



# DECISION

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

**Rhomberg Rail Australia Pty Ltd**  
(AG2021/7868)

## **RHOMBERG RAIL AUSTRALIA PTY LTD ENTERPRISE AGREEMENT 2021-2024**

Rail industry

DEPUTY PRESIDENT ASBURY

BRISBANE, 3 DECEMBER 2021

*Application for approval of the Rhomberg Rail Australia Pty Ltd Enterprise Agreement 2021-2024*

[1] Rhomberg Rail Australia Pty Ltd (the Applicant) applies to the Fair Work Commission (the Commission) for approval of an enterprise agreement known as the *Rhomberg Rail Australia Pty Ltd Enterprise Agreement 2021-2024* (the Agreement). The application was made pursuant to s.185 of the Fair Work Act 2009 (the Act). The Agreement is a single enterprise agreement.

[2] Undertakings were provided by the Employer in response to concerns the Commission held in relation to whether the Agreement passes the better off overall test. A copy of the Undertakings is attached as Annexure A to this decision. I am satisfied that the effect of accepting the Undertakings is not likely to:

(a) cause financial detriment to any employee covered by the Agreement; or

(b) result in substantial changes to the Agreement.

[3] The views of each person or organisation the Commission knows is a bargaining representative for the Agreement have been sought in relation to the Undertakings. Pursuant to subsection 190(3) of the Act, I accept the Undertakings. In accordance with s.201(3) of the Act, a copy of the Undertakings will be attached to the Agreement and forms part of the Agreement.

[4] I observe that clause 3.6 of the Agreement relating to abandonment of employment may be inconsistent with the National Employment Standards (NES). However, I note clause 1.6 of the Agreement provides that where there is an inconsistency between a provision of the Agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency. On this basis, I am satisfied the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES. I also note that by virtue of s. 55 of the Act, an enterprise agreement must not exclude the NES

or any provisions of the NES and s. 56 provides that a term of an enterprise agreement has no effect to the extent that it contravenes s. 55.

[5] The copy of the notice of employee representational rights (NERR) given to employees was not in the prescribed format, because it advised employees to contact employer representatives or FWC if they have any questions, where the prescribed NERR states “if employees have questions please speak to your employer or bargaining representative, or contact the Fair Work Ombudsman or the Fair Work Commission.”

[6] The Applicant responded to concerns about this issue by stating that the incorrect wording was used in the NERR because bargaining representatives had not been appointed at that stage and the Applicant was concerned that this would be confusing to some employees.

[7] Having regard to the decision of the Full Bench in *Huntsman Chemical Company Australia Pty Limited T/A RMAX Rigid Cellular Plastics & Others*, I am satisfied that this matter is a minor procedural or technical error and that pursuant to s. 188(2)(a) of the Act I can be satisfied that the Agreement would have been genuinely agreed but for this minor error. In this regard, I am satisfied that the employees covered by the Agreement were not likely to be disadvantaged by the errors. The Agreement replaces the *Rhomberg Rail Australia Pty Ltd Enterprise Agreement 2018-2021* and is in similar terms to that Agreement. A majority of employees approved the Agreement. The Australian Rail, Tram and Bus Industry Union of Employees, a bargaining representative of employees, also supports the approval of the Agreement. Accordingly, there is no basis for finding that the error had any bearing on the outcome of the ballot to approve the Agreement.

[8] The Agreement does not contain a consultation term that is consistent with the requirements in s.205 of the Act. Pursuant to s.205(2) of the Act, the model consultation term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[9] Clause 1.5 of the Agreement states the Agreement shall come into operation from the date of its lodgement with the Commission. This is inconsistent with s.54 of the Act which states that an enterprise agreement approved by the Commission operates from 7 days after the agreement is approved, or if a later day is specified in the agreement, that later day. Accordingly, the Agreement will operate 7 days from the date of this decision.

[10] I am satisfied, on the basis of information set out in the Form F16 Application for approval of an enterprise agreement, the Form F17 Employer’s declaration in support of an application for approval of the Agreement and responses to requests for further information provided by the Applicant, that each of the requirements of ss. 186, 187 and 188 as are relevant to this application for approval have been met. The Agreement does not cover all of the employees of the employer, however, taking into account s.186(3) and (3A), and on the basis of the information contained in the Form F17, I am satisfied that the group of employees covered by the Agreement was fairly chosen.

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

[12] The Agreement is approved in accordance with s.54 of the Act and will operate from 10 December 2021. The nominal expiry date of the Agreement is 15 October 2024, being three years from the date of lodgement of the application for approval of the Agreement in the Commission which is the effect of clause 1.5.



DEPUTY PRESIDENT

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Annexure A

**IN THE FAIR WORK COMMISSION**

**FWC Matter No.:**

AG2021/7868

**Applicant:**

Rhomberg Rail Australia

Section 185 - Application for approval of a single enterprise agreement

**Undertaking – Section 190**

I, Richard Morgan, Managing Director for Rhomberg Rail Australia have the authority given to me by Rhomberg Rail Australia to give the following undertakings with respect to the Rhomberg Rail Australia Enterprise Agreement 2021-2024] ("the Agreement"):

1. Rhomberg Rail Australia hereby undertakes that all employees (Full-time, Part-time, and Casual) are appropriately assessed and allocated to a specific Employer Job Role based on their competencies, qualifications, and experience.
2. Rhomberg Rail Australia hereby undertakes that all Casual Employees in all classifications will be paid the 25% casual loading as per clause 5.2.3 on top of the nominated pay rate in the Classification Structure.
3. Rhomberg Rail Australia hereby undertakes that all casual employees will receive cumulative casual penalties, when entitled to penalties, on top of their nominated base pay rate.
4. Rhomberg Rail Australia hereby undertakes that all employees (Fulltime, Part-Time, and Casual) will receive penalty rates based on the actual time of day worked as well as the duration since the beginning of the shift.
5. Rhomberg Rail Australia hereby undertakes that all employees (Fulltime, Part-Time, and Casual) will receive penalty rates, casual loading and travel allowances, in accordance with the Agreement, on top of their base pay rate

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

Signature



Date

2/12/21

# **Rhomberg Rail Australia Pty Ltd**

## **Enterprise Agreement**

**2021 – 2024**

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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.**

**Note - the model consultation term is taken to be a term of this agreement and can be found at the end of the agreement.**

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## 1 APPLICATION, INCIDENCE AND OBJECTIVES

### 1.1 Title of Agreement

RHOMBERG RAIL AUSTRALIA PTY LTD ENTERPRISE AGREEMENT 2021-2024

### 1.2 Parties to The Agreement

The parties to this Enterprise Agreement (EA) will be as follows:

- Rhomberg Rail Australia Pty Ltd, ACN 082 016 608 (the Employer)
- All persons who are employed by Rhomberg Rail Australia for which classifications and/or rates of pay are prescribed by the Agreement (the Employee/s).
- The Following Organisation of Employees, Their Officers and Members:
  - Australian Rail Tram and Bus Industry Union, Victoria, Northern Territory, South Australia, Western Australia, Queensland, Tasmania & New South Wales Branches.

### 1.3 Operation and Scope

In this Agreement, the work carried out by Rhomberg Rail Australia means the provision of rail infrastructure inspection, routine maintenance, major periodic maintenance, renewals, construction and project work across Australia. This includes track, resurfacing, overhead line, civil and bridge work.

No employee will be disadvantaged by the making of this Agreement.

Unless the context otherwise requires, in this agreement:

### 1.4 Definitions

**Act** means the Fair Work Act 2009 (Cth), as amended from time to time.

**Agreement** means the final agreed, signed and lodged "Rhomberg Rail Australia Pty Ltd Enterprise Agreement 2021-2024"

**"Basic" hourly rate of pay** is defined as the sum of an employee's classification rate on which an employee's fortnightly pay is calculated on, and on which long service, superannuation and total leave payments are also calculated

**Casual Worker** means an employee that is engaged on a casual basis with no guaranteed roster. A Casual Employee will be paid a 25% loading on their base rate only to compensate them for the casual nature of their employment including having no entitlement to paid leave.

**Consultative Committee** means the committee formed to discuss workplace issues in a consultative manner as well as Occupational Health and Safety matters.

**Employee** means all persons engaged by Rhomberg Rail Australia Pty Ltd within Australia under the classifications listed herein

**Employer or Company** means Rhomberg Rail Australia Pty Ltd, ACN 082 016 608 / ABN 70 082 016 608 represented by its senior management

**Employer Job Role** means the role or position that the Employee is appointed to. The competency requirements for each Employer Job Role are defined in the Rail Industry Worker (RIW) Portal.

**Enterprise Agreement** means this Rhombberg Rail Australia Pty Ltd Enterprise Agreement 2021-2024

**Family** means a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of an employee; or a child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner

**Fixed Term Worker** means an employee who is engaged on a fixed term with an agreed commencement and completion date.

**FWC** means Fair Work Commission and its successors

**Home Depot** means the depot to which an employee is appointed upon commencement, or as otherwise mutually agreed by the Company and the employee.

**Long Service Leave Act** means Long Service Leave Acts in each state the company operates.

- Australian Capital Territory: Long Service Leave Act 1976
- New South Wales: Long Service Leave Act 1955
- Northern Territory: Long Service Leave Act 1981
- Queensland: Industrial Relations Act 1999
- South Australia: Long Service Leave Act 1987
- Tasmania: Long Service Leave Act 1976
- Victoria: Long Service Leave Act 1992
- Western Australia: Long Service Leave Act 1958

**Manager or Supervisor** means the representative of Rhombberg Rail Australia management to whom the employee ultimately reports

**NES** means National Employment Standards as part of the Fair Work Act 2009

**Night shift** means a shift that occurs between the hours of 6:00 pm and 6:00 am

**Ordinary hours** is applicable to full time employees and shall be an average of seventy six (76) hours per fortnight.

**Overtime** is applicable to Full Time Employees and shall be paid for all hours worked in excess of the Ordinary Hours.

**Parties** means the Company and Employees and the RTBU

**Penalty Rates** means the pay rate at which the base rate will be multiplied by based on the time of day and the time since the shift commenced:

**1.0T** means single time at the base rate for the applicable Employer Job Role

**1.5T** means single time and a half at the base rate for the applicable Employer Job Role

**2.0T** means double time at the base rate for the applicable Employer Job Role

**2.5T** means double time and a half at the base rate for the applicable Employer Job Role

**Personal Development Plan** means a plan that is agreed to by the Employee and Employer to map the training and development of the Employee within their work stream and also allow feedback on the performance of the Employee in their current role.

**Residence or Home** means the employee domicile place of residence.

**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.

**Non-Rostered Worker** means an Employee engaged on a regular shift pattern between 6:00 AM and 6:00 PM Monday to Friday. Work shifts undertaken on a Saturday, Sunday, public holiday, afternoon or night shift will be treated as overtime.

**Rostered Worker** means an Employee engaged on either Night Shift, Early Morning Shift, Afternoon Shift, Saturday Shift, Sunday Shift or Public Holiday Shift on the basis of working at least ten (10) rostered shifts (ordinary hours) in each 3-month period (i.e.: 1 Jan – 31 Mar) on which a Saturday, Sunday, public holiday, afternoon or night shift payment is incurred.

**Temporary Depot** means a place of work assigned to an Employee by the Company as a temporary replacement for the Employee's normal home depot. A Temporary Depot can be a worksite, a track machine location or accommodation provided to an employee when they are required to work away from their normal residence.

