



DECISION

Fair Work Act 2009

s.185—Enterprise agreement

Simcoa Operations Pty Ltd T/A Simcoa
(AG2024/638)

SIMCOA OPERATIONS PTY LTD MAINTENANCE ENTERPRISE AGREEMENT 2023

Mining industry

COMMISSIONER LIM

PERTH, 26 MARCH 2024

Application for approval of the Simcoa Operations Pty Ltd Maintenance Enterprise Agreement 2023

[1] Simcoa Operations Pty Ltd (the **Applicant**) has made an application for the approval of an enterprise agreement known as the *Simcoa Operations Pty Ltd Maintenance Enterprise Agreement 2023* (the **Agreement**). The application was made under s 185 of the *Fair Work Act 2009* (Cth) (the **Act**). The Agreement is a single enterprise agreement.

[2] The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (the **Amending Act**) made several changes to enterprise agreement approval processes in Part 2-4 of the Act, which commenced operation on 6 June 2023.

[3] Under transitional arrangements, amendments made by Part 14 of Schedule 1 to the Amending Act in relation to genuine agreement requirements for agreement approval applications apply where the notification time for the agreement was on or after 6 June 2023. The genuine agreement provisions in Part 2-4 of the Act, as it was before 6 June 2023, continue to apply in relation to agreement approval applications where the notification time for the agreement was before 6 June 2023. The notification time for the Agreement was 26 May 2023.

[4] The Applicant has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement.

[5] In compliance with s 190(4) of the Act, the bargaining representative's views regarding the undertakings proffered were sought. They were provided with the opportunity to raise and address any objections they had to the undertakings proffered by the Applicant. No objection was raised.

[6] Subject to the undertakings referred to above, and on the basis of the material contained in the application and accompanying declarations, 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.

[7] The model consultation term prescribed by the *Fair Work Regulations 2009* (Cth) is attached to the Agreement and taken to be a term of it.

[8] I note the following clauses appear to be inconsistent with the National Employment Standards (NES):

- Clause 22.4 appears to provide that in the case of termination, if the Employee fails to give notice the Employer has the right to withhold monies due to the Employee to a maximum amount equal to the ordinary time rate of pay for the period of notice. The effect of this is that this clause appears to permit the employer to withhold monies owing to the employee under the NES. This raises the issue that the clause may be inconsistent with Chapter 2 Part 2.2 Division 2 of the Act.
- Clause 31.8 does not appear to provide compassionate leave is available in circumstances of miscarriage or stillbirth. This appears inconsistent with s 104 of the Act.
- Clause 22.6 provides that other than in extenuating circumstances, if the Employee is absent from work for more than 5 consecutive work days without the Employer's authorisation, their employment will be deemed to have been abandoned. This appears to be inconsistent with the NES at s 117 of the Act.

[9] However, I am satisfied that under clause 4.3 of the Agreement, the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[10] The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU) and Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (together, the **organisations**), being bargaining representatives for the Agreement, have given notice under s 183 of the Act that they want the Agreement to cover them. In accordance with s 201(2), and based on the declarations provided by the organisations, I note that the organisations are covered by the Agreement.

[11] The Agreement was approved on 26 March 2024 and, in accordance with s 54, will operate from 2 April 2024. The nominal expiry date of the Agreement is 26 March 2028.



COMMISSIONER

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ANNEXURE A

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2024/638

Applicant:
Simcoa Operations Pty Ltd T/A Simcoa

Collectively referred to as 'Simcoa'.

Undertaking- section 190

I, David Miles, VP Director of Site Services and Marketing for Simcoa Operations Pty Ltd T/A Simcoa give the following undertaking with respect to the *Simcoa Operations Pty Ltd Maintenance Enterprise Agreement 2023* (**the Agreement**):

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

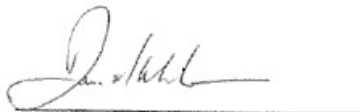
1. Clause 10.3 will be amended to read as follows:

For the purpose of the additional week of leave provided in clause 12 ("Annual Leave"), a Shift Worker is an Employee engaged in a continuous process who is rostered to work regularly on Sundays and Public Holidays.

2. Clause 6.3 (b) will be amended to read as follows:

Where there is a change in the hours or arrangement of work to be performed by the Employee, or the provisions of the relevant award are varied, the Company will reassess the Employee's rate of pay to ensure that they are better off overall when compared to the relevant award. Where as a result of any such change there is a need to increase the Employee's rate of pay, the increase (if not implemented prior) will be backdated to the date of that change. With respect to this subclause and subclause 6.3 (a), the Company will ensure a review and if necessary, a reconciliation, is undertaken at least every 12 months on or around the anniversary date of commencement of this Agreement.

This undertaking is provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature



Date



Simcoa Operations

Simcoa Operations Pty Ltd

**Maintenance Enterprise
Agreement 2023**

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1. TITLE

This agreement shall be known as the *Simcoa Operations Pty Ltd Maintenance Enterprise Agreement 2023 (Agreement)*.

2. PARTIES BOUND AND APPLICATION OF AGREEMENT

2.1 This Agreement will only operate in the State of Western Australia.

2.2 Upon approval by the Fair Work Commission (**Commission**), this Agreement is intended to cover:

- (a) Simcoa Operations Pty Ltd (ABN 42 009 064 653) (Employer);
- (b) the Employees of the Employer engaged in the Maintenance Division of the Employer who are employed in the classifications contained in clause 6 ("Classifications and Wage Rates") of this Agreement (**Employees**);
- (c) The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union known as the Australian Manufacturing Workers' Union (AMWU); and the
- (d) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU).

3. PERIOD OF OPERATION

3.1 This Agreement shall commence operation on the seventh day after the day it is approved by the Fair Work Commission.

3.2 The nominal expiry date of this Agreement will be 4 years after the day on which the Commission approves the Agreement. However, this Agreement shall continue to operate beyond the nominal expiry date until it is replaced or terminated in accordance with the *Fair Work Act 2009 (FW Act)*.

