DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Winc Australia Pty Limited
(AG2022/624)

WINC - ENTERPRISE AGREEMENT 2021

Business equipment industry

DEPUTY PRESIDENT BELL MELBOURNE, 24 MARCH 2022

Application for approval of the Winc - Enterprise Agreement 2021.

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

[2] The Employer has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement. Pursuant to s.201(3), the undertakings are taken to be a term of the Agreement.

[3] Subject to the undertakings referred to above, and having regard to the material contained in the application and filed in relation to it, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval has been met. The Agreement does not cover all of the employees of the employer, however, taking into account the factors in section 186(3) and (3A) I am satisfied that the group of employees was fairly chosen.

[4] I observe that clauses 15, 16 and 17 of the Agreement are potentially inconsistent with the National Employment Standards (NES). However, noting the NES precedence clause on page 3 of the Agreement, I am satisfied the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[5] The United Workers' Union (UWU) being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[6] The Agreement was approved on 24 March 2022 and, in accordance with s 54, will operate from 31 March 2022. The nominal expiry date of the Agreement is 30 June 2024.

DEPUTY PRESIDENT

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2022/624

Applicant:
Winc Australia Pty Limited

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Troy Swan, Director and General Counsel have the authority given to me by Winc Australia Pty Limited to give the following undertaking with respect to the Winc - Enterprise Agreement 2021 ("the Agreement"):

1. Casual employees will be guaranteed not less than four hours' engagement every start.

This undertaking is provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

Signature

18 March 2022

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.

Winc - Enterprise Agreement 2021

Application of this Agreement

This Agreement shall apply to all Full Time, Part Time and Casual warehouse employees (herein referred to as "Employees") based at the New South Wales, National Distribution Centre in Erskine Park operated by Winc Australia Pty Limited.

The Agreement will be between

(i) Winc Australia Pty Limited (ACN 000 728 398) (***Winc***); and

(ii) Employees employed by Winc.

(iii) The United Workers Union (NSW Branch) (***the Union***), the bargaining representative of the employees.

The Agreement will operate from seven days after it is approved by Fair Work Commission ***(Effective Date)*** and will have a nominal expiry date of June 30 2024 The Agreement will remain in force after the expiry date until terminated or replaced by a new agreement in accordance with the *Fair Work Act 2009* (Cth) **(*the Act*).**

The Agreement will not apply to any person appointed to a Team Co-ordinator or Management role.

This Agreement will be submitted to the Fair Work Commission for approval subject to the endorsement of the Agreement by a valid majority of Employees.

This Agreement shall apply to the exclusion of any industrial instrument and be read and interpreted in conjunction with the National Employment Standards (NES) provided that where there is any inconsistency between this Agreement and the NES, the more beneficial provision to an employee shall take precedence.

Contents

1 Rates of Pay

The minimum hourly rates of pay for each classification covered by this Agreement for the term of this Agreement are set out in Annexure 1. The minimum Full Time rates of pay have been calculated on 75 hours work averaged over a fortnight period. The casual rates of pay include a 25% loading in lieu of service related entitlements.

All Employees covered by this Agreement may be required to work a reasonable level of Overtime Hours in excess of 37.5 in any week. Overtime will be calculated daily and paid in accordance with this Agreement.

2 Ordinary Hours

Ordinary Hours will be set by Winc at least 14 days in advance. The Ordinary Hours exclusive of meal times for Full Time Employees shall be 37.5 hours per week Monday to Friday worked as follows:

(a) Ordinary Hours may vary between 7.5 and 9.4 hours each day (working 9.4 hour shifts is by mutual agreement only);

(b) Ordinary Hours that will be worked will be between 6am to 7pm; and

(c) Ordinary Hours will be paid for at the Minimum Hourly Rate as per the Employee's level.

Part Time Employees work on a regular schedule with total hours between 20 and 37.5 hours per week. Part Time employees may from time to time by mutual agreement work additional hours, up to 9.4 hours per day or 37.5 hours per week, Monday to Friday. These hours are all Ordinary Hours and are paid for at the Minimum Hourly Rate as per the Part Time Employee's level.

3 Overtime Hours (Monday to Friday)

Overtime Hours are hours worked in excess of Ordinary Hours in any day or shift (Monday to Friday for Full Time Employees) and will be paid at the rate of time and one half for the first 2 hours and double time thereafter on each day or shift.

An Employee on rehabilitation or suitable duties may only work overtime if they are not restricted in their hours of work and overtime is required to complete work which is in line with their suitable duties.

When overtime is available in a particular area, a roster system shall be used to ensure that all Employees of that area are given the chance to partake in overtime. If the numbers required for overtime are not achieved in that area, then it shall be rostered through the remaining areas of the fulfilment centre amongst those Employees skilled in the relevant area.

When overtime is available in a non-specific function, such as, but not limited to stocktake, reconfiguration of the warehouse etc, such overtime shall be rostered through all fulfilment centre Employees with the required skills.

To the extent that it is practicable, Winc shall endeavour to provide employees with 4 hours' notice before completion of their shift in regards to overtime with first preference given to employees covered under this Agreement.

4 Shift Allowances

An Employee, who works his or her Ordinary Hours between 6am to 7pm, Monday to Friday, will not be entitled to an additional shift allowance.

