



# DECISION

*Fair Work Act 2009*

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

**Dreampath Recruitment Pty Ltd T/A Dreampath Pty Ltd**  
(AG2020/198)

## DREAMPATH ON-HIRE EMPLOYEE AGREEMENT 2020

Building, metal and civil construction industries

COMMISSIONER HUNT

BRISBANE, 12 MARCH 2020

*Application for approval of the Dreampath On-Hire Employee Agreement 2020.*

[1] Dreampath Recruitment Pty Ltd T/A Dreampath Pty Ltd (the Employer) has applied for approval of an enterprise agreement known as the *Dreampath On-Hire Employee Agreement 2020* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). The Agreement is a single-enterprise agreement.

[2] The Fair Work Commission (the Commission) raised certain concerns regarding the Agreement with the Employer, and as a result, the Employer has provided written undertakings. A copy of the undertakings is attached at Annexure A. Pursuant to s.190(4) of the Act I sought the views of the employee bargaining representative for the Agreement regarding the undertakings.

[3] 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. Pursuant to s.190 of the Act, I accept the undertakings. In accordance with s.201(3) of the Act, I note that the undertakings are taken to be a term of the Agreement.

[4] I have taken into consideration the material filed in the Commission. Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met. The Agreement does not cover all of the employees of the employer, however, taking into account s.186(3) and (3A) I am satisfied that the group of employees was fairly chosen.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 19 March 2020. The nominal expiry date of the Agreement is 12 March 2024.



COMMISSIONER

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**Annexure A:**

IN THE FAIR WORK COMMISSION

Matter Number: AG2020/198

Applicant: Dreampath Recruitment Pty Ltd

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

**Undertaking- Section 190**

I Marc Meili, Managing Director, give the following undertaking in relation to *Dreampath On-Hire Employee Agreement 2020* (the Agreement).

1. I have the authority given to me by Dreampath Recruitment Pty Ltd to provide the following undertakings in relation to the application before the Fair Work Commission.
2. I have sought views of the bargaining representative for this undertaking pursuant to section 190(4) of the *Fair Work Act (Cth)*.
3. Dreampath Recruitment Pty Ltd gives the following undertaking pursuant to section 190 of the *Fair Work Act 2009 (Cth)*
  - a. In relation to the wage rates contained in Appendix 1 we undertake that the rates are as follows:

Classification	Rates On Lodgement		
	Column A	Column B	Column C
	Weekly Hire weekly rate of pay including special allowance & industry allowance.	Ordinary hourly rate of pay including special allowance & industry allowance.	Casual hourly rate of pay including 25% casual loading & special allowance & industry allowance.
Level 9 (ECW 9)	\$1,059.29	\$27.88	\$34.85
Level 8 (CW/ECW 8)	\$1,041.63	\$27.41	\$34.26
Level 7 (CW/ECW7)	\$1017.89	\$26.79	\$33.48
Level 6 (CW/ECW6)	\$990.64	\$26.07	\$32.59
Level 5 (CW/ECW 5)	\$966.02	\$25.42	\$31.78
Level 4 (CW/ECW4)	\$938.52	\$24.70	\$30.87
Level 3 (CW/ECW3)	\$911.16	\$23.98	\$29.97
Level 2 (CW/ECW2)	\$886.58	\$23.33	\$29.16
Level 1 (CW/ECW1):			
CW/ECW 1 (level d)	\$869.31	\$22.88	\$28.60
CW/ECW 1 (level c)	\$853.96	\$22.47	\$28.09
CW/ECW 1 (level b)	\$842.60	\$22.17	\$27.71
CW/ECW1 (level a)	\$826.37	\$21.75	\$27.18

- b. In relation to clause 14.3 we undertake that the employee's rates will not fall below the minimum rates contained in the Agreement. Where an employee's considers that

over a month period they are not better off overall under this Agreement due to the implementation of clause 14.3, they may request a comparison of the wages received for that roster cycle under this Agreement and the wages they would otherwise have been provided with under the Award. Any shortfall in wages which would otherwise be payable under the Award will be paid to the Employee in the next pay period after the review is completed. If the Employee and Employer cannot reach agreement on the total amount which should be paid by the operation of this undertaking, the Dispute Resolution Procedure in clause 16 of the Agreement will be followed and the parties will agree to the Fair Work Commission arbitrating and making a binding determination to resolve the matter.

- c. In relation to clause 13, clauses 13.1.iii and iv and 13.2 will not be pursued by the Company. The Company it will only apply clause 13 to the extent that it is allowable under section 324 of the *Fair Work Act 2009 (Cth)*, as varied from time to time.
- d. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



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Marc Meili

27/02/2020

## Dreampath On-Hire Employee Agreement 2020

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

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## 1. Title

- 1.1 This will be called the *Dreampath On-Hire Employee Agreement 2020* (the Agreement).

