



DECISION

Fair Work Act 2009

s.185 - Application for approval of a single-enterprise agreement

Martin Brower Australia Pty Ltd t/a Martin Brower Australia Pty Ltd
(AG2024/1882)

MARTIN BROWER AUSTRALIA PTY LTD AND TRANSPORT WORKERS UNION OF AUSTRALIA DRIVERS ENTERPRISE AGREEMENT 2023

Road transport industry

DEPUTY PRESIDENT ROBERTS

SYDNEY, 10 JULY 2024

Application for approval of the Martin Brower Australia Pty Ltd and Transport Workers Union of Australia Drivers Enterprise Agreement 2023

[1] An application has been made for approval of an enterprise agreement known as the *Martin Brower Australia Pty Ltd and Transport Workers Union of Australia Drivers Enterprise Agreement 2023* (**the Agreement**). The Application was made pursuant to s.185 of the *Fair Work Act 2009* (**the Act**). It has been made by Martin Brower Australia Pty Ltd (**the Applicant**). The Agreement is a single enterprise agreement.

[2] The Applicant has provided written undertakings (**Annexure A**). In accordance with s.190(4) of the Act the views of the bargaining representatives for the agreement were sought in relation to the undertakings. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement.

[3] Subject to the undertakings referred to above, I am satisfied that each requirement of ss186, 187 and 188 as is relevant to this application for approval has been met. The undertakings are taken to be a term of the Agreement.

[4] I note that Clause 5 of the Agreement provides that this Agreement shall be read and interpreted in conjunction with the National Employment Standards (NES) provided that where there is any inconsistency between this Agreement and the NES, the more beneficial provision to an employee shall take precedence.

[5] The Transport Workers' Union of Australia NSW/QLD (Interim Governance) Branch (TWU) lodged a Form F18 statutory declaration giving notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) of the Act, I note the Agreement covers the TWU.

[6] The Agreement is approved and will operate in accordance with s.54 of the Act. The nominal expiry date of the Agreement is 30 June 2026.



DEPUTY PRESIDENT

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG2024/1882

Martin Brower Australia Pty Ltd
1 Burilda Close
Wetherill Park NSW 2164

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Sally Hole, Human Resources Director have the authority given to me by Martin Brower Australia Pty Ltd to give the following undertakings with respect to the Martin Brower Australia Pty Ltd and Transport workers Union of Australia Drivers Enterprise Agreement 2023 ("the Agreement"):

1. Clause 5 of the Agreement addresses the incorporation of the Road Transport and Distribution Award 2020 (the Award). Under this Clause, if there are matters covered by the Award that the Agreement is silent on, then Award provisions as relevant to our business will be incorporated and shall have precedence.
2. Appendix 4, Schedule 2 which provides for right of entry provisions for TWU officials will be excluded and will be void as a term of the Agreement.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature



Date



**Martin
Brower®**



Martin Brower Australia Pty Ltd and Transport Workers Union of Australia Drivers Enterprise Agreement 2023

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A Copy of it can be found at the bottom of this agreement.

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PART 1 APPLICATION AND OPERATION OF AGREEMENT

1. TITLE

This Agreement shall be referred to as the Martin Brower Australia Pty Ltd and Transport Workers Union of Australia– Drivers Enterprise Agreement 2023.

2. COMMENCEMENT DATE OF AGREEMENT AND PERIOD OF OPERATION

- a) This Agreement is an Enterprise Agreement in accordance with the Fair Work Act 2009.
- b) This Agreement shall operate for a period of three (3) years and have a nominal expiry of 30 June 2026.
- c) Notwithstanding anything else contained in this Agreement, it shall remain in force until such time as it is superseded, rescinded, or replaced.

3. COVERAGE OF AGREEMENT

- a) This Agreement outlines the conditions of employment for employees of Martin-Brower Australia Pty Ltd in the Company's operations involving functions as detailed below.
- b) This Agreement shall apply to distribution centres throughout New South Wales where the work covered by this Agreement is performed by employees.
- c) This Agreement shall apply to employees of the company within this Agreement's classification structure who perform work in or in connection with:
 - I. receiving, dispatching of goods, logistics operation; and
 - II. transportation and delivery / pick up of products.

4. THE PARTIES TO THIS AGREEMENT

- a) Employees whose employment or engagement is, at any time when the agreement is in operation, subject to this Agreement,
- b) Martin-Brower Australia Pty Ltd ("the Company"), and
- c) The Transport Workers' Union of Australia ("the Union").

5. RELATIONSHIP TO PARENT AWARD AND NATIONAL EMPLOYMENT STANDARDS

This Agreement shall be read and interpreted in conjunction with the National Employment Standards (NES) provided that where there is any inconsistency between this Agreement and the NES, the more beneficial provision to an employee shall take precedence.

The terms of this agreement deal comprehensively with those matters contained in Awards and previous Agreements covering the employees. As the Agreement replaces all of these terms, all terms of the Awards and any prior agreements are wholly excluded by this Agreement.

Should this agreement be silent on any matter covered by the Road Transport and Distribution Award 2020, then the provision in the award shall have precedence.

All employees subject to the conditions of the Agreement are also bound by all company Policies and Procedures (as amended) that are not directly referred to in this Agreement.

6. NO PRECEDENCE

This Agreement shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other Distribution Centre.

7. NO EXTRA CLAIMS

This Agreement provides for all wages, salary, allowances and loadings increases during the life of the Agreement. It is a term of this Agreement that neither party shall pursue any extra claims during the nominal life of this Agreement and that the Agreement will cover all matters or claims regarding the employment of the employees, which could otherwise be the subject of protected action pursuant to s.408 of the Fair Work Act 2009.

8. SHARED VALUES

8.1. PRODUCTIVITY AGREEMENT

The employees agree to work with management to assist in increasing productivity gains in order to offset cost increases incurred by this agreement.

8.2. CONTINUOUS IMPROVEMENT

The parties to this Agreement recognise the need to continue to build workplace arrangements that contribute to the on-going viability of the Company in a highly competitive market. Flexibility in the deployment of labour is extremely important to ensure the long-term future of the Company and its employees. The parties to this Agreement recognise that the Company is a third-party Distribution Company. Our success is dependent upon our ability to demonstrate cost of living increases, productivity gains and improved levels of customer service.

The objectives of this agreement are to:

- a) maximise the efficiency and prosperity of the Company for the benefit of employees, customers and the community;
- b) provide a high quality distribution service to fully meet customer requirements;
- c) continue to develop and maintain the most productive, safe, cooperative and harmonious working relationships possible by promoting trust and continually striving to improve communications at all levels;
- d) provide the highest standard of Workplace Safety and Injury Management Protection, ensure that the principals of equal opportunity in employment are applied and that any discrimination, harassment, bullying and vilification is excluded from the workplace;
- e) develop a “learning environment” where all employees are willing and encouraged by the company to develop to their maximum potential, and to continually update their skills and knowledge to meet their personal objectives and the objectives of the Company.
- f) Provide secure employment for employees through the full utilisation of company employees and equipment prior to the engagement of casual or contract labour.

9. EQUAL EMPLOYMENT OPPORTUNITY

The Company is an equal opportunity employer. All people have a right to fair and equal treatment in all aspects of their employment. It is unlawful to treat people differently or to harass them on the basis of, for example, but not limited to:

- sex or gender
- pregnancy or potential pregnancy
- breast feeding
- race, colour, decent, national or ethnic origin, immigration status
- marital status, relationship status
- family responsibilities, status as a parent or carer
- homosexuality, sexual orientation, lawful sexual activity
- transgender status, gender identity, gender history, transexuality
- religious belief, affiliation, or activity, ethno religious status
- union membership, participation in union activities
- political belief, affiliation or activity
- disability, impairment (physical or mental)
- age

Equality of opportunity particularly applies to, for example, but is not limited to:

- recruitment and promotion
- terms and conditions of employment
- allocation of tasks
- dismissal or redundancy
- retirement
- enterprise agreements

Employees who feel that they have suffered discrimination or harassment on one of the above grounds should report the matter to their supervisor, manager, or human resources. The matter will be dealt with in accordance with the relevant Company grievance and harassment and discrimination policies.

10. PRESENTATION & UNIFORM

The Company is a customer driven organisation. Customers and suppliers frequently visit our premises. For these reasons it is important that our uniforms and employees are presentable and the standard of housekeeping in our workplace be high at all times.

Where uniforms are supplied, they must be worn and kept clean.

The initial allocation of uniforms will include five (5) Shorts or Trousers, five (5) Shirts, a jumper or bomber jacket.

Replacement of all uniform items will be on a fair wear and tear (exchange) basis. All uniform items, excluding safety boots, must be returned when leaving the Company, prior to final payment being received.

In the interest of safety and image, employees are required to present themselves in a neat and hygienic manner ensuring long hair is tied back for their safety as well as removing any jewellery that may be unsuitable for the workplace, or safety or image (e.g. risk of causing bodily harm if caught or pulled).

11. PROTECTIVE CLOTHING

Each person will be issued the following on a needs basis. The old garment will be required to be sighted by management before each new issue.

- Safety shoes/boots
- Gloves
- Socks
- High visibility vest
- Wet weather gear
- Beanie / Hat
- Sunglasses

Where an employee has been provided with any personal protective clothing or equipment it will be mandatory for such employee to wear or use such equipment. Failure to do so may result in disciplinary action being taken in accordance with the company's established procedure.

PART 2 COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

12. WORKPLACE HEALTH & SAFETY

Workplace Health & Safety is everyone's responsibility and requires appropriate behaviours and practices at all levels to ensure we have a proactive Safety Culture.

The company aims to ensure all reasonable steps are taken to identify, eliminate or control potential risks and hazards in the workplace. The company's planned and systematic approach to workplace safety is critical in maintaining a workplace safety culture.

The joint co-operation of Employees, Supervisors and Managers is required for ensuring:

1. Adoption of pro-active behaviours to identifying hazards/risks & implementing corrective actions for improvement;
2. Communicating awareness across the businesses – by holding team briefings (Toolbox Talks), training, the continuation of the safety committee etc;
3. Developing our culture – through policies, procedures, KPI's, consultation mechanisms, proper instructions, training etc;
4. Introduction and maintenance of safe systems of work – by establishing KPI's, monitoring and auditing our processes / KPI variances etc and taking corrective actions across the business to improve the business and our culture;

While this is not an exhaustive list, examples of basic safety standards for employees to comply with are as follows:

- Wear a high visibility uniform/vest at all times;
- Do not ride on any equipment in a manner it was not designed for;
- Wear all Personal Protective Equipment (PPE), including steel caps as required;
- Wear appropriate clothing, hats & sunscreen when in the sun;
- Do not tamper with any safety equipment and/ or device / guards;
- Warm up stretches are performed at the start of every delivery;
- Do not come to work under the influence of alcohol or drugs;

- No speeding in vehicles/equipment (*watch for pedestrians & sound the horn*);
- Avoid climbing over vehicles or product;
- Keep all aisles and exits clear from any obstructions;
- Maintain good House Keeping in work area(s) to ensure we have a clean site and vehicle;
- Treat individuals with mutual respect & honesty (i.e: no smutty jokes, sexually offensive comments/taunts, unwelcome behaviours, no bullying/aggressive behaviour);
- Do not bring or show in a workplace pornographic or other offensive material;
- Do not engage in aggressive, intimidating or bullying tactics or behaviours
- Comply with all safety warning signage and notices;
- Comply with relevant laws (i.e: Speed signs, Fatigue Management, load restraints, licensing laws etc); - please keep your licence current and on you at all times;
- Rules of the road and relevant laws pertaining to the road will be followed using defensive driving techniques
- Report all Incidents and/or Hazards immediately in writing;
- Pedestrians & MHE are to maintain a safe distance from each other (this is a dual responsibility) – alert each other to your presence as a preventative measure;
- Wear seat belts / harnesses where fitted;
- Do not engage in reckless or other unsafe activities;
- Comply with all company policies and procedures.
- Comply with Chain of Responsibility requirements

Failure to comply with these requirements may result in disciplinary action including the termination of the employee's employment.