**WHS** means Workplace Health and Safety

**WHS Laws** means the legislation in relation to Workplace Health and Safety which commenced on 1<sup>st</sup> January 2012 to harmonize occupational health and safety (OH&S) laws across Australia. Each state and territory is responsible for regulating and enforcing WHS laws, Rhomberg Rail Australia operates in each state/territory as follows, but not limited to:

- Australian Capital Territory
- New South Wales
- Northern Territory
- Queensland
- South Australia
- Tasmania
- The Commonwealth of Australia
- Occupational Health and Safety Act 2004 of Victoria
- Occupational Safety and Health Act 1984 of Western Australia

### **1.5 Term – Nominal Expiry Date**

This Agreement shall come into operation from the date of its lodgement with the FWC and shall remain in force for three (3) years from this date unless varied or terminated earlier in accordance with the Fair Work Act 2009.

### **1.6 National Employment Standard**

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.

### **1.7 Step Up Clause**

Employees assigned to work on a nominated construction project, may be paid at a higher rate of pay or receive additional allowances, than is provided for under this agreement, provided that:

- The terms, conditions or benefits of employment are contained in an agreement that is registered, and applies to the Employer and its Employees; or
- The terms, conditions or benefits of employment are contained in an agreement that is a common law agreement made between an Employer and an individual Employee.

Employees will be assigned to work on the nominated project by the Employer under the following conditions:

- they are notified in writing by the Employer that this will be so prior to commencement on that project of the revised arrangements for their rates of pay and allowances.
- that the additional payments cease when the employee's involvement on that particular project is ended.
- the employee is paid not less than the entitlements provided for under this Agreement.

### **1.8 Agreement Principles**

The principle of "working together" is to capitalise on the synergies available to create a competitive advantage.

The competitive advantage will be realised through a focus on safety, reliability, and cost-efficient solutions and through its people by way of adequate remuneration and job security.

We are committed to achieving these goals through the highest level of commitment and consultation with our customers, our people and all our stakeholders.

Our aim is to make the business a benchmark for which other operations will aspire to emulate as the preferred workplace, and an operation that totally satisfies the customer's needs.

### **1.9 Objectives**

In order to achieve the aforementioned goals and be consistent with a continuous improvement philosophy, the parties are committed to:

- Establishing a best practice focus in relation to occupational health and safety matters. At all times the emphasis will be on the prevention of accidents and injuries that all parties acknowledge are avoidable. Targets for best practice occupational health and safety will be established.
- Establishing effective communication processes by maintaining a high standard of Employer/Employee consultation and involvement in decision-making.
- A willingness by Employees to undertake any task that the Employee is competent to perform. Employer Job Roles will be developed over the life of the Agreement in accordance with the classification structure. The parties will ensure that the tasks are safe,

legal and within the classification structure of this Agreement and consistent with the scope of work of a project.

- A willingness by the parties to try to avoid any action which might disrupt the continuity of production or reduce the effectiveness of their Employer's business.
- Improving the skill base of the Employees.

To ensure the objectives of this Agreement are met, the parties agree that the following measures form an integral part of business operations:

- Ensuring that, at all times, terms and conditions of employment will be based upon the specific needs of the business.
- All parties to this Agreement will constantly seek improvements in safety, methods of production, work organisation, quality and in other areas that will enhance the effectiveness of operations.
- The parties recognise that issues should be processed through agreed procedures and that engaging in immediate industrial action is against the spirit and intent of this agreement and are committed to processing grievances through the dispute procedure.
- Ensuring that working relationships between Employees are developed to promote mutual trust, co-operation and open communication of relevant information and ideas.
- A commitment to the provision of appropriate training opportunities to ensure Employees are skilled to perform their jobs and develop themselves further in their career utilising national competency standards where applicable.
- Maintenance of standards of conduct and attendance necessary to ensure a safe, efficient and cooperative operation.

The parties accept that, subject to the proper consultation processes being followed, everyone will be expected to co-operate willingly to achieve the objectives of this Agreement, so that everyone performs to their full capability and potential.

#### **1.10 Flexibility Term**

The Employer and an individual Employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement in accordance with the Fair Work Act 2009 if;

- a) The flexibility arrangement deals with one or more of the following matters:
  - Arrangements about when work is performed.
  - Pay Rate.
  - Overtime Rates.
  - Penalty Rates.
  - Daily Travel Allowance.
  - Travel Time; and
- b) The flexibility arrangement meets the genuine needs of the Employer and Employee in relation to one or more of the matters mentioned in clause 1.9 a); and

c) The flexibility arrangement is genuinely agreed to by the Employer and Employee.

The Employer must ensure that the terms of the individual flexibility arrangement:

- a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
- b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
- c) result in the Employee being better off overall based on this Agreement than the Employee would be if no arrangement was made.

The Employer must ensure that the individual flexibility arrangement:

- a) is in writing; and
- b) includes the name of the Employer and Employee; and
- c) is signed by the Employer and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and
- d) includes details of:
  - the terms of the Agreement that will be varied by the arrangement; and
  - how the arrangement will vary the effect of the terms; and
  - how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and states the day on which the arrangement commences.

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

The Employer or Employee may terminate the individual flexibility arrangement:

- a) as detailed specifically in the agreement itself; or
- b) if the Employer and Employee agree in writing — at any time.

There is no requirement that any individual flexibility arrangement agreed by the Employer and an Employee be approved by or consented to by any other party whether before or after the arrangement has been agreed to.

## **2 CONSULTATION, COMMUNICATION, DISPUTE RESOLUTION**

### **2.1 Dispute Settling Procedure**

The purpose of this procedure is to ensure that disputes are resolved as quickly as possible. If a dispute arises between the Employer and an Employee(s) in relation to either a matter arising under this Agreement, or the National Employment Standards, the following procedures shall be followed:

#### **Step 1 - Employee and Supervisor**

In the event that the Employer or an Employee(s) have a grievance or dispute, the Employee(s) and their manager will attempt to resolve the matter in a consultative manner at the workplace level.

This will involve the Employee(s) and their manager meeting and conferring on the matter. If the matter is not resolved at such a meeting, then the manager will refer the matter to Senior Management within 7 days for resolution.

### **Step 2 - Employee and Senior Management**

The affected Employee(s) will meet with Senior Management to review and resolve the dispute. This will involve Senior Management reviewing the grievance or dispute and discussing the issue with the Employee(s) and local management to agree on a settlement.

### **Step 3 – Fair Work Commission**

If the matter is still not settled by following the above steps, the issue may be submitted by either the Employer or Employee(s) to the Fair Work Commission for an independent assessment and judgement.

### **General Provision**

At the Employee's choice they may appoint (with notification to the Employer) a representative of their choice to assist him/her in settling the matter at any stage of the Dispute Settling Procedures.

The Employer and the Employees agree that during the life of this Agreement, they are committed to take no unlawful industrial action including stoppages of work, lockouts or any other bans or limitations on the performance of work.

Where a dispute exists and whilst the dispute remains unresolved and is being addressed through this procedure, the Employer and the Employee(s) will return to the situation and arrangements that existed prior to the issue which caused the dispute, such that no party is prejudiced during the process to resolve the matter.

During the dispute resolution procedure, the Employees will continue to work in accordance with this Agreement and co-operate to ensure that the dispute resolution procedures are carried out as expeditiously as is reasonably possible.

### **2.2 Safety Issues Exempted**

Genuine safety issues relevant to this Clause and with respect to WHS Law will be the province of the Occupational Health and Safety Committee and isolated from industrial matters covered by 2.1 above.

### **2.3 Safety Conflict Resolution**

It is the responsibility of all Employees to report identified hazards to their manager.

It is the responsibility of Managers to ensure appropriate actions are taken to control workplace hazards and to monitor the effectiveness of such controls.

The Parties agree that the following procedures shall apply for the handling of safety matters and while these are being followed, there shall be no stoppages of work related to the matter under consideration except in the affected area as provided for in Section 2.1.

Where a hazard has been identified and Employees do not regard the control measure to be effective, work that can and/or expose workers to the hazard will cease. The Supervisor will ensure a temporary control measure is implemented.



The Supervisor together with a Consultative Committee representative will carry out a risk assessment to determine the effectiveness of the nominated control measure. If a risk level is determined to be between moderate to very high, an alternate control measure must be applied. The alternate control measure will be risk assessed and, if classified below moderate, the control measure shall be implemented, and work will continue.

Should the control measure remain unacceptable to the potentially exposed Employees, the appropriate manager shall be consulted, and the risk assessment performed again in conjunction with the OH&S Committee representative. Any agreed control measure shall be risk assessed prior to implementation.

Matters that remain unresolved shall be referred to the appropriate Government Authority for advice.

#### **2.4 Consultative Mechanisms**

Consultation provisions apply if the Employer proposes to introduce a Major Change.

Major Change occurs if the employer has made a definite decision to introduce a major change to production, program, organization, structure or technology in relation to its enterprise that is likely to have a significant effect on the Employees.

In the event of a major change:

- a) the Employer must notify the relevant Employees of the decision to introduce the major change; and
- b) the relevant Employees may appoint a representative for the purposes of the procedures in this term, if:
  - the relevant Employees appoint, a representative for the purposes of consultation; and
  - the relevant Employees advise the Employer of the identity of the representative; the Employer must recognize the representative.
- (c) as soon as practicable after making its decision, the Employer must discuss with the relevant Employees:
  - the introduction of the change
  - the effect the change is likely to have on the Employees; and
  - measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employees; and
- (d) for the purposes of the discussion—provide, in writing, to the relevant Employees:
  - all relevant information about the change including the nature of the change proposed; and
  - information about the expected effects of the change on the Employees; and
  - any other matters likely to affect the Employees.
  - However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.

- (e) the Employer must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.

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 need to retrain Employees; or
- the need to relocate Employees to another workplace; or
- the restructuring of jobs.

## **2.5 Consultative Committee**

The parties agree that a permanent Consultative Committee shall be established as a regular means of consulting on workplace issues.

The committee shall be a forum for the discussion of any matters that the Employer and Employees and their nominated representatives agree to discuss.

These matters shall include, but are not limited to:

- Zero Harm Initiatives.
- Company performance update.
- health and safety matters.
- matters pertaining to the relationship between the Employees and the Employer.
- best practice initiatives.
- skills development.
- rosters and working hours.
- amenities and standard of accommodation.
- team working.
- changes to contractual or operational requirements, including redundancy.

The above matters to be discussed at the Consultative Committee should focus on continuous improvement, workplace systems, and matters generally affecting the overall effectiveness of the workplace. They should not include individual grievances or matters more appropriately dealt with in other forums or in the normal management procedures of the workplace.

The Employees on the Consultative Committee shall be elected by their peers. The Consultative Committee shall consist of an Employer representative(s) and an Employee representative(s).

Any Employee representative(s) nominated by Employees for the purposes of consultation must be recognized and allowed full participation by the Employer.

The objectives, rules and guidelines of the committee shall be developed as part of the consultative process. Once agreed, the objectives, rules and guidelines shall be adhered to for the life of this Agreement and shall only be varied by agreement in accordance with the same during the life of this Agreement.

The structure and operation of the Consultative Committee acknowledge and provide measures for the effective exchange of information, views and feedback from Employees, as the basis of discussions within the committee. The Employer shall provide support to ensure the effective operation of the Consultative Committee. The Employer and the Employees agree that training for members of the committee and open sharing of information are vital for the effectiveness of the committee.

### **3 COUNSELLING AND DISCIPLINARY PROCEDURES**

#### **3.1 Disciplinary Investigations:**

Disciplinary inquiries and investigations shall be confidential.

