



DECISION

Fair Work Act 2009
s 185—Enterprise agreement

Milbrae Concrete Pty Ltd
(AG2016/2731)

MILBRAE CONCRETE PTY LTD ENTERPRISE AGREEMENT 2016

Road transport industry

DEPUTY PRESIDENT SAMS

SYDNEY, 14 APRIL 2016

Application for approval of the Milbrae Concrete Pty Ltd Enterprise Agreement 2016.

[1] This is an application, pursuant to s 185 of the *Fair Work Act 2009* (the ‘Act’), filed by Milbrae Concrete Pty Ltd (the ‘applicant’) which seeks the approval of the Fair Work Commission (the ‘Commission’) of a single enterprise agreement to be known as the *Milbrae Concrete Pty Ltd Enterprise Agreement 2016* (the ‘Agreement’). The Agreement was negotiated the Australian Workers’ Union Greater New South Wales Branch (the ‘Union’) and Mr V Campbell, Mr M Valenzisi and Mr W Teerman, nominated employee bargaining representatives (EBR) and is to cover 24 employees who are engaged as Agitator Truck Drivers. For the purposes of s 186(3) of the Act, I am satisfied that the group of employees to be covered by this Agreement has been fairly chosen.

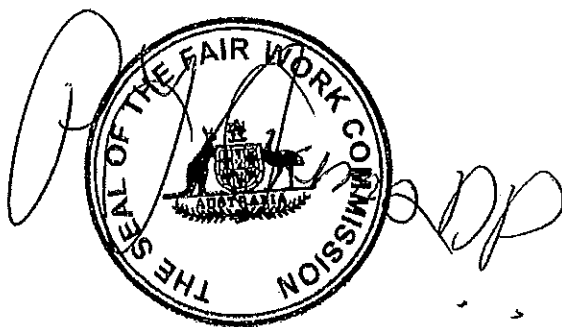
[2] The employees were last notified of their representational rights on 21 September 2015, and voting for the Agreement’s approval took place on 23 March 2016. The time limits under s 181(2) of the Act are thereby satisfied. In a vote for the Agreement’s approval, all 17 of the employees who cast a valid vote, agreed to approve the Agreement. The application for approval of the Agreement was lodged on 5 April 2016, thereby satisfying s 185(3) of the Act.

[3] In the Employer’s Declaration in support of the application (Form F17) Ms T Cotter, Business Services Manager, identified the *Road Transport and Distribution Award 2010* [MA000038] as the relevant reference instrument for the purposes of the Better Off Overall

Test (the 'BOOT'). Ms Cotter said that the Agreement provides for higher rates of pay and additional leave, although it provides lower afternoon shift loading. On balance, I am satisfied that the Agreement passes the BOOT. The Agreement provides for the mandatory flexibility and consultation terms at clauses 27 and 24 respectively, and a disputes resolution procedure at clause 25 provides for conciliation and arbitration by the Commission.

[4] At a hearing of the application on 13 April 2016, Ms *Cotter* appeared for the applicant and Mr *Cowdrey* for the Union. Ms *Cotter* outlined the main features of the Agreement and submitted that all of the legislative requirements for approval of the Agreement have been satisfied and the Agreement should be approved by the Commission. She added that rates of pay are to be increased in accordance with the Commission's Minimum Wage Review decisions. The Union had filed a Declaration in relation to the application (Form 18) supporting the approval of the Agreement and giving notice that it wishes to be covered by the Agreement (s 183). For the purposes of s 201(2) of the Act, I note that the Union is to be covered by the Agreement. I am satisfied that the employees genuinely agreed to approve the Agreement.

[5] Having heard the parties' submissions and upon reviewing the terms of the preapproval process documentation and the Agreement itself, I am satisfied that all of the requirements of the Act, in particular ss 180, 186, 187 and 188, in so far as relevant to this application, have been met. Accordingly, I approve a single enterprise agreement known as the *Milbrae Concrete Pty Ltd Enterprise Agreement 2016*. Pursuant to s 54 of the Act, the Agreement shall operate from 20 April 2016 and have a nominal expiry date of 13 April 2020.

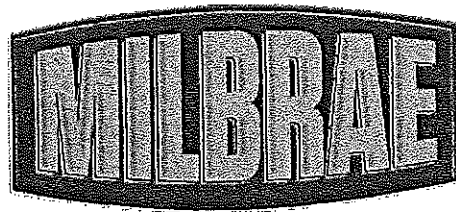


DEPUTY PRESIDENT

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CONCRETE

Milbrae Concrete Pty Ltd
Enterprise Agreement 2016

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PART A

1 TITLE

This Agreement will be known as the Milbrae Concrete Pty Ltd Enterprise Agreement 2016.

