



# DECISION

*Fair Work*

*(Transitional Provisions and Consequential Amendments) Act 2009*  
Sch. 3, Item 16 - Termination of transitional instrument

**Wayne Jackson**  
(AG2021/5438)

## **OH MY PTY LTD T/A HERVEY BAY SECURITY OF 455 BOAT HARBOUR DRIVE HERVEY BAY QLD 4655 COLLECTIVE WORKPLACE AGREEMENT**

Security services

COMMISSIONER HUNT

BRISBANE, 15 SEPTEMBER 2021

*Application for termination of the Oh My Pty Ltd T/A Hervey Bay Security of 455 Boat Harbour Drive Hervey Bay QLD 4655 Collective Workplace Agreement – agreement terminated effective 1 July 2022.*

[1] On 1 June 2021, Mr Wayne Jackson, an employee of Oh My Pty Ltd, lodged a Form F28 Application for termination of collective agreement-based transitional instrument with the Fair Work Commission (the Commission) to terminate the *Oh My Pty Ltd T/A Hervey Bay Security of 455 Boat Harbour Drive Hervey Bay QLD 4655 Collective Workplace Agreement* (the Agreement).<sup>1</sup> The Agreement passed its nominal expiry date in 2011.

[2] The application is made pursuant to s.225(b) of the *Fair Work Act 2009* (the Act) and under Schedule 3, Item 16 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (the Transitional Act). The application of these sections is discussed below.

[3] The Agreement covers employees of Oh My Pty Ltd T/A Fraser Coast Security (the Employer). Mr Les Horwood, Director, represented the Employer, while written submissions were made on the Employer's behalf by Mr Chris Delaney, Industrial Relations Advisor from the Australian Security Industry Association Limited (ASIAL).

[4] Mr Jackson was an employee covered by the Agreement when the application was made to the Commission. It follows that Mr Jackson had standing to bring the application.

[5] Termination of the Agreement would result in employees then being covered by one of the following Awards, depending on the work performed by the employee:

- *Security Services Industry 2020* (the Security Award);

- *Electrical, Electronic and Communications Contracting Award 2020* (the Electrical Award);
- *Clerks' Private Sector Award 2020* (the Clerks Award).

### **Legislative provisions**

[6] Item 16 of Schedule 3 of the Transitional Act provides that Subdivision D of Division 7 of Part 2-4 of the *Fair Work Act 2009* (the Act) applies in relation to a collective agreement-based transitional instrument as if a reference to an enterprise agreement included a reference to a collective agreement-based transitional instrument.

[7] Chapter 2, Part 2-4, Division 7, Subdivision D is as follows:

#### **“225 Application for termination of an enterprise agreement after its nominal expiry date**

If an enterprise agreement has passed its nominal expiry date, any of the following may apply to the FWC for the termination of the agreement:

- (a) one or more of the employers covered by the agreement;
- (b) an employee covered by the agreement;
- (c) an employee organisation covered by the agreement.

#### **226 When the FWC must terminate an enterprise agreement**

If an application for the termination of an enterprise agreement is made under section 225, the FWC must terminate the agreement if:

- (a) the FWC is satisfied that it is not contrary to the public interest to do so; and
- (b) the FWC considers that it is appropriate to terminate the agreement taking into account all the circumstances including:
  - (i) the views of the employees, each employer, and each employee organisation (if any), covered by the agreement; and
  - (ii) the circumstances of those employees, employers and organisations including the likely effect that the termination will have on each of them.

#### **227 When termination comes into operation**

If an enterprise agreement is terminated under section 226, the termination operates from the day specified in the decision to terminate the agreement.”

### **Employees covered by the Agreement notified of the application**

[8] On 3 June 2021, I issued directions to the Employer to forward to employees covered by the Agreement an email from my chambers inviting views as to the application and the likely effect of termination of the Agreement. The Employer complied with the directions.

[9] On 11 June 2021, Mr Horwood provided the Employer's views to the application. On 11 June 2021, Ms Michelle Ozanne, Executive Officer, communicated her views to the application, produced below at [29].

[10] Between 10 and 11 June 2021, my chambers received emails from 23 employees covered by the Agreement, providing views as to the application.

[11] On 22 June 2021, Mr Delaney from ASIAL provided written submissions on behalf of the Employer.

### **Hearing**

[12] On 23 June 2021, I convened a telephone hearing. Mr Jackson appeared, as did Mr Horwood and Ms Ozanne. Mr Delaney from ASIAL was unable to appear for the Employer on the day of the hearing due to other commitments. I have had regard to the written submissions and the evidence and submissions given during the hearing.

### **Views of Mr Jackson**

[13] Mr Jackson did not provide any views as to whether it would be contrary to the public interest not to terminate the Agreement. He is employed as a permanent part-time employee. During the hearing he stated that he had only worked a small number of hours within the last fortnight. He generally works day shifts but has worked between 10pm and 2am without payment of penalty rates.

[14] Mr Jackson's views as to the termination are produced below:

"I can't speak on the views of employers or employee organisations, however as an employee my view is that the current collective agreement is extremely outdated (2006), and far below basic [standards], and below award. The current Approx. 15 year old agreement leaves employees [ultimately] earning less than they would under the base award. By terminating this agreement, it will leave employees being paid at least minimum award wage, including getting back penalty rates for nights and weekends, as well as 4 hour minimum shifts (currently 2 hours under this agreement)."

[15] Mr Jackson's views as to the likely effect the termination will have on employees and the Employer is produced below:

"I'm sure that almost all, if not all employees are unaware that form f28 exists and that the collective agreement is 15 years old, or I'm sure it would have been terminated already as I have heard several co-workers complain about not getting penalties etc. Employees work a lot of nights and weekends in the security industry and have been getting under award for night shifts and weekends. I think the effect the collective agreement termination will have, will be guards a lot happier being properly paid to work nights and weekends. For employers, as long as their contracts cover at least minimum award wage there shouldn't be a problem."

## Views of the Employer

[16] The Employer noted that Mr Jackson had only recently joined the Employer on 12 April 2021 as a security guard, suggesting he may not have full knowledge of the business as he is a new employee. The Employer has employees performing traditional manpower security services, and also requires employees to perform technology/electronic-based services.

[17] It was submitted that while Mr Jackson's employment would revert to the Security Award if the Agreement is terminated, other employees will be covered by the Electrical Award and the Clerks Award.

