



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Downer EDI Rail Pty Ltd T/A EDI Rail
(AG2021/6518)

DOWNER EDI RAIL HCMT BUILD AGREEMENT 2021

Rail industry

DEPUTY PRESIDENT YOUNG

MELBOURNE, 23 AUGUST 2021

Application for approval of the Downer EDI Rail HCMT Build Agreement 2021.

[1] Downer EDI Rail Pty Ltd T/A EDI Rail (the Employer) has made an application for approval of an enterprise agreement known as the *Downer EDI Rail HCMT Build Agreement 2021* (the Agreement) pursuant to s 185 of the *Fair Work Act 2009* (the Act). The Agreement is a single-enterprise agreement.

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

[3] Subject to the undertakings referred to above, and on the basis of the material contained in the application, and the accompanying statutory declaration and the additional information provided by the Employer, I am satisfied that each of the requirements of ss 186, 187, 188 and 190 as are relevant to this application for approval have been met.

[4] I observe that clauses 26.1, 26.2, 27.2, 29.2 and 29.3 of the Agreement are likely to be inconsistent with the National Employment Standards (NES). However, noting clause 5 of the Agreement, I am satisfied the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[5] The "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union, the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia and the Australian Rail, Tram and Bus Industry Union, being bargaining representatives for the Agreement, have given notice under s 183 of the Act that they seek to be covered by the Agreement. In accordance with s 201(2) and based on the statutory declaration provided by these organisations, I note that the Agreement covers these organisations.

[6] The Agreement was approved on 23 August 2021 and, in accordance with s 54, will operate from 30 August 2021. The nominal expiry date of the Agreement is 30 June 2025.



DEPUTY PRESIDENT

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Annexure A

FWC Matter No.:
AG2021/6518

Applicant:
Downer EDI Rail Pty Ltd

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Melissa Hogan, IR Manager have the authority given to me by Downer EDI Rail Pty Ltd to give the following undertakings with respect to the Dower EDI Rail HCMT Build Agreement 2021 ("the Agreement"):

1. That clause 40.1.2 of the Agreement be amended to read "It is the intention of this procedure to resolve by direct consultation and negotiation between the parties any grievance, dispute, claim or problem on any matter arising under the Agreement or any industrial matter, including the NES, with the exception of safety issues".
2. That clause 34.4 of the Agreement be amended to read "If an Employee fails to give the notice set out in subclause 34.1 then the Company has the right to withhold monies due to the Employee to a maximum amount equal to the amount the Employee would otherwise have received under subclause 34.2, but does not include deductions from accrued NES entitlements such as annual leave."
3. Despite the provision of clause 35.1, where an employee has completed at least one year of service but less than two, the employee will be entitled to a minimum of 4 weeks' redundancy pay.
4. The "Establishment Wage Level" rates of pay at clause 20.1.2 of the Agreement are the rates of pay that apply at the test time of the Agreement.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature

18/08/2021

Date

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

**DOWNER EDI RAIL
HCMT BUILD AGREEMENT 2021**

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PART I – GENERAL

1. TITLE

This Agreement shall be known as the Downer EDI Rail HCMT Build Agreement 2021 (**the/this Agreement**).

2. COVERAGE OF THIS AGREEMENT

This Agreement shall cover:

- (i) The employees employed by Downer EDI Rail Pty Ltd specifically in connection with production of the HCMT train fleet and whose classifications are prescribed in this Agreement (**Employees**);
- (ii) Downer EDI Rail Pty Ltd (**the Company**);
- (iii) The Australian Rail, Tram & Bus Industry Union (Victorian Branch);
- (iv) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (Victorian Branch); and
- (v) The Communication, Electrical & Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (Victorian Branch).

(Collectively referred to as '**Union**' or '**Unions**')

Note that the Unions will only be covered by this Agreement if they elect to be covered by this Agreement in accordance with section 183 of the Fair Work Act 2009 (the FW Act**) and it is noted in the decision of the Fair Work Commission (**FWC**) to approve the Agreement, that the Agreement covers the Unions.*

3. DURATION OF THIS AGREEMENT

This Agreement shall come into operation on the seventh (7th) day after the FWC approves the Agreement. The nominal expiry date of the Agreement is 30 June 2025.

4. INCORPORATION BY REFERENCE OF THE RELEVANT AWARD

- 4.1 This Agreement incorporates the terms of the Relevant Award as in operation at the date of the signing of this Agreement; provided that the terms of this Agreement will prevail where it is inconsistent with the incorporated terms of the Relevant Award. The rates of pay and/or allowances provided for in this Agreement apply for all purposes of the Relevant Awards (excluding the calculation of any incorporated allowances). Further, any increases in the rates of pay and/or allowances in the Relevant Awards, will apply where better than this Agreement.
- 4.2 As the context requires, the terms in the Relevant Award should be read as altered to make them operate as terms of the Agreement. For example "award" may mean "Agreement".
- 4.3 This Agreement supersedes any other Statutory Industrial Instruments which applied prior to the introduction of this Agreement and which regulated the terms and conditions of employment of Employees covered by this Agreement.

5. DEFINITIONS

In this Agreement the following definitions shall apply:

“the FW Act” Means the *Fair Work Act 2009* (Cth), as amended from time to time.

“the NES” Means the National Employment Standards as set out in or determined pursuant to the FW Act .

The terms of this Agreement that deal with the NES only apply to the extent that the terms are not detrimental to an Employee when compared to the NES. This is, no provision of the NES is displaced by this Agreement, but the NES provisions may be supplemented by the terms of this Agreement. Accordingly, the NES will continue to apply to the extent that any term of this Agreement is detrimental in any respect when compared to the NES.

“Occupational Health and Safety legislation” Means the *Occupational Health and Safety Act 2004* (Vic) and the Regulations to that Act and any other applicable occupational health and safety legislation, including, but not limited to, the Rail Safety Act 2006 (local Operations).

“Party” or “Parties” Means the Employees, Unions and the Company.

“Relevant Award” Means the *Manufacturing and Associated Industries and Occupations Award 2020* as in operation at the date of the signing of this Agreement; excluding the flexibility provisions in clause 5 and including any increases in the rates of pay and/or allowances in the Award, if they are better than this Agreement. (**‘the Manufacturing Award’**)

“BLD” Means bonus leave day.

“RDO” Means rostered day off.

6. APPENDICES

The Appendices to this Agreement form part of the Agreement.

7. OBJECTIVES OF THIS AGREEMENT

The Parties to this Agreement recognise the importance of open consultation, cooperation and agreement to facilitate the achievement of objectives as set out in this clause.

The objectives of this Agreement are to -

- (i) Achieve an internationally competitive manufacturing facility, with a multi/cross-skilled and highly motivated workforce with a focus on

achieving delivery, product quality, measurable productivity gains, cost efficiency, and teamwork, for the mutual benefit of the Company, its employees, shareholders and the community.

- (ii) Ensure the ability of the Company with the support of the Employees covered by this Agreement, to fulfil its obligations for the manufacture of the HCMT train fleet under a contract to the customer.
- (iii) 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, and continuous improvement in product quality, reliability and customer service, flexible work patterns via cross-skilling to achieve customer delivery in full and on time.
- (iv) Establish a framework to enable Employees to achieve these objectives and to 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.
- (v) Create and enhance a culture of continuous improvement.
- (vi) Establish a clear understanding by Employees of the goals and objectives of the Company.
- (vii) Ensure that a competitive unit hourly charge-out rate and tact time is maintained or reduced to enhance the competitiveness of the Company.
- (viii) Avoid any industrial action which might disrupt the continuity of service to the customer, or in any way reduce the effectiveness of the business.
- (ix) To select the best person for the position on the basis of competencies at all levels of the Company and to invest in that person's potential through relevant training and job enhancement to improve an individual's personal security and job satisfaction respectively.
- (x) Achieve job security for all Employees, all other things being equal.
- (xi) Develop a flexible workforce and a flexible-working environment.

PART II - OCCUPATIONAL HEALTH AND SAFETY

8. ZERO HARM

Employees and the Company understand that it is an objective of this Agreement to provide an accident free, Zero Harm workplace in accordance with the Occupational Health and Safety Legislation.

The Parties covered by this Agreement will take a constructive role in promoting improvements in occupational health, safety, welfare and rehabilitation.

9. PROTECTIVE CLOTHING AND EQUIPMENT

9.1 Protective Clothing and Equipment

The Company will provide Employees with protective clothing, e.g. overalls, or long sleeve shirts and pants, and one pair of safety footwear in accordance with company policy, as amended from time to time. Replacement of such property will be issued after evidence of reasonable wear and tear. It is the responsibility of Employees to clean and maintain same in a neat and tidy condition.

Employees working in designated "hearing protection" areas will be required to wear ear protection provided by the Company which complies with the requirements of the Occupational Health and Safety legislation. Employees will be required to wear safety glasses at all times whilst in the designated areas.

