



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

RMC Track and Civil Pty Ltd
(AG2019/2465)

RMC TRACK AND CIVIL PTY LTD ENTERPRISE AGREEMENT 2019

Rail industry

DEPUTY PRESIDENT MASSON

MELBOURNE, 31 JULY 2019

Application for approval of the RMC Track and Civil Pty Ltd Enterprise Agreement 2019.

[1] An application has been made for approval of an enterprise agreement known as the *RMC Track and Civil Pty Ltd Enterprise Agreement 2019* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by RMC Track and Civil Pty Ltd. The Agreement is a single enterprise agreement.

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

[3] I note that Clause 6.16 is inconsistent with the National Employment Standards as it appears that regular and systematic casuals may be excluded from annual leave and other leave entitlements. Given the National Employment Standards precedence clause at clause 4.2 of the agreement, I am satisfied that the more beneficial entitlements of the NES will prevail.

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

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 July 2019. The nominal expiry date of the Agreement is 30 July 2023.



DEPUTY PRESIDENT

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RMC Track and Civil Pty Ltd
ENTERPRISE AGREEMENT 2019



1.	TITLE	3
2.	PARTIES BOUND AND APPLICATION OF AGREEMENT	3
3.	PERIOD OF OPERATION	3
4.	RELATIONSHIP TO INDUSTRIAL AWARDS	3
5.	DEFINITIONS IN THIS AGREEMENT	3
6.	CONTRACT OF SERVICE	4
7.	CLASSIFICATIONS AND WAGE RATES	9
8.	ADDITIONAL ALLOWANCES	10
9.	DISTANCE WORK AND MEALS AND ACCOMMODATION ALLOWANCES	11
10.	HOURS OF WORK.....	12
11.	OVERTIME.....	13
12.	MEAL AND CRIB BREAKS	14
13.	PROJECT WORKING HOURS.....	15
14.	SHIFTWORK.....	15
15.	PROTECTIVE EQUIPMENT AND CLOTHING	17
16.	ANNUAL LEAVE.....	17
17.	PERSONAL/CARER'S LEAVE	18
18.	COMPASSIONATE LEAVE	19
19.	PUBLIC HOLIDAYS	20
20.	LONG SERVICE LEAVE	21
21.	PARENTAL LEAVE	21
22.	COMMUNITY SERVICE LEAVE	21
23.	DOMESTIC VIOLENCE LEAVE	21
24.	SUPERANNUATION	23
25.	TERMINATION OF EMPLOYMENT	23
27.	REDUNDANCY	24
28.	DISPUTE SETTLEMENT PROCEDURE	26
29.	INDIVIDUAL FLEXIBILITY ARRANGEMENTS.....	27
30.	CONSULTATION TERM	28
31.	REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS	30
32.	NO EXTRA CLAIMS.....	31
	SIGNATURES.....	32
	APPENDIX 1 - Classifications.....	33

1. TITLE

This agreement shall be known as the RMC Track and Civil Pty Ltd Enterprise Agreement 2019 (**Agreement**).

2. PARTIES BOUND AND APPLICATION OF AGREEMENT

2.1 This Agreement shall cover:

- (a) RMC Track and Civil Pty Ltd (ACN 627 041 221) (**Employer**); and
- (b) the Employees of the Employer employed in the classifications contained in clause 7 - Classification and Wage Rates of this Agreement when performing track maintenance and construction work on sites throughout the States of Queensland, New South Wales, Australian Capital Territory, South Australia and Western Australia (**Employees**); and
- (c) The Australian Rail, Tram and Bus Industry Union (Union)

2.2 This Agreement replaces the Railtrain Pty Ltd SA/VIC/TAS/ACT/NSW/QLD/NT Enterprise Agreement 2013 in relation to the Employees.

3. PERIOD OF OPERATION

- 3.1 This Agreement shall commence operation on the seventh (7th) day after the day it is approved by the Fair Work Commission (**FWC**).
 - 3.2 The nominal expiry date of this Agreement shall be four (4) years after the day on which the FWC approves the Agreement. However, this Agreement shall continue to operate beyond the nominal expiry date until it is replaced or terminated in accordance with the *Fair Work Act 2009* (Cth) (**Act**).
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4. RELATIONSHIP TO INDUSTRIAL AWARDS

- 4.1 This Agreement operates to the exclusion of any otherwise applicable industrial award.
 - 4.2 This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.
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5. DEFINITIONS IN THIS AGREEMENT

“**Act**” means the *Fair Work Act 2009* (Cth) (as amended or replaced from time to time)

“**Agreement**” means the RMC Track and Civil Pty Ltd Enterprise Agreement 2019

“**ATO Act & Guidelines**” means the *Taxation Administration Act 1953* and the *Income Tax Assessment Act 1997* and associated Regulations and Guidelines (as amended from time to time)

“Australian CPI” means the national consumer price index for Australia, as indicated by the Australian Bureau of Statistics for the weighted average of the eight (8) Australian capital cities as of the full quarters from June to March each year.

“De Facto Partner” in relation to an Employee means:

- a) a person who, although not legally married to the Employee, lives with the Employee in a relationship as a couple on a genuine domestic basis (whether the Employee and the person are of the same sex or different sexes); and
- b) Includes a former de facto partner of the Employee.

Employee means a person employed by the Employer whose employment is covered by this agreement.

“FWC” means the Fair Work Commission.

“Immediate family” means:

- a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the Employee; or
- b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the Employee.

“Long Service Leave Act” means the relevant Portable Long Service Leave Acts (construction) in each state the agreement operates.

“NES” shall mean the National Employment Standard (as amended or replaced from time to time).

“Permanent Night Shift” shall mean where an Employee: during a Roster cycle, works night shift only; or remains on night shift for a longer period than four consecutive weeks; or works on night shift which does not rotate or alternate with another shift or with day work so as to give him or her at least 1/3rd of his or her working time off night shift in each Roster cycle.

“Residence” means the Employee domicile place of residence as defined in the ATO Act and guidelines.

“Roster” means a work schedule containing the ordinary and overtime hours of work required of an Employee over a period of time along with the RDOs, public holidays and other days of approved leave falling during that period.

“Rostered Day off (RDO)” means a week day not worked as a result of the operation of a method of working a 38 hour week where sufficient extra ordinary time is worked on a number of days and accrued to allow for the day off.

“Union” means the Australian Rail, Tram and Bus Industry Union

“Wet Weather Clothing” means a ‘3-in-1’ jacket and waterproof pants.

6. CONTRACT OF SERVICE

Types of Employment

6.1 Employees will be engaged on one of the following basis:

- (a) full-time Employees;
- (b) part-time Employees;
- (c) maximum term or project/task specific Employees; or
- (d) casual Employees.

Position of employment

6.2 The position of employment (classification) as set out in clause 7 and in Appendix 1 will be specified in each Employee's respective contract of employment or as otherwise specified in writing by the Employer at the commencement of their employment in accordance with:

- (a) the operational requirements of the Employer; and
- (b) the Employee's trade and/or other qualifications, skills and experience.

6.3 The Employee will report to any person who may from time to time be designated for this purpose by the Employer.

Basis of employment

6.4 The basis of employment will be specified in each Employee's respective contract of employment or as otherwise specified in writing by the Employer at the commencement of their employment.

Full-time employment

6.5 Full-time Employees are engaged on the basis of a maximum ordinary hours of work of thirty-eight (38) hours per week plus reasonable additional hours averaged over a period of sixteen (16) weeks.

Part-time employment

- 6.6 A part-time Employee is an Employee who:
- a) is engaged to work an average of fewer than 38 ordinary hours per week; and
 - b) receives, on a pro-rata basis, equivalent pay and conditions to those of full-time Employees who do the same kind of work
- 6.7 Part-time Employees receive the same entitlements as full-time Employees on a pro-rata basis based on their ordinary hours of work.
- 6.8 Before commencing part-time employment the Employee and the employer must agree upon the number of hours to be worked each day, the days of the week the Employee will work and the starting and finishing times each day.
- 6.9 All time worked in excess of the agreed hours will be paid at the appropriate overtime rate.
- 6.10 Part-time Employees will be engaged for a minimum shift length of 4 hours.

