

REGISTER OF ENTERPRISE AGREEMENTS

ENTERPRISE AGREEMENT NO: EA06/92

TITLE: Flyash Australia Pty Limited Enterprise Agreement 2005

I.R.C. NO: IRC6/428

DATE APPROVED/COMMENCEMENT: 17 February 2006 / 17 May 2004

TERM: 21

**NEW AGREEMENT OR
VARIATION:** Replaces EA98/224.

GAZETTAL REFERENCE: 17 March 2006

DATE TERMINATED:

NUMBER OF PAGES: 16

COVERAGE/DESCRIPTION OF

EMPLOYEES: The agreement applies to all employees employed by Flyash Australia Pty Limited located at 119 Willoughby Road, Crows Nest NSW 2065, who are engaged at Flyash Australia Limited's Eraring or Mount Piper site, who fall within the classification of the Flyash Australia (State) Award 2002.

PARTIES: Flyash Australia Pty Limited -&- The Australian Workers' Union, New South Wales

ENTERPRISE AGREEMENT

BETWEEN

FLYASH AUSTRALIA PTY LTD

AND

**THE AUSTRALIAN WORKERS' UNION,
NEW SOUTH WALES**

KNOWN AS

**THE FLYASH AUSTRALIA PTY LIMITED
ENTERPRISE AGREEMENT 2005**

4. **TITLE**

- C. This agreement shall be known as the Flyash Australia Pty Limited Enterprise Agreement 2005 (the “**Agreement**”).

5. **CONTENTS**

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6. **PARTIES TO THE AGREEMENT**

The parties to this Agreement are:

- Flyash Australia Pty Limited (the “**Company**”); and
- The Australian Workers’ Union, New South Wales (the “**Union**”).

7. **APPLICATION**

This Agreement shall apply to persons employed by the Company who fall within the classifications

contained in the Flyash Australia (State) Award 2002 and who work at the Company's Eraring or Mount Piper sites (the "**Employees**").

8. **OBJECTIVES OF THIS AGREEMENT**

C. On or about February 2005, the Company and the Union finalised arrangements for the working of 12-hour shifts by Employees engaged as Operators at the Company's Eraring site (the "**12-Hour Shift Workers**").

D. This Agreement aims to formalise arrangements for 12-Hour Shift Workers.

E. This Agreement also aims to formalise arrangements for:

the cashing out of Employee sick leave entitlements for all Employees; and
annual skills testing for all Employees;

9. **RELATIONSHIP TO THE AWARD**

C. This Agreement shall be read in conjunction with the Flyash Australia (State) Award 2002 (the "**Award**").

D. This Agreement shall prevail over the Award to the extent of any inconsistency.

E. Despite any other provision of this Agreement, this Agreement shall displace the following provisions of the Award in their entirety so far as concerns a 12-Hour Shift Worker:

- (1) Clause 9 - Hours;
- (2) Clause 10 - Shift Work;
- (3) Clause 11 - Overtime;
- (4) Clause 13 - Holidays;
- (5) Clause 16 - Annual Leave; and
- (6) Table 1 - Wages.

10. **TERM OF THIS AGREEMENT**

The nominal term of this Agreement shall commence on 17 May 2004 and expire on 3 February 2006. Thereafter, the Agreement will continue to apply in accordance with the *Industrial Relations Act 1996*.

11. **NO EXTRA CLAIMS**

C. It is agreed by the parties to this Agreement that up to and including 3 February 2006:

The Employees and the Union will not, by any means whatsoever, demand, pursue or make any extra claims relating to benefits, conditions, obligations or matters contained in this Agreement;

The Employees and the Union will not, by any means whatsoever, demand, pursue or make any claims relating to benefits, conditions, obligations or matters that are not contained in this Agreement; and

The Employees and the Union will not seek any changes to the Employee's terms and conditions of employment.

12. **CASHING OUT OF SICK LEAVE**

The Company may, at its discretion, provide an Employee with payment in lieu of the Employee's accrued but untaken sick leave entitlement at the completion of each year of employment for all accrued but untaken sick leave in excess of 25 days.

If the Company makes a payment to an Employee for accrued but untaken sick leave, the sick leave paid out will cease being an entitlement and the number of sick leave days available will be reduced accordingly.

13. **12-HOUR SHIFT WORKERS**

The provisions of this clause 10 apply to 12-Hour Shift Workers only.

C. **12-Hour Shift Patterns**

A 12-Hour Shift Worker shall work the 12-Hour shift roster by working:

- (1) 2 consecutive day shifts then 2 consecutive night shifts over 4 days (Monday to Sunday) followed by 4 consecutive days off;
- (2) 12 ordinary hours for each shift; and
- (3) in accordance with a roster prepared by the Company that complies with the requirements of this subclause.

