**DECISION**

*Fair Work Act 2009*

s.185—Enterprise agreement

**Downer EDI Works Pty Ltd T/A Downer EDI Works Pty Ltd**

(AG2020/980)

**DOWNER WATER & PIPELINES REHABILITATION ENTERPRISE AGREEMENT 2020 - 2022**

Building, metal and civil construction industries

DEPUTY PRESIDENT CLANCY  
MELBOURNE, 1 MAY 2020

*Application for approval of the Downer Water & Pipelines Rehabilitation Enterprise Agreement 2020 - 2022.*

[1] An application has been made for the approval of an enterprise agreement known as the *Downer Water & Pipelines Rehabilitation Enterprise Agreement 2020 - 2022* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Downer EDI Works Pty Ltd. The Agreement is a single enterprise agreement.

[2] The Agreement does not cover all of the employees of Downer EDI Works Pty Ltd, however, taking into account the factors in s.186(3) and s.186(3A) I am satisfied that the group of employees was fairly chosen.

[3] Downer EDI Works Pty Ltd has provided a written undertaking. A copy of the undertaking is attached in Annexure A. I am satisfied that the undertaking will not cause financial detriment to any employee covered by the Agreement and that the undertaking will not result in a substantial change to the Agreement. The undertaking is taken to be a term of the Agreement.

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

[5] I note that Clauses 7.5(h) and 10.8(i) are inconsistent with the National Employment Standards (NES). However, given the NES precedence clause at Clause 3.1 of the Agreement, I am satisfied that the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.
The Agreement is approved and, in accordance with s.54, will operate from 8 May 2020. The nominal expiry date of the Agreement is 9 May 2023.

DEPUTY PRESIDENT

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2020/980

Applicant:
Downer EDI Works Pty Ltd

Section 185 – Application for approval of a single enterprise agreement

Undertaking - Section 190

I, Craig Hartley, State Manager – Victoria Pipelines for Downer EDI Works Pty Ltd (Company) give the following undertaking with respect to the Downer Water & Pipelines Rehabilitation Enterprise Agreement 2020 – 2022 (Agreement):

1. I have the authority given to me by the Company to provide this undertaking in relation to the application for approval of the Agreement before the Fair Work Commission.

2. For the purpose of clause 7.6(d) of the Agreement, an employee whose continuous service is less than one year and whose employment is terminated by reason of redundancy, shall be entitled to a redundancy payment of 1.75 hours per week of service.

3. This undertaking provided on the basis of an issue raised by the Fair Work Commission in the application before the Fair Work Commission.

Signature

23/04/2020

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

a) This workplace enterprise Agreement shall be known as the Downer Water & Pipelines Rehabilitation Enterprise Agreement 2020 - 2022.

2. Parties Bound

a) This Agreement will be binding upon:

(i) Downer EDI Works Pty Ltd (“Downer” or “the Company” or “the Employer”); and

(ii) All employees of Downer who perform work within the scope of this Agreement and who are engaged in any of the classifications referred to in Attachment 1 of this Agreement;

3. Application and Scope of Agreement

a) This Agreement is made under the provisions of the Fair Work Act 2009 (the “FW Act”).

b) This Agreement sets out the terms and conditions of employment for employees of Downer who are employed in classifications contained in the Agreement and who perform water pipelines, construction & maintenance, tunnelling, boring, heavy civil engineering and associated work in Victoria.

c) This Agreement will operate to the exclusion of any and all other Agreements and/or Awards.

d) For the purposes of this clause the term ‘award’ or ‘awards’ also include any applicable award including a pre-reform federal award, a rationalised, simplified and/or modern federal award.

e) Together the Company and a majority of Employees that are covered by this Agreement may vary or terminate this Agreement on the condition that such action is undertaken in accordance with the relevant provisions of the Fair Work Act 2009.

f) The Company has policies, procedures and rules about how it runs the business and how employees are to behave at work and perform at work. These policies, procedures and rules cannot reduce any of the conditions that are provided for in this Agreement. Employees are required to follow all of these policies, procedures and rules. These policies, procedures and rules do not form part of this Agreement.
3.1 The National Employment Standards and this Agreement

The NES and this Agreement contain the minimum conditions of employment for Employees covered by this Agreement.

This Agreement will be read and interpreted in conjunction with the 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.

4. Commencement and Term of Agreement

a) This Agreement operates from seven days after the date of Fair Work Commission approval of the agreement in accordance with the Fair Work Act 2009 (Cth) (Act).

b) The nominal expiry date of this Agreement is 3 years from the date of operation.

5. Obligations

5.1. Consultation

The Employer acknowledges the importance of holding regular toolbox and/or safety meetings with Employees. These meetings provide an open forum for all Employees to discuss issues of concern such as work plans and safety matters. Employees are required to attend these meetings as part of their job and work duties.

5.2. Significant change/Consultation Term

a) This term applies if the employer:
   i. has made a definite decision 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
   ii. proposes to introduce a change to the regular roster or ordinary hours of work of employees.

5.3.1 Major change
a) For a major change referred to in paragraph (5.2) (a) (i)
   i. the employer must notify the relevant employees of the decision to introduce the major change; and
   ii. subclauses 5.3.1(b) to 5.3.1(h) apply

b) The relevant employees may appoint a representative for the purposes of the procedures in this term.

c) If:
   i. relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
   ii. the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.

d) As soon as practicable after making its decision, the employer must:
   i. discuss with the relevant employees:
      1. the introduction of the change; and
      2. the effect the change is likely to have on the employees; and
      3. measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
   ii. for the purposes of the discussion—provide, in writing, to the relevant employees:
      1. all relevant information about the change including the nature of the change proposed; and
      2. information about the expected effects of the change on the employees; and
      3. any other matters likely to affect the employees.

e) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

f) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

g) 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 employer, the requirements set out in paragraph 5.3.1(a) and subclauses 5.3.1(b) and 5.3.1(d) are taken not to apply.

h) In this term, a major change is likely to have a significant effect on employees if it results in:
   i. the termination of the employment of employees; or
   ii. major change to the composition, operation or size of the employer’s workforce or to the skills required of employees; or
   iii. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
   iv. the alteration of hours of work; or
   v. the need to retrain employees; or
   vi. the need to relocate employees to another workplace; or
vii. the restructuring of jobs.

5.3.2 Change to regular roster or ordinary hours of work

i. For a change referred to in clause (5.2 (a) (ii) the employer must notify the relevant employees of the proposed change; and

ii. subclauses 5.3.2(j) to 5.3.2(n) apply.

i) The relevant employees may appoint a representative for the purposes of the procedures in this term.

j) If:

i. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

ii. the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.

k) As soon as practicable after proposing to introduce the change, the employer must:

i. discuss with the relevant employees the introduction of the change; and

ii. for the purposes of the discussion—provide to the relevant employees:

1. all relevant information about the change, including the nature of the change; and

2. information about what the employer reasonably believes will be the effects of the change on the employees; and

3. information about any other matters that the employer reasonably believes are likely to affect the employees; and

iii. 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).

l) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

m) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.

n) In this term relevant employees means the employees who may be affected by a change referred to in subclause (5.2) (a)

5.3. Enterprise Flexibility

a) All Employees will carry out all lawful and reasonable directions and duties provided such directions and duties are within their skill, competency and training and the Employee is capable of performing these in a safe manner.

b) Where alternative working arrangements to those described in this Agreement are identified, which would allow for greater flexibility and/or increased
productivity, these may be implemented provided there is consultation between the Parties.

5.4. Individual Flexibility

a) The Employer and an Employee covered by this enterprise Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement, if the Agreement deals with 1 or more of the following matters:

i. arrangements about when work is performed;
ii. overtime rates;
iii. penalty rates;
iv. allowances;
v. leave loading; and

b) The arrangement meets the genuine needs of the Employer and Employee in relation to 1 or more of the matters mentioned in paragraph (a); and

c) The arrangement is genuinely agreed to by the Employer and Employee.

d) The Employer must ensure that the terms of the individual flexibility arrangement:

i. are about permitted matters under section 172 of the Fair Work Act 2009; and
ii. are not unlawful terms under section 194 of the Fair Work Act 2009; and
iii. result in the Employee being better off overall than the Employee would be if no arrangement was made.

e) The Employer must ensure that the individual flexibility arrangement:

(1) is in writing; and

i. includes the name of the Employer and Employee; and
ii. is signed by the Employer and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and
iii. includes details of the terms of the enterprise agreement that will be varied by the arrangement; and

1. how the arrangement will vary the effect of the terms; and
2. how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
3. states the day on which the arrangement commences.
f) The Employer must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

g) The Employer or Employee may terminate the individual flexibility arrangement:
   i. by giving no more than 28 days written notice to the other party to the arrangement; or
   ii. if the Employer and Employee agree in writing — at any time.

