



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Rail Commissioner
(AG2018/542)

RAIL COMMISSIONER TRAM OPERATIONS ENTERPRISE AGREEMENT 2018

Passenger vehicle transport (non rail) industry

DEPUTY PRESIDENT MASSON

MELBOURNE, 6 JUNE 2018

Application for approval of the Rail Commissioner Tram Operations Enterprise Agreement 2018.

[1] An application has been made for approval of an enterprise agreement known as the *Rail Commissioner Tram Operations Enterprise Agreement 2018* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Rail Commissioner. The Agreement is a single enterprise agreement.

[2] The Applicant has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement.

[3] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

[4] 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.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 13 June 2018. The nominal expiry date of the Agreement is 30 June 2020.



DEPUTY PRESIDENT

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Annexure A



Government of South Australia
Department of Planning,
Transport and Infrastructure

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**Undertaking – Rail Commissioner Tram Operations Enterprise Agreement
2018**

Dear Deputy President Masson,

The Rail Commissioner undertakes the following in regards to the *Rail Commissioner Tram Operations Enterprise Agreement 2018*:

1. Clause 17 of the Enterprise Agreement will operate subject to the National Employment standards.
2. Clause 37.8 and 37.9 of the Enterprise Agreement will be applied in accordance with the requirements provided by clause 24.6 of the Award.
3. Clause 42.4.2 of the agreement, employees are entitled to take concurrent parental leave in accordance section 72(5) of the Act.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Julienne TePohe'.

Julienne TePohe
RAIL COMMISSIONER

30 May 2017

**RAIL COMMISSIONER
TRAM OPERATIONS ENTERPRISE AGREEMENT
2018**

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of the agreement.

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PART 1 – AGREEMENT ADMINISTRATION

1 TITLE

This Agreement will be known as the *Rail Commissioner Tram Operations Enterprise Agreement 2018*.

2 OBJECTIVE

- 2.1 The objective of this Agreement is to record the agreement reached between the Rail Commissioner and the Australian Rail Tram and Bus Industry Union (RTBU), representing employees subject to this Agreement, concerning pay, conditions and other benefits arising from their employment.
- 2.2 Employees and the RTBU recognise it is imperative for the Rail Commissioner to be able to adapt and change the manner in which it conducts business activities to meet the changing environment within which it operates.
- 2.3 In making and applying this Agreement, the Parties recognise that a number of initiatives have been, and will continue to be introduced to improve the efficiency and effectiveness of the Rail Commissioner. The Parties undertake to consult in a way that contributes positively towards work and business changes necessary to improve the effectiveness of the business.

3 AIM

- 3.1 The aim of this Agreement is to promote an efficient and safe working environment; to enhance the value of the Rail Commissioner to its stakeholders by being competitive, flexible and innovative; and to provide a workplace that promotes and facilitates productivity, efficiency and flexibility improvements.
- 3.2 Further, the Parties agree to establish a workplace which enables variety, skills, career development and job opportunities for employees by:
 - 3.2.1 Developing and maintaining a workplace which encourages and facilitates teamwork, personal and skill enhancement to achieve Rail Commissioner's and employees' objectives;
 - 3.2.2 Promoting efficient and effective delivery of services to Rail Commissioner's customers;
 - 3.2.3 Implementing change through constructive consultation to ensure a competitive, efficient and cost effective service;
 - 3.2.4 Providing employees with remuneration and benefits to reflect the competitive performance of Rail Commissioner;
 - 3.2.5 Achieving continuous improvement in the operations and service delivery of Rail Commissioner's tram operations;
 - 3.2.6 Working together to enhance and grow the business; and
 - 3.2.7 Remaining focussed on the needs of customers, recognising that customer satisfaction and increased patronage are integral to securing the future.

4 TERM OF AGREEMENT

- 4.1 This Agreement will come into operation seven days after it is approved by the Fair Work Commission until its nominal expiry date.
- 4.2 The nominal expiry date of this Agreement is 30 June 2020.
- 4.3 Negotiations for a new Agreement may commence no earlier than six months from the nominal expiry date.

5 INCIDENCE AND PARTIES BOUND

This is an Agreement between the Rail Commissioner, employees classified pursuant to this Agreement, and the RTBU.

6 RELATIONSHIP OF THIS AGREEMENT TO THE AWARD

The *Passenger Vehicle Transportation Award 2010* is the applicable Modern Award.

7 DEFINITIONS

- 7.1 **“Additional day’s wage”** means one-fifth the weekly wage applicable to the employee’s classification.
- 7.2 **“Agreement”** means this enterprise agreement, the *Rail Commissioner Tram Operations Enterprise Agreement 2018*, as approved by the Fair Work Commission.
- 7.3 **“Buddy Driver”** The role of the Buddy driver is purely for guidance and assistance of either a recently qualified driver or a driver returning to work post incident. Buddy drivers do not share safe working responsibilities; these remain with the driver in charge of the movement. The buddy would still however be expected to intervene to such an extent as is reasonably practicable if required to avoid an incident occurring.
- 7.4 **“Continuous Service”** means the period of service with Rail Commissioner (and Government Service immediately prior to commencing with Rail Commissioner) excluding periods of unpaid leave exceeding 22 days, with the exception of sick leave without pay that is supported by a medical certificate. Government Service recognised by Rail Commissioner includes any State Government of Australia, the Commonwealth Government of Australia, any Territory of the Commonwealth of Australia any local Government Authority of Australia. The definition of “service” and “continuous service” in the *Fair Work Act 2009 (Cth)* will prevail to the extent of any inconsistency with this definition.
- 7.5 **“Continuous Shift Work”** means work carried out with consecutive shifts of employees throughout the twenty four hours of each day, of at least six consecutive days without interruption, except during break downs or meal breaks or due to unavoidable cause beyond the control of the Rail Commissioner
- 7.6 **“Family or household member”** has the same meaning it has in the *Fair Work Act 2009 (Cth)*, and includes an employee’s spouse (or de facto spouse), a child, parent, grandparent, grandchild or sibling of the employee or a child, parent, grandparent, grandchild or sibling of the employee’s spouse or any other member of an employee’s household and any other person who is dependent on the employee’s care.

PART 1 – AGREEMENT ADMINISTRATION

- 7.7 “**On-call**” means that an employee has agreed to be available to perform work between the cessation of one rostered shift and before the beginning of their next normal rostered shift.
- 7.8 “**Reasonable Overtime**” without limiting the meaning of what is reasonable overtime in the *Fair Work Act 2009 (Cth)*, means, in any one fortnight period, one additional shift in excess of those rostered for ordinary hours and total of not more than an accumulation of 10 hours overtime per fortnight.
- 7.9 “**Substantive classification**” means the actual appointed classification of the employee confirmed in writing.
- 7.10 “**The Parties**” means the Parties to this Agreement in accordance with clause 5 of this Agreement.

8 NO EXTRA CLAIMS COMMITMENT

During the life of this Agreement the Parties undertake not to pursue claims except where consistent with and contemplated by this Agreement.

9 ANTI-DISCRIMINATION

- 9.1 It is the intention of the Parties to this Agreement to respect and value the diversity of the workforce, by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 9.2 Accordingly, in fulfilling their obligations under the dispute resolution procedures in this Agreement, the Parties will make every endeavour to ensure that neither the provisions of this Agreement nor their operation are directly or indirectly discriminatory in their effects.
- 9.3 Nothing in this clause is to be taken to affect:
- 9.3.1 any different treatment (or treatment having different effects) which is specifically exempted under state or federal anti-discrimination legislation;
 - 9.3.2 an employee, employer or registered organisation, pursuing matters of discrimination in any state or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission;
 - 9.3.3 any exemptions allowed under legislation.

PART 2 – TYPES OF EMPLOYMENT

10 GENERAL

10.1 Employees employed under this Agreement will be employed in one of the following categories:

- full-time employee;
- part-time employee; or
- fixed-term employee.

10.2 At the time of engagement, the Rail Commissioner will inform each employee of the terms of their engagement and, in particular, whether they are a full-time, part-time, or fixed-term employee.

10.3 The Parties acknowledge that the primary category of employment shall be full-time ongoing employment.

11 FULL-TIME EMPLOYEE

An employee not specifically engaged as being a part-time employee or fixed term employee will, for all purposes of this Agreement, be a full-time employee engaged to regularly work 38 hours per week in accordance with the provisions of this Agreement.

12 PART-TIME EMPLOYEE

12.1 The Rail Commissioner may employ part-time employees in any classification in this Agreement.

12.2 A part-time employee is an employee who:

- works less than full-time hours of 38 hours per week;
- has reasonably predictable hours of work; and
- receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

12.3 When an opportunity arises for a part-time employee to be assigned work on the master roster, the Rail Commissioner and the part-time employee will agree in writing those lines of work on the master roster the part-time employee will be required to work.

12.4 The Rail Commissioner will roster a part-time employee for not less than 7.6 hours on any shift unless participating in a job sharing arrangement that meets operational requirements.

12.5 All time worked in excess of the hours as mutually arranged will be overtime and paid for at the rates prescribed in the overtime provisions of this Agreement.

12.6 A part-time employee employed under the provisions of this clause must be paid for the ordinary hours worked at the rate of 1/38th of the total rate each week prescribed for the class of work performed.

PART 2 – TYPES OF EMPLOYMENT

13 FIXED TERM EMPLOYMENT

13.1 The Rail Commissioner may employ fixed term employees in any classification in this Agreement.

13.2 Fixed term employment may be utilised on the following bases:

13.2.1 To perform duties of temporary nature for a period of not less than one year and not exceeding two years; or

13.2.2 To perform duties in the absence of another employee or while selection processes are conducted but the term is not extended beyond the absence of the employee or completion of the selection processes to which the absence relates.

14 PROBATIONARY EMPLOYMENT

14.1 An employee will initially be engaged for a probationary period of six months for the purpose of determining the employee's suitability for employment. During this time either party may notify intention to withdraw from the contract of employment by providing one week's notice.

14.2 Employees promoted into a role other than their substantive role will be subject to a three month probation period in respect of that role. An employee withdrawing from that role will result in the employee returning to their previous substantive classification.

14.3 The period of probationary employment forms part of an employee's period of continuous service for all purposes of this Agreement.

15 TERMINATION OF EMPLOYMENT

15.1 Notice of Termination by employer for a full-time or regular part-time employee.

15.1.1 In order to terminate the employment of a full-time or regular part-time employee, the employer shall give to the employee the period of notice specified in the table below:

Period of continuous service	Period of notice
1 year or less	1 week
1 year and up to the completion of 3 years	2 weeks
3 years and up to the completion of 5 years	3 weeks
5 years and over	4 weeks

15.1.2 In addition to this notice, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service are entitled to an additional week's notice.

15.1.3 Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the employee working part of the required period of notice and by the employer making payment for the remainder of the period of notice.

15.1.4 In calculating any payment in lieu of notice, the wages an employee would have received in respect of the ordinary time they would have worked during the period of notice had their employment not been terminated, will be used.

PART 2 – TYPES OF EMPLOYMENT

15.1.5 Continuous service is defined in clause 7.4.

15.2 Notice of Termination by Employee

The notice of termination required to be given by an employee will be seven days except where the Rail Commissioner agrees to reduce or waive this requirement.

15.3 Time off during notice period

Where the employer has given notice of termination to an employee, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the employee following consultation with the employer.

16 ABSENCE FROM WORK

16.1 An employee absent from work either by arriving late or not attending during required working hours will lose their pay for the actual time of non-attendance, except when absent on paid leave under other provisions of this Agreement.

16.2 An employee who arrives late for work will, at the first opportunity, be allowed to take up their rostered shift.

17 ABANDONMENT OF EMPLOYMENT

17.1 If an employee is absent from work for a continuous period exceeding three working days without the consent of the Rail Commissioner and without notification to the Rail Commissioner, this will be prima facie evidence the employee has abandoned their employment.

17.2 If, within a period of 14 days from the employee's last attendance from work or the date of the employee's last absence in respect of which notification has been given, or consent has been granted, the employee has not established to the satisfaction of the Rail Commissioner that the employee is absent for reasonable cause; the employee will be deemed to have abandoned their employment.

17.3 The Rail Commissioner will undertake all reasonable endeavours to make contact with the employee within the 14 day period outlined at clause 17.2.

17.4 Termination of employment by abandonment in accordance with this clause will operate as from the date of the last attendance at work or the last day's absence in respect of which consent was granted, or the date of the last absence in respect of which notification was given to the Rail Commissioner, whichever is the latter.

18 DEMOTION DUE TO MISCONDUCT OR UNSATISFACTORY PERFORMANCE

18.1 Where there is serious consideration an employee is to be terminated based on a finding of:

- serious misconduct;
- continual misconduct; and/or
- continual unsatisfactory performance,

PART 2 – TYPES OF EMPLOYMENT

- the Rail Commissioner can unilaterally elect to demote that employee instead of terminating their employment.
- 18.2 The decision to demote an employee can be made for a set period of time or indefinitely.
- 18.3 Demotion includes, but is not limited to;
- 18.3.1 Demotion to a classification with lower remuneration within the Rail Commissioner; and/or
- 18.3.2 Demotion to a classification with the same remuneration but with lower status in the Rail Commissioner organisational structure.
- 18.4 An employee cannot be demoted to a transitional classification (i.e. Intermediate Tram Operator or Trainee Senior Tram Operator).
- 18.5 The act of demoting an employee does not constitute a breach of the employee's contract of employment or termination of the employee's employment, or affect the continuity of the employee's employment for any purpose.
- 18.6 Notwithstanding clause 18.5, this clause does not preclude an employee from being able to undertake an unfair dismissal application under the *Fair Work Act 2009* (Cth) or a dispute under this Agreement.

19 REDEPLOYMENT

- 19.1 An ongoing (full-time or part-time) employee who is declared excess to requirements in the Rail Commissioner's Tram Operations will be subject to Appendix 1 – Tram Operations Redeployment, Retraining and Redundancy, which forms part of this Agreement.
- 19.2 The Consultation clause at clause 46 is not intended to replace the specific provisions in Appendix 1 regarding consultation around redeployment arrangements.

