

REGISTER OF  
ENTERPRISE AGREEMENTS

ENTERPRISE AGREEMENT NO: EA03/123

**TITLE: Costa's Pty Ltd Flemington Fresh Produce Distribution Centre Clerical Agreement 2003**

I.R.C. NO: IRC3/2482

DATE APPROVED/COMMENCEMENT: 27 May 2003/10 February 2003

TERM: 10 February 2005

NEW AGREEMENT OR  
VARIATION: Replaces EA01/206

GAZETTAL REFERENCE: 20 June 2003

DATE TERMINATED:

NUMBER OF PAGES: 20

**COVERAGE/DESCRIPTION OF**

**EMPLOYEES:** Applies to all Clerical Employees employed by Costa's Fresh Produce Flemington Distribution Centre, Flemington, New South Wales.

**PARTIES:** Costa's Pty Ltd -&- the New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union



**FILED**

8 MAY 2003

**COSTA'S PTY LTD FLEMINGTON  
FRESH PRODUCE DISTRIBUTION CENTRE**

OFFICE OF THE INDUSTRIAL  
REGISTRAR

**CLERICAL AGREEMENT 2003**

**1. Arrangement**

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## 2. PARTIES

- (i) The parties to this award are:

Costa's Pty Ltd

Federated Clerks Union of Australia New South Wales Branch.

## 3. HOURS

- (i) Weekly hours - The ordinary hours of work of employees shall not exceed thirty six hours per week to be worked in accordance with Clause 8 Rosters for seven day week, Monday to Sunday and save for the meal times prescribed, all time between the actual commencing time and the actual ceasing time on any day shall count and shall be paid for as time worked.
- (ii) Commencing time - The commencing time of the ordinary hours of work shall be 6.00am Monday to Sunday.
- (iii) Ceasing time - The times for the cessation of the ordinary hours of work by employees shall be 6.00pm Monday to Sunday.
- (iv) Within the commencing and ceasing times prescribed, respectively, in subclauses (ii) and (iii) of this clause, employees shall be given a regularly starting and ceasing time for each day which shall not be changed except upon not less than seven days notice unless by agreement with the employee or in the event of an emergency.

## 4. AREA, INCIDENCE AND DURATION

- (i) This agreement regulates in whole, the conditions of employment of all clerical employees employed at Costa's Pty Ltd Produce site.
- (ii) This agreement commences from the beginning of the first pay period after 10 February 2003 and shall remain in force for a period until 10 February 2005.

## 5. SHIFT WORK

- (i) Definition of shifts - In this Clause
- (a) "Afternoon shift" means any shift finishing after 6.00pm and at or before midnight.
- (b) "Night shift" means any shift finishing subsequent to midnight and at or before 8.00am and any shift where ordinary hours commence prior to 5.00am.



- (c) Permanent shift means a shift which does not rotate with another shift and which continues for a period of not less than four consecutive weeks.

(ii) Hours, Shift Allowances, Special Rate, Meal Interval

- (a) Notwithstanding any other provisions of this award an employee may be employed upon shifts Monday to Sunday inclusive, in which case the ordinary hours shall not exceed eleven in any one day or thirty six per week or seventy two per fortnight or 144 hours over a four week cycle and shall be worked in accordance with Clause 8 Rosters for a Seven Day Week.
- (b) Times of beginning and ending the shift of any employee may be varied in the event of an emergency or in any case by agreement between the employee and employer or in the absence of agreement by at least one weeks notice given by the employer to the employee.
- (c) A shift worker employed on a shift shall for work done during the ordinary hours of any such shift be paid ordinary rates prescribed by Clause 11, Wages plus the following additional percentage of the rate of pay:

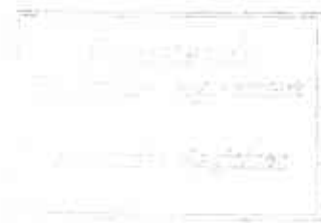
Afternoon Shift .....at the rate of 17.5 per cent  
Night Shift.....at the rate of 27.5 per cent

Allowances in accordance with this clause shall be calculated in multiples of 10 cents, amounts of less than 5 cents being taken to the lower multiple and amounts of 5 cents or more being taken to the higher multiple.