13. FATIGUE MANAGEMENT PROTOCOL

The parties acknowledge that fatigue management is an important health and safety issue. Accordingly, the parties commit to a process of consultation, the purpose of which will be to develop a fatigue management protocol. It will be the objective of this protocol to create a system of work that minimizes the risks associated with fatigue while having regard to the particular needs and requirements of the Company's business. It is also acknowledged by the parties, that the outcome of their considerations of this issue may result in a need to change rosters and historical work practices, in order to comply with fatigue management guidelines. Accordingly, the employees and union give a commitment that should such changes become necessary, they shall work with management in a consultative manner to introduce such changes and in doing so, they shall not unreasonably withhold their agreement to such changes.

14. DRUG AND ALCOHOL POLICY

A copy of the Drug and Alcohol Policy will be held on site and made available to employees.

The company will continue to consult with employees and the TWU in relation to any proposed changes to this policy.

15. ANNUAL MEDICAL ASSESSMENTS

The annual medical assessments prescribed herein shall occur on a voluntary basis. However, the company may require a mandatory medical examination of any person(s) who is/are involved in a notifiable workplace safety incident or accident and/or to comply with driving legislation.

For the purposes of this clause, the term notifiable workplace safety incident or accident shall mean any such event that is required by way of legislation or other legal instrument to be notified to a government agency or other recognised authority.

The purpose of medical examinations is to ensure that employees are medically able to perform their duties in a manner which shall not give rise to undue risk to themselves, their work colleagues or members of the community.

An employee may use his or her own doctor, for the purpose of undergoing such assessment.

The employee shall be provided with a form, by the company, which shall be given to the doctor to complete, as part of the assessment process. The form shall request that the doctor perform checks in

relation to eyesight, hearing, blood pressure, cholesterol, diabetes, presence of illegal substances, general well-being & fitness for work in the employee's occupation and behaviour modifying drugs.

The results shall be returned to the company's WHS Manager and shall be treated in confidence.

If an employee fails a medical assessment, to the extent that the employee cannot safely perform their normal duties, regard will be had to the following:

- a) The reasons for such failure and whether such reasons would preclude the employee from being able to continue performing their duties in a safe manner.
- b) Whether treatment is available which would enable the employee to continue to perform their duties in a safe manner.
- c) Whether it is possible to reclassify the employee into an alternative position within the company, the duties for which the employee could perform safely, having regard to the medical condition.
- d) The company shall respect the privacy of all employees with regard to the results of any medical examinations that are carried out in accordance with this clause. Such results will be treated as confidential and will only be available to authorised managers.

16. WORKERS COMPENSATION

The Company will provide Workers Compensation in accordance with relevant State and Federal legislation (As Amended).

The company supports injured workers through Early Intervention and Well Being programs, Warm up stretching exercises before starting each delivery.

17. INTRODUCTION OF MAJOR CHANGE IN THE WORKPLACE

- 1) This term applies if the employer:
 - a. has made a definite decision to introduce major change to production, program, organisation, structure, or technology in relation to its enterprise that is likely to have significant effect on the employees; or
 - b. proposes to introduce a change to the regular roster or ordinary hours of work of employees.
- 2) For a Major Change referred to in paragraph 17.1 a:
 - a. the employer must notify the relevant employees of the decision to introduce the major change; and
 - b. Subclauses (17.3) to (17.9) apply.
- 3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 4) If:
 - a. A relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - b. The employee or employees advise the employer of the identity of the representative;
 - c. The employer must recognise the representative.
- 5) As soon as practicable after making its decision, the employer must:
 - a. Discuss with the relevant employees:
 - i. The introduction of the change; and
 - ii. The effect the change is likely to have on the employed; and
 - iii. Measures the employer is taking to avert or mitigate the adverse effect of the change on the employees and
 - b. For the purposes of the discussion—provide, in writing, to the relevant employees
 - i. all relevant information about the change including the nature of the change proposed; and
 - ii. information about the expected effects of the change on the employees; and
 - iii. any other matters likely to affect the employees.

- 6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (17 2)(a) and subclauses (17 3) and (17 5) are taken not to apply.
- 9) In this term, a major change is likely to have a significant effect on employees if it results in:
 - a. the termination of the employment of employees; or
 - b. major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
 - c. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - d. the alteration of hours of work; or
 - e. the need to retrain employees; or
 - f. the need to relocate employees to another workplace; or
 - g. the restructuring of jobs
- 10) Change to regular roster or ordinary hours of work
 - a. For a change referred to in paragraph (17 1)(b):
 - I. the employer must notify the relevant employees of the proposed change; and
 - II. subclauses (17 11) to (17 15) apply.
- 11) The relevant employees may appoint a representative for the purposes of the procedures in this term.

If:

 - I. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - II. the employee or employees advise the employer of the identity of the representative;

the employer must recognise the representative.
- 12) As soon as practicable after proposing to introduce the change, the employer must:
 - a. discuss with the relevant employees the introduction of the change; and
 - b. for the purposes of the discussion--provide to the relevant employees:
 - I. all relevant information about the change, including the nature of the change; and
 - II. information about what the employer reasonably believes will be the effects of the change on the employees; and
 - III. information about any other matters that the employer reasonably believes are likely to affect the employees; and
 - c. invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- 13) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 14) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 15) In this term:
- 16) "relevant employees" means the employees who may be affected by a change referred to in subclause (17 1).

18. JOINT CONSULTATIVE COMMITTEE

- a) At each site covered by this Agreement, the company and the employees shall establish a Joint Consultative Committee (JCC) and associated procedures that are appropriate to the size, structure and needs of the site.
- b) The principal objective of this clause (and of the Joint Consultative Committee) is to provide a system whereby orderly consultation between management and the employees can occur in a systematic and planned way.
- c) The JCC shall discuss and consider issues affecting the business, including employee related matters.

- d) The JCC shall meet on a monthly basis, or on an alternative level of frequency, as determined appropriate by the members.
- e) The JCC shall be comprised of both company and employee representatives. The number of representatives who shall participate as members of the committee shall be a matter for Agreement at each site. However, the number of persons comprising the Committee should be an equal number of company and employee representatives. At least one employee member of the JCC shall also be selected member of the Union.
- f) The JCC will have an active role in such matters as training programs and issues, dispute settling, consultation and relevant issues that affect employees in the workplace which also includes rosters and posting of available overtime.
- g) The determination for base roster allocations will be determined on seniority (length of service). The base roster will be rostered weekly. Any dispute must be formally registered as per the Dispute Settlement Procedure.
- h) Where it is considered appropriate to do so, the JCC may form sub committees to deal with specific workplace related issues.
- i) At the conclusion of each JCC meeting, minutes will be drafted and communicated through the employee notice boards.

19. EMPLOYEE DISCIPLINARY MATTERS

- a) It is accepted by the parties to this Agreement that matters related to performance management and discipline may sometimes be necessary in circumstances applying to individual employees. In managing such issues in the workplace the parties are committed to the following:
 - The observance of procedural fairness in the application of performance management and disciplinary processes.
 - The right of employees to be represented at all times and/ or stages, in any matters related to performance management or disciplinary processes.
 - That the extent to which individual events of performance management and discipline (i.e. formal warnings) can be relied upon diminishes over the course of time, particularly where the employee concerned has not been involved in subsequent performance or disciplinary events within a reasonable period of time.
- b) It is agreed that where an employee has been issued with a formal disciplinary notice, movement to the next level of the performance management or disciplinary process will be determined by reference to the elapsed time since the last event, provided that such event has been within the last 12 months. By way of example and to assist in the understanding of the intentions of the parties in agreeing to this provision, reference should be made to the following:
 - Example 1 - Employee A is issued with a first formal warning. The employee later participates in conduct justifying further disciplinary action. Such conduct occurs 11 months after the date of the first warning. In this case, the employee may be issued with a second formal warning.
 - Example 2 - Employee A is issued with a first formal warning. The employee later participates in conduct justifying further disciplinary action. Such conduct occurs 13 months after the date of the first warning. In this case, the employee is to be issued with a new first warning.
- c) In making decisions concerning the performance management and disciplinary steps that may be taken, the employer is entitled to refer to all such matters as they appear on the employee's personnel file. However, any written warning issued to an Employee that has lapsed in accordance with this clause, will not be used as one of the warnings to justify the employee's dismissal.
- d) It is further agreed that the above conditions do not remove the right of the employer to summarily terminate the employment of an employee for serious and wilful misconduct, or to move through the disciplinary process in a manner that is justified having regard to the particular circumstances and facts of each event.

- e) In the event that an employee is stood down from work pending any investigations, and providing they make themselves reasonably available for any meetings and/or comply with any directions during such stand down periods, they will be paid a rate of pay equivalent their average earnings, taken over the last 12-month period.

20. DISPUTE SETTLEMENT PROCEDURE

Any dispute or grievance that arises at the workplace in relation to the Agreement, matters pertaining to the relationship of employer and employee and the National Employment Standards (NES) must be dealt with in the following manner:

- a) The Employee who has the dispute or grievance should discuss the matter with the appropriate supervisor.
- b) In the first instance, the parties will attempt to resolve the matter in dispute at the workplace by discussions between the effected employee(s) concerned and the relevant supervisor.
- c) If the Employee does not receive an answer after a reasonable period, or is not satisfied with the answer received, the Employee is to raise the matter with the manager. The Employee may choose to be accompanied by an employee representative.
- d) The representative may interview the employee(s) concerned and the supervisor. The representative shall have reasonable access to resources (including photocopier, telephone, fax machine and notice board) to perform their role.
- e) Any employee involved in the grievance procedure steps shall be released on paid time.
- f) If such discussions do not resolve the matter in dispute, the parties will arrange further discussions involving more senior levels of management as appropriate.
- g) If the grievance is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, either party may refer the grievance to Fair Work Commission ('the Commission) for conciliation, and, if necessary, arbitration.
- h) The decision of the Commission will bind the parties, subject to either party exercising a right of appeal against the decision to a Full Bench.
- i) Until the dispute is determined, the status quo will remain. However while the grievance procedure is being conducted an employee must not unreasonably fail to comply with a direction by the company, nor will the grievance process, being undertaken, hinder the commercial viability or operation of the company.
- j) The Commission shall have the power to do all such things as are necessary for the just resolution or determination of the grievance. This includes the exercising of procedural powers in relation to directions, hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective.
- k) At any stage of the process, an employee is entitled to a representative of their choice which may include a fellow employee or a TWU union official.