## 2. Parties

- 2.1 The parties to this Agreement are:

- 2.1.1 Dreampath Pty Ltd (ACN 635 076 238) (the Company); and
- 2.1.2 Dreampath Pty Ltd On-Hire Employees who:
- i. Are employed throughout all States and Territories of Australia, excluding Victoria; and
  - ii. Whose employment would have been otherwise covered by the *Building and Construction General On-Site Award 2010*.

## 3. Duration of the Agreement

- 3.1 This Agreement will commence seven (7) days after the date of approval from the Fair Work Commission (FWC).
- 3.2 The Agreement will have a nominal expiry date of four (4) years after the approval notice is issued by the FWC.

## 4. Application

- 4.1 This Agreement shall apply to all On-Hire Employees as outlined in clause 2.
- 4.2 This Agreement shall apply to and be binding upon the Company and its On-Hire Employees in relation to all its operations within the Building and Construction Industry whose employment would have been otherwise covered by the *Building and Construction General On-Site Award 2010*, all States and Territories of Australia, excluding Victoria.

## 5. Scope and Intent

- 5.1 This Agreement shall incorporate the *Building and Construction General On-Site Award 2010*, as varied from time to time. Should there be an inconsistency between this Agreement and the *Building and Construction General On-Site Award 2010*, then the terms of the Agreement shall prevail to the extent of the inconsistency.
- 5.2 Where the Agreement is silent, the terms of the *Building and Construction General On-Site Award 2010* shall apply, in so far as the terms have application.
- 5.3 The terms of this Agreement apply in a manner that does not exclude the National Employment Standards (NES). That is, no provision of the NES is displaced by this Agreement, but the NES provisions may be supplemented by the terms of this Agreement.

The NES will continue to apply to the extent that any term of this Agreement is detrimental in any aspect when compared with the NES.

- 5.4 The Company and On-Hire Employees are committed to the implementation of the Australian Building and Construction Code, namely the *Code for the Tendering and Performance of Building Work 2016 (the Building Code 2016)*. For clarity this Agreement does not incorporate the Building Code 2016.

## 6. Definitions

**“Act”** shall mean the *Fair Work Act 2009 (Cth)* as amended from time to time.

**“Agreement”** shall mean the *Dreampath On-Hire Employee Agreement 2020*.

**“Award”** shall mean the *Building and Construction General On-Site Award 2010*, as varied from time to time.

**“Casual On-Hire Employee”** shall mean an On-Hire Employee who has no guarantee of ongoing or continued work with the Company and is not eligible for paid leave entitlements under this Agreement. A Casual On-Hire Employee/s is entitled to a minimum payment of four (4) hours work per engagement. Casual On-Hire Employees will be paid a 25% casual loading which is in lieu of all paid leave entitlements (annual leave, annual leave loading, personal leave, paid community service leave, notice of termination, public holidays not worked and redundancy entitlements).

**“Client”** shall mean any client of the Company to who employees are on-hired to from time to time.

**“Company”** shall mean Dreampath Pty Ltd (ACN 635 076 238).

**“Continuous shiftworker”** shall mean an On-Hire Employee 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.

**“Fair Work National Minimum Wage Order”** Each national minimum wage order made in an annual wage review comes into operation on 1 July in the next financial year, and continues in operation until the next national minimum wage order comes into operation.

**“Full time On-Hire Employees”** shall mean an On-Hire Employee who has been notified in writing of their full time employment status prior to commencement. A full time On-Hire Employee shall work an average of no less than thirty eight (38) ordinary hours per week over a rostered cycle. A full time On-Hire Employee will accrue annual leave and personal leave and will not be entitled to the 25% casual loading.

**“FWC”** shall mean the Fair Work Commission or any other body that replaces it.

**“Inclement weather”** shall mean the existence of rain or abnormal climatic conditions (whether hail, extreme cold, high wind, severe dust storm, extreme high temperature or the like or any combination of these conditions) where it is not reasonable or it is unsafe for On-Hire Employees to continue working in those conditions.

**“NES”** shall mean National Employment Standards, as varied from time to time.

**“Ordinary hours of work”** shall mean a maximum of 38 hours per week.

**“On-Hire Employees”** shall mean all Company On-Hire Employees who are placed on assignment with a Client of the Company and are covered by this Agreement.



**“Over Agreement Payment”** shall mean any payment that is in excess of the rates contained in this Agreement and/or the *Building and Construction General On-Site Award 2010*.

**“Part time On-Hire Employee”** shall mean an On-Hire Employee who has been notified in writing of their part time employment status prior to commencement. A part time On-Hire Employee works an average of less than thirty eight (38) ordinary hours per week and the On-Hire Employee has reasonably predictable hours of work. Part time On-Hire Employees shall receive a pro rata, equivalent pay and conditions to those full time On-Hire Employees.

