



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Rail Commissioner
(AG2020/1374)

RAIL COMMISSIONER TRAM OPERATIONS ENTERPRISE AGREEMENT 2020

Passenger vehicle transport (non rail) industry

COMMISSIONER PLATT

ADELAIDE, 1 JUNE 2020

Application for approval of the Rail Commissioner Tram Operations Enterprise Agreement 2020.

[1] An application has been made for approval of an enterprise agreement known as the *Rail Commissioner Tram Operations Enterprise Agreement 2020* (the Agreement) pursuant to s.185 of the *Fair Work Act 2009* (the Act) by the Rail Commissioner (the Applicant). The agreement is a single enterprise agreement.

[2] The matter was allocated to my Chambers on 28 May 2020.

[3] On 28 May 2020, my Chambers corresponded with the parties to seek clarification about aspects of the Agreement and invited the Applicant to address these matters including through the provision of an undertaking.

[4] The Applicant has submitted an undertaking in the required form dated 29 May 2020. The undertaking deals with the following topics:

- A typographical error is amended in Appendix 4, S4.7, the Rail Operations Support Employee Training Allowance.
- In relation to clause 39.2, the definition of a shift worker will be for the purposes of the National Employment Standards (NES).
- In relation to clause 39 and Appendix 4, clause 22.2, an employee's entitlement to paid annual leave will accrue progressively during a year of service according to the employee's ordinary hours of work and will accumulate year to year.
- In relation to clause 40 and Appendix 4, clause 22.4, an employee's entitlement to paid personal/carer's leave accrues progressively during a year of service according to the employee's ordinary hours of work and will accumulate year to year.

[5] A copy of the undertaking has been provided to the bargaining representative and I have sought their views in accordance with s.190(4) of the Act. The bargaining representative supported the undertaking.

[6] The undertaking appears to meet the requirements of s.190(3) of the Act and I have accepted it. As a result, the undertakings are taken to be a term of the Agreement.

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

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

[9] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 days after the date of approval of the Agreement. The nominal expiry date is 30 June 2023.



COMMISSIONER

Printed by authority of the Commonwealth Government Printer

<AE508183 PR719801>

RAIL COMMISSIONER
TRAM OPERATIONS ENTERPRISE AGREEMENT
2020

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.

CONTENTS

PART 1 - AGREEMENT ADMINISTRATION	4
1 TITLE	4
2 SCOPE.....	4
3 OBJECTIVE.....	4
4 AIM.....	4
5 TERM OF AGREEMENT.....	5
6 INCIDENCE AND PARTIES BOUND.....	5
7 RELATIONSHIP OF THIS AGREEMENT TO THE AWARD.....	5
8 DEFINITIONS	5
9 NO EXTRA CLAIMS COMMITMENT	6
10 ANTI-DISCRIMINATION	7
PART 2 - TYPES OF EMPLOYMENT	8
11 GENERAL	8
12 FULL-TIME EMPLOYEE	8
13 PART-TIME EMPLOYEE	8
14 FIXED TERM EMPLOYMENT.....	9
15 PROBATIONARY EMPLOYMENT.....	9
16 TERMINATION OF EMPLOYMENT	9
17 ABSENCE FROM WORK	10
18 ABANDONMENT OF EMPLOYMENT.....	10
19 DEMOTION DUE TO MISCONDUCT OR UNSATISFACTORY PERFORMANCE.....	11
20 REDEPLOYMENT.....	11
21 WORKPLACE REPRESENTATIVES & TRADE UNION TRAINING.....	12
22 EMPLOYEE DUTIES.....	12
PART 3 - CLASSIFICATIONS AND REMUNERATION	13
23 CLASSIFICATION OF EMPLOYEES.....	13
24 WAGE ADJUSTMENTS.....	13
25 CLASSIFICATIONS, WAGE RATES AND ALLOWANCES.....	12
26 UNIFORMS AND PROTECTIVE CLOTHING, EQUIPMENT AND FOOTWEAR	16
27 HIGHER DUTIES	17
28 ACTING IN A LOWER CLASSIFICATION	17
29 SALARY PACKAGING ARRANGEMENTS.....	17
PART 4 - HOURS OF WORK	18
30 HOURS OF WORK	18
31 ALLOCATION OF WORK	19
32 STANDBY EMPLOYEES	22
33 ATTENDING OFFICE	25
34 SHIFT PENALTY RATES.....	25
35 MAXIMUM PENALTY RATES.....	26
36 WORKING ON ROSTERED DAYS OFF	27
37 VOLUNTARY OVERTIME.....	27
PART 5 - LEAVE	29
38 RELATIONSHIP BETWEEN THIS AGREEMENT AND THE NATIONAL EMPLOYMENT STANDARDS (NES)	29
39 ANNUAL LEAVE	29
40 PERSONAL LEAVE	30
41 SICK LEAVE POOL.....	31
42 COMPASSIONATE LEAVE	32
43 LONG SERVICE LEAVE & SKILLS AND EXPERIENCE RETENTION LEAVE	32
44 PARENTAL LEAVE.....	33
45 JURY SERVICE	40
46 PUBLIC HOLIDAYS	40
PART 6 - WORKPLACE CONSULTATION AND DISPUTE RESOLUTION	42
47 CONSULTATION	42

48	CONSULTATION - TRAM OPERATIONS CONSULTATIVE COMMITTEE	44
49	RESOLVING WORKPLACE CONCERNS OR DISPUTES.....	45
<u>PART 7 - OTHER MATTERS.....</u>		47
50	COMPETENCY BASED TRAINING AND ASSESSMENT	47
51	EMPLOYEE COSTS	47
52	QUALITY & CONTINUOUS IMPROVEMENT	47
53	FLEXIBILITY TERM	48
54	WORK VALUE ASSESSMENTS – NEW ROLLING STOCK AND TRAM LINES	49
55	INJURY AND INCOME PROTECTION.....	50
56	INCENTIVE PAYMENT TO TRANSFER EMPLOYMENT TO TORRENS CONNECT.....	51
<u>SIGNATORY PAGE.....</u>		52
<u>APPENDIX 1 - REDEPLOYMENT, RETRAINING AND REDUNDANCY.....</u>		53
<u>APPENDIX 2 – INJURY AND INCOME PROTECTION.....</u>		64
<u>APPENDIX 3 – SPECIAL LEAVE.....</u>		69
<u>APPENDIX 4 – PROVISIONS FOR TRAM CONTROLLERS.....</u>		78

PART 1 – AGREEMENT ADMINISTRATION

1 TITLE

This Agreement will be known as the *Rail Commissioner Tram Operations Enterprise Agreement 2020*.

2 SCOPE

- 2.1 Other than clauses 1-7, 9, 49 and 56, the body of this Agreement (Part 1 – Part 7) is not applicable to Tram Controllers.
- 2.2 Appendices 1, 2 and 3 are applicable to all employees.
- 2.3 Appendix 4 is only applicable to Tram Controllers.

3 OBJECTIVE

- 3.1 The objective of this Agreement is to record the agreement reached between the Rail Commissioner and the Australian Rail Tram and Bus Industry Union (RTBU), representing employees subject to this Agreement, concerning pay, conditions and other benefits arising from their employment.
- 3.2 Employees and the RTBU recognise it is imperative for the Rail Commissioner to be able to adapt and change the manner in which it conducts business activities to meet the changing environment within which it operates.
- 3.3 In making and applying this Agreement, the Parties recognise that a number of initiatives have been, and will continue to be introduced to improve the efficiency and effectiveness of the Rail Commissioner. The Parties undertake to consult in a way that contributes positively towards work and business changes necessary to improve the effectiveness of the business.

4 AIM

- 4.1 The aim of this Agreement is to promote an efficient and safe working environment; to enhance the value of the Rail Commissioner to its stakeholders by being competitive, flexible and innovative; and to provide a workplace that promotes and facilitates productivity, efficiency and flexibility improvements.
- 4.2 Further, the Parties agree to establish a workplace which enables variety, skills, career development and job opportunities for employees by:
 - 4.2.1 Developing and maintaining a workplace which encourages and facilitates teamwork, personal and skill enhancement to achieve Rail Commissioner's and employees' objectives;

- 4.2.2 Promoting efficient and effective delivery of services to Rail Commissioner's customers;
- 4.2.3 Implementing change through constructive consultation to ensure a competitive, efficient and cost effective service;
- 4.2.4 Providing employees with remuneration and benefits to reflect the competitive performance of Rail Commissioner;
- 4.2.5 Achieving continuous improvement in the operations and service delivery of Rail Commissioner's tram operations;
- 4.2.6 Working together to enhance and grow the business; and
- 4.2.7 Remaining focussed on the needs of customers, recognising that customer satisfaction and increased patronage are integral to securing the future.

5 TERM OF AGREEMENT

- 5.1 This Agreement will come into operation seven days after it is approved by the Fair Work Commission until its nominal expiry date.
- 5.2 The nominal expiry date of this Agreement is 30 June 2023.
- 5.3 Negotiations for a new Agreement may commence no earlier than six months from the nominal expiry date.

6 INCIDENCE AND PARTIES BOUND

This is an Agreement between the Rail Commissioner, employees classified pursuant to this Agreement, and the RTBU.

7 RELATIONSHIP OF THIS AGREEMENT TO THE AWARD

The *Passenger Vehicle Transportation Award 2010* is the applicable Modern Award.

8 DEFINITIONS

- 8.1 **“Additional day’s wage”** means one-fifth the weekly wage applicable to the employee’s classification.
- 8.2 **“Agreement”** means this enterprise agreement, the *Rail Commissioner Tram Operations Enterprise Agreement 2020*, as approved by the Fair Work Commission.
- 8.3 **“Buddy Driver”** The role of the Buddy driver is purely for guidance and assistance of either a recently qualified driver or a driver returning to work post incident. Buddy drivers do not share safe working responsibilities; these remain

with the driver in charge of the movement. The buddy would still however be expected to intervene to such an extent as is reasonably practicable if required to avoid an incident occurring.

- 8.4 **“Continuous Service”** means the period of service with Rail Commissioner (and Government Service immediately prior to commencing with Rail Commissioner) excluding periods of unpaid leave exceeding 22 days, with the exception of sick leave without pay that is supported by a medical certificate. Government Service recognised by Rail Commissioner includes any State Government of Australia, the Commonwealth Government of Australia, any Territory of the Commonwealth of Australia any local Government Authority of Australia. The definition of “service” and “continuous service” in the *Fair Work Act 2009 (Cth)* will prevail to the extent of any inconsistency with this definition.
- 8.5 **“Continuous Shift Work”** means work carried out with consecutive shifts of employees throughout the twenty four hours of each day, of at least six consecutive days without interruption, except during break downs or meal breaks or due to unavoidable cause beyond the control of the Rail Commissioner
- 8.6 **“Family or household member”** has the same meaning it has in the *Fair Work Act 2009 (Cth)*, and includes an employee's spouse (or de facto spouse), a child, parent, grandparent, grandchild or sibling of the employee or a child, parent, grandparent, grandchild or sibling of the employee's spouse or any other member of an employee's household and any other person who is dependent on the employee's care.
- 8.7 **“Master Roster”** A foundation roster from which the period roster is built that shows all known work prior to incorporating leave, amendments, meetings, swaps, training, medicals, special events, work restrictions, staff shortages and any other absences from work.
- 8.8 **“On-call”** means that an employee has agreed to be available to perform work between the cessation of one rostered shift and before the beginning of their next normal rostered shift.
- 8.9 **“Period Roster”** A period roster shows all work allocated to employees for that fortnight / period incorporating leave, amendments, meetings, swaps, training, medicals, special events, work restrictions, staff shortages, overtime and any other absences from work.
- 8.10 **“Reasonable Overtime”** without limiting the meaning of what is reasonable overtime in the *Fair Work Act 2009 (Cth)*, means, in any one fortnight period, one additional shift in excess of those rostered for ordinary hours and total of not more than an accumulation of 10 hours overtime per fortnight.
- 8.11 **“Substantive classification”** means the actual appointed classification of the employee confirmed in writing.
- 8.12 **“The Parties”** means the Parties to this Agreement in accordance with clause 5 of this Agreement.

9 NO EXTRA CLAIMS COMMITMENT

During the life of this Agreement the Parties undertake not to pursue claims except where consistent with and contemplated by this Agreement.

10 ANTI-DISCRIMINATION

- 10.1 It is the intention of the Parties to this Agreement to respect and value the diversity of the workforce, by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 10.2 Accordingly, in fulfilling their obligations under the dispute resolution procedures in this Agreement, the Parties will make every endeavour to ensure that neither the provisions of this Agreement nor their operation are directly or indirectly discriminatory in their effects.
- 10.3 Nothing in this clause is to be taken to affect:
- 10.3.1 any different treatment (or treatment having different effects) which is specifically exempted under state or federal anti-discrimination legislation;
 - 10.3.2 an employee, employer or registered organisation, pursuing matters of discrimination in any state or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission;
 - 10.3.3 any exemptions allowed under legislation.

PART 2 – TYPES OF EMPLOYMENT

11 GENERAL

- 11.1 Employees employed under this Agreement will be employed in one of the following categories:
- full-time employee;
 - part-time employee; or
 - fixed-term employee.
- 11.2 At the time of engagement, the Rail Commissioner will inform each employee of the terms of their engagement and, in particular, whether they are a full-time, part-time, or fixed-term employee.
- 11.3 The Parties acknowledge that the primary category of employment shall be full-time ongoing employment.

12 FULL-TIME EMPLOYEE

An employee not specifically engaged as being a part-time employee or fixed term employee will, for all purposes of this Agreement, be a full-time employee engaged to regularly work 38 hours per week in accordance with the provisions of this Agreement.

13 PART-TIME EMPLOYEE

- 13.1 The Rail Commissioner may employ part-time employees in any classification in this Agreement.
- 13.2 A part-time employee is an employee who:
- works less than full-time hours of 38 hours per week;
 - has reasonably predictable hours of work; and
 - receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- 13.3 When an opportunity arises for a part-time employee to be assigned work on the master roster, consistent with the arrangements in clause 13.2, the Rail Commissioner and the part-time employee may agree in writing those lines of work on the master roster the part-time employee will be required to work.
- 13.4 The Rail Commissioner will roster a part-time employee for not less than 7.6 ordinary hours on any shift unless participating in a job sharing arrangement that meets operational requirements.
- 13.5 All time worked in excess of the hours as mutually arranged will be overtime and paid for at the rates prescribed in the overtime provisions of this Agreement.

- 13.6 A part-time employee employed under the provisions of this clause must be paid for the ordinary hours worked at the rate of 1/38th of the total rate each week prescribed for the class of work performed.

14 FIXED TERM EMPLOYMENT

- 14.1 The Rail Commissioner may employ fixed term employees in any classification in this Agreement.
- 14.2 Fixed term employment may be only utilised on the following bases:
- 14.2.1 To perform duties of temporary nature for a period of not less than one year and not exceeding two years; or
 - 14.2.2 To perform duties in the absence of another employee or while selection processes are conducted but the term is not extended beyond the absence of the employee or completion of the selection processes to which the absence relates.

15 PROBATIONARY EMPLOYMENT

- 15.1 An employee will initially be engaged for a probationary period of six months for the purpose of determining the employee's suitability for employment. During this time either party may notify intention to withdraw from the contract of employment by providing one week's notice.
- 15.2 Employees promoted into a role other than their substantive role will be subject to a three month probation period in respect of that role. An employee withdrawing from that role will result in the employee returning to their previous substantive classification.
- 15.3 The period of probationary employment forms part of an employee's period of continuous service for all purposes of this Agreement.

16 TERMINATION OF EMPLOYMENT

- 16.1 Notice of Termination by employer for a full-time or regular part-time employee.
- 16.1.1 In order to terminate the employment of a full-time or regular part-time employee, the employer shall give to the employee the period of notice specified in the table below:

Period of continuous service	Period of notice
1 year or less	1 week
1 year and up to the completion of 3 years	2 weeks
3 years and up to the completion of 5 years	3 weeks
5 years and over	4 weeks

- 16.1.2 In addition to this notice, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service are entitled to an additional week's notice.

16.1.3 Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the employee working part of the required period of notice and by the employer making payment for the remainder of the period of notice.

16.1.4 In calculating any payment in lieu of notice, the wages an employee would have received in respect of the rostered time they would have worked during the period of notice had their employment not been terminated, will be used.

16.1.5 Continuous service is defined in clause 8.4.

16.2 Notice of Termination by Employee

The notice of termination required to be given by an employee will be seven days except where the Rail Commissioner agrees to reduce or waive this requirement.

16.3 Time off during notice period

Where the employer has given notice of termination to an employee, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the employee following consultation with the employer.

17 ABSENCE FROM WORK

17.1 An employee absent from work either by arriving late or not attending during required working hours will lose their pay for the actual time of non-attendance, except when absent on paid leave under other provisions of this Agreement.

17.2 An employee who arrives late for work will, at the first opportunity, be allowed to take up their rostered shift.

18 ABANDONMENT OF EMPLOYMENT

18.1 This clause will operate subject to the National Employment standards.

18.2 If an employee is absent from work for a continuous period exceeding three working days without the consent of the Rail Commissioner and without notification to the Rail Commissioner, this will be prima facie evidence the employee has abandoned their employment.

18.3 If, within a period of 14 days from the employee's last attendance from work or the date of the employee's last absence in respect of which notification has been given, or consent has been granted, the employee has not established to the satisfaction of the Rail Commissioner that the employee is absent for reasonable cause; the employee will be deemed to have abandoned their employment.

18.4 The Rail Commissioner will undertake all reasonable endeavours to make contact with the employee within the 14 day period outlined at clause 18.2.

- 18.4 Termination of employment by abandonment in accordance with this clause will operate as from the date of the last attendance at work or the last day's absence in respect of which consent was granted, or the date of the last absence in respect of which notification was given to the Rail Commissioner, whichever is the latter.

19 DEMOTION DUE TO MISCONDUCT OR UNSATISFACTORY PERFORMANCE

- 19.1 Where there is serious consideration an employee is to be terminated based on a finding of:
- serious misconduct;
 - continual misconduct; and/or
 - continual unsatisfactory performance,
- the Rail Commissioner can unilaterally elect to demote that employee instead of terminating their employment.
- 19.2 The decision to demote an employee can be made for a set period of time or indefinitely.
- 19.3 Demotion includes, but is not limited to;
- 18.3.1 Demotion to a classification with lower remuneration within the Rail Commissioner; and/or
- 18.3.2 Demotion to a classification with the same remuneration but with lower status in the Rail Commissioner organisational structure.
- 19.4 An employee cannot be demoted to a transitional classification (i.e. Intermediate Tram Operator or Trainee Senior Tram Operator).
- 19.5 The act of demoting an employee does not constitute a breach of the employee's contract of employment or termination of the employee's employment, or affect the continuity of the employee's employment for any purpose.
- 19.6 Notwithstanding clause 19.5, this clause does not preclude an employee from being able to undertake an unfair dismissal application under the *Fair Work Act 2009* (Cth) or a dispute under this Agreement.

20 REDEPLOYMENT

- 20.1 An ongoing (full-time or part-time) employee who is declared excess to requirements in the Rail Commissioner's Tram Operations will be subject to Appendix 1 – Tram Operations Redeployment, Retraining and Redundancy, which forms part of this Agreement.
- 20.2 The Consultation clause at clause 47 is not intended to replace the specific provisions in Appendix 1 regarding consultation around redeployment arrangements.

21 WORKPLACE REPRESENTATIVES & TRADE UNION TRAINING

- 21.1 Upon written advice from the relevant Union Secretary/Branch Secretary that a member has been elected as a union Workplace Representative or Union Delegate, the Rail Commissioner shall recognise that employee as being accredited by the relevant Union for the purpose of representing the industrial interests of the relevant Union's members at the workplace.
- 21.2 An employee who is recognised as being accredited by the relevant Union in accordance with clause 21.1 may be granted time off with pay at ordinary rates for up to a maximum of five working days each calendar year to attend accredited trade union training courses.
- 21.3 Approval is confined to attendance at trade union training courses aimed at promoting sound industrial relations in the workplace and ensuring adherence to this Agreement and is subject to the operational requirements of the Rail Commissioner.
- 21.4 Workplace representatives or union delegates required to attend their Union's branch or national meetings may be granted reasonable unpaid leave of absence as per Appendix 3. Where such leave is required, the Union shall advise the Rail Commissioner in advance in writing the name(s) of the employee(s) and the duration of the absences.
- 21.5 The Rail Commissioner will not unreasonably withhold consent for leave under this clause. The Rail Commissioner retains the right to withdraw consent for such leave should circumstances arise that require the representative to return to their appointed position.
- 21.6 Leave of absence will be granted to not more than two members of any Union party to this Agreement required to attend any industrial proceedings under the provisions of the *Fair Work Act 2009 (Cth)*.
- 21.7 Union delegates may request reasonable paid time subject to operational requirements, to prepare for and attend worksite related meetings or attend to member's issues in support of the enterprise agreement and to promote industrial harmony in the workplace.

22 EMPLOYEE DUTIES

An employee may be rostered to undertake any duties for which they are trained and competent to perform that are consistent with the duties defined for their classification.

PART 3 – CLASSIFICATIONS AND REMUNERATION

23 CLASSIFICATION OF EMPLOYEES

- 23.1 Upon commencing employment, an employee will be appointed to a position classified in accordance with this Agreement, will be paid according to the rate of pay applicable to the classification of that position and will remain on that classification unless reclassified, appointed to another position classified at another level or demoted as per clause 19.
- 23.2 Employees will be advised in writing of their classification and any subsequent changes.

24 WAGE ADJUSTMENTS

Wage adjustments will be as per Clause 25.1 and will apply from the first full pay period on or after the specified operative date.

25 CLASSIFICATIONS, WAGE RATES AND ALLOWANCES

25.1 Weekly Wage Rates (first full pay period on or after the specified operative date)

Classification		14/10/18	1/1/19	1/1/2020	1/1/2021	1/1/2022	1/1/2023
		Work Value Assessment 0.5%*	0.5%*	0.5%*	2%	2%	2%
Trainee Tram Operator		\$1,000.47	\$ 1,015.48	\$ 1,030.71	\$ 1,051.32	\$ 1,072.35	\$ 1,093.80
Intermediate Tram Operator		\$ 1,137.64	\$ 1,154.70	\$ 1,172.02	\$ 1,195.46	\$ 1,219.37	\$ 1,243.76
Tram Operator	First year	\$1,183.37	\$ 1,201.12	\$ 1,219.14	\$ 1,243.52	\$ 1,268.39	\$ 1,293.76
	Thereafter	\$1,189.29	\$ 1,207.13	\$ 1,225.24	\$ 1,249.74	\$ 1,274.73	\$ 1,300.22
Trainee Senior Tram Operator		1,258.51	\$ 1,277.39	\$ 1,296.55	\$ 1,322.48	\$ 1,348.93	\$ 1,375.91
Senior Tram Operator	First year	\$1,327.74	\$ 1,347.66	\$ 1,367.87	\$ 1,395.23	\$ 1,423.13	\$ 1,451.59
	Thereafter	\$1,334.37	\$ 1,354.39	\$ 1,374.71	\$ 1,402.20	\$ 1,430.24	\$ 1,458.84

* Employees received a 1.5% wage increase on the first full pay period on or after 1/1/18, 1/1/19 and 1/1/20 in the *Rail Commissioner Tram Operations Enterprise Agreement 2018*. The 0.5% increase in this table reflects that the Rail Commissioner and RTBU agreed to a 0.5% wage increase for the extension of the Tram line to Botanic Gardens and Festival Plaza and is on top of the already provided 1.5% wage increase.

- 25.1.1 A Tram Operator that relieves as a Senior Tram Operator for a cumulative period of 1976 hours will progress to the Senior Tram Operator Thereafter increment for all future work as a Senior Tram Operator.

25.2 Trainee Tram Operator

- 25.2.1 A new entrant who is engaged either on a full-time or regular part-time basis and is training to become a Tram Operator able to undertake driving duties on all trams in the Rail Commissioner fleet; customer service; use of communication devices; operate manual switches as required in normal course of duty or during unplanned service disruptions; and other generic traffic operation duties identified by the Consultative Committee and agreed to by the Parties.
- 25.2.2 After completing three months as a Trainee Tram Operator having passed all relevant training and having worked competently, the employee will be classified as an Intermediate Tram Operator.

25.3 Intermediate Tram Operator

- 25.3.1 An employee previously classified as a Trainee Tram Operator who has undertaken training as a Tram Operator and is assessed as competent to progress to this classification.
- 25.3.2 An employee who is trained to undertake driving duties within the network, but is restricted in the types of vehicles used in the Rail Commissioner fleet, use of communication devices, undertake flag person and switch changing under direction for emergencies only.
- 25.3.3 An employee will progress to the Tram Operator Classification after:
 - 25.3.3(a) having completed all relevant training and deemed competent; or
 - 25.3.3(b) nine months if the employee has not yet been deemed competent due to actions of the Rail Commissioner (i.e. through no fault of their own).

25.4 Tram Operator

- 25.4.1 An employee previously classified as an Intermediate Tram Operator and progresses to this classification through clause 25.3.3.
- 25.4.2 An employee is trained to undertake driving duties of all trams operated in regular revenue service in the Rail Commissioner fleet, use of communication devices, switch changing under direction, operate manual switches as required in normal course of duty or during unplanned service disruptions, and other duties identified by the Consultative Committee and agreed to by the Parties.
- 25.4.3 An employee may volunteer to participate as a "buddy driver" with other employees to provide guidance and assistance.
- 25.4.4 All employees will be subject to regular competency and skills assessment.

25.5 Trainee Senior Tram Operator

An employee qualified as a Tram Operator who has been engaged on a full-time or relief basis and is training to become a Senior Tram Operator but not yet competent in the Senior Tram Operator role.

25.6 Senior Tram Operator

25.6.1 An employee responsible for facilitating an effective, safe, customer oriented tram service by delivering training and assessment to Tram Operations employees, ensuring correct tram operating skills and performances are achieved. The employee is required to investigate and take appropriate action on reports concerning service delays, employee error, safeworking incidents or mechanical failure to trams and make recommendations to enhance the provision of a customer friendly transport service. Will also undertake Tram Network Control functions when required for operational reasons.

