



# DECISION

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

**Pacific National Bulk Rail Pty Ltd T/A Pacific National**  
(AG2021/5834)

## **PACIFIC NATIONAL VICTORIAN BULK RAIL ENTERPRISE AGREEMENT 2021**

Rail industry

COMMISSIONER MCKINNON

MELBOURNE, 20 JULY 2021

*Application for approval of the Pacific National Victorian Bulk Rail Enterprise Agreement 2021.*

[1] Pacific National Bulk Rail Pty Ltd t/a Pacific National has applied for approval of a single enterprise agreement known as the *Pacific National Victorian Bulk Rail Enterprise Agreement 2021* (the Agreement).

[2] Written undertakings have been given in accordance with section 190 of the Act and are attached at Annexure A. I am satisfied that the undertakings are not likely to cause financial detriment to any employee covered by the Agreement and do not result in substantial changes to the Agreement. The undertakings are taken to be terms of the Agreement.

[3] With the undertakings now given, I am satisfied that each of the requirements of sections 186, 187, 188 and 190 of the Act, as are relevant to this application for approval, have been met.

[4] The Agreement is approved and will operate from 27 July 2021. The nominal expiry date of the Agreement is 18 July 2024.

[5] The Agreement covers the Australian Rail Tram and Bus Industry Union.

  
  
COMMISSIONER

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## Annexure A

### IN THE FAIR WORK COMMISSION

FWC Matter No  
AG2021/5834

Applicant:  
Pacific National Bulk Rail Pty Ltd T/A Pacific National

Section 185 – Application for approval of a single enterprise agreement

## Undertaking – Section 190

I, Nicholas Clifton, Head of Operations have the authority given to me by Pacific National Bulk Rail Pty Ltd to provide the following undertakings with respect to the Pacific National Victorian Bulk Rail Enterprise Agreement 2021 ("the Agreement"):

1. Notwithstanding the provisions in the Agreement, this Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.
2. Where Pacific National has an employee engaged under the classification Level 1 – Trainee Locomotive Driver, and they are required to commence their shift at or between the hours of 6:00pm to 6:00am Monday to Friday or work on Weekends or work on Public Holidays, they will be paid at the Level 2 – Second Person Hourly Rate of Pay. This includes where Level 1 – Trainee Locomotive Drivers are employed on a casual basis.
3. Where a Level 1 – Trainee Locomotive Driver, is required to work overtime they will be paid at the Level 2 – Second Person Hourly Rate of Pay.
4. Where a Level 1 – Casual Trainee Locomotive Driver commences a shift prior to 6:00pm and finishes the shift after 6:30pm, they will be paid at the Level 2 – Second Person Hourly Rate of Pay.
5. Pacific National will not engage Level 1 employees on a part time basis.

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

Nicholas Clifton  
Head of Operations – Bulk



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Signature

15 July 2021  
Date

# Pacific National Victorian Bulk Rail Enterprise Agreement 2021

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

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# Part A - Common Clauses

## 1. Title

Pacific National Victorian Bulk Rail Enterprise Agreement 2021.

## 2. Parties

The parties to this Agreement are:

- Pacific National Bulk Rail Pty Ltd; (Referred to in this Agreement as “**Pacific National Bulk Rail**” or “Company”);
- Australian Rail Tram and Bus Industry Union (“**ARTBIU**”); and
- Employees of Pacific National Bulk Rail who perform work within the Victorian Bulk business of the Pacific National group in positions which fall within the classification structures contained within this Agreement, primarily within the State of Victoria.

## 3. Scope

This Agreement shall apply to:

- (a) Each of the parties; and
- (b) Employees of Pacific National Bulk Rail who perform work within the Victorian Bulk business of the Pacific National group in positions which fall within the classification structure/s contained within this Agreement, primarily within the State of Victoria.
- (c) This Agreement shall comprise of Parts A, B schedule 1, 2, 3 and Classification Specific Sections which shall be read in conjunction with each other.
- (d) No person engaged by Pacific National Bulk Rail under an Appointment Agreement, to perform work equivalent to the classifications contained within this agreement are to receive less than the applicable terms and conditions which apply to that classification, position or role.

## 4. Term

This Agreement will operate seven (7) days from approval of the Agreement by the Fair Work Commission, with a nominal expiry date of 18 July 2024.

## 5. Glossary of Terms

**Agreement** shall mean Part A and B schedule 1, 2 and 3..

**Aggregate Allowance** shall mean an allowance payable to Employees in Part B of this agreement in lieu of any other allowance which may be payable to the Employee if the Employee was covered by an award. It shall **also** include the following allowances – shift penalties, wasted meal allowance, overtime meal allowance, fuel point allowance, overtime (0.5) and lay back allowance. The hourly rate of pay will include these allowances.

**Blank Line Working** means a roster or a line or lines in a roster where no known work is indicated (i.e. not Forecast Work rostering). Such rostering may apply to all Part B Employees.

**Commencement Date** means 7 days after this Agreement is approved by the Fair Work Commission

**Dayworker** means any Employee (except casual employees) whose roster provides for ordinary hours to be worked on any day Monday to Friday between the hours of 0600 and 1800.

**Duty Cycle Part B Employees** for Train Crew Employees only, it shall mean a stand-alone period of six (6) weeks, where ordinary hours are averaged. The Duty Cycle consists of 240 ordinary hours for Preserved Employees and 228 ordinary hours for Non-Preserved Employees.

**Employee** means a person who is employed in a full time, part time, fixed, task or casual basis.

**Forecast Work/Working** means a shift where sign-on and Shift Lengths are provided.

**Home Base** shall mean the Employee's normal location where they commence their shift.

**Hourly Rate** shall mean the rates as set out in this agreement.

**Master Roster** means Roster(s) that are permanently displayed at a location that show rostered days off and any known tasks or work.

**Non-Preserved Employee** means a full-time employee who was not covered by the Agreement prior to the approval of the 2021 Agreement by the Fair Work Commission

**Permanent Line** means an allocated line on a roster.

**Preserved Employee** means a full-time employee who was covered by the Agreement prior to the approval of the 2021 Agreement by the Fair Work Commission

**Rest Location** means a nominated location where Train Crew are signed off/on and are accommodated away from their Home Base.

**Rostered Days Off (“RDO’s”)** previously known as Off Rostered Days (“ORD’s”).

**Shiftworker** means any Employee who works rostered shifts including shifts outside the hours of 0600 to 1800 Monday to Friday and is not defined as a Dayworker under this Agreement for the purposes of the NES.

**The Act** means *The Fair Work Act 2009* as amended from time to time.

**Working Roster** means Roster(s) developed from Master Rosters that provide more details of attendance requirements.

## 6. Contract of Employment

### 6.1 General Principles and Undertakings

- (a) Pacific National Bulk Rail shall use their best endeavours to ensure that full time employment is the principal form of employment. Further, subject to the provisions contained in this Agreement, no Employee shall have their form of employment altered without agreement of the affected Employee(s).
- (b) Notwithstanding the above, Pacific National Bulk Rail may offer employment on one or more of the types of employment as described below.
- (c) Full-time Part B Employees who were employed prior to the approval of the Agreement by the Fair Work Commission and are those who are engaged to work ordinary hours of either two thousand and eighty hours (2080) per annum (for Preserved Employees which is the equivalent of fifty two (52) weeks at thirty eight (38) ordinary hours per week plus two(2) additional hours per week or Part B Employees who were employed after the approval of the Agreement by the Fair Work Commission and who are engaged to work ordinary hours of one thousand nine hundred and seventy six (1976) per annum (for Non Preserved Employees, made up of fifty two

(52) weeks at thirty eight (38) ordinary hours per week). The above mentioned ordinary hours are inclusive of public holidays and annual leave hours.

- (d) Part-time Employees are those (other than casual Employees) employed to work less than the ordinary hours of work for an equivalent full-time Employee (Non Preserved). Further, a part time Employee shall:
- (i) Be engaged for no fewer than four (4) hours per engagement.
  - (ii) Be entitled to pro rata accruals with respect to full time employee's entitlement to annual, personal and long service leave.
  - (iii) Have the minimum number of guaranteed fortnightly hours agreed to in writing,
  - (iv) Be provided the number of days per fortnight that they will be rostered to work (Working Days)
  - (v) Be required to complete full rostered shift(s) on Working Day(s) with the requisite notice provided for in the Agreement to meet any shortfall of guaranteed fortnightly hours over the duty cycle. Such shifts may result in the employee exceeding their guaranteed fortnightly hours. For example, if an employee has guaranteed fortnightly hours of 40 hours and in a fortnight and have worked shifts that total thirty six (36) hours, Pacific National Bulk Rail can roster an employee on for an additional shift within the shift limit provisions to meet the minimum guaranteed hours on their Working Days which will be paid at the ordinary hourly rate.
  - (vi) Receive the minimum number of designated RDOs as Full-Time employees or greater as designated in clause B 4(a)(i). Part time employees will be entitled to Additional RDOs provided in clause B4(a)(i) where they work predominantly on a Blankline roster.
  - (vii) Have days that are not rostered as Working Days or designated RDOs, defined as a Part Time Not Available Day (PTNAD).
  - (viii) Have the ability to agree to work additional hours on PTNAD's and Working Days at ordinary rates up to a maximum of 76 ordinary hours per fortnight averaged over a six (6) week duty cycle.
  - (ix) Have the ability to provide Pacific National Bulk Rail with advanced notice that they are available to work additional ordinary hours beyond their guaranteed fortnightly hours on PTNAD's and/or Working Day(s), Pacific National Bulk Rail will roster accordingly if the work is available in accordance with the relevant rostering provisions in the Agreement.
    - (A) If an employee has provided advanced notice that they are available to work additional ordinary hours on PTNAD's and/or Working Days, they can withdraw this availability with a minimum one (1) weeks' notice.
  - (x) Have PTNAD's and designated RDOs exhibited on the Master Roster.
  - (xi) At a minimum be paid their guaranteed fortnightly hours on the applicable pay day following the end of the fortnightly pay period. The employee will also be paid any additional ordinary hours worked in the fortnight subject to 6.1 (d) (xii) & (xiii).
  - (xii) Where a part time Employee works hours in excess of seventy six (76) hours in a fortnightly pay period:
    - (A) Seventy six (76) ordinary hours will be paid in the applicable pay run for that pay period; and
    - (B) Hours worked in excess of seventy six (76) ordinary hours will be recorded in a bank of hours (**Additional Hours Bank**). The Additional



Hours Bank will operate for the duration of each six (6) week duty cycle and reset to zero at the commencement of the next duty cycle.

- (xiii) Where a part time Employee works less than their minimum guaranteed fortnightly hours in a given fortnight (Shortfall Hours) the following will take place:
  - (A) the Shortfall Hours will be deducted from the Additional Hours Bank, Schedule 3 – example 1; and
  - (B) Where there are insufficient hours in the Additional Hours Bank to cover the Shortfall Hours, all or part of the Shortfall Hours will be deducted from any hours in a future fortnight (within the six (6) week duty cycle) worked in excess of the employee's guaranteed fortnightly hours. See Schedule 3 - example 2.
- (xiv) Employees will be eligible for Overtime penalty payments in the following instances, subject to clause (vi):
  - (A) Ordinary hours worked in excess of two hundred and twenty eight (228) hours, subject to subclause 6.1(vi) and (vii); see Schedule 3- example 3; and
  - (B) Where the employee works standalone overtime in accordance with clause 39(b); for example work performed on a designated rostered day off. Stand-alone overtime will be paid in accordance with clause 39 and Part B, clause 2.2 Overtime
- (xv) Be entitled to Public Holidays in the following manner:
  - (A) If a public holiday falls on a Working Day, a Part Time employee will be entitled to the provisions set out in 18 (d) (iii).
  - (B) If a Public Holiday falls on an RDO, a Part Time employee will be entitled the provisions set out in 18 (d) (iv).
  - (C) If a Public Holiday falls on a PTNAD a Part Time employee will not be entitled to the provisions set out in 18 (d), unless the employee agrees to work a public holiday on a PTNAD's where they will be paid in accordance with 18 (d) (iii).
- (e) Casual Employees are those engaged on an irregular and ad hoc basis with no firm advance commitment of work. Casual Employees are paid by the hour. The minimum engagement on each instance shall be four (4) hours. Casual Employees shall be entitled to the hourly rate of pay applicable to the equivalent full time classification plus an additional loading of 25% paid in lieu of all benefits provided to Full-time and Part-time employees under the NES and this Agreement, including without limitation paid annual, personal/carers, jury service and compassionate leave, notice of termination, and redundancy pay.
- (f) Casual Employees shall not be entitled to:
  - (i) Annual leave, personal/carer's leave or compassionate leave; or
  - (ii) Parental leave (unless the casual Employees are entitled to parental leave in accordance with The Act); or
  - (iii) Public holidays (unless work is performed on a public holiday by the Casual Employee, in which case he/she will be entitled to the payment specified in clause 18(c); or
  - (iv) Redundancy payments.

- (g) Pacific National Bulk Rail may, at any time, offer a casual Employee the opportunity to be appointed as a full-time or as a part-time Employee, under terms provided for in this Agreement
- (h) Where a casual Employee has worked the equivalent ordinary hours of a full time Employee for a continuous period of six (6) months he/she may seek to be appointed as a full time or as a part-time Employee. Where a casual Employee seeks appointment under this sub-clause, Pacific National Bulk Rail will comply with such a request and make an offer of full time or part-time employment..
- (i) Any offer to convert the employment status of a casual Employee must be in writing. The casual Employee may elect to accept or to reject any offer made.
- (j) Where an offer is made and rejected, but Pacific National Bulk Rail considers there is a position vacant for an additional full-time or part-time employee, it may seek to fill the position by other means.
- (k) Fixed Term Employment:
  - (i) A full-time or part-time Employee may be engaged for a fixed term, or for a fixed task(s) for up to a period of twenty four (24) months.
  - (ii) If a fixed task or fixed term Employee becomes an ongoing Employee the period worked as a fixed task, or fixed term Employee forms part of that Employee's period of continuous service for all purposes of this Agreement.
  - (iii) For the avoidance of doubt, fixed task, or fixed term Employees accrue, annual leave, and personal/carers leave under this Agreement in the same manner as full-time or part-time ongoing Employees. Only accrued annual leave is payable on cessation of employment.
  - (iv) A fixed term employee's period of employment may be described as a set period of time or a maximum duration of time of up to twenty four (24) months employment. In the event the fixed term is described as a maximum duration of time the employer may terminate a fixed term employee's employment by provision of notice set out in clause 14 Termination of Employment. For the avoidance of doubt the notice provided to the affected employee under clause 14 will be for the original engagement period irrespective of whether this time was completed.
  - (v) At the end of a fixed task, or fixed term Employee's contract of employment, there is no obligation for Pacific National Bulk Rail to offer any further or additional employment.

