

CON02

## Construction AWA (2)

*The following information does not represent all the reasons why the AWA was approved. It is provided, however as a general guide as to why the AWA in question did not disadvantage the employee when compared to the appropriate award.*

The AWA provides the employee with a significant financial benefit under the AWA when compared to the award. The AWA includes a higher rate of pay than that prescribed by the award, and an increase in the number of ordinary hours to be worked per week. The ordinary rate of pay also absorbs a number of allowances and annual leave loading.



# AUSTRALIAN WORKPLACE AGREEMENT

This agreement is made between

[REDACTED]

("the employer" and "the company")

Situated at [REDACTED]

And

[REDACTED]

("The employee")

Of [REDACTED]

[REDACTED]

## 1. Title

The title of this Agreement shall be the [REDACTED] and [REDACTED]

## 2. Application

2.1 This Agreement shall form the full extent of the agreement between [REDACTED] and [REDACTED]

2.2 This Agreement replaces the [REDACTED] as amended from time to time unless specific reference is made to that Award.

2.3 In such cases, the linkage to the Award relies solely on the clause concerned.

2.4 This Agreement applies to all sites and workplaces occupied by [REDACTED] throughout [REDACTED]

## 3. Date of Effect

3.1 This Agreement shall take effect from the first full pay period after the date that the Office of the Employment Advocate has issued a filing receipt.

3.2 This Agreement shall be for a period of 3 years.

3.3 The company and the employee undertake to commence negotiations on future agreements 3 months prior to the expiry of this Agreement.

## 4. Classifications of Positions

4.1 This Agreement shall cover the following employment classification.

4.1.1 Brush Hand

## 5. Wage Rates

5.1 The employee will be paid an all inclusive rate of \$17.50 per hour

5.2 This rate is inclusive of all payments, allowances and entitlements. No other payments will be made in excess of this, unless specifically mentioned in this agreement.

- 5.3 The hourly rate shown in Clause 5.1 may rise annually by negotiations between the parties to this agreement. The employee will need to justify any claims for a pay review and this will be dependent upon increased productivity, experience and acquisition of qualifications and licences.

## **6. Contract of Employment**

- 6.1 The contract of employment for this agreement shall be daily hire.

## **7. Allowances**

- 7.1 All standard employment allowances have been incorporated into the wage rate contained in Clause 5 of this Agreement. In particular the employee has been compensated in the hourly rate for the District Allowance and Travel Allowance.
- 7.2 No allowances are payable in respect to this Agreement unless expressly contained in this Agreement.

## **8. Hours of Work**

- 8.1 The hours of work shall generally be 40 worked Monday to Friday between the hours of 6am and 6pm.
- 8.2 Notwithstanding, 8.1 above, there may be times when the employee will be required to work less than 40 hours in the week due to falling work volumes. Where this is the case the employee will be paid on the number of hours worked. The employer is under no obligation to pay a minimum of 40 hours for the week.
- 8.3 Notwithstanding, 8.1 above, it may be necessary to work reasonably in excess and outside of the hours indicated above, in order to complete the work at hand or in order to comply with clients requirements.
- 8.4 Clause 10 refers to how overtime payments will be dealt with.

## **9. Payment**

- 9.1 The employee will be paid cash every second Friday.

## **10. Overtime**

- 10.1 Where the employee is required to work overtime, he will be paid at his normal hourly rate. The hourly rate is sufficient to compensate the employee for overtime.

10.2 Where the employee is required to work outside the ordinary hours, he will be paid at his normal hourly rate. The hourly rate is sufficient to compensate the employee for overtime.

10.3 No other payment with respect to overtime shall be made. In particular no payment will be made for crib time and meal allowances.

## **11. Annual Leave**

11.1 Payment for annual leave is included in the hourly wage rate shown in clause 5.1, and therefore the employee is not entitled to any paid annual leave.

11.2 Leave without pay will be taken when there is a downturn in the work at hand or in periods of shutdown due to either falling work volume or the Christmas holiday period.

11.3 The employee will give at least one months notice in order to take annual leave. Annual leave may be rejected by the employer because of work commitments. However, the company undertakes to approve all reasonable requests for annual leave.

11.4 Annual leave may be granted when less notice is given in exceptional circumstances and at the discretion of [REDACTED]

## **12. Sick Leave**

12.1 Payment for sick leave is included in the hourly rate and therefore the employee is not entitled to any paid sick leave.

12.2 The employee will be required to supply a medical certificate signed by a registered medical practitioner for absences of two or more days due to illness or injury.

12.3 All absences from work due to illness or injury must be reported to a supervisor, at least 30 minutes before the nominated start time, on the day of absence.

## **13. Public Holidays**

13.1 Payment for public holidays are included in the hourly rate, and therefore the employee is not entitled to any paid gazetted Public Holidays [REDACTED]

13.2 Should it be necessary for the employee to work on a Public Holiday, the equivalent unpaid time off in lieu may be negotiated.

