



## DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**Ryans Fresh Pty Ltd**  
(AG2013/4819)

### **RYANS FRESH PTY LTD AND AMIEU COLLECTIVE AGREEMENT 2012**

Meat Industry

DEPUTY PRESIDENT SMITH

MELBOURNE, 15 FEBRUARY 2013

*Application for approval of the Ryans Fresh Pty Ltd and AMIEU Collective Agreement 2012.*

[1] An application has been made for approval of an enterprise agreement known as the *Ryans Fresh Pty Ltd and AMIEU Collective Agreement 2012* (**Agreement**). The application was made pursuant to s.185 of the *Fair Work Act 2009* (**Act**). It has been made by Ryans Fresh Pty Ltd. The Agreement is a single-enterprise agreement.

[2] The employer has provided undertakings pursuant to s.190 of the Act. I am satisfied that the undertakings meet my concerns. The undertakings are attached to this decision at Attachment A, and are taken to form part of the Agreement.

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

[4] The Australasian Meat Industry Employees Union, being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) of the Act I note that the Agreement covers this organisation.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 22 February 2013. The nominal expiry date of the Agreement is 21 February 2016

DEPUTY PRESIDENT

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## ATTACHMENT A

### UNDERTAKINGS

(s.190 Fair Work Act 2009)

#### Ryans Fresh Pty Ltd and AMIEU Collective Agreement 2012

1. Ryans Fresh Pty Ltd (Employer) has applied to the Fair Work Commission (FWC) pursuant to s.185 of the Fair Work Act 2009 (Act) for approval of an enterprise agreement to be known as the Fishers Stores Consolidated Pty Ltd and AMIEU Collective Agreement 2012 (Agreement).
2. The Employer is trading as Ryans Fresh.
3. FWC has raised concern that clause 20 of the Agreement appears to contravene the requirements of s.93 of the Act relating to cashing out and taking paid annual leave.
4. The FWC also raised concerns that clause 16(3) of the Agreement will not satisfy the requirements of the Act.
5. Pursuant to s190 of the Act, the Employer hereby undertakes to the FWC to:

- a. Remove clause 20 under section 'Entitlement to Receive Payment in lieu of taking Annual Leave' which states:

An employee is entitled to forgo half of their annual leave entitlement that has accrued during each 12 month period by giving the employer written notice requesting to forgo such leave, and by the employer authorising that request.

Payment for annual leave foregone is at that employee's Ordinary Hourly rate at the time that the employee gives notice exercising this entitlement, and payment is to be made within a reasonable period.

And replace with:

An employee is entitled to forgo half of their annual leave entitlement that has accrued during each 12 month period, only if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being greater than 4 weeks.

Each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee;

Payment for annual leave foregone must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

- b. Remove clause 16(3) entitled 'Voluntary Overtime' which states:
  - a) An employee may volunteer to work Overtime, provided they make a written request for such hours to the employer.
  - b) Voluntary Overtime shall not form part of an employee's regular working hours.


- c) Voluntary Overtime will be paid at the Ordinary Hourly rate plus a 25% loading.
- d) An employee may work voluntary Overtime in a maximum of 26 weeks per year. Any Overtime in excess of 26 weeks per year is deemed to be worked at the request of the employer and shall be paid at the overtime loading of 50%.

- c. Ensure that a copy of these undertakings is made available to all employees covered by the Agreement and ensure that a copy of this instrument is attached to any copy of the Agreement provided to employees or made available in the workplace.

Name: BEN RYAN

Position: GENERAL MANAGER

(A position duly authorised to give this undertaking on behalf of the Employer)

Signature: 

Date: 11/2/2013.

As an employee bargaining representative I support FWA accepting these undertakings and the Agreement then being approved.

Name: DIANNE BOLSTER

Position: HR MANAGER

Signature: 

Date: 11/2/2013.

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.

## UNION COLLECTIVE AGREEMENT 2012

(1) **TITLE**

This Agreement will be known as the Ryans Fresh Pty Ltd and AMIEU Collective Agreement 2012.

(2) **ARRANGEMENT**

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(3) DEFINITIONS

*Act* means the Australian Fair Work Act 2009.

*Agreement* means this Union Collective Agreement.

*AMIEU* means the Australasian Meat Industry Employees' Union (Victorian Branch).

*Authority* means the Workplace Authority which is responsible for the approval of this Agreement

*Award* means the Federal Award that would apply but for this Agreement, which is listed in Schedule B of this Agreement.

