



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Freightliner Australia Coal Haulage Pty Ltd
(AG2019/716)

FREIGHTLINER AUSTRALIA COAL HAULAGE PTY LTD ENTERPRISE AGREEMENT 2019

Rail industry

COMMISSIONER LEE

MELBOURNE, 30 APRIL 2019

Application for approval of the Freightliner Australia Coal Haulage Pty Ltd Enterprise Agreement 2019.

[1] An application has been made for approval of an enterprise agreement known as the *Freightliner Australia Coal Haulage Pty Ltd Enterprise Agreement 2019* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Freightliner Australia Coal Haulage Pty Ltd. The Agreement is a single enterprise agreement.

[2] The Employer has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement.

[3] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

[4] Pursuant to s.202(4) of the Act, the model flexibility term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

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

[6] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 May 2019. The nominal expiry date of the Agreement is 29 April 2023.



COMMISSIONER

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<AE503145 PR707633>

Annexure A



Genesee & Wyoming Australia

UNDERTAKING

In accordance with section 190 of the *Fair Work Act 2009* (Cth) (**FW Act**), the employer, Freightliner Australia Coal Haulage Pty Ltd (**Company**), provides the following undertaking in respect of the *Freightliner Australia Coal Haulage Pty Ltd Enterprise Agreement 2019* (**Agreement**):

1. For the sake of clarity, the wage rates at commencement of the Agreement contained in the table at clause 26.4 of the Agreement are also taken to be the rates of pay at the "test time" for the purposes of section 193(6) of the FW Act, being 15 March 2019.
2. For the purposes of the additional week of annual leave provided by Division 6 of the National Employment Standards (**NES**), a shiftworker is an Employee who is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays and an Employee who works permanent night shift. Notwithstanding this, however, clause 44 of the Agreement provides all Employees (except Casual Employees) with the additional week of annual leave provided by the NES.

Signed by Freightliner Australia Coal Haulage Pty Ltd:

Signature: Vanessa Hoey

Date: 16/4/19

Name: Vanessa Hoey

Position (authority to sign): Director Human Resources

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Freightliner Australia Coal Haulage Pty Ltd Enterprise Agreement 2019

(Part of the Genesee & Wyoming Australia Group)

Note - the model flexibility term is taken to be a term of this agreement and can be found at the end of the agreement.

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of the agreement.

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PART 1 – THE AGREEMENT AND ITS OPERATION

1 TITLE

This Agreement will be referred to as the *Freightliner Australia Coal Haulage Pty Ltd Enterprise Agreement 2019* (Agreement).

2 PARTIES TO THIS AGREEMENT

The parties to this Agreement are:

- 2.1 Freightliner Australia Coal Haulage Pty Ltd (“Company” or “Employer”) ACN 137 483 713; and
- 2.2 Employees of the Company who are employed in one of the classifications contained in this Agreement (“Employees”); and
- 2.3 The Australian Rail, Tram and Bus Industry Union (“RTBU” or “Union”).

3 APPLICATION OF THIS AGREEMENT

- 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.
- 3.2 This Agreement does not purport to exclude the operation of the National Employment Standards (NES).
- 3.3 Part 2-1 and Part 2-2 of the *Fair Work Act 2009* describe the NES entitlements and may also provide terms that supplement or are ancillary to the entitlements of the NES.

4 DURATION OF THIS AGREEMENT

- 4.1 This Agreement will commence in operation seven (7) days after the date on which it is approved by the Fair Work Commission (FWC), and will reach its nominal expiry date four (4) years after the date on which it was approved by the FWC.
- 4.2 The Employer and the Union agree to commence discussions no later than three (3) months prior to the nominal expiry date of this Agreement.

5 NO EXTRA CLAIMS

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

6 DEFINITIONS

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

The 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, weekend work and leave loadings, etc.
AQF	Australian Qualifications Framework.
Available Day	Where a turn of work may be allocated to an Employee, providing that advice meets the conditions of clause 39.
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 on an ad hoc basis.
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.
FWC	Fair Work Commission.
Home Location	Designated sign on / off location.
Hourly Rate	Annual Remuneration divided by 1976 hours worked in a period of one year. The rate is detailed in clause 26.
Hours Cycle	The mechanism by which hours worked are compared to the Ordinary Hours.
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.
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 twelve (12) consecutive shifts in a rolling fourteen (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.
Overtime	Any hours additional to the Ordinary Hours i.e. any hours in excess of 76 hours worked over the nominated two (2) week cycle or hours worked on a Book off Day.
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.
Master Roster	Means a template roster that shows, but is not limited to, working days and book off days.
Working Roster	Means a forecast roster derived from the Master Roster that provides specific shift details including shift commencement time, shift length, specific tasks (i.e. job, training, shut down etc.) for the next roster cycle.
Roster Cycle	A period of two (2) weeks over which 76 Ordinary Hours are available.
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 Act, and may include a Union representative.
Total Annual Remuneration (TAR)	Total remuneration for annual cycle hours worked. Incorporates any additional payments for Overtime, work on Public Holidays and allowances.
Transition Day	A period of time to allow for change of shift pattern e.g. 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 2 – CONTRACT OF EMPLOYMENT AND RELATED MATTERS

7 CONDITIONS OF EMPLOYMENT

- 7.1 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.
- 7.2 Where an offer is made to appoint an Employee under the terms of this Agreement, the offer will be in writing and shall contain the following:
- Commencement date;
 - Home Location;
 - Position, level and title contained in this Agreement;
 - Remuneration level;
 - That this Agreement applies to the Employee's employment; and
 - Duration of probation period (except for casual Employees).
- 7.3 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.

8 ENGAGEMENT 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 A full time Employee is engaged to work an average of seventy six (76) Ordinary Hours over a 2 week Roster Cycle.
- 8.1.2 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 A part-time Employee is one engaged to work agreed defined hours, which are less than the Ordinary Hours of a full time Employee.
- 8.2.2 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 42.
- 8.2.3 Wages and conditions of employment for part-time Employees will be calculated on a pro rata basis by reference to the Ordinary Hours of a full time Employee, being an average of 76 hours averaged over a 2 week Roster Cycle, 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 Cycle during the year, their leave credits will accrue based on the Ordinary Hours worked in each Roster Cycle.
- 8.2.4 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 is an Employee engaged and paid on an ad hoc basis.
- 8.3.2 Unless provided for in the Act or NES, other than Long Service Leave in accordance with applicable legislation, casual Employees shall not be entitled to any form of paid leave, payment for Public Holidays not worked, and notice payments set out in 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 Cycle.
- 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 7 - 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 PROBATION AND QUALIFYING PERIOD OF EMPLOYMENT

- 9.1 All new Employees, with the exception of casuals, will be engaged on an initial three month probation period.
- 9.2 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.
- 9.3 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 15.3 applies.
- 9.4 At any time during the qualifying period the Company or an Employee may terminate the employment relationship by giving one weeks' notice.