Maximum term or project specific employment

6.11 Employees may be engaged for specified period of time, for a specified task, or for the duration of a specified project.

- 6.12 However, at any time, either the Employer or the Employee may end the employment relationship by giving notice in accordance with the terms of this Agreement.

Casual employment

- 6.13 A casual Employee is one engaged and paid in accordance with the provisions of clauses 6.13 to 6.18.
- 6.14 The Employer, when engaging a person for casual employment, must inform the Employee in writing that the Employee is to be employed as a casual, the job to be performed, the classification level and the relevant rate of pay.
- 6.15 A casual Employee is entitled to payment for a minimum of four (4) hours' work per engagement.
- 6.16 A casual Employee must be paid a casual loading of twenty-five per cent (25%) on their ordinary hourly rate for ordinary time worked. The casual loading is paid instead of annual leave, personal/carer's leave, notice of termination, redundancy benefits, public holiday entitlements and other benefits of permanent employment (otherwise than provided for in this Agreement).
- 6.17 A casual Employee is entitled to the relevant penalty rates prescribed by clauses 11 - Overtime, 14 - Shiftwork and 19 – Public Holidays of this Agreement as the case may be, provided that the casual loading of twenty-five per cent (25%) of the Employees ordinary hourly rate will be paid in addition to those penalty rates. For example, where the relevant penalty rate is time and a half (1.5 times), the casual Employee must be paid 1.75 times their ordinary hourly rate (which includes the time and a half penalty rate and the 25% casual loading).
- 6.18 To the extent permitted by law, if a Court or Commission determines that a casual Employee under this Agreement is not a casual Employee at law and is entitled to permanent Employee benefits (including, but not limited to paid leave, prior notice of termination and redundancy pay), the 25% casual loading paid for all hours worked to the Employee will be offset against any amount required to be paid by the Employer to the Employee for permanent Employee benefits.

Casual Conversion

- 6.19 An Employee engaged as a regular casual Employee may request that their employment be converted to full-time or part-time employment.
- 6.20 A regular casual Employee is a casual Employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the Employee could continue to perform as a full-time Employee or part-time Employee under the provisions of this Agreement.
- 6.21 A regular casual Employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
- 6.22 A regular casual Employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.

- 6.23 Any request under this subclause must be in writing and provided to the Employer.
- 6.24 Where a regular casual Employee seeks to convert to full-time or part-time employment, the Employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the Employee.
- 6.25 Reasonable grounds for refusal include that:
- (a) it would require a significant adjustment to the casual Employee's hours of work in order for the Employee to be engaged as a full-time or part-time Employee in accordance with the provisions of the Agreement – that is, the casual Employee is not truly a regular casual Employee as defined in clause 6.20;
 - (b) it is known or reasonably foreseeable that the regular casual Employee's position will cease to exist within the next 12 months;
 - (c) it is known or reasonably foreseeable that the hours of work which the regular casual Employee is required to perform will be significantly reduced in the next 12 months; or
 - (d) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the Employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the Employee is available to work.
- 6.26 For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- 6.27 Where the Employer refuses a regular casual Employee's request to convert, the Employer must provide the casual Employee with the Employer's reasons for refusal in writing within 21 days of the request being made. If the Employee does not accept the Employer's refusal, this will constitute a dispute that will be dealt with under the dispute settlement procedure in clause 28. Under that procedure, the Employee or the Employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- 6.28 Where it is agreed that a casual Employee will have their employment converted to full-time or part-time employment as provided for in this clause, the Employer and Employee must discuss and record in writing the form of employment to which the Employee will convert – that is, full-time or part-time employment.
- 6.29 The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- 6.30 Once a casual Employee has converted to full-time or part-time employment, the Employee may only revert to casual employment by written agreement between the Employer and the Employee.
- 6.31 A casual Employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under this Agreement.
- 6.32 Nothing in this clause obliges a regular casual Employee to convert to full-time or part-time employment, nor permits the Employer to require a regular casual Employee to so convert.
- 6.33 Nothing in this clause requires the Employer to increase the hours of a regular casual Employee seeking conversion to full-time or part-time employment.

- 6.34 The Employer must provide a casual Employee, whether a regular casual Employee or not, with a copy of the provisions of this subclause within the first 12 months of the Employee's first engagement to perform work. In respect of casual Employees already employed as at the commencement of this Agreement, the Employer must provide such Employees with a copy of the provisions of this subclause within 3 months of commencing employment.
- 6.35 A casual Employee's right to request to convert is not affected if the Employer fails to comply with the notice requirements in clause 6.34.

Probation

- 6.36 All new Employees will be engaged on a probationary period of three (3) months.
- 6.37 During this period, either party can terminate the employment by giving one (1) weeks' notice or payment in lieu of notice (other than casual Employees).
- 6.38 For casual Employees, employment may be terminated by either party giving four (4) hours' notice.

Duties

- 6.39 An Employee's duties and responsibilities may be varied by the Employer, provided that they are within the Employee's range of skills, qualifications, competence and training as directed from time to time.
- 6.40 At all times in performing their duties and responsibilities, Employees are required to:
- (a) comply with any lawful and reasonable directions given by the Employer;
 - (b) use their best endeavors in the performance of work;
 - (c) devote the whole of their time and attention to their work; and
 - (d) ensure the highest level of safe working practices are adhered to and maintained.

Stand Down

- 6.41 Notwithstanding any other provision in this Agreement, where an Employee cannot be usefully employed due to industrial action engaged in by Employees, or a breakdown of equipment or any stoppage of work over which the Employer cannot be reasonably held responsible, the Employer may stand down the Employee. If the Employer stands down the Employee under this clause, the Employee will not receive payment for the stand down period.

Inclement Weather Clause

- 6.42 Inclement Weather is defined as abnormal climatic conditions (for example heavy rain, hail, high wind, severe dust storm, extreme temperatures) under which it is either unreasonable or unsafe for Employees to be exposed to these conditions to continue working.
- 6.43 The Employer recognises the increased inherent risk of working in inclement weather, therefore the following general principles apply. This clause is intended to ensure that the parties to this Agreement have an agreed understanding about how the general principle of maximising productivity is applied without exposing Employees to unsafe

inclement weather conditions.

6.44 An Employee must comply with Employer's instructions to:

- (i) Continue work when the area in which the Employee is working is not affected by the unsafe inclement weather; and/or
- (ii) Transfer to work to an area of the site not affected by the unsafe inclement weather; and/or
- (iii) Transfer (within paid working time) from one site to another site not affected by the unsafe inclement weather; and/or
- (iv) Leave the site without loss of pay. For the avoidance of doubt, Employees will only receive payment for Ordinary Hours of that shift (excluding rostered or unrostered overtime).

6.45 Where it is necessary for an Employee to traverse open ground (not work) the Employer will provide the Employee with safe transport and/or appropriate wet weather protective clothing. Such clothing will remain the property of the Employer and must be returned to the Employer on request. Employees shall take reasonable care of the clothing and pay the cost of its replacement if lost or damaged due to an Employee's negligence.

Fitness for Work

6.46 Employees must not be adversely affected by alcohol or drugs during working hours.

6.47 Employees must also be medically fit to perform work.

6.48 An Employee who is taking medication, or suffering from any condition, that may affect or limit the Employee's ability to carry out their work safely must advise his/her supervisor immediately.

6.49 Employees may be required to undertake random, targeted or 'for cause' drug and alcohol testing. Where there is a positive result on a drug or alcohol test, any subsequent tests to determine fitness for work will be at the Employee's expense.

6.50 For the purposes of Clause 6.49 'for cause' includes, but is not limited to: following an incident or near miss or when the Employer or a client of the Employer reasonably suspects an Employee is or has been under the influence of or affected by alcohol or drugs during working hours or at the work site.