- (d) A shift worker whose rostered day off work coincides with a public holiday shall be paid a days pay additional to his/her weekly wage or have a day added to his/her annual leave or another day allowed off with pay within 28 days after the holiday falls.
- (e) A shift worker whose ordinary working period includes a Saturday, Sunday or holiday as an ordinary working day shall be paid the rates of pay in accordance with Clause 10 Penalty Rates for certain Ordinary Hours:

ie:	Saturday	time and one half
	Sunday	time and three quarters
	Holidays	double time and a half

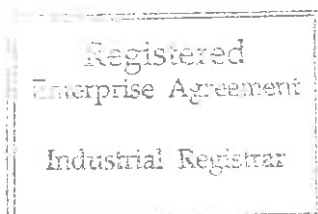
These rates shall be in substitution for and not cumulative upon any shift loadings as prescribed in (c).



- (f) For the purpose of this clause any employee whose ordinary hours of work commences before and continues past midnight shall be regarded as working on a holiday only if the greater number of his/her working hours fall on the holiday, in which case all time worked shall be regarded as holiday work provided that if the ordinary hours worked before and past midnight is equal, all ordinary time worked shall be regarded as time worked on the day on which the shift commenced.
  - (g) Twenty minutes shall be allowed to a shift worker for a meal during each shift before the expiration of five hours. Such meal break shall be counted as time worked.
- (iii) Overtime
- (a) All time worked by a shift worker in excess of the hours provided in paragraph (a) in subclause (ii) of this clause shall be paid at time and one half for the first two hours and double time thereafter. In computing overtime each day shall stand alone.
  - (b) A shift worker required to work overtime in excess of one hour on any shift shall be paid \$8.33 as meal money. If overtime exceeds five hours then a further meal allowance of the same amount shall be paid.
- (iv) Work on a Rostered Day Off
- (a) An employee required to work on a rostered day off shall be paid the rate prescribed in subclause (iii) of this clause.
  - (b) Where work is performed as prescribed in paragraph (a) of this subclause on Sunday or holiday such employee shall be paid a minimum of three hours at the appropriate rate.
- (v) Special rates are not cumulative - The penalties prescribed by this clause are in substitution for and not cumulative upon the shift allowances prescribed in subclause (ii) of this clause.
- (vi) Casual and Part-time shift workers - Casual and part-time shift workers shall receive an hourly shift allowance at the rate of 1/36th of the allowance prescribed in paragraph (c) of subclause (ii) of this clause.

## 6. MEAL TIMES

- (i) An employee who works more than five ordinary hours on any day shall be allowed on such day a meal break of thirty minutes duration. Provided that where the agreement exists between the employer and the employee a meal break of sixty minutes may apply.



- (ii) Provided that meal breaks referred to in subclause (i) of this clause shall be given and taken so that no employee shall work more than five consecutive hours without a meal break.
- (iii) To meet special cases mutual agreements may be made in writing between an employer and his/her employees regarding meal times.

## **7. REST PAUSE**

- (i) When and where it can be arranged conveniently by the employer, each employee who works more than four hours on any day shall be allowed a rest pause of ten minutes.
- (ii) An employee who works more than five hours on any day shall be allowed both a meal break and one rest pause of ten minutes. Provided that where such meal break commences on or before the middle of a shift, then the rest pause shall be taken after the meal break and where the meal break commences after the middle of the shift the rest pause shall be taken before the meal break.
- (iii) An employee who works nine hours or more on any day shall be allowed two rest pauses (each of ten minutes duration) if only one meal break is taken; or one rest pause of ten minutes if two meal breaks are taken.
- (iv) No rest pause shall be given or taken within one hour of the employees commencing or ceasing time or within one hour before or after any meal or crib break.
- (v) A rest pause shall be counted and paid for as time worked.

## **8. ROSTERS FOR A SEVEN-DAY WEEK**

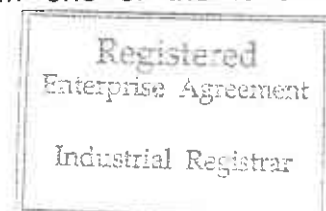
- (i) All full-time and part-time employees shall be rostered their ordinary hours of work on any 5 days of the week Monday to Sunday inclusive.
- (ii) At least once every two weeks an employee shall be granted two consecutive days off which shall not include the rostered day off. Rostered day off means the day off arising from the working of ordinary hours in a 19-day-4 week cycle.
- (iii) There shall not be more than one long day in any week. A long day is defined as a day exceeding nine ordinary hours of work. Provided that by mutual agreement additional long days may apply.
- (iv) The maximum number of ordinary hours which may be worked on any day shall be 10 hours.

