

ANALYSIS DOCUMENT – TERMINATION OF AGREEMENT

1. This document compares key terms of the *Apple Retail Enterprise Agreement 2014* (“the Agreement”) with key terms of the General Retail Industry Award 2020 (“the Award”). This document does not consider every clause.
2. This document has been prepared by the Retail and Fast Food Workers Union Incorporated (RAFFWU) which is the bargaining representative of the applicant. RAFFWU has been informed by Apple Pty Ltd that it employs approximately 3800 employees in Australia of whom approximately 3200 are employed in retail stores and covered by the Agreement. RAFFWU has been informed by Apple Pty Ltd that approximately 73% of those covered by the Agreement are employed at Level 1.

Hours of Work & Rostering Arrangements

3. The Agreement imposes rostering and working hours arrangements on workers which are far inferior to the Award.
4. The Agreement defines in clause 23 part-time or full-time employment as follows :
 - (a) Full Time means a Team Member engaged to work a minimum of 76 hours per fortnight.
 - (b) Part Time means a Team Member engaged to work regular hours less than 76 hours per fortnight and is not a Casual Team Member.
5. The Agreement term at clause 6.1 outlines rostering:
 - 6.1 **Apple will determine rosters of work for Team Members on the basis of a fortnightly roster. The roster will be prepared and may be varied by Apple at any time in its discretion. There may be frequent variations to rosters from one fortnightly cycle to another.**
 - 6.2 **All Team Members, regardless of classification, may be rostered to work on weekends and on Public Holidays. Whilst you are expected to be available to be rostered to work at any time across seven days of the week, Monday to Sunday, Apple appreciates that there will be occasions where you may not be available to work. In these circumstances, Apple may agree to alternative rostering arrangements as reasonably requested in writing, having regard to the operational needs of the business and your individual circumstances, including any risk to your health and safety (our emp.).**
6. The effect of these terms, is that Apple requires employees to be available at all times, can roster employees as it sees fit, and can change employee rosters at its discretion. While Schedule D nominally provides a system for consultation on changes to regular

rosters reflective of the model term in *Fair Work Regulations 2009* (Cth) schedule 2.3, employees do not in practice have ‘regular rosters’, by virtue of Apple’s implementation of clause 6 above and are not consulted on any changes in fact.

7. Other than clause 6, the other relevant term regarding rostering is clause 7 entitled ‘*Your Working Hours*’, which provides that workers will be rostered to work ‘generally’ between 6am and 10pm on any day.
8. None of the other Award protections for hours of work and rostering rights in clause 15 are provided for under the Agreement.

Part-Time Workers - Award Provisions

9. In relation to part-time workers, clause 10 of the Award provides a suite of protections including clause 10.5, where the employee has the right to agree to their guaranteed hours, which can only change by agreement. The times of work are agreed and can only change following consultation. There are no equivalent protections in the Apple agreement.
10. The timing and duration of meal breaks are also agreed and can only change following consultation.
11. All of those obligations must be agreed in writing. Overtime rates must be paid if additional hours are required to be worked without agreement being reached to work those hours at overtime rates.
12. Clause 10.11 in the Award lays out rights to a review of guaranteed hours. No such rights exist in the Agreement.

Full-Time Workers – Award Provisions

13. Clause 15.6 in the Award provides full-time employees a series of rights including the rights to RDOs or equivalent arrangements. No equivalent term is in the Agreement.

Rostering – Award Provisions

14. Clause 15 in the Award provides a series of minimum conditions for the rostering of employees. None of these are in the Agreement.

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- (a) Clause 15.7 provides an employee may not be rostered to work more than 5 days a week unless a 6 and 4 fortnight is used;
- (b) Clause 15.7 provides each employee must be rostered to work in a way that gives 2 consecutive days off per week or 3 consecutive days off per fortnight unless an employee requests in writing otherwise;
- (c) Clause 15.7 provides the maximum number of consecutive days an employee may work is 6 (six).
- (d) Clause 15.8 provides an employee who regularly works Sundays must be rostered in a way that gives them 3 consecutive days off, including the weekend, each 4 week cycle unless an employee requests in writing otherwise;
- (e) Clause 15.9 provides the roster must be published, maintained and kept;
- (f) Clause 15.9 provides the roster must not be changed with the intention of avoiding benefits;
- (g) Clause 15.9 provides systems for managing disputes over roster changes; and
- (h) Clause 15.9 provides the roster must show a range of information for each employee.