4. RELATIONSHIP TO AWARDS, LEGISLATION AND OTHER INSTRUMENTS

4.1 This Agreement operates to the exclusion of any award.

4.2 Where any legislation, award, policy, procedure or other document is referred to in this Agreement it is not incorporated into and does not form part of this Agreement. In particular, references to entitlements provided for in the National Employment Standards (**NES**) and other legislation are:

- (a) for information only and do not incorporate those entitlements into this Agreement; and
- (b) not intended as a substitute for the detailed provisions of the NES and other legislation.

4.3 This Agreement will be read and interpreted in conjunction with the National

Employment Standards (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.

5. CONTRACT OF SERVICE

Types of Employment

5.1 Employees will be employed in one of the following categories:

- (a) full-time Employees; or
- (b) part-time Employees.

Full-time Employment

5.2 A full-time Employee is an Employee who works an average of 38 ordinary hours per week.

Part-time Employment

5.3 An Employee who works an average of fewer than 38 ordinary hours per week and has reasonably predictable hours of work.

Probation

5.4 All new Employees will be engaged on a probationary period of six (6) months. During this period, either party can terminate the employment by giving one week's notice.

Duties

5.5 An Employee's duties and responsibilities may be varied by the Employer, provided that they are within the Employee's range of skills, qualification, competence and training.

5.6 At all times in performing their duties and responsibilities, Employees are required to:

- (a) comply with any lawful and reasonable direction given by the Employer;
- (b) carry out their duties at such places as necessary and as directed by the Employer;
- (c) use their best endeavours;
- (d) ensure the highest level of safe working practices are adhered to and maintained.

Stand Down

- 5.7 Notwithstanding any other provision in this Agreement, where an Employee cannot be usefully employed due to industrial action, breakdown of equipment or any stoppage of work over which the Employer cannot be reasonably held responsible, the Employer may stand down the Employee and deduct or withhold payment for that period. This does not break continuity of employment for the purposes of any entitlements.

Fitness for Work

- 5.8 Employees must not be adversely affected by alcohol or drugs during working hours.

6. CLASSIFICATIONS AND WAGE RATES

- 6.1 Employees (other than apprentices) will be paid no less than the following ordinary rates of pay (**Ordinary Rates**):

Day Workers

Level	Annual Salary prior to commencement of this Agreement	Annual Salary effective from the first full pay period after commencement of this Agreement (inclusive of 4% increase)
	\$	\$
Senior Electrical Technician/Instrument Fitter	128,455	133,593
Grade 3 Electrical Technician/Instrument Fitter	125,563	130,586
Grade 2 Electrical Technical/Instrument Fitter	123,602	128,546
Grade 1 Electrical Technician/Instrument Fitter	120,549	125,371
Senior Mechanical Tradesperson	121,792	126,664
Grade 3 Mechanical Tradesperson	116,310	120,962
Grade 2 Mechanical Tradesperson	112,911	117,427
Grade 1 Mechanical Tradesperson	107,554	111,857
Site Artisan	96,547	100,409
Serviceperson/ Lubrication Technician	92,620	96,325

Level	Annual Salary prior to commencement of this Agreement	Annual Salary effective from the first full pay period after commencement of this Agreement (inclusive of 4% increase)
	\$	\$
Refrigeration / Air Conditioning Technician	107, 554	111, 857

Shift Workers

Level	Annual Salary prior to commencement of this Agreement	Annual Salary effective from the first full pay period after commencement of this Agreement (inclusive of 4% increase)
	\$	\$
Senior Electrical Technician/Instrument Fitter	132, 778	140, 273
Grade 3 Electrical Technician/Instrument Fitter	130, 778	137, 115
Grade 2 Electrical Technician/Instrument Fitter	128, 732	134, 973
Grade 1 Electrical Technician/Instrument Fitter	125, 526	131, 640

6.2 The above Ordinary Rates of pay are minimum rates. The base hourly rate is calculated on the following basis **(Base Hourly Rate)**:

- (a) 40 hours per week for a day worker **(Day Worker)**; and
- (b) 42 hours per week for a shift worker **(Shift Worker)**.

6.3 Where an Employee is required to perform shiftwork, work on site or regular overtime, the Company will ensure that the Employee is better off overall (based on his/her overall terms and conditions of employment) when compared against the relevant award that would otherwise apply but for the operation of this agreement.

- (a) In calculating the rate of pay the following considerations have been taken into account:
 - (i) reasonable additional rostered overtime of 2 hours per week for a Day Worker and 4 hours per week for a Shift Worker;
 - (ii) the relevant rate of pay that would be applicable to the Employee under the relevant award;

- (iii) the hours and arrangement of work that the employee will be required to work;
 - (iv) penalty rates attributable under the relevant award to those hours;
 - (v) the applicable allowances and loadings under the relevant award;
 - (vi) any expenses occurred by the Employee for distance work with respect to travel and board and lodging where these are not provided by the Company or its clients; and
 - (vii) any other provision of the relevant award which would provide the Employee with a monetary entitlement or compensate them for an expense.
- (b) Where there is a change in the hours or arrangement of work to be performed by the Employee, or the provisions of the relevant award are varied, the Company will reassess the Employee's rate of pay to ensure that they are not disadvantaged against the relevant award. Where as a result of any such change there is a need to increase the Employee's rate of pay, the increase (if not implemented prior) will be backdated to the date of that change.