[18] The Employer stated that while some of the guards are required to work nights without the payment of penalty rates, many other employees are employed during the day only, performing administrative roles, technical security, or cash-in-transit functions. The following table was provided relevant to the hours of work performed across the day and week:

	<b>May 2021</b>	<b>Year ending 31 May 2021</b>
<b>Day Shift</b>	51.38%	53.40%
<b>Night Shift (1800 – 0600)</b>	25.50%	26.70%
<b>Saturday (0000 – 2359)</b>	13.11%	10.90%
<b>Sunday (0000 – 2359)</b>	10.01%	9.00%

[19] It was submitted that if the Agreement is terminated, the Employer would not be able to, in the short-term, increase the rates charged to clients. The increased rates payable to employees under the various Awards would not be recovered, it was submitted. Changes to the enterprise would need to be made, including reducing night work to day work, where possible.

[20] It was submitted that an over-award rate of pay is made to some employees where they do day work, noting that employees performing night and weekend work do not attract the penalty rates payable under the three awards (where this work is predominantly security work). Accordingly, employees performing day work will see a reduction in the rate of pay payable under the various Awards, particularly adult technical service trainees and administration staff, and employees working night shift or on weekends would be paid more under the various Awards.

[21] The Agreement contains the following weekly allowances per 38 hours of work for employees performing security guard work:

- Mobile phone \$38
- Torch and batteries \$7
- Laundry \$12

[22] It was submitted that at the time the Agreement was made, employees were expected to supply and operate a MagLite or similar torch running on very expensive D-Cell batteries, and phone plans cost in excess of \$100 per month. In present times, a USB rechargeable torch can be purchased at Bunnings for around the same price as a bulb on a MagLite, rechargeable in a work vehicle. It was submitted that employees can purchase mobile phone

plans for as little as \$10 per month. In May 2021, employees entitled to the above allowances were paid on average \$143.07 each for the month. There are no comparative allowances within the Security Award, and therefore this payment would not be made to employees upon termination of the Agreement.

[23] A weapons allowance paid to relevant employees under the Agreement equates to \$79.80 per fortnight as opposed to the \$30.88 within the Security Industry Award.<sup>2</sup>

[24] The Agreement provides for five weeks' annual leave to permanent employees as opposed to four weeks under the three Awards. It was submitted that the loss of the extra weeks' leave would affect 17 employees. For some clerical employees and technical/electronic employees, they might lose the extra weeks' leave and see a reduction in their hourly rate of pay on account of the over-award payment no longer being paid to them. Security guards working nights and weekends would see penalty rates flow their way.

[25] In the written submission it was put that the Employer works in a unique geographical location with limited commercial opportunities. It was submitted that the closest competitor for the provision of protective security services in the region operates under an agreement approved more than a decade ago. It was noted it has reached its expiry date, but it is still in operation. During the hearing I learned the name of the competitor is Prosek.

[26] It was submitted that if the Agreement is terminated, the Employer will be unable to compete against the competitor, will lose customers, and its employees will lose jobs or have hours of work reduced.

[27] It was proposed that if the Agreement is to be terminated, a lengthy lead-in time be permitted to allow the Employer to renegotiate as many contracts as it can. If the Employer was not required to pay the Award rates until 1 July 2022, it could attempt to in the meantime, renegotiate contracts with its clients, in spite of its competitor having a commercial advantage of paying its employees rates within an agreement approved in 2006.

[28] The Employer noted its largest contract represents over 20% of its business, and it may potentially run until 2024. It would hope to be in a position to renegotiate the costs with that client if the Agreement is terminated and the Employer's wages bill increases.

[29] Ms Ozanne made the following submissions:

“...My role as the Executive Officer sees me ultimately responsible for employing and managing staff as well as tendering for contracts and submitting quotes on behalf of the Company.

Over the past week, I have assisted fellow team mates to check the award for what their possible new pay rate will be. For some, it has been joyous - night rates and weekend rates will benefit a select few in the organisation. Yes, I think it's awesome that they will be rewarded for working through the night whilst others sleep and working on weekends when their team mates are at home with their families. These same staff will most likely get fewer hours as our client base lessens, however they will be paid more for those hours.

For others though (daytime Monday to Friday staff which make up a larger and just as important percentage of us), it still remains an emotional rollercoaster waiting to find out the impact for their families. Some may be affected by as much as losing just over \$5.00 an hour moving to another award. Many have expressed that they will be unable to remain with us on these terms.

Over the past 12 to 18 months my instruction from Les has been to bring our tenders and pricing into line with the SSIA to allow us to move towards paying staff under this instrument. As you can imagine this is a slow process with some tenders spanning over 5 years (including options).

To date we have not really touched on small business pricing, other than a small annual cost of service increase. I don't believe in this current economic climate that many of them will be able to afford to absorb any such increase that would be required to bring our pricing into line in such a short period of time to accommodate a wage increase for night and weekend patrols. This will result in a loss of our client base.

I firmly believe that if we could have 12 months to roll out any change required to move away from the Oh My Pty Ltd Collective Workplace Agreement and move to a multitude of modern day awards, we would be able to lessen the impact on my fellow teammates and their families as well as the business. Even in 12 months, there will still be an impact on the business with contracts that will not have yet come to term.

Change can be good, but change can't happen overnight without catastrophic consequences to my teammates. I have promised to do everything in my power to lessen the impact on them and in turn their families and try to keep them in their current jobs. I do believe we are a team. Our day people are just as important as our night people. They are all valuable team members and play an intricate role in Fraser Coast Security as a whole.

I respectfully ask, that if you deem change necessary at a faster rate than we are implementing, that you allow us as much time as possible to roll it out to lessen the impact on our team.”

[30] In written submissions filed on 22 June 2021, the following was put:

“ASIAL understands that the Respondent is willing for the Agreement to be terminated however has concerns about the immediate effect on the business and the employees who have been engaged for some time.”

### **Views of the employees covered by the Agreement**

[31] Of the 23 views received by employees covered by the Agreement, 20 were opposed to termination of the Agreement, with only three in favour of termination of the Agreement. While I have had regard to all of the views provided, a sample of views expressed by the employees is produced below (with minor editing).

#### *Employee 1*

[32] Employee 1 stated:

“...I left a job that gave me penalty rates for weekends and nights, to work for Fraser Coast Security. I understood when I signed my employment contract that it said I was employed by the Oh My Pty Ltd Collective Workplace Agreement and we had one flat rate except for public holidays.

I didn't like my previous job and would much prefer to work for a flat rate under the conditions I have now.

.....

I mainly work daytime hours through the week and from what I understand my pay rate will go down.

I'm thinking that work will need to put their prices up to be able to pay the night and weekend staff more. This will most likely cause us to lose clients.

