



FairWork  
Commission

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**Title of Matter:** Application by Decipha Pty Ltd

**Section:** s.185 - Application for approval of a single-enterprise agreement

**Subject:** Application for approval of the Decipha Enterprise Agreement 2015

**Matter Number(s):** AG2016/2344

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In relation to the above matter, please find attached for your information a copy of the document which has been issued by the Fair Work Commission.

### Decision approving agreement – PR578503

#### Inquiries:

Any inquiries relating to this notice are to be directed to: [member.assist@fwc.gov.au](mailto:member.assist@fwc.gov.au).

**31 MARCH 2016**

#### To:

Notified:	Address/fax no.:
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Ms Geraldine Rivers Decipha Pty Ltd	<a href="mailto:geraldine.rivers@auspost.com.au">geraldine.rivers@auspost.com.au</a>
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## DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**Decipha Pty Ltd**  
(AG2016/2344)

### DECIPHA ENTERPRISE AGREEMENT 2015

Graphic Arts

COMMISSIONER LEE

MELBOURNE, 31 MARCH 2016

*Application for approval of the Decipha Enterprise Agreement 2015.*

[1] An application has been made for approval of an enterprise agreement known as the *Decipha Enterprise Agreement 2015* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Decipha Pty Ltd. The Agreement is a single enterprise agreement.

[2] The Applicant has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement.

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

[4] Pursuant to s.202(4) of the Act, the model flexibility term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[5] The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[2016] FWCA 1982

[6] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 April 2016. The nominal expiry date of the Agreement is 22 October 2018.



COMMISSIONER

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ANNEXURE A



29 March 2016

Mr Matthew Mitchell  
Member Support Research Team  
Fair Work Commission  
11 Exhibition Street  
MELBOURNE VIC 3000

Dear Mr Mitchell

**AG2016/2344 – Decipha Enterprise Agreement 2015**

We refer to previous correspondence in relation to concerns raised by Commissioner Lee about certain clauses of the proposed Decipha Enterprise Agreement 2015 (**Agreement**).

In response to those concerns, the below undertakings are provided:

**1. Facilitative Provisions – clause 10.1**

Decipha Pty Ltd (**Decipha**) undertakes that to the extent that clause 10.1 provides for facilitative arrangements by majority agreement of employees, this will only be sought by Decipha in circumstances which are permitted by the underpinning Award, the *Graphic Arts Printing and Publishing Award 2010 (Award)*, and set out in the Agreement.

In accordance with clause 10.1.13 of the Agreement, Decipha confirms that the model flexibility term in Schedule 2.2 of the Fair Work Regulations 2009 will be complied with where individual agreement is sought under the facilitative provisions in the Agreement.

**2. Personal Leave on Annual Leave – clause 33.4.4**

In accordance with clause 5.2 of the Agreement, Decipha undertakes that where an employee suffers from an illness whilst on annual leave, the absence due to personal illness or injury for any applicable duration that may apply will be recorded as personal leave and the relevant portion of annual leave will be recredited accordingly. This undertaking is subject to the conditions in clauses 33.4.4(i), (ii), (iv) and (v) being met by an affected employee.

**3. Casuals – Unpaid Carer's Leave – clause 14.6.2**

In accordance with clause 5.2 of the Agreement, and notwithstanding clause 14.6.2, Decipha undertakes that casual employees will be entitled to unpaid carer's leave in accordance with the National Employment Standards set out in the *Fair Work Act 2009 (Cth)*.

**4. Saturday Shiftworkers – clause 20.3.2**

In circumstances where Decipha commences engaging shiftworkers to work ordinary hours of work on a Saturday, Decipha undertakes that an appropriate penalty will be paid to hours worked so as to ensure that employees are better off overall than they would be under the Award.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Vince Rosano', written over a horizontal line.

Vince Rosano  
Head of Decipha National Operations

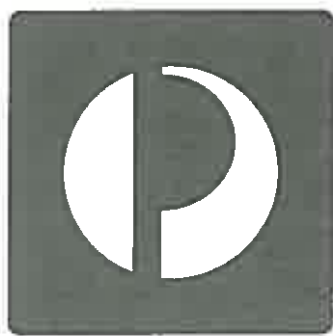
**Note - the model flexibility term is taken to be a term of this agreement and can be found at the end of the agreement.**

**DECIPHA PTY LTD**

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**ENTERPRISE AGREEMENT 2015**

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



**Decipha**

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## PART 1 – APPLICATION AND OPERATION OF AGREEMENT

### 1. AGREEMENT TITLE

This Agreement is called the Decipha Enterprise Agreement 2015.

### 2. DEFINITIONS

#### 2.1. For the purpose of this Agreement:

- 2.1.1. “Act” means the *Fair Work Act 2009* (Cth);
- 2.1.2. “Agreement” means this agreement, being the *Decipha Enterprise Agreement 2015*;
- 2.1.3. “FWC” means the Fair Work Commission;
- 2.1.4. “Regulations” means the *Fair Work Regulations 2009* (Cth);
- 2.1.5. “Agreement” means the Decipha Enterprise Agreement 2015;
- 2.1.6. “Employer” means Decipha Pty Ltd (ABN 31 100 126 396);
- 2.1.7. “Manager/Supervisor” and “Management” means a manager or supervisor of Decipha Pty Ltd;
- 2.1.8. “Employee” means an employee of Decipha Pty Ltd who is employed in the classifications set out in Schedule A of this Agreement;
- 2.1.9. “Union” means the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU).

### 3. DURATION AND SCOPE

#### 3.1. Duration

The Agreement comes into operation 7 days after the Agreement is approved by the Fair Work Commission. The nominal expiry date of the Agreement is 22 October 2018.

The parties will make reasonable endeavours to negotiate for a new Enterprise Agreement within 4 months prior to the nominal expiry date of the Agreement as above.

#### 3.2. Agreement not to be used as a precedent

The parties undertake not to seek to apply the terms of this Agreement to core employment structures within the Australian Postal Corporation.

### 4. COVERAGE OF THE AGREEMENT

#### 4.1. This Agreement covers:

- 4.1.1. the Employer;
- 4.1.2. the Employees as defined in clause 2.1 of this Agreement; and
- 4.1.3. the Union as defined in clause 2.1 of this Agreement.

### 5. RELATIONSHIP TO OTHER INDUSTRIAL INSTRUMENTS AND LEGISLATION

- 5.1. This Agreement is a comprehensive agreement. However, it does not override State laws relating to Long Service Leave and State and Commonwealth laws relating to Occupational Health and Safety.



- 5.2. The terms of this Agreement apply in a manner that does not exclude the NES. That is, no provision of the NES is displaced by this Agreement but the NES provisions may be supplemented by the terms of this Agreement. Accordingly, the NES will continue to apply to the extent that any term of this Agreement is detrimental in any respect when compared with the NES.

## **6. ANTI-DISCRIMINATION**

### **6.1. Both the Employer and the Union:**

- 6.1.1. respect and value the diversity of the workforce;
- 6.1.2. will, in accordance with the relevant anti-discrimination legislation and the Employer's policies, help to prevent and eliminate discrimination within the workplace based on a person's disability, sex, race, colour, national or ethnic origin, pregnancy, breastfeeding, age, trade or profession, physical features, marital status, social origin, parental/family status, sexuality/sexual orientation (ie sexual preference), irrelevant medical or criminal record, caring responsibility, union/employer association activity, religion, political belief or personal association; and
- 6.1.3. will endeavour to ensure that neither the Agreement provisions nor their operation are directly or indirectly discriminatory in their effect.

## **7. NOTICE BOARDS**

The Employer will permit the use of notice boards at the workplace to facilitate work-related communication between Employees and their representatives, including the Union. The Employer retains the right to reject and remove the posting of any material that might reasonably be considered offensive or is not in relation to this Agreement or the employment relationship.

## **8. SHARED VALUES AND OBJECTIVES**

### **8.1. Objectives of the Agreement**

The parties to this Agreement recognise that Decipha operates in a competitive market and that workplace flexibility is a critical success factor for the business. This Agreement provides a framework within which workplace flexibility can be pursued.

#### **8.1.1. The objectives of this Agreement are to:**

- (i) enhance the efficiency and business success of the Employer, and through this contribute to increased job security for all Employees;
- (ii) provide a high quality service which fully meets customer requirements;
- (iii) continue to develop and maintain productive, co-operative and harmonious working relationships by promoting trust and continually striving to improve communications at all levels; and
- (iv) develop a learning environment where all Employees are willing and encouraged to develop their maximum potential, within the scope of their employment, and to continually update their skills and knowledge with regard to operational requirements, and the objectives of the Employer.

### **8.2. Availability of the Agreement**

The Employer will provide all Employees covered by this Agreement with a copy of this Agreement. A copy of the Agreement will be placed on notice boards where possible, or where it is easily accessible to Employees. The Employer's policies and

procedures are available on the Employer's network to all Employees, or alternatively may be accessed through their Supervisor.

## 9. NO EXTRA CLAIMS

It is agreed by the parties to this Agreement that up to the nominal expiry date, the parties will not pursue any extra claims relating to wages or conditions of employment, whether dealt with in the Agreement or not, except by agreement between the parties.

## PART 2 – FLEXIBILITY, CONSULTATION AND DISPUTE RESOLUTION

### 10. WORKPLACE FLEXIBILITY

#### 10.1. Facilitative provisions

10.1.1. A facilitative provision provides for a standard approach in the Agreement to be departed from by agreement between the Employer and either an individual Employee or the majority of Employees in the workplace.

10.1.2. Facilitative provisions are contained in the following clauses of this Agreement:

Subject Matter	Clause
Part-time Employees	14.4.3
Casual Employees	14.6.1(ii)
Span of ordinary hours	18.1(iii)
Public Holiday shift	20.4
Roster Changes	20.10
Time off	21
Meal break	22.1
Substitution of public holidays	32.4

10.1.3. Subject to *Clause 10.1.2* of the Agreement, the Employer undertakes that the requirements set out in paragraphs (1)(c) and (2)-(5) of the model flexibility term in Schedule 2.2 of the Regulations will also apply to any individual flexibility agreement reached in respect to the matters contained in *Clause 10.1.2* of the Agreement.

10.1.4. Facilitative provisions are not to be used as a device to avoid Agreement obligations, nor should they result in unfairness to an Employee or Employees covered by this Agreement. Employees are not to be coerced to reach agreement on facilitative provisions.

10.1.5. The agreement reached with either an individual Employee or the majority of Employees in the workplace or part of it must be recorded in the time and wages records kept by the Employer in accordance with Part 3–6 of the Regulations.

10.1.6. In the case of facilitation by individual agreement, an Employee may be accompanied by a person of his or her choice when conferring with the Employer about the proposed implementation of the facilitative provisions. That person may be a Union representative and they must be given a reasonable opportunity to participate in the negotiations.

10.1.7. In the case of facilitation by majority agreement involving one or more of its members, the Union will be informed of the intention to use the facilitative provision and must be given the opportunity to participate in the negotiations.

10.1.8. Union involvement does not mean the Union's consent is required prior to the introduction of agreed facilitative arrangements.

10.1.9. Where relevant circumstances change, any party to the Agreement can review the arrangements established under these facilitative provisions, and can, subject to an appropriate period of notice, withdraw agreement.

10.1.10. In the event that a dispute or concern arises over the implementation or continued operation of a facilitative provision, the matter will be handled in accordance with *Clause 13 – Dispute Settlement*.

## **10.2. Individual Flexibility Arrangements**

10.2.1. The parties agree that the model flexibility term set out in Schedule 2.2 of the Regulations is taken to be a term of this Agreement.