2 PARTIES

The parties to this Agreement are Milbrae Concrete Pty Ltd and all current and future employees unless engaged under a different instrument.

3 DURATION

This Agreement will come into operation seven days after the date of notice issued by the Fair Work Commission stating it has passed the "better off overall test" (BOOT). The nominal expiry date will be four years after the approval notice is given.

4 SCOPE

4.1 This Agreement will operate as a stand alone Agreement to the exclusion of all other agreements and awards. It is a full and complete statement of the terms and conditions of employment of all employees covered by this Agreement. To avoid doubt, where 'protected award conditions' within the meaning of the Fair Work Act 2009, as amended/replaced from time to time, are inconsistent with this Agreement, they have been excluded or modified.

4.2 This Agreement replaces the Area Pre-Mix Pty Ltd Employee Collective Agreement 2009.

4.3 This Agreement is binding upon all parties to the Agreement at all workplaces conducted by the Company from time to time.

5 DEFINITIONS

The following definitions will apply throughout this Agreement except where an alternate definition for the same term is provided in a particular clause or section of this Agreement; in that case the alternate definition will apply.

Act means the *Fair Work Act 2009*, as amended/replaced from time to time.

Agreement means this document, including any Schedules, Annexures and terms from any industrial instrument that has been incorporated by reference.

Agree in Writing refers to the process whereby the Company and an employee reach agreement and reference that agreement through either a workplace agreement or another document.

Company means Milbrae Concrete Pty Ltd and its successor, or its nominee or representative.

Employee refers to any employee whose employment is subject to this Agreement. All references to an employee also include the plural.

Ordinary hours of work refers to 38 hours per week for a full time employee.

Service means continuous service with the Company, provided that for all existing employees it is to be taken to include all service with any predecessor organisation.

6 NATIONAL EMPLOYMENT STANDARDS

The National Employment Standards (the **NES**) is a set of minimum employment entitlements prescribed by the Fair Work Act 2009 and will apply as a minimum to this agreement in respect to:

These entitlements relate to:

- Requests for flexible working arrangements
- Parental leave and related entitlements
- Hours of work
- Annual leave
- Personal/carer's leave and compassionate leave
- Community service leave
- Long service leave
- Public holidays
- Notice of termination and redundancy pay
- Fair Work Information Statement

The NES underpins this Agreement.

7 VARIATION OF AGREEMENT

The Parties can agree in writing to vary this Agreement at any stage of its operation subject to the requirements of Section 207 of the FWA 2009 including submitting the variation to the Fair Work Commission to determine that the changes are consistent with the requirements of the Act. If the variation is approved a notice will be issued and the Agreement as varied will start to operate seven days after the date of issue specified in that notice.

PART B

8 AGREEMENT OBJECTIVES

This Agreement is designed to:

- create a harmonious work environment based on mutual trust and understanding;
- increase efficiency and productivity through the development and effective utilisation of employee skills and continuous improvement; and
- provide high standards of workplace health and safety.

9 WORKPLACE CONSULTATION

The making of this Agreement reinforces the consultative ethos that encourages discussion between the Company and its employees to promote matters of mutual interest that pertain to the wellbeing of both parties.

The parties agree that within three (3) months prior to the expiration of this Agreement, they will commence renegotiation of a new Agreement and will remain flexible in the way in which they approach such negotiation.

10 POSITIONS

The Company has one primary stream of work and this is described in Schedule "A" hereto. Each employee covered by this Agreement will be classified in accordance with Schedule "A"

Each new employee so engaged, and unless otherwise agreed, shall be a probationary employee for six months.

PART C

11 HOURS OF WORK

11.1 General

- 11.1.1 The span of hours is from 5.00 am to 7.00 pm daily.
- 11.1.2 The regular (ordinary) hours for full time employees are as described in the NES.
- 11.1.3 All hours worked in excess of an employee's ordinary hours per week will be considered additional hours. The Company may require or request an employee to work reasonable additional hours and such hours will be processed as described in the Hour Bank and Overtime clauses.
- 11.1.4 By a formalised mutual agreement, and without undue hardship to either party, the Company and an employee may vary the span of hours and the ordinary weekly hours and no overtime will apply as a result of this variation.
- 11.1.5 Starting and finishing times for the daily hours shall be determined after consideration of operational, customer service requirements and other matters that may impact on the business and wellbeing of the employees.
- 11.1.6 The manner of recording and the frequency of timesheet submission shall be as determined from time to time by the Company.
- 11.1.7 Lunch meal breaks of a minimum 30 minutes duration (unpaid) are made available each day and are determined by mutual agreement in each functional work area.
- 11.1.8 Morning and afternoon breaks are made available to employees for ten minutes at a time convenient to the operational requirements of the Company.

