



Coles Logistics

Coles Queensland Distribution Centre's ENTERPRISE AGREEMENT 2018

OPERATES FROM: 23 APRIL 2019 - EXPIRES: 5 AUGUST 2022



Shop, Distributive & Allied Employees' Association

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Chris Gazenbeek, Secretary



DECISION

Fair Work Act 2009

s.185 - Applications for approval of single-enterprise agreements

Coles Group Supply Chain Pty Ltd

(AG2018/4874 and AG2018/4945)

Storage services

VICE PRESIDENT HATCHER

SYDNEY, 18 APRIL 2019

Applications for approval of the Coles Queensland (Forest Lake and Heathwood) Distribution Centre Enterprise Agreement 2018 and the Coles Eastern Creek (NUW) National Distribution Centre Enterprise Agreement 2018

Introduction

[1] Coles Group Supply Chain Pty Ltd (Coles) has lodged applications for the approval of two enterprise agreements pursuant to s 185 of the *Fair Work Act 2009* (FW Act): the *Coles Queensland (Forest Lake and Heathwood) Distribution Centre Enterprise Agreement 2018* (Qld Agreement) and the *Coles Eastern Creek (NUW) National Distribution Centre Enterprise Agreement 2018* (NSW Agreement). The Qld Agreement covers employees at three Coles distribution centres in Brisbane which are adjacent to each other: Forest Lake, Heathwood Grocery and Heathwood Liquor. The NSW Agreement covers employees at Coles' Eastern Creek National Distribution Centre (NDC) in Sydney.

[2] The application for approval of the Qld Agreement was accompanied by a Form F17 statutory declaration made by Nicole Jan Dodimead, People and Culture Manager, dated 31 August 2018. The application for approval of the NSW Agreement was accompanied by a Form F17 statutory declaration made by Sam Thornell, Distribution Centre Manager, which was also dated 31 August 2018

[3] The National Union of Workers' (NUW) was a bargaining representative in respect of each agreement. Initially the NUW supported the approval of each agreement. In respect of the Qld Agreement, the NUW filed a Form F18 statutory declaration made by Godfrey Moase, Assistant General Branch Secretary, on 3 September 2018 which relevantly stated that the NUW supported the agreement's approval and gave notice pursuant to s 183 of the FW Act that it wished to be covered by the agreement. A Form F18 statutory declaration to similar effect was made on 24 August 2018 in relation to the NSW Agreement by Sharon Morris, the President of the NUW's NSW Branch.

[4] However the position of the NUW subsequently changed. In relation to the Qld Agreement, the NUW filed a second F18 statutory declaration made by Mr Moase on 22 October 2018 which indicated that the NUW now opposed the approval of the agreement. On 24 October 2018 an F18 statutory declaration made by Bruno Mendoca, Assistant Branch Secretary, was filed which indicated opposition to the approval of the NSW Agreement also.

[5] The Shop, Distributive and Allied Employees' Association (SDAEA) was a bargaining representative for the Qld Agreement. On 31 August 2018 the SDAEA filed a statutory declaration made by Gerard Dwyer, its National Secretary, which stated that the SDAEA supported the approval of the Qld Agreement and gave notice that it wished to be covered by it. The SDAEA's position in this respect did not subsequently change.

[6] The NUW's reversal of position with respect to both agreements arose from an announcement made on 5 October 2018 by Coles' then parent company, Wesfarmers Limited (Wesfarmers),¹ that it had entered into a heads of agreement for development of two new "*automated ambient distribution centres*" in Brisbane and Sydney over a five year period, and that provision would be made for redundancies at "*a number of existing distribution centres that will be closed over a five year period*". The distribution centres to be closed included those at Forest Lake and Heathwood and the NDC. This announcement made public a business project, known as "*Project Broccoli*", which Coles had been pursuing for some time. This caused the NUW to contend that the Qld Agreement and the NSW Agreement were not genuinely agreed to by the employees covered by them in accordance with that element of the "*genuinely agreed*" definition in s 188(1)(c) of the FW Act. This contention was based on the propositions that Coles had misrepresented to employees that their employment was secure, and had failed to inform them of Project Broccoli, whilst bargaining was proceeding in circumstances where the NUW had been claiming improved redundancy entitlements.

[7] Because the NUW's ground of opposition to the approval of the two agreements was based on a substratum of facts that was to a significant degree common to both, and involved common submissions concerning the application of s 188(1)(c) to the applications, both applications were the subject of a common hearing and will be dealt with together in this decision. Before I turn to the NUW's case in that respect, I will deal with the other issues which arose concerning the approval requirements in ss 186 and 187 of the FW Act. As explained below, these issues were resolved either with the benefit of further submission from Coles or by the provision of undertakings, and ultimately became non-controversial in the proceedings.

Qld Agreement - other approval requirement issues

[8] With respect to the QLD Agreement, on 24 December 2018 I caused to be issued a letter to Coles identifying five issues and concerns as to whether the Qld Agreement met the approval requirements in ss 186 and 187 (apart from the issue raised by the NUW). They were, in the terms communicated to Coles, as follows:

- (1) Clause 24.2 of the Qld Agreement provides that ordinary hours are 40 per week for full-time team members, presumably for the purpose of accruing a

¹ Wesfarmers demerged from Coles Group Limited, Coles' parent company, in November 2018.

rostered day off over the roster cycle provided for in cl 24.1. The wage rates in cl 12 are expressed in weekly terms only and not hourly terms. It is not clear whether the divisor for the purpose of calculating hourly rates is 40, 38 or some other number (noting that casuals may not work more than 36 hours per week under cl 7.3 and part-time employees may not work more than 32 hours per week under cl 7.8). That means that a determinative assessment as to whether employees are better off overall under the Agreement (having regard to its lower shift allowances and weekend and overtime penalty rates and wider span of hours) cannot be carried out, since overtime rates, other penalty rates, casual rates and part-time rates cannot be calculated. In respect of overtime, it is also unclear whether overtime is payable after 32, 36, 38 or 40 hours per week.

- (2) Annual leave in clause 31 is not expressed as accruing progressively and may therefore be inconsistent with s 87(2) of the Fair Work Act 2009 (FW Act). In this respect, the provision may exclude the NES contrary to s 55(1) of the FW Act.
- (3) Clause 24.14 of the Agreement provides that part-time employees are required to work in accordance with a roster specifying the commencing and finishing times on each day of the week. Clause 11.3(c) of the Storage Services and Wholesale Award 2010 (SSW Award) requires that the hours of work of a part-time employee, including actual starting and finishing times each day, be agreed in writing at the time of engagement, and clause 11.4(d) provides that any agreed variation to the regular pattern of work will be recorded in writing. A part-time employee under the Agreement may not be better off overall compared to the SSW Award because the employee's hours may be altered in an unpredictable way by unilateral decision of the employer.
- (4) Clause 24.22 of the Agreement allows a part-time employee to agree to work hours additional to their agreed ordinary hours at the casual rate. Under cl 11.3(f) of the SSW Award, all hours worked in addition to the mutually arranged hours of work (which, under cl 11.3(d) may be varied by written agreement) are to be paid at overtime penalty rates. Consequently part-time employees who work additional hours may not be better off overall under the Agreement as compared to the SSW Award.
- (5) The severance pay entitlement in Schedule B.3(d)(i) is three weeks' pay per completed year of service, calculated pro-rata for each month of service. Under s 119 of the FW Act, a retrenched employee who has completed at least 1 year but less than 2 years' service is entitled to 4 weeks' redundancy pay. Schedule B.3(d)(i) may exclude the NES to this extent contrary to s 55(1) of the FW Act.

[9] Coles responded to the above issues and concerns in correspondence dated 11 January 2019. In respect of the first issue, Coles' response in full was as follows:

“To assist the Commission undertake the required calculations to assess compliance with the better off overall test (BOOT), please note the following:

Divisor

To determine the hourly rate of pay for each team member classification covered by the Agreement, divide the weekly rates of pay specified in clause 12 of the Agreement, by 38. For your information, the Agreement has historically always reflected its specified rates of pay in weekly, not hourly terms. This has long been the established and accepted practice.

The use of 38 as the divisor is evidenced within the Agreement in a number of clauses.

A full-time team member, as defined in clause 7.7 of the Agreement, is specified as a team member "engaged on a weekly basis to work 152 ordinary time hours over a 4 week cycle." This represents on an average weekly basis, a full-time team member working 38 ordinary hours per week (calculation: $152/4 = 38$).

A full-time team member who works in accordance with a Rostered Day Off (RDO), arrangement as prescribed in clause 25 of the Agreement, is paid pursuant to clause 25.1 of the Agreement at an hourly rate "derived by taking 1/38th of the all-purpose weekly wage".

A part-time team member's hourly rate of pay, as prescribed by clause 24.18 of the Agreement is calculated by "dividing the appropriate weekly wage by 38".

A casual team member's hourly rate of pay, as prescribed by clause 24.28 of the Agreement is calculated by dividing the appropriate weekly rate by thirty-eight (38), and then adding to that hourly rate either a 25% casual loading or applicable shift loading (where it is higher).

Whilst the number 38 is the divisor to determine hourly rates, the Agreement also sets out a number of terms prescribing numbers which form the foundation of the sites' rostering arrangements. These terms are primarily found within clause 24 (Rostering Principles) and clause 25 (RDO Guidelines) in the Agreement. These terms do not define the divisors, but rather are distinguishable from those terms in the Agreement identified above that do define the use of 38 as the divisor.

For example, the monthly (4-week cycle), weekly (40) and daily (8) ordinary working hours maximum limits for full-time team members are set out in clauses 24.1 and 24.2 of the Agreement.

Clause 24.1 of the Agreement states:

"The ordinary working hours for all team members shall be worked in accordance with an agreed roster which shall provide for not more than nineteen (19) working days or one hundred and fifty-two (152) hours per four (4) week cycle of twenty (20) working days"

Clause 24.2 of the Agreement states:

"The ordinary weekly working hours shall not exceed forty (40) hours per week or eight (8) hours per day and shall be worked continuously except for a meal break of not less than 30 minutes or more than one hour"

Clauses 24.1 and 24.2 facilitate a team member that works 8 hours per day or 40 hours per week meeting their monthly (152 hours) limit sooner than if that same team member had worked 7.6 hours per day or 38 hours per week.

Pursuant to clause 25.2 of the Agreement, a RDO arrangement is facilitated by permitting a full-time team member to work 40 ordinary hours per week on the basis that twenty-four (24) minutes of each day worked shall accrue as an entitlement to take the agreed rostered day in each cycle as a day off, with pay. Accordingly, the weekly 40 ordinary hours' provision permits work to be performed by a team member on 19 days but the payment they receive is equal to 20 days by virtue of the fact that 24 minutes is accrued per day.

A further example relates to clause 7.8 of the Agreement that provides a part-time team member with the ability to perform work "for not less than 12 ordinary hours per week and not more than 32 ordinary time hours per week".

Clause 7.8 of the Agreement simply sets the minimum and maximum weekly ordinary working hours that can be agreed with a part-time team member to form their contracted hours of work per week. Once again, neither 12 nor 32 are intended to act as the divisor by which to determine the hourly rate of pay. This conclusion is supported further by clause 24.19 of the Agreement that states that in the case of a part-time team member, "In no case will payment be no less than twelve (12) hours per week and not more than thirty-two (32) hours per week".

Finally, clause 7.3 of the Agreement provides that a casual team member cannot be engaged "for not more than 36 ordinary hours in any one week". This term sets a casual team member's maximum weekly ordinary hours. It does not act as the divisor for determining the casual team member's hourly rate of pay, but rather as previously referenced, this is achieved by clause 24.28 of the Agreement.

Overtime

To clarify when overtime is payable under the Agreement, I have set out the following:

Full-time team members

Clause No.	Term
26.2	Outside the time specified in clause 22 of the Agreement, that is work performed between Monday to Sunday 6:00pm to 5:00am.

26.2	In excess of the ordinary weekly working hours.
26.5 (iii)	In excess of their contracted hours.
24.24 and 26.2	Outside the hours specified in the team members roster including commencing and ceasing times in accordance with their roster.
26.1 (a) and 26.5	Working on a non-rostered day (ROO).
26.1 (a) and 26.5	Working on a non-working day.
24.5 and 24.7	Where a 10-hour break is not provided between the conclusion of one engagement (inclusive of overtime) and the commencement of the next engagement until such time that a 1 0-hour break is provided.
26.5 (ii)	Upon termination, in excess of 38 hours per week where the appropriate roster cycle has not been completed.

Part-time team members:

Clause No.	Term
26.2 (ii)	In excess of 8 hours on any day.
26.2 (ii)	In excess of 38 hours in any week.
26.2	In excess of the ordinary weekly working hours.
26.5 (iii) and 24.14	In excess of their contracted hours, with the exception of up to a maximum of 38 hours if a flex up arrangement is in place.
26.2	Outside the time specified in clause 22.1 of the Agreement, that is work performed between Monday to Sunday 6:00pm to 5:00am.
24.24, 26.2 and 24.1 4	Outside the hours specified in the team members roster including commencing and ceasing times in accordance with their roster unless a flex up arrangement has been agreed.
26.1 (a) and 26.5	Working on a non-rostered day (ROO).
26.1 (a)	Working on a non-working day.

24.5 and 24.7	Where a 10-hour break is not provided between the conclusion of one engagement (inclusive of overtime) and the commencement of the next engagement until such time that a 10-hour break is provided.
26.5 (ii)	Upon termination, in excess of 38 hours per week where the appropriate roster cycle has not been completed.

For casual team members:

Clause No.	Term
26.2 (i)	In excess of 8 hours on any day.
26.2 (i)	In excess of 36 hours in any week.
26.2(i)	In excess of 5 consecutive days (unless by agreement the team member is willing to work 6 consecutive days)
26.2(i)	In excess of 6 consecutive days (where the team member has not agreed to work 6 consecutive days)
26.2	Outside the time specified in clause 22.1 in the Agreement, that is work performed between Monday and Sunday 6:00pm to 5:00am

[10] On the basis of the explanation provided by Coles, I am now satisfied that the Qld Agreement does permit overtime rates, other penalty rates, casual rates and part-time rates to be calculated and does specify when overtime is payable, and thereby permits the agreement to be properly assessed for the purpose of the better off overall test (BOOT) approval requirement contained in s 186(2)(d) and explicated in s 193.

Issue 2

[11] Coles proposed the following undertaking:

“Annual leave in clause 31 of the Agreement accrues progressively during each year of service consistent with section 87(2) of the Fair Work Act 2009 (FW Act).”

[12] The above undertaking would resolve my concern.

Issue 3

[13] In respect of the third issue, Coles provided the following response:

“We acknowledge that clause 24.14 in the Agreement is different to the Services and Wholesale Award 2010 (SSW Award), but should not be considered detrimental. Clause 24.14 of the Agreement provides that part-time employees are required to work in accordance with a roster specifying the commencing and finishing times on each day of the week. The roster referenced in clause 24.14 of the Agreement relates to part-time team members as defined in clause 7.8 of the Agreement.

Under clause 7.8, a part-time team member is engaged as such and works a contracted number of hours. The reference to "contracted" by its very nature means a formal and legally binding agreement. The effect of clause 7.8 of the Agreement, whilst expressed differently contemplates and achieves the purpose of clause 11.3(c) of the SSW Award requiring that the contracted number of hours of work of a part-time employee, including actual starting and finishing times each day, be agreed in writing at the time of engagement. This reflects the site practice consistent with clause 7.8 of the Agreement.

The site also evidences in writing agreed variations to the regular pattern of work, in compliance with clause 11.4(d) of the SSW Award.

However, acknowledging that the Agreement could express more clearly mutual agreement requirements for part-time members, and to alleviate any concern the Commission may still hold, please see attached s.190 undertaking for your consideration.”

[14] Coles proposed the following undertaking:

“Consistent with clauses 11.3(c) and 11.4(d) of the Storage Services and Wholesale Award 2010 (SSW Award), the hours of work of a part-time employee, including actual starting and finishing times each day, will be agreed in writing at the time of engagement, and any agreed variation (whether it be ad hoc, a one off variation or permanent), to a part-time employee's regular pattern of work will be recorded in writing. For the avoidance of doubt, a part-time team member's contracted hours of work may be not be altered unilaterally by the employer.”

[15] I am satisfied that the above undertaking would resolve my concern.

Issue 4

[16] Coles proposed the following undertaking:

“A part-time employee may be offered and voluntarily accept to work additional hours (what is commonly known at the sites as 'flex up'), and be paid for those additional hours worked on each occasion pursuant to clause 24.22 and clause 26.2(i) (where overtime is applicable) of the Agreement. The part-time employee will be paid pursuant to the Agreement for additional hours worked, provided on each occasion the casual rate (and any applicable overtime payments) prescribed in the Agreement compensates the part-time team member more favourably or at least equal to the equivalent payment the part-time team member would have otherwise received

under clause 11.3(d) of the SSW Award. On any occasion a part-time employee's agreed additional hours will not satisfy clause 11.3(d) of the SSW Award, the part-time employee's additional hours will be capped to a maximum amount of additional hours on each occasion or alternatively the part-time employee will receive the relevant overtime penalty rates pursuant to clause 11.3(d) of the SSW Award.”

[17] The above undertaking would resolve my concern.

Issue 5

[18] Coles proposed the following undertaking:

“The severance pay entitlement in Schedule B.3(d)(i) of the Agreement that refers to three (3) weeks' pay per completed year of service, calculated pro-rata for each month of service does not apply to a retrenched employee who has completed at least 1 year but less than 2 years' service. If a retrenched employee has completed at least 1 year but less than 2 years' service, the employee will be entitled to four (4) weeks' severance pay consistent with section 119 of the FW Act. For all other years of service, the severance pay calculation is based on three (3) weeks' pay per completed year of service pursuant to Schedule B.3(d)(i) of the Agreement.”

[19] The above undertaking would resolve my concern.

NSW Agreement

[20] On 24 December 2018, I caused correspondence to be issued to Coles identifying a number of issues and concerns as to whether the NSW Agreement met the approval requirements in ss 186 and 187. They were, in the terms communicated to Coles, as follows:

- (1) Despite the answer given at Q2.9 of the Form F17 statutory declaration of Mr Thornell, the application was lodged on 5 September 2018, more than 14 days after the Agreement was made on 17 August 2018. An extension of time is therefore required under s 185(3)(b) of the *Fair Work Act 2009* (FW Act). It is necessary for the Commission to be provided with details of the circumstances the Commission should take into account in deciding if it is fair to extend the time for lodging the application.
- (2) Section 196 of the *Fair Work Act 2009* (FW Act) requires the Commission to be satisfied that when an employee covered by the Agreement is covered by a modern award that defines or describes the employee as a shiftworker for the purposes of the NES, the Agreement also defines or describes the employee as a shiftworker for the purposes of the NES. Clause 26.4 of the *Storage Services and Wholesale Award 2010* (SSW Award) contains a definition of shiftworker for the purpose of the NES. That definition appears to be potentially applicable to some employees covered by the Agreement. However there is no corresponding definition of shiftworker in the Agreement.
- (3) Clause 7 of the Agreement, which deals with *Introduction of change and consultation*, does not expressly apply to change to employees' regular rosters or ordinary hours of work, and therefore may not comply with s 205(1)(a)(ii) of the FW Act. Further,

clause 7 does not require that employees be invited to give their views about the impact of changes covered by the clause, as required by s 205(1A)(b).

- (4) Personal leave in clause 22.2 is not expressed as accruing progressively and may therefore be inconsistent with s 96(2) of the FW Act. Additionally, annual leave in cl 22.4 is not expressed as accruing progressively and may therefore be inconsistent with s 87(2) of the FW Act. In this respect, both provisions may exclude the NES contrary to s 55(1) of the FW Act.
- (5) Clause 17.2.5 of the Agreement allows a part-time employee to agree to work hours additional to their agreed ordinary hours at ordinary rates plus the casual loading (up to 36 hours per week and 144 hours in a four-week cycle). Under cl 11.3(f) of the SSW Award, all hours worked in addition to the mutually arranged hours of work (which, under cl 11.3(d) may be varied by written agreement) are to be paid at overtime penalty rates. Consequently part-time employees who work additional hours may not be better off overall under the Agreement as compared to the SSW Award.
- (6) Clause 18.8.6 of the Agreement provides for unused time of in lieu of overtime to be cashed out, but does not require that this be done at the overtime rate applicable to the time worked, unlike cl 24.3(f) of the SSW Award. This might result in employees who work overtime not being better off overall under the Agreement as compared to the SSW Award.
- (7) Clause 30 of the SSW Award (as at the date the application was lodged) provided for family and domestic violence leave. The Agreement contains no provision for family and domestic violence leave. This may mean that any current or prospective employees who have been the victim of family and domestic violence may not be better off overall under the Agreement than under the SSW Award.

[21] The first matter raised was based on an error in the Commission's records, and in fact the application for the approval of the Agreement was lodged within 14 days of the Agreement having been made. In respect of the other matters raised, Coles responded in correspondence dated 11 January 2019.

Issue 2

[22] Coles proposed the following undertaking:

“For the purpose of the additional week of annual leave provided for in the National Employment Standards (section 87(1)(b) of the Fair Work Act 2009), a shiftworker is a seven (7) day shiftworker who is regularly rostered to work on Sundays and public holidays.”

[23] The above undertaking would resolve my concern.

Issue 3

[24] I am satisfied by Coles' response that the model consultation term provided by reg 2.09 of the *Fair Work Regulations* (FW Regulations) will operate pursuant to s 205(2) of the FW Act.

Issue 4

[25] Coles gave the following response:

“Clause 22.2.2 of the EA provides:

'...In their first year of employment, a full-time permanent team member shall accrue to a maximum 72 hours (10 days). A part-time or limited tenure team member shall accrue, in their first year of employment, at a pro-rata rate. In the second and subsequent years, the 72 hours (10 days) leave for full-time permanent team members shall be credited in advance on each anniversary date of the commencement of employment (pro-rata for part-time team members).'

The Applicant provides an undertaking to ensure compliance with section 96(2) of the Act in relation to a permanent team member's first year of employment. Given in subsequent years personal leave is credited in advance, these provisions are more generous than the accrual rate under the National Employment Standards. The undertaking therefore need not apply to subsequent years of service as the provisions are permissible terms that supplement the National Employment Standards within the meaning of subsection 55(4) of the Act.

In respect of the Commission's concern regarding clause 22.4.1 of the EA, the Applicant provides an undertaking to ensure compliance with section 87(2) of the Act.”

[26] The undertaking proposed by Coles is as follows:

“(a) a permanent team member's entitlement to personal leave will accrue progressively during their first year of employment according to the team member's ordinary hours of work.

(b) the entitlement to annual leave under clause 22.4.1 of the Agreement will accrue progressively during each year of service according to a team member's ordinary hours of work.”

[27] The above undertaking would resolve my concerns.

Issue 5

[28] Coles provided the following response:

“In accordance with clause 17.2.5 of the EA, the rates paid to team members working additional hours are as follows:

EA classification	EA hourly rate (ordinary rate plus casual loading)	Storage Services and Wholesale Award 2010 hourly overtime rates (calculated by reference to the minimum wage rate of pay for a full-time adult for the highest classification shown in the table at 3.3 of the Form F17)
Team Member in Training	\$34.93 *(undertaking to be provided as outlined below)	\$30.71 for the first two (2) hours \$40.94 for subsequent hours
Team Member	\$43.53 *(exceeds highest overtime hourly rate)	\$32.30 for the first (2) hours \$43.06 for subsequent hours
Team Leader	\$46.00 *(exceeds highest overtime hourly rate)	\$33.24 for the first (2) hours \$44.32 for subsequent hours

The Applicant will provide an undertaking in relation to clause 17.2.5 of the EA to ensure that the employees will be better off than under the Storage Services and Wholesale Award 2010 (**Award**), such that part-time team members engaged in the Team Member in Training classification may only agree to work additional hours at ordinary rates plus the casual loading in accordance with clause 17.2.5 of the EA up to a maximum of three (3) hours on each occasion the team member is rostered to work ordinary hours.”

[29] The undertaking given by Coles is as follows:

“...it will limit the application of clause 17.2.5 of the Agreement to ensure that a part-time team member engaged in the Team Member in Training classification does not work any more than three (3) additional hours on each shift the team member is rostered to work ordinary hours.”

[30] The above undertaking would resolve my concern.

