



FAIR WORK  
AUSTRALIA

## DECISION

*Fair Work Act 2009*

s.185—Approval of enterprise agreement

**Freightliner Australia Pty Ltd T/A Freightliner Australia**  
(AG2010/1234)

### **FREIGHTLINER AUSTRALIA PTY LTD ENTERPRISE AGREEMENT 2010**

Rail industry

COMMISSIONER CAMBRIDGE

SYDNEY, 7 JUNE 2010

*Application for approval of the Freightliner Australia Pty Ltd Enterprise Agreement 2010.*

[1] An application has been made for approval of an enterprise agreement known as the *Freightliner Australia Pty Ltd Enterprise Agreement 2010* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by *First IR Consultancy* (the Consultant) on behalf of *Freightliner Australia Pty Ltd T/A Freightliner Australia* (the Employer). The Agreement is a single-enterprise agreement.

[2] The application was lodged by the Consultant at Sydney on 26 May 2010. The application included a Statutory Declaration of *John McArthur* made on behalf of the Employer and dated 19 May 2010, (the Declaration). The Declaration stated that the Agreement was made on 12 May 2010, thereby satisfying the 14 day lodgement time limit established by subsection 185 (3) of the Act.

[3] Part 2-4 of the Act includes various procedural requirements that must be satisfied before Fair Work Australia (FWA) can approve of an enterprise agreement. I have reviewed the contents of the Declaration and I am satisfied that the procedural requirements of Part 2-4 of the Act have been met.

[4] The application for approval was listed for E-Hearing before FWA on 7 June 2010.

[5] I note that the Agreement contains a flexibility term at clause 11 and a consultation term at clause 57.

[6] I am satisfied that each of the requirements of ss.186, 187 and 188 of the Act as are relevant to this application for approval have been met.

[7] The Australian Rail Tram and Bus Union (RTBU), being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. As required by subsection 201 (2) of the Act I note that the Agreement covers the RTBU.

**[8]** The Agreement is approved. In accordance with subsection 54 (1) of the Act it will operate from 14 June 2010. In accordance with clause 3.4 of the Agreement the nominal expiry day of the Agreement is 14 June 2012.

COMMISSIONER

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# **FREIGHTLINER AUSTRALIA PTY LTD**

## **ENTERPRISE AGREEMENT 2010**

**APRIL 2010**

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## **PART A - AGREEMENT FORMALITIES**

### **1. Title**

This agreement will be referred to as the Freightliner Australia Pty Ltd Enterprise Agreement 2010.

### **2. Coverage of the Agreement**

This Agreement covers:

- 2.1:** Freightliner Australia Pty Ltd ("the Company") and all employees of the Company who are engaged in any of the classifications set out in clause 24.3 of this Agreement; and,
- 2.2:** The Australian Rail, Tram and Bus Industry Union (RTBU) - subject to the Union notifying Fair Work Australia that it seeks to be covered by this Agreement and Fair Work Australia approving this Agreement).

### **3. Application, Duration and Operation**

- 3.1:** The parties to this Agreement are the Company and the Employees.
- 3.2:** This agreement applies to the exclusion of any modern award, Federal, State or Territory agreements relating to the matters governed by this agreement, notional agreement, preserving State award, or transitional award as defined in the Act or the Regulations.
- 3.3:** This agreement does not purport to exclude the operation of the National Employment Standards (NES). Where a term of this agreement is in conflict or inconsistent with a term of the NES, then the term of the NES will prevail to the extent of any inconsistency.
- 3.4:** This agreement will come in to operation 7 days after it is approved by Fair Work Australia and will nominally expire two (2) years after this operative date.

### **4. Definitions**

The following terms which appear throughout this Agreement are defined as follows:

<b>Act</b>	The Fair Work Act 2009 as amended.
<b>Annual Salary</b>	Base rate remuneration for annual cycle hours worked. Incorporates an aggregate amount for shift penalties, week-end work, leave loadings, etc
<b>AQTF</b>	Australian Quality Training Framework
<b>Averaged Hours Cycle</b>	A period of sixteen (16) weeks over which ordinary hours are averaged. The sixteen (16) week period is made up of four (4) Workplans.
<b>Casual</b>	An Employee engaged and paid as such.
<b>Confidential Information</b>	All information of whatever kind or nature, whether oral, electronic or in writing relating to the employer, its related Bodies Corporate and associated entities and its business, or relating to any of the clients of the Employer, which is or has been disclosed by the employer or its clients. It does not include information which is in, or becomes part of, the public domain (other than through as breach of this agreement) or information acquired from a third party who is entitled to disclose it. It does not include this Agreement.

<b>CPI:</b>	The annual percentage change in the Consumer Price Index, Australia, weighted average of eight capital cities, All groups, produced by the Australian Bureau of Statistics, for the September quarter in the current year
<b>Day</b>	For the purposes of paid leave, a day means 7.6 hours
<b>EFT:</b>	Electronic Funds Transfer
<b>Employee:</b>	An employee engaged under the terms of this Agreement.
<b>Employer or Company:</b>	Freightliner Australia Pty Ltd ACN 122 522 123
<b>FWA:</b>	Fair Work Australia; the national workplace relations tribunal.
<b>Immediate Family:</b>	The current spouse (including a de facto spouse) of an employee, and a child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or his or her current spouse.
<b>Home Location:</b>	Designated sign on / off location for scheduling purposes.
<b>Hours Bank:</b>	The mechanism by which hours worked are compared to the Ordinary Hours.
<b>Hours Worked:</b>	Actual time worked.
<b>Lift up/Lay back:</b>	The time employees may be called in early (lifted up) to an earlier sign on time or have their shift commencement delayed (laid back) to a later time than shown on the workplan.
<b>NES:</b>	National Employment Standards
<b>Ordinary Hours:</b>	The hours of work which an employee is required to work over their nominated fifty two (52) week period, i.e. 1976 ordinary hours including public holidays and annual leave.
<b>Overtime:</b>	Any hours additional to the Ordinary Hours ie any hours in excess of 608 worked over the nominated sixteen (16) week period, including public holidays and annual leave.
<b>Rail Safety Worker:</b>	Any employee who performs rail safety work.
<b>Recognition of Current Competency (RCC):</b>	RCC provides for the recognition of an individual's qualification, knowledge, skills, relevant prior learning, and experience, wherever it was gained.
<b>Resting away from home:</b>	A shift where employees are scheduled to complete a shift at a location away from their home location.
<b>Safety Legislation:</b>	Prevailing Occupational, Workplace Safety and Rail Safety in the jurisdictions in which employees are employed.
<b>Shift Length:</b>	The total time from a sign-on to a sign-off.
<b>Stand Alone</b>	Payment of hours which are additional to the annual salary.
<b>Unavoidable Necessity:</b>	A practically inescapable circumstance that necessitates the working of extended hours. The working of extended hours in these circumstances

is subject to the employee's indication of their fitness to continue and employees may decline to perform safeworking duties after having completed twelve hours from sign on.

- Union:** The Australian Rail, Tram and Bus Industry Union (trading as 'RTBU') whose rules allow for the representation and coverage of eligible members.
- Virtual Depot:** Designated location for purposes of sign-on / off and related matters, in the absence of a physical depot facility
- Workplan** A four (4) week schedule which allocates tasks to employees. The commencement date and end date are consistent with the Employers Accounting Periods.

#### **5. No Extra Claims**

It is a term of this Agreement that the parties will not make any extra claims for the duration of this Agreement.

#### **6. National Employment Standards**

- 6.1:** Part 2-1 and Part 2-2 of the Fair Work Act 2009 describe the National Employment Standards (NES) entitlements and may also provide terms that supplement or are ancillary to the entitlements in the NES.
- 6.2:** The parties acknowledge that the clauses contained in this Agreement apply only to the extent that they are not detrimental to an employee in any respect when compared with the NES.

## **PART B - EMPLOYMENT**

### **7. Contract of Employment**

- 7.1:** An Employee may be engaged as a permanent or a casual employee. Employees shall not have their category of employment changed without their consent. Any agreed change shall be detailed in writing.
- 7.2:** Advice to new employee: New employees, except short term casual appointments, shall be advised in writing of their commencement date, category of employment, wage rates, hours of work, and their Home Location, prior to engagement.

### **8. Probationary Employment**

- 8.1: Initial term:** All new employees, with the exception of casuals, will be engaged on an initial probationary period of three months. During the probationary period the company will assess the skills and capacity of the employee, which will allow the company and the employee to determine if they wish to continue with the employment relationship.
- 8.2: Duration of Probation period:** At the commencement of employment the company shall inform new employees in writing of the duration of the probationary period.
- 8.3: Induction:** On commencement of employment new employees will undergo an induction and orientation program, during which time they will be familiarised with the company, their work sites, the requirements of their position and be issued with a copy of this agreement and any other notices prescribed under the Fair Work Act 2009 or other relevant legislation

#### **8.4: Termination by the Company**

An employee's employment may be terminated in accordance with this clause for reasons including (although not limited to):

Where the employee is:

- (a) Unable to demonstrate the required skill or ability and/or,
- (b) Demonstrates inappropriate behaviour and/or,
- (c) Cannot satisfy the medical requirements for their position.

##### **8.4.1: During probationary period - performance to be discussed:**

During the probationary period the Company shall discuss the Company's concerns relating to the employee's performance with the employee; and the Company shall give the employee an opportunity to improve his/her performance, except where clause 13 applies.

- 8.5: Termination by employee:** At any time during the probationary period an employee may terminate the employment relationship by giving one days notice to the Company.
- 8.6: Permanent engagement:** During the probationary period should the employee demonstrate the level of skill, behaviours, ability and the medical requirements required for the position, the Company and employee may agree to cease the probationary period.

## 9. Employment Status

A permanent Employee may be engaged on a full time, part-time or fixed term basis.

### 9.1: Full Time Employee.

**9.1.1: Ordinary Hours of Work.** A full time employee is an employee engaged to work ordinary hours of 38 hours per week. These ordinary hours are to be averaged to 152 hours in a four-week cycle, over a period of twelve (12) months.

**9.1.2: Filling permanent positions:** Where permanent full time positions become available, preference will be given to suitable part time, casual or temporary fixed term employees who wish to be considered for appointment to these positions.

### 9.2: Part Time Employee.

**9.2.1: Hours of Work:** A part time employee is one engaged to work agreed defined hours, which are less than the Ordinary Hours of a full time employee.

These agreed hours and the days an employee is required to work can only be altered by mutual agreement and must be in writing. A part time employee will have their scheduled book off days posted in accordance with the provisions in Clause 45.6.

**9.2.2: Conditions:** Wages and conditions for part time employees will be calculated on a pro rata basis to the full-time ordinary hours of work of 38 hours per week, equivalent pay and conditions to those full-time employees in the same position / classification, unless otherwise expressly stated in this agreement. For employees whose weekly hours of work differ during the year, their leave credits will accrue based on a pro-rata of the entitlement over the accrual period.

**9.2.3:** A part time employee will be paid the applicable overtime rate as described in Clause 37 where that employee works in excess of 608 hours in a sixteen week cycle workplan cycle.

**9.2.4:** A part time employee will be paid the applicable overtime rate as described in Clause 37 where he/she works on a scheduled book off day.