Employees will be required to wear safety footwear at all times whilst in the designated areas.

The Company will provide Employees with any other necessary and appropriate protective clothing and equipment in order to comply with the requirements of the Occupational Health and Safety legislation.

9.2 Prescription Safety Glasses

In accordance with HR-03-GD PPE Guide (Prescription Safety Glasses), as amended from time to time, prescription safety eye wear will be provided to all Employees who are required to wear both prescription glasses and safety glasses in order to perform their duties in a safe manner.

In accordance with HR-03-GD Guide (Prescription Safety Glasses), as amended from time to time, prescription Safety Glasses will be replaced when damaged during the performance of normal work activities, or every two (2) years as per Australian Standard (AS 1337) requirements, or when medically advised that a different lens is required.

10. MEDICAL EXAMINATION

Employees will be required to attend scheduled health assessments carried out by a Company nominated medical practitioner (such practitioner must be rail accredited) from time to time, in accordance with the applicable Rail Safety requirements and HM-05-PR Health Assessments, as amended from time to time.

The medical practitioner will provide a report to the Company regarding the impact of illness or injury, if any, on the ability of the Employee to perform the inherent requirements of their position (i.e. perform the duties / functions required by their relevant classification and this Agreement), any work limitations and the likely date of return to work.

The Company will meet the cost of the consultation, any approved travelling costs, costs associated with these medical examinations and the Employee shall be paid for such time.

11. USE OF SUBSTANCES

Smoking outside designated areas is prohibited at all times as sound occupational health and safety practice.

The consumption or possession of intoxicating substances on Company premises is also prohibited. Employees presenting for work in an intoxicated and unsafe condition will be liable for disciplinary action and possible dismissal.

PART III - TERMS AND CONDITIONS OF EMPLOYMENT

12. CONTRACT OF EMPLOYMENT

Employees may be employed on a full time, part time or casual basis. Every contract of employment entered into will specify whether the employment is full time, part time or casual.

12.1 Probationary Employment

The Company will engage all new full time/part time Employees on a three (3) month probationary period of employment. During or at the end of the probation, either party can give or forfeit one (1) weeks' notice and effect termination. The period of probationary employment will count towards the calculation of all entitlements under this Agreement.

12.2 Induction

Employees will be required to attend an induction training program, as far as practicable in the first (1st) week of their engagement.

12.3 Performance of Work

It is a term and condition of employment of this Agreement that an Employee:

- (i) Abides by all lawful directions of the Company.
- (ii) Performs such work, according to a shift, including any off site operations, as the Company from time to time reasonably requires.
- (iii) Agrees to minor amendments to shifts as required to meet business objectives e.g. short term delivery requirements, etc.
- (iv) Undertakes such training as is consistent with the needs of the Company.
- (v) Follows the dispute resolution procedure, ensuring continuity of service to the customer during dispute resolution.
- (vi) Adopts all occupational health and safety requirements at the site in compliance with the relevant Occupational Health and Safety legislation.
- (vii) Abides by the principles of the Equal Opportunity Act 2010 (Vic) and other applicable equal opportunity legislation.
- (viii) Complies with individual responsibilities in relation to the Environment Protection Act 1970 (Vic).
- (ix) Commits to ensuring that labour is available on any of the seven (7) days of the week (which may include public holidays), should such be necessary to meet the service requirements to the customer, or to rectify an equipment breakdown.
- (x) Agrees to work shift work as and when required, with reasonable notice.
- (xi) Agrees to adopt new work practices designed to make the new business efficient and prosper and so re-establish employment security.

12.4 Trade Cross-Skilling

Employees will be required to perform all tasks necessary for the manufacture of the HCMT train fleet following consultation. All Employees shall be expected to undertake work for which they are deemed competent and agree to undertake training consistent with full utilisation of these competencies.

12.5 Quality of Work

Quality management principles will apply as part of an ongoing best practice, continuous improvement program and every Employee is responsible for implementing these requirements in their area of responsibility.

Accreditation of ISO9001 is to be maintained as part of a quality assurance program.

12.6 Individual Flexibility Arrangement

12.6.1 Notwithstanding any other provision of this Agreement, the Company and an individual Employee may agree to vary the application of certain terms of this Agreement provided that the Individual Flexibility Arrangement (**IFA**):

- (i) Is genuinely agreed to by the Company and the Employee; and
- (ii) Only varies the term prescribed in subclause 12.6.2; and
- (iii) Contains only permitted matters (and does not contain any unlawful terms);
- (iv) Results in the Employee being better off overall than if the IFA had not been entered into.

12.6.2 An IFA may be entered into to vary the application of clause 26.4.4 - single day annual leave absences.

12.6.3 For the IFA to come into operation, it must:

- (i) be in writing, name the parties to the IFA and be signed by the Company and the Employee and, if the Employee is under eighteen (18) years of age, the Employee's parent or guardian;
- (ii) state each term of this Agreement that the Company and the Employee have agreed to vary;
- (iii) detail how the application of each term has been varied by the IFA;
- (iv) detail how the IFA does not disadvantage the Employee in relation to the Employee's terms and conditions of employment;
- (v) state how the IFA can be terminated; and
- (vi) state the date the IFA commences;

12.6.4 The Company will give the Employee a copy of the IFA within fourteen (14) days and keep the IFA as a time and wages record.

12.6.5 The IFA may be terminated:

- (i) by the Company or the Employee giving twenty eight (28) days' notice of termination, in writing, to the other party; or
- (ii) at any time, by written agreement between the Company and the Employee.

12.7 Hand Tools

12.7.1 Tradespersons shall supply and maintain tools ordinarily required in the performance of their work in accordance with the prescribed list.

12.7.2 A list of these tools will be contained in the prescribed list – Appendix D.

13. TRAINING

The Parties agree that a highly skilled workforce is necessary to improve the Company's quality of work and overall competitiveness.

As soon as practicable and during the life of this Agreement, the Parties aim to reach agreement on the structure and content of a training plan that not only meets the needs of the Company but also meets the Employees' needs for maximum transferability of nationally accredited skills.

Once the training plan is developed, the Parties will prioritise the training most important for the Company's business strategy and assist in the allocation of the Company's training investment.

As far as practicable, attendance at Company initiated training courses will be arranged in accordance with shift rosters and Employees will be paid the ordinary day work rate whilst attending such courses during normal ordinary working hours. Any training outside ordinary working hours will be paid at ordinary rates.

Training expenses such as course cost, accommodation, meals and travel expenses will be paid by the Company for Company initiated courses. Consideration will be given for the reimbursement of out-of-pocket expenses for course fees incurred during attendance at Employee initiated training courses where the Company benefits.

Employees willing to advance and update their skills through training, will be facilitated with opportunity for career development within the Company, subject only to the approval of the Operations Manager having considered the relevancy of the training and the operational needs of the Company.

14. PRODUCTION CONTROL RECORDING AND TIME KEEPING

Employees shall record all hours worked through a production control system or other suitable electronic time keeping mechanism.

15. BUSINESS IMPROVEMENT PROCESS AND INITIATIVES

15.1 Business Improvement Process

The Parties to this Agreement acknowledge that a central feature of this Agreement is the implementation of an ongoing business improvement program, which will continue for the life of the Agreement.

The Parties agree the primary aims of the Business Improvement Program are productivity and efficiency improvements. Thus the Business Improvement Program will require the identification of initiatives and opportunities across all areas of the HCMT Build program.

The requirements to continue to introduce changes to current work practices to enable more flexibility and thus support the removal of artificial barriers and allow for the performance of tasks, which are safe, efficient and logical, and for which

the Employee has been trained and has current and demonstrated competency is essential. There is a need to develop flexibility of jobs and duties with and between work areas. Business Improvement issues shall be discussed and agreed to by the Parties throughout the life of the Agreement.

15.2 Business Improvement - Bonus Leave Days

15.2.1 Entitlement

As part of the business improvement process, the Employees have agreed to job rotation to enable on-the-job training to take effect from shop-to-shop. Subject to clause 18.3, in recognition of this flexibility, all Employees are entitled to five (5) bonus leave days ('BLDs') per annum. Employees may be requested to take the BLDs as individual leave days to accommodate fluctuations in workloads and customer requirements as discussed. These BLDs will be rostered throughout the year at the discretion of the company with a minimum of one (1) weeks' notice to be provided prior to the rostering of each bonus leave day. An Employee on a rostered BLD will be paid seven point six (7.6) hours per day at their classification rate and accrue an additional zero point four (0.4) hours towards their RDO.

16. RDO ENTITLEMENT

16.1.1 Ordinary hours are arranged to provide for the accumulation of an RDO.

16.1.2 RDOs may be accumulated to a maximum of five (5) days subject to consultation between the Company and the Employee. RDOs will be rostered and taken as agreed between management and staff during the cycle so as to guarantee continuity of operation.