20 WORKPLACE REPRESENTATIVES & TRADE UNION TRAINING

- 20.1 Upon written advice from the relevant Union Secretary/Branch Secretary that a member has been elected as a union Workplace Representative or Union Delegate, the Rail Commissioner shall recognise that employee as being accredited by the relevant Union for the purpose of representing the industrial interests of the relevant Union's members at the workplace.
- 20.2 An employee who is recognised as being accredited by the relevant Union in accordance with clause 20.1 may be granted time off with pay at ordinary rates for up to a maximum of five working days each calendar year to attend accredited trade union training courses.
- 20.3 Approval is confined to attendance at trade union training courses aimed at promoting sound industrial relations in the workplace and ensuring adherence to this Agreement and is subject to the operational requirements of the Rail Commissioner.
- 20.4 Workplace representatives or union delegates required to attend Union meetings may be granted reasonable unpaid leave of absence as per clause 44. Where such leave is required, the Union shall advise the Rail Commissioner in advance in writing the name(s) of the employee(s) and the duration of the absences.
- 20.5 The Rail Commissioner will not unreasonably withhold consent for leave under this clause. The Rail Commissioner retains the right to withdraw consent for such leave should circumstances arise that require the representative to return to their appointed position.

PART 2 – TYPES OF EMPLOYMENT

- 20.6 Leave of absence will be granted to not more than two members of any Union party to this Agreement required to attend any industrial proceedings under the provisions of the *Fair Work Act 2009 (Cth)*.
- 20.7 Union delegates may request reasonable paid time subject to operational requirements, to prepare for and attend meetings and attend to member's issues in support of the enterprise agreement and to promote industrial harmony in the workplace.
- 20.8 In the event of a grievance or the commencement of a process relating to alleged misconduct or any other similar matter, it is accepted that procedural fairness and natural justice principles must apply at all times, including the right of an employee to be represented.

PART 3 – CLASSIFICATIONS AND REMUNERATION

21 CLASSIFICATION OF EMPLOYEES

- 21.1 Upon commencing employment, an employee will be appointed to a position classified in accordance with this Agreement, will be paid according to the rate of pay applicable to the classification of that position and will remain on that classification unless reclassified or appointed to another position classified at another level.
- 21.2 Employees will be advised in writing of their classification and any subsequent changes.

22 WAGE ADJUSTMENTS

Wage adjustments will be as per Clause 23.1 and will apply from the first full pay period on or after the specified operative date.

23 CLASSIFICATIONS, WAGE RATES AND ALLOWANCES

23.1 Weekly Wage Rates (first full pay period on or after the specified operative date)

Classification		1/12/2015	1/1/2016	1/1/2017	1/1/2018	1/1/2019	1/1/2020
		Tram Industry Review 4%	2.5%	2.5%	1.5%	1.5%	1.5%
Trainee Tram Operator		\$933.52	\$956.86	\$980.78	\$995.49	\$1,010.42	\$1,025.58
Intermediate Tram Operator				\$1,115.25	\$1,131.98	\$1,148.96	\$1,166.20
Tram Operator	First year	\$1,104.18	\$1,131.78	\$1,160.08	\$1,177.48	\$1,195.14	\$1,213.07
	Thereafter				\$1,183.37	\$1,201.12	\$1,219.13
Trainee Senior Tram Operator				\$1,233.74	\$1,252.25	\$1,271.03	\$1,290.10
Senior Tram Operator	First year	\$1,239.61	\$1,269.85	\$1,301.60	\$1,321.13	\$1,340.94	\$1,361.06
	Thereafter				\$1,327.73	\$1,347.65	\$1,367.86

- 23.1.2 The 'Thereafter' increments will come into operation in the first full pay period 12 months on or after the Agreement comes into operation.
- 23.1.3 A Tram Operator that relieves as a Senior Tram Operator for a cumulative period of 1976 hours will progress to the Senior Tram Operator Thereafter increment for all future work as a Senior Tram Operator.

23.2 Trainee Tram Operator

- 23.2.1 A new entrant who is engaged either on a full-time or regular part-time basis and is training to become a Tram Operator able to undertake driving duties on all trams in the Rail Commissioner fleet; customer service; use of communication devices; operate manual switches as required in normal course of duty or during unplanned service disruptions; and other generic traffic operation duties identified by the Consultative Committee and agreed to by the Parties.

PART 3 – CLASSIFICATION AND REMUNERATION

23.2.2 After completing three months as a Trainee Tram Operator having passed all relevant training and having worked competently, the employee will be classified as an Intermediate Tram Operator.

23.3 Intermediate Tram Operator

23.3.1 An employee previously classified as a Trainee Tram Operator who has undertaken training as a Tram Operator and is assessed as competent to progress to this classification.

23.3.2 An employee who is trained to undertake driving duties within the network, but is restricted in the types of vehicles used in the Rail Commissioner fleet, use of communication devices, undertake flag person and switch changing under direction for emergencies only.

23.3.3 An employee will progress to the Tram Operator Classification after:

23.3.3(a) having completed all relevant training and deemed competent; or

23.3.3(b) nine months if the employee has not yet been deemed competent due to actions of the Rail Commissioner (i.e. through no fault of their own).

23.4 Tram Operator

23.4.1 An employee previously classified as an Intermediate Tram Operator and is assessed as competent to progress to this classification.

23.4.2 An employee is trained to undertake driving duties of all trams operated in regular revenue service in the Rail Commissioner fleet, use of communication devices, switch changing under direction, operate manual switches as required in normal course of duty or during unplanned service disruptions, and other duties identified by the Consultative Committee and agreed to by the Parties.

23.4.3 An employee may volunteer to participate in a "buddy" system with other employees to provide guidance and assistance.

23.4.4 All employees will be subject to regular competency and skills assessment.

23.5 Trainee Senior Tram Operator

An employee qualified as a Tram Operator who has been engaged on a full-time or relief basis and is training to become a Senior Tram Operator but not yet competent in the Senior Tram Operator role.

23.6 Senior Tram Operator

23.6.1 An employee responsible for facilitating an effective, safe, customer oriented tram service by delivering training and assessment to Tram Operations employees, ensuring correct tram operating skills and performances are achieved. The employee is required to investigate and take appropriate action on reports concerning service delays, employee error, safeworking incidents or mechanical failure to trams and make recommendations to enhance the provision of a customer friendly transport service. Will also undertake Tram Network Control functions when required for operational reasons.

23.6.2 An employee will be subject to regular competency and skills assessment (as agreed by the Parties).

23.7 Allowances & Reimbursements

23.7.1 Meal allowance

The meal allowance referred to in this Agreement will be:

First full pay period on or after 1/1/18	First full pay period on or after 1/1/2019	First full pay period on or after 1/1/2020
\$16.50	\$16.75	\$17.00

23.7.2 On-call Allowance

23.7.2(a) Where an employee has agreed to be placed on-call during a period when they are off work, the employee will be entitled to be paid the following allowance:

	First full pay period on or after 1/1/2018	First full pay period on or after 1/1/2019	First full pay period on or after 1/1/2020
Monday to Friday	\$12.57	\$12.75	\$12.95
Saturday	\$25.14	\$25.52	\$25.90
Sunday and Public Holidays	\$33.52	\$34.02	\$34.53

23.7.2(b) Where an employee is recalled for work, a minimum of three hours' work will apply and paid at the rate of double time if a Sunday, double time and a half the ordinary rate if a public holiday or the rate of time and one half for the first three hours and double time thereafter if any other day.

23.7.2(c) An on-call period must not exceed 24 hours.

23.7.3 First Aid Allowance

Senior Tram Operators will be paid a weekly first aid allowance starting from the first full pay period on or after the date this Agreement comes into operation:

First full pay period on or after 1/1/17	First full pay period on or after 1/1/18	First full pay period on or after 1/1/19	First full pay period on or after 1/1/20
\$15	\$15.23	\$15.46	\$15.69

23.7.4 First Aid Certification Reimbursement

23.7.4(a) Employees who possess a first aid certification at the time of approval of this Agreement will be reimbursed 100% of the cost of maintaining their first aid certification during the life of this Agreement.

PART 3 – CLASSIFICATION AND REMUNERATION

23.7.4(b) An employee is required to provide the applicable receipt for the cost of the first aid certification to obtain the reimbursement.

23.7.4(c) The requirement for employees to maintain a first aid certification, and the reimbursement provided for in this clause, will be reviewed during the life of the Agreement.

23.7.5 Drivers Licence Reimbursement

23.7.5(a) Employees will be reimbursed 100% of the cost of a class C Drivers Licence for a maximum licence period of five years.

23.7.5(b) An employee is required to provide the applicable receipt for the cost of the drivers licence to obtain the reimbursement.

23.7.5(c) Where the remaining licence period of an employee's Class C drivers licence is greater than a year, and the employee's employment concludes prior to the licence expiring, Rail Commissioner may deduct and retain from all final monies owing to the employee any reimbursed monies for the proportionate remaining period of the licence.

24 UNIFORMS AND PROTECTIVE CLOTHING, EQUIPMENT AND FOOTWEAR

24.1 An employee will be reimbursed for the purchase of a uniform and protective clothing, equipment and footwear (as applicable) where the Rail Commissioner has deemed that such items are required for work.

24.2 If a Rail Commissioner employee receives such items, reimbursement will not apply.

24.3 The applicable reimbursement for footwear is the average value of the cost of footwear that would otherwise be provided. Any footwear purchased by the employee must meet the applicable standards for Personal Protective Equipment as determined by the Rail Commissioner.

25 HIGHER DUTIES

25.1 Where an employee has been appropriately trained and is directed by the relevant manager or delegate to perform, on a temporary basis, the duties of a position or in a capacity for which a higher remuneration level may be applicable, the employee will be entitled to be paid for the performance of such duties.

25.2 An employee will perform such work as the Rail Commissioner may require from time to time. Employees who are engaged on work carrying a higher rate than their substantive classification will be paid the higher rate for such day or shift.

26 ACTING IN A LOWER CLASSIFICATION

26.2 An employee required to perform temporarily the duties of a grade for which a lower rate of payment is prescribed than that prescribed for their classified grade will be paid at their substantive classified rate.

PART 3 – CLASSIFICATION AND REMUNERATION

- 26.3 A reduction made due to the employee being demoted, as per clause 18, will not be regarded as a breach of this clause.

27 SALARY PACKAGING ARRANGEMENTS

- 27.1 This clause applies for the period an employee enters into a Salary Sacrifice Agreement (SSA). An SSA is a written, formal administrative instrument between the Rail Commissioner and the employee which enables salary packaging arrangements to be put in place.
- 27.2 Subject to this clause, the salary payable to an employee, or applicable to a position where the occupant elects to enter into an SSA, pursuant to this Agreement will be the salary payable under the SSA, notwithstanding any other provision in, or Schedule of, this Agreement.
- 27.3 Any entitlement to payment of overtime, leave loading or shift allowance will be based on the salary that would have been payable had the employee not entered into a SSA.
- 27.4 Where, on cessation of employment, the Rail Commissioner makes a payment in lieu of notice; or a payment in respect of accrued recreation or long service leave entitlements (instead of transferring leave credits to another SA public sector employer in the event the employee immediately becomes employed by that employer party), the payment thereof shall be based on the salary that would have been payable had the employee not entered into a SSA.

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28 HOURS OF WORK

28.1 Ordinary Hours

- 28.1.1 The ordinary hours of work for a full-time employee is limited to 76 hours each fortnight to be worked in not more than 10 shifts each fortnight period Sunday to Saturday.
- 28.1.2 The ordinary hours of work for a full-time employee will be made up to 7 hours 36 minutes each day.
- 28.1.3 The ordinary hours of work for a part-time employee will average less than 76 hours per fortnight to be worked in not more than 10 days per fortnight period Sunday to Saturday.
- 28.1.4 The ordinary hours of work may be worked on any day of the week including Saturdays, Sundays and public holidays.

28.2 Overtime

28.2.1 General Principles

The Rail Commissioner may require any employee to work reasonable overtime at overtime rates.

28.2.2 Overtime Penalty Rates

- 28.2.2(a) In the case of full-time employees, all time worked in excess of seven hours and 36 minutes on any shift, or in excess of 76 hours in any fortnight when 10 shifts of ordinary hours are worked will stand alone and be paid for at the rate of time and a half for the first three hours and double time thereafter. Saturday overtime will be paid at the rate of double time. Payment for overtime will be calculated upon whichever alternative gives the greater amount.
- 28.2.2(b) Where a full-time employee voluntarily undertakes to perform work in addition to their rostered work, then such work will stand alone and the employee must be paid for time worked under the rates prescribed above.
- 28.2.2(c) In the case of part-time employees, all time worked in excess of the hours as mutually arranged will be overtime and will stand alone and be paid for at the rate of time and a half for the first three hours and double time thereafter. Saturday overtime will be paid at the rate of double time.

29 ALLOCATION OF WORK

29.1 General Principles

- 29.1.1 An employee's work will be arranged so as to provide four full days off in each rostered fortnight. Where practicable, the Rail Commissioner will endeavour to roster at least two days off consecutively.

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- 29.1.2 Except by agreement between the Parties, where new services, new timetables or alteration to timetables necessitate adjustment to the regular roster, the new or revised roster will be posted so as to give 14 days' notice of such alterations.
- 29.1.3 Except by agreement between the Rail Commissioner and the RTBU, rosters in respect of special events such as Public Holiday services, Royal Show event services, and major horse racing events, the dates of which are known ahead and approved by the Rail Commissioner, will be posted at least 14 days prior.
- 29.1.4 Rosters will ordinarily be posted 14, but no less than seven days, before coming into operation and will include all route service work.
- 29.1.5 Changes to a period roster where an employee will need to commence their shift a maximum of three hours earlier or finish a maximum of three hours later will be posted at the usual place at least 48 hours in advance of the work to be performed.
- 29.1.6 Any change not referred to in clause 29.1.5, or any change to rostered work with less than 48 hours' notice must be with the consent of the employee concerned.
- 29.1.7 Any change to an employee's day off once the period roster has been posted must be with the consent of the employee concerned.
- 29.1.8 Holiday relief work will be rostered and displayed on a relevant roster unless otherwise agreed between the Parties to this Agreement.
- 29.1.9 Except for standby shifts and special events, the period roster will show the rostered start and finish times as well as the commencement time for meal breaks on all shifts. Where actual times cannot be decided, for example shifts required for special events, approximate finish times will be shown on such rosters.
- 29.1.10 Special rosters will be prepared to cater for employees expected to be absent from normal traffic work for periods exceeding six months.
- 29.1.11 The maximum number of consecutive shifts will be consulted between the relevant parties, as required.

