



DECISION

Fair Work Act 2009

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

Osborne Cogeneration Pty Ltd
(AG2024/543)

OSBORNE COGENERATION ENTERPRISE AGREEMENT 2023

Electrical power industry

COMMISSIONER PLATT

ADELAIDE, 27 MARCH 2024

Application for approval of the Osborne Cogeneration Enterprise Agreement 2023

[1] An application has been made for approval of an enterprise agreement known as the *Osborne Cogeneration Enterprise Agreement 2023* (the Agreement) pursuant to s.185 of the *Fair Work Act 2009* (the Act) by Osborne Cogeneration Pty Ltd (the Applicant). The agreement is a single enterprise agreement.

[2] The matter was allocated to my Chambers on 12 March 2024.

[3] On 12 March 2024, I provided the parties with a table of issues to seek clarification about aspects of the Agreement and invited the Applicant to address these matters including through the provision of an undertaking.

[4] There is one National Employment Standard (NES) issue that requires comment:

- Clause 21.2(b) appears to provide that where an employee fails to give the prescribed notice, any payment due to the employee may be forfeited to the extent it falls short of the notice required. Noting the clause does not appear to limit the source of monies which may be forfeited, this may operate to reduce an employee's NES entitlements.

[5] Clause 2.5 of the Agreement acts as an effective NES precedence clause. As a result, the above clause will not apply to the extent it is inconsistent with the NES.

[6] The Applicant has submitted an undertaking in the required form dated 25 March 2024. The undertaking ensures casual employees will be engaged for no less than 3 hours on each occasion.

[7] A copy of the undertaking has been provided to the bargaining representative and I have sought their views in accordance with s.190(4) of the Act. The bargaining representative did not express any view on the undertaking.

[8] The undertaking appears to meet the requirements of s.190(3) of the Act and I have accepted it. As a result, the undertakings are taken to be a term of the Agreement.

[9] The Australian Services Union South Australian and Northern Territory Branch, being a bargaining representative for the Agreement, has given 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 that the Agreement covers this organisation.

[10] I am satisfied that each of the requirements of ss.186, 187, 188 and 190 of the Act as are relevant to this application for approval have been met.

[11] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 days after the date of approval of the Agreement. The nominal expiry date is 2 April 2028.



COMMISSIONER

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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 this agreement.

Osborne Cogeneration Enterprise Agreement 2023

OSBORNE COGENERATION ENTERPRISE AGREEMENT 2023

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1. AIMS AND OBJECTIVES

This Agreement reflects the Company's aim to deliver a safe, operationally efficient, cost competitive and environmentally sustainable generation facility.

Employees contribute to the sustainability of the business through the provision of competent, productive, flexible, proactive and responsive work practices, which are duly and equitably recognised by the Company.

2. AGREEMENT

2.1 Title

This Agreement shall be known as the Osborne Cogeneration Enterprise Agreement 2023.

2.2 Application and Operations

This Agreement Covers:

- (a) Osborne Cogeneration Pty Ltd (the "Company"); and
- (b) All employees of the Company engaged in the classifications contained within Schedule 1 of this Agreement.

The parties to this Agreement acknowledge the underlying principle that improvements in terms and conditions are offset by productivity improvements and reductions in cost.

2.3 Term of the Agreement

- (a) This Agreement will come into operation seven days after the date of approval by the FWC. The nominal term of this Agreement will expire 4 years from the date of approval ("Expiry Date") (4-year agreement).
- (b) This Agreement shall continue to operate after its Expiry Date until it is replaced or terminates in accordance with applicable provisions of the Act.

2.4 Terms and Definitions

The following terms are used throughout the Agreement and are defined as follows:

"Adult Apprentice"	means a person of 21 years of age or over at the time of entering into a training contract for an apprenticeship in accordance with Clause 3(g).
"Agreement"	refers to the Osborne Cogeneration Enterprise Agreement 2023.
"Act"	means the <i>Fair Work Act 2009</i> (Cth).
"Apprentice"	means a person who has entered into a training contract for an apprenticeship in accordance with Clause 3(g).

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"ASU"	means the Australian Municipal, Administrative, Clerical and Services Union.
"Annualised Salary"	refers to Shift Workers receiving an annualised salary which incorporates the consolidated value of base salary and Shift Premium.
"ATCO"	refers to ATCO Australia Pty Ltd (ACN 091 033 546) and its related entities within the meaning of s 50 <i>Corporations Act 2001</i> (Cth), including the Company.
"Company"	refers to Osborne Cogeneration Pty Ltd (ABN 89 072 027 331), may also be referred to as the Employer.
"Day Worker"	means an employee whose ordinary hours are worked between Monday and Friday and within the span of hours for Day Workers in Clause 4.
"Employee"	means an Employee of the Company within the description in Clause 2.2 of this Agreement.
"FWC"	refers to the Fair Work Commission.
"Household Member"	means a person who regularly resides in the same house as the Employee, whether or not related to the Employee.
"Immediate Family"	means a current and former spouse or de facto spouse of Employee (including a de facto of the same or opposite sex) and a child (including adopted child, step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the Employee or their spouse or de facto partner.
"Manager"	refers to an Employee of the Company who is responsible for managing Employees, eg a Manager or Supervisor.
"NES"	means the National Employment Standards as prescribed by the Act.
"Ordinary Hours"	means the hours that an Employee works that are paid at single time, in accordance with Clause 4 Hours of Work.
"Shift Premium"	refers to Shift Workers receiving a consolidated Shift Premium of 31% of base salary. This is in lieu of any applicable shift and/or public holiday penalty rates and minor overtime associated with shift hand overs.
"Shift Workers"	for the purposes of this agreement and for the purposes of the NES are defined as Employees engaged on a designated shift roster.

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2.5 Relationship of this Agreement to the Award

This Agreement will operate to the exclusion of the *Electrical Power Industry Award 2020* or any other Award (modern or otherwise). The Agreement will be read and interpreted in conjunction with the NES. Where there is an inconsistency between this Agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

2.6 No Extra Claims

It is a term of this Agreement that the Company and Employees (whether themselves or through anyone else) will not pursue any extra claims during the operation of the Agreement, unless otherwise permitted by the Act. Nothing in this clause prevents an agreement being reached on a mutual basis to vary the terms of the Agreement in accordance with the Individual Flexibility (Clause 7).