6. Definitions

For the purposes of this agreement:

Act or FW Act means the Fair Work Act 2009 (as amended).


Call out is where an Employee leaves work for the day and is then recalled to attend for work.

Company or Employer means Downer EDI Works Pty Ltd ABN 6608709608.

Day Work (or shift) means any work where the actual hours worked are after 0500 hours and before 1800 hours.

Employee or employees means a person employed under this Agreement performing work in a classification described in Attachment 1 of the Agreement.

Employee Representative means an employee that has been nominated by a fellow employee or employees to act as a representative.

Full Rate of Pay means the same as defined by the FW Act.

FWC means the Fair Work Commission.

Immediate Family means an employee’s spouse, and the employee’s or the employee’s spouse’s child, parent, grandparent, grandchild or brother or sister. This includes a de facto partner (regardless of gender), former spouses and former de facto partners, and those to whom the employee has a step or adoptive relationship.

NES means the National Employment Standards.

Night Work (or shift) means any work where the actual hours worked are after 1800 hours and before 0500 hours.
Ordinary Hours means the hours of work described in clause 8 of this Agreement.

Overtime means work performed in addition to an employee’s ordinary hours.

Redundancy means the Company has made a definite decision that it no longer wishes the job an employee has been doing done by anyone.

Retrenchment means the termination of employment by reason of redundancy.

Roster means a work schedule containing the ordinary and overtime hours of work required of an employee over a period of time along with the RDOs, public holidays and other days of approved leave falling during that period.

Rostered Day Off (RDO) means a week day not worked as a result of the operation of a method of working a 38 hour week where sufficient extra ordinary time is worked on a number of days and accrued to allow for the day off.

Shiftwork means day or night shift.

Transfer of business is as described in Part 2-8 of the Fair Work Act 2009 and includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and transmitted has a corresponding meaning.

Zero Harm means supporting the health and safety of the Company’s employees, minimising the impact of its business on the environment, and building strong relationships with the community, governments and supply chain. It also means growing the Company’s business in a sustainable way.

7. Contract of Employment

7.1. Engagement

a) Upon commencement of employment with the Company an Employee will be advised of their position, classification and category of employment.

The category of employment can be full-time, part-time, casual, for a specific period of time, or for a specified task.

b) Definitions of the categories of employment are:

   i. A full-time employee is an employee who is employed to work 38 ordinary hours per week.

   ii. A Part-time employee means an employee who is engaged to work an average of fewer than 38 ordinary hours per week and receives, on a
pro rata basis, equivalent pay and conditions to those of full-time employees who perform the same kind of work.

For each ordinary hour worked, a part-time employee will be paid no less than 1/38th of the minimum weekly rate of pay for the relevant classification in Attachment 2 of this Agreement.

At the time of commencing employment the employer and a part-time employee must agree in writing, on the ordinary hours to be worked each week and the days such hours will be worked. Provided that the regular number of ordinary hours once fixed may be varied in writing by mutual agreement between the employer and the employee concerned.

All time worked in excess of the regular number of ordinary hours will be overtime and paid in accordance with the provisions of clause 8.2 of this Agreement.

iii. Casual employment

a) A casual employee is one engaged and paid as such. A casual employee for working ordinary time must be paid an hourly rate calculated on the basis of one thirty eighth of the minimum weekly wage prescribed in [clause 7 C i] for the work being performed, plus a casual loading of 25%. The casual loading constitutes part of the casual employee’s all purpose rate.

b) For the avoidance of doubt, the casual employee’s all purpose rate is inclusive of a 25% casual loading providing for full and complete compensation for annual leave and other forms of paid leave, including but not limited to paid personal/carer’s leave, paid compassionate leave, community service leave and public holidays not worked (but not long service leave). The casual loading also provides for full and complete compensation for any other matters identified as excluding casual employees contained in this agreement. If for any reason a court or a tribunal determines that the employee is not a casual employee, the company may set off against the all purpose rate, the value of any paid leave that accrues or has accrued, and any other identified entitlement, that was intended to be covered by the 25% loading. This set off will operate so as to ensure that employees are not “paid twice” for any such entitlement.

c) On each occasion a casual employee is required to attend work the employee must be paid for a minimum of 4 hours work. In order to meet their personal circumstances a casual employee may request and the company may agree to an engagement of less than the minimum 4 hours.

d) The company, when engaging a casual must inform the employee that they are employed as a casual, stating by whom the employee is employed, the classification level and rate of pay and the likely number of hours required.

e) A casual employee’s employment may be terminated with 1 days’ notice by either the employee or the company.
Casual conversion to full time or part time employment

f) This clause only applies to a regular casual employee. A regular casual employee is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full time or part time employee under the provisions of this agreement.

i. A regular casual employee who has worked equivalent full time hours over the preceding period of 12 months’ casual employment may request to have their employment converted to full time employment.

ii. A regular casual employee who has worked equivalent full time hours over the preceding period of 12 months’ casual employment may request to have their employment converted to part time employment consistent with the pattern of hours previously worked.

iii. Any request under this subclause must be in writing and provided to the company.

iv. Where a casual employee seeks to convert to full time or part time employment, the company may consent to or refuse the request, but only on reasonable grounds. In considering a request, the company may have regard to any of the following factors:

   a. The size and needs of the workplace or enterprise;
   b. The nature of the work the employee has been doing;
   c. The qualifications, skills and training of the employee;
   d. The trading patterns of the workplace or enterprise (including cyclical and seasonal trading demand factors);
   e. The employee’s personal circumstances, including any family responsibilities; and
   f. Any other relevant matter.

v. Reasonable grounds for refusal include that:

   a. It would require a significant adjustment to the casual employee’s hours of work in order for the employee to be engaged as a full time or part time employee in accordance with the provisions of this agreement – that is, the casual employee is not truly a regular casual employee as defined in paragraph (f); or
   b. It is known or reasonably foreseeable that the regular casual employee’s position will cease to exist within the next 12 months; or
   c. It is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
   d. It is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee’s hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.

vi. For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
g) Where it is agreed that a casual employee will have their employment converted to full time or part time employment as provided for in this clause, the company and employee must discuss and agree upon:
   i. The form of employment to which the employee will convert – that is, full time or part time employment; and
   ii. If it is agreed that the employee will become a part time employee, the matters referred to in [7.1 (C) ii Part time employment.

h) The date from which the conversion will take effect is the commencement of the next pay cycle following such agreement being reached unless otherwise agreed.

i) Once a casual employee has converted to full time or part time employment, the employee may only revert to casual employment with the written agreement of the company.

j) An employee must not be engaged and/or re-engaged (which includes a refusal to re-engage) to avoid any obligation under this agreement.

k) Nothing in this clause obliges a casual employee to convert to full time or part time employment, nor permits the company to require a casual employee to so convert.

l) Nothing in this clause requires to the company to convert the employment of a regular casual employee to full time or part time employment if the employee has not worked for 12 months or more in a particular establishment, in a particular classification stream.

m) Nothing in this clause requires the company to increase the hours of a regular casual employee seeking conversion to full time or part time employment.

   iv. Specific period of time or specified task employee means an employee engaged for a fixed period of employment, or for the duration of a specific project.

c) Continuous service is a period of service that includes all of an Employee’s period of employment with the Company and therefore, is regarded as being continuous for the purpose of calculating entitlements under this Agreement including periods of paid and unpaid leave which have been authorised by either the Company, or a State or Federal law. Unless a State or Federal law allows for a different situation, continuity of employment will be broken on the occasion that employment ceases for any reason.