13.3 Where the employee is required to work on a Public Holiday he will be paid at his normal hourly rate as shown in clause 5.1 of this agreement. The rate is sufficient to compensate the employee

## 14. Camping Allowance

- 14.1 Where the employee is employed on a project that requires him to be accommodated away from his normal place of abode the company will arrange suitable accommodation and prepared meals.

## 15. Long Service Leave

- 15.1 The employee will receive long service leave as provided in the Long Service Leave [REDACTED]

## 16. Superannuation

- 16.1 The employee shall be entitled to receive superannuation payments as described in the Superannuation Guarantee Act or any other Act that details employer obligations. [REDACTED] it shall be at the rate of 8%.

- 16.2 In accordance with the Superannuation Guarantee Act, superannuation will be paid on a maximum of 38 hours.

- 16.3 The company will pay superannuation contributions into the [REDACTED] fund.

## 17. Occupational Health, Safety and Environment

- 17.1 The company and all employees are bound by the [REDACTED] Act. Breaches of this clause will be considered serious and subject to the disciplinary procedures in the Agreement.

## 18. Disputes Clause

In relation to any matter that may be in dispute between the parties to this Agreement {'the matter'}, the parties:

- (a) will attempt to resolve the matter at the workplace level, including, but not limited to:
- i) the employee and his or her supervisor meeting and conferring on the matter; and
  - (ii) if the matter is not resolved at such a meeting, the parties arranging further discussions involving more senior levels of management (as appropriate); and

- (b) acknowledge the right of either party to appoint, in writing, another person to act on behalf of the party in relation to resolving the matter at the workplace level; and
- (c) agree to allow either party to refer the matter to mediation if the matter cannot be resolved at the workplace level; and
- (d) agree that if either party refers the matter to mediation, both parties will participate in the mediation process in good faith; and
- (e) acknowledge the right of either party to appoint, in writing, another person to act on behalf of the party in relation to the mediation process; and
- (f) agree that during the time when the parties attempt to resolve the matter:
  - (i) the parties continue to work in accordance with their contract of employment unless the employee has a reasonable concern about an imminent risk to his or her health or safety; and
  - (ii) subject to relevant provisions of any State or Territory occupational health and safety law, even if the employee has a reasonable concern about an imminent risk to his or her health or safety, the employee must not unreasonably fail to comply with a direction by his or her employer to perform other available work, whether at the same workplace or another workplace, that is safe and appropriate for the employee to perform; and
  - (iii) the parties must cooperate to ensure that the dispute resolution procedures are carried out as quickly as is reasonably possible; and
- (g) agree not to commence an action:
  - (i) to obtain a penalty under section 170VV of the Act; or
  - (ii) to obtain damages for breaches of this Agreement;
  - (iii) to enforce a provision of this Agreement or Part VID of the Act (other than an action to enforce section 170VU of the Act);

unless:

- (iv) the party initiating the action has genuinely attempted to resolve the dispute at the workplace level; and
- (v) either:
  - (A) a period of 7 days has expired from the date when the party initiating the action gave notice that mediation is not requested; or

- (B) the mediation was requested by either party and that mediation has been completed.
- (h) (i) In the event that the dispute over any of the terms of this agreement is not able to be settled using the procedures detailed above, the dispute shall be referred to the Office of the Employment Advocate for arbitration.
- (ii) Either party may refer the dispute to the Office of the Employment Advocate, but only after all attempts at mediation have been exhausted.
- (iii) Should either party wish to refer the matter to the Office of the Employment Advocate, then the other party must be notified in writing of this intention.

## 19. Anti-Discrimination

The parties to this Agreement agree that:

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

## 20. Termination of Employment

The employment of the employee may be terminated under all or any of the following circumstances.

In the case of the employee:

- 1 week's written notice of resignation.



In the case of the company:

- Notice of termination as per Clause 6.1
- Immediately upon evidence of theft, malicious and willful damage, threat of violence or behavior likely to threaten the health or well-being of the company, its employees or clients.
- Non-attendance at the place of employment for 3 consecutive days without advice on the reason for that absence.
- Presentation for duty in a state unfit for work including, but not limited to, being under the influence of alcohol or drugs.
- After counselling for continued poor workmanship.
- After counselling for breaches of Clause 17 – Occupational Health, Safety and Environment.
- Immediately for misconduct, malingering, inefficiency and neglect or refusal of duty.

## 21. Personal Conduct

[REDACTED], recognises that its employees are a very important aspect in maintaining a beneficial relationship with its clients. It is therefore expected that the employee will maintain a very high level of personal conduct while representing [REDACTED]

Continued specific breaches of the elements listed below may cause termination of employment, as set out in clause 20 of this Agreement.

