



DECISION

Fair Work Act 2009

s.185 - Application for approval of a single-enterprise agreement

H.E.S.T Australia Limited

(AG2020/1737)

HESTA ENTERPRISE AGREEMENT 2020-2024

Banking finance and insurance industry

DEPUTY PRESIDENT CLANCY

MELBOURNE, 16 JULY 2020

Application for approval of the HESTA Enterprise Agreement 2020-2024.

[1] An application has been made for the approval of an enterprise agreement known as the *HESTA Enterprise Agreement 2020-2024* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by H.E.S.T Australia Limited. The Agreement is a single enterprise agreement.

[2] The Agreement does not cover all of the employees of H.E.S.T Australia Limited, however, taking into account the factors in s.186(3) and s.186(3A) I am satisfied that the group of employees was fairly chosen.

[3] I have noted that a Notice of Employee Representational Rights (NERR) was first given to the employees on 16 January 2020 and an updated NERR was given on 2 March 2020. As such, it would appear that not all copies of the NERR were distributed no later than 14 days after the 16 January 2020 notification time but because bargaining had not formally commenced as at 2 March 2020, I am satisfied the employees were not likely to have been disadvantaged as a result and that the Agreement has been genuinely agreed, notwithstanding this minor procedural error.¹

[4] H.E.S.T Australia Limited has provided a written undertaking. A copy of the undertaking is attached in Annexure A. I am satisfied that the undertaking will not cause financial detriment to any employee covered by the Agreement and that the undertaking will not result in a substantial change to the Agreement. The undertaking is taken to be a term of the Agreement.

[5] Subject to the undertaking referred to above, and on the basis of the material contained in the application and accompanying statutory declaration, together with my conclusion at paragraph [3] above, I am satisfied that each of the requirements of ss 186, 187, 188 and 190 as are relevant to this application for approval have been met.

¹ *Fair Work Act 2009*, s.188(2).

[6] The Finance Sector Union (FSU), 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) and based on the statutory declaration provided by the FSU, I note that the Agreement covers the FSU.

[7] The Agreement is approved and, in accordance with s.54, will operate from 23 July 2020. 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.: AG2020/1737

Applicant: H.E.S.T Australia Limited

Undertaking- section 190

I, Sophie Sigalas, Head of People & Culture of H.E.S.T Australia Limited give the following undertakings with respect to the *HESTA Enterprise Agreement 2020-2024* ("**the Agreement**"):

- 1) I have the authority given to me by H.E.S.T Australia Limited ("**HESTA**") to provide this undertaking in relation to this application before the Fair Work Commission.
- 2) In the event that HESTA engages a casual employee as a Level 1 or Level 2 employee to perform work solely on a Sunday, the employee will be paid for that engagement at a rate that is better off overall than the rate that would be payable under the *Banking, Finance and Insurance Award 2020*.

Employer name: H.E.S.T Australia Limited

Authority to sign: Yes

Signature:



Date: 14 July 2020

HESTA Enterprise Agreement 2020-2024

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.

Table of contents

Table of contents.....	2
1 Title.....	3
2 Introduction.....	3
3 Definitions.....	4
4 Scope and parties covered.....	4
5 Date and period of operation.....	4
6 Working arrangements and related matters.....	5
7 Remuneration and related matters.....	8
8 Allowances.....	10
9 Leave and related matters.....	11
10 Resignation, termination and redundancy.....	20
11 Accident make up pay.....	21
12 Consultation and dispute resolution procedures.....	21
13 Individual flexibility agreement.....	23
14 No extra claims.....	24

1 Title

This Agreement will be known as the HESTA Enterprise Agreement 2020-2024.

2 Introduction

The HESTA Enterprise Agreement reflects the principles of HESTA, specifically:

Promise

The gutsy advocate driving meaningful change for generations to come

Purpose

Make a real difference to the financial future of every member.

Ambition

To become the super fund for life for all those who work in health and community services in Australia.

Values

Ownership

We empower each other to take ownership. That means we plan ahead, get things done and make changes today for a better tomorrow.

Passion

Our members' work inspires and motivates us every day. We strive to be the very best at what we do, because their futures depend on it.

Leadership

We lead by example and have the courage to try new things. We are driven by a common purpose and are committed to making it happen.

Respect

We embrace difference and celebrate diversity because it matters. We treat our members, each other and our partners with respect, always.

Partnership

We work together with like-minded partners to benefit members. We use our influence to ensure members' voices are heard.

3 Definitions

ATO – Australian Taxation Office

Award - Banking, Finance and Insurance Award 2020

CEO – Chief Executive Officer

FW Act – Fair Work Act 2019 (Cth)

FSU – Finance Sector Union

FWC – Fair Work Commission

GPPL – Government Paid Parental Leave Scheme

HESTA – H.E.S.T Australia Limited (ACN 006818695)

HO-PC – Head of People and Culture

IFA – Individual Flexibility Agreement

LSL – Long Service Leave

LSL Act – Long Service Leave Act 2018 (Vic)

NES – National Employment Standards

SG – Superannuation Guarantee

TOIL – Time off in lieu

WIRC Act – Workplace Injury Rehabilitation and Compensation 2013 (Vic)

4 Scope and parties covered

4.1 This Agreement is made under the FW Act and covers:

- a. HESTA;
- b. All employees classified under Clause 7 of this Agreement; and
- c. The FSU and its officers and members if so determined by FWC under s53 (2) of the Act.