11.2 Hour Bank

An Hour Bank facility is made available to all staff who may be impacted financially by the temporary cessation of operations for a variety of reasons including weather and the employee chooses not to remain at work. Committing a portion of worked hours, in excess of ordinary hours, to the Hour Bank may assist in ensuring consistent wage payments thereby negating the impact of any time lost.

- 11.2.1 Should an employee work more than 38 hours in any one weekly period, such excess hours shall not be paid but shall be credited as one hour for each hour worked or part thereof, to the Hour Bank. After an employee has accrued hours equivalent to their regular hours the additional hours may be paid out.
- 11.2.2 Employees can have a maximum debit balance of 10 hours in the Hour Bank.
- 11.2.3 In the event there is insufficient work available for the employee in any week and the employee wishes not to undertake other work available during that week the period which the employee did not work shall be deducted from the employee's Hour Bank and the hours paid to the employee.

11.2.4 Requests for use of Hour Bank leave shall be applied for in the same way as annual leave.

11.2.5 In times of hardship an employee may seek to have their credit balance paid out and payment shall not be unreasonably withheld.

11.2.8 Upon severance of employment accrued credit hours in the Hour Bank shall be paid out at the (composite) hourly rate of pay in Annexure A.

11.2.9 Any debit of hours outstanding on an employee's last day of duty will be deducted from any unpaid salary first, and then, if necessary any other unpaid monetary entitlement.

11.3 Working outside span of hours

11.3.1 Employees may be requested to work at times outside the nominated span of hours to which a 15% loading shall be paid.

11.4 Part-Time Hours

11.4.1 The Company is supportive of providing employees with greater flexibility in their working arrangements. Part-time work arrangements will be considered for employees to enable them to balance their work and personal commitments in circumstances such as the following:

- when returning from parental leave
- pre-retirement transition
- short-term requests arising from personal illness, carer's needs or study commitments.

11.4.2 The Company will consider all requests in writing for part-time work, having regard, as appropriate, to some or all of the following:

- the employee's circumstances
- the nature of the role
- the cost of making part-time work available
- alternative arrangements, as discussed with the employee and other staff
- the impact on customer service
- the availability of suitable replacement staff
- the operational needs of the Company and those other employees in the work area.

11.4.3 The employee will be advised in writing as to whether their request for part-time hours has been approved. The employee may only revert back to full-time hours with Company approval.

11.4.4 Part-time employees shall be engaged on minimum of 4 hours on any day.

11.4.5 A full-time employee who elects to work part time for a set period will have the right of return to full-time work at the end of that period, provided that this is specified, negotiated and approved at the outset.

11.4.6 The remuneration for part-time employees will be a pro-rata of the ordinary hours applying to the employee.

11.4.7 A part-time employee who is directed to work extra time shall be paid at the ordinary rate for those hours worked in addition to their regular part time hours up to the standard ordinary hours and consistent with clause 11.1.2 should additional hours be worked.

11.5 Casual Hours

11.5.1 Employees who work casual hours are typically engaged to perform irregular, seasonal and on-call work in order to meet peak demands, and to work without the expectation of continuous work.

11.5.2 Casual employees will be advised when they first commence work that their engagement will be classified as casual and such engagement may be terminated at any time.

11.6 Additional Hours

11.6.1 All hours worked in excess of the NES ordinary hours for a full-time employee will be considered additional hours. The Company may require or request an employee to work reasonable additional hours.

11.6.2 In determining whether additional hours are reasonable additional hours, all relevant factors are to be taken into account. Those factors will include, where relevant:

- any risk to employee health and safety that might reasonably be expected to arise if the employee worked the additional hours
- the employee's personal circumstances including any family responsibilities
- the operational requirements of the workplace
- the notice (if any) given by the Company of the requirement or request that the employee work the additional hours and by the employee of their intention to refuse to work the additional hours
- whether the additional hours fall on a public holiday
- the employee's hours of work over the four weeks ending immediately before the employee is required or asked to work the additional hours
- authorised leave or absence that may conflict with the additional hours.

11.7 Overtime

Where the operational requirements make it necessary, the employee may be required to work reasonable overtime at overtime penalty loading rates and the employee shall work overtime in accordance with that requirement.

