

FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

Matter No.: AM2019/5

Professional Employees Award 2010

OUTLINE OF SUBMISSIONS



**Association of Professional Engineers, Scientists and Managers,
Australia ("APESMA")**

DATE: 15th July 2019

**Lodged by: APESMA
Address: 152 Miller Street West Melbourne, VIC 3003
Tel: (03) 9695 8838
Email: mbutler@professionalsaustralia.org.au**

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INTRODUCTION

1. These Outline of Submissions are filed by the Association of Professional Engineers, Scientists and Managers, Australia (**APESMA**) in accordance with the Amended Directions issued by the Full Bench on 28 May 2019¹.
2. The Professional Employees Award ("**PEA**") is the main modern award covering technology - based professionals in the non-government sectors. It is impossible to be exact, but the PEA has application to several thousand employers who employ Professional Engineers, Professional Scientists, Information Technology and Telecommunications Professionals, Quality Auditors and Medical Research Employees. It is both an Occupational and Industry Award.
3. APESMA and Ai Group have had numerous meetings over recent months in a concerted endeavour to reach agreement on the various claims. The draft award variations set out in Attachment "A" – Draft Award Variations – Professional Employees Award 2010 – Joint Negotiating Document (APESMA and Ai Group (Attachment "A")) are the outcome of those extensive negotiations. The draft variations are a package and concessions have been made by each party on that basis. Most of the draft clauses in Attachment "A" are agreed upon, but a few are subject to Ai Group confirming its position after further consultation with its members. Ai Group has agreed to confirm its position on the relevant clauses by no later than the date when it files its reply submission in the proceedings. If agreement cannot be reached on the relevant clauses APESMA may, depending on the circumstances, wish to amend its proposed variation.
4. APESMA and Ai Group have also agreed that the award clauses do not seek to invalidate or regulate an annual salary arrangement that compensates for or "buys out" various identified award entitlements in accordance with the principles stated in *Australia and New Zealand Banking Group Limited v Finance Sector Union of Australia 111 IR 227* and *Linkhill Pty Ltd v Director, Office of the Fair Work Building Industry Inspectorate, 240 FCR 578*

OUTLINE OF CLAIMS

5. Attachment "A" details the proposed matters as follows;

CLAUSE 2 – DEFINITIONS AND INTERPRETATION

¹ Directions

6. Clause 2 – Definitions and Interpretation of Attachment “A” defines the qualifications that are necessary to be covered under the Award as a Graduate and Experienced Information Technology Employee and Professional Scientist. The qualifications for professional employees are usually based on those qualifications /experience which are acceptable to the relevant professional bodies. This has been the approach adopted ever since award coverage for these employees was first established. References are made to membership grades which have altered over time and required updating in order to preserve the integrity of the definitions. In the case of Professional Scientists this matter was dealt in detail as part of the exposure draft process, but the alterations were not included in latest exposure draft issued on 29th March 2019.
7. The proposed variation to the membership requirements for the Australian Computer Society which are relevant to the definition of Information Technology Employees were outlined in the AI Group claim filed on 12th October 2019 and are in a similar vein to the upgrading the Professional Scientist definitions. APESMA supports the Ai Group’s proposed variations to Clause 2.

HOURS OF WORK

8. The second variation which will occupy the bulk of this submission relates to the proposed variations to Clause 13 – Ordinary Hours of Work.

APESMA CLAIM – CLAUSE 13 – ORDINARY HOURS OF WORK

9. APESMA is seeking variations to the Professional Employees Award 2010 [MA0000065] (“the PE Award”) in respect of Clause 13 Ordinary Hours of Work. The draft variation is set out in Attachment “A”. For consistency the numbering of the draft clauses is in accordance with the latest exposure draft for the PE Award dated 29th March 2019. To assist the current Clause 13 – Ordinary Hours of Work is also included as Attachment “B”.

CLAUSE 13 – HOURS OF WORK – CURRENT PROVISION

10. The current Hours of Work clause is set out in Attachment “B” and covers a diverse range of industries throughout the private sector and different patterns of work. Essentially the clause includes several provisions which ordinarily would be set out in separate clauses.

² The Professional Employees Award – Exposure Draft – 29th March 2019

The main features of the clause are as follows;

- Definition of Ordinary Hours (13.1).
- Averaging of 38 hours per week over the cycle (13.2).
- Provision for compensation for additional hours. (13.3).
- Definition of methods of compensation (13.4).
- Inclusion of a majority provision in respect of the compensation in 13.4 (13.5).
- Provision for an annual review to assess whether compensation is set at an appropriate level (13.6).
- Requirement for a Notice of Transfer from day work to shift work or vice versa (13.7)

CLAUSE 13 – HOURS OF WORK - WHAT IS BEING SOUGHT?

11. Attachment “A” contains a proposed variation to Clause 13 Ordinary Hours of Work to make the following changes;

- To provide in clause 13.2 a definition of an averaging cycle for employees who by agreement with their employees work an average of 38 hours a week. The proposed variation provides for a six-month cycle.
- To provide for greater protection in the form of an enforceable minimum standard for employees classified in Levels 1 & 2 in the Award in respect of compensation for the working of additional/unsociable hours as defined in clause 13.3 as follows;
 - 13.3 (a) defines the non-standard working arrangements for which there must be additional compensation.
 - 13.3(b) defines the various methods of compensation.
 - 13.3(b) (i) provides that where time off is granted it will be on the basis of “hour for hour”.
 - 13.3 (b) (c) provides for the employee to be advised in writing regarding the method of compensation used and the amounts identified.
 - 13.3(d) provides that where shiftwork is worked or work on public holidays that the compensation shall not be less that that paid to the majority of employees of the enterprise.
 - 13.3(f) provides for an Annualised Salary clause which stipulates that each 12 months; at the end of a cycle or upon the termination of employment

there must be a reconciliation process to ensure that the annual salary paid for all hours worked is not less than what is prescribed by Clause 14 – Minimum Wages

- 13.3(g) provides that the employer must keep a record of the ordinary hours of work and additional hours and the arrangements in clause 13.3(b). Further the employee has the right to inspect and copy these records.
- To provide for a separate provision for employees classified in Levels 3 and 4 of the Award. For these employees at the more senior levels in the classification structure the claim in respect of compensation/remuneration for the working of additional/unsociable hours is for essentially the existing Award provision.

LEGISLATIVE FRAMEWORK AND KEY DECISIONS

12. The proposed variations are sought as part of the Four Yearly Review of modern awards arising from s. 156 of the FW Act. APESMA is seeking the variations pursuant to s 156(2) of the FW Act and the discretion available to the Commission under those and various other provisions of the FW Act to make variations to modern awards.
13. Section 156 (1) of the FW Act provides that the Commission must conduct a Four Yearly review of modern awards.
14. In conducting the Four Yearly review of modern awards, the task of the Commission is to conduct this review in accordance with the provisions of s 156 (2) of the FW Act which sets out the requirement to conduct the review.
15. Section 156(2) deals with what must be done and what the Commission may do when conducting the review:

(2) In a four yearly review of modern awards, the FWC:

(a) must review all modern awards; and

(b) may make:

(i) one or more determinations varying modern awards; and

(ii) one or more modern awards; and

(iii) one or more determinations revoking modern awards.

(c) must not review, or make a determination to vary, a default fund term of a modern award.

16. In *Re Four Yearly Review of Modern Awards – Preliminary Jurisdictional Issues*³ (*Preliminary Jurisdictional Issues Decision*), the Full Bench indicated that in conducting a 4 yearly review the Commission will also have regard to the historical context applicable to each modern award⁴, and previous decisions relevant to any contested issue. They also indicated that previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so⁵.

17. In the *Preliminary Jurisdictional Issues Decision*, the Full Bench identified that, in addition to s 156, a range of other provisions in the FW Act are relevant to the review. Those provisions included the objects of the Act (s 3), the interaction with the NES (s 55) and those provisions providing for the performance of functions and exercise of powers by the Commission (ss 577 and 578).

18. In the *Preliminary Jurisdictional Issues Decision*, the Full Bench confirmed that they are required to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions, taking into account the modern awards objective⁶.

19. The modern awards objective is detailed at s 134 (1) of the FW Act:

(1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

(a) relative living standards and the needs of the low paid; and

(b) the need to encourage collective bargaining; and

³ [2014] FWCFB 1788.

⁴ *Ibid* [24].

⁵ *Ibid* [27].

⁶ *Ibid* [23].

- (c) *the need to promote social inclusion through increased workforce participation; and*
- (d) *the need to promote flexible modern work practices and the efficient and productive performance of work; and*
- (da) *the need to provide additional remuneration for:*
 - (i) *employees working overtime; or*
 - (ii) *employees working unsocial, irregular or unpredictable hours; or*
 - (iii) *employees working on weekends or public holidays; or*
 - (iv) *employees working shifts; and*
- (e) *the principle of equal remuneration for work of equal or comparable value; and*
- (f) *the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and*
- (g) *the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and*
- (h) *the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.*

This is the modern awards objective.

20. When considering the relevance of s 134 the Full Bench in the Preliminary Jurisdictional Issues Decision stated that:

'No particular primacy is attached to any of the s.134 considerations and not all of the matters identified will necessarily be relevant in the context of a particular proposal to vary a modern award'⁷.

21. Further they went on to indicate that:

'the Commission's task is to balance the various considerations and ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions.'⁸

22. In performing functions or exercising powers, the Commission must take into account the objects of the FW Act including, *"ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions"* including through modern awards⁹.

23. Section 134 of the FW Act provides for modern awards, together with the National Employment Standards, to provide a fair and relevant minimum safety net of terms and conditions but this is tempered by s 138 which indicates that modern awards may only include terms that are required to achieve the modern awards objective. It is expressed as follows:

"A modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective and (to the extent applicable) the minimum wages objective."

24. Tracey J¹⁰ in *Shop Distributive and Allied Employees Association v National Retail Association No.2*) when considering s 138 of the FW Act observed that:

⁷ [2014] FWCFB 1788 [32].

⁸ Ibid [33].

⁹ Explanatory Memorandum, Fair Work Bill 2008, r 105.

¹⁰ [2012] FCA 480.

“.. a distinction must be drawn between what is necessary and that which is desirable. That which is necessary must be done. That which is desirable does not carry the same imperative for action.”

25. Various Decisions of the Commission have subsequently applied and agreed with this observation of Tracey J. For example, in their Decision on the scope of the 2012 modern awards review the Full Bench¹¹ said:

[33] We are satisfied that s.138 is relevant to the Review. The section deals with the content of modern awards and for the reasons given at paragraph [25] of our decision it is a factor to be considered in any variation to a modern award arising from the Review. We also accept that the observations of Tracey J in SDAEA v NRA (No.2), as to the distinction between that which is “necessary” and that which is merely desirable, albeit in a different context, are apposite to any consideration of s.138.

26. Section 134 of the FW Act provides for modern awards, together with the National Employment Standards, to provide a fair and relevant minimum safety net of terms and conditions but this is tempered by Section 138 which indicates that modern awards may only include terms that are required to achieve the modern awards objective. It is expressed as follows:

A modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective and (to the extent applicable) the minimum wages objective.

27. The Full Bench, in the Preliminary Jurisdictional Issues Decision make it clear that if a party seeks a significant change to a provision in a modern award that it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation¹².

28. In seeking a variation to Clause 13 – Hours of Work what is being sought in part is an annualised salary provision. In fact, the existing Hours of Work clause is in part a de-facto

¹¹ [2012] FWAFB 5600.

¹² Ibid [23].

annualised salaries clause albeit in the submission of the Association a very unsatisfactory one.

29. Therefore, the relevant statutory provision in respect of Annualised Salaries needs also to be considered. This is found in Section 139 of the FW Act which specifies the terms which may be included in modern awards. The relevant section 139(1)(f) states as follows:

“(1) A modern award may include terms about any of the following matters:

(f) annualised wage arrangements that:

(i) have regard to the patterns of work in an occupation, industry or enterprise; and

(ii) provide an alternative to the separate payment of wages and other monetary entitlements; and

(iii) include appropriate safeguards to ensure that individual employees are not disadvantaged;”

30. Therefore, in reviewing the PEA as a whole, the Commission is also to consider whether the Hours of Work provision to the extent that it contains an annualised salaries provision is currently meeting the criteria specified in ss 139(1)(f)(i)-(iii) of the FW Act.

31. Also, in accordance with s 139(1)(f)(i), the patterns of work of individuals covered by the PE Award will be considered and explored in substantive evidence throughout these submissions.

32. Further, in the Preliminary Jurisdictional Issues Decision, the Full Bench acknowledges that not all of the matters identified in s. 134 (1) of the FW Act will necessarily be relevant in the context of a particular proposal to vary a modern award¹³.

33. If APESMAs claim to vary the PE Award is to be successful it must provide cogent merit argument and probative evidence that demonstrates how this claim is justified and how it properly satisfies the relevant requirements of the various sections of the FW Act.

34. Finally, and in accordance with *CFMEU v Anglo American Metallurgical Coal Pty Ltd*¹⁴ the Federal Court of Australia identified that the Commission’s task in a modern award review is to review the modern award as a “whole”¹⁵. Additionally, when considering APESMA’s proposed variation to the PE Award, the Commission is not to:

¹³ [2014] FWCFB 1788 at [32].

¹⁴ [2017] FCAFC 123.

¹⁵ Ibid, at [28].

... address a jurisdictional fact about the need for change, but to review the award and evaluate whether the posited terms with a variation met the objective¹⁶.

ANNUALISED SALARIES

35. The Annualised Salaries issue has been treated by the Commission as a Common Issue throughout the 4 Year Review and in this regard, there has been 3 key decisions. In the 20 February 2018 *Annualised Wage Arrangements Decision*¹⁷ the Full Bench explored the application of this type of provision and identified that a number of factors need to be taken into consideration. Namely, whether employees under the award work a stable or variable number of hours per week, whether employees' work rosters are fixed or changeable over the course of the year, and whether employees work rosters are fixed or changeable over the course of the year and whether employees tend to work unsociable times that would attract the payment of penalty rates under the award or simply perform day work on a Monday – Friday basis¹⁸.
36. The February 2018 decision commencing at [129] established some important principles which would be necessary for an annualised wages provision to form part of a fair and relevant safety net;

“(1) The first concerns the circumstances in which individual agreement should be a requirement for entering into an annualised wage arrangement, as distinct from the employer having the right to introduce it. Where the employee works a reasonably stable pattern of hours such that the fixed amount of annualised salary would not vary significantly from the amount that would otherwise be payable to the employee under the relevant modern award in any given pay period, we do not consider, having regard to the requirement in s 138 that modern award provisions achieve the modern awards objective of a fair and relevant safety net, that the introduction of an annualised wage should require employee agreement since any potential prejudice to the employee by the introduction of such a system is likely to be slight. Subject to further submissions about this issue (as discussed later in this decision), we think that, as an example, employees under the Clerks Award are likely to fall in this category. However, where the working hours of the employee are highly variable

¹⁶ Ibid at [46].

¹⁷ [2018] FWCFB 154

¹⁸ Ibid at [103].

(whether from one week to the next or over the course of a year because of seasonal factors), and/or the employee works to a significant degree hours which under the relevant modern award would be subject to overtime, weekend, evening or other penalty rates, we consider fairness requires that annualised wage arrangements should only be able to be applied by agreement. This is because the employee in that circumstance should be able to decide whether, in their own interests, they would prefer to have the stability of an annualised wage or to receive the full amount of their pay entitlements under the relevant modern award for hours worked at the time of the pay period in which those hours are worked. Subject to further submission, employees under the Horticultural Award, the Hospitality Award and the Restaurant Award are likely to fall in this category.

(2) The arrangement (whether introduced by agreement or by employer right) should be in writing. Because an annualised wage arrangement is likely to effect such a fundamental change to the employee's pay entitlements in any given pay period, any agreement to such an arrangement should be clearly evidenced to put beyond doubt that the agreement exists. A copy of the agreement should be kept by the employer as part of the pay records, and a further copy should be provided to the employee.

(3) Where the annualised wage arrangement is by agreement, it should be terminable by the employer or employee at annual intervals upon notice. Where an employee is working highly variable hours and/or hours that would otherwise be subject to penalty rates, there is a reasonable likelihood that the employee may form the view that the annualised wage arrangement no longer suits their interests, and if so they should be afforded a reasonable opportunity to return to the other award provisions. The employer too may become dissatisfied with the arrangement (for example, because the number of hours worked by the employee no longer justifies the salary being paid) and should therefore have an equivalent opportunity to return to the other award provisions.

(4) In no circumstances should an annualised wage arrangement clause in a modern award permit or facilitate an employee receiving less pay over the course of a year than they would have received had the terms of the modern award been applied in the ordinary way, and it is essential that the clause contain a mechanism or

combination of mechanisms to ensure that this does not happen. We consider that there are three types of mechanism which would likely be effective in this respect:

(A) A requirement for a minimum increment above the base rate of pay prescribed in the annualised wages clause itself.

(B) A requirement that the arrangement identify the way the annualised wage is calculated.

(C) A requirement that the employer undertake an annual reconciliation or review exercise.

(5) In respect of the mechanism (A) above, any such provision in an award should be justifiable by reference to reasonable assumptions about the number of hours which are being paid for, and impose outer limits on the number of overtime hours or other penalty-rate hours which are to be taken as paid for by the increment.

(6) In relation to mechanism (B), the calculation method for the annualised wage must expose any assumptions made about the number of overtime and penalty-rate hours that are to be worked on average. Additionally, the arrangement should contain an outer limitation on the number of such hours in a pay period or across a roster cycle that are paid for by the annualised wage, with any excess hours to be paid for in accordance with the normally applicable overtime or other penalty rate provisions. This outer limitation is not intended to reflect the average number of overtime and penalty rate hours upon which the annualised wage is calculated but rather a higher number of such hours representing the maximum that an employee can reasonably be asked to work in a given pay period without being entitled to an amount in excess of the annualised wage.

(7) In relation to mechanism (C), the annual reconciliation exercise should involve a comparison between the amount paid by way of the annualised wage and the amount that would have been payable had the award provisions been applied in the ordinary way, with a requirement to pay to the employee any shortfall between the former and latter amounts within a specified period. Because of the apparent lack of a requirement in the FW Regulations to keep records of overtime and other penalty-rate hours where an annualised wage arrangement displaces

the award requirements for payment for such hours, it is necessary that in establishing a reconciliation mechanism the award clause contain a requirement for such records to be kept. It is only by this means that the reconciliation requirement could practically operate. The inclusion of such a provision in a modern award is authorised by s 142 of the FW Act: it is incidental to an annualised wage arrangement provision made pursuant to s 139(1)(f) and is essential to make such a provision operate in a practical way.

(8) Although it was not the subject of debate in the hearing before us, we have proceeded on the basis that annualised wages provisions only have application in relation to full-time employees. The proposition that a casual employee could be paid pursuant to an annualised wage arrangement is oxymoronic, and no workable proposition has been advanced that such arrangements could apply to part-time employees engaged to work fixed numbers of hours per week. However, we will provide parties with an opportunity to advance any proposal they wish to make as to how an annualised wage provision might practically apply to part-time employment. With respect of the need to incorporate appropriate safeguards in a modern award, as specified under s 139(1)(f)(iii) of the FW Act. This decision also stated that this employer obligation is directly linked to the requirement maintain and keep the necessary records of hours worked by an employee¹⁹.

37. Finally, the Full Bench provisionally identified several model clauses ²⁰ which may be appropriate and invited further submissions from interested parties.
38. The second key decision was issued by the Full Bench on 27 February 2019²¹. This Decision dealt with the outstanding issues. Firstly, at paragraph 39 the Full Bench confirmed its provisional conclusion in the 2018 that a reconciliation requirement *“must be a fundamental requirement of any annualised wage arrangement provision”*.
39. In addressing the question as to whether standard annualised wage provisions should be adopted for modern awards generally the Full Bench demurred on this point but indicated ²²*“it will remain open for interested parties to apply for a specific modern award to be varied to include Model clause 1 or Model Clause 3, as appropriate.”* In this regard it is submitted that as

¹⁹ Ibid at [125].

²⁰ Ibid 130-135

²¹ [2019] FWCFB 1289

²² [2019] FWCFB 1289 P.49

the PEA has applicability to employers across a diverse range of industries and occupations both model clauses could potentially be relevant depending on the patterns of work. Accordingly, what is proposed for this award which is relevant to an Annualised Salary can be appropriately described as a Majority Provision.

40. The third key decision²³ amongst other considerations reiterated its provisional conclusion that it saw no reason in principle why managerial or supervisory – level employees should not have access to an annualised salary in an appropriate form.²⁴
41. It may be contested as to whether Clause 13 of the PEA is an Annualised Salaries provision. In this regard as mentioned earlier it is submitted that the clause is hybrid in character in that it is an Annualised Salaries provision in part. Accordingly, the Full Bench Decisions in addition to s.139(1) (f) are very relevant to the consideration of the Association’s claim.

HOURS OF WORK – COMPENSATION FOR WORKING ADDITIONAL/UNSOCIABLE HOURS AND ANNUALISED SALARIES

42. As outlined above and in accordance with s 134(1) of the *Fair Work Act 2009* (Cth) (“**the FW Act**”) the Fair Work Commission must ensure that the modern awards objective of providing for a fair and relevant minimum safety net of terms and conditions is achieved. APESMA believes that Clause 13 of the PE Award as currently drafted fails to meet this objective.
43. APESMA submits that clause 13 – Hours of Work of the PE Award fails to provide relevant and enforceable safety net on 2 grounds.

AVERAGING OF 38 HOURS OVER A CYCLE

44. Firstly, there is the inadequate protection and lack of an enforcement option provided by Clause 13.2 which deals with the averaging of the 38 hour week over a cycle and states as follows;

“13.2 An employee who by agreement with their employer is working a regular cycle (including shorter or longer hours) must not have ordinary hours of duty which exceed an average of 38 hours per week over the cycle.”

²³ [2019] FWCFB 4368

²⁴ Ibid P.30

45. This issue was identified by the Full Bench in its Decision in respect of the 4 Yearly review of modern awards – Award stage – Group 4 awards²⁵ dealing with the various exposure drafts.

46. the Full Bench commencing at PN 616 made the following observations;

“[613] The Professional Employees Award and Exposure Draft allow an employee, by agreement with their employer, to average their ordinary hours of work over a regular cycle which may include shorter or longer hours. In the exposure draft published on 3 November 2016, the Commission asked parties to confirm the maximum number of weeks in a cycle that the 38 ordinary hours per week may be averaged.

[614] initially, APESMA and AFEI submitted that any proposal to specify a maximum number of hours over which 38 hours may be averaged would be a substantive change. ABI and Ai Group opposed the introduction of any maximum number of weeks over which ordinary hours were averaged. APESMA proposed the following clause to address the Commission’s concerns:

‘For the purposes of this sub-clause 13.2, a cycle cannot be longer than 12 months.

[615] Following the final conference, the interested parties conformed that they agreed to APESMA’s proposal cannot be longer than 12 months.

[616] The Commission wrote to interested parties on 8 September 2017 to seek clarification about whether an average cycle was appropriate given the lack of overtime provisions. In response, Ai Group submitted that the Professional Employees Award and its predecessors never contained overtime and TOIL provisions because employees typically receive an annual salary.’

[617] We agree with the initial submissions of APESMA and AFEI that the introduction of a maximum number of weeks would constitute a substantive change.

[618] We are also concerned that the proposed averaging of ordinary hours of work over a 12 month period is not reasonable period of time over which to average ordinary hours, and would raise practical issues with the

²⁵ [2018] FWCFB 1548

reconciliation of the ordinary hours and any overtime worked including in situations where employment is terminated prior to a 12 month period.

[619] Along with any overtime entitlement that might be introduced, there would need to be a consideration of the rate at which overtime hours would be paid, for example, at the ordinary rate of pay or a loaded rate. There would also need to be consideration given to whether time off may be granted instead of payment for overtime.

[620] The averaging of the ordinary hours of work clause has brought to our attention the issues reconciling the average ordinary hours work over a cycle and the payment of overtime entitlements for hours worked in addition to ordinary hours. We note that under the Professional Employees Award, while there is provision that employees will be compensated for time worked regularly in excess of ordinary hours, there is no method of calculation of these 'additional hours in relation to remuneration, time off in lieu or penalty rates.

[621] This matter will be referred to a separately constituted Full Bench for further consideration and determination."

47. This matter was again considered by the Full Bench in its²⁶ Decision of 7 August 2018. The Full Bench at PN 371 stated;

"We outlined that this item would be referred to a separately constituted Full Bench for further consideration and determination. Ai Group contested this view in their submission dated 19 April 2018 and sought us to reconsider. We have regard to Ai Groups' submission but are not persuaded to depart from our previous decision."

48. With these considerations raised, the Commission then identified that there is currently no provision under the PE Award which, provides for a method of calculation of additional hours in relation to remuneration, time off in lieu or penalty rates for additional hours worked. The current PE Award as it is drafted at clause 18.4 states that an employee's remuneration "*will be reviewed annually to ensure that it is set at an appropriate level having regard to the factors listed in this clause*". How that remuneration is reviewed or how the appropriate level is determined is not specified.

²⁶ [2018] FWCFB 4175

49. The observations of the Full Bench whilst identifying a different aspect of the overall problem nevertheless puts the spotlight on the Association's concerns around the enforceability of the Hours of Work provision when there is no measurement backed up by no minimum entitlement. The proposed variation proposes that the cycle be no more than 6 months.

NO MINIMUM STANDARD/RECORD KEEPING/RECONCILIATION

50. The second concern with clause 13 whilst to some extent is related to the averaging of 38 hours per week over a cycle issue also stands on its own. That is the inherent difficulties with the operation of sub-clauses 13.3,13.4,13.5 and 13.6. These sub-clauses specify the circumstances when compensation needs to be provided including the working of additional and unsociable hours and identify several options for compensation/remuneration

51. The methods of compensation/remuneration include an additional leave, an annualised salary, special additional remuneration, or a special allowance or loading. In addition, there is an overall provision which attempts to provide a framework.

"Where relevant, compensation in clause 13.4 must include consideration of the penalty rate or equivalent and conditions applicable from time to time to the majority of employees employed in a particular establishment in which the employee is employed."

52. One of the inherent difficulties with this sub-clause is that it cannot be enforced. For instance, the inclusion of such words as *"where relevant"* and *"include consideration of"* negate what it is submitted by APESMA should be an enforceable right.

53. In addition, this type of wording and clause 13 in general assumes that all professional employees that are covered by the Award actually receive appropriate compensation/remuneration. Further there is an in-built assumption that a Level 1 Graduate for example is on the same footing as a senior professional at Level 4 in terms of being to negotiate.

54. APESMA submits that Clause 13 of the Award, as it is currently drafted demonstrably fails to provide establish clear and enforceable minimum standards which are capable of

measurement. As will be demonstrated through evidence throughout these submissions, that when the total number of hours worked by employees covered by the PEA are taken into account the available evidence shows that a significant number of individuals covered by this Modern Award classified at Levels 1 and 2 may be falling under the minimum rates of pay under the Award in terms of all hours worked.

55. APESMA's submissions will demonstrate that the proposed variation as proposed will ensure that the objective of a fair and relevant safety net will be met. Further that the proposed changes which are sought satisfy the various requirements specified in the FW Act that must be met on order for such a variation to a modern award to succeed.
56. In doing so the Association acknowledges the requirement as outlined earlier in this submission that the Full Bench will also have regard to the historical context applicable to each modern award²⁷, and previous decisions relevant to any contested issue. They also indicated that previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so²⁸.

HISTORY OF CURRENT PROVISIONS

57. The Professional Employees Award is an amalgam of several pre-reform Awards and NAPSAs. These included amongst others the following Awards;

- Technical Services Professional Engineers (General Industries) Award 1998 [T1450]
- Scientific Services Professional Scientists Award 1998[S1894]
- Information Technology Industry (Professional Employees) Award 2001 [AP812692]

These Awards all contained variations of the current award provision on Hours of Work. The underlying philosophy has been to provide the right to compensation for the working of additional (including unsociable hours) whilst allowing for a flexible approach in the determination of the appropriate level of compensation.

²⁷ Ibid [24].

²⁸ Ibid [27].

58. The Professional Scientists Award 1981 (Print V-M Print E8377) was the first federal award which had applicability to Professional Scientists employed in the non-government sector to include a provision relating to Hours of Work.

Clause 7 – Hours of Duty stated as follows;

“The ordinary hours of duty of a professional scientist should not exceed the normal hours of duty in the particular industry or section of industry in which he is employed. Employers will compensate for time worked regularly in excess of a professional scientist’s ordinary hours of duty either by:

- (a) taking this factor into account in the fixation of his remuneration,*
- (b) granting special additional remuneration, or*
- (c) granting other compensation, such as time off in lieu.”*

A similar provision was inserted into the Professional Engineers (General Industries) Award 1982²⁹.

59. With the creation of the first Award covering Information Technology Professionals in the private sector the issue of compensation for additional hours also brought into sharper focus the working of unsociable hours as a feature of the information technology industry. Accordingly, the provision included in the *Information Technology Industry (Professional Engineers) Award 1999* [I0531 VOO1 D Print R6202] built on what was, up until that time, the standard provision with the addition in particular of a new clause 21.2 which introduced a greater measure of specificity.

21. *Hours Of Work And Related Matters*

21.1 *The ordinary hours of work of an employee should not exceed the ordinary hours of duty in the particular industry or sector of industry in which the employee is employed.*

Employers will compensate for:

- 21.1.1 *time worked regularly in excess of ordinary hours of duty;*
- 21.1.2 *time worked on call backs;*
- 21.1.3 *time spent standing-by in readiness for a call back;*

²⁹ P067 A S Print F1735

21.1.4 *time spent carrying out professional engineering duties outside of the ordinary hours of duty over the telephone or via remote access arrangements; or*

21.1.5 *time worked on afternoon, night or weekend shifts;*

Either by:

21.1.6 *taking this factor into account in the fixation of annual remuneration;*

21.1.7 *granting special additional remuneration; or*

21.1.8 *granting a special allowance or loading; or*

21.2.9 *granting other compensation such as special additional leave.*

21.2 ***Upon a request in writing being made to the employer, an employee shall be advised in writing of the method of compensation being used in respect of any of the matters specified in 21.1.1,21.1.2,21.1.3,21.1.4 and 21.1.5. The methods of compensation are set out in 21.1.6, 21.1.7, 21.1.8 and 21.1.9. If the employer is compensating the employee by a method identified in 21.1.7 of 21.1.8, the employer shall identify the special additional remuneration, allowance or loading which is being paid.”***
(Emphasis added).

60. The introduction of this provision was designed to introduce a greater level of measurability in circumstances where the pattern of work was more varied and unpredictable.

AWARD MODERNISATION

61. The matter of compensation for the working of additional hours/unsociable hours was next considered during the s. 576E of the Workplace Relations Act 1996 Award Modernisation proceedings.

62. The issue was canvassed by the parties at a conference before the Commission which took place before Commissioner Smith on Thursday 26 March 2009. Several exposure drafts covering what were known as Group 3 industries were dealt with, including Technical Services which included the awards for technology-based professionals. APESMA and the AI Group had

proposed a joint draft award titled the "*Professional Engineers and Scientists – Private Sector – Award – 2010*"³⁰. There was, however, disagreement on the issue of the level of compensation for the working of additional hours with alternative provisions proposed.

63. The transcript of this proceeding is informative to an understanding of the views of the parties.³¹ Consideration of the remuneration for working additional hours was raised by Mr. J Artis, APESMA Senior Industrial Officer commencing at paragraph 65 where he says;

"At clause 24.2 it states that employees will compensate for time worked regularly in excess of ordinary hours of duty and then the current award provides three options. The association has added a fourth option:

"Payment of the same penalty rate and upon the same conditions as are applicable from time to time to the majority of employees employed in the particular establishment in which the employee is employed".

64. Paragraphs 66 to 102 consisted of a dialogue between Mr. Artis and Commissioner Smith which went to the heart of the concerns regarding the unenforceability of the then existing provision. For instance, the following exchange commencing at paragraph 82 is very illustrative as the Commissioner questioned Mr. Artis regarding the clarity of the existing provision.

"THE COMMISSIONER: Let me put it another way. Let me put it another way. One of your members goes along to the Workplace Ombudsman and says "I haven't been compensated for working in excess of ordinary hours" and the employer says "Yes you have. You worked 60 hours a week and we gave you another day. We compensated you". How do I fix a minimum - in fixing a minimum award, what do I understand compensate to mean?

MR ARTIS: Well, there is no guide given by the current award provision.

THE COMMISSIONER: No. What do you say it means here?

MR ARTIS: Well, its open. It's very much open to the employer under A,B, and C.

³⁰ *Professional Engineers and Scientists – Private Sector – Award - 2010*

³¹ *Transcript of Proceedings – AM2008/54, AM2008/57, s.576E – Award Modernisation, Melbourne, 10.09 AM, Thursday, 26 March 2009.*

THE COMMISSIONER: Yes

MR ARTIS: To comply with A, B and C without provide – without being specific about the quantum.

THE COMMISSIONER: So it's unenforceable.

MR ARTIS: Yes.

65. Beginning at PN 204 the Commissioner Asked Ms. Street representing the AI Group whether she wanted to comment on Clause 24.2 and specifically what “*compensation*” meant. In response Ms. Street at PN 205 stated in part that “*This clause is really premised on the flexibility that is frequently utilized by employers in engaging professional employees. The compensation as is in the draft award is not in fact measured. There is no minimum or maximum and it is designed to contemplate the agreement that is struck by the employer and the employee who is engaged at a professional level.*”

66. Addressing the issue further Mr. Mead also appearing for the AI Group stated “*So the manner in which this clause operates is in essence that the additional compensation could be, on one reading, as little as a dollar.*”

67. *THE COMMISSIONER: Yes*

MR MEAD: Now, we say that that recognizes the nature of professional employees and they should be..... the compensation can be as little as that, to discharge the obligations - - -

THE COMMISSIONER: So for your three year graduate \$41,445 can then have a person work whatever hours is chosen by the employer?

MR MEAD: Potentially, Commissioner, but just on that point, I can I can understand if the Commissioner thinks that perhaps there is some- - -

THE COMMISSIONER: Uncertainty, is the word you're searching for, is it?

MR MEAD: Logical difficulties, perhaps, would be the way I would approach it. But, Commissioner, one only needs to look at the Private Clerks Award by way of example, an award

– and I appreciate that there has been some discussion post -stage 1 about the appropriateness of an exemption provision.

68. Subsequently, the Commission released an exposure draft for the proposed new Professional Employees Award 2010 which contained at 18.2 what is the current wording in the Award for compensation by amending the APESMA proposal for it to be a “*should do*” proposition as opposed to “*will do*”.³²

69. Ultimately a Decision in respect of Stage 3 modern awards was issued by the Commission on 4th September 2009.³³ In respect of compensation for the working of additional hours issue at PN 236 the Full Bench stated as follows;

“[236] An important change sought by AI Group related to the way in which employers would consider a total remuneration package for employers having regard to patterns of work. We have retained the provision contained in the exposure draft. In our view this is not prescriptive but nonetheless alerts employers to the need to take into consideration the demands placed upon professional employees when fixing remuneration.”

NATURE OF PROFESSIONAL EMPLOYMENT/HOURS OF WORK SURVEY

70. There are several often unchallenged assumptions regarding the nature of professional employment. These include that professional employment is “*flexible*” and that professional employees “*self-manage*” their hours of work; perform additional hours often by their own choice; are well remunerated or compensated for working these hours; and essentially by virtue of “*being treated as a professional*” do not need or require the rights and protections which are afforded to other employees. It is almost by virtue of possessing a degree qualification there is no need for anything other than the most minimal amount of protection. This is despite these protections being available to professional employees covered by other modern awards and to employees working alongside professionals or performing work of broadly similar work value.

71. The standard working week for Professionals like any other employees are 38 hours per week. In addition, they can be expected to work “*reasonable additional hours*”. What constitutes “*reasonable*” is not defined and will depend on the circumstances. However, many

³² Exposure Draft – May 2009

³³ [2009] AIRCFB 826 Award Modernisation (AM2008/25-63)

professionals work well in excess of 38 hours per week including in circumstances which, may be categorized as *"unsociable times"*.

72. On the available evidence which will result in a broader consideration of the overall issue it would appear that a significant number of employees covered by the PE Award remain at the office, or continue their work at *"unsociable hours"* due to obligations imposed on them by their workplace by managerial instruction; a significant workload or the particular workplace culture. In other words, APESMA submits that they do not *"choose"* to work additional hours.
73. In response to the on-going concerns expressed by members regarding both the quantum of hours required to be worked and the adequacy or not of the compensation received the Association in late 2018 conducted a survey of members in order to evaluate the extent of the problem. To date much of the evidence regarding the working hours of professionals has been anecdotal in nature. The survey is the first attempt by APESMA to try and document what is believed to be the seriousness of this issue.
74. Attached is a copy of a witness statement prepared by Mr. Alex Crowther APESMA Manager of Surveys (Attachment "C") which details the methodology used for the survey including the survey questions. In addition, data was also sourced from the 2018 Annual Professional Engineers Remuneration Survey.
75. Further, Mr. Crowther elaborates on the survey findings as outlined in a report published by the Association titled *"Professionals – Additional Hours and Unpaid Overtime – A Time for Action"* (Annexure "A" to the Witness Statement of Alex Crowther). The publication of this report is designed to inform APESMA's current claim on Hours of Work and as an awareness raising exercise amongst members in order to foster discussion around this issue in the workplace and more broadly as an occupational health and safety issue.
76. By way of summary the headline findings are set out at page 5³⁴ of the survey report and from APESMA's perspective paints a very disturbing picture. It is submitted that the lack of industrial protection afforded employees employed under the PEA particularly at Level 1 and 2 has created a situation where a sizeable minority of those employees are not adequately compensated and worse off when compared to other employees at similar classification levels who do not possess professional qualifications but who are covered by Awards that prescribe stronger minimum standards.
77. Amongst those who completed the survey the key findings are as follows;

³⁴ Professionals – Additional Hours and Unpaid Overtime – A Time for Action, P3

- The average professional works 45 hours each week.
- 56.0% of professionals report not receiving any compensation for working additional hours, and only 16.2% were paid overtime/penalty rates.
- 13.5% of professionals were paid below the minimum award rate.
- When all hours worked by professionals are considered, many earned below award rates:
 - 28.0% at Level 1
 - 19.4% at Level 2
 - 8.7% at Level 3
 - 2.4% at Level 4
- If a standard penalty rate of time and a half were factored in it's estimated that even more would earn below award rates:
 - 32.6% at Level 1
 - 27.5% at Level 2
 - 12.5% at Level 3
 - 6.3% at Level 4
- 52.3% of professionals work alongside those who are paid for working additional hours.
- When explicit compensation is paid to professionals for working additional hours, they are less likely to do so than those compensated through their annual salary.
- High workloads and strong 'cultural' expectations are key reasons that professionals work additional hours.

Additional Hours – How common?

78. Generally speaking, the lower the level, the less that additional hours are performed. The survey data shows however, that even at Levels 1 and 2 the percentage of professionals

working additional hours was 30.4% and 34.6% respectively. At Level 3 it is 48.4% and at Level 4 it is 60.1%.³⁵

Additional Hours – How many?

