



# DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**Freightliner Australia Pty Ltd**  
(AG2019/1488)

## **FREIGHTLINER AUSTRALIA PTY LTD ENTERPRISE AGREEMENT 2018**

Rail industry

COMMISSIONER JOHNS

MELBOURNE, 12 JUNE 2019

*Application for approval of the Freightliner Australia Pty Ltd Enterprise Agreement 2018.*

[1] An application has been made for approval of an enterprise agreement known as the *Freightliner Australia Pty Ltd Enterprise Agreement 2018* (**the Agreement**). The application was made pursuant to s.185 of the *Fair Work Act 2009* (Cth) (**the Act**). It has been made by Freightliner Australia Pty Ltd. The Agreement is a single enterprise agreement.

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

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

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

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 19 June 2019. The nominal expiry date of the Agreement is 11 June 2022.

COMMISSIONER

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## Annexure A



**Private & Confidential**  
7 June 2019

Dear Commissioner Johns

**Freightliner Australia Enterprise Agreement 2018 (AG2019/1488)  
Submissions & Undertaking (s.190 of the Fair Work Act 2009)**

I, Vanessa Hoey, Director of Human Resources, Genesee & Wyoming Australia Pty Ltd, give the following Undertaking with respect to the application for certification of the *Freightliner Australia Pty Ltd Enterprise Agreement 2018* (AG2019/716) (the Agreement):

1. I have the authority given to me by Genesee & Wyoming Australia Pty Ltd to provide this undertaking in relation to the application for the certification of the *Freightliner Australia Pty Ltd Enterprise Agreement 2018* currently before the Fair Work Commission;
2. I understand that each undertaking is to be taken to be a term of the Agreement;
3. I give the following undertaking/s with respect to the Agreement:

**Clause 12: Flexibility Arrangements**

Any arrangement reached by operation of Clause 12 shall be confined to permitted matters and must not include a term that would be an unlawful term.

**Clause 14: Redundancy**

Where there is an inconsistency between the Agreement and the National Employment Standards (the NES) and the inconsistency is to the detriment of the relevant employees, the NES Applies.

**Clause 61.4: Disciplinary Matters**

Dismissal without notice may only occur where it has been determined that a disciplinary matter shall invoke summary dismissal.

**Clause 19.3 Casual Employees Rate of Pay**

In the event that a level 1 – Cadet is engaged to perform casual work on any Sunday, the Company will pay such employees the Agreement rate of pay (\$28.40 p/h) plus an additional 70% loading (\$48.28 p/h).

Yours sincerely

Vanessa Hoey  
**Director Human Resources**

Genesee & Wyoming Australia  
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# **Freightliner Australia Pty Ltd Enterprise Agreement 2018**

(Part of the Genesee & Wyoming Australia Group)

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

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## **PART 1 – THE AGREEMENT AND ITS OPERATION**

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### **1 TITLE**

This agreement will be referred to as the Freightliner Australia Pty Ltd Enterprise Agreement 2018 (the Agreement).

### **2 PARTIES TO THIS AGREEMENT**

The parties to this agreement are:

- 2.1 Freightliner Australia Pty Ltd - ACN 122 522 123 referred to as “the employer” and “the company”;
- 2.2 The employees of the company employed under the classifications contained within this agreement “employee(s)”, and;
- 2.3 The Australian Rail Tram and Bus Industry Union (“RTBU” or “union”).

### **3 APPLICATION OF THIS AGREEMENT**

- 3.1 This agreement applies to the exclusion of any modern award.
- 3.2 This agreement does not purport to exclude the operation of the National Employment Standards (NES).
- 3.3 Part 2-2 of the Fair Work Act 2009 describes the NES entitlements and may also provide terms that supplement or are ancillary to the entitlements in the NES.
- 3.4 The parties acknowledge that the clauses contained in this Agreement apply only to the extent that they are not detrimental to an employee overall when compared with the NES.

### **4 DURATION OF THIS AGREEMENT**

- 4.1 The nominal expiry date of this Agreement shall be 3 years from the date the Fair Work Commission approves it.
- 4.2 The employer and the union agree to commence discussions no later than 3 months prior to the expiry date of this Agreement.

### **5 DEFINITIONS**

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

<b>The ACT:</b>	The Fair Work Act 2009 as amended.
<b>Annual Remuneration:</b>	Base rate remuneration for annual cycle Hours Worked. Incorporates an aggregate amount for shift penalties, weekend work and leave loadings.
<b>Casual:</b>	An employee engaged and paid on an ad hoc basis.
<b>CPI:</b>	The annual percentage change in the Consumer Price Index, Australia, weighted average of eight capital cities, All groups, produced by the Australian Bureau of Statistics, for the September quarter in the current year.
<b>Day:</b>	For the purposes of paid leave, a Day means 7.6 hours.
<b>EFT:</b>	Electronic Funds Transfer.
<b>Emergency:</b>	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.
<b>FWC:</b>	Fair Work Commission.
<b>Immediate Family:</b>	Spouse including de facto spouse of an employee, a child including an adopted child, a step child or an ex-nuptial child, or



	parent, stepparent, grandparent, grandchild or sibling of the employee or employee's spouse.
<b>Home Location:</b>	One of the designated work locations listed at clause 9 of this Agreement. The employee's usual sign on / off location for scheduling purposes.
<b>Hourly Rate:</b>	Annual Remuneration divided by 1976 hours worked in a period of one year. The rate is detailed in clause 19.1.
<b>NES:</b>	National Employment Standards.
<b>Rail Safety Worker:</b>	Any employee who performs rail safety work.
<b>Recognition of Prior Learning (RPL):</b>	RPL provides for the recognition of an individual's qualification, knowledge, skills, relevant prior learning, and experience, wherever it was gained.
<b>Master Roster:</b>	Means a template roster that shows, but is not limited to, working days, book off days, and blank days.
<b>Working Roster:</b>	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.
<b>Roster Cycle:</b>	Means a single period of four (4) weeks, made up of two (2) pay fortnights, over which an employee works their ordinary hours.
<b>Shift Length:</b>	The total time from a sign-on to a sign-off.
<b>Stand Alone:</b>	Payment of hours, which are additional to the Annual Remuneration.
<b>Total Annual Remuneration:</b>	The total amount of monies paid during a financial year, including any additional payments of overtime.

## 6 NO EXTRA CLAIMS

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

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## **PART 2 – CONTRACT OF EMPLOYMENT AND RELATED MATTERS**

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### **7 ENGAGEMENT**

- 7.1 An employee may be engaged as a permanent or a casual employee. Employees shall not have their category of employment changed without their consent. Any agreed change shall be detailed in writing.
- 7.2 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 casuals).
- 7.3 Where permanent full time positions become available, preference will be given to suitable part time, casual or temporary fixed term employees who wish to be considered for appointment to these positions.
- 7.4 Where the company is proposing to introduce a part time arrangement preference will be given to suitable full time, casual or temporary fixed term employees who wish to be considered for appointment to these positions.
- 7.5 The company will ensure that all employees are appropriately inducted into their workplace following appointment.
- 7.6 The company will provide training relevant to job/position requirements and employee needs that is aligned to the Industry Training Package. Certificates and statements of attainment will be issued to employees upon satisfying the requirements of the specific training.

### **8 FORMS OF EMPLOYMENT**

#### **8.1 Full Time Employee**

An employee engaged to work an average of 38 ordinary hours per week over a roster cycle.

#### **8.2 Part Time Employee**

- 8.2.1 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.
- 8.2.2 These agreed hours and the days an employee is required to work can only be altered by mutual agreement and must be in writing. A part time employee will have their scheduled book off days posted.
- 8.2.3 Wages and conditions for part time employees will be calculated on a pro rata basis to the full-time ordinary hours of work of 38 hours per week, equivalent pay and conditions to those full-time employees in the same position / classification, unless otherwise expressly stated in this agreement. For employees whose weekly hours of work differ during the year, their leave entitlements will accrue based on a pro-rata of the entitlement over the accrual period.
- 8.2.4 A part time employee will be paid the applicable overtime rates where that employee works in excess of 152 hours in a Roster cycle.
- 8.2.5 A part time employee will be paid the applicable overtime rate where they work on a scheduled book off Day.



### **8.3 Casual Employee**

- 8.3.1 Is an employee paid by the hour, who works on an ad hoc basis, and whose rate of pay includes a casual loading for their particular classification as set out in the agreement.
- 8.3.2 Will be paid a minimum shift length for each shift in accordance with the minimum shift provisions as set out in this agreement.
- 8.3.3 Other than long service leave in accordance with applicable legislation, casual employees shall not be entitled to any form of paid leave, payment for public holidays not worked, and notice payments.
- 8.3.4 A casual employee will be paid the applicable overtime rates where that employee works in excess of 152 hours in a Roster cycle.
- 8.3.5 The employer shall have the ability to use casual employees where operational requirements dictate.
- 8.3.6 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, in writing under terms provided for in this Agreement.
- 8.3.7 Where a casual employee has worked the equivalent ordinary hours of a full time employee being (893) hours for a continuous period of six (6) months they may seek to be appointed as a permanent or as a part-time employee.
- 8.3.8 Where a casual employee seeks appointment under this sub-clause, the employer may refuse where a major change is foreseeable as defined in clause 59.1 (a).