**9.2.5: Part time offers:** Where the Company is proposing to introduce a part time arrangement it shall offer the part time arrangement to existing suitable employees before seeking external appointments.

### 9.3: Casual Employee

**9.3.1:** A casual employee:

- (a) Is an employee paid by the hour, who works on an ad hoc basis.
- (b) Will be paid a minimum shift length in accordance with clause 42.3 (Minimum shift provisions) for each shift at their applicable rate of pay as provided for in clause 28.3.
- (c) Will be paid on an hourly basis using the Hourly Base Rate which includes a casual loading for their particular classification (as detailed in clause 28.3 of this Agreement).

**9.3.2:** A casual employee is not entitled to the benefits of Part G of this Agreement.

**9.3.3:** Payment of Overtime, penalties and allowances shall be paid where the employee works in excess of the Ordinary Hours in a 16 week cycle for a full time employee.

**9.3.4:** The Employer shall utilise Part Time and Full Time employees unless operational requirements require the use of casual employees.

**9.4: Fixed Term Employee**

**9.4.1:** A fixed term employee is engaged on a full time or part time basis for a defined period or task, which may be subject to change/extension by agreement of the parties. Where practicable, the length of time for the fixed term defined period shall not normally be more than 12 months.

**9.4.2:** A full time fixed term employee is entitled to all the benefits in Part G (Leave) of this Agreement, while a part time fixed term employee will be entitled to the Part G benefits on a pro rata basis. Pro-rata will be calculated on an hourly basis using the Annual Salary for the classification.

**10. Employee Transfers**

Employees may be required to work in more than one location at the reasonable direction of the Employer.

**10.1: Permanent Transfer**

**10.1.1:** Where opportunities for permanent transfers within the Company's operations arise, the Company will seek volunteers by calling for expressions of interest from suitable employees wishing to be considered for transfer.

**10.1.2:** Employees who are required to change their work location on a permanent basis will be given 21 days notice of the change.

**10.1.3:** The Company will pay reasonable costs for the transfer including travel and removal expenses for the employee and family members.

**10.2: Temporary Transfer**

**10.2.1:** Employees may be requested, to change their home location on a temporary basis for a period of not less than 7 days. A temporary transfer will only operate by agreement.

An employee shall be given 7 days notice of a temporary transfer.

**10.2.2: Conditions:** When temporarily transferred the following conditions apply:

- (a) Accommodation will be provided to the agreed minimum accommodation standard as set out in the organisational safety management system.
- (b) Meal expenses as described in clause 32.2 shall apply from the time an employee departs their home until the time an employee returns to their home location.
- (c) The means of travel to and from the temporary location will either be provided by the company or, where an employee uses their own car as agreed, the employee shall be reimbursed according to the current kilometre rates provided by the Australian Taxation Office and in line with the Company Policy.

**10.2.3: Travel time:**

The time taken to travel to and from the temporary location is to be included in scheduled workplan hours.

**11. Flexibility Arrangements**

**11.1:** An employer and individual employee covered by this enterprise agreement may agree to vary the application of certain terms of this agreement, provided that flexibility arrangement:

- (a) Is genuinely agreed to by the Company and the individual employee without coercion or duress; and
- (b) Only varies the terms prescribed in sub-clause 11.2; and
- (c) Does not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment and overall is better off as a result of the flexibility arrangement.

**11.2:** The terms of this Agreement that may be varied by a flexibility arrangement include:

- (a) Arrangements for when work is performed;
- (b) Overtime rates;
- (c) Penalty rates;
- (d) Allowances;
- (e) Leave loading.

**11.3: Operation:** For the flexibility arrangement to come into operation, it must:

- (a) Be provided within 14 days to the employee in writing, name the parties to the agreement and be signed by the Company and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- (b) State each term of this Agreement that the Company and the individual employee have agreed to vary;
- (c) Detail how the application of each term has been varied by the flexibility arrangement between the Company and the individual employee;
- (d) Detail how the agreement does not disadvantage the individual employee in relation to the individual employee's terms and conditions of employment; and
- (e) State how the flexibility arrangement can be terminated; and
- (f) State the date the flexibility arrangement commences.

**11.4:** The employer must ensure that the individual flexibility arrangement:

- (a) Is in writing; and
- (b) Includes the name of the employer and the employee; and
- (c) Is signed by signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
- (d) Includes details of:

- i. The terms of the Enterprise Agreement that will be varied by the arrangement; and
- ii. How the arrangement will vary the effect of the terms; and
- iii. How the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- iv. States the date of which the arrangement commences.

**11.5:** The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

**11.6: Termination of Flexibility Arrangement**

The employer or employee may terminate the individual flexibility arrangement:

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

**12. Disciplinary Matters**

Where disciplinary matters are to be addressed, the Employer will refer to the Human Resource policies and procedures contained within the Integrated Management Systems, and will take into account the principles of natural justice and due process.

All disciplinary matters will be treated as confidential.

For ease, the process will include:

- (a) Investigation into any allegations
- (b) Discussion with the Employee (and if requested, their representative) regarding the matter
- (c) Advice to the Employee as to the findings of any investigation, and any actions to be taken.

**12.1: Disciplinary Outcomes:**

Consistent with policies and procedures, employees may be subject to the following outcomes:

- (a) Verbal warning with a file note entered onto their personnel file;
- (b) Written warning;
- (c) Reduction in classification consistent with levels of performance or competency;
- (d) Suspension with or without pay
- (e) Dismissal, with or without notice;

### 13. Stand Down

**13.1: Stand down without pay.** The Employer may stand down employees without pay for any time during which they cannot usefully be employed because of one of the following:

- (a) industrial action (other than industrial action organised or engaged in by the employer);
- (b) a breakdown of machinery or equipment, if the employer cannot reasonably be held responsible for the breakdown;
- (c) a stoppage of work for any cause for which the employer cannot reasonably be held responsible.

**13.2:** The Employee may elect to use Annual Leave as an alternative to being Stood Down.

**13.3: Written notice:** The employee/s and at their request their representative, must receive written notice outlining the date on which the stand down is to commence, the reasons for the stand down and the expected duration of the stand down. This advice is to be provided as soon as reasonably practicable after the details of Stand Down are known.

**13.4: Alternative work:** the Employer will actively pursue alternative work to be done, such as training, or maintenance before proceeding with the stand down.

**13.5: Continuity of Employment:** Employees who are stood down under this provision shall be treated for all purposes (other than payment) as having Continuity of Employment.

**13.6: Resignation during Stand Down:** Any employee stood down in accordance with this Clause may, at any time during the stand down, terminate their employment with normal periods of notice, and shall be entitled to receive, as soon as possible, any payments to which they are entitled up to the time of the termination once it has been determined that no monies are owed.

#### **13.7: Work with another employer**

Any employee who is stood down in accordance with this Clause shall be at liberty to take other employment during the Stand Down period. In doing so, a period of notice may be required with the interim employer. When advised by the Employer that they are required to report for duty, and where a period of notice applies, the Employee must:

- (a) Provide details of the period of notice to the Employer, including details of the hours worked for the last two (2) weeks; and,
- (b) Inform the Employer when they will be available to commence work with the Employer.

The Employer will take into consideration the duration of the notice period whenever possible. However, the Employee must also make every effort to return to work with the Employer to meet operational requirements.

Any period between the end of the Stand Down period and the Employee's attendance at work will be treated as unpaid leave.

**14. Termination of Employment**

**14.1: Summary Dismissal**

The Employer may terminate an Employee's employment without prior notice if the Employee is guilty of serious misconduct as defined in the Act. In such cases, wages shall only be paid up to the time of dismissal.

**14.2:** In circumstances where the employee is summarily dismissed while suspended without pay, the employee will not receive any wages from the point of suspension up to the time of dismissal.

**15. Abandonment of Employment**

**15.1:** An Employee will be deemed to have terminated his or her employment without notice if he or she is absent from work other than on approved leave for more than 5 consecutive working days without notifying the Employer during that time and obtaining approval for the absence.

**15.2:** The Employer must take reasonable steps to contact the employee ascertain the intentions of the Employee including any reasons for absence during the 5 day period and prior to deeming the employment as terminated. This contact will include writing to the employee at the employee's last known address informing the employee that the absence may result in the employee's service being terminated.

**15.3:** Termination of employment by abandonment in accordance with this sub clause shall operate from the date of the last attendance at work, or the last day's absence in respect of which consent was granted whichever is the later.

**16. Notice of Termination by Company**

**16.1:** Subject to Clause 14, the Employer may terminate the employment of a permanent employee by giving notice to the Employee in accordance with the table below:

Period of Continuous Service	Period of Notice
3 months or less in probationary period	1 day
Not more than 1 year	1 week
More than 1 year	4 weeks

**16.2:** The period of notice required is increased by 2 weeks if the Employee:

- (a) is over 45 years age; and
- (b) has completed at least 2 years of continuous service with the Employer

**16.3:** An Employee who resigns must provide the Employer with the same period of notice as specified in clause 16.1 (but not the additional notice provided in clause 16.2).

**16.4:** Notwithstanding clause 16.1, the Employer may agree to a shorter period of notice from an Employee.

**16.5:** Where an employee does not provide the employer with the required notice under clause 16.1 and the employer does not agree to a shorter period, the Employer may deduct and retain an amount equal to the employee's normal pay for the period of required notice that was not given from the amount that the employer is required to pay the employee upon termination under this agreement.

**16.6: Time Off During Notice Period**

**16.6.1: Seeking other employment during notice period:** Where the company has given notice of termination to an employee, the employee shall be entitled to one working day off without loss of pay for the purpose of seeking other employment. This is excluded if termination results from Redundancy.

**16.6.2:** The time off shall be taken at times that are convenient to the employee after consultation with the Company.

**16.6.3:** The Company will not pay additional days taken during the notice period unless previously agreed by the relevant Manager.

**16.6.4:** Other leave arrangements shall be at the discretion of the Company.

**16.7:** The Employer may make a payment in lieu of notice at the discretion of the Employer.

**16.8:** On termination of employment, any overpayments of remuneration or any other monies advanced to the Employee by the Employer become immediately due and payable and the Employer may retain such monies out of monies otherwise due and payable to the Employee.

**16.9: Return of Company Property:** The Employer may withhold payment of an Employee's final payment on termination pending the return, in a satisfactory condition, of any property or equipment of the Employer.

**16.10: Statement of Employment**

The Company shall, upon receipt of a request from an employee whose employment has been terminated, provide the employee a written statement specifying the period of their employment and the classification of or the type of work performed by the employee.

**17. Redundancy**

**17.1: Discussions before termination of employment:**

**17.1.1:** A redundancy scenario arises where the Company considers that it no longer requires the position an employee has been performing, and this is not due to the ordinary and customary turnover of labour in the business.

**17.1.2:** Where a redundancy scenario may lead to termination of employment, the Company shall hold discussions with the employee/s directly affected.

**17.1.3:** The discussions shall take place as soon as is practicable after the Company has become reasonably aware of the possible redundancy scenario. The Company will advise employees of the reasons for the possible terminations of employment, measures to avoid or minimise terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.