**“PPE”** shall mean personal protective equipment.

**“RDO”** shall mean a rostered day off.

## 7. Flexibility

7.1 The Company and On-Hire Employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

7.1.1 The agreement deals with 1 or more of the following matters:

- i. arrangements about when work is performed;
- ii. overtime rates;
- iii. penalty rates;
- iv. allowances; and
- v. leave loading.

7.1.2 the arrangement meets the genuine needs of the employer and On-Hire Employee in relation to 1 or more of the matters mentioned in clause 7.1.1; and

7.1.3 the arrangement is genuinely agreed to by the employer and On-Hire Employee.

7.2 The employer must ensure that the terms of the individual flexibility arrangement:

- i. are about permitted matters under section 172 of the Act; and
- ii. are not unlawful terms under section 194 of the Act; and
- iii. result in the On-Hire Employee being better off overall than the On-Hire Employee would be if no arrangement was made.

7.3 The employer must ensure that the individual flexibility arrangement:

7.3.1 is in writing; and

7.3.2 includes the name of the employer and On-Hire Employee; and

7.3.3 is signed by the employer and On-Hire Employee and if the On-Hire Employee is under 18 years of age, signed by a parent or guardian of the On-Hire Employee; and

7.3.4 includes details of:

- i. the terms of the enterprise agreement that will be varied by the arrangement; and
- ii. how the arrangement will vary the effect of the terms; and
- iii. how the On-Hire 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. states the day on which the arrangement commences.

- 7.4 The employer must give the On-Hire Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 7.5 The employer or On-Hire Employee may terminate the individual flexibility arrangement:
- 7.5.1 by giving no more than 28 days written notice to the other party to the arrangement;  
or
  - 7.5.2 if the employer and On-Hire Employee agree in writing — at any time.

## 8. Lawful Directions

- 8.1 All On-Hire Employees are required to follow all lawful and reasonable directions that are within their ability, if given by their Leading Hand/Supervisor, assigned recruitment coordinator, account manager or any other appropriate person, as nominated by the Company or Client.
- 8.2 Should the On-Hire Employee not be able to perform the assigned task for any reason whatsoever, it is the On-Hire Employee's duty to inform their Leading Hand/Supervisor, assigned recruitment coordinator, account manager or other appropriate person immediately.
- 8.3 Refusal to comply with any lawful and reasonable direction may result in disciplinary action, which may include terminating the employment of the On-Hire Employee.

## 9. Skills, Competency and Training

- 9.1 On-Hire Employees are required to perform work within their skill set, competency and training as required by the Company and/or Client. It is agreed that On-Hire Employees shall undertake all training as directed for the performance of work and the development of skills.

## 10. Safety and Fitness for Work

- 10.1 The Company is committed to undertaking best endeavours to ensure the health and wellbeing of On-Hire Employees. The establishment of healthy and safe workplaces, which includes the use of healthy and safe work methods, impairment testing (both planned and random), work organisation, working time, machinery and equipment is fundamental to the Company's and our Client's success.
- 10.2 The Company expects all On-Hire Employees to attend work in a fit and healthy condition free from the effects of drugs and/or alcohol each shift to ensure that work can be performed safely. Accordingly, On-Hire Employees are prohibited from attending work under the influence of any drug or intoxicant, and the possession of drugs other than those medically prescribed and/or non-prescribed drugs that can potentially affect an On-Hire Employee's ability to be fit for work, then he/she must declare this to the Company and or relevant Client supervisor. For the avoidance of doubt drugs referenced in this clause shall mean illicit drugs, synthetic drugs, prescription drugs and over the counter medications.

- 10.3 On-Hire Employees are not allowed to enter or engage in work on a site or workplace if the On-Hire Employee is, or is reasonably suspected to be, under the influence of, or affected by, alcohol and/or drugs.
- 10.4 The Company often operates in industries that carry significant safety risks. On-Hire Employees health and wellbeing is an essential element to achieving success. Any breaches of obligations in relation to Workplace Health and Safety may be considered serious and may result in consideration being given to disciplinary action which may include termination of employment.
- 10.5 On-Hire Employees will be required to wear relevant PPE at all times as directed and/or as required. On-Hire Employees clothing will be of a standard and nature as deemed relevant and appropriate by the Company and/or Client. Any PPE provided will be replaced on a fair wear and tear basis, subject to the Company being satisfied that replacement is required. It is a condition of issue of PPE and of employment that the issued PPE will be worn whilst at the workplace. Any On-Hire Employee utilising PPE provided by a previous employer must first notify the Company to ensure it is appropriate and suitable for use.
- 10.6 The Company recognises that random testing of On-Hire Employees will be consistent with the relevant Australian Standards.