Any internal investigation by the Employer in relation to a matter or incident that may lead to disciplinary action being taken against an Employee must apply the principles of natural justice and due process, including:

- a) The Employee being made fully aware in writing of the allegations that are the subject of investigation.
- b) The Employee being provided with sufficient information to enable the provision of an informed response.
- c) The Employee being informed of their entitlement to have a representative present as a witness/support person at any meetings/interviews, if so requested.
- d) The Employee being given reasonable time (minimum 7 calendar days) to prepare a response to the allegations that are the subject of the investigation.

#### **3.2 Suspension:**

If the Employer suspends an employee while undertaking an investigation, the employee will be suspended and paid as per roster until an outcome is achieved.

Employees under investigation may be subject to the following action during the investigation:

- a) Suspension from duty with no reduction of pay; or
- b) Placed on alternative duties; or
- c) Re-assessed and returned to normal duties.

#### **3.3 Process:**

##### **Step 1: Counselling**

When the Employer has concern regarding the conduct of an employee, the Employer shall undertake an investigation into the issues pertaining to the unsatisfactory conduct. The Employee will be given the opportunity to provide an explanation.

The Employer will consider this explanation and relevant facts in making its determination. Based on its determination, the Employer may counsel the Employee, which shall be documented and signed by the Employee in acknowledgement of sighting the counselling, with a copy placed on the Employee's personnel file.

During counselling, the Employee shall be made aware of the standards of improvement in conduct that is to be made. If after 12 months from the date of counselling the Employer determines that the conduct has been satisfactory, the Employee will be advised that the written record of the counselling has been removed from the Employee's personnel file.

### **Step 2: Written Warning**

If the Employee fails to meet the agreed standards of improvement in accordance with Step 1, or if the Employer has a second concern about the conduct of the Employee, the Employer shall undertake an investigation into the issues pertaining to the unsatisfactory conduct. The Employee will be given the opportunity to provide an explanation. The Employer will consider this explanation and relevant facts in making its determination.

Based on its determination, the Employer may provide the Employee with a written warning, which shall be documented and signed by the employee in acknowledgement of sighting the warning with a copy placed on the Employee's personnel file.

The Employee receiving the written warning shall be made aware of the standards of improvement in conduct that is to be made. If after 18 months from the date of written warning the Employer determines that the conduct has been satisfactory; the Employee will be advised that the written warning has been removed from the Employee's personnel file.

### **Step 3: Final Written Warning**

If the Employee fails to meet the agreed standards of improvement in accordance with Step 2, or if the Employer has a third concern about the conduct of the Employee, the Company shall undertake an investigation into the issues pertaining to the unsatisfactory conduct. The Employee will be given the opportunity to provide an explanation.

The Employer will consider this explanation and relevant facts in making its determination. Based on its determination, the Employer may provide the Employee with a final warning, which shall be documented and signed by the Employee in acknowledgement of sighting the warning with a copy placed on the Employee's personnel file.

The Employee receiving the final warning shall be made aware of the standards of improvement in conduct that is to be made. If after 24 months from the date of written warning the Employer determines that the conduct has been satisfactory; the Employee will be advised that the written warning has been removed from the Employee's personnel file.

### **Step 4: Dismissal**

If the Employee fails to meet the agreed standards of improvement in accordance with Step 3, or if the Employer has a further concern about the conduct of the Employee, the Employer

shall undertake an investigation into the issues pertaining to the unsatisfactory conduct. The Employee will be given the opportunity to provide an explanation.

The Employer will consider this explanation and relevant facts in making its determination. Based on its determination, the Employer may dismiss the Employee with a written notice of termination or offer the employee the choice to resign.

### **3.4 Serious Breaches**

Serious breaches in this context refer to breaches that for which it is not reasonable that a second breach would be tolerated and include such breaches that are likely to significantly put at risk other persons or the environment. A serious breach may also be for intentional fraud or other acts or omissions that have a detrimental impact on the Employer or the Employers ability to undertake its activities for any clients.

### 3.5 Categories

The following categories are to be utilized as a basis for counselling/ warning procedures.

| CATEGORY   | DEFINITION  | APPROPRIATE DISCIPLINE   |
|------------|---|--|
| Category 1 | <ul style="list-style-type: none"> <li>• Absenteeism.</li> <li>• Inefficiency and poor performance.</li> <li>• Poor timekeeping and punctuality.</li> <li>• Leaving workplace without permission.</li> </ul>  | Work through four stages of discipline   |
| Category 2 | <ul style="list-style-type: none"> <li>• Negligence.</li> <li>• Breach of safety regulations.</li> <li>• Ignoring reasonable instructions from supervisor</li> </ul>  | May be necessary to by-pass the four stages of discipline and give a Final Written Warning to the Employee   |
| Category 3 | <ul style="list-style-type: none"> <li>• Major breach of safety regulations</li> <li>• Possessing or consuming alcohol or other drugs during work time.</li> <li>• Deliberately damaging Company property and personal property.</li> <li>• Falsifying timesheets or Doctor's Certificates.</li> <li>• Mistreating / abusing a work mate or supervisor.</li> <li>• Fighting or physical violence</li> <li>• Testing positive to alcohol or other drugs when undergoing test/s following initial positive result test</li> <li>• Driving company vehicles on road whilst over legal road limit of 0.05</li> <li>• Refusal to undergo testing for alcohol or other drugs</li> </ul> | May be necessary to dismiss an Employee without due notice. Where mitigating circumstances exist, it may be appropriate to give a Final Written Warning or to terminate the Employee's contract of employment with due notice. |

### **3.6 Abandonment of Employment**

The absence of an Employee from work for a continuous period exceeding three working days without the consent of the Employer and without notification to the Employer may be prima facie evidence that the employee has abandoned their employment.

In circumstances where there is prima facie evidence that an Employee has abandoned their employment, an Employee will be deemed to have abandoned their employment if within 14 days from when their unauthorised absence commenced, the Employee is unable to establish to the satisfaction of the Company that they were absent for reasonable cause.

Termination of employment by abandonment shall 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 Employer, whichever is the later.

## **4 SUPPLEMENTARY LABOUR**

A project may engage supplementary labour to cover peak workloads and provide skills not readily available within the business. This shall be done by sub-contracting the provision of "Day Labour" services to other companies, or by employing people on a casual basis (see section 5.2.3).

## **5 TERMS AND CONDITIONS OF EMPLOYMENT**

### **5.1 Employee Obligations**

The Employees shall:

- at the commencement of employment, attend and undertake relevant Company/ client induction program(s)
- be available, ready and willing to perform such work, including rostered work and reasonable overtime, as required by the Company, on the days and during the hours necessary for the Company to best meet any contractual obligations for the Company.
- comply with any request and/or direction of the Company to work reasonable overtime or rostered work as required by the Company during the working week and at weekends.
- Comply with, the Company's relevant policies and procedures, as amended from time to time.
- Comply with any project or site-specific policies and procedures of the Company or any client which may be advised to Employees from time to time.
- Support and actively co-operate in all formal and informal programs initiated by the Company to improve productivity, increase efficiency and flexibility, improve the effectiveness of operations, and reduce costs.
- Be multi-skilled and work in a flexible manner to perform works, as directed by the Company. All Employees will be required to perform a diverse range of functions within

their level of skill and competence as determined by the Company. There shall be no demarcation, restrictions or limitations on the performance of work whatsoever, including or between traditional crafts, trades, occupations, vocations or callings.

- work in a safe manner at all times, including properly using all appropriate protective clothing and equipment provided by the Company.
- follow all reasonable directions of the Company to carry out work that is within their skills and competence,
- wear any clothing, personal protective equipment or uniform provided by the Company.
- participate as a team member in accordance with the organization of work.
- be ready to commence work at the commencement of paid working time.
- undergo training as required.
- undertake medical examinations and/or treatment for injury management and rehabilitation purposes as directed.
- undertake drug and alcohol testing as directed (both random or with cause);
- implement changes to work practices and methods designed to improve performance consistent with the consultation requirements.
- comply with the disputes and grievances procedure as set out in this Agreement.
- comply with and participate in all safety programs and/or safety management systems as in place from time to time and
- Not smoke in any site office, mess/change shed, sanitary facilities, or any other amenities, vehicles, or any areas posted or designated as non-smoking areas.

## **5.2 Nature of Employment**

Employees can be engaged on a casual, part-time, or full-time basis. Employees may also be engaged on a permanent or fixed term basis. The nature of employment will be stated and agreed to by the Employee and Employer in the letter of employment.

### **5.2.1 Permanent Employment**

A permanent Employee is engaged on a full-time basis of 38 paid hours per week averaged over a period of 2 weeks (i.e., 76 hours of rostered work per fortnight). A permanent employee will be required to work a combination of ordinary and overtime hours.

Permanent Employees will be classified as either a Rostered Worker or a Non-Rostered Worker. Rostered Workers will be rostered to suit the changing work patterns of the Employer and will be entitled to 5 weeks annual leave per annum. Non-Rostered Workers will work a regular shift pattern during normal hours and will be entitled to 4 weeks annual leave per annum. Rostered Workers and Non-Rostered Workers may be required to work overtime as required by the employer.

### **5.2.2 Fixed Term Employment**

Employees may be engaged on a fixed term basis. The commencement date and completion date will be stated and agreed to (signed-off by the Employee and Employer) in the letter of employment.



A Fixed Term Worker may be employed on a full-time or part-time basis and will not be entitled to any termination notice period or redundancy benefits unless their employment is terminated prior to the completion date in accordance with the terms of this Agreement.

### **5.2.3 Casual Employment**

A Casual Worker may be engaged by the Employer to meet short-term operational requirements on the basis that the Employer is not obliged to ensure 76hrs per fortnight is guaranteed and may terminate casual employment at any time.

A Casual Worker engaged to work, will be paid a 25% loading on the base rate that they are employed at in lieu of all leave; public holidays; termination notice period; consultation and dispute settling procedure; redundancy benefits; training and competency conditions; and progression within the classification structure.

The 25% casual loading is not applicable to Daily Travel Allowances.

### **5.2.4 Part-Time Employment**

Part-time Employees may be engaged on such hours and terms as are advised to the Employee. All entitlements for part-time Employees under this Agreement shall be proportionate as the Employee's Ordinary Hours relate to full-time Ordinary Hours worked.

Before commencing part-time employment, the Employer and the part time Employee must agree upon (the arrangement):

- The hours of work to be worked.
- The days upon which they will be worked.
- The classification applying to the work to be performed.

The Employees concerned are entitled to be paid for the hours agreed upon provided they attend for work at the agreed times. The terms of the agreement may be varied by mutual consent. Employees shall be deemed to be employed by the week, except where specifically engaged as a Casual Worker, or otherwise provided for in this Agreement

### **5.2.5 Outside Employment**

It is the Employer policy that a permanent Employee cannot have outside employment, hold any paid office, engage in any paid employment, carry on any business or engage in the private practice of any profession outside of the Employer, unless the Employer management grants permission in writing.

Permanent Employees must declare in writing if they currently do or wish to undertake any other business in addition to their permanent employment with the Employer. Management and the Employee will need to discuss whether this is acceptable and come to a mutual agreement on how it will work, to ensure that there is no possible conflict of interest or does not cause a breach of the company's policies and procedures.

The Employer will not unreasonably withhold permission of Employees to hold outside employment, hold any paid office, carry on any business or engage in any private practise of any profession outside the Employer, whereby the Company's Policies and Procedures are met and there is no conflict of interest.

### 5.2.6 Probation Period

At the commencement of the employment, the Employee will be placed on a probation period of three (3) months, with the ability to extend for a further three (3) months. During the probationary period, the Employer or Employee may terminate the Employee's services on the giving of seven (7) days' notice or payment of one week's pay in lieu of notice.