4.2 This Agreement replaces the HESTA Enterprise Agreement 2016-2020.

4.3 This Agreement will not reduce any entitlements provided by the NES. Where there is any inconsistency between this Agreement and the NES, the more beneficial provision to an employee shall take precedence.

5 Date and period of operation

5.1 This Agreement will come into operation seven (7) days after approval by the Fair Work Commission and its nominal expiry date is 30 June 2024.

5.2 After the nominal expiry date, the Agreement will continue to be in force until it is either replaced by a new Agreement or terminated in accordance with the provisions of the FW Act.

5.3 Negotiations for a new enterprise agreement will commence six months prior to the nominal expiry date.

6 Working arrangements and related matters

6.1 Probationary period

All employees will serve a six month probationary period on commencement of employment with HESTA. If during the probationary period the employee is deemed unsuitable for their role, their employment may be terminated. Employees terminated during their probationary period are entitled to notice in accordance with clause 10.1.1.

6.2 Ordinary hours

6.2.1 The ordinary working hours of full time employees, excluding meal breaks, will not be less than 35 hours per week.

6.2.2 The spread of ordinary working hours will be worked between 8.00am and 6.00pm, Monday to Friday. Employees working outside the spread of ordinary hours will require approval from their leader.

6.3 Employment categories

At the time of engagement, HESTA will inform employees of the terms of their engagement and in particular whether they are to be full-time, part-time, maximum term or casual.

6.3.1 Full time employee

A full time employee is an employee who is engaged to work not less than 35 ordinary hours per week.

6.3.2 Part time employee

Part-time employees:

- a. Work fewer than the full time hours of 35 hours per week; and
- b. Work a minimum of three consecutive hours on any one single attendance; and
- c. Receive, on a pro-rata basis, equivalent wages and conditions to those of full-time employees who do the same kind of work.
- d. Have an agreement in writing of the regular pattern of work, specifying working days and the hours worked each day.

6.3.3 Casual employee

A casual employee:

- a. Is specifically engaged to work on an irregular basis, as and when required by mutual agreement between HESTA and the employee;
- b. Will be paid per hour 1/35th of the weekly rate prescribed for the work which the employee performs, plus a 25% loading as compensation instead of annual leave, personal/carer's leave, notice of termination,

redundancy benefits and the other attributes of full time or part-time employment;

- c. Must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work
- d. May request to be converted to part time or full time employment where they have worked a regular pattern of hours in the preceding 12 month period.

6.3.4 Maximum term employee

A maximum term employee may be engaged for a maximum period or successive maximum periods to:

- a. Perform specific projects required; or
- b. Cover permanent employees who may be on various forms of leave, such as parental leave.

A maximum term employee whose employment comes to an end due to the expiry of their term will not be entitled to notice or redundancy.

6.4 Overtime

- 6.4.1 Employees will be entitled to overtime in accordance with this clause.
- 6.4.2 There are separate overtime provisions for employees classified from Level 1 to 7 and employees classified from Level 8 to 12.
- 6.4.3 Overtime under this clause will only be paid if it is worked by the authorisation of HESTA and the authorisation is in writing by a nominated leader prior to it being worked.
- 6.4.4 Employees may be required to work reasonable additional hours in accordance with the requirements of their role. For employees classified from Level 8 to 12, payment for such additional hours is included within their remuneration except as outlined in clause 6.4.5.
- 6.4.5 Employees classified from level 8 to 12 will be entitled to TOIL if they are directed by their leader to work on a weekend. Where these employees are directed to work on weekends, they will be provided with TOIL at the rate of 1.5 hours for every hour worked. Where requested to work, and it is agreed, on a public holiday, TOIL will also be provided at the rate of 1.5 hours for every hour worked.
- 6.4.6 Work will be considered overtime for employees classified from Level 1 and 7 where an employee is required to perform it outside the ordinary hours and where work:
 - a. Exceeds 7.5 hours per day; or
 - b. Is performed on Saturdays, Sundays and Public Holidays.
- 6.4.7 Employees classified from Level 1 to 7 who have been required to perform overtime will be paid overtime at the following rates:

