



# **SMS GROUP SERVICES ENTERPRISE AGREEMENT**



## SMS Group Services Enterprise Agreement

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## SMS Group Services Enterprise Agreement

### 1. Title, Parties, Scope and Term of Agreement

- (a) This Enterprise Agreement shall be known as the SMS Group Services Enterprise Agreement. **(the Agreement)**
- (b) The parties to this Agreement are SMS Contracting Pty Ltd (**SMS**) and its Employees, now and in the future, including but not limited to those in the classifications set out in Appendix A to this Agreement.
- (c) This Agreement is applicable throughout all States and Territories of Australia.
- (d) This Agreement shall apply regardless of the number of separate periods of employment that may come into existence during the period of this Agreement.
- (e) This Agreement commences from the seventh day after the date on which it is approved in writing by the Fair Work Commission (**FWC**) and will remain in force for a period of four years from that date (**Nominal Expiry Date**).
- (f) This Agreement will continue in force beyond the Nominal Expiry Date until it is terminated or replaced by another instrument in accordance with the provisions of the *Fair Work Act 2009 (FW Act)* as amended.
- (g) The parties acknowledge that no extra claims will be made during the term of this Agreement.

### 2. Express Exclusion of Industrial Instruments

- (a) This Agreement, together with any offer letter, regulates all of the terms and conditions of the Employees' employment with SMS and operates to the exclusion of any Award or Agreement (State or Federal).
- (b) It is the express intention of the parties that this Agreement excludes all loadings, penalties, or other allowances that may apply to the employees arising out of any Awards, Collective or Enterprise Agreements, orders or otherwise and that are not directly dealt with in this Agreement.
- (c) The removal or modification of any protected Award conditions will not reduce the Employees' substantive entitlements contained in this Agreement but provide for the fair and efficient administration of the employment relationship.
- (d) This Agreement is intended to be read in conjunction with SMS policies and applicable rules and regulations, as varied from time to time.
- (e) Nothing in this Agreement shall operate to vary or exclude the operation of the following Acts insofar as they apply to the work covered by this Agreement:
  - (i) the Construction Industry Portable Paid Long Service Leave Act 1985; the Mines, Safety and Inspection Act 1994; the Mines Safety and Inspection Regulations 1995; the Workers' Compensation and Rehabilitation Act 1981, as amended from time to time.
- (f) Nothing in this Agreement shall operate to vary or exclude the operation of the *Building Code 2016*.



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### 3. The National Employment Standards and this Agreement

- (a) The National Employment Standards (**the NES**) and this Agreement contain the minimum conditions of employment for Employees covered by this Agreement.
- (b) Employees will be provided with a copy of this Agreement and the Fair Work Information Statement on commencement of employment.
- (c) A copy of this Agreement and the NES is freely available at [www.fwc.gov.au](http://www.fwc.gov.au) (**the FWC Website**) and is also available to view at the SMS administration centre.

### 4. Objective of this Agreement

- (a) This Agreement provides for a 'Safety Net' of the terms and conditions of employment. It is intended to be read in conjunction with the NES.
- (b) It is the objective of SMS to provide for career development within the SMS Group of Services.
  - (i) On commencement of the employment, SMS will determine an Employee's classification with consideration to skills, qualifications, competency and the operational requirements.
  - (ii) Regular appraisals will be conducted to facilitate the movement of Employees to higher levels.
- (c) The aim of the appraisals is to identify skills gaps and provide for training to ensure SMS remains competitive in the market and maintains a highly competent and productive workforce.
- (d) SMS will utilise its Registered Training Organisation (RTO) facilities to achieve the objectives of this clause.

### 5. Category of Employment

- (a) SMS will advise Employees, in writing, of their employment category upon commencement of the employment.
- (b) Categories of employment include;
  - (i) permanent employment - defined as either part time or full time or
  - (ii) casual employment.

#### 5.1. Permanent Employee

- (a) Full time Employees are guaranteed a minimum of thirty eight (38) hours of work each week. In accordance with the NES, the hours may be averaged over twenty six (26) weeks of continuous service.
  - (i) This means the actual hours worked each week may vary, with some weeks being more than thirty eight (38) hours, and others being less.
- (b) Part time Employees are defined as those who generally work less than thirty eight (38) hours each week, when averaged over twenty six (26) weeks of continuous service.
  - (i) Part time employment shall be in accordance with the provisions of this Agreement and shall apply pro rata.



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- (ii) On each occasion, a part time Employee is required to attend work, the Employee will be paid for a minimum of four (4) hours work.

### 5.2. Casual Employee

- (a) For the purposes of this Agreement, a Casual Employee is defined as an Employee who is engaged and paid as such.
- (b) On commencement of an assignment, a Casual Employee will be notified in writing of their category of employment, classification and individual rate of pay.
- (c) Casual Employees do not accrue paid annual or personal leave.
- (d) SMS does not guarantee Casual Employees work on a regular basis, and any assignment offered will be subject to the operational requirements of SMS.
- (e) On each occasion, a casual Employee is required to attend work the Employee will be paid for a minimum of four (4) hours work.

### 5.3. Regular Casual Employee

- (a) A casual Employee who has completed more than six (6) months of continuous employment with SMS, shall be deemed to be a Regular Casual Employee.
- (b) Regular casual work is not categorised as permanent employment, and regular casual Employees are not entitled to the benefits allocated to a permanent Employee.
- (c) A regular casual Employee shall be provided with four (4) hours' notice of termination of the employment, or payment in lieu.
- (d) On completion of twelve (12) months continuous service with SMS, a regular Casual Employee may request to convert their employment to Permanent.