### **8.4 Fixed Term Employee**

- 8.4.1 A fixed term employee is engaged on a full time or part time basis for a defined period or task, which may be subject to change/extension by agreement of the parties. Where practicable, the length of time for the fixed term defined period shall not normally be more than 12 months.
- 8.4.2 A full time fixed term employee is entitled to all leave benefits and public holidays as specified in this agreement. Pro-rata for these entitlements will be calculated on an hourly basis using the annual remuneration for the classification.
- 8.4.3 A part time fixed term employee is entitled to all leave benefits (on a pro rata basis) and public holidays as specified in this agreement.

### **8.5 Supplementary Labour:**

- 8.5.1 Supplementary labour from external sources may be utilised when the operational circumstances requires flexibility in order to efficiently manage situations including but not limited to; fluctuating or uncertain business demands, unplanned or extended leave, special programs/projects or ad-hoc business contracts.
- 8.5.2 The company confirms that the predominant form of employment is permanent full time or part time, fixed term or casual, except where this cannot be accommodated as a result of any one of the circumstances outlined in clause 8.5.1.
- 8.5.3 Supplementary labour from external sources shall not be used to displace permanent employees.

## **9 WORK LOCATIONS (DEPOTS AND FACILITIES)**

- 9.1 Work locations at the commencement of this agreement are:
  - a) Newcastle
  - b) Sydney
  - c) Narrabri

- 9.2 As per Clause 59, the above work locations may be expanded on throughout the life of the Agreement.
- 9.3 The company will provide access to an air-conditioned office and welfare facilities, which shall include a meal room, shower, change room, toilets and electronic communications. Drinking water, Tea, coffee, milk, and sugar will be provided free of charge. A notice board for authorised material distributed by the employees union will also be provided. These facilities may be a shared facility. Where this is the case, the company will have entered into a contractual arrangement with the owner to provide these services.
- 9.4 If at the commencement of this agreement, there are no welfare facilities provided at a work location, the company will consult with its employees and their union to provide such facilities within six months of the commencement of this agreement. Failing such provision, the parties will have the right to escalate the matter as per the dispute resolution provision of this agreement.
- 9.5 Should the company have difficulty providing the provisions outlined in 9.3 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.

## 10 PROBATIONARY PERIOD

### 10.1 Initial Term

All new employees, with the exception of casuals, will be engaged on an initial probationary period of three months. At the commencement of employment, the company shall inform new employees in writing of the duration of the probationary period.

### 10.2 During Probationary Period - Performance to be Discussed

During the probation period, should an employee be failing to meet performance standards, the company shall discuss the concerns with the employee; and the company shall give the employee an opportunity to improve their performance, except where clause 11.3 applies. The company may agree to extend the probation period.

## 11 TERMINATION OF EMPLOYMENT

### 11.1 Termination by the Company

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

- Unable to demonstrate the required skill or ability; and/or,
- Demonstrates inappropriate behaviour; and/or,
- Cannot satisfy the medical requirements for their position.

11.1.2 Subject to Clause 11.3, where an employee's employment (other than a casual employee) is terminated by the company the following period of notice applies:

Period of Continuous Service	Period of Notice
1 year or less	1 week
More than 1 year	4 weeks
For employees over 45 years of age and who have completed two years of service	6 weeks

11.1.3 The company may make payment to the employee in lieu of working the notice period.

## **11.2 Termination by the Employee**

- 11.2.1 At any time during the probationary period, an employee may terminate the employment relationship by giving one weeks' notice to the company.
- 11.2.2 An employee who resigns must provide the employer with 1 week of notice for 1 year or less of service and 4 weeks of notice for more than 1 year of service.
- 11.2.3 The employer may agree to a shorter period of notice from an employee.
- 11.2.4 Where an employee does not provide the employer with the required notice, and the employer does not agree to a shorter period, the employer may deduct and retain an amount equal to the employee's normal pay for the period of required notice that was not given from the amount that the employer is required to pay the employee upon termination under this agreement.

## **11.3 Summary Dismissal**

The employer may terminate an employee's employment without notice for serious misconduct as defined in the Act. In such cases, wages shall only be paid up to the time of dismissal.

## **11.4 On Termination**

### **11.4.1 Annual Leave**

- 11.4.1.1 On termination of employment, any unused annual leave shall be paid to the employee.
- 11.4.1.2 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.

### **11.4.2 Monies Payable to the Employer**

Any overpayments of remuneration or any other monies advanced to the employee by the company may be retained by the company from the employee's final payment.

### **11.4.3 Return of Company Property**

The employer may withhold payment of an employee's final payment on termination pending the return, in a satisfactory condition, of any property or equipment of the employer.

### **11.4.4 Statement of Employment**

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

## **12 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 clause 12.2:
- 12.2 The terms of this Agreement that may be varied by a flexibility arrangement are:
  - Arrangements for when work is performed;
  - Overtime rates;
  - Penalty rates.
- 12.3 The employer must ensure that the individual flexibility arrangement:
  - a) Is in writing; and
  - b) Includes the name of the employer and the employee; and
  - c) Is signed by 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:

- 
- The terms of the Enterprise Agreement that will be varied by the arrangement; and
  - How the arrangement will vary the effect of the terms; and
  - 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
  - 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 Arrangement**
- The company or employee may terminate the individual flexibility arrangement:
- By giving no more than 28 days written notice to the other party to the arrangement; or
  - If the company and employee agree in writing - at any time.

### **13 REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS**

- 13.1 Employee may request change in working arrangements.
- 13.2 Clause 13 applies where an employee has made a request for a change in working arrangements under section 65 of the Act.
- 13.3 An employee with the following circumstances may request a change in their working arrangements;
- 13.3.1 The employee is the parent, or has responsibility for the care, of a child who is of school age or younger;
  - 13.3.2 The employee is a carer (within the meaning of the Carer Recognition Act 2010);
  - 13.3.3 The employee has a disability;
  - 13.3.4 The employee is 55 or older;
  - 13.3.5 The employee is experiencing violence from a member of the employee's family;
  - 13.3.6 The employee provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing violence from the member's family.
- 13.4 To avoid doubt, and without limiting clause 13.3.1 an employee who:
- a) is a parent, or has responsibility for the care, of a child; and
  - b) is returning to work after taking leave in relation to the birth or adoption of the child;
- may request to work part time to assist the employee to care for the child.
- 13.5 An employer may only refuse a request for a change in working arrangements on 'reasonable business grounds as outlined in the act.
- 13.6 Responding to the Request**
- 13.6.1 Before responding to a request made, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to:
    - a) the needs of the employee arising from their circumstances;
    - b) the consequences for the employee if changes in working arrangements are not made; and
    - c) any reasonable business grounds for refusing the request.
  - 13.6.2 The employer must give the employee a written response to an employee's request within 21 days, stating whether the employer grants or refuses the request.



- 13.6.3 If the employer refuses the request, the written response must include details of the reasons for the refusal.

### **13.7 If the Employer Refuses the Request the Response Must Include**

- 13.7.1 Clause 13.7 applies if the employer refuses the request and has not reached an agreement with the employee under clause 13.6.
- a) The written response must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
  - b) If the employer and employee could not agree on a change in working arrangements under clause 13.6, the written response must:
    - i. state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and
    - ii. if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

### **13.8 If a Different Change in Working Arrangements is Agreed the Response Must Include**

If the employer and the employee reached an agreement under clause 13.6 on a change in working arrangements that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

### **13.9 Dispute Resolution**

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 13, can be dealt with under 60.

## **14 REDUNDANCY**

### **14.1 Discussions Before Termination of Employment:**

- 14.1.1 A redundancy scenario arises where the company considers that it no longer requires the position an employee has been performing, and this is not due to the ordinary and customary turnover of labour in the business.
- 14.1.2 Where a redundancy scenario may lead to termination of employment, the company shall hold discussions with the employee/s directly affected and their union.
- 14.1.3 Redundancy is a major change. The obligations relating to consultation contained in the major workplace change clause of this Agreement are to be observed.
- 14.1.4 Provided that where the disclosure would be contrary to the company's commercial interests, the company shall not be required to disclose Confidential Information.

### **14.2 Transfer to Lower Paid Duties**

- 14.2.1 Where an employee agrees to transfer to lower paid duties for reasons set out in clause 14.1, the employee shall be entitled to the same period of notice of transfer as they would have been entitled to if their employment had been terminated.
- 14.2.2 The company will, make payment in lieu of the difference between the former annual remuneration and the new lower annual remuneration for the number of weeks of notice still owing.

### **14.3 Severance Pay**

- 14.3.1 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 two (2) weeks of severance pay for every full or part year of service in respect of a continuous period of service. The maximum limit of severance pay is thirty 30 weeks.

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- 14.3.2 For the purposes of this clause, "weeks' pay" means the annual remuneration for an employees' classification as set out in this agreement, divided by 52 (weeks).

