked by an employee must be authorised in advance by the employee’s Manager.

10.3 For all work performed by an employee outside of and/or in excess of an employee's ordinary hours as set out in Clause 8 and Clause 9, an employee shall be paid at the rate of time and one half for the first two hours and double time thereafter, such double time to continue until the completion of the overtime worked.

10.4 A shift worker required to work overtime on a Saturday and shifts preceding a Public Holiday immediately after the finishing time of their ordinary hours which commenced on a Friday shall be paid overtime in accordance with the overtime rate applicable to ordinary hours between Monday and Friday.

10.5 If an employee works more than 2 hours of overtime at the completion of their ordinary hours and has not been notified of this prior to the end of his/her previous shift, a meal allowance will be paid in accordance with Schedule 2.

10.6 Employees working 12 hours or more overtime on a Saturday, or a Sunday will be paid additional meal money at the rate set out in Schedule 2.

10.7 10 Hour Rest Period

Employees, wherever reasonably practicable, shall have a 10 hour break without loss of ordinary pay before commencing their next shift unless the Company and the employee agree otherwise. In which case the employee shall be paid double time until released from duty for such period and then shall be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

10.8 For the purposes of calculating overtime, each day of work shall stand alone.

11 Work on a Sunday

All work performed on a Sunday shall be paid at the rate of double time for all time worked.

12 Working as Directed

12.1 Using Skills As Directed

(a) To avoid any doubt, Visy Recycling Smithfield MRF may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training and provided that such duties are not designed to promote deskilling.

(b) To avoid any doubt, Visy Recycling Smithfield MRF may direct an employee to carry out such duties and use such tools and equipment as may be required, provided that the employee has been properly trained in the use of such tools and equipment.
(c) Any direction issued by Visy Recycling Smithfield MRF shall be:

i. consistent with Visy Recycling Smithfield MRF's responsibilities to provide a safe and healthy working environment; and

ii. carried out in a safe manner and in accordance with Visy Recycling Smithfield MRF's safety systems.

13 Recall/Call Out

13.1 Where an employee is recalled to work after having left the site, he/she shall be paid a minimum of four hours at overtime rates for such work; provided that any subsequent call back occurring within the four hours period shall not attract any additional payment.

13.2 Except in cases of unforeseen circumstances arising, the employee shall not be required to work the full four hours if the job they were recalled to perform is completed within a shorter period.

13.3 This clause shall not apply:

(a) Where the employee is notified that such overtime is to be continuous (subject to a reasonable meal break) with the completion or commencement of their ordinary working time; or

(b) Pre-arranged overtime where the employee has been notified at least the day before; or

(c) Where it is customary for an employee to return to work to perform specific jobs outside of the employee's ordinary working hours.

14 Superannuation

14.1 Obligation

The subject of superannuation contributions is dealt with extensively by legislation including the Superannuation Guarantee (Administration) Act 1992 and others. The legislation as varied from time to time, governs the superannuation rights and obligations of the parties.

14.2 Choice of Superannuation Fund

In accordance with the Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004, employees can exercise a choice of superannuation fund where they are
eligible to do so and provided the chosen fund is a complying fund in accordance with the Act. It is not compulsory to make a choice. If an employee does not make a choice then superannuation contributions will be made to the Company’s default fund, currently ING Corporate Super Master Trust (known as OnePath Corporate Super).

14.3 Superannuation Sacrifice

(a) A permanent employee may elect to forgo part of their weekly ordinary time rate of pay in return for increased Employer funded superannuation. An election form must be completed and provided to the Employer’s payroll department for this to occur.