## **7. Probationary Employment**

- (a) A probationary period of up to three (3) months from the date of commencement will be applied to all new Employees, other than casual Employees and fixed term Employees engaged for less than a period of six months and will be outlined in their letter of engagement.
- (b) During the probationary period, the Employee's employment may be terminated by either the Employee or Pacific National Bulk Rail by providing one (1) week's written notice.
- (c) On commencing employment, probationary Employees will be advised as to the performance standards required, including the provision of regular performance reviews during the period of probationary employment.

## **8. Recruitment, Selection and Induction**

- (a) The selection process for filling position vacancies will be based on the merit principle. The merit of applicants will be determined by considering the abilities, competence, qualifications, experience, standard of work performance and work history of candidates, relative to the position.
- (b) Pacific National Bulk Rail will advertise all vacancies for positions covered by this Agreement, unless those vacancies are filled in accordance with prevailing policy related to redeployment or transfer of Employees.
- (c) All vacancies will be advertised internally within all Pacific National business divisions. At times, Pacific National may also advertise a vacancy simultaneously internally and through media advertisements, recruitment agencies and other sources. Internal advertisements will include the position level from the classification structure contained in this Agreement and the salary level.
- (d) Where an offer is made to appoint Employees under the terms of this Agreement, following advertising, the offer will be in writing in the form of a letter of engagement which shall contain the following:
  - (i) Position, level and title contained in this Agreement;
  - (ii) Appointment date;
  - (iii) Salary level; and
  - (iv) That in addition to the terms of the letter of engagement, this Agreement applies to the Employee's employment.
    - (A) Pacific National will ensure that all Employees are appropriately inducted into their workplace following appointment.
    - (B) All selections will reflect Pacific National Bulk Rail's commitment to equal employment opportunity and the elimination of unlawful discrimination.
    - (C) Pacific National Bulk Rail will provide training relevant to job/position requirements and Employee needs that is aligned to the Transport and Logistics Industry Training Package. Certificates and statements of attainment will be issued to Employees upon satisfying the requirements of the specific training.

## **9. Hours of Work**

- (a) The ordinary hours of work, for Part B Employees, for a full-time Preserved Employee, are Two Thousand and Eighty hours (2080) per annum. This is equivalent to fifty-two (52) weeks at thirty-eight (38) ordinary hours and two (2) additional hours per week which the Employees consider reasonable. The annual ordinary hours are made up as follows:
  - (i) Two Thousand and Eighty Hours, (2080), which includes public holidays as Gazetted by the Victorian Government and two hundred (200) hours of annual leave for a shift worker.
- (b) The ordinary hours of work, for Part B Employees, for a full-time Non-Preserved Employee, are One Thousand, Nine Hundred and Seventy Six hours (1976) per annum. This is equivalent to fifty-two weeks at thirty-eight ordinary hours per week. The annual ordinary hours are made up as follows:

- (i) One Thousand, Nine Hundred and Seventy Six hours (1976), which includes the public holidays as Gazetted by the Victorian Government and one hundred and ninety (190) hours of annual leave for a shift worker.
- (c) While public holiday hours are included in the total hours outlined above, where an Employee is rostered to work on a public holiday they are required to attend for work and undertake activities as rostered, subject to the provisions of The Act.
- (d) In addition to the ordinary hours specified above, an Employee may be required to work reasonable additional hours (with the exception of working on rostered days off ("RDOs") for payment at the hourly rate.
- (e) An Employee may decline to work overtime in circumstances where the working of such overtime would result in the Employee working hours which are unreasonable having regard to:
  - (i) Any risk to Employee health and safety from working the additional hours;
  - (ii) The Employee's personal circumstances, including family responsibilities;
  - (iii) The operational requirements of Pacific National Bulk Rail in relation to which the Employee is required or requested to work the additional hours;
  - (iv) whether the Employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
  - (v) Any notice given by the Employer of any request or requirement to work the additional hours;
  - (vi) Any notice given by the Employee of his or her intention to refuse to work the additional hours;
  - (vii) The usual patterns of work in the industry, or the part of an industry, in which the Employee works;
  - (viii) The nature of the Employee's role, and the Employee's level of responsibility;
  - (ix) The Employee's hours of work over the six (6) weeks (where a six week (6) Duty Cycle is applicable) ending immediately before the Employee is required or requested to work the additional hours; and
  - (x) Any other relevant matter.

## **10. Higher Duties**

- (a) Where Employees perform work that falls within a higher classification level, they will be entitled to be paid at the higher classification level for the shift / shifts during which the work was performed.
- (b) Employees may, on a voluntary basis, act in a higher duties role with the exception of any discipline related activity.

## **11. Stand Down**

Notwithstanding anything expressed or implied in any other provision of this Agreement, Pacific National may deduct payment for any time during which Employees cannot be usefully employed in the classes or grades of work in which those Employees are usually employed, because of any strike or lockout by any persons whomsoever, or any other cause whatsoever for which the Employer cannot justly be held responsible, subject to the following conditions:

- (a) When Pacific National proposes to exercise the right conferred by this clause, it shall notify Employees affected. During the period such notification remains in force the Employees affected shall be deemed to be stood down.
- (b) Employees who are thus stood down shall be treated for all purposes, other than payment of wages, as otherwise having continuity of service and employment.
- (c) Employees who are thus stood down may at any time during the period they are stood down, terminate their employment without notice and shall be entitled to receive as soon as practicable, all wages and other payments to which they are entitled up to the time of termination.
- (d) Employees whose employment is terminated under sub-clause (c) shall for all purposes, other than payment in lieu of notice, be treated as if their employment had been terminated by Pacific National without default of the Employee.
- (e) Employees who are thus stood down shall be at liberty to take other employment and, in such event, it shall be a reasonable excuse for not reporting for duty after being notified that they are required to attend for work with Pacific National that they are working out a period of notice not exceeding one week which they are required to give in such other employment. In such instances, the Employees shall, if required by the Employer, furnish a statutory declaration setting out details of such other employment.
- (f) Employees whom Pacific National proposes to stand down shall be entitled to take any annual leave and accrued days to which they are entitled or which is accruing to them.
- (g) Pacific National shall not be entitled to deduct payment for any public holiday which occurs during the period on which Employees are stood down and for which payment would be due in the ordinary course, except to the extent that Employees have become entitled to payment for the public holiday in other employment. Employees claiming payment for a public holiday shall, if required by Pacific National, provide a statutory declaration setting out details of other employment during this period and the remuneration received there from.

## **12. Superannuation and Salary Sacrifice**

### **12.1 Superannuation**

- (a) For Employees who were employed by Freight Australia immediately prior to the commencement of their employment with Pacific National, and who have continued to have superannuation paid to the following funds, Pacific National shall continue to be a participating member of the following funds:
  - (i) The Revised Scheme;
  - (ii) The New Scheme;
  - (iii) The Transport Scheme;

being funds administered by the Emergency Services and State Super (“**ESSS**”).
- (b) For all other Employees, Pacific National will continue to be a participating member of Vic Super or will contribute to another complying fund nominated by the Employee.
- (c) In the event an Employee does not nominate a fund, the default fund shall be Vic Super.
- (d) Pacific National will not be liable for:

- (i) Any payment in addition to remuneration outlined in this Agreement if the law changes;
- (ii) Financial advice to Employees in relation to salary sacrificed arrangements; and
- (iii) Any costs or losses associated with salary sacrifice arrangements.

## **12.2 Salary Sacrifice**

- (a) Employees may elect to have part of their pre-tax earnings paid into superannuation. The principle is that Employees will continue to receive whatever their fortnightly pre-tax earnings would be under this Agreement less the nominated superannuation contribution.
- (b) This fixed amount can only be varied twice in each twelve (12) month period.
- (c) The Employee will bear the cost of any tax or surcharge resulting from contributions under this clause. Pacific National will not pay additional Employer superannuation contributions as a result of a decision of an Employee to make an election under this clause.
- (d) Pacific National will continue to contribute the earnings required by clause 12.1 and/or the Superannuation Guarantee (Administration) Act 1992, as varied from time to time, or other relevant legislation on the basis of the Employee's ordinary time earnings before the salary sacrifice is deducted.
- (e) The wage/salary deduction will continue to be made during a period of paid leave and the Employee will receive the rate of pay specified in this Agreement less the wage / salary sacrifice.

## **13. Disciplinary Procedures**

- (a) Disciplinary measures are implemented within the context of an overall performance management approach. Employees will at all times be accorded procedural fairness and if the Employee so chooses, a representative which may include a union.
- (b) Before implementing disciplinary measures, Pacific National Bulk Rail will:
  - (i) Gather and analyse any material relevant to the performance issue subject to the disciplinary measures and give the Employee a copy;
  - (ii) Advise the Employee of the allegation(s) of inappropriate performance or behaviour in writing; and
  - (iii) Provide the Employee with an opportunity to respond to any allegation(s).
- (c) During the investigation described above, Pacific National Bulk Rail may stand the Employee down, with pay, during part or all of the investigation.
- (d) In implementing disciplinary action, Pacific National Bulk Rail may:
  - (i) Issue a verbal or written caution, warning or reprimand; or
  - (ii) Impose a temporary reduction in position or classification level and/or pay (for a period of up to twelve months) which may include a written caution or warning where the disciplinary procedure relates to ongoing performance concerns or a safety related breach. When this option is implemented, the Employee will be required to undertake work activities in accordance with the classification level to which they have been regressed until they had their competency re-verified to perform duties at their substantive classification. This option is available to Pacific National Bulk Rail as an alternative to dismissal.; or

- (iii) Dismiss an Employee.
- (e) With the exception of a termination, any Employee who has a grievance in relation to the application of this clause shall follow the Resolution of Dispute Procedure outlined in clause 331 of this Agreement.

**14. Termination of Employment**

- (a) An Employee's employment (other than a casual) will be terminated with the following period of notice:

Period of service	Notice period required
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- (b) For Employees over forty five (45), the notice period specified in sub-clause (a) above will be increased by one (1) week.
- (c) In circumstances where the Employee terminates their employment, the Employee's obligations with respect to notice shall be as per the criteria as set out in sub-clause (a). If an Employee fails to give the required period of notice, Pacific National Bulk Rail has the right to withhold monies owed to the Employee up to a maximum equal to the hourly rate of pay including allowances of the notice period.
- (d) If Pacific National Bulk Rail so chooses, the Employee shall receive a payment in lieu of working the notice period.
- (e) Notwithstanding sub-clauses (a) and (b) above, Pacific National Bulk Rail has the right to terminate an Employee's employment without notice if the Employee is guilty of serious misconduct.
- (f) A casual Employee may be terminated with the provision of one (1) day's notice.
- (g) The hourly rate of pay will be used to determine any payment in lieu of notice.
- (h) In calculating any payment in lieu of notice, the wages an Employee would have received in respect of the hourly rate of pay they would have worked during the period of notice had their employment not been terminated will be used.

**15. Abandonment of Employment**

- (a) Where an Employee is absent from duty for more than 5 days this shall be considered prima facie an abandonment of employment.
- (b) Prior to confirming that an Employee's employment has been terminated under this provision, Pacific National will make reasonable attempts to contact the Employee. If Pacific National cannot contact the Employee, Pacific National will write to the Employee's last known address. In the correspondence, Pacific National will outline that it will consider the Employee's employment terminated unless the Employee provides a satisfactory explanation for their absences within five working days of the date of the letter.
- (c) If no response is received, Pacific National Bulk Rail shall confirm the termination.

## 16. Redundancy

- (a) A redundancy occurs in a circumstance where Pacific National Bulk Rail decides that it no longer requires the position that an Employee has been doing to be done by anyone and there is no suitable alternative position for the Employee. A redundancy is not triggered by the ordinary and customary turnover of labour.
- (b) For the purpose of sub-clause (a) a suitable alternative position which includes, but not limited to, the following:
  - (i) The Employee's skill base, competence and experience or is suitable after the provision of appropriate training and such training is offered by Pacific National Bulk Rail (or such other person) to the Employee at no cost to the Employee; and
  - (ii) Attracts the same or no less favourable terms and conditions of employment overall.
- (c) Without limiting the terms of sub-clause (b) above, a suitable alternative position may be a position:
  - (i) Elsewhere within Pacific National Bulk Rail operations; or
  - (ii) With another related entity to Pacific National Bulk Rail; or
  - (iii) With an unrelated entity in circumstances where Pacific National Bulk Rail has sold all or part of its business.
- (d) Where Pacific National Bulk Rail decides that it no longer requires the position an Employee has been doing to be done by anyone, Pacific National Bulk Rail:
  - (i) Shall undertake consultation, as outlined in clause 30 of this Agreement;
  - (ii) Shall explore opportunities for suitable alternative employment;
  - (iii) Shall call for expressions of interest in suitable alternative employment and/or voluntary redundancy, where appropriate, from other Employees. Pacific National Bulk Rail has the right to accept or reject expressions of interest from individual Employees.
- (e) Subject to sub-clause (d)(iii), shall make offers to Employees for suitable alternative employment, voluntary redundancy and/or initiate involuntary redundancy, as appropriate, following consideration of all of the criteria outlined in this clause.
- (f) Selection for redundancies shall be made having regard to the following criteria:
  - (i) Pacific National Bulk Rail needs for competencies;
  - (ii) Employee qualifications;
  - (iii) Employee past work performance and experience;
  - (iv) An Employee's suitability for Pacific National Bulk Rail future needs; and
  - (v) Any expressions of interest for voluntary redundancy.
- (g) Severance payments are payable upon termination on account of redundancy and are in addition to:
  - (i) Notice or payment in lieu of notice; and
  - (ii) Payment for any accrued but untaken leave or days in lieu which are payable on termination.
- (h) Severance Payments shall be paid at:
  - (i) On the Employee's hourly rate at the time of termination;



- (ii) Shall be paid on a pro rata basis for part years of service. Pro rata shall be calculated to the day,
- (iii) The rate of payment for former Employees of the Public Transport Corporation of Victoria shall be as follows:
  - (A) Two (2) weeks' pay for each year of service from the date of commencement with the Public Transport Corporation of Victoria until 1 May 1999, up to a maximum of twenty (20) weeks' pay; and
  - (B) Three (3) weeks' pay for each year of service from 1 May 1999 up to a maximum of fifteen (15) weeks' pay.
- (iv) For all other Employees the amount of severance payment shall be in accordance with the following table:

<b>Period of Continuous Employment</b>	<b>Severance Pay</b>
Less than 1 year	Nil
1 year and up to the completion of 2 years	4 week's pay
2 years and up to the completion of 3 years	6 week's pay
3 years and up to the completion of 4 years	9 week's pay
4 years and up to the completion of 5 years	12 weeks' pay
5 years and up to the completion of 6 years	15 week's pay
6 years and up to the completion of 7 years	15 week's pay
7 years and up to the completion of 8 years	18 week's pay
8 years and up to the completion of 9 years	24 week's pay
9 years and up to the completion of 10 years	27 week's pay
Greater than 10 years	30 week's pay

- (i) Where an Employee has been offered an alternative position which would require the Employee to relocate, irrespective of whether that position is suitable or otherwise, and the Employee chooses to accept the offer of employment in lieu of accepting a redundancy, Pacific National Bulk Rail shall offer to pay the Employee's relocation expenses, as set out in clause 32 to a maximum of \$30,000.00 provided however that the cost of relocation shall be no more than 75% of the cost of the redundancy.

