



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

Aircon Rentals Pty Ltd T/A Aircon Rentals
(AG2023/4787)

AIRCON RENTALS COLLECTIVE AGREEMENT (2007)

Retail industry

DEPUTY PRESIDENT ROBERTS
COMMISSIONER CRAWFORD
COMMISSIONER PERICA

SYDNEY, 16 FEBRUARY 2024

Application to extend the default period for the Aircon Rentals Collective Agreement (2007)

[1] Pursuant to subitem 20A(4) of Sch 3 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (**Transitional Act**), Aircon Rentals Pty Ltd (**Aircon Rentals**) has applied to extend the default period for the *Aircon Rentals Collective Agreement 2008* (**Agreement**). The application seeks to extend the default period for the Agreement to 6 December 2024.

[2] The Agreement is a collective agreement that was made under the *Workplace Relations Act 1996* (Cth) (**WR Act**) and approved under that Act by the Workplace Authority. The Agreement is a ‘WR Act instrument’ within the meaning of item 2(2) of Sch 3 of the Transitional Act. It is classified by item 2(5)(c)(i) of Sch 3 as a ‘collective agreement-based transitional instrument’. Agreements of this kind are commonly referred to as ‘zombie agreements’.

[3] The Transitional Act was amended by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (**SJBP Act**) to provide for the automatic termination of all remaining transitional instruments. Pursuant to items 20A(1) and (2) of Schedule 3 to the Transitional Act, the Agreement would have terminated on 6 December 2023 (the end of the default period) unless extended by the Commission. The main features of item 20A of Schedule 3 to the Transitional Act are described in detail in the Full Bench decision in *Suncoast Scaffold Pty Ltd*.¹

[4] Under subitem 20A(6) of Sch 3, where an application is made under subitem 20A(4) for the default period to be extended, the Commission must extend the default period for a period of no more than four years if either (a), subitem (7), (8) or (9) applies and it is otherwise

¹ [2023] FWCFB 105 at [3] to [18].

appropriate in the circumstances to do so, or (b), it is reasonable in the circumstances to do so. Subitem (7) applies if bargaining for a replacement agreement is occurring. Subitem (8) relates to individual agreement-based transitional instruments. Subitem (9) applies if the application relates to a collective agreement-based transitional agreement and it is likely that as at the time the application is made the award covered employees, viewed as a group, would be better off overall if the agreement continued to apply than if the relevant modern award applied.

Grounds relied upon

[5] Aircon Rentals submits it is reasonable in the circumstances to extend the default period for the Agreement.

[6] It argues employees bound by the Agreement are paid at higher rates than the relevant Modern Awards. For example, administrative employees are paid at higher rates than under the *Clerks Private Sector Award 2020*. Refrigeration Mechanics are paid at a higher hourly higher than under the *Manufacturing and Associated Industries and Occupations Award 2020 (C10)*. Electricians are paid at an hourly rate higher than under the *Electrical, Electronic and Communications Contracting Award* and van drivers/installers are paid better rates under the Agreement, as compared to the *Amusement, Events and Recreation Award*.

[7] It also argues employees are paid superior first aid allowances under the Agreement compared to the relevant Modern Award including for employees who would be covered by either the *Road Transport and Distribution Award*, *Amusement, the Events and Recreation Award*, the *Manufacturing and Associated Industries and Occupations Award* and the *Electrical, Electronic and Communications Contracting Award*. It also claims that employees under the Agreement are paid a superior living away from home and on-call allowance compared to *Electrical, Electronic and Communications Contracting Award*.

[8] The application notes the Applicant “pays an annual wage increase to employees on 15 September each year. This means that with the benefit of these increases, the wage rates provided for in the Agreement have been updated and kept pace with inflation and provide fair and reasonable remuneration for work performed by the employees.”

[9] The Applicant also bases its claim to an extension of the default period on particular circumstances of the employer. Those submissions follow.

[10] It is a relatively small company with a nationwide workforce. It does not have the benefit of a dedicated Human Resources or Legal section that it can call upon for advice. In this instance, the Applicant has acted as soon as it became aware of the sunset of the Agreement on 6 December 2023, and sought urgent legal advice to address the issue.

[11] It is responsible for supporting a large number of important and critical industries, in both the private and public sectors. These critical clients include Services Australia, AMPOL, Commonwealth Bank of Australia, Coles Petroleum, Airservices Australia, Department of Defence and the Department of Health. It submits “Any impediment to the continuation of servicing of these priority clients would generate risks, losses and potential damage to services provided to aged care homes, hospitals, defence industries, banking and financial services, oil and government clientele including the vulnerable, aged and those requiring government support.”

[12] It carries out work and provides services to critical infrastructure in a variety of industries including hospitals, defence facilities, aged care and education facilities. The Applicant also provides services to natural disaster sites, including those affected by bushfires, floods and storms. It argues “a distraction from the natural course of business could result in services being compromised and further supports extending the operation of the Agreement.”

[13] The Applicant submits it has a workforce of long-term employees who have been employed by the company for a number of years. It argues this demonstrates that employees are happy with the current employment arrangements.

[14] It intends to commence bargaining with its employees in early 2024 for a new enterprise agreement. To support this intention, “the Applicant has sought legal advice for an urgent review of the Agreement so as to update its conditions in readiness to provide to employees as the first step for bargaining in 2024. The Applicant would not have incurred these legal costs unless it had a genuine intention and commitment to commence bargaining with its workforce in 2024, and it is now in a position to do so. In the Applicant's submission, this is a factor that supports a conclusion that it is otherwise appropriate in the circumstances to extend the operation of the Agreement.

[15] On 23 January 2024, Mr. David Loombs, the Managing Director of the Applicant, sent an e-mail to the Commission. In the e-mail, he noted “the notice of employees representational rights (NERR) has been distributed to the Applicant’s employees” and made the following submission: “Due to the current progress of the new 2024 Agreement, we would be happy to compromise on the application and reduce this to a 6-month extension should the Commission find that more favourable”.

Consideration

[16] We cannot be satisfied that the requirements of subitem 6(a) have been met. Subitem (7) does not apply because there is no evidence that the application was made at or after the notification time for a proposed agreement. As the Agreement is a collective agreement-based instrument subitem (8) does not apply.

[17] After reviewing the terms of the Agreement and the relevant Awards, as well as the analysis provided by the employer, we cannot be satisfied the employees, viewed as a group, are likely to be better off under the Agreement than they would be if the relevant Awards applied. We note the employer pays yearly wage increases above those required by the Agreement, but the actual payments received by the employees are not the relevant comparator under sub-item 9 which compares the terms of the Agreement against the modern Awards. Sub-item 9 does not apply here.

[18] We are, however, satisfied that it is “reasonable in the circumstances” to extend the default period in accordance with subitem 20A(6)(b) of Sch 3 based on the particular circumstances of the employer and the employees described in this decision.

[19] In *Suncoast Scaffold Pty Ltd*,² the Full Bench described the ‘reasonable’ criterion in item 20A(6)(b) of Sch 3 to the Transitional Act in this way:

² [2023] FWCFB 105.

[17] Subitem (6)(b) of item 20A constitutes an independent pathway to the grant of an extension. The ‘reasonable’ criterion in the subitem should, in our view, be applied in accordance with the ordinary meaning of the word – that is, ‘agreeable to reason or sound judgment’. Reasonableness must be assessed by reference to the ‘circumstances’ of the case, that is, the relevant matters and conditions accompanying the case. Again, a broad evaluative judgment is required to be made.

[20] We also consider the purpose of the provisions to be relevant to the broad evaluative judgment we are required to make. The Explanatory Memorandum of the SJPB Act expressed the purpose of the provisions relating to extending the default period in this way³:

Provision would be made for the FWC to (upon application) extend the default period to ensure the automatic sunseting of zombie agreements does not operate harshly, including by leaving employees worse off.