## 11. Additional Claims

- 11.1 On-Hire Employees will not, during the term of this Agreement, pursue any further claims about any matter which pertains to the employment relationship.
- 11.2 For the avoidance of doubt, the parties to this Agreement commit that the practical application of this clause shall be consistent with *the Building Code 2016*, as varied from time to time.

## 12. Stand Down

- 12.1 The Company shall have the right to stand down an On-Hire Employee without payment for any day (or part of any day) which an On-Hire Employee cannot be usefully employed because of any:
- i. Industrial action (other than industrial action organised or engaged in by the Company); or
  - ii. a breakdown of machinery or equipment, if the Company or Client cannot reasonably be held responsible for the breakdown; or
  - iii. force majeure, for which the Company cannot reasonably be held responsible; or
  - iv. any stoppage of work by any cause for which the Client or Company cannot reasonably be held responsible.
- 12.2 An On-Hire Employee who is stood down may elect to use accrued annual leave entitlements or RDOs for such time.
- 12.3 For the avoidance of doubt, the Company commits that the operation of this clause will be consistent with section 524(1) of the Act.

## 13. Deduction of Monies

- 13.1 Wages will be paid subject to the On-Hire Employees authorised deductions as agreed with the Company. The On-Hire Employee authorises the Company to deduct from their Wages (including leave and termination payments):
- i. all taxes, payable by law;
  - ii. all identified and justified overpayments;
  - iii. any amount attributable to unauthorised absences, approved unpaid leave or monies owing to the Company;
  - iv. any other deductions authorised by the On-Hire Employee and agreed by the Company or as required or permitted by law.
- 13.2 On-Hire Employees authorise the Company to deduct from any wages or entitlements payable or owing to the On-Hire Employee, any overpayments made in error by the Company to the On-Hire Employee upon the Company providing a written notification of an overpayment to the On-Hire Employees last known home address, last known email address or current work address.
- 13.3 Overpayments will be deducted via reasonable amounts over a maximum period of twelve (12) weeks unless agreed otherwise.
- 13.4 The Company commits to ensure the provisions of section 324 of the Act are followed regarding any prior attempt in the pursuit of deduction of any monies from its On-Hire Employees.

### ***Underpayments***

- 13.5 The Company commits that where there is an acknowledged underpayment that this will be rectified and paid to the affected On-Hire Employee as soon as possible and in the event that this cannot be achieved the maximum period will be the next pay period.

## 14. Above Agreement Payments

- 14.1 Due to the nature of the Company's industry and conditions of assignments performed under this Agreement, the Company may provide above Agreement payments (as prescribed by this Agreement and underpinning Award) to an On-Hire Employee engaged under this Agreement, at the total discretion of the Company. These Above Agreement Payments are subject to the following:
- i. The Above Agreement Payment may take into account and be based upon client requirements and expectations, skills, safety, production, quality, equipment condition, environmental compliance, market conditions, performance as determined by the Company in its sole discretion;
  - ii. The Above Agreement Payment will be in addition to any employment benefits provided for in this Agreement and may be paid as an hourly supplement to classification wages or as a weekly or one-off lump sum amount;
  - iii. The Above Agreement Payment may be withdrawn or varied at any time, but will not be used to reduce the rates otherwise payable under this Agreement;
  - iv. In the event that the Above Agreement Payment applies to only one classification it will not have a flow on to other areas of work or classifications under this Agreement;

- 14.2 Details of any entitlement under this clause will be communicated to the On-Hire Employee at the commencement of engagement through the Letter of Engagement.
- 14.3 Where an On-Hire Employee is paid an all up rate the following may be included in the all up rate; casual loading (where applicable), overtime, public holiday rates, penalty rates, shift loadings, special allowance, industry allowance, tool allowance and any other monetary allowance applicable from time to time. The all up rate shall be identified in the On-Hire Employee's Letter of Engagement.

## 15. Types of Employment

On-Hire Employees under this Agreement will be employed in one of the following categories of employment:

- i. Casual On-Hire Employee;
  - ii. Full Time On-Hire Employee;
  - iii. Part Time On-Hire Employee;
  - iv. On-Hire Employees engaged for a specific project/site/assignment or workplace related task.
- 15.1 At the time of the On-Hire Employees engagement, the Company will inform each On-Hire Employee in writing of their status and term of their engagement.
- 15.2 Casual Employment
- 15.2.1 A Casual On-Hire Employee is one engaged and paid as such.
- 15.2.2 A Casual On-Hire Employee will be paid the hourly rate of pay for the relevant classification in addition to a loading of 25% calculated on the ordinary rate of pay.
- 15.2.3 This 25% loading is in lieu of:
- i. Annual Leave and Leave Loading entitlements;
  - ii. Personal Leave entitlements;
  - iii. Notice of Termination requirements;
  - iv. Redundancy entitlements; and
  - v. Other entitlements not applicable to casual On-Hire Employee.
- For the avoidance of doubt, casual loading is paid in lieu of entitlements, which do not apply to casual On-Hire Employees, having regard for the National Employment Standards.
- 15.2.4 The minimum engagement for a Casual On-Hire Employee working ordinary hours will be four (4) hours on any one day that the On-Hire Employee is required to work.
- 15.2.5 Overtime and Penalty Rates for Casual On-Hired employees.
- i. The *Overtime* and *Penalty Rate* provisions of the Award are incorporated into this agreement,
  - ii. For the purposes of calculating the casual hourly overtime, weekend and public holiday penalty rates, the applicable overtime or penalty rate in the incorporated Award shall be calculated on the prescribed ordinary hourly

rates in Column B of the wages table contained in Schedule 1 of this agreement.

### **15.2A Casual Conversion**

- 15.2.6 An On-Hire Employee engaged by the Company as a casual On-Hire Employee, other than an irregular casual On-Hire Employee, who has been engaged for a sequence of periods of employment under this Agreement during a period of six (6) months may request that their employment be converted to full time or part time employment.
- 15.2.7 An irregular casual On-Hire Employee is a casual On-Hire Employee who has been engaged to perform work on an occasional or non-systematic or irregular basis.
- 15.2.8 Any request made by the On-Hire Employee under clause 15.2A must be in writing and provided to the employer.
- 15.2.9 Where a casual On-Hire Employee seeks to convert to full time or part time employment, the Company may agree to or refuse the request, but the request may only be refused on reasonable grounds.
- 15.2.10 Where the Company refuses a casual On-Hire Employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made.
- 15.2.11 Where it is agreed that a casual On-Hire Employee will have their employment converted to full time or part time employment as provided for in this clause, the Company and On-Hire Employee must discuss and record in writing:
- i. the form of employment to which the On-Hire Employee will convert – that is, full time or part time employment;
  - ii. if it is agreed that the On-Hire Employee will become a part time On-Hire Employee, the number of hours and the pattern of hours that will be worked, as set out in clause 15.4; and
  - iii. the date upon which the conversion will take effect.
- 15.2.12 Nothing in this clause obliges a regular casual On-Hire Employee to convert to full time or part time employment, nor permits a Company to require a regular casual On-Hire Employee to convert.
- 15.2.13 Nothing in this clause requires a Company to increase the hours of a regular casual On-Hire Employee seeking conversion to full time or part time employment.
- 15.2.14 Once a casual On-Hire Employee has elected to become and has been converted to a full time or part time On-Hire Employee, the On-Hire Employee may only revert to casual employment by written agreement with the Company.
- 15.2.15 For the avoidance of doubt, this clause prevails and replaces clause 14.8 of the *Building and Construction General On-Site Award 2010*.

### **15.3 Full Time Employment**

- 15.3.1 A full time On-Hire Employee works an average of thirty eight (38) ordinary hours per week.
- 15.3.2 A full time On-Hire Employee will accrue annual leave and personal leave and will not be entitled to the 25% casual loading.

#### 15.4 Part Time Employment

- 15.4.1 A Part Time On-Hire Employee is employed to work an average of fewer than thirty eight (38) ordinary hours per week and has reasonably predictable hours of work.
- 15.4.2 For each ordinary hour worked, a part time On-Hire Employee will be paid no less than the ordinary time rate for the relevant classification and pro-rata entitlements for those hours. Part time On-Hire Employees will be informed of their ordinary hours of work and the starting and finishing times.
- 15.4.3 Before commencing as a part time On-Hire Employee the Company and the On-Hire Employee will agree in writing:
- i. that the On-Hire Employee may work part time;
  - ii. the hours to be worked by the On-Hire Employee, the days upon which the hours will be worked and the commencing times for the work;
  - iii. the classification applying to the work to be performed by the On-Hire Employee; and
  - iv. the period of part time On-Hire employment.
- 15.4.4 The terms of the part time agreement may be varied, in writing, by consent.
- 15.4.5 A copy of the part time agreement and any variation to it will be provided to the On-Hire Employee by the Company.
- 15.4.6 A part time On-Hire Employee is entitled to accrue leave on a pro-rata basis. A part time On-Hire Employee will accrue pro-rata annual leave and pro-rata personal leave and will not be entitled to the 25% casual loading.

## 16. Disputes

- 16.1 If a dispute relates to:
- 16.1.1 a matter arising under the Agreement; or
  - 16.1.2 the National Employment Standards;
- this term sets out procedures to settle the dispute.
- 16.2 An On-Hire Employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- 16.3 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the On-Hire Employee or On-Hire Employees and relevant supervisors and/or management.