The Company must aim to give reasonable notice about the requirement to work overtime and be mindful of the personal responsibilities of the employee.

11.7.1 For the purpose of the calculating the time to accrue or be paid, overtime shall be calculated on a daily stand alone basis.

11.7.2 Overtime Penalty Loadings

- Saturday: Once an employee has worked 38 hours then additional time worked on Saturdays will attract a 10% loading unless employed as a casual to which casual rates will apply.
- Sunday: An employee working on a Sunday will be paid their ordinary time rate, plus a 10% loading and accrue the same amount of time to their Hour Bank unless employed as a casual to which the casual rates will apply.
- Public Holiday: An employee working on a public holiday will be paid their ordinary time rate, plus a 10% loading and accrue one and half (1.5) times the same amount of time to their Hour Bank unless employed as a casual to which the casual rates will apply.

11.8 Flexible Working Arrangements

Flexible working arrangements are provided for in the NES.

12 REMUNERATION

12.1 Position Work Value

All employees covered by this Agreement will be referenced to the Position Work Value Level. The hourly rate is a composite hourly rate, which includes an amount of compensation for reasonable additional hours of up to 10 per week as defined within Annexure A.

12.2 Annual Base Salary Indexation

The hourly rate shown in Annexure A incorporates a 2% increase that will be effective from the date the Agreement is approved.

From 1 July 2017 the current pay rate will increase by the index nominated in the Annual Wage Review as handed down by the Fair Work Commission and will do so annually for the duration of this Agreement. For clarity pay increases only apply during the nominal term of the agreement.

12.3 Superannuation

12.3.1 The company will make statutory contributions in respect to occupational superannuation in accordance with Superannuation Legislation. The required contribution is currently 9.5% of an employees ordinary time earnings (OTE) which is the NES 38 ordinary hours per week payable at the rate as provided in Annexure A, for full time employees or a pro rata amount of the full time entitlement for part time employees. For clarity, any hours worked in excess of, or outside the span (if any) of, those specified ordinary hours of work are not part of the employee's 'ordinary hours of work'

12.3.2 Under no circumstances will the employer be required to contribute more than the OTE value.

12.3.3 Employees may nominate a complying fund into which Milbrae is required to make superannuation contributions as required by law. In the absence of a nomination by the employee, contributions will be made into a default fund which is complying fund offering a Mysuper Product.

12.4 Pay Cycle Arrangements

Employees will be paid by electronic funds transfer into their nominated bank account and will be able to arrange Salary Sacrifice into superannuation.

12.5 Market Based Variations

The Company may pay a "market based variation" for particular skills that are specialised, scarce or critical to the business in a particular location.

12.6 Casual Loading

The ordinary rate of pay for a casual employee includes a loading of 25 per cent in lieu of paid leave and severance entitlements, unless otherwise specified in this Agreement.

12.7 Public Holidays

Employees will be entitled to Public Holidays as gazetted in NSW without loss of pay and any requirement to work on a Public Holiday will attract the penalty loading as described in the Overtime clause.

12.8 Picnic Day

Employees will be entitled to a Picnic Day each year of this Agreement to be taken at a time mutually agreeable between the parties.

13 ALLOWANCES

13.1 An employee will be entitled to a higher duties allowance if the employee:

- (a) is temporarily assigned to a position in a Company Work Level above their substantive Work Level; or
- (b) undertakes an expanded role equivalent to performing higher duties in a higher Company Work Level and
- (c) has performed those duties for a period of one day.
- (d) The higher duties allowances is payable on a daily basis. For clarity the employee must undertake the duties for the full shift and payment is applicable only whilst the employee is undertaking and carrying out higher duties.
- (e) The allowance payable is \$25 per day.

- 13.2 The circumstances in which the employee is entitled to a higher duties allowance and the amount of the allowance payable will be determined by the Milbrae Concrete Manager.
- 13.3 An employee will be entitled to be paid for travel time at the ordinary rate of pay if the employee is required to work at a place that is not their normal nominated place of work. This allowance is activated once the daily travel time to commence work exceeds 30 minutes.
- 13.4 Employees will be entitled to an allowance commensurate with actual expenses reasonably incurred when required to travel and be away overnight from their normal residence. Employees shall submit receipts of expenditure to support their claim for reimbursement.
- 13.5 Employees who are required to travel and be away overnight and do not submit receipts of expenditure shall receive an allowance of \$59.70 per event. This amount will be indexed 3% each year during the operative period of this Agreement.

PART D

14 ANNUAL LEAVE

Annual Leave entitlement is provided for in the NES.