10 EMPLOYEE TRANSFERS

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

10.1 Permanent Transfers

- 10.1.1 Where opportunities for permanent transfers within the Company's operations arise, the Company will seek volunteers by calling for expressions of interest from suitable Employees wishing to be considered for transfer.
- 10.1.2 Employees who are required to change their work location on a permanent basis will be given 21 days' notice of the change.

- 10.1.3 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.
- 10.1.4 Where an Employee requests a Permanent Transfer and is successful, they will be responsible for all costs associated with the transfer.

10.2 Temporary Transfer

- 10.2.1 Employees may be requested to change their home location on a temporary basis for a period of not less than 7 days. A temporary transfer will only operate by agreement.
- 10.2.2 An Employee shall be given 7 days' notice of a temporary transfer.
- 10.2.3 When temporarily transferred the following conditions apply:
 - a) Accommodation will be in accordance with the provisions of clause 43.2.
 - b) Expenses for temporary transfer are detailed in clause 30.2.2.
 - 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 kilometer rates provided by the Australian Taxation Office.
 - 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 41 applies.
- 10.2.4 The time taken to travel to and from the temporary location is to be included in scheduled roster hours.

10.3 Short Term Contract Work

- 10.3.1 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.
- 10.3.2 An Employee shall be given 7 days' notice of Short Term Contract Work.
- 10.3.3 The conditions referred to in clause 10.2.3 will also apply.

11 FLEXIBILITY ARRANGEMENTS

- 11.1 The Employer and an Employee covered by this 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 11.2.
- 11.2 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.

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 the Employer and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and
- d) Includes details of:
 - i. The terms of the Enterprise Agreement that will be varied by the arrangement; and
 - ii. How the arrangement will vary the effect of the terms; and

- iii. How the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - iv. States the date of which the arrangement commences.
- 11.3 The Company must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 11.4 Termination of Flexibility Arrangements**
- 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.

12 PERFORMANCE MANAGEMENT

- 12.1 Where performance management is to be addressed, the Employer will refer to any applicable Human Resource policies and procedures and will take into account the principles of natural justice and due process.
- 12.2 All disciplinary matters will be treated as confidential.
- 12.3 Process**
- For disciplinary matters the process will include:
- a) Investigation into any allegations.
 - b) Discussion with the Employee, and their support person if applicable, 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.

12.4 Outcomes

Consistent with any applicable 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.

12.5 Failure to Demonstrate or Maintain Competence

- 12.5.1 Where an Employee is unable to demonstrate competence through assessment, the Company will re-classify the Employee to the appropriate classification for the level of competence demonstrated by the Employee.
- 12.5.2 Once re-classified, the Employee will only be required to perform the tasks associated with their new classification.
- 12.5.3 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.
- 12.5.4 Where an Employee is assessed as failing to maintain competence in a particular function that Employee may be 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 12.4.

- 12.5.5 Once competence is demonstrated, the Employee will be reinstated to their original classification from the date of assessment.

13 STAND DOWN

13.1 Stand Down without pay

- 13.1.1 the Employer may Stand Down Employees without pay for any time during which they cannot usefully be employed because of one of the following:
- a) industrial action (other than industrial action organised or engaged in by the Employer);
 - b) a breakdown of machinery or equipment, if the Employer cannot reasonably be held responsible for the breakdown;
 - c) a stoppage of work for any cause for which the Employer cannot reasonably be held responsible.

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

13.3 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.

13.4 The Employer will actively pursue alternative work to be done, such as training or maintenance, before proceeding with the Stand Down.

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

13.6 Work with another employer

- 13.6.1 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.
- 13.6.2 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.
- 13.6.3 Any period between the end of the Stand Down period and the Employee's attendance at work will be treated as unpaid leave.

14 ABANDONMENT OF EMPLOYMENT

14.1 An Employee may be deemed to have terminated their employment if they are absent from work other than on approved leave for more than five (5) consecutive days without notifying the Employer during that time and obtaining approval for the absence. The Employee shall have five (5) days to respond.

14.2 The Employer will make every reasonable effort to contact the Employee during this period.

15 TERMINATION OF EMPLOYMENT

15.1 Termination by the Company

15.1.1 An Employee's employment may be terminated in accordance with this clause for reasons including (although not limited to), where the Employee:

- Is unable to demonstrate the required skill or ability; and/or,
- demonstrates inappropriate behaviour; and/or,
- cannot satisfy the medical requirements for their position.

15.1.2 Subject to clause 15.2.3, The Employer may terminate the employment of an Employee (other than a casual 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
1 year or more	4 weeks

15.1.3 The period of notice required is increased by two (2) weeks if the Employee:

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

15.2 Termination by the Employee

15.2.1 An Employee who resigns must provide the Employer with the same period of notice as specified in clause 15.1.2 (but not the additional notice provided in clause 15.1.3).

15.2.2 Notwithstanding clause 15.2.1, the Employer may agree to a shorter period of notice from an Employee.

15.2.3 Where an Employee who is at least 18 years old does not provide the Employer with the required notice under clause 15.2.1 and the Employer does not agree to a shorter period, the Employer may deduct and retain an amount that is no more than one weeks' wages for the Employee from the amount that the Employer is required to pay the Employee upon termination under this Agreement.

15.3 Summary Dismissal

15.3.1 The Employer may terminate an Employee's employment without 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.

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

15.4 Time Off During Notice Period

15.4.1 Where the Company has given notice of termination to an Employee, the Employee shall be entitled to one (1) working day off without loss of pay for the purpose of seeking other employment.

15.4.2 The time off shall be taken at times that are convenient to the Employee after consultation with the Company.

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

15.4.4 Other leave arrangements shall be at the discretion of the Company.

15.5 On Termination

- 15.5.1 With the exception of Employees terminated in accordance with clause 15.3 of this Agreement, Employees with a balance of Personal Leave greater than 30 days will be entitled to be paid out 75% of balances in excess of 30 days, to be calculated as follows:
- Personal Leave balance greater than 30 days as at termination date - 30 (days) x 75%.
- This will be paid at the Employee's ordinary rate of pay at the date of termination of employment.
- 15.5.2 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.
- 15.5.3 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.
- 15.5.4 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.

16 REDUNDANCY

16.1 Discussions before termination of employment

- 16.1.1 A redundancy scenario arises where the Company considers that it no longer requires the position an Employee has been performing to be performed by anyone, and this is not due to the ordinary and customary turnover of labour in the business.
- 16.1.2 Where a redundancy scenario may lead to termination of employment, the Company shall hold discussions with the Employee/s directly affected.
- 16.1.3 Redundancy is a major change. The obligations in relation to consultation contained in clause 56 of this agreement are to be observed.

16.2 Transfer to lower paid duties

- 16.2.1 Where an Employee agrees to transfer to lower paid duties for reasons set out in sub-clause 16.1.1, the Employee shall be entitled to the same period of notice of transfer as he or she would have been entitled to if their employment had been terminated.
- 16.2.2 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.

16.3 Severance pay

- 16.3.1 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 three (3) weeks of severance pay for every full or part year of service in respect of a continuous period of service. Employees who have completed one (1) years' continuous service will be entitled to a minimum of four (4) weeks' severance pay. The maximum limit of severance pay is sixty (60) weeks.
- 16.3.2 For the purposes of this clause, "weeks' pay" means the weekly Annual Remuneration rate.

