



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Genesee & Wyoming Australia Pty Ltd
(AG2017/409)

GENESE & WYOMING AUSTRALIA PTY LTD (SA/NT) TERMINAL OPERATIONS ENTERPRISE AGREEMENT 2017

Rail industry

COMMISSIONER ROE

MELBOURNE, 16 MARCH 2017

Application for approval of the Genesee & Wyoming Australia Pty Ltd (SA/NT) Terminal Operations Enterprise Agreement 2017.

[1] An application has been made for approval of an enterprise agreement known as the *Genesee & Wyoming Australia Pty Ltd (SA/NT) Terminal Operations Enterprise Agreement 2017* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Genesee & Wyoming Australia Pty Ltd. The Agreement is a single enterprise agreement.

[2] I am satisfied that each of the requirements of ss.186, 187 and 188 as are relevant to this application for approval have been met. The Agreement does not cover all of the employees of the employer, however, taking into account the factors in Section 186(3) and (3A) I am satisfied that the group of employees was fairly chosen.

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

[4] The Agreement was approved on 16 March 2017 and, in accordance with s.54, will operate from 23 March 2017. The nominal expiry date of the Agreement is 31 December 2019.



COMMISSIONER

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<Price code G, AE423674 PR591004>



**Genesee & Wyoming Australia Pty Ltd
(SA/NT) Terminal Operations
Enterprise Agreement
2017**

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PART 1 – THE AGREEMENT AND ITS OPERATION

1 TITLE

This agreement shall be known as the Genesee & Wyoming Australia Pty Ltd (SA/NT) Terminal Operations Enterprise Agreement 2017 (the “agreement”).

2 PARTIES TO THIS AGREEMENT

The parties covered by this agreement are:

- 2.1 Genesee & Wyoming Australia Pty Ltd – ACN 079 444 296 (referred to as “GWA” or the “employer”);
- 2.2 Employees of GWA employed under the classifications prescribed in clause 16 – *Remuneration*, of this agreement (the “employees”); and
- 2.3 Australian Rail Tram and Bus Industry Union SA/NT Branch (referred to as the “RTBU” or the “Union”), subject to the Fair Work Commission including a note to that effect in its decision to approve the agreement.

3 APPLICATION OF THIS AGREEMENT

This agreement applies to GWA, and employees who are engaged in any of the classifications specified in clause 16 – *Remuneration*, at locations in South Australia (“SA”) or the Northern Territory (“NT”).

4 DURATION OF THIS AGREEMENT

- 4.1 This agreement will commence operation in accordance with the Act, seven (7) days after the Fair Work Commission makes a decision to approve the agreement. The nominal expiry date of this agreement is 31 December 2019.
- 4.2 This agreement shall continue to operate after its nominal expiry date unless it is terminated or replaced in accordance with the Act.

5 RELATIONSHIPS WITH OTHER AGREEMENTS, AWARDS AND OTHER INDUSTRIAL INSTRUMENTS

- 5.1 This agreement supersedes and replaces, in full, the Genesee & Wyoming Australia Pty Ltd (SA/NT) Terminal Operations Collective Agreement 2014.
- 5.2 No award, collective agreement, pre-reform certified agreement, preserved state agreement or notional agreement preserving a state award will have any effect in relation to employees covered by this agreement while this agreement is in operation.

6 DEFINITIONS AND INTERPRETATIONS

In this agreement, the following definitions shall apply:

Aggregate Remuneration	Aggregate Remuneration is the total of Aggregate Remunerations Penalty payment, if such a payment is applicable, plus Aggregate Allowance, if such an allowance is applicable.
Annual Cycle Hours	The ordinary hours of work which an employee is required to work over a nominated fifty-two (52) week period, ie. nineteen-hundred and seventy-six (1976) ordinary hours including public holidays and annual leave for a full-time employee.
Annual Hours of Work Cycle	The fifty-two (52) week period over which the annual cycle hours are scheduled to be worked.
Dayworker	Any employee whose roster provides for ordinary hours to be worked on any day Monday to Friday between the hours of 0600 and 1800.
Hours Worked	Actual time worked.
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 posted Working Roster or daily work plan.
Master Roster	Roster(s) that are permanently displayed at a location that show rostered days off and any known tasks or work.
Shift length	The total time from a sign-on to a sign-off.
Shiftworker	Any employee who works rostered shifts outside the hours of 0600 to 1800 Monday to Friday
Shunting	Includes shunt rollingstock and conduct marshalling operations.
Steel Terminal Marshalling / Planning	Marshalling strategy and contingency plan development without supervision.
the Act	The Fair Work Act 2009 (Cth) as amended from time to time.
Unavoidable Necessity	A practically inescapable circumstance that necessitates the working of extended hours. The working of extended hours in these circumstances is subject to the individual's indication of their fitness to continue and employees may decline to perform safeworking duties after having completed twelve hours from sign-on.
Working Roster	Roster(s) developed from the Master Rosters that provide more details of attendance requirements. Working Rosters allocate employees to work lines and adjusts the rostered work to accommodate work variations, planned leave and/or any other issues known at the time of posting. A Working Roster may also allow for the posting of actual attendance and shift details. Variations from the Master Roster placed onto a Working Roster must not impact on the placement of rostered days off. Variations that might be addressed in a Working Roster could include changes to shifts, eg. the number of shifts and/or their placement on the roster or changes to sign-on times, shift lengths and/or sign-off times. Variations may be required because of specific operational changes that are known at the time the Working Roster is prepared.

PART 2 – CONTRACT OF EMPLOYMENT AND RELATED MATTERS

7 FORMS OF EMPLOYMENT

7.1 General Principles and Undertakings

- 7.1.1 The employer shall use its best endeavors to ensure that full-time employment is the principal form of employment. Further, subject to the provisions contained in this agreement, no employee shall have their form of employment altered without agreement of the affected employee(s).
- 7.1.2 Notwithstanding the above, the employer may offer employment on one or more of the types of employment described below.

7.2 Full Time Employment

Full time employees are those who are engaged to work ordinary hours of nineteen-hundred and seventy-six (1976) hours per annum, inclusive of public holidays and annual leave hours. This is the equivalent of fifty-two (52) weeks at thirty-eight (38) hours per week.

7.3 Part Time Employment

- 7.3.1 Part time employees are those (other than casual employees) employed to work less than the ordinary hours of work for an equivalent full time employee.
- 7.3.2 Further, a part time employee shall:
- be engaged for no fewer than three (3) hours per engagement;
 - be entitled to pro rata accruals with respect to annual and long service leave;
 - have the minimum number of hours agreed to in writing and may be required to work additional hours at ordinary rates up to a maximum of thirty-eight (38) hours;

- d) Have any additional hours beyond thirty-eight (38) paid at the appropriate penalty rates.

7.4 Casual Employment

- 7.4.1 Casual employees are employees paid on an ad hoc basis by the hour. The minimum engagement on each instance shall be three (3) hours. Casual employees shall be entitled to the Base Rate of pay applicable to the equivalent full time classification (and Aggregate Allowance where applicable) plus an additional loading of 25%.
- 7.4.2 Casual employees shall not be entitled to:
 - a) annual leave, personal/carer's leave or compassionate leave; or
 - b) parental leave (unless the casual employees are entitled to parental leave in accordance with the Act); or
 - c) public holidays (unless work is performed on a public holiday by the casual employee, in which case he/she will be entitled to the payment specified in clause 24); or
 - d) redundancy payments.
- 7.4.3 The employer may, at any time, offer a casual employee the opportunity to be appointed as a permanent or as a part-time employee, under terms provided for in this agreement.
- 7.4.4 Where a casual employee has worked the equivalent ordinary hours of a full time employee for a continuous period of six (6) months he/she may seek to be appointed as a permanent or as a part time employee. Where a casual employee seeks appointment under this sub-clause, the employer will comply with such a request and make the appointment.
- 7.4.5 Any offer to convert the employment status of a casual employee must be in writing. The casual employee may elect to accept or to reject any offer made.
- 7.4.6 Where an offer is made and rejected, the employer may seek to fill the position by other means and this action may result in the casual employee's employment being terminated.

7.5 Fixed Term Employment

- 7.5.1 Fixed term employees are engaged for a specific task or project (which may include the replacement of an employee who is on leave) for a specified, fixed period of time and shall generally not be engaged for a period greater than twelve (12) months.

8 RECRUITMENT, SELECTION AND INDUCTION

- 8.1 The selection process for filling job vacancies will be based on the merit principle. The merit of applicants will be determined by considering the abilities, competence, qualifications, experience, and standard of work performance and work history of candidates, relative to the position.
- 8.2 The employer will advertise all vacancies for positions covered by this agreement, unless those vacancies are filled in accordance with prevailing policy related to redeployment or transfer of employees.
- 8.3 All vacancies will be advertised internally within all of the employer's business divisions. At times, the employer may also advertise a vacancy simultaneously internally and through media advertisements, recruitment agencies and other sources.
- 8.4 Where an offer is made to appoint employees under the terms of this agreement, following advertising, the offer will be in writing in the form of a letter of engagement. The letter of engagement will contain the following:
 - a) position, level and title contained in this agreement;
 - b) appointment date;
 - c) salary level; and

d) that in addition to the terms of the letter of engagement, this agreement applies to the employee's employment.

- 8.5 The employer will ensure that all employees are appropriately inducted into their workplace following appointment.
- 8.6 All selections will reflect the employer's commitment to equal employment opportunity and the elimination of unlawful discrimination.
- 8.7 The employer will provide training relevant to job/position requirements and employee needs that is aligned to the Transport and Logistics Industry Training Package. Certificates and statements of attainment will be issued to employees upon satisfying the requirements of the specific training.

9 PROBATIONARY PERIOD

New employees will be subject to a probationary period under the following conditions:

- 9.1 The period of probationary employment will be commensurate with the requirements of the position and will be outlined in the written offer of employment. Unless otherwise required a probationary period of up to six (6) months from the date of commencement will be applied to new employees.
- 9.2 A probationary period will not apply to casual employees and temporary employees engaged for a period of less than six (6) months.
- 9.3 On commencing employment, probationary employees will be advised of the performance standards required and will undergo regular performance reviews during the period of probationary employment.
- 9.4 Employees will undergo an induction and orientation program at the commencement of employment, during which they will be familiarised with GWA, their work sites and the requirements of their position.
- 9.5 During the probationary period, the employee's employment may be terminated by either the employee or the employer providing one (1) weeks' written notice.

10 INDIVIDUAL FLEXIBILITY ARRANGEMENT

- 10.1 An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement (including, for the avoidance of doubt, terms in the appendices) if:
 - 10.1.1 the agreement deals with one (1) or more of the following matters:
 - a) arrangements about when work is performed;
 - b) overtime rates;
 - c) penalty rates; and
 - 10.1.2 the arrangement meets the genuine needs of the employer and employee in relation to one (1) or more of the matters mentioned in paragraph 10.1.1; and
 - 10.1.3 the arrangement is genuinely agreed to by the employer and employee.
- 10.2 The employer must ensure that the terms of the individual flexibility arrangement:
 - 10.2.1 are about permitted matters under section 172 of the Fair Work Act 2009; and
 - 10.2.2 are not unlawful terms under section 194 of the Fair Work Act 2009; and
 - 10.2.3 result in the employee being better off overall than the employee would be if no arrangement was made.
- 10.3 The employer must ensure that the individual flexibility arrangement:
 - 10.3.1 is in writing; and
 - 10.3.2 includes the name of the employer and employee; and

- 10.3.3 is signed by the employer and employee and if the employee is under eighteen (18) years of age, signed by a parent or guardian of the employee; and
- 10.3.4 includes details of:
 - a) the terms of the enterprise agreement that will be varied by the arrangement; and
 - b) how the arrangement will vary the effect of the terms; and
 - c) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- 10.3.5 states the day on which the arrangement commences.
- 10.4 The employer must give the employee a copy of the individual flexibility arrangement within fourteen (14) days after it is agreed to.
- 10.5 The employer or employee may terminate the individual flexibility arrangement:
 - 10.5.1 by giving twenty-eight (28) days written notice to the other party to the arrangement; or
 - 10.5.2 if the employer and employee agree in writing—at any time.

