



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Akiba Canberra Pty Limited T/A Akiba
(AG2021/6804)

AKIBA MULTI-ENTERPRISE AGREEMENT 2021

Restaurants

DEPUTY PRESIDENT SAUNDERS

NEWCASTLE, 28 SEPTEMBER 2021

Application for approval of the Akiba Multi-Enterprise Agreement 2021.

[1] An application has been made for approval of an enterprise agreement known as the *Akiba Multi-Enterprise Agreement 2021 (Agreement)*. The application was made pursuant to section 185 of the *Fair Work Act 2009 (Act)*. The Agreement is a single enterprise agreement.

[2] The Employer has provided written undertakings (*Undertakings*). A copy of the Undertakings is attached in Annexure A to this decision. I am satisfied that the effect of accepting the Undertakings is not likely to:

- (a) cause financial detriment to any employee covered by the Agreement; or
- (b) result in substantial changes to the Agreement.

[3] Pursuant to subsection 190(3) of the Act, I accept the Undertakings. The Undertakings are taken to be a term of the Agreement.

[4] Subject to the Undertakings, I am satisfied that each of the requirements of sections 186, 187, 188 and 190 as are relevant to this application for approval have been met.

[5] Pursuant to subsection 205(2) of the Act, the model consultation term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[6] The Agreement is approved and, in accordance with section 54 of the Act, will operate from 5 October 2021. The nominal expiry date of the Agreement is 27 September 2025.



DEPUTY PRESIDENT

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2021/6804

Applicant:
Akiba Canberra Pty Ltd Trading as Akiba Restaurant and Bar

Section 185 – Application for approval of a multi enterprise agreement

Undertaking- Section 190

I, Michael Harrington, General Manager for Akiba Canberra Pty Ltd give the following undertakings with respect to the Akiba Multi Enterprise Agreement ("the Agreement"):

1. I have the authority given to me by Akiba Canberra Pty Ltd to provide this undertaking in relation to the application before the Fair Work Commission.
2. Akiba undertakes that in the event of an inconsistency between the terms of this Agreement and the National Employment Standards (NES), and the NES provides a greater benefit to an employee, the NES provision will apply to the extent of the inconsistency.
3. Akiba undertakes to pay the revised (increased) pay rates as per the table below:

Schedule A – Mini Rates of Pay		
Classification	Base Rate	Loaded Casual Rate
Introductory	\$21.50	\$26.24
Level 1	\$22.58	\$27.86
Level 2	\$23.70	\$28.93
Level 3	\$24.95	\$30.45
Level 4	\$26.20	\$31.96
Level 5	\$27.80	\$35.00
Classification	Annualised Salary	
Introductory	N/A	
Level 1	\$52,158.6	
Level 2	\$54,147.6	
Level 3	\$57,002.4	
Level 4	\$59,833.8	
Level 5	\$65,520	
<p>NB: The hourly rates above are intended to be hours worked on any day including Saturday, Sunday and Public Holidays are paid as per clause 20.2. They include a premium for penalty rate time after 10pm Monday to Friday, overtime rates (notwithstanding reasonable additional hours as per clause 8.5) and for annual leave loading.</p> <p>Casual rates include a 25% premium for all the incidents of permanent employment including annual holidays.</p>		

4. The loaded rates held within this EA must not result in an employee being paid less over a quarter (or, if the employee's employment is terminated before a quarter is completed, over the period of that employment) than would have been the case if they were being paid under the Restaurant Industry Award (2020).

A quarterly reconciliation of hours against pay will be undertaken for all staff on loaded rates to ensure that they have been recompensed in line with the wage rates relevant to their grade (as per the requirement above).

If the reconciliation reveals that the loaded rates paid to an employee in respect of the previous quarter is less than the employee would have been paid had they been paid pursuant to the provisions of the Restaurant Industry Award (2020), then the shortfall

will be paid by Akiba to the employee within 30 days of the end of the quarter to which the reconciliation relates. **Employees will be paid a further 10% of the shortfall amount as recompense on any quarter where a shortfall is identified.**

5. The annualised salary must not result in an employee being paid less over a year (or, if the employee's employment is terminated before a year is completed, over the period of that employment) than would have been the case if an annualised salary had not been agreed and the employee had instead been paid their weekly rate and any other amounts satisfied by the annualised salary.