(b) Having made a wages sacrifice election in accordance with this clause an employee shall have their weekly ordinary time rate of pay reduced by the relevant elected amount except when:

(i) overtime is worked in which case the relevant pre election weekly ordinary time rate of pay shall apply for the purposes of calculating the payment for overtime;

(ii) calculating all purpose work related allowances in which case the relevant pre election weekly ordinary time rate of pay shall apply for the purposes of calculating the said allowances;

(iii) calculating annual leave loading, in which case the relevant pre election weekly ordinary time rate of pay shall apply for the purposes of calculating the said allowances;

(iv) calculating payments upon termination of employment (pay in lieu of notice, accrued annual and long service leave entitlements and redundancy pay) in which case the relevant pre election weekly ordinary time rate of pay shall apply for the purposes of calculating the payment those payment upon termination; or

(v) calculating an employee’s minimum statutory Superannuation Guarantee contribution, in which case the relevant pre election weekly ordinary time rate of pay shall apply for the purposes of calculating the said contribution.

(c) If an employee has made an election in accordance with this clause the employer shall provide the employee with employer funded superannuation contributions in the amount elected in addition to any statutory contributions.

(d) Having made an election in accordance with this clause an employee may cease or vary their election by completing a further election form to have prospective effect once per 12 month period.

(e) Despite anything else in this clause, if an employee makes an election in accordance with this clause:

(i) should any laws governing taxation or superannuation change at any time so as to impose any additional cost or tax upon the Employer than those applicable at the
commencement of the operation of this clause then the Employer may cease the wages sacrifice contributions;

(ii) if the employee enters a period of leave without pay the employee's wages sacrifice election shall be suspended for the period of such leave;

(iii) during any period when the employee is injured or incapacitated and in receipt of workers' compensation payments, the Employer will continue to provide the employee with Employer funded superannuation contributions in the amount elected while the employee is still employed by the Employer, up to a maximum of 26 weeks within any continuous period of 52 weeks from the date of the employee's injury or incapacitation.

The employee must not make a sacrifice election of a percentage that when added to the minimum Superannuation Guarantee Contribution exceeds the age-based contribution limit provided for by sections 82AAC to 82AAF of the Income Tax Assessment Act 1946 (Cth).

15 Payment of Wages

Employees shall be paid their wages on a weekly basis into a financial institution account nominated by the employee.

16 Training

16.1 Commitment

The parties to this Agreement recognise that in order to increase the efficiency, productivity and competitiveness of Visy Recycling MRF Smithfield, commitment to training and skill development needs to be maintained. Accordingly, the parties commit themselves to:

(a) developing a more highly skilled and flexible workforce; and

(b) providing employees with career opportunities through appropriate training.

16.2 Training Programme

Visy Recycling Smithfield MRF shall develop a training programme consistent with:

(a) the current and future needs of the site;

(b) the size, structure and nature of the operations of the site; and

(c) the need to develop vocational skills relevant to the site and the industry through courses conducted by accredited educational institutions and providers through on-site training.
16.3 Costs

(a) Any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available from Visy Recycling Smithfield MRF) incurred in connection with the undertaking of training shall be paid by Visy Recycling Smithfield MRF upon the commencement of that course.

(b) In the event that a course is not successfully completed due to non-attendance or poor application by an employee (as indicated by the course trainer), that employee’s next approved course expenses shall be reimbursed on successful completion of that course.

16.4 Travel

(a) All time spent travelling to and back from a training programme in an employee’s ordinary hours of work shall be without loss of pay.

(b) All time spent travelling, outside of an employee’s ordinary hours of work, to a training programme (in excess of 30 minutes) and back from a training programme (in excess of 30 minutes) shall be paid at ordinary time rates of pay.

16.5 Third Party Certifications

The parties agree to develop by [Insert date] a training protocol to clarify requirements for training that requires a third party certification to confer employee competence.

16.6 Employee Representative Training

(a) An Employee representative, formally advised as such to the Company, with not less than six months service with the employer shall, upon application in writing, be granted leave with pay to attend bona fide training that is specifically directed towards effective resolution of disputes under this Agreement and/or industrial issues that arise at the workplace.