- a. Time and a half for every hour worked, with a minimum of four hours paid for weekends.
 - b. Double time and a half for every hour worked, with a minimum four hours paid for all Public Holidays.
 - c. Overtime is calculated on a weekly basis based on an employees' ordinary pay. Meal breaks will not be counted.
- 6.4.8 By agreement with the employee and their leader, instead of being paid at overtime rates in accordance 6.4.7, TOIL for payment for overtime can be taken. In calculating TOIL, the employee will be entitled to one hour off for every hour worked except for work performed on a weekend or public holiday which will be calculated at the rate of 1.5 hours for every hour worked.
- 6.4.9 Part-time and casual employees will be paid for each hour worked up to 35 hours per week at their ordinary rate of pay. Part time and casual employees working in excess of 35 hours work in any week will be eligible for overtime in accordance with this clause. TOIL will not be available to casual employees, rather the employee will be paid for the amount of overtime that has been worked at the applicable rates above.
- 6.4.10 If an employee who is entitled to an overtime payment, is required to work after 6pm on any day, or after 1pm on any Saturday, Sunday or Public Holiday the employee will, unless a meal has been provided, be paid a meal allowance at the applicable rates at the time provided in the Award as updated from time to time. This is in addition to any overtime payment entitlement.
- 6.4.11 If an employee works overtime beyond 8pm, transport will be provided to the employee's usual place of residence, if requested by the employee.
- 6.4.12 While in most cases overtime must be approved in advance, consideration for retrospective approval will be given in special circumstances provided that any request for overtime must be made in writing within 10 days of the overtime having been worked.

6.5 Time off in lieu

- 6.5.1 Any TOIL accrued or agreed under clause 6.4 should be taken at times agreed between an employee and their leader.
- 6.5.2 TOIL should be taken within one month of the overtime being performed but can be held for a maximum of six (6) months with the agreement of their leader and the HO-PC or their designate.
- 6.5.3 Any unused TOIL entitlements will form part of a termination benefit consistent with the overtime calculations outlined in clause 6.4

6.6 Workplace flexibility

6.6.1 HESTA supports employees to work flexibility so that they can balance their personal and work commitments.

6.6.2 Employees can explore the flexible work arrangements that might work for their personal situation and for their role at HESTA by discussing different options with their people leader.

7 Remuneration and related matters

The minimum annual salary for full time employees in applicable roles and classifications is set out below.

	Minimum annual salaries at commencement of the Agreement	1/10/2020	1/10/2021	1/10/2022	1/10/2023
		3%	3%	3%	3%
Level 12	\$156,000	\$160,680	\$165,500	\$170,465	\$175,579
Level 11	\$148,232	\$152,679	\$157,259	\$161,977	\$166,836
Level 10	\$139,536	\$143,722	\$148,034	\$152,475	\$157,049
Level 9	\$124,880	\$128,626	\$132,485	\$136,460	\$140,554
Level 8	\$108,732	\$111,994	\$115,354	\$118,814	\$122,379
Level 7	\$103,483	\$106,587	\$109,785	\$113,079	\$116,471
Level 6	\$92,727	\$95,509	\$98,374	\$101,325	\$104,365
Level 5	\$85,320	\$87,880	\$90,516	\$93,231	\$96,028
Level 4	\$76,658	\$78,958	\$81,326	\$83,766	\$86,279
Level 3	\$65,994	\$67,974	\$70,013	\$72,113	\$74,277
Level 2	\$55,000	\$56,650	\$58,350	\$60,100	\$61,903
Level 1	\$45,000	\$46,350	\$47,741	\$49,173	\$50,648

To calculate an hourly rate (as applicable under this Agreement) the annual salary is divided by 52 weeks and then 35 hours.

7.1 Levels

7.1.1 Employees shall be placed at the appropriate level depending on their role.

7.1.2 HESTA may pay an employee at a rate above the applicable level for their classification based on the individual employee's skills, performance, experience, qualifications and geographic location.

7.2 Movement through levels

- 7.2.1 An employee can move to a different level or salary within a level based on:
- a. A vacancy becoming available and the employee being appointed to that role
 - b. The reclassification of their role on the basis of a significant change in the responsibilities performed or the scope of the role expanding (including significantly increasing leadership accountability)
- 7.2.2 Employees who consider that a review of their classification level or salary is appropriate are encouraged to discuss this with their leader detailing the reasons for requesting the change. The people leader will then discuss the request with the business team executive and the HO-PC. Any change to salary must be approved by the business team executive.

7.3 Payment of salary

- 7.3.1 Salaries will be paid fortnightly in advance into each employee's nominated bank account.
- 7.3.2 HESTA may with the employee's written agreement make a deduction from salary in the event that an employee is absent from duty.

7.4 Superannuation

- 7.4.1 HESTA will pay an employer contribution of 15% inclusive of SG obligations, fully vested in the employee.
- 7.4.2 Contributions will be made into the superannuation fund nominated by the employee provided it is a complying fund. If employees do not make a choice, contributions will be made into HESTA.
- 7.4.3 While supporting choice, as the trustee of HESTA superannuation fund, HESTA encourages employees to consider whether they can live the values of HESTA should they nominate another superannuation fund. HESTA encourages employees to nominate HESTA as their nominated superannuation fund.
- 7.4.4 Employees may make a salary sacrifice arrangement for additional contributions to be made into their nominated superannuation fund. The amount is to be agreed in advance each financial year, so as to conform to the requirements of the ATO.
- 7.4.5 HESTA superannuation contributions are to be calculated on the employee's gross base salary.

7.4.6 For employees who are on parental leave, HESTA will contribute superannuation for up to 12 months. For periods on paid parental leave under this Agreement, superannuation contributions will be paid at 15%. While the employee is on the GPPL or unpaid parental leave, superannuation contributions will be paid in accordance with the SG rate as legislated on the employee's normal rate of pay.

