



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Q.H. & M. Birt Pty. Ltd.
(AG2024/283)

Q H & M BIRT PTY LTD NATIONAL ENTERPRISE AGREEMENT 2023

Building, metal and civil construction industries

DEPUTY PRESIDENT GRAYSON

SYDNEY, 2 APRIL 2024

Application for approval of the Q H & M Birt Pty Ltd National Enterprise Agreement 2023

Introduction

[1] Q.H. & M. Birt Pty. Ltd. has made an application for approval of an enterprise agreement known as the *Q H & M Birt Pty Ltd National Enterprise Agreement 2023* (the Agreement) pursuant to s.185 of the *Fair Work Act 2009* (the Act). The Agreement is a single enterprise agreement.

Regulation 2.06 Requirements

[2] The signature page of the Agreement did not comply in all respects with Regulation 2.06A of the *Fair Work Regulations 2009* (Cth). An amended signature page was subsequently filed. I consider it appropriate in the circumstances to allow an amendment of a document relating to a matter before the FWC and do so pursuant to s.586(a) of the Act.

Notice of Employee Representational Rights

[3] It appears that the version of the NERR that was provided to employees was a prior version (i.e. before the 6 June 2023 reforms). I am satisfied that employees were not likely to have been disadvantaged by the error and exercise my discretion to waive the error pursuant to s.188(5) of the Act.

National Employment Standards precedence term in Clause 1.5 of the Agreement

[4] Clause 4.4 of the Agreement provides that in the event an employee fails to give the required period of notice to the employer, the employer has the right to withhold amounts payable to the employee equal to the period of notice not given. Clause 4.4 does not appear to limit the source of the monies which may be deducted. The effect of the clause appears to permit the employer to withhold monies owing to the employee under the NES (such as

accrued but unused annual leave or long service leave on termination), which may be inconsistent with Chapter 2 Part 2.2 Division 2 of the Act.

[5] I note that in accordance with the NES precedence term in Clause 1.5 of the Agreement, this clause will be read and interpreted in conjunction with the NES.

Non-continuous Shiftwork

[6] On 5 March 2024, the Commission wrote to the employer seeking confirmation as to whether the employer rosters employees for non-continuous shiftwork, and subsequently received confirmation that the employer:

- Does not roster employees for non-continuous shiftwork; and,
- Does not have any intention to roster employees for non-continuous shiftwork.

Section 190 Undertakings

[7] The employer provided written undertakings. A copy of the undertakings is attached in Annexure A. 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. The undertakings are taken to be a term of the Agreement.

Section 186, 187, 188 and 190

[8] Subject to the representation by the employer at [6] above, and the undertakings referred to at [7] above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

Approval

[9] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 9 April 2024. The nominal expiry date of the Agreement is 2 April 2028.



DEPUTY PRESIDENT

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ANNEXURE A

IN THE FAIR WORK COMMISSION

FWC Matter No.: **AG2024/283**

Applicant: **Q.H. & M. Birt Pty Ltd**

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Quentin Birt, Director of Q.H. & M. Birt Pty Ltd (**QBirt**), give the following undertakings with respect to the *Q H & M Birt Pty Ltd National Enterprise Agreement 2023 (Agreement)*, pursuant to section 190 of the *Fair Work Act 2009* (Cth):

I have the authority given to me by QBirt to provide this undertaking in relation to the application before the Fair Work Commission.

1. Whenever clause 6.1(a) of the Enterprise Agreement applies (because the Employee in question is working on a project or job that operates according to a swing roster cycle), QBirt will cap the maximum number of ordinary hours that the Employee in question may work at:
 - (a) 8 hours/day if the *Building and Construction General On-site Award 2020* applies; and
 - (b) 10 hours/day if the *Mining Industry Award 2020* applies, subject to clause 12 of that award.
2. For the purposes of clause 12.1 of the Agreement, all hours worked on a Saturday, Sunday or public holiday will be characterised as overtime and will be paid at the rate stipulated in clauses 12.1(b), (c) or (d) respectively.
3. Clause 12.1(a) of the Agreement will be deleted and replaced with the following clause:

'Monday – Friday: time and a half for the first two (2) hours worked in excess of an employee's ordinary rostered hours and double time thereafter.'



Quentin Birt

Date *2.4.24*



Q H & M BIRT PTY LTD National 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 end of the agreement.

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1. Title, Operation and Coverage

- 1.1 This Agreement is made pursuant to Part 2-4 of the FW Act.
- 1.2 This Agreement will expire four (4) years after the day on which the FWC approves the Agreement.
- 1.3 Subject to the FW Act, this Agreement applies to Employees in Australia and covers:
- (a) QBirt; and
 - (b) Employees.
- 1.4 This Agreement excludes the Award except:
- (a) where it expressly refers to the Award; or
 - (b) for the following clauses of the Award, which are incorporated into this Agreement:
 - (i) clause 11, in relation to part-time weekly hire employment;
 - (ii) to the extent that each of the following Award clauses would apply to an Apprentice (as defined in the Award) who is covered by this Agreement:
 - (A) clause 21, in relation to expense-related allowances;
 - (B) clause 22, in relation to site and general wage related allowances; and
 - (C) clause 23, in relation to special rates;
 - (iii) to the extent that each of the following Award clauses would apply to a Trainee (as defined in the Award) or an Apprentice (as defined in the Award) who is covered by this Agreement:
 - (A) clause 30.1, in relation to penalty rates for overtime in accordance with the Award for work that Employee performs on a Saturday afternoon;
 - (B) clause 25.6, in relation to payment of a fares allowance;
 - (C) clause 21.2, in relation to payment of a meal allowance;
 - (iv) clause 25, in relation to a living away from home allowance, to the extent that:
 - (A) that Award clause would apply to a Trainee (as defined in the Award) or an Apprentice (as defined in the Award) who is covered by this Agreement; and
 - (B) the allowance under that Award clause is more beneficial than the allowance under clause 14 of this Agreement.
- 1.5 Where there is any inconsistency between this Agreement and the NES, the NES will apply.