## 6. Probationary Period

- (a) This Clause does not apply to Casual Employees.
- (b) Appointments of permanent Employees to any position shall be initially for a period of up to three (3) months, unless another agreed term has been specified in writing.
- (c) At the discretion of SMS, the probationary period may be extended for up to a maximum of an additional three (3) months to allow for further assessment of an Employee's suitability for a position and additional training.
- (d) The probationary period may also apply to Employees being offered a different classification, position, promotion, or a change of duties. In this circumstance, the Employee will be notified in writing.
- (e) Should either the Employee concerned, or SMS, decide the changes implemented at Clause 6 (d) are not suitable to either party, the Employee will revert back to a classification or position, and rate of pay, equal to that held prior to those changes.

## 7. Classification of Employment

- (a) On commencement of the employment, Employees will be assessed and notified in writing of their employment classification.



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- (i) Classifications of the employment are determined by SMS, at its discretion, with consideration to experience, skills, qualifications, certification, competency and the operational requirements.
  - (ii) SMS may, at its discretion, determine the Classification level of Employees who do not have formal qualifications but, in the opinion of SMS, has appropriate experience and competency.
- (b) Employees will be paid according to the classification and level of the work performed as set out in Appendix A.
- (c) During the term of employment, Employees may perform duties of another classification or level. In these circumstances, the following shall apply:
  - (i) The Employee shall be notified in writing of the applicable classification.
  - (ii) Higher duties shall be paid in accordance with the applicable classification for the duties to be performed.
  - (iii) If the work performed is a classification below the Employee's usual classification and is less than four (4) hours, then the work performed is without loss of pay.
  - (iv) If the work performed is a classification below the Employee's usual classification, and the Employee has elected to accept the work, and is more than four hours, then the duties shall be paid in accordance with the applicable classification.

## **8. Rates of Pay & Loadings**

### **8.1. Current Employees**

- (a) For the purposes of this Agreement, a Current Employee is deemed to be an Employee who was working for SMS at the time of the voting on the Enterprise Agreement.
- (b) SMS affirms that no current Employee will be disadvantaged by this Agreement when compared to their Individual Confirmation Notice and rate of pay issued prior to this Agreement.
  - (i) An Employee may request a comparison and if there is a short fall, it will be rectified.
- (c) In the circumstances where a loading has been provided, the higher of this Agreement or the individual notice will apply.

### **8.2. FWC - Base Rate of Pay**

- (a) The base rates of pay for this Agreement are determined by the FWC and are specified in Appendix A, FWC Base Rate 2017.
- (b) The base rate of pay shall increase each year in accordance with the FWC decisions.
- (c) Appendix A will be updated and distributed to new Employees in accordance with the FWC annual decisions.



### 8.3. SMS – Base Rate of Pay

- (a) The SMS base rate of pay shall include an all-purpose allowance as compensation for the exclusions specified in Clause 2 (b), all disabilities and/or special skills (other than for those for which allowances are provided) and/or special rates associated with, or likely to be associated with:
  - (i) work on, or in connection with the industry/site including industry allowance;
  - (ii) tools or similar allowance;
  - (iii) dirty work, hot work, confined spaces, dust, toxic or irritant materials;
  - (iv) or other allowance of a kindred nature not elsewhere prescribed in this Agreement.

### 8.4. Permanent Employee – up to 38 hours

- (a) The SMS base rate of pay for Permanent Employees will include an all-purpose allowance (**the loading**) as specified below.
  - (i) Permanent Employees working in the operational area of SMS who have been classified as **SMS Level 2, or above**, will receive a **minimum thirty five percent (35%) loading** on the FWC base rate of pay for the first thirty eight (38) hours of work performed as compensation for the exclusions specified in this Agreement.
  - (ii) Permanent Employees working in the operational area of SMS who have been classified as **SMS Level 1** will receive a **minimum twelve percent (12%) loading** on the FWC base rate of pay for the first thirty eight (38) hours of work performed as compensation for the exclusions specified in this Agreement.
  - (iii) Permanent Employees working in the administrative area of SMS will receive a minimum **twelve percent (12%) loading** on the FWC base rate of pay for the first thirty eight (38) hours of work performed as compensation for the exclusions specified in this Agreement.

### 8.5. Casual Employee – up to 38 hours

- (a) The SMS base rate of pay for Casual Employees will include an all-purpose allowance (**the loading**) as specified as specified below.
  - (i) Casual Employees working in the operational area of SMS who have been classified as **SMS Level 2, or above**, will receive a **minimum sixty percent (60%) loading** on the FWC base rate of pay for the first thirty eight (38) hours of work performed as compensation for the exclusions specified in this Agreement.
  - (ii) Casual Employees working in the operational area of SMS who have been classified as **SMS Level 1** will receive a **minimum thirty seven percent (37%) loading** on the FWC base rate of pay for the first thirty eight (38) hours of work performed as compensation for the exclusions specified in this Agreement.
  - (iii) Casual Employees working in the administrative area of SMS will receive a minimum **thirty seven percent (37%) loading** on the FWC base rate of pay for the first thirty eight (38) hours of work performed as compensation for the exclusions specified in this Agreement.