Some of us may lose jobs and I know we will lose hours.  
I believe majority of us will be worse off if this happens.”

*Employee 2*

[33] Employee 2 stated:

“.....I am surprised at the application that a colleague has put in since I know that in this area we live in it is hard to maintain a business and be competitive. I am aware that in this area some Security companies will not quote guards for weekends and night shifts because of the cost to them, they are not able to give competitive rates to clients and cover penalty rates outside of the workplace agreement, but at present because of this agreement in place at Fraser Coast Security they can quote and have the quotes accepted and provide work for us.

I would like to stress that we do receive wage increases every year, could we benefit from a wage increase like Mr Jackson is suggesting, in a perfect world where everyone wins Employer and Employee yes. Regardless of what the media and other people try to tell us changes like what Mr Jackson wants to wage reform in our workplace won't happen overnight if we want Companies to continue to exist and employ in rural & urban areas.

Most Clients in our area would not [be] able to carry the rise in cost for the service this industry provides, which in reality means that Security employees would lose their jobs because the companies couldn't carry the loss or hours would be reduced which then affect how they can afford their licenses needed for their work, as well as the company expenses to keep it running. What would happen then, do companies get hauled over the coals because they have to let staff go so someone else can have a fatter pay pack and hours, I apologise if I sound flippant but I believe that would be the reality, they would have no choice but to let staff go.

.....I for one would not like to lose my job, and it would be awful to see my employers forced into changes that could affect so many employees, if this Work

Place agreement is deemed to be outdated I would request that it could be implemented over a period of time so that clients can be advised of cost changes when their contracts are due for renegotiating and hopefully most would understand and accept the changes and jobs would be safe.....”

*Employee 3*

[34] Employee 3 stated:

“.....I believe the current agreement that we work under is fair. To my understanding, a new agreement would put night staff on more money however it would put day staff on less. Day staff work just as hard, if not harder than night staff. Here at Fraser Coast Security we are a big family and are supposed to look after each other. I work 5 night shifts a week and I’m personally happy to be on less \$ an hr to enable the day staff to be on a sufficient rate.

I get \$29.28 per hr to do my job currently..... I left [company] to come to Fraser Coast Security. At [company] I was being paid only \$19.85 per hr for 2 and a half years. That was day, night , weekends, on call ..... I am grateful for my current job , and once again very happy with the (although dated ) current wage agreement as it looks after everyone.”

*Employee 4*

[35] Employee 4 stated:

“.....when a new employee gains a job with us they are issued a contract. They are then booked in for a 2hr induction a few days after or when they are ready. The first part of this induction is to go page by page through the contract and discuss any issues. The first page of each contract is a letter containing information on the pay rates.

.....

I have secured a trainee role as a security installer that only operates on a Monday to Friday daytime basis within this company and I'm very proud of my achievements. This is a permanent part time role and my pay rate is about \$23/hour + shift allowances.

I have worked ..... days, nights, weekends, weekend nights, public holidays, etc. And not once have I had an issue with the pay rate nor had issues with discussing similar monetary issues with the executive officer.

I understand this is a 'Zombie Agreement', however forcing the company to make changes immediately where night and weekend employees earn more is causing me severe stress and anxiety and hastily moving forward on this issue is not the correct way.

The extra money night and weekend workers will get will come from staff like me who work daytime and weekdays. I have 'paid my dues' in this industry to be able to secure a work life balance that suits my young family and I deserve that.

I find it completely unreasonable that with my skill set, my experience, my reputation, my rapport with clients that I will be punished in the form of a lower pay rate so these [redacted] who work nights can get paid more than me for the incredibly simple work they do.

I don't believe they are entitled to it and if they have an issue with the pay conditions (which I reiterate, is on the first page of their contract) they should just leave and find another job - they are casual employees working in a regional area during a pandemic, they should be ecstatic that this company had managed to stay afloat and shifts always kept appearing on their rosters, I know I was!"

*Employee 5*

[36] Employee 5 stated:

".....While I understand that Wayne Jackson is concerned that under the agreement he is not paid penalty rates for evening and weekend shifts I don't believe he has taken into account the overall effect this would have on the company and thus, its employees. If the company has to increase prices for clients who receive night patrols, alarm responses, etc to cover the cost of penalty rates, it is likely we would lose clients thus reducing the amount of shifts available for night and weekend guards.

A large amount of these clients also use our daytime cash collection services and the services of our technicians for alarms and security cameras. If we lose these businesses as night time clients we may also lose them as clients for these daytime services. If this happens with a number of our clients not only will night time shifts be reduced but so will shifts for daytime cash staff, technicians and office staff.

Price increases to cover penalty rates will also hinder the companies potential to secure future contracts and renew current ones. I don't believe there are benefits in receiving penalty rates for evening and weekend shifts if a price increase to clients means hours would be reduced for both evening and daytime staff.

In a small town where small businesses already struggle I see this as a very likely outcome.

For some team members completing traineeships I believe the hourly rate of pay would be dramatically reduced. I am very aware that these are team members who have families to support, rent or mortgages to pay and in today's changed world cannot afford to suffer a drop in pay.

I came into this workplace as a mature aged worker looking for my 'forever' job. I would be devastated if a cut in hours meant this was not it. I accepted employment here knowing that the workplace agreement was in place.

I have been given the opportunity to learn new skills in a challenging and rewarding industry and feel very supported in my role here. My pay is in the bank every payday without fail and I am paid for the hours I work.

It is my opinion that the agreement should stay in place as it benefits the company and its employees as a whole.”

*Employee 6*

[37] Employee 6 stated:

“.....Since I have been working here, I have found Les to be incredibly supportive and fair.

Les has given me an opportunity to upskill myself from a Security Officer to a Technician on a Traineeship and still paid me the same wage as everyone else.

I have a partner and three children. I have researched on the fair work web site and used the online pay calculator to see what my new pay will be if this happens. It turns out it's going to go down to \$18.98 per hour including allowances. I am currently receiving \$22.5478 plus \$1.50 per hour allowance. I will be \$5.07 an hour worse off if this goes through! I can't afford to support my family on this and will have to find another job and hand in my traineeship. Jobs aren't readily available in this area unfortunately, so I will probably need to talk to Centrelink to make ends meet. This is very stressful for me and my family. My partner is a Uni student so we rely on my wage.

I am also worried that my supervisor may not be able to afford to stay under the new award rates. So even if I do somehow manage to stay, there may be no-one qualified to sign me off on my studies.

I ask you to please look at the repercussions of this change for us daytime people as well.”