2. Definitions

- 2.1 The following definitions apply throughout this Agreement.

Agreement means this *Q H & M Birt Pty Ltd National Enterprise Agreement 2023*.

Award means the *Building and Construction General On-Site Award 2020*.

Casual Employee means an Employee who is:

- (a) made an offer of employment on the basis that QBirt makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work;

- (b) the Employee accepts the offer on that basis; and
- (c) paid a casual loading in lieu of and to compensate the Employee, in full, for all benefits of permanent employment that do not apply to casual Employees, including annual leave, paid personal/carer's leave and redundancy pay.

DIDO allowance means \$300 for each roster cycle the LAH Employee is required to work as a DIDO Employee.

DIDO Employee means a LAH Employee who QBirt requires to drive their personal vehicle 150 kilometres or more from their residence by the most direct route to commence a period of work in a roster cycle.

Employee means any employee of QBirt who:

- (a) performs work on or in connection with any project or projects in Australia; and
 - (b) is employed by QBirt in any of the work classifications identified in clause 7.2 of the Agreement,
- and **Employees** has a corresponding meaning.

FIFO Employee means a LAH Employee who is required to fly to and from a project.

Final Trim Operator means, for the purposes of clause 7.2, an Employee who is a Level 3 operator of an excavator or grader who demonstrates, to the satisfaction of the Site Superintendent at the site in question, that the Employee can, without supervision, work safely, competently and efficiently, use GPS guidance systems effectively and accurately trim surfaces within strict tolerances.

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

FWC means the Fair Work Commission or its successor.

IFA means an individual flexibility arrangement.

LAH allowance means \$275 per week.

LAH Employee means a permanent Employee who QBirt directs to relocate to work on a project and live away from home during the roster cycle for the duration of that project.

Level 1 means an Employee who:

- (a) is serving a period of probation; or
- (b) is a competent operator but cannot demonstrate, to the satisfaction of the Site Superintendent, that the Employee is capable of operating at the level of a Level 2 Employee.

Level 2 means an Employee who:

- (a) has completed their probation period successfully; and
- (b) demonstrates, to the satisfaction of the Site Superintendent, that the Employee is capable of performing their role in accordance with all QBirt procedures at a level above mere competence.

Level 3 means an Employee who:

- (a) demonstrates, to the satisfaction of the Site Superintendent, that the Employee is capable of performing their role at a level above the level of a Level 2 Employee without supervision;
- (b) has significant experience and a well-developed technical skill and ability;
- (c) is able to use GPS systems competently without supervision (if required); and
- (d) may be proficient in the operation of, and willing to operate, more than one type of

machine.

NES means National Employment Standards under the FW Act, as amended or replaced from time to time.

Ordinary Hours means the ordinary hours of work specified in clause 6.

permitted matters has the meaning given to that term by section 172 of the FW Act.

QBirt means Q.H. & M. Birt Pty Ltd ABN 15 009 963 222.

roster cycle means a roster in which the Employee is rostered to work a series of shifts followed by a period of rest and recreation.

unlawful term has the meaning given to that term by section 194 of the FW Act.

3. Types of employment

3.1 Employees may be engaged on a full time, part time or casual basis.

3.2 Part time Employees may be required to work full days and will be paid on a pro-rata basis.

3.3 Shiftworkers are those Employees who are:

- (a) required to work exclusively between 6pm and 6am Monday to Friday; or
- (b) engaged to work in a system of consecutive shifts throughout the 24 hours of each of at least six consecutive days without interruption (except during breakdown or meal breaks or due to unavoidable causes beyond the control of QBirt) and who are regularly rostered to work those shifts.

4. Termination of employment

4.1 Employees other than Casual Employees are entitled to notice of termination or payment in lieu of notice in accordance with the NES.

4.2 An Employee other than a Casual Employee whose employment has been terminated by QBirt is entitled to up to one day's time off without loss of pay to seek other employment.

4.3 An Employee (other than a casual) is required to give QBirt one (1) weeks' notice if he/she intends to terminate their employment.

4.4 Where less than one week's notice is given by an Employee, QBirt may withhold from any monies due to the Employee on termination, under this Agreement or the NES, an amount not exceeding the amount the Employee would have been paid in respect of any period of notice required by this clause, less any period of notice actually given by the Employee.

5. Redundancy

5.1 Employees are entitled to redundancy pay in accordance with the NES, or the Award (based on the ordinary hourly rate of pay under the Award), whichever is greater.

6. Hours of Work

6.1 Full time Employees' Ordinary Hours of work will be:

- (a) when the full time Employee in question is working on a project or job that operates according to a swing roster cycle, as required by the roster and roster cycle for the project in question (for example, 11 hours per day on a 20 day on 8 day off cycle);
- (b) when the full time Employee in question is working on a project or job that does not operate according to a swing roster cycle, and without limiting clause 20 or clause 23, an average of 40 hours per week consisting of 38 hours of work plus two (2) reasonable additional hours per week averaged over a four (4) week (28 day) period, to be worked between 6:00am and 6:00pm, subject to agreement between QBirt and the individual

Employee in question, so long as the change does not reduce the Employee's pay.