Apprentices

6.4 The minimum ordinary rate of pay for an apprentice will be as follows:

Apprenticeship	Mechanical (% of Grade 1)	Electrical (% of Grade 1)
Four Year Term Salary		
First Year	45	45
Second Year	55	55
Third Year	75	75
Fourth Year	88	88
Three and a Half Year Term		
First six months	45	45
Next Year	55	55
Next Year	75	75
Final Year	88	88
Three Year Term		
First Year	55	55

Apprenticeship	Mechanical (% of Grade 1)	Electrical (% of Grade 1)
Second Year	75	75
Third Year	88	88

The ordinary rate of pay for an adult apprentice (over 21 years of age) will not be less than 65% of the prescribed rate for a Grade 1 Mechanical Tradesperson or Grade 1 Electrical Tradesperson in this Agreement.

Payment of Wages

- 6.5 Wages shall be paid on a monthly basis by electronic fund transfer to an acceptable financial institution nominated by the Employee.
- 6.6 The Employer may deduct from an Employee's wages, or any monies owing, any amount it is authorised or required to deduct, including any overpayment of remuneration or any amount provided for by this Agreement. The Employee shall have access to the dispute settlement procedure of the agreement in the event of a dispute over the method and/or rate of pay back of any monies owing to the Employer.

Tools

- 6.7 The Employer will provide all tools and test equipment for Employees, with the exception of small hand tools.
- 6.8 An Employee shall replace or pay for any tools supplied by the Employer if lost or damaged through the Employee's negligence, which excludes fair wear and tear or accidental loss. The Employer shall replace any tools provided by an Employee on a like for like basis that have been lost or damaged as a result of the Employer's negligence.

Rate Increases

- 6.9 The Company will provide a guaranteed minimum increase to the rates of pay in Clause 6.1, adjusted by the seasonally adjusted Wage Price Index (WPI) for Australia for the year, as released by the Australian Bureau of Statistics for the March quarter of that year and in accordance with the following subclauses 6.10 and 6.11.
- 6.10 A safety net of 2.0% and ceiling of 4.0% will apply to the increase. For the avoidance of doubt, if the WPI is less than 2.0%, a 2.0% increase will be provided. If the WPI is greater than 4.0%, a 4.0% increase will be provided. If the WPI is between 2.0% and 4.0%, the specified WPI figure will apply.
- 6.11 The first increase to the rates of pay in Clause 6.1 will occur from the first full pay period following 1 July 2024. Further increases to the rates of pay in Clause 6.1 will occur on 1 July 2025, 1 July 2026 and 1 July 2027.
- 6.12 The following allowances under this Agreement shall increase on the same basis as provided for in subclauses 6.9-6.11 of this Agreement:

- Standby Allowance (Clause 8.3)
- Recall Allowance (Clause 8.7)
- Step Up Allowance (Clause 8.12)

7. HOURS OF WORK

- 7.1 An Employee's ordinary hours of work (**Ordinary Hours**) are an average of:
- (a) 40 hours per week for a Day Worker, comprising an average of 38 nominal hours and two (2) hours regular reasonable additional rostered hours; and
 - (b) 42 hours per week for a Shift Worker in accordance with clause 10 ("Shift Work"), comprising an average of 38 nominal hours and four (4) hours regular reasonable additional rostered hours.
- 7.2 Ordinary Hours for a Day Worker will be worked between 6.00 a.m. and 6.00 p.m., Monday to Friday.
- 7.3 The spread of Ordinary Hours and the pattern of working hours within the spread of Ordinary Hours may be altered by agreement with an individual Employee or with the majority of Employees covered by this Agreement. Failing agreement, the Employer will give those Employees two weeks' notice of the change. Arrangements for adjusting the spread of ordinary hours may include, but are not limited to, a day worker working four ten-hour days in a week, or a shift worker working four 10.5-hour days in a week.
- 7.4 Ordinary Hours for a Day Worker will not exceed 10 hours on any day.
- 7.5 Ordinary Hours for a Shift Worker will not exceed 12 hours on any day.
- 7.6 Where the Employer wishes to transfer an Employee from
- day work to shift work or;
 - from shift work to day work or;
 - from one shift to another shift of the same type;
- it shall seek the agreement of the Employees involved.
- Failing agreement, the Employer shall give those Employees one month's notice of the change.
- For unplanned shutdowns, the Employer may transfer an Employee for any of the reasons outlined above immediately where there is agreement between the parties.
- 7.7 For the avoidance of doubt, for those entitlements that accrue on the basis of ordinary hours of work, the ordinary hours for accrual purposes are 40 hours per week for a Day Worker and 42 hours per week for a Shift Worker.

8. OVERTIME

- 8.1 The Employer may require an Employee to work a reasonable amount of overtime including rostered overtime. Payment for 4 hours reasonable additional rostered overtime per week is included in the annual wage rate for Shift Workers and two hours reasonable additional rostered overtime per week for Day Workers.
- 8.2 Subject to the provisions of this clause, all work done beyond the Ordinary Hours (which includes reasonable additional rostered overtime per week of 4 hours for Shift Workers and 2 hours for Day Workers) will be paid for at the following rates:
- Monday to Friday: Time and a half for the first two hours and Double Time thereafter.
 - Saturday, Sunday: Double Time
 - Public Holidays: Double time and a half

Standby Allowance

- 8.3 In the event that an Employee is required to participate in the Employer's callout roster, the Employee will be paid a "standby allowance" calculated on a daily basis as per the following table:

Day Type	Daily Allowance
Weekday	\$64.63
Weekends	\$161.38
Public Holidays	\$242.03

- 8.4 These rates will be increased in accordance with the rate of the remuneration increase provided to Employees by the Company from 1 July each year, as applicable.