16.2 Taking of RDOs

RDO's shall be rostered to meet customer requirements in accordance with the following principles –

- (i) RDO's shall be taken on either a Monday or Friday;
- (ii) Rosters shall be developed based on skill requirements; and
- (iii) Rosters may be developed on a shop by shop basis.

17. CONTINUOUS IMPROVEMENT

The Company and its Employees covered by this Agreement are committed to searching for areas where improvements can be made and implementing such improvements as part of this Agreement.

PART IV - HOURS OF WORK

18. HOURS OF WORK

18.1 To ensure competitiveness both plant and labour are to be used in the most efficient and flexible manner in order to effectively meet the operational needs of the Company.

- 18.2 Overtime shall be worked as required and Employees who work overtime will be selected based on specific nature of the work and their specific competencies.
- 18.3 From 1 July 2022, or from the commencement of a 7-day roster as per clause 18.4 – whichever is earlier, the ordinary hours of work for a full time Employee shall be thirty six (36) hours per week. A thirty six (36) hour divisor will be applied to the weekly rate and any leave accrued prior to the commencement of this clause.
- 18.3.1 Employees' ordinary hours will be rostered Monday to Friday and RDO's will continue to accrue and be taken resulting in an average 9-day fortnight.
- 18.3.2 RDO's will be arranged to guarantee operational requirements, e.g. a 25% reduction instead of a shut down.
- 18.3.3 From 1 July 2022, Employees will no longer accrue or have an entitlement to Bonus Leave Days (BLD's) as provided under clause 15.2. Employees who have accrued BLD's at this time must take them by 31 December 2022 and any unused accrual will not transfer beyond this date.
- 18.4 Should the Company determine a 7-day roster is required to support, for example, an acceleration in production, the following will apply:
- 18.4.1 The Parties will reach agreement on the rosters to be implemented within twenty eight (28) days of the Company notifying its intent to implement a 7-day roster and agreement will not be unreasonably withheld. Once agreed the rosters can be implemented by the Company with twenty eight (28) days' notice.
- 18.4.2 The rosters will be developed around a compressed working week. RDO's will no longer accrue in accordance with clause 16. Employees who have accrued RDO's at this time must take them within three (3) months of the 7-day roster coming into effect. If not taken, they will be paid out.
- 18.4.3 Ordinary hours performed on Saturday will be paid at the rate of time and a half (1.5) for the first three (3) hours and double time thereafter.
- 18.4.4 An additional 3% wage increase will be made to all Employees in the first full pay period after the 7-day roster comes into effect.

PART V – CLASSIFICATIONS, REMUNERATION & PENALTY RATES

19. CLASSIFICATIONS

- 19.1 Classifications in this Agreement are set out in Appendix C.
- 19.2 All classification levels represent Employees for whom cross-skilling (multi-skilling where applicable), including trade to non-trade and trade cross trade, is unlimited providing OH&S guidelines are met.
- 19.3 It is agreed that the primary determinant of appropriate classification levels and numbers required in this Agreement, are the number required per level and the associated competencies obtained and training completed.

20. REMUNERATION

20.1 Wage Rates

20.1.1 The established weekly wage rate levels and agreed increases over the life of this Agreement for Employees are as displayed in the table at 20.1.2 below.

20.1.2 Weekly Wage Rates

Classification	Establishment Wage Level	Wage Increases		
		Commencement	1/07/2023	1/07/2024
		2.50%	1.50%	1.50%
C13	\$ 1,240.73	\$ 1,271.75	\$ 1,290.82	\$ 1,310.19
C12	\$ 1,320.73	\$ 1,353.75	\$ 1,374.05	\$ 1,394.67
C11	\$ 1,394.78	\$ 1,429.65	\$ 1,451.09	\$ 1,472.86
C10	\$ 1,507.36	\$ 1,545.04	\$ 1,568.22	\$ 1,591.74
C9	\$ 1,581.38	\$ 1,620.91	\$ 1,645.23	\$ 1,669.91
C8	\$ 1,655.42	\$ 1,696.81	\$ 1,722.26	\$ 1,748.09
C7	\$ 1,729.48	\$ 1,772.72	\$ 1,799.31	\$ 1,826.30
C6	\$ 1,851.12	\$ 1,897.40	\$ 1,925.86	\$ 1,954.75
C5	\$ 1,925.17	\$ 1,973.30	\$ 2,002.90	\$ 2,032.94
C4	\$ 2,034.91	\$ 2,085.78	\$ 2,117.07	\$ 2,148.83
C3	\$ 2,147.32	\$ 2,201.00	\$ 2,234.02	\$ 2,267.53

* Gross less appropriate taxation as required by law.

- 20.1.3 The wage increases in the table above shall be payable as follows:
- (i) On the first full pay period after the commencement of the Agreement – 2.5%.
 - (ii) On the first full pay period after 1 July 2023 – 1.5%
 - (iii) On the first full pay period after 1 July 2024 – 1.5%.
- 20.1.4 Employees will receive two (2) cash bonus payments in the amount of \$750 (gross). The first payment to be payable in the first full pay period after the Commencement of the Agreement and the second payment payable in the first full pay period after 1 July 2022.
- 20.1.5 Weekly Wage rates include and compensate fully for:
- (i) All competencies possessed and required to be exercised;
 - (ii) Tool allowances as prescribed in the Relevant Award; and
 - (iii) Wage decisions of the Minimum Wage Panel of Fair Work Commission.

20.2 Apprentices

- 20.2.1 Apprenticeships under this Agreement are time based. The actual time taken to complete an apprenticeship will vary depending upon factors such as the intensity of training and the variety of work experience:
- (i) Apprentices shall be paid the following percentages of the C10 Tradesperson level hourly rate ;
 - (ii) "Adult" means any person who is 21 years of age or over at the time of commencing an apprenticeship; and
 - (iii) "Junior" means any person who is employed under the age of 21 at the time of commencing an apprenticeship.

20.2.2 Wage rates for apprentices:

Wage Level	% rates for "Junior" apprentices	% or Classification Rates for "Adult" apprentices
Year 1	55	80
Year 2	65	C13
Year 3	75	C12
Year 4	88	C11

20.3 Payment of Wages

- 20.3.1 Wages will be paid fortnightly into financial institutions, nominated by the Employee, which accept Electronic Transfer Payments. Such payments will be made on the Thursday following the close of the pay period.

- 20.3.2 The Company retains the right to alter the nominated day for Electronic Funds Transfer payments provided it gives twenty eight (28) days' notice of such change.

20.4 Workshop Allowance

- 20.4.1 A workshop allowance is incorporated into the Employee's hourly rate in lieu of all allowances prescribed in the Award, except for First Aid Allowance and Asbestos Allowance.
- 20.4.2 This workshop allowance has been so incorporated since 3 December 2001.

20.5 First Aid Allowance

- 20.5.1 An Employee who has been trained to render first aid and holds a current Level 3 first aid certificate will be paid an allowance of \$17.46 per week if appointed by the Company to perform first aid duty.
- 20.5.2 The first aid allowance will increase in alignment with the Relevant Award.

20.6 Asbestos Allowance

- 20.6.1 Where an Employee is involved in asbestos removal, the Employee will be paid an asbestos allowance of \$1.33 per hour for each hour that the Employee is involved in the removal of the asbestos.
- 20.6.2 The asbestos allowance will increase in alignment with the Relevant Award.
- 20.6.3 Only Employees who are trained and competent to undertake asbestos removal work will be instructed to undertake such work.

20.7 Team Leader Allowance

- 20.7.1 An Employee who has been elected by the Company to perform the required duties as a Team Leader will receive an allowance of \$6,000.00 per annum on top of their current base salary; this is to recognise the additional responsibilities required. The Company maintains the right to review and alter the duties required of a Team Leader from time to time to ensure their duties are aligned to the business strategy.

20.8 Employee free travel passes - eligible employees

The Company shall provide an annual employee free travel pass to all Employees covered by the Agreement, with the exception of fixed term Employees who are only engaged for the purpose of an acceleration program, employment beyond this purpose will result in an Employee being entitled to a travel pass.

- 20.8.1 Entitlement

Employee free travel passes are valid for travel on:

- (a) Metropolitan trains, trams and buses (both Government and privately owned).

- (b) V/Line passenger service (including V/Line interstate Rail / Coach Link services) and contracted bus or privately owned train services that have replaced or supplemented certain country train services.

Employee free travel passes are not valid for travel on:

- (c) Interstate trains beyond Albury and Wolsley; or
- (d) Chartered or privately owned train, trams and buses (except as in (a) and (b) above and privately owned country and provincial city route buses unless designated a V/Line service.

