



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

One Rail Australia (FLACH) Pty Ltd T/A One Rail Australia
(AG2023/2481)

ONE RAIL AUSTRALIA (FLACH) PTY LTD, NSW COAL HAULAGE ENTERPRISE AGREEMENT 2023

Rail industry

DEPUTY PRESIDENT BEAUMONT

PERTH, 2 AUGUST 2023

*Application for approval of the One Rail Australia (FLACH) Pty Ltd, NSW Coal Haulage
Enterprise Agreement 2023*

[1] One Rail Australia (FLACH) Pty Ltd T/A One Rail Australia (the **Applicant**) has made an application for the approval of an enterprise agreement known as the *One Rail Australia (FLACH) Pty Ltd, NSW Coal Haulage Enterprise Agreement 2023* (the **Agreement**). The application was made under s 185 of the *Fair Work Act 2009* (Cth) (the **Act**). The Agreement is a single enterprise agreement.

[2] The model flexibility term prescribed by the *Fair Work Regulations 2009* (Cth) is attached to the Agreement and taken to be a term of it.

[3] The Australian Rail, Tram and Bus Industry Union (the **organisation**), being a bargaining representative for the Agreement, has given notice under s 183 of the Act that it wants the Agreement to cover it. In accordance with s 201(2), and based on the declaration provided by the organisation, I note that the organisation is covered by the Agreement.

[4] The Agreement was approved on 2 August 2023 and, in accordance with s 54, will operate from 9 August 2023. The nominal expiry date of the Agreement is 2 August 2027.



DEPUTY PRESIDENT

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

One Rail Australia (FLACH) PTY LTD, NSW Coal Haulage Enterprise Agreement 2023

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PART 1 – THE AGREEMENT AND ITS OPERATION

1 TITLE

- 1.1 This Agreement will be referred to as the One Rail Australia (FLACH) Pty Ltd, NSW Coal Haulage Enterprise Agreement 2023 (Agreement).

2 PARTIES TO THIS AGREEMENT

- 2.1 The parties to this Agreement are:
- 2.1.1 One Rail Australia (FLACH) Pty Ltd (“Company” or “Employer” or “ORA”) ACN 137 483 713; and
- 2.1.2 Employees of the Company who are employed in one of the classifications contained in this Agreement (“Employees”); and
- 2.1.3 The Australian Rail, Tram and Bus Industry Union (“the 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 (the Act) describe the NES entitlements and may also provide terms that supplement or are ancillary to the entitlements of the NES.
- 3.4 The company undertake that The National Employment Standards prescribed by the *Fair Work Act 2009* (cth) at division 2 section 61 as in force or replaced from time to time prevail to the extent on any inconsistency with this agreement.

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

- 5.1 It is a term of this Agreement that the parties will not make any extra claims for the duration of this Agreement. The exclusion to this clause will be if the Company seeks to introduce the following conditions in the life of this Agreement:
- 5.1.1 The Operation of Distributive Power Trains.
- 5.2 This clause is subject to the right to a variation of this Agreement in accordance with the Act.

6 DEFINITIONS

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

The Act *The Fair Work Act 2009* 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.
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.
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. The rates are detailed in clause 28.4.1
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 stepchild 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 standard hours of work averaged over the applicable duty cycle which an Employee is required to work, that for a full-time employee will equal 1976 hours over a fifty two (52) week period.

Overtime	Hours worked in accordance with clause 43, including any hours additional to the Ordinary Hours in the applicable roster cycle.
ORA	One Rail Australia (FLACH) Pty Ltd (the Company)
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.
RSNL	Rail Safety National Law (NSW) 2012 and its subsidiary legislation.
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, working days, start times, transition 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.
Roster A	A Master Roster where there are a maximum of 8 appearances (shifts) over a fortnight roster cycle of 76 base hours.
Roster B	A Master Roster where there are a maximum of twenty eight (28) appearances (shifts) over an eight (8) week roster cycle of three hundred and four (304) base hours and where shifts are in equal blocks worked and not worked ie. 4 on 4 off.
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.
Satellite sign on Point.	A <i>Sign On</i> facility that must be within ten (10) kilometres of the home location by the shortest public route
Stand Alone	Hours worked which attract an Overtime payment and are not considered Ordinary Hours.
Support Person	As defined in the Act, and may include a Union representative.

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 and to balance annual leave shifts.
Union	The Australian Rail, Tram and Bus Industry Union ('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 The selection process for filling position vacancies will be based on the merit principle. The merit of applicants will be determined by considering the abilities, competence, qualifications, experience, standard of work performance and work history of candidates, relative to the position.
- 7.3 All vacancies will be advertised internally within all business divisions. At times, ORA may also advertise a vacancy simultaneously internally and through media advertisements, recruitment agencies and other sources. Internal advertisements will include the position level from the classification structure contained in this Agreement and the salary level.
- 7.4 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).
- 7.5 On commencement of employment the company will ensure Employees undergo an induction and orientation program, during which time they will be familiarised with the Company, their work sites, the requirements of their position and be issued with a copy of this Agreement and any other notices prescribed under the Act or other relevant legislation.
- 7.6 Where permanent full-time positions become available, preference will be given to suitable part time, casual, temporary fixed term and Labour Hire workers who wish to be considered for appointment to these positions.
- 7.7 Where the company is proposing to introduce a part time arrangement, preference will be given to suitable full time, casual, and temporary fixed term employee candidates.
- 7.8 The company will provide training relevant to job/position requirements and employee needs that is aligned to the Australian Qualifications Framework. Certificates and statements of attainment will be issued to employees upon satisfying the requirements of the specific training.

8 ENGAGEMENT STATUS

- 8.1 Employees will be engaged in accordance with clause 7.1.
- 8.2 Full time Employee
 - 8.2.1 A full time Employee is engaged to work an average of one thousand, nine hundred and seventy six (1976) Ordinary Hours per year.

8.3 Part-time Employee

- 8.3.1 A part-time Employee is one engaged to work agreed defined Ordinary Hours, which are less than the Ordinary Hours of a full time Employee.
- 8.3.2 These agreed hours an Employee is required to work must be in writing and can only be altered by mutual agreement in writing (which may be via text message or email). A part-time Employee will have their scheduled Book Off Days posted in accordance with the provisions in clause [51](#) Rosters.
- 8.3.3 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. Part-time Employees will receive 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.
- 8.3.4 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.

8.4 Casual Employee

- 8.4.1 A casual Employee is an Employee engaged and paid on an ad hoc basis.
- 8.4.2 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 additional form of paid leave, payment for Public Holidays not worked, and notice payments set out in this Agreement.
- 8.4.3 Overtime shall be paid where the Employee works in excess of 38 hours in any week.
- 8.4.4 The Employer shall utilise part-time and full time Employees, as a preference, unless operational requirements require the use of casual Employees.
- 8.4.5 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.
- 8.4.6 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.
- 8.4.7 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.

8.5 Fixed Term Employee

- 8.5.1 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.
- 8.5.2 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.

8.6 Job Sharing

- 8.6.1 The parties acknowledge the benefits of job sharing to both the Employees and to the company and agree to make all reasonable efforts to facilitate such arrangements where requested by Employees, subject to the reasonable needs of the business and any legal requirements.
- 8.6.2 With the approval of the Company, the potential for any Employee to undertake job sharing will be dependent upon identifying another current Employee with similar qualifications and skills levels that will allow the pairing of individuals to share the position.
- 8.6.3 Employees undertaking a job sharing arrangement will be required to seek approval from their relevant manager/s, and sign a letter of agreement which confirms their work arrangements and also any conditions which have been varied (i.e. pro rata of leave, redundancy and other entitlements) from those outlined in this Agreement.
- 8.6.4 Where an Employee is unable to be paired with another Employee or an Employee already job sharing is left without a partner for any reason and an alternative cannot be found, with the approval of the Company, the Employee may revert to a part time role or a full-time role if a vacancy exists.

- 8.6.5 Where Employees have secondary employment outside of their job sharing position with One Rail Australia, the Employee is obliged to advise One Rail Australia so that the parties can ensure that the Employee is capable of performing their role safely.

8.7 FLEXIBLE WORKING ARRANGEMENTS

- 8.7.1 Employees may request flexible working arrangements In line with the NES and the Company policy (which is in line with the NES). an employee may request a change in their working arrangements from their employer if they require flexibility because they:
- 8.7.1.1 are the parent, or have responsibility for the care, of a child who is of school age or younger
 - 8.7.1.2 are a carer (within the meaning of the Carer Recognition Act 2010)
 - 8.7.1.3 have a disability
 - 8.7.1.4 are 55 or older
 - 8.7.1.5 are experiencing violence from a member of their family, or
 - 8.7.1.6 provide care or support to a member of their immediate family or household, who requires care or support because they are experiencing violence from their family.
- 8.7.2 If an employee is the parent of a child or has responsibility for the care of a child and is returning to work after taking parental or adoption leave, the employee may request to return to work on a part-time basis to help them care for the child.
- 8.7.3 The request must be made in writing and set out details of the change sought and reasons for the change.
- 8.7.4 ORA must give employees a written response to the request within twenty one (21) days, stating whether they grant or refuse the request. ORA may refuse the request only on reasonable business grounds. If ORA refuses the request, the written response must include the reasons for the refusal.
- 8.7.5 Where a flexibility arrangement includes a reduction in ordinary hours annual leave will accrue pro rata on hours worked.

8.8 SUPPLEMENTARY LABOUR AND JOB SECURITY

- 8.8.1 The company confirms that the predominant form of employment is permanent full time or part time, fixed term or casual.
- 8.8.2 Supplementary labour from external sources shall not be used to displace permanent employees.