2.7 Bargaining Representatives

The parties note that the Australian Municipal, Administrative, Clerical and Services Union has acted as the bargaining representative for some or all of the Employees covered by this Agreement.

3. TYPES OF EMPLOYMENT

The Company may employ full time, part time, maximum term, casual Employees, Shift Workers or Apprentices as required.

- (a) Full time Employees will be engaged to work Ordinary Hours as per this Agreement.
- (b) Part time Employees will work less than the specified full time hours and will work a regular pattern of hours. Any relevant entitlements are on a pro rata basis. At the time of engagement, the Company and the part-time Employee will agree in writing on a regular pattern of work including the hours to be worked and the start and finishing time on each day. Any agreed variation to the regular pattern of work will be recorded in writing.
- (c) Maximum term Employees may be engaged on a full time or part time basis for a maximum period.
- (d) Shift Workers for the purposes of this Agreement and for the purposes of the NES are defined as Employees engaged on a designated shift roster. Over the roster cycle, a Shift Worker may be rostered to work ordinary time shifts on any of the seven days of the week; and may be regularly rostered to work on Sundays and public holidays.
- (e) Newly engaged permanent Employees will observe a six month probationary period.
- (f) Casual employees are employees who were offered and accepted employment on the basis that there is no firm advance commitment to continuing and indefinite work according to an agreed pattern of work.
- (g) Apprentices are employees who work under an applicable contract of apprenticeship or training agreement operating under federal, State or Territory apprenticeship or training, in the Day Worker classifications.

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4. HOURS OF WORK

Employee Classification	Hours of Work
Shift Workers	36.8 hours per week (average) with Ordinary Hours to be worked in accordance with the Company Shift Roster. A Company standard shift for the purposes of this Agreement is defined as being 12 hours in length. An Ordinary Hours shift includes 2 x 15 minute paid tea breaks and one paid meal break of 30 minutes.
Day Workers	36.8 hours per week between 7:00am and 5:30pm (Monday to Friday) inclusive with start and finish times for each day to be determined by the Company. This includes a 20 minute paid tea break and an unpaid meal break of 30 minutes.

The hours of work and work patterns may be varied from time to time in order to meet the requirements of the Company. The Employee must work the hours which are reasonably necessary to fulfil the requirements of the Employee's position, or as reasonably required by the Company. Where the daylight saving time change-over falls during rostered-on shifts, then there will be no variance to the allocated 12 hour remuneration.

5. SHIFT ROSTER

The shift roster operates on a 5 week cycle. Changes to the shift roster are at management discretion during the term of the Agreement with reasonable notice. Proposed changes to the shift roster will be duly considered and agreement will not be unreasonably withheld by either party.

Training (including group and safety meetings) for Employees working shifts, will be arranged where possible on an Employee's normal rostered day(s) (or nightshift changed to a dayshift). Where it is necessary to conduct training on normal rostered day(s) off, if suitable to both Employee and Company, the training day will be in place of a normal rostered day(s). Where this option is not suitable, training when conducted locally will be paid at single time or as banked time.

Where a person employed as a Shift Worker is required to temporarily work day work (rather than their normal roster), they will continue to be remunerated at their Annualised Salary. This provision does not apply where major change (as defined in the Consultation (Clause 25)) is necessary.

6. OTHER FLEXIBLE WORKING ARRANGEMENTS

Managers and Employees may mutually agree to implement other working arrangements to meet business needs or to accommodate an Employee's personal circumstances. Such arrangements may include part time, job share arrangements or flexible patterns of hours and days worked.

7. INDIVIDUAL FLEXIBILITY ARRANGEMENTS

- (a) An employer and Employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - (i) The agreement deals with the following matter;
(A) Leave loading; and
 - (ii) The arrangement meets the genuine needs of the employer and Employee in relation to the matter mentioned in paragraph (i); and
 - (iii) The arrangement is genuinely agreed to by the employer and Employee.

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- (b) The employer must ensure that the terms of the individual flexibility arrangement:
 - (i) Are about permitted matters under section 172 of the Fair Work Act 2009; and
 - (ii) Are not unlawful terms under section 194 of the Fair Work Act 2009; and
 - (iii) Result in the Employee being better off overall than the Employee would be if no arrangement was made.
- (c) The employer must ensure that the individual flexibility arrangement:
 - (i) Is in writing; and
 - (ii) Includes the name of the employer and Employee; and
 - (iii) Is signed by the employer and Employee and if the Employee is under 18 (eighteen) years of age, signed by a parent or guardian of the Employee; and
 - (iv) Includes details of:
 - (A) The terms of the Agreement that will be varied by the arrangements; and
 - (B) How the arrangement will vary the effect of the terms; and
 - (C) 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
 - (v) States the day on which the arrangement commences.
- (d) The employer must give the Employee a copy of the individual flexibility arrangement within 14 (fourteen) days after it is agreed to.
- (e) The employer or Employee may terminate the individual flexibility arrangement:
 - (i) By giving no more than 28 (twenty eight) days written notice to the other party to the arrangement; or
 - (ii) If the employer and Employee agree in writing – at any time.

8. OVERTIME

Any hours (apart from local training hours) worked in excess of Ordinary Hours and as referenced in Hours of Work (Clause 4) will be treated as overtime. This work must be pre-approved by Management prior to commencement, and the following rules apply

- (a) Weekdays and Weekends - All overtime to be paid at double time.
- (b) Public Holidays - Day Workers will receive all overtime paid at double time and a half.
- (c) If a Shift Worker is not scheduled to work on a Public Holiday and is required to do so, the time worked will be paid at double time and a half.
- (d) For Shift Workers all overtime hours are paid on Annualised Salary.