- (v) Each full-time weekly employee shall be rostered so that the maximum number of hours that shall constitute an ordinary week's work without the payment of overtime shall not exceed on average 36 per week and may be worked in any of the following forms.
- (a) 36 hours in on week;
  - (b) 72 hours in two consecutive weeks;
  - (c) 108 hours in three consecutive weeks;
  - (d) 144 hours in four consecutive weeks.
- (vi) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive days. An employee other than a casual employee who works so much overtime between the termination of his/her ordinary work on one day and the commencement of his/her ordinary work on the next day that he/she has not had at least ten consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until he/she is released from duty, without loss of pay, for ordinary working time occurring during such absence. If on the instruction of the employer such an employee resumes or continues work without having had such ten consecutive hours off duty, he/she shall be paid at double rates until he/she is released from duty for such period and he/she then shall be entitled to be absent until he/she has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (vii) Where mutual agreement exists between the employer and the employee employees can bank up to two RDO's for special circumstances. The employee shall give the employer one week's notice prior to taking a RDO on a date suitable to the employer.
- (viii) Where specific agreement exists between an employer and an employee, the employee may be worked on the basis of:
- Not more than 4 hours work on one day in each two-week cycle;
  - Not more than 6 hours work on one day per week.

## 9. ROSTERED DAY OFF FALLING ON A HOLIDAY

Where an employee's Rostered Day Off falls on a day prescribed as a holiday in subclause (i) of Clause 20, Holidays, the employee shall be paid by mutual agreement between the employer and employee in one of the following methods.

- (i) Payment of an additional day's wages.



- (ii) Addition of one day to the employee's annual holidays.
- (iii) Another day may be allowed off with pay to the employee within twenty-eight days after the holiday falls.

**NOTE:** For the purposes of this clause "day" means the average number of hours in the employee's normal roster cycle worked by the employee prior to the day on which the public holiday falls.

#### **10. PENALTY RATES AND LOADINGS FOR CERTAIN ORDINARY HOURS**

- (i) All ordinary hours worked by full-time and part-time employees on a Saturday shall be paid for at the rate of time and one half.
- (ii) All ordinary hours worked by full-time and part-time employees on a Sunday shall be paid for at the rate of time and three quarters.
- (iii) Casual employees working on a Saturday shall be paid time and one half for all ordinary hours worked.
- (iv) Casual employees working on a Sunday shall be paid time and three quarters for all ordinary hours worked.
- (v) Penalty rates outlined in (iii) and (iv) in this clause are in substitution for and not in addition to casual loading as outlined in Clause 16. Casual Employees.
- (vi) Casual employees will also receive the 1/12th Annual Leave Loading in addition of the penalty loading outlined in (iii) or (iv) in this clause.
- (vii) The penalties and loadings prescribed in this clause shall not be taken into consideration in calculating any payment for overtime or public holidays or for any period of sick leave.

#### **11. WAGES**

- (i) Adults - The minimum rates of pay for ordinary hours shall be as follows:

Clerk - Full Time	\$608.20 per week - effective from registration
	\$626.45 per week - effective 10 February 2004

- (ii) Where an employee is a qualified first aid attendant and is employed to carry out duties of a qualified first aid attendant he/she shall be paid the sum of \$2.77 per day (\$13.83 per week).

#### **12. FLEXIBILITY OF WORK**

- (ii) Employees shall take all reasonable steps to achieve quality, accuracy and completion of any job or task assigned to the employee.



- (iii) Employees shall not impose any restrictions or limitations on a reasonable review of work methods or standard work times.

### **13. COMMITMENT TO TRAINING AND CAREERS**

- (i) The parties acknowledge that varying degrees of training are provided to employees both via internal on the job training and through external training providers.
- (ii) The parties commit themselves to continuing such training as is regarded by them as appropriate and improving training in cases where this is required.
- (iii) It is agreed that appropriate training is available for all employees and the parties agree to co-operate in encouraging both employers and employees to avail themselves of the benefits to both from such training.