## **17. Annual Leave**

- (a) Employees are entitled to Annual Leave in accordance with The Act and as set out below:
  - (i) A Dayworker shall receive four (4) weeks annual leave being the equivalent to one hundred and fifty two (152) hours;
  - (ii) Shift Workers Part B Employees shall receive five (5) weeks annual leave.

- (iii) For the purposes of the extra week of leave in section 87 of the Act “Shiftworker means any Employee who works rostered shifts including shifts outside the hours of 0600 to 1800 Monday to Friday and is not defined as a Dayworker under this Agreement for the purposes of the NES.
- (b) An Employee’s entitlement to annual leave accrues progressively during a year of service according to an Employee’s ordinary hours of work, and accumulates year to year.
- (c) Part B Employees will be paid at the hourly rate while on Annual Leave. For train crew, annual leave loading has been included in the aggregate allowance.
- (d) Annual leave is normally rostered and taken in blocks of one or more calendar weeks. Employees may request to take leave in less than one (1) week blocks. Any such request is subject to approval by Pacific National Bulk Rail.
- (e) When annual leave is taken in fewer than one (1) week blocks it will be deducted from the Employee’s accrual in the following manner:
  - (i) Preserved Employees: at eight (8) hours for each day of leave taken. Otherwise all annual leave will be deducted, from the Employees accrual of annual leave, at forty (40) hours per week.
  - (ii) Non Preserved Employees: at 7.6 hours for each day of leave taken. Otherwise all annual leave will be deducted, from the Employees accrual of annual leave, at thirty eight (38) hours per week.
- (f) Leave should be taken in the year following its accrual. For this to happen, Pacific National Bulk Rail will develop rosters, in consultation with affected Employees. Employees must take leave in accordance with leave rosters.
- (g) Employees may, subject to approval by Pacific National Bulk Rail, exchange rostered blocks of annual leave with other Employees in the same position. Exchanges must not create operational constraints and must be cost neutral to Pacific National Bulk Rail. Subject to these conditions, Pacific National Bulk Rail will not unreasonably withhold approval.
- (h) Where an Employee believes that special circumstances exist, they may apply to their manager to defer the taking of their annual leave for up to twelve (12) months. Applications to defer annual leave should be made prior to the posting of the annual leave roster and approval by Pacific National Bulk Rail is subject to the operational needs of the business.
- (i) The parties acknowledge that if, in a particular respect, The Act provides a more favourable outcome for Employees than the entitlements in this clause, and then the Act prevails.
- (j) Where Part B Employees working shift either finish or commences during a period of annual leave, that portion of the annual leave which the Employee has worked shall be credited to the Employees accrued annual leave hours.
- (k) An Employee who becomes ill while on annual leave may have the annual leave re-credited and applied as personal / carer’s leave provided that the Employee produces a medical certificate provided by a medical practitioner within three rostered days of returning from Annual leave.

### **Cashing Out of Annual Leave**

- (l) Employees may, with the agreement of Pacific National Bulk Rail, cash out accrued annual leave as follows:
  - (i) Each request made by an Employee must be by a separate agreement, agreed to in writing between the employee and Pacific National Bulk Rail; and
  - (ii) An Employee may only cash out accrued annual leave in excess of the equivalent of four (4) weeks annual leave. That is, after cashing out, an Employee must have no fewer than the equivalent of four (4) weeks annual leave remaining in their accruals...
  - (iii) The Employee must be paid at least the full amount that would have been payable had the employee taken the annual leave

### **18. Public Holidays**

- (a) Due to the nature of the work performed by Pacific National Bulk Rail, being a business that operates twenty four (24) hours per day, three hundred and sixty five (365) days per year, Employees can be required to work on public holidays in accordance with their respective roster.
- (b) All Employees, other than casual employees, shall be entitled to the public holidays without loss of pay as gazetted by the Victorian Government, which at the time of the approval of the 2021 Agreement include:
  - New Year's Day
  - Australia Day
  - Labour Day (as per State)
  - Good Friday
  - Easter Sunday
  - Easter Monday
  - Easter Saturday (applies to shift workers only)
  - Anzac Day
  - Christmas Day
  - Boxing Day
  - Queen's Birthday
  - Melbourne Cup Day (Victoria)
  - Friday before AFL Grand Final
- (i) Any other days prescribed by the relevant State or Territory. However such days shall not include those excluded by the regulations of The Act.
- (c) Provisions for Day Workers:
  - (i) Substitution:
    - (A) Where Christmas Day and/or Boxing Day falls on a Saturday or Sunday, then the next Monday and/or Tuesday following the Saturday/Sunday shall be substituted as the public holiday.
    - (B) Where Anzac Day; Australia Day; New Year's Day fall on a Saturday or Sunday then the Monday following that Saturday or Sunday shall be substituted as the public holiday.

- (ii) Payment for Working on a Public Holiday:
    - (A) Where a Day Worker is rostered to work on a public holiday and actually works on the public holiday, they shall receive their hourly rate plus an additional payment at the rate of 150% of their normal hourly rate for all hours worked on the public holiday.
    - (B) Where a Day Worker is not rostered to work on a public holiday but is required to work by Pacific National Bulk Rail, all hours worked will stand alone and will be paid at normal overtime rates, as prescribed in this Agreement.
  - (iii) (Day Worker) RDO on a Public Holiday:
 

Where a public holiday falls on a RDO, the Employee shall receive their normal pay.
  - (iv) Notwithstanding sub-clause (c) above, a Day Worker not rostered to work on a public holiday is able to refuse to work on a public holiday if the Pacific National Bulk Rail request to work is not reasonable or the refusal to work is reasonable.
- (d) Provisions for Shift Workers:
- (i) Shift Workers have compensation included in their annual cycle of hours, i.e. two thousand and eighty hours (2080) hours for Preserved employees or one thousand nine hundred and seventy six (1976) hours for Non Preserved Employees, for the public holidays set out in sub-clause (b).
  - (ii) Substitution:
 

There is no substitution of public holidays for Shift Workers. The public holiday will be the actual day on which it falls. For example if Christmas Day falls on a Sunday, then Sunday will be the public holiday. This is irrespective of any substitution made for Day Workers or any changes made as a consequence of Government gazettal notices
  - (iii) Payment for Working on a Public Holiday is as follows:
    - (A) Payment for working on a Public Holiday for employees covered in Part B, where a Shift Worker is rostered to work on a public holiday and actually works; they shall receive their normal pay plus an additional payment at the rate of 1.0 times the hourly rate.
  - (iv) RDO on a Public Holiday:
    - (A) Part B Employees: Where a public holiday falls on an RDO and the employee is not required to work the Employee shall receive a payment of 8 hours (for Preserved Employees) and 7.6 hours (for a Non Preserved Employee and part time employees) at the hourly rate, which will not count to a duty cycle.
- (e) Where a public holiday falls during a period of annual leave and/or LSL, Pacific National Bulk Rail will provide the Employee with an additional day of leave.

## 19. Long Service Leave

- (a) An Employee is entitled to thirteen (13) weeks long service leave with pay after the completion of ten (10) years continuous service.
- (b) Additional entitlements accrue at the rate of 1.3 weeks for every additional year of service.

- (c) In cases where an Employee retires on account of age or ill health, dies or is terminated on the grounds of redundancy, entitlement to long service leave is subject to a minimum of four years completed continuous service and is computed on the basis of 1.3 weeks leave for each completed year of service.
- (d) In the event of termination, whereupon the Employee has in excess of seven (7) year's service but fewer than ten (10) but who have not yet qualified for LSL accrued for such service will be paid out.
- (e) On request from an Employee, the whole or any part of due long service leave may be taken at half pay for a period equal to twice the whole or part of the period to which the Employee is entitled.
- (f) For the purposes of this sub-clause, half pay means pay computed at half the hourly rate that would have been received had the leave been granted at full pay.
- (g) Approval to take long service leave will be generally given only when service to our customers is not affected or excessive overtime is not required to be worked to cover the absence.
- (h) Other than as provided for in this Agreement and for the avoidance of doubt, this clause 19 shall operative to the total exclusion of any other state or territory legislation or provision of an industrial instrument purporting to deal with an Employee's entitlement, accrual or process to long service leave.
- (i) For the purposes of this clause the long service leave entitlement shall be calculated using the hourly rate of pay.
- (j) For the purposes of this clause the Long Service Leave entitlement, upon resignation and termination, shall be calculated using the hourly rate of pay.

## 20. Personal/ Carer's Leave (Previously Sick Leave)

### 20.1 Accrual of Personal / Carer's Leave

- (a) Full time Train Crew will receive the following entitlement to personal / carer's leave in accordance with the following table:

	Days
On completion of 4 weeks service	3
On completion of 8 weeks service an additional	3
On completion of 12 weeks service an additional	4
in respect of the first year of service on completion of 52 weeks service an additional	5
After the completion of the first year of service, leave will accrue every 2 weeks and be credited to a total of 15 days (120 hours for Preserved Employees and 114 for Non-Preserved Employees) in respect of each subsequent year of service.	

- (b) Any unused personal / carer's leave accrues from year to year without limitation.

### 20.2 Payment for Personal / Carer's Leave

- (a) All payments for personal / carer's leave will be based on the following:
  - (i) Part B Employees:

- (A) Where the Employee has a doctor's certificate, 100% of the hourly rate;
  - (B) Where an Employee does not provide a doctors certificate, and the provision of such a certificate would be reasonably practicable, 75% of the hourly rate under sub-clause (B) will only be applied to the portion of personal leave which is accrued in excess of 10 days per annum.
- (b) An Employee shall not be entitled to paid personal / carer's leave for any period in respect of which they are entitled to accident pay or workers' compensation.
  - (c) An Employee shall not be entitled to paid personal / carer's leave in respect of other than ordinary hours of work.
  - (d) An Employee shall, as soon as reasonably practicable inform Pacific National of his/her inability to attend for work and, as far as practicable, state the estimated duration of absence. Such notification should be reasonably attempted to be given prior to the Employee's shift commencement time for work.
  - (e) An Employee must advise Pacific National of his/her intention to resume work as soon as he/she becomes aware of his/her ability to do so but by no later than 11:00 hours that day.
  - (f) Where personal / carer's leave:
    - (i) Exceeds three working days; or
    - (ii) Is taken on any public holiday on which the Employee was rostered for work; or
    - (iii) Is taken before or after a RDO, public holiday, annual leave or long service leave; or
    - (iv) For each instance of personal/carer's leave without a certificate exceeding ten (10) days per twelve (12) month period.

A medical certificate from a registered health practitioner will be provided where it is reasonably practicable to do so. If it is not reasonably practicable for the Employee to provide a medical certificate, a statutory declaration made by the Employee will be provided.

- (g) If a manager doubts whether absences are due to genuine illness or injury, Employees may be required to provide medical certificates for every personal / carer's leave absence within a defined period of up to twelve (12) months.
- (h) If considered necessary by Pacific National an Employee will be required to attend a medical examination by a medical practitioner nominated by Pacific National, in respect of the illness or injury. Pacific National will roster on duty and meet the cost of the consultation and any approved travelling costs.
- (i) Where an Employee has no reasonable prospect of returning to perform the position they were appointed to, owing to the nature of their illness or injury, Pacific National will examine opportunities for reclassification to an alternate position or may initiate action to terminate the Employee's employment contract.
- (j) Where medical termination is progressed, the Employee will take their accumulated personal /carer's leave entitlement before the medical termination takes effect. Personal / carer's leave does not accrue from the date the medical termination is approved. This provision does not apply to Employees on worker's compensation, as they are not entitled to take accumulated personal / carer's leave before medical termination.

- (k) Employees may access accumulated personal leave whilst a claim for Worker's Compensation is being considered. Where the claim is accepted, any personal leave shall be re-credited.

## **21. Unpaid Carer's Leave**

- (a) The entitlement to Unpaid Carer's Leave will be in accordance with The Act.
- (b) An Employee is entitled to a period of up to two (2) days unpaid carer's leave for each occasion when a member of the Employee's immediate family, or a member of the Employee's household, requires care or support during such a period because of:
  - (i) A personal illness, or injury, of the member; or
  - (ii) An unexpected emergency affecting the member.
- (c) Unpaid carer's leave may be taken in a single unbroken period of up to two (2) days or in any separate periods as agreed between the Employee and Pacific National Bulk Rail.
- (d) Unpaid Carer's Leave is only available when an Employee has exhausted their entitlement to paid carer's leave or has no entitlement to paid carer's leave.
- (e) Notice of the taking of unpaid carer's leave is expected to be given to Pacific National Bulk Rail prior to the commencement of the Employee's shift, but where this is not possible, as early as is reasonably practicable to do so.
- (f) If the care or support required is because of a personal illness, or injury, a medical certificate from a registered health practitioner will be provided by the Employee where it is reasonably practicable to do so otherwise a statutory declaration shall be adequate which includes a statement to the effect that the Employee requires (or required) leave during the period to provide care or support to the member of their household because the member requires (or required) care or support during the period because of:
  - (i) A personal illness, or injury of the member; or
  - (ii) An unexpected emergency affecting the member.

## **22. Trauma Leave**

- (a) Where Employees are involved and or witness a serious accident or incident during the course of their work, the company shall ensure that the Employees are replaced as soon as possible by other suitably qualified Employees.
- (b) In these circumstances Employees will be provided with transport to their home or their home base location, as so elected by the Employee.
- (c) Where the incident involves a fatality, employees will be provided with five (5) days paid trauma leave as per the working days in the working roster.
- (d) Upon exhaustion of the five (5) days of paid trauma leave, the employee may access paid or unpaid personal leave in accordance with the requirements of clause 20.2 Personal Leave which includes the provision of a medical certificate.
- (e) Trauma leave will be paid at the hourly rate.
- (f) A Casual Employee will be entitled to Five (5) days paid trauma Leave as per this clause. For the purposes of this sub-clause a day will be considered as 7.6 hours The entitlement to trauma leave is available for each separate occurrence.