**14.4 Time Off During Notice Period**

- 14.4.1 During the period of notice of termination given by the company, an employee shall be allowed a minimum of one day off without loss of pay during this notice period for the purpose of seeking other employment.
- 14.4.2 If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the company, be required to produce proof of attendance at an interview otherwise the employee shall not receive payment for the time absent. For this purpose, a statutory declaration will be sufficient.

**14.5 Notice to Centrelink**

Where a decision has been made to terminate employee's employment by reason of redundancy the company shall notify Centrelink in accordance with Centrelink's requirements.

**14.6 Employee Transfer**

- 14.6.1 Where the company offers, and the redundant employee accepts a transfer to another location within the company, the entitlements under clause 39.1 shall apply.
- 14.6.2 Employees who accept such transfer in these circumstances are not entitled to the severance payments.

**14.7 Transfer of Business**

The relevant provisions of the Act shall apply where there is a Transfer of Business.

**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 reasons:
- Industrial action (other than industrial action organised or engaged in by the employer);
  - A breakdown of machinery or equipment, if the employer cannot reasonably be held responsible for the breakdown;
  - A stoppage of work for any cause for which the employer cannot reasonably be held responsible.
- 15.1.2 The employee may elect to use Annual Leave as an alternative to being Stood Down.

**15.2 Advice**

- 15.2.1 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.
- 15.2.2 Where a Stand Down is related to Rail Infrastructure Planned maintenance, a minimum of seven (7) days' notice will be given by the employer.

**15.3 Alternative Work**

The employer will actively pursue alternative work to be done, such as training, or maintenance before proceeding with the stand down.

**15.4 Continuity of Employment**

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



### **15.5 Resignation During Stand Down**

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

### **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:

- Provide details of the period of notice to the employer, including details of the Hours Worked for the last two (2) weeks; and
- Inform the employer when they will be available to commence work with the employer.

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

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

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## **PART 3 – CLASSIFICATION AND WAGES**

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### **16 CLASSIFICATIONS**

#### **16.1 Identification of Classifications**

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

#### **16.2 Classification Factors**

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.

#### **16.3 Positions**

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

- Level 1 (Cadet - 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).

### **17 CAREER PATH AND PROMOTION**

#### **17.1 Progression Criteria**

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

#### **17.2 Progression to Higher Classifications**

- 17.2.1 Career progression shall be dependent upon an employee being deemed competent by a qualified workplace assessor; and
- 17.2.2 An employee may opt not to progress to a higher classification and shall advise the company in writing of his/her decision.

### **18 HIGHER DUTIES**

- 18.1 Where an employee is required to act in a higher classification than that in which they are engaged for a period in excess of four hours, they shall receive the higher pay rate for the whole time during which the employee is acting in the higher classification. Any leave taken during periods of acting in a higher classification will be payable at the rate consistent with that higher classification.
- 18.2 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.
- 18.3 Where the employee performs higher-level duties as part of training, no additional amount shall be payable under this clause.

## 19 REMUNERATION

### 19.1 Table of Pay Rates

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

<b>Wage Increase and Applicable Pay Rates</b>				
<b>Percentage Increase</b>	A) 2%	B) 2.75%	C) 2.75%	D) 2%
<b>Date of Increment</b>	22 October 2018	22 October 2019	22 October 2020	On expiry of this Agreement
<b>Level 4 - Driver</b>				
Annual Remuneration	\$108,467.10	\$111,449.94	\$114,514.81	\$116,805.10
Hourly Rate	\$ 54.89	\$ 56.40	\$ 57.95	\$ 59.11
<b>Level 3 - Trainee Driver/Assistant Maintainer</b>				
Annual Remuneration	\$ 81,350.26	\$ 83,587.39	\$ 85,886.04	\$ 87,603.76
Hourly Rate	\$ 41.16	\$ 42.30	\$ 43.46	\$ 44.33
<b>Level 2 - Assistant Driver</b>				
Annual Remuneration	\$ 65,000.25	\$ 66,869.96	\$ 68,708.88	\$ 70,083.06
Hourly Rate	\$ 32.93	\$ 33.84	\$ 34.77	\$ 35.46
<b>Level 1 - Cadet</b>				
Annual Remuneration	\$ 56,126.55	\$ 57,670.03	\$ 59,255.96	\$ 60,441.08
Hourly Rate	\$ 28.40	\$ 29.18	\$ 29.98	\$ 30.58

19.1.1 The parties agree the increase shown in column (D) does not prohibit the parties from negotiating a further increase to apply upon certification of the next agreement in 2021.

### 19.2 Calculation of Rates of Pay

19.2.1 The rates of pay in this Agreement are based on the annual remuneration described in clause 19.1 and 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.

19.2.2 The annual remuneration and base salary calculations based on this salary do not include overtime payments, payments for public holidays, or allowances provided for in clause 21, and other payments over the base rate of pay expressly provided for in this Agreement.

### 19.3 Casual Employees Rate of Pay

19.3.1 Employees engaged as casuals shall receive an hourly rate equivalent to the base hourly rate for their classification set out in clause 19.1 plus a loading of 25%. The 25%

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loading is in lieu of any entitlement to paid leave, notice of termination, severance pay or other benefit of permanent employment.

19.3.2 The casual rate of pay shall be the employee's ordinary rate of pay for all purposes.

#### **19.4 Payment of Wages**

19.4.1 Employees will be paid two (2) weekly in arrears by EFT to an account nominated by the employee. The amount of the payment shall be calculated as the rate of the annual remuneration divided by twenty six (26), paid on a two weekly basis.

19.4.2 Changes to scheduled payments may be made by the employer to accommodate unusual situations or circumstances. Employees will be notified of any changes to the method of payment in advance.

19.4.3 Where the employer is unable to determine the total entitlements (i.e. pay inclusive of Out of Pocket Expenses) of an employee in any pay period, adjustments to the employee's wages for the two (2) week period may be made in the following pay period.

#### **19.5 Salary Packaging and Salary Sacrifice**

19.5.1 An employee may, by separate agreement with the company, enter into a salary sacrifice or salary packaging arrangement in accordance with any applicable company policy, Australian Tax Office requirements and other relevant legislation.

19.5.2 An employee must make such request to the company in writing.

19.5.3 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.

19.5.4 The company will not be liable for any costs should the law or the views on salary sacrifice or salary packaging change in the future. The salary packaging arrangement will be on a genuine salary sacrifice basis.

19.5.5 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.

19.5.6 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.

### **20 SUPERANNUATION**

20.1 On commencement, an employee shall be entitled to have an employer superannuation contribution made to a complying superannuation fund nominated by the employee. If the employee does not nominate a complying superannuation fund, the company will make superannuation contributions into Australian Super.

20.2 Such contribution shall be at the amount specified by the Superannuation Guarantee (Administration) Act 1992 (Cth) from time to time.

20.3 Such contributions shall be based on the total annual remuneration for each classification of employee, as specified in clause 19.1 of this Agreement.

### **21 ALLOWANCES**

## **21.1 Car Reimbursement Costs**

- 21.1.1 Where an employee is required to travel for work purposes using their own personal motor 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.
- 21.1.2 In the case of a motor vehicle, the cost reimbursed shall be at the rate per kilometer for their motor vehicle size, which is specified by the Australian Taxation Office and shall include the cost of tolls.
- 21.1.3 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.
- 21.1.4 Where an employee agrees to use their own motor vehicle to travel to multiple work locations, the employee shall be reimbursed for additional expense associated with any extra distance from the employee's usual residence to their usual Home Location, consistent with clause 21.1.2.
- 21.1.5 For other travel, pre-approved additional costs, which are incurred, shall be reimbursed.

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**21.2 Meal Expenses**

- 21.2.1 Employees who are required to Rest Away from Home in accordance with the provisions set down in clause 40 shall be paid \$28.46 for every 8 hours or part thereof they are away from their Home Location.
- 21.2.2 Where the company provides an allowance as described in clause 21.2.1 the allowance is paid in lieu of any Out of Pocket Expenses while resting away.
- 21.2.3 Meal Expenses are not paid while on temporary transfer.
- 21.2.4 This allowance shall be adjusted in line with CPI Increases in September each year.



## PART 4 – WORKING ARRANGEMENTS

### 22 HOURS OF WORK

#### 22.1 Principles

- 22.1.1 National Rail Safety Law in NSW sets specific limits for work and rest with regards to train crew. This legislation, as well as workplace health and safety legislation also articulates specific requirements for rostering employees and managing their fatigue. Accordingly, the parties agree that working hours for employees under this agreement will be subject to legislative framework in NSW.
- 22.1.2 All Hours Worked must be authorised by the employer and shall be recorded by the employee on their Timesheet.

#### 22.2 Ordinary Hours of Work

- 22.2.1 The ordinary hours of work for a full-time employee are one thousand, nine hundred and seventy six hours (1976) over a period of one (1) year; and
- Are based on a 38 hours per week for a full-time employee; or
  - Up to 38 hours per week for a part-time or casual employee.
- 22.2.2 Ordinary hours of work may be worked on any Day at any time.
- 22.2.3 An employee shall be rostered for a maximum of 152 ordinary hours over the four-week roster cycle.
- 22.2.4 For full time employees, annual leave should be treated as ordinary hours.
- 22.2.5 The ordinary hours will include public holidays to which the employee is entitled.