25.6.2 An employee will be subject to regular competency and skills assessment (as agreed by the Parties).

25.7 Allowances & Reimbursements**25.7.1 Meal allowance**

The meal allowance referred to in this Agreement will be:

First full pay period on or after 1/1/2020	First full pay period on or after 1/1/2021	First full pay period on or after 1/1/2022	First full pay period on or after 1/1/2023
\$ 17.00	\$ 17.34	\$ 17.69	\$ 18.04

25.7.2 On-call Allowance

25.7.2(a) Where an employee has agreed to be placed on-call during a period when they are off work, the employee will be entitled to be paid the following allowance:

	First full pay period on or after 1/1/2020	First full pay period on or after 1/1/2021	First full pay period on or after 1/1/2022	First full pay period on or after 1/1/2023
Monday to Friday	\$ 12.95	\$ 13.21	\$ 13.47	\$ 13.74
Saturday	\$ 25.90	\$ 26.42	\$ 26.95	\$ 27.49
Sunday and Public Holidays	\$ 34.53	\$ 35.22	\$ 35.92	\$ 36.64

25.7.2(b) Where an employee is recalled for work, a minimum of three hours' work will apply and paid at the rate of double time if a Sunday, double time and a half the ordinary rate if a public holiday or the rate of time and one half for the first three hours and double time thereafter if any other day.

25.7.2(c) An on-call period must not exceed 24 hours.

25.7.3 First Aid Allowance

Senior Tram Operators will be paid a weekly first aid allowance starting from the first full pay period on or after the date this Agreement comes into operation:

First full pay period on or after 1/1/2020	First full pay period on or after 1/1/21	First full pay period on or after 1/1/22	First full pay period on or after 1/1/23
\$ 15.69	\$ 16.00	\$ 16.32	\$ 16.65

25.7.4 First Aid Certification Reimbursement

25.7.4(a) Employees who possess a first aid certification at the time of approval of this Agreement will be reimbursed 100% of the cost of maintaining their first aid certification during the life of this Agreement.

25.7.4(b) An employee is required to provide the applicable receipt for the cost of the first aid certification to obtain the reimbursement.

25.7.4(c) The requirement for employees to maintain a first aid certification, and the reimbursement provided for in this clause, will be reviewed during the life of the Agreement.

25.7.5 Drivers Licence Reimbursement

25.7.5(a) Employees will be reimbursed 100% of the cost of a class C Drivers Licence for a maximum licence period of five years.

25.7.5(b) An employee is required to provide the applicable receipt for the cost of the drivers licence to obtain the reimbursement.

25.7.5(c) Where the remaining licence period of an employee's Class C drivers licence is greater than a year, and the employee's employment concludes prior to the licence expiring, Rail Commissioner may deduct and retain from all final monies owing to the employee any reimbursed monies for the proportionate remaining period of the licence.

26 UNIFORMS AND PROTECTIVE CLOTHING, EQUIPMENT AND FOOTWEAR

26.1 An employee will be reimbursed for the purchase of a uniform and protective clothing, equipment and footwear (as applicable) where the Rail Commissioner has deemed that such items are required for work.

26.2 If the Rail Commissioner provides such items then reimbursement will not apply.

- 26.3 The applicable reimbursement for footwear is the average value of the cost of footwear that would otherwise be provided, but not less than \$105. Any footwear purchased by the employee must meet the applicable standards for Personal Protective Equipment as determined by the Rail Commissioner.

27 HIGHER DUTIES

- 27.1 Where an employee has been appropriately trained and is directed by the relevant manager or delegate to perform, on a temporary basis, the duties of a position or in a capacity for which a higher remuneration level may be applicable, the employee will be entitled to be paid for the performance of such duties.
- 27.2 An employee will perform such work as the Rail Commissioner may require from time to time. Employees who are engaged on work carrying a higher rate than their substantive classification will be paid the higher rate for such day or shift.

28 ACTING IN A LOWER CLASSIFICATION

An employee required to perform temporarily the duties of a grade for which a lower rate of payment is prescribed than that prescribed for their classified grade will be paid at their substantive classified rate.

29 SALARY PACKAGING ARRANGEMENTS

- 29.1 This clause applies for the period an employee enters into a Salary Sacrifice Agreement (SSA). An SSA is a written, formal administrative instrument between the Rail Commissioner and the employee which enables salary packaging arrangements to be put in place.
- 29.2 Subject to this clause, the salary payable to an employee, or applicable to a position where the occupant elects to enter into an SSA, pursuant to this Agreement will be the salary payable under the SSA, notwithstanding any other provision in, or Schedule of, this Agreement.
- 29.3 Any entitlement to payment of overtime, leave loading or shift allowance will be based on the salary that would have been payable had the employee not entered into a SSA.
- 29.4 Where, on cessation of employment, the Rail Commissioner makes a payment in lieu of notice; or a payment in respect of accrued recreation or long service leave entitlements (instead of transferring leave credits to another SA public sector employer in the event the employee immediately becomes employed by that employer party), the payment thereof shall be based on the salary that would have been payable had the employee not entered into a SSA.

PART 4 - HOURS OF WORK

30 HOURS OF WORK

30.1 Ordinary Hours

- 30.1.1 The ordinary hours of work for a full-time employee is limited to 76 hours each fortnight to be worked in not more than 10 shifts each fortnight period Sunday to Saturday.
- 30.1.2 The ordinary hours of work for a full-time employee will be made up to 7 hours 36 minutes each day.
- 30.1.3 The ordinary hours of work for a part-time employee will average less than 76 hours per fortnight to be worked in not more than 10 days per fortnight period Sunday to Saturday.
- 30.1.4 The ordinary hours of work may be worked on any day of the week including Saturdays, Sundays and public holidays.

30.2 Overtime

30.2.1 General Principles

The Rail Commissioner may require any employee to work reasonable overtime at overtime rates.

30.2.2 Overtime Penalty Rates

- 30.2.2(a) In the case of full-time employees, all time worked in excess of seven hours and 36 minutes on any shift, or in excess of 76 hours in any fortnight when 10 shifts of ordinary hours are worked will stand alone and be paid for at the rate of time and a half for the first three hours and double time thereafter. Saturday overtime will be paid at the rate of double time. Payment for overtime will be calculated upon whichever alternative gives the greater amount.
- 30.2.2(b) Where a full-time employee voluntarily undertakes to perform work in addition to their rostered work, then such work will stand alone and the employee must be paid for time worked under the rates prescribed above.
- 30.2.2(c) In the case of part-time employees, all time worked in excess of the hours as mutually arranged will be overtime and will stand alone and be paid for at the rate of time and a half for the first three hours and double time thereafter. Saturday overtime will be paid at the rate of double time.

31 ALLOCATION OF WORK

31.1 General Principles

- 31.1.1 An employee's work will be arranged so as to provide four full days off in each rostered fortnight. Where practicable, the Rail Commissioner will endeavour to roster at least two days off consecutively.
- 31.1.2 Except by agreement between the Parties, where new services, new timetables or alteration to timetables necessitate adjustment to the master roster, the new or revised roster will be posted so as to give 14 days' notice of such alterations once consultation, as per clause 47, has concluded and a decision has been made.
- 31.1.3 Except by agreement between the Rail Commissioner and the RTBU, period rosters in respect of special events such as Public Holiday services, Royal Show event services, and major horse racing events, the dates of which are known ahead and approved by the Rail Commissioner, will be posted at least 14 days prior.
- 31.1.4 Period rosters will ordinarily be posted 14, but no less than seven days, before coming into operation and will include all route service work.
- 31.1.5 Changes to a period roster where an employee will need to commence their shift a maximum of three hours earlier or finish a maximum of three hours later will be posted at the usual place at least 48 hours in advance of the work to be performed.
- 31.1.6 Any change not referred to in clause 31.1.5, or any change to rostered work with less than 48 hours' notice must be with the consent of the employee concerned.
- 31.1.7 Any change to an employee's day off once the period roster has been posted must be with the consent of the employee concerned.
- 31.1.8 Holiday relief work will be rostered and displayed on a relevant roster unless otherwise agreed between the Parties to this Agreement.
- 31.1.9 Except for standby shifts and special events, the period roster will show the rostered start and finish times as well as the commencement time for meal breaks on all shifts. Where actual times cannot be decided, for example shifts required for special events, approximate finish times will be shown on such rosters.
- 31.1.10 Special rosters will be prepared to cater for employees expected to be absent from normal traffic work for periods exceeding six months.
- 31.1.11 The maximum number of consecutive shifts will be consulted between the relevant parties, as required.

31.2 Principles of Rostering Work

31.2.1 Rosters will be arranged so:

- 31.2.1(a) that the ordinary hours of work will be not less than seven hours on any shift for a full-time employee, and not less than 7.6 hours on any shift for a part-time employee unless participating in an approved job sharing arrangement;
- 31.2.1(b) that broken shifts have not less than 11 hours spread of work and no more than a 12 hour spread of work, and not less than two hours break between the two portions of work;
- 31.2.1(c) that broken shifts are not rostered upon a Saturday, Sunday, or public holidays;
- 31.2.1(d) as to avoid the hours on a combination of rostered work and voluntary overtime exceeding 12 hours' work in any day;
- 31.2.1(e) as to allow an employee to be at home for either lunch or dinner on Christmas Day unless an employee volunteers to work a full shift;
- 31.2.1(f) as to provide portions of work of not less than two and a half hours;
- 31.2.1(g) that an employee will not be signed off by direction or by roster more than twice in any one day including paid and unpaid meal breaks.

31.2.2 Despite the principles contained in this clause, employees may be required to work beyond these hours due to unforeseen circumstances which are:

- 31.2.2(a) late running due to an accident;
- 31.2.2(b) vehicle or equipment breakdown;
- 31.2.2(c) traffic conditions;
- 31.2.2(d) an employee giving less than two hours' notice of being late for work or not being able to attend work.

The Rail Commissioner will not require an employee to work under this clause, where at least two hours' notice of the unforeseen circumstances has been given to the depot.

31.2.3 Where an employee is advised by the Rail Commissioner, after having commenced their shift, that their rostered shift finishing time has been extended beyond the time when public transport is available, the Rail Commissioner will provide transport for an employee to their home at the end of that shift.

31.2.4 Any employee who attends for work and is subsequently told that they are not required for the shift will receive payment for the shift for which they were rostered.

31.2.5 Where an employee's work is not rostered so as to allow a 12 hour break between shifts the employee will be entitled to be absent for 12 consecutive hours without deduction of pay except in instances where an employee:

31.2.5(a) ceases work after the rostered finishing time due to unforeseen circumstances under clause 31.2.2;

31.2.5(b) works on a rostered day off under clause 36 – Working on Rostered Days Off;

31.2.5(c) exchanges a shift under clause 31.4.1;

31.2.5(d) is recalled for work under clause 25.7.2;

31.2.5(e) or agrees to work beyond their rostered hours,

then the respective intervals referred to in this agreement will be not less than 10 hours and subject to fatigue management principles.

31.2.6 **Straight Shifts**

Straight shifts will, subject to the exception in clause 30.2.1, not exceed nine hours excluding unpaid meal breaks. Straight shifts will be rostered up to nine hours 40 minutes, excluding unpaid meal breaks, on Saturdays, Sundays and Public Holidays.

31.2.7 The parties acknowledge that broken shifts will continue to be rostered and worked.

31.2.8 In circumstances where an employee does not report for work, another appropriate employee due to sign on may be allocated this work and:

31.2.8(a) That employee will be paid either:

(i) the remuneration for the original rostered shift,
or

(ii) the remuneration for the substitute shift,
whichever is the greater.

31.2.8(b) and where possible the employee will be returned to their original work allocation prior to the end of their first portion of rostered work.

- 31.2.9 The roster will include the following time provisions for the tasks listed below from the Glengowrie depot:

Task	Driver
When signing on	10 minutes
Walking time to or from Stop 12 Down	2 minutes
Walking time to or from Stop 12 UP	5 minutes
Walking time to or from Tram barn when preparing or stabling	5 minutes
Tram Preparation.	15 minutes
Tram Berthing from time of arrival at depot	8 minutes
Signing off	5 minutes
Signing on at the beginning of 2nd portion of Broken shift	5 minutes
Signing off at the completion of 1st portion of Broken shift	5 minutes

- 31.2.10 New time provisions will be created for any new depot which opens during the life of this agreement.
- 31.2.11 An employee will be responsible for undertaking their own sign on and sign off procedure.

31.3 **Meal/Crib Breaks**

- 31.3.1 Employees will not be rostered to work for more than five hours, inclusive of sign on/off times, without a meal break (not calculated in ordinary hours) or crib break (calculated in ordinary hours), whichever meets the requirements of the Rail Commissioner's operations.
- 31.3.2 Where a meal break is allowed a minimum of 40 minutes and a maximum of 55 minutes will be allowed. The first 25 minutes of that meal break will be paid at the employee's base rate of pay, the rest of the meal break will be without pay.
- 31.3.3 Where a meal break of at least 40 minutes is not provided, a crib break will be taken in Rail Commissioner's time and the minimum time allowed for a crib break will be 25 minutes and a maximum of 39 minutes.
- 31.3.4 If due to unforeseen circumstances/emergency a portion of work exceeds five consecutive hours, a meal break will be provided at the earliest opportunity.
- 31.3.5 Meal/crib breaks may be rostered at other locations. In such instances a meal allowance will be paid as per clause 25.7.1

31.4 **Right To Give Away Shifts (G.A.S) or Exchange Shifts**

31.4.1 **Right to Exchange Shifts**

- 31.4.1(a) Employees have the right to exchange shifts or days off by mutual arrangement between themselves. Employees who elect to exchange shifts must ensure

that the relevant Agreement provisions are observed to the satisfaction of the Rail Commissioner. The Rail Commissioner cannot unreasonably refuse a reasonable request to exchange shifts.

31.4.1(b) Any shift may be swapped in a fortnight's roster in accordance with relevant Agreement provisions and the satisfaction of the Rail Commissioner.

31.4.1(c) The Rail Commissioner will approve the exchange of shifts having regard to fatigue management principles.

31.4.2 Right to Give Away Shifts

31.4.2(a) An employee will have the right to 'give away' shifts as outlined below provided that the relevant Agreement provisions are observed and the shifts are given to an employee who has the capabilities to work that shift.

31.4.2(b) An employee will have the right to 'give away' rostered route service work shifts to another employee.

31.4.2(c) Where an employee 'gives away' a day's work to another employee the employee who is relinquishing the shift will not be entitled for payment for such day or any make-up pay unless they apply for annual leave or skills and experience retention leave for the day after the shift has been 'given away'. The Rail Commissioner must approve the leave taken for this purpose unless the employee has not already taken or will not take three weeks annual leave in that financial year. Single day's annual leave will not count for the calculation of the three weeks annual leave.

31.4.2(d) An employee accepting the 'given away' work will receive payment for that work at their classification level plus any penalty entitlement attributed to that shift. The acceptance of 'given away' work will not constitute a part of the employee's ordinary hours and, therefore, they will not be eligible for overtime penalties unless they were already attributed to that shift.

31.4.2(e) Where an employee accepts a 'given away shift' and for any reason is not able to perform that work then they will not be entitled to receive payment for such work.

31.4.2(f) An employee can 'give away' (i.e. not exchange) shifts without applying for annual leave or skills and experience retention leave a maximum of 22 shifts within a year to ensure their continuous service is not impacted. This number may be smaller depending if the employee has taken any other unpaid leave in the year, other than sick leave without pay that is supported by a medical certificate.

31.4.2(g) A part-time employee can accept 'give away' shifts provided that a combination of their ordinary rostered hours and the accepted give away hours of work are less than the ordinary rostered hours of work for a full-time employee, i.e. thirty eight hours for the week.

31.4.2(h) The Rail Commissioner will approve an employee accepting a shift having regard to fatigue management principles.

31.5 Depot Transfer

31.5.1 The Rail Commissioner may require an employee to permanently or temporarily transfer to another depot with reasonable notice.

31.5.2 An employee who is unilaterally moved to a new depot by the Rail Commissioner will be compensated for the distance between their home depot and their temporary/new depot (based on the shortest route) at \$0.78/km. The employee will be eligible for this payment for a maximum for the term of the transfer or 10 weeks, whichever is less.

31.5.3. Employees will not receive payment for any excess travelling time to and from work that may occur as a result of the transfer.

31.5.4 The Rail Commissioner will provide the employee a minimum of one month's notice before the employee is transferred to a new depot.

31.5.5 The Rail Commissioner cannot unilaterally permanently transfer an employee to another depot more than once every 18 months (commencing from the date they are transferred).

31.5.6 The Rail Commissioner cannot unilaterally temporarily transfer an employee to another depot more than once every 12 months (commencing from the date they are transferred). The minimum period for a temporary transfer is one month, the maximum is six months.

31.5.7 Employees have the right to request a permanent or temporary transfer to another depot. The Rail Commissioner will consider each request based on operational requirements. None of the criteria between clauses 31.5.2 and 31.5.6 inclusive apply to an employee who requests to be transferred to another depot.

32 STANDBY EMPLOYEES

32.1 An employee who is rostered as a 'standby' may be required to perform any work for which they are trained.

32.2 Rostering of standby employees (if necessary) will be at the discretion of the Rail Commissioner.

32.3 The minimum shift for standby purpose is seven hours and 36 minutes.

- 32.4 As per clause 31.1.9, standby shifts will have a known start time but not a known finish time. The maximum time for a standby shift is 9 hours on a weekday and 9 hours 40 minutes on a weekend.
- 32.5 Standby shifts will include a crib break as defined by clause 31.3.

33 ATTENDING OFFICE

- 33.1 An employee will be paid for time reasonably spent at applicable rates when attending by instruction at their depot or elsewhere to:
- 33.1.1 answer complaints;
 - 33.1.2 furnish reports;
 - 33.1.3 supply statements and affidavits;
 - 33.1.4 submit to a medical examination;
 - 33.1.5 attend any court or coronial inquiry as a witness or at the request of Rail Commissioner; or
 - 33.1.6 undertake training.
- 33.2 An employee attending by instruction any court or coronial inquiry on their day off will be paid at the appropriate overtime penalty rate for the day.
- 33.3 Where the employee, under clauses 33.1 or 33.3, attends outside their ordinary days' work and the distance travelled exceeds the distance from the employee's place of residence to their depot or usual place of employment, travelling time at ordinary rates for the excess time will also be paid.
- 33.4 This clause will not apply to any employee required to submit to a medical examination prior to resuming work after a period of absence due to illness or injury.
- 33.5 Employees who are directed by the employer to undertake Category 1 medical reviews and/or the blood tests that accompany them, for the purpose of being declared fit for duty in accordance with Rail Safety requirements, may choose to do so during non-rostered time. In cases where the employer and employee agree to do so, employees will be paid for actual time involved up to a maximum of two hours at ordinary time rates. Such time shall not be considered a shift or ordinary time in the calculation of overtime.

34 SHIFT PENALTY RATES

The following shift penalty rates apply for part-time, fixed term contract and full-time employees.

34.1 Monday to Friday

- 34.1.1 For all time at work between the hours of 5.00 pm and 9.00 am (other than public holidays and broken shifts) employees will be paid 15% more than their ordinary rate;

34.1.2 Subject to the exceptions specified above, any shift rostered to finish at or after 5.00 pm must be paid 15% more than ordinary rates for the whole of such shift; or

34.1.3 An employee who signs on or off between 2:00am and 3:59am, or works through those times, will be paid the following percentage more than their ordinary rate:

34.1.3(a) continuous shift workers – 25%; or

34.1.3(b) non-continuous shift workers – 20%.

34.2 **Saturdays**

Time worked on Saturdays must be paid for at the rate of time and a half.

34.3 **Sundays**

Time worked on Sundays must be paid for at the rate of double time.

34.4 **Public Holidays**

If required to work on such day an employee must be paid at the rate of double time and a half for the time worked on the public holiday.

34.5 **Shifts Overlapping Days**

Where a shift falls partly on a Saturday, Sunday or public holiday the shift will be regarded as being worked on the day on which the major portion falls.

34.6 **Broken Shifts**

Employees may be required to work broken shifts. All work performed on any day outside a spread of nine and a half consecutive hours must be paid for at the following rates:

34.6.1 between a spread of nine and a half and 10½ hours - time and a half;

34.6.2 after 10½ hours - double time.

35 MAXIMUM PENALTY RATES

35.1 Penalty and additional rates prescribed by this Agreement will not be cumulative so as to exceed the maximum of double ordinary rates excepting where overtime is worked on a broken shift the broken penalty and overtime penalty is cumulative.

35.2 Despite the provisions of clause 35.1 the rate of double time and one half applies for time worked on a public holiday.

36 WORKING ON ROSTERED DAYS OFF

- 36.1 Employees are expected to work on their rostered day off when required, however, an employee may refuse to work on their rostered day off if the request is unreasonable or if their refusal is reasonable as per the National Employment Standards (NES).
- 36.2 Where an employee works on his or her rostered day off the time worked will be paid for at the rate of:
- 36.2.1 double time if a Saturday or Sunday;
 - 36.2.2 double time and a half if a public holiday, or;
 - 36.2.3 Time and a half for the first three hours and double time thereafter if any other day.
- 36.3 An employee who works on their rostered day off but is absent upon any other day in the same pay period without leave or without a reason for such absence accepted by the Rail Commissioner as reasonable, will forfeit all penalty rates prescribed in this clause for working a rostered day off.
- 36.4 The Tram Operations Consultative Committee will monitor the amount of employees working on a rostered day off on a regular basis and make recommendations. The Rail Commissioner will consider these recommendations when requesting an employee to work on a rostered day off.

37 VOLUNTARY OVERTIME

- 37.1 Voluntary Overtime means that an employee has volunteered to work additional hours.
- 37.2 The Parties and employees acknowledge that the following provisions are inclusive of all conditions pertaining to Voluntary Overtime for employees classified pursuant to this Agreement.
- 37.3 **General Principles**
- 37.3.1 Voluntary overtime work may include Sunday work, Charter work, Tour work and Special Events services and time worked to cover absenteeism on a daily basis.
 - 37.3.2 Voluntary overtime will be offered to any available appropriate employee. If volunteers cannot be found to perform voluntary overtime, the Rail Commissioner may require an employee to work reasonable overtime.
 - 37.3.3 Any combination of rostered route service work and voluntary overtime duty will not exceed 12 hours on any one day. This includes paid meal breaks, crib breaks and sign on/off times.
 - 37.3.4 Where an employee performs voluntary overtime following a portion of rostered route service work and the total of all time will exceed the five hour limit without a meal break, the employee will

be entitled to a minimum 30 minute paid break before undertaking the voluntary overtime.

37.3.5 The location of meal breaks taken during voluntary overtime, for other than route service work, will be by negotiation between the employee and the Rail Commissioner.

37.3.6 A minimum of one hour's payment will apply, at the appropriate rate, when voluntary overtime is coupled with rostered route service work.

37.3.7 Employees required to extend their shift by two or more hours after signing on duty shall be entitled to a meal allowance in accordance with clause 25.7.1 and a crib break. The crib break will be taken either in the second portion of the rostered shift or no later than the end of the first hour of overtime.

37.4 **New Year's Eve - Payment for Working**

37.4.1 **Special Extra New Year's Eve Shifts**

An employee working a 'special' New Year's Eve shift will be paid at the rate of double time and a half for the whole shift, notwithstanding the part-day public holiday. A 'special' New Year's Eve shift is one that is operated to provide continuous service delivery between the last regular service on New Year's Eve and the first regular service on New Year's Day. The double time and a half rate is payable for those shifts which finish or commence during the hours where trams would not normally operate.

37.4.2 **Ordinary Shifts**

An employee working a shift other than a 'special' New Year's Eve shift on New Year's Eve will be paid the applicable shift payment.

PART 5 – LEAVE

38 RELATIONSHIP BETWEEN THIS AGREEMENT AND THE NATIONAL EMPLOYMENT STANDARDS (NES)

- 38.1 The provisions of this Agreement relating to various forms of leave are to be read in conjunction the *Fair Work Act 2009 (Cth)*.
- 38.2 It is not the intention that any provision of this Agreement is to operate in a way that is less favourable to employees than the NES. If any provision of this clause operates in a way that is less favourable to employees than the NES, then the NES shall prevail.

39 ANNUAL LEAVE

- 39.1 An employee is entitled to four weeks paid annual leave per year, which will accrue each month at the rate of 1/13 of ordinary hours worked. Regular part-time employees will accrue an entitlement to Annual Leave on a pro-rata basis based on their ordinary hours of work.
- 39.2 Where an employee is able to be rostered ordinary hours on Saturdays and/or Sundays, and Public Holidays, they will be entitled to five weeks paid annual leave per year. In this case the additional annual leave will accrue at the rate of 1/52 of ordinary hours worked.
- 39.3 Where an employee with twelve months continuous service is engaged for part of the twelve monthly period as a seven day shift worker, that employee is entitled to have the period of leave prescribed in clause 39.1 increased by half a day for each month he or she is continuously engaged as a seven day shift worker to a maximum of five additional paid days leave.
- 39.4 An employee who has been absent on leave without pay for more than 22 working days (Monday to Friday) in one or more periods in any one financial year (1 July to 30 June), other than approved sick leave without pay, will have their completed months of service adjusted accordingly so as not to include the period for which they were so absent.
- 39.5 Annual leave will be taken at times agreed between the Rail Commissioner and the employee.
- 39.6 The Rail Commissioner must not unreasonably refuse a request by an employee to take paid annual leave, unless the request is unreasonable or the refusal is reasonable.
- 39.7 A day work employee with an annual leave credit of greater than eight weeks may be directed to take leave to reduce their balance to eight weeks.
- 39.8 A shift work employee with an annual leave credit of greater than 10 weeks may be directed to take leave to reduce their balance to 10 weeks.
- 39.9 Annual leave is payable at an employee's Ordinary Time Rate of Pay (being the applicable ordinary rates described in this Agreement) for the number of ordinary hours the Employee would have worked during the period of annual leave. Annual leave hours paid will be deducted from the Employee's accrued entitlement.

- 39.10 An employee who, at the time of taking a period of Annual Leave, has been undertaking higher duties immediately prior to the taking of such leave and who will be required to resume the performance of such duties immediately on return to duty, will be paid at the higher rate for the duration of that leave.
- 39.11 Where practicable, annual leave will be taken in a weekly block from Sunday to Saturday to facilitate efficient rostering. This clause should be read in conjunction with and does not limit the operation of clauses 39.6, 39.7, 39.8 39.9, and 39.13.
- 39.12 As per clause 31.4.2(c) an employee is entitled to apply for single days' annual leave once they have 'given away' a shift. The Rail Commissioner must approve annual leave taken for this purpose unless the employee has not already taken or will not take three weeks annual leave in that financial year. Single day's annual leave will not count for the calculation of the three weeks annual leave.
- 39.13 **Loading on annual leave**
- 39.13.1 During a period of annual leave an employee will receive a loading calculated on the ordinary base rate of pay as follows:
- 37.14.1(a) Day workers - employees who would have worked on day work if they had not been on leave - a loading of 17.5%;
- 37.14.1(b) Shift workers - employees who would have worked on shift work had they not been on leave - a loading of 20%;
- 39.14 Any annual leave accrued but not taken will be paid out on termination of employment in the amount that would have been payable had the employee taken that leave.

