



# DECISION

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

**Delta Pty Ltd T/A Delta Group**  
(AG2021/6898)

## **DELTA PTY LTD TRADING AS DELTA GROUP AND THE CFMMEU (VICTORIAN MINING AND ENERGY DIVISION) HAZELWOOD ENTERPRISE AGREEMENT 2021**

Building, metal and civil construction industries

COMMISSIONER O'NEILL

MELBOURNE, 8 SEPTEMBER 2021

*Application for approval of the Delta Pty Ltd Trading as Delta Group and the CFMMEU  
(Victorian Mining and Energy Division) Hazelwood Enterprise Agreement 2021.*

[1] Delta Pty Ltd has applied for approval of a greenfields agreement known as the *Delta Pty Ltd Trading as Delta Group and the CFMMEU (Victorian Mining and Energy Division) Hazelwood Enterprise Agreement 2021* (the Agreement).

[2] The Agreement meets the requirements of section 172(2)(b) of the Act. I am satisfied that each of the requirements of ss.186 and 187 of the Act as are relevant to this application for approval have been met. In accordance with s.187(5)(a) of the Act, I am satisfied that the Construction, Forestry, Maritime, Mining and Energy Union is entitled to represent the industrial interests of a majority of employees who will be covered by the Agreement in relation to work that is to be performed under it. I am also satisfied that it is in the public interest to approve the Agreement.

[3] I observe that the following provisions are likely to be inconsistent with the National Employment Standards (NES):

- Clause 2.11(c) – Abandonment; and
- Clause 6.9(a)(iii) – Personal Leave.

However, noting clause 1.4(c) of the Agreement, I am satisfied the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[4] Pursuant to s.53(2)(b) of the Act I note the Agreement was made with the CFMMEU and that the Agreement covers this organisation.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 15 September 2021. The nominal expiry date of the Agreement is 30 June 2023.



COMMISSIONER

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**DELTA PTY LTD TRADING AS DELTA GROUP AND THE  
CFMMEU (VICTORIAN MINING AND ENERGY DIVISION)  
HAZELWOOD ENTERPRISE AGREEMENT 2021**

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## 1. APPLICATION AND OPERATION

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### 1.1 Title

This Agreement shall be known as the DELTA PTY LTD TRADING AS DELTA GROUP AND THE CFMMEU (VICTORIAN MINING AND ENERGY DIVISION) HAZELWOOD ENTERPRISE AGREEMENT 2021 ('**the Agreement**').

### 1.2 Parties

The parties to this Agreement are:

- (a) DELTA Pty Ltd ('**DELTA**'), ACN 67 007 069 794 and/or any successor(s), assignee(s), transmittee(s) (including receivers, managers, trustees, administrators or liquidators) who have control over the DELTA PTY LTD assets (whether immediate or not) belonging to or of the whole or part of the business; and
- (b) Employees employed by DELTA business ('**the business**') at Hazelwood, who fall within the classifications in clause 3.1 of this Agreement ("**the Employees**")

### 1.3 Application, Scope and Coverage

- (a) This Agreement binds and covers:
  - (i) DELTA; and
  - (ii) the Employees; and
  - (iii) the Construction, Forestry, Maritime, Mining & Energy Union (CFMMEU) Victorian District, Mining and Energy Division.

### 1.4 Sanctity of Agreement

- (a) Subject to clause 1.4(b) this Agreement is stand alone and insular in nature and has been developed by the parties to reflect and accommodate the specific circumstances of the business. Unless referred to herein this Agreement shall supersede and replace all previous Awards, Certified Agreements and all other local Agreements whether written or verbal in their entirety.
- (b) This Agreement shall incorporate the **Building and Construction General On-site Award 2010** incorporating all amendments as at the date of operation of this Agreement. Where there is any inconsistency between this Agreement and the Award, this Agreement shall take precedence to the extent of the inconsistency.
- (c) 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.

### 1.5 Term of Agreement

This Agreement shall operate seven (7) days after the Agreement has been approved by the Fair Work Commission (FWC). The nominal expiry date will be 30 June 2023.

## **2. TERMS AND CONDITIONS OF EMPLOYMENT**

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### **2.1 Confirmation of Employment**

All new Employees, at the time of engagement, will be given a letter outlining their conditions of employment. A copy of this agreement will be provided at the same time.

### **2.2 Flexibility**

DELTA may direct an Employee to carry out any duties, which are within the limits of the Employee's skill, competence and authorization.

Any direction by DELTA shall be consistent with its responsibility to provide a safe and healthy working environment.

### **2.3 Productivity**

It is recognised by the parties that in order to achieve a viable production operation the parties to this agreement must commit themselves to improve the productivity of the business.

In particular it is recognised that DELTA's success is based on achieving levels of productivity consistent with international best practice.

DELTA commits to make available appropriate technical advances and to apply the necessary expertise, skills and facilities. In return the parties commit to a high level of co-operation between the production Employees and management at all levels to enable production to flow freely and efficiently with an ability to accommodate changes in the work plan and varying opportunities to ensure profitability.

### **2.4 Individual Flexibility Agreement**

DELTA and an Employee covered by this Agreement may agree to make an Individual Flexibility Arrangement (IFA) to vary the effect of terms of the Agreement, provided that:

- (a) The individual flexibility arrangement deals with one or more of the following matters:
  - (i) arrangements about when work is performed;
  - (ii) overtime arising from variations to when work is performed; and
- (b) The individual flexibility arrangement meets the genuine needs of DELTA and the Employee in relation to one or more of the matters mentioned in paragraph (a); and
- (c) The individual flexibility arrangement is genuinely agreed to by DELTA and the Employee.
- (d) DELTA must ensure that the terms of the individual flexibility arrangement:
  - (i) Are about permitted matters under section 172 of the Fair Work Act; and
  - (ii) Do not contain unlawful terms within the meaning of section 194 of the Fair Work Act; and

- (iii) Result in the Employee being better off overall than the Employee would be if no arrangement was made.
  
- (e) DELTA must ensure that the individual flexibility arrangement:
  - (i) is in writing; and
  - (ii) includes the name of DELTA and Employee; and
  - (iii) is signed by DELTA and Employee and if the Employee is under eighteen (18) years of age, signed by a parent or guardian of the Employee; and
  - (iv) include details of:
    - a) the terms of the Agreement that will be varied by the arrangement; and
    - b) how the arrangement will vary the effect of the terms; and
    - c) how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
  - (v) states the day on which the arrangement commences.
  
- (f) DELTA must give the Employee a copy of the individual flexibility arrangement within fourteen (14) days after it is agreed to.
  
- (g) DELTA or the Employee may terminate the individual flexibility arrangement:
  - (i) by giving no more than twenty-eight (28) days written notice to the other party to the arrangement; or
  - (ii) if DELTA and the Employee agree in writing — at any time.

## 2.5 Probationary Employment

All new Employees other than casuals shall have a probationary period of three months. During the probationary period the Employee's service will count for the purposes of accruing entitlements and benefits, which apply under this Agreement.

During the probationary period, DELTA or the Employee may terminate employment by giving one (1) week's notice.

## 2.6 Weekly Employment

All Employees shall be engaged on a weekly basis unless specifically engaged as a casual.

## 2.7 Casual Employees

- (a) A casual Employee is an Employee employed on an occasional basis and whose work pattern is not regular and systematic. When a person is engaged for casual employment the Employee will be informed in writing that the Employee is to be employed as a casual, the job to be performed, the classification level, the

actual or likely length of engagement including number of hours to be worked per week, and the relevant rate of pay.

- (b) A casual Employee shall be entitled to all the applicable rates and conditions of employment prescribed in this Agreement except annual leave, personal leave, parental leave, jury service and public holidays.
- (c) On each occasion a casual Employee is required to attend work the Employee shall be entitled to payment for a minimum of four hours work plus the relevant fares and travel allowance.
- (d) A casual Employee for working ordinary hours shall be paid one hundred and twenty-five percent (125%) of the hourly rate prescribed in this Agreement for the Employees' classification. The additional twenty-five percent (25%) payment is in lieu of annual leave, sick leave and public holidays.
- (e) A casual Employee, who is required to work overtime or weekend work shall be entitled to the relevant penalty rates prescribed in this Agreement.
- (f) Any casual Employee (if eligible) may seek that their casual employment be converted to full time or part time employment in accordance with the provisions of the relevant award.
- (g) Termination of all casual employment shall require one (1) hours' notice on either side or the payment or forfeiture of one (1) hours pay, as the case may be.

