

**Synergy Subs Pty Ltd Enterprise Agreement 2023**

Part 1 —Application and Operation..... 3

1. Title..... 3

2. Commencement..... 3

3. Definitions and interpretation ..... 3

4. Coverage..... 4

5. Access to the Agreement and the National Employment Standards..... 5

6. The National Employment Standards and this Agreement..... 5

7. Individual flexibility arrangements..... 5

Part 2— Consultation and Dispute Resolution ..... 7

8. Consultation about major workplace change ..... 7

9. Dispute resolution ..... 8

Part 3— Types of Employment and Termination of Employment..... 9

10. Employment categories ..... 9

11. Full-time employees..... 9

12. Part-time employees..... 9

13. Casual employment ..... 11

14. Termination of employment..... 12

15. Abandonment of employment ..... 13

16. Redundancy ..... 13

Part 4— Classifications and Wage Rates..... 15

17. Classifications..... 15

18. Minimum weekly wages ..... 17

19. Junior rates..... 17

20. Allowances ..... 18

21. Superannuation..... 20

22. Payment of wages..... 21

23. Supported wage ..... 22

Part 5— Ordinary Hours of Work.....	22
24. Hours of work.....	22
25. Penalty rates .....	23
26. Overtime .....	24
27. Breaks.....	26
28. Requests for flexible working arrangements.....	27
Part 6— Leave, Public Holidays and Union Rights .....	28
29. Annual leave.....	28
31. Shut down and Refurbishments.....	31
32. Suspension .....	31
33. Stand Down.....	31
34. Personal/Carer’s Leave .....	31
35. Compassionate Leave .....	33
36. Natural Disaster Leave .....	33
37. Public Holidays .....	33
38. Community Service Leave .....	334
39. Leave to deal with Family and Domestic Violence .....	334
40. Signatures .....	38
Schedule A— Work Classifications.....	<b>Error! Bookmark not defined.</b>
Schedule B— Wage Rate Schedule Summary on commencement of the Agreement.....	<b>Error! Bookmark not defined.</b>
Schedule C— Supported Wage System .....	<b>Error! Bookmark not defined.</b>
Schedule D – Work and Care .....	<b>Error! Bookmark not defined.</b>

## Part 1 —Application and Operation

### 1. Title

1.1 The agreement is the Synergy Subs Pty Ltd National Enterprise Agreement 2023.

### 2. Commencement

2.1 This agreement shall take effect from the beginning of the first pay period commencing on or after 7 days of approval by the Fair Work Commission and shall remain in force for a period of three years.

### 3. Definitions and interpretation

3.1 In this agreement, unless the contrary intention appears:

**Act** means the *Fair Work Act 2009* (Cth)

**Award** means the *Fast Food Industry Award 2020*.

**Team Meetings and Training** covers emergency evacuation drills, product launches, reward and recognition, and WHS.

**default fund employee** means an employee who has no chosen fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth)

**employee** means national system employee within the meaning of the Act

**employer** means national system employer within the meaning of the Act

**fast food industry** means the industry of taking orders for and/or preparation and/or sale and/or delivery of:

- meals, snacks and/or beverages, which are sold to the public primarily to be consumed away from the point of sale;
- take away foods and beverages packaged, sold or served in such a manner as to allow their being taken from the point of sale to be consumed elsewhere should the customer so decide; and/or
- food and/or beverages in food courts and/or in shopping centres and/or in retail complexes, excluding coffee shops, cafes, bars and restaurants providing primarily a sit down service inside the catering establishment

**FWC** means the Fair Work Commission

**Immediate family** means;

- a. Spouse or partner (including former, de facto or a former de facto spouse); or

- b. child, (including step, adopted, ex-nuptial or foster child); or
- c. parent (including step-parent); or
- d. father and mother-in-law; or
- e. grandparent (including grandparent-in-law); or
- f. grandchild (including grandchild of a spouse); or
- g. siblings; or
- h. brother and sister-in-law; or
- i. a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.
- j. a “child” includes; a child through a care order or equivalent temporary and long-term foster arrangement, or a stillborn child.

**MySuper product** has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)

**NES** means the National Employment Standards as contained in sections 59 to 131 of the *Fair Work Act 2009* (Cth)

**standard rate** means the minimum weekly wage for a Senior Sandwich Artist in clause 18—Minimum weekly wages. Where an allowance is provided for on an hourly basis, a reference to **standard rate** means 1/38th of the weekly wage referred to above.

**Union** means the Shop, Distributive and Allied Employees’ Association (“SDA”).

**3.2** Where this Agreement refers to a condition of employment provided for in the NES, the NES definition applies.

#### **4. Coverage**

**4.1** This agreement shall apply to Synergy Subs Pty Ltd, as well as its subsidiaries, licensees and their associated companies operating food outlets trading as Subway and all employees as defined.

**4.2** This agreement is not to be read in conjunction with any modern award (unless expressed to the contrary in this Agreement)

**4.3** This agreement provides minimum entitlements only and shall not restrict the Employer and its Employees from agreeing to a higher Wage Rate or any other additional benefits.

**4.4** The agreement will also cover the Shop, Distributive and Allied Employees’ Association (“SDA”), where Employees are financial members of this Union.

## **5. Access to the Agreement and the National Employment Standards**

- 5.1** The Employer must ensure that copies of this Agreement and the NES are available to all Employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

## **6. The National Employment Standards and this Agreement**

- 6.1** This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

## **7. Individual flexibility arrangements**

- 7.1** Despite anything else in this agreement, the employer and an individual employee may agree to vary the application of the terms of this agreement relating to any of the following in order to meet the genuine needs of both the employee and the employer:

- (a)** arrangements for when work is performed (including hours of work); or
- (b)** overtime rates; or
- (c)** penalty rates; or
- (d)** allowances; or
- (e)** annual leave loading

- 7.2** An agreement must be one that is genuinely made by the Employer and the individual Employee without coercion or duress.

- 7.3** An agreement may only be made after the individual Employee has commenced employment with the Employer.

- 7.4** An Employer who wishes to initiate the making of an agreement must:

- (a)** give the Employee a written proposal; and  
if the Employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.

- 7.5** An agreement must result in the Employee being better off overall at the time the agreement is made than if the agreement had not been made.

- 7.6** An agreement must do all of the following:

- (a)** state the names of the Employer and the Employee; and

- (b) identify the agreement term, or agreement terms, the application of which is to be varied; and
- (c) set out how the application of the agreement term, or each agreement term, is varied; and
- (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
- (e) state the date the agreement is to start.

**7.7** An agreement must be:

- (a) in writing; and
- (b) signed by the Employer and the Employee and, if the Employee is under 18 years of age, by the Employee's parent or guardian.

**7.8** Except as provided in clause 7.7(b), an agreement must not require the approval or consent of a person other than the Employer and the Employee.

**7.9** The Employer must keep the agreement as a time and wages record and give a copy to the Employee.

**7.10** The Employer and the Employee must genuinely agree, without duress or coercion to any variation of this agreement provided for by an agreement.

**7.11** An agreement may be terminated:

- (a) at any time, by written agreement between the Employer and the Employee; or
- (b) by the Employer or Employee giving 13 weeks' written notice to the other party.

Note: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this agreement term and the arrangement does not meet a requirement set out in s.144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see s.145 of the Act).

**7.12** An agreement terminated as mentioned in clause 7.11(b) ceases to have effect at the end of the period of notice required under that clause.

**7.13** The right to make an agreement under clause 7 is additional to, and does not affect, any other term of this agreement that provides for an agreement between an Employer and an individual Employee.

