



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Downer EDI Works Pty Ltd
(AG2020/3037)

DOWNER EDI WORKS PTY LTD RAIL (WA) ENTERPRISE AGREEMENT 2020

Building, metal and civil construction industries

COMMISSIONER WILLIAMS

PERTH, 2 NOVEMBER 2020

Application for approval of the Downer EDI Works Pty Ltd Rail (WA) Enterprise Agreement 2020.

[1] An application has been made for approval of an enterprise agreement known as the *Downer EDI Works Pty Ltd Rail (WA) Enterprise Agreement 2020* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Downer EDI Works Pty Ltd. The Agreement is a single-enterprise agreement.

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

[3] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 9 November 2020. The nominal expiry date of the Agreement is 1 November 2024.



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Downer EDI Works Pty Ltd Rail (WA) Enterprise Agreement 2020

**Downer EDI Works Pty Ltd Rail (WA)
Enterprise Agreement 2020**

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1 TITLE

This enterprise agreement shall be known as the Downer EDI Works Pty Ltd Rail (WA) Enterprise Agreement 2020.

2 ARRANGEMENT

2.1 Parties Bound

This Agreement will cover:

- (a) the Employer;
- (b) All Employees engaged in the business described in clause 2.2 in any of the classifications referred to in clause 2.2 and Appendix 2; and
- (c) The Australian Rail Tram and Bus Industry Union, Western Australia.

2.2 Application

This agreement shall apply to Downer EDI Works Pty Ltd (“Employer”) in respect of Employees covered by classifications in this Agreement who are engaged in rail infrastructure maintenance, renewal and construction, and perform work in Western Australia (WA). However, this Agreement will not apply to Employees employed under the terms of a different workplace or enterprise agreement.

This Agreement replaces the *Downer Infrastructure Rail Division Enterprise Agreement 2013* (AG2013/2003), for Employees working in Western Australia.

This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

2.3 Commencement and Term of Agreement

This Agreement will commence operation 7 days after it is approved by the Fair Work Commission and will have a nominal expiry date of four (4) years after the commencement date. This Agreement will continue to operate after its nominal expiry date until terminated or replaced.

3 DEFINITIONS

For the purposes of this agreement:

Accident Pay means a weekly payment made to an employee by the employer that is the difference between the amount of workers’ compensation received by the employee and their Ordinary Rate for 38 hours work, and any RDO accrued entitlements prescribed by the Hours of Work and shift work clauses. Where the incapacity caused by the injury which leads to workers’ compensation becoming payable is for a period less than one week, the payment is the difference between the amount of compensation and the Ordinary Rate for that period. The Ordinary Rate does not include over award payments, shift loadings or overtime.

Agreement means the Downer EDI Works Pty Ltd Rail (WA) Enterprise Agreement 2019.

Drive in Drive Out (DIDO) means travelling to and from distant work without travelling by aircraft for any part of the journey.

Employer means Downer EDI Works Pty Ltd, ABN 66 008 709 608.

Employee and Employees mean an Employee of the Employer to whom this Agreement applies.

Fly In Fly Out (FIFO) means travelling to and from distant work where an aircraft is used for part of the journey

NES means the National Employment Standards.

Ordinary Hours means the hours of work described in Clause 11.1 of this Agreement.

Overtime means work performed outside of or in addition to an Employee’s ordinary hours. Overtime can be worked before or after ordinary hours of work.

Ordinary Rate means the wages paid to an Employee for working Ordinary Time hours as described in 11.1 (a) of this Agreement.

Point of Hire (POH) means the Employee's designated work depot or Usual Place of Residence (UPR) for Drive In Drive Out or Perth Airport for Fly In Fly Out, that will determine an Employee's eligibility to access provided transport to remote sites.

Usual Place of Residence (UPR) means the home address of an Employee declared at the commencement of this Agreement upon the provision of evidence to the satisfaction of the employer.

4 OBJECTIVES

The parties agree that the intent of this Agreement is to achieve productivity improvements that allow the Employer to compete within the market place by:

- (a) Making all parties aware of their accountability in the contracting process within the employer's operations;
- (b) Encouraging Employees to accept responsibility for their role in managing the overall performance of the Employer, including its subcontractors;
- (c) Embedding Employee management practices that promote a shared responsibility for skill development, learning, teamwork, participation, performance, flexibility and communication, and maintaining a Zero Harm working environment;
- (d) Promoting a working environment that allows the achievement of the above through Employee participation in work processes, including Zero Harm initiatives; and attention to quality, safe working practices and continuous improvement;
- (e) Maintaining standards of conduct and attendance necessary to ensure safe, efficient and cooperative operations;
- (f) Engaging in strategies to develop the Employer's competitive position in the market, to help improve levels of job security;
- (g) Developing a clear understanding by Employees of the goals and objectives of the Employer;
- (h) Avoiding any action that might disrupt the continuity of services to its customer, or in any way reduce the effectiveness of the Employer's business;

The parties agree that the measures in this Agreement, properly implemented and carried out, will assist the achievement of these objectives; and

The Employer will keep a copy of this Agreement in a place accessible by Employees.

5 NO EXTRA CLAIMS

During the term of this Agreement the parties will make no extra claims for any changes in the terms and conditions contained in the Agreement, including to remuneration.

6 FLEXIBILITY

Individual Flexibility

- (a) The Employer and an Employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if the Agreement deals with one or more of the following matters:
 - i. arrangements about when work is performed
 - ii. overtime rates
 - iii. penalty rates
 - iv. allowances
 - v. leave loading, and

The arrangement meets the genuine needs of the Employer and Employee in relation to one or more of the matters mentioned paragraph (a); and

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

- (b) The Employer must ensure that the terms of the individual flexibility arrangement:
 - i. are about permitted matters under section 172 of the Fair Work Act 2009; and
 - ii. are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - iii. result in the Employee being better off overall than the Employee would be if no arrangement was made.
- (c) The Employer must ensure that the individual flexibility arrangement:
 - i. is in writing; and
 - ii. includes the name of the Employer and Employee; and
 - iii. 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:
 - i. the terms of the enterprise agreement that will be varied by the arrangement; and
 - ii. how the arrangement will vary the effect of the terms; and
 - iii. how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - iv. states the day on which the arrangement commences.
- (e) The Employer must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (f) The Employer or Employee may terminate the individual flexibility arrangement:
 - i. by giving no more than 28 days written notice to the other party to the arrangement; or
 - ii. if the Employer and Employee agree in writing — at any time.

Enterprise Flexibility

- (g) Employees will carry out all lawful direction and duties provided they are within the scope of their skills, abilities, competency and training, and the Employee is capable of performing the work in a safe manner.
- (h) Where alternative working arrangements to those described in this Agreement are identified, which would allow for greater flexibility and/or increased productivity, implemented in accordance with this agreement.