*Butcher* means an employee who has served a relevant apprenticeship or has had at least 4 years' experience in general butchering, but does not necessarily perform the work of serving customers, or in such other cases where an employer engages or calls upon an employee to perform the tradesperson's functions of a Butcher.

*Commencement Date* means the day on which the Agreement is lodged with the Workplace authority, and is when this Agreement commences operation.

*Continuous Service* means the whole of the period served with the company by any employee (other than a casual employee), such period to include any periods of authorised leave.

*Employees* means all current and future employees who are, or become, employed by the employer and whose employment is, or becomes, covered by this Agreement.

*Employer* means the employer who is party to this Agreement and is named in Schedule A of this Agreement.

*Ordinary Hourly Rate* means the applicable minimum hourly rate for each relevant classification as set out in Schedule C of this Agreement.

*Ordinary Hours* means any hours worked within the spread of hours, which is worked as part of the employees' ordinary roster and is not of such a nature as to fall within the definition of Overtime.

*Overtime* has the meaning prescribed to it in clause 13.

*Packer/Cabinet Attendant* means an adult employee (not being a butcher) who is employed in wrapping, weighing, pricing, packaging and packing uncooked meat whether manually or by means of machinery, replenishing of display cabinets or work associated therewith or any other work that the employee is reasonably required to perform as part of his or her duty (including interchange with shop assistants). Provided that nothing in this definition will remove the right of the employer to employ:

- (a) Juniors in wrapping, weighing, pricing, packaging and packing uncooked meat whether manually or using a machine; or
- (b) Juniors of 18 years of age and over in the replenishing of display or storage cabinets or work associated with these duties.

*Relevant State or Territory vocational education and training legislation* means the following or any successor legislation:

Australian Capital Territory: *Training and Tertiary Education Act 2003*;

New South Wales: *Apprenticeship and Traineeship Act 2001*;

Northern Territory: *Northern Territory Employment and Training Act 1991*;

Queensland: *Vocational Education, Training and Employment Act 2000*;

South Australia: *Training and Skills Development Act 2008*;

Tasmania: *Vocational Education and Training Act 1994*;

Victoria: *Education and Training Reform Act 2006*; or

Western Australia: *Vocational Education and Training Act 1996*

(4) **PERIOD OF AGREEMENT**

This Agreement shall come into operation 7 days following approval by FWA and shall remain in force for a period of 3 years.

(5) **COVERAGE**

This Agreement binds all employers, butchers and meat packers as set out in clause 3 of this Agreement, who are currently employed by Ryans Fresh Pty Ltd.

(6) **AWARD FLEXIBILITY**

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
  - (a) 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;
    - (v) leave loading; and
  - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
  - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
  1. are about permitted matters under section 172 of the *Fair Work Act 2009*; and
  2. are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
  3. result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
  - (a) is in writing; and
  - (b) includes the name of the employer and employee; and
  - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - (d) 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 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
  - (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:



- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
- (b) if the employer and employee agree in writing – at any time.

(7) **CONSULTATION TERM**

- (1) This term applies if:
  - (a) the employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
  - (b) the change is likely to have a significant effect on employees of the enterprise.
- (2) The employer must notify the relevant employees of the decision to introduce the major change.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
  - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative;the employer must recognise the representative.
- (5) As soon as practicable after making its decision, the employer must:
  - (a) discuss with the relevant employees:
    - (i) the introduction of the change; and
    - (ii) the effect the change is likely to have on the employees; and
    - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
  - (b) for the purposes of the discussion – provide, in writing, to the relevant employees:
    - (i) all relevant information about the change including the nature of the change proposed; and
    - (ii) information about the expected effects of the change on the employees; and
    - (iii) any other matters likely to affect the employees.
- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) If a term in the enterprise agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in subclauses (2), (3) and (5) are taken not to apply.
- (9) In this term, a major change is *likely to have a significant effect on employees* if it results in:
- (a) the termination of the employment of employees; or
  - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
  - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (d) the alteration of hours of work; or
  - (e) the need to retrain employees; or
  - (f) the need to relocate employees to another workplace; or
  - (g) the restructuring of jobs.
- (10) In this term, *relevant employees* means the employees who may be affected by the major change.

(8) **DESCRIPTIONS OF POSITIONS**

The employees agree to carry out the employment duties that apply to their position, and any other duties as reasonably requested by the employer, and such duties are to be carried out in accordance with the terms of the Agreement.