7. CLASSIFICATIONS AND WAGE RATES

7.1 Employees engaged in work covered by this Agreement will be paid in accordance with the following classifications and wage rates for Ordinary Hours of work.

Classification	Level	Base Hourly Rate	Base Hourly Rate + Casual Loading (25%)	Engagement Period
Level One				
Entry Level Track Labourer	Level 1.1	\$25.75	\$32.19	NA
Level Two				
Track Labourer	Level 2.1	\$26.44	\$33.05	Not more than 1 year.

	Level 2.2	\$26.80	\$33.50	At least one year but no more than 3 years.
	Level 2.3	\$27.15	\$33.94	More than 3 years.
Level 3				
Track Worker	Level 3.1	\$27.46	\$34.33	Not more than 1 year
	Level 3.2	\$28.08	\$35.10	At least one year but no more than 3 years
	Level 3.3	\$28.40	\$35.50	More than 3 years
Level 4				
Advanced Track Worker	Level 4.1	\$29.35	\$36.69	Not more than 1 year
	Level 4.2	\$29.83	\$37.29	At least one year but no more than 3 years
	Level 4.3	\$30.31	\$37.89	More than 3 years
Level 5				
Specialist Operator	Level 5.1	\$34.07	\$42.59	Not more than 1 year
	Level 5.2	\$34.70	\$43.38	At least one year but no more than 3 years
	Level 5.3	\$35.33	\$44.16	More than 3 years

7.2 The Base Hourly Rates set out in clause 7.1 are subject to annual increases from 1 July commencing on the first July the Agreement is in operation and for each year thereafter (up until its nominal expiry date) in accordance with Australian CPI or 2% (whichever is the greater).

7.3 Classification descriptions are contained in Appendix 1.

Project rates

7.4 Employees assigned to work on a project may be paid wage rates and allowances additional to those prescribed under this Agreement for the work on that project to reflect the site roster arrangements, site location or additional skills or experience required to be utilised for the period they are on the project, provided that:

- (a) the Employees are notified in writing by the Employer that this will be so prior to the commencement on that project of the arrangements and rates of pay; and
- (b) overall, the Employees are paid not less than the entitlements under this Agreement.

Payment of wages

7.5 Wages shall be paid on a fortnightly basis by electronic fund transfer to an acceptable financial institution nominated by the Employee.

7.6 In accordance with the FW Act, the Employer may seek an authorisation from the Employee to deduct from an Employee's wages, or any monies owing, any overpayment of remuneration or any amount provided for by this Agreement.

8. ADDITIONAL ALLOWANCES

Leading hand allowance

8.1 In addition to the ordinary rate of pay for his/her classification, a leading hand appointed in writing as such by the Employer, shall be paid one of the following allowances, per

shift worked, in accordance with the table below:

Number of employees supervised	Upon commencement of this Agreement:
If placed in charge of not less than three and not more than ten (10) other Employees	\$6.86 per shift worked in a leading hand capacity
If placed in charge of more than ten (10) other	\$8.88 per shift worked in a leading hand capacity

First aid allowance

- 8.2 An Employee who holds the appropriate first aid qualifications (St John Ambulance Workplace First Aid and Advanced Resuscitation or Australian Red Cross Intermediate First Aid) and is appointed in writing by the Employer to perform first aid duties in addition to their usual duties, shall be paid an allowance of \$2.89 per shift worked.

9. DISTANCE WORK AND MEALS AND ACCOMMODATION ALLOWANCES

Qualification

- 9.1 This clause shall apply when:
- (a) an Employee is employed on project site rail operations, rail/civil maintenance work and rail/civil construction work at such a distance from the Employee's usual place of residence that the Employee cannot reasonably return to that place each night;
 - (b) the Employee is not in receipt of relocation benefits; and
 - (c) the Employee has provided the Employer with details of their usual place of residence in accordance with clause 9.2.

Employee's usual place of residence

- 9.2 On engagement, an Employee must provide the Employer with details of their usual place of residence at the time of application and reasonable documentary proof of those details. No subsequent change of address will entitle an Employee to the provisions of this clause unless the Employer agrees.
- 9.3 The Employee is not entitled to any payment or other benefit under this clause if the Employee has knowingly made a false statement regarding the details required in clause 9.2.

Entitlement

- 9.4 Where an Employee qualifies under clause 9.1 the Employer will:
- (a) provide the Employee with reasonable board and lodging in a well-kept establishment with three (3) adequate meals each day; and
 - (b) where an Employee is required to reside near the project site, provide all board and accommodation free of charge; or
 - (c) if the Employer so agrees, pay a Meals and Accommodation Allowance to be

determined by the Employer on a project by project basis at the sole discretion of the Employer.

- 9.5 The Meal and Accommodation Allowance is not payable if the Employee is not living away from home or if the Employee is not ready, willing and available to work in accordance with this Agreement (except during periods of authorised leave) or because of industrial action.

9.6 Table of Allowances for Distance Work:

	Accommodation & Meal Allowance	Meal Allowance	Incidentals Allowance	Vehicle KMs
QLD	\$180	\$85.50	\$17.50	0.68 / KM
SA	\$180	\$85.50	\$17.50	0.68 / KM
NSW	\$180	\$85.50	\$17.50	0.68 / KM
WA NW	\$240	\$93.50	\$17.50	0.68 / KM
WA SW	\$240	\$93.50	\$17.50	0.68 / KM
ACT	\$180	\$85.50	\$17.50	0.68 / KM

These allowances will not fall below the ATO Act and guidelines.

Travelling

- 9.7 An Employee who is engaged for project site work which qualifies the Employee for the provisions of this clause will be entitled to the following benefits on mobilisation and demobilisation.
- 9.8 The Employee will be provided with appropriate transport to and from the project site.
- 9.9 Where an Employee is required to travel to or from the project site during rostered working hours, the Employee will be entitled to be paid for the time spent travelling during the rostered working hours.
- 9.10 Except as otherwise provided in clause 9.11, an Employee is not entitled to be paid for time spent travelling where travel falls outside of rostered working hours (for example, an Employee will not be entitled to be paid for time spent travelling to the project site either before the start of a roster or after the completion of a roster).
- 9.11 Where an Employee is working at a temporary location from which they are unable to return home on a daily basis, the Employee will be paid travel time between the project site and their Employer provided accommodation at the same rate as if they were working during this travel time.

Accommodation

- 9.12 Where accommodation is arranged by the Employer, such accommodation shall be no less than a three star rating where reasonably practicable.
- 9.13 Where Employees are provided with accommodation they are required to comply with the relevant rules for that establishment/project site.

10. HOURS OF WORK

- 10.1 Except as provided in clause 14 – Shiftwork, Ordinary Hours for full-time and part-time Employees will not exceed thirty-eight (38) per week averaged over sixteen (16) weeks. Employees are also required to work reasonable additional hours paid at the applicable

overtime rate.

- 10.2 Except as provided in clause 14 – Shiftwork, Ordinary Hours shall be worked between 6.00 a.m. and 6.00 p.m., Monday to Friday (**Ordinary Hours**). The pattern of working hours within the spread of Ordinary Hours may be altered by agreement with an individual Employee or with the majority of Employees at the site, section or sections concerned.
- 10.3 Ordinary Hours shall not exceed ten (10) hours on any day. By agreement between the Employer and a majority of Employees concerned, Ordinary Hours can be increased to twelve (12) hours on any day.
- 10.4 Where the Employer wishes to vary the pattern of working hours within the spread of Ordinary Hours, it shall consult with and seek the agreement of the Employees involved. Failing agreement, the Employer shall give those Employees one (1) weeks' notice of the change.
- 10.5 Where the Employee is directed to remain in Employer supplied accommodation for the purposes of managing fatigue, the Employee will be paid a minimum of four (4) hours.