## **11. CONSULTATIVE MECHANISM AND PROCEDURES**

11.1. The Employer will consult with Employees about major workplace changes that are likely to have a significant effect on the Employees.

11.2. The Employees may be represented for the purposes of the consultation in *Clause 11.1* and *Clause 11.3*.

11.3. Where the Employer proposes to introduce a change to the regular roster or ordinary hours of work of Employees, the Employer must notify the Employees who may be affected and their representatives, if any, of the proposed change.

11.4. The parties agree that consultation in accordance with this clause will occur and that it is important in maintaining positive working relationships between the Employer, Employees and the Union. The Employer acknowledges that consultation prior to any significant change and on the consequences of that change is critical to maintaining positive workplace relationships and positive business outcomes. However, the parties also acknowledge that the consultative processes need to have regard to the competitive business environment that the Employer operates within and the associated need that may exist for time limited business decision making.

11.5. The Employer must discuss with the Employees affected and their representatives, if any, the introduction of the changes referred to in *Clauses 11.1* and *11.3*, the effects the changes are likely to have on Employees and measures to avert or mitigate the adverse effects of such changes on Employees. Consideration to matters raised by Employees and/or their representatives in relation to the changes must be given by the Employer (including, in the case of changes to rosters or ordinary hours of work, the impact in relation to their family or caring responsibilities, which employees will be invited to give their views in respect of).

11.6. For the purposes of the discussions referred to in *Clause 11.1*, the Employer must provide in writing to affected Employees and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on Employees and any other matters likely to affect Employees, provided that the Employer is not required to disclose confidential information the disclosure of which would be contrary to the Employer's interests.

11.7. The parties agree to have a National Consultative Forum at least every 6 months, or more often if required. The consultative structure and procedures will be agreed between the parties.

11.8. The Employer and the Union agree to develop specific arrangements and protocols for the conduct of Union affairs that foster constructive and positive relationships, do not adversely impact on the Employer's operations and respect the rights of Employees.

## **12. CONFIDENTIALITY**

**12.1.** Each Employee understands that during the course of their employment, each Employee will have access to certain information of a confidential nature. Each Employee agrees:

12.1.1. not to disclose any confidential information to any person, company or organisation during or following each Employee's employment unless the disclosure has been approved by the Employer;

12.1.2. not to remove any confidential information from the Employer's premises or the premises of a customer of the Employer, nor copy or duplicate any such information except in the ordinary course of employment; and

12.1.3. to return all confidential information and property immediately on request of the Employer or in the event of the termination of each Employee's employment.

**12.2.** Management understands that each Employee's personal information should be treated confidentially and only disclosed on a "need to know" basis or where approved by the Employee.

## **13. DISPUTE SETTLEMENT**

### **13.1. Principles**

13.1.1. The Parties to the Agreement recognise that there exists a mutual responsibility to work cooperatively to resolve disputes over workplace matters, as far as is practicable, at the workplace level. Accordingly, in relation to a dispute over the application of the Agreement arising during the life of the Agreement, the parties commit themselves to:

- (i) promptly addressing the dispute within the procedures set out below;
- (ii) discussing the dispute in an open and honest way; and
- (iii) seeking to resolve the dispute wherever possible at the local level.

13.1.2. While the parties are attempting to resolve the matter, the Employee(s) will continue to work in accordance with the Agreement and their contract of employment, unless the Employee(s) has/have a reasonable concern about an immediate threat to their health or safety. In such circumstances and subject to relevant Work Health & Safety legislation, the Employee(s) must not unreasonably fail to comply with a direction by the Employer to perform other available work that is appropriate for the Employee(s) to perform.

13.1.3. In resolving any dispute, the parties will have regard to the principles of the Employer having the accountability to:

- (i) operate the business efficiently;
- (ii) determine and allocate resources;
- (iii) implement both large and small changes in an efficient, timely and cost-effective manner;
- (iv) explore means of protecting and expanding business levels; and
- (v) provide fair and equitable treatment to its Employees and provide safe workplaces that support employee diversity and work/life balance arrangements.

## **13.2. Disputes**

If a dispute relates to:

- (i) A matter arising under this Agreement; or
- (ii) The National Employment Standards;

*Clauses 13.3 to 13.6* set out the escalation process which must be followed to settle the dispute.

## **13.3. Dispute Resolution Procedures**

13.3.1. It is agreed that where a dispute arises under *Clause 13.2*, the following procedure will apply:

- (i) In the first instance, the Employee will discuss the matter with their immediate Manager/Supervisor.

However, in circumstances where the matter may relate to the behaviour or actions of the immediate Manager/Supervisor and it would be inappropriate to discuss the matter at that level, the Employee may discuss the matter with the next highest level of Management, and, if required, be accompanied by a Union representative or another Employee.

- (ii) If the matter is not resolved at that level within a reasonable timeframe, the Employee concerned may arrange further discussions involving more senior levels of Management or the Union as appropriate.

- (iii) If the issue involves more than one Employee, the Employees involved, the Union or Management may raise the issue to the level the parties consider appropriate.

## **13.4. FWC Conciliation**

13.4.1. If the internal negotiations outlined at *Clause 13.3.1* do not resolve the dispute, a party to the dispute may refer the matter to the FWC for conciliation.

13.4.2. The party notifying the dispute will do so by filing with the FWC and serving on all other relevant parties a dispute notification document that sets out a brief description of the dispute, the material facts the disputing party believes to be relevant to the dispute and the desired remedy.

## **13.5. Independent Mediation**

13.5.1. If the conciliation by the FWC has been unsuccessful in resolving the dispute, a party to the dispute may refer the dispute to a third party mediator agreed to by both parties. If the parties are unable to agree on a mediator, the Institute of Arbitrators & Mediators Australia Mediation Rules will apply in relation to the appointment of a mediator.

13.5.2. Having regard to the terms of this Agreement, the National Employment Standards and the principles set out in *Clause 13.1.3*, the independent mediator must assess the merits of the matter and make a non-binding recommendation that:

- (i) arbitration by the FWC is appropriate on the basis that it raises a genuine question about the interpretation of the Agreement or the National Employment Standards; or
- (ii) arbitration by the FWC is not appropriate.

13.5.3. The independent mediator may make non-binding recommendations regarding how the matter may be resolved between the parties prior to arbitration.

- 13.5.4. The cost of the mediator will be shared equally between the parties and each party will pay its own costs for the mediation.

### **13.6. Arbitration**

- 13.6.1. If the independent mediator has determined that the dispute is appropriate for arbitration, then a party to the dispute may elect to have the matter arbitrated by the FWC.
- 13.6.2. The FWC may only determine the matter by arbitration if all the conditions set out in this *Clause 13.6.2* are satisfied:
- (i) the escalation process set out at *Clauses 13.3 to 13.5* has been followed; and
  - (ii) where the party requesting the arbitration is one of the parties specified in *Clause 4* of this Agreement, that party has been authorised to apply for arbitration by its relevant decision-making body in accordance with their rules as follows:
    - a. CEPU (Communications Division) – its Divisional Executive (or any successor body);
    - b. The Employer – its Head of National Operations; and
  - (iii) The FWC is satisfied that the relevant decision-making body of the party requesting arbitration has considered the independent mediator's recommendation in relation to whether arbitration is appropriate for the dispute in authorising the application for arbitration by the FWC.
- 13.6.3. In arbitrating the dispute, the FWC may:
- (i) make a determination that is binding on the parties; and
  - (ii) use the powers that are available to it under the Act.
- 13.6.4. A decision that the FWC makes when arbitrating a dispute is a decision for the purpose of Division 3 of Part 5-1 of the Act. Therefore, an appeal may be made against the decision.

### **13.7. Representation**

- 13.7.1. Employees may be represented for the purposes of the procedure in *Clauses 13.3 to 13.7*.

### **13.8. Training**

#### **Disputes Resolution Training:**

- 13.8.1. To assist in dispute resolution, a Union delegate or Employee representative who has had at least 3 months continuous service with the Employer, will be granted leave of absence, at ordinary rates of pay, to attend short courses conducted by a recognised training provider which are specifically directed towards effective dispute resolution.
- 13.8.2. The specific training courses will be mutually agreed between the parties.
- 13.8.3. The granting of leave under this clause will be subject to the operational requirements of the Employer. Such leave will be granted up to a maximum of 5 days per calendar year and will not accumulate.
- 13.8.4. An Employee granted leave who fails to attend the nominated course, will notify the Employer as soon as practicable. No payment will be made to any Employee until satisfactory proof of attendance at the nominated course is produced.

### **13.9. Redundancy disputes procedure**

- 13.9.1. *Clauses 13.9.2 and 13.9.3* impose additional obligations on an Employer where an Employer contemplates termination of employment due to redundancy and a dispute arises (“a redundancy dispute”).
- 13.9.2. Where a redundancy dispute arises, and it has not already done so, the Employer must provide affected Employees and the Union (if requested by an affected Employee) in good time, with relevant information including:
- (i) the reasons for any proposed redundancy;
  - (ii) the number and categories of workers likely to be affected; and
  - (iii) the period over which any proposed redundancies are intended to be carried out.
- 13.9.3. Where a redundancy dispute arises and discussions occur in accordance with this clause the Employer will, as early as possible, consult with Employees and their representatives (if any) on measures taken to avert or to minimise any proposed redundancies and measures to mitigate the adverse effects of any proposed redundancies on the Employees concerned.

## **PART 3 – CONTRACT OF EMPLOYMENT**

### **14. CATEGORIES OF EMPLOYEES**

#### **14.1. Terms of engagement**

- 14.1.1. A person may be employed as a permanent, fixed term or casual Employee.
- 14.1.2. A person engaged as a permanent or fixed term Employee can be employed on a full-time or part-time basis.
- 14.1.3. At the time of engagement, the Employer will inform each Employee in writing of:
- (i) the type of the Employee’s employment; and
  - (ii) the terms and conditions of the Employee’s employment.

#### **14.2. Permanent Employment**

The Employer recognises the value of its permanent workforce and is committed to providing permanent employment as the preferred employment option, where the flow of work provides for it and there is an ongoing business need for such full time employment. In cases where the flow of work or existing business need does not provide for permanent full time employment, the preferred employment option is permanent part time employment.

#### **14.3. Period of probation**

Unless an Employee’s employment is terminated pursuant to *Clause 16.1.3*, or due to unsatisfactory performance, a person engaged as a permanent Employee, will be on probation for a period of three months. After this period, the Employee’s employment will either be confirmed or terminated.

#### **14.4. Part time Employee**

- 14.4.1. A part time Employee:
- (i) is an Employee who works less than 38 hours per week;

- (ii) will be rostered for a minimum of four (4) and a maximum of ten (10) consecutive hours on any day except where:
    - a. any new Employee can be employed for a minimum of three (3) hours and a maximum of ten (10) consecutive hours on any day. This can only occur where that Employee is working on a client premises that is more than 10km from the CBD in their state or territory capital; and
    - b. will not be employed by the Employer for more than one engagement per day.
- 14.4.2. Specific consultation will occur with the Union where it is proposed to implement a three hour minimum daily engagement option at a particular work site.
- 14.4.3. The Employer will inform a part-time Employee in writing, on engagement, of the hours and times he or she will be required to work. The hours and times of work may be subsequently varied by agreement with the Employee, or by the Employer providing the Employee with 2 weeks' notice to apply in both cases of an increase or a reduction in hours.
- 14.4.4. A part time Employee is required to be available to work such hours, within the specified span of hours at *Clause 18* – Hours of work, as are necessary to meet the Employer's business operational needs.
- 14.4.5. A part time Employee will be paid a pro rata salary in accordance with the relevant job classification.
- 14.4.6. The conditions provided in this Agreement will apply to a part-time Employee on a pro rata basis unless otherwise specified.
- 14.4.7. At the Employee's request, the Employer will review the status of a part time Employee who on a regular basis is engaged for hours in excess of their nominated fortnightly hours of work, for a period exceeding 6 months. In circumstances where the requirement to work excess hours is likely to continue on an ongoing basis, and there is a genuine business need, the Employee's hours may be increased to the hours that have actually been worked.

