



**VEOLIA PORT STEPHENS
RESIDENTIAL AGREEMENT 2023**

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VEOLIA PORT STEPHENS RESIDENTIAL AGREEMENT 2023



Title

This enterprise agreement will be referred to as the Veolia Port Stephens Residential Agreement 2023.

1. Definitions

Term	Meaning
the Act	<i>Fair Work Act 2009 (Cth)</i>
the Agreement	<i>Veolia Port Stephens Residential Agreement 2023</i>
the Award	<i>Waste Management Award 2020</i>
the Company	Veolia Recycling & Recovery Pty Ltd (ACN 002 902 650)
the Council Contract	The Contract between Veolia and Port Stephens Council to provide residential municipal collection services.
the Employees	Employees of Veolia Recycling & Recovery Pty Ltd based at the Port Stephens Residential Service Centre who perform duties in relation to the Port Stephens Council Contract for Kerbside Collections and are employed within the classifications set out in the Classification Table in Schedule 1 .
the FWC	Fair Work Commission
Industrial Rights	Awareness and understanding of the conditions and obligations that an employee would be entitled to under an applicable award, enterprise agreement, Fair Work Act and other legislated matters of employment.
NES	The National Employment Standards, as set out in the Act and amended from time to time.
RDO	Rostered Day Off
Standard Rates	The minimum hourly pay rates set out in Schedule 1 of the Agreement
the TWU	Transport Workers' Union of Australia (NSW Branch), 22 John Hines Avenue, Minchinbury, NSW 2770
the Service Centre	Port Stephens Residential Service Centre

2. Parties Bound

The Agreement is made pursuant to the Act. The Agreement binds and covers the following Parties:

- the Company;
- the Employees; and
- the TWU.

3. Commencement and Duration

This Agreement comes into operation seven (7) days after it is approved by the FWC under section 186 of the Act and will remain in force until its nominal expiry date of 31 May 2027.

The pay rates specified in **Schedule 1** of this Agreement will apply from when the Agreement comes into operation.

4. Relationship to the Award

This Agreement incorporates the terms contained in the Award.

Where there is any inconsistency between this Agreement and the Award, the provisions of this Agreement shall apply to the extent of any inconsistency.

Disputes regarding the interaction of the Award and this Agreement or over the application of the Award or this Agreement shall be dealt with in accordance with the dispute resolution procedure contained at **Appendix 3** of this Agreement. To avoid doubt, **Appendix 3** of the Agreement supersedes the dispute resolution clause contained in the Award.

5. No Further Claims

There shall be no further claims in respect of the terms and conditions of this Agreement made during the currency of this Agreement. This Agreement supersedes and replaces all previous agreements made between the Company and Employees.

6. Commitment

By entering this Agreement, the Company and the Employees hereby make a commitment to:

- enhance the productivity and efficiency of the Company's residential operations;
- train the Employees in the Industrial Rights, work health and safety and vocational skills;
- engage and utilise Employees to their full capacity;
- ensure that all employment and labour hire agencies pay site rates and abide by all lawful requirements (including but not limited to work health and safety).

7. Induction Training

The Company will promote vocational training, occupational health and safety training, safer work practices and other industrial entitlements.

The Company recognises its responsibility to provide a safe and healthy workplace for its Employees and all other persons attending sites and accordingly agrees to train all Employees covered by this Agreement in accordance with this clause.

8. Classifications

Employees will be graded according to the classifications listed in **Schedule 1**.

9. Wage Rates and Increases

The Standard Rates of pay are set out in **Schedule 1**.

At no time shall the wages drop below the Federal Minimum Wages set by FWC or the corresponding wage rates set out in the Award.

The Standard Rates incorporate the following increases:

- 01 July 2023 – 10%
- 01 July 2024 – 4%
- 01 July 2025 - 4%
- 01 July 2026 – 3%

For clarity, the industry allowance as provided in the Award is incorporated into the Standard Rate.

Employees will be paid on the basis of the highest classification level worked on each day.

Employees are not entitled to any additional monetary entitlements under the Award or other relevant industrial instrument including overtime, penalty rates, allowances and annual leave loading except as set out in this Agreement.