Issue 6

[31] Coles responded to this concern by stating that it intended to ensure that TOIL cashed out in accordance with clause 18.8.6 of the Agreement is paid at the applicable overtime rates. The following undertaking was proposed to give effect to this:

“...it will apply clause 24.3(f) of the Storage Services and Wholesale Award 2010 ("the Award") (as at 10 January 2019) so that time off in lieu cashed out in accordance with clause 18.8.6 of the Agreement will be paid at the overtime rate applicable to the overtime as if worked.”

[32] The above undertaking would resolve my concern.

Issue 7

[33] Coles posited that an undertaking was not required in relation to this issue given that employees are now entitled to five days' unpaid family and domestic violence leave per year in accordance with the NES. Nonetheless the following undertaking was proposed:

“...employees will be entitled to 5 days' unpaid family and domestic violence leave per year in accordance with clause 30 of the Award (as at 10 January 2019) as if it were a term of the Agreement.”

[34] As at the “*test time*” (the date of the lodgement of the application for approval of the NSW Agreement), the entitlement to five days' unpaid family and domestic violence leave was not yet a NES entitlement under the FW Act, so an undertaking is necessary to address my concern. The proposed undertaking would resolve my concern.

Issue in contest: whether “genuinely agreed” – s 186(2)(a) and s 188(1)(c)

[35] As earlier explained, the sole issue in contest is whether the Qld Agreement and the NSW Agreement satisfy the approval requirement in s 186(2)(a) of the FW Act that they must have been “*genuinely agreed to by the employees covered by the agreement*”. Section 188 defines when employees have genuinely agreed to an enterprise agreement as follows:

188 When employees have genuinely agreed to an enterprise agreement

(1) An enterprise agreement has been *genuinely agreed* to by the employees covered by the agreement if the FWC is satisfied that:

(a) the employer, or each of the employers, covered by the agreement complied with the following provisions in relation to the agreement:

(i) subsections 180(2), (3) and (5) (which deal with pre-approval steps);

(ii) subsection 181(2) (which requires that employees not be requested to approve an enterprise agreement until 21 days after the last notice of employee representational rights is given); and

(b) the agreement was made in accordance with whichever of subsection 182(1) or (2) applies (those subsections deal with the making of different kinds of enterprise agreements by employee vote); and

(c) there are no other reasonable grounds for believing that the agreement has not been genuinely agreed to by the employees.

(2) An enterprise agreement has also been *genuinely agreed* to by the employees covered by the agreement if the FWC is satisfied that:

(a) the agreement would have been *genuinely agreed* to within the meaning of subsection (1) but for minor procedural or technical errors made in relation to the requirements mentioned in paragraph (1)(a) or (b), or the requirements of sections 173 and 174 relating to a notice of employee representational rights; and

(b) the employees covered by the agreement were not likely to have been disadvantaged by the errors, in relation to the requirements mentioned in paragraph (1)(a) or (b) or the requirements of sections 173 and 174.

[36] It was not in dispute that those elements of the definition in s 188(1)(a) and (b) were satisfied (and accordingly s 188(2) is not relevant to the applications). However, as earlier stated, the NUW submitted that the Commission could not be satisfied as to s 188(1)(c).

[37] The key principles concerning the interpretation and application of s 188(1)(c) (then s 188(c)) were stated in the Federal Court Full Court decision in *One Key Workforce Pty Ltd v CFMEU*.² The Full Court said:

“[141] Turning then to the language utilised in ss 186(2)(a) and 188(c), the word “genuinely” in the phrase “genuinely agreed”, indicates that mere agreement will not suffice and that consent of a higher quality is required. We reject OKW’s contention that the phrase is only directed at requiring an absence of fraud, coercion or duress in the process of employees providing their agreement. The word “agreed” on its own, suffices to achieve those ends. The word “genuinely” must be given some additional work to do. A court construing a statutory provision must strive to give meaning to every word of it: *Project Blue Sky* at [71]. The limits OKW seeks to put on para 188(c) are too narrow. The requirement for genuine agreement in the Fair Work Act prescribes some, but not all, factors that must be taken into account. In this respect, in contrast to its predecessor, s 170LT(6) of the Workplace Relations Act, paras 188(a) and (b) direct the Commission’s attention to a number of discrete matters. Paragraph 188(c), however, it is not at all prescriptive.

[142] Paragraph 188(c) is cast in very broad terms. It is intended to pick up anything not caught by paras (a) and (b). Thus, any circumstance which could logically bear on the question of whether the agreement of the relevant employees was genuine would be relevant. One obvious example is the provision of misleading information or an absence of full disclosure (see, for example, *Re Toys “R” Us (Australia) Pty Limited Enterprise Flexibility Agreement 1994* (1995) 37 AILR 3-068 (Print L9066) (C No 23663 of 1994)). Another is the likelihood that the relevant employees understood the operation of the various awards that would be affected by the agreement and the extent to which the wages and working conditions for employees under each of those awards would change, for better or worse, under the terms of the agreement. Thus, if we be wrong to conclude that the Commission is bound by s 180(5) to consider the content of the employer’s explanation of the terms of the Agreement and their effect, in order

² [2018] FCAFC 77, 277 IR 23

to be satisfied that the Agreement was “genuinely agreed to” having regard to s 188(a)(i), then for similar reasons we would hold that this was a matter which was not only relevant to the question raised by para 188(c), but was a mandatory consideration.

[143] Furthermore, contrary to OKW’s submission, authenticity is not irrelevant to para 188(c). To the contrary, it goes to the heart of the matter. Recourse to a standard dictionary of the English language tells us that “authentic” is a synonym for “genuine”. The editor of the *Oxford English Dictionary* online notes that “[t]he distinction which the 18th [century] apologists attempted to establish between *genuine* and *authentic* ... does not agree well with the etymology of the latter word, and is not now recognised”.

[38] The Full Court reference to “authenticity” in paragraph [143] of the above passage hearkens back to the earlier Federal Court Full Court decision in *CFMEU v Australian Industrial Relations Commission*³ (*Gordonstone*), in which the Court said that the then s 170LT(6) of the *Workplace Relations Act 1996* (which was the equivalent of the current s 186(2)(a)) “plainly betokens a concern with the authenticity and, as it were, the moral authority of the agreement”.

[39] The NUW contended that s 188(1)(c) could not be satisfied because:

- bargaining in relation to both sites commenced in or around April 2018, and a major claim advanced on behalf of workers was for improved redundancy provisions;
- securing fair and/or improved redundancy is often a key industrial claim in the warehousing/logistics industry, particularly so in an industry facing outsourcing and prospective job losses due to automation;
- the workers at both sites sought to improve their redundancy provisions to ensure their financial security in the case of their worksite closing down;
- Coles’ announcement on 5 October 2018, after employees had voted to approve the agreements in August 2018, was that it would close five of its warehouses including the Forest Lake/Heathwood site and the NDC, and replace them with two new, highly-automated distribution centres;
- there was material non-disclosure by Coles during bargaining for the two agreements, in that it knew of the impending closure of the Forest Lake/Heathwood sites and the NDC prior to the making of both agreements but deliberately failed to disclose this to employees;
- the result of this was that the employees did not give informed consent to the agreements;

³ [1999] FCA 847, 93 FCR 317, 96 IR 156 at [126] per Wilcox and Madgwick JJ, with whom Moore J relevantly agreed at [155]

- there were also statements made by Coles' managers during bargaining that misrepresented the situation with respect to site closures and gave false assurances about employees' job security; and
- Coles failed to exhibit trustworthiness throughout bargaining, meaning that there was a lack of authenticity and moral authority in respect of the two agreements.

[40] The NUW adduced evidence from the following persons, who all made witness statements and were subject to cross-examination by Coles:

- Gary Strauss, NUW organiser with the responsibility for members at the Heathwood distribution centre;
- Futi Anesone, picker and loader employed by Coles at the Heathwood distribution centre;
- Glen Crosbie, an employee of Coles at the Heathwood distribution centre;
- Sloan Rourke, an employee of Coles at the Heathwood distribution centre;
- Than Ly, an employee of Coles at the Heathwood distribution centre;
- Callum McColl, an employee of Coles at the Heathwood distribution centre;
- Ghazi Noshie, NUW Organiser with responsibility for NUW members at the NDC;
- John Kot, NUW union delegate and employee of Coles at the NDC; and
- Christopher Dundon, a Team Member employed by Coles at the NDC.

[41] Coles tendered witness statements made by the following persons:

- David Brewster, the Chief Legal Officer for Coles Group Limited (of which Coles is a subsidiary) and a director of Coles Supermarkets Australia Pty Ltd (a subsidiary of Coles Group Limited);
- Kara Bryant, Employee Relations Manager for Coles Supermarkets Australia Pty Ltd;
- Robert Rondinelli, Head of Employee Relations and Compliance for Coles Supermarkets Australia Pty Ltd;
- Sam Thornell, employed by Coles Supermarkets Australia Pty Ltd as Distribution Manager for the NDC;
- Joanna Hammond, employed by Coles Supermarkets Australia Pty Ltd as General Manager - Supply Chain – North Zone (i.e. NSW and Queensland); and

- Nicole Dodimead, employed by Coles Supermarkets Australia Pty Ltd as People and Culture Manager for the Forest Lake and Heathwood Distribution Centres.

[42] The above persons were required by the NUW to attend the hearing for cross-examination except for Mr Brewster and Mr Thornell.

Project Broccoli

[43] The progress of Project Broccoli was described in the witness statement of Mr Brewster and in a number of documents, and was not in factual sense the subject of any significant contest. Some of the contents of Mr Brewster's statement are commercially sensitive and the subject of a confidentiality order, but it will not be necessary to refer to those parts of his evidence for the purpose of this decision.

[44] By way of background, the retail operations of Coles Group Limited (Coles Group) are supported by 20 distribution centres, which include the Forest Lake and Heathwood distribution centres and the NDC. The parent company of the Coles Group was previously Wesfarmers, but a demerger was announced in March 2018 and took effect in November 2018. The Coles Group operates in highly competitive and dynamic retail markets, and the retail industry has been significantly affected by the rapid take-up of online purchasing by customers. In this context, the Coles Group constantly reviews its operations, develops business plans and submits for board approval proposals for capital and operating expenditure. Prior to 2016 the Coles Group had developed advanced plans to automate parts of its supply chain, but these were ultimately rejected. A further proposal was considered in November 2016 but was also rejected.

[45] In October 2017 a new project commenced to evaluate the possible construction of automated distribution centres (also known as ambient technology centres) in New South Wales and Queensland. Key decisions were made by a group of Coles Group senior executives which included Mr Brewster. The project had three main streams: (1) the identification and engagement of an appropriate supplier for the supply and installation of two large-scale distribution centres; (2) the identification of appropriate sites and engagement with appropriate landlords and/or developers for the construction of two new warehouses; and (3) the preparation, review and ongoing management of the business case for the project and the negotiation of commercial arrangements with relevant counterparties.

[46] In relation to the first stream, in early 2018 the Coles Group commenced discussions with Witron Australia Pty Ltd (Witron) concerning the development of a commercial agreement for the supply and installation of equipment for the new automated distribution centres should they ultimately be approved at the board level. On 1 May 2018 the business case for the project was discussed at a Coles Divisional Board meeting. The minutes of that meeting do not disclose any decision to proceed with the new automated distribution centres, and suggest that alternative options remained under consideration. A draft Supply and Installation Agreement between Coles and Witron had been prepared by late June 2018, and negotiations between Coles and Witron concerning this agreement continued throughout July and August 2018.

[47] In early July 2018, the Coles Group engaged a project management specialist on a six-month contract to lead the three project streams earlier described. At this time, the project had a limited budget which was subject to further sign-off by the CFO. On 25 July 2018, a report concerning the project (now known as Project Broccoli) was presented at the Coles Divisional Board. Again, the minutes of the meeting do not disclose any positive decision to proceed with the new automated distribution centres, although support in-principle for the proposal being evaluated was recorded.

[48] In mid-August 2018 the Coles Group executives responsible for Project Broccoli decided that if there was a prospect of an agreement being reached by the end of the year, it would be preferable to try to expedite negotiations so that a public announcement could be made concerning what would be the largest capital investment the Coles Group had ever made before the date of the demerger. To that end, a Coles team met with Witron's parent company in Germany from 28 to 31 August 2018. When the team returned from Germany, it became apparent that it would not be possible to negotiate final agreements with Witron and put them before the Coles Divisional Board and the Wesfarmers Board prior to the demerger. Accordingly the executives responsible for Project Broccoli decided to try to negotiate a heads of agreement with Witron, in which the parties would seek to negotiate final agreements by a drop dead date, with the objective of making an ASX announcement about this by 5 October 2018 (the date of the first court hearing concerning the demerger). However there remained some doubt whether this could be completed and approved by that date.

[49] The proposed heads of agreement was negotiated with Witron throughout September 2018 and, at the same time, there were discussions with three potential property developers who had submitted proposals for the sourcing of land for the new sites and leasing terms. On 14 September 2018 there was a Wesfarmers Board meeting. A report was made to the board concerning Project Broccoli, but the minutes do not disclose that any positive decision was made to proceed with the new automated distribution centres. On 19 September 2018 the Coles Group Divisional Board met and noted that negotiations on a heads of agreement with Witron were continuing.

[50] On 21 September 2018 an article appeared in the Courier Mail newspaper under the headline "*Coles shops around for new hub*" which stated that:

- Coles was seeking to consolidate its Brisbane distribution facilities under the one roof;
- it had a confidential requirement for an initial 50,000-60,000 square metre "*automated distribution centre*" on a 15-20 hectare greenfield site;
- if built, the "*24/7 distribution centre*" will eventually replace Coles' Parkinson and Heathwood facilities; and
- Yatala and Redbank were the favoured sites.

[51] On 26 September 2018 the heads of agreement was finalised subject to board approvals and, at about the same time, a preferred developer for the two sites was selected and heads of agreement for the development and leasing of the two sites were executed. On 4 October 2018 the documents were put to the Coles Divisional Board and the Wesfarmers

Board, and the Wesfarmers Board approved the entry into the heads of agreement that day (subject to a condition relating to court approval for the demerger which was satisfied the following day). The public announcement was made the same day (5 October 2018).

[52] A binding supply and installation agreement with Witron and leases for the development sites for the new automated distribution centres were announced to the ASX on 24 January 2019. The locations for the new centres were Redbank in Brisbane and Kemp's Creek in Sydney.

[53] In his witness statement Mr Brewster said:

“...the precise effect and timing that Project Broccoli will have on jobs at the Eastern Creek National Distribution Centre and the Forest Lake and Heathwood Distribution Centre is still to be determined, given the facilities will not be operational for up to 5 years and the New Enterprise Agreements (if approved) will expire prior to that time. The likely impacts were even less certain prior to Coles entering into the HOA [*the heads of agreement entered into on 4 October 2018*].”

[54] In his oral evidence, Mr Rondinelli said that the anticipated timeframe for the opening of the new automated distribution centres and the closure of the existing distribution centres covered by the Qld Agreement and NSW Agreement remained some time in 2023, but he “assumed” that “ramping down” of the existing distribution centres would occur “towards the back end of 2022 or early stages of 2023”.

Bargaining for the Qld Agreement

[55] The Forest Lake, Heathwood Grocery and Heathwood Liquor distribution centres are currently covered by the *Coles Queensland Distribution Centre's Enterprise Agreement 2014* (2014 Agreement), which has a nominal expiry date of 5 August 2018. As at August 2018 there were 508 employees covered at the Forest Lake distribution centre and 204 employees covered at the two Heathwood distribution centres. It appears that at or about this time the NUW had about 200 members amongst the employees and the SDAEA probably had significantly more, with the NUW having the preponderance of membership at Heathwood and the SDAEA at Forest Lake.

[56] Coles initiated bargaining for a replacement agreement on 12 April 2018 by issuing notices of employee representational rights (NERRs) to the employees. There were subsequently a number of bargaining meetings with NUW and SDAEA representatives in the period from 19 April 2018 to 12 June 2018. Mr Rondinelli and Ms Dodimead were amongst the representatives of Coles at these meetings, and Mr Strauss was one of the NUW representatives.

[57] Prior to the commencement of bargaining, the NUW surveyed its members to identify what were the most important issues. There was a concern amongst many workers that the site might close because it was 20 years old and the lease would soon expire. There was also a concern about the possible automation of distribution centres given that Woolworths was at the time in the process of developing an automated warehouse in Victoria. Consequently, when the NUW drew up its log of claims for the next enterprise agreement, it included a

claim for improved redundancy benefits. The 2014 Agreement does not contain any entitlement to redundancy pay as such. Clause 7.3 provides, in effect, that in the event a decision was made to make employees redundant, “*the Company will negotiate a redundancy package with the Union*” (which, as per clause 3.1, is the SDAEA). In the absence of any agreement being reached, the only entitlement would be the NES entitlement in s 119 of the FW Act. Shortly before the commencement of bargaining, redundancy packages for a small number of employees made redundant had been negotiated with the NUW and the SDAEA, and the employees received two weeks’ pay per year of service capped at 26 weeks.

[58] The NUW’s log of claims, which was sent to Coles on 19 April 2018, claimed a redundancy package under which employees would receive six weeks’ notice and six weeks’ pay per year of service, uncapped, if made redundant. The log also included a separate claim for a “*job security*” provision intended to regulate and limit the use of casual and labour hire employees, and proposed an agreement with a nominal term of three years. The SDAEA’s log of claims also sought improved redundancy entitlements, including an uncapped redundancy pay scale of four weeks’ pay per year of service, and a new agreement with a three-year nominal term.

[59] Coles rejected the NUW’s and the SDAEA’s redundancy pay claims early on in the negotiations. At an early meeting (prior to mid-May 2018), a Coles representative in response to queries from both SDAEA and NUW representatives concerning the Forest Lake distribution centre said “*we have just signed 5-year leases*” and “*there are no redundancies planned*”. At a bargaining meeting on 30 May 2018, Coles made a comprehensive proposal for a new agreement to settle the issues in dispute. This included an offer of a new redundancy pay scale of three weeks’ pay per year of service, capped at 36 weeks. This was the redundancy pay entitlement applicable to Coles’ Parkinson distribution centre, which was its only other distribution centre in Queensland.

[60] Coles also proposed in its offer that the new agreement have a four-year nominal term. Mr Rondinelli explained that this was the same terms as the 2014 Agreement had, and Coles preferred a longer term to minimise the costs and disruption associated with the bargaining process.

[61] At a bargaining meeting on 15 June 2018, Coles reached an in-principle agreement with the SDAEA for a new agreement which included Coles’ redundancy pay proposal. However the NUW was not satisfied with Coles’ 30 May 2018 offer, and in early June 2018 it distributed a leaflet to employees criticising Coles’ offer in a number of respects, including the redundancy pay offer. In this respect the leaflet said:

“Redundancy has improved to 3 weeks per year capped at 36 weeks. However 8 of 11 Coles sheds have at least 52 weeks paid for redundancy! ARE YOU WORTH LESS THAN THE OTHER SHEDS?”

[62] The “*8 of 11 Coles sheds*” referred to were other Coles distribution centres outside of Queensland. The NUW’s leaflet did not criticise the proposed four-year term.

[63] At the 15 June 2018 meeting the NUW confirmed that it would campaign against a vote for an agreement based upon the term of the in-principle agreement reached with the

SDAEA. Coles then took steps to put a proposed new agreement to give effect to the in-principle agreement to a vote of the employees to occur on 19 July 2018. The access period for the vote pursuant to s 180 of the FW Act commenced on 12 July 2018, and immediately prior to this Coles provided employees with an information and voting pack which described the history of bargaining, the key terms of the proposed agreement and the details of the voting process. Coles also conducted information sessions with employees on 16 and 17 June 2018. Sessions were conducted separately for each shift at each of the Forest Lake distribution centre, the Heathwood Grocery distribution centre and the Heathwood Liquor distribution centre.

[64] There was a considerable amount of evidence concerning statements about events at the day shift meeting at the Heathwood Grocery distribution centre on 16 July 2018. Ms Dodimead, Ms Hammond, Mr Anesone, Mr Crosbie, Mr Rourke and Mr Ly all attended this meeting and gave evidence about it.⁴ Mr Rourke, Mr Ly and Mr Anesone said there were about 40-50 employees at this meeting, but Mr Crosbie gave a higher estimate. The NUW's case of misrepresentation in respect of the Qld Agreement is substantially founded on statements said to have been made by Ms Hammond and/or Ms Dodimead at this meeting. Because there was a considerable variance as to the accounts given by each witness, it is necessary to set out the various versions of events.

[65] There is no dispute that Ms Dodimead gave a prepared presentation, in the form of a slideshow, about the proposed agreement that was to be voted on. It is not suggested that there was any misrepresentation contained in the prepared presentation or the slides which supported it. There was also a near-consensus amongst the witnesses that the remarks which caused the controversy were made in response to a question or questions from the floor of the meeting.

[66] Mr Anesone's evidence was that an employee named Pedro asked a question concerning rumours that had circulated for some years about Coles opening "*a super DC*". He said that Ms Dodimead replied by saying: "*From what I can tell you there is no super DC opening up*". Ms Hammond then supported this statement, and Ms Dodimead also said "*something*" about a new lease for the existing distribution centres and "*how we were secure*". Mr Anesone said that he then asked why, if their jobs were safe, they could not be given the redundancy pay as other Coles distribution centres, to which Ms Hammond replied: "*Great question, but your jobs are safe and we can't give you everything, there has to be something for us in it as well*".

[67] Mr Crosbie's evidence was that employees asked at the meeting why the redundancy package could not be increased to 52 weeks' pay, to which the response was that Coles "*would not move on it*". Mr Crosbie said that Ms Hammond added: "*Leases are in place in Coles Forest Lake and Heathwood; your jobs are safe and there are no plans for redundancy at Coles; you have nothing to worry about; there is always the next EBA to get a better redundancy*".

⁴ Mr Anesone, Mr Crosbie, Mr Rourke and Mr Ly referred to events at a meeting which was not clearly identified by any of them in their witness statements and was described somewhat differently in terms of timing, but it became clear in cross-examination that they were all talking about the same meeting which all of them attended together with Ms Hammond and Ms Dodimead.

[68] Mr Rourke gave evidence that Ms Hammond said: *“There will be no redundancies in the foreseeable future. We have just taken Polar Fresh back from 3PL [third party logistics provider], so why would we make anyone redundant? You’ve got the same deal they just signed for redundancy ... Don’t worry guys, your jobs are safe”*.

[69] Mr Ly’s evidence was that an employee asked *“If there are no plans on shutting down this place, why don’t you give the workers 52 weeks (redundancy)?”*, to which Ms Hammond replied: *“We have just signed a full lease, we won’t be making anyone redundant; your jobs are safe”*.

[70] In reply to the above evidence, Ms Hammond said:

- she took the lead in answering questions at the meeting after Ms Dodimead completed her presentation;
- in response to a question about the redundancy clause, Ms Hammond responded that *“it is in line with Parkinson, which is consistent across Queensland”*;
- she confirmed that there were lease agreements in place for the Forest Lake and Heathwood sites;
- she referred to three chilled distributions centres as having transitioned in-house from Polar Fresh to Coles with no redundancies;
- she otherwise did not recall the questions or responses alleged by the NUW witnesses;
- she was aware of the rumours concerning the Forest Lake and Heathwood distribution centres being replaced by a *“super DC”*, but did not recall any questions or answers about it at the meeting.

[71] Ms Dodimead’s evidence was different in a number of respects to that of Ms Hammond. She said that there were questions about the redundancy package offered by Coles, to which Ms Hammond responded *“we won’t move up on redundancies”*. Ms Dodimead said there was a question about the Parkinson Chilled distribution centre which Coles had recently taken back in-house from Polar Fresh, to which Ms Hammond responded: *“You’ve got the same deal as Parkinson DC for redundancy”*. Ms Hammond also said, according to Ms Dodimead, words to the effect of *“don’t worry guys, there are no immediate plans for redundancies at Coles”*. She recalled that team members did ask questions about a rumoured new distribution centre to be opened at Yatala and to replace Forest Lake and Heathwood, and that either herself or Ms Hammond replied that this was only a rumour. She also said that a team member asked *“why not give us the same redundancy as other Coles DCs?”*, to which she recalled that Ms Hammond began her reply with *“great question”* but did not recall the rest of her response. She did not otherwise recall the various remarks attributed to Ms Hammond or herself by the NUW witnesses.