16.4 Time off during notice period

- 16.4.1 During the period of notice of termination given by the Company, an Employee shall be allowed a minimum of one (1) days' time off without loss of pay during this notice period for the purpose of seeking other employment. This does not apply where clause 13.6 of this Agreement applies.
- 16.4.2 If the Employee has been allowed paid leave for more than one (1) 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.

16.5 Notice to Centrelink

Where a decision has been made to terminate fifteen (15) or more Employees by reason of redundancy, the Company shall notify Centrelink in accordance with Centrelink's requirements.

16.6 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 10.1.3 apply. Employees who accept such transfer in these circumstances are not entitled to severance payments.

17 TRANSFER OF BUSINESS

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

PART 3 – SAFETY

18 SAFETY PRINCIPLES

- 18.1 The Company and its Employees agree they both have a duty of care that the improvement and maintenance of any applicable health and safety policies and procedures in the work environment is a primary objective of the Company.
- 18.2 The parties to this Agreement commit to meeting their obligations and duties under the relevant Safety Legislation.

18.3 Health & Safety Representatives

- 18.3.1 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.
- 18.3.2 Safety consultation systems have been established to discuss health, safety and welfare issues and opportunities. These arrangements are consistent with any applicable Company consultation programs and procedures.
- 18.3.3 Safety meetings will be held in accordance with prevailing safety legislation and will be scheduled in rosters.
- 18.3.4 Hazard reporting and communication systems are in place to support the Employer, Employees and nominated Health & Safety Representatives in these matters.
- 18.3.5 Health & Safety Representatives will be appointed consistent with prevailing legislation.

18.4 Safety Procedures

- 18.4.1 Any applicable safety policies and procedures and standards shall be clearly detailed by the Company to all Employees. Where any applicable safety policies and procedures or standards require Employees to receive training, this training shall be provided by the Company, at the Company's expense.
- 18.4.2 Any applicable safety policies and procedures and standards shall be followed and met by all Employees. Failure to acknowledge and adhere to applicable safety policies and procedures and standards may be grounds for dismissal. Neglect of applicable safety policies and procedures that may lead to injury of other persons or Employees may be grounds for summary dismissal.

19 ALCOHOL AND DRUGS

- 19.1 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.
- 19.2 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.
- 19.3 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.
- 19.4 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.
- 19.5 An Employee who fails to comply with the Alcohol and Other Drug Policy or with a request to undertake a test may be subject to disciplinary action which might include termination of employment.

20 HEALTH ASSESSMENTS

- 20.1 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 Company 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.
- 20.2 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 – i.e. there is no underlying condition that should have prompted such a referral.
- 20.3 To ensure privacy, the Employee must provide evidence from the Authorised Health Professional that the tests were not required.
- 20.4 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.

20.5 Additional costs associated with referral

- 20.5.1 If further tests are required following the examination, but before the determination, the Company will be responsible for the costs of those tests.
- 20.5.2 Once the determination has been made by the Authorised Health Professional, costs of all tests will be borne by the Employee.

20.6 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 eight (8) hours, which includes four (4) hours for attending a pathology appointment.

20.7 Applicable legislation

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

20.8 Maintenance of rate of pay in certain circumstances

Where an Employee, in accordance with clause 20.4 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 this 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 twelve (12) months, or until the Employee is determined to be fit to resume the Employee's former duties, whichever is earlier.

21 UNIFORMS, PROTECTIVE CLOTHING AND EQUIPMENT

- 21.1 The Company will provide Employees with uniforms and any required personal protective equipment.
- 21.2 Safety equipment provided by the Company will be utilised as directed by the Company and in accordance with the manufacturer's instructions.
- 21.3 Where a uniform, protective clothing or equipment is provided, it must be correctly worn or utilised while the Employee is on duty.
- 21.4 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.
- 21.5 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.
- 21.6 The Company will replace uniforms, protective clothing and equipment on a "fair wear and tear" basis, or in accordance with applicable occupational health and safety legislation.
- 21.7 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 4 – SKILLS DEVELOPMENT AND CLASSIFICATION STRUCTURE

22 SKILLS DEVELOPMENT AND TRAINING

22.1 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.

22.2 Incidental and Peripheral Tasks

22.2.1 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.

22.2.2 The performance of peripheral duties should not jeopardise the Employee's competencies, qualifications or in any way promote de-skilling.

22.3 Skills Development priorities

The Company will provide opportunities for Employee skills development to progress to Certificate IV level based on their competence through:

22.3.1 The 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;

22.3.2 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

22.3.3 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.

22.4 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.

22.5 Assessment of Competency

The Competency Assessment process will comply with the AQF where it applies.

22.5.1 The Competency Assessment process will apply the principles associated with Recognition of Prior Learning (RPL);

22.5.2 Whenever possible formal training undertaken with the Company will provide credentials, such as AQF or other certification that are nationally recognised by other employers.

22.6 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.

22.7 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.

22.8 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.

- 22.9 The Company and Employees shall utilise the consultative processes (as described in clause 56 of this Agreement) to identify, discuss issues related to skills development and training.
- 22.10 The provisions of clause 12.5 apply where an Employee fails to demonstrate competence.

23 CLASSIFICATIONS

23.1 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.

23.2 Classification factors

Employees will be classified based on the following factors:

- a) level of experience;
- b) range of skills (including level of training or competency) required to perform duties;
- c) level of supervision (including degree of instructions required and/or given); and
- d) degree of responsibility.

23.3 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:

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

24 CAREER PATH AND PROMOTION

24.1 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.

24.2 Progression to Higher Classifications

- 24.2.1 Career progression shall be dependent upon an Employee being deemed competent by a qualified workplace assessor.
- 24.2.2 An Employee may opt not to progress to a higher classification and shall advise the Company in writing of their decision.

25 HIGHER DUTIES

- 25.1 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 duties.
- 25.2 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.
- 25.3 Where the Employee performs higher level duties as part of training, no additional amount shall be payable under this clause.

PART 5 – REMUNERATION

26 RATES OF PAY

- 26.1 The Annual Remuneration for each classification as at the date of commencement of this Agreement is included in the Table in clause 26.4. Payment for ordinary time earnings is 1/26th of the Annual Remuneration, representing twenty-six (26) periods of fourteen (14) days throughout the year.
- 26.2 The rates of pay at commencement of this Agreement will apply from the first full pay period after the Fair Work Commission approves it.
- 26.3 As per the table in clause 26.4, the rates of pay will increase by 4% each year as at the first full pay period following the anniversary date of the commencement of this Agreement.

