

**PUBLIC TRANSPORT AUTHORITY/ARTBIU (TRANSPERTH TRAIN OPERATIONS
RAIL CAR DRIVERS) INDUSTRIAL AGREEMENT 2019**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA	APPLICANT
	-v-	
	THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH	RESPONDENT
CORAM	COMMISSIONER D J MATTHEWS	
DATE	THURSDAY, 11 APRIL 2019	
FILE NO/S	AG 8 OF 2019	
CITATION NO.	2019 WAIRC 00186	


Result	Agreement registered
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Registration of Agreement

WHEREAS the Commission has before it an application pursuant to section 41 of the *Industrial Relations Act 1979* to register an agreement as an industrial agreement; and

WHEREAS I am satisfied that the agreement meets the requirements of the *Industrial Relations Act 1979* and that it should be registered;

NOW I, the undersigned, pursuant to the powers conferred on me under section 41 of the *Industrial Relations Act 1979* hereby register the agreement made between the parties filed in the Commission on 27 February 2019 entitled *Public Transport Authority/ ARTBIU (Transperth Train Operations Rail Car Drivers) Industrial Agreement 2019* attached hereto be registered as an industrial agreement in replacement of *Public Transport Authority/ ARTBIU (Transperth Train Operations Rail Car Drivers) Industrial Agreement 2016*.


(Sgd.) D.J. MATTHEWS

COMMISSIONER D J MATTHEWS

**PUBLIC TRANSPORT AUTHORITY/ ARTBIU
(TRANSPERTH TRAIN OPERATIONS RAIL CAR DRIVERS)
INDUSTRIAL AGREEMENT 2019**

1 APPLICATION AND OPERATION

1.1 Title

This Agreement shall be known as the Public Transport Authority/ ARTBIU (Transperth Train Operations Rail Car Drivers) Industrial Agreement 2019.

This Agreement is in substitution of the Public Transport Authority (Transperth Train Operations Rail Car Drivers) Industrial Agreement 2016.

1.2 Arrangement

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1.3 Area and Scope

- 1.3.1 This Agreement extends to and binds all employees who are engaged by the Employer as Trainee Railcar Drivers, Railcar Drivers, Driver Trainers and Driver Coordinators in the

Transperth Train Operations who are members of or eligible to be members of the Union.

1.3.2 This Agreement also extends to and binds the:

- (a) Employer; and the
- (b) Union.

1.3.3 The provisions of the Award will not apply while this Agreement remains in force.

1.3.4 This Agreement shall operate throughout the State of Western Australia.

1.3.5 As at the date of registration, the approximate number of employees bound by the agreement is 350.

1.4 **Term of Agreement**

1.4.1 This Agreement shall come into operation from its date of registration.

1.4.2 This Agreement will expire at midnight on 16 March 2021 and will thereafter continue in force until a new industrial agreement, award or enterprise order has been registered or made in substitution for this Agreement or until a party retires from the agreement in accordance with the Act.

1.4.3 The Parties subject to this Agreement are to commence negotiations for an industrial agreement to replace this Agreement at least six months prior to its expiry date.

1.5 **Definitions**

1.5.1 "Act" means the *Industrial Relations Act 1979*.

1.5.2 "Agreement" means the *Public Transport Authority/ ARTBIU (Transperth Train Operations Rail Car Drivers) Industrial Agreement 2019*.

1.5.3 "AM/PM Preference System" means the system notified by the Employer to employees in a depot from time to time under subclause 3.2.3(c) of this Agreement.

1.5.4 "Award" means *Public Transport Authority Rail Car Drivers (Transperth Train Operations) Award 2006*.

1.5.5 "Base Rate of Pay" means the rate of pay explained and set out in subclause 4.1 of this Agreement.

1.5.6 "Credit Day" means an extra day off accumulating in accordance with subclause 3.1.2(b) and taken or cashed out in accordance with subclauses 6.5 and 6.6 of this Agreement.

- 1.5.7 "Day" means 7.6 hours unless the context requires otherwise.
- 1.5.8 "Driver Trainer" is an employee paid in accordance with sub clause 4.1 of this Agreement.
- 1.5.9 "Driver Coordinator" is an employee paid in accordance with sub clause 4.1 of this Agreement.
- 1.5.10 "Emergency" means a circumstance of an unforeseen nature, for example: Earthquake, epidemic, act of terrorism, accident, or the like, but does not include a shortage of labour or an error in rostering.
- 1.5.11 "Employer" means the Public Transport Authority of Western Australia or its successor.
- 1.5.12 "Full Time Employee" means an employee as defined at subclause 2.7.
- 1.5.13 "Government Railways" means the term as defined in the Government Railways Act 1904.
- 1.5.14 "Guide Roster" means the roster described at subclause 3.2.3 of this Agreement.
- 1.5.15 "Head of Branch" means the Chief Executive Officer of the Public Transport Authority or his/her nominee who has the responsibility for metropolitan rail car operations.
- 1.5.16 "Home Depot" means a depot the Employer has nominated as an employee's home depot.
- 1.5.17 "Hours' pay" means the total weekly Base Rate of Pay provided for at Schedule 1: Base Rates of Pay of this Agreement divided by 38.
- 1.5.18 "Operational Roster" means the roster described at subclause 3.2.5 of the Agreement.
- 1.5.19 "Ordinary Hours" means the hours as defined at subclause 3.1.1 of this Agreement.
- 1.5.20 "Ordinary Time Earnings" means the Base Rate of Pay and rostered shift allowances and weekend penalties where these are the regular pattern of hours determined by reference to the Operational Roster on relevant dates but excluding overtime.
- 1.5.21 "Parties" means the Employer and Union.
- 1.5.22 "Part Time Employee" means an employee as defined at subclause 2.8.
- 1.5.23 "Public Sector" means all agencies, ministerial offices and non-SES organisations as defined in section 3 of the *Public Sector Management Act 1994*; and employing authorities as defined in section 5 of the *Public Sector Management Act 1994*.
- 1.5.24 "Railcar Driver" is an employee paid in accordance with sub clause 4.1 of this Agreement.

- 1.5.25 "Redeployment period" means the redeployment period as defined by regulation 28 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- 1.5.26 "Registered employee" means a registered employee as defined by section 94(1A) of the *Public Sector Management Act 1994*.
- 1.5.27 "Registrable employee" means a registrable employee as defined by section 94(1A) of the *Public Sector Management Act 1994*.
- 1.5.28 "Regular Day Shift" means a shift commencing between 0530 and 1800 hours the rostered duration of which concludes before 1830 hours.
- 1.5.29 "Rostering Committee" means the committee described at subclause 3.2.4(b)(i) of this Agreement.
- 1.5.30 "Rostered Day Off" means a period as defined at subclause 3.1.4.
- 1.5.31 "Shed Duties" means work performed by an employee during a shift for the purposes of clause 5.4 of this Agreement where the employee is confined to the Depot and involved in marshalling and storing of railcars in readiness for service for more than four hours during that shift.
- 1.5.32 "Shift employee" means an employee whose usual hours of duty commence and complete other than during the period 0700 hours and 1730 hours.
- 1.5.33 "Special Event" means a sporting fixture, concert/performance or other event.
- 1.5.34 "Standard Hours" means the hours as defined at subclause 3.1.2, which are paid at base rates only and not at overtime rates.
- 1.5.35 "Suitability" means suitable office, post or position or suitable employment as defined by section 94(6) of the *Public Sector Management Act 1994* as read with regulation 7 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- 1.5.36 "Suitable office, post or position", and "Suitable employment" have the meaning given in section 94(6) of the *Public Sector Management Act 1994* as read with regulation 7 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- 1.5.37 "Surplus employee" means either a Registrable employee or a Registered employee.
- 1.5.38 "Suspend" means to suspend the continuance of an employee's Redeployment period in accordance with regulation 29 of the *Public Sector Management (Redeployment and Redundancy) Regulations 2014*.
- 1.5.39 "Trainee Railcar Driver" is an employee paid in accordance with sub clause 4.1 of this Agreement.
- 1.5.40 "Trainee Railcar Driver Training Program" means the initial training undertaken by a Trainee Railcar Driver to become accredited to operate suburban railcars.

- 1.5.41 "Transperth Train Operations" means the division of the Employer known by that name or its successor.
- 1.5.42 "Union" means The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch".
- 1.5.43 "WAIRC" means Western Australian Industrial Relations Commission.

1.6 No Further Claims

- 1.6.1 The Parties shall not, for the duration of the Agreement, make any application for further wage increases. This includes wage adjustments arising out of State Wage Cases.
- 1.6.2 The Parties undertake that, for the term of the Agreement, there will be no further claims on matters contained in the Agreement except where otherwise provided.

1.7 No Precedent

The terms of this Agreement are not to be used for the purposes of the pursuit of wages or conditions claims in any other areas of the Public Sector.

2 CONTRACT OF EMPLOYMENT

2.1 Employer Preference

- 2.1.1 The Employer recognises that permanent employment is the preferred form of engagement for employees covered by this Agreement.
- 2.1.2 The Employer recognises that casual employment, labour hire and other contract for service arrangements are not the preferred methods for delivery of services, and the Employer will work towards minimising the use of casual employment, labour hire and other contract for service arrangements.
- 2.1.3 Within sixty (60) days of a request being made in writing, the Employer will provide to the Union the names of the labour hire businesses used; the functions undertaken; the headcount number of labour hire employees performing the work; and the amount of money paid to each labour hire business.
- 2.1.4 Prior to engaging, or extending the engagement of, a labour hire employee, or otherwise entering into a new or extended labour hire arrangement, the Employer must first consider whether any permanent Surplus employees can undertake the role or duties required.

2.1.5 All duties undertaken by labour hire employees will be assessed every three (3) months for the possibility of a Surplus employee instead undertaking the role or duties. If a permanent Surplus employee can undertake the role or duties, they will be offered the employment.

2.1.6 Where more than one appropriate permanent Surplus employee exists, the following hierarchy shall apply for access to the role or duties:

- a) internal Surplus employees are considered first;
- b) if no Surplus employees are suitable, Registered employees from other employing authorities are considered; and
- c) if no Registered employees are suitable, Registrable employees from other employing authorities are considered.

2.2 Contract of Employment

2.2.1 No person shall be employed as a driver of a railcar on the Government Railways without the approval of the Head of Branch.

2.2.2 Such driver shall be trained and assessed in accordance with the Trainee Railcar Driver Training Program or other developmental training program as agreed between the Employer and the Union.

2.2.3 The Employer shall advise each employee, prior to the time of engagement:

- (a) whether their employment is permanent, fixed-term, Full Time and/or Part Time; and
- (b) that their employment will be subject to the provisions of statutory and Employer rules, regulations and policies, as amended from time to time.

2.2.4 The Employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training.

2.3 Fixed Term Contract Employment

2.3.1 Subject to this clause and in accordance with clause 2.2 – Contract of Employment, employees may be employed on contracts having fixed terms

2.3.2 Before employing a person as a fixed term contract employee or providing a new or extended fixed term contract to an employee, the Employer must first consider whether any permanent Surplus employees can undertake the role or duties required. If a permanent Surplus employee can undertake the role or duties, they will be offered the employment.

- 2.3.3 Notwithstanding clause 2.3.2 the Employer will have discretion to renew an existing fixed term contract if the employee has been in the same or similar role for more than two years and the arrangements are being reviewed for possible conversion under the relevant Public Sector Commissioner's Instruction process.
- 2.3.4 Where more than one appropriate permanent Surplus employee exists, the following hierarchy shall apply for access to the role or duties:
- (a) internal Surplus employees are considered first;
 - (b) if no internal Surplus employees are suitable, Registered employees from other employing authorities are considered; and
 - (c) if no Registered employees are suitable, Registrable employees from other employing authorities are considered.
- 2.3.5 In exercising their employing authority, Employers may only employ a person as a fixed term contract employee in the following circumstances:
- (a) covering one-off periods of relief;
 - (b) work on a project with a finite life;
 - i) where a project is substantially externally funded including multiple external funding, the Employer must present a business case supporting the use of fixed term contract employees in such positions to the Union;
 - ii) where external funding has been consistent on an historical basis and it can be reasonably expected to continue the Employer shall assess the percentage of positions for which permanent appointment can be made;
 - (c) work that is seasonal in nature;
 - (d) where an employee with specific skills is not readily available in the Public Sector is required for a finite period; or
 - (e) in any other situation as is agreed between the parties to this Agreement.
- 2.3.6 Employees appointed for a fixed term shall be advised in writing of the terms of the appointment, including the circumstances of the appointment as provided under sub

clause 2.3.5 and such advice shall specify the dates of commencement and termination of employment.

- 2.3.7 The Employer will provide the Union the names and work locations of all employees on fixed term contracts within 28 days of a request being made in writing.

2.4 Probation - New Employees

- 2.4.1 Following accreditation to operate railcars on the urban rail system, a Trainee Railcar Driver will be offered appointment to the position of Railcar Driver subject to completion of a three (3) month probationary period in the position of Railcar Driver.
- 2.4.2 During the probationary period the employee's work performance will be monitored and advice on performance will be provided to the employee as appropriate.
- 2.4.3 The probationary period may be extended at the Employer's discretion for a period of up to a further three (3) months, subject to the approval of the Divisional General Manager or their delegate.
- 2.4.4 Appointment to the position of Railcar Driver will be confirmed at the conclusion of the probationary period subject to satisfactory performance and conduct during this period.
- 2.4.5 At any time during training, or the probationary period, where the employee's performance or conduct is not satisfactory, the Employer may terminate the employee's services by one (1) weeks' notice or payment in lieu of notice.

2.5 Probation - Existing Employees

- 2.5.1 Following accreditation to operate railcars on the urban rail system, an existing employee who has been appointed as a Trainee Railcar Driver will be offered appointment to the position of Railcar Driver subject to completion of a three (3) month probationary period in the position of Railcar Driver.
- 2.5.2 During the probationary period the employee's work performance will be monitored and advice on performance will be provided to the employee as appropriate.
- 2.5.3 The probationary period may be extended at the Employer's discretion for a period of up to a further three (3) months, subject to the approval of the Divisional General Manager or their delegate.
- 2.5.4 Appointment to the position will be confirmed at the conclusion of the probationary period subject to satisfactory performance and conduct during this period.

- 2.5.5 If an existing employee's appointment to the position of Railcar Driver is not confirmed, the employee will revert to their substantive position or to a position at an equivalent level to the one the employee held prior to commencing as a Trainee Driver.

2.6 Probation – Promotional Positions

- 2.6.1 An existing employee will be offered appointment to a position of Driver Trainer or Driver Coordinator subject to completion of a three (3) month probationary period from the date of commencement in the position..
- 2.6.2 During the probationary period the employee's work performance will be monitored and advice on performance will be provided to the employee as appropriate.
- 2.6.3 The probationary period may be extended at the Employer's discretion for a period of up to a further three (3) months, subject to the approval of the Divisional General Manager or their delegate.
- 2.6.4 Appointment to the position will be confirmed at the conclusion of the probationary period subject to satisfactory performance and conduct during this period.
- 2.6.5 If an existing employee's appointment to the position of Driver Trainer or Driver Coordinator is not confirmed, the employee will revert to the substantive position the employee held prior to appointment.

2.7 Full Time Employee

An employee engaged on a seventy-six (76) hour fortnight basis.

2.8 Part Time Employee

An employee engaged to work an average of fewer than seventy-six (76) hours per fortnight and shall be entitled to all the conditions of employment of a Full Time Employee on a pro rata basis.

2.9 Job Share

- 2.9.1 The Employer may agree to two employees entering into a job share arrangement where a full time job is shared between the two employees. Applications to job share must be cost neutral to the Employer and will be assessed on an individual basis for suitability to operational requirements. Employees entering into a job share arrangement must be employed in the same classifications and at the same Home Depot.
- 2.9.2 The Employer and the relevant employees will enter into a written job share agreement covering operating conditions such as hours of employment, absence from employment due to annual leave, sick leave and any other relevant matters.

- 2.9.3 If the arrangement would comply with this Agreement if the work were being done by one employee, then where there is any conflict between the job share agreement and the provisions of this Agreement dealing with part time employment, the job share agreement shall prevail.
- 2.9.4 The Employer may terminate the job share arrangement by giving four weeks' notice to the relevant employee/s if any of the following events occur:
- (a) The employment of one of the employees involved in the job share arrangement is terminated by the Employer or the employee;
 - (b) The arrangement is no longer consistent with the operational requirements of the business.
- 2.9.5 In the circumstances of subclause 2.9.4 the job share employee(s) may apply for a full-time position with the Employer.

2.10 Notice of Termination by Employer

- 2.10.1 The employment of any employee (other than a probationary) may only be terminated by a period of at least four (4) weeks' notice, provided that an employee has not been dismissed on the grounds of serious misconduct, in which case the employee shall be paid up to the time of dismissal.
- 2.10.2 An employee who at the time of being given notice is over forty five (45) years of age and has completed two (2) years' continuous service with the Employer shall be entitled to one (1) week's additional notice.
- 2.10.3 Payment in lieu of notice prescribed in clause 2.10 shall be made if the appropriate notice period is not given. The employment may be terminated by part of the period specified and part payment in lieu thereof.
- 2.10.4 In calculating any payment in lieu of the notice the Employer shall pay the employee the Ordinary Time Earnings before overtime for the period of notice had the employment not been terminated.
- 2.10.5 The period of notice an employee must give to the Employer is the same as applies to the Employer, except the extra week for being forty- five (45) years of age. The Employer and the employee may agree to a shorter period of notice.

2.11 Stand Down

- 2.11.1 Where on any day or part of a day, the Employer is unable to provide useful work for the employee as a result of:

- (a) Industrial action, whether or not on the part of the Employer's employees; or
- (b) Any cause outside the Employer's control,

the Employer is entitled to stand down the employee and not pay the employee for the day or part of a day.

- 2.11.2 Subject to the Employer's approval, the employee may apply to have the day or part day paid as annual leave, a Credit Day or leave in lieu of public holidays provided the employee has such leave entitlement.
- 2.11.3 Any period for which the employee is not paid under the provisions of subclause 2.11.1 will count as service for the accrual of leave to which the employee would otherwise be entitled under this Agreement, provided that the employee resumes work as required at the end of such period.

2.12 Employees Performing Higher Duties

- 2.12.1 An employee engaged in performing duties that carry a higher classification within this Agreement than the employee's ordinary classification shall be paid the higher rate as follows:
 - (a) Where the employee is engaged for more than one half day or shift they shall be paid for the day or shift.
 - (b) Where the employee is employed for one-half or less than one half of one day or shift they shall be paid the higher rate for the time actually worked.
 - (c) Any acting of less than twenty minutes shall not be counted or paid.
- 2.12.2 Where an employee is engaged in performing duties that carry a higher classification within this Agreement than the employee's ordinary classification, the conditions applicable to the higher duties shall apply.
- 2.12.3 Any employee required to perform work in a lower grade for any shift or portion thereof shall not have their wages reduced whilst employed in such lower capacity.

2.13 Unsatisfactory performance

- 2.13.1 Where an employee engages in an employment related act or omission so that it appears to the Employer that the employee is unable or unwilling to utilise appropriate skills to carry out tasks associated with a particular job competently and in a manner that meets the reasonable expectations and service needs of the Employer, then the matter may be dealt with by the Employer under its Performance Management Policy and Procedure as amended from time to time or under any more specific procedure established by the Employer established for unsatisfactory performance of that nature.