A shift worker may be assigned regular hours outside standard day hours, but will be paid the appropriate shift allowance as specified below, on the basis of when a shift starts or finishes, as the case may be:

Shift Description	Shift Allowance
Early Morning Shift (starts at or after 4am and before 6am)	12.5% of Minimum Hourly Rate
Day Shift (starts at or after 6am and finishes at or before 7pm)	Nil
Afternoon Shift (finishes after 7pm and at or before midnight)	15% of Minimum Hourly Rate
Evening Shift (finishes after midnight and before midday)	30% of Minimum Hourly Rate

Where Winc wishes to make changes to an Employee's shift (eg starting and finishing times, nature of work and duties to be performed, etc) it will provide at least 14 consecutive days' notice to the relevant Employee, except in the event of an unforeseen emergency or absence, or where otherwise agreed with the Employee. **Winc will endeavour to minimise shift changes and will consult with affected staff and their representatives before conducting any such changes. Winc will provide a business justification for requesting shift changes during any consultation.**

5 Saturday Work

All work performed on a Saturday will be paid at the rate of time and one half of the Minimum Hourly Rate for the first two hours and at the rate of double time of the Minimum Hourly Rate thereafter. All hours worked after 12:00 noon on Saturday will be paid at the rate of double time of the Minimum Hourly Rate The minimum payment for work performed on a Saturday shall be 4 hours at the appropriate rate as per the Employee's level.

6 Public Holiday and Sunday Rate of Pay

All work performed on Christmas Day and Good Friday shall be paid for at the rate of treble time of the Minimum Hourly Rate.

All work performed on public holidays, other than the aforesaid, shall be paid for at double time and one half of the Minimum Hourly Rate to the exclusion of any other benefit or loading in this Agreement.

If a Full Time employee works on a 4-day week schedule, and a public holiday falls on a day where they are not scheduled to work, they will be entitled to take a day's paid leave at a mutually agreed time, within one week of the public holiday to the exclusion of any other benefit or loading in this Agreement.

Part Time employees rostered to work on any public holiday as part of their roster will be permitted paid leave for the day.

All work performed on a Sunday shall be paid for at the rate of double time and one half of the Minimum Hourly Rate.

7 Allowances

First Aid

From time to time, Winc may appoint appropriately qualified Employees as First Aid Attendants. During any period in which an Employee holds the position of a First Aid Attendant and / or is fulfilling the duties of a First Aid Attendant, the Employee will be entitled to a First Aid Allowance of $36.80 per fortnight.

Occupational First Aid

The site has a requirement for two Occupational First Aid representatives, whose role will be to assist with the co-ordination of first aid activities on site. If this role is filled by an Employee covered by this Agreement, the Occupational First Aid allowance will be $69.48 per fortnight.

Winc may appoint and revoke the appointment of a First Aid Attendant at its discretion.

Meal Allowance

Where you are required to work more than one (1) hour beyond your Ordinary Hours and have not been advised 24 hours in advance you will receive a meal allowance of $ 17.80

8 Shift Breaks

During each shift, you will be entitled to the following work breaks, to be taken at the times advised by Winc, provided that no Employee will be required to work more than four (4) hours without taking a work break:

a) 1 x Tea Break: 20 minutes paid

b) 1 x Meal Break: 30 minutes unpaid

You will be entitled to a 10 minute paid rest break after each 1.5 hours of overtime worked provided that you are required to work after completion of the rest break. If the overtime period of 1.5 hours is not completed you will not be paid for the 10 minute rest break.

Full Time Employees working a 4 day week of 9.4hr shifts will be entitled to an additional 10 minutes for Tea Break noted in (a) above:

9 Crewing Arrangements

Crewing arrangements will be determined by Winc and in accordance with this Agreement, on the basis of workload. Employees will be required to perform any range of duties for which they are capable and trained in that particular role of doing, and are safe and appropriate for which they have been trained.

10 Probationary Period

For the first three (3) months of your employment you will be on probation. During the Probation Period, your Manager will assess your suitability for the position.

Your employment may be terminated for any reason and at any time during the Probation Period by Winc giving one week's notice in writing or making the payment of one (1) week's remuneration in lieu of notice. Winc will ensure procedural fairness is followed for any termination.

If you successfully complete the Probation Period, your ongoing employment will be confirmed in accordance with this agreement.

11 Superannuation Contributions

In addition to your salary subject to any statutory obligation, Winc will make superannuation contributions into a complying superannuation fund. If you do not choose a complying fund, Winc will contribute to LUCRF Super or ANZ Smart Choice Super - Winc Superannuation Plan.

The value of your superannuation contribution will be equivalent to the minimum amount required as per the federal Superannuation Guarantee Legislation.

Unless otherwise required by legislation, the value of any superannuation is expressly excluded from the calculation of all employment benefits calculated upon remuneration, including without limitation any payment in lieu of notice on the termination of your employment.

12 Payment of Wages

All amounts to be paid to the Employees will be paid by electronic funds transfer to a bank account nominated by the Employee.

All Employees will be paid their wages and other amounts due to them under the Agreement on a fortnightly basis.

All termination payments in lieu of notice of termination made under this Agreement will be made within five working days following the date of termination.

13 Leave Entitlements for Employees

Annual Leave

You will be entitled to four (4) weeks (i.e. 20 days for Full Time Employees) annual leave per annum in accordance with the NES. Part Time Employees will receive equivalent annual leave on a pro rata basis. Where you take annual leave 17.5% loading shall apply if you are a permanent Employee, with the exception of Employees regularly scheduled to work on Evening Shift, where 30.0% leave loading shall apply. Employees must have worked on Evening Shift for a minimum of 2 pay periods prior to the scheduled annual leave, and be returning to work on an Evening Shift following the period of annual leave, in order for the 30.0% leave loading to apply.