## **23. Compassionate Leave**

- (a) Employees are entitled to two (2) days Compassionate Leave per occasion. The rules for the taking of Compassionate Leave are set out in The Act and are incorporated into this Agreement.
- (b) Notwithstanding the provisions of clause 19(a) above, paid leave of up to 5 days will be available where a death involves the Employee's spouse or partner or former spouse or child (which child will include a step, foster or adopted child) or Parent, grandparent or grandchild of either the Employee or their spouse and brothers and sister of either the Employee or their spouse.
- (c) Compassionate leave shall be paid at the hourly rate for all employees.

## **24. Parental Leave**

- (a) Employees are entitled to Parental Leave in accordance with the relevant provisions of The Act which, for the avoidance of doubt, includes Adoption Leave. Eligible employees may also access benefits over and above that provided under the Act (including paid parental leave) in accordance with the Company's Parental Leave Policy as varied from time to time.
- (b) The version of the policy at the approval of the 2021 Agreement, provides eligible employees who are the primary caregiver with either up to twelve (12) weeks fully paid leave (or up to twenty four (24) weeks on half pay) and employees who are the secondary care giver with one (1) weeks fully paid leave. These benefits are subject to the employee meeting qualification criteria contained within the policy. The entitlements contained in the version of Parental Leave Policy at the time of approval of the Agreement by the Fair Work Commission, prevails for the term of the Agreement and is subject to the relevant employee meeting the eligibility criteria contained within the policy. This policy will not form part of or be incorporated into this Agreement.
- (c) Where paid forms of leave, i.e. annual leave, long service leave, are taken in conjunction with Parental Leave, the total duration of leave cannot exceed fifty two (52) weeks.
- (d) Paid Parental leave referred to in sub-clause (a) shall be paid at the hourly rate for all employees.

## **25. Leave Without Pay**

Pacific National Bulk Rail may approve leave without pay subject to the needs of the business and at the discretion of the Employee's Manager. Periods of leave without pay shall not exceed twelve (12) months.

## **26. Jury Service**

- (a) Employees called for jury duty will be provided leave for the period of their attendance.
- (b) Payment for leave for jury service will be made at hourly rate for all employees. The Employee may retain any payment made by the court.

## **27. Special Leave**

- (a) Special leave is paid leave which enables Employees to participate in special situations not covered by other forms of leave provided.



- (b) Each application for leave under this provision will be assessed on its merits. Approval will be granted subject to the operational requirements of the work unit or team. Pacific National Bulk Rail will not unreasonably withhold such approval.
- (c) Pacific National Bulk Rail will provide unpaid leave for defence force reservists in accordance with the requirements set out in the Defence Reserve Service (Protection) Act 2001.
- (d) Special leave is paid at the hourly rate.

## **28. Community Services Leave**

- (a) Community Services Leave is paid leave which enables Employees to participate in community activities, deal with public emergencies not covered by other forms of leave provided.
- (b) Community Services Leave will be paid at the hourly rate for all Employees.

## **29. Domestic Violence Leave**

Employees are eligible to access family and domestic violence leave in accordance with the Act. In addition to the entitlements provided by the Act, eligible employees may also access benefits provided under the Pacific National's Family or Domestic Violence Leave Policy as varied from time to time. The version of the policy at the approval of the 2021 Agreement, provides employees with ten (10) days paid Family and Domestic violence leave subject to the employee meeting qualification criteria contained within the policy. This policy will not form part of or be incorporated into this Agreement.

## **30. Consultation and Change**

- (a) The parties are committed to pursue all opportunities to adopt the world's best practices through modern technology and continuous improvement to all aspects of Pacific National Bulk Rail operations.
- (b) Levels of staffing, equipment and methods of operation may be varied from time to time by Pacific Bulk Rail to reflect the need for safe work practices, improved technology, and new types of machinery or systems, customer service needs or for any other reason.
- (c) Pacific National Bulk Rail having made a definite decision that it intends to proceed with any significant change shall issue a notification, in writing, advising:
  - (i) The affected Employees, or their representatives and their Union;
  - (ii) The nature of the change;
  - (iii) The reason for it;
  - (iv) The timing of it; and
  - (v) Any other relevant information.

Pacific National Bulk Rail shall allow the Employee, their representative and the Union, an opportunity to express their view or concerns. Pacific National Bulk Rail will allow Employees, their representative and their Union to actively participate in the consultative process. That is, allow for the reasonable release and payment of Employees to attend meetings and access to entitlements as provided for in this Agreement.

- (vi) Pacific National Bulk Rail shall genuinely consult and consider any views or advice from the Employees, their representative and their Union in relation to

the proposed change and provide written reasons addressing concerns raised by Employees and or Employee representatives.

- (d) This consultative process must be completed within a period of fourteen (14) days from the date of notification by Pacific National Bulk Rail as set out in sub-clause (c) above, subject to the provisions of sub-clause (d) being complied with. Failure to comply with the provisions of sub-clause (d) will delay and or extend the fourteen (14) day period accordingly.
- (i) Should Pacific National Bulk Rail fail to provide the notification as required in sub-clause (c) above Pacific National Bulk Rail shall not implement any of the proposed changes until such time that the proper notification of change has been provided and the consultation process set out in sub-clause (d) has been complied with.
- (ii) Further, where Pacific National Bulk Rail has failed to engage in any consultation whatsoever with the affected Employees, their representative or their Union, may issue Pacific National Bulk Rail, within seven (7) days of the non-compliance, with a notice of dispute, in writing, setting out the reasons for the dispute in the form set out in Schedule 1 of this Agreement. Upon receiving such notice of dispute Pacific National Bulk Rail will not implement the change and or cease the change should it have been already implemented.
- (e) It is agreed between the Parties that after the above notification and consultation process has satisfactorily taken place, Pacific National Bulk Rail, may implement change after a further fourteen (14) days.
- (f) **Significant Change**
- For the purposes of this clause and without limiting the generality thereof, significant change includes changes in the composition, operation or size of the workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of Employees to other work or locations and the restructuring of jobs.
- (g) **Right to Conciliation**
- Notwithstanding the above, once the notification has been provided or consultation has commenced in accordance with this clause, either party may notify FWA of a dispute, in accordance with clause 31, with respect of the proposed change. In such circumstances, clause 31.1(b)(i)(iv) to (iv) need not be followed.
- (h) **Right to Arbitration**
- (i) Either party shall have the right to have FWC arbitrate a dispute arising under this clause in circumstance where a party has failed to follow the notification and or the consultation process outlined in sub-clauses (c) and (d) above.
- (ii) The Employees with their representatives shall have a further right to arbitrate a dispute where Pacific National Bulk Rail has introduced the change and the provisions of sub-clause (d)(ii) have been enacted.
- (i) The provisions in this Clause 30 (Consultation and Change) shall apply if the Company proposes to introduce a change to the regular roster or ordinary hours of work, and the Company will invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

## 31. Dispute Resolution Procedure

### 31.1 Resolution of Disputes

- (a) Employees may be represented at any stage of the Resolution of Disputes process by a representative of their choosing which representative may include a union.
- (b) Where a dispute or grievance arises between Pacific National Bulk Rail and its Employees in relation to the application of this Agreement, disputes arising in relation to the National Employment Standards<sup>1</sup> or other workplace change, the following will occur:

- (i) Where a person or their representative wish to lodge a dispute or grievance it must be done so in writing in the form as set out in Schedule 1 of this Agreement.
  - (A) Where the person or their representative who lodges the dispute / grievance elects to commence the dispute settling process with this step, the Employee(s) who is (are) affected by the decision will discuss the matter with their Local Manager. This may be appropriate, even where the Local Manager was not the Pacific National Bulk Rail Manager who made the decision which is subject of the dispute notice.
  - (B) The Local Manager will consider the issues raised and will respond to the Employee who lodged the notice within twenty four (24) hours. This response may be verbal or in writing, if so requested.
- (ii) If the dispute / grievance remains unresolved, it may be referred to the General Manager and if the Employee(s) affected so request, a Union representative for discussion.

These discussions must be concluded within forty eight (48) hours.

- (iii) If the dispute / grievance remains unresolved, it may be referred to the Group General Manager of the relevant business unit and if the Employees(s) affected so request, a representative, which may include a union. Where an Employee chooses a union to represent them, the relevant State Secretary or National Secretary (or their nominee) may choose to be involved in these discussions.

These discussions must be completed within forty eight (48) hours.

- (iv) If the dispute / grievance remains unresolved, a “cooling off period” of forty eight (48) hours (excluding weekends and public holidays) will occur at this stage of the process. During this period, the parties may continue to have discussions at whichever level they regard as most likely to assist in resolving the dispute / grievance. The parties may agree, at this point, to utilise mediation to resolve the dispute.
  - (A) During, or at the conclusion of the cooling off period, either party may decide to refer the matter to a mutually acceptable independent mediator or the FWC for the purpose of conciliation of the dispute. The conciliation must occur as soon as reasonably practicable.
  - (B) Where a dispute / grievance is escalated to the point of involvement of either an independent mediator or the FWC in conciliation, the parties acknowledge the significance of this point being reached. Therefore, any recommendation made by the independent mediator or FWC in an

attempt to assist the parties to resolve the dispute / grievance will be treated as highly influential.

- (C) Where both parties agree, they may empower the mediator or member of the FWC to resolve the matter by arbitration.
- (c) Any of the steps in the process may be removed where both parties agree. Likewise, the parties may agree to extend the timeframes within which each of the steps are to be completed.
- (d) Where the Notice of Dispute is received by Pacific National and the above procedures are being followed, work shall continue in the manner it was being performed immediately before the decision, subject of the dispute, was made.
- (e) Where a change, having significant impact on Employees has been implemented and the consultation procedures outlined in clause 29 of this Agreement have not been followed, work shall continue as it was prior to any changes being made while the Resolution of Disputes Procedure is being followed.

## **32. Transfer of Existing Employees**

### **32.1 Relocation**

- (a) Pacific National Bulk Rail proposals that may require an Employee to relocate will be subject to the consultative provisions outlined in clause 30 of this Agreement. With any final decision regarding the individual Employee the relocation will be made on assessment of the individual's circumstances with regard to reasonableness.
- (b) Where a transfer instigated by Pacific National Bulk Rail requires the Employee to relocate their residence, Pacific National Bulk Rail will meet reasonable relocation expenses.
- (c) Based on individual circumstances, the following expenses will be met:
  - (i) Housing expenses
    - (A) Costs associated with selling a residence at the "old" location, including Agent's commission, legal expenses, stamp duty and Bank charges.
    - (B) Costs associated with the purchase or construction of a new residence at the "new" location, where that residence will be the usual place of residence, such as legal expenses, stamp duty, bank charges, connection of utilities and mortgage insurance (one-off payment).
  - (ii) Removal expenses, including removalist's fees, insurance charges and temporary storage (up to twelve months).
  - (iii) Travel expenses, including:
    - (A) One familiarisation visit, of up to five days with travel costs, to the limit of economy class airfares for the Employee and spouse to visit the location to examine housing and other services; and
    - (B) Actual travel costs, to the limit of economy class airfares for the Employee and family during the actual relocation.
- (d) Resettlement Allowance
  - (i) Resettlement Allowance is provided to cover the costs of temporary accommodation for Employees and their families until a permanent residence is available. Resettlement allowance is paid as a reimbursement to cover actual costs incurred for temporary accommodation on the following basis;

- (ii) Employees with dependants may be reimbursed up to the value of six week's pay, calculated on their hourly rate, where the dependants accompany them; or
  - (iii) Employees without dependants will be reimbursed up to the value of three week's pay, calculated on their hourly rate.
- (e) Employees who transfer at their own request will meet all costs associated with any relocation.

### **33. Temporary Transfer**

- (a) Where required by the business, Employees may be temporarily transferred to a different Home Base for a period of time.
- (b) Temporary transfers will also be used to support commercial activities affected by variable demand and traffic volumes and/or temporary staff shortages.
- (c) In the first instance, volunteers will be called for temporary transfer. In the event that insufficient Employees volunteer, Employees may be selected for temporary transfer. Employees will be temporarily transferred away from their Home Base for a period of not more than six (6) weeks in any twelve (12) month period, unless mutually agreed. Any decision regarding individual Employee temporary transfer will be made on assessment of the individual's circumstances with regard to reasonableness.
- (d) Pacific National Bulk Rail will provide the means of travelling to and from the temporary location if required. Reasonable time allowances for travelling to and from all locations where motor vehicles are utilised, will apply. Employees will be paid travelling time on a stand-alone basis, which means that the time will not be deducted from the Annual Cycle Hours. Employees who are temporarily transferred may be authorised to use their own vehicles to travel to and from the temporary location.
- (e) Reimbursement for use of private motor vehicle will be in accordance with the relevant Pacific National Bulk Rail policy. When temporarily transferred, the Employee has the option of an expense allowance or reimbursement of reasonable expenses associated with temporary location transfer. Such reimbursement or allowance will be in accordance with the relevant Pacific National Bulk Rail policy. Employees may elect to receive the allowance in advance upon request.
- (f) Employees who are temporarily transferred to a location which does not permit them to return to their Home Base daily shall be paid expenses at the rate of \$239.75 for each full day away from their Home Base. The payment of expenses is on the following basis:
  - (i) This daily rate is made up of \$25.75 for each breakfast, \$29.35 for each lunch, \$50.65 for each dinner and \$134.00 for accommodation.
  - (ii) No allowance for breakfast, lunch, dinner or accommodation, as the case may be, shall be granted to an Employee unless they commence travelling from their Home Base earlier than the time specified in the table below and return to their Home Base after the time specified in the table below:

Payment for:	If departure before	If return after
Breakfast	0700 hrs	0800 hrs
Lunch	1300 hrs	1400 hrs
Dinner	1830 hrs	1830 hrs
Bed	0100 hrs	0100 hrs

**Note:** No allowance for a bed shall be paid unless a bed is reasonably required.

- (iii) The above allowances specified for breakfast, lunch, dinner and accommodation are based on Tier 2 Country Centres for annual salaries of \$126,970 and below as specified in the ATO Schedule TD2020/5 'Income Tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2020/21 income year'. Expenses shall be adjusted on an annual basis in accordance with updates to this schedule.
- (iv) Where the actual cost of accommodation and/or meals are greater than those outlined above Employees will be reimbursed the difference, subject to the production of receipts which are reasonable in the circumstances. Where Pacific National provides any meals and /or accommodation, the relevant component(s) of the expenses shall not be payable.
- (v) Employees shall have the option of accepting accommodation arranged by Pacific National Bulk Rail or arranging their own accommodation. Where accommodation is arranged by Pacific National Bulk Rail, such accommodation shall be of no less than three star rating.
- (g) Where Train Crew Employees have been temporarily transferred and would be entitled to meal allowances under this clause and the barracks meal allowance set out in Part B, such Employees will only be entitled to the barracks meal allowance set out in Part B.