(b) The total, cumulative paid leave days to be granted to all Employee Representatives will be 12 in any calendar year. Unless otherwise agreed with the Company, no one Employee Representative will be granted more than four days’ training leave under this sub-clause.

(c) For the purpose of this sub-clause, unless otherwise agreed between the Employee Representative and the Company, bona fide training means training conducted by, or on behalf of a registered training organisation, whose scope of registration includes industrial relations training.
(d) Unless otherwise agreed with the Company, the Employee Representative must provide four weeks’ notice of their intention to attend such training and include the details of the type, content, curriculum and duration of the training.

(e) All costs (such as travel, meals, accommodation, course fees etc.) associated with or incurred by the Employee Representative in attending training as provided in this sub-clause shall be the responsibility of the Employee Representative or his/her union.

17 Allowances

See Schedule 2. Monetary Allowances shall be increased in accordance with the percentage increases to wages during the life of this Agreement.

18 Annual Leave

18.1 Employees shall be entitled to four (4) weeks annual leave per annum in accordance with the National Employment Standards ("NES") as outlined in the Fair Work Act 2009.

18.2 Employees may be required to take their annual leave in particular circumstances on the giving of four (4) weeks’ notice by the Company. Those circumstances include, but shall not be limited to the employee having total annual leave balance in excess of 4 weeks.

18.3 Cashing Out of Annual Leave

Employees may cash out annual leave, subject to the following:

(a) The employee’s remaining accrued entitlement to paid annual leave must not be less than 4 weeks; and

(b) Each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the Company and the employee; and

(c) The employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

18.4 Annual Leave Loading

Whilst on annual leave, employees will be entitled to an annual leave loading of 17.5%, or their customary shift loading if such loading is greater than 17.5%. Annual leave loading is payable on leave accruals upon termination.

19 Personal/Carers Leave
Employees shall be entitled to personal/carers' leave in accordance with the NES.

20 Compassionate Leave

Employees shall be entitled to compassionate leave in accordance with the NES.

21 Parental Leave

Employees shall be entitled to parental leave in accordance with the NES.

22 Long Service Leave

Employees shall be entitled to long service leave in accordance with the Long Service Leave Act 1955 (NSW).

23 Public Holidays

23.1 Employees shall be entitled to public holidays in accordance with the NES, except as outlined at Clauses 23.2, 23.3, 23.4, 23.5 and 23.6 below:

23.2 Easter Saturday and Easter Sunday will be recognised as a Public Holiday in addition to those days listed in accordance with the NES.

23.3 Employees may be expected to work the majority of public holidays each year, as directed by the Company.

23.4 Employees who work on a nominated Public Holiday will be paid at the rate of double time and one half for all hours worked.

23.5 Employees who work on Christmas Day and Good Friday will be paid a minimum of four hours at the rate of double time for all hours worked in addition to receiving their normal days' pay. Alternatively, the Company may agree to provide a paid day off in lieu at a mutually agreeable time and payment for hours worked at double time. Where an employee is not required to work on the day, he/she will not have any deduction from the normal ordinary weekly pay.

24 Interruption of Work

24.1 The Company may deduct payment for any time an employee cannot usefully be employed because of any strike, or industrial action or through any breakdown of machinery or any stoppage of work for any cause for which the Company cannot be held responsible.

24.2 In the event of work being temporarily stopped by a breakdown of machinery or by any cause for which the employer cannot be held responsible, all reasonable efforts will be made by the
Company to provide alternative duties during the period of stoppage before any wages are deducted.

24.3 In the event of any stoppage as described in Clauses 25.1 and 25.2 and the Company not being able to provide alternative duties within a reasonable period of time, the employee may inform the employer of their intention to terminate their employment. Whereupon the employment shall be terminated without the employee being required to give the appropriate notice, he/she shall be paid such money as is due to him/her under this Agreement.