7.2. Position and Duties, including changes.

7.2.1. The position and duties to be undertaken by an Employee will be explained upon the commencement of employment. Such duties may be changed from time to time to suit the needs of the business. Any significant changes to duties will be discussed with an Employee prior to the change taking place.
In addition to the specific duties that an Employee is engaged to perform, an Employee can be reasonably required to perform any work for which an Employee possesses the relevant skills and competencies.

a) If the position and duties of an Employee change during the life of this Agreement, then the new position will be assigned a classification as described in Attachment 1 to this Agreement. The progression of an Employee through the classification structure will depend upon:
   - The Company’s evaluation of the Employee’s demonstrated on the job competency against the classification
   - Skill gained via structured training programmes or formal qualifications;
   - Recommendations provided by Supervisor and Manager; and
   - A position being available and offered by Downer

b) If the position and duties of an Employee change to one that is of a higher classification level, then payment will be at the appropriate rate for that classification if such duties are performed effectively for more than a full day or shift.

c) If an Employee requests to be temporarily assigned to do duties of a higher paid job classification to obtain greater experience, an Employee will be paid at the normal rate of pay for their substantive classification for any time worked in those higher duties.

d) If the position and duties of an Employee change to one that is of a lower classification level, normally, an Employee will continue to be paid at their old classification rate of pay. It is possible, however, that in circumstances including disciplinary reasons, loss of license or transfer as a result of redundancy that reclassification to a lower level may also result in a reduction in an Employee’s rate of pay to that of the lower level classification. Any change in the rate of pay applicable to an Employee’s reclassification will apply from the time reclassification occurs, unless a different arrangement is agreed to between the Employee and Employer.

7.2.2. Each Employee covered by this Agreement shall:

   - Complete any site induction program prescribed by the Company;
   - Be required to carry out work either individually or as part of a team;
   - Be responsible for carrying out work in a safe manner and for the quality of their work;
   - Be prepared to carry out such duties as are within the limits of the employees skill, competence and training consistent with the classification structure of this Agreement; and
   - Be prepared to train employees classified at a lower level than themselves and assist employees categorised at a higher level than themselves.
7.3. Probation and Qualifying Period

a) A probation period of three (3) months shall apply to new Employees from the commencement of employment.

b) The probation period enables both the Company and a new Employee the opportunity to assess workplace suitability. To successfully complete the probationary period an Employee must have achieved the minimum required competencies as outlined in Attachment 1 of this Agreement, as well as satisfying workplace performance and conduct requirements.

c) In addition, there is a qualifying period of six (6) months as prescribed by the Regulations of the *Fair Work Act 2009*. For clarity the qualifying period commences from the date of employment.

7.4. Zero Harm

a) The Parties recognise the importance of policies and standards which are designed to provide all Employees and visitors to the workplace with a safe and healthy working environment consistent with the Company’s obligations at law.

b) Fundamental to all aspects of the Company’s operations is the necessity to ensure the effective management of employee fatigue, particularly in circumstances where an employee is asked to perform extended working hours, whether that be in the form of overtime, or beyond the usual meal break, or beyond the usual number of consecutive working days, or when working away from home.

c) It is a condition of employment that the Company and the Employee’s comply with all relevant Federal and State laws including occupational health and safety laws, Codes of Practice, all site rules and safety standards, and any revisions or additions that may be made from time to time.

7.5. Termination of Employment

a) The Employer is required to give notice of termination of employment in accordance with the following table:

<table>
<thead>
<tr>
<th>Employee’s period of continuous employment</th>
<th>45 years old or younger</th>
<th>Older than 45 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Casual Employee</td>
<td>7.6 hours’ notice</td>
<td>7.6 hours’ notice</td>
</tr>
<tr>
<td>During probation period</td>
<td>1 weeks’ notice</td>
<td>1 weeks’ notice</td>
</tr>
<tr>
<td>Not more than 1 year</td>
<td>1 weeks’ notice</td>
<td>1 weeks’ notice</td>
</tr>
<tr>
<td>More than 1 year but less than 2 years</td>
<td>2 weeks’ notice</td>
<td>2 weeks’ notice</td>
</tr>
<tr>
<td>More than 2 years but less than 3 years</td>
<td>2 weeks’ notice</td>
<td>3 weeks’ notice</td>
</tr>
<tr>
<td>More than 3 years but less than 5 years</td>
<td>3 weeks’ notice</td>
<td>4 weeks’ notice</td>
</tr>
<tr>
<td>More than 5 years</td>
<td>4 weeks’ notice</td>
<td>5 weeks’ notice</td>
</tr>
</tbody>
</table>
b) The notice of termination required to be given by an employee is the same as that required of the Employer except that there is no requirement on the Employee to give additional notice based on the age of the employee concerned. As a consequence the ‘Older than 45 years’ provision in the table above does not apply. The Company and Employee may agree to a lesser period of notice, whereby the Employee will be paid up until the last day of employment.

c) If the Employee does not give the required notice, the Employer is entitled to deduct from monies owing to the Employee an amount equivalent to the amount they would have earned for working the balance of the required notice period. The Employer may agree to a lesser period of notice.

d) The Employer may pay the Employee in lieu of all or part of the notice specified in Clause 7.6(a) above in accordance with section 117 of the Fair Work Act 2009 as amended from time to time. Payment will be equal to the wages that would have been earned during ordinary time for the whole, or the part, of the notice period the Employer did not require work to be performed.

e) Nothing in this Agreement precludes the right of the Employer to summarily dismiss an Employee for serious misconduct and so pay the Employee up to and including the last day of work only. Serious misconduct includes but is not limited to:

- Theft;
- Fraud, including falsifying timesheets and other Company records;
- Using or taking Company material and equipment without proper approval (this includes using or taking materials or equipment that might be considered to be scrap);
- Possessing alcohol or illegal drugs in the workplace;
- Doing something that is an imminent and serious risk to the health or safety of someone else in the workplace;
- Threatening or assaulting Company employees and others in the workplace;
- Indecent behaviour in the workplace or in view of the public;
- Doing something that seriously damages, or threatens to damage, the Company’s relationship with a client;
- Doing something that seriously damages, or threatens to damage, the Company’s public image; and
- Refusing to carry out a lawful and reasonable instruction of the Company.

f) The Employer may suspend an Employee on ordinary pay while it investigates any suspected misconduct and/or while it makes a decision as to the appropriate course of action to take in the event that misconduct is proven.

g) Upon request the Company will provide a written statement of service to an Employee. The statement will specify an Employee’s period of employment, the classification and the type of work performed. The Company does not
issue written references that describe an Employee’s performance or behaviour at work.

h) Where an Employee does not attend for work for 3 or more consecutive days without an acceptable reason and approval from the Company, the Employee will be considered to have abandoned their employment. Termination of employment will take effect from the last day the Employee attended for work or had approval to be absent from work.

i) There is no entitlement to the notice provisions referred to in sub clause 7.5 (a) of this Agreement for those employees who are employed under a contract of employment for a specific period of time, for a specified task, or for the duration of a specified season, and the employment has terminated at the end of the period, on completion of the task, or at the end of the season.

7.6. Redundancy

a) The provisions of this clause will apply where the Company terminates an Employee’s employment because it no longer requires the job which the Employee had been doing done by anybody, except where this is due to the ordinary and customary turnover of labour.

b) If the Company determines the job of an Employee to be redundant it can either transfer the Employee to another position or terminate employment.

c) If as a result of redundancy, the Company transfers an Employee to a lower paid position, the Employee will receive the same period of notice for the transfer as if the Employee were terminated by the Company. However, instead of providing an Employee with the notice period, the Company can instead choose to pay an Employee the pre transfer rate of pay for the relevant period of notice.

d) In addition to the period of notice or payment instead of notice as prescribed for in clause 7.6 (a) of this Agreement, an Employee whose employment is terminated by reason of redundancy, shall be entitled to the provisions as set out in the table below. For clarity, a week’s pay means the ordinary hourly rate of pay for ordinary hours of work.

<table>
<thead>
<tr>
<th>PERIOD OF CONTINUOUS SERVICE</th>
<th>REDUNDANCY PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 year</td>
<td>Nil</td>
</tr>
<tr>
<td>1 year but less than 2 years</td>
<td>2.4 weeks’ pay plus for all service in excess of 1 year, 1.75 hours pay per completed week of service up to a maximum of 4.8 weeks’ pay</td>
</tr>
</tbody>
</table>
### PERIOD OF CONTINUOUS SERVICE

<table>
<thead>
<tr>
<th>PERIOD OF CONTINUOUS SERVICE</th>
<th>REDUNDANCY PAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 years but less than 3 years</td>
<td>4.8 weeks’ pay plus, for all service in excess of 2 years, 1.6 hours pay per completed week of service up to a maximum of 7 weeks’ pay</td>
</tr>
<tr>
<td>3 years but less than 4 years</td>
<td>7 weeks’ pay plus, for all service in excess of 3 years, 0.73 hours pay per completed week of service up to a maximum of 8 weeks’ pay</td>
</tr>
<tr>
<td>4 years but less than 5 years</td>
<td>8 week’s pay</td>
</tr>
<tr>
<td>5 years but less than 6 years</td>
<td>10 week’s pay</td>
</tr>
<tr>
<td>6 years but less than 7 years</td>
<td>11 week’s pay</td>
</tr>
<tr>
<td>7 years but less than 8 years</td>
<td>13 week’s pay</td>
</tr>
<tr>
<td>8 years but less than 9 years</td>
<td>14 week’s pay</td>
</tr>
<tr>
<td>9 years but less than 10 years</td>
<td>16 week’s pay</td>
</tr>
<tr>
<td>At least 10 years</td>
<td>12 week’s pay</td>
</tr>
</tbody>
</table>

**e)** If employment is terminated by reason of redundancy an Employee may leave the Company during the notice period, however, will not be entitled to payment for that portion of the notice period not worked out. An Employee will, however, still be entitled to receive the relevant redundancy payment.