### 34. Salary Maintenance

- (a) Existing Employees on Salary Maintenance
  - (i) Pacific National Bulk Rail Employees who were on salary maintenance pursuant to clause 43 of the Pacific National Enterprise Agreement 2004 will continue to receive salary maintenance on the same grounds as was provided in that clause indefinitely.
  - (ii) Employees who entered salary maintenance pursuant to clause 35 of the Pacific National Operation Services Union Collective Agreement 2006, Pacific National Bulk Services Division Industrial Products Union Collective Agreement 2006 and Pacific National Bulk Services Division Grain Union Collective Agreement 2006 will continue to receive salary maintenance on the same basis as was provided in those respective clauses.

- (b) Employees engaged prior to 27 January 2007

Where an existing Employee is redeployed or reclassified to another position with a lower hourly rate, that Employee shall receive salary maintenance on the following basis:

- (i) The Employee will retain the classification they held at the date of lodgement of this Agreement and receive the pay increases applicable under this Agreement.

- (ii) If the Employee is promoted during the life of this Agreement, they will be salary maintained on their hourly rate for a period of twelve (12) months (and receive the annual remuneration increases prescribed in clause B16 of this Agreement before reverting to being salary maintained at the level in clause 34(b)(i) above.
- (c) New Employees engaged after 27 January 2007
 

Where such an Employee is redeployed or reclassified to another position with a lower hourly rate, that Employee shall receive salary maintenance on the following basis:

  - (i) The Employee will receive the hourly rate applicable to their former position for a period of twelve (12) months and receive the increases prescribed in clause B 16 of this Agreement during this period.
  - (ii) At the conclusion of the twelve month period, the Employee will revert to and be paid the applicable hourly rate for the position they are actually occupying.
- (d) Reasonable Alternative Offers
  - (i) Employees receiving salary maintenance through the application of this clause shall be required to accept a reasonable offer for appointment to a position that has an applicable salary equal to or greater than their maintained salary. Reasonable within this context will have regard to consideration of the skills, knowledge and experience possessed by the Employee and those required for the proposed position. Reasonable will also be considered within the context of the location of the proposed position.
  - (ii) Where an Employee rejects a reasonable offer for appointment under this, their salary will revert to that for the position that they are actually occupying.

### **35. Uniforms**

- (a) Pacific National Bulk Rail will provide Employees with uniforms and, where required, protective clothing or equipment.
- (b) Pacific National Bulk Rail will replace uniforms, protective clothing and equipment on a "fair wear and tear" basis.
- (c) If Pacific National Bulk Rail intends to make significant changes to uniforms, protective clothing and equipment issued under this clause, it will undertake consultation in accordance with the provisions outlined in clause 30 of this Agreement.

### **36. Representatives**

- (a) Pacific National Bulk Rail recognises workplace delegates who are authorised by the Union and will permit such delegates to perform their role without discrimination. This clause is subject to the delegates concerned continuing to act in accordance with their contract of employment and the terms and conditions of this Agreement.
- (b) It is further recognised that workplace delegates represent union members at the workplace and will be allowed reasonable time to attend to any work related matters, without limitation, on behalf of union members but must advise their supervisor prior to attending to any such matters.
- (c) Pacific National Bulk Rail will allow workplace delegates reasonable access to telephone, facsimile, photocopying and email services, where available and provided, for the purpose of carrying out their role. The use of resources by a workplace delegates will be subject to the delegate complying with the prevailing

company policy provisions (which shall not impose unreasonable restriction on the operation of this sub clause) and the specific directions of the site manager.

- (d) Workplace Delegates will be entitled to reasonable unpaid time off to attend union meetings, congresses and conferences, subject to operational constraints. Workplace delegates seeking such leave are required to give fourteen (14) day's notice and Pacific National Bulk Rail will not unreasonably refuse to approve such leave.
- (e) Pacific National Bulk Rail will provide a lockable notice case to be used by workplace delegates for posting formal Union notices signed off by the delegates and or Union official. All material posted must be authorised by the relevant Union.
- (f) Special paid union leave, at the hourly rate, will be granted to Employees of Pacific National Bulk Rail who are elected through the Australian Electoral Commission as delegates of their Union to attend their Union's National Council; National Executive; Branch Council; Branch Executive and; Divisional Committee meetings, or their equivalent.
- (g) To be eligible for special paid union leave, the Employee:
  - (i) Is required to apply for leave at least four (4) weeks prior to the meeting;
  - (ii) Is required to provide documentary evidence, signed by the appropriate authorised Officer of the Union, that they are an elected delegate of the Union and are required by the Union to attend the meeting. This documentation must also include the duration of the meeting.

### **37. Workplace Relations Training**

- (a) Workplace relations training is specifically targeted at maintaining harmonious workplace relations between Pacific National Bulk Rail and its Employees.
- (b) Unions will identify training course content and ensure that all training is delivered by appropriately qualified trainers. Unions will fund all cost associated with the development and delivery of workplace relations training programmes.
- (c) Pacific National Bulk Rail will provide a maximum of two hundred and fifty six (256) hours in total per year for such training.

### **38. Individual Flexibility Arrangement**

- (a) Notwithstanding any of the other provisions in this Agreement, Pacific National Bulk Rail and an individual Employee may agree to vary the application of terms of this Agreement to meet the genuine individual needs of Pacific National Bulk Rail and the individual Employee. The terms of the Agreement Pacific National Bulk Rail and the individual Employee may agree to vary are those concerning:
  - (i) Arrangements for when work is performed;
  - (ii) Overtime rates; and
  - (iii) Penalty rates.
- (b) Pacific National Bulk Rail and the individual Employee must have genuinely made the agreement under sub-clause (a) without coercion or duress.
- (c) The agreement between Pacific National Bulk Rail and the individual Employee under sub-clause (a) must result in the Employee being better off overall than the Employee would have been if no individual flexibility agreement had been agreed to.



- (d) The agreement between Pacific National Bulk Rail and the individual Employee pursuant to sub-clause (a) must also:
  - (i) Be in writing, name the parties to the agreement, be signed by Pacific National Bulk Rail and the individual Employee and, if the Employee is under 18 years of age, the Employee's parent or guardian;
  - (ii) State the date the agreement commences to operate;
  - (iii) State each term of this Agreement that Pacific National Bulk Rail and the Employee have agreed to vary;
  - (iv) Detail how this Agreement has been varied; and
  - (v) Detail how the arrangement meets the Better Off Overall Test (“**BOOT**”).
- (e) Pacific National Bulk Rail must give the individual Employee a copy of the agreement within fourteen (14) days.
- (f) Except as provided in sub-clause (d)(i), the Agreement must not require the approval or consent of a person other than Pacific National Bulk Rail and the individual Employee.
- (g) Any agreement made pursuant to clause 38 may be terminated:
  - (i) By Pacific National Bulk Rail or the individual Employee by giving four weeks' notice of termination, in writing, to the other party; or
  - (ii) At any time, by written agreement between Pacific National Bulk Rail and the individual Employee.
- (h) The right to make an agreement pursuant to this clause 38 is in addition to, and is not intended to otherwise affect, any provision for an agreement between Pacific National Bulk Rail and an individual Employee contained in any other term of this Agreement.
- (i) Pacific National shall inform the RTBU when it intends to negotiate and Individual Flexibility Agreement with an Employee covered by this agreement and of the nature of any such agreement. Nothing in this clause requires or permits Pacific National to provide information about Employees to other parties covered by this agreement except where the provision of that information is required or authorised by law.

### **39. Health and Safety**

- (a) The parties to this Agreement share an ongoing commitment to ensure and to promote the health, safety and welfare of all Employees, via the formation of occupational health and safety committees and nothing in this Agreement shall be designed or applied in ways that reduce or diminish this objective.
- (b) Pacific National Bulk Rail allows any form of legislative consultation concerning health and safety to occur. In addition, Pacific National Bulk Rail provides a consultation structure through site SHE committees from which information is communicated to and from the business division.
- (c) The aim of the SHE committee is to improve safety, health and environment at work by assisting with the development and implementation of risk management systems and processes, through direct Employee/classification based representation on the committee.
- (d) Pacific National Bulk Rail must take all practical and reasonable measures to ensure the health, safety and welfare of all Employees, as well as ensuring a safe and healthy work environment. Pacific National Bulk Rail will also monitor and seek

to improve systems and processes to ensure that both its statutory obligations and the objectives of this Agreement are met.

- (e) Employees must ensure that they perform their jobs safely with a duty of care to themselves and to other Employees.
- (f) Employees must attend for duty fit and able to safely perform their duties. Employees must comply with Pacific National's policy and procedures, including those related to drugs and alcohol.
- (g) Employees must also bring to the notice of their supervisor or manager, any situation where they genuinely believe a risk of injury or damage exists.
- (h) Safe working notification - It is the responsibility of the Employee to review the forecasted program of work to proactively notify Pacific National Bulk Rail Management if they have not performed a safe working operation at a particular location for a significant period of time that renders them unsure of how to perform the task safely. Pacific National will organise the appropriate re-familiarisation training to occur for the applicable safe working operation.

#### **40. Payment of Wages**

- (a) Wage/salary payments will be made by Electronic Funds Transfer ("EFT") on a fortnightly basis in arrears.
- (b) Where stand-alone payments are due, these will be made by EFT on a fortnightly basis in arrears. Overtime incurred in the circumstances outlined in this Agreement will be paid in the following pay period, with the exception of duty cycle overtime which is paid in the pay period following the completion of the duty cycle.
- (c) Fortnightly payments are based on averaging the annual ordinary hours on a fortnightly basis, excluding overtime.
- (d) Where employment is terminated, the final payout for hours worked will be calculated on the basis of reconciling the completed hours worked with the notional hours paid. Pacific National has the right to deduct any overpayment of monies from the Employee's final payment.
- (e) Pacific National Bulk Rail will ensure that Employee's pay dockets will be provided in accordance with The Act.

#### **41. Internal Transfer of Work**

- (a) The Parties acknowledge that a "*transfer of work*" as described with in The Act is not dealt with under this clause.
- (b) The Parties acknowledge that Pacific National Bulk Rail may, from time to time, reorganise and restructure its business units.
- (c) If an Employee or group of Employee's is permanently transferred to another business unit (including a unit that is created after the commencement of this Agreement) at the sole instigation of Pacific National Bulk Rail following a reorganisation or restructure of business units, the terms and conditions of the Employee shall be governed by the agreement which is applicable to that business unit subject to the following and subject to law:
  - (i) If the Employee's classification or level does not exist in the proposed agreement, then the Employee(s) will transfer to a similar classification within the agreement and salary maintenance shall apply;

- (ii) Employees shall retain their superannuation (where possible), long service leave, picnic days and travel pass entitlements (where such existed), but only where such entitlements are more beneficial to the Employee(s).
- (d) If no agreement covers the new business unit, then this Agreement will prevail (subject to law) until such time as an agreement for the new business unit has been approved by FWC.

## **42. Travel Passes**

Any Employee who at the time of making this Agreement had an entitlement to a Travel Pass shall continue to have such entitlement.

For the avoidance of doubt, any Employees who commenced employment with PN or Freight Victoria Limited or the Public Transport Corporation or any of its predecessors on or after 7 September 2000 never had such entitlement to Travel Passes and shall continue to have no such entitlement.

## **43. Transition to Retirement options**

Pacific National supports employee transitions to retirement. Transition to retirement will consist of employees having the ability to request:

- (a) Transition from full time or part time employment to casual employment with the Company;
- (b) Transition from full time to part time employment;
- (c) Variation to the existing part time employment arrangements (such as reducing the existing ordinary hours); or
- (d) Transition from full time into Job Sharing arrangements as detailed in Schedule 2 of this Agreement.

The above provisions only apply to full time and part time employees directly employed by Pacific National Bulk Rail. Where an employee satisfies Pacific National Bulk Rail that the employee intends to retire from paid employment-within a reasonable period of time, the company will take reasonable steps to facilitate the transition to retirement option (as detailed in this clause) requested by the employee subject to the Company's operational requirements and vacancies at the time.

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# Part B – Train Crew

## 1. Classifications Structure

Employees covered by this Agreement shall be employed in any of the classifications as set out below:

- (a) Pacific National may, subject to complying with any consultation requirement outlined in clause 30 of this Agreement, where the implementation of any change will have a significant impact on Employees, determine the following:
  - (i) The type and number of positions in the organisation and the organisational structures;
  - (ii) Employee levels;
  - (iii) Specific work practices; and
  - (iv) Specific equipment and its use.
- (b) The classifications to which this Agreement applies are set out in this clause.
  - (i) The classification structure provides flexibility to design new positions or to redesign existing positions, including the way work is performed, so that Pacific National can respond to changes in the business and commercial environment.
  - (ii) The process of position design or position redesign may require Employees to undertake activities that have not traditionally been within their classification stream or that have not been previously part of their position.
  - (iii) Where positions are adjusted or redesigned, the Employee will be entitled to be paid at a classification level that equates to the work or activities being undertaken in the new position subject to the provisions of the Salary Maintenance clause of this Agreement.
- (c) There is one defined career path with an appropriate classification structure that operates within this Agreement.
- (d) The career path provides a structured career path for Employees who are engaged in positions that directly focus on the business operations of the organisation.
- (e) This Agreement and the classification stream improves flexibility, this allows work to be allocated in the most efficient manner, recognising Employees use of skills and competencies within the appropriate classification and pay levels.
- (f) Subject to Employees completing relevant training and acquiring the necessary competencies for their position, they will progress through the classification structure up to and including Level 5.

### 1.1 Principles

The classification structure operates in accordance the following principles:

- (a) Positions will be defined in terms of their primary accountabilities or main functions.
- (b) Employees moving through the classification levels will be required to accept responsibility for the safe and efficient management of train operations.

- (c) Classification of a position will be made on the basis of matching the primary accountabilities or main functions with the appropriate level of the classification structure.
- (d) On this basis, Employees will be classified at a level within the classification structure that is commensurate with the major and substantial requirements of the position undertaken. Employees will progress through the classification structure up to and including Level 5.
- (e) Classification of an Employee is based on business need and assessment of the demonstration of primary tasks, accountabilities, qualifications, competencies, capability and performance required in the position rather than skills possessed by an Employee.
- (f) An Employee in a particular classification may be required to perform activities and tasks that are deemed to be safe and appropriate to that classification and for which the Employee has been trained and has current and demonstrated competency.
- (g) An Employee may be requested to participate in forums about safety operational enhancements, business involvement and customer requirements to assist and support the overall Bulk Rail objectives.