- 6.2 While an Employee works according to a swing roster cycle, QBirt will pay the Employee at least what would be required by clause 6.1(b) for the same hours.
- 6.3 In determining whether additional hours are reasonable the factors in section 62(3) of the FW Act will be taken into account.
- 6.4 QBirt will implement a roster cycle and apply rest and recreation to any roster at its discretion and in accordance with operational requirements.

7. Classifications

- 7.1 QBirt will classify each Employee as a Level 1, Level 2 or Level 3 Employee, based on its assessment of the Employee's skill level, competence. QBirt will notify each Employee of their classification group under clause 7.2.
- 7.2 The work classifications and classification groups are:

Group AA	Group A
<ul style="list-style-type: none"> Boilermaker Diesel fitter Final Trim Grader Operator Final Trim Excavator Operator 	<ul style="list-style-type: none"> Dozer Operator Grader Operator Excavator Operator Mobile Crane Driver Scraper Operator Tyre Fitter Light Vehicle Mechanic
Group B	Group C
<ul style="list-style-type: none"> Formworker/Form setter Structural Concreting Serviceperson Survey technician (GPS) Tractor and Laser Bucket Operator 	<ul style="list-style-type: none"> Compactor Operator Concrete Finisher Dogman Pipe layer Plumber Skid Steer Operator Steel Fixer
Group D	Group E
<ul style="list-style-type: none"> Labourer Loader Operator Truck Driver 	<ul style="list-style-type: none"> Escort driver Peggy/Cleaner Traffic Controller Trainee Operator

- 7.3 Without limiting clause 8.2, if QBirt directs an Employee to perform work or operate a machine at a lower classification, QBirt will continue to pay the Employee the Base hourly rate of their (higher) classification for all work performed (including the work at the lower classification).

For example, if QBirt requires a Final Trim Excavator Operator to perform as an Excavator Operator (50T and above), QBirt will continue to pay the Employee as a Group AA Employee for all work performed.

8. Base hourly rates

- 8.1 Subject to clause 7, QBirt will pay Employees the following Base hourly rates:

Group	Level		
	1	2	3
AA	\$41.50 [#]	\$44.00	\$46.00
A	\$39.00	\$41.50	\$43.50
B	\$37.00	\$39.00	\$41.00
C	\$35.50	\$37.50	\$39.50
D	\$34.00	\$35.50	\$37.50
E	\$34.00	N/A	N/A

[#] **NOTE:** The Group AA Level 1 does not apply to Operators as they will be paid at a Level 3 Group A rate.

- 8.2 Nothing in clause 7.1 or clause 8.1 prevents QBirt from paying an Employee, in QBirt's sole discretion, a higher pay rate than set out in clause 8.1 or an additional allowance in increments of \$0.50/hour for good performance, or both.

9. Casual Employees

- 9.1 Casual Employees will be paid the applicable base hourly rate set out in clause 8.1 plus a casual loading of 25% of the Employee's Base hourly rate in lieu of all benefits of permanent employment including applicable leave entitlements and redundancy pay.
- 9.2 Casual Employees required to work overtime, on weekends or public holidays will be entitled to overtime rates as follows:
- (a) where the relevant overtime rate is time and a half, the Employee will be paid 175% of the applicable Base hourly rate;
 - (b) where the relevant overtime rate is double time, the Employee will be paid 225% of the applicable Base hourly rate; and
 - (c) where the relevant overtime rate is double time and a half, the Employee will be paid 275% of the applicable Base hourly rate.
- 9.3 Casual Employees are entitled to payment for a minimum of four hours' work per engagement.

10. Apprentices

- 10.1 Apprentices will be paid at the rate of the following percentages of the applicable Group classification in clause 8.1 which applies to their role.

10.2 For a four-year apprenticeship:

Year(s) post-commencement	% of base rate
1	55
2	65
3	75
4	90

10.3 For a three-year apprenticeship:

Year(s) post-commencement	% of base rate
1	55
2	75
3	90

10.4 An Employee who is an adult (that is 21 years of age or over at the time of entering into the contract of training) apprentice in their first year post-commencement of their apprenticeship will be paid whichever is the greater of:

- (a) the applicable rate in clause 10.2 or clause 10.3; or
- (b) the maximum rate that Employee would otherwise receive under the Award as an adult apprentice.

10.5 Where an Employee was employed by QBirt immediately prior to becoming an Apprentice, that Employee will not suffer a reduction in the ordinary time hourly rate of pay by virtue of entering into the contract of training.

10.6 Time spent by an apprentice in attending any training and assessment specified in, or associated with, their training contract, will be regarded as time worked for QBirt for the purposes of calculating the apprentice's wages and determining the apprentice's employment conditions.

10.7 When an apprentice works overtime and/or shiftwork the relevant penalties and allowances will apply, based on the applicable apprentice hourly rate identified above.

10.8 Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and such training requires an overnight stay, QBirt must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from such training.

10.9 An apprentice will:

- (c) be permitted to be absent from work, without loss of pay or continuity of employment, to attend off-the-job training in accordance with their contract of training;
- (d) not work under any system of payment by results; and
- (e) not work overtime or shiftwork on their own or without supervision.

11. Breaks

11.1 Day work

- (a) This sub-clause applies to Employees who are required to work between 6am and 6pm

Monday to Friday.

- (b) QBirt will schedule the workday on Monday through Friday so that it is divided into three periods separated by two (2), 30-minute work breaks.
- (c) One break will be paid at the Employee's base hourly rate and the other break will be unpaid.
- (d) The maximum period between any work break, or a work break and the start or end of a standard workday, shall be five (5) hours.
- (e) When an Employee is required to work overtime after the usual finishing time of the day or shift for two hours or more, the Employee is entitled to take:
 - (i) a paid 20 minute crib break immediately after such finishing time (or be taken to have worked an additional 20 minutes after completing the overtime if continuity is required); and
 - (ii) after each four hours of continuous work thereafter, a paid 30 minute crib break.