**f)** An Employee whose employment has been terminated as a result of redundancy is entitled to have one paid day off work to look for another job.

**g)** Subject to the requirements of section 120 of the *Fair Work Act 2009*, if the Company obtains other acceptable employment for an Employee, there is no obligation on the Company to provide a redundancy payment.

Acceptable alternative employment will depend on the circumstances that exist at the time. As an example, if a position within the Company or another employer are of the same or similar status, employment type, conditions of employment and pay, that are overall no less favourable to an Employee, then that circumstance will be considered as acceptable, alternative employment.

**h)** The Parties agree that redundancy is not payable to any of the following Employees:
8. Hours of Work

8.1. Ordinary Hours of Work

a) The ordinary hours of work of a full-time employee shall be thirty-eight (38) hours per week and may be worked in accordance with this clause.

b) The ordinary hours of work can be worked any time between the span of 0500 (5am) to 1800 (6pm).

c) The number of ordinary hours in a day will depend on how the normal working hours are rostered.

d) The Company will endeavour to provide Employees with a roster at least seven days in advance.

e) The Employer will determine the actual method of working ordinary hours that best suits the operational requirements of the business. Where the Employer wishes to vary the pattern of working the ordinary hours of work, the Employer shall provide as much notice as is practicable to affected Employees, including when an Employee is rostered to work.

f) The Parties agree that ordinary hours of work can be rostered in a manner that includes any or all of:

- Day work; and/or
- Night work; and/or
- Shift work; and/or
- Weekend work; and/or
- Public Holiday work; and/or
- Compressed work cycle; and/or
- Involves a rostered day off (RDO) system.

g) The starting times can be changed by the Company to suit the needs of its business after discussing the changes with the employees that are affected by the change and giving notice of the changed times.
h) The normal starting times for ordinary hours depends on the established work pattern as follows:
   
   i. **Day work**: Day work is the actual hours worked after 0500 hours and before 1800 hours;
   
   ii. **Night work**: Night work is the actual hours worked after 1800 hours and before 0500 hours.

i) The Company treats the classification of hours an Employee works as only the time worked within those hours defined in 8.1 (h). This includes that if the Employee starts work at or after 2300 hours on a Sunday or public holiday where only the time worked on the Sunday or public holiday is paid at the Sunday or public holiday rate.

j) The Parties agree that a roster can also be changed during a roster cycle if the Company informs an Employee of the change at least before an Employee leaves work for the day, or before the change is to occur, or by agreement at any time.

k) The Company will not normally change a roster unless there is a clear business or operational need such as client demand, weather conditions, equipment or material availability, or access to work areas. The Parties agree there may be other reasons for roster changes than those mentioned in this sub-clause.

l) Employees can swap rostered shifts with each other on the proviso supervisory approval is obtained. If a roster is changed in that way it will be paid for at the rates applicable to the actual time worked and no overtime will be paid.

m) If the roster is changed and an Employee is required to work on a day originally rostered off, they will be paid at their ordinary rate of pay for the work performed and given a substitute day off.

8.2. **Reasonable additional hours or overtime**

a) An Employee can be required to work a reasonable amount of additional hours beyond their ordinary hours of work.

b) Overtime rates are dependent on when the work is performed:

   i. **Monday to Saturday**
      
      Except as otherwise provided in this Agreement, all time worked by Employees in excess of the normal hours of work will be paid at one and a half times the ordinary prescribed rate for the first two hours, and at double the ordinary prescribed rate for time worked thereafter.

   ii. **Sunday work**
      
      Overtime that is worked on a Sunday will be paid at double time for every hour worked.
c) In accordance with provisions of section 62 of the *Fair Work Act 2009* an employee may have the right to refuse to work unreasonable additional hours.

### 8.3. Minimum periods of engagement on weekends & public holidays

a) An Employee working overtime on a Saturday, Sunday or Public holiday will be afforded at least four hours or will be paid for four hours at the appropriate rate.

b) An Employee will be paid a minimum of four hours if overtime on a weekend or public holiday is rostered and then cancelled after the employee has left for work. This minimum payment is not applicable should the shift be cancelled beforehand.

### 8.4. Call out

**8.4.1 Call out rates**

a) A call out is where an Employee leaves work for the day and is then recalled to attend for work.

b) Where an Employee attends work for a call out such employee will be paid for a minimum of four hours at the appropriate overtime rate.

c) Where other work needs to be done when an Employee has attended work for a call out, the Employee can be asked to perform the additional work as part of the original call out.

d) If an Employee is routinely required to attend to a task outside of normal working hours this will not be considered a call out and the Employee will be paid for the actual time spent attending to that task.

### 8.5. Rostered Days Off (RDOs)

a) Where ordinary hours of work are arranged to include an RDO, working hours will be arranged on a system, which provides for an Employee to accrue one (1) rostered day off over a four (4) calendar week work cycle. This will be done by the employee working forty (40) ordinary hours each week, being paid thirty-eight (38) hours ordinary pay and accruing two (2) hours ordinary pay towards a rostered day off. RDOs will not accrue when unpaid leave or long service is taken, or for a period of workers compensation.

b) An Employee may elect to accumulate up to five (5) RDOs, which may be paid out once in each calendar year, subject to written approval from the General Manager.

c) Accrued rostered days shall generally be taken at a time mutually agreed between the Parties, however, during off-peak times or times where work ceases as a result of inclement weather or other operational circumstances,
employees may request to take accrued days off or annual leave rather than perform alternative duties. Approval of such requests shall be at the sole discretion of the company.

d) RDOs will be paid upon termination of employment

8.6. Breaks between rostered attendances

a) An Employee is required to have a minimum break of ten hours from the time an Employee completes one rostered attendance and the time the Employee starts the next rostered attendance.

b) Where an Employee is required to take time off that would normally be worked in order to have the ten (10) hour break, the Employee will not lose pay for such time off work.

c) Where the Company requires an Employee to start working before they have had the ten (10) hour break, the Employee will be paid the appropriate overtime rate for all time worked.

8.7. Meal Breaks

a) Employees will be provided with a 30 minute unpaid meal break after no more than five consecutive hours of work from the beginning of the shift.

b) Meal breaks are to be taken at a time set by the Company to suit the needs of the business. The Company shall endeavour to provide Employees with breaks that provide a reasonable mix of work and rest and which ensure the effective management of employee fatigue.

8.8. Rest Breaks

a) Employees will be provided with a 15 minute paid rest break during the first five hours of consecutive work from the beginning of a shift. This rest break will be paid at the ordinary hourly rate.

b) If an Employee is required to work more than four (4) hours of overtime on a weekday, such Employee will be entitled to another paid rest break of 20 minutes, provided the Employee continues to work after the rest break.

c) Employees will be provided with a 20 minute paid rest break after the first four (4) hours of overtime that is performed on any Saturday, Sunday or Public Holiday. If an Employee is required to work more than another four (4) hours of overtime, such Employee will be entitled to another paid rest break of 20 minutes.

d) By agreement an Employee and the Company may agree to take the rest breaks at a different time or, to not have the rest break but finish work earlier, provided such changes do not require the Company to pay for any more rest
break time than is allowed for in this clause. Any such decision will be based on ensuring the effective management of employee fatigue has been taken into consideration by the Company.

8.9. Night Work

a) Due to client requirements, employees may from time to time be directed to work night shift. For the purposes of night shift the working week will normally commence on Sunday evening and conclude on a Thursday night. Where there is a client requirement to commence work on Monday night shift the working week will commence on Monday night shift, and conclude on the Friday night shift.

b) Due to the difficulties of scheduling within any normal hours working week, an employee on day work may be directed to work night shift(s) in the working week at night shift rates. In these circumstances the employee shall be paid Stand Down (normal day rates) for the difference between 40 hours [in accordance with clause 8.1(a) and 8.5(a)] and the Hours Worked. For example, if only 32 hours are worked in the week then an additional 8 hours will be paid at normal time.

c) If employees are required to move from night shift to day shift in the working week, then the 1st dayshift following the nightshift will be classified as “changeover shift” and employees will not be paid and will not be required to work this shift.

d) Night shift shall be paid at the rate of time and one half for works carried out from Monday to Friday night inclusive and double time for a Saturday or Sunday night.

