



DECISION

Fair Work Act 2009

s.185 - Application for approval of a greenfields agreement

GWA (Queensland) Pty Ltd
(AG2019/3911)

GWA (QUEENSLAND) PTY LTD CENTRAL QUEENSLAND COAL OPERATIONS ENTERPRISE AGREEMENT 2019

Rail industry

COMMISSIONER HUNT

BRISBANE, 5 NOVEMBER 2019

Application for approval of the GWA (Queensland) Pty Ltd Central Queensland Coal Operations Enterprise Agreement 2019.

[1] GWA (Queensland) Pty Ltd (The Employer) has applied for approval of an enterprise agreement known as the *GWA (Queensland) Pty Ltd Central Queensland Coal Operations Enterprise Agreement 2019* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). The Agreement is a greenfields agreement.

[2] This is a greenfields agreement that meets the requirements of s.172(2)(b) of the Act. I am satisfied that each of the requirements of ss.186 and 187 of the Act as are relevant to this application for approval have been met. In accordance with s.187(5)(a) of the Act, I am satisfied that the Australian Rail, Tram and Bus Industry Union (RTBU) is entitled to represent the industrial interests of a majority of employees who will be covered by the Agreement in relation to work that is to be performed under it. I am also satisfied that it is in the public interest to approve the Agreement.

[3] The Commission raised certain concerns regarding the Agreement with the Employer, and as a result, written undertakings were provided by the Employer. A copy of the undertakings is attached at Annexure A. Pursuant to s.190(4) of the Act I sought the views of the RTBU regarding the undertakings provided by the Employer. The RTBU indicated to my chambers that it considers the Employer's undertakings address the concerns raised by the Commission.

[4] I am satisfied that the undertakings will not cause financial detriment to any employee that will be covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement. Pursuant to s.190 of the Act, I accept the undertakings. In accordance with s.201(3) of the Act I note that the undertakings are taken to be a term of the Agreement.

[5] Pursuant to s.53(2)(b) of the Act I note the Agreement was made with the RTBU and that the Agreement covers that organisation.

[6] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 12 November 2019. The nominal expiry date of the Agreement is four years after the date of approval by the Commission.



COMMISSIONER

Printed by authority of the Commonwealth Government Printer

<AE505994 PR713997>

Annexure A:



Genesee & Wyoming Australia

Private & Confidential
1 November 2019

Dear Commissioner Hunt

**Application by GWA (Queensland) Pty Ltd (AG2019/3911)
Submissions & Undertaking (s.190 of the Fair Work Act 2009)**

I, Ian Hall, Chief Operating Officer, Genesee & Wyoming Australia Pty Ltd, give the following Undertaking with respect to the Application by GWA (Queensland) Pty Ltd (AG2019/3911) (the Agreement):

1. I have the authority given to me by Genesee & Wyoming Australia Pty Ltd to provide this undertaking in relation to the application for the approval of the *GWA (Queensland) Pty Ltd Central Queensland Coal Operations Enterprise Agreement 2019* currently before the Fair Work Commission;
2. I understand that each undertaking is to be taken to be a term of the Agreement;
3. I give the following undertaking/s with respect to the Agreement:

Clause 6: Additional Definition - Permanent Night Shift Workers

Night Shift means a shift that commences at or between 6.00pm and 3.59am.

For non-Loaded Remuneration employees Permanent Night Shift means where an employee actually works Night Shift for more than four consecutive weeks or works on Night Shifts which do not rotate or alternate with another shift or with day work so as to give him or her at least 1/3rd of his or her working time off night shift.

Permanent Night Shift employees accrue five weeks annual leave per year.

Clause 17.6 Non-permitted deductions

To the extent that Clause 17.6 is inconsistent with s.326 of the Fair Work Act 2009 (the Act), the Act will apply. Clause 17.6 will not result in deductions not permitted by s.324 of the Act.

Clause 39.1.1: Compassionate Leave

The entitlement to Compassionate leave set out at Clause 39.1.1 of the Agreement will also apply to a member of the Employee's household.

Yours sincerely

Ian Hall
Chief Operating Officer

Genesee & Wyoming Australia
Level 3, 33 Richmond Road, Keswick SA 5035 PO Box 309, Marleston DC SA 5033
Tel: (08) 8343 5455 Fax: (08) 8343 5454 Web: www.gwrr.com



GWA (Queensland) Pty Ltd
Central Queensland Coal Operations
Enterprise Agreement 2019

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 this agreement.



TABLE OF CONTENTS

PART 1 – THE AGREEMENT AND ITS OPERATION	4
1 Title.....	4
2 Parties to this Agreement.....	4
3 Application of this Agreement	4
4 Duration of this Agreement.....	4
5 No Extra Claims	4
6 Definitions.....	4
PART 2 – TERMS OF EMPLOYMENT AND RELATED MATTERS	6
7 Conditions of Employment.....	6
8 Engagement Status	6
9 Probation and Qualifying Period of Employment.....	7
10 Employee Transfers.....	7
11 Flexibility Arrangements	8
12 Stand Down.....	9
13 Abandonment of Employment	9
14 Termination of Employment.....	10
15 Redundancy	11
PART 3 – SAFETY	12
16 Fitness for Work	12
17 Uniforms, Protective Clothing and Equipment.....	12
PART 4 – CLASSIFICATION STRUCTURE AND REMUNERATION	14
18 Classifications	14
19 Rates of Pay	14
20 Payment of Wages.....	14
21 Loaded Remuneration employees	15
22 Non-Loaded Remuneration employees	15
23 Casual employees	15
24 Superannuation	16
25 Resting away from home.....	16
PART 5 – HOURS OF WORK	18
26 Rosters.....	18
27 Hours of Work.....	19
28 Reconciliation of Hours.....	19
29 Overtime & Reasonable Additional Hours	19
30 Rostered Days Off	20
31 Meal Breaks	20
32 Lift Up / Lay Back.....	20
33 Lift-Up and Lay-Back Advice.....	20
34 Shift Cancellations	21



35	Shift Lengths, Shift Extensions and Rest Periods	21
36	Train Crew Configurations	22
PART 6 – LEAVE.....		23
37	Annual Leave Conditions	23
38	Personal / Carer’s Leave	24
39	Compassionate Leave	24
40	Long Service Leave	25
41	Parental Leave	25
42	Jury Service	25
43	Unpaid Leave	25
44	Unpaid Carer’s Leave	25
45	Trauma Leave	25
46	Defence Reserve Service Leave.....	25
Natural Disaster Leave		26
47	Domestic and Family Violence.....	26
48	Ordinary Rate of Pay for Leave Periods	26
PART 7 – WORKPLACE RELATIONS.....		27
49	Workplace Consultation	27
50	Dispute Settling Procedure	29
PART 8 – SIGNATORIES		30



PART 1 – THE AGREEMENT AND ITS OPERATION

1 TITLE

- 1.1 This Agreement will be referred to as the GWA (Queensland) Pty Ltd Central Queensland Coal Operations Enterprise Agreement 2019 (the Agreement).

2 PARTIES TO THIS AGREEMENT

The Agreement covers:

- 2.1 **The Company or Employer:** GWA (Queensland) Pty Ltd (ACN 634 345 627); and
- 2.2 **Employee or Employees:** Employees of the Company who are employed in one of the classifications contained in this Agreement to perform work in or in connection with the Company's coal operations in the following Central Queensland Coal Systems:
- 2.2.1 Goonyella;
 - 2.2.2 Newlands;
 - 2.2.3 Blackwater; and
 - 2.2.4 Moura.
- 2.3 **The RTBU or Union:** The Australian Rail, Tram and Bus Industry Union Queensland Branch, provided notice is given under s.183 of the *Fair Work Act 2009* (the Act).