26.4 Table of Pay Rates

The rates of pay and agreed pay increases will be in accordance with the following table:

Wage Increase and Applicable Pay Rates				
Percentage Increase	4%	4%	4%	4%
Date of Increment	Rate at commencement 2019	Rate at first anniversary 2020	Rate at second anniversary 2021	Rate at third anniversary 2022
Level 1 – Assistant Driver				
Annual Remuneration	\$ 71,316.59	\$ 74,169.25	\$ 77,136.02	\$ 80,221.46
Hourly Rate	\$ 36.0914	\$ 37.5350	\$ 39.0364	\$ 40.5979
Overtime Hourly Rate	\$ 61.3554	\$ 63.8096	\$ 66.3620	\$ 69.0164
Level 2 – Assistant Driver				
Annual Remuneration	\$ 74,650.40	\$ 77,636.42	\$ 80,741.87	\$ 83,971.55
Hourly Rate	\$ 37.7785	\$ 39.2897	\$ 40.8613	\$ 42.4957
Overtime Hourly Rate	\$ 64.2235	\$ 66.7925	\$ 69.4642	\$ 72.2427
Level 3 - Trainee Driver or Assistant Maintainer				
Annual Remuneration	\$ 90,917.04	\$ 94,553.72	\$ 98,335.87	\$ 102,269.30
Hourly Rate	\$ 46.0106	\$ 47.8511	\$ 49.7651	\$ 51.7557
Overtime Hourly Rate	\$ 78.2181	\$ 81.3468	\$ 84.6007	\$ 87.9847
Level 4 - Qualified Driver				
Annual Remuneration	\$ 118,463.65	\$ 123,202.20	\$ 128,130.29	\$ 133,255.50
Hourly Rate	\$ 59.9512	\$ 62.3493	\$ 64.8433	\$ 67.4370
Overtime Hourly Rate	\$ 101.9171	\$ 105.9938	\$ 110.2335	\$ 114.6429

26.5 Calculation of Rates of Pay

- 26.5.1 The rates of pay in this Agreement are based on the Annual Remuneration described in clause 26.4 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 30 (Allowances) and clause 35 (Overtime).
- 26.5.2 The Total Annual Remuneration includes Overtime payments, payments for Public Holidays, or allowances provided for in clause 30 expressly provided for in this Agreement.

- 26.5.3 The annual remuneration increases provided by clause 26.4 of this Agreement have been set at a level to compensate Employees for the annual cost of income protection insurance for the life of this Agreement only, being 1% of the annual 4% increase. For the sake of clarity, Employees will be responsible for obtaining their own income protection insurance.

26.6 Casual Rates of Pay

- 26.6.1 Employees engaged as casuals will be paid a casual loading of 25% in addition to 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.
- 26.6.2 The casual rate of pay shall be the Employee's Ordinary rate of pay for all purposes.

27 PAYMENT OF WAGES

- 27.1 Full time Employees will be paid two (2) weekly in arrears by EFT to an account nominated by the Employee. The amount of the payment for a full time Employee shall be calculated as the rate of the Annual Remuneration divided by twenty-six (26), paid on a two (2) weekly basis. Part-time Employees will be remunerated on a pro rata basis according to their ordinary hours of work. Casual Employees will be remunerated in accordance with their actual hours worked.
- 27.2 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.
- 27.3 Where the Company is unable to determine the total entitlements (i.e. pay inclusive of out of pocket expenses) of an Employee in any pay period, adjustments to the Employee's wages for the two (2) week period may be made in the following pay period.

28 SALARY PACKAGING AND SALARY SACRIFICE

- 28.1 An Employee may, by separate agreement with the Company, enter into a salary packaging or salary sacrifice arrangement in accordance with any applicable Company Policy, Australian Tax Office requirements and other relevant legislation.
- 28.2 An Employee must make such request to the Company in writing.
- 28.3 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.
- 28.4 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.
- 28.5 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.
- 28.6 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.

29 SUPERANNUATION

- 29.1 On commencement, an Employee shall be entitled to have an Employer superannuation contribution made to a complying superannuation fund nominated by the Employee.
- 29.2 If the Employee does not nominate a complying superannuation fund, the Company will make superannuation contributions into Australian Super.

- 29.3 Such contribution shall be at the amount specified by the *Superannuation Guarantee (Administration) Act 1992* (Cth) from time to time.
- 29.4 Such contributions shall be based on the Annual Remuneration rate for each classification of Employee, as specified in clause 26 of this Agreement.

30 ALLOWANCES

30.1 Car Reimbursement costs

- 30.1.1 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.
- 30.1.2 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.
- 30.1.3 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 vehicle.

30.2 Meal Expenses

30.2.1 Rest Away from Home

Employees who are required to Rest Away from Home in accordance with the provisions set down in clause 43 shall be paid \$28.88 with payroll for every 8 hours or part thereof they are away from their Home location.

30.2.2 Temporary transfer and Short Term Contract Work

30.2.2.1 Expenses of \$177.93 will be payable for each twenty-four (24) hour period, or part thereof in eight (8) hour blocks, during a temporary transfer or short term contract work. The commencement time of the twenty-four (24) hour period will be consistent with the commencement time of the first shift at the start of that temporary transfer.

30.2.2.2 Meal expenses as described in clause 30.2.1 will not apply.

30.2.3 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.

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

- 30.3.1 An Employee can be required to sign on at a location outside of their usual Home Location area.
- 30.3.2 Home Locations and Resting Away locations in Newcastle and the Hunter Valley are currently Newcastle and Mudgee. These locations may be varied through normal consultation processes as defined in clause 56.
- 30.3.3 Where an Employee agrees to use their own vehicle to travel to another sign on/sign off location (Home Location or Resting Away location), 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.
- 30.3.4 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.
- 30.3.5 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.

- 30.3.6 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 vehicle.

PART 6 – HOURS OF WORK

31 PRINCIPLES

- 31.1 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.
- 31.2 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.
- 31.3 Employees are expected to be available to work their Ordinary Hours in accordance with the requirements below.

32 ORDINARY HOURS OF WORK

- 32.1 The Ordinary Hours of work for a full-time Employee are an average of 76 hours averaged over a two (2) week roster cycle.
- 32.2 The Ordinary Hours of work for a part-time Employee are less than an average of 76 hours averaged over a two (2) week roster cycle.
- 32.3 The Ordinary Hours of work for a casual Employee are a maximum of 76 hours over a two (2) week roster cycle.
- 32.4 Ordinary hours of work may be worked on any day at any time.
- 32.5 The Ordinary Hours will include a number of Public Holidays to which the Employee is entitled.
 - 32.5.1 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.
 - 32.5.2 An Employee may refuse to work on a Public Holiday only if the refusal is reasonable.
- 32.6 **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 Cycle may be scheduled on for less than seventy-six (76) hours. To be clear, in such cases the Employee will forfeit the Ordinary Hours component for hours not worked for the particular period that they made themselves unavailable in the Roster Cycle.
- 32.7 **No loss of Ordinary Hours component:**

Employees who have been engaged as full-time Employees who are scheduled for less than seventy-six (76) hours in a Roster Cycle as a result of not being required to perform driving duties in that Roster Cycle will be paid for seventy-six (76) hours.

33 REASONABLE ADDITIONAL HOURS

- 33.1 Employees may be requested to work reasonable additional hours as are necessary.
- 33.2 Employees may refuse a request to work more than seventy-six (76) hours in a Roster Cycle in circumstances where to work the requested additional hours is 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.