Recall

- 8.5 In the event an Employee is called in to work in non-working hours, compensation will be as per the following table which will commence from the time the Employee departs from their residence:

Day Type	Rate per Hour
Monday to Friday (Excluding Public Holidays)	1.5 x Base Hourly Rate for the first two hours and 2.0 x Base Hourly Rate thereafter
Saturday or Sunday	2.0 x Base Hourly Rate
All Public Holidays Hours	2.5 x Base Hourly Rate

- 8.6 An Employee recalled to work in accordance with this clause will be entitled to a minimum callout payment of 4 hours, plus 1 hour for travel calculated as per overtime or public holiday rates detailed in the table above.
- 8.7 An Employee recalled to work in non-working hours will also receive a “recall allowance” calculated on a daily basis as per the following table:

Day Type	Daily Allowance
Weekday	\$64.63
Weekends	\$161.38
Public Holidays	\$242.03

Despite any other provisions in this clause, an Employee will receive either the “standby allowance” or the “recall” allowance, not both. As is expected for normal working hours, Employees who are recalled for work in non-working hours must present for work in a state that is fit for work to receive payment.

Working of Overtime

- 8.8 When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that an Employee has at least ten consecutive hours off duty between the work of successive days.
- 8.9 An Employee who works so much overtime between the termination of the Employee's work on one day and the commencement of the Employee's ordinary work on the next day so that the Employee has not had at least ten consecutive hours off duty between those times shall, subject to this clause, be released after completion of such overtime until the Employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- 8.10 If, on instructions of the Employer, such an Employee resumes or continues work without having had such ten consecutive hours off duty, the Employee will be entitled to be absent for such period of ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

Withdrawal of Overtime

- 8.11 The Employer may withdraw overtime (including rostered overtime) on any day where the Employee(s) concerned have been stood down because they cannot be usefully employed because of any breakdown in machinery or any stoppage of work by any cause for which the Employer cannot be reasonably held responsible or because of industrial action.

Shut Down Payment – Step Up Allowance

- 8.12 Where an Employee is directed by the Company to work during a shutdown (and step up to lead contractors) for the purpose of maintaining plant and equipment, an additional payment will be made for employees stepping up during the shutdown as follows, if applicable:

- Ten (10) hour shift: An additional \$80.00 per day worked or part thereof
- Twelve (12) hour shift: An additional \$100.00 per day worked or part thereof

9. MEAL AND CRIB BREAKS

Meal breaks

- 9.1 The Employer shall structure the working hours to include one half-hour unpaid meal break for Day Workers to be commenced within the first six hours of work, provided that this may be extended upon agreement between an Employee, or group of Employees, and the Employer.
- 9.2 If the Employee is working shift work in accordance with clause 10 ("Shift Work"), then in lieu of the meal breaks in clause 9.1 the Employee is entitled to a 30 minute meal break paid at Ordinary Rates.
- 9.3 An Employee, where they agree to do so, will work during meal breaks and be paid at Ordinary Rates for the purpose of making good breakdown of plant or upon routine maintenance of plant which can only be done while such plant is idle.
- 9.4 A morning tea break paid at Ordinary Rates will be allowed to each Employee, provided that such break shall not exceed 15 minutes duration. If the Employee is working shift work in accordance with clause 10 ("Shift Work"), the Employee is entitled to an additional tea break paid at Ordinary Rates.
- 9.5 The Employer may stagger the times for Employees to take meal and tea breaks to meet operational requirements.

10. SHIFT WORK

- 10.1 The Employer has the right to direct Employees to work shift-work as required. Prior to the commencement of shift-work or variation of the shift system in operation, the Employer shall seek the agreement of the Employees involved. Failing agreement, the Employer will provide to the Employees concerned one month's notice (unless a lesser period is mutually agreed between the employee/s and employer) of the commencement of shift-work or variation of the shift system in operation, and the starting and finishing times of ordinary hours of the shifts.
- 10.2 Where an Employee works shift work, the Employee will be paid an annual shift allowance of 28% of the Employee's Base Hourly Rate (based on the day shift rate). This payment will be on a pro rata basis where an employee works two weeks or more of shift work. In cases of where an Employee works shift work of periods less than two weeks, each shift will be paid at the relevant overtime rates. Where the annual shift allowance is payable to an Employee under this clause, the Employee will be entitled to continue to be paid the shift allowance whilst taking any form of paid leave specified in this Agreement. Notice of termination and redundancy entitlements will also consider the annual shift allowance where an annual shift allowance is payable to an Employee.

Definition for purpose of 5th week of annual leave

- 10.3 For the purpose of the additional week of leave provided in clause 12 ("Annual Leave"), a Shift Worker means a continuous shift worker who is engaged to work in a system of consecutive shifts throughout the 24 hours of each of at least six consecutive days without interruption (except during breakdown or meal breaks or due to unavoidable causes beyond the control of the Employer) and who is regularly rostered to work those shifts.

11. PROTECTIVE EQUIPMENT AND CLOTHING

- 11.1 All Employees will be issued with appropriate protective equipment including case hardened prescription glasses where required.
- 11.2 Employees engaged for one week or more pursuant to this Agreement shall be given an issue of one pair of safety footwear and three sets of work clothing (pants or overalls, and jacket) unless the Employee has previously been given an issue of boots or clothing by the Employer within the previous 12 months and the issue is still in good condition. The clothing issue will be provided within one month of commencing. Consistent with the instructions provided during any site orientation and induction process, protective clothing and equipment must be worn correctly at all times and helmets must not be painted, drilled or modified in any way.
- 11.3 Re-issue of the specified clothing shall be on the basis of fair wear and tear. An Employee's supervisor will be required to sign off on reasonable requests for re-issue of the specified clothing.

12. ANNUAL LEAVE

- 12.1 For each year of service, an Employee is entitled to:
- (a) 4 weeks (160 hours) of paid annual leave; or
 - (b) 5 weeks (210 hours) of paid annual leave if the employee is a Shift Worker. For this purpose a Shift Worker means a continuous shift worker as defined in clause 10.3 of this Agreement.
- 12.2 Annual leave accrues progressively during a year of service according to the employee's Ordinary Hours and accumulates from year to year. Annual leave does not accrue during any period of unpaid leave, or unpaid authorised absence or unauthorised absence or workers' compensation.
- 12.3 Annual leave can be taken by agreement between the Employer and Employee following a request by the Employee to take accrued annual leave. Leave approval is subject to the operational requirements of the workplace but shall not be unreasonably withheld.
- 12.4 The Employer may also require an Employee to take accrued annual leave:
- (a) by giving a minimum of 4 weeks' notice; or
 - (b) where the Employer shuts down all or any part of the business;
- providing that the requirement to take leave is reasonable in the circumstances.