A **quarterly** reconciliation of hours against salaried pay will be undertaken for all salaried staff to ensure that they have been recompensed in line with the wage rates relevant to their grade (as per the requirement above).

If the reconciliation reveals that the annual salary paid to an employee in respect of the previous quarter is less than the employee would have been paid had they been paid pursuant to the other provisions of the Agreement, then the shortfall must be paid by Akiba to the employee within 30 days of the end of the quarter to which the reconciliation relates. **Employees will be paid a further 10% of the shortfall amount as recompense on any quarter where a shortfall is identified.**

6. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature

13 September 2021

Date

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

Akiba Multi-Enterprise Agreement 2021

In accordance with Part 2-4 of the Fair Work Act 2009

Between:

Akiba Canberra Pty Ltd Trading as Akiba Restaurant and Bar of
40 Bunda Street Civic ACT 2608
ACN: 1669S0 527

And

Employees as defined in the Agreement


Employer Signature: 

Date: 18th August 2021

Name: Michael Harrington

Position: Owner/Director

Address: 40 Bunda Street, City,
Canberra, ACT, 2601

Employee Signature: 

Date: 18 August 2021

Name: Isaiah Samau

Position: Venue Manager

Address: 1 Genge Street, City
Canberra, ACT, 2601

Note - the model consultation term is taken to be a term of this agreement and can be found at the end of the agreement.

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2. Definitions

"Act" means the Fair Work Act 2009 as amended and associated Regulations.

"Award" means the Restaurant Industry Award 2020

"Agreement" means this Agreement: The Akiba Canberra Enterprise Agreement 2014.

"Employer" means Akiba Canberra PtyLtd.

"Employee(s)" means any person(s) employed by the employer in any capacity or classification to work at Akiba Restaurant and Bar, located at 40 Bunda Street, Civic ACT and/or Kokomo Joe's, located at Shop 1/21 Genge St, Canberra ACT 2601, and/or Sage Dining Rooms, located at Gorman House Arts Centre, Batman St, Braddon ACT 2612 or Loquita Taqueria located at 5/7 Garema Place, Canberra ACT 2601.

"Salaried full-time employee(s)" means any employee that is employed on a salary, working ordinary hours of 38 hours per week.

"Permanent part-time employee(s)" are employee(s) paid at an hourly rate and work between 8 and 37 hours per week.

"Casual employee(s)" are employee(s) paid at an hourly rate with a minimum shift of 4 hours as rostered by the employer on a weekly basis.

" FWC" means Fair Work Commission

"NES" means the National Employment Standards as defined by the Fair Work Act.

3. Duration and Coverage

- 3.1 This Agreement shall have a nominal term of four years from the date it is approved by the Fair Work Commission.
- 3.2 This Multi-Enterprise Agreement shall apply to all employees as defined including Salaried Full-Time, Permanent Part-Time and Casual Employees at Kokomos, Akiba, Sage and Loquita Restaurants, Canberra.
- 3.3 This Agreement provides wages and conditions standards for employees but does not prevent or restrict the parties agreeing to more generous pay rates and employment benefits.
- 3.4 Where possible all employees will be employed on a permanent full-time or part-time basis thus ensuring security of employment. Every effort will be made to ensure regularity of rostered hours however some flexibility will be required given the vagaries of the Restaurant business.

4. Relationship to the Award and the Act

- 4.1 Except as provided or excluded by this Agreement the conditions of employment of employees to whom this Agreement applies shall be those in relevant and prevailing legislation or the Award or the Act at the date this Agreement is made. Where there is inconsistency between this Agreement and the Award, this Agreement shall prevail.
- 4.2 For the avoidance of doubt, employees shall receive entitlements for Occupational Health and Safety, Redundancy and Long Service Leave in accordance with relevant and prevailing legislation.

5. Contract of Employment

- 5.1 The employment contract will consist of this agreement coupled with the terms of a letter of offer of employment from the employer to the employee plus the written policies and procedures of the company as notified from time to time. In no sense will the letter or the written policies and procedures detract in any way from the minimum entitlements of this agreement.