#### **14.5. Fixed term Employee**

- 14.5.1. A fixed term Employee is a person engaged for an extended fixed period, or to undertake a specific task.
- 14.5.2. The Employer recognises the value of a permanent workforce and is committed, as far as is commercially viable and practicable, to providing permanent employment as the preferred option.
- 14.5.3. The period of continuous employment as a fixed term Employee will be determined by the duration of each contract and be for up to a maximum of one year for any one contract period. However, the period can be extended for a further year by agreement between the parties.
- 14.5.4. Disputes about the extent of the use of long term fixed term employment should follow *Clause 13* – Dispute Settlement.

#### **14.6. Casual Employees**

- 14.6.1. A casual Employee:
  - (i) is a person engaged on a daily basis in relieving work or work of an irregular or intermittent nature or of a short term duration but does not include an Employee who could properly be classified as permanent or fixed term;



- (ii) will not be engaged in a full time or part time capacity on a continuous basis from week to week for more than 12 weeks. However, a further maximum period of up to 12 weeks may be agreed to between the Employer and the Employee concerned in which case the facilitative provisions at **Clause 10** will apply;
- (iii) will be engaged and paid by the hour;
- (iv) will be engaged on each occasion and be paid for no less than four hours excepting where;
  - a. casual Employees can be employed for a minimum of three (3) hours and a maximum of ten (10) consecutive hours on any day. This can only occur where that Employee is working on a client premises that is more than 10km from the CBD in their state or territory capital;
- (v) will be paid an hourly rate based on the salary for the job classification in which he or she is engaged, plus a casual loading of 22.5%, which loading is in lieu of annual leave, personal leave, public holidays and bereavement leave; and
- (vi) will not be paid the casual loading when he or she receives overtime payments or works on a public holiday and receives a public holiday penalty.

14.6.2. The following clauses of this Agreement do not apply to casual Employees:

Clause Number	Subject Matter
16	Termination of employment
17	Redundancy
28	Annual leave
32	Public holidays
33	Personal leave
38	Parental leave except in the case of an eligible casual Employee as defined in <b>Clause 38.1.3</b> .

## 15. LABOUR AGENCIES

The Employer will ensure that any employee of a labour hire agency engaged by the Employer will be paid the same rate of pay as if they had been an Employee of the Employer. The Employer will notify the Union of labour suppliers.

## 16. TERMINATION OF EMPLOYMENT

### 16.1. Notice period

16.1.1. Subject to **Clause 16.1.3**, **Clause 16.1.4** and **Clause 14.5**, where the services of a fixed term Employee are terminated before the expiry of the period fixed by the terms of engagement, or the employment of a permanent Employee is terminated, the Employee must be given the following notice or payment in lieu of notice:

Period of continuous service	Period of notice
1 year or less	2 weeks
More than 1 year and up to the completion of 3 years	2 weeks
More than 3 years and up to the completion of 5 years	3 weeks
More than 5 years	4 weeks

16.1.2. In addition to the notice in *Clause 16.1.1* above, Employees over 45 years of age at the time of the giving of notice, with not less than 2 years continuous service with the Employer, are entitled to an additional one weeks' notice.

16.1.3. The Employer may terminate the employment of a permanent or fixed term Employee at any time for behaviour or performance that warrants such action. In exercising this right, the Employer will not take action which is harsh, unjust or unreasonable,

Behaviour or performance that warrants such action includes:

- (i) serious misconduct or wilful neglect of duty or grossly negligent conduct;
- (ii) incompetence or inefficiency for reasons within the Employee's control; and
- (iii) failure to observe Decipha's code of ethics as named from time to time.

In such cases there is no entitlement to notice and any entitlements under this Agreement are to be paid up to the time of dismissal only.

For the purpose of this clause, grossly negligent conduct involves a reckless act or omission that causes or could cause significant damage or harm.

16.1.4. An Employee on probation will be given one week's notice of termination or payment in lieu of notice, except where an Employee's employment is terminated for serious misconduct and/or grossly negligent conduct, in which case there will be no entitlement to notice of termination.

## **16.2. Job Search Entitlement**

Where the Employer gives notice of termination to an Employee, such Employee will be allowed up to one (1) days' time off without loss of pay for the purposes of seeking other employment. The timing of taking leave under this clause will be discussed with the Employer and will be subject to the operational requirements of the business.

## **16.3. Review of termination of employment**

An Employee may exercise his or her rights pursuant to the Act, in relation to a termination decision under this Agreement.

## **16.4. Notice of termination by an Employee**

16.4.1. The notice of termination required to be given by an Employee is the same as that required of the Employer in *Clause 16.1.1* above, save and except that there is no requirement on the Employee to give additional notice based on the age of the Employee concerned referred to in *Clause 16.1.2*.

16.4.2. If an Employee fails to give the notice specified in *Clause 16.1.1* the Employer has the right to withhold monies due to the Employee to a maximum amount equal to the amount the Employee would have received under *Clause 16.1.1*.

# **17. REDUNDANCY**

## **17.1. Definitions**

17.1.1. **Business** includes trade, process, business or occupation and includes part of any such business.

17.1.2. **Redundancy** occurs where the Employer has made a definite decision that the Employer no longer wishes the job the Employee has been doing done by anyone and that decision leads to the termination of employment of the Employee, except where this is due to the ordinary and customary turnover of labour.

17.1.3. **Transmission** includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and transmitted has a corresponding meaning.

17.1.4. **Week's pay** means the ordinary time rate of pay for the Employee concerned, provided that such rate will exclude:

- overtime;
- penalty rates;
- disability allowances;
- shift allowances;
- special rates;
- fares and travelling time allowances;
- bonuses; and
- any other ancillary payments of a like nature.

## **17.2. Discussions before termination**

17.2.1. Where the Employer has made a definite decision that it no longer requires the essential elements of the job that an Employee(s) has/have been doing to be done by the Employee(s) and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the Employer will hold discussions with the Employee(s) directly affected and with the Union. Where practicable, the Employer will offer voluntary redundancy as a first option. Affected Employee(s) will be provided at least 3 weeks' notice in order to be able to make their decision.

17.2.2. The discussions will take place as soon as is practicable after the Employer has made a definite decision which is likely to invoke the provisions of *Clause 16.1.1* above and will cover, inter alia, reasons for the proposed termination(s), measures to avoid or minimise the termination(s) and measures to mitigate any adverse effects of any termination(s) on the Employee(s) concerned.

17.2.3. The Employer will, at the time of the initial discussions with the Employee(s) and the Union, concurrently provide a written advice to the Employee(s) concerned and the Union of all relevant information about the proposed termination(s), including the reasons for the proposed termination(s), the number of categories of Employees likely to be affected, the number of people normally employed and the period over which the termination(s) is likely to be carried out. However, the Employer will not be required to disclose confidential information, the disclosure of which would be detrimental to the Employer's interests.

17.2.4. The Employer will explore redeployment opportunities within the Employer and Australia Post, should an Employee face redundancy.

## **17.3. Transfer to lower paid duties**

Where an Employee is transferred to lower paid duties for reasons set out in *Clause 17.2.1* above, the Employee will be entitled to the same period of notice of transfer as he or she would have been entitled to if his or her employment had been terminated. The Employer may elect to make payment in lieu of notice of an amount equal to the difference between the Employee's former ordinary time rate of pay and the new lower ordinary time rate of pay for the number of weeks of notice still owing.

#### **17.4. Severance pay**

- 17.4.1. An Employee whose employment is terminated for reasons of redundancy in accordance with this *Clause 17* is entitled to the following severance pay based on the Employee's continuous period of service with the Employer:

<b>Period of Continuous Service</b>	<b>Severance Pay</b>
Less than 1 year	nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7.5 weeks' pay
4 years and less than 5 years	10 weeks' pay
5 years and less than 6 years	12.5 weeks' pay
6 years and less than 10 years	16 weeks' pay
10 years and over	20 weeks' pay

Weeks' pay means the ordinary time rate of pay for the Employee concerned.

- 17.4.2. The severance payments are in addition to the periods of notice specified in *Clause 16.1.1* and *Clause 16.1.2*.

#### **17.5. Employee leaving during notice period**

An Employee whose employment is terminated for the reasons set out in *Clause 17.2.1* above, may terminate his or her employment during the period of notice. Where this occurs, the Employee will be entitled to the same benefits and payments under this clause had the Employee remained with the Employer until the expiry of such notice. However, in such circumstances, the Employee will not be entitled to payment in lieu of notice.

#### **17.6. Alternative Employment**

Subject to the Act, if an Employee's position is made redundant and the Employee is offered suitable alternative employment then the severance payments in *Clause 17.4.1* will not apply.

#### **17.7. Time off during notice period**

- 17.7.1. During the period of notice of termination, an Employee will be allowed up to one day's time off with pay during each week of notice to seek other employment.
- 17.7.2. Payment for additional leave for this purpose will be subject to the Employee producing proof of attendance at an interview (a statutory declaration will be sufficient for this purpose.)

#### **17.8. Exclusions**

This *Clause 17* does not apply where employment is terminated as a result of serious and wilful misconduct or grossly negligent conduct as defined in *Clause 16.1.3* that justifies dismissal without notice. Nor does it apply to probationary Employees, casual Employees or fixed term Employees.

#### **17.9. Transmission of business**

Where a business is before or after the date of this Agreement, transmitted from the Employer (in this clause called the transmittor) to another employer (in this clause

called the transferee) and an Employee who at the time of such transmission was an Employee of the transferor in that business becomes an Employee of the transferee:

- 17.9.1. the continuity of employment of the Employee will be deemed not to have been broken by reason of such transmission; and
- 17.9.2. the period of employment which the Employee has had with the transferor or any prior transferor will be deemed to be service of the Employee with the transferee.
- 17.9.3. In this clause, business includes trade, process, business or occupation and includes part of any such business and transmission includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and transmitted has a corresponding meaning.

## **PART 4 – HOURS OF WORK AND OVERTIME**

### **18. HOURS OF WORK – DAY WORKERS**

#### **18.1. The ordinary hours of work:**

- (i) for a full time Employee will be 38 hours per week or an average thereof;
- (ii) may be between six and ten hours on any one day;
- (iii) will be between the hours of 4.00am and 6.00pm, except that work performed between the hours of 4.00am and 8.00am will attract a penalty of 15%. The daily spread of hours may be altered by up to one hour at either end, subject to business operational needs, by agreement between the Employer and the majority of Employees or by agreement between the Employer and an individual Employee;
- (iv) may be worked on any day Sunday to Friday inclusive, except that an Employee who is rostered to work ordinary hours on Sunday will receive a 100% loading for the time worked; and
- (v) no Employee will be rostered for ordinary work on more than five concurrent days in any seven-day period.

### **19. LETTER OF ENGAGEMENT FOR PART TIME EMPLOYEES**

For all new part-time Employees, the letter of employment will provide the days of the week and hours of work, upon engagement. If requested, an existing part-time Employee will be provided in writing, the days of the week and hours of work. This request may be made up to a maximum of once in each 12 month period, from commencement of the Agreement.