- 12.5 If, where the Employer shuts down all or any part of the business, an Employee does not have sufficient accrued leave he/she may be required to take leave without pay.
- 12.6 Any untaken annual leave is paid out on termination.
- 12.7 Annual leave is paid according to the Employee's Ordinary Hours. Employees are not entitled to annual leave loading as it has been incorporated into the Ordinary Rates.
- 12.8 Shift Workers will continue to receive the shift allowance as prescribed in clause 10.2.
- 12.9 By written agreement with the Employer, an Employee may elect to cash out part of his/her accrued annual leave entitlement each 12 months, provided that:
- (a) paid annual leave cannot be cashed out if the cashing out would result in the Employee's remaining accrued entitlement to paid annual leave being less than four weeks;
 - (b) each cashing out of a particular amount of paid annual leave must be by a separate written agreement in writing between the Employer and the Employee; and
 - (c) the Employee must be paid at least the full amount that would have been payable to the Employee had the Employee taken the leave.

13. PERSONAL/CARER'S LEAVE

- 13.1 Personal/carer's leave entitlements are provided for in the NES.

Paid Personal/Carer's Leave

- 13.2 Employees engaged pursuant to this Agreement will be entitled to paid personal/carer's leave for each year of service in accordance with the table below:

Terms of Employment	Entitlement
Day Worker (40 hour week)	ten days (80 hours) for each year of service
Shift Worker	ten days (84 hours) for each year of service
Part time	Pro rata entitlement on permanent standard (40 hour week) accrued on the basis of the proportion of hours worked to full time hours (40 hours)

- 13.3 Paid personal/carer's leave accrues progressively during a year of service according to the Employee's Ordinary Hours and accumulates from year to year. Paid personal/carer's leave does not accrue during any period of unpaid leave,

unauthorised absence or workers' compensation.

13.4 Paid personal/carer's leave may only be taken:

- (a) because the Employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or
- (b) to provide care or support to a member of the Employee's immediate family, or a member of the Employee's household, who requires care or support because of:
 - (i) a personal illness, or personal injury, affecting the member; or
 - (ii) an unexpected emergency affecting the member.

13.5 Paid personal/carer's leave may not be taken in advance of accrual.

13.6 An Employee engaged pursuant to this Agreement will be paid for any period of paid personal/carer's leave at the Employee's Ordinary Rates for the period.

13.7 Accrued but untaken paid personal/carer's leave will not be paid out either during employment or upon termination of employment.

Unpaid Carer's Leave

13.8 Unpaid carer's leave entitlements are provided for in the NES.

13.9 The NES entitles Employees to 2 days of unpaid carer's leave for each occasion (a permissible occasion) when a member of their immediate family or household, requires care or support because of:

- (a) a personal illness, or personal injury, affecting the member; or
- (b) an unexpected emergency affecting the member.

13.10 Under the NES:

- (a) an Employee may take unpaid carer's leave for a particular permissible occasion if the leave is taken to provide care or support as referred to in clause 13.9;
- (b) an Employee may take unpaid carer's leave for a particular permissible occasion as:
 - (i) a single continuous period of up to 2 days; or
 - (ii) any separate periods to which the Employee and the Employer agree;
- (c) an Employee cannot take unpaid carer's leave during a particular period if the Employee could instead take paid personal/carer's leave.

Notice and Evidence Requirements (paid and unpaid personal/carer's leave)

13.11 An Employee who is unable to attend work must notify the Employer as soon as practicable of

his/her inability to attend work, the estimated duration of the absence and the reason for the absence. Generally this should occur before the commencement of the Employee's shift.

13.12 An Employee who has given notice of the taking of personal/carer's leave must provide the Employer with evidence that would satisfy a reasonable person that the leave is being taken for the specified reason. For the avoidance of doubt, if an Employee is unable to obtain a medical certificate, the Employer shall accept a statutory declaration from the Employee. Evidence will not be required where only a single day of paid or unpaid personal/carer's leave is taken in any one week, unless the Employee is being performance managed for any reason.

13.13 An employee is not entitled to take paid or unpaid personal/carer's leave under the NES unless the employee complies with these notice and evidence requirements.

Workers' Compensation Exclusion

13.14 An Employee is not entitled to take paid or unpaid personal/carer's leave during a period when the Employee is absent from work because of a personal illness, or a personal injury, for which the Employee is receiving workers' compensation.

14. COMPASSIONATE LEAVE

14.1 Employees are entitled to 2 days of compassionate leave for each occasion (a permissible occasion) when a member of their immediate family or household:

- (a) contracts or develops a personal illness that poses a serious threat to his or her life; or
- (b) sustains a personal injury that poses a serious threat to his or her life; or
- (c) dies.

Permissible occasions

14.2 An Employee may take compassionate leave for a particular permissible occasion if the leave is taken:

- (a) to spend time with the member of the Employee's immediate family or household who has contracted or developed the personal illness, or sustained the personal injury, referred to in clause 14.1; or
- (b) after the death of the member of the Employee's immediate family or household referred to in clause 14.1.

14.3 An Employee may take compassionate leave for a particular permissible occasion as:

- (a) a single continuous 2 day period; or
- (b) 2 separate periods of 1 day each; or
- (c) any separate periods to which the employee and the Employer agree.