9 WORK LOCATIONS (DEPOTS, NEW DEPOTS, AND FACILITIES)

- 9.1 Work locations (Depots) at the commencement of this Agreement are:
- 9.1.1 Newcastle (Mayfield)
 - 9.1.2 Mudgee;
- 9.2 A Satellite sign on point for the Newcastle Depot is the ORA Facility, at Carrington.
- 9.3 Employees will sign on at the home location or a satellite facility that must be within ten (10) kilometers of the home location by the shortest public route.
- 9.4 Work Locations and Satellite Sign on Points may be amended throughout the life of the Agreement. For completeness and clarity, nothing in this clause prohibits the Company's ability to amend or alter work locations and or satellite sign on points due to operational needs, growth, and or efficiencies.
- 9.5 The company will consult as per clause [71](#) with its employees and union to provide facilities as and when new work locations and satellite sign on points are established.

- 9.6 At a minimum any location will have an air-conditioned office, toilet facilities, an equipped meal room and accessible car parking.
- 9.7 A Notice board of at least one square metre of area will be provided in meal rooms to allow for exclusive posting of authorised union material by the local delegates.
- 9.8 The Company will commit to providing appropriate provisions and facilities at the various locations. Should the company have difficulty providing facilities due to a remote location or similar, then the company will consult with the employees and their union as to what is acceptable at that site.
- 9.9 From time to time, for the purposes of training, Employees may be required to work in more than one location at the reasonable direction of the Employer.
- 9.10 It is noted the Carrington sign on point is yet to be completed at the time of certification. The company has agreed to a site inspection of the location with HSR's and the Union to agree on site requirements. The company has agreed that upon introduction of the Depot, employees may park outside the gates and be transported by the company to the site.

10 PROBATION AND QUALIFYING PERIOD OF EMPLOYMENT

- 10.1 All new Employees, with the exception of casuals, will be engaged on an initial three (3) month probation period.
- 10.2 From the date of commencement, and for a qualifying period of six (6) 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.
- 10.3 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 [16.5](#) applies.
- 10.4 At any time during the qualifying period the Company or an Employee may terminate the employment relationship by giving one weeks' notice.

11 EMPLOYEE TRANSFERS

11.1 Permanent Transfers

- 11.1.1 An employee may apply for transfer to another home location. The employer will consider the application and at its discretion either approve or reject the request.
- 11.1.2 Where an Employee requests a Permanent Transfer and is successful, they will be responsible for all costs associated with the transfer.

11.2 Temporary Transfer

- 11.2.1 Employees may agree to change their home location on a temporary basis for a period of not less than four (4) shifts over four (4) days (inclusive of an outgoing and return travel shift from the home location / base).
- 11.2.2 The terms of a temporary transfer, including the start date and duration of the transfer, will only operate by agreement.
- 11.2.3 When temporarily transferred the following conditions apply:
 - 11.2.3.1 Accommodation will be in accordance with the provisions of clause 55 Accommodation Standards
 - 11.2.3.2 Expenses for temporary transfer are detailed in clause 32 allowances
 - 11.2.3.3 The means of travel to and from the temporary location will either be provided by the Company or, where an Employee uses their own car as agreed, the Employee shall be reimbursed according to the current kilometre rates provided by the Australian Taxation Office.
- 11.2.4 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 49 shift limits applies.

- 11.2.5 The time taken to travel to and from the temporary location is to be included in scheduled roster hours and credited to the duty cycle.

12 INDIVIDUAL FLEXIBILITY ARRANGEMENTS

- 12.1 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 12.2.

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

- 12.2.1 Arrangements for when work is performed;
- 12.2.2 Overtime rates;
- 12.2.3 Penalty rates.

- 12.3 The Employer must ensure that the individual flexibility arrangement:

- 12.3.1 Is in writing; and
- 12.3.2 Includes the name of the Employer and the Employee; and
- 12.3.3 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
- 12.3.4 Includes details of:
 - 12.3.5 The terms of the Enterprise Agreement that will be varied by the arrangement; and
 - 12.3.6 How the arrangement will vary the effect of the terms; and
 - 12.3.7 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
 - 12.3.8 States the date of which the arrangement commences.

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

12.5 Termination of Flexibility Arrangements

- 12.5.1 The Company or Employee may terminate the individual flexibility arrangement:
- 12.5.2 by giving no more than 28 days written notice to the other party to the arrangement; or
- 12.5.3 if the Company and Employee agree in writing – at any time.

13 DISCIPLINARY MATTERS

- 13.1 Where performance management is to be addressed, the Employer will refer to its policies and procedures, and will observe the principles of natural justice and due process.

- 13.2 All disciplinary matters will be treated as confidential.

14 PROCESS

- 14.1 For disciplinary matters the process will include:

- 14.1.1 Investigation into any allegations.
- 14.1.2 Discussion with the Employee, and their support person if applicable, regarding the matter.
- 14.1.3 Where formal responses are required, employees will be given up to seven days to respond and may seek the assistance of their union in doing so. Additional time to respond will be granted if required.
- 14.1.4 Advice to the Employee as to the findings of any investigation, and any actions to be taken, in a timely and reasonable manner.
- 14.1.5 Where the action(s) to may include termination, the Employee will be given an opportunity to show cause as to why their employment should not be terminated)
- 14.1.6 The Employer will provide details of disciplinary concerns and evidence to the Employee in writing.
- 14.1.7 All parties are required to participate in this process.

- 14.1.8 Where an employee has been stood down as part of the process they will be paid their normal payment. Time stood down is to be minimized and employees should be kept up to date with the process at all times.

14.2 OUTCOMES

- 14.2.1 Consistent with any applicable policies and procedures, Employees may be subject to the following outcomes:
- 14.2.1.1 Verbal warning with a file note entered onto their personnel file;
 - 14.2.1.2 Written warning;
 - 14.2.1.3 Reduction in classification consistent with levels of performance or competency;
 - 14.2.1.4 Suspension with or without pay;
 - 14.2.1.5 Dismissal, with or without notice.

15 STAND DOWN

15.1 Stand Down without pay

- 15.1.1 the Employer may Stand Down Employees without pay for any time during which they cannot usefully be employed because of one of the following:
- 15.1.1.1 industrial action (other than industrial action organised or engaged in by the Employer);
 - 15.1.1.2 a breakdown of machinery or equipment, if the Employer cannot reasonably be held responsible for the breakdown;
 - 15.1.1.3 a stoppage of work for any cause for which the Employer cannot reasonably be held responsible.
- 15.1.2 Employees cannot be stood down for planned maintenance by a network provider unless the maintenance is for a period exceeding seven days. In such cases at least 14 days' notice is to be provided.
- 15.2 The Employee may elect to use Annual Leave as an alternative to being Stood Down.
- 15.3 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.
- 15.4 The Employer will actively pursue alternative work to be done, such as training or maintenance, before proceeding with the Stand Down.
- 15.5 Employees who are Stood Down under this provision shall be treated for all purposes (other than payment) as having Continuity of Employment.

15.6 Work with another employer

- 15.6.1 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:

- 15.6.1.1 Provide details of the period of notice to the Employer, including details of the hours worked for the last two (2) weeks; and,
 - 15.6.1.2 Inform the Employer when they will be available to commence work with the Employer.
 - 15.6.1.3 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.
- 15.6.2 Any period between the end of the Stand Down period and the Employee's attendance at work will be treated as unpaid leave.

16 TERMINATION OF EMPLOYMENT

16.1 Termination by the Company

- 16.1.1 An Employee's employment may be terminated in accordance with this clause for reasons including (although not limited to), where the Employee:
- After training and mentoring, Is unable to demonstrate the required skill or ability; and/or,
 - demonstrates inappropriate behaviour; and/or,
 - cannot satisfy the medical requirements for their position.
- 16.2 Subject to clause 16.4.3, 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

- 16.3 The period of notice required is increased by two (2) weeks if the Employee:
- 16.3.1 is over 45 years age; and
 - 16.3.2 has completed at least two (2) years of continuous service with the Employer.

16.4 Termination by the Employee

- 16.4.1 An Employee who resigns must provide the Employer with the same period of notice as specified in clause 16.2 (but not the additional notice provided in clause 16.3).
- 16.4.2 Notwithstanding clause 16.4.1, the Employer may agree to a shorter period of notice from an Employee.
- 16.4.3 Where an Employee who is at least 18 years old does not provide the Employer with the required notice under clause 16.2 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.

16.5 Summary Dismissal

- 16.5.1 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.
- 16.6 Time Off During Notice Period
- 16.6.1 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.
 - 16.6.2 The time off shall be taken at times that are convenient to the Employee after consultation with the Company.

- 16.6.3 The Company will not pay additional days taken during the notice period unless previously agreed by the relevant Manager.
- 16.6.4 Other leave arrangements shall be at the discretion of the Company.

16.7 On Termination

- 16.7.1 With the exception of Employees terminated in accordance with clause [16.5](#) 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:
 - 16.7.1.1 Personal Leave balance greater than 30 days as at termination date - 30 (days) x 75%.
 - 16.7.1.2 This will be paid at the Employee's ordinary rate of pay at the date of termination of employment.
- 16.7.2 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.
- 16.7.3 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.
- 16.7.4 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 and the name of a contact person within the company whom can be contacted to verify the information.

17 REDUNDANCY

17.1 Discussions before termination of employment

- 17.1.1 A redundancy scenario arises where the Company considers that it no longer requires the position an Employee has been performing to be performed by anyone, and this is not due to the ordinary and customary turnover of labour in the business.
- 17.1.2 Where a redundancy scenario may lead to termination of employment, the Company shall hold discussions with the Union and the Employee/s directly affected.
- 17.1.3 Redundancy is a major change. The obligations in relation to consultation contained in clause 71 of this agreement are to be observed.

17.2 Transfer to lower paid duties

- 17.2.1 Where an Employee agrees to transfer to lower paid duties for reasons set out in sub-clause 17.1.1, the Employee shall be entitled to the same period of notice of transfer as he or she would have been entitled to if their employment had been terminated.
- 17.2.2 The Company may, at its option, make payment in lieu thereof of an amount equal to the difference between the former Annual Remuneration and the new lower Annual Remuneration for the number of weeks of notice still owing.
- 17.2.3 The company shall maintain the employee's rate of pay for a period of 12 months. If after 12 months the employee has been unable to be reassigned to a classification equivalent in pay the employee will revert to the lower rate of pay.