*Employee 7*

[38] Employee 7 stated:

“....I am employed as a Security Technician and supervisor of 3 trainee Security Technicians. I started my traineeship with Les in July 2014 and have been with him ever since. I have learned a lot of skills including leadership over the last 7 years and am enjoying being able to pay this forward with my 3 trainees.

I am looked after very well and paid above Les's collective agreement award wage.

I am worried about the 3 trainees that I look after. From what I understand their wages will be considerably less than what they are on now. These guys all have young families and are worried themselves. We have lots of daytime / weekday staff that are also in the same boat.

As someone that sees some contracts and pricing for quotes, I know we as a business are not charging rates that would accommodate a change in award rates as has been suggested. I feel that something will have to give to accommodate this and such a change could hurt the business our clients and my team mates.

I disagree with Wayne Jackson's statement that "by terminating this agreement, it will leave employees being paid at least minimum award wage". I believe that by terminating this agreement, it will leave daytime Monday to Friday employees (of which we have a lot) being paid a lot less than they have been and struggling to survive.

I do not support Wayne Jackson's application to have the collective agreement terminated."

[39] Of the employees who communicated they support termination of the Agreement, each of their communications was brief, stating they support termination of the Agreement, but without providing reasons.

### Consideration

*Not contrary to the public interest (s.226(a))*

[40] I will first consider whether I am satisfied that termination of the Agreement is "not contrary to the public interest".

[41] In his decision to approve the termination of the *McDonald's Australia Enterprise Agreement 2013*, Deputy President Colman observed that:<sup>3</sup>

"Section 226(a) does not require the Commission to be satisfied that the termination of an enterprise agreement is *in* the public interest. It sets a lower requirement. The Commission must be satisfied that it is not contrary to the public interest to terminate the agreement." (emphasis is in the original)

[42] The Agreement provides a simple flat rate of pay to be paid for all hours of work, except public holidays when worked. It does not provide for any penalty rates for work outside of a span of ordinary hours or for weekend work, nor overtime.

[43] Where the Employer is currently paying employees greater than the Award rates of pay, the Agreement prescribes only the following rates for all hours of work, including overtime, except for work performed on public holidays:

Classification	Full-time weekly rate	Part-time weekly rate
Level 1	\$494	\$13.00
Level 2	\$551	\$14.50
Level 3	\$589	\$15.50
Level 4	\$627	\$16.50
Level 5	\$665	\$17.50

[44] The rates above were appropriate in 2006. Pursuant to s.206 of the Act, the Employer need to ensure the base rate paid to employees is no less than the Award rate that would otherwise apply. If the Employer is currently paying employees a base rate greater than the Award, it is not obliged to, but is choosing to do so. On the information before the

Commission, it appears that the Employer is paying to some clerical and technical/electronic employees a base rate greater than the relevant Award rate.

[45] Mr Jackson's rate of pay for all hours worked other than public holidays was \$22.55 (plus a \$1.50 torch and phone allowance) as of 23 June 2021, against the Security Award rate of \$22.28. The following penalty rates within the Security Award have not been payable to employees covered by the Agreement who perform security work, noting that the rates below were for the period up until 1 July 2021 but have now increased:

- Night penalty rates of 21.7%, with an hourly rate of pay of \$27.11;
- Saturday penalty rates of 50%, with an hourly rate of pay of \$33.42; and
- Sunday penalty rates of 100%, with an hourly rate of pay of \$44.56.

[46] In recent years, a small number of enterprise agreements covering large employers (such as Coles and McDonalds) have been terminated or been involved in applications to terminate the agreement, where it has been observed that penalty rates under the relevant modern award did not flow to employees working outside the span of ordinary hours, including on weekends as they were not contained within the relevant agreement. Where over-award payments were made to employees covered by those agreements, they were typically made to employees working during the weekday. Employees working nights and weekends received less under their respective agreements than they would under the applicable award.

[47] A similar scenario arises in the matter before me. Termination of the Agreement and in its place provision of the terms of the three Awards cited at [5] to the employees would not be contrary to the public interest. While it is noted that the Employer and ASIAL have submitted that the Employer would face incredible competition from its main competitor in a regional area, an organisation with an agreement approved at around the same period of time, that alone is not a satisfactory reason to find that it is not contrary to the public interest to terminate the Agreement.

[48] The Employer has been benefiting from the application of an agreement made 15 years ago, without application of most of the penalty rates applicable in modern awards. This would appear to me to have been to the detriment of some employees of the Employer, who would otherwise be entitled to increased hourly rates on account of night time and weekend penalty rates.

[49] Maintaining such a competitive advantage over any potential new-comers into the industry is not, in my view, appropriate. Whilst clients of the Employer might enjoy cheaper rates for night and weekend services performed by the Employer, there is no basis for this continuing to the detriment of employees when modern awards do not prescribe lower penalty loadings on account of work performed in regional areas.

[50] Having regard to all the circumstances, I cannot identify any considerations that would support a conclusion that terminating the Agreement would be contrary to the public interest. I am satisfied in the present case that it is not contrary to the public interest to terminate the Agreement. The first limb of s.226 is therefore made out.

*Appropriate (s.226(b))*

[51] I must consider whether it is “*appropriate*” to terminate the Agreement, taking into account all the circumstances, including the views of the employees, each employer and each employee organisation covered by the Agreement, and the circumstances of those employees, employers and organisations, including the likely effect that the termination will have on each of them.

[52] While I note the Employer ultimately consents to termination of the Agreement, as put at [30], the jurisdiction requires the Commission to be *satisfied* it is appropriate to terminate the Agreement taking into consideration the views of the Employer and the employees covered by the Agreement, together with the circumstances and the likely effect the termination will have on each of them.

[53] There are no employee organisations covered by the Agreement.

[54] The views of the employees are overwhelmingly opposed to termination of the Agreement. Understandably, there are many employees who have worked in the business for a long period of time and have known no other method of remuneration from the Employer. Some of the employees are day employees, benefitting from an above-award payment, at the discretion of the Employer. It is open to the Employer to continue to pay over-award payments to employees if it so wishes and if it can afford to do so.

[55] Some employees who work nights and weekends are opposed to termination of the Agreement, noting that the Employer is likely to be priced out of contracts if it increases its charges to clients on account of having to pay penalty rates to employees for night and weekend work. The employees expressed views that they would rather have the work available and be paid less than the Award, than have no work or reduced hours on account of the Employer being uncompetitive.