7 CONSULTATION

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

- (c) For a major change referred to in paragraph 7 (a):
 - i. the employer must notify the relevant Employees of the decision to introduce the major change; and
 - ii. subclauses (d) to (i) apply
- (d) The relevant Employees may appoint a representative for the purposes of the procedures in this term, if:
 - i. a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
 - ii. the Employee or Employees advise the employer of the identity of the representative;

The employer must recognise the representative.

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

- (e) 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;
- (f) 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
- (g) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- (h) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.
- (i) 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 (c) (i) and subclauses (d) and (f) are taken not to apply.
- (j) In this term, a major change is likely to have a significant effect on Employees if it results in:
 - i. the termination of the employment of Employees; or
 - ii. major change to the composition, operation or size of the employer's workforce or to the skills required of Employees; or
 - iii. the elimination or diminution of job opportunities (including for promotion or tenure); or
 - iv. the alteration of hours of work; or
 - v. the need to retrain Employees; or
 - vi. the need to relocate Employees to another workplace; or
 - vii. the restructuring of jobs.

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

- viii. a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation;
and
- ix. the Employee or Employees advise the employer of the identity of the representative;

The employer must recognise the representative.

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

- (k) Discuss with the relevant Employees the introduction of the change; and
- (l) 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
 - iv. 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).
- (m) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- (n) The employer must give prompt and genuine consideration to matters raised about the change by the relevant Employees.
- (o) In this term:
Relevant Employees means the Employees who may be affected by a change referred to in subclause (a).

8 DISPUTE RESOLUTION

If a dispute relates to:

- i. a matter arising under this Agreement; or
- ii. the NES;

This clause sets out procedures to settle the dispute.

- (b) Parties to a dispute will attempt to resolve the dispute at the workplace level, through discussions between the Employee or Employees concerned, and relevant supervisors and/or management as applicable.
- (c) If the matter is not satisfactorily resolved, the Employee may discuss the matter with the next level of supervision, e.g. Superintendent / Manager.
- (d) If the dispute is not resolved at that level, the matter will be referred to a senior site manager who will take steps to resolve the matter as soon as possible.
- (e) If discussions held at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the Fair Work Commission (FWC).

The Fair Work Commission may deal with the dispute in two (2) stages:

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

Note: If the FWC arbitrates the dispute, it may also use the powers that are available to it under the Act.

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

While the parties are attempting to resolve a dispute using the procedure in this term:

- (h) An Employee must continue to perform their duties as they would normally unless they have a reasonable concern about an imminent risk to their health or safety; and
- (i) An Employee must comply with a direction given by the Employer to perform other available work at the same workplace or at another workplace, unless:
 - i. The work is not safe; or
 - ii. Applicable WHS legislation would not permit the work to be performed; or
 - iii. The work is not appropriate for the Employee to perform; or
 - iv. There are other reasonable grounds present for the Employee to justify refusal to comply.

The parties to the dispute agree to be bound by a decision made by the FWC in accordance with this term. All decisions must be consistent with the *Code for the Tendering and Performance of Building Work 2016*.

9 CONTRACT OF EMPLOYMENT

9.1 Engagement

The contract of employment of Employees will be on a full-time, part-time, casual, fixed or specific term or task basis, unless otherwise advised on engagement, as defined.

9.2 Full Time Employment

When an Employee is engaged on a full-time basis, working an average of 38 Ordinary Time Hours per week.

9.3 Part Time Employment

Occurs when an Employee normally works less than full-time hours but may, from time to time, work 38 hours per week plus reasonable additional hours. A part time Employee is entitled to all the benefits of a full-time Employee, on a pro rata basis according to the proportion identified on engagement.

9.4 Casual Employment

Occurs when an Employee is engaged and paid as such. The employment of a casual Employee will be on a casual basis, and shall commence on each engagement and cease at the completion of each engagement

- (a) A casual Employee may be offered subsequent engagements, and such offers of engagement may be in accordance with a pattern previously or subsequently offered to the casual Employee, although the Employer is under no obligation to do so. The casual Employee may accept such engagements, although the casual Employee is under no obligation to do so.
- (b) A casual Employee for working ordinary time must be paid the Ordinary Rate plus a casual loading of 25%. The casual loading constitutes part of the casual Employee's all-purpose rate.
- (c) For the avoidance of doubt, the casual Employee's all-purpose rate is inclusive of a 25% casual loading providing for full and complete compensation for annual leave and other forms of paid leave, including but not limited to paid personal/carer's leave, paid compassionate leave, community service leave and public holidays not worked (but not long service leave). The casual loading also provides for full and complete compensation for any other matters identified as excluding casual Employees contained in this agreement. If for any reason a court or a tribunal determines that the Employee is not a casual Employee, the Employer may set off against the all-purpose rate, the value of any paid leave that accrues or has accrued, and any other identified entitlement, that was intended to be covered by the 25% loading. This set off will operate so as to ensure that Employees are not "paid twice" for any such entitlement.
- (d) In circumstances where an ongoing Employee is credited with leave as a result of subclause c) (above), the leave will be deemed to have already been paid, and may be taken as unpaid leave, to the extent that the value of that leave has been set off against the casual Employee's all-purpose rate.
- (e) On each occasion a casual Employee is required to attend work the Employee must be paid for a minimum of 3 hours work. In order to meet their personal circumstances a casual Employee may request, and the Employer may agree to an engagement of less than the minimum 3 hours.
- (f) The Employer, when engaging a casual must inform the Employee that they are employed as a casual, stating by whom the Employee is employed, the classification level and rate of pay and the likely number of hours required.
- (g) Despite the provisions of subclause (a), a casual Employee's employment may be terminated with 1 hours' notice by either the Employee or the Employer.

9.5 Casual Conversion to Full Time or Part Time Employment

- (a) This clause only applies to a regular casual Employee. A regular casual Employee is a casual Employee who has, in the preceding period of 12 months, worked a pattern of hours on an ongoing basis which, without significant adjustment, the Employee could continue to perform as a full time or part time Employee under the provisions of this agreement.
- (b) A regular casual Employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full time employment.
- (c) A regular casual Employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part time employment consistent with the pattern of hours previously worked.
- (d) Any request under this subclause must be in writing and provided to the Employer.
- (e) Where a casual Employee seeks to convert to full time or part time employment, the Employer may consent to or refuse the request, but only on reasonable grounds. In considering a request, the Employer may have regard to any of the following factors:
 - i. The size and needs of the workplace or enterprise;
 - ii. The nature of the work the Employee has been doing;
 - iii. The qualifications, skills and training of the Employee;
 - iv. The trading patterns of the workplace or enterprise (including cyclical and seasonal trading demand factors);
 - v. The Employee's personal circumstances, including any family responsibilities; and
 - vi. Any other relevant matter.

