



# 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

**Arc @ UNSW Limited**  
(AG2023/4500)

## ARC EMPLOYEE COLLECTIVE AGREEMENT 2009

DEPUTY PRESIDENT WRIGHT  
DEPUTY PRESIDENT SLEVIN  
DEPUTY PRESIDENT GRAYSON

SYDNEY, 12 FEBRUARY 2024

*Application to extend the default period for the Arc Employee Collective Agreement 2009*

[1] Pursuant to subitem 20A(4) of Sch 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), Arc @ UNSW Limited has applied to extend the default period for the *Arc Employee Collective Agreement 2009* (the Agreement). The application seeks to extend the agreement until 7 April 2024.

[2] The application is made in accordance with subitem 20A(6)(a) on the ground that the bargaining is occurring for a proposed enterprise agreement that will cover the same, or substantially the same, group of employees as are covered by the Agreement and that it is appropriate to do so. The application was made after the notification time for the proposed enterprise agreement.

[3] The Full Bench in *ISS Health Services Pty Ltd*<sup>1</sup> described the requirements that must be met for an application to extend the default period where bargaining for a replacement agreement is made.

[4] We are satisfied on the material provided that the requirements in subitem (6)(a) are met and that it is appropriate to extend the default period. The applicant has commenced bargaining for a replacement agreement and we consider that an extension until 6 April 2024 is sufficient time for a replacement agreement to be made and approved.

[5] 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 6 April 2024.

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<sup>1</sup> [2023] FWCFB 122

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



DEPUTY PRESIDENT

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**UNSW Student Life**

**ARC EMPLOYEE  
COLLECTIVE AGREEMENT  
2009**

# Arc @ UNSW LIMITED

## Employee Collective Agreement 2009

This Agreement is made under the *Workplace Relations Act 1996* (Cth) (“**WR Act**”) as an Employee collective agreement (as defined by section 327 of the WR Act) between Arc @ UNSW Limited (“**Arc**”) and Employees that are subject to this Agreement.

The parties agree as follows:

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### 1 SECTION 1: PRELIMINARY

#### 1.1 Title

This Agreement shall be known as the **Arc Employee Collective Agreement 2009**.

#### 1.2 Parties

The parties to this Agreement are:

- (a) Arc @ UNSW Limited ("**Arc**"); and
- (b) all Employees of Arc who are not members of SLT.

#### 1.3 Definitions

In this Agreement, unless a contrary intention appears:

- (a) "**Agreement**" means the Arc Employee Collective Agreement 2009.
- (b) "**AFPCS**" means the Australian Fair Pay and Conditions Standard.
- (c) "**AIRC**" means the Australian Industrial Relations Commission, or any successor institution exercising the same functions and powers, such as Fair Work Australia.
- (d) "**Annualised Salary**" means the annual rate of pay which an Employee receives in a year and is intended to compensate the Employee for all loadings, allowances and penalty amounts which the Employee would have otherwise been entitled to under the terms of this Agreement.
- (e) "**Arc**" means Arc @ UNSW Limited as the Employer.
- (f) "**Award**" means any pre-reform Federal Award or Modern Award which comes into force on 1 January 2010.
- (g) "**Casual Employment**" means an Employee who is engaged and paid on an hourly basis, inclusive of a loading to compensate for benefits (such as personal and annual leave). A Casual Employee is appointed to work an irregular pattern of hours on an intermittent or irregular basis and employment ceases at the end of each engagement.
- (h) "**Casual Rate of Pay**" means the Normal Hourly Rate applicable to a Casual Employee's position classification plus a loading of 28%.
- (i) "**Company Property**" includes:
  - (i) any property of any department (including property leased by, or in the custody or possession of, any Employee) including all written or machine readable material, software, computers, credit cards, keys, mobile telephones, security passes and vehicles; and
  - (ii) any document (including any form of electronic record) which includes any Confidential Information or which relates to the business of any Employee or a customer or supplier of any Industry Group.
- (j) "**Confidential Information**" means any information in respect of the business and affairs of Arc and students which is not in the public domain whether known by the Employee before or after the date of the making of this

Agreement. For the avoidance of doubt, that information includes, but is not limited to, any document, discovery, invention, improvement, book, account, process, patent, specification, drawing, design, plan, strategy, recommendation, data, report, proposal, budget, idea, concept or know how concerning the organisation, business, finances, transactions or affairs of Arc or any clients or suppliers which:

- (i) comes to the notice of the Employee in the course of the Employee's employment; or
  - (ii) is generated by the Employee in the course of performing the Employee's obligations.
- (k) **De Facto Partner** means a person who, although not legally married to the Employee, lives with the Employee in a relationship as a couple on a genuine domestic basis (whether the Employee and the person are of the same or different sexes).
- (l) **"Employee"** means a person employed by Arc in an Industry Group specified in clause 3.1, but excludes member of SLT.
- (m) **"Fixed Term Employment"** means:
- (i) employment for a specified term or ascertainable period for which Arc specified the starting and finishing dates of that employment; or
  - (ii) employment for a specific task or project, for which Arc specified the specific task or project upon the completion of which the term of the employment will expire.
- (n) **"FW Act"** means the *Fair Work Act 2009* (Cth) and its associated regulations as amended from time to time.
- (o) **"Household Member"** means another person living at an Employee's place of residence.
- (p) **"Immediate Family Member"** means:
- (i) the Employee's spouse or De Facto Partner (including a former spouse or former De Facto Partner), child, parent, grandparent, grandchild or sibling; or
  - (ii) a child, parent, grandparent, grandchild or sibling of the Employee's spouse or De Factor Partner.
- (q) **"Industry Group"** means the groups specified in clause 3.1 and includes any additional operational division of Arc which may be varied from time to time.
- (r) **"Intellectual Property Rights"** means all intellectual property rights arising from or directly related to the employment including but not limited to:
- (i) patents, copyrights, rights in circuit layouts, registered designs, trade marks and the right to have confidential information kept confidential; and
  - (ii) any application or right to apply for registration of any of those rights.
- (s) **"LWOP"** means Leave Without Pay.
- (t) **"National Employment Standard (NES)"** means the legislative standard contained in Part 2-2 of the FW Act.

