



# DECISION

*Fair Work Act 2009*

s.185 - Application for approval of a single-enterprise agreement

## Rail Commissioner

(AG2023/340)

## RAIL COMMISSIONER INFRASTRUCTURE EMPLOYEES ENTERPRISE AGREEMENT 2023

Rail industry

COMMISSIONER PLATT

ADELAIDE, 2 MARCH 2023

*Application for approval of the Rail Commissioner Infrastructure Employees Enterprise Agreement 2023.*

[1] An application has been made for approval of an enterprise agreement known as the *Rail Commissioner Infrastructure Employees Enterprise Agreement 2023* (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 22 February 2023.

[3] On 28 February 2023, I conducted a telephone conference 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 following National Employment Standards (NES) issues require comment:

- **Notice of Termination (Clause 13.1.5):** The Agreement excludes apprentices from the notice provisions contained in the Agreement. Apprentices do not fall within the group of employees excluded from notice as set out in s.123 of the Act, and therefore clause 13.1.5 with respect to apprentices appears inconsistent with the Act
- **Abandonment of employment:** Clause 13.3 states that an employee will be deemed to have abandoned their employment after 14 days of unauthorised absence and in such cases, the notice provisions of the Agreement will not be applied. This may be inconsistent with the NES at section 117 of the Act.
- **Personal Leave (Clause 38.2):** The Agreement requires an employee to give notice of their intention to take personal leave prior to the commencement of the employee's

shift. This appears inconsistent with s.107(2)(a) of the Act which permits notice to be given after the leave has started.

[5] The Applicant has submitted an undertaking in the required form dated 27 February 2023.

[6] The undertaking provides that an effective NES precedence clause, in that it states that in the event of an inconsistency between the Agreement and the NES, and the NES provides a greater benefit, the NES will apply to the extent of the inconsistency. As a result of the NES precedence clause, the Agreement clauses discussed paragraph [4] above clause(s) will not apply to the extent that they are inconsistent with the NES.

[7] A copy of the undertaking has been provided to the bargaining representative(s) and I have sought their views in accordance with s.190(4) of the Act. The bargaining representative(s) did not express any view on the undertaking.

[8] 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.

[9] The “The Australian Workers’ Union”, and “Australia Rail, Tram and Bus Industry Union” being bargaining representatives for the Agreement, have given notice under s.183 of the Act that they want the Agreement to cover them. In accordance with s.201(2) of the Act I note that the Agreement covers these organisations.

### Approval

[10] 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.

[11] 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 1 March 2024.



COMMISSIONER

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**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.**

# **RAIL COMMISSIONER INFRASTRUCTURE EMPLOYEES ENTERPRISE AGREEMENT 2023**

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## **PART 1 - APPLICATION AND OPERATION**

### **1 Title**

This Agreement will be known as the *Rail Commissioner Infrastructure Employees Enterprise Agreement 2023*.

### **2 Scope and Persons Bound**

This is an Enterprise Agreement between the Rail Commissioner, employees classified pursuant to this Agreement, the Australian Rail Tram and Bus Industry Union (RTBU), and the Australian Workers' Union (AWU).

### **3 Commencement Date and Period of Operation**

- 3.1 This Agreement will operate from seven days after it is approved by the Fair Work Commission until its nominal expiry date.
- 3.2 The nominal expiry date of this Agreement will be 29 February 2024.
- 3.3 Negotiations for a new Agreement may commence no earlier than one month from the nominal expiry date.

### **4 Relationship of this Agreement to the Award**

The *Rail Industry Award 2010* is the applicable modern award.

### **5 Aims and Objectives**

The parties have reached the outcomes contained in this Enterprise Agreement through a process of cooperation in balancing the Rail Commissioner's need against the needs of employees for better remuneration, more rewarding work, and work / life balance.

The aims and objectives of this Agreement are to:

- Provide employees with appropriate remuneration and conditions of employment while delivering on-going budget savings and operational efficiencies.
- Improve the structure, productivity, efficiency and effectiveness of the Rail Commissioner's activities through the introduction of initiatives at the business unit and work group level;
- Introduce new and agreed flexible conditions of employment and provide a framework to develop a flexible and skilled workforce;
- Attract employees to, and retain employees in, employment which supports the Rail Commissioner's planned and/or future operational requirements;
- Provide for continuous workplace transformation with the objective of continuous customer service improvement;
- Ensure ongoing cooperation between the parties to achieve improvements in occupational health and safety performance and the development of a positive safety culture;
- Ensure an ongoing stable industrial relations framework at the corporate, business unit and work group level that assists in improving efficiency and operational performance.

## 6 Anti-Discrimination and Harassment

- 6.1 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.
- 6.2 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.
- 6.3 Nothing in this clause is to be taken to affect:
- 6.3.1 any different treatment (or treatment having different effects) which is specifically exempted under state or federal anti-discrimination legislation;
  - 6.3.2 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;
  - 6.3.3 any exemptions allowed under legislation.

## 7 Definitions

**"Agreement"** means this Enterprise Agreement, the *Rail Commissioner Infrastructure Employees Enterprise Agreement 2023*, as approved by the Fair Work Commission.

**"Award"** means the *Rail Industry Award 2010* or any Award that supersedes it.

**"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 Schedule 1 of this Agreement.

**"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.

**"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.

**"NES"** means the National Employment Standards.

**"Ordinary hours"** means the hours of work fixed in accordance with clause 22.

**"On call"** means an employee is available to perform work between the cessation of one rostered shift and before the commencement of their next normal rostered shift.

**"Shift"** means a turn of duty during which some actual work has been performed, and includes compulsory attendance at examinations, enquiries and hearings.

**“Substantive classification”** means the actual appointed classification of the employee confirmed in writing.

**“The Act”** means the *Fair Work Act 2009* (Cth).

**“The parties”** means the parties to this Agreement as listed in clause 2.

**“Union”** means the Australian Rail, Tram and Bus Industry Union (RTBU) or the Australian Workers’ Union (AWU).



## PART 2 - CONSULTATION AND DISPUTE RESOLUTION

### 8 Consultation

- 8.1 This term applies if the employer:
  - 8.1.1 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
  - 8.1.2 proposes to introduce a change to the regular roster or ordinary hours of work of employees.
- 8.2 Major Change
  - 8.2.1 For a major change referred to in clause 8.1.1:
  - 8.2.2 the employer must notify the relevant employees of the decision to introduce the major change; and
  - 8.2.3 clauses 8.3 to 8.9 apply.
- 8.3 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 8.4 If:
  - 8.4.1 a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - 8.4.2 the employee or employees advise the employer of the identity of the representative;
  - 8.4.3 the employer must recognise the representative.
- 8.5 As soon as practicable after making its decision, the employer must:
  - 8.5.1 discuss with the relevant employees:
    - 8.5.1(a) the introduction of the change; and
    - 8.5.2(b) the effect the change is likely to have on the employees; and
    - 8.5.3(c) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
  - 8.5.2 for the purposes of the discussion—provide, in writing, to the relevant employees:
    - 8.5.2(a) all relevant information about the change including the nature of the change proposed; and

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

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

- 8.6 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 8.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 8.8 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 8.2.2, 8.3 and 8.5 are taken not to apply.
- 8.9 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.
- 8.10 For a change referred to in clause 8.1.2:
- 8.10.1 the employer must notify the relevant employees of the proposed change; and
- 8.10.2 clauses 8.11 to 8.15 apply.
- 8.11 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 8.12 If:
- 8.12.1. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- 8.12.1 the employee or employees advise the employer of the identity of the representative;

- 8.12.2 the employer must recognise the representative.
- 8.13 As soon as practicable after proposing to introduce the change, the employer must:
  - 8.13.1 discuss with the relevant employees the introduction of the change; and
  - 8.13.2 for the purposes of the discussion—provide to the relevant employees:
    - 8.13.2(a) and all relevant information about the change, including the nature of the change; and
    - 8.13.2(b) information about what the employer reasonably believes will be the effects of the change on the employees; and
    - 8.13.2(c) information about any other matters that the employer reasonably believes are likely to affect the employees; and
  - 8.13.3 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).
- 8.14 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 8.15 The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 8.16 In this term:
  - 8.16.1 relevant employees means the employees who may be affected by a change referred to in clause 8.1.

#### **8.17 Consultative Committee**

- 8.17.1 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.
- 8.17.2 Nothing in this clause can preclude or otherwise inhibit any consultation or communication between Rail Commissioner and individual employees as provided for throughout clause 8 or Schedule 5.

## **9 Workplace Representatives and Trade Union Training**

- 9.1 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.
- 9.2 An employee who is recognised as being accredited by the relevant Union in accordance with clause 9.1 may be granted time off with pay at ordinary rates for up to a maximum of ten working days during two calendar years to attend accredited trade union training courses.
- 9.3 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.
- 9.4 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.
- 9.5 The Rail Commissioner will not unreasonably withhold consent for leave under clause 9.4.
- 9.6 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 including that of a witness under the provisions of the Act.

## **10 Dispute Resolution**

- 10.1 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.
- 10.2 The parties are obliged to make every endeavour to facilitate the effective functioning of these procedures.
- 10.3 The employee or employee representative involved 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.
- 10.4 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 will arrange a conference to discuss the matter. If requested by the manager, the subject of the dispute will be put in writing, so far as is reasonably practicable.
- 10.5 The consultation process 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.
- 10.6 If a matter cannot be resolved when the procedures referred to above have been initiated, the parties should enter into consultation at a higher level on both sides, as the parties consider appropriate.

- 10.7 At any stage in the procedure after consultation between the parties has taken place in accordance with that procedure, either party may request and be entitled to receive a response to its representations within five working days.
- 10.8 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 may be referred to the Fair Work Commission for resolution by mediation and/or conciliation and if necessary arbitration.
- 10.9 The decision of the Fair Work Commission will bind the parties, subject to either party exercising a right of appeal against the decision.
- 10.10 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 3 - EMPLOYMENT RELATIONSHIP

### 11 Employment Relationship

The Rail Commissioner may direct an employee to carry out such duties as are within the limits of the employee's skills, competence and training consistent with the classification structure of this Agreement provided that such duties are not designed to promote deskilling.