D. Maximum Ordinary Hours

The average ordinary working hours for a 12-Hour Shift Worker shall not exceed:

- (1) 12 hours during any day.
- (2) 48 hours during any week.
- (3) 336 hours during any 8-week cycle.

E. Hours of Work

(1) The ordinary hours of work for a 12-Hour Shift Worker shall be worked between:

- (1) 6.00 am to 6.00 pm (Monday to Sunday) for a day shift; and
- (2) 6.00 pm to 6.00 am (Monday to Sunday) for a night shift.
- (2) The Company reserves the right to change the start and finish times for 12-Hour Shift Workers in accordance with the needs of the business. In such a case, the Company will provide the 12-Hour Shift Worker with 7 days notice.

F. Change of Shift Roster

- (1) The Company may change the rostered shifts of a 12-Hour Shift Worker. In such a case, the Company will endeavour to provide the Employee with 48 hours' notice. The Union and the Employees recognise that it will not always be possible for the Company to provide such notice.
- (2) The Company may, at its discretion, convert a 12-Hour Shift Worker to a Day Worker or a Shift Worker as defined in clause 9 of the Award. Provided however, the Company must provide a 12-Hour Shift Worker with at least 7 days' notice of such conversion.

G. No Rostered Day Off

- (1) A 12-Hour Shift Worker is unable to accrue a Rostered Day Off (“**RDO**”).
- (2) If an Employee has an accrued RDO entitlement at the time of commencing as a 12-Hour Shift Worker, the Company shall pay out the Employee's accrued RDO entitlement. At the time of payment, any RDO entitlement is

extinguished.

H. Overtime

- (1) Overtime for a 12-Hour Shift Worker may only be worked at the request of the Company or otherwise with the Company's permission.
- (2) For the purpose of calculating overtime, each shift will stand alone. Further, overtime will be calculated to the nearest ¼ hour.
- (3) A 12-Hour Shift Worker who is required to commence work before the start of their rostered shift shall be paid at the rate of \$26.34 per hour for the first 2 hours so worked. A rate of \$35.12 per hour will apply for all hours worked thereafter up until the start of the employee's rostered shift.
- (4) A 12-Hour Shift Worker who is required to remain at work after the end of their rostered shift shall be paid at the rate of \$35.12 per hour for all work performed after the end of their rostered shift.
- (5) A 12-Hour Shift Worker who is required to perform work on a day that the employee has not been rostered to work shall be paid at the rate of \$26.34 per hour for the first 2 hours worked. A rate of \$35.12 per hour will apply for all hours worked in excess of the first 2 hours.
- (6) Notwithstanding any other provision of this Agreement, no overtime rate applies to work performed by a 12-Hour Shift Worker during the employee's rostered shift.
- (7) When overtime is necessary, it shall, wherever reasonably practicable having regard to the needs of the business, be so arranged such that a 12-Hour Shift Worker has at least 8 consecutive hours off duty between successive shifts. A 12-Hour Shift Worker who has not had at least 8 consecutive hours off duty between shifts shall be paid at the rate of \$35.12 per hour for their next shift and each successive shift until the employee has had 8 consecutive hours of duty. In the alternative, the Company may, at its discretion, elect for the 12 Hour Shift Worker to be released from the next rostered shift for as many hours as is necessary to ensure that the 12 Hour Shift Worker has had an 8-hour break before commencing their next shift. Such release time shall be without loss of pay.

- (8) By mutual agreement between a 12-Hour Shift Worker and the Company, a 12-Hour Shift Worker may be given time off in lieu of payment for overtime. Such time off is to be given at a time or times agreed between the 12-Hour Shift Worker and the Company or otherwise as directed by the Company on the giving of 7 days' notice. Overtime taken as time off during ordinary time hours will be taken at the ordinary time rate, that is, an hour off for each hour of overtime worked.

I. Sick Leave

- (1) A 12-Hour Shift Worker shall be entitled, in each year of continuous service, to a maximum of 80 hours sick leave without loss of pay.
- (2) The minimum unit of sick leave allowed to be taken by a 12-Hour Shift Worker is 1 x 12 hours shift, or on an hour-by-hour basis if the employee becomes ill after the commencement of a 12-hour shift.
- (3) Sick leave for a 12-Hour Shift Worker will be paid at the rate of \$17.56 per hour.