29.2 Principles of Rostering Work

- 29.2.1 Rosters will be arranged so:
 - 29.2.1(a) that the ordinary hours of work will be not less than seven hours on any shift for a full-time employee, and not less than 7.6 hours on any shift for a part-time employee unless participating in an approved job sharing arrangement;
 - 29.2.1(b) that broken shifts have not less than 11 hours spread of work and no more than a 12 hour spread of work, and not less than two hours break between the two portions of work;
 - 29.2.1(c) that broken shifts are not rostered upon a Saturday, Sunday, or public holidays;
 - 29.2.1(d) as to avoid the hours on a combination of rostered work and voluntary overtime exceeding 12 hours' work in any day;

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- 29.2.1(e) as to allow an employee to be at home for either lunch or dinner on Christmas Day unless an employee volunteers to work a full shift;
 - 29.2.1(f) as to provide portions of work of not less than two and a half hours, except for the second portion of a part-time shift;
 - 29.2.1(g) that an employee will not be signed off by direction or by roster more than twice in any one day including paid and unpaid meal breaks.
- 29.2.2 Despite the principles contained in this clause, employees may be required to work beyond these hours due to unforeseen circumstances which are:
- 29.2.2(a) late running due to an accident;
 - 29.2.2(b) vehicle or equipment breakdown;
 - 29.2.2(c) traffic conditions;
 - 29.2.2(d) an employee giving less than two hours' notice of being late for work or not being able to attend work. The Rail Commissioner will not require an employee to work under this clause, where at least two hours' notice of the unforeseen circumstances has been given to the depot.
- 29.2.3 Where an employee is advised by the Rail Commissioner, after having commenced their shift, that their rostered shift finishing time has been extended beyond the time when public transport is available, the Rail Commissioner will provide transport for an employee to their home at the end of that shift.
- 29.2.4 Any employee who attends for work and is subsequently told that they are not required for the shift will receive payment for the shift for which they were rostered.
- 29.2.5 Where an employee's work is not rostered so as to allow a 12 hour break between shifts the employee will be entitled to be absent for 12 consecutive hours without deduction of pay except in instances where an employee:
- 29.2.5(a) ceases work after the rostered finishing time due to unforeseen circumstances under clause 29.2.2;
 - 29.2.5(b) works on a rostered day off under clause 34 – Working on Rostered Days Off;
 - 29.2.5(c) exchanges a shift under clause 29.4.1;
 - 29.2.5(d) is recalled for work under clause 23.7.2;
 - 29.2.5(e) or agrees to work beyond their rostered hours,
- then the respective intervals referred to in this agreement will be not less than 10 hours and subject to fatigue management principles.
- 29.2.6 **Straight Shifts**
- Straight shifts will, subject to the exception in clause 28.2.1, not exceed nine hours excluding unpaid meal breaks. Straight shifts will be rostered

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up to nine hours 40 minutes, excluding unpaid meal breaks, on Saturdays, Sundays and Public Holidays.

- 29.2.7 The parties acknowledge that broken shifts will continue to be worked in accordance with current provisions.
- 29.2.8 In circumstances where an employee does not report for work, another appropriate employee due to sign on may be allocated this work. That employee will be paid either the remuneration for the original rostered shift, or the remuneration for the substitute shift, whichever is the greater. Where possible the employee will be returned to their original work allocation prior to the end of their first portion of rostered work.
- 29.2.9 The roster will include the following time provisions for the tasks listed below from the Glengowrie depot:

Task	Driver
When signing on	10 minutes
Walking time to or from Stop 12 Down	2 minutes
Walking time to or from Stop 12 UP	5 minutes
Walking time to or from Tram barn when preparing or stabling	5 minutes
Tram Preparation.	15 minutes
Tram Berthing from time of arrival at depot	8 minutes
Signing off	5 minutes
Signing on at the beginning of 2nd portion of Broken shift	5 minutes
Signing off at the completion of 1st portion of Broken shift	5 minutes

- 29.2.10 New time provisions will be created for any new depot which opens during the life of this agreement.
- 29.2.11 An employee will be responsible for undertaking their own sign on and sign off procedure.

29.3 Meal Breaks

- 29.3.1 Employees will not be rostered to work for more than five hours, inclusive of sign on/off times, without a meal break (not calculated in ordinary hours) or crib break (calculated in ordinary hours), whichever meets the requirements of the Rail Commissioner's operations.
- 29.3.2 If due to unforeseen circumstances/emergency a portion of work exceeds five consecutive hours, a meal break will be provided at the earliest opportunity.
- 29.3.3 Where an unpaid meal break is allowed a minimum of 40 minutes and a maximum of 55 minutes will be allowed. The first 25 minutes of that meal break will be paid at the employee's base rate of pay, the rest of the meal break will be without pay.
- 29.3.4 Where a meal relief of at least 40 minutes is not provided, a crib break will be taken in Rail Commissioner's time and the minimum time allowed for a crib break will be 25 minutes and a maximum of 39 minutes.
- 29.3.5 Meal breaks may be rostered at other locations. In such instances a meal allowance will be paid as per clause 23.7.1

29.4 Right To Give Away Shifts (G.A.S) or Exchange Shifts

29.4.1 Right to Exchange Shifts

- 29.4.1(a) Employees may have the right to exchange shifts or days off by mutual arrangement between themselves. Employees who elect to exchange shifts must ensure that the relevant Agreement provisions are observed to the satisfaction of the Rail Commissioner.
- 29.4.1(b) Shifts may be swapped between “A” and “B” weeks of the roster in accordance with relevant Agreement provisions and the satisfaction of the Rail Commissioner.
- 29.4.1(c) The Rail Commissioner will approve the exchange of shifts having regard to fatigue management principles.

29.4.2 Right to Give Away Shifts

- 29.4.2(a) An employee will have the right to 'give away' shifts as outlined below provided that the relevant Agreement provisions are observed and the shifts are given to an employee who has the capabilities to work that shift.
- 29.4.2(b) An employee will have the right to 'give away' rostered route service work shifts to another employee.
- 29.4.2(c) Where an employee 'gives away' a day's work to another employee the employee who is relinquishing the shift will not be entitled for payment for such day or any make-up pay unless they apply for annual leave or skills and experience retention leave for the day after the shift has been 'given away'. The Rail Commissioner must approve the leave taken for this purpose unless the employee has not already taken or will not take three weeks annual leave in that financial year. Single day's annual leave will not count for the calculation of the three weeks annual leave.
- 29.4.2(d) An employee accepting the 'given away' work will receive payment for that work at their classification level plus any penalty entitlement attributed to that shift. The acceptance of 'given away' work will not constitute a part of the employee's ordinary hours and, therefore, they will not be eligible for overtime penalties unless they were already attributed to that shift.
- 29.4.2(e) Where an employee accepts 'given away' work and for any reason is not able to perform that work then they will not be entitled to receive payment for such work.
- 29.4.2(f) An employee can 'give away' (i.e. not exchange) shifts without applying for annual leave or skills and experience retention leave a maximum of 22 shifts within a year to ensure their continuous service is not impacted. This number may be smaller depending if the employee has taken any other unpaid leave in the year, other than sick leave without pay that is supported by a medical certificate.
- 29.4.2(g) A part-time employee can accept 'give away' shifts provided that a combination of their ordinary rostered hours and the accepted give away hours of work are less than the ordinary

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rostered hours of work for a full-time employee, i.e. thirty eight hours for the week.

- 29.4.2(h) The Rail Commissioner will approve an employee accepting a shift having regard to fatigue management principles.

29.5 Depot Transfer

- 29.5.1 The Rail Commissioner may require an employee to permanently or temporarily transfer to another depot with reasonable notice.
- 29.5.2 An employee who is unilaterally moved to a new depot by the Rail Commissioner will be compensated for the distance between their home depot and their temporary/new depot (based on the shortest route) at \$0.78/km. The employee will be eligible for this payment for a maximum of 10 weeks.
- 29.5.3. Employees will not receive payment for any excess travelling time to and from work that may occur as a result of the transfer.
- 29.5.4 The Rail Commissioner will provide the employee a minimum of one month's notice before the employee is transferred to a new depot.
- 29.5.5 The Rail Commissioner cannot unilaterally permanently transfer an employee to another depot more than once every 18 months (commencing from the date they are transferred).
- 29.5.6 The Rail Commissioner cannot unilaterally temporarily transfer an employee to another depot more than once every 12 months (commencing from the date they are transferred). The minimum period for a temporary transfer is one month, the maximum is six months.
- 29.5.7 Employees have the right to request a permanent or temporary transfer to another depot. The Rail Commissioner will consider each request based on operational requirements. None of the criteria between clauses 29.5.2 and 29.5.6 inclusive apply to an employee who requests to be transferred to another depot.

30 STANDBY EMPLOYEES

- 30.1 An employee who is rostered as a 'standby' may be required to perform any work for which they are trained.
- 30.2 Rostering of standby employees (if necessary) will be at the discretion of the Rail Commissioner.
- 30.3 The minimum shift for standby purpose is seven hours and 36 minutes.

31 ATTENDING OFFICE

- 31.1 An employee will be paid for time reasonably spent at ordinary rates when attending by instruction at their depot or elsewhere to:
- 31.1.1 answer complaints;
- 31.1.2 furnish reports;
- 31.1.3 supply statements and affidavits;

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- 31.1.4 submit to a medical examination;
 - 31.1.5 attend any court or coronial inquiry as a witness or at the request of Rail Commissioner; and
 - 31.1.6 undertake training.
- 31.2 Payment will not be made under clause 31.1 in cases where an employee:
- 31.2.1 is answering charges of their own misconduct and is not subsequently exonerated; or
 - 31.2.2 is tendering any explanation of failure to attend for work.
- 31.3 An employee attending by instruction any court or coronial inquiry on their day off will be paid at the appropriate overtime penalty rate for the day.
- 31.4 Where the employee, under clauses 31.1 or 31.3, attends outside their ordinary days' work and the distance travelled exceeds the distance from the employee's place of residence to their depot or usual place of employment, travelling time at ordinary rates for the excess time will also be paid.
- 31.5 This clause will not apply to any employee required to submit to a medical examination prior to resuming work after a period of absence due to illness or injury.

32 SHIFT PENALTY RATES

The following shift penalty rates apply for part-time, fixed term contract and full-time employees.

32.1 Monday to Friday

- 32.1.1 For all time at work between the hours of 5.00 pm and 9.00 am (other than public holidays and broken shifts) employees will be paid 15% more than their ordinary rate;
- 32.1.2 Subject to the exceptions specified above, any shift rostered to finish at or after 5.00 pm must be paid 15% more than ordinary rates for the whole of such shift; or
- 32.1.3 An employee who signs on or off between 2:00am and 3:59am will be paid the following percentage more than their ordinary rate:
 - 32.1.3(a) continuous shift workers – 25%; or
 - 32.1.3(b) non-continuous shift workers – 20%.

32.2 Saturdays

Time worked on Saturdays must be paid for at the rate of time and a half.

32.3 Sundays

Time worked on Sundays must be paid for at the rate of double time.

32.4 Public Holidays

If required to work on such day an employee must be paid at the rate of double time and a half for the time worked on the public holiday.

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32.5 Shifts Overlapping Days

Where a shift falls partly on a Saturday, Sunday or public holiday the shift will be regarded as being worked on the day on which the major portion falls.

32.6 Broken Shifts

Employees may be required to work broken shifts. All work performed on any day outside a spread of nine and a half consecutive hours must be paid for at the following rates:

32.6.1 between a spread of nine and a half and 10½ hours - time and a half;

32.6.2 after 10½ hours - double time.

33 MAXIMUM PENALTY RATES

33.1 Penalty and additional rates prescribed by this Agreement will not be cumulative so as to exceed the maximum of double ordinary rates excepting where overtime is worked on a broken shift the broken penalty and overtime penalty is cumulative.

33.2 Despite the provisions of clause 33.1 the rate of double time and one half applies for time worked on a public holiday.

34 WORKING ON ROSTERED DAYS OFF

34.1 Employees are expected to work on their rostered day off when required, however, an employee may refuse to work on their rostered day off if the request is unreasonable or if their refusal is reasonable as per the National Employment Standards (NES).

34.2 Where an employee works on his or her rostered day off the time worked will be paid for at the rate of:

34.2.1 double time if a Saturday or Sunday;

34.2.2 double time and a half if a public holiday, or;

34.2.3 Time and a half for the first three hours and double time thereafter if any other day.

34.3 An employee who works on their rostered day off but is absent upon any other day in the same pay period without leave or without a reason for such absence accepted by the Rail Commissioner as reasonable, will forfeit all penalty rates prescribed in this clause for working a rostered day off.

34.4 The Tram Operations Consultative Committee will monitor the amount of employees working on a rostered day off on a regular basis and make recommendations. The Rail Commissioner will consider these recommendations when requesting an employee to work on a rostered day off.

35 VOLUNTARY OVERTIME

35.1 Voluntary Overtime means that an employee has volunteered to work additional hours.

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35.2 The Parties and employees acknowledge that the following provisions are inclusive of all conditions pertaining to Voluntary Overtime for employees classified pursuant to this Agreement.

35.3 **General Principles**

35.3.1 Voluntary overtime work may include Sunday work, Charter work, Tour work and Special Events services and time worked to cover absenteeism on a daily basis.

35.3.2 Voluntary overtime will be offered to any available appropriate employee. If volunteers cannot be found to perform voluntary overtime, the Rail Commissioner may require an employee to work reasonable overtime.

35.3.3 Any combination of rostered route service work and voluntary overtime duty will not exceed 12 hours on any one day. This includes paid meal breaks and sign on/off times.

35.3.4 Where an employee performs voluntary overtime following a portion of rostered route service work and the total time will exceed the five hour limit without a meal break, the employee will be entitled to a minimum 30 minute paid break before undertaking the voluntary overtime.

35.3.5 The location of meal breaks taken during voluntary overtime, for other than route service work, will be by negotiation between the employee and the Rail Commissioner.

35.3.6 A minimum of one hour's payment will apply, at the appropriate rate, when voluntary overtime is coupled with rostered route service work.

35.4 **New Year's Eve - Payment for Working**

35.4.1 **Special Extra New Year's Eve Shifts**

An employee working a 'special' New Year's Eve shift will be paid at the rate of double time and a half for the whole shift, notwithstanding the part-day public holiday. A 'special' New Year's Eve shift is one that is operated to provide continuous service delivery between the last regular service on New Year's Eve and the first regular service on New Year's Day. The double time and a half rate is payable for those shifts which finish or commence during the hours where trams would not normally operate.

35.4.2 **Ordinary Shifts**

An employee working a shift other than a "special" New Year's Eve shift on New Year's Eve will be paid the applicable shift payment.

PART 5 – LEAVE

36 RELATIONSHIP BETWEEN THIS AGREEMENT AND THE NATIONAL EMPLOYMENT STANDARDS (NES)

- 36.1 The provisions of this Agreement relating to various forms of leave are to be read in conjunction the *Fair Work Act 2009 (Cth)*.
- 36.2 It is not the intention that any provision of this Agreement is to operate in a way that is less favourable to employees than the NES. If any provision of this clause operates in a way that is less favourable to employees than the NES, then the NES shall prevail.