11 TERMINATION OF EMPLOYMENT

Unless otherwise provided for in clause 7 or clause 12, termination of employment shall be in accordance with the following provisions:

11.1 Termination by the Employer

- 11.1.1 Termination of an employee's contract of employment may occur by the employer giving the employee four (4) weeks' notice.
- 11.1.2 In addition to this notice, employees over forty-five (45) years of age at the time of the giving of the notice and with not less than two (2) years continuous service are entitled to an additional weeks' notice.
- 11.1.3 The employer may, at its election, make payment in lieu of notice, either wholly or in part thereof.
- 11.1.4 Nothing in this agreement affects the employer's rights to dismiss an employee at any time without notice for conduct that would justify summary dismissal. If an employee is dismissed on this basis, the employee will be entitled to be paid for work only up to the time of dismissal.

11.2 Termination by the Employee

- 11.2.1 An employee may resign from employment by giving four (4) weeks' notice in writing.
- 11.2.2 In the event that the employee fails to give the prescribed notice, any pay due to the employee may be forfeited to the extent that the written notice given falls short of the required notice.
- 11.2.3 Where agreed, a shorter period of notice may be given without forfeiture of pay.

11.3 Abandonment of Employment

- 11.3.1 The absence of an employee from work for a continuous period exceeding five (5) working days without the consent of the employer shall be prima facie evidence that the employee has abandoned their employment.
- 11.3.2 The employer will make reasonable attempts to contact the employee to determine any reasons for the absence. This contact will include the employer writing to the employee at the employee's last known address informing the employee that the absence may result in the employee's services being terminated.
- 11.3.3 If within a further period of five (5) days the employee has not established, to the satisfaction of the employer, that they were absent for a reasonable cause they shall be deemed to have abandoned their employment and, at the employer's discretion, their employment may be terminated.

- 11.3.4 Termination of employment by abandonment in accordance with this subclause shall operate as from the date of the last attendance at work or the last days' absence in respect of which consent was granted whichever is the later.
- 11.3.5 Upon any termination of employment becoming effective, the employee must return all property belonging to GWA which is held by or under the control of the employee.

12 REDUNDANCY

- 12.1 A redundancy occurs in a circumstance where the employer decides that it no longer requires the position that an employee has been doing to be done by anyone and there is no suitable alternative position for the employee. A redundancy is not triggered by the ordinary and customary turnover of labour.
- 12.2 For the purposes of clause 12.1, a suitable alternative position includes, but is not limited to, the following:
 - 12.2.1 the employee's skill base, competence and experience or is suitable after the provision of appropriate training and such training is provided by the employer (or such other person) to the employee at no cost to the employee; and
 - 12.2.2 attracts the same or no less favorable terms and conditions of employment overall.
- 12.3 Without limiting the terms of clause 12.1 above, a suitable alternative position may be a position:
 - 12.3.1 elsewhere in the employer's operations; or
 - 12.3.2 with another related entity to the employer; or
 - 12.3.3 with an unrelated entity in circumstance where the employer has sold all or part of its business.
- 12.4 Where the employer decides that it no longer requires the position an employee has been doing to be done by anyone, the employer:
 - 12.4.1 shall undertake consultation, as outlined in clause 34 of this agreement;
 - 12.4.2 shall explore opportunities for suitable alternative employment;
 - 12.4.3 shall call for expressions of interest in suitable alternative employment and/or voluntary redundancy, where appropriate, from other employees. The employer has the right to accept or reject expressions of interest from individual employees; and
 - 12.4.4 subject to clause 12.4.3, shall make offers to employees for suitable alternative employment, voluntary redundancy and/or initiate involuntary redundancy, as appropriate, following consideration of all of the criteria outlined in this clause.
- 12.5 Selection for redundancies shall be made having regard to the following criteria:
 - 12.5.1 the employer's need for competencies;
 - 12.5.2 employee qualifications;
 - 12.5.3 employee past work performance and experience;
 - 12.5.4 an employee's suitability for the employer's future needs; and
 - 12.5.5 any expression of interest for voluntary redundancy.
- 12.6 Severance payments are payable upon termination on account of redundancy and are in addition to:
 - 12.6.1 notice or payment in lieu of notice; and
 - 12.6.2 payment for any accrued but untaken leave or days in lieu which are payable on termination.
- 12.7 Severance payments shall be:
 - 12.7.1 calculated on the employee's Base Remuneration at the time of termination; and
 - 12.7.2 paid on a pro rata basis for part years of service (pro rata shall be calculated to the day).

12.7.3 The rate of payment is four (4) weeks' pay per year of service up to a maximum of eighty (80) weeks, calculated on the base rate. To avoid doubt, an employee's prior service includes any previous continuous service with FreightCorp or National Rail Corporation.

12.8 Where an employee has been offered an alternative position which would require the employee to relocate, irrespective of whether that position is suitable or otherwise, and the employee chooses to accept the offer of employment in lieu of accepting a redundancy, the employer shall offer to pay the employee's relocation expenses, as set out in clause 13 to a maximum of \$30,000.00 provided however that the cost of relocation shall be no more than 75% of the cost of the redundancy.

13 TRANSFER OF EXISTING EMPLOYEES

13.1 Permanent Transfers

13.1.1 Employer proposals that may require an employee to relocate will be subject to the consultative provisions outlined in clause 34 of this agreement. With any final decision regarding the individual employee the relocation will be made on assessment of the individual's circumstances with regard to reasonableness.

13.1.2 Where a transfer instigated by the employer requires the employee to relocate their residence, the employer will meet reasonable relocation expenses.

13.1.3 Based on individual circumstances, the following expenses will be met:

13.1.3.1 Housing expenses

a) Costs associated with selling a residence at the "old" location, including Agent's commission, legal expenses, stamp duty and Bank charges.

b) Costs associated with the purchase or construction of a new residence at the "new" location, where that residence will be the usual place of residence, such as legal expenses, stamp duty, bank charges, connection of utilities and mortgage insurance (one-off payment).

13.1.3.2 Removal expenses, including removalist's fees, insurance charges and temporary storage (up to twelve (12) months).

13.1.3.3 Travel expenses, including:

a) One (1) familiarisation visit, of up to five (5) days with travel costs, to the limit of economy class airfares for the employee and spouse to visit the location to examine housing and other services; and

b) Actual travel costs, to the limit of economy class airfares for the employee and family during the actual relocation.

13.1.3.4 Resettlement Allowance

13.1.3.4.1 Resettlement allowance is provided to cover the costs of temporary accommodation for employees and their families until a permanent residence is available. Resettlement allowance is paid as a reimbursement to cover actual costs incurred for temporary accommodation on the following basis:

a) Employees with dependants may be reimbursed up to the value of six (6) weeks' pay, calculated on their base remuneration, where the dependants accompany them; or

b) Employees without dependants will be reimbursed up to the value of three (3) weeks' pay, calculated on their base remuneration.

13.1.4 Employees who transfer at their own request will meet all costs associated with any relocation.

13.2 Temporary Transfers

- 13.2.1 Where required by the business, employees may be temporarily transferred to a different home base for a period of time. Temporary transfer will be used to support commercial activities affected by variable demand and traffic volumes and/or temporary staff shortages.
- 13.2.2 In the first instance, volunteers will be called for temporary transfer. In the event that insufficient employees volunteer, employees may be selected for temporary transfer. Employees will be temporarily transferred away from their Home Base for a period of not more than six (6) weeks in any twelve (12) month period unless mutually agreed. Any decision regarding individual employee temporary transfer will be made on assessment of the individual's circumstances with regard to reasonableness.
- 13.2.3 The employer will provide the means of travelling to and from the temporary location if required. Reasonable time allowances for travelling to and from all locations where motor vehicles are utilised will apply. Employees will be paid travelling time on a standalone basis which means that the time will not be deducted from the Annual Cycle Hours. Employees who are temporarily transferred may be authorised to use their own vehicles to travel to and from the temporary location.
- 13.2.4 Reimbursement for use of private motor vehicle will be in accordance with the relevant employer policy. When temporarily transferred, the employee has the option of an expense allowance or reimbursement of reasonable expenses associated with temporary location transfer. Such reimbursement or allowance will be in accordance with the relevant employer policy. Employees may elect to receive the allowance in advance upon request.
- 13.2.5 Employees who are temporarily transferred to a location which does not permit them to return to their home base daily shall be paid expenses at the rate of **\$191.56** for each full day away from their Home Base. The payment of expenses is on the following basis:
- 13.2.5.1 This daily rate is made up of **\$22.57** for each breakfast and each lunch, **\$28.36** for each dinner and **\$118.06** for each bed.
- 13.2.5.2 No allowance for breakfast, lunch, dinner or bed, as the case may be, shall be granted to an employee unless they commence travelling from their home base earlier than the time specified in the table below and return to their home base after the time specified in the table below:

Payment for:	If departure before:	If return after:
Breakfast	0700hours	0800hours
Lunch	1300hours	1400hours
Dinner	1830hours	1830hours
Bed	0100hours	0100hours

Note: No allowance for a bed shall be paid unless a bed is reasonably required.

- 13.2.5.3 Expenses shall be adjusted by a formula that applies the Consumer Price Index (CPI) (weighted average of eight (8) capital cities) for the bed component and by the Meals Out and Take Away Food component of the CPI for the meals components. This adjustment shall be made annually in the first full pay period following the release of CPI data for the September quarter each year.
- 13.2.5.4 Where the actual cost of accommodation and/or meals are greater than those outlined above employees will be reimbursed the difference, subject to the production of receipts which are reasonable in the circumstances. Where the employer provides any meals and/or accommodation, the relevant component(s) of the expenses shall not be payable.
- 13.2.5.5 Employees shall have the option of accepting accommodation arranged by the employer or arranging their own accommodation. Where accommodation is arranged by the employer, such accommodation shall be of no less than three (3) star rating.

14 STAND DOWN

- 14.1 The employer may stand down employees without pay for any time during which they cannot usefully be employed in their normal position because of any cause for which the employer cannot reasonably be held responsible.
- 14.2 The employee, and if the employee so chooses, a representative which can include the Union, 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. However, in circumstances where the employer is aware in advance that employees will be required to be stood down, for example planned maintenance, then the employer must give affected employees at least fourteen (14) days' notice.
- 14.3 As soon as practicable, and prior to the stand down commencing, the employer will consult with the affected employees and the Union. In this regard, the performance of useful work shall be discussed together with the performance of training and re-accreditation that may be required by the employer.
- 14.4 Employees who are stood down under this provision shall be treated for all purposes (other than payment) as having continuity of employment.
- 14.5 Any employee stood down in accordance with this clause may at any time during the stand down, terminate their employment without notice and shall be entitled to receive, as soon as possible, any payments to which they are entitled up to the time of the resignation, without default of the employee.
- 14.6 Any employee who is stood down in accordance with this clause shall be at liberty to take other employment and, in the event of doing so, the employer shall not require the employee to attend work until the employee has worked out a period of notice where required to do so by the other employer.
- 14.7 An employee who is stood down in accordance with this clause may elect to take leave or other time owed by the employer.
- 14.8 Notwithstanding any other provision of this clause, the employer shall not be entitled to deduct any payment for any public holiday, which occurs during a period of stand down.