(9) **PROBATIONARY PERIOD**

All new employees shall be on probation for the first 3 months of employment. During this period the employer will monitor the employees' work performance. In the event that the performance is assessed as unsatisfactory the employer may terminate the employment by giving one day's notice.

(10) **EMPLOYMENT**

Employment may be full time, part time or casual. An employee will be informed upon engagement of the nature of their employment.

**Full time employees**

A full time employee will be engaged to work a maximum of 38 hours per week on a fixed roster.

#### **Part time employees**

A part time employee shall be engaged to work a minimum of 10 hours per week and a maximum of 32 hours per week on a fixed roster.

Part time employees will receive pro-rata payment for all entitlements contained in this Agreement for a full time employee, including annual leave, personal leave, public holidays and long service leave.

#### **Casual employees**

A casual employee will be engaged to work on an hourly basis, and terminable on one hour's notice.

#### **Fixed Term Employment**

- (a) The employer may employ a person on a short term contract of fixed duration.
  - (i) If an employee is employed to replace an employee on parental leave, the maximum duration of that employee's fixed term contract is 52 weeks.
  - (ii) If an employee is employed to replace an employee on long service leave, the maximum duration of that employee's fixed term contract is 13 weeks.
  - (iii) In all other circumstances, the maximum duration of a fixed term contract is 6 weeks.
- (b) For a period of 6 months from the date of expiration of a fixed term contract, the employer cannot re-engage that same employee on another fixed term contract.
- (c) An employee on a fixed term contract is entitled, pro rata, to the same terms and conditions of employment as provided to a full time employee under this Agreement.

#### **Apprentices**

Subject to the provisions contained in this Agreement, the employment of apprentice butchers will be in accordance with the provisions of the relevant State or Territory vocational education and training legislation.

- 1) Supervision of Apprentices:
  - (i) The employer will ensure that all apprentices requiring supervision are supervised by a person possessing the

appropriate qualifications, knowledge and skill, and who is otherwise a fit and proper person for that purpose.

- (ii) As a general principle:
  - a) first and second year apprentices under the age of twenty-one will not work unsupervised for more than one hour;
  - b) second year apprentices over the age of twenty-one and third year and fourth year apprentices may work for reasonable periods of time without supervision; and
  - c) any apprentice may work for periods of time without supervision.

**(11) HOURS OF WORK**

**Spread of Hours**

Employees are to work Ordinary Hours within the Spread of Hours.

The Spread of Hours is as follows:

Monday to Saturday - 5am to 6pm

Sunday - 6am to 6pm

Provided that all Ordinary Hours worked on Saturday and Sunday will be paid at the penalty rates specified in clauses 13 and 14.

**Full time employees**

- (a) A full time employee may be rostered to work Ordinary Hours within the Spread of Hours provided that the employee does not work more than 10.5 hours on any one day. When rostering a full time employee to work for 10.5 hours on any one day, the employer will take into account any particular difficulty the employee may have because of family responsibilities.
- (b) A full time employee may work outside the Spread of Hours, with all such work to be paid at the applicable overtime rate.
- (c) A full time employee will be rostered to work a minimum of 4 hours per engagement.

**Part time employees**

- (a) A part time employee will be rostered to work ordinary hours within the Spread of Hours provided that the employee does not work more than 10.5 hours on any one day.

- (b) A part time employee may work outside the Spread of Hours, with all such work to be paid at the applicable overtime rate.
- (c) A part time employee may be offered additional Ordinary Hours up to a maximum of 38 hours per week and will be paid at the Ordinary Hourly rate. Hours worked in excess of 38 hours per week will be paid at the applicable overtime rate.
- (d) A part time employee will be rostered to work a minimum of 3 hours per engagement.

**Casual employees**

- (a) A casual employee may be rostered to work Ordinary Hours within the Spread of Hours provided that the employee does not work more than 10.5 hours on any one day.
- (b) A casual employee may work outside the Spread of Hours, with all such work to be paid at the applicable overtime rate.
- (c) A casual employee will be rostered to work a minimum of 3 hours per engagement.

**(12) RATES OF PAY**

**Full time employees**

Full time employees will be paid the Ordinary Weekly rate, set out in Schedule C of this Agreement, for all Ordinary Hours worked.

**Part time employees**

Part time employees will be paid the Ordinary Hourly rate, set out in Schedule C of this Agreement, for all Ordinary Hours worked.

**Casual employees**

Casual employees will be paid the Ordinary Hourly rate, set out in Schedule C of this Agreement for all time worked.