The Rail Commissioner may direct an employee to carry out such duties and use such tools and equipment as may be required, provided that the employee has been properly trained in the use of such tools and equipment.

#### 11.1 Full-time employment

Any employee not specifically engaged on a part-time or fixed-term basis is for all purposes of this Agreement a full-time employee employed by the week.

#### 11.2 Part-Time employment

11.2.1 An employee may be engaged to work on a part-time basis for a constant number of hours less than 38 per week, but no less than 15 hours per week. An employee so engaged shall be paid per hour one thirty eighth (1/38) of the weekly rate prescribed by this Agreement for the work performed.

11.2.2 An employee engaged on a part-time basis shall be entitled to receive pro rata entitlement to leave and other entitlements applicable to full time employees.

11.2.3 A part-time employee who is required to work in excess of hours specified in the employee's contract will be paid overtime in accordance with clause 29 for such time so worked.

#### 11.3 Fixed-term employment

11.3.1 An employee may be engaged:

11.3.1 (a) for the duration of a specific project or defined phase of a project.

11.3.1 (b) to perform duties in the absence of an employee; or  
11.3.1 (c) while selection processes are conducted.

11.3.2 The contract will come to an end and there will be no guarantee of ongoing employment at the end of the above periods.

#### 11.4 Apprentices

11.4.1 The terms of this Agreement will apply to apprentices, including adult apprentices, except where it is otherwise stated or where special provisions are stated to apply.

11.4.2 Every contract of training must be made in accordance with the *Training and Skills Development Act 2008 (SA)*.

11.4.3 Apprentices may be engaged in trades or declared vocations where declared or recognised by the appropriate authority under the Act.

- 11.4.4 In accordance with the *Training and Skills Development Act 2008 (SA)*, the Rail Commissioner will not undertake to train a person in a trade except under a contract of training.
- 11.4.5 The Rail Commissioner may use an approved Group Training Scheme for Apprentices, in which case the Rail Commissioner will seek to facilitate payments to such Apprentice(s) at rates commensurate with those provided for under this Agreement.
- 11.4.6 No apprentice under the age of eighteen years will be required to work overtime or shift work unless they so desire. No apprentice will, except in emergency, work or be required to work overtime or shift work at times which would prevent their attendance in training consistent with their contract of training.
- 11.4.7 No apprentice will work under a system of payment by results.

## **12 Probationary Employment**

- 12.1 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.
- 12.2 Employees promoted into a role other than their substantive role will be subject to a three month probation period in respect of that role, or another period by agreement. An employee withdrawing from that role will result in the employee returning to their previous substantive classification.
- 12.3 The period of probationary employment forms part of an employee's period of continuous service for all purposes of this Agreement.

## **13 Termination of Employment**

### **13.1 Notice of Termination by Employer**

- 13.1.1 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 in the table below:

Period of Continuous Service	Period of Notice	Over 45 years
1 year or less	1 week	2 weeks
Over 1 year and up to the completion of 3 years	2 weeks	3 weeks
Over 3 years and up to the completion of 5 years	3 weeks	4 weeks
Over 5 years of completed service	4 weeks	5 weeks

- 13.1.2 In addition to the notice described above, employees aged over 45 years at the time of the employer giving notice and with not less than two years continuous service are entitled to an additional week's notice, as indicated in the table above.

- 13.1.3 Payment in lieu of notice prescribed in clauses 13.1.1 and 13.1.2 must be made if the appropriate notice period is not given or required to be worked. Employment may be terminated by the employee working part of the required period of notice and by the Rail Commissioner making payment for the remainder of the period of notice.
- 13.1.4 In calculating any payment in lieu of notice, the wages an employee would have received had they worked the period of notice must be used.
- 13.1.5 The period of notice in this clause does not apply in the case of dismissal for serious misconduct, or in the case of apprentices, or employees engaged for a specific period of time or for a specific task or tasks.

### **13.2 Notice of Resignation by an Employee**

- 13.2.1 The notice of termination required to be given by an employee will be two weeks or such less time as may be agreed between the employee and the responsible Manager.
- 13.2.2 If an employee fails to give notice the Rail Commissioner has the right to withhold moneys due to the employee to a maximum amount equal to the ordinary time rate of pay for the period of notice.

### **13.3 Abandonment of Employment**

- 13.3.1 The absence of an employee from work for a continuous period exceeding three working days without the consent of the Rail Commissioner and without notification to the Rail Commissioner will be prima facie evidence that the employee has abandoned their employment.
- 13.3.2 If within a period of 14 days from their last attendance at work or the date of their last absence in respect of which notification has been given or consent has been granted an employee has not established to the satisfaction of the Rail Commissioner that they were absent for a reasonable cause, they will be deemed to have abandoned their employment and the notice period provided in this Agreement will not apply.
- 13.3.3 The Rail Commissioner will undertake all reasonable endeavours to make contact with the employee within the 14 day period outlined at clause 13.2.2.
- 13.3.4 Termination of employment by abandonment in accordance with this subclause 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 later.



#### **13.4 Absence from Duty**

An employee will not be remunerated for any time not in attendance at work unless they are on approved paid leave.

#### **13.5 Standing Down Employees**

The Rail Commissioner has the right to deduct payment for any day or part day the employee cannot be usefully employed because of any industrial action or through any breakdown in machinery or any stoppage of work by any cause for which the Rail Commissioner cannot reasonably be held responsible.

#### **13.6 Return of Property**

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

#### **13.7 Debt Recovery**

If property is not returned, 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 Rail Commissioner may recover the amount by lawful means.

## PART 4 - RATES OF PAY AND RELATED MATTERS

### 14 Classifications and Rates of Pay

#### 14.1 Classification Structure

- 14.1.1 Employees covered by this Agreement will be classified in accordance with the classification criteria in Schedule 1 of this Agreement.

#### 14.2 Vocational career opportunities

- 14.2.1 In addition to career advancement through the classification structure, employees may pursue advancement in one of a number of vocational fields. This includes, but is not limited to, Supervisory, Training, Administration, Technical or Professional. All new entrants will undertake structured induction training.

### 15 Acting in a higher grade

- 15.1 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 minimum rate (i.e. the first increment) for that grade for the whole time worked on that day.
- 15.2 If employed for two hours or less in a higher grade, the employee will be paid the higher rate for the time so worked.
- 15.3 In any case, the employee will work under the conditions of the higher classification whilst so employed.

### 16 Acting in lower grade

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

### 17 Apprentice Rates of Pay

- 17.1 The minimum rate of wage for apprentices will be a percentage of the ordinary weekly wage rates payable for employees employed in the area in which the apprentices are employed and in all contracts of training subsequently made the Rail Commissioner will agree to pay wages of not less than such rates:

Years of Service	Percentage of Ordinary Weekly Rate Level 4
1 <sup>st</sup> year	55%
2 <sup>nd</sup> year	65%
3 <sup>rd</sup> year	75%
4 <sup>th</sup> year	88%

- 17.2** An employee who is under 21 years of age on the expiration of their contract of training and thereafter works as a minor in the occupation to which the employee has been trained will be paid at not less than the adult rate prescribed for the classification.

**18 Adult Apprentice Rates of Pay**

- 18.1** Adult apprentice means a person of 21 years of age or over at the time of entering into a contract of training as provided for in this Agreement.
- 18.2** Where a person was employed by the Rail Commissioner immediately prior to becoming an adult apprentice in accordance with this Agreement such person will not suffer a reduction in the rate of pay by virtue of signing a contract of training.
- 18.3** For the purpose of fixing a rate of pay, the adult apprentice will continue to receive the rate of pay that is from time to time applicable to the classification in which the adult apprentice was engaged immediately prior to entering into the contract of training.
- 18.4** Subject to clause 18.2, the rate of pay of an adult apprentice will be the minimum wage prescribed by the Fair Work Commission or the rate prescribed by this Agreement for the relevant year of apprenticeship, whichever is the greater.

**19 Allowances and Special Rates**

All employees subject to this Agreement and subject to their classification will be entitled to the allowances detailed at Schedule 3 should the specified circumstances exist.

**20 Extra Rates not cumulative**

Extra rates in this Agreement, except rates prescribed for work on public holidays, are not cumulative so as to exceed the maximum of double the ordinary rates.

**21 Payment of Wages**

**21.1 Period of Payment**

- 21.1.1** Wages will be paid fortnightly, either
- 21.1.1(a)** according to the actual ordinary hours worked per fortnight (76); or
  - 21.1.1(b)** 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 weekly cycle.
- 21.1.2** The hourly rate is calculated by dividing the appropriate weekly rate by 38.
- 21.1.3** The Rail Commissioner will pay wages and salaries direct to financial institution accounts acceptable to the Rail

Commissioner. It is the responsibility of the employee to provide the Rail Commissioner with details of suitable accounts into which their pay can be deposited.

**21.2 Method of payment**

Wages will be paid by electronic funds transfer directly to an account nominated by the employee.

**21.3 Payment of Wages on Termination of Employment**

21.3.1 Upon termination of employment, wages due to an employee will be paid by electronic funds transferred directly into the employee's usual nominated account within 7 days of the date of the employee's final date of work.

21.3.2 In the case of an employee who is paid average pay and who has not taken the day off 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.

21.3.3 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.

**21.4 Timekeeping - Proportion of an Hour**

21.4.1 The Rail Commissioner may select and utilise for timekeeping purposes any fraction or 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.

21.4.2 The Rail Commissioner will apply the same proportional hour method for the purpose of calculating overtime.

## PART 5 - HOURS OF WORK, SHIFT WORK, MEAL BREAKS AND OVERTIME

### 22 Ordinary Hours of Work

#### 22.1 Definitions

For the purposes of this clause:

- 22.1.1 The span for **ordinary hours** for a day worker is between the hours 6.00 a.m. to 6.00 p.m. on any day.
- 22.1.2 **Early morning** shift means a shift which commences at or between 4.00 a.m. and 6.00 a.m.
- 22.1.3 **Afternoon** shift means any shift commencing after 12 noon and finishing after 6.00 p.m. and at or before midnight
- 22.1.4 **Night** shift means a shift finishing after midnight and at or before 8.00 a.m.
- 22.1.5 **Saturday** means all time between midnight Friday and midnight Saturday.
- 22.1.6 **Sunday** means all time between midnight Saturday and midnight Sunday.