PART 3 – CLASSIFICATIONS AND REMUNERATION

15 CLASSIFICATIONS

- 15.1 The employer may, subject to complying with any consultation requirement outlined in clause 34 of this agreement, where the implementation of any change will have a significant impact on employees, determine the following:
 - a) The type and number of positions in the organisation and the organisational structures;
 - b) Employee levels;
 - c) Specific work practices; and
 - d) Specific equipment and its use.
- 15.2 The classifications to which this agreement applies are set out in this clause.

The classification structures provide flexibility to design new positions or to redesign existing positions, including the way work is performed, so that the employer can respond to changes in the business and commercial environment.

 - 15.2.1 The process of position design or position redesign may require employees to undertake activities that have not traditionally been within their classification stream or that have not been previously part of their position. Where positions are adjusted or redesigned, the employee will be entitled to be paid at a classification level that equates to the work or activities being undertaken in the new position.

- 15.2.2 In the circumstance where an employee has previously been required to perform a position which is no longer used or has lapsed for whatever reason, the employer may determine, based on business requirements, to train that employee in an alternate position and therefore maintain the current number of positions and the employee's current pay level.
- 15.3 This agreement provides for employees who are engaged in positions that directly focus on the terminal operations in the Intermodal Division.
- 15.4 Terminal Operations include:
- a) Load lifting (Gantry)
 - b) Load / Lifting (Fork/Reachstacker)
 - c) Examining
 - d) Shunting & marshalling 1 (as 1 skill set)
 - e) Steel Terminal marshalling/planning 2
 - f) Terminal Locomotive Assistant (TLA - Qualified second person)
 - g) Terminal Locomotive Operator (TLO)
 - h) Remote Control Operator (RCO)
- 15.5 Internal Transfer Vehicle (ITV) and groundsman operations are considered base entry level skills and not a designated career path work area.
- 15.6 This agreement identifies two (2) streams for employees:
- a) Traditional Terminal Operator, and
 - b) Terminal Locomotive Operations
- 15.7 Subject to employees completing relevant training for their position they will progress through the classification structure to the following minimum base classification levels:
- a) Terminal Operator 1
 - b) Terminal Locomotive Assistant

15.8 Principles

The classification structures operate in accordance the following principles:

- 15.8.1 Classification of a position will be made on the basis of matching the primary job roles with the appropriate level of the classification structure. On this basis, employees will be classified at a level within the classification structure that is commensurate with the major and substantial requirements of the position undertaken. Employees will remain in their classification unless there is a major and substantial change in the work undertaken and/or accountabilities. At the same time it is not anticipated that there be any other wholesale reclassifications other than those negotiated in reaching settlement of this agreement;
- 15.8.2 Classifications are based on primary accountabilities or main functions used in the position rather than skills possessed by the employee;
- 15.8.3 To allow for the design of positions and the performance of activities and tasks based on assessment of what is safe, efficient and logical for which the employee has been trained and has current and demonstrated competency;
- 15.8.4 Flexibility that allows the employer, to change the way work is organised and/or the way positions are designed, as required by the business or commercial demands; and
- 15.8.5 Training will be provided in accordance with clause 8.7.

15.9 Higher Duties

Where employees perform work that falls within a higher classification level, they will be entitled to be paid at the higher classification level for the shift/shifts during which the work was performed.

15.10 Assessment of Previous Skills or Knowledge

Employees, when engaged or when transferring from one (1) classification stream to another will be assessed in whether they have any skill or knowledge relevant to the position they were employed for within the first three (3) months from their commencement into their position. Where the employee is assessed as having previously obtained skills and knowledge applicable to the position the assessment process will determine the level of the classification structure the employee should be appointed.

15.11 Classifications, Descriptors and Pay Levels

The following table outlines the classification titles, descriptors and pay levels in the two (2) streams, Traditional Terminal Operations and Terminal Locomotive Operations.

It is not expected that any other consequential position reclassifications will occur as a result of implementing the classification structures in the field upon lodgement of this agreement. Any further position reclassifications during the term of the agreement will only occur where there has been a significant change in a position that, in itself, would warrant a reclassification.

Notwithstanding the above, during the life of the agreement a classification review will be undertaken to ensure that all current employees are appropriately classified. The review does not aim to and will not result in reducing the classification of any individual.

15.11.1 Traditional Terminal Roles

Classification Title	Description
Terminal Operator in Training	An employee engaged and in training to perform in their primary position.
Terminal Operator	Terminal operators at this level are accountable for and undertake a range of base level terminal support activities. These activities would typically include: <ul style="list-style-type: none"> ▪ Directing the movements of forklifts and trucks; ▪ Preparing wagons for placement and removal of containers; ▪ Assisting with lifting and lowering operations; ▪ Moving trailers with containers, using an ITV.
Terminal Operator 1	Terminal operators at this level are accountable for and undertake activities that are directed at a single job role.
Terminal Operator 2	Terminal operators at this level are accountable for and undertake activities that are directed at two (2) job roles.
Terminal Operator 3	Terminal operators at this level are accountable for and undertake activities that are directed at three (3) job roles.
Terminal Operator 4	Terminal operators at this level are accountable for and undertake activities that are directed at four (4) job roles.
Terminal Operator 4 (a)	Team Leader level 1. This role applies to positions which provide comprehensive supervision and leadership to a designated team of employees. This position may have other employees, providing field leadership of smaller groups, reporting to them. As a team leader, this role is accountable for planning and organising activities, usually on a shift basis.
Terminal Operator 5	Terminal operators at this level are accountable for and undertake activities that are directed at five (5) job roles.
Terminal Operator 6	Terminal operators at this level provide leadership and supervision to a designated group of employees. Positions at this level may have other employees providing field leadership of smaller work groups reporting to them. As a team leader, this role is accountable for planning and organising, usually on a shift basis

Terminal Operator 7	An employee allocated to Terminal activities, who has the responsibility to direct train and /or shunting movements, within a Yard or Terminal on a day to day basis. This position is responsible for the planning and organising of yard/terminal activities related to the provision of resources (eg: rollingstock) to ensure the effective transportation of freight.
Terminal Operator 8	An employee allocated to terminal activities, who has the responsibility of ensuring the availability of appropriate rollingstock to and from Yards/Terminals by producing train movement plans in advance.

15.11.2 Terminal Locomotive Operational Roles

Classification Title	Description
Terminal Locomotive Assistant	An employee engaged to perform the role of second person during trip train, and driver relief operations. This employee will also be competent to carry out shunting /marshalling and examining operations.
Terminal Locomotive Operator	An employee trained and competent in all of the above positions PLUS Qualified and undertaking locomotive operational accountabilities in a Terminal environment. Conducts single person locomotive operations. These activities can only take place within terminals, however for shunting purposes, it is recognised that such activities may involve the shunting of wagons outside the immediate terminal boundaries for the purpose of shunting a train within the terminal boundaries.
Remote Control Operator	An employee trained and competent in all of the above positions PLUS Trained and qualified in, and undertaking the operation of Remote Control Operation accountabilities in a Terminal / Yard limit environment.

- 15.12 The parties recognise that the introduction of the Terminal Locomotive Operations classification structure provides for a logical avenue for a further career path to mainline Locomotive Operations, subject to the employee's suitability and the vacancy of such positions. An employee engaged and classified within the Terminal Locomotive Operations classification structure has a right to apply and compete for other vacant train crew positions within the employer's other Business Divisions.
- 15.13 The introduction of the classification of Terminal Locomotive Operations within a depot is only to be created following consultation, as outlined in clause 34 of this agreement, after due consideration of the depot's need for quality of position.
- 15.14 Employees appointed to the Terminal Locomotive Operations classification structure will not be required to perform any job roles, which are not contained within the classification structure at 15.11.2 with the exception of TLA, shunting/marshalling 1, and train inspection (examining), and clause 15.5. In the circumstance where an employee moves from the Traditional Terminal Operator classification structure to the Terminal Locomotive Operations classification structure, job roles other than shunting/marshalling 1 and train inspection (examining) will cease to be recognised as applicable to the employees pay point level.
- 15.15 Employees employed by the employer under this agreement as at the date of lodgement of this agreement shall not be forced to move to the Terminal Locomotive Operations classification structure. This does not prevent any employee to whom this agreement is applicable from voluntarily applying for positions within the Terminal Locomotive Operations classification structure. Further, this does not prevent the GWA Intermodal Division from transferring and or employing future employees to the Terminal Locomotive Operations structure.
- 15.16 A job role is a term that defines a key and significant function that is undertaken by Terminal Operators. Due to the nature of work, some Terminal Operator positions may also be defined as multi-functional, i.e. they are required, as a major and substantial component of their position, to undertake work comprising more than one (1) job role.

15.17 While a job role outlines a key and significant function, or functions, this does not prevent a position being designed and the employee subsequently performing other activities which are of a lower level and which are secondary to the functions. Classifications will be made on the basis of assessing the job roles being undertaken.

15.18 For example, a terminal operator's job role may be operating lifting equipment, eg. operating a gantry crane. This will be that employee's major job role and the basis for the employee's classification. However, from time to time the employee may undertake other lower level activities associated with assisting with forklift operations eg. setting up wagons for containers, driving ITV etc. These activities are secondary to the major role of load lifting and are not used for determining the classification level.

15.19 The following table describes the current job roles. The employer may identify additional job roles, subject to developments in business or operational requirements:

<p>Shunt and Marshall Rollingstock</p> <p>This job role requires employees to undertake all activities associated with both marshalling and shunting rollingstock, including locomotives and wagons. These activities can take place within terminals, yards and/or on the mainline.</p> <p>Marshalling involves using appropriate skills and knowledge required to determine wagon and locomotive placements within a consist in order to comply with any safeworking or regulatory requirements and to comply with the employer's workplace procedures. Marshalling, therefore, requires an employee to plan and organise the efficient movement and positioning of rollingstock required to make up a train, break up a train or to load or unload a train.</p> <p>Shunting involves using the appropriate skills and knowledge required to safely move, or shunt, rollingstock in accordance with regulatory requirements and the employer's workplace procedures. Shunting involves controlling and directing the physical movement of rollingstock and operating relevant equipment and the requirement to carry out a developed marshalling or shunting plan. Shunting may also involve the movement of vehicles in fixed signal areas in accordance with relevant safeworking rules and procedures.</p>	<p>Conduct Full Train Examination</p> <p>This job role requires the employee to undertake and complete a full and comprehensive train examination. It also includes the completion of basic maintenance associated with any defects or irregularities detected as part of the train examination.</p> <p>Train examining involves the use of skills and knowledge to conduct a full train examination in accordance with the employer's workplace procedures and the requirements of the relevant safe working regulations and codes of practice. It includes making preparations for the examination to take place, preparing the train for examination, examining the locomotive and rollingstock, examining the loads, using hand tools for repairs, documenting results and actioning/taking appropriate corrective actions where defects and/or irregularities are detected.</p> <p>Full train examinations in this context may be undertaken in terminals or yards or may be undertaken at remote or isolated locations.</p>
<p>Load lifting Forklift and Reachstacker Equipment</p> <p>This job role requires the employee to undertake the correct and safe use of specialised load lifting equipment used to load and unload trains or wagons. The employees may be required to use a range of specific equipment in use at a location.</p> <p>Load lifting involves the use of skills and knowledge required to operate specialised load shifting equipment in accordance with the employer's workplace requirements and with relevant regulatory requirements.</p> <p>Associated activities include planning work to be undertaken within the working environment; correctly using the controls and equipment operating systems to manage the movement of both the equipment and the load. The employee will be required to also locate the correct load and, identifying load characteristics in making any movements, move loads; securing equipment after use and completing any required reports and returns, including maintenance reports.</p>	<p>Load lifting Gantry/Straddle Equipment</p> <p>This job role requires the employee to undertake the correct and safe use of specialised load lifting equipment used to load and unload trains or wagons. The employees may be required to use a range of specific equipment in use at a location.</p> <p>Load lifting involves the use of skills and knowledge required to operate specialised load shifting equipment in accordance with the employer's workplace requirements and with relevant regulatory requirements.</p> <p>Associated activities include planning work to be undertaken within the working environment; correctly using the controls and equipment operating systems to manage the movement of both the equipment and the load. The employee will be required to also locate the correct load and, identifying load characteristics in making any movements, move loads; securing equipment after use and completing any required reports and returns, including maintenance reports.</p>