Subject to any provision to the contrary in the Act and/or in the NES, annual leave shall be taken at a time convenient to both Winc and the Employee concerned taking into consideration

the operating needs of Winc. Annual leave should be taken in continuous periods. A maximum of four periods of annual leave will be approved in any one calendar year. However, extenuating circumstances will be reviewed.

Request for annual leave shall be submitted at least two weeks in advance unless extenuating circumstances exist. Management will respond to the annual leave request within 48 hours of its submission unless extenuating circumstances apply.

Banking of annual leave entitlements beyond 4 weeks is discouraged by Winc, and wherever practical Employees will be expected to take leave within 9 months of it falling due. If an Employee is planning an extended period of leave and wishes to accrue annual leave beyond 4 weeks, prior approval in writing should be sought from the State Logistics Manager NSW & ACT. Employees who, at the time of this Agreement, have annual leave balances in excess of 4 weeks will be encouraged to reduce this balance to 4 weeks within the first 12 months of this agreement.

Payment will not be made in lieu of annual leave except in the case of cessation of employment with Winc.

Shut Down

Subject to any provision to the contrary in the Act and/or in the NES, Winc reserves the right to close its operations (or part thereof) once a calendar year for a period no longer than two weeks, and require Employees to take any accumulated annual leave for that period. Winc will provide one month's notice. For example, Winc may close down the NSW National Distribution Centre on or around Christmas and New Year.

If an Employee does not have the required amount of annual leave accrued at this time, then they will be required to take Leave Without Pay or go into negative leave (only at the Company's discretion).

Personal Leave

You are entitled to personal leave of ten (10) days per year which may be used as:

(a) paid sick leave, when you are sick or injured; or

(b) paid carer's leave which you may take when you need to provide care or support to a member of your immediate family or household due to the personal illness or injury of that person, or an unexpected emergency that affects that person.

Your personal leave accrues progressively during a year of service according to your ordinary hours of work, and accumulates from year to year.

You may take a maximum of ten (10) days personal leave per year as paid carer's leave.

If you do not have any personal leave accrued or you have exhausted your entitlement to paid carer's leave, you may take a period of up to two (2) days unpaid carer's leave on each occasion that a member of your immediate family or household requires care or support due to the personal injury or illness of that person or an unexpected emergency that affects that person.

Notification of sick leave – team member will endeavour to advise 2 hours prior to shift start time or no later than actual shift start time via dedicated sick telephone line. Extenuating circumstances will be taken into account if the time frame has been missed.

You will not be required to provide a doctor's certificate for the first two (2) single days of personal leave that you take in any 12 month period. However, for all subsequent absences

during that 12 month period where you seek to take personal leave, Winc has at all times a right to require you to provide documentary evidence verifying the cause and duration of the absence, including a doctor's certificate, statutory declaration or any other evidence reasonably required to cover the period of the absence.

If any such reasonable evidence is requested and you do not provide it, Winc may regard that period as unauthorised unpaid leave.

If you take a day's paid sick leave you will be regarded as having worked a full day ie 7.5 hours (or as per your usual working shift).

The balance of any personal leave which you do not take will accumulate from year to year.

On return to work, at the first appropriate opportunity, you must complete all relevant procedures regarding your leave. This must be finalised on the first day back to work.

Compassionate Leave

You are entitled to two (2) days paid compassionate leave for each occasion that a member of your immediate family or household:

(a) contracts a personal illness that poses a serious threat to his or her life; or

(b) sustains a personal injury that poses a serious threat to his or her life; or

(c) dies.

You are required to provide Winc with any documentary evidence Winc reasonably requires regarding the illness, injury or death.

Parental Leave

You are entitled to unpaid parental leave in accordance with the NES and any applicable paid parental leave in accordance with relevant legislation.

Long Service Leave

Long Service leave will accrue and be taken in accordance with the *NSW Long Service Leave Act 1955*.

14 Public Holidays

Full Time & Part Time Employees shall be entitled, without loss of pay, to all statutory Public Holidays in the State of New South Wales:

(a) New Year's Day

(b) Australia Day

(c) Good Friday

(d) Easter Saturday

(e) Easter Sunday

(f) Easter Monday

(g) Anzac Day

(h) Labour Day

(i) Queen's Birthday

(j) Christmas Day

(k) Boxing Day

Additional Day in lieu of the Union Picnic Day which will be a Flex day to be taken within the calendar year. Must be used within the calendar year. To qualify for a picnic day employees need to be employed prior to the 1st of July of the qualifying year.

15 Termination of Employment

Summary Dismissal

Winc has the right at any time to dismiss you without notice or without payment in lieu of notice if you commit an act of serious misconduct or gross neglect of duty.

Instances which may result in instant dismissal include, but are not limited to:

(a) theft, fraud, or assault;

(b) wilful disobedience of a Managerial direction;

(c) releasing confidential trade or business secrets;

(d) serious breaches of Winc' rules and policies;

(e) refusal or neglect to comply with a lawful and reasonable order given to you by Winc;

(f) abandonment of employment; or

(g) alcohol or drug intoxication, consumption and/or abuse during working hours.

