



DECISION

Fair Work Act 2009

s.185 - Application for approval of a single-enterprise agreement

Keolis Downer Hunter Pty Ltd

(AG2023/5389)

KEOLIS DOWNER HUNTER LIGHT RAIL OPERATIONS AGREEMENT 2023

Passenger vehicle transport (non rail) industry

COMMISSIONER JOHNS

HOBART, 12 JANUARY 2024

Application for approval of the Keolis Downer Hunter Light Rail Operations Agreement 2023

[1] An application has been made for approval of an enterprise agreement known as the *Keolis Downer Hunter Light Rail Operations Agreement 2023* (**the Agreement**). The application was made pursuant to s.185 of the *Fair Work Act 2009* (**the Act**). It has been made by Keolis Downer Hunter Pty Ltd. The Agreement is a single enterprise agreement.

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

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

[4] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 19 January 2024. The nominal expiry date of the Agreement is 30 June 2025.



COMMISSIONER

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KEOLIS DOWNER HUNTER LIGHT RAIL OPERATIONS AGREEMENT 2023



TABLE OF CONTENTS

1. TITLE.....	4
2. SCOPE AND APPLICATION OF THE AGREEMENT	4
3. DEFINITIONS	4
4. DATE OF OPERATION AND NOMINAL EXPIRY DATE	4
5. RELATIONSHIP TO AWARDS, AGREEMENTS AND NES	5
6. OBJECTIVES OF AGREEMENT	5
7. WORKPLACE FLEXIBILITY	5
8. INDIVIDUAL FLEXIBILITY TERM.....	5
9. CONSULTATION TERM	7
10. CONTRACT OF EMPLOYMENT	9
11. SECONDMENT	10
12. PROBATIONARY PERIOD	11
13. GENERAL OBLIGATIONS	11
14. CLASSIFICATION STRUCTURES	12
15. WAGE RATES.....	12
16. REIMBURSEMENT OF EXPENSES.....	12
17. NIGHT WORK ALLOWANCE	12
18. MENTOR ALLOWANCE.....	13
19. SUPERANNUATION	13
20. HOURS OF WORK.....	13
21. ROSTERING	14
22. SHIFT LENGTHS	14
23. INTERVAL BETWEEN SHIFTS.....	14
24. WORK LOCATION.....	14
25. OVERTIME.....	15
26. MEAL BREAKS	15
27. ANNUAL LEAVE	16
28. PERSONAL/CARER'S LEAVE	16
29. TRAUMA LEAVE.....	17
30. COMPASSIONATE LEAVE	17
31. PARENTAL LEAVE	17
32. LONG SERVICE LEAVE.....	18

33. PUBLIC HOLIDAYS.....	18
34. TERMINATION OF EMPLOYMENT	18
35. REDUNDANCY	19
36. MEDICAL ASSESSMENTS.....	20
37. HEALTH AND SAFETY MANAGEMENT ARRANGEMENTS.....	20
38. WORKPLACE HEALTH AND SAFETY TRAINING.....	21
39. DISPUTES AND GRIEVANCE PROCEDURE.....	21
40. CLOTHING & PERSONAL PROTECTIVE EQUIPMENT	22
41. TRAINING AND DEVELOPMENT OPPORTUNITIES.....	23
42. COMPANY CONSULTATIVE COMMITTEE	23
43. PAYMENT OF WAGES	24
44. OVERPAYMENT REIMBURSEMENT TO COMPANY FROM EMPLOYEE.....	24
45. WORKPLACE REPRESENTATION.....	24
46. CONFIDENTIALITY	25
47. FAMILY AND DOMESTIC VIOLENCE LEAVE	25
48. CAREER BREAK.....	25
49. JURY SERVICE LEAVE AND COMMUNITY SERVICE LEAVE	26
50. RENEWAL OF AGREEMENT.....	27
SIGNATORIES	28
APPENDIX A - CLASSIFICATION STRUCTURE	31

1. TITLE

This agreement shall be known as the *Keolis Downer Hunter Light Rail Operations Agreement 2023 (this/the Agreement)*.

2. SCOPE AND APPLICATION OF THE AGREEMENT

This Agreement covers:

- a) Keolis Downer Hunter Pty Ltd (**the Company**);
- b) Employees of the Company engaged in the operations of the Newcastle Light Rail network, in classifications contained in Appendix A of this Agreement (**Employees**); and
- c) The Australian Rail, Tram and Bus Industry Union, New South Wales (**RTBU**), to the extent that the Fair Work Commission notes in its decision to approve this Agreement that this Agreement covers them.

Any reference in this Agreement to Union is a reference to the RTBU.

3. DEFINITIONS

"Certificate" means any certificate provided by a Registered Training Organisation.

"Company" means Keolis Downer Hunter Pty Ltd (ABN: 89 614 205 766).

"Continuous shift worker" means an employee engaged to work in a system of consecutive shifts throughout the twenty four (24) hours of each day of at least six (6) consecutive days without interruption (except during breakdown or meal breaks or due to unavoidable causes beyond the control of the employer) and who is regularly rostered to work those shifts, and who regularly works on Sundays and public holidays.

"Serious misconduct" includes conduct that is wilful or deliberate behaviour by an Employee that is inconsistent with the continuation of the contract of employment and conduct that causes serious and imminent risk to the health and safety of a person or to the reputation, viability or profitability of the Company's business.

Serious misconduct can include theft, fraud, assault, sexual harassment, intoxication at work and the refusal to carry out lawful and reasonable instructions consistent with the employment contract.

"FWC" means the Fair Work Commission.

"FW Act" means the *Fair Work Act 2009*

(Cth). **"LRV"** means Light Rail Vehicle.

"WHS" means Workplace Health and Safety.

"Newcastle Light Rail Operations" means the Newcastle Light Rail Network.

4. DATE OF OPERATION AND NOMINAL EXPIRY DATE

- a) This Agreement will operate from its Commencement Date, which is the seventh (7th) day after approval by the FWC and shall have a nominal expiry date of 30 June 2025.