## **1.2 Assessment of Competencies**

- (a) All Employees, including when first engaged, when transferring from one classification to another will participate in a process of personal performance assessment and feedback – they will be assessed in terms of their competence.
- (b) References to competencies here and generally in this document, refers to the satisfactory and continuous demonstration of appropriate qualifications, skills, knowledge, ability, physical and mental capability, performance, behaviour and attitudes as required by the business and relevant to the appropriate position. At any time, an Employee may be required to carry out tasks and demonstrate competencies relevant to a lower classification.
- (c) An Employee may not be required to advance through each level of the classification structure if they possess the necessary qualifications of that classification, based on a successful assessment of competency.

## **1.3 Classifications, Position Descriptors and Pay Levels**

- (a) The table in sub-clause 1.3(e) outlines the classification titles, position descriptors and classification pay levels:
- (b) There is an expectation that all Employee's will move through the classification structure.
- (c) Notwithstanding the classification structure, an Employee shall be required to participate in performance appraisals conducted by Management. Such appraisals will be conducted with a view towards recognition of improved performance and/or to provide constructive and positive support such as additional training where areas for improvement are identified. To this end, reviews shall be objective, transparent and based on practicable and measured mechanisms to deliver competency and enhance career paths, promote productivity, safety and understanding of company policies, job satisfaction and communication within the enterprise.
- (d) Current Train crew levels will translate into the new classification structure as follows:

- New Starter Driver to Level 1;
- Trainee Driver to Level 2;
- Locomotive driver (under supervision) to Level 3;
- Locomotive Driver to Level 4;
- Driver Trainer (OJT) to Level 5; and
- SCID to Level 6.

Where the pay levels are higher than the new classification structure they will be maintained in accordance with this agreement.

(e) Operation Classifications

Level	Description	Hourly Rate
Level 1 Trainee Locomotive Driver	An entry level Employee engaged as a Trainee Locomotive Driver whilst completing stage 1 and 2 training. The Employee may be required to perform various other duties considered to be safe and appropriate to this position for which they are competent to perform. An assessment will be conducted using the checklist 2 (Basic Train Operations).  On successful completion of Checklist 2 the employee will progress to Level 2 second person.	\$21.89
Level 2 Second Person	An Employee at this level will be engaged as a Second person and be required to perform the duties of Second person during train operations. The Employee will also be required to carry out shunting, roll-by duties as required. At this level the Employee will complete the engine/air component (Block School) of training and FX Train Examination. When the candidate has successfully completed Checklist 3 (Assist with train operations) and FX train examination they will be promoted to level 3.  Time frames may vary because of operational requirements and it is competency based, but on average it is twelve (12) months.	\$45.93
Level 3 Locomotive Driver (under supervision)	Level 3 will: <ul style="list-style-type: none"> <li>• Perform all duties related to level 2 and can also operate locomotives or trains under supervision of a level 5 or level 6 driver.</li> <li>• Be required to learn to operate on all Principal Routes applicable to their depot.</li> </ul>	\$53.39

Level	Description	Hourly Rate
	<ul style="list-style-type: none"> <li>• Be promoted to level 4 locomotive driver after successful completion of checklist 4 (drive train to operational requirements).</li> <li>• Time frames may vary due to operational requirements and it is competency based, but on average it is 12 months.</li> </ul>	
<p>Level 4 Locomotive Driver</p>	<p>An Employee who, has demonstrated competence at Level 2 or 3, will be appointed as Level 4, subject to possessing the necessary qualifications and competencies.</p> <p>At this level a driver can provide tuition to a level 3 or level 2 or level 4 on safeworking or a locomotive operation as long as the level 4 is licensed in the safeworking and the class of locomotive. A level 4 can provide tuition to another driver for the purposes of route learning.</p> <p>At this level, the Employee will be required to perform tasks on mainline operations including DOO.</p> <p>An operator at this level will be required to maintain appropriate qualifications at all times and will be provided the opportunity to do so where appropriate.</p> <p>A Locomotive Driver will also be required to assist personnel in a broad range of Rail Operations</p>	<p>\$ 56.69</p>
<p>Level 5 Advanced Locomotive Driver</p>	<p>The Level 5 Advanced Locomotive Driver is an appointed position and means a Locomotive Driver who delivers directed or structured instructions and on the job training for Trainee Locomotive Drivers or Qualified Locomotive Drivers. This includes completion of trainee logbooks.</p> <p>Any vacancies that exist for a Level 5 Advanced Locomotive Driver will be appointed based on suitability for the role and a minimum qualification as a Level 4 Locomotive Driver who is employed under the Agreement.</p> <p>To assist in the efficient delivery of Locomotive Driver Training, a Level 5 Advanced Locomotive Driver may have their rosters amended (excluding minimum time off between shifts) in consultation with the affected Driver and pursuant to any other rostering requirements in the Agreement.</p> <p>The minimum training requirements to perform the role of a Level 5 Advanced Locomotive Driver will be the following units of competency (or the equivalent</p>	<p>\$61.45</p>



Level	Description	Hourly Rate
	<p>units when changed by the AQTF) from the Certificate IV:</p> <ul style="list-style-type: none"> <li>a) TAEDEL404 Mentor in the workplace;</li> <li>b) TAEDEL301 Provide work skill instruction; and</li> <li>c) TAEDEL402 Plan, organise and facilitate learning in the workplace.</li> </ul> <p>If an individual wishes to resign their Level 5 Advanced Locomotive Driver duties, this must be done in writing and submitted to the relevant manager. After the Company has undertaken the recruitment and placement of a suitable candidate, this change will take effect and the Employee will be returned to Locomotive driving duties.</p>	
<p>Level 6 Driver Trainer Assessor</p>	<p>Certain Employees may, subject to the needs of the business and demonstrated competence at Level 5, be promoted to Driver Trainer/Assessor and/or act as a mentor driver, subject to possessing the necessary qualifications in Cert IV National Training Standards.</p> <p>A Driver Trainer/Assessor occupies an important leadership position in the organisation. They will have already demonstrated and continue to demonstrate, superior competence and performance in all aspects of operations covered in Levels 1 to 5 above.</p> <p>In addition to any other operational duties as required, the Driver Trainer/Assessor is required to undertake training, competency assessments, Employee communication, mentoring and motivation, performance reviews and feedback, investigations, audits, procedural and assist in business improvement reviews as required.</p>	<p>\$68.46</p>

- (f) Where Employees are permanently employed outside of the classification structure of this EA where circumstances require them to maintain their skills, competence and qualifications and to meet the needs of the business, such Employees may from time to time be required to conduct tasks and duties detailed in Levels 1 to 6 above and whilst performing these duties. Where this occurs the relevant conditions of the EA will apply.
- (g) Driver Only Allowance: The Driver Only Allowance shall be paid to Employees who are qualified and authorised by management to fulfil such designated roles. This allowance will be adjusted in accordance with the remuneration increases set out

in Part B clause 16. The Driver only allowance is \$4.36 per hour which is inclusive of the increase in B 16 (a).

#### **1.4 Pacific National Bulk Rail Training**

- (a) All Pacific National Bulk Rail employees engaged from certification of the Agreement will be qualified to the standards set out below:

The Pacific National Bulk Rail training shall consist of both theory and practical in-field training. The training shall comprise of successfully completing the units of competencies required to be assessed and deemed competent in the AQTF standard for Certificate IV of Train Driving.

- (b) Progression to a Qualified Locomotive Driver will be contingent on successful completion of the theory and practical training and also include the following:
- (i) Issued a Certificate IV in Train Driving with a statement of attainment with all units passed as competent; and
  - (ii) Successfully assessed as competent in the Pacific National Bulk Network and rolling stock.
- (c) For the avoidance of doubt all train crew who performed the role of a Qualified Locomotive Driver prior the certification of the Agreement will be deemed to have satisfied the requisite qualification. Within the term of this agreement Pacific National will complete the appropriate recognition of prior learning and/or training to provide existing train drivers a Certification IV in Train Driving.

## **2. Hours of Work**

### **2.1 Management of Hours**

Full time employees who were covered by the Agreement prior to the approval of the 2021 Agreement by the Fair Work Commission, will be paid a guaranteed eighty (80) ordinary hours each fortnight (**Preserved Employees**).

Full time employees who become covered by the Agreement post the approval date of the 2021 Agreement by the Fair Work Commission will be paid a guaranteed seventy six (76) ordinary hours each fortnight (**Non-Preserved Employees**).

In the case of Preserved Employees, the ordinary hours will be averaged over a six (6) week duty cycle of two hundred and forty (240) ordinary hours. In the case of Non Preserved Employees, the ordinary hours will be averaged over a six (6) week duty cycle of two hundred and twenty eight (228) ordinary hours.

### **2.2 Overtime**

- (a) All hours worked in excess of the 6 week duty cycle (240 ordinary hours for Preserved Employees and 228 ordinary hours for Non Preserved Employees ) shall be paid at the hourly rate.
- (b) All hours worked in excess of the six (6) week duty cycle hours for part time employees (228 ordinary hours) shall be paid at the hourly rate. Overtime payments for Part Time Employees will also be governed by clause 6.1(d).
- (c) Where an Employee signs-on for duty on an RDO they will be paid in the pay run following the conclusion of the current pay period. Payment will be made at 1.2 times the hourly rate for the actual shift worked.

- (d) All RDO overtime hours stand alone and apart from all other hours worked. This means that overtime hours worked on RDO's are not counted toward the Duty Cycle.

### **2.3 Guarantee Payment**

- (a) Time on duty is added to form total hours for the cycle. A full time Employee who is fit, ready, willing and available for all work offering (in accordance with the provisions of these guidelines) is guaranteed either seventy six (76) ordinary hours (Non Preserved Employees) or eighty (80) ordinary hours (Preserved Employees) payment in each fortnight.
- (b) In the case of part time Employees the guaranteed payment will be identical to their ordinary hours of employment as specified in Part A 6.1 (d) (xi).
- (c) During that fortnight the Full Time Employee will be paid to a maximum of eighty (80) ordinary hours (for Preserved Employees) or seventy six (76) ordinary hours (for Non Preserved Employees). All actual ordinary hours worked will be credited to the duty cycle.
- (d) If an Employee is absent from duty without authorisation, time lost from duty is to be deducted at the hourly rate to be paid in that fortnight. This will include circumstances where a driver reports sick but fails to submit a sick leave application, e.g., if seventy two (72) ordinary hours of duty were rostered for the fortnightly pay period and an Employee was off for one shift of ten (10) hours he/she would be paid seventy (70) hours.

### **3. Home Base and Sign-On/Sign-Off Provision**

- (a) Upon commencing employment, an Employee shall be allocated a sign on/sign off point at which he/she shall commence and finish a shift. This point shall be located within a depot, terminal or office (referred to as the "home base") where the Employee shall report in order to commence and complete a shift.
- (b) There may be multiple sign on/off locations attached to a home depot within a ten (10) km radius. An Employee required to sign on/off at locations outside their normal commute shall be reimbursed in accordance with the provisions in this agreement.
  - (i) Home base sign on points will contain the following:
  - (ii) Car Parking – Consultation will occur at each location where new car parking is proposed. Where current car parking facilities exist they will be maintained.
  - (iii) Amenities including a meal room with appropriate facilities.
  - (iv) Communications as required.
  - (v) Operational documentation.
  - (vi) Notice board.
- (c) Sign on and sign off points within a home base may be varied following consultation with the affected Employees.

It is an Employee's responsibility to convey themselves to their designated sign on point. However, with respect to sign on/off point outside their usual home base, in cases where, because of genuine hardship, Employees are unable to transport themselves to a sign on point, Pacific National Bulk Rail may provide transport to

the sign on point at no cost to the Employee. Genuine hardship may include personal commitments such as family responsibilities.

Below is the list of agreed locations which represents the home depot and multiple sign on/off points in respect of those depots:

Melbourne            Appleton Dock

Appleton Dock      Melbourne

(These are the only agreed locations in Victoria).

(d) Remote Sign On/Off Provision

(i) Remote sign-on/off points may be determined in consultation with the respective depot.

Remote sign on/off points will contain the following:

(A) Car Park.

(B) Amenities including a meal room with appropriate facilities.

(C) Communications as required.

(D) Operational documentation.

(E) Notice Board.

(ii) Where an Employee is required to report at a remote location for sign on/sign off in order to commence and complete a shift, private motor vehicle reimbursement will be paid as prescribed in accordance with this agreement. Below is the list of the existing remote sign on locations in respect of those depots.

(iii) For any new remote sign on locations identified during the life of this agreement, consultation will occur with affected Employees.

(iv) Where an Employee finishes work at a location that is different to the sign on location, Pacific National Bulk Rail will provide transport back to the sign on point, unless otherwise agreed. In these circumstances, actual sign off will be on the return to the sign on location and shall be within the shift length.

(v) There will be no remote sign on points outside of a fifty (50) km radius unless agreed with the affected Employee's except for the sites listed in this agreement.

(vi) It is an Employee's responsibility to convey themselves to their designated sign on point. However, with respect to sign on/off point outside their usual home base, in cases where, because of genuine hardship, Employees are unable to transport themselves to a sign on point, Pacific National Bulk Rail may provide transport to the sign on point at no cost to the Employee. Genuine hardship may include personal commitments such as family responsibilities.

(vii) Roster officers will apply their best endeavours to minimise the impact of Employee's entitlement to intervals between shifts where excess travelling time is a factor. Excess travelling time, as described in clause above, shall be included in an Employee's fatigue scoring.