21. INDIVIDUAL FLEXIBILITY ARRANGEMENTS

- I. An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - a. the agreement deals with the following matters:
 - allowances
 - arrangements dealing with ordinary hours or work
 - arrangements dealing with minimum break (Clause 45) – as long as this does not result in a breach to fatigue management requirements as per legislation.
 - b. The individual flexibility arrangement must meet the genuine needs of an employee and the employer.
 - c. The individual flexibility arrangement must be genuinely agreed to by the employee and the employer. In order to ensure genuine agreement the employer must advise the employee representative prior to an individual flexibility arrangement being entered into and the employee has the option to seek advice from their representative.
- II. The employer must ensure that the terms of the individual flexibility arrangement:
 - a. are about permitted matters under section 172 of the Fair Work Act 2009 ; and
 - b. are not unlawful terms under section 194 of the Fair Work Act 2009 ; and
 - c. result in the employee being better off overall than the employee would be if no arrangement was made.

- III. The employer must ensure that the individual flexibility arrangement:
 - a. is in writing; and
 - b. includes the name of the employer and employee; and
 - c. is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - d. includes details of:
 - i. the terms of the enterprise agreement that will be varied by the arrangement; and
 - ii. how the arrangement will vary the effect of the terms; and
 - iii. how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - e. states the day on which the arrangement commences.
- IV. The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- V. The employer or employee may terminate the individual flexibility arrangement:
 - a. by giving no more than 28 days written notice to the other party to the arrangement; or
 - b. if the employer and employee agree in writing, at any time.

PART 3 CONTRACT OF EMPLOYMENT

22. PERMANENT EMPLOYMENT

The company shall, when engaging an employee, state definitely whether such employee is engaged as a permanent full time, permanent part time or casual employee. Failing such notice the employee shall be deemed to be engaged as a permanent employee.

The company may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training, consistent with the classification structure of this Agreement. Provided, that such duties are not designed to promote de-skilling.

An employee not attending for duty shall, except as provided by clauses 49, 50, 51, 52, 53, 54, 55 and 56 of this Agreement, lose pay for the actual time of such non-attendance.

23. PROBATION

All employees are engaged on a probationary period for the first six (6) Months (26 weeks) of their employment. The employee must be advised in writing and in advance that the employment is probationary.

For clarification, the probationary period also constitutes as the qualifying period of employment. Probationary employment forms part of an employee's period of continuous service and cannot be extended.

24. FULL TIME EMPLOYMENT

A full time employee is an employee engaged to work an average of 38 hours per week on a permanent basis.

25. PERMANENT PART TIME

The Company may employ employees on a permanent part-time basis. For permanent part-time employees, clauses of this Agreement shall be applied on a pro-rata basis. Hours of work and days of work will be agreed between the Company and the employee in writing.

The minimum daily hours of work are four (4) hours on any one day.

If a change to the hours of work is required, the employee will be provided with two (2) weeks written notice.

An employee and the Company may agree to change the employee's working days, without the provision of two (2) week notice or penalty payment.

26. MARTIN BROWER AUSTRALIA CASUALS

The role of casuals is to cater for peaks in demand for labour and will supplement permanent full time and permanent part time employment.

- a) Casual employees are employed by the hour and paid as such for a minimum of four (4) hours on any one day. A casual is paid the applicable hourly rate the plus a 25% casual loading (inclusive of one twelfth (1/12th) of ordinary time earnings in lieu of annual leave). Casual rates compensate employees for the casual nature of the engagement as well as all leave entitlements.

Where casual employees are required to work overtime, payment will be made at the same time and a half or double time rates, as applicable to permanent employees. A casual employee will not receive the 25% loading whilst working overtime however they will also be paid 10% of the applicable full time classification rate for each hour of overtime worked.

Martin Brower casuals employed for a minimum period of six (6) months and during the last 6 months have worked a regular pattern of hours on an ongoing basis, which, without significant adjustment, the employee could continue to work as a full time or part time employee will be offered to convert to permanent full time employment, or where they have worked less than the equivalent full time hours, part time employment.

On receipt of the offer to convert, an employee must give a written response to the offer within 21 days after the offer is made stating whether they accept or decline the offer. If the employee fails to give this written response, they are taken to have declined the offer.

In any instance where there are reasonable grounds that are known or reasonably foreseeable that would impact the ongoing requirement in the next 12 months for the position and/or significantly reduce the hours, or where the days and times required to be worked are not able to be met by the employee, then the Company will not have to make a conversion offer and written notice of this will be given to the employee.

Should a casual employee be transitioned to either a full time or part time employee, all accruals (except Long Service Leave) will only commence from the first day that the change takes effect and as per the new letter of appointment.

Nothing in the above is intended to override or impair an ability a casual employee may have to issue a 'casual conversion notice'.

26.1. AGENCY CASUAL LABOUR

It is agreed that where temporary and/or casual labour is engaged through an employment agency, persons so engaged shall be entitled to receive wage payments that are equivalent to those applying under this enterprise agreement to company employees. The company shall advise any employment agency through which labour is accessed of this provision, in order that the agency can make the correct payments to any persons whom are provided on a casual and/or temporary basis.

27. CHANGE OF PLACE OF EMPLOYMENT

Where the company transfers an employee, after he or she commences work, from the place which the employee usually works to another place, fares or expenses to and from such altered place shall be reimbursed by the company to the employee, except when transported by the company.

28. JOB ABANDONMENT

If an employee is absent from work for a period of three (3) consecutive working days, or after a period of authorised leave without the consent of the Company and without notifying the Company, that person will be deemed to have abandoned employment.

In the case that the Company believes that an employee has abandoned their employment, the Company will make reasonable effort to contact the employee to confirm the reason for the absence.

Where the employee is unable to establish to the satisfaction of the Company that there is a reasonable cause for the absence, and if it is within a period of 14 days from their last attendance at work or the date of their last absence in respect of which notification has been given or consent has been granted, the employee is deemed to have abandoned their employment.

The employment contract will be terminated from the date of last attending work, or the last day's absence for which consent was given, whichever is the latter.

29. TERMINATION OF EMPLOYMENT

- a) Employment may be terminated by the employer by giving the appropriate notice in writing as shown in the table below:

Years of Service	Notice Period By Age of Employee	
	Under 45	45 Years and Over
Less than 1 year	1 week	1 week
1 year and less than 3 years	2 weeks	3 weeks
3 years and less than 5 years	3 weeks	4 weeks
5 years and over	4 weeks	5 weeks

- b) Where the Company terminates the employment, payment in lieu of notice may be made.
 c) The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of his or her employment and the classification of or the type of work performed by the employee and level of competency achieved.
 d) The notice of termination required to be given by an employee is seven (7) days in writing prior to the last day of employment.
 e) If an employee fails to give the notice specified above the company has the right to withhold monies due to the employee to a maximum amount equal to the amount of the notice period not provided.

29.1. THE PERIOD OF NOTICE IN THIS CLAUSE DOES NOT APPLY:

- a) in the case of dismissal for serious misconduct;
 b) to employees engaged for a specific period of time or for a specific task or tasks;
 c) to trainees whose employment under a traineeship Agreement or an approved traineeship is for a specified period or is, for any other reason, limited to the duration of the Agreement; or
 d) to casual employees.

30. REDUNDANCY

The Company will seek to avoid redundancies. However, in the event of redundancy, the Company will communicate with employees at the earliest opportunity. Subject to the retention of necessary skills and any operational requirements, consideration will be given to volunteers before forced redundancies.

Redundancy occurs where the company has made a definite decision that the company no longer wishes the job the employee has been doing done by anyone and that decision leads to the termination of employment of the employee, except where this is due to the ordinary and customary turnover of labour.

The company will not make higher classification levels redundant in an attempt to save costs and replace those employees with lower classified employees.

30.1. DEFINITIONS

- a) **Business** includes trade, process, business or occupation and includes part of any such business.
 b) **Week's pay** means the ordinary time rate of pay for the employee concerned. Provided that such rate shall exclude:
 i. Overtime;
 ii. penalty rates;
 iii. disability allowances;
 iv. shift allowances;
 v. special rates;
 vi. fares and travelling time allowances;
 vii. bonuses; and
 viii. any other ancillary payments of a like nature.

30.2. PROCESS BY WHICH REDUNDANCIES WOULD OCCUR

- a) Where the company has made a decision that positions were to be made redundant and no other suitable and alternative positions were available, necessitating the termination of employment of employees, the following process would be followed:
 - i. The company would as a first step call for volunteers.
 - ii. If insufficient volunteers were available, selection criteria will be developed. All employees would then be rated against this criteria.
 - iii. If any employees are rated equally on the selection criteria, seniority will then be used. For the purposes of this clause, "seniority" shall mean last on/employed, first off.
- b) Throughout the above process, the company will consult with the employees and their representative, to develop selection criteria.

30.3. TRANSFER TO LOWER PAID DUTIES

Where an employee is transferred to lower paid duties by reason of redundancy the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the company may at the company's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary rate of pay and the new ordinary time rate for the number of weeks of notice still owing.

30.4. SEVERANCE PAY

Where an employee is to be terminated due to redundancy, the Company shall pay the following severance pay in respect of a continuous period of service. The following scale will apply in the event of redundancy for permanent employees only.

30.5. SCALE OF SEVERANCE PAY

Length of Continuous Service	If Employee Under 45 Years of Age	If Employee 45 Years of Age or More
Less than 1 year	Nil	Nil
1 year or more but less than 2 years	4 weeks	5 weeks
2 years & more but less than 3 years	7 weeks	8.75 weeks
3 years & more but less than 4 years	10 weeks	15 weeks
4 years & more but less than 5 years	12 weeks	15 weeks
5 years & more but less than 6 years	14 weeks	17.5 weeks
6 years & more but less than 7 years	16 weeks	20 weeks
7 years & more but less than 8 years	18 weeks	22 weeks
8 years & more but less than 9 years	20 weeks	24 weeks
9 years & more but less than 10 years	22 weeks	26 weeks
10 years & more but less than 15 years	24 weeks	28 weeks
At least 15 years	28 weeks	32 weeks

30.6. EMPLOYEE LEAVING DURING NOTICE PERIOD

An employee given notice of termination in circumstances of redundancy may terminate his/her employment during the period of notice set out in Clause 28 - Notice of termination. In this circumstance the employee will be entitled to receive the benefits and payments they would have received under this clause had they remained with the company until the expiry of the notice, but will not be entitled to payment in lieu of notice.

30.7. JOB SEARCH ENTITLEMENT

- a) During the period of notice of termination given by the company in accordance with clause 28 an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the company, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

30.8. EMPLOYEES EXEMPTED

This clause does not apply to:

- a) employees terminated as a consequence of serious misconduct that justifies dismissal without notice;
- b) probationary employees;
- c) employees engaged for a specific period of time or for a specified task or tasks; or
- d) casual employees.

PART 4 WAGES, HOURS OF WORK, SHIFT WORK AND OVERTIME

31. WAGE RATES

It is agreed that the wage increases which apply during the life of this Agreement are as set out in the table of weekly wage rates, as it, appears in Appendix 1 to the Agreement.

The Classification and Grading Structure which is applicable to employees covered by this Agreement is set out in Appendix 1.

32. PAYMENT OF WAGES

The pay week for employees covered by this agreement shall begin on Monday & cease on the following Sunday. All wages and overtime shall be paid by direct deposit into no more than two bank or building society accounts nominated by the employee by no later than the following Thursday.