**17.1.4:** For the purpose of the discussion the Company shall, as soon as practicable, provide in writing to the employees concerned, all relevant information about the possible terminations of employment. This information will include the reasons for the possible terminations, the number and the names of employees likely to be affected, the number of employees normally employed and the period over which the terminations are likely to be carried out.

**17.1.5:** Provided that where the disclosure would be contrary to the Company's commercial interests, the Company shall not be required to disclose confidential information.

**17.2: Transfer to Lower Paid Duties**

**17.2.1:** Where an employee agrees to transfer to lower paid duties for reasons set out in sub-clause 17.1.1, the employee shall be entitled to the same period of notice of transfer as he or she would have been entitled to if their employment had been terminated.

**17.2.2:** The Company may, at its option, make payment in lieu thereof of an amount equal to the difference between the former Annual Aggregate and the new lower Annual Aggregate for the number of weeks of notice still owing.

**17.3: Severance pay**

In addition to any period of notice prescribed for ordinary termination in this Agreement, an employee whose employment is terminated in a redundancy scenario shall be entitled to the following amount of severance pay in respect of a continuous period of service:

<b>Period of continuous service</b>	<b>Severance pay</b>
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay*
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

**17.3.1:** For the purposes of this clause, "weeks' pay" means the weekly Annual salary rate.

**17.4: Alternative employment and incapacity to pay.**

The Company, in a particular redundancy case, may make application to the Fair Work Australia to have the severance pay prescription varied if the Company obtains acceptable alternative employment for an employee or cannot pay the amount.

**17.5: Time off during notice period**

**17.5.1:** During the period of notice of termination given by the Company, an employee shall be allowed a minimum of one day's time off without loss of pay during this notice period for the purpose of seeking other employment. This does not apply where clause 16.6 of this document applies.

**17.5.2:** If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the Company, be required to produce proof of attendance at an interview otherwise the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

**17.6: Notice to Centrelink**

Where a decision has been made to terminate employees in the circumstances outlined in clause 17.1, the Company shall notify the nearest Centrelink office as soon as possible giving relevant information including the number and type of employees likely to be affected and the period over which the terminations are likely to occur.

**17.7: Employees exempted**

This clause shall not apply where the employee:

- (a) Has completed less than one year's service;
- (b) an employee employed for a specified period of time, for a specified task, or for the duration of a specified season
- (c) Is terminated as a result of serious misconduct justifying dismissal
- (d) as a casual employee,
- (e) an employee (other than an apprentice) to whom a training arrangement applies and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement;

**17.8: Employee Transfer**

Where the company offers and the redundant employee accepts a transfer to another location within the Company, the employee shall be entitled to receive reasonable removal expenses and allowances for both the employee and the employee's dependents.

**18. Transfer of Business**

Where there is a transfer of business, as prescribed by the Fair Work Act, an employee will not be entitled to Severance Pay in accordance with clause 17.3 if the employee is offered employment (regardless of whether the employee accepts such employment) by the transferee, provided that:

- (a) The offer of employment is on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the employee's terms and conditions of employment with the company immediately before the transfer (or termination if the employee does not accept the employment)
- (b) The transferee recognises the employee's service with the company. The provisions of Part 2-8 of the Act shall apply where there is a transfer of business.

The provisions of Part 2-8 of the Act shall apply where there is a Transfer of Business.

**PART C: SAFETY**

**19. Safety Principles**

The company and its employees agree they both have a duty of care that the improvement and maintenance of occupational health and safety standards and procedures in the work environment is a primary objective of the company.

The parties to this agreement commit to meeting their obligations and duties under the relevant Safety Legislation.

**19.1: Safety Representatives**

- 19.1.1:** The parties to the agreement understand the value of regular and constructive communication to improving the overall operation of the company and work environment of the employees.
- 19.1.2:** Safety consultation systems have been established to discuss health, safety and welfare issues and opportunities. These arrangements are consistent with the Employers Consultation Programs and procedures contained within its Safety Management Systems.  
  
Safety Meetings will be held in accordance with prevailing Safety Legislation.
- 19.1.3:** Hazard reporting and communication systems are in place to support the Employer, Employees and nominated Safety Representatives in these matters.
- 19.1.4:** A safety representative is elected for each workgroup, by the workgroup Employees by means of a ballot.
- 19.1.5:** Elections will be carried out every two (2) years, consistent with the Employers Consultation Program.

**19.2: Safety Procedures**

- 19.2.1:** Safety policies and procedures and standards shall be clearly detailed by the company to all employees. Where safety policies and procedures or standards require employees to receive training, this training shall be provided by the company, at the company's expense.
- 19.2.2:** Safety policies and procedures and standards shall be followed and met by all employees. Failure to acknowledge and adhere to safety policies and procedures and standards may be grounds for dismissal. Neglect of safety policies and procedures that may lead to injury of other persons or employees may be grounds for summary dismissal.

**20. Alcohol and Drugs**

- 20.1: Alcohol and other drugs policy:** In accordance with its commitment to "Zero Tolerance" and in compliance with relevant rail safety legislation, the company has a policy dealing with the possession and consumption of alcohol and other drugs.
- 20.2: Compliance with policy:** Employees are required to comply with the company's alcohol and other drug policy and must undertake an alcohol and/or other drugs test when requested to do so.
- 20.3: Methods of Testing:** All drug and alcohol testing shall be carried out by duly accredited testing practitioners, and be conducted in a manner and place that preserves the dignity and personal integrity of the employee.

**20.3.1: Cost of testing:** The Company will bear all the costs associated with such testing. However after a positive reading, any required second or subsequent testing will be at the employees cost.

**20.3.2: Failure to comply:** An employee who fails to comply with the policy or with a request to undertake a test may be subject to disciplinary action which might include termination of employment.

## **21. Health Assessments**

**21.1:** The Company to pay costs where liable: Where, through the operation of the National Standard for Health Assessment of Rail Safety Workers ("National Standard") an employee is required to undertake a Health Assessment, the Employer will pay all costs associated with the health assessment up to the "Determination", including the health assessment and stress ECG and/or other referred tests requested as part of the assessment. This does not include Specialist referral costs or associated tests.

**21.2: The Determination:** The determination occurs when a qualified health professional, in satisfaction of the National Standard, has determined that the employee is either:

- (a) Fit for Duty; or,
- (b) Fit for Duty subject to Review; or,
- (c) Fit for Duty subject to Job Modification; or,
- (d) Temporarily Unfit for Duty Subject to Review; or,
- (e) Permanently Unfit for Duty.

### **21.3: Additional costs associated with referral**

**21.3.1:** If further tests are required following the examination, but before the determination, the Employer will be responsible for the costs of those tests.

**21.3.2:** Once the determination has been made by the Authorised Health Professional, costs of all tests will be borne by the Employee.

**21.4: Applicable legislation:** The above provisions do not exclude any obligations arising under the applicable Workers Compensation legislation.

### **21.5: Maintenance of rate of pay in certain circumstances**

Where an employee, in accordance with sub-clause 21.2 is deemed to be:

- (a) Temporarily Unfit for Duty Subject to Review; or
- (b) Permanently Unfit for Duty

and the employee accepts alternative employment with the company in a position covered by the Agreement that results in a reduction in the employee's aggregate rate of pay, the company shall maintain the employee's former aggregate rate of pay for a period of 12 months, or until the employee is determined to be fit to resume the employee's former duties, whichever is earlier.

**22. Uniforms, Protective Clothing and Equipment**

- 22.1:** The company will provide employees, with uniforms as specified in the company policy, and where required, protective clothing or equipment.
- 22.2:** Safety equipment provided by the company will be utilised as directed by the Company and in accordance with the manufacturer's instructions.
- 22.3:** Where a uniform, protective clothing or equipment is provided, it must be correctly worn or utilised while the employee is on duty.
- 22.4:** Employees will take reasonable care of uniforms, protective clothing or equipment which will remain, at all times the property of the Company. Worn or defective items of uniform, protective clothing or equipment must be reported to the Company.
- 22.5:** The Company shall consult with the relevant employees where there is a proposal to make a significant change to the frequency, quality or quantity of uniform issues. Changes to colour or supplier will not be considered a significant change.
- 22.6:** The Company will replace uniforms, protective clothing and equipment on a "fair wear and tear" basis, or in accordance with Safety Legislation.
- 22.7:** Employees will return all clothing and equipment upon termination. In instances where outstanding property is not returned, the Company will deduct the reasonable value of the missing equipment from the final payment of monies.

## PART D - SKILLS DEVELOPMENT and CLASSIFICATION STRUCTURE

### 23. Skills Development and Training

- 23.1: Multi Skilling:** The parties to this Agreement recognise the need for employees to be able to perform a wide range of tasks in the performance of their duties. The company recognises the value of skills development and formal training to achieve multi-skilling and the importance of training and developing and maintaining the competence of its employees.
- 23.2: Incidental and Peripheral Tasks:** Employees recognise the need to be flexible in the performance of their duties and may be required to perform a wider range of duties including work which is incidental or peripheral to their main tasks, responsibilities or functions providing they are competent to perform such work.
- The performance of peripheral duties should not jeopardise the employee's competencies, qualifications or in any way promote de-skilling.
- 23.3: Skills Development priorities:** The priorities for employee skills development will be:
- 23.3.1:** Combination of appropriate on-the-job skills development and formal training to ensure an employee possesses and / or maintains the competencies required to fulfil their role;
  - 23.3.2:** Appropriate opportunity, skills development and formal training to prepare an employee for progression to the next step of the classification structure in their career path; and
  - 23.3.4:** The company will provide reasonable access to skills development opportunities, support and resources, and formal training to afford employees the opportunity to acquire all of the skills, competency and knowledge needed to perform work in the employees appointed position.
- 23.4: Nationally Recognised Competency based training:** Formal Training will be competency based. It will be delivered and assessed using both off the job and on the job methods, and delivered by appropriately qualified trainers and assessors.
- 23.5: Assessment of Competency:** The Competency Assessment process will comply with the AQTF where it applies.
- 23.5.1: Recognition of Current Competence:** The Competency Assessment process will apply the principles associated with Recognition of Current Competence (RCC);
  - 23.5.2: Recognised Qualifications:** Whenever possible formal training undertaken with the company will provide credentials, such as ATQF or other certification that are nationally recognised by other employers.
- 23.6: Training at Company expense:** When training is undertaken by the employee as required by or at the request of the Company then all such training will be provided in the Company's time and at the Company's expense.
- 23.7:** Employees who are required to attend training sessions will be paid for time in attendance at the ordinary rate of pay. Employees who are offered training, but are not required to attend, and who choose to attend such training, will not be paid for time in attendance.

**23.8: Payment for skills used:** An employee may be required to undertake training to enhance and broaden their work skills as required in their appointed position. By agreement they may train for higher or alternative positions. This training will not entitle an employee to the rate of pay for that higher or alternative position, unless the training is completed and the company requires the employee to use such skills in performing certain duties.

**23.9: Identifying Training issues:** The Company and employees shall utilise the consultative processes (as described in clause 57 of this agreement) to identify, discuss issues related to skills development and training.

#### **24. Classifications**

**24.1: Identification of classifications:** There will be one classification structure for employees. On commencement of employment, employees shall be classified by the Company in accordance with the indicative duties for each classification prescribed in the appropriate Position Descriptions.