79. The average working week for professional employees is 45 hours per week. Broken down by Level of Responsibility this shows a similar pattern at Level 1 and Level 2 of 43.56% and 43.89% respectively. More senior professionals worked more hours on average and this group were more likely to report working 50 or more hours. However, there is still a proportion of those at the junior levels working more than 50 hours per week. At Level 1 there were 15.7% and at Level 2 18.9%.³⁶

Additional Hours – How are professionals compensated?

80. 56.5% of the survey respondents indicated that no compensation is available for working additional hours. Interesting 30.7% received time off in lieu followed by the payment of an annual salary (21.8%) which takes additional hours into account. Only 16.2% of professional employees received additional remuneration such as overtime or penalty rates.³⁷

Additional Hours – Hourly rates of pay?

81. Using data from the Professional Engineers Remuneration Survey Report 2018 as an example data showed unsurprisingly that the average base hourly rate is above the award minimum for each classification. However, 13.5% of those classified at Level 1 received rates of pay which are below the award minimum³⁸. However, when all hours worked are considered the data shows that the actual rates are below the award minimums. For instance, this was the case for 28.0% for Level 1 and for 9.4% at Level 2. Professional employees at Levels 3 and 4 do much better because of the more appropriate remuneration which they receive.³⁹

Additional hours – If penalties were paid?

82. Again, using Professional Engineers as an example, it is instructive to consider those who work alongside non-professional staff in industries where modern awards include explicit compensation such as penalty rates for working additional hours/overtime. According to the

³⁵ Ibid P18

³⁶ Ibid P10

³⁷ Ibid P8

³⁸ Ibid P13

³⁹ Ibid P14

Professional Engineers Survey data respondents were aware that 52.3% were compensated while 22.3% of respondents were not sure.⁴⁰

83. In this regard as an exercise, if the standard loading of 50% were to be applied to the hourly rate received by Professional Engineers under the PEA a higher percentage would receive hourly rates of pay below the award minimums. In the case of Level 1 it would be 32.6% and Level 2 27.7%. Again, as a reflection of the better remuneration at Levels 3 and 4 the findings were 12.4% and 6.3% of the survey respondents respectively.⁴¹

Additional Hours – What kind?

84. In response to this question 83.8% of survey respondents reported working regularly in excess of 38 hours per week. The next highest category were those professional employees carrying out duties over the phone or via remote access arrangements.⁴²

Additional Hours – Why?

85. As mentioned earlier in this submission it is often asserted by employers that professional employees largely “self-manage” their hours and that the fact that many employees work additional hours is a matter of choice presumably one that is easily reversed. However, the survey data suggests otherwise with some disturbing responses.

86. The most prevalent reason reported for working additional hours was “My workload requires I perform additional hours to get the job done” (80.3%). This was followed by “There is an expectation” (58.7%); “My colleagues work additional hours” (44.6%); “I work additional hours to cover a shortfall in staffing” (39.3%) and “My manager/supervisor works additional hours” (38.1%).⁴³

Payment of Compensation – How does this impact on additional hours?

87. One interesting but not surprising finding amongst survey respondents was that where professional employees received overtime payments, time off in lieu, or specific allowances for being on-call or standby they were less likely to regularly work in excess of 38 hours per week than those whose compensation was part of their annual salary.⁴⁴

⁴⁰ Ibid P14

⁴¹ Ibid P14

⁴² Ibid P18

⁴³ Ibid P23

⁴⁴ Ibid P20

88. Further, an examination of the rates of pay shows that those who receive time off in lieu for working additional hours had the best “actual” hourly rate. For Level 1 this was \$32.56 and at Level 2 it was \$43.69.⁴⁵

Conclusions from Survey Data

89. Whilst the conduct of the survey is viewed by APESMA as a first step the indicative overall picture which emerges is that significant additional hours are worked by professional employees and that compensation for the working of these hours is at best lacking in transparency and at worst grossly inadequate. Moreover, the problem is more acute at the junior levels Level 1 and 2.

COMMON LAW CONTRACTS AND MINIMUM STANDARDS

90. The practical difficulties which are experienced when attempting to utilise the existing Clause 13 – Hours of Work are elaborated further in the witness statement of APESMA Principal Legal Officer Michelle Anthony. The witness statement and annexures are included as Attachment “D”.

91. At Paragraph 2 of her statement Ms Anthony outlines one aspect of her role as providing professional legal supervision to a group of lawyers and industrial officers who work as part of the APESMA Workplace Advice Support team (“WAS”). The purpose of WAS is to enable APESMA members to seek advice and representation in respect of a range of issues including their common law contracts of employment.

92. Ms Anthony states that in 2018 WAS received 289 contracts for review in 2018 and had reviewed an additional 36 by June 2019. A selection of these contracts is attached to the witness statement.

93. As an indicator Ms Anthony at paragraph 5 refers to an example of a Site Engineer who she believes falls within the coverage of the PEA at Level 1. Under the terms of this employee’s contract they are required to work *“all hours and times construction work is being carried out at sites (whether day or night and regardless of how many hours are consecutively worked), without receiving any remuneration in addition to the employee’s annual salary.”*

⁴⁵ Ibid P20

94. The extract from the employee's contract of employment contains Clause 4 Hours of Work and in addition includes at 9.4 the words " *With regard to payments or benefits to which you are or may legally become entitled whether or not as a matter of legislation, regulation, or any other industrial instrument, then you agree that your remuneration will be specifically applied to offset and absorb any such payments of benefits.*
95. In paragraph 7 Ms Anthony states that the "offset" clauses such as those contained in the contracts of employment attached to her witness statement have become "*standard conclusions*". This is followed by her view that Clause 13 of the Award as it stands allows an employer to pay a minimal amount for additional hours and not be in breach regardless of the number of additional hours worked.
96. Paragraphs 9 and 10 of Ms Anthony's witness statement refers to alleged underpayments which have been made by an individual employer. It should be noted that the employer strongly rejects the Association's view. Therefore, whilst the matter has not been determined and therefore no conclusion can be made the issue is relevant to the capacity for APESMA to commence proceedings on behalf of members.
97. The circumstances were that a group of Fly in Fly Out employees were employed under the PEA. However, it emerged that some of the employees did not possess professional qualification and that therefore it was likely that the Manufacturing and Associated Industries and Occupations Award 2010 ("*Manufacturing Award*") would apply. After reviewing the salaries paid to employees, members have been advised that as the relevant clauses in the Manufacturing Award provide measurable, enforceable entitlements and that action can be initiated on behalf of those employees. However, those performing the same work under the same conditions etc have no recourse under the PEA.

OTHER MODERN AWARDS – MORE ADVANTAGEOUS PROVISIONS

- **Professional and Managerial Employees**
 - **Employees at similar level**
98. The incidence of employees at a similar work value level to Levels 1 and 2 under the PEA or other professional employees and similar occupations covered by modern awards with greater protection is highly relevant to the consideration of the Association's proposed variation as illustrated by the following examples.

99. The *Architects Award 2010* (“**the Architects Award**”) covers employers of architects with respect to their employees that who Graduates of Architecture; Experienced Graduates of Architecture and Registered Architects. The minimum wage entitlement is expressed in the form of an annual wage. The Architects Award includes a provision that determines the spread of ordinary hours. It sets an enforceable minimum standard for compensation for work performed in excess of ordinary hours of work and outside the spread of ordinary hours. The Architects Award offers a degree of flexibility as to the form of compensation permitted. The minimum compensation an employee must receive is payment for excess hours worked at the rate of time and a half. Alternatively, the employer and employee may enter into another compensation arrangement that is equal to, or greater than, the minimum compensation to which the employee is entitled. Furthermore, the Architects Award gives employees the option to take time off instead of payment for overtime (“**TOIL**”), by agreement with their employer.⁴⁶ The TOIL clause requires the employer to conduct a reconciliation every six months (or more frequently) and pay the employee for any overtime that has not been compensated as TOIL. The agreement to enter into another compensation arrangement, or take time off instead of payment for overtime, must be recorded in writing and kept as a time and wages record.
100. The *Banking, Finance and Insurance Award 2010* (“**the Banking Award**”) covers a wide range of employees in the banking, finance and insurance industry.⁴⁷ The coverage includes employees with specialist knowledge and experience; formal qualifications; and those who work in managerial positions. Employees that fall within classification levels 4, 5 and 6 are entitled to a minimum wage that equates to the minimum wages payable to level 1 employees covered by the *Professional Employees Award*. The Banking Award minimum wage entitlement is expressed as both a minimum annual salary and a minimum weekly rate. It also contains an annualised salary provision. Pursuant to clause 14.1 an employer can pay an employee an annual salary to satisfy any or all of the entitlements to the minimum wage; allowances; overtime; penalty rates; and annual leave loading. Subclause 14.2(b) requires an employer to undertake an annual review “*to ensure that the compensation is appropriate having regard to the award provisions which are satisfied by the payment of the annual salary*”. As noted by the Fair Work Commission Full Bench, the word “*appropriate*” does not require a comparative mathematical exercise to determine whether the annual salary is greater, or less,

⁴⁶ Ibid [cl 19.3].

⁴⁷ Fair Work Commission, *Banking, Finance and Insurance Award 2010*, MA000019, 20 June 2019, cl 4.

than the amount an employee would have been paid under the award.⁴⁸ Consequently, the annual review provision in the Banking Award does not, by itself, satisfy the s 139(1)(f)(iii) requirement.⁴⁹ It is significant that the Fair Work Commission Full Bench intends to vary the Banking Award to include Model Clause 1.⁵⁰

101. The coverage of *Broadcasting, Recorded Entertainment and Cinemas Award 2010* (“**the Broadcasting Award**”) includes journalists from a graduate level to those who exercise the highest level of skills and responsibility. These journalists work variable hours, and significant ordinary hours which attract penalty rates.⁵¹ There is an annualised salary clause in the Broadcasting Award, that only applies to employees classified as Journalist Grade 5 or above. The minimum wage payable to employees classified as Journalist Grade 5 or above is greater than the minimum wage payable to level 2 employees covered by the *Professional Employees Award*. The annual salary must compensate for ordinary time pay; overtime; shift penalties; annual leave loading; and distant engagement provisions. Before agreeing to an annualised salary arrangement, an employer must inform an employee of their hours of work and payments to which they will be entitled to for the prospective year. There must be agreement between the employer and the employee to enter into an annualised salary arrangement. This agreement must be written, and identify the entitlements compensated for by the annual salary, and amount of compensation for each entitlement. Once the arrangement has been in place for 12 months, it may be terminated by either party. If the arrangement continues beyond 12 months, either party can terminate it by providing eight weeks’ notice. Employees have a contingent right to terminate the arrangement before 12 months. This right arises if their ordinary hours of work changes; their hours of work and payments were wrongly calculated; or “*extraordinary events have intervened*”. The Broadcasting Award does not expressly require the employer to conduct an annual review or reconciliation; nor does it impose record keeping obligations. The safeguard mechanism operates by informing the employee of their hours of work and payments for the prospective year and allowing the employee to terminate the agreement if these were wrongly calculated. The Fair Work Commission Full Bench has decided to replace the existing annualised salary provision in the Broadcasting Award to include Model Clause 3.⁵²

⁴⁸ [2018] FWCFB 145, [121].

⁴⁹ Ibid [121].

⁵⁰ [2019] FWCFB 1289, [53].

⁵¹ [2019] FWCFB 1289, [56].

⁵² [2019] FWCFB 4368, [27].

102. The *Pharmacy Industry Award 2010* (“**the Pharmacy Award**”) covers employers in the community pharmacy industry, and their employees working as Pharmacy Assistants and Pharmacists. It contains an annualised salary provision that applies to employees in the higher-level classifications of Pharmacist and Pharmacy Assistant Level 4. Clause 27.5 requires the employer to keep a record of hours worked each day, including the employee’s start and finish time. This record must be countersigned by the employee and kept for six years. The Fair Work Commission Full Bench has determined that the safeguards in this annualised salary provision fail to ensure that individual employees are not disadvantaged.⁵³ Clause 27.3 requires that an employee must not be disadvantaged by payment of an annualised salary, “*but does not prescribe the means for achieving the outcome*”.⁵⁴ To rectify this deficiency, the Pharmacy Award will be varied to include Model Clause 3.⁵⁵

103. The *Manufacturing and Associated Industries and Occupations Award 2010* (“**the Manufacturing Award**”) applies to employees who work alongside Engineers and Scientists covered by the *Professional Employees Award 2010*. Clause 24.1(g) is an annualised salary provision that applies to employees in the “*supervisor/trainer/coordinator field*”. These employees are responsible for training and supervising other employees. The employer is required to specify the entitlements that are incorporated within the annualised salary. The annualised salary must be reviewed each year to ensure that the compensation is “*appropriate*” having regard to the entitlements incorporated within it. As discussed above, the annual review mechanism does obviate the risk that an employee will be disadvantaged by an annualised salary arrangement. The existing annualised wage provision will be replaced by Model Clause 3.⁵⁶

104. The *Mining Industry Award 2010* (“**the Mining Award**”) covers employees in the mining industry. Employees covered by the Mining Award are often employed in the same establishment as Engineers covered by the *Professional Employees Award 2010*. Pursuant to clause 17 of the Mining Award, an employer has the right to pay an employee an annualised salary. The annualised salary must be set at an amount that fully discharges the employer’s obligation to pay the employee’s monetary entitlements under this Award. The employer must

⁵³ [2019] FWCFB 1289, [36] – [39].

⁵⁴ Ibid [38].

⁵⁵ [2019] FWCFB 4368 [27].

⁵⁶ [2019] FWCFB 4368 [27].

review the annualised salary each year to “to ensure the compensation is appropriate having regard to the award”. Model Clause 1 will replace the current annualised salary provision in the Mining Award.⁵⁷

105. The *Animal Care and Veterinary Services Award 2010* (“**the Animal Care Award**”) applies to veterinary surgeons employed in the veterinary surgery and animal care industries. In the veterinary surgery industry, degree qualified veterinary surgeons work alongside trade qualified employees. The Animal Care Award applies to both veterinary surgeons and trade qualified employees. The minimum wage is expressed as an annual salary for veterinary surgeons and animal care inspectors; and as a weekly rate for all other employees. Clause 24.1 prescribes an enforceable minimum standard of compensation that veterinary surgeons must receive for overtime. The default compensation required by clause 24.1(a)(i) is additional remuneration paid at the ordinary time rate. Under clause 24.1(b), the employer and employee veterinary surgeon may reach an agreement that compensation for overtime will be paid by an annual allowance. This compensation must not be less than the amount the employee veterinary surgeon would have received if paid for overtime hours worked at the ordinary time rate. Such an agreement must be made in writing.
106. The *Local Government Industry Award 2010* (“**the Local Government Award**”) applies to local government industry employees from entry level employees, with only on the job training, up to senior professional and managerial employees. Employees classified as Level 8 and higher require a degree qualification. By written agreement with the employee, the employer may pay an annualised salary to compensate for the employee’s monetary entitlements under the Local Government Award. The annualised salary must not be less than the amount the employee would have been received under the Local Government Award. Clause 14.7(b) requires the employer to review the amount annually to ensure it is “appropriate”. Clause 14.7(d) extensively prescribes matters that the written agreement must address, including details of any non-salary benefits (e.g. an employer provided motor vehicle) and details of any performance pay arrangements. This annualised salary provision will be replaced with Model Clause 3.⁵⁸
107. The *Rail Industry Award 2010* (“**the Rail Award**”) covers employers in the rail industry and a wide range of their employees. It applies to employees with a degree qualification, including

⁵⁷ [2019] FWCFB 4368 [26].

⁵⁸ [2019] FWCFB 4368 [27].

professional employees in senior managerial positions. By written agreement, an employer may pay an employee an annualised salary to satisfy the employee monetary entitlements under the Rail Award. The written agreement must identify the monetary entitlements satisfied by the annualised salary, and the calculations used to determine the annualised salary amount. This written agreement must keep as a time and wages record. The amount paid as an annual salary must not be less than the amount the employee is entitled to under the provisions it incorporates. The Rail Award will be varied to replace the existing annualised salary provision with Model Clause 3.⁵⁹

108. The *Water Industry Award 2010* (“**the Water Award**”) covers employer in the water industry, and their employees, up to, and including those with degree qualifications. The coverage includes professional employees in managerial positions, who are classified as Level 9 or 10. There is an annualised salary provision that applies to employees in classification Levels 9 and 10. Under clause 14.2.1(a), an annualised salary may be paid in compensation for the employee’s entitlement to minimum wages; allowances; shift work penalty rates and overtime; and/or annual leave loading. An employee who is paid an annualised salary must not receive less remuneration under the arrangement than they would otherwise be paid under the provisions of the Water Award. The employer is required to review the annualised salary each year to ensure that the compensation is “*appropriate*”. The annualised salary provision in the Water Award will be replaced by Model Clause 1.⁶⁰

RECORD KEEPING/MEASUREMENT/RECONCILIATION

109. APESMA submits that a requirement for record keeping and measurement/conciliation against a relevant minimum standard is pivotal to ensuring that employees are appropriately compensated for working additional/unsociable hours. This is reflected in the proposed draft variation by the inclusion of Clause 13.3(g).

110. This issue has been a matter of much debate in the *Annualised Wage Arrangements* decisions where the Full Bench has stated that in no circumstances should an annualized wage arrangement clause in a modern award permit an employee to receive less pay over the course

⁵⁹ [2019] FWCFB 4368 [27].

⁶⁰ [2019] FWCFB 4368 [26].

of a year than they would have received if the terms of the modern award had been applied⁶¹. Several mechanisms were explored by the Full Bench to ensure that this would not occur. For instance, Mechanism C proposed by the Full Bench was the “*requirement that the employer undertake an annual reconciliation or review exercise.*”⁶²

111. Conversely, an annual reconciliation provides for a comparison between the amount paid by the way of the annualized wage and the amount that would have been payable had the award been applied⁶³. This approach is not necessarily guaranteed in an annual review.
112. In having regard to patterns of work, industry or enterprise and as outlined earlier in this submission it can be said that most employees who will be on an annualized salary provision covered by the PEA will be full-time permanent employees working a regular pattern of hours. However, there are also those who work unsociable hours including shift work. Therefore, APESMA supports the Full Bench approach in the *Annualised Wage Arrangements* decision that a reconciliation is to occur at least annually⁶⁴.
113. In addition, APESMA proposes that employees who have had their employment relationship terminated prior to the conclusion of their first 12-month term or are at the end of an averaging of the 38 hours per week cycle should be entitled to this reconciliation process. The requirement to ensure that an employee is not receiving less pay than if they would have received the benefits of the modern award⁶⁵ needs to be considered for these employees.
114. To address the Full Bench’s concern in the *Group 4 Awards* decision of the lack of measurability in connection with the averaging of the 38 hour week over a cycle it is submitted that along with the proposed adopted of minimum standards against which the level of remuneration can be measured that the proposed variation in Clause 13.3(g) will address these concerns.
115. Additionally, the requirement to have a reconciliation rather than just a review which is the current provision at Clause 13.6 will provide the certainty which is required. Clause 13.6 as currently drafted falls short of to review the compensation annually to “*ensure*” that the

⁶¹ See above n 16 at [129] paragraph (4).

⁶² Ibid.

⁶³ See above n 16 at [12] paragraph (7).

⁶⁴ Ibid.

⁶⁵ See above n 28.

remuneration is set at an “appropriate” level which read within the totality of the existing clause 13 is unenforceable.

116. In summary APESMA Reiterates that for the review process to work there must be both a bench minimum standard and the capacity for measurement. As this obligation requires employers to “ensure” that employees are not being disadvantaged, the requirements of s 139 (1) (f) and Full Bench’s determinations in the *Annualised Wage Arrangements* decisions are highly relevant.

APESMA PROPOSED VARIATION - CONCLUSIONS

117. Whilst APESMA accepts that there are challenges in developing provisions to apply to different patterns of work and types of remuneration it is submitted that it is clear from the evidence including the plain reading of the provision that the current Clause 13 – Ordinary Hours of Work does not constitute a relevant and enforceable minimum standard. It follows that employees covered by the PEA are at a significant disadvantage in this regard.

118. In addition, as outlined in the submission there are a diverse collection of modern awards which provide a stronger safety net for professional and managerial employees and or employees engaged in similar work etc. In fact, these employees will soon have access to the benefits of the relevant Model Clauses contained in the Annualised Salaries Decisions.

119. Further as outlined in the Witness Statement of APESMA Legal Officer Michelle Anthony the PEA which underpins common law contracts of employment is almost irrelevant in terms of providing an appropriate safeguard by which “set off” provisions can be measured.

120. The Witness Statement by APESMA Surveys Manager Alex Crowther refers to the survey report titled “*Professionals -Additional Hours and Unpaid Overtime*”. This report contains the available evidence on this issue which supports APESMA’s contention that the lack of relevant and enforceable minimum standards adversely impacts on pay rates particularly at Levels 1 and 2.

121. The proposed variation draws a distinction between junior professionals at Levels 1 and 2 and the more senior professionals at levels 3 and 4. It is assumed based on the available

evidence that the Level 3 and level 4 professionals are remunerated at an adequate level when compared to their more junior counterparts.

122. The proposed variation attempts to cover the different patterns of work and a range of methods of compensation throughout the diverse range of industries covered by the PEA by providing relevant enforceable entitlements but in a manner that allows for flexibility.

MODERN AWARDS OBJECTIVE

123. APESMA submits that both s.134 and s.139(1)(f) are relevant as to whether the proposed variation to Clause 13 is necessary to achieve the Modern Awards Objective. In this regard APESMA has demonstrated that the current provision is vague and unenforceable, does not provide a relevant minimum standard and accordingly it is the APESMA submission that changes are “necessary” to achieve the Modern Awards Objective.

124. Firstly in respect of s.139(1)(f) the Full Bench has stated that the fact s.139(1)(f) *“permits the inclusion of annualized wage arrangements indicates that it was contemplated by the legislature that provisions of that nature were capable of achieving the modern awards objective”*.⁶⁶ Therefore for that part of the proposed variation that encompasses annualized wage arrangements the 3 principles outlined in (i), (ii) and (iii) need to be observed.

125. Regarding the patterns of work within an occupation, industry or enterprise the variations to Clause 13 accommodate both variable/unsociable hours at Clause 13.3(d) and the more stable working patterns at Clause 13.3(f).

126. In so far as s.139(f) (ii) is concerned the proposed variation continues to provide for an alternative to the separate payment of wages and other monetary entitlements. Clause 13.3 (iii) provides for the relevant factors in Clause 13.2 which requires compensation to be provided to be taken into account in the fixation of an annual salary.

127. Finally, S.139(f) (iii) requires that there are safeguards so that employees are not disadvantaged. The proposed inclusions of Clauses 13.3 (c), (d), (f) and (g) provide both an enforceable minimum standard and a capacity to measure and affect a reconciliation.

⁶⁶ [2018] FWCFB 154 P.101

128. Secondly in addressing the requirements of the Modern Awards Objective s 134 of the FW Act it is noted as referred to in paragraph 18 of this submission that no particular primacy is attached to any of the s.134 considerations and not all will be relevant to a particular claim. Accordingly, it is submitted that the following considerations are relevant.

129. *“(1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:” etc.*

Overall, APESMA submits that the current Clause 13 does not *“provide a fair and relevant safety net”* and that variations to this clause are *“necessary”* to achieve the Modern Awards objective.

(a) It is submitted that *“low paid”* is relevant in the context of the unenforceability of the existing provision and the need for certainty in respect compensation for the working of additional /unsociable hours.

(b) It is submitted that this is a neutral consideration.

(c) It is submitted that this is a neutral consideration.

(d) The proposed variation is inherently flexible in providing for a variety of methods of compensation and in addition distinguishes between junior classifications (Levels 1 and 2) and senior classifications (Levels 3 and 4)

(da) The inclusion of more specific entitlements for the working of additional hours, unsocial hours, shift work, weekends, public holidays for employees at Levels 1 and 2 provide an enforceable minimum standard which hitherto has not existed.

(e) It is submitted that this is a neutral consideration.

(f) It is acknowledged that this will increase the regulatory requirement, but it is submitted that this is necessary for that part of the proposed variation that is relevant to the Annualised Salary Decisions. This has been accepted by the Full Bench in that matter that it is necessary for compliance reasons.⁶⁷

⁶⁷ {2019} P62

(g) If approved the proposed variation will clarify obligations and will result in a provision that will be far easier to understand and apply.

(h) It is submitted that this consideration is not relevant to a consideration of this matter.

130. Finally, this submission was compiled with the assistance of National Industrial Officer Sophie Vassallo.

MICHAEL BUTLER

DIRECTOR INDUSTRIAL RELATIONS

15 JULY 2019

ATTACHMENT "A"

DRAFT AWARD VARIATIONS – PROFESSIONAL EMPLOYEES AWARD 2010 – JOINT NEGOTIATING DOCUMENT (APESMA and Ai GROUP) 12 JULY 2019

CLAUSE 2 – DEFINITIONS AND INTERPRETATION

Experienced information technology employee means a professional information technology employee with the undermentioned qualifications in any particular employment the adequate discharge of any portion of the duties of which employment requires:

- (a) that they have graduated with a university degree, with a science or information technology major (three, four or five year course) and had four years' experience on professional information technology duties since graduating; or
- (b) that they, not having so graduated, have sufficient qualifications and experience to be a Certified Professional of the Australian Computer Society plus a further four years' experience on professional information technology duties. [AGREED]

Graduate information technology employee means a person who:

- (a) holds a university degree with a science or information technology major (three, four or five year course) accredited by the Australian Computer Society at professional level; or
- (b) has sufficient qualifications and experience to be a Certified Professional of the Australian Computer Society. [AGREED]

professional information technology duties means duties carried out by a person in any particular employment the adequate discharge of any portion of which duties requires a person to:

- (a) hold a university degree with a science or information technology major (three, four or five year course) accredited by the Australian Computer Society at professional level; or
- (b) has sufficient qualifications and experience to be a Certified Professional of the Australian Computer Society. [AGREED]

Academic schedule

- (a) A degree in science from an Australian, New Zealand or United Kingdom university or from an Australian tertiary educational institution.

- (b) Academic qualifications acceptable to the Royal Australian Chemical Institute for admission to the grade of Graduate Chemist (MRACI), Early Career Chemist (MRACI)(CChem) or Member (MRACI). [AGREED]
- (c) Academic qualifications acceptable to The Australian Institute of Physics for admission to the grade of Member (MAIP). [AGREED]
- (d) Academic qualifications in metallurgy, metallurgical engineering or technology acceptable to either the Australasian Institute of Mining and Metallurgy for admission to the grade of Graduate Member, or the Institution of Materials, Minerals Mining (London) for admission to the grades of Professional Graduate Member or Associate Member. [AGREED]
- (e) Academic qualifications acceptable to the Australian Institute of Agricultural Science and Technology for admission to the category of 1st Year Graduate Member, 2nd Year Graduate Member or Full Member. [AGREED]
- (f) Academic qualifications acceptable to the Australian Institute of Food Science and Technology for admission to the grade of Graduate Member. [AGREED]
- (g) Academic qualifications acceptable to a pharmacy board or council within the Commonwealth of Australia provided that the award will not apply to pharmacists employed in a retail pharmacy shop.

Experienced scientist means a Professional scientist possessing the following qualifications and engaged in any particular employment, the adequate discharge of any portion of the duties of which, requires the possession of such qualifications.

The qualifications are:

- (a) A degree or diploma and the following further experience in professional scientific duties obtained after their degree or diploma: [AGREED]
 - (i) when a graduate (four or five year course) – four years' experience;
 - (ii) when a graduate (three year course) – five years' experience, or
- (b) that they possess qualifications acceptable to:
 - (i) the Royal Australian Chemical Institute for admission to the grade of Chartered Member; or [AGREED]
 - (ii) the Australian Institute of Physics for admission to the grade of Member (MAIP); or [AGREED]

- (iii) the Australasian Institute of Mining and Metallurgy for admission to the grade of **Member**; or **[AGREED]**
- (iv) the Australian Institute of Food Science and Technology for admission to the grade of **Professional Member**. **[AGREED]**

13. ORDINARY HOURS OF WORK AND ROSTERING

13.1 For the purpose of the NES, ordinary hours of work under this award are 38 per week.

13.2 An employee who by agreement with their employer is working a regular cycle (including shorter or longer hours) must not have ordinary hours of duty which exceed an average of 38 hours per week over a **six-month cycle**. **[AGREED]**

13.3 Level 1 – Graduate Professional and Level 2 – Experienced Professional

- (a) For employees at Level 1 – Graduate Professional and Level 2 – Experienced Professional, employers must compensate for:
 - (i) time **required by the employer to be worked in** excess of ordinary hours of duty; **[AGREED]**
 - (ii) time **required by the employer to be** worked on call-backs; **[AGREED]**
 - (iii) time **required by the employer to be** spent standing by in readiness for a call-back; **[AGREED]**
 - (iv) time **required by the employer to be** spent carrying out professional engineering duties or professional scientific/information technology duties outside of the ordinary hours of duty over the telephone or via remote access arrangements; or **[AGREED]**
 - (v) time **required by the employer to be** worked on afternoon, night or weekend shifts **or on public holidays**. **[AGREED]**
- (b) Compensation may include:
 - (i) **granting time off on the basis of one hour of time off for each additional hour worked beyond the ordinary hours of work; Time off shall be taken at a time agreed upon between the employer and employee within 12 months, or paid out by the employer at the minimum award rate specified in clause 14.1. [Ai GROUP TO CLARIFY POSITION AFTER CONSULTATION WITH MEMBERS]**

- (ii) granting special additional remuneration;
 - (iii) taking relevant factors in clause 13.3 into account in the fixation of an annual salary; **[AGREED]** or
 - (iv) granting a special allowance or loading.
- (c) An employee shall be advised in writing by the employer of the method of compensation being used in respect of any of the matters specified in clause 13.3. If the employer is compensating the employee by a method identified in clause 13.4(b) or clause 13.4(d), the employer shall identify the amount of the special additional remuneration, special allowance or loading that is being paid. **[AGREED]**
- (d) In circumstances where an employee is paid compensation in accordance with clause 13.3(e) for work on afternoon, night or weekend shifts or on public holidays in an office or other establishment where the majority of employees are entitled to loadings or penalties for such work under a different award, the employee's compensation shall not be less than the compensation paid to the majority of employees. **[Ai GROUP TO CLARIFY POSITION AFTER CONSULTATION WITH MEMBERS]**
- (e) The compensation in clause 13.3(a) and (b) must be reviewed annually to ensure that it is set at an appropriate level having regard to the factors listed in this clause. **[AGREED]**
- (f) If an employee is paid an annual salary in accordance with clause 13.3(b)(iii), the employer must each 12 months, or at the end of a cycle of averaging of the 38 hour week, or upon termination of employment, calculate the number of ordinary hours worked by the employee and any additional hours that the employee was required by the employer to work. If the salary that has been paid is less than the amount that the employee would have received if the employee was paid at the relevant minimum award rate in clause 14.1 for each ordinary hour and each additional hour that the employee was required by the employer to work, the employer shall pay the employee the amount of the shortfall within one month. **[Ai GROUP TO CLARIFY POSITION AFTER CONSULTATION WITH MEMBERS]**
- (g) The employer must keep a record of the ordinary hours of work and any additional hours that the employee is required by the employer to work. In addition, the employer must keep a record of the arrangements implemented in accordance with clause 13.3(b). The

employer must make a copy of these records available for inspection and copying on request by the employee to whom the record relates. **[Ai GROUP TO CLARIFY POSITION AFTER CONSULTATION WITH MEMBERS]**

13.4 Level 3 Professional and Level 4 Professional

- (a) For employees classified at Level 3 – Professional or Level 4 – Professional, employers must compensate for:
- (i) time required by the employer to be worked regularly in excess of ordinary hours of duty; **[AGREED]**
 - (ii) time required by the employer to be worked on call-backs; **[AGREED]**
 - (iii) time required by the employer to be spent standing by in readiness for a call-back; **[AGREED]**
 - (iv) time required by the employer to be spent carrying out professional engineering duties or professional scientific/information technology duties outside of the ordinary hours of duty over the telephone or via remote access arrangements; or **[AGREED]**
 - (v) time required by the employer to be worked on afternoon, night or weekend shifts. **[AGREED]**
- (b) Compensation may include:
- (i) granting special additional leave;
 - (ii) granting special additional remuneration;
 - (iii) taking relevant factors in clause 13.10 into account in the fixation of an annual salary; **[AGREED]**
 - (iv) granting a special allowance or loading.

13.5 Transfers

- (a) Where an employee is transferred permanently from day work to shiftwork or from shiftwork to day work, such employee should receive at least one month's notice, unless the employer and the employee may agree on a lesser period of notice.

- (b) Clause 13.7(a) is subject to the requirements of clause 24—Consultation about changes to rosters or hours of work.

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- (b) Where an employee has failed to produce to the employer written evidence that they possess or have acquired the relevant qualifications and the employee subsequently claims to be entitled to payment at a rate prescribed by this award, it will be a defence to the employer if the employer establishes that during the said period the employer did not know and had no reason to believe that the employee had acquired the qualifications of a Qualified engineer, Experienced engineer, Qualified scientist, Experienced scientist, Graduate information technology employee or, Experienced information technology employee, Graduate medical research employee or Experienced medical research employee.

12.4 Professional development

Clause 12.4 referred to a separately constituted Full Bench in AM2019/5. See Statement [2018] FWC 6107 at Attachment A.

- (a) Employees are responsible for keeping themselves informed of developments in their profession and developing their professional knowledge and ability. It is appropriate for employees to be encouraged to undertake self-development programs.
- (b) Where the employee and the employer agree that an activity be undertaken by the employee as a component of a structured training program, the employer will meet all costs associated with the training.

Part 3—Hours of Work

13. Ordinary hours of work

- 13.1 For the purpose of the NES, ordinary hours of work under this award are 38 per week.

Ordinary hours of work referred to a separately constituted Full Bench in AM2019/5. See [2018] FWCFB 1548 at [621]; [2018] FWCFB 4175 at [372] and Statement [2018] FWC 6107 at Attachment A.

- 13.2 An employee who by agreement with their employer is working a regular cycle (including shorter or longer hours) must not have ordinary hours of duty which exceed an average of 38 hours per week over the cycle.
- 13.3 Employers must compensate for:
- (a) time worked regularly in excess of ordinary hours of duty;
 - (b) time worked on call-backs;
 - (c) time spent standing by in readiness for a call-back;
 - (d) time spent carrying out professional engineering duties or professional scientific/information technology duties outside of the ordinary hours over the telephone or via remote access arrangements; or

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(e) time worked on afternoon, night or weekend shifts.

13.4 Compensation may include:

- (a) granting special additional leave;
- (b) granting special additional remuneration;
- (c) taking the factors in clause 13.3 into account in the fixation of annual remuneration; or
- (d) granting a special allowance or loading.

13.5 Where relevant, compensation in clause 13.4 must include consideration of the penalty rate or equivalent and conditions applicable from time to time to the majority of employees employed in a particular establishment in which the employee is employed.

13.6 The compensation in clause 13.4 must be reviewed annually to ensure that it is set at an appropriate level having regard to the factors listed in this clause.

13.7 Transfers

- (a) An employee who is transferred permanently from day work to shiftwork or from shiftwork to day work must receive at least one month's notice unless the employer and the employee agree on a lesser period of notice.
- (b) Clause 13.7(a) is subject to the requirements of clause 24—Consultation about changes to rosters or hours of work.

Part 4—Wages and Allowances

14. Minimum wages

Minimum wages referred to a separately constituted Full Bench in AM2019/5 for Engineering Technologists. See Statement [2018] FWC 6107 at Attachment A.

Monetary amounts adjusted as a result of AWR 2018; Clause 14.1 varied in accordance with PR704336.

14.1 The minimum annual wages payable to full-time employees in the classifications defined in Schedule A—Classification Structure and Definitions and Schedule B—Medical Research Employees are:

Classification	Annual wages	Minimum hourly rate
	\$	\$
Level 1 Graduate professional		
Pay point 1.1 (3 year degree)	\$49,998	\$25.22

ATTACHMENT "A"

DRAFT AWARD VARIATIONS – PROFESSIONAL EMPLOYEES AWARD 2010 – JOINT NEGOTIATING DOCUMENT (APESMA and Ai GROUP)

12 JULY 2019

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- (b) that they, not having so graduated, have sufficient qualifications and experience to be a Certified Professional of the Australian Computer Society plus a further four years' experience on professional information technology duties. **[AGREED]**

Graduate information technology employee means a person who:

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professional information technology duties means duties carried out by a person in any particular employment the adequate discharge of any portion of which duties requires a person to:

- (a) hold a university degree with a science or information technology major (three, four or five year course) accredited by the Australian Computer Society at professional level; or
- (b) has sufficient qualifications and experience to be a Certified Professional of the Australian Computer Society. **[AGREED]**

Academic schedule

- (a) A degree in science from an Australian, New Zealand or United Kingdom university or from an Australian tertiary educational institution.
- (b) Academic qualifications acceptable to the Royal Australian Chemical Institute for admission to the grade of Graduate Chemist (MRACI), Early Career Chemist (MRACI)(CChem) or Member (MRACI). **[AGREED]**
- (c) Academic qualifications acceptable to The Australian Institute of Physics for admission to the grade of Member (MAIP). **[AGREED]**
- (d) Academic qualifications in metallurgy, metallurgical engineering or technology acceptable to either the Australasian Institute of Mining and Metallurgy for admission to the grade of Graduate Member, or the Institution of Materials, Minerals Mining (London) for admission to the grades of Professional Graduate Member or Associate Member. **[AGREED]**
- (e) Academic qualifications acceptable to the Australian Institute of Agricultural Science and Technology for admission to the category of 1st Year Graduate Member, 2nd Year Graduate Member or Full Member. **[AGREED]**
- (f) Academic qualifications acceptable to the Australian Institute of Food Science and Technology for admission to the grade of Graduate Member. **[AGREED]**
- (g) Academic qualifications acceptable to a pharmacy board or council within the Commonwealth of Australia provided that the award will not apply to pharmacists employed in a retail pharmacy shop.

Experienced scientist means a Professional scientist possessing the following qualifications and engaged in any particular employment, the adequate discharge of any portion of the duties of which, requires the possession of such qualifications.