37 ANNUAL LEAVE

- 37.1 An employee is entitled to four weeks paid annual leave per year, which will accrue each month at the rate of 1/13 of ordinary hours worked. Regular part-time employees will accrue an entitlement to Annual Leave on a pro-rata basis based on their ordinary hours of work.
- 37.2 Where an employee is regularly working on a seven day shift work roster (including Sundays and Public Holidays), they will be entitled to five weeks paid annual leave per year. In this case the additional annual leave will accrue at the rate of 1/52 of ordinary hours worked.
- 37.3 Where an employee with twelve months continuous service is engaged for part of the twelve monthly period as a seven day shift worker, that employee is entitled to have the period of leave prescribed in clause 37.1 increased by half a day for each month he or she is continuously engaged as a seven day shift worker to a maximum of five additional paid days leave.
- 37.4 An employee who is regularly rostered to work on Saturdays and/or Sundays and Public Holidays, but does not work on identified other days of the week, shall be entitled to five weeks annual leave for each year of service. In this case, the additional leave will accrue at the rate of 1/52 of ordinary hours worked.
- 37.5 An employee who has been absent on leave without pay for more than 22 working days (Monday to Friday) in one or more periods in any one financial year (1 July to 30 June), other than approved sick leave without pay, will have their completed months of service adjusted accordingly so as not to include the period for which they were so absent.
- 37.6 Annual leave will be taken at times agreed between the Rail Commissioner and the employee.
- 37.7 The Rail Commissioner must not unreasonably refuse a request by an employee to take paid annual leave, unless the request is unreasonable or the refusal is reasonable.
- 37.8 A day work employee with an annual leave credit of greater than eight weeks may be directed to take such leave.
- 37.9 A shift work employee with an annual leave credit of greater than 10 weeks may be directed to take such leave.
- 37.10 Annual leave is payable at an employee's Ordinary Time Rate of Pay (being the applicable ordinary rates described in this Agreement) for the number of ordinary hours the Employee would have worked during the period of annual leave. Annual leave hours paid will be deducted from the Employee's accrued entitlement.

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- 37.11 An employee who, at the time of taking a period of Annual Leave, has been undertaking higher duties immediately prior to the taking of such leave and who will be required to resume the performance of such duties on return to duty, will be paid at the higher rate for the duration of that leave.
- 37.12 Where practicable, annual leave will be taken in a weekly block from Sunday to Saturday to facilitate efficient rostering. This clause should be read in conjunction with and does not limit the operation of clauses 37.6, 37.7, 37.8 and 37.9.
- 37.13 As per clause 29.4.2(c) an employee is entitled to apply for single days annual leave once they have 'given away' a shift. The Rail Commissioner must approve annual leave taken for this purpose unless the employee has not already taken or will not take three weeks annual leave in that financial year. Single day's annual leave will not count for the calculation of the three weeks annual leave.
- 37.14 **Loading on annual leave**
- 37.14.1 During a period of annual leave an employee will receive a loading calculated on the ordinary base rate of pay as follows:
- 37.14.1(a) Day workers - employees who would have worked on day work if they had not been on leave - a loading of 17.5%;
- 37.14.1(b) Shift workers - employees who would have worked on shift work had they not been on leave - a loading of 20%;
- 37.15 Any annual leave accrued but not taken will be paid out on termination of employment in the amount that would have been payable had the employee taken that leave.

38 PERSONAL LEAVE

- 38.1 An employee is entitled to a total of 12 days paid personal leave, in accordance with this clause, if they are unable to attend work because of a personal injury or illness (Sick Leave), or because they have to care for a member of their immediate family or a member of their household (Carer's leave).
- 38.2 Personal leave will accrue each month at the rate of 7.6 hours for a full time employee. Part-time employees will accrue an entitlement to paid personal leave on a pro-rata basis based on their contracted hours of employment.
- 38.3 An employee is only entitled to personal leave if the day(s) requested for personal leave was an ordinary day that the employee would have been required to work.
- 38.4 Subject to 38.6 of this Agreement, an employee may be required to produce a medical certificate for any absence taken for personal leave. A medical certificate is not required where the circumstances would make it unreasonable for it to be produced. In this case an employee must provide a statutory declaration that sets out the reason for the absence and why they could not obtain a medical certificate. Failure to provide either a medical certificate or statutory declaration proof may result in non-payment of personal leave.
- 38.5 If an employee is unable to attend work because of injury, illness or the requirement to take carer's leave they must inform the Rail Commissioner as soon as is reasonably practicable and, in any event, prior to the commencement of the shift unless the employee is unable to comply with this requirement due to reasons beyond their control. Such advice must include:
- 38.5.1 the nature of the injury or illness (if known); or
- 38.5.2 the basis on which carers leave is required; and

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- 38.5.3 the period the employee expects to be away from work.
- 38.6 If it is not practicable for an employee to give prior notice of the absence, the employee must notify the Rail Commissioner by telephone at the first opportunity.
- 38.7 Where an employee takes personal leave on any one-day of work or part thereof the employee, provided that they have a personal credit of paid personal leave, will be entitled to payment for the day or part thereof. The hours paid will be debited from the employee's personal credit of personal leave.
- 38.8 An employee may be absent on account of personal illness or injury (other than for which Worker's compensation is payable) for periods of up to two working days without the production of a medical certificate or a certificate from a health practitioner. Where an employee is absent from duty for a period in excess of two consecutive working days, the employee will produce a medical certificate or a certificate from a health practitioner covering all days in excess of the two original days.
- 38.9 Where an employee is absent on the day before or after a day or part-day that is a public holiday, they will be required to provide the Rail Commissioner with a medical certificate or statutory declaration for that day as per clause 38.4.
- 38.10 Clause 38.8 will not limit a manager requiring an employee to produce a medical certificate or a certificate from a health practitioner for all or any absence on account of personal illness or injury. Such requirement will not unreasonably be imposed and will be subject to discussion between the employee and their manager.
- 38.11 Unused personal leave will accrue from year to year.
- 38.12 Unused personal leave will not be paid out on termination.
- 38.13 In circumstances where an employee has exhausted their paid Carer's leave entitlement, they are entitled to up to two days unpaid Carer's leave for each occasion on which they may have otherwise claimed paid carers leave. An employee may also have access to Special Leave with Pay or Special Leave Without Pay as per clause 44 respectively.

39 SICK LEAVE POOL

- 39.1 The parties agree to continue the sick leave pool, which provides that employees forgo two days of their personal leave, as defined at clause 38, per year in order to access up to 800 hours of paid leave over the course of their employment in the event that they have exhausted their entitlement to paid personal leave and require to be absent from duty for a period in excess of five consecutive days due to personal illness or injury.
- 39.2 Regular part-time employees will have access to the full 800 hours of the leave from the sick leave pool but will have the entitlement paid on a pro-rata basis.

40 COMPASSIONATE LEAVE

- 40.1 An employee is entitled to paid leave for up to two days per occasion to attend to:
- 40.1.1 the death; or
 - 40.1.2 a life threatening illness/injury of a member of their immediate family or household.

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- 40.2 An employee must advise the Rail Commissioner as soon as possible of the need to take compassionate leave.
- 40.3 Compassionate leave is non-cumulative.
- 40.4 An employee may be required to produce suitable evidence of the requirement to take and be paid for compassionate leave.
- 40.5 If the occasion of compassionate leave is for an illness or personal injury of a member of the employee's immediate family or household, the employee may take the compassionate leave for that occasion at any time whilst the injury or illness persists.

41 LONG SERVICE LEAVE & SKILLS AND EXPERIENCE RETENTION LEAVE

- 41.1 Employees are entitled to Long Service Leave, and Skills and Experience Retention Leave subject to the qualifying conditions and terms of the *Public Sector Act 2009* and the provisions of the applicable Commissioner's Determination as varied from time to time.
- 41.2 During each financial year, an eligible employee will accrue an amount of retention leave for each month of effective service completed during that financial year. From 2014-15 onwards an employee will accrue 1/3 working day per month of effective service, up to a maximum of four days per year.
- 41.3 An eligible employee may apply to take retention leave once the employee has accrued an amount of leave equivalent to one working day. Retention leave must be applied for and taken as a whole working day.
- 41.4 Between 1 July and 31 August each year an employee may elect to convert the retention leave accrued in the preceding financial year to a monetary payment.
- 41.5 To make an election to receive a payment instead of taking the leave, an employee must complete and submit the appropriate form to the relevant agency with responsibility for payroll services by 31 August following the financial year in which the entitlement accrued.
- 41.6 A retention leave entitlement accrued within a financial year must, if not converted into a monetary amount, be taken within five years of the accrual.

42 PARENTAL LEAVE

- 42.1 Employees are entitled to maternity; paternity and/or adoption leave in connection with the birth or adoption of a child.
- 42.2 This Agreement makes provision for the taking of 16 weeks or 20 weeks paid maternity or adoption leave as part of the basic entitlement to such leave as set out hereunder.
- 42.3 **Definitions**
 - 42.3.1 For the purpose of adoption leave, 'child' means a child of the employee that is or will be under 16 when placed with the employee for the purposes of adoption, other than a child or stepchild of the employee or of the spouse of the employee or a child who had previously lived continuously with the employee for a period of six months or more.
 - 42.3.2 Subject to this clause, 'spouse' includes a de facto or former spouse.

42.3.3 In relation to 42.3.1, 'spouse' includes a de facto spouse but does not include a former spouse.

42.4 Basic entitlement

42.4.1 After twelve months' continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken, and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.

42.4.2 Parental leave is to be available only to one parent at a time, in a single unbroken period, except that both parents may simultaneously take:

42.4.2(a) for maternity and paternity leave, an unbroken period of up to eight weeks at the time of the birth of the child;

42.4.2(b) for adoption leave, an unbroken period of up to eight weeks at the time of placement of the child.

42.4.3 Parental leave and other entitlements

An employee may, in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued, subject to the total amount of paid and unpaid leave not exceeding 104 calendar weeks in relation to the employee's child. For the purposes of this clause, child includes children of a multiple birth/adoption.

42.5 Variation of Parental Leave approved

Where an employee takes leave under this clause, unless otherwise agreed between the Rail Commissioner and employee, an employee may apply to the Rail Commissioner to change the period of parental leave on one occasion. Any such change is to be notified as soon as possible but no less than four weeks prior to the commencement of the changed arrangements. Nothing in this clause detracts from the basic entitlement to leave under this clause.

42.6 Right to request variation of parental leave approved

42.6.1 An employee entitled to parental leave pursuant to the provisions of this Agreement may request Rail Commissioner to allow the employee:

42.6.1(a) extend the period of simultaneous unpaid parental leave provided for in clauses 42.4.2(a) and 42.4.2(b) up to a maximum of eight weeks;

42.6.1(b) to extend the period of unpaid parental leave provided for in clause 42.4 by a further continuous period of leave not exceeding 12 months;

42.6.1(c) to return from a period of maternity or adoption leave on a part-time basis, at the employee's substantive level, until the child reaches school age, to assist the employee in reconciling work and parental responsibilities.

42.6.2 The Rail Commissioner shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the Rail Commissioner's business. Such grounds might include cost, lack of

adequate replacement staff, loss of efficiency and the impact on customer service.

42.7 Employee's request and Rail Commissioner's decision to be in writing

The employee's request and the Rail Commissioner's decision made under this clause must be recorded in writing.

42.8 Request to return to work part-time

42.8.1 Where an employee wishes to make a request under clause 42.6.1(c) such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from maternity or adoption leave, and will provide to the Rail Commissioner such information as may reasonably be required, including the proportion of time sought, and the date the relevant child will reach school age (i.e. five years of age).

42.8.2 At least 12 weeks prior to the relevant child reaching school age, the employee will advise the Rail Commissioner whether the employee will revert to employment on a full-time basis or seeks to continue to be employed on a part time basis.

42.9 Maternity leave

42.9.1 An employee must provide notice to the Rail Commissioner in advance of the expected date of commencement of maternity leave. The notice requirements are:

42.9.1(a) if the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;

42.9.1(b) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least four weeks.

42.9.2 When the employee gives such notice the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

42.9.3 An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.

42.9.4 Subject to 42.9.1 and unless agreed otherwise between Rail Commissioner and the employee, an employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.

42.9.5 Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, the Rail Commissioner may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

42.9.6 Where leave is granted under 42.9.4, during the period of leave an employee may return to work at any time, as agreed between the Rail Commissioner and the employee provided that the time does not exceed four weeks from the recommencement date desired by the employee.

42.9.7 Transfer to a safe job

- 42.9.7(a) If, in the opinion of a legally qualified medical practitioner:
- 42.9.7(a)(i) illness or risks arising out of a pregnancy; or
 - 42.9.7(a)(ii) hazards connected with the work assigned to the employee make it inadvisable for the employee to continue her present work, then
- 42.9.7(b) The Employee must, if Rail Commissioner considers that it is practicable to do so, be transferred to a safe job at the rate and on the conditions of the employee's substantive position until the commencement of maternity leave.
- 42.9.7(c) If the transfer to a safe job is not considered practicable, the employee is entitled to paid or unpaid no safe job leave, as per the *Fair Work Act 2009* (Cth).

42.10 Paid maternity Leave and Adoption Leave

42.10.1 Basic entitlement

- 42.10.1(a) An employee who has completed 12 months continuous service immediately prior to the birth of her child, is entitled to 16 weeks paid maternity leave.
- 42.10.1(b) An employee who has completed 12 months of continuous service before taking custody of an adopted child is entitled to 16 weeks paid adoption leave.
- 42.10.1(c) An employee who, at the time of commencing paid maternity or paid adoption leave, has been employed in the Rail Commissioner for not less than five years (including any periods of approved unpaid leave) will be entitled to 20 weeks paid maternity/adoption leave.

42.10.2 Conditions

The following conditions apply to an employee applying for paid maternity leave or paid adoption leave:

- 42.10.2(a) An employee will be entitled to the applicable maximum period of leave, paid at the employee's ordinary rate of pay (excluding allowances, penalties or other additional payments) from the date maternity/adoption leave commences.
- 42.10.2(b) The period of paid maternity/adoption leave is not to be extended by public holidays, rostered days off, programmed days off or any other leave falling within the period of paid leave.
- 42.10.2(c) At the time of applying for paid maternity leave or paid adoption leave, the employee may elect in writing:
- 42.10.2(c)(i) To take the paid leave in two periods split into equal portions during the first 12 months of the commencement of their paid leave; or
 - 42.10.2(c)(ii) To take the paid leave at half pay in which case, notwithstanding any other clause of

this Agreement, the employee will be entitled, during the period of paid leave, to be paid at half the ordinary rate of pay (excluding allowances, penalties or other additional payments) from the date maternity/adoption leave commences; or

42.10.2(c)(iii) A combination of 42.10.2(c)(i) and 42.10.2(c)(ii).