#### 22.3 Guaranteed / Loss of Ordinary Hours Component

- 22.3.1 Unless otherwise provided for in this agreement, the employer shall guarantee work, or equivalent pay, for the employee's ordinary hours of work.
- 22.3.2 Where the employee has made themselves unavailable (Leave without pay or absent without leave or unable to be contacted during shift change period, including, where an employee does not confirm a shift change advice) the employee will forfeit the equivalent ordinary hours not worked.

### 23 OVERTIME

- 23.1 In addition to ordinary hours, an employee may be required to work reasonable overtime.
- 23.2 Overtime under this agreement includes:
- a) End of roster cycle overtime;
  - b) All hours worked on a book off day;
  - c) Hours worked on a shift that are in excess of a fixed shift length, should a fixed length shift roster be in place.
- 23.3 For all full time and part time employees, end of roster cycle overtime will only apply to hours worked in excess of 152 hours in the roster cycle.
- 23.4 End of roster cycle overtime will be paid at 1.7 times the employee's base hourly rate of an employee's classification and will be paid in the pay period following the roster cycle in which it occurred.
- 23.5 Hours worked on a book off will be paid at 1.7 times the employee's base hourly rate of an employee's classification and will be paid in the pay period following the fortnight in which it occurred.
- 23.6 Overtime payments shall stand alone.

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### **23.7 Minimum Overtime Shift Payment**

- 23.7.1 Where an employee is asked to work an overtime shift for a period of no more than 4 hours, the employee shall be paid for a minimum of 4 hours at the overtime rate, which will count towards the roster cycle.
- 23.7.2 Where an employee is asked to work for more than 4 hours on a book off day, they will receive all hours worked at the overtime rate, or a minimum payment of 7.6 hours at the employee's base hourly rate, whichever is the greater.

### **23.8 Overtime Shift Cancellation**

Where an employee has agreed to work an overtime shift, and the shift is cancelled with less than 3 hours' notice in advance of the commencement of the shift, the employee will receive a stand alone payment at the ordinary hourly rate of pay for:

- 4 hours where the original shift was for 4 hours or less; or
- 7.6 hours where the shift was greater than 4 hours.

### **23.9 Reasonable Additional Hours**

- 23.9.1 Employees may be requested to work reasonable additional hours as are necessary.
- 23.9.2 Employees may refuse a request to work more than 152 hours in a Roster cycle in circumstances where to work the requested hours is unreasonable, taking into account:
- a) any risk to health and safety from working the additional hours;
  - b) the personal circumstances of the employee, including any family responsibilities;
  - c) the needs of the workplace;
  - d) the entitlement to payment of overtime rates, the notice given by the employer; and
  - e) the employee's notice of intention to refuse it;
  - f) the usual patterns of work, the nature of the role;
  - g) the averaging of hours as agreed; and
  - h) any other relevant matter.

## **24 MEAL BREAKS**

Employees shall be entitled to a paid meal break of thirty 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 are to be taken so that they do not interfere with the smooth running of trains/services.

## **25 SHIFT CHANGES**

- 25.1 A shift change is when the commencement time of an employee's shift, as set on the working roster, is altered in the following ways:
- a) Brought forward by two (2) hours; or
  - b) Pushed back by four (4) hours.
- 25.2 **Shift Change Conditions**
- 25.2.1 There is to be a maximum of 2 shift changes made to the original shift shown on the working roster. However, if a shift time is altered from the Master roster as part of the process of developing the working roster, then this change is deemed to be one of the two allowable changes.
- 25.2.2 An employee must be advised of a shift change no later than 24 hours prior to the shift commencing. For example, if a shift is scheduled to commence on Tuesday at 1100, the company must advise the employee of a shift change no later than Monday at 1100.

- 25.2.3 A shift change advice can occur by:
- Advising an employee prior to, during, or at the end of a previous shift;
  - By telephone call or text message to their company provided mobile phone (when provided by the company ); or
  - By email, if the employee elects this method.
- 25.2.4 Within 6 hours of receiving a shift change advice, the employee must confirm receipt of the advice by return phone call, text message or email.
- 25.2.5 Shift change outside the parameters set in clauses 25.1 and 25.2.1, can only occur by mutual agreement between the employer and the employee.
- 25.2.6 Rostering staff must be mindful of employees rest when making contact with the employee.

## **26 JOB CHANGE**

- 26.1 A job change is not considered to be a shift change.
- 26.2 Any change to a rostered job can occur with the exception of changing a local job to a Barracks Job, unless mutually agreed.

## **27 LIFT UP / LAY BACK**

- 27.1 Lift up and lay back is used to alter the most recently advised shift / shift change as a way to deal with emergency type scenarios on the rail network.
- 27.2 Lift up is where the start time of a shift is brought forward by up to one (1) hour.
- 27.3 Lay back is where the start time of a shift is pushed back by up to three (3) hours.
- 27.4 Any emergency type scenario for the purposes of this clause means a circumstance occurring during the shift, necessitating working to be adopted to avoid dislocation to train services. For example, this includes equipment and infrastructure failures, accidents and derailments but shall not include scheduling/rostering errors or general late running of trains.

### **27.5 Lift Up and Lay Back Conditions**

- 27.5.1 There is to be a maximum of 2 start time changes when applying the lift up / lay back provision.
- 27.5.2 The company can advise an employee of lift up or lay back within eighteen (18) hours leading up to the commencement time of the shift. It is the employee's responsibility to be available to receive this advice within said period.
- 27.5.3 Lay back advice must be given prior to the employee leaving their residence i.e. allowing for the time it takes the employee to drive from their place of residence directly to their work location.
- 27.5.4 Where an employee agrees to lift up or lay back the commencement time of their shift outside of the parameters set in this clause, the company agrees to pay the additional hours which fall outside of the maximum lift up of 1 hour or lay back of 3 hours, at the overtime rate. These hours will still count towards the employees' ordinary hours and will not stand alone.

## **28 WAKE UP CALL**

Where the employee is resting, the employee will receive a wakeup call to advise of their start time (original rostered start time or altered lift up / lay back start time). The time of this call will be in accordance with the time limit advised by the employee .i.e. thirty (30) minutes prior to sign on and up to a maximum of two (2) hours, taking in to consideration place of residence.

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## **29 SHIFT CANCELLATIONS**

- 29.1 If no alternate work is available and a shift is cancelled with less than 3 hours before the commencement of the shift, then 50% of the shift length will be credited to the ordinary hours.
- 29.2 Where an employee is shown on duty, and the shift is cancelled part way through, ordinary hours in the roster cycle will be credited equal to the shift length originally rostered.

## **30 SHIFT LIMITS**

- 30.1 Shift limits are prescribed in Rail Safety Legislation. The employer will schedule work tasks in accordance with this legislation and any conditions in its Notice of Rail Safety Accreditation.

### **30.2 Shift Limits for Types of Working**

The shift limits are:

- Route Qualified Driver / Driver (L4): Maximum 12 hour shift.
- Non Route Qualified Driver (L4) / Driver (L4): Maximum 11 hour shift.
- Driver (L4)/Trainee Driver (L3): Maximum 11 hour shift.
- Driver (L4)/Assistant Driver (L2): Maximum 11 hour shift.
- Shift spent wholly within a terminal / siding: Maximum 9 hours.
- Cadet (LI) can work as a third person to the shift limits of the crew configuration that they are working with.

## **31 MINIMUM SHIFT PROVISIONS**

Employees will be paid a minimum of 4 hours for each rostered shift.

## **32 REST PERIODS**

The following minimum intervals between shifts shall apply:

- Returning home: 12 continuous hours rest between each shift.
- Staying away from home: 8 continuous hours rest between each shift.

## **33 MAXIMUM SHIFTS IN A 14 DAY PERIOD**

A maximum number of 6 x 12 hour shifts are to be worked in any 14-Day period. Any shift that exceeds 11 hours but is less than 12 hours is taken to be a 12 hour shift.

## **34 MASTER ROSTER**

- 34.1 Master roster is developed and permanently displayed at a home location. It shows rostered days off and any known tasks or work. Where no work is known, the shifts will be displayed as blank workdays. All employees must be available to work on blank days. Any known shutdowns for the year will be displayed, alongside the master roster.
- 34.2 When a master roster is changed, employees will be consulted as per clause 59.
- 34.3 Either party may request that a committee be formed to review and develop a new master roster. The committee is to be made up of both company and employee representative(s).
- 34.4 Any newly developed master roster will not be implemented without providing employees 28 days' notice of its implementation.

## **35 WORKING ROSTER**

- 35.1 The working roster is developed from the Master roster.
- 35.2 Working rosters will be issued for a roster cycle commencing Sunday at 00:01 and ending 28 Days later on Saturday at 23:59.



- 35.3 All Rosters will use the 24 hour clock, and will be available to the relevant employees no later than close of business on the Monday preceding the commencement date of the roster.
- 35.4 All Working Rosters will show:
- a) Work / job tasks including training;
  - b) Shift details including, commencement time and length of shift where known;
  - c) Book Off Days;
  - d) Any Blank Days.