[21] We are satisfied it is reasonable in the circumstances to extend the default period given the particular circumstances of the employer and the commitment to engage in a bargaining process for a new agreement. We are of the view that a short extension is reasonable to allow the parties to conclude a replacement agreement. Pursuant to item 20A(6) of Sch 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), we order that the default period for the Agreement is extended until 30 June 2024.

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



DEPUTY PRESIDENT

Printed by authority of the Commonwealth Government Printer

<AC310605 PR771515>

³ Explanatory Memorandum *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022* at [670].

AIRCON RENTALS
COLLECTIVE AGREEMENT (2007)

TABLE OF CONTENTS

PART A - INTRODUCTION AND APPLICATION	4
1. TITLE.....	4
2. PARTIES	4
3. DEFINITIONS.....	4
4. APPLICATION.....	5
5. OBJECTIVES OF AGREEMENT	6
PART B - EMPLOYMENT CONDITIONS	6
6. CONTRACT OF EMPLOYMENT	6
7. OBLIGATIONS.....	9
8. QUALIFYING PERIOD AND PROBATION PERIOD	10
9. PRE-EXISTING INJURIES AND DISEASES	10
10. POLICE CHECKS.....	10
11. COMPANY POLICIES	11
PART C - JOB CLASSIFICATIONS AND DUTIES.....	11
12. JOB CLASSIFICATIONS	11
13. FLEXIBILITY OF DUTIES	11
14. LOCATION AND TRANSFER OF EMPLOYMENT	11
PART D - HOURS OF WORK AND BREAKS	12
15. SPREAD OF HOURS	12
16. MEAL AND REST BREAKS	12
17. OVERTIME.....	13
18. REASONABLE ADDITIONAL HOURS - SALARIED PERMANENT EMPLOYEES	14
PART E - WAGES, SUPERANNUATION AND BENEFITS	14
19. WAGES	14
20. JUNIOR WAGE RATES	14
21. APPRENTICE AND TRAINEE WAGE RATES.....	15
22. SUPERANNUATION	15
23. SALARY SACRIFICE	16
24. WAGE REVIEWS AND PERFORMANCE REVIEWS.....	16
25. PERFORMANCE INCENTIVES AND BONUSES	16
26. EXPENSES	17
27. ALLOWANCES	17
PART F - LEAVE ENTITLEMENTS.....	18
28. GENERAL LEAVE PROVISIONS.....	18
29. ANNUAL LEAVE	19
30. PERSONAL LEAVE.....	20
31. UNPAID CARER'S LEAVE.....	21
32. COMPASSIONATE LEAVE	22
33. PARENTAL LEAVE	22
34. LONG SERVICE LEAVE	22
35. PUBLIC HOLIDAYS.....	23
PART G - THE WORKPLACE GENERALLY	23
36. UNIFORMS AND PROTECTIVE CLOTHING.....	23
37. APPROPRIATE DRESS	24
38. EXTERNAL COURSES	24
39. HEALTH AND SAFETY OF EMPLOYEES	24
40. ANTI DISCRIMINATION, EQUAL OPPORTUNITY AND HARASSMENT.....	25
41. GRIEVANCE HANDLING PROCEDURE	25
42. SUSPENSION	26
43. STAND DOWN.....	26
44. ABANDONMENT OF EMPLOYMENT.....	26

PART H - FURTHER EMPLOYMENT OBLIGATIONS.....27

45. CONFIDENTIAL INFORMATION27

46. INTELLECTUAL PROPERTY RIGHTS28

47. CONFIDENTIALITY, INTELLECTUAL PROPERTY & POST EMPLOYMENT OBLIGATIONS 29

48. CONFLICTS OF INTEREST AND SECONDARY EMPLOYMENT29

PART I - ENDING EMPLOYMENT30

49. NOTICE OF TERMINATION30

50. TERMINATION WITHOUT NOTICE30

51. REDUNDANCY31

52. PROPERTY OF AIRCON RENTALS33

53. DEDUCTIONS33

PART J - MISCELLANEOUS34

54. EXCLUSIONS & MODIFICATIONS.....34

55. NO EXTRA CLAIMS34

56. SEVERANCE.....35

SIGNATURE OF THE PARTIES36

SCHEDULE 137

PART A - INTRODUCTION AND APPLICATION

1. TITLE

This Agreement shall be known as the Aircon Rentals Collective Agreement (2007).

2. PARTIES

The parties to this Agreement are:

- 2.1 Aircon Rentals Pty Ltd (ABN 65 003 454 680) trading as Aircon Rentals ("**Aircon Rentals**"); and
- 2.2 All employees employed by Aircon Rentals in the Job Classifications set out in Schedule 1 ("**You**" or "**the Employees**").

3. DEFINITIONS

- 3.1 "**Agreement**" means this Aircon Rentals Collective Agreement (2007);
- 3.2 "**Capacity**" means full time, part time or casual employment;
- 3.3 "**Casual Employee**" means an employee who is not employed on a permanent or regular basis, and who works hours when available and as required by Aircon Rentals;
- 3.4 "**Company Policies**" means any of Aircon Rentals' policies and procedures, dealing with employment related duties, entitlements and obligations, as amended from time to time;
- 3.5 "**Full time Employee**" means a Permanent Employee who works 152 hours per 4 week period;
- 3.6 "**Job Classification**" means the Job Classification in which you are employed by Aircon Rentals and set out in Schedule 1;
- 3.7 "**Letter of Engagement**" means a letter from Aircon Rentals to you setting out your Job Classification, Capacity, Wage Rate, Rostered Hours of Work (if relevant) and any other individual terms and conditions of employment;
- 3.8 "**Lodgement Date**" means the date of lodgement of this Agreement with the Workplace Authority in accordance with the *Workplace Relations Act 1996*;
- 3.9 "**Overtime**" means additional hours worked in accordance with **Clause 17**;
- 3.10 "**Part time Employee**" means a Permanent Employee who works up to 152 hours per 4 week period;

- 3.11 **"Permanent Employee"** means a full time or part time Employee;
- 3.12 **"Related Entities and Associates"** has the same meaning as they have for the purposes of the *Corporations Act 2001*;
- 3.13 **"Rostered Hours of Work"** means the hours required to be worked by you.
- 3.14 **"Schedule 1"** means the Schedule to this Agreement;
- 3.15 **"Shift"** means the continuous period of time from when you start work to when you finish work for any rostered shift (excluding unpaid meal breaks).
- 3.16 **"Wage Rate"** means:
- (a) In the case of salaried Employees, your salary (expressed either as an annual amount or as a notional hourly amount);
 - (b) In the case of non-salaried Permanent Employees or Casual Employees, your hourly wage rate; and
 - (c) Excludes the following:-
 - (i) Overtime (**Clause 17**);
 - (ii) Performance Incentives and Bonuses (**Clause 25**);
 - (iii) Allowances (**Clause 27**); and
 - (iv) Public holiday entitlement (**Clause 35.3**).
 - (d) The minimum Wage Rate for your Job Classification is set out in Schedule 1.
- 3.17 **"Week"** means Monday to Sunday.

4. APPLICATION

This Agreement:

- 4.1 Will operate from the Lodgement Date and shall remain in operation for a period of 3 years from the Lodgement Date (the **"Nominal Expiry Date"**);
- 4.2 Shall be binding on Aircon Rentals and all Employees as defined in **Clause 2.2**;
- 4.3 Overrides all letters of offer and employment contracts, whether written or oral, in existence prior to the Lodgement Date, save for your Letter of Engagement or

any agreement or deed relating to confidential information, intellectual property or post employment obligations;

- 4.4 Constitutes the entire agreement between you and Aircon Rentals in relation to all matters relating to your employment with Aircon Rentals, save for your Letter of Engagement or any agreement or deed relating to confidential information, intellectual property or post employment obligations;
- 4.5 Is not to be read in conjunction with any award; and
- 4.6 Provides minimum entitlements only and shall not restrict Aircon Rentals and Employees from agreeing to a higher Wage Rate or any other additional benefits.