#### 22.2 Ordinary Hours of Work

- 22.2.1 The ordinary hours of work for a full time employee will normally be an average of 38 hours per week. The ordinary hours for part-time employees will be as specified in the employee's contract of employment consistent with the provisions of this Agreement.
- 22.2.2 Shift rosters will be arranged so as to provide for the working of ordinary hours over roster cycles of two weeks duration, which may be adjusted subject to operational and logistical requirements.
- 22.2.3 Ordinary hours of work will generally be rostered so as to provide for the working of ordinary hours over consecutive shifts normally of eight hours duration (inclusive of a paid meal break) but may involve the working of shifts in excess of eight hours per day but less than 10 hours per day.
- 22.2.4 The requirement to work shifts of greater than eight hours duration will be the exception and will be subject to operational requirements and consultation with affected workgroups in all cases.

### 23 Change of Master Roster Shift Patterns

- 23.1 Employees may be required to change shift patterns as operational circumstances require, subject to appropriate consultation with the affected workgroup and a minimum of two

weeks' notice. Employees shall not unreasonably refuse such a requirement.

- 23.2** If an employee or group of employees feel aggrieved by a decision made at clause 23.1 they will have access to the Dispute Resolution process set out at clause 10 of this Agreement.

## **24 Meal Breaks**

- 24.1** An employee will not be required to work for more than five hours without a break for a meal.
- 24.2** The time taken for scheduled meal breaks will form part of the ordinary hours worked on any rostered shift and will be paid for accordingly.
- 24.3** The scheduling of meal breaks will be arranged within each workgroup so as to provide, to the extent possible, for continuity of activities relative to operational requirements.
- 24.4** An employee may be required to work during a scheduled meal break at ordinary rates of pay for the purpose of making good any breakdown of plant or equipment or to undertake routine maintenance which can only be performed while the access to the rail network or related facilities is available.
- 25.5** The requirement to work through a scheduled meal break will only apply in exceptional circumstances.
- 26.6** The provision of a paid meal break after a maximum of five hours work will apply to both ordinary hours and additional hours and will be subject to payment at the rate prescribed for the working of such hours.

## **25 Shift Rosters**

- 25.1** The parties agree that the Rail Commissioner will assign work to employees covered by this Agreement on rostered working arrangements in order to best meet prevailing operational needs.
- 25.2** Shift rosters will specify the commencing and finishing times of the respective shifts and will ensure that employees have at least twelve consecutive hours off duty between the rostered work of successive days.
- 25.3** The method of working shifts and the time of commencing and finishing shifts once having been determined may be varied by agreement between the Rail Commissioner and the majority of employees concerned to suit the circumstances of the Rail Commissioner's business.
- 25.4** Any change to established shift patterns will be advised to the workgroup affected and be subject to the consultative provisions of this Agreement prior to implementation.

- 25.5 Any changes to starting times or other shift arrangements required once rosters are established will be advised at least seven days prior to such changes being implemented, or less than seven days prior by mutual agreement.
- 25.6 Any shift worked in addition to work performed as part of an employee's ordinary hours (i.e. overtime) will be subject to the provisions of clause 29.

## 26 Shift Allowances

- 26.1 An employee working an **early morning** shift will be paid 50 percent more than the employee's ordinary rate for those hours worked on that shift before 6.00 a.m.
- 26.2 An employee working **afternoon** shift will be paid for ordinary hours worked on that shift 15 percent more than the employee's ordinary rate.
- 26.3 An employee working **night** shift will be paid for ordinary hours worked on that shift 35 percent more than the employee's ordinary rate.
- 26.4 An employee working on a **Saturday** will be paid for ordinary hours worked on that shift 50 percent more than the employee's ordinary rate.
- 26.5 An employee working on a **Sunday** will be paid for ordinary hours worked on that shift 100 percent more than the employee's ordinary rate.
- 26.6 An employee working on a **public holiday** will be paid for all hours worked on that shift 150 percent more than the employee's ordinary rate.
- 26.7 Subject to clause 26.6, an employee who works on an afternoon or night shift as an alternative to the shifts rostered for that employee within a fortnightly roster cycle will be paid for ordinary hours worked on that shift at the rate of time and a half for the first three hours of such shift and double time for the remaining hours thereof in substitution for the applicable shift allowance.

## 27 Explanation of the Averaging System

- 27.1 As provided in this Agreement an 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.
- 27.2 The ordinary hours of an employee may be arranged so that they are entitled to a day off on a fixed day or rostered day basis, during each work cycle. It is in these circumstances that the averaging system would apply.
- 27.3 Where an 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 for three weeks and eight ordinary hours on four weekdays only in the fourth week - a total of 19 days during the work cycle.

- 27.4** Where an employee has a day off in each work cycle of 14 consecutive days (two consecutive weeks) the employee's ordinary hours are arranged on the basis that they work 42.20 ordinary hours in the first week and 33.76 ordinary hours in the second week. That is, they would work for 8.44 ordinary hours each day in the two week cycle – a total of nine days during the work cycle.

27.4.1 The method of working ordinary hours outlined at clause 27.4 will only be available to employees who were approved to work nine days in a two week work cycle before this Agreement come into operation. It will not be available to any other employees.

- 27.5** 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, Worker's Compensation, bereavement leave, paid carer's leave, paid training leave or jury service. Entitlements in these circumstances are determined in accordance with the relevant agreement provision. No entitlement to accrual exists for any other absence.

**27.6 Absences from Duty under an Averaging System**

Where an employee is absent from duty in circumstances other than those described at clause 27.6 that employee will for each of the days they are absent, lose pay for each hour or part thereof at an hourly rate calculated by dividing the weekly rate by 38.

**28 Daylight Saving**

An employee working a shift either at the time of commencement or termination of daylight saving hours, will be paid for the rostered hours for that shift regardless of the clock moving forward or backward during the shift.

**29 Overtime**

- 29.1** The Rail Commissioner may require an employee to work reasonable additional hours as overtime, which, for the purpose of this Agreement, means any work performed in addition to work performed as part of an employee's ordinary hours.
- 29.2** Any time worked as overtime (including periods where an employee may be recalled to work) requires prior approval and consideration of fatigue management principles.



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- 29.3** An employee may, in accordance with the provisions of section 62 of the *Fair Work Act 2009* (Cth), refuse to work additional hours if they are unreasonable.
- 29.4** Section 62(3) of the *Fair Work Act 2009* (Cth) sets out the basis on which additional hours may be determined to be reasonable or unreasonable. Such circumstances may include:
- any risk to employee health and safety
  - the employee's personal circumstances including any family responsibility
  - the needs of the workplace or enterprise
  - the notice (if any) given by the Rail Commissioner of the overtime and by the employee of their intention to refuse it.
- 29.5** In addition, consideration will be given to the amount of overtime worked by an individual employee within the preceding fortnight. One additional shift in excess of that ordinarily rostered in any one fortnight period, and a total of not more than an accumulation of 10 hours daily overtime per fortnight, has generally been considered reasonable.
- 29.6** Additional hours worked Monday to Saturday will be paid at the rate of time and one half for the first three hours and double time thereafter, and double time for Sunday.
- 29.7** The provisions in this clause will not apply where the time is worked:
- by arrangements between the employees themselves; or
  - for the purpose of effecting the customary rotation of shifts
- 29.8** An employee working overtime will be allowed a crib break of 20 minutes without deduction of pay after each four hours of overtime worked if the employee continues work after such crib break.
- 29.9** 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.
- 29.10** The Rail Commissioner and the 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.
- 29.11** In calculating overtime, each day shall stand alone. For the purposes of calculating a "day" (for this clause only) it shall be the 24 hour period from the commencement of the shift.

## **30 Rest Period after Overtime**

- 30.1** When overtime work is necessary, employees must have at least 10 consecutive hours off duty between the work of successive days.

- 30.2 If an employee does not have at least 10 consecutive hours off duty between overtime and their next rostered shift then that employees must be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary rostered working time occurring during such absence.
- 30.3 If the Rail Commissioner instructs an employee to resume or continue work before the completion of the above mentioned rest period, that employee must be paid at double rates until released from duty. The employee will be entitled to be absent until having had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

### **31 On Call Allowance**

- 31.1 Where an employee is required to be on-call outside the ordinary hours of work they will be entitled to an allowance as detailed in Schedule 3.
- 31.2 An employee will, when recalled for duty outside ordinary working hours, be entitled to a minimum payment of four hours at the appropriate overtime rate, except in the case of time worked before the usual starting time and extending into the usual working time.
- 31.3 Except in the case of unforeseen circumstances arising, an employee will not be required to work the full four hours if the job he/she was recalled to perform is completed within a shorter period.

### **32 On-Call Conditions**

- 32.1 An On Call roster will be developed in consultation with the workgroup involved.
- 32.2 No employee will be required to enter into an On Call arrangement other than voluntarily and may elect to cease such an arrangement at any time, subject to provision of reasonable notice.
- 32.3 No employee should be rostered or required to be on-call more frequently than a total of seven days every 14 days. Any arrangement that would require an employee to be oncall more frequently than this must only be introduced where the employee concerned genuinely agrees to same.
- 32.4 The frequency, duration, etc, of being on-call is to be established through consultation with the employees affected and if requested by the employees, their representatives, having particular regard to occupational, health and safety considerations.
- 32.5 Employees rostered to be On Call under the agreed roster arrangements will be required to attend to unplanned situations requiring the rectification of faults or repair of equipment likely to disrupt the continuous operation of the train or tram rail network.