10. Payments of Wages

All Employees will be paid by Electronic Funds Transfer into their nominated bank account. Wages will be paid into Employees' nominated bank account(s) weekly on Wednesdays.

11. Types of Employment

The Company will consider length of service, performance, productivities, relevant competencies, and personal circumstances when rostering Employees engaged under the following arrangements:

11.1 Full-time Employees

The ordinary hours of work for full-time employees will be an average of 38 hours per week to be worked within a work cycle not exceeding 28 consecutive days.

The ordinary hours of work must not exceed 8 hours per day and are to be worked continuously (except for meal breaks) on Monday to Friday between the hours of 4.00 am and 5.00 pm.

11.2 Part-time Employees

Part-time Employees will be entitled to on a pro-rata basis the same terms and conditions under the Agreement as full-time Employees and will have clearly defined minimum hours of work.

11.3 Casual Employees

Provisions relating to Casual Employees are included in the Award. This clause supplements the Award in relation to casual loading on overtime hours.

A Casual Employee while working ordinary hours will be paid the relevant standard rate in **Schedule 1** plus a casual loading of 25%.

A Casual Employee while working overtime or outside of ordinary hours will be paid the relevant standard rate in **Schedule 1** plus a loading of 10% and any additional overtime penalty rates.

Casual Employees will be engaged for a minimum of four (4) hours.

12. Casual Conversion

a) A casual Employee who has been engaged by the Company on a regular and systematic basis for a sequence of periods of employment under this agreement during a period of six (6) months has the right to request to have their contract of employment converted to permanent employment.

b) The Company must give a casual Employee who has been engaged by the Company on a regular and systematic basis for period of six (6) months, notice in writing of their rights under clause 12(a) within four (4) weeks of that right accruing.

c) The Employee retains their right to request permanent employment under clause 12(a) even where the Company fails to comply with clause 12(b).

d) A casual Employee who does not, within four (4) weeks of receiving written notice, request to convert their casual employment to permanent employment will be deemed to have elected not to convert to permanent employment.

e) Any casual Employee who has received notice under clause 12(b), or who has accrued the right to such notice under clause 12(b), after the notice is given or the expiry of the time for giving such notice, has four (4) weeks' to request in writing to the Company that a desire to convert their casual employment to permanent employment. Within four (4) weeks of receiving such notice, the Company must either consent to or refuse the request but must not unreasonably refuse any request.

f) A casual Employee who has worked on a full-time basis throughout the period of casual employment with the Company has the right to request to convert their employment to full-time permanent employment, and a casual Employee who has worked on a part-time basis throughout the period of casual employment with the Company has the right to request to convert their employment to part-time permanent employment, working the same number of hours and times of work as previously worked, unless other arrangements are agreed upon between the Company and Employee.

g) Subject to clause 12(f) where a casual Employee has elected to convert to permanent employment, the Company and the Employee must discuss and agree upon:

- i. whether the Employee will become a full-time or a part-time Employee; and
- ii. if it is agreed that the Employee will become a part-time Employee, the number of hours and the pattern of hours that will be worked.

h) A casual Employee who has requested to convert to permanent employment in accordance with this clause may request to revert to casual employment. In these circumstances, any reverting to casual employment is conditional upon agreement in writing with the Company. If such a conversion is required, the Company may request that the Employee resign from their permanent employment with the Company before being re-employed on a casual basis, subject to law.

13. On-Hire Labour

In the event that the Company needs to engage on-hire labour from time to time to meet operation requirements of the business, the Company shall take all reasonable steps to ensure that pay-rates and conditions which are consistent and no less favourable to the benefits provided to Employees covered by the Agreement are applicable to on-hire labour performing work for the Service Centre.

The Company will provide information regarding rates of pay, entitlements and benefits under the Agreement that is necessary to ensure that third-party labour hire companies are able to provide such benefits and rates of pay to individuals performing on-hire labour duties for the Company.

14. Shift Work

Shift Work is defined and will be paid in accordance with the Award.

