



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

McConnell Dowell Constructors (Aust) Pty Ltd T/A McConnell Dowell
(AG2017/3498)

MCCONNELL DOWELL CONSTRUCTORS (AUST) PTY LTD
NATIONAL RAIL ENTERPRISE AGREEMENT 2017-2020

Building, metal and civil construction industries

COMMISSIONER MCKINNON

MELBOURNE, 31 AUGUST 2017

Application for approval of the McConnell Dowell Constructors (Aust) Pty Ltd National Rail Agreement 2017-2020.

[1] An application has been made for approval of an enterprise agreement known as the *McConnell Dowell Constructors (Aust) Pty Ltd National Rail Enterprise Agreement 2017-2020* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by McConnell Dowell Constructors (Aust) Pty Ltd T/A McConnell Dowell. The Agreement is a single enterprise agreement.

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

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

[4] Pursuant to s.202(4) of the Act, the model flexibility term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

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

[6] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 September 2017. The nominal expiry date of the Agreement is 31 August 2020.



COMMISSIONER

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24 August 2017

Commissioner McKinnon
Fair Work Commission
Level 4, 11 Exhibition Street
Melbourne VIC 3000

By Email: member.assist@fwc.gov.au

Dear Commissioner McKinnon

AG2017/3498
McConnell Dowell Constructors (Aust) Pty Ltd National Rail Enterprise Agreement 2017-2020

I, Mary-Jo Durrant, of Level 3, 109 Burwood Road, Hawthorn in the State of Victoria, National Employee Relations Manager of McConnell Dowell Constructors (Aust) Pty Ltd (the **Company**), provide the following undertakings pursuant to Section 190 of the *Fair Work Act 2009 (Cth)* (the **Act**), in relation to the *McConnell Dowell Constructors (Aust) Pty Ltd National Rail Enterprise Agreement 2017-2020* (the **Agreement**):

Clause 45 - Dispute Resolution Procedure

Clause 45 of the Agreement will operate so that any disputes relating to safety that are about a matter arising under the Agreement, will be dealt with pursuant to the Dispute Resolution Procedure provided for therein, notwithstanding the provisions of Clause 45.5.

Clause 39 - Redundancy

Notwithstanding the provisions of Clause 39 of the Agreement, Employees (other than casuals) will be entitled to redundancy (severance) pay that is no less beneficial than that which is provided for in the National Employment Standards (**NES**) prescribed by the Act. For clarity, the Company may offset an Employee's redundancy pay entitlement under the NES in whole or in part by any benefit payable pursuant to the redundancy pay accrual scheme provided for under Clause 39 of the Agreement.

Schedule 4 - Allowances

Notwithstanding the provisions of the text of Schedule 4 of the Agreement, by way of correction to reflect the agreement of the Parties, the Company will apply Schedule 4 as follows:

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Ref: xxxx.xxx.xx.xxxx.xx.xxxxx

SCHEDULE FOUR – ALLOWANCES

Allowance	Upon commencement of Agreement	Year 2	Year 3
Meal Allowance Clause 27.3	\$18.00	\$18.63	\$19.28
First Aid Clause 29.1	\$15.63 per week	\$16.17 per week	\$16.73 per week
Travel Allowance Clause 31.1			
0-50 kms:	\$22.50 per day	\$23.28 per day	\$24.09 per day
50-100 kms:	\$31.25 per day	\$32.34 per day	\$33.47 per day
>100 kms:	\$62.50 per day	\$64.68 per day	\$66.94 per day
Mobile Phone Allowance (Maintenance Rail Workers only) Clauses 32.1 and 32.2	\$10.00 per week	\$10.35 per week	\$10.71 per week
Tool Allowance	\$20 per week	\$20.70 per week	\$21.42 per week

Yours sincerely

Mary-Jo Durrant
National Employee Relations Manager

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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.



Note - the model flexibility term is taken to be a term of this agreement and can be found at the end of the agreement.

**McConnell Dowell Constructors (Aust)
Pty Ltd**

National Rail Enterprise Agreement

2017-2020

McConnell Dowell Constructors (Aust) Pty Ltd National Rail Enterprise Agreement 2017-2020

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1. Title

This Agreement will be known as the McConnell Dowell Constructors (Aust) Pty Ltd National Rail Enterprise Agreement 2017-2020 (Agreement).

2. Definitions

The following definitions apply in this agreement:

- 2.1. **Act** means the Fair Work Act 2009 (Cth)
- 2.2. **Company** means McConnell Dowell Constructors (Aust) Pty Ltd
- 2.3. **Construction Site Allowance** means the amount payable to employees who undertake construction work as defined in this Agreement. The construction site allowance value for a project is determined by the McConnell Dowell Contract Value of the works.
- 2.4. **Employee** means employees of McConnell Dowell Constructors (Aust) Pty Ltd performing work covering the Application of this Agreement (as described in clause 6 – Application) within the classifications listed in Schedule One of this Agreement.
- 2.5. **Immediate Family** means a spouse, child, parent, grandparent or sibling of the Employee, or child, parent, grandparent or sibling of a spouse of an Employee.
- 2.6. **Majority** means, where used in the context agreement of Employees, 50% plus one of the affected group of Employees.
- 2.7. **Rail Construction work** is defined as constructing new and additional infrastructure, including new stations, new rail corridors or grade separation of existing infrastructure and the employees performing such work will be entitled to construction wage rates in Schedule 3.
- 2.8. **Rail Maintenance work** is defined as performing heavy rail works in the existing rail corridor, rail yards or rail terminals including; repairs, refurbishments, upgrades, renewals, removal and/or reconstruction of existing infrastructure and minor new works directly associated with the maintenance or upgrade of infrastructure and the employees performing such work will be entitled to the maintenance wages rates in Schedule 2.
- 2.9. **Serious Misconduct** means any misconduct which is sufficiently serious to justify instant dismissal without notice or payment in lieu of notice.

3. Objectives

- 3.1. This Agreement has been developed to enable the Company to become a leading provider of rail infrastructure solutions in Australia.
- 3.2. This Agreement is designed to support the highest levels of success by:
 - a) Ensuring the safety of our workers and workplaces is maintained;
 - b) Providing job satisfaction through consultation and support;
 - c) Demonstrating a commitment to training and employee development;
 - d) Encouraging effective communication throughout the organisation; and
 - e) Focusing on best work practices and increased Company viability to achieve long term success.

4. Parties

4.1. The following parties are bound by this Agreement:

- a) All Employees of McConnell Dowell Constructors (Aust) Pty Ltd employed within the application of the Agreement (as described in clause 6 – Application) in the classifications listed in Schedule One of this Agreement (**Employees**).
- b) McConnell Dowell Constructors (Aust) Pty Ltd (**Company**).
- c) Australian Rail Tram and Bus Industry Union (together, the **Parties**).

5. Flexibility

- 5.1. The Parties are committed to the removal of barriers to optimise work performance to achieve agreed safety and productivity objectives.
- 5.2. The commitment to flexibility extends to individual Employees performing a broad range of tasks including those that are incidental or peripheral to the main job that enable the completion of the whole job, provided that all work is safe and within the Employee's level of classification.
- 5.3. The Parties are committed to developing productivity improvement strategies and other initiatives, which will go towards ensuring continuity of work.

6. Application

- 6.1. This Agreement applies to Employees of the Company engaged in the maintenance, refurbishment, construction and improvement of rail infrastructure and related services in Australia, within the classifications described in Schedule One of this Agreement.

7. Term

- 7.1. This Agreement commences from the beginning of the first pay period commencing on or after the 7th day following approval by Fair Work Commission.
- 7.2. This Agreement will nominally expire at the end of three years from the date Fair Work Commission approves the Agreement.

8. Relationship with existing awards

- 8.1. Employees' terms and conditions of employment will be as provided by this Agreement. This Agreement stands alone and will operate to the exclusion of any otherwise applicable provisions of a modern award or other applicable industrial instrument.

9. Consultation and introduction of change

9.1. This term applies if:

- a) Prior to the Company making a 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.

9.2. Prior to making a definite decision to implement major change, the Company must notify the

relevant Employees of the decision to introduce the major change. The relevant Employees may appoint a representative, including a representative from one of the Unions, for the purposes of the procedures in this term. 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 Company of the identity of the representative; the Company must recognise the representative for all procedures in this term.

9.3. As soon as practicable after making its decision, the Company must:

- a) discuss with the relevant Employees:
 - i. the introduction of the change;
 - ii. the effect the change is likely to have on the Employees;
 - iii. measures the Company is taking to avert or mitigate the adverse effect of the change on the Employees; and
- b) for the purposes of the discussion — provide, in writing, to the relevant Employees:
 - i. all relevant information about the change including the nature of the change proposed;
 - ii. information about the expected effects of the change on the Employees; and
 - iii. any other matters likely to affect the Employees.

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

9.5. The Company must give prompt and genuine consideration to matters raised about the major change by the relevant Employees, including measures to mitigate any adverse impacts on the employees.

9.6. If a term in the Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Company, the requirements set out above are taken not to apply.

9.7. 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 Company'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.