Ordinary Hours – Award Provisions

- 15. The ordinary hours under clause 15 of the Award are from 7am to 9pm Monday to Friday, 7am to 6pm on Saturday and 9am to 6pm on Sunday. Under the Agreement at clause 7, workers will be rostered ‘generally’ between 6am to 10pm on any day.
- 16. Not only does this Agreement term permit wider rostering (which is unrestricted and unilaterally imposed on employees in any event), but the rates of pay are also less than the Award for many hours. This is because the Award would pay workers overtime rates where they worked outside ordinary hours, since Apple does not employ shift-workers.
- 17. Under the clause 15.3 of the Award, all hours must be continuous on the day of work whereas under the Agreement there is no such restriction.

Breaks Between Shifts

18. The Agreement has no restriction on the length of break between shifts.
19. The Award provides at clause 16.6 a minimum break of 12 hours between shifts unless an employee agrees to a 10 hour break. Should these not be met, the employee is entitled to a 200% rate of pay until they have the required break between shifts.

Overtime

20. Under clause 8 of the Agreement, overtime is only payable for work beyond 76 hours in a fortnight.
21. Under clause 21.2 of the Award, overtime can be payable in a number of instances, including for hours worked beyond the contracted hours, hours worked beyond a maximum number of hours in a day, hours worked beyond the rostering restrictions, and more.
22. Clause 21 in the Award deals with overtime, as do other provisions such as 10.8 and 15.9. Please note the charts at the end of this Annexure presume only the lowest overtime rate, which is 150% of an ordinary rate except on Sunday when all overtime is 200%.

Meal Breaks

23. The Agreement does not provide for any longer meal break than 30 minutes, and at clause 11.3 imposes the condition that “*all breaks are to be taken at the direction of Apple...*” .
24. In contrast, clause 16 of the Award provides for the setting of meal breaks at agreed times and that they may change only following consultation. The Award also provides for a break of up to 60 minutes.
25. The Award also requires a meal break be taken after 5 hours of work and prohibits an employer requiring an employee to combine a meal break and a rest break. Neither of these protections are in the Agreement.

Minimum wage structure – Permanent Workers

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26. Under the Agreement, workers engaged on a permanent basis are entitled to minimum rates of pay laid out in Schedule A. These rates are mapped against the Award rates of pay at the end of this Annexure.
27. We note the Agreement rates of pay may not be the actual paid rates of pay, and that clause 3.6 of the Agreement provides an annual system of pay review (where raises are not guaranteed). However, the rates in Schedule A are the enforceable rates of pay under the employees' relevant industrial instrument, and are the relevant rates of pay for consideration of the *effect* of the termination on employees.
28. The classification structure employed at Apple does not lend itself to ready comparison between the Award and the Agreement. The application for approval of the Agreement purported to translate Level 1 in the Agreement with Level 1 in the Award. This is not at all clear from the text of the Agreement and could be construed as requiring Level 2, 3 or 4 work under the Award at Level 1 in the Agreement. However, to simplify the analysis, the comparison has been undertaken comparing Level 1 under the Agreement with Level 1 under the Award.
29. Similarly, the approval documentation purports to translate Agreement Level 2 with Award Level 3. This is demonstrably incorrect. The level of judgement exercised by Agreement Level 2 employees, including in the application of technical expertise, leadership of others and associated work would correctly be at Award Level 4 or higher. Again, to simplify the analysis, the comparison has been undertaken comparing Level 2 under the Agreement with Level 4 under the Award.
30. Level 1 (Agreement) employees have a lower (or equivalent by virtue of s.206 of the *Fair Work Act 2009* (Cth) Agreement wage at all times of the week, except on a public holiday. Section 206 increases the base Agreement rate between 7am and 6pm, Monday to Friday, to that of the Award.
31. Level 2 (Agreement) employees have a lower Agreement wage between 6pm and 10pm Monday through Friday, 6am to 10pm Saturday and before 9am and after 6pm on Sunday.
32. It is acknowledged the paid Level 2 rate is higher than the Agreement rate. The applicant is paid \$37.05 per hour and the respondent has advised RAFFWU the median

Level 2 rate is \$36.79. The median rate is charted with the Award and Agreement rates at the end of this Annexure.