### **20. SHIFT WORK**

#### **20.1. Definition**

For the purpose of this clause:

20.1.1. “**shift worker**” means an Employee who is rostered on:

- (i) alternating or rotating shifts or a constant shift involving regular ordinary work after 1.00pm on Saturday; or
- (ii) a shift, which commences before 4am or finishes after 6pm;

20.1.2. “**seven day shift worker**” means an Employee who is rostered to and works regularly on Sundays and Public Holidays.

20.1.3. “**afternoon shift**” is a shift that finishes after 6.00pm and before or at midnight;

20.1.4. “**night shift**” is a shift that finishes after midnight and before or at 7.00am.

**20.2. Ordinary hours**

The ordinary hours of work of a shift worker:

20.2.1. will be 38 hours per week or an average thereof over a cycle of shifts; and

20.2.2. may be between six and ten hours on any one day.

**20.3. Shift penalties**

The following shift penalties apply to a shift worker:

**20.3.1. Monday to Friday**

Afternoon shift 15%

Night shift 30%

**20.3.2. Saturday**

All rostered time that falls wholly between midnight Friday  
and midnight Saturday 50%

**20.3.3. Sunday**

All rostered time that falls wholly between midnight Saturday  
and midnight Sunday 100%

**20.3.4. Public Holiday**

150%

**20.4. Public holiday shift**

Where shifts fall partly on a public holiday, the shift which has the major portion falling on a public holiday will be regarded as the holiday shift. Except that, by agreement between the Employer and the majority of Employees concerned, the shift which has the minor portion falling on a public holiday may be regarded as the holiday shift.

**20.5. Payment during annual leave**

Shift penalty payments will be made in respect of any work (other than on public holidays) which an Employee would have performed had the Employee not been on approved annual leave.

**20.6. Payments stand alone**

The additional payments prescribed by this clause will not be taken into account in the computation of overtime or in the determination of any allowance based upon salary, nor will they be paid with respect to any shift for which any other form of penalty payment is made under this Agreement.

**20.7. Exchange of shifts**

An Employee is allowed to exchange duties or shifts or days off, or to perform work for another Employee, with the approval of the Employee’s Manager.

**20.8. Interval between shifts**

Shifts will be arranged so that an Employee has a minimum break of 10 hours continuously off work between shifts except in cases of:

- (i) an emergency certified by the Employee's Manager and notified to the Employees concerned by posting the notification in a prominent place; and/or
- (ii) regular changeover of shifts.

#### **20.9. Day off instead of public holiday**

A seven day shift worker who is rostered off work on a public holiday will be granted a day's leave in lieu of that holiday within one month after the holiday, if practicable, or paid one day's pay at ordinary rates.

#### **20.10. Roster changes**

An Employee will be given a minimum of 14 consecutive days' notice of any rostered change, unless the roster change is by agreement between the Employer and an individual Employee or is necessitated by an emergency or special circumstances (for example sick leave, resignations on short notice, dismissals and suspensions).

### **21. TIME OFF**

By agreement between the Employer and an Employee, an Employee may work in excess of ordinary hours to enable time off to be accumulated over a cycle of 4 weeks. The accumulated time off will be taken at a time mutually convenient to the Employee and the Employer. A maximum of 22 hours 48 minutes may be accumulated. Any hours accumulated in excess of 22 hours 48 minutes will be paid at overtime rates in accordance with *Clause 23 – Overtime*.

### **22. MEAL AND TEA BREAK**

#### **22.1. Meal break**

An Employee who works a minimum of five (5) consecutive hours will receive an unpaid meal break of a minimum of 30 minutes and not more than 60 minutes, except that:

- 22.1.1. a longer period for the meal break may be arranged by agreement between the Employer and an Employee or a majority of Employees in the workplace concerned; and/or
- 22.1.2. an Employee may work in excess of 5 hours, but not more than 6 hours, without a meal break, by agreement between the Employer and the Employee concerned.

#### **22.2. Tea break**

One 15 minute paid tea break per day will be granted to Employees, at a time fixed by the Employer so as to minimise disruption to operations. A further 15 minute break will be made available to Employees who work full time hours.

### **23. OVERTIME**

#### **23.1. Reasonable overtime**

- 23.1.1. Subject to *Clause 23.1.2* an Employer may require an Employee to work reasonable overtime at overtime rates.
- 23.1.2. An Employee may refuse to work overtime in circumstances where the working of such overtime would result in the Employee working hours which are unreasonable having regard to:
  - (i) any risk to the Employee's health and safety;
  - (ii) the Employee's personal circumstances, including any family responsibilities;

- (iii) the needs of the workplace or enterprise;
- (iv) the notice (if any) given by the Employer of the overtime and by the Employee of his or her intention to refuse it; and
- (v) any other relevant matter.

### **23.2. Definition**

Overtime is paid for all authorised work outside ordinary hours outlined in *Clause 18* – Hours of work.

### **23.3. Equity of Overtime**

To ensure the equity of providing overtime, once a part-time Employee reaches 7 hours 36 minutes on any day, then the Employer would like an equitable sharing of overtime amongst all Employees, providing there is a skill-set and client match and subject to business requirements.

### **23.4. Rate of pay – day workers**

The rate of pay for authorised overtime worked will be:

- 23.4.1. Monday to Saturday – time and a half for the first 3 hours and double time thereafter;
- 23.4.2. Sunday – double time;
- 23.4.3. Public Holidays – double time and a half.

### **23.5. Full time Employees**

Full time Employees are eligible for overtime rates;

- (i) for work in excess of 7 hours 36 minutes on any one day; and /or
- (ii) where an Employee is required to work on more than 5 days per week.

### **23.6. Part time Employees**

23.6.1. Part-time Employees are eligible for overtime rates applicable to full-time Employees:

- (i) for work in excess of 7 hours 36 minutes on any one day; and/or,
- (ii) where an Employee is required to work on more than 5 days per week; and
- (iii) where an Employee is required to work on more than 5 days per week, the minimum engagement for the additional days will be 4 hours.

23.6.2. Work in excess of normal requirements but which does not attract a penalty under *Clause 23.6.1* will be paid at the rate applicable to ordinary work on that day.

### **23.7. Rest period after overtime**

23.7.1. When overtime work is necessary, it will, wherever reasonably practicable, be so arranged that Employees have at least 10 consecutive hours off duty between the work of successive days.

23.7.2. An Employee who, because of working overtime in accordance with this clause, does not have at least 10 consecutive hours off between finishing work and the commencement time of work the next day, will not be required to perform work on the next day until 10 hours have elapsed since the conclusion of work. The Employee will not incur any loss of pay for ordinary working time occurring during the absence.



- 23.7.3. If an Employee is required to resume or continue to work without having had a 10-hour break in accordance with *Clause 23.7.1* above, the Employee will be paid at the appropriate overtime rate until such time as a ten-hour break is taken. The Employee will not incur any loss of pay for ordinary working time occurring during the absence.

**23.8. Time off in lieu of overtime**

- 23.8.1. An Employee may elect, with the consent of the Employer, to take time off in lieu of payment for overtime at a time or times agreed with the Employer.
- 23.8.2. Overtime taken as time off during ordinary time hours will be taken at the ordinary rate, that is, an hour for each hour worked.

## **PART 5 – WAGES AND ALLOWANCES**

### **24. JOB CLASSIFICATIONS AND WAGES**

**24.1. Job classifications and wages**

The job classifications covered by this Agreement and the respective wage rates are specified in *Schedule A* – Job classifications and wage rates. The wage rates in *Schedule A* include annual leave loading.

**24.2. Annual increments**

There are currently four classifications within the Decipha wage structure as defined in *Schedule A*. Each of the four classifications has yearly increments contained within. Movement within each classification, to the next yearly increment, will occur on the basis of the Employee's original commencement or anniversary date, or in the instance of promotion to a higher level, the applicable commencement date to that level, subject to a satisfactory performance assessment result. This will occur until an Employee reaches the maximum yearly increments of that level.

Movement between levels (e.g. Team Member to Technical Operator) can only occur through promotion or successful appointment to an advertised position.

**24.3. Review of classification structure**

The classification structure in this Agreement has been developed to provide a structure appropriate for the Decipha work environment.

The parties agree to review the classification structure where there is a genuine business need with a view to enhancing the Decipha business and promoting skill and career development of Decipha Employees.

**24.4. Junior rates**

An Employee who is under 18 years of age and employed in a job classification specified in *Schedule A*, will be paid a wage rate. The wage rate, calculated to the nearest dollar, will be set by applying the appropriate percentage for the age of the Employee as specified in Table 1 below, to the minimum total rate fixed by this Agreement of an adult employed in the same job classification.

**TABLE 1**

<b>Age of Employee</b>	<b>Percentage of Minimum wage rate contained in applicable classification in Schedule A %</b>
Under 18 years	80
At 18 years and over	100

## 25. EMPLOYEE DUTIES

The Employer may direct an Employee to carry out such duties as are within the limits of the Employee's skills, competence and training, consistent with the relevant job classification.

Any such direction will be consistent with the Employer's responsibility to provide a safe and healthy work environment.

## 26. PAYMENT OF WAGES

### 26.1. Wages will be paid:

26.1.1. Fortnightly, at the fortnightly equivalent of the annual rates prescribed by Schedule A; and

26.1.2. By electronic funds transfer into a financial institution nominated by the Employee.

## 27. ALLOWANCES

### 27.1. First aid allowance

Employees appointed as first aiders will be paid an allowance as specified in *Schedule B* – First aid allowance.

### 27.2. Mixed functions

27.2.1. An Employee who is required to temporarily perform the work of a higher classification level will be paid at the rate corresponding to that higher level for the time actually worked at that higher level.

27.2.2. An allowance paid under this clause will be regarded as salary for the purposes of calculating penalty payments.

### 27.3. Overtime meal allowance

27.3.1. An Employee will be paid an overtime meal allowance as specified in *Schedule C*, Overtime meal allowance, when the Employee has not been provided with written advice of the requirement to work overtime during his or her previous work period and is required to work at least:

- (i) 1 hour of overtime continuous with ordinary work. In determining whether or not an overtime attendance is continuous with ordinary work, unpaid meal breaks are to be disregarded; or
- (ii) 5 hours overtime on a day the Employee is not rostered for ordinary work.
- (iii) An additional 5 hours overtime on a day which eligibility for payment of a first meal allowance has already been established under *Clauses 27.3.1.(i) & 27.3.1(ii)* above.

27.3.2. For a part-time Employee, only work that attracts an overtime penalty rate counts as overtime under *Clause 27.3.1* for the purpose of an overtime meal allowance.

### 27.4. Travel allowance

27.4.1. Where an Employee is required to travel to perform work on more than one site (the Employer's or a Client's) per day, and either uses their own private motor vehicle, or public transport to attend the additional or secondary site (the Employer's or a Client's) the Employee will be entitled to be reimbursed for mileage. The calculation for mileage will be based on the rates in line with the Australian Taxation Office's rates per business kilometre table. If public transport

fares are incurred for travel to the additional or secondary site, the actual cost of the fares will be reimbursed subject to the provision of transport tickets or receipts. Such instances may include Employees required to travel to more than one site per day to perform relief functions, or to cover for unplanned Employee absences.

In such instances, the Employee will be paid at their rate of pay for the time incurred during travel to the secondary location.