9.8. In this term, relevant Employees mean the Employees who may be affected by the major change.

9.9. The Company will also commit to:

- a) consult Employees about changes to their regular roster or ordinary hours of work;
- b) provide information to the Employees about the change;
- c) invite the Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities);
- d) consider any views given by the Employees about the impact of the change; and
- e) allow for representation of those Employees for the purposes of that consultation,

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.

10. No extra claims

10.1. No party to this Agreement will directly or indirectly make any claim for further wages, salaries or any other terms or conditions of employment whatsoever, for the duration of this Agreement.

11. Occupational Health and Safety – Protective clothing

11.1. All Employees engaged to work on site will be supplied with appropriate protective clothing and equipment before commencing work on a project.

11.2. It is a term and condition of employment that Employees use all appropriate protective clothing and equipment provided by the Company for specific circumstances.

11.3. Protective clothing and equipment must be worn at all times as instructed during the site induction process. Employees are expected to wear Company provided clothing and maintain it in a tidy manner so as to display a professional Company image. Helmets must not be painted, drilled or modified in any way, including by the application of stickers unless authorised by the Company. Damaged and/or worn footwear and helmets will be replaced on a fair wear and tear basis.

12. Job Related Equipment

12.1. The Company will supply the protective equipment/materials that are necessary for the work being performed, such as:

- a) Protective sun screen.
- b) Hearing protection.
- c) Eye protection.
- d) Gloves.
- e) Safety harness.
- f) Gumboots.
- g) Hat Brims.
- h) Dust Masks.
- i) Any other specific work related equipment.

13. Drug and Alcohol Testing

- 13.1. Employees will be required to submit to fitness for work, random and “for cause” drug and alcohol testing in accordance with Company policy as amended from time to time.

14. Suspension

- 14.1. In the event that an Employee is alleged to have engaged in serious misconduct, the Employee may be suspended from their employment with full pay for rostered ordinary hours pending the outcome of an investigation. The Employee must remain ready to attend work during any period of suspension and available to be contacted during usual business hours during the suspension period.
- 14.2. Any investigation held as a result of the suspension of an Employee will be conducted as quickly as practicable in the circumstances.

15. Individual flexibility arrangements

- 15.1. An Employee and the Company may agree to make an Individual Flexibility Arrangement to vary the effect of terms of this agreement if:

- a) The individual Flexibility Agreement deals with one or more of the following matters:
- Parental Leave; and
 - Leave loading
- b) The Individual Flexibility Agreement meets the genuine needs of the Company and the Employee in relation to one or more of the matters mentioned in paragraph a); and
- c) The individual flexibility Agreement is genuinely agreed to by the Company and the Employee.

- 15.2. The terms of any Individual Flexibility Agreement must:

- a) Be about permitted matters under section 172 of the Act (which describes the type of terms which can be included in an enterprise agreement); and
- b) Not include unlawful terms under section 194 of the Act (which describes the type of terms which cannot be included in enterprise agreements); and
- c) Result in the Employee being better off overall than the Employee would be if no individual Flexibility Agreement was made.

- 15.3. The individual Flexibility Agreement must:

- a) Be made in writing; and
- b) Include the name of the Company and the Employee; and
- c) Be signed by the Company and the Employee, or if the Employee is under 18 years of age, a parent or guardian of the Employee; and
- d) Include details of:
- The terms of the Agreement that are varied by the Individual Flexibility Agreement;

and

- How the individual Flexibility Agreement will vary the effect of the terms; and
- How the Employee will be better off overall in relation to the terms and conditions of their employment as a result of the Individual Flexibility Agreement; and

e) State the day on which the Individual Flexibility Agreement commences.

15.4. The Company or Employee may terminate the Individual Flexibility Agreement:

- a) By giving no more than 28 days' written notice to the other party to the Individual Flexibility Agreement; or
- b) If the Company and Employee agree in writing – at any time.

16. Contract of Employment

16.1. Employees will be employed on a probationary basis for a period of three months from commencement with the Company.

16.2. During the probationary period, either party may terminate the employment on one week's notice.

16.3. If the Employee is stood down for reasons beyond the control of the Company (including mechanical breakdown, availability of equipment and inclement weather), they will be paid for the rostered hours remaining up to a maximum of 8 hours for the day's work.

16.4. Employees may be engaged on a full time, part time or casual basis.

17. Full time employees

17.1. A full time employee is an Employee who is engaged to work an average of 38 hours per week over a fortnightly period.

18. Part time employees

18.1. A part-time employee is an Employee who works a rostered average of fewer than 38 hours per week and has reasonably predictable hours of work.

18.2. For each ordinary hour worked, a part-time employee will be paid the hourly rate for their relevant classification.

18.3. Subject to and in accordance with the Act, part-time Employees will accrue leave entitlements on a pro-rata basis.

18.4. Before commencing a period of part-time employment, the Employee and the Company will agree in writing:

- a) The hours to be worked by the Employee, the days on which the hours be worked and commencing times for the work; and
- b) The classification applying to the work to be performed.

18.5. Where a part-time employee is required to work in excess of their additional part-time hours at

overtime rates, they will be paid at their ordinary hourly rate, plus accrued leave entitlements on a pro-rata basis to a maximum of 38 hours.

19. Casual employees

- 19.1. A casual Employee is an Employee engaged as such on an as needs basis whose work pattern is not regular and systematic and who is engaged as a casual in their letter of offer.
- 19.2. Casual Employees will be paid a loading of 25% in addition to the ordinary time rate provided in Schedule Two of this Agreement for the classification in which the Employee is employed.
- 19.3. In addition to the 25% casual loading, casual Employees are entitled to:
 - a) Overtime rates after working eight hours on a shift; and
 - b) Applicable penalty rates for weekend work and working on gazetted public holidays.

Where there is an entitlement to overtime or other penalty rates any relevant penalty rates shall be paid in addition to the casual loading. For the avoidance of doubt, penalty rates shall be applied according to the following formula. (Base rate x Casual loading) x penalty rate.

- 19.4. Casual Employees will not be entitled to annual leave, paid personal leave, payment for public holidays not worked, redundancy payments or other paid absences, and will not accrue rostered days off.

20. Termination of Employment

- 20.1. Should the Company wish to terminate the contract of employment of a full time or permanent part time Employee the Company will give the Employee the period of notice specified in the table below.

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

- 20.2. In addition to this notice, Employees are entitled to an additional week’s notice if they are over 45 years of age at time of the giving of the notice and have completed at least two years’ continuous service.
- 20.3. The Company may, in its sole discretion, make a payment of the equivalent number of weeks’ pay in lieu of actual notice based on the full rate of pay for the hours the Employee would have worked during the notice period.
- 20.4. Full time and part time employees must provide written notice of their intention to terminate their employment in accordance with Table 20.1.
- 20.5. Casual Employees are only required to be given notice up to the end of the rostered daily shift.
- 20.6. Should an Employee terminate the contract of employment of that Employee without giving notice, or without allowing the full notice period to be worked, the Company may withhold the amount representing what the Employee would have been paid for the ordinary hours that

should have been worked for that period from other amounts payable to the Employee. This does not prevent a shorter notice period being agreed between the Employee and the Company.

- 20.7. The provisions of this clause do not prevent the Company from terminating employment without notice for serious misconduct.

21. Hours of Work- Day Workers

- 21.1. Ordinary hours of work will be 38 hours per which may be worked any day Monday to Saturday.
- 21.2. The span of ordinary hours will be between 6.00 am (or 5 am during daylight saving time, at the election of the Company) and 6.00 pm, worked on any day Monday to Saturday, unless otherwise agreed between the majority of Employees and the Company in the area or areas concerned.
- 21.3. The normal or rostered hours of work within the spread of hours shall be as determined by the Company to meet the needs of its projects. The spread of ordinary hours of work for different work areas, once established, may be varied by agreement, or by the Company giving 48 hours' notice to the Employees affected.
- 21.4. The Company and an Employee or group of Employees may, during the course of the project, develop by agreement innovative working arrangements that provide better use of hours available for work and provide quality of life advantages and productivity improvements.
- 21.5. Starting and finishing times may be varied by the Company, including amongst separate work teams or areas, provided that the ordinary hours are to be worked during the spread of hours referred to in clause 21.2.
- 21.6. The Company will have the option to roster for all gazetted public holidays after consultation with the workforce affected by the request to work public holidays. As part of this consultation, the Company and Employees must consider the operational requirements of the business and Employees' requests to take time off.

22. Overtime

- 22.1. Employees agree to work reasonable overtime as required by the Company.
- 22.2. All overtime worked by an Employee outside their rostered hours or on a shift other than a rostered shift will be paid at the ordinary hourly base rate plus the following loadings:
- a) A loading of 50% of the ordinary hourly base rate of pay will apply for the first two (2) overtime hours, and 100% of the ordinary hourly base rate of pay will apply thereafter for any time worked outside ordinary hours on a Monday to Friday, except for public holidays.
 - b) A loading of 50% of the ordinary hourly base rate of pay will apply for the first 2 hours, and 100% loading of the ordinary hourly base rate of pay will apply thereafter for overtime worked between 24:00 (midnight) Friday and 24:00 (midnight) Saturday.
 - c) A loading of 100% of the ordinary hourly base rate of pay will apply for all overtime worked between 24:00 (midnight) Saturday and the conclusion of the shift.
 - d) A loading of 150% of the ordinary base rate of pay will apply for all overtime worked on a public holiday.