3 APPLICATION OF THIS AGREEMENT

- 3.1 This Agreement applies to the exclusion of any Modern Award, agreement, or other workplace instrument.
- 3.2 This Agreement does not purport to exclude the operation of the National Employment Standards (NES).
- 3.3 Part 2-1 and Part 2-2 of the Act describe the NES entitlements and may also provide terms that supplement or are ancillary to the entitlements of the Agreement.
- 3.4 This Agreement will be read and interpreted in conjunction with the 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.

4 DURATION OF THIS AGREEMENT

- 4.1 This Agreement will commence operation seven (7) days after it is approved by the FWC and will expire four (4) years after FWC approval.
- 4.2 The Employer and the RTBU agree to commence discussions regarding a replacement agreement no later than six (6) months prior to the nominal expiry date of this Agreement.

5 NO EXTRA CLAIMS

- 5.1 It is a term of this Agreement that the parties will not make any extra claims for the duration of this Agreement.

6 DEFINITIONS

The following terms which appear throughout this Agreement are defined as follows:

The Act	<i>Fair Work Act 2009</i> (Cth) as amended from time to time.
Base Remuneration Hourly Rate	As defined in clause 19.3.
Casual Employee	As defined in clause 8.
Continuous Shiftworker	A continuous shiftworker for the purposes of the NES is an Employee who is a seven-day shiftworker, who is regularly

	rostered to work on Sundays and public holidays. All Loaded Remuneration Employees are continuous shiftworkers.
Employee	An Employee engaged under the terms of this Agreement.
Forecast Roster	As defined in clause 26.1.3
Full time Employee	As defined in clause 8.
FWC	Fair Work Commission.
Home Location	Designated sign on/off location as specified by the Employees letter of offer.
Immediate Family	As per the Act.
Lift-Up/Lay-Back	The time Employees may be called in early (lifted-up) to an earlier sign on time or have their shift commencement delayed (laid-back) to a later time than shown on the Operational Roster.
Loaded Remuneration	Includes base salary and a payment for all allowances and penalties unless otherwise provided for in this Agreement.
Loaded Remuneration Hourly Rate	As defined in clause 19.2
Master Roster	As defined in clause 26.1.2
Maximum Shift Length	As defined in clause 35.
NES	National Employment Standards as set out in Part 2-2 of the Act, as amended from time to time.
Operational Roster	As defined in clause 26.1.4.
Ordinary Hours	The hours of work which an Employee is required to work over the nominated 52-week period, for a full-time employee, calculated on the basis of 38 ordinary hours per week (including public holidays and leave periods), averaged over a roster cycle.
Ordinary Pay	Ordinary pay is the rate of pay for the relevant employee as determined by the Company as follows: For a Loaded Remuneration Employee – the Loaded Remuneration (clause 21). For a Casual Employee – the Base Remuneration (clause 23). For a Non-Loaded Remuneration – the Determined Remuneration (clause 22).
Overtime	As defined in clause 29.
Part time Employee	As defined in clause 8.
Rail Safety Worker	Any Employee who performs rail safety work as defined in the <i>Rail Safety National Law (Queensland) Act 2017 (QLD)</i> .
Safety Legislation	Prevailing Occupational, Workplace Safety and Rail Safety laws in Queensland.
Shift Length	The total time from a sign-on to a sign-off.

PART 2 – TERMS OF EMPLOYMENT AND RELATED MATTERS

7 CONDITIONS OF EMPLOYMENT

- 7.1 Where an offer is made to appoint an Employee under the terms of this Agreement, the offer will be in writing and shall contain the following:
- Commencement date;
 - Home Location;
 - Position, level and title contained in this Agreement;
 - Remuneration level;
 - Reference to this Agreement applying to the Employee; and
 - Duration of probation period (except for casual Employees).
- 7.2 On commencement of employment new Employees will undergo an induction and orientation program, during which time they will be familiarised with the Company, their work sites, and the requirements of their position. During this time, they will have access to this Agreement and will be issued any other notices prescribed under the Act or other relevant legislation.
- 7.3 Employees recognise the need to be flexible in the performance of their duties and may be directed to perform a wider range of duties including work which is incidental or peripheral to their main tasks, responsibilities or functions providing they are competent to perform such work.
- 7.4 Employees are required to provide the Company with up to date contact details to ensure the Employee is contactable for the purposes of the provisions of this Agreement; for example, lift-up and lay-back. This requirement is remunerated as part of the remuneration.

8 ENGAGEMENT STATUS

- 8.1 An Employee may be engaged on a permanent full-time, permanent part-time, casual or fixed term basis. Employees shall not have their category of employment changed without their consent. Any agreed change shall be detailed in writing.

Full time Employee

- 8.2 A full time Employee is engaged to work an average of thirty-eight (38) Ordinary Hours per week over a roster cycle.

Part-time Employee

- 8.3 A part-time Employee is one engaged to work agreed defined minimum Ordinary Hours each week, that are less than 38 hours per week.

- 8.4 Overtime shall be paid where:

8.4.1 the Employee works in excess of 76 hours in a pay fortnight; or

8.4.2 the Employee is placed into a Master Roster, where Master Roster Reconciliation of Hours (clause 28) will apply.

- 8.5 The agreed hours an Employee is required to work must be in writing and can only be altered by mutual agreement.

- 8.6 Wages and conditions of employment for part-time Employees will be calculated on a pro rata basis by reference to the Ordinary Hours of a full-time Employee.

Casual Employee

- 8.7 A casual Employee is an Employee engaged and paid as such on an ad hoc basis.

- 8.8 A casual Employee is one engaged to work less than 76 Ordinary Hours in a pay fortnight unless placed into a Master Roster.



- 8.9 Unless provided for in the Act or NES, other than long service leave in accordance with applicable legislation, casual Employees shall not be entitled to any form of paid leave, payment for Public Holidays not worked, or notice payments set out in this Agreement.
- 8.10 Overtime shall be paid where:
- 8.10.1 the Employee works in excess of 76 hours in a pay fortnight; or
 - 8.10.2 the Employee is placed into a Master Roster, where Master Roster reconciliation of hours (clause 28) will apply.

Fixed Term Employee

- 8.11 A fixed term Employee is engaged on a full-time or part-time basis for a defined period or task, which may be subject to change/extension by agreement between the parties.
- 8.12 A fixed term Employee is entitled to all the benefits in Part 6 - Leave of this Agreement on a pro rata basis. Pro-rata will be calculated on an hourly basis using the applicable Hourly Rate for the classification.

9 PROBATION AND QUALIFYING PERIOD OF EMPLOYMENT

- 9.1 All new Employees, except for casuals, will be engaged on an initial six-month probation period (qualifying period).
- 9.2 At any time during the qualifying period the Company or the Employee may terminate the employment relationship by giving one weeks' notice.