5. OBJECTIVES OF AGREEMENT

- 5.1 The objectives of this Agreement are to provide fair and reasonable working conditions and pay, to facilitate workplace efficiency and professionalism, and to ensure the success of the Aircon Rentals business.
- 5.2 You agree with these objectives and accept that their achievement will require you to be flexible in meeting the needs of the business and to adhere to Company' Policies and procedures.

PART B - EMPLOYMENT CONDITIONS

6. CONTRACT OF EMPLOYMENT

- 6.1 At the commencement of employment, or prior to the Lodgement Date, you will be provided with a Letter of Engagement. Your Letter of Engagement and this Agreement shall confirm the terms and conditions of your employment with Aircon Rentals.
- 6.2 Any change to your Letter of Engagement shall be made in consultation with you and will be confirmed in writing.
- 6.3 **Permanent Employees**
 - (a) In recognition that Aircon Rentals is subject to high seasonal demand, you may be either employed:
 - (i) for an indefinite period of time, which will be communicated in writing and may be terminated by either you or Aircon Rentals giving notice as provided in this Agreement; or
 - (ii) for such period of time as meets the requirements of Aircon Rentals which will be communicated in writing and may be

terminated by either you or Aircon Rentals giving notice as provided in this Agreement.

- (b) Aircon Rentals may, in its discretion, close its business during off-peak periods for up to a maximum consecutive period of 10 days. During these off-peak periods, you will continue to receive the Wage Rate (including any shift loadings) that you were entitled to receive had you worked during the off-peak periods, subject to those hours being worked at a later time, as advised by Aircon Rentals.
- (c) Aircon Rentals will provide all relevant Employees a minimum of 1 week's notice of any such closure referred to in **Clause 6.3(b)**.

6.4 Full Time Employees

- (a) Full time non-salaried Employees:
 - (i) You are required to work an average of 152 hours per 4 week period, averaged over a 12 month period, plus reasonable additional hours;
 - (ii) Having regard to the seasonal nature of Aircon Rentals' business, you will be paid the relevant Wage Rate for each hour worked by you up to 38 hours per week; and
 - (iii) You will receive Overtime in accordance with **Clause 17** for hours worked in excess of 38 hours per week.
- (b) Full time salaried Employees:
 - (i) You are required to work an average of 152 hours per 4 week period, averaged over a 12 month period, plus reasonable additional hours; and
 - (ii) Your salary is in full satisfaction of all hours worked by you and you shall not be entitled to payment for Overtime under **Clause 17** or any public holiday entitlement under **Clause 35.3**.

6.5 Part Time Employees

- (a) Part time non-salaried Employees:
 - (i) You are required to work up to 152 hours per 4 week period, averaged over a 12 month period, plus reasonable additional hours;

- (ii) Having regard to the seasonal nature of Aircon Rentals' business, you will be paid the relevant Wage Rate for each hour worked by you up to 38 hours per week; and
 - (iii) You will receive Overtime in accordance with **Clause 17** for hours worked in excess of 38 hours per week.
- (b) Part time salaried Employees:
- (i) You are required to work up to 152 hours per 4 week period, averaged over a 12 month period, plus reasonable additional hours; and
 - (ii) Your salary is in full satisfaction of all hours worked by you and you shall not be entitled to payment for Overtime under **Clause 17** or any public holiday entitlement under **Clause 35.3**.
- (c) **Decreasing Hours below Contract Hours**

If you are employed on a part time basis, your hours of work may be reduced by up to 20% in any month provided that:

- (i) You are provided with 2 weeks' notice of each such reduction; and
- (ii) If your hours have been reduced, you shall be provided with the opportunity to increase your hours as business needs allow.

6.6 Casual Employees

As a Casual Employee:

- (a) You are employed to work on an hourly basis, when available and as required by Aircon Rentals.
- (b) You shall be paid a casual Wage Rate, being the ordinary Wage Rate for your Job Classification as set out in **Schedule 1**, plus a casual loading of 20%, for all hours worked by you.
- (c) The following Clauses do not apply to Casual Employees:
 - (i) **Clause 8** (qualifying period and probation period);
 - (ii) **Clause 28** (general leave provisions);
 - (iii) **Clause 29** (annual leave);
 - (iv) **Clause 30** (personal leave, excluding unpaid carer's leave);

- (v) **Clause 32** (compassionate leave);
 - (vi) **Clause 33** (parental leave - unless you are an eligible casual employee as defined in the *Workplace Relations Act 1996*);
 - (vii) **Clause 34** (long service leave - unless you are an eligible casual employee as defined by the relevant long service leave legislation in your State of employment);
 - (viii) **Clause 35.2** (payment for public holidays not worked);
 - (ix) **Clause 49.2** (notice of termination - permanent employment);
 - (x) **Clause 51** (redundancy); and
 - (xi) Such other Clauses of this Agreement which are clearly expressed to apply only to Permanent Employees.
- (d) If you are a long term casual (when you have had at least 12 months continuous service with Aircon Rentals), Aircon Rentals may offer to you the opportunity to convert your employment capacity from casual to full time or part time employment. Any acceptance of such a change to your employment capacity must be in writing.

7. OBLIGATIONS

7.1 In your employment with Aircon Rentals, you agree to, at all times:

- (a) Act in good faith towards Aircon Rentals;
- (b) Follow the lawful directions of Aircon Rentals' management;
- (c) Contribute to an amicable working atmosphere, including avoidance of prejudicial or discriminatory behaviour towards other individuals or groups;
- (d) Follow guidance given by Aircon Rentals in relation to occupational health and safety and promote a safe and secure working environment;
- (e) Notify Aircon Rentals immediately of any customer complaint, injury or incident;
- (f) Act diligently, to the best of your ability and within the knowledge of your experience and any qualifications in the performance of your work;

- (g) Create and maintain records of your work related activities as required by Aircon Rentals;
- (h) Act in the best interests of Aircon Rentals and at all times use your best endeavours to protect and promote Aircon Rentals' reputation, goodwill and customer relationships; and
- (i) Comply with all Company Policies which are communicated to you.

8. QUALIFYING PERIOD AND PROBATION PERIOD

- 8.1 If you are a Permanent Employee employed after the Lodgement Date, you shall be employed subject to a 6 month qualifying period of employment.
- 8.2 During your qualifying period, you or Aircon Rentals may terminate your employment with the giving of 1 day's notice.
- 8.3 The length of any period/s of leave or absence taken during your qualifying period will be added to the length of your qualifying period.

9. PRE-EXISTING INJURIES AND DISEASES

- 9.1 Prior to commencing employment with Aircon Rentals, you are required to disclose any pre-existing injuries, diseases or medical conditions suffered by you of which you are aware and which could reasonably be expected to be affected by the nature of your proposed employment with Aircon Rentals.
- 9.2 If you fail to disclose any such pre-existing condition, you may not be entitled to compensation for any recurrence, aggravation, acceleration, exacerbation or deterioration of the pre-existing condition arising out of your employment with Aircon Rentals.
- 9.3 Prior to commencing employment with Aircon Rentals, you may be required to undergo a pre-employment medical and physiotherapy examination at the expense of Aircon Rentals. Aircon Rentals will receive a report in relation to your ability to perform the inherent requirements of the potential position.

10. POLICE CHECKS

- 10.1 Prior to commencing employment with Aircon Rentals, you may be required to undergo a police check, having regard to the nature of your position.
- 10.2 Should you be promoted to a new position with Aircon Rentals, you may be required to undergo a police check, having regard to the nature of your new position.

11. COMPANY POLICIES

You must comply with Company Policies. Aircon Rentals may amend its Company Policies from time to time and will advise you of any amendments made.

PART C - JOB CLASSIFICATIONS AND DUTIES

12. JOB CLASSIFICATIONS

- 12.1 Aircon Rentals employs Employees to work in the Job Classifications set out in Schedule 1. Your Job Classification will also be confirmed in your Letter of Engagement.
- 12.2 Any change to your Job Classification shall be made in consultation with you and will be communicated in writing to you.