7.5 Salary packaging

7.5.1 Part of salary may be taken in the form of non-salary benefits described by agreement between the employee and HESTA. The terms of any agreement will be committed to writing and signed by both parties.

7.5.2 All employees will be given the opportunity to salary sacrifice additional superannuation payments.

7.5.3 HESTA encourages employees interested in modifying their salary packaging arrangements to obtain independent taxation advice before making their decision. HESTA accepts no responsibility for any decision made by an employee in relation to their salary packaging arrangements.

7.6 End of year payment

7.6.1 An annual end of year payment representing 1.25% of the employee's base salary will be payable as a lump sum in the first pay run in December during the life of the Agreement.

7.6.2 Superannuation at the rate of 15% will be applied to the payment.

7.6.3 The payment will be prorated based on time fraction and date of commencement. A full payment will apply to employees on parental leave whether on paid or unpaid leave for the first 12 months of leave.

7.6.4 The payment will only be payable to employees employed on the date the payment is made.

7.6.5 As part of the transition to this arrangement, the end of year payment will be prorated for the payment made in December 2020 to represent only six months of the year.

8 Allowances

8.1 Higher duties allowance

Where an employee is required by HESTA to relieve in a job which is at a higher level than the job in which the employee usually works, for a period of more than 5 consecutive working days, the employee will be provided with an additional payment reflecting the classification of the role.

8.2 Fleet vehicles and allowances

- 8.2.1 Eligible full time employees who are determined by HESTA to require a vehicle to perform their role will be provided with the use of a fully maintained vehicle.
- 8.2.2 Any part-time employees who are eligible to access a HESTA Fleet Vehicle will be required to make a personal financial contribution to utilise the vehicle full time, to compensate for use during non-work days such that there is no additional FBT requirement on HESTA.
- 8.2.3 During annual leave, personal leave or the end of year closure, employees with full time access to a fleet vehicle are entitled to continued maintenance. Employees travelling interstate on any leave will be personally responsible for all fuel costs.
- 8.2.4 Employees on approved long service leave may retain the vehicle during this time but are personally responsible for all costs relating to fuel and servicing during that time.
- 8.2.5 Employees on any form of unpaid leave, workers compensation, or parental leave are not entitled to retain the HESTA Fleet Vehicle during such periods, and no vehicle allowance is payable during such periods.

8.3 Financial planning

Employees seeking to obtain personal access to the financial planning service via HESTA Financial Planners will be able to claim reimbursement of up to a maximum value of \$700 once every 5 years.

8.4 Relocation allowance

An employee who has to change their place of residence to another State as a result of a HESTA required transfer will be provided with a reasonable relocation allowance to assist in covering expenses associated with relocation and settlement.

9 Leave and related matters

9.1 Annual leave

- 9.1.1 Employees will be entitled to four weeks annual leave which accrue progressively for each year of service.
- 9.1.2 Annual leave is paid at the base rate of ordinary hours of work at the time leave is taken.
- 9.1.3 Annual leave may be taken at half pay at the employee's request.

- 9.1.4 Annual leave is to be taken at a mutually convenient time having regard to the operational requirements of HESTA.
- 9.1.5 Leave applications should generally be made at least four weeks prior to the date from which leave is intended to be taken.
- 9.1.6 Annual leave is exclusive of any public holidays. If any public holidays fall within an employee's period of annual leave on a day which would have been an ordinary working day, it will not form part of the employee's annual leave.
- 9.1.7 Employees are encouraged to take annual leave. Employees with a balance of eight weeks or more of annual leave may be directed in writing to take a period of annual leave, provided that the employee's remaining accrued entitlement to paid annual leave is at least half of their accrued leave balance. Such leave will be required to be taken within three months of the direction, unless the HO-PC or their designate and the employee's leader agree otherwise. If the employee does not wish to take leave following a direction in accordance with this clause (or if an employee otherwise wishes to cash out an amount of paid annual leave), HESTA and the employee may agree in writing to cash out an amount of the employee's accrued leave, provided that the employee retains at least 6 weeks' annual leave.

9.2 Paid leave in advance of accrued entitlement

HESTA may allow an employee to take annual leave either wholly or partly in advance before the leave has accrued. Where paid leave has been granted to an employee in excess of the employee's accrued entitlement, and the employee subsequently leaves the organisation or is discharged from the service of HESTA before completing the required amount of service to account for the leave provided in advance, HESTA and the employee will discuss the amount owing and agree to a repayment plan, which may include agreement that the amount of leave in advance still owing is to be deducted from any money payable to the employee upon termination of employment.

9.3 Office closure

- 9.3.1 Permanent employees are entitled to additional paid leave as follows:
- a. For the 2020 office closure the dates will be 23 December 2020 to 3 January 2021 inclusive.
 - b. For the 2021 office closure the dates will be 23 December 2021 to 3 January 2022 inclusive.
 - c. For the 2022 office closure the dates will be 23 December 2022 to 3 January 2023 inclusive.

d. For the 2023 office closure the dates will be 23 December 2023 to 3 January 2024 inclusive.