<table>
<thead>
<tr>
<th>NIGHTS</th>
<th>PENALTY RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monday to Friday night: First 10 hours</td>
<td>50% (Time and a half)</td>
</tr>
<tr>
<td>Monday to Friday night: more than 10 hours</td>
<td>100% (Double Time)</td>
</tr>
<tr>
<td>Saturday, Sunday nights: all hours</td>
<td>100% (Double Time)</td>
</tr>
<tr>
<td>Public Holiday</td>
<td>150% (Double Time and a half)</td>
</tr>
</tbody>
</table>
9. Remuneration

9.1 Rates of Pay

a) Employees engaged in work covered by this Agreement will be paid their ordinary hours of work at the wage rates shown in Attachment 2 of this Agreement.

b) The Company will review the hourly rate during the nominal life of the Agreement and increase the base hourly rate by:

- In the first year, the hourly rates will be paid as per Attachment 2 effective 18 January 2020;
- 2.2% in the second year, effective as of 18 January 2021; and
- 2.2% in the third year, effective as of 18 January 2022.

c) From the start of the first full pay period commencing seven days from the date of the Fair Work Commission’s decision to approve this Agreement, Employees will be back paid for all ordinary hours worked from 18 January 2019 to 17 January 2020, at the relevant rate specified in Attachment 2 of this Agreement.

d) Further, from the start of the first full pay period commencing seven days from the date of the Fair Work Commission’s decision to approve this Agreement, Employees will be back paid from 18 January 2020 for all hours worked, at the relevant rate specified in Attachment 2 of this Agreement.

e) Thereafter, each additional annual wage increase will take effect from the first full pay period on or after 18 January throughout the nominal life of the Agreement as referred to in sub-clause (b) above.

f) The Company may pay additional amounts than those set in this agreement that it decides are deserved, such as bonuses, incentives, and rewards. These payments are at the complete discretion of the Company.

9.2 Superannuation

9.2.1 Superannuation legislation

(a) Superannuation legislation, including the Superannuation Guarantee (Administration) Act 1992 (Cth), the Superannuation Guarantee Charge Act 1992 (Cth), the Superannuation Industry (Supervision) Act 1993 (Cth) and the Superannuation (Resolution of Complaints) Act 1993 (Cth), deals with the superannuation rights and obligations of Employers and Employees. Under superannuation legislation individual Employees generally have the opportunity to choose their own superannuation fund. If an Employee does not choose a superannuation fund, any superannuation fund nominated in the Agreement covering the Employee applies.

(b) The rights and obligations in these clauses supplement those in
superannuation legislation.

9.2.2 Employer contributions

The Employer must make such superannuation contributions to a superannuation fund for the benefit of an Employee as will avoid the Employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that Employee.

9.2.3 Voluntary Employee contributions

9.2.4 Subject to the governing rules of the relevant superannuation fund, an Employee may, in writing, authorise their Employer to pay on behalf of the Employee a specified amount from the post-taxation wages of the Employee into the same superannuation fund as the Employer makes the superannuation contributions provided for in clause 9.2.2.

9.2.5 An Employee may adjust the amount the Employee has authorised their Employer to pay from the wages of the Employee from the first of the month following the giving of three months’ written notice to their Employer.

9.2.6 The Employer must pay the amount authorised under clause 9.2.3(a) and (b) no later than 28 days after the end of the quarter in which the deduction authorised under clause 9.2.3(a) or (b) was made.

9.3 Absence from work

Subject to the governing rules of the relevant superannuation fund, the Employer must also make the superannuation contributions provided for in clause 9.2.2 and pay the amount authorised under clauses 9.2.3(a) and (b) while the Employee is:

9.3.2 on any paid leave;

9.3.3 absent from work (subject to a maximum of 52 weeks in total) due to a work-related injury or illness provided that:

9.3.3.1 the Employee is receiving workers compensation payments or is receiving regular payments directly from the Employer in accordance with statutory requirements; and

9.3.3.2 the Employee remains employed by the Employer.

9.4 Superannuation fund

Unless, to comply with superannuation legislation, the Employer is required to make the superannuation contributions provided for in clause 9.2.2 to another superannuation fund that is chosen by the
Employee, the Employer must make the superannuation contributions provided for in clause 9.2.2 and pay the amount authorised under clause 9.2.3(a) and (b) to one of the following superannuation funds or its successor:

9.4.2 Employer’s default fund;

9.4.3 Any superannuation fund to which the Employer was making superannuation contributions for the benefit of its Employees before 12 September 2008, providing the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector scheme; or

9.4.4 A superannuation fund or scheme which the Employee is a defined benefit member of.

9.5 Payment of Wages and Allowances

a) Wages, allowances and any payments due, including payments due upon termination of employment, shall be paid fortnightly on the day nominated by the Employer by electronic funds transfer into the Employee’s nominated Australian financial institution account.

b) The Employer may change the pay period and pay day, but only after it has consulted with Employees and has provided adequate notice of the change.

c) The Employer may deduct an amount of money from an amount payable to the Employee if the deduction is authorised in writing by the Employee and is principally for the Employee’s benefit.

d) The case of an overpayment of monies to an Employee shall be dealt with as follows:

- Upon termination of employment from monies owed to the Employee; and/or
- In all other cases either as agreed between the parties, or failing agreement the employee shall repay the overpayment in equal amounts over double the period of time that the overpayment occurred.

9.6 Allowances

9.6.1 Provisions for Working Away from Home

a) Where an Employee is required to work at such a distance from home such that the Company determines that it is not practical to return each night, the Company at its sole discretion shall either provide meals and accommodation or provide monetary allowances in accordance with the provisions below:
i. Up to $150.00 per night is payable to reimburse an employee for expenses associated with paying for accommodation. Should the company pay for accommodation, shared accommodation will be provided. It is at the Company’s discretion to pay the allowance or to supply the accommodation.

ii. $69.00 per day to cover expenses associated with buying meals. Instead of paying the allowance the Company may supply employees with three meals for each day. It is at the Company’s discretion to pay the allowance or supply the meals.

Normally the first meal to be paid for or provided by the Company is the dinner on the first night an employee is away from home and the last meal paid for or provided is the lunch on the day of the employees return to home.

iii. An employee may request the Company to pay for or provide additional meals than these where travel arrangements justify it. It is at the Company’s discretion to approve such additional meal requests.

b) The Company will pay to an employee an incidental allowance of $6.00 each night spent away from the employee’s usual place of residence.

c) Allowances: The meals, accommodation and incidental allowance rates are to be no greater than the reasonable travel allowance determination set by the ATO each income year.

9.6.2 Asbestos Allowance

Employees trained in the disposal of asbestos material and who are required to wear the Asbestos removal PPE equipment during a shift will be paid a fixed flat rate Asbestos Allowance of $50 per shift. This allowance is paid only when an employee is directed by site supervision to wear the PPE and dispose of material. For the sake of clarity, other employees not required to wear the PPE on that shift will not receive the allowance.

9.6.3 Float and Trailer Allowance [combined Cl7.5(d) & (e)]

Employees who are directed to operate the float meaning the use of a dog trailer or float trailer to transport material, plant and equipment from site to site will be paid a fixed flat allowance of $50 per 24 hour period. To be eligible for the allowance, the employee must have a current heavy combination licence.

9.6.4 Availability Allowance

Employees who are rostered to be available to attend call outs will be paid a fixed flat allowance of $50 for each 24 hour period they are rostered. To be eligible for the allowance you must be:
- Rostered to be available; and
- Easily contactable during the entire time the employee is rostered to be available; and
• Fit to attend work for the entire time you are rostered to be available; and
• Attend call outs as required.

9.6.5 Overtime Meal Allowance

The Company will pay a Meal Allowance of $15.38 per meal if an Employee is required to work more than two hours overtime after their normal finishing time for the day. This allowance is to compensate for providing a meal. Should the company provide an overtime meal, this allowance is not payable.

9.6.6 Fares and Travelling Time

a) If an employee is required to commence work at a work site that is within 50 km of their designated depot they will be paid a travelling allowance of $20.00 per day for travel to and from that work site. This allowance will not be paid if the Company provides the employee with transport.

b) If the employee is required to commence work at a work site that is more than 50km from their designated depot, the Company will pay $0.55 cents per kilometre. This allowance will not be paid if the Company provides the employee with transport. This allowance is paid instead of, and not in addition to, the allowance stated in 9.4.6(a). Distance to be paid will be calculated from the depot to the job site.