14.2 Taking Annual Leave

- 14.2.1 Requests for annual leave require a completed Application Form and approval is subject to:
- The operational requirements of the workplace, and
 - Fair allocation of leave during prime leave periods.
- 14.2.2 After the first year of employment employees are required to take their annual leave entitlement each financial year and approval is necessary to vary this requirement.
- 14.2.3 Annual leave will not be granted for a period less than 1 hour.
- 14.2.4 Employees may be directed to take annual leave during a period of shut down or if the employee has a leave balance greater than 1/13th of the nominal hours that the employee has worked over a two year period.
- 14.2.5 Annual leave will only be granted, if the leave has accrued up to the day prior to the day on which the particular period of leave commences.

15 PERSONAL/CARER'S LEAVE AND COMPASSIONATE LEAVE

Personal/Carer's leave and Compassionate leave is provided for in the NES.

16 COMMUNITY LEAVE AND OTHER LEAVE

Community Leave and other leave is provided for in the NES.

17 PARENTAL LEAVE

Parental Leave is provided for in the NES.

18 LONG SERVICE LEAVE

18.1 Long service leave will be provided in accordance with the NES which for this agreement is in accordance with the provisions of the NSW Long Service leave Act 1955.

19 LEAVE WITHOUT PAY

19.1 Leave without pay may be granted to an employee showing good and sufficient personal reason for the leave provided that the employee intends to resume duty on the expiration of the leave.

19.2 Leave without pay may be granted to allow the employee to engage in other employment.

19.3 The Company retains the right to abolish any position or to terminate the employee's services should the circumstances so require, during the period of leave.

19.4 Where an employee is granted leave without pay for a period not exceeding 10 consecutive working days, the employee shall be paid for any proclaimed public holidays falling during such leave without pay.

19.5 An employee who has been granted leave without pay which, when aggregated, does not exceed 5 working days in a period of 12 months, such leave shall count as service for accrual of annual leave.

PART E

20 NOTICE OF TERMINATION

Termination is provided for in the NES.

21 REDUNDANCY

Redundancy is provided for in the NES.

22 ABANDONMENT OF EMPLOYMENT

An employee will be deemed to have abandoned their employment if they 'walk off the job', or fail to return to work after a period of authorised leave. In such circumstances,

the employer will conclude that the employee no longer intends to be bound by this Agreement.

- 22.1 The absence of an employee from work for a continuous period exceeding three working days without the consent of the employer and without notification to the employer is evidence that the employee has abandoned their employment.

23 DRUG AND ALCOHOL POLICY

The parties to this Agreement commit to adhering to the Company's drug and alcohol policy as amended from time to time and understand that breaches of that policy will not be tolerated. The policy is not incorporated into this agreement.

24 CONSULTATION REGARDING MAJOR WORKPLACE CHANGE

24.1 This term applies if:

- (a) The employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
- (b) The change is likely to have a significant effect on employees of the enterprise

24.2 The employer must notify the relevant employees of the decision to introduce the major change.

24.3 The relevant employees may appoint a representative for the purposes of the procedures in this term.

24.4 If:

- (a) A relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- (b) The employee or employees advise the employer of the identity of the representative;

The employer must recognise the representative.

24.5 As soon as practicable after making its decision, the employer must:

- (a) Discuss with the relevant employees the introduction of the change; and
- (b) The effect the change is likely to have on the employees; and
- (c) Measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
- (d) For the purposes of the discussion — provide, in writing, to the relevant employees:
 - (i) All relevant information about the change including the nature of the change proposed; and
 - (ii) Information about the expected effects of the change on the employees; and
 - (iii) Any other matters likely to affect the employees.

24.6 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

- 24.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 24.8 If a term in the enterprise agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in sub clauses 24.2, 24.3 and 24.5 are taken not to apply.
- 24.9 In this term, a major change is *likely to have a significant effect on employees* if it results in:
- the termination of the employment of employees;
 - major change to the composition, operation or size of the employer's workforce or to the skills required of employees;
 - the elimination or diminution of job opportunities (including opportunities for promotion or tenure);
 - the alteration of hours of work;
 - the need to retrain employees;
 - the need to relocate employees to another workplace;
 - the restructuring of jobs; or
 - change to regular roster or ordinary hours of work
- 24.10 For a change referred to in paragraph 24.1(b):
- The employer must notify the relevant employees of the proposed change; and
 - Sub clauses 24.11 to 24.15 apply.
- 24.11 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 24.12 If:
- (a) a relevant employee appoints, or relevant employees appoint a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;
- The employer must recognize the representative.
- 24.13 As soon as practicable after proposing to introduce the change, the employer must:
- (a) Discuss with the relevant employees the introduction of the change; and
 - (b) For the purposes of the discussion—provide to the relevant employees:
 - (i) All relevant information about the change, including the nature of the change; and
 - (ii) Information about what the employer reasonably believes will be the effects of the change on the employees; and
 - (iii) Information about any other matters that the employer reasonably believes are likely to affect the employees; and
 - (iv) Invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

24.14 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

24.15 The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees

24.16 In this term: *relevant employees* means the employees who may be affected by a change referred to in sub clause 24.1.