13. FLEXIBILITY OF DUTIES

- 13.1 Any job description provided to you should be read as a general guide. Aircon Rentals may direct you:
 - (a) To carry out such duties as are within the limits of your skill, competence and training; and
 - (b) To use such business tools or equipment as may be required, provided that you have been properly trained in the use of such business tools and equipment.
- 13.2 You are expected to willingly accept flexibility of jobs and duties throughout your employment and to take all reasonable steps to achieve quality, accuracy, efficiency and completion of any reasonable job or task assigned to you.
- 13.3 A reasonable change in duties to accommodate Aircon Rentals' business needs will not attract any extra payment and will not be grounds for the termination of your employment.

14. LOCATION AND TRANSFER OF EMPLOYMENT

- 14.1 Aircon Rentals employs Employees at its business premises.
- 14.2 Aircon Rentals may relocate Employees from one location to another, on a permanent or temporary basis, to accommodate the needs of the business, but will first consult with you to ensure that such relocation takes into account your personal circumstances.

PART D - HOURS OF WORK AND BREAKS

15. SPREAD OF HOURS

- 15.1 You may be required to work on any day of the week and across all hours.
- 15.2 Your Letter of Engagement shall set out your indicative spread of hours.
- 15.3 Where possible, any change to your indicative spread of hours shall be communicated to you in writing.
- 15.4 You will be notified of start and finish times of each Shift (including of any changes to your start and finish times) in accordance with your indicative spread of hours subject to the following:
- (a) As far as possible, there will be a minimum of 10 hours between the completion of work on one day and the commencement of work on the following day; and
 - (b) As far as possible, you will not be required to work for more than 8 consecutive days.

16. MEAL AND REST BREAKS

- 16.1 Meal and Rest Breaks shall be determined as follows:
- (a) **Permanent Employees**
 - (i) Permanent Employees shall receive one paid rest break of 15 minutes duration for work performed or Shifts worked of 4 hours but less than 5 hours' duration; or
 - (ii) Permanent Employees shall receive a 30 minute unpaid meal break and a paid 15 minute rest break for work performed or Shifts worked of 5 hours but less than 9 hours' duration; or
 - (iii) Permanent Employees shall receive a 30 minute unpaid meal break and 2 paid 15 minute rest breaks (one before the meal break and one after the meal break) for work performed or Shifts worked of more than 9 hours' duration.
 - (b) **Casual Employees**

Casual Employees shall receive an unpaid meal break of not less than 30 minutes' duration for work performed or Shifts worked of 5 hours, as determined by their manager.

- 16.2 If Permanent Employees or Casual Employees are required to work a Shift of more than 9 hours, they will receive an additional unpaid meal break of not less than 30 minutes' duration.
- 16.3 For the avoidance of doubt, time that is taken as a paid rest break shall be counted as time worked within the meaning of Rostered Hours of Work. Time that is taken as an unpaid meal break shall not be counted as time worked within the meaning of Rostered Hours of Work.
- 16.4 Meal breaks and rest breaks are, in all cases, to be taken at times which are convenient to Aircon Rentals' business and the service of customers. It may be that, in some instances, you will be required to work through your break, in which case, a break will be taken at a mutually agreeable time.

17. OVERTIME

- 17.1 This Clause only applies to non-salaried Permanent Employees.
- 17.2 Overtime is hours worked as follows:
- (a) if you are employed as a Labourer/Trades Assistant, those hours in excess of 56 hours per week; or
 - (b) if you are not employed as a Labourer/Trades Assistant, those hours in excess of 40 hours per week,
- that are previously authorised by Aircon Rentals and are not hours worked voluntarily and without specific authorisation from Aircon Rentals.
- 17.3 Overtime entitlements shall, at the option of Aircon Rentals, be provided in one of the following ways:
- (a) **Payment for Overtime Worked**

You will receive payment of 150% of your Wage Rate for the first 3 Overtime hours worked in each Shift, and 200% of your Wage Rate for each Overtime hour worked thereafter.
 - (b) **Paid time off in lieu for Overtime Worked**

You will receive paid time off in lieu of Overtime hours worked equal to 1.5 hours' time off for the first 3 Overtime hours worked in each Shift, and 2.0 hours' time off for each Overtime hour worked thereafter.

17.4 Paid time off in lieu

- (a) Paid time off in lieu should be taken within 4 weeks from the Overtime hours being worked where the operational requirements of the business allow.
- (b) Having regard to the operational requirements of Aircon Rentals, if paid time off in lieu cannot be taken within 4 weeks from the Overtime hours being worked, it will accrue and may be taken at the next most suitable opportunity, as agreed by Aircon Rentals.
- (c) Accrued time off in lieu not taken within 6 months from the date it has accrued will be paid to you at your Wage Rate.
- (d) If your employment ceases, any accrued time off in lieu that has not been taken, shall be paid at your Wage Rate.

18. REASONABLE ADDITIONAL HOURS - SALARIED PERMANENT EMPLOYEES

- 18.1 The salary for full time and part time salaried Permanent Employees includes a component for all reasonable additional hours in excess of 38 hours per week and is in full satisfaction of all hours worked.
- 18.2 Full time and part time salaried Permanent Employees are not entitled to additional payment for Overtime or paid time off in lieu in accordance with **Clause 17**.

PART E - WAGES, SUPERANNUATION AND BENEFITS

19. WAGES

- 19.1 You will be paid, as a minimum, the Wage Rate for your Job Classification as set out in Schedule 1.
- 19.2 You will be paid your Wage Rate weekly in arrears.
- 19.3 It is your obligation to provide correct bank details to Aircon Rentals and advise Aircon Rentals promptly if there are any changes to those details.
- 19.4 Pay-slips giving details of earnings and deductions will be issued after each payment of wages.

20. JUNIOR WAGE RATES

If you are a junior Employee, you may be paid a junior rate as provided for in an Australian Pay and Classification Scale or a Special Federal Minimum Wage as amended

or introduced from time to time by the Australian Fair Pay Commission (including such an instrument introduced after the Lodgement Date).

21. APPRENTICE AND TRAINEE WAGE RATES

21.1 Aircon Rentals may engage Employees as either apprentices or trainees in certain Job Classifications, pursuant to a training contract registered and approved by the relevant state training body.

21.2 If you are engaged as either an apprentice or trainee Aircon Rentals will, as a minimum, pay you as follows:

- (a) If you are an apprentice, in accordance with the minimum wage rates under the relevant Australian Pay and Classification Scale;
- (b) Subject to **Clause 21.3**, if you are a trainee, in accordance with the minimum wage rates under the *National Training Wage Award 2000* (the "**Training Award**"). Where the Training Award refers to a relevant award, this shall be taken to be a reference to this Agreement.

21.3 In the event that the Australian Fair Pay Commission determines a relevant Australian Pay and Classification Scale which contains basic rates of pay for trainees, then the Australian Pay and Classification Scale will apply instead of the Training Award for the purposes of this Agreement.

22. SUPERANNUATION

22.1 Your Wage Rate is exclusive of superannuation.

22.2 Subject to **Clause 22.3**, superannuation for Employees employed under this Agreement shall be governed by the provisions of the *Superannuation Guarantee (Administration) Act 1992* (as amended from time to time), currently 9% of ordinary time earnings.

22.3 Aircon Rentals will pay superannuation contributions into a complying superannuation fund nominated by you. In the event that you fail to nominate a complying superannuation fund within 60 days of commencement of employment, Aircon Rentals shall pay superannuation contributions into a default fund nominated by Aircon Rentals.

22.4 For the purposes of this Clause, the expression "**ordinary time earnings**" includes your Wage Rate and performance related bonuses but does not include Overtime entitlements, discretionary bonuses, incentive payments or payments to reimburse expenses.

22.5 You are only entitled to receive superannuation contributions in accordance with this Clause and the *Superannuation Guarantee (Administration) Act 1992* if you

are aged between 18 and 70, and are paid \$450.00 (before tax) or more in a calendar month.