## 4. Rostering Guidelines

### (a) Master Rosters

- (i) A Master Roster shall be exhibited primarily for the purpose of indicating rostered days off ("RDO's"), which shall be a minimum of one hundred and four (104) p/annum averaged over the roster cycle, any sign on/off times for known work and to meet the operational requirements of the business having regard to fatigue principles. The company agrees to maximise forecast rostering and where practicable will follow the master roster. In addition to the one hundred and four (104) RDOs provided above a full time employee working predominantly on a Blankline roster is entitled one (1) additional RDO for each six (6) week duty cycle completed (Additional RDOs). Additional RDOs will be displayed in the Master Roster.
- (ii) Pacific National Bulk Rail in consultation with the local rosters committee where formed, will develop and modify master rosters consistent with operational and business requirement. The local rosters committee will monitor the impacts of blank line rostering that are notified to the respective local rosters committee.
- (iii) The number of Pacific National Bulk Rail initiated Master Roster changes shall not exceed four (4) in any twelve (12) month period, unless there is a specific business requirement. Where there is a business requirement to exceed four (4) changes formal consultation will occur with the depot.
- (iv) Where a change to a Master Roster is proposed, formal consultation will commence at least twenty eight (28) days prior to the intended implementation date of the new Master Roster. Where no rosters committee exists, Pacific National Bulk Rail will consult with all the affected employees.
- (v) Following the consultation, the final Master Roster is to be posted no less than fourteen (14) days in advance of its introduction.
- (vi) Changes to the Master Roster which do not impact on an Employee's RDO will not constitute a Master Roster change. Consultation will occur in this instance.
- (vii) Rosters shall be arranged to provide the maximum number of complete weekends rostered off duty which shall be at least one (1) weekend off in four (4) unless altered by way of consultation and agreement.

(b) Notwithstanding the existence of master rosters, all Employees actual rosters shall be in accordance with the daily work plan.

### (c) Working Rosters

- (i) Where variations to any master roster, not impacting on RDO's is required, a working roster is developed.
- (ii) Working Rosters must be posted weekly at least nine (9) days in advance of the Sunday on which the roster is to commence.

### (d) Daily Work Plan/Roster

- (i) Pacific National shall post a Daily Roster no later than 1600 the day before the Employees' shift is to commence.

- (ii) The Daily Roster shall determine the Employee's next shift and work allocation.
  - (iii) The Daily Roster shall not be used to alter an Employee's RDO posted on the Master Roster without the affected Employee's agreement.
  - (iv) Rosters covering Christmas and Easter holidays are to be posted up to a maximum of two (2) weeks prior where practicable.
- (e) Annual Leave Relief Lines
- (i) It is agreed that Pacific National may utilise blank line rostering during any period of annual leave whether predetermined or otherwise in the Master Roster. During such periods, the Employee's normal roster shall be suspended and the Employee will be required to perform work as determined by Pacific National as necessary subject to the rostering principles contained in this agreement.
  - (ii) There will be a minimum of nine (9) day's notice for advice regarding holiday relief unless otherwise agreed with the affected Employee.
  - (iii) RDO's will be displayed for annual leave relief lines on the Master Roster and will be adhered to if no annual leave relief coverage is required.
- (f) Blank Line Rostering
- (i) The utilisation of blank line rostering can be expanded subject to operational and business requirements and can only be done in consultation with the affected Employees or representatives as set out in this Agreement.
  - (ii) Notwithstanding the use of blank line rostering, each Employee's RDO's cannot be varied and shall fall due as set out in the Master Roster.

## **5. Rostered Days Off ("RDO's") Train Crew**

- (a) When developing depot rotations for full time Employees, all individual rostered days off are a minimum duration of thirty two (32) hours between the finish of the last shift and the commencement of the next shift, unless otherwise agreed between Pacific National and the affected Employee, and are to include an adequate number of clear RDO's.
- (b) Where two (2) off rostered days are rostered consecutively then the maximum duration shall be no fewer than forty eight (48) hours between the finish of the last shift and the commencement of the next shift.
- (c) RDO's worked will stand alone and attract a payment of 1.2 times the hourly rate and will be paid the fortnight it is worked.

## **6. Roster Changes**

- (a) Pacific National acknowledges that it will use its best endeavours to construct master Rosters to reflect the real and likely work, so to minimise any changes that may be subsequently required to rosters.
- (b) Notwithstanding the existence of the Master Roster, all employee's actual rosters shall be in accordance with the daily roster as set out in Clause 4(d), Rostering Guidelines.

- (c) For Employees who have specific reasons to ensure a shift is not altered, they should make an application to their immediate supervisor of their requirement at least one week prior to the posting of the Working Roster. The immediate supervisor will not unreasonably withhold approval of the request, and will review the request with roster personnel and consideration of customer and operational needs. The immediate supervisor will work in conjunction with the rostering personnel to facilitate the employee's request, subject to the following:
  - (i) The employee may make an application in circumstances involving but not limited to medical appointments, special family events, pressing personal needs, community commitments.
  - (ii) Where required the employee must establish to the reasonable satisfaction of the immediate supervisor the reason for the application.
  - (iii) The Not To Alter application will be subject to the following:
    - (A) There be no more than one (1) employee per Daily Roster with an unaltered shift.
    - (B) When the quota is filled there will be no more than two (2) unaltered shifts per month for any one employee.
  - (iv) In addition to the above Pacific National will endeavour to accommodate additional requests (whether by shift or by employee) having regard to customer and operational needs.
  - (v) The immediate supervisor will ensure there will be an equitable distribution of this provision amongst the employees.
  - (vi) In addition to the quota employees that may be required to use this clause on a regular basis due to extenuating circumstances will advise their immediate supervisor of the circumstances.
  - (vii) Consideration of customer and operational needs will not always override the employee's genuine reasons.
- (d) When creating a working roster or daily roster any alterations to the working in a master roster must be within lift up and lay back allowances unless consultation occurs with the employee.
- (e) Lift up and Lay back principles also apply after the next turn of duty is confirmed:
  - (i) At home location, Train crew must be contactable to allow for a two (2) hour lift-up and a four (4) hour lay-back. No more than two (2) alterations can be made from the confirmed sign on time.
  - (ii) It is expected that crews will be called to sign on duty as required at resting locations. Lift-up and Lay-back thresholds will apply from the confirmed sign on time at the rest location. It is the responsibility of the Employee to advise the appropriate telephone number to facilitate a call to sign on duty.
  - (iii) The sign-on for any new or altered work must be within the lift up and lay back thresholds, when applied to the original confirmed shift.
  - (iv) Alternative or new work may be provided, where possible.
  - (v) Pacific National Bulk Rail has the right to deploy a driver from one form of work to another so long as the work falls within their skills and competencies.

In cases where rest working is involved the train crew must be returned to their home sign off point in the same shift unless agreed with the Employee.

- (vi) If no alternative or new work is available within the lift up and lay back threshold, the Employee is to drop into the next advice period to receive advice for their next turn of duty. Only by agreement with the Employee can this provision be negated.
- (vii) If no new or alternative work is available, i.e. the shift is cancelled, and at least three (3) hours' notice is not provided, the Employee will have four (4) hours credited against their duty cycle.
- (viii) Subject to relevant OH&S, fatigue management and operational issues, Employees may mutually exchange rostered working shifts, with the approval of the relevant manager or rostering staff. Pacific National will not unreasonably withhold approval where such requests are cost neutral.

## 7. Shift Lengths

### 7.1 Maximum Shift Lengths

- (a) The maximum Shift Length shall be twelve (12) hours, subject to the limits prescribed below:

Crew Arrangement	Maximum Shift Length
Driver Only Mainline/Terminal	As prescribed by legislation relevant to each state  Current 8 hours in Victoria, 9 hours all other states territory's
Two Person Operation Driver with qualified second person	11 Hours
Driver/Driver  A qualified driver who is learning the route or being assessed for route knowledge or competency is considered a qualified driver for the purposes of shift length	12 Hours

- (b) For the purposes of this clause, a shift that exceeds eleven (11) hours but is less than twelve (12) hours is taken to be a twelve (12) hour shift. A maximum of six (6) shifts of twelve (12) hours can be worked in any fourteen (14) day period.

### 7.2 Rostered Working Time and Actual Working Time

- (a) Employees may be required to work hours additional to those in the master/working roster (up to the maximum shift length) to complete the assigned task(s).
- (b) Employees may be required to work up to the rostered sign off time when the task(s) are completed early.

### 7.3 Minimum Shift Lengths



- (a) An Employee who actually reports for and undertakes duty and is then advised that he / she is not required, is to be credited with four (4) hours at the hourly rate unless otherwise agreed. The Employee will be credited with a shift.
- (b) Each leg of a rest job will be credited for a minimum of eight (8) hours unless otherwise requested by the crew, provided that each Employee will make himself / herself available for other work if required. Each leg will count as a shift.

#### **7.4 Exception**

Crew may be rostered to travel back to their original sign-on location within a twelve (12) hour maximum shift limit from an agreed barracks or rest location, regardless of the crew configuration. This can only be utilised on a forward leg.

#### **7.5 Maximum Hours on Duty in Emergency Situations**

The maximum hours of work in an emergency situation is sixteen (16) hours.

The requirements of this clause apply in the event of:

- (a) an accident or emergency; or
- (b) any urgent circumstances approved by the ITSRR; or
- (c) any other unforeseeable circumstances, that make it necessary to contravene shift limits to avoid a serious dislocation of train services if there is no reasonably practicable alternative.

In this clause **Emergency** means an emergency arising out of an actual or imminent event, such as fire, flood, storm, earthquake or explosion, that:

- (i) endangers, or may endanger, the safety of persons; or
- (ii) destroys or damages, or may destroy or damage, property.

The driver or drivers concerned must indicate their fitness to work the extended hours.

### **8. Meal Breaks**

- (a) Employees shall have a meal break of thirty (30) minutes built into the working arrangements for that shift. Meal breaks shall be taken between the third and the fifth hour at such times as will not interfere with the efficient running of the business including the operation of the network.
- (b) Where an Employee is rostered to perform DOO working, they shall be entitled to a paid break of no less than thirty (30) minutes, taken between the third and the fifth hour as arranged between the driver and the train controller to ensure the efficient operation of the network.

### **9. Interval between Shifts**

- (a) At Home Base
  - (i) Eleven (11) hours or twelve (12) hours if the previous shift length worked was in excess of eleven (11) hours.
- (b) At a Rest Location
  - (i) Minimum eight (8) hours or ten (10) hours if the previous shift length worked was equal to or greater than eleven (11) hours

- (c) Such intervals between shifts may be reduced to seven (7) hours through the roster development process in consultation with the Employees. Outside of the roster development process, and on a case by case basis, agreement with the individual is required.
- (d) In the event that the master roster has included a rest period the master roster rest period will apply unless out of course running has occurred.

## **10. Mandatory Rest Period**

- (a) A Mandatory Rest Period will be provided after having worked eleven consecutive shifts.
- (b) Mandatory Rest Periods shall conform to the same conditions as an RDO, as outlined above.
- (c) Where an Employee works an overtime shift, at the Company's request, and this results in the Employee not being able to work a previously rostered shift due to the taking of the Mandatory Rest Period, the company will credit eight (8) hours (minimum Shift) to the Employee's duty cycle.

## **11. Confirming Next Turn of Duty**

- (a) Next turn of duty will be in accordance with the starting time shown on the Master Roster, the Working Roster, the Daily Work Plan or advice period, subject to any lift-up or lay-back adjustment.  

Confirmation of an Employee's next turn of duty, sign-on time and details of any Barracks Working will normally be provided upon signing off duty on the previous shift.
- (b) The Daily Work Plan will be available and posted to confirm the allocation of work, sign-on time, and details of any Barracks working by 1600 hours on each day. The work plan will contain advice for at least the following shift/s up to 0600 hours the subsequent day, i.e. thirty (30) hours of advice subject to changes due to operational requirements.
- (c) Where an Employee is not on duty or advice was not available and work is required to commence between 0000 – 0600 hours the following day advice will be provided between 0930 – 1100 hours.
- (d) Where an Employee is not on duty or advice was not available and work is required to commence after 0600 hours the following day, advice will be provided between 1600 – 1730 hours.
- (e) Where an Employee does not want to be contacted during the advice period (sleep or personal reasons) the Employee is to notify the company upon signing off. The responsibility to receive advice for the next turn of duty then becomes the Employee's.
- (f) It is the intention of the company to call train crew however an Employee who works blank line rostering who has not received advice during the pm call period shall make contact with Pacific National not later than 1800 hours to obtain their next turn of duty. If the Employee has left a message on the rostering telephone and has not been contacted by 2000 hours on the day by Pacific National, the Employee will be deemed to be rostered off.
  - (i) Barracks Working Advice - Blank Line Only.

- (ii) Where not included on either the master or Working Rosters, Train Crew will be notified of any barracks working upon signing off duty on the previous shift or where possible twelve (12) hours in advance.
- (g) Where available, the advice for the return shift and sign-on time will be provided at the same time.
- (h) Rostering officers may provide advice for Employees next turn of duty via SMS, advice on answering machines, message banks or a nominated responsible person, where such has been provided by the Employee as an alternative. Where such advice has been provided it will be logged by the company to avoid doubt.
- (i) Train crew will receive wake up calls for all shifts where the sign on time is between 2200-0600, protection of lift up/lay back will still apply.
- (j) Pacific National Bulk Rail will ensure that train crew employees working a blank line in the roster will be planned to sign on after 0600 following an RDO and planned to sign off prior to midnight before an RDO, although this may be altered due to out of course running and hours paid will be normal working hours. If train crew employees are asked during the planning stage of rosters to commence prior to 0600 following an RDO or, who work beyond midnight into an RDO, actual hours worked will go to the duty cycle and they will receive the stand alone multiplier of 0.2 for all hours worked prior to 0600 and past midnight.

## **12. Resting Away**

- (a) Rosters will be developed so that, wherever practicable, detention away from home depot on a rest job will not exceed twelve (12) hours duration.
- (b) Where any working with rests/barracks is involved, the first crew to book on at the home station shall be the first to book off at the home depot depending on fatigue management, qualifications and Enterprise Agreement guidelines.
- (c) A stand-alone payment for rest detention will be paid in the current pay period for all hours that an Employee (other than on temporary transfer) is detained at rest in excess of twelve (12) hours until sign on. Rest detention will be paid at hourly rate.
- (d) Meal allowance will be paid at the current applicable rate for every completed eight (8) hour period or part thereof (\$32.74) and adjustments will be made in accordance with the remuneration increases in this agreement and as allowed by the ATO. This rate is inclusive of the increase in B 16 (a).

### **Roster Suspension – Forecast Rosters**

- (e) In situations where a major derailment, washaway, customer maintenance programs or other unplanned circumstance causes major service disruption, all rosters affected may be suspended until normal operations can resume. Roster suspension may apply up to seven (7) days beyond which an interim roster will apply until normal operations resume.
- (f) Where practicable, a minimum of seven (7) day's notice will be provided and consultation with the respective depot will occur.

