



# DECISION

*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*  
Sch. 3, Item 20A(4) - Application to extend default period for agreement-based transitional instruments

**Hermes Australia Pty Ltd T/A Hermes**  
(AG2024/1988)

## HERMES AUSTRALIA - WORKPLACE AGREEMENT

Retail industry

DEPUTY PRESIDENT WRIGHT  
DEPUTY PRESIDENT ROBERTS  
DEPUTY PRESIDENT SLEVIN

SYDNEY, 17 SEPTEMBER 2024

*Application to extend the default period for the Hermes Australia - Workplace Agreement 2007*

[1] Hermes Australia Pty Ltd T/A Hermes (the Applicant) has applied to extend the default period for the Hermes Australia - Workplace Agreement 2007 (Agreement) pursuant to subitem 20A(4) of Sch 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth).

[2] An earlier application was made to extend the default period of the Agreement. In a decision issued on 28 February 2024 the Full Bench considered that the requirements in subitem 20A(6)(a) were met and it was appropriate in the circumstances to extend the Agreement. The Full Bench ordered that the default period for the Agreement be extended until 6 June 2024 to allow time for a replacement agreement to be made and approved.<sup>1</sup>

[3] The current application, lodged on 4 June 2024, seeks to extend the agreement until 6 September 2024, or the date which is 7 days after the Applicant's new enterprise agreement is approved by the Fair Work Commission. The application was made, in accordance with subitem 20A(6)(b), on the ground that it is reasonable in the circumstances to extend the default period where an enterprise agreement has been made that covers the same employees covered by the Agreement and an application has been made to have the replacement agreement approved by the Commission under the *Fair Work Act 2009*. An application to approve the replacement agreement was lodged with the Commission on 6 June 2024. At the time the current application was made the replacement agreement had not yet been approved by the Commission.

[4] The Commission has since approved the replacement agreement.<sup>2</sup> The replacement agreement commenced operation on 27 August 2024.

[5] We are satisfied for the purpose of subitem (6)(b) that it is reasonable to extend the default period for the Agreement.

[6] Pursuant to item 20A(4) of Sch 3 to the Transitional Act, we order that the default period for the Agreement is extended until 27 August 2024

[7] The Agreement is published, in accordance with subitem 20A(10A)(c), on the Fair Work Commission's website.



DEPUTY PRESIDENT

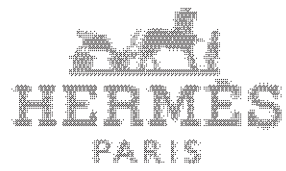
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<sup>1</sup> [\[2024\] FWCFB 113](#)

<sup>2</sup> [2024] FWCA 1807.



**Contents**

1.	Application of Agreement	3
2.	Parties Bound	3
3.	Operation of Agreement	3
4.	Period of Operation	3
5.	Definitions	3
6.	Probation Employment	4
7.	Hours of Work	4
8.	Performance Reviews	5
9.	Employment Categories	5
10.	Remuneration	6
11.	Superannuation	7
12.	Annual leave	8
13.	Personal Leave (sickness/family/bereavement)	8
14.	Parental Leave	9
15.	Long Service Leave	9
16.	Public holidays	10
17.	Days in Lieu	10
18.	Unpaid leave	10
19.	Termination	11
20.	Redundancy	11
21.	Disputes procedure	12
22.	Occupational Health and Safety	12
23.	Outside employment and other activities	13
24.	Dress requirements and uniforms	13
25.	Confidentiality	13
26.	Intellectual Property	14
27.	Misconduct	14
28.	Anti Discrimination	15

## 1. Application of Agreement

This Agreement shall apply to all work sites operated by Hermes in positions specified in this Agreement within the States and Territories of Australia.

## 2. Parties Bound

This Agreement is made by, and is binding upon:

- a) Hermes Australia Pty. Ltd (ABN 88003558085) ("Hermes").
- b) All employees employed by Hermes in a Hermes store and administration positions set out in this Agreement.
- d) This Agreement does not apply to employees in managerial positions.

## 3. Operation of Agreement

This Agreement is intended to replace and exclude any other industrial instrument, transitional industrial instrument and/or Protected Award Conditions which would otherwise apply if not for the making of this Agreement. The benefits offered as part of this Agreement must be read in conjunction with the Australian Fair Pay and Conditions Standard (the Standard).