25 DISPUTE RESOLUTION

25.1 In the event a dispute arises relating to a matter under this Agreement or the NES the parties, in the first instance, must attempt to resolve the matter through workplace discussions between the employee and their immediate supervisor.

25.2 If the dispute remains unresolved the supervisor should defer the matter to their Operational Manager, the Business Services Manager or General Manager. The employee who is party to the dispute may, at this time, appoint a representative.

25.3 All reasonable steps will be taken to resolve the dispute in a timely, fair, transparent and sensitive manner. However, if the dispute remains unresolved either the Company or employee may refer the matter to the Fair Work Commission.

25.4 The Fair Work Commission will attempt to resolve the dispute through mediation, conciliation, expressing an opinion or making a recommendation. If the dispute remains unresolved the Fair Work Commission may then:

- Arbitrate the dispute: and
- Make a determination that is binding on the parties.

25.5 The employee or Company may appoint another person, organisation or association to accompany and/or represent them for the purposes of 25.4.

25.6 A decision that Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act and can therefore be subject to an appeal against the decision.

25.7 While the parties are trying to resolve the dispute as described:

25.7.1 An employee must continue to perform his/her work as he/she would normally unless he/she has a reasonable concern about an imminent risk to his/her health or safety.

25.7.2 An employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:

- the work is not safe, or
- applicable occupational health and safety legislation would not permit the work to be performed, or
- the work is not appropriate for the employee to perform, or
- there are other reasonable grounds for the employee to refuse to comply with the direction.

- 25.8 The parties to the dispute agree to be bound by a decision made by Fair Work Commission.

26 COUNSELLING AND DISCIPLINE PROCEDURE

26.1 Commitment

These procedures are designed to encourage and improve good work practices, performance and individual conduct. They also prescribe steps for giving guidance, and in appropriate cases, for taking disciplinary action. All formal stages of this procedure must be verified with the Business Manager prior to them being actioned.

26.2 Objectives

- 26.2.1 To encourage and improve performance and individual conduct.
- 26.2.2 To ensure that all matters relating to employee conduct are investigated properly, considered reasonably and dealt with promptly, fairly and consistently.
- 26.2.3 To ensure that every consideration has been given to correcting unsatisfactory performance or conduct.
- 26.2.4 To utilise appropriate methods of disciplinary action (eg counselling sessions, sanctions etc) that have the clear intention of bringing about an improvement in the work performance of an employee.
- 26.2.5 To ensure that, other than in cases of serious misconduct, severe disciplinary action is only taken as a last resort, following appropriate counselling and after formal warnings have been given.

26.3 Informal Procedure

- 26.3.1 The supervisor will interview the employee in an informal counselling environment with a view to discussing areas of their work that are considered unsatisfactory, such as conduct, work performance or work habit. The reasons for the unsatisfactory performance shall be explored with a view to identifying any mitigating circumstances or other reasons that have led to this situation. The employee's assistance will be sought to solve the problem and self-esteem will be maintained.
- 26.3.2 The employee will be encouraged to provide a point of view, particularly as it may assist in correcting the problem. The employee's views will be listened to with appropriate empathy.
- 26.3.3 The supervisor and employee will then aim to develop a mutually acceptable work plan with the view to achieving satisfactory performance outcomes. A further review period may form part of this plan.
- 26.3.4 Notwithstanding the above, should the performance situation not improve or the nature of an employee's indiscretion is considered serious enough, then Step 1 of the counselling and disciplinary procedure may be implemented immediately.

26.4 Formal Procedure

26.4.1 Step 1 – Initial Warning

26.4.2 The supervisor will conduct a formal counselling session and the employee will be clearly informed that this is an initial warning as part of the Company's Counselling and Disciplinary Procedures and an employee representative may be present during this session.

26.4.3 The counselling session will focus on unsatisfactory conduct, job performance or work habit. The employee will be told specifically what is unsatisfactory. The counselling shall focus discussion on these points and shall not be drawn into side or unrelated issues.