J. Annual Leave

A 12-Hour Shift Worker shall be entitled to annual leave in accordance with the *Annual Holidays Act 1944* subject to the following provisions:

- (1) After each 12 months of continuous service, an Employee who has served as a 12-Hour Shift Worker for the entire 12-month period shall be entitled to 210 hours paid annual leave.
- (2) After each 12 months of continuous service, an Employee who has served as a 12-Hour Shift Worker for only part of a 12-month period shall be entitled to 3.5 hours' paid annual leave, in addition to their entitlement under the *Annual Holidays Act 1944*, for each completed month of service as a 12-Hour Shift Worker.
- (3) a 12-Hour Shift Worker's annual leave bank will be reduced by 42 hours for each week that the employee is absent on annual leave. Where the employee is absent on annual leave for between 1 and 3 days, the employee's annual leave bank will be reduced by 12 hours for each day of annual leave.

- (4) to avoid any uncertainty, a 12-Hour Shift Worker will have no entitlement to annual leave loading when entering on a period of annual leave.
- (5) annual leave for a 12-Hour Shift Worker shall be paid at the rate of \$21.07 per hour.

K. Public Holidays

- (1) Where a 12-Hour Shift Worker works on a Public Holiday, the employee will be paid at the rate of \$43.89 per hour for all hours worked on the actual day that the Public Holiday falls. If a 12-Hour Shift Worker works a Public Holiday as overtime, the rate referred to in this clause will be paid in lieu of any entitlement to overtime in respect of all hours worked on the actual day that the Public Holiday falls.
- (2) If a 12-Hour Shift Worker is rostered to work on a Public Holiday, however, by mutual agreement between the Company and the 12-Hour Shift Worker, does not work the Public Holiday, the 12-Hour Shift Worker shall be entitled to 12 hours' pay at the hourly rate of \$21.07 in respect of the Public Holiday not worked.
- (3) If a Public Holiday falls on a rostered day off and the 12-Hour Shift Worker does not work the Public Holiday, the 12-Hour Shift Worker shall have no entitlement to payment for the Public Holiday.
- (4) For the purpose of this clause, "Public Holiday" means New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Christmas Day, Boxing Day, Labour Day and any other gazetted holidays in the state of New South Wales. In addition to the above days, an additional day shall be granted and taken on the first Monday in December each year or as otherwise agreed.

L. Bereavement Leave

A 12-Hour Shift Worker shall be paid at the rate of \$21.07 per hour in respect of any paid bereavement leave entitlement under the Award.

M. Long Service Leave

A 12-Hour Shift Worker shall be paid at the rate of \$21.07 per hour in respect of any Long Service Leave entitlement under the Award.

N. Break Entitlements

A 12 Hour Shift Worker shall be entitled to two 20 minute paid breaks per shift. These breaks are to be taken approximately four hours apart and at a time best suited to the Company's operations.

O. Wages for a 12-Hour Shift Worker

It is acknowledged by the parties that the 12-Hour Shift Roster will result in a 12-Hour Shift Worker working up to 48 ordinary hours per week in some weeks and as little as 36 ordinary hours in other weeks. For the purpose of a 12-Hour Shift Worker's ordinary weekly pay, ordinary hours will be averaged to 42 hours per week.

P. Adjustment to Amounts

The dollar amounts referred to in clauses:-

- (1) 10.6;
- (2) 10.7;
- (3) 10.8;
- (4) 10.9;
- (5) 10.10; and
- (6) 10.11

shall be adjusted in accordance with the existing formula, on each occasion that the ordinary weekly rate of pay for a 12-Hour Shift Worker increases under this Agreement.

14. COMPETENCY TESTING

The Company may, from time to time, conduct competency testing of Employees.

Employees are required to participate in competency testing.

- (1) It is envisaged that competency testing of Employees will occur on a quarterly basis.
- (2) The Company will provide an Employee with one week's notice of the Company's intention to conduct competency testing.

15. WAGE AND ALLOWANCE INCREASES

During the life of this Agreement, a 12-Hour Shift Worker's ordinary weekly rate of pay shall be as prescribed by Table 1 - Wages for 12-Hour Shift Workers.

- (1) During the life of this Agreement, the wage of an Employee (other than a 12-Hour Shift Worker) shall be as prescribed by Table 2 - Wages for Employees (other than 12-Hour Shift Workers).
- (2) During the life of this Agreement, the allowances payable to Employees will be as prescribed by Table 3 - Allowances.

16. ANTI-DISCRIMINATION

- C.** It is the intention of the parties to this Agreement to seek to achieve the object in s.3 (f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- D.** It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Agreement the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Agreement are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Agreement which by its terms or operation, has a direct or indirect discriminatory effect.
- E.** Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- F.** Nothing in this clause is to be taken to affect:
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;

- (b) offering or providing junior rates of pay to persons under 21 years of age;
- (c) any act or practice of a body established to propagate religion which is exempted under s.56 (d) of the *Anti-Discrimination Act 1977*;
- (d) a party to this Agreement from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

G. This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

NOTES:

(a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.