34 ESTABLISHMENT OF AN HOURS CYCLE

- 34.1 All hours worked must be approved by the Company and the hours actually worked shall be recorded. An Employee shall record actual hours worked.
- 34.2 Payment of salary for Ordinary Hours for full-time Employees will be assumed to be seventy-six (76) hours over a two (2) week Roster Cycle and will be paid in equal fortnightly instalments throughout the year.
- 34.3 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.
- 34.4 Payments for casual Employees will be based on the number of hours worked in the relevant fortnightly period.

35 OVERTIME

- 35.1 In addition to the Ordinary Hours specified above, an Employee may be required to work reasonable additional hours for payment of Overtime penalty rates.
- 35.2 Overtime will be paid at 1.7 times the Hourly Rate for the applicable classification and shall Stand Alone.
- 35.3 All time counted as Overtime must be approved by the Company.
- 35.4 Where an Employee is required to work in excess of seventy-six (76) hours in a two (2) week Roster Cycle, all such time shall be deemed Overtime.
- 35.5 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.
- 35.6 Employees required to work on a Book Off Day will be entitled to receive payment for a minimum of 7.6 hours at the applicable Overtime rate.

36 BOOK-OFF DAYS

- 36.1 In any two (2) consecutive Roster Cycles (i.e. a total period of four weeks), Employees are entitled to at least eight (8) duty free days, two (2) of which are to be consecutive in each fortnight.
- 36.2 All Book Off Days will commence at 00:00 hours for a duration of thirty (30) hours ending at 06:00 hours the following day.
- 36.3 Any subsequent Book Off day will have a duration of twenty-four (24) hours.
- 36.4 Book Off Days are not to be infringed by either lift up or lay back.
- 36.5 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 35.
- 36.6 Unless agreed in accordance with clause 41.6, the minimum shift length for working an Overtime shift on a Book Off Day will be 7.6 hours.

37 MEAL BREAKS

37.1 Meal break conditions

Employees shall be entitled to a paid meal break of thirty (30) minutes during each scheduled work task. Where possible the break should 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.

38 SHIFT CHANGES AND LIFT UP / LAY BACK

38.1 General Conditions

- 38.1.1 The Master Roster will be used to create all shifts.
- 38.1.2 A shift change can only occur in accordance with the conditions set out in clause 38.
- 38.1.3 There is to be a maximum of two (2) changes to a shift by applying a shift change (clause 38.2) and/or lift up or lay back (clause 38.3), unless mutually agreed to by the individual Employees affected to more than two (2) changes. Any change made must be applied to the shift commencement time as stated on the Master Roster.
- 38.1.4 Any shift change or lift up/lay back advised which is outside of the parameters set in clause 38.2.1, 38.3.3 and 38.3.4 can only take place by agreement between the Company and the individual Employee. Should an Employee agree to a shift change or lift up/lay back outside of these parameters, the Ordinary Hours for that Roster Cycle will be credited with an equivalent number of hours equal to the extra hours at the ordinary rate.

38.2 Shift Change (used the day/s prior to sign on)

- 38.2.1 A Shift Change can occur by moving the commencement time of an Employee's shift:
 - a) Forward by up to one (1) hour; or
 - b) Back by up to two (2) hours.
- 38.2.2 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.
- 38.2.3 An Employee may be advised of a Shift Change to a scheduled shift in the Roster Cycle in accordance with clause 39 – Advice Periods.

38.3 Lift Up / Lay Back (used on the day of sign on)

- 38.3.1 Lift up and Lay Back can be used to deal with emergency type scenarios on the rail network, as defined below.
- 38.3.2 An emergency type scenario for the purpose of this clause may include equipment and infrastructure failures, accidents, derailments and general late running of trains but shall not include rostering errors.
- 38.3.3 Lift Up: The Employer may Lift Up Employees to a maximum of one (1) hour from the shift commencement time as per the Master Roster.
- 38.3.4 Lay Back: The Employer may Lay Back Employees to a maximum of two (2) hours from the shift commencement time as per the Master Roster.
- 38.3.5 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 36, unless by mutual agreement.
- 38.3.6 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.
- 38.3.7 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 by mutual agreement.

39 ADVICE PERIODS

- 39.1 Employees will be advised of changes to their next shift within the relevant Advice Period:
- 39.1.1 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
- 39.1.2 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

- 39.2 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 39.1.1 and 39.1.2.
- 39.3 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.
- 39.4 Where an Employee makes themselves unavailable during an Advice Period the provisions of clause 32.6 will apply.
- 39.5 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.
- 39.6 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.
- 39.7 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.
- 39.8 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.

40 SHIFT CANCELLATIONS

- 40.1 If no alternate work is available and a shift is cancelled outside the Advice Periods, and with less than three (3) hours before the commencement of a shift, then 50% of the shift length will be credited to the Ordinary Hours for that Roster Cycle.
- 40.2 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.

41 SHIFT LIMITS

- 41.1 Shift limits are prescribed in Rail Safety Legislation in the State or Territory in which the Employee works and if different will prevail over the provisions of this clause. The Employer will schedule work tasks in accordance with this legislation and any conditions in its Notices of Rail Safety Accreditation.

41.2 Shift Limits for Types of Working

- Route Qualified Driver/Route Qualified Driver: Maximum twelve (12) hour shift.
- Route Qualified Driver/Non Route Qualified Driver: Maximum eleven (11) hour shift.
- Route Qualified Driver/Assistant Driver: Maximum eleven (11) hour shift.
- Shunting Shift Limit: Maximum ten (10) hour shift.

41.3 Shunting Definition

Shunting is a task where a shunt plan is formulated to conduct a shunt, excluding the following;

- Locomotive detach or en-route wagon defect detach.
- Amalgamation or Placement of a Unit Train Maintenance (UTM).

41.4 Inclusions in shift limit

The time taken to travel from sign on points is included in the scheduled work task.

41.5 Maximum Hours on Duty during Emergencies

- 41.5.1 In the event of an Emergency, shift limits may be extended up to sixteen (16) hours. However, any extension of Employees hours is subject to indication of their fitness to continue.
- 41.5.2 In an Emergency, Employees should not drive motor vehicles when they have worked for more than twelve (12) hours.
- 41.5.3 During an Emergency, Safeworking duties may only be performed after twelve (12) hours where an Employee has indicated their fitness to continue.

41.6 Minimum Shift Provisions

Employees will be paid a minimum of four (4) hours if the scheduled shift length is less than four (4) hours.

41.7 Rest Periods

The following minimum intervals between shifts shall apply:

- a) Resting at home: Twelve (12) continuous hours rest between each shift.
- b) Resting away from home: Eight (8) continuous hours rest between each shift.
- c) When required to self-drive after Resting Away from home to relieve and work a train from Hunter Valley (Newcastle to Mangoola Area) to Newcastle: Twelve (12) continuous hours rest between each shift.

41.8 Limits on shifts in a fourteen (14) day period

An Employee can work a maximum of six (6) x twelve (12) hour shifts in any fourteen (14) day period. Where a shift that exceeds eleven (11) hours, but is less than twelve (12) hours it is taken to be a twelve (12) hour shift.