### 5.2.7 Job rotation and multi-skilling

Job rotation aims to maximise flexibility and efficiency within the workplace, while broadening the Employee's skills and experience, and increasing their job satisfaction.

An Employee may be transferred to different positions within the organisation at the same classification level. This arrangement will only occur with the agreement with both the Employer and Employee. Training will be provided where necessary to enable job rotation to occur. If job rotation may be deemed to be a major change and have a significant effect on all Employees, it shall be discussed in accordance with the consultative mechanism outlined in clause 2.4.

## 5.3 Termination of Employment – Notice Period

A notice period is the amount of notice an Employer must give an Employee if they plan to terminate the Employee's employment. If the Employer terminates employment of a permanent Employee, the following notice shall be provided (in accordance with the National Employment Standards):

| Period of continuous service                 | Notice Period |
|--|---------------|
| 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       |

The relevant notice period increases by 1 week if the Employee is over 45 years old and has completed at least 2 years' continuous service with the Employer.

If an Employee terminates his employment with the employer, a notice period of two weeks shall apply.

An Employee's employment may be terminated without notice for serious misconduct, in accordance with this agreement.

Satisfactory resources shall be applied to investigate serious misconduct instances to ensure a fair and thorough investigation is undertaken without prejudice.

The Termination Notice Period does not apply to Fixed Term Workers that have reached their completion date and terminated their employment.

## 5.4 Redundancy

### 5.4.1 Redundancy Pay

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

- 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
- because of the insolvency or bankruptcy of the Employer

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:

| Period of continuous service with the employer on termination | Redundancy pay period |
|---|-----------------------|
| Less than 1 year  | Nil                   |
| At least 1 year but less than 2 years                         | 4 weeks               |
| At least 2 years but less than 3 years                        | 6 weeks               |
| At least 3 years but less than 4 years                        | 7 weeks               |
| At least 4 years but less than 5 years                        | 8 weeks               |
| At least 5 years but less than 6 years                        | 10 weeks              |
| At least 6 years but less than 7 years                        | 11 weeks              |
| At least 7 years but less than 8 years                        | 13 weeks              |
| At least 8 years but less than 9 years                        | 14 weeks              |
| Greater than 9 years  | 16 weeks              |

This redundancy payment will be paid in addition to the notice period prescribed in section 5.3 of this Agreement.

This clause does not apply to a Casual Employee, a Fixed Term Employee that has reached the end of the Fixed Term, an Employee terminated during the probationary period, an Employee whose employment is terminated because of serious misconduct, an apprentice, 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.

It is possible for the Employer to apply to Fair Work Australia for a determination reducing the liability to pay redundancy pay to a specified amount (that may be nil) if Fair Work Australia considers it appropriate. The Employer may apply for the determination if an Employee is entitled to redundancy pay, and the Employer finds other acceptable alternative employment, or the Employer cannot pay the amount.

#### **5.4.2 Employee leaving during notice period**

An Employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The Employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice but is not entitled to payment instead of notice.

#### **5.4.3 Job search entitlement**

An Employee given notice of termination in circumstances of redundancy shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment. If the Employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the Employee must, at the request of the Employer, produce proof of attendance at an interview or he or she will not receive payment for the time absent. For this purpose, a statutory declaration will be sufficient.

#### **5.4.4 Transfer of employment**

The 'transfer of employment' provisions under the Fair Work Act 2009 applies when an Employee moves from one employer (the old employer) to another employer (the new employer) within three months, and there is a transfer of business involved.

#### **5.5 Overpayment Reimbursement**

Employees agree to reimburse the Company for any overpayment made to the Employee in error by the Company. Upon the Company providing written notification of an overpayment to an Employee, the Employee authorises the Company to deduct the overpayment from wages or other entitlements owing to the Employee.

The Company will consult with the Employee and the reimbursement of the overpayment may be spread over an extended period to reduce any financial burden on the Employee.

### **6 HOURS OF WORK – ROSTERED AND OVERTIME**

#### **6.1 Hours of Rostered Weekday, Weeknight & Weekend Work**

##### **6.1.1 Full Time Employees**

The rostered hours of work for full-time Employees are to be 38 hours per week averaged over a period of 2 weeks (i.e., 76 per fortnight), consisting of a combination of rostered weekday, weeknight, and weekend shifts.

The pattern of work may require rostered hours of work to be between 7.6 and 12 hours per work shift, which are to be worked continuously on any day of the week. Minimum shift duration for machine transfer or travel in work shifts is 4 hours.

In the event that an Employee is recalled for overtime, after they have left the premises on the Employer or the Temporary Work Depot, the Employee shall be paid a minimum of 4 hours.

Permanent Employees will have a Home Depot. Shift start and finish times are deemed to commence/finish at the Home Depot unless Employees are directed to commence/finish at a Temporary Depot.

The Employees' pay is made on the basis of actual hours worked, not on the planned roster.

### **6.1.2 Casual Employees**

A Casual Worker is entitled to all of the applicable rates and conditions of employment by this Agreement except annual leave, paid personal/carers leave, paid community leave, notice of termination and redundancy benefits.

When engaging a person for casual employment, the Employer must inform the Employee, in writing, that the Employee is to be employed as a casual, stating by whom the Employee is employed, the job to be performed, the classifications level, and the relevant rate of pay.

A Casual Worker must be paid a casual loading of 25% for the ordinary hours as provided for in this Agreement. The casual loading is paid as compensation for annual leave, personal/carers leave, community service leave, notice of termination and redundancy benefits and public holidays not worked.

A Casual Worker will be entitled to the penalty rates applicable to the relevant shift times.

- Where the relevant penalty rate is time and a half, the Employee must be paid 175% of the ordinary time hourly rate prescribed for the Employee's classification.
- Where the relevant penalty rate is double time, the Employee must be paid 225% of the ordinary time hourly rate prescribed for the Employee's classification.
- Where the relevant penalty rate is double time and a half, the Employee must be paid 275% of the ordinary time hourly rate prescribed for the Employee's classification.

### **6.1.3 Penalty Rates for Rostered and Overtime Shifts**

Penalty rates will be calculated based on the actual time of day worked as well as the time since the beginning of the shift.

The shift time is calculated from the commencement of the work shift and does not reset when the shift changes from one time zone to another.

The following penalty rates will apply during the following time zones:

- Weekday shifts (Monday to Fri between 0600hrs and 1800hrs) will be paid at single time (1.0T) for the first 8 hours of the shift; time and a half (1.5T) between 8 and 10 hours of the shift; and double time (2.0T) for all hours in excess of 10 hours.
- Weeknight shifts (Monday to Friday between 0000hrs and 0600hrs and between 1800hrs and 2400hrs) will be paid at time and a half (1.5T) for the first 8 hours of the shift; and double time (2.0T) for all hours in excess of 8 hours.
- Saturday shifts (Saturdays between 0000hrs and 2400hrs) will be paid at time and a

half (1.5T) for the first 4 hours of the shift; and double time (2.0T) for all hours in excess of 4 hours.

- Sunday shifts (Sundays between 0000hrs and 2400hrs) will be paid at double time (2.0T); and
- Public Holiday (Public Holidays between 0000hrs and 2400hrs) shifts will be paid at double time and a half (2.5T).

For example, if a 12-hour shift commences at 10:00am on a Monday (non-Public Holiday), the first 8 hours will be paid at 1.0T (hrs 1-8, M-F 0600-1800hrs), and the remaining 4 hours will be paid at 2.0T (hrs >9, M-F 1800-2400).

Table 6.1.3 provides a summary of the penalty rates applicable to the actual times worked including a factor for the duration of the shift.

| Shift Time (since start of shift) | Monday to Friday 0600 to 1800 hours | Monday to Friday 0000 to 0600 and 1800 to 2400 hours | Saturday 0000 to 2400 hours | Sunday 0000 to 2400 hours | Public Holiday 0000 to 2400 hours |
|-----------------------------------|-------------------------------------|--|-----------------------------|---------------------------|-----------------------------------|
| Hours 1-4                         | 1.0T                                | 1.5T   | 1.5T                        | 2.0T                      | 2.5T                              |
| Hours 5-8                         | 1.0T                                | 1.5T   | 2.0T                        | 2.0T                      | 2.5T                              |
| Hours 9-10                        | 1.5T                                | 2.0T   | 2.0T                        | 2.0T                      | 2.5T                              |
| Hours > 10                        | 2.0T                                | 2.0T   | 2.0T                        | 2.0T                      | 2.5T                              |

**Table 6.1.3 – Penalty Rates based on actual time of day worked and the shift time**

#### 6.1.4 Rostering Principles

Rostering will be based on fatigue management principles which:

- Address the opportunity for quantity and quality of sleep, particularly the 'time of day' effect.
- Ensure the number of consecutive shifts (in particular night shifts), shift lengths and

roster periods between shifts are considered in roster compilation; and,

- Understand that you have a need to balance the competing requirements of your job with your social and home life.

The Parties acknowledge the variations in business requirements for rostered work across the Employer's business. These variations need to be addressed through local level consultation and agreement, which addresses business requirements while ensuring compliance with the rostering principles contained in this Agreement.

The Employers rostering principles are:

- Long term work programs (up to 3 monthly) are to be regularly updated and distributed to Employees to allow planning of leave entitlements within future work commitments.
- Employee rosters for a 14-day cycle are to be developed based on work requirements and need to take into account the employers fatigue management policy. Rosters will provide indicative shift start and finish times only. These times may vary during the course of the roster due to changing operational requirements.
- Rosters will be posted 7 days in advance of the roster commencement and will only change due to unforeseen circumstances. Employee(s) will be consulted about any changes to their normal ordinary hour's roster. The maximum number of times a shift pattern can be changed is twice in a 14-day period or by mutual agreement.
- Changes after the commencement of the roster period may be required due to changes in work commitments or altered work schedules. Roster changes are to be mutually agreeable between the Company and Employees; however, the Employee must have a legitimate reason to refuse a reasonable alteration.
- Rosters will identify and differentiate both rostered hours and rostered overtime hours/shifts. Any overtime shifts not nominated on an Employee's roster will be deemed non-rostered overtime.
- Employees are required to undertake a reasonable amount of rostered overtime at the request of the Company.
- Rostered overtime shifts may be cancelled due to unforeseen circumstances. Where possible, the Company will endeavor to find alternative work for the affected employees. In the event that no alternate work is available, and the rostered overtime shift is cancelled, Employees will be entitled to the following remuneration for:
  - Shifts cancelled with more than 24 hours' notice – no pay
  - Shifts cancelled with less than 24 hours' notice – 4 hours pay
  - Shifts cancelled after shift commencement – 7.6 hours pay
- Overtime shifts notified after the commencement of roster period are deemed as non-rostered overtime shifts. Non rostered overtime shifts require mutual agreement

between the Company and the affected Employees.

- Shift duration shall be planned to be a maximum of 12 hours for a single shift. Shift durations can be extended upon agreement with the Employee, and compliance with risk assessment that is undertaken in accordance with the Company's fatigue management policies and procedures.
- Rostered shifts shall be planned to a minimum of 7.6 hours for a single work shift or 4 hours for a travelling in a work shift or machine transfer shift.
- A rest day shall be a minimum of 34 hours. This consists of a 10-hour break at the completion of the last shift plus 24 hours break for the rest day.
- A minimum 10-hour break is to be rostered between work shifts
- Travel time is to be included in the fatigue management calculations.
- Employees are entitled to a minimum of 2 consecutive days at home in a month, unless mutually agreed by the Employee and the Employer.
- Employees are entitled to one weekend off per month, consisting of a consecutive Saturday and Sunday rostered off, unless mutually agreed by the Employee and Employer.
- Employees are entitled to a 24-hour break when changing from regular night shift to regular day shifts during a roster. This 24-hour break does not meet the requirement for a rostered day off or rest day.