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- 32.6** Employees who are on-call must be contactable whilst oncall but will not be restricted to their residence.
- 32.7** Employees who are on-call will be provided with any equipment required for their work (except where existing award provisions or other agreed arrangements, which require employees to provide their own equipment, are in place).
- 32.8** To facilitate the timely response to situations requiring out of hours attendance, employees participating in On Call roster arrangements will be provided with a suitable vehicle on each rostered On Call day.
- 32.9** An employee recalled to duty will be required to complete only the work which prompted the initial request.
- 32.10** An employee recalled to duty as a result of being rostered to be on call will be paid a minimum of four hours pay at prevailing overtime rates, but will be required to attend for duty only for the time required to attend to and complete the tasks which prompted a recall to duty.
- 32.11** Calculation of the four hour period for which payment will be made will commence at the time the employee leaves home and conclude at the time the employee returns home. Employees will be required to notify the person who initiated their return to work of the completion time of the task involved and the anticipated time of their return home.
- 32.12** Should the total time worked exceed four hours, payment for the additional hours worked will be made at the applicable overtime rate. (Refer to clause 29.6).
- 32.13** Subsequent call backs within four hours of an initial call back (other than to attend to a worksite to rectify faults not appropriately attended to during the initial recall to duty) will be treated as separate call backs.
- 32.14** The conditions set out at clause 30 in relation to the provision of at least 10 consecutive hours off duty following the completion of the last call out will apply to employees participating in on call arrangements

## **PART 6-TYPES OF LEAVE AND PUBLIC HOLIDAYS**

### **33 Annual Leave**

- 33.1** 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.
- 33.2** Annual leave will be taken at times agreed between Rail Commissioner and the employee.
- 33.3** Notwithstanding clause 33.2, an employee with an accrued annual leave credit of greater than eight weeks may be directed to take such leave prior to their next completed year of service.
- 33.4** 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.
- 33.5** Additional leave for seven day shift workers
- 33.5.1** In addition to leave provided for in clause 33.1, seven day shift workers, that is shift workers who are rostered to work regularly on Sundays and public holidays, will be allowed seven consecutive days leave including non-working days (i.e. one additional week).
- 33.5.2** Where an employee with 12 months continuous service is engaged for part of the 12 monthly period as a seven day shift worker, that employee is entitled to have the period of leave prescribed in clause 34.1 increased by half a day for each month the employee is continuously engaged as a seven day shift worker.

### **34 Payment for Annual Leave**

Annual leave is paid at ordinary rates of pay excluding payments in respect of overtime, shift penalties, special rates or other payment which might have been payable to the employee as a reimbursement for expenses incurred.

### **35 Annual Leave Loading**

During a period of annual leave an employee will receive a loading calculated on the ordinary base rate of pay. The loading will be as follows:

- 35.1.1** Employees who would have worked on day work only had they not been on leave - a loading of 17.5 percent.
- 35.1.2** Employees who would have worked on shift work had they not been on leave - a loading of 20 percent.

### **36 Entitlement to cash out annual leave**

- 36.1** An employee may request to receive payment in lieu of an amount of accrued annual leave, provided the employee:
- 36.1.1 has an accrued an annual leave balance of at least 10 weeks;
  - 36.1.2 has taken at least four weeks' annual leave in the 12 months preceding the application; and
  - 36.1.3 retains an entitlement of annual leave of not less than four weeks.
- 36.2** The Rail Commissioner will consider the request having regard to the employee's circumstances and may only refuse the request on reasonable grounds relating to fatigue and occupational health and safety.
- 36.3** The payment in lieu of an amount of accrued annual leave is paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.
- 36.4** The Rail Commissioner must not require an employee to cash out an entitlement to accrued annual leave or exert influence or pressure on an employee to decide whether or not to cash out an entitlement accrued annual leave.
36. 5 Each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee.

### **37 Payment of Leave on Termination**

If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee had the employee taken that period of leave.

### **38 Personal Leave**

The provisions of this clause apply to full-time employees and part-time employees (on a pro rata basis).

#### **38.1 Personal leave for personal injury or sickness**

Subject to clause 39 of this Agreement an employee is entitled to use their personal leave entitlement, including accrued leave, for the purposes of personal illness or injury, subject to the conditions set out in this clause.

#### **38.2 Personal leave to care for an immediate family or household member**

- 38.2.1 (a) An employee is entitled to access their personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency, subject to the conditions set out in this clause.

- 38.2.2 (b) The entitlement in 38.2.1(a) is subject to the employee being responsible for the care and support of the person concerned. In normal circumstances, an employee is not entitled to take leave for this purpose where another person has taken leave to care for the same person.

### **38.3 Notification Requirements**

- 38.3.1 Employees must notify the Rail Commissioner if they will be absent from work. The notification:
- must be given by the employee as soon as reasonably practicable (prior to the commencement of the employee's shift); and
  - state the reasons why the employee requires leave (that is whether it is due to personal illness, personal injury, illness or injury affecting an immediate family member or household member, or an unexpected emergency).
- 38.3.2 Employees are not entitled to personal/carer's leave if they do not comply with a notification requirement set out in this clause.

### **38.4 Evidence supporting claim**

- 38.4.1 An employee is entitled to leave for personal illness or injury without the production of a medical certificate or other supporting evidence for any period of personal leave relating to personal illness or incapacity for a period up to two working days.
- 38.4.2 When taking leave for personal illness or injury in excess of the limit set out in 38.4.1, the employee must establish by production of a medical certificate or other supporting evidence from a health practitioner that the employee was unable to work because of personal injury or illness.
- 38.4.3 When taking leave to care for members of their immediate family or household who are sick and require care and support, the employee must establish, by production of a medical certificate or other supporting evidence from a qualified health practitioner, the illness of the person concerned and that such illness requires care by the employee.
- 38.4.4 When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employee must establish by production of documentation acceptable to the Rail Commissioner, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

- 38.4.5 Notwithstanding the provisions set out herein, the Rail Commissioner may require an employee to provide evidence in support of an absence relating to Personal Leave at any time, where reasonable grounds exist to require such evidence.

**38.5 Amount of paid personal leave**

- 38.5.1 Paid personal leave is available to an employee when they are absent due to personal illness or injury; for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency.
- 38.5.2 An employee is entitled to 12 days (91.2 hours) personal leave per year payable at the rate the employee would reasonably have expected to be paid if they had worked during that period and subject to the conditions set out at clause 40 in regard to the operation of the Sick Leave Pool.

**38.6 Unpaid personal leave**

- 38.6.1 Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency.
- 38.6.2 The Rail Commissioner and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to three days per occasion, provided the requirements of clauses 38.3 and 38.4 are met.

**39 Sick Leave Pool**

The Parties agree to continue the Rail Commissioner's sick leave pool arrangements, which provides that employees forgo two days of their personal leave, as defined at clauses 38.5.2, 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.

**40 Compassionate Leave**

- 40.1** Full-time employees and part-time employees (on a pro-rata basis) are 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.



- 40.2 An employee must advise Rail Commissioner as soon as possible of the need to take compassionate leave.
- 40.3 Compassionate leave is non-cumulative.
- 40.4 An employee may be required to produce suitable evidence of the requirement to take and be paid for compassionate leave.
- 40.5 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
- 40.6 Employee may take unpaid compassionate leave by agreement with the Rail Commissioner.

## 41 Parental Leave

Subject to the terms of this clause employees are entitled to a maternity, paternity and adoption leave and to request flexible working arrangements in connection with the birth or adoption of a child. The Parental Leave provisions will be as per the National Employment Standards (NES) with exception to clause 41.7 which is more beneficial than the NES.

### 41.1 Definitions

- 41.1.1 For the purposes of this clause **child** has the same meaning as under the *Fair Work Act 2009* (Cth) and includes an adopted child or step-child except for adoption of a child where '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 step-child 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.
- 41.1.2 For the purpose of this clause the term "spouse" has the same meaning as under the *Fair Work Act 2009* (Cth) and includes a de facto or former spouse.

### 41.2 Basic Entitlement

- 41.2.1 After 12 months' continuous service, parents are entitled to a combined total of leave that is not to exceed 104 weeks paid and 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.
- 41.2.2 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:
  - 41.2.2(a) for maternity and paternity leave, an unbroken period of up to a total period of eight weeks at the time, or following the birth of the child; and



adoption leave, the day of the placement of the child.

### **41.3 Maternity Leave**

- 41.3.1 For the avoidance of doubt, maternity leave provisions under this clause are leave without pay. Refer to clause 41.7 for paid maternity leave provisions.
- 41.3.1 An employee must provide notice to the Rail Commissioner in advance of the expected date of commencement of parental leave. The notice requirements are:
  - 41.3.2(a) the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) - at least 10 weeks;
  - 41.3.2(b) the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least four weeks.
- 41.3.2 When the employee gives notice under 41.3.1, 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.
- 41.3.3 An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned due to the actual date of birth of the child occurring earlier than the presumed date.
- 41.3.4 Subject to 41.2.2, and unless agreed otherwise between the Rail Commissioner and employee, an employee may commence parental leave at any time within six months immediately prior to the expected date of birth.
- 41.3.5 Where any 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 employee is required to provide a medical certificate stating that she is fit to work on her normal duties.

### **41.4 Special Maternity Leave**

- 41.4.1 Where the pregnancy of an employee ends within 28 weeks of the expected date of birth of the child other than by the birth of a living child, then the employee may take unpaid special maternity leave for such time as a registered medical practitioner certifies as necessary.

- 41.4.2 Where an employee suffering from an illness that is not a pregnancy related illness the employee may take any paid personal leave to which she is entitled in lieu of, or in addition to, special maternity leave.
- 41.4.3 Where an employee who is not then on maternity leave suffers illness related to her pregnancy, she may take any paid personal leave to which she is then entitled and such further unpaid special maternal leave as a registered medical practitioner certifies as necessary before her return to work.
- 41.4.5 Where leave is granted under this section, 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.

#### **41.5 Paternity Leave**

- 41.5.1 For the avoidance of doubt, paternity leave is leave without pay.
- 41.5.2 An employee will provide to the Rail Commissioner at least ten weeks prior to each proposed period of paternity leave:
- 41.5.2(a) a certificate from a registered medical practitioner which names the spouse, states that she is pregnant and the expected date of birth of the child, or provides the date on which the birth took place;
  - 41.5.2(b) written notification of the dates on which it is proposed that the leave commences and concludes; and
  - 41.5.2(c) a statutory declaration stating:
    - the employee will have responsibility for the care of the child for the period being sought;
    - particulars of any period of maternity leave sought or taken by the spouse; and that for the period of paternity leave the employee will not engage in any conduct inconsistent with their contract of employment.
- 41.5.3 The employee will not be in breach of this clause if the failure to give the required notice is due to the birth occurring earlier than expected, the death or serious illness of the mother or child or other compelling circumstances.