### 21.1 Company Vehicles and Equipment.

- (i) The employee shall ensure that company vehicles, in their charge, are kept clean and tidy at all times. All personal and other rubbish must be removed from the vehicles on a regular basis.
- (ii) Company vehicles must be driven in a safe, courteous and responsible manner. The employee will observe all relevant road rules and regulations. In particular the employee will be responsible for all fines, penalties and infringements that they may incur.
- (iii) All faults, mechanical problems or accidents with company vehicles must be reported to management as soon as possible.
- (iv) Vehicles and equipment assigned to the employee must not be lent to other employees or exchanged without a record of the loan or exchange being made.

- (v) Where the employee has been involved in a motor vehicle accident and the employee is deemed to be at fault by the insurance company he shall be responsible for paying the excess on any insurance claim.
- (vi) Should the employee be involved in an accident involving a company vehicle they will be responsible for the cost of any repairs to the vehicle or the cost of replacing the vehicle should the employee fail a breathalyser or blood test.

## 21.2 Personal Behaviour

- (i) The employee, while on duty, will at all times try and maintain a respectful and polite relationship and be honest and fair with clients, co-workers and management of [REDACTED] and members of the general public.
- (ii) Dress should be kept clean and neat, as the job in hand allows
- (iii) Attention must be given to personal hygiene at all times
- (iv) The employee will comply with all company policies, procedures, rules, regulations and contracts.
- (v) The employee will comply with all reasonable and legal instructions of management.
- (vi) The employee will maintain punctuality at all reasonable times.
- (vii) The employee will maintain punctuality at all reasonable times.
- (viii) Smoking in clients houses is not permitted.

## 22. Special Work Conditions

- 22.1 Should the employee have to return to rectify a job due to poor workmanship, at the discretion of the employer, he will make good the repairs in his own time.
- 22.2 The employee will supply the necessary hand-tools required to undertake the position of a qualified painter. In particular the employee will provide wire brushes, Gap Guns, Filling Blades, Spray Guns and Pole Sanders.
- 22.3 Brushes, Rollers and other equipment must be cleaned at the end of each day and the work area left in a clean and tidy state.
- 22.4 Expenses incurred by the employee will only be reimbursed upon receipt of a tax invoice.

## 23. Training

- 23.1 The employee shall be required to undertake any appropriate course at the request of the employer.

23.2 The cost of the course will be borne by the employer.

## **24. Probationary Period**

24.1 The appointment will be subject to a probation period of 12 weeks during which time work performance will be monitored and subject to appraisals on a regular basis throughout the period.

24.2 Continued employment beyond the probationary period will be subject to a satisfactory work performance appraisal at the end of that period. Continued employment will also be subject to availability of work.

24.3 During the probationary period the employer or the employee has the right to terminate the employment for any reason.

## **25. Motor Vehicles**

25.1 The employee shall be permitted to use such motor vehicle as may from time to time be allocated by the employer.

25.2 The employee shall be entitled to use the motor vehicle allocated to him during work hours only or by consent from the company

25.3 The employer shall maintain the motor vehicle at its own costs.

25.6 The motor vehicle shall at all times remain the property of the employer and the employee undertakes to do all things reasonably necessary to preserve the motor vehicle in the best working condition. In particular the employee will check oil and water levels, tyres and battery levels on a regular basis.

25.6 The employee shall not permit any other person to drive the motor vehicle or be a passenger, without the consent of the employer.

25.6 There will be no unauthorized use of the vehicle.

25.7 All company policies relating to motor vehicles will be adhered to.

## **26. Redundancy**

26.1 Where the employee's employment is terminated in circumstances where [REDACTED] no longer wishes the job the employee has been doing to done by anyone and this is not due to the ordinary and customary turnover of labour, the employee shall be entitled to the following amount of severance pay in respect of continuous periods of service:

Period of continuous service

Severance pay

1 year or less	Nil
1 year and up to the completion of 2 years	4 weeks pay
2 years and up to the completion of 3 years	6 weeks pay
3 years and up to the completion of 4 years	7 weeks pay
4 years and over	8 weeks pay

26.2 The term 'weeks pay' means the ordinary time rate of pay for the employee concerned.

26.3 The amount of severance pay shall not exceed the amount which the employee would have earned if employment with the company had proceeded to the employee's normal retirement date.

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

26.5 This clause shall not apply:

- (i) Where termination of employment is a consequence of malingering, inefficiency or neglect of duty, namely conduct that justifies summary dismissal:
- (ii) To employees engaged for a specific period or for a specific task or tasks.

Signed by

[Redacted signature]

On behalf of

[Redacted name]

Date

[Redacted date]

Witness Name

[Redacted witness name]

Witness Signature

[Redacted witness signature]

Signed

[Redacted signature]

Date

[Redacted date]

Witness Name

[Redacted witness name]

Witness Signature

[Redacted witness signature]