14.4 If the permissible occasion is the contraction or development of a personal illness,

or the sustaining of a personal injury, the Employee may take the compassionate leave for that occasion at any time while the illness or injury persists.

Payment

- 14.5 An Employee will be paid for any period of compassionate leave at the Employee's Ordinary Rate for the period.

Notice and Evidence Requirements

- 14.6 An Employee who wishes to take compassionate leave must notify the Employer as soon as practicable of the reason for and estimated period of the leave. Generally this should occur before the commencement of the Employee's shift.
- 14.7 An Employee who has given notice of the taking of compassionate leave must provide the Employer with evidence that would satisfy a reasonable person that the leave is being taken for that reason.
- 14.8 An Employee is not entitled to take compassionate leave unless the Employee complies with these notice and evidence requirements.

Workers' Compensation Exclusion

- 14.9 An Employee is not entitled to take compassionate leave during a period when the Employee is absent from work because of a personal illness, or a personal injury, for which the Employee is receiving workers' compensation.

15. PUBLIC HOLIDAYS

- 15.1 The following days shall be observed as public holidays for Day Worker Employees (Public Holidays):
- (a) New Year's Day (1 January);
 - (b)** Australia Day (26 January);
 - (c) Good Friday;
 - (d) Easter Monday;
 - (e) Easter Sunday
 - (f) Anzac Day (25 April);
 - (g) Labour Day;
 - (h) WA Day;
 - (i) Sovereign's Birthday;
 - (j) Christmas Day (25 December); and
 - (k) Boxing Day (26 December),

provided that, if any other day declared by or under a law of a State or Territory is generally observed in a locality as an additional day or as a substitute day for any of the said holidays, the additional day shall also be observed or the day so substituted shall be observed.

- 15.2 Employees who, because it is a Public Holiday, are not required to work on a day on which they are normally required to work will be paid according to the Employee's Ordinary Hours on that day.
- 15.3 When New Year's Day, ANZAC Day or Christmas Day falls on a Saturday or Sunday, the next following Monday is also a Public Holiday.
- 15.4 When Boxing Day falls on a :
- (a) Saturday, the next following Monday is also a Public Holiday; or
 - (b) Sunday or Monday, the next following Tuesday is also a Public Holiday.

16. LONG SERVICE LEAVE

- 16.1 Employees are entitled to 13 weeks Long Service Leave after each period of ten (10) years of continuous service with the Employer.
- 16.2 In the event an Employee's employment is terminated, except for serious misconduct, the Employee will be entitled to a pro rata amount of Long Service Leave for each of the following periods:
- (a) (during the initial ten (10) years of continuous service) after at least seven (7) years, but less than ten (10) years, of continuous service; and
 - (b) (for each period of ten (10) years of continuous service after the initial ten (10) years of continuous service) at least five (5) years, but less than ten (10) years, of continuous service.

17. UNPAID PARENTAL LEAVE

- 17.1 Unpaid parental leave entitlements are provided for in the NES.

18. COMMUNITY SERVICE LEAVE

- 18.1 Unpaid leave for voluntary emergency management activities and leave for jury service (including up to 10 days' paid leave for Employees) are provided for in the NES.

19. FAMILY AND DOMESTIC VIOLENCE LEAVE

- 19.1 Family and domestic violence leave is provided for in the NES.

20. REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

- 20.1 Requests for flexible working arrangements are provided for in the NES.

21. SUPERANNUATION

21.1 Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees.

21.2 Contributions shall be paid into an eligible fund nominated by the Employee. Provided that where an Employee does not nominate a fund, or the Employer is unable to pay into that fund, contributions will be paid into the default fund of the Employer.

Voluntary Employee Contributions

21.3 Subject to the governing rules of the relevant superannuation fund, an Employee may, in writing, authorise the Employer to pay on behalf of the Employee a specified amount from the post- taxation wages of the Employee into the same superannuation fund as referred to in clause 19.2.

21.4 An Employee may adjust the amount the Employee has authorised the Employer to pay from the wages of the Employee from the first of the month following the giving of one months' written notice to the Employer.

21.5 The Employer must pay the amount authorised under paragraph clause 19.3 or 19.4 no later than 28 days after the end of the month in which the deduction authorised under clause 19.3 or 19.4 was made.

22. TERMINATION OF EMPLOYMENT

22.1 The contract of employment may be terminated at any time by:

- (a) the Employer giving the Employee written notice in accordance with the table below; or
- (b) the Employee giving the Employer written notice in accordance with the table below:

Employee's period of continuous employment	Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

22.2 The period of notice to be given by the Employer is increased by one week if the Employee is over 45 years of age and has completed at least 2 year's continuous service with the Employer. The Employee will not be required to provide additional

notice because of age.

- 22.3 Instead of providing notice, the Employer may provide the Employee with payment in lieu of notice for the period of notice not provided. Payment shall be the total of all amounts that, if the employment had continued until the end of the required notice period, the Employer would have become liable to pay.
- 22.4 Where the Employee fails to provide the required notice, the Employer may deduct from any monies owing an amount equivalent to the period of notice not provided.
- 22.5 This clause does not operate so as to prevent an Employee and the Employer from agreeing to accept a greater or lesser amount of notice period when terminating the contract.
- 22.6 Other than in extenuating circumstances, if the Employee is absent from work for more than 5 consecutive work days without the Employer's authorisation, their employment will be deemed to have been abandoned.
- 22.7 Notwithstanding the above, an Employee may be dismissed without notice for serious misconduct, and in such case wages shall be paid up to the time of dismissal only.

Return of Property

- 22.8 On the termination of employment, the Employee must return all property of the Employer prior to receiving any final payments.

23. REDUNDANCY

- 23.1 Redundancy entitlements are provided for in the NES.
- 23.2 Under the NES, an Employee is entitled to be paid a redundancy payment by the Employer if the Employee's employment is terminated:
- (a) at the Employer's initiative because the Employer no longer requires the job done by the Employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
 - (b) because of the insolvency or bankruptcy of the Employer.