The qualifications are:

- (a) A degree or diploma and the following further experience in professional scientific duties obtained after their degree or diploma: **[AGREED]**
 - (i) when a graduate (four or five year course) – four years' experience;
 - (ii) when a graduate (three year course) – five years' experience, or
- (b) that they possess qualifications acceptable to:

- (i) the Royal Australian Chemical Institute for admission to the grade of Chartered Member; or [AGREED]
- (ii) the Australian Institute of Physics for admission to the grade of Member (MAIP); or [AGREED]
- (iii) the Australasian Institute of Mining and Metallurgy for admission to the grade of Member; or [AGREED]
- (iv) the Australian Institute of Food Science and Technology for admission to the grade of Professional Member. [AGREED]

13. ORDINARY HOURS OF WORK AND ROSTERING

13.1 For the purpose of the NES, ordinary hours of work under this award are 38 per week.

13.2 An employee who by agreement with their employer is working a regular cycle (including shorter or longer hours) must not have ordinary hours of duty which exceed an average of 38 hours per week over a six-month cycle. [AGREED]

13.3 Level 1 – Graduate Professional and Level 2 – Experienced Professional

- (a) For employees at Level 1 – Graduate Professional and Level 2 – Experienced Professional, employers must compensate for:
 - (i) time required by the employer to be worked in excess of ordinary hours of duty; [AGREED]
 - (ii) time required by the employer to be worked on call-backs; [AGREED]
 - (iii) time required by the employer to be spent standing by in readiness for a call-back; [AGREED]
 - (iv) time required by the employer to be spent carrying out professional engineering duties or professional scientific/information technology duties outside of the ordinary hours of duty over the telephone or via remote access arrangements; or [AGREED]
 - (v) time required by the employer to be worked on afternoon, night or weekend shifts or on public holidays. [AGREED]

- (b) Compensation may include:
- (i) granting time off on the basis of one hour of time off for each additional hour worked beyond the ordinary hours of work; Time off shall be taken at a time agreed upon between the employer and employee within 12 months, or paid out by the employer at the minimum award rate specified in clause 14.1. **[Ai GROUP TO CLARIFY POSITION AFTER CONSULTATION WITH MEMBERS]**
 - (ii) granting special additional remuneration;
 - (iii) taking relevant factors in clause 13.3 into account in the fixation of an annual salary; **[AGREED]** or
 - (iv) granting a special allowance or loading.
- (c) An employee shall be advised in writing by the employer of the method of compensation being used in respect of any of the matters specified in clause 13.3. If the employer is compensating the employee by a method identified in clause 13.4(b) or clause 13.4(d), the employer shall identify the amount of the special additional remuneration, special allowance or loading that is being paid. **[AGREED]**
- (d) In circumstances where an employee is paid compensation in accordance with clause 13.3(e) for work on afternoon, night or weekend shifts or on public holidays in an office or other establishment where the majority of employees are entitled to loadings or penalties for such work under a different award, the employee's compensation shall not be less than the compensation paid to the majority of employees. **[Ai GROUP TO CLARIFY POSITION AFTER CONSULTATION WITH MEMBERS]**
- (e) The compensation in clause 13.3(a) and (b) must be reviewed annually to ensure that it is set at an appropriate level having regard to the factors listed in this clause. **[AGREED]**
- (f) If an employee is paid an annual salary in accordance with clause 13.3(b)(iii), the employer must each 12 months, or at the end of a cycle of averaging of the 38 hour week, or upon termination of employment, calculate the number of ordinary hours worked by the employee and any additional hours that the employee was required by the employer to work. If the salary that has been paid is less than the amount that the employee would have received if the employee was paid at the relevant

minimum award rate in clause 14.1 for each ordinary hour and each additional hour that the employee was required by the employer to work, the employer shall pay the employee the amount of the shortfall within one month. **[Ai GROUP TO CLARIFY POSITION AFTER CONSULTATION WITH MEMBERS]**

- (g) The employer must keep a record of the ordinary hours of work and any additional hours that the employee is required by the employer to work. In addition, the employer must keep a record of the arrangements implemented in accordance with clause 13.3(b). The employer must make a copy of these records available for inspection and copying on request by the employee to whom the record relates. **[Ai GROUP TO CLARIFY POSITION AFTER CONSULTATION WITH MEMBERS]**

13.4 Level 3 Professional and Level 4 Professional

- (a) For employees classified at Level 3 – Professional or Level 4 – Professional, employers must compensate for:
- (i) time required by the employer to be worked regularly in excess of ordinary hours of duty; **[AGREED]**
 - (ii) time required by the employer to be worked on call-backs; **[AGREED]**
 - (iii) time required by the employer to be spent standing by in readiness for a call-back; **[AGREED]**
 - (iv) time required by the employer to be spent carrying out professional engineering duties or professional scientific/information technology duties outside of the ordinary hours of duty over the telephone or via remote access arrangements; or **[AGREED]**
 - (v) time required by the employer to be worked on afternoon, night or weekend shifts. **[AGREED]**
- (b) Compensation may include:
- (i) granting special additional leave;
 - (ii) granting special additional remuneration;

- (iii) taking relevant factors in clause 13.10 into account in the fixation of **an annual salary; [AGREED]**
- (iv) granting a special allowance or loading.

13.5 Transfers

- (a) Where an employee is transferred permanently from day work to shiftwork or from shiftwork to day work, such employee should receive at least one month's notice, unless the employer and the employee may agree on a lesser period of notice.
- (b) Clause 13.7(a) is subject to the requirements of clause 24—Consultation about changes to rosters or hours of work.

ATTACHMENT “B”

Exposure Draft—Professional Employees Award 20XX

- (b) Where an employee has failed to produce to the employer written evidence that they possess or have acquired the relevant qualifications and the employee subsequently claims to be entitled to payment at a rate prescribed by this award, it will be a defence to the employer if the employer establishes that during the said period the employer did not know and had no reason to believe that the employee had acquired the qualifications of a Qualified engineer, Experienced engineer, Qualified scientist, Experienced scientist, Graduate information technology employee or, Experienced information technology employee, Graduate medical research employee or Experienced medical research employee.

12.4 Professional development

Clause 12.4 referred to a separately constituted Full Bench in AM2019/5. See Statement [\[2018\] FWC 6107](#) at Attachment A.

- (a) Employees are responsible for keeping themselves informed of developments in their profession and developing their professional knowledge and ability. It is appropriate for employees to be encouraged to undertake self-development programs.
- (b) Where the employee and the employer agree that an activity be undertaken by the employee as a component of a structured training program, the employer will meet all costs associated with the training.

Part 3—Hours of Work

13. Ordinary hours of work

- 131 For the purpose of the [NES](#), ordinary hours of work under this award are 38 per week.

Ordinary hours of work referred to a separately constituted Full Bench in AM2019/5. See [\[2018\] FWCFB 1548](#) at [621]; [\[2018\] FWCFB 4175](#) at [372] and Statement [\[2018\] FWC 6107](#) at Attachment A.

- 132 An employee who by agreement with their employer is working a regular cycle (including shorter or longer hours) must not have ordinary hours of duty which exceed an average of 38 hours per week over the cycle.
- 133 Employers must compensate for:
- (a) time worked regularly in excess of ordinary hours of duty;
 - (b) time worked on call-backs;
 - (c) time spent standing by in readiness for a call-back;
 - (d) time spent carrying out professional engineering duties or professional scientific/information technology duties outside of the ordinary hours over the telephone or via remote access arrangements; or

(e) time worked on afternoon, night or weekend shifts.

134 Compensation may include:

- (a) granting special additional leave;
- (b) granting special additional remuneration;
- (c) taking the factors in clause 13.3 into account in the fixation of annual remuneration; or
- (d) granting a special allowance or loading.

135 Where relevant, compensation in clause 13.4 must include consideration of the penalty rate or equivalent and conditions applicable from time to time to the majority of employees employed in a particular establishment in which the employee is employed.

136 The compensation in clause 13.4 must be reviewed annually to ensure that it is set at an appropriate level having regard to the factors listed in this clause.

137 Transfers

- (a) An employee who is transferred permanently from day work to shiftwork or from shiftwork to day work must receive at least one month’s notice unless the employer and the employee agree on a lesser period of notice.
- (b) Clause 13.7(a) is subject to the requirements of clause 24—Consultation about changes to rosters or hours of work.

Part 4—Wages and Allowances

14. Minimum wages

Minimum wages referred to a separately constituted Full Bench in AM2019/5 for Engineering Technologists. See Statement [\[2018\] FWC 6107](#) at Attachment A.

Monetary amounts adjusted as a result of AWR 2018; Clause 14.1 varied in accordance with [PR704336](#).

141 The minimum annual wages payable to full-time employees in the classifications defined in Schedule A—Classification Structure and Definitions and Schedule B—Medical Research Employees are:

Classification	Annual wages	Minimum hourly rate
	\$	\$
Level 1 Graduate professional		
Pay point 1.1 (3 year degree)	\$49,998	\$25.22

Attachment "C"

Fair Work Act 2009

s.156—4 yearly review of modern awards

(AM2019/5)

PROFESSIONAL EMPLOYEES AWARD 2010

Section 156 – 4 yearly review of modern awards

WITNESS STATEMENT

ALEX CROWTHER

STATEMENT OF ALEX CROWTHER

I, Alex Crowther, of [REDACTED] in the State of Victoria, say as follows:

1. I completed a Bachelor of Psychology (Hons) in 2010 at Victoria University of Wellington in Wellington, New Zealand. I also have a Master of Psychology from the same Institution awarded in 2012. The bulk of my studies focused on research methodology and statistical analysis within humanities fields including material specific to survey design and analysis that is drawn upon in my statement below.
2. I am currently employed as the Surveys Manager at Professionals Australia, Association of Professional Engineers, Scientists and Managers, Australia, ('APESMA' or the 'Association').
3. My duties in my current position are the collection of data using online surveying tools for the purposes of creating market research of interest to Professionals Australia and members the Association represents. This data includes regular surveys of remuneration and employment conditions in the following industries covered by the Association: engineering, science, information communication

technology, local government, coal mining, and pharmacy. Results from these surveys are published in various reports and distributed to interested parties.

4. I am the primary author of the publication titled "*Professionals – Additional Hours and Unpaid Overtime: A Time For Action*" (the 'Report') which is a summary of data collected in an ad-hoc survey conducted by the Association at the end of 2018 titled "Professional Employees Award - Long Hours and Compensation" (the 'Survey').
5. Data collected in the Survey and reported on include details of respondents employment at the time they responded, the number of hours and types of additional hours they regularly work, reasons for working additional hours, and compensation available for additional hours based on classifications contained in the Professional Employee Award ('PEA').
6. Members of the Association within divisions likely to be covered by the PEA were invited to participate in the survey using direct e-mail, social media, and the Association's website. Non-member contacts sourced through recent activities of the Association and likely to be covered by the PEA were also invited to participate. Participation was incentivised by entering respondents into a draw to win a \$500 voucher. Questions regarding a participant's industry of occupation and tertiary qualifications were used to identify those not covered by the PEA. From a pool of 1,949 individual respondents to the survey 1,480 were retained for analysis. Respondents were not required to answer all questions in the survey and are only included in analysis where they have answered all relevant questions to that analyses.
7. The Report also draws on data collected in 2018 through the Association's annual Professional Engineer Employment and Remuneration Survey (the 'Remuneration Survey'). This survey has been conducted by the Association since 1974 and receives the greatest volume of responses from PEA covered employees of the

various regular remuneration and employment condition surveys conducted by the Association.

8. Data collected in the Remuneration Survey is used to annually benchmark pay conditions for Professional Engineers. Respondents provide demographic information, and details of their occupation at the time of the survey including rates of pay, hours of work, and access to various benefits and allowances. The Remuneration Survey also collects information on respondent's sentiment towards their employer, industry, and profession.
9. All Professional Engineer members of the Association are invited to participate in the Remuneration Survey using direct e-mail, social media, and the Association's website. Non-member Professional Engineer contacts sourced through recent activities of the Association are also invited to participate. Participation is incentivised by entering respondents into a draw to win a \$500 voucher. Participants must self-identify as a Professional Engineer to be included in analyses. In 2018 responses were received from 2,736 individuals. Respondents are not required to answer all questions in the survey. Results from this survey were originally published in the 2018 Professional Engineers Employment and Remuneration Report.
10. For the purpose of the Report, data collected in the Remuneration Survey was analysed differently to how it was originally published. Respondents to the Remuneration Survey unlikely to be covered by the PEA due to their sector of employment were excluded from analysis. Participant remuneration was also compared to the minimums specified by the PEA at the time of the Remuneration Survey on an hourly basis.
11. Annexed to this statement and marked as shown below are true and correct copies of the Reports and the questionnaires used to collect data presented in the report:

11.1. Annexure "A": Professionals – Additional Hours and Unpaid Overtime: A Time for Action

11.2. Annexure "B": 2018 Professional Engineers Employment and Remuneration Survey

11.3. Annexure "C": Professional Employees Award – Long Hours and Compensation

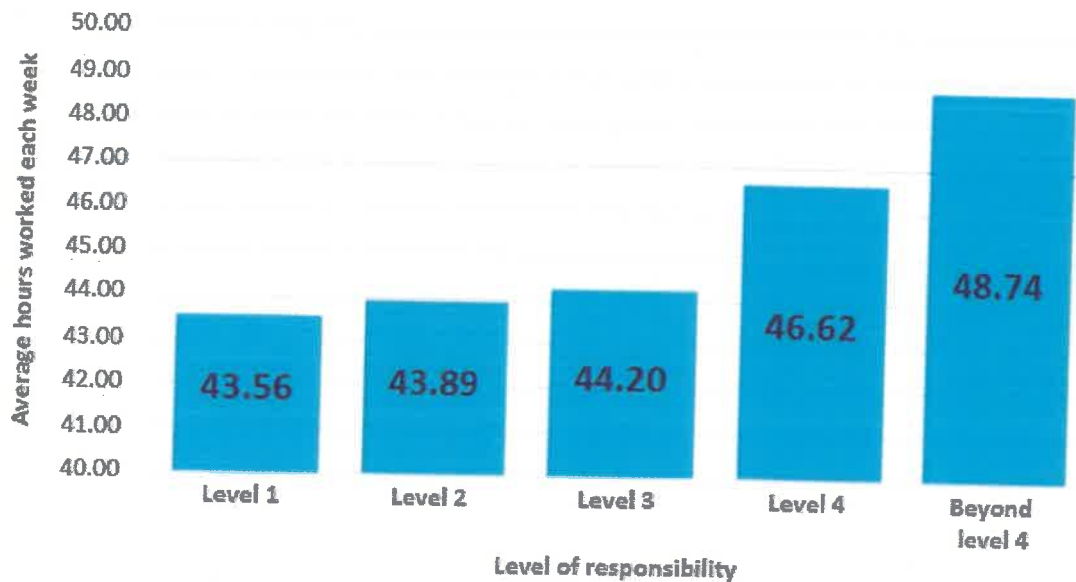
12. Data reported in Attachment "A", the Report, will form the basis of subsequent opinions presented in this statement.

Professional Employees Prevalence of Working Additional Hours

13. When asked on average how many hours they work each week survey respondents report performing a mean of 45 hours. That's seven hours in an average week that would need to be compensated through some mechanism. The number of hours worked each week tended to increase as the level of responsibility of a professional increased, but even those in roles consistent with the Level 1 Graduate Professional classification defined by the PEA reported working a mean of 43.6 hours each week (*Attachment A, page 10*).

How many hours do full-time professionals work each week?

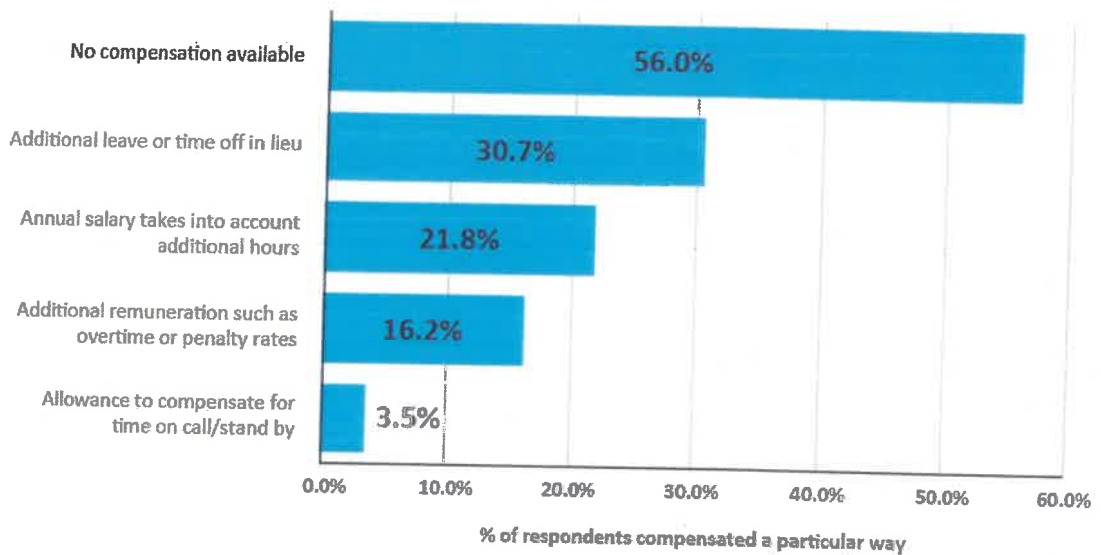
To be defined as full-time, respondents had to report working 35 hours or more in the average week



14. Respondents to the Survey were asked to indicate which methods of compensation were used to recognise the additional hours they performed. Options presented were based on section 18.3 of the existing PEA and respondents could select as many as applied to their role. It was more common for respondents to cite having access to no compensation (56.0%) than any of the methods described in the PEA (*Attachment A, page 8*).

How are professionals compensated for working additional hours?

Respondents could select all methods of compensation that applied to them.



15. There is potential for professionals to be unaware that their annual salary has been set taking into account the additional hours expected of them to perform their role given how uncommon it was for respondents to report their contract explicitly outlined the portion of their salary that compensates for those hours. Amongst the 21.8% that indicated their salary took into account additional hours only 8.9% could identify that portion of their salary (*Attachment A, page 8*).
16. Given it is so uncommon that contracts for professional employees specify the portion of their salary that accounts for additional hours expected of them there is also potential for professionals to believe their annual salary accounts for the additional hours they perform when the reality is those hours have not been accurately factored in.
17. The existing PEA in section 18.2 specifies types of additional hours professionals must be compensated for. Survey respondents were asked to indicate which of those they are expected to perform in their current role. The most common form of additional hours performed by professionals was "Working regularly in excess of 38 hours per week" (*Attachment A, page 18*).

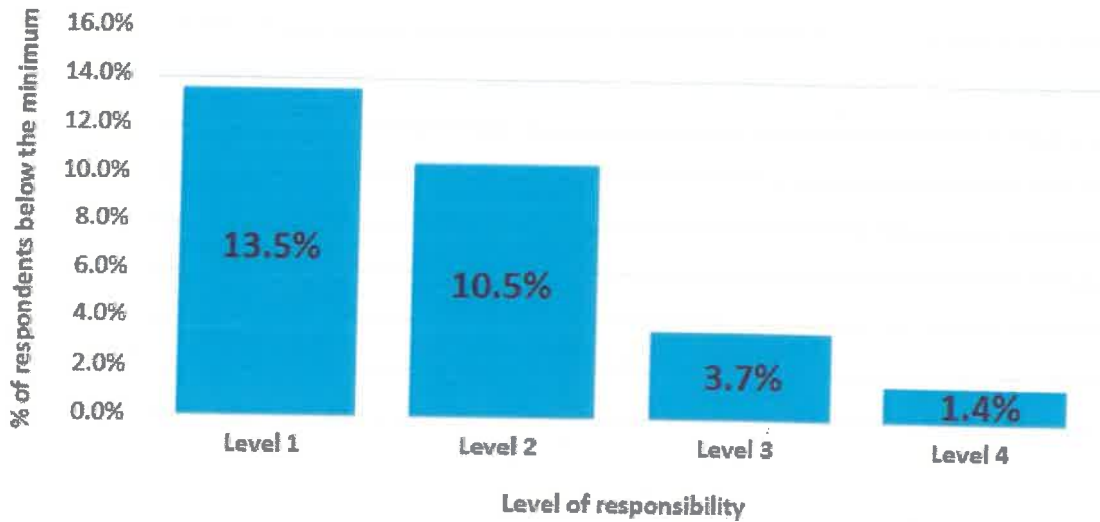
18. The methods of compensation available to professional employees tended to alter the likelihood those professionals worked regularly in excess of 38 hours per week. Those compensated for working additional hours through their annual salary or who believed they received no compensation at all were most likely to report working in excess of 38 hours each week. Professional employees with access to compensation that put an immediate price on additional hours, such as time off in lieu or penalty rates were notably less likely to report working regularly in excess of 38 hours per week (*Attachment A, page 19*). It appears that as a more immediate cost is incurred by an employer to have their employees perform additional hours that employer is less likely to encourage or tolerate those additional hours.

Professional Employees Risk of Falling Below the Award Minimum

19. Respondents to the Remuneration Survey are asked to indicate their annual base salary as well as whether or not they are employed full-time. Respondents also indicate their level of responsibility as it related to the PEA and their years of professional experience. Assuming those engineers employed on a full-time basis work 38 hours each week hourly rates of pay can be calculated for each respondent. Comparing those hourly rates to the minimum rates of pay as detailed in section 15 of the existing PEA at the time the data was collected, May 2018, 13.5% of Level 1 Professional Engineers and 10.5% of Level 2 Professional Engineers were identified as potentially being paid below the award minimum (*Attachment A, page 13*). This can be considered a baseline for risk of underpayment as it doesn't account for additional hours.

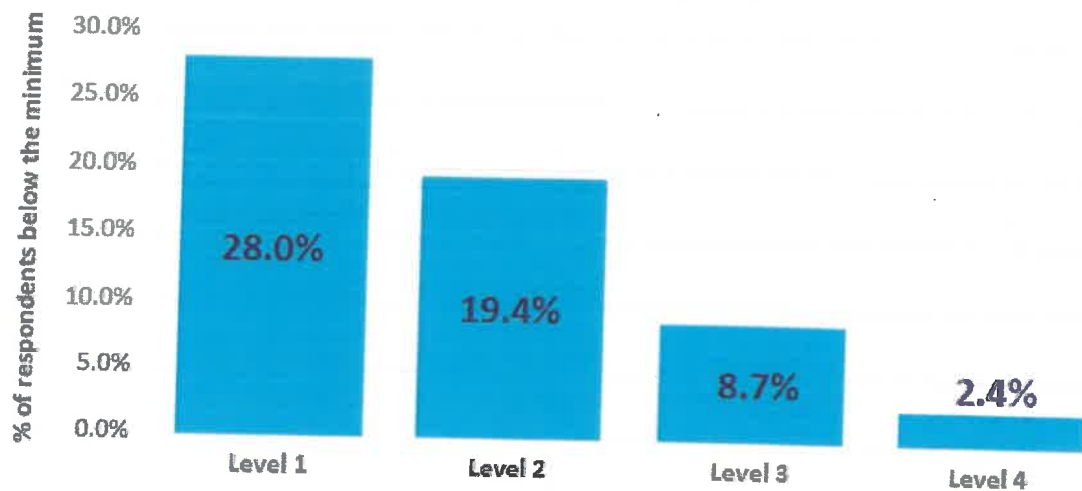
How many professional engineers have an hourly rate of pay below the award minimum?

Where an engineer is level 1, their years of experience was used to determine which award rate to compare against.



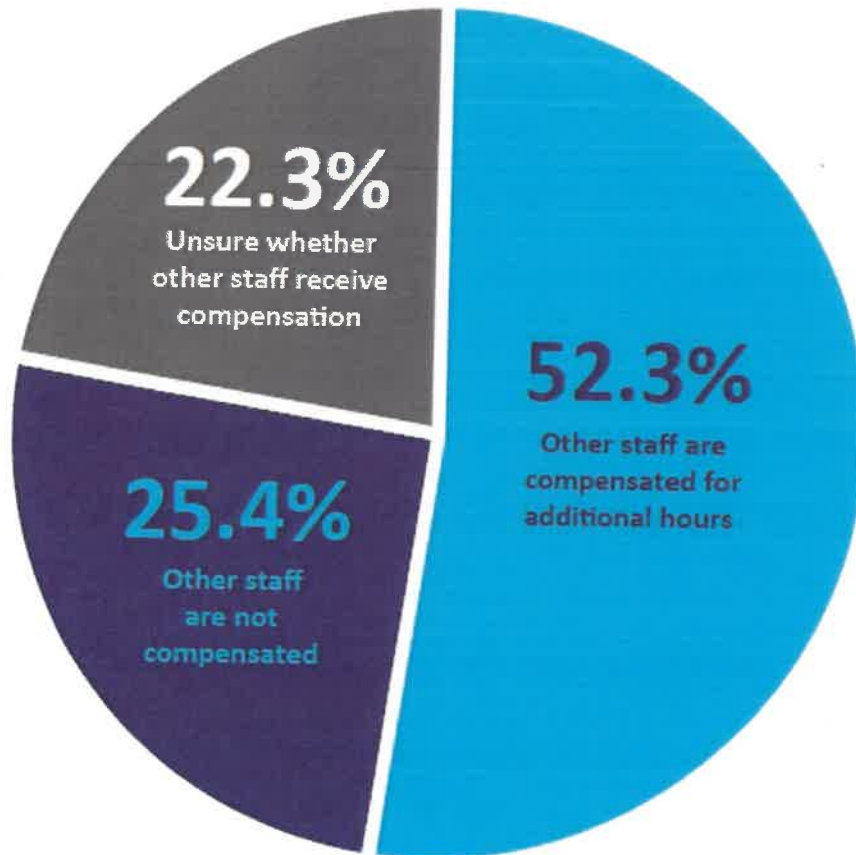
20. Respondents to the Remuneration Survey are also asked to indicate the average number of hours they work each week, so rather than assuming 38 hours as in paragraph 19, we can determine their real hourly rate of pay and compare that to the minimums detailed in the PEA at the time the data was collected. When the hours actually worked are taken into account the proportion of respondents at risk of underpayment substantially increases. With all hours worked accounted for 28.0% of Level 1 Professional Engineers appear at risk of underpayment as do 19.4% of Level 2 Professional Engineers and 8.7% of Level 3 Professional Engineers (*Attachment A, page 14*).

How many engineers have an hourly rate of pay below the award minimum if additional hours are included?



21. The difference in the proportion of Professional Engineers at risk of underpayment in paragraph 19 and paragraph 20 gives a good indication of the proportion of PEA covered employees that would benefit from stronger, more enforceable clauses regarding compensation for working in excess of ordinary hours of work.
22. In the current PEA clause 18.3 specifies that compensation available to PEA covered employees for working in excess of ordinary hours must consider the entitlements of the majority of employees in that establishment. Respondents to the Survey were asked to indicate whether they believed the majority of other employees in the establishment they work receive compensation for working additional hours. Roughly half of professionals (52.3%) believed other staff in the establishment they worked received compensation and almost a quarter (22.3%) weren't sure (*Attachment A, page 14*).

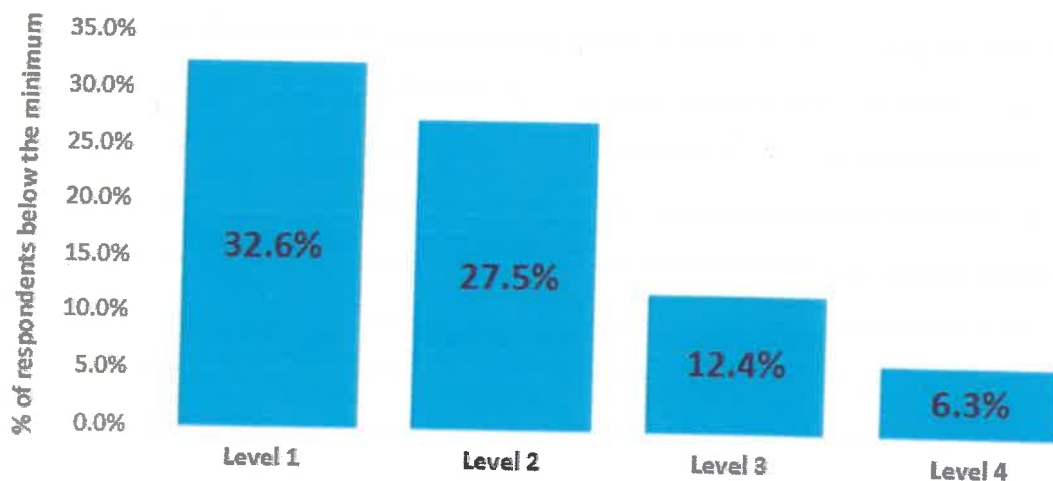
How common is it for professionals to work alongside people that are entitled to compensation for additional hours?



23. Professional Engineers, the PEA covered group the Association has the most remuneration information for, work across a variety of industries often supervising Technicians covered by different awards to themselves, such as the Manufacturing and Associated Industries and Occupations Award. Where those Technicians are the majority employee in an establishment and a Professional Engineer is required to work additional hours clause 18.3 of the current PEA could be interpreted as indicating the Professional Employees compensation should take into consideration any penalty rate or equivalent those technicians are entitled to.
24. Penalty rates applicable for working in excess of ordinary hours vary enough by award, and the range of industries Professional Employees work in is so broad, that a

conservative estimate of a 50% loading on working additional hours was simulated on hourly rates of pay for Professional Engineers to estimate the maximum risk of underpayment with clause 18.3 enforced in full. Up to 32.6% of Level 1, 27.5% of Level 2 and 12.4% of Level 3 Professional Engineers are at risk of being underpaid once consideration is given to the possibility the majority employee in the establishment they work is compensated for working additional hours and entitled to penalty rates (*Attachment A, page 14*).

How many engineers have an hourly rate of pay below the award minimum if loadings are applied to additional hours?



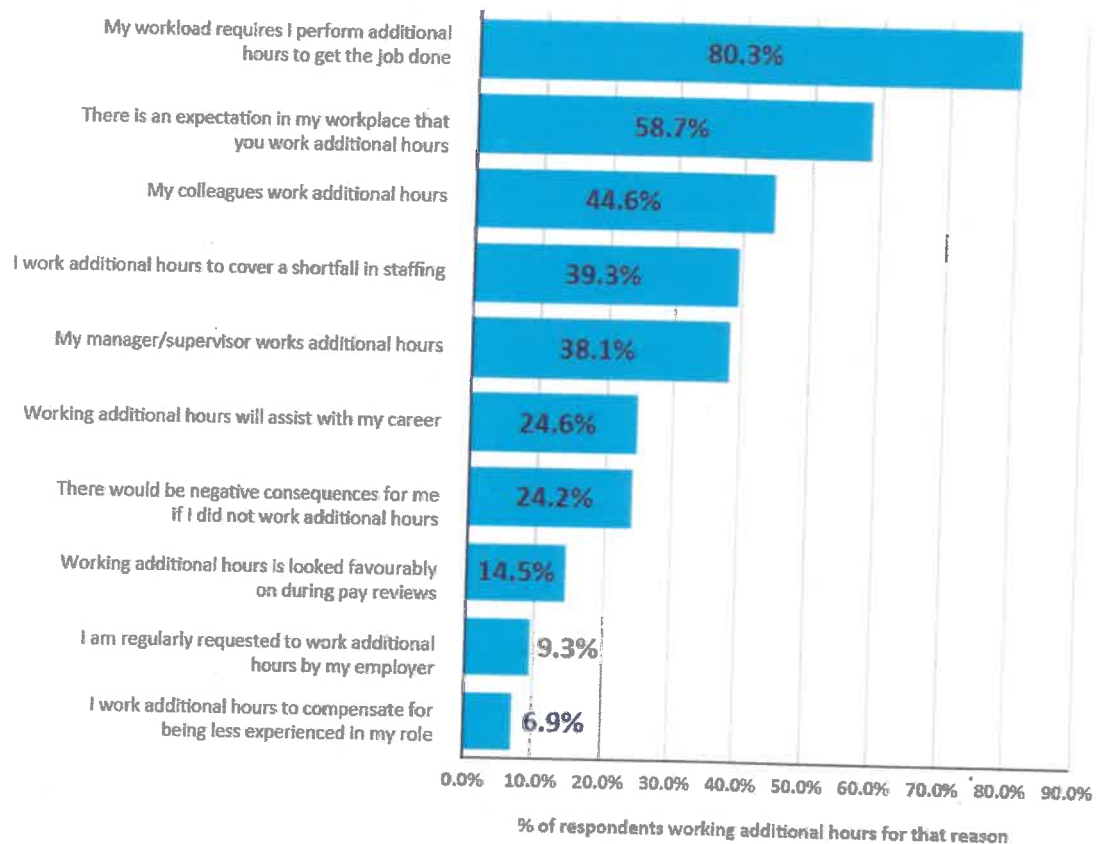
25. Irrespective of which approach (paragraph 19, 20, or 24) used to assess the risk of underpayment relative to the hours of work performed by Professional Employees those employed at Level 1 or Level 2 as defined in the PEA were consistently the most at risk and in need of better protections when it comes to compensation for performing hours in excess of the ordinary hours of duty.

Reasons Professional Employees Perform Additional Hours

26. Respondents to the Survey were given a list of common reasons Professional Employees might engage in additional hours and asked to indicate each that applied to them. Two groups of reasons appear to be the most common drivers

for Professional Employees working additional hours: Workloads that cannot be completed without performing additional hours ('Workload requires they perform additional hours to get the job done' by 80.3% of respondents, 'To cover a shortfall in staffing' by 39.3% of respondents), and cultural expectations in the workplace normalizing working additional hours ('Expectation in my workplace to work additional hours' by 58.7% of respondents 'Colleagues work additional hours' by 44.6% of respondents, 'Manager/supervisor works additional hours' by 38.1% of respondents) (*Attachment A, page 23*).

Why are professionals working additional hours?



27. Where Professional Employees work additional hours because of under resourcing from the employer it is my opinion there is a clear need to add a financial incentive for employers to maintain adequate staffing. One possible mechanism is through penalty rates. The current PEA has weak and difficult to enforce clauses around

working in excess of ordinary hours of duty that encourage an employer to test the limits on the maximum number of hours they can expect Professional Employees to perform. This can be seen clearly with the data presented in paragraph 18 where Professional Employees with access to penalty rates, time off in lieu, or payments for being on-call or on standby were noticeably less likely to work in excess of 38 hours each week.



Alex Crowther

12 July 2019



2018 Professional Engineer Remuneration & Employment Survey

Introduction

Welcome to Professionals Australia's 2018 Professional Engineer Remuneration & Employment Survey. Please take a few minutes to assist the profession by completing the questionnaire.

No identification is necessary and all information is strictly confidential. Data collected will be handled in accordance with Professionals Australia's [privacy policy](#). Results will be reported in aggregate form to protect the anonymity of respondents.

Participants that complete the survey have the opportunity to enter the draw to **win one of two \$500 JB Hifi gift cards**. Please complete the entry form at the end of the survey if you wish to enter.

A summary of the survey results will be published in August/September and made available for download free of charge from the Professionals Australia website. If you wish to be notified when the report becomes available, let us know at the end of the survey.

The survey takes approximately 10 - 15 minutes to complete. The closing date for submission is **Sunday, 27th of May 2018**.

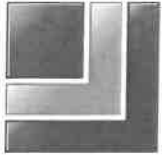
To navigate between survey pages, use only the 'Previous' and 'Next' buttons at the bottom of each page. **DO NOT** use your browser's back and forward buttons to navigate.

* 1. Are you a member of Professionals Australia

Yes

No

If yes, please enter your Member Number



Demographics

2. What is your age?

3. Gender

- Male
- Female

4. In which state or territory are you based?

- NSW
- VIC
- QLD
- SA
- WA
- TAS
- NT
- ACT
- Overseas

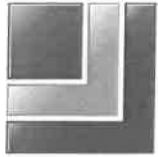
5. Where are you based?

- Capital city/suburb
- Regional

6. What is your residency status?

- Australian Citizen
- Permanent Resident
- Temporary Resident

If you are a temporary resident, what type of visa are you covered by?



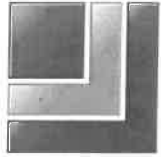
Qualifications

7. What is your highest tertiary engineering qualification?

- Diploma
- Bachelor Degree (inc. Hons)
- Graduate Diploma
- Masters Degree (inc. MBA)
- Doctorate/PhD
- Other (please specify)

8. In which discipline(s) of engineering did you qualify?

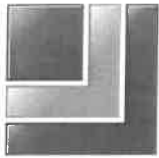
- | | |
|--|---|
| <input type="checkbox"/> Aeronautical | <input type="checkbox"/> Geological |
| <input type="checkbox"/> Biomedical | <input type="checkbox"/> Industrial or Production |
| <input type="checkbox"/> Chemical | <input type="checkbox"/> Manufacturing |
| <input type="checkbox"/> Civil | <input type="checkbox"/> Materials |
| <input type="checkbox"/> Structural | <input type="checkbox"/> Mechanical |
| <input type="checkbox"/> Information Technology and Communications | <input type="checkbox"/> Mechatronics |
| <input type="checkbox"/> Electrical | <input type="checkbox"/> Mining |
| <input type="checkbox"/> Electromechanical | <input type="checkbox"/> Naval Architecture |
| <input type="checkbox"/> Electronics | <input type="checkbox"/> Nuclear |
| <input type="checkbox"/> Environmental | <input type="checkbox"/> Petroleum |
| <input type="checkbox"/> Other (please specify) | |



Current employment status

* 9. What status is your current main engineering job?

- Full-time salaried
- Part-time salaried
- Self-employed or proprietor/director
- Hourly contract employee
- Unemployed
- Retired
- Other
- I am employed in a non-engineering role.



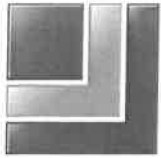
Employed as an engineer

10. Number of years in current role?

11. Years of experience since commencing as a professional engineer?

12. How many hours per week do you normally work, including any paid or unpaid overtime?

13. Hours normally worked per week 12 months ago?



Overtime

14. On average, how many hours of overtime do you work each week?

15. How are you *normally* compensated for overtime worked?

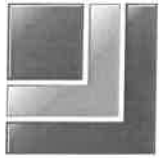
- Monetary payment at hourly rate (single time, double time etc.)
- Overtime built into base salary
- Time off in lieu of payment (single time, double time, etc.)
- No compensation received



Professional Development

16. How many hours of professional development (CPD) have you completed over the last 12 months?

17. What percentage of that CPD was provided/paid for by your employer?(%)



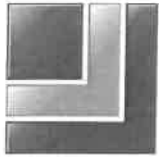
Accreditation

18. Which professional engineer accreditations do you currently hold?*(tick all that apply)*

- RPEng
- CPEng
- RPEQ
- None
- Other (please specify)

19. Which professional engineer accreditations does your employer pay for?*(tick all that apply)*

- RPEng
- CPEng
- RPEQ
- None
- Other (please specify)



Job responsibility

20. Which of the following best describes your main job responsibility?

- Construction Supervision
- Design of Equipment & Processes (not product design)
- Management
- Production, Quality, Maintenance
- Project Study and Analysis
- Research & Development (inc. Product Design/Development)
- Sales and Marketing
- Teaching or Training
- Other (please specify)

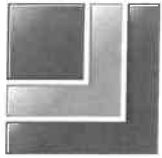
21. Job title

What is your current job title?

What is the job title of your supervisor?

What is the job title of your subordinates?

Name of employer

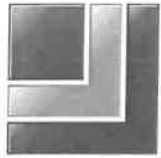


Responsibility level

* 22. What is your responsibility level?

Please refer to the definitions to ensure that the level that you enter below is consistent with your employer's designation.