- (f) Reasonable grounds for refusal include that:
- i. It would require a significant adjustment to the casual Employee's hours of work in order for the Employee to be engaged as a full time or part time Employee in accordance with the provisions of this agreement – that is, the casual Employee is not truly a regular casual Employee as defined in paragraph (f); or
 - ii. It is known or reasonably foreseeable that the regular casual Employee's position will cease to exist within the next 12 months; or
 - iii. It is known or reasonably foreseeable that the hours of work which the regular casual Employee is required to perform will be significantly reduced in the next 12 months; or
 - iv. It is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the Employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the Employee is available to work.
- For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (e) Where it is agreed that a casual Employee will have their employment converted to full time or part time employment as provided for in this clause, the Employer and Employee must discuss and agree upon:
- (i) The form of employment to which the Employee will convert – that is, full time or part time employment; and
 - (ii) If it is agreed that the Employee will become a part time Employee, the matters referred to in clause 9.3 – Part time employment.
- (f) The date from which the conversion will take effect is the commencement of the next pay cycle following such agreement being reached unless otherwise agreed.
- (g) Once a casual Employee has converted to full time or part time employment, the Employee may only revert to casual employment with the written agreement of the Employer.
- (h) An Employee must not be engaged and/or re-engaged (which includes a refusal to re-engage) to avoid any obligation under this agreement.
- (i) Nothing in this clause obliges a casual Employee to convert to full time or part time employment, nor permits the Employer to require a casual Employee to so convert.
- (j) Nothing in this clause requires the Employer to convert the employment of a regular casual Employee to full time or part time employment if the Employee has not worked for 12 months or more in a particular establishment, in a particular classification stream.
- (k) Nothing in this clause requires the Employer to increase the hours of a regular casual Employee seeking conversion to full time or part time employment.

9.6 Probation

- (a) The probationary period of employment of all new Employees shall be in line with the qualifying period under the *Fair Work Act 2009*.
- (b) During the probation period, either party can terminate the employment relationship by giving one (1) week's notice.
- (c) For casual employees, employment may be terminated by either party giving eight (8) hours' notice.

9.7 Employee Obligations

Each Employee covered by the terms of this Agreement will:

- (a) Complete any induction program prescribed by the employer;
- (b) Agree to abide by the Employer's policies and procedures and the provisions of this agreement;
- (c) Be prepared to carry out such duties as are within the limits of the Employee's skill, competence and training consistent with the classification structure of this Agreement;
- (d) Be responsible for carrying out work in line with safe work systems, in a diligent, flexible and cooperative manner safe manner, with a focus on quality;

- (e) Manage their fitness for work and ensure they are fit and ready to perform their duties each day;
- (f) Understand that the Employer is not obliged to pay an Employee for any hours where the Employee is absent without authorisation, or for any day or part day that the Employee cannot be usefully employed because of any activity or event which ceases operation, for which the Employer cannot be reasonably held responsible; and
- (g) Inform the Employer as soon as practicable if their circumstances change in a way that limits or prevents them from performing all of the required duties, e.g. due to change in their medical fitness, or where the Employee is charged or convicted of a criminal offence (e.g. loss of licence).

9.8 Classification and Progression

- (a) Each Employee will be appointed by the Employer to a classification level based on their qualifications, skills and experience, and in consideration of the substantive duties required to be carried out at the time.
- (b) 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 Employee's main function.
- (c) Progression to each level can only occur where the Employer requires a vacant or additional position to be filled. Any appointment will require the completion of all required training and demonstration of the required competencies to progress to the next higher classification.
- (d) Where an Employee has completed all necessary training and believes that they possess the necessary competency and qualifications to progress to the next level, they may apply to undertake an assessment as agreed in their Individual Performance Plan, in consultation with the Employee's immediate supervisor and the Employer's Human Resources representative. For the avoidance of doubt, an employee can only progress to a higher level where they are appointed to such to fill a vacancy or an additional resource requirement as determined by the Employer.
- (e) In the event that an Employee does not successfully complete all assessment requirements, no progression will take place and the Employer will advise the Employee of the timing for any subsequent assessment.
- (f) The Employee may request a review of the process (if unsuccessful), having regard to their Individual Performance Plan, and in consultation with the Employee's next immediate level of supervision and the Employer's Human Resources representative.
- (g) Individual Performance Plans will be developed for Employees who have completed a competency assessment and will be established within three (3) months of an Employee being assessed.
- (h) The plan will outline aspects such as performance expectations, career goals, key performance indicators, the training and development required to progress within the classification structure, in line with a shared responsibility for meeting the expectations set out in the plan.

9.9 Timekeeping

Notwithstanding anything elsewhere stated in this Agreement, the Employer may select and utilise for time keeping purposes any fractional or decimal proportion of an hour (not exceeding six minutes) and shall apply such proportion in the calculation of working time (including overtime) of an Employee.

10 TRANSMISSION OF BUSINESS

As consequence of any functions or activities of the Employer being performed by its successors, assignees or transmittees, Employees who continue their employment with the new Employer (successor, assignee or transmittee) shall have their previous service recognised, including classification and accrued entitlements.

In the event of the Employer selling, transmitting, assigning or otherwise transferring the whole part of the business in which Employees covered by this Agreement are employed, and in the event of Employees being offered employment in the business by a new employer upon the terms and conditions of employment of this agreement with continuity of entitlements and at the same location, then the Employer will not be liable for payment of any notice amounts or redundancy or severance payments in respect of the termination of employment of such Employees arising from the transmission or transfer.

11 HOURS OF WORK

11.1 Ordinary Hours

- (a) The ordinary hours of work for a full-time employee (other than rostered and shift workers) will be 8 hours per day (including additional time worked to accrue for an RDO), Monday to Friday, with notional weekly hours based on a 38-hour week. Ordinary hours may be worked between the hours of 06:00 and 18:00 Monday to Friday and may vary depending on operational needs. This span of hours does not apply to shift work or rostered working arrangements.
- (b) The Employer will determine the actual working roster of ordinary hours and reasonable overtime hours. Where the Employer wishes to alter the working roster due to operational requirements, it may do so but must notify the Employees affected, prior to the completion of work on the day before the proposed change takes effect.

11.2 Rostered Working

- (a) A full-time rostered worker is an Employee who has agreed with the Employer to work an average of 38 ordinary hours per week over a 28-day period, with such ordinary hours able to be rostered on any day of the week, Monday to Sunday and at any time during or outside of the ordinary span of hours referred to in 11.1. A roster pattern may also include overtime. A rostered worker will be given a minimum of 14 days' notice of the requirement to work a set roster pattern.
- (b) The parties acknowledge the variations in business requirements for rostered work across the Employer's business units. These variations need to be addressed through local level consultation which considers business requirements and employee work-life balance.