Casual employees will be paid an additional hourly loading of 25% for all Ordinary Hours.

All work done on a Saturday, Sunday or Public Holiday by a casual employee will be paid for at the rate applicable to a part time employee, exclusive of the 25% casual loading.

All Overtime worked by a casual employee will be paid for at the applicable rate, as specified in clause 13.

**Payment Method**

Wages will be paid weekly or fortnightly according to the actual hours worked, which shall be no later than Thursday in each pay week. Wages will be paid into a bank account nominated by the employee.

**Wage Increase**

Wages will be increased in accordance with Schedule D of this Agreement.

**(13) WORK ON SATURDAY**

All Ordinary Hours worked on Saturday will be paid at the employees' ordinary hourly rate plus a 50% loading.

**(14) WORK ON SUNDAY**

All Ordinary Hours worked on Sunday will be paid at the employees' Ordinary Hourly rate plus a 100% loading.

**(15) ROSTERING PRINCIPLES**

**Rosters**

Roster arrangements will be established in accordance with the needs of the employer during the Spread of Hours. Rosters will be provided to full time and part time employees two weeks in advance. Any changes to rosters will be made known to employees as soon as reasonably possible.

**Full time employees**

- (a) Ordinary Hours of work shall be averaged over a 2 week cycle. The actual hours worked may vary on a weekly basis, with some weeks being greater than 38 hours and other weeks being less than 38 hours.
- (b) A full time employee will not be rostered to work Ordinary Hours on more than 5 days per week unless the employer and employee agree in writing.
- (c) A full time employee may be rostered to work Ordinary Hours on Saturday or Sunday by agreement. Such work is to be paid at the Ordinary Hourly rate plus the applicable loading.

**Part time employees**

- (a) A part time employee shall be rostered to work an agreed number of hours. The minimum Ordinary Hours worked shall be 10 hours per week, or 20 hours averaged over a two week cycle, or 40 hours averaged over a four week cycle.

- (b) The maximum Ordinary Hours worked by a part time employee shall be 32 hours per week or 64 hours averaged over a two week cycle or 128 hours averaged over a four week cycle.
- (c) A part time employee shall not be engaged for less than 3 hours on any one day and shall not have more than one start on one day.
- (d) A part time employee may be required to work Ordinary Hours on 6 days in one week provided that in the following week the employee shall not be rostered to work Ordinary Hours on more than 4 days.

**Casual employees**

The minimum engagement for a casual employee will be 3 hours per shift. Casual employees should consult with the employer at the conclusion of each shift in order to determine whether any further hours of work are available.

**(16) OVERTIME**

**1. Overtime**

Overtime is all work:

- (a) outside the Spread of Hours
- (b) in excess of 10.5 hours per day
- (c) in excess of 38 hours per week, averaged over 4 weeks

An employee may be required to work Overtime and will be paid an overtime loading of 50% on the Ordinary Hourly rate for all such hours worked.

Overtime worked on Sunday will be paid at the rate of double time.

When requiring an employee to work Overtime, the employer will have regard to an employee's family commitments and other relevant personal circumstances.

**2. Time off in Lieu of Overtime Payment**

An employee may elect to take time off in lieu of payment for all Overtime worked. The time taken will be at the penalty rate, which means that for each hour worked, the employee will be entitled to one and a half hours time in lieu.

Time in lieu of payment for Overtime worked on a Sunday will be at double time, which means that for each hour worked, the employee will be entitled to two hours time in lieu.

An employee may request to work 2 hours Overtime per week, every week as part of a fixed roster. An employee working such Overtime will not be paid for those 2 hours, but will accrue 2 hours paid time in lieu. Accrued time in lieu will be taken on one day every four weeks, on a regular basis.

**3. Voluntary Overtime**

- (a) An employee may volunteer to work Overtime, provided they make a written request for such hours to the employer.
- (b) Voluntary Overtime shall not form part of an employee's regular working hours.
- (c) Voluntary Overtime will be paid at the Ordinary Hourly rate plus a 25% loading.
- (d) An employee may work voluntary Overtime in a maximum of 26 weeks per year. Any Overtime in excess of 26 weeks per year is deemed to be worked at the request of the employer and shall be paid at the overtime loading of 50%.

**4. Overtime During Meal Hours**

An employee will receive a meal allowance of \$16.15 if that employee is required to work reasonable additional hours during the following recognised meal hours:

6:30 am	-	8:30am
12:00pm	-	2:00pm
6:30pm	-	8:30pm

**(17) PUBLIC HOLIDAYS**

**Entitlement**

A full time or part time employee who is regularly rostered to work on a day on which a Public Holiday falls is entitled to the day off on that Public Holiday without loss of pay.