23. SALARY SACRIFICE

- 23.1 Aircon Rentals may agree to allow you to forgo part of your Wage Rate in return for additional contributions being made into your superannuation fund by way of salary sacrifice.
- 23.2 In the event that you decide, for any reason whatsoever, to stop participating in such salary sacrificing, arrangements will be made, where possible, to reinstate the amount sacrificed to your Wage Rate.

24. WAGE REVIEWS AND PERFORMANCE REVIEWS

- 24.1 Wage reviews are conducted on or about 15 September each year.
- 24.2 The conduct of a wage or performance review will not impose an obligation on Aircon Rentals to increase your Wage Rate.
- 24.3 Aircon Rentals may, however, increase your Wage Rate after taking into account relevant factors, including your performance and prevailing market conditions both generally and relating to the operational requirements of the business.

25. PERFORMANCE INCENTIVES AND BONUSES

- 25.1 Aircon Rentals may offer performance incentives or bonuses in order to reward Employees for excellent overall performance, subject to the revenue and success of the business.
- 25.2 If you are eligible to participate in a performance incentive scheme or receive a bonus, such a performance incentive scheme or bonus shall be communicated to you in writing in your Letter of Engagement.
- 25.3 Performance incentive payments and bonuses are discretionary and Aircon Rentals reserves the right to review, amend or retract any type of performance incentive scheme or bonus at any time.
- 25.4 A performance incentive payment or bonus will only be paid if you are a current Employee as at the date such payment is due to be made.
- 25.5 Employees who receive a performance incentive payment or bonus shall not have an expectation that such payment will form part of their wages on an ongoing basis.
- 25.6 Should the Wage Rate paid to you over a 12 month period fall below the relevant guaranteed basic rate of pay forming part of the Australian Fair Pay and

Conditions Standard, Aircon Rentals may offset any performance incentive payment or bonus made to you in accordance with this Clause in order to meet the requirements of the Australian Fair Pay and Conditions Standard.

26. EXPENSES

- 26.1 Where Aircon Rentals has previously authorised reasonable and proper business expenses incurred by you, Aircon Rentals will reimburse you for such business related expenses incurred in the course of carrying out your duties. A tax invoice must be provided to receive reimbursement.
- 26.2 Where expenses are paid by a company debit card, a tax invoice must be provided in accordance with Aircon Rentals' Credit Policy.

27. ALLOWANCES

- 27.1 This Clause sets out all relevant allowances payable under this Agreement. Allowances to which you are entitled will be set out in your Letter of Engagement.
- 27.2 If you are a Casual Employee, you are not entitled to any allowances under this Clause, unless by agreement with Aircon Rentals and set out in your Letter of Engagement.

27.3 Vehicle Allowance

- (a) If you are required to use a vehicle in the performance of your duties, you must make all reasonable attempts to make use of an Aircon Rentals vehicle. If an Aircon Rentals vehicle cannot be made available, you may use your own vehicle in the performance of your duties, and will be paid a vehicle allowance of 60 cents per kilometre travelled, subject to the provisions of this Clause:
- (i) You hold a current driver's licence;
 - (ii) Your vehicle is insured and has valid registration;
 - (iii) The use of the vehicle is approved by Aircon Rentals; and
 - (iv) You maintain a log book containing accurate and detailed information regarding the use of the vehicle in performing your duties, and the log book is made available to Aircon Rentals upon request.

27.4 Phone Allowance

- (a) You may, in Aircon Rentals' discretion and in accordance with Aircon

Rentals' Telephone Policy, be provided with a mobile phone for use in the performance of your duties and reasonable personal use. Such mobile phone remains the property of Aircon Rentals. Aircon Rentals will meet all costs associated with the provision of such a mobile phone.

27.5 **First Aid Allowance**

A first aid allowance of \$6.00 per week if you are a nominated employee holding an approved certificate.

27.6 **Travel Allowance**

If you are required to travel and stay overnight at a place other than your usual place of living, you will either be paid a food allowance or, where food is provided by Aircon Rentals, no food allowance shall be paid. Reasonable accommodation will either be provided and paid for by Aircon Rentals or an additional payment shall be made by Aircon Rentals.

27.7 **On Call Allowance**

- (a) If you are required to be on call to work, this will be confirmed in writing in your Letter of Engagement.
- (b) Employees who are required to be on call to work will receive an On Call Allowance of \$120.00 per week when on call.
- (c) Employees who are required to be on call to work should be contactable at all times.
- (d) If you are required to be on call to work and are required to work outside of your Rostered Hours of Work, you will receive payment of 200% of your Wage Rate for a minimum Shift of 4 hours.

PART F - LEAVE ENTITLEMENTS

28. GENERAL LEAVE PROVISIONS

- 28.1 All paid leave provided for in this Agreement shall be paid at your Wage Rate.
- 28.2 The rules set out in the *Workplace Relations Act 1996* in relation to the taking of annual leave, personal leave, compassionate leave, unpaid carer's leave and parental leave will apply in conjunction with this Agreement.
- 28.3 If you are a part time Employee, the leave entitlements provided for in this Agreement accrue and are calculated on a pro-rata basis.

28.4 If you are a Casual Employee, you are not entitled to the leave entitlements set out in this Agreement (except for, where applicable, unpaid carer's leave, parental leave and long service leave) as you are paid a loaded hourly rate in lieu of such leave entitlements.

29. ANNUAL LEAVE

29.1 You are entitled to 4 weeks' paid annual leave in each year of your employment, to be taken at times agreed by you and Aircon Rentals.

29.2 Annual leave accrues on a pro-rata basis throughout the year, is cumulative and is paid out upon termination of employment.

29.3 If possible, a request for the taking of annual leave should be made at least 4 weeks in advance. Aircon Rentals may, in its discretion, reasonably refuse a request for annual leave where the operational requirements of the business necessitate such a refusal, particularly during the period 1 September to 30 April.

29.4 Aircon Rentals prefers and encourages you to take all accrued annual leave within 12 months of accruing that annual leave.

29.5 Annual leave loading of 17.5% is payable for all annual leave taken under this Agreement, but is not payable upon termination of employment.

29.6 Excess Accrued Annual Leave

(a) You must take an amount of annual leave if:

(i) You are directed to do so by Aircon Rentals; and

(ii) At the time that the direction is given, you have annual leave credited to you of more than 40 days; and

(iii) The amount of annual leave that you are directed to take is less than, or equal to, 1/4 of the amount of your credited annual leave at the time that the direction is given.

29.7 Payment in Lieu of Annual Leave

(a) You may elect to forgo up to 2 weeks of your entitlement to annual leave each year in exchange for a payment in lieu of the annual leave equal to the amount you would have received had you taken the annual leave.

(b) All requests for payment in lieu of annual leave must be made in writing to Aircon Rentals.

- (c) Such payments in lieu of annual leave can only be made in accordance with the provisions set out in the *Workplace Relations Act 1996*.

30. PERSONAL LEAVE

30.1 You are entitled to 10 days' paid personal leave in each year of your employment.

30.2 Personal leave accrues on a pro-rata basis, is cumulative and is not paid out upon termination of employment.

30.3 Personal leave may be used as follows:

- (a) As "**sick leave**" - in the event of personal illness or injury; or
- (b) As "**carer's leave**" - to provide care or support to a member of your Immediate Family or household, who requires your care and support because of:
 - (i) A personal illness or injury of a member; or
 - (ii) An unexpected emergency affecting the member.

30.4 "**Immediate Family**" means:

- (a) Your spouse (including a former spouse, a de facto spouse and a former de facto spouse);
- (b) Your child (including your stepchild, adopted child, ex-nuptial child or adult child), parent, grandparent, grandchild or sibling; and
- (c) A child, parent, grandparent, grandchild or sibling of your spouse.