- (u) **“Normal Hourly Rate”** means the ordinary rate of pay, excluding overtime, shift, penalties and other loadings, that an Employee paid a wage is entitled to receive.
- (v) **“Notional Agreement preserving a State award (NAPSA)”** means any Notional Agreement preserving a State award as defined by Schedule 8 Part 3 Division 1 Subdivision A clause 31 of the WR Act (as varied or replaced from time to time) that may have come into effect with respect to the terms and conditions of employment of the Employees covered by this Agreement.
- (w) **“Ordinary Hours”** means for a Full Time Employee 38 hours per week, and for a Part Time Employee, those hours less than 38 hours agreed between Arc and the Employee.
- (x) **“Permanent Employee”** means a Full Time or Part Time Employee (including Rostered Employees) not engaged as a Casual Employee or Fixed Term Employee.
- (y) **“Pro-rata”** means in proportion to an entitlement of a Full Time Employee.
- (z) **“Rostered Employee”** means an Employee who works according to a roster as set out in clause 4.7.
- (aa) **“SLT”** means the Senior Leadership Team of ARC, or a similar successor body.
- (bb) **“University”** means the University of New South Wales.
- (cc) **“WR Act”** means the *Workplace Relations Act 1996* (Cth), and its associated Regulations, as amended from time to time.

#### 1.4 Effect of Agreement

This Agreement excludes and replaces:

- (a) all previous (written and oral) arrangements and understandings between Arc and its Employees about the matters dealt within this Agreement;
- (b) any other Awards that may have previously applied to the terms and conditions of employment of the Employees, including any NAPSA's;
- (c) Arc & UNSW Limited Workplace Agreement (Employer Greenfields Agreement); and
- (d) any Australian Workplace Agreements in operation which have passed their nominal expiry date.

#### 1.5 Period of Operation

The Nominal Expiry Date of this Agreement will be five years from the date of commencement.

This Agreement will commence seven days from the date the Workplace Authority Director issues a notice that the Agreement has passed the no-disadvantage test and will nominally expire on the fifth anniversary of that date unless terminated in accordance with the WR Act, FW Act or other applicable legislation.

#### 1.6 Purpose of the Agreement

The reasons for making this Agreement are to:

- (a) simplify and standardise the conditions of employment as applicable to Employees;



- (b) comprehensively set out the conditions of employment as applicable to Employees;
- (c) promote equity and transparency in the workplace;
- (d) create a harmonious and co-operative workplace;
- (e) develop a partnership between Employees and Arc which supports the achievement of Arc's business objectives, namely, the provision of services to the student community; and
- (f) attain and maintain the highest possible level of occupational health and safety in accordance with appropriate legislation.

### **1.7 Arc's Policies**

Some conditions of employment will be governed by Arc's policies and procedures, which may change from time to time. However, these policies and procedures do not form a part of this Agreement.

Employees must abide by these policies. It will be the responsibility of an Employee to acquaint themselves with Arc's policies and procedures. Arc's policies and procedures can be accessed by all Employees by contacting Human Resources or through Arc's website.

To the extent that there is any inconsistency between this Agreement and any of Arc's policy and procedure, this Agreement will prevail.

### **1.8 Anti-Discrimination**

Employees must respect and value the diversity of the workforce by helping to prevent and eliminate discrimination 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.

Neither the provisions of this Agreement nor their operation are intended to be directly or indirectly discriminatory in their effects.

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## SECTION 2: MODE OF ENGAGEMENT

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### 2 SECTION 2: MODE OF ENGAGEMENT

#### 2.1 Engagement

- (a) Employees will be engaged as either a Full Time, Part Time, Fixed Term or Casual Employee.
- (b) **Full Time Employee** means an Employee who works 38 Ordinary Hours per week.
- (c) **Part Time Employee** means an Employee who is engaged to work a prescribed number of Ordinary Hours which is less than 38 hours per week.
- (d) **Casual Employee** means an Employee who is subject to Casual Employment as defined in clause 1.3, paragraph (g)
- (e) **Fixed Term Employee** means an Employee who is subject to Fixed Term Employment as defined in clause 1.3, paragraph (m).
- (f) In engaging an Employee, Arc will identify the Employee's:
  - (i) initial position;
  - (ii) initial classification;
  - (iii) commencement date;
  - (iv) initial location;
  - (v) manager;
  - (vi) core hours;
  - (vii) initial rate of pay; and
  - (viii) number of Ordinary Hours if the Employee is a Part Time Employee.

#### 2.2 Acknowledgement

In accepting an offer of employment, Employees acknowledges that:

- (a) they are legally entitled to work in Australia and perform the duties and responsibilities of employment for which they are employed;
- (b) they will immediately notify Arc of any circumstance that might prejudice such an entitlement as soon as it arises; and
- (c) they will provide Arc with documentary evidence of their entitlement to work when Arc requests this information.

#### 2.3 Probation

- (a) All new Employees engaged after the date on which this Agreement comes into force will be subject to a probationary period of three months.
- (b) During this probationary period, either Employees or Arc may terminate the employment on one (1) week's notice or, in the case of Arc, one (1) week's pay in lieu of notice.

- (c) Nothing in this clause is intended to affect the minimum employment period required to access the unfair dismissal jurisdiction under Part 3-2 of the FW Act.

