

[2021] FWCA 4943

The attached document wholly replaces the document previously issued with the code [2021] FWC 4935 on 11 August 2021 to correct document referencing.

Associate to Commissioner Platt

Dated 11 August 2021.





# DECISION

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

**Ventia Australia Pty Ltd T/A Ventia**  
(AG2021/6551)

## **VENTIA PTY LTD SA RAIL ENTERPRISE AGREEMENT 2020**

Rail industry

COMMISSIONER PLATT

ADELAIDE, 11 AUGUST 2021

*Application for approval of the Ventia Pty Ltd SA Rail Enterprise Agreement 2020.*

[1] An application has been made for approval of an enterprise agreement known as the *Ventia Pty Ltd SA Rail Enterprise Agreement 2020* (the Agreement) pursuant to s.185 of the *Fair Work Act 2009* (the Act) by Ventia Australia Pty Ltd T/A Ventia (the Applicant). The agreement is a single enterprise agreement.

[2] The matter was allocated to my Chambers on 10 August 2021 and was determined on the papers.

[3] The Agreement was not lodged within 14 days after it was made. The Applicant has provided submissions in relation to the late lodgement in their application form. Pursuant to s.185(3)(b) of the Act I consider it fair to extend the time for making this application to 4 August 2021.

[4] The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU) and the Australian Rail, Tram and Bus Industry Union (RTBU), being bargaining representatives for the Agreement, have given notice under s.183 of the Act that they want the Agreement to cover them. In accordance with s.201(2) of the Act I note that the Agreement covers these organisations.

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

[6] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 days after the date of approval of the Agreement. The nominal expiry date is 18 August 2024.



COMMISSIONER

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# VENTIA PTY LTD SA RAIL ENTERPRISE AGREEMENT 2020

**1 TITLE**

This Agreement shall be known as the Ventia Pty Ltd SA Rail Enterprise Agreement 2020

**2 ARRANGEMENT**

This Agreement is arranged as follows:

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### 3 APPLICATION OF AGREEMENT

3.1 This Agreement shall apply to the provision of rail services work (as defined) and associated services for rail track infrastructure in the networks known as:

- SA Freight (One Rail Australia (ORA));
- Australian Rail Track Corporation (business of Australia National Rail Commission) and;
- Other associated networks.

3.2 Definitions (for the purposes of this Agreement):

**The Company** means Ventia Pty Ltd.

**The Employer/Employer/Management** means Ventia Pty Ltd.

**Employee** means, unless otherwise stated, an employee of the Company/Employer /Management.

**Site** means any premises, location or establishment of the Company and/or any other site where the Company is contracted to carry out rail infrastructure work within the networks set out at **clause 3.1**.

**Rail Services Work** means any work, including work to repair, replace, renovate, rehabilitate, maintain, overhaul, upgrade and/or upkeep the plant, machinery, equipment, track, tunnels, buildings, property and any other associated infrastructure of the Company or Clients of the Company, for which the Company has a contract to carry out rail work on the networks set out at **clause 3.1**.

**Union** means an organisation of employees as listed at **clause 4** of this Agreement.

**This Agreement** means Ventia Pty Ltd SA Rail Enterprise Agreement 2020.

#### **4 PARTIES BOUND**

4.1 The parties to the Agreement are:

- Ventia Pty Limited (previously known as Broadspectrum (Australia) Pty Limited);
- All employees, whether members of an organisation of employees listed below or not, engaged in any of the classifications/occupations/levels referred to in **clause 22.1**; and
- The organisations of employees listed below:
  - Australian Manufacturing Workers Union; and
  - Australian Rail Tram and Bus Industry Union.

4.2 This Agreement is binding on:

- The parties set out in **clause 4**; and
- Employees of the Company whose employment is subject to this Agreement and who are engaged within the scope and classifications of this Agreement.

#### **5 DATE AND PERIOD OF OPERATION**

5.1 This Agreement will commence operation 7 days after it is approved by the Fair Work Commission (FWC) and shall have a nominal expiry date of three (3) years from the date of operation.

5.2 The parties agree to commence negotiations for a further agreement no later than three months before the nominal expiry date of this Agreement.

#### **6 STAND ALONE AGREEMENT**

6.1 Except as specifically provided, the terms of this Agreement shall operate to the exclusion of and shall supersede all Federal and State Awards or variations and all other industrial agreements which would otherwise operate to regulate wage rates and conditions of employment covered by this Agreement.

6.2 This Agreement excludes any award conditions that might otherwise apply in accordance with the Act, to employees covered by this Agreement in respect of:

- rest breaks;
- incentive-based payments and bonuses;
- annual leave loadings;
- public holidays;
- monetary allowances;
- loadings for working overtime or for shift work;
- penalty rates;
- outworker conditions; and

any other award conditions specified as protected award conditions in Regulations made under the *Fair Work Act 2009* (Cth).

## **7 AIMS OF THE AGREEMENT**

- 7.1 For the mutual benefit of the enterprise and its employees to achieve an internationally competitive maintenance facility, with a multi skilled and highly motivated workforce with focus on achieving delivery, commitment, product quality, measurable productivity gains, cost efficiency, and teamwork.
- 7.2 Ensure the ability of the Company to fulfil its obligations for the maintenance, and overhaul of track and associated equipment.
- 7.3 Develop a working environment that will contribute to the achievement of the above by encompassing Employee participation in decision making, pride in quality, safe working practices, continuous improvement in product quality, reliability and customer service, flexible work patterns and multi skilling.
- 7.4 Establish a framework to enable employees to achieve these aims and enable them to identify and solve problems as well as initiate improvements to work design, processes and procedures, leading to productivity improvements and increased job satisfaction.
- 7.5 Develop a process of continuous improvement in all work and business- related areas to enable the Company and its Employees to obtain additional contract work on a national basis in rail infrastructure and associated work.
- 7.6 To establish a clear understanding by employees for the goals and objectives of the consortium.
- 7.7 It is also agreed that the parties will commit themselves to avoiding any action, which might disrupt the continuity of services to its customer, or in any way reduce the effectiveness of the business.

## **8 COMMITMENT TO IMPROVING PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY**

- 8.1 Through the ongoing exercise of work group restructuring, the parties to this Agreement are committed to the need to continually develop further flexibility over the functions performed at the Company's facilities, consistent with agreed productivity objectives and the removal of artificial demarcation work barriers by agreement, subject to competence, training and classification.
- 8.2 The commitment extends to the individual employees performing tasks which, while primarily involving the skill of the Employee's classification, are incidental or peripheral to the primary task and enables the completion of the whole task. Such incidental or peripheral tasks would be carried out giving due consideration to it being safe, legal sensible and within the Employee's competence.
- 8.3 Arrangements made to accommodate flexible working practices arising from the provisions of this Agreement between the Company and section or sections of employees shall be recorded in individual Working Conditions Agreements. The Working Conditions Agreements shall reflect such practices established by consultation and be subject to change only by further consultation and agreement between the Company and section or section of employees.

- 8.4 The Company and the Employees are also committed to continuously monitor and keep under review the classification and competency based training arrangements, consistent with the TOT Board competency standards for track-workers and the Metal and Engineering Competency Standards for tradespersons, and to implement any variations that arise therefrom. In this regard the parties will undertake a review of the classification system within the first 6 months of this Agreement.
- 8.5 The model flexibility term prescribed by the Fair Work Regulations is a term of the Agreement. Refer to Appendix A of this Agreement.

## 9 INDUCTION

- 9.1 The Company will conduct inductions in order that employees are made familiar with the work at hand and to ensure that prospective employees are familiar with the Company's operation and its methods of work.
- 9.2 Aspects to be outlined to new employees at induction courses shall not be limited to but will include: -
- The Company's history and objectives.
  - Adherence to the Client's and the Company's safety standards, relevant legislation, codes of practice and rehabilitation policy.
  - Familiarisation with adherence to the terms of this Agreement governing Employee's contract of employment.
  - Cooperative objectives regarding goals that the Company sets for its projects.
  - Outline of the House Rules, including disciplinary procedures.

## 10 CONTRACT OF EMPLOYMENT

- 10.1 Any Employee not specifically engaged as being a part-time or casual Employee is for all purposes of this Agreement a full-time Employee, unless otherwise specified in the Agreement.
- 10.2 All full-time and part-time personnel employed after the date this Agreement is ratified by FWC shall be subject to a six (6) month probationary period as per the *Fair Work Act 2009* (Cth).
- 10.3 **Casual Employment**
- (a) A casual Employee is to be one engaged and paid as such.
  - (b) A casual Employee working ordinary time shall be paid per hour 1/38 of the prescribed actual weekly rate for the work performed, plus 25%. A casual Employee is not entitled to any paid leave benefits of this Agreement including annual holidays, sick leave, public or additional holidays, or any redundancy or severance payments.
  - (c) A casual Employee must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.

#### 10.4 **Skill Enhancement**

All full-time and part-time employees must complete three (3) months service before being considered for the Skills Enhancement Programme as outlined in **clause 22.2**. Only weekly employees will be considered for skill enhancement.

#### 10.5 **Employee Duties**

An Employee shall perform such work as the Company shall, from time to time, reasonably require, provided the Employee has been trained to the level of skill required to perform such duties and has been evaluated to have the appropriate skills. Where training is required to enable the Employee to undertake any varied duties, the Employee shall undertake such training within the classification structure of this Agreement.