9.3.2 Employees who are required to work during the office closedown period as directed by their leader will be entitled to time off in lieu equivalent to the time worked during the close down.

9.4 Purchasing additional annual leave

9.4.1 Permanent full-time and part-time employees are able to apply to purchase up to two weeks additional annual leave, to increase their annual leave entitlement in return for a reduced annual salary. Subject to the following conditions employees may choose to average their pay to access one or two week's additional leave by averaging their pay over 52 weeks.

9.4.2 Access to purchasing additional leave is subject to business needs and must be agreed between the employee's leader/HO-PC and the employee.

9.4.3 Participation is available to full-time employees who have passed their probation period and have demonstrated at least satisfactory performance.

9.4.4 An employee seeking to purchase additional leave is required to make an application to their leader/HO-PC by no later than 30 March in order to obtain access for the following financial year. Participation must be for the full 12 months, on a financial year basis, but may change if an employees' role has changed within that time period.

9.4.5 If one week additional leave is purchased 51 weeks of pay is averaged across 52 weeks, if 2 weeks additional leave is purchased, 50 weeks of pay is averaged across 52 weeks.

9.4.6 Individual employees must have 20 days of annual leave or less accrued to be able to make the application to purchase additional leave.

9.4.7 To be eligible to purchase additional leave, an employee is expected to use all annual leave accrued during the year (at least 5 or 6 weeks depending on which arrangement is entered into).

9.4.8 Purchasing additional leave will not be accepted as a substitute for time fraction reductions (i.e. if an individual is going to take one day off on a regular basis a time fraction reduction is a better alternative from an organisation point of view).

9.4.9 It is noted that the adjusted pay rate applicable to this arrangement will apply throughout the period, including to any leave that accrued prior to the arrangement.

9.5 Personal leave

Employees, other than casuals, are entitled to 15 days paid personal leave inclusive of sick leave and carer's leave. For part time employees, personal leave entitlements will accrue on a pro-rata basis (and will not be less than the minimum provided by the NES which is 10 days as at the commencement of this Agreement). This leave accumulates progressively throughout the year and is cumulative but will not be paid out on termination of employment.

9.5.1 Taking sick leave

9.5.1.1 A total of 5 days of personal leave (in each accrual year) taken as either as single days or up to a maximum of 2 successive days may be taken without the requirement for a medical certificate. A medical certificate or statutory declaration will be required for any personal leave in excess of this. Any personal leave taken immediately prior to or after a public holiday, or other approved leave will require a medical certificate to be provided.

9.5.1.2 Proof of illness provided by dentists, registered providers of alternative therapy (chiropractors or psychologists) or by statutory declaration will be accepted forms.

9.5.1.3 Unused personal leave will not be paid out upon termination.

9.5.1.4 If an employee is absent due to illness or personal leave for less than one day, an equivalent part-day will be deducted from the employee's accrued leave balance.

9.5.1.5 Additional leave will be granted in special circumstances. Where an employee is ill and has used all accumulated personal leave the HO-PC will consider and may authorise that the employee be:

- a. Placed on unpaid leave; or
- b. Paid a part salary for a specified time; or
- c. Paid a full salary for a specified time.

9.5.2 Carer's leave

9.5.2.1 An employee is entitled to utilise any accrued personal leave to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:

- a. A personal illness, or personal injury, affecting the member; or
- b. The need to attend medical appointments with the member; or
- c. An unexpected emergency affecting the member.

9.5.2.2 An "immediate family member" is defined as a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee, or a

child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner. "Spouse" includes married, de facto and same sex couples and a former spouse. "De facto partner" includes a former de facto partner.

9.5.2.3 The HO-PC or their designate may allow carers leave to be taken in circumstances where a person other than an immediate family member has been regarded by the employee as the equivalent to an immediate family member.

9.5.2.4 An employee is entitled to additional unpaid carer's leave in accordance with the NES or as agreed by the HO-PC.

9.6 Family violence leave

9.6.1 Family violence is a workplace matter. If an employee is experiencing violence at home, they may need support at work. Employees who are experiencing or dealing with family violence are encouraged to speak with their leader or to the HO-PC or their designate to talk about the different options available to support them. There are many safety and support measures that can be accessed and implemented at work.

9.6.2 HESTA will provide paid family violence leave of up to 20 days, which will be determined by the individual's situation through consultation between the employee, their leader and the HO-PC or their designate.

9.6.3 Employees who are experiencing family violence and need time off work for medical and/or legal assistance, court appearances, counselling, relocation or to make other safety arrangements may use family violence leave for this purpose.

9.6.4 An employee may be required to produce evidence to support the need for leave such as a medical certificate, a document issued by the police service, a court or a statutory declaration.

9.6.5 Information concerning matters of family violence will be treated confidentially. Information relating to the individual's situation may need to be disclosed if required by law or to maintain the safety of the employee or any other employee or members of HESTA.

9.7 Compassionate leave

9.7.1 Employees are entitled to a maximum of 3 days leave on full pay for each occasion of a life threatening illness or the death of an immediate family member. Compassionate leave may be granted on approval of the HO-PC or their designate on the death of a close friend or other significant family member.