40 PERSONAL LEAVE

- 40.1 An employee is entitled to a total of 12 days paid personal leave, in accordance with this clause, if they are unable to attend work because of a personal injury or illness (Sick Leave), or because they have to care for a member of their immediate family or a member of their household (Carer's leave).
- 40.2 Personal leave will accrue each month at the rate of 7.6 hours for a full time employee. Part-time employees will accrue an entitlement to paid personal leave on a pro-rata basis based on their contracted hours of employment.
- 40.3 An employee is only entitled to personal leave for ordinary hours that they would have been required to work.
- 40.4 Subject to 40.6 of this Agreement, an employee may be required to produce a medical certificate or a certificate from a health practitioner for any absence taken for personal leave. A medical certificate or a certificate from a health practitioner is not required where the circumstances would make it unreasonable for it to be produced. In this case an employee must provide a statutory declaration that sets out the reason for the absence and why they could not obtain a medical certificate or a certificate from a health practitioner.

Failure to provide either a medical certificate or statutory declaration proof may result in non-payment of personal leave.

- 40.5 If an employee is unable to attend work because of injury, illness or the requirement to take carer's leave they must inform the Rail Commissioner as soon as is reasonably practicable and, in any event, prior to the commencement of the shift unless the employee is unable to comply with this requirement due to reasons beyond their control. Such advice must include:
- 40.5.1 the nature of the injury or illness (if known); or
 - 40.5.2 the basis on which carers leave is required; and
 - 40.5.3 the period the employee expects to be away from work.
- 40.6 If it is not practicable for an employee to give prior notice of the absence, the employee must notify the Rail Commissioner by telephone at the first opportunity.
- 40.7 An employee may be absent on account of personal leave for periods of up to two working days without the production of a medical certificate or a certificate from a health practitioner. Where an employee is absent from duty for a period in excess of two consecutive working days, the employee will produce a medical certificate or a certificate from a health practitioner covering all days in excess of the two original days.
- 40.8 Where an employee is on personal leave on the day before or after a day or part-day that is a public holiday, they will be required to provide the Rail Commissioner with a medical certificate, a certificate from a health practitioner or statutory declaration for that day as per clause 40.4.
- 40.9 Clause 40.8 will not limit a manager requiring an employee to produce a medical certificate or a certificate from a health practitioner for all or any absence on account of personal illness or injury. Such requirement will not unreasonably be imposed and will be subject to discussion between the employee and their manager.
- 40.10 Unused personal leave will accrue from year to year.
- 40.11 Unused personal leave will not be paid out on termination.
- 40.12 In circumstances where an employee has exhausted their paid Carer's leave entitlement, they are entitled to up to two days unpaid Carer's leave for each occasion on which they may have otherwise claimed paid Carer's leave. An employee may also have access to Special Leave with Pay or Special Leave Without Pay as per Appendix 3 respectively.

41 SICK LEAVE POOL

- 41.1 The parties agree to continue the sick leave pool, which provides that employees forgo two days of their personal leave, as defined at clause 40, per year in order to access up to 800 hours of paid leave over the course of their employment in the event that they have exhausted their entitlement to paid personal leave and require to be absent from duty for a period in excess of five consecutive days due to personal illness or injury.

- 41.2 An employee must provide a medical certificate or a certificate from a health practitioner for all time off to access the sick leave pool.
- 41.3 Regular part-time employees will have access to the full 800 hours of the leave from the sick leave pool but will have the entitlement paid on a pro-rata basis.

42 COMPASSIONATE LEAVE

- 42.1 An employee is entitled to paid leave for up to two days per occasion to attend to:
 - 42.1.1 the death; or
 - 42.1.2 a life threatening illness/injury of a member of their immediate family or household.
- 42.2 An employee must advise the Rail Commissioner as soon as possible of the need to take compassionate leave.
- 42.3 Compassionate leave is non-cumulative.
- 42.4 An employee may be required to produce suitable evidence of the requirement to take and be paid for compassionate leave.
- 42.5 If the occasion of compassionate leave is for an illness or personal injury of a member of the employee's immediate family or household, the employee may take the compassionate leave for that occasion at any time whilst the injury or illness persists.
- 42.6

43 LONG SERVICE LEAVE & SKILLS AND EXPERIENCE RETENTION LEAVE

- 43.1 Employees are entitled to Long Service Leave, and Skills and Experience Retention Leave subject to the qualifying conditions and terms of the *Public Sector Act 2009* and the provisions of the applicable Commissioner's Determination as varied from time to time.
- 43.2 During each financial year, an eligible employee will accrue skills and experience retention leave at the rate of 1/3 working day per month of effective service, up to a maximum of four days per year. An eligible employee may apply to take retention leave once the employee has accrued an amount of leave equivalent to one working day. Retention leave must be applied for and taken as a whole working day.
- 43.3 Between 1 July and 31 August each year an employee may elect to convert the retention leave accrued in the preceding financial year to a monetary payment.
- 43.4 To make an election to receive a payment instead of taking the leave, an employee must complete and submit the appropriate form to the relevant agency with responsibility for payroll services by 31 August following the financial year in which the entitlement accrued.
- 43.5 A retention leave entitlement accrued within a financial year must, if not converted into a monetary amount, be taken within five years of the accrual.

44 PARENTAL LEAVE

44.1 Employees are entitled to maternity; paternity and/or adoption leave in connection with the birth or adoption of a child.

44.2 This Agreement makes provision for the taking of 16 weeks or 20 weeks paid maternity or adoption leave as part of the basic entitlement to such leave as set out hereunder.

44.3 Definitions

44.3.1 For the purpose of adoption leave, 'child' means a child of the employee that is or will be under 16 when placed with the employee for the purposes of adoption, other than a child or stepchild of the employee or of the spouse of the employee or a child who had previously lived continuously with the employee for a period of six months or more.

44.3.2 Subject to this clause, 'spouse' includes a de facto or former spouse.

44.3.3 In relation to 44.3.1, 'spouse' includes a de facto spouse but does not include a former spouse.

44.4 Basic entitlement

44.4.1 After twelve months' continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken, and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.

44.4.2 Parental leave is to be available only to one parent at a time except that both parents may simultaneously take:

44.4.2(a) for maternity and paternity leave, a period of up to eight weeks at the time of the birth of the child; or

44.4.2(b) for adoption leave, a period of up to eight weeks at the time of placement of the child; and

44.4.2(c) this leave may be taken in separate periods, but, unless the employer agrees, each period must not be shorter than two weeks.

44.4.3 Parental leave and other entitlements

An employee may, in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued, subject to the total amount of paid and unpaid leave not exceeding 104 calendar weeks in relation to the employee's child. For the purposes of this clause, child includes children of a multiple birth/adoption.

44.5 Variation of Parental Leave approved

Where an employee takes leave under this clause, unless otherwise agreed between the Rail Commissioner and employee, an employee may apply to the Rail Commissioner to change the period of parental leave on one occasion. Any such change is to be notified as soon as possible but no less than four weeks prior to the commencement of the changed arrangements. Nothing in this clause detracts from the basic entitlement to leave under this clause.

44.6 Right to request variation of parental leave approved

44.6.1 An employee entitled to parental leave pursuant to the provisions of this Agreement may request Rail Commissioner to allow the employee:

44.6.1(a) extend the period of simultaneous unpaid parental leave provided for in clauses 44.4.2(a) and 44.4.2(b) up to a further eight weeks;

44.6.1(b) to extend the period of unpaid parental leave provided for in clause 44.4 by a further continuous period of leave not exceeding 12 months;

44.6.1(c) to return from a period of maternity or adoption leave on a part-time basis, at the employee's substantive level, until the child reaches school age, to assist the employee in reconciling work and parental responsibilities.

44.6.2 The Rail Commissioner shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the Rail Commissioner's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

44.7 Employee's request and Rail Commissioner's decision to be in writing

The employee's request and the Rail Commissioner's decision made under this clause must be recorded in writing.

44.8 Request to return to work part-time

44.8.1 Where an employee wishes to make a request under clause 44.6.1(c) such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from maternity or adoption leave, and will provide to the Rail Commissioner such information as may reasonably be required, including the proportion of time sought, and the date the relevant child will reach school age (i.e. five years of age).

44.8.2 At least 12 weeks prior to the relevant child reaching school age, the employee will advise the Rail Commissioner whether the employee will revert to employment on a full-time basis or seeks to continue to be employed on a part time basis.

44.9 Maternity leave

- 44.9.1 An employee must provide notice to the Rail Commissioner in advance of the expected date of commencement of maternity leave. The notice requirements are:
- 42.9.1(a) if taken from the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks; or
 - 42.9.1(b) if taken from a date prior to confinement – at least four weeks.
- 44.9.2 When the employee gives such notice the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- 44.9.3 An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.
- 44.9.4 Subject to 44.9.1 and unless agreed otherwise between Rail Commissioner and the employee, an employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.
- 44.9.5 Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, the Rail Commissioner may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- 44.9.6 Where leave is granted under 44.9.4, during the period of leave an employee may return to work at any time, as agreed between the Rail Commissioner and the employee provided that the time does not exceed four weeks from the recommencement date desired by the employee.
- 44.9.7 Transfer to a safe job**
- 44.9.7(a) If, in the opinion of a legally qualified medical practitioner:
- 44.9.7(a)(i) illness or risks arising out of a pregnancy; or
 - 44.9.7(a)(ii) hazards connected with the work assigned to the employee make it inadvisable for the employee to continue her present work, then
- 44.9.7(b) The Employee must, if Rail Commissioner considers that it is practicable to do so, be transferred to a safe job at the rate and on the conditions of the employee's substantive position until the commencement of maternity leave.

- 44.9.7(c) If the transfer to a safe job is not considered practicable, the employee is entitled to paid or unpaid no safe job leave, as per the *Fair Work Act 2009* (Cth).

44.10 **Paid maternity Leave and Adoption Leave**

44.10.1 **Basic entitlement**

- 44.10.1(a) An employee who has completed 12 months continuous service immediately prior to the birth of her child, is entitled to 16 weeks paid maternity leave.
- 44.10.1(b) An employee who has completed 12 months of continuous service before taking custody of an adopted child is entitled to 16 weeks paid adoption leave.
- 44.10.1(c) An employee who, at the time of commencing paid maternity or paid adoption leave, has at least five years continuous service (including any periods of approved unpaid leave) will be entitled to 20 weeks paid maternity/adoption leave.

44.10.2 **Conditions**

The following conditions apply to an employee applying for paid maternity leave or paid adoption leave:

- 44.10.2(a) An employee will be entitled to the applicable maximum period of leave, paid at the employee's ordinary rate of pay (excluding allowances, penalties or other additional payments) from the date maternity/adoption leave commences.
- 44.10.2(b) The period of paid maternity/adoption leave is not to be extended by public holidays, rostered days off, programmed days off or any other leave falling within the period of paid leave.
- 44.10.2(c) At the time of applying for paid maternity leave or paid adoption leave, the employee may elect in writing:
- 44.10.2(c)(i) To take the paid leave in two periods split into equal portions during the first 12 months of the commencement of their paid leave; or
 - 44.10.2(c)(ii) To take the paid leave at half pay in which case, notwithstanding any other clause of this Agreement, the employee will be entitled, during the period of paid leave, to be paid at half the ordinary rate of pay (excluding allowances, penalties or other additional payments) from the date maternity/adoption leave commences; or

44.10.2(c)(iii) A combination of 44.10.2(c)(i) and 44.10.2(c)(ii).

44.10.3 During periods of paid or unpaid maternity leave, sick leave with pay will not be granted for a normal period of absence for confinement. However, any illness arising from the incidence of the pregnancy may be covered by sick leave to the extent available, subject to the usual provisions relating to production of a medical certificate and the medical certificate indicates that the illness has arisen from the pregnancy.

44.10.4 Regular part-time employees will have the same entitlement as full-time employees, but paid on a pro-rata basis according to the average number of ordinary hours during the immediately preceding 12 months (disregarding any periods of leave).

44.11 **Paternity leave**

44.11.1 An employee will provide to Rail Commissioner at least 10 weeks prior to each proposed period of paternity leave:

44.11.1(a) a certificate from a registered medical practitioner which names their spouse, states that she is pregnant and the period of gestation or states the date on which the birth took place; and;

44.11.1(b) written notification of the dates on which he proposes to commencement and finish the period of paternity leave; and

44.11.1(c) except in relation to leave taken simultaneously with the child's mother a statutory declaration stating:

44.11.1(c)(i) they will take that period of paternity leave to become the primary caregiver of the child;

44.11.1(c)(ii) particulars of any period of maternity leave sought or taken by their spouse; and

44.11.1(c)(iii) that for the period of paternity leave they will not engage in any conduct inconsistent with his contract of employment.

44.11.2 The employee will not be in breach of 44.11.1 if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

44.12 **Adoption leave**

44.12.1 The employee will notify the Rail Commissioner at least 10 weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through

circumstances beyond the control of the employee, the adoption of a child takes place earlier.

44.12.2 Before commencing adoption leave, an employee will provide the Rail Commissioner with a statutory declaration stating:

44.12.2(a) the employee is seeking adoption leave to become the primary caregiver of the child;

44.12.2(b) particulars of any period of adoption leave sought or taken by the employee's spouse; and

44.12.2(c) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.

44.12.3 The Rail Commissioner may require an employee to provide confirmation from the appropriate government authority of the placement.

44.12.4 Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the Rail Commissioner immediately and the Rail Commissioner will nominate a time, not exceeding four weeks, from receipt of notification for the employee's return to work.

44.12.5 An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.

44.13 **Return to work after a period of parental leave**

44.13.1 An employee will notify of their intention to return to work after a period of parental leave at least six weeks but no later than four weeks prior to the expiration of the leave.

44.13.2 An employee will be entitled to the position, which they held immediately before proceeding on parental leave.

44.13.3 Where such position no longer exists, but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

44.14 **Replacement employees**

44.14.1 A replacement employee is an employee specifically engaged or temporarily promoted or transferred as a result of an employee proceeding on parental leave.

44.14.2 Before the Rail Commissioner engages a replacement employee the Rail Commissioner must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

44.15 Communication During Parental Leave

- 44.15.1 It is a principle of this enterprise agreement that employees on parental leave will, for the purposes of consultation and Appendix 1, be treated the same as if they were at work.
- 44.15.2 Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the Rail Commissioner shall take reasonable steps to:
 - 44.15.1(a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
 - 44.15.1(b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- 44.15.3 The employee shall take reasonable steps to inform the Rail Commissioner about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- 44.15.4 The employee shall also notify the Rail Commissioner of changes of address or other contact details which might affect Rail Commissioner's capacity to comply with 44.15.1.

44.16 Return to Work on a Part-time Basis

- 44.16.1 Subject to this clause, an employee is entitled to apply to return to work after maternity or adoption leave on a part-time basis, at the employee's substantive level, until the child reaches school age.
- 44.16.2 In considering an application under this clause, the Rail Commissioner (or delegate) will have regard to both the operational needs of Rail Commissioner and/or the particular business unit, and the employee's circumstances.
- 44.16.3 The following conditions apply to an employee applying to return on a part-time basis:
 - 44.16.3(a) The employee will provide such request in writing at least six weeks prior to the date on which the employee's maternity or adoption leave is due to expire, and will provide to the Rail Commissioner (or delegate) such information as may reasonably be required, including the details of the change sought and the reasons for the change.
 - 44.16.3(b) At least six weeks prior to the relevant child reaching school age, the employee will advise the Rail Commissioner whether the employee will revert to

employment on a full-time basis or seeks to continue to be employed on a part-time basis.

- 44.16.3(c) An employee's return to work part-time will be on a non-discriminatory basis so as to operate in the same manner as any other employee returning from a period of leave.

45 JURY SERVICE

- 45.1 Employees who are required for jury service will be allowed time off work to attend as required by the Court.
- 45.2 Proof of attendance, the duration of attendance and the amount received must be provided by the employee to the Rail Commissioner.
- 45.3 Employees will be paid the difference between the amount paid for such jury service and the amount of wage, including any penalties, they would have received if they had been rostered to work during such jury service period.

46 PUBLIC HOLIDAYS

- 46.1 Employees under this Agreement are entitled to the following public holidays, and part-day public holidays without loss of pay:
- 46.1.1 New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Adelaide Cup Day, Sovereign's Birthday, Labour Day, Christmas Day, Proclamation Day, Christmas Eve (part-day), and New Year's Eve (part-day).
- 46.2 In addition, employees are entitled without loss of pay to any other day, or part-day, duly proclaimed to be a public holiday in the State of South Australia.
- 46.3 Whenever a public holiday or part-day public holiday falls on an employee's ordinary working day, the employee may be stood down on such day without loss of pay. Where the major portion of a shift falls on a full-day public holiday it will be regarded as a public holiday shift.
- 46.4 An employee may refuse the request to work a public holiday shift if the request is not reasonable or if the refusal is reasonable. However, the Parties recognise that there is generally a need for public holiday shifts to be included on the roster and agree that any roster which includes such shifts is considered reasonable.
- 46.5 An employee not rostered to work between 7pm and midnight (other than an employee who has exercised their right not to work on a part-day public holiday if the request to work is not unreasonable or the refusal is reasonable as provided for in the NES) will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.
- 46.6 Subject to clause 46.4, an employee who works any hours between 7pm and midnight on a part-day public holiday will be entitled to the applicable public holiday penalty rate for those hours worked.

- 46.7 Where a public holiday falls between Monday and Friday inclusive and an employee does not work on such day because it is a rostered day off, the employee will receive 7 hours 36 minutes pay at ordinary rates in respect of each full-day public holiday.
- 46.8 Where an employee may be rostered to work ordinary hours between 7pm and midnight on a part-day public holiday, but as a result of having a rostered day off does not work, the employee will be taken to be on a public holiday for those hours and paid their ordinary rate of pay for those hours.
- 46.9 Where a public holiday other than a part-day public holiday falls during the period of an employee's annual leave, the employee will be taken not to be on annual leave and will be paid for their ordinary rate of pay for such hours.
- 46.10 Where a part-day public holiday falls during the period of an employee's annual leave, the employee will be taken not to be on annual leave between the hours of 7pm and midnight that they would have otherwise been rostered to work and will be paid for their ordinary rate of pay for such hours.
- 46.11 **Public Holidays occurring in periods of Special Leave without Pay or Unpaid Parental Leave**
- 46.11.1 Where special leave without pay or unpaid parental leave is granted for periods of up to four weeks, any full-day Public Holidays that fall within such a period are to be granted with pay (base rate at ordinary hours). Where the special leave without pay or parental leave exceeds four weeks, no payment for any Public Holidays, irrespective of where they may fall, is to be made.
- 46.11.2 Where special leave without pay or unpaid parental leave is granted for periods of up to four weeks, any part-day Public Holidays that fall within such a period are to be granted with pay (base rate at ordinary hours) where the employee would have been rostered ordinary hours between 7pm and midnight.
- 46.12 **Substitution of certain public holidays which fall on a weekend**
- 46.12.1 Public holiday's falling on a weekend will be substituted in accordance with the *Holidays Act 1910 (SA)*.

PART 6 – WORKPLACE CONSULTATION AND DISPUTE RESOLUTION

47 CONSULTATION

47.1 This term applies if the employer:

47.1.1 has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or

47.1.2 proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

47.2 For a major change referred to in paragraph 47.1.1:

47.2.1 the employer must notify the relevant employees of the decision to introduce the major change; and

47.2.2 sub-clauses 47.3 to 47.9 apply.

47.3 The relevant employees may appoint a representative for the purposes of the procedures in this term.

47.4 If:

47.4.1 a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

47.4.2 the employee or employees advise the employer of the identity of the representative;

the employer must recognise the representative.

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

47.5.1 discuss with the relevant employees:

47.5.1(a) the introduction of the change; and

47.5.1(b) the effect the change is likely to have on the employees; and

47.5.1(c) measures the employer is taking to avert or mitigate the

adverse effect of the change on the employees; and

47.5.2 for the purposes of the discussion—provide, in writing, to the relevant employees:

47.5.2(a) all relevant information about the change including the nature of the change proposed; and

47.5.2(b) information about the expected effects of the change on the employees; and

47.5.2(c) any other matters likely to affect the employees.

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

- 47.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 47.8 If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph 47.2.1 and sub-clauses 47.3 and 47.5 are taken not to apply.
- 47.9 In this term, a major change is likely to have **a significant effect on employees** if it results in:
- 47.9.1 the termination of the employment of employees; or
 - 47.9.2 major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
 - 47.9.3 the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - 47.9.4 the alteration of hours of work; or
 - 47.9.5 the need to retrain employees; or
 - 47.9.6 the need to relocate employees to another workplace; or
 - 47.9.7 the restructuring of jobs.

Change to regular roster or ordinary hours of work

- 47.10 For the purposes of this clause, 'regular' means the normal day(s) and shifts that the employee would usually work up until the point of the proposed change. Consultation is not required under this clause in respect to roster changes that are consistent with usual rostering practices.
- 47.11 For a change referred to in paragraph 47.1.2:
- 47.11.1 the employer must notify the relevant employees of the proposed change; and
 - 47.11.2 subclauses 47.11 to 47.15 apply.
- 47.12 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 47.13 If:
- 47.13.1 a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - 47.13.2 the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.

- 47.14 As soon as practicable after proposing to introduce the change, the employer must:
- 47.14.1 discuss with the relevant employees the introduction of the change; and
 - 47.14.2 for the purposes of the discussion—provide to the relevant employees:
 - 46.14.2(a) all relevant information about the change, including the nature of the change; and
 - 46.14.2(b) information about what the employer reasonably believes will be the effects of the change on the employees; and
 - 46.14.2(c) information about any other matters that the employer reasonably believes are likely to affect the employees; and
 - 47.14.3 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).
- 47.15 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 47.16 The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 47.17 In this term:
- relevant employees* means the employees who may be affected by a change referred to in sub-clause 47.1.

48 CONSULTATION - TRAM OPERATIONS CONSULTATIVE COMMITTEE

- 48.1 The Tram Operations Consultative Committee will operate as a mechanism for democratic employee involvement in maximising the flexibility of the workforce and for ensuring that Depot working patterns and arrangements enhance flexibility and the efficiency of the Rail Commissioner. The Tram Operations Consultative Committee may consider, but are not limited to considering, the following:
- 48.1.1 job redesign including multi-skilling;
 - 48.1.2 development of a "team" culture in semi-autonomous work groups;
 - 48.1.3 time tabling;
 - 48.1.4 principles of rostering and scheduling options including fatigue management, whilst acknowledging the need to minimise the number of rostered changes during the period of operation of this Agreement;
 - 48.1.5 increase in patronage;

- 48.1.6 business efficiency;
 - 48.1.7 innovation;
 - 48.1.8 assigning of work;
 - 48.1.9 community liaison;
 - 48.1.10 delivering quality service;
 - 48.1.11 attendance management; and
 - 48.1.12 Charter arrangements for Heritage Trams and employees maintaining applicable competencies in support of those arrangements.
- 48.2 The Tram Operations Consultative Committee will comprise of:
- 48.2.1 A minimum of three employees classified pursuant to this Agreement and elected by their peers;
 - 48.2.2 An RTBU nominee; and
 - 48.2.3 Management representatives.
- 48.3 The Parties acknowledge a commitment to workplace reform and Driver participation.
- 48.4 Any future Depot changes will consider recommendations from the Tram Operations Consultative Committee in conjunction with the Parties.
- 48.5 The Tram Operations Consultative Committee will work with the Work Health and Safety Committee to promote and reach best practice/safe working arrangements.
- 48.6 Employees shall be informed of the outcomes and decisions of all Tram Operations Consultative Committee meetings as soon as practicable after the meeting has occurred.
- 48.7 Should the Rail Commissioner decide to introduce a major change to its operations that is likely to have significant change on the workforce- including but not limited to changes to the composition, size and skills required of its employees, the location of employment and possible job losses - the Tram Operations Consultative Committee will be used as a mechanism for consultation with the affected employees.
- 48.8 Nothing in this clause can preclude or otherwise inhibit any consultation or communication between Rail Commissioner and individual employees as provided for in clause 47 –Consultation, or Appendix 1 - Tram Operations – Redeployment, Retraining And Redundancy.

49 RESOLVING WORKPLACE CONCERNS OR DISPUTES

- 49.1 Any industrial dispute or matter likely to create an industrial dispute arising under this Agreement or the National Employment Standards should be dealt with in the following manner:

- 49.2 The Parties to the Agreement are obliged to make every endeavour to facilitate the effective functioning of these procedures.
- 49.3 In the event of a grievance or the commencement of a process relating to alleged misconduct or any other similar matter that results in a disciplinary outcome, it is accepted that procedural fairness and natural justice principles must apply at all times, including the right of an employee to be represented by their union.
- 49.4 The employee or employee representative should discuss any matter affecting an employee with the supervisor in charge of the section or sections in which the dispute or likely dispute exists.
- 49.5 If the matter is not resolved at this level the employee or employee representative should ask for it to be referred to an appropriate manager who shall arrange a conference to discuss the matter. If requested by the manager, the subject of the dispute shall be put in writing, so far as is reasonably practicable.
- 49.6 The consultation process as prescribed in clause 49.4 shall be commenced within 48 business hours of the dispute or likely dispute having been indicated, or within such longer or shorter period as may be agreed by the Parties.
- 49.7 If a matter cannot be resolved when the above referred to procedures have been availed of, the Parties should enter into consultation at a higher level on both sides, as the Parties consider appropriate.
- 49.8 At any stage in the procedures after consultation between the Parties has taken place in accordance with the procedure, either party may request and be entitled to receive a response to its representations within five working days.
- 49.9 If a dispute arising from any industrial matter, including a dispute arising under this Agreement or the National Employment Standards is unable to be resolved at the workplace, and all agreed steps for resolving it have been exhausted, the dispute shall be referred to the Fair Work Commission for resolution by mediation and/or conciliation and if necessary arbitration.
- 49.10 If arbitration is necessary the Fair Work Commission may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective, in accordance with the provisions of the *Fair Work Act 2009 (Cth)*.
- 49.11 Any dispute referred to the Fair Work Commission under this clause should be dealt with by a member nominated by either the head of the relevant panel or the President.
- 49.12 The decision of the Fair Work Commission will bind the Parties, subject to either party exercising a right of appeal against the decision.
- 49.13 It is a term of this Agreement that except where there is a genuine health or safety concern, the status quo existing immediately before the matter giving rise to the dispute will remain while the dispute resolution procedure is being conducted.