#### 8.6. SMS Additional Hours Rate of Pay

- (a) For the purposes of this Agreement, additional hours shall mean those hours worked outside of the ordinary hours of work as prescribed in Clause 16.2.
- (b) All work performed after thirty eight (38) hours or on a Saturday, Sunday or Public Holiday will be paid at the SMS additional hours rate of pay, or another amount specified in writing, whichever is the higher.

#### 8.7. Permanent Employee – over 38 hours

- (a) The SMS additional hours rate of pay for Permanent Employees will include a loading as specified below:
  - (i) Permanent Employees working in the operational area of SMS who have been classified as **SMS Level 2, or above**, will receive a **minimum sixty five percent (65%) loading** on the FWC base rate of pay for all additional hours worked as compensation for the exclusions specified in this Agreement.
  - (ii) Permanent Employees working in the operational area of SMS who have been classified as **SMS Level 1** will receive a **minimum forty two percent (42%) loading** on the FWC base rate of pay for all additional hours worked as compensation for the exclusions specified in this Agreement.
  - (iii) Permanent Employees working in the administrative area of SMS will receive a **minimum forty two percent (42%) loading** on the FWC base rate of pay for all additional hours worked as compensation for the exclusions specified in this Agreement.

#### 8.8. Casual Employee – over 38 hours

- (a) The SMS additional hours rate of pay for Casual Employees will include a loading as specified below:
  - (i) Casual Employees working in the operational area of SMS who have been classified as **SMS Level 2, or above**, will receive a **minimum ninety percent (90%) loading** on the FWC base rate of pay for all additional hours worked as compensation for the exclusions specified in this Agreement.
  - (ii) Casual Employees working in the operational area of SMS who have been classified as **SMS Level 1** will receive a **minimum sixty seven percent (67%) loading** on the FWC base rate of pay for all additional hours worked as compensation for the exclusions specified in this Agreement.
  - (iii) Casual Employees working in the administrative area of SMS will receive a **minimum sixty seven percent (67%) loading** on the FWC base rate of pay for all additional hours worked as compensation for the exclusions specified in this Agreement.

#### 8.9. Site Uplift Allowance

- (a) An additional allowance on work sites may also be provided. This will be referred to as a Site Uplift Allowance (**the Uplift**) and will be specified in writing on commencement of an assignment.





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- (b) The Uplift will take into account:
  - (i) the scope and responsibilities of the position;
  - (ii) an individual's skills and experience;
  - (iii) the requirements and disabilities associated with the work location and
  - (iv) the roster and working hours expected to be worked by employees.
- (c) The Uplift may not apply to all work sites.
- (d) The Uplift is not "guaranteed earnings" and may be increased, or decreased, at the discretion of SMS with consideration to operational profitability.
  - (i) In the circumstance of a change to the Uplift rate, not less than fourteen (14) days' notice will be provided.

### 8.10. Approved Allowances

- (a) Allowances may be applicable when approved by SMS. Such allowances will be specified in writing for each assignment.
- (b) An allowance for a Leading Hand will be specified in writing and shall not be less than the Award.
- (c) An allowance for First Aid will be specified in writing and shall not be less than the Award.
- (d) An Employee who works a night shift shall be paid an additional ten percent (10%) or such amount specified in writing applicable to the work site location, whichever is the higher.
- (e) When changing rosters from day to night, or night to day and an Employee is required to rest, an additional payment shall be paid at the SMS base rate of pay up to a maximum of eight (8) hours, or as specified in writing, whichever is the higher.
  - (i) In the circumstances where an Employee 'elects' to remain on site for the purposes of working additional hours, the rest period will be unpaid.
  - (ii) Clause 8.10 (e) does not apply when a period of R & R is commencing.

### 8.11. Standing By

- (a) Subject to any custom prevailing at the work site location, where an Employee is required regularly to hold themselves in readiness to work after ordinary hours, the Employee shall be paid standing by time at the Employee's SMS base rate of pay for the time they are standing by, up to a maximum of eight (8) hours per day.

## 9. Apprentices, Trainees & Junior Employees

### 9.1. Apprentices

- (a) Employees completing an Apprenticeship shall be remunerated in accordance with the relevant training agreement, this Agreement, or in writing, whichever is the higher.



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### 9.2. Trainees

- (a) Employees completing an 'on the job' Federal Government Traineeship shall be remunerated in accordance with either the National Training Wage provisions, this Agreement, or in writing, whichever is the higher.

### 9.3. Juniors

- (a) Junior Employees shall be remunerated in accordance with the prescribed percentages of the adult classifications as referenced in Appendix A.
  - (i) Junior employees may only perform work in an industry where the law permits.

## 10. Payment of Wages & Superannuation

- (a) Wages shall be paid weekly in arrears by electronic funds transfer to a financial institution of the Employee's nomination. Casual Employees agree to these terms.
  - (i) Employees will be notified of their week start and end on commencement of the employment.
- (b) Should the needs of the business require SMS to change the payment period, SMS will provide Employees with not less than seven (7) days' notice.
- (c) Should an Employee not notify SMS of the complying superannuation fund of their choice, the superannuation contribution for and on their behalf of the Employee will be paid into the SMS MySuper Superannuation Fund.
- (d) Superannuation shall be paid on an Employee's ordinary time earnings, calculated on the SMS base rate of pay, up to a maximum of thirty eight (38) hours per week.
- (e) Superannuation shall be paid to a MySuper complying fund nominated by the Employee in accordance with the Superannuation Guarantee (Administration) Act 1992.