- 9.7.2 Where a partner, parent, brother, sister, or child dies overseas and the employee is required to travel overseas then an additional 3 days compassionate leave will be granted.
- 9.7.3 Compassionate leave is not available to employees who are on parental leave, or long service leave or leave without pay.
- 9.7.4 Additional entitlements to compassionate leave may be approved by the HO-PC.

9.8 Public holidays

- 9.8.1 Employees are entitled to paid public holiday leave for any holiday having general application throughout the State or Territory in which they work under the terms of the NES.
- 9.8.2 An employee may be requested to work on a public holiday if the request is reasonable. An employee may refuse the request if it is not reasonable or where refusal is reasonable.
- 9.8.3 If an employee is directed to work on a public holiday overtime will be paid or TOIL provided in accordance with this Agreement.

9.9 Long service leave

- 9.9.1 Each employee will be entitled to LSL after 10 years' service. The entitlement accrues as 2.5% of hours paid.
- 9.9.2 Employees are entitled to take accrued LSL after completing 3 years' service.
- 9.9.3 LSL will be taken at a time or times mutually acceptable to HESTA and the employee.
- 9.9.4 Payment in lieu shall be made on resignation after completing 3 years' service.
- 9.9.5 Ancillary terms relating to LSL will be governed by the LSL Act, including but not limited to:
- a. LSL can be taken in minimum periods of one day at a time
 - b. LSL may be taken at half pay
 - c. Both paid and unpaid parental leave up to 12 months' will count towards service
 - d. Any parental leave beyond 12 months will not break continuity of service.

9.10 Parental leave

- 9.10.1 Employees with 12 months continuous service prior to the due date of birth or the expected adoption placement date of a child are entitled to 12 months unpaid parental leave in conjunction with the birth or adoption of a child, in accordance with the NES.
- 9.10.2 HESTA will provide 14 weeks paid parental leave to permanent employees who are the primary caregiver who have a minimum 12 months continuous service with HESTA. Where a permanent employee who is primary caregiver have less than 12 months service, HESTA will provide 8 weeks paid parental leave.
- 9.10.3 HESTA will provide 4 weeks paid parental leave to permanent employees who are the secondary caregiver.
- 9.10.4 Any paid parental leave must be taken by an employee within the first 12 months of the birth or adoption of the child.
- 9.10.5 This will be paid as normal fortnightly salary separate from any GPPL and can be taken at half pay. Appropriate proof that the employee is the primary care giver must be provided to be eligible for paid leave under this clause.
- 9.10.6 It is not mandatory for employees to take the entire 12 months of parental leave. Where the employee elects to take a lesser period of leave, HESTA will provide parental leave equal to the period taken.
- 9.10.7 An employee is required to provide HESTA with a minimum of 10 weeks' written notice before commencing parental leave specifying the intended start and end dates of that leave. HESTA may require an employee who has provided notice of the intention to take parental leave to provide evidence.
- 9.10.8 If a pregnant employee continues to work within six weeks before the estimated date of birth, HESTA may ask the employee to provide a medical certificate, stating whether the employee is fit for work. If the employee fails to provide the certificate within seven days, or if the certificate states that the employee is not fit for work, HESTA may require an employee to commence unpaid parental leave.
- 9.10.9 Unpaid parental leave (excluding concurrent leave) starts:
- a. For a pregnant female employee, up to six weeks before the expected date of birth of her child, but no later than the date of the child's birth;
 - b. For an employee other than the pregnant female employee, unpaid parental leave starts on the child's date of birth;
 - c. For adoption leave, on the day of placement of the child;

- d. Immediately following the period of unpaid parental leave taken by the employee's spouse under one of the options above, if one or both employees are employed by either HESTA or another business; or
 - e. If the employee's spouse or de facto partner is not an employee of HESTA or any other business, anytime within 12 months of the date of birth or day of placement of the child.
- 9.10.10 Unpaid parental leave must be taken in a single continuous period subject to specific exceptions about concurrent leave around the time of the child's birth or placement. Concurrent leave reduces the total available period of unpaid parental leave.
- 9.10.11 In addition to the basic entitlement to unpaid parental leave, one parent may request an additional 12 months of leave, which will only be refused after discussing the request with the employee and based on reasonable business grounds.
- 9.10.12 Employees entitled to unpaid parental leave may request to return from a period of parental leave on a part time basis until the child reaches school age.
- 9.10.13 HESTA will consider the request for flexible working arrangements having regard to the employee's circumstances. Provided that the request is genuinely based on the employee's parental responsibilities the request may only be refused on reasonable grounds relating to the impact on the organisation or HESTA's business. Such grounds might include cost, lack of adequate replacement, loss of efficiency and the impact on service.
- 9.10.14 The employee's request and the HESTA's decision and response must be recorded in writing.
- 9.10.15 Where an employee wishes to make a request under clause 9.10 the request must be made as soon as possible but no less than eight weeks prior to the date upon which the employee is due to return to work from parental leave.