### **14. MIXED ENTERPRISE**

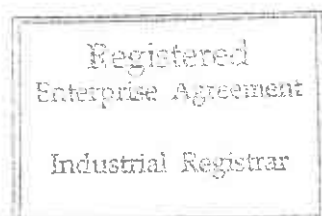
- (i) A mixed enterprise is defined as an establishment where the primary operation is not covered by this award but where there is an on-site shop which employs less than 25 per cent of the total number of employees in the enterprise.
- (ii) For the purpose of increasing productivity, flexibility and efficiency in mixed enterprises, as well as enhancing opportunities for employees, broad banding may extend, by agreement between an employer and an employee, to allow the employee to perform any work in a mixed enterprise within the scope of their skills and competence. Discussion shall take place at the wider range of tasks, removal of demarcation barriers and participation of employees in additional training.
- (iii) Subject to the provisions of the previous paragraph, employees in a mixed enterprise shall not impose or continue to enforce demarcation barriers between the work of employees provided that it is agreed that the work lies within the scope of the skill and competence of the employee concerned.

### **15. ENTERPRISE CONSULTATIVE MECHANISM**

There shall be established a consultative mechanism and procedures for consultation and negotiation on matters effecting efficiency and productivity.

### **16. CASUAL EMPLOYEES**

- (i) Casual employees shall be paid an hourly rate equal to the appropriate weekly rate divided by thirty-six plus 15 per cent calculated to the nearest half cent with a minimum payment on any one day of four hours.



- (ii) Casual employees will also receive the 1/12th Annual Leave Loading in addition to the penalty loading outlined in Clause 10 paragraph (iii) and (iv).

## 17. PART-TIME EMPLOYEES

- (i) The ordinary hours of work, exclusive of meal times, shall be the same as those prescribed for weekly employees but shall not, in any case, be less than nine hours per week nor more than thirty two hours per week.
- (ii) Part-time employees shall be paid an hourly rate equal to the appropriate weekly rate divided by thirty six.
- (iii) The provisions of this award with respect to sick leave, holidays and Saturday and Sunday penalties shall apply to all part-time employees.
- (iv) Notwithstanding the provisions of subclause (i), (ii), and (iii) the union and the employer may agree, in writing to observe other conditions in order to meet special cases.

## 18. OVERTIME

- (i) An employee shall be paid overtime for all work -
- (a) In excess of -
- (i) 36 hours per week; or
- (ii) an average of 36 hours per week in accordance with Clause 7, Rosters for Seven-day Week;
- (iii) 5 days per week
- (iv) in excess of 9 hours on any one day. Provided that on one day per week up to ten hours may be worked without the payment of overtime. By mutual agreement additional days of up to eleven hours may be worked without the payment of overtime.
- (b) Before his/her regular commencing time on any one day.
- (c) After his/her regular ceasing time on any one day.
- (ii) The rate of overtime shall be time and one half for the first two hours on any one day and at the rate or double time thereafter.
- (iii) Any portion of an hour less than thirty minutes shall be reckoned as thirty minutes and any portion of an hour over thirty minutes shall be reckoned as one hour.
- (iv) Notwithstanding anything contained in Clause 3, Hours, and subclause (i) of this clause, employees whose fixed hours of employment are less than



thirty-six hours per week may be worked without the payment of overtime up to two hours after the fixed finishing time on any one day or not more than four days in any calendar month or eight days in any two consecutive calendar months; provided that, in any case, an employee shall not be required to work more than nine hours on any one day provided that on one day per week up to eleven hours may be worked (by mutual agreement additional days of up to eleven hours may be worked) or more than thirty-six hours in any one week without the payment of overtime: provided further that such nine hours or eleven hours shall be worked between 6.00am and 6.00pm Monday to Sunday.

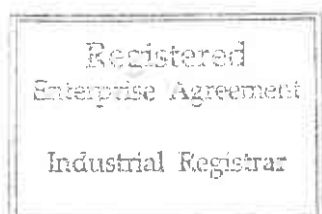
- (v) By mutual agreement the rate of overtime may be time off in lieu of overtime provided that:
  - (a) Time off shall be calculated at the penalty equivalent.
  - (b) The employee is entitled to a fresh choice of payment or time off on each occasion overtime is worked.
  - (c) Time off must be taken within one calendar month of the working of the overtime or it shall be paid out.

## 19. MEAL ALLOWANCE

An employee who works overtime in excess of one hour shall be paid \$9.85 meal allowance provided the employee was not given reasonable notice of the overtime required. If the employee is contacted prior to the commencement of the shift and agrees to work the overtime no meal allowance will be paid.

## 20. HOLIDAYS-PICNIC DAY

- (i) The following day or days observed as such shall be holidays: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day and all other days proclaimed as public holidays for the State.
- (ii) Every employee allowed a holiday specified herein shall be deemed to have worked in the week in which the holiday falls the number of ordinary working hours that he/she would have worked had the day not been a holiday.
- (iii) Work done on any of the above holidays shall be paid for at the rate of double time and one-half with a minimum payment of three hours.
- (iv) (a) In addition to the holidays prescribed in subclause (i) of this clause, full-time employees shall be entitled to an additional holiday without loss of pay and this day shall be known as Market Picnic Day.