23. Penalty Rates

- 23.1. Where an Employee's ordinary hours of work are rostered on a weekend or Public Holiday the following penalties apply:
- a) Saturday penalty at 50% for the first two hours, 100% will apply thereafter
 - b) Sunday penalty at 100%
 - c) Public Holiday penalty at 150%
- 23.2. Employees are entitled to a minimum of ten consecutive hours off duty between rostered shifts. If an Employee works such overtime that there is less than ten hours between the end of one shift and the start of another shift, the Employee is entitled to be absent, without deduction of ordinary pay, from the next rostered shift until they have had ten consecutive hours off duty.
- 23.3. If an Employee is directed by the Company to resume duty without ten consecutive hours off duty, they will be paid at double the ordinary rate until ten consecutive hours off duty are taken by the Employee.
- 23.4. There will be no compounding or double counting of loadings or penalty rates in this Agreement.

24. Call outs

- 24.1. If an Employee is called out to work after they have left work for the shift, or is called out to work on a day on which they are taking a rostered day off, they will be paid for a minimum of four hours work at double time. An Employee cannot claim multiple call out payments within the same four hourly call out period.
- 24.2. If a call out occurs on a public holiday, payment is calculated in accordance with clause 23 of this Agreement.

25. Shift work

- 25.1. For the purposes of this clause:
- a) **Day shift** means any shift starting on or after 6.00 a.m. (or 5 am during daylight saving time at the election of the Company in accordance with clause 21.2 above) and concluding before 6.00 p.m.
 - b) **Afternoon Shift** means any shift starting on or after 12.00pm and concluding before 12.00am.
 - c) **Night shift** means any shift starting at or after 6.00 p.m. and concluding before 6.00 a.m.
 - d) **Rostered shift** means a shift as rostered by the company.

Ordinary Hours for Shift Workers

- 25.2. The Ordinary Hours of work for full time shift workers will be an average of 38hrs per week averaged over a two week period, which may be worked any day Monday to Sunday. A roster will be provided to employees on a monthly basis, and no later than 14 days prior to its commencement and such a roster will constitute the employees ordinary rostered hours. The

provided roster cannot be changed unless by agreement with the majority of affected employees.

Roster Change Allowance

25.3. If the Company does not provide the Employee with at least two week's notice it must pay the Employee a roster change allowance of \$100.00 for each day where the notice is less than 14 days as per clause 25.2 and 25.3.

For example, if the Employee is given 3 days' notice of the requirement to work a different roster, then the Employee will be entitled to a payment of the roster change allowance for the first 11 days required to be worked by the Employee on the different shift

Shift rosters

25.4. The current shifts will continue and the Company may change shift rosters, in accordance with clause 25.2, at the direction of the Company where operational circumstances require. The Company will provide the Employee with as much notice as practicable prior to any change in roster and the Company will consult with the Employee before any change to a roster is made. In addition to the consultation requirements in clause 9 of this Agreement, roster changes to a long-term pattern of regular shift work employment will require the Company to consider:

- a. Impact of the change on an individual's financial remuneration
- b. Operational requirements
- c. Work life balance considerations including any personal or family circumstances that may be impacted by the change
- d. Fatigue requirements.

Paid leave for shift workers

25.5. Each day of paid annual or personal leave and any public holiday not worked occurring during any shift cycle will be regarded as a shift worked for accrual purposes. Leave and public holidays will be paid at the ordinary hours of work for the shift length, excluding penalties or loadings.

25.6. Shift workers will be paid annual leave in accordance with Clause 38.1 (b) where they are regularly rostered to work shifts rostered 24 hours a day for 7 days a week and regularly work on Sundays and public holidays.

Pro rata accrued entitlements

25.7. A shift worker who has not worked or is not considered to have worked a complete shift cycle will receive pro rata accrued entitlements for each shift worked. Such pro rata entitlements will be payable for the RDO or, in the case of termination of employment, on termination.

Overtime for Shift Workers

25.8. All time worked by a shift worker outside their ordinary hours or on a shift other than a rostered shift will be paid at double time for all hours worked.

25.9. Under no circumstances shall an Employee be entitled to a shift loading pursuant to this clause and overtime rates at the same time. For the avoidance of doubt, an Employee shall only be entitled to a shift loading or overtime rates but not both.

Shift allowance – Weekdays

25.10. Provided that the Employee is employed continuously (inclusive of public holidays) for at least four shifts, the Employee will be paid a flat rate allowance of 15% of their ordinary rate for afternoon shifts Monday to Friday.

25.11. Clause 25.10 does not apply to afternoon shifts worked on a Saturday, Sunday or public holiday.

Shift Allowance – Night shift

25.12. Provided that the Employee is employed continuously (inclusive of weekends and public holidays unless directed by the company) for at least four night shifts, the Employee will be paid a flat rate allowance of 30% of the ordinary rate for all time worked during ordinary working hours on night shift during the engagement, period or cycle.

Shift Allowance – Weekends and Public Holidays

25.13. The following rates apply to shift work performed on weekends and public holidays:

- a) Shifts between midnight Friday and midnight on Saturday – time and a half on the base hourly rate for the first two hours, double-time thereafter.
- b) Shifts between midnight on Saturday and midnight on Sunday – double time on the base hourly rate
- c) Where an Employee's ordinary hours of shift work commences on a Sunday which continues into a Monday, the Employee will be paid the Sunday penalty rate in Clause 25.13.b) for all hours worked.
- d) Public holidays – double time and a half on the base hourly rate.
- e) Where a shift falls partly on a public holiday, it will be paid as a public holiday where the majority of the shift (more than 50%) falls on the public holiday.

Under no circumstances shall an Employee be entitled to a shift loading pursuant to this clause and overtime rates at the same time. For the avoidance of doubt an employee will only be entitled to a shift loading or penalty rates, whichever greater – not both.

Less than four successive shifts

25.14. Employees who work on any afternoon or night shift which does not continue for at least four successive afternoons or nights will be paid at the rate of time and a half for all ordinary time occurring during such shift. If the shift falls on a Saturday, Sunday or public holiday payment will be in accordance with clause 25.13. For the avoidance of doubt, penalty rates in clauses 25.11, 25.12 and 25.12 do not apply.

26. Rostered days off

26.1. Where a roster consisting of 8 ordinary hour shifts or days is worked, 0.40 hours of each shift or

day will be banked and accrued towards a rostered day off (e.g. 7.6 ordinary hours will be worked and paid and 0.40 hours will be worked and accrued towards a rostered day off).

- 26.2. RDOs may, subject to the Company's requirements, either be rostered as paid days off during a cycle or banked and taken as an alternative day off, or paid out on termination of employment or at the end of the project.
- 26.3. Employees working greater than 8 ordinary hour shifts do not accrue RDOs' (for example a roster of 4 nights on, 3 nights off).

27. Breaks

- 27.1. For day workers working Monday to Saturday, an unpaid lunch break of 30 minutes shall be no later than 5 hours after the commencement of work, or at another time by agreement between the Company and an individual Employee or a Majority of Employees.

Day workers and shift workers working Monday to Sunday, in addition to the unpaid 30 minute meal break will be entitled to one 15 minute break without deduction of pay.

Where an Employee is required to work overtime in excess of four hours on a Saturday or Sunday, they will be allowed a further meal break of 30 minutes without deduction of pay.

- 27.2. Meal and Breaks on Overtime

- 27.3. If an Employee is required to work more than one and a half hours of overtime on any shift, a crib break of 20 minutes (paid at ordinary time) will be taken, or alternatively paid in lieu at ordinary time. Employees who have not received 24 hours' prior notice of overtime will be paid \$18.00 when required to work more than one and a half hours of overtime on a Monday to Sunday.
- 27.4. Meal and other breaks may be staggered to suit the operational requirements of the Company. It may be necessary to defer the observance of meal or crib breaks to enable the completion of the task at hand in a timely manner. The deferment of meal or crib breaks by up to one hour will be permissible and such deferment will not entitle the Employee to any additional payment.
- 27.5. The Company and an Employee may agree to any variation of these provisions to meet the requirements of the work in hand, based on the particular circumstances at that time.

28. Rates of pay and payment of wages

- 28.1. Applicable pay rates are set out in Schedule Two and Schedule Three. An Employee's classification and hourly rate will be advised in the letter of offer.
- 28.2. Pay increases will take effect from the first pay period following the date of the increase being implemented.
- 28.3. Payment of wages will be by electronic funds transfer to the Employees' nominated financial institutions' account on a weekly or fortnightly basis in arrears. Employees engaged prior to 1 May, 2017 will have the option to be paid weekly.
- 28.4. Employees are required to provide an email address to which electronic payslips can be issued.
- 28.5. Where the employer has made a payroll or administrative error, resulting in an overpayment to the employee, the employer can deduct money from the employee's wages to recover the overpayment. The employer must provide a written explanation to the employee the explanation

for the payroll or administrative error, the amount that has been overpaid and the amount that will be deducted from the employee's wages and the dates that this will occur. The employee is required to enter into a repayment written agreement which must be fair and reasonable. If in the event the employee is terminated, the employer has the right to recover outstanding debts. Where an employee or their representative brings to the attention of the employer an underpayment of wages the underpayment once confirmed must be rectified within 2 clear business days.