**24.2: Classification factors:**

Employees will be classified based on the following factors:

**24.2.1:** level of experience;

**24.2.2:** range of skills (including level of training or competency) required to perform duties;

**24.2.3:** level of supervision (including degree of instructions required and/or given); and

**24.2.4:** degree of responsibility.

**24.3: Positions**

A structured career path is provided for employees who are engaged in positions with a view to becoming a Driver. These roles currently in Freightliner Australia would typically include:

- Assistant Driver;
- Trainee Driver;
- Driver;
- Driver Trainer;
- Assistant Maintainer

#### **25. Career Path and Promotion**

**25.1: Progression criteria:** All employees will be encouraged and assisted to progress to the highest level personally attainable consistent with the needs of the workplace subject to the Company's operational requirements, the availability of training, and the availability of promotional opportunities.

**25.2: Progression to Higher Classifications**

**25.2.1:** Career progression shall be dependent upon an employee being deemed competent by a qualified workplace assessor; and

**25.2.3:** An employee may opt not to progress to a higher classification and shall advise the company in writing of his/her decision.

**25.3: Filling and Advertising vacancies:** Should a vacancy become available for promotion, the company undertakes to first seek expressions of interest from suitably qualified employees within the company. If the vacancy cannot be filled internally the company will advertise internally and externally concurrently and selection will be based on merit.

**26. Relocation costs**

The Company will pay relocation costs for:

- 26.1:** An employee transferring location as a result of a merit based selection promotion; or
- 26.2:** Where the company requests a change of work location for employees covered by this agreement.
- 26.3: Training, Accreditation, Performance standards not met:** In the event that an employee has not met the required standards in relation to training, accreditation or performance standards within a reasonable period, the company and the employee and their representative (if they so wish) shall meet to discuss the concerns with the employees performance if required.

**27. Higher Duties**

- 27.1:** Where an employee is required to act in a higher classification than that in which they are engaged for a period in excess of four hours, they shall receive the higher pay rate for the whole time during which the employee is acting in the higher classification.
- 27.2:** Where an employee performs higher duties than those for which they were engaged, for a continuous period of 12 months, they will be deemed to be employed at that higher classification.
- 27.3: Training:** Where the employee performs higher level duties as part of training, no additional amount shall be payable under this clause.

**PART E - REMUNERATION**

**28. Rates of Pay**

**28.1:** The ordinary rates of pay for each classification as at the date of commencement of this Agreement included at the Table in clause 28.3 of this Agreement.

**28.2:** The rates of pay in clause 28.3 will be increased in accordance with the following:

**28.2.1:** A salary increase of 4% shall be paid from the workplan period immediately following the commencement date of this agreement. The Annual salary shall be paid in accordance with the table contained in sub-clause 28.3.

**28.2.2:** From the first anniversary date of the initial increase, a further increase of 4% on the Annual Salary rate payable at that date;

**28.2.3:** On expiry of the Agreement - an increase of 2% on the Annual Salary rate at that date, unless a new enterprise agreement has been finalised. If a new agreement is agreed after this date, the salary increase paid on the expiry date shall be absorbed into the commencement salary rate of the new agreement. That is, the wage increase paid at the expiry date shall be deducted from the agreed wage increase at commencement of the new agreement.

**28.3: Table of Pay Rates:**

Classification	Annual Salary	Four Weekly Payment	Permanent Hourly Base Rate	Casual Hourly Rate
Assistant Maintainer	\$62,400.00	\$4,800.00	\$31.58	\$39.48
Assistant Driver	\$49,920.00	\$3,840.00	\$25.26	\$31.58
Trainee Driver	\$62,400.00	\$4,800.00	\$31.58	\$39.48
Driver	\$83,200.00	\$6,400.00	\$42.11	\$52.64

**28.4: Calculation of Rates of Pay**

**28.4.1:** The rates of pay in this Agreement are based on the Annual Salary described in clause 28.3 have been factored to include compensation for all weekend penalties, shift loadings and other penalties and allowances otherwise payable to employees for work covered by this Agreement. No additional payment will be made in respect of work performed by employees under this Agreement unless otherwise expressly provided in this Agreement in clause 32 (Allowances) and Clause 37 (Overtime).

**28.4.2:** The annual salary and base salary calculations based on this salary do not include overtime payments, payments for public holidays, or allowances provided for in clause 32, and other payments over the base rate of pay expressly provided for in this Agreement.

**28.5: Casual Rates of Pay**

**28.5.1:** Employees engaged as casuals have a casual loading of 25% already included in the base hourly rate for the classification, in lieu of any entitlement to paid leave, notice of termination, severance pay or other benefit of permanent employment.

**28.5.2:** The casual rate of pay shall be the Employee's ordinary rate of pay for all purposes.

#### **29. Payment of Wages**

- 29.1:** Employees will be paid four (4) weekly in arrears by EFT to an account nominated by the employee. The amount of the payment shall be calculated as the rate of the Annual Salary divided by thirteen (13), paid on a four weekly basis.
- 29.2:** Changes to scheduled payments may be made by the employer to accommodate unusual situations or circumstances. Employees will be notified of any changes to the method of payment in advance.
- 29.3:** Where the employer is unable to determine the total entitlements (ie pay inclusive of Out of Pocket Expenses) of an Employee in any pay period, adjustments to the employee's wages for the four week period may be made in the following pay period.

#### **30. Salary Packaging and Salary Sacrifice**

- 30.1:** An employee may, by separate agreement with the Company, enter into a salary sacrifice or salary packaging arrangement in accordance with the Company's policy, Australian Tax Office requirements and other relevant legislation.
- 30.2:** An employee must make such request to the company in writing.
- 30.3:** An employee entering into a salary packaging arrangement is accountable for compliance with their personal taxation obligations and will bear any costs associated with entering into the arrangement including the costs of obtaining financial advice.
- 30.4:** The Company will not be liable for any costs should the law or the views on salary sacrifice or salary packaging change in the future. The salary packaging arrangement will be on a genuine salary sacrifice basis.
- 30.5:** Any salary packaging arrangement will be cost neutral to the company. Any employee wishing to enter into a salary packaging arrangement must obtain independent financial advice from a registered financial planner and provide proof of that advice to the employer before entering into a salary packaging arrangement.
- 30.6:** Where an employee receives part of his or her salary as a non-cash benefit under the salary packaging or salary sacrifice arrangements under clause 28, the employee's base earnings shall be determined as though the salary packaging or salary sacrifice arrangements did not exist.

#### **31. Superannuation**

- 31.1:** On commencement, an employee shall be entitled to have an employer superannuation contribution made to a complying superannuation fund nominated by the employee. If the employee does not nominate a complying superannuation fund, the Company will make superannuation contributions into the 'AON Master Trust' superannuation fund.
- 31.2:** Such contribution shall be at the amount specified by the Superannuation Guarantee (Administration) Act 1992 (Cth) from time to time.
- 31.3:** Such contributions shall be based on the Annual Salary rate for each classification of employee, as specified in clause 28 of this Agreement.

## **32. Allowances**

### **32.1: Car Reimbursement costs**

- 32.1.1:** Where an employee is required to travel for work purposes using their own personal vehicle, the Company will pay an allowance based on the number of kilometres travelled. Such kilometres will not include travel between home and home station.
- 32.1.2:** In the case of a motor vehicle the cost reimbursed shall be at the rate per kilometre for their vehicle size which is specified by the Australian Taxation Office and shall include the cost of tolls.
- 32.1.2:** Alternately, the employee and Employer may enter into a mutually agreeable arrangement to provide 'compensation' for actual costs incurred in the use of their motor car.

### **32.2: Meal Expenses - Away from Home and on Temporary Transfer**

- 32.2.1: Rest Away from Home:** Employees who are required to Rest Away from Home in accordance with the provisions set down in clause 46 shall be paid \$21.00 for every 8 hours or part thereof they are away from their Home location.
- 32.2.2: Temporary transfer:** When employees are away from home in the case of temporary transfer, they shall be paid \$21.00 for every 8 hours or part thereof they are away from their home. For clarification, those employees on temporary transfer and in receipt of meal expenses for the duration shall not be entitled to further meal expenses.
- 32.2.3: CPI:** This allowance shall be adjusted in line with CPI increases each year at 1st September for the life of the agreement

### **32.3: Payment for use of employees own motor vehicle and travel to multiple sign on points**

Sign on locations are described in the Virtual Depot Procedure, and are bounded within specific areas. Multiple Sign on points apply when an employee is required to sign on at an area outside of their nominated location area.

Areas and locations are currently:

- Sydney, which includes:
  - Chullora
  - Port Botany
  - Cooks River
  - Enfield
  - Enfield Delec
  - Pymble
- Newcastle, which includes:
  - Port Waratah
  - Broadmeadow
  - Kooragang Island

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- Carrington
- Downer EDI Rail Cardiff
- Transqual Office, Wickham
- United Group Broadmeadow
- Telford Road, Newcastle
- Narrabri, which includes:
  - Narrabri
  - Narrabri West
  - Wee Waa

Locations may be varied through normal consultation processes.

- 32.3.1:** Where an employee agrees to use his/her own vehicle to travel to another sign on/sign off point, as described above, the employee shall be reimbursed for additional expense associated with any extra distance from the employee's usual residence to their usual home location.
- 32.3.2:** In the case of a motor vehicle the cost reimbursed shall be at the rate per kilometre for the vehicle size which is specified by the Australian Taxation Office and shall include the cost of tolls.
- 32.3.3:** For other travel, the additional costs which are reasonably incurred shall be reimbursed, however pre-approval is to be obtained before the use of taxis as other travel.
- 32.3.4:** Alternately, the employee and Employer may enter into a mutually agreeable arrangement to provide 'compensation' for actual costs incurred in the use of their motor car.

**PART F HOURS OF WORK**

**33. Principles**

In recognition of the particular circumstances of the Company's operations, the overriding concerns in determining hours of work shall be the needs of the Company's clients and safety of operations, including the management of fatigue for employees, and a reasonable balance of employee work and social commitments.

The rail industry is subject to extensive regulation in terms of restrictions on working hours for rail safety workers under Rail Safety and other relevant legislation. Accordingly, the parties agree that working hours for employees under this agreement are always subject to the regulatory framework that the Employer operates in.