11.3 Rostered Days Off

- (a) Working hours will be arranged on a system which provides for an Employee to accrue one (1) rostered day off (RDO's) over a four (4) calendar week work cycle.
- (b) The ordinary working hours generally will be 8 hours per day, Monday to Friday with 0.4 of an hour of each day ordinary hours are worked accruing at the Employee's Ordinary Rate as an RDO entitlement in accordance with this clause.
- (c) Where Employees are working a roster pattern that includes an R&R period, e.g. one that is aligned with remote or distant work, RDO hours accrued on rostered time can be paid out to the Employee each R&R break or in the closest pay cycle or paid out in full in line with the last pay cycle of each calendar year.
- (d) The following is agreed in respect of RDO's:
 - i. Agreement will be reached by the Employer and Employees as to which day will be taken as a rostered day off, when such entitlement is due.
 - ii. Employees may elect to cash out all or part of their RDO accrual, provided that any requests are made in writing to the Employer.
 - iii. It is agreed that the Employer and the Employees will maintain flexibility in the planning and taking of RDO's to cover work requirements where such an inconsistency arises.
 - iv. Employees may bank RDO's to a maximum of ten (10) days. On or around 31 December each year, all accumulated RDO hours will be paid to Employees.
 - v. During reduced periods of activity, the Employer may request that Employees take any accumulated RDO's. The Employer will provide Employees with at least 48 hours' notice of such request and Employees agree that such a request shall not be unreasonably refused.

12 SHIFT WORK

12.1 Definitions

- (a) *Shift Work* is deemed to be any arrangement of working hours where Employees concerned have had at least 48 hours' notice to work these arrangements and the majority of ordinary time hours worked are outside of the ordinary span of hours as defined in 11.1 (a) of this Agreement.
- (b) *Shift Work* is a system of work carried out on a regular, scheduled basis, which can be a series of Early Morning (commencing before 6.00am), Afternoon (commencing after 12:00pm) or Night shifts (commencing between 6:00pm and 12:00am).

- (c) A continuous shift worker (as defined in Building and Construction General On-site Award 2010) receives five (5) weeks' annual leave only when required to work on a shift roster system which operates 24 hours a day, and the roster requires the Employee to regularly work on Sundays and public holidays.
- (d) Any regular, non-consecutive Early Morning, Afternoon or Night shifts (or combination thereof), will be paid at the rate of time and one half, in lieu of shift loading for all Ordinary Hours. A shift pattern will not be deemed to have been broken where an Employee is not rostered to work over a weekend, public holiday or any other authorised or unauthorised absence.

12.2 Shift Penalties

- (a) Any consecutive shifts (as defined) will attract a shift penalty, as follows:
 - i. Night Shift: loading of 30% on all ordinary hours worked.
 - ii. Early Morning Shift: loading of 15% on all ordinary hours worked.
 - iii. Afternoon Shift: loading of 20% on all ordinary hours worked.
- (b) In lieu of the shift loadings referred to in (a), all ordinary hours of work performed between midnight Friday and midnight Saturday shall be paid at the rate of time and a half, and all time worked between midnight Saturday and midnight Sunday will be paid at double time.

12.3 Transition Between Shifts

When requested by the Employer to perform shift work, an Employee may be required to transition between one shift pattern and another, e.g. from Day shift to Night shift. The Ordinary Hours that apply to such passive time will be paid in these circumstances, up to a maximum of 7.6 hours on any day designated as passive time.

12.4 Call Out / Call Back

A call out or call back is a task that an Employee is requested to undertake outside of normal working hours. The following describes the general rules for calculating pay for attending a call out or call back:

- (a) The minimum period for a call out or call back on any day is four (4) hours.
- (b) The first two (2) hours are paid at time and a half and at double time thereafter.
- (c) The minimum payment is equivalent to seven (7) hours ordinary time.
- (d) Any time worked beyond four (4) hours continues to be paid at double time.

13 MEAL BREAKS AND REST PERIODS

- (a) One 10-minute paid morning rest break and one 30-minute unpaid lunch break will be scheduled within an Employee's ordinary hours of work, to be taken no later than five (5) hours after the Employee commences ordinary hours of work for the day.
- (b) Where an Employee works more than four (4) hours overtime Monday to Friday, they will receive a twenty (20) minute rest period, paid at the Ordinary Rate, and paid in lieu of a break not taken.
- (c) An Employee will not be required to work more than five (5) consecutive hours after commencing a shift without a meal break unless it is agreed otherwise between the Employer and the Employees at site level.
- (d) The meal breaks and rest periods in this clause may be modified by agreement between the Employer and Employees, provided that changes do not result in the Employee receiving payment for more breaks than what they would have otherwise been entitled to had it not been for the change.

14 FITNESS FOR WORK

- (a) The Employer is committed to protecting Employees, physical assets, the community and the environment from hazards arising from alcohol or drug misuse in the workplace.
- (b) It is a requirement that Employees are not adversely affected by alcohol or drugs during working hours or when utilising Employer supplied transport. Employees must act in accordance with any applicable drug and alcohol policies and procedures, relevant to the Employer, project, and/or client requirements.

- (c) Where an Employee is taking medication (prescribed by a registered medical professional) or suffering from any condition that may have the potential to affect or limit their ability to carry out work, the Employee must advise the Employer immediately, and prior to the start of any shift.
- (d) Employees may be required to undertake random, blanket or "for cause" drug and alcohol testing, which the Employer will carry out to the relevant Australian Standards.
- (e) An Employee who returns a positive test or fails to undertake a test may be subject to disciplinary action, up to and including termination of employment.
- (f) An Employee returning a non-negative test result or who fails to undertake a test will be stood down until such time as the Employee is deemed fit for work or when a decision has been made on their employment.
- (g) Employees may be required to undergo medical examinations, as required by the Employer, for the purposes of determining an Employee's ability to perform their duties safely and competently, and to satisfy site entry requirements of Clients.
- (h) Medicals may include drug and alcohol testing, and all examinations will be in accordance with the National Health Standards of Rail Safety Workers, or any other relevant standard applicable to the Employee.

15 PAYMENT OF WAGES

15.1 General Provisions

- (a) The Employee will be paid by direct deposit / electronic funds transfer, no less frequent than fortnightly.
- (b) When the Employee's services are terminated, the Employer will pay any wages and entitlements due as soon as practicable after their last day of work and as soon as possible to the next pay cycle.

15.2 Higher Duties Arrangements

- (a) An employee who has been notified of a requirement to work for a period of time at a level which attracts a higher rate of pay than their ordinary grade or level, shall be paid for the duration of that period at the rate applicable to the level of that work, given that the Employee is qualified, competent and authorised to work at that level.
- (b) The Employee may elect to decline the offer to perform higher duties.

15.3 Project Allowances

- (a) The Employer and an individual Employee may reach agreement on a project allowance when an Employee is nominated in writing by the Employer to carry out work on a specified project.
- (b) Any such agreement will be made with the Employee prior to commencement and will in addition to the entitlements under this Agreement.