29. First aid allowance

29.1. A first aid allowance of \$15.63 a week (flat) will be paid to an Employee who:

- a) Holds a current Senior First Aid Certificate or Occupational First Aid Certificate; and
- b) Is appointed in writing by a Supervisor to undertake first aid duties.

30. Tool Allowance

30.1. An employee engaged on the basis of a trade qualification and required by the employer to supply their own tools shall receive a tool allowance of \$20.00 per week at the commencement of the Agreement. Where the employee receives a tool allowance they are required to supply a comprehensive grade quality tool kit of all small tools of their trade up to one inch size, including a trade quality tool box. The company will supply all specialised and large tooling which will be available for use from the workshop.

30.2. The tool allowance shall also apply to a non trades employee who is required by the employer to supply their own tools.

30.3. The tool allowance shall not be payable where the employer provides all tools to the employee.

31. Travel allowance

31.1. An employee who is required to travel in their own vehicle from base to the work site will be paid the appropriate allowance as follows:

- Between 0 to 50 km from the employee's local base: \$22.50 per day
- Between 50 to 100 km from the employee's local base: \$31.25 per day
- More than 100 km from the employee's local base: \$62.50 per day

Where an employee is requested to live away from home, their temporary place of residence shall be deemed their local base.

31.2. For the purposes of this clause 'base' means the local McConnell Dowell office or, where there is no local office, the accommodation from which the employee proceeds to work each day and to which they return at the completion of each day's work.

31.3. The allowance is payable to cover the cost of travel and any additional travel time involved.

32. Mobile phone allowance for maintenance employees

32.1. Mobile phone allowance only applies to maintenance rail workers who are paid under Schedule Two.

32.2. Maintenance rail workers will receive a mobile phone allowance as set out in Schedule 4 of this Agreement.

33. Travel Time Payment

33.1. Melbourne based Rail Plant Employees

Employees that are required to attend Melbourne based Rail Plant Yards at the commencement of a shift and undertake maintenance work offsite will be paid for all travel time at their ordinary hourly rate. Where an employee is able to travel directly to an offsite location and is not required to travel to the Melbourne based Rail Plant at the commencement of a shift, they will not be paid for travel time but will be paid from the commencement of their rostered shift.

33.2. Fly in Fly Out (FIFO) Employees

FIFO workers will be entitled to one travel time payment of up to 8 ordinary hours' pay per roster swing. Return travel will be unpaid.

33.3. Where the rostered shift is made up solely of travelling to or from site, the shift length payment will be actual hours spent travelling up to a maximum of 8 hours, paid at the Employees' base hourly rate.

33.4. The Company commits to scheduling flights in a manner that minimises the waiting time that affects the employee.

34. Distant work

34.1. Where an Employee is performing work at a location where the Employee cannot reasonably return to their usual residence at night or at a location greater than 120km from their work front and the Company does not provide suitable accommodation and meals, the Company will pay a Living Away From Home Allowance (LAFHA) of \$180.00 per day based on the Employee arranging their own accommodation and meals. The Employee is required to arrange accommodation that is as close as practicable to the work site to ensure fatigue management is considered.

34.2. Where the Employee is given short notice by the Employer (which is defined as less than 24 hours' notice) of a requirement to attend site or to attend to emergency works, the Employee will be provided with an additional LAFHA, subject to the Employee providing the management with evidence of costs incurred beyond \$180.00 per day, averaged over the work's duration.

34.3. Where the Employee is provided with suitable accommodation arranged by the Employer but not meals, the Company will pay a LAFHA of \$70.00 per day to cover meals and incidental expenses.

34.4. Payment of LAFHA is conditional on the Employee meeting ATO eligibility requirements and complying with Company requirements for the payment including completing LAFHA questionnaires, checklists and declarations and providing evidence of expenditure while working away.

34.5. The amounts described in clause 34.1 and 32.3 above may be increased at the sole discretion of the Company, depending on market changes and project requirements.

34.6. For the purposes of this clause, the Company will determine at its sole discretion whether accommodation and/or meals will be provided to Employees working away from their usual

residence.

35. Project specific maintenance allowance

- 35.1. The Employer currently has project maintenance work throughout Australia.
- 35.2. To provide greater flexibility and resource efficiency, where Employees are required to travel to project and work sites nationally to address operational and project demands, the Company will determine whether a Project Specific Allowance will apply. The Company will take into consideration:
- a) Working environment;
 - b) Project hours & rosters;
 - c) Capital Work Programs vs. Maintenance Works; and
 - d) Market demand & competition.
- 35.3. Where a Project Specific Allowance has been determined, the Employee will be notified in writing of this prior to mobilisation to site.
- 35.4. A project specific allowance of \$13.50 per hour will be paid for all hours worked at Port Hedland, FMG.

36. Income protection insurance

- 36.1. All Employees will be covered by IncoLink Rail Tram and Bus Accident and Illness Program. The cost of the premium at the commencement of the Agreement is \$25.20 per week.

37. Incentive payments

- 37.1. At the sole discretion of the Company, individual projects may implement an additional target payment to reward Employees for the achievement of agreed productivity, quality, environmental and waste minimisation targets.

38. Superannuation

- 38.1. The Company will make superannuation contributions for each eligible Employee in accordance with the Superannuation Guarantee (Administration) Act 1992 (Cth). The minimum amount paid will be \$90 per week.
- 38.2. Contributions will be paid into a fund meeting legislative requirements.

39. Redundancy

- 39.1. Subject to clause 39.2, Employees will be entitled to accrue a redundancy payment of \$40 per week per completed week of service should they be made redundant. This amount will be increased by 30% on each anniversary of the Employee's employment, up to a maximum of \$125 per week. (pro rata for part time Employees).
- 39.2. Where an Employee is an existing employee, or an employee who transferred from MacMahon Pty Ltd to the Company prior to 25 April 2012, they will retain their existing redundancy accrual

rate.

For example, if an existing Employee has a current redundancy accrual rate of \$67 per week prior to the commencement of this Agreement, they will continue to accrue redundancy at this rate and that amount will be increased by 30% on each subsequent anniversary of their employment (to a maximum of \$125 per week) in accordance with clause 39.1. New Employees engaged after the commencement of this Agreement will begin accruing redundancy at the commencement rate of \$40 per week, which will be increased by 30% on each anniversary of their employment (to a maximum of \$125 per week) in accordance with clause 39.1.

- 39.3. The accrued amount may be transferred between projects and will be paid out upon the event of the Employee's redundancy or by written agreement from the Company.
- 39.4. Employees who commenced employment with McConnell Dowell prior to 1 January 2017 and have at least 6 months' service and who cease to be employed by the Company for any reason other than misconduct or refusal of duty, will be paid out their entitlement in accordance with Clause 39.2.
- 39.5. This clause 39 does not apply to casual employees.

40. Statutory leave

- 40.1. Subject to and in accordance with the Act, Employees (other than casual Employees) are entitled to:
- a) Annual Leave

152 hours of annual leave per annum, (equivalent to 20 days at 7.6 nominal hours or 4 ordinary weeks per annum) to be paid at the Employee's Base Hourly Rate; or
 - b) 190 hours annual leave per annum (equivalent to an additional 5 days at 7.6 nominal hours, totalling 5 ordinary weeks per annum) for Employees who are engaged on continuous shift work or night shift to be paid at the Employee's Base Hourly Rate. An Employee engaged on continuous shift work or night shift for at least 6 months of any year accrues the additional 38 hours annual leave.
 - c) Personal/carer's Leave

Accrue ten days' personal/carer's leave per year of service (to be taken as either personal (sick) leave or carer's leave) to be paid at the Employee's Base Hourly Rate. Where an employee's usual rostered shift is greater than 7.6 hours, they will be paid their personal leave on actual rostered hours. There is no payment for penalties or loading. Where an employee takes a personal day during extended hours, they will have 7.6 hours deducted from their personal leave accruals and the remaining 2.4 hours will be paid by the company.
 - d) Compassionate Leave

Three days' compassionate leave for each occasion that a member of an Employee's Immediate Family or member of their household contracts or develops a personal injury that poses a serious threat to their life, or sustains a personal injury that poses a serious threat to their life, or dies.
 - e) Eligible community service leave (including jury duty).