<p>Provide Locomotive Operational Assistance for Train Movements</p> <p>This job role provides for skilled employees to provide the required operational and associated safe working support to a locomotive driver for train movements conducted within the terminal environment or for trip train working. This job role may be described as providing second person support or support as a terminal locomotive assistant. Prerequisite job roles for this position include shunting/marshalling and examining.</p> <p>Providing operational assistance for train movements involves using appropriate skills and knowledge to assist with train operations in accordance with workplace procedures and the requirements of relevant safeworking regulations and codes of practice. The activity includes assisting with preparations for train operations, assisting with the operation of the train, assisting with provisioning tasks, and handing over or stabilising the train in accordance with requirements.</p>	<p>Conduct Terminal Locomotive Operations</p> <p>This job role requires skilled employees to undertake and control terminal locomotive operations in accordance with terminal workplace procedures and the requirements of relevant safeworking regulations and codes of practice.</p> <p>This job role includes employees performing the following activities as part of their role; conducting single person shunting operations, which may also include traditional terminal operational tasks. This job role may also involve the use of skills attained in providing locomotive assistance for train movements.</p> <p>Prerequisite job roles for this position include:</p> <ul style="list-style-type: none"> ▪ Shunting/Marshalling; ▪ Examining; and ▪ Providing Locomotive Operational Assistance for Train Movements.
<p>Steel Terminal Marshalling/Planning</p> <p>This job role requires employees to undertake all activities associated with both the marshalling and planning of rollingstock, including locomotives and wagons. These activities can take place within terminals, yards and/or on the mainline.</p> <p>Steel Terminal marshalling and planning involves the identification of required rollingstock types, locations and track and siding availabilities, to facilitate the operation. The employee is required to prioritise and sequence wagons in accordance with workplace procedures, in addition to developing a strategy to achieve safe and efficient loading, unloading and train consist development. This job role also involves the development of track and siding access options from the marshalling strategy and contingency plans are identified and prepared for unplanned events. Steel Terminal marshalling and planning involves the monitoring and operations of signalling equipment. Operational requirements in this job role would require the employee to document, file and distribute shunt and marshalling plans and train consists in accordance with operational requirements. Employees undertaking this job role would do so without supervision.</p>	<p>Remote Control Operation</p> <p>This job role requires employees to undertake and control terminal locomotive operations in accordance with terminal remote control operating procedures and any relevant safeworking regulations and codes of practice.</p> <p>Employees performing this job role would undertake the following activities as part of their role; conducting single person locomotive shunting operations, which may include remote control locomotive operations. Employees in this job role may also undertake traditional terminal operating tasks.</p> <p>Prerequisite job roles for this position include:</p> <ul style="list-style-type: none"> ▪ Shunting/Marshalling; ▪ Examining; ▪ Providing Locomotive Operational Assistance for Train Movements; and ▪ Conducting Terminal Locomotive Operations.

15.20 In the event that the employer changes a classification and pay point level for any existing role or creates a new role covered by this agreement and the classification or paypoint level is disputed by an affected employee then the employer must provide the details of how the determination was arrived at. The *Dispute Resolution Procedure* (clause 35) in this agreement will be followed should the employee believe the process is not genuine.

16 REMUNERATION

16.1 Base Remuneration for each classification level and agreed increases over the life of this agreement are as follows:

Table Of Base Remuneration Per Annum			
Classification	Remuneration Increases		
	1/01/2017	1/01/2018	1/01/2019
	2%	2%	0%
Trainee Terminal Operator	\$ 55,869.34	\$ 56,986.72	\$ 56,986.72
Terminal Operator	\$ 61,137.88	\$ 62,360.64	\$ 62,360.64
Terminal Operator 1	\$ 63,293.51	\$ 64,559.38	\$ 64,559.38
Terminal Operator 2	\$ 68,411.53	\$ 69,779.76	\$ 69,779.76
Terminal Operator 3 / Terminal Locomotive Assistant	\$ 73,192.38	\$ 74,656.23	\$ 74,656.23
Terminal Operator 4 / Terminal Locomotive Driver	\$ 77,727.98	\$ 79,282.54	\$ 79,282.54
Terminal Operator 4 (a)	\$ 81,582.49	\$ 83,214.14	\$ 83,214.14
Terminal Operator 5 / Remote Control Operator	\$ 83,151.20	\$ 84,814.22	\$ 84,814.22
Terminal Operator 6	\$ 86,138.67	\$ 87,861.45	\$ 87,861.45
Terminal Operator 7	\$ 94,164.82	\$ 96,048.12	\$ 96,048.12
Terminal Operator 8	\$100,443.58	\$102,452.45	\$102,452.45

16.2 The rates in the above table will increase in the first full pay period after the nominated date.

16.3 Composition of Total Remuneration

Total remuneration is made up of Base Remuneration (where applicable) plus Aggregate Allowances (where applicable), as detailed below.

16.3.1 Base Remuneration

Base Remuneration for each classification level is detailed in the table provided at clause 16.1 of this agreement.

16.3.2 Aggregate Penalties

16.3.2.1 Aggregate penalties are provided to compensate employees for:

- working shiftwork and weekends;
- annual leave loading

16.3.2.2 Aggregate penalties are calculated for a whole forecast Master Roster. Employees rotate through lines on a Master Roster without altering the APM. Where an employee works under a Master Roster that contains only one line, APM is calculated on the individuals Master Roster.

16.3.2.3 Aggregate penalties are determined by calculating an Aggregate Penalty Multiplier (APM) from the available shift and rostering information, ie. the time worked on weekends and/or night/afternoon shifts.

16.3.2.4 Application of APM

- 1) APM will be calculated on the basis of all the planned working shown on the roster, in accordance with the provisions contained within sub-clause 16.3.2.5 below.
- 2) The resultant APM factor will be applied to the Base Remuneration for each employee resulting in an annual quantum of APM. The resultant quantum of APM will be paid in equal instalments each pay period. APM is not applied to payments for overtime.
- 3) At each change of roster(s) the APM will be reworked to reflect the hours worked.

16.3.2.5 Calculating APM

The following formula is used to calculate the applicable APM based on the roster:

Data required to Calculate an Aggregate Penalty Multiplier			
Base Data ↓	Column A Actual number of hours in roster cycle ↓	Shift Multipliers ↓	Column B Hour Equivalents ↓
Day Shift Hours (See Note 1)	<i>Insert No. of Hours</i>	1.00	<i>Multiply No. of Hours by Shift Multiplier</i>
Afternoon/Night Shift Hours (See Note 2)	<i>Insert No. of Hours</i>	1.18	<i>Multiply No. of Hours by Shift Multiplier</i>
Saturday Shift Hours	<i>Insert No. of Hours</i>	1.50	<i>Multiply No. of Hours by Shift Multiplier</i>
Sunday Shift Hours	<i>Insert No. of Hours</i>	2.00	<i>Multiply No. of Hours by Shift Multiplier</i>
Sub Totals			

Note 1: Day shift hours fall within the span 0600 hours to 1800 hours.

Note 2: Afternoon and Night Shifts fall within the span 1800 hours to 0600 hours.

To calculate the APM use the following:

Part A

Step 1 Take the total in Column A away from the total in Column B.

Step 2 Divide the number calculated in Step 1 by the total in Column A.

Step 3 Multiply the number calculated in Step 2 by 0.9.

Part B

Step 4 For annual leave loading, add 0.019 for a shiftworker or 0.013 for a dayworker.

16.3.2.6 Where an APM is calculated and applied across a whole roster, based on the planned or forecast working, and the planned or forecast working on the roster changes to the extent that the calculated APM is no longer relevant, a revised APM will be calculated and applied based on the revised work plan or roster arrangements.

16.3.3 Aggregate Allowance

16.3.3.1 The Aggregate Allowance is intended to cover all allowances applicable to roles in the Operations stream, unless specifically provided for elsewhere in this agreement.

16.3.3.2 An aggregate allowance of 2.75% of \$62,574.58 (\$1,720.80) will apply per annum to classifications in the Terminal Operators Stream, which will be adjusted by the percentage increases applicable to the pay rates in this agreement.

17 PAYMENT OF WAGES

17.1 Wage/salary payments will be made by Electronic Funds Transfer (EFT) on a fortnightly basis in arrears.

17.2 Where standalone payments are due, these will be made by Electronic Funds Transfer (EFT) on a fortnightly basis in arrears. Overtime incurred in the circumstances outlined in this agreement will be paid in the following pay period.

17.3 Fortnightly payments are based on averaging the annual ordinary hours on a fortnightly basis and making payment of one twenty-sixth of annual ordinary time pay each fortnight (notionally seventy-six (76) hours per fortnight), excluding overtime.

17.4 Where employment is terminated, the final payout for hours worked will be calculated on the basis of reconciling the completed hours worked with the notional hours paid. The employer has the right to deduct any overpayment of monies from the employee's final payment, with the consent of the employee.

17.5 The employer will ensure that employee's pay dockets will be provided in accordance with the Act.

18 SUPERANNUATION AND SALARY SACRIFICE

- 18.1 The employer will make superannuation contributions on the employee's behalf, as provided by the *Superannuation Guarantee (Administration) Act 1992* (as amended from time to time), into a complying superannuation fund of the employee's choice.
- 18.2 Where an employee does not select a fund, the contributions will be made to Australian Super.
- 18.3 Salary sacrifice is available for employee contributions into a superannuation fund of their choice (subject to the rules of the fund to which the contribution is to be made and relevant legislation) and also for salary continuance insurance.

PART 4 – WORKING ARRANGEMENTS

19 HOURS OF WORK

19.1 Ordinary Hours

The ordinary hours of work, for a full-time employee, are nineteen-hundred and seventy-six (1976) hours per annum. This is equivalent of fifty-two (52) weeks at thirty-eight (38) ordinary hours per week. The annual ordinary hours are made up as follows:

- 19.1.1 Nineteen-hundred and seventy-six (1976) hours, which includes eighty-three-point-six (83.6) hours for eleven (11) public holidays and one-hundred and ninety (190) hours of annual leave for a shiftworker; or
 - 19.1.2 Nineteen-hundred and seventy-six (1976) hours, which includes seventy-six (76) hours for a minimum of ten (10) public holidays and one-hundred and fifty-two (152) hours of annual leave for a dayworker.
- 19.2 While public holiday hours are included in the total hours outlined above, where an employee is rostered to work on a public holiday they are required to attend for work and undertake activities as rostered, subject to provisions of the Act.
 - 19.3 In addition to the ordinary hours specified above, employees may be required to work reasonable additional hours (with the exception of working on rostered days off) for payment of overtime penalty rates.
 - 19.4 An employee may decline to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
 - 19.4.1 Any risk to employee health and safety that might reasonably be expected to arise if the employee worked the additional hours;
 - 19.4.2 The employee's personal circumstances, (including any family responsibilities);
 - 19.4.3 The operational requirements of the employer in relation to which the employee is required or requested to work the additional hours;
 - 19.4.4 Any notice given by the employer of the requirement or request that the employee work the overtime;
 - 19.4.5 Any notice given by the employee of their inability to work the overtime;
 - 19.4.6 Whether any additional hours are on a public holiday;
 - 19.4.7 The employee's hours of work over the four (4) weeks (where a four (4) week duty cycle are applicable) ending immediately before the employee is required or requested to work the additional hours; and
 - 19.4.8 Any other relevant matter.