An employee will be considered to be "regularly" rostered on a particular day if they have worked on that day for 4 consecutive weeks before the Public Holiday.

**Public Holidays**

"Public Holiday" includes the following days

- (a) 1 January (New Year's Day)
- (b) 26 January (Australia Day)
- (c) Good Friday
- (d) Easter Saturday



- (e) Easter Monday
- (f) 25 April (Anzac Day)
- (g) Sovereign's Birthday
- (h) Labour Day
- (i) Melbourne Cup Day
- (j) 25 December (Christmas Day)
- (k) 26 December (Boxing Day)

Any other day declared by or under a law of a State to be observed generally within the State or a region of the State other than:

- A union picnic day; or
- A day that is excluded by the Regulations to the Act from counting as a Public Holiday.

#### **Work on a Public Holiday**

- (a) An employee may be reasonably required to work on a Public Holiday.
- (b) The employer will seek volunteers for work on Public Holidays but in the absence of volunteers will attempt to schedule employees to work on Public Holidays on an equitable basis.
- (c) The employer will make every effort to roster employees in a manner that is fair and equitable to ensure that allocation of Public Holiday hours are divided equally on a rotating basis.
- (d) The employer will endeavor to accommodate the needs of employees if they have family or study commitments. The employer will have regard to any other relevant personal circumstances as far as is reasonably practicable.

#### **Payment for Work on a Public Holiday**

- (a) An employee who works on a Public Holiday shall be entitled to their Ordinary Hourly rate plus a loading of 150% for all time worked.
- (b) Casual employees who work on a Public Holiday shall be entitled to their Ordinary Hourly rate, exclusive of any casual loading, plus a loading of 150% for all time worked.
- (c) An employee may elect in writing to accrue the 150% loading as time off in lieu. This means that for every hour worked on a Public Holiday, the employee receives their Ordinary Hourly rate plus one and a half hours time off in lieu.

#### **Absences Before or After a Public Holiday**

An employee who fails to attend for work on the working day before or after a Public Holiday is not entitled to be paid for the Public Holiday unless the employee provides a medical certificate or statutory declaration explaining his or her absence.

**(18) MEAL INTERVALS/REST BREAKS**

**Meal Intervals**

An employee shall not work more than 5 hours without taking an unpaid meal break of no less than 30 minutes.

The meal break shall be taken at a mutually convenient time to be reached by agreement. Provided that where an agreement cannot be reached, the employer may require the employee to take a meal break at a time convenient to the business.

**Rest Breaks**

- (a) A paid rest break of ten minutes shall be taken at a mutually convenient time during a rostered shift of more than 4 hours.
- (b) A second paid rest break of ten minutes shall be taken at a mutually convenient time during a rostered shift of more than 7 hours.

**(19) TRAVEL ALLOWANCE**

The employer will pay an allowance of \$0.75 per kilometer to an employee who is required by the employer to use his or her own motor vehicle in the performance of his employment duties.

**(20) ANNUAL LEAVE**

Annual leave is provided for in the NES.

**Taking Annual Leave**

- (a) Any employee may take paid annual leave in sufficient annual leave has been credited to that employee and the employer has authorised the leave being taken.

**Employer's Authorisation of Annual Leave**

- (a) Requests for taking of annual leave must be made by the employee in writing to the employer.

- (b) Annual leave is authorised if any employee gives the employer reasonable prior notice requesting annual leave, and the employer agrees to that request.
- (c) The employer may reasonably refuse any employee's request to take annual leave, or revoke annual leave, due to the operational requirements of the workplace.
- (d) The employer shall not unreasonably refuse any employee's request to take annual leave and shall make all reasonable efforts to accommodate requests to take annual leave.

**Mandatory taking of Annual Leave**

An employee must take an amount of annual leave during a particular period if:

- (a) The employer directs that employee to do so because during that period the employer shuts down its business, or any part of its business in which the employee works, and the employee has at least that amount of annual leave credited to them; or
- (b) The employer directs that employee to do so, and at that time the employee has accrued more than 8 weeks of annual leave. Provided that the amount of annual leave that the employer has directed the employee to take is no more than one quarter of the total annual leave that the employee has accrued.

**Payment for Annual Leave**

All annual leave taken shall be paid at the employee's Ordinary Hourly rate at the time of taking leave, exclusive of any loadings.