#### **41.6 Adoption Leave**

- 41.6.1 For the avoidance of doubt, adoption leave provisions under this clause are leave without pay. Refer to clause 41.7 for paid adoption leave provisions.
- 41.6.2 The employee will notify the Rail Commissioner at least ten weeks in advance of the day of placement, or expected day of placement, of the child and the intended start and end dates of the period of leave to be taken. An employee may commence adoption leave prior to providing such notice where through circumstances beyond their control, the adoption takes place earlier.
- 41.6.3 Before commencing adoption leave an employee will provide the Rail Commissioner with a statutory declaration stating:
  - 41.6.3.1 the employee is seeking adoption leave as they will have responsibility for the care of the child;
  - 41.6.3.2 particulars of any period of adoption leave sought or taken by the employee's spouse; and
  - 41.6.3.3 that for the period of adoption leave the employee will not engage in any conduct in consistent with their contract of employment.
- 41.6.4 The Rail Commissioner may require the employee to provide confirmation from the appropriate Government authority of the placement.
- 41.6.5 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.
- 41.6.6 An employee will not be in breach of this clause as a consequence of failure to give appropriate notice if it results from a requirement of an adoption agency to accept earlier or later placement of a child, the death or serious illness of a spouse or other compelling circumstances.
- 41.6.7 An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the Rail Commissioner will agree on the length of the unpaid leave where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the Rail Commissioner may require the employee to take such leave instead.

#### **41.7 Paid Maternity Leave and Adoption Leave**

- 41.7.1 Subject to this Agreement a full time employee who has completed 12 months' continuous service immediately prior to the birth of a child, or immediately prior to taking custody of an adopted child, is entitled to 16 weeks of paid

maternity/adoption leave payable at the employee's ordinary rate of pay (excluding allowances, penalties or other additional payments) from the date leave commences. The period of paid 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.

- 41.7.2 Employees who at the time of taking such paid maternity or adoption leave have been employed in the SA public sector for not less than five years (including any periods of approved unpaid leave) will be entitled to 20 weeks paid leave.
- 41.7.3 The following conditions apply to an employee applying for paid maternity or paid adoption leave:
  - 42.7.3(a) the total of paid and unpaid is not to exceed 104 calendar weeks in relation to the employee's child, "child" to include children of a multiple birth/adoption.
  - 42.7.3(b) an employee will be entitled to the applicable maximum period of paid leave, paid at the employee's ordinary rate of pay (as outlined at 42.7.1) from the date such leave commences.
- 41.7.4 At the time of applying for paid maternity/adoption leave, the employee may elect in writing:
  - 42.7.4(a) to take the paid leave in two periods split into equal proportions during first 12 months of the commencement of their paid leave; or
  - 42.7.4(b) to take the paid leave at half pay in which case notwithstanding any other clauses of this 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 leave commences; or
  - 42.7.4(c) a combination of (a) and (b).
- 41.7.5 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).
- 41.7.6 During periods of paid or unpaid maternity leave, sick leave with pay will not be granted for a normal period of absence of confinement.

41.7.7 This clause operates notwithstanding the *Paid Parental Leave Act 2010* (Cth).

#### **41.8 Variation of the Period of Parental Leave**

Where an employee takes leave under this clause, unless otherwise agreed between Rail Commissioner and the employee, an employee may apply to 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.

#### **41.9 Right to Request**

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

41.9.1(a) To extend the period of simultaneous unpaid parental leave provided for within this Agreement up to a maximum of eight weeks;

41.9.1(b) To extend the period of unpaid parental leave provided for in this clause by a further continuous period of leave not exceeding 12 months; and

41.9.1 (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.

41.9.2 The Rail Commissioner will 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 business grounds after having conferred with the employee as to whether there are any other changes in working arrangements that could accommodate the employee's circumstances.

#### **41.10 Employee's Request and Employer's Decision to be in Writing**

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

#### **41.11 Use of Parental Leave in conjunction with 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.

**41.12 Transfer to a Safe Job**

- 41.12.1 Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue with her present work, the employee will, if there is a safe job available, be transferred to a safe job that has the same ordinary hours of work as the employee's present position or a different number of ordinary hours agreed to by the employee.
- 41.12.2 If there is no appropriate safe job available, the employee is entitled to take "no safe job leave" for the duration of the risk period and to be paid at the employee's base rate of pay for the duration of that period.
- 41.12.3 If transferred to an appropriate safe job, the employee will be paid at the employee's full rate of pay (for the position she was in before the transfer) for all ordinary hours worked during the risk period.

**41.13 Returning to Work After a Period of Parental Leave**

- 43.13.1 An employee will notify of their intention to return to work after the period of parental leave at least four weeks prior to the expiration of the leave.
- 43.13.2 An employee will be entitled to the position which they held immediately before proceeding on parental leave.
- 43.13.3 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 suited nearest in status and pay to that of their former position.

**41.14 Request to Return to Work Part Time**

- 41.14.1 Where an employee wishes to make a request under this Agreement to return to work on a part time basis, such request must be made no less than six weeks prior to the date upon which the employee is due to return to work from maternity or adoption leave. The employee will provide to the business unit manager such information as may reasonably be required, including

the proportion of time sought, and the date the relevant child will reach school age.

- 41.14.2 In the event that the worker has returned to work on a part time basis, then at least 12 weeks prior to the relevant child reaching school age, the employee will advise the executive director whether the employee will revert to employment on a full time basis or wishes to continue to be employed on a part time basis. Continuation of part time arrangements will remain at the Rail Commissioner's discretion and in accordance with NES provisions.

#### **41.15 Replacement Employees**

- 42.15.1 A replacement employee is an employee specifically engaged or temporarily promoted or transferred as a result of an employee proceeding on parental leave.
- 42.15.2 Before the Rail Commissioner engages a replacement employee, the Rail Commissioner must inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.

#### **41.16 Communication during Parental Leave**

- 41.16.1 Where an employee is on parental leave and a definite decision has been made to introduce significant change to 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 they commenced leave.
- 41.16.2 In addition the Rail Commissioner will provide an opportunity for the employee to discuss any significant effect will have on the position they held before commencing parental leave.
- 41.16.3 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 a return to work on a part time basis.
- 41.16.4 The employee will also notify the Rail Commissioner of changes of address or other contact details which might affect the Rail Commissioner's capacity to comply with this clause.



## **42 Long Service Leave and Public Sector Skills and Experience Retention Leave**

- 42.1 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.
- 42.2 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 4 days per year.
- 42.3 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.
- 42.4 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.
- 42.5 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.
- 42.6 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* and the provisions set out in Commissioner's Determination 3.1 as varied from time to time.

## **43 Community Service Leave**

### **43.1 Jury Service**

- 43.1.1 Employees who are required for jury service will be allowed reasonable time off work to attend.
- 43.1.2 Proof of attendance, the duration of attendance and the amount received will be provided by the employee to the Rail Commissioner.
- 43.1.3 Employees will be paid the difference between the amount paid for such jury service and any wages, including penalty payments, he or she would have received if they had been rostered to work during such period of jury service.

### **43.2 Other Community Service Activity**

- 43.2.1 Where an employee engages in an eligible community service activity, excluding jury service, he or she is entitled to take unpaid leave for the reasonable duration of the activity,



provided that the employee's absence is reasonable in the circumstances. An eligible community service activity includes the carrying out of voluntary emergency management activities, prescribed in the applicable legislation.

- 43.2.2 The reasonable duration of the activity may include travelling time and reasonable rest time following the activity.
- 43.2.3 Employees will be required to give the Rail Commissioner notice of an absence for eligible community service activity under this clause and must advise the Rail Commissioner of the period or expected period of the absence. The Rail Commissioner may also require a satisfactory evidence of the employee's participation in the activity for which leave is requested.

#### 44 Public Holidays

- 44.1 Public holidays will be recognised on those days prescribed by the *Holidays Act 1910* (SA).
- 44.2 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. For avoidance of doubt, part-time employee is not entitled to payment for a public holiday falling on a day the employee is not rostered or contracted to work.
- 44.3 Public holidays falling on a weekend will be substituted in accordance with the *Holidays Act 1910*.

#### 44.4 Not required to work on a public holiday

- 44.4.1 A full-time 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 8 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.
- 44.4.2 A part-time employee who is not required to work on a public holiday, that would have otherwise been an ordinary working day, will be paid at the ordinary rate for the ordinary hours that would normally have been worked under the terms of their contract of employment.

#### 44.5 Payment for Time Worked on Public Holidays

- 44.5.1 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.
- 44.5.2 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**.

- 44.5.3 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**.
- 44.5.4 An employee whose rostered day off falls on a public holiday will be paid for that day at the ordinary rate.
- 44.5.5 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.
- 44.5.6 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.
- 44.5.7 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.

#### **44.6 Public holiday during annual leave**

Should a public holiday occur during the currency of an employee's annual leave an additional day in lieu of such holiday will be added to the annual leave. The public holiday will not be regarded as annual leave and therefore payment for the public holiday must not be included in the annual leave loading calculation.

#### **44.7 Acting in a Higher Grade - Public Holidays**

Where an employee acts in a higher class or grade on the working day immediately preceding a public holiday, payment for the holiday will be made at the higher rate.

## PART 7 – OTHER MATTERS

### 45 Salary Packaging Arrangements

- 45.1 This clause applies for the period an employee enters into a Salary Sacrifice Agreement (SSA). A Salary Sacrifice Agreement is a written formal administrative instrument between the Rail Commissioner and the employee which enables agreed salary packaging arrangements to be put in place that is principally for the employees benefit.
- 45.2 Subject to this clause the salary payable to an employee or applicable to a position where the occupant elects to enter into an SSA will be the salary payable under the SSA, notwithstanding any other provision in or schedule to this Agreement.
- 45.3 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 an SSA.
- 45.4 Where on cessation of employment, the Rail Commissioner makes payment in lieu of notice, or a payment in respect of accrued leave entitlements (instead of transferring leave credits to another SA Public Sector Employer) the payment shall be based on the salary that would have been payable had the employee not entered into an SSA.