## SECTION 3: INDUSTRY GROUPS, DUTIES AND WAGES

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### 3 SECTION 3: INDUSTRY GROUPS, DUTIES AND WAGES

#### 3.1 Industry Groups

Employees will be employed by Arc in one of the following Industry Groups, or in any other Industry Group of similar nature created by Arc from time to time:

- (a) Corporate Administration, incorporating:
  - (i) Corporate Services;
  - (ii) Finance;
  - (iii) Marketing & Membership;
  - (iv) Student Services;
  - (v) Other General Office Staff;
- (b) Food, Beverage and Entertainment, incorporating:
  - (i) Bar Staff;
  - (ii) Door Staff;
  - (iii) Wait Staff;
  - (iv) Production Staff;
- (c) Retail;
- (d) Student Programs, incorporating:
  - (i) Publications;
  - (ii) Other Student Development Programs; and
- (e) Building Services.

#### 3.2 Classifications

Employees covered by this Agreement will be employed in one of the following classifications:

Worker	Employees at this level works under direct supervision with regular checking of progress, applying skills and knowledge to a limited range of tasks. Employees will usually work within established routines, methods and procedures that are predictable and require only the limited exercise of discretion.
Supervisor	Employees at this level may work with limited supervision and checking relating to overall progress. Employees at this level will be responsible for the work of others and may be required to coordinate such work.
Manager	Employees at this level are engaged in supervising, training and co-ordinating staff and are, amongst other duties, responsible for the maintenance of service and operational standards.

### **3.3 Duties**

- (a) All Employees will receive a copy of their position descriptions at the commencement of employment. An Employee's actual duties may be varied by Arc from time to time.
- (b) Arc can, at its discretion, direct Employees to work from time to time in other areas of the business in order to meet the operational requirements of the business at that time.
- (c) Employees must carry out any other duties reasonably required by Arc that are within their skills and abilities.

### **3.4 Other obligations**

During the course of employment with Arc, Employees must:

- (a) carry out all lawful and reasonable directions and instructions given in relation to an Employee's employment, and comply with any policies and procedures;
- (b) serve Arc faithfully, efficiently and diligently;
- (c) exercise all due care and skill in the performance of duties, including taking all reasonable care in the use of Arc's property; and
- (d) act at all times in the interests of Arc and not give the appearance of acting contrary to the interests of Arc.

### **3.5 Flexible arrangements**

- (a) To enable flexible working arrangements:
  - (i) Arc may ask Employees to agree to working arrangements that differ from those in the Agreement, for example (but not limited to) working flexible working hours and payment of annualised salaries. Employees will be entitled to refuse to agree to these arrangements and will suffer no negative actions for making such a decision.
  - (ii) Employees may ask their Manager to agree to working arrangements that differ from those in the Agreement, for example (but not limited to) working flexible working hours and the payment of annualised salaries.
- (b) Any flexible working arrangement must be in writing and must, on balance, be equivalent to or better than Employees' current overall terms and conditions of employment when compared to the terms and conditions under the Agreement.
- (c) An Employee or Arc may terminate a flexible working arrangement at any time with the provision of four weeks' written notice.

### **3.6 Location**

Employees covered by this Agreement are required to work at Arc, which is located at either:

- (a) UNSW Campus, Anzac Parade Kensington; or
- (b) COFA Campus, Oxford Street, Paddington.

In circumstances where the business operations relocate, if the new premises are within 10 km of the current location, Employees will be required to relocate with no change to their entitlement and no entitlement to a severance payment.

### **3.7 Wages and Salaries**

- (a) Employees are entitled to receive either a wage or Annualised Salary.
- (b) Employees who receive a wage will be paid in accordance with the minimum Normal Hourly Rates outlined at **Appendix 1**.
- (c) Full Time Employees that are paid a wage will be paid on the assumption that they have worked 38 hours each week.
- (d) Part Time Employees who are paid a wage will be paid on the assumption that they have worked the prescribed number of hours agreed at the point of commencement of employment.

### **3.8 Casual Rates**

- (a) Casual Employees will be paid the Casual Rate of Pay.

### **3.9 Wage Review**

- (a) The Normal Hourly Rate and Annualised Salaries will be reviewed on an annual basis, although this may not necessarily result in an increase.
- (b) If the rate of pay under an Award increases during the term of the Agreement so that the Normal Hourly Rate is less than the Award rates of pay, Arc will increase these rates to at least the rates of pay provided by the Award.

### **3.10 Higher Duties**

- (a) Employees may, by written agreement with their Manager, agree to perform functions for a period of time that attracts a higher rate of pay than their normal classification.
- (b) Employees other than Employees paid an Annualised Salary, shall be paid the higher rate for the time that they are acting in that role if the Employee performs all such duties of the higher classified position for the whole time the Employee was appointed to perform such duties.
- (c) Where the Employee performs only a part of the duties of the higher position, a proportion of the higher rate may be paid at Arc's discretion.

### **3.11 Superannuation**

- (a) Superannuation contributions will be paid by Arc so as to satisfy its obligations under the *Superannuation Guarantee (Administration) Act 1992*, or any other applicable legislation.
- (b) Employees may nominate a complying fund. In the absence of a nomination within twenty (20) days of commencement, the default fund will be REST Superannuation or other complying fund nominated by Arc from time to time.

### **3.12 Payment of Wages**

- (a) An Employee's Annualised Salary or wages will be initially paid weekly by direct deposit to their nominated bank account. Employees are entitled to nominate up to two accounts for this purpose.
- (b) Employees are required to provide banking or credit union account details for the deposit of wages. Employees are responsible for ensuring that bank or credit union account details provided are correct. No responsibility will be

taken by Arc for monies deposited into accounts incorrectly provided by Employees.