30.5 In order to qualify for the payment of personal leave:

- (a) You must take all reasonable steps to inform Aircon Rentals of any expected period of absence from work due to personal leave as soon as is reasonably practical, preferably prior to the start of the Shift on which you are rostered to work in order that alternative staffing arrangements may be made; and
- (b) To substantiate all absences for personal leave:
 - (i) Where it is reasonably practicable to do so, you must give Aircon Rentals a medical certificate from a registered health practitioner evidencing an inability to work or, in the case of carer's leave,

confirming the illness or injury of the person being cared for by you; or

- (ii) If it is not reasonably practicable for you to give Aircon Rentals a medical certificate, you must make and give Aircon Rentals a statutory declaration containing such details as Aircon Rentals may require.
- (c) It is mandatory to provide the documentary evidence described in **Clause 30.5** where you are absent on account of personal leave for 1 day or more.
- (d) The documentary evidence required in accordance with **Clause 30.5** must be given to Aircon Rentals as soon as is reasonably practicable (which may be before or after personal leave has started).

30.6 Payment in Lieu of Personal Leave

- (a) Aircon Rentals recognizes the importance of allowing you to keep a certain amount of accrued personal leave in reserve for use in circumstances of genuine illness and injury.
- (b) As an incentive to encourage you to only access personal leave in circumstances of genuine illness and injury, and subject to agreement with Aircon Rentals, you may elect to forgo up to 5 days of your entitlement to personal leave each year in exchange for a payment in lieu of the personal leave equal to the amount you would have received had you taken the personal leave, provided you maintain a balance of at least 15 days' accrued personal leave at all times.
- (c) All requests for payment in lieu of personal leave must be made in writing to Aircon Rentals.
- (d) Such payments in lieu of personal leave can only be made in accordance with the provisions set out in the *Workplace Relations Act 1996*.

31. UNPAID CARER'S LEAVE

31.1 You (including if you are employed on a casual basis) shall be entitled to up to 2 days' unpaid carer's leave for each occasion where a member of your Immediate Family, or a member of your household, requires care or support during such a period because of:

- (a) A personal illness, or injury, of the member; or
- (b) An unexpected emergency affecting the member.

31.2 "**Immediate Family**" in this Clause has the same meaning as in **Clause 30.4**.

31.3 To be entitled to take unpaid carer's leave in accordance with this Clause:

- (a) Your entitlement to paid personal leave in accordance with **Clause 30** must be exhausted; and
- (b) You must provide a medical certificate from a registered health practitioner if the care and support is required because of a personal illness or injury of the member; or
- (c) You must (if requested) provide a statutory declaration if the care and support is required because of an unexpected emergency affecting the member.

32. COMPASSIONATE LEAVE

32.1 You are entitled to up to 2 days' paid compassionate leave on each occasion of the following:

- (a) For the purposes of spending time with a person who is a member of your Immediate Family or household who has a personal illness, or injury, that poses a serious threat to his or her life; or
- (b) After the death of a member of your Immediate Family or household.

32.2 "**Immediate Family**" in this Clause has the same meaning as in **Clause 30.4**.

32.3 If Aircon Rentals requests reasonable evidence of the illness, injury or death, you must provide such evidence in order to receive payment for compassionate leave.

32.4 Use Of Compassionate Leave

Where your entitlement to compassionate leave is exhausted, you shall be able to access your accrued personal leave entitlement.

33. PARENTAL LEAVE

After 12 months' continuous service with Aircon Rentals, you are entitled to unpaid maternity, paternity and adoption leave as set out in the *Workplace Relations Act 1996*.

34. LONG SERVICE LEAVE

34.1 You are entitled to long service leave as follows in accordance with the *Long Service Leave Act 1992* (Victoria), *Long Service Leave Act 1955* (New South Wales) and the *Industrial Relations Act 1999* (Queensland).

34.2 Cashing in Long Service Leave

If you become entitled to long service leave during your employment with Aircon Rentals, you may apply in writing to cash in your long service leave entitlement (or part thereof) in exchange for payment. Aircon Rentals may, in its discretion, grant your application.

35. PUBLIC HOLIDAYS

35.1 Introduction

Public holidays are those days (including substituted public holidays) declared or prescribed as public holidays in your State of employment.

35.2 Public Holidays Not Worked

A Permanent Employee who is rostered, but not required, to work on a public holiday shall be paid their Wage Rate for their Rostered Hours of Work.

35.3 Public Holidays Worked - All Employees

- (a) Aircon Rentals may request that you work on a public holiday.
- (b) If you are a non-salaried Permanent Employee and you work on a public holiday you will receive, at Aircon Rentals' discretion, either:
 - (i) Payment of 200% of your Wage Rate for all hours worked; or
 - (ii) Paid time off in lieu of hours worked equal to 2 hour's time off for each hour worked.
- (c) If you are a salaried Permanent Employee and you work on a public holiday, you will not be entitled to any additional payment as your Wage Rate takes into account all hours worked.

PART G - THE WORKPLACE GENERALLY

36. UNIFORMS AND PROTECTIVE CLOTHING

36.1 If you are a Permanent Employee, you may be required to wear a uniform and/or protective clothing supplied by Aircon Rentals. This will be provided each year and include the following:

- (a) 1 pair of safety boots;
- (b) 3 pairs of long trousers;

- (c) 3 pairs of shorts;
- (d) 5 polo shirts; and
- (e) 1 jacket or sweatshirt.

- 36.2 If you are a Casual Employee, you may be required to wear a uniform and/or protective clothing supplied by Aircon Rentals. This will be provided each year and includes 2 polo shirts. Casual Employees are required to provide their own safety boots.
- 36.3 In accordance with **Clause 52**, all uniforms and protective clothing remain the property of Aircon Rentals.
- 36.4 Unless otherwise agreed by Aircon Rentals, employees will be responsible for laundering their uniforms.

37. APPROPRIATE DRESS

Aircon Rentals' image is an important responsibility of all Employees. All Employees shall be required to dress and present in a professional, neat and tidy manner in accordance with Company Policy.

38. EXTERNAL COURSES

- 38.1 Subject to company policy, Aircon Rentals may require you to undertake training appropriate and essential to the efficient and productive performance of your duties and to improve the services offered to Aircon Rentals' customers.
- 38.2 You are not entitled to payment for Overtime where you attend an external course voluntarily.
- 38.3 Aircon Rentals may agree to subsidise part of the cost of training courses or programs that you would like to undertaken subject to the Aircon Rentals Policies.
- 38.4 If you cease employment with Aircon Rentals within 6 months of completing training or study, you may be required to reimburse to Aircon Rentals an amount equal to the amounts paid by Aircon Rentals with respect to such training or study.

39. HEALTH AND SAFETY OF EMPLOYEES

- 39.1 Your responsibilities are:
- (a) To work carefully to ensure your own safety and the safety of others who

may be affected by your acts or omissions;

- (b) To report all incidents that may affect your own safety and the safety of others;
- (c) To use and maintain equipment properly; and
- (d) To ensure that your work area is free of hazards.

40. ANTI DISCRIMINATION, EQUAL OPPORTUNITY AND HARASSMENT

- 40.1 You and Aircon Rentals agree that it is our intention to achieve the main object in Section 3(m) of the *Workplace Relations Act* 1996, which is to respect and value the diversity of people in the workforce by helping to prevent and eliminate discrimination at our workplace 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.
- 40.2 Nothing in this Clause is to be taken to affect any differential treatment (or treatment having different effects) which is not unlawful under Commonwealth or State anti-discrimination legislation.
- 40.3 Employees must comply with Aircon Rentals' Policies in relation to anti-discrimination, equal opportunity, harassment and workplace bullying in conjunction with this Clause.

41. GRIEVANCE HANDLING PROCEDURE

- 41.1 Where a dispute arises out of the terms of this Agreement, the following procedure should be followed:
- (a) The matter shall, where possible, first be discussed by you with your immediate manager. Your immediate manager will respond to your grievance as soon as possible.
 - (b) If the issue is not resolved in accordance with **Clause 41.1(a)**, the matter may be discussed by you with Aircon Rentals' Management. The matter should be discussed with Aircon Rentals' Management within 2 weeks of the grievance being raised.
 - (c) If the matter cannot be resolved in discussion between the parties as part of the steps set out in **Clause 41.1(a)** and **41.1(b)**, the matter may be referred to an agreed private independent mediator for mediation. The agreed private independent mediator shall have only those powers to mediate or such further powers as expressly agreed by the parties to the dispute.