## 2.8 Seasonal Workers

- (a) Seasonal workers may be employed during the dry months of the year, usually November to May.
- (b) Seasonal workers will be paid the hourly rate prescribed in this Agreement for the Employee's classification for each hour worked.
- (c) Banked RDO's when paid out will be paid at the rate at which the entitlement was accrued.

## 2.9 Termination

- (a) Notice of Termination by DELTA:
  - (i) In order to terminate the employment of an Employee DELTA shall give to the Employee the following notice:

Employee's Period of Continuous Service with DELTA	Period of Notice
Less than one (1) year	At least 1 week
One (1) year and not more than three (3) years	At least 2 weeks
More than three (3) years but not more than five (5) years	At least 3 weeks
More than five (5) years	At least 4 weeks

- (ii) In addition to the notice in sub-paragraph 2.9(a)(i), Employees over forty five (45) years of age at the time of the giving of the notice with not less

than two (2) years continuous service, shall be entitled to an additional week's notice.

- (iii) Payment in lieu of the notice prescribed in sub-clause 2.9(a)(i) and 2.9(a)(ii) shall be made if the appropriate notice period is not given. Such payment shall be calculated in accordance with the Fair Work Act.
- (iv) The period of notice in this clause shall not apply in the case of termination of casual Employees or Employees engaged for a specific period of time or for a specific task or tasks.
- (v) DELTA will have the right to dismiss any Employee without notice for conduct that justifies instant dismissal. In such cases the wages shall be paid up to the time of dismissal only.

(b) Notice of Termination by the Employee

The notice of termination of employment required to be given by an Employee shall be the same as that required of DELTA, except that there shall be no additional notice based on the age of the Employee concerned.

**2.10 Employment Security, Redundancy & Income Schemes**

(a) Obligation to Consult

- (i) Where DELTA is seriously considering that it no longer wishes the job an Employee has been doing done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, DELTA must consult with any Employees who will be affected by the proposal, inclusive of any representative(s) nominated by the Employees.
- (ii) As soon as practicable DELTA must discuss with the relevant Employees (inclusive of any representative(s) nominated by the Employees) and cover any reasons for the proposed termination.
- (iii) The consultation process to be followed is defined under clause 7

(b) Severance, Income Protection, Trauma and Journey Accidents Insurance Schemes.

(i) Non Seasonal Employees

\$81.60 per week shall be paid into each Employee's account with Incolink for each week of service. This weekly severance amount will be indexed according to industry agreements.

The Employer is, and will remain during the life of this Agreement, a participating employer in the Incolink Number 1 Fund (or other redundancy fund of which Incolink is a trustee) and,

an employer member of IPT Agency Co Ltd or IPT Agency Co (No.2) Ltd. IPT Agency Co Ltd and IPT Agency Co (No. 2) Ltd administer the insurance schemes covering income protection, trauma and journey accidents (Income Protection, Trauma and Journey Accidents Insurance Schemes).

(ii) Seasonal Employees

Seasonal Employees shall accrue severance pay at the equivalent rate of \$3.50 per hour worked to a maximum of thirty-eight (38) hours per week for the first 28 weeks each season. This amount will be deposited into Employees Incolink accounts on a monthly basis. Beyond twenty-eight (28) weeks until the end of the season severance pay will only accrue at the Incolink industry weekly rate until the season finishes.

(iii) Casual Employees

Casual Employees shall be entitled to a pro rata entitlement (based on the non-seasonal Employees' entitlement – see 2.10(b)(i) ) that shall be paid into the Employee's Incolink account. The pro-rata entitlement will be based on the number of ordinary hours a casual Employee works each week, up to total ordinary time of thirty-six (36) hours per week. To avoid doubt, the maximum weekly contribution is currently eighty-one dollars and sixty cents (\$81.60) (indexed for movement in industry agreements).

(c) Employee Leaving During Notice

An Employee whose employment is terminated for reasons set out in clause 2.10(a)(i) hereof may terminate employment during the period of notice, and if so, shall be entitled to the same benefits and payments under this clause had the Employee remained with DELTA until the expiry of such notice, provided that in such circumstances the Employee shall not be entitled to payment in lieu of notice.

(d) Time Off During Notice Period

- (i) During the period of notice of termination given by DELTA, an Employee shall be allowed up to one (1) day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (ii) If the Employee has been allowed paid leave for more than one (1) day during the notice period for the purpose of seeking other employment, the Employee shall, at the request of DELTA, be required to produce proof of attendance at an interview or the Employee shall not receive payment for the time absent. For this purpose, a statutory declaration will be sufficient.

(e) Notice to Centrelink

Where a decision has been made to terminate fifteen (15) or more Employees in the circumstances outlined in sub-clause 2.10(a), DELTA will notify Centrelink as soon as practicable after making the decision by giving written notice about the proposed terminations.

(f) Employees Exempted (Ancillary Employees)

Clause 2.10 shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, or in the case of casual Employees or Employees engaged for a specific period of time or for a specified task or tasks or to seasonal workers (with the exception , in respect of Seasonal Workers, of clause 2.10(b)(ii).

## 2.11 **Abandonment**

- (a) The absence of any Employee from work for a continuous period exceeding three (3) working shifts without the consent of DELTA and without notification to DELTA shall be prima facie evidence that the Employee has abandoned their employment. During such period, DELTA will make every reasonable attempt to contact an Employee prior to terminating their employment.
- (b) If within a period of fourteen (14) calendar days from their last attendance at work or the date of their last absence in respect of which notification has been given or consent has been granted an Employee has not established to the satisfaction of their employer that they were absent for reasonable cause, the Employee is deemed to have abandoned their employment.
- (c) Termination of employment by abandonment in accordance with this Abandonment clause operates as from the date of the last attendance at work or the last day's absence in respect of which consent was granted, or the date of the last absence in respect of which notification was given to DELTA, whichever is the later."

## 2.12 **Stand Down**

- (a) Subject to this clause, DELTA has the right to stand down an Employee(s) for part or all of a day for serious misconduct or where industrial action occurs.
- (b) DELTA has the right to stand down an Employee if the Employee cannot be usefully employed after three (3) or more days because of major breakdowns in machinery or equipment or any stoppage of work for which DELTA cannot reasonably be held responsible.
- (c) Alternative available work, training and leave taking opportunities shall be considered before stand-downs occur. If leave is to be taken, the Employee may elect to take such leave either with or without pay
- (d) Prior to any stand downs occurring due to major breakdowns or other stoppages (excluding industrial action), the consultative process under clause 7 in this Agreement will be applied.
- (e) Any Employee who is stood down under this clause shall be treated for all purposes (other than payment of wages) as having continuity of service and employment.

### 3. WAGES AND ALLOWANCES

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#### 3.1 Classifications and Rates of Pay

(a) Classifications and skill levels as described in this clause are to cover all aspects of DELTA's operations at the Hazelwood sites which are not covered by separate Enterprise Agreements.

(b) Employees shall be classified and paid the following hourly all purpose base rates:

(i) Group 1 — Labourer, Spotter, Peggy, Trades Assistant, Fuel Tanker Driver/Greaser, Trainee Plant Operator

**\$43.58** Effective first full pay period after **approval of this Agreement**

**\$44.67** Effective first full pay period after **1 Sep 2021**

**\$45.79** Effective first full pay period after **1 Sep 2022**

(ii) Group 1a — Servicemen (New Entrant) Plant Services Operator, Survey & Technical Assistant.

**\$44.21** Effective first full pay period after **approval of this Agreement**

**\$45.32** Effective first full pay period after **1 Sep 2021**

**\$46.45** Effective first full pay period after **1 Sep 2022**

(iii) Group 2 — General Plant Operator, Accredited Serviceman and Van Services Operator.

