



DECISION

Fair Work Act 2009

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

Freightliner Australia Coal Haulage Pty Ltd

(AG2015/169)

FREIGHTLINER AUSTRALIA COAL HAULAGE PTY LTD ENTERPRISE AGREEMENT 2015

Rail industry

COMMISSIONER CARGILL

SYDNEY, 6 FEBRUARY 2015

Application for approval of the Freightliner Australia Coal Haulage Pty Ltd Enterprise Agreement 2015.

[1] An application has been made for approval of an enterprise agreement known as the *Freightliner Australia Coal Haulage Pty Ltd Enterprise Agreement 2015* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act) by Freightliner Australia Coal Haulage Pty Ltd. The agreement is a single-enterprise agreement.

[2] I am satisfied that each of the requirements of ss186, 187 and 188 as are relevant to this application for approval have been met.

[3] The Australian Rail, Tram and Bus Industry Union has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[4] The Agreement is approved and, in accordance with s.54, will operate from 13 February 2015. The nominal expiry date is four (4) years from the date of approval.


COMMISSIONER


**FREIGHTLINER AUSTRALIA COAL
HAULAGE PTY LTD**

ENTERPRISE AGREEMENT 2015

9th January 2015

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PART A - AGREEMENT FORMALITIES

1. Title

This agreement will be referred to as the Freightliner Australia Coal Haulage Pty Ltd Enterprise Agreement 2015.

2. Parties to the Agreement

The Parties to this Agreement are;

- 2.1: Freightliner Australia Coal Haulage Pty Ltd ("the Company") ACN 137 483 713; and
- 2.2. Employees of the Company who are employed in one of the classifications contained in this Agreement; and
- 2.2: The Australian Rail, Tram and Bus Industry Union (RTBU or the Union) assuming it elects to be covered by the Agreement pursuant to s.183 of the Act.

3. Application, Duration and Operation

- 3.1: 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).

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 of the NES.
- 3.4: This agreement will come in to operation 7 days after it is approved by Fair Work Australia and will expire 4 years after this operative date.
- 3.5: The Employer and the Union (if covered by the Agreement) agree to commence discussions no later than 3 months prior to the expiry date of this Agreement;

4. 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.

5. Definitions

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

Act	<i>The Fair Work Act 2009</i> as amended.
Annual Remuneration	Base rate remuneration for annual cycle hours worked. Incorporates an aggregate amount for shift penalties, week-end work, leave loadings, and continuous improvement etc
AQF	Australian Qualifications Framework
Available Day	Where a turn of work may be allocated to a RSW, providing that advice meets the conditions of clause 37.
Book Off Day	A rostered day off that commences at 00:00 for a duration of 30 hours ending at 06:00 hours the following day. Any subsequent Book Off Day will have a duration of 24 hours.

Casual	An Employee engaged and paid as such.
Confidential Information	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.
CPI:	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
Day	For the purposes of paid leave, a day means 7.6 hours
DIL Day	Day off In Lieu
EFT:	Electronic Funds Transfer
Emergency	An emergency arising out of an actual or imminent event, such as fire, flood, storm, earthquake or explosion that endangers, or may endanger, the safety of persons; or destroys or damages, or may destroy or damage, property.
Employee:	An Employee engaged under the terms of this Agreement.
Employer or Company:	Freightliner Australia Coal Haulage Pty Ltd ACN 137 483 713
FWC:	Fair Work Commission
Immediate Family:	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.
Home Location:	Designated sign on / off location for scheduling purposes.
Hourly Rate:	Annual Remuneration divided by 1976 hours worked in a period of one year. The rate is detailed in clause 25.
Hours Cycle:	The mechanism by which hours worked are compared to the Ordinary Hours.
Hours Worked:	Actual time worked.
Lift up/Lay back:	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 roster.
Mandatory Day Off (MDO):	A Mandatory Day Off must occur after 12 consecutive shifts in a rolling 14 day period.
NES:	National Employment Standards
Ordinary Hours:	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.

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Overtime:	Any hours additional to the Ordinary Hours ie any hours in excess of 152 worked over the nominated four (4) week period.
Permanent Employee	An Employee not engaged as a casual Employee or a fixed term Employee.
Rail Safety Worker:	Any Employee who performs rail safety work as defined in the relevant Rail Safety Law.
Recognition of Prior Learning (RPL):	RPL provides for the recognition of an individual's qualification, knowledge, skills, relevant prior learning, and experience, wherever it was gained.
Resting away from home:	A shift where Employees are scheduled to complete a shift at a location away from their home location.
Roster	A schedule which allocates tasks to Employees.
Roster Period	A period of four (4) weeks over which 152 Ordinary Hours are averaged.
Safety Legislation:	Prevailing Occupational, Workplace Safety and Rail Safety in the jurisdictions in which Employees are employed.
Shift Length:	The total time from a sign-on to a sign-off.
Short Term Contract Work	Where the Company is engaged to provide ad hoc or short term rail haulage services such as infrastructure work.
Stand Alone	Payment of hours which are additional to the Annual Remuneration.
Support Person	As defined in the Fair Work Act, and may include a Union Representative.
Total Annual Remuneration (TAR)	Total remuneration for annual cycle hours worked. Incorporates any additional payments for Overtime and working public holidays, including any Allowances, including the Continuous Improvement.
Transition Day	A period of time to allow for change of shift pattern eg night shifts or Book Offs to an early morning pattern.
Union:	The Australian Rail, Tram and Bus Industry Union (trading as 'RTBU') whose rules allow for the representation and coverage of eligible members.

PART B - EMPLOYMENT

6. Contract of Employment

- 6.1:** An Employee may be engaged as a permanent, fixed term or a casual Employee. Employees shall not have their category of employment changed without their consent. Any agreed change shall be detailed in writing.
- 6.2:** Advice to new Employee: New Employees shall be advised in writing of their commencement date, category of employment, wage rates, hours of work, and their Home Location.

7. Qualifying Period of Employment

- 7.1: Initial term:** All new Employees, with the exception of casuals, will be engaged on an initial three month probation period.

From the date of commencement, and for a qualifying period of six months, the Company will assess the skills and capacity of the Employee. This will allow the Company and the Employee to determine if they wish to continue with the employment relationship.

- 7.2: 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 Act or other relevant legislation.

7.3: 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.

In such case, the Employee shall receive one weeks' notice or payment in lieu thereof.