6. Classifications

- 6.1 Each employee is classified as assessed by the employer as follows:

6.1.1 Introductory

New employees who have no previous experience and who require training and direction to carry out tasks in any or all areas of the premises including general cleaning of the kitchen and the bar, clearing plates, glasses, wiping tables, removal of rubbish, light kitchen duties and washing up.

Employees working at this Level shall remain at this level for a period of up to three months before being eligible to work at Level 1. This period may be increased to six months by agreement between the employer and the employee if more training is needed.

6.1.2 Level 1

- a) Waitstaff/Bar staff - Employees who have undergone introductory training and have demonstrated ability to perform introductory level tasks unsupervised and who provide general assistance to Waitstaff/Bar staff of a higher grade.
- b) Kitchenhands - Employees who have demonstrated competency at Level 1 tasks and are engaged in cleaning duties and other specialised non-cooking duties in the kitchen.

- c) Cook - Employees who require supervision and are engaged in the preparation of simple meals such as snacks, baking and pastry cooking.

6.1.3 Level 2

- a) Waitstaff/Bar staff - Employees who have demonstrated competency at Level 1 tasks and are assessed by the employer as having the ability to perform general waiting duties of food and beverage, supplying and dispensing liquor, setting and cleaning of tables, receipt of money, handling, replenishing and distributing goods and providing general assistance to Waitstaff/Bar staff of a higher grade.
- b) Kitchenhands- Employees who have undergone introductory training and have demonstrated an ability to carry out introductory tasks unsupervised and are involved in the assembly and preparation of food ingredients, general pantry duties and assist cooking employees.
- c) Cook: - Employees who are assessed by the employer as having the appropriate level of training and who undertake general cooking duties including, but not limited to, a la carte cooking, baking, pastry cooking and butchery.

6.1.4 Level 3

- a) Waitstaff/Bar staff: - Senior waitstaff or supervisors who have demonstrated an ability to perform all the tasks at Level 1 and 2, and have been assessed and appointed by the employer to perform all general waiting duties including supply and dispensing of liquor, receipt of monies and operating an electronic terminal, stock control, taking delivery of goods and assisting in the training of lower grade staff.
- b) Kitchenhands: - Employees assessed and appointed by the employer to have the responsibility of supervising, training and coordinating lower grade Kitchenhands.
- c) Chef: - Employees who are a qualified commi chef or who have completed an apprenticeship or other relevant training and are engaged in a la carte cooking, baking, pastry cooking and butchery.

6.1.5 Level 4

- a) Waitstaff/Bar staff: - Supervisors or assistant managers assessed and appointed by the employer as having all the competencies of lower level staff and have demonstrated a high level of customer service and who in addition to waiting duties are engaged in general purchasing and stock control, taking receipt of deliveries and supervising and coordinating lower grade staff. Tasks also include opening and closing the restaurant.
- b) Chef (tradesperson): - Employees who are a Demi Chef/Chef de partie: - Employees who are a qualified chef de partie who have completed an apprenticeship or other relevant training and are engaged in a la carte cooking, Duties also include supervising other cooks- and kitchen staff.

6.1.6 Level 5

- a) Manager: - Employees assessed by the employer as having a high level of proficiency having demonstrated all the competencies of lower level staff and are appointed to take responsibility for the supervision, training and coordination of lower level waitstaff as well as for general purchasing and stock control. This includes receipt, recording, inventory control and ordering of goods as directed by the employer. Tasks also include opening and closing the restaurant, preparing rosters, operational reports, menu planning and staff inductions.
- b) Chef grade 5 (tradesperson): means a Chef de Partie or Sous Chef who has completed an apprenticeship or has passed the appropriate trade test or who has the appropriate level of training in cooking, butchering or pastry cooking and who performs any of the following:
 - general and specialised duties including supervision or training of other kitchen staff;
 - ordering and stock control; and
 - solely responsible for other cooks and other kitchen employees in a single kitchen establishment.