21. SUPERANNUATION

The Company will provide superannuation contributions to eligible Employees subject to the following distinction:

- (i) All Employees will receive contributions in accordance with the Superannuation Guarantee legislation. Contributions made in accordance with the legislation will be paid into a complying fund nominated by the relevant Employee and if no choice of fund is made, the default fund will be Australian Super Pty Ltd or CBUS provided that Australian Super or CBUS maintain a Mysuper product. Such contributions shall be paid to the fund not later than twenty eight (28) days following the relevant pay date of the Employee.

22. DEDUCTIONS

22.1 Income Protection Insurance

22.1.1 Provided that there shall be no cost to the Company, the Company shall provide Income Protection Insurance to those Employees who elect to take it up through Protect, Incolink or other providers as agreed to by the Parties.

22.1.2 If the election is made, the Employee must authorise the deduction of the income protection insurance from their salary by completing the relevant documentation and provide that documentation to the Company.

22.2 Union Membership Fees

22.2.1 The Company shall deduct union membership fees (not including fines or levies) from the pay of any Employee, provided that:

- (i) the Employee has authorised the Company to make such deductions in accordance with subclause 22.2.2;
- (ii) the union shall advise the Company and the Employee of the amount to be deducted for each pay period applying at the Company's workplace and any changes to that amount; and
- (iii) deduction of union membership fees shall only occur in each pay period in which payment has or is to be made to an Employee.

- 22.2.2 The Employee's authorisation shall be in writing and shall authorise the deduction of an amount of union fees (including any variation in that fee effected in accordance with the union rules) that the union advises the Company to deduct.

23. MOVEMENT BETWEEN SITES

- 23.1.1 Increased ability to effectively utilise available resources and better attendance ensures the ongoing competitiveness of the Company, assisting the ongoing employment security for the Employees.
- 23.1.2 The Parties will consult on the movement of employees between sites and utilisation of jobs/work. Any change will only be implemented following agreement. Agreement will not be unreasonably withheld.

24. LIVING AWAY FROM HOME

When an Employee is required to stay overnight when working at other sites the minimum standard for accommodation the Company shall supply will be three (3) stars if it is available at the location. The Employee will be paid a meal allowance of \$75.00 per day for meals and miscellaneous expenses.

PART VI - LEAVE ENTITLEMENTS

25. NATIONAL EMPLOYMENT STANDARDS

The FW Act provides for minimum entitlements through the National Employment Standards.

Clauses 26-35 describe the National Employment Standards entitlements and may also provide terms that supplement or are ancillary to the entitlements in the National Employment Standards.

The Parties acknowledge that the entitlements contained in Clauses 26-35 apply to the extent that they are not detrimental to an Employee when compared with the National Employment Standards.

26. ANNUAL LEAVE

The entitlement, accrual and taking of annual leave shall be in accordance with this Agreement and the NES.

26.1 Full and part time employees

Full time Employees are entitled to four (4) weeks of annual leave for each year of continuous service. Part time Employees have a pro-rata entitlement to annual leave based on the entitlement of full time Employees.

Annual leave accrues and will be credited on a pro-rata basis at the end of each four (4) week period of continuous service.

26.2 Additional annual leave for shift workers

For each completed twelve (12) month period of continuous service a full or part time Employee who is engaged as a shift worker during that period has a pro-rata entitlement of one (1) week (38 hours) of additional annual leave. For the purpose of this clause, a shift worker is defined as an Employee who is a seven (7) day shift worker who is regularly rostered to work on Sundays and public holidays.

Additional annual leave for such shift workers accrues and will be credited on a pro-rata basis at the end of each twelve (12) month period of continuous service.

26.3 Annual Leave Conversion

A period of annual leave is exclusive of periods that an employee is entitled to leave in accordance with:

- (i) Clauses 27 – Personal Leave;
- (ii) Clause 28 – Compassionate Leave;
- (iii) Clause 30 – Jury Service; or
- (iv) Clause 31 – Long Service Leave;
- (v) Clause 32 – Public Holidays;

26.4 Taking leave

- 26.4.1 Annual leave may normally be taken at times as mutually agreed between the Employee and the Company.
- 26.4.2 Employees are required to give the Company reasonable notice of the proposed date for the taking of annual leave. The Company will not unreasonably refuse a request for annual leave.
- 26.4.3 The Company may require an employee to take $\frac{1}{4}$ of the accrued leave if the employee has eight (8) weeks (ten (10) weeks for shift workers) or more annual leave accumulated. This leave may be negotiated and agreed between the parties.
- 26.4.4 The Employees shall only be allowed to take a maximum of ten (10) single day annual leave absences in a twelve (12) month period.

26.5 Payment for period of annual leave

- 26.5.1 An Employee, before going on annual leave, must be paid the wages they would have received in respect of the ordinary hours the Employee would have worked had the Employee not been on leave during the relevant period.
- 26.5.2 Subject to clause 26.5.3, the wages to be paid must be worked out on the basis of what the Employee would have been paid under this Agreement for working ordinary hours during the period of annual leave, including allowances, loadings and penalties paid for all purposes of the Agreement, and any other wages payable under the Employee's contract of employment including any over Agreement payment.
- 26.5.3 The Employee is not entitled to payments in respect of overtime, special rates or any other payment which might have been payable to the employee as a reimbursement for expenses incurred.

26.6 Service for annual leave

The following types of leave taken by an Employee will be counted as time worked for the purpose of the accrual of annual leave:

- (i) personal sick and carer's leave;

- (ii) workers' compensation leave;
- (iii) unpaid carer's leave;
- (iv) compassionate leave;
- (v) long service leave;
- (vi) annual leave;
- (vii) public holidays;
- (viii) paid training leave;
- (ix) jury service; and
- (x) any other period of authorised paid leave.

27. PERSONAL SICK AND CARER'S LEAVE

27.1 General

The entitlement, accrual and taking of personal sick and carer's leave shall be in accordance with this Agreement and the NES.

The purpose of making available personal sick and carer's leave is to mitigate against financial hardship for employees resulting from absences due to genuine personal illness or injury ("**personal sick leave**"); or an illness, injury or unexpected emergency of a member of the Employee's immediate family or household ("**carer's leave**") that requires the Employee to care for or support that person.

An Employee's immediate family is as defined in the FW Act and includes the Employee's spouse and a child, parent, grandparent, grandchild or sibling of the Employee or the Employee's spouse.

27.2 Entitlement and accrual

Full time employees accrue ten (10) days of personal sick and carer's leave for each year of continuous service. Part time Employees have a pro-rata entitlement to personal sick and carer's leave based on the entitlement of full time Employees. Casual employees are entitled to unpaid personal sick and carers leave in accordance with the NES.

Where an employee accrues rostered days off, that employee will be paid seven point six (7.6) hours per day of personal leave and zero point (0.4) hours will be accrued to their rostered days off.

Personal sick and carer's leave will be credited on a pro-rata basis at the end of each four (4) week period of continuous service for the first (1st) year of employment. For subsequent years, it shall be credited up front on the anniversary date of commencement of employment.

Subject to satisfactory proof and notice being provided to the Company, an Employee may be entitled to take two (2) days of unpaid carer's leave to care for or support a member of the Employee's immediate family or household who requires care or support if the Employee does not have an accrued entitlement to any paid personal sick and carer's leave or other such leave.

27.3 Taking personal sick and carer's leave

An Employee must give satisfactory notification including the reason for taking personal sick and carer's leave to the Employee's Supervisor as soon as practicable and generally prior to the commencement of their shift.

Personal sick and carer's leave is subject to satisfactory proof being provided to the Company of the Employee's illness or injury or the illness, injury or unexpected emergency of a member of the Employee's immediate family or household.

However, for personal sick leave a medical certificate is to be produced after four (4) single day absences per year, being each consecutive twelve (12) month period following the commencement of employment. A medical certificate is to be produced for any absences of two (2) or more consecutive days. Where it is impracticable to provide a medical certificate an Employee may provide a statutory declaration.

A medical certificate or statutory declaration, as appropriate, is required for each occasion of carer's leave.

The Company may require the Employee to provide a medical certificate or statutory declaration for any period of unpaid carer's leave.

Personal sick and carer's leave cannot be taken for a period for which the Employee receives workers' compensation.

28. COMPASSIONATE LEAVE

Compassionate leave shall be in accordance with the NES.

On the production of satisfactory evidence being given to the Company Employees other than casual Employees shall be entitled to two (2) days without loss of pay on each occasion (permissible occasion) when a member of the Employee's immediate family or household contracts or develops a personal illness that poses a serious threat to his or her life or sustains a personal injury that poses a serious threat to his or her life.

On the production of satisfactory evidence being given to the Company Employees other than casual Employees shall be entitled to three (3) days without loss of pay on each occasion (permissible occasion) when a member of the Employee's immediate family or household dies.