#### 10.6 **Timekeeping**

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

#### 10.7 **Absence from Duty**

- (a) An Employee (other than a casual Employee as defined) who is absent from work on account of personal illness or injury by accident (other than that covered by workers compensation), shall be entitled to leave of absence, without deduction of pay, subject to the following conditions and limitations:
- (b) The Employee shall notify the immediate supervisor or other nominated Employer representative prior to the shift in sufficient time to permit arrangements being made for the performance of the worker's duties: or as soon as possible within that shift; or in exceptional circumstances, no later than 24 hours from commencement of that shift. Any such worker who fails to reasonably do so shall be treated as absent without leave.
- (c) Subject to the provisions of **clause 29** - Personal Leave, any worker losing time through sickness or special leave shall be reduced in wages only to the extent of the time actually lost through sickness or actually granted as special leave.

### 11 **TERMINATION**

11.1 Except as provided in **clause 11.3** of this Clause, an Employee who has been continuously employed for four weeks or longer shall not, without the approval of the Company, leave the service of the Company until the expiration of one weeks' notice of the Employee's intention to do so.

11.2 In order to terminate the employment of an Employee the Company must comply with either of the following requirements.

- (a) Provide the Employee the period of notice set out in **clause 11.3** and **11.4** or compensation instead of notice.
- (b) Terminate the Employee due to serious misconduct, that is, misconduct of a kind such that it would be unreasonable to require the Company to continue the employment during the notice period.

11.3 The required period of notice is first calculated using this table:

Period of continuous service	Period of notice
Not more than 1 year	At least 1 week
More than 1 year but more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

The period of notice is increased by one week if the Employee is over 45 years old and has completed at least 2 years of continuous service with the Company.

11.4 **Ascertaining period of continuous service**

Continuous service shall be calculated under **clause 28.5** for the purpose of **clause 11.3**

11.5 **Amount of payment in lieu of notice**

The amount of payment in lieu of notice will not be less than the total of the all-purpose amounts that, if the Employee's employment had continued until the end of the required period of notice, the Company would have become liable to pay to the Employee because of the employment continuing during that period: provided that where both parties agree to a lesser period of notice, no payment shall be due for the agreed reduction of notice.

11.6 **Calculation of payment in lieu of notice**

That total must be worked out on the basis of:

- (a) the Employee's ordinary hours of work (even if they are not standard hours); and
- (b) the amounts payable to the employees in respect of those hours, including, where applicable, allowances, loading and penalties; and
- (c) any other amounts specified in this award and payable under the employees' contract of employment.

**12 REDUNDANCY PAY**

12.1 **Redundancy Payments**

- (a) Employees will receive a severance payment of 2.5 weeks for each complete year of service, or the amount payable as per the NES as below, to a maximum of 30 weeks in both voluntary and involuntary redundancy situations.

For Employee's period of continuous service at termination due to redundancy;

At least 1 year but less than 2 years - 4 weeks

At least 2 years but less than 3 years - 6 weeks

For periods of service of more than 3 years 2.5 weeks for each completed year of service applies to a maximum of 30 weeks.

Payments are calculated on the ordinary weekly hours' rate of pay at the time of termination for the Employee/s concerned.

- (b) Employees will also receive payment for the following:
  - (i) unused accrued annual leave
  - (ii) pro-rata unused long service leave according to the provisions of this Agreement.
- (c) The above payments will not be offset against accumulated superannuation benefits, which will be available in accordance with the trust deeds of the 'Australian Super' Superannuation Fund and the Company's Superannuation Plan.

## 12.2 Other Entitlements

- (a) The Company will provide to the Employee the following services:
  - (i) Outplacement services, counselling and assistance including advice on all entitlements, independent financial planning guidance, assistance to plan lifestyle and career strategies and assistance with job search techniques and interview skills.
  - (ii) Reasonable paid leave will be provided to a redundant Employee to attend job interviews. The Employee shall at the request of the Company produce proof of attendance at an interview.
- (b) If an Employee dies within the notice period of termination for reasons of redundancy and the Employee has a period of eligible service which would have entitled that Employee to redundancy pay, such redundancy pay entitlement shall be paid to the estate of the Employee.

## 12.3 Transmission of business

- (a) Where the business is transmitted from the Company (in this subclause called the 'Transmitter') to another Employer (in this subclause called the 'Transmittee') and an Employee who at the time of such transmission was an Employee of the transmitter in that business, becomes an Employee of the transmittee:
  - (i) the continuity of the employment of the Employee shall be deemed not to have been broken by reason of such transmission; and
  - (ii) the period of employment which the Employee has had with the transmitter shall be deemed to be service of the Employee with the transmittee.
- (b) In this subclause business includes trade, process, business or occupation and includes part of any such business and transmission includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and transmitted has a corresponding meaning.

## 13 APPRENTICES

- 13.1 The terms of this Agreement will apply to apprentices, including adult apprentices, except where it is otherwise stated or where special provisions are stated to apply. Apprentices may be engaged in trades or occupations provided for in this clause where declared or recognised

by an Apprenticeship Authority. In South Australia this is the Accreditation and Registration Council.

13.2 Subject to **clause 13.1** an apprenticeship may be undertaken in any of the following trades:

- (a) Engineering Tradesperson (Mechanical);
- (b) Engineering Tradesperson (Fabrication);
- (c) Engineering Tradesperson (Electrical/Electronic);
- (d) Radio/Telecommunications Tradesperson.

13.3 When at any time the Company has a need to enter into a contract of training with a person, the apprenticeship and training (will insofar as the *Fair Work Act 2009*(Cth), as amended allows) be in accordance with the requirements of the Apprenticeship Authority or State legislation.

13.4 **Rates of Pay- Apprentices**

(a) The minimum weekly rate of pay for apprentices shall be the applicable % as set out below of the Level 6 - Entry Level Trade rate of pay set out at **clause 22**:

Year of Apprenticeship	% of Levels
1 <sup>st</sup> Year	50
2 <sup>nd</sup> Year	60
3 <sup>rd</sup> Year	75
4 <sup>th</sup> Year	88

(b) **Hosted Apprentices**

Where an apprentice is hosted by the Company and employed by a Group Training provider, every effort will be made to ensure the rates of pay are equal to that provided for apprentices if employed directly by the Company as per this clause.

(c) **Adult Apprentices**

Until such time that the employee secures their relevant trade qualification, the minimum weekly rate of pay for an adult apprentice shall be equivalent to a 'Level 8 - Entry Level Non-Trade' Rail Employee (refer to cl. 22.3).

For the purposes of this Agreement, an 'adult apprentice' means an apprentice who is 21 years of age or over at the commencement of their apprenticeship.

**14 HOURS OF WORK**

14.1 The ordinary hours of work for a fulltime Employee shall be 38 per week or an average of 38 per week to be worked over a cycle of 28 consecutive days.

14.2 The ordinary hours of work prescribed herein shall be worked on any day or all of the days Monday to Sunday and shall be worked continuously except for meal breaks, at the discretion of the Company between 6.00am and 6.00pm. The spread of hours (i.e. 6.00am to 6.00pm)

may be altered at either end of the spread, by agreement between the Employer and the majority of employees concerned or in appropriate circumstances, between the Employer and an individual Employee.

The 38 hours per week shall be worked on one of the following bases:

- (a) 38 hours within a work cycle not exceeding 7 consecutive days; or
- (b) 76 hours within a work cycle not exceeding 14 consecutive days; or
- (c) 114 hours within a work cycle not exceeding 21 consecutive days; or
- (d) 152 hours within a work cycle not exceeding 28 consecutive days; or
- (e) any other work cycle during which a weekly average of 38 ordinary hours are worked which may be altered by agreement between Management and the majority of employees.
- (f) By agreement between the Employer and the majority of employees in the enterprise or part of the enterprise concerned, 12-hour days or shifts may be introduced subject to:
  - (i) Proper health monitoring procedures being introduced;
  - (ii) Suitable roster arrangements being made;
  - (iii) Proper supervision being provided;
  - (iv) Adequate breaks being provided;

An adequate trial or review process being implemented through the consultative process in **clause 21**.

- 14.3 In any arrangement of ordinary working hours where the ordinary working hours are to exceed eight (8) the arrangement of hours shall be agreed between the Employer and the majority of employees in the work group or sections concerned.
- 14.4 The method of implementation of a 38-hour week may be any one of the following:
  - (a) By employees working less than eight ordinary hours each day; or
  - (b) By employees working less than eight ordinary hours on one or more days each week; or
  - (c) By rostering employees off on various days of the week during a particular work cycle so that each Employee has one week's day off during that cycle;
  - (d) By an alternative system which allows employees to accrue at least one rostered day off in each work cycle.
- 14.5 An assessment should be made as to which method of implementation best suits the work requirements and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation.
- 14.6 In the absence of agreement the matter shall be referred to the Disputes Settling Procedure provided in **clause 24**.
- 14.7 Different methods of implementation of a 38-hour week may apply to various groups or sections of employees.