Notice of Termination

Where Winc terminates your employment in circumstances where the termination is not a summary dismissal, it will do so by giving you notice or, at its discretion, payment in lieu of notice, or a combination of notice and payment in lieu of notice, calculated as follows:

Period of continuous service	Notice Period
Not more than 1 year	1 week
More than 1 year, but no more than 3 years	2 weeks
More than 3 years, but no more than 5 years	3 weeks
More than 5 years	4 weeks

The periods specified in the table above will be increased by 1 week if you are over 45 years old and have completed at least 2 years' of continuous service with Winc.

Resignation by the Employee

You may resign from your employment with Winc by giving two weeks' written notice.

16 Abandonment of employment

Any unauthorised and/or unexplained absence from work by an Employee for a continuous period exceeding five working days shall be evidence that the Employee has abandoned their employment and no longer intends to be bound by this Agreement.

17 Redundancy

The benefits under this clause apply where the Company terminates the employment of a Full Time or Part Time Employee because:

(i) the Company no longer requires the job done by the Employee to be done by anyone (except where this is due to the ordinary and customary turnover of labour); and

(ii) acceptable alternative employment or redeployment is not available.

On redundancy, an Employee will be entitled to the following:-

a) you will receive the applicable period of notice of termination (or payment in lieu) contained in clause 15, and;

b) you will receive payment of pro-rata long service leave if you have completed five years' or more of continuous service, and;

c) you will receive a redundancy payment calculated on the following basis:

Service	**Employee less than 45 years of age**	**Employee45 years of age**
Up to 1 year	0 weeks	0 weeks
1 up to 2 years	4 weeks	5 weeks
2 up to 3 years	7 weeks	8.75 weeks
3 up to 4 years	10 weeks	12.5 weeks
4 up to 5 years	12 weeks	15 weeks
5 up to 6 years	14 weeks	17.5 weeks
more than 6 years	16 weeks	20 weeks

A redundancy payment will not be made in circumstances where you refuse an offer of relocation or redeployment or where you are offered ongoing employment in a new role on comparable rates of pay and entitlements.

Employees previously employed under Part B of the Collective Workplace Agreement 2008 will be "grandfathered", and retain access to their prior level of benefit.

18 Accrued Rostered Days Off

All Full Time Employees who work a 5-day schedule will have the option to participate in the RDO system at any time in accordance with the RDO rules.

If an Employee is taken off the system for non-compliance with the rules, or otherwise decides to no longer participate in the system, that Employee will have the option to re-join the system after a period of six (6) months. This 6 month exclusion period will not apply when an Employee is unable to participate in the RDO system as a direct result of Operational Changes caused by Winc. All Employees who wish to opt out and not participate in the system can do so at any time, effective from the start of the next pay period following which Winc is notified.

19 Accrued Rostered Day Off (RDO) System Rules

The following rules will apply:

1. Winc reserves the right to change any aspects of the RDO system at any time subject to consultation with the relevant stakeholders.

2. Time for RDOs must be accrued on a daily basis in the following way:

   (a) Monday to Thursday - 30 minutes each day, 30 minutes is not paid and will be banked and accrued as RDO hours;

   (b) Fridays – no accrual.

3. Time accrued for RDOs will be Ordinary Hours. You will not be eligible to receive shift allowance on the shift you work if your 30 minute RDO accrual is all that falls outside of the ordinary hours of work.

4. The time for RDOs must be accrued before the date of the RDO. You will only be paid for the actual time accrued as at the allocated RDO day. RDO's will be paid at the Minimum Hourly Rate plus any Shift Allowance to which the Employee is entitled at the time of the RDO day.

5. RDOs will be scheduled as whole days and may not be used in substitution for annual leave or personal leave.

6. A fixed RDO schedule will be developed for staff who wish to join the RDO process. This process will be a rolling 4 weekly cycle with the RDO days to be taken off fixed within the following RDO schedule. In each cycle a different RDO will be fixed in the following 4 weeks which means in 5 cycles the day off will be a different day from Monday to Friday as nominated by the business in the 4 weeks after the cycle completion.

7. Staff members may request a change to the fixed RDO day than the one nominated for exceptional circumstances and they have no annual leave that can be used. The approval for this will be given by the Team Manager of the area worked.

8. As the RDO day is fixed in the following RDO schedule period no banking of RDO days is allowed.

9. All Banked RDO days from the previous RDO period are to be used by the 30 September for the year of the term.

10. The accrual of the accrued time will be at the end of the shift, or at the start of the shift by mutual agreement between Winc and the Employee. If you fail to accrue on more than three (3) occasions per annum (other than for authorised leave eg: personal leave, workers compensation, jury duty) you will be removed from the RDO system.

11. All new starters to the RDO system must commence at the start of a new pay period and those leaving must finish their accrual at the end of a pay period.

12. Staff must be employed by Winc for a period of 6 months to be eligible to enter the RDO system.

20 Remuneration for Management Duties

For any shift that you are appointed to the role of Team Leader / Supervisory / or directed to perform Management duties:

You will be paid $30 per shift (irrespective of hours worked) performing Team Leader, Supervisory or Management duties. Employees are required to ensure that the pay upgrade paperwork is completed by their Supervisor prior to the completion of the relevant pay period, and handed to the site Administration Manager.

21 Errors

Any error or mistake by Winc in calculating the amount to be paid to an Employee under this Agreement, which amounts to an underpayment of more than two hours normal pay, will be corrected no later than two working days of the Employee notifying his or her Manager of the error or mistake. Amounts of less than two hours normal pay will be corrected in the next fortnightly pay. Any failure to comply with this clause by Winc will entitle the Employee to an additional 15% of the amount owing per additional day outstanding beyond the stated limit.