11. OVERTIME

- 11.1 In computing overtime, each day shall stand alone.
- 11.2 Subject to the provisions of this clause, all work done outside the Ordinary Hours on any day, Monday to Friday, inclusive, shall be paid for at the rate of time and one half (1.5 times) for the first two (2) hours and double time (2 times) thereafter.
- 11.3 Overtime performed on:
- (a) Saturdays prior to 12.00 noon shall be paid for at the rate of time and one half (1.5 times) for the first two (2) hours and double time (2 times) thereafter;
 - (b) Saturdays after 12.00 noon or on Sundays shall be paid for at the rate of double time (2 times); or
 - (c) Public holidays shall be paid for at the rate of double time and a half (2.5 times).

Working of overtime

- 11.4 When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that an Employee has at least ten (10) consecutive hours off duty between the work of successive days.
- 11.5 An Employee (other than a casual Employee) who works so much overtime between the cessation of the Employee's ordinary work on one (1) day and the commencement of the Employee's ordinary work on the next day so that the Employee has not had at least ten (10) consecutive hours off duty between those times shall, subject to this clause, be released after completion of such overtime until the Employee has had ten (10) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- 11.6 If, on instructions of the Employer, such an Employee resumes or continues work without having had such ten (10) consecutive hours off duty, the Employee shall be paid at double rates (2 times) until released from duty and shall then be entitled to be absent for such period of ten (10) consecutive hours off duty without loss of pay for ordinary

working time occurring during such absence.

Recall

- 11.7 When an Employee is recalled to work after leaving their shift:
- (a) the Employee shall be paid for at least four (4) hours at overtime rates; and
 - (b) time reasonably spent in getting to and from work shall be counted as time worked.

12. MEAL AND CRIB BREAKS

Meal breaks

- 12.1 The Employer shall structure the working hours to include a thirty (30) minute unpaid meal break to be commenced within the first five (5) hours of work, provided that this may be extended upon agreement between an Employee, or group of Employees, and the Employer.
- 12.2 On Saturdays, Sundays and Public Holidays, an Employee shall be entitled to the above break paid at ordinary rates unless the rostered shift is for six (6) hours or less.
- 12.3 If the Employee is working shiftwork in accordance with clause 14 – Shiftwork, then in lieu of the meal breaks in clauses 12.1 and 12.2, the Employee is entitled to a twenty (20) minute meal break paid at ordinary rates.
- 12.4 A morning tea break paid at ordinary rates will be allowed to each Employee, provided that such break shall not exceed ten (10) minutes duration.
- 12.5 The Employer may stagger the times for Employees to take meal and tea breaks to meet operational requirements however, where practical, an Employee should not be required to work more than five (5) hours without a break.

Overtime crib breaks

- 12.6 An Employee required to work two (2) or more hours of unrostered overtime after the completion of Ordinary Hours on any day shall be entitled to:
- (a) a twenty (20) minute crib break immediately after the completion of Ordinary Hours paid at ordinary rates; and
 - (b) thereafter, a thirty (30) minute crib break after each four (4) hours of continuous work paid at the appropriate overtime rate.
- 12.7 If an Employee remains at work after the completion of Ordinary Hours without taking a twenty (20) minute crib break and continues to work for a period of two (2) hours or more, the Employee will be regarded as having worked twenty (20) minutes more than the time worked and be paid accordingly.
- 12.8 For the purpose of this clause:
- (a) the completion of Ordinary Hours is at the end of Ordinary Hours plus any rostered overtime or time worked for the purpose of accruing rostered days off; and
 - (b) Unrostered overtime is overtime that has not been incorporated into the

Employee's roster.

13. PROJECT WORKING HOURS

Alternative working hours

- 13.1 An Employee may be required to work on a project site or part of a project site that has alternative working hours arrangements.
- 13.2 If, in such a case, the Employer elects to roster the Employee on an alternative working hours arrangement, for that Employee whilst so engaged, ordinary hours for all purposes of this Agreement will not exceed the particular project working hours per week over a specified roster cycle not exceeding sixteen (16) weeks and a maximum shift length not exceeding twelve (12) hours.
- 13.3 Prior to the commencement of an alternative working hours arrangement, the Employer shall consult and seek the agreement of the Employees involved. Failing agreement, the Employer will provide to the Employees concerned one (1) weeks' notice of the commencement of an alternative working hours arrangement

RDOs

- 13.4 An Employee may be required to work on a project site or part of a project site on which hours are arranged on a system which provides Employees the opportunity to accrue rostered days off (**RDO**).
- 13.5 The accrual of RDOs will be subject to prevailing project terms and conditions in accordance with clause 7.4. An Employee will not accrue RDOs unless specifically designated and authorised by the Employer to accrue RDOs.

14. SHIFTWORK

- 14.1 Shiftwork is any arrangement of working hours where the majority of the ordinary hours are worked outside of the spread of hours 6.00am – 6.00pm Monday to Friday and when Employees are working as such.
- 14.2 The Employer has the right to direct Employees to work shiftwork as required. Prior to the commencement of shiftwork, the Employer shall consult and seek the agreement of the Employees involved. Failing agreement, the Employer will provide to the Employees concerned one (1) weeks' notice of the commencement of shiftwork and the starting and finishing times of Ordinary Hours of the shifts.
- 14.3 The Employer will not direct Employees to work a permanent night shift. Employees may be directed to work night shift on a temporary basis or for project work.

Hours of work

- 14.4 Ordinary hours for Employees working shiftwork will not exceed thirty-eight (38) per week averaged over sixteen (16) weeks. Employees are also required to work reasonable additional hours paid at the applicable overtime rate.
- 14.5 Ordinary hours for Employees working shiftwork shall not exceed ten (10) hours on any day. By agreement between the Employer and the majority of Employees at the project site, section or sections concerned, ordinary hours shall not exceed twelve (12) hours on any day.

Rates

- 14.6 An Employee working shiftwork shall receive a flat loading of fifteen per cent (15%) of their ordinary time hourly rate for each hour worked.
- 14.7 Provided that all work performed on a shift, when the major portion of such shift falls on a Saturday, Sunday or public holiday, shall be paid for as follows:
- (a) Saturday - at the rate of time and one half (1.5 times) for the first two (2) hours and double time (2 times) thereafter;
 - (b) Sunday - at the rate of time double time (2 times); and
 - (c) Public Holiday - at the rate of double time and a half (2.5 times).
- 14.8 The Public Holiday rate in clause 14.7(c) will be payable on any Public Holiday mentioned in clause 19.1. However, where a Public Holiday has an additional day or substituted day declared by or under a law of a State or Territory, the Public Holiday rate in clause 14.7(c) will only be payable on the declared additional day or substituted day.
- 14.9 The rates specified in clause 14.7 shall be paid in lieu of the shift loading prescribed in clause 14.6.
- 14.10 No Employee will work Permanent Night Shift under the Agreement. .

Overtime

- 14.11 Subject to the provisions of this clause, all work done outside the Ordinary Hours on any day, Monday to Friday, inclusive, shall be deemed overtime and paid for at the rate of time and one half (1.5 times) for the first two (2) hours and double time (2 times) thereafter.
- 14.12 Overtime performed on:
- (a) Saturdays prior to 12.00 noon shall be paid for at the rate of time and one half (1.5 times) for the first two (2) hours and double time (2 times) thereafter;
 - (b) Saturdays after 12.00 noon or on Sundays shall be paid for at the rate of double time (2 times); or
 - (c) Public holidays shall be paid for at the rate of double time and a half (2.5 times).

Definition for purpose of 5th week of annual leave

- 14.13 For the purpose of the additional week of leave provided by the National Employment Standards (**NES**) (see clause 16.2 - Annual Leave), a shiftworker means an Employee who is:
- (a) engaged to work in a system of continuous shifts rostered twenty-four (24) hours a day, seven (7) days per week without interruption (except during breakdown or meal breaks or due to unavoidable causes beyond the control of the Employer); and

- (b) regularly rostered to work those shifts; and
- (c) regularly works on Sundays and public holidays.