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Employees can elect to take excess hours as banked time on a one for one basis (one hour of overtime worked = one hour of banked time) with prior management approval. At any time however an Employee can have no more than the following levels of banked time - 5 days (or 37.6 hours) for a Day Worker, 4 shifts (or 48 hours) for a Shift Worker (including that earned for working a Public Holiday). Once the limit is reached any additional overtime or Public Holiday banked time must be taken as pay.

9. CALL OUT

Call outs will be paid at a minimum of 4 hours, including travel time, and paid in accordance with the Overtime (Clause 8) of this Agreement.

10. ALLOWANCES

10.1 Travel Time and Expense Reimbursement

- (a) Where an Employee is required to temporarily work and live away from home, the Company will pay accommodation and flight costs in advance, where possible. Where this is not possible, other advance arrangements may be made to reduce the temporary financial impact on the travelling Employee.
- (b) The Employee is entitled to claim reasonable expenses on the provision of receipts, where applicable and with the approval of management.
- (c) Hours spent travelling (in excess of Ordinary Hours for the pay period) will be paid at overtime rates.
- (d) Journey will be from normal place of residence and return.

10.2 Work Related Expenses

With the prior approval of the Employee's Manager, an Employee who incurs an expense on behalf of the Company in the course of their employment, may seek reimbursement (upon providing receipts) in alignment with the Company's expense claim reimbursement process.

11. HIGHER DUTIES

An Employee directed by the Company to carry out the substantive duties of a position classified at a higher pay level for a continuous period of not less than 1 week will be paid at the rate of their current classification + 5%.

12. PAYMENT OF SALARY

- (a) The minimum annual rates payable to Employees by the Employer are set out in Schedule 1.
- (b) Employees shall be paid fortnightly by electronic funds transfer into a nominated bank account by close of business on the Employees' usual pay day.
- (c) Deductions for income tax and superannuation will be made automatically from the Employee's pay.
- (d) Repayments will be required by the Company in the event of:
 - (i) over payment by the Company;

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- (ii) any unauthorised absence or default (including not providing minimum notice on termination);
- (iii) an Employee owing any debt to the Company including any unauthorised expenditure incurred by the Employee on behalf of the Company.
- (e) Where an overpayment is deemed to have been made due to the fault of the company, the Employee will be notified in writing as soon as practicable.
- (f) Where an overpayment has been made at either the fault of the company or Employee, the parties will discuss and agree in writing, a repayment plan with consideration for both the value of the overpayment and the individual Employee's circumstances. Repayments are to be made as soon as practicable.
- (g) Written agreements should include the reason for the overpayment, the amount of money overpaid and the way in which repayments will be made (frequency, method and instalment values).

13. SUPERANNUATION

- (a) Superannuation payments will be made on the Employee's behalf in accordance with the provisions of the relevant legislation.
- (b) An Employee may choose the superannuation fund they wish the Company contributions to be paid into, subject to the nominated fund being a complying fund under the Act and also having the capability of accepting contributions by electronic transfer.
- (c) If the Employee does not nominate a superannuation fund in accordance with legislation, the Company contributions will be made to the Employee's 'stapled fund'. If the Australian Taxation Office does not identify a 'stapled fund' for an Employee, the Company contributions will automatically be made to the Company's default superannuation fund.

14. SALARY SACRIFICE

Employees may enter into salary sacrifice arrangements in accordance with the Company's salary packaging arrangements, subject to applicable legislation.

15. SALARY CONTINUANCE

The Company is committed to providing Employees employed pre 1 January 2018 with salary continuance coverage to age 65 (sixty-five) under the current insurance policy for the term of this Agreement, subject to availability, financial feasibility (with a significant increase in cost) and the insurer's conditions. For Employees employed pre January 2018, the Company will (at a minimum) offer a policy with a maximum claim period of 2 years. All new Employees joining the Company post January 2018 will be covered by a policy with a maximum claim period of 2 years.

The Company agrees to consider competitive offers presented by suppliers and made available to the Company that may improve the overall benefit that could be provided to the total workforce.

16. LEAVE

Leave will be paid at the Employee's rate of pay that they would have received for Ordinary Hours during the relevant period, had the Employee not been on leave during the relevant period.

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16.1 Annual Leave

- (a) Permanent full time Employees, other than casual Employees will accrue up to 4 weeks (150.4 hours) per annum of continuous service.
- (b) Part time Employees will accrue as per permanent full time Employees, but on a pro-rata basis in alignment with the number of hours they are contracted to work.
- (c) Employees who work on a permanent shift roster will accrue up to 5 weeks (188 hours) per annum of continuous service.
- (d) Accrued annual leave may be taken for a period agreed between the Employee and their Manager. Annual leave requests will be subject to the operational requirements of the business and must be approved by the Employee's line Manager prior to being taken.
- (e) Where an Employee has an excessive leave accrual, the Company or the Employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (f) The Company may direct an Employee to take annual leave where the Employee has accrued more than 8 weeks of leave (and may consist of annual leave, banked hours or a combination thereof). The Company will provide Employees with at least 1 months' notice of any such direction. The Employee's remaining accrued entitlement to paid annual leave after such direction has occurred must be no less than 6 weeks. Once the direction is made by the Company, the Employee must take paid annual leave in accordance with a direction.
- (g) An Employee to whom a direction has been given may request to take an alternate period of paid annual leave as if the direction had not been given subject to the agreement of the Company. The Company will not unreasonably refuse to agree to such a request by the Employee.
- (h) An application may be made by the Employee for the cashing out of annual leave. An application for cashing out annual leave must be mutually agreed between the Employee and the Company in writing. The Employee must be left with an annual leave balance of at least 1 year's accrual after cashing out has occurred. Each agreement to cash out an amount of annual leave must be a separate agreement in writing. The amount of leave cashed out will be equal to the Employee's rate of pay payable had the Employee taken the annual leave during the relevant period.
- (i) The Company and Employee may agree in writing to the Employee taking a period of paid annual leave before the Employee has accrued an entitlement to the leave to a maximum of 3 days. If on the termination of the Employee's employment, the Employee has not accrued an entitlement to a period of annual leave already taken in accordance with an agreement, the Company may deduct from any money due to the Employee on termination, an amount equal to the amount that was paid to the Employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.
- (j) The annual leave accrual is based on continuous service and does not include unpaid absences whether authorised or not. Any accrued but unused annual leave will accumulate from year to year, with exception of those periods of worker's compensation as referred to in Clause 16.1(m).
- (k) In general, Employees will not be permitted to take annual leave during their notice period on termination of employment unless this has been specifically discussed and approved by the Manager prior to being taken. This includes for requests by the

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Employee in regards to taking of annual leave in lieu of working the full period of notice.