- (b) This day shall be the day the Flemington Markets hold the annual Market Picnic Day. By mutual agreement between the employee and the employer an alternative day can be arranged.
- (c) Should an employee resign prior to taking a Picnic Day then the Picnic Day entitlement shall be taken during the period of notice.

## 21. TIME AND PAYMENT OF WAGES

- (i) All wages shall be paid weekly by EFT. Such payment shall be made on the same day of each week which shall not be Friday, Saturday or Sunday, except as hereinafter provided, and shall be made up to and including at least the third day preceding the day of payment; provided that in a week where an award holiday falls on the day on which wages are usually paid preceding the award holiday. Other arrangements regarding payment may be made by agreement between the employer and the union.
- (ii) Subject to the next succeeding subclause overtime shall be paid not later than a week from the payday succeeding the day on which it was earned.
- (iii) Where employment is terminated an employee shall be paid forthwith all wages due and shall be paid all overtime and other monies due within seven days of the date of the termination of the employment.
- (iv) In the event of an employer not paying the said overtime and other monies due at the time on which he/she has undertaken to pay them, the employer shall reimburse the employee all the expenses he/she has incurred in attending to collect the amounts due to him/her.
- (v) 60 cents will be paid per pay to cover costs associated with the payment of wages by EFT. *This increase will take effect from 27 May 2004*
- (vi) Current practice of payment will be maintained for employees employed prior to 31 July, 1995.

## 22. TERMINATION OF EMPLOYMENT

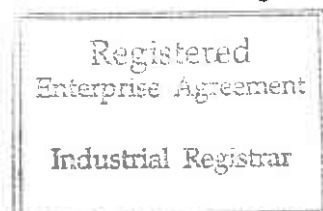
- (i) Except in the case of misconduct justifying instant dismissal employment of an employee may be terminated by one week's notice on either side or by the payment or forfeiture as the case may be of one week's pay in lieu of such notice. Provided that during the first month of an employee's engagement his/her employment may be terminated by either side by a moment's notice: provided further that the employment of an employee shall not be terminated except for misconduct whilst legitimately absent from duty on accrued sick leave.
- (ii) Subject to the provision of Clause 25 Absence Without Leave an employee whose employment is terminated by the employer on the business day

preceding a holiday or holidays but this provision shall not apply to an employee employed for two weeks or less. In the event of Christmas Eve falling on a Saturday or a Sunday any employee, other than those employed for two weeks or less, whose employment is terminated by the employer on the preceding Friday, otherwise than for misconduct, shall be paid for the Christmas holidays. Should an employee be transferred from the regular to the casual staff during the week preceding the Christmas holidays, he/she shall be paid for such holidays provided that an employee engaged on or after 1 December in any year whose employment finishes before Christmas Day by the same employer is not entitled to payment for the Christmas holidays.

- (iii) An employee who has been employed for not less than one month, on leaving or being discharged shall, upon request, be entitled to a statement in writing containing the date when the employment began and the date of its termination. The statement shall be the property of the employer and shall be returned to him/her, unnoted by any subsequent employer, within seven days of the engagement.

**23. TERMINATION OF EMPLOYMENT CAUSED BY MECHANISATION AND/OR TECHNOLOGICAL CHANGE**

- (i) Notwithstanding the provisions of Clause 23, Termination of Employment, where, on account of the introduction or proposed introduction by an employer of mechanisation or technological changes in the industry in which he/she is engaged, the employer proposes to terminate the employment of an employee who has been employed by him/her for the preceding twelve months, he/she shall give the employee three months notice of the termination of his/her employment; provided that, if the employment of such an employee is terminated and the employer fails to give such notice in full, (a) he/she shall pay the employee at his/her ordinary rate of pay specified for the employee's classification in Clause 11, Wages, for a period equal to the difference between three months and the period of the notice given, and (b) the period of notice required by this clause to be given, shall be deemed to be service with the employer for the purpose of the Long Service Leave Act 1955, the Annual Holidays Act 1944, or any Act amending or replacing either of those Acts: and provided further that the right of the employer summarily to dismiss an employee for the reasons specified in the said Clause 24 shall not be prejudiced by the fact that the employee has been given notice pursuant to this clause of the termination of his/her employment.
- (ii) Due to the introduction of mechanisation or technological changes which may result in one or more employees becoming redundant, the employer shall give notification in accordance with this clause at least six months before the introduction of such mechanisation or technological changes and if it is not practicable for the employer to give such notifications at least six months before such introduction, then he/she shall give the notifications as early as is practicable for him/her to give them.