[56] The views of the Employer have been made clear. The Employer considers it will have to attempt to renegotiate contracts to accommodate the increase in the rate of pay for work outside of the ordinary span of hours in the various Awards, notably the Security Award, together with weekend penalty rates. The Employer would prefer that this application had not been made, however now does not oppose the application if the termination date is 1 July 2022.

[57] I appreciate the Employer will have to increase wage rates to its employees working outside the span of ordinary hours in the Awards, and on weekends. The likely effect on the Employer is a higher annual wages bill. It will, however, be on equal terms to all other employers operating under the Awards, many of whom have been doing so since the Awards came into operation on 1 July 2010.

[58] I have taken into consideration the Employer’s and employees’ submissions relevant to its major competitor in the region. I do not consider it appropriate to provide a legacy to the Employer to permit significant reductions in payments for night and weekend work as opposed to the Award only on the basis that its major competitor also has in place a collective agreement made more than a decade ago. It is possible that competitor may face a similar application in the future, and it should not be, in my view, an exercise of not terminating an agreement for one employer unless a competitor’s agreement is terminated at a relatively similar point in time.

[59] The likely effect on the Employer is that it will need to reconsider its staffing levels on the days and hours of the week where penalty rates are payable. The likely effect on employees will be an increase in the rate of pay received for work performed outside the span of ordinary hours, and on weekends. Employees will be entitled to a minimum four hour shift, instead of a two hour shift under the Agreement.

[60] The Employer's consideration of staffing levels on weekends and periods outside the span of ordinary hours may have an impact on the number of hours offered to employees, by reducing their hours of work. The Employer has suggested that where possible, it would attempt to have out-of-hours work performed during the day. I have taken consideration that this is not always possible, particularly with live security patrols at night and on weekends.

[61] I note that casual employees will receive a 25% casual loading under the various awards as opposed to a 23% casual loading under the Agreement. I have had regard for the fact that a substantial number of employees will receive four weeks' annual leave and not five weeks as provided by the Agreement.

[62] I have taken into consideration the significant weekly allowances paid to employees under the Agreement that will not be paid to employees under the relevant Awards. I note that these increased allowances have gone some way, over the years, to mitigating some of the penalty rates not paid to employees under the Agreement.

[63] Taking into account the views of the persons (including the Employer) referred to in s.226(b) that have been presented to the Commission, and the circumstances of those persons, as well as the effect that termination will have on each of them, I consider that it is appropriate to terminate the Agreement.

### **The operative date of the termination**

[64] Section 227 provides that, if an enterprise agreement is terminated under s.226, the termination 'operates from the day specified in the decision to terminate the agreement.'

[65] I accept it is a significant change for the Employer to accommodate in its business; to pay pursuant to the Awards rather than a flat rate of pay (other than a loading on public holidays). I am satisfied the Employer will need to take some time to adjust its proposed rosters, costings, and attempts to negotiate new rates with its clients. I accept that the administrative effect of termination of the Agreement is not insignificant.

[66] During the hearing I inquired if the Employer was bound by its contracts, and if specific performance was required by the Employer's client to provide the services at the rates currently set. Mr Horwood stated that most of the Employer's contracts would require specific performance, and others, he would attempt to renegotiate to secure a higher price.

[67] I have had regard for the regional area in which the Employer operates, and the views of the many employees who have taken the time to communicate with the Commission their opposition to the application; some noting that if the Agreement is to be terminated, it should not occur immediately, and the Employer should be afforded a suitable period of time to attempt to negotiate contracts with clients.

[68] I have also taken into consideration the potential for employees employed during the day who might be affected by a reduction in the over-award payment currently being paid to them to have a significant lead-in to adjust to their new circumstances. If the over-award payments are not maintained, some employees have expressed distress as to what this will mean for them and their families, being paid pursuant to the relevant Award.

[69] During the hearing, Mr Jackson said he had no issue with the operative date of the termination being 1 July 2022 if the Commission decided it was appropriate.

[70] For these reasons, I am agreeable to the proposition put by the Employer and not opposed by Mr Jackson to declare the operative date of the termination as 1 July 2022.

### **Conclusion**

[71] For the reasons given above, in consideration of s.226(a), I am satisfied that the termination of the Agreement is not contrary to the public interest. There is nothing before me which raises public interest considerations which might militate against the termination of the Agreement.

[72] For the reasons given above, in consideration of the material before me relevant to s.226(b)(i) and (ii), I consider that it is appropriate to terminate the Agreement.

[73] In accordance with s.226, I must terminate the Agreement. The application to terminate the Agreement is approved.

[74] For the reasons given above, the termination will take effect from 1 July 2022.



COMMISSIONER

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<AC301866 PR733986>

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<sup>1</sup> AC301866; <https://www.fwc.gov.au/documents/documents/agreements/wpa/caen06692146.pdf>.

<sup>2</sup> Clause 17.3, *Security Services Industry Award 2020*, rates payable first full pay period on or after 1 July 2021.

<sup>3</sup> [2019] FWCA 8563 at [16].

**Oh My Pty Ltd**

Trading as

**HERVEY BAY SECURITY**

Of

**455 Boat Harbour Drive HERVEY BAY QLD  
4655**

**Within this document the “Employer”**

**Collective Workplace Agreement**

**Friday 28<sup>th</sup> July 2006.**

**Definitions**

'We' means the employer.

'You' means the employee.

'The parties' mean the employer and the employees.

**Expiry date**

This agreement will take effect on the day it is lodged with the Office of the Employment Advocate, and will have a nominal expiry date of five years from the date on which the agreement was lodged.

**Categories of employment**

**Full-time employees** - are defined as those whose ordinary hours of work are 38 hours per week.

**Part-time employees** - are defined as those who are employed on a weekly basis with ordinary hours of work up to 38 hours per week. Part time employees will be entitled to the same entitlements as full-time employees on a pro-rata basis.

**Casual employees** - taking into account other personal, study or family commitments work is offered and accepted by mutual agreement on a casual basis. Casual employees are considered as a supplementary workforce and working without the expectation of continuous work.

Where not specified otherwise terms within this agreement refer to a full-time employee

**Classification**

**Level 1** means an employee who works under direct supervision and who undertakes basic work, and is not required to hold a current Queensland Security License.

**Level 2** means an employee who works under general supervision, undertakes general work and is required to hold a current Queensland Security License.

**Level 3** means employees, other than trainees, who to undertake their normal duties, are required to hold a Queensland Weapons License (Security Guard) and have attained competency in Certificate III in security operations.

The parties to this agreement acknowledge that if we are unable to agree on the person to conduct the alternative dispute resolution process, either party can notify the Industrial Registrar. In this case, the Industrial Registrar will provide the parties with information about options resolving the dispute.