26.4.4 A plan of corrective action will be agreed on which identifies specific and attainable goals required to be met by the employee, and a realistic time frame for their implementation. The employee will be made aware of the consequences of subsequent breaches.

26.4.5 A 'Record of Initial Warning', summarising the key points discussed during the session, will be drawn up by the supervisor and given to the Human Resources Officer. The employee will be given a copy of the 'Record of Initial Warning'. This record shall remain active on the employee's file for a period of six months.

26.4.6 The supervisor within the time frame previously agreed will follow up the counselling session. The employee shall be commended if the problem has been corrected. If not, Step 2 of this procedure shall be applied.

26.5 Step 2 – First Written Warning

26.5.1 The first written warning will be given in the presence of the employee's direct supervisor and employee representative.

26.5.2 The supervisor will begin the session by reviewing the previous counselling session - when and why it was called, the corrective action agreed, the time frame set - and the circumstances that have led to this situation.

26.5.3 Again a specific plan of corrective action will be agreed to and a time frame set.

26.5.4 The warning is evidenced in writing by completing a 'First Written Warning Report'. All parties will be asked to sign the report although it is not compulsory for the employee or the employee representative to sign. The completed report will be given to the Human Resources Officer and a copy provided to the employee. This record shall remain active on the employee's file for a period of six months.

26.5.5 The First Written Warning will be followed up within the time frame agreed. If a satisfactory improvement has not been made as agreed in 26.5.3, Step 3 of this procedure shall be applied.

26.6 Step 3 – Second Written Warning

26.6.1 The manager in the presence of the supervisor and employee representative will discuss the situation with the employee.

- 26.6.2 The manager will begin the session by reviewing the previous counselling session - when and why it was called, the corrective action agreed, the time frame set - and the circumstances that have led to this situation.
- 26.6.3 Again a specific plan of corrective action is agreed and a time frame set. Failure to rectify the situation within the agreed time, or a subsequent breach of acceptable conduct or performance, may lead to dismissal. This will be clearly stated.
- 26.6.4 A completed 'Second Written Warning Report' will be provided to the employee for signature, together with that of the employee representative although it is not compulsory for the employee or the employee representative to sign.
- 26.6.5 The completed 'Second Written Warning Report' will be given to the Human Resources Officer for filing where it will remain active for a period of six months. A copy will be given to the employee.
- 26.6.7 The Second Written Warning will be followed up within the time frame agreed. If a satisfactory improvement has not been made as agreed in 26.5.3, Step 4 of this procedure shall be applied.

26.7 Step 4 - Dismissal

- 26.7.1 The 'Second Written Warning Report' will be followed up within the time frame agreed. If satisfactory improvement has not been made the employee may be dismissed.
- 26.7.2 The manager in the presence of the supervisor and employee representative then discusses the situation with the employee. The facts are to be clearly stated.
- 26.7.3 A completed 'Third Written Report' is handed to the employee for signature, together with that of the employee representative although it is not compulsory for the employee or the employee representative to sign.
- 26.7.4 The completed 'Third Written report' is to be given to the Human Resources Officer for filing.

26.8 Instant Dismissal

- 26.8.1 The Company views the decision to terminate an employee's employment as a serious occurrence and will always ensure that fairness and reasonableness apply in each case.
- 26.8.2 Notwithstanding, the Company shall have the right to dismiss any employee without notice for conduct justifying instant dismissal including, but not limited to, gross neglect of duty, non observance of safety regulations and policies, threatening or violent behaviour, fraud or theft of property, and in such cases remuneration shall be paid up to the time of dismissal only.

27 FLEXIBILITY TERM

- 27.1 The employer and any employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of the terms of the agreement if:
- 27.1.1 the agreement deals with one or more of the following matters:
- arrangements about when work is performed;
 - overtime rates;
 - penalty rates;
 - allowances;
 - leave loading; and
- 27.1.2 the arrangement meets the genuine needs of the employer and employee in relation to one or more of the matters mentioned in paragraph 29.1.1 and
- 27.1.3 the arrangement is genuinely agreed to by the employer and employee.
- 27.2 The employer will ensure that the terms of the individual flexibility arrangement;
- 27.2.1 are about permitted matters under section 172 of the Fair Work Act 2009; and
- 27.2.2 are not unlawful terms under section 194 of the Fair Work Act 2009; and
- 27.2.3 result in the employee being better off overall than the employee would be if no arrangement was made.
- 27.3 The employer will ensure that the individual flexibility arrangement:
- 27.3.1 is in writing; and
- 27.3.2 includes the name of both the employer and employee; and
- 27.3.3 is signed by both the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
- 27.3.4 includes details of:
- the terms of the Agreement that will be varied by the arrangement; and
 - how the arrangement will vary the effect of the terms; and
 - 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
 - states the day on which the arrangement commences.
- 27.4 The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 27.5 The employer or employee may terminate the individual flexibility arrangement:
- 27.5.1 by giving no more than 28 days written notice to the other party to the arrangement or
- 27.5.2 if the employer and employee agree in writing – at any time.