- b) This Agreement will remain in operation after the nominal expiry date until replaced by another agreement or terminated in accordance with the FW Act.

5. RELATIONSHIP TO AWARDS, AGREEMENTS AND NES

This Agreement is a comprehensive agreement which operates to the exclusion of any Awards or agreements.

Nothing in this Agreement is intended to provide for an entitlement which is less than the National Employment Standards (**NES**). The terms of this Agreement apply in a manner that does not exclude the NES. That is, no provision of the NES is displaced by this Agreement but the NES provisions may be supplemented by the terms of this Agreement. Accordingly, the NES will continue to apply to the extent that any term of this Agreement is detrimental in any respect when compared to the NES.

6. OBJECTIVES OF AGREEMENT

The fundamental objective of this Agreement is to achieve the following goals:

- a) To establish an agreed set of conditions of employment;
- b) To promote increased business competitiveness through continuous improvement in operational safety, reliability, quality customer service and enhanced productivity; and
- c) To follow at all times the agreed disputes resolution procedures, so as to develop a dispute-free work site culture.

7. WORKPLACE FLEXIBILITY

- a) Workplace flexibility is a condition of employment. Employees shall be multi-skilled and are to work in a completely flexible manner to perform works as directed by the Company. All Employees will be required to perform a diverse range of functions within their level of skill and competence. The Company may direct the Employee, and the Employee will be obliged, to carry out such duties in accordance with this Agreement that are within the limits of the Employee's skill, competence and training as determined by the Company and any such direction issued by the Company will be consistent with the Company's responsibility to provide a safe and healthy work environment. This may include performing alternative duties as directed by the Company, for which the Employee is competent to perform, in particular where there is a service disruption or special event.
- b) Employees may be required to work reasonable overtime or shift work in excess of the ordinary hours.

8. INDIVIDUAL FLEXIBILITY TERM

8.1 The Company and Employees covered by this Agreement may agree to make an Individual Flexibility Arrangement (**IFA**) to vary the effect of terms of the Agreement if:

- a) the IFA deals with one (1) or more of the following matters:

- (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances; and
 - (v) leave loading.
 - b) the IFA meets the genuine needs of the Company and Employee in relation to one (1) or more of the matters mentioned in paragraph a); and
 - c) the IFA is genuinely agreed to by the Company and Employee.
- 8.2 The Company must ensure that the terms of the IFA:
- a) are about permitted matters under section 172 of the FW Act; and
 - b) are not unlawful terms under section 194 of the FW Act; and
 - c) result in the Employee being better off overall than the Employee would be if no IFA was made.
- 8.3 The Company must ensure that the IFA:
- a) is in writing; and
 - b) includes the name of the Company and Employee; and
 - c) is signed by the Company and Employee and if the Employee is under eighteen (18) years of age, signed by a parent or guardian of the Employee; and
 - d) includes details of:
 - (i) the terms of the Agreement that will be varied by the IFA; and
 - (ii) how the IFA will vary the effect of the terms; and
 - (iii) how the Employee will be better off overall in relation to the terms and conditions of their employment as a result of the IFA; and
 - (iv) states the day on which the arrangement commences.
- 8.4 The Company will provide the Employee fourteen (14) days to seek external advice (from an authorised union or legal representative), if requested, prior to signing the IFA.
- 8.5 The Company must give the Employee a copy of the IFA within fourteen (14) days after it is agreed to.
- 8.6 The Company or Employee may terminate the IFA:

- a) by giving twenty eight (28) days written notice to the other party to the IFA;
or
- b) if the Company and Employee agree in writing - at any time.

9. CONSULTATION TERM

9.1 This consultation term applies if the Company:

- a) Proposes to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the Employees; or
- b) Proposes to introduce a change to the regular roster or ordinary hours of work of Employees.

Major change

9.2 For a major change referred to in clause 9.1a):

- a) the Company must notify the Relevant Employees of the decision to introduce the major change; and
- b) clauses 9.3 to 9.9 apply.

9.3 The Relevant Employees may appoint a representative (which may include the Union) for the purposes of the procedures in this clause.

9.4 If:

- a) A Relevant Employee appoints, or Relevant Employees appoint, a representative for the purposes of consultation; and
 - b) the Employee or Employees advise the Company of the identity of the representative;
- the Company must recognise the representative.

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

- a) discuss with the Relevant Employees and their representative (if nominated):
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the Employees;
and
 - (iii) measures the Company is taking to avert or mitigate the adverse effect of the change on the Employees; and
- b) for the purposes of the discussion - provide, in writing, to the Relevant Employees and their representative (if nominated):
 - (i) all relevant information about the change including the nature of the change proposed; and

- (ii) information about the expected effects of the change on the Employees; and
- (iii) any other matters likely to affect the Employees.

9.6 However, the Company is not required to disclose confidential or commercially sensitive information to the Relevant Employees and their representative (if nominated).

9.7 The Company must give prompt and genuine consideration to matters raised about the major change by the Relevant Employees and their representative (if nominated) before proceeding with any change.

9.8 If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Company, the requirements set out in clause 9.2 and clauses 9.3 and 9.5 are taken not to apply.

9.9 In this clause, a major change is likely to have a significant effect on Employees if it results in:

- a) the termination of the employment of Employees; or
- b) major change to the composition, operation or size of the Company's workforce or to the skills required of Employees; or
- c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- d) the alteration of hours of work; or
- e) the need to retrain Employees; or
- f) the need to relocate Employees to another workplace; or
- g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

9.10 For a change referred to in clause 9.1b):

- a) the Company must notify the Relevant Employees of the proposed change; and
- b) clauses 9.11 to 9.15 apply.

9.11 The Relevant Employees may appoint a representative (which may include the Union) for the purposes of the procedures in this clause.

9.12 If:

- a) A Relevant Employee appoints, or Relevant Employees appoint, a representative for the purposes of consultation; and
- b) the Employee or Employees advise the Company of the identity of the representative;

the Company must recognise the representative.