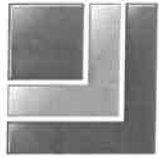
- Level 1
- Level 2
- Level 3
- Level 4
- Level 5
- Beyond Level 5



Sector

23. In which employment sector are you employed?

- Private Sector – employee
- Private Sector – proprietor/director
- Australian Public Service
- State Public Service
- Government Business Enterprise
- Local Government
- Education
- Other (please specify)



Industry

24. In which industry are you mainly engaged?

- Consulting & Technical Services
- Construction
- Mining (inc. Oil/Gas extraction)
- Electricity
- Gas Supply
- Water, Sewerage and Drainage
- Information Media and Telecommunications
- Defence
- Public Administration and Safety
- Road
- Rail
- Other Transport, Postal and Warehousing
- Education and Training
- Manufacturing
- Other (please specify)



Turnover, Employees & Membership

25. If you are employed in the private sector, what is the approximate turnover of your company?

- Less than \$5m
- \$5m to \$10m
- \$11m to \$20m
- \$21m to \$50m
- \$51m to \$100m
- Over \$100m
- Don't know

26. How many professional engineers are employed by your organisation?

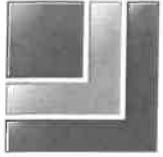
- 10 or less
- 11 to 50
- 51 to 100
- Over 100

27. How many employees are employed by your organisation?

- 19 or less
- 20 to 199
- 200 or more

* 28. Are you an independent contractor?

- Yes
- No

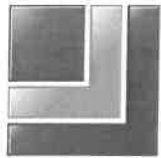


Independent contractors

29. As an independent contractor, is your current contract:

- Long term (12 months or longer)
- Short term

30. What is the hourly rate charged? (\$ gross, excl GST)



Employees

31. Is your position covered by an Enterprise Agreement?

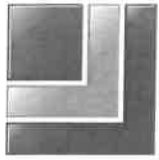
- Yes
- No
- Don't know

32. Have you received a promotion in the last 12 months?

- Yes
- No

* 33. Have you changed employer in the last 12 months?

- Yes
- No

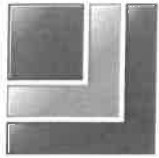


Voluntary change of employer

* 34. Was your change in employer voluntary?

Yes

No



Changing employer

35. My change in employer was driven by:

- A pay increase
- Greater job security
- Working closer to home
- Promotion
- Professional development opportunities
- Flexible working arrangements
- Improved workplace culture
- Opportunity for better management
- Improved work/life balance
- A more challenging workload
- Other (please specify)

* 36. Are you considering leaving your current employer?

- Yes
- No



Intention to leave

37. Which of the following would alter your intention to leave your current employer?

- A pay increase
- Greater job security
- Working closer to home
- Promotion
- Professional development opportunities
- Flexible working arrangements
- Improved workplace culture
- Opportunity for better management
- Improved work/life balance
- A more challenging workload
- Other (please specify)

38. Are you considering leaving the engineering profession and if so, when?

- In under 12 months
- In the next 1 to 3 years
- In the next 3 to 5 years
- I'm not considering leaving



Organisational capability

39. Which of the following have you noticed within your workplace over the last 12 months?

- Cost-cutting
- A reduction in the number of engineers in decision-maker roles
- Reduced adherence to professional standards
- Less engineering-driven innovation
- Misallocation of resources
- Insufficient skills development
- Reduced commitment to service quality
- Increased outsourcing of engineering function
- Lack of in-house engineering capacity
- Poorly scoped or designed projects
- Poor graduate development

Please describe the impact these issue/s you've noticed have had in terms of outcomes. (For example: greater cost to taxpayer, compromised service quality, greater risk to the community, increased waste of resources)

40. To what extent do you agree engineering capability is seen as a source of innovation in your organisation?

- Strongly agree Agree Neither agree or disagree Disagree Strongly disagree

41. How have the following features of your organisations engineering workforce changed over the last 12 months?

	Increased	Stayed the same	Decreased
Worker fatigue has:	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Staff morale has:	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overall productivity has:	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



Remuneration data - employees only

Over the following pages if you do not receive an item or do not know its value, please leave the answer space blank.

42. Annual base salary (excluding all superannuation, allowances, bonuses & before salary sacrifice) (\$ p.a)

43. Base salary 12 months ago (*Do not answer if you have changed jobs or graduated in the last 12 months*) (\$ p.a)

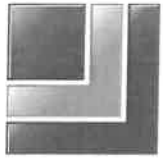
44. What is your gross (pre-tax) hourly rate of pay as it appears on your payslip? (\$ p/h)

45. If you are a recent graduate and commenced work in the last 12 months, what was your commencing salary? (\$ p.a.)

* 46. Is your salary subject to performance-based incentives?

Yes

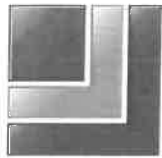
No



Performance-based incentives

47. What is the maximum percentage of your base salary offered as a performance-based incentive? (%)

48. What percentage do you reasonably expect to achieve? (%)



Additional items

49. Car allowance (\$ p.a.)

50. Entertainment allowance (\$ p.a.)

51. Annual leave loading (%)

52. Award allowances (\$ p.a.)

53. Overtime paid (\$ p.a.)

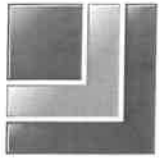
54. Value of other benefits included in package exempt from FBT? *e.g. home office, subscriptions, etc.* (\$ p.a.)

55. Value of other benefits included in package subject to FBT? *excluding vehicles* (\$ p.a.)

* 56. Do you have access to an employer-provided vehicle?

Yes

No



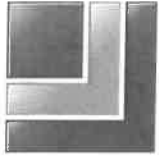
Employer-provided vehicle

57. Original cost of vehicle provided (\$)

58. Total kilometres travelled by vehicle per annum (kms)

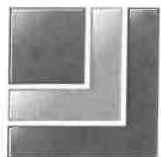
59. After-tax contribution to vehicle costs (*not salary sacrifice*) (\$ p.a.)

60. If you contribute to the cost of the vehicle via a salary sacrifice, what is the annual sacrifice amount? (\$ p.a.)



Superannuation

61. If your employer makes contributions to your superannuation on your behalf, including the mandatory employer contribution of 9.5%, what % of your base salary does your employer contribute? (%) *Do not include additional contributions made by yourself.*



Workplace satisfaction

62. Please rank the following to indicate how well they reflect your personal work priorities, where (1) is your highest priority.

<input type="checkbox"/>	<input type="text"/>	Remuneration
<input type="checkbox"/>	<input type="text"/>	Job Security
<input type="checkbox"/>	<input type="text"/>	Being close to home
<input type="checkbox"/>	<input type="text"/>	Career progression
<input type="checkbox"/>	<input type="text"/>	Continuing professional development
<input type="checkbox"/>	<input type="text"/>	Flexible work arrangements
<input type="checkbox"/>	<input type="text"/>	Positive workplace culture
<input type="checkbox"/>	<input type="text"/>	Work/life balance
<input type="checkbox"/>	<input type="text"/>	A challenging workload

63. Have you experienced bias or discrimination in the workplace within the last three years due to any of the following? (*tick all that apply*)

- Age
- Gender
- Race
- Religion
- Sexual identity
- None of the above

64. Which of the following does your organisation provide:(tick all that apply)

- Formal policies to promote diversity
- Formal policies to deal with discrimination
- None of the above

65. Do you believe your employer has strategies in place to actually implement policies relating to diversity/discrimination?

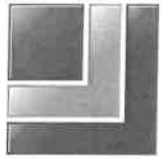
- Yes
- No
- Not applicable

66. To what extent do you agree with the following statements:

	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree
My remuneration package is falling behind what others undertaking similar engineering work are being paid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My package does not appropriately reflect the level of responsibility I undertake in my day-to-day work	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

67. Overall, how satisfied are you with your current level of remuneration?

- Very dissatisfied
- Dissatisfied
- Unsure
- Satisfied
- Very satisfied



Non-Engineering Employment

68. Would you prefer to be employed in an engineering role?

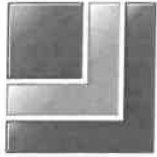
Yes

No

69. Are you actively looking for engineering roles?

Yes

No



Retired Engineers

70. Do you still engage in professional development?

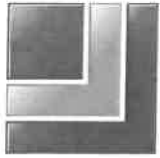
- Yes
 No

71. In what ways are you still involved in the engineering profession?

- Mentoring
 Volunteering
 Advising on professional issues
 Board/Committee membership
 Providing training
 I am no longer involved in the profession
 Other (please specify)

72. Are you interested in becoming more involved in the engineering profession through Professionals Australia? (for example, as an assessor for the RPEng program)

- Yes
 No



Unemployment

73. How many months have you been unemployed?

* 74. What was the cause of your current unemployment as an engineer?

- I voluntarily left my previous role
- Termination
- Redundancy
- I have not been employed as an engineer



Unemployment (cont.)

75. Why was your previous role made redundant?

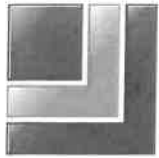
- My role was outsourced
- The organisation downsized
- The role description changed

76. Where are you currently looking for new employment?

- Within the engineering profession
- Outside of the engineering profession
- I am not currently looking for employment

77. Which of the following is your main reason for being unemployed at this time

- I have only recently entered the job market
- I am taking a career break
- There are a shortage of appropriate roles available
- Taking time to look after children/family
- Taking time for personal/health reasons
- Other (please specify)



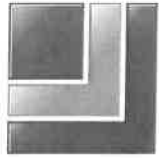
Impressions

78. How do you feel about your future prospects in the engineering profession?

0 - Not confident at all

10 - Very confident

79. Please enter any other comments you have in relation to the Engineering profession or your working life as a Professional Engineer in Australia.



Submit

Thank you for participating in the 2018 Professional Engineer Remuneration & Employment Survey.

Competition Entry

To enter the draw for your chance to win one of two \$500 JB Hifi gift cards, please fill out the entry form below. Entries close the **27th of May, 2018** and the winner will be drawn the following week. All personal details are confidential and will be handled in accordance with Professionals Australia's [privacy policy](#). Entry is only open to participants residing in Australia.

80. Entry Details

Full name

Phone number

E-mail

Street address

Suburb

State

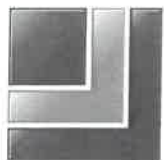
Postcode

Get Involved

81. Professional Australia is committed to improving employment outcomes for Australian engineers. Let us know what else you're interested in learning about:

- I want to receive a copy of the survey results once they become available.
- I'm interested in participating in Professionals Australia focus groups.
- I want to learn more about Professionals Australia membership.
- I'd like information on Professionals Australia's registration program, RPEng.
- I'm a member that wants to get more involved with the organisation.

Please press the 'Submit' button below to complete the questionnaire.



Professional Employees Award - Long Hours and Compensation

Are you paid fairly for working long hours?

Professionals Australia is conducting a survey to find out if you are working additional hours and whether you are being properly rewarded and recognised for your efforts.

Your contribution will assist the Association in the upcoming review of the Professional Employees Award (the Award) which Professionals Australia is actively involved in. We are seeking to have the Award amended as it is currently unclear as to whether your employer is adequately compensating you for working more than 38 hours per week.

Please help us tackle the issue by completing this short 5 minute survey regarding additional hours and related compensation within your workplace. All responses are confidential and will be handled in accordance with Professionals Australia's [privacy policy](#).

*** What is your highest tertiary qualification?**

- | | |
|---|--|
| <input type="radio"/> Diploma | <input type="radio"/> Masters degree |
| <input type="radio"/> Trade Certificate | <input type="radio"/> Doctorate/PhD |
| <input type="radio"/> Bachelor degree (with or without honours) | <input type="radio"/> Professional accreditation in recognition of past experience |
| <input type="radio"/> Graduate diploma | <input type="radio"/> None of the above |



Professional Employees Award - Long Hours and Compensation

In which year was that qualification granted?

While studying for your qualifications, did your educational institution communicate that you would be expected to work additional hours to advance your career?

Yes

No

* Which of the following professions or industries do you work in?(tick all that apply)

The professional engineering profession

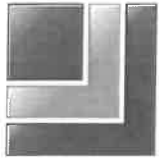
The quality auditing industry

The professional scientific profession

The telecommunications services industry

The information technology industry

None of the above/I am not an employee



Professional Employees Award - Long Hours and Compensation

Is your current employment covered by an Enterprise Agreement?

- Yes
- No
- Don't know

Which of the following best describes the responsibility you exercise in your current employment?

- You perform professional work under the supervision of higher-level Professionals. You perform normal professional work and exercise individual judgement and initiative in the application of principles, techniques and methods.
- You perform and conduct professional work without detailed supervision but with guidance on unusual features on more responsible assignments requiring substantial professional experience.
- You perform professional work requiring the application of mature professional knowledge. Your recommendations may be reviewed, and informed professional guidance may be available.
- You perform professional work with considerable independence, you supervise a group or groups of professionals and other staff or exercise authority and technical control over a group of professional staff. You are engaged in complex professional engineering or professional scientific/information technology applications
- You perform professional work with independence and responsibility beyond what's described above.

Are you currently employed in a permanent role, or on a temporary contract/casually?

- Permanent
- Temporary contract
- Casual

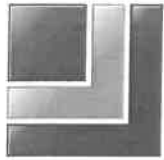
On average, how many hours do you work each week, including any paid or unpaid additional hours?

Which of the following forms of additional hours are you required to do as part of your current role? *(tick all that apply)*

- | | |
|---|--|
| <input type="checkbox"/> Working regularly in excess of 38 hours per week | <input type="checkbox"/> Performing professional duties outside of the ordinary hours of duty over the telephone or via remote access arrangements |
| <input type="checkbox"/> Working on call-backs after hours | <input type="checkbox"/> Working on afternoon, night or weekend shifts |
| <input type="checkbox"/> Standing by in readiness for call-backs | <input type="checkbox"/> None of the above |

* Which of the following forms of compensation do you receive in recognition of additional hours you work? *(tick all that apply)*

- I am not compensated for the additional hours I work
- Additional remuneration for additional hours worked, such as overtime or penalty rates
- My annual salary takes into account additional hours worked
- Additional leave or time off in lieu for additional hours worked
- An allowance to compensate for time on call/stand by
- I do not work additional hours



Professional Employees Award - Long Hours and Compensation

Do other employees who hold lesser or different qualifications to you in your workplace receive compensation for working additional hours?

- Yes
 No
 Don't know

Which of the following contributes towards you working additional hours?(tick all that apply)

- There is an expectation in my workplace that you work additional hours
 My manager/supervisor works additional hours
 My colleagues work additional hours
 Working additional hours will assist with my career progression
 Working additional hours will be looked favourably on during pay reviews
 My workload requires I perform additional hours to get the job done
 I am regularly requested to work additional hours by my employer
 I work additional hours to cover a shortfall in staffing
 I work additional hours to compensate for being less experienced in my role
 There would be negative consequences for me if I did not work additional hours
 None of the above/I do not work additional hours

Do you record how many hours you work each week?

- Yes
 No

Does your employer record how many hours you work each week?

- Yes
- No
- Don't know

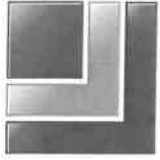
Do you feel comfortable negotiating your rate of pay with your employer at performance review time?

- Yes
- No
- Not applicable

Are you currently a member of Professionals Australia

- Yes
- No

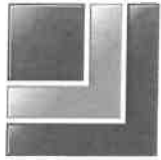
If yes, please enter your member number



Does your contract of employment specify the portion of your annualised salary that is to compensate for additional hours worked?

Yes

No



Professionals Australia

Professional Employees Award - Long Hours and Compensation

Thank you for participating in Professionals Australia's survey of additional hours and compensation within your workplace.

Your contribution will help us build the case that professionals deserve better compensation for the additional hours they regularly work. To stay up to date with our work in this area remember to check our regular e-news.

To enter the draw to win a \$500 JB HiFi voucher please enter your details below. Entries are only open to participants based in Australia. The winner will be drawn in the new year.

Name

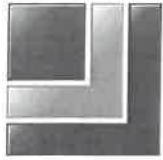
E-mail

Phone

Postcode

If you have any questions please get in touch with the association on 1300 273 762 or by e-mailing info@professionalsaustralia.org.au

To submit your responses please click the 'Done' button below.



Are you paid fairly for working long hours?

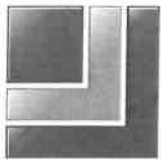
Professionals Australia is conducting a survey to find out if you are working additional hours and whether you are being properly rewarded and recognised for your efforts.

Your contribution will assist the Association in the upcoming review of the Professional Employees Award (the Award) which Professionals Australia is actively involved in. We are seeking to have the Award amended as it is currently unclear as to whether your employer is adequately compensating you for working more than 38 hours per week.

Please help us tackle the issue by completing this short 5 minute survey regarding additional hours and related compensation within your workplace. All responses are confidential and will be handled in accordance with Professionals Australia's [privacy policy](#).

*** What is your highest tertiary qualification?**

- | | |
|---|--|
| <input type="radio"/> Diploma | <input type="radio"/> Masters degree |
| <input type="radio"/> Trade Certificate | <input type="radio"/> Doctorate/PhD |
| <input type="radio"/> Bachelor degree (with or without honours) | <input type="radio"/> Professional accreditation in recognition of past experience |
| <input type="radio"/> Graduate diploma | <input type="radio"/> None of the above |



Professionals Australia

Professional Employees Award - Long Hours and Compensation

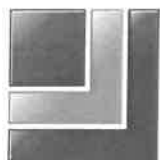
In which year was that qualification granted?

While studying for your qualifications, did your educational institution communicate that you would be expected to work additional hours to advance your career?

- Yes
 No

* Which of the following professions or industries do you work in?*(tick all that apply)*

- | | |
|--|---|
| <input type="checkbox"/> The professional engineering profession | <input type="checkbox"/> The quality auditing industry |
| <input type="checkbox"/> The professional scientific profession | <input type="checkbox"/> The telecommunications services industry |
| <input type="checkbox"/> The information technology industry | <input type="checkbox"/> None of the above/I am not an employee |



Professional Employees Award - Long Hours and Compensation

Is your current employment covered by an Enterprise Agreement?

- Yes
- No
- Don't know

Which of the following best describes the responsibility you exercise in your current employment?

- You perform professional work under the supervision of higher-level Professionals. You perform normal professional work and exercise individual judgement and initiative in the application of principles, techniques and methods.
- You perform and conduct professional work without detailed supervision but with guidance on unusual features on more responsible assignments requiring substantial professional experience.
- You perform professional work requiring the application of mature professional knowledge. Your recommendations may be reviewed, and informed professional guidance may be available.
- You perform professional work with considerable independence, you supervise a group or groups of professionals and other staff or exercise authority and technical control over a group of professional staff. You are engaged in complex professional engineering or professional scientific/information technology applications
- You perform professional work with independence and responsibility beyond what's described above.

Are you currently employed in a permanent role, or on a temporary contract/casually?

- Permanent
- Temporary contract
- Casual

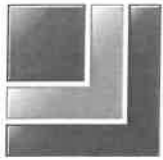
On average, how many hours do you work each week, including any paid or unpaid additional hours?

Which of the following forms of additional hours are you required to do as part of your current role? *(tick all that apply)*

- | | |
|---|--|
| <input type="checkbox"/> Working regularly in excess of 38 hours per week | <input type="checkbox"/> Performing professional duties outside of the ordinary hours of duty over the telephone or via remote access arrangements |
| <input type="checkbox"/> Working on call-backs after hours | <input type="checkbox"/> Working on afternoon, night or weekend shifts |
| <input type="checkbox"/> Standing by in readiness for call-backs | <input type="checkbox"/> None of the above |

* Which of the following forms of compensation do you receive in recognition of additional hours you work? *(tick all that apply)*

- I am not compensated for the additional hours I work
- Additional remuneration for additional hours worked, such as overtime or penalty rates
- My annual salary takes into account additional hours worked
- Additional leave or time off in lieu for additional hours worked
- An allowance to compensate for time on call/stand by
- I do not work additional hours



Do other employees who hold lesser or different qualifications to you in your workplace receive compensation for working additional hours?

- Yes
- No
- Don't know

Which of the following contributes towards you working additional hours?*(tick all that apply)*

- There is an expectation in my workplace that you work additional hours
- My manager/supervisor works additional hours
- My colleagues work additional hours
- Working additional hours will assist with my career progression
- Working additional hours will be looked favourably on during pay reviews
- My workload requires I perform additional hours to get the job done
- I am regularly requested to work additional hours by my employer
- I work additional hours to cover a shortfall in staffing
- I work additional hours to compensate for being less experienced in my role
- There would be negative consequences for me if I did not work additional hours
- None of the above/I do not work additional hours

Do you record how many hours you work each week?

- Yes
- No

Does your employer record how many hours you work each week?

- Yes
- No
- Don't know

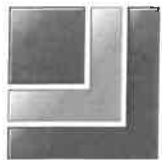
Do you feel comfortable negotiating your rate of pay with your employer at performance review time?

- Yes
- No
- Not applicable

Are you currently a member of Professionals Australia

- Yes
- No

If yes, please enter your member number



Does your contract of employment specify the portion of your annualised salary that is to compensate for additional hours worked?

Yes

No



Professionals Australia

Professional Employees Award - Long Hours and Compensation

Thank you for participating in Professionals Australia's survey of additional hours and compensation within your workplace.

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Name

E-mail

Phone

Postcode

If you have any questions please get in touch with the association on 1300 273 762 or by e-mailing info@professionalsaustralia.org.au

To submit your responses please click the 'Done' button below.

Fair Work Act 2009

s.156—4 yearly review of modern awards

(AM2019/5)

**PROFESSIONAL EMPLOYEES
AWARD 2010**

Section 156 – 4 yearly review of modern awards

**WITNESS STATEMENT
MICHELLE MAREE ANTHONY**

1. I, Michelle Maree Anthony of [REDACTED] am employed as Principal Legal Officer by the Association of Professional Engineers Scientists Managers Australia (APESMA) and (concurrently), Principal of APESMA Lawyers, a law firm wholly owned by Professionals Australia.

2. One aspect of my role involves the professional supervision of a team of lawyers and industrial officers employed within APESMA's Workplace Advice and Support (WAS) team. APESMA's 22,649 members are able to access the services of the WAS team to seek advice and representation regarding issues concerning their employment such as:
 - a. Unfair Dismissal / Termination of employment;
 - b. Disciplinary issues / Performance Management;
 - c. Workplace Bullying and harassment;
 - d. Disputes under Enterprise Agreements/ Awards; and
 - e. breach of common law contract of employment.

3. Employment contract reviews are one of the most popular and frequently used services provided by WAS to APESMA members. When a prospective employer offers one of our members a job, the member can send the proposed written employment contract to the WAS team when it will be reviewed by a WAS team member, and the member will be provided with general and legal advice about any notable clauses in the contract. The WAS team reviewed 289 employment contracts in 2018 and had reviewed approximately 36 as at early June in 2019. As a result, APESMA has access to a large number of actual employment contracts that have been offered to our members over recent years. A selection of employment contracts that contain annualized salary clauses is attached to this witness statement. Now produced, shown to me, marked in accordance with column 1 of the table below and attached to my witness statement, are copies of the employment contracts listed in the table below:

	Job Title	Level	Annual Salary	Clause / Page
MA-1	Site Engineer	Level1	\$60,000	Clauses 4, 9, 10
MA-2	Graduate Engineer	Level 1	\$60,273.	Clauses 4, 5, 8
MA-3	Graduate Engineer	Level 1	\$65,000.	Clauses 3
MA-4	Project Engineer	Level2	\$70,000.	Pg 2
MA-5	Graduate Software Engineer	Level 1	\$76,650.	Clauses 4.2, 7
MA-6	Special Projects Engineer	Level 1	\$65,000.	Clauses 1, 6, 11
MA-7	Software Engineer	Level 1	\$62,000.	Pg 2, 3

4. APESMA obtained the consent of the members who submitted MA-1 to MA-7 (both inclusive) to submit the contracts to the Fair Work Commission in support of APESMA's application. The contracts have been redacted to keep the identities of the members and the relevant employers confidential.

5. MA-1 is an employment contract for a Site Engineer. APESMA is of the view the employee who accepts the job offered in the contract will be covered by the Professional Employees Award 2010. Further, (taking into account the annual salary amount), the job offered will be a Level 1 position according to the classifications in clause 12 and Schedule A of the Award (Exposure draft). The effects of the combination of Clauses 4, 9 and 10 of the contract will be the employee employed under the contract will be contractually required to work all hours and times construction work is being carried out at sites (whether day or night, and regardless of how many hours are consecutively worked), without receiving any remuneration in addition to the employee's annual salary. The relevant clauses of the contract are set out below:

4. Hours of work

4.1 Your ordinary hours of work are 38 hours per week averaged over a 26-week period, plus reasonable additional hours which are reasonably necessary to fulfil the requirements of your position. This may include, but is not limited to, being available at all time when construction work is being carried out at sites.

4.2 Your remuneration includes compensation for all ordinary and any additional hours of work and you will not be entitled to any additional remuneration or other benefit for work performed outside the hours.

9. Remuneration package

.....

9.3 Your remuneration and benefits specified in the agreement, are the total aggregate annual entitlement that includes all payments and

benefited whatsoever that the employer will provide to you for the performance of your duties and responsibilities under the agreement and your employment with the employer including but not limited weekend penalties, shift loadings, overtime and/or annual leave loading.

9.4 With regard to payments or benefits to which you are or may become legally entitled whether or not as a matter of legislation, regulation, or any other industrial instrument, then you agree that your remuneration will be specifically applied to off-set and absorb any such payments of benefits.

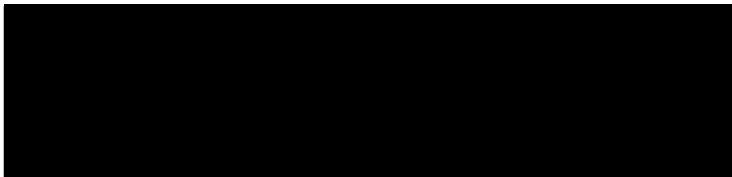
6. While Clause 13 of the of the Award, (Exposure draft), does provide that employers will compensate for work in excess of 38 ordinary hours per week, or outside the ordinary hours of duty, clause 13.3 (c) of the Award provides that such compensation can include “taking this factor into account in the fixation of annual remuneration”. This means that if an employee agrees to enter into the employment contract which is attachment MA-1, should that employee be required to work 60 hours per week at unsociable hours, (say the hours usually referred to as night shift), the employer will be able to rely on clauses 4.1, 4.2, 9.3 and 9.4, of MA-1 in defence of any claim for a breach of clause 13 of the Award. The clauses nominated in the fifth column of the table in Clause 3 above from attachments MA-2 to MA-7 operate in the same way with the same legal efficacy.
7. “Offset” clauses such as the ones contained in MA-1 to MA-7 have become standard inclusions in professional employment agreements. Employees employed under such clauses have no entitlement to regular reconciliation or measurement to ensure the employee’s annual salary does not fall below the value of the employee’s total award entitlements (for example entitlements to overtime, penalty rates, shift loading and meal allowance) for the year.
8. Clause 13.3 of the Award (Exposure Draft) does not give the employee covered by the Award an entitlement to a certain amount of compensation for working hours in

excess of 38 hours per week or outside of the ordinary hours of work. An employer could compensate an employee by paying a minimal amount (for example one dollar) over the employee's minimum rate of pay under the award, and not be in breach of the Award even where the employee has worked many hours in excess of 38 hours in a week and at 'unsociable' times.

9. In 2018 Lockheed Martin notified a large group of its employees their employment would end later that year as the company had lost a contract to provide services to the Australian government. A number of APESMA's members were affected by the announcement and sought APESMA's advice and assistance to ensure they received at termination all payments to which they were entitled at law. The affected members consisted of a large group of Fly In Fly Out employees that worked twelve hour days, fifteen days on, thirteen days off. In the process of checking termination entitlements, it became apparent that a number of the affected employees were covered by the Manufacturing and Associated Industries and Occupations Award 2010 (the Manufacturing Award), despite the fact that they had been advised by their employer their employment was covered by the Professional Employees Award 2010. The coverage provisions of the Professional Employees Award 2010 provide for the award to cover professional engineers and scientists on an occupational basis. To be a professional engineer an employee is required to have completed a tertiary qualification in engineering. It was clear that a number of the Lockheed Martin employees were technicians and not professional engineers, and consequently those employees were covered by the Manufacturing Award and not the Professional Employees Award.

10. After reviewing the annual salary amounts paid to some of the employees covered by the Manufacturing Award, APESMA has advised those members they may have an underpayment claim as the annual salaries paid by Lockheed Martin to those employees fell short of the total amount that would have been payable to the employees had they been paid the full amount of any overtime, shift allowance, first aid allowance, penalty rates and annual leave loading in respect of all shifts

worked over a twelve month period. Some of the affected employees are professional engineers (as they do have a tertiary degree in engineering), and despite having worked the exact same pattern of hours and shifts as the Manufacturing Award employees, and having been employed at a similar level of seniority and performing in similar roles, the professional engineers are precluded from pursuing an underpayment claim due to the operation of clause 13 of the Professional Employees Award 2010 (Exposure Draft). Now produced, shown to me, marked MA-8, and attached hereto, is a copy of Clause 13 of the Professional Employees Award 2010 (Exposure Draft). Now produced, shown to me, marked MA-9, and attached hereto, is a copy of Clauses 36, 37 and 40 of the Manufacturing Award. It is evident that the relevant clauses of the Manufacturing Award provide measurable, enforceable entitlements to award covered employees while Clause 13 of the Professional Employees Award does not and employees covered by the latter award are susceptible to exploitation as a result.



(Signed)

Michelle Anthony

Association of Professional Engineers Scientists Managers Australia (APESMA)

14 June 2019

'MA-1'

27 August 2018

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dear [REDACTED]

Re: Letter of offer

We are pleased to offer you employment with [REDACTED] (the **Employer**) in the position of *Position name* on the term set out in the enclosed Employment Agreement (**Agreement**). Please read the Agreement carefully, as it sets out the terms and conditions of your employment.

You can confirm your agreement by returning a signed copy of the Agreement to [REDACTED]. Please note that this offer of employment must be accepted prior to 17:00 on Thursday 30 August 2018, and this offer will not extend beyond this time.

We recommend that you retain a copy for your own records. If you have any queries, feel free to contact me on [REDACTED] or seek independent advice.

We look forward to having you as part of the team and know that you will make a valuable contribution.

Yours faithfully

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EMPLOYMENT AGREEMENT

BETWEEN

[REDACTED]
[REDACTED] (the Employer)

AND

[REDACTED]

1. Appointment and Commencement

- 1.1 Your employment with the Employer and the terms of this Agreement will commence on the date specified in Item 2 of Schedule A, and will continue until terminated
- 1.2 You will be as a full-time employee
- 1.3 Unless otherwise agreed in writing, the first six (6) months of your employment with the Employer is probationary. During this time the employer will assess your suitability, competency and progress and performance in the position. Either party may terminate the employment at any time during the probation by giving 1-week notice, or in the case of the employer, payment in lieu of notice.

2. Conditional Appointment

- 2.1 Your employment with the employer is conditional upon your eligibility to work in Australia (proof of which may be required by the employer)
- 2.2 You expressly warrant that:
- (a) All the information provided in the recruitment process including but not limited to the pre-employment questionnaire is true and correct;
 - (b) You have disclosed any physical or psychological limitation on your ability to safely perform the requirement of your position;
 - (c) You are not subject to any post-employment restrictions that have been imposed on you arising from your previous employment; and
 - (d) You retain the skills and necessary qualifications required to perform your position.
- 2.3 You understand that the employer is relying upon these warranties, and may terminate your employment without notice at any time, should it become aware that you have breached a warranty.

3. Position and title

- 3.1 You will initially be employed in the position specified in Item 1 of Schedule A by the employer and will report to the person or role specified in Item 3 of Schedule A, although the Employer may require you to work in other positions and/or report to another person or role from time to time in accordance with the needs of the employer and your skills and abilities. In circumstances where there is a substantial change to your position, the employer will consult with you and request your consent to the change.
- 3.2 Your assigned duties may at any time be varied and you may be required to perform services for the employer. The obligation and duties owed by you under this Agreement shall be owed by you to the employer.
- 3.3 You expressly agree that where there is a change in your position, title, duties or reporting requirements, the terms and conditions of this Agreement will continue to apply to your employment.

4. Hours of work

- 4.1 Your ordinary hours of work are 38 hours per week averaged over a 26-week period, plus reasonable additional hours which are reasonably necessary to fulfil the requirements of your position. This may include, but is not limited to, being available at all time when construction work is being carried out at sites.
- 4.2 Your remuneration includes compensation for all ordinary and any additional hours of work and you will not be entitled to any additional remuneration or other benefit for work performed outside the hours.

5. Place of work

- 5.1 Your normal place of work will be that which is set out in Item 4 of Schedule A. You agree you may also be required to attend the Employer's Head Office from time to time in accordance with the business requirements.
- 5.2 The employer may reasonably require you to transfer to another location, or to perform work at other locations from time to time, or on a permanent basis, in accordance with the needs of the business.

6. General duties

- 6.1 During your employment, you must:

- (a) Perform the duties consistent with your position, including carrying out all reasonable directions;
- (b) Devote to your duties all your time and attention during normal business hours, except when on leave allowed by this agreement;
- (c) Take all steps to familiarise yourself and abide by all legislation, regulations and other requirement as amended from time to time which affect the business of the employer and [REDACTED] and are relevant to your position. This includes but is not limited to, ensuring that any necessary licenses or approval you are required to have and maintain are current and valid and familiarising yourself with and complying with the duties imposed upon you under workplace health and safety law; and
- (d) Bring to the attention of the employer any matters of which you become aware that would be of significance to the employer, including matters that may be against your own interest.

6.2 You agree a breach of clause 6.1 of this agreement may result in disciplinary action including and up to termination of employment.

7. Policies and Procedures

- 7.1 You are required to familiarise yourself and comply with all of the employer's policies and procedures (HRPP). Failure to do so may result in appropriate disciplinary action.
- 7.2 If there is any conflict between HRPP and this agreement, the terms of this agreement take precedence.
- 7.3 The employer may in its sole discretion vary, replace or rescind all or a portion of HRPP from time to time, including those referred to in this Agreement. The employer's policies and procedures do not form part of your agreement and are not enforceable as obligations on the employer nor as any right created for or vested in you.

8. Drugs and Alcohol

- 8.1 Subject to the consent of the Employer (for example, staff drinks at the office), the consumption of drugs and/or alcohol while at work, or during the course of work is strictly prohibited. You consent to random testing carried out by the employer. If you are found to be intoxicated, under the influence of illicit drugs and/or in possession of illicit drugs in the workplace, this may result in disciplinary action up to and including termination of your employment.

9. Remuneration package

- 9.1 During your employment, you will receive an annual remuneration package which includes:
- (a) A base salary component in the amount set out in Item 5 of Schedule A, gross; and
 - (b) Superannuation payments under clause 11.
- 9.2 Your base salary, less tax will be paid each calendar monthly via EFT to a bank account nominated by you on or about 15th of each calendar month, approximately half in advance and approximately half in arrears.
- 9.3 Your remuneration and benefits specified in the agreement, are the total aggregate annual entitlement that includes all payments and benefits whatsoever that the employer will provide to you for the performance of your duties and responsibilities under the agreement and your employment with the employer including but not limited to weekend penalties, shift loadings, overtime and/or annual leave loading.
- 9.4 With regard to payments or benefits to which you are or may become legally entitled whether or not as a matter of legislation, regulation, or any other industrial instrument, then you agree that your remuneration will be specifically applied to off-set and absorb any such payments or benefits.

10. Remuneration and Performance Review

- 10.1 The employer may formally review your performance and the remuneration package on 30 June each year. Such reviews may be preceded by appraisals and discussion regarding your position and your performance from both yours and the employer's perspective.
- 10.2 Any increase in your remuneration is at the sole discretion of the employer.

11. Superannuation

- 11.1 The employer will pay superannuation contributions in respect of your employment, in accordance with relevant superannuation guarantee legislation.
- 11.2 The employer will pay those superannuation contributions to any complying fund (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) that you nominate. If you fail to nominate a complying superannuation fund, the Employer will make the necessary superannuation contributions into a completing fund. Currently our default fund is Cbus.

12. Tools of Trade

- 12.1 Your position may require you to use tools of trade. In the employer issues you with such tools of trade, such tools will not form part of your remuneration and they will be withdrawn where your duties no longer require the use of them.
- 12.2 The use of such tools shall be subject to any policies the employer may have in place from time to time governing their use. A breach of such policies shall be a fundamental breach of the terms of this Agreement.

13. Mobile Phone

- ~~13.1 You will be provided with a mobile phone. Usage should be in accordance with the Employer's mobile phone policy in place from time to time. Use should generally be limited to company business, although reasonable personal use would be acceptable. You permit the employer to deduct from your salary an amount up to the cost incurred by the employer as a result of usage inconsistent with the policy. The included but is not limited to personal international calls.~~

14. Vehicle Allowance

- ~~14.1 You will be provided with a company vehicle for use for company purposes and for reasonable personal use only. The employer will cover the cost of insurances, fuel, tolls, registration, leasing, running, repair and maintenance costs. Where the vehicle is used outside of this purpose without prior approval you may be required to cover these costs for that duration.~~
- 14.1 You will be provided with a company vehicle for use for company purposes only whilst working away from home. The use of this vehicle is limited to travel to and from the living away from home location and travel whilst at the living away from home location. The employer will cover the cost of insurances, fuel, tolls, registration, leasing, running, repair and maintenance costs. Where the vehicle is used outside of this purpose without prior approval you may be required to cover these costs for that duration.

15. Business Expenses

- 15.1 In the course of normal business, it may be necessary for you to incur expenses on behalf of the Employer. Approval for significant expenses must be sought from your supervisor prior to expenditure. Expenses which are incurred in accordance with this agreement and the Employer petty cash policy adhered to for reimbursement to you subject to the provision of supporting documentation.

16. Uniform

- 16.1 You agree, where a corporate uniform or item of clothing is provided you are required to wear such uniform or clothing at all times when performing work. The uniform or clothing provided must be kept clean, tidy and in good repair at all times and worn in a professional manner.

17. Leave

- 17.1 You are entitled to leave in accordance with the National Employment Standards (NES) in the Fair Work Act 2009 (Cth) as amended from time to time. A summary of the current NES is as follows.

Annual Leave

- 17.2 You are entitled to 4 weeks' paid annual leave for each completed year of service with the employer, which accumulates from year to year.
- 17.3 As annual leave accrues progressively during a year of service based on your ordinary hours of work, annual leave will accrue on a pro rata basis.
- 17.4 Annual leave must be taken at time agreed between you and the Employer.
- 17.5 You agree the Employer may direct you to take excess annual leave on the giving of 4 weeks' notice.
- 17.6 You also agree there may be periods of the year where no annual leave will be approved for reasons including but not limited to busy periods of the year.