10 EMPLOYEE TRANSFERS

Temporary Transfer

- 10.1 Employees may be directed to change their Home Location on a temporary basis by the Company at its discretion (temporary transfer), to perform work covered by this agreement.
- 10.2 If the Company requires a temporary transfer, the Company will seek volunteers prior to issuing directions.
- 10.3 An Employee shall be given seven (7) days' notice of a temporary transfer. Shorter notice may be given by agreement.
- 10.4 When an Employee is temporarily transferred the following conditions apply:
- 10.4.1 Accommodation will be provided for by the Employer and will be equivalent to three-star accommodation where available, and where this standard is unavailable the accommodation provided will be the nearest possible to this standard;
 - 10.4.2 The means of travel to and from the temporary location will either be provided by the Company or, where an Employee uses their own car by agreement, the Employee shall be reimbursed according to the current cents per kilometer rates provided by the Australian Taxation Office (as amended from time to time); and
 - 10.4.3 Where an Employee is on a temporary transfer, the transfer location is to be treated as a Home Location for the period of the temporary transfer.
- 10.5 The time taken to travel to and from the transfer location is to be included in scheduled roster hours.
- 10.6 The duration of a temporary transfer will be determined on a case by case basis through discussion with the relevant Employee.

Temporary Transfer Work Expenses

- 10.7 Expenses of \$99 will be payable for each twenty-four (24) hour period of a temporary transfer. One-third (1/3) of the temporary transfer work expenses will be paid for every



complete eight (8) hour period.

- 10.8 Payment will only be made for each complete eight (8) hour period.
- 10.9 The commencement time of the 24 hour period will be consistent with the arrival time at the temporary transfer location. The conclusion of a temporary transfer will be on departure from the temporary transfer location.
- 10.10 Temporary transfer work expenses shall be adjusted in line with the National Meals and Take Away Food Component of the Consumer Price Index (CPI) as published for the March Quarter and be effective from the commencement of the first pay period on or after July 1 each year.
- 10.11 Expenses as described in clause 25.7 will not apply.

11 FLEXIBILITY ARRANGEMENTS

- 11.1 The Employer and an Employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of this Agreement if:
 - 11.1.1 the arrangement deals with one (1) or more of the following matters:
 - 11.1.1.1 arrangements about when and/or where work is performed;
 - 11.1.1.2 overtime rates;
 - 11.1.1.3 penalty rates; and
 - 11.1.1.4 allowances.
 - 11.1.2 the arrangement meets the genuine needs of the employer and employee in relation to one (1) or more of the matters mentioned in clause (11.1.1); and
 - 11.1.3 the arrangement is genuinely agreed to by the Company and Employee.
- 11.2 The Company must ensure that the terms of the individual flexibility arrangement:
 - 11.2.1 are about permitted matters under section 172 of the Act; and
 - 11.2.2 are not unlawful terms under section 194 of the Act; and
 - 11.2.3 result in the employee being better off overall than the employee would be if no arrangement was made.
- 11.3 The employer must ensure that the individual flexibility arrangement:
 - 11.3.1 is in writing; and
 - 11.3.2 includes the name of the Employer and Employee; and
 - 11.3.3 is signed by the Employer and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee and includes details of:
 - 11.3.3.1 the terms of the enterprise agreement that will be varied by the arrangement; and
 - 11.3.3.2 how the arrangement will vary the effect of the terms; and
 - 11.3.3.3 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
 - 11.3.3.4 states the day on which the arrangement commences.
- 11.4 The Employer must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 11.5 The Employer or Employee may terminate the individual flexibility arrangement:



11.5.1 by giving no more than 28 days written notice to the other party to the arrangement; or

11.5.2 if the Employer and Employee agree in writing—at any time.

12 STAND DOWN

Stand Down Without Pay

12.1 The Company, at its sole discretion, may stand down Employees without pay for any time during which they cannot usefully be employed because of one of the following:

12.1.1 industrial action (other than industrial action organised or engaged in by the Employer);

12.1.2 a breakdown of machinery or equipment, if the Employer cannot reasonably be held responsible for the breakdown;

12.1.3 a stoppage of work for any cause for which the Employer cannot reasonably be held responsible, including network planned and unplanned maintenance outside the Company's control.

12.2 Written notice:

12.2.1 the Employee and their representative must 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 two (2) days prior to the stand down commencing.

12.2.2 for network planned maintenance the Company must give affected employees at least 28 days' notice.

12.2.2.1 For the purpose of 12.2.2, network planned maintenance occurs when the Company receives notice from the network provider (of the maintenance) that is equal to or more than 29 days.

12.3 Employees directly affected by the stand down:

12.3.1 may elect to use accrued annual leave or long service leave (if the Employee has an entitlement to long service leave) as an alternative to being stood down.

12.3.2 may move their RDO's during the notice period to day/s covered by the stand down period, subject to Company approval.

12.4 Alternative work:

12.4.1 The Company will consider alternative work to be done, such as training, reaccreditations, maintenance etc. before proceeding with the stand down. In the event alternative work is identified, the Company may, at its sole discretion, offer this work to Employees.

12.5 To avoid doubt, the consultation provisions within this Agreement do not apply to a decision to stand down an employee under this clause.

12.6 Any period of stand down under this clause will not break and Employee's continuity of service, however, any such period will not count as a period of service for the purpose of service based entitlements

13 ABANDONMENT OF EMPLOYMENT

13.1 In the event that an Employee is absent from work (other than an authorised absence) without notifying the Company, and is not contactable by the Company, the Company may assume the Employee has abandoned their employment, and the Company may consider the contract of employment to have been terminated at the initiative of the Employee effective from the last day of work attended.



- 13.2 Prior to assuming the Employee has abandoned their employment, the Company will make every reasonable effort to contact the Employee prior to taking action to finalise the Employee's employment.
- 13.3 Should the employment be deemed to be terminated, payment of notice will be made in accordance with clause 14 of this Agreement.

14 TERMINATION OF EMPLOYMENT

Termination by the Company

- 14.1 An Employee's employment may be terminated in accordance with this clause for reasons including (although not limited to), where the Employee:
 - 14.1.1 is unable to demonstrate the required skill or ability; and/or
 - 14.1.2 engages in inappropriate conduct; and/or
 - 14.1.3 engages in substandard performance; and/or
 - 14.1.4 cannot satisfy the medical requirements for their position; and/or
 - 14.1.5 has abandoned their employment.
- 14.2 The Employer may terminate the employment of an Employee (other than a casual Employee) by giving notice to the Employee or by making payment in lieu of such notice in accordance with the table below:

Period of Continuous Service	Period of Notice
Less than 1 year	1 week
1 year or more	4 weeks

- 14.3 The period of notice required is increased by one (1) week if the Employee:
 - 14.3.1 is over 45 years age; and
 - 14.3.2 has completed at least two (2) years of continuous service with the Employer.
- 14.4 The Employer may terminate a Casual Employee's employment with one (1) days' notice. A Casual Employee must give the Company one (1) days' notice. The Casual Employee will not be entitled to any payment for the Period of Notice.

Termination by the Employee

- 14.5 An Employee who resigns must provide the Employer with 4 weeks' notice.
- 14.6 The Employer may agree to a shorter period of notice from an Employee.
- 14.7 Where an Employee does not provide the Employer with the required notice, and the Employer does not agree to a shorter period, the Employer may deduct and retain an amount that is no more than one weeks' wages for the Employee from the amount that the Employer is required to pay the Employee upon termination.

Job Search Entitlement

- 14.8 Where the Employer has given notice of termination to an Employee, the Employee will be allowed up to one (1) day off, without loss of pay, for the purpose of seeking other employment.
- 14.9 This day off will be taken at a time agreed to between the Employee and the Company given the business needs of the Company.

Summary Dismissal

- 14.10 The Employer may terminate an Employee's employment without notice if the Employee is guilty of serious misconduct. Wages shall only be paid up to the time of dismissal.