7. Probation and Termination

7.1 Permanent employees will initially be employed on six (6) months' probation (the "Probation Period"). During the Probation Period either the employer or the employee may terminate the employment relationship by giving one week's notice of their intention to end the employment contract. The employer may at any time during or on completion of the Probation Period confirm the employee's ongoing employment with the employer.

7.1.1 Following expiry of the Probation Period termination is by notice or payment in lieu (in the case of the employer) or forfeiture of pay (in the case of the employee) in accordance with the following:

Permanent employee's period of continuous employment	Notice Required
Not more than 1 year	A least 1 week
1-3 years	At least 2 weeks
3-5 years	At least 3 weeks
More than 5 years	At least 4 weeks

7.2 In addition to the notice specified above, permanent employees 45 years of age or over who have completed at least 2 years continuous service with the employer shall be entitled to an additional week's notice.

7.3 The provisions of Clause 7.2 do not apply to casual employees.

7.4 Nothing in this Agreement shall affect the right of the employer to dismiss an employee without notice where the employee is guilty of serious misconduct. For the purposes of this Clause serious misconduct includes but is not limited to the following:

7.4.1 Wilful or deliberate behaviour by the employee that is inconsistent with the continuation of employment, including, but not limited to:

- a) Theft
- b) Fraud {including falsifying time records}
- c) Assault
- d) Attendance at the workplace under the influence of drugs including alcohol

- e) The employee refusing to carry out the lawful and reasonable instructions of the employer.
- f) The employee not complying with the policies and procedures of the employer in such a manner as to endanger the business of the employer.
- g) Conduct that causes imminent and serious risk to the health and/or safety of a person or the reputation, viability or profitability of the employer's business.

7.4.2 Notwithstanding Clauses 7.1 or 7.2, employees absent from work for a period of three consecutive shifts without the consent of the employer and without notification to the employer shall be deemed to have terminated their employment by abandonment.

7.4.3 Upon termination of employment the employee shall immediately return all documents, publications, manuals, corporate uniforms and other property which are in the employee's possession as a consequence of that employment.

8. Hours of Work

- 8.1 The average weekly ordinary hours of work for salaried full-time employees will be 38 hours, calculated excluding any period of Stand Down under Clause 21 of the Agreement.
- 8.2 Maximum ordinary hours worked on any one day may not exceed 12 hours.
- 8.3 No employee shall be required to work more than 10 consecutive days without 4 days off.
- 8.4 A minimum engagement of 2 hours per shift will apply.
- 8.5 All time worked outside ordinary hours as defined in Clause 8.1 shall be additional hours. The employer may require the employee to work reasonable additional hours of up to a total of no more than 45 hours per week provided account is taken of:
 - 8.5.1 Any risk to the employee's health and safety.
 - 8.5.2 The employee's personal circumstances including any family responsibilities.
 - 8.5.3 The needs of the workplace
 - 8.5.4 The notice (if any) given by the employer of the additional hours.
 - 8.5.5 The standard patterns of work within the restaurant industry.

- 8.6 Permanent Part-Time employees shall work no more than 37 ordinary hours and no less than 8 hours per week. Permanent Part-time employees can be employed on a roster cycle. If they are, their hours need to be an average of at least 8 and less than 38 hours. Any excess of 37 hours per week must be approved in advance by the Head of Dept.
- 8.7 Casual employee's hours are as rostered by the employer on a weekly basis with a minimum shift of four hours.

9. Rosters

- 9.1 As far as practically possible, the employer will draw up a roster one week in advance. Changes to rosters may occur with 48 hours notice for additional shifts and 18 hours notice for cancelation of shifts, or, subject to the availability of the employee with less notice by mutual consent.
- 9.2 The employer will use all reasonable endeavours to roster employees in a fair and equitable manner so as to ensure weekend and public holiday hours are rotated among all available workers.
- 9.3 Rostering of employees will as far as possible take into consideration preferred hours of the employee, family responsibilities, study and personal priorities.