15. PROTECTIVE EQUIPMENT AND CLOTHING

- 15.1 All Employees shall be issued with the following appropriate protective equipment. Employees will be issued with protective equipment that adheres to state requirements.

Period of engagement	Footwear	Workpants	Shirts
Less than 1 Month engagement	1 Pair of Safety Footwear	1 Pair	2 x Hi Vis Long Sleeve Shirts Compliant to the Relevant Network Requirements
1 month to 6 months engagement	1 Pair of Safety Footwear	2 Pairs	3 x Hi Vis Long Sleeve Shirts Compliant to the Relevant Network Requirements
Over 6 months engagement	1 Pair of Safety Footwear	3 Pairs	5 x Hi Vis Long Sleeve Shirts Compliant to the Relevant Network Requirements

- 15.2 In addition to the above Employees who are engaged for longer than four (4) weeks between 1 April and 31 August in any year shall be entitled to a one-off issue of a good quality cotton work jacket.
- 15.3 Consistent with the instructions provided during any project site orientation and induction process, protective clothing and equipment must be worn correctly at all times and helmets and other work clothing must not be painted, marked, contain stickers or drilled or modified in any way.
- 15.4 Re-issue of the specified clothing shall be on the basis of fair wear and tear provided the worn out item(s) is produced for replacement.
- 15.5 Appropriate wet weather clothing will be provided where necessary.

16. ANNUAL LEAVE

- 16.1 Annual leave is provided for in the NES.
- 16.2 For each year of service the NES entitles Employees to:
- (a) Four (4) weeks of paid annual leave; or
 - (b) Five (5) weeks of paid annual leave if the Employee is a shiftworker. For this purpose, a shiftworker is defined in clause 14.1 – Shiftwork of this Agreement.
- 16.3 Under the NES, annual leave accrues progressively during a year of service according to the Employee's ordinary hours of work and accumulates from year to year. Annual leave does not accrue during any period of unpaid leave or unauthorised absence.
- 16.4 Annual leave can be taken by agreement between the Employer and Employee following a request by the Employee to take accrued annual leave. Leave approval is subject to the operational requirements of the workplace but shall not be unreasonably withheld.
- 16.5 The Employer may also require an Employee to take accrued annual leave:

- (a) by giving a minimum of two (2) weeks' notice; or
 - (b) where the Employer shuts down all or any part of the business;
- providing that the requirement to take leave is reasonable in the circumstances.
- 16.6 If, where the Employer shuts down all or any part of the business, an Employee does not have sufficient accrued leave he/she may be required to take leave without pay.
- 16.7 Annual leave is paid at ordinary rates of pay. Employees are not entitled to annual leave loading.
- 16.8 By written agreement with the Employer, an Employee may elect to cash out part of his/her accrued annual leave entitlement each twelve (12) months, provided that:
- (a) paid annual leave cannot be cashed out if the cashing out would result in the Employee's remaining accrued entitlement to paid annual leave being less than four (4) weeks;
 - (b) each cashing out of a particular amount of paid annual leave must be by a separate written agreement in writing between the Employer and the Employee; and
 - (c) the Employee must be paid at least the full amount that would have been payable to the Employee had the Employee taken the leave.
- 16.9 This clause shall not apply to casual Employees.

17. PERSONAL/CARER'S LEAVE

- 17.1 Personal/carer's leave entitlements are provided for in the NES.

Paid personal/carer's leave

- 17.2 The NES entitles Employees (other than casual Employees) to ten (10) days of paid personal/carer's leave for each year of service.
- 17.3 Under the NES, paid personal/carer's leave accrues progressively during a year of service according to the Employee's ordinary hours of work and accumulates from year to year. Paid personal/carer's leave does not accrue during any period of unpaid leave or unauthorised absence.
- 17.4 Under the NES, paid personal/carer's leave may only be taken:
- (a) because the Employee is not fit for work because of a personal illness, or personal injury, affecting the Employee; or
 - (b) to provide care or support to a member of the Employee's immediate family, or a member of the Employee's household, who requires care or support because of:
 - (i) a personal illness, or personal injury, affecting the member; or
 - (ii) an unexpected emergency affecting the member.
- 17.5 Paid personal/carer's leave may not be taken in advance of accrual.
- 17.6 Under the NES, an Employee (other than a casual Employee) shall be paid for any

period of paid personal/carer's leave at the Employee's ordinary rate of pay for the Employee's ordinary hours of work in the period.

Unpaid carer's leave

- 17.7 Unpaid carer's leave entitlements are provided for in the NES.
- 17.8 The NES entitles Employees (including casual Employees) to two (2) days of unpaid carer's leave for each occasion (a ***permissible occasion***) when a member of their immediate family or household, requires care or support because of:
- (a) a personal illness, or personal injury, affecting the member; or
 - (b) an unexpected emergency affecting the member.
- 17.9 Under the NES:
- (a) an Employee may take unpaid carer's leave for a particular permissible occasion if the leave is taken to provide care or support as referred to in clause 17.8;
 - (b) an Employee may take unpaid carer's leave for a particular permissible occasion as:
 - (i) a single continuous period of up to two (2) days; or
 - (ii) any separate periods to which the Employee and the Employer agree;
 - (c) an Employee cannot take unpaid carer's leave during a particular period if the Employee could instead take paid personal/carer's leave.

Notice and evidence requirements (paid and unpaid personal/carer's leave)

- 17.10 An Employee who is unable to attend work must notify the Employer as soon as practicable of his/her inability to attend work, the estimated duration of the absence and the reason for the absence. Generally this should occur before the commencement of the Employee's shift.
- 17.11 An Employee who has given notice of the taking of personal/carer's leave must provide the Employer with evidence that would satisfy a reasonable person that the leave is being taken for the specified reason.
- 17.12 An Employee is not entitled to take paid or unpaid personal/carer's leave under the NES unless the Employee complies with these notice and evidence requirements.

18. COMPASSIONATE LEAVE

- 18.1 Compassionate leave entitlements are provided for in the NES.
- 18.2 The NES entitles Employees (including casual Employees) to two (2) days of compassionate leave for each occasion (a ***permissible occasion***) when a member of their immediate family or household:
- (a) contracts or develops a personal illness that poses a serious threat to his or her life; or
 - (b) sustains a personal injury that poses a serious threat to his or her life; or
 - (c) dies.

Permissible occasions

18.3 Under the NES:

- (a) an Employee may take compassionate leave for a particular permissible occasion if the leave is taken:
 - (i) to spend time with the member of the Employee's immediate family or household who has contracted or developed the personal illness, or sustained the personal injury, referred to in clause 18.2; or
 - (ii) after the death of the member of the Employee's immediate family or household referred to in clause 18.2.
- (b) an Employee may take compassionate leave for a particular permissible occasion as:
 - (i) a single continuous two (2) day period; or
 - (ii) two (2) separate periods of one (1) day each; or
 - (iii) any separate periods to which the Employee and the Employer agree.
- (c) if the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the Employee may take the compassionate leave for that occasion at any time while the illness or injury persists.

Payment

18.4 Under the NES:

- (a) an Employee (other than a casual Employee) shall be paid for any period of compassionate leave at the Employee's ordinary rate of pay for the Employee's ordinary hours of work in the period.
- (b) for casual Employees, compassionate leave is unpaid leave.

Notice and evidence requirements

- 18.5 An Employee who wishes to take compassionate leave must notify the Employer as soon as practicable of the reason for and estimated period of the leave. Generally, this should occur before the commencement of the Employee's shift.
- 18.6 An Employee who has given notice of the taking of compassionate leave must provide the Employer with evidence that would satisfy a reasonable person that the leave is being taken for that reason.
- 18.7 An Employee is not entitled to take compassionate leave under the NES unless the Employee complies with the notice and evidence requirements in this Agreement.

19. PUBLIC HOLIDAYS

- 19.1 Public Holiday entitlements are provided for in the NES. The below clause supplements these entitlements.