42.10.3 During periods of paid or unpaid maternity leave, sick leave with pay will not be granted for a normal period of absence for confinement. However, any illness arising from the incidence of the pregnancy may be covered by sick leave to the extent available, subject to the usual provisions relating to production of a medical certificate and the medical certificate indicates that the illness has arisen from the pregnancy.

42.10.4 Regular part-time employees will have the same entitlement as full-time employees, but paid on a pro-rata basis according to the average number of ordinary hours during the immediately preceding 12 months (disregarding any periods of leave).

42.11 **Paternity leave**

42.11.1 An employee will provide to Rail Commissioner at least 10 weeks prior to each proposed period of paternity leave:

42.11.1(a) a certificate from a registered medical practitioner which names their spouse, states that she is pregnant and the period of gestation or states the date on which the birth took place; and;

42.11.1(b) written notification of the dates on which he proposes to commencement and finish the period of paternity leave; and

42.11.1(c) except in relation to leave taken simultaneously with the child's mother a statutory declaration stating:

42.11.1(c)(i) they will take that period of paternity leave to become the primary caregiver of the child;

42.11.1(c)(ii) particulars of any period of maternity leave sought or taken by their spouse; and

42.11.1(c)(iii) that for the period of paternity leave they will not engage in any conduct inconsistent with his contract of employment.

42.11.2 The employee will not be in breach of 42.11.1 if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

42.12 **Adoption leave**

42.12.1 The employee will notify the Rail Commissioner at least 10 weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

PART 5 – LEAVE

- 42.12.2 Before commencing adoption leave, an employee will provide the Rail Commissioner with a statutory declaration stating:
- 41.12.2(a) the employee is seeking adoption leave to become the primary caregiver of the child;
 - 41.12.2(b) particulars of any period of adoption leave sought or taken by the employee's spouse; and
 - 41.12.2(c) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- 42.12.3 The Rail Commissioner may require an employee to provide confirmation from the appropriate government authority of the placement.
- 42.12.4 Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the Rail Commissioner immediately and the Rail Commissioner will nominate a time, not exceeding four weeks, from receipt of notification for the employee's return to work.
- 42.12.5 An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.

42.13 **Return to work after a period of parental leave**

- 42.13.1 An employee will notify of their intention to return to work after a period of parental leave at least six weeks but no later than four weeks prior to the expiration of the leave.
- 42.13.2 An employee will be entitled to the position, which they held immediately before proceeding on parental leave.
- 42.13.3 Where such position no longer exists, but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

42.14 **Replacement employees**

- 42.14.1 A replacement employee is an employee specifically engaged or temporarily promoted or transferred as a result of an employee proceeding on parental leave.
- 42.14.2 Before the Rail Commissioner engages a replacement employee the Rail Commissioner must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

42.15 **Communication During Parental Leave**

- 42.15.1 Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the Rail Commissioner shall take reasonable steps to:
- 42.15.1(a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

42.15.1(b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

42.15.2 The employee shall take reasonable steps to inform the Rail Commissioner about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

42.15.3 The employee shall also notify the Rail Commissioner of changes of address or other contact details which might affect Rail Commissioner's capacity to comply with 42.15.1.

42.16 **Return to Work on a Part-time Basis**

42.16.1 Subject to this clause, an employee is entitled to apply to return to work after maternity or adoption leave on a part-time basis, at the employee's substantive level, until the child reaches school age.

42.16.2 In considering an application under this clause, the Rail Commissioner (or delegate) will have regard to both the operational needs of Rail Commissioner and/or the particular business unit, and the employee's circumstances.

42.16.3 The following conditions apply to an employee applying to return on a part-time basis:

42.16.3(a) The employee will provide such request in writing at least six weeks prior to the date on which the employee's maternity or adoption leave is due to expire, and will provide to the Rail Commissioner (or delegate) such information as may reasonably be required, including the details of the change sought and the reasons for the change.

42.16.3(b) At least six weeks prior to the relevant child reaching school age, the employee will advise the Rail Commissioner whether the employee will revert to employment on a full-time basis or seeks to continue to be employed on a part-time basis.

42.16.3(c) An employee's return to work part-time will be on a non-discriminatory basis so as to operate in the same manner as any other employee returning from a period of leave.

43 JURY SERVICE

43.1 Employees who are required for jury service will be allowed time off work to attend as required by the Court.

43.2 Proof of attendance, the duration of attendance and the amount received must be provided by the employee to the Rail Commissioner.

43.3 Employees will be paid the difference between the amount paid for such jury service and the amount of wage, including any penalties, they would have received if they had been rostered to work during such jury service period.

44 SPECIAL LEAVE WITH OR WITHOUT PAY

- 44.1 The Rail Commissioner may grant special leave with and without pay in accordance with Commissioner's Determination 3.1: Employment Conditions – Hours of Work, Overtime and Leave – Section F – Special Leave With and Without Pay (or however so titled and as varied from time to time). This includes, but is not limited to, special leave with or without pay as it relates to:
- cultural leave;
 - domestic violence leave;
 - bereavement leave; and
 - urgent and pressing necessity (including a traumatic event).
- 44.2 The Rail Commissioner may approve periods of special leave with or without pay following a period of compassionate leave.
- 44.3 Access to personal leave does not limit an employee's right to apply for special leave with or without pay.
- 44.4 This clause cannot provide entitlements to Tram Operations Employees below those provided in the National Employment Standards or in other clauses of this Agreement.

45 PUBLIC HOLIDAYS

- 45.1 Employees under this Agreement are entitled to the following public holidays, and part-day public holidays without loss of pay:
- 45.1.1 New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Adelaide Cup Day, Sovereign's Birthday, Labour Day, Christmas Day, Proclamation Day, Christmas Eve (part-day), and New Year's Eve (part-day).
- 45.2 In addition, employees are entitled without loss of pay to any other day, or part-day, duly proclaimed to be a public holiday in the State of South Australia.
- 45.3 Whenever a public holiday or part-day public holiday falls on an employee's ordinary working day, the employee may be stood down on such day without loss of pay. Where the major portion of a shift falls on a full-day public holiday it will be regarded as a public holiday shift.
- 45.4 An employee may refuse the request to work a public holiday shift if the request is not reasonable or if the refusal is reasonable. However, the Parties recognise that there is generally a need for public holiday shifts to be included on the roster and agree that any roster which includes such shifts is considered reasonable.
- 45.5 An employee not rostered to work between 7pm and midnight (other than an employee who has exercised their right not to work on a part-day public holiday if the request to work is not unreasonable or the refusal is reasonable as provided for in the NES) will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.
- 45.6 Subject to clause 45.4, an employee who works any hours between 7pm and midnight on a part-day public holiday will be entitled to the applicable public holiday penalty rate for those hours worked.

PART 5 – LEAVE

- 45.7 Where a public holiday falls between Monday and Friday inclusive and an employee does not work on such day because it is a rostered day off, the employee will receive 7 hours 36 minutes pay at ordinary rates in respect of each full-day public holiday.
- 45.8 Where an employee is usually rostered to work ordinary hours between 7pm and midnight on a part-day public holiday, but as a result of having a rostered day off does not work, the employee will be taken to be on a public holiday for those hours and paid their ordinary rate of pay for those hours.
- 45.9 Where a public holiday other than a part-day public holiday falls during the period of an employee's annual leave, the employee will be taken not to be on annual leave and will be paid for their ordinary rate of pay for such hours.
- 45.10 Where a part-day public holiday falls during the period of an employee's annual leave, the employee will be taken not to be on annual leave between the hours of 7pm and midnight that they would have otherwise been rostered to work and will be paid for their ordinary rate of pay for such hours.
- 45.11 **Public Holidays occurring in periods of Special Leave without Pay or Unpaid Parental Leave**
- 45.11.1 Where special leave without pay or unpaid parental leave is granted for periods of up to four weeks, any full-day Public Holidays that fall within such a period are to be granted with pay (base rate at ordinary hours). Where the special leave without pay or parental leave exceeds four weeks, no payment for any Public Holidays, irrespective of where they may fall, is to be made.
- 45.11.2 Where special leave without pay or unpaid parental leave is granted for periods of up to four weeks, any part-day Public Holidays that fall within such a period are to be granted with pay (base rate at ordinary hours) where the employee would have been rostered ordinary hours between 7pm and midnight.
- 45.12 **Substitution of certain public holidays which fall on a weekend**
- 45.12.1 Public holiday's falling on a weekend will be substituted in accordance with the *Holidays Act 1910 (SA)*.

PART 6 – WORKPLACE CONSULTATION AND DISPUTE RESOLUTION

46 CONSULTATION

- 46.1 This term applies if the employer:
- 46.1.1 has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
 - 46.1.2 proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

- 46.2 For a major change referred to in paragraph 46.1.1:
- 46.2.1 the employer must notify the relevant employees of the decision to introduce the major change; and
 - 46.2.2 sub-clauses 46.3 to 46.9 apply.
- 46.3 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 46.4 If:
- 46.4.1 a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - 46.4.2 the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.
- 46.5 As soon as practicable after making its decision, the employer must:
- 46.5.1 discuss with the relevant employees:
 - 46.5.1(a) the introduction of the change; and
 - 46.5.1(b) the effect the change is likely to have on the employees; and
 - 46.5.1(c) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
 - 46.5.2 for the purposes of the discussion—provide, in writing, to the relevant employees:
 - 46.5.2(a) all relevant information about the change including the nature of the change proposed; and
 - 46.5.2(b) information about the expected effects of the change on the employees; and
 - 46.5.2(c) any other matters likely to affect the employees.
- 46.6 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 46.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

PART 6 – WORKPLACE CONSULTATION AND DISPUTE RESOLUTION

- 46.8 If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph 46.2.1 and sub-clauses 46.3 and 46.5 are taken not to apply.
- 46.9 In this term, a major change is likely to have **a significant effect on employees** if it results in:
- 46.9.1 the termination of the employment of employees; or
 - 46.9.2 major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
 - 46.9.3 the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - 46.9.4 the alteration of hours of work; or
 - 46.9.5 the need to retrain employees; or
 - 46.9.6 the need to relocate employees to another workplace; or
 - 46.9.7 the restructuring of jobs.

Change to regular roster or ordinary hours of work

- 46.10 For the purposes of this clause, 'regular' means the normal day(s) and shifts that the employee would usually work up until the point of the proposed change. Consultation is not required under this clause in respect to roster changes that are consistent with usual rostering practices.
- 46.11 For a change referred to in paragraph 46.1.2:
- 46.11.1 the employer must notify the relevant employees of the proposed change; and
 - 46.11.2 subclauses 46.11 to 46.15 apply.
- 46.12 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 46.13 If:
- 46.13.1 a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - 46.13.2 the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.
- 46.14 As soon as practicable after proposing to introduce the change, the employer must:
- 46.14.1 discuss with the relevant employees the introduction of the change; and
 - 46.14.2 for the purposes of the discussion—provide to the relevant employees:
 - 46.14.2(a) all relevant information about the change, including the nature of the change; and
 - 46.14.2(b) information about what the employer reasonably believes will be the effects of the change on the employees; and

- 46.14.2(c) information about any other matters that the employer reasonably believes are likely to affect the employees; and
- 46.14.3 invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- 46.15 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 46.16 The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 46.17 In this term:
- relevant employees* means the employees who may be affected by a change referred to in sub-clause 46.1.

47 CONSULTATION - TRAM OPERATIONS CONSULTATIVE COMMITTEE

- 47.1 The Tram Operations Consultative Committee will operate as a mechanism for democratic employee involvement in maximising the flexibility of the workforce and for ensuring that Depot working patterns and arrangements enhance flexibility and the efficiency of the Rail Commissioner. The Tram Operations Consultative Committee may consider, but are not limited to considering, the following:
- 47.1.1 job redesign including multi-skilling;
- 47.1.2 development of a "team" culture in semi-autonomous work groups;
- 47.1.3 time tabling;
- 47.1.4 principles of rostering and scheduling options including fatigue management, whilst acknowledging the need to minimise the number of rostered changes during the period of operation of this Agreement;
- 47.1.5 increase in patronage;
- 47.1.6 business efficiency;
- 47.1.7 innovation;
- 47.1.8 assigning of work;
- 47.1.9 community liaison;
- 47.1.10 delivering quality service;
- 47.1.11 attendance management; and
- 47.1.12 Charter arrangements for Heritage Trams and employees maintaining applicable competencies in support of those arrangements.
- 47.2 The Tram Operations Consultative Committee will comprise of:
- 47.2.1 A minimum of three employees classified pursuant to this Agreement and elected by their peers;
- 47.2.2 An RTBU nominee; and

- 47.2.3 Management representatives.
- 47.3 The Parties acknowledge a commitment to workplace reform and Driver participation.
- 47.4 Any future Depot changes will consider recommendations from the Tram Operations Consultative Committee in conjunction with the Parties.
- 47.5 The Tram Operations Consultative Committee will work with the Work Health and Safety Committee to promote and reach best practice/safe working arrangements.
- 47.6 Employees shall be informed of the outcomes and decisions of all Tram Operations Consultative Committee meetings as soon as practicable after the meeting has occurred.
- 47.7 Should the Rail Commissioner decide to introduce a major change to its operations that is likely to have significant change on the workforce- including but not limited to changes to the composition, size and skills required of its employees, the location of employment and possible job losses - the Tram Operations Consultative Committee will be used as a mechanism for consultation with the affected employees.
- 47.8 Nothing in this clause can preclude or otherwise inhibit any consultation or communication between Rail Commissioner and individual employees as provided for in clause 46 –Consultation, or Appendix 1 - Tram Operations – Redeployment, Retraining And Redundancy.