33. It is important to note that the Award rates in the charts do not include:
- (a) laundry allowance (despite workers having to launder their uniform);
 - (b) annual leave loading; and
 - (c) 200% overtime rate for the fourth and subsequent overtime hours (except Sunday.)
34. Under the Agreement, Apple does not pay laundry allowance, and annual leave loading is purportedly built into the Agreement rates pursuant to clause 12.5.

Minimum wage structure – Casual Workers

35. Under the Agreement a casual loading is referred to as 25% in Clause 20.1. However, the actual casual rate provided for in the Agreement is specified in Schedule A. Clause 3.7 provides the minimum base salary or hourly rate of pay for each *classification* will be no less than the *minimum rate of pay* for each *classification* in the Award.
36. This would appear to not inflate the base Award rate for the casual loading. Therefore, the comparative hourly rate for Level 1 retail employees is much less than the Award rate as identified at the end of this Annexure.
37. Under the Award, there is a base rate, plus casual loading of 25%, penalties rates, public holiday rates and overtime rates for certain hours in a week.
38. The employer purports to not engage casual employees and instead provides no guaranteed hours for part-time employees, no set rosters for part-time employees, and no ability for employees to block out their unavailability to control their roster. In essence, part-time employment under the Agreement is akin to casual employment albeit without the casual loading.

Minimum wages for ordinary hours

39. Under the Agreement, employees are paid a base hourly rate plus some additional payment for:

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- (a) Public Holidays (clause 13.2);
 - (b) \$17 per meal allowance (less than the \$20.01 currently provided for in Award) (clause 5);
 - (c) First Aid allowance (clause 5.3);
 - (d) Weeknight & Saturday work after 10pm (clause 10);
 - (e) Saturday work for Level 1 employees (clause 9.1);
 - (f) Sunday work (clause 9.2).
40. Under the Agreement, employees are paid a base hourly rate and no additional payment for:
- (a) Annual leave loading (purportedly incorporated into base salary or hourly rate of pay by way of clause 12.5);
 - (b) Weeknight work between 6pm and 10pm;
 - (c) Saturday work for Level 2 employees;
 - (d) Laundry allowance;
 - (e) Higher Duties;
 - (f) Excess Travelling Costs;
 - (g) Travelling Time reimbursement;
 - (h) Motor Vehicle reimbursement;
 - (i) Special clothing allowance;
 - (j) Transport reimbursement;
 - (k) Recall allowance
41. Under the Award, employees are paid a base hourly rate plus *additional payments* for:
- (a) Annual leave loading;