- (l) Where an Employee's contract is terminated for any reason, the Employee will be paid for all accrued but unused annual leave entitlements.
- (m) The accrual of annual leave during periods of worker's compensation will be determined and administered in alignment with the relevant state legislation.
- (n) The Company may direct an Employee to take paid annual leave during all or part of a period where the Company shuts down the business or part of the business where the Employee works. If an Employee does not have sufficient accrued annual leave for the period of the shut-down, then the Employee may be required to take leave without pay. Payment and/or non-payment during periods of shut down will be in accordance with the Act. This clause does not apply to maintenance shutdowns (either planned or unplanned) or trader requested shutdowns.

16.2 Purchased Additional Annual Leave

- (a) Employees are able to apply for between 1 and 4 weeks purchased additional annual leave per year, in addition to their annual leave. Employees with an available annual leave and/or long service leave entitlement and/or banked time in excess of one year's accrual at the time of the application are ineligible to apply.
- (b) Purchased additional annual leave calculations run over one calendar year, commencing from the pay period in which the first deduction is made. The leave must be taken within 12 months of this date and cannot be 'rolled over' from one calendar year to the next. The cost of leave will be spread over a 12 month period in the form of a pre-tax salary deduction.
- (c) Applications to purchase additional annual leave must be made via completion of the appropriate leave application and approval is at management discretion in alignment with operational requirements of the Company.

16.3 Personal Leave

- (a) Personal leave includes both sick and carer's leave, and is available to Employees who are absent due to personal illness or injury ("Sick Leave"). Personal leave can be used to care for a member of the Employee's Immediate Family or Household Member who is ill, injured, recovering from surgery or involved in an emergency ("Carer's Leave").
- (b) Permanent full time Employees and Shift Workers, other than casual Employees will accrue up to 10 (ten) days per annum of continuous service.
- (c) Part time Employees will accrue as per permanent full time Employees, but on a pro-rata basis in alignment with the number of hours they are contracted to work.
- (d) Personal leave not taken in any year of service accumulates from year to year.
- (e) The Employee is required to provide as much notice as possible of their intention to take personal leave. . The appropriate leave application must be completed and submitted. The following will not be accepted as notification:
 - SMS text messages
 - Email messages
 - Messages left with Reception or work peer;

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unless agreed with management in accordance with standard operating practice (for example overnight for Shift Workers).

- (f) The Company reserves the right to request reasonable evidence for leave taken, for example in situations where:
 - (i) Absence is more than 2 consecutive days, or for Shift Workers; crosses over the first or last day of a shift
 - (ii) Absence precedes or follows a Public Holiday
 - (iii) Absence is on a Monday or Friday (for Day Workers)
 - (iv) Employee has taken in excess of 5 days personal leave in a year (either as full days or cumulatively in part days)
- (g) Where an Employee is expected to take more than 2 consecutive days of leave, they will keep their Managers informed of their expected return to work. If the Employee has been on sick leave for an extended period, they may be requested to provide a medical certificate to confirm that they are fit to return to work.
- (h) The accrual of personal leave during periods of worker's compensation will be determined and administered in alignment with the relevant state legislation.
- (i) Accrued but unused personal leave will not be paid upon termination of employment.
- (j) Employees who become sick during a period of annual leave may request the Company to have the period of their illness as paid personal leave provided there is a sufficient personal leave balance available. The period of illness will be credited to the Employee's annual leave balance. The Company may require the Employee to provide reasonable evidence in support of their request for paid personal leave.
- (k) In the event that an Employee has exhausted their entitlement to paid personal leave, Employees will be eligible for up to two days' unpaid leave per occasion due to personal illness or injury or if a member of an Employee's Immediate Family or Household Member requires care or support due to personal illness or injury or in an emergency.

16.4 Compassionate Leave

- (a) Employees are entitled to 3 days of paid compassionate leave (or the equivalent in ½ days) for each occasion when a member of the Employee's Immediate Family or Household Member contracts or develops a personal illness that poses a serious threat to his or her life; or sustains a personal injury that poses a serious threat to his or her life; or dies.
- (b) Compassionate leave may also be taken where a child is stillborn and the child would have been a member of the Employee's Immediate Family or Household if they had been born alive, or where the Employee's current spouse or de facto partner has a miscarriage.
- (c) Casual Employees are entitled to up to 2 days' unpaid leave on each occasion.

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- (d) Employees may be required to provide written evidence in a form that ATCO reasonably requires of the illness, injury, death, stillbirth or miscarriage.
- (e) Approval will be at the discretion of the Employee's Manager. Access to paid leave (annual or long service leave) or leave without pay may also be requested and is at the discretion of the Employee's Manager with consideration for an Employee who may have to travel overseas or interstate in these circumstances.

16.5 Family and Domestic Violence Leave

- (a) Employees (including casual Employees) who are, or have an immediate family or household member who is experiencing family or domestic violence, and the Employee needs to do something to deal with the impact of the family and domestic violence, and it is impractical for the Employee to do that thing outside the Employee's work hours, are entitled to paid family and domestic violence leave.
- (b) Employees are entitled to 10 days of paid family and domestic violence leave in a 12 month period. The Company and Employee may agree that the Employee may take an additional paid or unpaid leave in addition to this entitlement, with the amount of leave provided will be determined by the individual's situation in consultation with the employee, their line manager and/or Human Resources representative.
- (c) Employees may be required to produce evidence to support the need for leave, such as a medical certificate, a document issued by the police service or courts, or a statutory declaration.
- (d) Employees may also be considered for other support based on their individual circumstances. Please refer to the ATCO Australia [Family and Domestic Violence Leave Procedure](#) for full details.