PART 7 – OTHER MATTERS

50 COMPETENCY BASED TRAINING AND ASSESSMENT

- 50.1 The Parties recognise the achievement of objectives relating to safety, customer service, productivity, and quality require a skilled and motivated workforce.
- 50.2 The program concentrates on customer service; communication and team working skills; operational and technical competencies; the Rail Commissioner contract knowledge and understanding; rail safety accreditation and; quality certification knowledge and skills for all levels of Tram Operations employees.
- 50.3 The Rail Commissioner will continue to use a competency based training and assessment method which may lead to an applicable nationally recognised qualification, recognising that Rail Commissioner and its employees have a shared responsibility for competency achievement and maintenance.
- 50.4 Training and assessment can be conducted by a variety of methods, including:
- 50.4.1 classroom based;
 - 50.4.2 on the job;
 - 50.4.3 off the job;
 - 50.4.4 computer based;
 - 50.4.5 self-paced; and
 - 50.4.6 other as deemed appropriate.
- 50.5 The Rail Commissioner and/or appropriate training providers will provide the training and assessment.
- 50.6 Where Senior Tram Operators are required to deliver training they will be paid what would have been their rostered shift had they not been required to deliver that training.
- 50.7 An employee performance and development review system will be continued by the Parties throughout the life of this Agreement.

51 EMPLOYEE COSTS

In the event fees are required to be paid for accreditation purposes for individual employees, the employee will not incur the cost unless otherwise specified.

52 QUALITY & CONTINUOUS IMPROVEMENT

- 52.1 The Parties acknowledge the importance of the safety and quality management system and will continue to support it.

- 52.2 The Parties to this Agreement are committed to work together to improve efficiency, productivity and quality in order to achieve benchmarks established for Tram Operations.
- 52.3 As part of the commitment to continuous improvement, the employees, the RTBU and Rail Commissioner agree to implement a process of continuous improvement. This can be achieved by a willingness to participate in and trial continuous improvement initiatives.
- 52.4 Any new cost saving efficiency or productivity gain achieved during the life of this Agreement, and which are not already articulated in this Agreement, will be recognised as forming a starting point for negotiations in the next Agreement to be negotiated upon expiry of this one. Any such new efficiency and productivity gains are to be monitored via the consultative group.

53 FLEXIBILITY TERM

- 53.1 The Rail Commissioner and an employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - 53.1.1 the agreement deals with one or more of the following matters:
 - 53.1.1(a) arrangements about when work is performed; or
 - 53.1.1(b) forms of employment (i.e. full-time/part-time); and
 - 53.1.2 the arrangement meets the genuine needs of the employer and employee in relation to one or more of the matters raised at clause 53.1.1; and
 - 53.1.3 the arrangement is genuinely agreed to by the employer and employee.
- 53.2 The Rail Commissioner must ensure that the terms of the individual flexibility arrangement are about permitted matters under section 172 of the *Fair Work Act 2009 (Cth)*, are not unlawful terms under section 194 of the *Fair Work Act 2009* and result in the employee being better off overall than the employee would be if no arrangement was made.
- 53.3 The Rail Commissioner must ensure that the individual flexibility arrangement is in writing and includes the name of the employer and employee and 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.
- 53.4 The Rail Commissioner must ensure that the individual flexibility arrangement includes details of the terms of the enterprise agreement that will be varied by the arrangement, how the arrangement will vary the affect 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.
- 53.5 The Rail Commissioner must ensure that the individual flexibility arrangement states the day on which the arrangement commences.
- 53.6 The Rail Commissioner must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

- 53.7 The Rail Commissioner or an 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 Rail Commissioner and the employee agree in writing – at any time.

54 WORK VALUE ASSESSMENTS – NEW ROLLING STOCK AND TRAM LINES

- 54.1 A work value assessment will be undertaken to determine possible difference in work value due to the operation of:
- 54.1.1 New rolling stock (which is different to current types of rolling stock); and/or
 - 54.1.2 New tram lines.
- 54.2 Review Scope and Guidelines
- 54.2.1 A work value assessment for new rolling stock will commence six months from the date the new rolling stock comes into operation.
- 54.2.1(a) If further new rolling stock are planned to come into operation before the nominal expiry date of this agreement (30 June 2023), the Rail Commissioner and RTBU may agree to postpone the work value assessment to begin six months after the further new rolling stock come into operation.
 - 54.2.1(b) The Rail Commissioner and RTBU may also agree for a work value assessment to occur at another time within the life of this agreement if necessary.
 - 54.2.1(c) Neither the Rail Commissioner nor RTBU will unreasonably refuse a request made under clauses 54.2.1(a) and/or 54.2.2(b) if the request is reasonable.
- 54.2.2 A work value assessment for any new tram lines that come into operation on or after the approval of this enterprise agreement will commence six months from the date the new tram lines come into operation.
- 54.2.2(a) If further new tram lines are planned to come into operation before the nominal expiry date of this agreement (30 June 2023), the Rail Commissioner and RTBU may agree to postpone the work value assessment to begin six months after the further new tram lines come into operation.
 - 54.2.2(b) The Rail Commissioner and RTBU may also agree for a work value assessment to occur at another time within the life of this agreement if necessary.
 - 54.2.2(c) Neither the Rail Commissioner nor RTBU will unreasonably refuse a request made under clauses 54.2.2(a) and/or 54.2.2(b) if the request is reasonable.
- 54.2.3 The work value assessments at clause 54.1 will assess the difference in work value for all classifications between:
- 54.2.3(a) the work value of the classification before the new rolling stock and/or tram lines came into operation; and

54.2.3(b) the work value of the classification after the new rolling stock and/or tram lines come into operation.

54.2.4 The work value assessments will be undertaken by an assessor to be agreed between the Rail Commissioner and the RTBU.

54.3 Outcomes

54.3.1 The assessor will make recommendations to the Rail Commissioner and RTBU in relation to whether a rate of pay adjustment is recommended for a classification and the quantum of that adjustment. The assessor will set out the reasons for that recommendation and support that by reference to their detailed report findings.

54.3.2 The assessor may recommend a different adjustment for different classifications.

54.3.3 An adjustment to the wages of the applicable classification or classifications in this Agreement will be made where the following criteria are satisfied:

54.3.3(a) the assessor recommends an adjustment to the rate of pay in this Agreement for the applicable classification based on their assessment of each classification; and

54.3.3(b) the wage adjustment is agreed to by both the Rail Commissioner and the RTBU (agreed wage adjustment). The Parties may agree to a quantum of wage adjustment other than the recommended wage adjustment.

54.3.4 The work value assessment increase in 54.3.3 will:

54.3.4 (a) be rounded to the nearest half number. For example:

Work value assessment increase	Recommended wage increase
0% - 0.25%	0%
0.26% - 0.75%	0.5%
0.76% - 1.25%	1%

54.3.4(b) will operate from the first full pay period on or after the date the new rolling stock and/or tram lines begin operating in a regularly timetabled service.; and

54.3.4 (c) will be given effect to through a Memorandum of Understanding between the Rail Commissioner and the RTBU, the effect of which will be incorporated into any successor Agreement.

54.4 Regardless of the outcome of the work value assessment(s), an employee's wage cannot be less than that provided by clause 25.1.

54.5 This clause is taken to be excluded from the No Extra Claims clause in this Agreement.

55 INJURY AND INCOME PROTECTION

Additional income and injury protection will apply to employees in accordance with the Income and Injury Protection Principles set out at Appendix 2 of this Agreement, where entitlements under the *Return to Work Act 2014* (SA) have ceased.

56 INCENTIVE PAYMENT TO TRANSFER EMPLOYMENT TO TORRENS CONNECT

Any employee who is covered by this Agreement, who:

- Accepts an offer of employment from Torrens Connect (or an associated entity) by 30 June 2020;
- Commences employment with Torrens Connect (or an associated entity); and
- Resigns from the Rail Commissioner and South Australian Public Sector effective from not later than 30 June 2020 or such other date as is agreed by the Rail Commissioner;

will receive a \$15,000 (gross) incentive payment from the South Australian Public Sector to or for the benefit of such employee, payable within 2-4 weeks of their commencement with Torrens Connect (or an associated entity).

SIGNATORY PAGE



Tony Braxton-Smith
Rail Commissioner
50 Flinders Street, Adelaide SA 5000
Employer

14.05.2020

Date



Darren Phillips
Branch Secretary
Australian Rail Tram and Bus Industry Union – South
Australia and Northern Territory Branch
Ray Hancox House, 63 Ledger Road, Beverley SA 5009
Union Bargaining Representative

14-05-2020.

Date

APPENDIX 1 – REDEPLOYMENT, RETRAINING AND REDUNDANCY

Contents

OPERATION	49
OBJECTIVES.....	49
PROCEDURE	49
1. <i>Seriously considering changes to workforce composition</i>	49
1.1 <i>Notification</i>	49
1.2 <i>Meetings with Union</i>	50
1.3 <i>Identification of new workforce composition</i>	50
2. VOLUNTARY SEPARATION PACKAGES	50
2.1 <i>Call for Expressions of Interest (EOIs) for VSPs</i>	50
2.2 <i>Agency considers outcomes of EOI process</i>	51
2.3 <i>Number of EOIs is the same as the number of identified excess positions</i>	51
2.4 <i>Number of EOIs is less than the number of identified excess positions</i>	51
2.5 <i>Calculation of a VSP</i>	52
2.6 <i>Employee offered a VSP</i>	52
3. PROCESS FOR IDENTIFYING EXCESS EMPLOYEES	52
3.1 <i>Notification to Union</i>	52
3.2 <i>Meeting with Union</i>	52
3.3 <i>Notification to affected employees</i>	52
3.4 <i>Notification to redundant employee(s)</i>	52
4. REDEPLOYMENT PROCESS.....	53
4.1 <i>Commencement of the Redeployment Process and Case Management</i>	53
4.2 <i>Criteria for suitable employment</i>	54
4.3 <i>Making of an offer of suitable employment during redeployment program</i>	54
4.4 <i>Notification of a suitable ongoing permanent role</i>	55
4.5 <i>Deferment of redeployment program</i>	55
4.6 <i>Conclusion of the Redeployment Process</i>	56
4.7 <i>Accepting a VSP while a redeployee</i>	56
5. DISPUTES	57
REVIEW	57

Operation

This Appendix operates in conjunction with consultation provisions contained in the *Rail Commissioner Tram Operations Enterprise Agreement 2020* (the Agreement).

This Appendix applies to all Parties bound by the Agreement.

Objectives

The objective of this Appendix is to ensure that proper consultation occurs between the Rail Commissioner, employees and the Australian Rail Tram and Bus Industry Union (RTBU) regarding changes in workforce composition.

The Parties acknowledge that:

- Redeployment and retraining is the preferred approach to workforce reductions;
- Forced redundancies should only be used as a last resort;
- With the exception of consultation regarding changes to workforce composition, these arrangements will apply to employees who, in the event of outsourcing or privatisation of Tram Operations (or part thereof), do not transfer to the new business under Transfer of Business arrangements under the *Fair Work Act 2009 (Cth)*;
- Where there is a need for genuine redundancies, employees must be offered a Voluntary Separation Package (VSPs); and
- Any reduction in staffing levels should be achieved by:
 1. Restricting the use of temporary contracts;
 2. Natural attrition; and
 3. Voluntary Separation Packages.

The Parties further acknowledge that changes to staffing levels, including the offering of VSPs, may have a significant effect on employees because it has the potential to lead to, amongst other things:

- The alteration in required skills of ongoing employees and potential retraining;
- The alteration of workloads and/or hours of work for ongoing employees;
- The potential diminution of job opportunities or promotional opportunities; and
- The possible redeployment of employees.

Nothing in this Appendix is intended to remove or limit the operation of Clause 49 – Resolving Workplace Concerns or Disputes contained in the Agreement.

Procedure

1. Seriously considering changes to workforce composition

1.1 Notification

- 1.1.1 When the Rail Commissioner is seriously considering changes to workforce composition, including calling for employees to express an interest in VSPs or potentially forced redundancies, the Rail Commissioner will notify the affected employees and the RTBU in writing of the intention. The notification will include (but not be limited to):
 - a) The reason the Rail Commissioner is considering changes to workforce composition;
 - b) The affected work/process/service delivery;
 - c) The affected department/location/worksite/unit;
 - d) The number and classifications of positions including (but not limited to) changes in position duties and/or responsibilities/tasks/workload;
 - e) In the event of privatisation or outsourcing, applicable Transfer of Business arrangements under the *Fair Work Act 2009 (Cth)*;
 - f) Any relevant information regarding potential effects of staffing changes on continuing employees, including changes to existing practices and/or changes that the Rail Commissioner considers necessary;
 - g) Any known potential redeployment and job vacancy options;
 - h) Data regarding the use of existing temporary employees and steps taken to reduce the use of temporary employees; and

i) Any other relevant information.

- 1.1.2 The Rail Commissioner agrees to genuinely consider in good faith any feedback provided by employees and the RTBU. The Rail Commissioner agrees to take all reasonable steps to mitigate adverse effects such as reducing, where practicable, the use of temporary employees.
- 1.1.3 The Rail Commissioner will provide the RTBU with not less than 14 days or as otherwise agreed to respond to written notification.
- 1.1.4 Where the total number of positions affected may be 20% or more of the FTE at the worksite, the Rail Commissioner will facilitate reasonable paid time for meeting(s) between employees and the RTBU.
- 1.1.5 Where the RTBU respond to the written notification or requests for further information, the Rail Commissioner will respond within 14 days or as otherwise agreed.

1.2 Meetings with Union

- 1.2.1 The Parties agree to meet and seek to reach agreement on the proposed changes to workforce composition, as soon as practicable after step 1.1 has been completed (unless otherwise agreed).
- 1.2.2 The Rail Commissioner will give genuine consideration to matters raised by the RTBU including any proposals to mitigate any adverse effects and any other proposals to avoid the redundancy (for example, job swaps where employees may wish to swap roles).
- 1.2.3 Where any issues remain unresolved following further consultation, either party may utilise Clause 46 – Resolving Workplace Concerns or Disputes in the Agreement, including by referring the matter to the Fair Work Commission, noting however that the Commission will not be empowered to make any order having the effect of determining the composition of the workforce.
- 1.2.4 The Parties agree to maintain the status quo whilst the matter remains in dispute.

1.3 Identification of new workforce composition

- 1.3.1 Prior to calling for expressions of interest (EOI), the proposed new workforce composition (i.e. full-time equivalent required to undertake the required duties) must have been identified in accordance with consultative processes set out in 1.1 and 1.2, and following any Transfer of Business arrangements applicable under the *Fair Work Act 2009 (Cth)*. The Rail Commissioner will then confirm in writing the new workforce composition to the affected employees and the RTBU.
- 1.3.2 Rail Commissioner cannot use the EOI process to inform/decide what the new workforce/change may be.

2. Voluntary Separation Process

2.1 Call for Expressions of Interest (EOIs) for Voluntary Separation Packages (VSP)

- 2.1.1. The Rail Commissioner will only call for EOIs after the number of genuinely redundant positions has been determined in accordance with the consultation requirements outlined above and following any Transfer of Business arrangements applicable under the *Fair Work Act 2009 (Cth)*, unless otherwise agreed.
- 2.1.2. The Rail Commissioner will write to employees (i.e. permanent/ongoing employees) in work sites affected by the proposed change requesting EOIs for VSPs. The request will,

at a minimum, be sent to employees working in the positions identified as no longer required (i.e. determined to be excess/redundant).

- 2.1.3. The call for EOIs for VSPs will have a specified closing date and will be open for not less than 21 days.
- 2.1.4. The call for EOIs will include information regarding how a VSP may be estimated, the number of positions that have been determined to be genuinely redundant, details of the position(s) that have been determined “excess” and an option for employees to discuss and explore reasons why these positions are no longer required. A copy of this notification should be provided to the RTBU.
- 2.1.5. Employees may seek assistance from a nominated Human Resource representative to determine an approximate calculation as to what a possible VSP would be without completing an EOI. Such a calculation would only be an approximation and possibly subject to variation.

2.2 Agency considers outcomes of EOI process

- 2.2.1. As soon as practicable after the EOI period has closed, the Rail Commissioner will consider and consult with the relevant employees and the RTBU regarding the outcomes of the EOI process. For the purposes of consultation, the Rail Commissioner will provide the RTBU in writing the outcomes of the EOI process and provide the RTBU with a minimum of 14 days notice to respond, prior to any VSP offers being made.
- 2.2.2. In the event Rail Commissioner has determined potential VSP offers for affected employees, if requested, the Parties agree to meet to discuss the proposed VSPs as soon as practicable.
- 2.2.3. Where a meeting is requested, the Rail Commissioner agrees to delay VSP offers to employees until after the meeting has occurred.
- 2.2.4. Where The RTBU requests further information or seeks a response, the Rail Commissioner will respond as soon as practicable.
- 2.2.5. The Rail Commissioner agrees to delay VSP offers to employees until 7 days after a response is provided to the RTBU.
- 2.2.6. In the event that the number of suitable applicants for VSPs is greater than the number of positions identified as “excess” the Rail Commissioner will inform the RTBU of the selection criteria it will utilise to determine which employees will be offered VSPs. The criteria may include (but is not limited to):
 - The new workforce composition position descriptions;
 - Hours of work;
 - Skills, experience and qualifications; and
 - Any other factors (such as geographical location).

2.3 Number of EOIs is the same as the number of identified excess positions

- 2.3.1 In the event the number of EOIs matches the number of identified excess positions, the Rail Commissioner will notify the effected employees and RTBU.

2.4 Number of EOIs is less than the number of identified excess positions

- 2.4.1 Where the number of EOIs is less than the number of identified excess positions, the Rail Commissioner will not unreasonably refuse to offer an employee a VSP.

- 2.4.2 In the event the number of EOIs is less than the number of identified excess positions, the Rail Commissioner will move to the steps outlined in 3. Process for Identifying Excess Employees.

2.5 Calculation of a VSP

- 2.5.1 The Parties agree that for the purpose of a VSP, an employee will be paid not less than the *Department of Treasury and Finance – Targeted Voluntary Separation Packages (TVSPs)* as at 1st July 2015.

2.6 Employee offered a VSP

- 2.6.1 Affected employees will be notified in writing that their EOI for a VSP has been received.
- 2.6.2 The Rail Commissioner will provide written advice to the employee which will include the proposed date on which the Rail Commissioner intends to make the employee an offer of a VSP, including the proposed date of payment of the VSP and the proposed date of the employee's separation from the public sector.
- 2.6.3 The notification of the intention to make an offer of a VSP will also include the date by which the employee is required to advise the Rail Commissioner if they do not wish to be made an offer of a VSP.
- 2.6.4 Where the employee confirms they wish to progress with the VSP, the Rail Commissioner will provide an offer of a VSP to the employee which will include the date on which the VSP will be paid, the date of the employees separation, the steps the employee can take to decline the offer of the VSP, and that the Rail Commissioner must declare that their position is no longer required and therefore "excess" (redundant).
- 2.6.5 In addition to the payment of a VSP, an additional lump sum payment of \$15,000 will be payable to an employee who accepts a TVSP either as a result of an EOI or within the first 3 months of being declared excess/redeployee.
- 2.6.6 Upon receipt of a VSP, the employee's employment in the public sector will cease.

3. Process for identifying excess employees

3.1 Notification to Union

- 3.1.1 Where there are insufficient numbers of EOIs to meet the number of excess positions identified in 1.3 the Rail Commissioner will notify the relevant employees and the RTBU of the following information in writing:
- a. the number of remaining excess positions, including job classification/role /worksite location/FTE equivalent;
 - b. number of affected employees; and
 - c. the proposed time frames and plan for notification and consultation with affected employees.

3.2 Meeting with Union

- 3.2.1 Prior to notifying affected employees (clause 3.3), the Rail Commissioner and the RTBU will meet to discuss the selection criteria to be used for forced redundancies, the proposed time frames and plan for notification and consultation with affected employees.

3.3 Notification to affected employees

- 3.3.1 The Rail Commissioner will inform the affected employee/s in writing that there were insufficient numbers of EOIs for voluntary redundancies and provide information regarding the number of positions and employees that will be declared excess and made redundant. A copy of any correspondence will also be provided to the RTBU. This will include all relevant information including, but not limited to, why the position/s have been determined to be genuinely redundant, the number of redundant positions, the application of the above selection criteria, and information regarding the timeline and process.
- 3.3.2 The Rail Commissioner will notify employees of their right to be represented by the RTBU.
- 3.3.3 The Rail Commissioner will take all possible steps to mitigate the adverse effect on the employee/s affected, including (but not limited to) consideration of immediate redeployment to a suitable alternative position with the consent of the affected employee/s.
- 3.3.4 The Rail Commissioner will organise at least one paid meeting with the affected employee/s to discuss the redundancies. The RTBU will be invited to attend this meeting.

3.4 Notification to redundant employee(s)

- 3.4.1 The Rail Commissioner will then notify the redundant employee/s and the RTBU that the particular employees will be made redundant. Prior to notifying a redundant employee, the Rail Commissioner must declare that the employee's position is no longer required and therefore "excess" (redundant).
- 3.4.2 The redundant employee/s will be notified in writing that their position is "excess" and may elect to consider a VSP or seek redeployment. In this same notification, the Rail Commissioner will provide the employee with the following:
- The date their position will be made redundant shall be no earlier than 28 days from the date the notification is received;
 - Information regarding taking a VSP and information regarding the redeployment process. This information will clearly outline what the employee's entitlement would be if they elect to take a VSP at the date of termination, pursuant to step 2.5.
 - That the employee may request a paid time meeting with the Rail Commissioner to discuss any aspect of the redundancy and/or redeployment process.
 - That the employee is entitled to be represented during the meeting by the RTBU.
 - Should the employee wish to accept the offer for a VSP at this time, they must do so within the timeframe provided, which must be no less than 28 days. Upon acceptance of the VSP, their employment in the public sector will cease upon receipt of the VSP.

4. Redeployment Process

4.1 Commencement of the Redeployment Process and Case Management

- 4.1.1 Following receipt of written advice of being declared an excess employee, where an employee has elected to become a redeployee (i.e. has decided not to accept an offer for VSP), the redeployee will be assigned a case manager and will participate in the redeployment/retraining program.

- 4.1.2 A redeployment plan will be established in consultation with the redeployee which aims to identify a suitable alternative ongoing permanent role in the public sector which would, with appropriate training and support, be reasonably available to the employee. The plan will also include (but not be limited to):
- details of any training to be provided;
 - skills or duties relevant to a suitable placement and/proposed role; and
 - job fit assessment and analysis.
- 4.1.3 A copy of the redeployment plan will be provided to the redeployee.
- 4.1.4 The redeployee's case manager will have priority access to the notice of vacancies and redeployee will also have access to notice of vacancies.
- 4.1.5 The excess employee is also expected to cooperate and participate in all reasonable training opportunities or placements.
- 4.1.6 Criteria for suitable training
- a. Training will be provided to the redeployee by the Rail Commissioner consistent with meeting the requirements for the suitable employment identified at 4.1.2.

4.2 Criteria for suitable employment

- 4.2.1. An ongoing permanent role in any agency in the Public Sector will only be considered suitable for the purposes of redeployment if (unless the employee otherwise agrees):
- a. The hours of work remain the same or similar where practicable;
 - b. It is a reasonable distance/location from the employee's residence to the new place of employment;
 - c. The classification is commensurate with the employee's job fit assessment and analysis, and the employee is assessed as being able to perform the role with reasonable training and support over a reasonable period of time;
 - d. The remuneration is not less than what the employee was earning prior to becoming a redeployee;
 - e. The nature of the work is such that it is reasonable to perform, taking into account the employee's skill and experience;
 - f. There are no extenuating factors specific to the employee/worksite that would make it unreasonable for the employee to perform the ongoing permanent role.
- 4.2.2. The above criteria does not limit further discussions and agreements between the employee and their case manager.
- 4.2.3. The applicable Income Maintenance policy will apply to employees transferred to a suitable ongoing role.

4.3 Making of an offer of suitable employment during redeployment program

- 4.3.1. During the redeployment process the applicable case managers/agency representatives will genuinely seek to identify an alternative role or placement that is a reasonable match with the employee's skills and capabilities (including with reasonable training).
- 4.3.2. In the event that an offer for an alternative role/position is not made within six months of the employee being declared excess, or before the date of enrolment of the employee into training identified in the redeployment programme established at 4.1.2, whichever is the greater, the case manager must meet with the employee and their representative (if applicable) to discuss and review the employees redeployment plan.

- 4.3.3. The outcomes of these discussions and the action plan for next steps must be provided in writing to the employee and a copy forwarded to the Office for the Public Sector (OPS).
- 4.3.4. In the event an offer for a suitable ongoing permanent role has not been identified and made within nine months from the date of them being declared excess, or before the date of enrolment of the employee into training identified in the redeployment programme established at 4.1.2, whichever is the greater, the relevant agency must notify the OPS.
- 4.3.5. The Rail Commissioner will discuss with the employee (and the RTBU) any reasons that an alternative role has not been achieved. At this stage the Commissioner for Public Sector Employment (CPSE) or representative from the OPS will become involved in order to review the process and options available for redeployment.
- 4.3.6. In the event that an offer of suitable employment has not been identified and made within 12 months of the employee being declared excess, or before the date of enrolment of the employee into training identified in the redeployment programme, whichever is the greater, the Rail Commissioner, the CPSE or representative from OPS, and the employee (and RTBU) will meet to discuss the outcome of the redeployment/retraining programme. The Parties will discuss:
- Whether the redeployment plan has been complied with by the Rail Commissioner and the employee;
 - Whether all reasonable efforts have been made to identify suitable employment for the employee; and
 - Whether there are exceptional circumstances which could make it reasonable to extend the redeployment/retraining programme, and/or amend the redeployment plan, to provide further opportunity to identify suitable employment.
- 4.3.7. For the purposes of 4.3.6, “exceptional circumstances” may include the geographical location of the employee, the unique skills and/or experience of the employee, the age of the employee, or the circumstances of the employee becoming excess, which circumstances provide additional difficulty to the identification of suitable employment for the employee.
- 4.3.8. Where any issues remain unresolved, either party may utilise clause 46 – Resolving Workplace Concerns or Disputes in the Agreement.