[72] As will be apparent from the above summary of the evidence, no two witnesses gave a consistent account of what occurred at the 16 July 2018 meeting. There was no recording or minutes taken of the meeting. I do not consider that any witness was untruthful in their recollection of the meeting, but it is likely that there has been unconscious selectivity of memory on the part of some witnesses and a conflation between what was actually said and

the meaning ascribed to what was said. I place significant weight on the evidence of Ms Dodimead, who gave evidence that was detailed, inconsistent in some respects with Coles' interests as well as with the evidence of Ms Hammond, and consistent in some respects with the evidence of some of the NUW's witnesses. Having regard to these matters, I am satisfied on the balance of probabilities that, between them, Ms Hammond and Ms Dodimead made statements to the following effect to the participants at the meeting:

- (1) There were leases in place for the Forest Lake and Heathwood distribution centres and for that reason employees' jobs were safe.
- (2) Coles had no immediate plans for redundancies.
- (2) Coles would not improve upon its redundancy pay offer, which was the same as for the Parkinson distribution centre.
- (3) It was only a rumour that there would be a new distribution centre opened at Yatala to replace Forest Lake and Heathwood.

[73] The result of the vote which occurred on 19 July 2018 was that the proposed agreement was rejected by a majority of 63% of those who voted. The witness statements of Messrs Anesone, Crosbie, Rourke and Ly did not disclose how they voted, but Mr Anesone and Mr Crosbie said in their oral evidence that they voted against it.

[74] Following the unsuccessful vote, there were further bargaining meetings on 23, 25 and 26 July. At these meetings both the SDAEA and the NUW identified the provisions of the proposed agreement they considered needed to be improved in order to secure approval from employees, and both included the redundancy pay provisions. The NUW identified redundancy as a "*die in the ditch*" issue, but Coles refused to alter its position and pointed out that at Coles' Parkinson Distribution Centre, where the NUW represented the majority of employees, the same redundancy pay outcome which Coles was proposing had been agreed. Neither union made any complaint about the proposed four-year term.

[75] On 25 July 2018 Coles tabled a new offer which included an improved pay proposal but did not alter the position concerning redundancy pay. Mr Rondinelli made it clear at the 25 July 2018 meeting that Coles would not increase the redundancy offer, there would be no further bargaining meetings and that it intended to put its proposal to a further vote of employees. The NUW initially persisted with its claim for improved redundancy pay, but in an email sent on 2 August 2018 the NUW acknowledged that Coles did not intend to change its position and said that this had been communicated to the NUW's delegates. On 6 August 2018 Coles made a further improved offer. The SDAEA indicated its support for the proposal on 8 August 2018. The NUW conducted mass meetings of its members at the Heathwood Grocery and Liquor distribution centres, and (according to Mr Strauss) members were in general happy with the improved offer except that they were "*still adamant that the redundancy entitlement had not improved enough*". Mr Strauss said that he believed that the same sentiment was present in meetings conducted by the SDAEA, but the basis for this belief was not disclosed. The NUW did not actively campaign against approval for the proposed new agreement.

[76] The access period for the second vote commenced on 8 August 2018, and immediately prior to this a “*Team Member EA Voting Information Pack*” was provided to employees. Coles again held information sessions for employees on 14 August 2018. There is no suggestion of any misrepresentation by Coles either in the Information Pack or during the information sessions. The vote occurred on 16 and 17 August 2018, and the Qld Agreement was approved with a majority of 62% of those who voted.

Bargaining for the NSW Agreement

[77] The NDC is currently covered by the *Coles Eastern Creek (NUW) National Distribution Centre Enterprise Agreement 2015-2018* (2015 Agreement). The 2015 Agreement has a nominal expiry date of 1 September 2018. In respect of termination of employment because of redundancy, the 2015 Agreement provides in clause 26 that employees have an entitlement to four weeks’ notice and four weeks’ pay per year of service, with employees over the age of 45 entitled to an additional week’s pay per year of service capped at 10 weeks, subject to an overall cap of 52 weeks’ pay.

[78] Coles initiated bargaining for the NSW Agreement when it issued NERRs to relevant employees on 24 April 2018. The first bargaining meeting occurred on 10 May 2018, on which date Coles presented its log of claims to the NUW. The evidence establishes that Mr Thornell gave a positive review of the NDC’s performance at this meeting. He also said at this and/or later meetings that Coles was committed to investing \$5 million in mechanisation at the NDC. In respect of this representation, Mr Thornell gave evidence that Coles had already spent \$2 million of this investment and planned to proceed with the remainder of the investment. This evidence was not the subject of any cross-examination, nor was it contradicted. Mr Dundon said in his witness statement that Mr Thornell also said, in connection with this investment, that Coles “*had to get another 10 years out of it*” (referring to the NDC). This was not specifically affirmed or denied by Mr Thornell in his witness statements.

[79] At the second bargaining meeting on 29 May 2018, the NUW presented its own log of claims. The NUW’s log contained 21 items, of which the sixth was as follows:

“A clause providing that no permanent Employee be made redundant whilst labour hire employees. Contractors and/or employees of contractors, engaged by the Employer, are performing work that is or has been performed by the Employees on the site and for redundancy severance provisions to be uncapped.”

[80] Mr Noshie said in his witness statement that the claim for uncapped redundancy pay provisions “*was formulated as the second most important claim on the log as presented to me*”, but that is far from apparent on the face of the document. He also said that the claim arose from members’ concerns about their redundancy entitlements if the workplace was automated. The NUW’s log also included (at number 4) a claim for a provision requiring permanent employment to be offered to casual employees after six months’ regular and systematic employment and (at number 5) a claim for a provision under which agency labour could only be used if such persons were paid in accordance with the proposed agreement and were not engaged on terms and conditions which would undercut employees.

[81] At the meeting on 29 May 2018, a NUW representative said that item 6 in the NUW log was based on the fact that automation in the industry was “*driving some concern*” amongst NUW members. At the following meeting on 31 May 2018, Mr Thornell on behalf of Coles said that the current redundancy pay provisions were generous and that the claim in item 6 was wholly rejected.

[82] Coles maintained throughout the negotiations that the term of a new agreement should be four years (as distinct from the three-year term of the 2015 Agreement) and offered a 4% increase in the fourth year to secure agreement to this. Ms Bryant’s explanation of this was that Coles wished to “*decouple*” the nominal expiry date of any enterprise agreement at the NDC from the enterprise agreement applying at the nearby Coles Eastern Creek Chilled distribution centre. The current agreements at the two sites had nominal expiry dates within a few weeks of each other, which exposed Coles to the potential of protected industrial action occurring at both sites simultaneously. Coles therefore proposed a four-year term for the NDC’s new agreement and a three-year term for the new agreement at the other site. Ms Bryant also explained that enterprise bargaining was an expensive and time-consuming process for Coles which it wanted to minimise. Ms Bryant’s explanation is corroborated by a slideshow concerning the proposed new agreement which Coles presented to employees in mid-July 2018. Under the heading “*Why does Coles want a 4 yr EA agreement?*”, Coles included as a reason that “*Coles want to get out of the EA sequence with the CDC – Inconvenient and a distraction for 2 sites at the present – There is the potential risk to customers and service*”. I accept Ms Bryant’s explanation of Coles’ position that the new agreement have a four-year term. Ms Bryant denied that Project Broccoli influenced in any way Coles’ strategy to seek a four-year term, and there was no evidence to contradict that denial.

[83] After the fifth bargaining meeting on 7 June 2018 there remained significant differences between the parties, principally concerning wages, allowances and the term of the new agreement. The evidence does not suggest the redundancy pay entitlements claim was treated as an issue remaining in dispute after Coles rejected item 6 of the NUW’s log on 31 May 2018.

[84] Coles was anxious to have a new agreement approved before the nominal expiry date for the 2015 Agreement was reached so that it would not be exposed to protected industrial action. At the ninth bargaining meeting on 28 June 2018, Coles made a proposal for a new “*roll-over*” agreement with a four-year term to be put to a vote of employees. The NUW representatives agreed to positively present the terms of the proposed agreement to NUW members at mass meetings to be held on 3 and 5 July 2018. After these mass meetings had occurred, there was a further bargaining meeting on 5 July 2018 at which Mr Noshie informed Coles that the NUW’s members opposed the proposed new agreement. Ms Bryant’s evidence, which was not contradicted, was that Mr Noshie said at this meeting that NUW’s members’ concerns related to wages and allowances and the term of the new agreement.

[85] There were further bargaining meetings on 10 and 12 July 2018 which did not result in progress being made, and led to Coles determining to put its proposed agreement to a vote of employees. The access period for this vote commenced on 17 July 2018 and, on the preceding day, Coles distributed a “*Team Member Information and Voting Pack*” to employees which included an explanation of key provisions of the proposed new agreement. Coles managers

also conducted nine information sessions with employees on 17, 18 and 20 July 2018. These sessions were conducted using a slideshow entitled “*Proposed 2018 Enterprise Agreement*”.

[86] The vote was conducted on 24, 25 and 26 July 2018, and the result was that the proposed agreement was rejected by a majority of about 55% of those who voted. Coles managers sought feedback from employees after the vote, and negotiations then recommenced with the NUW on 31 July 2018. Mr Kot gave evidence that “*Feedback from over 50% of the NUW membership was the issue of job security*” and mentioned “*assurances from management ... in regard to their job security*”; Mr Noshie said that during the renewed bargaining process “*The company had to reassure them about their job security through several meetings to try and get them to change their ‘no’ votes and finally accept the deal*”, and Mr Dundon said that Mr Thornell gave assurances that “*we had nothing to worry about regarding job security*”.

[87] This evidence is problematic for two reasons. First, the evidence is so generalised and lacking in particularity that it is difficult to assign it any significant weight. It is not possible to identify what precisely are the representations said to have been made by Coles and when they were made; for example, Mr Kot gave evidence about assurances given concerning job security, but when tested about when such assurances were given, he said that they were contained in the Coles slideshow. However the NUW was unable to identify where any such representation was made in the slideshow (which was placed into evidence).

[88] Second, the witnesses did not make it clear what they meant by the term “*job security*”. Mr Thornell gave evidence in his witness statement, which was not the subject of cross-examination or contradiction, that the NUW did not raise the issue of job security insofar as it related to redundancies at the further bargaining meetings, but rather raised job security in connection with fears about the casualisation of the workforce. In this connection it is significant that Coles agreed in the second round of bargaining to introduce a new labour resourcing review provision (clause 40 of the Agreement) under which Coles was to review its labour resourcing requirements every six months and fill any vacant positions with agency labour hire employees working at the NDC. Having regard to this evidence, I am not satisfied that redundancy pay was ever raised by the NUW as an outstanding issue after the first unsuccessful vote, and that any discussions and representations concerning “*job security*” related to those in precarious employment at the NDC, namely labour hire casuals.

[89] In-principle agreement was reached between Coles and the NUW as to the terms of a new agreement on 7 August 2018. A new access period commenced on 8 August 2018, and an updated information and voting pack was distributed immediately prior to this. Information sessions with employees were conducted by Coles Managers on 10 and 14 August 2018. The only “*job-security*”-related issue that arose during these sessions concerned a misunderstanding about pay rates for direct and labour-hire casual employees, which was clarified by Coles. The second vote was conducted from 15 to 17 August 2018, and the proposed agreement was approved by a majority of about 56% of those who voted.

[90] Mr Kot said in his witness statement that, when the announcement concerning the new automated distribution centres and the closure of the NDC was made to the workforce (presumably on 5 October 2018), Mr Thornell said to him: “*Now I know why they [Coles] wanted a 4 year deal*”. In his witness statement Mr Thornell denied having said words to that

effect either on 5 October 2018 or at any other time. Mr Kot was not cross-examined about this aspect of his statement and Mr Thornell was not cross-examined at all. Even if Mr Thornell said the words attributed to him by Mr Kot, this could only be pure speculation on his part since he said he had no knowledge of any plan to build the new automated distribution centres or to close the NDC until about 45 minutes before it was announced to the employees on 5 October 2018. I have earlier made findings about Coles' motivation for seeking a four-year term, and even if I accepted Mr Kot's evidence, it is not probative in relation to that issue.

Consideration

[91] In considering the NUW's case against the approval of the two agreements, it is necessary to align the chronology of the bargaining process for each agreement with that of Project Broccoli. As earlier set out, the final board decision to proceed with the project was not made until 4 October 2018 while the voting process for the Qld Agreement commenced on 8 August 2018 and for the NSW Agreement on 15 August 2018. In the strict sense therefore, Coles could not have disclosed the formal decision to proceed with the project (and to close down the Forest Lake and Heathwood distribution centres and the NDC) prior to the vote being taken on either project. However I consider it would be somewhat naïve to think, given the size of the investment involved in establishing the two new automated distribution centres, that Coles' commitment to Project Broccoli can only be dated to the board meetings which occurred on 4 October 2018. As a matter of commercial reality, when a large corporation engages in the development of a major investment project which involves its most senior executives and continuing board oversight - as here - such projects will usually reach a "point of no return" some time before final board sign-off. The key pointer to that being the case with Project Broccoli is the *Concise Independent Expert's Report* concerning the demerger which was sent by Grant Samuel to the Wesfarmers Board. It is dated 5 October 2018 but was obviously prepared well before that date, and it states unequivocally that Coles' business strategy post-demerger would include "...modernising its supply chain through the development of two new automated distribution centres over a five year period, which are expected to deliver lower supply chain costs and higher service levels, improved efficiency and stock availability in stores, safer working environments and enhanced business competitiveness...".

[92] It is difficult to identify the time at which Project Broccoli reached that point. The NUW did not seek discovery of internal Coles documents which may have assisted in this task. The Courier Mail report of 21 September 2018, which clearly contained very accurate information, suggests Coles was already virtually committed to the course of establishing an automated distribution centre in Queensland at that time. It is possible that the decision reached in mid-August 2018 to expedite negotiations with Witron so that an announcement could be made prior to the date of the demerger might represent that point, but against that is the fact that this was prior to the intensive negotiations with Witron in Germany from 28 to 31 August 2018 and the subsequent decision that it was only achievable to negotiate a heads of agreement prior to the demerger announcement. Mr Brewster said that the information which formed the basis of the passage in the Grant Samuel report quoted above was supplied in September 2018 (without further specification of the precise date). In the circumstances of the limited evidence before me, I am not satisfied that Coles had committed itself either in legal or practical terms to developing the two new automated distribution centres (and closing the

Forest Lake and Heathwood distribution centres and the NDC) at any time prior to the voting processes in August 2018 by which employees approved the Qld Agreement and the NSW Agreement.

[93] The most that could conceivably have been disclosed by Coles to relevant employees during bargaining for the Qld Agreement and the NSW Agreement therefore was that there was a significant possibility that a decision might be made in the near future to establish two new automated distribution centres and to close the Forest Lake and Heathwood distribution centres and the NDC. Accordingly the first question that arises, having regard to the case advanced by the NUW, is whether the failure of Coles to disclose this prior to the votes constitutes a reasonable ground for believing that the Qld Agreement and the NSW Agreement were not genuinely agreed to by the employees covered by them.

[94] Coles submitted (on the basis of evidence given by Mr Brewster) that it was not in a position to disclose the developing position concerning Project Broccoli to employees during bargaining because:

- the Wesfarmers Market Disclosure Policy, which reflects continuing disclosure obligations under the ASX listing rules, prohibits disclosure of market sensitive information prior to its public release through the ASX;
- an ASX announcement prior to Coles entering into the heads of agreement would have created significant legal risk in terms of creating false market expectations;
- disclosure to employees only may have involved contravention of the insider trading provisions of the *Corporations Act 2001*; and
- such disclosure may have jeopardised the project's viability including by skewing leasehold prices and opening it up to public commentary.

[95] This submission may readily be accepted but at the same time I do not consider that it constitutes a proper answer to the NUW's case. Where disclosure of a material fact is necessary in order for employees to give informed consent to a proposed enterprise agreement, the existence of legal or practical impediments to disclosure cannot render the agreement of employees genuine for the purpose of s 188(1)(c). If at a particular time legal constraints or commercial sensitivities means that the necessary disclosures cannot be made to employees to permit them to genuinely agree to a proposed enterprise agreement, then the consequence may be that an enterprise agreement cannot be made at that time and must be deferred until such time as the necessary disclosures are able to be made.

[96] The more material consideration here is, I consider, the intended timing of the opening of the new automated distribution centres and the closure of the Forest Lake and Heathwood distribution centres and the NDC. The unchallenged evidence of Mr Brewster was that this would not occur until 2023, subject only to the "*assumption*" made by Mr Rondinelli that "*ramping down*" of the existing distribution centres might commence in late 2022 or early 2023. The most that could conceivably have been disclosed by Coles to employees prior to the votes to approve the Qld Agreement and the NSW Agreement therefore was the existence of a significant possibility that the distribution centres to be covered by the proposed

agreements might close, with a consequent need for redundancies, *at some time after those proposed agreements had passed their nominal expiry dates* (which are 5 August 2022 and 1 September 2022 respectively).

[97] I do not consider that this was a disclosure that was necessary to be made in order to obtain the genuine agreement of employees in respect of the proposed agreements. There is no question that the terms of the proposed agreements, including the redundancy terms, and the effect of those terms, were properly explained to employees. On the evidence before me, there will be no redundancies caused by Project Broccoli prior to the nominal expiry date of either agreement, so the redundancy terms in each agreement will not operate in respect of any such redundancies prior to that date. Employees will have the opportunity to bargain for new agreements, including new redundancy terms, to operate when any redundancies caused by Project Broccoli actually occur, and they will also have the opportunity to take protected industrial action in support of any claim for improved redundancy pay provisions in any new agreement before any such redundancies occur. Non-disclosure did not affect the capacity of employees to take advantage of this opportunity, and any informed employee would have been aware that they could pursue improved redundancy pay provisions after the nominal expiry dates of the agreements they were voting on had passed.

[98] Furthermore, it cannot be said that the possibility of redundancies occurring at some time in the future because of the development of new automated warehouses was unknown to employees. A number of witnesses said that the very motivation for the NUW's claims for improved redundancy provisions was a concern about the future automation of distribution centres - a concern given flesh by the fact that the construction of the first Woolworths automated distribution centre in Victoria was approaching completion while bargaining was occurring for the Qld Agreement and the NSW Agreement. I do not consider that the disclosure of the substantial possibility that the distribution centres covered by the proposed agreements might be replaced by automated distribution centres some years in the future would necessarily have added anything to the legitimate concern about future automation which employees already held.

[99] I do not consider that the evidence supports the proposition that any non-disclosure by Coles concerning Project Broccoli had any relationship to its position, ultimately accepted by the employees, that the Qld Agreement and the NSW Agreement should each have a four-year term. In the case of the Qld Agreement, the four-year term merely repeats the position applying under the current 2014 Agreement. In respect of the NSW Agreement, Coles' desire for a four-year term had the industrial rationale which I have earlier explained. This rationale had nothing to do with Project Broccoli and was disclosed to employees in a slideshow well before the vote.

[100] In those circumstances, it cannot in my view be said that Coles' failure to disclose what conceivably could have been disclosed before the votes in August 2018 affected the quality of the agreement of employees to the Qld Agreement and the NSW Agreement. In summary:

- employees already held a legitimate concern about future redundancies because of automation at the time they voted;

- employees were provided with the information necessary to have a proper understanding of the redundancy provisions of the proposed agreements;
- there will not be any redundancies effected pursuant to those redundancy provisions arising from Project Broccoli prior to the nominal expiry dates of the agreements;
- after the nominal expiry dates of the agreements and before any redundancies occur as a result of Project Broccoli, employees will have the opportunity to bargain for improved redundancy pay provisions in new agreements and take protected industrial action in support of such claims;
- informed employees knew at the time they voted that they would have the opportunity to bargain for improved redundancy pay provisions in a new agreement after the nominal expiry date in each proposed agreement, and the availability of this opportunity was not affected by any non-disclosure by Coles; and
- Coles' position that the Qld Agreement and the NSW Agreement should have four-year terms had nothing to do with Project Broccoli and was the subject of proper disclosure to employees.

[101] It is next necessary to consider the second limb of the NUW's case, namely that misrepresentations made by Coles during the bargaining process for the Qld Agreement and the NSW Agreement meant that there are reasonable grounds for believing that the agreements were not genuinely agreed to by the employees. In respect of the Qld Agreement, I have earlier set out (in paragraph [72] above) the four representations relied upon by the NUW which I am satisfied were actually made at the information session on 16 July 2018. In relation to the first three of those representations, I do not consider that they conveyed any incorrect or misleading information. Dealing with these representations in turn:

- (1) It was not contended by the NUW that Ms Hammond's statement that there were leases in place for the Forest Lake and Heathwood sites was factually incorrect. When Ms Hammond, in connection with that statement, said that employees' jobs were safe, I consider that would reasonably be understood as meaning that employees' jobs were safe for the duration of those leases (which has not been suggested to be inaccurate). I do not consider that the statement could fairly be interpreted as meaning that employee's jobs were safe for an indefinite period.
- (2) As at 16 July 2018, I consider that it was entirely correct to say that Coles had no immediate plans for redundancies at the Forest Lake or Heathwood sites.
- (3) Consistent with Ms Hammond's statement, Coles did not improve on its redundancy offer after 16 July 2018, and that offer involved the same redundancy pay entitlements as the agreement applying at the Parkinson site.

[102] The fourth representation is more questionable. By 16 July 2018, given the stage which Project Broccoli had reached, it was clearly much more than a mere rumour that there would be a new distribution centre opened to replace those at Forest Lake and Heathwood

(even though, as it has turned out, the new distribution centre will not be at Yatala). What Ms Hammond personally knew about Project Broccoli at this time is beside the point, since she was speaking on behalf of Coles and effectively acting as its agent. However to the extent that what Ms Hammond said might have amounted to a misrepresentation, it remains necessary to consider the effect this might have had on the genuineness of the employees' agreement. In this respect I consider that the following matters are relevant:

- the representations were made at an information session for day shift employees at the Heathwood Grocery distribution centre on 16 July 2018, which was attended by approximately 40-50 employees out of a total workforce covered by the Qld Agreement of over 700 employees;
- the evidence does not establish that any representation to similar effect was made to any other part of the workforce at any other meeting at any other time;
- the representation was made in respect of the first proposed agreement, which was rejected by the workforce on 19 July 2018 by a substantial majority; and
- there is no evidence that any employee who heard the representation actually voted in favour of the Qld Agreement; those employee witnesses who gave evidence about it either did not say how they voted or voted against the approval of the Qld Agreement, and a number of them said they simply did not believe the representations they said were made.

[103] For these reasons I am not satisfied that any misrepresentation made on behalf of Coles constitutes a reasonable ground for believing that the Qld Agreement was not genuinely agreed to. In short, there is no basis upon which it might reliably be concluded that the representation swayed or influenced anybody who voted in favour of the approval of the Qld Agreement on 16 and 17 August 2018.

[104] In respect of the NSW Agreement, I am not satisfied that any representative of Coles made any misrepresentation as alleged by the NUW. Generally speaking, the NUW's evidence concerning the alleged misrepresentations was expressed in vague generalities and was lacking in particularity. Mr Thornell's review of the performance of the NDC and his statement that Coles was continuing to invest in the NDC at the meeting on 10 May 2018 was not demonstrated to be untrue or inaccurate. If he said that Coles intended to get a further ten years' life out of the NDC, that was a true statement of Coles' intention at that time having regard to the \$5 million investment it was making in the mechanisation of the NDC. Subsequent discussions and any assurances made about "*job security*" at the bargaining meetings which occurred from 31 July to 7 August 2018 were concerned with the position of labour hire casuals, not future redundancies. Accordingly the factual premise of the NUW's case concerning misrepresentation in relation to the NSW Agreement is rejected.

[105] The NUW advanced the additional contention that the Qld Agreement and the NSW Agreement lacked authenticity and moral authority because Coles failed to exhibit "*trustworthiness*" throughout bargaining. It was not made clear by the NUW in its submissions that this third limb of its case had any substantive content separate from its earlier contentions that the genuineness of employees' agreement was vitiated by material

non-disclosure and misrepresentations. Having regard to the conclusions I have already expressed, I do not consider that there is a proper basis to conclude that Coles conducted itself in an untrustworthy fashion during bargaining for the Qld Agreement and the NSW Agreement.

[106] For these reasons, I am satisfied for the purpose of s 188(1)(c) of the FW Act that there are no reasonable grounds for believing that the Qld Agreement or the NSW Agreement was not genuinely agreed to by the employees covered by each agreement.