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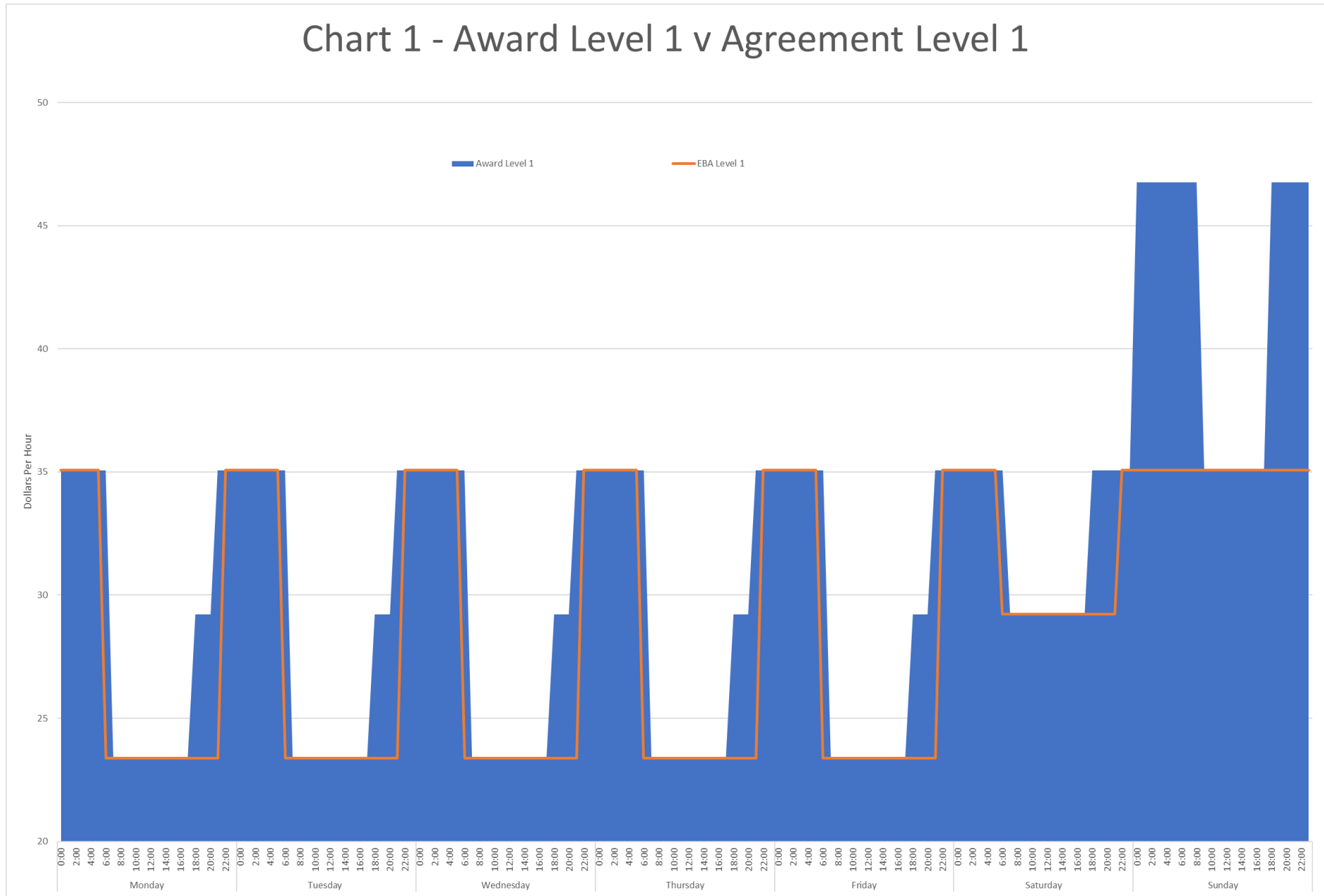
- (b) Weeknight work between 6pm and 11pm (clause 22);
- (c) Overnight work between 11pm and 7am (9am Sundays);
- (d) Saturday and Sunday work for all employees (clause 22);
- (e) Laundry allowance (clause 19.3);
- (f) Meal allowance (clause 19.2);
- (g) First Aid allowance (clause 19.10);
- (h) Higher Duties (clause 17.5);
- (i) Excess Travelling Costs (clause 19.4);
- (j) Travelling Time reimbursement (clause 19.4);;
- (k) Motor Vehicle reimbursement (clause 19.7);;
- (l) Transport reimbursement (clause 19.8);;
- (m) Recall allowance (clause 19.11); and
- (n) Public holiday penalty rates (clause 22).

Other Conditions

- 42. A range of other conditions are imposed or inferior under the Agreement which cause detriment to workers including:
 - (a) Power to compel bag or locker inspections (clause 22.1);
 - (b) Power to direct to be on annual leave (clause 12.4(b)); and
 - (c) Power to direct workers to attend fitness for work assessment (clause 12.13).
- 43. For clarity, the unfairness does not stem from any assertion that (a) and (c) above are beyond power of the employer. The unfairness it is that as terms of the Agreement, non-compliance may be unlawful and place a worker at risk of civil penalties for non-compliance.

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Chart 1 - Award Level 1 v Agreement Level 1



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Chart 2 - Award Level 4 v Agreement Level 2 v Paid Median Level 2