- 27.4.2. Travel allowance or parking reimbursement is also available in accordance with **Clause 27.4.1** where an Employee working on a particular day is required to work at a secondary work location on a temporary basis. In such circumstances the mileage or travel allowance for that day is limited to the difference (if any) between the kilometres/cost travelled to and from home to the initial place of work and the kilometres/cost distance travelled to and from home to the second place of work. The payment will be made for the difference in incremental kilometres/cost travelled and will include reimbursement for any parking costs incurred at this temporary location. Such instances include circumstances where an Employee is required to change their work arrangements on a temporary basis (for a period of up to 4 weeks) to provide relief to cover planned leave or unplanned absences.

#### **27.5. Forklift Allowance**

An Employee will be paid a forklift allowance as specified in **Schedule D**. The allowance will be paid on a daily basis to Employees as allocated on a roster basis, and will apply to Employees who are rostered to perform forklift duties. This allowance also applies in instances where an Employee is required to cover for planned or unplanned absences on an ad hoc basis.

## **PART 6 – TYPES OF LEAVE AND PUBLIC HOLIDAYS**

### **28. ANNUAL LEAVE**

#### **28.1. Entitlement**

- 28.1.1. A full time Employee will receive 152 hours of paid annual leave per annum, which will accrue progressively from the Employee's commencement date, unless otherwise adjusted in accordance with the Act. Annual leave for part time Employees will accrue on a pro rata basis.
- 28.1.2. Paid annual leave accrued may be taken on a pro rata basis subject to operational requirements.
- 28.1.3. Ordinarily, leave is to be taken within 12 months of accrual, to minimise excessive leave accruals and to promote a healthy work life balance.
- 28.1.4. Employees can request in writing to accrue a balance exceeding 12 months and up to 24 months for the purposes of special arrangements. These may include caring responsibilities, planned overseas trips or other special circumstances. These requests should specify the dates of the leave and hours to be taken.
- 28.1.5. The Employer reserves the right to direct Employees to take annual leave in certain circumstances where excessive leave has accrued.
- 28.1.6. During the life of the Agreement, the Employer will trial an arrangement whereby full time Employees can purchase additional annual leave in lieu of pay.

**28.2. Timing of annual leave**

An Employee will be allowed to take annual leave in whole or in part, at a time convenient to the Employee, consistent with the operational requirements of the Employer.

**28.3. Annual leave exclusive of public holidays**

The annual leave provided in *Clause 28* and *Clause 29* is exclusive of public holidays.

**28.4. Payment on termination**

An Employee whose services are terminated for any reason and who is entitled to paid annual leave in accordance with *Clause 28* and *Clause 29* (if applicable), will be paid out that leave.

**29. ANNUAL LEAVE - SEVEN DAY SHIFT WORKERS**

**29.1. Additional annual leave**

- 29.1.1. In addition to the period of annual leave prescribed in *Clause 28* – Annual leave, seven day shift workers, that is, shift workers who are rostered and work regularly on Sundays and Public holidays, are entitled to an additional 38 hours of paid annual leave.
- 29.1.2. Where a seven-day shift worker works an overtime shift on a Sunday, that will constitute Sunday work for the purposes of this clause, providing the overtime shift is of a duration that is not less than four (4) hours subject to the provisions in *Clauses 14.4* – Part-Time Employees and *14.6* – Casual Employees.
- 29.1.3. Where a rostered overtime shift commences on a Saturday and extends into Sunday or commences on a Sunday and extends into Monday, it is deemed to be a Sunday overtime shift for the purposes of *Clause 29* – Annual Leave – Seven Day Shift Workers.

**29.2. Pro rata entitlement**

- 29.2.1. Where a seven-day shift worker is rostered to work, and works on less than 10 Sundays during the accrual period, the shift worker is entitled to pro rata additional leave at the rate of 1/10th of a working week in respect of each Sunday worked.
- 29.2.2. Where a seven-day shift worker is a part-time Employee, and works less than 10 Sundays during the accrual period, entitlement to the additional annual leave in *Clause 29.1.1* shall apply pro-rata to the part-time Employee on the basis that ordinary weekly hours for full time Employees are 38.

**30. LEAVE AS DIRECTED**

- 30.1. Where operational requirements necessitate or an Employee cannot usefully be employed because of a breakdown of machinery or any stoppage of work for any cause for which the Employer cannot be held responsible, the Employer may direct an Employee to take annual leave at a nominated time, whether or not the Employee has made an application.
- 30.2. Taking into account the operational requirements of the Employer, the direction to take annual leave has to be reasonable, taking into account factors such as the needs of the Employee or any agreed arrangement with the Employee. An Employee may choose to take leave without pay rather than annual leave.

## **31. CASHING OUT OF ANNUAL LEAVE**

**31.1.** An Employee can cash-out Annual Leave subject to the following provisions:

- (i) Paid annual leave must not be cashed out if the cashing out results in the Employee's remaining accrued annual entitlement to paid annual leave being less than 4 weeks; and
- (ii) Each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the Employer and the Employee; and
- (iii) The Employee must be paid at least the full amount that would have been payable to the Employee had the Employee taken the leave that the Employee had forgone; and
- (iv) The amount of annual leave to be cashed out must be a minimum of one (1) week.

## **32. PUBLIC HOLIDAYS**

### **32.1. Designated holidays**

32.1.1. The following days will be observed as public holidays:

- (i) New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and
- (ii) the following days, as prescribed in the relevant States, Territories and localities:
  - Australia Day,
  - Anzac Day,
  - Queen's Birthday and
  - Eight Hours' Day or Labour Day; and
- (iii) in addition to the holidays prescribed in *Clauses 32.1.1(i) and 32.1.1(ii)* above, the following days will be observed as Public holidays:

32.1.2. **New South Wales:** the day that Australia Post observe as the additional Public Holiday will be the day adopted by the Employer;

32.1.3. **Victoria:** Melbourne Cup Day;

32.1.4. **Queensland:** Royal National Show;

32.1.5. **South Australia:** Adelaide Cup Day;

32.1.6. **Western Australia:** Foundation Day;

32.1.7. **Tasmania:** Royal Hobart Regatta (Southern Tasmania) or Recreation Day (Northern Tasmania);

32.1.8. **Northern Territory:** Picnic Day and May Day;

32.1.9. **ACT:** Canberra Day.

### **32.2. Substitute holidays**

#### **32.2.1. Christmas Day**

When Christmas Day falls on Saturday or Sunday, a holiday in lieu thereof will be observed on 27 December.

#### **32.2.2. Boxing Day**

When Boxing Day falls on a Saturday or Sunday, a holiday in lieu thereof will be observed on 28 December.

**32.2.3. New Year's Day or Australia Day**

When New Year's Day or Australia Day falls on a Saturday or Sunday, a holiday in lieu thereof will be observed on the next Monday.

**32.3. Payment for work on substituted day**

32.3.1. Where 25 December or 26 December falls on a Saturday or Sunday and another day is provided as a substitute holiday under the provisions of *Clauses 32.2.1* or *32.2.2* above, an Employee who works on both 25 December and the substitute day and/or 26 December and the substitute day will only be paid at the Public holiday rate for work on 25 December and/or 26 December.

32.3.2. The payment for work on the substitute day will be in accordance with *Clause 18* – Hours of work or *Clause 23* – Overtime.

**32.4. Substitution of public holidays by agreement**

The Employer and an individual Employee may agree to the Employee taking another day as the public holiday, in lieu of the day that is being observed as a public holiday in the Employee's workplace.

**32.5. Public holiday duty**

32.5.1. Where the ordinary hours of a permanent or fixed term Employee fall on a public holiday and the Employee does not perform work, the Employee will not lose pay for the day.

32.5.2. Where the Employee works on the public holiday he or she will be paid the public holiday penalty of 150% in addition to the Employee's ordinary rate of pay.

32.5.3. The minimum extra payment payable for ordinary work on a public holiday for each separate attendance will be for four (4) hours subject to the provisions in *Clauses 14.4* and *14.6*.

**32.6. Local Holidays**

**32.6.1. Local substitution holiday**

Where in a State or Territory or locality within a State or Territory, another day is declared or prescribed in substitution for a holiday mentioned in this clause, then that day will be deemed to be the holiday for the purpose of this Agreement.

**32.7. Additional Holidays**

Where in a State or Territory or locality, Public holidays are declared or prescribed on days other than those set out above, those days will constitute additional holidays for the purpose of this Agreement.

**33. PERSONAL LEAVE**

**33.1. Eligibility**

Subject to *Clause 33.4* – Leave for personal injury or illness (sick leave) and *Clause 33.5* – carer's leave, paid personal leave is available to an Employee when the Employee is absent:

33.1.1. due to personal illness or injury (sick leave); or

- 33.1.2. for the purposes of caring for an immediate family member (as defined in *Clause 33.5.2*) or a member of the Employee's household that requires care or support because of an illness or injury or an unexpected emergency (carer's leave).

**33.2. Entitlement**

- 33.2.1. A full time Employee will receive 76 hours of paid personal leave per annum, which will accrue progressively from the Employee's commencement date, unless otherwise adjusted in accordance with the Act. Personal leave for part time Employees will be on a pro rata basis.

**33.3. Accrual**

Unused personal leave is cumulative.

**33.4. Leave for personal injury or illness**

**33.4.1. Eligibility**

The Employer will grant an Employee leave of absence on account of personal illness or injury (sick leave) without deduction from normal pay, subject to the following conditions:

- (i) an application for sick leave must be submitted in the prescribed manner;
- (ii) a certificate from a duly qualified medical practitioner or other evidence approved by the Employer must support an application for sick leave;
- (iii) the Employee's Manager or another nominated Employee is informed, prior to the Employee's scheduled starting time, if practicable, of the Employee's inability to attend for work; and
- (iv) sick leave credits, determined in accordance with this clause, are available.

**33.4.2. Sick leave without certificate**

- (i) Despite *Clause 33.4.1(ii)* and subject to the availability of credits, the Employer may grant sick leave without production of a medical certificate for up to two separate single days or two consecutive days in any sick leave year.
- (ii) Despite the provisions of this clause, a medical certificate must be provided for any sick leave absence that occurs immediately before or following a public holiday or time off under *Clause 21*.
- (iii) Except as provided in *Clause 33.4.1(ii)* above, where sick leave is taken without production of a medical certificate, such leave is without pay.

**33.4.3. Illness on public holiday**

Sick leave taken on a public holiday, which, but for the personal leave, would have been observed, is not debited.

**33.4.4. Illness during annual leave**

If an Employee produces satisfactory medical evidence of illness during annual leave, the absence will be recorded as sick leave and annual leave recredited accordingly, provided:

- (i) the Employee produces a medical certificate covering the period in question;
- (ii) the medical certificate indicates the Employee was unfit for work;
- (iii) sick leave for not less than 7 hours 36 minutes was needed;
- (iv) sick leave credits are available; and

- (v) the medical evidence is provided at the time of illness, or, if that is not possible, as soon as practicable thereafter.

#### **33.4.5. Failure to produce satisfactory evidence**

Despite anything else contained in this clause, where an Employee has failed to produce satisfactory evidence to support an application for sick leave, the Employer may direct that Employee, in writing, that all future applications for sick leave for such period as is specified in the direction must be supported by evidence in accordance with *Clause 33.4.1(ii)*.

#### **33.4.6. Requirement to provide medical report or attend a medical examination**

The Employer may require an Employee to provide a medical report or undergo an examination by a medical practitioner nominated by the Employer where the Employee:

- (i) may be a danger to him or herself, other Employees or members of the public due to the Employee's state of health; or
- (ii) has been absent through illness for an extended period.

#### **33.4.7. Timing of medical report**

An Employee who is required to provide a medical report or undergo a medical examination under *Clause 33.4.6* must do so as soon as practicable.