16.6 Study Leave

- (a) Employees are entitled to up to 5 days of study leave per annum (non-accruing) to attend lectures, tutorials and examinations associated with approved courses of tertiary/trade study at diploma level or higher. When possible, attendance at courses should occur outside of the Employee's regular hours of work. Time off or flexible working arrangements for studies may be granted at the discretion of the Employee's Supervisor or Manager, taking into consideration business requirements, including the Employee's workload, departmental responsibilities, and workflow requirements.
- (b) For each instance an application for study leave must be submitted and approved. Access to study leave is subject to the Employee performing satisfactorily in their role and making satisfactory progress in their course of study.

16.7 Community Service Leave

- (a) **Emergency Services**
 - (i) Employees are entitled to be paid emergency services leave if they are a voluntary member of a recognised emergency management group (e.g. SES or CFS) and they engage in a voluntary emergency management activity dealing with an emergency or natural disaster.
 - (ii) An Employee who is a voluntary member of a recognised emergency management group may attend one training course or session directly associated with that group each year (up to 1 day per year, non-accruing).

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- (iii) All requests and decisions on the amount of emergency services leave will be approved based on assessment of business needs and Employees will establish with their Manager the conditions under which a release from work could be granted.

(b) Jury Service

- (i) Employees required to attend court for jury service will be paid for the duration of the requirement.
- (ii) All Employees are required to provide appropriate written notice as soon as practicable to their Manager and, on return from jury service, will be required to submit an application form for the reimbursement of wages to the Company to allow ATCO to claim.
- (iii) Attendance at a court by an Employee for reasons other than jury service or as a witness for ATCO will be covered by the Employee's accrued annual or long service leave and supported by an approved leave application. Where no accrued leave is available then leave without pay may be requested.
- (iv) Employees will not be paid by ATCO where they attend court in their own time (e.g. annual or long service leave or non-working day). When this happens it will be the responsibility of the Employee to seek fees as prescribed and paid for by the court.
- (v) Where an Employee is requested or summonsed to court for any work related matter, they must advise the Station Manager as soon as they receive such documents.

16.8 Long Service Leave

- (a) Employees are entitled to long service leave of 13 (thirteen) weeks' leave after the first 10 (ten) years continuous service and a further 1.3 weeks for each subsequent year of service after 10 (ten) years.
- (b) Long service leave entitlements apply to a casual Employee for all periods of continuous service.
- (c) Absences that will count as continuous service for the purpose of accruing long service leave include annual leave, long service leave and public holidays; personal leave taken to a maximum of 10 (ten) days in any year and/or community service leave (including jury service). Employees do not accrue long service leave whilst on periods of unpaid leave.
- (d) The accrual of long service leave during periods of worker's compensation will be determined and administered in alignment with the relevant state legislation.
- (e) Where a Public Holiday falls during a period of long service leave, and the Employee would otherwise be entitled to a paid day off work, the period of long service is increased by 1 day for each Public Holiday.
- (f) On termination or resignation from the Company, an Employee who has completed 7 (seven) years' service is, entitled to a payment equal to the monetary equivalent of 1.3 weeks leave in respect of each completed year of service. For Employees having passed their 10 (ten) year anniversary, where long service leave has been taken by an Employee or a payment in lieu of long service leave has been made, the resulting payment of long service leave in their termination pay will be reduced accordingly.

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- (g) An Employee is not entitled to a payment on termination for long service leave if the Employee's contract of service is terminated on the grounds of serious and wilful misconduct on the part of the Employee; or the contract of service is unlawfully terminated by the worker.
- (h) Long service leave is accrued and, where applicable, paid on the annualised salary rate for all employees.
- (i) An Employee must not engage in paid employment that is in substitution for the employment from which they are on long service leave. In exceptional circumstances an Employee wishing to undertake alternate employment during extended periods of leave must first disclose this intention to the Station Manager for approval.
- (j) With agreement from their Manager, an Employee may 'cash out' either part or the whole of their accrued long service leave. The Company and the Employee must make an individual written agreement that is signed by them both. Requests to cash out less than 2 weeks of accrual in one transaction will not be considered.
- (k) The Company may direct an Employee to take long service leave having provided a minimum of 60 (sixty) days' notice of the date from which leave is to be taken.
- (l) The Company and Employee may agree on the timing, duration and notice provided in taking long service leave (with the exception of where an Employee is directed by the Company). This may include the Company agreeing that an Employee with more than 7 years' continuous service may access a long service leave accrual in anticipation of the entitlement. Requests for long service leave will be duly considered by the Company and approval will not be unreasonably withheld.

16.9 Parental Leave

Parental leave will be administered in accordance with the provisions of the Act, with the following exceptions:

- (a) The Company provides Employees, subject to the completion of a 12 (twelve) month qualifying period, with a maximum of 14 (fourteen) weeks paid parental leave, in circumstances where the Employee assumes the principal role of providing care and attention to the child (primary caregiver). The 14 (fourteen) week paid parental leave may be taken at half pay over 28 (twenty eight) weeks. An Employee is not entitled to parental leave for the care of a spouse. Such leave is to be taken as personal leave. Casual Employees will not be entitled to paid leave entitlements.
- (b) A maximum of 2 weeks paid parental leave, per pregnancy or adoption, is available during the period of parental leave for a parent who is not the primary caregiver.
- (c) Where both parents are employed by the Company this entitlement (to unpaid leave) may be shared between the Employee parents up to a maximum of 52 (fifty two) weeks.

16.10 Leave without Pay

In exceptional circumstances, where an Employee has exhausted their paid leave options, the Head of the Business Unit may approve an Employee taking leave without pay. This will be at the discretion of the Company and assessed on a case by case basis.

17. PUBLIC HOLIDAYS

- (a) Day Workers are entitled to time off without loss of pay on all Public Holidays as proclaimed or gazetted as a public holiday or part-days declared or prescribed by

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State or Territory law as public holidays, and substitutes public holidays under State or Territory laws, on which day the Employee would normally have worked.