9.13 As soon as practicable after proposing to introduce the change, the Company must:

- a) discuss with the Relevant Employees and their representative (if nominated) the introduction of the change; and
- b) for the purposes of the discussion - provide to the Relevant Employees and their representative (if nominated):
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the Company reasonably believes will be the effects of the change on the Employees; and
 - (iii) information about any other matters that the Company reasonably believes are likely to affect the Employees; and
 - (iv) invite the Relevant Employees and their representative (if nominated) to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

9.14 However, the Company is not required to disclose confidential or commercially sensitive information to the Relevant Employees and their representative (if nominated).

9.15 The Company must give prompt and genuine consideration to matters raised about the change by the Relevant Employees and their representative (if nominated).

10. CONTRACT OF EMPLOYMENT

- a) Employees may be employed on a full-time, part-time or casual basis.

Casual Employees

- b) A casual Employee is one who is engaged on an hourly basis. A casual loading of twenty five percent (25%) shall be paid. The casual loading is paid in lieu of annual leave, personal leave, other paid leave and public holidays as contained in this Agreement. In calculating overtime payments for casuals the following should apply: base rate then twenty five (25%) loading and then the relevant overtime rate/loading.
- c) On each occasion where a casual Employee is required to attend work, the Employee shall be entitled to payment for a minimum of three (3) hours work. A casual Employee who is told on attendance for a shift that they are not required, shall be paid a minimum of three (3) hours.
- d) Offers and requests for conversion from casual employment to full time or part time employment are provided for in the NES.

- e) Disputes about offers and requests for casual conversion are to be dealt with under clause 39 – Disputes and Grievance Procedure.

Part Time Employees

- f) Part-time Employees may be engaged to work reasonably predictable hours of work less than thirty eight (38) ordinary hours per week.
- g) Before commencing part-time employment, the Employee and the Company must agree upon:
 - (i) the usual hours to be worked by the Employee, the days upon which they will be worked and the expected commencing and finishing times for the work; and
 - (ii) the classification applying to the work to be performed.
- h) Additional hours to those specified in clause 10g) above, may be offered and worked by agreement. Where a part time Employee agrees to perform additional duty then such duty will stand alone and count towards the ordinary hours of duty for that week.
- i) Except as otherwise provided in this Agreement, a part time Employee is entitled to be paid for the hours agreed upon in accordance with clause 10g) and clause 10h).
- j) The terms of the agreement may be varied by consent. The terms of the agreement or any variation must be in writing and retained by the Company. A copy of the agreement and any variation to it must be provided by the Company to the Employee.
- k) All entitlements for part time Employees under this Agreement shall be proportionate as the Employee's ordinary hours relate to full time ordinary hours worked.
- l) All time worked in excess of the agreed hours referred to in clause 10g) and 10h) will be paid at the appropriate overtime rate.

Full Time Employees

- m) A full time Employee is an Employee engaged for a minimum average of thirty eight (38) ordinary hours per week plus any reasonable additional hours as required by the Company, averaged in accordance with the provisions of Clause 20 of this Agreement.

Requests for Flexible Working Arrangements

- n) Requests for flexible working arrangements are provided for in the NES.

11. SECONDMENT

- a) Employees may agree to be seconded for fixed periods to other parts of the Company from time to time.
- b) In these circumstances, the Employee will continue to be covered by this Agreement and the terms and conditions applying during the secondment

will be managed in accordance with clause 8.

12. PROBATIONARY PERIOD

- a) The Employee's employment with the Company will be subject to a three (3) month probationary period commencing from the date of commencement of employment.
- b) At any time during the probationary period and for any reason, the Employee's employment may be terminated by either the Company or the Employee.
- c) An Employee's probationary period may be extended up to six (6) months by mutual agreement between the Company and the Employee.

13. GENERAL OBLIGATIONS

- a) Employees are expected to act in consideration of good conduct, sobriety, efficiency, safe and economical work practices at all times as an essential requirement of the employment relationship. Responsibilities and obligations of Employees therefore include but are not limited to:
 - (i) following reasonable and lawful instructions;
 - (ii) carrying out all tasks and duties with due care, skill and diligence in a safe manner;
 - (iii) complying with all Company policies and procedures (as amended from time to time) and advising the Company of any suspected breach of the same or of any misconduct or unsafe practices;
 - (iv) working to the full scope of the job/task and, where required, using initiative to complete the assigned job/task;
 - (v) applying the highest standards of honesty, integrity and confidentiality;
 - (vi) acting in good faith to ensure the achievement of Company goals and objectives;
 - (vii) undertaking workplace drug and alcohol testing as required to ensure a safe operating environment for all parties; and
 - (viii) undertaking and/or assisting in training opportunities.
- b) The Company will undertake annual performance reviews with Employees. The purpose of these reviews will be to recognise achievement and to provide constructive feedback of areas for Employee performance as required. As part of this process, positive support and consideration of appropriate training opportunities will be provided.
- c) Annual performance reviews will be transparent, objective, and based on the

delivery of competencies and productivity.

- d) The staffing levels for all operations are governed by the relevant Company policies and procedures (as amended from time to time). Such policies and procedures will be developed having regard to safety and efficient operations.

14. CLASSIFICATION STRUCTURES

At the start of employment, each Employee will be appointed by the Company to a classification level based on the Employee's skills, qualifications and experience and in consideration of the substantive duties required to be carried out at that time.

15. WAGE RATES

- a) The wage rates for each classification are as prescribed in this clause. The wage rates and allowances in this Agreement are in compensation for, amongst other things, all disabilities and/or special skills and/or special rates associated with, or likely to be associated with the Newcastle Light Rail Operations.
- b) All increases under this Agreement will apply from the first full pay period on or after the specified date.
- c) Wage Rates for Employees are as follows:

Classification	Starting Wage Rate (\$/hr)	1/7/2022 (4.5%)	1/7/2023 (3%)	1/7/2024 (3%)
LRV Operator – Level 1	\$30.45	\$31.82	\$32.77	\$33.76
LRV Operator – Level 2 (1 Year Experience)	\$31.19	\$32.59	\$33.57	\$34.58
LRV Operator – Level 3 (2 Years Experience)	\$31.75	\$33.18	\$34.17	\$35.20
LRV Operator – Level 4 (3 Years Experience)	\$32.42	\$33.88	\$34.89	\$35.94

16. REIMBURSEMENT OF EXPENSES

The Company shall reimburse Employees for authorised expenses incurred on the Company's behalf.