Conclusion

Qld Agreement

[107] A signed copy of the consolidated undertakings given by Coles in respect of the Qld Agreement is attached as Annexure A. I accept the undertakings. I am satisfied that they will not cause financial detriment to any employee covered by the Qld Agreement and will not result in substantial changes to the Qld Agreement.

[108] On the basis of the material contained in the application, the accompanying statutory declaration, the further information provided by Coles, the undertakings attached as Annexure A and the conclusions earlier stated concerning s 188(1)(c), I am satisfied that each of the requirements of ss 186, 187, 188 and 190 as are relevant to the application for approval of the Qld Agreement have been met.

[109] As earlier stated, the NUW and the SDAEA have given notice under s 183 of the FW Act that they want the Qld Agreement to cover them. In accordance with s 201(2) I note that the Agreement covers the NUW and the SDAEA.

[110] The Agreement is approved and, in accordance with s 54 of the FW Act, will operate 7 days from the date of approval. The nominal expiry date of the Agreement is 5 August 2022.

NSW Agreement

[111] A signed copy of the consolidated undertakings given by Coles in respect of the NSW Agreement is attached as Annexure B. I accept the undertakings. I am satisfied that they will not cause financial detriment to any employee covered by the NSW Agreement and will not result in substantial changes to the NSW Agreement.

[112] On the basis of the material contained in the application, the accompanying statutory declaration, the further information provided by Coles, the undertakings attached as Annexure B and the conclusions stated above concerning s 188(1)(c), I am satisfied that each of the requirements of ss 186, 187, 188 and 190 as are relevant to the application for approval of the NSW Agreement have been met.

[113] Pursuant to s 205(2) of the FW Act, the model consultation term prescribed by reg 2.09 of the FW Regulations is taken to be a term of the NSW Agreement. In accordance with s 201(1) I note that the model consultation term is included in the NSW Agreement.

[114] The NUW has given notice under s 183 of the FW Act that it wants the NSW Agreement to cover it. In accordance with s 201(2) I note that the NSW Agreement covers the NUW.

[115] The NSW Agreement is approved and, in accordance with s 54 of the FW Act, will operate 7 days from the date of approval. The nominal expiry date of the NSW Agreement is 1 September 2022.



VICE PRESIDENT

Appearances:

H. Mifflin on behalf of the National Union of Workers

F. Parry QC and *A. Pollock* of Counsel on behalf of Coles Group Supply Chain Pty Ltd

J. Murdoch QC and *S. Sciacca* on behalf of the Shop, Distributive and Allied Employees' Association

Hearing details:

2019.

Sydney:

12 - 13 March.

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ANNEXURE A

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG2018/4874

Applicant: Coles Group Supply Chain Pty Ltd

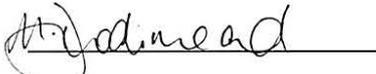
Section 185 – Application for approval of a single enterprise agreement

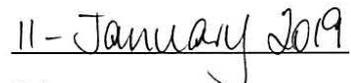
Undertaking- Section 190

I, Nicole Jan Dodimead, People and Culture Manager (Forest Lake & Heathwood) – Supply Chain for Coles Group Supply Chain Pty Ltd give the following undertakings with respect to the Coles Queensland (Forest Lake and Heathwood) Distribution Centre Enterprise Agreement 2018 ("**the Agreement**"):

1. I have the authority given to me by Coles Group Supply Chain Pty Ltd to provide these undertakings in relation to the application before the Fair Work Commission.
2. Annual leave in clause 31 of the Agreement accrues progressively during each year of service consistent with section 87(2) of the *Fair Work Act 2009 (FW Act)*.
3. Consistent with clauses 11.3(c) and 11.4(d) of the Storage Services and Wholesale Award 2010 (**SSW Award**), the hours of work of a part-time employee, including actual starting and finishing times each day, will be agreed in writing at the time of engagement, and any agreed variation (whether it be ad hoc, a one off variation or permanent), to a part-time employee's regular pattern of work will be recorded in writing. For the avoidance of doubt, a part-time team member's contracted hours of work may be not be altered unilaterally by the employer.
4. A part-time employee may be offered and voluntarily accept to work additional hours (what is commonly known at the sites as 'flex up'), and be paid for those additional hours worked on each occasion pursuant to clause 24.22 and clause 26.2(i) (where overtime is applicable) of the Agreement. The part-time employee will be paid pursuant to the Agreement for additional hours worked, provided on each occasion the casual rate (and any applicable overtime payments) prescribed in the Agreement compensates the part-time team member more favourably or at least equal to the equivalent payment the part-time team member would have otherwise received under clause 11.3(d) of the SSW Award. On any occasion a part-time employee's agreed additional hours will not satisfy clause 11.3(d) of the SSW Award, the part-time employee's additional hours will be capped to a maximum amount of additional hours on each occasion or alternatively the part-time employee will receive the relevant overtime penalty rates pursuant to clause 11.3(d) of the SSW Award.
5. The severance pay entitlement in Schedule B.3(d)(i) of the Agreement that refers to three (3) weeks' pay per completed year of service, calculated pro-rata for each month of service does not apply to a retrenched employee who has completed at least 1 year but less than 2 years' service. If a retrenched employee has completed at least 1 year but less than 2 years' service, the employee will be entitled to four (4) weeks' severance pay consistent with section 119 of the FW Act. For all other years of service, the severance pay calculation is based on three (3) weeks' pay per completed year of service pursuant to Schedule B.3(d)(i) of the Agreement.

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


Signature


Date

Coles Queensland (Forest Lake and Heathwood) Distribution Centre Enterprise Agreement 2018



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



Table of Contents

Subject Matter	Page No.
PART 1 – PRELIMINARY	5
1. TITLE.....	5
2. PERIOD OF OPERATION	5
3. PARTIES BOUND AND COVERAGE	5
4. AGREEMENT POSTING	5
5. RELATIONSHIP TO OTHER AWARDS OR AGREEMENTS.....	5
6. OBJECTIVES OF THE AGREEMENT.....	6
PART 2 – DEFINITIONS, DISPUTE RESOLUTION, ENGAGEMENT.....	6
7. DEFINITIONS	6
8. DISPUTE RESOLUTION	8
9. CONTRACT OF EMPLOYMENT	9
10. CASUAL ENGAGEMENT	10
PART 3 – CLASSIFICATIONS & WAGES	10
11. CLASSIFICATION STRUCTURE	10
12. WAGE RATES.....	13
13. HIGHER DUTIES	13
14. PAYMENT OF WAGES.....	14
15. SUPERANNUATION	14
PART 4 – MONETARY ALLOWANCES	15
16. MEAL ALLOWANCE	15
17. FIRST AID ALLOWANCE	15
18. TEAM MEMBER TRAINERS ALLOWANCE	15
19. TRAVELLING ALLOWANCE	16
20. LAUNDRY ALLOWANCE	17
21. MAINTENANCE ALLOWANCE	17
PART 5 – HOURS OF WORK, OVERTIME, RDOS, MEAL AND REST BREAKS	18
22. SPAN OF ORDINARY HOURS.....	18
23. SHIFT PENALTIES / ALLOWANCES.....	18
24. ROSTERING PRINCIPLES	19
25. RDO GUIDELINES.....	21
26. OVERTIME.....	24
27. MEAL BREAK	26
28. REST BREAKS.....	26
PART 6 – LEAVE AND PUBLIC HOLIDAYS	27
29. PERSONAL LEAVE	27
30. COMPASSIONATE LEAVE.....	30
31. ANNUAL LEAVE	31
32. LONG SERVICE LEAVE.....	32
33. NATURAL DISASTER LEAVE.....	32
34. PARENTAL LEAVE	32
35. COMMUNITY SERVICE LEAVE.....	33
36. JURY SERVICE	33
37. DOMESTIC AND FAMILY VIOLENCE LEAVE	34
38. LEAVE OF ABSENCE	34
39. PUBLIC HOLIDAYS	34

PART 7 – MISCELLANEOUS PROVISIONS	36
40. NO EXTRA CLAIMS	36
41. PROTECTIVE CLOTHING AND UNIFORMS	37
42. OCCUPATIONAL HEALTH AND SAFETY	37
43. LIMITATION OF WEIGHTS	38
44. FIRST AID EQUIPMENT	38
45. FORKLIFT LICENCE	38
46. MANAGERS AND WORK UNDER THE AGREEMENT	38
47. PERFORMANCE MANAGEMENT	39
48. TASK ALLOCATION	39
49. TRAINING AND CAREERS	40
50. BAG CHECKS	40
51. SECURITY CAMERAS	40
52. ENGINEERED STANDARD	40
53. PRODUCTIVITY / PERFORMANCE BASED INCENTIVES	40
54. HOT WEATHER	41
55. FATIGUE MANAGEMENT POLICY (NIGHT SHIFT)	41
56. SMOKE MANAGEMENT POLICY	41
57. WORK AT OTHER SITES	41
SCHEDULE A - TERMINATION OF EMPLOYMENT	42
SCHEDULE B - REDUNDANCY	43
SCHEDULE C - MODEL CONSULTATION TERM	44
SCHEDULE D - FLEXIBILITY TERM	46
SIGNATORIES	47

PART 1 – PRELIMINARY

1. TITLE

This Agreement will be known as the Coles Queensland (Forest Lake and Heathwood) Distribution Centre Enterprise Agreement 2018.

2. PERIOD OF OPERATION

This Agreement shall operate seven (7) days after the date of approval by the Fair Work Commission (**FWC**). The nominal expiry date of this Agreement is 5 August, 2022.

3. PARTIES BOUND AND COVERAGE

This Agreement shall cover and apply to:

- (a) Coles Group Supply Chain Pty Ltd (ABN 33 082 423 014] ("**Coles and/or Coles**"), and
- (b) All team members employed by Coles under one of the classifications prescribed in clause 11 of this Agreement and who undertake work at Coles' Distribution Centres' commonly known as Forest Lake, Heathwood Grocery and Heathwood Liquor (**Sites**); and
- (c) the Shop Distributive and Allied Employees Association, Union of Employees; (**the Union**) and
- (d) Distribution Centers' commonly known as Forest Lake, Heathwood Grocery and Heathwood Liquor.

4. AGREEMENT POSTING

A true copy of this Agreement shall be exhibited in a conspicuous and convenient place at the Sites.

5. RELATIONSHIP TO OTHER AWARDS OR AGREEMENTS

This Agreement constitutes the whole agreement between the parties bound and operates in complete substitution of any award or enterprise agreement, whether State or Federal, previously covering such team members as provided for within the classifications contained in this Agreement.

6. OBJECTIVES OF THE AGREEMENT

6.1 The parties to this Agreement acknowledge:

- the objective of this Agreement is to work collectively to improve the working environment and to increase the productivity, flexible operation, efficiency and prosperity of Coles;
- workplace flexibility (as per the terms in this Agreement) is a condition of employment of all team members.
- all team members will carry out reasonable and lawful directions and duties that are within their skill, competency and training, provided the team member is capable of performing the work in a safe manner.

6.2 The terms of this Agreement are aimed at:

- (a) providing in a competitive market place, a Supply Chain that is in conformity with the vision and goals of Coles; and
- (b) providing the basis for continued flexibility and security of employment through:
 - All team members, including managers at all levels and elected Union representatives, working co-operatively as a team.
 - Continuous monitoring of performance, behaviour and results to ensure that Coles continuously improves productivity with the aim of meeting and/or exceeding world best practice.
 - Ensuring that the total workforce is committed to quality of product, personal and workplace safety and meeting or exceeding customer needs.
 - Ensuring all team members benefit from the improved competitiveness and prosperity of Coles.

- Team members understanding and accepting Company Policies and Procedures which are made known to them and which are necessary to ensure a safe and efficient operation.

6.3 The parties to this Agreement recognise:

- (a) the contribution of all parties to this Agreement in setting a framework for increased productivity and profitability, and to the long-term security and financial well-being of its team members.
- (b) their shared interests in maintaining and enhancing the efficiency, productivity and continuous improvement of Coles in the competitive market in which it operates.

6.4 The parties to this Agreement agree:

- (a) that in order to improve its competitive position Coles requires full flexibility to operate on a twenty-four (24) hour, seven (7) day per week basis around the needs of stores, suppliers and customers;
- (b) to work to facilitate the introduction of such innovations in work practices and technology in order to achieve the goals of protecting employment, improving the productivity, competitiveness and prosperity of Coles
- (c) that Coles has the ability to maximise the efficiency of its operations through flexibility in the assignment of appropriately skilled team members. Team members will perform the full range of tasks required by Coles limited only by their skills, knowledge, training, capability, and safety considerations.

6.5 To assist in achieving the desired objectives, Coles will carefully select the best people available to work in its operation and to create a safe work environment that fosters teamwork and co-operation amongst team members at all levels.

6.6. This environment will ensure, job satisfaction for all team members' high productivity and confidence in Coles to continue to invest in the business to the benefit of team members and its customers.

6.7. Maximising permanent employment within the workforce wherever possible. When a vacancy occurs Coles will give first consideration to the employment of a permanent team member depending on the needs of the business. Management reserves the right to continue to manage the business on a commercial basis.

6.8. It is understood between the parties that the Objective clause is to be interpreted in the context of all the other clauses in this Agreement.

PART 2 – DEFINITIONS, DISPUTE RESOLUTION, ENGAGEMENT

7. DEFINITIONS

7.1. "Act" means the Fair Work Act 2009 (as amended).

7.2. "Agreement" means the Coles Queensland (Forest Lake & Heathwood) Distribution Centre Enterprise Agreement 2018.

7.3. Casual Team Member means a team member engaged by Coles by the hour, for not more than 36 ordinary time hours in any one week. A casual team member may work their ordinary hours over a maximum of 5 consecutive days, unless by agreement, a team member is willing to work 6 consecutive days. A casual team member shall be entitled to overtime at the applicable rates when they work in excess of 6 consecutive days.

7.4. "Child" A child of a person includes:

- (a) someone who is a child of the person within the meaning of the Family Law Act 1975 ; and
- (b) an adopted child or step-child of the person.

It does not matter whether the child is an adult.

7.5. "the Company" and/or "Coles" and/or "employer" means Coles Group Supply Chain Pty Ltd.

7.6. "Immediate family" means the team member's spouse (including de-facto spouse or de-facto partner), child (including step, adopted, ex-nuptial or foster), parent (including step parent), grandparent, grandchild or sibling of the team member ; and the children (including step, adopted, ex-nuptial or foster), parent (including step parent), grandparent, grandchild or sibling of a spouse of the team member.

A ***'member of the team member's household'*** shall mean any person (including but not limited to the team member's ***'immediate family'*** as defined above) who resides in the team member's household or home.

- 7.7. "Full-time team member" means A full-time team member is engaged on a weekly basis to work 152 ordinary time hours over a 4 week cycle.
- 7.8. "Part-time team member" means a part-time team member engaged as such and works a contracted number of hours for not less than 12 ordinary time hours per week and not more than 32 ordinary time hours per week. Leave and benefit entitlements shall be calculated on the basis of pro rata entitlements for a full-time team member.
- 7.9 "Fixed Term team member" means a fixed term team member engaged on a full-time or part-time basis for a fixed period of employment, excluding relief in a parental leave situation. The period and terms of their employment will be agreed in writing before commencement of their engagement. A minimum period of employment shall be one month with a maximum of four months.
- 7.9.1 No team member will be engaged for more than three successive engagements of fixed-term employment from the date of operation of the Agreement (except where the team member is relieving another on parental leave, long service leave or personal leave, in excess of three months).
- 7.9.2 Fixed term contracts are not considered to be successive if they are interrupted by a break of three months or more.
- 7.9.3 In addition to meeting the normal selection criteria, preference in permanent employment will be given to team members who have completed consecutive periods of fixed-term employment.
- 7.9.4 All leave and benefits that the fixed term team member may accrue shall be calculated on the basis of pro rata entitlements for full-time team members.
- 7.9.5. Personal leave entitlements will be on a pro rata basis and calculated pursuant to the personal leave provisions of this Agreement.
- 7.9.6. A fixed term team member shall be entitled to retain accrued personal leave entitlements provided they are engaged with Coles either on a full-time, part-time, or fixed term team member basis. Actual use of the entitlement shall only be in periods when the team member is engaged either as a full-time, part-time or fixed term team member.
- 7.9.7. A fixed term team member having accrued pro rata annual leave may at the end of their fixed term engagement elect either:
- (a) To have that accrued leave paid out (being the payment of the accrued leave plus 17.5% loading), or
 - (b) To carry that accrued leave over to their next engagement with Coles either as a full-time, part-time or fixed term team member.
- 7.9.8. If the team member is not re-engaged as a full-time, part-time or fixed term team member within three (3) months from the end of the engagement that accrued such leave or leaves the business, Coles shall pay to the team member the accrued annual leave (plus 17.5% loading); however the rate of payment will be the rate paid or payable during the period of engagement as a fixed term team member.
- 7.10. "Trainers" (subject to clause 18 of this Agreement) means a team member appointed as such who is responsible for the training of other team member/s and who has or will undertake Certificate IV Workplace Training and Assessment through a registered training organization and be paid an allowance in accordance with clause 18 of this Agreement in recognition of their training skills.
- 7.11. "Ordinary time earnings" means the actual ordinary rate of pay the team member receives for the ordinary hours of work performed, excluding overtime, annual leave loadings, shift allowances or other penalty rates, fares and travelling time and other extraneous payments including bonuses, incentives and over award payments.
- 7.12. "Day Shift" means any shift in which the ordinary hours are worked between 5.00 am and 6.00 pm, Monday to Sunday.
- 7.13. "Afternoon Shift" means any shift finishing between 6.00pm and up to and including Midnight.
- 7.14. "Night Shift" means any shift in which the majority of hours are worked after Midnight.
- 7.15. Policies and Procedures mean the policies and procedures of Coles which may be amended from time to time with appropriate notification and consultation with the team members and/or the Union (if necessary).
- 7.16. "NES" means the National Employment Standards.

- 7.17. "Non-Rotating Afternoon Shift" means a team member who by direction of Coles works their ordinary hours on afternoon shift as defined in clause 7.13 without rotation shall be paid in addition to the appropriate weekly rate as prescribed in clause 12.
- 7.18. "Non-Rotating Night Shift" means a team member who by direction of Coles works their ordinary hours on night shift as defined in clause 7.14 without rotation shall be paid in addition to the appropriate weekly rate as prescribed in clause 12:
- 7.19. 'FFPP' means from the first full pay period to commence on or after.
- 7.20. "Union" means the Shop Distributive and Allied Employees Association, Union of Employees

8. DISPUTE RESOLUTION

- 8.1. This clause sets out the procedure to settle a dispute between Coles, team member/s engaged pursuant to the terms of this Agreement or their nominated representative (including but not limited to the Union, the Union officials and on-site delegates):
- 8.1.1 about a matter or concern regarding the application and/or interpretation of the terms of this Agreement; or
 - 8.1.2 about a matter arising from the operation of this Agreement; or
 - 8.1.3 in relation to the NES (except for disputes under section 65(5) or 76(4) of the Fair Work Act relating to refusals for flexibility arrangements or extended parental leave on reasonable business grounds).

This clause does not preclude disputes and claims pertaining to termination of employment, equal opportunity or unlawful discrimination despite the utilisation of this clause or not.

- 8.2. It is agreed that every endeavour will be made to amicably settle any dispute which may arise in the Sites by direct negotiation and consultation between the parties.
- 8.3. Both team members and Coles may appoint a representative of their choice for the purposes of the dispute resolution procedure.
- 8.4. In the first instance, should a dispute arise, the team member/s shall raise the matter with the responsible line manager with the intent to discuss and resolve the matter.
- 8.5. If the dispute remains unresolved, after 24 hours of the dispute first being raised, the team member/s may discuss the dispute with their the line manager and the team member/s nominated representative (or elected delegate, where relevant).
- 8.6. If the dispute remains unresolved within four (4) calendar days, the team member/s or their nominated representative (or elected delegate, where relevant) may approach the next level of management for further discussion and resolution.
- 8.7. If the dispute remains unresolved, within four (4) calendar days, the team member/s or their nominated representative (or elected delegate, where relevant) may advise the appropriate Union official as nominated by the State Secretary of the Union. Discussions shall then be held between the nominated representative of Coles and the appropriate Union official. The elected delegate, the team member and appropriate line managers may be involved at this level.
- 8.8. If discussions at the workplace level do not resolve the dispute, either party may refer the matter to the Fair Work Commission (**FWC**) to, at first instance conciliate with the parties to resolve the issue, or failing resolution by conciliation, either party may refer the matter to the FWC to arbitrate.

Status Quo

- 8.9. At all times, it is agreed that while the dispute resolution procedure is in process (including conciliation, arbitration and appeals) the status quo shall prevail and work will proceed normally.

Fair Work Act – legislation and procedures

- 8.10. Throughout the conciliation, arbitration and appeal process (if applicable) the parties agree to comply with all relevant requirements under the Fair Work Act legislation and regulations (as amended from time to time) to allow these procedures to be completed in a timely manner.
- 8.11. The parties shall at all times retain their right to utilise other legislation, commissions or courts to resolve disputes arising out of the application of or in relation to the Agreement.

9. CONTRACT OF EMPLOYMENT

Each team member shall be engaged on the following basis as either a:

- a) full-time team member ; or
- b) part-time team member ; or
- c) casual team member ; or
- d) fixed-term team member.

10. CASUAL ENGAGEMENT

- 10.1. It is the clear preference of Coles to directly employ its own workforce.
- 10.2. Coles continues to move towards a position of having a workforce made up of Coles full-time, part-time and Coles' casual team members.
- 10.3. It is not the intention of Coles to rely on agency staff to operate shifts. That said, there will be times when additional staff are required above that which Coles already has, and if necessary Coles will get these through an appropriate source. Coles believes however that this can be kept to a minimum and only used in an unusual or highly pressing situation.
- 10.4. When a situation arises where agency staff are deemed necessary, Coles will consult with delegates before implementing any decision regarding the use of agency staff.
- 10.5. Consistent with the above, on or before 30 November 2018, Coles will employ an additional 30 permanent team members, with the positions being made available to suitable Coles casual team members in the first instance (and, if all the positions cannot be filled by casual team members, to suitable workers who are in the existing pool of agency staff used at the Site). Coles will ensure that 30 workers from the existing pool of agency staff are converted to Coles' direct casual employment.
- 10.6. Unless significant business change occurs, Coles will ensure that the number of permanent team members at each of the DCs remains, at a minimum, the number of permanent team members employed after the additional (30) permanent positions are filled in accordance with this clause, above. When permanent positions become available (e.g. as a result of attrition), those positions will be filled by suitable Coles casual team members in the first instance, with the same number of conversions of agency staff to direct Coles Casual employment occurring each time casual team members are converted to permanent employment in accordance with this provision.

Coles direct casual conversion

- 10.7. A casual team member (other than an irregular casual team member), who over a calendar period of 12 months has been regularly engaged and worked a pattern of hours on an ongoing basis which, without significant adjustment, the casual team member could perform as a full-time or part-time team member, may request in writing, after 12 months of casual employment, to convert their employment to full-time or part-time employment.
- 10.8. Coles will within four (4) calendar weeks of receiving the request for conversion, review and consider the request, based on reasonable business and operational grounds.
- 10.9. Coles at its discretion has the right to refuse the request for conversion on reasonable business and operational grounds that include:
- it would require significant adjustment to the casual team member's hours of work to accommodate them in full-time or part-time employment;
 - it is known or reasonably foreseeable that the casual team member's position will cease to exist within the next 12 months;

- it is known or reasonably foreseeable that the team member's hours of work will be significantly reduced within the next 12 months; or
- it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the team member's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.

The reasons for refusal must be provided by Coles in writing within 28 days of the request. If the team member does not accept the refusal, it may be dealt with as a dispute under the dispute resolution procedure.

- 10.10. Once a casual team member has been accepted by Coles to convert to permanent employment the team member may only revert back to casual employment by written agreement with Coles.
- 10.11. If Coles agrees to the conversion this agreement must be recorded in writing and if it is a part-time position, the number of hours and the pattern of hours that will be worked, as set out in clause 7.9 Part-time employment must be confirmed.
- 10.12. For the purposes of this clause an irregular casual team member is one who has been engaged to perform work on an occasional, non-systematic or irregular basis.
- 10.13. A team member will not be engaged and re-engaged so as to avoid any obligation under this clause.
- 10.14. This Coles direct casual conversion clause does not apply to indirect or agency casuals engaged by Coles via a labour hire arrangement.
- 10.15. Coles casual team members who were regularly engaged by Coles as at the date of 6 August 2018, and for a period of at least 6 months prior to the operation of this Agreement, may request in writing, to convert their employment to full-time or part-time employment. For the avoidance of doubt, operation of this Agreement means the operative date as determined by the FWC at the time of approval.