15 REDUNDANCY

- 15.1 This clause does not apply to casual, or fixed-term Employees.
- 15.2 A redundancy scenario arises where the Company considers that it no longer requires the position an Employee has been performing to be performed by anyone, and this is not due to the ordinary and customary turnover of labour in the business.
- 15.3 Redundancy is a major change. The obligations in relation to consultation contained in this Agreement are to be observed.
- 15.4 Eligible Employees who are terminated by reason of redundancy are entitled to redundancy payments as provided by the NES. For the purpose of severance payments, a "week's" pay means the Base Remuneration for Ordinary Hours.
- 15.5 Where the Company offers and an Employee accepts a transfer in lieu of being made redundant to another location within the Company, or a related corporate entity, redundancy payments under this clause do not apply.
- 15.6 Where the Company finds suitable alternative employment for an Employee, redundancy payments under this clause do not apply.

Suitable alternative employment for the purpose of this clause is employment that:

- 15.6.1 The Company deems the Employee has relevant skills, qualifications or experience in order to perform the role; and
 - 15.6.2 is on substantially similar terms and conditions to that of the redundant role.
- 15.7 Should the Employee not accept the suitable alternative employment, or the transfer as described in clause 15.5, the Company may apply to the FWC to vary the Employee's redundancy entitlement to nil, or an amount the FWC considers appropriate..



PART 3 – SAFETY

16 FITNESS FOR WORK

- 16.1 An Employee must be fit for work at all times, ensuring that they are well rested and prepared to carry out all duties including the safe operation of workplace equipment.
- 16.2 To ensure that the Employee does not attend or perform work whilst under the influence of drugs or alcohol, testing programs including mandatory, random, and causal testing will be carried out, at the Company's sole discretion. The testing is to ensure that Employee(s) are not under the influence of prohibited and/or illicit substances and is a mechanism to ensure persons are fit for work and are able to perform their duties in a safe manner without endangering themselves and others.
- 16.3 All Employee(s) are required to comply with any Company policies in relation to alcohol and/or drugs (as amended from time to time) and any other customer and site (for example coal terminals) policies that relate to the management and testing of alcohol and other drugs.
- 16.4 Failure to comply with these policies may result in disciplinary action up to and including termination.
- 16.5 Employee(s) agree to attend rail health assessments as required by the Company.
- 16.6 Employee(s) agree to attend any other medical assessment or take any drug/alcohol test as directed by the Company.
- 16.7 Employee(s) agrees that the results of any health assessment and/or drug and alcohol test conducted under this clause will be provided to the Company without the requirement for further consent from the Employee(s).
- 16.8 If Employee(s) do not meet the Company's safety and fitness for work requirements or refuse to take a test or assessment as directed, the Company may stand down Employee(s) without pay until such time as the Employee's fitness for work can be determined as fit for duty. If an employee is stood down under this clause, the Employee may take accrued personal leave, annual leave or long service leave (if the Employee has an entitlement to long service leave).
- 16.9 If Employee(s) refuse to complete an assessment or fails to meet fitness for work requirements, the Employee's employment may be terminated, at the Company's discretion.
- 16.10 Costs of any health assessment that the Company directs an Employee to complete, or test the Company directs an Employee to take, will be covered by the Company.
- 16.11 Employee(s) will be rostered to attend rail health assessments and hours will be credited to actual cycle hours worked.
- 16.12 Employee(s) who are required to undertake a periodic pathology tests will undertake those tests in their own time.
- 16.13 Employee remuneration includes time taken to undertake pathology tests and no additional hours, ordinary or overtime, will be credited to the Employee.

17 UNIFORMS, PROTECTIVE CLOTHING AND EQUIPMENT

- 17.1 The Company will provide Employees with uniforms and any required personal protective equipment as per Company policy.
- 17.2 Safety equipment provided by the Company will be utilised as directed by the Company and in accordance with the manufacturer's instructions.
- 17.3 Where a uniform, protective clothing or equipment is provided, it must be correctly worn and utilised.
- 17.4 Employees will take reasonable care of uniforms, protective clothing and equipment which will remain, at all times the property of the Company.



- 17.5 The Company will replace uniforms, protective clothing and equipment on a "fair wear and tear" basis, or in accordance with applicable occupational health and safety legislation.
- 17.6 Employees will return all clothing and equipment upon termination. In instances where outstanding property is not returned, the Company will deduct the reasonable value of the missing equipment from the final payment of monies.
- 17.7 When at work or wearing the Company uniform, Employees are representing the Company. Accordingly, employees are expected to remain clean and tidy to the extent that this is possible. Worn or defective items of uniform, protective clothing or equipment must be reported to the Company.



PART 4 – CLASSIFICATION STRUCTURE AND REMUNERATION

18 CLASSIFICATIONS

Positions

18.1 The positions covered by this Agreement are:

- a) **Trainee Driver:** A trainee driver is an employee undertaking the necessary training to become a qualified driver.
- b) **Driver:** A driver is a qualified locomotive driver who undertakes this work. A driver is also required to assist other personnel in Rail Operations (for example route knowledge and Trainee Driver mentoring) and other duties pursuant to the Conditions of Employment (clause 7).

19 RATES OF PAY

19.1 The Loaded Remuneration for each classification as at the date of commencement of this Agreement is included in the table in clause 19.6.

19.2 The Loaded Remuneration Hourly Rate is the Loaded Remuneration divided by 1976.

19.3 The Base Remuneration Hourly Rate is the Base Remuneration divided by 1976.

19.4 The rates of pay at commencement of this Agreement will apply from the first full pay period after the FWC approves the Agreement.

19.5 Rates of pay will be increased from the first full pay period following the first, second and third anniversary of the date of commencement of the Agreement.

Table of Pay Rates

19.6 The rates of pay and agreed pay increases will be in accordance with the following table:

Wage Increase and Applicable Pay Rates				
Percentage Increase		2%	2%	2%
Date of Increment	Rate at commencement	Rate at first anniversary	Rate at second anniversary	Rate at third anniversary
Driver				
Base Remuneration	\$94,000.00	\$95,880.00	\$97,797.60	\$99,753.55
Loaded Remuneration	\$137,000.00	\$139,740.00	\$142,534.80	\$145,385.50
Trainee Driver				
Base Remuneration	\$64,496.00	\$65,785.92	\$67,101.64	\$68,443.67
Loaded Remuneration	\$94,000.00	\$95,880.00	\$97,797.60	\$99,753.55

20 PAYMENT OF WAGES

20.1 Employees will be paid two (2) weeks in arrears by electronic funds transfer to an



account nominated by the Employee.

- 20.2 Payment for Ordinary Hours for full-time Employees will be thirty-eight hours per week, representing an average of 38 hours per week over the roster cycle, and will be paid in equal fortnightly installments throughout the year.
- 20.3 Payment for part-time Employees will be based on their agreed minimum Ordinary Hours and actual hours worked.
- 20.4 Changes to scheduled payments may be made by the Employer to accommodate unusual situations or circumstances. Employees will be notified of any changes to the method of payment in advance.
- 20.5 Methods of payment, and payment periods may change according business requirements.

21 LOADED REMUNERATION EMPLOYEES

- 21.1 Employees will be paid the Loaded Remuneration if they are available twenty-four (24) hours per day, seven (7) days per week, including public holidays, and can perform all duties required.