PERIOD OF CONTINUOUS SERVICE	REDUNDANCY PAY PERIOD
Less than 1 year	Nil
1 year but less than 2 years	4 weeks
2 years but less than 3 years	6 weeks
3 years but less than 4 years	7 weeks
4 years but less than 5 years	8 weeks
5 years but less than 6 years	10 weeks
6 years but less than 7 years	11 weeks

7 years but less than 8 years	13 weeks
8 years but less than 9 years	14 weeks
9 years but less than 10 years	16 weeks
10 years and over	16 weeks

- 23.3 The amount of redundancy pay is in addition to the period of notice to which the Employee is entitled.

Variation of redundancy pay for other employment or incapacity to pay

- 23.4 The Employer may apply to the Commission to reduce the amount of redundancy pay (which may be to nil) if it obtains other acceptable employment for the Employee or cannot pay the amount.

Transfer of business

- 23.5 Redundancy entitlements do not apply where there is a transfer of business and the Employee accepts employment with the new employer who agrees to recognise the Employee's service with the Employer for the purpose of calculating future redundancy entitlements.

- 23.6 Subject to any order of the Commission, redundancy entitlements also do not apply where there is a transfer of business and the Employee rejects an offer of employment made by the new employer that:

- (a) is on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the Employee's terms and conditions of employment with the Employer; and
- (b) recognises the Employee's service with the Employer for the purpose of calculating future redundancy entitlements.

Employees not covered by redundancy pay provision,

- 23.7 The following Employees are not eligible for redundancy pay:

- (a) an Employee employed for a specified period of time or for a specified task;
- (b) an Employee whose employment is terminated because of serious misconduct;
- (c) an apprentice;
- (d) an Employee (other than an apprentice) to whom a training arrangement applies and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement.

24. DISPUTE SETTLEMENT PROCEDURE

- 24.1 If a dispute relates to:

(a) a matter arising under this Agreement; or

(b) the NES;

this clause sets out procedures to settle the dispute.

24.2 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 concerned and relevant supervisors and/or management.

24.3 Discussions should commence with a level of supervision or management appropriate to the particular dispute. If the dispute is not resolved at that level, discussions should involve the Employer's staff member responsible for industrial relations at the Site and, if the issue remains unresolved, the Employer's senior Site manager.

24.4 If discussions at the workplace level do not resolve the dispute a party to the dispute may refer the matter to Commission.

24.5 Provided the Commission is satisfied that clauses 22.2 and 22.3 have been complied with and that genuine attempts have been made to resolve the dispute at the workplace level, the Commission must attempt to resolve the dispute by mediation or conciliation.

24.6 The Commission may attempt to resolve the dispute by making a recommendation.

24.7 If the dispute remains unresolved, the Commission may arbitrate and make a determination that is binding on the parties (save for any right of appeal to the Commission) in the following circumstances:

(a) where either party to the dispute wishes for the matter to be arbitrated and

(b) provided that the Commission must not make a determination which is inconsistent with this Agreement.

24.8 Each party will be bound by the decision (save for any right of appeal to the Commission).

24.9 Any party to the dispute may, at any stage, appoint a representative of their choice for the purposes of the procedures in this clause.

24.10 At all times whilst a question or dispute is being resolved work will continue, subject to relevant occupational health and safety considerations in accordance with the relevant legislation.

25. INDIVIDUAL FLEXIBILITY ARRANGEMENTS

25.1 The Employer and an Employee covered by this Agreement may agree to make an Individual Flexibility Arrangement (IFA) to vary the effect of terms of this Agreement (in relation to the Employer and the Employee), in order to meet the genuine needs of the Employer and the Employee.

25.2 The IFA must be genuinely agreed to by the Employer and the Employee.

Terms which may be varied

25.3 The terms of this Agreement the effect of which may be varied by an IFA are the following:

- (a) Clause 7 ("Hours of Work");
- (b) Clause 8 ("Overtime");
- (c) Clause 9 ("Meal and Crib Breaks");
- (d) Clause 10 ("Shift Work").

Employer must ensure

25.4 The Employer must ensure that:

- (a) the IFA is in writing;
- (b) the IFA is about matters that would be permitted matters under section 172 of the *FW Act*;
- (c) the IFA does not include a term that would be an unlawful term under section 194 of the *FW Act*;
- (d) the IFA results in the Employee being better off overall than the Employee would be if no IFA was made;
- (e) the IFA is signed in all cases by the Employer and the Employee (and if the Employee is under 18 years of age by a parent or guardian of the Employee);
- (f) a copy of the IFA is given to the Employee within 14 days after it is agreed to.

25.5 The Employer or the Employee may terminate the IFA:

- (a) by either the Employer or the Employee giving 28 days written notice; or
- (b) if the Employer and Employee agree in writing - at any time.

26. CONSULTATION - MAJOR WORKPLACE CHANGE

26.1 This clause applies if a major workplace change is likely to have a significant effect on Employees **(the relevant Employees)**.

26.2 The Employer must notify the relevant Employees and their Union/s of the major workplace change.

26.3 The Employer must consult with the relevant Employees about:

- (a) the timing and introduction of the change;
- (b) the effect the change is likely to have on the Employees; and

- (c) measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employees.

26.4 The Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.

26.5 The Employer must consider matters raised about the major change by the relevant Employees and their Union/s.

26.6 An Employee may appoint a representative for the purposes of the consultation.

27. NO EXTRA CLAIMS

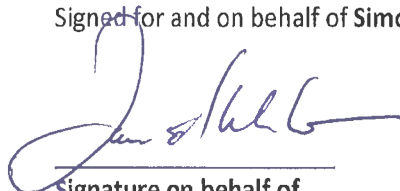
27.1 During the term of this Agreement there shall be no extra claims for any changes in remuneration or conditions of employment. The Agreement is comprehensive and is intended to be exhaustive of the terms and conditions of the employment relationship between the Employer and its Employees.