**34. Ordinary Hours of Work**

- 34.1:** The Ordinary Hours of work for a full-time employee are one thousand, nine hundred and seventy six hours (1976) over a period of one (1) year, and:
- (a) Are based on a 38 hours per week for a full-time Employee; or
  - (b) Up to 38 hours per week for a part-time or casual Employee.
- 34.2:** Ordinary Hours will commence on the date of employment and will cease at midnight of the day prior to the anniversary date.
- 34.3:** Ordinary hours of work may be worked on any day at any time.
- 34.4:** The Ordinary Hours will generally be allocated in 13 x 28 day period Workplans.
- 34.5:** Ordinary Hours will be distributed across an Averaged Hours Cycle of sixteen (16) weeks with six hundred and eight hours (608) allocated to each Cycle.
- 34.5.1:** Where employed as a shift worker, this amount includes one hundred and ninety (190) hours of annual leave entitlement.
  - 34.5.2:** Where employed as a day worker, this amount includes one hundred and fifty two (152) hours of annual leave entitlement.
- 34.6:** The Ordinary Hours will include a number of public holidays to which the employee is entitled.
- 34.6.1:** While public holiday hours are included in the total hours outlined above, where an employee is scheduled to work on a public holiday they are required to attend for work and undertake activities as scheduled.
- 34.7: Loss of Ordinary Hours component:** Employees who have made themselves unavailable (Leave without pay or absent without leave) to perform their duties in any Workplan Cycle may be scheduled on for less than 152 hours. In such cases the employee will forfeit the Ordinary Hours component for hours not worked for that particular week in the Workplan Cycle.
- 34.8: No loss of Ordinary Hours component:** Employees who have been engaged as full-time employees who are scheduled for less than 152 hours in a Workplan Cycle as a result of their not being required to perform driving duties in that Workplan Cycle will be paid for 152 hours in the Workplan Cycle.
- 34.9: Temporary transfer:** The time taken to travel to and from a temporary transfer location is to be included as working time in the Workplan Cycle in which it is incurred.

**34.10: Multiple sign on points:** The time taken to travel to another sign on point other than those covered in Clause 31.3 is to be included as working hours in the Workplan Cycle in which it is incurred.

**35. Reasonable Additional Hours**

**35.1:** Employees may be requested to work reasonable additional hours as are necessary.

**35.2:** Employees may refuse a request to work more than 38 hours per week in circumstances where to work the requested hours if they are unreasonable, taking into account:

- (a) any risk to health and safety from working the additional hours,
- (b) the personal circumstances of the Employee, including any family responsibilities,
- (c) the needs of the workplace,
- (d) the entitlement to payment of overtime rates, the notice given by the Employer; and
- (e) the Employee's notice of intention to refuse it,
- (f) the usual patterns of work, the nature of the role; and
- (g) the averaging of hours as agreed.

**36. Establishment of an Hours Bank**

**36.1:** All hours worked must be authorised by the Employer and shall be recorded by the employee on the Daily Operating Report.

**36.2:** One hour in the bank shall be paid at the rate of one hour. For the purposes of this clause an hours pay shall equal the annual base salary, contained in clause 28.3, divided by 1976.

**36.3:** Payment of salary for ordinary hours will be assumed to be 38 hours a week and will be paid in equal instalments throughout the year, regardless of the Hours Bank balance, or the hours worked in that Workplan Cycle.

**36.4:** Employees will receive a statement of their Ordinary Hours Bank balance at the end of each Averaged Hours Cycle, and on their Anniversary Date.

**36.5:** Where an Employee has worked a number of hours equivalent to the hours contained within the Averaged Hours Cycle (608) in advance of their end of the Averaged Hours Cycle date, they may elect to:

- (a) Refuse any additional hours of work until the commencement date of the next 16 week period is reached;
- (b) Continue to work at agreed overtime rates, where each additional hour is an 'overtime hour';
- (c) A combination of both of the above.

**36.6:** Hours in the 'Hours Bank' shall be credited on the basis of the rate at which they were acquired. That is, at ordinary hourly base rate (where one hour worked equals one hour banked) or at overtime rates (where one hour worked equals 1.7 hours banked) as contained in this agreement.

**36.7:** Hours in excess of the required Averaged Hours Cycle (608) shall be taken in one of the following ways:

- (a) Payment of an amount equivalent to the additional hours payable at the end of the Averaged Hours Cycle.
- (b) Retention of the additional hours worked until the Anniversary Date; or
- (c) Exchange the additional hours accrued for use as additional Annual Leave entitlement to be taken in the next anniversary year, assuming one day equals 7.6 hours.

For clarity, where an Employee agrees to continue to work and accrue additional hours in excess of 608, payment of those additional hours will be paid as overtime.

Requests for the taking of the Annual Leave credit must be in writing and approved by the relevant Manager, and must be submitted at least eight (8) weeks in advance of the commencement of the Annual Leave.

The Employer will not reasonably withhold this approval. However, if the requested dates are not suitable, the Employer and Employee will endeavour to agree alternate mutually acceptable dates for Annual Leave. Where a request is declined, option (a) of clause 36.7 will be considered to be the default position.

- 36.8:** For clarity, any accrued additional hours that fall in the period in which the Employee's Anniversary Date falls, will be carried over for inclusion in the next Anniversary year.
- 36.9:** Annual leave limits are provided by Company policies and procedures.
- 36.10:** The maximum number of hours worked in the Averaged Hours Cycle will be limited by operational requirements, fatigue management principles and conditions of the Employers Rail Safety Accreditation.

### **37. Overtime**

In addition to the ordinary hours specified above, an employee may be required to work reasonable overtime for payment of overtime penalty rates with the exception of working on scheduled Book Off days where clause 38 applies.

**37.1:** Overtime will be paid at 1.7 times the Hourly Base Rate for the applicable classification.

**37.1.1:** All time counted as Overtime must be scheduled, required by the Employer and agreed to be worked by the employee concerned.

**37.1.2:** Excess hours over total Workplan Cycle: Where an employee is required to perform hours in excess of 608 hours in a sixteen (16) week period, all such time shall be deemed to be Overtime.

### **38. Work on a Book off day:**

- 38.1:** All Employees are able to request specific days where they wish to be "Booked Off".
- 38.2:** The Employer may ask an employee to work on a scheduled Book Off day. The Employee is NOT required to work on a Book Off day if so requested.
- 38.3:** When an Employee works on a scheduled Book Off day, they will have the option to either:
  - (a) Reschedule the Book Off day, or
  - (b) To credit their Annual Leave entitlement with a number of hours

equivalent to the hours worked multiplied by 1.7.

**38.3.1:** Where the Employee agrees to reschedule a book off day, the employee will be given the option to reschedule for a mutually convenient day within the Workplan Cycle. The re-scheduling of a book off day is subject to operational requirements.

**38.3.2:** Where the Employee does not wish to reschedule the Book Off day, or when the Book Off day cannot be rescheduled, clause 38.3(b) will apply.

#### **39. Meal Breaks**

**39.1: Meal break conditions:** Employees shall be entitled to a paid meal break of thirty minutes during each scheduled work task. Where possible the break should, to be taken between the third and fifth hours of the shift, but should fit in with the business and individual needs. All breaks are to be taken so that they do not interfere with the smooth running of trains/services.

**39.2: Meal taken en route:** Breaks may be taken on board, on passenger services or during times where the train is required to await further instruction from the Network Manager. Other breaks may be taken during periods when the train is directed into sidings by Train Control Centre, or in consultation with the Rail Infrastructure Manager. Where both drivers are fully route qualified, meals may be consumed en route by rotation of Drivers.

**39.3: Paid break built into Workplan:** All employees shall have a paid break of not less than 30 minutes built into the scheduled work task. This break to be taken at a time suitable to the business, while at the same time ensuring that employees are able to take the meal at a reasonable time.

#### **40. Lift Up / Lay Back**

**40.1: Lay Back:** The Employer may lay back Employees to a maximum of four (4) hours from the time the shift was last advised to commence (as described in clause 41.)

**40.2: Lift up:** The Employer may lift up Employees to a maximum of two (2) hours from the most recent time advised to commence (as described in clause 41).

**40.3: Maximum of 2 changes:** There is to be only a maximum of 2 changes to a shift (within lift up / lay back provisions for the sign on advice for the day), unless mutually agreed to by the individual Employees affected to more than two changes.

**40.4: Lift up/lay back period may be extended:** Should an Employee agree to a lift up/lay back outside the conditions agreed above (ie 2 or 4 hrs), the Hours Bank will be credited with an equivalent number of hours equal to the extra hours at the ordinary rate.

**40.5: Outside the above hours at the home location or when resting away from home** employees will be advised within the agreed personal call period specified by each employee for the purpose of lift up and lay back only.

**40.6:** Once called the employee will be signed on at the times associated with that call.

**40.7: Lift Up following a book off day:** An employee cannot be lifted up before 0600 following a book off day scheduled in accordance with clause 41, or 0500 hours following a book off day scheduled in accordance with clause 41, unless by mutual agreement.

**40.8: Employee Requirement:** For the purposes of clause 40.1 & 40.2, employees must take all reasonable measures to ensure they are contactable prior to the scheduled commencement of their shift. If an employee is not, or will not be contactable by the normal means utilised by the Employer (including on the phone numbers provided and updated by the employee), that employee is required to call the Employer, on a dedicated number provided, to confirm their shift start time.

#### **41. Shift Changes**

**41.1:** An employee may be advised of a shift change to a scheduled shift in the workplan by receiving a call in the appropriate advice period the day/s prior to the commencement of the shift.

#### **41.2: Notice period:**

The 28 day workplan may require changes on a daily basis. Daily workplans are to be issued within advice periods. Employees can agree to the shifting of book off days with less notice. A formal record agreeing to these amendments should be signed on each occasion.

Advice periods are dictated by the nature of the operation, and are included in the Employers Safety Management System unless otherwise advised. Advice periods may be determined for specific contracts, to meet operational requirements. Once allocated, they will be consistently applied to those operations. At the time of development advice periods are:

**41.2.1:** The "AM" advice period will be between the hours of 11.30 and 14.00 (for shifts commencing after 23.59 and prior to 11.59 the following day) and,

**41.2.2:** the "PM" advice period will be between 16.00 and 17.30 (for shifts commencing on or after 12.00 the following day).

**41.3:** All employees must be available to be contacted during advice periods. Alternate means of communication such as fax or email will be considered under individual arrangements. Text messages will be sent to all impacted Employees when workplans are amended.

**41.4:** All employees are responsible for checking their email accounts (and/or other agreed communication mechanisms) to check workplan changes for the next or subsequent days. All employees are responsible for notifying their Manager/Supervisor of any email/system outages that may impact their ability to receive notifications or any other communication, so that alternate arrangements can be made.

**41.5:** The commencement time of a shift of ordinary hours and the expected shift length shall be notified to the Employees involved prior to, during, or at the end of the last shift worked. In the event that the next shift of ordinary hours is not known by the end of the last of the last shift worked, then the Employees will be advised of their next work shift, during the advice period.

**41.6:** Where it is operationally necessary to extend a previously advised shift, the employee may be advised at any time during that shift, so long as fatigue limitations are not breached.

**41.8:** Every effort will be made to ensure that employees are contacted within the advice periods, however in times of late notice of sickness, employees may be contacted outside these periods.

#### **42. Shift Cancellations**

**42.1:** Regardless of cancellations of duty, employees will receive a payment of 152 hours every four weeks, on meeting these terms and conditions.

- 42.2:** Where an employee is scheduled as on duty, and the employee is notified during the Advice Period of the cancellation, and no alternate work can be found, then the shift can be included as an additional shift in the same workplan to meet operational requirements.
- 42.3:** Where the shift cannot be included in the current workplan, the amount of hours equivalent to the ordinary hours component of the original work schedule will be carried over for use in subsequent workplans subject to fatigue and legislative requirements.
- 42.4:** If no alternate work is available and a shift is cancelled outside the advice periods, and with less than 3 hours before the commencement of a shift, then 50% of the shift length will be deducted from the Ordinary Hours Bank.
- 42.5:** Where an employee is shown on duty, and the shift is cancelled part way through that turn of duty, the Ordinary Hours bank will be deducted by the full number of hours originally scheduled.
- 42.6:** Regardless of when a shift is cancelled, normal rest breaks will apply between shifts in accordance with Fatigue Management requirements.