7.3.1: During qualifying period - performance to be discussed:

During the qualifying 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 their performance, except where clause 13 applies.

- 7.4: Termination by Employee:** At any time during the qualifying period an Employee may terminate the employment relationship by giving one weeks' notice to the Company.

8. Employment Status

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

8.1: Full Time Employee.

- 8.1.1: Ordinary Hours of Work.** A full time Employee is engaged to work Ordinary Hours of 152 hours over a Roster period of four weeks.
- 8.1.2: Filling permanent positions:** Where permanent full time positions become available, preference will be given to suitable part-time, casual or fixed term Employees who wish to be considered for appointment to these positions.

8.2: Part-Time Employee.

- 8.2.1: Ordinary 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 an Employee is required to work must be in writing and can only be altered by mutual agreement. A part time Employee will have their scheduled Book Off Days posted in accordance with the provisions in Clause 40.

- 8.2.2: Conditions:** Wages and conditions for part-time Employees will be calculated on a pro rata basis to the full time Ordinary Hours of 152 hours per Roster Period, equivalent pay and conditions to those full-time Employees in the same position / classification, unless otherwise expressly stated in this agreement. For Employees whose hours of work are different in each Roster Period during the year, their leave credits will accrue based on the Ordinary Hours worked in each Roster Period.
- 8.2.3:** A part-time Employee will be paid the applicable overtime rate as described in Clause 34 where that Employee works in excess of 152 hours in a Roster Period.
- 8.2.4:** A part-time Employee will be paid the applicable Overtime rate as described in Clause 34 where they work on a scheduled book off day.
- 8.2.5: 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.

8.3: Casual Employee

- 8.3.1: A casual Employee:**
 - (a) Is an Employee engaged and paid as such.
 - (b) Will be paid a minimum shift length of 4 hours for each shift at their applicable rate of pay as provided for in clause 25.4.
 - (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 25 of this Agreement).
- 8.3.2:** A casual Employee is not entitled to the benefits of Part G of this Agreement.
- 8.3.3:** Overtime shall be paid where the Employee works in excess of the Ordinary Hours for a full time Employee in a Roster Period.
- 8.3.4:** The Employer shall utilise Part-Time and Full Time Employees, as a preference, unless operational requirements require the use of casual Employees.

- 8.3.5: The Employer may, at any time, offer a casual Employee the opportunity to be appointed as a permanent full time or a part-time Employee, under terms provided for in this Agreement.
- 8.3.6: Where a casual Employee has worked the equivalent ordinary hours (893) of a full time Employee for a continuous period of six (6) months the Employee may seek to be appointed as a permanent full time or permanent part-time Employee.
- 8.3.7: Any offer to convert the employment status of a Casual Employee must be in writing. The Casual Employee may elect to accept or to reject any offer made.

8.4: Fixed Term Employee

- 8.4.1: 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.
- 8.4.2: A fixed term Employee is entitled to all the benefits in Part G (Leave) of this Agreement on a pro rata basis. Pro-rata will be calculated on an hourly basis using the Annual Remuneration for the classification.

9. Employee Transfers

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

9.1: Permanent Transfer

- 9.1.1: 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.
- 9.1.2: Employees who are required to change their work location on a permanent basis will be given 21 days' notice of the change.
- 9.1.3: Where the Company directs an Employee to make a Permanent Transfer, the Company will pay reasonable costs for the transfer including travel and removal expenses for the Employee and family members.
- 9.1.4: Where an Employee requests a Permanent Transfer, and is successful, they will be responsible for all costs associated with the transfer.

9.2: Temporary Transfer

- 9.2.1: 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.

- 9.2.2: **Conditions:** When temporarily transferred the following conditions apply:
 - (a) Accommodation will be in accordance with the provisions of clause 42.1.
 - (b) Expenses for temporary transfer are detailed in clause 29.2.2.

(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.

(d) Where an Employee is on a Temporary Transfer, the resting location is to be treated as a Home Location for the period of the transfer, and clause 39 applies.

9.2.3: Travel time:

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

9.3: Short Term Contract Work

9.3.1: Employees may be requested, to change their home location on a temporary basis for a period of not less than 4 days. A transfer of this type will only operate by agreement.

An Employee shall be given 7 days' notice of Short Term Contract Work.

9.3.2: the conditions referred to in clause 9.2.2 will also apply.

10. Flexibility Arrangements

10.1: The Employer and an Employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if the agreement deals with one or more of the matters contained in sub-clause 10.2:

10.2: The terms of this Agreement that may be varied by a flexibility arrangement are:

- (a) Arrangements for when work is performed;
- (b) Overtime rates;
- (c) Penalty rates;

10.3: 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.

10.4: The Company must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

10.5: Termination of Flexibility Arrangement

The Company 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 Company and Employee agree in writing - at any time.

11. Performance Management

11.1: Overview:

Where performance management are to be addressed, the Employer will refer to the Human Resource policies and procedures contained within the Safety Management System, 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 Support Person) regarding the matter
- (c) Advice to the Employee as to the findings of any investigation, and any actions to be taken, in a timely and reasonable manner.
- (d) The Employer will provide details of disciplinary concerns and evidence to the Employee in writing.
- (e) All parties are required to participate in this process.

11.2: Failure to Demonstrate or Maintain Competence:

- (a) Where an Employee is unable to demonstrate competence through assessment, the Company will re-classify the Employee to the appropriate classification for competence demonstrated.
- (b) Once re-classified, the Employee will only be required to perform the tasks associated with their classification.
- (c) Where an Employee is to be assessed and has not had working exposure to the task(s) to be assessed, and the Employee requests refresher training, the Employer will provide a refresher opportunity prior to the assessment occurring.
- (d) Where an Employee is assessed as failing to maintain competence in a particular function that Employee maybe demoted to a level commensurate with the Employee's assessed competence. The Employee will be offered re-training and an opportunity to be reassessed at the higher level. An Employee who is not assessed as competent at the re-assessment will be subject to the performance management outcomes in clause 11.3.
- (e) Once competence is demonstrated, the original classification will be reinstated from the date of assessment.

11.3: 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.

12. Stand Down

12.1: 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.

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

12.3: Advice: The Union and the Employee/s must receive written/electronic advice outlining when the stand down is to commence, the reasons for the stand down and the expected duration of any stand down if known, as soon as reasonably practical.

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

12.5: 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.

12.6: 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.