41.9 Mandatory Day Off (MDO)

- 41.9.1 A Mandatory Day Off will occur if an Employee works twelve (12) consecutive shifts in a rolling fourteen (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.
- 41.9.2 Where an Employee works an Overtime shift, and this results in the Employee not being able to work their next rostered shift, a number of hours equal to the rostered shift hours will be credited to the Roster Cycle.

42 ROSTERS

- 42.1 The Master Roster will be determined by the relevant Manager, based on the principles contained in clause 31.
- 42.2 All Rosters will use the twenty-four (24) hour clock, and will be available to the relevant Employee.
- 42.3 All Rosters will show:
 - a) Scheduled work tasks where known, including training days.
 - b) Book Off Days.
 - c) Transition Days.
 - d) Available Days.
- 42.4 All Employees are required to 'sign on and off' at the locations described in clause 30.3. 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.
- 42.5 The Master Roster will provide for one (1) weekend off in three (3) averaged over the Master Roster. A weekend means from 23:59 on Friday to 06:00 on Monday.
- 42.6 Where a change to the Master Roster is required, the Employer will seek volunteers to form a working group.

43 RESTING AWAY FROM HOME

43.1 Advice Conditions

- 43.1.1 The Master / Working Roster will indicate potential Barracks working lines.
- 43.1.2 The commencement time of the outgoing shift will set an indicative commencement time for the return shift.
- 43.1.3 Advice for the commencement time of the return shift will be communicated to the Employee in the appropriate Advice Period relevant to the outgoing shift.
- 43.1.4 The conditions of shift change do not apply to the commencement time of the Barracks return shift as the sign on time advised in the appropriate Advice Period for the return shift can only alter under Lift Up / Lay Back on the day.
- 43.1.5 A maximum of two (2) Barracks jobs can be rostered in any one Roster Cycle. Any additional Barracks working will require mutual agreement between the Employer and Employee.

43.2 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.

- 43.3 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.
- 43.4 Employees are only to be rested away from home once before returning back to their home.

43.5 Payment for resting away from home in excess of twelve (12) hours

Where a rest period away from home extends by more than twelve (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.

43.6 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.
- Air conditioning and heating.
- Suitable window coverings.

PART 7 – LEAVE

44 ANNUAL LEAVE CONDITIONS

- 44.1 Full Time Employees shall be entitled to five (5) weeks annual leave per year.
- 44.2 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 five (5) calendar weeks, whether taken consecutively or not.
- 44.3 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.
- 44.4 Conditions for accrual and taking annual leave**
 - 44.4.1 All such leave, whether current entitlement or accrued, shall be taken at a mutually convenient time.
 - 44.4.2 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 (1) months' notice must be given.
 - 44.4.3 Where an Employee has accrued more than ten (10) 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 balance to ten (10) weeks.
 - 44.4.4 Annual leave shall accrue in accordance with the requirements of the NES.
- 44.5 Annual Leave exclusive of other leave**
 - 44.5.1 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.
 - 44.5.2 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.
 - 44.5.3 Where an Employee is taking a block of annual leave (i.e. 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.
- 44.6 Annual Leave Payment**
 - 44.6.1 An Employee may elect to cash out up to two (2) 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 four (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.
 - 44.6.2 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.
 - 44.6.3 On termination of employment, any accrued annual leave shall be paid to the Employee.
 - 44.6.4 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.
 - 44.6.5 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.
 - 44.6.6 All paid leave provided for in Part 7 of this Agreement shall be inclusive of the components of the Annual Remuneration for the Employee classification at the time the leave is taken.

- 44.6.7 Employees will not be paid an annual leave loading. This has been incorporated into the Annual Remuneration detailed in Clause 26.4.

45 PERSONAL / CARERS LEAVE

45.1 Employees accrual bank on commencement of Agreement

Full time Employees who are employed on the date this Agreement is "made" for the purposes of the Act, and who remain in employment with the Company on the date this Agreement commences its operation, will have an accrued Personal/Carers Leave balance equal to;

- a) the Employee's years of service multiplied by fifteen (15) (Personal/Carers Leave days) less the number of Personal/Carers Leave days taken throughout their years of service; or
- b) thirty (30) days,

whichever is the greater.

45.2 Personal/Carers Leave entitlement

- 45.2.1 All permanent full-time Employees engaged under this Agreement are entitled to accrue a maximum of fifteen (15) days Personal/Carers Leave per year. Part-time Employees will receive a pro-rata entitlement.
- 45.2.2 Unused Personal/Carers Leave shall accumulate from year to year.
- 45.2.3 Personal/Carers Leave will be paid at the Employee's ordinary hourly rate of pay.
- 45.2.4 For every absence in excess of ten (10) days over a twelve (12) month period or where an Employee is absent for more than two (2) consecutive days, the Employee must support the absences by providing evidence (a medical certificate or statement by other health care practitioner, statutory declaration, or other supporting documentation) satisfactory to the Employer.
- 45.2.5 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.
- 45.2.6 Any misuse of the paid Personal/Carers Leave provisions will be subject to investigation and possible disciplinary action, which may result in termination of the Employee's employment.

45.3 Personal Leave

- 45.3.1 An Employee is entitled to paid Personal Leave when they are unable to attend work due to personal injury or illness.
- 45.3.2 An Employee will only be paid Personal Leave where they notify the Employer of their absence as soon as possible. Such notifications must include the likely duration of any such absence.
- 45.3.3 Where an Employee has taken more than ten (10) days Personal Leave in a twelve (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 the Company's nominated return to work provider or Authorised Health Professional, so as to determine whether or not the Employee is capable of returning to work.
- 45.3.4 In the event that the Company's nominated 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.

45.4 Carers Leave

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

- 45.4.2 An Employee will only be paid Personal Leave where they notify the Employer of their absence as soon as possible. Such notifications must include the likely duration of any such absence.

45.5 Unpaid Carers Leave

Employees who have exhausted their paid Carers Leave entitlement may be granted unpaid carer's leave of up to two (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 applies to casual Employees subject to compliance with the notice requirements of the Act.

45.6 Long Term Personal Leave

- 45.6.1 Each Employee is entitled to access up to twenty (20) days paid Personal Leave when they are unable to attend work due to a long term personal injury or illness. The following conditions apply:
- a) This Personal Leave entitlement is in addition to the Personal/Carers Leave entitlement.
 - b) This Personal Leave entitlement can only be accessed once by each Employee over the life of this Agreement. This is not an annual entitlement.
 - c) Subject to suitable evidence being provided, an Employee may only need to utilise a portion of the twenty (20) days Personal Leave. If the Employee elects to use only a portion of the twenty (20) days Personal Leave, the remaining days will not be available on any other subsequent occasion/s. If the Employee elects not to access any portion of the entitlement and no other occasion arises over the life of this Agreement where the entitlement is utilised, the Company will not provide back pay for the occasion whereby the Employee elected not to access the entitlement.
 - d) An Employee seeking to access this Personal Leave must be eligible in accordance with the below.
- 45.6.2 To be eligible to access this Personal Leave, an Employee must:
- a) Have exhausted all unused Personal/Carers Leave accrual;
 - b) Be absent from work for a minimum of four (4) continuous weeks after depletion of Personal/Carers Leave accrual or from date of illness or injury where an Employee has no accrual available (this period will be unpaid or an Employee can elect to be paid annual leave); and
 - c) Be absent from work due to the same illness or injury continuing on from the previous four (4) weeks absence.
- 45.6.3 Personal Leave taken as part of clause 45.6.2c, up to a maximum twenty (20) days, will be paid retrospectively in the relevant pay run.
- 45.6.4 Any long term sick leave taken is subject to the terms set out in clause 45.3.