- f) 12 months' unpaid parental leave.
- 40.2. For the purposes of clause 40.1b) above, an Employee "engaged on continuous shift work" means an employee who is employed as a seven day shiftworker and who is regularly rostered to work on Sundays and public holidays.
- 40.3. Subject to and in accordance with the Act, part-time employees will accrue entitlements on a pro-rata basis.
- 40.4. In addition, in respect of annual leave:
- a) The Company may direct an Employee to take annual leave where that requirement is reasonable in accordance with the Fair Work Act
 - b) During a period of annual leave Employees will be entitled to payment of the base rate occurring during that period and annual leave loading of 17½% for day workers, 20 % for employees who are shift workers calculated on the base hourly rate of pay.
 - c) If an Employee's employment ceases, they will be paid any annual leave (plus loading) which has been accrued but not taken by them.
- 40.5. In addition, in respect of personal leave:
- a) Employees must notify the Company of their inability to attend for duty before the absence commences or as soon as practicable after, and as far as practicable state the nature of the injury or illness and the estimated duration of the illness.
 - b) Where an employee takes in excess of 3 individual days per year employees must provide reasonable evidence of the illness or injury, for example, a medical certificate or statutory declaration. A medical certificate or statutory declaration must be provided when the absence:
 - occurs on a rostered Saturday or Sunday shift;
 - is of two or more consecutive shifts duration;
 - occurs after the Employee has exhausted the entitlement to paid sick leave;
 - occurs on a public holiday or on either rostered shift immediately before or after the public holiday;
 - or who have exhausted their entitlement to paid personal leave may be entitled to unpaid carer's leave in accordance with the Act.
 - c) Accrued personal leave will not be paid out on termination.
 - d) The Company may direct an Employee to undergo a medical examination by a medical practitioner in order to determine their fitness for work.

41. Long Service Leave

- 41.1. Employees will be entitled to long service leave as per the Victorian Long Service Leave Act or where eligible under the CoInvest Deed. Payments by the Employer will be made into CoInvest.

42. Cultural leave

- 42.1. An Employee who adheres to a specific culture and practices spiritual and or religious beliefs will be allowed reasonable opportunity by the Company to practise such requirements. The Employee by agreement may take annual leave, unpaid leave, accrued RDOs or substitute

public holidays for such leave.

42.2. The Company may require reasonable evidence of any requirement under this clause.

42.3. In the event of any disagreement, the parties will follow the dispute resolution process of this Agreement.

43. Public holidays

43.1. Employees are entitled to be absent from work on the days (or part days) gazetted for the following public holidays (in the relevant State or Territory) without deduction of ordinary rates of pay:

- New Years' Day
- Australia Day
- Good Friday
- Easter Monday
- Anzac Day
- Queen's Birthday
- Labour Day
- Christmas Day
- Boxing Day
- Other public holidays gazetted for the relevant region or State or Territory.

43.2. The relevant public holiday is the holiday gazetted for the region of the State or Territory where the project or work is performed.

43.3. Where any of the above public holidays fall on a Saturday or Sunday, the following weekday will be observed as the public holiday, provided that where a particular State or Territory prescribes a Saturday as a public holiday (e.g. Easter Saturday), the holiday will be the day prescribed.

43.4. For any worked performed on a gazetted public holiday, an Employee will be paid in accordance with clause 23.1.

43.5. By agreement between the Company and the majority of Employees, other days may be substituted for any of the days set out in this selection. In that case, the substitute day will be paid at public holiday rates and the substituted day will be paid at the normal applicable rates.

43.6. In the event of a half-day gazetted public holiday, only that portion of the day which is designated as the public holiday will be paid at public holiday rates.

43.7. Where the majority of hours of the employees' rostered shift falls on a public holiday, the Employee will be paid 250% for each hour worked. There is no additional public holiday payment.

43.8. Employees other than casuals who, because it is a public holiday are not required to work on a day on which they are normally required to work will be paid for the ordinary hours normally worked with no penalties.

43.9. 24/7 shift workers, where a public holiday falls on a day where they are not normally rostered to work, will be entitled to pay of up to 7.6 hours.

44. Training and development

- 44.1. The Parties to the Agreement recognise that in order to increase efficiency and the competitiveness of the Company, a continued commitment to training and skill development is necessary. Accordingly, the Company is committed to developing a highly skilled and flexible workforce and providing Employees with career opportunities through appropriate training to acquire additional skills required by the Company.
- 44.2. Employees may be offered training to enhance their knowledge and skills of existing and new technologies where such training is required by the Company and is to the benefit of the Company.
- 44.3. Employee training that is to the benefit of the Company will be paid by the Company including re-accreditation of current qualifications.
- 44.4. Training needs will be determined based on business requirements, workforce planning, personal development and career paths. The guiding principles for training shall be as follows:
- a) Company Initiated Training – Employees will undertake training and retraining as required by the Company. The Company will pay all costs associated with Company initiated training whether it is formal, internal, and external or on the job.
- Where the Company requires an existing Employee to possess and retain a certificate/qualification to carry out certain tasks or duties that the Company has directed them to carry out, the Company will meet the costs of such certification/qualification.
- b) Employee Initiated Training – Employees planning to undertake further training should discuss the matter with their immediate Supervisor or Area Manager.
- The Company may consider reimbursing part or all of the costs associated with the training, provided the Company has approved the training, and the training has relevance to the Company's current or future needs. Where the Company agrees to reimburse part or all the costs associated with the training the Employee will be notified in writing.
 - Reimbursement for approved training will be made at the successful completion of each stage of the course. Employees will be required to submit a claim for payment accompanied by receipts.

45. Dispute resolution procedure

45.1. Where a dispute exists and while that dispute remains unresolved about the interpretation of this Agreement or the National Employment Standards, the provisions of this section will be applied in resolving the matters. The company and the employees will return to the situation and arrangements that existed prior to the issue which caused the dispute, such that no party is prejudiced during the process to resolve the matter process to resolve the matter.

a) Step One – Notification to Foreman/Supervisor by Employee

The Employee concerned and if requested by the Employee, another nominated support person/employee representative, will raise the matter with the immediate foreman or supervisor (or equivalent position) for resolution.

b) Step Two – Notification to General Superintendent

If not resolved, the Employee will raise the matter with the General Superintendent (or equivalent position). If not resolved at this stage within a reasonable time, the matter will then proceed to the next stage.

c) Step Three – Matters in Dispute to be recorded in writing

If the matter is still not resolved after Step 2, then the facts of the matter in dispute will be recorded in writing with a copy going to the Employee, and a copy going to the General Superintendent or equivalent level.

d) Step Four – Notification to Project Manager

After the matter has been recorded in writing, then the Project Manager (or equivalent position) will receive a copy of the matter in dispute and will arrange a meeting with the Employee (and a nominated support person/employee representative if requested) to resolve the matter.

e) Step Five – Notification to the Operations Manager

If the matter is still unresolved, the matter will be referred to the Operations Manager (or State Manager or equivalent position which is not based on site) or a delegate nominated by the Operations Manager. They will arrange a meeting with the Employee (and a nominated support person/employee representative if requested) and will work with the Project Manager (or equivalent position) and the nominated HR representative to resolve the matter.

f) Step Six – Matter to be referred to Fair Work Commission

If still not resolved the matter may be referred by either party to Fair Work Commission for assistance which may include Fair Work Commission exercising its conciliation powers with respect to the interpretation and determination of any dispute arising about a matter contained within this Agreement. If conciliation fails and the dispute is not resolved, Fair Work Commission may exercise arbitration powers to resolve the dispute.

Any decision, order or suggested resolution of a grievance under this clause must be consistent with legislative obligations or any other applicable State or Federal Building Codes or regulations.

- 45.2. At the Employee's election, the Employee's representative may be involved in any of the steps in this procedure.
- 45.3. Reasonable and practical time limits will be allowed for each step and work will continue as it was prior to the matter being raised.
- 45.4. No person will be prejudiced with respect to any final settlement by the continuance of work.
- 45.5. The steps in this section will not apply to any bona fide safety concern, which will be dealt with in accordance with the relevant project procedure for dealing with and resolving safety issues.

46. Inclement weather

- 46.1. For the purposes of this clause, "Inclement Weather" is defined as rain or abnormal climatic conditions (e.g. Hail, snow, high wind, severe dust storm, extreme cold temperature, extreme high temperature) under which it is either unreasonable or unsafe for Employees exposed to these conditions to continue working.

46.2. The primary objective of this clause is to record a set of agreed procedures which ensure that productivity is maximised without exposing Employees to Inclement Weather conditions.

47. Procedures for maximising productivity during Inclement Weather

47.1. The Parties agree that Inclement Weather does not automatically create unsafe working conditions. Employees will not work in unsafe or unreasonable conditions due to Inclement Weather.

47.2. The sudden onset of rain, hail, snow and severe wind or dust storm will be obvious to all Parties and Employees exposed to these conditions will take shelter. The designated Company representative will record the time of the onset and proceed immediately to steps set out below.

47.3. In situations where conditions have not been declared to be Inclement Weather, but there is an increasing severity of climatic conditions (e.g. Temperature, wind, dust), the designated Company representative and Employee or Employee representative(s) will meet regularly (at no more than 30 minute intervals) to reach agreement when, or if Inclement Weather conditions should be declared. Employees will continue working in the exposed areas until this agreement is reached.

47.4. An Employee operating machinery fitted with a functional weatherproof cab will be deemed to be working in an area not affected by Inclement Weather, subject to safe access to the machine and safe working conditions applying.

48. Transfer to alternative productive work/activities

48.1. Following consultation, Employees may be transferred from one location on the site where it is unreasonable or unsafe due to Inclement Weather, to another location which is not affected by Inclement Weather provided that:

- a) The work is within the Employees' competencies; and
- b) The parties take a reasonable approach to deciding whether it is necessary to transfer to areas not affected by Inclement Weather.

48.2. Should Inclement Weather affect only a portion of the Project, all Employees not affected will continue working, regardless of the fact that some Employees may be transferred to non-working activities.