13. Abandonment of Employment

- 13.1: An Employee will be deemed to have terminated their employment without notice if they are absent from work other than on approved leave for more than 5 consecutive days without notifying the Employer during that time and obtaining approval for the absence. The Employee shall have 5 days to respond.
- 13.2: The Employer will make every reasonable effort to contact the Employee during this period.
- 13.3: 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.

14. Notice of Termination by Company

- 14.1: The Employer may terminate the employment of a permanent Employee by giving notice to the Employee or by making payment in lieu of such notice in accordance with the table below:

Period of Continuous Service	Period of Notice
Less than 1 year	1 week
More than 1 year	4 weeks

- 14.2: 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.
- 14.3: An Employee who resigns must provide the Employer with the same period of notice as specified in clause 14.1 (but not the additional notice provided in clause 14.2).
- 14.4: Notwithstanding clause 14.3, the Employer may agree to a shorter period of notice from an Employee.
- 14.5: Where an Employee does not provide the Employer with the required notice under clause 14.3 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.
- 14.6: **Summary Dismissal**
 - (a) The Employer may terminate an Employee's employment 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.
 - (b) 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.

14.7: Time Off During Notice Period

- 14.7.1: 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.
- 14.7.2:** The time off shall be taken at times that are convenient to the Employee after consultation with the Company.
- 14.7.3:** The Company will not pay additional days taken during the notice period unless previously agreed by the relevant Manager.
- 14.7.4:** Other leave arrangements shall be at the discretion of the Company.
- 14.8:** 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.
- 14.9: 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.

14.10: 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.

15. Redundancy

15.1: Discussions before termination of employment:

- 15.1.1:** 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.
- 15.1.2:** Where a redundancy scenario may lead to termination of employment, the Company shall hold discussions with the Employee/s directly affected.
- 15.1.3:** Redundancy is a major change. The obligations in relation to consultation contained in Clause 53 of this agreement are to be observed.

15.2: Transfer to Lower Paid Duties

- 15.2.1:** Where an Employee agrees to transfer to lower paid duties for reasons set out in sub-clause 15.1.1, the Employee shall be entitled to the same period of notice of transfer as they would have been entitled to if their employment had been terminated.
- 15.2.2:** The Company may, at its option, make payment in lieu thereof of an amount equal to the difference between the former Annual Remuneration and the new lower Annual Remuneration for the number of weeks of notice still owing.

15.3: 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 3 weeks of severance pay for every full or part year of service in respect of a continuous period of service. The maximum limit of severance pay is 39 weeks.

For the purposes of this clause, "weeks' pay" means the weekly Annual Remuneration rate.

15.4: Time off during notice period

15.4.1: 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 12.6 of this document applies.

15.4.2: 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.

15.5: Notice to Centrelink

Where a decision has been made to terminate Employees by reason of redundancy, 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.

15.5.1 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 summary 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.

15.6: Employee Transfer

Where the company offers and an Employee accepts a transfer in lieu of being made redundant to another location within the Company, the provisions of clause 9.1.3 apply. Employees who accept such transfer in these circumstances are not entitled to severance payments.

16. Transfer of Business

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

PART C: SAFETY

17. 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.

17.1: Health & Safety Representatives

- 17.1.1: 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.
- 17.1.2: 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.
- 17.1.3: Safety Meetings will be held in accordance with prevailing Safety Legislation and will be scheduled in rosters.
- 17.1.4: Hazard reporting and communication systems are in place to support the Employer, Employees and nominated Health & Safety Representatives in these matters.
- 17.1.5: Health & Safety Representatives will be appointed consistent with prevailing legislation.

17.2: Safety Procedures

- 17.2.1: 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.
- 17.2.2: 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.

18. Alcohol and Drugs

- 18.1: **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.
- 18.2: **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.
- 18.3: **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.
- 18.4: **Cost of drug 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.

18.5: 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.

19. Health Assessments

19.1: 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.

19.2: If further tests are required following the Determination, the Company will only be liable to cover the costs of those tests where it is established that there was no basis for this referral - ie there is no underlying condition that should have prompted such a referral.

19.3: To ensure privacy, the Employee must provide evidence from the Authorised Health Professional that the tests were not required.

19.4: 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; or,
- (e) Permanently Unfit for Duty.

19.5: Additional costs associated with referral

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

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

19.6: Time off for attendance at health assessments

Where the Company in accordance with this clause directs an Employee on a health assessment, the minimum assessment period is to be 8 hours, which includes 4 hours for attending a pathology appointment.

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

19.8: Maintenance of rate of pay in certain circumstances

Where an Employee, in accordance with sub-clause 19 is deemed to be:

- (a) Temporarily Unfit; 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.

20. Uniforms, Protective Clothing and Equipment

- 20.1:** The company will provide Employees, with uniforms as specified in the company policy, and where required, protective clothing or equipment.
- 20.2:** Safety equipment provided by the company will be utilised as directed by the Company and in accordance with the manufacturer's instructions.
- 20.3:** Where a uniform, protective clothing or equipment is provided, it must be correctly worn or utilised while the Employee is on duty.
- 20.4:** 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.
- 20.5:** 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.
- 20.6:** The Company will replace uniforms, protective clothing and equipment on a "fair wear and tear" basis, or in accordance with Safety Legislation.
- 20.7:** 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

21. Skills Development and Training

- 21.1: 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.
- 21.2: 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.
- 21.3: Skills Development priorities:** The Company will provide opportunities for Employee skills development to progress to Certificate IV level based on their competence through:
- 21.3.1:** 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;
- 21.3.2:** 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
- 21.3.3:** 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.
- 21.4: 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.
- 21.5: Assessment of Competency:** The Competency Assessment process will comply with the AQF where it applies.
- 21.5.1: Recognition of Prior Learning:** The Competency Assessment process will apply the principles associated with Recognition of Prior Learning (RPL);
- 21.5.2: Recognised Qualifications:** Whenever possible formal training undertaken with the company will provide credentials, such as AQF or other certification that are nationally recognised by other employers.
- 21.6: 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.
- 21.7:** 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.

- 21.8: 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.
- 21.9: Identifying Training issues:** The Company and Employees shall utilise the consultative processes (as described in clause 53.3 of this agreement) to identify, discuss issues related to skills development and training.
- 21.10 Failure to demonstrate competence:** The provisions of clause 11.2 apply in this circumstance.