2.13.2 The outcome of a performance management process may include a transfer, a demotion or a dismissal. Where the Employer applies such an outcome for reasons of unsatisfactory performance, that outcome will not be a disciplinary penalty unless it is expressed to be so by the Employer, and may be reviewed by means of the Dispute Resolution Procedure, including by making an application to the WAIRC to deal with the matter.

2.14 **Discipline**

2.14.1 Definitions

(a) “Breach of Discipline” includes:

(i) an act of misconduct; or

(ii) negligence or carelessness of an employee in the performance of their functions; or

(iii) a conviction for an offence listed at subclause 2.14.19;

(b) “Chief Executive Officer” means the Chief Executive Officer or their nominated representative, and for the purpose of subclause 2.14.18 or 2.14.21, the Chief Executive Officer may only nominate the Managing Director of the Public Transport Authority or the General Manager.

(c) “First Notification” means a notification given under subclause 2.14.4.

(d) “General Manager” means the General Manager, Transperth Train Operations.

(e) “Investigator” will be the person given responsibility to investigate on behalf of the Employer an alleged Breach or Breaches of Discipline by an employee.

(f) “Misconduct” shall have its ordinary meaning.

2.14.2 This subclause describes the Employer’s disciplinary procedure for dealing with an employee’s unacceptable behaviour. The procedure will enable appropriate disciplinary action to be taken to deal with and prevent further unacceptable behaviour. The principles of procedural fairness apply to the Employer’s disciplinary procedure.

2.14.3 Notwithstanding subclause 2.14.5, an employee will, if called upon, provide any report or statement required by the Employer in relation to an investigation into any incident occurring in the course of the employee’s duties. Such a report or statement may be required and provided prior to the Employer determining that it reasonably suspects a breach of discipline and that further action is required.

2.14.4 *Step One: First Notification:* Where the Employer reasonably suspects that an employee has committed a breach of discipline, and the Chief Executive Officer decides that further action is required, the Chief Executive Officer must notify the employee of the nature of the suspicion. This first notification:

- (a) will be in writing;
- (b) will record the date on which the employee's act came to the attention of the Employer, being the earlier of the date on which the General Manager had first knowledge of the act or the date a substantive complaint or report was received by the Manager Investigations;
- (c) will be issued to the employee within 28 calendar days (exclusive of public holidays) of the date on which the act came to the attention of the Employer, failing which, subject to subclause 2.14.26, formal disciplinary action cannot be taken;
- (d) will record the nature of the Employer's suspicion sufficiently clearly to give the employee a reasonable opportunity to submit a written statement of events, an explanation or otherwise respond but need not be a formal allegation and is not required to include or refer to all evidence upon which the suspicion is based;
- (e) will nominate a date by which the employee may provide any response which allows a reasonable opportunity to respond in all the circumstances, provided that a period of 14 calendar days will usually be sufficient. A longer time may be agreed by the Employer on the employee's request provided that the Employer will not refuse a reasonable request;
- (f) will nominate the date by which any disciplinary process must be completed, if formal disciplinary action is pursued, calculated by reference to this date of first notification in accordance with subclause 2.14.25; and
- (g) may also be a formal allegation of breach of discipline, where the Chief Executive Officer considers there are already sufficient grounds to make such an allegation and where it complies with subclause 2.14.8.

2.14.5 After receiving a first notification, the employee may either respond or advise the Employer that he or she does not propose to respond. Any response provided by the employee will be treated as a preliminary response, taking into account the circumstances in which that response is given. An employee's choice whether to respond to the notification and the nature of the response may be a relevant consideration in any later disciplinary decision.

2.14.6 The Chief Executive Officer will consider whether there are sufficient grounds to make a formal allegation of a breach of discipline against the employee and whether the matter warrants being dealt with as a disciplinary matter, taking into account any first notification and any response, and will decide to:

- (a) initiate formal disciplinary action;
- (b) refer the matter to be managed by the Employer under its Performance Management Policy and Procedure as amended from time to time;
- (c) issue a warning to the employee that certain conduct is not acceptable (which will not be a finding that such conduct has occurred);

- (d) refer the employee for counselling or for training and development; or
 - (e) take no further action.
- 2.14.7 The Employer will inform the employee in writing of the Chief Executive Officer's decision, including where relevant any finding by the Chief Executive Officer that there had not been a breach of discipline.
- 2.14.8 *Step Two: Formal Allegation of Breach Of Discipline:* Where the Chief Executive Officer decides to initiate formal disciplinary action, the Employer will notify the employee of the formal allegation of a breach of discipline against the employee and the notification will:
- (a) be in writing;
 - (b) record the nature of the allegation against the employee;
 - (c) nominate the date by which any disciplinary process must be completed, recalculated in accordance with subclause 2.14.26; and either:
 - (d) advise the employee that the allegation will be the subject of further investigation; or
 - (e) where the employee's response to the first notification was an admission, advise the employee of any proposed adverse finding in relation to that allegation, which advice will comply with subclause 2.14.17.
- 2.14.9 *Step Three: Formal Disciplinary Investigation:* An Investigator conducting any disciplinary investigation may determine the procedure followed and will conduct the investigation with as little formality and technicality as the principles of procedural fairness, substantial compliance with the Employer's applicable policies and procedures and the circumstances of the matter permit.
- 2.14.10 An employee will, if called upon, provide any report or statement and/or attend an interview with the Investigator in relation to an investigation into a breach of discipline and will follow any lawful and reasonable instructions given by the Chief Executive Officer for the purposes of investigating the suspected breach.
- 2.14.11 An employee who is believed to be a witness to a suspected breach of discipline will, if called upon, follow any lawful and reasonable instructions given by the Chief Executive Officer for the purposes of investigating the suspected breach.
- 2.14.12 During a discipline process an employee may have an independent support representative present at any meeting. However that representative is only to provide support and is not to engage in the discussion unless the person conducting the investigation deems it appropriate to do so. The representative must be reasonably available and cannot be a person involved in the matter under investigation.
- 2.14.13 If during the course of an investigation it comes to the attention of the Employer that the employee may have committed other breaches of discipline which are not the subject of

the investigation and which had not previously come to the attention of the Employer, then the Employer may investigate those matters. If the allegation or allegations are investigated as part of the investigation already being conducted, then the disciplinary process into the additional allegation or allegations will not be invalid for non-compliance with subclauses 2.14.4 to 2.14.8 but the Employer must inform the employee of any additional allegation in writing, the employee must be given a proper opportunity to the respond to the allegation and procedural fairness must be accorded to the employee in relation to any additional allegation. Where subclauses 2.14.4 to 2.14.8 are not complied with, the time for completion of the discipline process in relation to any additional allegation will be calculated from the date of the first notification of the initial allegation being investigated. Where subclauses 2.14.4 to 2.14.8 are complied with, the time for completion of the discipline process in relation to any additional allegation will be calculated from the date of the first notification of the additional allegation.

2.14.14 The Investigator will at the conclusion of the investigation report to the Chief Executive Officer on the investigation and on the findings open to the Chief Executive Officer.

2.14.15 At any time during or at the conclusion of the investigation, the Chief Executive Officer may decide to:

- (a) refer the matter to be managed by the Employer under its Performance Management Policy and Procedure as amended from time to time;
- (b) issue a warning to the employee that certain conduct is not acceptable (which will not be a finding that such conduct has occurred);
- (c) refer the employee for counselling or for training and development; or
- (d) take no further action.

2.14.16 The Employer will inform the employee in writing of any such decision and the reasons for the decision, including where relevant any finding by the Chief Executive Officer that there had not been a breach of discipline.

2.14.17 *Step Four: Opportunity to Respond to Proposed Adverse Finding and any Proposed Penalty:* The Chief Executive Officer will advise the employee of:

- (a) any proposed adverse finding in relation to the allegation of breach of discipline made against the employee or any other breaches of discipline which came to the attention of the Employer in the course of any investigation;
- (b) the results of any investigation and the evidence relied upon by the Chief Executive Officer in support of the proposed finding;
- (c) the range of penalties the Chief Executive Officer is considering applying if the finding is confirmed;
- (d) the time within which the employee is required to provide any written response as to the finding and as to the appropriate penalty, which will be not less than 14 days. A longer time may be agreed by the Employer on the employee's request provided

that the Employer will not refuse a reasonable request; and

- (e) the date by which any disciplinary process must be completed, recalculated in accordance with subclause 2.14.26.

2.14.18 *Step Five: Final Determination:* After receiving any response from the employee to the advice of proposed adverse findings, or after the nominated date by which the employee was required to provide any response, the Chief Executive Officer will review the evidence, including the employee's response, and make a final determination on the allegation of breach of discipline and decide which if any penalty from the list of penalties in subclause 2.14.21 should be applied.

2.14.19 Criminal Conviction of an employee: The Chief Executive Officer is able to take disciplinary action against employees who have been convicted of:

- (a) offences which involve:
 - (i) fraud or dishonesty; or
 - (ii) wilful damage to or destruction of the property of others;
- (b) offences which are committed against the persons of others; or
- (c) offences which are punishable on conviction by imprisonment for two years or more.

2.14.20 An employee who has been convicted of such an offence shall notify the Employer and such a conviction may be taken as if a breach of discipline has been found to have been committed so that no further disciplinary investigation or finding is required. The Chief Executive Officer may choose to apply any of the penalties listed at subclause 2.14.21, subject to subclause 2.14.22. The Chief Executive Officer shall write to the employee and advise if he or she proposes to apply any penalty and the employee is to be provided with an opportunity to respond prior to a final determination as to penalty being made.

2.14.21 Penalties: Where a breach of discipline has been found to have been committed, the Chief Executive Officer may apply any of the following penalties:

- (a) no penalty;
- (b) a reprimand (which may include a final reprimand);
- (c) a permanent or temporary transfer to another location within the Employer's business or to another employment position within the Employer's business, including to a position to which this Agreement does not apply;
- (d) a permanent or temporary demotion or reduction to a lower increment or to a lower grade or position to which this Agreement applies;
- (e) a permanent or temporary demotion to another position to which this Agreement does not apply; and/or

(f) dismissal.

2.14.22 The type of penalty applied must be proportionate to the conduct which gave rise to the breach of discipline or must be reasonably suitable in consideration of all of the circumstances of the case.

2.14.23 Appeal: Where a breach of discipline has been found to have been committed, the employee found guilty of the breach of discipline, shall have a right to appeal the decision of the Chief Executive Officer and any associated penalty, by notification and direct referral of a dispute to the WAIRC by a party on the employee's behalf under subclause of 8.1.5 of this Agreement.

2.14.24 Stand Down from Operational Duties: During the course of an investigation, an employee may be stood down from Operational duties. The Chief Executive Officer may provide alternative duties or allow the employee not to attend the workplace. Where the employee is a Shift employee, the employee will be paid a wage equivalent to weekly base rate plus afternoon shift penalties until a final determination is made. If a finding of breach of discipline is not made against the employee, the employee will be paid the difference between the weekly base rate plus afternoon shift penalties and the average of the employee's weekly pay in the three months prior to date the employee was stood down from operational duties.

2.14.25 Time Frames: The discipline process shall be completed within six months from the date of the first notification, or within such other extended period of time as is provided for in this Agreement.

2.14.26 The minimum periods specified in this clause 2.14 in which a notification is to be given or a determination is to be made will be extended:

- (a) by reason of a delay caused by the employee or their representative, to the extent of the delay;
- (b) by reason of the absence from duty of the affected employee through sickness or other authorised leave, to the extent of that absence;
- (c) by reason of the suspension of the Employer's disciplinary process during an investigation of the allegation by Police or by the Corruption and Crime Commission, to the extent of the duration of that investigation;
- (d) by reason of any extension granted under sub clauses 2.14.4(e) or 2.14.17(d); or
- (e) by mutual agreement between the parties.

2.15 **Redeployment and Redundancy**

2.15.1 The Parties acknowledge that the *Public Sector Management Act 1994* (PSMA) and the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* (Regulations) provide the legislative framework for redeployment and redundancy for all

employees covered by this Agreement. If the provisions of this Agreement and the Regulations are inconsistent, the provision of the Regulations shall prevail.

- 2.15.2 The Employer and prospective Employer will assess the Suitability of a Surplus employee broadly which includes, but is not limited to:
 - (a) acknowledging that the employee's classification level illustrates core competencies for that classification level;
 - (b) providing sufficient weight to the employee's knowledge, skills and experience; and
 - (c) recognising the transferability of skills to roles where a direct fit may not exist.
- 2.15.3 The Employer and prospective Employer will seek to place Surplus employees in suitable positions in accordance with clause 2.15.2
- 2.15.4 The Employer will provide Surplus employees with direct access to priority vacancies through the online Recruitment Advertising Management System.
- 2.15.5 The Employer will provide Surplus employees with case management in line with the Public Sector Commission's Redeployment and Redundancy Guidelines and the Public Sector Commission's Redeployment and Redundancy Guidelines Appendix A – Case Management or any revised arrangement subsequent to the review of the redeployment and redundancy provisions. The Employer will ensure that Surplus employees are provided with an appropriately skilled case manager/s, a skills audit and continual support to find Suitable employment.
- 2.15.6 Upon notification of registration, the Employer shall provide an employee who is notified of the Employer's intention to register them under regulation 18 of the Regulations with the written reason/s for the intended registration and the possible employment, placement and training options available to them.
- 2.15.7 Where the Employer is able to do so consistent with Commissioner's Instruction No. 12 – Redeployment and Redundancy, the Employer may Suspend the Redeployment period of a Registered employee for the duration that the employee is participating in retraining, a secondment or other employment placement arrangement. Where suspension of the total duration would exceed the allowable duration under Commissioner's Instruction No. 12 – Redeployment and Redundancy, the Employer may Suspend the Redeployment period for the portion allowable.
- 2.15.8 When a Registered employee enters the last three months of their Redeployment period, the Employer will notify the Union as soon as possible.

3 HOURS OF WORK

3.1 Hours of Work

- 3.1.1 The Ordinary Hours of full-time employment shall be seventy six (76) hours per fortnight, and shall consist of up to ten shifts which shall constitute a fortnight's work.
- 3.1.2 For the purposes of subclause 3.1 the seventy six (76) hour fortnight shall be worked in accordance with the following provisions:

- (a) the Standard Hours of full-time employment in each fortnightly cycle will be 80 hours.
 - (b) four hours in each fortnightly cycle will be accumulated towards Credit Days, which may be cleared in accordance with subclause 6.6 - Taking of Leave or be cashed out in accordance with subclause 6.5 - Cashing out of Leave Entitlements.
- 3.1.3 Rosters when first posted shall show four Rostered Days Off in each fortnightly cycle.
- 3.1.4 A Rostered Day Off as provided for in subclause 3.1.3 shall be either:
 - (a) 24 hours commencing 0001 hours to 2400 hours on the day designated as the Rostered Day Off; or
 - (b) where the preceding rostered shift ends between 0000 and 0400 hours, the day on which that shift ends, provided either that:
 - (i) there is a minimum period off duty of 32 hours between the end of that shift and the commencement of the next shift; or
 - (ii) the employee agrees to a shorter period of duty before the commencement of the next shift, for example to enable the employee to work an additional overtime shift or to permit a mutual roster change.
- 3.1.5 No rostered shift shall be less than five (5) hours for a Full Time Employee or less than three (3) hours for a Part Time Employee and no rostered shift shall be more than nine (9) hours.
- 3.1.6 The maximum number of consecutive shifts an employee may be required to work will be ten (10).
- 3.1.7 Subject to subclause 3.2.4(d), the posted roster may include rostered overtime for an employee of up to a maximum of five hours more than the 80 Standard Hours in a fortnightly cycle for the purposes of a Special Event or other exceptional circumstance.
- 3.2 **Rostering**
- 3.2.1 For the period of this Agreement the Employer will roster employees using two rosters being the Guide Roster and the Operational Roster.
- 3.2.2 The period of the roster cycle will be at the Employer's discretion, involving consultation with the Rostering Committee.
- 3.2.3 Guide Roster:
 - (a) A Guide Roster will be compiled which displays a work day and Rostered Day Off (RDO) pattern and starting and finishing times for each shift except for relief lines.

- (b) No entitlement to or expectation of earnings will arise from the Guide Roster.
- (c) Where enough employees at a depot volunteer to be allocated exclusively to the relief lines and rostered on an AM/PM Preference System, the Employer may maintain such a system at that depot. The Employer shall notify employees of the terms of any AM/PM Preference System or of any change to the system before employees volunteer to be rostered under that system.

3.2.4 Changes to Guide Roster

- (a) The Guide Roster will only be modified to accommodate changes of a long term nature.
- (b) Where the Employer proposes to modify the Guide Roster or compile a new Guide Roster, it will do so in consultation with the affected employees, including:
 - (i) establishing and meeting with a Rostering Committee comprised of no more than four Employer representatives and the following employee rostering representatives elected by employees:
 - Claisebrook Depot - two rostering representatives;
 - Mandurah Depot - one rostering representative and one proxy; and
 - Nowergup Depot - one rostering representative and one proxy.

The term of employee rostering representatives shall be for the term of the Industrial Agreement. The next election of employee rostering representatives will be held within 3 months of the registration of this Agreement.

- (ii) posting the proposed Guide Roster at least six (6) weeks before it is proposed to come into operation, to provide all employees the opportunity for at least three weeks to make further comment to permit final changes before the Operational Roster based on the new Guide Roster is posted.
- (c) For the avoidance of doubt, while the Employer will compile the Guide Roster in consultation with employees and will genuinely consider comments received during the consultation process, the Employer will while this Agreement is in force be entitled to post a Guide Roster which it determines best balances the operational requirements of the business, including the reliability, safety and cost effectiveness of the service offered to the community, fatigue management and the attractiveness of the roster to employees, provided the Guide Roster complies with this Agreement and with the specific fatigue management rules (currently FAID) adopted by the Employer, and in particular:
 - (i) there is no rule limiting the number of trips which may be rostered in a day; and

- (ii) the provision within the roster of variety of work will be at the discretion of the Employer, with no rule requiring it to be provided on any day or within any fortnightly roster cycle.
- (d) Notwithstanding subclause 3.2.4(c), the Employer agrees while this Agreement remains in force to compile and post Guide Rosters which roster:
 - (i) fortnights Monday to Sunday;
 - (ii) five days worked and two days off in each Monday to Sunday week, for no less than 90% of the time;
 - (iii) a maximum of nine (9) consecutive shifts;
 - (iv) no more than eighty-five (85) hours in any Monday to Sunday fortnight provided that, where a majority of the employee representatives on the Rostering Committee agree, some fortnights may exceed eighty-five (85) hours as an exception to this rule where in their opinion it enables a roster to be constructed which is more balanced overall.

3.2.5 Operational Roster

- (a) The Operational Roster is the actual roster that the Employer is requiring the employees to work and will show all shifts to be worked for the period of the roster.
- (b) The Operational Roster will display shift times and the location where the shift break is anticipated to be taken. The details of the relief line working will also be incorporated.
- (c) The lines of work for employees on successive Operational Rosters will follow each line of work on the Guide Roster in sequence by:
 - (i) as far as reasonably practicable following the Rostered Day Off pattern in the Guide Roster except for periods of rostered leave, training, alternate duties or performance management; and
 - (ii) taking the timing of shifts in the Guide roster into account as a relevant factor in the compilation of the Operational Rosters.
- (d) Following an authorized absence from work, the Operational Roster for an employee will resume following the line on the roster that they would have reached if no absence from work had occurred. If the absence exceeds six months, this may not be guaranteed.
- (e) Subject to subclause 3.1.7, the Operational Roster may include rostered overtime with employees able to be rostered for up to eighty-five (85) hours per fortnightly cycle, provided that:

- (i) the average Standard Hours worked by all rostered employees in any fortnightly cycle under any posted Operational Roster shall not exceed 80; and
 - (ii) any objection by an employee to being rostered to work overtime shall be raised with the employee's supervisor by the end of their second shift after the roster is posted and shall be dealt with as if it were an objection to working additional hours.
- (f) Each fortnightly cycle of the Operational Roster should be posted 3 weeks in advance by Thursday at 1300 hours unless there are mitigating operational circumstances, in which case the roster will be posted by 1300 on Friday.
- (g) Where an employee requests a change to their Operational Roster within five calendar days after the Operational Roster has been posted, the Employer will consider that request. The decision whether to agree to the request shall be within the managerial prerogative of the Employer, provided that the shift as rostered is not unreasonable. Where a request is not agreed to, the employee will be required to work the shift as posted unless it is resolved otherwise under the Dispute Resolution Procedure prior to the shift.