**\$46.06** Effective first full pay period after **approval of this Agreement**

**\$47.21** Effective first full pay period after **1 Sep 2021**

**\$48.39** Effective first full pay period after **1 Sep 2022**

- (iv) Group 3 — Plant Operator — Excavator Operator (under 60 Tonnes), Accredited Dozer And Grader

**\$46.47** Effective first full pay period after **approval of this Agreement**

**\$47.63** Effective first full pay period after **1 Sep 2021**

**\$48.82** Effective first full pay period after **1 Sep 2022**

- (v) Group 4 — Excavator Operator (Over 60 Tonnes), Heavy Earthmoving Plant Mechanic — New Entrant, Surveyor (graduate).

**\$48.09** Effective first full pay period after **approval of this Agreement**

**\$49.29** Effective first full pay period after **1 Sep 2021**

**\$50.52** Effective first full pay period after **1 Sep 2022**

- (vi) Group 5 — Special Class, Attainable After Accredited Training, Certified Training Officer/Instructor, Surveyor.

**\$50.39** Effective first full pay period after **approval of this Agreement**

**\$51.65** Effective first full pay period after **1 Sep 2021**

**\$52.94** Effective first full pay period after **1 Sep 2022**

### 3.2 **Payment of Wages**

All monies payable pursuant to this Agreement shall be paid weekly by electronic transfer of funds into an account nominated by the Employee with a bank or other financial institution recognized by DELTA.

### 3.3 **Higher Duties**

Where an Employee is required to temporarily operate plant which attracts a higher rate of pay, then the Employee will be paid at the higher rate for the full day seven and one fifth (7.2) hours or all hours the Employee operated such plant whichever is the greater.

### 3.4 Allowances

Employees engaged by DELTA shall be entitled to the following allowances.

(a) Fares & Travelling

Employees will be paid the following allowance for fares and travelling for each day an Employee attends work as follows:

**\$38.24** Effective first full pay period after **approval of this Agreement**

**\$39.20** Effective first full pay period after **1 Sep 2021**

**\$40.18** Effective first full pay period after **1 Sep 2022**

Fares and Traveling allowance shall be paid on rostered days off.

(b) Disability Allowance

An hourly all purpose disability allowance will be paid as follows:

**\$2.90** Effective first full pay period after **approval of this Agreement**

**\$2.97** Effective first full pay period after **1 Sep 2021**

**\$3.05** Effective first full pay period after **1 Sep 2022**

(c) DELTA Mobile Plant Business Allowances

An hourly all purpose allowance titled DELTA Mobile Plant Business Allowance shall be paid as follows:

**\$2.62** Effective first full pay period after **approval of this Agreement**

**\$2.68** Effective first full pay period after **1 Sep 2021**

**\$2.75** Effective first full pay period after **1 Sep 2022**

(d) Tea Money

A flat allowance per week or part thereof shall be paid to cover the cost of tea, coffee and milk.

**\$4.73** Effective first full pay period after **approval of this Agreement**

**\$4.85** Effective first full pay period after **1 Sep 2021**

**\$4.97** **Effective** first full pay period after **1 Sep 2022**

(e) Leading Hand Allowances

A weekly all purpose allowance shall apply to those carrying out Leading Hand duties as follows:

**\$61.50** Effective first full pay period after **approval of this Agreement**

**\$63.04** Effective first full pay period after **1 Sep 2021**

**\$64.61** Effective first full pay period after **1 Sep 2022**

(f) A stand alone allowance will be paid to First Aiders appointed by DELTA who hold a current First Aid Certificate.

**\$3.05/day** Effective first full pay period after **approval of this Agreement**

**\$3.12/day** Effective first full pay period after **1 Sep 2021**

**\$3.20/day** Effective first full pay period after **1 Sep 2022**

3.5 **Tool Allowance**

A non all purpose tool allowance will be paid to Earthmoving Plant Fitters covered by this agreement as follows:

**\$32.57** Effective first full pay period after **approval of this Agreement**

**\$33.38** Effective first full pay period after **1 Sep 2021**

**\$34.22** Effective first full pay period after **1 Sep 2022**

### 3.6 **Superannuation**

- (a) Subject to the Superannuation Guarantee Legislation:
  - (i) From the first full pay period after approval of this Agreement DELTA shall contribute an amount equal to ten and a half percent (10.5%) of an Employee's ordinary time earnings and appropriate allowances into the Employee's C+Bus Superannuation fund.
- (b) DELTA will make deductions from the wages of Employees who so authorise such deductions for voluntary contributions to the fund with the consent of the trustee in accordance with the trust deed.

### 3.7 **Salary Packaging**

The Employee's ordinary time earnings and appropriate allowances shall be used for the purposes of superannuation salary. Salary sacrificing shall not reduce the ordinary time earnings and appropriate allowances that are used for the purposes of superannuation or other benefits or entitlements.

To the extent allowable by the Australian Taxation Office, Employees may elect to salary sacrifice a portion of their salary to cover:

- (a) Personal superannuation contribution;
- (b) For permanent weekly Employees, novated and/or associate leasing of motor vehicles through an agreed leasing company; or
- (c) Union Membership Fees.

## **4. HOURS OF WORK**

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### **4.1 Hours of Work – Day Worker**

- (a) The ordinary hours of work shall be an average of 36 per week exclusive of lunch break. Operators shall be available to commence work and cease work at the crib sheds adjacent to the car park at the prescribed start and finish times and at the job location as directed within the operating areas of each of the Hazelwood sites.
- (b) The ordinary hours of work prescribed on any day shall be worked continuously, except for meal breaks, at the discretion of DELTA between 6.00 am and 6.00 pm Monday to Friday.

### **4.2 Hours of Work – Shift Worker**

DELTA, under normal circumstances, will require shift work to maintain unimpeded production.

- (a) Definitions — for the purpose of this clause:
  - (i) *Afternoon Shift* means any shift finishing after 6.00 pm and at or before midnight.
  - (ii) *Continuous Work* means work carried on with consecutive shifts of people throughout the twenty-four (24) hours of each of at least five (5) consecutive days without interruption, except during breakdowns or meal breaks or due to unavoidable causes beyond the control of DELTA.
  - (iii) *Night Shift* means a shift finishing after midnight and at or before 8.00 am.
  - (iv) *Rostered Shift* means a shift of which the Employee concerned has had at least twenty-four (24) hours' notice.

- (b) Hours — Continuous Work Shifts

This sub-clause shall apply to shift workers on continuous work as hereinbefore defined. The ordinary hours of shift workers shall average thirty-six (36) per week or shorter as agreed inclusive of crib time which shall be taken between the 5th and 6th hour after commencement so as not to impede production.

- (c) Afternoon and Night Shift Allowances

A shift worker whilst on afternoon or night shift shall be paid for such shift at thirty percent (30%) more than the ordinary rate for ordinary time hours.

- (d) Public Holiday Shifts

Shift workers on continuous work on rostered shift, the major portion of which is performed on a public holiday, shall be paid at the rate of double time and a half.

- (e) Where the major portion of a shift which falls on a public holiday, that shift shall be regarded as the holiday shift.
- (f) Shift Rosters
  - (i) Mobile plant crews may be required by DELTA to work two rotating shifts, six (6) days per week as directed. Overtime hours will be paid at the appropriate penalty.
  - (ii) Every endeavour will be made to post shift rosters seventy-two (72) hours in advance of their implementation. However, DELTA reserves the right to change rosters with a minimum of forty-eight (48) hours' notice without incurring penalty.

#### 4.3 **Rostered Days Off**

- (a) RDO Rosters
  - (i) RDO rosters shall be prepared for the site prior to the commencement of each year. Rosters shall be prepared in consultation with the workplace representative.
- (b) Banking and Pay Out of RDO's
  - (i) Subject to sub clause 4.3(b)(ii), Day Work and Shift Work Employees will be able to bank rostered days off.
  - (ii) Where an Employee has banked RDO's to his/her credit, such RDO's will be paid out at the rate at which the RDO's were accrued. RDO balances will be converted prior to each wage increment
- (c) Day work
  - (i) Employee may take the banked RDOs at a mutually acceptable time on the understanding that RDO balances will be cleared prior to taking annual leave.
  - (ii) In the event that an Employee is required to work on an RDO the payment for that work will be at Saturday rates and a day off in lieu will be provided.
- (d) Shift work

The working of a thirty-six (36) hour week or shorter as agreed, must provide maximum flexibility in respect of working requirements. The maintenance crew will stagger its rostered days off such that the maximum number of maintenance personnel is available for work when the production crew is absent. Employees will have the ability to bank their rostered days off, in accordance with clause 4.3(c), and will take them at a mutually acceptable time on the understanding that RDO balances will be cleared prior to taking annual leave balances.