46 COMPASSIONATE LEAVE

- 46.1 Permanent Employees are entitled to paid Compassionate Leave on the basis of three (3) days per occasion, as follows:
- 46.1.1 following the death of a member of the Employee's immediate family; or
 - 46.1.2 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.

- 46.2 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.

47 LONG SERVICE LEAVE

- 47.1 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).
- 47.1.1 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
- 47.1.2 Subject to the 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.

47.2 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.

- 47.2.1 Applications to take Long Service Leave must be made at least one (1) month 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.
- 47.2.2 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.
- 47.2.3 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.

47.3 Pro Rata Entitlement

Where an Employee has been employed by the company for at least five (5) 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 Employees serious and wilful misconduct;
- On resignation by the Employee on account of illness, incapacity or domestic or other pressing necessity; or
- On the death of the Employee.

48 PARENTAL LEAVE

- 48.1 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:
- 48.1.1 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.

- 48.2 An Employee must commence maternity leave no later than six (6) weeks immediately prior to the expected date of birth of the child and must remain on maternity leave for a minimum period of six (6) weeks following the birth of the child.
- 48.3 Subject to clause 48.2, an Employee is entitled on their return to work to the position which they held immediately before commencing Parental Leave.
- 48.4 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.

49 PUBLIC HOLIDAYS

- 49.1 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 Year's Day
- Easter Sunday
- Labor Day
- Australia Day
- Easter Monday
- Christmas Day
- Good Friday
- Anzac Day
- Boxing Day
- Easter Saturday
- Queen's Birthday

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

- 49.2 Due to the nature of the work performed by the Company, 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.
- 49.3 Where the Government Gazettes an alternative Public Holiday, (for example Christmas Day falls on a Saturday but the government changes the Public Holiday to Monday), it is agreed that Employees will substitute the Public Holiday for the original day (for example Christmas Day is Saturday so Saturday will be the Public Holiday). This applies even in the instance that the Government Gazetted notices specify the substituted date which is different to the original day.
- 49.4 The table below sets out payments for Public Holidays.

Public Holidays	
Scenario	Application
Has a Book Off Day	<ul style="list-style-type: none"> • A payment 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 payment 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: <ul style="list-style-type: none"> • A payment of 7.6 hours, or • The option to bank a DIL

Works any Overtime shift (including a Book of 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.

- 49.5 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.
- 49.6 Where an Employee has accrued a DIL in accordance with sub-clause 49.4, 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 DIL in the next pay period on or after 15th November and the DIL will be cancelled.
- 49.7 Where an Employee wishes to retain DIL past this date, they must notify the Company in writing prior to 31st October. Any agreement to this must be mutually agreed.

50 TRAUMA LEAVE

- 50.1 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.
- 50.2 Employee Assistance Programs and counselling will be available to the Employee during this time.
- 50.3 The Employee will be able to access Personal Leave (in accordance with the Personal Leave provision) for any additional leave required as a result of 'trauma' resulting from an incident of this type.

51 SPECIAL LEAVE

- 51.1 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.
- 51.2 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:
- one or more of the following:
 - time when the Employee engages in the activity;
 - reasonable travelling time associated with the activity;
 - reasonable rest time immediately following the activity; and
 - unless the activity is jury service — the Employee's absence is reasonable in all the circumstances.
- 51.3 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* (cth).

52 JURY SERVICE

- 52.1 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.
- 52.2 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.

53 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.

54 FAMILY AND DOMESTIC VIOLENCE

- 54.1 The Company recognises that some of its staff may experience situations of Family and Domestic Violence, which may in turn impact on their attendance or performance at work.
- 54.2 The Company accepts the definition of family violence as provided in the relevant Act and further recognises that it includes physical, sexual, financial, verbal and/or emotional abuse by a family or household member.
- 54.3 Family and Domestic Violence means violent, threatening or other abusive behaviour by an Employee's family member that seeks to coerce or control the Employee or causes them harm or fear.
- 54.4 A family member includes an Employee's spouse or former spouse, de facto partner or former defacto partner, child, parent, grandparent, grandchild, sibling, an Employee's current or former spouse or de facto partner's child, parent, grandparent, grandchild or sibling.
- 54.5 Employees experiencing family or domestic violence are entitled to two (2) days paid leave per year for the purpose of attending legal proceedings or filing police reports where it is impractical to do so outside of ordinary working hours.
- 54.6 In addition to the paid days, an Employee will be entitled to up to three (3) days unpaid Family and Domestic Violence leave per year for the purpose of attending medical appointments, legal proceedings, seeking safe housing or other activities related to dealing with family or domestic violence where it is impractical to do so outside of ordinary working hours.
- 54.7 Family and Domestic Violence leave does not accumulate from year to year.
- 54.8 The Company may request relevant supporting evidence, which can take the form of a document issue by the police force, a court, a medical practitioner, a family violence support service, a lawyer, or a counselling professional.
- 54.9 All personal information concerning Family and Domestic Violence will be kept confidential in line with relevant policies and relevant legislations.

PART 8 – WORKPLACE RELATIONS

55 WORKPLACE HEALTH AND SAFETY

- 55.1 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.
- 55.2 The Safety Team will meet within prescribed timeframes at a minimum.
- 55.3 All safety meeting agenda's and meeting notes are posted on the Employers secure intranet site, and are also emailed directly to all Workgroup Employees.

56 WORKPLACE CONSULTATION

56.1 This term applies if the Employer:

- a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the Employees; or
- b) proposes to introduce a change to the regular roster or ordinary hours of work of Employees.

56.2 For a change referred to in clause 56.1:

- a) the Employer must notify the relevant Employees and the Union of the decision to introduce the change by complying with either clause 56.3 for Major Change or clause 56.4 for change to the regular roster or ordinary hours of work; and
- b) the relevant Employees may appoint a Representative for the purposes of the procedures in this term. If;
 - i. a relevant Employee appoints, or relevant Employees appoint, a Representative for the purposes of consultation; and
 - ii. the Employee or Employees advise the Employer of the identity of the Representative;

the Employer must recognise the Representative, which may include the Union.

