

AG835990 PR950231

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996
s.170LK Agreement with employees (Division 2)

Permanent Trustee Company Limited

and

Trust Company of Australia Limited
(AG2004/2839)

**TRUST COMPANY OF AUSTRALIA LIMITED ENTERPRISE FLEXIBILITY
AGREEMENT 2004**

Finance and investment services

SENIOR DEPUTY PRESIDENT DRAKE

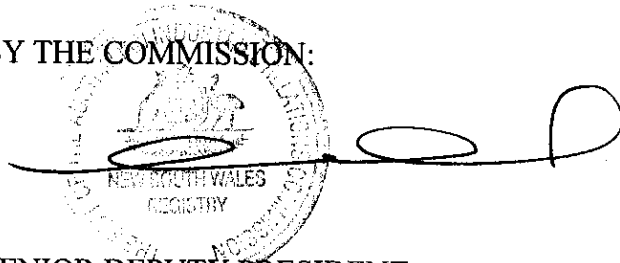
SYDNEY, 29 JULY 2004

CERTIFICATION OF AGREEMENT

In accordance with section 170LT of the *Workplace Relations Act 1996*, the Commission hereby certifies the attached written agreement.

This agreement shall come into force from 27 July 2004 and shall remain in force until 27 July 2006.

BY THE COMMISSION:

The image shows a circular official seal of the Australian Industrial Relations Commission, New South Wales Registry. The seal features a central emblem with a figure holding a scale and a sword, surrounded by the text 'AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION' and 'NEW SOUTH WALES REGISTRY'. A handwritten signature in black ink is written across the seal.

SENIOR DEPUTY PRESIDENT

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**TRUST COMPANY OF
AUSTRALIA LIMITED**

**ENTERPRISE FLEXIBILITY
AGREEMENT 2004**

Contents

PART 1 – OPERATION OF AGREEMENT.....	5
1. Title.....	5
2. Arrangement.....	5
3. Definitions and Interpretation	5
4. Scope of the Agreement	5
4.1 The Agreement applies to	5
4.2 This Agreement does not apply to:	5
4.3 For the purposes of clause 4.2(2), “Senior Manager” means:	6
4.4 This Agreement applies instead of awards, orders or other certified agreements.....	6
4.5 No Extra claims	6
4.6 Australian Workplace Agreements.....	6
4.7 Individual flexibility agreements	6
4.8 When this Agreement applies.....	7
5. How this Agreement can be varied	7
6. Availability of this Agreement.....	7
7. Consultative Process	8
PART 2 – EMPLOYMENT RELATIONSHIP	8
8. Objectives of Agreement.....	8
9. Non Discrimination.....	8
10. Dispute Settlement Procedure	9
10.1 How employees and Trust will resolve disputes.....	9
10.2 Employees must speak to their manager.....	9
10.3 If that does not work or is inappropriate	9
10.4 Human Resources.....	9
10.5 Representation	9
10.6 Mediation and conciliation	9
10.7 Work should continue	9
11. Casual Employment.....	10
12. Part time employment and job sharing	11
12.1 Part time work	11
12.2 Job Sharing	11
13. Full-time employment	12

14.	Fixed Term and Specified Task employees	12
15.	Probationary employment	12
16.	Employee duties	12
17.	Termination of Employment	13
17.1	Notice of termination by Company	13
17.2	Notice of termination by employees	13
17.3	Recovery of amounts due to Trust	13
17.4	Return of Company property	14
PART 3 - REDUNDANCY		14
18.	Redundancy	14
18.1	Severance pay	14
18.2	Time off during the notice period	14
18.3	Alternative employment	15
18.4	Exempt employees	15
PART 4 - HOURS OF WORK		16
19.	Hours	16
19.1	Ordinary hours of work	16
19.2	Span of hours	16
19.3	Meal Break	16
20.	Overtime	16
20.1	Application	16
20.2	Reasonable overtime	16
20.3	Payment for Overtime	16
20.4	Time off in lieu of overtime	17
21.	Shift Work Arrangements	17
PART 5 - WAGES AND RELATED MATTERS		17
22.	Wages & Classifications	17
22.1	Application	17
22.2	Minimum Rates of Pay	18
22.3	Junior salaries	18
22.4	Classifications and Grades	18
22.5	Supported Wage System	19
22.6	Meal Allowance	19
22.7	Higher Duties Allowance	20
23.	Out-of-hours transport	20
24.	Appraisal System	20

25.	Study Assistance	20
26.	Learning And Development	21
27.	Working Environment and Occupational Health and Safety	21
PART 6 – LEAVE		21
28.	Annual Leave.....	21
28.1	Entitlement	21
28.2	Time for taking annual leave.....	22
28.3	Annual leave and termination of employment.....	22
28.4	Payment in lieu of taking annual leave	22
28.5	Extinguishing leave loading	22
29.	Long Service Leave	23
30.	Sick Leave/Carers Leave.....	23
30.1	Amount of paid sick leave/carers leave.....	23
30.2	Eligibility	23
30.3	Immediate family or household:.....	23
30.4	Sick leave.....	24
30.5	Carer’s leave	24
31.	Personal Needs Leave	25
32.	Parental Leave	25
33.	Public Holidays	25
33.1	Entitlement	25
33.2	Substitute holidays	26
33.3	Agreement on substitute holidays.....	26
33.4	Working on a public holiday.....	27
PART 7 - NEW AGREEMENT		27
34.	New Agreement.....	27

PART 1 – OPERATION OF AGREEMENT

1. Title

This Agreement is entitled the Trust Company of Australia Limited Enterprise Flexibility Agreement 2004 (“Agreement”).