17.3 Severance pay

- 17.3.1 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.
- 17.3.2 For the purposes of this clause, "weeks' pay" means the weekly Annual Remuneration rate.

17.4 Time off during notice period

- 17.4.1 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 15.6 of this Agreement applies.
- 17.4.2 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.

17.5 Notice to Centrelink

- 17.5.1 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.

17.6 Employee Transfer

- 17.6.1 Where the Company offers and an Employee accepts a transfer in lieu of being made redundant to another location within the Company. Employees who accept such transfer in these circumstances are not entitled to severance payments.
- 17.6.2 Employees will be given 21 days' notice of the change.
- 17.6.2.1 the Company will pay reasonable relocation costs for the transfer including but not limited to:
- a) travel costs;
 - b) legal costs for sale and purchase of new dwellings; and
 - c) removal expenses for the Employee and family members.

18 TRANSFER OF BUSINESS

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

PART 3 – SAFETY

19 SAFETY PRINCIPLES

- 19.1 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.
- 19.2 The parties to this Agreement commit to meeting their obligations and duties under the relevant Safety Legislation.

19.3 Health & Safety Representatives

- 19.3.1 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.
- 19.3.2 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.
- 19.3.3 Safety meetings will be held in accordance with prevailing safety legislation and will be scheduled in rosters.
- 19.3.4 Hazard reporting and communication systems are in place to support the Employer, Employees and nominated Health & Safety Representatives in these matters.
- 19.3.5 Health & Safety Representatives will be appointed consistent with prevailing legislation. however there will be no less than one (1) HSR per 50 employees covered by this agreement at each depot/workgroup.

19.4 Safety Procedures

- 19.4.1 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.
- 19.4.2 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.

20 ALCOHOL AND DRUGS

- 20.1 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.
- 20.2 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.
- 20.3 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.
- 20.4 The Company will bear all the costs associated with such testing, including any required subsequent testing (directed to be undertaken by the Company).
- 20.5 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 may include termination of employment.

21 HEALTH ASSESSMENTS

21.1 RAIL SAFETY HEALTH ASSESSMENTS

- 21.1.1 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 the cost of the medical assessment. In cases where additional information or specialist opinion is required, an interim determination may be made while awaiting this further advice. If an interim determination is provided (i.e. fit for duty subject to review or temporarily unfit for duty), any tests (e.g. a stress ECG test) will be paid for by the company to finalise the determination as provided for in 21.1.3 below.
- 21.1.2 E.g. Edward goes for his medical assessment and the Doctor issues him with an interim determination of “fit for duty subject to review” and refers him for a stress ECG test to finalise the determination. Edward does the stress ECG test and the final determination is issued as “fit for duty”. The company will pay for the stress ECG test and Edward continues at work.
- 21.1.3 A qualified health professional, in satisfaction of the National Standard, will issue an Employee a determination which can be either interim or final as outlined below:
 - 21.1.3.1 Fit for Duty;
 - 21.1.3.2 Fit for Duty subject to Review;
 - 21.1.3.3 Fit for Duty subject to Job Modification;
 - 21.1.3.4 Temporarily Unfit for Duty; or
 - 21.1.3.5 Permanently Unfit for Duty.
- 21.1.4 **Additional costs associated with referral**

- 21.1.4.1 If further tests are required following the examination, but before the final determination, the Company will be responsible for the costs of those tests.
- 21.1.4.2 Once the final determination has been made by the Authorised Health Professional, costs of all further tests will be borne by the Employee unless there was no basis for the referral to the further tests.
- 21.1.5 Where it is determined that there was no basis for the referral, One Rail will:
 - 21.1.5.1 Reimburse the Employee for the medical costs incurred;
 - 21.1.5.2 Re-credit any sick leave that has been used as a result of being unable to perform their duties as a result of the referral.
- 21.1.6 Time off for attendance at health assessments**
 - 21.1.6.1 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.
- 21.1.7 Applicable legislation**
 - 21.1.7.1 The above provisions do not exclude any obligations arising under the applicable Workers Compensation legislation.
- 21.1.8 Maintenance of rate of pay in certain circumstances**
 - 21.1.8.1 Where an Employee, in accordance with clause 21.1.3 is deemed to be:
 - 21.1.8.2 Temporarily Unfit; or
 - 21.1.8.3 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.

21.2 HEALTH ASSESSMENTS – OTHER

- 21.2.1 Where as part of employment matters not associated with requirements of Rail Safety National Law, and where the company requires an employee to attend any form of medical examination all costs associated with such examinations will be met by the company.
- 21.2.2 In the event that an employee is absent from work for a non-work related illness or injury and they provide the company with a certificate from their general practitioner or treating medical specialist which states that the employee is fit to return to work, ORA may either accept that certificate and return the employee to their normal duties or may decide to engage an accredited rail safety assessor, (Safety Assessor) to make a determination as to whether the employee is fit to return to their normal duties (Determination). Where ORA elects to engage a Safety Assessor, it will only direct an employee to undergo an assessment with an assessor where it is lawful and reasonable to do so;
- 21.2.3 The period between the date on which the employee provides ORA with a medical certificate stating they are fit to return to work and the date on which the outcome of the Determination is communicated to the employee will be referred to as the Interim Period. During the Interim Period:
 - 21.2.3.1 ORA will provide the employee with suitable alternative duties, if such duties are available, noting that this does not oblige ORA to create a new job or role for the employee. If such suitable alternative duties are available, ORA

will pay the employee their usual remuneration (for their substantive role) during the Interim Period; or

- 21.2.3.2 If no suitable alternative duties are available, the employee will not be required to attend work but will be If ORA informs an employee that it has decided to engage a Safety Assessor to make a Determination, the employee will have a period of 72 hours thereafter to inform ORA whether the employee would like to undertake a functional capacity assessment with Jobfit or another local rail accredited provider engaged by ORA (Assessment);
- 21.2.4 If an employee informs ORA within the 72 hour period provided that they would like to undertake an Assessment, then:
 - 21.2.4.1 ORA will arrange for the Assessment to take place, at its cost, in the local region;
- 21.2.5 The results and/or observations of the Assessment will be provided to the Safety Assessor for his or her consideration in making their Determination, but the ultimate question of the employee's fitness to return to work will remain with the Safety Assessor;
- 21.2.6 The employee may request a copy of the results and/or observations of the Assessment from Jobfit or any other company engaged by ORA to undertake the Assessment; and
- 21.2.7 The outcome of the Determination will be communicated to the employee as soon as practicable after it is received by ORA from the Safety Assessor.
- 21.2.8 In the event that the Safety Assessor's Determination is that the employee is not fit to return to work for an additional period of time (the Further Period), then during the Further Period:
- 21.2.9 ORA will provide the employee with suitable alternative duties, if such duties are available, noting that this does not oblige ORA to create a new job or role for the employee. If such suitable alternative duties are available, ORA will pay the employee their usual remuneration (for their substantive role) during the Further Period; or
- 21.2.10 If no suitable alternative duties are available, the employee will not be required to attend work and will either be on paid leave (eg personal leave, annual leave, long service leave) or unpaid leave during the Further Period.
- 21.2.11 Where the assessment raises a matter that falls under Rail Safety National Law then the matter will then be dealt with as per the requirements of clause 21.1

22 UNIFORMS, PROTECTIVE CLOTHING AND EQUIPMENT

- 22.1 The Company will provide Employees with uniforms and any required personal protective equipment.
- 22.2 Safety equipment provided by the Company will be utilised as directed by the Company and in accordance with the manufacturer's instructions.
- 22.3 Where a uniform, protective clothing or equipment is provided, it must be correctly worn or utilised while the Employee is on duty.
- 22.4 Employees will take reasonable care of uniforms, protective clothing or equipment which will remain, at all times the property of the Company. Worn or defective items of uniform, protective clothing or equipment must be reported to the Company.

- 22.5 The Company shall consult with the relevant Employees where there is a proposal to make a significant change to the frequency, quality or quantity of uniform issues. Changes to colour or supplier will not be considered a significant change.
- 22.6 The Company will replace uniforms, protective clothing and equipment on a "fair wear and tear" basis, or in accordance with applicable occupational health and safety legislation.
- 22.7 Employees will return all clothing and equipment upon termination. In instances where outstanding property is not returned, the Company will deduct the reasonable value of the missing equipment from the final payment of monies.

23 FATIGUE MANAGEMENT

- 23.1 The Parties to this Agreement share an ongoing commitment to ensure and to promote the management of fatigue risk via the formation of work health and safety committees. Nothing in this Agreement shall be designed or applied in ways that reduces or diminishes this objective.
- 23.2 The parties recognise the provision of relevant safety legislation in relation to fatigue.
- 23.3 With regards to fatigue management, ORA 's obligation will not be removed by an Employee's preference for certain shift patterns for social reasons, their willingness to work extra hours or to not present fit for work.
- 23.4 All rosters will take into account fatigue issues in their construction and will recognise the ONRSR Fatigue Risk Management Guidelines document.

PART 4 – SKILLS DEVELOPMENT AND CLASSIFICATION STRUCTURE

24 SKILLS DEVELOPMENT AND TRAINING

24.1 Multi Skilling

- 24.1.1 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.

24.2 Incidental and Peripheral Tasks

- 24.2.1 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.
- 24.2.2 The performance of peripheral duties should not jeopardise the Employee's competencies, qualifications or in any way promote de-skilling.

24.3 Skills Development priorities

- 24.3.1 The Company will provide opportunities for Employee skills development to progress to Train Driver Certificate IV level based on their competence through:
 - 24.3.1.1 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;
 - 24.3.1.2 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
 - 24.3.1.3 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.

- 24.3.1.4 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.