22. Classifications

22.1: 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.

22.2: Classification factors:

Employees will be classified based on the following factors:

- 22.2.1:** level of experience;
- 22.2.2:** range of skills (including level of training or competency) required to perform duties;
- 22.2.3:** level of supervision (including degree of instructions required and/or given); and
- 22.2.4:** degree of responsibility.

22.3: Positions

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

- Level 1 (Assistant Driver - Not performing Rail Safety Work in the cab of a locomotive);
- Level 2 (Assistant Driver - Performing Rail Safety Work in the cab of a locomotive);
- Level 3 (Trainee Driver or Assistant Maintainer);
- Level 4 (Driver);

23. Career Path and Promotion

23.1: 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.

23.2: Progression to Higher Classifications

23.2.1: Career progression shall be automatic upon an Employee being deemed competent for the next classification by a qualified workplace assessor.

23.2.3: An Employee may opt not to progress to a higher classification and shall advise the company in writing of their decision.

24. Higher Duties

24.1: 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.

24.2: Where an Employee performs higher duties than those for which they were engaged, for a continuous 1976 hours, they will be deemed to be employed at that higher classification.

24.3: Training: Where the Employee performs higher level duties as part of training, no additional amount shall be payable under this clause.

PART E - REMUNERATION

25. Rates of Pay

- 25.1:** The Annual Remuneration for each classification as at the date of commencement of this Agreement included at the Table in clause 25.4 of this Agreement. Payment for ordinary time earnings is 1/26th of the Annual Remuneration, representing 26 periods of 14 days throughout the year.
- 25.2:** The Annual Remuneration in the table below will be paid for the Roster Period immediately following the commencement date of this agreement. The Annual Remuneration shall be paid in accordance with the table contained in sub-clause 25.4.
- 25.3:** The rates of pay in clause 25.4 will be increased by 3% on each anniversary of the commencement date of this Agreement, and will be paid for the Roster Period immediately following the anniversary date of the commencement of is agreement.

25.4: Table of Pay Rates:

Classification	Rate at commencement	Rate at first anniversary	Rate at second anniversary	Rate at third anniversary
Level 1 - Assistant Driver				
Annual Remuneration	\$62,754.59	\$64,637.23	\$66,576.35	\$68,573.64
Hourly Rate	\$31.76	\$32.71	\$33.69	\$34.70
Hourly Rate (Casual)	\$39.70	\$40.89	\$42.12	\$43.38
Level 2 - Assistant Driver				
Annual Remuneration	\$65,688.16	\$67,658.80	\$69,688.57	\$71,779.23
Hourly Rate	\$33.24	\$34.24	\$35.27	\$36.33
Hourly Rate (Casual)	\$41.55	\$42.80	\$44.08	\$45.41
Level 3 -Trainee Driver				
Annual Remuneration	\$80,001.90	\$82,401.96	\$84,874.01	\$87,420.23
Hourly Rate	\$40.49	\$41.70	\$42.95	\$44.24
Hourly Rate (Casual)	\$50.61	\$52.13	\$53.69	\$55.30
Level 4 - Qualified Driver				
Annual Remuneration	\$104,241.37	\$107,368.61	\$110,589.67	\$113,907.36
Hourly Rate	\$52.75	\$54.34	\$55.97	\$57.65
Hourly Rate (Casual)	\$65.94	\$67.92	\$69.96	\$72.06

Level 3 - Assistant Maintainer				
Annual Remuneration	\$80,001.90	\$82,401.96	\$84,874.01	\$87,420.23
Hourly Rate	\$40.49	\$41.70	\$42.95	\$44.24
Hourly Rate (Casual)	\$50.61	\$52.13	\$53.69	\$55.30

25.5: Calculation of Rates of Pay

25.5.1: The rates of pay in this Agreement are based on the Annual Remuneration described in clause 25.4 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 29 (Allowances) and Clause 34 (Overtime).

25.5.2: The Total Annual Remuneration includes Overtime payments, payments for working public holidays, or allowances provided for in clause 29 expressly provided for in this Agreement.

25.6: Casual Rates of Pay

25.6.1: 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.

25.6.2: The casual rate of pay shall be the Employee's Ordinary rate of pay for all purposes.

26. Payment of Wages

26.1: Employees will be paid two (2) 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 Remuneration divided by twenty six (26), paid on a two weekly basis.

26.2: 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.

26.3: 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 two week period may be made in the following pay period.

27. Salary Packaging and Salary Sacrifice

27.1: An Employee may, by separate agreement with the Company, enter into a salary packaging or salary sacrifice arrangement in accordance with the Company's policy, Australian Tax Office requirements and other relevant legislation.

27.2: An Employee must make such request to the company in writing.

27.3: 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.

- 27.4:** The Company will not be liable for any costs should the law or the views on salary packaging or salary sacrifice change in the future. The salary packaging arrangement will be on a genuine salary sacrifice basis.
- 27.5:** 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.
- 27.6:** Where an Employee receives part of their salary as a non-cash benefit under the salary packaging or salary sacrifice arrangements, the Employee's base earnings shall be determined as though the salary packaging or salary sacrifice arrangements did not exist.

28. Superannuation

- 28.1:** 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 nominated AON MySuper product.
- 28.2:** Such contribution shall be at the amount specified by the Superannuation Guarantee (Administration) Act 1992 (Cth) from time to time.
- 28.3:** Such contributions shall be based on the Annual Remuneration rate for each classification of Employee, as specified in clause 25 of this Agreement.

29. Allowances

29.1: Car Reimbursement costs

- 29.1.1:** 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.
- 29.1.2:** 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.
- 29.1.3:** 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.

29.2: Meal Expenses:

29.2.1 Rest Away from Home

Employees who are required to Rest Away from Home in accordance with the provisions set down in clause 42 shall be paid \$27.60 for every 8 hours or part thereof they are away from their Home location.

29.2.2 Temporary Transfer and Short Term Contract Work

Expenses of \$170.00 will be payable for each 24 hour period, or part thereof in 8 hour blocks, during a temporary transfer or for short term contract work. The commencement time of the 24 hour period will be consistent with the commencement time of the first shift at the start of that temporary transfer.

Meal expenses as described in clause 29.2.1 will not apply.

29.2.3 Meal and short term contract expenses shall be adjusted in line with CPI Increases each year at 1st September for the life of the agreement.