15. Overtime

Overtime penalty rates will be paid in accordance with the Award.

Where operational requirements permit (e.g. compliance with fatigue legislation, efficiency, cost, etc.) the Company will engage and utilise where practical full time employees to their full capacity before casual or part time employees.

16. Meal Breaks

Regular and overtime meal breaks are to be taken in accordance with the Award.

Meal times will be taken in accordance with individual needs and operational requirements. Employees agree to be flexible when taking meal breaks.

Each Employee will take a meal break each day they work. Meal breaks will be of duration of no more than 30 minutes.

Staggered meal breaks, commencement times and periods of lunch breaks will be determined between the Company and Employees, depending on operational requirements.

17. Meal Allowance

Meal allowances will be paid in accordance with the Award.

An employee who is required to work overtime for two hours or more will be paid a meal allowance.

18. Rostered Days Off

- a) Full-time Employees will be rostered to work 19 days over a four week period and will be entitled to one RDO during the four week period.
- b) An RDO may be taken at a time agreed between the Employee and the Company taking into account pre-approved annual leave and operational requirements of the Company.
- c) A maximum of 10 RDO's may be accumulated, after which the Company may direct the Employee to take the accumulated days or the RDO to be paid out provided a minimum of ten (10) remain.
- d) Employees may elect to cash out or salary sacrifice into their elected superannuation fund accrued RDO's in excess of ten (10). The Employee must submit in writing to the Company if they elect to cash out or salary sacrifice accrued RDO's. This can be done throughout the calendar year at a mutually acceptable time by agreement between the Employee and the Company.
- e) RDOs may be paid out (at ordinary time rates) by agreement between the Company and the Employee provided.
- f) The Company may require an Employee to work on an RDO due to operational requirements and substitute another day off for the RDO. An Employee may change his or her RDO by agreement with the Company with at least 48 hours' notice.
- g) If an Employee is absent on an RDO when a family member dies, he or she will not be entitled to compassionate leave for that day nor will the Employee's entitlement to compassionate leave be reduced.

- h) An Employee will not accrue an entitlement towards an RDO during any period that the Employee is absent on:
- i. annual leave;
 - ii. personal/carer's leave in excess of 10 days;
 - iii. long service leave;
 - iv. workers compensation for more than five days;
 - v. leave without pay; or
 - vi. any other absence from the workplace which is unpaid or unauthorised.

19. Public Holidays

Employees will be entitled to gazetted public holidays or any additional substituted holiday in accordance with the NES.

If Employees work on a public holiday, the penalty rate provisions in the Award shall apply.

20. Annual Leave

The Company may convert the annual leave entitlement in s.87 of the Act to an hourly entitlement for administrative ease (i.e. 152 hours for a full-time Employee entitled to four weeks annual leave, per annum). The Company may direct an Employee to take up to a quarter of his or her accrued unused annual leave if the Employee has accrued an unused annual leave balance of more than eight weeks (40 days) at any time, subject to applicable law. Annual leave may be taken in such periods as mutually agreed between the Company and the Employee.

Unused annual leave that is accrued may be cashed out at the rate of 100% of the accrual on an annual basis under the following conditions:

- Minimum of 4 weeks' must remain after unused annual leave payment.
- Payment will only be made at the written request of Employees.

Annual Leave Loading will be provided as per the Award.

21. Personal/Carers Leave

The Company will provide personal/carer's leave entitlements in accordance with the NES. This clause supplements the NES in relation to personal/carer's leave entitlements.

The Employer may require an Employee to take personal leave and leave the workplace if the Employer considers that the Employee is unfit to perform the Employee's duties in a proper and safe manner.

The Employee must give the Employer notice that the Employee is (or will be) absent from his or her employment because of a personal illness or injury of the Employee or because of carer's leave.

22. Notice and evidence supporting claim for Personal Leave (sick and carer's leave)

The Employee must give the Employer notice that the Employee is (or will be) absent from his or her employment because of a personal illness or injury of the Employee or because of carer's leave. The Employer requires that notice be given prior to the commencement of the Employee's shift by telephone call (SMS text messages are not acceptable) in order to make arrangements to cover shifts for Employee absences. If notice cannot be provided prior to the commencement of the Employee's shift then the notice

must be given to the Employer as soon as practicable (which may be at a time before or after sick leave has started).