11.2 Night work

- (a) This sub-clause applies to Employees who are required to work a shift that commences between 6pm and 6am Monday to Friday.
- (b) Employees working a shift of 8 hours or less will be entitled to take one (1), 30-minute work break paid at the Employee's base hourly rate.
- (c) Employees working a shift of more than 8 hours and up to 10 hours will be entitled to take two (2), 30-minute work breaks paid at the Employee's base hourly rate.
- (d) The maximum period between any work break, or a work break and the end or start of a workday, shall be five (5) hours.
- (e) Where an Employee works more than two (2) additional hours after their normal finish time on any day, the Employee will be entitled to an additional 30-minute paid work break on that day, paid at the rate of double time.

11.3 Weekends/Public Holiday

- (a) This sub-clause applies to Employees who are required to work on Saturday, Sunday or a public holiday.
- (b) Any Employee required to work on a Saturday and/or Sunday will be provided with a minimum engagement/payment of four (4) hours of work on each of those days respectively.
- (c) Any day of eight (8) hours or less of work in the day will be divided into two periods separated by one (1) work break of 30 minutes, which will be paid.
- (d) Any day of more than eight hours of work in the day will be divided into three (3) periods separated by two (2), 30-minute work breaks.
- (e) One break will be paid at the Employee's base hourly rate and the other break will be unpaid.
- (f) Notwithstanding anything in this clause 11.3, clause 30.4(b) of the Award applies, to the extent that, any Employee who is required to work for more than 4 hours after their usual finishing time on a Saturday, Sunday or public holiday will be entitled to at least one (1) further work break, each of which will be paid.

11.4 General

- (a) Employees may be directed to take work breaks so as not to interfere with the continuity

of work where continuity is necessary.

- (b) Employees may be directed to take staggered breaks, or breaks at different times in the day, to suit work requirements

12. Overtime

- 12.1 Overtime worked shall attract the following penalty rates, calculated on the Employee's base hourly rate, and on the basis that each day stands alone:
- (a) **Monday - Friday:** time and a half for the first two (2) hours and double time thereafter.
 - (b) **Saturday:** time and a half for the first two hours and double time thereafter.
 - (c) **Sunday:** double time for all hours worked.
 - (d) **Public holidays:** double time and a half for all hours worked.
- 12.2 An Employee who is required to work so much overtime between the completion of their ordinary hours of work on one day and the commencement of their ordinary hours of work on the next day such that the Employee will not have at least ten (10) consecutive hours off duty shall be released after the completion of the overtime until the Employee has had ten (10) consecutive hours off duty. The Employee will be entitled to take those ten (10) consecutive hours off duty without loss of pay for normal working time occurring during such absence.
- 12.3 An Employee is entitled to overtime rates only if QBirt directs that Employee to work overtime.
- 12.4 An Employee who is recalled to work overtime after leaving QBirt's business premises (whether notified before or after leaving the premises) will be paid for a minimum of three (3) hours' work at the appropriate penalty rates as set out in this clause 12 for each time the Employee is so recalled on the basis that each day stands alone.

13. Night and early start shift loading

- 13.1 For each hour an Employee works on a shift that commences between 1pm and 4am as directed, QBirt will pay the Employee a loading of 10% on top of (as applicable) the Employee's:
- (a) base hourly rate; or
 - (b) overtime rate.
- 13.2 Unless clause 13.1 applies, for hours worked between 4am and 6am as directed, QBirt will pay an Employee a loading of 10% on top of (as applicable) the Employee's:
- (a) base hourly rate; or
 - (b) overtime rate.

14. Living away from home

- 14.1 QBirt will, in its discretion, provide to a LAH Employee either:
- (a) accommodation; or
 - (b) the LAH allowance, pro-rated for part weeks on shift.
- 14.2 QBirt will pay the LAH allowance to any Employee, who is required to work on construction work at such a distance from that Employee's usual place of residence or any separately maintained residence that the Employee cannot reasonably return to that place each night, provided that:
- (a) the Employee provides QBirt with their address prior to the relocation, and the address of any separately maintained residence and, if requested, reasonable documentary proof of those details;

- (b) the LAH allowance will not be paid if the details provided pursuant to clause 14.2(a) of this Agreement are false; and
- (c) no subsequent change of address will entitle an Employee to the provisions of this clause unless QBirt agrees.

14.3 If a LAH Employee is a FIFO Employee QBirt will arrange for transport for the FIFO Employee:

- (a) from the closest commercial airport to the project at the start of the Employee's roster cycle; and
- (b) from the project to the closest commercial airport at the end of the Employee's roster cycle.

14.4 A LAH Employee may qualify for only one (or none, but not both) of the following allowances. A LAH Employee who has to travel more than half an hour (30 minutes) from the accommodation provided to them to work on any day or for any shift is entitled to an allowance of \$30 for that day or shift.

14.5 A LAH Employee who has to travel more than an hour (60 minutes) from the accommodation provided to them to work on any day or for any shift is entitled to an allowance equivalent to the time spent travelling multiplied by the LAH Employee's base hourly rate for that day or shift.

14.6 **(DIDO allowance)** Subject to clause 14.7, QBirt will pay a DIDO Employee \$300 for each roster cycle the LAH Employee is required to work as a DIDO Employee. The DIDO allowance for each roster cycle will be paid to the Employee if and when the DIDO Employee returns to work from rest and recreation for the subsequent roster cycle.