2. Arrangement

3. Definitions and Interpretation

- (1) In this Agreement:
 - (a) **Act** means the *Workplace Relations Act 1996* (Cth);
 - (b) **Award** means the Trust Company Award 2001 or any award which replaces that award.
 - (c) **Commission** means Australian Industrial Relations Commission.
 - (d) **Employee** means an employee of Trust covered by this Agreement.
 - (e) **Trust** means the Trust Company of Australia Limited and the Permanent Trustee Company Limited.
- (2) In this Agreement, a party includes the party’s executors, administrators, successors and permitted assigns.
- (3) In this Agreement the singular includes the plural and vice versa unless otherwise stated.

4. Scope of the Agreement

4.1 The Agreement applies to

- (1) Trust and
- (2) Subject to clause 4.2, all employees of Trust Company of Australia Limited and Permanent Trustee Company Limited.

4.2 This Agreement does not apply to:

- (1) Employees who are employed by Trust as Financial Planners or Private Client Advisors under Financial Planners Employment Contracts or

- (2) any Senior Manager who is a party to a Senior Manager Employment Contract with Trust.

4.3 For the purposes of clause 4.2(2), "Senior Manager" means:

- (i) the Managing Director or equivalent position of Trust, and
- (ii) any manager who is a direct report to the Managing Director (or equivalent position) of Trust;
- (iii) a manager within Trust that has the title of General Manager or head of a business division of Trust, howsoever named.

"Senior Management Employment Contract" means a written contract of employment between Trust and any employee of Trust who is a Senior Manager as defined in clause 4.3.

4.4 This Agreement applies instead of awards, orders or other certified agreements

The terms of this Agreement apply instead of, and to the exclusion of, the Award, any other certified agreement and any other award or order (to the extent permitted by law) that may otherwise apply to employees of Trust.

4.5 No Extra claims

For the term of this Agreement, the parties referred to in clause 4.1 will not make any extra claims in relation to any matter covered by this Agreement.

4.6 Australian Workplace Agreements

After this Agreement is certified, an employee and Trust can enter into an Australian Workplace Agreement (AWA) which is approved under the Act. If this is done, then the AWA operates to the exclusion of this Agreement or prevails over this Agreement to the extent of any inconsistency.

4.7 Individual flexibility agreements

- (1) An employee, or prospective employee, may make an individual flexibility agreement ("IFA") with Trust to (subject to clause 4.7(5)):
 - (a) exclude specific provisions of the Agreement;
 - (b) vary specific provisions of the Agreement.
- (2) An IFA in accordance with clause 4.7(1) must:
 - (i) be in writing;
 - (ii) not result in the employee's terms and conditions of employment pursuant to the Agreement not meeting the requirements of the "no disadvantage" test at the time of the making of the Agreement;

- (iii) specify a notice period for withdrawal from the IFA.
- (3) The effect of an IFA in accordance with clause 4.7(1) is that:
 - (i) it overrides the provisions of the Agreement to the extent of any inconsistency;
 - (ii) its terms become part of the Agreement and are enforceable as part of the Agreement.
- (4) Either party to an IFA under this clause may withdraw from the IFA by providing the notice specified in the IFA. At the end of the specified notice period the terms of the Agreement, so far as they were previously excluded or varied, will be reinstated.
- (5) The following provisions of the Agreement may not be subject to exclusion or variation pursuant to an IFA under this clause 4.7: Non Discrimination (clause 9); Dispute Settlement Procedure (clause 10); Supported Wage System (clause 22.5), Annual Leave (clause 28); Long Service Leave (clause 29); and Sick Leave/Carers Leave (clause 30).

4.8 When this Agreement applies

- (1) This Agreement will not apply unless and until the Commission terminates the *Permanent Trustee Company Limited Certified Agreement 2000*.
- (2) Subject to clause 4.8(1), this Agreement applies on and from the date that it is certified by the Australian Industrial Relations Commission ("the Commission").
- (3) The nominal expiry date of this Agreement is 2 years from that date when the Agreement comes into operation.

5. How this Agreement can be varied

Any variation to this Agreement must be done in a way that complies with section 170MD of the Act. A proposed variation to this Agreement must be in writing and must be genuinely approved by a valid majority of the persons who cast a valid vote with respect to the proposed variation and who are covered by this Agreement at that time. The proposed variation has no effect unless it is certified by the Commission.

6. Availability of this Agreement

An employee can get a copy of this Agreement and any variations to it from Trust's Human Resources Department or from the Lotus Notes documents library.