#### 4.4 **Breaks**

- (a) Meal breaks shall be for a period of thirty (30) minutes. The time during which a meal break is taken may be varied to meet special work conditions. The duration and commencement time of meal breaks may be varied by the site consultative committee.

- (b) The time of taking a scheduled meal break or smoko breaks by one or more Employees may be altered by DELTA if it is necessary to do so in order to meet a requirement for continuity of operations. Smoko breaks shall be taken at the work location provided that suitable amenities are available.
- (c) DELTA may stagger the time of taking a meal and rest break to meet operational requirements.
- (d) Subject to the provisions of sub-clause 4.4(a) hereof, an Employee employed as a regular maintenance man shall work during meal breaks at the ordinary rates or pay whenever instructed to do so 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.

4.5 **Maximum Hours of work**

Except for emergency no Employee shall be required to work more than fourteen (14) hours on any one day or shift.

## **5. OVERTIME**

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### **5.1 Day Workers**

Subject to sub-clause 5.4 of this Agreement, for all time worked in excess of the ordinary hours prescribed by this Agreement, the rate of pay for a day-worker shall be time and a half for the first two (2) hours and double time thereafter, such double time to continue until the completion of the overtime work.

### **5.2 Shift Workers**

Shift workers shall, for all time worked in excess of the ordinary working hours prescribed by this agreement, be paid at the rate of double time.

### **5.3 Requirement to Work Reasonable Overtime**

DELTA may require any Employee to work reasonable overtime as demonstrably required by the task in hand having regard to the personal requirements of the Employee.

### **5.4 Rest Period after Overtime**

- (a) When overtime is necessary it shall, wherever reasonably practicable, be so arranged that Employees have at least ten (10) consecutive hours off duty between the work of successive days.
- (b) An Employee who works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day that the Employee has not had at least ten (10) consecutive hours off duty between those times shall, subject to this sub-clause, be released after completion of such overtime until the Employee has had ten (10) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (c) If on the instructions of DELTA such an Employee resumes or continues work without having had such ten (10) consecutive hours off duty, payment shall be at double time until released from duty for such period and the Employee shall then be entitled to be absent until the Employee has had ten (10) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (d) The provisions of this sub-clause shall apply in the case of shift workers with eight (8) hours being substituted for ten (10) hours when overtime is worked:
  - (i) For the purpose of changing shift rosters; or
  - (ii) Where a shift worker does not report for duty and a day worker or a shift worker is required to replace such shift worker; or
  - (iii) Where a shift is worked by arrangement between the Employees themselves.

#### 5.5 **Call Back**

An Employee called back to work overtime after leaving DELTA's premises (whether notified before or after leaving the premises) shall be paid for a minimum of four hours' work or where the Employee has been paid for standing by in accordance with sub-clause 5.7 shall be paid for a minimum of three (3) hours' work at the appropriate rate for each time recalled; provided that:

- (a) except in the case of unforeseen circumstances arising, the Employee shall not be required to work the full three (3) or four (4) hours as the case may be if the job the Employee was recalled to perform is completed within a shorter period;
- (b) overtime worked in the circumstances specified in this sub-clause shall not be regarded as overtime for the purpose of sub-clause 5.4 of this clause when the actual time worked is less than three (3) hours on such recall or on each of such recalls;
- (c) this sub-clause shall not apply in cases where it is customary for an Employee to return to DELTA's premises to perform a specific job outside ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

#### 5.6 **Saturday Work**

A day worker required to work overtime on a Saturday shall be afforded at least four (4) hour's work or paid for four (4) hours at the appropriate rate, except where such overtime is continuous with overtime commenced on the day previously.

#### 5.7 **Standing By**

An Employee required to hold himself in readiness to work after ordinary hours shall, until released, be paid standing-by time at ordinary rates from the time which the Employee is told to hold in readiness.

#### 5.8 **Meal Times on Overtime**

- (a) When an Employee is required to work overtime after the usual ceasing time of the day or shift for two (2) hours or more, the Employee shall be allowed to take, without deduction of pay, a crib time of twenty (20) minutes in duration immediately after such ceasing time and thereafter, after each four (4) hours of continuous work, (also without deduction of pay), a crib time of thirty (30) minutes in duration. In the event of an Employee remaining at work after the usual ceasing time without taking the crib time of twenty minutes (20) and continuing at work for a period of two (2) hours or more, the Employee shall be regarded as having worked twenty minutes more than the time worked and be paid accordingly.
- (b) Where a day worker is required to work on a Saturday or Sunday the first prescribed crib time will be paid at the appropriate rate.

#### 5.9 **Meal Allowance**

An Employee required to work overtime for at least one and a half (1.5) hours after working ordinary hours shall be paid an amount of \$15.81 to meet the cost of a meal.

## **6. LEAVE AND STATUTORY HOLIDAYS**

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### **6.1 National Employment Standards**

Part 6 of this Agreement describes the NES entitlements and may also provide terms that supplement or are ancillary to the entitlements in the NES.

The parties acknowledge that the clauses contained in Part 6 only apply to the extent that they are not detrimental to an Employee when compared with the NES.

### **6.2 Taking of Leave**

Unless otherwise specified under this clause, leave entitlements shall be taken to meet the needs of the business and the individual.

### **6.3 Annual Leave**

#### **(a) Entitlement**

- (i) Full time Employees will be entitled to four (4) weeks (one hundred and forty-four (144) hours) annual leave.
- (ii) A shift worker will be entitled to five (5) weeks (one hundred and eighty (180) hours) annual leave.
- (iii) Employee's annual leave accrues progressively during a year of service according to an Employee's ordinary hours of work and accumulates from year to year.

#### **(b) Additional Annual Leave Entitlements**

In addition to the annual leave entitlements, a continuous shift worker (as defined in the Fair Work Act) will be entitled to an additional week of annual leave. Such additional leave will accrue on a pro-rata basis.

#### **(c) Requirement to take Annual Leave**

- (i) Annual leave shall be taken in not more than three (3) separate periods per year.
- (ii) Where DELTA shuts down its plant or sections thereof for the purposes of allowing annual leave to all or the bulk of the Employees on the project, it may do so by giving not less than one (1) month's notice of its intention to do so.
- (iii) DELTA may close down its plant for two (2) or three (3) separate periods per year for the purpose of granting annual leave in accordance with this clause.

#### **(d) Payment of Annual Leave**

Annual leave will be paid at the Employee's all-purpose base rate plus a seventeen and a half percent (17.5%) loading.

#### **(e) Payment on Termination**

Payment of annual leave and proportionate leave on termination shall be at the rate of ordinary time earnings (applied to the accrued hours) plus seventeen and a half percent (17.5%) loading.

#### 6.4 Long Service Leave

Long service leave entitlements for each Employee will accrue with the Coinvest (construction industry long service leave fund) scheme. DELTA will contribute into the Coinvest scheme at the agreed industry rate.

#### 6.5 Compassionate Leave

- (a) An Employee on weekly employment shall be entitled to a maximum of two (2) days without loss of pay on each occasion when a member of the Employee's immediate family or household dies or contracts or develops a personal illness that poses a serious threat to his or her life or sustains a personal injury that poses a serious threat to his or her life. Employees must provide evidence for such leave.
- (b) The Fair Work Act defines immediate family or household as the Employee's husband, wife, father, mother, brother, sister, child, stepchild, grandfather, grandmother or parents-in-law. For the purpose of this clause, the words "wife" and "husband" shall include de facto partner, and the words "father" and "mother" shall include foster father or mother and stepfather or mother.