## 11. Work Location

- (a) During the term of this Agreement, the SMS Group may operate from various metropolitan and regional work sites, and all States and Territories throughout Australia.
- (b) In the course of employment an Employee may be required to work on more than one work site, and/or at more than one work location as the business operations may require.

### 11.1. Remote Work Sites

- (a) Where an Employee cannot reasonably return to their usual place of residence each night, they will be provided with either reasonable board or lodging, or paid an appropriate allowance.
- (b) An Employee working on a remote work site will be entitled to applicable site loadings and allowances as specified in either this Agreement or provided in writing on commencement of the assignment. The higher amount will apply.

## 12. Termination of Employment

- (a) Notice of termination is provided for in the NES.



### **12.1. Termination by SMS**

- (a) Circumstances where SMS may terminate an Employee's employment include, but are not limited to:
  - (i) an Employee's work performance is unsatisfactory;
  - (ii) an Employee's conduct is unsatisfactory;
  - (iii) an Employee has accommodation withdrawn by the Client;
  - (iv) an Employee is not permitted on the work site by the Client;
  - (v) it becomes necessary due to the operational requirements of the business;
  - (vi) an Employee is disqualified from holding a license that is a requirement of the position; or
  - (vii) an Employee does not have, or does not renew and maintain any qualification, license, accreditation, or certificate that is a requirement of the position.

### **12.2. Termination for Serious Misconduct**

- (a) Before dismissing an Employee without notice, SMS shall conduct investigations and exhaust all options available in this Agreement for any acceptable alternatives.
- (b) Circumstances where ( after investigation) an Employee's actions, acts, or behaviour, may justify termination without notice, are if the Employee:
  - (i) engages in any act or omission constituting misconduct in respect of their duties;
  - (ii) wilfully fails or wilfully neglects to perform or carry out their powers, functions or duties in an agreed manner;
  - (iii) engages in bullying, offensive or harassing behaviour;
  - (iv) breaches health and safety obligations;
  - (v) breaches, or fails to comply with, camp or work site rules, regulations or policies;
  - (vi) is believed to be under the influence of alcohol or drugs;
  - (vii) is believed to be either providing or receiving, goods or services without payment;
  - (viii) is engaged in any conduct which might tend to injure the reputation or standing of the business;
  - (ix) refuses or neglects to comply with any lawful and reasonable request by SMS, or any other person duly authorised by the SMS;
  - (x) is believed to be stealing;
  - (xi) is believed to have submitted a false entry on their time sheet, or entered a false time sheet on behalf of other Employees; or
  - (xii) is convicted of an indictable offence.
- (c) The decision of SMS to terminate an Employee without notice is not limited to those issues prescribed above.



### **12.3. Payment in Lieu of Notice**

- (a) Payment in lieu of the notice periods prescribed in the NES shall be made to the Employee if SMS does not require the Employee to work the notice period.
- (b) For the purposes of this Agreement, there is no obligation for SMS to accept a notice period from an Employee that exceeds the prescribed notice periods in the NES.
- (c) Payment, or forfeiture of wages, in lieu of notice is calculated on the SMS base rate of pay.
- (d) The periods of notice prescribed in the NES shall not apply in the case of serious misconduct that justifies instant dismissal. In this instance, the Employee shall be entitled to payment only for the hours worked up to the time of dismissal.

### **12.4. Abandonment of Employment**

- (a) An Employee who is absent from work for a period of three (3) consecutive days, without notification to SMS, is deemed to have abandoned their employment.
- (b) Termination of employment by abandonment in accordance with this Clause operates as from the date of the last attendance at work or the last day's absence in respect of which consent was granted, or the date of the last absence in respect of which notification was given to SMS, whichever is the later.

### **13. Suspension**

- (a) SMS, or an authorised representative of SMS, has the discretion to temporarily suspend an Employee from duty whilst conducting any investigation, including (but not limited to) allegations of misconduct or breach of policies.
- (b) The period of suspension shall be a maximum of five (5) working days.
- (c) The following procedure shall apply for hours not worked during the suspension period:

If, in the reasonable opinion of SMS:

  - (i) the allegations are unfounded, the Employee will be entitled to payment for the hours that would normally have been worked, including any additional hours; or
  - (ii) if the allegations are justified, the Employee will not be entitled to payment for the hours that would normally have been worked, and appropriate disciplinary action will be taken which may also lead to termination of the employment.

### **14. Stand Down**

- (a) SMS may stand down Employees in certain circumstances.
- (b) In the event of a stand down, the Employee will be notified prior to the commencement of the rostered work period that there is no useful work available.
- (c) If the work period has commenced, the Employee will be paid up to the time of cessation of work to a minimum of four (4) hours.
- (d) SMS may stand down, without payment, any Employee who cannot be usefully employed during a period because of a particular circumstance which may include, but not be limited to, any:



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- (i) strike, ban, limitation or restriction on the performance of work by the employees, or any union, association or organisation;
  - (ii) breakdown or failure of machinery or equipment which SMS could not reasonably have prevented;
  - (iii) closure of the SMS Group, or any section of the business, or lack of work which could not reasonably have been prevented; or
  - (iv) stoppage of work for any cause which SMS could not reasonably be held responsible or
  - (v) limitation of raw materials, natural disaster, inclement weather or failure or lack of power.
- (e) SMS also has the right to stand down Employees for part, or all, of a day for:
- (i) refusal of duty;
  - (ii) neglect of duty; or
  - (iii) misconduct.