29.3: Payment for use of Employees own motor vehicle and travel to multiple sign on points

Sign on locations are described in the operational procedures in areas where an operations facility does not currently exist, 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 in Newcastle and the Hunter Valley are currently:

Newcastle		Mudgee	
Home Location Sign on	Resting Away	Home Location Sign On	Resting Away
Newcastle Facility	Mudgee	Mudgee	Newcastle Facility
Transqual Office, Wickham		Transqual Office, Wickham	

Locations may be varied through normal consultation processes as defined in clause 52.

- 29.3.1:** Where an Employee agrees to use their 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.
- 29.3.2:** 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.
- 29.3.3:** 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.
- 29.3.4:** 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

30. Principles

- 30.1:** 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.
- 30.2:** 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.
- 30.3:** Employees are expected to be available to work their Ordinary Hours in accordance with the requirements below.

31. Ordinary Hours of Work

- 31.1:** The Ordinary Hours of work for a full-time Employee are 152 hours averaged over a 4 week roster period.
- 31.2:** The Ordinary Hours of work for a part-time Employee are a maximum of 152 hours averaged over a 4 week roster period.
- 31.3:** The Ordinary Hours of work for a casual Employee are a maximum of 152 hours averaged over a 4 week roster period.
- 31.4:** Ordinary hours of work may be worked on any day at any time.
- 31.5:** The Ordinary Hours will include a number of public holidays to which the Employee is entitled.
 - 31.5.1:** 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.
 - 31.5.2:** An Employee may refuse to work on a public holiday only if the refusal is reasonable.
- 31.6:** **Loss of Ordinary Hours component:** Employees who have made themselves unavailable (including by taking leave without pay or absent without leave or unable to be contacted during advice periods) to perform their duties in any Roster Period may be scheduled on for less than 152 hours. To be clear, In such cases the Employee will forfeit the Ordinary Hours component for hours not worked for that particular period that they made themselves unavailable in the Roster Period.
- 31.7:** **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 Roster Period as a result of their not being required to perform driving duties in that Roster Period will be paid for 152 hours in the Roster Period.

32. Reasonable Additional Hours

- 32.1:** Employees may be requested to work reasonable additional hours as are necessary.
- 32.2:** Employees may refuse a request to work more than 152 hours in a Roster Period, 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;.

33. Establishment of an Hours Cycle

- 33.1:** All hours worked must be approved by the Employer and the hours actually worked shall be recorded. An Employee shall record actual hours worked.
- 33.2:** Payment of salary for Ordinary Hours for full-time Employees will be assumed to be 152 hours over a 4 week Roster Period and will be paid in equal fortnightly instalments throughout the year.
- 33.3:** Payment for part-time Employees will be on the basis of their agreed Ordinary Hours and adjusted where hours actually worked exceeds the agreed hours to be worked.
- 33.4:** Payments for casual Employees will be based on the number of hours worked in the relevant fortnightly period.

34. Overtime

- 34.1** In addition to the Ordinary Hours specified above, an Employee may be required to work reasonable additional hours for payment of Overtime penalty rates.
- 34.2:** Overtime will be paid at 1.7 times the Hourly Rate for the applicable classification and shall Stand Alone.
- 34.4:** All time counted as Overtime must be approved by the Employer.
- 34.5:** **Excess hours worked:** Where an Employee is required to perform hours in excess of 152 hours in a four (4) week period, all such time shall be deemed to be Overtime.
- 34.6:** Overtime payable for excess hours worked will be paid at the end of the second fortnightly pay cycle in the Roster Period in which the Overtime was worked.
- 34.7:** **Work on a Book Off Day:** Where an Employee is requested to work on a Book Off Day, and the Employee agrees to work, all such work shall be counted as Stand Alone. Employees have the right to refuse work Overtime on a Book Off Day for any reason.

35. Meal Breaks

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 should be taken so that they do not interfere with the smooth running of trains/services.

36. Shift Changes including Lift Up / Lay Back

36.1: The Master Roster will be used to create all shifts.

Any change to the start time of a rostered shift from the Master Roster is considered to be a Shift Change. A change to an allocated task is not considered to be a Shift Change.

An Employee may also be advised of a shift change to a scheduled shift in the Roster Period by receiving a call in the appropriate advice period the day/s prior to the commencement of the shift.

36.2: Lift up and Lay back will apply to the original sign on time. Any Shift change in the advice period which is outside of the parameters of Lift Up or Lay Back hours can only take place by agreement between the Company and the individual Employee.

36.3: Lay Back: The Employer may lay back Employees to a maximum of four (4) hours from the original time the shift was to commence.

36.4: Lift up: The Employer may lift up Employees to a maximum of two (2) hours from the original time the shift was to commence.

36.5: 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.

36.6: 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 Ordinary Hours for that Roster Period will be credited with an equivalent number of hours equal to the extra hours at the ordinary rate.

36.7: Lift Up following a book off day: An Employee cannot be lifted up before 06:00 following a Book Off day scheduled in accordance with clause 41, unless by mutual agreement.

36.8: Employee Requirement: For the purposes of clause 36, 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, to confirm their shift start time.

36.9: The Employer will not Lift Up or Lay Back an Employee for a shift that is scheduled to commence between the hours of 22:00 - 04:00, unless there is mutual agreement prior to 22:00.

37. Advice Periods

37.1: Employees will be advised of changes to their next shift within the relevant advice period:

37.1.1: The "AM" advice period will be between the hours of 09:00 and 11:30 (for shifts commencing after 06:00 and prior to 11:59 the following day); and

37.1.2: the "PM" advice period will be between 16:00 and 17:30 (for shifts commencing on or after 12:00 up to 05:59 for the following 2 days).

Call Period (Day 0)	Times on Day 1	Times on Day 2
09:00 to 11:30	06:00 to 11:59	
16:00 to 17:30	After 12:00	Up to 05:59

- 37.2:** An Employee can be advised of a change to their next sign on time at the end of a shift. If the Employee chooses not to accept the advice, they will be contacted in line with clause 37.1.1 and 37.1.2.
- 37.3:** All Employees must be available to be contacted during advice periods. Alternate means of communication will be considered under individual arrangements. Employees must confirm receipt of this communication.
- 37.4:** Where an Employee makes themselves unavailable during an advice period the provisions of clause 31.6 will apply.
- 37.5:** If an Employee has not been contacted by the end of the relevant advice period, the Available Day will be taken as an additional Book Off Day.
- 37.6:** All Employees are responsible for checking their email accounts (and/or other agreed communication mechanisms) to check roster 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.
- 37.8:** 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, and on the fitness of the Employee to continue.
- 37.9:** All Employees must be available during the advice periods on the last Book Off day, and on the last day of Annual Leave to receive advice of their next shift.