9.11 Leave without pay

- 9.11.1 Permanent employees with 3 or more years' continuous service are entitled to apply for up to 12 months leave without pay.
- 9.11.2 Leave without pay will only be granted once in any 5 year period.
- 9.11.3 Leave without pay does not break the continuity of service but does not count towards service for purposes of entitlements based on service (not including LSL).
- 9.11.4 Extended periods of leave without pay is approved at the discretion of the business team executive and the HO-PC.

9.11.5 Employees accessing this benefit must not be performing work in Australia during the absence from HESTA.

9.12 Days of cultural significance

9.12.1 Employees are eligible to swap gazetted public holidays from the State or Territory in which they work for time off on a day of cultural significance.

9.12.2 The employee will be required to nominate with at least two weeks' notice in writing to their leader, the specific day of cultural significance that they would like to take, and the gazetted public holiday they wish to swap to take it.

9.12.3 The employee will be required to work standard working hours on that gazetted public holiday. Time in lieu will not apply on this day.

9.12.4 Cultural significance days are not able to be swapped with gazetted public holidays during the office closure period.

9.13 Blood donor's leave

Employees are able to access leave to attend blood donation services. Proof of attendance of the employee at the recognised place for donating blood, and the duration of attendance may be requested by HESTA. The employee will notify HESTA as soon as possible of the time and date they are requesting to be absence for the purposes of donating blood.

9.14 Professional development and training

9.14.1 Employees will be provided with a budget for their training and professional development. This allocated budget will include all external courses including university studies and attendance at industry conferences and lunches.

9.14.2 The maximum time allocated to accompany this budget is 8 days per annum.

9.14.3 An employee enrolled in an approved course of private study may be granted leave to attend lectures, tutorials and practical work in subjects essential to the completion of the approved course.

9.14.4 Where an employee fails a course they will pay the fee to repeat the course.

10 Resignation, termination and redundancy

10.1 Termination

- 10.1.1 An employee on probation may be terminated on one weeks' notice (or payment in lieu). An employee on probation can resign by providing one weeks' notice.
- 10.1.2 Employees may at any time terminate their employment with HESTA giving their leader or the HO-PC or their designate four weeks' written notice or notice as mutually agreed.
- 10.1.3 HESTA may terminate the employment of an employee with 4 weeks' written notice or four weeks' payment in lieu. Where the employee is over 45 years of age and with greater than five years' continuous service, an additional week will apply.
- 10.1.4 HESTA may terminate the employment of an employee immediately for serious misconduct without notice or payment in lieu of notice.

10.2 Redundancy

In the event of a termination for reasons of redundancy or retrenchment the following provisions will apply.

10.2.1 Retrenchment

- 10.2.1.1 Every effort will be made to avoid retrenchment through redeployment, retraining, normal employee turnover and curtailing external recruitment.
- 10.2.1.2 Retrenchment will not occur until all reasonable alternatives for continuing employment have been explored and no suitable alternative employment is available.
- 10.2.1.3 If an employee's position becomes redundant and alternative employment is accepted, a 2 month trial period in the new position will be applicable. Should either the employee or HESTA find that the employee is unsuited to the new position, the employee's service will be terminated without the loss of entitlement to retrenchment payments, calculated to the last date of service.

10.2.2 Severance payments

- 10.2.2.1 Upon termination through retrenchment, an employee shall be paid the following:
 - a. 8 weeks' salary in lieu of notice; plus
 - b. 3 weeks' salary for each completed year of service, plus a pro rata payment for each completed month of service in the final year of service.

- 10.2.2.2 The minimum sum payable shall not be less than 11 weeks' payment.
- 10.2.2.3 In addition to the severance payment outlined above, a retrenched employee shall also be paid any accrued annual leave and employees with more than 3 years' continuous service will be paid for untaken LSL on a pro rata basis.
- 10.2.2.4 HESTA will also provide retrenched employees access to a suitable outplacement service at HESTA's expense.

11 Accident make up pay

- 11.1 Employees on WorkCover will be entitled to make-up pay to provide their normal rate of pay for the first 52 weeks of absence from work on Workers' Compensation. Superannuation will be paid at the SG rate as amended from time to time.
- 11.2 Accident make up pay is not payable in circumstances where:
 - (a) HESTA believe on reasonable grounds that Section 40(1) of the WIRC Act (or equivalent provision in other legislation) should apply; or
 - (b) The employee is not fully co-operating with any return to work plans put in place by HESTA.

12 Consultation and dispute resolution procedures

12.1 Application

This clause applies when HESTA has made a definite decision to introduce a major workplace change which is likely to have a significant effect on employees to whom this Agreement applies (affected employees).