16.4 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the Fair Work Commission.

16.5 The Fair Work Commission may deal with the dispute in 2 stages:

16.5.1 the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and

16.5.2 if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:

- i. arbitrate the dispute; and
- ii. make a determination that is binding on the parties.

*Note: If the Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Act.*

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

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

16.6.1 an On-Hire Employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and

16.6.2 an On-Hire Employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:

- i. the work is not safe; or
- ii. applicable Occupational Health and Safety legislation would not permit the work to be performed; or
- iii. the work is not appropriate for the On-Hire Employee to perform; or there are other reasonable grounds for the On-Hire Employee to refuse to comply with the direction.

16.7 The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this term.

Any decision under this clause must be consistent with the Building Code 2016 as varied from time to time.

## 17. Consultation

17.1 This term applies if the Company:

17.1.1 has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the On-Hire Employees; or



17.1.2 proposes to introduce a change to the regular roster or ordinary hours of work for On-Hire Employees.

**Major change**

17.2 For a major change referred to in clause 17.1.1:

17.2.1 the company must notify the relevant On-Hire Employees of the decision to introduce the major change; and

17.2.2 subclauses 17.3 to 17.9 apply.

17.3 The relevant On-Hire Employees may appoint a representative for the purposes of the procedures in this term.

17.4 If:

17.4.1 a relevant On-Hire Employee appoints, or relevant On-Hire Employees appoint, a representative for the purposes of consultation; and

17.4.2 the On-Hire Employee or On-Hire Employees advise the company of the identity of the representative;

the company must recognise the representative.

17.5 As soon as practicable after making its decision, the company must:

17.5.1 discuss with the relevant On-Hire Employees:

- i. the introduction of the change; and
- ii. the effect the change is likely to have on the On-Hire Employees; and
- iii. measures the company is taking to avert or mitigate the adverse effect of the change on the On-Hire Employees; and

17.5.2 for the purposes of the discussion—provide, in writing, to the relevant On-Hire Employees:

- i. all relevant information about the change including the nature of the change proposed; and
- ii. information about the expected effects of the change on the On-Hire Employees; and
- iii. any other matters likely to affect the On-Hire Employees.

17.6 However, the company is not required to disclose confidential or commercially sensitive information to the relevant On-Hire Employees.

17.7 The company must give prompt and genuine consideration to matters raised about the major change by the relevant On-Hire Employees.

17.8 If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the company, the requirements set out in paragraph 17.2.1 and subclauses 17.3 and 17.5 are taken not to apply.

17.9 In this term, a major change is likely to have a significant effect on the On-Hire Employees if it results in:

17.9.1 the termination of the employment of On-Hire Employees; or

17.9.2 major change to the composition, operation or size of the company's workforce or to the skills required of On-Hire Employees; or

17.9.3 the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or

17.9.4 the alteration of hours of work; or

17.9.5 the need to retrain the On-Hire Employees; or

17.9.6 the need to relocate On-Hire Employees to another workplace; or

17.9.7 the restructuring of jobs; or

17.9.8 change to regular rostering or ordinary hours of work

17.10 For a change referred to in clause 17.1.2:

17.10.1 the company must notify the relevant On-Hire Employees of the proposed change; and

17.10.2 clauses 17.11 to 17.15 apply.

17.11 The relevant On-Hire Employees may appoint a representative for the purposes of the procedures in this term.

17.12 If:

17.12.1 a relevant On-Hire Employee appoints, or relevant On-Hire Employees appoint, a representative for the purposes of consultation; and

17.12.2 the On-Hire Employee or On-Hire Employees advise the company of the identity of the representative;

the company must recognise the representative.

17.13 As soon as practicable after proposing to introduce the change, the company must:

17.13.1 discuss with the relevant On-Hire Employees the introduction of the change; and

17.13.2 for the purposes of the discussion—provide to the relevant On-Hire Employees:

- i. all relevant information about the change, including the nature of the change; and
- ii. information about what the company reasonably believes will be the effects of the change on the On-Hire Employees; and

- iii. information about any other matters that the company reasonably believes are likely to affect the On-Hire Employees; and

17.13.3 invite the relevant On-Hire Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

17.14 However, the Company is not required to disclose confidential or commercially sensitive information to the relevant On-Hire Employees.

17.15 The Company must give prompt and genuine consideration to matters raised about the change by the relevant On-Hire Employees.

17.16 In this clause:

**Relevant On-Hire Employees** means the On-Hire Employees who may be affected by a change referred to in clause 17.1.

## 18. Classifications

18.1 At the commencement of each assignment by way of Letter of Engagement, an On-Hire Employee will be assigned to a classification level based on skills, qualifications and experience of the role.