#### 6.6 Public Holidays

- (a) A full time Employee shall be entitled to the following public holidays without loss of pay:
  - (i) New Year's Day
  - (ii) Australia Day
  - (iii) Labour Day
  - (iv) Good Friday
  - (v) Easter Saturday
  - (vi) Easter Sunday
  - (vii) Easter Monday
  - (viii) Anzac Day
  - (ix) Queen's Birthday
  - (x) Friday before the AFL Grand Final
  - (xi) Melbourne Cup
  - (xii) Christmas Day
  - (xiii) Boxing Day
  - (xiv) Any other gazetted public holiday by the Victorian government

- (b) With the exception of Easter Saturday and Easter Sunday, where any of the above public holidays fall on a Saturday or Sunday, the following working day will be the public holiday.
- (c) Seasonal workers will be entitled to any of the above public holidays that fall during the term of their engagement.
- (d) Where an Employee is absent from their employment on the working day before or after a public holiday without reasonable excuse or without consent of DELTA the Employee shall not be entitled to payment for such holiday.

#### 6.7 **Picnic Day**

Employees will be granted time off without loss of ordinary pay to attend the annual picnic day. The picnic day each year will be determined between DELTA and a majority of Employees.

Casual Employees will be entitled to payment for picnic day if they attend work on the day before or after the nominated picnic day.

#### 6.8 **Cashing Out of Annual Leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 6.8.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 6.8.
- (c) An employer and an Employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the Employee.
- (d) An agreement under clause 6.8 must state:
  - (i) the amount of leave to be cashed out and the payment to be made to the Employee for it; and
  - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 6.8 must be signed by the employer and Employee and, if the Employee is under eighteen (18) years of age, by the Employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the Employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the Employee's remaining accrued entitlement to paid annual leave being less than four (4) weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of twelve (12) months is two (2) weeks.
- (i) The employer must keep a copy of any agreement under clause 6.8 as an employee record.
  - (i) NOTE 1: Under section 344 of the Fair Work [Act](#), an employer must not exert undue influence or undue pressure on an Employee to make, or not make, an agreement under clause 6.8.

- (ii) NOTE 2: Under section 345(1) of the Fair Work [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 6.8.
- (iii) NOTE 3: An example of the type of agreement required by clause 6.8 is set out in clause 13. There is no requirement to use the example form of agreement set out at clause 13.

## 6.9 Personal Leave

Weekly Employees shall accrue ten (10) working days of personal sick and carer's leave for each year of continuous service. In accordance with the Fair Work Act all personal/carer's leave accrues progressively during a year of service according to the Employee's ordinary hours of work, and accumulates from year to year. Personal leave balances will be shown on each Employee's payslip.

### (a) Sick Leave

- (i) An Employee on weekly employment who is absent from work on account of personal illness or on account of injury by accident shall be entitled to a leave of absence without deduction of pay subject to the following conditions and limitations.
- (ii) The Employee shall not be entitled to paid leave of absence for any period in respect which the Employee is entitled to worker's compensation.
- (iii) The Employee shall, as soon as reasonably practicable and within eight (8) hours of the commencement of such absence inform DELTA of inability to attend for duty, and as far as practicable, state the estimated duration of the absence.
- (iv) The Employee shall prove to the satisfaction of DELTA that the Employee was unable on account of such illness or injury to attend for duty on the day or days for which sick leave is claimed. In the absence of a doctor's certificate a statutory declaration may be accepted as evidence.

### (b) Carer's Leave

- (i) Employees may use their personal leave accrued in accordance with the NES or the purposes of caring for household members or immediate family (including adult child), spouse (including de facto spouse), parent, grandparent, grandchild or sibling of the Employee or his or her spouse.
- (ii) Where an Employee has no accrued personal leave, that Employee may apply for annual leave or leave without pay to care for family/household members.
- (iii) They may also swap rostered day off, provided this is consistent with operational requirements and has the approval of the appropriate manager, to care for family/household members.
- (iv) Employees shall, if required by DELTA, establish by the production of a medical certificate or statutory declaration, the illness of the household or immediate family member concerned and that the illness is such as to require care by another.

(c) Single Day Absences

In the case of an Employee who claims to be allowed paid sick leave in accordance with this clause for an absence of one day only, such Employee, if in the year the Employee has already been allowed paid leave on more than one occasion for one day only, shall not be entitled to payment for the day claimed unless a doctor's certificate is provided or other evidence as DELTA may require. Nothing in this sub-clause shall limit DELTA's rights under sub-clause 6.9(a)(iv).

(d) Seasonal Employees

- (i) Seasonal Employees who are employed on a weekly basis will accrue personal leave in accordance with the provisions for weekly Employees.
- (ii) Where an Employee ceases to be employed as a seasonal Employee and is engaged as a casual Employee they will cease to accrue personal leave during the period of casual employment.
- (iii) Any personal leave entitlements accrued as a seasonal Employee will be maintained as long as there is no break in an Employee's continuity of employment with DELTA for a period of more than twelve (12) months.

**6.10 Family and Domestic Violence Leave**

Family and domestic Violence will be in accordance with the Fair Work Act save that personal leave will be made available for use by victims of family and domestic violence.

**6.11 Parental Leave**

Parental leave will be in accordance with the Fair Work Act.

**6.12 Jury Service and Crown Witness Leave**

An Employee required to attend for jury service or is subpoenaed to appear by the Crown as a Crown Witness during ordinary working hours shall be reimbursed by DELTA an amount equal to the difference between the amount paid in respect of their attendance and the amount the Employee would have received in respect of their roster or prescribed working hours, provided that the Employee:

- (a) Notifies DELTA as soon as possible of the date upon which the Employee is required to attend and any relevant evidence of the required attendance;
- (b) Does all things necessary to obtain payment, as per the relevant legislation, for their attendance; and
- (c) Provides DELTA with proof of attendance, the duration of such attendance, and the amount received in respect of such attendance.

**6.13 Accident and Injury Benefits**

- (a) DELTA shall pay an Employee accident pay where the Employee receives an injury for which weekly payments or compensation are payable by or on behalf of DELTA pursuant to the provisions of the workers' compensation legislation as amended from time to time.

- (b) "Accident pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the Employee pursuant to the workers' compensation legislation and the Employees appropriate 36 hour rate and accrued entitlements prescribed by clauses 3 and 4.1 and 4.2 where the incapacity is for a lesser period than ten (10) days the difference between the amount of compensation and the said agreement rate for that period.
- (c) DELTA shall pay or cause to be paid accident pay as defined during the incapacity of the Employee arising from any one injury for a total of one hundred and thirty (130) weeks whether the incapacity is in one continuous period or not.
- (d) The liability of DELTA to pay accident pay in accordance with this clause shall arise as at the date of the injury or accident in respect of which compensation is payable under the said relevant workers' compensation legislation, and the termination of the Employee's employment for any reason during the period of any incapacity shall in no way affect the liability of DELTA to pay accident pay as provided in this clause.
- (e) In the event that an Employee receives a lump sum in redemption of weekly payments under the said relevant legislation, the liability of DELTA to pay accident pay as herein provided shall cease from the date of such redemption.
- (f) For the purpose of this clause journey accidents will be compensable and subject to make-up pay. Entitlements to compensation from the Transport Accident Commission shall be pursued by the Employee prior to seeking compensation from DELTA under this clause.

#### 6.14 **Income Protection and Trauma (IPT) - Accident Insurance**

DELTA will contribute \$25.05 per week per current Employee to the cost of the Income Protection and Trauma (IPT) insurance policy. This will be indexed in line with industry movement.