### 46 Training, Development and Succession Planning

- 46.1 The shared commitment to enable performance improvement is recognised. The Rail Commissioner will continue to use a competency based development and assessment regime and wherever possible, this will be in accordance with relevant standards identified within the Australian Quality Training Framework (AQTF) or its successor.
- 46.2 Assessment of competence will be undertaken, as appropriate, by qualified assessors employed by the Rail commissioner or through external providers. Any appeal by an employee against a competency assessment will be dealt with through the relevant Registered Training Organisation's complaints and appeals procedure. If an employee does not agree with the outcome of the appeal, the parties will agree for the matter to be dealt with through an agreed external provider.
- 46.3 To support this, regular performance reviews will be undertaken with all employees (at least annually) to assist in performance improvement. The outcome of these reviews will be a record of agreed performance measures and training and development activities.
- 46.4 These will relate to the requirements for continuous improvement in performing the duties of the role, as detailed in the related job description, and in supporting appropriate career advancement.
- 46.5 The Rail Commissioner commits to supporting arrangements for effective business/works planning and management and development of individual performance by:
  - Providing appropriate training and support for supervisors and managers.

- Co-ordinating the allocation of appropriate resources for implementing priority training and development activities, identified through performance reviews and business planning activities.
- 46.6 In support of individual career progression and effective workforce planning, employees will be involved in activities designed to meet future workforce needs. In addition to individual performance development review and business planning processes, such activities are likely to include contribution to focus groups, completion of questionnaires, etc.
- 46.7 To promote the efficient and effective delivery of services to the Rail Commissioner's customers, the classification structure will recognise the requirement for increasing levels of multiskilling commensurate with their classification.
- 46.8 Progression to higher classification levels will be on the basis of the Rail Commissioner confirming that the individual:
- is required to apply that higher level of competence in performing the duties detailed in the related job description; and
  - is formally assessed as competent to perform those duties at the higher level as per clause 46.2.
- 46.9 To achieve continuous improvement in service delivery and expand the knowledge base of the organisation, all employees will contribute to activities for ensuring the successful transfer and sharing of knowledge and expertise with colleagues.
- 46.10 A variety of approaches will be used as appropriate to the workgroup and individual employees. Such activities may include contribution to arrangements for:
- Documenting and reviewing work practices
  - Inducting new employees
  - Refresher training for existing employees.
- 46.11 The parties share a joint commitment to implementing improved arrangements for the successful integration of additional apprenticeships and traineeships within the organisation.

## **47 Redeployment**

- 47.1 An ongoing (full-time or regular part-time) employee who is declared excess to requirements in will be subject to Schedule 5.
- 47.2 The Consultation clause at clause 8 is not intended to replace the specific provisions in Schedule 5 regarding consultation around redeployment arrangements.
- 47.3 A redeployee will no longer be supplied with a uniform and/or protective clothing. However, in circumstances where a redeployee is required to wear protective clothing when undertaking temporary work placement, The Rail Commissioner will arrange to supply the protective clothing. Any issue/replacement would be on a fair wear and tear basis.

## 48 No Extra Claims Commitment

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

## 49 Flexibility Term

- 49.1 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:
  - 49.1.1 the agreement deals with one or more of the following matters:
    - arrangements about when work is performed; or
    - the taking of annual leave.
  - 49.1.2 the arrangement meets the genuine needs of the employer and employee in relation to one or more of the matters mentioned in clause 49.1.1; and
  - 49.1.3 the arrangement is genuinely agreed to by the employer and employee.
- 49.2 The Rail Commissioner must ensure that the terms of the individual flexibility arrangement:
  - 49.2.1 are about permitted matters under section 172 of the *Fair Work Act 2009* (Cth);
  - 49.2.2 are not unlawful terms under section 194 of the *Fair Work Act 2009* (Cth); and
  - 49.2.3 result in the employee being better off overall than the employee would be if no arrangement was made.
- 49.3 The Rail Commissioner must ensure that the individual flexibility arrangement
  - 49.3.1 is in writing; and
  - 49.3.2 includes the name of the employer and employee; and
  - 49.3.3 is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - 49.3.4 includes details of:
    - 49.3.4(a) the terms of the Enterprise Agreement that will be varied by the arrangement; and
    - 49.3.4(b) how the arrangement will vary the effect of the terms; and
    - 49.3.4(c) how the employee will be better off overall in relation to the terms and

conditions of his or her employment as a result of the arrangement; and

- 49.3.5 states the day on which the arrangement commences.
- 49.4 The Rail Commissioner must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 49.5 The Rail Commissioner or an employee may terminate the individual flexibility arrangement:
  - 49.5.1 by giving no more than 28 days written notice to the other party to the arrangement; or
  - 49.5.2 if the Rail Commissioner and the employee agree in writing - at any time.

## **50 Use of Contractors**

Consistent with commitments contained in the objectives of this Agreement, where the Rail Commissioner identifies a business need it can proceed through agreed consultative processes to engage contractors to ensure that the Rail Commissioners employees are engaged in work requiring the skills held by those employees, and that duties not requiring these skills are performed by contractors where the Rail Commissioner does not have sufficient available employees. The Employee Representatives agree to not unreasonably delay or obstruct the objectives of this provision.

## **51 Supplementary Staffing**

- 51.1 The Rail Commissioner may employ supplementary employees to cover excessive workloads caused by unplanned increases in work or for special programs or events or where a particular skill is not available or readily available through short-term training from the Rail Commissioner's operational or surplus employees.
- 51.2 A supplementary employee can be a part time or full time employee engaged to work for a fixed term of employment not exceeding 12 months. Where it is considered that the fixed term of employment may be longer than six months, the Rail Commissioner will consult with the Organisation of Employee/s concerned to determine the term of employment and will consider any alternative proposals by the Organisation of Employee/s concerned regarding coverage of the work.
- 51.3 A supplementary employee will be classified and paid pursuant to this Agreement.
- 51.4 A supplementary employee will accrue annual leave and personal leave as per clauses 33 and 38 respectively. The supplementary employee will be paid any accrued annual leave entitlements at the end of the term of their employment.

- 51.5 A supplementary employee will not be eligible for any other paid leave entitlements.
- 51.6 In the event that the Rail Commissioner proposes to retain a supplementary employee beyond the term of their initial employment or re-engage the person within a period of six weeks, the individual is to be made a full time employee.
- 51.7 Employment of supplementary employees will not occur where a permanent employee of the same occupation is available to transfer to this work

## **52 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 Schedule 6 of this Agreement, where entitlements under the *Return to Work Act 2014* (SA) have ceased.

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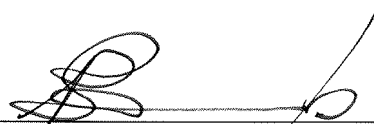
SIGNATORY PAGE

  
Jon Whelan  
Rail Commissioner  
83 Pirie Street, Adelaide SA 5000  
Employer

10/2/23  
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

09-02-2023  
Date

  
Peter Lamps  
Branch Secretary  
The Australian Workers Union  
22-24 Main Street, Mawson Lakes SA 5095  
Union Bargaining Representative

9/2/2023  
Date



## **SCHEDULE 1 – CLASSIFICATION STRUCTURE**

### **S1.1 CLASSIFICATION DEFINITIONS INFRASTRUCTURE EMPLOYEES**

#### **S1.1.1 Infrastructure Employee Level 1**

S1.1.1 (a) Employees at this level will be required to perform a broad range of routine tasks, and

S1.1.1 (b) will be required to successfully complete or be working towards the following training requirements:

- Rail Safety Awareness Card or equivalent

S1.1.1 (c) Work at this level is characterised by the following:

- generally labour intensive in nature;
- the application of specific and prescribed training and experience;
- performed under direction by way of verbal, written or diagrammatic direction;
- may require the operation of machinery, equipment and/or facilities, requiring the exercise of skills and knowledge appropriate to this level;
- require the exercise of limited judgement in the execution of their own work;
- provide assistance and co-operation to other employees;
- tasks performed are relevant to a particular worksite or location and are performed either as an individual or team member.

#### **S1.1.2 Infrastructure Employee Level 2**

S1.1.2 (a) Employees at this level will be required to perform a range of higher level operation tasks above and beyond the skill and knowledge of an employee at Level 1, and

S1.1.2 (b) Will have completed or be working towards the following training requirements:

- Certificate II in Transport and Logistics (Track Protection) or equivalent

S1.1.2 (c) Work at this level is characterised by the following:

- prerequisite skills have been acquired through relevant experience and/or some specialised training;
- may require the operation of machinery, equipment and/or facilities requiring the exercise of skill and knowledge beyond that of an employee at Level 1;
- performed under general direction;

- exercise judgement and initiative in the day to day execution of their own work;
- instruction given is by way of general direction;
- provide assistance and co-operation to other employees;
- tasks performed are relevant to a particular worksite or location, and are performed either as an individual or team member;
- may from time to time be required to perform work of a lower level

### **S1.1.3 Infrastructure Employee Level 3**

S1.1.3 (a) Employees at this level will be required to perform a range of higher level operative tasks which are above and beyond the skill and knowledge of an employee at Level 2, and

S1.1.3 (b) Will have completed or be working towards the following training requirements:

- Certificate III in Transport and Logistics (Track Protection) or equivalent

S1.1.3 (c) Work at this level is characterised by the following:

- tasks performed require skill specialisation and/or extensive training;
- may require the setup, program and operation of machinery, equipment and/or facilities;
- performed under limited direction;
- an ability to determine and appraise methods of work organisation;
- the implementation of detailed directions and procedures;
- provide assistance and guidance within their level of expertise to other employees;
- assist in the provision of on the job training;
- tasks performed are relevant to a particular worksite or location and are performed either as an individual or team member;
- may from time to time perform work of a lower level.

OR

S1.1.3 (d) Activities associated with Level 3 and the following:

- Allocate and determine work priorities (this may include the requirement to set and prioritise work parameters for operative employees of the same level within the scope of the activity being taken),

- Inspect and ensure the quality of work undertaken by employees,
- Advise group members in respect of the most appropriate procedures and safe work practices affecting the methods of work thereby ensuring employee and public safety at the worksite or location,
- Ensure that labour, tools, materials and equipment are available, used efficiently and where appropriate, are properly maintained,
- Prepare and maintain records and incident reports,
- Provide an overall on the job leadership role,
- Exercise judgment and advise on matters requiring the application of the employee's skills and knowledge,
- Assist in the on-the job- training of employees,
- Perform associated duties as directed.