48 RESOLVING WORKPLACE CONCERNS OR DISPUTES

- 48.1 Any industrial dispute or matter likely to create an industrial dispute arising under this Agreement or the National Employment Standards should be dealt with in the following manner:
- 48.2 The Parties to the Agreement are obliged to make every endeavour to facilitate the effective functioning of these procedures.
- 48.3 The employee or employee representative should discuss any matter affecting an employee with the supervisor in charge of the section or sections in which the dispute or likely dispute exists.
- 48.4 If the matter is not resolved at this level the employee or employee representative should ask for it to be referred to an appropriate manager who shall arrange a conference to discuss the matter. If requested by the manager, the subject of the dispute shall be put in writing, so far as is reasonably practicable.
- 48.5 The consultation process as prescribed in clause 48.4 shall be commenced within 48 business hours of the dispute or likely dispute having been indicated, or within such longer or shorter period as may be agreed by the Parties.
- 48.6 If a matter cannot be resolved when the above referred to procedures have been availed of, the Parties should enter into consultation at a higher level on both sides, as the Parties consider appropriate.
- 48.7 At any stage in the procedures after consultation between the Parties has taken place in accordance with the procedure, either party may request and be entitled to receive a response to its representations within five working days.
- 48.8 If a dispute arising from any industrial matter, including a dispute arising under this Agreement or the National Employment Standards is unable to be resolved at the workplace, and all agreed steps for resolving it have been exhausted, the dispute shall be referred to the Fair Work Commission for resolution by mediation and/or conciliation and if necessary arbitration.

PART 6 – WORKPLACE CONSULTATION AND DISPUTE RESOLUTION

- 48.9 If arbitration is necessary the Fair Work Commission may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective, in accordance with the provisions of the *Fair Work Act 2009 (Cth)*.
- 48.10 Any dispute referred to the Fair Work Commission under this clause should be dealt with by a member nominated by either the head of the relevant panel or the President.
- 48.11 The decision of the Fair Work Commission will bind the Parties, subject to either party exercising a right of appeal against the decision.
- 48.12 It is a term of this Agreement that except where there is a genuine health or safety concern, the status quo existing immediately before the matter giving rise to the dispute will remain while the dispute resolution procedure is being conducted.

PART 7 – OTHER MATTERS

49 COMPETENCY BASED TRAINING AND ASSESSMENT

- 49.1 The Parties recognise the achievement of objectives relating to safety, customer service, productivity, and quality require a skilled and motivated workforce.
- 49.2 The program concentrates on customer service; communication and team working skills; operational and technical competencies; the Rail Commissioner contract knowledge and understanding; rail safety accreditation and; quality certification knowledge and skills for all levels of Tram Operations employees.
- 49.3 The Rail Commissioner will continue to use a competency based training and assessment method which may lead to an applicable nationally recognised qualification, recognising that Rail Commissioner and its employees have a shared responsibility for competency achievement and maintenance.
- 49.4 Training and assessment can be conducted by a variety of methods, including:
- 49.4.1 classroom based;
 - 49.4.2 on the job;
 - 49.4.3 off the job;
 - 49.4.4 computer based;
 - 49.4.5 self-paced; and
 - 49.4.6 other as deemed appropriate.
- 49.5 The Rail Commissioner and/or appropriate training providers will provide the training and assessment.
- 49.6 Where Senior Tram Operators are required to deliver training they will be paid what would have been their rostered shift had they not been required to deliver that training.
- 49.7 An employee performance and development review system will be continued by the Parties throughout the life of this Agreement.

50 EMPLOYEE COSTS

In the event fees are required to be paid for accreditation purposes for individual employees, the employee will not incur the cost unless otherwise specified.

51 EMPLOYEE DUTIES

An employee may be rostered to undertake any duties for which they are trained and competent to perform that are consistent with the duties defined for their classification.

52 QUALITY & CONTINUOUS IMPROVEMENT

- 52.1 The Parties acknowledge the importance of the safety and quality management system and will continue to support it.

PART 7 – OTHER MATTERS

- 52.2 The Parties to this Agreement are committed to work together to improve efficiency, productivity and quality in order to achieve benchmarks established for Tram Operations.
- 52.3 As part of the commitment to continuous improvement, the employees, the RTBU and Rail Commissioner agree to implement a process of continuous improvement. This can be achieved by a willingness to participate in and trial continuous improvement initiatives.
- 52.4 Any new cost saving efficiency or productivity gain achieved during the life of this Agreement, and which are not already articulated in this Agreement, will be recognised as forming a starting point for negotiations in the next Agreement to be negotiated upon expiry of this one. Any such new efficiency and productivity gains are to be monitored via the consultative group.

53 FLEXIBILITY TERM

- 53.1 The Rail Commissioner and an employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
- 53.1.1 the agreement deals with one or more of the following matters:
 - 53.1.1(a) arrangements about when work is performed; or
 - 53.1.1(b) forms of employment (i.e. full-time/part-time); and
 - 53.1.2 the arrangement meets the genuine needs of the employer and employee in relation to one or more of the matters raised at clause 53.1.1; and
 - 53.1.3 the arrangement is genuinely agreed to by the employer and employee.
- 53.2 The Rail Commissioner must ensure that the terms of the individual flexibility arrangement are about permitted matters under section 172 of the *Fair Work Act 2009 (Cth)*, are not unlawful terms under section 194 of the *Fair Work Act 2009* and result in the employee being better off overall than the employee would be if no arrangement was made.
- 53.3 The Rail Commissioner must ensure that the individual flexibility arrangement is in writing and includes the name of the employer and employee and is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee.
- 53.4 The Rail Commissioner must ensure that the individual flexibility arrangement includes details of the terms of the enterprise agreement that will be varied by the arrangement, how the arrangement will vary the affect of the terms; and how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement.
- 53.5 The Rail Commissioner must ensure that the individual flexibility arrangement states the day on which the arrangement commences.
- 53.6 The Rail Commissioner must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 53.7 The Rail Commissioner or an employee may terminate the individual flexibility arrangement by giving no more than 28 days written notice to the other party to the arrangement or if The Rail Commissioner and the employee agree in writing – at any time.

54 WORK VALUE ASSESSMENTS – NEW ROLLING STOCK AND TRAM LINES

- 54.1 A work value assessment will be undertaken to determine possible difference in work value due to the operation of:
- 54.1.1 New rolling stock (which is different to current types of rolling stock); and/or
 - 54.1.2 New tram lines.
- 54.2 Review Scope and Guidelines
- 54.2.1 A work value assessment for new rolling stock will commence six months from the date the new rolling stock comes into operation.
- 54.2.1(a) If further new rolling stock are planned to come into operation before the nominal expiry date of this agreement (30 June 2020), the Rail Commissioner and RTBU may agree to postpone the work value assessment to begin six months after the further new rolling stock come into operation.
 - 54.2.2(b) The Rail Commissioner and RTBU may also agree for a work value assessment to occur at another time within the life of this agreement if necessary.
 - 54.2.3(c) Neither the Rail Commissioner nor RTBU will unreasonably refuse a request made under clauses 54.2.1(a) and/or 54.2.2(b) if the request is reasonable.
- 54.2.2 A work value assessment for any new tram lines that come into operation on or after 1 January 2018 will commence six months from the date the new tram lines come into operation.
- 54.2.2(a) If further new tram lines are planned to come into operation before the nominal expiry date of this agreement (30 June 2020), the Rail Commissioner and RTBU may agree to postpone the work value assessment to begin six months after the further new tram lines come into operation.
 - 54.2.2(b) The Rail Commissioner and RTBU may also agree for a work value assessment to occur at another time within the life of this agreement if necessary.
 - 54.2.2(c) Neither the Rail Commissioner nor RTBU will unreasonably refuse a request made under clauses 54.2.2(a) and/or 54.2.2(b) if the request is reasonable.
- 54.2.3 The work value assessments at clause 54.1 will assess the difference in work value for all classifications between:
- 54.2.3(a) the work value of the classification before the new rolling stock and/or tram lines came into operation; and
 - 54.2.3(b) the work value of the classification after the new rolling stock and/or tram lines come into operation.
- 54.2.4 The work value assessments will be undertaken by an assessor to be agreed between the Rail Commissioner and the RTBU.
- 54.3 Outcomes
- 54.3.1 The assessor will make recommendations to the Rail Commissioner and RTBU in relation to whether a rate of pay adjustment is recommended for a classification and the quantum of that adjustment. The assessor will set out the reasons for that recommendation and support that by reference to their detailed report findings.
 - 54.3.2 The assessor may recommend a different adjustment for different classifications.
 - 54.3.3 An adjustment to the wages of the applicable classification or classifications in this Agreement will be made where the following criteria are satisfied:

PART 7 – OTHER MATTERS

54.3.3(a) the assessor recommends an adjustment to the rate of pay in this Agreement for the applicable classification based on their assessment of each classification; and

54.3.3(b) the wage adjustment is agreed to by both the Rail Commissioner and the RTBU (agreed wage adjustment). The Parties may agree to a quantum of wage adjustment other than the recommended wage adjustment.

54.3.4 The work value assessment increase in 54.3.3 will:

54.3.4 (a) be rounded to the nearest half number. For example:

Work value assessment increase	Recommended wage increase
0% - 0.25%	0%
0.26% - 0.75%	0.5%
0.76% - 1.25%	1%

54.3.4(b) will operate from the first full pay period on or after the date the new rolling stock and/or tram lines begin operating in a regularly timetabled service.; and

54.3.4 (c) will be given effect to through a Memorandum of Understanding between the Rail Commissioner and the RTBU, the effect of which will be incorporated into any successor Agreement.

54.4 Regardless of the outcome of the work value assessment(s), an employee's wage cannot be less than that provided by clause 23.1.

54.5 This clause is taken to be excluded from the No Extra Claims clause in this Agreement.

55 BLOCK BOOK OFF REVIEW

55.1 The Rail Commissioner will undertake a review of the implications Block Book Off (BBO) arrangements may have on Tram Operations.

55.2 The review will consider the following implications BBO may have on the Tram Operations:

- FTEs;
- Budget;
- Ability to meet operational requirements;
- Ability to meet community expectations;
- Ability to operate within an AdeLink project environment; and
- Any other implications deemed necessary.

55.3 The review will also consider the following implications BBO may have on Tram Operations employees:

- Workplace health, safety and welfare,
- Productivity;
- Rosters; and
- Any other implications deemed necessary.

55.4 The draft review must be provided to the Tram Operations Consultative Committee and the RTBU for feedback and consideration before it is finalised.

56 INJURY AND INCOME PROTECTION

Additional income and injury protection will apply to employees in accordance with the Income and Injury Protection Principles set out at Appendix 2 of this Agreement, where entitlements under the *Return to Work Act 2014* (SA) have ceased.

SIGNATORY PAGE



Michael Deegan
Rail Commissioner
50 Flinders Street, Adelaide SA 5000
Employer

14.02.2018

Date



Darren Phillips
Branch Secretary
Australian Rail Tram and Bus Industry Union – South
Australia and Northern Territory Branch
Ray Hancox House, 63 Ledger Road, Beverley SA 5009
Union Bargaining Representative

15-02-2018

Date

APPENDIX 1 – REDEPLOYMENT, RETRAINING AND REDUNDANCY

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Operation

This Appendix operates in conjunction with consultation provisions contained in the *Rail Commissioner Tram Operations Enterprise Agreement 2018* (the Agreement).

This Appendix applies to all Parties bound by the Agreement.

Objectives

The objective of this Appendix is to ensure that proper consultation occurs between the Rail Commissioner, employees and the Australian Rail Tram and Bus Industry Union (RTBU) regarding changes in workforce composition.

The Parties acknowledge that:

- Redeployment and retraining is the preferred approach to workforce reductions;
- Forced redundancies should only be used as a last resort;
- With the exception of consultation regarding changes to workforce composition, these arrangements will apply to employees who, in the event of outsourcing or privatisation of Tram Operations (or part thereof), do not transfer to the new business under Transfer of Business arrangements under the *Fair Work Act 2009 (Cth)*;
- Where there is a need for genuine redundancies, employees must be offered a Voluntary Separation Package (VSPs); and
- Any reduction in staffing levels should be achieved by:
 1. Restricting the use of temporary contracts;
 2. Natural attrition; and
 3. Voluntary Separation Packages.

The Parties further acknowledge that changes to staffing levels, including the offering of VSPs, may have a significant effect on employees because it has the potential to lead to, amongst other things:

- The alteration in required skills of ongoing employees and potential retraining;
- The alteration of workloads and/or hours of work for ongoing employees;
- The potential diminution of job opportunities or promotional opportunities; and
- The possible redeployment of employees.

Nothing in this Appendix is intended to remove or limit the operation of Clause 46 – Resolving Workplace Concerns or Disputes contained in the Agreement.

Procedure

1. Seriously considering changes to workforce composition

1.1 Notification

- 1.1.1 When the Rail Commissioner is seriously considering changes to workforce composition, including calling for employees to express an interest in VSPs or potentially forced redundancies, the Rail Commissioner will notify the affected employees and the RTBU in writing of the intention. The notification will include (but not be limited to):
- a) The reason the Rail Commissioner is considering changes to workforce composition;
 - b) The affected work/process/service delivery;
 - c) The affected department/location/worksite/unit;
 - d) The number and classifications of positions including (but not limited to) changes in position duties and/or responsibilities/tasks/workload;
 - e) In the event of privatisation or outsourcing, applicable Transfer of Business arrangements under the *Fair Work Act 2009 (Cth)*;
 - f) Any relevant information regarding potential effects of staffing changes on continuing employees, including changes to existing practices and/or changes that the Rail Commissioner considers necessary;
 - g) Any known potential redeployment and job vacancy options;
 - h) Data regarding the use of existing temporary employees and steps taken to reduce the use of temporary employees; and

i) Any other relevant information.

- 1.1.2 The Rail Commissioner agrees to genuinely consider in good faith any feedback provided by employees and the RTBU. The Rail Commissioner agrees to take all reasonable steps to mitigate adverse effects such as reducing, where practicable, the use of temporary employees.
- 1.1.3 The Rail Commissioner will provide the RTBU with not less than 14 days or as otherwise agreed to respond to written notification.
- 1.1.4 Where the total number of positions affected may be 20% or more of the FTE at the worksite, the Rail Commissioner will facilitate reasonable paid time for meeting(s) between employees and the RTBU.
- 1.1.5 Where the RTBU respond to the written notification or requests for further information, the Rail Commissioner will respond within 14 days or as otherwise agreed.

1.2 Meetings with Union

- 1.2.1 The Parties agree to meet and seek to reach agreement on the proposed changes to workforce composition, as soon as practicable after step 1.1 has been completed (unless otherwise agreed).
- 1.2.2 The Rail Commissioner will give genuine consideration to matters raised by the RTBU including any proposals to mitigate any adverse effects and any other proposals to avoid the redundancy (for example, job swaps where employees may wish to swap roles).
- 1.2.3 Where any issues remain unresolved following further consultation, either party may utilise Clause 46 – Resolving Workplace Concerns or Disputes in the Agreement, including by referring the matter to the Fair Work Commission, noting however that the Commission will not be empowered to make any order having the effect of determining the composition of the workforce.
- 1.2.4 The Parties agree to maintain the status quo whilst the matter remains in dispute.