22 NON-LOADED REMUNERATION EMPLOYEES

- 22.1 Where the Employee is not able to meet the requirements of clause 21.1, as determined by the Company:
 - 22.1.1 the Employee will not be a Loaded Remuneration Employee;
 - 22.1.2 the Company will determine whether the Employee's situation can be accommodated. This will be determined on a case by case basis consistent with the Employee's situation, and the requirements of the business, and will be at the Company's sole discretion. If the Company determines the Employee's situation cannot be accommodated, the Employee may be terminated in accordance with clause 14; and
 - 22.1.3 if the Company, at its discretion, determines it is able to accommodate the Employee's situation by providing alternate, or sporadic duties, the Company, at its discretion, will pay the Employee the Determined Remuneration. The Company will determine the Employee's remuneration on a case by case basis and in line with the availability and duties able to be performed. For an employee that works full-time equivalent hours, such rate shall not be below the Base Remuneration.
- 22.2 A determination by the Company under this clause may include the base rate of pay plus penalties as prescribed in clause 23 (excluding the casual loading).

23 CASUAL EMPLOYEES

- 23.1 Casual Employees do not receive the Loaded Remuneration.
- 23.2 A Casual Employee receives the Base Remuneration Hourly Rate for their classification plus applicable penalties as prescribed in this clause.

Casual Loading

- 23.3 Employees engaged as casuals will be paid a casual loading of 25% in addition to the Base Remuneration Hourly Rate for the classification, for all Ordinary Hours worked, in lieu of any entitlement to paid leave, notice of termination, redundancy pay, or other benefit of permanent employment. For a Casual Employee, all penalties in this clause are in addition to this casual loading.

Applicable Penalties

- 23.4 The applicable penalty rate will be determined by reference to the actual hours worked by the Casual Employee.

Shift loading

- 23.5 Casual Employees will be paid a shift loading of 22.5% of the Base Remuneration Hourly Rate (in addition to the Casual Loading) for any Ordinary Hours worked between 18:00 hours and 06:00 hours excluding Saturday, Sunday, Public Holiday's and/or working Overtime.

Weekends, Public Holidays & Overtime

- 23.6 In addition to the Base Remuneration Hourly Rate, a Casual Employee will be paid:
- 23.6.1 50% loading for Ordinary Hours worked on a Saturday;
 - 23.6.2 100% loading for Ordinary Hours worked on a Sunday;
 - 23.6.3 150% loading for all Ordinary Hours worked on a public holiday;
 - 23.6.4 70% of the Base Remuneration Hourly Rate for all Overtime hours worked.
 - 23.6.5 70% of the Base Remuneration Hourly rate for all time worked on an RDO when placed in a Master Roster Link.

24 SUPERANNUATION

- 24.1 An Employee shall be entitled to have an Employer superannuation contribution made to a complying superannuation fund nominated by the Employee.
- 24.2 If the Employee does not nominate a complying superannuation fund, the Company will make superannuation contributions into the Company default MySuper product fund (Australian Super).
- 24.3 Such contribution shall be at the amount specified by the *Superannuation Guarantee (Administration) Act 1992* (Cth) as amended from time to time.
- 24.4 Employees may choose to have additional contributions of a fixed amount or percentage, each pay period, deducted from their pre-tax income (salary sacrifice).
- 24.5 Employees will be responsible for obtaining their own financial and legal advice, and to make themselves aware of all requirements before entering into salary sacrifice arrangements.

25 RESTING AWAY FROM HOME

Rest Away from Home

- 25.1 Employees may be rostered to Rest Away from Home as part of their rostered shifts.
- 25.2 Advice for the commencement time of the return shift will be communicated to the Employee in the Operational Roster.
- 25.3 Employees may be required to Rest Away from Home more than once before returning.
- 25.4 Lift Up and Lay Back provisions apply to both outgoing and return shifts.
- 25.5 Accommodation will be provided for by the Employer and will be equivalent to three-star accommodation where available, and where this standard is unavailable the accommodation provided will be the nearest possible to this standard.
- 25.6 Periods of Rest Away from Home are calculated (for the purposes of Overtime Calculation and Expenses) by reference to the sign-on and sign-off time at home location.
- 25.7 Employees who are required to Rest Away from Home shall be paid \$99 for each 24 hour period (Rest Away from Home Daily expenses). For each completed eight (8) hour



period from sign-on to sign-off at home location one-third of the Rest Away from Home Daily Expenses shall be paid.

- 25.8 Payment will only be made for each complete eight (8) hour period.
- 25.9 Where an Employee is required to Rest Away from Home for longer than 16 hours at the rest location, the Employee will be paid a penalty of 1.7 times the Employees applicable Hourly Rate for each complete hour over 16 hours.
- 25.10 In circumstances where an employee is required to rest away from home more than once before returning to the employee's home location, the aggregate rest periods in excess of 16 hours shall be paid at 1.7 times the employees applicable Hourly Rate for each complete hour over 16 hours.
- 25.11 Rest Away from Home Daily Expenses shall be adjusted in line with the National Meals and Take Away Food Component of the Consumer Price Index (CPI) as published for the March Quarter and be effective from the commencement of the first pay period on or after July 1 each year.



PART 5 – HOURS OF WORK

26 ROSTERS

The Roster Framework

26.1.1 The Roster Framework consists of the:

- 26.1.1.1 Master Roster;
- 26.1.1.2 Forecast Roster; and
- 26.1.1.3 Operational Roster.

Master Roster

26.1.2 The Master Roster:

- 26.1.2.1 Depicts all known workings, available days and RDO's;
- 26.1.2.2 Cycle length will be prescribed by management in accordance with operational requirements;
- 26.1.2.3 Will provide each full-time Employee 38 ordinary hours per week averaged across the roster cycle;
- 26.1.2.4 Can be amended and implemented with 14 days' notice as per clause 49 (Workplace Consultation) ;
- 26.1.2.5 May include shift durations up to the Maximum Shift lengths (clause 35);
- 26.1.2.6 Will show RDO's, averaging 2 RDO's per week over the Roster Cycle; and
- 26.1.2.7 Will be published at the depot and can be printed/emailed to employees on request.

Forecast Roster

26.1.3 The Forecast Roster

- 26.1.3.1 Is based on the incoming two weeks of the Master Roster and will be published weekly by 15:00 hours on Friday;
- 26.1.3.2 Will highlight any shift changes from the Master Roster and any additional known workings;
- 26.1.3.3 May be changed from the Master Roster;
- 26.1.3.4 Will be published at the depot and can be printed/emailed to employees on request; and
- 26.1.3.5 RDO's cannot be changed unless by agreement between the Employee and the Company, at the Company's discretion.

Operational Roster

26.1.4 The Operational Roster:

- 26.1.4.1 Is published a minimum of 33 hours prior to the day to which it applies;

Example: Published 15:00 hours on Monday, for shifts commencing 00:01 hours on Wednesday.



- 26.1.4.2 Will show all shifts for the day to which it applies;
- 26.1.4.3 May be changed from the Forecast Roster;
- 26.1.4.4 Can be viewed when finished shifts and/or confirmed at any time after 1500 hours by Employees calling the depot; and
- 26.1.4.5 RDO's cannot be changed unless by agreement between the Employee and the Company, at the Company's discretion.

27 HOURS OF WORK

- 27.1 The ordinary hours of work for a full-time Employee are an average of 38 hours per week averaged over a roster cycle.
- 27.2 The ordinary hours of work for a part-time Employee may be less than an average of 38 hours averaged over a roster cycle.
- 27.3 The ordinary hours of work for a casual Employee are a maximum of 76 hours per fortnight pay period, unless placed into a Master Roster, where Master Roster hours will apply.
- 27.4 Ordinary hours of work may be worked on any day at any time.
- 27.5 The ordinary hours for Loaded Remuneration Employees includes work on Public Holidays.
- 27.6 The maximum number of ordinary hours per shift will be up to the maximum allowable shift length.