## **6.2 Work Locations and Travel Arrangements**

### **6.2.1 Start and Finish at Home Depot**

Employees will start and finish at their Home Depot (e.g., Wetherill Park, NSW; Rutherford NSW; Port Kembla, NSW; Gracemere, Queensland; Jandakot, WA) and will not be paid for travelling from their home or place of residence.

Employees may be required to travel to a Temporary Depot (worksite or machine) after commencing at the Home Depot. Transit time between the Home Depot and the Temporary Depot will form part of their rostered working time and will be paid accordingly. Travel arrangements between the Home Depot and the Temporary Depot will be provided by the company.

### **6.2.2 Start and Finish at Worksites that are closer to Employee Residence**

Where an Employees (usual) residential address is closer to the Temporary Depot than their nominated Home Depot and it is more convenient for the Employee to travel directly to the Temporary Depot, the Employee may start and finish their shift at the Temporary depot.

The employee shall receive an allowance of \$25.00 per day worked (flat).



This allowance is not applicable to those Employees who are required to live away from home and/or are provided adequate Company transport to the work site.

Employees receiving this allowance will start and/or finish their shift on site and will not be entitled to payment for travel time. This allowance is in compensation of all fares and travelling claims.

### **6.2.3 Start and Finish at Worksites that are further from the Employee Residence**

At times, the Employer may instruct an Employee to start and finish a rostered shift or block of shifts at a Temporary Depot that is further away from their residential address than their Home Depot.

Employees may be required to travel directly to and from the Temporary Depot to undertake their rostered shift(s). Travel to and from the Temporary Depot may be undertaken in a stand-alone travel shift (minimum 4 hours) or as part of the first shift of the roster block.

Travel time will be calculated using the "direct route" on "Google Maps" from their Home Depot to the Temporary Depot and return.

### **6.2.4 Staying Away from Home**

In the event that an Employee is unable to travel to the Temporary Depot and return to the Home Depot within the rostered shift, the Employee will be required to stay away from home overnight. In this case, the Employer may provide accommodation and/or meals to the Employee or direct the Employee to arrange suitable accommodation and meals.

If accommodation is not provided by the Company, the Employee will be required to obtain accommodation within 15 minutes of the Temporary Depot, and Daily Travel Allowance will be paid to the employee under clause 10 for each night that the employee is required to stay away from home.

When living away from home, Employees will start and finish their shift at the Temporary worksite with no allowance for travel time. If there is no available accommodation within 15 minutes of the worksite, travel time will be paid between the closest accommodation and the temporary worksite.

At the Company's discretion, compensation for fares and/or private car usage will be paid for travel between the employees (usual) residential address and the temporary worksite if the Employer is unable to provide travel arrangements.

### **6.2.5 Special Transit Arrangements (use of private motor vehicle)**

The Company may require an employee to use his private motor vehicle to travel from his nominated residential address to a Temporary Depot. In this event the Company will reimburse the Employee at the rate of \$0.565 per kilometre.

Kilometres travelled will be calculated using the "direct route" on "Google Maps" from their Home Depot to the Temporary Depot and return.

This arrangement must be approved by the Company prior to shift commencement

### **6.3 Meal/Crib Breaks**

Employees will be required to take an unpaid meal break of 30 minutes per shift on all shifts in excess of 4 hours. Meal breaks should be organised so as to ensure continuity of operations and taken in a flexible manner at any time during the shift to suit the needs of the work group. A meal break shall be taken within six (6) hours of commencing the shift.

An Employee working greater than a ten (10) hours shift shall be allowed a crib break of twenty minutes without deduction of pay. The crib break shall be organised to ensure continuity of operations in conjunction with Company policies and procedures.

In the event that a shift is extended beyond 12 hours due to an emergency or other unforeseen circumstance, the Company will implement measures in compliance with the risk assessment that is undertaken in accordance with the Company's fatigue management policies and procedures.

### **6.4 Rest Periods**

Rest periods between shifts are subject to the company's fatigue management policies and procedures.

Employees shall be rostered to have at least ten (10) consecutive hours off duty between successive shifts.

In most circumstances if extended shifts become necessary, the company's fatigue management policies and procedures allow for extending the finish time of one shift, with adjustment made to the starting time of the next shift, thus still allowing for a 10-hour rest period.

In the unusual situation where, extended shifts become necessary to complete critical work and the rest period between shifts (after adjustment) results in less than a 10-hour break, each Employee will be firstly consulted, and then work can only proceed if mutually agreed between the Employee and Employer.

This will be subject to the approval process as outlined in the company's fatigue management policies and procedures.

Employees who agree to return to work at the specific request of the Employer, prior to the conclusion of the 10-hour break, will be paid at double time (2.0T) for the next shift or until they can be provided with a 10-hour break. Employees who return to work prior to the 10 hour break without approval of their Manager will not be entitled to the additional penalty rate.

The arranged shift start time is defined by the roster or by the Supervisor (after liaising with senior management).

## **7 REMUNERATION AND PAYMENTS**

Remuneration will take the form of a fortnightly payment paid to an Employee's nominated bank by electronic funds transfer (EFT) at the completion of the pay period.

The fortnightly payment represents compensation for all time worked at the applicable penalty rates described in Clause 6.1, as well as Daily Travel Allowances described in Clause 10.

The wage rates are inclusive of ordinary hours (based on an average of 38 ordinary hours

per week), and all other payments including shift work allowances, disability payment, and all other wage related allowances or allowances for any other responsibilities and conditions except those which are mentioned below.

The 'basic' hourly rate is used for the purposes of calculating long service leave payments, superannuation, and total leave payments. The 'basic' hourly rate consists of the classification rate plus allowance rate which are paid for all ordinary hours worked as described below.

### **7.1 Classifications**

All Employees will be appointed to an Employer Job Role based on their competencies and the duties they are expected to undertake. The Employee will be paid the rate of pay for their appointed Employer Job Role as outlined in Appendix 1.

Employees may hold a number of Employer Job Roles and they will be paid at the highest rate for their nominated Job Roles. Employees will be required to carry out such duties as are within the limits of the Employee's skill, competence and training, including work that is incidental or peripheral to the Employees main function.

The rate of pay for each Employer Job Role will increase by 2.5 % on each anniversary of the date of certification of this agreement.

### **7.2 Superannuation**

The Employer shall make a superannuation payment on behalf of each employee , as required by the Superannuation Guarantee (Administration) Act 1992, to an approved superannuation scheme as nominated by the employee.

The Superannuation payment calculation shall be in accordance with the NES.

### **7.3 Superannuation Salary Sacrifice**

An Employee may apply in writing to the Employer to have their gross salary reduced by an amount nominated by the employee as a salary sacrifice superannuation contribution for the benefit of the employee.

The Employer must approve the Employee's application to salary sacrifice before the Employee's salary is adjusted for salary sacrifice contributions.

The Employee will receive their reduced salary for periods of annual leave, long service leave, and other periods of paid leave provided the salary sacrifice contribution is paid during these periods.

The total value of the reduced salary and the agreed value of the benefits provided will not be less than the amount that would otherwise be paid if the salary sacrifice arrangement was not in place.

An Employee is entitled to terminate their salary sacrifice arrangements provided that at least one month's notice in writing is given to the Employer.

In the event that changes in legislation relating to superannuation or taxation remove the Employer's capacity to maintain the salary sacrifice arrangements agreed to, the Employer

will be entitled to withdraw from the salary sacrificing arrangement by giving one month's notice to the relevant employee.

The Employer recognises the need for the Employee to consider independent financial and taxation advice. The Employer recommends that an employee seeks such advice prior to entering into salary sacrifice arrangements.

## **8 SKILLS, TRAINING AND COMPETENCY**

The Company is committed to providing its employees with opportunities for career growth and to make a positive contribution to the success of the business. The skills and abilities of our employees are an integral part of the continued delivery of quality services to our customers.

### **8.1 Employer Job Roles**

The Company has developed a matrix of Employer Job Roles that will enable us to effectively meet our operational objectives and provide a competent and fully accredited workforce to meet our contractual obligations. This is the only way to remain competitive in the rail industry and grow the business for the benefit of our employees and stakeholders.

The Employer Job Roles are linked to a set of nationally recognised competencies as well as targeted in-house training packages. The competencies listed in our database are mandatory requirements that are required to achieve a specific Employer Job Role. Details of the competency requirements to achieve and maintain a specific Employer Job Role are contained in the Rail Industry Worker (RIW) Portal and available for all Employees to review.

The Employer Job Roles are also aligned to the Rail Industry Job Roles of our Networks to ensure that we meet the requirements of our clients in regard to competency and accreditation. Competency Standards will be aligned with the Employer Job Roles set out as part of this Agreement and will be those required to effectively meet and undertake the work requirements of the Employer.

Our Employees will be required to attend training and recertification courses in accordance with their nominated Employer Job Roles to maintain their level of competency. The manager or supervisor of each Employee will work with them during the annual Personal Development Program to map out their career development and appropriate training path.

The Employer may determine elective competencies specific to each classification or provide additional training specific to its business needs, which will be reflected in the Employee Personal Development Plan.

### **8.2 Attainment and Maintenance of Competency**

Employees are required to undertake all of the required training, tasks and assessment required for their appointed Employer Job Role and for their agreed development path. This will include continuation of training and undertaking of training and assessment where competencies change, or new competencies may be required due to changed Employer Job Roles and/or changes to legislation.

Refusal to do so, or failure to attain or maintain the required competency level, may disqualify an Employee to undertake the duties of the appointed Employer Job Role. In such cases the Employer, in consultation with the Employee, will determine whether or not the Employee can undertake duties of an available alternative Employer Job Role for which they are qualified and competent. Where this is determined and approved by the Employer, the Employee will be paid the wage rate applicable to the Employer Job Role for which they are competent and qualified.

While the Employer is committed to the development of its Employees, the primary focus of the attainment and accreditation of the specific competencies identified is to safely and effectively undertake the duties and responsibilities of the appointed Employer Job Role.

## **9 CLASSIFICATION STRUCTURE – TRANSLATION AND PROGRESSION**

The Company is committed to providing its people with options for both career and personal development. The classification structure contained in this Agreement identify specific work streams and the associated specific Employer Job Roles. Minimum training, competency and qualification requirements, are maintained in the Rail Industry Worker (RIW) Portal.

The classification structure provides for:

- Induction and training of new Employees.
- Translation of existing Employees to new work streams
- Appointment of experienced and skilled Employees based on recognition of prior learning and competency assessment.
- Career progression to supervisory or specialist roles based on business requirements and appointment on merit.

Employees will be paid the wage rates specified in this Agreement for undertaking the duties and responsibilities and demonstrating the competencies required of the respective appointed Employer Job Roles and not in relation to individual qualifications, skills and competencies held that is not required for the role undertaken.

### **9.1 New Employees**

New employees will be appointed in the appropriate Employer Job Role dependent on existing qualifications; relevant experience; and demonstrated competencies. The Employer may appoint a new Employee in an Employer Job Role for which he does not have the necessary competencies, however the new Employee must undertake and successfully complete any necessary training and assessment required for the appointed Employee Job Role.