## 4. Period of Operation

- (a) This AWA will take effect from the day it is registered with the office of employment advocate (OEA).
- (b) The nominal expiry date of this AWA is three years from that date. After the nominal expiry date, the Agreement will continue to be binding on the parties unless it is replaced by a new Agreement or terminated in accordance with the Act

## 5. Definitions

**Act** means the *Workplace Relations Act 1996 (Cth)* as amended

**Base Wage** means the minimum rate of pay applicable to an employee under this Agreement as set out in Table 1. Base Wage includes all penalties unless otherwise stated but does not include allowances specified in this Agreement or reimbursements for expenses incurred by the employee during the course of the employment.

**Ordinary Hours** means an employee's usual hours of work, not including Overtime.

**Overtime** means any hours worked by a full time or part time employee in excess of 76 hours per fortnight or outside of the hours of 8am to 9pm Monday to Sunday.

**Parties** means Hermes and the categories of employees set out in Table 1.

Protected Award Conditions is given the meaning set out in Part 8, Division 7 of the Act.

**Related Body Corporate** means a related body corporate as defined in section 50 of the *Corporations Act 2001*.

**Shift** means a period of time during which an employee is required to work consecutive hours with a start time and a finish time, in accordance with a roster prepared by Hermes.

**Standard** means the Australian Fair Pay and Conditions Standard

## 6. Probation Employment

Employees will complete a three month probationary period prior to confirmation of their permanent employment.

During the probationary period, either party may terminate the employment at any time by giving one week's notice or payment in lieu except in cases of serious or wilful misconduct where an employee may be summarily dismissed without notice or payment in lieu of notice. This probationary period will not apply to employees who are employed by Hermes prior to this Agreement being lodged with the Office of Employment Advocate. This right is in addition to any other rights of Hermes to terminate the employment of the employee under this Agreement.

## 7. Hours of Work

The ordinary hours of work shall be 38 hours per week (which can be averaged over a 12 month period), worked between the hours of 8.00am and 9.00pm, Monday to Sunday.

Employees may be required to work additional hours in excess of 38 hours per week as required by Hermes during peak times and/or to complete their duties.

No employee will be required to work in excess of 10 hours in any given shift.

## **8. Performance Reviews**

It is Hermes's policy to encourage and support staff in the development of their work performance. To enable formal feedback and the identification of development needs and recognition of the Employee's work, a performance appraisal will be conducted for each calendar year (or part thereof).

The information gathered during these appraisals may be used as a component of any decision to award salary increases, bonuses or other benefits.

## **9. Employment Categories**

### **a. Permanent Employee**

#### **Full time**

A "full time" employee means an employee who works not less than 38 hours per week on a permanent basis (averaged over a 12 month period).

#### **Part time**

A "part time" employee means an employee who works, on a permanent basis, less than 38 hours per week. A part time employee will accrue all benefits on a pro-rata basis unless otherwise stated.

### **b. Casual Employee**

Due to the nature of the work at Hermes and the unpredictability of the number of employees needed during peak periods, Hermes requires the flexibility of casual employment.

"Casual employee" means an employee who is engaged by the hour, and paid as such. Casual employees will be engaged for a minimum of four hours per Shift. A casual employee is not a shift worker for the purposes of this Agreement. Casual employees shall be paid at the rates set out in this Agreement. Casual employees are paid a loaded rate in lieu of entitlements such as sick leave, annual leave, long service leave, and redundancy payments. Casual employees also will not accrue continuity of service for the purposes of calculating any employment related benefits.

The following clauses of this Agreement do not apply to casual employees:

- a) Annual Leave;
- b) Personal Leave;
- d) Redundancy;
- e) Probation;
- f) Long Service Leave.

**c. Employment Category transfer**

If your employment classification changes during the term of this Agreement your terms and conditions will be determined by this Agreement with reference to your new employment category or, if applicable, a new agreement between us.

**10. Remuneration**

- a. This is a minimum rates agreement and as such employees will be paid not less than the Base Wage which is in accordance with table 1
- b. Employees may also be entitled to any applicable allowances or loadings in accordance with this Agreement which will be calculated at the end of each pay period and paid by or in the following pay period.
- c. Employees will not be entitled to receive additional payments for working reasonable additional hours to properly fulfil their duties or meet the needs of the business. Compensation for working additional hours has already been incorporated into an employee's Base Wage.
- d. Employees will also receive statutory superannuation contributions
- e. Remuneration will be paid by electronic funds transfer (EFT) to a nominated account as specified by the employee.
- f. Pay rates contained in Table 1 replace and exclude all pay rates and penalties that may be contained in any other industrial instrument, Award or Protected Award Condition.