14.7 A LAH Employee is not entitled to receive DIDO allowance if they move their residence to beyond 150km of the place they are required to work (by the most direct route of travel).

14.8 In addition to any entitlement under clause 14.1 or clause 14.2, QBirt may, at its election, provide to a LAH Employee, in each case, pro-rated for part weeks on shift:

- (a) three (3) meals per day on shift; or
- (b) a meal allowance of \$203.61 per week.

14.9 If, because of circumstances that QBirt cannot be reasonably held responsible for, QBirt directs a LAH Employee to remain at accommodation supplied in accordance with clause 14.1(a), QBirt will, until the LAH Employee is able to commence their journey to their residence (whether by their usual method of transport from site or an alternative method of transport):

- (a) continue to provide the Employee with accommodation; and
- (b) at QBirt's discretion, supply the Employee with meals or a meal allowance, in accordance with clause 14.8.

15. Pilbara allowance

15.1 Employees who are directed to work on any project in the Pilbara are entitled to an allowance of \$4.50 per hour for any hour worked.

15.2 This allowance does not form part of any calculation for shift loading or penalty.

16. Tool allowance

16.1 Employees in the work classification of Diesel Fitter and Boilermaker are entitled to a tool allowance of \$70.00 per week.

16.2 Employees in the classification of serviceperson are entitled to a tool allowance of \$25.00 per week.

16.3 QBirt will provide any Employee who is not employed in any of the classifications in clauses 16.1 and 16.2 with the tools reasonably required of their role.

17. First Aid allowance

- 17.1 An Employee who QBirt appoints as a first aid attendant will be paid an allowance of \$40.00 per week while they act as a first aid attendant.

18. Leave

- 18.1 Employees, other than Casual Employees, are entitled to accrue annual leave at the rate of 4 weeks' per annum based on a 40-hour average working week (i.e., 40 ordinary hours per week).
- 18.2 Shiftworkers are entitled to an additional week of annual leave per annum.
- 18.3 Part-time Employees will accrue leave on a pro-rata basis.
- 18.4 In relation to a shut-down period, the following applies in respect of annual leave:
- (a) QBirt may direct an employee to take paid annual leave during all or part of a period where QBirt shuts down the business, part of the business, or a site where the Employee works. If an Employee does not have sufficient accrued annual leave for the period of the shutdown, then the Employee may be required to take leave without pay for the balance of the shutdown period for which leave is not accrued.
 - (b) Where an employer decides to utilise the provisions of clause (a) in respect of the shut down period for the purpose of giving the whole of the annual leave due to all or the majority of their Employees then qualified for such leave, QBirt must give at least two months' notice to the affected Employees.
- 18.5 Clauses 31.4 – 31.8 of the Award apply.
- 18.6 A LAH Employee who qualifies for paid personal leave under the NES during a roster cycle will be paid at their Base hourly rate (with no overtime, penalties or allowances), subject to the notification requirements in clause 18.7.
- 18.7 A LAH Employee claiming paid personal leave may be required to:
- (a) supply evidence of their personal illness or personal injury in accordance with the FW Act to receive payment for personal leave; and
 - (b) depending on the expected length of their personal illness or personal injury, remain living away from home (but not to attend work) for the remainder of their roster cycle (subject to any medical emergency).
- 18.8 Employees are otherwise entitled to leave in accordance with the NES and relevant long service leave legislation.

19. Disputes Settlement Process

- 19.1 If a dispute relates to:
- (a) a matter arising under the Agreement; or
 - (b) the NES;
- this term sets out procedures to settle the dispute.
- 19.2 An Employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- 19.3 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the Employee or Employees and relevant supervisors and/or management.
- 19.4 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to FWC.

19.5 The FWC may deal with the dispute in 2 stages:

- (a) the FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
- (b) if the FWC is unable to resolve the dispute at the first stage, the FWC may then, if all parties agree:
 - (i) arbitrate the dispute; and
 - (ii) make a determination that is binding on the parties.

Note: If the FWC arbitrates the dispute, it may also use the powers that are available to it under the FW Act.

A decision that FWC makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the FW Act. Therefore, an appeal may be made against the decision.

19.6 While the parties are trying to resolve the dispute using the procedures in this term:

- (a) each affected Employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
- (b) each Employee must comply with any direction given by QBirt to perform other available work at the same workplace, or at another workplace, unless:
 - (i) the work is not safe; or
 - (ii) applicable occupational health and safety legislation would not permit the work to be performed; or
 - (iii) the work is not appropriate for the Employee to perform; or
 - (iv) there are other reasonable grounds for the Employee to refuse to comply with the direction.

19.7 The parties to the dispute agree to be bound by any decision made by FWC in accordance with this term.

20. Agreement Flexibility

20.1 Notwithstanding any other provision of this Agreement, QBirt and an individual Employee may agree to vary the terms of the Agreement (which, for the purpose of this clause, is deemed to include all applicable Award provisions) to meet the genuine individual needs of QBirt and the individual Employee.

20.2 To give effect to clause 20.1, QBirt and any individual Employee may agree to vary the application of any one (1) or more of the following matters to the Employee, by entering into an IFA addressing:

- (a) arrangements about when work is performed;
- (b) overtime rates;
- (c) penalty rates;
- (d) allowances;
- (e) leave loading;
- (f) rest periods or meal breaks; and/or
- (g) training or vocational education.