4.4 Notification of a suitable ongoing permanent role

- 4.4.1 Where an offer of a suitable ongoing permanent role is made to an employee, such notification will be provided in writing. Written notification will also include:
- A contract of employment for the new role;
 - A Job and Person Specification for the new role; and
 - Information advising the employee that should they not accept the suitable ongoing permanent role, the employee may be separated with five weeks’ notice and separation pay outlined in 4.6.3 (provided that the terms of this Appendix have been met). Such information will be clearly outlined to the employee.
- 4.4.2 An employee will be given a minimum of 14 days to consider whether they wish to accept the suitable ongoing permanent role.

4.5 Deferment of redeployment program

- 4.5.1. Rail Commissioner must defer the redeployment period where an employee that has been declared excess is absent from duty by reason of:
- Parental leave; or
 - Defence reserves leave; or

- Where an employee is in receipt of weekly payments for a compensable workplace injury or illness and/or subject to a Rehabilitation and Return to Work Plan for such injury or illness.

4.5.2. Rail Commissioner may approve an application for deferment of the redeployment period by an employee who has been declared excess, on the basis of exceptional personal circumstances by the employee. The Rail Commissioner is required to seek advice from the Commissioner for Public Sector Employment. This decision making function is not to be delegated.

4.6 *Conclusion of the Redeployment Process*

4.6.1 The redeployment process will end only when the following criteria has been satisfied:

- a. The employee has accepted employment in an ongoing role; or
- b. For an employee whose position has been determined to be excess as a result of the Rail Commissioner's decision to privatise, outsource, contract out or the closure/part closure of a service(s) and the employee has been offered employment in a suitable ongoing permanent role and has declined such ongoing employment; or
- c. The employee has been offered employment in a suitable ongoing permanent role and has declined such ongoing employment;
- d. The Rail Commissioner and employee has negotiated, been offered and accepted an additional separation payment;
- e. For employees other than those in 4.6.1(b), all reasonable attempts have been made to offer suitable alternative employment and the redeployment process set out in 4.3 has been completed; or
- f. The employee has at any stage elected to take a VSP, in accordance with step 4.7.

4.6.2 Where the redeployment process ends, the Rail Commissioner will confirm in writing to the employee the outcome of that process.

4.6.3 Where an employee has been offered employment in a suitable ongoing permanent role and has declined such ongoing employment or the redeployment process set out in clause 4.3 is completed, the following will apply:

- a. The employee will be provided in writing a minimum of five weeks' notice of the date of separation.
- b. During the notice period, the Rail Commissioner agrees to allow a minimum of one day of paid leave each week to job seek.
- c. During the notice period, the Employee may give notice of their intention to resign their employment with 24 hours' notice and be paid the balance of the notice period.
- d. A separation payment as set out in clause 4.7.3 will be paid to the employee at the separation date of their employment.

4.7 *Accepting a VSP while a redeployee*

4.7.1 At any time while an employee is a redeployee, they may give notice that they wish to accept a VSP.

4.7.2 A redeployee will only be required to provide one weeks' notice to terminate their employment (or less by agreement).

4.7.3 An employee who indicates that they wish to accept a VSP, in accordance with clause 4.7.1, will be entitled to the following amounts of redundancy pay:

- a. An employee who has been a redeployee for between 0 to 12 months is entitled to receive redundancy pay equal to 100% of the VSP clause 2.5; or
- b. An employee who has been a redeployee for more than 12 months is entitled to receive redundancy pay equal to 75% the VSP, specified in clause 2.5.

5. Disputes

5.1. Where a dispute arises in relation to the operation of this Appendix, the Parties may raise a dispute in accordance with 49 – Resolving Workplace Concerns or Disputes of the Agreement.

5.2. A dispute may be raised at any stage of this Appendix. Where a dispute is raised in relation to this Appendix, the status quo will remain until the matter is resolved.

5.3. Where the Parties cannot reach agreement to resolve a dispute in relation this Appendix, the Parties agree that the dispute may be arbitrated by the Fair Work Commission.

Review

The Rail Commissioner and the RTBU will review the implementation of this process no earlier than 12 months after date of approval of this enterprise agreement.

“Declared excess” means the date of written notice to the employee that their position is no longer required.

APPENDIX 2 – INJURY AND INCOME PROTECTION PRINCIPLES

1. PREAMBLE

- 1.1 This 'Injury and Income Protection' policy is founded upon the current Police Disability Pension under Regulation 38A of the Southern State Superannuation Regulations 2009 that is available to workers who meet specific criteria for eligibility.
- 1.2 The Regulations referred to above were introduced during the operation of the previous *Workers Rehabilitation and Compensation Act 1986*.
- 1.3 The content of an amended Regulation 38A and the principles agreed between the Government and the Police Association of South Australia are set out in this policy.
- 1.4 Under this new 'Injury and Income Protection' policy an eligible worker will receive entitlements as outlined in this policy.

2. FUNDING ARRANGEMENTS

- 2.1 The funding arrangements for this policy shall be provided within the budget process of the agency.

3. ADMINISTRATION OF THIS POLICY

- 3.1 The responsibility for administering this policy is vested in the Rail Commissioner or delegate.
- 3.2 In administering this policy the Rail Commissioner shall provide procedural fairness when making potentially adverse decisions affecting injured workers.

4. DEFINITIONS

- 4.1 This policy applies to workers who have an accepted claim pursuant the *Workers Rehabilitation and Compensation Act 1986* or the *Return to Work Act 2014* and meet the eligibility requirements of this policy.
- 4.2 "Employer" means Rail Commissioner or delegate.
- 4.3 "Benefits" means weekly payments of income maintenance or medical and like expenses.
- 4.4 "Financial support" means the weekly payments of income support made pursuant to this policy.
- 4.5 "Independent Medical Adviser" in this policy means an Independent Medical Adviser as listed on the South Australian Employment Tribunal website (www.saet.sa.gov.au).
- 4.6 "Notional Weekly Earnings" within this policy means the "Salary as specified for the eligible worker's classification in the applicable Enterprise Agreement".
- 4.7 "Retirement" in this policy has the same meaning as 'retiring age' as defined in section 44 of the *Return to Work Act 2014*.
- 4.8 "Recovery/return to work plan" includes a recovery/return to work plan established or continuing under this policy.

5. MUTUAL OBLIGATIONS

- 5.1 A worker while in receipt of benefits pursuant to this policy is entitled to expect—
 - (a) The employer to continue to actively manage the worker's injury, to provide services and to participate and cooperate in assisting the workers recovery and return to work; and
 - (b) A worker may reasonably request the employer to review the provision of any service to the worker under this policy or to investigate any circumstance where it appears that the employer is not complying with any requirement of this policy.
- 5.2 A worker while in receipt of benefits pursuant to this policy must—
 - (a) participate in all activities designed to enable the worker to recover and return to work as soon as is reasonably practicable; and
 - (b) without limiting paragraph (a)—

- (i) participate and cooperate in the establishment of a recovery/return to work plan; and
 - (ii) comply with obligations imposed on the worker by or under a recovery/return to work plan; and
- (c) ensure that the employer is provided with current medical certificates (in a designated form provided by recognised health practitioners not inconsistent with the *Return to Work Act 2014*) with respect to any incapacity for work for which financial support is being provided under this policy so as to provide evidence to support the continuation of those payments; and
- (d) return to suitable employment when reasonably able to do so; and
- (e) take reasonable steps to mitigate any possible loss on account of the work injury.

6. RETURN TO WORK COMMITMENT

6.1 Whereas:

- (a) the parties agree that a return to work within the meaning of the *Return to Work Act 2014* is always the objective in the case of any work injury;
- (b) the unions and workers covered by this agreement will reasonably support and cooperate in the pursuit of this objective as required by the *Return to Work Act 2014* and this agreement.

7. COVERAGE & BENEFITS - INJURIES ON OR AFTER 1 JULY 2015

7.1 Those workers who are injured on or after 1 July 2015 in circumstances where the worker:

- (a) is temporarily or permanently incapacitated for work as a result of a physical or psychological injury sustained when he or she was on duty or lawfully exercising the duties of a worker in their employment; and
- (b) the injury—
 - i. resulted from conduct directed at the worker that constitutes a criminal offence; or
 - ii. occurred as a direct and immediate result of conduct that constitutes a criminal offence in the course of the workers employment or conduct that appears to be criminal; or
 - iii. occurred as a direct and immediate result of conduct that constitutes a criminal offence; or
 - iv. occurred in other circumstances where the worker is placed in a dangerous situation in the course of, or as a consequence of, acting in, or engaging in, their duties or position excluding psychological injury other than that caused as a consequence of a specific incident or incidents.
- (c) has an accepted claim pursuant to the *Return to Work Act 2014*; and
- (d) has had their individual entitlements exhausted pursuant to the *Return to Work Act 2014*; and
- (e) has not been assessed as having a 30% or more Whole Person Impairment (WPI); and
- (f) has not made a return to work within the meaning of the *Return to Work Act 2014*;

will be provided on the following basis:

7.2 In the case of medical expenses, ongoing cover for such expenses as are reasonably and necessarily incurred as a direct result of such accepted claim (other than those already covered by the Employer); or

7.3 A redemption of medical expenses referred to in 7.2.

7.4 In the case of financial support:

- (a) A top-up payment to achieve 80% notional weekly earnings or 80% of the difference between actual earnings and notional weekly earnings until retirement or return to work, subject to a work capacity review as per the

- Workers Rehabilitation and Compensation Act 1986* and meeting the mutual obligations set out in this policy; or
- (b) A redemption of 7.4(a).

8. COVERAGE & BENEFITS - INJURIES PRIOR TO 1 JULY 2015

- 8.1 Those workers who were injured prior to 1 July 2015 in circumstances of 7.1(a) and (b); and
- (a) have an accepted claim pursuant to the *Workers Rehabilitation and Compensation Act 1986/Return to Work Act 2014* and;
 - (b) have had their individual entitlements exhausted pursuant to the *Return to Work Act 2014* and;
 - (c) have not been assessed as having a 30% or more Whole Person Impairment (WPI) and;
 - (d) have not made a return to work within the meaning of the *Return to Work Act 2014*;
- will be provided on the following basis:
- 8.2 In the case of medical expenses, ongoing cover for such expenses as are reasonably and necessarily incurred as a direct result of such accepted claim (other than those already covered by the Employer) or;
- 8.3 A redemption of medical expenses referred to in 8.2.
- 8.4 In the case of financial support:
- (a) A top-up payment to achieve 80% notional weekly earnings or 80% of the difference between actual earnings and notional weekly earnings until retirement or return to work, subject to a work capacity review as per the *Workers Rehabilitation and Compensation Act 1986* and meeting the obligations set out in this policy, or
 - (b) a redemption of 8.4(a); or
 - (c) payment of an amount equivalent to the payment to which the worker would have been entitled to under section 39 of the *Return to Work Act 2014* had their compensable injury occurred after 1 July 2015.
- 8.5 Any financial support provided for in this policy shall be discounted to the extent of any payment made pursuant to *Part 4, Division 6 of the Return to Work Act 2014*.

9. WORK CAPACITY REVIEW PROVISION - as referred to in 7.4(a) and 8.4(a)

- 9.1 In regard to 7.4(a) and 8.4(a), a worker's entitlement to financial support pursuant to this policy does not commence, or if having commenced, ceases, unless the worker is assessed by the employer as:
- (a) having no current work capacity; and
 - (b) likely to continue indefinitely to have no current work capacity; or
 - (c) being in employment, and that because of the compensable injury the worker is, and is likely to continue indefinitely to be, incapable of undertaking further or additional employment or work which would increase the worker's current weekly earnings.
- 9.2 A review of the assessment of a worker under 9.1 may be conducted by the employer at any time and must be conducted as often as may be reasonably necessary, being at least once in every two years.
- 9.3 An assessment under 9.1 may be conducted before or after the period of financial support provided pursuant to the *Return to Work Act 2014* has been exhausted.
- 9.4 A worker receiving financial support under this policy shall continue to receive such financial support unless or until the employer has assessed whether the worker as:
- (a) having no current work capacity; and
 - (b) likely to continue indefinitely to have no current work capacity.
- 9.5 The employer must not discontinue the financial support under this policy on the basis of a work capacity assessment until it has given the worker 13 weeks' notice in writing of the proposed discontinuance. Such notice must not be given unless and until the assessment referred to herein has been undertaken.

- 9.6 A worker who is, or has been, entitled to financial support under this policy may apply to the employer for a decision that the worker's entitlement to financial support under this policy does not cease.
- 9.7 The employer, upon receipt of an application under 9.6 may decide that the worker's financial support under this policy does not cease as contemplated by 9.1 if the employer is satisfied that the worker is in employment and that because of the work injury, the worker is, and is likely to continue indefinitely to be, incapable of undertaking further or additional employment or work which would increase the worker's current weekly earnings.
- 9.8 The employer:
- (a) must within 90 days of receiving an application under 9.6, make or refuse to make a decision under 9.7 and advise the worker in writing of its decision (unless the employer requires an extension of time because of the operation of paragraph (b)); and
 - (b) must not refuse to make a decision under 9.7 on the ground that the employer is not satisfied under the requirements of that clause unless—
 - i. the employer has referred the medical question whether, because of the injury, the worker is, and is likely to continue indefinitely to be, incapable of undertaking further or additional employment or work, and if not so incapable, what further or additional employment or work the worker is capable of undertaking, for the opinion of an Independent Medical Adviser ('IMA'); and
 - ii. the opinion of the 'IMA' is that the worker is not so incapable and specifies what further or additional employment or work the worker is capable of undertaking.
- 9.9 If the employer makes a decision under 9.7, the worker is entitled to financial support in accordance with clause 7.4 (for injuries occurring on or after 1 July 2015) or 8.4 (for injuries occurring prior to 1 July 2015).
- 9.10 The entitlement to financial support under 9.9 continues until—
- (a) the employer ceases to be satisfied as to the matters specified in 9.7; or
 - (b) the worker otherwise ceases to be entitled to financial support under this policy.

10. CEASING OF BENEFITS

- 10.1 In regard to a worker's entitlement to financial support ceasing for any reason other than on the basis of a work capacity assessment, 28 days' notice outlining the reasons for discontinuance is to be provided before the discontinuance of financial support.
- 10.2 Benefits pursuant to these this policy shall no longer apply in the event that an eligible worker in the view of the employer:
- (a) Has "returned to work" under the *Return to Work Act 2014*; or
 - (b) Has had a Work Capacity Assessment the result of which is cessation of payments under clause 9.1 of this policy; or
 - (c) Fails to comply with the Mutual Obligations of this policy; or
 - (d) Receives a redemption of entitlements pursuant to the *Workers Rehabilitation and Compensation Act 1986* or the *Return to Work Act 2014*; or
 - (e) Retires, resigns or is terminated from employment; or
 - (f) Is in receipt of income or other financial benefits in lieu of wages; or
 - (g) Is classified as a seriously injured worker under the *Return to Work Act 2014*.
- 10.3 If a worker applies for and takes a period of annual or long service, the employer may suspend the financial support that would otherwise be payable to the worker during the period while the worker is on leave.

11. PROVISIONS APPLICABLE TO MEDICAL EXPENSES

- 11.1 In the case of 7.2 and 8.2, an eligible worker incurring medical expenses beyond the period provided for within the *Return to Work Act 2014* pursuant to this policy shall in the first instance claim such incurred expenses against the private health insurance policy held by the worker or, in the case of a worker whose private health insurance

policy does not cover the particular item or who does not hold a private health insurance policy, from Medicare.

- 11.2 The worker may then claim 'out of pocket' costs against this policy for:
- (a) attendance, examination or treatment by a health practitioner including the obtaining of a certificate or report; or
 - (b) any diagnostic examination or test required for the purpose of treatment by a health practitioner; or
 - (c) any medical services which are included in the scales of charges published by the Minister for Industrial Relations under section 33(12)(a) of the *Return to Work Act 2014*.

12. DISPUTATION RESOLUTION PROCEDURE

- 12.1. Where a dispute arises in relation to the operation of this Schedule, the Parties may raise a dispute in accordance with clause 49.

APPENDIX 3 – SPECIAL LEAVE

1 Special leave with or without pay

1.1 An employee can apply for special leave with or without pay which forms part of the 15 days special leave with pay per service year.

1.2 The Employer may grant special leave with and without pay in accordance with this clause. This includes special leave with or without pay as it relates to:

1.2.1 Bereavement leave

- (i) An employee (other than a casual employee), on the death of a:
 - (a) Spouse (including a de facto spouse or a former spouse or de facto spouse);
 - (b) parent;
 - (c) parent-in-law;
 - (d) sister or brother;
 - (e) child or step-child;
 - (f) household member;
 - (g) grandparent;
 - (h) grandchild;

is entitled, on notice to their manager, to special leave with pay for 2 ordinary days' work. Proof of death must be furnished by the employee to the satisfaction of the employer, if requested. Whilst the employer needs to be satisfied that there is justification for granting such leave, such requests should be treated with respect and acknowledgement of the employee's circumstances.

- (ii) Additional leave in the form of recreation leave, long service leave, special leave with or without pay or the like may be approved by agreement with the employer subject to the circumstances and requirements of the employee. Should additional special leave with pay be approved, the additional leave forms part of the 15 days special leave with pay per service year.

1.2.2 Urgent Pressing Necessity

- (i) Special leave with pay may be granted for urgent and pressing necessity (including a traumatic event) to enable an employee to be absent due to a matter of pressing or urgent necessity that requires the personal attention of the employee and cannot reasonably be attended to by the employee outside the employee's hours of duty. Such absences may be due to but not limited to situations involving family members.

- (ii) The criteria for approving such leave is that the employer must be satisfied that it is not practicable or reasonable for alternative arrangements to be made. Further, the employer may have regard to available options to plan for the absence and to use alternate leave arrangements including flexible working arrangements (Individual Flexible Working Arrangements). This leave forms part of the 15 days special leave with pay per service year

1.2.3 Individual Needs and Responsibilities

This category provides for the employer to consider applications for special leave with pay that cover absences limited to compassionate reasons, cultural and community responsibilities and domestic relocation arrangements. The leave covered by this category forms part of the 15 days special leave with pay per service year and is detailed below.

1.2.3.1 Access to up to 15 days of special leave may be granted to employees for cultural leave and community responsibilities including fulfilling community, ceremonial, family, funeral and/or cultural obligations. Additional leave in the form of recreation leave, long service leave or the like may be approved by agreement with the employer to the circumstances and requirements of the employee.

1.2.3.2 Moving House – 1 day per every three years only. This leave is available where an employee changes residence for personal reasons. If more than one family member is employed by the employer, only one member is to be granted leave on account of a removal. The employer should be satisfied that the removal will require the employee's absence for the greater part of a working day.

1.2.3.3 Care of a Sick Child who is a Dependant– up to 3 days in a service year.

- (i) An employee may make an application for special leave with pay for this purpose and may be granted for up to three days in a service year. An employer should be satisfied that it is not practical or reasonable for alternative arrangements to be made. One day's special leave with pay may be granted in cases where a suitable alternative does exist, but it would not be reasonable or practicable to expect it to be immediately available.
- (ii) *South Australian Industrial Relations Commission decision 1591/1996 regarding an Application to Vary the Department for Education and Children's Services Enterprise Agreement 1996* provides further explanation on when an employee is able to make an application for special leave with pay in order to care for a sick child who is a dependent. It provides that there is no requirement to use Personal Leave to care for a sick child prior to accessing this type of leave. Such leave is not accumulative from year to year and does not reduce the entitlement to any other form of leave.

- (iii) A sick child means a child who needs direct care and support due to injury or illness. Note: an employee is able to make an application for special leave with pay to care for family member (other than for a dependent child) via "urgent pressing necessity" provisions.

1.1.3.4 Participation as an Elite athlete

- (i) Elite athletes may be granted special leave with pay, including up to 2 days travel time, if the employee;
 - (a) will compete at an Olympic, Paralympics or Commonwealth games in an eligible sport or;
 - (b) is ranked in the top ten in the world in the in an eligible sport;
 - (c) or is a member of a national or South Australian state team/squad of an eligible sport;
 - (d) or is a coach, official and non-officiating participant in relation to an eligible sport.
- (ii) The relevant sports organisations which determine the range of eligible sports for which elite athletes may be granted special leave with pay comprise those sports listed on the program for the next Olympic, Paralympics, Commonwealth games or their successors and will only be altered in conjunction with any changes made by the respective Games Associations. Current details for the appropriate National or State sports organisation are available from the South Australian Sports Institute or its successor.
- (iii) An employer may approve special leave with pay to elite athletes if they meet the criteria above for the period of peak official competition attendance plus up to two days travelling time for each such attendance. They may also approve up to the equivalent of ten working days special leave with pay per service year for official Commonwealth, Paralympics or Olympic games (or their successors) lead up camps. An employer also has the discretion to provide support for other training or competitive events by approving additional special leave with or without pay.
- (iv) An employer may also approve special leave with pay for coaches, officials and non-officiating participants as follows:
 - (a) head coaches, who are entitled to the same entitlements as elite athletes.
 - (b) assistant coaches, umpires, referees and team managers, who are eligible for leave to attend a peak official national or international sporting competition in

an eligible sport; plus up to two days travelling time for each such attendance. No other special leave with pay is available; and/or

- (c) escorts for disabled athletes who meet the above criteria for elite athletes who are entitled to the same entitlements as those elite athletes.
 - (v) Applications for special leave with pay must be accompanied by a copy of the official advice from the appropriate Australian (or if appropriate South Australian) body to the employee about the employee's selection as an Australian (or if appropriate South Australian) representative and a copy of the official itinerary or details of the training camps.
 - (vi) Applications for special leave with pay will be required to meet the relevant criteria as listed above. If special leave with pay is requested and the criteria are not met, then the employer may consider granting special leave without pay, recreation leave, long service leave, or retention leave, or allowing the employee to use flexible working arrangements (Individual Flexible Working Arrangements).
 - (vii) In addition, the employer could consider the granting of special leave with pay for individual needs and responsibilities.
- 1.1.3.5 The Employer may approve periods of special leave with or without pay following a period of compassionate leave.
- 1.1.3.6 Access to personal leave does not limit an employee's right to apply for special leave with or without pay.
- 1.1.3.7 This clause cannot provide entitlements to Tram Operations Employees below those provided in the National Employment Standards or in other clauses of this Agreement.

2 Family and Domestic Violence

2.1 For the purpose of this clause, family and domestic violence is defined as abusive behaviours by one person against another, within an intimate relationship such as marriage, domestic partnerships, cohabitation, dating or within a family including across generations. To avoid doubt, this definition includes behaviour that:

- (a) is physically or sexually abusive; or
- (b) is emotionally or socially abusive; or
- (c) is economically abusive; or
- (d) is threatening or intimidating; or
- (e) is depriving or creates property damage (including pets and other animals).

APPENDIX 3 – SPECIAL LEAVE

2.2 Family and Domestic Violence Leave

2.2.1 An employee experiencing family and domestic violence is entitled to 15 days per year of paid family and domestic violence leave for the purpose of:

- (a) attending legal proceedings, court appearances counselling, appointments with a medical or legal practitioner;
- (b) relocation or making other safety arrangements; or
- (c) other activities associated with the experience of family and domestic violence.

2.2.2 In addition, an employee who provides support to a person experiencing family and domestic violence may apply for urgent and pressing necessity.

2.2.3 This leave will be in addition to existing leave entitlements, including special leave with pay and may be taken as consecutive or single days or as a fraction of a day.

2.2.4 Upon exhaustion of the leave entitlement in clause 2.2.1, employees may request other forms of leave available including but not limited to additional special leave with pay available under urgent pressing necessity.

2.3 Notice and Evidentiary Requirements

2.3.1 The employee shall give his or her employer notice as soon as reasonably practicable of their request to take leave under this clause.

2.3.2 If required by the employer, the employee must provide evidence that would satisfy a reasonable person that the leave is for the purpose as set out in clause 2.2. Such evidence may include a document issued by:

- (a) the police;
- (b) a court;
- (c) a registered medical practitioner or registered nurse;
- (d) a counsellor trained in providing support to people experiencing the effects of domestic/family violence;
- (e) an employee assistance program; or
- (f) a family violence support service.

2.3.3 The employer must ensure that any personal information provided by the employee to the employer concerning an employee's experience of family and domestic violence is kept confidential. In order to maintain confidentiality, the leave may be requested, approved and recorded in such circumstances as 'urgent pressing necessity'.

2.4 Individual Support

24.1 The employer may approve appropriate flexible work arrangements including:

- (a) a temporary change to a work location;
- (b) change in work pattern or part time work arrangements; and/or
- (c) a change to the employee work phone and email address.

24.2 An employee that discloses to their employer that they are experiencing domestic violence will be offered:

- (a) access to the Employee Assistance Program; and
- (b) regular check ins from their employer following the disclosure meeting.

2.5 Workplace Safety

2.5.1 The employer will consult their domestic violence workplace risk plan (or equivalent documentation) to assess the risk to the employee, other staff and the workplace.

2.5.2 The employer can initiate security arrangements such as escorting the employee to and from their car before and after work or the use of cab charges to ensure the safety of an employee arriving or leaving the workplace.

2.5.3 Where an abusive person attends at the employee's workplace or otherwise threatens or harasses an employee at the workplace, the appropriate authorities should be advised immediately.

3 Emergency Services and Defence Force Leave

3.1 An employee can apply for special leave with pay for emergency services including community service, as follows:

- (a) 15 days special leave with pay per service year.

3.1.1 Special leave covered by this category forms part of the 15 days special leave with pay per service year as per clause 1.1.

3.2 Emergency services including community service

Employers are encouraged to grant special leave with pay to an employee to undertake duties as a volunteer member of an emergency service or community organisation, such as:

- (a) St John Ambulance Australia;
- (b) SA Ambulance Service;
- (c) State Emergency Service South Australia;
- (d) Country Fire Service; or
- (e) their successors.

3.2.1 Employees engaged in duties, a role or position or particular task that is/are urgent or essential may not be released to perform emergency and other community service if the employer considers that the absence will adversely affect the work of the public sector agency.

3.2.2 Leave may be granted to an employee to permit them to attend training courses for emergency services and emergency management activities, provided that:

- (a) the employee is nominated by the emergency and other community service organisation;
- (b) the chief executive of the emergency and other community service organisation approves the nomination and informs the employer in writing of the name of the nominated employee, the proposed training to be undertaken and the period during which it is to be held;
- (c) no expenses (apart from the employee's salary) are to be borne by the public sector agency; and
- (d) the amount of special leave with pay for emergency and other community services training does not exceed the equivalent of ten days in a service year.