14.8 The "RDO Bank" is provided generally to allow an Employee one rostered day off in each four- week work cycle.

14.9 **Notice of days off duty**

Except as provided in **clauses 14.10** and **14.11** of this clause in cases where, by virtue of the arrangement of ordinary hours an Employee, in accordance with **clauses 14.4(b)** and **14.4(c)**, is entitled to a day off duty during the work cycle, then such Employee shall be advised by the Company at least four weeks in advance of the day to be taken off duty provided that a lesser period of notice may be provided if such notice is not practicable or the Company and the Employee(s) concerned agree.

14.10 **Flexibility in relation to rostered days off**

Notwithstanding any other provision in this clause, where the hours of work of a section or group are organised in accordance with **clauses 14.1** and **14.2** the Employer and the majority of employees or the Employer and an individual Employee may agree to accrue up to a maximum of 5 rostered days off.

14.11 **Alternative RDO**

Where required by the Company to meet operational requirements, an alternative working day in the cycle may be substituted as the rostered day off and all provisions of the Agreement shall apply as if the substituted day were the prescribed day.

14.12 **RDO falling on a Public Holiday**

Where the agreed rostered day off falls on a public holiday prescribed by the Agreement, the next working day shall be taken in lieu of the rostered day off, unless an alternative day in that cycle or the next cycle is agreed in writing between the Company and the Employee.

14.13 **Programming of RDOs**

The parties will meet to programme the RDO's for each year, ensuring that they are aligned with the public holidays to the greatest extent practicable.

14.14 **Paid Leave**

Each day of paid leave taken and any public holiday occurring during any cycle shall be regarded as a day worked for accrual purposes.

14.15 **Pro rata accrued entitlements**

An Employee who has not worked shall receive pro rata accrued entitlements for each day worked or regarded as having been worked in that cycle. Such pro rata entitlements shall be payable for the rostered day off, or in the case of termination of employment, on such termination.

14.16 **Work on an RDO**

The rostered day off prescribed by this clause shall generally be taken as a paid day off, provided that the day may be worked where that is required by the Company to meet operational requirements. In such cases, the Employee shall be paid at normal rates for all work performed on the rostered day off and be granted another day in lieu as provided in **clause 14.11**.

- 14.17 An Employee who works an average of 38 ordinary hours per week in accordance with any combination of alternatives provided in **clause 14.1** shall be paid weekly the average payment of 38 ordinary hours even though more or less than 38 ordinary hours may be worked. In addition, payment shall be made for any overtime worked in excess of the nominated ordinary hours on a daily basis. On completion of each four week work cycle, an Employee will receive in addition to the weekly ordinary time wages, payment for overtime worked in excess of the average ordinary hours for that cycle (152 hours) together with payment of allowances and penalties entitled in that work cycle.
- 14.18 Under the averaging system an Employee will work 7 hours 36 minutes or more each day. When an Employee exceeds 7 hours and 36 minutes ordinary hours per day the additional time becomes a "credit" which shall be accrued in an "RDO Bank" and paid in the pay period when the rostered day off is taken.
- 14.19 The maximum "credit" to be accrued in the "RDO Bank" is 38 hours at which time the Employee and section Management must roster the appropriate time off to reduce or eliminate the accrued time.
- 14.20 The "RDO Bank" is provided generally to allow an Employee one rostered day off in each four-week work cycle. The arrangements of ordinary hours and the substitute of accrued rostered days off to other days or other work cycles are at the discretion of the Management and the section or group of employees concerned. Provided that the ordinary hours worked on any other day by a section or group will be the same for all members of that section or group.
- 14.21 Employees may be requested to transfer their rostered day off to suit operational requirements, including possessions or project work. Likewise, employees may request to transfer their rostered day off, operational requirements permitting.

A planned possession or project is generally classified as being a planned possession of a section of the track and/or related infrastructure to carry out maintenance and/or project work which cannot be undertaken on stream.

Casual employees terminated before or at completion of the possessions and/or project work that have RDO accruals will have the accruals paid at the ordinary time rate (casual rates) on the termination.

On completion of the possession or project work the RDO programme will immediately revert to the programme and practice which existed before the possession or project work commenced, i.e. the next scheduled RDO will generally be recognised according to the normal flexible workplace practice.

All details showing forecast indicative RDOs and the practice to be followed during possession or project work is to be clearly outlined and communicated to casual employees at the time of offer of employment.

Outside planned possessions or project work the existing flexible approach to RDO practice will continue.

## **15 MEAL BREAKS AND REST PERIODS**

### **15.1 Meal Break - Day Workers**

- (a) Employees will be entitled to an unpaid meal break of not more than half an hour. The meal break will be taken as near to the midpoint of the day's work as is reasonably possible and at such times as will not interfere with the continuity of the work.
- (b) Subject to **subsection 15.4** hereof where it is necessary (as required by the Company), to defer the main meal break for more than one (1) hour for the purpose of completing a specific task, then the Employee or employees concerned shall be paid time and a half rates for all work done beyond the hour until a meal break is allowed.

#### 15.2 **Meal Break - Shift Workers**

Employees who are employed as shift workers will be entitled to a meal break of twenty minutes to be taken without loss of pay.

#### 15.3 **Rest Period**

Employees will be entitled to a paid ten-minute rest period between the commencement of work and the main meal break, at a time which shall coincide with other areas of operations. It is recognised that on occasions it may be necessary to defer the scheduled rest period for the purpose of completion of specific tasks. On these occasions the rest period will be observed as soon as possible after the original schedule time.

#### 15.4 **Flexibility for planned work**

- (a) As part of the employees' commitment to improving the efficiency of the enterprise, the planned time of the observance of meal and rest breaks may be adjusted to enable the completion of the whole task at hand without incurring penalty rates.
- (b) This provision shall not operate to deny or unduly disadvantage any Employee's meal or rest entitlements.

### 16 **SATURDAY AND SUNDAY TIME**

- 16.1 Time worked between midnight on Friday and midnight on Saturday, which is not overtime, shall be paid for that at the rate of time and a half.
- 16.2 Time worked between midnight on Saturday and Midnight on Sunday shall be paid at the rate of double time. Provided an Employee commences work on a Sunday earlier than 10.00pm such double rate to continue until the Employee is relieved from duty for at least eight consecutive hours without deduction of pay for ordinary time duty occurring during such absence. Where an Employee commences work after 10.00pm the payment to midnight shall be double time and subsequent to midnight shall be the appropriate Monday rate.
- 16.3 Time paid for travelling, waiting, terminal intervals, or meal intervals shall not be regarded as time worked for the purpose of payment under this clause except when occurring between periods of actual work within a shift, provided that time occupied in walking and carrying departmental kit tools shall be computed as time worked.
- 16.4 Consistent with the provisions of **clause 7** - Aims of Agreement and **clause 8** - Commitment to Improving Productivity Efficiency and Flexibility, the Company and the Employees shall exercise total flexibility when determining the suitable start and finish times for a given day or a group of days or for a specific job or period or to accommodate adverse or difficult weather conditions. For similar reasons to those mentioned above the spread of hours (6.00am to

6.00pm) may be altered by agreement between Management and the majority of employees. For the purposes of this Sub- clause the employees shall not unreasonably withhold agreement.

- 16.5 Rosters and work notification - where an Employee is required to commence work at a location other than the Employee's usual place of commencing work, in the case of programmed work, the Employee shall be provided with a minimum of one week's notice of such requirement, for other work a minimum of 48 hours' notice, and in the event of derailment or emergency attendance to restore service, every endeavour will be made to provide at least 48 hours' notice except where it is just not possible to do so. In the event of 48 hours' notice not given for change of shift, Overtime rates shall apply to any normal hours worked at a location other than the usual place of work, until the expiration of that 48 hours.
- 16.6 With respect to **clauses 16.4** and **16.5** the Company and the Employees agree to regularly monitor the application of these provisions through the consultative committee to ensure the intentions of the parties are observed.

## 17 TRAVELLING TIME

An Employee required to travel to and from their usual base and the work location will be paid at the ordinary rate of pay plus applicable overtime contained in **clause 18 - Overtime**. Time spent travelling is classed as work time. Where an Employee travels on a Sunday such payment for travel time shall be at double the ordinary rate.

The maximum travelling time to be paid for shall be 12 hours out of every 24 hours where a sleeping berth is provided by the Company for all night travel.

## 18 OVERTIME

### 18.1 Payment for Working Overtime

- (a) For all work done outside the nominated ordinary hours or spread hours on Monday to Saturday the rate of pay shall be 1.7 times the ordinary time rates of pay. All overtime performed between midnight Saturday and midnight Sunday shall be paid at double time.
- (b) Except as provided in this subclause or **clause 18.3** hereof in computing overtime each day's work shall stand alone. Day shall mean all the time between the commencing time of one day and the commencing time of the next succeeding day.
- (c) For the purposes of this clause ordinary hours shall mean the hours worked in accordance with **clause 14** of this Agreement.
- (d) The hourly rate, when computing overtime, shall be determined by dividing the appropriate weekly rate by 38, even including in cases when an Employee works more than or less than 38 ordinary hours in a week.

### 18.2 Requirement to Work Reasonable Overtime

The Employer may require an Employee to work reasonable overtime at overtime rates. In such circumstances, overtime will be worked in accordance with the requirements set out in this clause, and subject to the relevant definition contained in the NES.