24.4 Assessment of Competency

- 24.4.1 The Competency Assessment process will comply with the AQF.
- 24.4.2 The Competency Assessment process will apply the principles associated with Recognition of Prior Learning (RPL);
- 24.5 Whenever possible formal training undertaken with the Company will provide credentials, such as AQF or other certification that are nationally recognised by other employers.
- 24.6 When training is undertaken by the Employee as required by, initiated 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. For the avoidance of doubt, this requirement applies to all training undertaken at the request of the Company and training required to achieve or maintain qualifications aligning to an employee's classification.
- 24.7 Employees who are required to attend training sessions will be paid for time in attendance at the ordinary rate of pay.
- 24.8 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.
- 24.9 The Company and Employees shall utilise the consultative processes (as described in clause 73 of this Agreement) to identify, discuss issues related to skills development and training.
- 24.10 Failure to demonstrate competence.**
- 24.10.1 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.
- 24.10.2 Once re-classified, the Employee will only be required to perform the tasks associated with their new classification.
- 24.10.3 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.
- 24.10.4 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.
- 24.10.5 Once competence is demonstrated, the Employee will be reinstated to their original classification from the date of assessment.

25 CLASSIFICATIONS

25.1 Identification of classifications

- 25.1.1 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.

25.2 Employees will be classified based on the following factors:

- level of experience;
- range of skills (including level of training or competency) required to perform duties;

- level of supervision (including degree of instructions required and/or given); and
- degree of responsibility.

25.3 Positions

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

- Level 1 (Assistant Driver – Not performing Rail Safety Work in the cab of a locomotive);
- Level 2 (Assistant Driver – Performing Rail Safety Work in the cab of a locomotive);
- Level 3 (Trainee Driver or Assistant Maintainer);
- Level 4 (Driver).
- Level 5 (Driver Trainer / Operations Specialist)

26 CAREER PATH AND PROMOTION

26.1 Progression criteria

26.1.1 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.

26.2 Progression to Higher Classifications

- 26.2.1 Career progression shall be dependent upon an Employee being deemed competent by a qualified workplace assessor.
- 26.2.2 An Employee may opt not to progress to a higher classification and shall advise the Company in writing of their decision.
- 26.2.3 Progression to Level 5 Driver Trainer / Operations Specialist will be by merit selection at the company's discretion.

27 HIGHER DUTIES

- 27.1 Where an Employee is required to act in a higher classification than that in which they are engaged, for a period in excess of four hours, they shall receive the higher pay rate for the whole time during which the Employee is acting in the higher duties.
- 27.2 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.
- 27.3 Where the Employee performs higher level duties as part of training, no additional amount shall be payable under this clause.

PART 5 – REMUNERATION

28 RATES OF PAY

- 28.1 The Annual Remuneration for each classification as at the date of commencement of this Agreement is included in the Table in clause 28.4. Payment for ordinary time earnings is 1/26th of the Annual Remuneration, representing twenty-six (26) periods of fourteen (14) days throughout the year.
- 28.2 The rates of pay at commencement of this Agreement will apply from approval date of the agreement by the FWC and will be paid in the first full pay period after the Fair Work Commission approves it.
- 28.3 As per the table in clause 28.4, the rates of pay will increase each year at the anniversary of the approval and will be paid in the first full pay period following the anniversary date of the commencement of this Agreement.

28.4 Table of Pay Rates

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

Wage Increase and Applicable Pay Rates						
Percentage Increases		7%	5%	3%	3%	Sunset 2%
Date of Increment	Rate prior to commencement	Rate at commencement 2023	Rate at first anniversary 2024	Rate at second anniversary 2025	Rate at third anniversary 2026	Rate at fourth Anniversary 2027
Level 1 – Assistant Driver						
Annual Remuneration	\$ 80,221.46	\$ 85,836.96	\$ 90,128.81	\$ 92,832.67	\$ 95,617.65	\$ 97,530.01
Hourly Rate	\$ 40.60	\$ 43.44	\$ 45.61	\$ 46.98	\$ 48.39	\$ 49.36
Overtime Hourly Rate	\$ 69.02	\$ 73.85	\$ 77.54	\$ 79.87	\$ 82.26	\$ 83.91
Level 2 – Assistant Driver						
Annual Remuneration	\$ 83,971.55	\$ 89,849.56	\$ 94,342.04	\$ 97,172.30	\$ 100,087.47	\$ 102,089.22
Hourly Rate	\$ 42.50	\$ 45.47	\$ 47.74	\$ 49.18	\$ 50.65	\$ 51.66
Overtime Hourly Rate	\$ 72.24	\$ 77.30	\$ 81.16	\$ 83.60	\$ 86.11	\$ 87.83
Level 3 – Trainee Driver or Assistant Maintainer						
Annual Remuneration	\$ 102,269.30	\$ 109,428.15	\$ 114,899.56	\$ 118,346.55	\$ 121,896.94	\$ 124,334.88
Hourly Rate	\$ 51.76	\$ 55.38	\$ 58.15	\$ 59.89	\$ 61.69	\$ 62.92
Overtime Hourly Rate	\$ 87.98	\$ 94.14	\$ 98.85	\$ 101.82	\$ 104.87	\$ 106.97
Level 4 – Qualified Driver						
Annual Remuneration	\$ 133,255.50	\$ 142,583.39	\$ 149,712.55	\$ 154,203.93	\$ 158,830.05	\$ 162,006.65
Hourly Rate	\$ 67.44	\$ 72.16	\$ 75.77	\$ 78.04	\$ 80.38	\$ 81.99
Overtime Hourly Rate	\$ 114.64	\$ 122.67	\$ 128.80	\$ 132.67	\$ 136.65	\$ 139.38
Level 5 – Driver Trainer / Operations Specialist						
Annual Remuneration	\$ 151,847.12	\$ 162,476.42	\$ 170,600.24	\$ 175,718.25	\$ 180,989.79	\$ 184,609.59
Hourly Rate	\$ 76.85	\$ 82.22	\$ 86.34	\$ 88.93	\$ 91.59	\$ 93.43
Overtime Hourly Rate	\$ 130.64	\$ 139.78	\$ 146.77	\$ 151.17	\$ 155.71	\$ 158.82

Sunset Provision

- 28.4.2 It is the intention of both parties to endeavor to reach agreement on a replacement agreement as soon as possible.
- 28.4.3 On the nominal expiry date of the Agreement an increase of 2% of the Annual Remuneration rate will be made and paid in the first full pay period after the Expiry Date, if the parties to the existing agreement have not reached agreement on a new enterprise agreement by that date. The Annual Remuneration increase in this clause will be absorbed into the wage increase in the first year of any enterprise agreement that replaces this Agreement.
- 28.4.4 If a new enterprise agreement to replace this Agreement has been finalised prior to the Expiry Date then this payment will not be made.

28.5 Calculation of Rates of Pay

- 28.5.1 The rates of pay in this Agreement are based on the Annual Remuneration described in clause 28.4 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 32 (Allowances) and clause 43 (Overtime).

- 28.5.2 The annual remuneration increases provided by clause 28.4 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.

28.6 Casual Rates of Pay

- 28.6.1 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.
- 28.6.2 The casual rate of pay shall be the Employee's Ordinary rate of pay for all purposes.

29 PAYMENT OF WAGES

- 29.1 Full time Employees will be paid fortnightly 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.
- 29.2 Changes to scheduled payments may be made by the Employer to accommodate unforeseen situations or circumstances. Employees will be notified of any changes to the method of payment in advance.
- 29.3 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 fortnightly period may be made in the following pay period.

30 SALARY PACKAGING AND SALARY SACRIFICE

- 30.1 An Employee may, by separate agreement with the Company, enter into a salary packaging or salary sacrifice arrangement in accordance with any applicable Company Policy, Australian Tax Office requirements and other relevant legislation.
- 30.2 An Employee must make such request to the Company in writing.
- 30.3 An Employee entering into a salary packaging arrangement is accountable for compliance with their personal taxation obligations and will bear any costs associated with entering into the arrangement including the costs of obtaining financial advice.
- 30.4 The Company will not be liable for any costs should the law or the views on salary packaging or salary sacrifice change in the future. The salary packaging arrangement will be on a genuine salary sacrifice basis.
- 30.5 Any salary packaging arrangement will be cost neutral to the Company. Any Employee wishing to enter into a salary packaging arrangement must obtain independent financial advice from a registered financial planner and provide proof of that advice to the Employer before entering into a salary packaging arrangement.
- 30.6 Where an Employee receives part of 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.

31 SUPERANNUATION

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

- 31.3 Such contribution shall be at the amount specified by the Superannuation Guarantee (Administration) Act 1992 (Cth) as amended from time to time.
- 31.4 Such contributions shall be based on the Annual Remuneration rate for each classification of Employee, as specified in clause 28 of this Agreement.

32 ALLOWANCES

32.1 Car Reimbursement costs

- 32.1.1 Where an Employee is required to travel for work purposes using their own personal vehicle, the Company will pay an allowance based on the number of kilometres travelled. Such kilometres will not include travel between home and home location.
- 32.1.2 In the case of a motor vehicle, the cost reimbursed shall be at the rate per kilometre for their vehicle size which is specified by the Australian Taxation Office and shall include the cost of tolls.
- 32.1.3 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.

32.2 Meal Expenses

- 32.2.1 Employees who are required to Rest Away from Home in accordance with the provisions set down in clause 53 shall be paid \$33.25 for every 8 hours or part thereof they are away from their Home Location.

32.3 Temporary Transfer

- 32.3.1 Expenses of \$200.16 will be payable for each twenty-four (24) hour period, or part thereof in eight (8) hour blocks, during a temporary transfer. 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 (including where that first shift is an outward shift to the temporary transfer location).
- 32.3.2 Meal expenses as described in clause 32.2 will not apply.
- 32.4 All Meal and Temporary Transfer Allowances shall be adjusted in line with annual agreement increases as per clause 28.

PART 6 – HOURS OF WORK

33 PRINCIPLES

- 33.1 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.
- 33.2 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.
- 33.3 The RSNL sets specific limits for work and rest with regards to train crew. This legislation, in addition to applicable workplace health and safety legislation, sets requirements for rostering employees and managing their fatigue. Accordingly, the parties agree that working hours for employees under this agreement will be subject to the RSNL and any other applicable legislation.
- 33.4 Hours of work will be dependent on the employees roster they are assigned to. The parties have agreed to two roster styles, Roster A and Roster B as defined in Clause 6 definitions.
- 33.5 Employees are expected to be available to work their Ordinary Hours in accordance with the requirements below.