### **43. Shift Limits**

Shift limits are prescribed in Rail Safety Legislation in the State or Territory in which the Employee works. The Employer will schedule work tasks in accordance with this legislation and any conditions in its Notice of Rail Safety Accreditation.

#### **43.1: Shift Limits for Types of Working**

- Driver/Driver: Maximum 12 hour shift
- Driver/Driver Assistant: Maximum 11 hour shift.
- Driver Only: Maximum 9 hour shift, minimum rest of 8 hrs away from home and 11 hours at home.
- Driver Only: 30 minutes break between 3<sup>rd</sup> and 5<sup>th</sup> hour of each shift

**43.2:** Inclusions in shift limit: The time taken to travel from sign on points is included in the scheduled work task.

#### **43.3: Minimum Shift Provisions**

- 43.3.1:** Permanent Full-Time Employees will be paid a minimum of 4 hours if the scheduled shift length is less than 4 hours.
- 43.3.2:** Part-time and casual employees minimum engagements are as per the terms of their employment agreement.
- 43.3.3:** The minimum length of a shift for payment to attend required health assessments (is to be 8 hours which includes 4 hours for attending a pathology appointment. Although shown on the Workplan on the day of assessment.

**43.4: Rest Periods:** The following minimum intervals between shifts shall apply:

**43.4.1:** Returning home: 11 continuous hours rest between each shift.

**43.4.2:** Staying away from home: 8 continuous hours rest between each shift.

**43.5: Maximum shifts in a 14 day period:**

**43.5.1:** A maximum number of 6 x 12 hour shifts are to be worked in any 14-day period, where a shift that exceeds 11 hours but is less than 12 hours is taken to be a 12 hour shift.

**43.5.2:** A maximum number of 12 hour shifts is to be worked in a 14 day period.

**44. Workplans**

**44.1: Workplan Principles**

Employee work schedules will be determined by the relevant Manager, based on customer requirement forecasts and other relevant data.

**44.2:** Workplans will be issued for a 28 day (4 weeks) period commencing Sunday at 00:01 and ending on Saturday 28 days later at 23:59. The first 14 days of the workplan will indicate times and tasks; while the second 14 day period may show only tasks.

**44.3:** The 28 day workplan will form the basis of the four-weekly pay period cycle. For clarity, work plan 1 covers the same dates as Accounting Period 1.

**44.4:** All workplans will use the 24 hour clock, and will be available to the relevant Employee no later than close of business on the Thursday preceding the date of commencement.

**44.5:** All workplans will show:

- (a) Scheduled work tasks
- (b) Book Off Days
- (c) Blank Days

**44.6: Workplan preparation**

**44.6.1:** Hours of duty will be placed in the work plan to cover a range of known commitments over the forthcoming 14 day period, showing days, dates, tasks and times. The second 14-day period may indicate days, dates and tasks, but not times.

**44.6.2:** Employees will be placed in the work plan to cover customer requirements and legislative requirements for mandatory days off, and other days where they have requested specific days off. Other days are then shown on the workplan as blank days. All rail safety workers must be available to work on blank workplan days.

**44.6.3:** All workplans must conform to these requirements, except in the case of an emergency, an accident or an unavoidable necessity. In all of these cases, any extensions to scheduled work tasks are subject to compliance with the prevailing Rail Safety legislation.

**44.7: Booking on/off**

Freightliner Australia currently has no physical depots but operates 'virtual' depots. All workplan based employees are required to book on and off remotely. See the Virtual Depots procedure.

- 44.7.1:** As part of the 'booking on' procedure, all Employees will be required to report any drug, alcohol or fatigue related issue to their supervisor/manager immediately. Any other issues that may impact the operation should also be reported to the supervisor/manager immediately they are known.

#### **45. Book-Off Days**

Workplan employees may request specific Book-Off days.

- 45.1:** In any one four (4) weekly Workplan period there is to be at least eight (8) duty free days of which two (2) are to be consecutive in each fortnight.
- 45.2:** All single free days on which employees are not required to work, must be one of these two options, depending on the workplan;
- (a) A minimum of 36 hours in duration from sign off of one shift to sign on of the next, OR
  - (b) A minimum of 30 hours in duration from midnight on one day to 06:00 on the next.
- 45.3:** Book off days carry 30 hours from the time an employee signs off from the previous turn of duty. Employees may request that their book off day commences at midnight when completing the Book Off Request Form. The Employer agrees to facilitate this wherever operationally possible.
- 45.4:** Multiple book-off days will be determined by a multiple of 36 hours for the first day and twenty-four for each additional day from the sign off time.
- 45.5:** Book Off days are not to be infringed by either lift up or lay back. Operational requirements will dictate placement of consecutive Book Off Days.
- 45.6:** All workplan employees must be available during the advice periods on the second book off day each fortnight, and on the last day of annual leave.
- 45.7:** Employees, who have not had a request approved for a particular book off day, may be scheduled for work on that day.
- 45.8:** Where a book off day is cancelled, the employee will be given the option to reschedule for a mutually convenient day within the Workplan Cycle. The scheduling of a cancelled book off day is subject to operational requirements. Where a cancelled book off day is rescheduled, no penalties will be payable to the employee.

#### **46. Resting Away from Home**

##### **46.1: Provision of Accommodation**

Where employees covered by this agreement are scheduled to rest at a site away from their home area, the site accommodation will be provided for by the Employer and will be equivalent to three star accommodation where available, and where this standard is unavailable the accommodation provided will be the nearest possible to this standard and agreed to by the parties.

- 46.2:** Workplans for Train Crew with shifts involving rest away from the initial sign on location will incorporate a scheduled return that optimises crew utilisation and considers Employee dwell time at barracks.
- 46.3:** Employees are to only be rested away/booked off away from home once (1) before returning back to their home, unless otherwise agreed.

**46.4: Payment for resting in excess of 12 hours:**

**46.4.1:** Where a rest period away from home extends by more than 12 hours, an additional credit equal to excess hours will be made to the Averaged Hours Cycle. Extended rest periods do not apply where rest is taken at home.

**46.4.2:** From the commencement of the 13th hour, and for each complete hour until the commencement of the next shift, an additional hour will be credited to the Averaged Hours Cycle, ie a extended rest period away from home of 15 hours between sign off and sign on times will result in a credit to the Averaged Hours Cycle by an additional 3 hours.

## **PART G - LEAVE**

### **47. Annual Leave Conditions**

#### **47.1: Entitlement**

- 47.1.1:** Full time employees shall be entitled to 5 weeks annual leave per year.
- 47.1.2:** To avoid doubt, this means a full time employee (other than a casual employee) who is covered by this agreement shall be entitled to be absent from work on paid leave for a period of 5 calendar weeks, whether taken consecutively or not.
- 47.1.3:** Pro rata entitlement: Employees engaged on a part time, fixed term or temporary basis (but not a casual basis) shall be entitled to accrue annual leave on a pro rata basis provided they are engaged for at least four consecutive weeks in any one year.

#### **47.2: Conditions for accrual and taking annual leave**

The taking of annual leave shall be subject to the following:

##### **47.2.1: Approval to take annual leave**

- (a) All such leave, whether current entitlement or accrued, shall be taken at a mutually convenient time.
- (b) In the absence of agreement on the taking of leave, it shall be taken at a time determined by the Company. In such a case, at least one month's notice must be given.

##### **47.2.2: Accrual**

- (a) Annual leave shall accrue from each 4 week period to the next, aligned with the Employers Accounting Periods. Annual leave or any portion accrued may be granted to an employee by the Company at such time as approved by the Company.
- (b) Annual leave shall accrue to employees in respect of any authorised period of paid absence from duty.
- (c) Annual Leave cannot be accrued in excess of eight (8) weeks unless agreed between the employee and the Company.

#### **47.3: Annual Leave exclusive of other leave**

- 47.3.1:** Where an employee takes a period of annual leave, any other leave entitlement, such as public holidays, personal leave, compassionate leave, long service leave or jury duty, that falls due in that period, will not be treated as annual leave.
- 47.3.2:** This means an employee is not taken to be on annual leave when on any other paid leave type as listed previously and any annual leave taken for that period should be re-credited.

#### **47.4: Annual Leave Payment**

- 47.4.1:** An Employee may elect to cash out up to two weeks of the accrued annual leave entitlement each year. Election to cash out annual leave may only be made by notice in writing to the Employer and must be authorised by the Employer.

- 47.4.2:** Payment in lieu of annual leave will be made at a rate that is no less than the Employee's ordinary rate of pay at the time the election is made.
- 47.4.3: Termination:** On termination of employment, any unused annual leave shall be paid to the employee.
- 47.4.4:** Any annual leave taken in excess of the annual leave entitlement will be repaid by the employee on termination of employment or deducted from any termination payments.
- 47.4.5:** Employees who have exhausted their annual leave entitlements at the time of a closure of the Employer's business may be stood down without pay for the period of the closure.
- 47.4.6: Annual Leave Rate of Pay**
- (a) All paid leave provided for in Part G of this Agreement shall be inclusive of the components of the Annual Salary for the employee classification at the time the leave is taken.
  - (b) Employees will not be paid an annual leave loading. This has been incorporated into the Annual Salary detailed in Schedule A.

#### **48. Personal & Carer's Leave**

**48.1:** Permanent employees are entitled to paid Personal Leave as a condition of their employment under this agreement. Personal Leave, for this agreement is divided into Personal Leave and Carer's Leave.

#### **48.2: Paid Personal Leave Entitlement**

Subject to the provisions contained in clause 48.3, all permanent employees engaged under this agreement are entitled to a maximum of twelve weeks (12 weeks) Personal Leave at full salary and twelve weeks (12 weeks) at half salary in any 12 month period.

Personal Leave does not accumulate from year to year.

#### **48.3: Limits on Paid Personal Leave**

- 48.3.1:** An employee will only be paid Personal Leave where they notify the Employer of their absence no later than 3 hours before the commencement of their scheduled duty on the day of their absence. Such notification must include the likely duration of any such absence.
- 48.3.2:** Where an employee has taken more than 10 days Personal Leave in a 12 month period, or the Employer believes that the employee will be unable to return to work, or to carry out the function of their role, the Employer may refer the employee to their nominated return to Work Provider so as to determine whether or not the employee is capable of returning to work.
- 48.3.3:** In the event that the return to work provider concludes that the employee has no reasonable prospect of returning to work, the Employer and the employee concerned will discuss whether a medical retirement is appropriate.
- 48.3.4:** All absences must be supported by evidence (medical certificate or statement by other health care practitioner, statutory declaration, or other supporting documentation) satisfactory to the Employer.

**48.3.5:** An Employee is not entitled to Personal Leave for any period in respect of which workers' compensation benefits are paid or payable to the Employee.

**48.3.6:** Any misuse of the paid Personal Leave provisions will be subject to investigation and possible disciplinary action, which may result in the summary termination of the employee.

**48.4: Paid Carer's Leave Entitlement**

**48.4.1:** An employee is entitled to paid Carer's Leave where they are required to care for a member of the Employee's immediate family or household who needs their care and support because of an illness, injury or unexpected emergency.