### 18.3 Rest Period after Overtime

- (a) When overtime work is necessary it shall, whenever reasonably practicable, be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days.
- (b) An Employee (other than a casual Employee) who works so much overtime between the termination of ordinary work on one day and the commencement of his ordinary work on the next day that he has not had at least 10 consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until they have had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (c) If on the instructions of the Company such Employee resumes or continues work without having had such 10 consecutive hours off duty he/she shall be paid at double rates until released from duty for such period and shall then be entitled to be absent until he/she has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (d) The provisions of this clause shall also apply in the case of shift workers.
- (e) Rest Period - with regard to **clause 18.3(a), 18.3(b) and 18.3(c)** of this Agreement it is agreed that the ten hour period referred to therein can be reduced to eight hours in the event that the reason arises consequent upon a derailment (which is expected to be repaired for a turnaround of less than 3 days), and then only in circumstances where the health and safety of the Employee is not compromised as a result of the reduction.

### 18.4 Call Back

- (a) An Employee recalled to work overtime after leaving the work location (whether notified before or after leaving the location) shall be paid for a minimum of four hour's work at the appropriate rate for each time so recalled; provided that, except in the case of unforeseen circumstances arising, the Employee shall not be required to work the full four hours if the job they were recalled to perform is completed within a shorter period. Provided that an Employee who is paid an on-call allowance shall be paid for a minimum of three hour's work for each time so recalled. This subclause shall not apply in cases where it is customary for an Employee to return to the Company's place of business to perform a specific job outside ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary time.
- (b) Overtime worked in the circumstances specific in this sub-clause shall not be regarded as overtime for the purpose of **clause 18.3** of this clause when the actual time worked is less than four hours on such recall or each of such recalls.

### 18.5 Saturday Work

A day worker required to work overtime on a Saturday shall be afforded at least four hour's work or paid for four hours at the appointed rate except where such overtime is continuous with overtime commenced on the day previous.

## 18.6 **Sunday Work**

A day worker required to work overtime on a Sunday shall be afforded at least four hour's work or paid for three hours at the appointed rate except where such overtime is continuous with overtime commenced on the day previous.

## 18.7 **Crib Time**

- (a) An Employee working overtime shall be allowed a crib of 20 minutes without deduction of pay after each four hours of overtime worked if the Employee continues work after such crib time.
- (b) Provided that where a day worker is required to work on a Saturday or on a rostered day off the first prescribed crib time shall if occurring between 10:00am and 1.00pm be paid at ordinary rates.
- (c) Unless the period of overtime is less than one and a half hours an Employee before starting overtime after working ordinary hours shall be allowed a crib of 20 minutes which shall be paid for at ordinary rates. The Company and Employee may agree to any variation of this provision to meet the circumstances of the work in hand provided that the Company shall not be required to make any payments in respect of any time allowed in excess of 20 minutes.

## 19 **SHIFT WORK**

### 19.1 **Definitions**

- (a) Shift work means any system of work which is being carried out on a regular scheduled basis outside ordinary working hours, for a minimum of five consecutive shifts.
- (b) Early morning shift means a shift which commences at or between 4:00a.m. and 5:30 a.m.
- (c) Afternoon shift means a shift which commences before 6:00 p.m. and finishes at or after 6:30 p.m.
- (d) Night shift means a shift which commences at or between 6:00 p.m. and 3:59a.m.
- (e) Provided that, in the case of broken shifts, each turn of duty shall be regarded separately for the purpose of this clause.

### 19.2 **Shift Penalty**

- (a) For all paid time on duty not subject to overtime penalty on days other than a Sunday, Saturday or public holiday, an Employee in receipt of an adult wage rate shall be paid a shift allowance of:
  - (i) 12.5% of the Employee's ordinary rate of pay for an early morning shift or an afternoon shift
  - (ii) 30% of the Employee's ordinary rate of pay for a night shift
- (b) In addition to the allowances prescribed herein, an Employee in receipt of an adult wage rate who signs on or off at or between 1:01 and 3:59 a.m. on Monday to Friday shall be paid an allowance of 12.5% for that shift provided that such loading is not payable on a public holiday or overtime shift.

- (c) In calculating the allowances herein prescribed, broken parts of an hour or less than 30 minutes shall be disregarded and 30 minutes to 59 minutes shall be paid as an hour.

### 19.3 **Five successive shifts**

- (a) Shift workers who work on any afternoon or night shift which does not continue for at least five successive afternoons or nights shall be paid at the rate of time and a half for all ordinary time occurring during such shifts.
- (b) On completion of the fifth consecutive afternoon or night's work the Employee shall be deemed to have been employed on afternoon or night shift as the case may be, during the preceding four afternoons or nights, and thereafter during any subsequent consecutive afternoon or nights the Employee is so employed. The sequence of shift work shall not be deemed to be broken under this paragraph by reason of the fact that the works are closed on a Saturday, Sunday or any public holiday.

### 19.4 **Extended night shift**

- (a) An Employee who:
  - (i) during a period of engagement on shift, works night shift only; and
  - (ii) remains on a night shift for a longer period than four successive weeks:
- (b) shall be paid 30% more than the ordinary rate for all time worked during ordinary working hours on such night shifts in excess of four weeks.

### 19.5 **Transport after Overtime**

When a shift worker, after having worked overtime or a shift for which he/she has not been regularly rostered, finishes work at a time when reasonable means of transport are not available, the Company will reimburse the Employee for the cost of conveying the Employee to his/ her usual place of residence or to the nearest appropriate public transport. In the event that the Company provides this conveyance, re-imbusement will not apply.

## 20 **INCLEMENT WEATHER**

20.1 If owing to inclement weather conditions employees are unable to work, they shall be entitled to be paid for the time lost. Provided that it shall be the sole responsibility of the Employee in charge on the Site of the work being carried out to determine whether or not, and when work shall cease owing to inclement weather conditions.

20.2 There shall be no deduction of wages for time lost during inclement weather provided that any Employee ceasing work of his own volition shall not be entitled to payment for the time lost.

"Inclement weather" shall mean the existence of rain or abnormal climatic conditions (whether they be those of hail, cold, high wind, severe dust storm, extremes of high temperature or the like of any combination thereof) by virtue of which it is either not reasonable or safe for employees exposed thereto to continue working whilst such inclement weather prevails.

## **21 CONSULTATIVE COMMITTEE**

### **21.1 Composition of Consultative Committee**

- (a) A consultative committee shall be formed to assist Management in the implementation of Best Practice initiatives consistent with the Aims of this Agreement.
- (b) The Consultative Committee shall consist of two (2) representatives of the workforce, elected by the workforce, and two (2) representatives of Management or such other equal numbers as agreed who shall meet as frequently as the Committee determines is necessary. It is intended that the members of the Committee would be from a broad cross-section of the workforce who are appropriately trained to undertake their responsibility.
- (c) The Consultative Committee shall be required to keep minutes of meetings and to provide an agenda for each meeting.
- (d) In an effort to provide a new input to the Committee from time to time, the Committee may invite other representatives to attend the Consultative Committee meetings. Such representatives may be from subcontracting companies who participate in the maintenance operations, where relevant a duly accredited Union Official such as the responsible organiser and/or a representative of the Management team.

### **21.2 Scope of Tasks of the Consultative Committee**

The tasks to be undertaken by the Consultative Committee shall be broad and shall be in the best interests of the quality and tasks execution for the Enterprise, consistent with the Aims of this Agreement. The tasks to be undertaken shall include, but shall not necessarily be limited to the following:

- Oversee the Skills Enhancement Training Programme content and evaluation criteria for each Classification Level to suit the requirements of the Company for the infrastructure maintenance servicing within the Rail Industry.
- Facilitate the resolution of difficulties and problems which may arise in establishment and implementation of the Skill Enhancement Training Programme.
- Contribute to development of shift and work rosters.
- Contribute to development of Best Practice initiatives for the Enterprise.
- Create feasible work methods and task redesign to enhance productivity and efficiency
- Contribute to the Quality Assurance Plan Development for the Maintenance Services Operation.
- Develop concepts for productivity and efficiency improvements within the Enterprise.
- Develop an open, participative and co-operative Management approach.
- Promote team-based work methods.
- Assist with communication, participation and training programs to bring about attitudinal and cultural change.
- Ensure propagation of experience, knowledge and skills at all levels.

- Ensure and monitor an appropriate standard of accommodation and amenities, including ensuring a regular review and maintenance programme is conducted.

### 21.3 **Consultation**

The model consultation term prescribed by the Fair Work Regulations is a term of the Agreement.

Refer to Appendix B of this Agreement.

## 22 **CLASSIFICATION, RATES OF PAY & ALLOWANCES**

### 22.1 **Classification**

- (a) With the exception of Apprentices, this Agreement provides for an eight (8) level single stream structure which encapsulates two entry levels.
- (b) All classifications are termed "Maintenance Employee". Differentiation applies at each level, based on skills acquired and demonstrated. The Skills Matrix defines the nature of skills attained.
- (c) The classification and skill levels as described in this Clause are to cover all aspects of the business of the Company.

### 22.2 **Skills Enhancement Programme-Progression**

- (a) All employees shall have a reasonable opportunity of progressing to a higher skill level. Advancement to a higher level will only result from:
  - (i) Maintenance service requirements (i.e. The needs of the Company) for skills within the levels specified. These needs shall be reviewed regularly by the Consultative Committee which shall be provided with all relevant information.
  - (ii) Accumulation of appropriate skills by the demonstration of required competency.
- (b) Advancement to a higher skill level will entail an increase in rates of pay as set out in **clause 22.1**.