7. Consultative Process

During the term of this Agreement, a process of employee consultation and information sharing will be established to provide Trust management with employee feedback and allow the parties to monitor and facilitate the operation of this Agreement. Where practical, this process will utilise existing consultative structures.

PART 2 – EMPLOYMENT RELATIONSHIP

8. Objectives of Agreement

- (1) This Agreement forms the foundation of terms and conditions of employment for all Trust employees. The terms and conditions under this Agreement are designed to provide a consistency, fairness and flexibility for employees, management and shareholders in order to support Trust's business ambition.
- (2) This Agreement specifically reflects Trust's intention to align the terms and conditions of employment of Trust employees following the merger of Trust Company of Australia Limited and Permanent Trustee Company Limited in 2002 and the progressive integration of the two businesses.
- (3) In circumstances where employees deliver outstanding performance, results or effort to Trust this will be rewarded as far as Trust determines is reasonable and appropriate. For the purposes of this sub-clause, the issues of identifying outstanding performance, results or effort, and the nature of any reward, are for Trust to determine in its absolute discretion.

9. Non Discrimination

- (1) Trust is committed to providing a non-discriminatory and equal opportunity environment for all its employees and to ensuring that the working environment for the employee is both safe and healthy and in accordance with relevant legislation.
- (2) An employee will not receive any employment benefit or detriment because of their membership or non-membership of a union.
- (3) It is the intention of the parties to achieve the principal object in s.3(j) of the Act by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (4) In fulfilling their obligations under the disputes avoidance and settling provisions in this Agreement, the parties must make every endeavour to ensure that neither this Agreement nor its operation is directly or indirectly discriminatory in its effect.

- (5) Nothing in this clause is to be taken to affect:
- (a) any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;
 - (b) an employee pursuing matters of discrimination in any State or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission.
 - (c) the exemptions in ss.170CK(3) and (4) of the Act .

10. **Dispute Settlement Procedure**

10.1 How employees and Trust will resolve disputes

The procedure in this clause should be followed to resolve disputes about matters arising under this Agreement:

10.2 Employees must speak to their manager

As soon as practicable after a dispute arises an employee must speak to their immediate manager and give the manager an opportunity to resolve the dispute.

10.3 If that does not work or is inappropriate

If it is inappropriate for the employee to raise the dispute with their immediate manager, or if the employee tries to do that but it does not resolve the dispute, the employee must as soon as practicable take the matter up with their General Manager (or equivalent).

10.4 Human Resources

If the dispute has not been resolved within a reasonable time, or if it is not appropriate for the employee to approach their manager, the dispute should be raised with Human Resources.

10.5 Representation

The employee can obtain the assistance of someone of their choice to represent them in resolving the dispute.

10.6 Mediation and conciliation

If the matter is still not resolved, the employee can ask Trust to agree to have a mutually agreed mediator to try to resolve the dispute through mediation. If the employee and Trust cannot agree on a mediator or mediation is unsuccessful, either one can ask the Commission to settle the dispute by conciliation. If both parties agree the Commission may determine the issue.

10.7 Work should continue

Work should continue in the manner required by this Agreement while the dispute is being dealt with unless the employee has a reasonable concern

about an imminent risk to his or her health and safety. Subject to relevant provisions of occupational health and safety law, even if the employee has a reasonable concern about an imminent risk to his or her health or safety, the employee must not unreasonably fail to comply with a direction by Trust to perform other available work that is safe and appropriate for the employee to perform. The fact that the employee continues to work will not prejudice the employee or Trust.

11. Casual Employment

- (1) Casual employees will be employed by the hour and will be paid each 14 days unless otherwise agreed between the casual employee and Trust.
- (2) The rate of pay for casual employees will be based on the rate of pay in this Agreement for the grade referable to the work required to be performed by the employee, as set out in clause 22.3 of this Agreement.
- (3) The employment of a casual employee may be terminated by either the employee or Trust at any time without notice in which case the employee will be paid for the hours or part hours worked up until the time the termination becomes effective.
- (4) Casual employees will not be required to work more than five hours without a meal break of not less than 30 minutes, unless the employee would normally cease duty within that period of 30 minutes. Trust may require a casual employee to work on in an emergency without a meal break, and in such circumstances a meal break will be allowed as soon as possible.
- (5) The following clauses will not apply to employees who are employed on a casual basis:
 - (a) Part Time Employment (clause 12);
 - (b) Full time employment (clause 13);
 - (c) Fixed Term and Specified Task Employees (clause 14);
 - (d) Probationary employment (clause 15);
 - (e) Termination of Employment (clause 17);
 - (f) Redundancy (clause 18);
 - (g) Ordinary hours of work (clause 19.1);
 - (h) Overtime (clause 20);
 - (i) Annual Leave (clause 28);
 - (j) Sick Leave / Carers Leave (clause 30);
 - (k) Public Holidays (clause 33).

- (6) Casual employees will be paid a 20% loading in lieu of the leave benefits available to full-time and part-time employees.
- (7) Casual employees will not be entitled to any benefits under this Agreement apart from those specified in this clause 11 or those benefits explicitly provided to casual employees under this Agreement.