## **7. CONSULTATION**

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### **7.1 Introduction of Change**

- (a) If DELTA is seriously considering either a major change that is likely to have a significant effect on Employees covered by this Agreement or changes to regular rosters or ordinary hours of work, DELTA must consult with any Employees who will be affected by the proposal, inclusive of any representative(s) nominated by the Employees.
- (b) As soon as practicable DELTA must discuss with the relevant Employees (inclusive of any representative(s) nominated by the Employees) the introduction of the change; and the effect the change is likely to have on the Employees. DELTA must discuss measures to avert or mitigate the adverse effect of the change on the Employees.
- (c) For the purposes of the discussion DELTA will provide the relevant Employees (inclusive of any representative(s) nominated by the Employees) in writing:
  - (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. However, DELTA is not required to disclose commercially confidential information.
- (d) In relation to any change about rosters or ordinary hours of work, DELTA must invite the Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (e) DELTA must give prompt and genuine consideration to matters raised by the relevant Employees about the proposed changes, including any impact the change will have on the Employees' family or caring responsibilities.
- (f) DELTA must act in good faith in relation to the consultation process provided in this clause. In this clause, 'good faith' includes obligations to meet, disclose relevant information, genuinely consider proposals and respond with reasons, and to refrain from capricious or unfair conduct that undermines consultation.
- (g) During the consultation, DELTA and the affected Employees and their representatives shall endeavour to reach agreement prior to the implementation of major change. Where agreement is reached with affected Employees and their representatives the obligation to consult will have been acquitted. However, if agreement is not reached, the disputed matter shall be progressed under clause 12 and the status-quo ante shall apply until the matter is resolved.
- (h) In this clause a major change is likely to have a significant effect on Employees if it results in:
  - (i) the termination of the employment of Employees; or
  - (ii) major change to the composition, operation or size of DELTA's workforce or to the skills required of Employees; or

- (iii) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (iv) the alteration of hours of work or rosters; or
  - (v) the need to retrain Employees; or
  - (vi) the need to relocate Employees to another workplace; or
  - (vii) the restructuring of jobs.
- (i) In this clause, relevant Employees mean the Employees who may be affected by the major change.
- (j) For the avoidance of doubt, this clause does not allow DELTA to vary matters expressly provided within this Agreement.

## 7.2 Consultative Committee

- (a) The consultative committee is seen as an integral and important part of the organisation of work at the project. For this reason, it is imperative that members of the committee are available at all times to resolve matters of mutual Interest and that they carry out their duties in a responsible and timely manner.
- (b) Consultative Committee Guidelines
- (i) These guidelines have been produced to assist in creating a stable and cooperative environment within DELTA. It is not the objective of the parties to this Agreement that the committee would usurp the function and responsibility of management or the unions.
  - (ii) The scope of discussions will include any reasonable subject falling within stated committee functions.
  - (iii) The committee shall consist of no fewer than four (4) members, all of whom shall be Employees of DELTA, as follows:
    - a) Two (2) management representatives including the project manager or his nominee;
    - b) Two (2) Employees.
    - c) Committee members shall hold office for a period of twelve (12) months, with no limitation on the number of terms.
    - d) The committee shall meet at least quarterly in accordance with the calendar prepared by DELTA and shall be chaired initially (for six (6) months) by a management representative, with the chair alternating every six (6) months with an Employee or the committee may decide who shall be chairman by mutual consent.
    - e) A quorum shall consist of two (2) management representatives and two (2) of Employee representatives.

f) The agenda shall be drafted and circulated to all committee members one (1) week before the due meeting date, which shall be established by the previous meeting. All committee members shall have the right to submit matters for the agenda. The agenda shall be produced and circulated by management in consultation with one nominated Employee representative.

(iv) Operation of Committee

a) Co-opting to the committee shall be with the consent of all members of the committee but co-opted persons shall not have the right to vote.

b) The committee may also request the assistance of other DELTA Employees on specific issues on the agenda.

c) Agendas and notes of meetings will be circulated without delay. Agendas and notes of meetings will be circulated to all parties.

(c) Functions of the committee will include:

(i) To receive from management representatives reports on the affairs of DELTA, including such matters as:

a) project manpower and skill requirements;

b) proposed technological or other significant changes and their anticipated effects as defined in this agreement;

c) any problems that have not been resolved at a shopfloor level.

(ii) To consider any matter placed on the agenda by committee members.

(iii) To increase understanding of DELTA's objectives and plans and to promote a more co-operative approach to resolving the problems on the project.

(iv) To obtain and discuss the views and concerns of the Employees.

(v) To discuss management proposals and the effects of proposed changes on Employees.

(vi) To identify problems and work co-operatively to develop solutions in all areas of DELTA's operations.

(vii) To provide and discuss information and reports on particular areas of DELTA's operations including aspects such as:

a) work practices and performance;

b) quality evaluations;

c) other matters of concern to management or Employees.

(viii) To receive and publish information and reports from other consultative committees such as the occupational health and safety committee.

- (ix) To promote Improved industrial relations through consultation and discussion including the negotiated settlement of particular and appropriate issues with a view to minimising unnecessary lost time through industrial disputation.

(d) Both parties accept that certain information could be considered as commercially sensitive or subject to security restrictions. Every effort will be made by both parties to respect such considerations of confidentiality while making available as much information as possible.

(e) The committee shall also produce a regular bulletin for distribution to all Employees which contains reports on its activities and in which both management and Employee perspectives can be accommodated on particular issues.

### 7.3 **Annual Review of Workload and Labour Requirements**

- (a) A review of the workload and labour requirements of the Business for the following calendar year will be carried out by DELTA in early November of each year.
- (b) The consultative committee will be advised of the outcomes of the reviews.

## **8. WORKPLACE REPRESENTATIVES**

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### **8.1 Workplace Union/Employee Representatives**

- (a) Collective industrial relations will continue as a fundamental principle of the Employer.
- (b) DELTA recognises, upon notification, the role of elected Employee Representatives, whether Union representatives or not. Employee Representatives will be provided with reasonable time to represent Employees at the workplace on matters that pertain to the employment relationship between DELTA and Employees covered by this Agreement.
- (c) Subject to approval by their Supervisor, Union/Employee Representatives will be released from normal duties without loss of pay to:
  - (i) Attend enterprise agreement negotiations;
  - (ii) Consult with other Employees or their union in relation to any matter arising out of this agreement or any matter arising in connection with their employment with DELTA;
  - (iii) Prepare for and attend Fair Work Commission proceedings relevant to matters associated with this agreement or any matter arising on the course of their employment with DELTA; and
  - (iv) Attend consultative, dispute, grievance, counselling, disciplinary meetings, et cetera (when requested) or DELTA approved communication meetings of Employees on site.
- (d) Employee Representatives will be able to place material relevant to the employment relationship at DELTA and the application of this agreement on a notice board located where Employees can have ready access to it at commencement and end of shifts. Company computers, telephones, facsimile, photocopying facilities and Information Technology facilities. Use of Company e-mail will also be made available for communication with Employees/members.
- (e) Employee Representatives (which may be a Union Delegate or representative) shall be allowed reasonable time and facilities to help them represent any Employee they are representing at the time in discussions with management to ensure observance of this Agreement or any other work related matter.
- (f) The Company shall provide an agreed facility for the use of Union Delegates/Employee Representative to perform their duties and functions as the on-site representative of Employees. The provision of the following facilities is to ensure that Union Delegates/Employee Representatives are able to effectively perform their functions in a professional and timely manner. The facilities shall include:
  - (i) a telephone;

- (ii) a table and chairs;
  - (iii) a filing cabinet;
  - (iv) air-conditioning/heating;
  - (v) access to stationery and other administrative facilities, including use of facsimile, use of e-mail, (if available on site), following consultation between the Union Delegate/Employee Representative and Site Management;
  - (vi) a private lockable area; and
  - (vii) a noticeboard in lunchrooms and another prominent location in the workplace which is accessible to all Employees and allow the Employee Representatives to post notices and information on those noticeboards.
- (g) Employee Representatives/Union Delegates shall have rights in accordance with this Agreement and the Act.
- (h) Any Employee Representative (including Union delegate) shall have the right to approach or be approached by an Employee to discuss any matter related to the Employees' employment at any time during working hours.
- (i) Each year a Union/Employee Representative will be allowed up to 10 days paid leave per annum to attend Union and Employer approved training and other activities. The Employer will pay for any approved training and the Employee will be given time off with pay to attend the approved training course.
- (j) Union membership shall be recognized by the Employer. The parties to this Agreement acknowledge and accept that it is the right of every employee of the Company to have freedom of association, including the right to join or not to join an organization/ Union or association of employees.
- (k) The employees who are members of a relevant Union shall be able to participate in Union meetings and exercise their rights.
- (l) Each month the Union may convene a meeting of Union members of up to 1 hour duration during working hours. The meetings will be without loss of pay. Meetings are to be held at times to minimise inconvenience for all parties. Such meetings will not entitle Employees to overtime.
- (m) The Employee Representatives role includes keeping all employees informed of workplace relations matters and providing workplace advice.

