



# FOOTPLATE

## NEW SOUTH WALES BRANCH / LOCOMOTIVE DIVISION

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### Sydney/NSW Trains EA Update for Locomotive Division Members

As members would be aware, the RTBU has been one of seven unions who have been involved in the bargaining process for the Sydney and NSW Trains Enterprise Agreements (EAs) since July 2017. Following almost three weeks of an EA tour, which was organised and conducted by your employers, it is now almost time to vote on your EA.

Prior to the voting period, which will likely go for two weeks, is what is known as the 'access period'. The access period is a 7-day period, as prescribed by the *Fair Work Act 2009* (Cth). The purpose of this 7-day period is to afford all employees covered by an EA the opportunity to read and examine the document before casting a vote. The formal access period officially commenced on 01 March 2018.

Members are now starting to receive their Enterprise Agreements – whether they are an employee of Sydney or NSW Trains – and the RTBU Locomotive Division would like to provide some additional background information in relation to both the EAs and the related circumstances concerning the vote.

#### **EA negotiations: what has been achieved so far?**

Firstly, it is important to note that the EA as it relates to your employment is a document distributed by management and is neither agreed nor endorsed by the RTBU Locomotive Division. Sydney and NSW Trains chose to walk away from the negotiating table and put their offer directly to their employees. This occurred during the 6-week suspension of our protected industrial action, and there is no doubt that Sydney and NSW Trains are attempting to have the EAs voted upon and approved so that the RTBU (and other unions) cannot take protected industrial action as a part of this bargaining process.

Under the *Fair Work Act 2009* (Cth), Sydney and NSW Trains have the ability to do the following:

- Put their document out to their employees, with or without the agreement of the RTBU or the CRU; (*Combined Rail Unions*).
- Choose who the vote is conducted by, with or without the agreement of the RTBU or the CRU; and
- Conduct a tour of employee work locations, with or without the agreement of the RTBU or the CRU.

History will now show that Sydney and NSW Trains did, in fact, decide to progress with the tour and the vote without the agreement of the RTBU.

Whilst most of the changes to the EA that have been made have been agreed in principle, the major outstanding issue between the parties is the wage increase. The RTBU Locomotive Division is bound by the decision of the delegates that was made on 1<sup>st</sup> February 2018: that the minimum wage increase was to be no less than 4% per year. Additionally, there are a number of clauses that were not agreed between the parties prior to Sydney and NSW Trains conducting an EA tour: the disciplinary matters clause (particularly concerning how employees are paid when stood down pending a disciplinary investigation), the deed of release (as management have refused to allow the priority assessment process to be disputed) and the facilitation clause. Seeing as though the wage increase being offered is only 3% and there are a number of outstanding clauses that have not been agreed, the RTBU Locomotive Division cannot endorse the proposed agreement and will not be recommending a 'yes' vote. This is not to say that the pay increase, along with all of the other changes to the EAs, is not a bad deal – simply put, the package does not reflect what the RTBU Locomotive Division were instructed to achieve. It is also worth noting that several commitments – which currently sit outside of the EAs in letters of comfort – are not legally enforceable should the promises contained therein be broken by Sydney and/or NSW Trains.

Following management's decision to conduct a tour, the RTBU decided to attend in an effort to advise members about the outstanding issues and answer any questions. During the meetings it became clear that there was a mixed view from RTBU members concerning the proposed EAs. The RTBU Negotiating Committee has therefore decided that members should vote based on what they think is the proper outcome (in other words, without a 'yes' or 'no' recommendation from the RTBU).

The RTBU acknowledges that social media is a modern form of communication and is a platform utilised to deliver a variety of opinions. It also acknowledges that the members always reserve the full right to express their opinions, but it should also be remembered that some members find it easier to choose this medium to be their *only* platform to run a 'yes' or 'no' campaign in cyber space, rather than confronting management directly. So, it is important for all members to exercise their right to vote and to vote without any influence.