33. SUPERANNUATION

The subject of superannuation is dealt with extensively by legislation including the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993, the Superannuation (Resolution of Complaints) Act 1993 and the Legislation Amendment (Choice of Superannuation Funds) Act 2004. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties. Notwithstanding this, the following provisions also apply.

33.1. DEFINITIONS

In this clause

- " 'Martin Brower Nominated Superannuation Fund' shall mean Colonial First State Superannuation Fund.
- "Ordinary time earnings" – is as per legislation.

33.2. CHOICE OF FUND

Martin Brower will make superannuation contributions on behalf of employees in accordance with the relevant Commonwealth Superannuation legislation into a superannuation fund of the employee's choice. If the employee does not choose a fund in accordance with legislation, the Company will make contributions into:

- (a) the employees 'stapled' fund; or
- (b) if the Australian Taxation Office does not identify a 'stapled fund' for the employee, to the Company's default fund.

33.3. EMPLOYER CONTRIBUTIONS

The employer will contribute to the relevant fund on behalf of all employees without exception the following amounts:-

- From the 1 July 2023 – 11.25%, .
- From the 1 July 2024 – 11.50%
- From the 1 July 2025 – 12.25%

For clarification, the above amounts are inclusive of the legislative minimum superannuation guarantee.

The employer shall provide each employee upon commencement of employment, membership forms and shall forward the completed membership form to the Fund within fourteen (14) days.

Payments shall be made on a monthly basis and cover pay periods completed in that time.

33.4. EMPLOYEE CONTRIBUTIONS – AFTER TAX

Where an employee wishes to make voluntary contributions to the Fund, the employee must authorise Martin Brower to deduct from the employee's wages an amount specified by the employee in accordance with the Fund trust deed and rules. Contributions deducted under this provision will be forwarded to the Fund by Martin Brower at the same time as Martin Brower's contributions made as per clause 33.3.

An employee may vary his or her additional contributions by a written authorisation and the employer must alter the additional contributions within fourteen (14) days of receipt of the authorisation.

Additional employee contributions to the fund requested under this sub-clause shall be expressed in whole dollars.

33.5. CESSATION OF CONTRIBUTIONS

The obligations of the employer to contribute to the fund in respect of an employee shall cease on the last day of such employee's employment with the employer.

33.6. SALARY SACRIFICE FOR SUPERANNUATION – EMPLOYEE PRE-TAX CONTRIBUTIONS

An employee may make an agreement with the employer to participate in a salary sacrifice program in relation to superannuation contributions. The program is voluntary.

The employee must specify an amount (either as a percentage of ordinary time earnings as defined by which his or her salary or by a fixed amount by which it is to be reduced ("the salary sacrifice").

The salary sacrifice will be deducted from the employee's salary and contributed by the employer to the Fund monthly at the same time as Martin Brower's contributions made as per clause 32.3.

All salary sacrifice contributions will be indicated as such on an employee's payslip as a pre-tax amount.

Salary sacrifice deductions will be made during a period of paid or pre-paid leave and the employee will receive the rate of pay specified under this Agreement less the salary sacrifice deduction.

The employee may revoke the salary sacrifice agreement at any time or vary the amount to be deducted at three (3) monthly intervals.

The employer may change benefits under the program if required to do so by changes to State or Federal legislation. The employer shall consult with employees and the Union prior to any changes being implemented. In the event that amendment to these remuneration arrangements is to be implemented, the employer will provide employees and the Union with reasonable notice. Such notice shall be not less than two (2) months unless a shorter time is required to comply with changes to legislation.

34. PERFORMANCE BASED PAYMENT SYSTEM

A performance based payment system shall be based on the following principles:

Group

Off Load Rate

Individual

Absenteeism

Shrink & Damage.

One (1) site issue as determined by the JCC – as required

a) Period of measurement

The performance against the above criteria shall be measured over 2 x 6 monthly periods, August to January, February to July.

Performance payments that are due to eligible employees shall be made within 2 full pay periods after the end of each calculation period and upon formal close off of the relevant end of month period.

- b) **Transparency** - All eligible employees shall be provided with details of cumulative performance/results on a minimum monthly basis.
- c) **Review** - A formal Review of the operation of the system shall be included as a permanent agenda item in site JCC meetings.
- d) **Eligibility** - shall be as follows:
 - i. All Permanent employees shall be eligible to participate in the Scheme.
 - ii. Company casual employees and permanent part time employees shall be eligible to participate in the scheme. Such payments to be calculated on a pro-rata basis by reference to the number of ordinary hours worked by the employee during the calculation period, as compared with the number of ordinary hours which could otherwise have been worked by a permanent employee.
 - iii. Agency casual employees are not eligible to participate in the scheme.
 - iv. In order to receive a payment, employees must be employed by the company as at the date the payment is due. No payments shall be made to any employee who ceases employment, for any reason, prior to the payment becoming due and payable.

Certain absences, as follows, will be deducted on a pro-rata basis from the eligible payment:

- Absences due to periods of workers compensation and/or income protection insurance.
- Maternity, paternity and adoption leave or other leave without pay.
- Absences exceeding the maximum paid period of personal (sick) leave available to an employee under the terms of the Agreement.

- e) **Payment Amount** - In each 6 monthly calculation, each eligible employee shall be entitled to receive a maximum payment of \$1,200.
 - i. The actual payment to be made to each eligible employee shall be calculated by reference to the actual performance of the business, as measured against the Performance Criteria which is specified above.
 - ii. For the purpose of calculating the payments to which employees are entitled, each month shall stand alone, and underperformance in a month will not disentitle an employee to amounts which have accrued in relation to months where the performance targets have been achieved.
- f) **Record Keeping** - At the site of this Agreement, the Performance Based Payment System shall be documented. This document shall be made available to all eligible employees, upon request.

35. MEAL/OVERNIGHT ALLOWANCE

Where an employee is required to perform duties which require an overnight stay away from their usual place of residence, then such employee shall receive an allowance of \$70.00 for each overnight stay. This allowance will be payable in respect for the each evening meal and breakfast which is applicable to the overnight stay.

This allowance shall be paid to employees in lieu of the Company being required to meet the cost of meals. The company will meet the cost of accommodation, excluding mini bar costs. The allowances which are prescribed herein, shall be in lieu of, and not cumulative upon, the meal allowance as prescribed by this agreement.

36. CALCULATION OF ACCRUAL- RDO

Where payment is based on 7 hours 36 minutes per day the 24 minutes of work remaining unpaid accrues so as to give a paid rostered day off, normally allowing for one (1) RDO in every four (4) week cycle.

At sites which operate rosters which do not accrue RDO's the status quo shall apply and the provisions relating to RDO rosters shall not apply. Having said that, nothing in this agreement prevents the introduction of an RDO system, should an agreement be reached between employees and the company.

During a period of annual leave the employee will continue to accrue RDO's.

36.1. ROSTERED DAYS OFF PROVISION

- a) This Agreement shall allow flexibility with regards to the manner of taking Rostered Days Off (RDO's). RDO's may be taken and paid for in any of the following ways:
 - i. Taken as time off work as a single paid RDO day on a roster basis.
 - ii. Taken as time off work in blocks of a minimum of 5 paid RDO's, at times that are agreed by management.
 - iii. Paid out in lieu of taking the time off.
 - iv. Alternatively, RDO's may be taken in any other method as may be agreed between the employee concerned and the employer.
- b) So as to permit effective rostering of staff to occur, each employee must nominate during December in each year, as to how they wish to take and be paid for their RDO's in the following year. Such nomination will be made in writing, in accordance with the form that appears as Appendix 3 to this Agreement.
- c) Where an employee elects to be paid out their RDO's in lieu, in accordance with paragraph 36.1(a) above, the following shall apply:
 - i. Pay-out of RDO's in lieu, shall be at the sole discretion and election of the employee concerned.
 - ii. Each employee may be paid out a maximum of 12 accumulated RDO's per year.
 - iii. RDO's shall be paid out at ordinary time rates of pay.
 - iv. Payment of accumulated RDO's shall be made retrospectively, as follows:
 - v. Accruals from 1 January to 30 June will be paid in the second pay week of July each year.
 - vi. Accruals from 1 July to 31 December will be paid in the second pay week of January each year.
- d) The Agreement to this provision shall not be used as a precedent with respect to the issue of the 38-hour week.
- e) It is accepted by the parties that whilst this provision is intended to provide a level of flexibility in relation to RDO's, any changes made in accordance with the clause should be consistent with the following objectives:
 - i. That all work is covered and completed.
 - ii. That any changes in rostered work must not create a situation whereby employees are driving illegally or in a potentially unsafe manner due to insufficient rest periods between shifts.
 - iii. That the effect of any such changes are cost neutral on the company.
 - iv. That no employee is put under duress by a work colleague to change the day on which they take their RDO.
 - v. The company will not be held responsible if employees enter into an arrangement to swap their RDO days and in doing so, it creates a situation whereby the number of prime and non prime RDO days is inconsistent with normal custom and practice.

37. HOURS OF WORK

The ordinary hours of work shall be an average of 38 per week to be worked on one of the following basis:

- 38 hours within a work cycle not exceeding 7 consecutive days; or
- 76 hours within a work cycle not exceeding 14 consecutive days; or
- 114 hours within a work cycle not exceeding 21 consecutive days; or
- 152 hours within a work cycle not exceeding 28 consecutive days.

It is not the intention of the company that employees be held back after the completion of their rostered work, if no work is available. If there is no known transport work available at the time the employee returns from their rostered delivery run, then such employee shall not be held back for their full rostered ordinary hours.

Employees who are requested to carry out work in the above mentioned fashion may request to be released without payment for the remaining hours of their rostered shift.

38. SPAN OF HOURS

Subject to Clause 41 (Saturday and Sunday), all employees understand that due to the need to maintain a 24 hour a day, 365 day a year operation employees will be required to work according to set rosters which may include weekends and Public Holidays.

It is agreed that the span of ordinary hours is between 6.00am and 6pm Mon – Friday, but may also include Saturday and Sunday. The span of ordinary hours may be altered in the distribution centre by one hour at each end by agreement between the employer and the employee concerned.

39. STARTING TIMES

- a) Where proper facilities are provided for an employee to sign on / clock on when beginning work and to sign off / clock off when leaving work, the work of such employee shall be deemed to commence when the employee signs on at the distribution centre at the commencement of their shift and to finish when the employee signs off at the completion of their shift, as per their roster.
- b) Base rosters will be designed by the company and posted Seven (7) days prior to commencement of a roster. The roster shall specify commencing and finishing times of ordinary working hours, indicating store allocations, pickups and changeovers.
- c) The Company may make a temporary change to the base roster in the 24 hours prior to the shift due to being commenced, based on volume (resulting in a vehicle being under-utilised or overloaded), unplanned leave and/or events outside the control of the company.
- d) In the event that the change as set out in clause 39 c) results in a two (2) hour variance to their base roster finish time, the company will notify the affected employee as early as possible, either through email, text message or telephone call.
- e) Base rosters will be reviewed at least twice a year, or in the case that there is a change to the operational requirements that impacts on the base roster or if Base Roster alterations become frequent. These changes will be communicated and allocated as per the provision in clause 18 g)
- f) Where a change, as mentioned in 39 c) is made and results in the Driver being changed from a shift that incurs a higher shift loading to a shift that incurs lower or no shift loading, the Company will honour the loadings that would have ordinarily been paid on the original roster, to the exclusion of overtime.