**48.4.2:** An employee is entitled to use up to 10 days per year of Personal Leave as Paid Carer's leave.

**48.4.3:** Such leave shall accrue four (4) weeks and be taken in accordance with the provisions of the Act, and subject to the notification provisions as if the Carer's Leave was Personal Leave.

**48.4.4:** Any remaining Paid Carer's Leave will accumulate from year to year, For clarification, and assuming Paid Carer's leave is not accessed, the following Personal Leave/Carer's Leave entitlements will apply:

**Year 1 of employment:**

Up to twelve weeks (12 weeks) Personal Leave at full salary and twelve weeks (12 weeks) at half salary of which 10 days can be used as Paid Carer's Leave.

**Year 2 of employment:**

Up to twelve weeks (12 weeks) Personal Leave at full salary and twelve weeks (12 weeks) at half salary of which 20 days can be used as Paid Carer's Leave.

**48.4.4:** Employees who have exhausted their paid Carer's Leave entitlement may be granted unpaid Carer's Leave of up to 2 days to care for a member of their immediate family or household who needs their care and support because of an illness, injury or unexpected emergency. This clause also applies to casual employees subject to compliance with the notice requirements of the Act.

**48.5. Unpaid Carers Leave**

**48.5.1:** The entitlement to Unpaid Carer's Leave will be in accordance with the Act.

**48.5.2:** An employee is entitled to a period of up to two (2) days unpaid Carer's Leave for each occasion when a member of the employee's immediate family, or a member of the employee's household, requires care or support during such a period because of:

(a) A personal illness, or injury, of the member; or

(b) An unexpected emergency affecting the member.

**48.5.3:** Unpaid Carer's Leave is only available when an Employee has exhausted their entitlement to paid Carer's Leave or has no entitlement to paid carer's leave.

**48.5.4:** Notice of the taking of unpaid Carer's Leave is expected to be given to the company prior to the commencement of the employee's shift, but where this is not possible, as early as is reasonably practicable to do so.

**48.5.5:** If the care or support required is because of a personal illness, or injury, a medical certificate from a registered health practitioner will be provided by the Employee where it is reasonably practicable to do so otherwise a statutory declaration shall be adequate which includes a statement to the effect that the employee requires (or required) leave during the period to provide care or support to the member of their household because the member requires (or required) care or support during the period because of:

- (a) A personal illness, or injury of the member; or
- (b) An unexpected emergency affecting the member.

#### **49. Compassionate Leave**

**49.1:** Permanent employees are entitled to paid compassionate leave on the basis of 2 days per occasion, as follows:

**49.1.1:** following the death of a member of the Employee's immediate family; or

**49.1.2:** where a member of the Employee's immediate family or household contracts, develops or sustains an injury or illness posing a serious threat to their life.

**49.2:** The Employee may be required by the Employer to provide evidence verifying the reason for the absence, such as a death notice or a medical certificate relating to an illness of a family or household member.

#### **50. Long Service Leave**

**50.1:** Subject to this clause, long service leave entitlements will be as provided in the *Long Service Leave Act 1955 (NSW)*.

**50.1.1:** Employees will be entitled to four hundred and fifty-six (456) hours, equivalent to twelve (12) weeks of paid long service leave, following a period of ten (10) years continuous employment

**50.1.2:** Subject to clause below, for each year of additional service above ten years, long service leave will accrue at the rate of 0.866 weeks of leave per year of service thereafter.

**50.2:** To the extent that the *Long Service Leave Act 1955* confers a right or remedy in relation to the termination of employment of an Employee for a reason that is harsh, unjust or unreasonable, that right or remedy is expressly excluded from operation under this Agreement.

**50.3:** **Applying for Long Service Leave:** Employees will apply for long service leave and the Employer will schedule the approved long service leave on the basis of the number of calendar days to be taken.

**50.3.1:** Applications to take long service leave must be made at least one (1) months prior to the expected commencement date for approval by the relevant manager. The employee will be advised at least two (2) weeks prior to the applied commencement date. Subject to mutual agreement between an employee and their manager, this period of notice may be reduced.

- 50.3.2:** The Company will not unreasonably withhold approval of long service leave. Where more than one application to take long service leave is received at a location for the same time period, consideration and approval will be treated on a "first in first served" basis, where operational difficulties do not provide for all employees to take leave at the same time.
- 50.3.3:** The company can roster Long Service Leave following consultation with the employee and/or their representative a minimum of 4 weeks prior to the commencement of the requirement to take the Leave.

## **51. Parental Leave**

- 51.1:** The Parental Leave provisions contained in the Act will apply to all Employees, including eligible casual employees. A summary of the entitlements of the Act in relation to parental leave is as follows:
- 51.1.1:** After 12 months continuous service, employees, including eligible casual Employees, are entitled to up to 52 consecutive weeks unpaid Parental Leave in respect of the birth or adoption of a child.
- 51.2:** An Employee must commence maternity leave no later than 6 weeks immediately prior to the expected date of birth of the child and must remain on maternity leave for a minimum period of 6 weeks following the birth of the child.
- 51.3:** Subject to clause 51.3 an Employee is entitled on his or her return to work to the position which he or she held immediately before commencing Parental Leave.
- 51.3:** Where an Employee's position no longer exists but there are other vacant positions for which the Employee is qualified and is capable of performing, the Employee is entitled to a vacant position as nearly comparable in status and pay to that of his or her former position. Such position may not be in the same location but should, if possible be in a location such that the employee does not need to move his or her domicile.

## **52. Public Holidays**

- 52.1:** Employees will be entitled to public holidays without loss of pay on New Years Day, Good Friday, Easter Monday, Easter Saturday, Christmas Day, Boxing Day, Australia Day, Anzac Day, Queen's Birthday, Labour Day and any other public holidays applicable to the State or Territory, as declared, prescribed or gazetted by the State or Territory in which the employee is employed.
- 52.2:** Due to the nature of the work performed by Freightliner Australia, being a business that operates 24 hours per day, 365 days per year, employees can be required to work on public holidays in accordance with their respective roster.
- 52.3:** Employees may be requested to work on public holidays and may only refuse such request on reasonable grounds giving consideration for the factors provided in clause 34 on Reasonable Additional Hours.
- 52.4:** The day for taking public holidays may not be substituted. The public holiday will be the actual day on which it falls. For example if Christmas Day falls on a Sunday, then Sunday will be the public holiday.
- 52.5:** An Employee is entitled to be paid for a public holiday where he or she actually works on the day. Payment for public holidays will be at the ordinary rate of pay.

- 52.6:** Where an Employee is rostered to work on a public holiday and actually works, they shall receive a credit equal to the number of hours actually worked to the Averaged Hours Cycle. In addition, an additional credit will be made to their Annual Leave entitlement of an equal number of hours worked on the public holiday multiplied by 1.5.
- 52.7:** Where an Employee is asked to work on a scheduled Book Off day which is a Public Holiday, and they do so, a number of hours equal to the hours worked will be credited to the Employee's Averaged Hours Cycle. In addition, a number of hours equal to number of hours worked multiplied by 1.7 will be credited to the Employee's Annual Leave entitlement.
- 52.8: Book Off on a Public Holiday:** Where a public holiday falls on a Book Off, the Employee shall receive a credit of 7.6 hours to the Averaged Hours Cycle.
- 52.9:** Where a public holiday falls during a period of annual leave and/or Long Service Leave, this will be taken into account when calculating the remaining annual leave entitlement.

### **53. Trauma Leave**

The Employer acknowledges that the Employee could be directly involved in a fatal or serious accident or event defined as a "critical incident". The Employee will be able to access Personal Leave for any incidence of 'trauma' resulting from an incident of this type. A minimum of two (2) days personal leave must be taken in an event of this type. Normal medical certification will apply in these cases.

Employee Assistance Programs and counselling will be available to the Employee during this time.

### **54. Special Leave**

- 54.1:** Special leave is unpaid leave which enables employees to participate in eligible community service activities, deal with public emergencies or be involved in other special situation as defined in the Act, not covered by other forms of leave provided.
- 54.2:** An employee who engages in an eligible community service activity is entitled to be absent from his or her employment for a period if the period consists of:
- (a) one or more of the following:
    - i. time when the employee engages in the activity;
    - ii. reasonable travelling time associated with the activity;
    - iii. reasonable rest time immediately following the activity; and
  - (b) unless the activity is jury service – the employee's absence is reasonable in all the circumstances.
- 54.3:** The Company will provide unpaid leave for defence force reservists in accordance with the requirements set out in the Defence Reserve Service (Protection) Act 2001.
- 54.4:** Special leave will be paid at the Annual Salary Base Rate.

**55. Jury Service**

- 55.1:** If an employee is required to attend for jury service during ordinary hours, the employee will be reimbursed an amount equal to the difference between the amount paid for the jury service and the amount of wages that would have been received for ordinary hours that would otherwise have been worked.
- 55.2:** The employee will notify the Employer as soon as possible of the date upon which attendance is required for jury service. The employee will provide proof of attendance, the duration of the attendance and the amount of payment received in respect of the jury service.

**56. Unpaid Leave**

The Employer may approve a period of unpaid leave for an Employee for any reason. Decisions under this clause are entirely at the discretion of the Employer and not subject to review.

**PART H - WORKPLACE RELATIONS**

**57. Workplace Consultation**

**57.1: Principle of Consultation**

The company, its employees and their nominated representatives understand the value of regular and constructive communication to ensure and improve the overall operation and development of the company and work environment of the employees.

To ensure this regular communication, and to minimise conflict in the workplace, the parties agree to establish and maintain regular formal consultative mechanisms to plan, communicate and address a range of workplace issues. Details of these mechanisms are included in the Consultation Program of the Employer's Integrated Management System,

**57.2: Consultation Process**

**57.2.1:** Documents outlining consultation and communication processes are included in the Safety Management System, including roles and responsibilities of the Employer, Management, Employees and elected Safety Representatives.

**57.2.2:** All employees receive induction training on commencement of employment which includes instruction and assessment of the Integrated Management System.

**57.2.3:** The Employer and Employees have agreed to consultation processes consistent with legislation in the State or Territory in which the Employees are employed.

**57.2.4:** The Safety Representative will participate in a joint management/employee consultative group, (Safety Team) with the aim of identifying and resolving health and safety issues, as well as working towards improved standards in health and safety and continuous improvement within the Integrated Management System.

**57.2.5:** The Safety Team will meet within prescribed timeframes at a minimum.

**57.2.6:** All Safety Meeting Agenda's & Meeting Notes are posted on the Employers secure intranet site, and is also emailed directly to all Workgroup Employees.

**58. Introduction of Significant Effects**

**58.1: Company's duty to notify**

**58.1.1: Definite decision for change made by the Employer:** Where the Employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology to its enterprise, and the change is likely to have 'significant effects' on employees, the Employer shall notify the relevant employees who may be affected by the proposed changes and/or their nominated representatives.

**58.1.2:** 'Significant Effects' include:

- (a) termination of employment; or
- (b) major changes in the composition operation or size of the Company's workforce or in the skills required of employees; or
- (c) the elimination or diminishment 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

in this term "relevant Employees" means the employees who may be affected by the major change.