## 9. COUNSELLING AND DISCIPLINE PROCEDURE

- (a) DELTA's Counselling and Discipline Procedure is a structured approach to handling Employee discipline matters. It will be invoked in cases where unacceptable Employee behaviour, performance or conduct that requires disciplinary action.
- (b) Performance and conduct related matters shall be resolved by the application of the DELTA Counselling and Discipline procedure and the management of such matters will be conducted on an individual basis based on the circumstances outlined in the table below.
- (c) DELTA will not refuse an Employee the right to involve, as applicable, a support person, a witness, or Employee Representative of their choice (which may include a Union Delegate or representative/s), at any stage in the process to assist in any discussion/s in relation to the Counselling and Discipline Procedure.
- (d) DELTA's Counselling and Discipline Procedure may include issuing warnings and other steps if the Employee's performance, conduct or behaviour does not meet DELTA's standards. After twelve (12) months (or earlier period as listed in the Counselling and Discipline Procedure) an Employee with a warning will have that warning expunged. Where an Employee invokes the Dispute / Grievance Resolution Procedure the discipline process will be on hold until the grievance is resolved.
- (e) This clause does not prevent summary dismissal on account of serious and wilful misconduct.

<b>Counselling and Discipline Procedure</b>			
<b>Steps</b>	<b>Who's Involved</b>	<b>Records</b>	<b>Expunged After</b>
1. Oral Warning	Employee, Team Leader, Supervisor & Employee Representative (which may be a Union Delegate or representative) (if requested)	Diary note or note to file detailing the unacceptable conduct, performance or behaviour.  Employee informed in writing if note is recorded on file.	Three (3) Months

<p>2. First Written Warning</p>	<p>Employee, Team Leader, Supervisor &amp; Employee Representative (which may be a Union Delegate or representative/s) (if requested) &amp; DELTA Representative. Employee Representative notified of disciplinary procedure.</p>	<p>The Employee has the right to respond to the warning in writing. A copy of both, the first written warning and the responses shall be placed in the Employee's employment history file.</p> <p>Note to file. Signed by Employee &amp; supervisor detailing reason for disciplinary action.</p>	<p>Six (6) Months</p>
<p>3. Final Written Warning</p>	<p>Employee, Team Leader, Supervisor, Line Manager &amp; Employee Representative (which may be a Union Delegate or representative/s) (if requested) &amp; DELTA Representative. Employee Representative notified of disciplinary procedure.</p>	<p>The Employee has the right to respond to the final warning in writing. A copy of both, the final written warning and the responses shall be placed in the Employee's employment history file.</p> <p>Note to file, signed by both Employee and Line Manager, detailing the reason for the disciplinary action.</p>	<p>Twelve (12) Months</p>
<p>4. Disciplinary action up to &amp; including dismissal</p>	<p>Employee, Team Leader, Supervisor, Line Manager &amp; Employee Representative (which may be a Union Delegate or representative/s) (if requested) &amp; DELTA Representative.</p> <p>Employee Representative (which may be a Union Delegate/District Official or representative/s) notified of disciplinary procedure.</p> <p>As above plus Senior Manager</p>	<p>The Employee has the right to respond to the disciplinary action in writing. A copy of both, the disciplinary action and the responses shall be placed in the Employee's employment history file.</p> <p>Note to file detailing the disciplinary action, signed by both Employee and a Senior DELTA Manager, or the reasons for dismissal signed by a Senior DELTA Manager.</p>	<p>Twelve (12) Months</p>

## **10. CONTRACTORS**

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### **10.1 General**

DELTA may use contractors and labour hire companies for the performance of work from time to time to meet abnormal workloads provided that the job security of Employees is not affected.

DELTA is committed to maintaining a stable and skilled workforce and recognises its contribution to the operation of the Company. As such, full-time direct and ongoing employment is a guiding principle of this Agreement.

DELTA will take all measures to achieve employment security for the direct permanent Employees of the Company. All persons covered by this Agreement recognize the importance of measures to protect and enhance the employment security, health and safety, terms and conditions of employment and career development of the Employees.

If DELTA wishes to engage contractors and the contractors Employees are to perform work that may be performed by Employees covered by this Agreement, the Company must consult in good faith with potentially affected Employees prior to the decision to engage contractors.

Such notification will include information regarding scope of work, expected duration and approximate numbers of people to be deployed on site.

Whilst DELTA may contract work to independent contractors for a variety of reasons, DELTA acknowledges that in certain circumstances the use of contractors may affect the job security of Employees covered by this Agreement. DELTA acknowledges that it is not its intention to outsource work to contractors that undermines the terms and conditions of Employees under this Agreement.

For the purpose of this Clause:

- (i) Contractor means a person, company or business and includes labour hire companies and sub-contractors; and
- (ii) Work means work covered by the Agreement which might ordinarily be performed by current or future Employees of the employer under this Agreement

## **11. MISCELLANEOUS PROVISIONS**

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### **11.1 Workplace Training**

DELTA will ensure that all Employees are suitably trained to carry out the functions and duties, which DELTA requires them to perform, and that qualifications gained are suitably recognised. Training will be carried out subject to the following criteria:

- (a) National accreditation;
- (b) Portability;
- (c) Competencies based on a career path;
- (d) Fairness; and
- (e) PDP: All Employees shall be offered the opportunity to participate in structuring a personal development plan outlining the Employee's training and career development over the life of this agreement. This will take into account the needs of DELTA and the Employee and will also include performance feedback.

Furthermore, DELTA supports the principle of providing opportunities for traineeships and apprenticeships.

### **11.2 Health, Safety and Environment**

The health and safety of all persons employed by DELTA is considered to be of the utmost importance. Appropriate resources shall be made available to ensure compliance with all relevant Acts, Regulations and Codes of Practice to make the workplace safe and without risk to health.

It is a prime responsibility of all people employed by DELTA to ensure that their jobs are performed safely and without injury or damage to themselves or their workmates, to the environment or equipment.

### **11.3 Protective Clothing**

- (a) DELTA shall provide suitable protective equipment. On commencement of employment and on the first anniversary of employment. DELTA will issue each Employee;
  - (i) Four (4) shirts;
  - (ii) Four (4) trousers or four (4) overalls; and
  - (iii) Two (2) pairs of safety footwear
- (b) Following the first anniversary of employment, DELTA will replace protective equipment or clothing on a fair wear and tear and exchange basis.
- (c) On commencement of this Agreement, any existing employee who has not received the protective equipment as above will receive a top up allocation to the full amounts as above.

- (d) Appropriate wet weather gear, including safety gumboots, if required in their work place, to be issued and to be replaced on a fair wear and tear and on an exchange basis.
- (e) A "bluey jacket" or approved equivalent will be issued to all Employees between 1st May and 31st August and will be replaced on a fair wear and tear basis.
- (f) The Employee shall utilise all protective equipment in such a way and at such times as to achieve the purposes for which it is supplied.

## 12. DISPUTE / GRIEVANCE RESOLUTION PROCEDURE

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In the event of any dispute arising as to the interpretation or application of this Agreement, or any matter arising in the course of employment, including matters in relation to the National Employment Standards (NES), the following procedure will apply. There is no limit on the type of issues which may be referred to this process by Employees, a representative of an Employee/s on behalf of that Employee/s or DELTA.

The aim of the Dispute/ Grievance Procedure is to:

- (a) Provide a mechanism to assist in the avoidance of grievances and or disputes;
- (b) Provide a mechanism to process grievances and or disciplinary procedure.
- (c) Enable both parties to process disputes expeditiously and without disruption to normal work or prejudice to the final settlement; and
- (d) Provide a mechanism to resolve disputes over the disciplinary procedure.

### 12.1 Initial Process

- (a) **STEP 1** The matter will in the first instance be discussed between the Employee/s, the immediate supervisor involved and, if any Employee in question wants to have a representative present, that Employee's representative (which may include a Union Delegate or representative).

If the matter remains unresolved;

**STEP 2** It will be referred for discussion between the Employee/s, the Company's representative/s and, if any Employee in question wants to have a representative present, that Employee's representative (which may include a Union Delegate or representative).