3.2.6 Changes to Operational Roster

- (a) The Employer may make reasonable changes to the posted Operational Roster.
- (b) Where an employee's roster is changed, the employee will be paid based on the hours actually worked by the employee unless there is an express prior written agreement to the contrary between the Employer and the employee with regard to that specific change.
- (c) For the avoidance of doubt, a change to the roster does not give rise to an entitlement to be paid overtime other than under subclause 3.3.3.
- (d) Where the Employer proposes to change a shift on the posted Operational Roster, the Employer will notify the employee of the proposed change in accordance with this subclause and the change takes effect when the employee agrees or is deemed to have agreed to the change.
- (e) The Employer will be deemed to have notified the employee of any proposed change if, as well as marking the change on the posted Operational Roster:
 - (i) the change is recorded in a list updated daily of changes made to Operational Rosters (other than wholesale changes) kept on the sign-on counter of the employee's Home Depot; or
 - (ii) Where there have been wholesale changes to the Operational Roster, the Employer has made an entry in the General Order Book and sent an email to all affected staff advising of the changes.

- (f) If an employee does not object by the end of their second shift after the Employer's notification he or she will be deemed to have agreed to the change.
- (g) Where the employee advises the Employer that he or she objects to the proposed change and advises of their reasons, the Employer will either withdraw the proposed change or refer it for consideration by the relevant Depot Manager.
- (h) The Depot Manager will give the employee the opportunity to be heard and will then decide whether he or she considers the proposed change to the Operational Roster is reasonable, taking into account all relevant factors including, but not limited to:
 - (i) whether the change results in rostered overtime, in which case the factors listed at subclause 3.3.1(e) will also be relevant - note that a reduction in make-up pay is not a relevant factor;
 - (ii) the notice given by the Employer to the employee of the proposed change;
 - (iii) the notice given by the employee to the Employer of the employee's intention to refuse to agree to the change;
 - (iv) whether the shift is a standby shift, and is therefore more liable to change at shorter notice than other shifts;
 - (v) the effect of the shift change on the employee (including the extent of variation from the posted shift);
 - (vi) the employee's personal circumstances (including family responsibilities);
 - (vii) fatigue management guidelines;
 - (viii) Transperth Train Operations' operational requirements;
 - (ix) the extent to which appropriate alternative arrangements are available;
 - (x) the extent to which the need to make the change and the notice given to the employee of the change was within the Employer's control; and
- (i) If the employee's objection to the roster change is not considered reasonable, the Depot Manager may direct the employee to work the altered shift.
 - (i) At the written request of the employee, the Depot Manager shall provide the employee with the reasons for the response referred to in 3.2.6 (i) in writing.
- (j) Any further dispute arising from the shift change may be dealt with under subclause 8.1 - Dispute Resolution Procedure of the Agreement, provided that:
 - (i) where at least two weeks' notice has been given of the change to the roster; or
 - (ii) where the shift was a standby shift;

the employee will be required to work the altered shift as directed unless it is resolved otherwise under the Dispute Resolution Procedure prior to the shift.

- (k) The provisions of this Agreement dealing with Changes to the Operational Roster do not apply to Trainee Railcar Drivers.

3.2.7 Mutual Roster Changes Between Employees

- (a) An employee may apply to exchange shifts with a fellow employee within the same classification at the same depot providing the application:
 - (i) is in writing in the required form (if any) signed by both employees;
 - (ii) is provided to the relevant rostering officer at least two days prior to the proposed change coming into effect;
 - (iii) does not breach fatigue management principles;
 - (iv) does not breach any condition of this Agreement; and
 - (v) is cost neutral to the Employer.
- (b) Applications will be considered by the relevant rostering officer and where accepted by the officer will be endorsed on the Operational Roster.
- (c) Where a mutual exchange is accepted, the hourly rate and penalties paid to each of the employees who exchange shifts shall be paid based on the shifts actually worked by each employee.

3.3 Overtime

3.3.1 Additional Hours Overtime

- (a) Additional hours overtime is additional time worked in the form of extensions to rostered shifts of which less than forty-eight (48) hours' notice is given or additional shifts.
- (b) The Employer shall arrange as far as practicable that shifts not be extended beyond nine hours and an employee shall not be required to remain on duty for more than ten (10) hours except in cases of Emergency or where relief cannot be provided.
- (c) Additional hours overtime may be worked by agreement.
- (d) The Employer may require any employee to work reasonable additional hours, and the employee must comply with the requirement unless they have a reasonable excuse, which should be raised and discussed with the employee's supervisor at the time the requirement is notified.

- (e) In determining whether additional hours are reasonable hours the following factors may be taken into account:
 - (i) any risk to employee health and safety from working the additional hours;
 - (ii) the employee's personal circumstances, including family responsibilities;
 - (iii) Transperth Train Operations' operational requirements;
 - (iv) any notice given by the Employer of any request or requirement to work the additional hours;
 - (v) any notice given by the employee of their intention to refuse to work the additional hours;
 - (vi) the employee's hours of work over the 4 weeks ending immediately before the employee is required or requested to work the additional hours;
 - (vii) whether the additional hours are on a public holiday;
 - (viii) any other relevant matter.
- (f) Where an employee has a prior planned family or community commitment or medical appointment and can, where required by the Employer, provide proof that would satisfy a reasonable person of the existence of that prior planned commitment or appointment then a refusal by the employee to work additional hours conflicting with that commitment or appointment will not be unreasonable.
- (g) Where the Employer determines an employee's refusal to be unreasonable, the employee shall work the additional overtime as directed unless it is resolved otherwise under the Dispute Resolution Procedure prior to the shift.

3.3.2 Rostered overtime is overtime in excess of the Standard Hours, which may be scheduled when the roster is first posted in accordance with subclause 3.2.5, or may be scheduled in a change to the roster in accordance with subclause 3.2.6.

3.3.3 Overtime Penalties

- (a) Where more than one penalty applies to time worked, the highest penalty only will be paid.
- (b) All time worked by:
 - (i) a Full Time Employee in excess of eighty (80) Standard Hours in any fortnightly cycle; or
 - (ii) a Part Time Employee in excess of their agreed Standard Hours in any fortnightly cycle;

shall be paid at the rate of time and a half.

- (c) Where a change to the posted roster, of which at least 48 hours' notice has been given, extends the length of a shift then no overtime shall be payable by reason of that extension unless the extension causes the rostered hours worked in the fortnightly cycle to exceed or further exceed eighty (80) hours, not including hours paid as additional hours.
- (d) All time worked as additional hours Monday to Friday shall be paid at the rate of time and a half.
- (e) All additional hours worked on a Saturday or a Sunday shall be paid at the rate of double time.
- (f) Where an employee is called upon to work additional hours or rostered overtime during the employee's Rostered Day Off the employee shall be paid at the rate of double time for that overtime worked, but not for any Standard Hours rostered between 0000 and 0400 on a Rostered Day Off.

3.3.4 Saturday and Sunday Penalty Rates

- (a) All Standard Hours worked on Saturdays by Shift employees shall be paid at time and a half.
- (b) All time worked on a Sunday shall be paid at the rate of double time.
- (c) For the avoidance of doubt, where a shift commences on one day and concludes on the following day, hours will be paid at the rate applicable to the day on which they were worked.

3.3.5 Penalties for Working on Public Holidays

- (a) Employees shall be paid for all time worked on a public holiday at the rate of time and a half for the first 8 hours worked on any shift on that day and at the rate of double time and a half for all time worked in excess of eight hours on any shift.
- (b) In addition to the payment described in subclause 3.3.5(a) an employee rostered or otherwise required to work on a public holiday, at the employee's election, shall either:
 - (i) be paid a sum equal to eight Hours' Pay at the Base Rate of Pay; or
 - (ii) be granted eight hours' leave with pay (to be known as leave in lieu of public holidays) which an employee can clear in accordance with subclause 6.7 – Annual Leave.
- (c) For the avoidance of doubt, no other penalties, including penalties under subclause 3.3 of this Agreement, are payable for work on a public holiday.

3.4 **Shift Breaks**

- 3.4.1 An employee who works a shift which is greater than five hours in duration shall be entitled to a paid shift break of twenty (20) minutes in duration. Unless alternative arrangements are agreed to by the Parties, shift breaks shall be rostered to commence after at least three (3) and before more than five (5) hours of duty.
- 3.4.2 The Employer shall not require an employee to actually continue to remain in control of their railcar for longer than five (5) hours and fifteen (15) minutes on a shift without having commenced a shift break during that shift, unless:
- (a) there is no reasonably practicable alternative due to:
 - (i) an accident or Emergency; or
 - (ii) any other unforeseeable circumstances that make it necessary to delay the shift break to avoid serious disruption to the Employer's railcar services; and
 - (b) the Employer has decided that it is safe to do so.
- 3.4.3 When an employee is on duty for more than ten (10) hours then the employee will be entitled to a shift extension allowance instead of an entitlement to a second shift break and a meal allowance. The shift extension allowance will be a sum equal to 0.75 Hours' Pay at the Base Rate of Pay. The Employer will endeavour, where practicable, to arrange a second shift break of fifteen (15) minutes duration where it is expected that an employee will be on duty for more than ten (10) hours.

3.5 **Minimum Time Off Duty**

- 3.5.1 Each employee shall be allowed off duty for a minimum of twelve (12) hours, except as provided hereunder.
- 3.5.2 Where a shift is extended:
- (a) the period off duty shall be calculated from the actual time the employee is released from duty by the Employer; and
 - (b) where the next rostered shift would not give the employee the minimum period off duty, the employee shall request and receive confirmation from the supervisor of the time the employee is actually required to commence the next shift.
- 3.5.3 The Employer shall not arrange for an employee who has not been allowed the minimum period off duty to commence a shift while there is another qualified employee available who has had the minimum period off duty.
- 3.5.4 When an employee is brought on duty without having been allowed the minimum period off duty, the employee shall be paid:

- (a) Where the employee has been allowed at least eleven hours off duty, at the double rate for the difference between the actual time off duty and twelve hours; and
- (b) Where the employee has been allowed less than eleven hours off duty, as if they had been continuously on duty from the time the employee booked on the shift preceding that period off duty.

3.6 Guaranteed Fortnight's Work

- 3.6.1 Full Time Employees: The Employer shall guarantee to each Full Time Employee a full fortnight's work of at least eighty (80) hours except during such period as by reason of any action on the part of any section of its employees or for any cause beyond the control of the Employer, it is unable wholly or partially to carry on the running of the trains. Each fortnight shall stand by itself.
- 3.6.2 Part Time Employees: The Employer shall guarantee to each Part Time Employee a fortnight's work of their agreed Standard Hours for that fortnight, except during such period as by reason of any action on the part of any section of its employees or for any cause beyond the control, it is unable wholly or partially to carry on the running of the trains. Each fortnight shall stand by itself.

4 WAGES

4.1 Classification and Pay Rates

- 4.1.1 Pay rates applying to employees covered by this Agreement are shown in Schedule 1: Base Rates of Pay.
- 4.1.2 The Base Rate of Pay for a Driver Trainer is established relative to the Base Rate of Pay for a Railcar Driver plus 6%.
- 4.1.3 The Base Rate of Pay for a Driver Coordinator is established relative to the Base Rate of Pay for a Railcar Driver plus 17%.
- 4.1.4 The following provisions apply to Trainee Railcar Drivers:
 - (a) the Base Rate of Pay for a Trainee Railcar Driver shall be 85% of the Base Rate of Pay for a Railcar Driver;
 - (b) this rate will apply to a Trainee Railcar Driver for the duration of the training period until the Trainee Railcar Driver has passed the assessment in accordance with the Trainee Railcar Driver Training Program.
 - (c) Trainee Railcar Drivers shall be required to undertake training during all shift work hours across the whole roster cycle.

- 4.1.5 Schedule 1: Base Rates of Pay, provides for wage adjustments applying from 17 March 2019 and 17 March 2020.
- 4.1.6 An employee who is employed by the Employer on the date of registration of this Agreement will, on registration of the Agreement, receive a payment equivalent to the additional wages that would have been paid had the wages in Schedule 1 been paid on and from 17 March 2019.
- 4.1.7 The Base Rates of Pay prescribed under this subclause are not subject to future minimum wage adjustments as prescribed by section 50A of the *Industrial Relations Act*.

4.2 **Remuneration Packaging**

- 4.2.1 An employee may, by agreement with the Employer, enter into a remuneration packaging arrangement in accordance with the Employer's Salary Packaging Agreement or any similar remuneration packaging arrangement offered by the Employer.
- 4.2.2 Remuneration packaging is an arrangement whereby the entitlements under this Agreement, contributing toward the Total Employment Cost (as defined in sub clause 4.2.3) of an employee, can be reduced by and substituted with another or other benefits.
- 4.2.3 For the purpose of this subclause, Total Employment Cost (TEC) is defined as the cost of wages and other benefits aggregated to a total figure or TEC, less the cost of compulsory employer superannuation guarantee contributions.
- 4.2.4 The TEC for the purpose of remuneration packaging is calculated by adding:
- (a) the base wage;
 - (b) other cash allowances, e.g. annual leave loading;
 - (c) non cash benefits, e.g. superannuation, motor vehicle etc;
 - (d) any Fringe Benefits Tax (FBT) liabilities currently paid; and
 - (e) any variable components, where commuted or annualised.
- 4.2.5 Where an employee enters into a remuneration packaging arrangement they will be required to enter into a separate written agreement with the Employer that sets out the terms and conditions of the arrangement, including an irrevocable signed agreement to allow the Employer to deduct from the employee's wages any outstanding liabilities to be paid.
- 4.2.6 Notwithstanding any remuneration packaging arrangement, the wage rate specified in subclause 4.1 - Classification and Pay Rates is the basis for calculating related entitlements specified in this Agreement.

- 4.2.7 The remuneration packaging arrangement must be cost neutral in relation to the total cost to the Employer.
- 4.2.8 The remuneration packaging arrangement must also comply with relevant taxation laws and the Employer will not be liable for any additional tax, penalties or other costs payable or which may become payable by the employee.
- 4.2.9 In the event of any increase or additional payments of tax or penalties associated with the employment of the employee or the provision of Employer benefits under the salary packaging agreement, such tax, penalties and any other costs shall be borne by the employee.
- 4.2.10 In the event of significant increases in FBT liability or administrative costs relating to arrangements under this subclause, the employee may vary or cancel a remuneration packaging arrangement.
- 4.2.11 The cancellation of remuneration packaging will not cancel or otherwise affect the operation of this Agreement.
- 4.2.12 The Employer shall not unreasonably withhold agreement to remuneration packaging on request from an employee.
- 4.2.13 The Dispute Resolution Procedures contained in this Agreement shall be used to resolve any dispute arising from the operations of this subclause. Where such a dispute is not resolved, either party may refer the matter to the WAIRC.

4.3 Payment of Wages

- 4.3.1 Subject to the following provisions of this clause 4.3, wages shall be paid fortnightly no later than each alternate Thursday.
- 4.3.2 All employees' wages will be paid into accounts (nominated by each employee) with a savings bank, trading bank (cheque account), building society or credit union.
- 4.3.3 The Employer shall provide each employee with access to electronic pay advice with capacity for printed advice in respect of each payment of wages.

4.4 Recovery of Underpayments

- 4.4.1 Where an employee is underpaid in any manner:
 - (a) the Employer will, once the Employer is aware of the underpayment, rectify the error as soon as practicable;

- (b) where possible the underpayment shall be rectified no later than in the pay period immediately following the date on which the Employer is aware that an underpayment has occurred; and
- (c) where an employee can demonstrate that an underpayment has created serious financial hardship, the employee shall be paid by way of a special payment as soon as practicable.

4.4.2 The Employer shall compensate an employee for costs resulting directly from an underpayment, where it is proven that the costs resulted directly from the underpayment. This includes compensation for overdraft fees, dishonoured cheque costs, and dishonour fees related to routine deductions from the bank account into which an employee's wages are paid.

4.4.3 Nothing in this provision shall be taken as precluding the employee's legal right to pursue recovery of underpayments.

4.5 **Recovery of Overpayments**

4.5.1 The Employer has an obligation under the *Financial Management Act 2006* to account for public monies. This requires the Employer to recover overpayments made to an employee.

4.5.2 Any overpayment identified and proven and made to an employee will be repaid to the Employer within a reasonable period of time.

4.5.3 Where an overpayment is identified and proven, the Employer will provide the employee with the written details of the overpayment and notify the employee of their intent to recover the overpayment.

4.5.4 Where the employee accepts that there has been an overpayment, arrangements for the recovery of the overpayment will be negotiated between the Employer and employee.

4.5.5 Any negotiated agreement between the Employer and the employee will be evidenced in writing stating the amount to be deducted and the time period for the deductions to occur with a signed copy provided to both Employer and employee for their records.

4.5.6 If an amount of repayment cannot be agreed to between the Employer and employee as per 4.5.5 above, the Employer may not deduct or require an employee to repay an amount exceeding 10% of the employee's net pay in anyone pay period without the employee's agreement. This will be confirmed in writing with the employee.

- 4.5.7 If the employee disputes the existence of an overpayment and the matter is not resolved within a reasonable period of time, the matter should be dealt with in accordance to with clause 8.1 – Dispute Resolution Procedure. No deductions relating to the overpayment shall be made from the employee's pay while the matter is being dealt with in accordance with the Dispute Resolution Procedure.
- 4.5.8 Nothing in this provision shall be taken as precluding the Employer's legal right to pursue recovery of overpayments.
- 4.5.9 Where the Employer alters the pay cycle or pay day, any consequential variations to an employee's fortnightly wages and/or payments to compensate shall not be considered an overpayment for the purposes of this clause.

5 ALLOWANCES AND FACILITIES

5.1 Shift Work

- 5.1.1 Monday to Friday: The Employer may, if the Employer so desires, work any part of its business on shifts in accordance with the following provisions;
- (a) on an afternoon shift which commences before 1800 hours and the rostered duration of which concludes at or after 1830 hours, an employee will be paid an allowance of \$3.34 an hour on all time paid at the Base Rate of Pay.
 - (b) on a night shift, which commences at or between 1800 hours and 0359 hours, an employee will be paid an allowance of \$3.97 an hour on all time paid at the Base Rate of Pay.
 - (c) on an early morning shift, which commences at or between 0400 hours and 0530 hours an employee will be paid an allowance of \$3.34 an hour on all time paid at the Base Rate of Pay.
 - (d) in addition to the hourly shift work allowance, an employee will be paid an allowance of \$3.97 for any shift where the rostered duration commences or finishes at or between 0101 hours and 0359 hours.
- 5.1.2 Saturday and Sunday: The penalties payable on Saturdays and Sundays are specified at subclause 3.3.4 Saturday and Sunday Penalty Rates.