**Table 1 - Pay Rates**

Job Title	Rate effective				
	1 January 2007				
	Standard		Casual Monday to Saturday	Casual Sunday	Casual Public Holidays
	Per Annum	Per Hour	Per Hour	Per Hour	Per Hour
<b>Sales Consultant</b>	\$36,500.00	\$18.47			
<b>Sales Consultant Level 1</b>	\$33,500.00	\$16.95	\$19.50	\$29.00	\$40.00
<b>Sales Consultant Trainee</b>	\$29,500.00	\$14.93	\$16.58	\$24.65	\$34.00

Job Title	Rate effective				
	1 January 2008				
	Standard		Casual Monday to Saturday	Casual Sunday	Casual Public Holidays
	Per Annum	Per Hour	Per Hour	Per Hour	Per Hour
<b>Sales Consultant</b>	\$37,412.50	\$18.93			
<b>Sales Consultant Level 1</b>	\$34,337.50	\$17.38	\$19.99	\$29.73	\$41.00
<b>Sales Consultant Trainee</b>	\$30,237.50	\$15.30	\$16.99	\$25.27	\$34.85

Job Title	Rate effective				
	1 January 2009				
	Standard		Casual Monday to Saturday	Casual Sunday	Casual Public Holidays
	Per Annum	Per Hour	Per Hour	Per Hour	Per Hour
<b>Sales Consultant</b>	\$38,347.81	\$19.41			
<b>Sales Consultant Level 1</b>	\$35,195.94	\$17.81	\$20.49	\$30.47	\$42.03
<b>Sales Consultant Trainee</b>	\$30,993.44	\$15.68	\$17.41	\$25.90	\$35.72

## 11. Superannuation

The subject of superannuation is dealt with extensively by legislation including the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993 and the Superannuation (Resolution of Complaints) Act 1993. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties to this Agreement unless otherwise specified. The value of the superannuation contribution will be the minimum amount required to avoid the superannuation contribution charge.

All employees shall have the right to choose an eligible Superannuation fund.

## **12. Annual leave**

- a) An employee will be entitled to paid annual leave in accordance with the Standard set out in the Act.
- b) Full time employees are entitled to 20 days annual leave per annum for each 12 months continuous service with Hermes, to be paid at their ordinary hourly rate of pay. Part time employees will be accrue leave on a pro-rata basis for the time worked.
- c) Employees will not be permitted to accrue more than 30 days' annual leave without prior approval from the Managing Director. Hermes may require an employee to take annual leave accrued in excess of 30 days.
- d) Hermes may require an employee to take all or part of their annual leave during exceptional or seasonal business periods.
- e) Annual leave may be taken in advance where there is agreement between Hermes and an employee.
- f) Hermes may restrict or disallow the taking of annual leave during peak periods, by giving an employee at least 4 weeks' notice in writing or as contained in the policy and procedure manual.
- g) Employees are required to give 4 weeks' notice to their manager of their intention to take annual leave.

## **13. Personal Leave (sickness/family/bereavement)**

Personal leave is any leave taken for the purposes of:

- personal illness or injury (sick leave); or
- caring for an immediate family or household member who is ill (family leave); or
- the death of an immediate family or household member (bereavement leave).

If you are a full time employee, after 3 months of continuous service, your entitlement to this leave accrues on a pro-rata basis from when you commenced employment. You are entitled to the following personal leave:

- 10 days per year

If you are a part time employee, after 3 months of continuous service, your entitlement to this leave accrues on a pro-rata basis from when you commenced employment. Your yearly leave entitlement is linked to your set ordinary hours and will be calculated on a pro-rata basis. This leave can be claimed only for the days which you would normally work.

Casual employees do not accrue paid personal or sick leave.

Personal leave is cumulative – i.e. unused balances carry over from year to year. We may grant additional unpaid personal leave for exceptional circumstances at our discretion.

For the purposes of personal leave, the term *immediate family or household member* means your spouse, partner, parent, grandparent, child, grandchild, sibling, or any person who lives with you permanently.

On return to work you will be required to complete a Leave form. This form will need to be sent to the Payroll Department to ensure you are paid any sick leave that you are entitled to.