## Part 2— Consultation and Dispute Resolution

### 8. Consultation about major workplace change

**8.1** If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
- (b) discuss with affected employees and their representatives (if any):
  - (i) the introduction of the changes; and
  - (ii) their likely effect on employees; and
  - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
- (c) commence discussions as soon as practicable after a definite decision has been made.

**8.2** For the purposes of the discussion under clause 8.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:

- (a) their nature; and
- (b) their expected effect on employees; and
- (c) any other matters likely to affect employees.

**8.3** Clause 8.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

**8.4** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 8.1(b).

**8.5** In clause 8: significant effects, on employees, includes any of the following:

- (a) termination of employment; or
- (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
- (c) loss of, or reduction in, job or promotion opportunities; or
- (d) loss of, or reduction in, job tenure; or
- (e) alteration of hours of work; or
- (f) the need for employees to be retrained or transferred to other work or locations; or
- (g) job restructuring.

## **8.A Consultation about changes to rosters or hours of work**

**8A.1** Clause 8A applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable

**8A.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).

**8A.3** For the purpose of the consultation, the employer must:

- (a)** provide to the employees and representatives mentioned in clause 8A.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
- (b)** invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.

**8A.4** The employer must consider any views given under clause 8A.3(b).

**8A.5** Clause 8A is to be read in conjunction with any other provisions of this agreement concerning the scheduling of work or the giving of notice.

## **9. Dispute resolution**

**9.1** The procedure shall be used in regard to any dispute, grievance, disagreement or issue arising between an employee or employees of the employer and/or the SDA on the one hand and the employer on the other and any dispute in relation to the NES.

**9.2** It is agreed that every endeavour will be made to amicably settle any grievance which may arise in the workplace by direct negotiation and consultation between the parties to this Agreement.

**9.3** To facilitate the settlement of any such grievances the following channel of communication shall apply:

- (a)** If the employee has a grievance, they should discuss the matter with their Restaurant Manager, who will endeavour to resolve the matter speedily and effectively. The Restaurant Manager will respond to the employee's grievance as soon as possible, and, unless there are exceptional circumstances, within 24 hours. A longer period may apply if agreed by the employee and the Restaurant Manager.
- (b)** If unresolved the employee (accompanied by their representative, which includes an SDA Delegate or Official if the employee so wishes) will discuss the matter with their Restaurant Manager or the Employer. If the issue cannot be resolved, the representative will discuss the case with the relevant the Employer.

**9.4** If the matter in dispute is not settled after direct negotiations and consultation after carrying out the foregoing procedure it shall be referred to the Fair Work Commission for mediation or conciliation and if required, arbitration.

**9.5** It is agreed that the objective of the above procedure is to settle disputes through the specified procedure without the need for industrial action. Whilst the above procedure is being followed the pre-issue status quo will be maintained.

**9.6** Nothing in this procedure shall operate to the prejudice of an employee's health and safety.

The SDA shall have reasonable access to rosters and the rostering system that manages them to assist in the settling of a dispute upon written request.

### **Part 3— Types of Employment and Termination of Employment**

#### **10. Employment categories**

**10.1** Employees under this Agreement will be employed in one of the following categories:

- (a) full-time Employees;
- (b) part-time Employees; or
- (c) casual Employees.

**10.2** At the time of engagement the Employer will inform each Employee of the terms of their engagement and, in particular, whether they are to be full-time, part-time or casual.

#### **11. Full-time employees**

**11.1** A full-time Employee is an employee who is engaged to work an average of 38 hours per week averaged over a 4-week period.

#### **12. Part-time employees**

**12.1** A part time employee is an employee who:

- (a) Works less than 38 hours per week averaged over a 4-week period;
- (b) Has reasonably predictable hours of work; and
- (c) Receives on a pro-rata basis, equivalent pay and conditions to those of full- time employees.

**12.2** School based part-time employees are part-time employees who:

- (a) are still completing their secondary education;
- (b) receive all the entitlements, pay and conditions of other part-time employees; and
- (c) who work at least 3 but less than 38 hours per week.

- 12.3** At the time of engagement, the employer and the part-time employee will agree in writing upon:
- (a)** the number of hours of work which are guaranteed to be provided and paid to the employee each week which may be averaged over a four-week period; and
  - (b)** the days of the week, and the periods in each of those days, when the employee will be available to work the guaranteed minimum hours (the employee's agreed availability).
- 12.4** The employee may not be rostered to work less than 3 consecutive hours in any shift.
- 12.5** Any change to the guaranteed minimum hours may only occur with written consent of the part-time employee.
- 12.6** Where there has been a genuine and ongoing change in the employee's personal circumstances, the employee may alter the days and hours of the employee's agreed availability with 14 days' written notice to the employer. If the alteration to the employee's agreed availability cannot reasonably be accommodated by the employer within the guaranteed minimum hours then, despite clauses 12.1 (or 12.2 if a school based part-time employee), those guaranteed minimum hours will no longer apply and the employer and the employee will need to reach a new agreement in writing concerning guaranteed minimum hours in accordance with clauses 12.1 or 12.2.
- 12.7** An employee may be offered ordinary hours in addition to their guaranteed minimum hours (additional hours) within the employee's agreed availability. The employee may agree to work those additional hours provided that:
- (a)** The additional hours are offered in accordance with clause 25 – Hours of Work;
  - (b)** The employee may not be rostered for work outside of the employee's availability;
  - (c)** Agreed additional hours are paid at ordinary rates (including any applicable penalties payable for working ordinary hours at the relevant times) and accrue entitlements such as annual leave and personal/carer's leave;
  - (d)** The agreement to work additional hours may be withdrawn by a part-time employee with 14 days written notice. For clarity, an employee can still refuse the ordinary additional hours when offered at any time.;
  - (e)** Additional hours worked in accordance with this clause are not overtime; and
  - (f)** Where there is a requirement to work overtime in accordance with clause 26, overtime rates will apply.
- 12.8** A part-time employee who immediately prior to (operative date of variation) has a written agreement with their employer for a regular pattern of hours is entitled to continue to be rostered in accordance with that agreement, unless that agreement is replaced by a new written agreement made in accordance with clauses 12.1 and 12.2.
- 12.9** The company recognises the importance of secure work for employees and will use its best endeavours to utilise full-time and part-time employees rather than casual employees. As part of this preference for secure work, and subject to operational requirements, where a part-time employee has over a period of at least 12 months regularly worked a number of ordinary hours that is in excess of the guaranteed minimum hours, the employee may request in writing that the employer agree to increase the guaranteed minimum hours. If the

employer agrees to the request, the new agreement concerning guaranteed minimum hours will be recorded in writing. The employer may refuse the request only upon reasonable business grounds, and such refusal must be provided to the employee in writing and specify the grounds for refusal.

- 12.10** An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 13 – Casual Employment.
- 12.11** A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the minimum weekly rate prescribed for the class of work performed.
- 12.12** The employer recognises the value of permanent employment over casual employment for all parties, from higher skill retention and development from guaranteed hours, to stability in working arrangements. Where appropriate to all parties' circumstances the employer will promote permanent employment.