If employee caused error, this will be corrected in next pay cycle.

Any overpayment to an Employee will be deducted from the fortnightly pay in reasonable increments as determined by Winc in consultation with the employee until fully repaid

22 Classification Rules

In classifying Employees, Winc will apply the following rules:

1. All parties to this Agreement recognise the importance of providing warehouse Employees with a suitable career path. Accordingly, when new roles are created or current ones develop further skills or responsibilities, consideration will be given to granting these jobs Team Leader status.
2. On commencement of service you will be employed as a Level One (1) Employee.
3. On successful completion of six (6) months service you will automatically be upgraded to a Level Two (2) Employee.
4. Only Level 2 Employees are eligible to join the RDO system.
5. Only Level Two (2) Employees are eligible to apply for advertised Level 3 – Team Leader and / or Trainer roles.
6. If Winc introduces a new process, Winc may require Employees to undergo additional training.

7. If an Employee is relocated or transferred into another Department or Area, the Employee will suffer no reduction in their hourly rate.

8. Any Level of Employee is required to perform any reasonable operational or administrative task as directed by the company

Any change in the Minimum Hourly Rate which arises as a result of a change in the classification of an Employee, will be reflected in the first full pay period occurring thereafter.

23 Dispute Resolution

Any disputes with respect to the interpretation of this Agreement and or its application will be resolved in accordance with the dispute resolution procedure set out in Annexure 2.

24 Productivity, Performance and Accuracy

All parties acknowledge the principle of "a fair days' work for a fair days' pay". All parties agree to the principle of every Employee working diligently and to the best of their ability. Employees will always strive to achieve the required levels of work quality, accuracy and productivity.

All employees will perform any work as directed. All Employees are to work in a safe manner and adhere to all Winc' policies and SSOPP's.

All employees will work honestly and promote and protect the company's interest and Values.

25 Performance Management

This clause does not apply to Casual Employees' misconduct that may warrant instant dismissal or safety breaches.

Employees must be provided with appropriate training in relation to their duties. In the event that an Employee has not received such training, there will be no cause to issue the Employee with counselling or a written warning.

All Employees shall receive one verbal counselling before being issued with a written warning; this verbal warning must be documented by Management for future reference, and a copy provided to the Employee.

This process shall apply for each separate performance issue as standalone, and is described below:

(a) The Manager explains the current work performance and explains why this is a problem; The Manager shall provide the Employee with the material evidence to substantiate their description

(b) This shall take the form of a written warning;

(c) The Manager explains what needs to change, when these changes shall occur and what actions will be taken to help the Employee improve their performance to meet the requirements described;

(d) The Manager explains what shall happen if the Employee's performance does not improve within the time specified;

(e) A follow-up meeting is then agreed upon by the Manager and Employee so performance improvements can be tracked on a gradual basis;

(f) After **3 months** without further recurrence of the issue, the Employee's record shall be wiped clean (for this issue);

(g) If the Employee's performance does not improve within the time specified, a 2nd counselling session may occur, accompanied by a 2nd written warning. Steps a, b, c, d, and e are repeated. Where an employee receives a 2nd written warning (for the same issue), then the Employee's record shall be wiped clean after **6 months** without further recurrence of the issue.

(h) If the required changes or improvement are again not made within the timeframe set during the 2nd counselling session Following receipt of a Final written warning.

(i) The Employee will be provided with the opportunity to bring a person of support for each formal counselling meeting.

Period of continuous service with Winc	Notice Period
Not more than 1 year	1 week
More than 1 year, but no more than 3 years	2 weeks
More than 3 years, but no more than 5 years	3 weeks
More than 5 years	4 weeks plus payment of pro-rata long service leave

The periods specified in the table above will be increased by 1 week if the Employee is over 45 years old and has completed at least 2 years of continuous service with Winc.

26 Safety Breaches

Winc will fully investigate all safety breaches, dependent upon severity, and relevant disciplinary action will be determined as part of the following procedure.

Final warning

If an Employee breaches a safety regulation, that Employee will be given a Final warning which will remain on file for six months. If there is no repeat of the offence within the six months,

then the warning shall be wiped clean. If the safety regulation is breached within the probationary period, the Employee may be immediately terminated.

Immediate Termination

Where there is a breach of a major safety regulation that is through neglect, a deliberate act, or wilful carelessness, the Employee may be immediately terminated.

27 Job Vacancies

All Fulfilment Centre position vacancies will be advertised internally for a period of not less than 48 hours. Notification of vacancies and position requirements will be placed on the Fulfilment Centre noticeboard. All applications will have the date posted and a close date on them.

Winc will advertise available roles to all team members.
This will be subject to capability assessment, no current disciplinary issues outstanding, attendance & reliability at an acceptable standard and will adopt Winc recruitment practices

All internal applicants must notify the person specified in the advertisement as to their interest in the position within the timeframe specified in the advertisement. All other terms and conditions of the job advertisement will apply.

All internal applicants for vacancies will be assessed on the basis of their qualification, knowledge, experience, past accomplishments, aptitude and potential.

Any successful applicant will be advised as to why they were selected. Winc will also endeavour to advise any unsuccessful internal applicants as to why they were not selected, where practicable at least 5 days before the appointee is announced.

If no internal applicants are selected for the position, Winc will seek external applicants including casual employees, employed through a third party labour hire company. External applicants will undergo pre-employment checks to ensure suitability to undertake the proposed position. Any changes to the company pre-employment check process will be communicated to the JCC.