### **15. Redundancy**

- (a) Redundancy is provided for in the NES.
- (b) There is no entitlement to Redundancy due to the ordinary and customary turnover of labour.
- (c) If SMS decides that the Employee's position is redundant, SMS shall discuss different possibilities such as working in another form of employment and other opportunities besides the ending of the employment.

### **16. Hours of Work**

#### **16.1. Setting Working Hours**

- (a) Maximum weekly hours and requests for flexible working arrangements are provided for in the NES.
- (b) The provisions of this Clause are a guide to rostering the working hours. Under this Agreement the Employees recognise that operational requirements and circumstances may arise where different methods of working ordinary hours may be required to be implemented.
- (c) Employees agree to:
  - (i) flexibility in the way that ordinary hours are organised and worked to meet operational requirements;
  - (ii) working reasonable additional hours; and
  - (iii) working in accordance with work site rosters.

#### **16.2. Ordinary Hours of Work**

- (a) The ordinary hours of work will generally be up to thirty eight (38) hours, plus reasonable additional hours, which may be worked in accordance with Clause 16.3.



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- (i) The ordinary hours will generally be worked during the hours of 6.00am and 6.00pm, or as specified in the work site roster.
- (b) Full Time Employees are guaranteed a minimum of thirty eight (38) hours of work each week when averaged over twenty six (26) weeks of continuous service.
  - (i) This means the actual hours worked may vary each week, with some weeks being more than thirty eight (38) hours, and others being less.
- (c) Part Time Employees are not guaranteed thirty eight (38) hours of work each week and will generally work less than thirty eight (38) hours when averaged over twenty six (26) weeks of continuous service.

### **16.3. Additional Hours**

- (a) Employees may request, or be required, to work reasonable additional hours.
- (b) For the purposes of this Agreement, additional hours shall mean those hours worked outside of the ordinary hours of work as prescribed in Clause 16.2, all hours worked over thirty eight (38) hours, and all hours worked on a Saturday, Sunday or Public Holiday.
- (c) SMS affirms that additional hours will be reasonable, with consideration given to:
  - (i) any hours Employees have worked over the previous four (4) weeks;
  - (ii) an Employees personal circumstances (including family responsibilities); and
  - (iii) any risk to Employees health and safety.
- (d) Employees are required to obtain the approval of SMS before working any additional hours.

### **16.4. Rosters**

- (a) SMS may implement any form of ordinary time rosters (with reasonable additional hours to be determined within those rosters) which are needed to meet the operational requirements of the business.
- (b) SMS shall notify Employees of any change in a roster. Any changes to a permanent roster will be made in accordance with Clause 27 of this Agreement.
- (c) Rosters are designed for 'forward rotation' of either eight (8), ten (10), or twelve (12) hour shifts over either five (5), six (6), or seven (7) consecutive days.
- (d) Employees will not be directed to work:
  - (i) a permanent night shift;
  - (ii) more than fifty (50) additional hours in any twenty eight (28) day period; or
  - (iii) more than twenty five percent (25%) of their ordinary hours on a weekend or public holiday in a roster cycle.



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### **16.5. Shift Worker**

- (a) For the purposes of this Agreement, a Continuous Shift Worker is a seven day/night Shift Worker who is regularly rostered to work over seven (7) days which may include Sundays and Public Holidays.
- (b) Night Shift means any shift finishing after midnight and at, or before, 8.00am.
- (c) When changing from a night to day, or day to night roster, an Employee is required to have at least ten (10) hours off duty between rosters.

### **16.6. Meal and Rest Breaks**

- (a) SMS may stagger the time of taking meal and rest breaks to meet operational requirements.
- (b) Where an Employee is required to work for five (5) or more hours in one shift, the Employee is entitled to an unpaid meal break of not less than thirty (30) minutes.
  - (i) Such Employees are also entitled to a rest break of up to fifteen (15) minutes without loss of pay.
- (c) Where an Employee is required to work for more than ten (10) hours in one shift, the Employee is entitled to an additional rest break of up to fifteen (15) minutes without loss of pay.

### **17. Public Holidays**

- (a) The public holidays gazetted by the Government in the State, or Territory, in which the Employee is working at that time, will be the public holidays for the purposes of this Agreement.
- (b) By agreement, an alternative day may be taken as the public holiday instead of those prescribed at part (a).
- (c) Where permanent Employees are not required to work on a public holiday that forms part of their usual roster, these Employees shall be entitled to payment for the hours usually worked at their SMS base rate of pay up to a maximum of eight (8) hours.
- (d) Payment for hours worked on a public holiday that forms part of an Employees usual roster has been compensated in accordance with Clause 8.6 of this Agreement.
- (e) Administration Employees will not be required to work on a public holiday.

### **18. Annual Leave**

- (a) Annual leave is provided for in the NES. It does not apply to Casual Employees.
- (b) Full Time Employees are entitled to four (4) weeks' annual leave with payment for each completed year of service, up to a maximum of one hundred and fifty two (152) hours, or as agreed in writing, whichever is the higher.
- (c) Part Time Employees are entitled to four (4) weeks' annual leave calculated on a pro rata basis.
- (d) A continuous shift worker, as defined at Clause 16.5 (a), is entitled to an additional week's payment for annual leave.