34 ORDINARY HOURS OF WORK

34.1 Ordinary hours of work may be worked on any day at any time.

34.2 The Ordinary Hours are made up as follows:

34.2.1 Ordinary working hours

34.2.2 Public Holidays

34.2.3 Any approved leave as described in this agreement.

35 NO LOSS OF ORDINARY HOURS COMPONENT:

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

36 LOSS OF ORDINARY HOURS COMPONENT

36.1 Except for where an employee reasonably refuses to work a scheduled public holiday, 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 fortnightly pay 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.

37 ROSTER A – FULL TIME EMPLOYEES ORDINARY HOURS

37.1 The Ordinary Hours of work for a full-time Employee working roster A are an average of 76 hours averaged over a two (2) week roster cycle.

38 ROSTER B – FULL TIME EMPLOYEES ORDINARY HOURS

38.1 The Ordinary hours of work for an Employee working roster B are an average of 304 hours over a eight (8) week roster cycle.

39 PERMANENT PART TIME EMPLOYEES' ORDINARY HOURS

39.1 The ordinary hours for a Permanent part time employee will be no less than 30 hours over a week.

40 CASUAL EMPLOYEES' ORDINARY HOURS

40.1 The Ordinary Hours of work for a casual Employee are a maximum of 38 hours over a week (Sunday to Saturday).

41 REASONABLE ADDITIONAL HOURS

41.1 Employees may be requested to work reasonable additional hours as are necessary.

41.2 Employees may refuse a request to work additional hours over and above their roster hours where the requested hours are unreasonable. For clarity, those on roster A may refuse more than seventy-six (76) hours in a fortnightly Roster Cycle and those on Roster B may refuse to more than three hundred and four (304) hours in a eight week roster cycle. In determining if the request is reasonable the following will be taken into account.

- any risk to health and safety from working the additional hours;
- RSNL obligations of the Employee;
- the personal circumstances of the Employee, including any family responsibilities;
- the needs of the workplace;
- the entitlement to payment of overtime rates, the notice given by the Employer; and
- the Employee's notice of intention to refuse it;
- the usual patterns of work, the nature of the role.

42 ESTABLISHMENT OF AN HOURS CYCLE

- 42.1 All hours worked must be approved by the Company and the hours actually worked shall be recorded. An Employee shall record actual hours worked.
- 42.2 Payment of salary for Ordinary Hours for full-time Employees will be assumed to be seventy-six (76) hours over a two (2) week pay Cycle and will be paid in equal fortnightly instalments throughout the year.
- 42.3 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.
- 42.4 Payments for casual Employees will be based on the number of hours worked in the relevant fortnightly pay cycle.

43 OVERTIME

- 43.1 In addition to the Ordinary Hours specified above, an Employee may be required to work reasonable additional hours for payment of Overtime penalty rates.
- 43.2 Overtime will be paid at 1.7 times the Hourly Rate for the applicable classification and shall Stand Alone.
 - 43.2.1 OVERTIME UNDER THIS AGREEMENT INCLUDES:
 - 43.2.1.1 Any work on a book off day
 - 43.2.1.2 Unless part of a shift change, any work where the employee signs on, during a Transition day. (For clarity, a shift that infringes a transition day through the lift up and lay back provision is not overtime)
 - 43.2.1.3 For casual employees any hours above 38 hours in any week
 - 43.2.1.4 For part time employees working any roster - *hours in excess of thirty (30) in a week.*
 - 43.2.1.5 For full time employees, working roster A - *hours in excess of seventy six (76) hours in a two week roster cycle. (Roster Cycle Overtime)*
 - 43.2.1.6 For Full time employees working roster B - *hours in excess of three hundred and four (304) in the eight-week roster cycle. (Roster cycle Overtime)*
- 43.3 All Overtime must be approved by the Company.
- 43.4 Where an Employee is requested to work on a Book Off Day or an extra shift on a transition day, and the Employee agrees to work, all such work shall be counted as Stand Alone. Employees have the right to refuse to work Overtime on a Book Off Day for any reason.
- 43.5 Employees required to work on a Book Off Day or an extra shift on a transition day will be entitled to receive payment for a minimum of 7.6 hours, at the Overtime rate.
- 43.6 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.
- 43.7 For clarity, Where the company pays overtime as an incentive that is not specified above in 43.2.1.1 to 43.2.1.6 any hours worked will be counted as part of the hours / duty cycle.

44 BOOK-OFF DAYS & TIME OFF

44.1 FOR "ROSTER A" EMPLOYEES'

- 44.1.1 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.

- 44.1.2 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.
- 44.1.3 Any subsequent Book Off day will have a duration of twenty-four (24) hours.
- 44.1.4 Book Off days are not to be infringed by either lift up or lay back.
- 44.1.5 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.
- 44.1.6 Unless agreed in accordance with clause 49.6, the minimum shift length for working an Overtime shift on a Book Off Day will be 7.6 hours.

44.2 FOR "ROSTER B" EMPLOYEES

- 44.2.1 In any Roster Cycles (i.e. a total period of (8) eight weeks), Employees are entitled to at least eight (16) duty free days, two (2) of which are to be consecutive in each fortnight.
 - 44.2.2 Time off is not to be infringed.
 - 44.2.3 If an employee is lifted up on the first shift after a book off day, overtime will apply for the time lifted up.
 - 44.2.4 Where, as a result of an out of course event, a Book Off Day is infringed all time after midnight will be treated as Overtime and will Stand Alone.
- 44.3 The minimum shift length for working an Overtime shift will be 7.6 hours.

45 MEAL BREAKS

- 45.1 Meal break conditions
- 45.2 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.

46 SHIFT CHANGES AND LIFT UP / LAY BACK

- 46.1 General Conditions
 - 46.1.1 The Master Roster will be used to create all shifts.
 - 46.1.2 A shift change can only occur in accordance with the conditions set out in clause 46.
 - 46.1.3 There is to be a maximum of two (2) changes to a shift by applying a shift change (clause 46.2) and/or lift up or lay back (clause 46.3), 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.
 - 46.1.4 Any shift change or lift up/lay back advised which is outside of the parameters set in clause 46.2.1, 46.3.3 and 46.3.4 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.
- 46.2 **Shift Change** (used the day/s prior to sign on)
 - 46.2.1 A Shift Change can occur by moving the commencement time of an Employee's shift:
 - 46.2.1.1 Forward by up to one (1) hour; or
 - 46.2.1.2 Back by up to two (2) hours.
 - 46.2.2 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.
 - 46.2.3 An Employee may be advised of a Shift Change to a scheduled shift in the Roster Cycle in accordance with clause 47 – Advice Periods.
- 46.3 **Lift Up / Lay Back** (used on the day of sign on)
 - 46.3.1 Lift up and Lay Back can be used to deal with emergency type scenarios on the rail network, as defined below.

- 46.3.2 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.
- 46.3.3 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.
- 46.3.4 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.
- 46.3.5 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 44, unless by mutual agreement.
- 46.3.6 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.
- 46.3.7 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.

46.3.8 Additional Penalty Payment

- 46.3.8.1 Where an employee agrees to lift up more than one (1) hour or lay back more than two (2) hours, the employee will be paid an additional payment of \$400 in addition to their normal pay for that shift. This amount will be indexed as per the annual increases of the agreement as outlined in clause 28.

47 ADVICE PERIODS

- 47.1 Employees will be advised of changes to their next shift within the relevant Advice Period:
 - 47.1.1 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
 - 47.1.2 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	0600 to 11:59	
16:00 to 17:30	After 12:00	Up to 05:59

- 47.2 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 47.1.1 and 47.1.2.
- 47.3 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.
- 47.4 Where an Employee makes themselves unavailable during an Advice Period the provisions of clause 36 will apply.
- 47.5 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.
- 47.6 Where it is operationally necessary to extend a previously advised shift, the Employee may be advised at any time during that shift, so long as fatigue limitations are not breached, and on the fitness of the Employee to continue.

47.7 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.

48 SHIFT CANCELLATIONS

48.1 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.

48.2 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.

49 SHIFT LIMITS

49.1 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.

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

49.3 Shunting Definition

49.3.1 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).

49.4 Inclusion in Shift Limit

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

49.5 Maximum Hours on Duty during Emergencies

49.5.1 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.

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

49.5.3 During an Emergency, Safe-working duties may only be performed after twelve (12) hours where an Employee has indicated their fitness to continue.

49.6 Minimum Shift Provisions

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

49.7 Rest Periods

49.7.1 The following minimum intervals between shifts shall apply:

49.7.2 Resting at home: Twelve (12) continuous hours rest between each shift.

49.7.3 Resting away from home: Nine (9) continuous hours rest between each shift.

49.7.4 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.

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

49.8.1 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.

49.9 Mandatory Day Off (MDO)

- 49.9.1 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.

50 NEXT SHIFT AVAILABILITY IMPACTED

- 50.1 This clause applies to ROSTER B employees only
- 50.2 Where an employees actual finish time does not provide the minimum time off between shifts as prescribed in clause 49.7 Rest periods, the following will apply;
- 50.2.1 Where the availability impact is equal to or less than 30 minutes, the employee will start at the available time (back on availability), or
- 50.2.2 Where the availability impact is greater than 30 minutes the employees next scheduled shift will be a cancelled shift with the employee's duty cycle credited by 10 hours 52 minutes.
- 50.3 This provision shall not apply should the employee have breached the shift length provisions outlined in clause 49.2

51 ROSTERS

- 51.1 A Master Roster will be developed, based on the principles contained in clause 33.
- 51.2 A Master Roster will be developed as Roster A or *Roster B* as defined in clause 6 definitions.
- 51.3 For clarity, upon certification of this agreement, all employees are currently working Roster A. Subject to clause 52.1, all classification two (2) to Classification (4), employees will move to roster B.
- 51.4 All Rosters will use the twenty-four (24) hour clock, and will be available to the relevant Employee.
- 51.5 All Rosters will show:
- 51.5.1 Scheduled work tasks where known, including training days.
- 51.5.2 Book Off Days.
- 51.5.3 Transition Days.
- 51.6 All Employees are required to 'sign on and off' at the locations described in clause 9. 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.
- 51.7 For Roster A employees, 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.
- 51.8 Where a change to the Master Roster is required, the Employer will seek volunteers to form a working group. The working group will comprise local Union Delegates and at least two other affected employees along with management representatives. The company will provide relevant information as to the reason for the required change and any other relevant information. The working group should work towards providing two alternate rosters for consideration by employees.
- 51.9 Any proposed change will require at least 28 days' notice to affected employees before implementation.