It is accepted that during the life of this Agreement, resignations and/or retirements will take place. In such circumstances, replacement will not be automatic. The decision whether to replace particular positions will be based on the company's assessment consistent with continuously improving productivity.

Perm part time team members have the ability to request conversion to full time if they work 30 hrs or more for 3 month period. This will be subject to capability assessment, no current disciplinary issues outstanding, attendance & reliability at an acceptable standard and will adopt Winc recruitment practices

28 Training

Winc training for all levels will be specific to those skills required for the Employee to carry out the tasks in their functional work area.

Winc is committed to a multi-skilled workforce and provides opportunities for additional training to ensure Employees who wish to can improve their skills and abilities. Winc provides a full time Trainer, a SSOPP program, a Sabbatical program for longer term on the job training, and maintains a training matrix and record of cross training undertaken within the facility.

As part of our commitment to Learning & Development for all of our team members, Winc will consult with our team members with the aim to increase the skill level for our Warehouse Officers.
It is the intention of Winc to introduce a tiered rate structure for team members with applicable MHE licences, the application of this rate structure will occur throughout the course of this agreement.

29 Joint Consultative Committee

The Employee representatives must be duly elected by the Employees in a democratic secret ballot within one month following the commencement of this Agreement. The committee will consist of:

(a) Three Winc representatives;

(b) Up to six Employee representatives (including a minimum of one Union Delegate),

All members of the Committee must be permanent Employees of Winc.

Membership of the Committee is open to all Employees irrespective of union membership.

The Employee representatives will hold office for the life of the Agreement or until a new agreement is in place, whichever is the greater. Winc Management will issue retiring JCC members with recognition (e.g. Certificate of Appreciation of Service for their contribution above their normal duties).

If a Committee member vacates his or her position on the Committee, that position will be filled by the person with the next highest number of votes in the ballot. If this cannot be determined, an election will be held by all warehouse Employees covered by this agreement to determine the new committee member.

The Committee will hold 1 meeting per month. No meeting may last longer than 45 minutes, unless the consent of Winc is obtained. There must be at least three Employee representatives present at any Committee meeting, and other guests may be invited

30 Functions of the Committee

The Committee is charged with the following responsibilities and such other responsibilities as may be agreed by the Employees and Winc.

1. To make recommendations for the improvement of the administration of this Agreement;
2. To assist in the implementation of this Agreement;
3. To advise Employees of the requirements of this Agreement;
4. To formulate any case for amendment of this Agreement;
5. To monitor compliance with this Agreement;
6. To act as a medium between senior Management and the Employees;
7. To assist Management in making and implementing any new changes in the warehouse;
8. To assist Management and the union in making any new agreement.

Where appropriate, Winc Management will commit to communicating all major changes in the NSW National Distribution Centre that will affect the Employees.

31 Employee Support and Workplace Delegates

Union membership is a matter of choice for each Winc Employee. Winc respects freedom of choice and an Employee's choice to join or not to join a union.

Where an employee chooses to join a Union, and where written authority is provided by the Employee to the Company, the Company will deduct Union membership fees from the Employee's wage.

Winc recognises that Employees are entitled to be supported by their union, if a union member, or any other representative of their choice, in relation to matters affecting their employment.

Winc acknowledges and respects the role played by workplace delegates supporting union members. Workplace delegates, when acting on behalf of the union, have the right to be treated fairly and to perform their role as a workplace delegate without any discrimination in their employment.

Workplace delegates will be released from work duties for training purposes, provided that there are no more than 2 delegates absent at any one time, and provided that no delegate is absent for more than 4 training days per annum non-cumulative, and provided that a minimum of 2 weeks' notice is provided.

Unions and workplace delegates recognise the importance of customer service in the success of Winc and will ensure that their activities do not negatively impact on the efficient operation of Winc.

Winc, workplace delegates and the union will comply with the provisions of the Act regarding right of entry and any other provision of the Act which regulates their relationship in the workplace.

32

All casual engagements shall be by the hour and paid in accordance with the base rates of this agreement. Casual Employees will receive a 25% loading which replaces any entitlement to paid leave and/or redundancy payments.

All casual employees employed through a third party labour hire Company will be paid in accordance with the base rate of this agreement plus a 25% loading. In addition they are entitled to appropriate shift penalties, overtime penalties including weekend work and shift breaks according to this agreement.

Commented [CW1]: Paragraph numbering to be updated.

33 Transfer of Business

Where business, on or after the date of this agreement, transfers from Winc to another employer, and satisfies the relevant requirements relating to a transfer of business pursuant to the Fair Work Act 2009, and an employee who at the time of transfer was employed by Winc within that business becomes an employee of the new employer:

A) The continuity of employment shall be deemed not to have been broken by reason of the transfer

B) The period of employment which the Employee has had with Winc or any prior employer shall be deemed to be service of the Employee within the new employer

C) No redundancy or severance payments will be payable (subject to the provisions of the National Employment Standards)

D) All other transfer provisions shall apply as outlined in the Fair Work Act, 2009

34 Exclusions

This Agreement applies to the exclusion of all:

(a) industrial instruments;

(b) transitional industrial instruments;

unless provided for in this Agreement.

35 No Extra Claims

The parties agree to make no extra claims with respect to terms and conditions of employment during the term of this Agreement.

36 Definitions

Act means the *Fair Work Act 2009* (Cth) and any successor legislation.

Casual means an Employee engaged in a casual capacity and paid at an hourly rate.