## 22.3 Pay Rates

- (a) The rates of pay in the table below shall apply on and from the first full pay period after the Agreement is approved by the FWC. Wage increases will apply during the term of the Agreement on the operative date below.

Rail Employee	1 <sup>st</sup> Pay Period on or after the Agreement is approved		1 <sup>st</sup> Pay Period on or after 1 <sup>st</sup> anniversary of the Agreement operating		1 <sup>st</sup> Pay Period on or after 2 <sup>nd</sup> anniversary of the Agreement operating	
	Weekly	Per Hour	Weekly	Per Hour	Weekly	Per Hour
	2.00%		2.00%		2.00%	
	\$	\$	\$	\$	\$	\$
Level 1	1479.32	38.92	1508.90	39.70	1539.08	40.50
Level 2	1420.08	37.36	1448.49	38.11	1477.46	38.87
Level 3	1361.03	35.80	1388.25	36.52	1416.01	37.25
Level 4	1301.60	34.25	1327.63	34.94	1354.19	35.64
Level 5	1242.72	32.70	1267.57	33.36	1292.92	34.02
Level 6 – Entry Level Trade	1183.49	31.14	1207.16	31.76	1231.30	32.40
Level 7	1124.68	29.59	1147.18	30.18	1170.12	30.79
Level 8 – Entry Level Non-Trade	1065.81	28.05	1087.12	28.61	1108.87	29.18

The hourly and weekly rates of pay expressed in this clause reflect a base rate of pay, and as such, do not include allowances for varying workplace conditions.

The hourly/weekly rates, as specified, reflect the hourly/weekly base rate, that is, the base rate payable for each individual classification levels.

- (b)
- (i) All monies paid pursuant to this Agreement shall be paid fortnightly by electronic transfer of funds into one account nominated by the Employee with a bank or other financial institution recognised by the Company.
  - (ii) The parties to this Agreement have agreed to change the pay frequency for an Employee from weekly to fortnightly, to enable payment to be aligned with the HR shared services payroll department, as per all other pay cycles in Ventia contracts/sites. The fortnightly payment of wages shall commence post the Agreement taking effect from the FWC endorsement process, to enable the workforce with sufficient notification of at least one month's notice or more, depending upon when ratification occurs.

- (iii) The Company shall have the right to deduct any amount required to be paid by the Employee under this clause for cases of incorrect or overpayment of wages or allowances. The deduction method must be discussed and agreed with the Employee.

#### 22.4 **Team Leaders Allowance**

Employees may be appointed by the Company as Team Leaders. Each Team Leader will be required to carry out the duties outlined below with a nominated team, or teams, notwithstanding that a team may consist of composite skills including trade and general skills.

A Team Leader who meets the criteria below shall be paid an additional weekly rate of 7 per cent of the weekly rate for the Employee's classification. A Team Leader in training, on commencing a prescribed training program, will be paid an additional rate of 3.5% of his/her current rate until training is completed and an accepted level of competence is obtained.

- (a) Trains personnel on the job at all levels in the Skills Enhancement Program where competent.
- (b) Supports, coaches, facilitates, plans with and assists individuals and teams, wherever required.
- (c) Specifies improvements, plans, coordinates, designs and is able to provide procedures according to QA requirements.
- (d) Details major and complex work plans and procedures as needed.
- (e) Trouble shoots and solves problems associated with works, plant, materials and equipment.
- (f) Plans, facilitates and supports the effective operations of two or more multitask and skilled teams, according to the operational and work requirements of the Company to meet client requirements.
- (g) Completes a relevant Team Leader course and applies skills across teams, to work being undertaken.
- (h) Trained and uses specialist skills to meet the Company's client requirements.
- (i) Applies computer skills (e.g. Job Pack) to undertake work, in line with the Project Program, as required.

#### 22.5 **Allowances**

The Allowances contained under cl. 22.5 will also be subject to the percentage increases stipulated in the table contained in cl. 22.3 relating to rates of pay in this Agreement.

##### (a) **On-call**

From commencement of this Agreement an Employee on call shall be paid an allowance of when on call for a day and a night combined as outlined in the table below.

For the purpose of this Clause, an Employee "on-call" shall mean that such Employee has been directed by the Company to be available outside normal working hours for recall to duty.

<b>1<sup>st</sup> Pay Period after the Agreement is approved by the FWC</b>
<b>Amount</b>
\$18.99 Per Night
\$41.89 Per Night & Day

(b) **Tool Allowance**

- (i) The Company may choose to pay in lieu of the provisions of **sub-clause 22.5(b)(ii)** below, a tool allowance per week for all purposes of this Agreement as outlined in the table below.

<b>First Full Pay Period on or after the Agreement is approved</b>	<b>First Full Pay Period on or after the first anniversary of this Agreement operating</b>	<b>First Full Pay Period on or after the second anniversary of this Agreement operating</b>
<b>Amount</b>	<b>Amount</b>	<b>Amount</b>
\$18.72 per week	\$19.09 per week	\$19.48 per week

- (ii) The Company may choose to supply tools to tradespersons in lieu of the payment of a tool allowance as prescribed in **sub-clause 22.5(b)1.1(a)(i)** above.
- (iii) It is a condition of the provision of tools in lieu of the payment of the allowance provided for at **sub-clause 22.5(b)(ii)** that if tools are lost or damaged the Employee shall submit a report on the appropriate form as soon as possible. Periodic checks will be conducted. An Employee shall, upon notice by the Company replace or pay for any tools and/ or equipment so supplied if lost or damaged through the Employee's negligence.

22.6 **First Aid Allowance**

An Employee who is nominated by the Company to be trained to provide first aid and who is currently a holder of appropriate first aid qualifications, namely complete 'Advanced First Aid' Training, and is appointed by the Company as a first aid officer, will be paid a flat weekly allowance as outlined in the table below:

<b>First Full Pay Period on or after the Agreement is approved</b>	<b>First Full Pay Period on or after the first anniversary of this Agreement operating</b>	<b>First Full Pay Period on or after the second anniversary of this Agreement operating</b>
<b>Amount</b>	<b>Amount</b>	<b>Amount</b>
\$17.09 per week	\$17.43 per week	\$17.78 per week

22.7 **Meal allowance**

- (a) An Employee is entitled to a meal allowance as outlined in the table below on each occasion that the Employee is entitled to a rest break in accordance with **sub-clause**

**18.7(a)** which is as follows, “An Employee working overtime shall be allowed a crib of 20 minutes without deduction of pay after each four hours of overtime worked if the Employee continues work after such crib time”, except in the following circumstances:

- (i) if the Employee is a day worker and was notified no later than the previous day that they would be required to work such overtime;
- (ii) if the Employee is a shift worker and was notified no later than the previous day or previous rostered shift, they would be required to work such overtime;
- (iii) if the Employee lives in the same locality as the enterprise and could reasonably return for meals.

First Full Pay Period on or after Agreement is approved	First Full Pay Period on or after the first anniversary of this Agreement operating	First Full Pay Period on or after the second anniversary of this Agreement operating
Amount	Amount	Amount
\$17.55	\$17.90	\$18.26

- (b) If an Employee has provided a meal on the basis that he or she has been given notice to work overtime and the Employee is not required to work overtime or is required to work less than the amount advised, he or she shall be paid the prescribed meal allowance for the meal or meals which he or she has provided but which are surplus.

## 22.8 Electrical License Allowance

An electrical worker who holds and in the course of his or her duties may be required to use an unrestricted license shall be paid an all-purpose allowance per week as outlined in the table below. The Employee is responsible for the renewal of the license.

First Full Pay Period on or after Agreement is approved	First Full Pay Period on or after first anniversary of this Agreement operating	First Full Pay Period on or after second anniversary of this Agreement operating
Amount	Amount	Amount
\$25.29 per week	\$25.80 per week	\$26.31 per week

## 22.9 Other allowances (as per Rail Industry Award 2020)

In recognition of the nature of working in poor conditions as below in specific heavy industrial locations as listed in this subclause, a disability allowance shall be paid at a flat rate per hour as outlined in the table below. The locations and circumstances where this allowance is to be paid are:

- Arrium rail lines to and from the Whyalla steel works and mines
- Nyrstar Port Pirie plant (lead smelter)
- Port Augusta Flash Butt Welding Depot

The allowance shall be deemed to compensate for special factors and for adverse working conditions including, associated with the provision of maintenance and associated services to rail track infrastructure in either of the aforementioned plants.

These allowances may apply in industrial environments that warrant the application of these allowances, for example, each allowance to apply for the specific work it entails. For example, if not undertaking “dirty work” then the dirty work allowance does not apply, the same goes for confined spaces, height and so forth. In the event of the dispute the parties will follow the procedure as set out in **clause 24** of the Agreement.