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- (e) Annual leave is calculated on the SMS base rate of pay at the time of taking the leave, or as agreed in writing, whichever is the higher.
  - (i) In the circumstances where an Employee has been receiving a 'site uplift' allowance for the twelve (12) month period prior to the taking of leave, the allowance shall be calculated in the leave payment.
  - (ii) Where various uplifts have been applicable, the uplift shall be averaged for the purpose of calculating the leave payment.
- (f) Leave loading is included in the SMS base rate of pay.
- (g) Annual leave may only be 'cashed out' in accordance with the NES.
- (h) If annual leave has not been taken within six (6) months of the leave falling due, SMS may direct an Employee to take annual leave with six (6) weeks' written notice.
- (i) Employees may be required to take an amount of annual leave during a particular period if:
  - (i) Employees are directed to do so by SMS because, during that period, SMS closes the business, or any part of the business, in which the Employees work.
- (j) When the workplace is closed, Employees must take the annual leave as directed or if they have no accrued annual leave Employees are required to take unpaid leave.
  - (i) At the discretion of SMS, paid leave may be approved in advance.
- (k) Where employment terminates and an Employee has not completed a twelve (12) month qualifying period, the Employee shall be entitled to be paid on a pro rata basis, calculated on the SMS base rate of pay at the time of the termination of employment.
- (l) The employee shall be paid for their period of annual leave during the normal payroll cycle unless otherwise approved by SMS on a case by case basis.

### **18.1. Taking Annual Leave**

- (a) Unless specified otherwise in writing, Employees are required to provide a minimum of six (6) weeks' notice of the date from which annual leave is to be taken.
  - (i) A shorter period of notice may be granted by mutual agreement with SMS.
- (b) Leave may not be approved during peak operational periods, or when SMS operations may be adversely effected by the absence.
  - (i) This may include a reduced work force due to other absences scheduled at that time.

### **19. Personal / Carers (Sick) Leave**

- (a) Personal and Carers leave are provided for in the NES. It does not apply to Casual Employees.
  - (i) The term "personal/carers leave" effectively covers both sick leave and carers leave.
- (b) Paid personal leave is calculated on the SMS base rate of pay at the time of taking the leave, unless a higher rate has been agreed in writing.





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- (c) When unable to attend for work, Employees are required to contact their Supervisor or Manager as soon as practicable and inform them of the nature of the injury or illness, and the estimated duration of the absence.
  - (i) A text message, or email, is not acceptable.
  - (ii) A certificate from a registered health practitioner, or other evidence satisfactory to SMS, must be provided for any absence of two (2) consecutive days.
  - (iii) At its discretion, SMS may require evidence for a shorter period of absence, or absence before and after a weekend or public holiday.
- (d) Casual Employees are required to comply with the requirements at part (c) of this Clause.
- (e) At its discretion, SMS may require supporting evidence of any Carer's leave taken.

### **20. Compassionate Leave**

- (a) Compassionate Leave is provided for in the NES.
- (b) Compassionate leave for permanent Employees is calculated on the SMS base rate of pay at the time of taking the leave, unless a higher rate has been agreed in writing.
- (c) Compassionate leave days that are not worked, and are paid at the SMS base rate of pay, are not calculated as part of thirty eight hours worked for the purposes of making additional hours payments
- (d) Casual Employees are entitled to Compassionate Leave. Such leave is unpaid.

### **21. Parental Leave**

- (a) Parental Leave is provided for in the NES.
- (b) Parental leave is only available to an Employee who has, or will have, responsibility for the care of a child.
  - (i) Different rules apply depending on if one Employee, or both members of an Employee couple take leave. Refer to the NES.
- (c) A pregnant Employee is required to begin parental leave six weeks prior to the expected date of confinement.
- (d) Parental leave shall mean unpaid parental leave. The Employee is required to give six (6) weeks' notice before such leave is taken.
- (e) When returning to work, the Employee is required to provide six (6) weeks' notice.
- (f) Should the Employee not wish to return to their previous position, duties, and hours of work, continued employment will be at the discretion of SMS and subject to the availability of a suitable position.

### **22. Long Service Leave**

- (a) The Long Service Leave Act 1958 (as amended) shall apply to Employees covered by this Agreement or (according to the nature of work performed) with the provisions of the Western Australian "Construction Industry Portable Paid Long Service Leave Act 1985" as amended from time to time.



**23. Community Service Leave**

- (a) Community service leave is provided for in the NES.
  - (i) Jury service is considered as community service leave.

**24. Continuity of Service**

- (a) In order to maintain continuity of services, and to ensure the competitiveness of the business, the Employees agree not to:
  - (i) participate in actions or activities which are detrimental to the interests of SMS (e.g. unauthorised stop-work meetings, strike action, work bans or limitations or the like) while employed under the terms of this Agreement;
  - (ii) stop work for the purpose of engaging in discussions with any person purporting to exercise a right of entry; and
  - (iii) encourage or incite any Employees to engage in the conduct described in subparagraphs (i) and (ii).
- (b) Issues and grievances are to be handled through the resolution of disputes procedure outlined in this Agreement.
- (c) Failure to comply with this Clause will result in disciplinary action which may lead to termination of the employment.