52 ROSTER B COMMITMENT

- 52.1 The Company shall ensure the prompt adoption of Roster B for Train Crew classifications Level 1 to Level 4, within four months of approval of this Agreement (**Implementation Period**) (or the next network shutdown planned following the end of the Implementation Period), and maintain its operation throughout the duration of this Agreement subject to this clause.

52.2 Following implementation and subject to clause 52.4, if a party wishes to revert to Roster A from Roster B, they shall only do so with mutual agreement, and such a change will require compliance with the roster change provisions detailed in Clause 51 "Rosters" and clause 71, "Workplace Consultation."

52.3 Agreement of the Parties for the purposes of this clause can be evidenced by:

52.3.1 in the case of agreement between the Union and the Company - by an exchange of letters signed by a union official, and a Company manager, with an appropriate level of authority in each organisation; and

52.3.2 in the case of employees, a ballot that shows the support of a majority of affected employees.

52.4 In the event that the Parties fail to reach a mutual agreement within one month of the Company proposing a change from Roster B to Roster A, the Company may raise a dispute under clause 72, (dispute settlement procedure) of this Agreement, seeking the immediate intervention of the Fair Work Commission.

53 RESTING AWAY FROM HOME

53.1 Advice Conditions

53.1.1 The Master / Working Roster will indicate potential Barracks working lines.

53.1.2 The commencement time of the outgoing shift will set an indicative commencement time for the return shift.

53.1.3 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.

53.1.4 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.

53.1.5 A maximum of two (2) Barracks jobs can be rostered in any one pay cycle. Any additional Barracks working will require mutual agreement between the Employer and Employee.

54 PROVISION OF ACCOMMODATION

54.1 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 at least 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.

54.2 Rosters for train crew with shifts involving rest away from the initial sign on location will optimise crew utilisation and minimise Employee dwell time away from home and will include a scheduled return

54.3 Unless on temporary transfer, Employees are only to be rested away from home once before returning back to their home.

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

54.4.1 Where a rest period away from home extends beyond 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.

55 ACCOMMODATION STANDARDS

55.1 Where accommodation is organised it will meet standards that comply with the Company's fatigue management program as a minimum. For avoidance of doubt, the following items are minimum requirements:

- 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.
- Window coverings that have reasonable ability to block out external light.
- ORA will ensure rooms are cleaned after each use;
- Rooms must be reasonably soundproofed to external noise;
- Rooms must contain individual bathroom facilities

55.2 Any new Barracks locations will be consulted with HSR's and Union Representatives as per clause 71 Consultation.

56 DAYLIGHT SAVING

56.1 Employees will be paid for hours worked during transition to Daylight Saving times.

PART 7 – LEAVE

57 ANNUAL LEAVE CONDITIONS

57.1 Full Time Employees shall be entitled to five (5) weeks annual leave per year.

57.2 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.

57.3 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 in accordance with clause 57.1 but on a pro rata basis.

57.4 Conditions for accrual and taking annual leave.

57.4.1 All such leave, whether current entitlement or accrued, shall be taken at a mutually convenient time.

57.4.2 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.

57.4.3 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.

57.4.4 Annual leave shall accrue in accordance with the requirements of the Act.

57.4.5 When an employee is on annual leave, 7.6 hours of an employee's accrued annual leave balance is deducted for each rostered day, including "Transition Days", that fall within the period of annual leave.

57.4.6 No annual leave entitlement is to be deducted for "Book-off Days" that fall during a period of annual leave.

57.5 Annual Leave exclusive of other leave

57.5.1 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.

57.5.2 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.

57.5.3 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. (This provision does not apply to roster B employees)

57.6 Annual Leave Payment

57.6.1 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 Act and 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.
- 57.6.2 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.
 - 57.6.3 On termination of employment, any accrued annual leave shall be paid to the Employee.
 - 57.6.4 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.
 - 57.6.5 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.
 - 57.6.6 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.
 - 57.6.7 Employees will not be paid an annual leave loading. This has been incorporated into the Annual Remuneration detailed in Clause 28.4.

58 PERSONAL / CARERS LEAVE

58.1 Personal/Carers Leave entitlement

- 58.1.1 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.
- 58.1.2 Unused Personal/Carers Leave shall accumulate from year to year.
- 58.1.3 Personal/Carers Leave will be paid at the Employee's ordinary hourly rate of pay.
- 58.1.4 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.
- 58.1.5 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.
- 58.1.6 Employees may access accumulated personal leave whilst a claim for Workers Compensation is being considered. Where the claim is accepted, any personal leave shall be re-credited.
- 58.1.7 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.

58.2 Personal Leave

- 58.2.1 An Employee is entitled to paid Personal Leave when they are unable to attend work due to personal injury or illness.
- 58.2.2 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.
- 58.2.3 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.
- 58.2.4 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.

58.3 Carers Leave

- 58.3.1 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.
- 58.3.2 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.

58.4 Unpaid Carers Leave

- 58.4.1 Employees who have exhausted their paid Carers Leave entitlement may be granted unpaid carer's leave of up to two (2) days per occasion 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.

58.5 Long Term Personal Leave

- 58.5.1 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:

58.5.1.1 This Personal Leave entitlement is in addition to the Personal/Carers Leave entitlement.

58.5.1.2 This Personal Leave entitlement can only be accessed once by each Employee over the life of this Agreement. This is not an annual entitlement.

58.5.1.3 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.

58.5.1.4 An Employee seeking to access this Personal Leave must be eligible in accordance with the below.

- 58.6 To be eligible to access this Personal Leave, an Employee must:

58.6.1 Have exhausted all unused Personal/Carers Leave accrual;

58.6.2 Be absent from work for a minimum of two (2) 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

58.6.3 Be absent from work due to the same illness or injury continuing on from the previous four (4) weeks absence.

58.7 Personal Leave taken as part of clause 58.6.3 up to a maximum twenty (20) days, will be paid retrospectively in the relevant pay run.

58.8 Any long term sick leave taken is subject to the terms set out in clause 58.2.

59 COMPASSIONATE LEAVE

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

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

59.3 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.

59.4 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.

59.5 Where an employee requires more than (3) days' leave on any given occasion, they may utilise their accrued annual leave, should they require.

60 LONG SERVICE LEAVE

- 60.1 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)*.
- 60.2 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
- 60.3 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.

60.4 Applying for Long Service Leave

- 60.5 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.
- 60.5.1 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.
- 60.5.2 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.
- 60.5.3 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.

60.6 Pro Rata Entitlement

- 60.7 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:
- 60.7.1 Where the Employee is dismissed for any reason, except as a result of the Employees serious and wilful misconduct;
- 60.7.2 On resignation by the Employee on account of illness, incapacity or domestic or other pressing necessity; or
- 60.7.3 On the death of the Employee.
- 60.7.4 Where an employee facing termination in accordance with clause 60.7.1 resigns rather than being terminated by the company.

61 PARENTAL LEAVE

61.1 Entitlement to parental leave

- 61.1.1 Subject to this clause full time, part time, temporary and casual employees with twelve (12) months' continuous service will be entitled to parental leave. Parental leave includes prenatal leave, Parental leave, partner's leave, leave for pre-adoption interviews and adoption leave.
- 61.1.2 Entitlement to any leave granted under this clause is pursuant to the continuation of circumstances relevant to the granting of the leave.
- 61.1.3 The entitlement to parental leave for casual employees is limited to those casual employees who would qualify for parental leave pursuant to the Act (see s67).
- 61.1.4 The entitlement to paid parental leave under this clause is in addition to any entitlement under the Australian Government's Paid Parental Leave scheme.

61.2 Pre-natal leave

- 61.2.1 Employees who are pregnant are entitled to be absent from work for one (1) week without loss of pay to attend pre-natal appointments.
- 61.2.2 An employee whose partner is pregnant is entitled to be absent from work for one shift without loss of pay to attend pre-natal appointments.

61.3 Paid Parental leave

61.3.1 Subject to this clause, Employees who give birth to a child are entitled to fourteen (14) calendar weeks of paid Parental leave. Such leave may commence up to six (6) weeks before the expected birth date and must include the six (6) weeks immediately following the birth.

61.4 Special Parental leave

61.4.1 Special Parental leave applies to employees who have a pregnancy-related illness or whose pregnancy has ended other than by the birth of a living child within twenty-eight (28) weeks before the expected date of birth. Such employees may apply for unpaid leave. The maximum period of unpaid leave is the period specified in the medical certificate that is provided as part of the employee's application for special Parental leave. However, the maximum period cannot exceed fifty two (52) weeks.

61.5 Partner's leave

61.5.1 An employee whose partner gives birth is entitled to be absent from work for one (1) week without loss of pay. The absence must commence within one week of the birth of the child. Where there are exceptional circumstances, the start of leave may be deferred if approved by the Company (e.g. extensive hospitalisation of mother or baby).

61.6 Leave for partner to be the Primary Caregiver

61.6.1 In cases where the birth parent returns to work or the birth parent due to a medical condition is unable to provide primary care and their partner (the employee) is to be the Primary Caregiver for the newborn, the employee is entitled to access up to a maximum of 7 weeks of paid leave. The amount of leave is fourteen (14) weeks Parental leave minus the number of weeks of leave taken by the birth parent (which will be a minimum of six (6) weeks) minus the one (1) week of partner's leave taken at the time of the birth.