Where an employee's regular weekly wage includes a penalty loading, the employee will be entitled to be paid for Annual Leave at their regular weekly wage, inclusive of any loadings.

"Regular" for the purposes of this section means where an employee has been in receipt of such wage for at least 8 weeks prior to taking leave.

**Entitlement to Receive Payment in lieu of taking Annual Leave**

An employee is entitled to forgo half of their annual leave entitlement that has accrued during each 12 month period by giving the employer written notice requesting to forgo such leave, and by the employer authorising that request.

Payment for annual leave foregone is at that employee's Ordinary Hourly rate at the time that the employee gives notice exercising this entitlement, and payment is to be made within a reasonable period.

(21) **PERSONAL/ CARER'S LEAVE AND COMPASSIONATE LEAVE**

Personal / carer's leave and compassionate leave are provided for in the NES.

**Unpaid Carer's Leave**

The employees are entitled to a period of up to 2 days taken either as a single unbroken period or as separate periods as agreed between the employer and employee in accordance with the Act.

**Absence Notices**

Any employee claiming, or seeking to claim, personal leave must give the employer notice of taking such leave as soon as reasonably practicable and at least 2 hours before they were due to commence work.

(22) **PARENTAL LEAVE**

The employees are entitled to a period of up to 52 weeks unpaid parental leave as provided for in the NES.

(23) **TRAINING**

The employer will provide training to the employee from time to time in areas affecting the retail industry. Employees are encouraged to participate in industry training as part of their personal development and an employee should discuss training opportunities with their immediate supervisor.

Training that is deemed by the employer to be relevant to the employee's personal and professional development shall be arranged and paid for by the employer. No employee shall suffer a decrease in weekly earnings due to undertaking training activities.

(24) **LONG SERVICE LEAVE**

Long Service Leave is provided for in the NES.

(25) **POLICIES AND PROCEDURES**

The employees are required to comply with the employer's current and future policies and procedures which relate to employment, operational and safety matters.

(26) **TERMINATION OF EMPLOYMENT**

Any employee's employment may be terminated by either the employer or that employee giving the following period of notice:

<b>Period of Continuous Service</b>	<b>Period of Notice</b>
Less than 1 year	1 week
1 year - 3 years	2 weeks
3 years - 5 years	3 weeks
5 years and over	4 weeks

Where the employment is terminated by the employer, and the employee is over 45 years of age and has completed at least 2 years of continuous service with the employer, the required period of notice as specified above shall be increased by one week.

In lieu of giving the required period of notice, the employer may pay the employee an amount which is equivalent to the amount that the employee would have been paid by the employer had they worked during the required period of notice.

Nothing in this clause or this Agreement shall prevent the employer from summarily dismissing any employee for grounds including (but not limited to) misconduct, gross incompetence, continued neglect of duties, willful disobedience of lawful orders, breach of duty of fidelity, misuse of the employer's confidential information, serious breach of contract and harassment (including sexual harassment).

**(27) SUPERANNUATION**

The employer shall be a participating employer of the Retail Employees' Superannuation Trust (REST) and shall contribute to REST on behalf of the employee the level of contribution required to comply with the Superannuation Guarantee (Administration) Act 1992 as amended. Alternatively an employee may elect that their authorized superannuation contributions be paid to the Meat Industry Employees' Superannuation Fund (MIESF) on their behalf.

**(28) JURY SERVICE**

Where an employee is required to attend for Jury Service, the employer will make up the difference between the daily attendance fee the employee receives on Jury Service and the employee's normal payment for the same period. The employee should provide proof of attendance for Jury Service and of any payment received at the time of claiming the difference.

**(29) ACCIDENT MAKE-UP PAY**

**Entitlement**

- (a) The employer will pay an employee who is in receipt of worker's compensation, an amount equal to the difference between the

weekly worker's compensation payment and the minimum weekly payment applicable to that employee's classification.

- (b) Provided that any such make-up pay shall be reduced by the amount an employee may earn as a result of a return to work.
- (c) Payment under this clause is conditional upon the employee accepting suitable work in accordance with the terms of any doctor's certificate issued in respect of the relevant injury. This may include work or duties different from the employee's normal duties.
- (d) No payment will be made for any injury arising out of an accident where the injured employee is knowingly in breach of any statutory regulation or any policy, procedure or instruction relating to safe working practices of the employer.
- (e) No payment will be made in respect of any accident occurring away from the premises of the employer, excepting accidents occurring during the performance of the employee's duties.
- (f) No payment will be made in respect of any absence following a recurrence of an injury arising out of employment with another employer.
- (g) No payment will be made in respect of any period that the employee is otherwise absent from work on paid leave.
- (h) Payment under this clause is limited to a maximum of 39 weeks on account of any one injury.