40. SHIFT WORK – 38 HOUR WEEK

Employees required to work shift work will be paid the penalty rate outlined below, in addition to the base rate detailed in Appendix 1 of this Agreement.

Prior to making a decision to alter the ordinary roster of an employee, the company will consult with the employee(s) concerned and their representative to discuss the change. The company will consider any views in relation to the impact of the change that are given by the employee(s) and their representative.

Where a definite decision in relation to changing a roster has been made the Company will give the employee(s) seven (7) days' notice or in cases outside of the control of the company, the change can be made by giving 24 hours' notice.

Shift rosters need not provide two consecutive days off when roster changes occur.

Hours of Shift -

- **Day Shift:** an ordinary shift (not including overtime) which commences at or after 6am (0600hrs) and finishing at or before 6pm (1800hrs).
- **Afternoon Shift:** an ordinary shift (not including overtime) which finishes after 6pm (1800hrs) and at or before midnight (2359hrs). A loading of 17.5% of base rate will apply for all ordinary hours of afternoon shift.
- **Rotating Afternoon Shift:** - Will attract a loading of 17.5%.
- **Night Shift:** an ordinary shift (not including overtime) which commences between 4.30pm (1630hrs) and 6.00am (0600hrs). A loading of 30% of base rate will apply for all ordinary hours of night shift.
- **Rotating Night Shift:** - Will attract a loading of 30%.

40.1. SHIFTS FINISHING AFTER MIDNIGHT – SPECIAL SHIFT ALLOWANCE

Due to the requirement of some customers to have particular delivery times which are outside of the normal rostering system. The company agrees to pay a special shift allowance to compensate the employees for the unusual times of work, as follows.

- a) Shifts (including overtime) commencing after 10am and finishing prior to midnight will attract 17.5% loading
- b) Shifts (including overtime) commencing after 10am and finishing at or after midnight will attract 30% loading allowance.

The above mentioned special shift allowance, is only paid on the ordinary hours and not the overtime component of the hours worked and is paid in lieu of any other penalties

41. ROSTERING OF SATURDAYS AND SUNDAYS

Working of Saturday and Sundays will be Voluntary.

In the case where all work is not covered the company will roster the work subject to clause 18 g.

- a) All hours worked on a Saturday (except overtime) shall attract a loading of 50%.
- b) Overtime on Saturday shall be paid at time and one half for the first two (2) hours and double time thereafter.
- c) All hours worked on a Sunday (except overtime) shall attract a loading of 100%.
- d) Overtime on Sunday shall be paid at double time.
- e) The minimum shift commencing on a Saturday or Sunday shall be four (4) hours.
- f) Where an employee is rostered to work ordinary hours on a Saturday and/or Sunday, the roster must be set in such a way that the employee has 2 consecutive days off work in the week.

41.1. EXISTING EMPLOYEES

- a) No existing employee may be directed to work ordinary hours on a Saturday and/or a Sunday. However, existing employees may request to work Saturdays and / or Sundays. For the purposes of this provision, existing employee shall mean:
 - a. In the case of ordinary hours on a Saturday - a person who was on the company payroll at or before 1 April 2011.
 - b. In the case of ordinary hours on a Sunday – a person who was on the company payroll at or before 1 April 2011.
- b) Any existing employee by agreement with management, who elects to move to the working of ordinary hours on a Saturday and/or Sunday, shall be entitled to do so. The employee must inform management of this request in writing and where possible the company will accommodate such a request.
- c) Each arrangement shall be trialled for a period of 3 months. The trial shall be conducted on a without prejudice basis.
- d) Upon the trial period in clause 41.1(d) being completed, the arrangement shall be reviewed again at least 3 months after it has been introduced and if either party no longer wishes to continue with the arrangement, it shall cease.
- e) All such arrangements shall be documented and signed by the parties, with a copy to be retained on the employee's personnel file.
- f) The parties to this Agreement undertake that should such arrangements be made that may be otherwise contrary to any other provisions of this Agreement, their implementation will not be taken as being a breach of this Agreement and no claim may be made by any employee for any additional payment or penalty that may have otherwise applied but for the implementation of such an arrangement.

42. MEAL TIMES

A break must be given no later than 5 hours of work.

42.1. DAY WORK

An paid meal break of thirty (30) minutes shall be taken each day.

42.2. AFTERNOON AND NIGHT SHIFT

An employee working afternoon or night shift shall be allowed a 30 minute paid meal break. This is counted as time worked.

42.3. OVERTIME

An employee required to work more than 2 hours overtime, beyond the rostered ordinary hours for the day will be allowed a thirty (30) minute rest break, paid at the applicable overtime rate. Employees are to receive this break no later than 5 hours after the end of their meal break

42.4. MEAL ALLOWANCE

Unless the employee was notified either the previous day or earlier, of the requirement to work overtime, an employee required to work more than 2 hours overtime beyond the rostered ordinary hours for the day will be paid a meal allowance, as set out in Appendix 2.

43. OVERTIME

Hours worked in excess of the 38 hours per week, or forty (40) rostered ordinary hours per week in the case of RDO accruals, shall be overtime and paid at the rate of time and one half for the first two (2) hours and double time thereafter. Overtime shall be calculated daily.

Employees who have been confirmed to work overtime, who take either sick leave, annual leave, carers leave or any other type of leave and the planned overtime is not worked, the hours of planned overtime will not be paid.

In the calculation of overtime, portions of hours shall be taken to the nearest quarter of an hour.

43.1. SATURDAY AND SUNDAY OVERTIME

- a. Rules for the posting of available overtime will be agreed between the company and the JCC. These rules as defined by the JCC will be enforced by the company.
- b. All routes nominated by a driver are considered "guaranteed". Non-guaranteed routes will be covered by contractors, casuals or other outsourcing. In the event that a guaranteed route is then not covered by an employee, the Company may outsource whichever route(s) is not covered, and the parties agree that this arrangement may be scheduled for 4 weeks (including the initial week).
- c. It is accepted by the parties that whilst this provision is intended to provide a level of flexibility in relation to rostered Saturday work, any changes made in accordance with the clause should be consistent with the following objectives:
 - i. That all work is covered and completed.
 - ii. That any changes in rostered work must not create a situation whereby employees are driving illegally or in a potentially unsafe manner due to insufficient rest periods between shifts.
 - iii. That the effect of any such changes are cost neutral on the company.
 - iv. That no employee is put under duress by a work colleague to change rostered shifts.

44. RECALL

An employee recalled for work shall be guaranteed and shall be paid for at least four hours' work for each start at the appropriate rate of pay.

For clarification a recall occurs when an employee has finished their shift for the day, left site and is requested to return to the workplace.

This clause shall also apply to any employee called upon to work before their normal starting time, and whose overtime work does not continue up to such starting time.

45. MINIMUM BREAK

An employee must have a 10 hour break between work on consecutive days.

In the case where a ten (10) hour break is not possible, the employee is to make contact with the supervisor and/or manager. Where possible the employee will be allocated a ten (10) hour break by being able to attend for work later than scheduled. Any time that the employee is away from the

workplace because of the need for the employee to receive a ten (10) hour break, the employee will receive their normal pay, for their rostered hours.

Where arrangements cannot be made for the employee to commence work later than scheduled as per the above, the period of time between the end of the previous shift plus 10 hours will be calculated and the employee will receive double time for the initial period of the shift which overlaps.

For clarification purposes, an employee completes work on Monday at 10pm and is required to commence work on Tuesday at 6 am:

- In the case that the employee does not commence work until 8am, the employee will receive normal pay for the period of time between 6am and 8am.
- In the case that the employee commences their shift at 6am, the period of time between 6am and 8am will be paid at double time.

Where an employee elects to volunteer for an overtime shift and the minimum break is not possible, the provisions within this clause will not apply, overtime provisions outlined at clause 43 will apply.

PART 5 – LEAVE AND RELATED MATTERS

46. PERSONAL (SICK) LEAVE

Employees should not attend work when they are sick, due to the potential personal and public health implications. However, abuse of personal (sick) leave has a serious impact on the ability of the business to provide a reliable distribution service to our customers. It also places additional pressure on fellow employees; each Martin-Brower Australia Pty Ltd employee has a responsibility to be reliable in their attendance at work. The Company reserves the right to implement measures to prevent the abuse of personal (sick) leave.

Taking the above into account, a permanent employee who is absent from work due to personal illness or injury is entitled to accrue 10 days (of ordinary hours) personal (sick) leave per annum subject to the following:

Absences. The company may request that an employee provide a certificate from a duly qualified medical practitioner for personal (sick) leave absences:

- if an employee has established a pattern of personal (sick) leave absences; and
 - has been counselled regarding the taking of excessive personal (sick) Leave; or
 - the absences is two (2) or more consecutive days
- i. The employee shall make verbal contact with their Supervisor / Manager or other person designated by the Company to inform them of their inability to attend for duty as soon as practicable and preferably where possible before the commencement of their shift.
 - ii. If the employee is unable to personally make verbal contact with their Supervisor / Manager, the employee's spouse or close family or household member can contact the Supervisor / Manager to advise of the absence.
 - iii. The employee shall advise that he/she is unfit for work and the estimated duration of the absence.
 - iv. The Supervisor / Manager will advise the employee at the time the employee makes contact of the requirement to provide a medical certificate upon their return to work.
 - v. An employee will not receive payment for any hours of overtime that they were scheduled to complete.
 - vi. The number of hours that the employee did not work due (excluding overtime) will be subtracted from the employee's personal (sick) leave entitlement.

47. COMPASSIONATE LEAVE

An employee will be entitled to a maximum of two (2) standard days leave without loss of pay on each occasion, and upon production of satisfactory evidence, a member of the employee's immediate family or household:

- a) contracts or develops a life-threatening illness or injury;
- b) passes away;
- c) a baby in their immediate family or household is stillborn;

- d) they have a miscarriage; or
- e) their current spouse or defacto partner has a miscarriage.

When an employee takes paid compassionate leave, the employer must pay the employee the amount of ordinary hours the employee would have worked had the employee not been on compassionate leave.

The term immediate family includes:

- the employee's spouse (including former spouse);
- de facto partner, former de facto partner or same sex partner. De facto spouse means a person who lives with the employee in a relationship as a couple on a genuine domestic basis; or
- child or adult child (including adopted child, step-child or ex nuptial child), or
- parent, parent-in-law, or
- grandparent, or
- grandchild, step grandchild or
- sibling of the employee, or
- the immediate family of the employee's spouse, or de facto partner (or former spouse or de facto partner)
- any other person who immediately prior to that person's death, lived with the employee as a member of the employee's family.

48. CARER'S LEAVE

Note that this is not additional leave entitlement, but a way of allowing greater flexibility in the use of entitlements to assist employees in balancing their work and family commitments. Employees may use one of the following methods to provide care for an immediate family or household member who is sick or injured or requires help during a family emergency. The definition of immediate family or household are as per clause 46.

- **Use of Personal (Sick) Leave.** A permanent employee may use their personal (sick) leave entitlements.
- **Use of Annual Leave.** An employee may use their annual leave entitlements each year to care for an immediate family or household member or partner.
- **Make up Time.** An employee may, with the consent of management, elect to take off ordinary hours to care for an immediate family member or partner and work them at a later time during the spread of hours in this agreement, at the ordinary rate of pay.
- **Leave Without Pay.** The employee may elect to take unpaid leave to care for an immediate family member or partner with the consent of management.