### **36 ASSIGNMENT OF WORK FOR BLANK DAYS**

- 36.1 The company should make all efforts to assign shifts and tasks to blank days when compiling the working roster.
- 36.2 Where shifts have not been assigned at the time of issue of the working roster, the following requirements shall apply.
- a) The change must be advised to the employee no later than 24 hours prior to the shift commencement. However, as much notice as possible should be given.
  - b) The employee will be personally advised of any change either at the end of a shift or by phone call or text message to their company provided mobile phone (when they are provided by the company). The employee may also receive their advice by email if they so choose.
  - c) Within 6 hours of receiving a shift change advice, the employee must confirm receipt of the advice by return phone call, text message or email.
  - d) Where an employee is advised with less than 24 hours of the commencement time of the shift, and the employee agrees to accept the advice, the hours worked will count towards the employee's ordinary hours but will be paid at 1.7 times the employee's base hourly rate.

### **37 SIGNING ON / OFF**

All employees are required to sign on and off **at their dedicated home Location**.

### **38 BOOK OFF DAYS**

- 38.1 Employees have the right to nominate book off days.
- 38.2 Requests must be received no later than close of business on the Monday preceding the issue of the four weekly working roster.
- 38.3 Where the employee has nominated all their book off days for the four-week period and none are consecutive, they will have waived their right to any consecutive book off days in the respective fortnight.
- 38.4 Approval of all book off day requests will be subject to operational requirements.
- 38.5 In any one four (4) weekly Roster period there is to be at least eight (8) book off days of which two (2) are to be consecutive in each fortnight.
- 38.6 All book off days will commence at 00:00 hours for a duration of 30 hours ending at 06:00 hours the following Day. Any subsequent book off day will have a duration of 24 hours.
- 38.7 The employer may ask an employee to work on a scheduled book off day. Any request must be mutually agreed.
- 38.8 When an employee works on a scheduled book off day, payment will be in accordance with clause 23.
- 38.9 Where, as a result of an out of course event, a book off day is infringed, all time after midnight will be treated as an overtime hour and will stand alone.

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## **39 EMPLOYEE TRANSFERS**

### **39.1 Permanent Transfer**

- 39.1.1 Where opportunities for permanent transfers within the company's operations arise, the company will seek volunteers by calling for expressions of interest from employees wishing to be considered for transfer.
- 39.1.2 The successful employees who are to change their work location will be given at least 21 Days' notice of the change.
- 39.1.3 The company will pay reasonable costs, for the transfer including travel and removal expenses for the employee and his / her Immediate Family. In normal circumstances, such costs will be determined between the company and the employee prior to offer and acceptance of the transfer.
- 39.1.4 Where an employee requests a permanent transfer, and is successful, they will be responsible for all costs associated with the transfer.

### **39.2 Temporary Transfer**

- 39.2.1 Employees may be requested, to change their Home Location on a temporary basis for a period of not less than 3 days.
- 39.2.2 A temporary transfer will only operate by agreement.
- 39.2.3 An employee shall be given 7 Days' notice of a temporary transfer.
- 39.2.4 Accommodation will be provided to the agreed minimum accommodation standard as set out in clause 40.5.
- 39.2.5 The means of travel to and from the temporary location will be as follows:  
Employees can;
  - work a train;
  - be transported by the company;
  - drive a company provided vehicle; or
  - drive their own vehicle if they so choose. If this option is agreed then the company will pay costs as per clause 21.
- 39.2.6 The time taken to travel to and from the temporary location is to be included in the scheduled Roster.
- 39.2.7 Upon arrival at the temporary location, the employee will have a minimum of 12 hours off duty before signing on again.
- 39.2.8 For avoidance of doubt, the temporary transfer location will become the Home Location for the duration of the transfer period.
- 39.2.9 Expenses of \$179.79 will be payable for each 24 hour period, or part thereof in 8 hour blocks, The commencement time of the 24 hour period will start at the sign on time prior to departing the employees usual Home location.
- 39.2.10 Temporary transfer expenses shall be adjusted in line with CPI increases each year at 1 September for the life of the agreement.
- 39.2.11 Meal expenses as described in clause 21.2 will not apply.
- 39.2.12 Upon completion of the last shift at the temporary location, the employee will have a minimum period off 12 hours off duty before signing on to work a train home or return to his /her home location.



#### **40 RESTING AWAY FROM HOME**

- 40.1 Where employees covered by this agreement are scheduled to rest at a site away from their home Location, the site accommodation will be provided for by the employer and will be equivalent to three star accommodation where available. Where this standard is unavailable the accommodation provided will be the nearest possible to this standard and agreed to by the parties.
- 40.2 Rosters for employees with shifts involving rest away from the initial sign on location will incorporate a scheduled return that optimises crew utilisation and considers employee time away from home.
- 40.3 Employees are to only be rested away / booked off away from home once before returning back to their home.

#### **40.4 Payment for Resting in Excess of 12 Hours**

Where a rest period away from home extends by more than 12 hours, from the commencement of the 13th hour, each hour or part thereof, until the commencement of the next shift, will be paid at overtime rates stand alone until the employee is signed back on. Once the employee is signed back on the ordinary hours rate will apply.

#### **40.5 Accommodation Standards**

Where accommodation is organised it should meet minimum standards. A checklist should be completed prior to use and the following items should be provided as a minimum:

- Three star Australian Automobile Association (or equivalent) rated accommodation whenever possible;
- Dining facilities on site or within walking distance;
- Access to facilities to heat food;
- Convenient parking on site or within walking distance;
- Double or Queen size bed;
- 24 hour check in facilities or ability to arrange secure access arrangements;
- Air conditioning and heating;
- Suitable window coverings that exclude daylight.

#### **41 TEMPORARY ASSIGNMENTS TO COAL WORKING**

- 41.1 Employees may be required to perform work in the Coal business. When employees are performing this work, they will be paid an additional amount equivalent to twelve point five percent (12.5%) of the employee's base hourly rate for the duration of that shift.
- 41.2 Where an employee is temporarily assigned to coal working, for a single shift, the shift finish time should be as close as possible to the original shift finish time.
- 41.3 Shift change and lift up / lay back provisions apply to this clause.

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## **PART 5 – LEAVE AND ENTITLEMENTS**

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### **42 RATE OF PAY FOR ALL LEAVE PROVISIONS**

- 42.1 All leave that is set out in this part and is paid by the company will be paid at the employee's hourly rate.
- 42.2 Employees will not be paid any leave loadings. This has been incorporated into the annual remuneration amounts detailed in this Agreement.

### **43 ANNUAL LEAVE CONDITIONS**

- 43.1 Full time employees shall be entitled to 5 weeks annual leave per year and it shall accrue progressively.
- 43.2 Employees engaged on a part time, fixed term or temporary basis (but not a casual basis) shall be entitled to accrue annual leave on a pro rata basis according to their ordinary hours of work.
- 43.3 **Conditions for Accrual and Taking Annual Leave**
  - 43.3.1 All such leave, whether current entitlement or accrued, shall be taken at a mutually convenient time.
  - 43.3.2 Annual leave shall only accrue during periods where the employee is being paid by the company.
  - 43.3.3 Annual Leave cannot be accrued in excess of eight (8) weeks unless agreed between the employee and the company.
  - 43.3.4 Where approval is provided by the company to accrue in excess of eight (8) weeks annual leave, the conditions of such will be agreed between the company and the employee.
  - 43.3.5 An employee who has accrued in excess of eight (8) weeks annual leave may be directed by the company to take annual leave. The company will give four (4) weeks' notice of any direction.
- 43.4 **Annual Leave Exclusive of Other Leave**
  - 43.4.1 Where an employee takes a period of annual leave, any other leave entitlement, such as public holidays, personal leave, compassionate leave, long service leave or jury duty, that falls due in that period, will not be treated as annual leave.
  - 43.4.2 This means an employee is not taken to be on annual leave when on any other paid leave type as listed previously and any annual leave taken for that period should be re-credited.
  - 43.4.3 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.
- 43.5 **Annual Leave Payment**
  - 43.5.1 An employee may elect to cash out up to two weeks of the accrued annual leave entitlement each year consistent with requirements of the NES. An employee must have an accrued Annual Leave balance of 4 weeks after the cashing out of Annual Leave.
  - 43.5.2 Election to cash out annual leave may only be made by notice in writing to the employer and must be authorised by the employer.
  - 43.5.3 Payment in lieu of annual leave will be made at a rate that is no less than the employee's ordinary rate of pay at the time the election is made.
- 43.6 **Shift Workers**

For the purpose of the additional week of annual leave provided by Division 6 of the NES, a shiftworker is an employee who is a seven-day shiftworker who is regularly rostered to work on Sundays and public holidays and an employee who works permanent nightshift. Notwithstanding

this, however, Clause 43 of the Agreement provides all employees (except casual employees) with the additional week of annual leave provided by the NES.