Personal/Carer's Leave

- 17.7 You are entitled to 10 days' paid personal/carer's leave for each completed year of service with the Employer. Personal/carer's leave will not be paid out on termination of your employment.
- 17.8 As personal/carer's leave accrues progressively during a year of service based on your ordinary hours of work, personal/carer's leave will accrue on a pro rate basis.
- 17.9 The taking of personal/carer's leave must occur in accordance with the employer policies as amended from time to time.

Long Service Leave

- 17.10 You will be eligible for long service leave in accordance with the legislation as amended from time to time.

Compassionate Leave

- 17.11 Compassionate leave is paid leave taken when a member of your immediate family or household dies or suffers a life-threatening illness or injury. You are entitled to 2 days compassionate leave each time an immediate member of your family or household dies or suffers life-threatening illness or injury.

18. Confidential Information

- 18.1 The Employer and Group Company own all Confidential information.
- 18.2 During and after your employment, you may use or disclose Confidential Information only:
- (a) to perform your duties;
 - (b) If the Employer (or where applicable, a Group Company) has consented in writing to the particular use or disclosure on a case by case basis; or
 - (c) If required by law.
- 18.3 You must not divulge, use or allow others to use, or change in any way to allow you others to use, either for your own benefit or that of others any Confidential Information acquired during or after the termination of, your employment other than in accordance with clause 18.2.
- 18.4 You must keep Confidential Information in a secure manner and take all precautions and steps reasonably necessary to prevent unauthorised disclosure or unauthorised use of the Confidential Information.
- 18.5 You must promptly notify the Employer (or where applicable, a Group Company) of any suspected or actual unauthorised use or disclosure of the Confidential information of which you become aware.
- 18.6 On demand by the Employer or a Group Company or at the conclusion of your employment, you must:
- (a) Deliver to the Employer or a Group Company all Confidential information in your control; and then
 - (b) Delete all Confidential Information held electronically in any medium in your control.
-

19. Intellectual Property

- 19.1 Subject to any express written agreement to the contrary, you agree that all Intellectual Property Rights (including moral rights) in the Materials automatically vest in the Employer or a Group Company.
- 19.2 To the extent permitted by law, you unconditionally and irrevocably consent to the Employer and/or a Group Company (and persons claiming an interest in the Materials through the Employer and/or a Group Company) committing any act or omission that may constitute an infringement of your Moral Rights in respect of all Materials created prior to or after this consent is given, and you waive all Moral Rights that you may have worldwide for the benefit of the Employer or a Group Company its licensees, successors in title and anyone authorised by any of them to do any act comprised in any copyright in the Material.
- 19.3 You must, when required, do all things and execute all documents necessary to give effect to this clause 19.
- 19.4 Your obligations under clause 19 continue to apply after the termination of your employment with the Employer.

20. Restraints

20.1 During employment

(a) Sole employment

During your employment, you must not hold any directorship or be engaged in any other employment or activity (other than in relation to companies owned by or on behalf of you or your family or a not for profit organisation) without the prior written consent of the Employer that:

- (1) results in you acting in any capacity in competition with the Employer or any Group Company;
- (2) otherwise adversely affects the Employer or any Group Company;
- (3) may create a potential or real conflict of interest with your employment; or
- (4) may or will hinder the performance of your duties.

(b) inducements

Other than as specified in this Agreement, you must not accept any payment or other benefit from any person as an inducement or reward for any act in connection with the business of the Employer or a Group Company.

20.2 During and post-employment

(a) Non-solicitation

Except with the prior written consent of the Employer, you must not during your employment and for a period of 6 months after the termination of your employment for any reason, either on your own account, or for or jointly with any other person:

- (1) solicit, persuade or induce or attempt to solicit, persuade or induce any person or entity, who or which was, or is, a client or customer or prospective client or customer who had received a proposal or quote from the Employer or a Group Company to provide services of the Employer or a Group Company with whom you have had dealings within the 12 months immediately prior to your last date of employment with the Employer or Group Company, to cease doing business with the Employer or Group Company or reduce the amount of business which the person or entity would normally do with the Employer or Group Company; or
- (2) induce or attempt to induce any director, employee, agent or contractor of the Employer or Group Company, to terminate their employment or relationship with the Employer or Group Company, whether or not that person would commit a breach of that person's contract of employment or other contract or agreement with the Employer or Group Company by reason of leaving the service of any member of the Employer or Group Company.

(b) Post-employment activities

- (1) You acknowledge that during your employment with the Employer you will acquire Confidential Information and trade secrets which are legitimate interests that the Employer is entitled to protect. Accordingly, the restraints imposed under this clause are reasonable and not greater than are necessary to protect the Employer and/or Group Company in relation to the Confidential Information, its goodwill and legitimate business interests, and the parties intend the provisions to operate to the maximum extent possible at law.

20.3 Restraints reasonable

- (a) You have agreed to and accepted the restrictions in this clause 20 in consideration of the Employer's entry into this Agreement and in consideration of your remuneration under this Agreement.
- (b) Each restraint contained in this clause 20 constitutes a separate and independent provision, severable from the other restraints. if any of those separate provisions are

invalid or unenforceable in whole or in part, the enforceability of the other separate provisions will not be affected.

- (c) You acknowledge that damages are not an adequate remedy for breach of this clause and that the Employer or a Group Company may apply for an injunction to prevent or restrain such breach or the continuation of such breach. This remedy will be in addition to any award of damages which may be made in the Employer's favour.
- (d) You acknowledge and agree that you have had a reasonable opportunity to obtain independent legal advice about this clause 20.
- (e) Your obligations under clause 20 continue to apply after the termination of your employment with the Employer.

21 . Termination

- 21 .1 Other than where your employment is terminated for any reason set out in clause 21 .7 (which includes serious misconduct) or in accordance with clause 1.3, either you or the Employer may terminate your employment by giving written notice in accordance with this table:

Length of continuous service with employer	Period of notice
Not more than 1 year	2 Weeks
More than 1 year	4 Weeks

If you are 45 years old and have completed at least 2 years of continuous service with the Employer at the end of the day the notice is given, the Employer will provide 1-week additional notice to the notice periods above.

- 21 .2 Where, in accordance with clause 21 .1, you are required to provide the Employer with notice in excess of 4 weeks, the Employer and you may agree to reduce your notice period to 4 weeks.
- 21 .3 The Employer may elect to pay you in lieu of part or all of your notice period.
- 21 .4 During any period of notice, the Employer may vary your duties, or require you not to attend for work, for all or part of your notice period.
- 21 .5 On termination of your employment, you are required to do all such things to resign from any positions and offices that you held with the Employer or a Group Company or on behalf of the Employer, in connection with your employment.

21.6 The Restraints, Intellectual Property and Confidential information clauses of this Agreement will survive the termination of your employment with the Employer (however occurring).

21.7 The Employer may terminate your employment without notice, if you, without limitation:

- (a) commit any serious or persistent breach of this Agreement;
- (b) are guilty of any serious misconduct or wilful neglect in performing your duties;
- (c) fail to comply with any reasonable directions of the Employer or a Group Company;
- (d) are convicted of a criminal offence which, in the Employer or any Group Company's reasonable opinion, affects your position as an employee of the Employer;
- (e) do an unreasonable act which reflects unfavourably on the Employer or any Group Company;
- (f) display serious negligence or incompetence in performing of duties;
- (g) act dishonestly or deceitfully;
- (h) use the Employer or a Group Company's property improperly or without authority;
- (i) display rude, abusive, violent, threatening or seriously inappropriate conduct including bullying towards other employees or client;
- (j) conduct any serious breach of the Employer's Computer policy, including downloading, viewing of pornography on the internet;
- (k) send any message over the internet/email that is defamatory of any person; or is misleading or deceptive or is likely to mislead or deceive any person; and/or
- (l) act in a way which in the Employer or a Group Company's reasonable opinion may injure or likely to injure the business or reputation of the business.

22. Return of property

22.1 On termination of your employment, or at any time on request by the Employer, you must deliver to the Employer:

- (a) all property belonging to or leased by the Employer or a Group Company in your control, including Intellectual Property, access cards, keys, mobile telephone, computer hardware, laptop, credit cards and motor vehicle; and

- (b) your computer log-in codes and relevant passwords.

23. Suspension of Employment

- 23.1 The Employer may elect to suspend your employment in any circumstances, including where it is carrying out an investigation (regardless of whether the investigation relates to your behaviour or conduct). The Employer will provide you with your normal pay during any period of suspension.

24. Authorisation to make deductions

- 24.1 During your employment or if at the time your employment is terminated and you owe any amounts to the Employer, the Employer may set off any amounts owed by you against any amounts the Employer owes to you at the date of termination except for amounts the Employer is not entitled by law to set off.
- 24.2 By signing this Agreement you acknowledge and accept that any such deductions are both reasonable and principally for your benefit, taking into account that that the deduction facility:
- (a) forms part of the broader set of generous remuneration and benefit terms afforded by this Agreement;
 - (b) allows the Employer to have the confidence to make any advance or 'upfront' payments to you, or for your benefit, without being put to unnecessary expense to recover any repayable amounts; and/or
 - (c) simplifies the repayment process for you.

25. Amendment

- 25.1 This Agreement may only be amended in writing signed by the parties.

26. No waiver

- 26.1 A party may only waive a breach of this Agreement in writing signed by that party or its authorised representative.
- 26.2 A waiver is limited to the instance referred to in the writing (or if no instance is referred to in the writing, to past breaches).

27. Terms of Employment Confidential

27.1 The terms of your employment, including those set out in this Agreement, are confidential. You must not disclose any part of them to any other person, except to the extent that the law requires disclosure.

27.2 In addition to any other remedy the Employer may have, any breach of this clause may result in disciplinary action, including the termination of your employment.

28. Entire agreement

28.1 This Agreement is the entire agreement between you and the Employer in relation to its subject matter, and may only be varied by agreement in writing and signed by the parties. All prior representations, communications and agreements in relation to your terms of employment are superseded by this Agreement made in writing between you and the Employer.

29. Severability

29.1 If a court decides that part of this Agreement is not valid or not enforceable, that part of the Agreement will be modified so that it is enforceable. If that part cannot be modified, it will be severed and the rest of the Agreement will continue to operate.

30. Governing law

30.1 This Agreement is governed by the laws of New South Wales.

31. Variation

31.1 This agreement may only be varied by a written agreement between the parties signed by the parties to this agreement or their authorised representatives.

32. Interpretation

32.1 In this Agreement, unless the context otherwise requires:

- (a) singular includes plural and plural includes singular;
- (b) words of one gender include both genders;
- (c) reference to legislation includes any amendment to it, any legislation substituted for it, and any statutory instruments issued under it and in force;
- (d) reference to a person includes a corporation, a firm and any other entity;

- (e) reference to a party includes that party's personal representatives, successors and permitted assigns;
- (f) if a party comprises more than one person, each of those persons is jointly and severally liable under this Agreement;
- (g) headings do not affect interpretation;
- (h) a provision must not be construed against a party only because that party put the provision forward;
- (i) the word "includes" in any form is not a word of limitation;
- (j) a reference to currency or "\$" is a reference to Australian currency;
- (k) a provision must be read down to the extent necessary to be valid; if it cannot be read down to that extent, it must be severed.

33. Definitions

In this Agreement:

Group Company means a related body corporate of the Employer (within the meaning of section 50 of the *Corporations Act 2001* (Cth)) and specifically includes without limitation

Confidential Information includes any information which you access or which is communicated to you in the course of the employment by the Employer and which:

- (a) is identified as confidential; or
- (b) which you should reasonably expect to be confidential; and

includes, but is not limited to: any trade secrets or information relating to customers or clients; customer lists or requirements; suppliers; terms or trade; pricing lists or pricing structures; marketing information and plans; tenders; Intellectual Property; Materials; inventions; business plans or dealings; technical data; employees or officers; financial information and plans; designs; product lines; production; processes; drawings; research activities; software and the source codes of any such software of the Employer or a Group Company.

It does not include information which:

- (a) is generally available in the public domain unless by unauthorised use or disclosure;
- (b) was known by you prior to your employment by the Employer; or
- (c) is required to be disclosed by law to the Employer.

Intellectual Property means any current or future, registered or unregistered rights to:

- (a) an invention, discovery, secret process, trade secret, know-how, design, improvement or modification of any nature (whether patentable or not);
- (b) computer software, tables, charts, flow charts, algorithms, diagrams, plans, techniques, data, structures, logical ideas, concepts and processes;
- (c) Confidential Information;
- (d) copyright in any Works (including literary works and art works);
- (e) trademarks;
- (f) patents,

made, written or developed by you (alone or with others) in the course of or in connection with your employment (in or out of working hours), whether or not capable of statutory protection;

Materials means works, ideas, concepts, designs, inventions, developments, improvements, systems or other material or information, created, made or discovered by you (either alone or with others and whether before or after the date of this document) in the course of your employment or as a result of using the resources of the Employer.

Moral Rights means moral rights under the Copyright Act 1968 (Cth), which includes (but is not limited to) any right of attribution of authorship, or such right not to have authorship falsely attributed, or right of integrity of authorship, existing (or which may come into existence) anywhere in the world;

Restricted Business means any business which operates in the NSW civil engineering industry in direct or indirect competition with a business carried on by the Employer or a Group Company.

Termination Date means the last date of your employment with the Employer (however occurring);
Works means a literary work, a dramatic work, a musical work, an artistic work or a cinematograph film.



APPENDIX A

Item 1	Position	Site Engineer
Item 2	Agreement Commencement Date	28/8/18
Item 3	Report to Person/Role	[REDACTED]
Item 4	Location of work	Sydney & Greater Sydney Area
Item 5	Base Salary	\$60,000

'MA-2'

Contact Human Resources

29 May 2018

[Redacted]

[Redacted]

Dear [Redacted]

OFFER OF EMPLOYMENT

We have pleasure in confirming our offer of the full-time position of Graduate Engineer within our [Redacted]. Should you accept this offer, you will report to [Redacted]

[Redacted]

We enjoy being able to offer diverse and challenging employment to each employee, and we are very pleased that you will be part of our team.

The attached Employment Agreement sets out the terms and conditions of your employment. Also included is some general information on the Company for your perusal. Further details of company policies and procedures will be explained upon commencement.

Please confirm your acceptance of this offer by signing and returning the duplicate copy of your Employment Contract within 7 days from the date of this letter. If your acceptance is not received by this date or an alternate date has not been mutually agreed, this offer will lapse. Further information regarding your on-boarding in our Human Resource Information System will be provided upon receipt of your signed Offer of Employment and Employment Agreement.

We are confident that you will find your employment with us a valuable and rewarding experience, and we look forward to welcoming you to the [Redacted].

Yours faithfully

[Redacted Signature]

[Redacted]

[Redacted]

- 8. Above award payments** If an award is applicable to your employment, your total remuneration package, including any non-cash benefits, may be applied in satisfaction of any entitlements you may have under that award (for example, overtime, leave loading, penalty rates, meal allowances etc). Your salary is not a rate of pay for ordinary hours on which penalties or other award entitlements may be calculated, if they apply to you.
- 9. Annual leave** You will be entitled to an accrual of twenty (20) working days' annual leave per annum. All leave is subject to approval. Where work load is low, or where you have an excessive leave balance, [REDACTED] may require you to take annual leave.
- The business closes over the Christmas and New Year period. At this time you will be required to take any annual leave available or, in the absence of accrued annual leave, you will be required to take unpaid leave.
- 10. Public holidays** You are entitled to the gazetted public holidays in the state or territory that is your primary place of employment.
- 11. Personal leave** You will accrue ten (10) days' personal leave per annum. You may be required to provide a medical certificate or statutory declaration for any period of personal leave. Accrued personal leave is not transferable for cash at any time.
- 12. Long service leave** You will be entitled to long service leave in accordance with [REDACTED]'s Leave Policy (Australia) and applicable legislation. Long Service Leave applications are subject to approval by your Supervisor.
- 13. Health and safety** [REDACTED]'s Health and Safety Policy outlines our commitment to providing a safe and healthy work environment. The responsibility for complying with all health and safety laws and maintaining a safe and healthy work environment is shared between [REDACTED] and employees.
- Health and safety procedures are contained within the Health and Safety Management System on the intranet. You will also be provided with information concerning your individual responsibilities.
- 14. Quality Management** [REDACTED]'s Quality Management Policy outlines our ongoing commitment to quality and continuous improvement. You must perform your work to the required standards. Quality management procedures and requirements, including local work instructions, are contained within the Quality Management System on the intranet
- 15. Policies and procedures** [REDACTED]'s policies, standards and procedures operate independently of this employment agreement and may be added to, modified or withdrawn at any time.
- All employees are to comply with [REDACTED]'s policies and procedures and failure to do so may be taken into account in assessing your performance and your conduct as an employee. Conduct which is in breach of policies or procedures may, in particular cases, justify disciplinary action, including termination of employment. Please ensure you are familiar with [REDACTED]'s policies and procedures, which can be accessed via the company's intranet, or obtained from your Business Unit Manager or Human Resources. You will

also be required to keep up to date with any amendments or additions to these policies and procedures.

16. Pre-existing medical conditions

At the time of commencement of employment, you must advise [REDACTED] of any pre-existing medical conditions that may in any way be affected by your performance of, or affect your ability to perform, the job for which you are employed.

17. Probation

When you first commence employment with [REDACTED], you will be on a probationary period for the first six (6) months. During this time, your employment may be terminated by either party with one (1) week's notice in writing.

At the end of the six (6) months' probation, your employment will either be confirmed as permanent or your employment will be terminated.

18. Termination of employment

After successfully completing the probationary period, your employment may be terminated by either party by giving four (4) weeks' notice in writing. If you are over 45 years old and you have been an employee of [REDACTED] for at least 2 years, you will be entitled to an extra week's notice.

[REDACTED], at its discretion, may elect to terminate your employment prior to the end of your notice period and, in lieu, pay you the amount of salary and superannuation you would have been entitled to had you worked for the remainder of the notice period.

[REDACTED] reserves the right to terminate your employment without any period of notice or pay in lieu if you:

- (a) disobey a lawful direction of [REDACTED];
- (b) are guilty of serious misconduct;
- (c) breach any material provision of this employment agreement; or
- (d) are found guilty by a court of a criminal offence.

Upon termination of employment, [REDACTED] may deduct from your final payment any money owed to the Company by you.

On termination, you will immediately return all property belonging to us including any material containing Confidential Information.

19. Training

[REDACTED] places great value on continued training. You will be required to undertake regular compliance and job-related training, provided by the company, from time to time as part of your normal duties.

While managing your training needs is a shared responsibility between you and your Manager, it is expected you will: (a) take responsibility for ensuring you maintain the appropriate job-related knowledge, skills and abilities to perform in your position as well as for managing your professional development; (b) actively participate in identifying your learning and development needs; and, (c) actively participate in the learning and development activities provided.

20. Membership of professional associations

It is encouraged that all professional employees will either be members or will become members of their relevant professional association (eg. Engineers Australia).

21. Responsibilities

In carrying out your duties it is your responsibility to:

- (a) perform the duties assigned to you to the best of your ability and knowledge;
- (b) act in [REDACTED]'s best interests and use your best efforts to promote the interests of [REDACTED];
- (c) comply with all lawful directions of [REDACTED];
- (d) comply with all laws applicable to your position and the duties assigned to you;
- (e) report to the person or persons nominated by [REDACTED] from time to time; and
- (f) observe the confidentiality of our clients' and [REDACTED] information

You are expected to:

- (a) display a mature and responsible attitude towards work;
- (b) be technically competent within your level of experience;
- (c) show initiative in solving problems;
- (d) continually develop your knowledge and skills for the performance of your duties under this employment agreement;
- (e) demonstrate respect to others; and
- (f) co-operate with and develop good relations with all people with whom you interact with during your employment.

22. Intellectual property

If you create Intellectual Property in the course of or in any way connected with your employment with [REDACTED], all rights, title and interest in the Intellectual Property will immediately upon creation vest in [REDACTED]

For the purposes of this clause, "Intellectual Property" means any invention, discovery, secret process, trade mark, service mark, copyright work, design, patent, know how and any other intellectual property right throughout the world.

[REDACTED] utilises technology under licence agreements from other organisations. You must familiarise yourself with these agreements and comply with these agreements at all times.

You consent to [REDACTED], companies in the [REDACTED] Group and others to whom [REDACTED] has contractual responsibilities infringing any moral rights that you may have or become entitled to in any work created, developed, modified or enhanced by you in the course of your employment. For the purposes of this consent "moral rights" and "work" have the meanings given to them in the Copyright Act 1968 (Cth).

23. Confidentiality

During your employment with [REDACTED] you may receive Confidential Information about the [REDACTED] Group, its clients and activities. Confidential Information is more particularly defined in the

Confidential Information Policy, a copy of which may be accessed via the intranet. You must keep Confidential Information Confidential, both during your employment and after you leave [REDACTED]'s employment. You must not disclose the Confidential Information to any person without [REDACTED]'s consent unless you are required to do so by law. You must not use Confidential Information for your own purposes or for any other person's benefit.

24. Staff liability

[REDACTED] will indemnify you and keep you indemnified against civil liability for any claim for compensation or financial penalty and costs imposed in any professional disciplinary proceeding arising out of or in respect to professional work performed by you in the normal course of your employment and at the direction of [REDACTED] provided you comply with the following:

- (a) you perform all your work in accordance with this agreement, the [REDACTED] Group's procedures, policies and Quality Management System;
- (b) you do not exceed Authority Levels, as set out in the Quality Management System ;
- (c) you follow all reasonable instructions of [REDACTED] in performing your work;
- (d) you do not wilfully or recklessly commit any act or omission in the performance of your work;
- (e) you do not engage in any fraudulent, criminal, dishonest and/or malicious acts or omissions or wilful breach of any statute, contract or duty during the course of your professional work; and
- (f) you notify [REDACTED] of any claim or circumstance that may give rise to a claim within 48 hours of you becoming aware of it.

25. Other employment

Whilst employed by [REDACTED] you must not work for any other employer without first obtaining the express written permission from your Business Unit Manager.

26. Employment with [REDACTED] Group's clients

If you are considering leaving [REDACTED] and commencing work with a client of [REDACTED] we request that you discuss the matter with your Supervisor before making any binding arrangements.

27. Non-Solicitation

In consideration of your remuneration and training and the necessity to protect our goodwill, trade connection, trade secrets and Confidential Information which you may acquire in the course of your employment, you undertake and agree that whilst you are employed by us, and for a period of 6 months after your employment ends:

- (a) you will not entice, encourage or solicit the resignation of any employee of [REDACTED] with whom you have had a working relationship and in respect of whom you have been in a position of influence or supervision;
- (b) you will not entice, encourage or solicit any client of the [REDACTED] Group with whom you have or have had a working relationship during your employment with [REDACTED] in the 12 months prior to your termination.

28. Legal entitlement to work Your acceptance of this offer of employment is conditional on you being legally entitled to undertake the employment that is being offered. If it is subsequently discovered after you have signed this letter that you are not so entitled for whatever reason, [REDACTED] may at its discretion, or in accordance with its legal obligation, withdraw this offer or terminate your employment. If such termination occurs you will not be entitled to receive any compensation as a consequence of the termination.

29. Duty of disclosure This offer of employment is on the basis of information you have provided [REDACTED] about your qualifications and experience and in the absence of any other information that might reasonably affect our decision. You have a responsibility to advise us of any matter that might have bearing on your employment, now or in the future. Failure to do so may be grounds for dismissal.

This offer of employment is made subject to you providing copies of relevant certifications, qualifications and licences. These must be provided prior to your commencement of employment.

30. Parties to whom obligations owed The obligations with respect to intellectual property, confidentiality and non solicitation are owed to all companies in the [REDACTED] Group.


31. Arrangements of first day Please speak to [REDACTED] regarding the arrangements for your first day.

ACCEPTANCE OF APPOINTMENT

Both parties accept and agree to the terms and conditions of this Employment Agreement and acknowledge that this Employment Agreement contains the entire agreement between the parties and supersedes all prior representations made by the Company and all previous agreements between the parties. Any amendments or additions to this employment agreement must be in writing.


Please sign below and return this Employment Agreement to your relevant Talent Acquisition or Human Resources representative along with any other requested information. Please also keep a duplicate copy for your own records.

Signed:



For the Company

29 May 2018
Date



Date

'MA - 3'



Tuesday, 30 October 2018

Private & Confidential



Dear

LETTER OF OFFER

Further to our recent discussions, I am pleased to confirm our offer of employment with (Company), initially in the position of **Graduate Engineer** – commencing on **03 December 2018**.

In this position, you will report to and work under the direction of or other persons nominated by the Company from time to time. A copy of your position description is **attached** as Attachment B.

Terms of Employment

Your employment contract (**Agreement**) for this position is comprised of this letter of offer and the attached Terms Sheet. Your employment is also subject to the National Employment Standards contained in the *Fair Work Act 2009* and any award or industrial agreement which may apply to your employment from time to time. However, the provisions of the *Fair Work Act 2009* and any applicable award or industrial agreement do not form part of your employment contract.

Remuneration

Your total on target remuneration package (**OTRP**) for this position is valued at **\$78,292.50** per annum.

Your OTRP is made up of the following components:

- Gross Base Salary of **\$65,000.00** per annum.
- Performance Based Incentive
- Superannuation

In relation to the Performance Based Incentive, you may be entitled to incentive payments in accordance with the **IP Scheme**. Under this scheme(s) you are eligible for an incentive payment based on **10%** of your Gross Base Salary with the final percentage depending on your own personal performance, as assessed by your manager and/or the results of the business. This incentive is an "At Risk" component of your OTRP and no payment is guaranteed. Your participation in this scheme(s) and the terms and conditions surrounding the scheme(s) are subject to alteration at the discretion of the Company and your ongoing participation in the scheme(s) will be reviewed annually.

Further details regarding your remuneration are set out in the Terms Sheet and in Attachment A to this letter.

Hours of Work

You will be employed on a **Fixed Term** basis.



Your ordinary hours of work will be **38 hours per week** plus such reasonable additional hours as are required to perform your duties, consistent with the Company's operational requirements. No additional remuneration will be payable for additional hours worked.

Your normal hours of work are between 8.30 am and 5.00 pm from Monday to Friday. You may be required to work outside these hours in order to discharge your duties.

Term of Employment

You will be employed for a **fixed term** period, commencing on **3 December 2018** and concluding on **30 June 2019**, unless your employment is terminated earlier in accordance with clause 8 of the Terms Sheet.

Probationary period

In accordance with our practice for all new staff, this offer of employment is subject to the satisfactory completion of a **six (6) month** probationary period. During this probationary period (up to and including the last day of this period), your employment may be terminated by either you or the Company giving one week's written notice. If the Company decides to terminate your employment during this period, it may, in its absolute discretion, pay you a sum equal to one week of your base salary in lieu of notice.

Location

Your initial place of employment will be [REDACTED] You may be required to travel to other locations as required by the Company or your duties.

Welcome

We welcome you into this position and look forward to your successful future with the Company.

In order to accept this offer, please sign the enclosed duplicate copy of this letter and return the signed copy to the undersigned, using the enclosed envelope, as soon as possible.

Yours sincerely

[REDACTED]
[REDACTED]

I, [REDACTED], have read and understood and I accept the terms and conditions of employment in this letter and the attached Terms Sheet.

Signature

Date

TERMS SHEET

1. Duties and responsibilities

- 1.1. Unless a variation is agreed in writing by both you and the Company, the terms and conditions in this Terms Sheet (Terms) will apply throughout your employment with the Company, regardless of any change to your duties, responsibilities, hours of work, remuneration, location or position.
- 1.2. You will perform the duties set out in your position description, together with such other duties as may be reasonably required by the Company from time to time.
- 1.3. The Company reserves the right to change your duties, role or reporting lines (either temporarily or permanently) to meet the operational needs of the business. This clause does not permit the Company to reduce your Gross Base Salary unilaterally without your agreement.
- 1.4. During your employment with the Company, in whichever position you hold, you will:
 - a) be faithful and diligent, and actively pursue the Company's best interests and at all times maintain reasonable ethical, professional and technical standards;
 - b) devote the whole of your time, attention and skill during normal working hours and at other times as reasonably necessary to your duties;
 - c) not act in conflict with the best interests of the Company;
 - d) not compete with the Company;
 - e) not, in performing your duties, accept any financial or other benefit except from the Company;
 - f) not conduct yourself in a manner, whether during or after work hours, that causes damage or potential damage to the Company's property or reputation;
 - g) not use internet, email or voicemail at the Company's workplace for excessive personal use or to view or distribute offensive or illegal material;
 - h) not unlawfully discriminate or sexually harass another person;
 - i) comply with all work, health and safety requirements imposed by the Company and by the law; and
 - j) conduct yourself in a manner that is in keeping with the Company's Code of Conduct and values.

2. Location

- 2.1. Your initial place of employment will be as stated in your letter of offer. You may be required to travel to other locations as required by the Company or your duties.
- 2.2. The Company may, by giving you reasonable notice, require you to be based in another location. In exercising its rights of relocation, the Company will consult with you and have regard to your personal and family circumstances.

3. Remuneration

- 3.1. Your base salary will be paid on a monthly basis by electronic funds transfer into the account or fund nominated by you, after deduction of all taxes and any amounts subject to salary sacrifice arrangements.
- 3.2. Depending on the terms of your letter of offer, you may be entitled to incentive payments in accordance with the CPIP Scheme, Gainshare scheme, Sales Incentive Scheme or IP Scheme. Under this scheme(s) you are eligible for an incentive payment based on a percentage of your Gross Base Salary with the final percentage depending on your own personal performance, as assessed by your

manager and/or the results of the business. Any incentive payment is an "At Risk" component of your OTRP and no payment is guaranteed.

Your participation in an incentive scheme(s) and the terms and conditions surrounding the scheme(s) are subject to alteration at the discretion of the Company and your ongoing participation in the scheme(s) will be reviewed annually.

- 3.3. The Company will pay superannuation as required under applicable legislation into an approved fund nominated by you or in the absence of such nomination, into a fund nominated by the Company. These superannuation contributions form part of your OTRP.
- 3.4. In the event that the Company's obligations in respect of superannuation contributions increase as a result of legislative change after the date of this letter, the Company reserves the right to offset any increase in contributions against your Gross Base Salary so that your OTRP remains the same despite the increase in contributions.
- 3.5. You authorise the Company to deduct from your salary any amounts you may owe to the Company from time to time, including any overpayment made to you.
- 3.6. Your remuneration fully compensates you for all hours worked and has been set in anticipation that extra work may be required outside normal business hours and in addition to your ordinary hours of work. Your remuneration is intended to satisfy and compensate you for all benefits and entitlements under any applicable award, other industrial instrument or law. This includes, without limitation, any overtime payments, penalty rates, allowances and loadings (including but not limited to annual leave loading) to which you may be entitled under an applicable award, other industrial instrument or law.
- 3.7. Your salary may be reviewed by the Company from time to time at its discretion, but may not necessarily be increased as a result of such review.

4. Expenses

You will be reimbursed for reasonable business expenses incurred in the proper performance of your duties in accordance with the Company's Business Travel, Expenses and Reimbursement Policy, as amended or replaced from time to time.

5. Leave

- 5.1. You will be entitled to annual leave, carer's/personal leave, compassionate leave, jury leave and parental leave in accordance with the *Fair Work Act*, any other applicable legislation, any applicable award and any applicable industrial agreement. Annual leave payments will be calculated on your Gross Base Salary.
- 5.2. Currently:
 - a) full-time employees are entitled to four weeks paid annual leave per year of service; and part-time employees are entitled to a pro-rated portion of four weeks per year of service;
 - b) full-time employees are entitled to ten days of paid personal/carer's leave per year of service; and part-time employees are entitled to a pro-rated portion of ten days per year of service;
 - c) you are entitled to two days of paid compassionate leave for each permissible occasion prescribed by the legislation; and
 - d) you may be eligible for up to 52 weeks of unpaid parental leave after 12 months of continuous service with the Company if you have, or will have, responsibility for care of the child.
- 5.3. If the Company directs you to take Annual Leave during a shutdown period and you do not have sufficient Annual Leave credited to you to cover the period of Annual Leave to be taken, you may choose to have Annual Leave credited to you in advance to cover the shortfall. Alternatively, you may choose to take unpaid leave for the period not covered by Annual Leave credited to you.

- 5.4. If you choose to have Annual Leave credited to you in advance, you will not be entitled to take any further Annual Leave until you have worked enough time to accrue sufficient Annual Leave to cover the period of Annual Leave credited in advance and the period of Annual Leave you subsequently want to take off.
- 5.5. If your employment with the Company is terminated, either by you or the Company, before you have accrued sufficient Annual Leave to cover any Annual Leave credited to you in advance, you agree that the Company may deduct from any sums to be paid to you on your termination, an appropriate amount in respect of any Annual Leave credited to you in advance which is still outstanding at the date of your termination.
- 5.6. Further details of your current leave entitlements, and the steps required by you to take leave, are set out in the Company's Australian Leave Policy.

6. Long Service Leave

- 6.1. You will be entitled to paid long service leave in accordance with applicable State legislation. Long service leave payments will be calculated on your Gross Base Salary.
- 6.2. Further details of your current long service leave entitlements, and the steps required by you to take such leave, are set out in the Company's Australian Leave Policy.

7. Investigation and suspension

If you are under investigation by the Company for any alleged misconduct, the Company may suspend you with pay while the investigation is being conducted.

8. Termination of employment

- 8.1. Following any probationary period applying to your employment, you or the Company may terminate your employment at any time for any reason by giving **six (6) weeks'** written notice of termination or such other period as may be required under the *Fair Work Act* or other applicable legislation.
- 8.2. The Company may terminate your employment summarily and without notice if in the Company's opinion you:
 - a) disobey or refuse to carry out a lawful direction;
 - b) breach any material provision of these Terms;
 - c) are guilty of serious misconduct including, without limitation, committing any act of dishonesty, fraud, theft, serious or wilful breach of duty or workplace policy; serious or wilful neglect in the performance of your duties; being intoxicated at work; or engaging in conduct that causes risk to a person's health and safety or to the Company's reputation, viability or profitability;
 - d) are convicted of an offence precluding or inhibiting the further performance of your duties; or
 - e) cease to be legally entitled to perform work in Australia.

9. Payment in lieu of notice

- 9.1. If notice of termination is given by either you or the Company under this Agreement, the Company may provide you with a payment in lieu of notice for all or part of the notice period.
- 9.2. Subject to any applicable legislative or award requirements, the payment in lieu of notice will be calculated with reference to your base salary only.
- 9.3. If you fail to give the Company the required notice of termination, the Company may withhold from any monies due to you, an amount not exceeding what you would have been paid during the period of notice not provided to the Company, to the extent permitted by law.

10. Garden leave

- 10.1. If notice of termination is given by either you or the Company, the Company may, during all or part of the notice period, direct you not to perform any duties, require you to remain away from the Company's premises, require you not to have any dealing with customers or clients of the Company, and/or change your duties.
- 10.2. You will remain an employee of the Company during the notice period and you agree not to commence work with any other person or entity during this period.

11. Payment on termination

- 11.1. If your employment is terminated under clause 8 (Termination of Employment), you have no further claims against the Company in respect of the termination of your employment except in respect of:
 - a) any remuneration or leave benefits due but unpaid at the Termination Date; and
 - b) any amount required to be paid under any applicable legislation.

12. Severance pay

Your employment is for a limited term and will automatically cease on the End Date. You will not be entitled to any severance payment by reason of the conclusion of your employment on the End Date.

13. Obligations on termination

- 13.1. If your employment is terminated for any reason, then:
 - a) to the extent permitted by law, the Company may set off any amounts you owe the Company against any amounts the Company owes you at the Termination Date; and
 - b) you must immediately return all of the Company's property (including property leased by the Company) including (but not limited to) all documents, files, Confidential Information, software, product samples, computers, credit cards, keys, vehicles, laptops, mobile telephones and data devices.

14. Policies

- 14.1. You are required to read, and comply with, all relevant Company policies and procedures, including but not limited to:
 - a) all work health and safety policies and procedures;
 - b) the Information Technology, Mobile Phones and Company Issued Equipment Policy;
 - c) [REDACTED] Industries plc's Code of Conduct and Business Ethics;
 - d) the [REDACTED] Australia Equal Employment Anti-harassment and Discrimination Policy; and
 - e) the Insider Trading Policy.
- 14.2. The Company's policies, procedures and Code of Conduct are not incorporated into this Agreement or your contract of employment as an express or implied term. To the extent that the policies, procedures or Code of Conduct describe benefits and entitlements to which you may be entitled, these are discretionary and are not intended to be contractual entitlements.
- 14.3. The Company reserves the right to change its policies and procedures from time to time as it considers necessary.

15. Workplace Health and Safety

- 15.1. You are responsible for taking reasonable steps to maintain your own health and safety, and that of others, and you are expected to follow all workplace health and safety directions given to you, all requirements under work health and safety legislation that may apply to you, and all procedures and policies the Company has in place from time to time.

15.2. You must report any accidents or hazards arising during the course of your employment, or any concerns you may have in regard to health or safety in the workplace, to management as soon as possible.

16 Exclusive engagement

16.1 During your employment with the Company, in whichever position you hold, you must not:

- a) be employed by or provide any services to anyone other than the Company; or
- b) be engaged, concerned or interested in any other business or undertaking, without the Company's prior written consent.

16.2 However, despite this clause, you are permitted to hold a shareholding of up to 5% in a company listed on any recognised stock exchange without seeking the Company's prior consent.

16.3 Now and at any time during your employment you must declare any potential conflict of interest, which might affect the decisions of the Company in dealing with any third party, where either you or an associate or family member has an interest in that third party by way of employment or financial interest or any potential personal gain.

16.4 The Company may require you to provide evidence confirming to its satisfaction that you are not in breach of this clause.

17 Medical Examination

17.1 You agree to undertake a medical examination and/or provide medical information to the Company in relation to yourself, if requested by the Company at any time during your employment, subject to the request being:

- a) for a legitimate business purpose connected with you (for example, for insurance or superannuation purposes); or
- b) to assess your fitness for work; or
- c) to determine your ability to perform the inherent requirements of any position you may hold with the Company from time to time.

17.2 For the avoidance of doubt, the Company may exercise this right for the purposes of:

- a) determining whether to grant you ongoing personal/carer's leave; or
- b) determining whether your employment should be terminated for incapacity; or
- c) complying with its work health and safety obligations; or
- d) assessing your fitness for work and/or to return to work after a period of personal/carer's leave; or
- e) obtaining a second opinion where you have provided a medical certificate/report.

18 Former Employer Information

It is the Company's policy to respect the intellectual property, confidential information, and proprietary rights of others. You represent and warrant that you do not possess any confidential, proprietary information belonging to any former employer or third party that you will use or disclose, or induce the Company to use or disclose, in connection with your employment with the Company. You also represent that you have returned to your prior employers all documents and records (whether written or electronic) containing any confidential, proprietary information belonging to such prior employers.