Type of Allowance (to be paid only in circumstances that entail this type of work	First Full Pay Period upon approval of this Agreement by the FWC and after the first anniversary of this Agreement	First Full Pay Period on or after the second anniversary of this Agreement
	Amount	Amount
Heat *	0.69 cents per hour	0.70 cents per hour
Wet places	0.69 cents per hour	0.70 cents per hour
Dirty Work and Fumes/Dust	0.69 cents per hour	0.70 cents per hour
Lead Smelter (Nyrstar)	0.50 cents hour	0.51 cents per hour
Confined spaces	0.90 cents per hour	0.92 cents per hour
Height money	0.50 cents per hour	0.51 cents per hour

\*Heat Allowance to be payable once Employee notifies supervisor of the temperature being above 42 degrees celsius to prevent working in excessive heat as per safety requirements at Ventia.

#### 22.10 Acting in a Higher Capacity Payment

An Employee who is appointed to fulfil the duties and responsibilities of a higher classification/position shall receive the corresponding rate of pay for the higher classification/position, for the period of time acting in the higher capacity, excluding coverage of the higher classification/position for any single day periods.

#### 22.11 Interstate Assignments

Employees working on an interstate assignment or project for a period of 14 days or more where a higher rate of pay is payable under an applicable local Ventia Pty Limited Enterprise Agreement for the work, the higher rate of pay shall be payable for the period the Employee is engaged on the interstate work.

## 22.12 Underground Allowance

Employees working underground on a mine site will be entitled to an allowance as outlined in the table below for each day that they work underground:

First Full Pay Period on or after agreement is approved	First Full Pay Period on or after the first anniversary of this Agreement	First Full Pay Period on or after the second anniversary of this Agreement
Amount	Amount	Amount
\$52.02 per day	\$53.06 per day	\$54.12 per day

## 23 DISCRIMINATION

23.1 It is the intention of the respondents to this Agreement to achieve the principal object in section 3(m) of *Fair Work Act 2009* (Cth) 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.

23.2 Accordingly, in fulfilling its obligations under the Avoidance of Disputes Clause, the Company will make every endeavour to ensure that neither the Agreement provisions nor their operation are directly or indirectly discriminatory in their effects.

23.3 **Nothing in this Clause is taken to effect:**

- (a) Any different treatment (or treatment having different effects) which is specifically exempted under Commonwealth anti-discrimination legislation).
- (b) An Employee, Employer or registered organisation, pursuing matters of discrimination in any State or Federal jurisdiction including by application of the Human Rights and Equal Opportunity Commission.

## 24 DISPUTES SETTLING PROCEDURE

24.1 It is an express condition of this Agreement and each Employee's contract of employment, that continuous operations and workflow be maintained. This shall apply whether the issue, matter, dispute (hereinafter referred to as the grievance) relates directly to Site employment or not or whether it relates to a grievance dealt with by this Agreement or not. In order to comply with this provision, the parties acknowledge that it is a fundamental requirement that this clause be observed in its entirety:

- (a) Where a grievance other than for safety reasons arises, the matter shall initially be taken up with the immediate Supervisor by the Employee and, if requested by the Employee, a representative of the employees' choice. This shall include matters pertaining to National Employment Standards.
- (b) If the grievance is still unresolved after discussions referred to above, the Employee and, if requested by the Employee, the Employee's representative shall attempt to resolve the matter with the Company's Contract Manager or his nominated representative.

- (c) Should Site discussions fail to resolve the grievance the matter shall be referred to the Project Manager and/or his nominated representative, who shall meet in an attempt to resolve the grievance with the Employee and if requested by the Employee the relevant responsible full time official of the Union or other representative of the Employee.
  - (d) After the above steps have concluded and if the grievance is not resolved, and subject to the grievance not being a prohibited matter, or a matter not relating to unlawful or unfair dismissal, or a matter not being in breach of the no further claims clause or a breach of this Agreement, then any party, subject to **clause 16(e)** below, may apply to the FWC seeking resolution of the grievance via conciliation.
  - (e) If the matter cannot be settled by conference between the parties, the Company or other representative may apply to FWC, which shall endeavour to resolve the issue between the parties pursuant to the provisions of the *Fair Work Act 2009* (Cth) including arbitration. Any decision or binding outcome of the FWC must be consistent with the Code for the Tendering and Performance of Building Work 2016.
- 24.2 The parties are committed to adherence of the above procedure. This shall be facilitated in the first instance by the earliest possible advice by one party to the other of any issue or problem, which may give rise to a grievance or dispute.
- 24.3 While the above steps are being followed normal work shall continue. Sensible time limits shall be allowed for all stages of the discussions to be finalised. No party shall be prejudiced simply by the fact that work continued whilst the above process was being followed.
- 24.4 If any of the matters in dispute are not resolved through the processes outlined herein, a cooling off period of seven days shall apply to enable either party or both parties to seek the assistance of the FWC to resolve the matter.
- 24.5 The status quo shall continue whilst the above procedures are being, followed. For this purpose, status quo shall mean the work procedures and practices in place immediately prior to commencement of the dispute.

## 25 COUNSELLING AND DISCIPLINARY PROCEDURE

Where Employee/s transgress reasonable employment requirements the Employee/s shall be subject to the following procedures:

- (a) First verbal Counselling/Warning (noted on Personnel File).
- (b) First Written Warning (at this stage a copy of the first Written Warning shall also be sent to the Company Project Manager).
- (c) Final Written Warning (at this stage a copy of the final Written Warning shall also be sent to the Company Project Manager).
- (d) Termination of employment by the Company (the Company Project Manager shall also be informed when termination(s) takes place).

In the above procedures the Employee/s concerned shall be made aware of his/her entitlement to have an Employee representative or a witness present. A request for a witness or an Employee representative to be present shall not be unreasonably withheld.

Notwithstanding the above, the Company shall have the right to dismiss an Employee without notice for conduct that justifies instant dismissal and in such cases the wages shall be paid up to the time of dismissal only. Similarly, if severity of the circumstances warrant, one or more of the steps of the procedure may be by-passed to enable adequate attention to be given to any incident.

## 26 TOOLBOX MEETINGS

"Toolbox" meetings will be held fortnightly for the purpose of discussing any matter concerning the general welfare of employees. Each meeting will be conducted by the individual supervisors and will involve each member of his immediate work team. Matters arising from the meetings, if not resolved at the time, will be processed through the Company's Works Superintendent.

## 27 WATCHES

To enable an adequate level of safety procedure on activities carried out trackside, appropriate personnel shall be issued with a wristwatch or other suitable time device to monitor the timetable of rail traffic.

## 28 ANNUAL LEAVE

### 28.1 Period of Leave

- (a) An Employee, other than a casual Employee, is entitled to 20 days annual leave per 12 months of continuous service with the Company, exclusive of any public holidays prescribed under **clause 35**, which accumulates progressively throughout the year. Any untaken annual leave accumulates from year to year.
- (b) Provided that where a rostered day off, as prescribed in **clause 14.3**, falls during the period annual leave is taken, payment of accrued entitlements for such day shall be made in addition to annual leave payments prescribed in **clause 28.8**.
- (c) An Employee who throughout the year is engaged as a shift worker rostered to work regularly on Sundays and/or public holidays shall be entitled to additional annual leave of one week. Such employees are shift workers for the purposes of the NES.

### 28.2 Method of taking leave

- (a) Annual leave will be taken by agreement between the Company and the Employee or as directed by the Company in accordance with the *Fair Work Act 2009* (Cth).
- (b) In the circumstances where a public holiday falls within one day of a weekend or another public holiday, the provision of **clause 28.9** hereof may be altered by agreement between the Company and a majority of employees affected under this Agreement, to provide that a day of annual leave entitlement may be granted on the day between the said public holidays and/or weekend if an Employee, or the Company, requests it.

**28.3 Proportionate leave on termination**

A weekly hired Employee who has five continuous working days or more service, inclusive of any days off as prescribed by this Agreement, (excluding overtime), who lawfully leaves the employment of the Company through no fault of the Employee is terminated by the Company shall be paid 1/12 of an ordinary week's wages in respect of each completed five working days of continuous service with the Company for which leave has not been granted or paid for in accordance with this Agreement.

**28.4 Broken service**

- (a) Where an Employee breaks the continuity of service by an absence from work for any reason other than a reason set out in **clause 28.6** hereof, the amount of leave which the Employee would have been entitled under **clause 28** hereof shall be reduced by 1/48 for each week or part thereof during which any such absence occurs and the amount of payment in lieu of leave to which any such absence occurs and the amount of payment in lieu of leave to which the Employee would have been entitled under **clause 28.8** hereof shall be reduced by 1/12 of a week's pay for each week or part thereof during which any such absence occurs.
- (b) Provided that no reduction shall be made in respect of any absence unless the Company informs the Employee in writing of the Company intention to do so within fourteen days of the termination of absence.

**28.5 Calculation of continuous service**

**28.6** For the purpose of this clause service shall be deemed to be continuous notwithstanding:

- (a) any interruption or determination of the employment by the Company if such interruption or determination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;
- (b) any absence from work on account of personal sickness or accident or on account of leave lawfully granted by the Company; or
- (c) any absence with reasonable cause, proof whereof shall be upon the Employee.

**28.7** In cases of personal sickness or accident or absence with reasonable cause the Employee to become entitled to the benefit of this subclause shall inform the Company, in writing if practicable, within 24 hours of the commencement of such absence of his/her inability to attend for duty and as far as practicable the nature of the illness, injury or cause and the estimated duration of his/her absence.