15.4 First Aid Allowance

- (a) An Employee who is qualified to provide first aid and appointed by the Employer to be a first aid officer will receive an allowance of \$19.00 per week worked, while a current first aid qualification is maintained.
- (b) The first aid allowance is a flat amount that is not included in the calculation of overtime, leave or any shift loadings or other payments.

15.5 Overpayments

- (a) Upon the Employer providing written notification and demonstration of an overpayment to an Employee, the Employee will repay the amount owing to the Employer.
- (b) Any overpayment will be repaid over a period agreed to by the Employee, not exceeding 12 pay cycles.
- (c) Any disagreement relative to this clause will be managed through the dispute procedure outlined at Clause 8 in this Agreement.

15.6 Accident Pay

- (a) Subject to the relevant workers' compensation claim being accepted, accident pay is payable from the time of the injury for which workers' compensation is paid for a total of 26 weeks in respect to the employee's incapacity from that injury, regardless of whether the incapacity is in one continuous period or not.

- (b) The termination of the employee’s employment for any reason whilst the employee is receiving accident pay will not affect the liability of the employer to pay accident pay in accordance with this clause.
- (c) Where an employee receives a lump sum payment in lieu of weekly payments under the applicable workers’ compensation legislation, the liability of the employer to pay accident pay will cease from the date of receipt of the lump sum by the employee.
- (d) If an employer has a scheme for the payment of accident pay that contains provisions generally not less favourable to employees than the provisions of this clause, the employer may apply to the Fair Work Commission for that scheme to apply instead of this clause.
- (e) For a casual employee the weekly payment will be calculated using the employee’s average weekly ordinary hours with the employer over the previous 12 months or, if the employee has been employed for less than 12 months by the employer, the employee’s average weekly ordinary hours over the period of employment with the employer (to a maximum of 38 hours). The weekly payment will include casual loading but will not include over award payments, shift loadings and overtime.
- (f) If an employee entitled to accident pay under this clause returns to work on reduced hours or modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of such work.
- (g) For the avoidance of doubt, an employee will not be entitled to any payment under this clause in respect of any period of workers’ compensation where the statutory payment for the period exceeds the amount the employee would have received for working ordinary time hours for the same period

16 APPRENTICES / TRAINEES

- (a) Apprentices or Trainees shall be participating in an accredited training course prescribed by a relevant Registered Training Organisation engaged by the Employer.
- (b) Apprentices / Trainees shall not be required to work overtime unless over eighteen (18) years of age.
- (c) Apprentices/Trainees shall be paid the following percentages of the Ordinary Rate of pay of the relevant classification to their role.

Year	First	Second	Third	Fourth
Rate	55%	65%	75%	85%

17 PAYMENT OF OVERTIME

- (a) Subject to the provisions of this clause, all work performed outside of the ordinary hours of any day, Monday to Saturday, inclusive, will be paid for at the rate of time and one half for the first two hours and double time thereafter.
- (b) All time worked on a Sunday shall be paid for at the rate of double time.
- (c) Work performed on any day prescribed as a Public Holiday under this Agreement will be paid for at the rate of double time and a half.
- (d) Any overtime worked on a Saturday or Sunday will be for a minimum period of four (4) hours paid at the applicable overtime rate.
- (e) Where an Employee works overtime between the completion of ordinary hours on one day and the commencement of ordinary hours on the next day, such that the Employee does not have at least ten (10) consecutive hours off duty, they will be released after the completion of such overtime (including recall back to work) until the Employee has had ten (10) consecutive hours off duty, without loss of pay.
- (f) Overtime can be worked before and after ordinary hours are worked.

18 SUPERANNUATION

- (a) The subject of superannuation contributions is dealt with by the *Superannuation Guarantee (Administration) Act 1992*. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

- (b) An Employee can choose to have their superannuation contributions made to any fund that complies with the relevant legislation. If an Employee does not choose a fund, the default will be that of the Employer.
- (c) Contributions shall be calculated in accordance with the requirements of the relevant legislation and ATO rulings applying from time to time. Contributions shall continue while an Employee is on authorised paid leave, however, contributions shall not be made for any period of unpaid leave or unauthorised absence.
- (d) In the event of an eligible Employee's absence from work being due to work-related injury or work-related illness, contributions at the normal rate shall continue for the period of the absence provided that:
 - i. the member of the fund is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with statutory requirements or the provision of this Agreement and;
 - ii. the person remains an Employee of the Employer.

19 TRAVELLING

19.1 Temporary Location

- (a) Travel required in a private vehicle to a temporary work location will attract a travel allowance, as outlined in Appendix 1. The allowance is paid where the temporary work location is greater than 50 kilometres from the Employee's UPR, Work Depot or Point of Hire, whichever is closer to the temporary work location.
- (b) When an Employee is required to travel between their UPR and the Work Depot or Point of Hire, travelling time and other costs incurred will not be paid.
- (c) The Employer shall provide transport from provided temporary accommodation to a temporary work location. In the event the Employer requests the Employee to use their own private vehicle for transport from temporary accommodation to the work location, the Employee will be compensated for such use based on the ATO cents-per-kilometre guidelines.

19.2 Provided Transport

- (a) An Employee who is engaged in distant work or work at a temporary location and who travels to their place of work via transport in the form of any vehicle or aircraft supplied by the Employer is responsible for meeting all travel arrangements in line with their roster pattern.
- (b) An Employee who fails to attend work according to their roster and does not meet provided transport may be responsible for travel costs associated with getting to their place of work (via the next available transport option).
- (c) Employees should provide at least 24 hours' notice of their inability to attend work and meet the travel arrangements in place, and will provide evidence to support their absence from work to the satisfaction of the Employer. Any absence that fails to satisfy this requirement shall be treated as unauthorised.
- (d) Employees who access provided transport are expected to adhere to the Employer's Standards of Business Conduct, Fitness for Work procedures, relevant Project Charter, client guidelines and any other travel provider, State or Federal regulations at all times while using any such provided transport. Breaches of this clause will be dealt with through the Employer's disciplinary process.

19.3 Accommodation and Meals

- (a) Employees who are required to undertake work temporarily at a location more than 100km away from their Work depot or UPR (that does not permit them to return to their Work depot or UPR each night), will be provided with meals and accommodation.
- (b) Where Employees are provided with temporary accommodation, Employees must comply with rules in place for use of that accommodation. Where the Employer is unable to provide messing facilities to the Employee, the Employee shall receive a Meal Allowance as outlined in Appendix 1, to compensate for costs incurred in providing their own meals.
- (c) For remote and distant work, the Employer will supply accommodation and meals while the Employee is living away from home. Where this is not possible, and the Employee must source their own meals and accommodation, the Employee will receive Accommodation and Daily Meal allowances (Appendix 1) upon the provision of relevant receipts.