Loss of Ordinary Hours component (Absorption)

- 27.7 Employees who have made themselves unavailable (including by taking leave without pay, are absent without leave or are unable to be contacted) to perform their duties in any roster cycle may be scheduled on for less than Master Roster hours. To be clear, in such cases the Employee will forfeit the Ordinary Hours component for hours not worked for the relevant period that they were unavailable in the roster cycle.

No loss of Ordinary Hours component:

- 27.8 Employees who have been engaged as full-time Employees who are scheduled for less than Master Roster hours in a fortnight, as a result of not being required to perform duties in that fortnight, will be paid for seventy-six (76) hours.

28 RECONCILIATION OF HOURS

- 28.1 Actual hours worked and Master Roster hours are reconciled every four weeks.
- 28.2 Where an employee's actual hours exceed total Master Roster hours for the four-week period, all additional hours will be deemed as Overtime.

29 OVERTIME & REASONABLE ADDITIONAL HOURS

- 29.1 In addition to the Hours of Work (clause 27), an Employee may be required to work reasonable additional Overtime.
- 29.2 Overtime is any Overtime identified in clause 28 (Reconciliation of Hours) and any hours worked on an RDO (RDO Overtime).
- 29.3 Overtime will be paid at 1.7 times the Loaded Remuneration Hourly Rate for Employee classifications where the Loaded Remuneration is applicable.
- 29.4 Overtime will be paid at 1.7 times the Base Remuneration Hourly Rate for Employee classifications where the Base Remuneration and Determined Remuneration is applicable.
- 29.5 Any work performed on an RDO is paid in the pay-period that it is worked and does not count towards ordinary hours.
- 29.6 Any Overtime identified in clause 28 (Reconciliation of Hours) is paid in the pay-period of



reconciliation.

30 ROSTERED DAYS OFF

- 30.1 All Rostered Days Off (RDO) will commence at 00:01 hours for a minimum duration of twenty-four (24) hours.
- 30.2 All Single Rostered Days Off will provide a minimum of 30 hours off from sign-off time.
- 30.3 Rostered Days Off are not to be infringed by either lift-up or lay-back, unless by agreement.
- 30.4 Where, as a result of an out of course event, a shift may be extended into an RDO and overtime rates apply

31 MEAL BREAKS

- 31.1 Meal breaks shall be taken to ensure that they do not delay train operations.

Two-Driver Operations

- 31.2 Meal breaks will be taken on route by rotating drivers.
- 31.3 No additional payment will be made (or hours credited) for this arrangement.

Other Operations

- 31.4 As far as practicable, meal breaks shall be taken during:
 - 31.4.1 operational delays such as train crossing or passing; or
 - 31.4.2 during breaks in loading/unloading operations; or
 - 31.4.3 during loading/unloading where the crew is not in control of the movement of the train; or
 - 31.4.4 where train queuing is likely to occur; or
 - 31.4.5 any other reasonable time or location.
- 31.5 No additional payment will be made (or hours credited) for such arrangements.

32 LIFT UP / LAY BACK

Lift Up / Lay Back (used on the day of sign on)

- 32.1 Lift-Up: The Employer may Lift-Up Employees to a maximum of two (2) hours from the shift commencement time.
- 32.2 Lay-Back: The Employer may Lay-Back Employees to a maximum of four (4) hours from the shift commencement time.
- 32.3 Maximum Lift-up and Lay-back hours may be increased by agreement.
- 32.4 Lift-Up following a Rostered Day Off: An Employee cannot be lifted-up into their RDO, unless by mutual agreement.
- 32.5 Employees must ensure they are contactable prior to the scheduled commencement of their shift to ensure compliance with Lift-up and Lay-back requirements.
- 32.6 An Employee can be advised at the end of a shift of a lift-up or lay-back for their next sign on time.

33 LIFT-UP AND LAY-BACK ADVICE

- 33.1 Conditions of Employment (Clause 7) in relation to employee contact details apply.
- 33.2 Employees are to ensure they are contactable for the purposes of communicating Lift-Up and Lay-Back advice.

- 33.3 Lift-Up and Lay-Back can be advised any time after the Operational Roster has been published.
- 33.4 Management will work with crews to ascertain an understanding of time needed to be advised for a Lift-Up and Lay-Back depending on the individual employees living arrangements.
- 33.5 A "common-sense" approach will be applied to Lift-Up and Lay-Back advice taking into account previously worked shifts, fatigue management, and individual circumstances.
- 33.6 Lift-Up and Lay-Back advice will be communicated by way of phone calls and/or text messages.
- 33.7 Methods of communicating Lift-Up and Lay-Back advice may change from time to time, at the Company's discretion, in line with technological advances and/or changes implemented within the business.

34 SHIFT CANCELLATIONS

- 34.1 If no alternate work is available and a shift is cancelled with less than three (3) hours' notice before the commencement of a shift, then 50% of the shift length will be credited to the Ordinary Hours for that roster cycle.
- 34.2 If a shift is cancelled with three (3) or more hours' notice, the shift length is not credited to the Ordinary Hours for the roster cycle.

35 SHIFT LENGTHS, SHIFT EXTENSIONS AND REST PERIODS

Shift Lengths

- 35.1 Shift lengths will be up to the Maximum Shift length as prescribed by the relevant Regulation, as amended from time to time.
- 35.2 The current Regulation is the *Rail Safety National Law National Regulations 2012* (Cth) (the Regulation).
- 35.3 The Regulation prescribes the following:

Configuration	Maximum
Two Driver Operations including a qualified train driver who is learning a route or undergoing an assessment.	12 hours.
Driver Only Operations (DOO)	9 hours.

- 35.4 Any matter in relation to Shift Lengths, Shift Extension and Rest Periods, not specifically mentioned within this clause is determined by the Regulation, as amended from time to time.
- 35.5 Should any matter specifically mentioned within this clause contradict a provision of the Regulation (as amended from time to time), the terms of the Regulation will prevail.
- 35.6 The Minimum Operational Shift Length will be six (6) hours.
 - 35.6.1 An Operational Shift is where rail safety work directly relating to the operating of trains, for example train driving/shunting, is performed.
- 35.7 The Minimum Non-Operational Shift Length will be four (4) hours.
 - 35.7.1 A Non-Operational Shift is where rail safety work is not required to be performed, for example, training, investigations and medical assessments.

Shift Extensions

- 35.8 Shifts can be extended beyond the hours in the Operational Roster up to the Maximum Shift Length.



35.9 Where it is operationally necessary to extend a shift, the Employee may be advised at any time up to the beginning of the shift extension.

Rest Periods

35.10 Rest Periods will be as per minimum periods prescribed by the relevant legislation.

35.11 Limits on shifts in a fourteen (14) day period will be as per legislation.

36 TRAIN CREW CONFIGURATIONS

36.1 Employees will be rostered and required to work any train crew configuration, i.e. two-driver and driver-only operations, as determined by the Company at its discretion, in line with operational requirements.

36.2 Relay working will not be introduced during the operation of this Agreement.

36.3 The Company may introduce driver only operations (DOO) in accordance with the relevant safety regulator's requirements.

36.4 When the Company intends to introduce DOO that have not been previously approved for any other rail operators to perform DOO, the Company will consult (as per Clause 49) with employees at the affected depot/s and the RTBU representatives prior to the introduction of DOO.