#### **S1.1.4 Infrastructure Employee Level 4**

S1.1.4 (a) Employees at this level will be required to apply either trade skills, or trade equivalent skills acquired from extensive training and/or experience in a specialised function, and

S1.1.4 (b) Will have completed or be working towards the following training requirements:

- Certificate III in Transport and Logistics (Rail Infrastructure) and Certificate III in Transport and Logistics (Track Protection) or equivalents, and have extensive experience in a specialised function.

S1.1.4(c) Work at this level is characterised by the following:

- understand and apply quality control techniques to a level equivalent to their skill and knowledge;
- may require the setup, program and operation of complex machinery, equipment and/or facilities requiring the exercise of skill and knowledge beyond that of an employee at Level 3;
- performed under broad guidelines;
- a capacity to programme detailed work functions;
- the ability to interpret complex instructions and procedures;
- the provision of trade or trade equivalent guidance and assistance within their area of expertise to other employees;
- tasks performed are relevant to a particular worksite or location and are performed either as an individual or as team member;
- may from time to time perform work of a lower level or incidental to their area of expertise.

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Activities associated with Level 3 and the following:

- allocate, and determine work priorities (This may include the requirement to set and prioritize work parameters for operative employees of the same or of a higher level within the scope of the activity being undertaken);
- inspect and ensure the quality of work undertaken by employees;
- advise group members in respect of the most appropriate procedures and safe work practices affecting the methods of work thereby ensuring employee and public safety at the worksite or location;
- ensure that labour, tools, materials and equipment are available, used efficiently and where appropriate, are properly maintained;
- prepare and maintain records and incident reports;
- provide an overall on the job leadership role;
- exercise judgment and advise on matters requiring the application of his/her skills and knowledge;
- assist in the on-the-job training of employees;
- perform associated duties as directed.

#### **S1.1.5 Infrastructure Employee Level 5**

S1.1.5 (a) An Infrastructure Employee 5 is an employee who has completed the following training requirements:

- Successfully completed six appropriate modules in addition to the training requirements of the Infrastructure Employee Level 4; or
- Will have equivalent skills gained through work experience subject to having successfully completed a skills test equivalent to the structured training requirements for this level.

S1.1.5 (b) An Infrastructure Employee Level 5 works above and beyond an Infrastructure Employee Level 4 and to the level of his/her training:

- Exercises the skills attained through completion of the training and/or experience prescribed for this classification,
- Understands and implements quality control techniques,
- Provides trade guidance and assistance as part of a team,
- Exercises discretion within the scope of this grade,
- Works under limited supervision either individually or in a team environment,
- Reads, interprets and applies information from plans.

S1.1.5(c) The following indicative tasks which an employee at this level may perform are subject to the employee having the appropriate Trade and Post Trade training or equivalent to enable the employee to perform the particular indicative tasks:

- Exercises precision trade skills using various materials and/or specialised techniques,
- Scheduled and plan work activity,
- Write brief reports on work activity
- Recognise hazards associated with tasks in the field of work,
- Exercise skills involved in fabrication, assembly, installation , repair, maintenance, modifying, design or minor construction and fit-out work,
- Provide support and assistance in other building trades areas to the level of training,
- Performs non-trade tasks incidental to his/her work,
- Performs work, which while primarily involving the skills of the employee's trade is incidental and peripheral to the primary task and facilitates the completion of the whole task. Such incidental or peripheral work would not require additional formal technical training.

OR

S1.1.5 (d) Activities associated with the Infrastructure Employee level 5 and the following:

- Allocate and determine work priorities (this may include the requirement to set and prioritise work parameters for operative employees of the same level within the scope of the activity being undertaken);
- Inspect and ensure the quality of work undertaken by employees, advise group members in respect of the most appropriate procedures and safe work practices affecting the methods of work thereby ensuring employee and public safety at the worksite or location,
- Ensure that labour, tools, material and equipment are available, used efficiently and where appropriate, are properly maintained,
- Prepare and maintain records and incident reports,
- Provide an overall on-the-job leadership role,
- Exercise judgement and advise on matters requiring the application of the employee's skills and knowledge,
- Assist in the on-the-job training of employees,
- Perform associated duties as directed.

### **S1.1.6 Infrastructure Employee 6A**

S1.1.6 (a) An Infrastructure Employee 6A is an employee who has completed the following requirements:

- Successfully completed nine appropriate modules in addition to the training requirements of Infrastructure Employee Level 5 or equivalent,
- or Certificate III in Business (Frontline Management) or;
- Will have equivalent skills gained through work experience subject to having successfully completed a skills test equivalent to the structured training requirements for this level,

S1.1.6 (b) An Infrastructure Employee work above and beyond an Infrastructure Employee Level 5 and to the level of his/her training;

- Exercises the skills attained through completion of the training prescribed for this classification,
- Provides trade guidance and assistance as part of a work team
- Understands and implements quality control techniques,
- Works under minimal supervision either individually or in a team environment, reads, interprets and applies information from plans.

S1.1.6 (c) The following indicative tasks which an employee at this level may perform are subject to the employee having the appropriate Trade and Post Trade training to enable the employee to perform the particular indicative tasks:

- Exercises high precision trade skills using various materials and/or specialised techniques,
- Exercise skills involved in fabrication, assembly, installation, repair, maintenance, modifying, design or minor construction and fit- out work,
- Exercises skills in preventative maintenance programs,
- Performs non-trade tasks incidental to his/her work,
- Performs work, which while primarily involving the skills of the employee's trade is incidental or peripheral to the primary task and facilitates the completion of the whole task. Such incidental or peripheral work would not require additional formal technical training.

S1.1.6 (d) Activities associated with Infrastructure Employee Level 6A and the following:

- Allocate and determine work priorities (this may include the requirement to set and prioritise work parameters for operative employees of the same level within the scope of the activity being undertaken),

- Inspect and ensure the quality of work undertaken by employees, advise group members in respect of the most appropriate procedures and safe work practices affecting the methods of work thereby ensuring employee and public safety at the worksite or location,
- Ensure that labour, tools, materials and equipment are available, used efficiently and where appropriate, are properly maintained,
- Prepare and maintain records and incident reports,
- Provide an overall on-the-job leadership role,
- Exercise judgement and advise on matters requiring the application of the employee's skills and knowledge,
- Assist in the on-the-job training of employees,
- Perform associated duties as directed.

### **S1.1.7 Infrastructure Employee Level 6**

S1.1.7 (a) An Infrastructure Employee Level 6 is an employee who has completed the following training requirements:

- Successfully completed 10.5 appropriate modules in addition to the training requirements of an Infrastructure Employee Level 4 or equivalent accredited training;
- or Certificate IV in Business (Frontline Management) or;
- Will have equivalent skills gained through work experience subject to having successfully completed a skills test equivalent to the structured training requirements for this level.

S1.1.7 (b) An Infrastructure Employee Level 6 works above and beyond an Infrastructure Employee Level 6A and to the level of his/her training:

- Exercises the skills attained through completion of the training prescribed for this classification,
- Exercises discretion within their level of training,
- Provides trade guidance and assistance as part of a work team,
- Understands, implements and guides others in quality control techniques,
- Works under minimal supervision either individually or in a team environment,
- Reads, interprets and applies information from plans.
- Exercises responsibility for the inspection and approval of completed work as required

S1.1.7 (c) The following indicative tasks which an employee at this level may perform are subject to the employee having the appropriate Trade and Post Trade training to enable the employee to perform the particular indicative tasks:

- Exercises high precision trade skills using materials, equipment and/or specialised techniques,
- Possesses effective written and verbal skills in order to provide concise reporting and communication,
- Exercises advance skills involved in fabrication, assembly, installation, repair, maintenance, modifying, design or minor construction and fit out-work,
- Exercises extensive skills in preventative maintenance programs,
- Undertakes inspections of infrastructure assets within the rail corridor to ensure compliance with relevant standards and to identify remedial works in cases of non-conformance.
- Conducts investigative and surveillance activities which contribute to critical safety advice, independent assessment & judgment of the condition of assets.
- Performs non-trade tasks incidental to his/her work,
- Performs work, which primarily involving the skills of the employee's trade is incidental and peripheral to the primary task and facilitates the completion of the whole task. Such incidental or peripheral work would not require additional formal technical training.

OR

S1.1 7 (d) Activities associated with Infrastructure Employee Level 5 and the following:

- Allocate and determine work priorities (This may include the requirement to set and prioritise work parameters for operative employees of the same level within the scope of the activity being undertaken),
- Inspect and ensure the quality of work undertaken by employees,
- Advise group members in respect of the most appropriate procedures and safe work practices affecting the methods, of work thereby, ensuring employee and public safety at the worksite or location,
- Ensure that labour, tools, material and equipment are available, used efficiently and where appropriate, are properly maintained,
- Prepare and maintain records and incident reports,



## OFFICIAL

- Provide an overall on-the-job leadership role,
- Exercise judgement and advise on matters requiring the application of the acquired trade skills

**SCHEDULE 2 – WAGES****INFRASTRUCTURE EMPLOYEE WAGE RATES**

Classification	First full pay period on or after 1 January 2022		First full pay period on or after 1 January 2023		First full pay period on or after 1 January 2024	
	3% Increase	Hourly	3% Increase	Hourly	3% Increase	Hourly
	Weekly Rate	Rate	Weekly Rate	Rate	Weekly Rate	Rate
<b>Infrastructure Employee 1</b>						
First year	\$1,082.13	\$28.48	\$1,114.59	\$29.33	\$1,148.03	\$30.21
Thereafter	\$1,097.37	\$28.88	\$1,130.29	\$29.74	\$1,164.20	\$30.64
<b>Infrastructure Employee 2</b>						
First year	\$1,111.73	\$29.26	\$1,145.08	\$30.13	\$1,179.43	\$31.04
Thereafter	\$1,135.53	\$29.88	\$1,169.60	\$30.78	\$1,204.69	\$31.70
<b>Infrastructure Employee 3</b>						
First year	\$1,161.46	\$30.56	\$1,196.30	\$31.48	\$1,232.19	\$32.43
Thereafter	\$1,185.77	\$31.20	\$1,221.34	\$32.14	\$1,257.98	\$33.10
<b>Infrastructure Employee 4 100%</b>						
First year	\$1,280.99	\$33.71	\$1,319.42	\$34.72	\$1,359.00	\$35.76
Thereafter	\$1,307.96	\$34.42	\$1,347.19	\$35.45	\$1,387.61	\$36.52
<b>Infrastructure Employee 5 110%</b>						
First year	\$1,405.39	\$36.98	\$1,447.56	\$38.09	\$1,490.98	\$39.24
Thereafter	\$1,438.75	\$37.86	\$1,481.91	\$39.00	\$1,526.36	\$40.17
<b>Infrastructure Employee 6A 115%</b>						
First year	\$1,473.12	\$38.77	\$1,517.31	\$39.93	\$1,562.83	\$41.13
Thereafter	\$1,504.14	\$39.58	\$1,549.26	\$40.77	\$1,595.74	\$41.99
<b>Infrastructure Employee 6</b>						
First year	\$1,660.64	\$43.70	\$1,710.46	\$45.01	\$1,761.77	\$46.36
Second year	\$1,724.19	\$45.37	\$1,775.91	\$46.73	\$1,829.19	\$48.14
Third year	\$1,792.26	\$47.16	\$1,846.03	\$48.58	\$1,901.41	\$50.04
Thereafter	\$1,860.22	\$48.95	\$1,916.03	\$50.42	\$1,973.51	\$51.93