**Levels 4 & 5** by agreement between the employer and the employee; an employee may be paid for a specific task at level 4 or level 5 rates.

**Probation**

New employees will be on probation for the first six months of engagement, for the purpose of determining the employee’s suitability for ongoing employment. During this period, the employee’s work performance will be assessed. At any time during the probationary period, the employer or the employee can terminate the employment by giving one day’s notice.

**Superannuation**

Superannuation contributions will be paid as required under the Superannuation Guarantee (Administration) Act 1992 as varied from time to time to a complying fund.

**Part time employees**

Part-time employees are entitled to the same entitlements as full time employees, on a pro-rata basis.

**Weekly rate (including overtime and penalty rates)**

The employee will be paid the rate of pay for their appropriate classification as outlined in the table below. Employees will be paid fortnightly in arrears.

<b>Classification</b>	<b>Full-time weekly rate</b>	<b>Part-time hourly rate</b>
LEVEL 1	\$494	\$13.00
LEVEL 2	\$551	\$14.50
LEVEL 3	\$589	\$15.50
LEVEL 4	\$627	\$16.50
LEVEL 5	\$665	\$17.50

This rate applies to payment for any reasonable additional hours worked by the employee. The employee(s) and the employer intend that this provision excludes the operation of protected award conditions dealing with penalty rates, overtime and shift allowances.

**Junior employees**

The following percentages will be used in calculating the junior rate of pay. The employee will be paid on a weekly basis.

Age	Rate of Pay (Percentage of Full-time adult rate)
17 years old	60 per cent
18 years old	70 per cent
19 years old	80 per cent
20 years old	90 per cent

By agreement between the employer and employee, junior rates may not apply to employees

**Allowances**

Employees undertaking a security guard function, are entitled to receive the following monetary allowances per 38 hours of duty, for the following expenses incurred in the course of employment:

- o Mobile Phone \$38
- o Torch & Batteries \$7
- o Laundry \$12

These monetary allowances will be rolled into a single amount and paid on a per hour basis, in addition to the employee's ordinary rate of pay.

The employee(s) and the employer agree that this provision excludes the operation of protected award conditions which deal with monetary allowances.

**Casual Employees**

Casual employees will be paid at the same hourly rate as a full time or part time employee.

In addition the employee will be paid a casual loading of 23 per cent plus paid any Allowances that a full time employee would be entitled to on a pro-rata basis per hour.

**Dispute Settlement**

In relation to any matter that may be in dispute between the parties to this agreement ('the matter') except matters relating to the actual or threatened termination of employment of the employee, the parties:

- (a) will attempt to resolve the matter at the workplace level, including, but not limited to:
  - (i) the employee and his or her supervisor meeting and conferring on the matter; and
  - (ii) if the matter is not resolved at such a meeting, the parties arranging further discussions involving more senior levels of management (as appropriate); and
- (b) acknowledge the right of either party to appoint, in writing, another person to act on behalf of the party in relation to resolving the matter at the workplace level; and
- (c) agree to allow either party to refer the matter to mediation or other alternative dispute resolution process to be conducted by a person agreed between the parties in dispute on the matter;
- (d) agree that if either party refers the matter to alternative dispute resolution both parties will participate in the alternative dispute resolution in good faith; and acknowledge the right of either party to appoint in writing, another person to act on behalf of the party in relation to the alternative dispute resolution process; and
- (e) agree that during the time when the parties attempt to resolve the matter:
  - (i) the parties continue to work in accordance with their contract of employment unless the employee has a reasonable concern about an imminent risk to his or her health or safety; and
  - (ii) subject to relevant provisions of any state or territory occupational health and safety law, even if the employee has a reasonable concern about an imminent risk to his or her health or safety, the employee must not unreasonably fail to comply with a direction by his or her employer to perform other available work, whether at the same workplace or another workplace, that is safe and appropriate for the employee to perform; and
  - (iii) the parties must cooperate to ensure that the dispute resolution procedures are carried out as quickly as is reasonably possible.

### Career break schemes

Employees with at least 2 years continuous service may apply for a career break of up to 12 months leave without pay. The length of career break may vary between six weeks and 12 months.

Applications for a career break must be made to the employee's manager. Applications by employees must provide the employer with two months notice of the intention to take a career break prior to the requested start date. Applications should include details of the purpose of the break and commencement and return to work dates.

Career breaks will be approved at the employer's discretion. In determining whether to approve a career break, the employer will consider:

- the employee's work performance and conduct history;
- the employer's operational requirements;
- the nature of the employee's current role;
- whether a role similar to that performed by the employee at the time of applying for the career break is likely to be available for the employee to return to at the end of the career break and the likelihood of the employer needing to employ another employee to replace the employee on career break for the duration of the career break.

Employees taking a career break must expressly agree they will not engage in any employment during the career break that could conflict with the employer's interests.

A career break is not considered a break in continuity of service. However, long service leave, superannuation, holidays, sick leave and other employee entitlements do not accrue during the unpaid portion of a career break.

On returning from a career break, the employee will be eligible to return to a position that is reasonably comparable to the position held by the employee immediately prior to commencing the career break, or, if such position is not available, the employee will be offered another comparable position. The employee's salary will not be reduced as a result of accepting a comparable position.

The employer will provide any necessary retraining for employees upon return from a career break.

### Increased with wage movements

Wage rates will be reviewed annually and will increase by the percentage increase awarded to the Federal Minimum Wage by the Australian Fair Pay Commission.

### Ordinary Hours

The employer and the employee recognise that the security industry requires operating hours outside that of normal business hours. This can include evenings, nights and weekends. In recognition of these hours, the employee's ordinary rate of pay has been increased to compensate for penalty rates. The employees will receive this higher rate of pay for all hours worked including weekdays, evenings, nights and weekends.

The ordinary hours of work for all employees will not exceed an average of 38 hours per week over a four week period. Although the actual hours of work may vary from week to week, with some weeks greater than 38 hours and other weeks less, the employee will not work in excess of 152 ordinary hours in any four week period.

From time to time the employer may require or request an employee to work reasonable hours in excess of an averaged 38 hours per week, this shall be considered additional hours.

An employee who works additional hours will receive their ordinary rate of pay and equivalent time off in lieu, to be taken at a mutually beneficial time.