19.2 The following days shall be observed as public holidays (**Public Holidays**):

- (a) New Year's Day (1 January);
- (b) Australia Day (26 January);
- (c) Good Friday;
- (d) Easter Monday;
- (e) Anzac Day (25 April);
- (f) Labour Day;
- (g) Foundation Day;
- (h) Sovereign's Birthday;
- (i) Christmas Day (25 December); and
- (j) Boxing Day (26 December),

provided that, if any other day declared by or under a law of a State or Territory is generally observed in a locality as an additional day or as a substitute day for any of the said holidays, the additional day shall also be observed or the day so substituted shall be observed.

19.3 Employees (other than casual Employees) who, because it is a Public Holiday, are not required to work on a day on which they are normally required to work will be paid for the ordinary hours normally worked on that day.

20. LONG SERVICE LEAVE

Long service leave entitlements are provided for in applicable legislation.

21. PARENTAL LEAVE

Parental leave entitlements are provided for in the NES.

22. COMMUNITY SERVICE LEAVE

Unpaid leave for voluntary emergency management activities and leave for jury service are provided for in the NES.

23. DOMESTIC VIOLENCE LEAVE

23.1 This clause applies to all Employees, including casuals.

23.2 In this clause:

- (a) family and domestic violence means violent, threatening or other abusive behaviour by a family member of an Employee that seeks to coerce or control the Employee and that causes them harm or to be fearful.

- (b) family member means:
 - (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the Employee; or
 - (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the Employee; or
 - (iii) a person related to the Employee according to Aboriginal or Torres Strait Islander kinship rules.
 - (c) A reference to a spouse or de facto partner in the definition of family member in clause 23.2(b)(i) includes a former spouse or de facto partner.
- 23.3 An Employee is entitled to 5 days' unpaid leave to deal with family and domestic violence, as follows:
- (a) the leave is available in full at the start of each 12 month period of the Employee's employment; and
 - (b) the leave does not accumulate from year to year; and
 - (c) is available in full to part-time and casual Employees.
- 23.4 An Employee may take unpaid leave to deal with family and domestic violence if the Employee:
- (a) is experiencing family and domestic violence; and
 - (b) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the Employee to do that thing outside their ordinary hours of work.
- 23.5 The time an Employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the Employee's continuity of service.
- 23.6 An Employee must provide the Employer notice of the taking of leave by the Employee under clause 23. The notice:
- (a) must be given to the Employer as soon as practicable (which may be a time after the leave has started); and
 - (b) must advise the Employer of the period, or expected period, of the leave.
- 23.7 An Employee who has given the Employer notice of the taking of leave under clause 23 must, if required by the Employer, give the Employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 23.4.
- 23.8 The Employer will take steps to ensure information concerning any notice an Employee has given, or evidence an Employee has provided under clause 23 is treated confidentially, as far as it is reasonably practicable to do so.
- 23.9 Nothing in clause 23 prevents the Employer from disclosing information provided by an Employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the Employee or another person.

- 23.10 An Employee is not entitled to take leave under clause 23 unless the Employee complies with clause 23.

24. SUPERANNUATION

- 24.1 The Employer will make superannuation contributions for each Employee equal to the amount that the Employer must contribute to a superannuation fund or retirement savings account on behalf of the Employee to avoid being liable for the superannuation guarantee charge under the *Superannuation Guarantee Act 1992* (Cth) and the *Superannuation Guarantee (Administration) Act 1992* (Cth). The Employer will comply with all relevant superannuation legislation as amended from time to time.
- 24.2 Contributions shall be paid into an eligible fund nominated by the Employee. Provided that where an Employee does not nominate a fund, or the Employer is unable to pay into that fund, contributions will be paid into an eligible fund nominated by the Employer.

Voluntary employee contributions

- 24.3 Subject to the governing rules of the relevant superannuation fund, an Employee may, in writing, authorise the Employer to pay on behalf of the Employee a specified amount from the post-taxation wages of the Employee into the same superannuation fund as referred to in Clause 24.2.

25. TERMINATION OF EMPLOYMENT

- 25.1 Except in the case of casual Employees, the contract of employment may be terminated at any time by:
- (a) the Employer giving the Employee written notice in accordance with the table below; or
 - (b) the Employee giving the Employer notice in accordance with the table below:

Employee's period of continuous employment	Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- 25.2 The period of notice to be given by the Employer is increased by one (1) week if the Employee is over forty-five (45) years of age and has completed at least two (2) year's continuous service with the Employer. The Employee will not be required to provide additional notice because of age.
- 25.3 For casual Employees, employment may be terminated by either party giving four (4) hours' notice.
- 25.4 Instead of providing notice, the Employer may provide the Employee with payment in lieu of notice for the period of notice not provided. Payment shall be the total of all amounts that, if the employment had continued until the end of the required notice period, the Employer would have become liable to pay.
- 25.5 If an Employee, who is over 18 years old, fails to provide the required notice, the

Employer may deduct from wages due to the Employee an amount that is no more than one week's wages for the Employee. Any deduction made in accordance with this clause must not be unreasonable.

25.6 This clause does not operate so as to prevent an Employee and the Employer from agreeing to accept a greater or lesser amount of notice period when terminating the employment. If the Employer has agreed to a shorter period of notice than is required by this clause, no deduction in accordance with clause 25.5 can be made.

25.7 Notwithstanding the above, an Employee may be dismissed without notice for serious misconduct, and in such cases, wages shall be paid up to the time of dismissal only.

Job search entitlement

25.8 Where the Employer has given notice of termination to an Employee, the Employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.

25.9 The time off under clause 25.8 is to be taken at times that are convenient to the Employee after consultation with the Employer.

25.10 Casual Employees are not entitled to the job search entitlement under clause 25.8 and 25.9.

Return of property

25.11 On the termination of employment, or at any other time required by the Employer, the Employee must return all Employer property.

26. *Abandonment of Employment*

26.1 Should an Employee have three (3) consecutive days of unauthorised absence from work, the Employee shall be deemed to have abandoned their employment, unless, through exceptional circumstances they have been unable to communicate their absence to the Employer. Before processing the termination due to abandonment of employment, the Employer will write, via registered post or courier (with delivery confirmation receipt) to the Employee's last known address advising that the Employer has assumed the Employee has abandoned their employment and will process this termination unless the Employee provides a satisfactory explanation within 7 days.

26.2 If the Employee does not respond to the letter or resume duty within the specified 7 calendar days, a further letter will be sent by registered mail or courier (with delivery confirmation receipt) to the Employee's last known address advising the Employee that their services have been terminated due to abandonment of employment.

26.3 Where an Employee is terminated in accordance with clause 26.2, they will receive payment on termination under clause 25 where applicable.

27. REDUNDANCY

27.1 Redundancy entitlements are provided for in the NES.

27.2 An Employee is entitled to be paid redundancy pay by the Employer if the Employee's employment is terminated:

- (a) at the Employer's initiative because the Employer no longer requires the job done by the Employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
- (b) because of the insolvency or bankruptcy of the Employer.

27.3 The entitlement to redundancy pay is additional to the period of notice which the Employer is required to provide to the Employee under clause 25.

27.4 The amount of the redundancy pay equals the total amount payable to the Employee for the redundancy pay period worked out using the following table at the Employee's Base Rate of Pay for his or her Ordinary Hours of work:

Redundancy pay period		
	Employee's period of continuous service with the Employer on termination	Redundancy pay period
1	At least 1 year but less than 2 years	4 weeks
2	At least 2 years but less than 3 years	6 weeks
3	At least 3 years but less than 4 years	7 weeks
4	At least 4 years but less than 5 years	8 weeks
5	At least 5 years but less than 6 years	10 weeks
6	At least 6 years but less than 7 years	11 weeks
7	At least 7 years but less than 8 years	13 weeks
8	At least 8 years but less than 9 years	14 weeks
9	At least 9 years but less than 10 years	16 weeks
10	At least 10 years	12 weeks

27.5 This clause does not apply to the termination of an Employee's employment, if immediately before the time of the termination, or at the time when the person was given notice of termination as described in clause 25 (whichever happened first):

- (a) the Employee's period of continuous service with the Employer is less than 12 months; or
- (b) the Employer is a small business employer.