**(30) DISPUTE RESOLUTION**

- (1) If a dispute relates to:
  - (a) a matter arising under the agreement; or
  - (b) the National Employment Standards;this term sets out procedures to settle the dispute.
- (2) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- (3) In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
- (4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Australia.

- (5) Fair Work Australia may deal with the dispute in 2 stages:
- (a) Fair Work Australia will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - (b) if Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then:
    - (i) arbitrate the dispute; and
    - (ii) make a determination that is binding on the parties.

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

A decision that Fair Work Australia 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.

- (6) While the parties are trying to resolve the dispute using the procedures in this term:
- (a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
  - (b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
    - (1) the work is not safe; or
    - (2) applicable occupational health and safety legislation would not permit the work to be performed; or
    - (3) the work is not appropriate for the employee to perform; or
    - (4) there are other reasonable grounds for the employee to refuse to comply with the direction.
- (7) The parties to the dispute agree to be bound by a decision made by Fair Work Australia in accordance with this term.

**(31) STAND DOWN**

The employer may deduct for any day or part of a day for which the employee cannot be usefully employed because of strike, breakdown of machinery or any stoppage of work for any cause for which the employer cannot reasonably be held to be responsible. Any stand down will not break the employment of the employee for the purposes of continuity of employment.

**(32) REDUNDANCY**

An employee whose employment is terminated on the basis that the position is redundant or for reasons due to the operational needs of the business (such as where there is a downturn in business or a bona fide restructure based on the

business needs of the company), the employee will be entitled to the severance payment in addition to the notice payment set out in clause 26 of this Agreement.

An employee whose employment is terminated by reason of redundancy is entitled to the following amount of severance pay in respect of a period of continuous service:

<b>Period of Continuous Service</b>	<b>Severance Pay</b>
Up to 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	6 weeks
3 years and less than 4 years	7 weeks
4 years and less than 5 years	8 weeks
5 years and less than 6 years	10 weeks
6 years and less than 7 years	11 weeks
7 years and less than 8 years	13 weeks
8 years and less than 9 years	14 weeks
9 years and less than 10 years	16 weeks
10 years and over	12 weeks

### (33) COMPREHENSIVE AGREEMENT

#### **34.1 Comprehensive agreement**

This Agreement is a comprehensive enterprise agreement and provides entitlements' consistent with the National Employment Standards as detailed in the *Fair Work Act 2009*.

#### **34.2 No Extra Claims**

It is an express term of this Agreement that during the operation of this Agreement there will be no extra claims made by the employees with respect to any matter pertaining to the relationship between the employer and the employees (whether or not such matters are covered by this Agreement).

#### **34.3 Policies and Procedures**

The employees must comply with the policies and procedures of the employer that might exist from time to time. It is expressly agreed by the parties that unless expressly specified to the contrary, the employer's policies and procedures are **not** incorporated into this Agreement.

#### **34.4 Termination of Agreement**

If this Agreement is terminated (other than where the Agreement is replaced by a new Agreement) the Australian Fair Pay and Conditions Standard and the Protected Award Conditions of the relevant and applicable Award will constitute the terms and conditions of employment of employees.



## SCHEDULE A

The Employer named in this Agreement is: Ryans Fresh Pty Ltd                      **Company**  
Name:

Address:    **Shed 9/109 Hertford Street Sebastopol. 3356**

## SCHEDULE B

The Award that formerly covered the employer and employees who are subject to this Agreement was the Ryans Fresh Pty Ltd and AMIEU Collective Agreement 2007.