17. NIGHT WORK ALLOWANCE

- a) Employees who work ordinary hours after 7.00pm and before 6.00am will be paid an additional fifteen percent (15%) of their wage rate for each ordinary hour so worked.
- b) Employees who work ordinary hours which finish after 12.00am will be paid the additional fifteen percent (15%) of their wage rate for the entire shift.
- c) Employees who work overtime hours after 7.00pm and before 6.00am will be paid in accordance with Clause 25.
- d) For the avoidance of doubt, the night work allowance will not be payable on

overtime. An Employee shall only be entitled to the night work allowance or overtime rates, but not both.

18. MENTOR ALLOWANCE

Employees nominated by the Company as a mentor for another Employee shall be paid an allowance of ten percent (10%) of their ordinary hourly rate for each hour, or part thereof, so nominated, and for the entire shift where the time so worked exceeds two (2) hours.

19. SUPERANNUATION

- a) The Company will make superannuation contributions in accordance with the *Superannuation Guarantee and Administration Act 1992* (Cth) into a complying superannuation fund nominated by the Employee. If no choice of fund is made by the relevant Employee and the Employee does not have a stapled superannuation fund, the default fund will be AWARE Super.
- b) The Employee can elect to salary sacrifice part or all of their wages or other allowable entitlements into a superannuation fund of the Employee's choosing provided that:
 - (i) the arrangement complies with relevant legislation and Company policy as amended from time to time;
 - (ii) the Employee notifies the Company of their election to salary sacrifice in writing prior to the wages and/or allowable entitlements being earned or accrued by the Employee;
 - (iii) the superannuation fund is a complying superannuation fund; and
 - (iv) the amount to be paid into the superannuation fund plus any balance of wages and/or allowable entitlements is equivalent to what the Employee would have been entitled to as wages and/or allowable entitlements under this Agreement.

20. HOURS OF WORK

- 20.1 The ordinary hours of work shall average seven point six (7.6) hours per day, Monday to Sunday (seven (7) day roster), thirty eight (38) hours per week, over a two (2) week period.
- 20.2 The Company and Employees may agree to implement patterns of working ordinary hours, for entire work groups, to allow for the taking of extra days off, where commercially viable.
- 20.3 Ordinary hours worked on weekends shall be paid as follows:
 - a) on Saturday: at the rate of time and one half (150%) of the Employee's wage rate for all ordinary hours worked;
 - b) on Sunday: at the rate of double (200%) of the Employee's wage rate for all

ordinary hours worked;

- c) provided that such ordinary hours worked in accordance with Clause 20.1:
 - (i) shall be counted toward an Employee's average hours per two (2) week period; and
 - (ii) the rates in clauses 20.3a) and 20.3b) apply in lieu of any applicable shift loading or penalty payment.

20.4 Start and finish locations(s) and time(s) shall be designed to support production and maximise operating hours and maintenance time, to suit the needs of the operation. These may be altered by the provision of twenty four (24) hours' notice to the Employee or less if by mutual agreement. Please note that these notice requirements do not apply to a shift swap arrangement between Employees.

20.5 Employees shall be entitled to ten (10) minutes sign-on/sign-off time that is counted towards the Employee's ordinary hours worked.

21. ROSTERING

- a) The Company will develop a master roster that sets out ordinary hours of up to sixteen (16) weeks.
- b) Weekly rosters showing approved changes due to leave, approved shift swaps, service changes, etc., are issued fourteen (14) days in advance.
- c) The Company may vary the roster by giving forty eight (48) hours' notice, or less by mutual agreement. Please note that these notice requirements do not apply to a shift swap arrangement between Employees.
- d) The roster, over the roster cycle, will provide for at least two (2) days off each week in the cycle, taking into account the Company's fatigue management policy.

22. SHIFT LENGTHS

- a) The duration of the ordinary hours worked per shift for full time Employees shall be between seven (7) and nine (9) hours.
- b) Part time Employees shall have a minimum engagement of four (4) hours.

23. INTERVAL BETWEEN SHIFTS

- a) The time which an Employee must be off duty will be a minimum of eleven (11) hours.
- b) Where an Employee works overtime between the ordinary hours on one day and the commencement of ordinary hours the next day and the Employee has not had the minimum interval between shifts, the Employee will receive payment for the ordinary hours occurring during such an absence.

24. WORK LOCATION

- a) Employees may start and end their shift at the depot, the depot stop or other

locations along the route as nominated by the Company. Employees will start and finish their shift at the same location.

- b) The depot will contain the following:
 - (i) meal break and crib facilities;
 - (ii) operational documentation;
 - (iii) provision for the transport of any safety or maintenance equipment.
- c) Where an Employee finishes work at a location that is different to the sign-on point, the Company 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 limit.

25. OVERTIME

- a) An Employee shall be required to work reasonable overtime for payment of overtime penalty rates. Hours worked in addition to the ordinary hours will attract overtime payment.
- b) Reasonable overtime will be scheduled with regard to:
 - (i) any risk to Employee health and safety;
 - (ii) the Employee's personal circumstances, including any family responsibilities;
 - (iii) the needs of the workplace; and
 - (iv) any other relevant matter.
- c) All time worked in excess of ordinary hours in any shift shall be paid for at the rate of time and a half (150%) for the first three (3) hours and double time (200%) thereafter, with the exception of overtime worked on a Sunday which shall be paid for at double time (200%).
- d) An Employee recalled to work overtime after leaving their shift shall be paid for a minimum of two (2) hours work at the rate of double time (200%).
- e) Overtime will be offered to a classified LRVO in the first instance in a fair and equitable manner, subject to rostered work not being affected.