10. Remuneration

- 10.1 The minimum hourly rate of pay for each employee is as set out in Schedule A. These rates are not intended to limit the progress of an employee who obtains further qualifications from receiving higher rates after assessment by the employer. The Base Rates set out in Schedule A are inclusive of all allowances, overtime rates, penalty rates and other entitlements which the employee may otherwise be entitled to under the relevant Award. The Loaded Casual Rate sets out the applicable hourly rate including a 25% premium.
- 10.2 Non-monetary remuneration: All staff who work in excess of a four hour shift are entitled to either a specially prepared staff meal or a meal from a staff menu with selected items from the restaurant menu on occasion where a staff meal has not been prepared. The Staff meal must be nutritional and well balanced. They are also entitled to a soft drink, and/or a coffee in every 4 hour shift. The soft drink will either be from the post mix or a selection of staff only soft drinks depending on the venue availability.

11. Annualised Salaries

- 11.1 The minimum annualised salaries for permanent employees are as set out In Schedule A and are calculated so as to take into account penalties and other entitlements the employee may otherwise have been entitled to.
- 11.2 Annualised salaries may only apply with the written agreement of the employee, ensuring the employee is not worse off than if he or she was paid hourly rates.
- 11.3 Full-time Salaried Employees are required to work 38 hours per week, plus reasonable additional hours up to a total of no more than 45 hours per week. The employee's salary shall be in full satisfaction of these reasonable additional hours.
The employee only if agreed in advance by the Head of Dept may work additional overtime hours. These hours will be paid at the standard permanent part time hourly rate for their level of employment, as per Schedule A of this Agreement. This clause can be varied only through an individual flexibility agreement.
- 11.4 The employer must keep all records relating to the starting and finishing times of employees to whom annualised salaries apply.

This record takes the form of an electronic sign on/sign off process, using the tablet provided at each workplace. It is the employee's responsibility to sign on at the start of every shift and sign off at the end, as well as logging unpaid breaks. Should the employee not sign on/sign off, they will be recorded as having worked only the rostered hours for that shift (unless they were absent). The relevant manager will then sign off weekly on these records.

12. Breaks

- 12.1 Employees who work a shift greater than five consecutive hours shall be entitled to a paid 30-minute meal break which shall be taken at an agreed time between the employer and the employee taking into account the operational requirements of the business.
- 12.2 To remove doubt, if an employee works six hours consecutively, he or she is entitled to pay for six hours even if a 30 minute meal break has been taken

13. Anti-Discrimination

- 13.1 Parties to this Agreement declare their intention to respect and value the diversity of the workforce by helping to prevent discrimination at the Akiba Restaurant and Bar on the basis of race, colour, sexual preference, physical or mental disability, marital status, pregnancy, religious belief, family responsibilities, political opinion, national extraction or social origin.

- 13.2 Nothing in this Agreement should be read as permitting in any way conduct that is prohibited by relevant anti-discrimination provisions in State, Federal or Territory legislation.

14. Dispute Resolution

- 14.1 This Agreement adopts in full the Model Term for Dealing with Disputes for Enterprise Agreements as outlined in Schedule 6.1 (Regulation 6.1) of the Fair Work Act Regulations as printed and attached as Appendix I to this Agreement.

15. Consultation/Flexibility Clause

- 15.1 This Agreement adopts in full the "Model Consultation Term" as outlined in Schedule 2.3 (regulation 2.09) of the Fair Work Act Regulations as printed and attached as Appendix I to this Agreement.
- 15.2 This Agreement adopts in full the "Model Flexibility Term" as outlined in Schedule 2.2 (regulation 2.09) of the Fair Work Act Regulations as printed and attached as Appendix I to this Agreement.

16. Superannuation

- 16.1 The employer shall contribute, on behalf of an eligible employee, amounts in accordance with the requirements of relevant and prevailing legislation to the (Hostplus) superannuation account of the employee or to another eligible fund if directed by the employee but only if such alternative Fund operates a My Super option.
- 16.2 The employer must make such contributions monthly for each employee who earns \$450 or more per month.

17. Parental leave

- 17.1 Parental Leave entitlements are in accordance with the provisions of the Fair Work Act and apply to permanent and eligible casual employees.
- 17.2 An eligible casual employee is one who has been employed by the employer on a regular and systematic basis for a period of 12 months or more and who, but for the pregnancy or decision to adopt would have a reasonable expectation of continuing engagement on a regular and systematic basis.
- 17.3 For the avoidance of doubt, Parental Leave includes Maternity, Paternity and Adoption Leave.