61.6.2 Leave for the partner to be the Primary Caregiver cannot be taken at the same time that the birth parent is on Parental leave.

61.6.3 Leave for the partner to be the Primary Caregiver, when combined with the birth parent cannot be more more than 14 weeks total combined.

61.6.4 Generally the same rules that apply to the birth parent taking Parental leave to be the Primary Caregiver, will apply to the partner who is to be the Primary Caregiver.

61.6.5 The birth parent may apply to shorten the period of Parental leave in accordance with this clause.

61.7 Adoption leave

61.7.1 An employee who is applying to be the Primary Caregiver of an eligible child/children is entitled to be absent from work for one (1) week without loss of pay to attend pre-adoption interviews or examinations.

61.7.2 An employee who is applying to be the secondary caregiver of an eligible child/children is entitled to be absent from work for one (1) shift without loss of pay and one (1) shift of unpaid leave to attend pre-adoption interviews or examinations.

61.7.3 Employees who are the Primary Caregiver of eligible child/children are entitled to fourteen (14) calendar weeks of paid adoption leave.

61.7.4 An employee who is the secondary caregiver of an eligible child/children is entitled to be absent from work for one (1) week without loss of pay on adoption leave and two (2) weeks of unpaid adoption leave.

61.7.5 This leave can be taken at the same time as the Primary Caregiver takes adoption leave and must start within three (3) weeks of the start of the placement.

61.8 Payment for parental leave

61.8.1 Where this clause requires paid parental leave, such leave will be paid at Base Remuneration Hourly Rate for the employee's substantive position. To avoid doubt superannuation contributions will continue during periods of such paid parental leave.

61.8.2 Where an employee is entitled to paid parental leave pursuant to the Australian Government Paid Parental Leave Scheme, the Company will, for each week of such paid leave, and in

addition to the requirements of the scheme, make superannuation contributions based on the amount required to be paid to the employee pursuant to the Scheme.

- 61.8.3 Part-time and eligible casual employees will be entitled to the same number of weeks' parental leave as full-time employees. However, part-time and casual employees will be paid these weeks on a Pro Rata basis.

61.9 Maximum periods of parental leave

- 61.9.1 The maximum period of Parental leave will be in accordance with the act.

61.10 Continuity of service

- 61.10.1 Paid and unpaid parental leave do not break an employee's continuity of service.
61.10.2 Paid parental leave, with the exception of the Australian Government Paid Parental Scheme, will be counted as service for the accrual of all entitlements.

61.11 Transfer to a Safe Job

- 61.11.1 A pregnant employee has an entitlement to be transferred to an 'appropriate safe job'. An appropriate safe job is a job that has:

- 61.11.1.1 The same ordinary hours of work as the employee's present position; or
- 61.11.1.2 A different number of ordinary hours agreed to by the employee.

- 61.11.2 this entitlement applies if the employee has provided evidence (e.g. a medical certificate) that would satisfy a reasonable person that they are fit for work, but that it is inadvisable for them to continue in their present position during a period because of:

- 61.11.2.1 Illness or risks arising out of the pregnancy; or
- 61.11.2.2 Hazards connected with that position.

- 61.11.3 If this requirement is met and there is an appropriate safe job available, the employee must be transferred to that job for the risk period, with no other change to the employee's terms and conditions of employment. The employer must pay the employee at their full rate of pay for the position they were in before the transfer and for the hours they work during the risk period.

- 61.11.4 if there is no appropriate safe job available, then the employee is entitled to take paid 'no safe job leave' for the risk period, and be paid at their base rate of pay for ordinary hours of work during the risk period.

- 61.11.5 If an employee is on paid no safe job leave during the six (6) week period before the expected date of birth, the employer may ask the employee to give the employer a medical certificate stating whether they are fit for work.

- 61.11.6 The employer may require the employee to take a period of unpaid parental leave, if they are eligible, as soon as practical if:

- 61.11.6.1 The employee does not give the employer a medical certificate within seven days after the request; or
- 61.11.6.2 Within seven days after the request, the employee provides a certificate stating they are not fit for work.

- 61.11.7 The no safe job leave ends when the period of unpaid parental leave starts.

61.12 Returning to work after a period of parental leave

- 61.12.1 An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.

61.13 Return to previous position

- 61.13.1 An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job, the employee will be entitled to return to the position they held immediately before such transfer.

- 61.13.2 Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.
- 61.13.3 Employees shall notify the Company if they wish to return to work on a part-time basis. Part-time employment shall be considered depending on operational requirements.
- 61.13.4 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:
- 61.13.5 After twelve (12) months continuous service, Employees, including eligible casual Employees, are entitled to up to fifty two (52) consecutive weeks unpaid Parental Leave in respect of the birth or adoption of a child.
- 61.13.6 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.
- 61.13.7 Subject to clause 61.1, an Employee is entitled on their return to work to the position which they held immediately before commencing Parental Leave.
- 61.13.8 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.

62 **PUBLIC HOLIDAYS**

- 62.1 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:
 - 62.1.1 New Year’s Day, Australia Day, Good Friday, Easter Saturday, Easter Sunday, Easter Monday, Anzac Day, Queen’s Birthday, Labor Day, Christmas Day, Boxing Day, and;
 - 62.1.2 any other day gazetted by the NES and/or state or federal government and, are applicable to the area where the Employee works.
- 62.2 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 requested to work on public holidays in accordance with their respective roster. Reasonable requests can only be refused if the Employee has reasonable grounds for doing so.
- 62.3 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	<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.

- 62.4 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.
- 62.5 Upon the commencement date of this agreement, any DIL days accumulated under the previous agreement will be paid out in the next pay period unless already approved for any future leave.
- 62.6 Days off in Lieu (DIL) can be accumulated and banked as per the above table for taking at a later date, either as single day/s or with annual leave. Where an employee wishes to attach their Days in Lieu (DIL) to their annual leave, they must advise the company in a reasonable time frame prior to the commencement date of such leave.
- 62.7 Each year, where an employee's accrual of Days in Lieu (DIL's) has not been cleared or allocated to be cleared with upcoming annual leave, upon the anniversary date of this agreement they will be paid out and cancelled.
- 62.8 Where an Employee wishes to retain DIL past this date, they must notify the Company in writing prior to the annual anniversary date of this agreement. Any agreement to this must be mutually agreed.
- 62.9 Employee requests for clearance of DIL days will not be unreasonably refused.

63 TRAUMA LEAVE

- 63.1 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 paid Trauma leave must be taken in an event of this type.
- 63.2 Employee Assistance Programs and counselling will be available to the Employee during this time.
- 63.3 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.

64 SPECIAL LEAVE

- 64.1 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.
- 64.2 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:
 - 64.3 one or more of the following:
 - 64.3.1 time when the Employee engages in the activity;
 - 64.3.2 reasonable travelling time associated with the activity;
 - 64.3.3 reasonable rest time immediately following the activity; and
 - 64.3.4 unless the activity is jury service — the Employee's absence is reasonable in all the circumstances.

64.4 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).

65 JURY SERVICE

65.1 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.

65.2 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.

66 UNPAID LEAVE

66.1 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.

67 FAMILY AND DOMESTIC VIOLENCE

67.1 Employees will be entitled to family and domestic violence leave consistent with the National Employment Standards.

67.2 Employees, including casuals and part-time employees, are entitled to 10 days of paid family and domestic violence a year.

67.3 The Company recognises that employees may experience situations of Family and Domestic Violence, which may in turn impact on their attendance or performance at work.

67.4 The Company accepts the definition of Family and Domestic Violence as provided in the Act.

67.5 Employees who are experiencing family and domestic violence can take leave under this section to deal with the impacts of family and domestic violence where it is impractical to do so outside their work hours. This might include;

67.5.1 making arrangements for their own or a family member's safety (including relocation)

67.5.2 attending court or assessing police services,

67.5.3 attending counselling or appointments with medical, financial, or legal professionals.

67.6 Employees can access the full amount of leave from the day they start work. The leave can be taken a single or multiple days or as part days by agreement. An employee's leave balance renews each year on their work anniversary but doesn't accumulate from year to year if it is not used.

67.7 Notice of accessing Family and Domestic Violence Leave must be given to the Company as soon as practicable (which may be a time after the leave has started) and, if practicable, must advise the Company of the period, or expected period, of the leave.

67.8 The Company may request relevant supporting evidence, such as a statutory declaration, or a document issued by the police force, a court, a medical practitioner, a family violence support service, a lawyer, or a counselling professional.

67.9 Employees Pay slips must not mention paid family and domestic violence leave.

67.10 All personal information concerning Family and Domestic Violence will be kept confidential. The Company will not, other than with the consent of the employee, use such information for a purpose other than satisfying itself in relation to the employee's entitlement to Family and Domestic Violence Leave

67.11 The Company will use a trauma informed response in assisting in the use and access of this entitlement.

68 LEAVE APPLICATIONS

- 68.1 All leave must be applied for on the relevant leave application forms. Except where otherwise specified in this Agreement, the company must approve, or decline leave in 10 working days of receipt of an application (with exception of Christmas Ballot)

69 LEAVE INCLUSIVE OF ANNUAL REMUNERATION COMPONENTS

- 69.1 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.

PART 8 – WORKPLACE RELATIONS

70 WORKPLACE HEALTH AND SAFETY

- 70.1 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.
- 70.2 The Safety Team will meet within prescribed timeframes at a minimum.
- 70.3 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.

71 WORKPLACE CONSULTATION

- 71.1 This term applies if the Employer:
- 71.1.1 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
- 71.1.2 proposes to introduce a change to the regular roster or ordinary hours of work of Employees.
- 71.2 For a change referred to in clause 71.1:
- 71.2.1 the Employer must notify the relevant Employees and the Union of the decision to introduce the change by complying with either clause 71.3 for Major Change or clause 56.4 for change to the regular roster or ordinary hours of work; and
- 71.2.2 the relevant Employees may appoint a Representative for the purposes of the procedures in this term. If;
- 71.2.3 a relevant Employee appoints, or relevant Employees appoint, a Representative for the purposes of consultation; and
- 71.2.4 the Employee or Employees advise the Employer of the identity of the Representative;
- 71.2.5 the Employer must recognise the Representative, which may include the Union.