5.2 Temporary Transfer Allowance

- 5.2.1 When an employee is required to commence and conclude a shift at a metropolitan depot other than the Home Depot to which the employee is stationed, the following shall apply:

- (a) When the distance the employee is required to travel from the employee's usual place of residence to the depot from which the employee is temporarily working is greater than the distance the employee is required to travel from their usual place of residence to the employee's Home Depot, the employee shall be paid an allowance per kilometre in both directions calculated on the extra distance the employee is required to travel. Such allowance as specified in this paragraph is in recognition of the cost and time taken for the extra distance to be travelled.
- (b) The allowance payable per kilometre will be:
 - (i) \$1.72 where the Depot Manager of the employee's Home Depot is satisfied that the employee is not reasonably able to use public transport to travel to and from the other depot; and otherwise
 - (ii) Half the figure nominated in paragraph (i) of this subclause where the Depot Manager of the employee's Home Depot is satisfied that the employee is reasonably able to use public transport to travel to and from the other depot.
- (c) The rates referred to in this subclause shall be adjusted by the Employer from time to time during the term of the Agreement by reference to changes to the median of the Perth metropolitan Tariff 1 weekday rates per kilometre charged by all licensed taxis in Perth. The adjustment shall take effect from the date nominated by the employer, which shall be no later than twenty-eight (28) days after being notified in writing by the Union of a change to the median weekday rate.

5.2.2 For the avoidance of doubt, a Trainee Driver will not be stationed at a Home Depot and will not be entitled to the temporary transfer allowance unless the Employer has agreed in writing with the Trainee Driver to the contrary.

5.3 On Call Allowance

5.3.1 Employees may be directed by the Employer to be on call. An employee placed on call will be required outside the employee's Standard Hours of duty to:

- (a) remain at the employee's residence or to otherwise be immediately contactable by telephone or other means; and
- (b) remain in a state of readiness in case of a call out;

and if called out immediately return to duty.

5.3.2 Employees placed on call outside their Standard Hours of duty will be paid an allowance of \$4.25 per hour for all time on call. The allowance will not be paid during the time the employee is paid working time following recall to duty.

5.3.3 Where an employee objects to being directed to be on call, the objection will be dealt with as if it were an objection to working additional hours.

5.3.4 Where an employee has volunteered to be on call, it is deemed to be reasonable for the Employer to direct that employee to return to duty while they are on call. An employee who while on call is not contactable, fails to respond or is not in a state of readiness when called upon to return to duty:

- (a) will not be paid the allowance for the period the employee was required to be on call; and
- (b) will be liable to disciplinary proceedings.

5.3.5 The Employer shall make at least two (2) attempts within six minutes to contact the employee and shall record the time of each attempted contact.

5.4 **Shed Duties Allowance**

5.4.1 Those drivers engaged on Shed Duties shall be paid an allowance per shift of 1% of the Railcar Driver's weekly Base Rate of Pay.

5.4.2

<i>Public Transport Authority ARTBIU (Transperth Train Operations Rail Car Drivers) Industrial Agreement 2016</i>	<i>Public Transport Authority ARTBIU (Transperth Train Operations Rail Car Drivers) Industrial Agreement 2019</i>	
Shed Duties Allowance rate as at 17 March 2018	Shed Duties Allowance as at 17 March 2019	Shed Duties Allowance as at 17 March 2020
\$14.49	\$14.68	\$14.87

5.5 **Suburban Electric Railcar Allowance**

5.5.1 While this Agreement is in force, the suburban electric railcar allowance paid to employees rostered to work as a driver on the suburban rail system will not be paid. For the purpose of history, this allowance was absorbed into the base rates of pay for employees except Trainees.

5.6 **Uniforms**

5.6.1 Employees are at all times to be well presented and wearing the supplied uniform in the manner prescribed.

5.6.2 Unless otherwise agreed between the Parties, the Employer will provide a bag and the following initial issue of uniforms for Railcar Drivers:

- 5 shirts
- 3 trousers and/or shorts

- 1 vest or jumper
- 1 belt
- 1 cap
- 5 pairs of socks
- 1 jacket
- 1 pair footwear
- 1 wet weather jacket
- 1 wet weather trousers (if requested)

5.6.3 Each year, unless otherwise agreed between the parties, an employee may nominate that the Employer provide up to a total of 5 new items from the following options:

- Shirts (up to 5)
- Trousers and/or shorts (up to 2)
- 1 vest or 1 jumper (either but not both)
- Socks (5 pairs of socks count as one item)

5.6.4 On the basis of "fair wear and tear" an employee may:

- (a) replace footwear, wet weather jacket or wet weather trousers;
- (b) after a minimum of one (1) year's usage, exchange a belt or a cap; and
- (c) after a minimum of four (4) years' usage, exchange a jacket.

5.6.5 Items of clothing will be replaced or exchanged on the basis of 'fair wear and tear'. Where an item of uniform has deteriorated to a point where its continued use would be detrimental to the objective of being well presented, then any such item of uniform will be replaced upon presentation of the old item. Any item of uniform that is damaged beyond repair, or is uneconomical to repair, will be replaced without cost to the employee providing the damaged item is returned.

5.6.6 Items of clothing will be supplied as standard sizes, and any alterations required are to be at the employee's expense.

5.7 **Knowledge of Routes**

5.7.1 Where an employee is required to learn a new route, this will be achieved by any one or a combination of the following methods, as determined by the Employer:

- (a) Being rostered with a qualified employee who has knowledge of the routes; and/or
- (b) The use of simulators; and/or
- (c) Any other safe and reasonable method.

- 5.7.2 Where an employee is unfamiliar with a route and requests to travel the route with a qualified employee who has knowledge of the route, the Employer will not unreasonably refuse that request.

5.8 Free Rail Travel

- 5.8.1 Free intrastate rail travel shall be made available to employees and their dependants in accordance with the conditions specified in the Suburban and Country Rail and Road Coach Passes Policy Rev 2.02, a copy of which shall be supplied to the Union. The entitlements existing at the day on which this Agreement comes into operation shall not be reduced without agreement between the Employer and the Union.
- 5.8.2 Where agreement cannot be reached between the parties any dispute under this subclause shall be determined by the WAIRC.

6 LEAVE

6.1 Public Holidays

- 6.1.1 The following days shall be allowed as holidays without deduction of pay, namely New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Western Australia Day, Sovereign's Birthday, Christmas Day and Boxing Day.
- 6.1.2 When any of the days mentioned in subclause 6.1.1 falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall not be a holiday.
- 6.1.3 When any of the days mentioned in subclause 6.1.1 above falls on an employee's Rostered Day Off the Employer and the employee may agree that the employee shall receive:
- (a) An additional 7.6 hours Base Rate of Pay; or
 - (b) 7.6 hours leave in lieu of public holidays may be allowed where at least six (6) weeks' notice has been given in accordance with clause 6.6 – Taking of Leave; or
 - (c) An additional 7.6 hours leave in lieu of public holidays to be taken in conjunction with a period of annual leave, in accordance with clause 6.6 – Taking of Leave.
- 6.1.4 When an employee works on a Public Holiday, subclause 3.3.5 applies.

6.2 Sick Leave

- 6.2.1 An employee who is unable to attend or remain at their place of employment during their rostered hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.
- 6.2.2 A Full Time Employee is entitled to payment pursuant to this subclause for seventy-six (76) hours per annum accrued pro rata on a weekly basis. Part Time Employees accrue sick leave pro rata according to Standard Hours worked.
- 6.2.3 Subject to this subclause, an employee shall be paid sick leave at the employee's Base Rate of Pay.

In addition, payment shall include:

- (a) Shift allowances as prescribed by subclause 5.1.1;
- (b) Saturday and Sunday penalty rates as prescribed by subclause 3.3.5;

which the employee would have received had the employee not ceased duty on account of sickness. Provided that no sick leave payment shall be made for additional shifts or overtime which the employee would have worked.

- 6.2.4 If the employee was engaged on the duties of another classification within this Agreement carrying a higher rate and was entitled to payment at that higher rate for the whole of the day or shift immediately prior to ceasing duty and the employee resumed duty after the absence in the same higher position the employee shall be paid for sick leave at that higher rate.
- 6.2.5 If in the first or successive years of service with the Employer an employee is absent on the ground of personal ill health or injury for a period longer than their entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's service terminates (if before the end of that year of service) to the extent that the employee has become entitled to further paid sick leave during that year of service.
- 6.2.6 Unused portions of paid sick leave shall accumulate from year to year.
- 6.2.7 Duty to Notify:
- (a) An employee, being unable to attend for duty through sickness or personal injury, shall notify the employee's supervisor at least three (3) hours before the time the employee is rostered for duty (except where it is not reasonably possible to do so) of their inability to attend for duty, the nature of the illness or injury and the estimated duration of the absence.
 - (b) An employee who is absent from duty and whose next rostered working shift commences prior to 1200 hours must inform the employee's supervisor of the employee's availability for duty by no later than 1500 hours the previous day. Where the employee's next rostered shift commences at or after 1200 hours the

employee must inform the supervisor of the employee's availability for duty by 0500 hours on the same day.

- (c) Where an employee has not notified the Employer in accordance with paragraph 6.2.7(b), following the employee's failure to attend duty as a result of sickness or personal injury; the Employer shall be under no obligation to engage the employee until the following working day.

6.2.8 **Proof of illness or Injury:** An employee who claims to be entitled to paid sick leave is to produce to the Employer proof that would satisfy a reasonable person of the entitlement for:

- (a) any absence due to sickness which occurs after three (3) separate absences without a certificate in any one year, calculated from 1 July; or
- (b) absences due to sickness for two (2) or more consecutive days;

failing which the employee will not be entitled to the benefits of this provision.

6.2.9 The minimum requirement to constitute evidence that would satisfy a reasonable person in an application for sick leave is:

- (a) a medical certificate from a medical practitioner confirming the employee is unfit for work; or
- (b) Where exceptional circumstances arise that the employee is unable to obtain a medical certificate, then a statutory declaration can be submitted stating the nature of the illness or injury and the reason why a medical certificate could not be obtained. Failure to provide sufficient information about why the medical certificate could not be obtained will result in the employee not being entitled to the benefits of this provision.

6.2.10 *Absenteeism Management:* Where the Employer has raised and documented concerns with an employee about the number and/or timing of their sick leave absences without clear explanation in the previous six months, the Employer:

- (a) may require, for the next three months medical practitioner certificates, dental practitioner certificates or, where specified in advance by the Employer, certificates from another health professional or allied health professional;
- (b) may extend the period referred to in 6.2.10(a) for a further three month period should sick leave and/or carer's leave absences without clear explanation or evidentiary support continue during this period; and
- (c) may cancel or reduce the period referred to in (a) and (b) where the concerns are considered to have been resolved.

6.2.11 Any notification to an employee under 6.2.10(a) shall be provided in writing by the Employer.

- 6.2.12 Employees will be provided with an opportunity to explain the number and/or timing of sick leave absences over the six month period prior to implementation of the process contained in subclause 6.2.10.
- 6.2.13 The evidence required in subclause 6.2.10 will replace the provisions of subclause 6.2.8 of this Agreement.
- 6.2.14 The Employer will not use the process contained in subclause 6.2.10 for employees who have produced evidence of an ongoing health problem and are taking sick leave due to that health problem.
- 6.2.15 Subject to 6.2.16, an employee who does not comply with subclauses 6.2.8 or 6.2.10 is not entitled to sick leave under subclause 6.2.1 unless the Employer agrees to provide the leave despite the non-compliance.
- 6.2.16 Where the Employer rejects a claim for sick leave on the basis that the evidence provided is not satisfactory then an employee who contends that the evidence provided would satisfy a reasonable person shall raise that claim with the Employer under the Dispute Resolution Procedure.
- 6.2.17 No payment shall be made for any absence due to the employee's own fault, neglect or misconduct in the course of the employee's employment.
- 6.2.18 Where an employee is ill during the period of annual leave and produces at the time, or soon thereafter, medical evidence to the satisfaction of the Employer that the employee was, as a result of the employee's illness, confined to their place of residence or a hospital for a period of seven (7) days, the employee may with the consent of the Employer, be granted at a time convenient to the Employer additional leave equivalent to the period during which the employee was so confined.
- 6.2.19 Sick Leave for War Caused Illnesses
- (a) An employee who produces evidence from the Department of Veterans' Affairs stating that the employee has a war-caused illness will be credited special paid leave of 15 working days per annum.
 - (b) Paid leave under this clause:
 - (i) may accumulate up to a maximum of 45 working days;
 - (ii) is to be recorded separately to the employee's normal sick leave entitlement;
 - (iii) is only to be accessed for sickness related to the war-caused illness; and
 - (iv) may be accessed despite normal sick leave credits being available.
 - (c) An application for paid leave under this clause is to be supported by evidence that would satisfy a reasonable person of the entitlement.

6.3 Carer's Leave

6.3.1 An employee is entitled to use up to ten (10) days of sick leave per year to provide care and support to:

- (a) the employee's spouse or de-facto partner;
- (b) a child, step-child or grandchild of the employee (including an adult child, stepchild or grandchild);
- (c) a parent, step-parent or grandparent of the employee;
- (d) a sibling of the employee;
- (e) any other person who, at or immediately before the relevant time for assessing the employee's eligibility to take leave, lives with the employee as a member of the employee's household;

who requires immediate care or support because he or she is injured, ill or affected by an unexpected emergency.

6.3.2 Duty to Notify: An employee, being unable to attend for duty for a reason listed at subclause 6.3.1 shall have the same duty to notify the Employer as is prescribed by subclause 6.2.7 for employees absent through sickness or injury.

6.3.3 If requested, the employee must supply evidence that would satisfy a reasonable person of the entitlement to such leave, failing which the employee will not be entitled to the benefits of this provision.

6.3.4 The minimum requirement to constitute evidence that would satisfy a reasonable person in an application for carer's leave is a Statutory Declaration outlining the name of the person requiring care, the employee's relationship to that person and the reasons for taking leave. It is at the discretion of the Employer as to whether the evidence provided is satisfactory justification for the entitlement to carer's leave.

6.3.5 Absenteeism Management: Where the Employer has raised and documented concerns with an employee about the number and/or timing of their carer's leave absences without clear explanation in the previous six months, the Employer:

- (a) may require, for the next three months medical practitioner certificates, dental practitioner certificates or, where specified in advance by the Employer, certificates from another health professional or allied health professional;
- (b) may extend the period referred to in 6.3.5(a) for a further three month period should carer's leave and/or sick leave absences without clear explanation or evidentiary support continue during this period; and
- (c) may cancel or reduce the period referred to in 6.3.5(a) and (b) where the concerns are considered to have been resolved.

- 6.3.6 Any notification to an employee under subclause 6.3.5 shall be provided in writing by the Employer.
- 6.3.7 Employees will be provided with an opportunity to explain the number and/or timing of carer's leave absences over the six month period prior to implementation of the process contained in subclause 6.3.5.
- 6.3.8 The evidence required in subclause 6.3.5 will replace the provisions of subclause 6.3.3 of this Agreement.
- 6.3.9 The Employer will not use the process contained in subclause 6.3.5 for employees who have produced evidence that a person in their care has an ongoing health problem and are taking carer's leave due to the health problem.
- 6.3.10 Subject to subclause 6.3.11 an employee who does not comply with subclauses 6.3.3 subclause 6.3.5 is not entitled to carer's leave under subclause 6.3.1 unless the Employer agrees to provide the leave despite the non-compliance.
- 6.3.11 Where the Employer rejects a claim for carer's leave on the basis that the evidence provided is not satisfactory then an employee who contends that the evidence provided would satisfy a reasonable person shall raise that claim with the Employer under the Dispute Resolution Procedure.

6.4 **Bereavement Leave**

- 6.4.1 Employees, including casuals, shall on the death of:

- (a) the employee's spouse or de facto partner;
- (b) a child, step-child or grandchild of the employee (including an adult child, step-child or grandchild);
- (c) a parent, step-parent or grandparent of the employee;
- (d) a sibling of the employee;
- (e) any other person who, at or immediately before the relevant time for assessing the employee's eligibility to take leave, lived with the employee as a member of the employee's household;

be eligible for up to two (2) days paid bereavement leave, provided that at the request of an employee the Employer may exercise discretion to grant bereavement leave to an employee in respect of some other person with whom the employee has a special relationship.

- 6.4.2 The two (2) days need not be consecutive.

- 6.4.3 Bereavement leave is not to be taken during any other period of leave, or at a time when the employee is not rostered for duty. Payment in respect of bereavement leave shall be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on annual leave, long service leave, sick leave, workers compensation or leave without pay.
- 6.4.4 Payment of such leave may be subject to the employee providing evidence, if so requested by the Employer, of the death or of the relationship to the deceased that would satisfy a reasonable person.
- 6.4.5 An employee requiring more than two (2) days bereavement leave in order to travel overseas in the event of the death overseas of a member of the employee's immediate family may, upon providing adequate proof, in addition to any bereavement leave to which the employee is eligible, have immediate access to annual leave and/or accrued long service leave or leave without pay provided all accrued leave is exhausted.

6.5 Cashing Out of Leave Entitlements

- 6.5.1 The Employer may approve the cashing out of the following forms of leave:
- (a) accrued long service leave;
 - (b) up to 50% of any annual leave accrued by an employee during any completed year of service;
 - (c) hours accumulated for clearance as Credit Days;
 - (d) accrued leave in lieu of public holidays.
- 6.5.2 Requests to cash out leave shall be in writing and consistent with the provisions of any relevant Employer policies. They shall usually be made in conjunction with the submission of leave requests during the nomination period for the leave roster process under subclause 6.6 of this Agreement. Requests to cash out leave made at other times may be approved at the discretion of the Employer, taking into account operational requirements and the reason the request was not made at the usual time.
- 6.5.3 An employee may request and the Employer may approve the cashing out of up to sixty-four (64) hours to be accumulated for Credit Days in advance of their accumulation over the next year, or pro rata for a shorter period.
- 6.5.4 If the number of Credit Days cashed out in advance exceeds the number of Credit Days accumulated by the employee over the relevant period, payment may be adjusted at the end of that period or when the employee's service terminates if the employee's service terminates before the end of the relevant period.
- 6.5.5 The minimum amount of accrued long service leave which may be cashed out at any time is four weeks.

- 6.5.6 Except where the Employer is satisfied there are extenuating circumstances, a minimum of three weeks accrued leave must be taken in a calendar year for any application to cash out long service leave or annual leave to be approved.

6.6 **Taking of Leave**

Requirement that Minimum Leave is Taken

- 6.6.1 An employee will take a minimum of three (3) weeks leave for recreational purposes in a financial year in blocks of a minimum of a week.
- 6.6.2 An employee may apply to defer the part of their annual leave entitlement to be taken in the following year. The decision to grant or refuse the application will be at the Employer's discretion.
- 6.6.3 At the time of application, an employee seeking deferment must nominate specific provisional dates in the following leave year when the deferred leave can be cleared and the Employer's decision to grant the application will constitute an agreement that the leave will be taken on those dates. The employee may submit a further leave request for the deferred leave during the next leave roster process confirming or seeking to vary the provisionally agreed dates, which will be treated no less favourably than a new leave request. In the absence of a further leave request, the employee will be rostered on leave on the provisionally agreed dates.
- 6.6.4 An employee may apply to defer all or part of their long service leave entitlement to be taken in the following year. The decision to grant or refuse the application will be at the Employer's discretion.