**25. Resolution of Disputes**

- (a) If a dispute relates to a matter arising under this Agreement or the NES, this Clause sets out procedures to settle the dispute.
- (b) 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.
  - (i) If agreement cannot be reached, the Employee or Supervisor may refer the dispute to the next level of Supervisor/Manager.
  - (ii) If agreement cannot be reached with the assistance of more senior management, the Employee or Supervisor may refer the dispute to the Employee Relations Manager for mediation between the parties.
- (c) At any or all stages of the above procedure, either party may appoint a representative to assist in resolution of the dispute.
- (d) Reasonable time limits shall be allowed for each stage of the procedure and each stage must be completed before proceeding to the next stage.
- (e) An Employee must continue to perform duties as they would normally, unless there is a reasonable concern about an imminent risk to health or safety.
- (f) An Employee must comply with a direction given by SMS to perform other available work at the same workplace, or at another workplace, unless:
  - (i) the work is not safe;
  - (ii) applicable Occupational Safety and Health legislation would not permit the work to be performed;



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- (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.

### 26. Referral to WAIRC

- (a) The parties agree that should the dispute be unresolved at the workplace level, the matter may be referred to the Chief Commissioner of the Western Australian Industrial Relations Commission (WAIRC) who will nominate an appropriate mediator.
- (b) For the purposes of this Agreement, all parties consent for the WAIRC to mediate, conciliate and/or arbitrate the dispute.
- (c) The WAIRC may make a determination that is binding upon the parties to the dispute.
- (d) During the period of the dispute, the parties agree not to commence any action to obtain damages for alleged breaches of this Agreement or the NES.

### 27. Consultation

- (a) This clause applies if SMS 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 Employees (**Operational Change**); or proposes to introduce a change to the regular roster or ordinary hours of work of Employees (**Roster Change**).
  - (i) SMS must notify the relevant Employees of the decision to introduce an operational or roster change. The relevant Employees may appoint a representative for the purposes of the procedures in this clause.
  - (ii) If any relevant Employees appoint a representative for the purposes of consultation and the Employee or Employees advise SMS of the identity of the representative, then SMS must recognise that representative.
  - (iii) "Relevant Employees" means those Employees who may be affected by a change referred to in this Clause.
- (b) As soon as practicable after making a decision regarding the proposed change, SMS must discuss the introduction of the change, the effect the change is likely to have on the Employees and measures SMS will take to avert or mitigate the adverse effect of the change on the Employees.
- (c) For the purposes of the discussion, SMS will provide in writing to the relevant Employees:
  - (i) All relevant information about the change, including the nature of the change proposed;
  - (ii) Information about the expected effects of the change on the Employees; and
  - (iii) Any other matters likely to affect the Employees.
- (d) SMS is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- (e) SMS must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.



## 28. Flexibility Term

- (a) SMS, and an Employee covered by this Enterprise Agreement, may agree to make an Individual Flexibility Arrangement (IFA) to vary the effect of terms of the Agreement.
- (b) Clause 28 (a) applies if the terms to be varied by Agreement deals with one or more of the following matters:
  - (i) arrangements about when work is performed;
  - (ii) overtime rates;
  - (iii) penalty rates;
  - (iv) allowances;
  - (v) leave loading; and
  - (vi) the arrangement meets the genuine needs of SMS and the Employee in relation to one or more of the matters mentioned in this Clause, and the arrangement is genuinely agreed to by SMS and the Employee.
- (c) SMS must ensure that the terms of the IFA:
  - (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.
- (d) SMS must ensure that the IFA is in writing and includes the name of the Employer (SMS) and the Employee, is signed by an authorised representative of SMS and the Employee, and if the Employee is under 18 years of age, is signed by a parent or guardian of the Employee.
- (e) The IFA must include the details of:
  - (i) the terms of the Enterprise Agreement that will be varied by the arrangement;
  - (ii) how the arrangement will vary the effect of the terms;
  - (iii) how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
  - (iv) state the day on which the arrangement commences.
- (f) SMS must give the Employee a copy of the IFA within 14 days after it is agreed to.
- (g) Either SMS or the Employee may terminate the IFA:
  - (i) by giving twenty eight (28) days written notice to the other party to the arrangement; or
  - (ii) if SMS and the Employee agree in writing - at any time.



## **29. Discrimination**

### **29.1. Anti-discrimination Provisions**

- (a) SMS and its Employees agree that it is their intention to achieve the principle object in paragraph 3(j) of the Workplace Relations Act 1996, which is to respect and value the diversity of the work force by helping to prevent and eliminate discrimination at their enterprise on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (b) Any dispute concerning these provisions and their operation will be progressed initially under the dispute resolution procedure in this Agreement.
- (c) Nothing in these provisions allows any treatment that would otherwise be prohibited by anti-discrimination provisions in applicable Commonwealth, State or Territory legislation.
- (d) Nothing in these provisions prohibits any discriminatory conduct (or conduct having a discriminatory effect) if:
  - (i) an Employee is a member of staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed; and
  - (ii) the conduct was in good faith to avoid injury to the religious susceptibilities of that religion or creed.

## **30. Policies**

- (a) Employment policies exist for the effective and safe operation of the business and the welfare and interests of those who work for SMS.
- (b) Employees undertake to observe and comply with all lawful directions, instructions and policies of SMS.
- (c) Any breach of a policy or procedure may lead to disciplinary action by SMS, including termination of the employment.
- (d) SMS retains the right to amend existing policies, and to introduce new ones.
  - (i) Policies are not incorporated into this Agreement as terms of the employment.
  - (ii) In the event of any inconsistency, the terms of this Agreement shall prevail over any term of a policy or procedure.