- (c) Arc will be entitled to recover money paid to Employees by mistake. Arc must inform the Employee of the mistake before recovery is made. If the recovery is likely to cause hardship, Arc must consult with the Employee to agree to an appropriate repayment schedule.

### **3.13 Salary Sacrificing Arrangements**

- (a) By written agreement with Arc, Employees may salary sacrifice an amount as superannuation in accordance with legislative requirements. A written record of the agreement will be kept in the Employee's personnel file.
- (b) Arc may, at its absolute discretion, allow Employees to salary sacrifice other eligible items.
- (c) The value of any salary sacrificed components of the an Employee's remuneration will be calculated by reference to the full cost of those components to Arc, inclusive of fringe benefits tax, goods and services tax and any other taxes (where such taxes, costs and charges are not deductible to Arc).
- (d) If Employees choose to salary sacrifice, the monetary value of the benefit will be combined to the cash value of wages or Annualised Salary the Employee receives for the purposes of the minimum amounts set out in **Appendix 1**.

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## SECTION 4: TYPES OF ENGAGEMENT AND HOURS OF WORK

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### 4 SECTION 4: TYPES OF ENGAGEMENT AND HOURS OF WORK

#### 4.1 Full Time Employees

- (a) Full Time Employees will work 38 Ordinary Hours per week.
- (b) Full Time Employees employed in the Corporate Administration & Student Programs Industry Groups are required to work their Ordinary Hours on a Monday to Friday, between 8 am to 6 pm, and Saturday, between 9 am to 12 pm, unless the Employee is on approved leave.
- (c) Subject to paragraph (d) of this clause, Full Time Employees employed in the Food, Beverage & Entertainment, Retail and Building Services Industry Groups are required to work shifts in accordance with clause 4.7.
- (d) Full Time Employees in the Food, Beverage & Entertainment Industry Group may be entitled to work Ordinary Hours flexibly and may work their Ordinary Hours at any time of any day, upon receiving approval from their manager.

#### 4.2 Part-Time Employees

- (a) The Ordinary Hours of work for Part Time Employees will ordinarily be less than 38 hours per week.
- (b) Part Time Employees' entitlement to sick leave, annual leave and long service leave will apply on a pro rata basis.
- (c) Part Time Employees employed in the Corporate Administration & Student Programs Industry Groups are required to work their Ordinary Hours on a Monday to Friday, between 8 am to 6 pm, and Saturday, between 9 am to 12 pm, unless the Employee is on approved leave.
- (d) Subject to paragraph (d) of this clause, Part Time Employees employed in the Food, Beverage & Entertainment, Retail and Building Services Industry Groups are required to work shifts in accordance with clause 4.7.
- (e) Part Time Employees in the Food, Beverage & Entertainment Industry Group may be entitled to work Ordinary Hours flexibly and may work their Ordinary Hours at any time of any day, upon receiving approval from their manager.

#### 4.3 Fixed Term Employees

- (a) Arc may engage Employees on a Fixed Term basis as set out in clause 1.3, paragraph (m) from time to time to meet operation requirements of the business.
- (b) Fixed Term Employees may be engaged on a Full Time or Part Time basis.
- (c) Fixed Time Employees are required to work their Ordinary Hours on a Monday to Friday, between 8 am to 6 pm, and Saturday, between 9 am to 12 pm, unless the Employee is on approved leave.
- (d) Employees engaged as Fixed Term Employees will be paid a loading of 28% in addition to the applicable Normal Hourly Rate.
- (e) Clause 6.5 of this Agreement does not apply to Fixed Term Employees.



#### **4.4 Hours worked in excess of Ordinary Hours (Employees in receipt of an Annualised Salary)**

- (a) Full Time or Part Time Employees in receipt of an Annualised Salary who work 17.6 hours in addition to their Ordinary Hours in a month will be entitled to accrue one (1) Flex Leave day each month to be taken in accordance with clause 5.6.
- (b) Full Time or Part Time Employees in receipt of an Annualised Salary may be required to work further reasonable additional hours, but will receive no additional payment for any overtime. Arc may, at its absolute discretion, allow Employees to treat any hours work in excess of their Ordinary Hours as time off in lieu.

#### **4.5 Hours worked in excess of Ordinary Hours (Employees in receipt of a wage)**

- (a) Full Time or Part Time Employees in receipt of a wage must obtain the approval of their manager prior to working hours in addition to their Ordinary Hours.
- (b) Full Time and Part Time Employees in receipt of a wage who are required by Arc to work more than their Ordinary Hours in a week may either choose to be paid the following rates for time worked in excess of Ordinary Hours or treat hours worked in excess of their Ordinary Hours as time off in lieu:
  - (i) one and a half times the Normal Hourly Rate for the first two hours worked in excess of their Ordinary Hours;
  - (ii) twice the Normal Hourly Rate thereafter.

#### **4.6 Casual Employees**

- (a) Casual Employee will be engaged for a minimum period of three (3) hours on each occasion required, unless the engagement is for the purpose of training and/or induction, in which case, the minimum period of each engagement is two (2) hours.
- (b) A Casual Employee's engagement terminates at the end of each shift. Although Casual Employees may be required to work according to a roster, this does not mean that Casual Employees have any entitlement to ongoing employment.
- (c) A Casual Employee is not entitled to receive any penalty amount for working overtime.
- (d) Casual Employees, who work between midnight and before 6 am, will receive a 30% loading in addition to the Casual Rate of Pay for all hours worked between midnight and 6 am.
- (e) Any Casual Employee who is unable to attend work for whatever reason must notify their manager or supervisor at least two (2) hours before the commencement of a shift with the nature of the leave and the estimated duration of absence.
- (f) All Casual Employees are required to provide to Arc with a Timesheet prior to 12 noon each Mondays or as required by Arc from time to time. Timesheets must be signed by their Manager. Arc will not make payment to the Employee unless a properly signed timesheet has been submitted to Arc.