12. Part time employment and job sharing

12.1 Part time work

- (1) Employees may be engaged to work on a part time basis. A part-time employee is an employee who works predictable hours of work being less than the hours of a full-time employee, and receives, on a pro-rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (2) Part-time employees will be paid each 14 days unless otherwise agreed between the part-time employee and Trust.
- (3) Part-time employees must work a minimum of 3 consecutive hours on any 1 single attendance.
- (4) At the time of engagement, Trust and the part time employee will agree in writing a regular pattern of work, within Trust's pay period, specifying the hours to be worked each day, which days of the week the employee will work and the actual starting and finishing times each day. Once agreed, these will become the set contracted hours for the particular employee until otherwise agreed.

12.2 Job Sharing

- (1) Job sharing will be available by agreement between part time employees concerned and Trust, after consultation with the manager of the section or department.
- (2) Two part time employees can share the one position by dividing their hours of work, for example into half days, alternate weeks, alternate days, or one partner may work two days and the other three.
- (3) Job sharers will receive pro-rata pay and conditions, for the relevant classification of the position filled according to the hours worked by each job sharer.
- (4) Trust and both job sharers will mutually determine the working arrangements and responsibilities for a particular position. The contract of employment will include matters such as the number of hours to be worked by each job sharer, when those hours are to be worked and overlap time.

13. Full-time employment

- (1) A full-time employee is an employee whose ordinary hours of work are 37.5 hours per week.
- (2) Full-time employees will be employed by the week and will be paid each 14 days unless otherwise agreed between the employee and Trust.

14. Fixed Term and Specified Task employees

An employee is a fixed term employee or a specified task employee if their contract of employment is expressed to be for a fixed term or specified task. If employees are employed as fixed term or specified Task employees, they will be employed as a full time employee or part time employee however clauses 17 and 18 will not apply to their employment.

15. Probationary employment

- (1) Full-time and part-time employees may be employed for a period of probationary employment for the purpose of determining the employees suitability for ongoing employment.
- (2) Employees must be advised in advance of the period or the maximum duration of the period of probation. The period or the maximum duration of the period of probation may be:
 - (a) 3 months or less, or
 - (b) if Trust requires a longer probation, up to a maximum of 6 months, provided the period or the maximum duration is reasonable having regard to the nature and circumstances of the employment.
- (3) Probationary employment forms part of employee's period of continuous service for all purposes of this Agreement.

16. Employee duties

- (1) Trust may direct employees to carry out duties which are within the limits of the employee's skill, competence and training.
- (2) The employee's obligations under this Agreement are to:
 - (a) diligently carry out their duties and to act ethically when conducting and discharging their responsibilities;
 - (b) support Trust in achieving its aims and objectives;
 - (c) adhere to Trust's Code of Conduct;
 - (d) maintain a high level of proficiency in their particular area of expertise;

- (e) participate in appropriate training programs as and when required; and
- (f) be accountable and responsible for their decisions and actions.

17. Termination of Employment

17.1 Notice of termination by Company

- (1) In order to terminate the employment of an employee, Trust will give the employee four (4) weeks written notice unless Trust and the employee have agreed to a longer notice period. During a period of probationary employment, Trust may terminate the employment of an employee by giving the employee seven (7) days written notice or payment in lieu.
- (2) In addition to the notice in clause 17.1(1), employees over 45 years of age at the time of the giving of the notice with not less than two years' continuous service, will be entitled to an additional week's notice.
- (3) Payment in lieu of the notice prescribed in clause 17.1(1) and/or clause 17.1(2) may be made if the appropriate notice period is not given by Trust. Employment may be terminated by part of the period of notice specified and part payment in lieu.
- (4) The calculation of the payment in lieu of notice will use the wage an employee would have received in respect of the ordinary time the employee would have worked during the period of notice had their employment not been terminated.
- (5) The period of notice in this clause 17.1 will not apply in the case of dismissal for serious misconduct nor to employees engaged as casuals pursuant to clause 11.

17.2 Notice of termination by employees

- (1) In order to terminate his or her employment an employee must give Trust four (4) weeks written notice unless Trust and the employee have agreed to an alternative notice period. This notice period does not apply during a period of probationary employment.
- (2) If an employee fails to give the required or agreed alternative notice Trust will have the right to withhold monies due to the employee with a maximum amount equal to the ordinary time rate of pay of the period of notice.

17.3 Recovery of amounts due to Trust

Notwithstanding any other provision in this Agreement, to the extent permitted by law, upon the termination of the employment of an employee, Trust may retain from the amount that the employee would otherwise have received on termination such sum as is due to Trust as a debt arising from a loan or advance or benefit provided during the term of the employment.

17.4 Return of Company property

When employees' employment with Trust ends, employees must return all material that is the property of Trust including documents, keys, notes and memoranda, including confidential information about Trust or its subsidiaries, to Trust or to such place as Trust may direct.