25 Termination of Employment

25.1 Either party will be entitled to terminate the employment of the employee by giving or making payment in lieu of, the following period of notice:

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<th>Employment Service</th>
<th>Period of Notice</th>
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<td>Less than one year</td>
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<td>More than 1 year but less than 3 years</td>
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<td>More than 3 years but less than 5 years</td>
<td>3 weeks</td>
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<tr>
<td>More than 5 years</td>
<td>4 weeks</td>
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25.2 The period of notice given by the Company will be increased by one (1) week if the employee is 45 years of age or older with not less than two years continuous service up to the date of termination of employment.

25.3 Nothing in this section precludes the Company from terminating the employment of the employee without notice for serious misconduct.

25.4 If the employee fails to give the required notice, or gives notice or is given notice but leaves before the end of the notice period, the Employee shall forfeit the amount that would equal pay in lieu of notice, from any wages owed to the employee by the Company under this Agreement. The Company reserves the right to pay an Employee in lieu of notice if the Company does not require the employee to work out the notice period.

26 Redundancy Pay

Employees whose job is being made redundant and whose employment is terminated will receive a redundancy payment in accordance with Clauses 26.1 and 26.2 below:

26.1 Notice Period: will be in accordance with Clause 25.1 and 25.2 above.
(a) an employee who is under formal notice of the termination of his/her employment for reason of redundancy will be allowed up to 7.6 hours per week time off without loss of pay for the purpose of seeking other employment and attending job interviews.

(b) the Company shall be entitled to have any such time off for attending interviews verified by the potential employer.

26.2 Severance Payment: will be three weeks’ pay for each completed year of service, pro rated to completed months to a maximum of 52 weeks’ pay. Notwithstanding this, any employee with at least 12 months’ continuous service will receive not less than four weeks’ severance pay.

26.3 Statutory entitlements to Annual Leave and Long Service Leave.

26.4 Superannuation entitlements.

26.5 The Company shall not be obliged to make a severance payment if the Company obtains suitable alternative employment for the employee and the employee unreasonably rejects the offer of employment.

27 Uniforms/Personal Protective Equipment

27.1 At the commencement of an employee’s employment, the Company shall provide them with such clothing as applies at the site which shall be replaced on an as needs item for item exchange basis.

27.2 Employees will be responsible for ensuring that clothing and PPE provided to them is maintained in good order.

27.3 Visy Recycling Smithfield MRF shall:

(a) provide all employees with personal protective equipment required to perform their work; and

(b) replace such articles, when, in the reasonable opinion of the Company, they are no longer in a serviceable condition and an employee shall return the corresponding article.

28 Dispute Settlement Procedure

28.1 If a dispute relates to:

(a) a matter arising under the Agreement; or
(b) the National Employment Standards;

this Clause sets out procedures to settle the dispute.

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

28.3 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.

28.4 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Australia.

28.5 Fair Work Australia may deal with the dispute in 2 stages:

(a) Fair Work Australia will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and

(b) if Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then:

i. arbitrate the dispute; and

ii. make a determination that is binding on the parties.

Note: If Fair Work Australia arbitrates the dispute, it may also use the powers that are available to it under the Act.

A decision that Fair Work Australia makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

28.6 While the parties are trying to resolve the dispute using the procedures in this term:

(a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and

(b) 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:

i. the work is not safe; or
ii. applicable occupational health and safety legislation would not permit the work to be performed; or

iii. the work is not appropriate for the employee to perform; or

iv. there are other reasonable grounds for the employee to refuse to comply with the direction.

28.7 The parties to the dispute agree to be bound by a decision made by Fair Work Australia in accordance with this term.

29 Consultation

29.1 This Clause applies if:

(a) the employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and

(b) the change is likely to have a significant effect on employees of the enterprise.

29.2 The employer must notify the relevant employees of the decision to introduce the major change.

29.3 The relevant employees may appoint a representative for the purposes of the procedures in this Clause.

29.4 If:

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

(b) the employee or employees advise the employer of the identity of the representative;

c. the employer must recognise the representative.