(b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

17. DISPUTE RESOLUTION

C. The purpose of this provision is to seek to eliminate disputes which result in stoppages, bans or limitations, especially those in the nature of a "protest", and it is agreed that the parties to this Agreement shall confer in good faith with a view to resolving the matter by direct negotiation and consultation to enable claims, issues and disputes to be progressed while work proceeds normally.

D. Subject to the provision of the *Industrial Relations Act, 1996* as amended, all grievances, claims or disputes shall be dealt with in the following manner so as to ensure the orderly settlement of the matters in question:

- (1) Whist this procedure is being followed work shall continue normally in accordance with current custom or practice. No party shall be prejudiced as to the final settlement by the continuance of work in accordance with this clause.

- (2) Any grievance or dispute which arises shall, where possible, be settled by discussion on the job between the Employee or Employees and the supervisor.
- (3) If the matter is not resolved at this level the matter will be further discussed between the Union delegates and Management. The Company's industrial relations representative and relevant Union organiser are to be notified.
- (4) If the matter is still not satisfactorily resolved the relevant Union organiser and Union delegate will discuss the matter with the Company's industrial relations representatives.
- (5) Should the matter still not be resolved it will be referred by the parties to the Industrial Relations Commission of New South Wales for settlement.

E. Notwithstanding any other provision of this Agreement an Employee is entitled to raise an issue either directly with the Company or through an Employee representative of their choice.

18. SIGNATORIES

SIGNED FOR AND ON BEHALF OF)
)
FLYASH AUSTRALIA PTY LIMITED)
)
 by its duly authorised officer)

 Signature of Officer

 Date

SIGNED FOR AND ON BEHALF OF)
)
THE AUSTRALIAN WORKERS' UNION,)
NEW SOUTH WALES)
 by its duly authorised officer)

 Signature of Secretary

 Date

TABLES

Table 1 - Wages for 12-Hour Shift Workers

Date From which Rate Applies	Ordinary Weekly Rate of Pay
From the first full pay period to commence on or after 17 May 2004	\$1,058.96
From the first full pay period to commence on or after 1 October 2004	\$1,101.32
From the first full pay period to commence on or after 1 October 2005	\$1,145.37

Table 2 - Wages for Employees (other than 12-Hour Shift Workers)

Classification	Date From which Rate Applies	Wage Rate Per Week ¹
Level 1	From the first full pay period to commence on or after 17 May 2004	\$618.24
	From the first full pay period to commence on or after 1 October 2004	\$642.97
	From the first full pay period to commence on or after 1 October 2005	\$668.69
Level 2	From the first full pay period to commence on or after 17 May 2004	\$667.86
	From the first full pay period to commence on or after 1 October 2004	\$694.57

¹ 38-hour week

Classification	Date From which Rate Applies	Wage Rate Per Week¹
	From the first full pay period to commence on or after 1 October 2005	\$722.35
Level 3	From the first full pay period to commence on or after 17 May 2004	\$696.16
	From the first full pay period to commence on or after 1 October 2004	\$724.01
	From the first full pay period to commence on or after 1 October 2005	\$752.97
Level 3 + Team Leader Allowance	From the first full pay period to commence on or after 17 May 2004	\$720.69
	From the first full pay period to commence on or after 1 October 2004	\$749.52
	From the first full pay period to commence on or after 1 October 2005	\$779.50
Level 4	From the first full pay period to commence on or after 17 May 2004	\$717.51
	From the first full pay period to commence on or after 1 October 2004	\$746.21
	From the first full pay period to commence on or after 1 October 2005	\$776.06
Level 4 + Team Leader Allowance	From the first full pay period to commence on or after 17 May 2004	\$763.61
	From the first full pay period to commence on or after 1 October 2004	\$794.15
	From the first full pay period to commence on or after 1 October 2005	\$825.92

Table 3 - Allowances

Item No. .	Description	Date From which Rate Applies	Amount
Item 1	Laundry Allowance	From the first full pay period to commence on or after 17 May 2004	\$5.10
		From the first full pay period to commence on or after 1 October 2004	\$5.10
		From the first full pay period to commence on or after 1 October 2005	\$5.60
Item 2	First Aid	From the first full pay period to commence on or after 17 May 2004	\$9.00
		From the first full pay period to commence on or after 1 October 2004	\$9.00
		From the first full pay period to commence on or after 1 October 2005	\$9.90
Item 3	Meal Money	From the first full pay period to commence on or after 17 May 2004	\$7.30
		From the first full pay period to commence on or after 1	\$7.30

Item No. .	Description	Date From which Rate Applies	Amount
		October 2004	
		From the first full pay period to commence on or after 1 October 2005	\$8.00