36.5 No additional allowances are payable based on train crew configuration.



PART 6 – LEAVE

37 ANNUAL LEAVE CONDITIONS

- 37.1 For each year of service with the Company, full-time Loaded Remuneration Employees shall be entitled to five (5) weeks annual leave per year.
- 37.2 For each year of service with the Company, Non-Loaded Remuneration Employees shall be entitled to four (4) weeks annual leave per year, unless the employee meets the definition of a continuous shift-worker, in which case, they will receive five (5) weeks annual leave per year.
- 37.3 The entitlement to paid annual leave at clause 37.1 and clause 37.2 accrues progressively during a year of service according to the employee's ordinary hours of work and accrues from year to year.
- 37.4 Pro rata entitlement: Employees engaged on a part time, fixed term or temporary basis (but not a casual basis) shall be entitled to accrue annual leave on a pro rata basis.
- 37.5 For the purposes of annual leave, a week is Sunday to Saturday, inclusive and based on five shifts per week.
- 37.6 For the purposes of annual leave, a full week's Annual Leave will be rostered from Sunday to Saturday. This may change by agreement between the Employee and the Company.
- 37.7 During a period of annual leave, for each shift that an employee was rostered to perform work pursuant to the Master Roster, 1/5 of a week will be deducted from accrued entitlements.
- 37.8 If an employee is rostered off for a week of annual leave where they are rostered to work in excess of five shifts, for the purposes of debiting annual leave, 5/5 of a week will be deducted from accrued annual leave entitlements.
- 37.9 All annual leave must be approved by the Company. Employees acknowledge that requests for annual leave will be considered in the context of the Company's operational requirements. Where a period of annual leave results in an employee being unavailable for more than one rostered shift, clause 37.7 will apply to each shift not completed.
- 37.10 Deductions of, and payment for, annual leave will be consistent with the NES.

Direction to take Annual Leave

- 37.11 Where a Loaded Remuneration Employee has accrued more than five (5) weeks of annual leave, the Company shall have the right to direct the Employee to proceed on annual leave to reduce the accrued annual leave balance to five (5) weeks.
- 37.12 Where a Non-Loaded Remuneration Employee has accrued more than four (4) weeks of annual leave, the Company shall have the right to direct the Employee to proceed on annual leave to reduce the accrued annual leave balance to four (4) weeks.
- 37.13 Any direction made under clause 37.7 or 37.8 will be discussed with the employee prior to any decision directing the employee to take annual leave.

Annual Leave exclusive of other leave

- 37.14 Where an Employee takes a period of annual leave, any other leave entitlement, such as public holidays, personal leave, compassionate leave, long service leave or jury duty, that falls due in that period, will not be treated as annual leave.

Cashing out of Annual Leave

- 37.15 An Employee may request to cash out up to two (2) weeks of the accrued annual leave each year. After cashing out annual leave, an Employee must have an accrued annual leave balance of at least four (4) weeks. Requests to cash out annual leave must be made in writing (by the Employee) to the Employer and may be authorised by the Employer on a case by case basis.
- 37.16 Cashing out of annual leave will be paid at the Employee's rate of Ordinary Pay at the



time the application to cash out annual leave is made.

- 37.17 On termination of employment, any accrued Annual Leave shall be paid to the Employee.
- 37.18 All paid leave provided for in Part 6 of this Agreement shall be inclusive of the components of the Loaded Remuneration for the Employee classification at the time the leave is taken.
- 37.19 Employees will not be paid an annual leave loading. This has been incorporated into the Loaded Remuneration.

38 PERSONAL / CARER'S LEAVE

Personal/Carer's Leave entitlement

- 38.1 All permanent full-time Employees engaged under this Agreement accrue ten (10) days personal/carers leave per year. Part-time Employees will receive a pro-rata entitlement.
- 38.2 Unused personal/carers leave shall accumulate from year to year.
- 38.3 Personal/carers leave will be paid at the Employee's ordinary hourly rate of pay (as outlined in clause 19).
- 38.4 An Employee is not entitled to personal or carer's leave for any period in respect of which workers compensation benefits are paid or payable to the Employee.
- 38.5 Employees shall provide evidence that would satisfy a reasonable person (which may include a medical certificate) for all instances of personal/carers leave that extend beyond two days duration.
- 38.6 If Employees are required to produce evidence by virtue of clause 38.5, and they fail to do so, no payment will be made in respect of the absence, and the Employee may be deemed to have been absent without authorisation.

Personal Leave

- 38.7 An Employee is entitled to paid personal leave when they are unable to attend work due to personal injury or illness.
- 38.8 An Employee will only be paid personal leave where they notify the Employer of their absence as soon as possible. Such notifications shall include the likely duration of any such absence.

Carer's Leave

- 38.9 An Employee is entitled to paid carer's leave where they are required to care for a member of the Employee's immediate family (as defined within the NES) or household who needs their care and support because of an illness, injury or unexpected emergency.
- 38.10 An Employee will only be paid carer's leave where they notify the Employer of their absence as soon as possible and provide any requested evidence. Such notifications shall include the likely duration of any such absence

39 COMPASSIONATE LEAVE

- 39.1 Permanent Employees may access up to two (2) paid days of Compassionate Leave per occasion:
 - 39.1.1 following the death of a member of the Employee's immediate family (as defined within the NES); and/or
 - 39.1.2 where a member of the Employee's immediate family or household contracts, develops or sustains an injury or illness posing a serious threat to their life.
- 39.2 The Employee may be required by the Employer to provide evidence verifying the reason for the absence, such as a death notice or a medical certificate relating to an injury or illness of a family or household member.

- 39.3 Where such evidentiary requirements are not fulfilled, payment for Compassionate Leave will not be made and the Employee may be deemed to have been absent without authorisation.

40 LONG SERVICE LEAVE

- 40.1 Long service leave entitlements will be as per the *Industrial Relations Act 2016 (QLD)* as amended from time to time.

Applying for Long Service Leave

- 40.2 Applications for long service leave are subject to approval by the relevant manager.
- 40.3 Where an application to take long service leave is received, consideration and approval will be treated on a case by case basis.
- 40.4 The Company can direct an Employee to take long service leave with a minimum of 3 months' notice prior to the commencement of the requirement to take the Leave.

Pro Rata Entitlement

- 40.5 Pro rata long service leave will be consistent with the *Industrial Relations Act 2016 (QLD)* as amended from time to time.

41 PARENTAL LEAVE

- 41.1 Parental Leave will be as per the Act.

42 JURY SERVICE

- 42.1 Jury Service Leave will be as per the Act.

43 UNPAID LEAVE

- 43.1 The Employer may approve a period of unpaid leave for an Employee for any reason. Decisions under this clause are entirely at the discretion of the Employer.

44 UNPAID CARER'S LEAVE

- 44.1 Unpaid carer's leave will be as per the Act.

45 TRAUMA LEAVE

- 45.1 Employees who are not physically injured but are involved in an incident that has the capacity to impair or traumatise the Employee, may be granted up to two days paid Trauma Leave to attend medical or other counselling.
- 45.2 Access to Trauma Leave is at the Company's discretion and is based on consultation with the affected employee and medical advice.
- 45.3 The Company may exercise its discretion to extend duration of Trauma Leave on a case by case basis.

46 DEFENCE RESERVE SERVICE LEAVE

- 46.1 The Company will release Defence Reserve members for the purposes of rendering Defence Service in accordance with the provisions of the *Defence Reserve Service (Protection) Act 2001 (Cth)* as amended from time to time.
- 46.2 An employee seeking Defence Reserve Service Leave must make a request which will be approved by the Company provided that the employee provides supporting documentation.
- 46.3 All Defence Reserve Service Leave will count towards continuous service with the Company.