26. MEAL BREAKS

- a) Employees shall not be rostered to work more than five (5) hours without an unpaid meal break.
- b) A minimum of forty (40) minutes and maximum of fifty (50) minutes shall be allowed for an unpaid meal break.
- c) Meal breaks shall be provided at a time when an Employee has access to depot/KO meal facilities.

- d) All meal breaks shall be taken at such times as will not interfere with the efficient running of light rail vehicles.

27. ANNUAL LEAVE

- a) Employees shall be entitled to annual leave in accordance with the NES. For the period, if any, that an Employee is engaged as a Continuous Shift Worker as defined by this Agreement, they will be a Shift Worker for the purposes of the NES and entitled to a pro-rata accrual of five (5) weeks annual leave per annum.
- b) The taking of annual leave shall be subject to the following:
 - (i) The company will seek to take into account Employee requests and preferences for rostering annual leave however the taking of leave is subject to operational requirements. If excessive leave has been accrued (meaning more than eight (8) weeks, or ten (10) weeks if the Employee is a Continuous Shift Worker), the Company may direct the Employee to take annual leave by providing at least four (4) weeks' notice. It is the intention of the parties bound by this Agreement that excessive annual leave is not accrued and for appropriate leave to be taken each year.
 - (ii) Annual leave shall accrue from commencement of service in accordance with the NES.
 - (iii) Annual leave shall accrue to Employees in respect of any authorised period of paid absence from duty.
- c) A leave loading of seventeen point five percent (17.5%) will apply to any annual leave taken.
- d) On termination of employment, any unused leave, including any applicable leave loading, shall be paid to the Employee.

28. PERSONAL/CARER'S LEAVE

- a) Employees, other than casual employees, shall be entitled to ten (10) days paid personal/carer's leave per annum in accordance with the NES. Part time Employees have a pro-rata entitlement to personal sick and carers leave based on the entitlement of full time Employees. Casual Employees are entitled to unpaid carers leave in accordance with the NES.
- b) Personal/carer's leave includes leave for the Employee when ill or injured and leave for the Employee to provide care or support to a member of the Employee's immediate family or household who is sick or injured or who has an unexpected emergency, as defined by the NES. An Employee's immediate family is defined in the NES and includes the spouse (or former spouse) or de facto partner (or former de facto partner), child, parent, grandparent, grandchild or sibling of the Employee; or the Employee's spouse (or former spouse) or de facto partner (or former de facto partner).

- c) Payment in respect of leave under this clause is the Employee's wage rate as set out in Clause 15 of this Agreement.
- d) An Employee must provide the Company with a medical certificate from a registered health practitioner or complete a Statutory Declaration stating that the Employee, or an immediate family or household member for whom the Employee was caring, was or is unwell and that the Employee was unable to attend for work on that occasion where the Employee has had two (2) consecutive days absent and/or two (2) individual day absences per annum. In the case of an unexpected emergency, reasonable proof may be required.
- e) The Employee must notify the Company prior to commencing personal/carer's leave or as soon as practicable, of the day on which the Employee wishes to take personal/carer's leave.
- f) The Employee's paid personal/carer's leave will accrue from year to year, however the Employee is not entitled to a payment for any accrued but untaken personal/carer's leave on termination of the Employee's employment for whatever reason.

29. TRAUMA LEAVE

An Employee who is involved in an accident or similar traumatic event during the normal performance of work, which of its nature causes the Employee concerned significant distress or trauma shall be entitled to up to three (3) days of paid leave. This leave is not counted as personal/carer's leave, is not cumulative, and is available on a per-event basis only, subject to the following:

- a) the Employee must attend an appointment with a medical practitioner (such as a psychologist) as directed by the Company;
- b) the Company shall nominate and pay for the practitioner to whom the Employee must attend;
- c) the Employee must provide the Company with such evidence as is required to establish that they have complied with the requirement to attend as set out above; and
- d) the practitioner must provide the Company with a report outlining the estimated duration of absence due to trauma leave circumstances.

30. COMPASSIONATE LEAVE

- a) Employees are entitled to compassionate leave in accordance with the NES and this Agreement.
- b) Employees (other than casual Employees) shall be entitled to two (2) days without loss of pay on each occasion when a member of the Employee's immediate family or household dies or contracts or develops a personal illness that poses a serious threat to their life or sustains a personal injury that poses a serious threat to their life. Casual Employees are entitled to unpaid leave in these circumstances.

31. PARENTAL LEAVE

Employees will be entitled to Parental Leave in accordance with the NES and the

32. LONG SERVICE LEAVE

Employees covered by this Agreement shall be entitled to long service leave in accordance with the provisions of the relevant State or Territory Long Service Leave Act, provided that where Employees meet the eligibility criteria for portable long service leave provisions under the relevant State or Territories Legislation, then such provisions will prevail for long service leave purposes.

33. PUBLIC HOLIDAYS

- a) All Employees (excluding casual Employees) shall be entitled to the following public holidays, without deduction from the Employee's wage rate: Christmas Day, Boxing Day, New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, King's Birthday and other locally gazetted half or full day public holidays.
- b) Any Employee required to work on a public holiday nominated herein shall receive payment at double time and a half (250%) of the wage rate.
- c) An Employee required to work on a public holiday will not receive any other penalty payment. For the avoidance of doubt, an Employee will receive a maximum payment of double time and half (250%) of the wage rate for all hours worked.
- d) Employees (excluding casuals) will be paid at their wage rate for public holidays they are rostered to work but are not required to work. This includes public holidays that fall on a day the employee would ordinarily work, but are not rostered to work. For the avoidance of doubt an employee is deemed to ordinarily work on a day if they have previously worked that day on at least thirteen (13) occasions in the twelve (12) months immediately proceeding the public holiday.
- e) It will be possible for the Company and an Employee(s) to agree to substitute the nominated public holiday for another day and the prescriptions of this clause will apply to the substituted day instead of the nominated public holiday.