#### **44 PERSONAL / CARERS LEAVE**

##### **44.1 Employees Accrual Bank on Commencement of the Agreement**

Employees who are employed on the date the company makes an application to the FWC for approval of the Agreement and who remain employed on the date this Agreement commences in operation, will have a personal/carers leave accrual equal to;

- a) the employee's years of service multiplied by 10 (personal/carers leave days) less the number of personal/carers leave days taken throughout their years of service; or
- b) 30 days.

Whichever is greater.

##### **44.2 Personal / Carers Leave Entitlement**

- 44.2.1 All permanent full time employees engaged under this agreement are entitled to a maximum of ten (10) days personal/carers leave per year in accordance with the NES as varied from time to time. Part-time employees will receive a pro-rata entitlement.
- 44.2.2 The ten (10) days will accrue progressively over the course of a year.
- 44.2.3 Any unused personal/carers leave shall be carried forward from year to year.
- 44.2.4 Personal/carers leave will be paid at the employee's ordinary hourly rate of pay.
- 44.2.5 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.

##### **44.3 Personal Leave**

- 44.3.1 An employee is entitled to paid personal leave when they are unable to attend work due to personal injury or illness.
- 44.3.2 An employee will only be paid personal leave where they notify the employer of their absence as soon as possible, and provide documentation in support of their absence as soon as reasonably practicable. Such notification must include the likely duration of any such absence.
- 44.3.3 Where an employee has taken more than 10 Days personal leave in a 12 month period, or the employer believes that the employee:
  - Will be unable to return to work, or to carry out the function of their role; or
  - Doubts whether an employee's previous absences from work are due to genuine illness and/or injury; and
- 44.3.4 The employer may require the employee to attend a medical examination in respect of the illness or injury conducted by a medical practitioner nominated by the employer, so as to determine whether or not the employee is capable of returning to work, or whether their claim is valid.
- 44.3.5 The employer will meet the cost of the examination. Transport will be provided from the normal sign on location to the location of the examination. In the event that the employee is unable to travel to the location due to the nature of the illness/injury, the employer will arrange transport.
- 44.3.6 In the event that the return to work medical practitioner concludes that the employee has no reasonable prospect of returning to work, the employer and the employee concerned will discuss whether a medical retirement is appropriate.

44.3.7 All absences must be supported by evidence (medical certificate or statement by other health care practitioner, statutory declaration, or other supporting documentation) satisfactory to the employer.

- Employees are required to provide a Medical Certificate for absences of more than 1 consecutive day, where the absence occurs during any other type of leave, or the absence is immediately before or after a book off day, public holiday or any other type of leave.
- A medical certificate will be required for all absences of personal or carers leave where more than ten (10) days have been taken in the last twelve (12) months.

44.3.8 An employee is not entitled to personal leave for any period in respect of which workers' compensation benefits are paid or payable to the employee.

#### **44.4 Pending Workers Compensation**

44.4.1 Employees may access accumulated personal leave whilst a claim for Worker's Compensation is being considered.

44.4.2 Where the claim is accepted for income maintenance purposes, any personal leave used from the date of injury shall be re-credited back to the employees leave accrual.

#### **44.5 Carers Leave**

44.5.1 An employee is entitled to paid carers leave where they are required to care for a member of the employee's immediate family or household who needs their care and support because of an illness, injury or unexpected emergency.

44.5.2 An employee will only be paid carers leave where they notify the employer of their absence as soon as possible, and provide evidence suitable to the employer in support of their absence as soon as reasonably practicable. Such notification must include the likely duration of any such absence.

#### **44.6 Unpaid Carers Leave**

44.6.1 The entitlement to unpaid carers leave will be in accordance with the Act.

44.6.2 Notice of the taking of unpaid carers leave is expected to be given to the company prior to the commencement of the employee's shift, but where this is not possible, as early as is reasonably practicable to do so.

44.6.3 If the care or support required is because of a personal illness, or injury, a medical certificate or a statutory declaration, are required as evidence of such.

### **45 TRAUMA LEAVE**

45.1 The employer acknowledges that the employee could be directly involved in an incident that results in a fatality or serious bodily harm. Under these circumstances the employee will be entitled to use up to 2 days paid trauma leave.

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

### **46 LONG SERVICE LEAVE**

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

#### **46.2 Applying for Long Service Leave**

46.2.1 Employees will apply for long service leave and the employer will schedule the approved long service leave on the basis of the number of calendar Days to be taken.

46.2.2 Applications to take long service leave must be made at least one (1) months prior to the expected commencement date for approval by the relevant manager. The employee will be advised within a week of the application being received. Subject to



mutual agreement between an employee and their manager, this period of notice may be reduced.

- 46.2.3 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 will be given to the operational requirements of the company.

#### **46.3 Pro Rata Entitlement**

Where an employee has been employed by the company for at least 5 years of service, they will be entitled to pro rata Long Service Leave, consistent with the prevailing legislation. This will only apply:

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

#### **47 COMPASSIONATE LEAVE**

- 47.1 Permanent employees are entitled to paid compassionate leave on the basis of 3 days per occasion, as follows:
- Following the death of a member of the employee's immediate family; or
  - 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.
- 47.2 The employee may be required by the employer to provide evidence verifying the reason for the absence, such as a death notice or a medical certificate relating to an illness of a family or household member.

#### **48 PARENTAL LEAVE**

The Parental Leave provisions contained in the Act will apply to all employees, including eligible casual employees.

#### **49 JURY SERVICE LEAVE**

- 49.1 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.
- 49.2 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.

#### **50 SPECIAL LEAVE**

- 50.1 Special leave is unpaid leave which enables employees to participate in eligible community service activities, deal with public emergencies or be involved in other special situation as defined in the Act, not covered by other forms of leave provided.
- 50.2 An employee who engages in an eligible community service activity is entitled to be absent from his or her employment for a period if the period consists of:
- a) one or more of the following;
    - i. time when the employee engages in the activity;
    - ii. reasonable travelling time associated with the activity;

- iii. reasonable rest time immediately following the activity; and
  - b) the employee's absence is reasonable in all the circumstances.
- 50.3 The company will provide unpaid leave for defence force reservists in accordance with the requirements set out in the Defence Reserve Service (Protection) Act 2001.

## 51 UNPAID LEAVE

The employer may approve a period of unpaid leave for an employee for any reason. Decisions under this clause are entirely at the discretion of the employer and not subject to review within the constraints of the Fair Work Act.

## 52 FAMILY & DOMESTIC VIOLENCE

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

## 53 PUBLIC HOLIDAYS

- 53.1 Employees will be entitled to public holidays without loss of pay on those days described in the National Employment Standards.
- For clarity these days are:
- |                 |                  |               |
|-----------------|------------------|---------------|
| New Years Day   | Easter Sunday    | Labor Day     |
| Australia Day   | Easter Monday    | Christmas Day |
| Good Friday     | Anzac Day        | Boxing Day    |
| Easter Saturday | Queen's Birthday |               |
- 53.2 Employees will also be entitled to any other public holiday gazetted by the State/Territory, and which are applicable to the area where the employee works.
- 53.3 Due to the nature of the work performed by the company, being a business that operates 24 hours per day, 365 days per year, employees can be required to work on public holidays in accordance with their respective roster.



- 53.4 While public holiday hours are included in the total hours outlined in 22.2, where an employee is rostered to work on a public holiday they are required to attend for work and undertake activities as scheduled.
- 53.5 No substitution for shift workers - For example if Christmas Day falls on a Sunday, then Sunday will be the public holiday for shift workers.
- 53.6 Employees shall receive their normal fortnightly pay of 76 hours plus the additional payments as indicated in the following table. Hours worked will count towards the ordinary hours of the roster cycle.
- 53.7 **Public Holidays**

Scenario	Application
1. Has a Book Off Day.	<ul style="list-style-type: none"> <li>• A Payment of 7.6 hours; or</li> <li>• the option to bank a DIL.</li> </ul>
2. Is available to be rostered to work but is given the day off (blank day).	<ul style="list-style-type: none"> <li>• A Payment of 7.6 hours; or</li> <li>• the option to bank a DIL.</li> </ul>
3. Is rostered to work and actually works.	<ul style="list-style-type: none"> <li>• Penalty of 1.5 for all hours worked on the public holiday; or</li> <li>• the option to bank a DIL.</li> </ul> <p>If the DIL option is taken;</p> <ol style="list-style-type: none"> <li>a) 7.6 hours is banked;</li> <li>b) an additional penalty payment is made for 7.6 hours at penalty rate of 0.5 (i.e. 3.8 hours payment);</li> <li>c) penalty payment applies for hours worked in excess of 7.6 hours at penalty rate of 1.5.</li> </ol>
4. Works any overtime shift (including a Book Off Day).	<p>The employee will receive payment for all time worked on the public holiday at the rate of 1.7 times the hourly rate of pay and;</p> <ol style="list-style-type: none"> <li>a) An additional payment of 7.6 hours; or</li> <li>b) the option to bank a DIL.</li> </ol>
5. Has been rostered but job is cancelled on the day and no further work is available.	<p>The employee will receive payment of 1.5 times the hourly rate of pay for the minimum shift length; and</p> <ol style="list-style-type: none"> <li>a) An additional payment of 7.6 hours at the employee's hourly rate of pay; or</li> <li>b) the option to bank a DIL.</li> </ol>

- 53.8 Where a public holiday falls during a period of any paid leave, the day shall be paid as a public holiday and not as the relevant paid leave.
- 53.9 Where an employee has accrued a 'Day in Lieu' through the operation of clause 53.7, the employee has until 31 October to take such days off, or to attach to a period of Annual Leave. If the employee has not taken the days off prior to this date, the employee will be paid for all such Days in Lieu in the next pay period on or after 15 November.
- 53.10 Where an employee wishes to retain Days in Lieu past this date, they must notify the company in writing prior to 31 October. Any agreement to this must be mutually agreed.