NATURAL DISASTER LEAVE

- 46.4 Where a natural disaster is declared by a State or Federal Government and an Employee is absent from work for all or part of a shift due to one of the following:
- 46.4.1 The inability of the Employee to travel to their place of work from their residence; or
 - 46.4.2 The Employee remaining at (or returning to) their residence to safeguard family and/or property; or
 - 46.4.3 The Employee remaining at (or returning to) their residence to avoid being stranded at work; or
 - 46.4.4 The Employee responding to the impact of the natural disaster on their property; or
 - 46.4.5 Any other reason approved by the Employer;

The Employee may be granted up to 3 days of natural disaster leave per calendar year.

- 46.5 An Employee granted natural disaster leave will not lose pay for any Ordinary Hours.

47 DOMESTIC AND FAMILY VIOLENCE

- 47.1 The Company recognises Employees may experience situations of Domestic and Family Violence, which may in turn impact on their attendance or performance at work.
- 47.2 The Company accepts the definition of family violence as provided in the Act and further recognises that it includes physical, sexual, financial, verbal and/or emotional abuse by a family or household member.
- 47.3 Domestic and Family Violence means violent, threatening or other abusive behaviour by an Employee's family member that seeks to coerce or control the Employee or causes them harm or fear.
- 47.4 Employees experiencing family or domestic violence are entitled to two (2) days paid leave per year for the purpose of attending legal proceedings or filing police reports where it is impractical to do so outside of ordinary working hours.
- 47.5 In addition to the paid days, an Employee will be entitled to up to three (3) days unpaid Domestic and Family Violence leave per year for the purpose of attending medical appointments, legal proceedings, seeking safe housing or other activities related to dealing with domestic or family violence where it is impractical to do so outside of ordinary working hours.
- 47.6 Domestic and Family Violence leave does not accumulate from year to year.
- 47.7 The Company may request relevant supporting evidence, which can take the form of a document issued by the police force, a court, a medical practitioner, a family violence support service, a lawyer, or a counselling professional.
- 47.8 All personal information concerning Domestic and Family Violence will be kept confidential in line with relevant policies and legislations.

48 ORDINARY RATE OF PAY FOR LEAVE PERIODS

- 48.1 All periods of paid leave will be paid at the Employee's rate of Ordinary pay.

PART 7 – WORKPLACE RELATIONS

49 WORKPLACE CONSULTATION

This term applies if the Employer:

- 49.1 has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the Employees; or
- 49.2 proposes to introduce a change to the regular roster or ordinary hours of work of Employees.

For a major change referred to in clause 49.1:

- 49.3 the Employer must notify the relevant Employees and the RTBU of the decision to introduce the change.
- 49.4 the relevant Employees may appoint a Representative for the purposes of the procedures in this term.
- 49.5 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.

- 49.6 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.
- 49.7 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- 49.8 The Employer must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.
- 49.9 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 at clause 49.3, 49.4, and 49.6 are taken not to apply.
- 49.10 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

49.11 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).

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

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

49.14 In this term, relevant Employees means the Employees who may be affected by a change referred to in clause 49.10.

Employee Representatives

49.15 The Company recognises the role of Employee Representatives and that Employee Representatives may require time during working hours to investigate and represent Employees' interests. Such time will not be denied as long as it is reasonable and does not affect operational activities/work area demands.

49.16 The RTBU will provide the Company with names of elected Representatives.

49.17 RTBU delegates may be released for up to two paid days per year for the purposes of attending RTBU delegates training. Approval of training days is at the discretion of the Company and based on business and operational requirements.

Labour Hire

49.18 The Company recognises that the RTBU preferences full-time, permanent, direct employment. However, from time to time, it may be necessary for the Company to engage labour hire arrangements.

In-cab Cameras and audio Recording

49.19 Forward facing cameras, with audio recording disabled, may be implemented.

49.20 This clause does not prevent the Company from using other recordings including data recordings, or recordings of radio and phone communications.



50 DISPUTE SETTLING PROCEDURE

- 50.1 If a dispute relates to:
- a) the application or interpretation of terms and conditions of this Agreement; or
 - b) the National Employment Standards;

The following dispute settling procedure shall be followed:

- 50.2 An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- 50.3 Where an Employee who is party to a dispute (or their representative) wish to lodge a dispute, it must be done in writing.
- 50.4 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant/direct management (example, superintendent).
- 50.5 Where the matter is not resolved, the parties will arrange further discussions at the next level of management.
- 50.6 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the FWC to resolve the dispute as it considers appropriate, including mediation, conciliation or arbitration.
- 50.7 While the parties are trying to resolve the dispute using the procedures in this term:
- An Employee must continue to perform their work as they would normally unless they have a reasonable concern about an imminent risk to their health or safety; and
- 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 work health and safety 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 for the Employee to refuse to comply with the direction.
- 50.8 The parties to the dispute agree to be bound by a decision made by the FWC in accordance with this term.



PART 8 – SIGNATORIES

Signed for and on behalf of GWA (Queensland) Pty Ltd:

Representative Name Vanessa Hoey Position and authority to sign Director of HR
Signature [Signature] Date 11/10/19
In the presence of Name EDWARD LAURIE Position Workplace Relations
Signature [Signature] Date 11/10/19

ADDRESS Level 3, 33 Richmond Road, Keswick SA 5035

Signed for and behalf of the Australian Rail Tram and Bus Industry Union (RTBU) Queensland Branch:

Representative Name BOBLE W MACKIE Position and authority to sign ACT STATE SECRETARY
Signature [Signature] Date 11/10/19
In the presence of Name [Signature] Position POSD TMR QLD
Signature [Signature] Date 11/10/19

ADDRESS

END OF AGREEMENT



Genesee & Wyoming Australia

Private & Confidential

1 November 2019

Dear Commissioner Hunt

**Application by GWA (Queensland) Pty Ltd (AG2019/3911)
Submissions & Undertaking (s.190 of the *Fair Work Act 2009*)**

I, Ian Hall, Chief Operating Officer, Genesee & Wyoming Australia Pty Ltd, give the following Undertaking with respect to the Application by GWA (Queensland) Pty Ltd (AG2019/3911) (the Agreement):

1. I have the authority given to me by Genesee & Wyoming Australia Pty Ltd to provide this undertaking in relation to the application for the approval of the *GWA (Queensland) Pty Ltd Central Queensland Coal Operations Enterprise Agreement 2019* currently before the Fair Work Commission;
2. I understand that each undertaking is to be taken to be a term of the Agreement;
3. I give the following undertaking/s with respect to the Agreement:

Clause 6: Additional Definition - Permanent Night Shift Workers

Night Shift means a shift that commences at or between 6.00pm and 3.59am.

For non-Loaded Remuneration employees Permanent Night Shift means where an employee actually works Night Shift for more than four consecutive weeks or works on Night Shifts which do not rotate or alternate with another shift or with day work so as to give him or her at least 1/3rd of his or her working time off night shift.

Permanent Night Shift employees accrue five weeks annual leave per year.

Clause 17.6 Non-permitted deductions

To the extent that Clause 17.6 is inconsistent with s.326 of the Fair Work Act 2009 (the Act), the Act will apply. Clause 17.6 will not result in deductions not permitted by s.324 of the Act.

Clause 39.1.1: Compassionate Leave

The entitlement to Compassionate leave set out at Clause 39.1.1 of the Agreement will also apply to a member of the Employee's household.

Yours sincerely

Ian Hall
Chief Operating Officer

Genesee & Wyoming Australia

Level 3, 33 Richmond Road, Keswick SA 5035 PO Box 309, Marlestone DC SA 5033
Tel: (08) 8343 5455 Fax: (08) 8343 5454 Web: www.gwrr.com