PART 3 – CLASSIFICATIONS & WAGES

11. CLASSIFICATION STRUCTURE

11.1 Purpose

The purpose of this classification graded structure is to achieve the following:

- (1) Foster a harmonious work place where team members are encouraged to train in all areas of distribution operations, developing skills which will enhance their own potential to advance whilst meeting both the needs of the business and changing technology.
- (2) Maintain and further develop a pay system that rewards flexibility in the workplace, skill enhancement and skill utilisation.
- (3) A proper emphasis is placed on maintaining and improving proper work practices, ensuring a safe and healthy work environment.

11.2. Grade 1 Team member - indicative task order selector in Training

A Grade 1 Team member is a team member undertaking a nine (9)-month planned training program in all facets of Coles's operation.

The training will involve:

- (1) Supervised use of all non-licensed material handling equipment.
- (2) Storing and packing of goods in line with Company procedures.
- (3) Effective completion of picking orders.
- (4) Expected levels of housekeeping to be maintained whilst working.
- (5) Education of safety standards and procedures operating within the Distribution Centre.

Promotional Criteria

- (1) Upon an existing team member completing the required nine (9) month training programme successfully they will be automatically promoted to a Grade 2 team member. However, management has sole discretion to promote earlier in case of demonstrated consistent performance.
- (2) Successful completion of the training programme and relevant probation/qualifying period will be dependent upon regular performance reviews with their Line Manager consistent with a 3/7/11 process.

11.3 Grade 2 Team member - Indicative tasks may include Trained Order Selectors, Cleaners, and Canteen assistants

A Grade 2 Team member will be a team member who can perform all the duties outlined in the training program with minimal supervision in addition to:

- (1) Having a sound knowledge of all departments within the Distribution Centre operation.
- (2) The team member wishing to progress, being prepared to undertake further training in more complex skills.
- (3) Perform duties safely with limited supervision and demonstrated accuracy.

Skills and Duties:

Responsibilities/Duties may include but not limited to:

- (1) Maintaining the quality of own work and required performance standards.
- (2) Working in a team environment and/or under supervision.
- (3) Undertaking duties in a safe and responsible manner.
- (4) Exercising limited discretion within their level of skills and knowledge.
- (5) Possessing basic interpersonal and communication skills.
- (6) Performs one or more of the following tasks/duties or a combination.
 - (a) **Picking, Selecting and/or processing stock-**
 - Understanding of order selection procedures.
 - Understanding distribution centres layout.
 - Identifying picking, labelling and assembling stock.
 - Transfer of stock.
 - (b) **Despatch of stock-**
 - Identifying stock for despatch.
 - Correct stacking and re-assembling of stock.
 - Preparation of and loading of stock manually.
 - (c) **Housekeeping and other functions-**
 - Cleaning/maintaining distribution centres and surrounds equipment and stock.
 - Clearing damaged stock, wrapping materials and loose stock.
 - Assemble, remove and assist racking changes and equipment as required.
 - Counting and recording stock (including stock take).
 - Unloading vehicles using non-licence materials handling equipment.

Promotional Criteria

A team member will remain at a Grade 2 level until they have demonstrated the potential to competently perform the duties outlined in Grade 3, attained necessary certification to perform Grade 3 duties. All promotions from Grade 2 to 3 will be based on business needs, as determined by vacancies; regular attendance and sustained performance levels.

11.4. Grade 3 Team member - indicative tasks Fork lift Operators, Maintenance assistants, *multi-skilled stock selector/forklift operator (*applies only to a permanent Liquor team member).

A Grade 3 Team member will be a team member who can competently perform all duties outlined in Grades 1 and 2 in addition to:

- (1) The legal operation of all material handling equipment requiring a licence.
- (2) Ability to use all tools and equipment within the Distribution Centre excepting when a qualified trades certificate is required.
- (3) The ability to operate VDU/computer systems on an interrogation basis only.
- (4) Performing put away and let down tasks effectively.
- (5) Ability to understand detailed work instructions and procedures.
- (6) Perform duties with limited supervision and maintain responsibility for own quality of work.
- (7) Sort and assemble pallets.

Promotional Criteria

A team member shall remain at a Grade 3 level until they have demonstrated the potential to competently perform the duties outlined in Grade 4, attained necessary certification to perform Grade 4 duties. All promotions from Grade 3 to 4 will be based on business needs, as determined by vacancies; regular attendance and sustained performance levels.

11.5. Grade 4 Team member-indicative task checkers

A Grade 4 Team member will perform all duties outlined in Grades 1, 2 and 3 in addition to:

- (1) Confirming accuracy of orders by checking quantity, receipt of stock, "use-by" coding, description of goods etc.
- (2) Understands and is responsible for quality control standards.
- (3) The ability to effectively locate, receive and despatch all goods.
- (4) Limited supervision of individuals and provide direction in a team environment.

Promotional Criteria

A team member will remain at a Grade 4 level until they have demonstrated the potential to competently perform duties outlined in Grade 5 and attained the necessary certification to perform Grade 5 duties. All promotions from Grade 4 to 5 will be based on business needs, as determined by vacancies; regular attendance and sustained performance levels.

11.6. Grade 5 Team member indicative tasks Despatch Officer; Non – salaried, Non Operational Clerks

A Grade 5 Team member will perform all duties outlined in items 1, 2, and 3.

- (1) Operate a VDU/Computer system for the purposes of maintenance/data entry and the storage of data, in respect of receiving/despatch procedures.
- (2) Understands all receiving/despatch procedures
- (3) Responsible for the preparation and reconciliation of regular reports on stock movement despatch/receiving etc.

The Grade 5 classification includes all non-salaried non-operational clerks performing administrative duties.

Promotional Criteria

A team member will remain at Grade 5 level until they have demonstrated the potential to competently perform duties outlined in Grade 6 and attained the necessary certification to perform Grade 6 duties. All promotions from Grade 5 to 6 will be based on business needs, as determined by vacancies; regular attendance and sustained performance levels.

11.7. Grade 6 Team member- Indicative tasks Section Head, Dispersement Officer, Liquor Bond Room duties

A Grade 6 Team member will perform all duties outlined in grades 1, 2, 3, 4 and 5 in addition to:

- (1) Understands all procedures and is responsible for one section of the Distribution Centre.

- (2) Exercising VDU skills to a higher level than a Grade 5 team member.
- (3) Responsible for planning and co-ordinating the work and performance of more than ten individuals.
- (4) Responsible for regularly reporting to Warehouse Manager on stock movement, despatch/receiving.
- (5) Liaising with management, suppliers and customers with respect to Distribution Centre operations.
- (6) For Liquor Operations team members only: Liquor bonding duties.

Vacancies and Promotional Criteria Review

- (1) In order for an effective training and review program to be implemented an appropriate amount of time should be allowed for the development of both and for the training of management to administer both. Until the development and implementation of these programs it is proposed the structure be implemented with current team members entering the structure as a Grade 2 Team member immediately.

Consideration needs to be given regarding Coles’s commitment to providing appropriate training within an acceptable time frame to encourage the progression of team members from Grade 1 to Grade 6.

- (2) Job vacancies are to be advertised with preference where applicable given to fulltime, part-time and casual team members in that order based on the merit principles. Results will be communicated to applicants within 21 days of the closure date of the advertisement.
- (3) Promotional criteria, if required, will be reviewed in the JCC (Joint Consultative Committee).
- 11.8. Team members within each classification are to perform a wider range of duties including work which is incidental or peripheral to their main tasks or functions.
- 11.9. A team member covered by this Agreement shall not be required to do any scrubbing of floors.
- 11.10. In ordinary time, the higher graded team member will be given first opportunity to perform work at the higher graded duty.

12. WAGE RATES

The weekly wage rate payable to a team member covered by this this Agreement will be as follows:

Classification	From the first full pay period to commence on or after the 6.08.18	From the first full pay period to commence on or after the 6.08.19	From the first full pay period to commence on or after the 6.08.20	From the first full pay period to commence on or after the 6.08.21
Grade 1	\$971.73	\$1,005.74	\$1,040.94	\$1,077.38
Grade 2	\$1,214.67	\$1,257.18	\$1,301.18	\$1,346.72
Grade 3	\$1,254.31	\$1,298.21	\$1,343.65	\$1,390.68
Grade 4	\$1,296.64	\$1,342.02	\$1,388.99	\$1,437.60
Grade 5	\$1,360.32	\$1,407.93	\$1,457.21	\$1,508.21
Grade 6	\$1,493.85	\$1,546.13	\$1,600.25	\$1,656.26

13. HIGHER DUTIES

- 13.1. A team member requested to perform duties of a higher classification shall be paid at the higher rate for all time so worked with a minimum payment of one hour. A team member performing higher duties shall be paid the higher duty rate for all hours so worked including paid meal breaks.
- 13.2. Where the team member completes overtime whilst performing higher duties they shall be paid overtime rates based on higher duty rate for the hours so worked.

14. PAYMENT OF WAGES

- 14.1.** Wages and overtime shall be paid weekly by Electronic Funds Transfer (**EFT**).
- 14.2.** Provided that where Coles' operations warrant a change of the method of payment of wages, consultation with the team members and their nominated representatives (including the Union) shall take place in order to facilitate such change.
- 14.3.** When a public holiday falls on a Monday, payment of wages will be deferred by one day to allow pays to be calculated and transmitted into bank accounts.
- 14.4.** All team members will be paid their total wages, including overtime, incentives, meal money, annual leave loading, annual leave pay, all allowances and penalties by EFT, provided that:
- a) Team members will be able to split weekly wages between a maximum of two bank accounts. A fixed amount must be nominated for payment into one account each week with the remainder of wages being paid into a second nominated account.
 - b) Team members will be issued with a weekly pay slip indicating pay details including all allowances and penalties and the current entitlements of team members to long service leave and annual leave.
 - c) Wages will be available for all team members to withdraw from their bank accounts no later than 12.00 noon on each Wednesday payday (other than when the provisions detailed in clause 14.2 are activated).
 - d) Should a team member's total wages not be available for withdrawal by 12.00 noon Wednesdays, Coles shall advance the team member concerned cash payment until such time as the wages are available for withdrawal.
 - e) Coles shall not charge a sum against, nor deduct any sum from the wages of a team member (except in the case of wilful destruction) in respect to any breakages by a team member.

15. SUPERANNUATION

- 15.1.** A team member's superannuation contributions shall be governed by the provisions of the Superannuation Guarantee (Administration) Act 1992 (as amended) and the applicable regulations provided that:
- a) Coles contribute 9.5% of ordinary time earnings to each eligible team members' superannuation account.
 - b) All superannuation entitlements shall be directed on a monthly basis to the REST Fund with the exception that a team member may nominate that Coles contribute to LUCRF.
 - c) The ability to opt in and out of REST or LUCRF to other funds as provided within the Superannuation Guarantee (Administration) Act 1992 (as amended) and the applicable regulations shall not apply.
 - d) For the purposes of superannuation, reference to ordinary time earnings shall have the meaning as defined in the Superannuation Guarantee Ruling SGR 94/4.
 - e) For the purposes of the Superannuation Guarantee, where Coles currently contributes into more than one (1) superannuation fund, these contributions may be combined for the purposes of meeting the legislative minimum requirements.
 - f) Coles may suspend for the applicable period contributions made on behalf of a team member if the team member is absent from the workplace whilst on unpaid leave including unpaid personal leave, unpaid leave of absence and workers compensation (beyond 3 months).
- 15.2.** Salary Sacrifice Arrangements are as follows:
- a) Coles may, in accordance with its policies and procedures allow a team member to participate in a salary sacrifice program in relation to superannuation contributions or any other benefit agreed to by Coles. (e.g., Company share plan). A team member is not obliged to participate in such programs.
 - b) A team member may elect to make their own contribution to the superannuation fund or any other agreed benefit by salary sacrificing part of their ordinary time earnings. This shall mean reducing pre-sacrificed earnings with a specified amount and contributing the specified amount to the superannuation fund or to

any other agreed benefit. Once the specified amount is removed then income tax shall be applied to the team member's earnings.

- c) The specific amount shall include the cost of Fringe Benefits Tax; further the specified amount shall be limited to 30% of pre-tax earnings of ordinary time rate of pay.
- d) Pre Sacrificed earnings shall be used in the calculation of all payments under this Agreement calculated by reference to the team member's wage.
- e) Salary Sacrifice may be changed by the team member up to two (2) times in each calendar year in January and August and may be revoked by the team member at any time.

PART 4 – MONETARY ALLOWANCES

16. MEAL ALLOWANCE

- 16.1. A team member required to work overtime for a period of two (2) hours or more after the ceasing time of their ordinary hours on any day shall be entitled to the following amounts for each meal in addition to the overtime rates prescribed in clause 26:

Meal Allowance	FFPP on or after 6 August 2018	FFPP on or after 6 August 2019	FFPP on or after 6 August 2020	FFPP on or after 6 August 2021
	\$14.46	\$14.97	\$15.49	\$16.03

- 16.2. This meal allowance is not payable when twenty-four (24) hours' notice or notice of overtime is given on the previous shift.

17. FIRST AID ALLOWANCE

- 17.1. A weekly team member appointed and whilst engaged to act as the First Aid Attendant will be paid an additional weekly amount as set out below. Provided that where a weekly, part-time or casual team member is engaged as such for a period which is less than 38 hours in any one week, a daily amount will be paid:

First Aid Allowance (weekly)	FFPP on or after 6 August 2018	FFPP on or after 6 August 2019	FFPP on or after 6 August 2020	FFPP on or after 6 August 2021
	\$17.66	\$18.28	\$18.92	\$19.58
First Aid Allowance (daily)	\$3.53	\$3.66	\$3.78	\$3.92

- 17.2. The first aid allowance amount shall be in addition to the team member's prescribed rate of pay.

18. TEAM MEMBER TRAINERS ALLOWANCE

18.1. Selection process

The process to fill any vacancies will be as follows:

- Vacancies will be open to all permanent team members across all three sites although the application will be limited to the team members "home" site.
- Successful applicants will perform the role initially for 3 months during which time Coles will arrange for them to complete 4 Units of the Certificate IV in Training and Assessment.

Coles Queensland (Forest Lake and Heathwood) Distribution Centre Enterprise Agreement 2018

- At the completion of the initial 3 months all new trainers will undergo an evaluation (which may or may not be at the Assessment Centre) and successful applicants will then undergo the balance of the Certificate over the next 6 months.
- Successful applicants will receive the appropriate allowance from the time they commence as a Trainer.

18.2. Full – Time Trainers

The number and grades of full-time Trainers will be determined by Coles and reviewed on an annual basis in December of each year.

18.2.1 A full time trainer will receive the following allowance as appropriate to their Grade:

Trainers Allowance Grades 2-4 (Incentive Eligible Grades)	FFPP on or after 6 August 2018	FFPP on or after 6 August 2019	FFPP on or after 6 August 2020	FFPP on or after 2021
	\$226.40	\$234.32	\$242.52	\$251.00
Trainers Allowance Grades 5&6	\$113.19	\$117.15	\$121.25	\$125.49

18.2.2 All full-time Trainers will perform their nominal role at least 1 day per fortnight. The role would be for an initial period of 12 months and each trainer would undergo annual evaluations.

18.2.3 The Trainers Allowance will not be payable on period of leave but Coles would apply the same principle as detailed in clause 31.7(ii) where it would substitute the allowance for average incentives.

18.2.4 All trainers will relinquish their Trainers role if they receive a promotion.

18.3. The role of the Trainer is as defined in the definitions clause 7.11.

18.4. The Trainer would be required to perform the following tasks-

1. Be the LEAD trainer for their nominal or another specified grade.
2. Responsible for the provision of on the job training for waged team members in accordance with SOP'S and SWP's.
3. Processing of paperwork/input in to the training database.
4. Involvement in the review, development and update of all necessary training documents.
5. Assist with annual refresher training which may involve classroom facilitation.
6. Assist with inductions of new team members.
7. Conduct task observations and provide feedback to managers.
8. Training "marginal" performers to assist them to achieve productivity improvements.
9. Filing and administrative tasks as required.

18.5. Relief Trainers

The number and grades of Relief Trainers will be determined by Coles and reviewed on an annual basis in December of each year. A Relief Trainer will only receive the appropriate Trainers Allowance when they perform a Trainers role. This rate will be paid by the hour if less than 38 hours are required. All Relief Trainers will perform the Training role (and receive the appropriate allowance) for a minimum of 4 weeks per year then they will receive payment unconditionally. All trainers will relinquish their Trainers role if they receive a promotion.

19. TRAVELLING ALLOWANCE

19.1. A team member required to travel on Company business shall be reimbursed by Coles for the cost of any fares incurred as a consequence of such travel or shall be provided with transportation by Coles free of charge. Coles shall also reimburse the team member for the cost of any meals necessary while travelling.

- 19.2. A team member who, by agreement with Coles uses their own motor vehicle for the purposes of such travel, shall be paid an allowance equivalent to the claimable deduction for car expenses authorised by the Australian Taxation Office by application of the “cents per kilometre” method OR rates under Coles’s vehicle kilometre reimbursement policy whichever provides the greater amount to the team member.
- 19.3. All time spent travelling outside the team member’s ordinary hours of work shall be paid for at the rate of 150% of team member’s ordinary wage rate.
- 19.4. Where a team member is engaged in travel at such distances that they cannot return home within a reasonable and/or safe time period Coles shall arrange and pay for all appropriate accommodation (providing meals when applicable).

20. LAUNDRY ALLOWANCE

- 20.1. **Protective Clothing** - Notwithstanding the provisions of clause 41 where it is mutually agreed that the laundering shall be done by the team member, a laundry allowance shall be paid as follows:

For **Full-time team members** the following weekly rates apply and for **casual and part-time team members** the following daily rates apply:

	FFPP on or after 6 August 2018	FFPP on or after 6 August 2019	FFPP on or after 6 August 2020	FFPP on or after 6 August 2021
Laundry allowance (weekly)	\$4.08	\$4.22	\$4.37	\$4.52
Laundry allowance (daily)	\$0.81	\$0.84	\$0.87	\$0.90
Uniform allowance (weekly)	\$4.08	\$4.22	\$4.37	\$4.52
Uniform allowance (daily)	\$0.81	\$0.84	\$0.87	\$0.90

- 20.2. **Uniforms** - In the event Coles requires a mandatory uniform to be worn by team members, the following allowance for laundering that uniform shall apply-

For **Full-time team members** the following weekly rates apply and for **casual and Part-time team members** the following daily rates apply:

	FFPP on or after 6 August 2018	FFPP on or after 6 August 2019	FFPP on or after 6 August 2020	FFPP on or after 6 August 2021
Uniform allowance (weekly)	\$4.08	\$4.22	\$4.37	\$4.52
Uniform allowance (daily)	\$0.81	\$0.84	\$0.87	\$0.90

21. MAINTENANCE ALLOWANCE

- 21.1. **Maintenance Assistants** that required by Coles to perform duties as outlined below, but not limited to:

- Racking changes, repairs;
- Minor plumbing repairs such as unblocking toilets, replacing seats, repairs to leaking taps;
- Repairs to concrete floors such as resin replacement;
- Battery changing;

- Replacing light bulbs/globes;
- Minor carpentry as required;
- Minor repairs to furniture;
- Minor repairs to materials handling equipment;
- As appropriate, moving materials handling equipment to maintenance area for repairs.

will be paid the following maintenance allowance in addition to the Grade 3 Rate of Pay:

Maintenance Assistants	FFPP on or after 6 August 2018	FFPP on or after 6 August 2019	FFPP on or after 6 August 2020	FFPP on or after 6 August 2021
	\$68.85	\$71.25	\$73.75	\$76.33

- 21.2. Where a night shift is in operation at the Sites, a Relief Maintenance Assistant will be appointed for Night Shift and will be paid the maintenance allowance on a pro rata basis for each hour during which they perform one or more of the abovementioned duties during a night shift.
- 21.3. The maintenance allowance is not paid to a team member undertaking battery changing duties. That team member will continue to be paid as a Grade 3.

PART 4 – HOURS OF WORK, OVERTIME, RDOs, MEAL & REST BREAKS

22. SPAN OF ORDINARY HOURS

22.1. Day Work

The ordinary hours of work shall be rostered between the hours of:

	TIME OF COMMENCEMENT	TIME OF CESSATION
MONDAY-SUNDAY.....	5.00 AM	6.00 PM

- 22.2. All permanent full-time and part-time team member engaged as at 6th August 2005 will be retained on their existing rosters being either Day, Afternoon or Night shift and shall not be compelled to work prior to 6.00am. However by mutual agreement, a team member engaged as at 6th August 2005 may volunteer to work or change rosters in accordance with the ordinary hours as defined in clause 22.1.
- 22.3. No team member engaged as at the 6th August 2005 shall be compelled to work ordinary hours which include Sundays. However, a team members engaged as at the 6th August 2005 may volunteer to work these shifts.
- 22.4. Staffing of the ordinary hours roster will be sourced from *volunteers* from the existing team members.
- 22.5. Clauses 22.2 and 22.3 do not preclude a team member from agreeing to work or change rosters outside of the hours specified in clause 22.1 and be paid at ordinary rates.

23. SHIFT PENALTIES / ALLOWANCES

- 23.1. Non rotating afternoon and night shift as defined in the Definition clause in this Agreement will be paid as per the table below:

Day of the week	Non-rotating shift	From the first full pay period to commence on or after 06/08/18	From the first full pay period to commence on or after 06/08/19	From the first full pay period to commence on or after 06/08/20	From the first full pay period to commence on or after 06/08/21
Mon - Fri	Afternoon Shift	\$ 5.75per hour	\$ 5.95 per hour	\$ 6.16 per hour	\$ 6.37 per hour
Mon - Fri	Night Shift	\$ 7.02 per hour	\$ 7.27per hour	\$ 7.52 per hour	\$ 7.79 per hour
Saturday	All Shifts	+ 30 % loading on ordinary base rate & shift allowance			
Sunday	All Shifts	+ 75 % loading on ordinary base rate & shift allowance			

- 23.2. All ordinary hours worked on a Saturday by a full-time and part-time team member shall be paid at the rate of time plus thirty percent of the ordinary base rate (130%). In the case of a casual team member, the thirty percent payment is paid in lieu of the casual loading of twenty five percent (25%).
- 23.3. All ordinary hours worked by a full-time, part-time and casual team member on a Sunday shall be paid at the rate of time and three quarters of the ordinary base rate (175%).
- 23.4. Effective from 6th August 2012, for ordinary hours worked on a Saturday or a Sunday, a team member engaged on a non-rotating afternoon or non-rotating night shift as defined in clauses 23.1 and 23.2 shall also receive the applicable shift allowances in addition to the rates of pay prescribed in clauses 23.3 and 23.4.

24. ROSTERING PRINCIPLES

Full-Time Team Members (including full-time fixed term team members):

- 24.1. The ordinary working hours for all team members shall be worked in accordance with an agreed roster which shall provide for not more than nineteen (19) working days or one hundred and fifty-two (152) hours per four (4) week cycle of twenty (20) working days.
- 24.2. The ordinary weekly working hours shall not exceed forty (40) hours per week or eight (8) hours per day and shall be worked continuously except for a meal break of not less than 30 minutes or more than one hour.
- 24.3. Notwithstanding sub clauses 24.1 and 24.2, other rosters mutually agreed between Coles and the Union and evidenced in writing may be worked.
- 24.4. Where there is an agreement between Coles and the individual team member, the ordinary working hours may exceed eight (8) hours but not exceed ten (10) hours on any one day, nor forty (40) hours in any one week.
- 24.5. There shall be a minimum break of ten (10) hours between a team member's finishing time on one engagement (including overtime) and commencing time on the next engagement. Where a team member does not receive such a break between engagements they will be paid overtime rates for all work performed until such time as they are provided with a ten (10) hour break.
- 24.6. Team members may be rostered to work their ordinary weekly hours from Monday to Sunday, provided that:
- (i) All hours worked by a full-time and part-time team member (including a fixed term team member) on a Saturday or a Sunday shall be paid the applicable loading.
 - (ii) Staffing of Tuesday to Saturday, Sunday to Thursday or Wednesday to Sunday rosters will be sourced from volunteers from existing team members who commenced prior to 6th August 2005. Team members engaged after the 6th August 2005 can be requested to work any roster.
 - (iii) All team members employed after 6th August 2005 will agree to work either a Monday to Friday roster, Tuesday to Saturday, Sunday to Thursday or Wednesday to Sunday roster at any time, provided that Coles shall give a minimum of two weeks' notice for a change of roster.
- 24.7. Provided further, where Coles' operations warrant the introduction of new shifts, consultation with the Union shall take place in order to achieve suitable rostering arrangements within ordinary time.
- 24.8. No team member engaged prior to 6th August 2005 shall be compelled to work such new shifts. However notwithstanding this, an existing team member may volunteer to work on these new shifts.