10 Leave Provisions

10.1 Annual Leave

a) Annual leave shall be provided for in accordance with the NES.

b) A full-time Employee is entitled to accrue four (4) weeks (152 hours) of annual leave at the completion of twelve (12) months continuous service with the Employer.

c) A part-time Employee is entitled to the same annual leave as a full-time Employee but on a proportional (or pro-rata) basis.

d) An employee who is employed for a specific period or specific task, is entitled to the same amount of annual leave as a full-time or part-time employee, but is proportional (pro-rata) to the number of ordinary hours worked.

e) An Employee who is a continuous shift worker, that is one who works continuous shifts that are rostered over 24 hours per day across seven days of a week and who regularly work Sundays and public holidays, is entitled to an additional 5 days (38 hours) of annual leave per annum.

f) A casual Employee is not entitled to annual leave.
g) Annual leave accrues on a pro rata basis progressively throughout each year of continuous service. There is no limit to the amount of annual leave that can be accrued, however, annual leave should be taken within 12 months of the entitlement falling due. Excessive annual leave is considered to be more than two year’s accrual and the Employer may require an Employee to take such leave to reduce leave balances or to facilitate a shutdown of all or part of its operations.

h) Payment for annual leave is at the Employee’s ordinary hourly rate of pay that applied immediately before the taking of the annual leave. Annual Leave Loading of 17.5% will be paid additional to the ordinary hourly rate. Leave loading is paid to employees covered by this agreement due to the employees loss of opportunity to work overtime during periods of annual leave. Annual leave shall be given and taken as agreed between the Employer and the Employee. An Employee is required to provide the Employer with as much notice as possible.

i) If a public holiday is observed on an ordinary working day during the leave, the leave is increased by one day for each public holiday.

j) All untaken accrued annual leave entitlements shall be paid out to an Employee upon the cessation of employment.

k) The provisions of this clause shall not apply to casual employees.

10.2 Annual Leave Cash Out

a) Annual leave may be cashed out in accordance with the provisions of the NES. Any such request by an Employee must be provided in writing to the Employer. A balance of at least four weeks annual leave must be left in an Employee’s accrued entitlement following the cashing out of any annual leave.

10.3 Employer Close Down

a) The Employer may close a workplace or part of a workplace or reduce the number of employees in a workplace so that all or most employees take their annual leave at the same time. Examples of the reasons for a close down may include a lack of work or seasonal, or other operational reasons, including the traditional Christmas / New Year close down period.

b) The Employer will give reasonable notice which will be a minimum of 48 hours to employees of the arrangement in (a) above.

c) When the workplace is closed Employees must take the annual leave to which they are entitled, take unpaid leave or as per 8.5(c).
d) If an Employee is employed for less than one (1) year, any leave the Employee takes will be proportionate to the employees’ length of service and if such leave is not equal to the leave given to other Employees, the Employee shall not be entitled to work or pay whilst other Employees are on leave in accordance with this clause.

10.4 Personal/Carer’s Leave

10.4.1

a) Personal/Carer’s leave shall be provided for in accordance with the NES.

b) An Employee will accrue paid personal/carer’s leave on a pro rata basis for each completed week of continuous service at the rate of 10 days (76 hours) for a full time employee per year. Part time employees are entitled to a pro-rata entitlement based on the average number of ordinary hours worked per week to a maximum of 38.

c) Paid personal/carer’s leave will be paid at the Employee’s ordinary hourly rate of pay.

d) An Employee’s entitlement to paid personal/carer’s leave accumulates from year to year, but will not be paid out on termination.

e) Personal/carer’s leave does not apply to casual employees.

10.4.2 Sick Leave (Personal Leave)

a) An Employee who is unable to attend or remain at work on account of personal illness or injury will be entitled to take accrued personal leave for this absence in accordance with the provisions of this clause.

b) If an Employee is absent for the reason of personal illness or injury for a period longer than their entitlement to paid personal leave, the employee is not entitled to payment for the absence.

c) An Employee will not be entitled to paid personal leave for any period that the employee is entitled to payment under the relevant State’s Worker’s Compensation Act.

d) An Employee will, as soon as reasonably practicable and other than in exceptional circumstances, prior to the commencement of sick leave, inform the Employer of the Employee’s inability to attend and the estimated duration of the absence. Where possible, this must be done by phone call speaking directly to the Supervisor or the Supervisor’s Manager.

e) An Employee must provide a medical certificate from a registered health practitioner if it is reasonably practicable to do so, or if it is not reasonably practicable for the employee to provide a medical certificate, a statutory
declaration must be provided. The medical certificate or statutory declaration must state that the employee was unfit for work during the period because of personal illness or injury.

f) An employee is entitled to take no more than two (2) paid single days of personal leave within a calendar year without providing either a medical certificate, statutory declaration or other evidence that would satisfy a reasonable person that the employee was unable to work due to injury or illness.

g) If an Employee does not satisfy the criteria set out in this clause 10.4, the Employee's personal leave application will not be approved and the leave will be unauthorised and therefore, unpaid.

10.4.3 Paid Carer's Leave (Personal Leave)

a) An Employee is entitled to take accrued personal leave to provide care or support to a member of their immediate family or household who requires care or support because of a personal illness or injury or an unexpected emergency.

b) In the case of care because of an illness or injury the Employee will provide a medical certificate or statutory declaration. In the case of an unexpected emergency the Employee will provide a statutory declaration. The medical certificate or statutory declaration must state that the person concerned was ill or injured during the period, or that there was an unexpected emergency affecting the person.

c) If the Employee does not satisfy the criteria set out in this clause 10.4, the Employee's personal leave application will not be approved and the leave will be unauthorised and therefore, unpaid.

10.4.4 Unpaid Carer's Leave (Personal Leave)

a) In accordance with the provisions of the Fair Work Act 2009, where an Employee is not entitled to paid carer's leave, the Employee is entitled to a period of up to two days unpaid carer's leave for each occasion when a member of their immediate family or household requires care or support because of a personal illness or injury or an unexpected emergency. Casual employees are only entitled to unpaid carers leave.

10.5 Parental Leave

a) Parental Leave shall be provided for in accordance with the NES.

b) An Employee can take other forms of leave during parental leave but these will reduce the parental leave available by the same amount that other leave is taken.

10.6 Compassionate Leave
a) Compassionate Leave shall be provided for in accordance with the NES.

b) An Employee is entitled to take up to two (2) days paid compassionate leave when a member of the employee’s immediate family (as defined) or household contracts or develops a personal injury or illness that poses a serious threat to their life or dies.

c) The entitlement may be taken in a single unbroken period of two days or as two separate periods of one day or as agreed by the Employer and Employee.

d) An Employee is to be paid for any period of paid compassionate leave at the Employee’s ordinary hourly rate of pay.

e) The Employer may require the Employee, as a condition of payment, to provide the Employer with reasonable evidence (such as a statutory declaration, death notice or death certificate) of the injury, illness or death.

f) Nothing in this clause operates to limit an Employee’s entitlement to compassionate leave under the Fair Work Act 2009.

g) For casual employees, compassionate leave is unpaid leave.

10.7 Community Service Leave (Including Jury Service)

a) Community Service Leave shall be provided for in accordance with the NES.

b) Employees (including casual employees) are entitled to community service leave, in accordance with the National Employment Standard and relevant State Legislation, to attend:

   i. jury service; or
   
   ii. a voluntary emergency management activity with a recognised body to deal with an emergency or natural disaster. A recognised body is an organisation set up for the purpose of responding to emergencies and disasters, such as a volunteer fire fighting, civil defence, or rescue service. A voluntary emergency management activity includes attending training, exercises, emergencies and disasters as required by the relevant organisation.

   c) Employees are required to notify the Employer as soon as reasonably practicable of their intention to take leave and advise the period (or expected period) of the absence. Further, Employees will provide the Employer with all the necessary information to administer this clause.

d) Where an Employee is required to attend jury service he/she will be paid the difference between their ordinary hourly rate of pay for ordinary hours and the amount received for jury service. A casual Employee is not entitled to payment other than that provided by the State in performing jury service.
e) To be entitled to community service leave Employees must provide proof to satisfy a reasonable person that he she has been / will be engaged in an eligible community service activity. For Employees on jury service, they are also required to provide an attendance certificate.

f) There is no entitlement to the payment of wages for any community service leave other than for jury service as provided for in clause 10.7 b) of this Agreement. Nothing precludes an Employee from taking paid, annual leave for a period of community service leave.