If required by the Employer, an Employee must provide evidence that would satisfy a reasonable person that his or her non-attendance was due to Personal Leave.

Payment for Personal Leave is subject to the production of a medical certificate or statutory declaration relating to that leave period where:

- An Employee is absent during the minimum employment period;
- An Employee is absent for two (2) or more consecutive days;
- An Employee is absent for a period immediately prior to or following a public holiday;
- An Employee has exhausted their paid personal leave entitlement; or
- Without limiting this clause as requested by the Employer.

23. Long Service Leave

Employees will be entitled to long service leave in accordance with the applicable legislation.

24. Compassionate Leave

Employees will be entitled to compassionate leave in accordance with the NES and applicable legislation.

25. Parental Leave

Employees will be entitled to parental leave in accordance with the NES and applicable legislation.

26. Community Service Leave

Employees will be entitled to community service leave in accordance with the NES.

27. Picnic Day

Easter Saturday will be recognised as the Union's Picnic Day.

In addition to all other payments to an Employee, Employees who are financial members of the TWU will be paid an additional day's pay in the second pay period after which Easter Saturday falls.

28. Superannuation

The Company agrees to make superannuation contributions (in accordance with Federal legislation) on behalf of each Employee. The default fund is the TWU Superannuation Fund, however an Employee can choose to nominate an alternative complying superannuation fund with respect to the minimum amount required, from time to time, for the Company to avoid a superannuation guarantee charge in respect of each Employees.

29. Probation

All new Employees will be subject to a three (3) month probationary period. During this time the skills and capacity of the Employee will be assessed by the Company. An Employee's employment can be terminated at any time during the probationary period by either party providing one (1) week notice.

30. Termination of Employment

The Company may terminate an Employee's employment by providing the amount of notice, or payment in lieu of notice as set out in the Award.

The amount of any payment in lieu of notice will be paid at the Standard Rates the Employee would otherwise have earned had the period been worked.

In case of termination due to serious misconduct, the Employee will not be entitled to notice of termination or payment in lieu of notice.

An Employee may resign from his or her employment by giving one (1) week written notice or such other period as is agreed between the Employee and the Company. Wages will be paid up until the last day of the Employee's employment.

If an Employee does not give the Company such notice of termination, the Company may withhold an amount of money equal to one (1) week wages, subject to applicable law.

31. Redundancy

In the event that a position at the Service Centres is redundant and no redeployment/transfer is reasonably possible, eligible Employees will be entitled to redundancy benefits in accordance with the Award.

The Employer will engage in the Consultation Procedure set out in **Appendix 2** in relation to any significant workplace change.

For clarity, redundancy payments will be made at the Standard Rates of pay applicable to an Employee at the time of redundancy, excluding shift loadings, overtime, penalty rates and allowances under this Agreement.

32. Union Recognition, Delegates' Rights and Employee Meetings

- a) This clause will not operate so as to provide an entitlement to enter premises in circumstances referred to in s.194(f)(i) or (ii) of the Act other than in accordance with Part 3-4 of the Act.
- b) The Company recognises the fact that delegates or co-delegates are required to attend union meetings, training courses, etc. (the Courses), during the course of their duties.
- c) The Company will allow a total of eight (8) days in any calendar year for delegates or co-delegates from the Service Centre covered by the Agreement to attend such Courses or the annual TWU delegates' conference. This entitlement may be taken by representatives called upon by the TWU to represent the Employees covered under this Agreement. Employees utilising this entitlement will be paid at their Standard Rate and ordinary hours.
- d) To clarify, the figure in clause 32(c) represents the total number of days available for any Employee attending such events and will apply to all Service Centre representatives, whether delegate, co-delegate or other. One (1) representative can be released on each occasion and operational requirements will be taken into consideration. The responsible supervisor will keep a running total on behalf of the Company. Any request for this leave must be applied for in writing and have the sanction of the TWU.
- e) TWU workplace representatives shall have the following rights:
 - i. to be treated fairly and to perform their role as union delegate or workplace representative without any discrimination in their employment;
 - ii. to speak on behalf of TWU members in the workplace;
 - iii. to bargain collectively on behalf of those they represent;
 - iv. to address new Employees regarding the benefits of TWU membership;