Casual Employees are entitled to unpaid compassionate leave in accordance with the NES.

An Employee's immediate family is as defined in the FW Act and includes the Employee's spouse and a child, parent, grandparent, grandchild or sibling of the Employee or the Employee's spouse.

29. PARENTAL LEAVE

The entitlement to and taking of parental leave shall be in accordance with this Agreement and the NES.

29.1 Entitlement to parental leave generally

Full and part time Employees who will have completed at least twelve (12) months continuous service at the date of the expected birth of the Employee's child or

placement of the Employee's adopted child and eligible casual Employees will be entitled to parental leave in accordance with the NES and this Agreement.

Such Employees may be entitled to a maximum of fifty two (52) weeks unpaid parental leave to be the primary carer for the child. An Employee may request that this period be extended for up to an additional fifty two (52) weeks. The Company will not unreasonably refuse such a request.

The period of an Employee's parental leave is inclusive of all periods of leave taken by the Employee and the Employee's spouse in relation to the birth or placement of the child (including for example annual leave, long service leave, parental leave, special maternity leave and concurrent leave).

Parental leave may be taken in a single unbroken period in relation to the birth of a child by the Employee or the Employee's spouse in order to be the primary carer for the child.

29.2 Entitlement to concurrent leave

Concurrent leave is unpaid parental leave available to an Employee who is not the primary carer at the date of birth of a child or placement of an adopted child. This leave can be taken concurrently with a spouse taking parental leave as the primary caregiver.

An Employee is entitled to a period of up to eight (8) weeks concurrent leave at the time of the birth of the Employee's child or placement of the Employee's adopted child.

Concurrent leave must be taken at or after the date of the birth or placement of an adopted child, but must not end more than three (3) weeks after the date of the birth or placement of an adopted child.

If, during the life of this Agreement, a paid parental leave scheme is introduced that provides for paid concurrent leave, and that scheme applies to the Employees, the Company will only pay the difference between the amount paid by the Scheme and the amount payable to the Employee under this clause.

29.3 Entitlement to special maternity leave

An Employee may be entitled to take special maternity leave in relation to a pregnancy related illness.

An Employee may also be entitled to take special maternity leave where the pregnancy ends within twenty eight (28) weeks of the expected date of the birth other than by the birth of the child. If an Employee has already commenced maternity leave in such a case maternity leave will continue until the Employee and the Company agree that the Employee should return to work or the Company gives at least four (4) weeks' notice for the Employee to return to work.

29.4 Period of parental leave

An Employee who is pregnant:

- (i) May start parental leave from six (6) weeks before the expected date of the birth. If the Employee wishes to continue to work during this period the Company may require the Employee to provide a medical certificate from an accredited medical practitioner stating that the Employee is fit to continue to work; and

- (ii) Will be required to take parental leave for a period of at least six (6) weeks from the date of the birth.

All other Employees must commence parental leave on the date of birth of the child or the placement of the adopted child.

29.5 Non pregnancy related illnesses during the period of confinement

Where an Employee suffers a non-pregnancy related illness during the period of confinement the Employee may take any accrued paid sick leave in lieu of or in addition to special maternity leave for the duration of the illness subject to the Employee meeting the requirements under this Agreement in relation to paid sick leave.

29.6 Return to work on a part time basis

An Employee may request to return to work on a part time basis after taking parental leave for a period up to the time when the child reaches school age. Such a request must be made at least seven (7) weeks before the date the Employee is due to return to work. The Company may not unreasonably refuse such a request.

30. JURY SERVICE

- 30.1 Subject to sub-clause 30.3, if an Employee is required to attend for jury service during the Employee's ordinary working hours the Employee will be reimbursed by the Company an amount equal to the difference between the amount paid in respect of the Employee's attendance for such jury service and the amount of salary the Employee would have received in respect of the ordinary time the Employee would have worked had the Employee not been on jury service.
- 30.2 An Employee must notify the Company as soon as possible of the date upon which the Employee is required to attend for jury service.
- 30.3 To be entitled to paid jury service as provided for in subclause 30.1, Employees will be required to provide the Company with:
 - (i) Evidence that the Employee has taken all necessary steps to obtain any amount of jury service pay that the Employee may be entitled to under relevant laws;
 - (ii) Proof of the duration of attendance; and
 - (iii) Evidence of the total amount, even if that amount is nil, of jury service pay that has been paid or that is payable to the Employee for the period of jury service.

31. LONG SERVICE LEAVE

- 31.1 The Parties agree that the below conditions only apply to the extent that it is more favourable than the entitlement under the NES. Employees will be entitled to thirteen (13) weeks of long service leave after ten (10) years continuous service. Long service leave may be taken on a pro-rata basis after seven (7) years.
- 31.2 Employees who are terminated by reason of redundancy will be entitled to Long Service Leave on a pro rata basis after four (4) years' service. Once the Company has advised an Employee they will be made redundant, Employees may choose to resign ahead of the notified date and still be paid their pro rata Long Service Leave on termination, subject to having achieved four (4) years' service.

31.3 Should an apprentice provided to Downer EDI Rail by a third party be offered and accept permanent employment with Downer EDI Rail at the end of their apprenticeship, the period of apprenticeship completed with Downer EDI Rail will be recognised for the purpose of their long service leave entitlement calculation.

31.4 All other conditions with respect to long service leave will be in accordance with the *Long Service Leave Act 2018* (Vic).

32. PUBLIC HOLIDAYS

32.1 A full-time Employee is entitled to the following public holidays, without loss of pay:

- (i) New Year's Day (1 January);
- (ii) Australia Day (26 January);
- (iii) Labour Day or Eight Hours' Day;
- (iv) Good Friday;
- (v) Easter Saturday;
- (vi) Easter Monday;
- (vii) Anzac Day (25 April);
- (viii) Queen's Birthday;
- (ix) Melbourne Cup Day or a local equivalent.
- (x) Christmas Day (25 December);
- (xi) Boxing Day (26 December);
- (xii) Any other day declared by or under a law of the State of Victoria to be observed generally within the State or a region of the State as a public holiday; and

32.2 Where another day is generally observed in a locality in substitute for any of the above days, that day shall be observed as the public holiday in lieu of the prescribed day.

32.3 An Employee may be requested to work on a public holiday in accordance with the FW Act.

32.4 Subject to subclause 32.5 below, where an Employee works on a day prescribed above as a public holiday the Employee will be paid the applicable penalty rates prescribed in the relevant incorporated award term for working on a public holiday.

32.5 Where a public holiday falls on a Saturday or a Sunday and a substituted day is declared under the law of the State of Victoria or prescribed in an incorporated award term, payment for working on the Saturday or Sunday will be at the appropriate penalty rates prescribed in the incorporated award term. Payment for working on the substitution day will be at the appropriate penalty for working on public holidays.

33. ACCIDENT MAKE UP PAY

The Company will pay fifty two (52) weeks accident make up pay from the date of injury on acceptance of a compensation claim to Employees covered by this Agreement and applicable to claims accepted after the commencement of this Agreement.

Accident make up pay shall be equal to the difference between the worker's compensation payment and the Employee's pre-injury average weekly earnings as defined by the *Accident Compensation Act 1985*.

Make up pay is only payable when compensation is paid for a work related injury.

PART VIII - TERMINATION OF EMPLOYMENT & REDUNDANCY

34. NOTICE OF TERMINATION

- 34.1 In order to terminate the employment of an Employee entitled to notice under this clause the Company must give to the Employee the following notice:

<u>Period of Service</u>	<u>Period of Notice</u>
1 year or less	1 week
1 year and up to the completion of 3 years	2 weeks
3 years and up to the completion of 5 years	3 weeks
5 years and over	4 weeks

In addition, Employees over forty five (45) years of age at the time of the giving of the notice with not less than two (2) years' service are entitled to an additional week's notice.

Payment in lieu of the notice prescribed in this clause must be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

- 34.2 The required amount of payment in lieu of notice must equal or exceed the total of all 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. That total must be calculated on the basis of:
- (i) the Employee's ordinary hours of work (even if not standard hours);
 - (ii) the amounts ordinarily payable to the Employee in respect of those hours, including (for example) allowances, loading and penalties; and
 - (iii) any other amounts payable under the Employee's contract of employment.
- 34.3 The period of notice in this clause does not apply:
- (i) in the case of dismissal for serious misconduct;
 - (ii) to trainees whose employment under a traineeship agreement or an approved traineeship is for a specified period or is, for any other reason, limited to the duration of the agreement;
 - (iii) to probationary Employees. Notice for probationary Employees is in accordance with clause 12.1; and
 - (iv) to casual Employees.
- 34.4 The notice of termination required to be given by an Employee shall be the same as that required of the Company, except that there is no additional notice based on the age of the Employee concerned. If an Employee fails to give the notice set out subclause 34.1 then the Company has the right to withhold monies due to the Employee to a maximum amount equal to the amount the Employee would have received under subclause 34.2.