If the new Employee is not able to meet the competency and training requirements of their appointed Employer Job Role within 12 months, the Employer in consultation with the Employee, will determine whether or not the Employee can undertake duties of an available alternative Employer Job Role for which they are qualified and competent. Where this is determined and approved by the Employer, the Employee will be paid the wage rate applicable to the Employer Job Role for which they are competent and qualified.

## **9.2 Translation**

Employees covered by this Agreement at the time of commencement of its operation will, where necessary, translate into the appropriate new classification stream and Employer Job Role.

Such employees will be required to have the relevant qualifications and base requirements for the translated Employer Job Role and possess, or undertake any required training and assessment to obtain, the respective competency requirements in line with the employees Personal Development Plan.

An Employee subject to translation to the new classification structure, who does not wish, or is unable to translate to a higher level Employer Job Role, may elect to translate only to their respective equivalent current classification level and associated pay rates.

No existing Employee will have their pay level reduced as a result of translation to any new structure that may be established under this Agreement; subject to the employee continuing to undertake, as a minimum, all of the duties and tasks of their positions prior to translation process.

## **9.3 Appointment and Progression**

The classification structure contained in this Agreement, provides for both progression of Employees through the appropriate job stream via their Personal Development Plan and by appointment to specified roles based on business needs and the merit of applicants.

Employees will be appointed in a primary Employer Job Role in the classification structure contained in this Agreement, based on the role and responsibility that the Employee is required to undertake.

Employees may also be appointed in additional Employer Job Roles based on the level of competency of the Employee and the operational requirements of the Employer. The Employee will be paid at the highest rate of their appointed Employer Job Roles, including both primary and subsequent Employer Job Roles.

Each Employee will be able to discuss their appointed Employer Job Roles with their Manager in a consultative manner. If the Employee and his Manager are unable to agree on their appointed Employer Job Roles, the Employee may appeal to Senior Management to review the decision. Senior Management will review the appeal and provide a response to the Employee within 7 days of notification.

Progression of Employees will be managed via the Personal Development Plan for each Employee. Progression will occur within the levels of the primary Employer Job Role and may also include progression through the levels of additional Employer Job Roles that the Employee has been appointed to. This will be a consultative process between the Employee and his Supervisor.

Employees will be required to carry out the full range of duties and training requirements associated with their appointed Employer Job Roles.

## **10 TRAVEL ALLOWANCE**

Employees required to undertake duties which do not permit the Employee to return to their home at the completion of their shift shall be paid a Daily Travel Allowance. The Daily Travel Allowance shall be payable for each shift that the Employee is unable to return home.

If the Employee is not provided accommodation or meals, the Daily Travel Allowance will be \$202.00 in Year 1, \$207.00 in Year 2, and \$212.00 in Year 3.

If the Employee is provided accommodation only, the Daily Travel Allowance will be \$91.00 per day in Year 1, \$93.50 per day in Year 2, and \$96.00 per day in Year 3.

When accommodation and meals are provided to the Employee, no Daily Travel Allowance will be payable.

Accommodation must be sought and booked at the closest location to the worksite and within 15 minutes of the worksite (if available). If accommodation is not available, management must be informed.

Such allowance will be payable, in full for each shift, including authorised paid or unpaid time off, during which the Employee is ready, willing and available for work and unable to return home.

An Employee who reasonably incurs incidental expenses in excess of the amount herein prescribed shall be granted upon production of receipts such additional amount as the Employer approves.

Where the Company provides accommodation, it must be single room accommodation for each employee and the accommodation will be to NRMA 3-star standard or its state/territory equivalent.

When accommodation is provided by the Company's client, it will be deemed suitable if it meets the NRMA 3-star standard or its state/territory equivalent.

## **11 ANNUAL LEAVE**

Non-Rostered Workers are entitled to four weeks (4) paid annual leave per annum. Rostered Workers shall be entitled to five (5) weeks annual leave. Annual leave is cumulative and accrues on a pro rata basis.

Annual leave shall be taken in blocks of 7.6 hours per day, thirty-eight (38) per week or seventy-six (76) hours per fortnight.

Annual leave will be credited to an Employee upon the completion of each four-week period of service with the employer and is cumulative from year to year.

Annual leave will be paid at the ordinary rate of pay the employee receives immediately before the period of annual leave begins plus an annual leave loading of 20%.

Any authorisation given by an Employer enabling an Employee to take annual leave during a particular period is subject to the operational requirements of the workplace. However, where an Employee requests leave be allowed in one continuous period, such request shall not be unreasonably refused. In the event of lack of agreement between the employer and employee the matter may be dealt with in accordance with the grievance procedures.

The Employee will develop rosters to enable the scheduling of annual leave throughout the year to ensure continuity of maintenance and productive operation and an equal distribution of Employees on leave.

In the case of extensive accumulated annual leave, the Employer may direct an Employee to clear a nominated amount of annual leave during a particular period if:

- The Employer consults with the Employee
- the Employee has accrued annual leave in excess of eight (8) weeks at the time that the direction is given, and
- the Employee retains a minimum of four (4) weeks accrued annual leave

An Employee may request cashing out of annual leave. Cashing out of annual leave will be approved at the discretion of the Employer, on the basis that:

- the request is in writing
- The health and wellbeing of the Employee is considered
- the Employee retains four (4) weeks accrued entitlement, after any cashing out of annual leave.

### **11.1 Stand Down / Useful Employment**

The Employer may stand down Employees without pay for any time during which the Employer determines that an Employee cannot be usefully employed through a stoppage of work for which the Employer cannot reasonably be held responsible.

The Employer will consult with affected Employees before implementation of any stand down. The Employees will receive written notice outlining the date on which the Stand Down is to commence, the reasons for the Stand Down and the expected duration of the Stand Down. This advice is to be provided at least 48 hours prior to the stand down commencing. The Employer will keep affected staff updated on the expected duration of the Stand Down.

The Employer will pursue all reasonable means in providing the affected Employees with alternate duties prior to initiating the Stand Down. Where no alternative duties are allocated the Employer may require Employees to undertake training and/or re-accreditation or clear accrued leave balances.

An Employee will take paid leave, or may elect to take unpaid leave, if their accrued leave balance is less than their annual leave entitlement.

An Employee taking leave under this clause shall be at liberty to take other employment and in the event of him/her so doing, the Employee will be responsible to inform the Employer of



any limitation that secondary employment may place on not reporting for duty after being notified to return to normal duty. It shall be a reasonable excuse for the Employee not reporting for duty after being notified to do so if he/she is required to work out a period of notice in such other employment.

The Employer shall not be entitled to deduct payment for any public holiday which occurs during a period an Employee is on leave pursuant to this clause.

An Employee on leave pursuant to this clause shall be treated as having continuity of employment.

## **12 PERSONAL / CARER'S LEAVE AND COMPASSIONATE LEAVE**

One of the key efficiencies and productivity contributors is high attendance and low absenteeism. For all periods of personal/carer's leave or compassionate leave, an Employee must give his or her Employer notice of the taking of such leave.

The Employer is entitled to request evidence that would substantiate the reason for leave. Failure to either provide notice or, if required, evidence that would satisfy a reasonable person to substantiate the reasons for the leave means the Employee is not entitled to the leave.

### **12.1 Personal / Carer's Leave**

The term 'personal/carer's leave' effectively covers both sick leave and carer's leave. The minimum entitlement to paid personal/carer's leave for an Employee (other than a casual employee) is 10 days per year.

An Employee may take paid personal/carer's leave:

- if they are unfit for work because of their own personal illness or injury or
- to provide care or support to a member of their immediate family or household, because of a personal illness, injury or emergency affecting the member. A member of the Employee's immediate family means a spouse, de facto partner, child, parent, grandparent, grandchild, or sibling of the employee; or a child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner.

An Employee's entitlement to paid personal/carer's leave accrues progressively during a year of service according to the number of ordinary hours worked and can accumulate from year to year. It cannot be cashed out during the term of employment and it will not be paid out to the Employee on termination of employment.

Payment for personal/carer's leave will be made at the basic hourly rate. An Employee will not be entitled to paid personal/carer's leave for any period during which they are entitled to worker's compensation payments or on public holidays.

The Employee is required to notify his or her direct Shift Supervisor or Manager by phone on the morning that the requirement for any quantity of sick leave arises and must advise the Employer of the period, or expected period, of the leave.

A Doctor's Certificate will be required by the Employer, for the Employee to claim sick leave for two days or more consecutively, and also for the case where the sick day falls either side of a book-off day or public holiday.

### **12.2 Unpaid Carer's Leave**

An Employee (including a casual employee) is entitled to two days of unpaid carer's leave for each occasion when a member of the employee's immediate family or household requires care or support because of a personal illness, injury, or an emergency.

An Employee may take unpaid carer's leave for each occasion as a single continuous period of up to two days, or any separate periods to which the Employee and his or her Employer agree. An Employee cannot take unpaid carer's leave during a particular period if the employee could instead take paid personal/carer's leave. (This does not apply to casuals who have no entitlement to paid personal/carer's leave.)

### **12.3 Compassionate Leave**

An Employee (including a Casual Worker) is entitled to two days of compassionate leave to spend time with a member of their immediate family or household who has sustained a life-threatening illness or injury. Compassionate leave may also be taken after the death of a member of the employee's immediate family or household.

An employee may take compassionate leave for each occasion as:

- a single continuous two-day period or
- two separate periods of one day each or
- any separate periods to which the Employee and his or her Employer agree.

If an Employee (other than a Casual Worker) takes a period of compassionate leave, the Employer shall pay the Employee at the Employee's base rate of pay for the ordinary hours they would have worked during the period.

### **12.4 Domestic Violence Leave**

Rhombert Rail Australia cares about the safety and wellbeing of all our Employees and are committed to a workplace where our Employees are safe, respected and feel valued. The Employer recognises that there are also external factors that can impact an employee's safety, health, and wellbeing. Domestic Violence is a serious concern and as such the Employer can make a difference to Employees by providing a safe environment and specific measures to support and assist our employees.

The Employer recognises that Employees sometimes face situations of Domestic Violence in their personal life that may affect their attendance or performance at work. As well as offering a free and confidential EAP service to all Employees, full time eligible employees are entitled up to 3 days paid domestic violence leave per calendar year.

Domestic violence leave is not cumulative, any unused balance of leave will not carry across to the following year.

Eligible Employees will have access to domestic violence leave when you, or a member of your immediate family experience domestic violence and need time off to access medical, legal and support services.

Should an employee wish to apply for domestic violence leave the following supportive documentation would need to be supplied:

- A provisional, interim or final Apprehended Violence Order (AVO)
- A court protection order
- A certificate of conviction
- A family law injunction
- Documentation from a medical professional,
- An agreed document issued by the Police Force, a court, a domestic violence support service or a member of the legal profession

The Employer will ensure that any personal information provided by the employees concerning a Domestic Violence matter will be kept confidential. Confidential information relating to Domestic Violence will not be kept on a employees personnel file.

### **13 LONG SERVICE LEAVE**

An Employee (other than a Casual Worker) is entitled to accrue Long Service Leave in accordance with the NES and the Long Service Leave Act or other applicable legislation.

Long Service Leave entitlements may be cleared with management approval provided adequate notice is provided. The taking of such leave must not interfere with operational requirements or critical project deadlines.

Long Service Leave payment will be made on the basic hourly rate which applied immediately prior to clearing the Long Service Leave.

### **14 PARENTAL LEAVE AND RELATED ENTITLEMENTS**

The Employer will grant unpaid parental leave and other related entitlements in accordance with the NES. The Employer will provide a copy of the relevant sections of the NES to an Employee on request.