- (b) Shift Workers working on a Public Holiday, in addition to being paid their Ordinary Hours will receive one hour banked time for each hour that falls on the Public Holiday. Where a Public Holiday falls on a rostered day off, no banked time is given. Banked time does not apply to overtime hours worked on a Public Holiday.
- (c) For Shift Workers accrued leave can be taken as time off with pay or can be paid out as a single time payment.
- (d) The banked time cap applies as per Overtime (Clause 8).
- (e) Shift Workers absent on leave for a shift that either partly or fully falls on a Public Holiday will not have their leave balances deducted for the hours (they would have worked) that fall on the Public Holiday.
- (f) For Shift Workers (who are required to work Christmas Day), where that day falls on a Saturday or Sunday, b) above will apply to the Saturday or Sunday and not the gazetted Monday.

18. COMPANY POLICIES AND PROCEDURES

This Agreement and the employment of Employees are supported by Company policies and procedures. Employees are required to comply with the policies and procedures (as amended from time to time) of ATCO. Such policies and procedures are directions of the Company. These policies and procedures do not form part of this Agreement.

19. FITNESS FOR WORK

- (a) The Company may require Employees to undergo appropriate health and medical assessment(s) with cause, at the Company's expense for example in cases where:
 - Frequent, lengthy or multiple unexplained absences from work have occurred or there is an inability to perform the work or its inherent characteristics, particularly where information about the Employee's medical condition, or its impact on the work, is unknown;
 - where the medical condition is known broadly and the nature of the work the Employee is required to perform is likely to be affected by such a condition;
 - there are inconsistencies in information available to the Company about the Employee's state of health or;
 - genuine concerns are raised by other Employees about an Employee's fitness for work.
- (b) In the process of requiring an Employee to undergo a medical examination the Company will ensure:
 - i) The medical examination focus is on the inherent requirements of the work, Work Health and Safety obligations and fitness for work generally.
 - ii) An appropriate medical expert is arranged to conduct the medical examination.
 - iii) The Employee is advised of the reasons for the examination.
 - iv) Privacy and confidentiality in the medical examination process is maintained as far as is reasonable.
- (c) Employees may also be required to undergo drug and alcohol testing, either randomly or with cause and recognise that this is a reasonable requirement of their employment. Some examples of instances where this may occur include:

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- Where a person is involved in a work related incident or near miss which has the potential to be serious, whether or not an injury resulted;
- where an Employee's erratic, dangerous, unusual or inappropriate behaviour raises a concern that the Employee may be impaired in the course of their work;
- where a Manager/Supervisor has reasonable grounds to believe that an Employee may be affected adversely. This may include by way of a response to information provided by another Employee in the workplace or by a third party;
- Where any evidence is found of possible alcohol or prohibited drug use at work (eg. Drug paraphernalia, alcohol containers on worksite or in vehicles), and the Company can identify with reasonable confidence those who may have been involved;
- If a person leaves or does not attend the workplace whilst random testing is being conducted.

20. SUSPENSION OF EMPLOYMENT AND STAND DOWN PROVISION

20.1 Investigation and Suspension of Employment

If an Employee is under investigation by the Company for acts or omissions which potentially put the Employee in breach of their employment obligations, the Company may at its discretion suspend the Employee on full pay while an investigation is conducted.

20.2 Stand-Down of Employees

- (a) The Company may stand down an Employee without pay for any period during which the Employee cannot be usefully employed due to any cause outside of the Company's control, including industrial action, a breakdown of machinery or equipment, if the employer cannot reasonably be held responsible for the breakdown; or a stoppage of work for any cause for which the employer cannot reasonably be held responsible.
- (b) Each Employee to be stood down shall be provided with written notice at least 5 days in advance of the stand-down (with the exception of industrial action where 1 days' notice will be provided) including the commencement date of the stand-down, the reason for the stand-down and the expected duration. The notice shall also include advice of the Employee's right to seek alternative employment during the stand down period or to terminate their employment.
- (c) In circumstances where the Employee will not be paid under the provisions of this clause, the period of stand down will count as service for the accrual of leave to which the Employee would otherwise be entitled under this Agreement, providing that the Employee resumes work as required at the end of the stand down period.

20.3 Counselling & Disciplinary Procedure

Where an Employee fails to meet the required standards of the company for performance or conduct the matter will be dealt with under Performance Management: Counselling & Disciplinary Guide AA-HR-GL-001 (Version 16 Mar 2017).

21. TERMINATION OF EMPLOYMENT

21.1 Employer

- (a) The Company will give an Employee 4 weeks' notice of termination of employment or provide payment in lieu of notice or a combination of notice and payment in lieu of notice (with the exception of sub clause (d) and (e) below).

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- (b) In addition to the above, Employees over the age of 45 (forty five) years (at the date of termination) and with more than 2 years' continuous service shall be entitled to an additional 1 weeks' notice.
- (c) Nothing in this Agreement affects the Company's rights to dismiss an Employee at any time without notice, for conduct that would justify summary dismissal. If an Employee is dismissed on this basis, the Employee will be entitled to be paid for work only up to the time of dismissal.
- (d) A casual Employee's employment with the Company may be terminated at any time by the Company giving 1 days' notice.
- (e) During the probationary period, either party may terminate the employment by providing to the other party one week's written notice, or in the case of the Company, by payment in lieu of one week's notice or a combination of notice and payment in lieu of notice.

21.2 Employee

- (a) An Employee may resign from employment by giving 4 weeks' notice with the exception of probationary Employees as referenced in Clause 21.1(e)
- (b) In the event that the Employee fails to give the prescribed notice, any payment due to the Employee may be forfeited to the extent that the written notice falls short of the required notice.