19.5 Management of Annual Ordinary Hours

- 19.5.1 Rosters and roster cycles will be used to spread and manage the Annual Cycle Hours over the Annual Hours of Work Cycle.

- 19.5.2 Over the roster cycle, ordinary hours will be allocated to average thirty-eight (38) hours per week. The employer may also develop rosters in consultation with the roster development committee (or where there is no roster development committee, consultation in accordance with clause 34) where average hours exceed thirty-eight (38) hours per week. Where this is the case, overtime payments will be made in accordance with provisions outlined in clause 19.6 below.

19.6 Overtime

- 19.6.1 Overtime is defined as:
- a) Total rostered hours worked in excess of the average of thirty-eight (38) hours per week over the roster cycle; or
 - b) Hours worked in excess of those in the ordinary rostered shift length; or
 - c) Hours worked on a RDO.
- 19.6.2 The penalty multiplier for overtime hours is one-point-five (1.5) for the first three (3) hours and then two (2) thereafter, except for overtime worked on a Sunday where the penalty multiplier is two (2) for all hours worked.

19.7 Dayworkers

- 19.7.1 Subject to 19.7.3 below, the ordinary hours of duty for a dayworker shall be thirty eight (38) hours per week, worked on any days, Monday to Friday between 0600 hours and 1800 hours.
- 19.7.2 The ordinary hours may be worked as a seven-point-six (7.6) hour day over twenty (20) days (four (4) weekly duty cycle) or eight (8) hour day over nineteen (19) days in a four (4) weekly duty cycle, where such arrangements already apply, and may be extended by mutual agreement. The employer will not unreasonably withhold agreement where an employee seeks to alter their pattern of work / hours however the employer will base such decisions on the requirements of the business and the impact upon the business of any requested change.
- 19.7.3 The ordinary hours may be worked within a one-hundred and fifty-two (152) hour, four (4) week cycle, subject to the Consultative Provisions (clause 34) in this agreement.
- 19.7.4 The maximum number of rostered hours per shift for dayworkers shall be no more than twelve (12) hours.
- 19.7.5 Overtime for dayworkers is time worked above the rostered hours which includes any time worked outside 0600 hours to 1800 hours, Monday to Friday unless roster is at employee's request.

20 GENERAL ROSTERING PROVISIONS

- 20.1 The employer will develop rosters consistent with operational requirements.
- 20.2 Rosters will take into account the employer's business and commercial requirements, employee needs and occupational health and safety requirements, including fatigue management principles.
- 20.3 Rosters may be developed to include forecast working, blank line working or both.
- 20.4 Rosters will be developed in accordance with operational and commercial needs and must take into account the following:
- a) Consultation with the employees. Employees may elect to form a rostering committee. Where formed, management will consult with the committee, as part of the consultative process. Where no committee is formed, consultation will occur in accordance with the provisions in clause 34;
 - b) Family, social and work commitments;
 - c) Fatigue obligations;
 - d) Maintenance of qualifications;
 - e) Relevant conditions of employment;

- f) Duty of care obligations;
- g) Optimal staff productivity; and
- h) Fair working for the employees.

20.5 Specific roster arrangements for terminal operators are detailed at *APPENDIX A – Rostering Guidelines*, of this agreement.

21 MEAL BREAKS / REST BREAKS

- 21.1 Shiftworking employees covered by this agreement shall have a paid meal break of thirty (30) minutes built into the working arrangements for that shift. Meal breaks shall be scheduled or taken at such times that will not unnecessarily interfere with the efficient running of the terminal business. Ordinarily, meal breaks shall be scheduled in a time frame that is ninety (90) minutes either side of the halfway point of each shift.
- 21.2 Where employees are required to work shifts in excess of ten (10) hours duration, the employee shall be entitled to an additional ten (10) minute paid rest break to be taken at a time that will not unnecessarily interfere with the efficient running of the terminal business.

22 HOME BASE AND SIGN-ON / SIGN-OFF PROVISIONS

- 22.1 Upon commencing employment, an employee shall be allocated to a home base. A home base is a geographic location, eg. a town, or a major facility (eg. a depot or terminal). At a home base a specific location may be nominated by the employer as a sign-on/sign-off point at which the employee shall normally commence and finish a shift.
- 22.2 For the purposes of this clause the home base for employees at the time of the lodgement of this agreement shall be that location, depot, terminal or office where they generally commence and finish work.
- 22.3 Sign-on and sign-off points within a home base or away from a home base may be varied by the employer following consultation with the affected employees.

22.3.1 Each sign-on / sign-off point must contain the following:

- a) Secure car parking, if required overnight;
- b) Amenities including equipped meal room and toilet;
- c) Communications;
- d) Air conditioned office to the required standard including equipped meal room and toilet.

22.3.2 Payment for excess travelling time

Where an employee is required to sign-on or sign-off outside their home base, payment for excess travelling time may apply.

Payments for excess travelling time will apply where the time taken by the employee to travel to the sign-on/sign-off point exceeds by more than fifteen (15) minutes the usual commute time from the employee's residence to the usual home base. Where this is the case, the employee will be paid the excess travelling time for the whole of the time travelling calculated in blocks of ten (10) minutes (eg, eighteen (18) minutes of time travelling will be paid at twenty (20) minutes). Payment for excess travelling time will be made at Base Remuneration.

22.3.3 Payment for use of employees own motor vehicle

Where an employee uses his/her own vehicle to travel to another sign-on/sign-off point, the employee shall be reimbursed for additional expense associated with any extra distance from the employee's usual residence to their usual home base (eg. usual commute seven (7) kilometres, commute to new sign-on/sign-off point twelve (12) kilometres – reimbursement for five (5) kilometres extra distance). In the case of a motor vehicle the cost reimbursed shall be at the rate per kilometre for their vehicle size, which is specified by the Australian Taxation Office and shall include the cost of tolls.

For other travel, ie. public transport, the additional costs which are reasonably incurred shall be reimbursed, however pre-approval is to be obtained before the use of Taxis as other travel.

- 22.3.4 Where an employee finishes work at a location that is different to the sign-on location, the employer must provide transport back to the sign-on point, unless otherwise agreed. In these circumstances, actual sign-off will be on the return to the sign-on location and shall be within the shift length.
- 22.3.5 It is an employee's responsibility to convey themselves to their designated sign-on point. However, with respect to sign-on/sign-off point outside the usual home base, in cases where, because of genuine hardship, employees are unable to transport themselves to a sign-on point, the employer will provide transport to the sign-on point at no cost to the employee. Genuine hardship may include personal commitments such as family responsibilities.
- 22.3.6 Roster officers will apply their best endeavors to minimise the impact of employees' entitlement to intervals between shifts where excess travelling time is a factor. Excess travelling time, as described in clause 22.3.2 above, shall be included in an employee's fatigue scoring.

PART 5 – LEAVE AND ENTITLEMENTS

23 ANNUAL LEAVE

- 23.1 Employees are entitled to annual leave in accordance with the Act and as set out below.
 - 23.1.1 A dayworker shall receive four (4) weeks annual leave being the equivalent to one-hundred and fifty-two (152) hours;
 - 23.1.2 Shiftworkers shall receive five (5) weeks annual leave being the equivalent to one-hundred and ninety (190) hours.
- 23.2 An employee's entitlement to annual leave accrues progressively during a year of service according to an employee's ordinary hours of work, and accumulates year to year.
- 23.3 Annual leave loading is included in the Aggregate Penalties payment.
- 23.4 Annual leave is normally rostered and taken in blocks of one (1) or more calendar weeks. Employees may request to take leave in less than one week blocks. Any such request is subject to approval by the employer.
- 23.5 For all employees, when annual leave is taken in fewer than one (1) week blocks, it will be deducted from the employee's accrual at seven-point-six (7.6) hours for each day of leave taken. Otherwise all annual leave will be deducted, from the employee's accrual of annual leave, at thirty-eight (38) hours per week.
- 23.6 Where a public holiday falls during a period of annual leave, the employer will credit the employee with an additional day of annual leave.
- 23.7 Leave should be taken in the year following its accrual. For this to happen, the employer will develop rosters, in consultation with affected employees. Employees must take leave in accordance with leave rosters.
- 23.8 Employees may, subject to approval by the employer, exchange rostered blocks of annual leave with other employees in the same position. Exchanges must not create operational constraints and must be cost neutral to the employer. Subject to these conditions, the employer will not unreasonably withhold approval.
- 23.9 Where an employee believes that special circumstances exist, they may apply to their manager to defer the taking of their annual leave for up to twelve months. Applications to defer annual leave should be made prior to the posting of the annual leave roster and approval by the employer is subject to the operational needs of the business.
- 23.10 Payment of accrued leave, including upon termination, will be made at the Total Remuneration rate.

23.11 The parties acknowledge that if, in a particular respect, the Act provides a more favourable outcome for employees than the entitlements in this clause, then the Act prevails.

23.12 Annual leave will be on a Sunday to Saturday basis.

23.13 Commutation of Leave

- 23.13.1 The parties agree that annual leave should be utilised as time off. This clause, however, recognises that some employees may require additional funds when taking annual leave to compensate for penalties, allowances and overtime that cannot be earned whilst on leave. This clause provides for employees to receive payment in lieu of unutilised accrued annual leave.
- 23.13.2 Subject to clause 23.13.3 below, an employee may request to forego part of their entitlement to annual leave in exchange for equivalent payment at the rate which would have applied had leave been taken.
- 23.13.3 The following criteria applies to the cashing out of unutilised accrued annual leave:
- a) the employer agrees in writing to a request in writing by an employee to cash out leave; and
 - b) leave is to be transferred to cash only in conjunction with the taking of annual leave at a capped amount of 25% of the leave taken; and
 - c) the employee must retain an entitlement to at least four weeks paid annual leave; and
 - d) there is a separate agreement in writing on each occasion that leave is cashed out.

24 PUBLIC HOLIDAYS

24.1 Due to the nature of the work performed in the employer's business, being a business that operates twenty-four (24) hours per day, three-hundred and sixty-five (365) days per year, employees can be required to work on public holidays in accordance with their respective roster

24.2 All employees shall be entitled to the following public holidays without loss of pay:

- 24.2.1 New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Christmas Day, Boxing Day, and
- 24.2.2 Excepting shiftworkers who shall also be entitled to, on the same basis as above, Easter Saturday; and
- 24.2.3 Any other days prescribed by the relevant State or Territory eg, Adelaide Cup Day and Labour Day in South Australia or May Day and Picnic Day in the Northern Territory. Such days however shall not include those excluded by the regulations of the Act.

24.3 Provisions for Dayworkers

24.3.1 Substitution

Where a public holiday falls on a weekend it will be recognised on the weekday, as gazetted by the relevant State/Territory government, if applicable.

24.3.2 Payment for Working on a Public Holiday

- 24.3.2.1 Where a dayworker is rostered to work on a public holiday and actually works on the public holiday, they shall receive their Base Rate plus an additional payment at the rate of 150% of their normal base hourly rate for all hours worked on the public holiday; or
- 24.3.2.2 A day off in lieu (DIL), where approved by the employer, plus an additional payment of 50% of the Employee's Base Remuneration for all hours worked on the public holiday. Any DIL not taken by 30 June each year shall be paid out at the Base Remuneration.
- 24.3.2.3 Where a Dayworker is not rostered to work on a public holiday but is required to work by the employer, all hours worked will stand alone and will be paid at normal overtime rates, as prescribed in this Agreement

24.3.3 Rostered Day Off (RDO) on a Public Holiday

Where a public holiday falls on a RDO, the Employee shall receive their normal pay.