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## **PART 6 – WORKPLACE HEALTH AND SAFETY**

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### **54 SAFETY PRINCIPLES**

- 54.1 The company and its employees agree they both have a duty of care that the improvement and maintenance of occupational health and safety standards and procedures in the work Environment is a primary objective of the company.
- 54.2 The parties to this agreement commit to meeting their obligations and duties under the relevant Safety Legislation.

### **55 HEALTH & SAFETY REPRESENTATIVES**

- 55.1 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.
- 55.2 Safety consultation systems have been established to discuss health, safety and welfare issues and opportunities. These arrangements are consistent with the employers' Consultation Programs and procedures contained within its Safety Management Systems.
- 55.3 Safety Meetings will be held in accordance with prevailing Safety Legislation and will be scheduled in rosters.
- 55.4 Hazard reporting and communication systems are in place to support the employer, employees and nominated Health & Safety Representatives in these matters.
- 55.5 Health & Safety Representatives will be appointed consistent with prevailing legislation.

### **56 SAFETY PROCEDURES**

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

### **57 ALCOHOL AND OTHER DRUGS**

- 57.1 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.
- 57.2 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.
- 57.3 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.
- 57.4 The company will bear all the costs associated with such testing. However after a positive reading, any required second or subsequent testing will be at the employee's cost.
- 57.5 An employee who fails to comply with the policy or with a request to undertake a test may be subject to disciplinary action, which may include termination of employment.

### **58 HEALTH ASSESSMENTS**

- 58.1 The company to pay costs where liable: Where, through the operation of the National Standard for Health Assessment of Rail Safety Workers ("National Standard") an employee is required to undertake a Health Assessment, the employer will pay all costs associated with the health assessment up to the "Determination", including the health assessment and stress ECG and/or

other referred tests requested as part of the assessment. This does not include Specialist referral costs or associated tests.

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

58.3 To ensure privacy, the employee must provide evidence from the Authorised Health Professional that the tests were not required.

#### **58.4 The Determination**

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

- Fit for Duty; or
- Fit for Duty subject to Review; or
- Fit for Duty subject to Job Modification; or
- Temporarily Unfit for Duty Subject to Review; or
- Permanently Unfit for Duty.

#### **58.5 Additional Costs Associated with Referral**

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

58.5.2 Once the determination has been made by the Authorised Health Professional, costs of all tests will be borne by the employee.

#### **58.6 Rosters Will Show an Allocation of Eight (8) Hours for Health Assessments**

58.6.1 The employee is required to arrange for pathology tests to be completed at least four (4) Days prior to the scheduled health assessment.

58.6.2 Where the requirement under 58.6.1 is not done, and as a result, the employee is unable to perform rail safety work, the employee will be determined to be on unpaid leave until the results are received by the Health Practitioner. The employee is required to advise the employer if they are unable to perform the test in the required period.

58.6.3 The employer is required to give two (2) weeks' notice of the health assessment requirement for this to apply.

#### **58.7 Applicable Legislation**

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

#### **58.8 Maintenance of Rate of Pay in Certain Circumstances**

Where an employee, in accordance with clause 58.4 is deemed to be:

- Temporarily Unfit for Duty Subject to Review; or
- Permanently Unfit for Duty;

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

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## PART 7 – INTRODUCTION OF CHANGE, CONSULTATION & DISPUTE RESOLUTION

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### 59 WORKPLACE CONSULTATION

59.1 This term applies if the employer:

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

59.1.1 For a change referred to in paragraph 59.1(a) and 59.1(b):

- a) the employer must notify the relevant employees and the union of the decision to introduce the change by complying with either clause 59.2 for Major Change or 59.3 for Change to the regular roster or ordinary hours of work; and
- b) the relevant employees may appoint a representative for the purposes of the procedures in this term. If;
  - I. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - II. the employee or employees advise the employer of the identity of the representative;

the employer must recognise the representative.

### 59.2 Major Change

59.2.1 As soon as practicable after making its decision, the employer must:

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

59.2.2 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

59.2.3 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

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

- a) the termination of the employment of employees; or
- b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
- c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- d) the alteration of hours of work; or
- e) the need to retrain employees; or



- f) the need to relocate employees to another workplace; or
- g) the restructuring of jobs.

### **59.3 Change to Regular Roster or Ordinary Hours of Work**

59.3.1 As soon as practicable after proposing to introduce the change, the employer must:

- a) discuss with the relevant employees the introduction of the change; and
- b) for the purposes of the discussion—provide to the relevant employees:
  - i. all relevant information about the change, including the nature of the change; and
  - ii. information about what the employer reasonably believes will be the effects of the change on the employees; and
  - iii. information about any other matters that the employer reasonably believes are likely to affect the employees; and
- c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

59.3.2 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

59.3.3 The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.

59.3.4 ***In this term, relevant employees*** means the employees who may be affected by a change referred to in clause 59.1.

### **59.4 Implementation of Change**

For a change referred to in 59.1, once the consultation term has been complied with, the company may implement change after fourteen (14) days, with the exception of a master roster change where the implication will be 28 days.

### **59.5 Failure to Consult**

59.5.1 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 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.

59.5.2 Notwithstanding the above, where a dispute arises relating to the consultation process and the proposed change, the Dispute Settlement provisions in clause 60 shall be followed.

## **60 DISPUTE SETTLING PROCEDURE**

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

### **60.1.1 Representation**

Any relevant party may appoint, in writing, another person (which may include the union) to act on their behalf at any stage of the disputes process including in relation to the mediation process.

### **60.1.2 Agree to Vary**

Where there is agreement of all parties:

- a) Any of the steps in the process may be removed; and/or
- b) The timeframes associated with each step may be extended.



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- 60.1.3 Cooling Off Period**
- After each of the steps in Clause 60.2 is completed there will be a 48 hour (excluding weekends and public holidays) cooling off period between each step.
- 60.1.4 No Action to Commence During Dispute Process**
- A party to the dispute shall not commence an action to obtain a penalty under the Act, or to obtain damages for breach of this Agreement, or to enforce a provision of this Agreement or the Act unless:
- a) the party initiating the action has genuinely attempted to resolve the dispute by following the steps in clause 60.2; and
  - b) the completion of these steps has failed to resolve the dispute; or
  - c) another party to the dispute has not complied with this clause.
- 60.2 Steps for Dispute Resolution**
- 60.2.1 Step 1**
- Where an employee who is a party to the dispute (or their representative) wish to lodge a dispute it must be done so in writing in the form as set out in Appendix A of this Agreement. Where the person or their representative who lodges the dispute / grievance elects to commence the dispute settling process with this step, the parties will attempt to resolve the matter in the first instance at the workplace level, by affected employee(s) discussing the matter at a meeting with their supervisor.
- The supervisor will consider the issues raised and will respond to the employee who lodged the notice within 24 hours. This response may be verbal or in writing, if so requested.
- 60.2.2 Step 2**
- If the matter is not resolved at such a meeting, or affected employees are not satisfied with the response from the supervisor, the parties will arrange further discussions at a more senior level of management, between the company's representative and the representative of the employee(s). Each representative shall take all reasonable steps to resolve the dispute.
- 60.2.3 Step 3**
- The parties may agree for the matter to be mediated by an approved private provider if the matter cannot be resolved at the workplace or more senior management level.
- 60.2.4 Step 4**
- If the dispute remains unresolved after the procedures and preceding steps 1-3 specified in this clause have been concluded, the matter may be referred by either party to Fair Work Australia for conciliation. Either party may seek to have the matter arbitrated by the Fair Work Commission should the matter not be resolved at conciliation.
- 60.3 Normal Operations to Continue**
- 60.3.1** While the above procedures are being followed, all work shall continue as normal prior to the dispute occurring or prior to the change which caused the dispute.
- 60.3.2 Normal Work Not to Continue**
- Normal operations will not continue where a genuine and serious safety concern makes it unsafe to continue normal operations and is the issue in dispute.
- 60.3.3 Follow Lawful Directions**
- Subject to relevant provisions of any State law concerning occupational health and safety unless an employee has a reasonable concern about an imminent risk to their health or safety, the employee must not unreasonably fail to comply with a lawful and reasonable direction of the employer to perform other available work, whether at the



same workplace or another workplace, that is safe and appropriate for the employee to perform.