All employees will be required to present a doctor's certificate or other reasonable documentation stating the dates and the reason(s) why they were absent from work if:

- you are absent by reason of sickness or injury for 2 or more successive work days; and/or
- a single day that occurs after or before a weekend or public holiday

If you require an extended period of leave (due to accident or illness), you will need to inform your supervisor / manager and keep them updated in regard to the estimated date you will be returning to work.

#### **14. Parental Leave**

An employee is entitled to 52 weeks unpaid parental leave (which includes maternity, paternity or adoption leave) in accordance with the Australia Fair Pay and Conditions Standard set out in the *Workplace Relations Act 1996* (Cth).

#### **15. Long Service Leave**

An employee will be entitled to long service leave in accordance with the applicable legislation in the State or Territory in which they are engaged, subject to the following minimum entitlements:

- Long service leave will be paid at the employee's Base Wage;
- Eligible employees shall be entitled to Long Service Leave after 10 years of continuous service;
- Long service leave will accrue at the rate of 0.867 weeks for every full year of completed service;
- Except on termination of service, payment in lieu of Long Service Leave is prohibited;
- Any leave without pay will not be counted towards continuous service for the purpose of this clause.

## **16. Public holidays**

Should it be necessary for employees to work on public holidays, Hermes will make every effort to approach employees on a rotating basis in order that all employees share fairly the requirement to work on such days.

All work performed on public holidays will be paid at the applicable rates specified in this agreement.

Full time and Part time employees who work on a Public Holiday will be entitled to the equivalent time off in lieu to be taken as per Hermes policy.

## **17. Days in Lieu**

If an employee is required to work significant additional hours time in lieu may be granted. This will be equal to the amount of hours worked overtime. Time in lieu is to be taken at a time that is mutually convenient to both parties.

Time in lieu may not be accrued from year to year. All time in lieu must be taken within a nominated period after the extra hours were worked. This will be specified by your supervisor / manager. Time in lieu will not be paid out.

Time in lieu must be pre-authorised by the employee's manager or Managing Director.

## **18. Unpaid leave**

Leave without pay may be granted in special circumstances. Each request will be considered on merit. Hermes reserves the right to refuse requests for leave without pay.

All requests for leave without pay should be submitted to the Employee's Manager with a statement confirming the reasons for the request. The Manager will consider the request in light of the Employee's service with Hermes, staffing requirements and leave which has already been approved or taken. Managers will recommend approval/denial and forward to the Managing Director for final approval.

Unpaid leave will not be included as service for employment purposes.

## 19. Termination

### a. Termination by you

Your employment may be terminated by you for any reason by giving four weeks' notice in writing.

### b. Termination by Hermes

Your employment may be terminated by Hermes giving you four weeks' notice in writing, or a payment equivalent to your base salary for the relevant period in lieu of notice.

Your entitlement to notice or pay in lieu of notice will be increased by one week if you are over 45 years of age and have been employed by Hermes for at least 2 years.

### c. Summary Dismissal

If you are guilty of serious misconduct you may be dismissed at any time without notice or pay in lieu of notice.

### d. Termination – casual employees

If you are employed as a casual employee, you or Hermes may terminate your employment for any reason with immediate effect.

## 20. Redundancy

Redundancy occurs where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour.

In addition to the period of notice prescribed for ordinary termination, if your employment is terminated for reasons set out above you shall be entitled to the following amount of severance pay in respect of a continuous period of service:

<b>Period of continuous service</b>	<b>Severance pay</b>
Less than 1 year	Nil
1 year but less than 2 years	4 weeks' pay
2 years but less than 3 years	6 weeks' pay
3 years but less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay

6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

“Weeks' pay” means your ordinary time rate of pay.

We shall not be obliged to make a severance payment if we obtain suitable alternative employment for you, whether or not you reject the offer of employment.

This clause also does not apply if you are dismissed for serious misconduct. In that event you are only entitled for time worked up to the time of dismissal.

This clause is to be read in conjunction with the Redundancy Test Case 2004 (Federal)

## **21. Disputes procedure**

All disputes or grievances arising in the workplace shall as far as practical be resolved through consultation between the parties involved. The following procedure will apply for the resolution of any dispute:

(a) initially the Employee(s) shall discuss any grievance, dispute or claim with their relevant Manager;

(b) where a satisfactory resolution is not reached as a result of informal discussion, the Employee may take the matter for resolution to the Managing Director.