56.3 Major Change

56.3.1 As soon as practicable after making its decision, the Employer must:

- a) discuss with the relevant Employees;
 - i. the introduction of the change; and
 - ii. the effect the change is likely to have on the Employees; and
 - iii. measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employees; and
- b) for the purposes of the discussion provide, in writing, to the relevant Employees:
 - i. all relevant information about the change including the nature of the change proposed; and
 - ii. information about the expected effects of the change on the Employees; and
 - iii. any other matters likely to affect the Employees.

56.3.2 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.

- 56.3.3 The Employer must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.
- 56.3.4 In this term, a major change is likely to have a significant effect on Employees if it results in:
- a) the termination of the employment of Employees; or
 - b) major change to the composition, operation or size of the Employer's workforce or to the skills required of Employees; or
 - c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - d) the alteration of hours of work; or
 - e) the need to retrain Employees; or
 - f) the need to relocate Employees to another workplace; or
 - g) the restructuring of jobs.

56.4 Change to Regular Roster or Ordinary Hours of Work

- 56.4.1 As soon as practicable after proposing to introduce the change, the Employer must:
- a) discuss with the relevant Employees the introduction of the change; and
 - b) for the purposes of the discussion—provide to the relevant Employees:
 - i. all relevant information about the change, including the nature of the change; and
 - ii. information about what the Employer reasonably believes will be the effects of the change on the Employees; and
 - iii. information about any other matters that the Employer reasonably believes are likely to affect the Employees; and
 - c) invite the relevant Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- 56.4.2 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- 56.4.3 The Employer must give prompt and genuine consideration to matters raised about the change by the relevant Employees.
- 56.4.4 In this term, relevant Employees means the Employees who may be affected by a change referred to in clause 56.1.

56.5 Implementation of Change

For a change referred to in clause 56.1, once the consultation term has been complied with, the Company may implement change after fourteen (14) days.

56.6 Failure to Consult

- 56.6.1 Where the Company has failed to engage in any part of the consultation process set out in this clause, the affected Employees, or their representatives, may issue the Company, within seven (7) days of the non-compliance, with a notice of dispute, in writing, setting out the reasons for the dispute. Upon receiving such notice of dispute, the Company will not implement the change and or cease the change should it have been already implemented.
- 56.6.2 Notwithstanding the above, where a dispute arises relating to the consultation process and the proposed change, the Dispute Settlement procedure in clause 57 shall be followed.

57 DISPUTE SETTLING PROCEDURE

57.1 If a dispute relates 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:

57.2 Step 1

57.2.1 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.

57.2.2 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.

57.3 Step 2

In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by holding discussions between the Employee or Employees and relevant supervisors.

57.4 Step 3

57.4.1 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.

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

57.4.3 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.

57.5 Step 4

If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission to resolve the dispute as it considers appropriate, including mediation, conciliation or arbitration.

57.6 While the parties are trying to resolve the dispute using the procedures in this term:

57.6.1 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

57.6.2 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.

57.7 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.

58 WORKPLACE REPRESENTATIVES

58.1 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.

- 58.2 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/manager prior to attending to any such matters.
- 58.3 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.
- 58.4 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.
- 58.5 The Company will provide a total pool of up to four (4) days paid leave each year, which will be available to the Representatives to attend for congresses and conferences.

59 WORKPLACE RELATIONS TRAINING

- 59.1 Workplace Relations Training is specifically targeted at maintaining harmonious workplace relations between the Company and its Employees.
- 59.2 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.
- 59.3 The Employer will grant leave for a maximum of up to two (2) paid days per new Workplace Representative to attend training under this Agreement. No more than three (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.

PART 9 – COMMITMENT BONUS

60 COMMITMENT BONUS

- 60.1 Employees (excluding Casual Employees) who are employed on the date the Agreement is “made” for the purposes of the Act and who remain employed on the date this Agreement commences in operation, will be entitled to receive a one off Commitment Bonus of \$18,000 (gross). This one off Commitment Bonus will be taxed at the Employee’s nominal tax rate and payable to eligible Employees in the next pay cycle following twenty-two (22) clear days after date the Agreement commences in operation. The Commitment Bonus will not be payable, however, in the event the FWC makes a decision not approving the Agreement or the FWC decision approving the Agreement is subject to a successful appeal.
- 60.2 Eligible Employees will be paid the Commitment Bonus in full in the relevant pay cycle as per clause 60.1 above, unless the Employee makes a request to the Company in writing within ten (10) days of the Agreement commencing operation to either salary sacrifice the Commitment Bonus in to their nominated superannuation account or to divide the payment equally over two (2) pay cycles. The request must state one of the following options:
- a) Salary sacrifice the payment in one pay cycle.
 - b) Salary sacrifice the payment evenly over two pay cycles.
 - c) Divide the payment equally over two pay cycles.
- 60.3 Where an Employee makes a request to the Company to either salary sacrifice the Commitment Bonus in to their nominated superannuation account or to divide the payment evenly over two pay cycles (as per clause 60.2), the payment/s must occur in a pay cycle/s ending prior to 31 October 2019.



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 57 of the *Freightliner Australia Coal Haulage Pty Ltd Enterprise Agreement 2019*. 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: _____

PART 10 – SIGNATORIES

Signed for and on behalf of Freightliner Australia Coal Haulage Pty Ltd:

Representative: Vanessa Hoey Director HR
Name Position
Signature [Signature] Date 14/03/19
In the presence of: Megan Griffin Senior HR Business Partner
Name Position
Signature [Signature] Date 14 March 2019

Signed for and behalf of the Australian Rail Tram and Bus Industry Union (RTBU) NSW Branch:

Representative: ROBERT MANDEN ASSISTANT SECRETARY (RAIC)
Name Position
Signature [Signature] Date 15/3/19
In the presence of: STEPHEN WRIGHT FREIGHT ORGANISER
Name Position
Signature [Signature] Date 15/3/19

END OF AGREEMENT



Genesee & Wyoming Australia

UNDERTAKING

In accordance with section 190 of the *Fair Work Act 2009* (Cth) (**FW Act**), the employer, Freightliner Australia Coal Haulage Pty Ltd (**Company**), provides the following undertaking in respect of the *Freightliner Australia Coal Haulage Pty Ltd Enterprise Agreement 2019* (**Agreement**):

1. For the sake of clarity, the wage rates at commencement of the Agreement contained in the table at clause 26.4 of the Agreement are also taken to be the rates of pay at the "test time" for the purposes of section 193(6) of the FW Act, being 15 March 2019.
2. For the purposes of the additional week of annual leave provided by Division 6 of the National Employment Standards (**NES**), a shiftworker is an Employee who is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays and an Employee who works permanent night shift. Notwithstanding this, however, clause 44 of the Agreement provides all Employees (except Casual Employees) with the additional week of annual leave provided by the NES.

Signed by Freightliner Australia Coal Haulage Pty Ltd:

Signature: U Hoey.

Date: 16/4/19

Name: Vanessa Hoey

Position (authority to sign): Director Human Resources

Address: Level 3/33 Richmond Road, Keswick SA 5035

Schedule 2.2—Model flexibility term

(regulation 2.08)

Model flexibility term

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - (a) the agreement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
 - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
 - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the employer and employee; and
 - (c) is 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
- (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the employer and employee agree in writing—at any time.