3.2.3 Special leave may be granted to employees for emergency service calls, provided that:

- (a) the emergency or other community service organisation subsequently confirms in writing that the employee was required for emergency duty, the period for which the services of the employee were required in that emergency, and the "call-out" fee (if any) which was paid to the employee;
- (b) far as is practicable, the employee returns to work if the emergency duty ceases before the end of normal rostered hours.

3.2.4 An employee who has been engaged on such emergency work for a period of at least 8 hours, is entitled upon the cessation of such work and prior to the resumption of normal duties, to a clear break of 8 hours without loss of pay for ordinary working time occurring during such a break.

- (i) Any reasonable period of additional time off (for recuperation etc.) for which special leave with pay has not been approved can be taken by utilising flexible working arrangements (including Individual Flexible Working Arrangements), recreation, retention leave or long service leave (if available), or leave without pay, at the choice of the employee.

3.2.5 "Standby" duty of an employee who is a volunteer member of the Country Fire Service or State Emergency Service SA is to be regarded as an emergency service call. Employees entitled to a "call-out" fee during a period of time off as special leave with pay set out above will be paid the difference between the employee's salary and the "call-out" fee (if any) paid by the community service organisation.

3.3 Defence Reserves Leave

Defence Service means service in a part of the Defence Force Reserves, including ordinary reserve service (e.g. training) and voluntary continuous full time service.

APPENDIX 3 – SPECIAL LEAVE

- 3.3.1 An employee who is a member of the Defence Reserves (Reservists) is entitled to special leave with full pay, as follows:
- (a) up to the equivalent of 20 working days paid leave in a twelve month period; and
 - (b) up to the equivalent of an additional 10 working days paid leave in the first year of service as a reservist.
- 3.3.2 An application by an employee for Defence Reserves leave must be accompanied by a Training Notice or other relevant authorisation from the Department of Defence.
- 3.3.3 Employees will give as much notice as possible for their Defence Service obligation. In some instances, a Reservist may be called upon with little or no notice and must be released as per the applicable Commonwealth act.
- 3.3.4 Any leave required for Defence Reserves in excess of the above would normally be taken as leave without pay. Note that during a period of special leave with pay, a reservist employee may be paid by both the public sector agency employing them and the Defence Reserves, but for any period of leave without pay, only by the Defence Reserves.
- 3.3.5 The employer must not compel the employee to use any type of paid or unpaid leave during the period of service if stated in the call out order issued under section 28 of the *Defence Act 1903* (or pursuant of replacement acts).
- 3.3.6 Pursuant to the applicable Commonwealth act, employers, including public sector agencies must protect the employment status and entitlements of the Reservist employee while absent on Defence Reserves Service.

4 Blood Donor Leave

An employee may be granted a period of special leave with pay for reasonable travelling and attendance time to enable them to meet a request by the Australian Red Cross Blood Service to visit a blood-taking centre for the purposes of donating whole blood, blood plasma or platelets. Organisational requirements and the necessity of the request during work hours will need to be considered.

- 4.1 The donation of whole blood may be required every 12 weeks, and the whole donation process takes approximately 1 hour.
- 4.2 The donation of blood plasma may be required on a fortnightly or monthly basis, and the whole donation process takes approximately 1 hour.
- 4.3 The donation of platelets may be required on a fortnightly or monthly basis and the whole donation process takes approximately 2 hours.
- 4.4 For the purposes of blood donor leave, part time employees are entitled to the same amount of special leave with pay as are full-time employees.

APPENDIX 4 – PROVISIONS FOR TRAM CONTROLLERS

PREAMBLE.....	79
9 DEFINITIONS.....	79
10 SHIFT HARMONISATION – DEFINITIONS.....	81
11 INITIATIVES AND UNDERTAKINGS TO APPLY DURING LIFE OF AGREEMENT.....	82
12 ANTI-DISCRIMINATION AND HARASSMENT.....	83
13 CLASSIFICATION AND WORK REQUIREMENTS.....	84
14 TRAINING OBLIGATIONS.....	84
15 COMPETENCY BASED TRAINING AND ASSESSMENT.....	85
16 EMPLOYMENT RELATIONSHIP.....	86
17 REDEPLOYMENT, RETRAINING AND REDUNDANCY.....	89
18 MODEL CONSULTATION TERM.....	90
19 WORKPLACE REPRESENTATIVES & TRADE UNION TRAINING.....	93
20 HOURS OF WORK – GENERAL.....	94
21 CLASSIFICATIONS & PAY RATES.....	95
22 LEAVE PROVISIONS.....	101
25 FLEXIBILITY TERM.....	116
26 INJURY AND INCOME PROTECTION.....	117
28 TYPES OF EMPLOYMENT.....	117
29 HOURS OF WORK, SHIFT WORK, OVERTIME AND MEAL BREAKS.....	118
30 ATTENDING FOR DUTY BUT NOT REQUIRED.....	122
31 SPECIAL LEAVE WITHOUT PAY – RAIL OPERATIONS SUPPORT EMPLOYEES.....	122
SCHEDULE 3 – WEEKLY WAGE RATES – RAIL OPERATIONS SUPPORT EMPLOYEES.....	122
SCHEDULE 4 – ALLOWANCES APPLICABLE TO RAIL OPERATIONS SUPPORT EMPLOYEES.....	123

Preamble

Tram Controllers were transferred from the *Rail Commissioner Rail Operations Enterprise Agreement 2016* (the Rail Agreement) to the *Rail Commissioner Tram Operations Enterprise Agreement 2020*.

Appendix 4 has been created to ensure Tram Controllers maintain their conditions and entitlements by including provisions of the Rail Agreement which are applicable to them. Clause numbers of the Rail Agreement have been maintained throughout Appendix 4 for ease of interpretation, but does not imply that any clauses or changes to the Rail Agreement (or its successor agreements) are applicable to Tram Controllers.

As per clause 2 of this Agreement, the only provisions of this Agreement that apply to Tram Controllers are clauses 1-7, 9, 49 and 56, and Appendices 1-4.

9 DEFINITIONS

- 9.1 Wherever in this Agreement a condition is made subject to the words 'except in case of unavoidable necessity', 'as far as practicable', 'where practicable' or to the existence of an 'emergency', the onus of proving in any proceedings that it is unavoidably necessary, or that it is not practicable, or is caused by an emergency, will be upon the Rail Commissioner, not upon the Union.
- 9.2 No proceedings will be taken against the Rail Commissioner by the RTBU for any breach of any clause containing the above words except by the express authority and with the consent of the South Australian Branch Secretary of the Union.
- 9.3 **"Agreement"** means this Enterprise Agreement, the Rail Commissioner Tram Operations Enterprise Agreement 2020, as approved by the Fair Work Commission.
- 9.5 **"Block Book Off"** means one week's absence from duty (Sunday to Saturday inclusive) consisting of time accrued whilst working designated shifts during a 20 week working cycle and taken as time off in lieu of ordinary hours worked in excess of a 38 hour week.
- 9.6 **"Continuous Shift Work"** means work carried out with consecutive shifts of employees throughout the twenty four hours of each day, of at least six consecutive days without interruption, except during break downs or meal reliefs or due to unavoidable cause beyond the control of the Rail Commissioner.

- 9.8 **“Employee(s)”** means or refers to persons employed by the Rail Commissioner in the classifications referred to in this Agreement and who perform(s) work described for such classifications at clause 21 of this Agreement.
- 9.9 **“Employee representative”**, means or refers to a person or agent nominated by an employee or group of employees to represent employee interests in matters pertaining to their employment and the operation of this Agreement.
- 9.10 **“Family or household member”** has the same meaning it has in the *Fair Work Act 2009 (Cth)*, and includes an employee’s spouse (or de facto spouse), a child, parent, any other member of an employee’s household and any other person who is dependent on the employee’s care.
- 9.11 **“Headquarters”** means the shed, depot or location to which an employee is permanently attached or the location to which they have been permanently transferred and is synonymous with ‘home station’.
- 9.12 **“Per day”** means one-fifth of the ordinary hours of duty per week or one-tenth of the ordinary hours of duty per fortnight.
- 9.14 **“Ordinary hours – Rail Support”** means the hours of work fixed in accordance with clause 29 - Ordinary Hours of Work - Shift Workers.
- 9.16 **“Rail Operations Support employee”** means an employee engaged under this Agreement in any of the classifications of Shift Manager, Operations Controller (all categories), Tram Controller (all categories), Network Operations Supervisor or Shift Coordinator.
- 9.17 **“Reasonable overtime”** without limiting the meaning of what is reasonable overtime in the *Fair Work Act 2009 (Cth)*, means, in any one fortnight period, one additional shift in excess of those rostered for ordinary hours and a total of not more than an accumulation of 10 hours daily overtime per fortnight.
- 9.18 **“Shift”** means a turn of duty during which some actual work has been performed, and includes compulsory attendance at examinations, enquiries and hearings, where such attendance is of at least four hours duration.
- 9.19 **“Shift work”** is in accordance with clause 10 – Shift Harmonisation Definitions.

- 9.20 **“Substantive classification”** means the actual appointed classification of the employee confirmed in writing.
- 9.21 **“Sunday”** means all time between midnight Saturday and midnight Sunday.
- 9.22 **“Temporary headquarters”** means the shed or depot or location to which an employee has been temporarily transferred and is synonymous with temporary home station.
- 9.23 **“The Act”** means the *Fair Work Act 2009* (Cth).
- 9.24 **“The parties”** means the parties to this Agreement as listed in clause 5 – Incidence and Parties Bound.
- 9.25 **“Union”** and **“RTBU”** means the Australian Rail, Tram and Bus Industry Union.

In regard to Rail Operations Support employees (as defined):

- 9.26 **“On call”** means that an employee has agreed to be available to perform work between the cessation of one rostered shift and before the commencement of their next normal rostered shift.
- 9.27 **“Rostered shift”** means a shift of which the employee concerned has had at least 48 hours’ notice.

10 SHIFT HARMONISATION – DEFINITIONS

	AM	Day	Afternoon	Night
Definitions	Commences at or between 0400 and 0600am Early AM commences between 0101 and 0359	Between 0601 and 1700 hours	Shift finishing after 1830	Signs on or off at or between 0101 and 0359
Penalty Arrangements	10% for all time worked from any shift which commences at or between 0400 and 0600. 15% for shifts commencing between 0101 and 0359	Nil	Shift finishing after 1830 – 15% whole shift 15% for each hour between 1700 and 1830 15% for all hours worked if finishing at or after 1830	Signs on or off at or between 0101 and 0359 – 25% whole shift if continuous – 15% if not continuous Signs on at or after 2100 hours and spans the hours of 0100 to 0359 – 25% whole shift if continuous – 15% if not continuous

11 INITIATIVES AND UNDERTAKINGS TO APPLY DURING LIFE OF AGREEMENT

11.5 The Rostering Codes of Principles (Rostering Code of Principles for Train Operations) will be jointly reviewed within 90 days following approval of this Agreement and any changes will be mutually agreed. Items for review include:

- Equality of weekend work and of workload across all depots;
- Scheduled days off;
- Scroucher lines/holiday relief including process for allocating known work from the roster into “line of work lines”;
- Turn-around times for drivers to get from one train to another at Adelaide Station;
- Lines of work;
- Sign-on times; and
- Amendments to the roster.

Terms of reference will be established for the Roster Review Committee which will include:

- Who will be involved;
- How decisions are made;
- How proceedings will be minuted; and
- Frequency of meetings.

11.6 Proposed Relocation of Operations Control Centre

11.6.1 For the purpose of clarity, this clause is intended to relate to the proposal to redevelop the site which currently houses the Rail Commissioner’s Operations Control Centre. As a result of any such redevelopment of that site which may occur during the life of this Agreement, some employees may be relocated to other depots or sites.

11.6.2 This clause does not relate to the relocation of any employees under any other circumstances other than mentioned above.

11.6.3 During the life of this Agreement, the parties commit to an effective consultation process which will enable employees and/or their representatives, to contribute to proposals for change and to raise any issues arising from the proposed redevelopment of the site currently occupied by Operations Control Centre.

- 11.6.4 The parties to this Agreement recognise that the Rail Commissioner may, during the life of this Agreement, and as a direct result of the redevelopment of the Operations Control Centre site, wish to implement relocation of some employees. The parties further recognise there may be issues which arise as a result of any relocation of employees which have not been contemplated by the provisions of this Agreement. This clause is intended to allow the parties to address such issues during the life of the Agreement as they arise.
- 11.6.5 The parties agree, in the event relocation of employee(s) is contemplated during the life of this Agreement, a working party comprising employee representatives and Rail Commissioner management shall be established. The role of the working party will be to develop agreed arrangements to apply to employees who are to be relocated and to address those issues associated with the relocation of employees and the development of facilities at alternative sites.
- 11.6.6 The working party will consider all issues associated with the potential relocation of employees to ensure that fair and reasonable arrangements are made for those employees that may be affected by any relocation. In the event that the working party cannot reach agreement on those proposed arrangements relating to relocation, the Dispute Resolution Procedure at Clause 23 will be initiated.
- 11.6.7 The parties agree that consideration of the impact of redevelopment proposals has not been a factor influencing the wage increases provided under this Agreement. As such, consideration of all factors likely to impact on future wage increases or employee benefits will form the basis of future negotiations between the parties and will not be affected by issues associated with the development of this Agreement.

12 ANTI-DISCRIMINATION AND HARASSMENT

- 12.1 The parties are committed to ensuring that the working environment is free from discrimination and harassment. Discrimination and harassment will not be tolerated under any circumstances.
- 12.2 The parties to this Agreement intend to respect and value the diversity of the workforce by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national status, national extraction or social origin.

13 CLASSIFICATION AND WORK REQUIREMENTS

- 13.1 Employees will be appointed to positions classified in accordance with the classifications defined at clause 21 of this Agreement. An employee may, subject to their qualifications, experience and fitness, be rostered to undertake any duty for which they are trained and competent to perform.
- 13.2 A standby employee may be required to perform “other duties” (as determined and agreed by the parties from time to time.)
- 13.3 Nothing in this Agreement precludes an employee’s appointment to another classification of work within this Agreement, in which case this Agreement will continue to apply.

14 TRAINING OBLIGATIONS

- 14.1 Employees must undertake training as required by the Rail Commissioner to ensure they have the skill and competencies needed to perform all of the required tasks.
- 14.2 Access to programmes conducted to provide or enhance mandatory training and skills in accordance with State and Federal Legislation will be provided for all employees. Attendance at such mandatory sessions is the responsibility of the employees concerned.
- 14.3 Payment for attendance at mandatory training programmes will be made at the appropriate hourly shift rate for employees who would normally have been rostered on duty and at the ordinary hourly rate of pay for those attending in their own time. Employees will be paid for actual attendance time only.
- 14.4 Further staff development may be achieved through a formal course of study at a recognised institution, or developmental activities such as conferences and seminars etc. Participation in such activities will be subject to the Rail Commissioner’s Learning and Development and/or Study Assistance policies and procedures.
- 14.5 Where an employee seeks further staff development to enhance the skills and knowledge of the employee, the employer will determine in discussion with the employee the amount of support to be provided. This may take the form of paid leave and/or paid expenses or leave without pay. This will be at the discretion of the employer having regard to the needs of the organisation and potential benefit for the employee concerned.
- 14.6 In addition to attendance at external staff development or training activities, employees will be required to familiarise themselves with the contents of various documents, guidelines and procedures issued by

the Rail Commissioner as part of on-going professional development and employee awareness programmes and activities.

- 14.7 An employee may be required to teach work skills and procedures to other employees as and when required.
- 14.8 Where an employee involved in approved staff development activities incurs out-of-pocket expenses as a result of participation in such activities, the Rail Commissioner may reimburse such expenses, provided that the expenses are reasonable, the employee was authorised by the Rail Commissioner to incur such expenses and the employee has receipts or other evidence of the expenses so incurred.
- 14.9 Employees who are required to deliver approved Rail Commissioner training will be paid the applicable rate that they would have otherwise been paid had they worked the rostered shift instead of providing training, except where a trainer classification exists. Such applicable rates will be paid in such circumstances.

15 COMPETENCY BASED TRAINING AND ASSESSMENT

- 15.1 The parties recognise that the achievement of objectives relating to safety, customer service, productivity and quality require a skilled and motivated workforce.
- 15.2 The programme concentrates on customer service, communication and team working skills, operational and technical competencies, rail safety accreditation and quality certification knowledge and skills for all levels of Rail Operations employees.
- 15.3 It is the Rail Commissioner's intention that employees will undertake a number of nationally accredited training modules leading to a relevant nationally recognised qualification of Certificate III level. It is likely that this will not be fully achieved during the life of this Agreement, however, the underpinning infrastructure will be established during the life of this Agreement. Wherever possible, employees will receive training that entitles them to receive a relevant nationally recognised qualification of Certificate IV level.
- 15.4 The Rail Commissioner will continue to use a competency based training and assessment regime, recognising that the Rail Commissioner and its employees have a shared responsibility for competency achievement and maintenance.
- 15.5 Training and assessment can be conducted by a variety of methods, including:
 - classroom based;
 - on the job;

- off the job;
- computer based;
- self-paced; and
- others as deemed appropriate.

The Rail Commissioner and/or appropriate training providers will provide the training and assessment.

- 15.6 Schedule 6 provides milestones for the implementation of competency based training and assessment.

16 EMPLOYMENT RELATIONSHIP

16.1 Weekly Employment

- 16.1.1 An employee engaged under the terms and conditions set out in this Agreement will be employed by the week and will be required to work an average of 38 ordinary hours per week over a roster period not exceeding four weeks.

16.3 Regular Part-Time Employment – Rail Support Employees

- 16.3.1 At the time of engagement, the Rail Commissioner and the regular part-time employee will agree in writing on a regular pattern of work, specifying, at least, the hours to be worked each day, the days of the week the employee will work and the actual starting and finishing times each day.

- 16.3.2 The minimum hours of work for a part-time employee will not be less than fifteen hours per week.

- 16.3.3 Any agreed variation to the regular pattern of work will be recorded in writing.

- 16.3.4 All time worked in excess of the hours as mutually arranged will be overtime and paid for at the rates prescribed in this Agreement.

- 16.3.5 Where a public holiday falls on a day of the week upon which a part time employee normally works but is not required to work, payment will be made for the ordinary hours which would normally have been worked on that day.

16.5 Fixed-Term Employment – Rail Support Employees

- 16.5.1 The Rail Commissioner may, in consultation with the relevant Organisation(s) of employees, determine that a position be offered on a fixed-term basis.

16.5.2 Where the salary and conditions of fixed-term employment are inconsistent with the salary and conditions of this Agreement, such salary and conditions of fixed-term employment will apply to the extent of any inconsistency.

16.5.3 No existing permanent employee will be compelled to transfer to fixed-term employment in respect to their current position.

16.6 Probationary Employment – New Appointments

16.6.1 Any person appointed to a full-time or part-time position under this Agreement for the first time will initially be engaged for a probationary period of six months for the purpose of determining the employee's suitability for on-going employment.

16.6.2 At the time of appointment, an employee will be provided with a copy of the relevant Job and Person Specification/Role Statement, which will form the basis of their performance evaluation.

16.6.3 During the probationary period, either party may notify an intention to withdraw from the contract of employment by providing the other party with one week's notice or payment in lieu, unless the termination is for misconduct which justifies summary dismissal.

16.6.4 Should the Rail Commissioner consider that an employee's performance has not been satisfactory, the Rail Commissioner may terminate the appointment with one weeks' notice.

16.6.5 Probationary employment forms part of an employee's period of continuous service for all purposes of this Agreement.

16.7 Confirmation of Permanent Employment

16.7.1 An employee's permanent employment will be subject to satisfactory completion of the probationary period set out at clause 16.6 of this Agreement, acknowledgement of which will be provided at the time of completion.

16.8 Promotion and Classification Appeals

16.8.1 Appointment Appeals

16.8.1(a) In respect of the "State Transport Authority of South Australia Appeal Board Agreement – Rail Grades – Explanatory Note", the Parties agree to establish a more efficient process within nine months of the approval of this Agreement. Where the parties agree on a more efficient process, the Rail Commissioner will implement such process.

16.8.2 Relief Duty

When applying for an advertised vacancy, an employee may subsequently be offered relief duty in that position. Relief duty will be offered to the candidate with the highest merit score as determined in the recruitment process. Any relief duty must be offered within three months of the date of finalisation of the appointment of position.

After three months has elapsed, the order of merit of candidates is no longer relevant and a registration of interest call will be made for further relief purposes.

16.10 Promotional Appointments

- 16.10.1 In respect of promotional appointment, an employee and their manager may agree that the employee's promotional appointment be subject to a trial period. The intention of this provision is to allow the employee and their manager to mutually agree on the suitability of the employment relationship and the assigned duties and responsibilities. Should the manager or employee, during or at the end of the trial, decide not to proceed with the appointment, the employee will return to their previous substantive classification. The employee will be advised of this arrangement in writing.

16.11 Termination of Employment by the Rail Commissioner for Employees Other than Fixed-Term Employees

- 16.11.1 In order to terminate the employment of an employee (other than a casual or probationary employee), the Rail Commissioner will give the applicable period of notice specified in the table below:

<i>Period of Continuous Service</i>	<i>Period of Notice</i>
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

- 16.11.2 In addition to this notice, if the employee is over 45 years of age at the time of giving notice with not less than two years continuous service, they are entitled to an additional one week's notice.
- 16.11.3 Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked.

Employment may be terminated by the Rail Commissioner requiring an employee to work part of the required period of notice and by the Rail Commissioner making payment for the period of notice not worked.

16.11.4 Any annual leave accrued but not taken will be paid out on termination of employment in the amount that would have been payable had the employee taken that leave and on a pro rata basis according to the completed months of service during which the entitlement to annual leave has accrued.

16.11.5 The period of notice in this clause shall not apply in the case of a decision to effect the summary dismissal of an employee in accordance with the relevant disciplinary policy and procedure.

16.12 Notice of Termination by the Employee

16.12.1 The notice of termination required to be given by an employee is seven days, except where the Rail Commissioner agrees to reduce or waive this requirement.

16.13 Time Off During Notice Period

16.13.1 Where the Rail Commissioner has given notice to an employee, an employee will be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off will be taken at times that are convenient to the employee after consultation with the Rail Commissioner.

16.14 Return of Property

16.14.1 Upon termination of employment for any reason, the employee must immediately return all property belonging to the Rail Commissioner.

16.14.2 The Rail Commissioner and the employee may enter into a written agreement for the amount to be deducted from the employee's final pay. If agreement is not reached the amount becomes a debt owing to the Rail Commissioner who can recover the amount by lawful means.

17 REDEPLOYMENT, RETRAINING AND REDUNDANCY

17.1 The parties acknowledge that there will be no forced redundancy of employees bound by this Agreement up to and including 1 January 2018.

- 17.2 From 2 January 2018, an employee, other than a fixed-term employee, who is declared excess to requirements in the Rail Commissioner's Rail Operations will be subject to Appendix 1 which forms part of this Agreement.

18 MODEL CONSULTATION TERM

- 18.1 This term applies if the employer:

18.1.1 has made a definite decision to introduce a major change to production, programme, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or

18.1.2 proposes to introduce a change to the regular roster or ordinary hours of work of employees.

- 18.2 Major Change

18.2.1 For a major change referred to in clause 18.1.1:

18.2.2 the employer must notify the relevant employees of the decision to introduce the major change; and

18.2.3 clauses 18.3 to 18.9 apply.

18.2.4 The relevant employees may appoint a representative for the purposes of the procedures in this term.

- 18.3 If:

18.3.1 a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

18.3.2 the employee or employees advise the employer of the identity of the representative;

18.3.3 the employer must recognise the representative.

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

18.4.1 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

18.4.2 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.

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

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

18.7 If a term in this Agreement provides for a major change to production, programme, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in clauses 18.2.2, 18.3 and 18.5 are taken not to apply.

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

- the termination of the employment of employees; or
- major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
- the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- the alteration of hours of work; or
- the need to retrain employees; or
- the need to relocate employees to another workplace; or
- the restructuring of jobs.

18.9 Change to Regular Roster (Period Roster) or Ordinary Hours of Work

18.9.1 For the purposes of this clause, 'regular' means the normal day(s) and shifts that the employee would usually work, up until the point of the proposed change. Consultation is not required under this clause in respect to roster changes that are consistent with usual rostering practices in accordance with the Rostering Code of Principles and this Agreement.

18.10 For a change referred to in clause 18.1.2:

18.10.1 the employer must notify the relevant employees of the proposed change; and

18.10.2 clauses 18.11 to 18.15 apply.

18.10.3 The relevant employees may appoint a representative for the purposes of the procedures in this term.

18.11 If:

18.11.1 a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

18.11.2 the employee or employees advise the employer of the identity of the representative;

18.11.3 the employer must recognise the representative.

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

18.12.1 discuss with the relevant employees the introduction of the change; and

18.12.2 for the purposes of the discussion—provide to the relevant employees:

(i) and 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

18.12.3 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).

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

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

18.13 In this term:

18.13.1 relevant employees means the employees who may be affected by a change referred to in clause 18.1.

18.14 Consultative Committee

- 18.14.1 The parties agree to maintain a consultative committee comprising management representatives, union representatives and employee nominated and elected representatives. This committee provides a forum for consultation between the Rail Commissioner and employees.
- 18.14.2 Nothing in this clause can preclude or otherwise inhibit any consultation or communication between Rail Commissioner and individual employees as provided for in clause 47 or Appendix 1.

19 WORKPLACE REPRESENTATIVES & TRADE UNION TRAINING

- 19.1 Upon written advice from the relevant Union Secretary/Branch Secretary that a member has been elected as a Union Workplace Representative or Union Delegate, the Rail Commissioner shall recognise that employee as being accredited by the relevant Union for the purpose of representing the industrial interests of the relevant Union's members at the workplace.
- 19.2 An employee who is recognised as being accredited by the relevant Union in accordance with clause 19.1 may be granted time off with pay at ordinary rates for up to a maximum of 10 working days during two calendar years to attend accredited trade union training courses.
- 19.3 Approval is confined to attendance at trade union training courses aimed at promoting sound industrial relations in the workplace and ensuring adherence to this Agreement and the relevant Award/s, and is subject to the operational requirements of the Rail Commissioner.
- 19.4 Union delegates may request reasonable paid time subject to operational requirements, to prepare for and attend meetings and attend to member's issues in support of the enterprise agreement, applicable award and to promote industrial harmony in the workplace.
- 19.5 Workplace representatives or union delegates required to attend Union meetings may be granted reasonable unpaid leave of absence. Where such leave is required, the Union shall advise the Rail Commissioner in advance in writing the name(s) of the employee(s) and the duration of the absences.
- 19.6 The Rail Commissioner will not unreasonably withhold consent for leave under clause 19.5.
- 19.7 Leave of absence will be granted to not more than two members of any Union party to this Agreement required to attend any industrial proceedings including.