Department means all of the functional areas within the Fulfilment Centre covered by this agreement, e.g.:

(a) Inbound;

(b) Outbound;

(c) Inventory;

(d) Transport.

Full Time means a person engaged to work a minimum of 75 hours each fortnight.

Part Time means a person engaged as such who works regular agreed hours less than 75 hours each fortnight.

FWC means the Fair Work Commission.

Base Hourly Rate or Ordinary Pay means the Minimum Hourly Rate exclusive of any allowances, overtime and/or penalty rates. Refer to Table 1, Annexure 1 – Base Rate Table.

Minimum Hourly Rate means rates of pay for each job level classification covered by this Agreement for the term of this Agreement as set out in Annexure 1

Ordinary Hours means hours worked each day. Ordinary Hours may vary in accordance with your roster between 7.5 and 9.4 hours each day.

Overtime Hours are hours worked in excess of Ordinary Hours in any day/shift (Monday to Friday)

Roster Period means a fourteen day pay period.

Team Member means a person engaged as such by Winc to assist in the provision of warehouse and logistical services.

Employee means any employee of Winc who is employed at the National Distribution Centre in Erskine Park.

SSOPP means Safe Standard Operating Picture Process

Person of Support means any person; including another employee, union delegate, union organiser, or external party who acts as a witness/guide throughout disciplinary meetings

Status Quo means the situation existing immediately prior to the dispute or matter giving rise to the dispute.

Except where defined in this clause, terms used in this Agreement will have the same meaning as in the Act.

Signatures:

Brock Woods
National Human Resources Manager

On behalf of Winc Australia Pty Limited
163 O'Riordan Street Mascot NSW 2020

Signature of Employee Representative of Winc in his/her capacity as an employee covered by the classifications of this Enterprise Agreement

JOHN. B. KOROMA
WAREHOUSE OFFICER / UNION DELAGATE.

Name of employee representative covered by this Enterprise Agreement

40-66 LOCKWOOD Rd, ERSKINE PARK, NSW. 2759 - WORK
16 CRANBROOK ST, MARSDEN PARK, NSW, 2765 - HOME

Address of employee representative

Annexure 1

Pay Rates & Job Levels

Table 1 – Base Rate Table

Job Level Classification	2020	0% 2021	2.5% Jan 1st 2022	2.75% Jan 1st 2023	3.0% Jan 1st 2024
Level 1	$23.69	$23.69	$24.28	$24.95	$25.69
Level 2	$28.57	$28.57	$29.28	$30.08	$30.98
Level 3	$33.01	$33.01	$34.51	$35.37	$36.43

1. 2022 pay rate is applicable from 1st January 2022
2. A $1000 sign on bonus will be paid to all employees covered by this agreement within 30 days of a successful vote

Job Level Classifications

The job level classifications described below are based upon the NSW NDC Job Classification Policy, which includes a training and knowledge building program to support Employees in gaining a wide variety of work experiences whilst at Winc.

Winc is committed to continually improving all aspects of the NSW NDC Job Classification Policy.

Level 1

Entry Requirements:

Acceptance of a permanent job offer from Winc

Classification description:

At this level an Employee performs to the level of their training and:

- Works to defined SSOPP's with direct supervision;
- Understands and undertakes basic quality processes employed with their work;
- Understands the Winc commitment to Our Values;
- Understands and follows the health and safety requirements of the work area, site and as set out by Winc;
- Understands and undertakes housekeeping procedures in the warehouse;
- Uses equipment for its intended purpose and as directed including materials handling equipment;
- Receives, records and dispatches product from the warehouse, including loading and unloading containers where required; and
- Uses pick to light, pick to voice and RF technology as directed.

All Employees will be trained to meet the requirements of the above job classification description as well as be trained in the following disciplines:

- SSOPP compliance for the immediate work area

- Work Health and Safety (WH&S);
- Equal Employment Opportunity (EEO), Law of the Jungle (LOTJ); and
- Harassment in the Workplace.

Level 2

Entry Requirements:

An Employee will automatically be elevated to a Level 2 on completion of six (6) months continuous service.

Classification description:

At this level an Employee performs to the level of their training and:

- Works from area SSOPP and may volunteer for transfer amongst work areas;
- Exercises initiative and judgement with discretion;
- Can recommend improvements in safety practices and procedures where appropriate;
- Demonstrates the performance of tasks up to the level of their skills to new or trainee Employees;
- Understands and follows the health and safety requirements of the work area, site and as set out by Winc;
- Can recommend and aid in the implementation of SSOPP & other process improvements;
- Receives, records and dispatches product from the warehouse, including loading and unloading containers where required; and
- Demonstrates a positive attitude towards Our Values.

All Employees will be trained to meet the requirements of the above job classification description as well as be trained in the following disciplines:

- SSOPP compliance for the immediate work area
- Work Health and Safety (WH&S);
- Equal Employment Opportunity (EEO), Law of the Jungle (LOTJ); and
- Harassment in the Workplace.

Level 3 / Team Leader

Entry Requirements:

To become a Team Leader, a vacant position must be available and an Employee must have been appointed subject to an interview process.

Classification description:

At this level an Employee performs to the level of their training and:

- Is highly proficient and compliant with SSOPP's in one (or more) key areas within the Fulfilment Centre;
- Possesses the knowledge and skill to understand the SSOPP requirements of all roles within their area;
- Exercises discretion within the scope of this level;
- Understands and applies principles of problem solving within their functional area;
- Is responsible for ensuring health and safety requirements are understood and followed by Employees of the work area and site;
- Directly supervises all Employees in their immediate work area and whilst "acting" during the provision of a Trainer role (but not including discipline or leave related

issues which will be referred to Management);
- Consults with other Team Leaders to help achieve optimum work outputs throughout the shift; and
- Plays an active responsible role in helping to exceed customer expectations.
- Demonstrates a positive attitude towards Our Values.