The Employee must inform the Employer of their intention to take unpaid parental leave or related entitlements and the expected duration as soon as possible.

Periods of unpaid parental leave or related entitlements will not count as service for the purpose of accruing leave entitlements but will not break the Employee's continuity of service.

## **15 COMMUNITY SERVICE LEAVE**

### **15.1 Jury Service**

An Employee required to attend compulsory Jury Service during rostered hours shall notify their Manager as soon as possible of the commencement date and the expected duration of attendance for Jury Service.

If an Employee is required to attend compulsory Jury Service on a rostered work shift, the Employee (other than a Casual Worker) shall be paid at the basic hourly rate for the Employee's ordinary hours of work for the first 10 days of absence provided the employer receives proof of their attendance.

The Employee is required to provide proof of payments received for the compulsory Jury Duty and the Employer may deduct this amount from the Employee pay.

### **15.2 Voluntary Emergency Management Activity**

The eligible voluntary emergency management are outlined in the National Employment Standards.

An employee engages in a voluntary emergency management activity only if they:

- engage in an activity that involves dealing with an emergency or natural disaster
- the Employee engages in the activity on a voluntary basis
- the Employee is a member of, or has a member-like association with, a 'recognized emergency management body' and either:
  - the Employee was requested by or on behalf of the body to engage in the activity or
  - No such request was made, but it would be reasonable to expect that if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.

An Employee's absence from his or her employment is unpaid and is not covered by community service leave unless the employee complies with the notice and evidence requirements under the Fair Work Act 2009. A copy of the provisions will be made available on request by the Employee.

## **16 CLOTHING AND PROTECTIVE EQUIPMENT**

The following work clothing shall be supplied on engagement of employment and will be replaced on a fair wear and tear basis upon satisfactory proof.

Five (5) sets work clothing

One (1) jacket

One (1) pullover

Two (2) pair safety boots

One (1) set of wet weather clothing

If additional clothing is required, it may be requested and issued subject to management for approval.

It is a condition of employment that all Employees wear high visibility clothing or orange vest at all times at the workplace. It is also a requirement to wear all other safety clothing and protective equipment provided, in accordance with Safe Work Method Statements and reasonable direction by the Employer, and to ensure their proper care and maintenance of the safety clothing and protective equipment.

Protective clothing and equipment that is required to meet legislative requirements as well as to provide for the health and safety of employees shall be provided by the business. Replacement of such equipment shall be on a Fair, Wear and Tear basis.

It is a condition of employment that all Employees shall abide by all instructions issued for the health and safety of employees and those provided for under legislative requirements. It is also a requirement that employees ensure that items issued receive proper care, maintenance and storage.

## **17 WORKS DURING SUMMER MONTHS IN QUEENSLAND**

In Queensland, employees may request to commence their shift prior to 6am due to heat considerations. If requested by all the Employees in a work team, shifts may be rostered to commence between 4.00am and 6.00am and single time rates (1.0T) will apply for these times.

## **18 INCLEMENT WEATHER**

“Inclement weather” will mean the existence of abnormal climatic conditions by virtue of which it is either not reasonable or safe for Employees to continue working whilst such conditions exist.

There will be no deduction of wages for time lost during inclement weather. An Employee or Employees ceasing work of their own volition where inclement weather conditions are not present, will not be entitled to payment for the time lost.

Where it is in question as to the impact of the weather on the health or safety of a worker, consultation will be held between the worker and the supervisors concerned to establish the risk of continuing in areas affected by the weather. At all times steps will be taken to ensure that work can continue in a safe and secure manner.

In the event that emergency or critical work is necessary during inclement weather, consideration will be given to ensuring that a safe workplace is provided, and safe systems of work are employed, and wet weather gear is supplied.

Should a portion of work be affected by inclement weather all other Employees not affected will continue working, even if some Employees may be entitled to cease work due to the inclement conditions.

If a portion of work is affected by inclement weather, employees may be transferred to another work location under cover on the site, or to another site not affected by the inclement weather or be provided with temporary cover for the existing location. There must not be unilateral automatic cessation of work in inclement weather.

## **19 EMPLOYEE ASSISTANCE PROGRAM**

The Company has engaged the services of an independent Employee Assistance Program. This is a confidential automated referral counselling and support service offered to Employees to assist with their mental health and wellbeing.

Services are provided by independent specialist practitioners able to provide both short-term and long-term counselling and support to assist with work-related and personal issues.

The Employee Assistance Program aims to ensure that all Employees who experience mental health and other well-being issues are supported, and that they work within positive workplace cultures that are conducive to their mental health and wellbeing.

## **20 USE OF COMPANY VEHICLE**

Where the Employer provides the Employee with a vehicle for the purpose of travelling to and from the work site, or to carry out their work functions, the Employee will ensure that the vehicle is maintained regularly and garaged in a secure location.

The Employee will be allowed minimal private use of the Employer's vehicle for travel within the Employee and Employer's local area. Toll fares will be paid by the Employee if the vehicle is used for private purposes.

The Employee must have a current driver's licence (which is not a learner's permit). The Employee is responsible for complying with all laws and regulations that apply to a driver while in control of a motor vehicle for official purposes.

Any traffic offence committed by an Employee while in control of the Employer's vehicle, including parking fines, will remain the sole responsibility of the Employee.

All accidents should be reported immediately to the police and to the Employer. The Employee will be personally liable for any infringements they incur in these circumstances.

The Employee may become liable for repairs to damage vehicles (including other parties), if it becomes apparent that the employee was driving recklessly or if there is an unsatisfactory record of careless driving.

## **21 PERFORMANCE MANAGEMENT**

### **21.1 Personal Development Plan**

Each Employee will be required to participate in the Personal Development Program on an annual basis. The Personal Development Program will consist of an interview between each Employee and their Supervisor, with the outcome of the discussion to be recorded in a Personal Development Plan for each Employee.

The Personal Development Plan will be provided to the Employee and kept on the Employee's file.

The Personal Development Plan interviews will give the Employee an opportunity to receive feedback on their performance, assist in the identification of training needs and career development, provide direction for employees to meet individual team and project objectives and provide the opportunity for the Employee to give the Supervisor feedback on areas where they could assist the Employee at their work.

Areas of review will include but are not limited to:

- productivity.
- safety.
- environmental awareness.
- individual work history (skills audit).
- attitude and job satisfaction.
- team and individual performance targets.
- training requirements; and
- competency.

The overall objective of the Personal Development Program is to develop a suitable development plan for all individuals and to establish mutual feedback in the workplace.

Failure to achieve the targets will trigger a collaborative assessment by the Supervisor and the Employee to identify factors that have affected their performance. This will enable remedial action to be implemented.

### **21.2 Performance Bonus**

At the discretion and timing of the Company each year, sometime after the declaration of the company's annual results, a bonus for the preceding financial year may be paid to Employees.

An Employee is eligible to participate in the profit share distribution if they have had continuous service with the Employer during the financial year to which the profits relate and are still in service on the date of payment of the bonus. If an Employee has had less than the full year's continuous service, the payment will be calculated on a pro rata basis.

The performance payment for Employees is based on the financial success of the Company and recognises the Employee's contribution to the Company's success.

The Employee and the Employer agree that this provision excludes the operation of protected conditions which deal with incentive-based payments and bonuses.

## **22 ABSENTEEISM PROCEDURE**

The Company philosophy to absenteeism is to focus on encouraging Employees to be at work unless they are absent due to genuine illness, injury, or approved leave. Where an Employee's behaviour is contrary to these goals the Employer is committed to encouraging good performance by communicating an expectation for improvement.

Where an Employee is absent from work without satisfactory notification, or sufficient reason the Employee's supervisor will discuss the absence with the employee to ascertain the reason in accordance with the Counselling and Disciplinary Procedures.

## **23 PUBLIC HOLIDAYS**

Employees, other than Casual Workers, shall be entitled to clear eligible public holidays that they are rostered to work on, without loss of pay. Eligible public holidays are officially gazetted Public Holidays in the State or Territory that they are rostered to work in.

If an Employee is required to work on a gazetted public holiday (in their State or Territory), they will be paid for all hours worked at the applicable public holiday penalty rate. In the event that Employees are rostered to travel between states on a gazetted public holiday in either of those states, they will be entitled to the applicable public holiday penalty rate.

Employees are not entitled to public holiday entitlements for gazetted public holidays in states that they are not rostered to work in.

## **24 EMPLOYEE ORGANISATIONS**

It is the policy of the Employer to provide the best possible environment for our work teams to deliver exemplary results for our clients and stakeholders.



The Employer is committed to achieving the highest standards of effectively managing our human resources by encouraging organisational and business development, innovative technologies and enterprise throughout the organisation. The Company and its management commits to the fostering of innovation and an intellectual climate accepting the need for continuous improvement through managed change (internally and externally). To operate in a culture of continuous improvement, it is essential that the Company functions as a team across all levels of the organisation, with mutual respect, accountability, and responsibility.

As such, the Employer recognises the role of employee organisations as important stakeholders to develop and maintain workplace environments which support the Company's spirit as described above and which support to increase the attractiveness of the rail industry in general public and on the labour market in particular.

#### **24.1 Communication Principles**

This clause shall underpin the Employers commitment to ensure appropriate communication with employee organisations in compliance with current law and in accordance with the following principles:

- Company's senior management is responsible to ensure appropriate communication with the responsible and authorised persons of the employee organisation (officials).
- The employee organisation ensures that only authorised persons employed by the organisation (officials) communicate directly with authorised senior management of the Company in relation to workplace matters unless agreed otherwise.
- The communication principles outlined in this clause do not affect any other parts of this Agreement. In particular the process procedures outlined in the clauses of 'Consultation, Communication, Dispute Resolution', 'Counselling and Disciplinary Procedure' and 'Absenteeism Procedure' shall not be affected by the application of this clause.
- The Company recognises that the employee organisation may nominate a representative of its organisation which is an Employee of the company in order to act on behalf of the employee organisation in certain circumstances and without any unlawful discrimination in their employment (the 'employee organisation's representative').
- The Company acknowledges that the 'employee organisation's representative' may participate and speak on behalf of the employee organisation in Company meetings when required and agreed between the Company and officials of the employee organisation.
- The 'employee organisation representative' may consult with the Employee Organisation members and officials during meal breaks of a rostered working day and must not interrupt employees who are undertaking their work duties.
- The employer will not be required to pay an 'employee organisation representative' for time spent attending employee organisation business except with respect to training attendance as described in clause 24.2.

In the case that the activities of the 'company organisation representative' are not carried out in accordance with the outlined principles above or his or her behaviour in carrying the tasks

is deemed to be not reasonable by the senior management, the following procedure shall apply:

- Senior management of the Company shall notify authorised officials of the employee organisation about activities by the 'employee organisation's representative' which are deemed to be not reasonable (e.g. activities which distract the 'employee organisation representative' to the extent that he or she cannot perform his or her primary duties in accordance with the Company's policies and procedures, activities which disrupt business operations, influencing Employees to discontentment)
- Senior management and employee organisation's officials will discuss and agree on suitable actions to manage the situation and to stop unreasonable behaviour by the 'employee organisation representative' within 10 working days from the notification to the employee organisation.
- If senior management and employee organisation officials cannot agree on suitable actions to manage the situation or if activities continue which are deemed to be not reasonable, the company may commence actions in accordance with clauses 2 or 3 of this Agreement (whichever is applicable).