38. Shift Cancellations

- 38.1:** 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 credited to the Ordinary Hours for that Roster Period.
- 38.2:** Where an Employee is shown on duty, and the shift is cancelled part way through that turn of duty, the Ordinary Hours cycle will be credit to the full number of hours originally scheduled.

39. Shift Limits

39.1: Shift Limits for Types of Working

- Driver/Driver: Maximum 12 hour shift
- Driver/Assistant Driver: Maximum 11 hour shift.
- Shunting Shift limit: Maximum 10 hour shift. A definition of what “shunting” means will be determined within 6 months of the commencement of this Agreement.

- 39.2:** Inclusions in shift limits: The time taken to travel from sign on points and from the sign off points is included in the scheduled work task.

39.3: Maximum Hours on Duty during Emergencies

In the event of an Emergency, shift limits may be extended up to 16 hours. However, any extension of Employees hours is subject to indication of their fitness to continue.

In an Emergency, Employees should not drive motor vehicles when they have worked for more than 12 hours.

During an Emergency, Safeworking duties may only be performed after 12 hours where the Employee has indicated their fitness to continue.

39.4: Minimum Shift Provisions: Permanent Full-Time Employees will be paid a minimum of 4 hours if the scheduled shift length is less than 4 hours.

39.4.1 Where an Employee is asked to work on an Overtime shift for a period of no more than 4 hours, this clause will apply. Refer to clause 41.5 where an Employee works for more than 4 hours on a Book Off Day.

39.5: Rest Periods: The following minimum intervals between shifts shall apply:

39.5.1: Resting at home: 12 continuous hours rest between each shift.

39.5.2: Resting away from home: 8 continuous hours rest between each shift.

39.6: Limits on shifts in a 14 day period:

An Employee can work a maximum of 6 x 12 hour shifts 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.

39.7: Mandatory Day Off (MDO):

A Mandatory Day Off will occur if an Employee works 12 consecutive shifts in a rolling 14 day period. A Mandatory Day Off will conform to the same terms and conditions as a Book Off Day, and is in addition to rostered Book Off Days.

Where an Employee works an Overtime shift, and this results in the Employee not being able to work a previously rostered shift, a number of hours equal to the rostered shift hours will be credited to the Roster Period.

40. Rosters

40.1: Roster Principles: Employee master roster will be determined by the relevant Manager, based on the principles contained in clause 30.

40.2: All Rosters will use the 24 hour clock, and will be available to the relevant Employee.

40.3: All Rosters will show:

(a) Scheduled work tasks where known, including training days

(b) Book Off Days

(c) Transition Days

(d) Available Days

40.4: Signing on/off: All Employees are required to 'sign on and off' at the locations listed in clause 29.3. As part of the 'signing 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.

- 40.5 The master roster will provide for 1 weekend off in 3.2, averaged over the master roster but shall occur in no greater than 1 in 4. A weekend means from 23:59 on Friday to 06:00 on Monday.
- 40.6 Where a change to the master roster is required, the Employer will seek volunteers to form a Working Group.

41. Book-Off Days

- 41.1: In any one four (4) weekly Roster period there is to be at least eight (8) duty free days of which two (2) are to be consecutive in each fortnight.
- 41.2: All Book Off days will commence at 00:00 hours for a duration of 30 hours ending at 06:00 hours the following day.
- Any subsequent Book Off day will have a duration of 24 hours.
- 41.3: Book Off days are not to be infringed by either lift up or lay back.
- 41.4: Where, as a result of an out of course event, a Book Off day is infringed all time after midnight will be treated as Overtime and will Stand Alone in accordance with clause 34.
- 41.5 Unless agreed in accordance with clause 39.4.1, the minimum shift length for working an Overtime shift will be 7.6 hours.

42. Resting Away from Home

42.1: 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.

- 42.2: Rosters for Train Crew with shifts involving rest away from the initial sign on location will optimise crew utilisation and minimise Employee dwell time away from home and will include a scheduled return.
- 42.3: Employees are only to be rested away from home once before returning back to their home.
- 42.4: **Payment for resting away from home in excess of 12 hours:** Where a rest period away from home extends by more than 12 hours, from the commencement of the 13th hour, each hour or part thereof, until the commencement of the next shift, will be paid at Overtime rates until the Employee is signed back on. Once the Employee is signed back on the Ordinary Hours Rate will apply.

42.5: Accommodation Standards

Where accommodation is organised it should meet standards that comply with the Company's fatigue management program as a minimum whenever possible. For avoidance of doubt, a check list should be completed prior to use and the following items should be provided as a minimum:

- Dining facilities on site or within walking distance;
- Convenient parking on site or within walking distance;

- Double or Queen size bed;
- 24 hour check in facilities or ability to arrange secure access arrangements;
- Air conditioning and heating;
- Suitable window coverings.

PART G - LEAVE

43. Annual Leave Conditions

43.1: Entitlement

43.1.1: Full Time Employees shall be entitled to 5 weeks annual leave per year.

43.1.2: To avoid doubt, this means any 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.

43.1.3: 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.

43.2: Conditions for accrual and taking annual leave

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

43.2.1: Taking 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.
- (c) Annual Leave cannot be accrued in excess of eight (8) weeks unless agreed between the Employee and the Employer;
- (d) Where an Employee has accrued more than 8 weeks of annual leave, the Company shall have the right to direct the Employee to proceed on annual leave so as to reduce the accrued annual leave.

43.2.2: Accrual: Annual leave shall accrue in accordance with the requirements of the NES.

43.3: Annual Leave exclusive of other leave

43.3.1: 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.

43.3.2: 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.

43.3.3: Where an employee is taking a block of annual leave (ie one week or more), where possible, the employee should complete their shift no later than 20:00. Where this is not possible, then the shift must be completed by 23:59.