- 34.5 The Company has the right to dismiss any Employee without notice for serious misconduct and in such cases any entitlements are to be paid up to the time of dismissal only.
- 34.6 Where the Company has given notice to an Employee, the Employee shall be allowed up to one (1) days' time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the Employee after consultation with the Company.

35. REDUNDANCY / SEVERANCE

- 35.1 Employees will be entitled to three (3) weeks' redundancy pay per year of service, up to a maximum of thirty five (35) weeks, in addition to the period of notice prescribed in clause 34.1.

PART VII - REPRESENTATION, CONSULTATION AND DISPUTE RESOLUTION

36. RECOGNITION OF RIGHTS

- 36.1 The Company and the Employees recognise their joint responsibility to ensure this Agreement is effective and in the event of ambiguity, the spirit and intention set out in Agreement clause 7, Objectives, shall be paramount.
- 36.2 The Employees recognise the right of the Company to plan, organise, manage and decide upon the operations of the company, including:
- (i) Engagement of casuals;
 - (ii) Engagement of contractors;
 - (iii) Employees of a customer performing work at the Downer EDI Rail Newport Facility;
 - (iv) Employees having to transfer between sites to meet operational needs; and
 - (v) Employees of the Company from other plants performing work at the Downer EDI Rail Newport Facility.
- 36.3 The Company recognises the right of the Employees to be members, or not to be members, of a union and to be represented by a union.

37. EMPLOYEE REPRESENTATIVES

- 37.1 The Company recognises, upon notification, the role of elected employee representatives, who may be a union delegate. Employee representatives will be provided with reasonable time to represent Employees at the workplace on matters that pertain to the employment relationship between the Company and Employees covered by this Agreement. The Company will agree to monthly scheduled meetings with the nominated union delegates for no more than ninety (90) minutes duration. The company will allow the union delegates to hold a "report back" meeting with the workforce on a quarterly basis throughout the year for no longer then one (1) hour duration.
- 37.2 The Company will extend the usual courtesy of providing reasonable time and access to resources such as telephone, photocopier and the employee notice board to allow elected employee representatives to carry out their role and

activities that are directly related to matters that pertain to the employment relationship between the Company and Employees covered by this Agreement.

- 37.3 Employee representatives will also be entitled to five (5) days paid training leave per year, or up to ten (10) days over 2 years, for the life of this Agreement. The training courses and the period of leave must be approved by the Company beforehand.

38. SUPPLEMENTARY LABOUR

- 38.1 Supplementary labour will be available to cover excessive workloads caused by increases in work or for special programs or where a particular skill is not available. It is recognised that in some instances a rapid response to the workload is required.
- 38.2 Prior to the employment of supplementary labour, the training and on transfer of existing Employees will be considered. Training for existing Employees will be appropriate when the skill requirement is long term and the work of sufficient volume to justify the training investment and retention of competence by the Employee in the required skill. Where training is proceeding, supplementary labour hire may be required to address the immediate workload.
- 38.3 During the employment of supplementary labour, no permanent Employee of the same occupation who is available to transfer to this work will be declared surplus.
- 38.4 Whenever practical, employment will be by a term contract for an initial period no longer than six (6) months or as otherwise agreed by the parties.
- 38.5 Fixed term labour shall be engaged at the classification level appropriate to the work to be undertaken and paid accordingly.
- 38.6 Where the employment of fixed term labour is not practical the engagement of supplementary labour or contractors will be utilised.
- 38.7 The engagement of supplementary labour is to be used to support the existing full time Employees is overcoming excessive workloads or skill shortages and not to undermine permanency. Before the Company engages supplementary labour to do work covered by this Agreement, the Company must notify the relevant Union(s). Additionally, the Company must also provide in writing to the Union(s), and where practical prior to the engagement of any supplementary labour but no later than two (2) business days after, the following:
- (i) The name of the supplementary labour Company;
 - (ii) The type of work to be given to the supplementary labour Company;
 - (iii) the number of persons and classifications to be engaged; and
 - (iv) the likely duration of the engagement.

The above notification shall not apply where individuals are brought in to cover short term absences due to planned or unplanned leave for a week or less.

- 38.8 In respect of work that is covered by this Agreement, the Company shall only use a contractor, or supplementary labour provider, if the wages and conditions which apply to it and/or its employees are the same or better overall than those provided for in this Agreement.

39. INTRODUCTION OF CHANGE/CONSULTATION

39.1 Preamble

39.1.1 For the purposes of this Agreement, consultation will be defined as follows:

A procedure instituted to provide greater participation by employees and the Unions in the formulation and implementation of changes.

39.1.2 Consultation is aimed at getting Employees and the Unions to suggest or respond to proposals put forward by the Company. It provides an opportunity to share points of view or state objections.

39.1.3 The Company will consult with its Employees where the implementation of significant change is being considered. The consultative provisions are directed toward the development of an atmosphere of inclusion, involvement and mutual trust, between the Company and its Employees.

39.1.4 Employees may nominate a representative for the purpose of this clause, which may include a union representative, and the Company must recognise that representative.

39.1.5 Consultation will take place with affected Employees and their representatives at the workplace level.

39.2 Scope of Consultation

39.2.1 The Company will consult with affected Employees and their representatives, where the implementation of change will have a significant impact on the Employees. Examples of changes that would fall within the scope of consultation are proposals that include major changes in the composition, operation or size of the Company's workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, change of roster patterns, the need for retraining or transfer of Employees to other work or locations and the restructuring of jobs. Provided that where this Agreement makes provision for an alteration of any of the matters referred to in this clause, those alterations shall be deemed not to have significant effects.

39.2.2 This consultation must involve the Employees affected and any nominated representatives.

39.2.3 The Company will provide sufficient information about the proposed change(s), including the proposed date of implementation of the change, to permit affected Employees and the appropriate Unions to consult about the nature, reasons and consequences of the proposed change.

39.2.4 The consultation, contemplated by this section, must be commenced by the Company in a manner which provides affected Employees and their representatives with a reasonable timeframe to properly consider the proposed changes and consult with the Company.

39.2.5 The Company shall discuss with the Employees affected and their representatives, the introduction of the changes referred above, the

effects the changes are likely to have on Employees, measures to avert or mitigate the adverse effect of such changes on Employees and shall give prompt consideration to matters raised by the Employees in relation to the changes.

- 39.2.6 Where the change relates to a change to the regular roster or ordinary hours of work, the Company must also invite affected Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- 39.2.7 The discussions with Employees affected (by such changes) and their representatives shall commence as early as practicable.
- 39.2.8 For the purposes of such discussion, the Company shall provide in writing to the Employees concerned all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees. Provided that the Company shall not be required to disclose confidential information, the disclosure of which would overtly affect the Company's interests. Furthermore the Company shall not be required to provide information about Employees bound by this agreement unless provision of that information is required or authorised by law. The Company shall provide information in languages other than English for Employees of non-English speaking background if required.
- 39.2.9 The change which is the subject of consultation may be implemented by the Company when the above steps are completed. Employees may follow the dispute settlement procedure in the case of any grievance.
- 39.2.10 Provided that such consultation will operate in conjunction with any other term of the Agreement requiring consultation or agreement with Employees in relation to changes to hours of work or related matters.

40. AVOIDANCE OF INDUSTRIAL DISPUTES

40.1 Continuity of Service

The Parties recognise the importance of delivering quality Rollingstock for the client and agree that any issue in dispute should be able to be resolved in an informal manner without industrial action.

The Parties agree to discuss in good faith, based upon mutual trust, any workplace issues that are likely to lead to on-going disagreement or conflict about matters arising under the Agreement.

This will be largely achieved through the avenue of consultation. However, in the event that a dispute occurs, the Parties agree to follow the current Dispute Settling procedures as outlined below.

For the purpose of this disputes procedure, it is recognised that the involvement of an employee representative, including a union representative, is on the basis of the affected Employee/s having requested that representative's involvement.