The notifications to be given in accordance with this clause are notifications in writing to the Industrial Registrar, the Director of the Vocational Guidance Bureau, the Director of Technical and Further Education, the Secretary, Federated Clerks' Union of Australia, New South Wales Branch and the Employment Section of the Department of Industrial Relations of the number of persons who may become redundant on account of the introduction or proposed introduction or proposed introduction of mechanisation or technological changes in the industry in which he/she is engaged and of their occupations and of the approximate date when their employment is likely to terminate on account of such introduction.

#### 24. ABSENCE WITHOUT LEAVE

An employee absent without leave on the day before or the day after any award holiday shall be liable to forfeit wages for the day of absence as well as for the holiday except where an employer is satisfied that the employee's absence was caused through illness, in which case wages shall not be forfeited for the holiday; provided that an employee absent on one day only, either before or after a group of holidays, shall forfeit wages only for one holiday as well as for the period of absence.

#### 25. SICK LEAVE

(i) An employee who, subject to subclause (ii) of this clause, is unable to attend for duty during their ordinary working hours by reason of personal illness or personal incapacity not due to their own serious and wilful misconduct, shall be entitled to be paid at ordinary-time rates of pay for the time of such non-attendance subject to the following:

- (a) An employee shall not be entitled to paid leave of absence for any period in respect of which they are entitled to workers compensation.
- (b) An employee shall not be entitled during their first year of continued employment with an employer to sick pay for more than 36 ordinary hours, and during the second or subsequent years of continued employment with an employer to sick pay for more than 72 ordinary hours.

Any period of paid sick leave allowed by the employer to an employee in any year of continued employment shall be deducted from the period of sick leave which may be allowed or may be carried forward from year to year.

- (c) The rights under this clause shall accumulate from year to year so long as their employment continues with the employer whether under this or any other award so that any part of the entitlement prescribed in paragraph (b) of this subclause which has not been allowed in any year may be claimed by the employee and shall be allowed by the employer, subject to the conditions prescribed by this clause, in a subsequent year of such



continued employment. Provided that in any year an employee shall not be entitled to take more than 380 hours sick leave.

- (ii) The granting of sick leave shall be subject to the following conditions and limitations:
  - (a) The employee shall, within twenty-four hours of the commencement of such absence, inform the employer of their inability to attend for duty and, as far as possible, state the nature of the illness or injury and the estimated duration of the absence.
  - (b) They shall furnish to the employer such evidence as the employer reasonably may desire that they were unable, by reason of such illness or injury, to attend for duty on the day or days which sick leave is claimed.
  - (c) A part-time employee shall not be entitled in any one year to leave in excess of the number of hours in the normal working week of such employee, but any leave not taken in any year shall accumulate proportionately and shall be available to such employee under the same conditions in other respects as prescribed by paragraph (b) of subclause (i) of this clause.
  - (d) Payment for any absence on sick leave in accordance with this clause during the first three months of employment of an employee may be withheld by the employer until the employee completes such three months of employment at which time the payment shall be made.
- (iii) For the purpose of this clause continuous service shall be deemed not to have been broken by -
  - (a) any absence from work on leave granted by the employer; or
  - (b) any absence from work by reason of personal illness, injury or other reasonable cause proof whereof shall, in each case, be upon the employee.
- (iv) Service before the date of coming into force of this clause shall be counted as service for the purpose of qualifying thereunder.
- (v) For the purpose of this clause the word year shall mean a period of twelve months commencing on the day on which the employment commenced.

## 26. JURY SERVICE

An employee shall be allowed leave of absence during any period when required to attend for jury service.

During such leave of absence, an employee shall be paid the difference between the jury service fees and the employee's award rate of pay as if working.

An employee shall be required to produce to the employer proof of jury service fees received and proof of requirement to attend and attendance on jury service and shall give the employer notice of such requirements as soon as practicable after receiving notification to attend for jury service.