Shift Work

- 24.9. Day shift, Afternoon Shift and Night Shift are defined in clause 7 of this Agreement.
- 24.10. Subject to subclauses 24.1, 24.3 and 24.4, the ordinary weekly working hours shall not exceed forty (40) hours per week nor eight (8) hours per day and shall be worked continuously, inclusive of a thirty (30) minute meal break to be taken between the fourth (4th) and sixth (6th) hours or by mutual agreement no longer than six (6) hours after commencement of work. Subject to subclause 39.11, such ordinary hours shall be worked in five (5) shifts from Monday to Sunday, both days inclusive between starting and ceasing times as arranged between the parties to this Agreement. Provided where existing shifts commence on a Saturday and or Sunday such shifts may be worked as part of ordinary time.
- 24.11. For all purposes of this Agreement, when a shift extends over two (2) days of the week such shift shall be deemed to be worked on the day on which the majority of hours are worked. In the case of an equal number of hours being worked on both days, the shift shall be deemed to be worked on the day on which it ceases.

Shift transfer

- 24.12. A team member may be transferred from a shift to another shift upon Coles providing fourteen (14) days' written notice.

Part-Time Team Members (including fixed term team members):

- 24.13. A Part-time team member (as defined in clause 7 of this Agreement) will receive a minimum payment of four (4) hours per day.
- 24.14. Each part-time team member will work in accordance with their roster specifying the team member's commencing and ceasing time on each day of each week.

7 days' notice of change of roster

- 24.15. Seven (7) days' notice will be given by Coles of any change to the part-time team member's roster and a new roster substituted. The roster and any change shall be available for inspection by officials of the Union.

Alteration of 7 days' notice

- 24.16. The ordinary working hours of a part-time team member may be altered without seven (7) days' notice by mutual agreement between Coles and the team member, and/or in the case of an emergency and/or special circumstance.

24 hours' notice

- 24.17. A team members commencing and ceasing time on any day may be altered (without reducing the number of hours a team member is rostered to be worked on the day) by not less than twenty-four (24) hours' notice in order to satisfy an emergency arising from the exigencies of Coles' business. In such circumstances a team member shall not be required to change commencing or ceasing times on any day the effect of which would increase the number of hours the team member is rostered to be worked on that day, when the team member is not available to work such extra hours.
- 24.18. The hourly rate of wages for a part-time team member will be calculated by dividing the appropriate weekly wage by 38.
- 24.19. In no case will the payment be for less than twelve (12) hours per week and not more than thirty-two (32) hours per week.
- 24.20. Where there is an agreement between Coles and a part time team member the ordinary working hours may exceed (8) hours but not exceed ten (10) hours on any one day.
- 24.21. A part-time team member shall be entitled to pro rata annual leave, personal leave, compassionate leave, long service leave, and all public holidays as defined in this Agreement.
- 24.22. In conjunction with, or in addition to any rostered shift, a part-time team member may be offered and may accept on a voluntary basis additional hours to a maximum of 38 hours in any week, which if worked, shall be paid at the stipulated casual rate, provided that such additional hours shall be offered:

- (i) within the ordinary spread of hours applicable to the team member;

- (ii) in accordance with the relevant roster principles;
- (iii) on the basis of being paid a casual loading in lieu of entitlements to personal leave, annual leave or other forms of leave other than long service leave.

All other terms and conditions of the team member's part-time employment remains unchanged.

Rosters and Roster Changes

- 24.23. All full-time and part-time team members shall be given a regular commencing and ceasing time for each day, subject to clause 24.12 shall not be changed except upon seven (7) days prior notice in writing:
- 24.24. All time worked outside of a team member's commencing and ceasing time according to their roster shall be deemed to be overtime and paid for accordingly, subject to clause 24.22 (Flex up) and voluntary work outside the span of hours.
- 24.25. A copy of the regular commencing and ceasing time of all team members including any alteration that may be made shall be kept and shall be available for inspection by officials of the Union.
- 24.26. When establishing or changing a roster Coles will consult with the affected team member and make all reasonable attempts to accommodate any family and/or caring responsibilities.

Minimum Shift Breaks – All team members

- 24.27. There shall be a minimum break of ten (10) hours between a team member's finishing time on one engagement (including overtime) and commencing time on the next engagement. Where a team member does not receive such a break between engagements, they will be paid overtime rates for all work performed until such time as they are provided with a ten (10) hour break.

Casual team members

- 24.28. Casual team members may be employed on a minimum engagement of four (4) hours in any one (1) day and shall be paid an hourly rate equal to the appropriate weekly rate divided by thirty-eight (38) plus twenty-five (25) percent subject to the provisions of clause 23 (Shift penalties – Saturday and Sunday work).
- 24.29. A casual team member may work their ordinary hours over a maximum of five (5) consecutive days, unless by agreement, a team member is willing to work six (6) consecutive days. A casual team member shall be entitled to overtime at the applicable rates when they work in excess of six (6) consecutive days.
- 24.30. Every endeavour will be made to notify a casual team member of their next shift by the end of their previous shift, or for the afternoon shift, every effort will be made to contact the casual team member between 10.00am and 11.00am on the day they are required to work.

Work/life balance

- 24.31. Coles is committed to discussing throughout the life of the Agreement and working co-operatively with team members and the Union to explore opportunities that enhance or achieve the goals of team members obtaining a work/life balance. This may include discussion on health and safety, rostering and flexibility arrangements.

25. RDO GUIDELINES

- 25.1. The ordinary hours on each of the nineteen (19) days worked shall be eight (8), to be paid on the basis of seven hours thirty-six minutes per day at the rate derived by taking 1/38th of the all-purpose weekly wage, the weekly rate including allowances to be averaged to ensure that four (4) equal payments shall occur.
- 25.2. Twenty-four (24) minutes of each day worked shall accrue as an entitlement to take the agreed rostered day in each cycle as a day off, with pay.
- 25.3. If the employment of a weekly team member is terminated during any four week working cycle before their rostered day off, such hours accumulated towards the rostered day off shall be paid for at ordinary time. In this situation, overtime rates will not apply.
- 25.4. The roster shall provide each team member with at least fourteen (14) consecutive days' notice in writing of the day on which that team member is to be rostered off.

- 25.5. A team member shall not be required to work on the rostered day off for that team member unless such a team member elects to work on such day, and where a team member so elects, all time worked shall be deemed to be overtime and paid for at not less than time and a-half for the first three hours and double time thereafter:

Provided that where a team member works on their rostered day off (RDO), they shall be paid for the minimum of four (4) hours at the above overtime rate. Work performed on a public holiday in accordance with the Agreement shall be paid as prescribed by clause 39. Meal allowances shall not be paid.

- 25.6. With the exception of meal allowance, all other allowances prescribed by this Agreement and paid for as part of the weekly rate of pay shall be included in payment for the rostered day off.

- 25.7. When a team member's rostered day off falls on a public holiday as prescribed in the Agreement, they shall by mutual agreement between Coles and team member be paid in one of the following methods:

- a) Another day may be allowed off with pay within twenty-eight (28) days after the public holiday; or
- b) Payment of an additional day's pay equivalent to one-fifth of the ordinary weekly rate of pay.

- 25.8. At Coles' discretion, rostered days off falling six (6) consecutive weeks prior to, during or up to two (2) weeks after Christmas Day in any year may be foregone and such rostered days off shall be substituted by mutual agreement by one of the following options:

- a) another day or days off in lieu within six (6) weeks either before or after the six (6) week period above; or
- b) a day or days added to annual leave (excluding 17½% loading); or
- c) an equivalent number of days pay in lieu of the foregone rostered day(s) off:

Provided that RDO'S presently scheduled four weeks prior to Christmas and Good Friday to be either paid out or added to annual leave, at the team member's choice.

- 25.9. Where a team member has a proven pattern of recurring absences on personal (sick) leave, Coles shall be entitled to inform such team member that, in the event of future absences, when personal (sick) leave is taken either side of a rostered day off or public holiday, for one day or more, a medical certificate or statutory declaration may be required to be supplied by the team member to Coles.

- 25.10. Banking and paying out of RDOs and public holidays in lieu

- (i) The option exists for a team member to have RDOs and public holidays in lieu paid out at ordinary time. Public holidays in lieu are those days received by a team member when a public holiday falls on a day on which the team member is not regularly rostered to work. For example: A public holiday falls on a Monday for a Tuesday – Saturday team member.
- (ii) Team Members may bank RDOs in the following circumstances:
 - If the days are to be used as single days off a team member may bank up to three (3) RDOs.
 - If the days are to be used as a block of time off a team member may bank up to five (5) RDOs.
- (iii) The banking of a specific RDO must be agreed between the team member and Coles prior to the day on which the RDO falls.
- (iv) A review of banked RDOs and public holidays in lieu will be conducted on a regular basis. Where a team member has not used banked days within twelve (12) calendar months from the date of the banked day, January – December, those days will be automatically paid out by every December following the expiration of that period.

R.D.O. Guidelines

- 25.11. Rostered days off will be taken on a rotating basis on each day of the week, Monday to Friday, and once rostered shall not be altered, changed or be substituted unless by mutual agreement.

- a) Rostered days off shall be scheduled for a period of six (6) months, a copy of which shall be provided to the Union and displayed on team member team member notice boards at each Distribution Centre.
- b) The selection of team members for the various days off for the initial six (6) monthly roster will be carried out in a manner mutually agreed by Coles, Union and team members at each Distribution Centre.

Personal Leave

- 25.12. A day's absence or part of a day's absence shall be expressed in terms of days or fractions of a day. A day's absence or part of a day shall not interfere with the daily accrual of twenty-four (24) minutes towards a full RDO as per the model roster.

The following shall apply where a team member is on personal leave:

Where personal leave credits exist personal leave will be deducted by the amount of time taken by the team member. Where a full day is taken, 8 hours will be deducted from the personal leave credit and 24 minutes will accrue towards an RDO.

Where no personal leave credits exist pay will be deducted by the amount of time taken by the team member. Where a full day is taken, 8 hours will be deducted from pay and 24 minutes will accrue towards an RDO.

- (a) Personal leave credits exist for each full day absent on personal leave in accordance with clause 29 (Personal Leave) of this Agreement where personal leave credits exist, personal leave shall be deducted on the basis of one full day. For part days, deductions shall be on the basis of a fraction. This shall allow the RDO to remain intact without a deduction of time or wages being necessary to allow for the difference between seven (7) hours thirty-six (36) minutes and eight (8) hours, or in other words, the twenty-four (24) minutes which accrues daily towards the taking of the RDO. The concept is to trade personal leave time credits to compensate Coles for daily accrual time lost towards the RDO.
- (b) Absence due to personal leave - nil personal leave credits exist for each full day absent on personal leave where no personal leave credits exist, Coles shall deduct the appropriate number of hours pay. This shall include twenty-four (24) minutes or part thereof for each full or part day the team member is on personal leave. The RDO shall, therefore, remain intact as a full day. The concept is to trade pay (on the basis of twenty-four (24) minutes per day or part thereof absent) to compensate Coles for the time which would normally accumulate towards the RDO.

Rostered Days off Each Year

- 25.13. The Union agrees that in normal circumstances (that is, where a team member works for forty eight (48) weeks and takes four (4) weeks annual leave), a total of twelve (12) rostered days off shall accumulate to each team member :
- (i) Provided that where more than forty eight (48) weeks are worked continuously (i.e. sixty (60) weeks) additional part or full rostered days off shall accrue, and shall be taken as for the first twelve (12) days.
 - (ii) Provided further, that where less than a total of forty-eight (48) weeks is worked continuously, the total of twelve (12) rostered days off shall be reduced accordingly by part or full days.

"Splitting" of Annual Leave and Rostered Days Off

- 25.14. The Union agrees that it is theoretically possible for a team member (by design or accident) to "split" their annual leave as to become apparently entitled to thirteen (13) rostered days off where only forty-eight (48) continuous working weeks have been worked. This approach is totally rejected by the Union.

It is the Union's policy that, wherever possible, its members shall take their annual leave in total (4 weeks). However, where less than four (4) weeks is taken in any one year on one or more occasions, Coles agrees that

Union members shall not be disadvantaged and time accrued towards rostered days off, when each period of holidays is taken, shall not be lost.

Days Added for Public Holiday Falling during Annual Leave and on a Rostered Day Off

25.15. The Union and Coles agree that in any calendar year of fifty-two (52) weeks, a team member shall be entitled to:

- a) A day in lieu wherever a rostered day off and a public holiday falls together on the same day. The day concerned shall be deemed to be only a public holiday and the rostered day off shall be taken within twenty-eight (28) days from the day it fell due, or an additional day's pay shall be paid in lieu.
- b) A day in lieu where one (1) of the twelve (12) rostered days off accrued on the basis of clause 22 (Hours), falls due during a period of annual leave:

Provided that in a forty eight (48) working week period, no more than twelve (12) rostered days off can be accrued or shall be taken.

25.16. Workers' Compensation - Coles and the Union agree that as regards time spent off work as a result of an injury which is covered by the provisions of the Workers Compensation and Rehabilitation Act (Qld) 2003 (as amended):

- a) Such time shall not be counted towards any rostered day off.
- b) Any time already accumulated towards a rostered day off or any complete rostered off day not taken at the time the injury occurs shall not be lost to the team member concerned.
- c) If the team member is returned to work, Coles shall do one of the following as regards any time which had accumulated towards a rostered day off at the time the injury occurred:
 - (i) Allow the existing accumulated time towards a rostered day off.
 - (ii) Grant a rostered day if a full day had been accrued.
 - (iii) Pay the team member for all time accrued.
- d) If the team member is not returned to work, Coles shall pay the team member for all time accrued as part of any termination of employment.

25.17. Termination of Employment - In the case of a team member who, from time to time works an average of days in excess of nineteen (19) days, but not more than twenty-one (21) days, the Union and Coles agree that where employment is terminated before a rostered day off is taken, all such hours accumulated shall be paid for at ordinary time. In this situation, overtime rates shall not apply.

26. OVERTIME

26.1 Subject to the provisions contained in clauses 26.2 to 26.8, overtime shall be paid at the following rates:

- a) **Monday to Saturday**
All team members – first three (3) hours 150% of ordinary rate and 200% of ordinary rate thereafter when the overtime is continuous with their ordinary shift. A team member working on a non-rostered or non-working day shall have a minimum engagement of four (4) hours at the applicable overtime rate/s.
- b) **Sunday**
All team members – 200% of ordinary rate with a minimum payment of four (4) hours.
- c) **Public Holiday**
All team members – 250% of ordinary rate with a minimum payment of four (4) hours.

d) Rostered Day off

Full-time team members only - first three (3) hours 150% of ordinary rate and 200% of ordinary rate thereafter with a minimum payment four (4) hours.

e) Casual Loading

For the purposes of this subclause ordinary rate for casuals includes 25% casual loading.

f) Shift penalties

Applicable shift penalties as specified at clauses 23.1 of this Agreement are payable to day shift team members working overtime outside the day shift span of hours and to team members engaged on overtime during afternoon or night shifts.

26.2 All time worked in excess of the ordinary weekly working hours, or outside the time specified in clause 22.1 or outside the hours specified in the team member's roster, shall be deemed overtime and paid for at the rate of time and one half for the first three (3) hours and double time thereafter.

(i) Provided that casual team members required to work more than eight (8) hours on any day or in excess of thirty six (36) hours in any one week or working a 7th consecutive shift or greater shall be paid at the rate of time and one half for the first three (3) hours and double time thereafter. In addition a casual team member may work their ordinary hours over a maximum of five (5) consecutive days, unless by agreement, a team member is willing to work six (6) consecutive days. A casual team member shall be entitled to overtime at the applicable rates when they work in excess of six (6) consecutive days.

(ii) Provided further that any time required to be worked by a part-time team member in excess of eight (8) hours on any day or in excess of thirty-eight (38) hours in any one week shall be deemed to be overtime and shall be paid for at the rate of time and a half for the three (3) hours and double time thereafter.

26.3. In the event of a team member being required to work overtime, they shall be given notice by Coles before closing time on the day previous to the day on which they are required to commence such overtime work.

a) For the purposes of such overtime, the following rest pauses shall apply:

(i) Overtime worked for two (2) hours or more a ten (10) minute paid rest pause shall be provided.

(ii) Overtime worked less than two (2) hours team members may elect to take an unpaid ten (10)-minute rest pause.

(iii) Both the paid breaks and unpaid breaks will be taken between the overtime and the shift or the shift and the overtime, whichever is worked first.

b) Provided that such team member, when required to work overtime in excess of one (1) hour shall be allowed not less than one half hour for each meal.

26.4. Provided further, however, that if by continuing at work, it can be completed in not more than two (2) hours, the team member may elect to continue to work, and in that case Coles shall not be obliged under this sub clause to give a meal break. Any team member who works overtime on a day outside of their ordinary working hours, and at times which comply with the normal hours for shift workers, and where the team member has been offered a defined shift of overtime of six (6) hours or more, the team member shall be provided a paid meal break of thirty (30) minutes.

Where a team member, having been offered and having accepted such a defined overtime shift does not work that shift as accepted, the meal break shall be unpaid.

26.5. A permanent team member (including a fixed term team member) shall not be required to work on a non-working day or a rostered day off unless the team member elects to work on such day, and where a team member so elects, all time worked shall be deemed to be overtime and paid for at the relevant rate specified in clause 26.1:

- (i) Where a permanent team member (including a fixed term team member) elects to work on a non-working day or a rostered day off, they shall be paid a minimum of four (4) hours' pay at the relevant overtime rate. (For example: 3 hours' work at 150% = 4.5 hours pay; 4 hours' work at 200% = 8 hours pay)
- (ii) On termination of employment, a permanent team member (including a fixed term team member) shall be entitled to be paid, as overtime, any time in excess of thirty-eight (38) hours per week where the appropriate roster cycle has not been completed.
- (iii) A permanent team member (including a fixed term team member) shall be entitled to be paid as overtime any time in excess of their contracted hours (except time used to a maximum of thirty-eight (38) hours in any week via a flex –up arrangement pursuant to clause 24.21).

26.6. Overtime will be offered as evenly as possible to team members. Operational factors may also influence the allocation of overtime, e.g. Coles may need a Grade 6 team member to perform Grade 6 functions in overtime.

26.7. Where a team member is performing higher duties and overtime is worked the team member whilst performing those duties shall be paid overtime upon the higher rate for all overtime performed at the higher duty.

Time off in Lieu of Overtime

26.8. A team member will be entitled to a choice between payment and time off in lieu (**TOIL**) of overtime [overtime rates as defined in clause 26.1(a) to (d)], on each occasion overtime is worked. If TOIL is not applied for, the default position will be the payment of the overtime.

26.9. A team member may elect to take TOIL of overtime provided:

- (i) That the request is made in writing;
- (ii) That the TOIL of overtime will be on an overtime basis for example, two (2) hours overtime at time and a half (150%) will accrue three (3) hours' time in lieu;
- (iii) That the time taken will be paid at the rate of pay at which the time was accrued and will not include any extra penalties. Any penalties payable at the time the overtime was worked will be paid in the current pay cycle and no penalties will be paid when TOIL of overtime is taken.

For Example

An afternoon shift team member works four (4) hours overtime on a Saturday afternoon and elects to bank the time as TOIL.

The team member would bank 6.5 hours as TOIL. In the current pay cycle the team member would receive the shift penalties for the overtime shift. When the team member elects to take the time off they will be paid the hours only but no shift penalties as the team member would have been previously paid them.

- (iv) That the time off will be taken at a mutually convenient time for the team member and Coles and be taken within ninety (90) days of working the overtime.
- (v) If a mutually convenient time cannot be agreed within the ninety (90) days then Coles and the team member may agree to a date for the time to be taken in the following sixty (60) days, no further extension will be granted.
- (vi) Where TOIL of overtime is not taken or paid out at the team member's request within the prescribed period (90 days), it will be paid out as overtime in the next available pay roll cycle thereafter.

27. MEAL BREAK

- 27.1 No team member shall be required to work longer than five (5) hours, or up to and including six (6) hours by mutual agreement without a thirty minute break.
- 27.2 Shiftwork, as defined in clause 7 of this Agreement, is inclusive of a thirty (30) minute paid meal break to be taken between the fourth (4th) and sixth (6th) hours or, by mutual agreement, no longer than six (6) hours after commencement of work. Coles shall endeavour to ensure that where possible, on Saturday and Sunday overtime shifts, the meal break occurs halfway through such shifts.
- 27.3 The time of taking a scheduled meal break by one or more team members may be altered by mutual agreement.
- 27.4 It is recognised that reasonable time will be provided to team members to ensure that they are at the canteen when the bell goes. The start and finish time of the break, which is recognised as time in the canteen, will be signified by the bell. At the end of the break, reasonable time will be provided to return to work.

28. REST BREAKS

- 28.1 All team members (full-time, part-time, fixed term and Coles casual team members) who work a minimum of four (4) consecutive ordinary hours, but less than 7.5 consecutive ordinary hours on any one day shall receive a rest break of ten (10) minutes duration. Team members who work a minimum of 7.5 consecutive ordinary hours (excluding the meal break) on any one (1) day shall receive a rest break of ten (10) minutes duration in the first half and the second half of the period worked.
- 28.2 Day shift team members will be entitled to two (2) 15 minute rest breaks on each day a team member works a full eight (8) hours. These are to be taken, one (1) in the morning and one (1) in the afternoon.
- 28.3 Rest breaks shall be taken in Coles' time.
- 28.4 Rest breaks shall be taken at times to suit the convenience of Coles and so as not to interfere with the continuity of work:

Alternation to rest breaks

- 28.4.1 where there is agreement between Coles and the majority of team members concerned on a particular shift or shifts, the rest pauses may be combined into one rest pause.
- 28.4.2 where there is mutual agreement between Coles and an individual team member, the rest pauses may be combined into one rest pause to meet operational requirements.
- 28.5 The time of taking a scheduled rest pause by one or more team members' may be altered by mutual agreement.
- 28.6 The Company recognise the need for machinery to be placed on charge during the last minutes of the shift in Company time.
- 28.7 In the interests of the efficient operations of the Sites, rest pauses, crib breaks and meal breaks shall be mutually arranged between Coles and the Union and evidenced in writing.
- 28.8 It is recognised that reasonable time will be provided to team members to ensure that they are at the canteen when the bell goes. The start and finish time of the break, which is recognised as time in the canteen, will be signified by the bell. At the end of the break, reasonable time will be provided to return to work.

PART 5 – LEAVE AND PUBLIC HOLIDAYS

29. PERSONAL LEAVE

Paid Personal/Carer's Leave

- 29.1 A full-time, part-time and fixed term team member shall be entitled to paid personal/carers' leave for a period of absence(s) where:
- a) the team member is not fit for work because of a personal illness or personal injury, affecting the team member; or
 - b) the team member needs to provide care or support to a member of the team member's immediate family, or a member of the team member's household who requires care or support because of.

(i) a personal illness, or personal injury, affecting the member; or

(ii) an unexpected emergency affecting the member.

29.2 The team member shall be entitled to payment of personal/carer's leave for the period of absence at their ordinary rate of pay plus applicable shift penalties / allowances under clause 23 of this Agreement had the team member worked the period of absence.

Entitlement

29.3 Entitlement to personal/carer's leave for a full-time team member shall accrue at the rate of 5.846 hours for each completed four week period of service (76 hours or ten (10) days for each year of service). A part-time team member accrues personal/carer's leave on a pro-rata basis.