48.3. In the event that the above alternative work or activities are either exhausted or not possible, and it is agreed that the prevailing Inclement Weather conditions are unlikely to change within the remaining ordinary working hours, affected Employees will be permitted to leave site.

48.4. The Company will advise when conditions are no longer considered to be Inclement Weather, and productive work will resume as soon as possible.

48.5. Where Employees are permitted to leave site because the Inclement Weather conditions are unlikely to change, they will be paid for the rostered hours remaining up to a maximum of 8 ordinary hours for the day's work.

49. Completion of emergency work

49.1. Except as provided in this clause, an Employee will not be required to work in areas which are affected by Inclement Weather.

- 49.2. Where track shutdown work or other emergency rail work has commenced prior to the commencement of a period of Inclement Weather, Employees may be required to complete such work. Employees will be paid for this work at the rate of double time (calculated to the next hours), and in the case of wet weather, will be provided with adequate wet weather gear. The payment for work performed in Inclement Weather is double time (based on the Employee's base hourly rate). This is a maximum payment (i.e. there will be no double-dipping of penalty rates).
- 49.3. There will be no deduction of ordinary time wages for any working time lost where the Company agrees that it is not reasonable or safe to continue to work due to Inclement Weather and the Employees remain at work, until the Employees are released by the Company.
- 49.4. If an Employee's clothes become wet as a result of working in the rain and change of dry clothes is not available, they will be allowed to go home without loss of pay for ordinary hours.
- 49.5. Clauses 49.2 and 49.3 will also apply in the case of emergency work where the Company and the Employees concerned agree that the work is of such a nature that it can start and/or proceed. Employees allocated to vehicular traffic control duties will be considered to be involved in emergency work for the purpose of this clause.

SCHEDULE ONE – EMPLOYMENT CLASSIFICATIONS

Employees will be classified according to the following categories based on their skills and abilities as they are most commonly utilised on the job. The Company are committed to promote training to ensure we have a skilled and competent workforce. Any Employee who believes that they are incorrectly classified should raise this with their Superintendent. Approval of a change to an Employee's classification will be made by the Rail Operations Manager in consultation with HR.

Employees will be required to attain all the competencies relevant to their classification. The Company will provide relevant training if the Employee does not hold all the competencies. The Employee is required to complete all the competencies of the classification within a reasonable period of time taking into consideration operational requirements and availability of training modules. The competencies definitions can be found in the Australian Rail Qualifications Framework.

Rail National Classification Structure

Rail Worker Grade 1 (RW1)

DESCRIPTION	WORK STREAM	COMPETENCY REQUIREMENTS
<p>An Employee at this level performs routine duties essentially of a manual nature and to the level of his/her training. The Employee will undertake a range of duties as follows:</p> <ul style="list-style-type: none"> • General labouring duties • Works under direct supervision • Follows safe work practices • Identifies and reports workplace hazards 	<p>General – applies to all work streams</p>	<p>New entrant (typically < 6 months experience in the rail industry) who has successfully completed all core competencies set out in a CERT II in Rail infrastructure which are as follows:</p> <ul style="list-style-type: none"> • CPCCOHS1001A Work Safely in the construction industry • TLIB1028A Maintain and use hand tools • TLID1001A Shift Materials using manual handling methods • TLIF1001A Follow Occupational Health and Safety procedures • TLIW2001A Operate under track protection rules • TLIE1003A Participate in basic workplace communication • TLIF2010A Apply fatigue management strategies • TLIF2080B/A/C Safely access the rail corridor • TLIU2008A Apply environmental procedures to rail infrastructure • Hold a current Australian Drivers licence without restrictions

Rail Worker Grade 2 (RW2)

DESCRIPTION	WORK STREAM	COMPETENCY REQUIREMENTS
<p>An Employee who performs work above the skills of an RW1. The Employee shall undertake a range of duties as follows:</p> <ul style="list-style-type: none"> Works in accordance with standard operating procedures and established criteria. Works under direct supervision either individually or in a team. Understands and undertakes basic quality control/assurance procedures and documentation, including the ability to recognise basic quality deviations/faults. 	General – applies to all work streams	<p>In addition to all competencies required for RW1, an Employee who has attained the following additional modules:</p> <ul style="list-style-type: none"> TLIB2085A Apply track fundamentals TLIG1001A Work effectively with others TLIB1093A Clean equipment and restore worksite TLIE2008A Process workplace documentation
	Specific Work Streams	
	Track Worker	<ul style="list-style-type: none"> TLIB2092A Operate minor mechanical equipment
	Mobile Plant Operator (includes Hi-rail)	<ul style="list-style-type: none"> TLIB2092A Operate minor mechanical equipment
	Rail Welder	<ul style="list-style-type: none"> TLIB2092A Operate minor mechanical equipment
	Safe working Rail Worker	<ul style="list-style-type: none"> Level 2 track protection officer

Rail Worker Grade 3 (RW3)

DESCRIPTION	WORK STREAM	COMPETENCY REQUIREMENTS
<p>An Employee who has attained the qualifications, experience and skills to perform work above an RW2. The Employee shall undertake a range of duties as follows:</p> <ul style="list-style-type: none"> Be responsible for the quality of his/her own work, subject to routine supervision Competent in the operation and / or maintenance of power / pneumatic / hydraulic hand tools, including chainsaws Fully competent to assist with welding & general fettling (including aluminothermic and Flashbutt welding) Certified to operate specific items of mobile plant 	General – applies to all work streams	<p>In addition to all General Competencies required for RW1 & RW2 and RW2 Specific Competencies relating to their work stream, an Employee who has attained the following additional modules:</p> <ul style="list-style-type: none"> TLIB2001A Check and assess operational capacities of equipment TLIF2062A Apply awareness or safe working rules and regulations
	Specific Work Streams	
	Track Worker	<ul style="list-style-type: none"> TLIW2012A Grind rails AHCARB205A Operate and maintain chainsaws AHCARB202A Fell small trees TLIS2031A Install railway sleepers TLIS2034A Install and repair rail fastening systems TLIC3045A Operate road/rail vehicle TLIS2044A Carry out rail installation TLIS2030A Carry out track ballasting
	Mobile Plant Operator (includes Hi-rail)	<ul style="list-style-type: none"> TLIB2085A Apply track fundamentals TLIS2030A Carry out track ballasting

<ul style="list-style-type: none"> • Hold a current Heavy Duty truck license • Coordination of track protection activities • Assist in the provision of on the job training 		<ul style="list-style-type: none"> • TLIS2031A Install railway sleepers • TLIS2034A Install and repair fastening systems • TLIS2044A Carry out rail installation • RIIMPO319A - Conduct backhoe/loader operations • AHCMOM207A - Conduct front-end loader operations • TLILIC2001A - Licence to operate a forklift truck • RIIMPO320A Conduct civil construction excavator operations • TLIC3045A Operate road/rail vehicle • TLIC2054B Access rail track to run track vehicle within defined worksite
	Rail Plant Fitter / Mechanic	<ul style="list-style-type: none"> • TLIB2029B - Use and maintain minor mechanical equipment • TLILIC2001A - Licence to operate a forklift truck • TLIC3045A Operate road/rail vehicle • TLIC2054B Access rail track to run track vehicle within defined worksite
	Rail Welder	<ul style="list-style-type: none"> • TLIW2001A Operate under track protection rules • TLIC3045A Operate road/rail vehicle • TLIB2091A Measure and record track geometry • TLIC2054B Access rail track to run track vehicle within defined worksite
	Track Machine Operator	<ul style="list-style-type: none"> • TLIB1093A Clean equipment and restore worksite • TLIB2085A Apply track fundamentals • TLIB2091A Measure and record track geometry • TLIS2030A Carry out track ballasting • TLIC2054B Access rail track to run track vehicle within defined worksite • TLIW2001A Operate under track protection rules • TLIW2032A Identify the principles of tamping machine operations • TLIW2029A Identify the principles of ballast regulator operations
	Safe working Rail Worker	<ul style="list-style-type: none"> • Level 3 track safety coordinator
	Truck/Bus Driver	<ul style="list-style-type: none"> • TLIC2015B Medium Rigid Vehicle (MR Licence)

Rail Worker Grade 4 (RW4)