## **13. Payment for Use of Employee's Own Motor Vehicle and Travel**

In addition to other rates payable in accordance with this agreement, an Employee shall also be entitled to the following:

- (a) Where an Employee agrees to use his/her own vehicle to travel to another sign on/sign off point, the Employee shall be reimbursed for additional expense associated with any extra distance from the Employee's usual residence to their usual home base (e.g. usual commute 7 kilometres, commute to new sign-on/sign-off point 12 kilometres - reimbursement for 5 kilometres extra distance).
- (b) In the case of a motor vehicle the cost reimbursed shall be at the rate per kilometre for their vehicle size that is specified by the Australian Taxation Office and shall include the cost of tolls.
- (c) For other travel, i.e. public transport, the additional costs which are reasonably incurred shall be reimbursed, however pre-approval is to be obtained before the use of taxis as other travel.
- (d) Where an Employee finishes work at a location that is different to the sign-on location, the Company will provide transport back to the sign-on location; the Company will provide the transport back to the sign-on point, unless otherwise agreed. In these circumstances, actual sign-off will be on the return to the sign-on location and shall be within the shift length.
- (e) Where there is genuine hardship with respect to sign on/off points outside their usual home base the company will consider alternative transport arrangements at no cost to the Employee agreed.

#### **14. Relieving Crew**

- (a) Relieving Crew are Train Crew who are deemed a flexible and mobile workforce. Pacific National Bulk Rail may deploy Relieving Crew to cover operational requirements at Bulk Depots within Victorian Bulk business. For the avoidance of doubt, operational requirements include but are not limited to those which are required to cover the satisfaction of commercial requirements, unpaid leave, annual leave, long service leave coverage, long term sick coverage, training and safe work training.
- (b) If operational circumstances require, the Relieving Crew may additionally be deployed to other Pacific National depots outside of the Victorian Bulk business within the state of Victoria.
- (c) Relieving Crew positions will only be specifically advertised internally to existing Level 4, Level 5 and Level 6 full-time or part-time Train Crew Employees in Part B of the Agreement. A new employment contract will be offered to these Employees who opt-in to a Relieving Crew role.
- (d) Pacific National will not reduce existing full time or part time headcount in a particular depot for the sole purpose of replacing the headcount with Relieving Crew.
- (e) A Relieving Crew employee will be provided with a nominated home depot.
- (f) In the event that a Relieving Crew Employee is working from their home depot, they will operate under their own separate Master Roster and may be used to cover staff shortages due to planned and unplanned absences and other operational requirements.
- (g) A maximum of up to 10% of employees covered by Part B of the Agreement (Employees as identified in clause 14 Relieving Crew sub-clause (c) above) may enter into a new contract of employment as Relieving Crew.

- (h) The following employment conditions apply to Relieving Crew:
  - (i) No Employee will be forced to be part of the Relieving crew.
  - (ii) Relieving Crew Employees will be required to travel and work from various locations as specified by the company.
  - (iii) Relieving Crew Employees will receive an annual allowance of \$7,800 gross in addition to their wages, allowances and penalties. This will be paid in equal fortnightly instalments.
  - (iv) Unless a lesser period of notice is mutually agreed, the company may with a minimum of one (1) weeks' notice in writing nominate a different work location other than the appointed home depot for a Relieving Crew Employee.
  - (v) An additional one weeks' notice will be provided for each changed work location or extension of time at a work location unless agreed otherwise. The timeframe of relocation will be advised in writing to the Employee and will be subject to business and operational requirements.
  - (vi) When Relieving Crew are required to travel and work away from their home depot, Temporary Transfer Allowances will apply in accordance with the relevant provision within this Agreement.
  - (vii) Notwithstanding the above all other term and conditions of employment in the Agreement will continue to apply to Relieving Crew Employees. Where there is any inconsistency between the provision(s) of this clause and any other applicable provision(s) of this Agreement, the provisions of this clause will prevail over any inconsistency.

## 15. Medical Assessments

- (a) Where, through the operation of the National Standard for Health Assessment of Rail Safety Workers (“**National Standard**”) an Employee is required to undertake a Health Assessment, Pacific National will pay the cost of the medical assessment up to the “Determination”, including the medical assessment itself, a stress ECG, if required, and/or other referred test(s).
- (b) The Determination occurs when a qualified health professional, in satisfaction of the National Standard, has determined that the Employee is either:
  - (i) Fit for duty;
  - (ii) Fit for duty subject to review;
  - (iii) Fit for duty subject to position modification;
  - (iv) Temporarily unfit for duty subject to review; or
  - (v) Permanently unfit for duty.
- (c) If further tests are required following the determination, Pacific National will only be liable to cover the costs of such tests where it is identified that there was no basis for this referral (i.e. there is no apparent underlying condition that should have prompted such referral).
- (d) Pacific National Bulk Rail will be liable for the costs associated for the employee to attend the review medical with the nominated company doctor.
- (e) In order to ensure privacy is maintained in relation to the medical files, where an Employee seeks to claim such costs in these circumstances, the Chief Medical

Officer or their nominee will review the case file and make a determination as to whether the referral was justified. The decision of the Chief Medical Officer in such matters will be final.

- (f) Where it is determined that the referral was not justified, Pacific National will:
  - (i) reimburse the Employee for the medical costs incurred as a result of the referral; and
  - (ii) re-credit any sick leave that has been used as a result of being unable to perform their duties as a result of the referral.
- (g) The above provisions do not exclude any obligations arising under the applicable Worker's Compensation legislation.
- (h) The medical assessment shall be organised by the company. This periodical assessment including blood tests, shall be arranged in the employee's own time.
- (i) Pacific National, on receipt of the health assessment report, will reimburse the Employee for travel expenses and a payment of \$1,276.31 gross, which is taxable and non-superable and will be indexed from 2022 as per the remuneration increases in Part B clause 16.
- (j) If Pacific National is not able to provide a local health professional to administer the health assessment, it will pay for all travel, and time associated with the assessment.

## **16. Remuneration**

### **Remuneration Increase**

The hourly rates outlined in Part B and all allowances and payments with the exception of those indexed by the ATO schedule of this agreement will be increased in the following manner:

#### Operative Date Percentage Increase

- (a) From the beginning of the first pay period on or after 17 January 2021 - 2.5%.
- (b) The rates set out in this Agreement in clause B1.3(e) are inclusive of this increase and will be back paid within 28 days of the commencement of this agreement.
- (c) From the beginning of the first pay period on or after 17 January 2022 - 2.5%.
- (d) From the beginning of the first pay period on or after 17 January 2023 - 2.5%.
- (e) From the beginning of the first pay period on or after 17 January 2024 - 1.25%.

## **17. Locomotive Standards**

Pacific National will ensure all locomotives used as lead units within Victorian Bulk Rail have a hotplate and either an air or electronic fridge. A locomotive will be unable to be used as a lead unit if the above defined equipment is not operational.

## **18. Driver Only Operation (DOO)**

The following must be implemented prior to DOO occurring:

- (a) DOO Locomotives must be fitted with Global Positioning Systems (GPS), ICE radios and must afford 180-degree visibility from the driver's seat.

- (b) DOO trains must be fitted with sufficient braking capacity to enable to hold the train stationary, on the steepest grade of the rail line it is to operate, in the event of a train failure.
- (c) Pacific National will consult the Union and employees in accordance with clause 30 Consultation and Change about the implementation process for DOO.

## DECLARATION AND SIGNATORIES

This Enterprise Agreement has been developed through extensive consultation.

All parties are entering into this Agreement with full knowledge as to the content and effect of the document.

This Agreement was made on this the 21 day of June 2021

Signed for and on behalf of

PACIFIC NATIONAL BULK RAIL PTY LTD

PAUL SCURRAH

(Name)



(Signature)

In the presence of

SHARON JORRELO

(Witness name)



(Witness signature)

of the following address

LEVEL 16, 15 BLUEST, NORTH STONEY, NSW, 2060

Being an authorised signatory for Pacific National

Signed for and on behalf of the

AUSTRALIAN RAIL, TRAM and BUS INDUSTRY  
UNION

Marc Marotta

(Name)




(Signature) 16/6/2021

in the presence of

Suzi Ignatidis

(Witness name)



(Witness signature)

of the following address

1/6 Elizabeth St Melbourne VIC 3000

Being members of the National Executive of the Union and authorised to sign an Agreement on behalf of the RTBU under the union's registered rules.



## Schedule 1 - Notification of Dispute or Grievance

To: \_\_\_\_\_ Date: \_\_\_\_\_

*Insert Name of Manager to whom Notice is given*

I hereby give notice that I wish to invoke the dispute settlement process in Clause 31 of the Pacific National Victorian Bulk Rail Enterprise Agreement 2021. The details of this dispute are as follows:

The decision I wish to dispute is:

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The person who made the decision is:

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The date the decision was made is *(If Known)*

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The reasons I wish to dispute the decision are:

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Your Name: \_\_\_\_\_ Position: \_\_\_\_\_

Signed: \_\_\_\_\_

Your Work Location & Telephone Number:

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*Please Print Clearly*

## Schedule 2 - Job Sharing

- a) The parties acknowledge the benefits of job sharing to both the employees and Pacific National and agree to make all reasonable efforts to facilitate such positions where requested by employees having regard to the Company's of operational requirements.
- b) The potential for any employee to undertake job sharing will be dependent upon the there being another current employee with same qualifications and skill levels that will allow the pairing of individuals to share the position.
- c) Employees seeking to undertake a job-sharing arrangement will be required to seek approval from the company and all parties will sign a letter of agreement which confirms their work arrangements and also any conditions which have been varied from those outlined in this Agreement.
- d) The employees who have been paired for job sharing are to cover each other during periods of planned leave and where practical during periods of unplanned leave. Where this occurs, this will be paid at the ordinary hourly rate.
- e) The rotation of any two employees undertaking job sharing is to take place in intervals no shorter than one (1) week rostered on/one (1) week rostered off and no longer than four (4) weeks rostered on/four (4) weeks rostered off (except with the approval of the relevant manager), excluding periods of extended leave. These periods will be known as the Employee's "Rostered On" or "Rostered Off" periods.
- f) If a Job Share employee is requested and agrees to work a shift in their Rostered Off period, they will be paid standalone overtime at 1.2 times the ordinary hourly rate.
- g) Job Share employees will work on a Duty Cycle period consistent with their rostered-on period in which they are required to work ordinary hours up to the equivalent of an average of 40 hours per week (Preserved Employees) or 38 hours per week (Non Preserved Employees) prior to overtime being payable in accordance with B 2.2 (a).
- h) Payment will be based on weekly pay increments and will be paid to the employees fortnightly in arrears based on number of weeks worked in the previous pay cycle at the rate as outlined in this agreement. Employees may seek to discuss an alternative payment arrangement whereby payments are made in equal fortnightly instalments based on hours agreed to be worked. Any such arrangement will be subject to the approval of the depot manager.
- i) Where an employee who is already in a job sharing arrangement is left without a job share partner for any reason and an alternative partner cannot be found, the employee may revert to a part time or full time role based on vacancies and operational needs of Pacific National at the time.
- j) The structure of job sharing roles may be such that the employees may work more than their agreed Rostered On Periods over the course of the year by making themselves available for work at the same time (for example during the peak period). Employees may also make themselves available for shifts during their Rostered Off periods. These options are to be agreed with local depot managers.
- k) Where employees have secondary employment outside of their job sharing position with Pacific National, the employee is required to comply with the Company's *Secondary Employment Policy* as varied from time to time. This policy will not form part of or be incorporated into this Agreement.
- l) Start date for transition into a Job-Sharing role will be in accordance with the Company's ability to source new employees to fill any vacancies created by the establishment of job sharing roles, or an alternative date agreed by the relevant manager.

- m) When an employee enters a job share arrangement, they become a part time employee. The provisions of A 6.1(d) (i) to A 6.1(d) (xv) relating to part time employees do not apply and job share employees will work in accordance with this schedule.
- n) An employee working a job share role will be entitled to pro rata accruals with respect to Annual and Long Service and Personal Carers leave, based on the ordinary hours worked.
- o) Should an employee that has transitioned into a job share role be impacted by their position being made redundant, their severance for the purpose of calculating weekly rate of pay will be calculated on a pro-rata basis.

### Schedule 3 – Part Time Duty Cycle Hours Examples

#### Example 1:

Employee guaranteed fortnightly hours of 40 based on a 6-week duty cycle

Fortnight	Hours worked	Hours Paid in F/N pay	Shortfall Hours	Hours Credited to the Additional Hours Bank
1	80	76	0	4
2	36	40	4	0
3	50	50	0	0
Total hours	<b>166</b>	166		
<b>Overtime hours to be paid out at the end of the duty cycle</b>				<b>0</b>

#### Example 2:

Employee guaranteed fortnightly hours of 40 based on a 6-week duty cycle

Fortnight	Hours worked	Hours Paid in F/N pay	Shortfall Hours	Hours Credited to the Additional Hours Bank
1	60	60	0	0
2	35	40	5	0
3	50	45	0	0
Total hours	<b>145</b>	145		
<b>Overtime hours to be paid out at the end of the duty cycle</b>				<b>0</b>

#### Example 3:

Employee guaranteed weekly hours of 40 based on a 6-week duty cycle

Fortnight	Hours worked	Hours Paid in F/N pay	Shortfall Hours	Hours Credited to the Additional Hours Bank
1	80	76	0	4
2	80	76	0	4
3	80	76	0	4
Total hours	<b>240</b>	228		
<b>Overtime hours to be paid out at the end of the duty cycle</b>				<b>12 hours (240-228)</b>

## IN THE FAIR WORK COMMISSION

FWC Matter No  
AG2021/5834

Applicant:  
Pacific National Bulk Rail Pty Ltd T/A Pacific National

Section 185 – Application for approval of a single enterprise agreement

### Undertaking – Section 190

I, Nicholas Clifton, Head of Operations have the authority given to me by Pacific National Bulk Rail Pty Ltd to provide the following undertakings with respect to the Pacific National Victorian Bulk Rail Enterprise Agreement 2021 ("the Agreement"):

1. Notwithstanding the provisions in the Agreement, this Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.
2. Where Pacific National has an employee engaged under the classification Level 1 – Trainee Locomotive Driver, and they are required to commence their shift at or between the hours of 6:00pm to 6:00am Monday to Friday or work on Weekends or work on Public Holidays, they will be paid at the Level 2 – Second Person Hourly Rate of Pay. This includes where Level 1 – Trainee Locomotive Drivers are employed on a casual basis.
3. Where a Level 1 – Trainee Locomotive Driver, is required to work overtime they will be paid at the Level 2 – Second Person Hourly Rate of Pay.
4. Where a Level 1 – Casual Trainee Locomotive Driver commences a shift prior to 6:00pm and finishes the shift after 6:30pm, they will be paid at the Level 2 – Second Person Hourly Rate of Pay.
5. Pacific National will not engage Level 1 employees on a part time basis.

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

Nicholas Clifton  
**Head of Operations – Bulk**



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Signature

15 July 2021  

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Date