#### **33.4.8. Direction to take sick leave**

On receipt of the medical report, the Employee may be directed to take sick leave for a specified period, or, if already on sick leave or other leave, the Employee may be directed to continue on leave for a specified period, and the absence will be regarded as sick leave.

### **33.5. Carer's leave**

#### **33.5.1. Eligibility**

- (i) An Employee with responsibilities in relation to either members of their immediate family (as defined in *Clause 33.5.2* below) or members of their household, who require the Employee's care and support when such persons are ill or injured or who requires care and support due to an unexpected emergency, is entitled to use personal leave for the purposes of carer's leave subject to:
- (ii) the person being:
  - a. a member of the Employee's immediate family; or
  - b. a member of the Employee's household; and
- (iii) the Employee:
  - a. being responsible for the care of the person concerned; and
  - b. establishing, by the production of a medical certificate, the illness or injury of the person concerned and that the illness or injury is such as to require the Employee's care;
  - c. for carer's leave of a single day's duration, where it is not feasible to obtain a medical certificate for that single day's absence, the Employee may instead provide a statutory declaration establishing the illness or injury of the person to whom the carer's leave relates and indicating that the Employee is responsible for the care of the person concerned;



- d. when taking carer's leave to care for members of their immediate family or household who require care due to an unexpected emergency must, if required by the Employer, establish by production of documentation acceptable to the Employer or a statutory declaration of the nature of the emergency and that such emergency resulted in the person concerned requiring care by the Employee.

In normal circumstances, an Employee is not entitled to take carer's leave under this clause if another person has taken leave to care for the same person.

#### **33.5.2. Definition of immediate family**

For the purpose of *Clause 33.5.1* above, the term immediate family includes:

- (i) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the Employee. A de facto spouse means a person who lives with an Employee as the partner of that Employee who lives with the Employee on a bona fide domestic basis; and
- (ii) child or an adult child (including an adopted child, a stepchild or an ex nuptial child), parent, grandparent, grandchild or sibling of the Employee or spouse of the Employee.

#### **33.5.3. Leave credit**

Each day or part day is deducted from the Employee's personal leave credit.

#### **33.5.4. Unpaid leave**

Where an Employee has exhausted all paid personal leave credits, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are ill or injured and require care and support or who require care due to an unexpected emergency. The Employer and the Employee will agree on the period of leave to be taken. In the absence of agreement, the Employee is entitled to take up to two days per occasion, provided the requirements of *Clauses 33.5.1(iii)a, b, c, and d and 33.5.5* are met.

#### **33.5.5. Prior notice**

The Employee will, wherever practicable, give the Employer notice of leave prior to the absence, the name of the person requiring care and his or her relationship to the Employee, the reasons for taking such leave and the estimated length of absence. If this is not practicable, the Employee will notify the Employer by telephone of such absence at the first opportunity on the day of absence.

### **34. DOMESTIC VIOLENCE LEAVE**

The Employer recognises that Employees may sometimes experience situations of domestic violence in their personal life that may affect their attendance at work.

#### **34.1. Eligibility**

- (i) Personal/Carer's Leave may be accessed by an Employee where he or she is unfit for work as a consequence of domestic violence. Where the Employee is not unfit for work, (ii) will apply.
- (ii) Where an Employee does not have any Personal/Carer's Leave available and the Employee is unable to attend work as a consequence of domestic violence, he or she may have access to up to two (2) days of Paid Domestic Violence Leave in each calendar year for the purposes of:

- a. attending medical appointments;
  - b. seeking legal or counselling services in relation to the domestic violence;
  - c. assisting the relevant authorities with any investigation or enquiry into the domestic violence;
  - d. attending legal proceedings; or
  - e. any related activity.
- (iii) Domestic Violence Leave under this clause is non-cumulative.
  - (iv) Access to Domestic Violence Leave will be at the approval of the National Human Resources Manager.
  - (v) The Employer will provide support through its Employee Assistance Program (EAP) and the National Human Resources Manager can assist in making this appointment.
  - (vi) For the purposes of granting Domestic Violence Leave under this clause, evidence of the domestic violence may be required by the Employer. This evidence may be in the form of a document issued by the Police, a Court, a Counsellor, Doctor or other recognised health professional.
  - (vii) All applications for Domestic Violence Leave will be treated in the strictest of confidence.
  - (viii) All Employees will be paid their ordinary rate of pay while on Domestic Violence Leave.
  - (ix) The Employer, where appropriate, may facilitate flexible working arrangements, subject to operational requirements, for an agreed period of time to support an Employee who is affected by domestic violence.

### **35. LONG SERVICE LEAVE**

Long Service Leave entitlements and conditions are in accordance with local State/Territory legislation in place and applying from time to time.

### **36. COMPASSIONATE LEAVE**

#### **36.1. Entitlement**

36.1.1. An Employee is entitled to up to two days (and in the case of a death, up to three days) of paid compassionate leave for each occasion (a permissible occasion), subject to the production of satisfactory evidence required by the Employer, that a member of the Employee's immediate family, or a member of the Employee's household:

- (i) contracts or develops a personal illness that poses a serious threat to his or her life; or
- (ii) sustains a personal injury that poses a serious threat to his or her life; or
- (iii) dies.

36.1.2. An Employee is entitled to a single day of paid compassionate leave for each occasion, to attend the funeral when an immediate Aunt or Uncle dies.

#### **36.2. Taking of compassionate leave**

36.2.1. An Employee may take compassionate leave for a particular permissible occasion if the leave is taken:

- (i) to spend time with the member of the Employee's immediate family or household who has contracted or developed the personal illness, or sustained the personal injury, referred to in *Clause 36.1*
- (ii) after the death of the member of the Employee's immediate family or household referred to in *Clause 36.1*.

**36.3. An Employee must give the Employer notice of taking compassionate leave:**

- (i) as soon as practicable (which may be a time after the leave has started); and
- (ii) provide details of the period or expected periods of the leave.

**36.4. An Employee may take compassionate leave for a particular permissible occasion if the leave is taken as:**

- (i) a single continuous period; or
- (ii) separate periods of 1 day each up to the total number of days; or
- (iii) any separate periods to which the Employee and the Employer agree.

**36.5. Personal illness or injury**

If the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the Employee may take the compassionate leave for that occasion at any time while the illness or injury persists.

**36.6. Immediate family**

The term immediate family has the same meaning as is contained in *Clause 33.5.2*.

**37. COMMUNITY SERVICES LEAVE**

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

37.1.1. An Employee who engages in an eligible community service activity is entitled to be absent from his or her employment for a period if:

- (i) the period consists of one or more of the following:
  - (a) time when the Employee engages in the activity;
  - (b) reasonable travelling time associated with the activity;
  - (c) reasonable rest time immediately following the activity; and
- (ii) unless the activity is jury service—the Employee's absence is reasonable in all the circumstances.

**37.2. Meaning of eligible community service activity**

*37.2.1. General*

Each of the following is an *eligible community service activity*:

- (i) jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; or
- (ii) a voluntary emergency management activity under *Clause 37.2.2*; or
- (iii) an activity prescribed in Regulations made for the purpose of *Clause 37.2.4*;  
*or*

- (iv) donating blood.

#### 37.2.2. *Voluntary emergency management activities*

An Employee engages in a voluntary emergency management activity if, and only if:

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

#### 37.2.3. *A recognised emergency management body is:*

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

but does not include a body that was established, or is continued in existence, for the purpose, or for purposes that include the purpose, of entitling one or more Employees to be absent from their employment under this Clause.

#### 37.2.4. *Regulations may prescribe other activities*

The Regulations may prescribe an activity that is of a community service nature as an eligible community service activity.

### 37.3. **Notice and evidence requirements**

#### 37.3.1. *Notice*

- (i) An Employee who wants an absence from his or her employment under this clause must give his or her Employer notice of the absence.
- (ii) The notice:
  - (a) must be given to the Employer as soon as practicable (which may be a time after the absence has started); and

- (b) must advise the Employer of the period, or expected period, of the absence.

**37.3.2. Evidence**

An Employee who has given the Employer notice of an absence under **Clause 37.3.1.** must give evidence that would satisfy a reasonable person that the absence is because the Employee has been or will be engaging in an eligible community service activity.

**37.3.3. Compliance**

An Employee's absence is not covered under **Clause 37** unless the Employee complies with section **Clause 37.3.**

Note: Personal information given to the Employer under this clause may be regulated under the *Privacy Act 1988*.

**37.4. Payment to Employees (other than casuals) on jury service**

**37.4.1. This *Clause 37.4* applies if:**

- (i) in accordance with **Clause 37.2**, an Employee is absent from his or her employment for a period because of jury service; and
- (ii) the Employee is not a casual Employee.

**37.4.2. Subject to *Clauses 37.4.3, 37.4.4* and *37.4.5* the Employer will pay the Employee at the base rate of pay for the Employee's ordinary hours of work in the period.**

**37.4.3. The Employer requires the Employee to give the Employer evidence that would satisfy a reasonable person:**

- (i) that the Employee has taken all necessary steps to obtain any amount of jury service pay to which the Employee is entitled; and
- (ii) of the total amount (even if it is a nil amount) of jury service pay that has been paid, or is payable, to the Employee for the period.

**37.4.4. In accordance with *Clause 37.4.3*:**

- (i) the Employee is not entitled to payment under **Clause 37.4.2** unless the Employee provides the evidence; and
- (ii) if the Employee provides the evidence - the amount payable to the Employee under **Clause 37.4.2** is reduced by the total amount of jury service pay that has been paid, or is payable, to the Employee, as disclosed in the evidence.

**37.4.5. If an Employee is absent because of jury service in relation to a particular jury service summons for a period, or a number of periods, of more than 10 days in total:**

- (i) the Employer is only required to pay the Employee for the first 10 days of absence; and
- (ii) the evidence provided in response to a requirement under **Clause 37.4.3** need only relate to the first 10 days of absence; and
- (iii) the reference in **Clause 37.4.4** to the total amount of jury service pay as disclosed in evidence is a reference to the total amount so disclosed for the first 10 days of absence.

## **38. PARENTAL LEAVE**

### **38.1. Provisions**

- 38.1.1. Subject to the terms of this clause, Employees are entitled to Maternity, Paternity and Spouse, and Adoption Leave and to work part-time in connection with the birth or adoption of a child.
- 38.1.2. The provisions of this clause apply to permanent and fixed term full-time and part-time Employees and eligible casual Employees, but do not apply to other casual Employees.
- 38.1.3. An **eligible casual Employee** means a casual Employee:
  - (i) employed by the Employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an on-going period of employment during a period of at least 12 months; and
  - (ii) who has, but for the birth or expected birth or placement of a child, a reasonable expectation of ongoing employment with the Employer.
- 38.1.4. For the purposes of this clause, continuous service is work for the Employer on a regular and systematic basis (including any period of authorised leave or absence).
- 38.1.5. The Employer must not fail to re-engage a casual Employee because:
  - (i) the Employee or Employee's spouse is pregnant; or
  - (ii) the Employee is or has been immediately absent on parental leave.
- 38.1.6. The rights of the Employer in relation to engagement and re-engagement of casual Employees are not affected, other than in accordance with this clause.

### **38.2. Definitions**

- 38.2.1. For the purpose of this clause, child means a child of the Employee, or for adoption related leave, a child under the age of 16 years who is placed with the Employee for the purposes of adoption, other than a child or step-child of the Employee or of the spouse of the Employee or a child who has previously lived continuously with the Employee for a period of six months or more.
  - (i) Subject to **Clause 38.2.1(ii)** in this clause, spouse includes a de facto or former spouse.
  - (ii) In relation to **Clause 38.7- Adoption Leave**, spouse includes a de facto spouse but does not include a former spouse.