28 FAIR WORK INFORMATION STATEMENT

The Fair Work Ombudsman must prepare a Fair Work Information Statement. The Statement contains information about the following:

- the National Employment Standards
- modern awards
- agreement-making under this Act
- the right to freedom of association
- the role of FWA and the Fair Work Ombudsman
- termination of employment
- individual flexibility arrangements
- right of entry (including the protection of personal information by privacy laws)

28.1 An employer must give each employee the Fair Work Information Statement before, or as soon as practicable after, the employee starts employment.

ANNEXURE A

1. An Employee will receive no less than the rates as are provided for in the following table.
2. The company at their sole descretion may pay a rate of pay which is higher than the rate provided in this agreement for the classification.
3. Any pay rate in excess of this Agreements rate may absorb increases provided in this agreement provided that the absorption of an increase does not reduce the rate to less than as provided for the classification after that particular years increase has been applied to the classification rate in the Agreement.

Stream 1

Function	Description	Rates of Pay 2016	
		Hourly	Casual (25%)
Agitator Drivers	Employees in this stream must have the appropriate Drivers Licence to gain and maintain their employment and such employment may be forfeited in the event their Drivers Licence is suspended or terminated.	\$25.78	\$32.22
Duties	<ul style="list-style-type: none"> - Attending the depot to collect bulk concrete - Ensuring bulk concrete is put into the agitator - Delivery of bulk concrete to the nominated place - Ensuring that the correct amount of concrete required to be delivered is delivered to the nominated place. - Return the agitator to the depot after delivery of the concrete - Ensure the agitator is cleaned and washed out - Report any breakages - Report any break-downs - Ensure that the slump is maintained in accordance with the appropriate consistency - When delivering a load of concrete to the job site, have the client or his/her representative sign the appropriate documentation. - Sign on when commencing work - Sign off when finishing work - The addition of any water to the concrete when on site is to be reported on the delivery docket prior to the customer signing and receiving their copy. - Washing down of chutes on site must be carried out in accordance with Council and environmental guidelines and with the approval of the client on site. 		

ANNEXURE B

SIGNATURES OF THE PARTIES

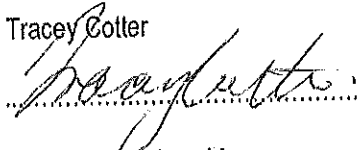
This employee collective agreement is made under the *Fair Work Act 2009*, between;

Milbrae Concrete Pty Ltd

For the Company

Name in full (printed): Tracey Cotter

Signature:



Position/Authority to sign: Business Services Manager


Company Address: PO Box 225, LEETON NSW 2705

Date: 4/4/16

Witnessed By:

Name in full (printed): Noeline Quinn

Signature:



Witness Address: PO Box 225, LEETON NSW 2705

Date: 4/4/2016

And

Signed on behalf of employees represented by Employee Bargaining Representatives:

Name in full (printed): Michael Valenzisi

Signature:



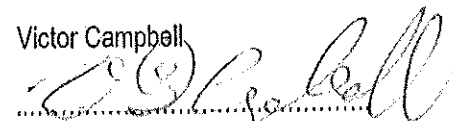
Authority to sign: Employee Bargaining Representative

Address: FARM 1883, PETERSHAM RD, LEETON, 2705

Date: 4/4/16

Name in full (printed): Victor Campbell

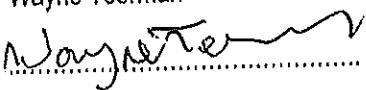
Signature:



Authority to sign: Employee Bargaining Representative

Address: PO BOX 1307, GERRATH, 2680

Date: 4.4.16

Name in full (printed):	Wayne Teerman
Signature:	
Authority to sign:	Employee Bargaining Representative
Address:	PO BOX 56, LEETON, 2705
Date:	4/4/16
Signed on behalf of employees represented by the Australian Workers Union:	
Name in full (printed):	
Signature:
Authority to sign:	
Address:	
Date:	