20 HOURS OF WORK - GENERAL

20.1 Meal Breaks

20.1.1 Employees are entitled to a 25 minute paid meal break (crib) on each shift which will be counted as time worked.

20.1.2 Breaks will be taken at times as determined by the Rail Commissioner based on operational requirements.

20.1.3 Employees may be rostered for cribs at their home depot where facilities are provided or at the Adelaide Railway Station.

20.1.4 The parties acknowledge that on occasions of special events, planned revenue protection or compliance activities it may be necessary for them to consult and agree that meal breaks be taken 'away' from an employee's home depot or Adelaide Railway Station. In such instances, the Rail Commissioner will be required to ensure that proper facilities are provided. Employees will be advised no later than the day before such circumstances.

20.2 Unforeseen Circumstances

20.2.1 Employees may be required to work beyond the shift length of hours outlined in this Agreement due to unforeseen circumstances, which are:

- late running due to an accident;
- vehicle or equipment breakdown;
- an employee giving less than two hours' notice of being late for work, or not being able to attend work or unable to complete a shift.

20.2.2 The Rail Commissioner will not require an employee to work under this clause where two hours' notice of the unforeseen circumstances has been given.

20.3 Special Extra or Extended New Year's Eve Shifts

20.3.1 Special extra or extended shifts that continue beyond the normal closing time of the particular depot are to be paid double time and a half for the whole shift.

20.4 Normal Rostered Shift

20.4.1 Double time and a half will not apply to employees working their normal rostered shift on New Year's Eve, unless the shift is extended in the manner outlined above or they meet the requirements of clause 22.7.7.

20.5 Transport of Employees

20.5.1 The Rail Commissioner will provide a conveyance home when an employee, after having commenced a shift, is advised that they are required to finish work at a time when reasonable means of transport are not available.

21 CLASSIFICATIONS & RATES OF PAY

21.1 Classification of Positions

21.1.1 Upon commencing employment, an employee will be appointed to a position classified in accordance with this Agreement, will be paid according to the salary applicable to the classification of that position and will remain on that classification unless reclassified or appointed to another position classified at another level.

21.1.2 Employees will be advised in writing of their classification and any subsequent changes.

21.1.3 The remuneration levels applicable to each classification are set out at Schedule 1 and 3 of this Agreement.

21.1.4 Employees engaged under this Agreement will be appointed to a position classified in accordance with the following classifications.

21.6 Tram Controller

- Means an employee who is responsible for the delivery of an effective and safe tram service through the regulation, control and monitoring of all tram movements and in accordance with service agreements, working timetables, safe working procedures and operational plans. In so doing the role will manage on-shift allocation and re-allocation of human and physical resources in accordance with relevant Enterprise Agreements and rostering procedures.

21.11 Rates of Pay

21.11.1 The rates of pay applicable to the respective classifications outlined in clause 21 of this Agreement are detailed at Schedule 3 of this Agreement.

21.12 Acting in a Higher Grade

21.12.1 An employee may be directed to temporarily perform specified duties in addition to those on which the remuneration level of that employee's position is based for purposes related, but not limited, to:

- extended absence of another employee(s);
- short term vacancies pending advertising a position;
- requirement to perform project work;
- development of employee skills.

21.12.2 Where an employee has been appropriately trained and is directed to undertake the duties of a position or in a capacity for which a higher remuneration level may be applicable, the employee will be entitled to be paid for the performance of such duties, subject to the approval of the relevant manager or delegate.

21.12.3 Approval of payments at a higher remuneration level in accordance with a direction under this clause will generally be given when an employee performs such additional duties for a continuous period of more than one week.

21.12.4 Payment at a higher remuneration level may be approved for a period of less than one week, provided that an employee is directed to temporarily assume responsibilities and/or to exercise supervisory and financial delegations for a period of at least one complete day or shift.

21.12.5 Where an employee is acting in a higher grade and has performed 1976 culminated hours the employee will be paid the applicable increment for that role.

21.12.6 Accumulated hours will be taken into account should the employee be appointed to that higher role.

21.12.7 An employee who is working temporarily in a grade higher than that classified, if employed for more than two hours on any day in such higher grade, will be paid the rate for that grade for the whole time worked on that day.

21.12.8 If employed for two hours or less in a higher grade, they will be paid the higher rate for the time so worked.

- 21.12.9 In any case, the employee will work under the conditions of the higher grade whilst so employed.

21.13 Acting in Lower Grade

- 21.13.1 An employee required to perform temporarily the duties of a grade for which a lower rate of payment is prescribed than that prescribed for their classified grade will be paid at their classified rate.
- 21.13.2 A reduction made for disciplinary reasons will not be regarded as a breach of this clause.

21.15 Adjustment of Wage Rates

- 21.15.1 The parties agree that rates of pay applicable to each of the Classification levels set out in this Agreement will be adjusted in accordance with clause 21.15.2.
- 21.15.2 This Agreement provides for base rates of pay to be increased as follows over the life of this Agreement:
- 2% from first pay period commencing on or after 1 January 2021.
 - 2% from first pay period commencing on or after 1 January 2022.
 - 2% from first pay period commencing on or after 1 January 2023.
- 21.15.3 Such increases will be in substitution for any adjustment of award wage rates determined or awarded by Fair Work Commission during the life of this Agreement.

21.17 Allowances

- 21.17.1 Allowances payable to eligible employees and the circumstances under which such allowances are payable under this Agreement are listed at Schedule 4.
- 21.17.2 Allowances (with the exception of the Equipment Allowance, Schedule 4) payable to eligible employees under this Agreement will be adjusted in line with any percentage variation of applicable wage rates set out in this Agreement.

21.18 Superannuation

- 21.18.1 Employer funded superannuation contributions will be made in accordance with the relevant federal legislation

into the Rail Commissioner's designated default fund OR into a fund nominated by the employee that complies with the relevant federal legislation.

21.19 Salary Sacrifice Arrangements

- 21.19.1 Salary Sacrifice Agreement (SSA) is a written, formal administrative instrument between the Rail Commissioner and the employee which enables salary packaging arrangements to be put in place. This clause applies for the period an employee enters into a Salary Sacrifice Agreement.
- 21.19.2 Subject to this clause, the wage or salary payable to an employee, or applicable to a position where the occupant elects to enter into an SSA, pursuant to this Agreement, will be the wage or salary payable under the SSA, notwithstanding any other provision in, or Schedule of, this Agreement.
- 21.19.3 Any entitlement to payment of overtime, leave loading or shift allowance will be based on the wage or salary that would have been payable had the employee not entered into a SSA.
- 21.19.4 Where, on cessation of employment, the Rail Commissioner makes a payment in lieu of notice; or a payment in respect of accrued annual or long service leave entitlements (instead of transferring leave credits to another SA public sector employer in the event the employee immediately becomes employed by that employer party), the payment thereof shall be based on the wage or salary that would have been payable had the employee not entered into a SSA.

21.20 Period of Payment

- 21.20.1 Wages will be paid fortnightly, either:
- according to the actual ordinary hours worked each week (38) or fortnight (76); or
 - according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the work cycle.
- 21.20.2 The hourly rate is calculated by dividing the appropriate weekly rate by 38.

21.21 Explanation of the Averaging System (as it applies to the calculation of Block Book Off)

21.21.1 A full-time employee whose ordinary hours may be more or less than 38 in any particular week of a work cycle, is to be paid their wages on the basis of an average of 38 ordinary hours so as to avoid fluctuating wage payments each week.

21.21.2 The ordinary hours of an employee may be arranged so that they are entitled to accrue a day off per month during each work cycle. It is in these circumstances that the averaging system would apply.

21.21.3 Where a full-time employee has a day off in each work cycle of 28 consecutive days (four consecutive weeks) the employee's ordinary hours are arranged on the basis that for three of the four weeks they worked 40 ordinary hours each week and in the fourth week they worked 32 ordinary hours. That is, they would work for eight ordinary hours each day, Monday to Friday inclusive for three weeks and eight ordinary hours on four week days only, Monday – Friday in the fourth week - a total of nineteen days during the work cycle.

21.21.4 Under the averaging system a full-time employee accrues a "credit" each day they work actual ordinary hours in excess of the daily average, which would otherwise be seven hours 36 minutes. This "credit" is carried forward so that in the week of the cycle that they work on only four days, their actual pay is an average of 38 ordinary hours even though, that week, they work a total of 32 ordinary hours.

21.21.5 Each day an employee works eight ordinary hours they accrue a "credit" of 24 minutes (0.4 hours). The maximum "credit" the employee may accrue under this system is 0.4 hours on nineteen days; that is, a total of seven hours 36 minutes.

21.21.6 In addition to working ordinary hours, an employee will accrue a "credit" for each day absent from duty whilst on annual leave, long service leave, public holiday, paid sick leave, workers' compensation, bereavement leave, paid carer's leave, paid training leave or jury service. Entitlements in these circumstances are determined in accordance with the relevant Award provision. No entitlement to accrual exists for any other absence.

21.21.7 A regular part-time employee receives, on a pro-rata basis accrual and taking of Block Book Off.

21.22 Payment During First Period of Employment

21.22.1 On the first pay day occurring during employment, an employee will be paid whatever wages are due up to the completion of work at the end of that pay period.

21.23 Payment of Wages on Termination of Employment

- 21.23.1 Upon termination of employment, wages due to an employee will be paid on the day of such termination or forwarded by post on the next working day.
- 21.23.2 In the case of an employee who is paid average pay and who has not taken the day off due during the work cycle in which employment is determined, the wages due to the employee will include the total of credits accrued during the work cycle.
- 21.23.3 However, where the employee has taken a day off during the work cycle in which employment is determined, the wages due to that employee will be reduced by the total of credits which have not accrued during the cycle.

21.24 Absences From Duty Under an Averaging System

- 21.24.1 An employee absent from duty in circumstances other than annual leave, long service leave, public holidays, paid sick leave, workers' compensation, bereavement leave, paid carer's leave, paid training leave or jury service will, for each day so absent, lose average pay for that day calculated by dividing their average weekly wage rate by five.
- 21.24.2 For part of a day, an employee will lose average pay for each hour or part thereof absent at an hourly rate calculated by dividing their average daily rate by 7.6.
- 21.24.3 The rate prescribed at clause 21.24.2 will be adjusted on a pro-rata basis for part-time employees.
- 21.24.4 Credits do not accrue when an employee is absent from duty for a whole day in accordance with this sub-clause because the employee would not have worked ordinary hours that day in excess of seven hours and 36 minutes. Whenever this occurs, the employee will not be entitled to average pay for that week but will be reduced by the amount of the "credit" not accrued for each whole day during the work cycle involving the absence.

21.25 Details of Payments to be Given

- 21.25.1 On or prior to pay day, the Rail Commissioner will state to each employee in writing the amount of wages which the employee is entitled, the amount of deduction made and the net amount being paid to the employee.

21.26 Timekeeping - Proportion of an Hour

- 21.26.1 The Rail Commissioner may select and utilise for timekeeping purposes any fractional or decimal proportion of an hour (not exceeding a quarter of an hour) for the calculation of the working time of employees who without reasonable cause being promptly communicated to the Rail Commissioner, report for duty after their appointed starting times or cease duty before their appointed finishing times.
- 21.26.2 The Rail Commissioner will apply the same proportional hour method for the purpose of calculation of overtime.

21.27 Extra Rates Not Cumulative

- 21.27.1 Extra rates in this Agreement, except rates prescribed in clause 22.7, are not cumulated so as to exceed the maximum of double the ordinary rates.

22 LEAVE PROVISIONS

22.1 Relationship Between this Agreement and the National Employment Standards (NES)

- The provisions of this Agreement relating to various forms of leave are to be read in conjunction with the Act.
- The purpose of the following clauses is to provide a simple summary of the provisions of the Act as they apply to employees covered by this Agreement.
- It is not the intention that any provision of this Agreement is to operate in a way that is less favourable to employees than the NES. If any provision of this clause operates in a way that is less favourable to employees than the NES, then the NES shall prevail.

22.2 Annual Leave

22.2.1 A full-time or part time employee is entitled to four weeks paid annual leave per year. Annual leave will accrue on a pro rata basis each fortnight period at the rate of 1/13 of ordinary hours worked.

22.2.2 Where an employee is regularly working on a seven day shift work roster (including Sundays and Public Holidays), they will be entitled to five weeks paid annual leave per year. In this case the additional annual leave will accrue at the rate of 1/52 of ordinary hours worked.

22.2.3 An employee who is regularly rostered to work on Saturdays and/or Sundays and Public Holidays but does not work on identified other days of the week shall be entitled to five weeks annual leave for each year of service. In this case, the additional leave will accrue at the rate of 1/52 of ordinary hours worked.

22.2.4 Normally annual leave must be taken in the year in which it accrues unless written approval has been provided by the Rail Commissioner to defer the taking of such leave.

22.2.5 Annual leave will be taken at times agreed between Rail Commissioner and the employee, or, failing this, at the discretion of Rail Commissioner with four weeks' notice.

22.2.6 An employee with an annual leave credit of greater than ten weeks may be directed to take such leave prior to the next entitlement of annual leave becoming due.

22.2.7 Rail Commissioner must not unreasonably direct an employee to take annual leave or unreasonably refuse a request by the employee to take paid annual leave.

22.2.8 Annual leave is payable at an employee's Ordinary Time Rate of Pay (being the applicable ordinary rates described in Schedule 3 whichever applies) for the number of ordinary hours the employee would have worked during the period of annual leave. Annual leave hours paid will be deducted from the employee's accrued entitlement.

22.3 Loading on Annual Leave

Rail Operations Support Employees

22.3.2 Shiftworkers - employees who would have worked on shift work had they not been on leave - a loading of 20 percent;

22.3.3 Leave loading will be paid on completed months of service;

22.3.4 Annual Leave loading will be paid in respect of each period of Annual Leave taken by an employee, subject to the conditions outlined in the Public Service (Recreation Leave Loading) Award, as varied, amended or substituted from time to time.

22.3.5 The Parties agree to be bound in respect of allowing continuous shift workers the right to be paid leave loading or to be paid at the rate applicable to the work they would have been rostered to perform during the period of annual leave, whichever is the greater.

22.3.6 Any annual leave accrued but not taken will be paid out on termination of employment based on the amount that would have been payable to the employee had they taken that period of leave.

22.3.7 The loading prescribed by this clause on termination will only apply to completed months of pro rata annual leave accruals.

22.4 Personal Leave

22.4.1 An employee is entitled to a total of 12 days paid personal leave, in accordance with this clause, if they are unable to attend work because of a personal injury or illness (sick leave), or because they have to care for a member of their immediate family or a member of their household (Carer's Leave).

22.4.2 Personal leave will accrue each fortnightly period at the rate of 1/26 of the ordinary hours paid.

22.4.3 Where an employee is sick on any one-day of work or part thereof the employee, provided that they have a personal credit of paid sick leave, will be entitled to payment for the day or part thereof. The hours paid will be debited from the employees personal credit of paid sick leave.

22.4.4 An employee is only entitled to personal leave if the day(s) requested for personal leave was an ordinary day that the employee would have been required to work.

22.4.5 Subject to clause 22.4.11 (Rail Support employees) of this Agreement, an employee may be required to produce a medical certificate for any absence taken for personal leave.

22.4.6 A medical certificate is not required where the circumstances would make it unreasonable for it to be produced. In this case an employee must provide a statutory declaration that sets out the reason for the absence and why they could not obtain a medical certificate. Failure to provide either a medical certificate or statutory declaration proof may result in non-payment of personal leave.

22.4.7 If an employee is unable to attend work because of injury, illness or the requirement to take carer's leave they must inform the Rail Commissioner as soon as is reasonably practicable and, in any event, prior to the start of the shift, unless the employee is unable to comply with this requirement due to reasons beyond their control. Such advice must include:

- the nature of the injury or illness (if known); or
- the basis on which carers leave is required; and
- the period the employee expects to be away from work.

22.4.8 If it is not practicable for an employee to give prior notice of the absence, the employee must notify the Rail Commissioner by telephone at the first opportunity.

22.4.11 A Rail Support employee may be absent on account of personal illness or injury (other than for which Worker's compensation is payable) for a period of two working days without the production of a medical certificate or a certificate from a health practitioner. Where an employee is absent from duty for a period in excess of two working days, the employee will produce a medical certificate or a certificate from a health practitioner covering all days in excess of the two original days.

22.4.12 Clause 22.4.11 will not limit a manager requiring an employee to produce a medical certificate or a certificate from a health practitioner for all or any absence on account of personal illness or injury. Such requirement will not unreasonably be imposed and will be subject to discussion between the employee and their manager.

22.4.13 Unused personal leave will accrue from year to year.

22.4.14 Unused personal leave will not be paid out on termination.

22.4.15 In circumstances where an employee has exhausted their paid Carer's Leave entitlement, they are entitled to up to two days unpaid Carer's Leave for each occasion on which they may have otherwise claimed paid carers leave.

22.5 Sick Leave Pool

22.5.1 Employees will be eligible to participate in the Sick Leave Pool arrangements established to cater for situations in which an employee may have exhausted an entitlement to paid sick leave and requires access to additional paid leave to cater for extended absences due to sickness.

22.5.2 Participation in such an arrangement involves employees foregoing two days of their annual sick leave entitlement in order to preserve an entitlement to leave under the Sick Leave Pool scheme.

22.5.3 The rate prescribed at clause 22.5.2 will be adjusted on a pro-rata basis for part-time employees.

22.6 Public Holidays

22.6.1 Public holidays will be recognised on those days prescribed by the *Holidays Act 1910 (SA)*.

22.6.2 An employee will not lose ordinary pay as a result of a public holiday falling on a day that they would normally be rostered to work and, in such cases, an employee will be paid at their ordinary rate for that day.

22.6.3 Rail Commissioner may require an employee to work on a public holiday. If an employee is required to work on a public holiday, they will be paid at the relevant rate of pay prescribed in this Agreement (either as a shift worker or as overtime).

22.6.4 An employee may refuse the request to work a public holiday shift if the request is not reasonable or if the refusal is reasonable. However, the parties recognise that there is generally a need for public holiday shifts to be included on the roster and agree that any roster which includes such shifts is considered reasonable.

22.6.5 Where special leave without pay or unpaid parental leave is granted for periods of up to four weeks, any public holidays that fall within such a period are to be granted with pay. Where the special leave without pay or parental leave exceeds four weeks, no payment for any public holidays, irrespective of where they may fall, is to be made.

22.6.6 Where a public holiday other than a part-day public holiday falls during the period of an employee's annual leave or personal leave the employee will be taken not to be on annual or personal leave and:

- i. will be paid for their ordinary rate of pay for such hours; and
- ii. The employee will be required to elect at that time whether they wish to be given credit for additional day(s) leave (equal to the number of Public

Holidays falling within the rostered period) at some other time.

- 22.6.7 Where a part-day public holiday falls during the period of an employee's annual leave or personal leave, the employee will be taken not to be on annual leave between the hours of 7pm and midnight that they would have otherwise been rostered to work and will be paid for their ordinary rate of pay for such hours.
- 22.6.8 Public holidays falling on a weekend will be substituted in accordance with the *Holidays Act 1910 (SA)*. Notwithstanding the *Holidays Act 1910 (SA)*, an employee who works on a Christmas Day which falls on a Saturday will be paid a loading of 50 percent for that shift.
- 22.6.9 An employee who is not required to work on a public holiday that would have otherwise been an ordinary working day will be paid as for eight hours at the ordinary rate, irrespective of any under time, ordinary time or overtime credited in the fortnightly pay period in which that public holiday occurs.

22.7 Payment for Public Holidays

- 22.7.1 An employee required to work on a public holiday will receive payment for the hours worked at the rate of time and one half and in addition, one day's pay in lieu, unless on application by the employee, they will receive a credit of one day's leave in lieu of the holiday.
- 22.7.2 For work on a public holiday occurring on a day on which they would not normally be booked on duty, an employee will be paid at the rate of double time and a half.
- 22.7.3 For work on a public holiday on which they would normally be booked on duty which is in excess of, or outside, the hours they would normally work on that day, an employee will be paid at the rate of double time and a half.
- 22.7.4 Non-driving Operations employees will be paid at the rate of double time and a half for all work in excess of eight hours in a shift.
- 22.7.5 A seven day or continuous shift worker whose rostered day off falls on a public holiday will be paid for that day at the ordinary rate
- 22.7.6 An employee not rostered to work between 7pm and midnight (other than an employee who has exercised their right not to work on a part-day public holiday if the request to work is not

unreasonable or the refusal is reasonable as provided for in the NES) will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

22.7.7 An employee who works any hours between 7pm and midnight on a part-day public holiday will be entitled to the applicable public holiday penalty rate for those hours worked.

22.7.8 Where an employee is usually rostered to work ordinary hours between 7pm and midnight on a part-day public holiday, but as a result of having a rostered day off does not work, the employee will be taken to be on a public holiday for those hours and paid their ordinary rate of pay for those hours. These hours cannot be counted towards the calculation of overtime within a roster period.

22.8 Compassionate Leave

22.8.1 A permanent employee is entitled to paid leave for up to two days per occasion to attend to:

- the death; or
- a life threatening illness/injury of a member of their immediate family or household.

22.8.2 An employee must advise the Rail Commissioner as soon as possible of the need to take compassionate leave.

22.8.3 Compassionate leave is non-cumulative.

22.8.4 An employee may be required to produce suitable evidence of the requirement to take and be paid for compassionate leave.

22.8.5 If the occasion of compassionate leave is for an illness or personal injury of a member of the employee's immediate family or household, the employee may take the compassionate leave for that occasion at any time whilst the injury or illness persists.

22.9 Long Service Leave, Skills and Experience Retention Leave

22.9.1 Employees are entitled to Long Service Leave and Skills and Experience Retention Leave subject to the qualifying conditions and terms of the Public Sector Act 2009 (SA) and the provisions of the applicable Commissioner's Determination as varied from time to time.

22.9.2 During each financial year, an eligible employee will accrue an amount of retention leave for each month of effective service completed during that financial year. From 2014-15 onwards an

employee will accrue 1/3 working day per month of effective service, up to a maximum of four days per year.

22.9.3 An eligible employee may apply to take retention leave once the employee has accrued an amount of leave equivalent to one working day. Retention leave must be applied for and taken as a whole working day.

22.9.4 Between 1 July and 31 August each year an employee may elect to convert the retention leave accrued in the preceding financial year to a monetary payment.

22.9.5 To make an election to receive a payment instead of taking the leave, an employee must complete and submit the appropriate form to the relevant agency with responsibility for payroll services by 31 August following the financial year in which the entitlement accrued.

22.9.6 A retention leave entitlement accrued within a financial year must, if not converted into a monetary amount, be taken within 5 years of the accrual. Employees are entitled to long service leave subject to the qualifying conditions and terms of the *Public Sector Act 2009* (SA) and the provisions set out in *Commissioner's Determination 3.1: Employment Conditions – Hours of Work, Overtime and Leave* as varied from time to time.

22.10 Parental Leave

22.10.1 Employees are entitled to maternity, paternity and adoption leave in connection with the birth or adoption of a child.

22.10.2 For the purpose of adoption leave, 'child' means a child of the employee that is or will be under 16 when placed with the employee for the purposes of adoption, other than a child or stepchild of the employee or of the spouse of the employee or a child who had previously lived continuously with the employee for a period of six months or more.

22.10.3 Subject to this clause, spouse includes a de facto or former spouse.

22.10.4 In relation to clause 22.10, spouse includes a de facto spouse but does not include a former spouse.

22.11 Transfer to a Safe Job

22.11.1 If, in the opinion of a legally qualified medical practitioner:

- a. illness or risks arising out of a pregnancy; or

- b. hazards connected with the work assigned to the employee make it inadvisable for the employee to continue her present work, then

- 22.11.2 The employee must, if the Rail Commissioner considers that it is practicable to do so, be transferred to a safe job at the rate and on the conditions of the employee's substantive position until the commencement of maternity leave.
- 22.11.3 If the transfer to a safe job is not considered practicable, the employee is entitled, or the Rail Commissioner may require the employee, to take leave for such period as is considered necessary by a legally qualified medical practitioner.
- 22.11.4 If the employee takes leave in such circumstances, the Rail Commissioner must pay the employee for that period the amount she would have received had she been at work.
- 22.11.5 Leave approved under this clause is in addition to any period of maternity leave granted.

22.12 Basic Entitlement

- 22.12.1 After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For female employees, maternity leave may be taken and for their partners, paternity or partner leave may be taken. Adoption leave may be taken in the case of adoption.
- 22.12.2 Parental leave is to be available only to one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
 - 22.12.2(a) for maternity, and paternity or partner leave, an unbroken period of up to eight weeks at the time of the birth of the child;
 - 22.12.2(b) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

22.13 Parental Leave and Other Entitlements

- 22.13.1 An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued, subject to the total

amount of paid and unpaid leave not exceeding 104 calendar weeks in relation to the employee's child. For the purposes of this clause, child includes children of a multiple birth/adoption.

22.14 Variation of Parental Leave

- 22.14.1 Where an employee takes leave under this clause, unless otherwise agreed between the Rail Commissioner and the employee, an employee may apply to the Rail Commissioner to change the initial 52 week period of parental leave on one occasion. Any such change is to be notified as soon as possible but no less than four weeks prior to the commencement of the changed arrangements. Nothing in this clause detracts from the basic entitlement to leave under this clause.

22.15 Right to Request

- 22.15.1 An employee entitled to parental leave pursuant to the provisions of this Agreement may request the Rail Commissioner to allow the employee:
- 22.15.1(a) to extend the period of simultaneous unpaid parental leave provided for in clause 22.12.2(a) up to a maximum of eight weeks;
 - 22.15.1(b) to extend the period of unpaid parental leave provided for in clause 22.12.1 by a further continuous period of leave not exceeding 12 months;
 - 22.15.1(c) to return from a period of maternity or adoption leave on a part-time basis, at the employee's substantive level, until the child reaches school age, to assist the employee in reconciling work and parental responsibilities.
- 22.15.2 The Rail Commissioner shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the Rail Commissioner's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- 22.15.3 The employee's request and the Rail Commissioner's decision made under this clause must be recorded in writing.