19 Confidential Information and protection of the Company's interests

19.1 Confidential Information is and will remain the sole and exclusive property of the relevant Beneficiary.

19.2 During and after your Employment, you must:

- a) keep all Confidential Information secret and confidential;
- b) take all reasonable and necessary precautions to maintain the secrecy and prevent the disclosure of any Confidential Information;
- c) not obtain or attempt to obtain Confidential Information that you do not need to know in order to perform your duties;
- d) not disclose to other Company or Beneficiary employees any Confidential Information that they do not need to know in order to perform their duties;
- e) not disclose any Confidential Information to any third party; and
- f) not retain, use any part of, remove, memorise or make copies of any Confidential Information,

except:

- g) as reasonably required in the ordinary and proper course of performing your duties during the Employment;
- h) to the extent required by law; or
- i) where you have the written consent of the chief executive officer of the Company, or another person duly authorised by the Company, to do so.

19.3 During and after your Employment, on request by the Company, you will deliver to and permit the Company and any IT specialist nominated by the Company to have access to and to copy or take an image of every computer, smart phone or other electronic device, storage unit or media or data file to or on which you have copied, recorded, sent or otherwise transferred or saved any Confidential Information, for the purpose of enabling the Company to ensure your compliance with your obligations under clause 19.2 and to identify whether any further copying, transmission or transfer of the Confidential Information has occurred.

20. Intellectual Property and Moral Rights

20.1. You hereby assign to the Company all existing and future Intellectual Property (other than those rights which you are not obliged to assign pursuant to the paragraph 20.7 below).

20.2. You acknowledge that by virtue of this clause all such existing rights vest in the Company and on their creation all such future rights will also vest in the Company.

20.3. Any document (including personal notes, memoranda, or diary entries) created by you or relating to any matters within the scope of the business of any Beneficiary, or concerning their dealings or affairs, will be the property of the Company and must be left at its registered office or at such other place as the Company may direct upon termination of your Employment.

20.4. You will immediately inform the Company of, and provide it with, full details relating to any and all Intellectual Property that you may make either alone or jointly with others in relation to or arising

during the course of your Employment or during the Restraint Period, whether or not the same are capable of being protected by patent, copyright, registered design or otherwise.

- 20.5. You will sign all documents and do all acts necessary to obtain such protection as the Company considers necessary for the Intellectual Property and to vest or otherwise perfect the vesting or assignment of the ownership of such rights in the Company.
- 20.6. You acknowledge that you may have Moral Rights. By signing this Deed you provide an unconditional and irrevocable consent to the Company to commit any act or omission that would otherwise constitute an infringement of your Moral Rights in the Intellectual Property, whether such intellectual property is created prior to or after this consent is given. You also agree to unconditionally and irrevocably waive your Moral Rights in the Intellectual Property in all other countries insofar as you are able.
- 20.7. Notwithstanding the terms of this clause 20 and the definition of Intellectual Property, you are not obliged to assign, and the Company is not entitled to any interest in, any Intellectual Property created by you after the expiration of Restraint Period ("New IP") unless:
 - a) there is an agreement that applies to the New IP at that time that expressly provides such rights; or
 - b) the New IP embodies, uses or is dependent on the use of Confidential Information in contravention of this Deed, in which case the terms of clauses 20.1 to 20.6 will apply to the New IP.
- 20.8 You warrant that any Intellectual Property created by you will not infringe or violate the rights of any third party and will not be copied or adapted from any other source (except with the written consent of the Company and subject to any necessary clearances or licences being obtained).

21 Surveillance

- 21.1 Computer use, including internet and email use, may be subject to surveillance and monitoring by the Company on an ongoing basis, by all means available, including by way of accessing, reviewing and monitoring all data and messages stored, sent or received over the Company's electronic communications system (including internet and email) or on the Company's computers, and in accordance with the Company's practices in place from time to time. For the avoidance of doubt, if you are employed in New South Wales, this clause 21.1 constitutes notice of surveillance for the purposes of section 10 of the *Workplace Surveillance Act 2005* (NSW).
- 21.2 You may also be subject to camera surveillance while at work.

22 Non-solicitation

- 22.1 You shall not during the period of your employment with the Company or for the Period of Restraint:
 - a) directly or indirectly in any capacity (including, without limitation, as director, shareholder, consultant, beneficiary, guarantor) approach or procure the approaching of (directly or indirectly) any person, entity or company who or which is or has been a client of the Company or its related bodies corporate with a view to soliciting any business of such client that in the reasonable opinion of the Company is competitive with the business of the Company or its related bodies corporate, either for yourself or any other person, entity or company, nor will you accept approaches from any such client to handle such business;
 - b) induce or solicit either directly or indirectly any agent or employee of the Company or its related bodies corporate to leave the employment of the Company; or
 - c) directly or indirectly employ the services of any person who is or was in the employ of the Company or its related bodies corporate at the time of the termination of your employment, or within twelve months prior to the termination of your employment.

22.2 For the purposes of clause 22.1, "Period of Restraint" means:

- a) twelve (12) months, but if that is held by a court of competent jurisdiction to be unenforceable then;
- b) nine (9) months, but if that is held by a court of competent jurisdiction to be unenforceable then;
- c) six (6) months.

23. Privacy

23.1 You consent to the Company collecting and using personal information and sensitive personal information as defined in the *Privacy Act 1988* (Cth) for any purpose relating to your employment with the Company. The personal information will be held in a secure location.

23.2 You also consent to the Company disclosing personal information and sensitive personal information about you to other persons for reasons relating to your employment or for the Company's business requirements. These persons include the Group, the Australian Tax Office, superannuation fund trustees and administrators, insurers, medical or occupational practitioners, financial and legal advisers, potential purchasers on sale of business and law enforcement bodies.

24 Survival of obligations

24.1 Your obligations under clause 11 (Payment on Termination), clause 12.1 (Obligations on Termination), clause 19 (Confidential Information) and clause 20 (Intellectual Property and Moral Rights) survive the termination of your employment.

24.2 The Company may protect its interests by seeking injunctive relief against you should it obtain information that you may breach or are breaching the obligations in clause 19 (Confidential Information) and clause 20 (Intellectual Property and Moral Rights).

24.3 Your obligations under any Deed Poll executed by you in favour of the Company and any related bodies corporate will, unless the Deed Poll states otherwise, survive the termination of your employment.

25. Warranty

25.1 You warrant that the information the Company has relied on in appointing you to the position is true and correct and that you have are capable of carrying out the duties required of your position.

25.2 You warrant that you are able to accept this offer of employment and that you are not subject to any restrictions or limitations (including but not limited to restraints imposed by previous employers or limitations on your legal entitlement to work in Australia) preventing you from accepting this offer of employment, or limiting your ability to perform the duties in your position description.

25.3 The Company may undertake pre-employment checks prior to the commencement of your employment with the Company. If the results of these checks are unacceptable to the Company, the Company may revoke your offer of employment or, if you have already commenced as an employee, summarily terminate your employment without notice.

26. Governing law

These Terms will be governed by the laws of the State or Territory in which you are employed. The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory.

27 Entire agreement

The letter of offer, these Terms, and any Deed Poll executed by you in favour of the Company, constitute the entire agreement of the parties with respect of the matters dealt with in these documents. They supersede

all prior agreements, understandings, arrangements and negotiations in respect of your employment except to the extent that any such prior agreements, understandings or arrangements include obligations relating to the protection of Confidential Information or Intellectual Property and Moral Rights (Pre-existing Obligations). If you are subject to any Pre-existing Obligations, those obligations continue to apply and are not limited or reduced by this Agreement. If there is any inconsistency between the terms of any Pre-existing Obligations and the terms of this Agreement, the most favourable enforceable provision for the Beneficiaries will take precedence. No other term can be implied or inferred.

28.1 Variation

The Agreement may not be modified, varied or changed in any way subsequent to its execution, except in writing and signed by both you and the Company.

29. Definitions

“Confidential Information” means all and any information (whether in written, electronic or any other form) of which you become aware that is treated or identified by the Group as confidential, whether you become aware of it before or after the date of your appointment to this role, but does not include information or technology:

- a) that is already in the public domain, other than as a result of a disclosure that was not authorised by the Group company to which the information or technology belonged; or
- b) that the Company has agreed in writing with you, or any of its employees, may be disclosed to the public.

Confidential Information includes, but is not limited to:

- c) manufacturing, materials, processes, techniques and equipment;
- d) product specifications, formulations, know-how and properties;
- e) research and development, discoveries and improvements;
- f) production, secret or unpatented inventions, experiments, data, prototypes and designs;
- g) product pipeline information;
- h) information about current and prospective customers and suppliers including but not limited to contact names and contact information, preferences and customer and supplier agreements;
- i) information received by the Company or the Group from third parties under obligations of confidentiality;
- j) pricing information and terms of sale;
- k) costs;
- l) operations;
- m) business plans;
- n) sales and marketing information and strategies;
- o) non-public financial and accounting information;
- p) information regarding the skills and abilities of other employees, particularly if you are in management or part of the Human Resources function (but excluding the information regarding the terms and conditions of employees’ employment);
- q) any other Intellectual Property of any kind, nature or description, tangible or intangible, in whatever form, of the Company, its affiliates, vendors and customers and
- r) any copy, extract, note or other record of the Confidential Information made by you or any other person, wherever contained or recorded.

Confidential Information does not lose its confidential status merely because it was known by a limited number of persons or entities or because it did not originate entirely with the Company.

"Fair Work Act" means the *Fair Work Act 2009* (Cth).

"Group" means:

- a) the Company
- b) [REDACTED]
- c) [REDACTED]
- d) any entity that is ultimately owned by [REDACTED]; and
- e) any related body corporate or associated entity of the above, as defined in the Corporations Act 2001;

jointly and severally.

Intellectual Property means all discoveries, developments, designs, ideas, improvements, inventions, formulae, processes, techniques, know-how, data, works of authorship, compositions of matter, computer software programs, databases, mask works, trademarks, service marks, trade secrets, Confidential Information, and all other intangible property (whether or not protectable by patent, copyright, or as trade secrets) that:

- i. relates at the time of conception, reduction to practice, or fixation in a tangible medium by you, to any Beneficiary's business;
- ii. relates at the time of conception, reduction to practice, or fixation in a tangible medium by you to any actual or demonstrably anticipated research or development of the Company or any part of the Business; or
- iii. results from any work performed by you for any Beneficiary, either alone or jointly with others, during the period of your Employment whether or not in the course of your Employment, and whether or not such Intellectual Property is protectable by patent, copyright, or as trade secrets.

"Moral Rights" means the following rights created by the *Copyright Act 1968* (Cth):



- a) the right of attribution of authorship;
- b) the right not to have authorship falsely attributed; and
- c) the right of integrity of authorship,

and any other similar right capable of protection under any applicable legislation.

"Termination Date" means the date when you cease to be employed by the Company for any reason.


Attachment A

On Target Remuneration Package Details Form

Employee's Name:	
Location:	
Effective Date:	03 December 2018

ON TARGET REMUNERATION PACKAGE	DETAILS
Gross Base Salary	\$65,000.00
Superannuation contribution on Gross Base Salary (currently 9.5%)	\$6,175.00
Performance Based Incentive*	\$6,500.00
Superannuation contribution on Performance Based Incentive* (currently 9.5%)	\$617.50
TOTAL OTRP	\$78,292.50

*subject to eligibility

Department Manager's Signature:		Date:	30/10/2018
Employee's Signature:		Date:	



Attachment B

(Position Description Attached)



'MA-4'

Private and Confidential

Dear [REDACTED]

On behalf of [REDACTED] I am pleased to confirm the offer of employment made to you as full time Position Project Engineer. The terms and conditions pertaining to your employment are contained in the attached Contract of Employment.

If you are comfortable with the contents of the Contract of Employment and agree to accept the offer of employment made to you, please sign one copy and return it to our offices no later than Friday 31st August, 2018. Please retain a second copy for your records.

In addition, attached is the following documentation:

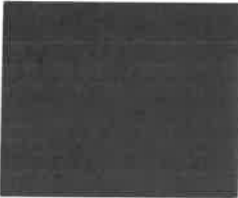
- Tax File Declaration Form
- Personal Details / Emergency Contact / Bank Details / Superannuation Form
- Fair Work Information Statement (reference only)
- Pre-Employment Health Decoration
- Confidentiality Agreement

Please complete the relevant documentation as provided and bring it with you on your first day of employment. Superannuation Guarantee Contributions (SGC) will be deposited into a Superannuation Fund of your choice however, in the event you do not provide such information, an account will be opened in your name with the Company default fund, in which contributions will be deposited.

Congratulations [REDACTED] we look forward to your valuable contribution to the [REDACTED] team. I am sure you will find it both a rewarding and challenging experience.

Should you have any questions in regards to any aspect of this letter of offer or the attached contract, please do not hesitate to contact me on [REDACTED]

Yours sincerely,



CONFIDENTIAL – CONTRACT OF EMPLOYMENT

Employee Name:	[Redacted]
Position Title:	Project Engineer
Company:	[Redacted]
Location:	[Redacted]
Reporting to:	[Redacted]
Commencement Date:	1st September, 2018
Employment Type:	Full Time
Annual Salary (Current):	Your remuneration is paid on an annualised basis. Your annual salary is \$70,000.00 gross per annum <u>plus</u> superannuation. The net amount will be deposited into your nominated bank account each pay cycle which is currently fortnightly.
Superannuation:	Superannuation contributions paid on your behalf by the Company are paid as per the Superannuation Guarantee Contribution Legislation (currently at 9.5%).
Hours of Work:	In regards to your role, you are employed to work a 38 hour week, Monday to Friday. Hours of work are 8.30 am and 5.00 pm. Employees are entitled to an unpaid meal break of 54 minutes.
Additional Hours:	Your salary is set at a level which incorporates reasonable additional hours and / or after hours work when necessary / from time to time to fulfil the duties and responsibilities related to your role and the Company's operational requirements. Payment for additional hours may be made and when applicable, is at the Company's discretion and at a rate as determined by the Company.
Set Off:	Except as specifically provided for under this Contract, your remuneration package compensates you for any legal entitlement (such as, but not limited to, any minimum weekly wages, overtime payments, weekend and holiday penalties, shift allowance/penalties, annual leave loading, travelling expenses, higher duties allowance, first aid allowance, meal breaks, penalty payments including overtime, payments on public holidays and such other provisions as may be permitted by law (Industrial Instrument), with the exception of leave entitlements and any redundancy pay. This clause shall not operate in a manner which results in you receiving less than the total combined monetary value of all of your legal and relevant award entitlements as a consequence of your employment with the Company.
Probationary Period:	Ongoing employment is subject to satisfactory completion of a six (6) month probationary period. Throughout your probationary period you will be given regular feedback on your performance in relation to expectations, which will be communicated to you upon commencement with the Company.



Performance Expectations:	Employee performance, including behaviours will be monitored in line with company expectations and the duties and requirements outlined in the position description pertaining to the role.
Performance and Salary Review:	Employees base salary is reviewed on an annual basis and considers employee performance along with the financial performance of the Company. A review of base salary does not necessarily constitute a salary increase.
Use of Company Vehicle:	<p>Employees operating a company motorised vehicle (including trucks, cars, utilities, forklifts, etc.) must act in accordance with the Company's Motor Vehicle Policy at all times.</p> <p>Employees must hold and maintain current and relevant licences at all times.</p> <p>Individual employees are responsible for notifying the company of any change to the status of any relevant licence or qualification.</p>
Use of Employee Private Vehicle:	<p>You are required to use your own vehicle in connection with the duties of your position whilst undertaking local and country travel in the normal course of your duties</p> <p>You will be reimbursed per kilometre for all travel for business purposes using your own vehicle. The current rate of reimbursement is \$0.70 per kilometre. Reimbursement will be made in line with Company Policy. The rate subject to change at the Company's discretion and in line with relevant legislation.</p> <p>The rate is paid is an all-encompassing payment and in lieu of costs associated with maintaining all running costs including but not limited to fuel, registration, insurance tolls, repairs, lease payments etc.</p> <p>The Company will endeavour to minimise employees travel in the employee's own vehicle.</p> <p>Employees using their own vehicle must act in accordance with the Company Policy.</p>
Use of Personal Phone:	<p>You will be reimbursed \$25.00 per month costs associated with use of your own mobile phone whilst undertaking your duties at the Company. The rate is subject to change at the Company's discretion; conversely a mobile phone may be issued at the company's discretion.</p> <p>Use of a personal phone for business purposes must be in accordance with Company Policy.</p>
Laptop Computer:	You will be issued a laptop computer in order to undertake the inherent requirements of your role. Use of the laptop is in line with Company Policy.

Travel Allowance	<p>From time to time your role will require extended periods on site and remote from your place of residence. To compensate you for the additional costs associated with living away from home you will be entitled to claim a Meals and Incidental Allowance of \$80.00 per day and is subject to change at the Company's discretion.</p> <p>The allowance is a per night rate for living expenses with the exception of accommodation costs and is to be claimed based on the number of overnight stays away per travel period.</p> <p>Accommodation costs are to be claimed separately under employee expenses. Payment will occur through the payroll system.</p> <p>Whilst travelling on Company business employees must act in accordance with Company Policy.</p>
Public Holidays:	<p>In line with the National Employment Standards (NES) employees are entitled to be paid for a public holiday where the public holiday falls on a day on which the employee is normally scheduled to work.</p> <p>The following public holidays, as prescribed are observed by the company:</p> <ol style="list-style-type: none"> a. New Year's Day, Australia Day, Labour Day, ANZAC Day, Good Friday, Easter Saturday, Easter Monday, Queens Birthday, AFL Grand Final Friday, Christmas Day and Boxing Day. b. Melbourne Cup Day
Annual Leave:	<p>In line with the National Employment Standards (NES) you are entitled to 20 days of annual leave per annum which accrues progressively.</p>
Personal Leave:	<p>In line with the National Employment Standards (NES) you are entitled to 10 days of Personal Leave per annum which accrues progressively.</p> <p>You are also entitled to <u>unpaid</u> Carers Leave in accordance with the National Employment Standards (NES).</p>
Parental Leave, Compassionate Leave and Community Service (Incorporating Jury Service) Leave:	<p>In line with the provisions of National Employment Standards (NES).</p>
Long Service Leave:	<p>In line with the provisions of the Long Service Leave Act (Vic) 1992 and National Employment Standards (NES).</p>
Flexible Working Arrangements:	<p>In line with the provisions of the National Employment (NES) and Fair Work Act 2009.</p>



Notice of Termination of Employment:

As per the relevant Award/Enterprise Agreement and National Employment Standards (NES). In order to terminate the employment of a full-time employee, notice by the Company shall be as follows:

Employees period of continuous service with employer at the end of the day the notice is given	Minimum Period of Notice
Not more than 1 year	1 week
More than 1 year and not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

In addition to the abovementioned notice, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service are entitled to an additional week's notice.

Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the employee working part of the required period of notice and by the Company making payment for the remainder of the period of notice.

The company is entitled to terminate your employment immediately and without notice in the event of serious misconduct which includes but is not limited to:

- a. Theft or dishonesty
- b. Fighting or abusive conduct
- c. Harassment, bullying or discriminatory behaviour
- d. Being intoxicated at work
- e. Serious breach of a Company Policy

Notice of Termination of Employment by the Employee:

The employee is required to provide the same notice period as would be given by the Company, in writing excluding the additional weeks' notice based on age where applicable. Payment in lieu of notice will be made by the Company if the notice period is not required to be worked.

Dispute Resolution:

As a result of a dispute arising in relation to a term of the relevant Award/Enterprise Agreement or National Employment Standards (NES) the matter shall be resolved in line with the Dispute Resolution Clause of the Award/Enterprise Agreement. In all cases, the emphasis shall be on resolving the issue directly at the workplace level in good faith and as quickly as possible.

Computer, Email and Internet Usage:

The company reserves the right to monitor the use of its IT systems and services which includes email, social media and internet usage.

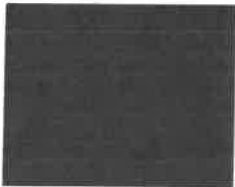
Routine monitoring will be undertaken by authorised personnel to maintain technical security and operational efficiency of the system/service. In cases of a suspected breach of law or a condition of employment, monitoring will also be undertaken.

Intellectual Property and Confidentiality:

While working for us you will find yourself in receipt of information that is of a confidential nature. Consequently, you may not divulge or use, either for your own benefit or that of others, any confidential information acquired during your employment.

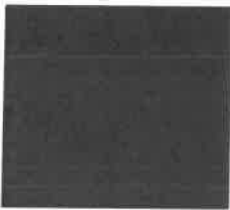
Confidential information refers to any information (written or oral) which is not publicly available unless such information became public domain by unauthorised disclosure.





	<p>A breach of your duty of confidentiality will result in disciplinary action, which may include the termination of your employment.</p> <p>Your obligation of confidentiality extends beyond the period of your employment with the Company.</p>
Non-Compete:	<p>The employee agrees not to engage in employment with (either under contract, or through full or part time work) with a past or current customer, whilst employed at the Company or post-employment for a period of one year, including, but not limited to, providing any research, engineering, product development, or services in any geographical area where the Company is located, conducts business, or provides service to past or current customers.</p>
Conflict of Interest:	<p>While working for the Company it is expected that employees shall not put themselves in a situation where there is a conflict of interest between his/her role or his/her own financial and personal situation which would influence his/her ability to act in the interests of the Company.</p> <p>It is the responsibility of employees to be aware of their obligation to identify, disclose and appropriately manage conflicts of interest which may arise at any time during the course of duty or while on Company business.</p>
Training and Development:	<p>The Company encourages and provides opportunity for employees to actively participate in professional development which includes attendance training facilitated by the Company.</p>
Pre-Employment Health Declaration, Fitness for Work:	<p>You are required to declare if you have a pre-existing injury, illness or disease of which you are aware that might be affected by the nature of your employment with the Company, in the Form attached.</p> <p>If you fail to make such disclosure, or make a false or misleading disclosure, and suffer a recurrence, exacerbation or deterioration of any pre-existing injury, illness or a disease arises out of the course of or due to the nature of the employment with the Company, this may result in you not being entitled to compensation under the Accident Compensation Act 1985 (Vic).</p> <p>You warrant that you are fit for work and do not have a medical condition which would impede the performance of your duties or pose a risk to the health and safety of yourself, fellow employees or a member of the public.</p> <p>The Company reserves the right to direct you to undergo a medical examination or investigation by a qualified medical practitioner appointed by the Company at any time, either before or during your employment, if in the Company's reasonable opinion there is a valid reason (for example, to determine whether you are fit for work). You agree to:</p> <ol style="list-style-type: none">a) attend and cooperate fully in such medical examination or investigation as required by the Company.b) consent to a report of the examination and/or results of the investigation being made available to the Company.
Expenses:	<p>All expenses incurred with prior management approval and within reason, in the carrying out of your duties, will be reimbursed following completion of an Expense Form, including the provision of receipts. Expenses will be paid in line with the pay run unless otherwise arranged.</p>




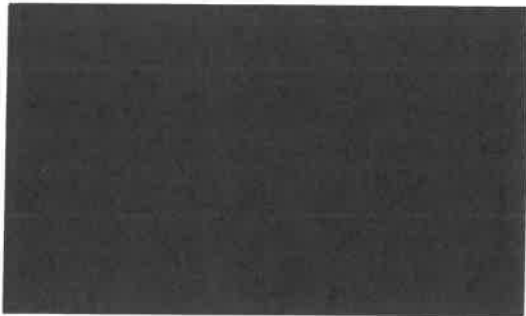


Position Description:	To be reviewed and issued post commencement.
Overpayment of Wages:	The Employee agrees to repay the Company any overpayment of wages as soon as possible but within two (2) months of its identification and that any monies owed at the time this Contract is terminated will be deducted in the termination payment.
Industrial Instrument:	Professional Employees Award 2010
National Employment Standards:	The terms and conditions of your employment with the Company as set out in this Contract of Employment and governed by the Fair Work Act 2009 and National Employment Standards (NES). Please find attached Fair Work Information Statement for your reference.
General Obligations:	<p>You are required to:</p> <ul style="list-style-type: none">a. perform all duties to the best of your ability at all times;b. use your best endeavours to promote and protect the interests of the employer; andc. act in a manner which does not pose a risk to your own health and safety and / or that of any other person you interact with whilst employed at the Companyd. follow all reasonable and lawful directions given to you by the employer, including complying with policies and procedures as amended from time to time. <p>Policies and procedures are <u>not</u> incorporated into this Contract of Employment.</p>
Information is accurate:	<p>You warrant that all information supplied to the Company with respect to your employment, including your qualifications and resume, is accurate in all respects and that you have not misled or deceived the Company in any way in relation to the information supplied. You warrant that you have not omitted or failed to disclose any information to the Company which you may reasonably consider to be relevant to your employment under this contract.</p> <p>The Company reserves the right to direct you to undertake a formal verification of your qualifications, skills and experience, at any time either before or during your employment.</p>
Completeness:	This contract replaces all previous written or oral agreements and understandings and represents a full record of the agreements entered into by you and the Company.





 please indicate your acceptance of the terms and conditions of your employment as set out in this Contract of Employment by signing below where indicated and returning the document to me no later than Friday 31st August, 2018



Attachments:

Pre-Employment Health Declaration
Confidentiality Agreement

ACKNOWLEDGMENT AND ACCEPTANCE

I confirm I have read, understood and accept the terms and conditions of employment specified in the Contract of Employment outlined above.

Employee Name: _____

Employee Signature: _____

Date: _____



'MA - 5'




26th April 2018



Dear 

Offer of Employment

I am pleased to confirm your appointment with 

Please accept my congratulations on being selected. s success depends on our people and I am sure that you will contribute to this success in your new role.

The terms and conditions applying to your employment are set out in the attached document.

Please indicate your acceptance of the terms and conditions by signing in the space provided at the end of the document. Please return the signed copy to me as soon as possible by email or hard copy. Please retain a copy of your signed document for your records.

I am very excited that you are joining us and look forward to your acceptance of this offer.

Yours sincerely





YOUR EMPLOYMENT DETAILS (referred to throughout as "the Details")

Employing Entity	[REDACTED]
Employee Name	[REDACTED]
Employee Address	[REDACTED]
Position	Graduate Software Engineer
Manager	[REDACTED]
Primary Location	Melbourne
Commencement Date	2 nd July 2018
Probation	6 months

YOUR REMUNERATION SUMMARY

Fixed Remuneration (including superannuation) AUD\$76,650

Total Remuneration	AUD\$76,650
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The terms and conditions governing your employment follow.



26th April 2018

Employment Agreement

Between:



and





TERMS AND CONDITIONS

In these terms and conditions of employment, "you" refers to the employee identified in the Details, and [REDACTED] refers to the [REDACTED] entity specified in the Details. There are certain other terms that have defined meanings. They will be capitalised and the definitions are set out towards the end of this Agreement. Some of the most important terms have been formatted in *bold italics* and you are encouraged to have particular regard to these terms.

1. Probationary Period

- 1.1 In order to assess your capabilities for the role and your cultural fit with [REDACTED] your continuing employment will be subject to a period of review ("**Probationary Period**") of the duration specified in the Details.

During the Probationary Period, either you or [REDACTED] may terminate this Agreement without consequence on one week's written notice, or in the case of [REDACTED] by payment in lieu of notice.

2. Details of Employment

- 2.1 [REDACTED] shall employ you in the position specified in the Details ("**Position**") and your usual place of work will be the location specified in the Details ("**Primary Location**").
- 2.2 Your employment will begin on the commencement date specified in the Details ("**Commencement Date**") and will continue until it is terminated under this agreement. The only exception to this is where your employment is stated in the Details to be for a fixed term only, in which case your employment will be terminated at the date specified in the Details (unless it has been terminated earlier). During this period, [REDACTED] will pay you the agreed Total Remuneration Package for the period worked as outlined in the Details.
- 2.3 We will review your performance annually and advise you of any changes we would like to make. This may include a change in remuneration, role, location or other change.
- 2.4 Your employment is contingent on maintaining valid work rights for Australia.

3. Travel

- 3.1 The nature of [REDACTED]'s business is such that from time to time, we may ask you to travel interstate or overseas. It is important that you tell us before the end of the Probation Period if you are unwilling or unable to travel for any reason. Where you are required to travel, [REDACTED] will reimburse all reasonable travel, accommodation and meals expenses in accordance with the applicable Company Policy. On occasion, we may also ask you to work interstate or overseas on a temporary or permanent basis. This is an exciting part of working for [REDACTED] and we will endeavour to give you as much notice as possible before any assignment.

4. Your Duties

- 4.1 Although your specific duties are set out in the Details, these duties are only part of your role. In order for [REDACTED] to operate as a high performance organisation, you are also expected to:



- a) Perform any additional duties that are implicitly required in order to carry out the duties in the Details;
- b) Follow the reasonable directions of your manager;
- c) read and abide by applicable Company Policy; and
- d) apply your full skills and ability to [REDACTED]'s business goals.

4.2 You are expected to work the hours which are reasonably necessary to meet all the requirements of clause 4.1. Your manager will discuss your hours with you. Your remuneration has been calculated by [REDACTED] on this basis and includes any entitlements (including to overtime, allowances or loadings) that are required by law. You are not entitled to any further payments in addition to the Total Remuneration Package set out in the Details.

5. Training and Development

5.1 It is an important to [REDACTED] that its personnel continue to develop during their employment. With your manager and as part of the performance review process, you should discuss your training and development requirements. Where appropriate, learning initiatives have been identified and agreed, they will be arranged by your Manager and the Human Resources department.

6. Medical Assessments

6.1 From time to time [REDACTED] might require you have a medical examination, although only where there is a reasonable business justification to do so (for example, where it is necessary for insurance purposes). In this case, you would need to:

- a) submit to and co-operate in a medical examination by a practitioner nominated by [REDACTED]; and
- b) consent to the disclosure to [REDACTED] of your medical records.

7. Remuneration

It is important that you keep the terms and conditions of this Agreement confidential and only disclose them to your immediate family and professional advisors. This includes the Total Remuneration Package.

Please note that the various elements comprising the Total Remuneration Package are subject to the following additional terms and conditions:

7.1 Method of payment

Your fixed remuneration (including superannuation) will be paid in equal instalments on or before the 15th of each month. Payments will be made into your bank account.

7.2 Superannuation

From time to time, [REDACTED]'s obligation to pay superannuation contributions may increase as a consequence of the operation of law. Because your remuneration is considered as a whole, where this happens, your Total Remuneration Package will not increase.

7.3 Expense Reimbursement

[REDACTED] shall reimburse you in line with Company Policy for all reasonable expenses you incur in connection with your employment.

7.4 Taxes

[REDACTED] may deduct the amount of any applicable taxes from any income or benefit, including any non-cash benefit, paid to you by [REDACTED] prior to payment.

8. Leave Entitlements

8.1 Annual Leave

- a) You are entitled to annual leave in accordance with the Fair Work Act 2009 (as amended or replaced from time to time). In order to maintain business continuity, this entitlement needs to be taken at mutually convenient times. In addition, [REDACTED] will usually close its offices over holiday periods, and during these periods you will be required to take annual leave for the days the office is closed, unless mutually agreed with your manager.
- b) [REDACTED]'s policy is not to have large accumulated annual leave balances and so [REDACTED] may direct you to take reasonable accumulated annual leave in accordance with the Fair Work Act 2009 (as amended or replaced from time to time) where your balance exceeds four weeks.
- c) Upon termination of employment for whatever reason, your annual leave balance will be accounted for in your final payment. For example, you will receive payment in lieu for any accrued annual leave not yet taken. However where you have an annual leave deficit, this will be offset against any final salary or, if insufficient, repayable by you upon demand by [REDACTED]

8.2 Personal/Carer's Leave

- a) Any paid personal/carer's leave that you are entitled to under the Fair Work Act 2009 (as amended or replaced from time to time) may be taken as either sick leave or carer's leave, but must be taken in accordance with Company Policy.
- b) Accrued but untaken personal/carer's leave is not payable when your employment ends. If you take sick leave in excess of two consecutive days or as one day either side of a weekend, you should obtain a medical certificate from a qualified medical practitioner.

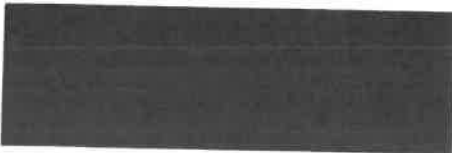
8.3 Flexible Work Policies

[REDACTED] has flexible work policies that may be taken advantage of by mutual agreement. Please speak to your manager for more information.

9. No Conflict of Interest and Confidentiality During Employment

- 9.1 In order to provide your best possible contribution to [REDACTED] you must not enter into any other employment or business activity that could reasonably conflict with, be detrimental to, or interfere with, the interests of [REDACTED] or any Group Member, the performance of your duties, or that could make use of Confidential Information.
- 9.2 For the duration of your employment, you must only use the Confidential Information for the benefit of [REDACTED] and Group Members, you must keep the Confidential Information secure, secret and confidential and you must not disclose the Confidential Information (or any part of the Confidential Information) to any person, except:
 - a) as is required by your employment; or

[REDACTED]



- b) to the limited extent you are required to disclose the information by law or requirement of any regulatory body, but only after providing reasonable prior notice of such disclosure to [REDACTED]
- 9.3 Without prejudice to any other available remedy, [REDACTED] may recover any loss sustained by [REDACTED] or profit obtained by you as a result of any breach of clause 9.1 or 9.2 above.
- 9.4 You must notify [REDACTED] as soon as you become aware of any situation which is, or is likely to, breach clause 9.1 or 9.2 above.

Your acceptance of this clause is crucial to [REDACTED] decision to employ you and, as a result, a breach of it may result in the termination of your employment. So please take appropriate precautions to ensure that you are fully compliant at all times.

10. Termination

10.1 Termination by Either Party

- a) Either party may terminate your employment at any time, by giving one months' written notice to the other party. If [REDACTED] is required by legislation to give additional notice in your particular circumstances, [REDACTED] will provide that additional notice.
- b) In the case of termination by [REDACTED] [REDACTED] may elect to make a payment in lieu of notice or a combination of notice and payment in lieu of notice. Any payment in lieu of notice under this Clause 10.1 will be calculated on the basis of your salary and superannuation entitlements only.

10.2 Direction Not To Attend For Work Or To Perform Different Duties

For all or part of your employment (including any notice period under clause 10.1, [REDACTED] may direct you:

- a) to not come in to work;
- b) to work at a different location to the Primary Location;
- c) to perform no work; or
- d) to perform designated duties whether or not these duties form part of your usual duties.

10.3 Immediate Termination by [REDACTED]

Despite anything else in this Agreement, [REDACTED] may terminate your employment immediately by written notice if, in [REDACTED] reasonable opinion, you have been guilty of serious, wilful or persistent misconduct. Examples of conduct justifying immediate dismissal include:

- a) committing any serious or persistent breach of any of the provisions on this Agreement;
- b) committing any misconduct in the discharge of duties;
- c) seriously neglecting the discharge of duties;
- d) failing to discharge the reasonable directions of [REDACTED]
- e) engaging in conduct that might be detrimental to the interest and integrity of [REDACTED] or



- f) committing any other act which at common law would entitle [REDACTED] to terminate your employment without any notice or payment in lieu of notice.

10.4 Payments upon Termination

Upon the termination of your employment, [REDACTED] will make the following payments, calculated as at the Termination Date:

- a) any component of the Total Remuneration Package to which you are entitled;
- b) severance payments to the extent required by law, but not otherwise. [REDACTED] does not offer severance payments in addition to the minimum legal entitlement;
- c) any payments in lieu of notice payable as a result of clause 10.1b); and
- d) any amount to which you are entitled in lieu of unused annual leave or long service leave.

In the event of termination under clause 10.3, you will only be entitled to payments under 10.4a) and d).

10.5 Suspension

As an alternative to termination or in order to conduct an investigation or for some other reason, [REDACTED] may suspend you from work for a specified period. During this time, [REDACTED] will continue to pay your salary and superannuation entitlements for the duration of the suspension.

11. Secondment

Where necessary to achieve the [REDACTED] business objectives, [REDACTED] may choose to second you to a Group Member. If this occurs:

- a) You remain employed by [REDACTED] for the duration of the secondment and this Agreement remains in force;
- b) [REDACTED] may end the secondment at its sole discretion, provided you are provided with at least one week's written notice;
- c) Any specific terms applying to the secondment will form part of this Agreement during the period of the secondment. In the event of an inconsistency between a specific term of the secondment arrangements and a term in this Agreement, the term of the secondment arrangements will prevail to the extent of the inconsistency.

12. Your Obligations after Employment Ceases

12.1 Return of Property

If your employment is terminated, or at any other time if requested by [REDACTED]

- a) you must return to [REDACTED] all property belonging to [REDACTED] or any Related Company (for example, cards, keys, motor vehicles, mobile phones, computers, equipment and materials) that you have possession of or access to, including all property containing Confidential Information; and
- b) on request, certify in writing to [REDACTED] that you have complied with this clause 12.1.

In this clause, property includes anything on which information is recorded, for example, documents, computer disks and computer records.

[REDACTED]



12.2 No Connection With

If your employment is terminated, you may no longer represent yourself as being in any way connected with or interested in any other business carried on from time to time by or any Related Company.

12.3 Confidentiality

- a) Following termination of your employment, you must not use the Confidential Information for any purpose, you must keep the Confidential Information secure, secret and confidential and you must not disclose the Confidential Information (or any part of the Confidential Information) to any person, except to the limited extent you are required to disclose the information by law or requirement of any regulatory body, but only after providing reasonable prior notice of such disclosure to Please note that the confidential nature of the Confidential Information can subsist for an indefinite period of time and that the elapsing of a predetermined period of time does not of itself cause the Confidential Information to cease having its confidential character nor extinguish the need to maintain its secrecy.
- b) Without prejudice to any other available remedy, may recover any loss sustained by or profit obtained by you as a result of any use of Confidential Information contrary to this Agreement.

12.4 Restraint

Within each of the Time Periods and each of the Restraint Areas in the Schedule, you covenant in favour of that neither:

- a) carry on or be engaged or concerned in:
 - (i) a material way, in any business in competition with, or of a similar nature to, any business being carried on by any Group Member as at the Termination Date; or
 - (ii) any business in a capacity in which you could make use of Confidential Information to the material detriment of any Group Member; or
 - (iii)
- b) solicit or entice away or endeavour to solicit or entice away from the Group any:
 - (i) director;
 - (ii) employee; or
 - (iii) supplier,of the Group; or
- c) solicit or entice away or endeavour to solicit or entice away from the Group any client or customer of the Group with which you had material dealings during the one year period prior to your employment ending.

12.5 Separate provisions

In clause 12.4, each Time Period and each Restraint Area in the Schedule have effect as if they consisted of separate provisions, each being severable from the other. If any one or more of the restraints resulting from a combination of those variables is unenforceable or illegal:





- a) that fact shall not affect the other mentioned restraints; and
- b) the unenforceable or illegal restraint or restraints will be deemed severed from and will form no part of this Agreement.

12.6 Exception

Clause 12.4 shall not prevent you from holding less than 5% of the issued capital of any company whose shares are listed on the Australian Stock Exchange Limited.

12.7 Remedies

You acknowledge that the remedy at law for breach of this clause would be inadequate and that temporary and permanent relief by way of injunction against you may be granted in any proceedings which [REDACTED] or any Relevant Group Member or any persons on its behalf may bring to enforce any of the provisions of that clause without the necessity of proof of actual damage suffered by [REDACTED] or any Relevant Group Member as the case may be.