### **13. Casual employment**

- 13.1** A casual employee is an employee engaged as such.
- 13.2** A casual will be paid both the ordinary hourly rate paid to a full-time employee and an additional 25% of the ordinary hourly rate for a full-time employee.
- 13.3** Casual employees will be paid at the termination of each engagement, or weekly or fortnightly in accordance with pay arrangements for full-time employees.
- 13.4** The minimum daily engagement of a casual employee is three hours.
- 13.5** The following do not apply to Casual Employees
  - (a)** Annual Leave
  - (b)** Personal Leave (except unpaid carer's leave as per the NES)
  - (c)** Payment for public holidays not worked
  - (d)** Notice of Termination – permanent employees
  - (e)** Redundancy pay; and
  - (f)** Such other clauses of this Agreement which are clearly expressed to apply only to Permanent Employees.
- 13.6** Right to request casual conversion
  - (a)** As noted in clause 12.10 above, the company will promote and prefer permanent employment over casual employment. As part of this commitment the right to request casual conversion as outlined in the NES. See sections 66A to 66M of the Act.

## **14. Termination of employment**

**14.1** The NES sets out requirements for notice of termination by an employer. See ss.117 and 123 of the Act.

### **14.2 Notice of termination by an employee**

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee who is at least 18 years old does not give the period of notice required in this clause the employer may deduct from wages due to the employee under this agreement an amount that is no more than one week's wages for the employee.

### **14.3 Termination without Notice**

The Employer may immediately, without notice or payment in lieu of notice, terminate the employment of an Employee found to have engaged in serious misconduct. Serious misconduct includes, but is not limited to:

- (a)** Wilful or deliberate behaviour by the Employee that is inconsistent with the continuation of employment;
- (b)** Conduct that causes serious risk to the health or safety of a person, to the reputation, viability or profitability of the Employer's business including a Food Safety standards breach (a breach being not following the Food Safety standards set by the Employer and/or the relevant Local or State Authority);
- (c)** Engaging in theft, fraud or assault;
- (d)** Harassing, sexually or otherwise, or discriminating against other employees, contractors, or customers of the Employer;
- (e)** Being intoxicated or under the influence of drugs at work as per company policy; or
- (f)** Refusing to carry out a lawful, reasonable instruction by a supervisor or manager.

And, in such case, the Employee will be paid all entitlements due to the date of the termination of employment as required by Clause 23.

The matters listed (a) through (f) are not intended to limit the rights of employees under the law. For clarity this includes the right to due process and natural justice.

### **14.4 Job search entitlement**

Where an employer has given notice of termination to an employee, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

### **14.5 Probation Period**

- (a)** All Employees shall be employed subject to a six-month probation employment which shall be confirmed to the Employee in their Letter of Engagement

- (b) During the Probation period, the Employee or the Employer may terminate the Employee's employment with the giving of 1 weeks' notice
- (c) Nothing in this clause shall affect the operation of the minimum qualifying period of employment prescribed by the Fair Work Act (2009) with respect to protection from unfair dismissal.

#### **14.6 Incapacity to Work**

- (a) In the event that an Employee is absent from performing duties due to illness or other incapacity for a period of not less than 90 days in any 12 month period (excluding paid personal leave) and is unable to demonstrate to the Employer that they will be able to return to work and perform the inherent requirements of their position within a reasonable period of time, the Employer shall be entitled to terminate that Employee's employment by giving notice of termination of employment or by a payment in lieu of notice.
- (b) This Clause does not affect the Employee's rights and entitlement under any applicable legislation (including legislation regarding workers compensation and disability).

#### **15. Abandonment of employment**

- 15.1** The parties recognise that the onus is on the employee to advise the employer when the employee is unable to work and to ensure contact details are up to date.
- 15.2** The absence of an employee from work for a continuous period of three (3) consecutive days or shifts without just cause and without notification to their supervisor will be evidence that the employee has abandoned their employment.
- 15.3** The employer will provide in writing (email where provided, otherwise by post) notification that failure to contact the employer within seven working days with a satisfactory explanation for the absence will result in the employer regarding the employee as having abandoned their employment.
- 15.4** Termination of employment by abandonment in accordance with this clause will operate from the date of the last attendance at work.
- 15.5** Where the employee establishes that the absence was for a reasonable cause, within four (4) weeks of the termination date, the employer will reinstate the employee to their former position.

#### **16. Redundancy**

- 16.1** This clause shall only apply if the Employer, at the time the job an Employee is doing is made redundant, employs 15 or more Permanent Employees.
- 16.2** This Clause shall not apply to:
  - (a) An employee offered suitable alternative employment;
  - (b) A permanent Employee with less than 1 years' continuous service;
  - (c) An Employee terminated as a consequence of serious misconduct that justifies termination without notice;

- (d) An Employee on a probation period in accordance with Clause 14.5;
- (e) A trainee;
- (f) An employee engaged for a specified period of time or for a specified task or tasks;  
or
- (g) A casual Employee.

**16.3** Redundancy pay is provided for in the NES.

**16.4 Discussions before Termination**

- (a) Where the Employer has made a definite decision that it no longer wishes the job an Employee or group of Employees have been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour, the decision may lead to termination of employment. In such circumstances, the Employer shall hold discussion with the Employees directly affected.
- (b) The discussion shall take place as soon as is practicable and shall cover, amongst other matters, the reasons for the proposed terminations, measures to avoid or minimise the terminations and measures (if any) to mitigate any adverse effects of the terminations on the Employees concerned.
- (c) During such discussions, the Employer shall not be required to disclose Confidential Information, the disclosure of which would be determinantal to its interests.

**16.5 Transfer to lower paid duties**

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

**16.6 Employees leaving during notice period**

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is only entitled to receive the benefits and payments they would have received under this clause until they terminate their employment and is not entitled to payments instead of notice.

**16.7 Job search entitlement**

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.

## **16.8 Transfer of Business**

- (a)** "Transfer" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transferred" has a corresponding meaning.
  
- (b)** The provisions of Clauses 14 and 16 are not applicable where the Employer's business is transferred to another employer (in this Subclause called the "New Employer"), in any of the following circumstances:
  - (i)** Where the Employee accepts employment with the New Employer which recognises the period of continuous service which the Employee had with the Employer (or any prior transferring employer) to be continuous service with the New Employer; or
  - (ii)** Where the Employee rejects an offer of employment with the New Employer that:
    - i.** Is on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the Employee's terms and conditions of employment with the Employer immediately before the termination; and
    - ii.** Recognises the Employee's period of continuous service which the Employee had with the Employer (or any prior transferring employer) to be continuous service with the New Employer; and
    - iii.** Had the Employee accepted the offer, there would have been a transfer of employment in relation to the Employee

## **16.9 Property of the Employer**

- (a)** In the event of termination of employment, an Employee must return to the Employer all property of the Employer which is in the possession, custody or control of the Employee. This includes, without limitation, tools, uniforms, keys, equipment, mobile telephones, documents, policies, manuals, or other information whether in written or other form. Employees undertake not to retain any copies of any such property.
  
- (b)** Employees cannot retain or share electronic copies of confidential information concerning their former employment.

## **Part 4— Classifications and Wage Rates**

### **17. Classifications**

**17.1** The Employer employs Employees to work in the following Job Classification

- (a)** Sandwich Artist;
  
- (b)** Shift Supervisor; and
  
- (c)** Restaurant Manager.