PART 3 - REDUNDANCY

18. Redundancy

18.1 Severance pay

- (1) If Trust terminates the employment of an employee due to redundancy, the employee will be entitled to the following:
- (a) the notice set out in clause 17.1(1) of this Agreement that it intends to terminate the employment, and
 - (b) severance pay as follows:

Period of continuous service	Weeks pay
1 year to 4 years	3 weeks pay per year of continuous service.
More than 4 years and over	12 weeks pay plus 2 weeks pay for the 5 th year, and each subsequent year, of continuous service.

- (c) Severance pay under clause 18.1 will be subject to a maximum payment of 36 weeks pay. Trust will calculate this severance pay on an employee's actual rate of pay (less any loadings).
- (d) Employees whose position is made redundant before having completed one year of service will have severance pay calculated as if they had completed one full year of service. Severance pay for employees with more than one year's continuous service will be calculated on a pro-rata basis for completed months of continuous service.

18.2 Time off during the notice period

If Trust gives employees notice that it is going to terminate the employment of employees then it will give employees up to one paid day off during each week of notice so that employees can look for other employment, provided that, on request from Trust, the employees give Trust satisfactory evidence

that they used this time to seek alternative employment. The time off may be used as a complete day off or in blocks of hours over several days adding up to a single day.

18.3 Alternative employment

- (1) If Trust finds employees adequate alternative employment it does not have to pay those employees the severance pay outlined above.
- (2) For the purposes of this clause 18.3, adequate alternative employment:
 - (a) may involve employment with Trust, or employment with a successor, assignee or transmittee of the business, or part of the business, of Trust;
 - (b) must involve recognition of the employee's prior service with Trust for all accruing rights' purposes;
 - (c) must involve employment on terms and conditions that are no less favourable in aggregate when considered on an overall basis, having regard to various factors including but not limited to: pay levels, classification, hours of work, seniority, fringe benefits, workload and speed, financial capacity, job security and travelling time.
- (3) If an employee accepts alternative employment within Trust, in circumstances where the alternative employment is not adequate alternative employment (having regard to the principles in sub-clause 18.3(2)), a two-month trial period in the new position will operate. Should either the employee or Trust find that the employee is unsuited to the new position, the employee's service will be terminated without loss of redundancy entitlements, payable at the date service actually terminates. If the employee continues in the new position after the end of the two-month trial period, they will not be entitled to severance pay in relation to their previous position.
- (4) Any dispute concerning the operation of this clause 18.3 must be processed in accordance with clause 10.

18.4 Exempt employees

This clause 18 will not apply to the following employees:

- (a) an employee whose employment is terminated for serious misconduct or
- (b) an employee who is employed as a fixed term employee or as a specified task employee, or an employee employed on a casual basis.

PART 4 - HOURS OF WORK

19. Hours

19.1 Ordinary hours of work

The ordinary hours of work for full-time employees will be 37.5 hours per week (or 75 per fortnight) excluding meal breaks, however, employees may be required to work reasonable hours to fulfil relevant work requirements.

19.2 Span of hours

- (1) The ordinary hours of work for employees will be worked after 6.00 a.m. Monday to Friday.
- (2) The times at which employees will start and finish work during ordinary hours will be determined by Trust provided:
 - (a) Trust gives an employee four (4) weeks notice before it alters the hours of the employee; and
 - (b) the change in hours is reasonable and necessary to meet Trust's operational requirements as well as the client needs within market expectations.

19.3 Meal Break

- (1) Full-time employees who work Monday to Friday will be entitled to a meal break of not less than 30 minutes or longer if so required by Trust. The meal break will be commenced at a time determined by Trust between 11.30 a.m. and 2.30 p.m.
- (2) A part-time employee will not be required to work more than five hours without a meal break of not less than 30 minutes, unless the employee would normally cease duty within that period of 30 minutes.
- (3) Trust may require an employee to work on in an emergency without a meal break, and in such circumstances a meal break will be allowed as soon as practicable.

20. Overtime

20.1 Application

This clause 20 does not apply to any employee whose annual salary is more than \$39,001 or whose hourly wage is more than \$20 per hour on or after the date of making this Agreement.

20.2 Reasonable overtime

Full-time and part-time employees will perform such work on overtime as reasonably required, directed and authorised by Trust.

20.3 Payment for Overtime

- (1) employees who work:
 - (a) on Saturday; or
 - (b) before 6.00 a.m. Monday to Friday; or
 - (c) in the case of full-time employees, in excess of the employee's ordinary hours in any fortnight, as set out in clause 19.1 calculated Monday to Friday exclusive of meal breaks; or
 - (d) in the case of part-time employees, in excess of 9.5 hours after 6.00 a.m. Monday to Friday exclusive of meal breaks

will be paid at the rate of time and one half for the first 3 hours and double time thereafter.

- (2) Not more than one overtime payment will be made in respect of one period of overtime.
- (3) Full-time and part-time employees for work on Sundays will be paid at the rate of double the ordinary time rate for hours actually worked or part hours actually worked.
- (4) Full-time and part-time employees for work on public holidays will be paid at the rate of double time and a half the ordinary time rate for hours actually worked or part hours actually worked.