27.6 This clause does not apply to any of the following Employees:

- (a) an Employee employed for a specified period of time, for a specified task, or for the duration of a specified season;
- (b) an Employee whose employment is terminated because of serious misconduct;
- (c) a casual Employee;
- (d) an Employee (other than an apprentice) to whom a training arrangement applies and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement; or
- (e) an Employee prescribed by the *Fair Work Regulations 2009* as an Employee to who the redundancy provisions do not apply.

28. DISPUTE SETTLEMENT PROCEDURE

28.1 If a dispute relates to:

- (a) a matter arising under this Agreement; or
- (b) the NES;

this clause sets out procedures to settle the dispute.

28.2 An Employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this clause.

28.3 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the Employee or Employees concerned and relevant supervisors and/or management.

28.4 Discussions should commence with a level of supervision or management appropriate to the particular dispute. If the dispute is not resolved at that level, discussions should involve the Employer's senior account manager.

28.5 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the FWC.

28.6 The FWC may deal with the dispute in 2 stages:

- (a) the FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
- (b) if the FWC is unable to resolve the dispute at the first stage, the FWC may then:
 - (i) arbitrate the dispute; and
 - (ii) make a determination that is binding on the parties.

28.7 A decision that the FWC makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the FW Act. Therefore, an appeal may be made against the decision.

28.8 While the parties are trying to resolve the dispute using the procedures in this clause:

- (a) an Employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
- (b) an Employee must comply with a direction given by the Employer to perform other available work at the same workplace, or at another workplace, unless:
 - (i) the work is not safe;
 - (ii) applicable occupational safety and health legislation would not permit the work to be performed;
 - (iii) the work is not appropriate for the Employee to perform; or
 - (iv) there are other reasonable grounds for the Employee to refuse to comply with the direction

28.9 The parties to the dispute agree to be bound by a decision made by the FWC in

accordance with this term.

29. INDIVIDUAL FLEXIBILITY ARRANGEMENTS

29.1 The Employer and an Employee covered by this Agreement may agree to make an Individual Flexibility Arrangement (**IFA**) to vary the effect of terms of this Agreement (in relation to the Employer and the Employee), in order to meet the genuine needs of the Employer and the Employee.

29.2 The IFA must be genuinely agreed to by the Employer and the Employee.

Terms which may be varied

29.3 The terms of this Agreement the effect of which may be varied by an IFA are the following:

- (a) Clause 8 – Additional Allowances;
- (b) Clause 9 – Distant Work and Meals and Accommodation Allowances;
- (c) Clause 10 – Hours of work;
- (d) Clause 11 – Overtime (and penalty rates);
- (e) Clause 12 – Meal and crib breaks; and
- (f) Clause 14 – Shiftwork.

The Employer must ensure

29.4 The Employer must ensure that:

- (a) the IFA is in writing;
- (b) the IFA includes the name of the Employer and the Employee;
- (c) the IFA includes details of:
 - (i) the terms of the Agreement that will be varied by the IFA;
 - (ii) how the IFA will vary the effect of the terms of the Agreement; and
 - (iii) how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the IFA;
- (d) the IFA states the day on which the IFA commences;
- (e) the IFA is about matters that would be permitted matters under section 172 of the FW Act;
- (f) the IFA does not include a term that would be an unlawful term under section 194 of the FW Act;
- (g) the IFA is signed in all cases by the Employer and the Employee (and if the Employee is under eighteen (18) years of age by a parent or guardian of the Employee); and
- (h) a copy of the IFA is given to the Employee within fourteen (14) days after it is

agreed to.

29.5 If the Employer wishes to initiate the making of an IFA it will:

- (a) give the Employee a written proposal; and
- (b) if the Employer is aware that the Employee has, or reasonably should be aware that the Employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the Employee understands the proposal.

29.6 The Employer or the Employee may terminate the IFA:

- (a) by either the Employer or the Employee giving twenty-eight (28) days written notice; or
- (b) if the Employer and Employee agree in writing — at any time.

30. CONSULTATION TERM

30.1 This term applies if the Employer:

- (a) Has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the Employees; or
- (b) Proposes to introduce a change to the regular roster or ordinary hours of work of Employees, other than an Employee whose working hours are irregular, sporadic or unpredictable.

Major Change

30.2 For major change referred to in clause 30.1(a):

- (a) The Employer must give notice of the changes to all relevant Employees of the decision to introduce the major change; and
- (b) Clauses 30.3 to 30.6 apply.

30.3 The relevant Employees may appoint a representative for the purpose of procedures of this term.

30.4 If:

- (a) A relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
- (b) The Employee or Employees advise the Employer of the identity of the representative;

the Employer must recognise the representative.

30.5 As soon as practicable after making its decision, the Employer must:

- (a) Discuss with the relevant Employees:
 - (i) The introduction of the change; and

- (ii) The effect the change is likely to have on the Employees; and
 - (iii) Measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employees; and
 - (b) For the purposes of the discussion — provide, in writing, to the relevant Employees:
 - (i) All relevant information about the change including the nature of the changed proposed; and
 - (ii) Information about the expected effects of the change on the Employees; and
 - (iii) any other matters likely to affect the Employees.
 - (c) However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.
 - (d) The Employer must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.
 - (e) If a term in this Agreement provides for major change to production, program, organisation, structure or technology in relation to the enterprise of the Employer, the requirements set out in clause 30.2(a) and clauses 30.3 and 30.5 are taken not to apply.
- 30.6 In clauses 30.2 to 30.6, a major change is likely to have a significant effect on the Employees if it results in:
- (a) The termination of the employment of Employees;
 - (b) Major change to the composition, operation or size of the Employer's workforce or to the skills required of Employees;
 - (c) The elimination or diminution of job opportunities (including opportunities for promotion or tenure);
 - (d) The alteration of hours of work;
 - (e) The need to retrain Employees;
 - (f) The need to relocate Employees to another workplace; or
 - (g) The restructuring of jobs.
- 30.7 Where this Agreement makes provision for alteration of any of the matters defined at clause 30.6 such alteration is taken not to have significant effect.

Change to regular roster or ordinary hours of work

- 30.8 For a change referred to in clause 30.1(b):
- (a) The Employer must notify the relevant Employees of the proposed change; and

(b) Clauses 30.9 to 30.13 apply.

30.9 The relevant Employees may appoint a representative for the purposes of the procedures in this term.

30.10 If:

- (a) A relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
- (b) The Employee or Employees advise the Employer of the identity of the representative;

the Employer must recognise the representative.

30.11 As soon as practicable after making its decision, the Employer must:

- (a) Discuss with the relevant Employees the introduction of the change; and
- (b) For the purposes of the discussion — provide, in writing, to the relevant Employees:
 - (i) All relevant information about the change including the nature of the change; and
 - (ii) Information about what the Employer reasonably believes will be the effects of the change on the Employees; and
 - (iii) Information about any other matters that the Employer reasonably believes are likely to affect the Employees; and
 - (iv) Invite the relevant Employees and their representative (if any) to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

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

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

30.14 In this clause relevant Employees means the Employees who may be affected by a change referred to in Clause 30.1.

31. REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

31.1 An Employee may request change in working arrangements.

31.2 Clause 31 applies where an Employee has made a request for a change in working arrangements under s.65 of the FW Act.

31.3 Before responding to a request made under s.65 of the FW Act, the Employer must discuss the request with the Employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the Employee's circumstances having regard to:

- (a) the needs of the Employee arising from their circumstances;
- (b) the consequences for the Employee if changes in working arrangements are not made; and
- (c) any reasonable business grounds for refusing the request.