34. TERMINATION OF EMPLOYMENT

- a) Employment may be terminated by an Employee or the Company by giving the following notice:

Employee's Period of Continuous Service with the Company	Actual Period of Notice Required to be Provided
Not more than 1 year	1 weeks' notice
More than 1 year but not more than 3 years	2 weeks' notice
More than 3 years but no more than 5 years	3 weeks' notice
More than 5 years	4 weeks' notice

- b) If the Employee is over forty five (45) years old at the time notice of

termination is given and the Employee has completed at least two (2) years of continuous service with the Company, the Employee will be entitled to an additional one (1) weeks' notice. For the avoidance of doubt, the additional notice provided under this clause does not apply to circumstances where the termination is at the initiative of the Employee.

- c) Termination of all casual engagements shall require eight (8) hours' notice on either side of an engagement or the payment or forfeiture of eight (8) hours pay, as the case may be.
- d) Following the giving of notice of termination by either party, the Company may, at its absolute discretion, elect to pay the Employee an amount equal to the full rate of pay due to the Employee had they continued working, for the remainder of the notice period and not require the Employee to work out the notice period.
- e) If an Employee fails to give the required notice, or gives notice but leaves before the end of the notice period, they shall forfeit payment for the notice period (or that part of the notice period not worked), from any money owed by the Company.
- f) Notwithstanding the notice provisions of this clause, the Company retains the right to summarily terminate an Employee's employment without notice for Serious Misconduct, in which case an Employee shall only be entitled to be paid for the time worked up to dismissal. The Company may suspend an Employee with or without pay and require an Employee not to attend for work for a period of up to seven (7) working days during which it investigates alleged misconduct.
- g) If an Employee loses their driver's licence or other relevant qualification and this prevents the performance of an Employee's duties, the Employee may elect to take any available accrued annual or long service leave for the period during which the Employee is unable to perform the duties. If the accrued leave available to the Employee is insufficient to cover the period during which the Employee is unable to perform the duties, or the Employee does not elect to take such accrued leave, the Company may terminate through frustration in which case the Company must give notice of termination, but will not be required to make payment in lieu of notice.
- h) If an Employee is absent from work without reasonable cause for five (5) consecutive days on which they are rostered without the consent of the Company or without notification to the Company, the Employee may be deemed, at the discretion of the Company, to have abandoned their employment and notice of termination may be given in accordance with clause 34(a).
- i) Clauses 34a) and 34b) shall not apply to Employees who are engaged for a specified task/s, or on a casual basis.

35. REDUNDANCY

- a) Subject to this clause, where the Company terminates an Employee's employment because it no longer requires the job done by the Employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour, the Employee is to be paid a redundancy payment in accordance with the following scale:

Employee's period of continuous service with the Company on termination	Redundancy pay period
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks

- b) The payment under Clause 35a) is made at the Employee's wage rate as set out in clause 15.
- c) Where there is a transfer of employment as defined by the FW Act, an Employee is not entitled to be paid any amount of redundancy pay where the Company obtains other acceptable employment for the Employee.
- d) Clause 35a) shall not apply to Employees who are engaged for a specified task/s, limited tenure, on a casual basis, an Employee dismissed for Serious Misconduct, or an Employee (other than an Apprentice) to whom a training arrangement applies and whose employment is for a specified period of time or is limited to the duration of the training arrangement.
- e) Payments made under this clause are in addition to any entitlement to payment under clause 34.

36. MEDICAL ASSESSMENTS

Employees will be required to attend Company initiated and scheduled health assessments carried out by a Company nominated medical practitioner from time to time in accordance with Company Policy.

It is a condition of employment with the Company that Employees complete the Category 1 rail safety worker medical assessment. The Company will meet the cost of the consultation and Employees shall be paid for such time. Payment of medical examinations will be exclusive of any specialist requirements.

37. HEALTH AND SAFETY MANAGEMENT ARRANGEMENTS

The Company will develop HSMA's in consultation with Employees or their nominated representatives which meet the needs of the operation, taking into account the particular circumstances of the Company and relevant health and safety issues as they relate to the workforce.

38. WORKPLACE HEALTH AND SAFETY TRAINING

The Company will determine the standard and requirement of training for Employees, in consultation with the Union. Every Employee will have the opportunity to attend a minimum of two (2) hours paid awareness WHS training each calendar year.

39. DISPUTES AND GRIEVANCE PROCEDURE

- a) In the event of a dispute arising in the workplace about matters arising under this Agreement or in relation to the National Employment Standards, the procedure to resolve the matter will be as follows:
- (i) The Employee and the Employee's supervisor meeting and conferring on the matter within two (2) days of the dispute being notified.
 - (ii) If the matter is not resolved at the meeting (above), the parties must arrange for further discussions between the Employee and more senior levels of management. The Company and the Employees and their representatives will meet within one (1) week of the meeting under clause 39a)(i).
 - (iii) If the matter cannot be resolved it may be referred by either party to the FWC for resolution. This does not affect the right of either party to a dispute to take other action to resolve the dispute. All parties to the dispute will use their best endeavours to expediate conferences or hearings in the FWC, with the view to resolving the dispute as quickly as possible.
- b) An Employee may choose to have a representative of their choice, which may include a union representative, to represent and support them at any stage of the dispute resolution procedure. Any representative nominated by the Employee pursuant to this dispute resolution procedure will be allowed, at a place designated by the Company, the necessary time during working hours to support the Employee.
- c) While the parties attempt to resolve the dispute, Employees must continue to work as normal in accordance with this Agreement and their contracts of employment unless an Employee has a reasonable concern about imminent risk to safety or health. In this case, an Employee must not unreasonably fail to comply with a direction of the Company to perform other available work, whether at the same or another workplace that was safe and appropriate for the Employee to perform.
- d) If a dispute is referred to the FWC for resolution, the FWC can take any or all of the following actions as it considers appropriate to resolve the dispute:
- (i) convene conciliation conferences of the parties or their representatives at which the FWC is present;
 - (ii) require the parties or their representatives to confer

among themselves at conferences at which the FWC is not present;