18. Personal Leave

- 18.1 Personal Leave provisions in this agreement are as per the Fair Work Act (National Employment Standards) and include personal/carer's leave, compassionate leave & family and domestic violence leave.

- 18.2 Subject to Clause 18.1, a permanent employee who is unable to attend or remain at his/her place of work due to personal illness or incapacity, shall be entitled to pay at the appropriate Monday to Friday hourly rate as follows:
- 18.2.1 Up to 10 days sick pay each year of continuous employment accruing on a pro-rata basis for each four-week period of continuous employment.
 - 18.2.2 Unused sick leave entitlements shall be cumulative.
 - 18.2.3 Permanent employees are entitled to access a maximum of 10 days per year of their sick leave entitlement to provide care and/or support to a sick or injured immediate family or household member.
 - 18.2.4 An immediate family or household member is a spouse, child, parent, grandparent, grandchild or sibling of the employee or the spouse of the employee.
- 18.3 Permanent employees are expected to comply with the following requirements when taking sick or carer's leave:
- 18.3.1 The employee shall, where practicable, advise the employer of their inability to attend for work at least 3 hours before the shift begins and as far as possible the nature of the illness and the estimated period of absence.
 - 18.3.2 The employer is entitled to request evidence that would substantiate the reason for leave. A failure to either provide notice or, if required, evidence that would satisfy a reasonable person to substantiate the reasons for the leave, means the employee is not entitled to the leave.
 - 18.3.3 An employee shall not be entitled to paid sick or carer's leave for any period with respect to which an entitlement to Workers Compensation is extant.
- 18.4 A permanent part-time employee is entitled to pro-rata benefits under this Clause.
- 18.5 Permanent employees are entitled to a period of 2 days compassionate leave for each permissible occasion. A permissible occasion happens when a member of the employee's immediate family, as defined in Clause 18.2.4, or household:
- a) Contracts a personal illness posing a serious threat to life
 - b) Sustains a personal injury posing a serious threat to life
 - c) Dies

- 18.6 An employee accessing leave under this part must comply with the requirements of Clause 18.3.1
- 18.7 Permanent and Casual employees are entitled to a period of up to 2 days unpaid carer's leave when a member of their immediate family as defined in 18.2.4 or household requires care and/or support because of personal illness or injury or an unexpected emergency.
- 18.8 Notice and documentation requirements under 18.3.2 must be complied with on accessing the leave.
- 18.9 A permanent employee is only entitled to unpaid carer's leave if all paid sick and carers' leave is exhausted
- 18.10 An employee (including a casual employee) is entitled to five days of unpaid family and domestic violence leave each year. Employees are entitled to the full five days from the day they start work. The five days renews each 12 months but does not accumulate from year to year if it isn't used.

19. Annual Leave

- 19.1 Permanent employees are entitled to 4 weeks paid annual leave per year of continuous employment. Annual Leave accrues on a pro-rata basis for each completed four-week period of continuous employment.
- 19.2 Employees taking approved annual leave shall be entitled to pay at the appropriate Monday to Sunday hourly rate as per Schedule A of the Agreement
- 19.3 Annual Leave is to be taken at a time mutually agreed by the employer and the employee. In any case, annual leave shall not be permitted to accrue for longer than 18 months i.e., a maximum of 6 weeks. At this point, employees will be directed to take leave.
- 19.4 An employee may elect to forgo an entitlement to take an amount of annual leave credited to the employee by way of written request to the employer. Where such a request is made and approved by the employer, the employee will receive a payment in lieu of the amount of annual leave at a rate no less than the employee's agreed rate of pay at the time the election is made.

The maximum amount of annual leave that an employee can forgo during each 12 month period of employment is 2 weeks for employees working an average of 38 hours per week. Part time employees working less than 38 hours per week are entitled to forgo a pro-rata amount. An agreement to cash out leave must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks (or the pro-rata amount thereof).