**28.8 Leave payment**

**(a) Payment for period of leave**

Each Employee shall be paid the all-purpose rate of pay which would ordinarily accrue to them during ordinary hours of duty for the currency of leave.

**(b) Annual leave loading**

- (i) In addition to the payment prescribed in **clause 28.8(a)** hereof an Employee shall receive during a period of annual leave a loading of 17.5% or in the case of a shift worker 20% calculated on the all-purpose rate of pay for the ordinary hours of duty per week.

- (ii) Payments under **clauses 28.8(a)** and **28.8(b)(i)** above shall be paid in advance on the written request of the Employee.

#### 28.9 **Annual close down**

Notwithstanding anything contained in this Agreement if leave is granted in conjunction with the Christmas/New Year holidays the Company may either:

- (a) stand off without pay during the period of leave any Employee who has not yet qualified under **clause 28** hereof;
- (b) stand off for the period of leave any Employee who has not qualified under **clause 28** hereof and pay them (up to the period of the leave then given) at a rate of 1/12 of an ordinary week's wages in respect of each five days continuous service (excluding overtime).
- (c) Provided that where the Company decides to close down the establishment at the Christmas/New Year period for the purpose of giving the whole annual leave due to all, or the majority of employees qualified for such leave, at least two months' notice of the intention so to do shall be given to the employees wherever practicable, provided that a less period of notice may be given to meet operational requirements or with the agreement of the affected Employee(s).

#### 28.10 **Commencement of leave - distant jobs**

If an Employee is still engaged on a distant job when annual leave is granted and the Employee returns by the first reasonable means of transport to their home station, annual leave shall commence on the first full working day following the Employee's return to the home station.

#### 28.11 **Leave is to be taken**

The annual leave provided by this clause must be taken as leave and except as provided by **clause 28.3** payment will not be made or accepted in lieu of annual leave.

### 29 **PERSONAL LEAVE**

- (a) The provisions of this clause apply to full-time and regular part-time employees, but do not apply to casual employees.
- (b) Employees are entitled to Personal Leave, Sick Leave, Compassionate Leave and Carers Leave in accordance with the National Employment Standards under the *Fair Work Act 2009* (Cth) ('NES').
- (c) In the case of an Employee who claims to be allowed paid sick leave in accordance with this clause for an absence of one day only such Employee if in the year he/she has already been allowed paid sick leave on two occasions for one day only, shall not be entitled to payment for the day claimed unless he/she produces to the Company a certificate of a duly qualified registered health practitioner that in his/her, the health practitioner's opinion, the Employee was unable to attend for duty on account of personal illness or injury. Provided that the Company must agree to accept from the Employee a statutory declaration, stating that the Employee was unable to attend for duty on account of personal illness or injury in lieu of a medical certificate.

- (d) Evidence can include a statutory declaration in circumstances whereby an Employee cannot see a doctor due at short notice, due to residing in a remote location with limited medical facilities/doctors being available.

### **30 PARENTAL LEAVE**

Subject to the terms of this clause, employees are entitled to maternity; paternity and adoption leave in connection with the birth or adoption of a child in accordance with the NES.

### **31 COMMUNITY SERVICES LEAVE**

An Employee will be entitled to community services leave (which includes jury service and emergency services leave) in accordance with the NES.

### **32 FAMILY/DOMESTIC VIOLENCE LEAVE**

Domestic Violence leave shall be in accordance with the NES.

### **33 PUBLIC HOLIDAYS**

33.1 An Employee, other than a casual Employee (as defined), shall be entitled to the following holidays without deduction of pay in accordance with the NES.

- (a) The Company and the employees may agree to substitute another day for any public holiday prescribed by the NES in this clause.
- (b) An agreement pursuant to **clause 33.1(a)** shall be recorded in writing and be available to every affected Employee.
- (c) An Employee required to work on a holiday shall be paid at the appropriate rate for all hours worked with a minimum payment of four hours at the appropriate rate.
- (d) Whenever any holiday falls on an Employee's ordinary working day and the Employee is not required to work on such day the Employee shall be paid for the ordinary hours the Employee would have worked on such a day had it not been a holiday.
- (e) If an Employee is required to work on a holiday the Employee shall be paid normal rates plus 50% and be granted another day in lieu of the public holiday.
- (f) However, if the Company considers, by reason of the work program it is inappropriate to grant another day in lieu of the Public Holiday then for time worked on that day the Employee shall receive double time and a half which shall include payment entitled under **clause 33**.
- (g) If a public holiday, as defined in the National Employment Standards falls on a week day within an Employee's period of annual leave and is observed on a day which in the case of that Employee would have been an ordinary working day, there shall be added to that period of leave one day being an ordinary working day for each such holiday observed as aforesaid.
- (h) All holidays to be computed in a manner consistent with the adopted method of implementation of the 38-hour week in accordance with **clause 14**.

- (i) An Employee who returns to the home station or finishes a shift at the home station, not later than 0400 hours on any holiday and is not again booked for that day shall be treated as having had a paid holiday.
- (j) When an Employee is off duty owing to leave without pay or sickness, including accidents on or off duty except time for which the worker is entitled to claim sick pay, any holiday falling during such absence shall not be treated as a paid holiday. Where the Employee, however, is on or is available for duty on the working day immediately preceding a paid holiday or resumes or is available for duty on the working day immediately following a holiday, the Employee shall be entitled to a paid holiday on such holiday.
- (k) Unless at the Employee's own request, no Employee shall be booked off for a holiday at a foreign or a temporary home station.
- (l) Any holiday occurring during the period in which an Employee is on long service leave shall be calculated as portion of the long service leave and extra days in lieu shall not be granted.
- (m) A casual worker shall not be entitled to any paid holiday.

### **34 LONG SERVICE LEAVE**

A weekly Employee shall accrue an entitlement to Long Service Leave in accordance with the South Australian *Long Service Leave Act 1987 (SA)*.

### **35 INDUSTRIAL RELATIONS TRAINING LEAVE**

35.1 Employees covered by this Agreement that are duly elected/appointed as Employee representative/delegate shall be allowed up to 5 days paid leave per annum, non- cumulative, to attend industrial relations training courses conducted by or approved by the parties to this Agreement, provided that reasonable notice has been given to the Company.

The application for leave shall be given to the Company at least 6 weeks in advance of the date of commencement of the course. The application for leave shall contain the following details:

- (a) The name of the Employee seeking the leave.
- (b) The period of time for which the leave is sought (including course dates and the daily commencing and finishing times).
- (c) The title, general description and structure of the course to be attended and the location of where the course is to be conducted.
- (d) The Company shall advise the applicant within seven clear working days (Monday to Friday), of receiving the application as to whether or not the application for leave has been approved.
- (e) The time of taking leave shall be arranged so as to minimise any adverse effect on the Company's operations.
- (f) The Company shall not be liable for any additional expenses associated with an Employee's attendance at a course other than the payment of ordinary time earnings.

- (g) Leave rights granted in accordance with this Clause will not result in additional payment for alternative time off to the extent that the course attended coincides with an Employee's rostered day off (if applicable).
- (h) An Employee, on request by the Company shall provide proof of their attendance at any course within 7 days.

## **36 CLOTHING, PROTECTIVE EQUIPMENT AND FOOTWEAR**

### **36.1 Clothing, Protective Equipment and Footwear**

The Company will reimburse the Employee for the purchase of clothing, protective equipment and footwear set out in this clause. In the event that the Company provides such clothing, protective equipment and footwear as set out in this clause re- imbursement will not apply. In lieu of re-imbursement the following will apply: -

#### **(a) Overalls**

Each weekly hired Employee will on engagement be issued with three pairs of overalls provided that an Employee who terminates employment within three months will be required to pay for the overalls supplied, at cost price.

The overalls supplied by the Company will remain the property of the employees who will arrange for laundering and repairs themselves. All employees will at the annual anniversary of their commencement date be supplied with a further two pairs of overalls. Each issue will be replaced on a fair wear and tear basis. It is to be understood that employees supplied with overalls by the Company are required to wear same at work.

#### **(b) Site Jackets**

A weekly Employee may between 1 April and 31 October elect to be provided with a site jacket which may be a "bluey" or light weight jacket in lieu of any entitlement to one pair of overalls as provided in **sub-clause 36.1(a)** of this clause. Provided that where this option is taken, subject to fair wear and tear, it is not then available for a further period of three years.

#### **(c) Shirt/Pants**

An Employee may elect to be issued in lieu of the provision of one pair of overalls pursuant to **clause 36** hereof, one pair of trousers and one work shirt.

#### **(d) Footwear**

Weekly employees shall be supplied with one (1) pair of appropriate safety footwear per year, (subject to fair wear and tear) subject to the following terms and conditions.

- (i) This clause shall not apply to any Employee who, at the time of engagement was expressly employed for a period of less than eight weeks, those employees will be required to provide their own safety footwear or authorise the Company to provide the footwear at the employees expense.
- (ii) In circumstances where the Employee terminates their own services within a period of eight weeks the Employee shall be reimbursed the total cost of the safety footwear provided.