Leave Roster Process

- 6.6.5 Unless otherwise agreed between the Parties, each year prior to 15th March, the Employer will require all employees to submit leave requests by 30th April nominating their preferred dates in the twelve months, commencing 1st July, to clear:
- (a) total annual leave calculated up to 30 June that year;
 - (b) all uncleared accumulated hours for Credit Days calculated up to 30 June that year and (unless the employee has requested to cash them out in advance) at least 5 further Credit Days expected to accumulate in the next year;
 - (c) any accrued long service leave;
 - (d) all accumulated leave in lieu of public holidays; and
 - (e) any purchased leave.

- 6.6.6 Following this leave nomination period, the Employer will consider the requested dates and prepare and post at each depot by 31st May a draft leave roster identifying the dates upon which each employee will go on leave and resume duty.
- 6.6.7 The Employer shall prepare and post a final leave roster by 21st June for leave that is to commence from 1st July each year and employees will be rostered for leave in the Employer's rostering and payroll systems in accordance with the final leave roster.
- 6.6.8 The Employer may elect not to roster all of the leave described in subclause 6.6.5, provided that the total un-rostered leave for any employee as at 1st July each year shall not exceed 40 hours unless the employee has applied to defer leave.
- 6.6.9 The final leave roster is not to be departed from except for reasons of sickness, accident or operational requirements not foreseeable at the date of preparing the roster, unless otherwise agreed between the employee and the Employer.
- 6.6.10 After the final leave roster has been posted, an employee may mutually change leave dates with another employee within the same classification at the same depot on the same roster, providing that the amount of leave being mutually changed is identical.
- 6.6.11 While reasonable attempts will be made to accommodate preferred dates the final allocation may be different to ensure the number of employees on leave each week can be accommodated within operational requirements.
- 6.6.12 Where the number of requests for leave in a particular period exceeds the number which can be accommodated, the Employer will have regard to the previous year's leave roster when determining which employees will be granted leave.
- 6.6.13 Should the dates proposed not be acceptable to an employee, then the dispute resolution process may be implemented by the employee.
- 6.6.14 If an opportunity to release an employee on leave becomes available on the leave roster due to resignation/change of circumstances of another employee, then another employee may apply to take leave at that time.
- 6.6.15 After the posting of the final leave roster, any application to vary, change, or occupy newly available dates, or request for mutual swap is to be made as soon as practical but not later than eight (8) weeks prior to leave being taken. Any variation is subject to the number on leave being consistent with operational requirements and any rostering/fatigue requirements.
- 6.6.16 Applications received less than eight (8) weeks prior to leave being taken will not generally be allowed but may be approved solely at the Employer's discretion.

Unscheduled Credit Days and Leave in Lieu of Public Holidays

- 6.6.17 Employees will have at least five (5) of the Credit Days expected to accrue in the next year cashed out or scheduled during that year as part of the leave roster process.

6.6.18 Employees may apply to take the remaining unscheduled Credit Days and any leave in lieu of public holidays as single days or as a combination of days as follows:

- (a) Where at least six (6) weeks' notice has been given, applications will be approved in order of receipt until the maximum number of unscheduled Credit Days for the relevant day at the applicable depot has been reached. The maximum number of unscheduled Credit Days to be taken on any day will be determined by the Depot Manager taking into account operational circumstances.
- (b) Where less than six (6) weeks' notice has been given, Credit Days may only be approved for urgent personal business, being unanticipated matters of a compassionate or pressing nature identified by the employee in their application which arise without notice and require immediate attention. The Employer may require evidence that would satisfy a reasonable person to be provided in relation to such matters.
- (c) Where leave is taken in single days and approved after the posting of the Operational Roster, leave will be paid and entitlements debited in accordance with the rostered hours the employee would have worked had the employee not been absent on leave.
- (d) Any reference to "Credit Day" in this subclause shall be read to include leave in lieu of public holidays.

6.7 **Annual Leave**

6.7.1 Regular Day Shift Employees

- (a) Except as herein provided a period of four (4) consecutive weeks leave with payment at the employee's Base Rate of Pay, plus a leave loading of seventeen and a half percent (17.5%) shall be allowed annually to an employee by the Employer.
- (b) Entitlements to annual leave accrue pro rata on a weekly basis.

6.7.2 Seven Day Shift Employees

- (a) Shift employees who work other than Regular Day Shift shall be entitled and allowed an additional week's leave on full pay inclusive of leave loading of twenty (20%) percent.
- (b) This provision shall also apply to any other employee whose rostered hours of work can be extended over Saturdays and public holidays and whose hours of duty vary throughout the twenty-four (24) hours of the day and who may be called upon to work Sundays.
- (c) Notwithstanding anything elsewhere contained herein this subclause shall not apply to any employee whose rostered hours of work must be completed between Monday and Friday inclusive and not on public holidays.

6.7.3 Part Qualifying Period Seven Day Shift Employee: Where an employee with twelve (12) months' continuous service is engaged for part of a qualifying twelve (12) monthly period as a seven day Shift employee, the employee shall be entitled to have the period of annual leave to which the employee is otherwise entitled under this subclause increased by one-twelfth of a week for each completed month the employee is continually so engaged, and shall be paid for the annual leave plus the extra leave at the employee's Base Rate of Pay, plus a loading calculated at eighteen and three quarter (18.75%) percent for the annual leave taken.

6.7.4 Annual Leave Loadings: An employee shall be entitled to:

- (a) the amount of loading calculated in accordance with subclauses 6.7.1, 6.7.2 or 6.7.3 as the case may be.
- (b) The Annual Leave Loading shall not exceed the weekly salary rate of a General Division Level 8.1 employee under the *Public Service and Government Officers CSA General Agreement 2017* (or its replacement agreement) as at 1 January in the calendar year in which the leave commences.

The maximum Annual Leave Loading payable to Shift employees who are granted an additional week's leave shall not exceed 5/4th of the weekly salary rate of a General Division Level 8.1 employee under the *Public Service and Government Officers CSA General Agreement 2017* (or its replacement agreement) as at 1 January in the calendar year in which the leave commences.

The rates applicable until the end of calendar year 2019 are shown in the following table.

Maximum Leave Loading for annual leave:	Maximum for 4 weeks	Maximum for 5 weeks
Commencing on or after 1 January 2019	\$1,788.64	\$2,235.80
Commencing on or after 1 January 2020 will be administratively updated after any industrial instrument replacing the <i>Public Service and Government Officers CSA General Agreement 2017</i> comes into operation.	TBC	TBC

6.7.5 No Deduction: An employee's entitlement to Annual Leave continues to accrue for the period an employee is off duty through sickness for any continuous period of up to three (3) calendar months.

6.8 Long Service Leave

- 6.8.1 An employee shall be entitled to thirteen weeks' paid Long Service Leave on the completion of ten years continuous service and an additional thirteen weeks' paid long service leave for each subsequent period of seven years of continuous service completed by the employee.
- 6.8.2 Where a public holiday falls within an employee's period of long service leave such day shall be deemed to be a portion of the long service leave and no other payment or benefit shall apply.
- 6.8.3 Long service leave shall be paid at the employee's Base Rate of Pay as prescribed in subclause 4.1 - Classification and Pay Rates.
- 6.8.4 An employee will be entitled to a pro rata long service leave payment only if employment is terminated:
- (a) by the Employer for other than disciplinary reasons;
 - (b) due to the retirement of the employee on the grounds of ill health;
 - (c) due to the death of the employee, in which case the payment would be made to the employee's estate;
 - (d) due to the employee's retirement at age of fifty-five (55) years or over, provided twelve (12) months continuous service has been completed prior to the day from which the retirement takes effect;
 - (e) for the purpose of entering an In Vitro Fertilisation Program, provided the employee has completed three (3) years' service and produces written confirmation from an appropriate medical authority of the dates of involvement in the program; or
 - (f) due to the employee's resignation for pregnancy, provided the employee has completed more than three (3) years and produces certification of such pregnancy and the expected date of birth from a registered medical practitioner.
- 6.8.5 For the purpose of determining long service leave entitlements, the expression "continuous service" includes any period during which the employee is absent on paid leave but does not include any period exceeding two (2) continuous weeks during which the employee is absent on unpaid parental leave or leave without pay.
- 6.8.6 Continuity of service shall not be broken by the absence of the employee on any form of approved paid leave or by the standing down of an employee under the terms of this Agreement.

6.9 Cultural/Ceremonial Leave

- 6.9.1 Cultural/ceremonial leave shall be available to all employees.
- 6.9.2 Such leave shall include leave to meet the employee's customs, traditional law and to participate in cultural and ceremonial activities.
- 6.9.3 Employees are entitled to time off without loss of pay for cultural/ceremonial purposes, subject to agreement between the Employer and employee and sufficient leave credits being available.
- 6.9.4 The Employer will assess each application for ceremonial/cultural leave on its merits and give consideration to the personal circumstances of the employee seeking the leave.
- 6.9.5 The Employer may request reasonable evidence of the legitimate need for the employee to be allowed time off.
- 6.9.6 Cultural/ceremonial leave may be taken as whole or part days off. Each day or part thereof, shall be deducted from annual leave, accumulated Credit Days off or leave in lieu of public holidays.
- 6.9.7 Time off without pay may be granted by arrangement between the Employer and the employee for cultural/ceremonial purposes.

6.10 Blood/Plasma Donors Leave

- 6.10.1 Subject to operational requirements, employees shall be entitled to absent themselves from the workplace in order to donate blood or plasma in accordance with the following general conditions:
 - (a) at least two (2) days' notice has been provided, the employee is rostered so that they are not resuming work within twelve (12) hours of donating blood or plasma and prior agreement with the supervisor has been reached; or
 - (b) the employee is called upon by the Red Cross Blood Centre.
- 6.10.2 The notification period shall be waived or reduced where the supervisor is satisfied that operations would not be unduly affected by the employee's absence.
- 6.10.3 The employee shall be required to provide proof of attendance at the Red Cross Blood Centre upon return to work.
- 6.10.4 Employees shall be entitled to two (2) hours of paid leave per donation for the purpose of donating blood to the Red Cross Blood Centre.

6.11 **Witness and Jury Service**

Witness Service

- 6.11.1 An employee subpoenaed or called as a witness to give evidence in any proceeding shall:
- (a) notify the Employer as soon as practicable; and
 - (b) provide to the Employer on request evidence that would satisfy a reasonable person of any entitlement claimed in relation to giving that evidence under this provision.
- 6.11.2 Where an employee is subpoenaed or called as a witness to give evidence in an official capacity, that employee shall be granted by the Employer leave of absence with pay, but only for such period as is required to enable the employee to carry out duties related to being a witness. If the employee is on any form of paid leave, the leave involved in being a witness will be reinstated. If the employee is on a Rostered Day Off and has complied with paragraph 6.11.1, the Employer shall on request roster an alternative Rostered Day Off. The employee is not entitled to accept any witness fee.
- 6.11.3 An employee subpoenaed or called as a witness to give evidence in an official capacity shall, in the event of non-payment of the proper witness fee or travelling expenses as soon as practicable after the default, notify the Employer.
- 6.11.4 An employee subpoenaed or called, as a witness on behalf of the Crown and/or the State, not in an official capacity shall be granted leave with full pay entitlements. If the employee is on any form of paid leave, this leave shall not be reinstated as such witness service is deemed to be part of the employee's civic duty. The employee is not entitled to accept any witness fees.
- 6.11.5 An employee subpoenaed or called as a witness under any other circumstances other than specified in subclauses 6.11.2 and 6.11.4 of this provision shall be granted leave of absence without pay except when the employee makes an application to clear accrued leave in accordance with the provisions of this Agreement.

Jury Service

- 6.11.6 An employee required to serve on a jury shall as soon as practicable after being summoned to serve, notify the supervisor/manager who shall notify the Employer.
- 6.11.7 An employee required to serve on a jury shall be granted paid leave of absence by the Employer, but only for such period as is required to enable the employee to carry out duties as a juror.
- 6.11.8 The parties acknowledge that as at the date of registration of this Agreement the Employer is required under the *Juries Act 1975* to pay an employee the earnings that the employee could reasonably expect to have been paid while doing jury service. Where an employee would have otherwise have been allocated to relief work while doing jury service, payment of the base rate plus a twenty percent (20%) loading will reflect the employee's reasonable expectation of payment during that period.

6.11.9 An employee granted leave of absence as prescribed in subclause 6.11.6 of this provision is not entitled to accept any juror's fees.

6.12 **Maternity Leave**

6.12.1 Eligibility

- (a) A pregnant permanent employee, fixed term contract employee is entitled to unpaid Maternity Leave on the birth of a child.
- (b) The period of leave for a fixed term contract employee shall not extend beyond the term of that contract.
- (c) An employee is eligible, without concluding their maternity leave and resuming duty, for subsequent periods of maternity leave, including paid maternity leave, in accordance with the provisions of this subclause.
- (d) A pregnant permanent or fixed term employee must have completed twelve months continuous service in the Public Sector immediately preceding the maternity leave in order to receive the forms of paid leave as provided for by this clause.
- (e) An employee on a period of leave without pay unrelated to maternity leave, adoption leave or other parent leave must resume duties prior to being entitled to paid maternity leave in accordance with the eligibility requirements.

6.12.2

- (a) A pregnant eligible casual employee is entitled to unpaid Maternity Leave only.
- (b) For the purposes of this subclause an eligible casual employee means a casual employee employed by the Employer:
 - (i) on a regular and systematic basis for several periods of employment with a break of no more than three months between each period of employment and where the combined length of the periods of employment are at least 12 months and the breaks of employment were the result of the Employer's initiative or
 - (ii) on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months; and, but for the birth or adoption of a child the employee has a reasonable expectation of continuing engagement on a regular and systematic basis.
- (c) Service performed by an eligible casual employee for a public sector Employer shall count as service for the purposes of determining twelve months continuous service as per subclause 6.12.1 and 6.12.2 where:

- (i) the eligible casual employee has become a permanent or fixed term contract employee with the same Employer; and
- (ii) the break between the period of eligible casual employment and permanent or fixed term contract employment is no more than three months.

6.12.3 Notice Requirements

- (a) An eligible employee shall give at least eight weeks written notice of:
 - (i) their intention to proceed on paid or unpaid maternity leave;
 - (ii) the date the employee proposes to commence paid or unpaid maternity leave and
 - (iii) the period of leave to be taken.
- (b) An employee who has given their Employer notice of their intention to take maternity leave shall provide the Employer with a medical certificate from a registered medical practitioner naming the employee, confirming the pregnancy and the estimated date of birth.
- (c) An employee is not in breach of subclause 6.12.3(a) by failing to give the required period of notice if such failure is due to the birth of the child taking place prior to the date the employee had intended to proceed on maternity leave.
- (d) An employee proceeding on maternity leave may elect to take a shorter period of maternity leave to that provided by this clause and may at any time during that period elect to reduce or seek to extend the period stated in the original application, provided four weeks' written notice is provided.

6.12.4 General Entitlement To Maternity Leave

- (a) Subject to the requirements of this clause an eligible employee is entitled to 52 weeks unpaid maternity leave.
- (b)
 - (i) Subject to the requirements of this clause an eligible employee is entitled to 14 weeks paid maternity leave that will form part of the 52 week unpaid entitlement;
 - (ii) The 14 week period of paid maternity leave is inclusive of any public holidays falling within that time;
 - (iii) The period of paid maternity leave can be extended by the employee taking double the leave on a half-pay basis and its effect is in accordance with subclause 6.12.15.

- (c) An employee must take maternity leave in one continuous period with the exception of
 - (i) Special Temporary Employment pursuant to subclause 6.12.13 Employment During Unpaid Maternity Leave; and
 - (ii) subclause 6.12.8 Unpaid Special Maternity Leave.
- (d) Except for leave provided under subclause 6.14.3 and clause 6.15- Partner Leave of this Agreement, only one parent can proceed on maternity, adoption or other parent leave at any one time.
- (e) Where less than the 52 weeks' maternity leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (f)
 - (i) Notwithstanding subclause 6.12.4(d) above, paid maternity leave may be taken in more than one period by an employee who meets the requirements of subclause 6.12.5(d).
 - (ii) Unpaid maternity leave may be taken in more than one continuous period where the employee undertakes special temporary employment in accordance with subclause 6.12.13 – Employment During Unpaid Maternity Leave. In these circumstances, the provisions of subclause 6.12.13 – Employment During Unpaid Maternity Leave, shall apply.
- (g)
 - (i) Where both parents are employed in the Public Sector an entitlement to paid or unpaid maternity leave, adoption leave or other parent leave or parental leave provided for by another industrial agreement can be shared; and
 - (ii) the entitlement provided to the employees shall not exceed the paid maternity, adoption or other parent leave quantum for one employee or its half pay equivalent; and
 - (iii) the employees may only proceed on paid and/or unpaid maternity, adoption or other parent leave at the same time in exceptional circumstances with the approval of the Employer or as provided for under subclause 6.12.5(d). This does not prevent an employee from taking paid or unpaid partner leave as prescribed by clause 6.15 – Partner Leave of this Agreement.

6.12.5 Payment for Paid Maternity Leave

- (a)
 - (i) Subject to subclause 6.12.5(c), a Full Time Employee proceeding on paid maternity leave is to be paid according to their ordinary working hours at the

time of commencement of maternity leave. Shift and weekend penalty payments are not payable during paid maternity leave.

- (ii) Subject to subclause 6.12.5(c), payment for a Part Time Employee is to be determined according to an average of the hours worked by the employee over the preceding twelve (12) months; or their ordinary working hours at the time of commencement of maternity leave, exclusive of shift and weekend penalties, whichever is greater.
- (b) An employee may elect to receive pay in advance for the period of paid maternity leave at the time the maternity leave commences, or may elect to be paid the entitlement on a fortnightly basis over the period of the paid maternity leave.
- (c)
 - (i) An employee in receipt of a higher duties allowance for a continuous period of twelve (12) months immediately prior to commencing paid maternity leave, is to continue to receive the higher duties allowance for the first four weeks of paid maternity leave.
 - (ii) An employee who is entitled to be paid higher duties allowance in accordance with subclause 6.12.5 (c) (i) and elects to take paid maternity leave at half pay will be paid the higher duties allowance at the full rate for the first four weeks only.
- (d) An employee is entitled to remain on paid maternity leave if the pregnancy results in other than a live child; or the employee is incapacitated following the birth of the child; or the child dies or is hospitalised such that the employee or the employee's partner is not providing principal care to the child.
- (e) Where an employee is on a period of half pay maternity leave and their employment is terminated through no fault of the employee, the employee shall be paid out any period of unused paid maternity leave equivalent to the period of leave the employee would have accessed had they been on full pay maternity leave when their termination occurred.
- (f) An employee eligible for a subsequent period of paid maternity leave as provided for under subclause 6.12.1(c) shall be paid the maternity leave as follows:
 - (i) According to the employee's status, classification and ordinary working hours at the time of commencing the original period of paid maternity leave; and
 - (ii) Not affected by any period of special temporary employment undertaken in accordance with subclause 6.12.13.

6.12.6 Commencement of Maternity Leave

- (a) The period of paid leave can commence up to six weeks prior to the expected date of birth of the child.