## **22. Occupational Health and Safety**

Hermes is committed to maintaining a healthy and safe work environment for all employees and in doing so will maintain compliance with applicable state and federal occupational health and safety legislation, as varied from time to time.

The company and employees are jointly responsible for maintaining the highest standards of occupational health and safety.

Hermes has Workers' Compensation insurance cover in all states in which it operates. Any accidents which occur on Hermes's premises or anywhere in the course of performing work related duties or on the way to or from work must be reported as soon as practicable to the Finance Department.

### **23. Outside employment and other activities**

You must not engage in any activity (either during work hours or at any other time) which would:

- (a) constitute a conflict of interest with your obligations to Hermes;
- (b) reflect unfavourably upon Hermes; or
- (c) affect in any way your work performance.

In addition, you shall not, within the term of your employment, establish a private business or undertake other employment in direct competition with Hermes or using knowledge or materials gained from your employment with Hermes.

### **24. Dress requirements and uniforms**

All employees will be provided with a Hermes uniform and are expected to wear this uniform at all times whilst working. Uniforms are not permitted or available to be worn outside working hours.

During working hours employees are required to be appropriately groomed and present themselves in a professional manner in keeping with the image of Hermes.

### **25. Confidentiality**

“Confidential Information” means information relating to the business or affairs of the Company (or its related companies) and information of a third party which has been disclosed to the company on confidential terms. It does not include information which is already publicly known.

Nothing in this clause, nor in this AWA, shall be taken as in any way prohibiting or restricting disclosure of details of this AWA by either party or any other person

You must protect the secrecy of Confidential Information and you must not disclose it to any person unless required in the proper performance of your duties as a Hermes employee or with the Company's written consent. You may only use Confidential Information for the benefit of the Company. You acknowledge that, as an employee, you acquire no rights in or to Confidential Information. These obligations will continue to be binding on you even after your employment with the Company terminates.

## **26. Intellectual Property**

You acknowledge and agree that the Company is the exclusive owner of all copyright, creations, inventions, designs and other intellectual property related to works created or designed by you in the course of your employment. You agree that you will co-operate with the Company in registering or otherwise protecting any intellectual property created during your employment.

## **27. Misconduct**

The following types of conduct are examples of misconduct which, depending on their seriousness, may constitute serious misconduct, and in any event may result in disciplinary counselling, oral or written warning or suspension without pay. Severe and/or repeat offences may result in termination of employment.

- (a) Unauthorised absence from duty.
- (b) Repeated tardiness or absence.
- (c) Smoking on Hermes premises.
- (d) Obscene, abusive language and/or malicious gossip and/or spreading of rumours.
- (e) Failure to comply with Hermes dress requirements.
- (f) Excessive use of Hermes time for personal business whilst on duty (personal phone calls, socialising, etc).
- (g) Reporting for work whilst under the influence of alcohol and/or drugs.
- (h) Abuse and disregard of Hermes rules, property, policies (ie. employee discounts).
- (i) Soliciting or collecting contributions for any purpose on Hermes's time without the permission of management.
- (j) Violation of safety practices.
- (k) Refusal to perform job as required.
- (l) Falsification, fraud or omission of information from résumé or job application.

The following conduct will result in immediate termination of employment:

1. Disclosure of Hermes's confidential information to outsiders.
2. Theft of Hermes property.
3. Possession of illegal goods or property.
4. Criminal activities which are relevant to your employment or which occur whilst on duty.



## **28. Anti Discrimination**

The parties to this AWA agree that:

(a) it is their intention to achieve the principal object in paragraph 3 (j) of the Workplace Relations Act 1996 , which is to respect and value the diversity of the work force by helping to prevent and eliminate discrimination at their enterprise on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and

b) any dispute concerning these provisions and their operation will be progressed initially under the dispute resolution procedure in this AWA; and

(c) nothing in these provisions allows any treatment that would otherwise be prohibited by anti-discrimination provisions in applicable Commonwealth, State or Territory legislation; and

(d) nothing in these provisions prohibits:

(i) where the AWA is approved before 23 June 2000, the payment of junior rates of pay; or

(ii) any discriminatory conduct (or conduct having a discriminatory effect) that is based on the inherent requirements of a particular position; or

(iii) any discriminatory conduct (or conduct having a discriminatory effect) if:

(A) the employee is a member of staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed; and

(B) the conduct was in good faith to avoid injury to the religious susceptibilities of that religion or creed.