22.16 Request to Return to Work Part-Time

- 22.16.1 Where an employee wishes to make a request under clause 22.15.1(c), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from maternity or adoption leave, and will provide to the Rail Commissioner such information as may reasonably be required, including the proportion of time sought, and the date the relevant child will reach school age (i.e. five years of age).
- 22.16.2 At least 12 weeks prior to the relevant child reaching school age, the employee will advise the Rail Commissioner whether the employee will revert to employment on a full-time basis or seeks to continue to be employed on a part-time basis.

22.17 Maternity Leave

- 22.17.1 An employee must provide notice to the Rail Commissioner in advance of the expected date of commencement of maternity leave. The notice requirements are:
- 22.17.1(a) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;
 - 22.17.1(b) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least four weeks.
- 22.17.2 When the employee gives such notice the employee must also provide a statutory declaration stating particulars of any period of paternity or partner leave sought or taken by her spouse and that or the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- 22.17.3 An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.
- 22.17.4 Subject to clause 22.12.1, and unless agreed otherwise between the Rail Commissioner and the employee, an employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.

22.17.5 Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, the Rail Commissioner may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

22.17.6 Where leave is granted under clause 22.17.4, during the period of leave an employee may return to work at any time, as agreed between the Rail Commissioner and the employee provided that the time does not exceed four weeks from the recommencement date desired by the employee.

22.18 Paid Maternity Leave and Paid Adoption Leave

22.18.1 Paid maternity leave and paid adoption leave and paid leave to enable parent-child relationships through surrogacy parenting applies in accordance with this clause. For the purpose of the following clauses, maternity and adoption leave includes a parent taking primary caring responsibility (parent-child relationship) as a consequence of a surrogacy arrangement.

22.18.2 The following clauses apply to employees who commence an absence on maternity leave or adoption leave on or after the date of approval by the Fair Work Commission of this Enterprise Agreement.

22.18.2(a) Subject to this clause, an employee, other than a casual employee, who has completed 12 months continuous service immediately prior to the birth of the child, or immediately prior to taking custody of an adopted child (as applicable), is entitled to 16 weeks' paid maternity or adoption leave (as applicable) ("the applicable maximum period").

22.18.2(b) An employee who, at the time of taking such paid maternity or adoption leave, has been employed by the Rail Commissioner for not less than five years (including any periods of approved unpaid leave), will be entitled to 20 weeks ("the applicable maximum period").

22.18.3 The following conditions apply to an employee applying for paid maternity leave or paid adoption leave:

- 22.18.3(a) The total of paid and unpaid maternity/adoption/surrogacy/parental/special leave is not to exceed 104 calendar weeks in relation to the employee's child. For the purposes of this clause, child includes children of a multiple birth/adoption/surrogacy. An employee will be entitled birth / adoption / surrogacy. An employee will be entitled to the applicable maximum period, paid at the employee's ordinary rate of pay (including allowances that are expressed as being payable 'for all purposes' but otherwise excluding allowances, penalties or other additional payments) from the date maternity / adoption / surrogacy leave commences. The paid maternity / adoption / surrogacy leave is not to be extended by public holidays, rostered days off, programmed days off or any other leave falling within the period of paid leave.
- 22.18.4 At the time of applying for paid maternity leave or paid adoption leave, the employee may elect in writing:
- 22.18.4(a) To take the paid leave in two periods split into equal proportions during the first 12 months of the commencement of their paid leave; or
- 22.18.4(b) To take the paid leave at half pay in which case, notwithstanding any other clause of this Enterprise Agreement, the employee will be entitled, during the period of leave, to be paid at half the ordinary rate of pay (excluding allowances, penalties or other additional payments) from the date maternity / adoption / surrogacy leave commences and that leave shall be payable at the relevant rate of half pay in equal proportions during the requisite number of weeks; or
- 22.18.4(c) A combination of (a) and (b).
- 22.18.5 Part-Time employees will have the same entitlements as full-time employees, but paid on a pro-rata basis according to the average number of contracted hours during the immediately preceding 12 months (disregarding any periods of leave).

- 22.18.6 During periods of paid or unpaid maternity leave, sick leave with pay will not be granted for a normal period of absence for confinement. However, any illness arising from the incidence of the pregnancy may be covered by sick leave to the extent available, subject to the usual provisions relating to production of a medical certificate and the medical certificate indicates that the illness has arisen from the pregnancy.
- 22.18.7 Where both prospective parents are employees covered by this Enterprise Agreement; or if the other prospective parent is an employee of the same agency as the employee who is taking paid leave in accordance with this clause (i.e. the other prospective parent is not covered by this Enterprise Agreement but is employed by the same agency), the period of paid maternity or adoption leave (as applicable) may be shared by both employees, provided that the total period of paid maternity or adoption leave does not exceed the applicable maximum and that the leave is taken in periods of not less than four weeks and has regard to the operational needs of the agency or agencies. Parents who are employees of the same agency but are covered by different Enterprise Agreements may only share a period of paid maternity or adoption leave arising under one or other Enterprise Agreement (i.e. it is not intended that a public sector employee would somehow have access to more than one entitlement to paid maternity or adoption leave in respect of a child/ren).
- 22.18.8 The entitlements available to an employee pursuant to the federal *Paid Parental Leave Act 2010* (Cth) (as amended from time to time) or any other federal parental leave scheme will be subject to criteria and eligibility as determined by any such scheme.

22.19 Paternity Leave

- 22.19.1 An employee will provide to the Rail Commissioner at least 10 weeks prior to each proposed period of paternity or partner leave:
- a certificate from a registered medical practitioner which names their spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and
 - written notification of the dates on which they propose to start and finish the period of paternity leave; and

- except in relation to leave taken simultaneously with the child's mother a statutory declaration stating:
- they will take that period of paternity or partner leave to become the primary caregiver of the child;
- particulars of any period of maternity leave sought or taken by his spouse; and
- that for the period of paternity or partner leave they will not engage in any conduct inconsistent with his contract of employment.

22.19.2 The employee will not be in breach of clause 22.19.1 if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

22.20 Adoption Leave

22.20.1 The employee will notify the Rail Commissioner at least 10 weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

22.20.2 Before commencing adoption leave, an employee will provide the Rail Commissioner with a statutory declaration stating:

- the employee is seeking adoption leave to become the primary caregiver of the child;
- particulars of any period of adoption leave sought or taken by the employee's spouse; and
- that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.

22.20.3 The Rail Commissioner may require an employee to provide confirmation from the appropriate government authority of the placement.

22.20.4 Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the Rail Commissioner immediately and the Rail Commissioner will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

- 22.20.5 An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.

22.21 Return to Work after a Period of Parental Leave

- 22.21.1 An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.
- 22.21.2 An employee will be entitled to the position, which they held immediately before proceeding on parental leave.
- 22.21.3 Where such position no longer exists, but there are other positions available, which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

22.22 Replacement Employees

- 22.22.1 A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

Before the Rail Commissioner engages a replacement employee, the Rail Commissioner must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

22.23 Communication During Parental Leave

- 22.23.1 Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the Rail Commissioner shall take reasonable steps to:
- make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
 - provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

22.23.2 The employee shall take reasonable steps to inform the Rail Commissioner about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

22.23.3 The employee shall also notify the Rail Commissioner of changes of address or other contact details which might affect the Rail Commissioner's capacity to comply with clause 22.23.1.

22.24 Jury Service

22.24.1 Employees who are required for jury service will be allowed time off work to attend as required by the Court.

22.24.2 Proof of attendance, the duration of attendance and the amount received must be provided by the employee to the Rail Commissioner.

22.24.3 Employees will be paid the difference between the amount paid for such jury service and the amount of wage, including any penalties they would have received if they had been rostered to work during such jury service period.

22.25 Leave Without Pay

An employee who has been absent on leave without pay for more than 22 working days in one or more periods in any one financial year, other than on approved sick leave without pay, will have their completed months employed adjusted accordingly so as to not include the period for which they were absent.

22.26 Absence From Duty

An employee (other than an employee who has given or received notice in accordance with clause 16.11 or in cases involving protected industrial action) not attending for duty will, unless covered under a leave with pay provision of this Agreement, lose their pay for the actual time of such non-attendance.

25 FLEXIBILITY TERM

25.1 The Rail Commissioner and an employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

25.1.1 the agreement deals with one or more of the following matters:

- arrangements about when work is performed; or
- forms of employment (i.e. full-time/part-time); and

25.1.2 the arrangement meets the genuine needs of the employer and employee in relation to one or more of the matters mentioned in clause 25.1.1; and

25.1.3 the arrangement is genuinely agreed to by the employer and employee.

25.2 The Rail Commissioner must ensure that the terms of the individual flexibility arrangement are about permitted matters under section 172 of the Act, are not unlawful terms under section 194 of the Act and result in the employee being better off overall than the employee would be if no arrangement was made.

25.3 The Rail Commissioner must ensure that the individual flexibility arrangement is in writing and includes the name of the employer and employee and 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.

25.4 The Rail Commissioner must ensure that the individual flexibility arrangement includes details of the terms of the enterprise agreement that will be varied by the arrangement, 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.

25.5 The Rail Commissioner must ensure that the individual flexibility arrangement states the day on which the arrangement commences.

25.6 The Rail Commissioner must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

25.7 The Rail Commissioner or an 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 Rail Commissioner and the employee agree in writing at any time.

26 INJURY AND INCOME PROTECTION

26.1 Additional income and injury protection will apply to employees in accordance with the Income and Injury Protection Principles set out at Appendix 2 of this Agreement, where entitlements under the *Return to Work Act 2014* (SA) have ceased.

PART 4 – RAIL OPERATIONS SUPPORT EMPLOYEES

28 TYPES OF EMPLOYMENT

28.1 Temporary Employment

28.1.1 An employee may be engaged on a full-time or part-time basis for a specific period of time or for a project of limited duration, generally for a period not exceeding twelve months.

28.1.2 The details of the specific period of time or project will be set out in writing and retained by the Rail Commissioner, with a copy provided to the employee.

29 HOURS OF WORK, SHIFT WORK, OVERTIME AND MEAL BREAKS

29.1 General Principles

The management and employees of any business unit will agree to the type and pattern of ordinary hours to be worked in each business unit as detailed in clause 29.2.2. This may include any combination of the type and pattern of hours detailed therein. Agreement to any change to the hours of work or work practices will be reached in accordance with the consultative provisions contained in this Agreement.

29.2 Ordinary Hours of Work

29.2.1 Ordinary hours of work are an average of 38 hours per week.

29.2.2 Ordinary hours of work – Shift Workers

29.2.2(a) The ordinary hours of work for full-time shift workers are to be an average of 38 per week and must not exceed 76 hours in fourteen consecutive days. The number of shifts worked will not exceed 10 in any fortnight.

29.2.2(b) Ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the Rail Commissioner. An employee will not be required to work more than five hours without a meal break.

29.2.2(c) The ordinary hours of work prescribed herein must not exceed eight hours on any day inclusive of crib breaks, except where agreement has been reached between the Rail Commissioner and the employee/s concerned to:

22.19.1.1.1 Work ordinary hours by means of a 19-day month or;

22.19.1.1.2 Work more ordinary hours on any one shift.

29.2.2(d) Except at the changeover of shifts an employee will not be required to work more than one shift in 24 hours.

29.3 Rosters

29.3.1 Shift rosters will specify the commencing and finishing times of ordinary working hours of the respective shifts.

29.4 Rate for Working on Saturday Shift

29.4.1 The minimum rate to be paid to a shift worker for work performed between midnight on Friday and midnight on Saturday will be time and a half.

29.4.2 Where a shift falls partly on a Saturday, the shift will be regarded as being worked on the day on which the major portion falls.

29.5 Rate for Working on Sunday and Public Holiday Shift

29.5.1 The rate at which a shift worker is to be paid for all time worked on a Sunday or public holiday is as follows:

- Sundays - at the rate of double time;
- public holidays - at the rate of double time and a half.

29.5.2 Where a shift falls partly on a Sunday or public holiday, the shift will be regarded as being worked on the day on which the major portion falls.

29.6 Penalty Rates Not Cumulative

29.6.1 The penalty rates in this sub-clause are in substitution for and not cumulative upon the shift penalty rates prescribed in Schedule 4 of this Agreement.

29.7 Time Off Between Shifts

29.7.1 Where an employee is rostered for work and such rostered work does not allow a 10 hour break before attending the next rostered work, an employee will be entitled to be absent until the expiry of the ten hour break without deduction of pay for the ordinary time of duty for such absence.

29.8 Shifts Put Back

29.8.1 Where an employee attends for work as directed and is then informed that he or she will not be required until a later time on that day, they will be paid an hour's pay for such attendance unless notice that they will not be required has been given at their place of residence at least two hours before the time at which they were required to commence work.

29.9 Block Book Off and Crib Breaks

29.9.1 An employee employed as a Rail Operations Support employee in accordance with this Agreement will be entitled to receive Block book off and a paid crib break of twenty five minutes per shift.

29.10 Overtime

29.10.1 Overtime will be defined as follows:

29.10.2 Overtime will be all time worked in excess of eight hours on any one day or shift or in excess of 80 hours per fortnight, whichever is to the employee's advantage, except where an employee works a 19 day month (that is, they accrue a day off), in which case, overtime will be all time worked in excess of the daily ordinary hours of work.

29.10.3 Overtime will be all time worked on a rostered day off, unless agreed that time off in lieu will be taken instead.

29.10.4 Overtime will be calculated in a manner which ever is to the employee's advantage.

29.11 Requirement to Work Reasonable Overtime

29.11.1 The Rail Commissioner may require any employee to work reasonable overtime at overtime rates and the employee must work overtime as required. An employee will not work overtime unless authorised by The Rail Commissioner. An employee may, in accordance with the provisions of s62(3) of the Act, refuse to work beyond those hours referred to in this clause if they are unreasonable. Section 62(3) of the Act sets out the basis upon which additional hours may be determined to be reasonable or unreasonable.

29.12 Rest Breaks

- 29.12.1 An employee working overtime will be allowed a crib time of 20 minutes without deduction of pay after each four hours of overtime worked if the employee continues work after such crib time.
- 29.12.2 Unless the period of overtime is less than one and a half hours an employee, before starting overtime after working ordinary hours, will be allowed a meal break of 20 minutes which will be paid for at ordinary rates. The Rail Commissioner and an employee may agree to any variation of this provision to meet the circumstances of the work in hand provided that the Rail Commissioner will not be required to make payment in respect of any time allowed in excess of 20 minutes.

29.13 Overtime Penalty Rates

Except as provided for in clause 29.13.1 and clause 29.13.2, for all time worked in excess of or outside the ordinary working hours prescribed by this enterprise agreement or on a shift other than a rostered shift, a shift worker will be paid at the rate of time and a half for the first three hours and double time thereafter, except in each case when the time is worked:

- 29.13.1 by arrangement between the employees themselves; or
- 29.13.2 for the purpose of effecting the customary rotation of shifts.

29.14 Call Back

- 29.14.1 An employee recalled to work overtime after leaving a Rail Commissioner worksite (whether notified before or after leaving worksite, department or section concerned) is to be paid for a minimum of three hours' work at the appropriate overtime penalty rate. The employee will be entitled to be absent for eight consecutive hours without deduction of pay before commencing a succeeding shift.
- 29.14.2 The On Call provisions set out at Schedule 4 of this Agreement, as they relate to employees engaged in structured on-call roster arrangements, will not be affected by the operation of this sub clause.

29.15 Extra Rates Not Cumulative

- 29.15.1 Extra rates as prescribed by this Agreement are not cumulative so as to exceed the maximum of double the ordinary rates. Overtime will not be paid for twice but will be paid at the rate that is to the employee's advantage, subject to the exceptions described in this Agreement in

respect of Sundays and public holidays and Saturday shifts (as applicable).

29.16 Time Off in Lieu of Overtime

- 29.16.1 A manager and employee may agree that an employee take time off in lieu of overtime payment.

29.17 Meal Breaks – Rail Operations Support Employees

29.17.1 Unpaid Meal Break

An employee may be required to work for up to five continuous hours on any one portion of duty before being eligible for an unpaid meal break. The time allowed for the unpaid meal break will be agreed between the manager and the employee, provided that no meal break will be less than thirty minutes nor longer than 60 minutes.

29.17.2 Crib Break

Where an unpaid meal break is not provided, a crib break will be taken in Rail Commissioner's time and the time allowed will be 25 minutes.

30 ATTENDING FOR DUTY BUT NOT REQUIRED

An employee who attends for work and is subsequently told that they are not required will receive payment for the day or shift for which they were rostered, as applicable.

31 SPECIAL LEAVE WITHOUT PAY – RAIL OPERATIONS SUPPORT EMPLOYEES

- 31.1 Employees may, at the discretion of Rail Commissioner, be eligible for up to one month's leave without pay for every completed year of service up to a maximum of six months.
- 31.2 Notwithstanding the provisions of clause 31.1, the Rail Commissioner may grant extended leave without pay where an employee, through ill health or injury is not allowed, on the basis of medical advice, to perform their substantive duties for a specified period of time.

- 31.3 An employee granted leave without pay in accordance with clauses 31.1 or 31.2 will not be eligible to accrue any paid leave during such period of absence except as detailed in clause 31.4.
- 31.4 An employee who has been absent on leave without pay for more than 22 working days (Monday to Friday) in one or more periods in any one financial year, other than approved sick leave without pay, will have their completed months employed adjusted accordingly, so as not to include the period for which they were absent.

SCHEDULE 3 - WEEKLY WAGE RATES – RAIL OPERATIONS SUPPORT EMPLOYEES

- S.3.1 The rates applicable to each classification will be as follows effective from the first full pay period on and from the nominated dates:

Tram Controller	First full pay period on or after 1 January 2020	First full pay period on or after 1 January 2021	First full pay period on or after 1 January 2022	First full pay period on or after 1 January 2023
Trainee	\$ 1,332.49	\$ 1,359.14	\$ 1,386.32	\$ 1,414.05
Qualified	\$ 1,459.92	\$ 1,489.12	\$ 1,518.90	\$ 1,549.28
After 1 st year	\$ 1,493.94	\$ 1,523.82	\$ 1,554.30	\$ 1,585.39
After 2 nd year	\$ 1,527.37	\$ 1,557.92	\$ 1,589.08	\$ 1,620.86

S3.2 Increments

The remuneration levels applicable to each classification level reflect incremental progression for full-time employees. Generally, an employee will be appointed to the 1st increment in the classification range. After twelve months and subsequently thereafter the employee will progress to the next level in the range for that particular classification, subject to their manager certifying that their performance has been satisfactory during the previous twelve months.

Where an employee is acting in a higher grade and has performed 1976 culminated hours the employee will be paid the applicable increment for that role.

Accumulated hours will be taken into account should the employee be appointed to that higher role.

S3.4 Minimum Payment

S3.4.1A full-time employee who is directed to and actually undertakes work on any day or shift, excluding overtime, will be paid a minimum of seven hours pay at ordinary rate.

S3.4.2A part-time employee who is directed to and actually undertakes work on any day or shift, excluding overtime, will be paid a minimum of the ordinary hours that the employee would have normally worked on that day.

SCHEDULE 4 - ALLOWANCES APPLICABLE TO RAIL OPERATIONS SUPPORT EMPLOYEES

S4.1 On Call Allowance

S4.1.1 For the purposes of this clause, “on-call” means that an employee has agreed to participate in an approved roster arrangement which ensures that a designated employee is available to respond to situations which may require a return to duty or perform designated duties at a time or on a day on which that employee would not normally be required to attend for duty.

S4.1.2 Where an employee has agreed to participate in an on-call roster arrangement, the employee will be entitled to payment of the following allowance for each period during which the employee is rostered to be on-call.

	First full pay period on or after 1 January 2020	First full pay period on or after 1 January 2021	First full pay period on or after 1 January 2022	First full pay period on or after 1 January 2023
Monday to Friday inclusive (except Public Holidays)	\$ 33.86	\$ 34.54	\$ 35.23	\$ 35.93
Saturday, Sunday and Public Holidays	\$ 59.30	\$ 60.49	\$ 61.70	\$ 62.93

S4.1.3 An employee rostered to be on-call on a particular day will not be required to remain at home for the whole of the on-call period. The employee will, however, remain available to be contacted by telephone and remain in reasonably close proximity to the worksite to which he/she may be required to return to duty. Details of the employee’s contact telephone number(s) must be provided by the employee prior

to the commencement of the on-call roster period and prior to the employee leaving their home at any time whilst on-call.

S4.1.4 Where an employee rostered on-call is recalled to duty or required to undertake duties associated with the role for which they have been nominated, that employee will, in addition to the allowance specified at S4.1.2, be paid overtime for a minimum of three hours, whether or not the employee is required to undertake duties for the entirety of that period.

S4.1.5 Details of the range of duties to be attended to whilst on-call and the method of recording incidents requiring the performance of duties or attendance at a nominated worksite will be determined in accordance with business unit requirements.

S4.1.6 An employee who is recalled for duty will be granted a minimum of ten hours off duty without loss of time before returning to the worksite to undertake normal duties.

S4.2 Travelling Expenses Reimbursements

Employees will be entitled to travelling reimbursements as specified in the

Commissioner's Determination 3.2 – Employment Conditions – Remuneration – Allowances and Reimbursements, or its successor/s.

S4.3 Meal Allowance

Where an employee is required to work more than two hours overtime on any day and has not been notified on the previous day or earlier of the overtime, a meal allowance prescribed in the table below will be paid.

First full pay period on or after 1 January 2020	First full pay period on or after 1 January 2021	First full pay period on or after 1 January 2022	First full pay period on or after 1 January 2023
\$ 17.67	\$ 18.02	\$ 18.38	\$ 18.75

S4.4 Continuous Shift Work Allowance

A Continuous Shift Worker working a night shift (as defined) on any day Monday to Friday except where such day is a Public Holiday, will be entitled to be paid 25 per cent more than their ordinary rate.

S4.6 Uniforms and Protective Clothing, Equipment and Footwear

An employee will be reimbursed for the purchase of a uniform and protective clothing, equipment and footwear (as applicable) where the Rail Commissioner has deemed that such items are required for work.

If the Rail Commissioner provides such items, reimbursement will not apply.

Where the Rail Commissioner has deemed that protective footwear is required a footwear reimbursement amount of not less than \$105 will be paid on the provision of a receipt. The reimbursement amount will be the averaged value of supplied footwear and be reviewed six monthly through the consultative forum.

S4.7 Rail Operations Support Employee Training Allowance

A Rail Operations Support Employee required to provide structured on-the-job training to Trainee or Intermediate employees will be entitled to be paid a Training Allowance as set out in the table below on each occasion such training is provided.

First full pay period on or after 1 January 2020	First full pay period on or after 1 January 2021	First full pay period on or after 1 January 2022	First full pay period on or after 1 January 2023
\$ 17.67	\$ 18.02	\$ 18.38	\$ 18.75

S4.9 Employees who are required to undertake medical assessments / blood tests to be declared fit for duty in accordance with Rail Safety requirements may choose to do so during non-rostered time. In cases where the employee elects to do so they will be paid for actual time involved up to a maximum of two hours at ordinary time rate. Such time shall not be considered a shift or ordinary time in the calculation of overtime.



IN THE FAIR WORK COMMISSION

FWC Matter No. AG2020/1374

Applicant: Rail Commissioner

Section 185 – Application for approval of a single
enterprise agreement

OFFICE OF THE RAIL COMMISSIONER

50 Flinders Street
Adelaide SA 5000

GPO Box 1533
Adelaide SA 5001

Telephone: 08 8343 2222
Facsimile: 08 8343 2768

Undertaking- Section 190

I, Tony Braxton-Smith, Rail Commissioner, give the following undertakings with respect to the *Rail Commissioner Tram Operations Enterprise Agreement* ("the proposed Agreement"):

1. I have the authority given to me by the *Rail Commissioner Act 2009* (SA) to provide this undertaking in relation to the application before the Fair Work Commission.
2. The Rail Commissioner and the Australian Rail, Tram and Bus Industry Union (RTBU) had agreed during negotiations to increase all allowances in the proposed Agreement by 2% on the first full pay period on or after 1 January 2021, 2022 and 2023. Employees were also advised of this in the Agreement Explained (a document which satisfies section 180(5) of the *Fair Work Act 2009*).

Because of a typographical error, the Rail Operations Support Employee Training Allowance, at Appendix 4, S4.7 of the Tram Agreement, does not reflect the 2% allowance increase, but instead incorrectly mirrors the Meal Allowance of Appendix 4, s4.3. The Rail Operations Support Employee Training Allowance should be:

	First full pay period on or after 1 January 2020	First full pay period on or after 1 January 2021	First full pay period on or after 1 January 2022	First full pay period on or after 1 January 2023
As written in proposed Agreement	\$17.67	\$18.02	\$18.38	\$18.75
Actual entitlement	\$26.37	\$26.90	\$27.44	\$27.99

The Rail Commissioner and RTBU have agreed this was a typographical error and have agreed Tram Controllers who are required to provide structured on-the-job training to Trainee or Intermediate employees will be entitled to be paid the actual entitlement rate as per the table above.

3. Clause 39.2 will be read as follows:

For the purposes of the NES, a 'shiftworker' is an employee who is able to be rostered ordinary hours on Saturdays and/or Sundays, and Public Holidays. A shiftworker as defined by this clause will be entitled to five weeks of paid annual leave per year.

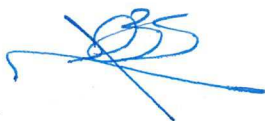
4. Appendix 4, clause 22.2.2 will be read as follows:

For the purposes of the NES, a 'shiftworker' is an employee who is regularly working on a seven day shift work roster (including Sundays and Public Holidays). A shiftworker as defined by this clause will be entitled to five weeks of paid annual leave per year.

5. For the purposes of clause 39, and Appendix 4, clause 22.2, an employee's entitlement to paid annual leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year, in accordance with section 87(2) of the *Fair Work Act 2009*.

6. For the purposes of clause 40, and Appendix 4, clause 22.4, an employee's entitlement to paid personal/carer's leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year, in accordance with section 96(2) of the *Fair Work Act 2009*.

7. These undertakings are provided on the basis of issues raised by the Commissioner in the application before the Fair Work Commission (Commission), and will be attached to the Agreement if approved by the Commission.



Tony Braxton-Smith
RAIL COMMISSIONER

29 May 2020