20.4 Time off in lieu of overtime

A full-time or part-time employee who is required to work and is entitled to be paid overtime, will be paid overtime in accordance with the applicable provision in clause 20.3. However an employee may elect in writing to take time off in lieu of payment under clause 20.3 at the rate of one hour of time off for each hour of overtime worked.

21. **Shift Work Arrangements**

Any employee may be employed on shift work as agreed from time to time between Trust and the employee.

PART 5 - WAGES AND RELATED MATTERS

22. **Wages & Classifications**

22.1 Application

This clause 22 does not apply to any employee whose annual salary is more than \$39,001 or whose hourly wage is more than \$20 per hour on or after the date of making this Agreement.

22.2 Minimum Rates of Pay

Employees will be paid for work during ordinary hours not less than the following annual rate for the relevant level:

Grade	Per annum
1	\$28,384
2	\$29,988
3	\$34,384
4	\$35,884

22.3 Junior salaries

Junior employees (employed on a full-time or part-time basis) will be paid a percentage of the rate payable under clause 22.2 to an employee in Grade 1 as follows:

Age	Percentage
Under 17 years	50
At 17 years	60
At 18 years	70
At 19 years	80
At 20 years	90

22.4 Classifications and Grades

- (1) Employees, other than employees employed in a management capacity, shall be appointed to a level according to the application of the following descriptions:

(a) Grade 1

All routine support and clerical work including typing, word processing, data entry, the operation of office support equipment and training at Grade 2.

(b) Grade 2

All or any of the work in Grade 1 and, but not limited to, the exercise of some judgement, initiative and responsibility under supervision, the checking of the work of others, the application of company product and procedure knowledge and systems skills and knowledge, some contact with clients and beneficiaries and their affairs, extensive use of computer terminals, the use of limited computer skills and training at Grade 3.

(c) Grade 3

All or any of the work in Grades 1 and 2 and, but not limited to, work of a specialised nature involving the use of detailed company product

and procedure knowledge, the use of systems skills and knowledge, regular contact with clients and beneficiaries and their affairs, computer operation, delegated routine supervision of employees at lower levels and training at Grade 4.

(d) Grade 4

All or any of the work in the lower Grades and, but not limited to, complex work requiring specialist skill and knowledge, problem solving, extensive contact with clients and beneficiaries and their affairs including giving advice with only limited supervision, the development of professional skills and delegated supervision of employees at lower levels.

(e) The level described in clause 22.4(1)(d) shall be applicable to employees in the following areas of activity carried out by Trust:

- (i) Asset Management
- (ii) Trusts
- (iii) Personal Services
- (iv) Financial Services
- (v) Corporate Trusts
- (vi) Taxation
- (vii) Management Information System
- (viii) Secretariat

(f) The list of activities in clause 22.4(1)(e) is not exclusive.

(g) Trust may direct an employee to carry out his/her level in any one of the above activity areas.

22.5 Supported Wage System

Clause 7.3 of the Award, Supported Wage System, will apply notwithstanding clause 4.4 of this Agreement.

22.6 Meal Allowance

- (1) If Trust requires a full-time or part-time employee to work overtime under this Agreement and the employee works overtime after 6.00 p.m. on Monday to Friday, the employee will be paid a meal allowance of \$14.60, or such other rate as applies under the Award from time to time.
- (2) If Trust requires a full-time or part-time employee to work overtime under this Agreement and the employee works overtime over 5 hours

on a Saturday, Sunday or public holiday, the employee will be paid a meal allowance of \$14.60 or such other rate as applies under the Award from time to time.

22.7 Higher Duties Allowance

Full-time employees (other than those in training) directed to perform all the duties of a job in a higher level for a continuous period of more than five working days shall be paid for such work at the rate prescribed for that level.

23. Out-of-hours transport

Where Trust requires an employee to commence or finish duty outside the employee's usual hours of work and at a time when the employee's usual means of transport is not reasonably or practically available, Trust will provide such employee with a conveyance to and/or from the employee's usual place of residence. In order to receive this entitlement, the employee must apply for the out-of-hours transport in the approved form and if practicable before they commence the out-of-hours work.

24. Appraisal System

- (1) To assist Trust in achieving its corporate objectives, all employees will participate in the ongoing performance appraisal program. The appraisal process will include but not be limited to the following components:
 - (a) achievement of outcomes against objectives;
 - (b) assessment of behavioural competencies;
 - (c) planning to address future development needs.
- (2) This process may be done as a half yearly and full yearly review.
- (3) The appraisals aim to be structured in such a way as to enable employees to effectively communicate with their managers and supervisors on all aspects of their job tasks, responsibilities and development requirements.

25. Study Assistance

- (1) Employees undertaking courses of study which are approved by Trust are entitled to the following benefits:
 - (a) access to paid Personal Needs Leave pursuant to clause 31;
 - (b) access to annual leave for study purposes (as outlined in clause 28);
 - (c) subject to clause 25(2), reimbursement of course fees, (including compulsory fees, levies, lectures or examination

fees) and compulsory textbooks upon successful completion of each subject.