- (g) Casual Employees are required to provide Arc with one (1) week's notice in circumstances where the Employee no longer wishes to be considered for any further shifts.
- (h) Part 5 (except clause 5.4) and Part 6 (except clause 6.6) of the Agreement do not apply to Casual Employees.

#### **4.7 Rostered Employees**

- (a) Rostered Employees will be required to work according to a roster.
- (b) Rosters will be posted in a readily accessible place where possible. Employees will be notified of any changes to the rosters at least two days prior to the changes becoming operative.
- (c) Rostered hours may vary from day to day and week to week and may not fall at the same time or day each week.
- (d) An Employee's (other than an Employee engaged as Production Staff in the Food, Bar and Entertainment Industry Group) shift shall not exceed a maximum of 10 hours in any 24 hour period, or up to 12 hours by agreement.
- (e) Rosters will be arranged so that Employees will have at least 10 hours off duty between work on successive days. In the event that an Employee agrees to forego their ten (10) hour break, the first two hours of the subsequent shift shall attract a loading of 25% in addition to the Normal Hourly Rate.
- (f) Employees whose shift concludes after 12 am midnight and before 6 am, will receive a loading of 30% in addition to the Normal Hourly Rate for all hours worked between midnight and 6 am.

#### **4.8 Weekend Work**

- (a) All Employees, other than those Employees in receipt of an Annualised Salary, will be paid the following loading for work performed on a Saturday, Sunday or a Public Holiday:
  - (i) On a Saturday after 12 pm- one and a quarter times the Normal Hourly Rate (or one and a quarter times the Casual Rate of Pay if the Employee is a Casual Employee);
  - (ii) On a Sunday- one and a half times the Normal Hourly Rate (or one and a half times the Casual Rate of Pay if the Employee is a Casual Employee) ;
- (b) Where an Employee is entitled to receive a loading or penalty rate in addition to the penalty rate provided in this clause, the Employee is only entitled to receive a single loading rate in addition their Normal Hourly Rate or Casual Rate of Pay, whichever is greater, for hours worked.
- (c) Employees paid an Annualised Salary may be required to work on a Saturday, Sunday or public holiday but will not receive any additional payments.

#### **4.9 Work on a Public Holiday**

- (a) Employees required to work on a Public Holiday will be paid two and a half times the Normal Hourly Rate (or two and a half times the Casual Rate of Pay if the Employee is a Casual Employee).

- (b) Where an Employee is entitled to receive a loading or penalty rate in addition to the penalty rate provided in this clause, the Employee is only entitled to receive a single loading rate in addition their Normal Hourly Rate or Casual Rate of Pay, whichever is greater, for hours worked.

#### **4.10 On-Call**

- (a) Permanent Employees directed to remain on call during any day or night outside their Ordinary Hours shall be paid \$104 for each day and/or night during which the Employee remains on call.
- (b) Employees required to perform work while on call will be paid one and a half times the Normal Hourly Rate for the hours they work while on call.
- (c) Employees directed to remain on call must be able to be contacted and be able to respond within a reasonable period of time.

#### **4.11 Meal Breaks**

- (a) Employees are entitled to a 30 minute unpaid meal break after working for five consecutive hours.
- (b) Employees may increase their unpaid meal break in consultation with the Employee's Manager.
- (c) All Employees will also receive a 10 minute paid morning tea break to be taken at a time agreed with their Manager, or if the Employee is rostered to work after midday, a 10 minute afternoon tea break, when working for at least four (4) consecutive hours.

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## SECTION 5: LEAVE ENTITLEMENTS

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### 5 SECTION 5: LEAVE ENTITLEMENTS

#### 5.1 Annual Leave

- (a) Full Time Employees are entitled to 20 days annual leave for each completed year of service. Part Time Employees are entitled to a pro-rata number of days of annual leave.
- (b) Annual leave entitlements will accrue on an ongoing basis and be credited as an entitlement on a weekly basis.
- (c) Arc may direct Employees to take annual leave:
  - (i) during any period in which the Employer shuts down its business; or
  - (ii) where the employee has accrued more than four (4) weeks' annual leave (pro rata for Part-Time Employees), in which case the Employer may direct the Employee to take a period of annual leave so that the Employee has no more than four (4) week's annual leave remaining.
- (d) Employees may accrue up to 8 weeks' annual leave with the approval of Arc.
- (e) Employees are not required to work from 25 December to 1 January (inclusive) each year and will be entitled to receive an amount equivalent to the amount they would have received had they worked during this period.
- (f) Employees in receipt of a wage will receive a loading of 17.5% in addition to their wage for any period on which the Employee is on annual leave.
- (g) Employees in receipt of an Annualised Salary who have an entitlement to annual leave loading on the day before this Agreement comes into force, will be entitled to receive a loading of 17.5% in addition to their salary for any period on which the Employee is on annual leave. Employees engaged after the date on which this Agreement comes into force, and in receipt of an Annualised Salary, will not be entitled to receive annual leave loading under this clause.

#### 5.2 Cashing Out Annual leave

- (a) Subject to the requirements of this clause, a Permanent Employee may agree in writing to forgo a portion of their annual leave.
- (b) Employees are entitled to receive pay in lieu of the amount of annual leave forfeited (cashed out).
- (c) During each 12 month period of employment, an Employee is only entitled to receive a payment in lieu of annual leave that is not more than two (2) weeks (10 days) (or a pro-rata amount for Part Time Employees).
- (d) Employees must have remaining a period of at least four (4) weeks' annual leave after the cashing out of a portion of their annual leave entitlement.
- (e) Arc must advise an Employee whether it approves the Employee's request to cash out their annual leave within two weeks of receiving the request.