20. Public Holidays

- 20.1 The following days are Public Holidays: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queens Birthday Labour Day, Christmas Day, Boxing Day and any other Government gazetted public holidays in the Australian Capital Territory
- 20.2 All salaried full-time, permanent part-time and casual employees will be entitled to a penalty rate of 150% for all hours worked on a public holiday. Paid at the standard hourly rate for that level of employment. This clause may only be varied through an individual flexibility agreement outlining alternate arrangements for penalty rates.

21. Stand Down

- 21.1 The employer may stand down employee(s) without pay where the employee(s) cannot be usefully employed due to a strike, breakdown of machinery, or stoppage of work for any cause where the employer cannot reasonably be held responsible.
- 21.2 The employer may also stand down employee(s) without pay during periods when business turnover and profitability cannot justify employment of the employee(s) affected. Stand downs in this context may not exceed a total of 12 weeks in any 52-week period.
- 21.3 An employee's continuity of service is not broken during a period of stand down.

22. Annual Wage Adjustment

- 22.1 On 1 July each year, all wage rates provided for in this agreement will be increased by at least the same percentage applied to the Restaurant Industry Award 2020 for the duration of the Agreement.

23. No Reduction of Wages

- 23.1 No existing Employee who was employed by Akiba prior to the coming into force of this Agreement, and who was in receipt of wages superior to the wages prescribed in this clause shall have their wages reduced merely through the coming into force of this Agreement. For the avoidance of doubt, this guarantee does not extend to other terms and conditions that may have varied as a result of this Agreement coming into force.

Schedule A - Minimum Rates of Pay

Classification	Base Rate	Loaded Casual Rate
Introductory	\$20.99	\$26.24
Level 1	\$22.29	\$27.86
Level 2	\$23.14	\$28.93
Level 3	\$24.36	\$30.45
Level 4	\$25.57	\$31.96
Level 5	\$28.00	\$35.00

Classification	Annualised Salary
Introductory	N/A
Level 1	\$52,158.6
Level 2	\$54,147.60
Level 3	\$57,002.40
Level 4	\$59,833.80
Level 5	\$65,520

NB: The hourly rates above are intended to be for hours worked on any day including Saturday, Sunday and Public Holidays are paid as per clause 20.2. They include a premium for penalty rate time after 10pm Monday to Friday, overtime rates (notwithstanding reasonable additional hours as per clause 8.5) and for annual leave loading.

Casual rates include a 25% premium for all the incidents of permanent employment including annual holidays.

Schedule B - Model flexibility term

(regulation 2.08)

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - (a) the agreement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
 - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
 - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the employer and employee; and
 - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - (d) includes details of:
 - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the employer and employee agree in writing — at any time.

Schedule C - Model term for dealing with disputes for enterprise agreements

(regulation 6.01)

- (1) If a dispute relates to:
 - (a) a matter arising under the agreement; or
 - (b) the National Employment Standards;this term sets out procedures to settle the dispute.
- (2) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- (3) In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
- (4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission.
- (5) The Fair Work Commission may deal with the dispute in 2 stages:
 - (a) the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - (b) if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
 - (i) arbitrate the dispute; and
 - (ii) make a determination that is binding on the parties.

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

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. Therefore, an appeal may be made against the decision.
- (6) While the parties are trying to resolve the dispute using the procedures in this term:
 - (a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
 - (b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
 - (i) the work is not safe; or
 - (ii) applicable occupational health and safety legislation would not permit the work to be performed; or
 - (iii) the work is not appropriate for the employee to perform; or
 - (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.