29.4 A team member's entitlement to unused personal/carer's leave shall be cumulative year to year.

29.5 In the event that a team member has exhausted all accrued personal leave but requires a period of paid leave to provide care or support to a member of their immediate family or a member of the team member's household the team member will have an option to take the leave required by accessing unused accrued annual leave (clause 31), accrued TOIL of overtime (clause 26.8) or banked RDO's (clause 25).

29.5.1 In the event Coles determines on the balance of probabilities a team member has not accessed the entitlement under clause 29.5 in accordance with the proper intent of the clause, Coles may exercise its rights to discipline the team member.

29.6 A team member will not be entitled to paid personal/carer's leave for any period of absence due to personal illness or personal injury in respect of which they are entitled and have an accepted workers compensation claim.

29.7 Except as provided by clause 29.21 the provisions of this clause do not apply to casual team members.

Notification and Documentation requirements

For personal illness or injury (personal leave)

29.8 The Company will introduce a dedicated notification absence telephone line (**Absence line**) that all team members can and are required to access to comply with their notification requirements specified in this Agreement. The Absence line will allow the team member to either notify directly a Coles' site manager or leave a detailed voice recorded message of their inability to attend for work, as far as reasonable the nature of the illness or injury; and the estimated duration of the absence.

29.9 To be entitled to payment under clause 29.2 of this Agreement, a team member who is absent due to the reasons as detailed in clause 29.1(a) shall be required to notify the Sites management of their absence, as soon as practicable, preferably within twenty four (24) hours, or at least within one (1) hour prior to the commencement of their shift. If a team member, due to exceptional circumstances, is not able to personally notify Coles via the Absence line, it is permissible for a member of the team member's immediate family or household to provide notification to the Company via the Absence line..

29.10 For any personal leave absence that exceeds two (2) days, Coles will require a medical certificate issued from a registered health practitioner or a statutory declaration (if it is not reasonably practicable for the team member to provide a medical certificate)..

29.11 A medical certificate must state that in the registered health practitioner's opinion the team member was, is or will be unfit during the period because of a personal injury or personal illness. A statutory declaration must specify the team member was, is or will be unfit during the period because of a personal injury or illness.

For care and support of a team member's immediate family household (carer's leave)

29.12 To be entitled to payment under clause 29.1.(b) of this Agreement, a team member who is absent due to the reasons as detailed in clause 29.1.(b) will provide Coles with notice as soon as is reasonably practicable of their intention to take paid carer's leave. The team member must make the notification personally or via the Absence line.

29.13 The team member shall provide management the estimated or expected period of absence (if known at the time of notification). In the event the absence will be greater than one (1) week in duration the team member must advise Coles as soon as practicable of the estimated length of absence.

29.14 Coles will require a medical certificate issued from a registered health practitioner or a statutory declaration (if it is not reasonably practicable for the team member to provide a medical certificate) in relation to a period of paid personal/carer's leave in the following circumstances:

- a) for single day absences when the number of single day absences in an anniversary year exceeds five (5); and
- b) for any absence that exceeds two (2) days.

29.15 Notwithstanding sub clause 29.14 hereof, Coles will require a medical certificate or a statutory declaration (if it is not reasonably practicable for the team member to provide a medical certificate) in relation to every period of unpaid carer's leave.

29.16 In relation to both paid and unpaid carer's leave, a medical certificate must state that in the registered health practitioner's opinion, the immediate family or household member had, has, or will have a personal injury or illness during the period of absence. If the required document is a statutory declaration, it must include a statement that the team member requires or required leave during the period of absence to provide care or support to an immediate family or household member because of injury, illness or unexpected emergency to the immediate family or household member.

Illness on Annual leave

29.17 Where a team member suffers sickness or a serious incapacitating illness for seven (7) working days or more during annual leave, the annual leave will be re-credited for the period of the illness upon the team member producing within seven days of returning to work, a certificate from a duly qualified medical practitioner confirming the period of illness. Such re-credited annual leave will not attract annual leave loading of 17.5%.

Pre Natal Leave

29.18 Period of leave and eligibility

(i) *Pregnant Team members*

A full-time or part-time team member who is pregnant may access personal/carer's leave for the purpose of attending medical appointments associated with pregnancy.

(ii) *Team members with pregnant partner*

A full-time or part-time team member may access personal/carer's leave for the purpose of attending medical appointments with their pregnant partner.

Proof of Attendance

29.19 Proof of attendance shall be required to be provided to Coles.

29.20 **Notice Required**

- (i)** Where possible, team members should arrange appointments as close as possible to the beginning or end of their ordinary working hours.
- (ii)** The team member is to provide reasonable notice to Coles of the requirement to take prenatal leave.
- (iii)** Personal/carer's leave will be deducted from the team member's accrued entitlement based on the actual time taken to attend each appointment.

Unpaid Personal/Carer's Leave

29.21 In addition to the provision of paid personal/carer's leave, all team members including casual team members shall be entitled to take additional unpaid personal/carer's leave to a maximum of two (2) days on each occasion that a member of the team member's immediate family or household requires care or support due to illness, injury or unexpected emergency. Full-time and part-time team members are only able to access unpaid personal carer's leave when they have exhausted all their paid personal/carer's leave.

29.22 The team member will provide Coles with notice as soon as is reasonably practicable of their intention to take unpaid carer's leave. The team member must make the notification personally or via the Absence line.

29.23 Coles will require a medical certificate or a statutory declaration (if it is not reasonably practicable for the team member to provide a medical certificate) in relation to every period of unpaid carer's leave.

29.24 Taking unpaid carer's leave shall have no adverse effect upon the promotional criteria for any team member.

Absenteeism

29.25 Where a team member has a poor attendance record in any anniversary year Coles shall be entitled to inform such team member that (notwithstanding the notification requirements under this clause) in the event of future absences, for one (1) day or more, evidence may be required in that anniversary year. This evidence shall be in the form of a medical certificate or a statutory declaration (if it is not reasonably practicable for the team member to provide a medical certificate) and shall have the same notification times as required under the relevant sub clauses to which notice of absence may be required.

Notice of leave either side of a public holiday

29.26 A team member is required to furnish a medical certificate or statutory declarations as proof of personal/carer's leave for any day or part working day absent before or after a public holiday.

Continuity of employment

29.27 The continuity of employment of a team member with Coles for personal/carer's leave accumulation purposes shall be deemed to be not broken by any of the following:

(i) Absence from work on leave granted by Coles;

(ii) The team member having been dismissed or stood down by Coles, or the team member having terminated their employment with Coles, for any period not exceeding three (3) months; Provided that team members shall have been re-employed by Coles.

29.28 The period during which the employment of the team member with Coles shall have been interrupted or determined in any of the circumstances mentioned in clause 29.10.1 hereof shall not be taken into account in calculating the period of employment of the team member with Coles.

Reporting for duties

29.29 A team member must report to their nominated line manager or substitute with their completed Leave Request Form no later than the end of the team member's next working shift after returning to work from absence due to any reason.

30. COMPASSIONATE LEAVE

Period of leave

30.1 A full-time, part-time or fixed term team member shall on the death of their parent (including step-parent and foster parent), guardian, partner (including spouse, de-facto or same sex), child (including step, adopted, ex-nuptial and foster children) be entitled on notice to paid compassionate leave for a period not exceeding the number of hours worked by the team member in five (5) ordinary working days. Such leave can be taken either as a single continuous period or separate periods up to the period allowed under this clause.

30.2 A full-time, part-time or fixed term team member shall on the death of their grandparent (including grandparent-in-law), parent-in-law, grandchild, brother or sister (including brother-in-law, sister in-law) be entitled on notice to paid compassionate leave for a period not exceeding the number of hours worked by the team member in three (3) ordinary working days. Such leave can be taken either as a single continuous period or separate periods up to the period allowed under this clause.

30.3 A full-time, part-time or fixed term team member shall on the death of their son-in-law, daughter-in-law, or member of the team member's immediate household (other than stipulated in clauses 30.1 and 30.2 above), be entitled on notice to paid compassionate leave not exceeding the number of hours worked by the team member in two (2) ordinary working days. Such leave can be taken either as a single continuous period or separate periods up to the period allowed under this clause:

30.4 A full-time, part-time or fixed term team member shall on each occasion on which a member of the team member's immediate family or household develops a personal illness or personal injury that poses a serious threat to that person's life, be entitled to two (2) days paid compassionate leave. Such leave can be taken at any time while the illness or injury persists.

30.5 A casual team member is entitled to two (2) days of unpaid compassionate leave on each occasion specified in clauses 30.1 to 30.5 in accordance with the provisions contained herein.

Documentation

30.6 The team member will, if reasonably required by Coles, provide to Coles proof of such death or life threatening illness or injury, and do so as soon as possible and practicable (but with due consideration to the circumstances) proof of death or illness or injury to the satisfaction of Coles.

30.7 'Proof of death' or 'illness' or 'injury' may be a copy of a death/funeral notice or death certificate or a medical certificate noting the illness or injury or a statutory declaration attesting to the details of the death or illness or injury and the relationship that person had with the team member.

31. ANNUAL LEAVE

31.1 Every team member (other than a casual team member) covered by this Agreement shall at the end of each year of their employment be entitled to annual leave on full pay for four weeks. For a full-time team member this equates to 152 hours per annum. A part-time team member will be entitled to annual leave on a pro-rata basis. For the purposes of the additional week of annual leave provided by the NES, a shift worker is a seven (7) day shift worker who is regularly rostered by Coles to perform their ordinary hours of work on a Sunday and Public Holidays.

Leave Debits will be equivalent to the ordinary hours team members would have worked had they not been on paid leave. Such leave will therefore be paid and debited on the basis of hours actually taken.

Rostered Days Off

31.2 A team member shall not derive any additional benefit for Rostered Days Off falling within a period of annual leave.

31.2A Further a team member is only entitled to a maximum of twelve (12) Rostered Days Off in any twelve (12) month period of employment except in the team member's first year with Coles when annual leave is not taken for one year (52 weeks). In these circumstances a maximum of thirteen (13) Rostered Days Off may accrue in the twelve (12) month period.

Public Holidays

31.3 Such annual leave shall be exclusive of any public holiday which may occur during the period of that annual leave and (subject to sub clause 31.7 hereof) shall be paid for by Coles in advance.

31.4 If any public holidays mentioned in clause 39 of this Agreement occur during such period of annual leave then the period of annual leave shall be extended by one (1) day for each public holiday so occurring.

Effect of Termination of Employment

31.5 If the employment of a team member is terminated at the expiration of a full year of employment, Coles shall be deemed to have given the annual leave to the team member from the date of the termination of the employment and shall forthwith pay to the team member in addition to all other amounts due to their pay, calculated in accordance with sub clause 31.7 hereof, for four weeks and also their ordinary hours pay for any public holiday occurring during such period of four (4) weeks.

31.6 If the employment of a team member is terminated before the expiration of a full year of employment, such team member shall be paid, in addition to all other amounts due to them, an amount equal to one-twelfth of his pay for the period of their employment, calculated in accordance with sub clause 31.7 hereof.

Calculation of Annual Leave Pay

31.7 In respect to annual leave entitlements to which this clause applies, annual leave pay (including any proportionate payments) shall be calculated as follows:

- a) All team members subject to provision (b) hereof, in no case shall the payment by Coles to a team member be less than the sum of the following amounts:

- (i) The team member's ordinary wage rate or higher duties pay rate if payable immediately before taking the leave (and would have continued if not having taken leave) as prescribed by the Agreement for the period of annual leave;
 - (ii) Annual leave loading calculated as the greater amount of 17.5% or the applicable shift penalties or the applicable average incentives.
- b) Provision (a) hereof shall not apply to the following:
- (i) Any period of periods of annual leave exceeding four weeks;
 - (ii) Coles (and their team members who are already paying or receiving) any annual leave bonus, loading or other annual leave payment which is not less favourable to the team members.

Single or Part Days leave

- 31.8** Forest Lake and Heathwood Grocery – team members may by a minimum 48 hours' notice take part or single days of annual leave up to a maximum of five (5) days per anniversary year. The number of team members able to access this leave will be capped at 4.5% of the number of permanent team members rostered per shift per day.
- 31.9** Heathwood Liquor - The number of team members able to access such leave will be two (2) team members per shift per day or 4.5% of the number of permanent team members rostered per shift per day, whichever is the greater.
- 31.10** It is agreed that a team member will not be deemed to have accessed leave pursuant to clause 31.8 in circumstances where Coles requests the team member to take a part or single day of annual leave and the team member elects to do.
- 31.11** Team members may request a further five (5) single days (or part days) of leave and Coles will give reasonable consideration to such requests taking into account operational needs.
- 31.12** Prompt notification of approval/disapproval of annual leave is to be given. A response should be received in two (2) weeks of the application being made. If this is not possible, then an update on the situation shall be given.
- 31.13** Annual Leave will be fairly shared in the most desired periods.

Cashing out of Annual Leave

- 31.14** Coles may, at the request of a permanent team member, cash out their accrued annual leave providing that:
- a) A separate request is made in writing to Coles on each occasion.
 - b) A maximum period of two weeks (pro-rata for part time team members) can be cashed out once in an anniversary year and a maximum of twice during the nominal life of this agreement.
 - c) 152 hours (pro-rata for part time team members) of accrued annual leave remains after cashing out.
 - d) The team member is paid their ordinary time earnings and any loadings that would ordinarily be paid to the team member if he/she proceeded on annual leave.
 - e) It will not affect the team member's right to reasonable rest and recreation.
 - f) Coles will not unreasonably refuse such a request

32. LONG SERVICE LEAVE

All team members covered by this Agreement are entitled to long service leave in accordance with the provisions of the Industrial Relations Act 2016 (Queensland) as varied from time to time.

33. NATURAL DISASTER LEAVE

- 33.1 Where a cyclone warning (Queensland) is announced by the relevant authority, or there is a natural disaster (e.g. flooding or bush fires), which poses a genuine threat to a team member's property, or creates a need for a team member to provide care or support for a member of their immediate household, the team member shall be allowed to be absent from work. In such circumstances, the team member will be able to access up to three (3) natural disaster leave paid days, non-cumulative per year or a pro rata amount for part-time team members .
- 33.2 Where a team member is unable to attend work due to being geographically cut off with no viable alternative route, they shall contact their relevant Manager and/or People & Culture Manager and agree on a relevant pay arrangement in the circumstance.
- 33.3 A team member working at the Sites affected by flood or fire shall be paid for any damage or injury to clothing (including boots) sustained owing to the conditions caused by such flood or fire.

34. PARENTAL LEAVE

- 34.1 A team member is entitled to parental leave in accordance with the Fair Work Act 2009 (as amended) and the Paid Parental Leave Act 2010 as amended (**the Acts**).
- 34.2 Where Coles' parental leave policy entitlement/s exceed those provisions contained in the Acts, then the policy provisions shall apply as amended from time to time.
- 34.3 Upon request to Coles, a team member shall be provided a copy of Coles's current parental leave policy and relevant legislation which covers such leave.

35. COMMUNITY SERVICE LEAVE

Emergency Services Leave

- 35.1 A full-time or part-time team member involved in recognised voluntary services including SES and firefighting shall be entitled to paid time off at ordinary time rates to attend to emergency situations. Casual team members will only be entitled to unpaid time off.
- 35.2 It shall be the responsibility of the team member to keep Coles informed about the time off needed to attend to emergency duties.
- 35.3 To receive payment a team member shall provide Coles proof of attendance of the emergency situation.
- 35.4 Paid time off for attendance at emergencies in the local area shall not be unreasonably restricted or accessed.
- 35.5 Paid time off for emergencies that are not local shall be limited to two (2) days but this period may be increased depending on the nature of the emergency, (e.g. major bushfires).

Defence Forces Leave

- 35.6 A full-time or part-time team member shall be allowed leave of up to two (2) weeks per year and additional weekends as required to attend Defence Force Reserve approved training camps.
- 35.7 During such leave, team members who are required to attend full-time training shall be paid an amount equal to the difference between the payment received in respect of their attendance and the payment they would have received for working ordinary time during that period.
- 35.8 To receive payment, a team member shall provide to Coles proof of attendance and proof of Defence Force Reserve rate of pay and the total payment received for the time spent in training.
- 35.9 Coles casual team members will be entitled to be absent for unpaid leave up to a maximum of two (2) weeks per calendar year to attend Defence Force Reserve approved training camps.
- 35.10 Team members must provide Coles with at least one (1) month's prior notice of such leave. The notice should detail the start and finish dates.

36. JURY SERVICE

- 36.1 A full-time or part-time (including a fixed term) team member required to attend for jury selection and/or jury service (referred to as Jury Service), will not be required to work the team members ordinary hours for the day

or days so required. Coles will reimburse the team member an amount equal to the difference between the amounts paid in respect of the ordinary time the team member would have worked had the team member not been on jury service.

- 36.2 A team member shall notify Coles as soon as possible of the date upon which the team member is required to attend for jury service. Further, the team member shall provide Coles proof of their attendance, the duration of the attendance and the amount received in respect of such jury attendance.
- 36.3 A team member required to attend for jury service during a period of annual leave will, on producing satisfactory evidence of attendance, be credited with annual leave for the period for which jury service was attended. While on jury service, a team member will not be required to attend work until the completion of the jury service.
- 36.4 A team member on a roster including weekend work, shall be given time off without loss of pay so that the combination of consecutive jury service and work days does not exceed five (5) days per week.
- 36.5 Coles casual team members are entitled to time off for jury service in accordance with this clause (however Coles will not be liable to pay casual team members who are absent for a period because of jury service).

37. DOMESTIC AND FAMILY VIOLENCE LEAVE

- 37.1 Coles recognises that team members who experience domestic or family violence may need additional support to recover, settle, organise children, attend doctor's appointments, court dates and related activities.

Entitlement

- 37.2 A full-time or part-time team member experiencing domestic or family violence will have the choice to access available TOIL, RDOs, sick leave, carer's leave or annual leave; or leave of absence. Leave may be granted for the purpose of seeking medical and legal assistance, for counselling, relocation or other related activities.

Notification

- 37.3 Team members are required to notify their Manager of such absence on the first day of absence if prior notice is not possible.

Documentation

- 37.4 Coles may require documentation supporting the need to take leave from the Police Service, a Court, a Doctor, District Nurse, Maternal and Child Health Care Nurse, a Family Violence Support Lawyer, Lawyer or any other reasonable source of evidence.

Payment

- 37.5 Domestic and family violence leave will be paid in line with the type of leave being taken by the team member.
- 37.6 Taking leave in accordance with this clause shall have no adverse effect upon the promotional criteria for any team member.

38. LEAVE OF ABSENCE

- 38.1. A leave of absence is an approved period of unpaid leave for 1 weeks' duration or more, which can be requested by the team member provided that:
- (a) the maximum period of absence on any one occasion is 12 months;
 - (b) all outstanding paid leave entitlements the team member is eligible to apply for are taken prior to the period of absence (unless otherwise agreed); and
 - (c) the absence will not break continuity of service.
- 38.2. Coles may approve a leave of absence for reasons such as (but not limited to):
- (a) studying commitments requiring time to attend exams or participate in annual school holidays;
 - (b) travelling overseas or interstate for an extended period;
 - (c) to care for an ill or injured close relative; or
 - (d) returning to study on a full-time basis.

38.3. During a period of leave of absence, unpaid leave, annual leave, sick/carer's leave and long service leave accruals will be frozen.

39. PUBLIC HOLIDAYS

39.1. All work done by a team member on the following public holiday days will be paid at the maximum rate of double time and a half (250%) **plus** shift allowances as outlined in clause 23 to be paid to applicable team members (noting that shift allowances shall be paid to applicable team members whether working or electing not to work on the public holidays) with a minimum engagement of four (4) hours:

- New Year's Day
- Australia Day
- Good Friday
- Easter Saturday
- Easter Sunday
- Easter Monday
- Anzac Day
- Labour Day
- Queen's Birthday
- Christmas Day
- Boxing Day
- Exhibition Day or local Regional Show Day

39.1A It is agreed between the parties that should Coles or any of its representative's offer any team member a higher rate or additional benefit for work on a public holiday then such offered rate or additional benefit will be offered to all team members and shall remain the standard rate of payment for all public holidays thereafter.

39.1 In addition, full-time or part-time team members (including a fixed term team member) shall be entitled without loss of pay to an additional public holiday when such public holiday is proclaimed or gazetted by the authority of the Commonwealth or State Government and such proclaimed or gazetted holiday is to be observed generally by persons throughout the State or locality.

39.2 For the purposes of this provision, where the rate of wage is a weekly rate, "double time and a half" shall mean one and a half day's wages in addition to the prescribed weekly rate, or pro rata if there is more or less than a day.

39.3 Where a Distribution Centre does not operate on a public holiday:

- A full-time or part-time team member (including a fixed term team member) would have been rostered to work on such a day, any such team member shall be entitled to payment for the day based upon their ordinary time earnings for the hours normally rostered to work.

39.4 Where a Distribution Centre does operate on a public holiday and team members who would normally be rostered to work:

- They may request to work the day or part thereof and shall be paid the appropriate penalty for the time so worked or the team member may elect to be paid at the rate of single time (100%) plus applicable shift allowances as outlined in clause 23 and take TOIL at the rate of 150%. TOIL will be taken in accordance with the procedure in clause 26.8

When a team member chooses not to work or is not required for work by Coles every such team member shall be paid in accordance with clause 39.4 above.

39.5 Where a Distribution Centre operates on an actual public holiday for which a substitution day has been prescribed, the following shall apply:

- If a team member is rostered to work on the actual public holiday and the substituted day, then that team member shall elect which day is to be their public holiday and receive the standard public holiday benefits on that day. The other day, subject to sub-clause 39.7 shall then be a normal rostered day.
- If a team member is rostered to work on the actual public holiday and not substituted day, the team member shall receive the standard public holiday benefits on the actual day.
- If a team member is rostered to work on the substituted day and not the actual public holiday, the team member shall receive the public holiday benefits on the substituted day.

39.6 Christmas Day - In the case of Christmas Day where a substitution occurs, work on the 25th December will attract an additional loading of half a normal day's wage for a full day's work in addition to the Saturday/Sunday rate and the team member shall also be entitled to the benefits of substituted day.

39.7 A full-time or a part-time team member working an average of 5 days per week, any of whose non-working days falls on a public holiday, shall be paid by mutual agreement either :

- a) payment of an additional day's wages,
- b) addition of one day to the team member's annual leave, or
- c) another day may be allowed off to the team member within twenty eight days after the holiday falls, or during the week prior to the holiday

A part-time team member shall be entitled to the provisions of (a), (b) and (c) above where the team member works an alternating roster and the public holiday falls on a day on which the team member works in any week of their roster cycle.

For the purposes of this sub-clause, for full-time team members, "day" shall mean 7.6 hours. In respect of part-time team members, "day" shall mean the average number of rostered hours per day prior to the public holiday in the 4 weeks preceding the holiday.

The following exceptions will apply to this clause:

- Monday to Friday team members will not be entitled to Easter Saturday.
- Tuesday to Saturday team members will not be entitled to Easter Monday.
- Sunday to Thursday team members will not be entitled to Easter Saturday.
- Wednesday to Sunday team members will not be entitled to Easter Monday.

39.8 A full-time, part-time or fixed term team member who is regularly rostered to work Monday to Friday shall not receive the benefit of a public holiday which falls on a Saturday or a Sunday unless a substituted day has been prescribed, in which case such a team member shall receive the benefit of the substituted day as prescribed in this clause.

39.9 For full-time, part-time and fixed term team members who regularly work a Tuesday to Saturday shift with the exception of Easter Monday, when a public holiday falls on a Monday, a day off in lieu shall be granted. This day shall be taken within 12 months of the public holiday by mutual agreement.

39.10 Any and every team member who, having been dismissed or stood down by Coles during the month of December in any year, and re-employed by Coles at any time before the end of the month of January in the next succeeding year shall, if that team member would have been employed by Coles for a continuous period of two (2) weeks or longer immediately prior to being so dismissed or stood down, be entitled to be paid and shall be paid by Coles (at the ordinary rate payable to that team member when so dismissed or stood down) for any or

more of the following public holidays: Christmas Day, Boxing Day and the first day of January occurring during the period on and from the date of the team member's dismissal or standing down to and including the date of the team member's re-employment as aforesaid.

- 39.11 Where there is agreement between the majority of a shift and Coles, a shift may be substituted from one day to another.

Part 6 – MISCELLANEOUS PROVISIONS

40. NO EXTRA CLAIMS

40.1 This Agreement is made in full and final settlement of all claims.

40.2 It is agreed by the parties that up to the nominal expiry date of this Agreement:

- The team members will not pursue any extra wage claims, whether award or over award; and
- The team members will not seek any changes to conditions of employment.