- 17.2** The indicative duties for each Job Classification are set out in Schedule A.
- 17.3** Any change to an Employee's Job Classification shall be made in consultation with the Employee and will be confirmed in writing.
- 17.4** Salaried Employee:
- (a)** Where a full-time employee classified as a Restaurant Manager is paid a salary in excess of their entitlements under this Agreement, including any bonus or incentive amount, this amount may be used to set off any other amount payable by the employer to that employee under this Agreement, including wages, overtime, loadings, penalty rates and allowances.
  - (b)** Nothing in this agreement requires an employer to maintain or increase any over Agreement payment.
  - (c)** Where the employer is utilising the set off provisions under this clause for a Restaurant Manager employee, the employer will for each six (6) month period of employment reconcile all payments made to the employee over that six (6) month period against the amounts payable under this Agreement for the same period to ensure that the employee is paid no less than the amounts payable to the employee under the terms of this Agreement. If the period is less than six (6) months as a result of termination of employment, then the employer will reconcile for that shorter period.
- 17.5** All employees covered by this Agreement must be advised by the employer in writing of their classification and of any changes to their classification.
- 17.6** The classification by the employer must be according to the skill level or levels required to be exercised by the employee in order to carry out the principal functions of the employment as determined by the employer.

#### **17.7 Flexibility of duties**

- (a)** Employees are expected to willingly accept flexibility of jobs and duties throughout their employment and take all reasonable steps to achieve quality, accuracy, efficiency and completion of any reasonable job or task assigned by the Employer,
- (b)** A reasonable change in duties to accommodate the Employer's business needs will not attract any extra payment and will not be deemed to constitute termination of employment, except where such a change results in the Employee performing the duties of a higher job classification on an ongoing basis.
- (c)** Higher duties, employees engaged in higher duties will be paid the higher duties allowance in clause 20.3.

#### **17.8 Company Policies**

- (a)** Employees are required to be aware of all policies and procedures which are made readily available by the Employer and advise if any part is not understood
- (b)** The Employer may amend its policies from time to time and will advise Employees of any amendments made.

- (c) For the avoidance of doubt, the policies and procedures of the Employer are not incorporated into this Agreement.

**17.9 Location and Transfer of Employment**

- (a) The Employer employs Employees at their business.
- (b) The employer may reasonably relocate their Employees from one location to another, on a permanent or temporary basis but will first consult with the Employee to ensure that such relocation takes into account the Employee’s personal circumstances. Such temporary relocation will accrue the relevant allowances in clause 20 and the Award.
- (c) Where an employee requests additional hours and these additional hours are available only at other stores, an employee will not be entitled to the relevant transport allowances due to this voluntary additional travel. Where an employee is required to travel for work as at clause 17.9(b) they will be entitled to such allowances.

**18. Minimum weekly wages**

- 18.1** (a) The minimum weekly wages in Schedule B – Wage Rate Schedule Summary will be increased in July every year in line with any national minimum award wage increases.
- (b) To avoid confusion the above levels are mapped to the Fast Food Industry Award classifications as follows:

Agreement Classification	Award Equivalent
<b>Sandwich Artist</b>	<b>Level 1</b>
<b>Shift Supervisor</b>	<b>Level 2</b>
<b>Restaurant Manager</b>	<b>Level 3(b)</b>

**19. Junior rates**

- 19.1** Junior employees will be paid the following percentage of the appropriate wage rate in Schedule B—Minimum weekly wages

Age	% of weekly wage
15 years of age and under	41
16 years of age	51
17 years of age	61
18 years of age	71

<b>Age</b>	<b>% of weekly wage</b>
19 years of age	81
20 years of age	91

## **19.2 Junior Rates Not to Apply to Restaurant Managers**

Junior rates do not apply to employees classified as a Restaurant Manager regardless of their age. All Restaurant Managers are to be paid the corresponding adult pay rates.

## **20. Allowances**

### **20.1 Meal allowance**

- (a) An employee required to work more than one hour of overtime after the employee's ordinary time of ending work, without being given 24 hours' notice, will be provided with a meal or paid a meal allowance of \$15.23. Where such overtime work exceeds four (4) hours, a further meal will be provided or an additional allowance of \$13.76.

### **20.2 Higher duties**

- (a) Any employee not appointed but required to undertake higher duties in a shift shall be paid the applicable rate for the work performed in those duties. Where required to perform higher duties for more than two (2) hours in a day, the employee will be paid the applicable higher rate for all hours worked on that day.

### **20.4 Uniforms and Special clothing**

- (a) Where the employer requires an employee to wear any protective or special clothing such as a uniform, dress or other clothing, the employer will reimburse the employee for any cost of purchasing such clothing and the cost of replacement items when replacement is due to normal wear and tear. This provision will not apply where the special clothing is supplied and/or paid for by the employer.
- (b) A uniform shall be supplied to each employee upon commencement at no cost to the employee. Such uniforms shall remain the property of the employer and shall be returned to the employer upon termination of employment in good order, subject to fair wear and tear. Employees shall be required to present themselves for work in a neat, tidy and businesslike manner.

### **20.5 Excess travelling costs**

Where an employee is required by their employer to move temporarily from one branch or shop to another for a period not exceeding three weeks, all additional transport costs so incurred will be reimbursed by the employer.

### **20.6 Travelling time reimbursement**

- (a) If an employer requires an employee to work on any day at a place other than their usual place of work, then the employer must:

(i) pay the employee for any extra time reasonably spent travelling to and from work in excess of their normal travel times, as calculated under clause 20.6(b) at the rates set out in clause 20.6(c); and

(ii) reimburse the employee for any fares reasonably incurred in excess of those normally incurred travelling to and from the employee's residence and their usual place of work.

(b) The employer must pay the amounts in clause 20.6(c) for the extra time the employee spends travelling:

(i) both ways between the employee's residence and the other place of work; or

(ii) if the employer provides transport from a pick-up point, both ways between the employee's residence and that pick-up point.

(c) The employer must pay the employee for the travelling time calculated under clause 20.6(b):

(i) on Monday to Saturday, at their minimum hourly rate of pay; or

(ii) on Sunday or a public holiday, at 150% of their minimum hourly rate of pay.

## **20.7 Transfer of employee reimbursement**

Where any employer transfers an employee from one township to another, the employer will be responsible for and will pay the whole of the moving expenses, including fares and transport charges, for the employee and their family.

## **20.8 Transport allowance**

Where an employer requests an employee to use their own motor vehicle in the performance of their duties such employee will be paid an allowance of \$0.95 per kilometre.

## **20.9 Safe Transport**

(a) An employer must reimburse an employee's travel costs as calculated under clause 20.9(b) if all of the following apply:

(i) the employee starts or finishes work on any day after 10.00 pm or before 7.00 am; and

(ii) the employee's regular means of transport is not available; and

(iii) the employee is unable to arrange their own alternative transport; and

(iv) the employer does not provide or arrange transport for the employee, at no cost to the employee.

(b) The employer must reimburse the employee, as applicable, for any cost they reasonably incur in taking a commercial passenger vehicle:

(i) from their usual place of residence to their place of work; or

(ii) from their place of work to their usual place of residence.

(c) Nothing in clause 20.9 prevents an employee from choosing to provide their own transport.

## **20.10 Team Meetings and Training Allowance**

- (a)** Employees shall only be directed to attend staff meetings as part of a rostered shift and attendance at such meetings will be treated as time worked. Where an employee voluntarily attends up to 6 meetings a year when not working a rostered shift, but is not directed to do so, the employee shall be paid an allowance equivalent to the amount of time spent at the meeting, with a minimum payment equivalent to one hour's work at the applicable wage rate. Training does not form part of staff meetings.
- (b)** Hours spent attending a team meeting or training sessions will be regarded as hours worked for the purpose of payment of wages and overtime in accordance with Clause 24.

## **21. Superannuation**

### **22.1 Superannuation legislation**

- (a)** Superannuation legislation, including the Superannuation Guarantee (Administration) Act 1992 (Cth), the Superannuation Guarantee Charge Act 1992 (Cth), the Superannuation Industry (Supervision) Act 1993 (Cth) and the Superannuation (Resolution of Complaints) Act 1993 (Cth), deals with the superannuation rights and obligations of employers and employees.
- (b)** The rights and obligations in these clauses supplement those in superannuation legislation.