10.8 Public Holidays

a) The employee is entitled to the following days which will be observed as holidays without deduction of ordinary time earnings, namely:
   - New Year’s Day
   - Australia Day
   - Good Friday
   - Easter Monday
   - Anzac Day
   - Queen’s Birthday
   - Labour Day
   - Christmas Day
   - Boxing Day
   - Melbourne Cup Day is considered a public holiday throughout the whole of that state and local cup or show days do not apply.
   - Any other day which is declared by, or under a law of Victoria to be observed generally within Victoria or a region of Victoria, as a public holiday.

b) When any of the days mentioned in sub-clause (a) hereof falls on a Saturday or Sunday –
   i. When Christmas Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on 27 December.
   ii. When Boxing Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on 27 December.
   iii. When Christmas Day and Boxing Day fall on Saturday and Sunday respectively, a holiday in lieu thereof shall be observed on 27 and 28 December.
   iv. When New Years Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.

c) Part time employees shall only be entitled to payment for those public holidays they are normally rostered to work.

d) Casual employees shall have no entitlement to payment for public holidays they do not work.

e) The rate of pay for public holidays not worked will be the ordinary rate of payment.
f) Any additional or substitute day that is declared a public holiday by the relevant state, territory or federal government that applies to where you are working at the time. However, no one public holiday event is to be observed or paid for on more than one day.

g) By agreement any of the public holidays named in this clause can be changed for another day either between the Employer and an Employee, or the majority of employees who are located in the same workplace.

h) Any of the public holidays named in this clause can be changed for another day by the Company where the Employee is working outside of the day on which the public holiday is due to be observed.

i) If an Employee is absent from the workplace on a day either side of a public holiday and is not on approved leave such as annual, personal/carer’s or compassionate leave, then an Employee is not entitled to payment for the public holiday.

j) If an Employee is required to work on a gazetted public holiday they will be given either:
   i. At least three hours’ work; or
   
   ii. Paid for at least four hours’ work by either:

      1. Double time and a half or

      2. Time and a half and have an equal amount of time off during normal working hours. These additional hours can be taken by agreement between the Company and the Employee or by direction of the Company where 14 days’ notice has been provided to the Employee.

10.9 Long Service Leave

a) Employees are entitled to long service leave pursuant to the provisions of the relevant State or Territory Long Service Leave Act as amended from time to time, or relevant State or Territory registered industry portable long service leave scheme such as CoInvest.

10.10 Leave to deal with Family & Domestic Violence

Employee entitlements to Family and Domestic Violence leave will be in accordance with the NES.

11 Dispute Resolution Procedure

a) In order to assist to achieve harmonious working relationships and maintain ongoing service delivery by the Employer, regular and ongoing consultation
between the employees and the Employer will be required to ensure co-
operation is provided.

b) If an Employee has a dispute with the Employer about any matter arising under
this Agreement or the National Employment Standards the dispute resolution
procedure must be used. The procedure is designed to try and resolve issues as
simply and quickly as possible. The procedure is:

i. The employee or employees must first discuss any grievance with their
foreperson or supervisor

ii. If the matter is unable to be resolved, the employee or employees will
discuss any grievance with the Employer’s senior site representative, who
shall attempt to resolve the matter.

iii. In the event of such discussions not resolving the grievance, the
employee or employees will meet with the Employer’s senior
management representative and participate in direct discussions in an
attempt to resolve the matter.

iv. At any and all stages, parties to a dispute under this clause may be
represented by any representative of their choice.

c) If a dispute in relation to a matter arising under this Agreement is unable to be
resolved at the workplace, and all agreed steps for resolving it have taken
place, the dispute can be referred by either the Employee or Employer to a
third person or organisation for assistance. The third person or organisation that
is used to help in resolving the dispute is to be agreed between the employee
and Employer. The type of assistance that third person or organisation can
provide is conciliation, mediation, arbitration, or any other form of alternative
dispute resolution agreed between the employee and Employer.

d) Employees and the Employer need to agree on the assistance to be provided
and whether the employee agrees to follow the outcome of using the third
person or organisation.

e) If an agreement on who the third person or organisation is not possible within a
reasonable period of time then the dispute can be taken by either Employees
or Employer to the Fair Work Commission (FWC), or any federal Government
body replacing FWC performing the same or similar functions. The type of
assistance that FWC can provide is conciliation, mediation, arbitration, or any
other form of alternative dispute resolution agreed between the employee and
Employer.

f) If arbitration by FWC is necessary, FWC may exercise its procedural powers
under the Act in relation to hearings, witnesses, evidence and submissions
which are necessary to make the arbitration effective.

g) Any arbitrated decision of FWC will be binding on Employees and the Employer,
however, a decision of a single member of FWC can be appealed to a Full
Bench of FWC by either party.
h) It is a term of this agreement that while the dispute resolution procedure is being conducted work must continue normally unless the employee has a reasonable concern about an imminent risk to their health or safety.

i) The outcome of the dispute resolution process under this clause must not be inconsistent with:
   a) The Code for the Tendering and Performance of Building Work 2016, or any successor code or instrument; or
   b) Any statutory obligations or inconsistent with any relevant legislative provisions.

j) Additionally, any recommendation, decision or determinations arising from the FWC must not change the intent and/or the terms and conditions provided for in this Agreement.

12 Training

a) Employees may be directed by the Company to attend training that is relevant to an Employee’s job and its business. The Company will endeavour to ensure that any training it requires Employee’s to undertake will take place during an Employee’s normal working hours.

b) Normal payment of wages will be provided for when training takes place during an Employee’s normal working hours. For any training undertaken outside an Employee’s normal hours of work, the Company will provide the same amount of time off work as is spent training (eg time off in lieu) or will pay the additional hours spent in training at the Employee’s ordinary rate of pay.

c) The Company will not pay an Employee to attending a training course that it does not require an Employee to undertake. There may, however, be circumstances where the Company can decide to support an Employee to undertake training that it does not require, but is of relevance to its business. The type of support provided by the Company may be paid time off, adjusting an Employee’s normal working hours or duties to assist in participating in the training or providing financial assistance with such things as course fees or text books. The type of support provided (if any) is at the sole discretion of the Company.
13 Stand down

a) Stand down occurs as a result of an Employee being unable to work as a result of circumstances that are beyond the Company’s control and the Company has explored all reasonable alternatives. An Employee may be stood down, without pay, as a result of:

- Industrial action such as strikes, bans, limitations on work, boycotts and stop work meetings; or
- Breakdown of machinery; or
- Power outages or shortages and restrictions, or lack of fuel or transport supply; or
- The non-delivery of supplies or provisions of services to the Company; or
- Damage to the Company’s facilities or equipment.

b) The Company may take reasonable actions other than stand down. These alternatives can include redeploying employees to other work at one of its work sites or allowing employees to take accrued annual leave or accrued long service leave, or other alternatives as agreed.

14 Personal Protective Clothing and Equipment

a) The Company will provide each Employee with work clothing and equipment that is commensurate with an Employee’s duties.

b) Employees agree to wear and use work clothing and equipment for the purpose it is intended and to keep such items in a presentable and workable condition.

c) Employees agree to ensure that work clothing that has been issued to them by the Company is kept clean and maintained.

d) The Company agrees to replace work clothing and equipment it has issued on a fair wear and tear basis. There may however, be a requirement for an Employee to pay for any replacement work clothing and equipment if such items are lost or damaged as a result of deliberate or negligent acts by an Employee.

15 Inclement Weather/Conditions

a) In the event of inclement weather/conditions affecting a workplace or worksite, work will continue until the particular work being performed can no longer be done safely and efficiently.
b) Inclement weather/conditions includes weather heat, cold, rain, strong wind and any other abnormal weather conditions that place an Employee’s health and safety at risk.

c) If inclement weather/conditions are such that the Company or the Employees feel it is not safe to continue to work, a discussion will take place between the Supervisor in charge and the Employees. A course of action will be decided upon and controls agreed to. If the Employees feel the course of action is not appropriate they may escalate this as per the Dispute Resolution Procedure (clause 11).

d) If the on-set of inclement weather is such that work is likely to cease, then steps must be taken to ensure that work being undertaken is rendered safe, that is, free from risk or hazard to Employees and the general public, before work ceases.

e) The Parties agree that Employees may be relocated to other unaffected sites or workplaces that are not affected by the inclement weather. Employees may also be required to undertake training activities, maintenance and housekeeping duties at depots.