## SCHEDULE 3 – ALLOWANCES

### S3.1 Allowances and Special Rates

#### S3.1.1 Trainer/Assessor Allowance

S3.1.1 (a) An employee pursuant to this Agreement who is a qualified Trainer/Assessor will be paid an allowance as set out below when delivering competency based training or assessment, provided that an employee performing such work will not be paid less than their normal rostered work.

S3.1.1 (b) The delivery of competency-based training is defined as formal training and assessment as distinct from mentoring and coaching.

Date of Operation	First full pay period on or after 1/1/2022	First full pay period on or after 1/1/2023	First full pay period on or after 1/1/2024
Rate per hour	\$2.39	\$2.46	\$2.54

#### S3.1.2 First aid allowance

An employee who has been trained to render first aid and who is the current holder of appropriate first aid qualifications such as a certificate from the St John's Ambulance or similar body will be paid a weekly allowance as set out below if appointed by the Rail Commissioner to perform first aid duty.

Date of Operation	First full pay period on or after 1/1/2022	First full pay period on or after 1/1/2023	First full pay period on or after 1/1/2024
Rate per week	\$17.86	\$18.40	\$18.95

#### S3.1.3 Meal allowance

An employee required to work overtime for more than two hours without being notified on the previous day or earlier that they will be so required to work will either be supplied with a meal by The Rail Commissioner or paid the rate provided below for the first and for each subsequent meal.

Date of Operation	First full pay period on or after 1/1/2022	First full pay period on or after 1/1/2023	First full pay period on or after 1/1/2024
Meal Allowance	\$17.82	\$18.35	\$18.90

### **S3.1.4 Travelling time allowance**

An employee required to sign on or off elsewhere than at his/her headquarters will be paid at the ordinary rate for the time reasonably occupied in travelling to and from such place of signing on or off in excess of the time reasonably occupied in travelling between his/her residence and his/her headquarters, except on Saturdays, Sundays and public holidays when travelling time is payable at time and a half rates. This clause will not apply where the employee is absent from headquarters on expenses.

### **S3.1.5 Motor vehicle allowance**

No employee is required, under any circumstances whatsoever, to use their private vehicle for official purposes if they do not wish to do so.

The payment of the allowance for the use of a private motor vehicle for purposes related to the employment will only occur where approval has been given by the Rail Commissioner prior to the actual use of the private motor vehicle by the employee.

Where an employee has been given approval by the Rail Commissioner to use their private motor vehicle for official purposes, such employee will be paid an allowance per kilometre travelled in accordance with *Commissioner's Determination 3.2: Employment Conditions – Remuneration – Allowances and Reimbursements*, as amended or superseded.

### **S3.1.6 On Call Allowance**

Employees who are rostered to be on-call of a night time or during a full Saturday, Sunday or public holiday or any day that the employee would normally be rostered off duty (as applicable), will be paid an allowance for each night or day (as applicable) as follows:

	On or after 1 January 2022	On or after 1 January 2023	On or after 1 January 2024
Monday to Friday	\$34.76/day	\$35.81/day	\$36.88/day
Weekends/Public Holidays/Rostered Days Off	\$60.69/day	\$62.51/day	\$64.38/day

## **SCHEDULE 4 – OTHER MATTERS**

### **S4. Employees' Uniforms, Clothing and Equipment**

#### **S4.1 Uniforms and equipment**

S4.1.1 The Rail Commissioner will generally supply an employee the necessary equipment, uniform, and protective clothing where The Rail Commissioner has determined that such items are required in connection with the undertaking or performance of work.

S4.1.2 Employees supplied with equipment, uniform, and protective clothing are accountable for maintaining and securing such items. Replacement of issued items will be on a fair wear and tear basis only. In the case of loss or damage to issued items outside what can reasonably be considered fair wear and tear, the employee will be billed for the cost of replacing the item.

#### **S4.2 Compensation for clothes or tools**

S4.2.1 A trade employee, whose clothes, spectacles, hearing aids or tools have been accidentally spoilt by acid, sulphur, or other deleterious substances, will be paid such amount to cover the loss thereby suffered by the employee. This may be agreed upon between the employee and the Rail Commissioner, or, in default of agreement in accordance with the Disputes Resolution Procedure.

S4.2.2 An employee will be reimbursed by the Rail Commissioner to a maximum as specified below for loss of tools or clothes by fire or breaking and entering, whilst securely stored at the Rail Commissioner's direction in a room or building on the Rail Commissioner's premises, job or workshop, or in a lock-up. This includes where tools are lost or stolen while being transported by the employee at the Rail Commissioner's direction, or if the tools are accidentally lost over water, or if tools are lost or stolen during an employee's absence after leaving the job because of injury or illness. Employees transporting their own tools will take reasonable care to protect those tools and prevent theft or loss.

S4.2.3 Only tools used by the employee in the course of their employment will be covered by this clause.

S4.2.4 The employee will report any theft to the police prior to making a claim on the Rail Commissioner for replacement of stolen tools.

S4.2.5 The employee will, if requested to do so, furnish the Rail Commissioner with a list of tools so used. Reimbursement will be at the current replacement value of new tools of the same or comparable quality.

S4.2.6 Where an employee is absent from work because of illness or accident, and has advised the Rail Commissioner as required, the employer will ensure that the employee's tools are securely stored during their absence.

Date Of Operation	First full pay period on or after 1/1/2013
Maximum reimbursement	\$1276.26

## **SCHEDULE 5 – INFRASTRUCTURE EMPLOYEES – REDEPLOYMENT, RETRAINING AND REDUNDANCY**

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## **Operation**

This Schedule operates in conjunction with consultation provisions contained in the *Rail Commissioner Infrastructure Employees Enterprise Agreement 2023* (the Agreement).

This Schedule applies to all Parties bound by the Agreement.

## **Objectives**

The objective of this Schedule is to ensure that proper consultation occurs between the Rail Commissioner, employees and the applicable unions 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 some or all of the duties Infrastructure employees undertake, 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 Schedule is intended to remove or limit the operation of Clause 10 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 applicable unions 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 applicable unions. 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 applicable unions 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 applicable unions.
- 1.1.5 Where the applicable unions 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 applicable unions 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 10 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 applicable unions.
- 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 applicable unions.
- 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 applicable unions regarding the outcomes of the EOI process. For the purposes of consultation, the Rail Commissioner will provide the applicable unions in writing the outcomes of the EOI process and provide the applicable unions 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 applicable unions request further information or seek 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 applicable unions.

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 applicable unions 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 applicable unions.

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 – Voluntary Separation Packages (VSPs) – Weekly paid Employees as at 1<sup>st</sup> July 2018. To be read in conjunction with 4.73 (a) & (b).*

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 VSP 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 applicable unions 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 applicable unions 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 applicable unions. 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 their applicable union.
- 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 applicable unions 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 applicable unions 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 their applicable union.
- 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/worksites 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 6 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 employee's 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 9 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 applicable unions) 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 applicable unions) 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 10.

#### 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 5 weeks’ notice and separation pay outlined in 4.6.3 (provided that the terms of this Schedule 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 that 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 5 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 Schedule, the Parties may raise a dispute in accordance with clause 10 of the Agreement.
- 5.2. A dispute may be raised at any stage of this Schedule. Where a dispute is raised in relation to this Schedule, 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 Schedule, the Parties agree that the dispute may be arbitrated by the Fair Work Commission.

### **Review**

The Rail Commissioner and the applicable unions 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.

## **SCHEDULE 6 – INFRASTRUCTURE EMPLOYEES – 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](http://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 2 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 10.



IN THE FAIR WORK COMMISSION

FWC Matter No. AG2023/340

Applicant: Rail Commissioner

Section 185 – Application for approval of a single  
enterprise agreementOFFICE OF THE  
RAIL COMMISSIONER83 Pirie Street  
Adelaide SA 5000GPO Box 1533  
Adelaide SA 5001

## Undertaking- Section 190

I, Jon Whelan, Rail Commissioner, give the following undertaking with respect to the *Rail Commissioner Infrastructure Employees Enterprise Agreement 2023* ("the proposed Agreement"):

1. I have the authority given to me by the *Rail Commissioner Act 2009* (South Australia), to provide this undertaking in relation to the application before the Fair Work Commission.
2. Relationship between the proposed Agreement and the National Employment Standards (NES):
  - The provisions of the proposed Agreement are to be read in conjunction with the *Fair Work Act 2009*.
  - The purpose of the proposed Agreement is to provide a simple summary of some of the provisions of the *Fair Work Act 2009*, and in some occasions, provide more favourable provisions.
  - It is not the intention that any provision of the proposed Agreement is to operate in a way that is less favourable to employees than the NES. If any provisions operate in a way that is less favourable to employees than the NES, then the NES shall prevail.
3. These undertakings are provided based on issues raised by the Commissioner in the application before the Fair Work Commission, and will be attached to the proposed Agreement if approved by the Commission.



Jon Whelan  
**RAIL COMMISSIONER**

27 February 2023