QH & M BIRT NATIONAL ENTERPRISE AGREEMENT 2023

- 20.3 QBirt must ensure that any IFA agreed under this clause:
- (a) is about only permitted matters if the IFA were an enterprise agreement;
 - (b) does not include any term that would be an unlawful term if the IFA were an enterprise agreement;
 - (c) is in writing, names the parties to the IFA and is signed by QBirt and the individual Employee and, if the Employee is under eighteen (18) years of age, the Employee's parent or guardian;
 - (d) states each term of the Agreement (or the Award) that the parties have agreed to vary;
 - (e) details how the application of each term has been varied by the parties' agreement;
 - (f) has been genuinely made without coercion or duress;
 - (g) results in the Employee being better off overall, at the time the IFA is made, than if no IFA had been agreed to;
 - (h) details how the IFA results in the individual Employee being better off overall;
 - (i) states the date upon which the IFA commences operation; and
 - (j) states that the IFA may be terminated:
 - (i) by either party to the IFA giving not more than twenty eight (28) days' notice of termination, in writing, to the other party; or
 - (ii) at any time, by written agreement between the parties to it.
- 20.4 QBirt must give the individual Employee a copy of the IFA within fourteen (14) days after it is agreed and then keep the arrangement as a time and wages record.
- 20.5 Except as provided in clause 20.3(c) the IFA must not require the approval or consent of a person other than QBirt and the individual Employee.
- 20.6 The right to make an IFA pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision of an agreement between QBirt and an individual Employee contained in any other term of this Agreement.

21. Consultation Regarding Workplace Change

- 21.1 This term applies if QBirt:
- (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the Employees; or
 - (b) proposes to introduce a change to the regular roster or ordinary hours of work of Employees.

Major change

- 21.2 For a major change referred to in paragraph (a):
- (a) QBirt must notify the relevant Employees of the decision to introduce the major change; and
 - (b) clauses 21.3 to 21.9 apply.
- 21.3 The relevant Employees may appoint a representative for the purposes of the procedures in this term.

- 21.4 If:
- (a) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
 - (b) the Employee or Employees advise QBirt of the identity of the representative;
- QBirt must recognise the representative.
- 21.5 As soon as practicable after making its decision, QBirt 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 Employees; and
 - (iii) measures QBirt 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.
- 21.6 However, QBirt is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- 21.7 QBirt must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.
- 21.8 If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of QBirt, the requirements set out in paragraphs 21.2(a), 21.3 and 21.9 are taken not to apply.
- 21.9 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 QBirt'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.

Change to regular roster or ordinary hours of work

- 21.10 For a change referred to in paragraph (b):
- (a) QBirt must notify the relevant Employees of the proposed change; and
 - (b) clauses 21.11 to 21.15 apply.

- 21.11 The relevant Employees may appoint a representative for the purposes of the procedures in this term.
- 21.12 If:
- (a) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
 - (b) the Employee or Employees advise QBirt of the identity of the representative;
- QBirt must recognise the representative.
- 21.13 As soon as practicable after proposing to introduce the change, QBirt 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 QBirt reasonably believes will be the effects of the change on the Employees; and
 - (iii) information about any other matters that QBirt reasonably believes are likely to affect the Employees; and
 - (iv) 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).
- 21.14 However, QBirt is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- 21.15 QBirt must give prompt and genuine consideration to matters raised about the change by the relevant Employees.
- 21.16 In this term:
- relevant Employees** means the Employees who may be affected by a change referred to in clause 21.1.

22. Personal Protective Equipment

- 22.1 QBirt will issue the following to Employees which must be worn as required:
- (a) One (1) pair of standard approved safety footwear;
 - (b) One (1) standard approved hardhat;
 - (c) One (1) pair of standard approved safety glasses;
 - (d) One (1) pair of standard approved gloves;
 - (e) Three (3) pairs of full-length pants;
 - (f) Three (3) high-vis shirts; and
 - (g) Other personal protective equipment as may be considered by QBirt to be necessary at a particular project or projects (e.g. a jacket in cold weather environments).
- 22.2 Employees required by QBirt to regularly work in a workshop will be issued an additional two (2) pairs of full-length pants and high-vis shirts.
- 22.3 QBirt will replace this equipment if it is damaged due to reasonable wear and tear if the item is produced for replacement.

- 22.4 QBirt will reimburse an Employee for the reasonable value of any equipment in paragraph 22.1 if:
- (a) QBirt does not supply the Employee with that piece of equipment;
 - (b) QBirt determines that the equipment in question is suitable, fit for purpose and necessary for the Employee's work; and
 - (c) the Employee produces a receipt for the equipment.

- 22.5 Employees who provide equipment that QBirt determines is not suitable and/or necessary, will be liable for the cost of that equipment and will not be reimbursed.

23. Inclement Weather

- 23.1 The Parties' Agreement in relation to Inclement Weather is set out in Appendix One.

24. Company Policies

- 24.1 Employees will comply with QBirt's policies in place from time to time, and acknowledge that policies do not form terms of this Agreement and instead operate as directions issued by QBirt to Employees.

25. Drug & Alcohol Testing

- 25.1 All Employees acknowledge that project work may impose obligations on QBirt to comply with mandatory drug and alcohol testing requirements.
- 25.2 Each Employee will comply with all directions from QBirt to submit to the drug and alcohol testing in accordance with the requirements of each and any project on which the Employee works.

26. Medicals and off-site Training

- 26.1 As part of its commitment to work health and safety, QBirt may require Employees to demonstrate fitness for work, including by requiring any Employee to:
- (a) undergo and participate actively in 5 yearly medical reviews; and
 - (b) obtain medical clearance to perform the inherent requirements of their role.
- 26.2 Employees will attend medical reviews outside of ordinary working hours wherever reasonably possible.
- 26.3 QBirt will pay an Employee at their Base hourly rate for each hour (up to 8 hours in any day) if QBirt requires the Employee to:
- (a) undergo a medical review or testing because QBirt transfers the Employee to a different site or project; or
 - (b) attend training off-site that day.