### **38.3. Basic entitlement**

After twelve months continuous service, an Employee who becomes a parent is entitled to a total of 52 weeks unpaid parental leave in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.

### **38.4. Maternity leave**

- 38.4.1. For females who are pregnant, paid maternity leave is applicable for a period of six weeks, under the following conditions:
  - (i) the Employee provides a medical certificate from a registered medical practitioner, stating that she is pregnant and the expected date of the birth;
  - (ii) the Employee has been continuously employed by the Employer for at least 12 months;

(iii) the payment will consist of six weeks' pay at the normal rate of pay.

### **38.5. Special Maternity Leave**

Where the pregnancy of an Employee not then on maternity leave terminates within 28 weeks of the expected date of birth of the child, other than by the birth of a living child, then an Employee may take unpaid Special Maternity Leave for such periods as a registered medical practitioner certifies as necessary.

### **38.6. Paternity or Spouse Leave**

- 38.6.1. An Employee is entitled to unpaid Paternity or Spouse Leave for up to 52 weeks after the birth of a child of a spouse.
- 38.6.2. An Employee will provide to the Employer at least ten weeks prior to each proposed period of Paternity or Spouse Leave:
  - (i) a certificate from a registered medical practitioner which names the spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and
  - (ii) written notification of the dates on which the Employee proposes to start and finish the period of Paternity or Spouse Leave.
- 38.6.3. The Employee will not be in breach of *Clause 38.6.2* if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

### **38.7. Adoption Leave**

- 38.7.1. An Employee is entitled to unpaid adoption leave for up to 52 weeks after the adoption of a child.
- 38.7.2. The Employee will notify the Employer at least 10 weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An Employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the Employee, the adoption of a child takes place earlier.
- 38.7.3. The Employer may require an Employee to provide confirmation from the appropriate government authority of the placement.
- 38.7.4. Where the placement of a child for adoption with an Employee does not proceed or continue, the Employee will notify the Employer immediately and the Employer will nominate a time not exceeding four weeks from receipt of notification for the Employee's return to work.
- 38.7.5. An Employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.
- 38.7.6. An Employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The Employee and the Employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the Employee is entitled to take up to two days unpaid leave. Where paid leave is available to the Employee, the Employer may require the Employee to take such leave instead.

### **38.8. Variation of period of parental leave**

Unless agreed otherwise between the Employer and the Employee, an Employee may apply to the Employer to change the period of parental leave on one occasion. Any such change is to be notified as soon as possible but no less than four weeks prior to the commencement of the changed arrangements.

### **38.9. Parental leave and other entitlements**

38.9.1. An Employee may in lieu of, or in conjunction with, parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks or longer as agreed under **Clause 38.13.1**.

- (i) Managers will grant any application for access to these leave credits for up to one week for paternity leave or adoption leave purposes during the period within 3 weeks of the birth or adoption. The Employee is to provide the Manager with appropriate evidence of the birth or adoption of the child as well as appropriate notice; and
- (ii) Managers will be encouraged to give favourable consideration to any application by an Employee for use of accrued annual leave or long service leave credits in excess of one week for paternity or spouse leave and adoption leave purposes, subject to sufficient notice being given by the Employee of the expected commencement date of such leave and the period of leave to be taken.

### **38.10. Transfer to a safe job**

38.10.1. Where an Employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the Employee make it inadvisable for the Employee to continue at her present work, the Employee will, if the Employer deems it practicable, be transferred to a safe job with no other change to the employee's terms and conditions of employment until the commencement of maternity leave.

38.10.2. If the transfer to a safe job is not practicable, the Employee is entitled to take paid no safe job leave for such period as is certified necessary by a registered medical practitioner.

### **38.11. Returning to work after a period of parental leave**

38.11.1. An Employee will notify the Employer of their intention to return to work after a period of parental leave at least four (4) weeks prior to the expiration of the leave.

38.11.2. An Employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an Employee transferred to a safe job pursuant to **Clause 38.10**, the Employee will be entitled to return to the position they held immediately before such transfer.

38.11.3. Where such position no longer exists but there are other positions available for which the Employee is qualified and is capable of performing, the Employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

### **38.12. Replacement Employees**

38.12.1. A replacement Employee is an Employee specifically engaged or temporarily promoted or transferred, as a result of an Employee proceeding on parental leave.



38.12.2. Before the Employer engages a replacement Employee, it must inform that person of the temporary nature of the employment and of the rights of the Employee who is being replaced.

### **38.13. Right to request**

38.13.1. An Employee entitled to parental leave pursuant to the provisions of this clause may request the Employer to allow the Employee:

- (i) to extend the period of unpaid Maternity Leave, Paternity or Spouse Leave or Adoption Leave by a further continuous period of leave not exceeding 12 months; or
- (ii) to return from a period of parental leave with a change in working arrangements (including on a part-time basis) while the child is of school age or younger; to assist the Employee in reconciling work and parental responsibilities.

38.13.2. The Employer will consider the request having regard to the Employee's circumstances and, provided the request is genuinely based on the Employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the Employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

38.13.3. The Employee's request in relation to *Clause 38.13.1(i)* must be provided for in writing at least four (4) weeks before the end of the available parental leave period and the Employer's decision made under *Clause 38.13.12* must be recorded in writing.

38.13.4. Where an Employee wishes to make a request under *Clause 38.13.1(ii)*, where possible such a request must be made in writing as soon as possible but no less than seven (7) weeks prior to the date upon which the Employee is due to return from parental leave and the Employer's decision must be recorded in writing.

### **38.14. Communication during parental leave**

38.14.1. Where an Employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the Employer will take reasonable steps to:

- (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the Employee held before commencing parental leave; and
- (ii) provide an opportunity for the Employee to discuss any significant effect the change will have on the status or responsibility level of the position the Employee held before commencing parental leave.

38.14.2. The Employee will take reasonable steps to inform the Employer about any significant matter that will affect the Employee's decision regarding the duration of parental leave to be taken, whether the Employee intends to return to work and whether the Employee intends to request to return to work on a part-time basis.

38.14.3. The Employee will also notify the Employer of changes of address or other contact details which might affect the Employer's capacity to comply with *Clause 38.14.1*.

### **39. LEAVE TO ATTEND AS WITNESS IN INDUSTRIAL PROCEEDINGS**

#### **39.1. Eligibility and entitlement**

Leave without deduction from ordinary pay will be granted to any Employee summoned to appear as a witness in proceedings under the Act, as may be amended from time to time. The leave will be only for such time as that Employee is necessarily absent from work attending as a witness.

#### **39.2. Period of service**

Leave granted under this clause will count for all purposes as period of service.

### **40. REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS**

#### **40.1. Employees may request a change in working arrangements**

- 40.1.1. An Employee who is a parent or has responsibility for the care of a child may request the Employer for a change in working arrangements to assist the Employee to care for the child if the child is of school age or younger.

*Note: Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.*

- 40.1.2. An Employee who cares or expects to care for a dependant who reasonably relies on the Employee for care, such as, frail or elderly parents or an adult child with a disability, has the right to request a change to working arrangements to meet his or her caring responsibilities. The Employer may only refuse the request on reasonable business grounds.

- 40.1.3. The Employee is not entitled to make the request unless:

- (i) for an Employee other than a casual Employee—the Employee has completed at least 12 months of continuous service with the Employer immediately before making the request; or
- (ii) for a casual Employee—the Employee:
  - (a) is a long term casual Employee of the Employer immediately before making the request; and
  - (b) has a reasonable expectation of continuing employment by the Employer on a regular and systematic basis.

#### **40.2. Formal requirements**

- 40.2.1. The request must:

- (i) be in writing; and
- (ii) set out details of the change sought and of the reasons for the change.

#### **40.3. Agreeing to the request**

- 40.3.1. The Employer must give the Employee a written response to the request within 21 days, stating whether the Employer grants or refuses the request.
- 40.3.2. The Employer may refuse the request only on reasonable business grounds.
- 40.3.3. If the Employer refuses the request, the written response under *Clause 40.3.1* must include details of the reasons for the refusal.

## **PART 7 – EMPLOYEE LEARNING & DEVELOPMENT**

### **41. SKILLS DEVELOPMENT**

#### **41.1. Induction training**

The Employer is committed to providing induction training and ongoing development programs relevant to the current and future skill requirements of the workplace so as to ensure that Employees:

- 41.1.1. fully understand and contribute effectively to the work environment;
- 41.1.2. fully understand what is expected of them in terms of both quality and quantity of output; and
- 41.1.3. are provided with recognised skills and knowledge necessary to perform their jobs efficiently, effectively and safely.

#### **41.2. Industry skills development**

##### **41.2.1. General**

- (i) The enhancement and acquisition of work related skills through appropriate training, both in-house and external, is an important component of any Employee's career development and overall work performance.
- (ii) The parties to this Agreement recognise that training provides a long term benefit to both the individual Employee and the Employer. Through training, the individual Employee has the ability to enhance skills development providing him or her with career development opportunities.

##### **41.2.2. Recognition of current competency**

- (i) Job related skills, knowledge and attributes prescribed for related job designations within the Employer's structure, will be identified through recognition of current competency or prior learning. Development will address assessed gaps, through on-the-job training wherever possible.

#### **41.3. Access to training**

- (i) All workplace skills training and assessment will be conducted where possible during workers' normal hours and treated and paid as time worked. All costs and expenses related to the training and assessment will be met by the Employer. Where an Employee is required to attend training out of hours the training time will be treated as paid time in accordance with the provisions of this Agreement.
- (ii) Employee participation in industry training to facilitate career progression, whilst encouraged, is voluntary.

## **PART 8 – POSITION PROFILES**

The parties agree to review the existing position profiles against the actual operational requirements of the business and make whatever amendments are mutually agreed.

## **PART 9 – TRANSITION TO RETIREMENT**

Where an Employee indicates their intention to retire, the Employer is committed to working with such Employee with a view to agreeing on a transition to retirement arrangement.

## PART 10 - SIGNATURES

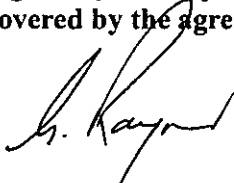
Signed in accordance with the signature requirements under section 185(5) of the Act and regulation 2.06A of the Regulations.