12.8 Protection of goodwill

You acknowledge that having regard to your duties with [REDACTED] your undertakings in this clause are reasonable and necessary for the protection of the goodwill and Confidential Information of the Group and that valuable consideration has been received both directly and indirectly by you and that its terms are approved.

12.9 Survival of your obligations on termination

Clauses 12 and 13 survive termination of this Agreement. To avoid doubt, this survival clause allows [REDACTED] to enforce the obligations set out in clauses 12 and 13, notwithstanding any breach allowing you to terminate this Agreement.

13. Intellectual Property and Moral Rights

13.1 [REDACTED] employs you, in part, to obtain the benefit of the Intellectual Property Rights you create. In this clause, you hereby assign all of your right, title and interest in all Intellectual Property Rights created or coming into existence in relation to anything done by you for or on behalf of [REDACTED] and / or its customers or clients during the term of your employment.

13.2 You must promptly disclose to [REDACTED]

- a) all Intellectual Property Rights on becoming aware of their creation or existence;
- b) all instances in which you suspect an actual or potential infringement of the Intellectual Property Rights of [REDACTED] or a Group Member;
- c) all instances in which you suspect an actual or potential infringement of the Intellectual Property Rights of another by [REDACTED] or a Group Member. Such instances under this clause 13.2(c) must be communicated initially in oral form and to a senior member of the [REDACTED] legal department.

13.3 In order to give full effect to this clause 13 [REDACTED] may require you to take necessary and reasonable action and provide assistance (at [REDACTED] expense), including without limitation, execution of further documents and support in relation to obtaining, commercialising or enforcing such intellectual property rights.

13.4 You consent unconditionally, irrevocably and to the fullest extent permitted by law, to any and all acts or omissions of, or for the benefit of, [REDACTED] whether occurring before or after the date of this consent, which would, but for this consent, infringe any of the your Moral



Rights in relation to all works and other copyright subject matter (both existing and future) howsoever arising anywhere in the world directly or indirectly in connection with your employment with [REDACTED]

14. Privacy

You consent to the use of your personal and health information in the manner and for the purposes set out in this clause, provided that [REDACTED] does so lawfully.

14.1 [REDACTED] and its Related Companies collect, use and store your personal and health information in connection with your employment. This information may need to be transferred outside the State in which you are employed, or even outside Australia for these purposes.

14.2 In addition, [REDACTED] and its Related Companies may disclose your personal and health information to other persons in connection with your employment. These persons include the Australian Tax Office, superannuation fund trustees and administrators, bankers, insurers, medical and occupational practitioners, investigators, financial and legal advisers, potential purchasers on sale of business, law enforcement bodies and regulatory authorities.

15. Set-Off

15.1 On termination of the employment, [REDACTED] or a Related Company may set-off against and deduct from all or any amount payable to you, any amount owing by you to that company, even where the payment obligations are of an entirely different character.

16. Third Party Benefit

16.1 From time to time you may be required to provide services that benefits one of the companies in the [REDACTED] Group. To that extent, your obligations under this Agreement are given for the benefit of the Group and are held by [REDACTED] on trust from time to time, notwithstanding that not all Group Members are parties to this Agreement.

17. Smoking, Alcohol and Drugs

17.1 All [REDACTED] offices are smoke-free environments.

17.2 As with most companies, you are not permitted to perform duties whilst under the influence of alcohol or drugs and if you are found to violate this requirement, you may be stood down without pay.

18. General Provisions

18.1 Notices

Any notices or other formal communications issued pursuant to this Agreement must be in writing and delivered to the intended recipient by fax, mail or hand.

18.2 Amendment

This Agreement may only be varied by a written, signed agreement if all parties.

[REDACTED]



18.3 Entire Agreement

This is the entire agreement between you and [REDACTED] and it supersedes any previous agreements in respect of your employment. All conditions and warranties implied by statute, common law, equity, trade or customer usage are expressly excluded from this Agreement to the maximum extent permitted by law.

18.4 Assignment

This agreement is personal to you and may not be assigned by you. However [REDACTED] may assign this agreement in the event of an internal restructure, in which case you will be given written notice at the earliest opportunity.

18.5 Severability of Provisions

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of that provision in any other jurisdiction.

18.6 No Waiver

No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any rights, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

18.7 Law Governing Agreement

This Agreement is governed by the laws of the State in which the Primary Location is situated and any disputes arising from this Agreement will be exclusively resolved by the courts there.

18.8 Definitions and Interpretations

Unless the context otherwise requires:

Agreement means the letter of offer, the Details and these terms and conditions.

Company Policy means [REDACTED]'s policies and procedures as varied from time to time.

Confidential Information includes, without limiting its ordinary meaning, all information (whether or not it is described as confidential) in any form or medium concerning any past, present or future business, operations or affairs of [REDACTED] or any Related Company, or of any client of [REDACTED] or a Related Company including, without limitation: all technical or non-technical data, formulae, patterns, programs, devices, methods, techniques, plans, drawings, models and processes, source and object code, software and computer records; all business and marketing plans and projections, details of agreements and arrangements with third parties, and client and supplier information and lists; all financial information, pricing schedules and structures, product margins, remuneration details and investment outlays; all information concerning any employee, client, contractor or agent of [REDACTED] or a Related Company; Company Policy; and all information contained in this document.

Details means the details of employment, as attached to the letter of offer and as updated from time to time.

Group means [REDACTED] and any Related Company from time to time and includes:

- a) any entity that controls, is controlled by or is under common control with, [REDACTED] and



- b) any other entity that is connected with [REDACTED] or any Related Company by a common interest in an economic enterprise, including (but not limited to) a partner or another member of a joint venture.

Group Member means any member of the Group.

Intellectual Property Rights means all rights and interests, vested or arising out of any industrial or intellectual property, whether protected at common law or under statute, which includes (without limitation) any rights and interests in inventions (both patentable and unpatentable), copyrights, moral rights, designs (whether registered or unregistered), trade marks (whether registered or unregistered), trade secrets, goodwill, plant varieties, samples, materials, data, know-how, results and confidential information.

Moral Rights has the meaning given to it in the Berne Convention for the Protection of Literary and Artistic Works as amended.

Ordinary Shares means ordinary shares in the capital of [REDACTED]

Pay Day means a day (or days) during each calendar month nominated by [REDACTED] as the day upon which salaries and expenses are paid. [REDACTED] may change the day (or days) nominated as the Pay Day by providing you with reasonable notice.

Related Company means a related body corporate as that term is defined in the Corporations Act 2001 (Cth).

Relevant Group Member means each Group Member for which you may work or perform services from time to time.

Restraint Areas means each of the areas referred to in the Schedule.

Time Periods means each of the periods referred to in the Schedule.

Superannuation Fund means your nominated complying superannuation fund.

Termination Date means the date of termination of your employment with [REDACTED] In the event of termination by a payment in lieu of notice, the Termination Date is the date on which payment is made.

Total Cost to Company Basis means the total cost of any item before any applicable tax (except payroll tax) and in relation to items assessable for Fringe Benefits Tax (FBT) the total cost of that item grossed up to take FBT into account.

Total Remuneration Package means the remuneration you receive, being the amount set out in the Details, which amount includes [REDACTED]'s contributions made to the Superannuation Fund.

18.9 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- a) The singular includes the plural and vice versa.
- b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- c) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- d) A reference to a clause or Schedule is a reference to a clause of, or a schedule to, this Agreement.

- e) A reference to an Agreement or document (including, without limitation, a reference to this Agreement) is to the Agreement or document as amended, varied, supplemented, novated or replaced except to the extent prohibited by this Agreement or that other Agreement or document.
- f) A reference to a party to this Agreement or another agreement or document includes the party's successors and permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- g) A reference to writing includes a facsimile transmission, email and any means of reproducing words in a tangible and permanently visible form.
- h) A reference to dollars or \$ is a reference to Australian dollars.



SCHEDULE


(a) Time Periods

Within each of the following periods:

- (i) For a period of 3 months after the Termination Date
- (ii) For a period of 6 months after the Termination Date
- (iii) For a period of 1 year after the Termination Date
- (iv) For such other time as the Confidential Information you hold retains its quality of confidentiality

(b) Areas

In each of the following areas:

- (i) Within a radius of 100 kilometres from  office locations in:
 - (A) Sydney
 - (B) Melbourne
 - (C) Brisbane
 - (D) Adelaide
 - (E) Perth
 - (F) Canberra
 - (G) Darwin
- (ii)
 - (A) New South Wales
 - (B) Victoria
 - (C) Queensland
 - (D) South Australia
 - (E) Western Australia
 - (F) Australian Capital Territory
 - (G) Northern Territory



Employment Agreement Australia Full Time



Signed by

Applicant name



Date



Signed by Authorised Officer

for and on behalf of



Print Name:

Date:

26th April 2018



'MA-6'

04 May 2018

Dear [REDACTED]

Position: SPECIAL PROJECTS ENGINEER

A complete review of all employment contracts has been completed. The outcome being that some contracts contain clauses which, due to the passage of time require updating to ensure consistency with the *Fair Work Act 2009*.

This updated contract will not affect your continuity of service. Further, for the purpose of calculating your leave entitlements and length of service your start date will be applied.

To indicate your acceptance of these new terms and conditions, please sign a copy and return it to me. If you have any questions or concerns, please do not hesitate to contact me.

Regards

[REDACTED]

[REDACTED]

1. Summary table

1.1 The items in the following summary table are subject to any additional detail, requirement or obligation set out otherwise in the Contract.

Item	Term	Details
1	Employer	[REDACTED]
2	Date of Commencement	11 September 2017
3	Term	Permanent
4	Position title	Special Projects Engineer ('the Position')
5	Location	[REDACTED]
6	Operational Hours	Monday to Friday, 6.00am to 6.00pm.
7	Ordinary Weekly Hours	38
8	Reports to	[REDACTED]
9	Salary	\$65000 plus Superannuation
10	Salary Payment Frequency	Monthly (2 weeks in advance, 2 weeks in arrears)
11	Probationary period	6 months
12	Notice Period	4 weeks
13	Frequency of Performance and Salary review	Annually

2. Interpretation

2.1. In the Contract, unless otherwise indicated by context, references to:

- a. 'Authorised person' mean a member of the Executive and/or a Company representative authorised by Company policy to the level appropriate for the request/action/approval sought.
- b. 'Client' refer to any Person who, at the Termination Date:
 - i. is or was a Person to whom the Company or its Related Entities provide and/or provided products or services at any time during the 12 months prior to the Termination Date; or
 - ii. has entered into discussions or negotiations with the Company or its Related Entities at either their own initiative or at the initiative of the Company or its Related Entities at any time during the 12 months prior to the Termination Date with a view to receiving products or services provided by the Company or its Related Entities and who had not notified the Company or its Related Entities at least 3 months prior to the Termination Date that they did not wish to receive such products or services (however any such notification will be disregarded if it was given as a result of any act you have performed, indirectly or directly, in breach of the terms of this Contract, to induce the Person to not receive such products or services).
- c. 'Company', include the Company's officers, principals, employees, agents, or directors, or any other person authorised to act on behalf of the Company.
- d. 'Confidential Information' mean all information obtained in the course of your employment with the Company that is by its nature confidential, or which is designated by the Company or its Related Entities as confidential, or which you know or reasonably ought to know is confidential, and includes (but is not limited to) the following,
 - i. the Company's and its Related Entities': trade secrets; Intellectual Property; confidential know-how; policies, systems and protocols; information about the business and its affairs such as pricing and fee information, marketing or strategic plans, commercial and business plans, financial information and data, and operational information and methods; methodologies and supporting documentation; software products, manuals and associated tools; commercial information in relation to current and prospective operations; information about Suppliers, dealers, Clients or customers such as their specific requirements, arrangements and past dealings; Client lists, customer lists, Supplier lists, dealer lists; business cards and diaries, calendars or schedulers; reports; working papers; training manuals; equipment; computer information and programs; personal and financial information of which you become aware.
- e. 'Contract' means this contract of employment entered into between you and the Company.
- f. 'FWA' means the *Fair Work Act 2009* (Cth) as amended from time to time.

- g. 'Intellectual Property' mean all forms of industrial and intellectual property rights of whatever nature throughout the world conferred under statute, common law or equity, whether existing now or at any time in the future, and includes rights in respect of copyright, inventions (including patents), designs, semiconductor and circuit layout rights, trade marks, service marks, trade names, business names, domain names, Confidential Information, know-how and trade secrets, and similar industrial and intellectual property rights, whether or not registered or registerable, and includes the right to apply for or renew the registration of such rights.
- h. 'Manager' mean the person to whom you directly report, as specified in item 8 under clause 1.1.
- i. 'Moral Rights' has the meaning given to it in the *Copyright Act 1968* (Cth) and includes rights of integrity of authorship, rights of attribution of authorship and similar rights that exist or may come to exist anywhere in the world.
- j. 'Person' includes any natural person, company, partnership, association, trust, business, or other organisation or entity of any description and a Person's legal personal representative(s), successors, assigns or substitutes.
- k. 'Products' mean any products produced, manufactured, sold or distributed (and prospective products to be produced, manufactured, sold or distributed) by the Company and its Related Entities.
- l. 'Related Entities' mean any entity connected with the Company by an interest in a common economic enterprise, including a Related Body Corporate (as that term is used in the *Corporations Act 2001* (Cth)).
- m. 'Services' mean any services offered or provided by the Company and its Related Entities.
- n. 'Supplier' mean any Person:
 - i. who supplied any products or services to the Company or its Related Entities and with whom you or a Person reporting to you had contact or dealings with; or
 - ii. who has entered into discussions or negotiations with you or a Person reporting to you on behalf of the Company, at either your own initiative, or at the initiative of a Person reporting to you, or at the initiative of the Company or its Related Entities, at any time during the twelve (12) months prior to the Termination Date, with a view to supplying products or services to the Company or its Related Entities and who had not notified the Company or its Related Entities prior to the Termination Date that they did not wish to supply such products or services (however any such notification will be disregarded if it was given as a result of any act you have performed, indirectly or directly, in breach of the terms of this Contract, to induce the Person to not supply such products or services).
- o. 'Termination Date' mean your last day of employment with the Company however occurring.
- P. 'Works' mean any and all works, materials, products and services, including but not limited to all inventions, designs, drawings, plans, software, hardware,

reports, documents, systems, improvements and other materials, and includes all literary, dramatic, musical and artistic works, sound recordings and cinematographic films in which copyright subsists.

3. Commencement

3.1 Your employment with the Company commences on the Date of Commencement specified in item 2 under clause 1.1.

3.2 This offer of employment with the Company is conditional upon you attending the workplace on the agreed Date of Commencement and commencing work in accordance with the terms and conditions of the Contract.

4. Offer of employment

4.1 This offer of employment is conditional upon:

a) You demonstrating that you are eligible to live and work in Australia by producing one of the following documents:

- (i) Australian birth certificate
- (ii) Certificate of Australian citizenship;
- (iii) evidence of Australian permanent resident status; or
- (iv) a valid temporary visa permitting you to work in Australia.

Copies of the document(s) provided in compliance with clause 4.1(a) will be taken and held by the Company. If your eligibility to work changes during the course of your employment with the Company, you must inform the Company as soon as you become aware of this. If you become ineligible to work in Australia, your employment will immediately cease from the date of such ineligibility.

b) You confirming by signing the Contract that:

- (i) there are no limitations on your ability to fully perform all of your duties and responsibilities for the Company, including but not limited to physical or psychological limitations;
- (ii) in commencing and performing your duties and responsibilities for the Company, you will not be in breach of any continuing obligations arising from any prior employment, including but not limited to confidentiality obligations;
- (iii) you have not been charged with an offence nor are you the subject of, involved in or aware of any current or pending legal proceedings which may reasonably be considered to negatively impact upon your ability to undertake the requirements of the position, including those relating to confidentiality set out in clause 29;
- (iv) you will not breach any conditions imposed on you by any visa which permits you to live and work in Australia; and
- (v) the information you have provided to the Company regarding your qualifications, accreditation, training and currency of all relevant licences and any other information required to be provided and

disclosed to the Company to evidence your ability to perform the Position is true and accurate.

4.2 By signing the Contract you acknowledge and agree that:

- a) any breach of the conditions listed under clause 4.1 will constitute grounds for immediate termination of your employment or revocation of the offer of employment, as may be the case; and
- b) the Company reserves the right to revoke the offer of employment or terminate the Contract with immediate effect in the event that you are unable to commence or continue employment with the Company because:
 - (i) you are bound by a contractual limitation, restriction or restraint, including but not limited to a limitation, restriction or restraint found in a contract of employment with a previous employer;
 - (ii) relevant visa conditions or restrictions apply; and/or
 - (iii) the terms of any other agreement, whether written or oral, formal or informal, have application.

5. Position

- 5.1 The title of the Position is set out in Item 4 under clause 1.1. You will be employed on a full-time basis.
- 5.2 The primary duties and responsibilities associated with the Position are set out in the Position Description attached and marked "**Schedule A**". The Company reserves the right to regularly review and update the Position Description to ensure it accurately reflects the duties and responsibilities associated with the Position and in view of the Company's needs.
- 5.3 You are required to carry out other duties as reasonably directed by the Company, commensurate with your skills and experience.
- 5.4 You may also be required to perform duties for the Company's Related Entities from time to time, commensurate with your skills and experience.
- 5.5 In the performance of the Position and during the course of your employment with the Company, you are expected to contribute to the achievement of the objectives of the Company which are detailed in operational, strategic and annual plans.
- 5.6 The Company may temporarily or permanently vary your Position and Position Description, or redeploy you in accordance with the needs of the business and having regard to your skills and experience.
- 5.7 You agree that the terms and conditions outlined in the Contract continue to apply to your employment until such time as the Contract is varied by the Company in writing, or the Contract is superseded with another written contract executed by you and the Company.

6. Hours of work

- 6.1 The Company's operational hours are set out in Item 6 under clause 1.1.
- 6.2 Your weekly ordinary hours of work are set out in Item 7 under clause 1.1, averaged over a period of up to 26 weeks.

6.3 Due to the nature of the Company's business and the Position you perform, you may from time to time work reasonable additional hours as well as be required to attend supervisory and/or training meetings outside of the Company's operational hours. Your salary takes into account reasonable additional hours worked by you in the performance of the Position.

7. Performance

7.1 In the course of your employment with the Company, you agree to:

- a) carry out all lawful and reasonable instructions and directions given to you by the Company;
- b) perform your duties and responsibilities competently, and in a proper, ethical, diligent, professional and efficient manner;
- c) act in good faith and in the best interests of the Company;
- d) use your best endeavours to protect, enhance and promote the interests, welfare, profitability, growth and reputation of the Company;
- e) not engage in any conduct, business or activities which may conflict with or be harmful to the interests of the Company, or any of its officers, employees, agents, contractors or consultants;
- f) perform your duties in a safe manner, in compliance with relevant work health and safety laws and policies;
- g) during work hours, devote the whole of your time and attention to performance of the Position and the Company's business;
- h) perform your duties with due care and skill and in a proper, thorough and co-operative manner;
- i) perform your duties in accordance with any written direction, procedure or other specifications provided to you by the Company (relating to the performance of your work or anything connected with it);
- j) perform your duties in accordance with Company values;
- k) perform your duties without jeopardising or damaging the Company's business;
- l) perform your duties in compliance with all relevant laws.

7.2 You must not:

- a) use any information or resources provided by the Company for your personal gain or for the benefit of any other person or business;
- b) do anything that is reasonably likely to harm the Company or its reputation; or
- c) enter into contracts or agreements on behalf of the Company the value or significance of which are outside the scope of your authority as defined by the relevant Company policy.

8. Reporting

8.1 Your reporting arrangements are set out in Item 8 at clause 1.1.

8.2 The Company may change your reporting arrangements in accordance with business needs.

9. Location

- 9.1 Your place of work is set out in Item 5 at clause 1.1.
- 9.2 The Company may require you to travel and to work in different locations, including interstate or international locations, in the performance of your Position or otherwise to meet business needs.
- 9.3 The relocation of your Position as described in clause 9.2 may be temporary or permanent, short or long term in nature. In the case of relocations that are permanent or a minimum of three months, the Company undertakes to give you notice of five (5) weeks where possible.

10. Probationary period

- 10.1 Your employment is subject to a probationary period which is set out in Item 11 under clause 1.1.
- 10.2 During the probationary period, the Company may terminate your employment by giving you one weeks' notice.
- 10.3 The Company may direct you not to attend work and pay in lieu the balance of the notice period.

11. Salary

- 11.1 Your current salary is set out in Item 9 under clause 1.1. Your salary includes all entitlements unless specifically excluded.
- 11.2 The Company pays Fringe Benefits Tax on your behalf. This payment also forms part of your remuneration package.
- 11.3 You will be paid in accordance with Item 10 at clause 1.1 into your nominated bank account.
- 11.4 Your salary and other employment conditions are confidential and must not be discussed with other employees of the Company.

Discretionary bonus and incentive payments

- 11.5 In addition to your salary and at the discretion of the Company, you may be eligible to participate in a discretionary bonus and/or incentive scheme.
- 11.6 The Company's discretionary bonus and/or incentive scheme does not form part of your Contract. Any bonus and/or incentive scheme does not form part of your remuneration for any purposes associated with calculating other benefits, including leave entitlements and severance payments.
- 11.7 Upon termination of your employment, you will not be entitled to the payment of any bonus and/or incentive amounts that fall due, or are determined, after the Termination Date.
- 11.8 The Company reserves the right to alter or withdraw the bonus and incentive payments scheme at any time. Any payment of a bonus or other incentive payment (including determining the amount of such payment) is at the discretion of the Company.

12. Company credit card

- 12.1 You may be issued with a company credit card. The card must only be used for work related expenses properly incurred in the performance of your duties. The Company

requires the provision of receipts for all purchases made using the company credit card, and may require other reasonable documentary evidence of your purchases on the card. The Company reserves the right to withdraw the use of the card from you at any time at its discretion.

12.2 If you are issued with a company credit card, you are to comply with the terms and conditions attached with the card.

12.3 In the event that the card is stolen or misplaced, you agree to take immediate action to avoid misuse.

12.4 Misuse by you of a company credit card may result in disciplinary action being taken against you, up to and including the termination of your employment.

13. Mobile phone, laptop and other business related equipment

13.1 The Company may provide you with a mobile phone, laptop and/or other business related equipment. Where any equipment is provided, all work-related and any reasonable personal use expenses will be paid for by the Company.

13.2 You are required to maintain the equipment and treat it with care. Misuse of the equipment may result in disciplinary action being taken against you up to and including termination of your employment.

14. Superannuation

14.1 The Company will pay superannuation contributions on your behalf in compliance with the minimum legal requirement (the Superannuation Guarantee Contribution).

14.2 The Company will pay superannuation contributions into a fund nominated by you, or if you do not nominate a fund, into the Company's default fund.

14.3 Your salary is inclusive of superannuation.

15. Performance and salary reviews

15.1 Your performance and salary may be reviewed in accordance with Item 13 at clause 1.1.

15.2 Any increases in salary are not automatic, but are at the Company's discretion.

16. Continuing education

16.1 If it is a requirement of your Position that you maintain your skills and qualifications to perform your duties, the Company will pay for you to attend any training or educational courses that it requires you to attend.

17. Driver licence

17.1 If it is a requirement of your Position that you drive a motor vehicle, you must maintain a current driver's licence.

17.2 You must notify the Company immediately if you are charged with any driving offences or if your licence is suspended or cancelled.

17.3 The suspension or cancellation of your licence may result in the termination of your employment.

18. Drugs and alcohol

- 18.1 Your ability to safely perform your duties at the Company could be affected by your consumption of alcohol and/or other drugs.
- 18.2 The Company may require you to undergo testing for the presence of drugs and/or alcohol, with or without prior notice. You agree to:
- a) submit to such testing and understand that it may be random, incident related or planned testing at any time as directed by the Company;
 - b) take whatever action is necessary or required of you to ensure that the medical practitioner or testing facility's report can be provided to the Company, including signing an authority enabling the medical practitioner, testing facility or other person conducting the test to release the information to the Company.
- 18.3 Failure to comply with this clause of the Contract, including failing to agree to submit to any drug or alcohol testing, may result in disciplinary action being taken up to and including the termination of your employment.

19. Workplace Surveillance

- 19.1 The Company may conduct computer surveillance of all its information technology systems, in accordance with the following Policy:
- a) The computer surveillance will include surveillance of email usage, internet usage and any other usage of information technology supplied by the Company.
 - b) This surveillance is carried out on a continuous and ongoing basis.
- 19.2 For security purposes the Company carries out camera surveillance by way of closed circuit television cameras. The surveillance is continuous and ongoing. Although this surveillance is not carried out to monitor employees, any footage which may help the company to investigate any work related matter may be reviewed for this purpose. Access to the recorded material will be strictly limited to authorised personnel on a need to know basis.
- 19.3 You may consult with the Company about the surveillance at any time.

20. Employment policies and procedures

- 20.1 You are required to comply with the Company's policies and procedures.
- 20.2 The Company's policies and procedures are regularly reviewed and updated and while amended versions may be communicated to all staff of the Company, it is your responsibility to ensure you have read and understand the policies and procedures and that you comply with the same.
- 20.3 The Company's policies and procedures do not form part of the Contract.
- 20.4 If in the course of your employment you breach your obligations as detailed in the Company's policies and procedures, you may be the subject of disciplinary action up to and including termination of your employment.

21. Annual leave

- 21.1 You are entitled to four (4) weeks (20 working days) annual leave each year, which accrues in accordance with the FWA.
- 21.2 The Company may require you to take accrued annual leave during periods where it decides to close its offices of business. If you do not have any or sufficient accrued annual leave to cover the period, you will be granted leave without pay.
- 21.3 If you are required to take leave without pay under clause 21.2, that period will still count as service and you will continue to accrue relevant leave entitlements during that period.
- 21.4 On the provision of at least four (4) weeks' notice, the Company may direct you to take annual leave if you have accrued more than six (6) weeks annual leave.

22. Public holidays

- 22.1 Due to the operational requirements of the Company's business, you acknowledge that you may be required to work on a public holiday from time to time.

23. Personal/carer's leave

- 23.1 As a full time employee, you are entitled to ten (10) days of paid personal/carer's leave for each year of service. This leave will accrue in accordance with the FWA.
- 23.2 If you are absent on personal/carer's leave, the Company may:
 - a) require you to provide to the Company evidence to the Company's satisfaction, confirming the illness or injury (such as a medical certificate); and/or
 - b) require you to be examined by a medical practitioner nominated by the Company.

24. Parental Leave

- 24.1 You are entitled to a maximum of 12 months unpaid parental leave (maternity, paternity or adoption leave) after 12 months service in accordance with the FWA.

25. Long Service Leave

- 25.1 You are entitled to long service leave in accordance with the applicable State or Territory legislation.

26. Termination

- 26.1 At the completion of the probationary period, and except where your employment is terminated for reasons of serious misconduct, the Company and you may terminate your employment by giving the period of notice set out in Item 12 at clause 1.1, except where such a period is required to be increased by reference to the FWA.
- 26.2 The Company may at its absolute discretion elect to pay you in lieu of part or all of your notice period. The amount you will be paid in lieu of notice is the amount the Company would have been liable to pay you had your employment continued until the end of the minimum period of notice.

Garden leave

- 26.3 During part or all of your notice period, the Company may:

- a) exclude you from any premises of the Company or of any Related Entities for which you perform duties,
- b) require you not to report for work, or
- c) provide you with altered duties.

However, and in each case listed at (a) to (c), the Company will continue to pay your salary for the notice period.

Summary dismissal

26.4 The Company may terminate your employment at any time without notice in the case of serious misconduct. Serious misconduct includes, but is not limited to:

- a) wilfully disobeying a lawful and reasonable direction;
- b) conducting yourself in a manner inconsistent with the due and faithful discharge of your duties;
- c) fraudulent or dishonest conduct;
- d) habitual neglect of your duties;
- e) gross negligence;
- f) participating in or being convicted of any criminal or civil offence; and
- g) any other conduct that would justify summary dismissal at common law.

26.5 On termination of your employment by any means, the Company will pay to you:

- a) your salary up to and including the Termination Date;
- b) payment in lieu of any accrued untaken annual leave to which you are entitled up to and including the Termination Date; and
- c) any other entitlements due to you under the Contract or relevant legislation.

Redundancy

26.6 If your Position with the Company is made redundant, you are entitled to redundancy payment in accordance with the relevant legislation, currently the FWA.

26.7 The FWA currently requires that redundancy be calculated with reference to your base rate of pay, your ordinary hours of work and the relevant pay period in the following table:

Period of continuous service with the Company on termination	Redundancy pay period
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks

26.8 For clarity, your base rate of pay excludes superannuation and your ordinary hours of work are defined at Item 7 under clause 1.1.

26.9 If your employment is terminated for any reason, you agree to resign all directorships, offices and positions that you may hold in relation to the Company, its Related Entities or any other entity in which you hold office in connection with your employment. You agree to do all things and execute all documents necessary to give effect to these resignations.

27. Suspension

27.1 Where the Company considers it necessary, it may suspend you on full pay, whilst it conducts an investigation into any concerns relating to your conduct or performance as an employee or for any other reason.

28. Return of property

28.1 On request by the Company or on termination of your employment, you must:

- a) return to the Company all property belonging to the Company in your possession, custody or control, including but not limited to any Confidential Information, Intellectual Property, mobile telephones, computers, keys, data storage devices, cards, documents, diaries, records and papers, reports, working papers, training manuals, equipment, computer information and programs and all copies of such items.
- b) cause to be deleted all records in your possession, custody or control pertaining to Clients, including but not limited to digital records and information contained on accounts to which you have access on professional or social media platforms such as LinkedIn, Facebook, Twitter, etc.

- 28.2 the Company may require you to declare that you have complied with the conditions in clause 28.1.
- 28.3 Any monies owing to you on termination will not be processed until you have complied with the conditions of this clause 28.
- 29. Confidential Information**
- 29.1 You must maintain the confidentiality of information and documents to which you have access in the course of or arising from your employment with the Company or any of its Related Entities.
- 29.2 You must not, during your employment or after the termination of your employment, directly or indirectly use or disclose (or attempt to use or disclose) any Confidential Information for any purpose, including to obtain any benefit for you or any other Person.
- 29.3 You must ensure secure custody of Confidential Information in your control or possession, and use your best endeavours to prevent the use or disclosure of Confidential Information by any person.
- 29.4 These restrictions do not apply to:
- a) information that is used or disclosed in the proper course of performing your duties for the Company;
 - b) information that is used or disclosed with the Company's prior consent;
 - c) information that is required by law to be disclosed; or
 - d) information that is in the public domain, other than through your breach of the Contract.
- 29.5 Any Confidential Information which is disclosed by you in accordance with clause 29.4(a), must only be done to the extent necessary, and only to persons who:
- a) have been approved by your Manager or an Authorised person as appropriate to receive such information;
 - b) are aware and agree that the Confidential Information must be kept confidential; and
 - c) sign and agree to be bound by the terms of any confidentiality agreement, as may be required by the Company to be signed, from time to time.
- 29.6 You acknowledge that the Company from time to time tenders for and engages in projects with Australian and foreign government agencies which impose their own secrecy and confidentiality conditions on the Company and its employees. You acknowledge that in the course of your employment you may directly or indirectly obtain access to or come into possession of materials governed by the terms of such secrecy or confidentiality obligations, and that you may be required to provide separate secrecy or confidentiality undertakings and/or consent to criminal record checks as determined by those agencies
- 29.7 If you are uncertain about whether information is Confidential Information, you must immediately ask your Manager. Until you receive an answer, you must treat that information as Confidential Information.
- 29.8 You acknowledge and agree that:

- a) damages may be inadequate compensation for breach of your obligations contained in this clause 29 and, subject to the court's discretion, the Company may seek specific performance or may seek to restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be in breach of this clause 29, in addition to any other remedy the Company may wish to pursue; and
- b) you will fully indemnify the Company in respect of any and all loss, damage, claims, liability, cost and expenses, of any kind, suffered or incurred by the Company as a result of your breach of this clause 29, in any way, including, but not limited to, any disclosure by you of any Confidential Information to any Person(s), other than is authorised under the Contract.

30. Intellectual Property and Moral Rights

- 30.1 All Intellectual Property rights arising in relation to any Works created or developed by you in connection with your employment with the Company (whether alone or with others) will belong to the Company and you agree to immediately disclose to the Company all such Works.
- 30.2 All existing Intellectual Property rights, title and interest in all Works created or developed by you in connection with your employment (whether alone or with others) are vested in the Company and, upon their creation, all such future rights will vest in the Company. You agree to execute all documents and do all acts and things required or desirable to secure any Intellectual Property rights of the Company.
- 30.3 You consent (for the Company's benefit) to any and all acts or omissions (whether occurring before or after this consent is given) made by or on behalf of the Company and its Related Entities in relation to all Works made or to be made by you in the course of your employment which might otherwise infringe your Moral Rights in any or all of those Works, and you waive all Moral Rights in any and all of those Works to the extent permitted by law.
- 30.4 You warrant that you have given this consent and undertaking genuinely, and without being subjected to any duress by the Company or any third party, and without relying on any representations other than those expressly set out in this Contract.

31. Post-employment obligations

- 31.1 You acknowledge and agree that:
 - a) in the course of your employment, you will:
 - (i) have access to and knowledge of the Company's and its Related Entities' products, services, skills and techniques;
 - (ii) become acquainted with the Clients and Suppliers of the Company and its Related Entities and their special needs and requirements;
 - (iii) become aware of the identity of prospective Clients whose business the Company and its Related Entities is attempting to attract;
 - (iv) generally be privy to Confidential Information and Intellectual Property concerning the Company and its Related Entities, their Clients, Suppliers, and methods of doing business.

- b) the only effective, fair and reasonable manner in which the interests of The Company can be protected is by the restraints imposed upon you in this Contract;
- c) the duration, extent and application of the restrictions contained in this Contract are not greater than is reasonably necessary to protect the Company's legitimate business interests, including the preservation of its relationships with its Clients, Suppliers, employees, agents, directors, officers, partners, contractors, advisors and consultants, the goodwill of its business, its Confidential Information and Intellectual Property; and
- d) the level of your benefits, including remuneration and bonuses (if any) constitutes adequate consideration for the restraint obligations imposed under this Contract.

31.2 You agree that having regard to the circumstances set out in clause 31.1, you will not, without the prior written consent of the Company, directly or indirectly, either as a principal, employee, agent, director, officer, partner, consultant, contractor, advisor or otherwise, for your own benefit or the benefit of any other Person, directly or indirectly, engage in any of the activities specified in clause 31.3, within the geographical areas specified in clause 31.4 and for the periods specified in clause 31.5 calculated from the Termination Date.

31.3 The activities are:

- a) engage in or perform any work in competition with the part of the business of the Company in which you worked during the 12 months preceding the Termination Date;
- b) canvass, solicit, or entice away (or attempt to do any of the foregoing), the business or custom of any Client, or provide products or services to any Client with whom you or a Person reporting to you, has performed work or had dealings with during the 12 months preceding the Termination Date;
- c) induce or encourage any Client (or attempt to do any of the foregoing), with whom you or a Person reporting to you have performed work or had dealings with, during the 12 months preceding the Termination Date, to terminate or to not renew or maintain or alter, any business relationship, contract or arrangement, that Client has with the Company or disclose any Confidential Information;
- d) induce or encourage any Supplier engaged by the Company (or attempt to do any of the foregoing), with whom you have performed work or had dealings with, during the 12 months preceding the Termination Date, to terminate or to not renew or maintain or alter, any business relationship, contract or arrangement, that Supplier has with the Company or disclose any Confidential Information;
- e) induce or encourage (or attempt to do any of the foregoing), any employee, agent, director, officer, partner, contractor, advisor or consultant with the Company, with whom you or a person reporting to you had dealings with, during the 12 months preceding the Termination Date, to terminate or to not renew or maintain or alter their employment contract with the Company, any business

relationship, contract or arrangement, they have with the Company, or disclose any Confidential Information.

31.4 The geographical areas are:

- a) the State of New South Wales; and
- b) Australia; and
- c) International markets in direct competition with the Company

31.5 The periods are:

- a) the three (3) month period which commences on the day immediately following the Termination Date; and
- b) the six (6) month period which commences on the day immediately following the Termination Date; and
- c) the nine (9) month period which commences on the day immediately following the Termination Date; and
- d) the twelve (12) month period which commences on the day immediately following the Termination Date

31.6 You and the Company separately enter into each of the covenants resulting from the combination of all the activities specified in clause 31.3, within the areas specified in clause 31.4 and for the periods specified in clause 31.5, and each of these covenants constitutes a separate covenant imposed upon you under this Contract.

31.7 If any of the restraints under this clause 30 is or is deemed void, invalid or otherwise unenforceable for any reason, by a Court of competent jurisdiction, that unenforceability does not in any way affect the enforceability of the other separate covenants.

31.8 If any of the covenants in this Contract are found by a Court of competent jurisdiction to be void, invalid or otherwise unenforceable, but would be valid and enforceable if:

- a) part of the wording was deleted; or
- b) the activities were reduced; or
- c) the geographical area was reduced; or
- d) the period was reduced; or
- e) any combination of the actions specified in clauses 31.8(a)-(d) were undertaken,

the covenant applies with such modifications as may be necessary to make the covenant valid and enforceable.

32. General provisions

32.1 This Contract is governed by the laws of New South Wales, Australia. The parties submit to the jurisdiction of the courts having jurisdiction in New South Wales, Australia.

32.2 Each provision of this Contract is severable from the others and the severance of a provision does not affect the remainder of the Contract.

32.3 You acknowledge and agree that the terms and conditions of your employment, as outlined in this Contract, are confidential and will not be disclosed by you to any Person(s) other than the Company, or your own legal or financial advisers.

33. Entire agreement

33.1 This Contract sets out all of the terms of your employment with the Company and supersedes and replaces all prior representations, contracts and agreements (whether oral or in writing) concerning your employment with the Company.

34. Employer's discretion

34.1 Where any provision of this contract entitles or engages discretion for the purposes of the Company exercising its discretion, the Company may act arbitrarily, with any payment being entirely gratuitous and voluntary.

EXECUTED as an agreement.



.....
Signature of authorised representative

.....
Name of authorised representative

.....
Position title

.....
Date

SIGNED by 

)
)
)

.....
Signature

.....
Date

[REDACTED]

[REDACTED]

1st December 2017

'MA-7'

PRIVATE & CONFIDENTIAL

[REDACTED]

Dear [REDACTED]

Further to our discussions, [REDACTED] or the 'Company') is pleased to offer you the full-time position of **Software Engineer** located in [REDACTED] commencing on **Monday 8th January 2018**. In this role you will report to the **Software Manager** or any nominated representative of the Company.

We want to be sure you are informed about our company, our culture, direction and the expectation we have of our people. We understand that your decision to join us is equally significant. Accordingly, we ask you to review the terms and conditions of employment as set out in the accompanying Employment Contract ("Contract").

What we expect of you...