41. PROTECTIVE CLOTHING AND UNIFORMS

Protective Clothing

41.1 Suitable waterproof clothing shall be made available to all team members' required to work in the rain.

41.2 Clothing made available by Coles pursuant to the above shall be maintained by Coles at its expense in good repair and in clean and hygienic condition, and shall remain the property of Coles.

41.3 Coles has agreed to supply the following:

- (i) Safety eye-wear for maintenance team members,
- (ii) raincoat for emptying scrubber,
- (iii) protective gloves for team members handling shrinkage/breakage,
- (iv) protective boots for cleaners.

41.4 Protective clothing and footwear will be provided in line with the Job Safe Practices requirements for each function and department within the Distribution Centre.

Articles to be supplied

41.5 Coles will provide the following items as an initial allocation and will replace individual items on a fair wear and tear basis thereafter.

(i) Permanent Full-Time and Part-Time team members:

- Allocation of the number of polo shirts/singlets in accordance with days rostered to work (e.g. Rostered to work 5 days get 5 shirts; Rostered to work 4 days get 4 shirts etc.).
- One (1) Windcheater or Wind Jacket.

(ii) Fixed Term and casual team members:

- Three (3) polo shirts / singlets.
- One (1) winter PPE jumper (casual team members only).

42. OCCUPATIONAL HEALTH AND SAFETY

42.1 The Union and Coles agree that health and safety in the work place is an issue of importance which should be dealt with on a non-protagonist basis. Occupational Health and Safety is both an individual and shared responsibility where everyone employed by Coles must ensure their jobs are performed safely.

42.2 Coles considers Occupational Health and Safety an integral part of Coles's business. Coles is committed to the reduction and control of accidents that can result in injury to team members, contractors and customers.

- 42.3 The Union and Coles agree to the continuation of an Occupational Health & Safety Committee. Representation from the Union shall consist of one or more Union member(s) appointed by team members as Workplace Health and Safety Representatives.
- 42.4 Coles shall recognise and work within the bounds of all relevant State and National Occupational Health and Safety and Workers Compensation regulations. This will be achieved by the development, implementation and maintenance of Occupational Health and Safety systems, procedures and standards.
- 42.5 In order to minimise work related injuries and illness Coles will provide safe work facilities, equipment, resources and the training necessary to assist in maintaining a safe and healthy work environment.
- 42.6 If a team member sustains a work-related injury or illness, Coles will make every effort to provide a suitable Occupational rehabilitation program. This practice assists in a speedy recovery and minimises the time lost from work.
- 42.7 Managers and team members are responsible for maintaining and observing safe work practices, using safety equipment and clothing provided, notifying management of any potential hazards and for working in such a way that limits the risk of injury to themselves, contractors and customers and assisting in the rehabilitation of injured team members.

43. LIMITATION OF WEIGHTS

No team member shall be permitted or allowed to lift, carry or move by hand any object so heavy as to be likely to cause risk of injury.

44. FIRST AID EQUIPMENT

- 44.1 Under the relevant Queensland Safety laws and regulations a workplace must have first aid equipment and facilities readily available for use. Team members should also have access to trained first aid personnel.
- 44.2 Determining first aid requirements at a workplace will involve making decisions based upon the risk assessment in a range of areas including:
- the selection, provision and maintenance of first aid facilities and services;
 - the selection and training of first aid personnel; and
 - policies, procedures and processes associated with the use of first aid facilities and services.

45. FORKLIFT LICENCE

- 45.1 Coles will pay the fee associated with the licence renewal for a team member's forklift licence provided Coles requires that team member to operate a forklift.
- 45.2 This clause will apply to all team members engaged in Grade 3 relief roles through to Grade 6 positions, with the exception of Grade 5 Administrative roles, who hold a forklift licence and who may be required to operate a forklift as part of their role.

46. MANAGERS AND WORK UNDER THE AGREEMENT

- 46.1 Coles agrees that managers are not to perform work detailed within the classification structure contained in the Agreement or tasks/work that are regularly performed under the terms of the Agreement unless there are 'exceptional circumstances'.
- 46.2 Exceptional circumstances will include but are not limited to instances where Coles has fully utilised all available staffing of grades (including reliefs) before making a decision to allow managers to perform work detailed within the classification structure contained in the Agreement or tasks/work that are regularly performed under the terms of the Agreement.

46.3 In the event that an issue arises from management performing work detailed within the classification structure contained in the Agreement or tasks/work that are regularly performed under the terms of the Agreement, the issue is to be elevated through the next level of management.

47. PERFORMANCE MANAGEMENT

47.1 To ensure the Sites continue to operate productively Coles operates systems which permit Coles to monitor the performance of each team member and the overall performance of each section of the Sites. The system records the work performance levels achieved by each team member and this data could act as a trigger for a discussion with a team member relating to their performance consistent with the requirements under clause 47.

47.2 Coles recognises that a minimum performance level will not act as the sole and determining factor in a team member's performance management. Coles expects and will manage team members based on the team members working to the best of their individual ability consistent with the principle of a 'fair weeks' pay for a fair weeks work'.

47.3 In circumstances where a team member's performance or conduct is not acceptable, the following procedure shall be followed. At all stages throughout the procedure disciplinary procedure, the team member will be offered, and may request that a support person be present (this which may include a union representative).

47.4 In the first instance, Coles will conduct a discussion with the team member, the time, date and summary of the discussion will be recorded by the relevant site manager. The team member will be advised during the discussion of management concerns and the required actions by the team member to remedy such concerns.

47.5 If the team member fails to improve their performance/conduct, Coles will conduct a disciplinary discussion that may result in the issuing of a warning. Any issued warning/s will be recorded and signed by management and identify for the team member the consequences of a failure to improve their performance/conduct which may include termination of their employment.

47.6 Coles may at its discretion, decide not to follow the above procedure in the event of gross misconduct, serious safety breaches or serious breaches of the Coles Code of Conduct.

48. TASK ALLOCATION

48.1 It is recognised by Coles that all consideration will be given so that all team members are able to complete their shift at or on normal finish times.

48.2 It is agreed that tasks allocated towards the end of a shift may equal or exceed time available for completion within remaining working hours.

48.3 Finalisation of task may be completed during overtime with minimum performance level.

48.4 If a team member does not complete the task within the time allowed, the team member may work until the task is completed receiving overtime payment for time worked outside of ordinary hours.

Code 78 – Voluntary finishes for 'end of shift'

48.5 Team members may volunteer to finish their shift early provided that:

- (i) The end of the team members' shift is within four hours of election to finish.
- (ii) The 'on standards' tasks are completed and there is sufficient time to complete them before finishing.
- (iii) The 'off standards' tasks are fully resourced before finishing.

48.6 The process for a 'code 78' shall be as follows:

- (i) A Grade 6 team member (after consultation with relevant line manager) may make an offer to the team member to complete shift early.
- (ii) The team member may elect to accept or reject the offer and will relay the response to the Grade 6 team member.
- (iii) If the offer is accepted, the Grade 6 team member shall advise the line manager what time the team member will be clocked off (allowing four (4) minutes to park and prepare for next shift).

- (iv) The Grade 6 team member is responsible for recording the team member's number and clock off time.
- (v) The line manager will utilise the relevant clock off records to complete an 'exception report' to be provided to the pay office for payment purposes.
- (vi) The pay office will apply an 'authorised unpaid leave' code to the time not worked. The code will ensure that there is no pay for the minutes not worked and no contribution made towards superannuation.
- (vii) The taking of a code 78 does not affect long service leave, annual leave, perfect attendance, promotional criteria or RDO's.

49. TRAINING AND CAREERS

- 49.1 The parties acknowledge that varying degrees of training are provided to team members in the Sites.
- 49.2 The parties commit themselves to continuing such training as is regarded by them as appropriate and improving training in cases where this is required.
- 49.3 It is agreed that the parties will co-operate in ensuring that appropriate training is available for all team members and the parties agree to co-operate in encouraging both managers and team members to avail themselves of the benefits to both from such training.
- 49.4 Coles encourages and supports permanent team members to develop knowledge and skills relevant to their current position and help meet identified development needs.

50. BAG CHECKS

Bags/items may be requested to be inspected by Security/Management upon exiting premises as per Bag Checking Code of Practice.

51. SECURITY CAMERAS

Security cameras are installed on the Sites for the purpose of protection of Coles' investment and surveillance of external perimeters of the Sites.

52. ENGINEERED STANDARD

- 52.1 It is agreed that engineering standards in the workplace are designed to improve the quality and performance of work in the Sites. Coles at its discretion will recalibrate machinery and timings of tasks. Coles will consult with the union when the recalibrations are being undertaken, and discuss any discrepancies, and explain the outcomes to team members once they have been completed.
- 52.2 To achieve desired levels of productivity and performance, it is acknowledged that all team members will perform their duties honestly, diligently and strive to achieve the expected overall performance based on the engineered standards and working to the best of their ability. Team members will conduct themselves in accordance with the principle of a fair week's pay for a fair weeks' work.

53. PRODUCTIVITY / PERFORMANCE BASED INCENTIVES

- 53.1 Coles has previously introduced a productivity and performance based incentive scheme ("**the incentive scheme**"), for team members covered by this Agreement on the basis that:
 - 53.1.1 The form and structure of the incentive scheme may be revised by Coles after full consultation with the team members and their nominated representative; and Occupational Health & Safety responsibilities have been considered; and
 - 53.1.2 The objective of instituting the incentive scheme was to provide an "at risk" additional wage benefit to the team members at no detriment to their wage rates specified in clause 12 of this Agreement, and
 - 53.1.3 Any additional wage benefit to the team members from the incentive scheme will not constitute any part of the ordinary time earnings at any time and will not be included for the purposes of calculating annual leave or long service leave entitlements, provided that the current arrangements for the payment of annual leave loading will continue (that is 17.5% or applicable shift penalties or applicable average incentive whichever is the greater, in accordance with clause 31.7).

- 53.2 Coles and all team members agree that any disagreement concerning the incentive scheme will not be the subject of industrial action, (including bans and limitations).
- 53.3 The incentive scheme will only apply while engaged on actual work undertaken within the scheme. It will not apply to all periods of leave authorised or otherwise.
- 53.4 The current incentive pay points will remain unchanged until the 5th of August 2022.
- 53.5 The incentive scheme will not apply during any periods of industrial action.

54. **HOT WEATHER**

Coles will have regard for the wellbeing of team members when they are working in hot weather conditions. Any concerns relating to the health and safety of a team member shall be addressed by the Occupational Health and Safety Committee. The Committee will review the current hot weather procedures within the term of the Agreement.

55. **FATIGUE MANAGEMENT POLICY (NIGHT SHIFT)**

- 55.1 The Night Shift Fatigue Management Program (FMP) endeavours to assist team members who may be suffering 'fatigue' (which is mental or physical exhaustion that affects a person's normal capacity to function). The parties acknowledge that there are general responsibilities that Coles and its team members can undertake to manage fatigue. These include:

- (i) Team members ensuring they are fit for duties (for example having sufficient sleep).
- (ii) Team members approaching Coles to discuss any fatigue issues.
- (iii) Team members accessing leave (using personal leave or other approved forms of leave when adversely affected by fatigue).
- (iv) Coles training its management and team members about fatigue and ensuring that measures are taken to prevent fatigue or when fatigue is actually identified.

- 55.2 The FMP may allow team members:
- (i) To access a form of leave called 'fatigue leave';
 - (ii) To take time off with pay (such time being counted as service) on the night before and after attending a full day course or training for Coles.
- 55.3 Coles will regularly train and inform team members of the responsibilities contained in any current Fatigue Management Program. Coles will provide on written request an outline of such program. Coles will endeavour to display a copy of the relevant FMP at the Sites that this Agreement applies too. Coles may (if it deems it appropriate and applicable to its team members) display government or health information in relation to fatigue.

56. **SMOKE MANAGEMENT POLICY**

The parties agree to maintain the '*smoke policy protocol*' when an event arises where smoke affects the Sites and adhere to the 'Forest Lake and Heathwood Campus Distribution Centres Protocol for Smoke in the Distribution Centres'.

57. **WORK AT OTHER SITES**

A team member will not be directed to relocate to another Distribution Centre (other than the Distribution Centre's listed in clause 3(d) of this Agreement Coles may transfer team members to a suitable position at another Distribution Centre (other than the Distribution Centre's listed in clause 3(d)) of this Agreement and operated by Coles provided their terms and conditions of employment remain the same as this Agreement, with 21 days written notice. However, a team member may be able to transfer to another Distribution Centre (other than the Distribution Centre's listed in clause 3(d) of this Agreement) and operated by Coles by agreement between Coles and the team member on the terms and conditions of employment which operate at that particular site. This clause does not apply in the situation of a redundancy.

SCHEDULE A – TERMINATION OF EMPLOYMENT

A.1 In order to terminate the employment of a weekly, part-time or fixed term team member Coles shall give the following notice in writing:

Period of continuous service	Period of Notice
Less than 1 year	1 week
1 year but less than 3 years	2 weeks
3 years but less than 5 years	3 weeks
5 years and over	4 weeks

A.2 In addition to the notice in (a) above, weekly, part-time or fixed term team members over 45 years of age at the time of giving of notice and with not less than two years continuous service shall be entitled to an additional week’s notice.

A.3 It is acknowledged that Coles’ casuals should not be terminated for reason of lack of work where there is work available at other Distribution Centres covered by this Agreement. In that regard Coles will make every effort to relocate Coles’ casuals who meet Coles’ expectations to alternative sites covered by this Agreement and who are willing to relocate to the offered site.

Notice of Termination by Team Members

A.4 The notice of termination required to be given by a team member shall be in writing and shall be a minimum of one (1) week or less by mutual agreement between the parties.

Time Off During Notice Period

A.5 During the period of notice of termination given by Coles to a weekly or part-time team member , such team member shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the team member after consultation with Coles.

Statement of Employment

A.6 Coles shall, in the event of termination of employment, provide upon request to the team member who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the team member.

A.7 Payment in lieu of notice shall be made if the appropriate notice is not given, provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

A.8 In calculating any payment in lieu of notice, the ordinary time rate of pay for the team member concerned shall be used.

A.9 The period of notice in this sub clause shall not apply in the case of dismissal for misconduct or other grounds that justified summary dismissal, or in the case of casual or seasonal team members, or to team members on daily or hourly hire, or team members engaged for specific period of time or for a specific task or tasks.

SCHEDULE B – REDUNDANCY

B.1. Application

This clause applies to all permanent team members covered by this Agreement. It does not apply to casual team members, team members engaged for a fixed term, fixed task, or team members whose employment is terminated for reasons other than redundancy.

B.2. Transfer to lower paid duties

a) Where a team member is transferred to lower paid classifications due to redundancy the team member is entitled to the same notice as if their employment had been terminated. Coles can make payment instead of notice. Where this occurs the team member will be paid the difference in gross wages (including allowances, loadings and penalties) between what they would have received in the former role and what the team member receives for the transferred role for the notice period owing.

B.3. Redundancy

a) After Coles has made a definite decision that the job a team member has been doing will no longer be done by anyone (and this is not due to the ordinary and customary turnover of labour), and that decision may lead to termination of employment, Coles will hold discussions with the affected team member and will cover the reason/s for the proposed termination

b) As an alternative to redundancy, Coles may relocate, redeploy, retrain or transfer a team member.

c) Where Coles determines it is necessary to implement redundancies, the following process applies:

Voluntary Retrenchment

i) Coles may call for expressions of interest for voluntary retrenchments amongst team members affected.

ii) Coles will review any expressions of interest received and consider whether it will offer voluntary retrenchment. Whilst this will provide an avenue for team members to volunteer, there is no automatic right to retrenchment.

iii) Coles in reviewing expressions of interest for voluntary retrenchment, will at all times reserve the right to retain a requisite level of operational skills, experience and knowledge amongst its team members. Coles reserves the right to reject applications for voluntary retrenchment.

Forced Retrenchment

v) Coles may select team members to be retrenched if there are insufficient volunteers for retrenchment.

d) In addition to a payment in lieu of notice and any other benefits payable on termination, a team member who is retrenched in accordance with this clause will be paid a severance benefit calculated as follows:

i) Three (3) weeks' pay per year of completed service, calculated pro-rata for each completed month of service such payment to be capped at thirty-six (36) weeks' pay.

ii) For the purposes of this clause "weeks' pay", means the ordinary time rate of pay for the team member concerned. The following amounts are expressly excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, shift penalties, allowances, bonus payments; incentives, and other ancillary payments.

e) A team member given notice of termination in circumstances of a redundancy will be allowed up to one day per week without loss of pay, during each week of notice for the purpose of seeking other employment and will be provided upon the termination of employment with a Statement of service, including the reason for termination.

SCHEDULE C – MODEL CONSULTATION TERM

Schedule 2.3 (Regulation 2.09)

- (1) This term applies if the employer:
- (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
 - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.
- Major change
- (2) For a major change referred to in paragraph (1)(a):
- (a) the employer must notify the relevant employees of the decision to introduce the major change; and
 - (b) subclauses (3) to (9) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (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;
- the employer must recognise the representative.
- (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:
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the change on the employees; and
 - (iii) any other matters likely to affect the employees.
- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) If a term in this 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 paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- (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.

Change to regular roster or ordinary hours of work

- (10) For a change referred to in paragraph (1)(b):
- (a) the employer must notify the relevant employees of the proposed change; and
 - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (12) 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;
- the employer must recognise the representative.
- (13) As soon as practicable after proposing to introduce the change, the employer must:
- (a) discuss with the relevant employees the introduction of the change; and
 - (b) for the purposes of the discussion—provide to the relevant employees:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
 - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
 - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:
- relevant employees means the team member/s who may be affected by a change referred to in subclause (1).

SCHEDULE D – FLEXIBILITY TERM

- D.1.** Coles and a team member covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of the following terms of this Agreement:
- a) Arrangements about when work is performed;
 - b) Overtime rates;
 - c) Penalty rates
 - d) Allowances;
 - e) Leave loading.
- D.2** The arrangement must meet the genuine needs of Coles and team member in relation to one or more of the matters mentioned in clause D.1 and the arrangement are genuinely agreed to by Coles and team member.
- D.3** Coles must ensure that the terms of the individual flexibility arrangement:
- a) are about permitted matters under section 172 of the Fair Work Act 2009. A copy of this section of the Act will be made accessible to the team member upon request to Coles;
 - b) are not unlawful terms under section 194 of the Fair Work Act 2009. A copy of this section of the Act will be made accessible to the team member upon request to Coles;
 - c) will result in the team member being better off overall than the team member would be if no arrangement was made.
- D.4** Coles must ensure that the individual flexibility arrangement:
- a) is in writing; and
 - b) includes the name of Coles and the team member ; and
 - c) is signed by Coles and team member and if the team member is under 18 years of age signed by a parent or guardian of the team member ; and
 - d) includes the details of:
 - (i) the terms of the Agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the team member will be better off overall in relation to the terms and conditions of their employment as a result of the arrangement; and
 - (iv) states the day on which the arrangements commences.
- D.5** Coles must give the team member a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- D.6** Coles or team member 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 Coles and team member agree in writing – at any time.

SIGNATORIES

Signed for and on behalf of Coles Group Supply Chain Pty Ltd

Signature:

Print Full name:

Address:

Authority to sign:

Date:

Witnessed by:

Signature:

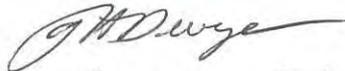
Print Full name:

Address:

Date:

Signed for and on behalf of the Shop Distributive and Allied Employees Association, Union of Employees

Signature:



Print Full name: GERARD ANDREW DWYER

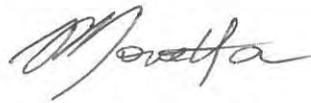
Address: L6, 53 QUEEN STREET, MELBOURNE, 3000

Authority to sign: NATIONAL SECRETARY - TREASURER

Date: 21 AUGUST 2018

Witnessed by:

Signature:

 21 August 2018

Print Full name:

Address:

Date:

Mauro Moretta
Level 3 / 65 Southbank Boulevard
Southbank VIC 3006
An Australian legal practitioner
within the meaning of the Legal
Profession Uniform Law (Victoria).

SIGNATORIES

Signed for and on behalf of Coles Group Supply Chain Pty Ltd

Signature:

Print Full name: PHIL MAUGHAN

Address: 44 STRADBROKE STREET, FOREST LAKE, QLD, 4110

Authority to sign: HEAD OF SUPPLY CHAIN - NORTH ZONE

Date: 29/8/18

Witnessed by: Matthew Patuno

Signature:

Print Full name: Matthew Patuno

Address: 10 Roberts Road Eastern Creek NSW 2766

Date: 29/8/18

Signed for and on behalf of the Shop Distributive and Allied Employees Association, Union of Employees

Signature:

Print Full name: GERARD ANDREW DWYER

Address: LG, 53 QUEEN STREET, MELBOURNE, 3000

Authority to sign: NATIONAL SECRETARY - TREASURER

Date: 21 AUGUST 2018

Witnessed by:

Signature:

Print Full name:

Address:

Date:

Mauro Moretta 21 August 2018

Mauro Moretta
Level 3 / 65 Southbank Boulevard
Southbank VIC 3006
An Australian legal practitioner
within the meaning of the Legal
Profession Uniform Law (Victoria).

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG2018/4874

Applicant: Coles Group Supply Chain Pty Ltd

Section 185 – Application for approval of a single enterprise agreement

Undertaking- Section 190

I, Nicole Jan Dodimead, People and Culture Manager (Forest Lake & Heathwood) – Supply Chain for Coles Group Supply Chain Pty Ltd give the following undertakings with respect to the Coles Queensland (Forest Lake and Heathwood) Distribution Centre Enterprise Agreement 2018 ("**the Agreement**"):

1. I have the authority given to me by Coles Group Supply Chain Pty Ltd to provide these undertakings in relation to the application before the Fair Work Commission.
2. Annual leave in clause 31 of the Agreement accrues progressively during each year of service consistent with section 87(2) of the *Fair Work Act 2009 (FW Act)*.
3. Consistent with clauses 11.3(c) and 11.4(d) of the Storage Services and Wholesale Award 2010 (**SSW Award**), the hours of work of a part-time employee, including actual starting and finishing times each day, will be agreed in writing at the time of engagement, and any agreed variation (whether it be ad hoc, a one off variation or permanent), to a part-time employee's regular pattern of work will be recorded in writing. For the avoidance of doubt, a part-time team member's contracted hours of work may be not be altered unilaterally by the employer.
4. A part-time employee may be offered and voluntarily accept to work additional hours (what is commonly known at the sites as 'flex up'), and be paid for those additional hours worked on each occasion pursuant to clause 24.22 and clause 26.2(i) (where overtime is applicable) of the Agreement. The part-time employee will be paid pursuant to the Agreement for additional hours worked, provided on each occasion the casual rate (and any applicable overtime payments) prescribed in the Agreement compensates the part-time team member more favourably or at least equal to the equivalent payment the part-time team member would have otherwise received under clause 11.3(d) of the SSW Award. On any occasion a part-time employee's agreed additional hours will not satisfy clause 11.3(d) of the SSW Award, the part-time employee's additional hours will be capped to a maximum amount of additional hours on each occasion or alternatively the part-time employee will receive the relevant overtime penalty rates pursuant to clause 11.3(d) of the SSW Award.
5. The severance pay entitlement in Schedule B.3(d)(i) of the Agreement that refers to three (3) weeks' pay per completed year of service, calculated pro-rata for each month of service does not apply to a retrenched employee who has completed at least 1 year but less than 2 years' service. If a retrenched employee has completed at least 1 year but less than 2 years' service, the employee will be entitled to four (4) weeks' severance pay consistent with section 119 of the FW Act. For all other years of service, the severance pay calculation is based on three (3) weeks' pay per completed year of service pursuant to Schedule B.3(d)(i) of the Agreement.

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

M. J. Adamead
Signature

11 - January 2019
Date

“

The SDA's core business is to negotiate fair and decent wages and we consistently negotiate pay rises that are well above retail award wages, **giving you more money in your pocket each week.**

”

Chris Gazenbeek

Secretary Chris Gazenbeek



Fast Food Workers



Warehouse Workers



Supermarket Workers



Fuel Console Workers



Hardware Workers

www.sdaq.asn.au