27.2 The wages, allowances, payments, conditions etc. as detailed in this Agreement are acknowledged and recognised as covering all circumstances, conditions and disabilities encountered.

28. SIGNATURES

Employer

Signed for and on behalf of Simcoa Operations Pty Ltd



Signature on behalf of
the Company



Name of person authorised
to sign

Date: 5/3/2024

VP Site Services + Marketing

Position

973 Marriott Road

Address

Wellesley

Post Cod

6233

For Employees

Signed on behalf of the Employees covered by this agreement



THOMAS MARTIN

Date: 7/3/24

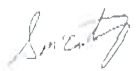
Signature of _____ Name of Employee _____
Employee Representative

ROLLER MAUER
Authority to Sign (Position Title)

 973 MARLIOTT ROAD WELLESLEY 6233
Address _____ Post Code _____

For the AMWU

Signed on behalf of the AMWU



Signature of

Steve McCartney

Name of Representative

Date: 06 / 03 / 24

121 Royal Street, East Perth WA

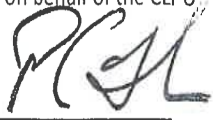
Address

6004

Post Code

For the CEPU

Signed on behalf of the CEPU



Signature of

Peter Carter

Name of Representative

Date: 29 / 2 / 2024

3 Focal Way, Baywater WA

Address

6053

Post Code

APPENDIX 1- CLASSIFICATION STRUCTURE

Note: Nothing in the classification structure prevents the Company from appointing an Employee to a higher classification level at the Company's discretion.

ELECTRICAL

Senior Electrical Technician / Instrument Fitter

- An Employee who is appointed as such at the discretion of the Company; and
- Meets all the criteria of a Grade 3 Electrical Technician and Instrument Fitter.

Grade 3 Electrical Technician / Instrument Fitter

- Meets all the criteria of a Grade 2 Electrical Technician / or Instrument Fitter; and
- Has satisfactorily completed a prescribed post trades course or an advanced trade equivalent, enabling the employee to apply advanced dual trade instrument electrical technician skills; and
- Supervisor's written recommendation forwarded to department manager, taking into account performance and/or any requirement for informal or formal counselling, whether safety or behaviour related; and
- Department Manager determines suitability of recommendation and feedback to the supervisor; and
- Possesses >60 months post trade experience in the industry; and
- >36 months onsite experience at Simcoa.

Grade 2 Electrical Technician /or Instrument Fitter

- Meets all the criteria of a Grade 1 Electrical Technician / or Instrument Fitter; and
- An Employee at this level will hold a single trade qualification; and
- Completion of training and deemed competent in High Voltage Switching, Confined Space and Hazardous Area's electrical installation and maintenance and Industrial Gas Fitting; and
- Supervisor's written recommendation forwarded to department manager, taking into account performance and/or any requirement for informal or formal counselling, whether safety or behaviour related; and
- The Department Manager determines suitability of recommendation and feedback to the supervisor; and
- Possesses 24- 60 months post-trade experience (or an electrical apprenticeship completed on site).

Grade 1 Electrical Technician /or Instrument Fitter

- An Employee appointed to the Company who holds a single trade qualification or has completed an apprenticeship with the Company; and
- Possesses 0 to 24 months post-trade experience.

MECHANICAL (INCLUDING BOILERMAKER AND WELDER)

Senior Mechanical Tradesperson

- An Employee who is appointed as such at the discretion of the Company and;
- Meets all the criteria of a Grade 3 Mechanical Tradesperson or Boilermaker/Welder

Grade 3 Mechanical Tradesperson

- Meets all the criteria of a Grade 2 Mechanical Tradesperson; and
- An Employee at this level will hold a dual trade qualification and/or consistently demonstrate competency in two or more of the following areas: Fabrication, Machining, Mechanical Fitting, Heavy Duty Mechanic or hydraulics; and
- Supervisor's written recommendation forwarded to department manager, taking into account performance and/or any requirement for informal or formal counselling, whether safety or behaviour related; and
- The Department Manager determines suitability of recommendation and feedback to the supervisor and;
- Possesses >60 months post trade experience in the industry; and
- >36 months onsite experience at Simcoa.

Grade 2 Mechanical Tradesperson

- Meets all the criteria of a Grade 1 Mechanical Tradesperson; and
- An Employee at this level will hold a single trade qualification; and
- Completion of training and deemed competent in Confined Space, Dogging and Basic Rigging, Elevated Work Platform and Forklift Operation; and
- Supervisor's written recommendation forwarded to department manager, taking into account performance and/or any requirement for informal or formal counselling, whether safety or behaviour related; and
- Department Manager determines suitability of recommendation and feedback to the supervisor ; and
- Possesses 24- 60 months post-trade experience (or a mechanical apprenticeship completed on site).

Grade 1 Mechanical Tradesperson

- An Employee newly appointed to the Company who holds a single trade qualification or has completed an apprenticeship with the Company ; and
- Possesses 0 to 24 months post-trade experience.

OTHER CLASSIFICATIONS

Serviceperson / Lubrication Technician

- An Employee appointed at this classification must possess the requisite training, qualifications and licenses (as applicable) required for this position in the use of a forklift, elevated work platform and a mobile crane.

Site Artisan

- An Employee appointed at this classification must possess the requisite training, qualifications and licenses (as applicable) required for this position in the use of a forklift, elevated work platform, mobile crane and basic rigging.

Refrigeration Mechanic / Aircon Technician

- An Employee appointed at this classification must possess the requisite training, qualifications and licenses (as applicable) required for this position in dogging and in the use of a forklift and elevated work platform; and
- Possess a current electrical workers license; and
- A trade certificate in refrigeration and air conditioning.