**60.3.4 Settlement of Dispute Not Affected if Normal Work Continues**

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

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## **PART 8 – GENERAL**

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### **61 DISCIPLINARY MATTERS**

61.1 Where performance issues are to be addressed, the company will refer to its policies and procedures and will take into account the principles of natural justice and due process.

61.2 All disciplinary matters will be treated as confidential.

#### **61.3 Process**

For all disciplinary matters, the process will include:

- a) Investigation into any allegations;
- b) Discussion with the employee (and if requested, their Support Person or representative) regarding the matter;
- c) Advice to the employee as to the findings of any investigation, and any actions to be taken, in a timely and reasonable manner;
- d) The employer will provide details of disciplinary concerns and evidence to the employee in writing;
- e) All parties are required to participate in this process.

#### **61.4 Outcomes**

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

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

#### **61.5 Failure to Demonstrate or Maintain Competence**

61.5.1 Where an employee is unable to demonstrate competence through assessment, the company will re-classify the employee to the appropriate classification for competence demonstrated.

61.5.2 Once re-classified, the employee will only be required to perform the tasks associated with their classification.

61.5.3 Where an employee is to be assessed and has not had working exposure to the task(s) to be assessed, and the employee requests refresher training, the employer will provide a refresher opportunity prior to the assessment occurring.

61.5.4 Where an employee is assessed as failing to maintain competence in a particular function that employee maybe demoted to a level commensurate with the employee's assessed competence. The employee will be offered re-training and an opportunity to be reassessed at the higher level. An employee who is not assessed as competent at the re-assessment will be subject to the outcomes in clause 61.4.

61.5.5 Once competence is demonstrated, the original classification will be reinstated from the date of assessment.

### **62 REPRESENTATION AND REPRESENTATIVES**

#### **62.1 Workplace Representatives**

62.1.1 The employer recognises that a union covered by this agreement may have workplace representatives in the workplace. The RTBU will notify the company of the elected workplace representatives.

- 62.1.2 It is further recognised that workplace representatives represent employees at the workplace and will be allowed reasonable time to attend to any work related matters, on behalf of employees but must advise their supervisor prior to attending to any such matters.
- 62.1.3 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.
- 62.1.4 Workplace representatives will be entitled to reasonable time off to attend meetings, congresses and conferences, including those that may be arranged by a union covered by this agreement subject to operational constraints. Workplace representatives seeking such leave are required to give two (2) weeks' notice and the company will not unreasonably refuse to approve such leave.
- 62.1.5 The company will provide a total pool of up to 4 days paid leave each year, which will be available to the representatives to attend for congresses and conferences.

## **62.2 Workplace Relations Training**

- 62.2.1 It is recognised by the company that where appropriate, unions covered by this agreement will identify appropriate training course content and ensure that all training of this type is delivered by appropriately qualified trainers to appropriate workplace representatives. Unions covered by this agreement will fund all costs associated with the development and delivery of that specific workplace relations training programs.
- 62.2.2 Subject to operational requirements, the employer will grant paid leave for:
  - a) A maximum of up to 2 paid days per new workplace representative to attend training under this arrangement;
  - b) No more than 3 employees per year will be considered for this leave;
  - c) At the discretion of the company, additional employees may be released to attend such training, subject to operational requirements. Where operational requirements change, the employee must with reasonable notice attend work as required.

## **63 UNIFORMS AND PERSONAL PROTECTIVE EQUIPMENT**

- 63.1 The company will provide employees, with uniforms, and where required, protective clothing or equipment.
- 63.2 Safety equipment provided by the company will be utilised as directed by the company and in accordance with the manufacturer's instructions.
- 63.3 Where a uniform, protective clothing or equipment is provided, it must be correctly worn or utilised while the employee is on duty.
- 63.4 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.
- 63.5 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 issued. Changes to colour or supplier will not be considered a significant change.
- 63.6 The company will replace uniforms, protective clothing and equipment on a "fair wear and tear" basis, or in accordance with Safety Legislation.
- 63.7 Employees will return all clothing, equipment, other company property upon termination. This clause is subject to the provisions of clause 11.4.3.

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## 64 COMMITMENT BONUS

- 64.1 Employees (excluding Casual Employees) who are employed on the date the Agreement is "made" for the purposes of the Act, will be entitled to receive a one off Commitment Bonus of \$18,000 (gross).
- 64.2 This one off Commitment Bonus will be taxed at the Employee's nominal tax rate and payable to eligible Employees subject to Clause 64.5
- 64.3 Eligible Employees will be paid the Commitment Bonus, in full, subject to Clause 64.5, unless the Employee makes a request to the Company in writing within ten (10) days of the Agreement commencing operation to either salary sacrifice the Commitment Bonus into their nominated superannuation account or to divide the payment equally over two (2) pay cycles. The request must state one of the following options:
- a) Salary sacrifice the payment in one pay cycle.
  - b) Salary sacrifice the payment evenly over two pay cycles.
  - c) Divide the payment equally over two pay cycles.
- 64.4 Where an Employee makes a request to the Company to either salary sacrifice the Commitment Bonus in to their nominated superannuation account or to divide the payment evenly over two pay cycles (as per clause 64.3), the payment/s must occur in a pay cycle/s ending prior to 31 October 2019.
- 64.5 The Commitment Bonus cannot be paid if the Agreement is not certified or is subject to a successful appeal that renders the Agreement uncertifiable.
- 64.5.1 Accordingly, the Commitment Bonus will be paid twenty two (22) days after certification or after any appeal decision is issued, which ever happens last.
  - 64.5.2 However, if in any event the Agreement is subject to an appeal that renders the Agreement uncertifiable, the Commitment Bonus cannot be paid.
  - 64.5.3 An appeal includes any application for leave to appeal a decision certifying the Agreement within the Fair Work Commission, Federal Circuit Court, Federal Court or High Court of Australia.
- 64.6 For the avoidance of doubt, nothing in this Clause prohibits or excludes an employee from his or her workplace rights as prescribed under relevant legislation.





## 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 60 of the Freightliner Australia Pty Ltd Enterprise Agreement 2018. The details of the Dispute or Grievance are as follows:

The decision I wish to dispute is:

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The person who made the decision is: \_\_\_\_\_

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

The reasons I wish to dispute the decision are:

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Name: \_\_\_\_\_

Position: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**PART 9 – SIGNATORIES**

Signed for and on behalf of Freightliner Australia Pty Ltd CAN 122 522 123, Level 3, 33 Richmond Road, Keswick SA 5035, by its authorised representative:

Representative: Vanessa Boeg Director, Human Resources  
Name Position  
U. Hong 4 June 2019  
Signature Date  
In the presence of: Edmund Hawrie Workplace Relations  
Name Position  
Hawrie 4 June 2019  
Signature Date  
Address: Level 3, 33 Richmond Rd, Keswick SA 5035

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

Representative: BOB NANVA NATIONAL SECRETARY  
Name Position  
[Signature] 7 June 2019  
Signature Date  
In the presence of: Mark Diamond National Lawyer  
Name Position  
[Signature] 7 June 2019  
Signature Date  
Address: Suite 240 / 4-12 Coulburn St, Sydney NSW  
2000

**END OF AGREEMENT**



Genesee & Wyoming Australia

**Private & Confidential**

7 June 2019

Dear Commissioner Johns

**Freightliner Australia Enterprise Agreement 2018 (AG2019/1488)  
Submissions & Undertaking (s.190 of the *Fair Work Act 2009*)**

I, Vanessa Hoey, Director of Human Resources, Genesee & Wyoming Australia Pty Ltd, give the following Undertaking with respect to the application for certification of the *Freightliner Australia Pty Ltd Enterprise Agreement 2018* (AG2019/716) (the Agreement):

1. I have the authority given to me by Genesee & Wyoming Australia Pty Ltd to provide this undertaking in relation to the application for the certification of the *Freightliner Australia Pty Ltd Enterprise Agreement 2018* currently before the Fair Work Commission;
2. I understand that each undertaking is to be taken to be a term of the Agreement;
3. I give the following undertaking/s with respect to the Agreement:

**Clause 12: Flexibility Arrangements**

Any arrangement reached by operation of Clause 12 shall be confined to permitted matters and must not include a term that would be an unlawful term.

**Clause 14: Redundancy**

Where there is an inconsistency between the Agreement and the National Employment Standards (the NES) and the inconsistency is to the detriment of the relevant employees, the NES Applies.

**Clause 61.4: Disciplinary Matters**

Dismissal without notice may only occur where it has been determined that a disciplinary matter shall invoke summary dismissal.

**Clause 19.3 Casual Employees Rate of Pay**

In the event that a level 1 – Cadet is engaged to perform casual work on any Sunday, the Company will pay such employees the Agreement rate of pay (\$28.40 p/h) plus an additional 70% loading (\$48.28 p/h).

Yours sincerely

Vanessa Hoey  
**Director Human Resources**

**Genesee & Wyoming Australia**

**Level 3, 33 Richmond Road, Keswick SA 5035 PO Box 309, Marleston DC SA 5033  
Tel: (08) 8343 5455 Fax: (08) 8343 5454 Web: [www.gwrr.com](http://www.gwrr.com)**