DESCRIPTION	WORK STREAM	COMPETENCY REQUIREMENTS
<p>An Employee who has attained the qualifications, experience and skills to perform work above an RW3. The Employee shall undertake a range of duties as follows:</p> <ul style="list-style-type: none"> • Coordinates work of a team or works individually, under limited supervision. • Is able to inspect completed works and/or materials for conformity with established standards. • Understands and applies quality control techniques and documentation. • Works from complex instruction and procedures. • Certified to operate and / or maintain multiple items of mobile plant, including on track machines • Exercises good interpersonal and communications skills 	<p>General – applies to all work streams</p>	<p>Holds a Certificate II – Rail Infrastructure qualification including all qualifications associated with RW1 through to RW3, and the following additional modules:</p> <ul style="list-style-type: none"> • TLIE2007A Use communication systems • RICCM201A Carry out measurement and calculations • TLIF3003A Implement and monitor OH&S • TLIE2029A Conduct workplace information briefings • TLIJ3002A Apply quality systems • RIICCM203A Read and interpret plans and specifications
	<p>Specific Work Streams</p>	
	<p>Track Worker</p>	<ul style="list-style-type: none"> • TLIB3409A Check track geometry • TLIS3025A Implement ballast unloading
<p>Mobile Plant Operator (includes Hi-rail)</p>	<ul style="list-style-type: none"> • TLIB3094B Check and repair track geometry • TLIS3026B Implement track maintenance and construction • RIIMPO320B Operate an Excavator (Experienced in Hi Rail Excavator ticket and in tamping track, laying sleepers, ploughing ballast, undercutting track and threading rail with a hi-rail excavator.) 	
	<p>Rail Plant Fitter / Mechanic</p>	<ul style="list-style-type: none"> • TLIW3035A Heat and cut materials using Oxy / LPG equipment for the rail industry • AURVTW2008 - Carry out oxy acetylene welding, thermal cutting and thermal heating procedures • AUMGTW3005 - Perform gas metal arc welding operations • AURVTW2001 - Carry out manual metal arc welding procedures • AURETH3002 - Service and maintain battery electric vehicles • AURETR2006 - Carry out soldering of electrical wiring and circuits

		<ul style="list-style-type: none"> • AURETR2007 - Demonstrate knowledge of automotive electrical circuits and wiring systems • AURETR2009 - Install, test and repair vehicle lighting and wiring systems • AURETR2012 - Test and repair basic electrical circuits • AURETR2013 - Inspect and service charging systems • AURETR2014 - Inspect and service starting systems • AURETR2016 - Read and apply vehicle wiring schematics and drawings
	Rail Welder	<ul style="list-style-type: none"> • TLIW3016A Weld rail using flash butt welding process • TLIW3015A Weld rail using Aluminothermic welding procedures • RIICCM201A Carry out measurements and calculations • TLIE2007A Use communication systems • TLIE2029A Conduct workplace information briefings • TLIF3003A Implement and monitor occupational and health procedures • TLIJ3002A Apply quality systems • RIICCM203A Read and interpret plans and specifications • TLIW2012A Grind rails • TLIW3035A Heat and cut materials using Oxy / LPG equipment for the rail industry • TLIB3409A Check track geometry • TLIW3013A Grind switches and crossings
	Track Machine Operator	<ul style="list-style-type: none"> • TLIE2007A Use communication systems • TLIE2029A Conduct workplace information briefing • TLIC2058A Travel medium or heavy self-propelled on-track equipment • TLIF3003A Implement and monitor occupational health and safety procedures • TLIJ3002A Apply quality systems • TLIB3094B Check and repair track geometry • TLIS3026B Implement track maintenance and construction • TLIS3039A Measure and mark track for resurfacing
	Truck/Bus Driver	<ul style="list-style-type: none"> • TLIC3004A Heavy Rigid Vehicle (HR Licence)

Rail Worker Grade 5 (RW5)

DESCRIPTION	WORK STREAM	COMPETENCY REQUIREMENTS
<p>An Employee who has attained the qualifications, experience and skills to perform work above an RW4. The Employee shall undertake a range of duties as follows:</p> <ul style="list-style-type: none"> • Certified to operate and / or maintain the majority of rail equipment and plant • Able to carry out routine maintenance and servicing of rail equipment and plant • Able to operate major items of track construction and maintenance equipment including: Pony Express, Tampers, Regulators, Flashbutt Welders • Performs non-trade tasks incidental to his/her work <p>Track Welder</p> <ul style="list-style-type: none"> • Is a qualified track welder <p>On track machine operator</p> <p>Safe working Coordinator</p> <ul style="list-style-type: none"> • Undertakes the duties of a level 3 track protection coordinator 	<p>General – applies to all work streams</p>	<p>An Employee who can demonstrate a thorough understanding of track infrastructure by being a qualified operator or maintainer of mobile plant and/or being a certified track welder and/or qualified as a Level 3 Track Protection Coordinator.</p> <p>Or a Tradesperson who holds a trade certificate or tradespersons rights certificate and is able to exercise the skills and knowledge or the trade so as to enable the Employee to perform work within the scope of this level.</p> <p>Holds all General Competencies required for RW1, RW2, RW3 & RW4 and RW2, RW3 & RW4 Specific Competencies relating to their work stream, and the following additional modules:</p> <ul style="list-style-type: none"> • TLIK2010A Use info-technology devices in the workplace
	Specific Work Streams	
	Track Worker	<ul style="list-style-type: none"> • TLIB2091A Measure and record track geometry • TLIB3100A Visually inspect track infrastructure • TLIB3102A Adjust Rail • TLIS3039A Measure and mark track for resurfacing
	Mobile Plant Operator (includes Hi-rail)	<ul style="list-style-type: none"> • TLIS3025A Implement ballast unloading • TLIW3013A Grind switches and crossings
	Rail Plant Fitter / Mechanic	<ul style="list-style-type: none"> • AUR30499 Certificate III - Automotive Specialist (Mechanical Diesel Fitting) • MEM20105 Certificate II - Engineering (Plant Mechanic) • AUR30405 Certificate III - Automotive Mechanical Technology (Heavy Vehicle Mobile Equipment) • AUR31212 - Certificate III in Mobile Plant Technology • AUR30312 - Certificate III in Automotive Electrical Technology • AUR20412 - Certificate II in Automotive Electrical Technology • MEM30205 Certificate III - Engineering (Mechanical Trade) Fitter & Turner • MEM30205 Certificate III - Diesel Fitter - Engineering (Mechanical Trade)
	Rail Welder	<ul style="list-style-type: none"> • TLIC2058A Travel medium or heavy self-propelled on-track equipment

		<ul style="list-style-type: none"> • TLIS3025A Implement ballast unloading • TLIK2010A Use infotechnology devices in the workplace • TLIB3102A Adjust Rail • TLIW3016A Weld rail using flashbutt welding process
	Safe working Rail Worker	<ul style="list-style-type: none"> • TLIF2081B Perform lookout duties • TLIF3083B Conduct track protection assessment • TLIL3082A Implement track blocking protection • TLIC0083A Access rail track to travel track vehicle under a proceed authority • TLIW2037B Clip & secure points • TLIC2081A Pilot rail traffic within work on track authority
	Track Machine Operator	<ul style="list-style-type: none"> • TLIW2030A Identify the principles of dynamic track stabiliser operations • TLIK2010A Use infotechnology devices in the workplace
	Truck Driver	<ul style="list-style-type: none"> • TLIC3005A Heavy Combination Vehicle (HR Licence)

Rail Worker Grade 6 (RW6)

DESCRIPTION	WORK STREAM	COMPETENCY REQUIREMENTS
<p>An Employee who has attained the qualifications, experience and skills to perform work above an RW5. The Employee undertakes a range of duties as follows:</p> <ul style="list-style-type: none"> • Sound leadership skills • Able to work with limited supervision or direction • Thorough knowledge of rail components and procedures • From time to time be in charge of a small to medium sized workforce and work under limited guidance • Operate, Maintain and Travel major items on self propelled on track rail plant • Mechanical or electrical repair, maintenance and fault finding to all 	General – applies to all work streams	<p>An Employee who can demonstrate a thorough understanding of track infrastructure by being a qualified operator and maintainer of self propelled on track plant and/or being a certified and experienced in all elements of track welding and/or capable of being a Level 3 Track Protection Coordinator for a large shutdown with multiple work groups.</p> <p>Holds all General Competencies required for RW1, RW2, RW3, RW4 & RW5 and RW2, RW3, RW4 & RW5 Specific Competencies relating to their work stream, and the following additional modules:</p>
	Specific Work Streams	
	Track Worker	<ul style="list-style-type: none"> • TLIB3094B Check and repair track geometry • TLIB3095A Check and repair points and crossings • TLIC2058A Travel medium or heavy self-propelled on-track equipment • TLIS3010A Test rail using ultrasonic equipment • TLIS2011A Test rail using non-destructive testing equipment

<p>rail equipment and plant;</p> <ul style="list-style-type: none"> • Thorough knowledge of rail components and procedures 	<p>Mobile Plant Operator (includes Hi-rail)</p>	<ul style="list-style-type: none"> • Competent in the operation of surfacing and/or FBW and/or Hi Rail Excavators and their attachments and operate on our primary client networks • TLIK2010A Use infotechnology devices in the workplace • TLIC2058A Travel medium or heavy self-propelled on-track equipment
	<p>Rail Welder</p>	<ul style="list-style-type: none"> • TLIS3010A Test rail using ultrasonic equipment • TLIS2011A Test rail using non-destructive testing equipment • TLIC2058A Travel medium or heavy self-propelled on-track equipment
	<p>Rail Plant Fitter / Mechanic</p>	<ul style="list-style-type: none"> • AUR30499 Certificate III - Automotive Specialist (Mechanical Diesel Fitting) • MEM20105 Certificate II - Engineering (Plant Mechanic) • AUR30405 Certificate III - Automotive Mechanical Technology (Heavy Vehicle Mobile Equipment) • AUR31212 - Certificate III in Mobile Plant Technology • AUR30312 - Certificate III in Automotive Electrical Technology • AUR20412 - Certificate II in Automotive Electrical Technology • MEM30205 Certificate III - Engineering (Mechanical Trade) Fitter & Turner • MEM30205 Certificate III - Diesel Fitter - Engineering (Mechanical Trade)
	<p>Truck Driver</p>	<ul style="list-style-type: none"> • TLILIC3018A Multiple Combination Vehicle (MC Licence)