An employee may refuse to work additional hours in circumstances where the working of such hours would result in the employee working hours which are unreasonable having regard to:

- any risk to employee health and safety that might reasonably be expected to arise if the employee worked the additional hours;
- the employee's personal circumstances including any family responsibilities;
- the operational requirements of the workplace;
- the notice (if any) given by the employer of the additional hours and by the employee of his/her intention to refuse it;
- whether the additional hours are on a public holiday; and

- the employee's hours of work over the four weeks ending immediately before the employee is required or requested to work the additional hours.

The employee(s) and the employer agree that this provision excludes the operation of protected award conditions which deal with overtime.

### Shift Length and Meal Breaks

The employee will be engaged for a minimum of 2 hours and a maximum of 12 hours of work for each engagement, where an engagement refers to the period or periods for which the employer notifies the employee that he or she is required to attend on any one day.

Where any engagement is

- in excess of 4 hours - employees shall receive a paid rest period of 10 minutes duration for each 4 hours worked to be taken at a time convenient to the employer.
- is in excess of 7 hours - employees shall receive an unpaid meal break of 30 minutes for every six hours worked, which is to be taken at a time convenient to the employer.

The employee(s) and the employer intend that this provision excludes the operation of protected award conditions dealing with overtime.

### Travel Time

When an employee is required to travel to a job in their own vehicle and the travelling is in excess of forty kilometres from the employer's principal place of business, travelling time will be paid. Travelling time will be paid in blocks of 15 minutes at the ordinary rate of pay, for time in excess of thirty minutes.

For example if it takes 35 minutes to get to a job fifty kilometres from the depot then 15 minutes travelling time will be paid. If it takes 50 minutes to get to the job then 30 minutes travel time will be paid.

When an employee elects to utilize the employer's vehicle or any other tool to undertake a shift, and such tool or vehicle is available to the employee; such tool or vehicle will be collected at a time that allows the employee to commence their shift at the normal starting time and

- (i) any discriminatory conduct (or conduct having a discriminatory effect) that is based on the inherent requirements of a particular position; or
- (ii) any discriminatory conduct (or conduct having a discriminatory effect) if:
  - the employee is a member of staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed; and
  - the conduct was in good faith to avoid injury to the religious susceptibilities of that religion or creed.

### General provisions

The employer agrees to:

- (a) take into account family responsibilities when rostering;
- (b) recognise the impracticality of working excessive overtime;
- (c) allow reasonable personal phone calls where appropriate;
- (d) be receptive to requests for leave during school holidays; and

With the prior written approval of their manager, the employee can work additional daily hours to provide for a shorter working week.

The employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family member who is ill.

### Achieving flexibility through job rotation and multi-skilling

Job rotation and multi-skilling allows employers to be flexible in managing and adapting to seasonal demands. Employees can gain valuable experience and training in different work areas to expand and develop new skills.

Job rotation aims to maximise flexibility and efficiency and at the same time broaden employee's skills and experience and increase their job satisfaction.

It may be agreed that employees can be transferred to different positions within the organisation at the same classification level within the same career stream.

Training will be provided where necessary to enable job rotation to occur.

### Occupational health and safety

We the employer and you the employee agree that a safe and secure workplace is important and we will comply with occupational health and safety laws. You will take all practicable steps to ensure your own safety while at work, and to ensure that no action or inaction by you while at work causes harm to any other person. You will ensure safety procedures are followed at all times.

You are to use the safety and protective equipment or clothing provided. You must ensure that you know our health and safety rules and procedures. You will not misuse any equipment, plant or process that is provided to ensure workplace health and safety.

If you do not comply with the rules and procedures, disciplinary action may be taken.

You will report to management as soon as possible any accidents, incidents or hazards arising during the course of your employment. If you have any concerns in relation to your safety or the safety of others in the workplace, you are to report them to the safety officer or appropriate manager who will take all practicable steps to provide and maintain a safe work environment.

### Anti-discrimination

The parties to this agreement agree that:

- (a) it is their intention to achieve the principal object in paragraph 3 (m) of the Workplace Relations Act 1996, which is to respect and value the diversity of the work force by helping to prevent and eliminate discrimination at their enterprise on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and
- (b) any dispute concerning these provisions and their operation will be progressed initially under the dispute resolution procedure in this agreement; and
- (c) nothing in these provisions allows any treatment that would otherwise be prohibited by anti-discrimination provisions in applicable Commonwealth, state or territory legislation; and
- (d) nothing in these provisions prohibits:

site that is applicable to that shift. Paid time will commence only once the employee is on site for the shift.

### Uniforms

All Employees shall be provided with 3 shirts every twelve months. The employer shall obtain a \$50.00 security bond in respect of each shirt from employees. Such security bond will be deducted from an employees pay in weekly instalments of \$20.00 providing the employee has completed more than fifteen hours work within the week. The security deposit is fully refundable on the return of uniforms in good condition.

### Public Holidays

Full-time employees will be entitled to the following public holidays without loss of pay:

- New Year's Day (1 January)
- Australia Day (26 January)
- Good Friday
- Easter Monday
- Anzac Day (25 April)
- Christmas Day (25 December)
- Boxing Day (26 December); and
- any other day declared by or under a law of a state or territory to be observed generally within the state or territory, or a region of that state or territory, as a public holiday by people who work in that state, territory or region, other than:
  - (i) A day declared by or under the law of the state or territory to be observed as a public holiday in substitution for a day named in above; or
  - (ii) A union picnic day; or
  - (iii) A day, or kind of day, that is excluded by the regulations

Employees may be requested to work on public holidays and will be entitled to be paid 150 per cent of their ordinary rate of pay in addition to a paid day off in lieu to be taken at a mutually beneficial time.

The employee(s) and the employer intend that this provision excludes the operation of protected award conditions dealing with public holidays.

**Annual Leave**

Full time employees are entitled to 5 weeks paid annual leave for each completed year of service with the employer.

The amount of annual leave credited to the employee will depend on the number of hours that the employee was required or requested to work each week (adjusted for some types of leave or any industrial action taken by the employee) and will be calculated by the employer each four week period. The employer will notify the employee of their accrued leave balance each four week period.

The employer and the employee believe that it is important that all employees take annual leave on a regular basis to ensure that employees are sufficiently rested and have the opportunity to balance work, family and recreational interests. Employees can take annual leave at a time that is mutually agreed between themselves and their employer taking into account the operational requirements of the workplace. The employer will not unreasonably refuse the taking of annual leave.

Unused annual leave carries forward from year to year.

Annual leave counts as service for all purposes.

**Cashing out annual leave**

The employee may, with the agreement of the employer, request to cash out up to to 1/26<sup>th</sup> of nominal hours worked over a 12 month period of their annual leave during each 12 month period. Annual leave cannot be cashed out in advance of it being credited to the employee.