1.3 Identification of new workforce composition

- 1.3.1 Prior to calling for expressions of interest (EOI), the proposed new workforce composition (i.e. full-time equivalent required to undertake the required duties) must have been identified in accordance with consultative processes set out in 1.1 and 1.2, and following any Transfer of Business arrangements applicable under the *Fair Work Act 2009 (Cth)*. The Rail Commissioner will then confirm in writing the new workforce composition to the affected employees and the RTBU.
- 1.3.2 Rail Commissioner cannot use the EOI process to inform/decide what the new workforce/change may be.

2. Voluntary Separation Process

2.1 Call for Expressions of Interest (EOIs) for Voluntary Separation Packages (VSP)

- 2.1.1. The Rail Commissioner will only call for EOIs after the number of genuinely redundant positions has been determined in accordance with the consultation requirements outlined above and following any Transfer of Business arrangements applicable under the *Fair Work Act 2009 (Cth)*, unless otherwise agreed.
- 2.1.2. The Rail Commissioner will write to employees (i.e. permanent/ongoing employees) in work sites affected by the proposed change requesting EOIs for VSPs. The request will, at a minimum, be sent to employees working in the positions identified as no longer required (i.e. determined to be excess/redundant).

- 2.1.3. The call for EOIs for VSPs will have a specified closing date and will be open for not less than 21 days.
- 2.1.4. The call for EOIs will include information regarding how a VSP may be estimated, the number of positions that have been determined to be genuinely redundant, details of the position(s) that have been determined “excess” and an option for employees to discuss and explore reasons why these positions are no longer required. A copy of this notification should be provided to the RTBU.
- 2.1.5. Employees may seek assistance from a nominated Human Resource representative to determine an approximate calculation as to what a possible VSP would be without completing an EOI. Such a calculation would only be an approximation and possibly subject to variation.

2.2 Agency considers outcomes of EOI process

- 2.2.1. As soon as practicable after the EOI period has closed, the Rail Commissioner will consider and consult with the relevant employees and the RTBU regarding the outcomes of the EOI process. For the purposes of consultation, the Rail Commissioner will provide the RTBU in writing the outcomes of the EOI process and provide the RTBU with a minimum of 14 days notice to respond, prior to any VSP offers being made.
- 2.2.2. In the event Rail Commissioner has determined potential VSP offers for affected employees, if requested, the Parties agree to meet to discuss the proposed VSPs as soon as practicable.
- 2.2.3. Where a meeting is requested, the Rail Commissioner agrees to delay VSP offers to employees until after the meeting has occurred.
- 2.2.4. Where The RTBU requests further information or seeks a response, the Rail Commissioner will respond as soon as practicable.
- 2.2.5. The Rail Commissioner agrees to delay VSP offers to employees until 7 days after a response is provided to the RTBU.
- 2.2.6. In the event that the number of suitable applicants for VSPs is greater than the number of positions identified as “excess” the Rail Commissioner will inform the RTBU of the selection criteria it will utilise to determine which employees will be offered VSPs. The criteria may include (but is not limited to):
 - The new workforce composition position descriptions;
 - Hours of work;
 - Skills, experience and qualifications; and
 - Any other factors (such as geographical location).

2.3 Number of EOIs is the same as the number of identified excess positions

- 2.3.1 In the event the number of EOIs matches the number of identified excess positions, the Rail Commissioner will notify the effected employees and RTBU.

2.4 Number of EOIs is less than the number of identified excess positions

- 2.4.1 Where the number of EOIs is less than the number of identified excess positions, the Rail Commissioner will not unreasonably refuse to offer an employee a VSP.
- 2.4.2 In the event the number of EOIs is less than the number of identified excess positions, the Rail Commissioner will move to the steps outlined in 3. Process for Identifying Excess Employees.

2.5 Calculation of a VSP

- 2.5.1 The Parties agree that for the purpose of a VSP, an employee will be paid not less than the *Department of Treasury and Finance – Targeted Voluntary Separation Packages (TVSPs) as at 1st July 2015*.

2.6 Employee offered a VSP

- 2.6.1 Affected employees will be notified in writing that their EOI for a VSP has been received.
- 2.6.2 The Rail Commissioner will provide written advice to the employee which will include the proposed date on which the Rail Commissioner intends to make the employee an offer of a VSP, including the proposed date of payment of the VSP and the proposed date of the employee's separation from the public sector.
- 2.6.3 The notification of the intention to make an offer of a VSP will also include the date by which the employee is required to advise the Rail Commissioner if they do not wish to be made an offer of a VSP.
- 2.6.4 Where the employee confirms they wish to progress with the VSP, the Rail Commissioner will provide an offer of a VSP to the employee which will include the date on which the VSP will be paid, the date of the employees separation, the steps the employee can take to decline the offer of the VSP, and that the Rail Commissioner must declare that their position is no longer required and therefore "excess" (redundant).
- 2.6.5 In addition to the payment of a VSP, an additional lump sum payment of \$15,000 will be payable to an employee who accepts a TVSP either as a result of an EOI or within the first 3 months of being declared excess/redeployee.
- 2.6.6 Upon receipt of a VSP, the employee's employment in the public sector will cease.

3. Process for identifying excess employees

3.1 Notification to Union

- 3.1.1 Where there are insufficient numbers of EOIs to meet the number of excess positions identified in 1.3 the Rail Commissioner will notify the relevant employees and the RTBU of the following information in writing:
- a. the number of remaining excess positions, including job classification/role /worksite location/FTE equivalent;
 - b. number of affected employees; and
 - c. the proposed time frames and plan for notification and consultation with affected employees.

3.2 Meeting with Union

- 3.2.1 Prior to notifying affected employees (clause 3.3), the Rail Commissioner and the RTBU will meet to discuss the selection criteria to be used for forced redundancies, the proposed time frames and plan for notification and consultation with affected employees.

3.3 Notification to affected employees

- 3.3.1 The Rail Commissioner will inform the affected employee/s in writing that there were insufficient numbers of EOIs for voluntary redundancies and provide information regarding the number of positions and employees that will be declared excess and made redundant. A copy of any correspondence will also be provided to the RTBU.

This will include all relevant information including, but not limited to, why the position/s have been determined to be genuinely redundant, the number of redundant positions, the application of the above selection criteria, and information regarding the timeline and process.

- 3.3.2 The Rail Commissioner will notify employees of their right to be represented by the RTBU.
- 3.3.3 The Rail Commissioner will take all possible steps to mitigate the adverse effect on the employee/s affected, including (but not limited to) consideration of immediate redeployment to a suitable alternative position with the consent of the affected employee/s.
- 3.3.4 The Rail Commissioner will organise at least one paid meeting with the affected employee/s to discuss the redundancies. The RTBU will be invited to attend this meeting.

3.4 *Notification to redundant employee(s)*

- 3.4.1 The Rail Commissioner will then notify the redundant employee/s and the RTBU that the particular employees will be made redundant. Prior to notifying a redundant employee, the Rail Commissioner must declare that the employee's position is no longer required and therefore "excess" (redundant).
- 3.4.2 The redundant employee/s will be notified in writing that their position is "excess" and may elect to consider a VSP or seek redeployment. In this same notification, the Rail Commissioner will provide the employee with the following:
 - The date their position will be made redundant shall be no earlier than 28 days from the date the notification is received;
 - Information regarding taking a VSP and information regarding the redeployment process. This information will clearly outline what the employee's entitlement would be if they elect to take a VSP at the date of termination, pursuant to step 2.5.
 - That the employee may request a paid time meeting with the Rail Commissioner to discuss any aspect of the redundancy and/or redeployment process.
 - That the employee is entitled to be represented during the meeting by the RTBU.
 - Should the employee wish to accept the offer for a VSP at this time, they must do so within the timeframe provided, which must be no less than 28 days. Upon acceptance of the VSP, their employment in the public sector will cease upon receipt of the VSP.

4. **Redeployment Process**

4.1 *Commencement of the Redeployment Process and Case Management*

- 4.1.1 Following receipt of written advice of being declared an excess employee, where an employee has elected to become a redeployee (i.e. has decided not to accept an offer for VSP), the redeployee will be assigned a case manager and will participate in the redeployment/retraining program.
- 4.1.2 A redeployment plan will be established in consultation with the redeployee which aims to identify a suitable alternative ongoing permanent role in the public sector which would, with appropriate training and support, be reasonably available to the employee. The plan will also include (but not be limited to):
 - details of any training to be provided;
 - skills or duties relevant to a suitable placement and/proposed role; and
 - job fit assessment and analysis.

- 4.1.3 A copy of the redeployment plan will be provided to the redeployee.
- 4.1.4 The redeployee's case manager will have priority access to the notice of vacancies and redeployee will also have access to notice of vacancies.
- 4.1.5 The excess employee is also expected to cooperate and participate in all reasonable training opportunities or placements.
- 4.1.6 Criteria for suitable training
 - a. Training will be provided to the redeployee by the Rail Commissioner consistent with meeting the requirements for the suitable employment identified at 4.1.2.

4.2 Criteria for suitable employment

- 4.2.1. An ongoing permanent role in any agency in the Public Sector will only be considered suitable for the purposes of redeployment if (unless the employee otherwise agrees):
 - a. The hours of work remain the same or similar where practicable;
 - b. It is a reasonable distance/location from the employee's residence to the new place of employment;
 - c. The classification is commensurate with the employee's job fit assessment and analysis, and the employee is assessed as being able to perform the role with reasonable training and support over a reasonable period of time;
 - d. The remuneration is not less than what the employee was earning prior to becoming a redeployee;
 - e. The nature of the work is such that it is reasonable to perform, taking into account the employee's skill and experience;
 - f. There are no extenuating factors specific to the employee/worksites that would make it unreasonable for the employee to perform the ongoing permanent role.
- 4.2.2. The above criteria does not limit further discussions and agreements between the employee and their case manager.
- 4.2.3. The applicable Income Maintenance policy will apply to employees transferred to a suitable ongoing role.

4.3 Making of an offer of suitable employment during redeployment program

- 4.3.1. During the redeployment process the applicable case managers/agency representatives will genuinely seek to identify an alternative role or placement that is a reasonable match with the employee's skills and capabilities (including with reasonable training).
- 4.3.2. In the event that an offer for an alternative role/position is not made within six months of the employee being declared excess, or before the date of enrolment of the employee into training identified in the redeployment programme established at 4.1.2, whichever is the greater, the case manager must meet with the employee and their representative (if applicable) to discuss and review the employees redeployment plan.
- 4.3.3. The outcomes of these discussions and the action plan for next steps must be provided in writing to the employee and a copy forwarded to the Office for the Public Sector (OPS).
- 4.3.4. In the event an offer for a suitable ongoing permanent role has not been identified and made within nine months from the date of them being declared excess, or before the date of enrolment of the employee into training identified in the redeployment programme established at 4.1.2, whichever is the greater, the relevant agency must notify the OPS.

4.3.5. The Rail Commissioner will discuss with the employee (and the RTBU) any reasons that an alternative role has not been achieved. At this stage the Commissioner for Public Sector Employment (CPSE) or representative from the OPS will become involved in order to review the process and options available for redeployment.

4.3.6. In the event that an offer of suitable employment has not been identified and made within 12 months of the employee being declared excess, or before the date of enrolment of the employee into training identified in the redeployment programme, whichever is the greater, the Rail Commissioner, the CPSE or representative from OPS, and the employee (and RTBU) will meet to discuss the outcome of the redeployment/retraining programme. The Parties will discuss:

- Whether the redeployment plan has been complied with by the Rail Commissioner and the employee;
- Whether all reasonable efforts have been made to identify suitable employment for the employee; and
- Whether there are exceptional circumstances which could make it reasonable to extend the redeployment/retraining programme, and/or amend the redeployment plan, to provide further opportunity to identify suitable employment.

4.3.7. For the purposes of 4.3.6, “exceptional circumstances” may include the geographical location of the employee, the unique skills and/or experience of the employee, the age of the employee, or the circumstances of the employee becoming excess, which circumstances provide additional difficulty to the identification of suitable employment for the employee.

4.3.8. Where any issues remain unresolved, either party may utilise clause 46 – Resolving Workplace Concerns or Disputes in the Agreement.

4.4 Notification of a suitable ongoing permanent role

4.4.1 Where an offer of a suitable ongoing permanent role is made to an employee, such notification will be provided in writing. Written notification will also include:

- A contract of employment for the new role;
- A Job and Person Specification for the new role; and
- Information advising the employee that should they not accept the suitable ongoing permanent role, the employee may be separated with five weeks' notice and separation pay outlined in 4.6.3 (provided that the terms of this Appendix have been met). Such information will be clearly outlined to the employee.

4.4.2 An employee will be given a minimum of 14 days to consider whether they wish to accept the suitable ongoing permanent role.

4.5 Deferment of redeployment program

4.5.1. Rail Commissioner must defer the redeployment period where an employee that has been declared excess is absent from duty by reason of:

- Parental leave; or
- Defence reserves leave; or
- Where an employee is in receipt of weekly payments for a compensable workplace injury or illness and/or subject to a Rehabilitation and Return to Work Plan for such injury or illness.

4.5.2. Rail Commissioner may approve an application for deferment of the redeployment period by an employee who has been declared excess, on the basis of exceptional personal circumstances by the employee. The Rail Commissioner is required to seek advice from the Commissioner for Public Sector Employment. This decision making function is not to be delegated.

4.6 Conclusion of the Redeployment Process

- 4.6.1 The redeployment process will end only when the following criteria has been satisfied:
- a. The employee has accepted employment in an ongoing role; or
 - b. For an employee whose position has been determined to be excess as a result of the Rail Commissioner's decision to privatise, outsource, contract out or the closure/part closure of a service(s) and the employee has been offered employment in a suitable ongoing permanent role and has declined such ongoing employment; or
 - c. The employee has been offered employment in a suitable ongoing permanent role and has declined such ongoing employment;
 - d. The Rail Commissioner and employee has negotiated, been offered and accepted an additional separation payment;
 - e. For employees other than those in 4.6.1(b), all reasonable attempts have been made to offer suitable alternative employment and the redeployment process set out in 4.3 has been completed; or
 - f. The employee has at any stage elected to take a VSP, in accordance with step 4.7.
- 4.6.2 Where the redeployment process ends, the Rail Commissioner will confirm in writing to the employee the outcome of that process.
- 4.6.3 Where an employee has been offered employment in a suitable ongoing permanent role and has declined such ongoing employment or the redeployment process set out in clause 4.3 is completed, the following will apply:
- a. The employee will be provided in writing a minimum of five weeks' notice of the date of separation.
 - b. During the notice period, the Rail Commissioner agrees to allow a minimum of one day of paid leave each week to job seek.
 - c. During the notice period, the Employee may give notice of their intention to resign their employment with 24 hours' notice and be paid the balance of the notice period.
 - d. A separation payment as set out in clause 4.7.3 will be paid to the employee at the separation date of their employment.