Wherever practical the employee should notify the employer prior to the intention to take carer's leave. If this is not possible then as soon as possible on the first day of the absence. The employee must provide their Supervisor/Manager with an appropriate certificate from a duly authorised medical practitioner for all instances of carers leave.

49. ANNUAL LEAVE

An employee is entitled to accrue annual leave which equates to, four (4) weeks per year (152 hours). The Company sees annual leave as being important to the health and wellbeing of the individual and their families and therefore encourages all employees to take their annual leave each year.

Applications for annual leave must be made in writing on the approved form not less than one (1) calendar month prior to starting date of the requested annual leave, unless otherwise agreed by the Company. An employee can elect to be paid as the leave falls or for the whole period of approved annual leave in the week prior to the leave being taken.

The company agrees to allow up to 10% of employees to take planned leave at any one time, subject to operational requirements and appropriate approvals. The authorised manager or supervisor is responsible for the approval of annual leave, within ten (10) business days.

If a public holiday falls within an employee's annual leave, as prescribed in the Agreement, and is on a day which would have been an ordinary working day, then extra time equivalent to the public holiday will not be taken out of the employee's accruals.

There are no overtime payments for employees who are on annual leave.

Nothing in this agreement prevents an employee who is on a period of annual leave attending the workplace to perform overtime on the non-annual leave days, as long as the overtime does not breach legislative requirements (Basic Fatigue Management).

49.1. SHIFTWORK - ANNUAL LEAVE

For the purposes of the NES, an employee qualifies for the shift worker annual leave entitlement of an additional one (1) week annual leave if they regularly work on Sundays and Public Holidays, as part of their ordinary hours.

Where an employee is engaged for part only of the 12 monthly period as a shift worker, the extra leave, to which he or she shall be entitled, shall be the same proportion of a week as the proportion which the time the employee spent as a shift worker during the period bears to a year.

49.2. ANNUAL LEAVE LOADING

The following loadings shall be paid to employees in conjunction with periods of annual leave:

Day Shift	17.5%
Night Shift	30%
Afternoon Shift	17.5%

Where an employee is on a period of annual leave but would have other than for such leave been rostered for a full week as a Stand-By driver, the employee will be entitled to the 30% annual leave loading for the week concerned.

49.3. CASHING OUT OF ANNUAL LEAVE

In accordance with the Fair Work Act, employees may apply to have their annual leave accruals cashed out.

In order to cash out annual leave accruals employees must meet the following criteria:

- have more than four (4) weeks of annual leave accrued at the time of the application to cash out annual leave accruals
- must have taken at least five (5) days, whether this be broken or in one occurrence of annual leave within the past 6 months

Where the employee meets these criteria and is requesting to have annual leave accruals cashed out which are in excess of four (4) weeks, the company will not reasonably refuse such a request.

For clarification, when an employee cashes out annual leave accruals, the company will also cash out the annual leave loading, as per clause 49.2.

49.4. CHRISTMAS PERIOD - ANNUAL LEAVE

Employees who wish to have annual leave approved during the Christmas Period must submit their leave applications / requests no later than the 30th June, of the relevant year. (For clarification purposes, Christmas Period is defined as the period from Mid-December to Mid-January).

The Company will review all leave forms and either approve or deny the leave applications / requests no later than 31st July, of the relevant year.

Preference shall be given to employees who have not had any annual leave during previous Christmas Periods.

50. LONG SERVICE LEAVE

Long Service Leave will be recognised as per the NSW Long Service Leave Act 1955.

51. PARENTAL LEAVE

Permanent and eligible casual employees with at least twelve (12) months continuous service are entitled to up to 52 weeks unpaid parental leave where the employee or employee's spouse or de facto partner gives birth, or on the adoption of a child under the age of 16 years and where they will have responsibility for the care of a child.

For casual employees to be eligible, they need to have been working for Martin Brower on a regular and systematic basis for at least 12 months and have a reasonable expectation of ongoing work with Martin Brower on a regular and systematic basis had it not been for the birth or adoption of a child.

Notice

An employee must provide written notice to their direct manager/supervisor of their intent to commence parental leave at least ten (10) weeks prior to the expected start date of parental leave, or, in the case of adoption, as soon as written approval is given by the adoption agency.

This notice must be supported by a medical certificate registered by a duly qualified medical practitioner stating the expected date of birth or, in the case of adoption, written evidence from the adoption agency of the expected day of placement.

Variation

If an employee on parental leave wishes to shorten their period of leave, they must provide four (4) weeks' notice to their supervisor/manager.

If an employee wishes to extend their period of parental leave for a further period of up to twelve (12) months they must submit an application to their manager/supervisor at least four (4) weeks before their current period of leave ceases.

An application to extend parental leave must be considered having regard to operational requirements. Applications will be reviewed by your manager and the HR Director. The employee will receive written advice as to outcome of their application in accordance with legislative requirements.

Continuity of service

For the purpose of this clause, parental leave does not break an employee's continuity of service. However, annual leave, personal (sick) leave and long service leave do not continue to accrue during a period of parental leave. Further, the period of parental leave does not count towards length of service.

Return to work

The employee must notify the Company at least four (4) weeks before the end of the period of parental leave of their intended return to work date.

The employee is entitled to return to the same position that they held before taking leave. If that position no longer exists, they are entitled to a position as close as possible, but at no less pay.

Concurrent Leave

Parents who are married or in a de facto relationship can take up to 8 weeks unpaid parental leave at the same time. This leave can start:

- On the birth or placement of the child, or earlier if agreed to by Management; or
- Later than this date, but within 12 months of the birth or placement of the child

Concurrent leave can be taken in separate periods, with each period being at least 2 weeks long.

Concurrent leave is part of an employee's total paid and unpaid parental leave entitlement, ie., any concurrent leave is deducted from the total unpaid parental leave entitlement.

Flexible Parental Leave

After taking continuous parental leave, an employee can take up to 30 days of their 12 month unpaid parental leave flexibly up to their child's second birthday or the second anniversary of their adopted child's placement. This leave can be taken as a single period of 1 day or longer or separate periods of

1 day or longer. The total of both continuous and flexible leave periods cannot be greater than 12 months.

52. PUBLIC HOLIDAYS

- a) Permanent Employees are entitled to the following public holidays without loss of pay: New Years Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Kings Birthday, Labour Day, Christmas Day and Boxing Day or any other day gazetted in lieu of these days and any other day gazetted as a public holiday in the employee's state of residence.
- b) In the event the Government gazettes another day in substitution for one of the above days, the substituted day is the public holiday. For clarification purposes, this means that clause 52.1 will only apply on the substituted day.
- c) One (1) additional day (Picnic Day) employee paid holiday will be observed each calendar year on a date agreed between the Company and the Employee, after successful completion of their probationary period. If this day is not taken in any one calendar year, the date does not accrue and is forfeited. To ensure the Company is reasonably able to accommodate any requests, employees should endeavour to use these throughout the year and not leave these until the end of year and/or peak periods.
- d) If an Employee is absent from work on the working day before or the working day after a public holiday the Employee must have reasonable excuse or consent of the Company.

52.1. PAYMENT FOR PUBLIC HOLIDAYS

An employee whose normal roster would not have them rostered to work on a day which a public holiday falls due to either a non-rostered work day or any type of leave without pay will not receive payment for the public holiday.

A public holiday shall count for the ordinary time in the rostered week. The minimum payment for work on a public holiday is four (4) hours (at applicable public holiday rates).

All time worked on public holidays is at the rate of double time in addition to shift penalties and their ordinary days' pay. For clarification this means triple time plus penalties.

53. COMMUNITY SERVICES LEAVE

Employees, including casual employees, can take community service leave for voluntary emergency management activities or jury duty.

Voluntary Emergency Management Activity

Where an employee is a member of a recognised emergency services organisation and is requested, or would reasonably be expected to be requested, to be absent from work for the purpose of attending an incident categorised as a state of emergency or to deal with an emergency or natural disaster, the employee will be entitled to leave, as follows:

- a) An employee shall be entitled to a maximum of 5 days paid emergency services leave, in each year of employment. Such leave shall not be cumulative from year to year.
- b) Where the proposed absence from work is for a period of more than 5 days, any period in excess of the 5 days shall be treated as unpaid leave. In such cases however, an employee may request and be paid for such time from any entitlement or pro-rata accrual to annual leave or long service leave that exists at the time of the absence.
- c) In order to claim payment, the employee shall be required to provide the company with documented evidence of the employee's requirement to attend for such emergency service duty.
- d) For the purpose of this provision, the term "working day" shall mean a rostered ordinary working day.
- e) For the purposes of this provision, the term "year" shall mean calendar year.

Emergency Services Organisation shall mean:

- A body that has role or function under a plan that was coping with emergencies / natural disasters; or
- Volunteer Fire fighting services (for example Rural Fire Service or Country Fire Authority), or
- State Emergency Service (S.E.S), or
- Civil Defence body; or
- Volunteer Emergency Rescue Service.

54. DEFENCE FORCE RESERVISTS LEAVE

Where an employee is a member of the Defence Force Reserves and is required to be absent from work for the purpose of attending duties related to such membership, the employee will be entitled to leave, as follows:

- The company will make-up the difference between the amounts paid to the employee by the Defence Services and the employee's weekly rate of pay, for a maximum period of 5 days per year. For the purposes of this provision, weekly rate of pay shall include the employees ordinary time classification rate, shift loadings that would have been payable but for such leave and any other work related allowance that is ordinarily received by the employee.
- Where the proposed absence from work is for a period of more than 5 days, any period in excess of the 5 days shall be treated as unpaid leave. In such cases however, an employee may request and be paid for such time from any entitlement or pro-rata accrual to annual leave or long service leave that exists at the time of the absence.
- In order to claim payment, the employee shall be required to provide the company with documented evidence of the employee's requirement to attend for Defence Force Reserves duty.
- No employee shall be discriminated against or treated in an unfair manner because of their volunteer activities in either the emergency services or defence force reserves.
- For the purpose of this provision, the term "working day" shall mean a rostered ordinary working day.
- For the purposes of this provision, the term "year" shall mean calendar year.

55. FAMILY AND DOMESTIC VIOLENCE

Definitions

Family and Domestic Violence is violent, threatening or other abusive behaviour by an individual(s) against an employee or an employee's family or household that seeks to coerce or control the employee or their family or household or cause them harm or fear. This includes physical, sexual, financial, verbal or emotional abuse.

Employee's family means:

- i. A spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- ii. A child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
- iii. A person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

(A reference to spouse or de facto partner includes a former spouse or de facto partner)

Entitlement

- a) An employee is entitled to 10 days of paid family and domestic violence leave in a 12 month period.
- b) Paid family and domestic violence leave:
 - i) is available in full at the start of each 12 month period of the employee's employment; and
 - ii) does not accumulate from year to year; and
 - iii) is available to full time, part time and casual employees.
- c) Family and Domestic Violence leave may be taken as:
 - i) a Single continuous 10 day period; or
 - ii) separate periods of one or more days each; or
 - iii) any separate periods to which the employee and the Company agree, including periods of less than 1 day.

- d) The Company may also agree for an employee to take unpaid leave in addition to this entitlement to paid leave.