18.2 Classifications will be determined on skills required for the particular role and not skills attained.

## 19. Wage Rates

19.1 Wage Rates

19.1.1 The rate of pay for On-Hire Employees are prescribed in Schedule 1 of this Agreement. On-Hire Employees are also entitled to allowances (except as specifically incorporated into the rates of pay as prescribed in Schedule 1), overtime and any other entitlements as set out in this Agreement. For the avoidance of doubt, the allowances included in the base hourly rate are a special allowance and industry allowance. Rates shall be at least 1% higher than the Award.

19.1.2 Where On-Hire Employees are placed on an assignment where it is necessary for the Company to pay On-Hire Employees in excess of the wages or allowances in this Agreement, this arrangement will be received by On-Hire Employees in satisfaction of any and/or all entitlements, terms, conditions, penalties and allowances which might otherwise apply to On-Hire Employees under this Agreement. This may include (but is not limited to) flat or rolled up hourly rates. The total payment to On-Hire Employees will not be less than On-Hire Employees would have received under this Agreement.

19.1.3 The Company will conduct a review of all wages yearly in line with the Fair Work Commission Minimum Wage Decision, where necessary rates will be adjusted to accommodate any increase. For the avoidance of doubt, where an On-Hire Employee receives an over agreement rate/market rate in line with Clause 14, which

remains above the annually adjusted agreement rate for their classification, any increase may be absorbed into the above agreement payment.

## 19.2 Payment of Wages

- 19.2.1 Payment of wages shall be by direct deposit/electronic funds transfer on a weekly or fortnightly basis to a bank account nominated by the On-Hire Employee. Where a public holiday or weekend falls on the normal pay day, the payment shall be made as soon as is practicable after the normal pay day.

## 19.3 Market Rate Protection – Existing Employees

- 19.3.1 The Company commits to market rate protection for existing On-Hire Employees for the life of the Agreement. For the avoidance of doubt, the provisions of this clause will apply for the life of this Agreement, and, will only cease on the replacement or termination of the Agreement
- 19.3.2 Where an On-Hire Employee is employed on a Letter of Engagement at the time this Agreement is lodged with the Fair Work Commission, and where the On-Hire Employee is receiving over Agreement payments and/or market arrangements/conditions, the Company will guarantee the rate of pay contained in their Letter of Engagement consistent with the following provisions:
- i. The On-Hire Employee remains at the host Client site as identified in the Letter of Engagement;
  - ii. The On-Hire Employee remains in the same classification;
  - iii. The On-Hire Employee does not have a break in service;
  - iv. The guarantee will cease to operate (i.e. the market rate protection) if an On-Hire Employee has a material change in their employment warranting a new Letter of Engagement, such as a substantive change in employment category, location/Client, change in classification or role type.

## 20. Superannuation

- 20.1 The Company will make superannuation contributions, in accordance with the relevant superannuation legislation, as varied from time to time. Where an On-Hire Employee does not elect a fund or provides the Company with insufficient information regarding their choice of superannuation fund then superannuation contributions will be made to the Company's default superannuation fund.

## 21. Company and site policies and protocols

- 21.1 The employees recognise that Company and client site policies, standards and protocols may be introduced from time to time. These policies, standards and protocols do not form part of this Agreement and shall not contradict the terms of this Agreement.
- 21.2 Where policies, standards and protocols are introduced, the employees agree to familiarise themselves and comply with the policies, standards and protocols.

## 22. Signatories

The parties recognise that each has a responsibility to ensure the successful operation of this Agreement. The signatures below testify the fact that the Agreement has been approved by the On-Hire Employees who will be covered by the Agreement in accordance with the Fair Work Act 2009.

Signed for and on behalf of Dreampath Pty Ltd by:

Name: Marc MEILI

Signature [Signature]

Address 3466 Pacific Highway, Springwood 4127

Position: Managing Director

Date 31.01.2020

Witness Name ELIZABETH HELEN DILLER J.P. (Quar)

Signature [Signature]

Address 3466 PACIFIC HIGHWAY SPRINGWOOD Q 4127

Date 31/1/2020



Signed for and on behalf of the employees of Dreampath Pty Ltd by:

Printed Name GREG BRADY - MACHINE OPERATOR

Signature [Signature]

Address 9 Chellaston Gw Laraine 6020

Position: Employee signing on behalf of the Employees covered by this agreement

Date 28.1.2020

Witness Name MAREE BRADY

Signature [Signature]