31.4 Clause 31.4 applies if the Employer refuses the request and has not reached an agreement with the Employee under clause 31.3.

- (a) The written response under s.65(4) of the FW Act must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- (b) If the Employer and Employee could not agree on a change in working arrangements under clause 31.3, the written response under s.65(4) of the FW Act must:
 - (i) state whether or not there are any changes in working arrangements that the Employer can offer the Employee so as to better accommodate the Employee's circumstances; and
 - (ii) if the Employer can offer the Employee such changes in working arrangements, set out those changes in working arrangements.

31.5 What the written response must include if a different change in working arrangements is agreed If the Employer and the Employee reached an agreement under clause 31 on a change in working arrangements that differs from that initially requested by the Employee, the Employer must provide the Employee with a written response to their request setting out the agreed change(s) in working arrangements.

31.6 Disputes about whether the Employer has discussed the request with the Employee and responded to the request in the way required by clause 31, can be dealt with under clause 28—Dispute Settlement Procedure.

32. NO EXTRA CLAIMS

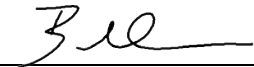
32.1 During the term of this Agreement there shall be no extra claims for any changes in remuneration or conditions of employment. The Agreement is comprehensive and is intended to be exhaustive of the terms and conditions of the employment relationship between the Employer and its Employees.

32.2 The wages, allowances, payments, conditions etc. as detailed in this Agreement are acknowledged and recognised as covering all circumstances, conditions and disabilities encountered.

SIGNATURES

Employer

Signed for and on behalf of RMC Track and Civil Pty Ltd (ACN 627 041 221)



Signature of

Brendan Lane

Name of person authorised

Date: 02 / 07 / 2019

General Manager

Position Held

52 King Arthur Terrace, Tennyson

Address

4105

Post Code

For Employees

Signed on behalf of the Employees covered by this agreement

Signature of
Employee Representative

Name of Employee

Date: ____ / ____ / ____

Authority to sign (position): Employee of RMC Track and Civil Pty Ltd and bound by the RMC Track and Civil Pty Ltd Enterprise Agreement 2019:

Address

Post Code

For The Australian Rail Tram and Bus Industry Union (RTBU)

Signed on behalf of the Australian Rail Tram and Bus Industry Union

Signature of

Name

Date: ____ / ____ / ____

Position Held: _____

Address

RMC Track and Civil Pty Ltd Enterprise Agreement 2019

SIGNATURES

Employer

Signed for and on behalf of RMC Track and Civil Pty Ltd (ACN 627 041 221)

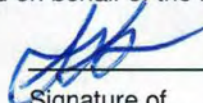
Signature of _____ Name of person authorised Date: ____/____/____

Position Held

Address _____ Post Code

For Employees

Signed on behalf of the Employees covered by this agreement

 _____
Signature of _____ Name of Employee Date: 5/7/19
Employee Representative

Authority to sign (position): Employee of RMC Track and Civil Pty Ltd and bound by the RMC Track and Civil Pty Ltd Enterprise Agreement 2019:

14 Patch St, SARINA, 4737
Address _____ Post Code

For The Australian Rail Tram and Bus Industry Union (RTBU)

Signed on behalf of the Australian Rail Tram and Bus Industry Union

Signature of _____ Name Date: ____/____/____

Position Held: _____

Address

SIGNATURES

Employer

Signed for and on behalf of RMC Track and Civil Pty Ltd (ACN 627 041 221)

Signature of _____ Name of person authorised Date: ____/____/____

Position Held

Address _____ Post Code

For Employees

Signed on behalf of the Employees covered by this agreement


Signature of _____ Name of Employee Date: ____/____/____
Employee Representative

Authority to sign (position): Employee of RMC Track and Civil Pty Ltd and bound by the RMC Track and Civil Pty Ltd Enterprise Agreement 2019:

Address _____ Post Code

For The Australian Rail Tram and Bus Industry Union (RTBU)

Signed on behalf of the Australian Rail Tram and Bus Industry Union

 _____ Date: 5/7/19
Signature of _____ Name

Position Held: NATIONAL SECRETARY

Suite 210, 2 Goulburn St, SYDNEY 2000
Address

APPENDIX 1 - Classifications

Preamble

Employees at each level may be required to have the competencies for the level or levels below their level. When required, Employees at each level will undertake lower level duties as well as performing tasks incidental to work at their level. The employer will ensure Employees undertake duties which are within the limits of the Employee's skills, competence and training.

RMC Track and Civil will continue to progress identified resources to complete CERT III Qualifications in line with operational requirements and where practicable.

Level 1 – Track Labourer

A worker at this level:

- Works in accordance with standard operating procedures and established criteria.
- Works under direct supervision either individually or in a team environment.
- Follows basic safe work practices-
- Minimal level of experience and hold basic competency in a limited range of tasks
- General awareness of the environment
- Works with peers and mentors to identify and report workplace hazards

Example Level 1 positions include, but are not limited to, an Entry Level Track Labourer.

Level 2 – Track Labourer

A worker at this level:

- Works in accordance with standard operating procedures and established criteria and be working towards attainment of CERT II in Rail Infrastructure
- Works under direct supervision either individually or in a team environment.
- Follows safe work practices
- Apply environmental procedures
- Works with peers and mentors to identify and report workplace hazards
- Workers at this level may perform a wider range of tasks and call upon a higher level of skill than Level 1
- Workers at this level may use a range of basic hand tools, power tools and manual handling equipment under general supervision and / or support to Employees at Level 1

Example Level 2 positions include, but are not limited to, a Track Labourer.

An Employee at this level who has attained the necessary competencies as outlined in Level 3 can seek approval from their Manager to progress to level 3. The Manager will take into account the Employee's competencies as well as operational requirements. Such a request will not be unreasonably refused.

Level 3 - Track Worker

A worker at this level:

- Works in accordance with standard operating procedures and established criteria and hold a current CERT II in Rail Infrastructure
- Workers at this level may use a range of basic hand tools, power tools and manual handling equipment to the level of training they have received
- Mentor Level 1 & Level 2 Employees as required
- Understands and applies quality control techniques to the level of training they have

received

- Exercises good interpersonal and communication skills.
- Exercises discretion within the scope of this level.
- Performs work under limited supervision either individually or in a team environment.
- Operates lifting equipment incidental to their work.

Example Level 3 positions include, but are not limited to, a Track Worker who holds a Certificate II qualification relevant to the work performed.

Level 4 - Advanced Track Worker

A worker at this level:

- Holds the relevant theoretical and practical qualifications in Cert III for the work performed
- Works in accordance with standard operating procedures and established criteria
- Workers at this level may use a range of basic hand tools, power tools and manual handling equipment and may on occasions work without supervision or provide mentoring to Employees at Level 1, 2 & 3
- Be undertaking theoretical and practical training to attain qualifications for a Cert III for a trade stream relevant to the work performed.

Example Level 4 positions include, but are not limited to, AT Welders, Senior Track Workers and Loader Operators.

Level 5 - Specialist Operator

A worker at this level:

- Works in accordance with standard operating procedures and established criteria and hold a current CERT II in Rail Infrastructure
- Holds the relevant theoretical and practical qualifications in Cert III for the work performed
- Be undertaking theoretical and practical training to attain qualifications for a Cert III for a trade stream relevant to the work performed.
- Hold relevant additional qualifications to undertake operation of specialist or On Track Equipment including but not limited to the relevant Network Safeworking Qualifications
- Demonstrated ability to carry out safety inspections in accordance with the Employer's Safety Management System
- Is able to provide trade guidance and assistance as part of a work team.
- Provides mentoring in conjunction with supervisors and trainers.
- Understands and implements quality control techniques.
- Works under general supervision either individually or in a team environment.
- Operates lifting equipment incidental to their work.
- Performs non-trade tasks incidental to their work.

Example Level 5 positions include, but are not limited to, Hi Rail Excavators, Track Machinists and a Flashbutt Welder.