To fulfil your accountabilities and our expectations of you:

- your behaviour at work will reflect our standards of business conduct;
- your endeavours will promote and enhance [REDACTED] (and where required of its associated companies) interests, growth, profitability and reputation;
- your interactions with fellow employees and our customers will reflect the value that [REDACTED] places on people, and in particular team leadership and membership; and
- during working hours, you are required to devote your time, attention and abilities to doing your best to carry out your duties in a proper and efficient manner.

What you can expect of [REDACTED].

Below are details relating to your employment with [REDACTED]. If there are some issues we haven't covered or you may need further information, please contact the HR Manager on [REDACTED].

YOUR TERMS OF EMPLOYMENT...

Agreement

The period of the Contract shall commence on **Monday 8th January 2018**.

Unless more generous provisions are provided in this letter, the terms and conditions of your employment will be those set out in the relevant Modern Award (if applicable) and applicable legislation. This includes, but is not limited to, the National Employment Standards in the Fair Work Act 2009 (Cth) (Act).

Total Remuneration Package (TRP)

The Company will pay you an annual remuneration package that comprises:

1. gross base salary of **\$62,000** plus
2. Superannuation contributions as required by law.

Your remuneration package includes payment for all amounts of overtime, allowances, penalties and loadings to which you may become entitled to under industrial laws.

Your salary will be paid monthly (2 weeks in arrears, 2 weeks in advance) and will be credited to your nominated bank account (or specified financial institution) on or around the 15th day of each month. The payment of equal monthly instalments is based on an average of 173.33 hours per month.

Your remuneration is confidential. Details concerning your remuneration package and/or outcomes of salary reviews (in particular, the dollar or % increase awarded) must not be discussed with colleagues. Any report of failure to abide by this policy will be investigated and, if proven may result in serious disciplinary action up to, and including termination of your contract of employment.

Salary Review

Your salary will be eligible for review on an annual basis. Such reviews do not in themselves automatically qualify you for additional remuneration but rather form the basis of regular assessment of your performance since the last review and in relation to the overall performance of the Company as well as economic factors.

Probationary Period

An employee commencing with Wabtec is employed under a probationary period for the first six (6) months. During this time, we will assess your progress and performance in the position. Employment may then, subject to this review, become permanent.

During probation, your employment may be terminated by one party giving the other two (2) weeks' notice in writing.

Position Description

The duties and responsibilities of your position are recorded for your reference in the position description. Please note that your duties may be varied in accordance with business needs following discussions with you.

Hours of Work

You are employed on a full time (38 hours per week) and are required to work during the Company's ordinary business hours which are 8.30 am – 5.00 pm from Monday to Friday, with a 30 minute lunch break.

Owing to the nature of your job, you are also required to work such additional hours as are necessary to satisfactorily perform the duties of your position, or as required by the Company.

You acknowledge that working additional hours is reasonable and is part of your role and this has been taken into account in setting your remuneration.

Work Location

You will be required to work primarily at [REDACTED] You may also be required to attend duties at other locations (including interstate) as may be reasonably necessary by [REDACTED] from time to time.

Salary Packaging

Providing you have sought independent professional advice, you may wish to adjust your Salary in the form of a salary sacrifice to provide for such items as the provision of a motor vehicle (on a novated lease basis) or to incorporate some other benefit. The Company is prepared to consider such requests on its merits, provided the cost of such a provision does not exceed the statutory limitation for the employee's Salary package and does not financially disadvantage the Company (e.g. FBT).

Expense Reimbursement

You may be required, in the performance of your duties, to make journeys in connection with Company business. The Company will reimburse you all reasonable, approved travel and other expenses incurred in the performance of your duties. Note: all expenses require approval by your manager before reimbursement of travel expenses occurs. You shall provide the Company with a detailed travel expenditure report, in accordance with our finance guidelines, for every travel excursion and shall include tax receipts or other evidence of actual payment of the said expenses.

Your Health and Wellbeing at Work...

Safety in the workplace - Our Responsibilities

At [REDACTED] we recognise our responsibility to provide a safe, secure workplace; we take this obligation very seriously. Workplace Health and Safety is a priority issue for us. In order to achieve this, we:

- acknowledge our obligation to provide a safe workplace, under the terms and conditions of relevant health and safety legislation and common laws. This includes but is not limited to the WHS legislation currently in force;
- maintain plant, equipment, substances and systems of work which are safe and without risk to health;
- provide systems of work to ensure the safe handling, use, storage and transport of plant, equipment and substances;
- provide the information, instruction, training and supervision necessary to ensure the health and safety of employees and visitors to the work site;
- provide for adequate monitoring of health and safety in the workplace to the extent that monitoring is relevant to the prevention of work-related injuries (e.g. injuries; air quality; industrial noise; temperature, etc).

Pre-employment Disclosure

As part of your pre-employment assessment with [REDACTED] you are required to give full particulars of any known condition that may affect your ability to carry out the inherent requirements of your role.

Safety in the workplace - Your Responsibilities

You have a key role in ensuring that the safety of yourself and others is maintained. To this end you must:

- assist and support the company with the implementation of any measures taken by us in respect of workplace health and safety;
- use all equipment, plant and appliances provided by the company in such a way as to ensure the health and safety of yourself, and all other persons;
- assist the Company in the implementation of any measures taken by us in respect of workplace health and safety;
- comply with all workplace health and safety guidelines, including those that refer to the use of personal protective equipment;
- adopt safe systems of work to support a safe place of work; and
- comply with any obligation imposed on you under the laws applicable to workplace health and safety, including but not limited to legislation currently in force.

For your safety and that of others, you are required to comply with all safety requirements at [REDACTED]. As part of your support for this initiative, you will advise a Health & Safety Representative should you be involved in an accident or incident that endangers your health during working hours. You are required to advise your manager should you suffer or contract a physical, medical or other condition that may affect your ability to carry out the inherent requirements of your position.

[REDACTED] promotes and encourages a smoke free environment consistent with our objective to provide a safe workplace for all and in line with public and community expectations. It is expected therefore that you will support this policy within all company buildings and facilities.

Substance Abuse

[REDACTED] has a **“zero tolerance”** in relation to substance abuse whilst you are engaged on company business. In order to ensure your own safety, and that of others, **you must not:**

- use or have in your possession any illegal substances whilst at work;
- consume alcoholic beverages, or use illegal substances whilst at work or attend work whilst unlawfully under the influence of alcohol or illegal substances;
- misuse legal drugs during working hours where you should be reasonably aware that such usage may constitute a misuse of such drugs;
- inappropriately consume alcohol during sanctioned company events held during working hours;
- drive a vehicle on company premises or operate company equipment while unlawfully under the influence of alcohol or illegal substances, or while using legal drugs where you should be reasonably aware that the use of such drugs might impair your performance.

“Illegal substance” refers to any substance the possession or use of which is prohibited by law.

[REDACTED] takes the above conditions seriously and may immediately terminate your employment should any one of the above events occur.

Operating Company Vehicles

You will be responsible for the upkeep and proper use of any vehicle in your custody. If, while unlawfully under the influence of alcohol, drugs, or illegal substances, you are involved in an accident while in charge of a company vehicle, you alone will be liable for any damage caused in the accident and for which [REDACTED] may otherwise be liable.

Tools of Trade

This position provides eligibility to be assigned a **desk top** for the proper discharge of your duties. You will be responsible for the upkeep and proper use of any company provided equipment in your custody.

Developing in your role

[REDACTED] has a performance review system that has been designed to assist you to maximise your performance within your role. Your manager will develop and review a performance and development plan with you in which you are required to participate.

This performance review process will provide an important opportunity for you personally as well as the business. It is important that you give this process your full support in order to develop in your work and broaden your skills. [REDACTED]'s employee development is designed to support you to develop in your role, broaden your skills and to increase your potential.

External educational and internal training courses may be approved, at [REDACTED] absolute discretion, if they are considered job related and contribute to your potential development within the company. Where prior approval has been gained, [REDACTED] will pay for the costs of enrolment conditional on you successfully passing the courses you are studying. In addition, upon application, paid study leave may also be granted to assist you with your studies. For more information on our employee development program, please consult the Human Resources Manager.

Diversity at [REDACTED]

You are responsible to act in a manner that will create and maintain a workplace environment that supports diversity and is free from discrimination, hostility, and harassment and bullying. You are required to read and familiarise yourself with related company policies in this regard. Behaviour that is inconsistent with the policies will be addressed, and disciplinary action will be taken, up to and including dismissal, to prevent such behaviour.

Workplace behaviour that is inconsistent with any company policies will be fully investigated. [REDACTED] reserves the right to dismiss you without notice for serious misconduct or breach of this Agreement. This includes but is not limited to any neglect of duty, dishonesty, wilful disobedience, gross misconduct, theft, fraud or assault.

In the event of such dismissal, you will be paid salary and accrued annual leave to the time of dismissal only.

Your Work / Life Balance...

Annual Leave and Public Holidays

Your annual leave will be in accordance with the National Employment standards ("NES"). Currently this is 20 days per year.

All employees should take the full amount of Annual Leave due no later than the anniversary date following the year in which the Annual Leave has accrued. Where this is not possible leave may be taken as directed by the company.

Your entitlement to Annual Leave is in addition to any declared public holidays that are normally observed by the company.

Any entitlement to leave loading is included in your total salary package.

Long Service Leave

You will be entitled to paid long service leave in accordance with applicable legislation.

Personal Leave

You have access to 10 days paid personal leave per annum. This leave accrues on a pro-rata basis and is cumulative.

You are entitled to use Personal Leave if you are absent from work:

- a. due to illness, injury or incapacity (Sick Leave); or
- b. to care for a member of your immediate family (Carer's Leave).

Accrued Personal Leave is not payable on termination.

Sick leave of 2 or more consecutive days must be accompanied by a certificate from a registered health practitioner.

The National Employment Standards ("NES") will govern personal leave entitlements.

Carer's Leave

You are entitled to use your Personal Leave each year to care for a member of your immediate family or a member of your household who is ill and requires your care or to deal with unexpected emergency.

You are not entitled to take carer's leave for a particular period if another person has taken leave to care for the person for the same period.

Your entitlement to carer's leave is conditional on you promptly notifying your manager of your inability to attend work.

If required by your manager, you may be required to produce a medical certificate, or make a statutory declaration.

Other Leave

You are also eligible for other leave such as Compassionate and Parental Leave. For more information on [REDACTED]'s leave provisions please discuss with your manager or refer upon commencement to the Human Resources Manager.

Your commitment to [REDACTED]

Confidential Information

[REDACTED] confidential information is one of the most important keys to our competitive advantage in the marketplace, and hence to our ongoing success as a business. Accordingly, you must ensure that you fully understand and comply with our confidentiality guidelines.

To ensure [REDACTED]'s business interests are protected, you must agree that:

1. Unless you are required by [REDACTED] or by law you must not use or disclose any confidential information other than for the purpose of carrying out the duties and responsibilities of your role.
2. All confidential information is for the exclusive benefit of [REDACTED] and must not be disclosed in the public domain.
3. If you have any doubt as to whether any given information is considered confidential, you are required to seek advice from your manager, the company secretary or [REDACTED]'s Human Resources department before taking action.
4. If you are uncertain as to whether any given information is either confidential or lawfully in the public domain, you should consider this information both confidential and not within the public domain unless [REDACTED] informs you in writing to the contrary.

Within your role we ask that you maintain proper and secure custody of all confidential information in your possession, and use your best endeavours to protect against the exposure of confidential information to third parties.

Your obligations to this policy on confidential information:

1. continue in the event that your employment is terminated with [REDACTED]
2. are enforceable by [REDACTED] at any time by legal process, and
3. are for the continuing benefit of [REDACTED] alone.

Company Property

We require you to hold, protect and return all items of company property that are issued to you through the course of your employment with [REDACTED]

Intellectual Property

[REDACTED] is entitled to know and benefit from the results of all your work. Any original work, process, design, system or material produced or published during your employment, including inventions, patent rights, trademarks, copyright or other processes developed or created by you arising from or developed in connection with [REDACTED] shall remain the sole property of [REDACTED]

As part of the grant of intellectual property rights to [REDACTED] you agree and give consent to [REDACTED] to alter, further develop and [REDACTED] things that you may do or create while you are working with the Company.

Conflict of Interest

To protect the interests of both [REDACTED] and yourself, you are required to notify us should you have an interest in, relationship with or obligation to any person or organisation with whom [REDACTED] competes or does business. This information is required to ensure that your judgement and ability to fulfil your responsibilities is protected, and that you avoid an actual or potential conflict of interest. We request that this information is provided at any time such a conflict arises during your ongoing employment with [REDACTED]

Computer Policy

Where [redacted] computers and systems are required to be used in your job, you must not access, download, store or transmit any e-mail message or attached material that is not directly related to your designated work role and responsibilities. The Company's policy in regard to inappropriate material such as sexually explicit and/or offensive material being accessed on [redacted] computers is that such behaviour will result in disciplinary action, up to and including termination of employment.

Security

Given the sensitive nature of our business, it is a requirement that you comply with all reasonable requests from authorised company personnel in relation to the inspection of all personal items whilst on company premises, or when leaving or entering company premises.

To assist with access security, you are required to wear a company access badge whilst at work. Should you lose your access card, please report this to your manager immediately so that a replacement card can be arranged.

Policy Gifts & Gratuities

Our policy on gifts, entertainment and gratuities is designed to preserve and maintain [redacted] reputation as an enterprise which acts with integrity and bases decisions on legitimate business considerations.

In general, receiving gifts, entertainment or other gratuities from anyone seeking to influence your decision-making should be politely declined. This prohibition covers all suppliers and bidders for our business.

[redacted] guidelines for giving and receiving gifts and entertainment may vary depending on your role, and may depend on the nature of your relationship with the other party. For further information, you should consult your manager or the Human Resources department.

Terminating Your Employment

After your probationary period is complete, either party may terminate your employment by the giving of **four (4) weeks written notice** of their intention.

[redacted] may elect to pay you salary in lieu of notice, or require you to work at a place other than your normal place of work, or to perform duties other than your normal duties, for the duration of all or part of the notice period.

Employment is automatically terminated without notice if you are dismissed for serious misconduct.

Restraint

During the period **six months following the termination of your employment**, you must not, **within the various states and territories of Australia and New Zealand:**

- attempt in any manner to persuade a customer to cease dealing with or to reduce the dealings which that customer has customarily had or contemplated having with [redacted]
- attempt in any manner to persuade a supplier to cease dealing with or to reduce the dealings that the supplier has customarily had or contemplated having with [redacted]
- attempt in any manner to persuade any employee or contractor of [redacted] with whose skills and abilities you have become familiar within the course of your employment to cease providing services to [redacted] and/or to provide services to you or another person; and

- carry on, advise, provide services to or be engaged, concerned or interested in or associated with or otherwise involved in any business activity that is competitive with any business carried on by [REDACTED]

[REDACTED] Policies and Procedures

[REDACTED] has a number of policies and procedures regarding a variety of matters. You are required to observe the terms of all [REDACTED] policies, procedures, guidelines, instructions and codes of conduct (as may be introduced or varied from time to time). You acknowledge that:

- the policies of [REDACTED] are not incorporated into and are not otherwise included in this Employment Agreement; and
- you will at all times adhere to and act in accordance with the policies and procedures of the Company which may, at our discretion, be amended from time to time.

Privacy

You agree that personal information concerning you, including but not limited to your name, image, address, remuneration, bank details, superannuation details, taxation details, employee records, training undertaken and work location:

1. will be maintained in [REDACTED] databases;
2. may be transferred to others, either inside or outside of [REDACTED] as is necessary to perform personnel related functions and for the purposes of complying with [REDACTED] policy or procedure or Australian law;
3. may be transmitted outside of Australia to other [REDACTED] entities; and
4. may be stored outside of Australia within [REDACTED] or entities engaged by [REDACTED] for the purpose of storing electronic data.

The Contract shall be governed, read and construed in accordance with the laws in force in the State of New South Wales and in compliance with Federal Laws as applicable.

The Contract constitutes the entire agreement between you and [REDACTED] about its subject matter; and supersedes any prior understanding or previous agreements or understandings. Negotiations on that subject matter cease to have any effect unless specified in this Contract.

The Contract shall be binding upon the company and upon its parent and subsidiary companies, and upon its successors, assigns, and upon any corporation deemed under the Company Code to be related to the Company.

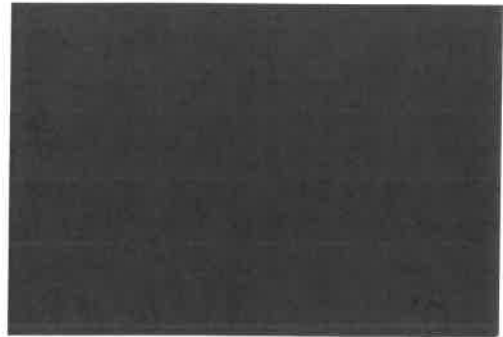
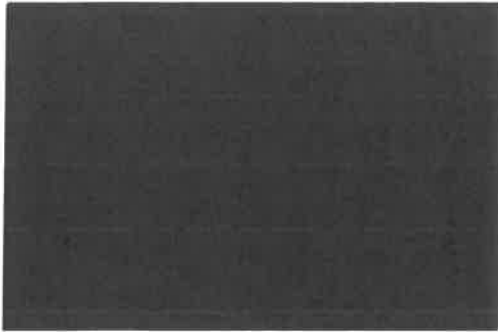
This Contract may only be altered in writing signed by each party.

To accept this offer under the terms and conditions enclosed, please:

- Return a signed and dated copy of this contract to me.

We look forward to your ongoing contribution as a team member with [REDACTED]

Signed on behalf of [REDACTED] by:



Statement of Acceptance

"I acknowledge that I have read this letter, its attachments and each of its enclosures. I understand and accept the terms and conditions of employment with the position of **Software Engineer** with [REDACTED]

Further, I warrant that all particulars given in my employment application form and all other information given by me in support of my application are true and correct.

I confirm that I am able to lawfully work in Australia on a full-time basis.

I consent to [REDACTED] providing my personal details to those employees or third-party providers as necessary for the purposes of my employment and appointment to the company."

First Name: _____
(Please Print)

Family Name: _____
(Please print)

Signature: _____

Date: _____

- (b) Where an employee has failed to produce to the employer written evidence that they possess or have acquired the relevant qualifications and the employee subsequently claims to be entitled to payment at a rate prescribed by this award, it will be a defence to the employer if the employer establishes that during the said period the employer did not know and had no reason to believe that the employee had acquired the qualifications of a Qualified engineer, Experienced engineer, Qualified scientist, Experienced scientist, Graduate information technology employee or, Experienced information technology employee, Graduate medical research employee or Experienced medical research employee.

12.4 Professional development

Clause 12.4 referred to a separately constituted Full Bench in AM2019/5. See Statement [2018] FWC 6107 at Attachment A.

- (a) Employees are responsible for keeping themselves informed of developments in their profession and developing their professional knowledge and ability. It is appropriate for employees to be encouraged to undertake self-development programs.
- (b) Where the employee and the employer agree that an activity be undertaken by the employee as a component of a structured training program, the employer will meet all costs associated with the training.

Part 3—Hours of Work

13. Ordinary hours of work

- 13.1 For the purpose of the [NES](#), ordinary hours of work under this award are 38 per week.

Ordinary hours of work referred to a separately constituted Full Bench in AM2019/5. See [2018] FWC 1548 at [621]; [2018] FWC 4175 at [372] and Statement [2018] FWC 6107 at Attachment A.

- 13.2 An employee who by agreement with their employer is working a regular cycle (including shorter or longer hours) must not have ordinary hours of duty which exceed an average of 38 hours per week over the cycle.
- 13.3 Employers must compensate for:
 - (a) time worked regularly in excess of ordinary hours of duty;
 - (b) time worked on call-backs;
 - (c) time spent standing by in readiness for a call-back;
 - (d) time spent carrying out professional engineering duties or professional scientific/information technology duties outside of the ordinary hours over the telephone or via remote access arrangements; or

- (e) time worked on afternoon, night or weekend shifts.
- 13.4 Compensation may include:
- (a) granting special additional leave;
 - (b) granting special additional remuneration;
 - (c) taking the factors in clause 13.3 into account in the fixation of annual remuneration; or
 - (d) granting a special allowance or loading.
- 13.5 Where relevant, compensation in clause 13.4 must include consideration of the penalty rate or equivalent and conditions applicable from time to time to the majority of employees employed in a particular establishment in which the employee is employed.
- 13.6 The compensation in clause 13.4 must be reviewed annually to ensure that it is set at an appropriate level having regard to the factors listed in this clause.
- 13.7 **Transfers**
- (a) An employee who is transferred permanently from day work to shiftwork or from shiftwork to day work must receive at least one month’s notice unless the employer and the employee agree on a lesser period of notice.
 - (b) Clause 13.7(a) is subject to the requirements of clause 24—Consultation about changes to rosters or hours of work.

Part 4—Wages and Allowances

14. Minimum wages

Minimum wages referred to a separately constituted Full Bench in AM2019/5 for Engineering Technologists. See Statement [\[2018\] FWC 6107](#) at Attachment A.

Monetary amounts adjusted as a result of AWR 2018; Clause 14.1 varied in accordance with [PR704336](#).

- 14.1 The minimum annual wages payable to full-time employees in the classifications defined in Schedule A—Classification Structure and Definitions and Schedule B—Medical Research Employees are:

Classification	Annual wages	Minimum hourly rate
	\$	\$
Level 1 Graduate professional		
Pay point 1.1 (3 year degree)	\$49,998	\$25.22

Part 5—Hours of Work and Related Matters

36. Ordinary hours of work and rostering

[Varied by [PR994530](#)]

36.1 Maximum weekly hours and requests for flexible working arrangements are provided for in the NES.

36.2 Ordinary hours of work—day workers

- (a) Subject to clause 36.5, the ordinary hours of work for day workers are an average of 38 per week but not exceeding 152 hours in 28 days.
- (b) The ordinary hours of work may be worked on any day or all of the days of the week, Monday to Friday. The days on which ordinary hours are worked may include Saturday and Sunday subject to agreement between the employer and the majority of employees concerned. Agreement in this respect may also be reached between the employer and an individual employee.
- (c) The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer between 6.00 am and 6.00 pm. The spread of hours (6.00 am to 6.00 pm) may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned or, in appropriate circumstances, between the employer and an individual employee.
- (d) Any work performed outside the spread of hours must be paid for at overtime rates. However, any work performed by an employee prior to the spread of hours which is continuous with ordinary hours for the purpose, for example, of getting the plant in a state of readiness for production work is to be regarded as part of the 38 ordinary hours of work.
- (e) Where agreement is reached in accordance with clause 36.2(b), the rate to be paid to a day worker for ordinary time worked between midnight on Friday and midnight on Saturday is time and a half and/or the rate to be paid to a day worker for ordinary time worked between midnight on Saturday and midnight on Sunday is double time.
- (f) A day worker required to work on a public holiday must be paid for a minimum of three hours work at the rate of double time and a half. The double time and a half rate must be paid to the employee until the employee is relieved from duty.

36.3 Ordinary hours of work—continuous shiftworkers

- (a) **Continuous shiftwork** means work carried on with consecutive shifts of employees throughout the 24 hours of each of at least six consecutive days without interruption except for breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer.
- (b) Subject to clause 36.3(c), the ordinary hours of continuous shiftworkers are, at the discretion of the employer, to average 38 hours per week inclusive of meal breaks and must not exceed 152 hours in 28 consecutive days. Continuous shiftworkers are

entitled to a 20 minute meal break on each shift which must be counted as time worked.

- (c) By agreement between the employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days but does not exceed 12 months.
- (d) Except at the regular changeover of shifts, an employee must not be required to work more than one shift in each 24 hours.

36.4 Ordinary hours of work—non-continuous shiftworkers

- (a) Subject to clause 36.4(b), the ordinary hours of work for non-continuous shiftworkers are an average of 38 per week and must not exceed 152 hours in 28 consecutive days.
- (b) By agreement between the employer and the majority of employees concerned, a roster system may operate on the basis that the weekly average of 38 ordinary hours is allowed over a period which exceeds 28 consecutive days but does not exceed 12 months.
- (c) The ordinary hours of work must be worked continuously, except for meal breaks, at the discretion of the employer.
- (d) Except at changeover of shifts an employee must not be required to work more than one shift in each 24 hours.

36.5 Methods of arranging ordinary working hours

- (a) Subject to the employer's right to fix the daily hours of work for day workers from time to time within the spread of hours referred to in clause 36.2(c) and the employer's right to fix the commencing and finishing time of shifts from time to time, the arrangement of ordinary working hours must be by agreement between the employer and the majority of employees in the enterprise or part of the enterprise concerned. This does not preclude the employer reaching agreement with individual employees about how their working hours are to be arranged.
- (b) The matters on which agreement may be reached include:
 - (i) how the hours are to be averaged within a work cycle established in accordance with clauses 36.2, 36.3 and 36.4;
 - (ii) the duration of the work cycle for day workers provided that such duration does not exceed three months;
 - (iii) rosters which specify the starting and finishing times of working hours;
 - (iv) a period of notice of a rostered day off which is less than four weeks;
 - (v) substitution of rostered days off;
 - (vi) accumulation of rostered days off;

- (vii) arrangements which allow for flexibility in relation to the taking of rostered days off; and
 - (viii) any arrangements of ordinary hours which exceed eight hours in any day.
- (c) By agreement between an employer and the majority of employees in the enterprise or part of the enterprise concerned, 12 hour days or shifts may be introduced subject to:
- (i) proper health monitoring procedures being introduced;
 - (ii) suitable roster arrangements being made;
 - (iii) proper supervision being provided;
 - (iv) adequate breaks being provided; and
 - (v) a trial or review process being jointly implemented by the employer and the employees or their representatives.
- (d) Where an employee works on a shift other than a rostered shift, the employee must:
- (i) if employed on continuous work, be paid at the rate of double time; or
 - (ii) if employed on other shiftwork, be paid at the rate of time and a half for the first three hours and double time thereafter.
- (e) Clause 36.5(d) does not apply when the time is worked:
- (i) by arrangement between the employees themselves;
 - (ii) for the purposes of effecting the customary rotation of shifts; or

[36.5(e)(iii) varied by [PR994530](#) from 01Jan10]

- (iii) on a shift to which the employee is transferred on short notice as an alternative to standing the employee off in circumstances which would entitle the employer to deduct payment in accordance with Part 3-5 of the Act.

36.6 Daylight saving

- (a) Where by reason of State or Territory legislation summer time is prescribed as being in advance of the standard time in that state, the length of any shift commencing before the time prescribed by the relevant legislation for the commencement of a summer time period or commencing on or before the time prescribed by the relevant legislation for the termination of a summer time period, is deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end of the shift. The time of the clock in each case is to be set to the time fixed by the relevant legislation.
- (b) The terms **standard time** and **summer time** have the same meaning as in the relevant State or Territory legislation.

36.7 Make up time

- (a) An employee may elect, with the consent of the employer, to work make up time under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in this award.
- (b) An employee on shiftwork may elect, with the consent of their employer, to work make up time under which the employee takes time off during ordinary hours and works those hours at a later time, at the rate which would have been applicable to the hours taken off.

37. Special provisions for shiftworkers

37.1 For the purposes of this award:

- (a) **rostered shift** means any shift of which the employee concerned has had at least 48 hours notice;
- (b) **afternoon shift** means any shift finishing after 6.00 p.m. and at or before midnight; and
- (c) **night shift** means any shift finishing after midnight and at or before 8.00 a.m.

37.2 By agreement between the employer and the majority of employees concerned or in appropriate cases an individual employee, the span of hours over which shifts may be worked may be altered by up to one hour at either end of the span.

37.3 Afternoon and night shift allowances

- (a) An employee who works on afternoon or night shift must be paid 15% extra for such shift.
- (b) An employee who works on an afternoon or night shift which does not continue:
 - (i) for at least five successive afternoon or night shifts or six successive afternoon or night shifts in a six day workshop (where no more than eight ordinary hours are worked on each shift); or
 - (ii) for at least 38 ordinary hours (where more than eight ordinary hours are worked on each shift and the shift arrangement is in accordance with clauses 36.3 or 36.4),must be paid for each shift 50% extra for the first three hours and 100% extra for the remaining hours.
- (c) An employee who:
 - (i) during a period of engagement on shift, works night shift only; or
 - (ii) remains on night shift for a longer period than four consecutive weeks; or
 - (iii) works on a night shift which does not rotate or alternate with another shift or with day work so as to give the employee at least one third of their working time off night shift in each shift cycle,

must, during such engagement, period or cycle, be paid 30% extra for all time worked during ordinary working hours on such night shift.

37.4 Rate for working on Saturday shifts

The rate at which a shiftworker must be paid for work performed between midnight on Friday and midnight on Saturday is time and a half. The extra rate is in substitution for and not cumulative upon the shift premiums prescribed in clause 37.3.

37.5 Rate for working on Sunday and public holiday shifts

- (a) The rate at which a continuous shiftworker must be paid for work on a rostered shift the major portion of which is performed on a Sunday or public holiday is double time.
- (b) The rate at which a shiftworker, on other than continuous shiftwork, must be paid for all time worked on a Sunday is double time and on a public holiday is double time and a half.
- (c) Where shifts commence between 11.00 p.m. and midnight on a Sunday or public holiday, the time so worked before midnight does not entitle the employee to the Sunday or public holiday rate for the shift. However, the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or public holiday and extending into the Sunday or public holiday must be regarded as time worked on the Sunday or public holiday.
- (d) Where shifts fall partly on a holiday, the shift which has the major portion falling on the public holiday must be regarded as the holiday shift. By agreement between the employer and the majority of employees concerned, the shift which has the minor portion falling on the public holiday may be regarded as the holiday shift instead.
- (e) The extra rates in clause 37.5 are in substitution for and not cumulative upon the shift premiums prescribed in clause 37.3.

38. Meal breaks

38.1 An employee must not be required to work for more than five hours without a break for a meal except in the following circumstances:

- (a) in cases where canteen or other facilities are limited to the extent that meal breaks must be staggered and as a result it is not practicable for all employees to take a meal break within five hours, an employee must not be required to work for more than six hours without a break for a meal break; or
- (b) by agreement between an employer and an individual employee or the majority of employees in an enterprise or part of an enterprise concerned, an employee or employees may be required to work in excess of five hours but not more than six hours at the ordinary time rate without a meal break.

38.2 The time of taking a scheduled meal break or rest break by one or more employees may be altered by an employer if it is necessary to do so in order to meet a requirement for continuity of operations.

40. Overtime

[Varied by [PR994530](#), [PR998104](#), [PR509163](#), [PR522993](#), [PR536796](#), [PR551719](#), [PR566818](#), [PR579514](#), [PR584117](#), [PR592267](#), [PR606490](#)]

40.1 Payment for working overtime

[40.1(a) varied by [PR584117](#) ppc 22Aug16]

- (a) Except as provided for in clauses 40.1(d), 40.8, 40.9, and 40.13, for all work done outside ordinary hours on any day or shift, as defined in clauses 36.2, 36.3 and 36.4, the overtime rate is time and a half for the first three hours and double time thereafter until the completion of the overtime work. For a continuous shiftworker the rate for working overtime is double time.
- (b) For the purposes of clause 40—Overtime, **ordinary hours** means the hours worked in an enterprise, fixed in accordance with clause 36—Ordinary hours of work and rostering.
- (c) The hourly rate, when computing overtime, is determined by dividing the appropriate weekly rate by 38, even in cases when an employee works more than 38 ordinary hours in a week.

[40.1(d) deleted by [PR584117](#) ppc 22Aug16]

[40.1(e) renumbered as 40.1(d) by [PR584117](#) ppc 22Aug16]

- (d) When not less than 7.6 hours notice has been given to the employer by a relief shiftworker that the relief shiftworker will be absent from work and the shiftworker whom that person should relieve is not relieved and is required to continue work on their rostered day off the unrelieved shiftworker must be paid at the rate of double time.

[40.1(f) renumbered as 40.1(e) by [PR584117](#) ppc 22Aug16]

- (e) In computing overtime each day's work stands alone.

40.2 Requirement to work reasonable overtime

- (a) Subject to clause 40.2(b), an employer may require an employee to work reasonable overtime at overtime rates.
- (b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
 - (i) any risk to employee health and safety;
 - (ii) the employee's personal circumstances including any family responsibilities;
 - (iii) the needs of the workplace or enterprise;
 - (iv) the notice, if any, given by the employer of the overtime and by the employee of their intention to refuse it; and
 - (v) any other relevant matter.

40.3 One in, all in does not apply

The assignment of overtime by an employer to an employee is to be based on specific work requirements and the practice of one in, all in overtime must not apply.

40.4 Rest period after overtime

- (a) When overtime work is necessary it must, wherever reasonably practicable, be arranged so that an employee has at least 10 consecutive hours off duty between the work of successive working days.
- (b) An employee, other than a casual employee, who works so much overtime between the termination of their ordinary hours on one day and the commencement of their ordinary hours on the next day that the employee has not had at least 10 consecutive hours off duty between those times must, subject to the other provisions of clause 40.4, be released after completion of the overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary hours occurring during such absence.
- (c) If on the instructions of the employer an employee resumes or continues work without having had the 10 consecutive hours off duty the employee must be paid at the rate of double time until the employee is released from duty for such period. The employee is then entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary hours occurring during the absence.
- (d) By agreement between the employer and individual employee, the 10 hour break provided for in clause 40.4 may be reduced to a period of no less than eight hours.
- (e) The provisions of clause 40.4 will apply in the case of a shiftworker as if eight hours were substituted for 10 hours when overtime is worked:
 - (i) for the purpose of changing shift rosters; or
 - (ii) where a shiftworker does not report for duty and a day worker or a shiftworker is required to replace the shiftworker; or
 - (iii) where a shift is worked by arrangement between the employees themselves.

40.5 Call back

An employee recalled to work overtime after leaving the employer's enterprise, whether notified before or after leaving the enterprise, must be paid for a minimum of four hours work at the rate of time and a half for the first three hours and double time thereafter or, if a continuous shiftworker, at the rate of double time for the full period provided that:

- (a) Where an employee is required to regularly hold themselves in readiness for a call back they must be paid for a minimum of three hours work at the appropriate overtime rate, subject to clause 40.6 which deals with the conditions for standing by.
- (b) If the employee is recalled on more than one occasion between the termination of their ordinary hours on one day and the commencement of their ordinary hours on the next working day they are entitled to the three or four hour minimum overtime payment provided for in clause 40.5 for each call back. However, in such

circumstances, it is only the time which is actually worked during the previous call or calls which is to be taken into account when determining the overtime rate for subsequent calls.

- (c) Except in the case of unforeseen circumstances arising, an employee must not be required to work the full three or four hours as the case may be if the job they were recalled to perform is completed within a shorter period.
- (d) Clause 40.5 does not apply in cases where it is customary for an employee to return to the enterprise to perform a specific job outside the employee's ordinary hours or where the overtime is continuous, subject to a meal break, with the commencement or completion of ordinary hours.
- (e) Overtime worked in the circumstances specified in clause 40.5 is not to be regarded as overtime for the purposes of clause 40.4 concerning rest periods after overtime, when the actual time worked is less than three hours on the call back or on each call back.

40.6 Standing by

Subject to any custom prevailing at an enterprise, where an employee is required regularly to hold themselves in readiness to work after ordinary hours, the employee must be paid standing by time at the employee's ordinary time rate for the time they are standing by.

40.7 Saturday work

A day worker required to work overtime on a Saturday must be afforded at least four hours work or be paid for four hours at the rate of time and a half for the first three hours and double time thereafter, except where the overtime is continuous with overtime commenced on the previous day.

40.8 Sunday work

An employee required to work overtime on a Sunday must be paid for a minimum of three hours work at double time. The double time is to be paid until the employee is relieved from duty.

40.9 Public holiday work

- (a) A day worker required to work overtime on a public holiday must be paid for a minimum of three hours work at the rate of double time and a half. The double time and a half is to be paid until the employee is relieved from duty.
- (b) A continuous shiftworker required to work overtime on a public holiday must be paid for a minimum of three hours work at the rate of double time.
- (c) A non-continuous shiftworker required to work overtime on a public holiday must be paid for a minimum of three hours work at the rate of double time and a half. The double time and a half is to be paid until the employee is relieved from duty.

40.10 Rest break

- (a) An employee working overtime must be allowed a rest break of 20 minutes without deduction of pay after each four hours of overtime worked if the employee is to continue work after the rest break.
- (b) Where a day worker is required to work overtime on a Saturday, Sunday or public holiday or on a rostered day off, the first rest break must be paid at the employee's ordinary time rate.
- (c) Where overtime is to be worked immediately after the completion of ordinary hours on a day or shift and the period of overtime is to be more than one and a half hours, an employee, before starting the overtime, is entitled to a rest break of 20 minutes to be paid at the employee's ordinary time rate.
- (d) An employer and employee may agree to any variation of clause 40.10 to meet the circumstances of the work in hand provided that the employer is not required to make any payment in excess of or less than what would otherwise be required under clause 40.10.

40.11 Meal allowance

[40.11(a) varied by [PR998104](#), [PR509163](#), [PR522993](#), [PR536796](#), [PR551719](#), [PR566818](#), [PR579514](#), [PR592267](#), [PR606490](#) ppc 01Jul18]

- (a) An employee must be paid a meal allowance of \$14.25 on each occasion the employee is entitled to a rest break in accordance with clause 40.10, except in the following circumstances:
 - (i) if the employee is a day worker and was notified no later than the previous day that they would be required to work such overtime; or
 - (ii) if the employee is a shiftworker and was notified no later than the previous day or previous rostered shift that they would be required to work such overtime; or

[40.11(a)(iii) varied by [PR994530](#) from 01Jan10]

- (iii) if the employee lives in the same locality as the enterprise and could reasonably return home for meals; or
 - (iv) if the employee is provided with an adequate meal by the employer.
- (b) If an employee has provided a meal or meals on the basis that they have been given notice to work overtime and the employee is not required to work overtime or is required to work less than the amount advised, they must be paid the prescribed meal allowance for the meal or meals which they have provided but which are surplus.

40.12 Transport of employees

When an employee, after having worked overtime or a shift for which they have not been regularly rostered, finishes work at a time when reasonable means of transport are not

available, the employer must provide the employee with a conveyance home, or pay the employee at the overtime rate for the time reasonably occupied in reaching home.

40.13 Time off instead of payment for overtime

[40.13 inserted by [PR584117](#) ppc 22Aug16]

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 40.13.
- (c) An agreement must state each of the following:
 - (i) the number of overtime hours to which it applies and when those hours were worked;
 - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
 - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
 - (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I. An agreement under clause 40.13 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

- (d) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 40.13 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 40.13 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.

- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 40.13 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 40.13 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

Note: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 40.13 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 40.13.

40A. Requests for flexible working arrangements

[40A inserted by [PR701402](#) ppc 01Dec18]

40A.1 Employee may request change in working arrangements

Clause 40A applies where an employee has made a request for a change in working arrangements under s.65 of the [Act](#).

Note 1: Section 65 of the [Act](#) provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in s.65(1A).

Note 2: An employer may only refuse a s.65 request for a change in working arrangements on 'reasonable business grounds' (see s.65(5) and (5A)).

Note 3: Clause 40A is an addition to s.65.

40A.2 Responding to the request

Before responding to a request made under s.65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working