Address 9 Chellaston Gw Laraine 6020

Date 28.1.2020

## SCHEDULE 1 – RATES OF PAY

Classification	Rates On Lodgement		
	Column A	Column B	Column C
	Weekly Hire weekly rate of pay including special allowance & industry allowance.	Ordinary hourly rate of pay including special allowance & industry allowance.	Casual hourly rate of pay including 25% casual loading & special allowance & industry allowance.
Level 9 (ECW 9)	\$1,059.09	\$27.87	\$34.77
Level 8 (CW/ECW 8)	\$1,041.51	\$27.41	\$34.19
Level 7 (CW/ECW 7)	\$1,017.89	\$26.79	\$33.42
Level 6 (CW/ECW 6)	\$990.64	\$26.07	\$32.52
Level 5 (CW/ECW 5)	\$965.98	\$25.42	\$31.71
Level 4 (CW/ECW 4)	\$938.52	\$24.70	\$30.81
Level 3 (CW/ECW 3)	\$911.16	\$23.98	\$29.91
Level 2 (CW/ECW 2)	\$886.40	\$23.33	\$29.10
Level 1 (CW/ECW 1):			
CW/ECW 1 (level d)	\$869.23	\$22.87	\$28.54
CW/ECW 1 (level c)	\$853.94	\$22.47	\$28.03
CW/ECW 1 (level b)	\$842.60	\$22.17	\$27.66
CW/ECW1 (level a)	\$826.37	\$21.75	\$27.13

- i. The rates above are inclusive of the Special Allowance and Industry Allowances.
- ii. The rates in Column A are for full-time weekly hire employees working a 38 hour (or averaged) ordinary week.
- iii. The rates in Column B shall be the rates used for part-time employees and in calculating the hourly rate for Casual On Hire employees for performing overtime work, weekend work and working on a public holiday.
- iv. The rates in Column C shall be the rates payable to casual employees for working ordinary hours.

IN THE FAIR WORK COMMISSION

**Matter Number: AG2020/198**

**Applicant: Dreampath Recruitment Pty Ltd**

**Section 185 - Application for approval of a single enterprise agreement.**

## Undertaking- Section 190

I Marc Meili, Managing Director, give the following undertaking in relation to *Dreampath On-Hire Employee Agreement 2020* (the Agreement).

1. I have the authority given to me by Dreampath Recruitment Pty Ltd to provide the following undertakings in relation to the application before the Fair Work Commission.
2. I have sought views of the bargaining representative for this undertaking pursuant to section 190(4) of the *Fair Work Act (Cth)*.
3. Dreampath Recruitment Pty Ltd gives the following undertaking pursuant to section 190 of the *Fair Work Act 2009 (Cth)*
  - a. In relation to the wage rates contained in Appendix 1 we undertake that the rates are as follows:

Classification	Rates On Lodgement		
	Column A	Column B	Column C
	Weekly Hire weekly rate of pay including special allowance & industry allowance.	Ordinary hourly rate of pay including special allowance & industry allowance.	Casual hourly rate of pay including 25% casual loading & special allowance & industry allowance.
Level 9 (ECW 9)	\$1,059.29	\$27.88	\$34.85
Level 8 (CW/ECW 8)	\$1,041.63	\$27.41	\$34.26
Level 7 (CW/ECW7)	\$1017.89	\$26.79	\$33.48
Level 6 (CW/ECW6)	\$990.64	\$26.07	\$32.59
Level 5 {CW/ECW 5}	\$966.02	\$25.42	\$31.78
Level 4 (CW/ECW4)	\$938.52	\$24.70	\$30.87
Level 3 (CW/ECW3}	\$911.16	\$23.98	\$29.97
Level 2 (CW/ECW2)	\$886.58	\$23.33	\$29.16
Level 1 {CW/ECW1):			
CW/ECW 1 (level d)	\$869.31	\$22.88	\$28.60
CW/ECW 1 (level c)	\$853.96	\$22.47	\$28.09
CW/ECW 1 (level b)	\$842.60	\$22.17	\$27.71
CW/ECW1 (level a)	\$826.37	\$21.75	\$27.18

- b. In relation to clause 14.3 we undertake that the employee's rates will not fall below the minimum rates contained in the Agreement. Where an employee's considers that

over a month period they are not better off overall under this Agreement due to the implementation of clause 14.3, they may request a comparison of the wages received for that roster cycle under this Agreement and the wages they would otherwise have been provided with under the Award. Any shortfall in wages which would otherwise be payable under the Award will be paid to the Employee in the next pay period after the review is completed. If the Employee and Employer cannot reach agreement on the total amount which should be paid by the operation of this undertaking, the Dispute Resolution Procedure in clause 16 of the Agreement will be followed and the parties will agree to the Fair Work Commission arbitrating and making a binding determination to resolve the matter.

- c. In relation to clause 13, clauses 13.1.iii and iv and 13.2 will not be pursued by the Company. The Company it will only apply clause 13 to the extent that it is allowable under section 324 of the *Fair Work Act 2009 (Cth)*, as varied from time to time.
- d. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



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Marc Meili

27/02/2020