Leading Hand Grade 1 (LH1)

DESCRIPTION	WORK STREAM	COMPETENCY REQUIREMENTS
<p>A Leading Hand / Trainer Group 1 is an Employee who is appointed by the Company to be responsible for supervision and /or the provision of structured on the job training of other Employees. Such an Employee has completed training in supervision and / or training and has the skills, capacity and experience to supervise the activities of a medium to large work crew.</p>	<p>General – applies to all work streams</p>	<p>Must hold all the General Competencies for RW1, RW2, RW3, RW4, RW5 & RW6 and RW2, RW3, RW4, RW5 & RW6 Specific Competencies relating to their work stream, as well as achieved the following Certificate III competency modules:</p> <ul style="list-style-type: none"> • TLIG3002A Lead a work team or group • TLIE2029A Conduct workplace information briefings • TLIJ3002A Apply quality systems • TLIE2008A Process workplace documentation • TLIF2006A Apply accident-emergency procedures • TLIF3058A Apply safe working rules and regulations to rail functions • TLIF3089A Implement fatigue management policies and procedures for rail infrastructure • RIIRIS401A Apply site risk management system • TLIU4001A Implement and monitor environmental protection policies and procedures

Leading Hand Grade 2 (LH2)

DESCRIPTION	WORK STREAM	COMPETENCY REQUIREMENTS
<p>A Leading Hand / Trainer Level 2 is an Employee who is appointed by the Company to be responsible for supervision and / or training of Leading Hand / Trainers Level 1. Such an Employee has completed training in supervision and / or training and/or has the skills, capacity and experience to supervise the activities of more than one work crew.</p>	<p>General – applies to all work streams</p>	<p>Must hold all the General Competencies for RW1, RW2, RW3, RW4, RW5, RW6 & LH1 and RW2, RW3, RW4, RW5 & RW6 Specific Competencies relating to their work stream, as well as achieved the following Certificate III competency modules:</p> <ul style="list-style-type: none"> • TLII1002A Apply customer service skills • TLIW2028A Identify the principles of ballast cleaning operations • TLIW2030A Identify the principles of dynamic track stabiliser operations • TLIW2031A Identify the principles of self-propelled rail grinder operations • TLIW2033A Identify the principles of mechanical track laying operations

SCHEDULE TWO – MAINTENANCE RATES

Classification	Upon commencement of Agreement	Year 2	Year 3
RW1	\$26.70	\$27.63	\$28.59
RW2	\$28.38	\$29.37	\$30.39
RW3	\$31.70	\$32.80	\$33.94
RW4	\$32.53	\$33.66	\$34.83
RW5	\$33.38	\$34.54	\$35.74
RW6	\$37.92	\$39.25	\$40.62
LH1	\$41.71	\$43.17	\$44.68
LH2	\$45.88	\$47.48	\$49.15

The above wage rates and allowances for each classification in this Agreement are in compensation for, amongst other things, all disabilities and/or special skills and/or special rates associated with, or likely to be associated with this work.

SCHEDULE THREE – CONSTRUCTION RATES

Classification	Upon commencement of Agreement	Year 2	Year 3
RW1	\$34.75	\$35.96	\$37.21
RW2	\$36.10	\$37.36	\$38.66
RW3	\$37.61	\$38.92	\$40.28
RW4	\$38.79	\$40.14	\$41.54
RW5	\$40.12	\$41.52	\$42.97
RW6	\$44.59	\$46.15	\$47.76
LH1	\$45.92	\$47.52	\$49.18
LH2	\$47.29	\$48.94	\$50.65

The above wage rates and allowances for each classification in this Agreement are in compensation for, amongst other things, all disabilities and/or special skills and/or special rates associated with, or likely to be associated with this work.

CONSTRUCTION SITE ALLOWANCE

In addition to the construction rates above, an employee performing construction work as defined in Clause 2- Definitions will be entitled to a construction site allowance where the Contract Value is at least \$2.6 Million. The construction site allowance amount is determined by the McConnell Dowell Contract Value of the works.

The Contract Value of each project will be notified in writing to all relevant employees prior to their commencement on the construction site.

There is no payment of a construction site allowance where the Contract Value is less than \$2.6 million.

Contract Value \$m	Site Allowance \$Per Hour
2.6-6.8	2.50
6.8-16.7	2.94
16.7-33.7	3.38
33.7-67.3	3.81
67.3-134.7	4.25
134.7-201.9	4.69
201.9-269.1	5.13
269.1-403.8	5.63

For Projects above \$403.8 million, there shall be an increment of 10 cents per additional \$100m or part thereof.

For Projects above \$455.6 million, there shall be an additional increment of 10 cents per additional \$100m or part thereof.


The construction site allowance will be increased by 2% at Year 2 of the Agreement and a further 2% at Year 3 of the Agreement.

SCHEDULE FOUR – ALLOWANCES


Allowance	Upon commencement of Agreement	Year 2	Year 3
Meal Allowance Clause 27.2	\$18.00	\$18.63	\$19.28
First Aid Clause 29.1	\$15.63 per week	\$16.17 per week	\$16.73 per week
Travel Allowance Clause 30.1			
0-50 kms:	\$22.50 per week	\$23.28 per week	\$24.09 per week
50-100 kms:	\$31.25 per week	\$32.34 per week	\$33.47 per week
>100 kms:	\$62.50 per week	\$64.68 per week	\$66.94 per week
Mobile Phone Allowance (Maintenance Rail Workers only) Clauses 30a.1 and 30a.2	\$10.00 per week	\$10.35 per week	\$10.71 per week
Tool Allowance	\$20 per week	\$20.70 per week	\$21.42 per week

SIGNATURE PAGE

Signed on behalf of the Employees:

Ashley Murrell	
Full Name	Signature
employee bargaining representative	51 Campaspe way Point Cook
Position	Address
10-8-17	
Date	

Signed on behalf of McConnell Dowell Constructors (Aust) Pty Ltd:

Mary-Jo Durrant	
Full Name	Signature
National Employee Relations Manager	3/109 Burwood Road Hawthorn
Position/Authority to Sign	Address
Date 31st July 2017	

24 August 2017

Commissioner McKinnon
Fair Work Commission
Level 4, 11 Exhibition Street
Melbourne VIC 3000

By Email: member.assist@fwc.gov.au

Dear Commissioner McKinnon

AG2017/3498

McConnell Dowell Constructors (Aust) Pty Ltd National Rail Enterprise Agreement 2017-2020

I, Mary-Jo Durrant, of Level 3, 109 Burwood Road, Hawthorn in the State of Victoria, National Employee Relations Manager of McConnell Dowell Constructors (Aust) Pty Ltd (the **Company**), provide the following undertakings pursuant to Section 190 of the *Fair Work Act 2009 (Cth)* (the **Act**), in relation to the *McConnell Dowell Constructors (Aust) Pty Ltd National Rail Enterprise Agreement 2017-2020* (the **Agreement**):

Clause 45 - Dispute Resolution Procedure

Clause 45 of the Agreement will operate so that any disputes relating to safety that are about a matter arising under the Agreement, will be dealt with pursuant to the Dispute Resolution Procedure provided for therein, notwithstanding the provisions of Clause 45.5.

Clause 39 - Redundancy

Notwithstanding the provisions of Clause 39 of the Agreement, Employees (other than casuals) will be entitled to redundancy (severance) pay that is no less beneficial than that which is provided for in the National Employment Standards (**NES**) prescribed by the Act. For clarity, the Company may offset an Employee's redundancy pay entitlement under the NES in whole or in part by any benefit payable pursuant to the redundancy pay accrual scheme provided for under Clause 39 of the Agreement.

Schedule 4 - Allowances

Notwithstanding the provisions of the text of Schedule 4 of the Agreement, by way of correction to reflect the agreement of the Parties, the Company will apply Schedule 4 as follows:



Ref: xxxx.xxx.xx.xxxx.xx.xxxxx

SCHEDULE FOUR – ALLOWANCES

Allowance	Upon commencement of Agreement	Year 2	Year 3
Meal Allowance Clause 27.3	\$18.00	\$18.63	\$19.28
First Aid Clause 29.1	\$15.63 per week	\$16.17 per week	\$16.73 per week
Travel Allowance Clause 31.1			
0-50 kms:	\$22.50 per day	\$23.28 per day	\$24.09 per day
50-100 kms:	\$31.25 per day	\$32.34 per day	\$33.47 per day
>100 kms:	\$62.50 per day	\$64.68 per day	\$66.94 per day
Mobile Phone Allowance (Maintenance Rail Workers only) Clauses 32.1 and 32.2	\$10.00 per week	\$10.35 per week	\$10.71 per week
Tool Allowance	\$20 per week	\$20.70 per week	\$21.42 per week

Yours sincerely



Mary-Jo Durrant
National Employee Relations Manager



Schedule 2.2—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.