#### **24.2 Employee Organisation Representatives Training**

The Employer seeks to establish an extraordinary relationship with its Employees by a comprehensive set of modern and innovative management tasks regarding a safe, supportive and team-oriented work environment. The Employer acknowledges the experience and proactive approach of employee organisations to develop a modern workplace environment in accordance with the company's work culture. It is also recognised that employee organisations can offer training for their representatives in order to foster the relationship between the Employer, the Employees and the employee organisation.

In order to have access to the employee organisation's potential of developing further a good workplace environment, the Company supports training of 'employee organisation representatives' as follows:


- Employee organisation representatives' may attend to up to three training days per year during their working hours (at single time and up to a maximum of eight hours per day). They are not entitled to any expense allowances (e.g. travel allowances), overtime, penalty rates and transit time. Furthermore, company's Fatigue Management policies and procedures must be adhered to when attending trainings (which also includes travelling to and from the training location).
- A maximum of two (2) Employees per year may attend training courses organised by the employee organisation. Once the Company employs more than 100 full time permanent employees covered under this Agreement, a maximum of four (4) Employees may attend the training in accordance with this clause.
- Application to attend these training courses must be submitted to the appropriate manager at least 6 weeks in advance of the training and will be supported by a statement from the relevant employee organisation indicating the relevance of the training to the employee organisation, the Employee and to the objective of developing a mutual relationship with the company.

- Training attendance shall only be granted by management, if there are no disruptions to the Company's business operations, but training attendance shall not be unreasonable withheld.
- 'Employee organisation representatives' and senior management shall identify opportunities to develop further the workplace environment after the training. In order to achieve this objective, the Employee who attended the training shall discuss with management lessons learned from the training and how he or she proposes to implement the newly gained knowledge in accordance with the company spirit described above.

## **25 NO EXTRA CLAIMS**

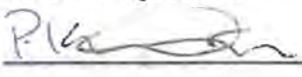
This agreement provides the only means by which Employees are to receive improved remuneration and conditions during its life. There shall be no extra claims in relation to remuneration or conditions for the term of the agreement.

The parties to this Agreement are committed to the provisions contained herein.  
Signed for and on behalf of Rhomberg Rail Australia


Signature of authorised person:   
Position/Title: Managing Director  
Name of authorised person: Richard Morgan  
Address: 9 McIntosh St  
Wetherill Park  
Date: 6-10-21

Note: the above person is authorised by Rhomberg Rail Australia to sign this Agreement on its behalf.

Signed for and on behalf of the Employees to this agreement

Signature of authorised person:   
Position/Title: TRACK WELDER  
Name of authorised person: PAULA KATOA  
Address: 92 MORT STREET  
BLACKTOWN  
Date: 6-10-21

Signed for and on behalf of the Rail, Tram and Bus Industry Union (RTBU) as party to this agreement

Signature of authorised person:   
Position/Title: National Secretary  
Name of authorised person: Mark Diamond  
Address: Suite 210/ 4-10 Goulburn Street  
Sydney 2000  
Date: 14 October 2021

**APPENDIX 1: Classification Structure and Pay Rates at Agreement Inception**

|                                       |   | General - non discipline specific  |                                  |                                    |                              |                           |                               | Track Construction  |  |  | Maintenance                 |   |   | O&M/RRV  |                         |                                   |
|---------------------------------------|---|--|----------------------------------|------------------------------------|------------------------------|---------------------------|-------------------------------|---|--|--|-----------------------------|---|---|--|-------------------------|-----------------------------------|
|                                       |   | Safeworking/<br>Protection<br>Officer  | OH&S/Rail<br>Safety<br>Officer   | Apprentice                         | Track<br>Labourer/<br>Casual | Truck<br>Driver           | Supervisor/<br>Team<br>Leader | Rail<br>Construction<br>Worker  | Rail<br>Welder   | Plant<br>Operator  | Track<br>Measurer           | Track<br>Machine<br>Operator/<br>Maintainer           | Track<br>Machine<br>Technician/<br>Specialist           | OHW Trade<br>Assistant/ RRV<br>Plant<br>Operator           | OHW<br>Rigger           | Traction<br>Linesperson           |
| <b>Skilled<br/>Worker<br/>Level 1</b> | <u>Corresponding<br/>Employer Job<br/>Roles</u> | Protection<br>Officer L1,<br>Protection<br>Officer L2,<br>Handsignaller<br>L1,<br>Handsignaller<br>L2. | Rail Safety<br>Officer<br>(SWL1) | Apprentice<br>Year 1<br>(SWL1)     | Track<br>Labourer<br>(SWL1)  | Truck<br>Driver<br>(SWL1) | Leader<br>(SWL1)              | Rail<br>Construction<br>Worker<br>(SWL1)  | Rail<br>Welder<br>(SWL1<br>NSW),<br>Rail<br>Welder<br>(SWL1<br>Qld)                      | Rail<br>Construction<br>Operator<br>(SWL1)   | Track<br>Measurer<br>(SWL1) | Track<br>Machine<br>Operator/<br>Maintainer<br>(SWL1) | Track<br>Machine<br>Technician/<br>Specialist<br>(SWL1) | OHW Trade<br>Assistant/ RRV<br>Plant<br>Operator<br>(SWL1) | OHW<br>Rigger<br>(SWL1) | Traction<br>Linesperson<br>(SWL1) |
|                                       | Proposed Pay<br>Rate                            | <b>31.47</b>   | <b>31.47</b>                     | <b>18.25</b>                       | <b>25.57</b>                 | <b>27.54</b>              | <b>34.47</b>                  | <b>27.54</b>  | <b>30.81</b>   | <b>30.81</b>   | <b>25.57</b>                | <b>30.81</b>  | <b>34.47</b>  | <b>30.81</b>   | <b>40.47</b>            | <b>40.47</b>                      |
| <b>Skilled<br/>Worker<br/>Level 2</b> | <u>Corresponding<br/>Employer Job<br/>Roles</u> | Protection<br>Officer L3,<br>Protection<br>Officer L4.   | Internal<br>Auditor              | Apprentice<br>Year 2 & 3<br>(SWL2) |                              | Truck<br>Driver<br>(SWL2) | Site<br>Supervisor<br>(SLW2)  | Rail<br>Construction<br>Worker<br>(SWL2.1),<br>Rail<br>Construction<br>Worker<br>(SWL2.2),<br>Rail<br>Construction<br>Worker<br>(SWL2.3),<br>Rail<br>Construction<br>Worker<br>(SWL2 QLD) | Rail<br>Welder<br>(SWL2.1),<br>Rail<br>Welder<br>(SWL2.2),<br>Rail<br>Welder<br>(SWL2.3) | Rail<br>Construction<br>Operator<br>(SWL2.1),<br>Rail<br>Construction<br>Operator<br>(SWL2.2),<br>Rail<br>Construction<br>Operator<br>(SWL2.3) | Track<br>Measurer<br>(SWL2) | Track<br>Machine<br>Operator/<br>Maintainer<br>(SWL2) | Track<br>Machine<br>Technician/<br>Specialist<br>(SWL2) | OHW Trade<br>Assistant/ RRV<br>Plant<br>Operator<br>(SWL2) | OHW<br>Rigger<br>(SWL2) | Traction<br>Linesperson<br>(SWL2) |
|                                       | Proposed Pay<br>Rate                            | <b>40.47</b>   | <b>40.47</b>                     | <b>25.57</b>                       |                              | <b>31.47</b>              | <b>43.48</b>                  | <b>31.47</b>  | <b>34.47</b>   | <b>34.47</b>   | <b>30.81</b>                | <b>34.47</b>  | <b>43.48</b>  | <b>34.47</b>   | <b>43.48</b>            | <b>43.48</b>                      |
| <b>Skilled<br/>Worker<br/>Level 3</b> | <u>Corresponding<br/>Employer Job<br/>Roles</u> | Track<br>Certifier &<br>Track<br>Examiner,<br>Safe Working<br>L1, Safe<br>Working L2                   | Lead<br>Auditor                  | Apprentice<br>Year 4<br>(SWL3)     |                              | Truck<br>Driver<br>(SWL3) | Site<br>Manager<br>(SLW3)     | Rail<br>Construction<br>Worker<br>(SWL3)  | Rail<br>Welder<br>(SWL3)   | Rail<br>Construction<br>Operator<br>(SWL3)   | Track<br>Measurer<br>(SWL3) | Track<br>Machine<br>Operator/<br>Maintainer<br>(SWL3) | Track<br>Machine<br>Technician/<br>Specialist<br>(SWL3) | OHW Trade<br>Assistant/ RRV<br>Plant<br>Operator<br>(SWL3) | OHW<br>Rigger<br>(SWL3) | Traction<br>Linesperson<br>(SWL3) |
|                                       | Proposed Pay<br>Rate                            | <b>43.48</b>   | <b>43.48</b>                     | <b>30.81</b>                       |                              | <b>37.47</b>              | <b>49.25</b>                  | <b>37.47</b>  | <b>37.47</b>   | <b>43.48</b>   | <b>34.47</b>                | <b>37.47</b>  | <b>49.25</b>  | <b>40.47</b>   | <b>49.25</b>            | <b>49.25</b>                      |



# Amendment commencing on 1 January 2014

## Schedule 2.3 Model consultation term

(regulation 2.09)

### Model consultation term

- (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.

#### *Major change*

- (2) For a major change referred to in paragraph (1)(a):
  - (a) the employer must notify the relevant employees of the decision to introduce the major change; and
  - (b) subclauses (3) to (9) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (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.
- (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 change proposed; and
    - (ii) information about the expected effects of the change on the employees; and
    - (iii) any other matters likely to affect the employees.
- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- (9) In this term, a major change is *likely to have a significant effect on employees* if it results in:
  - (a) the termination of the employment of employees; or

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

*Change to regular roster or ordinary hours of work*

- (10) For a change referred to in paragraph (1)(b):
  - (a) the employer must notify the relevant employees of the proposed change; and
  - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (12) 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.
- (13) As soon as practicable after proposing to introduce the change, the employer must:
  - (a) discuss with the relevant employees the introduction of the change; and
  - (b) for the purposes of the discussion—provide to the relevant employees:
    - (i) all relevant information about the change, including the nature of the change; and
    - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
    - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
  - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:

***relevant employees*** means the employees who may be affected by a change referred to in subclause (1).



## IN THE FAIR WORK COMMISSION

### FWC Matter No.:

AG2021/7868

Applicant:

Rhomberg Rail Australia

Section 185 - Application for approval of a single enterprise agreement

### Undertaking – Section 190

I, Richard Morgan, Managing Director for Rhomberg Rail Australia have the authority given to me by Rhomberg Rail Australia to give the following undertakings with respect to the Rhomberg Rail Australia Enterprise Agreement 2021-2024] ("the Agreement"):

1. Rhomberg Rail Australia hereby undertakes that all employees (Full-time, Part-time, and Casual) are appropriately assessed and allocated to a specific Employer Job Role based on their competencies, qualifications, and experience.
2. Rhomberg Rail Australia hereby undertakes that all Casual Employees in all classifications will be paid the 25% casual loading as per clause 5.2.3 on top of the nominated pay rate in the Classification Structure.
3. Rhomberg Rail Australia hereby undertakes that all casual employees will receive cumulative casual penalties, when entitled to penalties, on top of their nominated base pay rate.
4. Rhomberg Rail Australia hereby undertakes that all employees (Fulltime, Part-Time, and Casual) will receive penalty rates based on the actual time of day worked as well as the duration since the beginning of the shift.
5. Rhomberg Rail Australia hereby undertakes that all employees (Fulltime, Part-Time, and Casual) will receive penalty rates, casual loading and travel allowances, in accordance with the Agreement, on top of their base pay rate

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

Signature



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Date

2/12/21

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