### **21.2 Employer contributions**

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee. In the event that any Employee fails to nominate a complying superannuation fund within 60 days of commencement of employment, the Employer shall pay superannuation contribution into its default superannuation fund, which offers a MySuper product. This default fund will either be:

- (a)** REST; or
- (b)** another compliant fund.

### **21.3 Voluntary employee contributions**

- (a)** Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 22.1.
- (b)** An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.

- (c) The employer must pay the amount authorised under clauses 22.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 22.3(a) or (b) was made.
- (d) These voluntary contributions are in addition to and do not offset the employer's obligation to pay superannuation under clause 22.

#### **21.4 Superannuation fund**

- (a) The employer will make the superannuation contribution to one fund for employees. The Superannuation fund for employees will be the Retail Employees Superannuation Trust (REST) or a MySuper compliant fund.
- (b) Where an employee is paid by the employer into a different fund before the commencement of this agreement, the employer will continue to pay into that fund rather than the Retail Employees Superannuation Trust (REST).
- (c) By invitation the employer may invite salaried employees to join the employer's Corporate Fund. If the invitation is accepted, then the superannuation contributions will be made to that fund.

#### **21.5 Absence from work**

- (a) Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 22.2 and pay the amount authorised under clauses 22.3(a) or (b):
- (b) Paid leave—while the employee is on any paid leave.
- (c) Work-related injury or illness—For the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:
  - (i) the employee is receiving worker's compensation payments or is receiving regular payments directly from the employer in accordance with statutory requirements; and
  - (ii) the employee remains employed by the employer.

### **22. Payment of wages**

**22.1** Wages shall be paid either weekly or fortnightly in arrears by electronic funds transfer, except salaried employees whose wages may be paid monthly. It is the obligation of each Employee to provide correct bank details to their Employer and advise the Employer promptly if there are any changes to those details. Wages must be paid for a pay period according to the actual hours worked by the employee in the period or they may be averaged over a fortnight.

#### **22.2 Payment on termination of employment**

- (a) The employer must pay an employee no later than seven (7) days after the day on which the employee's employment terminates:
  - (i) the employee's wages under this agreement for any complete or incomplete pay period up to the end of the day of termination; and

(ii) all other amounts that are due to the employee under this Agreement and the NES.

(b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this agreement or the Act.

### **23. Supported wage**

The Supported Wage provisions of the Award as amended from time to time at Schedule C are incorporated into this Agreement.

## **Part 5— Ordinary Hours of Work**

### **24. Hours of work**

**24.1** This clause does not operate to limit or increase or in any way alter the trading hours of any employer as determined by the relevant State or Territory legislation.

#### **24.2 Ordinary hours**

(a) The ordinary hours of work are an average of 38 per week over a period of no more than four (4) weeks.

(b) Hours of work on any day will be continuous, except for meal breaks.

(c) The ordinary hours will be worked so as to provide an employee with two consecutive days off each week or three consecutive days off in a two-week period.

(i) This requirement will not apply where the employee requests other arrangements in writing. It cannot be made a condition of employment that an employee make such a request.

(ii) An employee can withdraw their written request to other arrangements by giving four (4) weeks written notice to the employer.

#### **24.3 Maximum hours on a day**

An employee may be rostered to work up to a maximum of 11 ordinary hours on any day.

#### **24.4 38-hour week rosters**

A full-time employee will be rostered for an average of 38 hours per week, worked in any of the following forms:

(i) 38 hours in one week;

(ii) 76 hours in two consecutive weeks;

(iii) 114 hours in three consecutive weeks; or

(iv) 152 hours in four consecutive weeks.

## 24.5 Rosters

- (a) A roster of the working hours will be exhibited a minimum of seven (7) days but fourteen (14) days in advance where possible
- (b) An employee is entitled and can request to be rostered off at least once every four weeks on the weekend. This request must be made in the employee portal before the release of the roster cycle in your relevant restaurant.
- (c) Ordinary hours of work cannot be worked over more than 5 days in a week. Or 6 days in one week if the employee is rostered to work ordinary hours on no more than 4 days in the following week.
- (d) Employee's will be provided with a minimum 10-hour break between shifts.
- (e) A roster for part-time employees must be prepared by the employer and made available to the employee which sets out the name of each employee, the days of the week to be worked, and their start and finishing times. The roster will be made available to employees in a manner that is easily accessible, this can include by electronic means.

## 25. Penalty rates

### (a) Evening work Monday to Friday

- (i) A loading of 10% will apply for ordinary hours of work within the span of hours between 10.00 pm and midnight, and for casual employees this loading will apply in addition to their 25% casual loading.
- (ii) A loading of 15% will apply for ordinary hours of work after midnight and before 6 am, and for casual employees this loading will apply in addition to their 25% casual loading.

### (b) Saturday work

A loading of 25% will apply for ordinary hours of work within the span of hours on a Saturday, and for casual employees an additional 25% on top of the casual loading.

### (c) Sunday work – Sandwich Artists

A 25% loading will apply for all hours of work on a Sunday for full-time and part-time Sandwich Artists. A 50% loading will apply for all hours of work on a Sunday for casual Sandwich Artists (inclusive of the casual loading).

### (c) Sunday work –Shift Supervisors, and Restaurant Managers

A 50% loading will apply for all hours of work on a Sunday for full-time and part-time Shift Supervisor, and Restaurant Manager employees. A 75% loading will apply for all hours of work on a Sunday for casual Shift Supervisor.

## **26. Overtime**

### **26.1 Rate of overtime**

- (a)** The rate of overtime for full time and part-time employees shall be time and a half for the first two (2) hours on any one day and at the rate of double time thereafter, except on a Sunday which shall be paid for at the rate of double time and on a Public Holiday which shall be paid for at the rate of double time and a half.
- (b)** The rate of overtime for casual employees shall be time and three quarters of the ordinary hourly rate of pay for the first two (2) hours on any one day and double time and a quarter of the ordinary hourly rate of pay thereafter, except on a Sunday which shall be double time and a quarter of the ordinary hourly rate of pay and double time and three quarters of the ordinary hourly rate on a Public Holiday (inclusive of the casual loading).

### **26.2 A full-time employee shall be paid overtime for all work as follows:**

- (a)** In excess of:
  - (i)** 38 hours per week or an average of 38 hours per week averaged over a four-week period; or
  - (ii)** five days per week; or
  - (iii)** eleven hours on any one day; or
  - (iv)** when a 10 hour break has not been provided between ceasing of a shift to the commencement of the next shift
- (b)** Before an employee's rostered commencing time on any one day; or
- (c)** After an employee's rostered ceasing time on any one day; or
- (d)** Outside the ordinary hours of work.

### **26.3 A part-time employee shall be paid overtime for all work as follows:**

- (a)** In excess of:
  - (i)** 38 hours per week; or
  - (ii)** five days per week; or
  - (iii)** eleven hours on any one day; or
  - (iv)** when a 10 hour break has not been provided between ceasing of a shift to the commencement of the next shift
- (b)** Hours worked by a part-time employee outside the employee's availability; or
- (c)** Before an employee's rostered commencing time on any one day; or
- (d)** After an employee's rostered ceasing time on any one day; or
- (e)** Outside the ordinary hours of work; or

- (f) Provided that no overtime penalty is payable for hours worked within the employee's availability by the part-time employee in excess of the guaranteed minimum hours that are:
  - (i) rostered; or
  - (ii) not rostered in advanced but agreed to be worked consistent with clause 12.8.