### **5.3 Personal Leave (Sick & Carer's)**

- (a) Full Time Employees are entitled to 10 days paid personal leave for each completed year of service (or a pro-rata amount for Part Time Employees).
- (b) Permanent Employees are entitled to use accrued personal leave for the following reasons:
  - (i) because of illness (sick leave); or
  - (ii) because the Employee has to care for an Immediate Family Member or Household Member (carer's leave) who requires the Employee's care and support because of:
    - (A) a personal illness or injury of the member; or
    - (B) an unexpected emergency affecting the member.
- (c) Personal Leave entitlements will accrue on an ongoing basis and be credited as an entitlement on a weekly basis.
- (d) Employees will not be paid out for any accrued personal leave when their employment ends.
- (e) An Employee who is absent from duty due to personal illness or personal incapacity must:
  - (i) inform their Supervisor or Manager as soon as possible by way of direct telephone call; and
  - (ii) state the estimated duration of the absence.
- (f) Where an Employee's absence exceeds two consecutive working days, or if the absence is immediately before or after a Public Holiday, the absence must be supported by a medical certificate.
- (g) Arc may request a medical certificate from an Employee where that Employee has taken excessive personal leave over a period of time.

### **5.4 Unpaid Carer's Leave**

- (a) Permanent Employees who has exhausted their paid personal leave entitlement or Casual Employees (who have no paid personal leave entitlement) are entitled to two days unpaid carer's leave for each occasion when an Immediate Family Member or Household Member requires care or support because of:
  - (i) a personal illness, or injury, of the member; or
  - (ii) an unexpected emergency affecting the member.

### **5.5 Compassionate/Bereavement Leave**

- (a) Permanent Employees are entitled to three days' paid compassionate leave per occasion for the purposes of spending time with a person who:
  - (i) is an Immediate Family Member or Household Member; and
  - (ii) who contracts or develops a personal illness that poses a serious threat to his or her life; or
  - (iii) sustains a personal injury that poses a serious threat to his or her life; or

- (iv) after the death of an Immediate Family Member or Household Member.
- (b) Arc may require evidence of the illness, injury or death in order to establish an entitlement to compassionate leave. At Arc's discretion, up to 5 days for compassionate leave may be approved for any of the purposes in this clause.
- (c) Arc may require evidence of travel.

## **5.6 Flex Leave**

- (a) Employees in receipt of an Annualised Salary who have accrued Flex Leave time in accordance with clause 4.4 must take Flex Leave in accordance with this clause.
- (b) Subject to paragraph (c) of this clause, Employees are required to take one (1) Flex Leave day per month and are only entitled to take twelve (12) Flex Leave days each year.
- (c) At Arc's discretion, Employees may be entitled to accumulate no more than three (3) Flex Leave days at any one time.
- (d) Employees must take their Flex Leave at a time which is mutually convenient for the Employee and Arc.

## **5.7 Parental Leave**

- (a) Employees are entitled to a period of unpaid Parental Leave in accordance with the AFPCS before 1 January 2010, and in accordance with the NES or any other applicable legislation, after 1 January 2010.
- (b) Permanent Employees who have worked at Arc for a continuous period of at least 12 months are also entitled to 12 weeks paid parental leave in accordance with Arc's policies.
- (c) Paid parental leave is granted subject to the Employee making a clear commitment to return to Arc after the expiry of the leave.
- (d) For the avoidance of doubt, any period of paid parental leave provided does not extend the total period of leave an Employee is entitled to receive under the applicable legislative standard.

## **5.8 Approved Leave Without Pay ("LWOP")**

- (a) Employees may take LWOP with the prior approval of Arc. Arc may at its discretion refuse LWOP to an Employee
- (b) LWOP may include, but not be limited to the following purposes:
  - (i) personal development;
  - (ii) travel; and
  - (iii) caring for sick or injured close relative.
- (c) Prior to taking LWOP, Employees must, unless otherwise agreed, have exhausted all other leave entitlements which the Employee may lawfully take.
- (d) A period of LWOP does not affect the Employee's continuity of service but will not count towards the accrual of any entitlement unless otherwise provided by law.
- (e) An Employee on LWOP may not perform work for payment for any third party during such a period of leave.

## 5.9 Community Service Leave

Employees will be entitled to Community Service Leave in accordance with the NES. Community Service Leave includes, but is not limited to Jury Service.

## 5.10 Public Holidays

- (a) Permanent Employees will be entitled to observe the following holidays where such holidays fall on a day which would otherwise have been a normal working day:
- New Years Day
  - Australia Day
  - Good Friday
  - Easter Monday
  - Anzac Day
  - Queen's Birthday
  - Christmas Day
  - Boxing Day; and
  - any other day declared by or under a law of New South Wales to be observed generally within the State.
- (b) All Permanent Employees who are not required to work on a holiday specified in clause 5.10, paragraph (a) but whom, if it were not for that holiday would ordinarily work on that day, will be paid the Normal Hourly Rate or a pro rata amount of their Annualised Salary for any Ordinary Hours falling on a public holiday.
- (c) If any of the holidays listed in clause 5.10, paragraph (a) are deemed by the Commonwealth or State Government not to be holidays with pay, such days shall cease to be regarded as a holiday for the purposes of this clause.

## 5.11 Long Service Leave

Long service leave shall be given and taken in accordance with the *Long Service Leave Act 1955* (NSW) or any other applicable legislation and or standard established.

## 5.12 Study/Examination Leave

Employees who are currently engaged in tertiary study are entitled to two (2) days of study leave each year and two (2) days of additional leave for the purpose of attending examinations.