- (2) If an employee ceases employment during the approved course of study, other than for reasons of redundancy or permanent incapacity, the employee may be required to repay to Trust any course fees which were paid or reimbursed by Trust to the employee at any time within the last 12 months immediately prior to the date of the termination of employment.
- (3) Employees may request unpaid leave to undertake approved or non-approved courses of study. This will be limited to one day's leave per subject per semester.
- (4) A course of study proposed by an employee will be approved only if it is relevant to a present or future role within Trust.

26. Learning And Development

- (1) Trust's endeavour towards a policy of continual improvement is dependent upon its provision of ongoing, relevant and tailored learning and development programs. All such management-approved training will be directed towards facilitating the required implementation of a skilled workforce, which is receptive to technological and operational change.
- (2) Such training will also be designed to enhance an employee's personal growth opportunities within Trust through the development of relevant competencies consistent with Trust's needs. In addition to job specific training, Trust will endeavour to provide broader learning and development opportunities including, but not limited to, coaching, mentoring, leadership development and secondments.

27. Working Environment and Occupational Health and Safety

In relation to occupational health and safety (OH&S), the parties have established a comprehensive approach, by setting up consultative mechanisms to address OH&S issues. Such a mechanism includes the election of health and safety representatives to represent their colleagues on health and safety matters. Appropriate and on-going training will be provided to these representatives.

PART 6 – LEAVE

28. Annual Leave

28.1 Entitlement

- (1) Leave at the rate of twenty (20) working days shall accrue for each period of twelve months continuous service to each employee, other than a casual employee. A part-time employee's entitlement to leave

is calculated on a pro-rata basis. Such leave of absence shall be exclusive of all prescribed public holidays.

- (2) Payment for annual leave accrued will be the aggregate of the actual rate of pay at the time leave is taken for the period of leave accrued.

28.2 Time for taking annual leave

- (1) Annual leave will be taken at such time as Trust may approve, but not later than one year after its accrual except with the mutual agreement of Trust and the employee.
- (2) Trust at its discretion may allow annual leave or a portion thereof to be taken before its accrual.

28.3 Annual leave and termination of employment

- (1) Any employee whose services are terminated or who leaves the service of Trust will be entitled to the proportionate calculation of leave or pay in lieu thereof, but Trust will be entitled to deduct from such pay in lieu of leave any monies owing to it by the employee including any payment made to the employee in advance of annual leave made in mistake of fact or mode.
- (2) Where employment ceases for any reason, and any portion of annual leave has been taken before accrual, Trust may deduct from whatever payment is due on cessation of employment or recover from the employee concerned, the cash equivalent of such portion of annual leave taken before accrual.

28.4 Payment in lieu of taking annual leave

- (1) If an employee has accumulated annual leave entitlements in excess of 20 days, the employee may request that Trust pay the employee any accrued annual leave in excess of 20 days, in lieu of the employee taking that annual leave, provided:
 - (a) the request is for a minimum payment equivalent to five (5) days annual leave, unless Trust agrees otherwise; and
 - (b) The employee's minimum actual leave entitlement does not fall below 20 days.
- (2) All requests made pursuant to clause 28.4(1) must be made to Trust in writing.

28.5 Extinguishing leave loading

- (1) No employee will be entitled to annual leave loading under this Agreement.
- (2) An employee who was entitled to annual leave loading immediately prior to this Agreement coming into effect will:

- (a) receive any unpaid annual leave loading (including pro-rata annual leave loading) that accrued at the date this Agreement comes into effect; and
 - (b) receive an adjustment to the employee's "Total Employment Cost " (TEC) which equates to the gross amount of their annual leave loading.
- (3) The benefits in sub-clause 28.5(2) will be calculated at the employee's salary immediately prior to this Agreement coming into effect, and will be payable on or from the first pay period on or after the date this Agreement comes into effect.

29. Long Service Leave

Long service leave entitlements, and the conditions for taking long service leave, will be in accordance with the *Long Service Leave Act 1955* (New South Wales) as amended from time to time.

30. Sick Leave/Carers Leave

30.1 Amount of paid sick leave/carer's leave

- (a) An employee is entitled to 8 days per each year of service.

30.2 Eligibility

- (1) Paid sick leave/carer's leave will be available to an employee when the employee is absent due to:
 - (a) personal illness or injury (sick leave); or
 - (b) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support (carer's leave); or

30.3 Immediate family or household:

- (1) The entitlement to use carer's leave is subject to the person being either:
 - (a) a member of the employee's immediate family; or
 - (b) a member of the employee's household;
- (2) The term immediate family includes:
 - (a) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as their husband or wife on a bona fide domestic basis although not legally married to the employee.

- (b) a same sex partner. A same sex partner means a person of the same sex to the employee who lives with the employee as their partner on a bona fide domestic basis; and
- (c) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

30.4 Sick leave

- (1) Leave taken by an employee under this subclause is deducted from the amount of sick leave/carer's leave under clause 30.1.
- (2) An employee is entitled to use accumulated sick leave for personal sickness where the employee has already used the current year's sick leave entitlement.
- (3) At the completion of each year sick leave not taken will accumulate to a total not exceeding six (6) months.
- (4) At Trust's discretion, Trust may ask an employee to produce a medical certificate in respect of any absence on sick leave.