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

(a) discuss with the relevant employees:

i. the introduction of the change; and

ii. the effect the change is likely to have on the employees; and

iii. measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and

(b) for the purposes of the discussion — provide, in writing, to the relevant employees and their nominated representatives:
29.6 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

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

29.8 If a term in the Collective Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in sub clauses (2), (3) and (5) are taken not to apply.

29.9 In this term, a major change is likely to have a significant effect on employees if it results in:

(a) the termination of the employment of employees; or
(b) major change to the composition, operation or size of the employer’s workforce or to the skills required of employees; or
(c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
(d) the alteration of hours of work; or
(e) the need to retrain employees; or
(f) the need to relocate employees to another workplace; or
(g) the restructuring of jobs.

29.10 In this term, relevant employees mean the employees who may be affected by the major change.

30 Individual Flexibility Arrangement

30.1 An employer and employee covered by this Collective Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:

(a) the Agreement deals with 1 or more of the following matters:

i. Hours of Work

An employee, due to child care responsibilities, may alter their shift start / finish time of ordinary hours as defined or varied in Clause 8 and Clause 9 of the Agreement, whilst maintaining and not exceeding the ordinary hours which would normally have been worked.

ii. Annual Leave
Annual leave may be taken in more than three blocks, including up to a maximum of five single days.

iii. Long Service Leave

An employee shall be able to arrange the taking of their long service leave in more than two blocks.

(b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and

(c) the arrangement is genuinely agreed to by the employer and employee.

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

(a) are about permitted matters under section 172 of the Fair Work Act 2009; and

(b) are not unlawful terms under section 194 of the Fair Work Act 2009; and

(c) result in the employee being better off overall than the employee would be if no arrangement was made.

30.3 The employer must ensure that the individual flexibility arrangement:

(a) is in writing; and

(b) includes the name of the employer and employee; and

(c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and

(d) includes details of:

i. the terms of the Collective Agreement that will be varied by the arrangement; and

ii. how the arrangement will vary the effect of the terms; and

iii. how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and

(e) states the day on which the arrangement commences.

30.4 The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
30.5 The employer or employee may terminate the individual flexibility arrangement:

(a) by giving no more than 28 days written notice to the other party to the arrangement; or

(b) if the employer and employee agree in writing — at any time.

31 Fitness for Work

Employees are required to comply with the Company's policies and/or programmes related to fitness for work and/or alcohol and/or drugs. The Company:

31.1 May, from time to time, require employees to undergo any drug or alcohol screen that, in its discretion, determines is appropriate to assess their capability and/or fitness to perform their work; and

31.2 Shall pay the cost of any such test

32 Disciplinary Procedure

32.1 Counselling Process

Prior to an employee being subject to the formal discipline process as outlined below, the Company should ensure employees are aware of:

- The expectations placed on them.
- The position and behavioural requirements by which they are measured.
- Any targets that have been set in advance.
- How they are working towards these set standards/targets.

If an employee is not performing they should be made aware of the concerns a manager has in respect of their performance. Managers should ensure sufficient time has been provided to assist employees in improving.

If, after this counselling phase, an employee fails to improve then the formal discipline procedure should be followed. The employee should be made aware of further disciplinary action consistent with this Clause.

32.2 Discipline Procedure

32.2.1 First Warning
The employee concerned should be invited to attend a meeting to discuss the issues of concern to the Company, to restate the position and behavioural requirements of them and to explore any problems the employee is having in meeting these.

The employee should be given the opportunity to respond and they should be given the opportunity to have a support person present.

Further investigation may be required in which case the meeting should be deferred until this information can be sought.

At the conclusion of the meeting, agreement should be reached between the employee and the manager on actions required to ensure the unacceptable performance or behaviour does not continue.