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- 13.1 Each Employee will comply with all directions from QBirt to submit to the drug and alcohol testing in accordance with the requirements of each and any project on which the Employee works.


14. Medicals and off-site Training

- 14.1 As part of its commitment to work health and safety, QBirt may require Employees to demonstrate fitness for work, including by requiring any Employee to:
- (a) undergo and participate actively in 5 yearly medical reviews; and
 - (b) obtain medical clearance to perform the inherent requirements of their role.
- 14.2 Employees will attend medical reviews outside of ordinary working hours wherever reasonably possible.
- 14.3 QBirt will pay an Employee at their Base hourly rate for each hour (up to 8 hours in any day) if QBirt requires the Employee to:
- (a) undergo a medical review or testing because QBirt transfers the Employee to a different site or project; or
 - (b) attend training off-site that day.

SIGNATURE PROVISIONS

This Enterprise Agreement has been executed by the parties, or their respective authorised representatives, on the dates set out below.

Signed for and on behalf of
QH & M Birt Pty Ltd
by an authorised representative:



Signature

QUENTIN BIRT

Print name

DIRECTOR

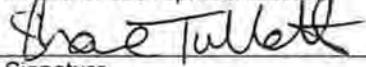
Print title

1754 MT NEBO, MT. NEBO, QLD, 4520

Print address (including state and postcode)

Date: 5.3.2024

Signed for and on behalf of
employees who are bound by this Agreement
as authorised representative:



Signature

SHANE TULLETT

Print name

SERVICEMEN

Print title

23 ISETTA CRT JAFFER COOMERA QLD 4209

Print address (including state and postcode)

Date: 27/2/24

Witnessed by:



Signature of Witness

ANTE RADOS

Print name of Witness

513/42 WYANDORA ST, NEWSTEAD, QLD, 4006

Print address (including state and postcode)

Date: 05.03.2024

Witnessed by:



Signature of Witness

Print name of Witness

14 Setonhall Court Sippy Downs

Print address (including state and postcode)

Date: 27/2/24 4556 Queensland



Q H & M BIRT NATIONAL ENTERPRISE AGREEMENT 2023

- 13.1 Each Employee will comply with all directions from QBirt to submit to the drug and alcohol testing in accordance with the requirements of each and any project on which the Employee works.

14. Medicals and off-site Training

- 14.1 As part of its commitment to work health and safety, QBirt may require Employees to demonstrate fitness for work, including by requiring any Employee to:
- (a) undergo and participate actively in 5 yearly medical reviews; and
 - (b) obtain medical clearance to perform the inherent requirements of their role.
- 14.2 Employees will attend medical reviews outside of ordinary working hours wherever reasonably possible.
- 14.3 QBirt will pay an Employee at their Base hourly rate for each hour (up to 8 hours in any day) if QBirt requires the Employee to:
- (a) undergo a medical review or testing because QBirt transfers the Employee to a different site or project; or
 - (b) attend training off-site that day.

SIGNATURE PROVISIONS

This Enterprise Agreement has been executed by the parties, or their respective authorised representatives, on the dates set out below.

Signed for and on behalf of
Q H & M Birt Pty Ltd
by an authorised representative:

Witnessed by:

Signature

Signature of Witness

Print name

Print name of Witness

Print title

Print address (including state and postcode)

Date:

Print address (including state and postcode)

Date:

Signed for and on behalf of
employees who are bound by this Agreement
as authorised representative:

Witnessed by:

Signature

Signature of Witness

Print name

Print name of Witness

Print title

Print address (including state and postcode)

Date:

Print address (including state and postcode)

Date:

Appendix 1 – Inclement Weather

a) General approach to inclement weather

Inclement weather means the existence of rain or abnormal climatic conditions (whether hail, fog, flooding, severe dust storm, extreme high temperature or the like or any combination of these conditions) where it is not reasonable or it is unsafe for Employees to continue working in those conditions.

The Parties to the Agreement will collectively work towards the minimisation of the lost time due to inclement weather. Further to this, the Parties undertake to adopt the following principles with regards to inclement weather and the idle time inclement weather creates:

- 1) All Parties will adopt a reasonable approach as to what constitutes inclement weather.
- 2) Work will continue in periods of inclement weather where it has been determined that it is safe to do so. QBirt will issue wet weather and appropriate PPE where appropriate.
- 3) Nominally the relevant supervisor in conjunction with the Employees and when appropriate, the Safety Representative will assess the weather conditions and where necessary, after consultation with the Site Manager, transfer to other work activities or training.
- 4) Each Employee shall accept transfer to an area on the same site not affected by inclement weather where work is available provided the work is within the Employee's skill, competence and training.
- 5) Where useful work is not available the use of non-productive time shall be utilised for activities such as skill development, safety training, presentation and participating in learning, planning and reprogramming of the project or projects or any other utilisation of non-productive time as QBirt may reasonably require.
- 6) Unless otherwise notified by QBirt, Employees will present to work during any period of inclement weather.

Any dispute arising from the application of this clause shall be resolved in accordance with the dispute resolution process in this Agreement.

b) Temporary stand down in the event of inclement weather

Where the project, projects or aspects of the project or projects are affected by inclement weather, QBirt may at its discretion give notice to affected Employees that they will be stood down for the duration of their work shift. However, an Employee may be stood down in such circumstances only where they have been given notice of the stand down prior to their presentation for work on the day on which they are to be stood down.