- (b) The period of unpaid leave can commence up to six weeks prior to the expected date of birth of the child or earlier if the Employer and employee so agree, but must not start later than the birth of the child.
- (c)
 - (i) If the Employer has reason to believe that the continued performance of duties by a pregnant employee renders danger to herself, fellow employees or the public, the employee may be required to obtain and provide a medical certificate stating that the employee is fit to work in her present position for a stated period.
 - (ii) The Employer shall pay the fee for any such examination.
 - (iii) Where an employee is deemed to be unfit to work in her present position, the provisions of subclause 6.12.7 Modification of Duties and Transfer to a Safe Job, may apply.
- (d)
 - (i) Where the pregnancy of an employee terminates other than by the birth of a living child, not earlier than 20 weeks before the expected date of the birth, the entitlement to paid maternity leave remains intact and subject to the eligibility requirements of this clause.
 - (ii) Such paid maternity leave cannot be taken concurrently with any paid sick leave taken in this circumstance.
- (e) The period of paid maternity leave must be concluded within 12 months of the birth of the child.
- (f)
 - (i) The Employer may in, in exceptional circumstances, allow an employee to take paid maternity leave that will result in the employee being on paid maternity leave more than twelve (12) months after the birth of the child.
 - (ii) An Employer may require evidence that would satisfy a reasonable person that the circumstances warrant allowing the employee to take their period of paid maternity leave such that it would result in the employee being on paid maternity leave more than twelve (12) months after the birth of the child.

6.12.7 Modification of Duties and Transfer to a Safe Job

- (a)
 - (i) A pregnant employee may work part time in one or more periods whilst she is pregnant where she provides her Employer with a medical certificate from a medical practitioner advising that part time employment is, because of her pregnancy, necessary or preferable.

- (ii) The terms of part time employment undertaken in accordance with subclause 6.12.7 (a)(i) shall be in writing.
 - (iii) Such employment shall be in accordance with clause 2.8 Part Time Employment of this Agreement.
- (b) In the absence of an alternative requirement, and unless otherwise agreed between an Employer and employee, an employee shall provide their Employer with four weeks written notice of an intention to:
 - (i) vary part time work arrangements made under subclause 6.12.7(a) or
 - (ii) revert to full time employment during the employee's pregnancy.
- (c) An employee reverting to full time employment in accordance with subclause 6.12.7 (b)(ii) will be entitled to the same position or a position equivalent in pay, conditions and status and commensurate with the employee's skill and abilities as the substantive position held immediately prior to undertaking part time employment.
- (d) If an employee gives her Employer a medical certificate from a medical practitioner, or some other form of evidence that would satisfy a reasonable person, and it contains a statement to the effect that the employee is fit to work, but that it is inadvisable for her to continue in her present position for a stated period because of:
 - (i) illness, or risks, arising out of her pregnancy or
 - (ii) hazards connected with that position

then the Employer must modify the duties of the position or alternatively transfer the employee to a safe job at the same classification level for the period during which she is unable to continue in her present position.
- (e) If an employee's Employer does not think it to be reasonably practicable to modify the duties of the position or transfer the employee to a safe job:
 - (i) the employee is entitled to be absent from the workplace on full pay for the period during which she is unable to continue in her present position; and
 - (ii) An employee who is absent from work pursuant to this subclause shall be paid the amount she would reasonably have expected to be paid if she had worked during that period.
- (f) An entitlement to be absent from the workplace on full pay is in addition to any leave entitlement the employee has.
- (g) An entitlement to be absent from the workplace on full pay ends at the earliest of whichever of the following times is applicable:
 - (i) the end of the period stated in the medical certificate;

- (ii) if the employee's pregnancy results in the birth of a living child – the end of the day before the date of birth or
- (iii) if the employee's pregnancy ends otherwise than with the birth of a living child – the end of the day before the end of the pregnancy.

6.12.8 Unpaid Special Maternity Leave

- (a) A pregnant employee is entitled to a period of unpaid special maternity leave if the employee is not fit for work during that period because the employee:
 - (i) has a pregnancy related illness; or
 - (ii) has been pregnant and the pregnancy ends within 28 weeks of the expected date of birth of the child otherwise than by a living child; and
 - (iii) has not utilised personal leave for the period.
- (b) An employee must give the Employer notice of the taking of unpaid special maternity leave.
- (c) The notice must:
 - (i) be given to the Employer as soon as practicable (which may be a time after the leave has started); and
 - (ii) advise the Employer of the period, or expected period, of the leave.
- (d) An employee who has given notice of the taking of unpaid special maternity leave must, if required by the Employer, give the Employer evidence that would satisfy a reasonable person that the leave is taken for a reason specified in 6.12.8(a).
- (e) Without limiting 6.12.8 (d), an Employer may require the evidence referred to in that subsection to be a medical certificate.
- (f) An employee's entitlement to 12 months of unpaid maternity leave provided at 6.12.4 is not reduced by the amount of any unpaid special maternity leave taken by the employee while the employee was pregnant.

6.12.9 Interaction with Other Leave Entitlements

- (a) An employee proceeding on unpaid maternity leave may elect to substitute any part of that leave with accrued annual and/or accrued long service leave.
- (b) Where annual and/or long service leave is substituted that leave shall form part of the 52 weeks' maternity leave entitlement.
- (c) Sick leave is not payable on a period of paid or unpaid maternity leave.

6.12.10 Extended Unpaid Maternity Leave

- (a) An employee shall be entitled to apply for leave without pay following maternity leave ('extended unpaid maternity leave') to extend their leave by up to two years.
- (b) Approval for an extension to unpaid maternity leave will be subject to all other available leave entitlements being exhausted.
- (c) Where both parents work for the Western Australia Public Sector the total combined period of extended unpaid maternity, adoption and extended other parent leave shall not exceed two years.
- (d) The Employer is to agree to a request for extended unpaid maternity leave unless:
 - (i) the Employer is not satisfied that the request is genuinely based on the employee's parental responsibilities or
 - (ii) agreeing to the request would have an adverse impact on the conduct of operations or business of the Employer and those grounds would satisfy a reasonable person.
- (e) The Employer is to give the employee written notice of the Employer's decision on a request for extended unpaid maternity leave under subclause 6.12.10 (a). If the request is refused, the notice is to set out the reasons for the refusal.
- (f) An employee who believes their request for extended unpaid parental leave under subclause 6.12.10 has been unreasonably refused may seek to enforce it as a minimum condition of employment and the onus will be on the Employer to demonstrate that the refusal was justified in the circumstances.

6.12.11 Communication during Maternity Leave

- (a) If the Employer makes a decision that will have a significant effect on the status, responsibility level, pay or location of an employee's position whilst on maternity leave, the Employer must take all reasonable steps to give the employee information about, and an opportunity to discuss, the effect of the decision on that position.
- (b) An employee shall also notify the Employer of changes of address or other contact details that might affect the Employer's capacity to comply with subclause 6.12.11 (a).

6.12.12 Replacement Employee

Should a replacement employee be engaged, the replacement employee is to be informed prior to engagement of the fixed-term nature of the employment and of the rights of the employee, who is being replaced, including that the engagement may be subject to variation according to 6.12.3(d) and ability to extend unpaid maternity Leave as provided for under subclause 6.12.10.

6.12.13 Employment During Unpaid Maternity Leave

(a) Special Temporary Employment

- (i) For the purposes of this subclause, “temporary” means employment of an intermittent nature; for a limited, specified period; and undertaken during unpaid maternity leave or extended unpaid maternity leave.
 - (ii) Notwithstanding any other provision of the maternity leave clause, an employee may be employed by their Employer on a temporary basis provided that:
 - both parties agree in writing to the special temporary employment;
 - employees are only employed on a temporary basis in connection with their substantive office, post or position;
 - any such period of service shall not change the employee’s employment status in regard to their substantive employment and
 - any period of special temporary employment shall count as qualifying service for all purposes under the Agreement.
- (b) The provisions of this subclause only apply to employment during unpaid maternity leave, and extended unpaid maternity leave taken in conjunction with maternity leave as provided for in subclause 6.12.10 – Extended Unpaid Maternity Leave.
- (c) An Employer cannot engage an employee in special temporary employment or special casual employment whilst the employee is on a period of paid maternity leave, annual leave or long service leave taken concurrently with a period of unpaid maternity leave.
- (d) Effect of special temporary employment on unpaid maternity leave
- (i) Subject to subclause 6.12.13 (d) (ii), a period of special temporary employment shall be deemed to be part of the employee’s period of unpaid maternity leave or extended unpaid maternity leave as originally agreed to by the parties.
 - (ii) An employee who immediately resumes unpaid maternity leave or extended unpaid maternity leave following the conclusion of a period of special temporary employment.
 - is entitled, on written notice, to extend their period of unpaid maternity leave or extended unpaid maternity leave by the period of time in which they were engaged in special temporary employment ;and
 - shall give not less than four weeks’ notice in writing to their Employer of the new date they intend to return to work and so conclude their period of maternity leave or extended unpaid maternity leave.

- (iii) An employee who does not immediately resume their period of unpaid maternity leave or extended unpaid maternity leave at the conclusion of a period of special temporary employment cannot preserve the unused portion of leave for use at a later date.

6.12.14 Return to Work on Conclusion of Maternity Leave

- (a)
 - (i) An employee shall confirm their intention in writing to conclude their maternity leave not less than four weeks prior to the expiration of maternity leave or extended unpaid maternity leave.
 - (ii) An employee who intends to return to work on a modified basis in accordance with subclause 6.12.14 (d) shall advise their Employer of this intention by notice in writing not less than four weeks prior to the expiration of maternity leave or extended unpaid maternity leave.
- (b) An employee on return to work following the conclusion of maternity leave or extended unpaid maternity leave will be entitled to the same position or a position equivalent in pay, conditions and status and commensurate with the employee's skill and abilities as the substantive position held immediately prior to proceeding on maternity leave.
- (c) Where an employee was transferred to a safe job or was absent from the workplace on full pay as provided for in subclause 6.12.7 – Modification of Duties and Transfer to a Safe Job, the employee is entitled to return to the position occupied immediately prior to the transfer or their absence from the workplace on full pay.
- (d) Right to Return to Work on a Modified Basis
 - (i) An employee may return on a part time or job-share basis to the substantive position occupied prior to the commencement of leave or to a different position as determined by the Employer at the same classification level in accordance with the part time employment provisions this Agreement.
 - (ii) An employee may return on a modified basis that involves the employee working on different days or at different times, or both; or on fewer days or for fewer hours or both, than the employee worked immediately before starting maternity leave.
- (e) Right to Revert
 - (i) An employee who has returned on a part time or modified basis in accordance with subclause 6.12.14 (d) may subsequently request permission from the Employer to resume working on the same basis as the employee worked immediately before starting maternity leave or full time work at the same classification level.

- (ii) A request made under subclause 6.12.14 (e)(i) must be in writing and must be made at least four weeks before the day on which the employee wishes to resume working on the same basis as the employee worked immediately before starting maternity leave or full time work at the same classification level.
 - (iii) An Employer is to agree to a request to revert made under subclause 6.12.14 (e) (i) unless there are grounds to refuse the request relating to the adverse effect that agreeing to the request would have on the conduct of operations or business of the Employer and those grounds would satisfy a reasonable person.
 - (iv) An Employer is to give the employee written notice of the Employer's decision on a request to revert under subclause 6.12.14 (e) (i). If the request is refused, the notice is to set out the reasons for the refusal.
 - (v) An employee who believes their request to revert under subclause 6.12.14 (e) (i) has been unreasonably refused may seek to enforce it as a minimum condition of employment and the onus will be on the Employer to demonstrate that the refusal was justified in the circumstances.
- (f) Employer Requirement to Revert
- (i) If, on finishing maternity leave, an employee has returned to work on a modified basis in accordance with subclause 6.12.14 (d), the Employer may subsequently require the employee to resume working on the same basis as the employee worked immediately before starting maternity leave.
 - (ii) A requirement can be made under subclause 6.12.14(f) (i) only if:
 - (aa) the requirement is made on grounds relating to the adverse effect that the employee continuing to work on a modified basis would have on the conduct of the operations or business of the Employer and those grounds would satisfy a reasonable person; or
 - (bb) the employee no longer has a child who has not reached the compulsory education period as defined in section 6 of the *School Education Act 1999*.

6.12.15 Effect of Maternity Leave on the Contract of Employment

- (a)
 - (i) Paid maternity leave will count as qualifying service for all purposes under this Agreement.
 - (ii) Qualifying service for any purpose under this Agreement is to be calculated according to the number of weeks of paid maternity leave that were taken at full pay or would have been had the employee not taken paid maternity leave

at half pay. Employees who take paid maternity leave on half pay do not accrue entitlements beyond those that would have accrued had they taken the leave at full pay.

(b)

- (i) Absence on unpaid maternity leave or extended unpaid maternity leave shall not break the continuity of service of employees.
 - (ii) Where an employee takes a period of unpaid maternity leave or extended unpaid maternity leave exceeding 14 calendar days in one continuous period, the entire period of such leave shall not be taken into account in calculating the period of service for any purpose under any relevant award, agreement or industrial instrument. Periods of unpaid leave of 14 days or less shall, however, count for service.
- (c) An employee on maternity leave may terminate employment at any time during the period of leave by written notice in accordance with clause 2.10 of this Agreement.
- (d) An Employer shall not terminate the employment of an employee on the grounds of the employee's application for maternity leave or absence on maternity leave but otherwise the rights of the Employer in respect of termination of employment are not affected.

6.13 Adoption Leave

6.13.1 Eligibility

- (a) A permanent employee, fixed term contract employee is entitled to 52 weeks unpaid adoption leave on the placement of a child for adoption as provided for under this clause.
- (b) The period of leave granted to a fixed term contract employee shall not extend beyond the term of that contract.
- (c) An employee is eligible, without concluding their adoption leave and resuming duty, for subsequent periods of adoption leave, including paid adoption leave, in accordance with the provisions of this clause.
- (d) A permanent or fixed term contract employee must have completed twelve months continuous service in the Public Sector immediately preceding the adoption leave in order to receive the forms of paid leave as provided for by this clause.
- (e) An employee on a period of leave without pay unrelated to adoption leave must resume duties prior to being entitled to paid adoption leave in accordance with the eligibility entitlements.

- (f) An eligible casual employee as defined under clause 6.12 - Maternity Leave of this Agreement is entitled to unpaid Adoption Leave as provided by this subclause.

6.13.2 General entitlement to Adoption Leave

- (a) Subject to the requirements of this subclause an eligible employee is entitled to 52 weeks unpaid adoption leave.
- (b)
 - (i) Subject to the requirements of this subclause an eligible employee is entitled to 14 weeks paid adoption leave that will form part of the 52 week unpaid entitlement.
 - (ii) The 14 week period of paid adoption leave is inclusive of any public holidays falling within that time.
 - (iii) The period of paid Adoption Leave can be extended by the employee taking double the leave on a half-pay basis and its effect is in accordance with clause 6.12 – Maternity Leave of this Agreement.
- (c) An employee must take adoption leave in one continuous period with the exception of Special Temporary Employment pursuant to clause 6.12 – Maternity Leave of this Agreement.
- (d) Except for leave provided under subclause 6.14.3 (f) and clause 6.15 - Partner Leave of this Agreement only one parent can proceed on maternity, adoption or other parent leave at any one time.
- (e) Where less than the 52 weeks' adoption leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (f) Unpaid adoption leave may be taken in more than one continuous period where the employee undertakes special temporary employment in accordance with the provisions at subclause 6.12.13 – Employment During Unpaid Maternity Leave of this Agreement. In these circumstances, the provisions of subclause 6.12.13 – Employment During Unpaid Maternity Leave of this Agreement shall apply.
- (g)
 - (i) Where both parents are employed in the Western Australia Public Sector an entitlement to paid or unpaid maternity leave, adoption leave or other parent leave or parental leave provided for by another industrial agreement can be shared; and
 - (ii) The entitlement provided to the employees shall not exceed the paid maternity, adoption or other parent leave quantum for one employee or its half pay equivalent; and

- (iii) The employees may only proceed on paid and/or unpaid maternity, adoption or other parent leave at the same time in exceptional circumstances with the approval of the Employer or as provided for under subclause 6.12.5(d) – Maternity Leave of this Agreement. This does not prevent an employee from taking paid or unpaid partner leave as prescribed by subclause 6.15 of this Agreement.

6.13.3 Payment for Paid Adoption Leave

(a)

- (i) Subject to subclause 6.13.3 (c), a Full Time Employee proceeding on paid adoption leave is to be paid according to their ordinary working hours at the time of commencement of adoption leave. Shift and weekend penalty payments are not payable during paid adoption leave.
- (ii) Subject to subclause 6.13.3 (c), payment for a Part Time Employee is to be determined according to an average of the hours worked by the employee over the preceding 12 months; or their ordinary working hours at the time of commencement of adoption leave, exclusive of shift and weekend penalties, whichever is greater.

- (b) An employee may elect to receive pay in advance for the period of paid adoption leave at the time the adoption leave commences or may elect to be paid the entitlement on a fortnightly basis over the period of the paid adoption leave.

(c)

- (i) An employee in receipt of a higher duties allowance for a continuous period of twelve (12) months immediately prior to commencing paid adoption leave is to continue to receive the higher duties allowance for the first four weeks of paid adoption leave.
- (ii) An employee who is entitled to be paid higher duties allowance in accordance with subclause 6.13.3 (c) (i) and elects to take paid adoption leave at half pay will be paid the higher duties allowance at the full rate for the first four weeks only.
- (d) Where an employee is on a period of half pay adoption leave and their employment is terminated through no fault of the employee, the employee shall be paid out any period of unused paid adoption leave equivalent to the period of leave the employee would have accessed had they been on full pay adoption leave when their termination occurred.
- (e) An employee eligible for a subsequent period of paid adoption leave as provided for under subclause 6.13.1(c) shall be paid the adoption leave as follows:
 - (i) According to the employee's status, classification and ordinary working hours at the time of commencing the original period of paid adoption leave; and

- (ii) Not affected by any period of special temporary employment or special casual employment undertaken in accordance with subclause 6.12.13 – Employment during Unpaid Maternity Leave of this Agreement.
- (f) Where less than the 52 weeks' adoption leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (g) The 'day of placement', in relation to the adoption of a child by an employee, means the earlier of the following days:
 - (i) the day on which the employee first takes custody of the child for the adoption;
 - (ii) the day on which the employee starts any travel that is reasonably necessary to take custody of the child for the adoption.
- (h) An employee is not entitled to adoption-related leave unless the child that is, or is to be, placed with the employee for adoption
 - (i) is, or will be, under 16 years old as at the day of placement, or the expected day of placement, of the child and
 - (ii) has not, or will not have, lived continuously with the employee for a period of six months or more as at the day of placement, or the expected day of placement, of the child; and
 - (iii) is not (otherwise than because of the adoption) a child or stepchild of the employee or the employee's partner.
- (i)
 - (i) An employee seeking to adopt a child is entitled to two days' unpaid leave to attend interviews or examinations required for the adoption procedure.
 - (ii) An employee working or residing outside of the Perth metropolitan area is entitled to an additional day's unpaid leave.
 - (iii) The employee may take any paid leave entitlement to which the employee is entitled to in lieu of this leave.
- (j)
 - (i) If an application for adoption leave has been granted for the adoption of a child, which does not eventuate, then the period of paid or unpaid adoption leave is terminated.
 - (ii) employees may take any other paid leave entitlement to which they are entitled in lieu of the terminated adoption leave or return to work.

6.13.4 Commencement of Adoption Leave

- (a) An eligible employee can commence adoption leave from the day of placement of the child.
- (b) The period of paid adoption leave must conclude within twelve (12) months of the day of placement except under exceptional circumstances as provided under subclause 6.12.6(f) - Maternity Leave of this Agreement but as it relates to Adoption Leave.