Taking Family & Domestic Violence Leave

This leave is available if:

- i) The employee is experiencing family and domestic violence; and
- ii) They need to do something to deal with the impact of the family and domestic violence; and
- iii) It is impracticable for them to do this thing outside their work hours.

Examples of actions include arranging for their safety or the safety of a close relative, member of their family or household, attending court hearings; accessing police services, attending counselling; attending appointments with medical professionals, financial or legal professionals. For the avoidance of doubt, Family and Domestic Violence Leave is not available to the perpetrators of such actions.

Notice and Evidence Requirements

An employee must give notice of taking leave under this clause. This notice must be given as soon as reasonably practicable (which may be a time after the leave has started) and must advise of the period, or expected period, of leave required.

Where such notice has been given, the Company may require that the employee provide supporting evidence of the requirement for such leave. This evidence is evidence that would satisfy a reasonable person that the leave is taken for the purposes set out in this clause.

Payment for Family & Domestic Violence Leave

An employee on paid Domestic and Family Violence Leave will be paid:

- a) At the employees' full rate of pay, worked out as if the employee had worked the hours in the period of leave; or
- b) For a casual employee, at the employee's full rate of pay worked out as if the employee had worked the hours in the period for which they were rostered, ie: where they have accepted an offer of casual work for those hours. (Note: a casual employee can take Paid Family and Domestic Violence Leave for a period where they were not rostered to work. In such a case, the casual employee will not be paid for such period/s)

Confidentiality

Martin Brower will take steps to ensure that any personal information provided by the employee to Martin Brower concerning their experience of Family and Domestic Violence is treated confidentially, as far as it is reasonably practicable to do so. Confidential information relating to Family or Domestic Violence will not be kept on the employee's personnel file.

Unless employee consent is given, Martin Brower will not use such information for a purpose other than satisfying the notice requirements for the taking of this leave.

Nothing in this clause prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Changes to Employment Conditions

Martin Brower will consider any reasonable request from an employee experiencing Family and Domestic Violence for:-

- a) Changes to the span of hours or pattern of hours and/or shift patterns; or
- b) A change to telephone numbers or email address to avoid harassing contact; or
- c) Change in work location, allocation, or duties; or
- d) Other appropriate measures including those available under existing provisions for flexible working arrangements.

56. JURY SERVICE

Employees, including casual employees, can take leave to attend for jury selection and jury duty.

A permanent employee required to attend for jury service during ordinary working hours shall be reimbursed by the company an amount equal to the difference between the amount paid in respect of the employee's attendance for such jury service and the amount of wage he or she would have received in respect of the normal pay for ordinary hours which the employee would have worked had he or she not been on jury service.

An employee shall notify the company as soon as possible of the date on which he or she is required to attend for jury service. Further, the employee shall give the company proof of this attendance, of the duration of such attendance and of the amount received in respect of such jury service.

An employee called up and subsequently not required for jury service shall report for work as soon as practicable after being informed that he or she is not so required

PART 6 – OTHER CONDITIONS

57. TRAINING & DEVELOPMENT

Drivers are required to attend all organised training & development courses that are conducted by the company. The training shall be prearranged so as to provide sufficient notice for employees to be able to attend. Where no objections as to the proposed date and time are received, drivers will attend the training. If objections are received, efforts will be made to organize alternative times and dates for the training to occur.

Employees attending such training shall be entitled to receive payment at ordinary time and/or overtime, depending upon whether the training occurs within the employee's ordinary hours of work or not.

Designated Trainers- the following shall apply with regards to designated trainers:

- a) A minimum of 2 employees shall be appointed as the designated trainers and assessors, who will be proactive in the rolling out of training programs to ensure that all employees have the appropriate skill level.
- b) All designated trainers and assessors must receive appropriate training to conduct and assess training. For the purpose of this agreement, a minimum 2 day training course is considered appropriate.
- c) "Buddy" instruction will be permissible provided that the "Buddy" has previously been assessed as competent in the job concerned (for which they are providing guidance). It will be a requirement of the training process that all employees must spend time working beside a buddy before they are required to undertake work in accordance with any task description, on their own. The amount of time to be spent with a buddy shall be determined by the amount of time taken by the trainee to demonstrate that they are able to work safely and competently on a task, without direct supervision or instruction. It is acknowledged that this time period shall vary between trainees having regard to the varying complexity of different tasks and the varying levels of competence of individual trainees.
- d) Designated trainers and assessors will be appointed by the company. The designated trainer will be required to perform normal duties when not performing Training & Assessment duties.
- e) No training assessment shall be deemed as being complete until it has been signed off by the relevant supervisor and/or manager.
- f) Any employee who performs a training role in accordance with this clause shall be entitled to receive the Driver Trainer rate for the period in which they are acting in such capacity.
- g) In addition to the training outlined in this agreement and subject to appropriate approvals, employees may access further training through the company's Further Education Policy.

58. TRAINING OF CASUAL DRIVERS & AGENCY CASUAL LABOUR

- a) Persons employed as casual drivers will be required to train with a Driver Trainer before performing deliveries on their own. The amount of training required is to be determined by the Trainer in consultation with Management
- b) Driver Trainers are responsible for assessing the industry experience and minimum levels of training required.

- c) Where a decision is taken by the company to subsequently change a casual employee to permanent, such employee shall commence at the Trainee Driver level of the classification structure.

59. COMPANY VEHICLE FOR DRIVERS

Company drivers are provided with a 'Company tool of trade vehicle'.

A large percentage of a Drivers day will involve driving and, as such, a current driver's licence (correct class for the vehicle) will be required at all times in order to perform the inherent requirements of the role. Any Driver who loses their licence is required to report the loss of their licence to their Supervisor/Manager immediately.

As a professional, a Driver is required to abide by all road rules and regulations at all times. Seatbelts must be worn, under no circumstances is a driver permitted to drive the vehicle whilst under the influence of alcohol or drugs. Also no smoking is permitted inside the vehicle.

The vehicles used are the responsibility of the company to maintain and service. However it is the Drivers responsibility to report any forthcoming service requirements and any mechanical issue they may find with the vehicle to their Supervisor/ Manager.

Drivers are required to ensure the vehicle is kept clean and presentable at all times. The company will provide the Driver with cleaning items that are to be used to maintain the vehicle's appearance.

Vehicles are not be utilised for private use. Should the Driver be found to have breached this policy, the matter will be investigated and the employee may face disciplinary action including the termination of their employment.

Each vehicle will be presented with a fuel card and it is the responsibility of the driver to ensure it is not misused. The company has access to reporting tools that will plot fuel usage against kilometres driven, which will indicate any potential misuse. Should the Driver be found to have breached this policy, the matter will be investigated and the employee may face disciplinary action including the termination of their employment.

The fuelling of the vehicles is considered to be part of a normal working day. It is preferred that the re-fuelling happens at the end of your run.

Each vehicle has been allocated a Toll Pass / Tag or E-toll transponder. It is the driver's responsibility to ensure that it is not misused. Reports are also available on the usage of the transponder. Should the driver be found to have breached this policy, the matter will be investigated and the employee may face disciplinary action including the termination of their employment.

No passengers or pets are to be carried in the vehicle at any time without the prior approval of the Supervisor/Manager. Under no circumstances are children allowed to be in the vehicle.

All traffic fines incurred whilst driving the vehicle, will be responsibility of the driver to pay in full and will not be compensated by the company.

All parking fines incurred whilst performing a delivery in line with the Agreement Delivery Method, will be reviewed by management.

It is the responsibility of a driver to be aware of the vehicle's height clearance and take note of height restrictions for the areas they are delivering to. Any damage to the vehicles must be reported to the Supervisor / manager immediately and an incident report must be completed as soon as practical.

The vehicle is the responsibility of the Driver and, as such, no unauthorised person is permitted to drive the vehicle. Under no circumstances is the vehicle to be loaned to anyone. Should the Driver be found to have breached this policy, the matter will be investigated and the employee may face disciplinary action including the termination of their employment.

60. LOSS OF LICENSE

An employee shall inform the Company immediately of any change in status to any licence/permit/authority/documentation that they are required to possess in order to perform their duties. The Company may request, at any time, to sight such licence/permit/authority.

Employees shall provide a print out of their driving license record at the Company's request from the relevant Authorities, as required by the Company. The company shall meet any administration / government fees incurred by the employee in order to comply with this request.

Should an employee not produce licence/permit/authority/documentation within 14 days of the request, The Company may have the right to stand down without pay until the documentation is produced.

The company may have the right to terminate an employee who through loss of their license, regardless of reason, is unable to perform the inherent requirements of their position.

61. WORK AT OTHER DISTRIBUTION SITES

It is agreed that from time to time employees who are normally engaged at the Wetherill Park site may be required to make deliveries to other Company Distribution sites.

Nothing in this Agreement shall be construed as preventing or inhibiting the Company from making such deliveries. Any employee who is required to make deliveries to other sites will continue to be paid the rates and allowances applicable under this Agreement, while he/she is performing such work.

62. PHONING AHEAD

If a delivery run is behind schedule, drivers shall be required to phone the store upon approach, so as to advise the store of the expected arrival time.

63. COLLECTION OF DATA

Employees will comply with any reasonable request from the company with respect to the collection of data.

64. DELIVERY METHODS

The employees give a full commitment to cooperate in relation to the implementation of new delivery methods which are introduced as a means of improving operational efficiency and in meeting customer service requirements.

APPENDIX 1: Schedule of Weekly Rates and Classification Structure

Table 1: Rates of Pay

	Rate as at July 2022	Rate - 1st pay period on/after 1 July 2023	Rate - 1st pay period on/after 1 July 2024	Rate - 1st pay period on/after 1 July 2025
Trainee Driver	\$30.94	\$32.49	\$33.95	\$35.31
Level 1	\$33.32	\$34.99	\$36.56	\$38.02
Level 2	\$37.51	\$39.39	\$41.16	\$42.80
Level 3	N/A	\$42.50	\$44.41	\$46.19
Driver Trainer	\$40.60	\$42.63	\$44.55	\$46.33

Certification Payment:

In the first full pay cycle on or after the certification of the 2023 Agreement by the Fair Work Commission, any current employee covered under the Agreement will be paid a one-off amount of \$1,600.00 gross.