- (iii) request, but not compel, a person to attend proceedings;
 - (iv) request, but not compel, a person to produce documents;
 - (v) where either party requests, make recommendations about particular aspects of a matter about which they are unable to reach agreement;
 - (vi) where the matter, or matters, in dispute cannot be resolved (including by conciliation) and one party or both request, arbitrate or otherwise determine the matter, or matters, in dispute.
- e) The FWC must follow due process and allow each party a fair and adequate opportunity to present their case.
 - f) Any determination of the FWC under clause 39d) must be in writing if either party so requests, and must give reasons for the determination.
 - g) Any determination made by the FWC under clause 39d) must be consistent with applicable law and must not require a party to act in contravention of an applicable industrial instrument or law.
 - h) Either party may appeal a determination of the FWC to a Full Bench of the FWC.
 - i) If either party requests the 'status quo' may operate while the dispute is being resolved. Provided that 'status quo' will not operate for more than one (1) month from the day that the dispute was first notified to the Company. The 'status quo' period may be extended beyond one (1) month by agreement between the parties to the dispute.
 - j) The parties are entitled to be represented, or to seek leave to be represented, e.g., by legal representatives and/or the union in proceedings pursuant to this dispute resolution procedure.

40. CLOTHING & PERSONAL PROTECTIVE EQUIPMENT

- a) The Company will provide Employees in operational roles with uniforms in accordance with Company policy (as amended from time to time) which must be worn.
- b) Full time Employees will be issued with the following:
 - (i) five (5) x shirts (long sleeve);
 - (ii) three (3) x trousers;
 - (iii) one (1) jumper;
 - (iv) one (1) x jacket (hi vis);

- (v) one (1) x hi vis vest (rail safety standard); and
 - (vi) one (1) x pair safety boots (light weight).
- c) Part time and casual Employees will be issued with sufficient uniforms based on their roster.
 - d) At the Company's discretion, clothing will be replaced on a fair wear and tear basis provided that they are produced to the Company for inspection and the Company determines that the replacement of such items is warranted.
 - e) At its discretion the Company shall supply safety clothing and any other protective equipment/materials as it determines relevant and the Employee shall be required to wear such clothing or equipment at all times as directed and/or as required by the Company. Any breach of this provision will give rise to disciplinary action. Disciplinary action taken under this clause may include verbal or written warnings, suspension, and termination of employment.
 - f) No safety equipment or PPE other than that provided by the Company is to be worn or used unless otherwise approved by the appropriate Company management representative.

41. TRAINING AND DEVELOPMENT OPPORTUNITIES

- a) At the absolute discretion of the Company, Employees may be provided with and undertake training and development opportunities.
- b) Upskilling shall not lead to a reclassification of the Employee unless and until the new skills are required by the Company and the Employee is appointed in writing by the Company to a new position/classification.
- c) The Company shall allow Employees undertaking training and development opportunities with time off without loss of ordinary pay to attend off-the-job training.

42. COMPANY CONSULTATIVE COMMITTEE

- a) The Company will establish and maintain a consultative committee as a forum for effective communication between the Company and the Employees.
- b) The consultative committee will be made up of an equal number of Company representatives and employee representatives elected by the Employees. The parties agree that there will be a maximum of two (2) representatives from management and two (2) from the Employees (which may include Union representatives). The committee shall meet a minimum of four (4) times per year.
- c) The principal purpose of this committee will be to:
 - (i) monitor the implementation of the terms of this Agreement;
 - (ii) facilitate the process of workplace reform through consultation;

- (iii) ensure Employees are properly consulted in respect of issues impacting on their wages, working conditions and job security; and
- (iv) monitor, discuss, develop and or recommend measures or actions in respect of, but not limited to: productivity, job security, skills audit and training, management of quality assurance, occupational health and safety, existing and future work, removal of restrictive work practices, environmental protection and redundancies.

43. PAYMENT OF WAGES

- a) Payment shall be by direct deposit/electronic funds transfer on a fortnightly basis to a maximum of two (2) separate bank account(s) nominated by the Employee.
- b) When the Employee's services are terminated, the Company shall pay any wages due as soon as practicable.

44. OVERPAYMENT REIMBURSEMENT TO COMPANY FROM EMPLOYEE

Upon the Company providing written notification of an overpayment to an Employee, the Employee authorises the Company to deduct from any wages or any other entitlements payable, or owing to the Employee, any overpayments made in error to the Employee by the Company. The Company and Employee will agree on the amount/frequency of the deduction, which should be no less than 10% of the Employee's fortnightly earnings.

45. WORKPLACE REPRESENTATION

- a) For the purposes of this clause a workplace representative is an Employee who has been appointed as a representative in writing by the Union.
- b) In exercising their rights, workplace representatives and the Union will consider the Company's operational issues, policies and guidelines and the likely effect on the efficient operation of the Company.
- c) Employee workplace representatives nominated by the Union to attend a Union sponsored training course on dispute resolution, or on matters pertaining to the employer/employee relationship, or on matters relating to statutory or enterprise agreement issues, will be granted a maximum of two (2) days leave (per annum) of absence per representative without loss of earnings provided that:
 - (i) the Company receives at least four (4) weeks' notice of the request from the Union setting out times, dates, content and venue for the course;
 - (ii) the Employee concerned can be released from duty by the Company for the period of the course, without affecting normal operations;
 - (iii) Employees are not entitled to any expense related allowances or penalty rates during the period of training;

and

- (iv) further leave may be granted subject to agreement between the Company and the Employee.

46. CONFIDENTIALITY

- a) Employees must not during their employment or at any time thereafter, without the prior written consent of the Company or as otherwise required by law, comment on or disclose directly or indirectly, to any person for any reason other than the conduct of the Company's business any secrets, project information, operations information, formula, process, methods, products, records, client information, prices, commissions, data or any other information belonging to the Company or any related body corporate of the Company or belonging to any of the Company's clients or business associates ("**the information**"), nor will Employees during the employment or thereafter without the prior written consent of the Company or as otherwise required by law use any part of the information for any purpose other than the Company's business.
- b) For the avoidance of doubt, nothing in this clause shall to be taken to restrict the rights of Employees to seek advice or assistance from their chosen representative (including the Union) and/or disclosing information as required under law to regulatory bodies such as the OTSB.