- 24.3.4 Notwithstanding 24 above, a Day worker not rostered to work on a public holiday is able to refuse to work on a public holiday if the employer request to work is not reasonable or the refusal to work is reasonable.

24.4 Provisions for Shiftworkers

- 24.4.1 Shiftworkers have compensation included in their annual cycle of hours, ie 1976 hours for public holidays set out in 24.2:

a) Substitution

There is no substitution of public holidays for shiftworkers. The public holiday will be the actual day on which it falls. For example if Christmas Day falls on a Sunday, then Sunday will be the public holiday. This is irrespective of any substitution made for dayworkers or any changes made as a consequence of Government gazettal notices.

24.4.2 Payment for Working on a Public Holiday

- 24.4.2.1 Where a shiftworker is rostered to work on a public holiday and actually works, they shall receive their Base Remuneration plus an additional payment at the rate of 150% of their Base Rate for all hours worked on the public holiday; or

- 24.4.2.2 A day off in lieu (DIL), where approved by the employer, plus an additional payment of 50% of the Employee's Base Remuneration for all hours worked on the public holiday. Any DIL not taken by 30 June each year shall be paid out at the Base Remuneration.

24.4.3 Rostered Day Off (RDO) on a Public Holiday

Where a public holiday falls on an RDO,

- 24.4.3.1 Employees shall receive a payment of 7.6 hours; or

- 24.4.3.2 Shall be entitled to a day off in lieu (DIL) where approved by the employer. Any DIL not taken by 30 June each year shall be paid out at the Total Remuneration.

- 24.4.4 Where a public holiday falls during a period of annual leave and/or long service leave, the employer will provide the employee with an additional day of leave.

25 PERSONAL / CARER'S LEAVE

25.1 General Provisions

- 25.1.1 The paid personal/carer's leave entitlement for a permanent full-time employee is one-hundred and fourteen (114) hours per annum, which is equivalent to fifteen (15) days at seven-point-six (7.6) hours per day and shall accrue at the rate of nine-point-five (9.5) hours per month. Any untaken leave will accumulate from year to year, without limit.

- 25.1.2 Part-time employees will receive a pro-rata allocation of personal/carer's leave.

25.2 Medical Certificate

- 25.2.1 Employees are required to provide a medical certificate or statutory declaration in circumstance where it is not practicable to obtain a medical certificate when personal /carer's leave:

- 25.2.1.1 Exceeds three (3) working days; or

- 25.2.1.2 If the employer's manager doubts whether an employee's previous absences from work are due to genuine illness or injury, the employee may be required to provide medical certificates for every personal/carer's leave absence within a defined period of up to twelve (12) months.

- 25.3 Except for clauses 25.1 and 25.2 above, the operation of personal/carer's leave will be in accordance with the provisions of the Act. This includes, but is not limited to, provisions of the Act regarding:

- a) The method or manner required for taking personal/carer's leave; and
b) The provision of documentary evidence regarding personal/carer's leave.

- 25.4 All payments for personal/carer's leave will be based on the following:
- a) Total Remuneration for up to seventy-six (76) hours per annum;
 - b) Total Remuneration for continuous blocks of leave of seventy-six (76) hours or more;
 - c) Base Remuneration for hours in excess of seventy-six (76) hours per annum.
- 25.5 Each shift in respect of which personal/carer's leave has been approved will be deducted on the following basis:
- 25.5.1 For Train Crew, each shift in respect of which personal/carer's leave has been approved will be deducted from the hours of work cycle at the rate of seven-point-six (7.6) hours per shift or rostered hours, in which case the rostered hours will be deducted from the employee's personal carer's leave accrual. The employee concerned will advise his/her supervisor at the time of taking the leave as to which option shall be applied.
- 25.5.2 For all other employees, personal/carer's leave deductions will be made in accordance with the rostered hours.
- 25.6 If:
- a) an employee has taken personal leave on the basis of an illness or injury; and
 - b) it is considered necessary by the employer that the employee attend a medical examination in respect of the illness or injury prior to returning to work,
- the employee may be required to attend a medical examination in respect of the illness or injury, conducted by a medical practitioner nominated by the employer. The employer will meet the cost of examination and any travelling costs.
- 25.7 If an employee becomes ill or injured whilst on annual leave, personal/carer's leave shall be approved and the employee's leave shall be re-credited.
- 25.8 If an employee becomes ill while on long service leave, personal/carer's leave may be approved and long service leave re-credited in the following circumstances:
- a) Where the illness extends more than seven (7) calendar days; and
 - b) The employee has contacted their manager / supervisor within three (3) days of becoming sick; and
 - c) The illness is supported by a medical certificate.
- This provision only applies for illness. It does not apply to injuries sustained on long service leave.

25.9 Medical retirement

- 25.9.1 Where an employee has no reasonable prospect of returning to perform the position they are appointed to, owing to the nature of their illness or injury, the employer will examine opportunities for reclassification to an alternate position or may initiate action to terminate the employee's employment contract. The employee shall submit a claim for disability retirement to the relevant superannuation fund immediately upon becoming eligible to submit such a claim.
- 25.9.2 Where medical retirement is progressed, the employee is to utilise all of the employee's accumulated personal/carer's leave prior to a medical retirement taking effect. Personal/carer's leave does not accrue from the date the medical retirement is approved. This provision does not apply to an employee on worker's compensation as they are not entitled to take accumulated personal/carer's leave before medical retirement.

25.10 Sick Leave pending Worker's Compensation

Employees may access accumulated personal leave whilst a claim for Worker's Compensation is being considered. Where the claim is accepted, any personal leave shall be re-credited.

26 UNPAID CARER'S LEAVE

- 26.1 The entitlement to unpaid carer's leave will be in accordance with the Act.
- 26.2 An employee is entitled to a period of up to two (2) days unpaid carer's leave for each occasion when a member of the employee's immediate family, or a member of the employee's household, required care or support during such a period because of:
- A personal illness, or injury, of the member; or
 - An unexpected emergency affecting the member.
- 26.3 Unpaid carer's leave may be taken in a single unbroken period of up to two (2) days or in any separate periods as agreed between the employee and the employer.
- 26.4 Unpaid carer's leave is only available where an employee has exhausted their entitlement to paid carer's leave or has no entitlement to paid carer's leave.
- 26.5 Notice of the taking of unpaid carer's leave is expected to be given to the employer prior to the commencement of the employee's shift, but where this is not possible, as early as is reasonably practicable to do so.
- 26.6 If the care or support required is because of a personal illness, or injury, a medical certificate from a registered health practitioner will be provided by the employee where it is reasonably practicable to do so otherwise a statutory declaration will be adequate which includes a statement to the effect that the employee requires (or required) leave during the period to provide care or support to the member of their household because the member requires (or required) care or support during the period because of
- A personal illness, or injury, of the member; or
 - An unexpected emergency affecting the member.

27 LONG SERVICE LEAVE

- 27.1 Employees will be entitled to thirteen (13) weeks of paid long service leave, following a period of ten (10) years continuous employment, in accordance with applicable long service leave legislation.
- 27.2 For each year of additional service above ten (10) years, a further one-point-three (1.3) weeks of long service leave will be provided, in accordance with applicable long service leave legislation.
- 27.3 In the event of a termination for employees who have in excess of five (5) years' service but who have not yet qualified for long service leave as per clause 27.1, any pro rata long service leave accrued for such service will be paid out. If the termination is for misconduct or disciplinary reason, no payment shall be made.
- 27.4 Employees will apply for long service leave and the employer will roster long service leave on the basis of the number of calendar days to be taken. Applications to take long service leave must be made at least one (1) month prior to the expected commencement date for approval by the relevant manager. The employee will be advised at least two (2) weeks prior to the applied commencement date. Subject to mutual agreement between an employee and their manager, this period of notice may be reduced.
- The employer will not unreasonably withhold approval of long service leave. Where more than one application to take long service leave is received at a location for the same time period, consideration and approval will be treated on a "first in first served" basis, where operational difficulties do not provide for all employees to take leave at the same time.
- 27.5 The employer can roster long service leave following consultation with the employee and/or their representative a minimum of sixty (60) days prior to the commencement of the requirement to the take the leave.
- 27.6 Long service leave will be paid at the Base Rate.

27.7 Special Provisions for some former National Rail Employees

For employees who were employed by Pacific National (ACT) at 27 February, 2004, the long service leave outlined in clause 27.1 and 27.2 will be paid at the Total Remuneration rate.

28 TRAUMA LEAVE

Where an employee is directly involved in a fatal or serious accident or event defined as a "critical incident" and the employee is not themselves physically injured in the accident or event, they will be provided with a minimum of two (2) days' paid trauma leave. Additional days will be determined by a qualified medical practitioner after attending a compulsory medical or other counselling. The employee will be given a choice of approved practitioners and /or counsellors. Trauma leave will be paid at Total Remuneration.

29 COMPASSIONATE LEAVE

29.1 Employees are entitled to two (2) days compassionate leave per occasion. The rules for the taking of compassionate leave are set out in the Act and are incorporated into this agreement.

29.2 Notwithstanding the provisions of clause 29.1 above, paid leave of up to five (5) days will be available where a death involves the employee's spouse or partner or former spouse or child (which child will include a step, foster or adopted child) or parent, grandparent or grandchild of either the employee or their spouse and brothers and sister of either the employee or their spouse.

29.3 Compassionate leave shall be paid at the Total Remuneration.

30 PARENTAL LEAVE

30.1 The following parental leave is provided to employees who have at least twelve (12) months continuous service:

a) Maternity leave: generally up to fifty-two (52) weeks leave made up of six (6) weeks paid leave and forty-six (46) weeks unpaid leave;

b) Paternity leave: generally up to fifty-two (52) weeks leave made up of one (1) week paid leave and fifty-one (51) weeks unpaid leave.

30.2 An employee who resumes duty following maternity leave will be eligible for a special payment of up to two-hundred and ten (210) hours pay at Base Remuneration. This payment will be paid in fortnightly instalments of nineteen (19) hours for each full fortnight worked on resumption from maternity leave.

30.3 Employees are entitled to parental leave in accordance with the relevant provisions of the Act which, for the avoidance of doubt, includes adoption leave.

30.4 Where paid forms of leave, i.e. annual leave, long service leave, are taken in conjunction with parental leave, generally the total duration of leave will not exceed fifty-two (52) weeks.

30.5 Paid parental leave referred to in clause 30.1 shall be paid at the base rate.

31 LEAVE WITHOUT PAY

The employer may approve leave without pay subject to the needs of the business and at the discretion of the employee's manager. Periods of leave without pay shall not exceed twelve (12) months.

32 LAW COURT ATTENDANCE

32.1 Jury Service

32.1.1 An employee who attends court for jury service will be paid at the employee's total remuneration for all time lost due to jury service up to a maximum of ten (10) working days.

32.1.2 An employee is not to claim the fee paid by the court for jury service and must, on return to work, submit a law court certificate of attendance and an application form for reimbursement of wages paid to employees to allow the employer to claim reimbursement of wages from the applicable department.

32.1.3 An employee will not be paid by the employer when the employee attends jury service in their own time, eg annual leave, long service leave, non-working day. However, where this occurs the employee may receive fees as prescribed and paid by the court.