40.2 Dispute Resolution Procedure

- 40.2.1 It is the intention of this procedure to resolve by direct consultation and negotiation between the parties any grievance, dispute, claim or problem on any industrial matter, including the NES, with the exception of safety issues.
- 40.2.2 The following four stage procedure shall be adhered to in resolving matters under this Agreement:
- (i) Discussion shall take place between the Employee/s concerned and at their request, an employee representative which may include a union shop steward/delegate, and the immediate supervisor/s. The immediate supervisor will act promptly and co-operatively.
 - (ii) Discussions involving the Employee/s, the employee representative/s at the Employee/s request, and senior management.
 - (iii) Discussions involving the Employee/s, the employee representative, which may include representatives from State Branch of a union, and nominated Company representatives.
 - (iv) Discussions involving the Employee/s, the employee representative, which may include senior union officials (State Secretary or National Officer) at the Employee/s request, and nominated Company representatives.
- 40.2.3 Throughout each of the above stages of the procedures, all relevant facts shall be clearly identified and recorded and reasonable time limits allowed for the completion of the various stages of discussion. At least seven (7) days should be allowed for all stages of the discussions to be finalised.
- 40.2.4 The earliest possible advice should be given by the Employee/s or the Company to the other of any issue or problem which may give rise to a grievance or dispute. An Employee/s may request the involvement of an employee representative including a union at any stage.
- 40.2.5 The parties may, during this process, refer the matter in dispute under this Agreement to an agreed independent person. The agreed independent person may attempt to resolve the dispute by conciliation or with the agreement of the Parties by arbitration.
- 40.2.6 If the dispute still remains unresolved the parties agree that the matter/s in dispute may be jointly or individually referred to the FWC for assistance in resolving the dispute by conciliation, mediation and if required, arbitration.
- 40.2.7 The Company shall ensure that all practices applied during the operation of these procedures are in accordance with the Safe working practices.
- 40.2.8 Where a dispute exists and whilst that dispute remains unresolved and is being addressed through this procedure, the parties will return to the situation and arrangements that existed prior to the events that caused the dispute, such that no party is prejudiced during the process to resolve the matter.

41. RENEWAL OF AGREEMENT

The parties will convene four (4) months prior to the expiry of this Agreement to negotiate a replacement. Should no Agreement be negotiated, this Agreement will remain in force until such time as a new Agreement is reached and signed by the appropriate parties. All clauses of this Agreement will remain in force.

42. SIGNATORIES

The parties to this Enterprise Agreement are committed to the provisions contained herein.

Signed for and on behalf of Downer EDI Rail Pty Ltd by:

Stephen Furlong of Champion Road, Newport Victoria 3015
Name Address

Head Of Operations

Position/Authority



Signature

26/07/2021

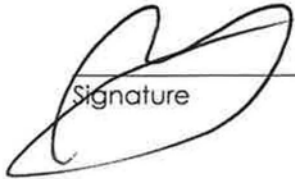
Date

Signed for and on behalf of the Employees by:

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (Victorian Branch)

Luciano Malgeri of 251 Queensberry St, Carlton Sth, 3053
Name Address

Assistant State Secretary
Position/Authority


Signature

August 2, 2021
Date

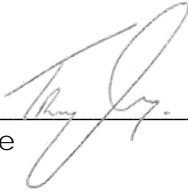
The Communication, Electrical & Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (Victorian Branch) by:

TROY GRAY _____ of _____ LEVEL 1, 200 ARDEN STREET NORTH MELBOURNE VIC
Name Address

SECRETARY ETU - VICTORIA BRANCH

Position/Authority

Signature



30/07/2021

Date

The Australian Rail, Tram & Bus Industry Union (Victorian Branch) by:

BRYAN EVANS

Name

of

LEVEL 2, 365 QUEEN ST

Address

MELBOURNE

VIC 3000

RTBU Organiser

Position/Authority



Signature

26 July 2021

Date

APPENDIX A: Procedure for classifying employees (Manufacturing Award)

The definitions of the classifications for each of the wage levels referred to in Clause 19 of this Agreement are set out in Parts B and C of this Appendix.

1. PROCEDURE

- 1.1 Subject to sub-clause 1.2, the procedures for reclassifying employees under this Agreement are set out in the *National Metal and Engineering Competency Standards Implementation Guide* distributed by the Innovation and Business Skills Australia ("IBSA").
- 1.2 Where an employee's level is not determined by the Metal and Engineering competency standards, the classification level is to be determined by the classification structure and definitions at Schedule B.1 to B.3 of the Manufacturing Award.
- 1.3 Without detracting from any of the processes set out in this clause, any disputes in relation to classification or reclassification, including disputes relating to the terms of the National Metal and Engineering Competency Standards Implementation Guide, shall be handled in accordance with the dispute resolution procedure of this Agreement.
 - 1.3.1 It shall be a term of the Agreement that where there is agreement to implement the standards at the Company, or in the event that the classification of an employee is called into question, the issue shall be settled by the application of competency standards in accordance with this clause and the National Metal and Engineering Competency Standards Implementation Guide or by reference to the minimum training requirement in the relevant classification definition, except as provided in clauses 1.3.2 or 1.3.3, below.
 - 1.3.2 Where the employee has a relevant qualification recognised as a minimum training requirement for the level at which the employee seeks to be classified and he or she is exercising or will be required to exercise the skills and knowledge gained from that qualification necessary for that level of work the employee shall be classified appropriately. It is up to the Company to demonstrate reasons for a qualification that is a recognised minimum training requirement not being regarded as relevant for an employee's work. Any disputes which cannot be resolved over the application of this clause in the first instance are to be referred to the dispute settlement procedure.
 - 1.3.3 Where skill standards have not been finalised in respect of any class of work, and this is necessary for determining an employee's classification, employees performing such work shall not be reclassified until such standards are available except as provided for in clause 1.3.2, above.
 - 1.3.4 All employees engaged under the Agreement at the relevant classification levels shall be subject to the metal and engineering competency standards.
 - 1.3.5 Other provisions to be followed where competency standards are being implemented at the Company:

- 1.4 Company and employee representatives responsible for overseeing the implementation of competency standards within the Company shall be given access to briefing and/or training courses on the standards prior to implementation.
- 1.5 Such briefings/training courses on the metal and engineering competency standards and the National Metal and Engineering Competency Standards Implementation Guide should be approved by IBSA. These briefings/training courses can be either a joint briefing or an approved course delivered by a IBSA recognised provider however under this Agreement there is no entitlement to paid leave to attend training (however described) provided by a trade union or to attend meetings (however described) conducted by or made up of trade union members.
- 1.6 Where a position is to be reclassified that incorporates any form of shunting duties as its primary task, the classification will be determined with reference to prevailing industry standards.

2. Facilitation of implementation

Any disputes or difficulty or likely dispute or difficulty in relation to the implementation of competency standards shall be dealt under the dispute settlement procedure in clause 40 of this Agreement.

3. Points

The points to be assigned to the classification levels under this Agreement shall be:

Award Level	Classification	Recommended Points
C14		-
C13		-
C12		32
C11		64
C10		96
C9		12 additional points above C10
C8		24 additional points above C10
C7		36 additional points above C10
C6		48 additional points above C10
C5		60 additional points above C10
C4		Standards and points to be finalised
C3		Standards and points to be finalised

and in accordance with Table 2 in the National Metal and Engineering Competency Standards Implementation Guide.

4. Mixed functions

An employee engaged for more than two (2) hours during one day or shift on duties carrying a higher rate than his or her ordinary classification shall be paid the higher rate for such day or shift. If for (2) hours or less during one day or shift he or she shall be paid the higher rate for the time so worked. This provision does not apply to employees who would, but for this Agreement, be covered by Part II of the relevant award.

APPENDIX B: Classification Structure

The classification structure is below:

Class'n No.	Classification Title	Minimum Training Requirement	Wage Relativity to C10*
C3	Engineering Associate - Level II	Advanced Diploma of Engineering, or equivalent.	145%
C4	Engineering Associate 3 rd Year of - Level 1	80% towards an Advanced Diploma of Engineering or equivalent	135%
C5	Advanced Engineering Tradesperson - Level II Engineering Technician - Level V	Diploma of Engineering - Advanced Trade, or equivalent. Diploma of Engineering - Technical or equivalent.	130%
C6	Advanced Engineering Tradesperson - Level 1 Engineering Technician - Level IV	C10 + 80% towards a Diploma of Engineering - Advanced Trade or equivalent. 50% towards an Advanced Diploma of Engineering, or 85% towards a Diploma of Engineering - Technical or equivalent.	125%
C7	Higher Engineering Tradesperson and Special Class Level II Engineering Technician - Level III	Certificate IV in Engineering or C10 + 60% towards a Diploma of Engineering or equivalent. Certificate IV in Manufacturing Technology provided that the minimum level of experience referred to in the Manufacturing and Associated Industries - Skills Development - Wages and Conditions Award has been completed or 45% towards an Advanced Diploma of Engineering, or 70% towards a Diploma of Engineering - Technical or equivalent	115%
C8	Engineering Tradesperson - Special Class Level I	C10 + 40% towards a Diploma of Engineering or equivalent	110%

Class'n No.	Classification Title	Minimum Training Requirement	Wage Relativity to C10*
	Engineering Technician - Level II	40% towards an Advanced Diploma of Engineering, or 60% towards a Diploma of Engineering - Technical or equivalent	
C9	Engineering Tradesperson - Level II Engineering Technician - Level I	C10 + 20% towards a Diploma of Engineering or equivalent Certificate III in Engineering - Technician, or Certificate III Manufacturing Technology, provided that the minimum level of experience referred to in the Manufacturing and Associated Industries - Skills Development - Wages and Conditions Award has been completed or 50% towards a Diploma of Engineering or equivalent	105%
C10	Engineering Tradesperson - Level I Production Systems Employee	Recognised Trade Certificate or Certificate III in Engineering - Mechanical Trade, or Certificate III in Engineering - Fabrication Trade, or Certificate III in Engineering - Electrical/Electronic Trade or equivalent Engineering Production Certificate III, or Certificate III in Engineering - Production Systems or equivalent	100%
C11	Engineering/Production Employee - Level IV	Engineering Production Certificate II, or Certificate II in Engineering - Production Technology or equivalent	92.4%
C12	Engineering/Production Employee - Level III	Engineering Production Certificate I or Certificate II in Engineering	87.4%

Class'n No.	Classification Title	Minimum Training Requirement	Wage Relativity to C10*
		or equivalent	
C13	Engineering/Production Employee Level II	In-house training	82%
C14	Engineering/Production Employee - Level 1	Up to 38 hours induction training	78%

* The percentage relativities column reflects the original percentages; these have changed over time due to flat dollar arbitrated safety net adjustments.