## SCHEDULE C WAGE RATES


<b>Position</b>	<b>Weekly Rate</b>	<b>Full Time &amp; Part Time Hourly Rate</b>	<b>Casual Hourly Rate</b>
<b>Butcher</b>	<b>\$786.33</b>	<b>\$20.69</b>	<b>\$25.86</b>
<b>year 4 apprentice 95%</b>	\$747.01	\$19.65	\$24.57
<b>year 3 apprentice 85%</b>	\$668.38	\$17.59	\$21.98
<b>year 2 apprentice 65%</b>	\$511.11	\$13.45	\$16.81
<b>year 1 apprentice 50%</b>	\$393.17	\$10.35	\$12.93
<b>Cabinet Attendants / Packers</b>	<b><u>weekly rate</u></b>	<b><u>FT &amp; PT Hourly Rate</u></b>	<b><u>Casual Hourly Rate</u></b>
<b>Adult 20 years and over</b>	<b>\$668.39</b>	<b>\$17.59</b>	<b>\$21.99</b>
<b>19-20 Junior (85%)</b>	\$568.13	\$14.95	\$18.69
<b>18-19 Junior (75%)</b>	\$501.29	\$13.19	\$16.49
<b>17-18 Junior (60%)</b>	\$401.03	\$10.55	\$13.19
<b>Under 17 Junior (50%)</b>	\$334.19	\$8.79	\$10.99


## SCHEDULE D WAGE INCREASES

The employee's Ordinary Rate of Pay as specified in Schedule C shall increase by 3.00% 12 months from the date of lodgment and every 12 months thereafter, with the final

increase to be made 12 months prior to nominal expiry of this Agreement, 3 years from the date of lodgment.


**Signed for and on behalf of the Employer:**

Signature:  Date: 30 / 01 / 2013  
.....  
BEN RYAN  
(name [print])  
.....  
GENERAL MANAGER  
(position)  
.....  
174 GEELONG RD MT CLEAR. 3350  
(address)

 Date: 30 / 01 / 2013  
.....  
Witness

DIANNE BOLSTER  
Name of Witness (print)

**Signed for and on behalf of the Australasian Meat Industry Employees Union:**

Signature:  Date: 1 / 02 / 2013  
.....  
Dianne Bolster.  
(name [print])  
.....  
HR Manager  
(position)  
.....  
3 Harold Court Alfredton. Vic  
(address)

 Date: 1 / 2 / 2013  
.....

Witness

Rebecca Whitehouse

Name of Witness (print)

## UNDERTAKINGS

(s.190 Fair Work Act 2009)

### Ryans Fresh Pty Ltd and AMIEU Collective Agreement 2012

1. Ryans Fresh Pty Ltd (Employer) has applied to the Fair Work Commission (FWC) pursuant to s.185 of the Fair Work Act 2009 (Act) for approval of an enterprise agreement to be known as the Fishers Stores Consolidated Pty Ltd and AMIEU Collective Agreement 2012 (Agreement).
2. The Employer is trading as Ryans Fresh.
3. FWC has raised concern that clause 20 of the Agreement appears to contravene the requirements of s.93 of the Act relating to cashing out and taking paid annual leave.
4. The FWC also raised concerns that clause 16(3) of the Agreement will not satisfy the requirements of the Act.
5. Pursuant to s190 of the Act, the Employer hereby undertakes to the FWC to:

- a. Remove clause 20 under section 'Entitlement to Receive Payment in lieu of taking Annual Leave' which states:

An employee is entitled to forgo half of their annual leave entitlement that has accrued during each 12 month period by giving the employer written notice requesting to forgo such leave, and by the employer authorising that request.

Payment for annual leave foregone is at that employee's Ordinary Hourly rate at the time that the employee gives notice exercising this entitlement, and payment is to be made within a reasonable period.

And replace with:

An employee is entitled to forgo half of their annual leave entitlement that has accrued during each 12 month period, only if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being greater than 4 weeks.

Each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee; Payment for annual leave foregone must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has foregone.

- b. Remove clause 16(3) entitled 'Voluntary Overtime' which states:
  - a) An employee may volunteer to work Overtime, provided they make a written request for such hours to the employer.
  - b) Voluntary Overtime shall not form part of an employee's regular working hours.

c) Voluntary Overtime will be paid at the Ordinary Hourly rate plus a 25% loading.

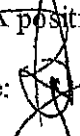
d) An employee may work voluntary Overtime in a maximum of 26 weeks per year. Any Overtime in excess of 26 weeks per year is deemed to be worked at the request of the employer and shall be paid at the overtime loading of 50%.

c. Ensure that a copy of these undertakings is made available to all employees covered by the Agreement and ensure that a copy of this instrument is attached to any copy of the Agreement provided to employees or made available in the workplace.

Name: BEN RYAN

Position: GENERAL MANAGER

(A position duly authorised to give this undertaking on behalf of the Employer)

Signature: 

Date: 11/2/2013.

As an employee bargaining representative I support FWA accepting these undertakings and the Agreement then being approved.

Name: DIANNE BOLSTER

Position: HR MANAGER

Signature: 

Date: 11/2/2013.