**26.4** A casual employee shall be paid overtime for all work in excess of:

- (a) 38 hours per week or, where the casual employee works in accordance with a roster, in excess of 38 hours per week averaged over the course of the roster cycle; or
  - (i) eleven hours on any one day;
  - (ii) five days per week; or
  - (iii) when a 10 hour break has not been provided between ceasing of a shift to the commencement of the next shift
- (b) Before an employee's rostered commencing time on any one day; or
- (c) After an employee's rostered ceasing time on any one day; or
- (d) Outside the ordinary hours of work.

**26.5** Where an employee works overtime on a Sunday and that work is not immediately preceding or immediately following ordinary hours, then that employee must be paid a minimum payment of four hours at such rate.

**26.6 Reasonable overtime**

- (a) An employer may require an employee to work reasonable overtime in accordance with the provisions of this clause.
- (b) 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 employee 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.

## 27. Breaks

### 27.1 Breaks during work periods

(a) Breaks will be given as follows:

Hours worked	Paid Rest break	Unpaid Meal break
Less than 4 hours	No rest break	No meal break
4 hours but less than 5 hours	One 10 minute rest break	No meal break
5 hours but less than 9 hours	One 10 minute rest break	One meal break of at least 30 minutes but not more than 60 minutes
9 hours or more	Two 10 minute rest breaks, with one taken in the first half of the work hours and the second taken in the second half of the work hours, two rest breaks will be given unless a second meal break is provided	One or two meal breaks of at least 30 minutes but not more than 60 minutes

- (b) The timing of the taking of a rest break or meal break is intended to provide a meaningful break for the employee during work hours.
- (c) An employee cannot be required to take a rest break or meal break within one hour of commencing or ceasing work. An employee cannot be required to take a rest break(s) combined with a meal break.
- (d) The time of taking rest and meal breaks and the duration of meal breaks form part of the roster
- (e) Rest breaks are paid breaks and meal breaks are unpaid breaks.
- (f) The employer understands the importance of employees having access to meaningful paid rest breaks and unpaid meal breaks as part of its commitment to work health and safety. Breaks will be taken to ensure employees have meaningful breaks while ensuring operational needs are met.
- (g) An employee cannot work more than five hours without a meal break.
- (h) Where an employee is required to work through their meal break, the employee will be paid at time and half from six hours until they cease the shift or are allowed an unpaid meal break in line with 27(a).
- (i) Where due to operational requirements a Sandwich Artist and Shift Supervisor employee may be provided a paid meal break, this paid meal break will be counted as time worked.
- (i) If required employees are entitled to a 20 minute paid break instead of an unpaid meal break when their entitlement becomes due between 10pm and

6am. Where only two employees are on site and the break cannot be taken consecutively due to maintaining customer service no less than two paid 10-minute paid breaks must be provided.

(ii) However, where an employee is rostered for more than 8 hours, they will receive a 30 minute paid meal break instead.

(j) Where due to operational requirements a Shift Supervisor and Restaurant Manager employees may be provided a paid meal break, whilst maintaining customer service, this paid meal break will be counted as time worked.

(i) If required employees are entitled to a 20 minute paid break instead of an unpaid meal break.

(ii) However, where an employee is rostered for more than 8 hours they will receive a 30 minute paid meal break instead.

## **28. Requests for flexible working arrangements**

**28.1** This clause shall only apply to:

(a) Full-time and part-time Employees; or

(b) Long term Casual Employees who have a reasonable expectation of continuing employment with their Employer on a regular and systematic basis;

with at least 12 months continuous service with their Employer.

## **28.2 Employee may request change in working arrangements**

Subject to Clause 28.1, an Employee who is a member of one of the following groups is entitled to request a flexible working arrangement

(a) The employee is the parent, or has the responsibility for the care, of a child who is of school age or younger;

(b) The employee is a carer (within the meaning of the Carer Recognition Act, 2010);

(c) The employee has a disability;

(d) The employee is 55 or older;

(e) The employee is experiencing violence from a member of their family; or

(f) The employee provides care or support to a member of their immediate family, or a member of their household, who requires care or support because the member is experiencing violence from the member's family.

**28.3** An employee who:

(a) Is a parent, or has responsibility for the care of a child; and

(b) Is returning from work after taking leave in relation to the birth or adoption of the child may request to work part-time to assist the Employee to care for the child.

**28.4** A request for a flexible working arrangements pursuant to Clauses 28.2 must

- (a) Be in writing; and
  - (b) Set out the details of the change sought and the reasons for the change.
- 28.5 Responding to the request. The Employer must give the Employee a written response within 21 days stating whether the Employee's request has been granted. The Employer may only refuse the request on reasonable business grounds, which include, without limitation, the following that:
  - (a) the new working arrangements requested by the Employee would be too costly for the Employer;
  - (b) there is no capacity to change the working arrangements of other Employees to accommodate the new working arrangements requested by the employee;
  - (c) it would impractical to change the working arrangements of other Employees, or recruit new employees, to accommodate the new working arrangements requested by the Employee;
  - (d) The new working arrangements requested by the Employee would be likely to result in a significant loss in efficiency or productivity; or
  - (e) The new working arrangements requested by the Employee would be likely to have a significant impact on customer service.
- 28.6 If the Employer refuses the request, the Employer must provide the Employee with details of the reasons for the refusal.
- 28.7 For the avoidance of doubt, clause 27A, requests for flexible work provisions in the *Fast Food Industry Award 2020* as amended from time to time is incorporated into this Agreement.

## **Part 6— Leave, Public Holidays and Union Rights**

### **29. Annual leave**

**29.1** Annual leave is provided for in the NES.

**29.2** The employer will use its best endeavours to respond to employee requests for annual leave within 7 days but no more than 14 days. Employees will use best endeavours so that a request for the taking of annual leave should be made at least 4 weeks in advance. The Employer may not unreasonably refuse a request for annual leave except on reasonable business grounds.

**29.3** Employees are encouraged to take annual leave within 12 months of accruing that annual leave.

### **29.4 Annual leave loading**

- (a) Annual leave loading is payable on leave accrued, calculated as being Employees who would have worked on day work only had they not been on leave—17.5% or the relevant weekend penalty rates, whichever is the greater but not both.

## **29.5 Annual leave in advance**

- (a)** An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b)** An agreement must:
  - (i)** state the amount of leave to be taken in advance and the date on which leave is to commence; and
  - (ii)** be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (c)** The employer must keep a copy of any agreement under clause 29.5 as an employee record.
- (d)** If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 29.5, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

## **29.6 Cashing out of annual leave**

- (a)** Paid annual leave must not be cashed out except in accordance with an agreement under clause 29.6.
- (b)** Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 29.6.
- (c)** An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d)** An agreement under clause 29.6 must state:
  - (i)** the amount of leave to be cashed out and the payment to be made to the employee for it; and
  - (ii)** the date on which the payment is to be made.
- (e)** An agreement under clause 29.6 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f)** The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g)** An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks (for a part-time employee this is calculated as their total guaranteed minimum hours for four weeks).
- (h)** The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i)** The employer must keep a copy of any agreement under clause 29.6 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 29.5.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 29.6.

## **29.7 Excessive leave accruals: general provision**

Note: Clauses 29.7 to 30 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Fair Work Act.

- (a) An employee has an excessive leave accrual if the employee has accrued more than 8 weeks' paid annual leave.
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 29.8 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 30 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

## **29.8 Excessive leave accruals: direction by employer that leave be taken**

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 29.7 but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph 29.8(a):
  - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 29.7, 29.8 or 30 or otherwise agreed by the employer and employee) are taken into account; and
  - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
  - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 29.8(b)(i).