30.5 Carer's leave

- (1) An employee may use up to five days sick leave/carer's leave each year as carer's leave.
- (2) An employee with responsibilities in relation to either members of their immediate family or household who need their care and support is entitled to use up to five days per annum of their personal/carer's leave to provide care and support for such persons when they are ill.
- (3) The entitlement to use carer's leave is subject to the employee being responsible for the care of the person concerned.
- (4) The employee must, if required by Trust, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.
- (5) In normal circumstances an employee must not take carer's leave under this clause when another person has taken leave to care for the same person.
- (6) The employee must, where practicable, give Trust notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reason for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of the absence, the employee must notify Trust by telephone of such absence at the first opportunity on the day of absence.
- (7) Leave taken by an employee under this subclause is deducted from the amount of sick leave/carer's leave under clause 30.1.

- (8) An employee is entitled to use accumulated sick leave as paid carer's leave if the employee has used the current year's personal/carer's leave entitlement. An exception to this is where the employee has already taken five days carer's leave in the current year.
- (9) An employee may take unpaid carer's leave by agreement with Trust.

31. **Personal Needs Leave**

- (1) Trust will provide paid leave in accordance with this clause for employees to attend to their family commitments and personal needs in the following circumstances and for the following purposes:
 - (a) to attend to a family or personal emergency, other than a situation in respect of which leave is available under clause 30. An emergency means a situation which could not be planned for and which demands the immediate attention of the employee, and for which the employee had no prior warning;
 - (b) as bereavement leave when a member of the employee's immediate family or household dies. The employee's immediate family has the same meaning as in clause 30.3(2). Proof of death must be provided to the satisfaction of Trust;
 - (c) as study leave, in respect of courses of study approved by Trust (pursuant to clause 25).
- (2) The total Personal Needs leave will not exceed 5 days in any year and is non-cumulative.
- (3) The entitlement to Personal Needs leave begins as at an employee's start date and is subsequently renewed upon each anniversary date. Personal Needs leave is not paid out upon termination of employment.
- (4) Personal Needs leave may be taken as half days.

32. **Parental Leave**

Applications for parental leave will be granted in accordance with and subject to the Parental Leave provisions in the Act (Division 5 of Part VIA) and the Adoption Leave provisions in the *Workplace Relations Regulations* (Division 2 of Part 5A).

33. **Public Holidays**

33.1 Entitlement

- (1) An employee shall be entitled to holidays on the following days:
 - (a) New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and

- (b) The following days, as prescribed in the relevant States, Territories and localities: Australia Day, Anzac Day, Queen's Birthday and Eight Hours'; Day or Labour Day; and
- (2) In addition to the holidays prescribed in clause 33.1(1), the following days shall be observed holidays:

(a)	New South Wales	August Bank Holiday
(b)	Victoria	Melbourne Cup Day
(c)	Queensland	Brisbane Royal National Show Day or Townsville Annual Show Day
(d)	South Australia	Adelaide Cup Day
(e)	Western Australia	Foundation Day
(f)	Tasmania	Easter Bank Holiday
(g)	Australian Capital Territory	August Bank Holiday
(h)	Northern Territory	Picnic Day

33.2 Substitute holidays

- (1) Where a day is legislated, declared, proclaimed, gazetted or otherwise prescribed in a State, Territory or locality within a State or Territory in substitution for any of the days specified in clause 33.1(1) above such day shall be the holiday for the purposes of this Agreement in lieu of the day specified.
- (2) When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.
- (3) When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 28 December.
- (4) When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.
- (5) Where in a State, Territory or locality, public holidays and bank holidays are declared or prescribed on days other than those set out in clause 33.1(1), those days shall constitute additional holidays for the purpose of this Agreement.

33.3 Agreement on substitute holidays

- (1) Trust and a majority of affected employees may agree to substitute another day for any day prescribed as a holiday in clause 33.1.
- (2) An agreement pursuant to clause 33.3(1) shall be recorded in writing and be available to every affected employee.

33.4 Working on a public holiday

An individual employee who may be required to work on a public holiday prescribed under clause 33.1, and who is not entitled to payment for overtime under clause 20, will be entitled to time off in lieu to be taken on a mutually acceptable day.

PART 7 - NEW AGREEMENT

34. **New Agreement**

Trust will communicate with the employees at least 1 month before the end of this Agreement about a new agreement to replace this one.

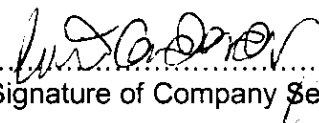
EXECUTED as an Agreement under seal by

TRUST COMPANY OF AUSTRALIA LIMITED.

369/04(2)


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Signature of Director

J W Sweeney
Name of Director


.....
Signature of Company Secretary

G D Corderoy
Name of Company Secretary

Dated 2004