APPENDIX C: Manufacturing Classification definitions

1. Definitions

1.1 In these definitions:

“Or equivalent” means any training which a registered provider (e.g. TAFE), or State recognition authority recognises as equivalent to an accredited course which IBSA recognises for this level. This can include advanced standing through recognition of prior learning and/or overseas qualifications; or, where competencies meet the requirements set out in IBSA competency standards in accordance with the *National Metal and Engineering Competency Standards Implementation Guide*.

“Work within the scope of this level” means, for an employee who does not hold a qualification listed as a minimum training requirement, the employee shall apply skills within the Company selected in accordance with the *National Metal and Engineering Competency Standards Implementation Guide*. Competencies selected must be competency standards recognised as relevant and appropriate by IBSA and as endorsed by the National Training Quality Council.

“Engineering Streams” are the three broad engineering streams recognised within the classification definitions set out in this Appendix, namely: Electrical / electronic; fabrication; and mechanical. Additionally, there are five vocational fields (as defined). Entry to training in any engineering stream is not conditional on union membership.

1.2 The streams are defined as:

“Electrical/electronic stream” includes the design, assembly, manufacture, installation, modification, testing, fault finding, commissioning, maintenance and service of all electrical and electronic devices systems, equipment and controls, e.g., electrical wiring, motors, generators, PLC's and other electronic controls, instruments, refrigeration, telecommunications, radio and television, communication and information processing.

“Mechanical stream” includes the design, assembly, manufacture, installation, modification, testing, fault finding, commissioning, maintenance and service of all mechanical equipment, machinery, fluid power systems, automotive mechanics, instruments, refrigeration, and the use of related computer controlled equipment, e.g. Computer Numeric Controlled machine tools.

“Fabrication stream” includes fabrication, forging, carpentry, plumbing, founding, structural steel erection, electroplating, metal spinning, metal polishing, sheet metal work and the use of related computer controlled equipment. This includes fabrication in all metals, plastics, carbon fibre, composite materials, ceramics and other materials.

“Vocational fields” are the five vocational fields recognised within this classification structure, namely: trade; technical; engineering / production; supervisor / trainer / coordinator; and professional.

1.3 The vocational fields are defined as:

“Trade” includes an employee who possesses as a minimum qualification a trade certificate in any of the engineering streams or Certificate IV in Engineering including Higher Engineering Trades or Special Class Trades.

“Technical field” includes production planning, including scheduling, work study, and estimating materials, handling systems and like work; technical including inspection, quality control, supplier evaluation, laboratory, non-destructive testing, technical purchasing, and design and development work (prototypes, models, specifications) in both product and process areas and like work; and design and draughting and like work.

“Engineering/production field” includes employees primarily engaged in production work including production, distribution, stores and warehousing, but does not require a qualification in the trade, technical, professional or supervisory fields.

APPENDIX D: Standard Toolkit Requirement

MINIMUM ELECTRICIANS TOOL KIT

NOTE: ALL TOOLS MUST BE TRADE QUALITY

Lockable Toolbox

Tape 8m

Pliers 6-8" (insulated)

Pliers diagonal cut

Pliers long nose

Screwdriver 7 piece (insulated)

Centre Punch

Hacksaw frame 12"

Wrench adjustable 100mm

Wrench adjustable 200mm

Wrench adjustable 250mm

Multigrips 250mm (10")

Tin Snips

Hammer 16oz ball pien

Hex key 8 set imperial to 3/8

Hex key 8 set metric to 10mm

Socket Set to 22mm

Spanner Set (combination ring & open end 22mm)

Cold Chisel

MINIMUM FITTER & TURNER TOOL KIT

NOTE: ALL TOOLS MUST BE TRADE QUALITY

Lockable Toolbox

Tape 8m

Rule Steel 300mm/12" (metric/imperial)

Rule Steel 150mm/6" (metric/imperial)

Dividers spring solid nut 150mm (6")

Block Square 150mm

Vice grip

Feeler gauges 75mm 20 blades metric

Pinch Punch Set long series 8 piece 2.5-10mm

Cold Chisel 230 x 22mm

Centre Punch 125 x 16 x 8 mm

Hacksaw frame 12"

Multigrips 250mm (10")

Tin Snips

Socket Set metric 20 piece

Screwdriver Set standard blade & Phillips 7 piece

Hammer 350gm (12oz) ball pien

Wrench adjustable 300mm

Wrench Tap T type 2-6mm capacity

Hex key 8 set imperial to 3/8

Hex key 8 set metric to 10mm

Pliers combination 200mm

Pliers long nose 180mm 654-71

Spanner Set (14 piece combination ring & open end metric)

MINIMUM BOILERMAKER TOOL KIT

NOTE: ALL TOOLS MUST BE TRADE QUALITY

Lockable Toolbox

Tape 8m

Tape 10m

Rule Steel 300mm/12" (metric/imperial)

Rule Steel 600mm/24" (metric/imperial)

Hammer 900gm (32oz) ball pien

Hammer 350gm (12oz) ball pien

Cold Chisel 230 x 22mm

Centre Punch 125 x 16 x 8 mm

Wrench adjustable 300mm

Dividers spring solid nut 150mm (6")

Vice grip without wire cutter 250mm

Wrench set Allen key 8 set imperial

Wrench set Allen key 8 set metric

Square rafter 610mm x 406mm

Square Engineers Grade B 150mm

Square Combination 300mm

Scribers Engineers double-ended 220mm

Screwdrivers 1 blade and 1 Phillips

Side cutters

Pliers

MINIMUM VEHICLE BUILDER TOOL KIT
NOTE: ALL TOOLS MUST BE TRADE QUALITY

Lockable Toolbox
Tape 8m
Rule Steel 300mm/12" (metric/imperial)
Rule Steel 150mm/6" (metric/imperial)
Scribers double-ended 220mm
Hammer 900gm (32oz) ball pien
Hammer 350gm (12oz) ball pien
Wrench adjustable 300mm
Wrench adjustable 150mm
Cold Chisel 230 x 22mm
Centre Punch 125 x 16 x 8 mm
Hacksaw frame 12"
Pliers or multigrips
Vice grip x 2
Screwdrivers blade x 2
Screwdrivers Phillips x 2
Screwdrivers Pozidrive x 2
Square Combination 300mm
Allen key 8 set imperial
Allen key 8 set metric
Socket Set metric 20 piece
Spanner Set 14 pc metric ring/open end
Tin Snips

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2021/6518

Applicant:
Downer EDI Rail Pty Ltd

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Melissa Hogan, IR Manager have the authority given to me by Downer EDI Rail Pty Ltd to give the following undertakings with respect to the Dower EDI Rail HCMT Build Agreement 2021 ("the Agreement"):

1. That clause 40.1.2 of the Agreement be amended to read "It is the intention of this procedure to resolve by direct consultation and negotiation between the parties any grievance, dispute, claim or problem on any matter arising under the Agreement or any industrial matter, including the NES, with the exception of safety issues".
2. That clause 34.4 of the Agreement be amended to read "If an Employee fails to give the notice set out in subclause 34.1 then the Company has the right to withhold monies due to the Employee to a maximum amount equal to the amount the Employee would otherwise have received under subclause 34.2, but does not include deductions from accrued NES entitlements such as annual leave."
3. Despite the provision of clause 35.1, where an employee has completed at least one year of service but less than two, the employee will be entitled to a minimum of 4 weeks' redundancy pay.
4. The "Establishment Wage Level" rates of pay at clause 20.1.2 of the Agreement are the rates of pay that apply at the test time of the Agreement.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature

18/08/2021

Date