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

IN THE FAIR WORK COMMISSION

FWC Matter No.:

AG2021/6804

Applicant:

Akiba Canberra Pty Ltd Trading as Akiba Restaurant and Bar

Section 185 – Application for approval of a multi enterprise agreement

Undertaking- Section 190

I, Michael Harrington, General Manager for Akiba Canberra Pty Ltd give the following undertakings with respect to the Akiba Multi Enterprise Agreement ("the Agreement"):

1. I have the authority given to me by Akiba Canberra Pty Ltd to provide this undertaking in relation to the application before the Fair Work Commission.
2. Akiba undertakes that in the event of an inconsistency between the terms of this Agreement and the National Employment Standards (NES), and the NES provides a greater benefit to an employee, the NES provision will apply to the extent of the inconsistency.
3. Akiba undertakes to pay the revised (increased) pay rates as per the table below:

Schedule A – Mini Rates of Pay

Classification	Base Rate	Loaded Casual Rate
Introductory	\$21.50	\$26.24
Level 1	\$22.58	\$27.86
Level 2	\$23.70	\$28.93
Level 3	\$24.95	\$30.45
Level 4	\$26.20	\$31.96
Level 5	\$27.80	\$35.00
Classification	Annualised Salary	
Introductory	N/A	
Level 1	\$52,158.6	
Level 2	\$54,147.6	
Level 3	\$57,002.4	
Level 4	\$59,833.8	
Level 5	\$65,520	
<p>NB: The hourly rates above are intended to be hours worked on any day including Saturday, Sunday and Public Holidays are paid as per clause 20.2. They include a premium for penalty rate time after 10pm Monday to Friday, overtime rates (notwithstanding reasonable additional hours as per clause 8.5) and for annual leave loading.</p> <p>Casual rates include a 25% premium for all the incidents of permanent employment including annual holidays.</p>		

- The loaded rates held within this EA must not result in an employee being paid less over a quarter (or, if the employee’s employment is terminated before a quarter is completed, over the period of that employment) than would have been the case if they were being paid under the Restaurant Industry Award (2020).

A **quarterly** reconciliation of hours against pay will be undertaken for all staff on loaded rates to ensure that they have been recompensed in line with the wage rates relevant to their grade (as per the requirement above).

If the reconciliation reveals that the loaded rates paid to an employee in respect of the previous quarter is less than the employee would have been paid had they been paid pursuant to the provisions of the Restaurant Industry Award (2020), then the shortfall

will be paid by Akiba to the employee within 30 days of the end of the quarter to which the reconciliation relates. **Employees will be paid a further 10% of the shortfall amount as recompense on any quarter where a shortfall is identified.**

5. The annualised salary must not result in an employee being paid less over a year (or, if the employee's employment is terminated before a year is completed, over the period of that employment) than would have been the case if an annualised salary had not been agreed and the employee had instead been paid their weekly rate and any other amounts satisfied by the annualised salary.

A **quarterly** reconciliation of hours against salaried pay will be undertaken for all salaried staff to ensure that they have been recompensed in line with the wage rates relevant to their grade (as per the requirement above).

If the reconciliation reveals that the annual salary paid to an employee in respect of the previous quarter is less than the employee would have been paid had they been paid pursuant to the other provisions of the Agreement, then the shortfall must be paid by Akiba to the employee within 30 days of the end of the quarter to which the reconciliation relates. **Employees will be paid a further 10% of the shortfall amount as recompense on any quarter where a shortfall is identified.**

6. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature

13 September 2021

Date

Schedule 2.3—Model consultation term

(regulation 2.09)

Model consultation term

- (1) This term applies if the employer:
 - (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
 - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

- (2) For a major change referred to in paragraph (1)(a):
 - (a) the employer must notify the relevant employees of the decision to introduce the major change; and
 - (b) subclauses (3) to (9) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;the employer must recognise the representative.
- (5) As soon as practicable after making its decision, the employer must:
 - (a) discuss with the relevant employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the employees; and
 - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and

- (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the change on the employees; and
 - (iii) any other matters likely to affect the employees.
- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) If a term in this 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 paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- (9) In this term, a major change is ***likely to have a significant effect on employees*** if it results in:
 - (a) the termination of the employment of employees; or
 - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
 - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - (d) the alteration of hours of work; or
 - (e) the need to retrain employees; or
 - (f) the need to relocate employees to another workplace; or
 - (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

- (10) For a change referred to in paragraph (1)(b):
 - (a) the employer must notify the relevant employees of the proposed change; and
 - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.

- (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 recognise the representative.
- (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
 - (c) 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).
- (14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:
- relevant employees*** means the employees who may be affected by a change referred to in subclause (1).