Table 2: Classification Structure

Classification	Duties	Progression
Trainee Driver	All drivers with appropriate licences will commence at this level whilst they are on probation and complete training with the company. At the discretion of the Company, employees with significant external experience may be appointed at Level 1.	Before progressing to Level 1 Driver, a Trainee driver must successfully complete the following: 1. 6 month probation period and 2. Corporate Induction, relevant CoR and BFM training, and 3. Assessed as competent in all duties of a driver including in cab assessment and driver handbook
Level 1 Driver	Competently and successfully complete all duties pertaining to deliveries, dispatching and yard work, in accordance with DQMP, CoR and any other company or legislative requirements <u>Must be able to meet the requirements for invisible deliveries.</u>	• Employee Induction Program • Drivers Hand Book Competency • Vehicle Temp control procedures (DQMP) • Restaurant Deliveries • Restaurant Invoices and Adjustment Note process • Heavy Articulated Driving Licence & Competency A Driver will progress to a Level 2 driver after 24 months of employment with the company as a Level 1 Driver.
Level 2 Driver	Competently and successfully complete all duties pertaining to deliveries, dispatching and yard work, in accordance with DQMP, CoR and any other company or legislative requirements. <u>Must be able to meet the requirements for invisible deliveries.</u>	

Level 3 Driver	Employees at this classification level are required to undertake MC routes as a main part or all of their normal weekly route allocation. A valid MC Licence is required, and drivers must competently and successfully complete all duties pertaining to deliveries, dispatching and yard work, in accordance with DQMP, CoR and any other company or legislative requirements. Note: holding an MC licence by itself does not entitle an employee to a Level 3 rate of pay. <u>Must also be able to meet the requirements for invisible deliveries.</u>	These roles are dependent on operational requirements and a driver must either: - hold a roster which has more than 1 route of MC work in their roster, or - hold a single multi day MC run, that accounts for 50% or more of their full time week The Company will build rosters based on efficiency and operational requirements and will endeavour to allocate more than one (1) MC route in a roster. Level 3 is not a permanent classification and is dependent on working an eligible MC permanent roster. An eligible permanent MC roster, ie: an roster with ongoing need that has more than 1 MC route within it. Where an employee is no longer on an eligible permanent MC roster, they will revert back to a Level 2 classification.
Driver Trainer	Additional to the functions of a Level 1 Driver, Level 2 Driver a Driver Trainer will complete Training and Assessment of Drivers in accordance with Company requirements	Trainers will be appointed on an as need basis. Employees at this level will be required to be competent in and complete: Hold a Certificate IV Training Certificate or Equivalent experience Be responsible for training and assessing employees, in accordance with national standards
MC Allowance	Any employee who through their roster only undertakes one MC route (and where that route does not account for 50% or more of their full time week), and/or who are not 'permanently' on a roster, for example covering a period of absence or leave relief will be entitled to receive an MC allowance. The MC allowance rate will be to the Level 3 rate of pay and will apply only for: - the hours that they are undertaking MC work, with all other hours will paid at the employee's normal classification level/rate of pay, OR - where the hours of MC work account for more than 50% of their ordinary hours on that shift, the MC allowance will be paid on all hours worked on that entire shift.	

APPENDIX 2: Schedule of Work Related Allowances

	Rate as at July 2022	Rate - 1st pay period on/after 1 July 2023	Rate - 1st pay period on/after 1 July 2024	Rate - 1st pay period on/after 1 July 2025
Meal Allowance (a day)	\$17.00	\$17.85	\$18.65	\$19.40
First Aid Allowance (a week)	\$25.68	\$26.96	\$28.18	\$29.30

APPENDIX 3: Rostered Days Off Election Form

PURSUANT TO ROSTERED DAYS OFF PROVISION

I, (print name) declare that in the year (insert year), I wish to take &/or be paid for RDO's in lieu on the following basis:

(Please place a "tick" in the box corresponding with your choice).

- ☐ Continue to be taken as time off work as a single paid RDO day on a roster basis.
- ☐ Taken as time off work in blocks of a minimum of 5 paid RDO's, at times that are agreed by management.
- ☐ Paid out in lieu of taking the time off.

I understand that where I elect to be paid out for RDO's in lieu, payments shall be made retrospectively as follows:

- Accruals from 1 January to 30 June will be paid in the second pay week of July each year.
- Accruals from 1 July to 31 December will be paid in the second pay week of January each year.

This form must be completed & returned to the company in December of each year.

Signatures

I, the above named employee have here below placed my signature in recognition of my agreement to the above election, as concerns the taking &/or payment in lieu of RDO's that accrue to my credit.

.....
(Employee Signature)

.....
(Dated)

This form has been authorised by:

.....
(Manager's Signature)

.....
(Dated)

APPENDIX 4 – MEMORANDUM OF UNDERSTANDING

1. INTRODUCTION

Specifically, this Memorandum is designed to promote harmonious, efficient and good industrial relations by

- a) Recognising the concept of Freedom of Association, including the right of employee's to join the TWU and receive effective representation by the TWU, should they so choose.
- b) Recognising the continuing relationship between the Employer and the TWU.
- c) Recognising past agreements between the employer and the TWU regarding:
 - Trade Union Training Leave.
 - Site Union Delegates.
 - Union Fee deductions.
 - Rates of pay for agency casual employees.

2. RIGHT OF ENTRY

The Agreement will provide a right of entry for TWU officials to Company premises at any time, where reasonable notice is given, for any purposes connected to the Agreement, including to hold consultations with persons covered by the Agreement in relation to the operation of the Agreement and their rights and obligations under the Agreement; to deal with disputes arising under the Agreement; to consult with employees about the negotiations for a replacement agreement; and to participate in induction meetings for new workers.

3. AGREEMENT TO BE MADE AVAILABLE

A copy of this agreement shall be available and held on site, so as to be accessible for all employees.

4. FREEDOM OF ASSOCIATION AND UNION RECOGNITION

- a) The company recognises the TWU as being entitled to represent transport workers at the sites covered by the Martin Brower Australia Pty Ltd and Transport Workers Union – Drivers Enterprise Agreement 2014 (The Agreement). This representation will extend to all terms and conditions of engagement of transport workers employed by the company, whether those terms and conditions are subject to this MOU or not. For the purposes of this provision, the term Transport Workers shall mean any employee of Martin-Brower Australia Pty Ltd whose employment is covered by the terms of the agreement.
- b) The company will not take any actions or make any statements that will directly or indirectly state or imply opposition by the company to transport workers electing to join or remain members of the TWU.
- c) The parties to this Agreement undertake that no employee shall be discriminated against, harassed or victimised based on the decision they make concerning union membership.

5. PAYROLL DEDUCTIONS

- a) At the request of any member of the TWU (by the submitting of a payroll deduction authority form) the Employer shall deduct the appropriate amount of union dues from the employee's pay and remit such dues to the Union at monthly intervals.

6. DELEGATE RIGHTS

- a) The employer recognises those persons who are elected as being the Site Union Delegate(s) by the employees, as being the on-site representatives of the Union. Provided that at any site, the employer will not be required to recognise more than 2 persons as being Site Delegates. A co-delegate elected in the same manner will be recognised in the absence of the delegate,
- b) Delegates will be allowed, subject to the agreement of their supervisor, reasonable paid time to conduct on-site business, including recruitment, with workers. This agreement shall not be unreasonably withheld. Similarly, and consistent with the spirit of goodwill and cooperation that is intended by this provision, Site Delegates shall not abuse this privilege.

7. RENEGOTIATION OF AGREEMENT

- a) The parties agree to commence negotiations for a new enterprise agreement to replace the agreement at least 3 months before the nominal expiry date of the Agreement. The parties intend to exercise their best efforts to conclude these negotiations prior to the nominal expiry date.
- b) These negotiations will be conducted on a collective basis between the parties with the negotiated outcome being collectively approved,
- c) The parties agree to bargain collectively in relation to any matters arising from the agreement.

- d) Should negotiations for a new enterprise agreement not be finalised prior to the nominal expiry date of the agreement, the rates of pay and conditions prescribed by the Agreement will continue to be observed for all employees by the parties.

8. TRADE UNION TRAINING

- a) It is agreed that the Company shall release eligible employees to attend Trade Union Training, subject to the following qualifications:
- b) Subject to the table below, the right to such leave shall be limited to no more than two employees per site, in any one calendar year.
- c) Leave shall be available according to the following scale for each site covered by this Memorandum of Understanding

No. of delegates employed at the site	Max. no. of employees eligible to attend per year	Max. no. of days permitted in total, per year
1	1	5
2	2	10
4	4	10

- d) Only duly elected site union delegates, who have held such position for at least 3 months, shall be eligible to request such leave.
- e) The courses for which leave is to be granted are those, which are conducted by or for the TWU, or those approved by either organisation and on which both the employer and the union agree are relevant.
- f) The Company shall pay to each delegate, for their period of absence, an amount of wages, which is equivalent to their ordinary time earnings (which shall include any shift work loadings).
- g) The Company will not be responsible for any costs, which are associated with the attendance of a delegate at such training.
- h) The Company shall be provided with as much notice of such training, as is reasonably possible, however wherever possible the company shall be provided with notice at least 4 weeks prior to the date upon which it is intended that such leave will commence. Notwithstanding these notice requirements, where less than 2 weeks' notice is given to the employer, it shall be the right of the employer to refuse to release the employee to attend such training
- i) The Company will be consulted as to the content of any proposed training and will be provided with a course outline, at the time that notice of the intention to commence such leave, is given. Leave may be granted where the courses to be attended are such so as to improve the employee's knowledge of industrial relations and related issues. As a minimum, a request to attend such training would require a letter, addressed to the site manager and which included details as to the content of the course.
- j) It shall be the right of the company to refuse to authorise such leave, if the taking of such leave would cause difficulty to the business or was intended to occur at a time of peak business activity.
- k) It is agreed that in the event that additional training is required then the amount of days indicated above, that the company will work with the TWU to allocate additional days where reasonable.
- l) In addition to the above, the Company will agree to the release of no more than 2 delegates to attend the TWU annual conference. Delegates will be paid for such attendance the rate of pay they would have received for such ordinary hours they would otherwise have worked, or where they are not rostered to work, their average rate of pay taken over the last 12 months.

Under no circumstances will an employee be paid overtime rates for attending Union organised training. As such, should the training fall on a day where the employee is not rostered to work then the employee may attend without pay.

9. YARD MEETINGS

Subject to any overriding operational requirements, the Company will work to accommodate the holding of two 15 minute yard meetings per year. Requests for any such meetings will need to be made with a minimum of 2 weeks' notice.

10. PROTECTION OF EMPLOYEE ENTITLEMENTS

Upon request from the Transport Workers Union, the company will provide a statement attesting to the ability of the company to meet its financial obligations with respect to the accumulated entitlements that are provided for in this agreement.

SIGNATORIES**SIGNED FOR AND ON BEHALF OF MARTIN-BROWER AUSTRALIA PTY LTD**

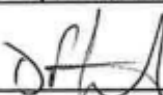
Name Sally Hoke Date 27.5.24

Signature 

Address 1 Bunde Close, Welherill Park, NSW

Position/authority to sign Human Resources Director

Witnessed by Name D. FITZGERALD Date 27/5/24

Signature 

Address 1 Bunde Close
Welherill Park, NSW, 2164

SIGNED FOR AND ON BEHALF OF THE TRANSPORT WORKERS UNION OF AUSTRALIA

Name Richard Olser Date 27/5/24

Signature 

Address 22 John Hines Ave
Minchinbury NSW 2770

Position/authority to sign State Secretary

Witnessed by Name Suzana Hall Date 27/5/24

Signature 

Address 22 John Hines Ave
Minchinbury NSW 2770

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG2024/1882

Martin Brower Australia Pty Ltd
1 Burilda Close
Wetherill Park NSW 2164

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Sally Hole, Human Resources Director have the authority given to me by Martin Brower Australia Pty Ltd to give the following undertakings with respect to the Martin Brower Australia Pty Ltd and Transport workers Union of Australia Drivers Enterprise Agreement 2023 ("the Agreement"):

1. Clause 5 of the Agreement addresses the incorporation of the Road Transport and Distribution Award 2020 (the Award). Under this Clause, if there are matters covered by the Award that the Agreement is silent on, then Award provisions as relevant to our business will be incorporated and shall have precedence.
2. Appendix 4, Schedule 2 which provides for right of entry provisions for TWU officials will be excluded and will be void as a term of the Agreement.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.


Signature


Date