22. REDUNDANCY

22.1 Payments

- (a) Subject to sub clauses (b) and (c) below, if the Employer terminates the Employee's employment for reasons of redundancy, the Employee will receive a redundancy payment in accordance with the following:
 - (i) the relevant notice period as specified by law; plus
 - (ii) 3 weeks' salary for each year of service, or part thereof; plus
 - (iii) \$5,000 to support re-training, upskilling or financial advice, to be used at the Employee's discretion.
- (b) Salary in the context of this clause excludes employer contributions to Superannuation. For Shift Workers, Annualised Salary will be used for the calculation, for Day Workers base salary will be used.
- (c) The total redundancy payment to be paid to the Employee in accordance with the above will not exceed an amount equivalent to 52 (fifty two) weeks' salary.
- (d) The Employee will also be paid any accrued but untaken annual leave and long service leave that has become payable, in accordance with legislative requirements.

22.2 Notice

An Employee may be required to work their full notice period or notice may be paid fully or partly in lieu of notice.

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22.3 Outplacement

Employees whose roles have been made redundant will have access to career transition services and the employer-provided employee assistance program for a nominal period of 3 months from the time of or immediately prior to, the day on which employment is terminated.

Dependent on the career transition service provider engaged, services provided will usually include items such as confidential career coaching, resume development, pathway identification and behavioural interview coaching to assist the Employee transition to their next opportunity.

22.4 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, instead make payment of an amount equal to the difference between the former (ordinary time) rate of pay and the rate of pay for the number of weeks of notice still owing.

23. DISPUTE RESOLUTION PROCESS

A dispute about any matters arising under the Agreement or in relation to the NES will be managed in the following way:

- (a) In the first instance as soon as it is practicable the Employee(s) will raise the concern with their Manager.
- (b) Employee(s) may engage a representative at any stage of the dispute resolution process.
- (c) If the concern is not resolved by the Manager or where it is inappropriate to discuss the concern with the Manager, the matter will be referred to the Manager next in line.
- (d) If the above procedure is followed and the concern remains unresolved the matter will be referred to Human Resources for further assistance and resolution.
- (e) If the concern is not settled it can be referred by either party, to the FWC for conciliation. The parties are committed to resolving all matters of concern by conciliation.
- (f) The matter may then proceed to arbitration at the request of either party, once the parties have exhausted all attempts to conciliate an agreed outcome.
- (g) During the period of dispute, from the time when the matter first arises until the time of its resolution, normal work shall continue, unless the performance of normal work would place at risk the health and safety or wellbeing of the Employee(s) concerned or the Company elects to stand down the Employee(s) on pay whilst the matter is being investigated. No party shall suffer any prejudice as to the resolution of the matter by reason only that normal work continues as required by this process.

24. EMPLOYEE REPRESENTATION

24.1 Conditions of Employee Representation

Subject to operational requirements and the Employee obtaining prior approval from the Company, an Employee who is nominated by the Employee(s) to assist a fellow Employee(s) with an employment matter will be allowed reasonable time during working hours without loss of pay to confer with the Employee(s) and the relevant Manager of the Company about the matters affecting the Employee(s) whom they represent. Such time will be granted for the purposes of minimising the

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potential for industrial disputation to occur and in order to promptly and effectively resolve matters as they arise.

24.2 Nomination as an ASU Representative

- (a) Upon written advice from the ASU, the Company will recognise the nominated Employee to act as an Employee representative.
- (b) Upon application by the ASU and with the Company's agreement (the Company agrees not to unreasonably refuse leave), an Employee representative will be granted up to 3 days Ordinary Hours paid training leave per annum (to a maximum of 6 days for the total Employee group) to attend workplace relations training. The provision of this leave will be granted having consideration for the operational requirements of the business. Paid leave is provided on the requirement that the ASU provide the Company with at least 6 weeks' notice (or less by mutual agreement) and if requested by the Company, the course agenda, contents and objectives. The Company will not be liable for any expenses incurred by the Employee.
- (c) Newly appointed workplace representatives may take 3 days of training for their orientation and induction into the role which will not be subject to the maximum training cap for the group. This entitlement is only applicable for new workplace representatives and only in their first year in the role.

24.3 Consultative Committee

- (a) The Consultative Committee will meet quarterly, unless both employees and management representatives agree that a meeting is not required, to discuss matters as they pertain to this Agreement and/or major change as defined under the Consultation Clause (Clause 25);
- (b) The number of employee representatives will be up to three (3);
- (c) The number of management representatives will be up to three (3);
- (d) Minutes of consultative committee meetings shall be communicated to all employees within seven (7) days of each meeting.

25. CONSULTATION

- (a) This clause applies if the Company:
 - (i) 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
 - (ii) Proposes to introduce a change to the regular roster or Ordinary Hours of work of Employees.

25.1 Major Change

- (a) For a major change referred to in paragraph 25(a)(i):
 - (i) The Company must notify the relevant Employees of the decision to introduce the major change; and

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- (ii) Subclauses 25.1(b) to (h) apply.
- (b) The relevant Employees may appoint a representative for the purposes of the procedures in this clause.
- (c) 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 Company of the identity of the representative,the Company must recognise the representative.
- (d) As soon as practicable after making its decision, the Company must:
 - (i) discuss with the relevant Employees:
 - (A) the introduction of the change; and
 - (B) the effect the change is likely to have on the Employees; and
 - (C) measures that the Company is taking to avert or mitigate the adverse effect of the change on the Employees; and
 - (ii) for the purposes of the discussion - provide, in writing, to the relevant Employees:
 - (A) all relevant information about the change including the nature of the change proposed; and
 - (B) information about the expected effects of the change on the Employees; and
 - (C) any other matters likely to affect the Employees.
- (e) However, the Company is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- (f) The Company must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.
- (g) If a term in the Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Company, the requirements set out in paragraph 25(a)(i) and subclauses 25.1(b) and (d) are taken not to apply.
- (h) In this clause a major change is likely to have a significant effect on Employees if it results in:
 - (i) the termination of the employment of Employees; or
 - (ii) major change to the composition, operation or size of the Company's workforce or to the skills required of Employees; or
 - (iii) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or

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- (iv) the alteration of hours of work; or
- (v) the need to retrain Employees; or
- (vi) the need to relocate Employees to another workplace; or
- (vii) the restructuring of jobs.