47. FAMILY AND DOMESTIC VIOLENCE LEAVE

- a) The entitlement to family and domestic violence leave shall be in accordance with this Agreement and the NES.
- b) The Company will need to be satisfied, on reasonable grounds, that domestic violence has occurred and may require proof presented in the form of an agreed document issued by the Police, a Court, a doctor, a domestic violence support service or lawyer.
- c) Personal information concerning domestic violence will be kept confidential by the Company.
- d) The Company, where appropriate, may facilitate flexible working arrangements subject to operational requirements, including changes to working time and changes to work location.

48. CAREER BREAK

- a) A permanent Employee who has been continuously employed with the Company for a minimum period of five (5) years may make application to take a fixed period of time off work, in order to fulfil family or personal commitments or to pursue personal development without loss of job security.
- b) The terms and conditions under which an Employee may take a career break are as follows:
 - (i) the minimum period for a career break is six (6) months. The maximum period for a career break is twelve (12) months.

- (ii) an Employee must provide three (3) months' notice of a request to take a career break.
 - (iii) an Employee who takes a career break must utilise any accrued annual leave as part of this break.
 - (iv) any unpaid period of the career break will be regarded as leave without pay for the purpose of leave accrual and superannuation.
- c) At the completion of the career break, an Employee can return to a position at the same grade that they held before commencing the break.
 - d) Where there is no position immediately available at the same grade, the Employee's skills and abilities will be assessed and they will be placed in another position at the same grade held before commencing the career break.
 - e) Applications for career breaks will be approved at the Company's discretion.

49. JURY SERVICE LEAVE AND COMMUNITY SERVICE LEAVE

- a) This clause of the Agreement supplements the provisions of the NES which deal with community service leave.
- b) An Employee who engages in an eligible community service activity is entitled to be absent from their employment for a period to undertake eligible community service.
- c) Eligible community service activity means jury service or voluntary emergency management activities as defined by the NES.
- d) An Employee who wants an absence from their employment to be covered by this clause must give the Company notice of the absence as soon as practicable and must advise the expected period of the absence.

Jury Service

- e) Employees covered under this Agreement who are called for jury service are eligible to receive special leave for the time they are at court. Employees receive a jury fee from the court and the Company will "make up" the difference between the court fee and the Employee's ordinary rate of pay. Ordinary rate of pay excludes overtime and penalties.
- f) Special leave will not be granted when the jury service falls on days when an Employee is on leave. When Employees attend jury service under such circumstances, they can retain the court fees.
- g) If the jury service falls on a day on which a shift work Employee would not ordinarily be rostered for duty, the Employee will be provided with the opportunity to request a change to their rostered shift, to enable them to receive payment for their service on the jury, and allow them to retain their days off for recreation purposes.
- h) The Employee must claim from the Sheriff or the Registrar of the Court, payment of the jury fee plus travelling allowance, if appropriate. Employees must notify their supervisor of the dates they have been summoned to attend

jury service immediately on receiving the summons.

- i) Employees selected to sit on a jury must apply for special leave and nominate the dates they will be required to be off duty.
- j) After taking leave to attend jury service, Employees must submit a certificate of attendance, detailing the days attended and the court fee received.

50. RENEWAL OF RENEWAL OF AGREEMENT

The parties will convene three (3) months prior to the expiry of this Agreement to negotiate a replacement.


51. SIGNATORIES

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

Signed for and on behalf of Keolis Downer Hunter Pty Ltd by:

Emmanuel Genlot of 89 Denison Street, Hamilton NSW 2303
Name Address

KDH General Manager
Position


Signature

Signed for and on behalf of the Australian Rail, Tram and Bus Industry Union (RTBU) by:

Alex Claassens of 4/321 Pitt st, Sydney, NSW, 2000
Name Address

Branch Secretary
Position

A. Claassens

Signature

Signed for and on behalf of the Employees:

_____ of _____
Name Address

Position

Signature

APPENDIX A - CLASSIFICATION STRUCTURE

CLASSIFICATION	DESCRIPTION
LRV Operator – Level 1	<p>An Employee engaged as an LRV Operator who has not yet completed one (1) years' service cumulatively.</p> <p>Employee will be responsible for operating the LRV's in accordance with:</p> <ul style="list-style-type: none"> • Safety procedures and a constant concern for passenger and the general public's safety; • Timetable and scheduling requirements; • Guidance from the Operations Control Centre; and • Operational procedures.
LRV Operator – Level 2 (1 Year Experience)	<p>An Employee engaged as an LRV Operator who has completed all the necessary training and has completed one (1) years' service cumulatively.</p> <p>Employee will be responsible for operating the LRV's in accordance with:</p> <ul style="list-style-type: none"> • Safety procedures and a constant concern for passenger and the general public's safety; • Timetable and scheduling requirements; • Guidance from the Operations Control Centre; and • Operational procedures.
LRV Operator – Level 3 (2 Years Experience)	<p>An Employee engaged as an LRV Operator who has completed all the necessary training and has completed two (2) years' service cumulatively.</p> <p>Employee will be responsible for operating the LRV's in accordance with:</p> <ul style="list-style-type: none"> • Safety procedures and a constant concern for passenger and the general public's safety; • Timetable and scheduling requirements; • Guidance from the Operations Control Centre; and • Operational procedures.
LRV Operator – Level 4 (3 Years Experience)	<p>An Employee engaged as an LRV Operator who has completed all the necessary training and has completed three (3) years' service cumulatively.</p> <p>Employee will be responsible for operating the LRV's in accordance with:</p> <ul style="list-style-type: none"> • Safety procedures and a constant concern for passenger and the general public's safety; • Timetable and scheduling requirements; • Guidance from the Operations Control Centre; and • Operational procedures.