6.13.5 Notice and Variation Requirements

- (a) An employee shall give no less than eight weeks' written notice to the Employer of:
 - (i) the date the employee proposes to commence paid or unpaid adoption leave; and
 - (ii) the period of leave to be taken.
- (b) An employee is not in breach of subclause 6.13.5 (a) by failing to give the required period of notice if such failure is due to the requirement of the adoption agency to accept earlier or later placement of a child, or other compelling circumstances.
- (c) An employee proceeding on adoption leave may elect to take a shorter period of adoption leave to that provided by this subclause and may at any time during that period elect to reduce or seek to extend the period stated in the original application, provided four weeks' written notice is provided.

6.13.6 Other Provisions: The following provisions, as provided under subclause 6.12 – Maternity Leave have application to adoption leave under this Agreement:

- 6.12.9 - Interaction with Other Leave Entitlements;
- 6.12.10 – Extended Unpaid Maternity Leave;
- 6.12.11 – Communication during Maternity Leave;
- 6.12.12 – Replacement Employee;
- 6.12.13 - Employment During Unpaid Maternity Leave;
- 6.12.14 – Return to Work on Conclusion of Maternity Leave; and
- 6.12.15 – Effect of Maternity Leave on the Contract of Employment

6.14 Other Parent Leave

6.14.1 For the purposes of this clause:

- (a) The “*other parent*” may or may not be the biological parent, and does not necessarily have to be the partner of the birth parent and has a responsibility for care of the child.
- (b) The “*primary care giver*” means the employee will assume the principal role for the care and attention of a child aged under twelve (12) months or a newly adopted child.
- (c) Only one person can be the primary care giver of the child at any one time.

6.14.2 Eligibility

- (a)
 - (i) Where an eligible employee, other than an employee entitled to paid maternity leave under subclause 6.12 or Adoption Leave under clause 6.13 in this Agreement, is the other parent and has responsibility for the care of a child under the age of twelve (12) months or newly adopted child the provisions of this subclause will apply.
 - (ii) An employee must be the primary care giver of the child to access paid other parent leave.
 - (iii) An Employer may require an employee to provide confirmation of their primary carer status with evidence that would satisfy a reasonable person.
- (b) An eligible casual employee as defined under subclause 6.12.2 - Maternity Leave of this Agreement is entitled to unpaid Other Parent Leave as provided by this subclause.
 - (i) A permanent, fixed term contract or eligible casual employee is entitled to 52 weeks unpaid Other Parent Leave in accordance with this subclause.
 - (ii) An eligible permanent or fixed term contract employee is entitled to 14 weeks paid Other Parent Leave in accordance with this subclause.
 - (iii) An employee employed on a fixed term contract shall have the same entitlement to other parent leave; however, the period of leave granted shall not extend beyond the term of that contract.
 - (iv) An employee is eligible, without concluding their other parent leave and resuming duty, for subsequent periods of other parent leave, including paid other parent leave, in accordance with the provisions of this subclause.

- (c) A permanent or fixed term contract employee must have completed twelve months continuous service in the Public Sector immediately preceding the Other Parent Leave in order to receive the forms of paid leave as provided for by this subclause.
- (d) An employee on a period of leave without pay unrelated to other parent leave must resume duties prior to being entitled to paid other parent leave in accordance with the eligibility requirements.

6.14.3 General Entitlement to Other Parent Leave

- (a) Subject to the requirements of this subclause an eligible employee is entitled to 52 weeks' unpaid other parent leave.
- (b)
 - (i) Subject to the requirements of this subclause an eligible employee is entitled to 14 weeks paid other parent leave that will form part of the 52 week unpaid entitlement if they are the primary care giver of the child.
 - (ii) The 14 week period of paid other parent leave is inclusive of any public holidays falling within that time.
 - (iii) The period of paid Other Parent Leave can be extended by the employee taking double the leave on a half-pay basis and in its effect is in accordance with clause 6.12 – Maternity Leave of this Agreement.
- (c) An employee must take other parent leave in one continuous period with the exception of Special Temporary Employment pursuant to subclause 6.12.13 – Employment During Unpaid Maternity Leave of this Agreement.
- (d) Except for leave provided under subclause 6.14.3 (f) and clause 6.15 - Partner Leave of this Agreement only one parent can proceed on maternity, adoption or other parent leave at any one time.
- (e) Where less than the 52 weeks Other Parent Leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.
- (f)
 - (i) An employee, whose partner is not employed, or is employed and does not intend to take unpaid parental related leave for a child under the age of twelve months or placement of a newly adopted child as provided for in clause 6.13 – Adoption Leave of this Agreement, may access unpaid other parent leave where:
 - (aa) the employee will have a responsibility for the care of a child; and
 - (bb) the Partner has responsibility for the care of the child for the period between the date of birth or placement of the child and the start date of the employee's leave.

- (ii) The leave application must ensure that the leave commences within 12 months of the date of birth or placement of the child.
 - (iii) This entitlement forms part of an employee's 52 week unpaid other parent leave entitlement and may not be extended beyond 24 months after the date of birth or date of placement of a newly adopted child as provided for in clause 6.13 – Adoption Leave of this Agreement.
- (g) Unpaid other parent leave may be taken in more than one continuous period where the employee undertakes special temporary employment or special casual employment in accordance with the provisions at subclause 6.12.13 – Employment During Unpaid Maternity Leave in this Agreement. In these circumstances, the provisions of subclause 6.12.13 – Employment During Unpaid Maternity Leave of this Agreement, shall apply.
- (h)
- (i) Where both parents are employed in the WA public sector an entitlement to paid or unpaid maternity leave, adoption leave or other parent leave or parental leave provided for by another industrial agreement can be shared; and
 - (ii) The entitlement provided to the employees shall not exceed the paid maternity, adoption or other parent leave quantum for one employee or its half pay equivalent; and
 - (iii) The employees may only proceed on paid and/or unpaid maternity, adoption or other parent leave at the same time in exceptional circumstances with the approval of the Employer or as provided for under subclause 6.14.3 (h) (i). This does not prevent an employee from taking paid or unpaid partner leave as prescribed by subclause 6.15 – Partner Leave of this Agreement.
- (i) If both parents work in the Public Sector and the mother is able to remain on paid maternity leave despite her incapacity to be her child's primary care giver, the employee may choose which parent will access the paid leave.
- (i) If the mother chooses to remain on paid maternity leave, the other parent may access unpaid other parent leave for the period they are their child's primary care giver.
 - (ii) If the other parent chooses to be the primary care giver of the child and accesses paid other parent leave the mother may access unpaid maternity leave.
 - (iii) Where the other parent accesses paid leave in accordance with this clause, the mother is entitled to resume paid maternity leave if/when she becomes her child's primary care giver, subject to the provisions of this subclause 6.14.3 (i).

6.14.4 Payment for Paid Other Parent Leave

- (a)
 - (i) Subject to subclause 6.14.4(c), a Full Time Employee proceeding on paid other parent leave is to be paid according to their ordinary working hours at the time of commencement of other parent leave. Shift and weekend penalty payments are not payable during paid other parent leave.
 - (ii) Subject to subclause 6.14.4(c), payment for a Part Time Employee is to be determined according to an average of the hours worked by the employee over the preceding twelve (12) months; or their ordinary working hours at the time of commencement of other parent leave, exclusive of shift and weekend penalties, whichever is greater.
- (b) An employee may elect to receive pay in advance for the period of paid other parent leave at the time the other parent leave commences, or may elect to be paid the entitlement on a fortnightly basis over the period of the paid other parent leave.
- (c)
 - (i) An employee in receipt of a higher duties allowance for a continuous period of twelve (12) months immediately prior to commencing paid other parent leave, is to continue to receive the higher duties allowance for the first four weeks of paid adoption leave.
 - (ii) An employee who is entitled to be paid higher duties allowance in accordance with subclause 6.14.4 (c) (i) and elects to take paid other parent leave at half pay will be paid the higher duties allowance at the full rate for the first four weeks only.
- (d) An employee is entitled to remain on paid other parent leave where the mother is incapacitated following the birth of the child; or the child dies or is hospitalised such that the employee or the employee's partner is not providing principal care to the child.
- (e) Where an employee is on a period of half pay other parent leave and their employment is terminated through no fault of the employee, the employee shall be paid out any period of unused paid other parent leave equivalent to the period of leave the employee would have accessed had they been on full pay other parent leave when their termination occurred.
- (f) An employee eligible for a subsequent period of paid other parent leave as provided for under subclause 6.14.2(b)(iv) shall be paid the other parent leave as follows:
 - (i) according to the employee's status, classification and ordinary working hours at the time of commencing the original period of paid other parent leave; and
 - (ii) not affected by any period of special temporary employment or special casual employment undertaken in accordance with subclause 6.12.13 – Employment During Unpaid Maternity Leave of this Agreement.

- (g) Where less than the 52 weeks' other parent leave is taken paid or unpaid, the unused portion of the leave cannot be banked or preserved in any way.

6.14.5 Commencement of Other Parent Leave

- (a) An eligible employee who has responsibility for the care of the child can commence other parent leave from the child's birth date or placement, or a later date nominated by the employee.
- (b) The period of paid other parent leave must conclude within 12 months of the birth or placement of the child except under exceptional circumstances as per subclause 6.12.6(f) of the maternity leave clause but as it relates to other parent leave.

6.14.6 Notice and Variation Requirements

- (a) An employee shall give no less than eight weeks written notice to the Employer of:
 - (i) the date the employee proposes to commence paid or unpaid other parent leave; and
 - (ii) the period of leave to be taken.
- (b)
 - (i) An employee is not in breach of subclause 6.14.6(a) by failing to give the required period of notice if such failure is due to the requirement of the employee to take on the role of primary care giver due to the birth parent or other adoptive parent being incapacitated to take on the principal caring role.
 - (ii) In such circumstances the employee shall give notice as soon as reasonably possible.
- (c) The granting of leave under this clause is subject to the employee providing the Employer with evidence that would satisfy a reasonable person detailing the reasons for and the circumstances under which the leave application is made and the relationship the employee has with the child.
- (d) An employee proceeding on other parent leave may elect to take a shorter period of other parent Leave to that provided by this clause and may at any time during that period elect to reduce or seek to extend the period stated in the original application, provided four weeks written notice is provided.

6.14.7 Other Provisions: The following provisions, as provided under clause 6.12 –Maternity Leave have application to Other Parent Leave under this Agreement:

- 6.12.9 - Interaction with Other Leave Entitlements;
- 6.12.10 – Extended Unpaid Maternity Leave;
- 6.12.11 – Communication during Maternity Leave;
- 6.12.12 – Replacement Employee;
- 6.12.13 – Employment during Unpaid Maternity Leave;

- 6.12.14 – Return to Work on Conclusion of Maternity Leave; and
- 6.12.15 – Effect of Maternity Leave on the Contract of Employment

6.15 **Partner Leave**

- 6.15.1 An employee who is not taking maternity leave, adoption leave or other parent leave is entitled to one week's partner leave as prescribed by this subclause in respect of the:
 - (a) birth of a child to the employee's partner; or
 - (b) adoption of a child who is not the natural child or the stepchild of the employee and/or the employee's partner; is under the age of 16; and has not lived continuously with the employee for six months or longer.
- 6.15.2 Subject to available credits, the entitlement to one weeks' partner leave shall be taken as
 - (a) paid carer's leave subject to clause 6.3,
 - (b) annual and/or long service leave; and/or
 - (c) unpaid partner leave.
- 6.15.3 Partner leave must be taken immediately following the birth or, in the case of adoption, the placement of the child.
- 6.15.4
 - (a) Subject to subclause 6.15.4 (b), the taking of partner leave by an employee shall have no effect on their or their partner's entitlement, where applicable, to access paid maternity leave as provided by clause 6.12 Maternity Leave of this Agreement, paid adoption leave as provided by subclause 6.13 Adoption leave of this Agreement and paid other parent leave as provided for by clause 6.14 of this Agreement.
 - (b) Where applicable, unpaid partner leave taken by an employee shall be counted as part of the employee's other parent leave entitlement.
- 6.15.5 Any public holidays that fall during partner leave shall be counted as part of the partner leave and do not extend the period of partner leave.
- 6.15.6 An employee may access their accrued sick leave entitlements for partner leave purposes, subject to the requirements of the *Minimum Conditions of Employment Act 1993* being met. That is, a minimum of 76 hours sick leave must be kept available for an employee to access for the purposes of an employee's entitlement to paid leave for illness or injury; or carer's leave.
- 6.15.7 The right to access sick leave credits for partner leave purposes does not affect an employee's right to take more than five days sick leave for the purposes provided for in clause 6.3 Carer's Leave.

6.15.8 Right to Request Additional Unpaid Partner Leave:

- (a) The total period of partner leave provided by this clause shall not exceed eight weeks.
- (b) An employee is entitled to request an extension to the period of unpaid partner leave up to a maximum of eight weeks. The additional weeks' leave shall be unpaid and the eight week maximum is inclusive of any period of partner leave already taken in accordance with subclause 6.15.2.

6.15.9

- (a) The extended unpaid partner leave may be taken in separate periods. Unless the Employer agrees, each period must not be shorter than two weeks.
- (b) The period of extended unpaid partner leave must be concluded within twelve months of the birth or placement of the child.

6.15.10 The Employer is to agree to an employee's request to extend their unpaid partner leave made under subclause 6.15.9(b) unless:

- (a) having considered the employee's circumstances, the Employer is not satisfied that the request is genuinely based on the employee's parental responsibilities; or
- (b) there are grounds to refuse the request relating to the adverse effect that agreeing to the request would have on the conduct of operations or business of the Employer and those grounds would satisfy a reasonable person. These grounds include, but are not limited to:
 - (i) cost;
 - (ii) lack of adequate replacement staff;
 - (iii) loss of efficiency; and
 - (iv) impact on the production or delivery of products or services by the Employer.

6.15.11 The Employer is to give the employee written notice of the Employer's decision on a request to extend their unpaid partner leave. If the employee's request is refused, the notice is to set out the reasons for the refusal.

6.15.12 An employee who believes their request to extend unpaid partner leave has been unreasonably refused may seek to enforce it as a minimum condition of employment and the onus will be on the Employer to demonstrate that the refusal was justified in the circumstances.

- 6.15.13 Where an Employer agrees to an employee's request to extend their period of unpaid partner leave under subclause 6.15.9, the Employer must allow an employee to elect to substitute any part of that period of unpaid partner leave with accrued annual leave or long service leave.
- 6.15.14 An employee on unpaid partner leave is not entitled to paid sick leave.
- 6.15.15 Notice
- (a) The employee shall give not less than four weeks' notice in writing to the Employer of the date the employee proposes to commence partner leave, stating the period of leave to be taken.
 - (b) An employee who has given their Employer notice of their intention to take partner leave shall provide the Employer with a medical certificate from a registered medical practitioner naming the employee, or the employee's partner, confirming the pregnancy and the estimated date of birth.
- 6.15.16 Effect of Partner Leave on the Contract of Employment: The provisions of subclause 6.12.15 of the maternity leave clause of this Agreement concerning the effect of maternity leave on the contract of employment shall apply to employees accessing partner leave, with such amendment as necessary.
- 6.16 Purchased Leave**
- 6.16.1 The Employer may approve an employee's application to enter into an arrangement whereby the employee can purchase up to eight (8) weeks additional leave.
- 6.16.2 The Employer will assess each application for 44/52 wage arrangement on its merits and give consideration to the personal circumstances of the employee seeking the arrangement and to the Employers' operational requirements.
- 6.16.3 Access to purchased leave will be subject to subclauses 6.16.1-6.16.2 and to:
- (a) the employee having satisfied the Employer's accrued leave management policy;
 - (b) the employee having not more than in excess of ten (10) weeks accrued annual leave, long service leave, days in lieu and/ or Credit Days balance at the time the employee requests access to purchased leave;
 - (c) during the financial year for which the purchased leave is requested, the employee will not complete a qualifying period for Long Service Leave; and
 - (d) the employee having nominated when the purchased leave will be taken as part of the Leave Roster Process, which can only be altered by approval of the Employer.
- 6.16.4 The Employer reserves the right to withdraw from the purchased leave arrangement where the employee:

- (a) Is internally transferred or promoted; or
- (b) Where there are operational requirements warranting such action

6.16.5 Purchased leave arrangements run over a financial year concluding on 30 June. employees participating in a purchased leave arrangement who wish to continue in the arrangement in the following year must apply to do so annually as part of the leave rostering process in accordance with subclause 6.6.

6.16.6 The employee can agree to take a reduced wage spread over the 52 weeks of the year and receive the following amounts of additional purchased leave:

Number of weeks wages spread over 52 weeks	Number of weeks purchased leave
44 weeks	8 weeks
45 weeks	7 weeks
46 weeks	6 weeks
47 weeks	5 weeks
48 weeks	4 weeks
49 weeks	3 weeks
50 weeks	2 weeks
51 weeks	1 week

6.16.7 The purchased leave will not be able to be accrued. The employee is to be entitled to pay in lieu of the additional leave not taken. In the event that the employee is unable to take such purchased leave, their wage will be adjusted on the last pay period in July to take account of the fact that time worked during the year was not included in the wage. Untaken purchased leave will be paid out at the rate at which it was purchased.

6.16.8 Where an employee who is in receipt of a higher duties allowance proceeds on any period of additional purchased leave, the employee shall not be entitled to receive payment of the allowance for any period of purchased leave.

6.16.9 In the event that a Part Time Employee's ordinary working hours are varied during the year, the wage paid for such leave taken will be adjusted on the last pay in July to take into account any variations to the employee's ordinary working hours during the previous year.

6.16.10 An employee may withdraw from this arrangement prior to completing the 52 week period by four (4) weeks written notice. The employee will be entitled to pay in lieu of wages forgone to that time but will not be entitled to equivalent absence from duty.

6.16.11 Where an employee or the Employer withdraws from a purchased leave arrangement, payment in lieu of wages forgone will be paid out at the rate at which it was purchased.

6.17 Emergency Service Leave

- 6.17.1 Subject to operational requirements, paid leave of absence shall be granted by the Employer to an employee who is an active volunteer member of State Emergency Service Units, St John Ambulance Brigade, Volunteer Fire and Rescue Service Brigades, Bush Fire Brigades, Volunteer Marine Rescue Services Groups or FESA Units, in order to allow for attendance at emergencies as declared by the recognised authority.
- 6.17.2 The Employer shall be advised as soon as possible by the employee, the emergency service, or other person as to the absence and, where possible, the expected duration of leave, taking into account any necessary minimum break between attending the Emergency and attending the next shift.
- 6.17.3 The employee must complete a leave of absence form immediately upon return to work.
- 6.17.4 The application form must be accompanied by a certificate from the emergency organisation certifying that the employee was required for the specified period.
- 6.17.5 An employee, who during the course of an Emergency, volunteers their services to an emergency organisation, shall comply with subclauses 6.17.2, 6.17.3 and 6.17.4.

6.18 Defence Force Reserves Leave

- 6.18.1 The Employer must grant leave of absence for the purpose of defence service to an employee who is a volunteer member of the Defence Force Reserves or the Cadet Force. Defence service means service, including training, in a part of the Reserves or Cadet Force.
- 6.18.2 Leave of absence may be paid or unpaid in accordance with the provisions of this subclause.
- 6.18.3 Application for leave of absence for defence service shall, in all cases, be accompanied by at least 6 weeks' notice and evidence of the necessity for attendance. At the expiration of the leave of absence granted, the employee shall provide a certificate of attendance to the Employer.
- 6.18.4 Paid leave
 - (a) An employee who is a volunteer member of the Defence Force Reserves or the Cadet Force is entitled to paid leave of absence for defence service, subject to the conditions set out hereunder.
 - (b) Part Time Employees shall receive the same paid leave entitlement as Full Time Employees but payment shall only be made for those hours that would normally have been worked but for the leave.
 - (c) On written application, an employee shall be paid salary in advance when proceeding on such leave.