### **30.1. Fitness for Work**

- (a) It is a condition of employment that all Employees attend work fit, able and willing to perform their duties.
- (b) Employees are required to abide by any policies implemented by SMS in relation to drugs and alcohol, as well as any and all site requirements. This includes, but is not limited to, any site requirement in relation to wet mess areas, village rules, codes of conduct or other requirements imposed by either SMS or the operator of the site on which the Employee works from time to time.



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- (c) Breaches of any SMS and/or site policies may result in disciplinary action being taken against the Employee, including termination of employment (either summarily or with notice).
- (d) Employees agree to participate fully in any medical examination and/or drug and alcohol testing, including urine analysis, breathalyser tests or any other method adopted by SMS, or the operator of the site at which the Employee works, for the detection of drugs or alcohol as requested.
- (e) In the circumstance where an Employee is unfit for work and has their accommodation withdrawn from a work site, the Employee agrees to pay their own travel cost, or reimburse SMS, in association with the return from site to their residence.
- (f) Employees are not entitled to payment for any period when the Employee is unfit for work due to drug or alcohol consumption.

### **30.2. Confidential Information & Property of SMS**

- (a) Business information is to remain confidential and not to be disclosed to a third party or removed from SMS's premises.
- (b) Confidential information includes, but is not limited to, employee, customer and supplier lists, manuals, designs, drawings, computer software and programs, ideas, procedures, documents, costings, accounting and intellectual property not in the public domain.
- (c) Employees are provided with appropriate equipment to carry out the requirements of their position. Any losses by way of theft, accident or damage, must be reported to SMS immediately.
- (d) Where phones, lap tops, tools and equipment, uniforms, or other goods which are the property of SMS are not returned upon request, the Employee agrees to reimburse SMS the replacement value of the goods.



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### APPENDIX A – Classifications Mapping & Base Rates as at 01 July 2018

SMS Level	MA000002 MA000010 MA000020	FWC Base Rate 2018	SMS - Permanent Up to 38 hrs Base Rate 2018	SMS - Casual Up to 38 hrs Base Rate 2018
SMS Level 1(a)	C14 Level 1	18.93	21.20	25.93
SMS Level 1(b)	C13 Level 2	19.47	21.81	26.67
SMS Level 1(c)	CW Level 1 (a)	19.89	22.28	27.25
SMS Level 2(a)	C12 Level 3	20.22	27.30	32.35
SMS Level 2(b)	CW Level 1 (b)	20.30	27.41	32.48
SMS Level 2(c)	CW Level 1 (c)	20.59	27.80	32.94
SMS Level 3(a)	C11 Level 4	20.91	28.23	33.46
SMS Level 3(b)	CW Level 1 (d)	20.98	28.32	33.57
SMS Level 4(a)	CW Level 2	21.41	28.90	34.26
SMS Level 4(b)	Level 1	21.78	24.39	29.84
SMS Level 5(a)	C10 CW Level 3	22.04	29.75	35.26
SMS Level 5(b)	Level 2	22.45	25.14	30.76
SMS Level 6(a)	C9 CW Level 4	22.73	30.69	36.37
SMS Level 6(b)	Level 3	23.28	26.07	31.89
SMS Level 7	Level 4	24.44	27.37	33.48
SMS Level 8	Level 5	25.44	28.49	34.85



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SMS Level	Classification		
SMS Level 1 (a) (b) (c)	Non-Trades	Labourer	Scaffolder – Shut Downs
	Dogman	Rigger	Storeperson
	Forklift Operator	Sentry	Trades Assistant
	General Hand	Scaffolder	Yardperson
SMS Level 2 (a) (b) (c)	Dogman	Rigger	Scaffolder –Shut Downs
	Forklift Operator	Scaffolder	Storeperson
SMS Level 3 (a) (b)	Crane Operator	Rigger	Scaffolder –Shut Downs
	Dogman	Scaffolder	
SMS Level 4 (a) (b)	Admin Assistant	Foreperson	Scaffolder
	Crane Operator	Rigger	Scaffolder –Shut Downs
SMS Level 5 (a) (b)	Admin Assistant	Fitter	Tradesperson
	Boilermaker	Foreperson	Welder
	Crane Operator	Scaffolder – Supervisor	
SMS Level 6 (a) SMS Level 6 (b)	Administrator	Tradesperson	
	Scaffolder - Supervisor		
SMS Level 7	Administrator		
SMS Level 8	Administrator		





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Apprentice 4 yr term	Apprentice 3.5 yr term	Apprentice 3 yr term	% of Level 5 Rate
1 <sup>st</sup> Year	1 <sup>st</sup> 6 months		55%
2 <sup>nd</sup> Year	Next Year	1 <sup>st</sup> Year	65%
3 <sup>rd</sup> Year	Following Year	2 <sup>nd</sup> Year	80%
4 <sup>th</sup> Year	Final Year	3 <sup>rd</sup> Year	95%
Mature Age	Mature Age	Mature Age	The higher of 80% or the apprentice year

Juniors	% of Adult Rate
16 yrs or less	70%
At 17 yrs	80%
At 18 yrs	90%
At 19 yrs	100%