Note 2: Under section 88(2) of the Fair Work Act, the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave

**30. Excessive leave accruals: request by employee for leave**

For clarity, clause 22.7, Excessive leave accruals: request by employee for leave of the Award as amended from time to time is incorporated into this Agreement.

**31. Shut down and Refurbishments**

(a) Employees may be required to take a nominated period of annual leave over annual shut down or refurbishment periods. Prior to the shutdown, the employer shall notify employees of the dates during which the leave is to be taken. An employee who does not have sufficient leave at the time of the shutdown, shall be required to take leave without pay for the duration of the shutdown to a maximum of 2 weeks.

(b) Where possible the employer shall attempt to find the employee suitable work at another geographically nearby store-

**32. Suspension**

An employee may be stood down on full pay, pending an investigation, if the Employer receives a complaint from another Employee, customer or supplier, or it is otherwise suspected that the Employee has, or may have, committed a serious breach of this Agreement or one of the matters listed in Clause 14.3

**33. Stand Down**

(a) The Employer shall have the right to stand down an Employee without pay where an Employee cannot be usefully employed because of a natural disaster, pandemic, power failure or any stoppage of work by a cause for which the Employer cannot reasonably be held responsible.

(b) This clause does not operate to affect continuity of employment for the purposes of accrual of leave entitlements.

(c) If an employee is stood down as per this agreement clause or the Fair Work Act, the employee will be able to access their entitlement to paid personal leave or annual leave or continue to access this leave.

**34. Personal/Carer's Leave**

Permanent employees are entitled to 10 days Personal/Carer's leave per year.

### **34.1 Unpaid Personal/Carer's Leave for Casual employees**

- (a)** Casual employees are entitled to be not available for work or to leave work to care for a person who is sick and requires care and support or who requires care due to an emergency.
- (b)** Such leave is unpaid. A maximum of 48 hours' absence is allowed by right with additional absence by agreement.

### **34.2 Paid Personal /Carer's Leave for Full-time and Part-time employees**

Personal/Carer's leave is any leave taken for the purposes of:

- (a)** Personal illness or injury (Personal Leave) or
- (b)** To provide care and support to an immediate family or household member who is ill, injured or is affected by an unexpected emergency (Carer's Leave).

**34.3** The employee must notify the employer of their inability to attend for work as early as practicable prior to the normal commencement time.

**34.4** For absences of more than two (2) consecutive days, the employee may be required to produce a medical certificate from a legally qualified medical practitioner, a statutory declaration or other evidence satisfactory to the employer, stating the nature of the illness and the period or approximate period that the employee will be unable to attend work. The employee can take five (5) days of personal leave per year inconsecutively without having to produce relevant documentation.

**34.5** Personal/Carer's Leave entitlement will be cumulative from year to year. During the second or subsequent years of continued employment with the employer, the employee will be credited their personal leave in advance.

**34.6** A full time, part time or casual employee may, subject to the Fair Work Act 2009, take unpaid carer's leave for the purpose of providing care and support for a member of their immediate family or a member of the employee's household who requires care or support because of personal illness, or injury of the member, or an unexpected emergency affecting the member.

**34.7** Unpaid carer's leave can only be taken when the employee's entitlement to paid personal leave has been exhausted. Unpaid carer's leave may be taken as a single, unbroken, period of 2 days, or two separate periods of 1 day each, or any separate periods totalling 2 days to which the employer and the employee agree. The 2 days unpaid carer's leave may be taken per occasion

**34.8** An employer must not fail to re-engage a casual employee because the employee has accessed the entitlement under this clause.

**34.9** For the purpose of caring for a person who is frail or aged or has a long-term disability or illness employees are able to provide evidence for an enduring period of time rather than requiring evidence for each occasion.

## **35. Compassionate Leave**

- 35.1** A full-time or part-time employee on the death of an immediate family member or member of their household, is entitled to three paid days of leave on each occasion. Proof of such death shall be furnished by the employee to the satisfaction of the Company.
- 35.2** This leave can be as a continuous 3 day period, 2 separate periods of 2 days and 1 day or as any other separate period of time as agreed with the employer.
- 35.3** Where a member of the full-time or part-time employee's immediate family or household suffers a serious illness or injury that poses a serious threat to their life, the employee will be entitled to 2 days paid leave on each occasion. This leave can be continuous or as two separate periods.
- 35.4** Casual employees are entitled to unpaid leave in the above circumstances.
- 35.5** Compassionate leave provided under the Agreement will be extended to employees who experience a miscarriage or in the case of stillbirth (in addition to unpaid and paid parental leave in the case of stillbirth). The leave is to be equivalent to that provided for children.

## **36. Natural Disaster Leave**

- 36.1** Where a yellow alert or a state of emergency is declared, or where flooding, earthquake or bushfires occur, or are imminent, an employee shall be allowed to leave work to care for their family and/or property where there is a genuine risk.
- 36.2** A full time or part-time employee is able to access any accrued leave if there is a reasonable and justified reason that the employee is unable to attend work due to a natural disaster. Provided that such leave may be extended with agreement of the Company in extenuating circumstances.
- 36.3** (a) A team member is entitled to annual leave, if the team member is:
- (i) required by government or medical authorities to self-isolate;
  - (ii) required by SRG to self-isolate;
  - (iii) required on the advice of a medical practitioner to self-isolate; or
  - (iv) is prevented from working by measures taken by government or medical authorities in response a pandemic.

## **37. Public Holidays**

- 37.1** Public holidays are provided for in the NES.
- 37.2** In addition, Easter Sunday will be treated as a Public Holiday under this Agreement.
- 37.3** An employer and a majority of employees may agree to substitute another day for a public holiday. If an employee works on either the public holiday or the substitute day public holiday penalties apply. If both days are worked, the public holiday penalties must be paid on the substituted day only.
- 37.4** Work on a public holiday must be compensated by payment at the rate of double time and a quarter of the ordinary rate, casual employees will receive double time and half

(inclusive of casual loading) and any changes to compensation will be move with the Fast Food Award 2020.

**37.5** Where New Year's Eve and Christmas Eve are not public holidays, work will be voluntary on those days regardless as per clause 37.6 below.

**37.6** Public Holiday and Easter Sunday work is voluntary provided:

- (a) If there are not enough volunteers for the company's operational requirements then the company will firstly call for volunteers;
- (b) If there are not enough volunteers, the company will roster employees on a rotating basis;
- (c) The company will be mindful of the employee's family and individual reasons for not wishing to work on a particular Public Holiday.

## **38. Community Service Leave**

**38.1** Community service leave is provided for in the NES.

## **39. Leave to deal with Family and Domestic Violence**

**39.1** This clause applies to all employees, including casuals

### **39.2 Definitions**

(a) In this clause:

***family and domestic violence*** means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

***family member*** means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
  - (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
  - (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.
- (b) A reference to a spouse or de facto partner in the definition of family member in clause 39.2(a) includes a former spouse or de facto partner.

### **39.3 Entitlement to paid and unpaid leave**

An employee is entitled to 10 days paid leave and 4 days 'unpaid leave to deal with family and domestic violence, as follows:

- (a) the leave is available in full at the start of each 12-month period of the employee's employment; and
- (b) the leave does not accumulate from year to year; and
- (c) is available in full to part-time and casual employees.

Note: 1. A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the employer.

2. The employer and employee may agree that the employee may take more than 5 days leave entitlement to deal with family and domestic violence.