- (d) If reasonable attempts to agree as to an agreed private mediator have been made and no agreement can be reached, either party may refer the matter to the Australian Industrial Registrar who will provide information on alternative dispute services. If no agreement can be reached, the dispute may be referred to the Australian Industrial Relations Commission for mediation only.

41.2 During any discussions or action taken under this Clause, all work shall continue in accordance with the practices existing prior to the matter in dispute arising, or other agreed arrangements. No party shall be prejudiced as to the final settlement by the continuance of the work in accordance with this sub Clause.

41.3 You are entitled to have a representative of your choosing present at any meeting held as part of the above grievance handling procedure.

42. SUSPENSION

You may be stood down on full pay if Aircon Rentals receives a complaint from another Employee or customer, or it is otherwise suspected that you have, or may have, committed a serious breach of this Agreement or one of the matters listed in **Clause 50**.

43. STAND DOWN

43.1 Aircon Rentals shall have the right to stand you down without pay where you cannot be usefully employed because of an act of God, or power failure, or any stoppage of work by a cause for which Aircon Rentals cannot reasonably be held responsible.

43.2 This Clause does not operate to affect your continuity of employment for the purposes of accrual of leave entitlements.

44. ABANDONMENT OF EMPLOYMENT

If you are absent from work, without just cause, for a continuous period of 3 working days or more without notification to Aircon Rentals and without the consent of Aircon Rentals, you shall be deemed to have abandoned your employment and Aircon Rentals will be entitled to treat your employment as having been terminated by you. In such a case, Aircon Rentals shall only be required to pay to you the Wage Rate for work performed and accrued leave entitlements due to you to the date of the termination of your employment.

PART H - FURTHER EMPLOYMENT OBLIGATIONS

45. CONFIDENTIAL INFORMATION

45.1 Definition

"**Confidential Information**" includes all information regarding the business, trade secrets and commercially valuable information of Aircon Rentals, its Related Entities and Associates, including without limitation:

- (a) All information relating to customers (eg customer lists, databases or records, particular customer transactions and the state of customer accounts) to which you are privy as a result of your employment with Aircon Rentals;
- (b) All information relating to suppliers of goods and services and Aircon Rentals arrangements with any other third parties;
- (c) All information relating to Aircon Rentals' products, pricing, manuals, Aircon Rentals Policies and personnel;
- (d) All matters relating to the business and marketing plans and strategies, technical data and financial information of Aircon Rentals;
- (e) All systems, processes, designs, methods, intellectual property, computer hardware and software of Aircon Rentals; and
- (f) Any information or document which you have been given or which has come to your attention during your employment with Aircon Rentals which, from its nature and content, is or would reasonably be expected to be confidential.

45.2 Obligations

- (a) You may use Confidential Information for the sole purpose of providing services to Aircon Rentals in the course of your employment. You must not use Confidential Information for any other purpose without the express written approval of a Director of Aircon Rentals.
- (b) You must not remove Confidential Information from the premises of Aircon Rentals without the express written approval of a Director of Aircon Rentals.

45.3 Application

- (a) This Clause shall also not apply to Confidential Information that is or subsequently comes into the public domain (unless this is due to a breach of confidentiality by you) or information required to be disclosed by law.
- (b) You agree that the obligations contained in this Clause shall survive termination of your employment with Aircon Rentals.
- (c) Nothing in this Clause, nor in this Agreement, shall be taken as in any way prohibiting or restricting disclosure or details of this Agreement by either party to any other person.

45.4 Acknowledgement

You acknowledge that Confidential Information is of considerable commercial value to Aircon Rentals. Any disclosure of Confidential Information in breach of this Agreement will cause Aircon Rentals damage that cannot adequately be compensated by any award of damages. Aircon Rentals shall be entitled to an injunction to restrain you from disclosure of this Confidential Information and this remedy shall be in addition to any award of damages that may be made in favour of Aircon Rentals.

46. INTELLECTUAL PROPERTY RIGHTS

- 46.1 All material provided to you by Aircon Rentals (or material of which you become aware of or comes into your possession in the course of your employment) and all intellectual property rights in that material are and will remain the absolute property of Aircon Rentals.
- 46.2 You acknowledge and agree that any discovery, invention, secret process or improvement in procedure ("**Discovery**") made, including any artwork, designs or brand names developed or discovered by you during your employment with Aircon Rentals in connection with or in any way affecting or relating to the business of Aircon Rentals must be promptly disclosed to Aircon Rentals and will be the absolute property of Aircon Rentals.
- 46.3 You, if and when required by Aircon Rentals to do so, must, at the expense of Aircon Rentals:
 - (a) Apply or join in applying with Aircon Rentals for letters patent or other similar protection in Australia or in any other part of the world for any Discovery; and
 - (b) Do all things necessary for vesting the said letters patent or other similar protection when obtained and all right and title to and interest in the

same (including all patent rights and proprietary rights) in Aircon Rentals or its nominee as sole beneficial owner.

46.4 You irrevocably and unconditionally consent to Aircon Rentals acts or omissions in relation to your moral rights in any existing and future copyright works created or designed by you in the course of your employment which may or might otherwise constitute a breach or infringement of those moral rights in the absence of such consent.

46.5 You agree that the obligations contained in this Clause shall survive termination of your employment with Aircon Rentals.

47. CONFIDENTIALITY, INTELLECTUAL PROPERTY & POST EMPLOYMENT OBLIGATIONS

Aircon Rentals may, at any time, request an Employee to execute a separate deed relating to confidential information, intellectual property and/or post employment obligations which will operate in conjunction with obligations contained in this Agreement.

48. CONFLICTS OF INTEREST AND SECONDARY EMPLOYMENT

48.1 During your employment you must not engage in any activity that may conflict in any way with your employment at Aircon Rentals. Failure by you to notify Aircon Rentals of any activities or proposed activities which may result in a conflict of interest may result in disciplinary action, or in serious cases, termination of employment.

48.2 If you are employed on a Permanent basis:

- (a) You are not permitted to accept work external to Aircon Rentals where such work may adversely impact on your working hours, commitments or accountabilities associated with your role with Aircon Rentals, or where such work represents a conflict of interest with your role with Aircon Rentals; and
- (b) If you are contemplating secondary employment external to Aircon Rentals, you are required to initially discuss your intention with your Manager prior to accepting such a position. Aircon Rentals will not unreasonably refuse consent to secondary employment where such other work does not constitute a conflict of interest.

PART I - ENDING EMPLOYMENT

49. NOTICE OF TERMINATION

49.1 Casual Employment

Casual employment can be terminated by either party on the giving of 1 day's notice (or, at the discretion of Aircon Rentals, payment in lieu of notice).

49.2 Permanent Employment

- (a) Subject to **Clause 8**, Permanent employment can be terminated by either party on the giving of the following periods of notice (or, at the discretion of Aircon Rentals, payment in lieu of notice):

<u>Period of Continuous Service</u>	<u>Period of Notice</u>
Not more than 1 year	1 week
1 year and up to 3 years	2 weeks
3 years and up to 5 years	3 weeks
5 years and over	4 weeks

- (b) If you are over 45 years of age and have at least 2 years' continuous service with Aircon Rentals, an additional 1 week's notice (or payment in lieu of notice) shall be given by Aircon Rentals.
- (c) During any period of notice, Aircon Rentals is not obliged to provide you with any work or work of a particular kind. Aircon Rentals may direct that you do not attend Aircon Rentals premises and may further direct that you only carry out duties as directed by Aircon Rentals.