All Employees will be trained to meet the requirements of the above job classification description as well as be trained in the following disciplines:

- SSOPP compliance for the immediate work area
- Work Health and Safety (WH&S);
- Equal Employment Opportunity (EEO), Law of the Jungle (LOTJ); and
- Harassment in the Workplace.

As Winc sees ongoing development as important, Level 3 Employees may be asked to or have available to them additional training up to and including Certificate III Transport and Logistics (TLI30107 or equivalent)

Level 3 / Trainer

Entry Requirements

To become a Trainer, a vacant position must be available and an Employee must have been appointed subject to an interview process.

Classification description:

At this level an Employee performs to the level of their training and:

- Is an expert and compliant with SSOPP's in all key areas within the Fulfilment Centre;
- Exercises discretion within the scope of this level;
- Understands and applies principles of problem solving within the warehouse as a whole;
- Possesses the knowledge and skill to understand the SSOPP requirements of all roles within the warehouse as a whole;
- Directly supervises Employees whilst undertaking training and during the provision of "acting" for Team Leader Level 3 roles (but not including discipline or leave related issues which will be referred to Management);
- Consults with other Team Leaders to help achieve optimum work outputs throughout the shift; and
- Plays an active responsible role in helping to exceed customer expectations.
- Demonstrates a positive attitude towards Our Values.

All Employees will be trained to meet the requirements of the above job classification description as well as be trained in the following disciplines:

- SSOPP compliance
- Train the Trainer TAE40110 (or equivalent / relevant)
- Work Health and Safety (WH&S);
- Equal Employment Opportunity (EEO), Law of the Jungle (LOTJ); and Harassment in the Workplace.

As Winc sees ongoing development as important, Level 3 Employees may be asked to or have available to them additional training up to and including Certificate III Transport and Logistics (TLI30107 or equivalent)

Management Higher Duties

Description:

In line with Winc's commitment to the development of its Employees and to ensure consistency in servicing our customers, Management Higher Duties for key positions (Supervisory and Managerial positions) may be utilised.

Should a need for relief resources be determined by Winc warehouse Management, then at the discretion of Winc a relief candidate may be appointed for a period deemed appropriate by Winc Management.

Employees selected as relief to a particular higher level position may be asked to perform this position in "but not limited" to the following cases:

- When permanent Employee in this key position is absent;
- When Permanent Employee in this key position is on annual or long service leave;
- When increased volume or activities require additional higher grade resources; or
- As determined by Winc warehouse Management.

In any of the above cases Winc warehouse Management reserves the right not to utilise relief Employees in higher level positions. When the requirement for higher level positions does not exist, Employees carrying our Management Higher Duties are to resume their day to day duties in current positions (lower level positions).

Annexure 2

Dispute Resolution

(1) If a dispute relates to:

(a) a matter arising under the Agreement; or

(b) the NES;

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 FWC.

(5) FWC may deal with the dispute in 2 stages:

(a) FWC 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 FWC is unable to resolve the dispute at the first stage, FWC may then:

(i) arbitrate the dispute; and

(ii) make a determination that is binding on the parties.

(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 Company to perform other available work at the same workplace, at another Winc workplace or to provide support at a customer workplace, unless:

(i) the work is not safe; or

(ii) applicable workplace 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) Status Quo will remain until the dispute is resolved by FWC, or for 14 days, whichever is the greater. All parties commit to acting in a constructive manner to ensure resolution as quickly as possible. The parties to the dispute agree to be bound by a decision made by FWC in accordance with this term.

Annexure 3

Annexure 3

Consultation Procedure

(1) This Annexure 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 Annexure, 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 set out in this Annexure.

(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 Annexure:

relevant employees means the employees who may be affected by a change referred to in sub-clause (1).

Annexure 4

Individual Flexibility

(1) A Manager 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 Manager 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 Manager and Employee.

(2) The Manager 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 Manager must ensure that the individual flexibility arrangement:

(a) is in writing; and

(b) includes the name of the Manager and Employee; and

(c) is signed by the Manager 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 Manager must give the Employee a copy of the individual flexibility arrangement within 14
days after it is agreed to.

(5) The Manager 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 Manager and Employee agree in writing — at any time.

Annexure 5

Redundancy – "grandfathered" benefit

Employees previously employed under Part B of the Collective Workplace Agreement 2008 will be "grandfathered", and retain access to their prior level of benefit under this annexure:-

a) a period of four weeks' notice, or payment in lieu, plus;

b) severance payment of four weeks ordinary pay for each year of completed service, plus;

c) payment of pro-rata long service leave for employees with five years or more of continuous service.

d) where an employee is aged over 45 years and has a minimum of two years continuous service with Winc at the time of termination, a loading of 25% shall apply to their severance payment as provided at sub-clause (b);

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2022/624

Applicant:
Winc Australia Pty Limited

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Troy Swan, Director and General Counsel have the authority given to me by Winc Australia Pty Limited to give the following undertaking with respect to the Winc - Enterprise Agreement 2021 ("the Agreement"):

1. Casual employees will be guaranteed not less than four hours' engagement every start.

This undertaking is provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

Signature

18 March 2022

Date