If the matter remains unresolved;

**STEP 3** It will be referred for discussion between the Employee/s, the Company's Senior representative/s, and if any Employee in question wants to have a representative present, that Employee's representative (which may include a Union Official or representative).

If the matter remains unresolved;

**STEP 4** It may be referred to the Fair Work Commission (FWC) for conciliation or arbitration (in accordance with clause 12.2 ).

- (b) In any event, if the dispute has not been resolved within one month, the dispute may be referred to the FWC at any stage.
- (c) During the entire period, from the time when the dispute first arises until the time of its resolution (whether by discussion or negotiation, or by proceedings before the FWC), the status quo ante or 'normal work' shall continue, unless the maintenance of status quo ante or performance of normal work would place at

risk the health or safety of the Employee(s) concerned. No party to the dispute shall suffer any prejudice as to the resolution of the matter by reason only that normal work continues as required by this paragraph.

- (d) For the purposes of this clause 'normal work' means the work normally performed by an Employee and "status quo ante" means the circumstances existing immediately prior to the change or circumstance leading to the proposed change which resulted in the dispute arising.

## 12.2 FWC Process

- (a) Upon referral of the matter, the FWC shall conciliate. If the dispute remains unresolved after conciliation, the FWC may resolve the dispute by arbitration. Either party may be legally represented during arbitration.
- (b) In exercising its role under this clause, the FWC shall exercise any of its powers under the Act, and in accordance with this dispute resolution procedure, any additional powers it finds are necessary to effectively resolve the matter in dispute.
- (c) It is a term of this Agreement that the parties to the dispute will be required under this dispute settlement procedure to:
  - (i) Attend conciliation conferences and hearings;
  - (ii) Produce relevant documents and other material (subject to appropriate safeguards for commercial-in-confidence documents); and
  - (iii) Make available any witness that the FWC believes is reasonably necessary.
- (d) Without limiting the generality of the foregoing, the FWC may exercise any powers reasonably incidental to the exercise of conciliation and/or arbitration functions under this clause. Any Arbitration decision must be consistent with any applicable legislative obligations and any applicable Building and Construction codes of practice including the **Code for Tendering and Performance of Building Work 2016**.
- (e) Where the FWC has issued a decision, determination or direction under this clause, it shall be final and binding on the parties to the dispute, subject to clause 12.3

## 12.3 Appeal Process

- (a) A party may seek to institute an appeal against the FWC's decision within twenty-one days of receipt of decision or the provision of reasons for decision whichever comes later.
- (b) An application to appeal the FWC's decision will be provided by the party seeking to institute the appeal to the other parties to the dispute and the FWC in writing detailing the grounds for the appeal. The party instituting the appeal must also comply with the requirements of the Fair Work Act 2009, Fair Work Act section 375A 12.3(c)(Appeal rights).
- (c) Fair Work Act section 375A (Appeal rights)
  - (i) Despite Fair Work Act subsection 604 - 12.3(e)(ii), the FWC must not grant permission to appeal from a decision made by the FWC under

subsection 369(2) (which is about arbitration of a dismissal dispute) unless the FWC considers that it is in the public interest to do so.

- (ii) Despite Fair Work Act subsection 604 - 12.3(e)(i), an appeal from a decision made by the FWC in relation to a matter arising under subsection 369(2) can only, to the extent that it is an appeal on a question of fact, be made on the ground that the decision involved a significant error of fact.
- (d) Fair Work Act section 400 Appeal rights
- (i) Despite FW Act subsection 604 - 12.3(e)(ii), the FWC must not grant permission to appeal from a decision made by the FWC under this Part unless the FWC considers that it is in the public interest to do so.
  - (ii) Despite subsection 604 - 12.3(e)(i), an appeal from a decision made by the FWC in relation to a matter arising under this Part can only, to the extent that it is an appeal on a question of fact, be made on the ground that the decision involved a significant error of fact.
- (e) FW Act 604 Appeal of decisions
- (i) A person who is aggrieved by a decision:
    - a) made by the FWC (other than a decision of a Full Bench or an Expert Panel); or
    - b) made under the Registered Organisations Act by:
      - i. the General Manager (including a delegate of the General Manager); or
      - ii. the Registered Organisations Commissioner (including a delegate of the Commissioner);
      - iii. may appeal the decision, with the permission of the FWC.
  - (ii) Without limiting when the FWC may grant permission, the FWC must grant permission if the FWC is satisfied that it is in the public interest to do so.
    - a) Note: Subsection 12.3(e)(ii) does not apply in relation to an application for an unfair dismissal (see Fair Work Act section 400 - 12.3(d)).
- (f) A person may appeal the decision by applying to the FWC.
- (g) Unless agreed otherwise by the parties to the dispute, the Appeal will be conducted according to the principles applying to an appeal under the Act, including where a stay is sought.

- (h) The parties to the dispute will use their best endeavours to ensure that the appeal process is expedited.
- (i) The appeal decision of the FWC is final.

#### 12.4 **Costs & Expenses**

- (a) Where a matter has been notified pursuant to this clause, the Company shall provide reasonable leave without loss of pay for any Employee directly involved in the preparation of the case or required as a witness. In the event that the parties fail to agree on the identity or number of persons who qualify under this clause, the question shall be determined by the FWC as part of the dispute.
- (b) Each party to the dispute will meet their own legal and other costs.

#### 12.5 **Discipline Procedure**

- (a) The discipline procedure may be invoked where unacceptable Employee conduct requires follow up action or counselling as appropriate.
- (b) Disciplinary action can be commenced at any of the four steps in the table below, commensurate with the seriousness of the misconduct, but only after a proper investigation is concluded. Investigation panels shall be impartial and any perceived conflict of interest that is raised by the Employee concerned shall be addressed.
- (c) Investigations of unacceptable conduct, including any mitigating circumstances, must be concluded within eight weeks, unless otherwise agreed to by the parties to the matter, or no disciplinary action shall be taken.
- (d) The Company can suspend an Employee without loss of pay for the purposes of disciplinary investigations.
- (e) An Employee under investigation shall be provided the presumption of innocence until proven guilty and accordingly the Employee shall not, as far as reasonably practicable, suffer any disadvantage.
- (f) After the times specified in the table below, notes shall be removed from the Employee's file and destroyed where no further unacceptable conduct occurs within the period concerned. The Company will provide the Employee with written confirmation of the file note removal.
- (g) Each act of unacceptable conduct shall be addressed separately on its own merits and the disciplinary action taken shall be appropriate to the seriousness of the unacceptable conduct, but may take into account the previous twelve months' conduct.
- (h) This clause does not prevent summary dismissal on the grounds of serious and wilful misconduct.
- (i) Where an Employee believes they have been treated harshly or unjustly, then they may appeal the disciplinary action decision through the dispute process under this clause

### 13. Attachments

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#### 13.1 Agreement to Cash Out Annual Leave (*Example*)

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

**The employer and employee agree to the employee cashing out a particular amount of the employee's accrued paid annual leave:**

The amount of leave to be cashed out is: \_\_\_\_ hours/days

The payment to be made to the employee for the leave is: \$\_\_\_\_\_ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer  
representative: \_\_\_\_\_

Signature of employer  
representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

*Include if the employee is under 18 years of age:*

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

## 14. Signatories

For and on behalf of DELTA Pty Ltd (the Company)

Name MARK WELSH

Witnessed by DANIEL BOSATTA

Position COO

Witness signature [Signature]

Address 577 PUMMER S. POOR  
MEERBURN VIC 3207

Witness address 577 PUMMER STREET  
POOR MEERBURN VIC 3207

Signature [Signature]

Date 13/8/2021

For and on behalf of Construction, Forestry, Maritime, Mining and Energy Union, Mining and Energy Division, Victorian District Branch (CFMMEU)

Name MARK RICHARDS

Witnessed by PAULA WILLIAMS

Position VICE PRESIDENT

Witness signature P. Williams

Address WING 5 LIGNITE CRT  
MORWELL VIC 3840

Witness address CF WING 5 LIGNITE CRT  
MORWELL VIC 3840

Signature [Signature]

Date 13/8/2021