49.3 Any payment in lieu of notice shall be equal to the Wage Rate you would have received in respect of the hours (excluding Overtime) that would have been worked by you during the period of notice had you not been terminated.

50. TERMINATION WITHOUT NOTICE

50.1 Aircon Rentals may immediately, without notice or payment in lieu of notice, terminate your employment if you are guilty of serious misconduct. Serious misconduct includes, but is not limited to:

- (a) Wilful or deliberate behaviour by you that is inconsistent with the continuation of your employment;
- (b) Conduct that causes serious risk to the health or safety of a person, or the reputation, viability or profitability of Aircon Rentals business;
- (c) Engaging in theft, fraud or assault;

- (d) Harassing, sexually or otherwise, or discriminating against other employees, contractors or customers of Aircon Rentals;
- (e) Being intoxicated or under the influence of drugs at work;
- (f) Refusing to carry out a lawful, reasonable instruction by a supervisor or manager; or
- (g) Neglect of duty;

and, in such case, you will be paid all entitlements due to the date of the termination of your employment, upon the return of all Aircon Rentals property as required by **Clause 52**.

50.2 "**Neglect of duty**" in this Clause includes the repeated failure by an Employee to attend for work without lawful excuse or prior notification to Aircon Rentals on 3 occasions or more.

51. REDUNDANCY

51.1 Discussions before Termination

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

51.2 Severance Pay

In addition to the period of notice provided in **Clause 49.2**, if you are a Permanent Employee and your employment is terminated for reasons of redundancy, you shall be entitled to the following amount of severance pay in respect of your continuous period of service with Aircon Rentals:

Period of Continuous Service	Severance Pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and over	8 weeks' pay

"Weeks' pay" means the Wage Rate which you would have received for a week's work, averaged over the previous 4 week period.

51.3 Time Off During Notice Period

- (a) If your employment is terminated for reasons of redundancy, during the period of notice of termination given by Aircon Rentals you shall be allowed up to 1 day's time off without loss of pay for the purpose of seeking other employment.
- (b) If you have been allowed paid leave for more than 1 day during the notice period for the purpose of seeking other employment, you will, at the request of Aircon Rentals, be required to produce proof of attendance at an interview or you will not receive payment for the time absent. For this purpose, a statutory declaration will be sufficient.

51.4 Transmission of Business

- (a) **"Transmission"** includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and **"transmitted"** has a corresponding meaning.
- (b) The provisions of **Clauses 49.2** and **51.2** are not applicable where Aircon Rentals' business is transmitted to another employer (in this sub Clause called the **"New Employer"**), in any of the following circumstances:
 - (i) Where you accept employment with the New Employer which recognises the period of continuous service which you had with Aircon Rentals (or any prior transmitter) to be continuous service with the New Employer; or
 - (ii) Where you reject an offer of employment with the New Employer:
 - (A) In which the terms and conditions are no less favourable, considered on an overall basis, than the terms and conditions applicable at the time of ceasing employment with Aircon Rentals; and

- (B) Which recognises the period of continuous service which you had with Aircon Rentals (or any prior transmitter) to be continuous service with the New Employer.
- (c) This Clause shall not apply to you if you are:
 - (i) Offered suitable alternative employment;
 - (ii) A Permanent Employee with less than 1 year's continuous service;
 - (iii) Terminated as a consequence of serious misconduct that justifies termination without notice;
 - (iv) On a qualifying period in accordance with **Clause 8**;
 - (v) An apprentice or trainee;
 - (vi) Engaged for a specific period of time or for a specified task or tasks; or
 - (vii) A Casual Employee.

52. PROPERTY OF AIRCON RENTALS

- 52.1 When your employment is terminated, you must return to Aircon Rentals all property of Aircon Rentals which is in your possession, custody or control. This includes, without limitation, tools, vehicles, uniforms, footwear, keys, equipment, documents, policies, manuals, or other information whether in electronic, written or other form. You undertake not to retain any copies of any such property.
- 52.2 Aircon Rentals has the right to withhold any final pay until all property is returned as required by this Clause.
- 52.3 You are responsible for all loss and damage suffered by Aircon Rentals due to wilful acts or negligence on your part caused during your employment, including loss and damage to property belonging to Aircon Rentals.

53. DEDUCTIONS

- 53.1 Aircon Rentals reserves the right to deduct from your wages or, upon the termination of your employment, to deduct from your final pay, including from any accrued leave entitlements, any sums owed to Aircon Rentals by you relating to your employment, in respect to the following:
 - (a) Any overpayments of wages or over-reimbursement of expenses;

- (b) If you fail to work out the required notice period as set out in **Clause 49**, an amount equal to the Wage Rate you would have received had you worked out the required notice period;
- (c) The replacement value of any property belonging to Aircon Rentals provided to you or under your control for the purposes of completing your employment duties that you have not returned upon termination, as required by **Clause 52**;
- (d) The value of any unaccrued leave taken in advance;
- (e) In accordance with **Clause 38**, any training costs payable.

PART J - MISCELLANEOUS

54. EXCLUSIONS & MODIFICATIONS

- 54.1 This Agreement constitutes the entire agreement between you and Aircon Rentals in relation to all matters relating to your employment with Aircon Rentals. Any protected award conditions as determined by the *Workplace Relations Act 1996* which relate to Public Holidays, Rest Breaks, Shift/Overtime Loadings, Allowances (as defined by the *Workplace Relations Act 1996*), Penalty Rates, Incentive-based Payments and Bonuses and Annual Leave Loading, other than as expressly provided for in this Agreement, are hereby modified or excluded.
- 54.2 For the avoidance of doubt, where this Agreement provides for an entitlement to Public Holidays, Rest Breaks, Shift/Overtime Loadings, Allowances (as defined by the *Workplace Relations Act 1996*), Penalty Rates, Incentive-based Payments and Bonuses and Annual Leave Loading, such protected award condition is hereby modified.
- 54.3 For the avoidance of doubt, where this Agreement does not provide for an entitlement to Public Holidays, Rest Breaks, Shift/Overtime Loadings, Allowances (as defined by the *Workplace Relations Act 1996*), Penalty Rates, Incentive-based Payments and Bonuses and Annual Leave Loading or any other award conditions, such entitlements are hereby excluded.

55. NO EXTRA CLAIMS

You and Aircon Rentals agree that, except where consistent with the terms of this Agreement, there shall be no extra claims during the life of this Agreement.

56. SEVERANCE

If any provision of this Agreement is declared or determined to be illegal or invalid by the Workplace Authority or a court or tribunal of competent jurisdiction, the validity of the remaining parts, terms or provisions of this Agreement shall not be affected and the illegal or invalid part, term or provision shall be deemed not to be part of this Agreement.

SIGNATURE OF THE PARTIES

EXECUTED as an Agreement by Aircon Rentals and its Employees.

SIGNED FOR AND ON BEHALF of **AIRCON RENTALS PTY LTD (ABN 65 003 454 680)** in the presence of:-

.....
Name of Employer Representative	Signature
.....
.....	Date
Address of Employer Representative
	Position

IN THE PRESENCE OF:

.....
Name of Witness	Signature
.....
.....	Date
Address of Witness	

SIGNED FOR AND ON BEHALF OF THE EMPLOYEES:

.....
Name of Employee Representative	Signature
.....
.....	Date
Address of Employee Representative
	Position

IN THE PRESENCE OF:

.....
Name of Witness	Signature
.....
.....	Date
Address of Witness	

SCHEDULE 1

Job Classification	Minimum Permanent Hourly Wage Rate	Minimum Salary per annum
Electrician	\$19.15	\$39,832.00
Refrigeration Mechanic	\$19.15	\$39,832.00
Van Driver/Installer	\$16.75	\$34,840.00
Heavy Vehicle Driver	\$19.80	\$41,184.00
Labourer/Trades Assistant	\$15.60	\$32,448.00
Rigger/Dogman	\$18.65	\$38,792.00
Administration Officer / Bookkeeper	\$16.65	\$34,632.00
Manager	\$19.25	\$40,040.00