## SECTION 6: TERMINATION OF EMPLOYMENT

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### 6 SECTION 6: TERMINATION OF EMPLOYMENT

#### 6.1 Summary Dismissal

- (a) Arc may terminate an Employee's employment summarily and without notice if:
  - (i) the Employee is guilty of any serious misconduct or dishonesty or a serious breach of a safety obligation or if they act in a way in which, in the reasonable opinion of Arc, may injure or be likely to injure the business or reputation of Arc;
  - (ii) the Employee commits a significant breach of this Agreement;
  - (iii) the Employee is convicted or receives a penalty in respect of a serious criminal offence;
  - (iv) the Employee is negligent in the performance of their duties.
- (b) If an Employee is terminated under clause 6.1, paragraph (a), the Employee will only be entitled to wages or salary to the date of termination together with any accrued leave entitlements.

#### 6.2 Termination of Employment other than Summary Dismissal

- (a) Arc may terminate the employment of a Permanent Employee on provision of four (4) weeks' written notice.
- (b) If an Employee is over 45 years of age, and has two or more years of continuous service at the time of termination, the Employee will receive an additional one (1) week's notice.
- (c) A Permanent Employee may terminate their employment on four weeks' written notice.
- (d) Instead of providing notice in accordance with clause 6.2, paragraph (a), paragraph (b) or paragraph (c), Arc may at its option provide a payment in lieu of notice based on what the Employee would have earned during this period.
- (e) If an Employee fails to give notice, Arc will, to the extent permitted by law, have the right to withhold monies due to the Employee to a maximum amount equal to the ordinary earnings for the period of notice not given.
- (f) Upon termination for any reason, Arc will have, to the extent permitted by law, the right to deduct from an Employee's final pay any amount owing to Arc. In the event that there are insufficient funds available to fully release the Employee's debt, the amount will be a debt due and payable to Arc.

#### 6.3 Abandonment of Employment

If an Employee fails to attend work for three (3) days without the authorisation of Arc or without proper excuse, then the Employee will be deemed to have abandoned their employment. In this event Arc will send written notification to the Employee requesting the Employee to contact Arc to provide an explanation. If the Employee fails to provide a proper explanation within the required time frame stated in the written notification, then it will be deemed that the Employee has terminated their employment without the required notice.



## 6.4 Suspension

If Arc considers there may be grounds to terminate an Employee's employment for serious misconduct, Arc may suspend the Employee on full pay or without pay pending an investigation prior to making a final decision whether to terminate the Employee's employment.

## 6.5 Redundancy

- (a) Redundancy occurs when Arc decides that it no longer wishes the job an Employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour.
- (b) Where Arc has made a decision to make redundant an Employee's position, Arc will provide the affected Employee with relevant information regarding the reason for the proposed redundancy. Arc will also consult with the Employee on measures to mitigate any adverse effects of the proposed redundancy.
- (c) Where an Employee is transferred to lower paid duties by reason of redundancy the same period of notice must be given as the Employee would have been entitled to if the employment had been terminated under clause 6.2. Arc may at its discretion, make payment in lieu of an amount equal to the difference between the former Normal Hourly Rate and the new Normal Hourly Rate for the number of weeks of notice still owing.
- (d) In addition to the period of notice prescribed for ordinary termination in clause 6.2, an Employee whose employment is terminated by reason of redundancy must be paid the following amount of severance pay in respect of a continuous period of service:

Length of Continuous Service	Severance Pay
At least 1 year but less than 2 years	4 weeks' pay
At least 2 years but less than 3 years	6 weeks' pay
At least 3 years but less than 4 years	7 weeks' pay
At least 4 years but less than 5 years	8 weeks' pay
At least 5 years but less than 6 years	10 weeks' pay
At least 6 years but less than 7 years	11 weeks' pay
At least 7 years but less than 8 years	13 weeks' pay
At least 8 years but less than 9 years	14 weeks' pay
At least 9 years but less than 10 years	16 weeks' pay
At least 10 years	12 weeks' pay

- (i) **Weeks' pay** means the Normal Hourly Rate applicable to the Employee concerned, excluding any overtime or penalty rates.
- (e) For the purpose of calculation of Severance Pay, Arc will not recognise any period of service with a predecessor organisation of Arc.
- (f) Where an Employee is redeployed within Arc to a suitable alternative role, Arc will not be required to provide Employees with a Severance Payment in accordance with paragraph (d).
- (g) Time off during notice period
  - (i) During the period of notice of termination given by Arc, an Employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
  - (ii) If the Employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the Employee shall, at the request of Arc, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.
- (h) Where there is a transfer of business from Arc to another employer, and as a result, the Employee obtains an offer of employment, Severance Pay is not payable by Arc in circumstances where the new employer recognises continuity of service with Arc and all accrued leave entitlements.
- (i) Arc may apply to AIRC for relief from making a Severance Payment under this clause if Arc:
  - (i) obtained other acceptable employment for the Employee in another organisation; or
  - (ii) cannot pay the amount.

## **6.6 Obligations on Termination**

- (a) On termination of employment for any reason whatsoever, an Employee must immediately return to Arc any keys, books, documents, papers, uniform, materials, access swipe card and other property of, or relating to, Arc which the Employee may have in their possession or custody.