Employees who wish to cash out annual leave must complete the election attached to this document. Cashed out annual leave will be paid at the rate of pay that the employee receives at the time when the election is made.

**By the employee:** Two weeks notice in writing or such other period as agreed by the parties.

**Severance pay scale**

Redundancy occurs where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour.

In addition to the period of notice prescribed for ordinary termination, if your employment is terminated for reasons set out above you shall be entitled to the following amount of severance pay in respect of a continuous period of service:

<b>Period of continuous service</b>	<b>Severance pay</b>
Less than 1 year	Nil
1 year but less than 2 years	4 weeks pay
2 years but less than 3 years	6 weeks pay
3 years but less than 4 years	7 weeks pay
4 years and less than 5 years	8 weeks pay
5 years and less than 6 years	10 weeks pay
6 years and less than 7 years	11 weeks pay
7 years and less than 8 years	13 weeks pay
8 years and less than 9 years	14 weeks pay
9 years and less than 10 years	16 weeks pay
10 years and over	12 weeks pay

'Weeks pay' means your ordinary time rate of pay.

We shall not be obliged to make a severance payment if we obtain suitable alternative employment for you, whether or not you reject the offer of employment.

This clause also does not apply if you are dismissed for serious misconduct. In that event you are only entitled for time worked up to the time of dismissal.

**Where can you find more information on maternity, paternity or adoption leave?**

The employer will grant maternity, paternity and adoption leave in accordance with Part 7, Division 6 of the Workplace Relations Act 1996. A copy of these provisions will be made available to you on request.

**Long service leave**

Employees will be entitled to long service leave in accordance with Queensland law.

**Termination**

Except in the case of casual and probationary employees, either party may terminate employment at any time by giving the other party the required period of notice specified below. Instead of providing the specified notice we may choose to make payment in lieu of notice. If you fail to give the required notice, you forfeit the entitlement to any monies owing equal to the amount of notice not given.

Nothing in this agreement affects our right to dismiss you without notice for serious misconduct and if so dismissed shall only be entitled to be paid for the time worked up to the time of dismissal and any entitlements accrued to such time.

If you are on probation you shall be entitled to one days notice of termination

The notice of termination period shall be:

**By the employer:**

**Years of Service**

Not more than 1 year  
 More than 1 year but not more than 3 years  
 More than 3 years but not more than 5 years  
 Over 5 Years

**Required Notice**

At least 1 week  
 At least 2 weeks  
 At least 3 weeks  
 At least 4 weeks

If you are 45 years or over and have completed at least two years continuous service with us, you will receive one additional weeks notice.

**Personal leave**

Full-time employees will be entitled to 10 days paid personal leave without deduction of pay. This leave may be taken if the employee is absent:

- (a) due to personal illness or injury; or
- (b) for short term caring purposes of an occasional and non-enduring nature; or
- (c) as a result of special or exceptional circumstances; or
- (d) to provide care or support to immediate family or household members who are ill or injured, or in the case of an unexpected emergency in relation to that person; or
- (e) To observe religious or culturally significant days or events.

Paid personal leave will be credited upon the completion of each four week period of service.

Paid personal/carer's leave is cumulative but will not be paid out on separation of employment.

An employee who qualifies for paid personal leave in accordance with this clause will be paid the amount that they would reasonably have expected to be paid had they worked during the period of their absence.

**Unpaid carer's leave**

All employees will be entitled to two days of unpaid leave when an employee is required to provide care or support to a member of the employee's immediate family or household member who requires care or support because:

- o they are sick or injured; or
- o there is an unexpected emergency in relation to that person.

Unpaid carer's leave may only be taken after the employee has exhausted their other paid personal or carer's leave entitlements.

**Notice**

The key priority is that the employer expects and relies upon each team member's ability to be at work as and when required, to achieve the completion of work on time and to the required quality standard. To ensure the smooth running of the business, the employee must make all reasonable effort to advise their manager as soon as reasonably practicable prior to the employee's normal start time on any day of absence. If it is not reasonably practicable for the employee to give prior notice of absence due to circumstances beyond the employee's control, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

An employee taking paid or unpaid personal leave will, if required, provide a medical certificate or statutory declaration, evidencing the illness or injury of the person concerned.

**Acceptable medical advice**

For these purposes, a medical certificate must be issued by a registered health practitioner. The medical certificate must be issued in respect of the area of practice in which the practitioner is registered or licensed under a law of a state or territory that provides for the registering or licensing of health practitioners.

**Limitations**

There is no limit to the maximum consecutive number of days of sick leave due to personal illness or injury which may be taken by the employee up to the amount of personal leave the employee has accumulated over time, subject to:

- the employee's available personal leave credits; and
- medical certification and, if required, the opinion of a medical practitioner nominated by the employer.

The employee shall not be entitled to paid sick leave for any period during which they are entitled to workers compensation payments.

**Carer's leave restrictions**

The employee is not entitled to take more than 10 days of paid carer's leave (1/26<sup>th</sup> of the nominal hours worked by the employee) per year, regardless of the amount of personal leave the employee has accumulated over time.

**Unpaid leave when paid personal leave is exhausted**

If the employee exhausts their paid personal leave, the employee may request to take an additional one month's unpaid leave. This dispensation will be granted at the employer's discretion upon having regard to the individual circumstances.

**Two days paid compassionate leave**

- In the event of the death or serious illness posing a threat to the life of a member of the employee's immediate family or household, the employee may access two days of paid compassionate leave on each occasion. Paid compassionate leave counts as service for all purposes.
- An employee who qualifies for paid personal leave in accordance with this clause will be paid the amount that they would reasonably have expected to be paid had they worked during the period of absence.
- The employer may require an employee to produce documentary evidence of the need for compassionate leave.
- An employee will be entitled to an additional two days leave without loss of pay on each death of a member of the employee's immediate family where that death occurs outside Australia. The employee must produce satisfactory evidence of the death to be eligible for this entitlement.

**Parental Leave****What is parental leave?**

Parental leave is up to 52 weeks unpaid leave to enable you to give birth to a child or to care for a new born or newly adopted child. It includes maternity, paternity or adoption leave.

**Who is entitled to maternity, paternity or adoption leave?**

Parental leave will be available to all full-time, part-time or eligible casual employees.

An "eligible casual employee" means a casual employee:

- (a) who has been employed by the employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months; and
- (b) who, but for the pregnancy or the decision to adopt, would have a reasonable expectation of continuing engagement on a regular and systematic basis.