19.4 Relocation Assistance

- (a) Where an Employee chooses to relocate for remote or distant work or is required to relocate for reason of redeployment or transfer, and the parties agree that this relocation will necessitate the Employee also relocating their usual place of residence, the Employer will provide relocation assistance.
- (b) This relocation assistance will be the reimbursement of limited allowable expenses actually incurred by the Employee in relocating themselves, their immediate family and their household and personal effects, upon the provision of documentary evidence and by agreement with the Employer.

20 DISTANT WORK

20.1 Distant Employee

For the purposes of this Agreement a distant work employee is an Employee who is engaged or selected and advised by the Employer to proceed to a place of work to perform duties such that the Employee cannot return to their usual place of residence each night, being either Fly-in, Fly-out (FIFO) or Drive-in, Drive-out (DIDO).

- (a) The Employer will obtain, and the Employee or job applicant will provide the Employer with, a statement in writing or suitable evidence of their UPR at the time the Employee is engaged.
- (b) No subsequent change of address will amend the Employee's UPR for the purposes of this clause unless the Employer agrees in writing.
- (c) Unless otherwise agreed in writing by the Employer, the Point of Hire (POH) for all FIFO work in Western Australia is Perth Airport. A Distant Work Employee is responsible for all travel to and from the POH for distant work in Western Australia.
- (d) Where an Employee is a Distant Work Employee under the terms of this Agreement, the Employee will be entitled to the following in addition to any other wage rates, allowances and conditions provided elsewhere in this Agreement:
 - i. When first mobilising to the distant location and/or demobilisation from the distant location back to their POH, a Distant Work Employee shall be paid travel time at their Ordinary Rate of up to four (4) hours each way, including departing from the location to the Employee's POH and returning to the location from the POH after a period of R&R.
 - ii. Full board and lodging will be provided (where possible) in Camp Accommodation by the Employer for distant work Employees. When staying overnight in Camp Accommodation, employees will receive \$35 per night in recognition of time spent away from their UPR.
 - iii. In situations where a Distant Work Employee is provided accommodation but no meals, they will receive the Meal Allowance outlined in Appendix 1 of this Agreement.
 - iv. Distant Work Employees will be entitled to rest and recreation leave (R&R) in accordance with their particular work roster. Rosters will be determined by the Employer or client requirements on relevant projects where/when applicable and advised when the Employee is selected.
 - v. R&R leave is designated as unpaid leave during which no other form of leave can be taken. Time off on R&R does not count towards service for determining the next R&R cycle.
 - vi. Payments under this clause will be made when the Employee returns in accordance with their roster and organised transport; where there are no unauthorised absences in the previous work cycle; and while the Employee continues to work in conformity with this Agreement.
- (e) An Employee required to perform distant work outside of Western Australia will be paid for time spent travelling in a vehicle or aircraft to and from these remote locations, at the Ordinary Rate.

20.2 Local Employee

A local Employee is an Employee who is engaged from an area within reasonable driving distance of their regular work location in, or who relocates to, a remote area, and is able to return home to their UPR each night.

A Local Employee's UPR will be determined at the time of engagement and no subsequent change of address will entitle the Employee to additional benefits except through mutual agreement with the Employer.

- (a) As defined above, a Local Employee shall be paid a Local Living Allowance (Appendix 1) for each day worked and while on R&R or authorised leave.
 - i. The Employer may deduct on a pro rata basis at the rate payable per day for the Local Living Allowance for each day that such an Employee is not ready, willing and available for work in accordance with this Agreement.
 - ii. For periods that an Employee (who has relocated to a remote area) is accommodated by the Employer (e.g. in Company supplied housing; Camp Accommodation), the Employee is not entitled to the Local Living Allowance.
- (b) A Local Employee (as defined) will also be entitled to claim up to 50% of approved utilities costs after presentation of suitable evidence, e.g. an electricity bill in the Employee's name, for the nominated address.

21 PUBLIC HOLIDAYS

- (a) The days that are considered to be a Public Holiday are:
 - i. New Year's Day
 - ii. Australia Day
 - iii. Good Friday
 - iv. Easter Saturday
 - v. Easter Monday
 - vi. Anzac Day
 - vii. Queen's Birthday
 - viii. Christmas Day
 - ix. Boxing Day

Any other day, or part day, prescribed by or under a law of Western Australia as a Public Holiday.

- (b) Public Holidays will be observed on the day that it falls in the location where the Employee is working.
- (c) If the day on which a Public Holiday is observed is changed, then only the substituted day is considered as the public holiday. No public holiday is to be observed on more than one day by an Employee.
- (d) Employees not required to work on a Public Holiday they will be paid their ordinary time hours for that day.
- (e) If an Employee is required to work on a Public Holiday they will be paid a total of double time and one half for all time worked on that day.
- (f) Public Holiday payments are not subject to any other loadings or penalties.

22 LEAVE

The National Employment Standards (NES) outline the leave entitlements for Employees covered by this Agreement. Leave types most commonly used include:

22.1 Annual Leave

- (a) Employees, other than shift workers, are entitled to four (4) weeks (152 hours) annual leave in respect of each year of service. Continuous shift workers (as defined by the Act), are entitled to five weeks (190 hours) annual leave in respect of each year of service.
- (b) During reduced periods of activity or for any period where the Employer's operations are shut down, Employees may be required to utilise Annual Leave entitlements. Employees agree that such a request shall not be unreasonably refused.
- (c) Such periods may be due to a loss of contracts or lack of work, a seasonal close down or shut down period imposed by a client of the Employer. Reasonable notice will be given to an Employee if the Employer requires Annual Leave to be taken, of not less than 48 hours.

- (d) An Employee may be required to take Annual Leave to reduce their leave balance if it has become excessive (i.e. six weeks or more). Reasonable notice will be given to the Employee in this instance.
- (e) An Employee will be paid an annual leave loading of 17.5% or for shift workers 20% of the appropriate applicable Ordinary Rate for the classification in which the Employee is employed, but shall not include any other allowances, penalties, or disability rates, commissions, bonuses, incentive payments, overtime rates or any other payments prescribed by this Agreement.

22.2 Personal / Carers Leave

- (a) Personal/carer's leave is:
 - i. taken by an Employee due to personal illness or injury of an Employee; or
 - ii. taken by an Employee to provide care or support to a member of the Employee's immediate family, or a member of the Employee's household, who requires care or support because of:
 - a. a personal illness, or injury, of the member; or
 - b. an unexpected emergency affecting the member.
- (b) From the date this agreement is made, employees are entitled to 10 days Personal/Carer's leave in respect of each year of service.
- (c) In addition, up to five (5) days of Personal Leave per year (non-cumulative) will be available for employees to access, to deal with mental health / personal issues or emergencies. These days will be taken in consultation with the Employee's line manager and the Employer's Human Resources representative, and in conjunction with access to the Employer's Employee Assistance Program
- (d) Employees are required to notify their Supervisor or other nominated Employer representative of their inability to attend for work, the expected duration of the absence and the nature of the illness or injury, as soon as is reasonably practicable.
- (e) Employees are required to make an application for the payment of Personal/Carer's leave subsequent to providing notice and evidence to support their application for the payment of Personal Leave, to the satisfaction of the Employer, for each occasion that Personal/Carer's leave is taken.
- (f) Employees must have the required leave balance for the leave to be taken and approved and must notify their immediate supervisor or other nominated Employer representative of their absence prior to the commencement of work or as soon as possible following the commencement of work.
- (g) Any such Employee who fails to comply with these conditions shall be treated as absent without authorisation.