- v. to access a phone, fax, photocopier or email for the purpose of typing out work as a delegate or workplace representative;
- vi. to place TWU information on a notice board;
- vii. to maintain regular contact with the union organiser;
- viii. the right to consultation, and access within reason about information regarding the workplace and business; and
- ix. the right to discuss TWU and workplace matters with all TWU Employees at the workplace.

33. Flexibility Arrangements

The Company and an Employee may agree to enter into an individual flexibility arrangement in accordance with the Act and **Appendix 1** of this Agreement.

34. Consultation

The parties agree to the consultation procedure set out in **Appendix 2**.

35. Dispute Resolution

The Parties agree to the dispute resolution procedure set out in **Appendix 3**.

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Signatories

Signed for and on behalf of Veolia Recycling & Recovery Pty Ltd by its authorised representative:

Adam Nisbett

Name of Authorised Representative (print)

Regional Manager

Position of Authorised Representative

4/65 Pirrama Road

Pymont NSW 2009

Address of the Company

13 March 2024

Date

Signed for and on behalf of the Transport Workers' Union (NSW Branch) by its authorised representative:

Name of Authorised Representative (print)

Position of Authorised Representative

Address of Authorised Representative

Date

Signed for and on behalf of **the** Transport Workers' Union (NSW Branch) by its authorised representative:

Name of Authorised Representative (print)

Position of Authorised Representative

Address of Authorised Representative

Date

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Signature of Authorised Representative

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Signature of Authorised Representative

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Schedule 1 – Classifications and Wage Rates

Wage Rates and allowances will increase in accordance with Clause 9.

At no time shall the wages drop below the Federal Minimum Wages set by FWC or the corresponding wage rates set out in the Award.

Level	Classifications	First full pay period on or after operational date	First full pay period on or after 01 July 2024	First full pay period on or after 01 July 2025	First full pay period on or after 01 July 2026
Runner/ Depot Hand	An employee performing one or more of the following functions: <ul style="list-style-type: none"> Labourer or depot hand at the Service Centre. 	\$30.07	\$31.28	\$32.53	\$33.50
Driver	An employee performing one or more of the following functions: <ul style="list-style-type: none"> Labourer or depot hand with Heavy Rigid Driver's Licence who is competently trained to the Company's requirements in the operation of the vehicles listed below: Rear end loading vehicles; Driver of an articulated vehicle; Driver of a rigid vehicle exceeding 30 tonnes GVM; Driver of a front lift vehicle; and Driver of a vehicle collecting containers of solid waste and/or recyclable materials by means of a one-man operated grab and lifting device (SOLO) in accordance with local government contracts. 	\$33.11	\$34.43	\$35.81	\$36.89
Allowances					
Meal Allowance	Refer to Clause 17 of the Agreement.				
Leading Hand Allowance	A weekly allowance of up to \$100 gross per week (\$20 gross per day). To be paid when appointed by the Company to perform Leading Hand duties.	\$100	\$100	\$100	\$100

Appendix 1 - Individual Flexibility Arrangements

- 1) The Company and an Employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - a) the agreement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
 - b) the arrangement meets the genuine needs of the Company and Employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - c) the arrangement is genuinely agreed to by the Company and Employee.
- 2) The Company must ensure that the terms of the individual flexibility arrangement:
 - a) are about permitted matters under section 172 of the Act ; and
 - b) are not unlawful terms under section 194 of the Act ; and
 - c) result in the Employee being better off overall than the Employee would be if no arrangement was made.
- 3) The Company must ensure that the individual flexibility arrangement:
 - a) is in writing; and
 - b) includes the name of the Company and Employee; and
 - c) is signed by the Company and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and
 - d) includes details of:
 - (i) the terms of the Agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - e) states the day on which the arrangement commences.
- 4) The Company must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 5) The Company or Employee may terminate the individual flexibility arrangement:
 - a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - b) if the Company and Employee agree in writing--at any time.