Depending on the outcomes of the investigation and the seriousness of the circumstances a first warning may be warranted.

The meeting must be followed up with a letter to the employee clearly stating:

- Confirming a first warning was issued.
- The nature of the problem and the standards expected.
- Follow up actions that were agreed upon.
- That the employee's progress will be monitored over a specific period of time.
- If standards are not met, then further discipline action may result.

A copy of the letter should be kept on the employee's file.

32.2.2 Second Warning

If an employee's unacceptable performance or behaviour continues the Company will repeat the process as outlined at Clause 32.2.1. This will result in a second formal written warning being issued.

32.2.3 Third and Final Warning

If an employee's unacceptable performance or behaviour continues the Company will repeat the process as outlined at Clause 32.2.1. This will result in a third and final written warning being issued.

A third and final written warning must clearly state that if the standards are not met within a specified period, the employee will be subject to disciplinary action, which may include termination of their employment.

Once again every effort should be made to assist the employee to improve, and a copy of the letter should be placed on their personnel file.

32.3 Dismissal
In the event that an employee's performance or behaviour does not improve following a final written warning, the process for dismissal should follow. The process will be:

- The employee is notified of an impending formal inquiry interview.
- The employee is given an opportunity to respond.
- The employee is encouraged to have a support person present.
- If necessary, a formal investigation is carried out in fair and equitable manner.
- Due consideration is given to all matters raised before making a decision.

If at the end of this process the Company decides the employee's employment should be terminated the employee must be notified of this intention and given one final chance to respond. If the Company is not satisfied with the response, the employee will be terminated.

The employee must be notified in writing and be given the appropriate period of notice.

The employee can be required to work out the period of notice, but in most cases, it may be preferable to provide a payment in lieu of notice.

32.4 Summary Dismissal

Summary dismissal occurs where the employee is dismissed without notice being either given or paid in lieu and for situations of serious misconduct. It is rare to issue such a dismissal and the misconduct must be of such a nature that it would be unreasonable to require the Company to continue the employment during the notice period.

There are certain performance issues that cannot be tolerated. Whilst in every instance the Company will examine all the issues, an employee may be summarily dismissed if they are:

- Intoxicated at the workplace (alcohol or drugs).
- Physically fighting at the workplace.
- Serious harassment.
- Using threatening behaviour.
- Carrying out unsafe work practices.
- Negligently or deliberately damaging Company property or the environment.
- Displaying wilful or deliberate behaviour that is inconsistent with the continuation of the contract of employment.

An employee can be summarily dismissed without any prior warnings having been given.

32.5 Suspension with Pay

Suspension with pay may be utilised in a situation where there is an allegation of serious misconduct against an employee and the Company does not wish the employee to be on the premises while investigations are made. Suspension on pay should only take place if the matter is so serious that it may warrant dismissal.

32.6 Code of Conduct
All employees are expected to adhere to the following guidelines on behaviour and conduct. Failure to adhere to these will lead to appropriate disciplinary action as outlined above.

The Guidelines acknowledge the responsibility of all employees to act in an appropriate and socially acceptable manner. It is expected that employees will conduct themselves with integrity in an honest, fair and reasonable manner that will reflect well upon the individual and the Company. It is also expected that employees do not enter into any transaction or become engaged in any other situation which might result in a conflict of interest with the Company.

All breaches and incidents involving these guidelines will be investigated thoroughly and impartially.

The following behaviour may be subject to appropriate counselling or disciplinary procedures:

32.6.1 Unsatisfactory work performance. Examples of this include, but are not limited to:

- Unsatisfactory quality or quantity of work.
- Poor attendance behaviours.
- Leaving work early without authorisation.
- Taking unauthorised breaks.
- Failure to advise management appropriately if you are unable to attend work.