- (d) An employee is entitled to paid leave for a period not exceeding 105 hours on full pay in any period of twelve months commencing on 1 July in each year.
- (e) An employee is entitled to a further period of leave, not exceeding 16 calendar days, in any period of twelve months commencing on July 1. Pay for this leave shall be at the rate of the difference between the normal remuneration of the employee and the Defence Force payments to which the employee is entitled if such payments do not exceed normal salary. In calculating the pay differential, pay for Saturdays, Sundays, Public Holidays and rostered days off is to be excluded, and no account is to be taken of the value of any board or lodging provided for the employee.

6.18.5 Unpaid leave: Leave of absence for the purpose of defence service shall be unpaid where:

- (a) the absence exceeds the paid entitlement prescribed in subclause 6.18.4 of this Agreement; or
- (b) the employee fails to provide the Employer with at least 6 weeks' notice and evidence of the necessity for attendance as required by subclause 6.18.3 of this Agreement.

6.18.6 Use of other leave

- (a) An employee may elect to use annual or long service leave credits for some or all of their absence on defence service, in which case they will be treated in all respects as if on normal paid leave.
- (b) The Employer cannot compel an employee to use annual leave or long service leave for the purpose of defence service.

6.19 **Family and Domestic Violence Leave**

6.19.1 In recognition that employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work the Employer has agreed to the leave which is the subject of this clause. The Employer is committed to providing support to employees that experience family and domestic violence.

6.19.2 An employee will not be discriminated against or have adverse action taken against them because of their disclosure of, experience of, or perceived experience of, family and domestic violence.

6.19.3 The Employer does not tolerate employees perpetrating family and domestic violence in or from the workplace. Employees must not use work facilities to perpetrate family and domestic violence. Any such conduct is a breach of employment obligations and any employees who do so will face disciplinary action.

Definition of Family and Domestic Violence

6.19.4

- a) The meaning of family and domestic violence is in accordance with the definition of “family violence” in the *Restraining Orders Act 1997* (Section 5A).
- b) To avoid doubt, this definition includes, but is not limited to behaviour that:
 - i. is physically or sexually abusive; or
 - ii. is emotionally or psychologically abusive; or
 - iii. is economically abusive; or
 - iv. is threatening; or
 - v. is coercive; or
 - vi. in any other way controls or dominates the family or household member and causes that person to feel fear for their safety or wellbeing or that of another person; or
 - vii. causes a child to hear or witness, or otherwise be exposed to the effects of, such behaviour.

Access to Family and Domestic Violence Leave

- 6.19.5 In accordance with the following subclauses, an employee, may make application for leave to deal with activities related to family and domestic violence. The Employer will assess each application and give consideration to the personal circumstances of the employee seeking the leave.
- 6.19.6 Such activities related to family and domestic violence may include attendance at medical appointments; legal proceedings; counselling; appointments with a medical or legal practitioner; relocation or making other safety arrangements; and other matters of a compassionate or pressing nature related to the family and domestic violence which arise without notice and require immediate attention.
- 6.19.7 Subject to subclauses 6.19.5 and 6.19.6 an employee experiencing family and domestic violence will have access to 10 non-cumulative days per year of paid family and domestic violence leave, in addition to their existing leave entitlements.
- 6.19.8 Upon exhaustion of the leave entitlement in subclause 6.19.7, employees will be entitled to up to two days’ unpaid family and domestic violence leave on each occasion.
- 6.19.9 Family and domestic violence leave does not affect sick leave entitlements, long service leave entitlements or annual leave entitlements.
- 6.19.10 Subject to the Employer’s approval of the application, family and domestic violence leave may be taken as whole or part days off.

Notice and Evidentiary Requirements

- 6.19.11 The employee shall give their Employer notice as soon as reasonably practicable of their request to take leave under this clause.
- 6.19.12 Supporting evidence of family and domestic violence may be required to access paid leave entitlements however this should not be onerous on the employee. Leave can be granted without supporting documentation when the manager/ supervisor is satisfied that it is not required.
- 6.19.13 Evidence may include a document issued by the police, a court, a legal service, a health professional, a counsellor, a financial institution, a family violence support service or a refuge service. A statutory declaration may also be provided.
- 6.19.14 Such evidence will be dealt with in accordance with the confidentiality provisions in this clause. Only the employee will retain a copy of the evidence and information will not be kept on an employee's personnel file, unless otherwise agreed.

Access to Other Forms of Leave

- 6.19.15 Subject to the leave provisions of this Agreement, an employee experiencing family and domestic violence may use other leave entitlements.
- 6.19.16 Subject to the Employer's approval of the application, and sufficient leave entitlements being available, leave may be taken as whole or part days off.
- 6.19.17 Forms of other paid accrued leave include:
 - (a) sick leave;
 - (b) annual leave;
 - (c) accrued long service leave;
 - (d) purchased leave; and/or
 - (e) Credit Days.

- 6.19.18 Approval of leave without pay is subject to the provisions of this Agreement.

Confidentiality

- 6.19.19 The Employer will take all reasonable steps to ensure any information disclosed by Employees regarding family and domestic violence is kept strictly confidential. Disclosure will be on a need-to-know basis only and only to maintain safety. Where possible, disclosure will only occur with the express consent of the employee.
- 6.19.20 Employers will take reasonable steps to ensure any information or documentation provided by an employee regarding family and domestic violence is kept confidential. Generally speaking, only the employee will retain a copy of evidence for accessing family and domestic violence leave and information will not be kept on an employee's personnel

file.

6.19.21 Subsequent disclosure within an organisation should be on a need-to-know basis, for example if there is a potential for workplace safety to be impacted and generally with the consent of the employee.

6.19.22 This clause does not override any legal obligations to disclose information.

Contact Person

6.19.23 The Employer will identify contact/s within the workplace who will be trained in family and domestic violence and associated privacy issues. The Employer will advertise the name of any family and domestic violence contacts within the workplace.

Individual Support

6.19.24 Where there is a risk to the personal health or safety of an employee who is experiencing or has experienced family and domestic violence, the Employer, where appropriate, may:

- a) facilitate flexible working arrangements, such as changes to hours/days worked, working different days or length of days, changed shift/rostering arrangements, in accordance with the provisions of this Agreement; and/or

- b) make workplace modifications including changes to the employee's telephone number and email address and, where appropriate/practicable, the employee's work location.

6.19.25 An employee who is experiencing or has experienced family and domestic violence may access confidential counselling support via the Employer's employee Assistance Program (EAP).

Workplace Safety

6.19.26 Where an employee raises issues of family and domestic violence the Employer should establish with the employee the level of risk and seek advice from their human resource/safety specialist to review and implement specific safety and emergency management systems and plans.

6.19.27 With the exception of access to the Employer's EAP which is available to all employees, the provisions of this clause are only applicable to employees who are victims of family and domestic violence.

7 CONSULTATION

7.1 Introduction of Change

7.1.1 This term applies if:

- (a) the Employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
 - (b) the change is likely to have a significant effect on employees of the enterprise.
- 7.1.2 The Employer must notify the relevant employees and the Union of the decision to introduce the major change.
- 7.1.3 As soon as practicable after making its decision, the Employer must:
 - (a) discuss with the relevant employees and the Union:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the employees; and
 - (iii) measures the Employer is taking to avert or mitigate the adverse effect of the change on the employees; and
 - (b) for the purposes of the discussion — provide, in writing, to the relevant employees and the Union:
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the change on the employees; and
 - (iii) any other matters likely to affect the employees.
- 7.1.4 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 7.1.5 The Employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 7.1.6 If a term in the enterprise agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Employer, the requirements set out in subclauses 7.1.2, 7.1.3 and 7.1.5 are taken not to apply.
- 7.1.7 In this provision, a major change is “likely to have a significant effect on employees” if it results in:
 - (a) the termination of the employment of employees; or
 - (b) major change to the composition, operation or size of the Employer’s workforce or to the skills required of employees; or
 - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or

- (d) the alteration of hours of work; or
- (e) the need to retrain employees; or
- (f) the need to relocate employees to another workplace; or
- (g) the restructuring of jobs.

7.1.8 In this provision, “relevant employees” means the employees who may be affected by the major change.

7.2 Joint Consultative Committee

7.2.1 The Joint Consultative Committee (JCC) will be a forum for consultation on matters relating to:

- (a) rostering and rostering practice; inclusive of rostering instructions, administrative processes related to rostering inclusive of fatigue management;
- (b) industrial matters generally;
- (c) fixed term and labour hire usage; and
- (d) significant changes to work organisation and or practices in the workplace.

7.2.2 The JCC will be comprised of the Employer or its nominee, Employer nominated representatives and Union nominated representatives.

7.2.3 For the avoidance of doubt, ‘rostering representatives’ as provided for under this Agreement may be required to attend JCC meetings as required for specific roster related matters.

7.2.4 The JCC will convene as required and agreed between the parties, provided that the JCC shall meet at least once every three months.

7.2.5 The JCC will determine its own operating procedures.

7.2.6 The JCC parties are to provide all reasonable and relevant information except confidential commercial, business or personal information, the release of which may harm a party or individual.

8 DISPUTE RESOLUTION

8.1 Dispute Resolution Procedure

8.1.1 Any questions, disputes or difficulties arising under this Agreement or in the course of the employment of employees covered by this Agreement shall be dealt with in accordance with this clause.

- 8.1.2 The employee/s and the manager with whom the dispute has arisen shall discuss the matter and attempt to find a satisfactory solution, within three (3) working days. An employee may be accompanied by a union representative.
- 8.1.3 If the dispute cannot be resolved at this level, the matter shall be referred to and be discussed with the relevant manager's superior and an attempt made to find a satisfactory solution, within a further three (3) working days. An employee may be accompanied by a union representative.
- 8.1.4 If the dispute is still not resolved, it may be referred by the employee/s or union representative to the Employer or his/her nominee.
- 8.1.5 Where the dispute cannot be resolved within five (5) working days of the union representatives' referral of the dispute to the Employer or his/her nominee, either party may refer the matter to the WAIRC.
- 8.1.6 The period for resolving a dispute may be extended by agreement between the parties.
- 8.1.7 At all stages of the procedure the employee may be accompanied by a union representative.
- 8.1.8 Notwithstanding the above the union may raise matters directly with representatives of the Employer. In each case the union and the employer shall endeavour to reach agreement. If no agreement is reached either party may refer the dispute to the WAIRC for conciliation and/or arbitration.
- 8.1.9 The parties covered by this Agreement will maintain and will not disrupt the provision of services to the public while disputes are being dealt with under this procedure.

8.2 Board of Reference

- 8.2.1 Under this Agreement, no disputes between the parties in relation to any matter will be determined by a Board of Reference.

9 REGISTERED ORGANISATIONS MATTERS

9.1 Leave To Attend Union Business

- 9.1.1 The Employer shall on application of the Union grant paid leave during working hours to an employee:
- (a) who is required to give evidence before an Industrial Tribunal;
 - (b) who is a union nominated representative of the employees and is required to attend negotiations and/or conferences between the Union and Employer;

- (c) when prior agreement between the Union and the Employer has been reached for the employee to attend official meetings preliminary to negotiations or industrial hearings; or
- (d) who is a Union nominated representative of employees and is required to attend working parties.

9.1.2 The granting of leave pursuant to this subclause shall only be approved:

- (a) where an application for leave has been submitted by an employee in a reasonable time in advance;
- (b) for the minimum period necessary to enable the Union business to be conducted or evidence to be given;
- (c) for those employees whose attendance is essential; or
- (d) when the operation of the organisation is not being unduly affected and the convenience of the Employer impaired.

9.1.3 The Employer shall be entitled to change the roster to minimise the effect of the employee's absence on the operation of the organisation.

9.1.4 Leave of absence will be granted at the Base Rate of Pay or, where the employee works part of a shift, at the rate the employee would have earned had the employee not been absent from their rostered shift.

9.1.5 The Employer shall not be liable for any expenses associated with an employee attending to Union business.

9.1.6 Leave of absence granted under this subclause shall include any necessary travelling time in normal working hours.

9.1.7 An employee shall not be entitled to paid leave to attend Union business other than prescribed by this subclause.

9.1.8 The provisions of this subclause shall not apply when an employee is absent from work without the approval of the Employer.

9.2 **Facilities For Workplace Delegates**

9.2.1 The Employer recognises the rights of the Union to organise and represent its members. Union representatives (delegates) in the organisation have a legitimate role and function in assisting the union in the tasks of recruitment, organising, communication and representing members' interests in the workplace and the organisation.

9.2.2 The Employer will recognise union representatives in the organisation and will allow them to carry out their role and functions.

- 9.2.3 The Union will advise the Employer in writing of the names of the Union representatives in the organisation and their role and authorities.
- 9.2.4 Subject to prior approval, the Employer shall recognise the authorisation of each Union representative in the organisation and shall provide them with the following:
- (a) reasonable paid time off from normal duties:
 - (i) to perform their functions as a union representative such as organising, recruiting, individual grievance handling, and collective bargaining; and
 - (ii) to attend union business in accordance with Clause 9.1 – Leave to Attend Union Business of this Agreement.
 - (b) access to facilities required for the purpose of carrying out their duties. Facilities may include but not be limited to, the use of lockable filing cabinets, meeting rooms, telephones, fax, email, Internet, photocopiers and stationery. Such access to facilities shall not unreasonably affect the operation of the organisation and shall be in accordance with normal Employer protocols.
 - (c) a notice board for the display of union materials including broadcast email facilities. Broadcast email facilities will need to be in accordance with the established policies, procedures and guidelines of the Employer. This means prior approval for emailed materials must be issued by the Employer's executive management.
 - (d) paid access to periods of leave for the purpose of attending union training courses in accordance with Clause 9.3 – Trade Union Training Leave of this Agreement.
 - (e) notification of the commencement of new employees and, as part of their induction, time to discuss the benefits of Union membership with them.
 - (f) access to a sheltered area for meetings of members.
 - (g) access to work locations, names, and rostered hours of work of employees. This information and access will also be provided to Union officials upon request.
 - (h) access to awards, agreements, policies and procedures.
 - (i) access to information on matters affecting employees in accordance with the consultation provisions under this Agreement.
 - (j) the names of any Equal Employment Opportunity representatives.
- 9.2.5 The Employer agrees, upon receiving written authorisation from an employee, to provide to the Union with five (5) working days the employee's bank account details and subsequent changes from time to time for the purpose of enabling the employee to establish direct debit facility for the payment of union dues. Employers must be

indemnified against financial accountability related to these transactions.

9.2.6 Group inductions: Where the Employer conducts a group induction, which may be on or off site, the Union shall be given at least 14 days' notice of the time and place of the induction. The Union will be entitled to at least thirty minutes to address new employees without Employer representatives being present.

9.2.7 The Employer recognises that it is paramount that union representatives in the workplace are not threatened or disadvantaged in any way as a result of their role as a Union representative.

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9.3 Trade Union Training Leave

9.3.1 Subject to the convenience of the employer and the provisions of this clause:

(a) the Employer shall grant paid leave of absence to employees who are nominated by the Union to attend short courses relevant to the public sector or the role of union workplace representative, conducted by the Union party to this Agreement or its nominated provider.

(b) the Employer shall grant paid leave of absence to attend similar courses or seminars as from time to time approved by agreement between the Employer and the relevant Union.

9.3.2 An employee shall be granted up to a maximum of five (5) days paid leave per calendar year for trade union training or similar courses or seminars as approved. However, leave of absence in excess of five days and up to ten (10) days may be granted in any one calendar year provided that the total leave being granted in that year and in the subsequent year does not exceed ten days.

9.3.3 Leave of absence will be granted at the Base Rate of Pay and shall not include shift allowances, penalty rates or overtime.

9.3.4 Where a public holiday or Rostered Day Off falls during the duration of a course, a day off in lieu of that day will not be granted.

9.3.5 Part Time Employees shall receive the same entitlement as Full Time Employees, but payment shall only be made for those hours that would normally have been worked but for the leave.

9.3.6 The granting of leave pursuant to the provisions of this clause is subject to the operation of the Employer not being unduly affected and to the convenience of the Employer.

9.3.7 Any application by an employee shall be submitted to the Employer for approval at least four weeks before the commencement of the course, provided that the Employer may

agree to a lesser period of notice.

- 9.3.8 All applications for leave shall be accompanied by a statement from the Union indicating that the employee has been nominated for the course. The application shall provide details as to the subject, commencement date, length of course, venue and the organisation that is conducting the course.
- 9.3.9 A qualifying period of 12 months service shall be served before an employee is eligible to attend courses or seminars of more than one half-day duration. An Employer may, where special circumstances exist, approve an application to attend a course or seminar where an employee has less than 12 months service.
- 9.3.10 The Employer shall not be liable for any expenses associated with an employee's attendance at trade union training courses or seminars.
- 9.3.11 Leave of absence granted under this clause shall include any necessary travelling time in normal working hours immediately before or after the course or seminar.

9.4 Right of Entry

- 9.4.1 The parties acknowledge that the Act empowers authorised representatives of the Union to exercise a right to enter the Employers' premises in the circumstances and for the purposes specified in Part II Division 2G of the Act.

10 MISCELLANEOUS PROVISIONS

10.1 Occupational Safety and Health Representatives Records

- 10.1.1 The Employer shall maintain an Occupational Safety and Health (OSH) Representative Register (the Register).
- 10.1.2 The Register is to record the following information for each OSH representative in the Department/Organisation covered by this Agreement
 - (a) name;
 - (b) work branch/division/directorate;
 - (c) work location;
 - (d) job title/occupation;
 - (e) date of election as an OSH representative; and
 - (f) training details on completion of relevant OSH training courses, including initial and refresher training dates.
- 10.1.3 The Employer shall provide a copy of the Register to the Union every six (6) months.


- 10.1.4 The Register is to be submitted to the Department of Mines, Industry Regulation and Safety - Public Sector Labour Relations division on 31 January each year, for the previous year.

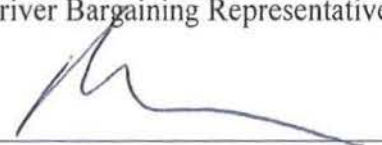
SIGNATURES OF PARTIES

Signed  Date: 1st April 2019
Joshua Dekuyer

Branch Secretary. The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch

Signed  Date: 1st April 2019
Railcar Driver Bargaining Representative

Signed  K. JENKINS Date: 1st April 2019
Railcar Driver Bargaining Representative

Signed  Date: 2/4~~th~~/19
Richard Sellers

Chief Executive Officer. The Public Transport Authority of Western Australia

SCHEDULE 1: BASE RATES OF PAY

Classification	<i>Public Transport Authority/ ARTBIU (Transperth Train Operations Rail Car Drivers) Industrial Agreement 2016</i>	<i>Public Transport Authority/ ARTBIU (Transperth Train Operations Rail Car Drivers) Industrial Agreement 2019</i>	
	Base Rate of Pay as at 17 March 2018	Base Rate of Pay per week from 17 March 2019	Base Rate of Pay per week from 17 March 2020
Trainee Railcar Driver	\$1,200.70	\$1,247.80	\$1,264.10
Railcar Driver	\$1,448.80	\$1,468.00	\$1,487.20
Driver Trainer	\$1,535.80	\$1,556.10	\$1,576.40
Driver Coordinator	\$1,695.10	\$1,717.60	\$1,740.00