25.2 Change to regular roster or ordinary hours of work

- (a) For a change referred to in paragraph 25(a)(a)(ii);
 - (i) The employer must notify the relevant Employees of the proposed change; and
 - (ii) Subclauses 25.2(b) to (f) apply.
- (b) The relevant Employees may appoint a representative for the purposes of the procedures in this term.
- (c) 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 Company of the identity of the representative;the Company must recognise the representative.
- (d) As soon as practicable after proposing to introduce the change, the Company must:
 - (i) Discuss with the relevant Employees the introduction of the change; and
 - (ii) For the purposes of the discussion – provide to the relevant Employees:
 - (A) All relevant information about the change, including the nature of the change; and
 - (B) Information about what the employer reasonably believes will be the effects of the change on the Employees; and
 - (C) Information about any other matters that the employer reasonably believes are likely to affect the Employees; and
 - (iii) 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).
- (e) However, the Company is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- (f) The Company must give prompt and genuine consideration to matters raised about the change by the relevant Employees.
- (g) In this term:

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Relevant Employees means the Employees who may be affected by a change referred to in subclause 25(a).

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EXECUTED AS AN AGREEMENT

Executed by Osborne Cogeneration Pty
Ltd (ABN 89 072 027 331) by its duly
authorised signatory in the presence of:



Signature of witness

HR BUSINESS PARTNER

Occupation of witness

L12/2 MILL ST PERTH WA 6000

Address of witness

20/02/2024

Date


JULIA BELL - SENIOR HRBP

L12/2 MILL ST PERTH WA 6000

Address of signatory

20/02/2024

Date

Executed by Australian Services Union on
behalf of the Employees to be covered by this
Agreement



Signature of Australian Service Union
Representative

Abbie Spencer

Name of Australian Services Union
Representative

41 King William Rd
Unley SA 5061

Address of Australian Services Union
Representative

22/02/2024

Date



Signature of witness

Pauline Sewell

Full Name of witness

41 King William Rd
Unley SA 5061

Address of witness

22/02/2024

Date

OSBORNE COGENERATION ENTERPRISE AGREEMENT 2023

SCHEDULE 1 – CLASSIFICATION AND PAY GRADES

SHIFT WORKERS				
	1-Jan			
	2024	2025	2026	2027
New Starter Field Operator	\$153,393	\$159,529	\$164,315	\$169,245
Field Operator	\$161,025	\$167,466	\$172,490	\$177,665
Control Room Operator (Entry)	\$177,289	\$184,381	\$189,912	\$195,610
Control Room Operator-1	\$182,170	\$189,457	\$195,140	\$200,994
Control Room Operator-3 (Senior)	\$191,928	\$199,606	\$205,594	\$211,762

DAY WORKERS (Employed in positions pre 1 Jan 2018)				
	1-Jan			
	2024	2025	2026	2027
Operations & Safety Coordinator	\$172,584	\$179,488	\$184,872	\$190,418
Maintenance Coordinator - Mechanical	\$172,584	\$179,488	\$184,872	\$190,418
Maintenance Coordinator - Electrical	\$175,688	\$182,716	\$188,197	\$193,843

*Table represents annualised salaries for shift worker roles – these figures are all inclusive of allowances, loadings and penalties with exception of those expressly detailed in this Agreement. A Shift Premium of 31% base salary is included in the above in accordance with the terms and definition of this Agreement.

**Table represents base salaries for all roles – these figures are all inclusive of allowances, loadings and penalties with exception of those expressly detailed in this Agreement.

***Day Workers hired prior to 1 January 2018 who have varied leave entitlements, will be grandfathered for the term of this Agreement.

**** The 2024 Classification and Pay Grades are effective from 8 December 2023

OSBORNE COGENERATION ENTERPRISE AGREEMENT 2023

APPRENTICES				
	1-Jan			
	2024	2025	2026	2027
Day Worker	\$58,242	\$60,572	\$62,390	\$64,261

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DAY WORKERS (Employed from 1 Jan 2018)	Level 1				Level 2			
	Minimum 5 years industry experience				Minimum 10 years relevant industry experience or 5 years Company experience.			
	1-Jan				1-Jan			
	2024	2025	2026	2027	2024	2025	2026	2027
Chemist & Environmental Specialist	\$117,953	\$122,671	\$126,351	\$130,142	\$130,369	\$135,584	\$139,651	\$143,841
Maintenance Coordinator (Technician)	\$142,786	\$148,498	\$152,953	\$157,541	\$155,202	\$161,410	\$166,252	\$171,239
Operations & Safety Coordinator	\$142,786	\$148,498	\$152,953	\$157,541	\$155,202	\$161,410	\$166,252	\$171,239
Technical Specialist	\$142,786	\$148,498	\$152,953	\$157,541	\$155,202	\$161,410	\$166,252	\$171,239

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DAY WORKERS (Employed from 1 Jan 2018)	Level 3			
	Minimum 10 years relevant industry experience or 10 years Company experience and fully competent/qualified to allow execution of all role requirements.			
	1-Jan			
	2024	2025	2026	2027
Chemist & Environmental Specialist	\$138,627	\$144,172	\$148,498	\$152,952
Maintenance Coordinator (Technician)	\$162,736	\$169,246	\$174,323	\$179,553
Operations & Safety Coordinator	\$162,736	\$169,246	\$174,323	\$179,553
Technical Specialist	\$162,736	\$169,246	\$174,323	\$179,553

***** Table represents base salaries for all roles – these figures are all inclusive of allowances, loadings and penalties with exception of those expressly detailed in this Agreement.

***** Progression from one level to the next will be based on the Employee obtaining the necessary experience as well as gaining and demonstrating the skills and competencies required. A development/training plan will be established and agreed with each new person engaged in these roles.

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THE FAIR WORK COMMISSION

FWC Matter No.:

AG2024/543

Applicant:

Osborne Cogeneration Pty Ltd


Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Julia Bell, Senior HR Business Partner, have the authority given to me by Osborne Cogeneration Pty Ltd to give the following undertakings with respect to the Osborne Cogeneration Enterprise Agreement 2023 ("the Agreement"):

1. The Applicant undertakes that casual employees will be engaged for a minimum of 3 hours on each occasion.

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 25/01/24