43.4: Annual Leave Payment

- 43.4.1:** An Employee may elect to cash out up to two weeks of the accrued annual leave entitlement each year consistent with requirements of the NES. In summary an Employee after cashing out annual leave must have an accrued annual leave balance of 4 weeks. Election to cash out annual leave may only be made by notice in writing to the Employer and must be authorised by the Employer.
- 43.4.2:** 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.
- 43.4.3: Termination:** On termination of employment, any accrued annual leave shall be paid to the Employee.
- 43.4.4:** 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.
- 43.4.5:** 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.
- 43.4.6: 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 Remuneration 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 Remuneration detailed in Schedule A.

44. Personal & Carer's Leave

- 44.1:** 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.
- 44.2: Paid Personal Leave Entitlement**
- Subject to the provisions contained in clause 44.4, all permanent employees engaged under this agreement are entitled to a maximum of twelve (12) weeks (equivalent to 60 days) Personal Leave at full salary, and twelve (12) weeks (equivalent to 60 days) at half salary in any twelve (12) month period. Personal Leave provided for in this sub-clause does not accrue from year to year.
- 44.3** Where an Employee may have a greater entitlement to paid personal leave under the terms of the NES, then the Employee is entitled to be paid access that entitlement. To be clear, for an Employee to have a greater claim under the NES, the Employee must have been an Employee of the Company for at least 9 years and have taken no Personal Leave at any time in this period.
- 44.4:** Where a public holiday falls during a period of Personal Leave, a credit of 7.6 hours will be made to the Ordinary Hours Cycle.
- 44.5: Limits on Paid Personal & Carers Leave**
- 44.5.1:** An Employee will only be paid Personal or Carers Leave where they notify the Employer of their absence as soon as possible. Such notification must include the likely duration of any such absence.

- 44.5.2:** 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 (or Authorised Health Professional) so as to determine whether or not the Employee is capable of returning to work.
- 44.5.3:** In the event that the return to work provider (or Authorised Health Professional) 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.
- 44.5.4:** All absences for Personal or Carers Leave must be supported by evidence (medical certificate or statement by other health care practitioner, statutory declaration, or other supporting documentation) satisfactory to the Employer.
- 44.5.5:** An Employee is not entitled to Personal or Carers Leave for any period in respect of which workers' compensation benefits are paid or payable to the Employee.
- 44.5.6:** Any misuse of the paid Personal or Carers Leave provisions will be subject to investigation and possible performance management, which may result in the summary termination of the Employee.

44.6: Paid Carer's Leave Entitlement

- 44.6.1:** 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.
- 44.6.2:** An employee is entitled to use up to 10 days per year of Personal Leave as Paid Carer's leave.
- 44.6.3:** Such leave shall accrue 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.
- 44.6.4:** 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.

- 44.6.5:** 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.

44.7. Unpaid Carers Leave

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

45. Compassionate Leave

45.1: Permanent Employees are entitled to paid Compassionate Leave on the basis of 3 days per occasion, as follows:

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

45.1.2: 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.

45.2: 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.

46. Long Service Leave

46.1: Subject to this clause, long service leave entitlements will be as provided in the relevant long service leave Act. For New South Wales Employees this is the *Long Service Leave Act 1955 (NSW)*.

46.1.1: 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

46.1.2: 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.

46.2: **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.

46.2.1: 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.

46.2.2: 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.

46.2.3: 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.

46.3 Pro Rata Entitlement

Where an Employee has been employed by the Company for at least five complete years of service, they will be entitled to pro rata Long Service Leave, consistent with the prevailing legislation. This will only apply:

- Where the Employee is dismissed for any reason, except as a result of the Employee's serious and willful misconduct;
- On resignation by the Employee on account of illness, incapacity or domestic or other pressing necessity; or
- On the death of the Employee.

47. Parental Leave

47.1: 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:

47.1.1: 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.

47.2: A pregnant Employee must commence parental 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.

47.3: Subject to clause 47.2 an Employee is entitled on their return to work to the position which they held immediately before commencing parental leave.

47.4: 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 their 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 their domicile.

48. Public Holidays

48.1: Employees will be entitled to public holidays without loss of pay on those days described in the National Employment Standards.

For clarity these days are:

New Years' Day	Easter Monday	Boxing Day
Australia Day	Anzac Day	
Good Friday	Queen's Birthday	
Easter Saturday	Labor Day	
Easter Sunday	Christmas Day	

And any other day gazetted by the NES and the State/Territory, and which are applicable to the area where the Employee works.

48.2: 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. For example if Christmas Day falls on a Sunday, then Sunday will be the public holiday for shift workers.

Public Holidays	
Scenario	Application
Has a Book Off Day	<ul style="list-style-type: none"> • A credit of 7.6 hours or • the option to bank a DIL
Is available to be rostered to work but is given the day off ie Transition Day or Available Day	<ul style="list-style-type: none"> • A credit of 7.6 hours or • the option to bank a DIL
Is rostered to work and actually works	Penalty of 1.5 and credit equal to the number of hours worked for all hours worked on the Public Holiday, plus an option of: <ul style="list-style-type: none"> • payment of 7.6 hours, or • the option to bank a DIL
Works any Overtime shift (including a Book Off Day)	Penalty of 1.7 for all hours worked on the shift and: <ul style="list-style-type: none"> • An additional payment of 7.6 hours for the public holiday, • or the option to bank a DIL
Has been rostered but job is cancelled on the day and no further work is available	Penalty of 1.5 for minimum shift length, and <ul style="list-style-type: none"> • An additional payment of 7.6 hours for the public holiday, or • the option to bank a DIL

48.3: 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.

48.4: Where an Employee has accrued a 'Day In Lieu' through the operation of either sub-clause 48.2, the Employee has until 31st October to take such days off, or to attach to a period of Annual Leave. If the Employee has not taken the days off prior to this date, the Employee will be paid for all such Days In Lieu in the next pay period on or after 15th November and the Days In Lieu will be cancelled.

Where an Employee wishes to retain Days in Lieu past this date, they must notify the Company in writing prior to 31st October. Any agreement to this must be mutually agreed.

49. 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". A minimum of two (2) days leave must be taken in an event of this type.

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

50. Special Leave

- 50.1:** 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.
- 50.2:** An Employee who engages in an eligible community service activity is entitled to be absent from their 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.
- 50.3:** 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.

51. Jury Service

- 51.1:** 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.
- 51.2:** 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.

52. 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

53. Introduction of Major Change & Workplace Consultation

Regular communication is required 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 Safety Management System.

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

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

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

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.

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

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

53.1: Major Change

Major changes will result in the following 'Significant Effects' including, but not limited to:

- (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.