22.3 Compassionate Leave

- (a) Compassionate leave is paid leave taken by an Employee:
 - i. For the purposes of spending time with a person who:
 - a. is a member of the Employee's immediate family or a member of the Employee's household; and
 - b. has a personal illness, or injury, that poses a serious threat to his or her life; or
 - ii. After the death of a member of the Employee's immediate family or household.
- (b) An Employee is entitled to a period of 3 days of compassionate leave for each occasion (a permissible occasion) when a member of the Employee's immediate family or a member of the Employee's household:
 - i. contracts or develops a personal illness that poses a serious threat to his or her life; or
 - ii. sustains a personal injury that poses a serious threat to his or her life; or
 - iii. dies.
- (c) The Employee is entitled to compassionate leave only if the Employee gives the Employer evidence of the illness, injury or death.

22.4 Long Service Leave

- (a) In accordance with Western Australia regulations, an Employee is entitled to 8^{2/3} weeks long service leave with pay after the completion of 10 years continuous service.
- (b) Additional Long Service Leave will accrue after the initial 10 years at the rate prescribed in Western Australia's *State Long Service Leave Act*.
- (c) Employees covered by this Agreement who were employed prior to 31 December 2016 and who were covered by the *Downer Infrastructure Rail Division Enterprise Agreement 2013* since that time will retain the long service leave accrued at the time this agreement was made and will accrue additional long service leave from that time forward at the rate set out in 22.4 (a) above.

22.5 Leave Without Pay

Leave without pay may be granted at the expiration of Employees' leave entitlements, as part of an application for paid leave, at the discretion of the Employer and subject to operational requirements.

22.6 Dispute Resolution Training Leave

Workplace Representative's nominated by their peers will be granted up to three days leave of absence per year to attend a training course in dispute resolution, provided that:

- (a) The Employer receives at least four weeks' notice of the times, dates, content and venue for the course;
- (b) The employee(s) concerned can be released from duty by the Employer for the period of the course, without affecting normal operations; and
- (c) Employees are not entitled to any expense related allowances or penalty rates while attending training.

23 INCLEMENT WEATHER

23.1 General Principles

- (a) *Inclement Weather* means the existence of rain or abnormal climactic conditions (including, but not limited to, hail, snow, high wind, severe dust storm, extreme high temperature, or any combination thereof) by virtue of which it is not safe for Employees exposed to the conditions to continue working, whilst the same conditions prevail.
- (b) The primary intent of this clause is to ensure that there is an agreed understanding between the parties to this agreement, for which the general principle of productivity is maximised without exposing Employees to unsafe inclement weather conditions.

23.2 Procedure

- (a) An Employee will comply with the Employer's instructions to:
 - i. Continue work when the area in which the Employee is working is not affected; or
 - ii. Accept a transfer to work in an area of the site not affected by the inclement weather; or
 - iii. Accept a transfer from one site to another site not affected by the Inclement weather (prior to the morning rest period); or
 - iv. Leave the site without loss of pay for ordinary hours, up to a maximum of 7.6 hours per day.
- (b) An Employee will not be affected by inclement weather unless, by virtue of the weather conditions, it is not reasonable and it is not safe for work to continue.
- (c) The site Work Health and Safety committee (where established), can assist in the site protocols in relation to working in inclement weather conditions, and/or disputes with this clause.
- (d) The Employer and Employees agree to the use of non-productive time arising from inclement weather for structured, relevant and meaningful training, skills enhancement and learning applications.
- (e) An Employee operating machinery fitted with a functional weatherproof cab will be deemed to be working in an area not affected by inclement weather, subject to safe access to the machine and safe working conditions applying.

23.3 Payment

- (a) Where Employees are present, ready and work commences but work is suspended due to inclement weather conditions, payment shall be for a minimum of four (4) hours at the Ordinary Rate.
- (b) The maximum payment where inclement weather conditions exist will be 7.6 ordinary time hours per day, up to a maximum of 38 hours in a four-week period.

24 TERMINATION

24.1 Notice Periods

Employment may be terminated:

- (a) In the case of casual Employees, by either party giving eight (8) hours' notice;
- (b) Without notice by the Employer for serious misconduct; or
- (c) With notice or payment in lieu of notice prescribed by the table below in any other circumstance when the Employer gives an Employee notice; or
- (d) By the Employee resigning and giving the Employer at least one (1) weeks' notice as outlined below:

<i>Period of continuous service</i>	<i>Period of notice</i>
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

- (e) The period of notice is increased by one week if the Employee is over 45 years of age and has completed at least 2 years of continuous service with the Employer.

24.2 Failing to give required notice

- (a) If an Employee fails to give the required notice or fails to work out the required notice period, the Employer may deduct from monies owing to the Employee upon termination, an amount equivalent to the salary or wage the Employee would have earned for working the balance of the required notice period.

24.3 Termination Without Notice

- (a) Notwithstanding the notice provisions of this clause, the Employer retains the right to summarily terminate an Employee's employment without notice for Serious Misconduct.
- (b) In these cases, an Employee will only be entitled to be paid for the time worked up to dismissal.
- (c) Actions that constitute Serious Misconduct include, but are not limited to:
 - i. any serious breach of the Employer's policies;
 - ii. fraud;
 - iii. theft;
 - iv. acts or threats of violence;
 - v. unacceptable behaviour in the community;
 - vi. serious breaches of safety procedures / policies;
 - vii. wilful damage to the Employer's property;
 - viii. gross negligence; or
 - ix. breach of the confidentiality requirements or other Employee obligations of this Agreement.

24.4 Abandonment of Employment

- (a) If an Employee is absent from work without reasonable cause for three (3) consecutive work days without the consent of the Employer or without notification to the Employer, the Employee may be deemed, at the discretion of the Employer, to have abandoned their employment without notice.

- (b) The Company shall attempt to contact the Employee according to the current contact details provided by the Employee. If the Employee cannot be contacted or Employee does not establish to the satisfaction of the Company that they were absent for reasonable cause, the company can deem the employee to have abandoned their employment.
- (c) The Employer will confirm the abandonment of employment in writing within two (2) working days of the Employee being deemed to have abandoned their employment.
- (d) Termination of employment by abandonment in accordance with this clause will be effective unless within seven (7) days the Employee can establish to the satisfaction of the Employer that the Employee was absent for reasonable cause.