71.3 Major Change

- 71.3.1 As soon as practicable after making its decision, the Employer must:
- 71.3.1.1 discuss with the relevant Employees;
- 71.3.1.2 the introduction of the change; and
- 71.3.1.3 the effect the change is likely to have on the Employees; and
- 71.3.1.4 measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employees; and
- 71.4 for the purposes of the discussion provide, in writing, to the relevant Employees:
- 71.4.1 all relevant information about the change including the nature of the change proposed; and
- 71.4.2 information about the expected effects of the change on the Employees; and
- 71.4.3 any other matters likely to affect the Employees.
- 71.4.4 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.

71.5 The Employer must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.

71.6 In this term, a major change is likely to have a significant effect on Employees if it results in:

- 71.6.1 the termination of the employment of Employees; or
- 71.6.2 major change to the composition, operation or size of the Employer's workforce or to the skills required of Employees; or
- 71.6.3 the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- 71.6.4 the alteration of hours of work; or
- 71.6.5 the need to retrain Employees; or
- 71.6.6 the need to relocate Employees to another workplace; or
- 71.6.7 the restructuring of jobs.

71.7 Change to Regular Roster or Ordinary Hours of Work

71.7.1 As soon as practicable after proposing to introduce the change, the Employer must:

71.7.2 discuss with the relevant Employees the introduction of the change; and

71.7.3 for the purposes of the discussion—provide to the relevant Employees:

- 71.7.3.1 all relevant information about the change, including the nature of the change; and
- 71.7.3.2 information about what the Employer reasonably believes will be the effects of the change on the Employees; and
- 71.7.3.3 information about any other matters that the Employer reasonably believes are likely to affect the Employees; and
- 71.7.3.4 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).

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

71.7.5 The Employer must give prompt and genuine consideration to matters raised about the change by the relevant Employees.

71.7.6 In this term, relevant Employees means the Employees who may be affected by a change referred to in clause 71.1.

71.8 Implementation of Change

71.8.1 For a change referred to in clause 71.1, once the consultation term has been complied with, the Company may implement change after fourteen (14) days.

71.9 Failure to Consult

71.9.1 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.

71.9.2 Notwithstanding the above, where a dispute arises relating to the consultation process and the proposed change, the Dispute Settlement procedure in clause 72 shall be followed.

72 DISPUTE SETTLING PROCEDURE

72.1 For clarity, a party in the dispute resolution process outlined in this clause can be:

72.1.1 An Employee;

72.1.2 ORA;

72.1.3 The ARTBIU.

(collectively the 'Parties')

72.2 If a dispute relates to:

- 72.2.1 the application or interpretation of terms and conditions of this Agreement; or
- 72.2.2 the National Employment Standards;
- 72.2.3 The following dispute settlement process shall be followed:

72.3 Step 1

- 72.3.1 Where a party who is a 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.
- 72.3.2 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.

72.4 Step 2

- 72.4.1 In the first instance, the Parties to the dispute must try to resolve the dispute at the workplace level, by holding discussions with relevant supervisors.

72.5 Step 3

- 72.5.1 Where the matter is not resolved, the Parties will arrange further discussions at a more senior level of management. Where an Employee has appointed a representative, this discussion will take place between the Company's representative and the Employee(s) representative.
- 72.5.2 After each of the above steps, a 48 hour (excluding weekends and public holidays) cooling off period will apply.
- 72.5.3 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.

72.6 Step 4

- 72.6.1 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. If the Fair Work Commission arbitrates a dispute under this clause, it may use all of the powers that are available to it under the Act.
- 72.6.2 While the Parties are trying to resolve the dispute using the procedures in this clause:
- 72.6.3 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
- 72.6.4 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:
 - 72.6.4.1 the work is not safe; or
 - 72.6.4.2 applicable occupational health and safety legislation would not permit the work to be performed; or
 - 72.6.4.3 the work is not appropriate for the Employee to perform; or
 - 72.6.4.4 there are other reasonable grounds for the Employee to refuse to comply with the direction.
- 72.7 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.

73 EMPLOYEE REPRESENTATIVE COMMITTEE (ERC) MEETING

- 73.1 ORA agrees to facilitate an ERC meeting 4 times per year (timetable to be arranged locally) for a maximum of four (4) union delegates to meet with management.
- 73.2 The ERC meeting will provide the opportunity to discuss and raise issues of Employee concern or feedback, including but not limited to:
 - policy matters;

- disciplinary trends;
- fatigue management;
- opportunities for improving the workplace; and
- suggestions on improving business operations and/or customer experience.

73.3 Rostering and shift limit breaches will be considered as a standing agenda item of the ERC.

73.4 As part of the ERC the parties will monitor and discuss issues of significance regarding the EBA and the implementation and effectiveness of the Roster. As part of this process, the Company will review how annual leave and DIL days are approved and will consult with the ERC and consider opportunities for improvement. The Company will also consult the ERC as to the process for taking leave in both single days and blocks of leave.

73.5 Within three months of certification, a terms of reference document will be developed in consultation with the delegates and their union and it will underpin the operation of the ERC and any changes to the terms and references will be made with agreement from the union delegates on the ERC. For avoidance of doubt, the terms of reference do not form part of this Agreement.

74 WORKPLACE REPRESENTATIVES

74.1 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.

74.2 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.

74.3 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.

74.4 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.

74.5 The Company will provide a total pool of up to eight (8) days paid leave each year, which will be available to the Representatives to attend for congresses and conferences.

75 WORKPLACE RELATIONS TRAINING

75.1 Workplace Relations Training is specifically targeted at maintaining harmonious workplace relations between the Company and its Employees.

75.2 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.

75.3 The Employer will grant leave for a maximum of up to two (2) paid days per new workplace representative to attend training under this arrangement. No more than three (3) Employees in a 12 month period will be considered for this leave.

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

PART 9 – OPERATIONS SPECIALIST - PROVISIONS

76 OPERATIONS SPECIALIST POSITION

76.1 Scope

76.1.1 This Part 9 Provision, applies exclusively to the Level 5 Driver Trainer / Operations Specialist Classification

76.2 Classification Descriptor

76.2.1 A Driver Trainer / Operations Specialist will have already demonstrated, and continue to demonstrate, superior competence and performance in all aspects of operations covered in Levels 1 to 4 above. In addition to any other operational duties as required, the Driver Trainer/Operations Specialist is required to undertake training, competency assessments, Employee communication, mentoring and motivation, performance reviews and feedback, investigations, audits, procedural and business improvement reviews, customer presentations and other special duties and tasks as required. Qualifications and Competency:

76.2.1.1 Certificate IV in Train Driving

76.2.1.2 Certificate IV in AQF Training & Assessment;

76.2.1.3 Demonstrated competence at Level 4; and

76.2.1.4 Competency in Multiple Mainline Routes.

76.3 Roster

76.3.1.1 The Driver Trainer / Operations Specialist Position will work roster A

76.4 Expenses

76.4.1.1 Reimbursement of expenses are subject to Company Policy when travelling to attend training and or other forums. Reimbursement of expenses does not apply when working as part of a train crew.

PART 10 – WORKPLACE SURVEILLANCE

77 AUDIO AND VIDEO IN-CAB TRAIN SAFETY RECORDINGS

77.1 The use and regulation of audio and visual recording devices in the cab of a locomotive will be governed by the Rail Safety National Law (NSW) 2012 (RSNL) as amended from time to time.

77.2 Notwithstanding any other provision of the RSNL, the only device capable of making an audio or visual recording installed in the cab of a locomotive used by ORA will be an in-cab train safety recorder (as defined by the RSNL).

77.3 This clause does not apply to:

77.3.1 Telecommunication and radio recordings; or

77.3.2 Outward facing audio or visual monitoring

77.4 Subject to consultation, ORA will install and/or operationalise in-Cab Cameras in its locomotives during the transition period to meet the requirements under the RSNL.

78 ELECTRONIC MONITORING & SURVEILLANCE

- 78.1 For the avoidance of doubt, this clause does not apply to in-cab train safety recorders as defined in clause A49 of the RSNL.
- 78.2 Where forms of electronic monitoring and surveillance are introduced, ORA will first consult with employees and explain the requirement for such introduction. Any use must meet the Privacy Act and Workplace Surveillance Act (NSW) requirements. ORA must;
 - 78.2.1 Give serious consideration to the proposals submitted by its Employees and their representatives.
 - 78.2.2 Ensure that Employee's privacy is respected, and any recordings are not used for improper purposes.
- 78.3 Any device used within a current or proposed procedure to record any Employee actions or interactions is only to be accessed for post incident investigations as defined in the RSNL, WHS matters or where a formal complaint is raised by an Employee against another Employee.
- 78.4 Any disciplinary action will be in line with the agreed disciplinary procedure and Employees will be provided any surveillance records relied upon in a disciplinary matter at the earliest opportunity in accordance with principles of natural justice.

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 72 of the *One Rail Australia (FLACH) Pty Ltd, NSW Coal Haulage Enterprise Agreement 2023*. 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 One Rail Australia (FLACH) Pty Ltd:

John Michael McArthur

Company Representative **Full Name**

Chief Executive Officer and Managing Director

Position

Suite 6.02, Level 6, 1 Pacific Highway North Sydney NSW 2060

Address

Signature

2 August 2023

Date

Being an authorised person to sign the agreement on behalf of the company.

Signed for and on behalf of Australian Rail Tram and Bus Industry Union, NSW Branch, as a bargaining representative of Employees:

Alex Claassens

Employee Bargaining Representative **Full Name**

Branch Secretary

Position

Level 4, 321 Pitt Street, Sydney NSW 2000

Address

A. Claassens

Signature

1 August 2023

Date

Being an authorised person to sign the agreement on behalf of the RTBU.

END OF AGREEMENT

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.