An Employee whom QBirt stands down under this policy may qualify for payment as follows:

<i>If QBirt informs the Employee of the stand down:</i>	<i>...the Employee is eligible to receive, for the work shift in question:</i>
1. on the day before the work shift in question:	no payment;
2. both: a. after the Employee presents for the work shift in question, ready, willing and fit for work; and b. before the work shift has commenced:	4 hours' pay;
3. after the Employee has commenced working the work shift in question and that work shift is a	8 hours' pay;

<i>If QBirt informs the Employee of the stand down:</i>	<i>...the Employee is eligible to receive, for the work shift in question:</i>
weekday (Monday to Friday) shift:	
4. after the Employee has commenced working the work shift in question and that work shift is a weekend (Saturday or Sunday) shift:	4 hours' pay.

All payments under this policy are paid on the Employee's Base Hourly Rate only.

The right to stand down an Employee is subject to QBirt ensuring that all reasonable options for other work (including, if reasonable, work on any other project/s) have been explored before the stand down is implemented.

Any Employee who is stood down because of inclement weather, irrespective of whether the employee was stood down before or after the commencement of their shift, will receive payment at the ordinary time hourly rate for time lost due to inclement weather up to a maximum of 32 hours' pay in any four week period.

Note: As an example, an Employee who comes into work on a weekday but is rained off after 2 hours gets paid the 8 hours required by the table above, but the 6 hour balance of that 8 hours (i.e., the difference between the 2 hours worked and the 8 hours paid) will count towards the 32 hour cap that applies under this paragraph.

c) Cancellation of work following presentation for work

At or before the commencement of a shift, QBirt may at its discretion give notice to affected Employees that they will not be required for work on that day due to inclement weather affecting the Project or aspects of the Project. In the event such notice is given, affected Employees will be released from work, and will be entitled to a payment of:

- 1) if the Employee is stood down on a weekday (Monday to Friday): 8 hours' pay; or
- 2) if the Employee is stood down on a weekend (Saturday or Sunday): 4 hours' pay.

All payments under this policy are paid on the Employee's Base Hourly Rate only.

Where Employees are not released from work in accordance with this subclause c), the procedures in subclause d) will apply.

d) Employees required to remain at work during inclement weather

Monday to Friday

When work carried out between Monday and Friday (including wet weather activities) on a particular part of a project site ceases or cannot continue because of inclement weather, Employees shall continue to be paid in accordance with this Agreement but they must remain at the Project site. After four ordinary hours, if information indicates the inclement weather will continue, QBirt may release affected Employees for the remainder of the day and they will be entitled to the ordinary hours normally worked for that day (i.e. excluding any planned overtime), including any hours QBirt reasonably directs affected Employees to remain at the Project site with a minimum payment of eight hours total for the day.

Inclement weather occurring during overtime will not be taken into account for the purposes of this clause and employees will not be entitled to any payment for stoppages because of inclement weather that occurs outside of ordinary hours.

Saturday and Sunday

When work carried out on a Saturday or Sunday ceases or cannot continue because of inclement weather, Employees shall continue to be paid in accordance with this Agreement for the hours they are required to remain at the Project with a minimum payment of four hours.

Conditions of payment

Nothing in this subclause d) limits QBirt's discretion to direct that Employees carry out alternative reasonable duties during times when their normal work is affected by inclement weather. If any Employee is not willing or available to work when so requested, they will not be entitled to pay for that day.

'All clear'

After the 'all clear' is given following the cessation of inclement weather, Employees shall be notified by QBirt of:

- 1) the time at which normal operations are to resume, and
- 2) the time at which they are to resume work.

An Employee who does not present for work after the 'all clear' is given will not be entitled to payment for the time during which work was affected by inclement weather, but instead will only be entitled to payment for their actual time worked.

e) Disruption to operations after inclement weather

Where, on the day following the resumption of normal operations or on any subsequent day, an Employee cannot be usefully employed because of damage caused to the Project by inclement weather, QBirt may stand down the Employee without pay in accordance with the procedure set out in subclause b) above.

IN THE FAIR WORK COMMISSION

FWC Matter No.: **AG2024/283**

Applicant: **Q.H. & M. Birt Pty Ltd**

Section 185 – Application for approval of a single enterprise agreement


Undertaking – Section 190

I, Quentin Birt, Director of Q.H. & M. Birt Pty Ltd (**QBirt**), give the following undertakings with respect to the *Q H & M Birt Pty Ltd National Enterprise Agreement 2023 (Agreement)*, pursuant to section 190 of the *Fair Work Act 2009* (Cth):

I have the authority given to me by QBirt to provide this undertaking in relation to the application before the Fair Work Commission.

1. Whenever clause 6.1(a) of the Enterprise Agreement applies (because the Employee in question is working on a project or job that operates according to a swing roster cycle), QBirt will cap the maximum number of ordinary hours that the Employee in question may work at:
 - (a) 8 hours/day if the *Building and Construction General On-site Award 2020* applies; and
 - (b) 10 hours/day if the *Mining Industry Award 2020* applies, subject to clause 12 of that award.
2. For the purposes of clause 12.1 of the Agreement, all hours worked on a Saturday, Sunday or public holiday will be characterised as overtime and will be paid at the rate stipulated in clauses 12.1(b), (c) or (d) respectively.
3. Clause 12.1(a) of the Agreement will be deleted and replaced with the following clause:

'Monday – Friday: time and a half for the first two (2) hours worked in excess of an employee's ordinary rostered hours and double time thereafter.'



Quentin Birt
Date **2.4.24**