## 27. ANNUAL HOLIDAYS

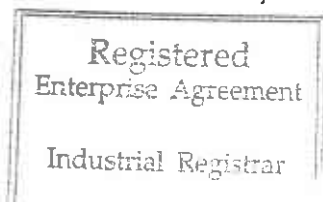
- (i) Annual Holidays - See Annual Holidays Act 1944. Provided that an employee shall be entitled to not less than a total period of annual leave equivalent to 144 ordinary hours of work in the case of full-time employees and pro rata thereof in the case of part-time employees.
- (ii) In addition to the leave provided by this clause, seven day shift workers, that is shift workers who work on a rotating roster which includes Sundays and Holidays shall be allowed one weeks extra leave; provided that if during the year of employment an employee has only served a portion of it as a seven day shift worker the additional leave shall be one day for every thirty six ordinary shifts worked as a seven day shift worker. In this clause reference to one week and one day shall include holidays and non - working days.

## 28. ANNUAL HOLIDAYS LOADING

- (i) In this clause the Annual Holidays Act 1944 is referred to as "the Act".
- (ii) Before an employee is given and takes their annual holiday or, where by agreement between the employer and employee the annual holiday is given and taken in more than one separate period, then before each of such separate periods the employer shall pay their employee a loading determined in accordance with this clause.

(NOTE: The obligation to pay in advance does not apply where an employee takes an annual holiday wholly or partly in advance-see subclause (vi).

- (iii) The loading is payable in addition to the pay for the period of holiday given and taken and due to the employee under the Act.
- (iv) The loading is the amount payable for the period at the rate per week of 171/2 per cent of the appropriate ordinary weekly time rate of pay prescribed by Clause 11, Wages and Clause 17, Part-time Employees, for the classification in which the employee was classified when the loading is paid. Such wage shall also include payments under the said Clause 10 where applicable, but shall not include any other allowances, penalty rates, overtime rates or any other payments prescribed by this award.
- (v) No loading is payable to an employee who takes an annual holiday wholly or partly in advance: provided that, if the employment of such an employee continues until the day when they would have become entitled under the Act to





and annual holiday, the loading then becomes payable in respect of the period of such holiday and is to be calculated in accordance with subclause (iv) of this clause applying the rates of wages payable on that day.

- (vi) (a) When the employment of an employee is terminated by his/her employer after 1 February 1974 for a cause other than misconduct and at the time of the termination the employee has not been given has not taken the whole of an annual holiday to which he/she became entitled after 1 February 1974 he/she shall be paid a loading calculated in accordance with subclause (v) for the period not taken.
- (b) Except as provided by paragraph (a) of this subclause, no loading is payable on the termination of an employee's employment.
- (vii) This clause extends to an employee who is given and takes an annual holiday and who would have worked as a shift worker if they had not been on holiday; provided that, if the amount to which the employee would have been entitled by way of shift work allowances and weekend penalty rates for the ordinary time (not including time on a public or special holiday) which the employee would have worked during the period of the holiday exceeds the loading calculated in accordance with this clause, then that amount shall be paid to the employee in lieu of the loading.

## 29. LONG SERVICE LEAVE

See Long Service Leave Act 1955.

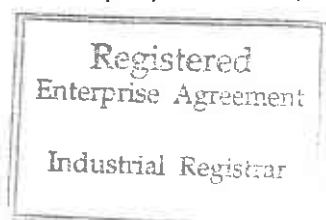
## 30. RIGHT OF ENTRY

See Section 299 of the Industrial Relations Act 1996.

## 31. DISPUTE SETTLING PROCEDURE

Subject to the Industrial Relations Act 1996 grievances or disputes shall be dealt with in the following manner:

- (a) The employee(s) is required to notify (in writing or otherwise) the employer as to the substance of the grievance, requesting a meeting with the employer for bilateral discussions and state the remedy sought. This meeting shall take place within two working days of the issue arising (weekends and holidays excepted).
- (b) If agreement is not reached, the matter shall then be referred by the employer to a higher authority (where this exists) no later than three working days after the period stated in subclause (a) of this clause (weekends and holidays excepted). At the conclusion of the discussion, the employer must provide a response to the employee's grievance if the



matter has not been resolved, including reasons (in writing or otherwise) for not implementing any proposed remedy.

- (c) If the matter is still not settled within a reasonable period of time, it may be referred/notified to the Industrial Relations Commission for settlement by either party.
- (d) While a procedure is being followed, normal work must continue.
- (e) The employer may be represented by an industrial organisation of employers and the employee(s) may be represented by an organisation of employees for the purposes of each step of the procedure.