32.6.2 Entering or leaving your workplace through incorrect or unauthorised exits.

32.6.3 Unprofessional work conduct.

32.6.4 Not complying with EEO, HSE requirements, rules or regulations.

32.6.5 Soliciting, collecting contributions or publicising information without the written permission of management.

32.6.6 Failing to sign or clock off or on for work, or failing to sign in and out for meal breaks.

32.6.7 The following behavioural standards may be subject to suspension pending investigation and may result in termination of employment:

- Fighting, starting a fight or contributing/inciting a fight.
- Theft or attempted theft.
- Fraud or attempted fraud.
- Abuse, destruction or vandalism of company property, customers' property or another employee's property.
- Smoking in an area where smoking is not permitted.
- Engaging in unsafe behaviour which places oneself or others at risk.
- Verbal and/or physical abuse of a fellow employee, customer, contractor, or visitor.
- Failure to comply with any VISY policy.
- Possession, sale, use, distribution or being under the influence of drugs and/or alcohol.
• Unauthorised selling, possession, distribution, drinking or being under the influence of alcohol.
• Refusing a reasonable directive from management.
• Threatening, bullying, coercing, intimidating, discriminating against, or interfering with fellow employees, management, visitors, contractors.
• Verbally or physically harassing (either sexually or non-sexually) other employees, customers, management, visitors or contractors.
• Unauthorised use of Company time, resources or facilities (including electronic communication facilities) for personal benefit or private purposes.
• Accessing, storing, processing or transmitting any information of a threatening, obscene, pornographic, discriminatory or harassing nature.
• Breaching confidentiality requirements associated with harassment allegations.
• Display or handing over confidential company information and/or documentation either in written or electronic form, without the express written permission of management.
• Failing to observe and strictly comply with all laws relevant to the Country State or Territory of operation.
33 Signatories to the Agreement

Signed for and on behalf of Visy Recycling MRF Smithfield by:

Signature: [Signature]
Name: Karl Schroder
Date: 26 July, 2012
Address: 6 Herbert Place, NSW
Authority to sign: Operations Manager NSW

Signature is witnessed by:

Signature: [Signature]
Name: Lisa Grice
Date: 26.07.12
Address: 6 Herbert Place, Smithfield 2164

Signed for and on behalf of Visy Recycling MRF Smithfield by:

Signature: [Signature]
Name: Tony Lyon
Date: 26 July, 2012
Address: 6 Herbert Place, NSW
Authority to sign: G M Visy Recycling NSW and Qld.

Signature is witnessed by:

Signature: [Signature]
Name: Dave Williams
Date: 26/7/12
Address: 6 Herbert Place, Smithfield 2164

Signed for and on behalf of the Bargaining Representative by:

Signature: [Signature]
Name: Gary Roberts
Date: 26 July, 2012
Address: 6 Herbert Place, NSW
Authority to sign: Bargaining Representative

Signature is witnessed by:

Signature: [Signature]
Name: Lisa Grice
Date: 26.07.12
Address: 6 Herbert Place, Smithfield 2164
### SCHEDULE 1
#### RATES OF PAY (Weekly)

<table>
<thead>
<tr>
<th>Classification</th>
<th>Current $ / Week (Inclusive of Shift Allowances)</th>
<th>01 July 2012 4.0%</th>
<th>01 July 2013 4.0%</th>
<th>01 July 2014 3.2%</th>
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<tbody>
<tr>
<td>General Hand / Sorter – Day and Afternoon Work</td>
<td>$901.82</td>
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<td>General Hand / Sorter – Night Work</td>
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### SCHEDULE 2
#### ALLOWANCES

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<th>Allowance Description</th>
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<th>01 July 2013 4.0%</th>
<th>01 July 2014 3.2%</th>
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</thead>
<tbody>
<tr>
<td>Leading Hand Allowance per Hour</td>
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<td>Meal Allowance per occasion</td>
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<td>Fixed Afternoon Shift Allowance</td>
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<td>Fixed Night Shift Allowance</td>
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<td>First Aid Allowance per day</td>
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