4.7 Accepting a VSP while a redeployee

- 4.7.1 At any time while an employee is a redeployee, they may give notice that they wish to accept a VSP.
- 4.7.2 A redeployee will only be required to provide one weeks' notice to terminate their employment (or less by agreement).
- 4.7.3 An employee who indicates that they wish to accept a VSP, in accordance with clause 4.7.1, will be entitled to the following amounts of redundancy pay:
- a. An employee who has been a redeployee for between 0 to 12 months is entitled to receive redundancy pay equal to 100% of the VSP clause 2.5; or
 - b. An employee who has been a redeployee for more than 12 months is entitled to receive redundancy pay equal to 75% the VSP, specified in clause 2.5.

5. Disputes

- 5.1. Where a dispute arises in relation to the operation of this Appendix, the Parties may raise a dispute in accordance with 46 – Resolving Workplace Concerns or Disputes of the Agreement.
- 5.2. A dispute may be raised at any stage of this Appendix. Where a dispute is raised in relation to this Appendix, the status quo will remain until the matter is resolved.
- 5.3. Where the Parties cannot reach agreement to resolve a dispute in relation this Appendix, the Parties agree that the dispute may be arbitrated by the Fair Work Commission.

Review

The Rail Commissioner and the RTBU will review the implementation of this process no earlier than 12 months after date of approval of this enterprise agreement.

“Declared excess” means the date of written notice to the employee that their position is no longer required.

APPENDIX 2 – INJURY AND INCOME PROTECTION PRINCIPLES

1. PREAMBLE

- 1.1 This 'Injury and Income Protection' policy is founded upon the current Police Disability Pension under Regulation 38A of the Southern State Superannuation Regulations 2009 that is available to workers who meet specific criteria for eligibility.
- 1.2 The Regulations referred to above were introduced during the operation of the previous *Workers Rehabilitation and Compensation Act 1986*.
- 1.3 The content of an amended Regulation 38A and the principles agreed between the Government and the Police Association of South Australia are set out in this policy.
- 1.4 Under this new 'Injury and Income Protection' policy an eligible worker will receive entitlements as outlined in this policy.

2. FUNDING ARRANGEMENTS

- 2.1 The funding arrangements for this policy shall be provided within the budget process of the agency.

3. ADMINISTRATION OF THIS POLICY

- 3.1 The responsibility for administering this policy is vested in the Rail Commissioner or delegate.
- 3.2 In administering this policy the Rail Commissioner shall provide procedural fairness when making potentially adverse decisions affecting injured workers.

4. DEFINITIONS

- 4.1 This policy applies to workers who have an accepted claim pursuant the *Workers Rehabilitation and Compensation Act 1986* or the *Return to Work Act 2014* and meet the eligibility requirements of this policy.
- 4.2 "Employer" means Rail Commissioner or delegate.
- 4.3 "Benefits" means weekly payments of income maintenance or medical and like expenses.
- 4.4 "Financial support" means the weekly payments of income support made pursuant to this policy.
- 4.5 "Independent Medical Adviser" in this policy means an Independent Medical Adviser as listed on the South Australian Employment Tribunal website (www.saet.sa.gov.au).
- 4.6 "Notional Weekly Earnings" within this policy means the "Salary as specified for the eligible worker's classification in the applicable Enterprise Agreement".
- 4.7 "Retirement" in this policy has the same meaning as 'retiring age' as defined in section 44 of the *Return to Work Act 2014*.
- 4.8 "Recovery/return to work plan" includes a recovery/return to work plan established or continuing under this policy.

5. MUTUAL OBLIGATIONS

- 5.1 A worker while in receipt of benefits pursuant to this policy is entitled to expect—
 - (a) The employer to continue to actively manage the worker's injury, to provide services and to participate and cooperate in assisting the workers recovery and return to work; and
 - (b) A worker may reasonably request the employer to review the provision of any service to the worker under this policy or to investigate any circumstance where it appears that the employer is not complying with any requirement of this policy.
- 5.2 A worker while in receipt of benefits pursuant to this policy must—
 - (a) participate in all activities designed to enable the worker to recover and return to work as soon as is reasonably practicable; and
 - (b) without limiting paragraph (a)—
 - (i) participate and cooperate in the establishment of a recovery/return to work plan; and
 - (ii) comply with obligations imposed on the worker by or under a recovery/return to work plan; and

- (c) ensure that the employer is provided with current medical certificates (in a designated form provided by recognised health practitioners not inconsistent with the *Return to Work Act 2014*) with respect to any incapacity for work for which financial support is being provided under this policy so as to provide evidence to support the continuation of those payments; and
- (d) return to suitable employment when reasonably able to do so; and
- (e) take reasonable steps to mitigate any possible loss on account of the work injury.

6. RETURN TO WORK COMMITMENT

6.1 Whereas:

- (a) the parties agree that a return to work within the meaning of the *Return to Work Act 2014* is always the objective in the case of any work injury;
- (b) the unions and workers covered by this agreement will reasonably support and cooperate in the pursuit of this objective as required by the *Return to Work Act 2014* and this agreement.

7. COVERAGE & BENEFITS - INJURIES ON OR AFTER 1 JULY 2015

7.1 Those workers who are injured on or after 1 July 2015 in circumstances where the worker:

- (a) is temporarily or permanently incapacitated for work as a result of a physical or psychological injury sustained when he or she was on duty or lawfully exercising the duties of a worker in their employment; and
- (b) the injury—
 - i. resulted from conduct directed at the worker that constitutes a criminal offence; or
 - ii. occurred as a direct and immediate result of conduct that constitutes a criminal offence in the course of the workers employment or conduct that appears to be criminal; or
 - iii. occurred as a direct and immediate result of conduct that constitutes a criminal offence; or
 - iv. occurred in other circumstances where the worker is placed in a dangerous situation in the course of, or as a consequence of, acting in, or engaging in, their duties or position excluding psychological injury other than that caused as a consequence of a specific incident or incidents.
- (c) has an accepted claim pursuant to the *Return to Work Act 2014*; and
- (d) has had their individual entitlements exhausted pursuant to the *Return to Work Act 2014*; and
- (e) has not been assessed as having a 30% or more Whole Person Impairment (WPI); and
- (f) has not made a return to work within the meaning of the *Return to Work Act 2014*;

will be provided on the following basis:

7.2 In the case of medical expenses, ongoing cover for such expenses as are reasonably and necessarily incurred as a direct result of such accepted claim (other than those already covered by the Employer); or

7.3 A redemption of medical expenses referred to in 7.2.

7.4 In the case of financial support:

- (a) A top-up payment to achieve 80% notional weekly earnings or 80% of the difference between actual earnings and notional weekly earnings until retirement or return to work, subject to a work capacity review as per the *Workers Rehabilitation and Compensation Act 1986* and meeting the mutual obligations set out in this policy; or
- (b) A redemption of 7.4(a).

8. COVERAGE & BENEFITS - INJURIES PRIOR TO 1 JULY 2015

- 8.1 Those workers who were injured prior to 1 July 2015 in circumstances of 7.1(a) and (b); and
- (a) have an accepted claim pursuant to the *Workers Rehabilitation and Compensation Act 1986/Return to Work Act 2014* and;
 - (b) have had their individual entitlements exhausted pursuant to the *Return to Work Act 2014* and;
 - (c) have not been assessed as having a 30% or more Whole Person Impairment (WPI) and;
 - (d) have not made a return to work within the meaning of the *Return to Work Act 2014*;
- will be provided on the following basis:
- 8.2 In the case of medical expenses, ongoing cover for such expenses as are reasonably and necessarily incurred as a direct result of such accepted claim (other than those already covered by the Employer) or;
- 8.3 A redemption of medical expenses referred to in 8.2.
- 8.4 In the case of financial support:
- (a) A top-up payment to achieve 80% notional weekly earnings or 80% of the difference between actual earnings and notional weekly earnings until retirement or return to work, subject to a work capacity review as per the *Workers Rehabilitation and Compensation Act 1986* and meeting the obligations set out in this policy, or
 - (b) a redemption of 8.4(a); or
 - (c) payment of an amount equivalent to the payment to which the worker would have been entitled to under section 39 of the *Return to Work Act 2014* had their compensable injury occurred after 1 July 2015.
- 8.5 Any financial support provided for in this policy shall be discounted to the extent of any payment made pursuant to *Part 4, Division 6 of the Return to Work Act 2014*.

9. WORK CAPACITY REVIEW PROVISION - as referred to in 7.4(a) and 8.4(a)

- 9.1 In regard to 7.4(a) and 8.4(a), a worker's entitlement to financial support pursuant to this policy does not commence, or if having commenced, ceases, unless the worker is assessed by the employer as:
- (a) having no current work capacity; and
 - (b) likely to continue indefinitely to have no current work capacity; or
 - (c) being in employment, and that because of the compensable injury the worker is, and is likely to continue indefinitely to be, incapable of undertaking further or additional employment or work which would increase the worker's current weekly earnings.
- 9.2 A review of the assessment of a worker under 9.1 may be conducted by the employer at any time and must be conducted as often as may be reasonably necessary, being at least once in every two years.
- 9.3 An assessment under 9.1 may be conducted before or after the period of financial support provided pursuant to the *Return to Work Act 2014* has been exhausted.
- 9.4 A worker receiving financial support under this policy shall continue to receive such financial support unless or until the employer has assessed whether the worker as:
- (a) having no current work capacity; and
 - (b) likely to continue indefinitely to have no current work capacity.
- 9.5 The employer must not discontinue the financial support under this policy on the basis of a work capacity assessment until it has given the worker 13 weeks' notice in writing of the proposed discontinuance. Such notice must not be given unless and until the assessment referred to herein has been undertaken.
- 9.6 A worker who is, or has been, entitled to financial support under this policy may apply to the employer for a decision that the worker's entitlement to financial support under this policy does not cease.
- 9.7 The employer, upon receipt of an application under 9.6 may decide that the worker's financial support under this policy does not cease as contemplated by 9.1 if the employer is satisfied that the worker is in employment and that because of the work injury, the worker is, and is likely to continue indefinitely to be, incapable of

undertaking further or additional employment or work which would increase the worker's current weekly earnings.

- 9.8 The employer:
- (a) must within 90 days of receiving an application under 9.6, make or refuse to make a decision under 9.7 and advise the worker in writing of its decision (unless the employer requires an extension of time because of the operation of paragraph (b)); and
 - (b) must not refuse to make a decision under 9.7 on the ground that the employer is not satisfied under the requirements of that clause unless—
 - i. the employer has referred the medical question whether, because of the injury, the worker is, and is likely to continue indefinitely to be, incapable of undertaking further or additional employment or work, and if not so incapable, what further or additional employment or work the worker is capable of undertaking, for the opinion of an Independent Medical Adviser ('IMA'); and
 - ii. the opinion of the 'IMA' is that the worker is not so incapable and specifies what further or additional employment or work the worker is capable of undertaking.
- 9.9 If the employer makes a decision under 9.7, the worker is entitled to financial support in accordance with clause 7.4 (for injuries occurring on or after 1 July 2015) or 8.4 (for injuries occurring prior to 1 July 2015).
- 9.10 The entitlement to financial support under 9.9 continues until—
- (a) the employer ceases to be satisfied as to the matters specified in 9.7; or
 - (b) the worker otherwise ceases to be entitled to financial support under this policy.

10. CEASING OF BENEFITS

- 10.1 In regard to a worker's entitlement to financial support ceasing for any reason other than on the basis of a work capacity assessment, 28 days' notice outlining the reasons for discontinuance is to be provided before the discontinuance of financial support.
- 10.2 Benefits pursuant to these this policy shall no longer apply in the event that an eligible worker in the view of the employer:
- (a) Has "returned to work" under the *Return to Work Act 2014*; or
 - (b) Has had a Work Capacity Assessment the result of which is cessation of payments under clause 9.1 of this policy; or
 - (c) Fails to comply with the Mutual Obligations of this policy; or
 - (d) Receives a redemption of entitlements pursuant to the *Workers Rehabilitation and Compensation Act 1986* or the *Return to Work Act 2014*; or
 - (e) Retires, resigns or is terminated from employment; or
 - (f) Is in receipt of income or other financial benefits in lieu of wages; or
 - (g) Is classified as a seriously injured worker under the *Return to Work Act 2014*.
- 10.3 If a worker applies for and takes a period of annual or long service, the employer may suspend the financial support that would otherwise be payable to the worker during the period while the worker is on leave.

11. PROVISIONS APPLICABLE TO MEDICAL EXPENSES

- 11.1 In the case of 7.2 and 8.2, an eligible worker incurring medical expenses beyond the period provided for within the *Return to Work Act 2014* pursuant to this policy shall in the first instance claim such incurred expenses against the private health insurance policy held by the worker or, in the case of a worker whose private health insurance policy does not cover the particular item or who does not hold a private health insurance policy, from Medicare.
- 11.2 The worker may then claim 'out of pocket' costs against this policy for:
- (a) attendance, examination or treatment by a health practitioner including the obtaining of a certificate or report; or
 - (b) any diagnostic examination or test required for the purpose of treatment by a health practitioner; or

APPENDIX 2 – INJURY AND INCOME PROTECTION

- (c) any medical services which are included in the scales of charges published by the Minister for Industrial Relations under section 33(12)(a) of the *Return to Work Act 2014*.

12. DISPUTATION RESOLUTION PROCEDURE

- 12.1. Where a dispute arises in relation to the operation of this Schedule, the Parties may raise a dispute in accordance with clause 9.



Government of South Australia

Department of Planning,
Transport and Infrastructure

*In reply please quote 2016/14569/01
Enquiries to Employee Relations
Telephone 08 8343 2342*

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Deputy President Masson
GPO Box 1994
Melbourne Victoria 3001

**Undertaking – Rail Commissioner Tram Operations Enterprise Agreement
2018**

Dear Deputy President Masson,

The Rail Commissioner undertakes the following in regards to the *Rail Commissioner Tram Operations Enterprise Agreement 2018*:

1. Clause 17 of the Enterprise Agreement will operate subject to the National Employment standards.
2. Clause 37.8 and 37.9 of the Enterprise Agreement will be applied in accordance with the requirements provided by clause 24.6 of the Award.
3. Clause 42.4.2 of the agreement, employees are entitled to take concurrent parental leave in accordance section 72(5) of the Act.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Julienne TePohe'.

Julienne TePohe
RAIL COMMISSIONER

30 May 2017