### 32. COMPASSIONATE LEAVE

An employee shall, on the death of a spouse or defacto spouse including same sex partner, father, mother, parent-in-law; grandparent, child, stepchild or grandchild, brother or sister, be entitled on notice leave up to and including the day of the funeral of such relative and such leave shall without deduction of pay for a period not exceeding the number of hours worked by the employee in three ordinary day's work. Proof of such death shall be furnished by the employee to the satisfaction of the employer, together with proof of attendance in the case of a funeral outside Australia.

Where the death of a named relative herein occurs outside Australia and the employee does not attend the funeral, they shall be entitled to one day only, unless they can demonstrate to their employer that additional time up to a period of three days is justified.

Provided, however, that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave. For the purposes of this clause, the words "wife" or "husband" shall not include a wife or husband from whom the employee is separated but shall include a person who lives with the employee as a defacto wife or husband, as the case may be.

### 33. FAMILY LEAVE

#### (i) Use of Sick Leave

- (a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use up to 5 days sick leave per annum, non cumulative, in order to care for such persons when they are ill.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.

(c) The entitlement to use sick leave in accordance with this sub-clause is subject to:

- (i) The employee being responsible for the care of the ill person concerned and
- (ii) The person concerned being either a member of the employees immediate family or a member of the employee's household.
- (iii) The term 'immediate family' includes:

A spouse or defacto spouse including same sex partners who live in the same household and a child, parent, grandparent, grandchild, sibling or relative of the employee or spouse of the employee who lives in the same household.

(d) The employee shall wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the sick person and their relationship to the employee, their reasons for taking such leave and the estimated length of absence.

(ii) Unpaid Leave for Family Purposes

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

(iii) Annual Leave

(a) Notwithstanding the provision of this clause, an employee may elect, with the consent of the employer, to take annual leave in single day absences not exceeding five days in any calendar year at a time or times agreed between them.

(b) An employee and an employer may agree to defer any payment of the annual leave loading in respect of single day absences, until at least 5 consecutive annual leave days are taken.

(iv) Time off in Lieu for Overtime

(a) An employee may elect, with the consent of the employer, to take time off in lieu of overtime at a time or times agreed with the employer.

(b) Overtime taken as time off during ordinary hours shall be taken at the ordinary time rate, that is an hour worked.

(c) An employer shall, if requested by the employee provide payment, at the rate provided for the payment of overtime in the award, for any overtime worked under paragraph (iv) (a) of this sub-clause where such time has not been taken within four weeks of accrual.



## (v) Make-up Time

An employee may elect, with the consent of their employer to work make-up time under which the employee takes time off ordinary hours and works those hours at a later time, during the spread of ordinary hours provided in the award.

## (vi) Grievance Procedure

In the event of any dispute arising in connection with this clause, such a dispute shall follow the procedures as outlined in Clause 32, Dispute Settlement Procedures.

**34. TRAVELLING EXPENSES**

When an employee is required to temporarily transfer from one site to another and this site requires the employee to travel further than normal they will be reimbursed for the extra kilometres travelled.

A car allowance of 53 cents per kilometre will be paid.

**35. REDUNDANCY**

See Clause 39 Redundancy, Clerical and Administrative Employees (State) Award.

**36. ANTI-DISCRIMINATION**

- i) It is the intention of the parties bound by this award to seek to achieve the object in Section 3(f) of the Industrial Relations Act, 1996 to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, disability, homosexuality, transgender identity and age.
- ii) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award, the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make an application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- iii) Under the Anti-Discrimination Act, 1977 it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination and harassment.
- iv) Nothing under this clause is to be taken to affect:




- (a.) Any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b.) Offering or providing junior rates of pay to persons under 21 year of age;
  - (c.) Any act or practice of a body established to propagate a religion which is exempted under Section 56(d) of the Anti-Discrimination Act, 1977;
  - (d.) A party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- v) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

**37. SIGNATORIES TO AGREEMENT 2003**

**Acknowledgement of 2003 Agreement**

For and on behalf of  
COSTA'S PTY LTD

  
\_\_\_\_\_  
Geoffrey Norman  
Divisional Manager

  
\_\_\_\_\_  
Simon Powdrill  
Distribution Centre Operations Manager

Date: 13. 3. 03

For and on behalf of the  
Federated Clerks Union  
of Australia,  
New South Wales Branch

  
\_\_\_\_\_  
Michael Want  
State Secretary - FCU - NSW

  
\_\_\_\_\_  
Derek Margerison  
Organiser - FCU - NSW

Date: 3. 3. 2003