32.2 Other Court Attendance

- 32.2.1 An employee who attends court as a witness for the company should be rostered to attend in working time and is to be paid at the employee's total remuneration. The employee is also to be reimbursed any reasonable expenses associated with attending court.
- 32.2.2 Attendance at a court by an employee, for reasons other than jury services or as a witness for the company, should be supported by a law court certificate of attendance and will be treated as leave without pay.

33 DEFENCE FORCE RESERVES AND EMERGENCY SERVICES

- 33.1 An employee shall be provided with unpaid leave for training with the Defence Force Reserves in accordance with the *Defence Reserve Service (Protection) Act 2001* (Cth).
- 33.2 An employee who is a voluntary member of a civil emergency group eg State Emergency Service or the Bush Fire Service, may be granted paid leave at the Base Rate to attend an emergency call out subject to
 - a) the operational requirements of the employer; and
 - b) the employer receiving and approving a request from the organisation involved.

PART 6 – INTRODUCTION OF CHANGE, CONSULTATION AND DISPUTE RESOLUTION

34 CONSULTATION AND CHANGE

34.1 Consultation

- 34.1.1 The parties are committed to pursue all opportunities to adopt the world's best practices through modern technology and continuous improvement to all aspects of the employer's operations.
- 34.1.2 Levels of manning, equipment and methods of operation may be varied from time to time by the employer to reflect the need for safe work practices, improved technology, and new types of machinery or systems, customer service needs or for any other reason.
- 34.1.3 When the employer has made a definite decision that it intends to proceed with a Major Workplace Change, it shall issue a notice, in writing, advising:
 - a) The affected employees, their representatives and the Union;
 - b) The nature of the change;
 - c) The reason for it;
 - d) The timing of it; and
 - e) Any other relevant information.
- 34.1.4 The employer shall invite the affected employees, their representatives and the Union, to express their views and concerns about the change. The employer shall enable active participation in the consultative process by granting employees reasonable release from duties and payment to attend meetings and access to entitlements as provided for in clause 39 of this agreement.
- 34.1.5 The employer shall genuinely consult and consider any views or advice from the employees, their representatives and the Union in relation to the proposed change and provide written reasons in reply to concerns raised in writing by employees and or employee representatives.

- 34.1.6 This consultative process must be completed within a period of fourteen (14) days from the date of the notice issued by the employer as set out in clause 34.1.3 above, subject to the provisions of 34.1.4 being complied with. A failure by the employer to comply with the provisions of 34.1.4 will cause the fourteen (14) day period to be suspended from the day which it occurs until rectified (and the time required for consultation will be extended accordingly).
- 34.1.7 Should the employer fail to provide the notice as required in clause 34.1.3 above the employer shall not implement any of the proposed changes until such time that the proper notice has been provided and the consultation process set out in clause 34.1.4 has been complied with.
- 34.1.8 Further, where the employer has failed to engage in any consultation whatsoever with the affected employees, their representative or the Union, may issue the employer, within seven (7) days of the non-compliance, with a notice of dispute, in writing, setting out the reasons for the dispute in the form set out in *APPENDIX B – Notification of Dispute or Grievance*. Upon receiving such notice of dispute the employer shall not implement the change, or shall cease the change should it have been already implemented.
- 34.1.9 It is agreed between the Parties that after the above notification and consultation process (including, where relevant, a dispute resolution process required under this agreement) has satisfactorily taken place, the employer may implement change after a further fourteen (14) days.

34.2 Major Workplace Change

- 34.2.1 For the purposes of this clause and without limiting the generality thereof, “Major Workplace Change” shall mean a change that is likely to have a significant effect on employees, including but not limited to changes in the composition, operation or size of the workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.
- 34.2.2 For avoidance of doubt consultation regarding the alteration of hours of work, not likely to have a significant impact on employees, will be as stipulated at A-1.1 *Consultation*.

34.3 Right to Conciliation

Notwithstanding the above, once the notification has been provided or consultation has commenced in accordance with this clause, either party may notify the Fair Work Commission of a dispute, in accordance with clause 35, with respect to the proposed change. In such circumstances, steps 1 and 2 of clause 35.2 need not be followed.

34.4 Right to Arbitration

- 34.4.1 Either party shall have the right to have the Fair Work Commission arbitrate a dispute arising under this clause in circumstance where a party has failed to follow the notification and consultation process outlined in clause 34.1.3 and 34.1.4 above.
- 34.4.2 The employees with their representatives shall have a further right to Fair Work Commission arbitrating a dispute where the employer has introduced the change and the provisions of clause 34.1.8 have been enacted.

35 DISPUTE RESOLUTION PROCEDURE

- 35.1 This clause applies to any dispute including matters arising under the agreement and the National Employment Standards.
- 35.2 The following procedure for the avoidance or resolution of disputes will apply. The mechanism and procedures for resolving disputes will include, but not be limited to, the following:
 - Step 1:** Where the employer or employee(s) raises an issue, with the employer or the employee(s) as applicable, it must be done so in writing or via the form as set out in *APPENDIX B – Notification of Dispute or Grievance*. Discussions shall take place, between the employee(s) and their direct manager / supervisor, concerning the issue being raised.

Step 2: Where the issue is not resolved, or a way to resolve the issue is not agreed, the issue may be referred to the next level of management. The employee(s) and the manager(s) will attempt to resolve the issue.

Step 3: If the issue remains unresolved, or a way to resolve the issue is not agreed, the issue may be referred to senior management of the employer. The employer and the employee(s) will attempt to resolve the issue.

Step 4: Where, having complied with this procedure, the parties are unable to resolve matters, the dispute may be referred, by either party, to an agreed mediator to conciliate and, if necessary, to arbitrate the matter. The parties agree to participate in the mediation process in good faith and to co-operate with any determination of the mediator.

In any case where the parties are unable to agree on the mediator, the matter will be referred to the Fair Work Commission as mediator at this step and if necessary to arbitrate the matter.

35.3 Where a matter is to be arbitrated in accordance with Step 4 above, the arbitrator, in the conduct of the arbitration, may exercise such powers as are agreed between the parties.

35.4 The employer will bear any cost for the services of the mediator, unless the mediator determines otherwise, based on submissions made by the parties, however each party will meet their own costs associated with any paid representation.

35.5 At any step in the dispute resolution process a party may be represented by a representative of their choice.

35.6 Where the parties are endeavouring to resolve the issue in accordance with this procedure the provision of services to customers will be maintained and the status quo that prevailed immediately prior to the change that led to the dispute shall be maintained. No action taken by either party to maintain services while this procedure is being complied with will be deemed to prejudice the position of the parties in respect of the dispute.

35.7 At each stage of the dispute resolution process agreed timeframes will be determined that are suitable to the circumstances of the matter in dispute and;

a) if the matter remains unresolved; or

b) an extension of timeframes has not been agreed;

the dispute will be escalated to the next step in the process.

35.8 In this clause “party” means the employer or the employee(s) engaged in the dispute.

PART 7 – GENERAL PROVISIONS

36 UNIFORMS

36.1 The employer will provide employees with uniforms, and where required, protective clothing or equipment.

36.2 The employer will replace uniforms, protective clothing and equipment on a “fair wear and tear” basis.

36.3 If the employer intends to make significant changes to uniforms and/or protective clothing and equipment issued under this clause, it will undertake consultation in accordance with the provisions outlined in clause 34 of this agreement.

37 HEALTH AND SAFETY

37.1 The parties to this agreement share an ongoing commitment to ensure and to promote the health, safety and welfare of all employees via the formation of occupational health and safety committees, and nothing in this agreement shall be designed or applied in ways that reduce or diminish this objective.

37.2 The employer allows any form of legislative consultation concerning health and safety to occur. In addition, the employer provides a consultation structure through site OHS committees from which information is communicated to and from the business division.

- 37.3 The aim of the OHS committee is to improve safety, health and environment at work by assisting with the development and implementation of risk management systems and processes, through direct employee/classification based representation on the committee.
- 37.4 The employer must take all practical and reasonable measures to ensure the health, safety and welfare of all employees, as well as ensuring a safe and healthy work environment. The employer will also monitor and seek to improve technology, systems and processes to ensure that both its statutory obligations and the objectives of this agreement are met.
- 37.5 Employees must ensure that they perform their jobs safely with a duty of care to themselves and to other employees.

Employees must attend for duty fit and able to safely perform their duties. Employees must comply with the employer's policy and procedures, including those related to drugs and alcohol. Employees must also bring to the notice of their supervisor or manager, any situation where they genuinely believe a risk of injury or damage exists.

38 MEDICAL ASSESSMENTS

- 38.1 Where, through the operation of the National Standard for Health Assessment of Rail Safety Workers ("National Standard") an employee is required to undertake a Health Assessment, the employer will pay cost of the medical assessment up to the "Determination", including the medical assessment itself, a stress ECG, if required, and/or other referred test(s).
- 38.2 The Determination occurs when a qualified health professional, in satisfaction of the National Standard, has determined that the employee is either:
- a) Fit for Duty;
 - b) Fit for Duty subject to Review;
 - c) Fit for Duty subject to Job Modification;
 - d) Temporarily Unfit for Duty Subject to Review; or
 - e) Permanently Unfit for Duty.
- 38.3 If further tests are required following the Determination, the employer will only be liable to cover the costs of such tests where it is identified that there was no basis for this referral i.e., there is no apparent underlying condition that should have prompted such referral.
- 38.4 In order to ensure privacy is maintained in relation to the medical files, where an employee seeks to claim such costs in these circumstances, the Chief Medical Officer or suitably qualified nominee will review the case file and make a determination as to whether the referral was justified. The decision of the Chief Medical Officer in such matters will be final.
- 38.5 Where it is determined that the referral was not justified, the employer will:
- a) Reimburse the employee for the medical costs incurred as a result of the referral; and
 - b) Re-credit any sick leave that has been used as a result of being unable to perform their duties as a result of the referral.
- 38.6 The above provisions do not exclude any obligations arising under the applicable Worker's Compensation legislation.
- 38.7 Payment for Pathology Blood Testing**
- 38.7.1 Where an employee is required to participate in a pathology blood test prior to their medical assessment, this may occur during normal rostered hours or in their own time.
- 38.7.2 If the blood test is to take place during rostered hours, the employee shall be given sufficient notice to enable them to fast before the commencement of their shift. Following conduct of the test the employee will be allowed a twenty (20) minute break on return to work before resuming normal employment. There will not be an entitlement to any additional payment and the hours/time taken to participate in the test shall be included within the rostered shift limit.
- 38.7.3 Where an employee is required to take the blood test outside of their normal rostered time, the employee shall be entitled to a \$65 allowance and have two hours credited to their Duty Cycle Hours.



38.8 Employees who are required to attend medical assessments shall be advised at least eight (8) weeks' in advance of the date of their medical assessment. Employees shall also be advised at the time they must have their blood test done no more than four weeks prior to the medical assessment. If this notice is not given, the employee shall be paid an additional allowance of \$65.

39 REPRESENTATIVES

- 39.1 The employer recognises workplace delegates who are authorised by the Union and will permit such delegates to perform their role without discrimination. This clause is subject to the delegates concerned continuing to act in accordance with their contract of employment and the terms and conditions of this agreement.
- 39.2 It is further recognised that workplace delegates represent union members at the workplace and will be allowed reasonable time to attend to any work related matters, without limitation, on behalf of union members but must advise their supervisor prior to attending to any such matters.
- 39.3 The employer will allow workplace delegates reasonable access to telephone, facsimile, photocopying and email services, where available and provided, for the purpose of carrying out their role. The use of resources by a workplace delegates will be subject to the delegate complying with the prevailing company policy provisions (which shall not impose unreasonable restriction on the operation of this clause) and the specific directions of the site manager.
- 39.4 Workplace Delegates will be entitled to reasonable unpaid time off to attend union meetings, congresses and conferences, subject to operational constraints. Workplace delegates seeking such leave are required to give fourteen (14) days' notice and the employer will not unreasonably refuse to approve such leave.
- 39.5 The employer will provide a lockable notice case to be used by workplace delegates for posting formal Union notices signed off by the delegates and or Union official. All material posted must be authorised by the relevant Union.
- 39.6 Special paid leave, at base ordinary hours, will be granted to employees of the employer who are elected through the Australian Electoral Commission as delegates of their Union to attend their Union's National Council, National Executive, Branch Council, Branch Executive and Divisional Committee meetings or their equivalent.
- 39.7 To be eligible for special paid leave, the employee:
- a) is required to apply for leave at least four (4) weeks prior to the meeting;
 - b) is required to provide documentary evidence, signed by the appropriate authorized Officer of the Union, that they are an elected delegate of the Union and are required by the Union to attend the meeting. This documentation must also include the duration of the meeting.