Appendix 2 - Consultation Procedure

- 1) This term applies if the Company:
 - a) is considering a proposal to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the Employees; or
 - b) proposes to introduce a change to the regular roster or ordinary hours of work of Employees.

Major change

- 2) For a major change referred to in paragraph (1)(a):
 - a) the Company must notify the relevant Employees of the decision to introduce the major change; and
 - b) subclauses (3) to (9) apply.
- 3) The relevant Employees may appoint a representative for the purposes of the procedures in this term.
- 4) If:
 - a) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
 - b) the Employee or Employees advise the Company of the identity of the representative;

the Company must recognise the representative.
- 5) As soon as practicable after making its decision, the Company must:
 - a) discuss with the relevant Employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the Employees; and
 - (iii) measures the Company is taking to avert or mitigate the adverse effect of the change on the Employees; and
 - b) for the purposes of the discussion--provide, in writing, to the relevant Employees:
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the change on the Employees; and
 - (iii) any other matters likely to affect the Employees.
- 6) However, the Company is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- 7) The Company must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.
- 8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Company, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- 9) In this term, a major change is likely to have a significant effect on Employees if it results in:
 - a) the termination of the employment of Employees; or
 - b) major change to the composition, operation or size of the Company's workforce or to the skills required of Employees; or
 - c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - d) the alteration of hours of work; or

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- e) the need to retrain Employees; or
- f) the need to relocate Employees to another workplace; or
- g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

- 10) For a change referred to in paragraph (1)(b):
 - a) the Company must notify the relevant Employees of the proposed change; and
 - b) subclauses (11) to (15) apply.
- 11) The relevant Employees may appoint a representative for the purposes of the procedures in this term.
- 12) If:
 - a) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
 - b) the Employee or Employees advise the Company of the identity of the representative;

the Company must recognise the representative.
- 13) As soon as practicable after proposing to introduce the change, the Company must:
 - a) discuss with the relevant Employees the introduction of the change; and
 - b) for the purposes of the discussion--provide to the relevant Employees:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the Company reasonably believes will be the effects of the change on the Employees; and
 - (iii) information about any other matters that the Company reasonably believes are likely to affect the Employees; and
 - c) invite the relevant Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- 14) However, the Company is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- 15) The Company must give prompt and genuine consideration to matters raised about the change by the relevant Employees.
- 16) In this term:

"relevant Employees" means the Employees who may be affected by a change referred to in subclause (1).

Appendix 3 – Dispute Resolution Procedure

- 1) If a dispute relates to:
 - a) a matter pertaining to the employment relationship;
 - b) a matter arising under the Agreement; or
 - c) the National Employment Standards;

this term sets out procedures to settle the dispute.

- 2) An Employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- 3) In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the Employee or Employees and relevant supervisors and/or management.
- 4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to FWC.
- 5) The FWC may deal with the dispute in 2 stages:
 - a) the FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - b) if the FWC is unable to resolve the dispute at the first stage, the FWC may then:
 - (i) arbitrate the dispute; and
 - (ii) make a determination that is binding on the parties.

If FWC arbitrates the dispute, it may also use the powers that are available to it under the Act.

A decision that FWC makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

- 6) While the parties are trying to resolve the dispute using the procedures in this term:
 - a) an Employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
 - b) an Employee must comply with a direction given by the Company to perform other available work at the same workplace, or at another workplace, unless:
 - (i) the work is not safe; or
 - (ii) applicable occupational health and safety legislation would not permit the work to be performed; or
 - (iii) the work is not appropriate for the Employee to perform; or
 - (iv) there are other reasonable grounds for the Employee to refuse to comply with the direction.

Until a dispute is resolved by agreement, conciliation or arbitration, the status quo before the dispute arose (including all payments to employees) will be maintained and work will continue as before without disruption.

- 7) The parties to the dispute agree to be bound by a decision made by FWC in accordance with this term.