### **The voting process and potential outcomes**

There are a number of consequences – both positive and negative – that could arise out of the result of the vote, regardless of whether the ultimate result is a 'yes' vote or a 'no' vote. It is important that members understand what the possible outcome for each scenario is.

**A 'yes' vote:** A 'yes' vote has the potential to split the workforce if one entity votes their EA up and the other doesn't (for example, NSW Trains returns a 'yes' vote and Sydney Trains returns a 'no' vote). The ongoing link between Sydney and NSW Trains would be weakened and would place the current wage structure and associated policies that are applicable to Sydney and NSW Trains (such as the Transfer and Roster Placement Policy) at risk. This is largely due to the fact that both EAs have a common expiry date, which would no longer be the case; the loss of a common expiry date would make bargaining incredibly difficult for both NSW/Sydney Trains going forward.

**A 'no' vote:** A 'no' vote could lead to several possible outcomes, and has no guarantee of achieving a better outcome. A 'no' vote also has the potential to split the workforce if one entity votes their EA up and the other does not. Whilst a 'no' vote would allow us the ability to seek to take some form of further lawful industrial action and possibly negotiate further with Sydney and NSW Trains, the possibility of Sydney and NSW Trains collectively applying to the FWC and having our industrial action terminated would mean that the RTBU could have any outstanding EA matters arbitrated (or decided upon) by the Commission. Furthermore, there is no obligation on Sydney and NSW

Trains to continue negotiating on the outstanding clauses: the employers are within their right to revoke all agreed clauses and the pay package, and revert back to their original position of a rollover and 2.5% per annum.

Unfortunately neither a majority 'yes' or 'no' outcome will satisfy all members as there is no guarantee of a better outcome in a 'no' vote scenario, and where a 'yes' vote whilst guaranteeing an outcome, it will be an outcome that does not meet what the CRU Delegates had determined would be a satisfactory to the majority of members.

### **Do we need a separate EA for Train Crew?**

There have been multiple enquiries made by members concerning a separate EA for the RTBU, Train Crew and/or Drivers, particularly in light of the current bargaining structure and the recent offer put to RTBU members by Sydney and NSW Trains.

The issue of a separate EA for Train Crew (or simply Drivers) is complex and would need a lot of discussion and debate within the Locomotive Division and the NSW Branch as a whole. At this point in time, we are unable to remove ourselves from the scope of the EA(s) as we are governed by the relevant scope provisions and by legislation in this respect. Scope is almost always decided at the beginning of the bargaining process (when the Notice of Employee Representation Rights, or NERR, is issued), and cannot be unilaterally changed at this point in the negotiating process. It is standard for the scope of an EA to be decided first. Once negotiations commence, the parties are effectively locked in until negotiations for the next EA commence (unless a party to the EA, including the employer, seeks to have parties or classifications excluded from the scope). Whilst this may not alleviate some or all of the concerns that have recently been raised by numerous members, it will hopefully be of some comfort that the Locomotive Division has already raised within the RTBU with the expectation that, once this EA is finalised, we will have an internal discussion prior to the commencement of negotiations for the next EA.

### **Summary**

One thing is certain there will be an end to this at some point in time, and the important thing is that both EAs are either voted up or down (and are not split in terms of their nominal expiry dates). Furthermore, it is important that we stick together as a union. If we turn on each other, we will weaken our collective position, both in terms of the bargaining process and in day-to-day affairs outside of the bargaining period. This is the outcome that management and the NSW Government would like, and we owe it to each other to show solidarity at the end of the process, regardless of the outcome.

**Remember:** For an EA to be successfully voted up or down, only **50% + 1 of those who vote** are required to vote in favour or against the EA (and not 50% + 1 of the entire workforce covered by the EA as is the case with a protected industrial action ballot).

If you have any questions, please do not hesitate to contact your local delegate or the RTBU via phone or email us at [nswloco@rtbu-nsw.asn.au](mailto:nswloco@rtbu-nsw.asn.au).

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