40 WORKPLACE RELATIONS TRAINING

- 40.1 Workplace relations training is specifically targeted at maintaining harmonious workplace relations between the employer and its employees.
- 40.2 Unions will identify training course content and ensure that all training is delivered by appropriately qualified trainers. Unions will fund all cost associated with the development and delivery of workplace relations training programmes.
- 40.3 The employer will allow a maximum of one-hundred and ninety (190) hours leave in total, at the ordinary rate, per year for such training.

41 DISCIPLINARY PROCEDURE

- 41.1 Disciplinary measures are implemented within the context of an overall performance management approach. Employees will at all times be accorded procedural fairness and if the employee so chooses, a representative which may include a union.
- 41.2 Before implementing disciplinary measures, the employer will;
- 41.2.1 Gather and analyse any material relevant to the performance issue subject to the disciplinary measures and give the employee a copy;

- 41.2.2 Advise the employee of the allegation(s) of inappropriate performance or behavior in writing; and
- 41.2.3 Provide the employee with an opportunity to respond to any allegation(s).
- 41.3 During the investigation described above, the employer may stand the employee down, with pay, during part or all of the investigation.
- 41.4 In implementing disciplinary action, if any, the employer may:
 - 41.4.1 Issue a verbal or written caution, warning or reprimand; or
 - 41.4.2 Impose a temporary reduction in position or classification level and/or pay (for a period of up to twelve (12) months) which may include a written caution or warning. When this option is implemented, the employee will be required to undertake work activities in accordance with the classification level to which they have been regressed; or
 - 41.4.3 Suspend an employee from duty, which may include a written warning or caution, with or without pay for a maximum period of four (4) weeks; or
 - 41.4.4 Dismiss an employee.
- 41.5 In extenuating circumstances the employer will compensate an employee for rostered shifts lost, if found not at fault and disadvantaged as a result of the disciplinary process. To avoid doubt this payment will be restricted to the period of the stand down, and expenses will not be included.
- 41.6 With the exception of a termination, an employee who has a grievance in relation to the application of this clause shall follow the *Dispute Resolution Procedure* outlined in clause 35 of this agreement.

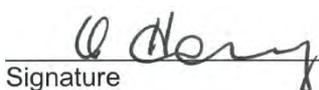
42 INTERNAL TRANSFER OF WORK

- 42.1 The Parties acknowledge that a “transfer of work” as described in the Act is not dealt with under this clause.
- 42.2 The Parties acknowledge that the employer may, from time to time, reorganise and restructure its business units.
- 42.3 If an employee is, or group of employees are, permanently transferred to another business unit (including a unit that is created after the commencement of this agreement) at the sole instigation of the employer following a reorganisation or restructure of business units, the terms and conditions of the employee shall be governed by the agreement which is applicable to that business unit subject to the following:
 - 42.3.1 If the employee’s classification or level does not exist in the proposed agreement, then the employee(s) will transfer to a similar classification with the agreement and salary maintenance shall apply;
 - 42.3.2 Employees shall retain their superannuation (where possible), long service leave and picnic days, but only where such entitlements are more beneficial to the employee(s).
- 42.4 If no agreement covers the new business unit, then this agreement will prevail (subject to law) until such time as an agreement for the new business unit has been approved by the Fair Work Commission.



PART 8 – SIGNATORIES

Signed for and on behalf of Genesee & Wyoming Australia Pty Ltd (GWA):

Representative: Vanessa Hoey Director Human Resources
Name Position (Authority to Sign)
 8/2/17
Signature Date

Address: Level 3, 33 Richmond Road KESWICK SA 5035

In the presence of: Amy Rodford Human Resources Advisor
Name Position
 8.02.2017
Signature Date

Signed for and on behalf of the employees by a representative of the employees:

Representative: Darren Brett Phillips Branch Secretary, Australian Rail, Tram and
Name Position (Authority to Sign) Bus Industry Union (SA/NT Branch) as duly
 13-02-2017
Signature Date appointed bargaining representative for the
employees

Address: 63 Ledger Road BEVERLEY SA 5009

In the presence of: Amy Rodford Human Resources Advisor
Name Position
 13.02.2017
Signature Date

APPENDIX A – ROSTERING GUIDELINES

A-1 ROSTERS

A-1.1 Consultation

- A-1.1.1 Employees may elect to form a rostering committee. Where formed, the employer will consult with the committee as part of the consultative process. Where no rostering committee is formed, consultation will occur in accordance with the provisions outlined in *Consultation and Change* clause 34.
- A-1.1.2 The employer, in consultation with the local rostering committee (where formed), will develop and modify rosters consistent with operational requirements.

A-1.2 Roster Development

- A-1.2.1 The Master Roster shall be exhibited primarily for the purpose of indicating all rostered days off (RDOs) and all known work. Additional RDOs may be inserted into the Master Roster.
- A-1.2.2 Where a change to a Master Roster is proposed, consultation will occur in accordance with the provisions outlined in *Consultation and Change* clause 34. This will commence at least twenty-eight (28) days prior to the intended implementation date of the new roster.
- A-1.2.3 Following consultation, the final Master Roster is to be posted at least fourteen (14) days in advance of its implementation, or unless otherwise agreed by both parties. At this time, employees will be notified of which line in the roster they will commence.
- A-1.2.4 The Master Roster will include sign-on and sign-off times.
- A-1.2.5 Changes to a Master Roster will be made mindful of balancing the business demands and the needs of employees. The number of changes to Master Rosters, where such a change impacts on a RDO, shall not exceed four (4) per annum, unless by agreement at each affected worksite. Where a variation to the Master Roster is proposed which does not impact on an RDO, but is only;
 - a) A variation to existing rostered working; or
 - b) The placement of additional RDOs;then such change will not constitute one (1) of the four (4) Master Roster changes.
- A-1.2.6 There may be more than one (1) roster developed at a location for a similar or the same positions.

A-2 SHIFT LENGTHS

- A-2.1 The maximum rostered shift length shall be twelve (12) hours. The maximum rostered shift length when conducting Terminal Locomotive DOO Shunt shifts will be nine (9) hours.
- A-2.2 The rostering and management of twelve (12) hour shifts is to be limited to no more than four (4) consecutive twelve (12) hour shifts in any seven (7) day period. Extra shifts (eg overtime/training) can occur within this seven (7) day period based on fatigue management policy/standard.
- A-2.3 The management of maximum shifts and shift times will be driven by the fatigue management policy/standard for the employer. This will include master rosters working rosters, overtime shifts and lift-up and lay-back where applicable or already in place.
- A-2.4 The development of the Master Roster must ensure that no employee will be rostered to work more than seven (7) consecutive shifts without a day off, in exception with the below A-2.4.1;

A-2.4.1 Any overtime shift in excess of A-2.4 is subject to fatigue management and consultation and agreement with the employee.

A-3 INTERVAL BETWEEN SHIFTS

- A-3.1 The minimum interval between shifts shall be eleven (11) hours off duty.
- A-3.2 When changing from night shift pattern to another shift pattern, there shall be an interval of thirty-three (33) hours off duty.
- A-3.3 When changing from any other shift pattern there shall be a minimum twenty-four (24) hours off duty. Subject to consultation and agreement with the local roster committee or affected employees this may be adjusted subject to fatigue management indicators and statutory requirements.
- A-3.4 Shift cycles will be designed to ensure the maximum number of similar shifts, eg. afternoon shifts, before a change to a different shift pattern, eg. night shift, is implemented.

A-4 WORKING ROSTER CHANGES

- A-4.1 Where the Working Roster is developed, a period of seven (7) days' notice of the introduction of such rosters shall occur.
- A-4.2 Where a Working Roster is adjusted such that an employee is required to change from one shift to another, a period of twenty-four (24) hours' notice will apply, unless an RDO is affected where seven (7) days' notice will apply, unless the employee agrees to a shorter period or it is a mutual shift exchange. The twenty-four (24) hour notice provision will only be used to cover circumstances such as, absenteeism or exceptional operational requirements, and the consultation requirements will not apply.
- A-4.3 Subject to relevant OH&S, fatigue management and operational issues, employees may mutually exchange shifts, with the approval of the relevant manager or rostering staff. The employer will not unreasonably withhold approval where such requests are cost neutral.

A-5 MAXIMUM HOURS OF DUTY – EMERGENCIES, MAJOR EQUIPMENT FAILURE

Employees who are unable to complete their rostered shift because of an emergency or major equipment failure, must be relieved from duty and signed off after a maximum period of sixteen (16) hours. In these circumstances, an 'emergency' means a major equipment failure, operational emergency or other emergency due to fire, flood, storm, earthquake, explosion, accident, derailment, epidemic or warlike action. The working of extended hours in these circumstances is subject to the employee's indication of their fitness to continue.

A-6 LIFT-UP AND LAY-BACK

- A-6.1 The intention of this provision is to provide flexibility where a business requirement exists for lift-up and/or lay-back offers. The following operational characteristics would determine the needs for lift-up/ lay-back provisions:
 - a) Locations with less than twenty-four (24) hour coverage;
 - b) Irregular or unreliable train running;
 - c) Where a Terminal Operator is required to travel on a locomotive as the second person, and then only to keep the commencement time for the shift compatible with that of the locomotive driver.
- A-6.2 Lift-up and lay-back will apply to all "Express" services.
- A-6.3 Where implemented, Terminal Operators may be lifted up by two (2) hours or laid back by three (3) hours from the rostered commencement time of their shift.
- A-6.4 During the consultation process, specific consideration will be given to any issues of "hardship" raised by employees at the location.
- A-6.5 The employer will make no more than one (1) alteration to the confirmed sign-on time under lift-up and lay-back provisions.

A-6.6 Where applicable employees may be contacted for lift-up and lay-back purposes. The employer will contact employees directly for lift-up and lay-back purposes.

A-7 ROSTER SUPERVISION

A-7.1 In situations where a major derailment, washaway or other unplanned circumstance causes track closure, all rosters affected may be suspended until normal operations can resume. Roster suspension may apply up to seven (7) days beyond which an interim roster will apply until normal operations resume.

A-7.2 The suspension of a roster will not impact on the placement of RDOs. Where RDOs are worked the overtime provisions for work on an RDO will apply.



APPENDIX B – NOTIFICATION OF DISPUTE OR GRIEVANCE

To: _____ Date: _____
Insert name of manager to whom notice is given

I hereby give notice that I wish to invoke the dispute settlement process in clause 35 of the *Genesee & Wyoming Australia Pty Ltd (SA/NT) Terminal Operations Enterprise Agreement 2017*.

The decision I wish to dispute is:

The person who made the decision is: _____

The date the decision was made is *(if known)*: _____

The reasons I wish to dispute the decision are:

Your name: _____ Position: _____
Please print clearly

Signed: _____ Telephone: _____

Work Location: _____

END OF AGREEMENT