25 REDUNDANCY

The provisions of this clause will apply where the Employer terminates an Employee's employment because it no longer requires the job which the Employee had been doing to be done by anybody. Payment of redundancy will be made in accordance with the NES.

- (a) From the commencement of this Agreement, the amount of the redundancy pay equals the total amount payable to the Employee for the redundancy pay period, worked out using the below table, at the Employee's Ordinary Rate of pay for their ordinary hours of work;
- (b) In addition to redundancy entitlements under the NES, Employees who have their position made redundant will receive a job search entitlement of one (1) day, paid at the Ordinary Rate for ordinary hours;
- (c) Where an Employee is offered suitable alternative employment as part of a transmission/transfer of business or redeployment process, and does not accept that offer of employment, the Employee will not be entitled to redundancy provisions;
- (d) In the event that an Employee covered by this Agreement who was employed prior to 31 December 2016 and who was covered by the *Downer Infrastructure Rail Division Enterprise Agreement 2013* since that time is terminated by reason of redundancy, they will receive a severance payment equivalent to the payment to which they would have been entitled had their employment been terminated immediately prior to the date on which this Agreement was made, up to a maximum of 29 weeks. This amount is in lieu of the amount specified in the table below.

NES Redundancy Entitlements

Period of continuous service	Severance pay
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
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks

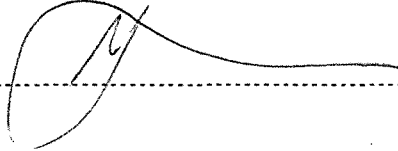
26 EMPLOYEE ASSISTANCE PROGRAM

The Employer maintains an Employee assistance program providing professional and confidential counselling and other support services to Employees. Employees are encouraged to use these services and communicate with the Employer about any issue that has the potential to create a risk to their health and safety, or that of their team.

27 SIGNATORIES

27.1 For Downer EDI Works Pty Ltd:


Signed for and on behalf of Downer Utilities Australia Pty Ltd by its authorised representative

Signature:  Date: 06/10/2020

Full Name: ANTHONY JOHN HOLMES Position Title: GENERAL MANAGER WA

Address:

L11 135 WOODLAWN DRIVE, MILTON, QLD, 4064

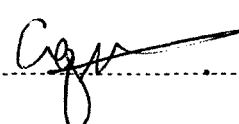
Witness Signature:  Date: 6/10/2020

Witness Full Name: Michelle Boyes

AND

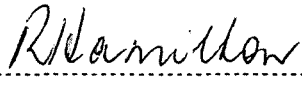
27.2 For the Australian Rail Tram and Bus Industry Union – WA Office:

I am authorised to sign this agreement by the position I hold within the Union and the authority granted to me in accordance with the rules of the Union and as a bargaining representative.

Signature:  Date: 7/10/20

Full Name: CRAIG MCKINLEY Position Title: SECRETARY

Address: Australian Rail Tram and Bus Industry Union
10 Nash Street, Perth WA 6000

Witness Signature:  Date: 7/10/2020

Witness Full Name: ROBYN HAMILTON

Downer EDI Works Pty Ltd Rail (WA) Enterprise Agreement 2020

Appendix 1: ORDINARY RATES and ALLOWANCES

In consideration of the nature and duration of this Agreement and of the matters contained herein to improve the efficiency and productivity of the Business, the first escalation of 2.1% will apply to the Wages and Allowances (as per the tables below) from the first full pay period after the Commencement date determined by the Fair Work Commission. In addition to this, the escalations will be backdated to the following day after the successful ballot vote was determined. Further annual Wages and Allowances in this Agreement will increase from the start of the first pay period commencing on or after the anniversary of the agreements Commencement date as determined by the Fair Work Commission.

Ordinary Rates throughout Agreement Term				
Level	Commencement	1st Year Anniversary	2nd Year Anniversary	3rd Year Anniversary
RW1	\$28.86	\$29.37	\$29.88	\$30.41
RW2	\$32.45	\$33.02	\$33.59	\$34.18
RW3	\$34.25	\$34.85	\$35.46	\$36.08
RW4	\$36.07	\$36.70	\$37.35	\$38.00
RW5	\$38.96	\$39.64	\$40.34	\$41.04
RW6	\$41.83	\$42.56	\$43.31	\$44.07
RW7	\$44.72	\$45.50	\$46.30	\$47.11

Summary of Allowances Throughout the Agreement Term						
Clause	Title	Type	Commencement	1st Year Anniversary	2nd Year Anniversary	3rd Year Anniversary
20.1 (a)	Private Vehicle Travel (>50km)	Flat Per Day	\$25.00	\$25.44	\$25.88	\$26.34
20.3	Accommodation	Flat Per Day	\$108.96	\$110.87	\$112.81	\$114.78
20.3	Breakfast	Flat Per Day	\$28.42	\$28.92	\$29.43	\$29.94
20.3	Lunch	Flat Per Day	\$22.50	\$22.90	\$23.30	\$23.71
20.3	Dinner	Flat Per Day	\$46.19	\$47.00	\$47.82	\$48.66
20.2 (a)	Local Living Allowance	Flat Per Day	\$68.45	\$69.65	\$70.87	\$72.11
15.4	First Aid Allowance	Flat Per Week	\$19.00	\$19.33	\$19.67	\$20.02

Downer EDI Works Pty Ltd Rail (WA) Enterprise Agreement 2020

Appendix 2: CLASSIFICATIONS

Level	Roles	Description / Notes
1	Trainee Labourer	Entrant into Rail work.
2	Experienced Rail Worker MR Driver Dogman	Certificate II attained; typically, a minimum of 6 to 12 months experience.
3	Welder's Offsider Plant Operator HR Driver Rigger PO1 / M3.	Track Labour with 5+ years' experience; Cert III modules also considered at this level.
4	Rail Excavator Operator HC / RRV Driver Leading Hand PO2 / M5 (or equivalent) AT Welder Int. / Adv. Rigger	Apprentice rate calculated at this level. Rail Excavator Operator may involve other Plant (eg Pettibone operators)
5	Hi-Rail Excavator Operator MC Driver FBW Operator Regulator Operator Track Certifier PO3 / M8 (or equivalent)	Foreman / Team Leader; must have completed Cert III in Rail infrastructure and possess Track Certifier qualifications. Trade Certificate (e.g. WA Electrical License).
6	Tamper Operator	Qualified, experienced and performing specific on-track role.
7	FBW Electrician Tamper Operator Tester-in-Charge	With Trade Qualification (e.g. Electrical Fitter, Mechanical Fitter); Qualified Trade Fitter (Tradesperson) in leadership role or utilising trade as part of maintenance of equipment; Nationally recognised, specialised skill level.