- (iii) It is a condition of employment that Company shall wear the safety footwear they have been supplied with.
  - (iv) Nothing in this clause shall serve to reduce the responsibility of all employees to at all times wear safe and suitable footwear when at work.
- (e) **Loss of Clothing**
- An Employee whose clothes, spectacles or hearing aids, other than those provided by the Company, have been accidentally spoilt by acid, sulphur or other deleterious substances, shall be paid such amount to cover the loss thereby suffered by the Employee as may be agreed upon between Employee and the Company.
- (i) An Employee shall be reimbursed by the Company to a maximum of \$1,348.00 for loss of clothes by fire or breaking and entering whilst securely stored at the Company's direction in a room or building on the Company's premises, job or workshop or in a lock-up.
  - (ii) Where safety glasses are to be worn at the direction of the Company, the Company will reimburse the Employee for the purchase of such glasses. In the event that the Company provides such glasses re-imburement will not apply. Where it is necessary for optically prescribed glasses to be hardened the Company will reimburse the Employee for the cost of such hardening.
  - (iii) Where an Employee during the course of employment suffers loss or damage to spectacles by cause for which he is not solely responsible he/she shall be compensated by the Company to the extent of the loss or damage sustained. This subclause shall not apply when an Employee is entitled to workers' compensation in respect to the damage.
- (f) **Protective equipment**
- (i) The Company shall have available a sufficient supply of protective equipment such as glasses, gloves, mitts, aprons, sleeves, leggings, gumboots, hearing protection, helmets, or other efficient substitutes therefore for use by the employees when engaged on work for which adequate protective equipment is reasonable necessary.
  - (ii) Each Employee issued with protective equipment shall give due diligence to its care and safe keeping, however such equipment shall remain the property of the Company.
  - (iii) Before goggles, glasses and gloves, or any such substitutes which have been used by a worker are reissued by the Company to another worker, they shall be effectively sterilised.
  - (iv) The Company shall provide free of charge any waterproof protective clothing required by an Employee for particular tasks he/she may be performing.
  - (v) The Company shall provide on the job, as is reasonably possible, adequate detergents and solvents for the removal of excessive dirt, bitumen, emulsions, paint and similar substances from the Employee's person and the cost of such detergents and solvents shall be borne by the Company.

- (vi) Employees engaged on work where traffic is not excluded by the use of continuous barriers or fences, shall be provided with a light coat or jacket with high visibility markings so as to enhance visibility in daylight against the road or rail background.

### **37 REIMBURSEMENT EXPENSES**

- 37.1 An Employee who incurs expenses in the event of carrying out duties away from their nominated depot or in transferring under direction from one location to another will have all reasonably agreed expenses reimbursed by the Company.
- 37.2 Where employees incur expenses in a transfer between depots the Company shall require evidence of such amounts.

#### **LAHA – Living Away from Home Allowance**

- (a) An Employee required to work at a location which makes it unreasonable to return at night to their usual place of residence shall have expenses reimbursed on the following basis:
- (i) The expenses incurred may be invoiced directly to the Company and settled by way of normal account procedure; or
  - (ii) A daily expense allowance will be provided outlined in the table below for South Australia and Sydney.
  - (iii) The daily expense allowance is all inclusive and covers accommodation, breakfast, food, drink and incidentals.

LAHA – New Company position from 17 Feb 2021

Upon receipt of expenses (reasonable food and accommodation, as per the total LAHA allowance prescribed within this clause), if the cost is in excess of \$197.00, due to limited hotel facilities available in remote regions, the Company will reimburse the Employee, to ensure the Employee does not incur out of pocket expenses.

<b>First Full Pay Period on or after Agreement is approved</b>	<b>First Full Pay Period on or after the first anniversary of this Agreement</b>	<b>First Full Pay Period on or after the second anniversary of this Agreement</b>	
<b>Amount</b>	<b>Amount</b>	<b>Amount</b>	
\$197 .00	\$200.94	\$204.95	

Where accommodation is paid by the Company at an approved Company hotels (no overnight accommodation allowance required)

**Meals only**

First Full Pay Period on or after Agreement is approved	First Full Pay Period on or after the first anniversary of this Agreement	First Full Pay Period on or after the second anniversary of this Agreement	
\$80.00	\$81.60	\$83.23	

- (b) Company supplied accommodation in remote areas will be of a suitable quality and standard. Plans will be in place for a "one man one room" sleeping quarters. Adequate cooking and cleaning facilities are to be in place at all accommodation.

Employees staying in Company nominated accommodation where employees are responsible for their own cleaning and cooking as is the case in ARTC rest houses the Company will not deduct charges for said accommodation.

For identified project work the Company will consult with employees prior to commencement of work as to the arrangements and accommodation in place.

This provision will be subject to a joint review 12 months following the certification of the Agreement. In the event of any concerns this will be dealt with the Disputes Settlement Procedure contained at **clause 24** of this Agreement.

**38 SUPERANNUATION**

In accordance with the requirements of the Superannuation Guarantee Act, its amendments and regulations, the Superannuation Guarantee Charge (SGC) Legislation and subject to the terms and conditions of the relevant superannuation fund trust deed, the Company will contribute on behalf of each Employee the following SGC percentage:

**Percentage**

9.5%

If at any time the SGC % changes during the life of this Agreement, then the % in this Agreement will change accordingly. When an Employee does not nominate a fund, contributions shall be made on behalf of each Employee into Employer's default fund which is currently the 'Australian Super' Superannuation Fund.

- 38.1 Contributions shall continue while an Employee is on authorised paid leave, however, contributions shall not be made in respect of any period of unauthorised absence of one whole day or more.
- 38.2 In the event of an eligible Employee's absence from work being due to work related injury or work- related illness, contributions at the normal rate shall continue for the period of the absence provided that:
- (a) the member of the fund is receiving workers compensation payments or is receiving regular payments directly from the Company in accordance with statutory requirements or the provision of this award; and

(b) the person remains an Employee of the Company.

**39 WORKING IN HEAT**

The parties shall observe and work in accordance with the Ventia Working in Heat Procedure dated 2 December 2020. The procedure may be amended from time to time in accordance with the process of the Committee and subsequent consultation and agreement of the Parties.

40 SIGNATORIES TO THE AGREEMENT

<b>FOR AND ON BEHALF OF VENTIA PTY LTD</b>	
Name in full (printed):	Peter Hugh Borden
.....	
..	
Signature:	
.....	
...	
Position/Authority to sign:	Group Executive - Transport
.....	
....	
Employer's Address:	20 Corporate Drive, Heatherton VIC 3202
.....	
...	
Date:	3 August 2021
.....	

**THE AUSTRALIAN MANUFACTURING WORKERS UNION WHO WAS A BARGAINING REPRESENTATIVE FOR THE AGREEMENT**

Name in full (printed): MARK PLUNKETT

Signature: 

Position/Authority to sign: ORGANISOR

Address: 53-61 DALE STREET PORT ADELAIDE

Date: 4/8/21

**THE AUSTRALIAN RAIL TRAM AND BUS INDUSTRY UNION WHO WAS A BARGAINING REPRESENTATIVE FOR THE AGREEMENT**

Name in full (printed): DARREN BRETT PHILLIPS

Signature: 

Position/Authority to sign: BRANCH SECRETARY

Address: 63 LEDGER ROAD BEVERLEY SA 5009

Date: 4 AUGUST 2021

## 41 APPENDIX A – MODEL FLEXIBILITY TERM (Regulation 2.08)

### Model flexibility term

1. An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
  - (a) the agreement deals with 1 or more of the following matters:
    - (i) arrangements about when work is performed;
    - (ii) overtime rates;
    - (iii) penalty rates;
    - (iv) allowances;
    - (v) leave loading; and
  - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
  - (c) the arrangement is genuinely agreed to by the employer and employee.
2. The employer must ensure that the terms of the individual flexibility arrangement:
  - (a) are about permitted matters under section 172 of the Fair Work Act 2009; and
  - (b) are not unlawful terms under section 194 of the Fair Work Act 2009; and
  - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
3. The employer must ensure that the individual flexibility arrangement:
  - (a) is in writing; and
  - (b) includes the name of the employer and employee; and
  - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - (d) includes details of:
    - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
    - (ii) how the arrangement will vary the effect of the terms; and
    - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
  - (e) states the day on which the arrangement commences.
4. The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
5. The employer or employee may terminate the individual flexibility arrangement:
  - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
  - (b) if the employer and employee agree in writing- at any time.

## 42 APPENDIX B – MODEL CONSULTATION TERM (Regulation 2.09)

### Model consultation term

1. This term applies if:
  - (a) the employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
  - (b) the change is likely to have a significant effect on employees of the enterprise.
2. The employer must notify the relevant employees of the decision to introduce the major change.
3. The relevant employees may appoint a representative for the purposes of the procedures in this term.
4. If:
  - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative;
  - (c) the employer must recognise the representative.
5. As soon as practicable after making its decision, the employer must:
  - (a) discuss with the relevant employees:
    - (i) the introduction of the change; and
    - (ii) the effect the change is likely to have on the employees; and
    - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
    - (iv) for the purposes of the discussion- provide, in writing, to the relevant employees:
      - (v) all relevant information about the change including the nature of the change proposed; and
      - (vi) information about the expected effects of the change on the employees; and
      - (vii) any other matters likely to affect the employees.
6. However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
7. The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
8. If a term in the enterprise 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 sub-clauses (2), (3) and (5) are taken not to apply.
9. In this term, a major change is likely to have a significant effect on employees if it results in:
  - (a) the termination of the employment of employees; or

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