**58.2:** Company's duty to discuss change

**58.2.1:** The employer must notify the relevant employees of the decision to introduce the major change.

The "relevant" employees may appoint a representative for the purposes of the procedures in this term.

**58.2.2:** If a "relevant" employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

**58.2.3:** The employee or employees advise the employer of the identity of the representative;

**58.2.4:** The employer must recognise the representative.

Where changes are proposed to be introduced as set out in Clause 58.1, the company shall discuss with the affected employees and their nominated representatives if requested by the employees, the effects;

- (a) the changes are likely to have on employees,
- (b) measures to avert or mitigate the adverse effects of such changes on employees; and,
- (c) shall give prompt consideration to matters raised by the employees and/or their nominated representatives in relation to the changes.

**58.2.3:** The discussions shall commence as early as practicable after a definite decision has been made by the Company to make the changes referred to in clause 58.1.2.

**58.2.4:** For the purposes of such discussion, the company shall provide in writing to the employees and/or their nominated representatives, all relevant information about the changes including:

- (a) the nature of the changes proposed;
- (b) the expected effects of the changes on employees; and
- (c) any other matters likely to affect employees.

Provided that the company shall not be required to disclose confidential information, of which the disclosure would be contrary to the company's interests.

**58.3: Implementation of Change**

- 58.3.1:** Consultation timeframe: This consultative process must be completed within a period of 14 days (or longer period as agreed) from the date of notification by the company as set out in clause 58.1 above, subject to the provisions of 58.2 being complied with. Failure to comply with the provisions of 58.2 will delay and or extend the 14 day period accordingly.
- 58.3.2:** It is agreed between the Parties that after the above notification and consultation process has satisfactorily taken place, the company may implement change after a further fourteen (14) days.
- 58.3.3:** Failure to consult: Where the company has failed to engage in any consultation process set out in this clause, the affected employees, or their representatives or their Union, may issue the company, within 7 days of the non compliance, with a notice of dispute, in writing, setting out the reasons for the dispute. Upon receiving such notice of dispute the company will not implement the change and or cease the change should it have been already implemented.
- 58.3.4:** Notwithstanding the above, where a dispute arises relating to the consultation process and the proposed change the Dispute Settlement provisions in clause 59 shall be followed.
- 58.3.5:** Right to proceed to arbitration: Either party shall have the right to have FWA arbitrate a dispute arising under this clause in circumstance where a party has failed to follow the notification and or the consultation process outlined in this clause.
- 58.3.6:** The employees with their representatives shall have a further right to have the dispute arbitrated where the company has introduced without complying with these provisions.

**59. Dispute Settling Procedure**

Where a dispute arises in relation to the application or interpretation of terms and conditions of this agreement, the following dispute settlement process shall be followed:

- 59.1:** All parties and their representatives shall participate in the dispute settlement process in good faith and in accordance with the steps described in clause 59.6.
- 59.2: Representation:** Any party may appoint, in writing, another person (which may include the union) to act on their behalf at any stage of the disputes process including in relation to the mediation process.
- 59.3: Cooling off period:** The commitment by the parties to this process represents a joint recognition that the dispute avoidance and settlement procedure is a key feature of this Agreement. After each of the steps in Clause 59.6 is completed there is a 48 hour (excluding week-ends and public holidays) cooling off period between each step.
- 59.4: Agree to vary:** Any of the steps in the process may be removed where both parties agree. Likewise, the parties may agree to extend the timeframes within which each of the steps is to be completed.

**59.5: No action to commence during dispute process:** A party to the dispute shall not commence an action to obtain a penalty under the Act, or to obtain damages for breach of this Agreement, or to enforce a provision of this Agreement or the Act unless:

- (a) the party initiating the action has genuinely attempted to resolve the dispute by following the steps in clause 59.6, and
- (b) the completion of these steps has failed to resolve the dispute, or
- (c) another party to the dispute has not complied with this clause.

**59.6: Steps for Dispute Resolution**

**Step 1:** Where an employee or their representative wish to lodge a dispute it must be done so in writing in the form as set out in Appendix A of this Agreement. Where the person or their representative who lodges the dispute / grievance elects to commence the dispute settling process with this step, the parties will attempt to resolve the matter in the first instance at the workplace level, by affected employee(s) discussing the matter at a meeting with their supervisor.

The supervisor will consider the issues raised and will respond to the employee who lodged the notice within 24 hours. This response may be verbal or in writing, if so requested.

**Step 2:** if the matter is not resolved at such a meeting, or affected employees are not satisfied with the response from the supervisor the parties will arrange further discussions at a more senior level of management; between the Company's representative and the representative of the employee(s). Each representative shall take all reasonable steps to resolve the dispute.

**Step 3:** the parties may agree for the matter to be mediated by an approved private provider if the matter cannot be resolved at the workplace or more senior management level.

Where mediation occurs, the Employer will pay the costs of any mediator that is appointed but will not pay the costs of any person appointed by the Employee to represent him or her in the mediation process.

Where: mediation fails to resolve the dispute; the dispute may be referred by either party to Fair Work Australia.

**Step 4:** If the dispute remains unresolved after the procedures and pre-ceding steps 1 -3 specified in this clause have been concluded, the matter shall be referred to Fair Work Australia for resolution.

**59.7: Normal operations to continue:** while the above procedures are being followed, all work shall continue as normal prior to the dispute occurring.

**59.8: Normal work not to continue:** Normal operations will not continue where a genuine and serious safety concern makes it unsafe to continue normal operations and is the issue in dispute.

**59.9: Follow lawful directions:** Subject to relevant provisions of any State law concerning occupational health and safety unless an Employee has a reasonable concern about an imminent risk to their health or safety, the Employee must not unreasonably fail to comply with a lawful direction of the Employer to perform other available work, whether at the same workplace or another workplace, that is safe and appropriate for the Employee to perform.

**59.10: Settlement of dispute not affected if normal work continues:** The ultimate terms of the settlement of the dispute shall not be affected in any way, nor shall the rights of any person involved in the dispute be affected by or prejudiced by the fact that normal work has continued without interruption.

#### **60. Workplace Representatives**

- 60.1:** The Employer recognises that a union covered by this agreement may have workplace representatives in the workplace.
- 60.2:** It is further recognised that workplace representatives represent employees at the workplace and will be allowed reasonable time to attend to any work related matters, on behalf of employees but must advise their supervisor prior to attending to any such matters.
- 60.3:** The Employer will allow workplace representatives reasonable access to telephone, facsimile, photocopying and email services, where available and provided, for the purpose of carrying out their role. The use of resources by a workplace representative will be subject to the representative complying with the prevailing company policy provisions (which shall not impose unreasonable restriction on the operation of this sub clause) and the specific directions of the workplace supervisor or manager.
- 60.4:** Workplace representatives will be entitled to reasonable unpaid time off to attend meetings, congresses and conferences, including those that may be arranged by a union covered by this agreement subject to operational constraints. Workplace representatives seeking such leave are required to give two (2) weeks notice and Freightliner will not unreasonably refuse to approve such leave.

#### **61. Workplace Relations Training**

Workplace relations training is specifically targeted at maintaining harmonious workplace relations between the company and its employees.

- 61.1:** It is recognised by the company that where appropriate, unions covered by this agreement will identify appropriate training course content and ensure that all training of this type is delivered by appropriately qualified trainers to appropriate workplace representatives. Unions covered by this agreement will fund all costs associated with the development and delivery of that specific workplace relations training programs.
- 61.2:** Subject to operational requirements, the Employer will grant unpaid leave for:
- (a) a maximum of up to 3 days per workplace representative each calendar year to attend training under this arrangement;
  - (b) No more than 3 employees will be considered for this leave.

**Appendix A: - Notification of Dispute or Grievance Form**

**To:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
(Insert Name of Manager / Supervisor to whom the notice is given)

I hereby give notice that I wish to invoke the Dispute Settlement Procedures in clause 59 of the Freightliner Australia Pty Ltd Enterprise Agreement 2010. The details of the Dispute or Grievance are as follows:

The decision I wish to dispute is:

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The person who made the decision is:

The date the decision was made is: \_\_\_\_\_  
(if Known):

The reasons I wish to dispute the decision are:

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**Name:**

**Position:**

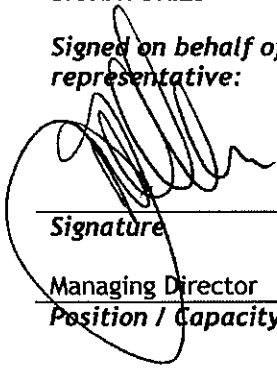
**Signature:**


**Date:**

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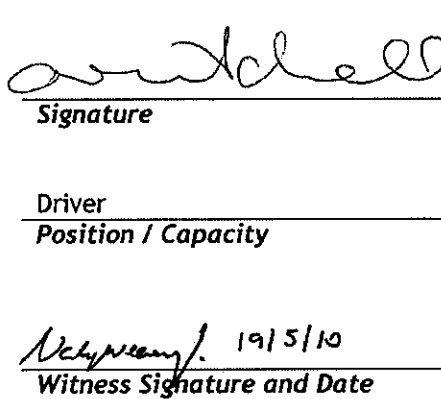

**SIGNATORIES**

Signed on behalf of Freightliner Australia Pty Ltd ACN 122 522 123, by its authorised representative:

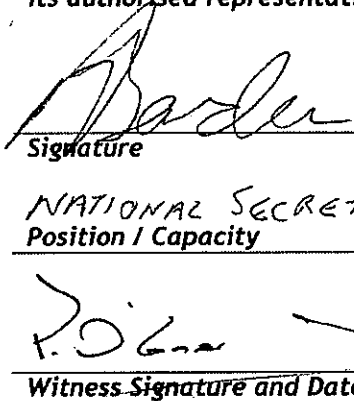
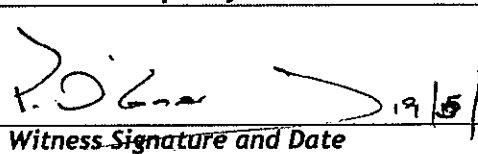
	John McArthur 20 Bridge Street, Pymble NSW 2073
Signature	Name and Address
Managing Director	19 May 2010
Position / Capacity	Date

 19/5/10	CATHERINE SCOTT 20 BRIDGE STREET PYMBLE NSW 2073
Witness Signature and Date	Name and Address

Signed on behalf of the employees of Freightliner Australia Pty Ltd:

	Anthony Mitchell 9 Spinifex Avenue, Tea Gardens NSW 2324
Signature	Name and Address
Driver	19 May 2010
Position / Capacity	Date
 19/5/10	NALIN WEERAKOON 20 BRIDGE STREET PYMBLE NSW 2073
Witness Signature and Date	Name and Address

Signed on behalf of the Australian Rail, Tram and Bus Industry Union of Australia by its authorised representative:

	ALLAN BARDEN 83-89 RENWICK ST. REDFERN N.S.W 2016
Signature	Name and Address
NATIONAL SECRETARY	Date 19-10-2010
Position / Capacity	Date
 19/5/2010	PETER O'CONNOR LEJ 4, 321 PITT ST SYDNEY 2000
Witness Signature and Date	Name and Address