**Signed by Decipha Pty Ltd**



**Vince Rosano**  
Head of Decipha National Operations  
Decipha Pty Ltd  
of 1D Marine Parade, Abbotsford, VIC 3067

**Signed by an Employee Bargaining Representative, as a representative of employees covered by the agreement**



**Greg Rayner**  
National Secretary  
Communication, Electrical and Plumbing Union, Communications Division  
of Level 9, 365 Queen Street, Melbourne, VIC 3000

## SCHEDULE A – JOB CLASSIFICATIONS AND WAGE RATES

Level	Designation	Year	Weekly/Hourly Wage Rates(\$)							
			01/07/14	01/07/14	From 1 <sup>st</sup> full pay period on or after 22 <sup>nd</sup> October 2015	From 1 <sup>st</sup> full pay period on or after 22 <sup>nd</sup> October 2015	From 1 <sup>st</sup> full pay period on or after 22 <sup>nd</sup> October 2016	From 1 <sup>st</sup> full pay period on or after 22 <sup>nd</sup> October 2016	From 1 <sup>st</sup> full pay period on or after 22 <sup>nd</sup> October 2017	From 1 <sup>st</sup> full pay period on or after 22 <sup>nd</sup> October 2017
1	Team Member		Per Week	Per Hour	Per Week 3%	Per Hour 3%	Per Week 3%	Per Hour 3%	Per Week 3%	Per Hour 3%
		1	739.57	19.46	761.76	20.04	784.61	20.65	808.15	21.26
		2	758.62	19.96	781.38	20.56	804.82	21.18	828.96	21.81
		3	778.10	20.48	801.44	21.09	825.49	21.73	850.25	22.38
		4	797.47	20.99	821.39	21.62	846.04	22.27	871.42	22.94
2	Technical Operator									
		1	825.18	21.72	849.94	22.37	875.43	23.04	901.70	23.73
		2	848.19	22.32	873.64	22.99	899.84	23.68	926.84	24.39
		3	871.26	22.93	897.40	23.62	924.32	24.33	952.05	25.06
		4	894.31	23.53	921.14	24.24	948.77	24.96	977.24	25.71
3	Quality Leader									
		1	910.79	23.97	938.11	24.69	966.26	25.43	995.24	26.19
		2	942.40	24.80	970.67	25.54	999.79	26.31	1,029.79	27.10
		3	973.95	25.63	1,003.17	26.40	1,033.26	27.19	1,064.26	28.01
		4	1,005.56	26.46	1,035.73	27.25	1,066.80	28.07	1,098.80	28.91
		5	1,037.04	27.29	1,068.15	28.11	1,100.20	28.95	1,133.20	29.82
4	Supervisor									
		1	1,074.93	28.29	1,107.18	29.14	1,140.39	30.01	1,174.61	30.91
		2	1,117.65	29.41	1,151.18	30.29	1,185.71	31.20	1,221.29	32.14
		3	1,161.91	30.58	1,196.77	31.50	1,232.67	32.44	1,269.65	33.42
		4	1,206.54	31.75	1,242.74	32.70	1,280.02	33.68	1,318.42	34.69
		5	1,251.19	32.93	1,288.73	33.92	1,327.39	34.94	1,367.21	35.98

#### **SCHEDULE B – FIRST AID ALLOWANCE (Clause 27.1)**

	<b>Date of Operation of the Agreement</b>		
<b>Current</b>		<b>22/10/16</b>	<b>22/10/17</b>
\$9.93	\$15.53	\$15.99	\$16.47

#### **SCHEDULE C – OVERTIME MEAL ALLOWANCE (Clause 27.3)**

	<b>Date of Operation of the Agreement</b>		
<b>Current</b>		<b>22/10/16</b>	<b>22/10/17</b>
\$9.85	\$13.97	\$14.39	\$14.82

#### **SCHEDULE D – FORKLIFT ALLOWANCE (Clause 27.5)**

	<b>Date of Operation of the Agreement</b>		
<b>Current</b>		<b>22/10/16</b>	<b>22/10/17</b>
\$4.43	\$4.56	\$4.69	\$4.83

#### **SCHEDULE E – BENEFIT DISTRIBUTION**

During the life of this Agreement wage rates will be adjusted as follows:

- First full pay period on or after 22 October 2015      3.0% increase
- First full pay period on or after 22 October 2016      3.0% increase
- First full pay period on or after 22 October 2017      3.0% increase

## **SCHEDULE F – GUIDELINES ON ROLE, RIGHTS RESPONSIBILITIES AND SUPPORT FOR UNION DELEGATES**

Decipha recognises the role unions play in the workplace and the right of Union delegates to represent Union members in the workplace.

These guidelines set out the role, rights and responsibilities expected of Union delegates and the support provided for Union delegates by Decipha Pty Limited.

### **Role**

The role of Union delegates is to represent the collective and individual interests of Union members. Some examples of specific functions of Union delegates include:

- understanding Agreement conditions and representing Employee issues concerning the application of the Agreement conditions;
- representing Union members' local grievances to local Supervisors and Managers;
- conducting discussions with local management to resolve local grievances;
- participating in joint Union-management consultative processes;
- meeting, communicating with and interviewing members to ascertain issues; and
- explaining to local members regarding their rights and entitlements (Agreement conditions, HR policy, OH&S policy etc).

### **Rights/Entitlements**

Union delegates shall be entitled to the following:

- the right to formal recognition by management that endorsed Union delegates represent Union members in the workplace;
- the right to be treated fairly and to perform their role as Union delegate without any discrimination in their employment;
- the right during working hours to perform delegate duties subject to the following principles:
  - such activities must not disrupt operations;
  - the Union delegate must not leave his or her work station and must not cease normal duties without prior discussion and agreement with the designated Manager or Supervisor;

- agreement won't be withheld unreasonably, but it is expected that to the extent practicable, the role of the Union delegate will be done in the delegate's own time;
  - the period of work time proposed to undertake delegate duties must be discussed and agreed with the delegate's workplace Manager in each instance. Subject to operational requirements, a reasonable period of time will normally be allowed which may vary depending on the issue and the seriousness of it. As a guide, 15 minutes of paid time per shift may be used for delegate duties. However, the actual period may be shorter but where the issue is serious, longer periods may be appropriate.
- the right to request appropriate information that is relevant to a member's issue;
  - the right to represent local workplace grievances of Union members and support the member where requested;
  - the right to interview a member to ascertain the facts about an issue;
  - the right to consult with management on local workplace matters affecting the interests of Union members consistent with these guidelines;
  - the right to meet with Union member(s) during their own time (ie during lunch/tea breaks and before / after normal shift times);
  - the right to be paid their normal hourly rates for any time discussed and agreed with management that is spent during ordinary working hours in the performance of their duties as Union delegates;
  - the right to paid leave to attend Union courses (which include courses for Union delegate training), which conform to the provisions of *Clause 13.8* of the Agreement. This right is subject to prior approval of the workplace Manager and the operating requirements of Decipha Pty Limited;
  - the entitlement to paid leave where summoned to appear as a witness in proceedings under the Fair Work Act. The leave shall only be for such time as the delegate is necessarily absent from duty attending as a witness. The Union delegate must advise their workplace Manager, who will in turn advise the National Human Resources Manager of such requirements.
  - the right to place Union authorised information on notice boards located in the workplace. Decipha retains the right to reject and remove any material that is not in relation to Agreement related matters or that has not been properly authorised by the relevant State Secretary of the Union.

## **Responsibilities**

In turn a Union delegate has an obligation to:

- comply with agreements reached between Decipha Pty Limited and the Union, including dispute resolution procedures;



- not leave his or her work station to perform any delegate duty prior to discussing and reaching agreement with his or her Supervisor or workplace Manager;
- conduct himself or herself at all times consistent with the standards described in the code of ethics;
- represent issues raised by Union members initially with the local Supervisor/ Manager, unless it would be inappropriate in the circumstances, in which case the issue would be represented to the next level of Manager;
- attend to duty and carry out instructions in the same manner as any other Employee, subject to time off the job that has been agreed for delegate's duties;
- Union delegates are also encouraged to understand employment conditions, OH&S requirements and Decipha Pty Limited's harassment, equal employment opportunity, rehabilitation and other policies as these apply to the workplace;

## **Support**

Decipha shall provide the following support for Union delegates:

- **Attendance at an industrial tribunal**
  - participation in or attendance at Fair Work Commission proceedings other than as a witness would normally be approved on a leave without pay basis, subject to operational requirements;
  - Decipha Pty Limited may provide for paid time if, in the particular circumstances, there is prior request from the Union for payment for a delegate attending Fair Work Commission proceedings and where Decipha Pty Limited considers that this will assist in resolution of a matter;
  - where a Union delegate is requested by the Union to participate in or attend a Fair Work Commission proceeding during normal rostered working hours, the Union delegate must advise and seek approval in advance from their workplace Manager.
- **Access to communication facilities**
  - the extent of access arrangements to communications equipment such as phone, fax and e-mail and photocopying facilities will be determined at the local site level;
  - a Union delegate's usage of Decipha Pty Limited IT, communications and photocopying facilities must not be excessive and must comply with Decipha Pty Limited policies.
- **Participation in the Union**
  - where a Union delegate seeks to be absent from work to participate in the operation of the Union, leave without pay may be granted subject to operational requirements;

- paid time off is not available for Union delegates to participate in the operation of the Union.
- **Access to new Employees/members**
  - Access to new Employees/members by Union representatives for the purpose of induction will be provided on a 15 minutes per month basis, subject to an agreed time by the relevant workplace Manager that is convenient to operational requirements,

### **Operation of guidelines**

The operation of these guidelines at individual Decipha Pty Limited sites will be subject to Union delegates acting in accordance with these guidelines and relevant Decipha Pty Limited policies.

The parties at the workplace level recognise that effective and reasonable working arrangements should apply to the structure and operation of the delegate's role in the workplace.

If the parties are unable to agree on appropriate operational arrangements for workplace delegates, Decipha Pty Limited reserves the right to limit the application of the guidelines, or if this is not practicable, not apply provisions of the guidelines within a particular workplace.

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## Schedule 2.2—Model flexibility term

(regulation 2.08)

### Model flexibility term

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
  - (a) the agreement deals with 1 or more of the following matters:
    - (i) arrangements about when work is performed;
    - (ii) overtime rates;
    - (iii) penalty rates;
    - (iv) allowances;
    - (v) leave loading; and
  - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
  - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
  - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
  - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
  - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
  - (a) is in writing; and
  - (b) includes the name of the employer and employee; and
  - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - (d) includes details of:

- (i) the terms of the enterprise agreement that will be varied by the arrangement; and
  - (ii) how the arrangement will vary the effect of the terms; and
  - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
  - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
  - (b) if the employer and employee agree in writing—at any time.



29 March 2016

Mr Matthew Mitchell  
Member Support Research Team  
Fair Work Commission  
11 Exhibition Street  
MELBOURNE VIC 3000

Dear Mr Mitchell,

**AG2016/2344 – Decipha Enterprise Agreement 2015**

We refer to previous correspondence in relation to concerns raised by Commissioner Lee about certain clauses of the proposed *Decipha Enterprise Agreement 2015 (Agreement)*.

In response to those concerns, the below undertakings are provided:

**1. Facilitative Provisions – clause 10.1**

Decipha Pty Ltd (**Decipha**) undertakes that, to the extent that clause 10.1 provides for facilitative arrangements by majority agreement of employees, this will only be sought by Decipha in circumstances which are permitted by the underpinning Award, the *Graphic Arts, Printing and Publishing Award 2010 (Award)*, and set out in the Agreement.

In accordance with clause 10.1.13 of the Agreement, Decipha confirms that the model flexibility term in Schedule 2.2 of the Fair Work Regulations 2009 will be complied with where individual agreement is sought under the facilitative provisions in the Agreement.

**2. Personal Leave on Annual Leave – clause 33.4.4**

In accordance with clause 5.2 of the Agreement, Decipha undertakes that where an employee suffers from an illness whilst on annual leave, the absence due to personal illness or injury, for any applicable duration that may apply, will be recorded as personal leave and the relevant portion of annual leave will be recredited accordingly. This undertaking is subject to the conditions in clauses 33.4.4(i), (ii), (iv) and (v) being met by an affected employee.

**3. Casuals – Unpaid Carer's Leave – clause 14.6.2**

In accordance with clause 5.2 of the Agreement, and notwithstanding clause 14.6.2, Decipha undertakes that casual employees will be entitled to unpaid carer's leave in accordance with the National Employment Standards set out in the *Fair Work Act 2009 (Cth)*.

**4. Saturday Shiftworkers – clause 20.3.2**

In circumstances where Decipha commences engaging shiftworkers to work ordinary hours of work on a Saturday, Decipha undertakes that an appropriate penalty will be paid to hours worked so as to ensure that employees are better off overall than they would be under the Award.

Yours sincerely

Vince Rosano  
Head of Decipha National Operations