#### **39.4 Taking paid and unpaid leave**

An employee may take paid and unpaid leave to deal with family and domestic violence if the employee:

- (a) is experiencing family and domestic violence; and
- (b) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

Note: The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

#### **39.5 Service and continuity**

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service.

#### **39.6 Notice and evidence requirements**

##### **(a) Notice**

An employee must give their employer notice of the taking of leave by the employee under clause 39. The notice:

- (i) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
- (ii) must advise the employer of the period, or expected period, of the leave.

##### **(b) Evidence**

An employee who has given their employer notice of the taking of leave under clause 39 must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 39.4

Note: Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

### **39.7 Confidentiality**

- (a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 39.6 is treated confidentially, as far as it is reasonably practicable to do so.
- (b) Nothing in clause 39 prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

### **39.8 Compliance**

- (a) An employee is not entitled to take leave under clause 3 unless the employee complies with clause 39.
- (b) The company will appoint one or more appropriately trained FDV contact officers to be a first point of contact for employees experiencing FDV
- (c) The company will consider any risk to an individual or workplace following a disclosure of family and domestic violence and implement a workplace safety plan with specific measures to minimize the risk and protocols for dealing with a crisis situation.

### **Parental Leave**

**40.** (a) Parental Leave is as provided for under the NES.

(b) A permanent employee returning from parental leave may choose to work part time or reduced hours, up to when the child is of school age, with the right to revert to full-time or the previous number of hours at the end of the period.

(c) When returning to work from parental leave the employee will be provided the classification and job role they were performing prior to taking leave.

(e) The company will provide employees who are taking responsibility for permanent/long term care of a child through a permanent care order or equivalent long-term foster arrangement, access to paid and unpaid parental leave in line with employees who adopt a child.

### **SDA Union Rights**

The Company recognises the Union Delegates who are elected by some of the Company's Employees as the on-site representatives of the SDA.

Elected Union Delegates nominated by the SDA to attend, during ordinary working hours, a recognised Union training program may do so on condition that:

- a. The Company receives written notice of nominations from the Union setting out the times, dates, content and venue of the course;
- b. Not more than one Union delegate at one time per store in a year for the Union;

- c. There shall be a cap of unpaid trade union training days equal to the total number of Synergy Subs stores per year.
- d. There shall be a cap of 1 unpaid trade union training day per Delegate.

The SDA will be invited and be able to join team member inductions where the SDA have organised to attend with store management.

Upon authorisation, and the Company having the payroll system that allows for it, the Company will deduct SDA membership dues as levied by the SDA (in accordance with their rules). The dues will be forwarded to the SDA each month along with all necessary information to enable reconciliation of members' accounts.

**Signatures**

\_\_\_\_\_  
Employee Representative Signature  
Signature

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Employee Representative Authority

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

**Witnessed by:**

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employer Authorised Person

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position / Authority

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

**Witnessed by:**

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

## **Schedule A—Work Classifications**

### **Sandwich Artist**

A sandwich Artist means an Employee who is engaged to perform the following duties

- Preparation, assembly, cooking or packing of product for sale;
- The maintenance of the work area at a standard of cleanliness required by the Employer
- The cleaning of cooking utensils, cutlery and glassware;
- The performance of customer service functions, including the taking of orders by any means and the entering of information onto a computer;
- The receipt of monies or other duties involving customer contact, except the delivery of product to the customer outside the restaurant;
- Opening and/or closing the restaurant according to established procedures;
- Completing stocktaking; and
- Accepting deliveries with due care and attention.

### **Shift Supervisor**

Shift Supervisor is an Employee who, in addition to performing the duties of a Sandwich Artist, has the major responsibility on a day to day basis for supervising Sandwich Artists and/or training new Employees or an Employee required to exercise trade skills.

### **Restaurant Manager**

A Restaurant Manager means an Employee who is in charge of a Sandwich Artist.

**Schedule B: Wage Rate Schedule Summary on commencement of the Agreement**

	%	Sandwich Artist	Shift Supervisor	Restaurant Manager
		\$	\$	\$
Age 21 or over	100%	25.15	26.60	27.33
Age 20	91%	22.97	23.98	27.33
Age 19	81%	20.2	21.36	27.33
Age 18	71%	17.73	18.75	27.33
Age 17	61%	15.26	16.13	27.33
Age 16	51%	12.78	13.51	27.33
Age 15 and Under	41%	10.31	10.89	27.33

**Loadings**

	Sandwich Artist	Shift Supervisor	Restaurant Manager
Saturday	25%	25%	25%
Sunday	25%	50%	50%
Public Holiday	125%	125%	125%
Casual	25%	25%	25%
Saturday Casual	50%	50%	50%
Sunday Casual	50%	75%	75%
Monday to Friday 10pm to Midnight	10%	10%	10%
Monday to Friday 10pm to Midnight (Casual)	35%	35%	35%
Monday to Friday Midnight to 6am	15%	15%	15%
Monday to Friday Midnight to 6am (Casual)	40%	40%	40%
Annual Leave Loading minimum	17.50%	17.50%	17.50%

## Schedule C— Supported Wage System

**C.1** This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this Agreement.

**C.2** In this schedule:

**approved assessor** means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

**assessment instrument** means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

**disability support pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (Cth), as amended from time to time, or any successor to that scheme

**relevant minimum wage** means the minimum wage prescribed in this Agreement for the class of work for which an employee is engaged

**supported wage system** (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full Agreement wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: [www.jobaccess.gov.au](http://www.jobaccess.gov.au)

**SWS wage assessment agreement** means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

**C.3 Eligibility criteria**

**C.3.1** Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this Agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

**C.3.2** This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this Agreement relating to the rehabilitation of employees who are injured in the course of their employment.

**C.4 Supported wage rates**

**C.4.1** Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed capacity (clause C.5)	Relevant minimum wage
%	%
10	10
20	20
30	30

<b>Assessed capacity (clause C.5)</b>	<b>Relevant minimum wage</b>
<b>%</b>	<b>%</b>
40	40
50	50
60	60
70	70
80	80
90	90

**C.4.2** Provided that the minimum amount payable must be not less than \$87 per week.

**C.4.3** Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.

**C.5 Assessment of capacity**

**C.5.1** For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

**C.5.2** All assessments made under this schedule must be documented in an SWS wage assessment agreement and retained by the employer as a time and wages record in accordance with the Act.

**C.6 Lodgement of SWS wage assessment agreement**

**C.6.1** All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

**C.6.2** All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the Agreement is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

**C.7 Review of assessment**

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

**C.8 Other terms and conditions of employment**

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this Agreement on a pro rata basis.

## **C.9 Workplace adjustment**

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

## **C.10 Trial period**

- C.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- C.10.2** During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- C.10.3** The minimum amount payable to the employee during the trial period must be no less than \$95 per week.
- C.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- C.10.5** Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause C.5.

## **Schedule D – Work and Care**

The SDA funded a study into retail work: Challenges of Work Family and Care. This report identified the stress, uncertainty and issues employees face in juggling their work and personal commitments. If conditions at work are structured and provide for acknowledgment and acceptance that work is only a part of an employee's life then the balance for an employee will be better. This will provide a workforce that is more engaged, healthier and productive.

The Right to Care is a basic right supported by the Company. Employees will have control over working hours to the maximum extent possible. In scheduling work rosters, the Company will consider the above, in addition to family, study and sporting commitments and the availability of safe transport home.

The rostering clause is to refer to the right under the NES to flexible working arrangements and any dispute about flexible work can be dealt with by the FWC including by arbitration.