## **6.7 Gardening Leave**

- (a) If at any time either party (the Employee or Arc) gives notice of termination pursuant to this Agreement, Arc may, in its discretion, modify the employment arrangements of the Employee during the notice period. Where such modification occurs, the Employee, during the notice period:
  - (i) may be required to perform duties which are different to those which the Employee was required to perform during the employment, provided that the Employee has the necessary skill and competence to perform the duties;
  - (ii) may be required to perform no duties at all;
  - (iii) may be required not to attend the premises of Arc, unless expressly requested to do so;
  - (iv) may be required not to have dealings with any customers or clients of Arc;

- (v) agrees to be reasonably available to Arc;
  - (vi) will remain an Employee;
  - (vii) acknowledges that Arc has no obligation to provide work, training or any other duties or facilities; and
  - (viii) agrees not to commence work as an employee, independent contractor or consultant with any other person or entity.
- (b) Both parties agree that, in the event that Arc modifies the duties of the Employee during the notice period as set out above, Arc is acting in accordance with its legitimate business interests. The cessation or modification of duties by Arc does not affect the trust and confidence that underpins the employment relationship.

### 7 SECTION 7: MISCELLANEOUS

#### 7.1 Uniforms

- (a) All Employees are required to present themselves for work attired in a professional manner.
- (b) Employees will receive the uniform from Arc where Employees are required to wear a specific uniform.
- (c) Employees will be sent home to change and may be disciplined if they do not meet the required uniform and presentation standards. Employees sent home for this reason will not be paid for the time they are absent from work.
- (d) If a uniform is provided by Arc, the cost of reasonable repair and replacement will be the responsibility of Arc. Employees are expected to exercise care in looking after their uniform,

#### 7.2 Dispute Resolution Procedure

- (a) If a dispute arises regarding the terms of this Agreement, the parties to the dispute must genuinely attempt to resolve the dispute at the workplace level.
- (b) In the first instance, an Employee must discuss the matter with their Manager.
- (c) If the matter remains unresolved, the Employee or the Manager may refer the matter to the Human Resources Manager who shall endeavour to resolve the dispute.
- (d) If the matter remains unresolved, the Employee or Manager may refer the matter to the Chief Executive Officer who will endeavour to resolve the dispute.
- (e) If the matter in dispute cannot be resolved at the workplace level, the matter will be submitted for private mediation using an agreed provider. Arc will organise and pay the costs of mediation, provided that such costs are reasonable.
- (f) If the matter does not resolve at mediation, the parties, by agreement, may refer the matter to an agreed dispute resolution provider for arbitration. The decision of the arbitrator will be accepted by the parties as final settlement of the dispute.
- (g) An Employee who is party to a dispute must, whilst the dispute is being resolved continue to work, unless the Employee has a reasonable concern about an imminent risk to his or her health and safety.
- (h) An Employee is entitled to have a support person present during each of the stages listed in this clause.
- (i) Disputes relating to Occupational Health & Safety (OHS) matters will not be dealt with under this clause.

#### 7.3 Company Property

- (a) Employees must not remove from the premises of Arc any materials, tools or equipment without the prior consent of Arc.

- (b) In circumstances where Arc grants an Employee authorisation to borrow Company Property, the Company Property continues to be wholly owned by Arc at all times.
- (c) Arc reserves the right to retrieve property from Employee if Arc reasonably considers that the material is being misused and/or not used for Arc's benefit.
- (d) Employees must not loan or duplicate keys, access / security cards and/or devices which are the property of Arc.
- (e) Employees must immediately report lost or damaged Company Property to the Employee's manager.

#### **7.4 Intellectual Property Rights**

- (a) An Employee:
  - (i) presently assigns to Arc all future intellectual Property Rights in all inventions, models, designs, drawings, plans, software, reports, proposals and other materials created or generated by the Employee for the use by Arc in the course of their employment; and
  - (ii) acknowledges that by virtue of this clause, all such future Intellectual Property Rights generated by the Employee for the use by Arc in the course of their employment.
- (b) Employees must do all things reasonably requested by Arc to enable Arc to assure further the Intellectual Property Rights assigned under this clause.
- (c) Employees acknowledge that they have waived their moral rights in works which they created, or may in the future create, in the course of their employment at Arc.

#### **7.5 Employee Personnel Information**

Employees are entitled to view their personnel file upon submitting a written request to Human Resources.

#### **7.6 Privacy**

Arc will comply with all requirements under the *Privacy Act 1988* (Cth) or any other applicable legislation.

#### **7.7 Workplace Health & Safety**

Employees must:

- (a) take all reasonably practicable steps to ensure their own health and safety and the health and safety of other persons in the workplace;
- (b) comply with Arc's OHS (including bullying, harassment and discrimination) practices, policies and procedures, as amended from time to time;
- (c) use safety and protective equipment and clothing provided;
- (d) not misuse any equipment, plant or process; and
- (e) report all health and safety incidents (including "near misses") to a Manager.

Any failure by an Employee to comply with their obligations under this clause may result in Arc taking disciplinary action, including the termination of employment.

## **7.8 Confidentiality Obligations**

During and after the employment, Employees must:

- (a) keep any Confidential Information secret and confidential, except to the extent that the Employee are required by law to disclose it;
- (b) take all reasonable and necessary precautions to maintain the secrecy and prevent the disclosure of any Confidential Information; and
- (c) not disclose any Confidential Information to any third party except in the ordinary and proper course of the employment or after first obtaining the written consent of SLT.

## APPENDIX 1- WAGES

Corporate Administration	Worker (excluded 28%)	\$ 15.86
	Supervisor	\$ 25.00
	Manager	\$ 30.35
Food, Beverage and Entertainment	Worker (excluded 28%)	\$ 15.50 ( Wait staff) \$ 15.90 ( Bar Staff) \$ 16.28 ( Production staff)
	Supervisor	\$ 20.75
	Manager	\$ 25.80
Retail	Worker (excluded 28%)	\$ 16.53
	Supervisor	\$ 16.54
	Manager	\$ 21.25
Student Programs	Worker (excluded 28%)	\$ 15.86
Building Services	Worker (excluded 28%)	\$ 15.50
	Supervisor	\$ 19.80
	Manager	\$ 23.78

(Excluded 28% = 15.86+28%=20.30)