Where a major change occurs, the Company may call for nominations from Employees for a working group as part of the consultation process.

53.2: Company's Duty to Notify

- 53.2.1** **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 representative, which may include the Union.
- 53.2.2** Where a term in this Enterprise Agreement already provides for a identified agreed major change to production, program, organisation, structure or technology, which also provides for an agreed process on how and the major change is to occur and or be implemented, then subclauses 53.3.1 to 53.3.4 are taken not to apply.

53.3: Company's duty to discuss change

- 53.3.1:** 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.

- 53.3.2:** If a "relevant" employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and

- 53.3.3:** The employee or Employees advise the employer of the identity of the representative;

- 53.3.4:** The employer must recognise the representative.

Where changes are proposed to be introduced as set out in Clause 53.2, 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.

- 53.3.5:** 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 53.2.2.

- 53.3.6:** 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.

- 53.3.7** Provided that the company shall not be required to disclose Confidential Information, of which the disclosure would be contrary to the company's interests.

53.4: Implementation of Change

- 53.4.1:** 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 53.2 above, subject to the provisions of 53.3 being complied with. Failure to comply with the provisions of 53.3 will delay and or extend the 14 day period accordingly.
- 53.4.2:** It is agreed between the Parties that after the above notification and consultation process has satisfactorily taken place, and the Dispute Settling Procedure has not been triggered, the Company may implement change after a further fourteen (14) days.
- 53.4.3:** 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. In this instance clause 54.9 will apply.
- 53.4.4:** Notwithstanding the above, where a dispute arises relating to the consultation process and the proposed change the Dispute Settlement provisions in clause 54 shall be followed.
- 53.4.5:** Right to proceed to arbitration: Either party shall have the right to have FWC 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.
- 53.4.6:** The Employees with their representatives shall have a further right to have the dispute arbitrated where the company has introduced change without complying with these provisions.

54. Dispute Settling Procedure

- 54.1:** If a dispute arises in relation to:
- (a) the application or interpretation of terms and conditions of this agreement; or
 - (b) the National Employment Standards;

The following dispute settlement process shall be followed:

- 54.2:** Where an Employee who is party to a dispute (or their representative) wish to lodge a dispute, it must be done in writing in the form set out in Appendix A of this document.
- 54.3:** An Employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this clause, which may include the Union.
- 54.4:** In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by:
- 54.4.1:** discussions between the Employee or Employees and relevant supervisors.
 - 54.4.2:** Where the matter is not resolved, the parties will arrange further discussions at a more senior level of management; between the Company's representative and the Employee(s) representative.

After each of the above steps a 48 hour (excluding weekends and public holidays) cooling off period will apply.

- 54.5** 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.
- 54.6:** If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission.
- 54.7:** The Fair Work Commission may deal with the dispute in 2 stages:
- 54.7.1** the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and where
- 54.7.2** the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
- (i) arbitrate the dispute; and
- (ii) make a determination that is binding on the parties.
- 54.8** While the parties are trying to resolve the dispute using the procedures in this term:
- 54.8.1** an Employee must continue to perform their work as they would normally unless they have a reasonable concern about an imminent risk to their health or safety; and
- 54.8.2** An Employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
- (i) the work is not safe; or
- (ii) applicable occupational health and safety legislation would not permit the work to be performed; or
- (iii) the work is not appropriate for the Employee to perform; or
- (iv) there are other reasonable grounds for the Employee to refuse to comply with the direction.
- 54.9:** The parties to the dispute agree to be bound by a decision made by Fair Work Commission in accordance with this term. However, either party may appeal the decision if they believe that process errors have occurred.
- 54.10** At all times during this process, the Company will not implement the change, cease the change should it have already been implemented and work shall continue in the manner it was being performed immediately before the dispute or grievance.

55. Workplace Representatives

- 55.1:** The Employer recognises that a union covered by this agreement may have workplace representatives in the workplace. The Employer must be advised as to who the workplace representatives are prior to the representative exercising any of their duties or rights under this clause. This advice must be in writing from the union.
- 55.2:** 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.

- 55.3:** 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.
- 55.4:** 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 four (4) weeks' notice.

56. Workplace Relations Training

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

- 56.1:** 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.
- 56.2:** The Employer will grant unpaid leave for:
- (a) a maximum of up to 5 separate 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.

Subject to agreement by each workplace representative to change the master roster for the shift immediately preceding or following the leave day to minimise the impact on operations as a result of this leave.

57. 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 54 of the Freightliner Australia Coal Haulage Pty Ltd Enterprise Agreement 2014. The details of the Dispute or Grievance are as follows:

The decision I wish to dispute is:

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:

Name:

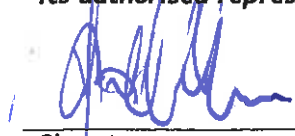
Position:

Signature:

Date:

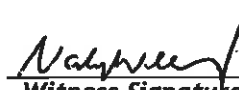
58. SIGNATORIES

Signed on behalf of Freightliner Australia Coal Haulage Pty Ltd ACN 137 483 713, by its authorised representative:


Signature
Managing Director
Position / Capacity

John McArthur
20 Bridge Street, Pymble NSW 2073
Name and Address

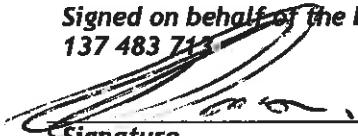
27 JAN 2015
Date


Witness Signature and Date

27/1/15
Date

NALIN WEERAKOON
20 BRIDGE ST PYMBLE NSW 2073
Name and Address

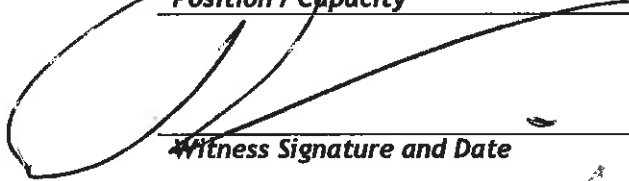
Signed on behalf of the Employees of Freightliner Australia Coal Haulage Pty Ltd ACN 137 483 713


Signature

BOB NANUA
Suite 210 4 Goulburn ST, SYDNEY 2000
Name and Address

NATIONAL SECRETARY
Position / Capacity

30/1/15
Date


Witness Signature and Date

Thomas Cosley
C/2 Suite 210, 4 GOULBURN ST
SYDNEY 2000
Name and Address