12.2 Consultation regarding major workplace change

- 12.2.1 Where HESTA has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, HESTA must notify the employees who may be affected by the proposed changes, their appointed representatives (if any) and the FSU. An appointed representative may be the FSU if affected employees are members of the union.
- 12.2.2 Significant effects include:
 - a. Termination of employment of multiple employees;
 - b. Major changes in the composition, operation or size of HESTA's workforce or in the skills required;
 - c. The elimination or diminution of job opportunities, promotion opportunities or job tenure;
 - d. The alteration of hours of work;

- e. The need for retraining or transfer of employees to other work or locations; and
 - f. The restructuring of jobs.
- 12.2.3 HESTA must discuss with the employees affected and their appointed representatives (if any), the introduction of the changes referred to in this clause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees or their representatives in relation to the changes.
- 12.2.4 The discussions must commence as early as practicable after a definite decision has been made by HESTA to make the changes referred to in this clause.
- 12.2.5 For the purposes of such discussion, HESTA must provide in writing to the employees concerned and/or their representatives, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that HESTA is not required to disclose confidential information, the disclosure of which would be contrary to HESTA's interests.

12.3 Consultation about changes to rosters or hours of work

- 12.3.1 Where HESTA proposes to change an employee's regular roster or ordinary hours of work, HESTA must consult with the employees affected and their appointed representatives (if any), about the proposed change.
- 12.3.2 HESTA must:
- a. Provide to the employees affected and any appointed representatives, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
 - b. Invite the employees affected and/or their representatives, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
 - c. Give consideration to any views about the impact of the proposed change that are given by the employees concerned and/or their representatives.
- 12.3.3 The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.

12.4 Dispute resolution

12.4.1 Any grievances or dispute arising in relation to the NES or this Agreement will be settled in the following manner:

- a. As soon as practicable after the grievance or claim has arisen, the employee concerned will take the matter up with his or her leader in order to remedy the cause of the grievances.
- b. Where the matter is not resolved or where the grievance or claim is of such a nature that a direct discussion between the employee and his or her immediate leader would be inappropriate, the employee shall notify the HO-PC or the business team executive and the FSU, or other representative of their choice, who will attempt to resolve the matter.
- c. If a relevant dispute cannot be resolved at the workplace, and all agreed steps for resolving it have been taken, the dispute may be referred to the Fair Work Commission for resolution by mediation, conciliation or arbitration.
- d. Without prejudice to any party, work shall continue as normal while the matters in dispute are being dealt with in accordance within this clause.
- e. A party to the dispute may appoint another person, representative, organisation or association to accompany or represent them in relation to a relevant dispute.
- f. No employee shall suffer any form of disadvantage or discrimination because he or she has exercised any rights contained in this clause or participated in any part of any of the processes set out in this clause

13 Individual flexibility agreement

13.1 HESTA and an employee covered by this Agreement may agree to make an Individual Flexibility Agreement (**IFA**) to vary the effect of terms of this Agreement if:

- a. the IFA deals with one or more of the following matters:
 - i. arrangements about when work is performed;
 - ii. overtime rates;
 - iii. penalty rates;
 - iv. allowances; and
- b. the arrangement meets the genuine needs of HESTA and the employee in relation to one or more of the matters mentioned above; and
- c. The arrangement is genuinely agreed to by HESTA and the employee.

13.2 HESTA must ensure that the terms of the IFA:

- a. Are about permitted matters under section 172 of the Fair Work Act
- b. Are not unlawful terms under section 194 of the Fair Work Act; and

- c. Result in the employee being better off overall than he/she would be if no arrangement was made.

13.3 HESTA must ensure that the IFA:

- a. Is in writing;
- b. Includes the name of the employer and employee;
- c. Is signed by the employer and the employee and if the employee is under 18 years of age, signed by the employee's parent or guardian; and
- d. Includes details of:
 - i. The terms of the Agreement that will be varied by the arrangements
 - 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.

13.4 HESTA must give the employee a copy of the IFA within 14 days of it being agreed to.

13.5 HESTA or the employee may terminate the IFA:

- a. By giving notice no more than 28 days written notice to the other party to the arrangement; or
- b. If the employer and the employee agree in writing at any time.

14 No extra claims

There shall be no extra claims made by employees nor industrial action taken in relation to matters which fall within the scope of this Agreement for the duration of this Agreement.

Signatories

Dated this: 10 June 2020

Signed for and on behalf of H.E.S.T Australia Ltd



Deborah Blakey

Chief Executive Officer

HESTA

Address: Level 20, 2 Lonsdale Street, Melbourne 3000.

Dated this: 18 June 2020

Signed for and on behalf of the Finance Sector Union of Australia



Julia Angrisano, National Secretary of the FSU, authorised under rule 49 of the FSU's rules to sign industrial agreements.

Address: 1/341 Queen Street, Melbourne, 3000

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG2020/1737

Applicant: H.E.S.T Australia Limited

Undertaking- section 190

I, Sophie Sigalas, Head of People & Culture of H.E.S.T Australia Limited give the following undertakings with respect to the *HESTA Enterprise Agreement 2020-2024* ("**the Agreement**"):

- 1) I have the authority given to me by H.E.S.T Australia Limited ("**HESTA**") to provide this undertaking in relation to this application before the Fair Work Commission.
- 2) In the event that HESTA engages a casual employee as a Level 1 or Level 2 employee to perform work solely on a Sunday, the employee will be paid for that engagement at a rate that is better off overall than the rate that would be payable under the *Banking, Finance and Insurance Award 2020*.

Employer name: H.E.S.T Australia Limited

Authority to sign: Yes

Signature:



Date: 14 July 2020