16 Company Policies, Procedures or Rules

All Employees shall comply with any Company policies, procedures or rules that may be established from time to time including, but not limited to, Zero Harm, Code of Conduct and the below. Breaches of Company policies, procedures or rules may lead to disciplinary proceedings which in some instances, may result in the termination of an Employee’s employment. For clarity the Company’s polices do not form part of this agreement.

16.1 Confidential Information

Employees may become aware of confidential and/or commercially sensitive information about the Company. Confidential or commercially sensitive information is that which in any form, is not publicly known.

Employees agree that confidential or commercially sensitive information cannot be passed or shared for an Employee’s own, or anyone else’s benefit, unless Company approval has been obtained or such information is required to be provided at law.

16.2 Security

Employees agree that a duly authorised representative of the Company, including a person acting on behalf of the Company, can inspect any bags, lockers, containers, vehicles or other personal property that is brought to a Company premises or site, or location where the Company is undertaking work.
16.3 Licence Qualifications

Employees agree to maintain any Australian issued licence or qualification that is reasonably required for the performance of work for the duration of employment with the Company.

Employees agree to inform the Company in writing of any licence or qualification that is suspended, cancelled or restricted which is reasonably required for the performance of work. Employees agree to inform the Company as soon as they are aware that there is a possibility of this happening, for example as soon as any legal proceeding begins. The Company will undertake regular audits on the validity of all Employee licences and permits that are reasonably required for the performance of work.

Employees are required to inform the Company of the loss of any demerit points that occur when driving company plant or vehicles, and the reason for such loss.

The Parties agree that the suspension or cancellation of a licence or qualification that is reasonably required for the performance of work may result in the termination of an Employee’s employment.

16.4 Visitors

Employees agree to not bring any visitors into a Company workplace, including vehicles, unless prior written approval of the relevant supervisor or manager has been obtained.

16.5 Animals, Explosives & Firearms

Employees agree not to bring any animals, explosives or firearms or other weapons into any Company vehicle or premises, or site, or location, where the Company is undertaking work.

16.6 Mobile Telephones

Employees agree not to use any mobile telephone in an unsafe manner whilst performing work.

16.7 Smoking

Employees agree not to smoke in any Company office, workshop, building or vehicle, or any other place where the Company is undertaking works, and where smoking has been banned.

16.8 Alcohol and other Drugs

Employees are subject to the Company’s drug and alcohol policy and agree to undertake any tests for alcohol and other non-prescribed drugs that are required by the Company, or the client of a place where the Company is working.
Employees agree to attend the workplace in a fit state and to remain fit to work during all work time. Testing positive to alcohol or other non-prescribed drugs under either the Company’s or client’s policy, will result in an Employee being considered unfit to work.

Employees agree to not bring alcohol and other non-prescribed drugs into any Company or client premises or vehicle.

A breach of any provision of this clause including the refusal by an Employee to undertake a test for alcohol and/or other non-prescribed drugs may result in the termination of an Employee’s employment.

16.9 Personal Belongings

Employees agree that their personal belongings and tools of trade always remain their responsibility. The Company will not reimburse an Employee if their personal belongings or tools of trade are damaged or lost. The only exception to this is prescription safety glasses that the Employee has supplied. The Company will replace such prescription safety glasses that are damaged or lost at work, up to a reasonable value to be discussed on a case by case basis.

16.10 Company Property

At the termination of an Employees employment the Employee must return to the Company all of its property, including any equipment, documents, vehicles and keys that the Employee has been issued.
17 Signatures to the Agreement

Signed for and on behalf of the Employer

Signature of authorised person

Name of authorised person

Position of authorised person

Address

Date

Witness (Signature and Print)
Attachment 1  Downer Infrastructure Classification & Pay Structure

Employees will be given a Grade and a Level within that Grade. They will be classified according to the duties that form the major and substantial part of their role. The range of classifications and the typical types of duties are described in the following table. The range of duties, skills and equipment is not meant to be complete. New duties, skills, positions and types of equipment can be classified and paid in this structure according to how they compare to those already listed.

The levels described in this Agreement are intended to provide flexibility and the ability to reward an Employee for the skills they have and their level of achievement. They are expected to always meet the requirements for the levels below their assigned level. If an Employee does not maintain the minimum skills they can be changed to a lower level.
Classification Definitions

Level 1 (New Entrant)

- Be able to perform basic tasks/general labouring as requested including:
  - Preparing & cleaning a job site
  - Loading & delivering materials or equipment
  - Use a variety of tools and machines such as power drills, saws, pressure washers, AVDD’s and pipe locating equipment (once trained & competency has been verified)
  - Set up and take down fencing, barriers and other temporary structures
  - Perform manual labour tasks (e.g. digging and threaded pipework connections)
  - Hold a current Driver Licence Type CAR
  - Hold a current General Industry Induction Card (Red/White card)
  - Report to a Supervisor, Foreman or Senior Operator regarding any safety or operation issues.
  - Work in a safe and productive manner, including participation in risk assessments and following applicable safe work method statements or work procedures

Level 1A (New Entrant - experienced)

- Satisfy Level 1 criteria for an extended period of 6 months minimum
- Be able to perform basic tasks/general labouring as requested including:
  - Preparing & cleaning a job site
  - Loading & delivering materials or equipment
  - Use a variety of tools and machines such as power drills, saws, pressure washers, AVDD’s and pipe locating equipment (once trained & competency has been verified)
  - Set up and take down fencing, barriers and other temporary structures
  - Perform manual labour tasks (e.g. digging and threaded pipework connections)
  - Hold a current Driver Licence Type CAR
  - Hold a current General Industry Induction Card (Red/White card)
  - Report to a Supervisor, Foreman or Senior Operator regarding any safety or operation issues.
  - Work in a safe and productive manner

Level 2 (Supporting Hand)

- Satisfy Level 1A criteria for an extended period of 6 months minimum
- Complete Asbestos awareness course and work safely, effectively and efficiently when working to remove asbestos.
- Obtain a Light Rigid (LR) Truck driver licence
- Carry out daily pre start and unskilled maintenance on all company equipment and hired equipment.
- Obtain First Aid Certificate Level 2 plus CPR

Level 3 (Supervised Operator)

- Satisfy Level 2 criteria
- Obtain license and be able to perform at least one of the following specialised tasks: Electrofusion welding, Plastek, Trenching & Shoring, Spotter, Dogman, Excavator, Backhoe, Flexibore, Medium Rigid (MR) Drivers Licence etc
- Obtain Asbestos Class B Removal accreditation and work safely, effectively and efficiently when working to remove asbestos
- Complete daily company and customer administration paper work
- Perform effective communication with customers and residents

Level 4 (Experienced Operator)

- Satisfy Level 3 criteria
- Obtain license and be able to perform at least two (in addition to the one in level 3 above) of the following specialised tasks: Electrofusion welding, PE Butt welding, Plastek, Trenching & Shoring, Spotter, Dogman, 20 ton excavator, backhoe, Flexibore, Heavy Rigid (HR) Drivers Licence, Heavy Combination (HC) Licence, 20 ton Excavator etc
- Able to complete all work to a high standard with minimal supervision
- Able to accurately set out and measure up jobs
- Able to keep production levels up with minimal assistance
- Able to estimate plant needs for oncoming projects
- Able to perform activities beyond the normal course of pipe laying requirements

Level 5 (Leading Hand/Second In Charge)

- Satisfy Level 4 criteria
- Able to oversee site in the absence of the crew Foreman
- Co-ordinate sub-contractors on site while maintaining productivity and efficiency
- Able to produce accurate site diagrams
- Able to train other operators in safe use of plant and equipment
- Understand Downer Risk Management Process and able to develop Safe Work Method Statements (SWMS)
Level 6 (Foreman)

- Satisfy Level 5 criteria and appointed to role
- Demonstrates leadership skills on site
- Plan and supervise projects from start to finish
- Achieve Downer operational and Zero Harm objectives
- Effectively communicate and interact with client representatives and all other stakeholders
- Participate in internal and external Audits
- Participate in incident investigations and implement related corrective actions
The minimum pay rates for each classification are set out below. These are hourly rates of pay that are calculated to compensate you for each hour you work.

<table>
<thead>
<tr>
<th>Grade</th>
<th>The below rates are for the purposes of calculating back pay on ordinary time only from pay period beginning on or after 18 January 2019</th>
<th>The start of the first pay period beginning on or after 18 January 2020</th>
<th>The start of the first pay period beginning on or after 18 January 2021</th>
<th>The start of the first pay period beginning on or after 18 January 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1 New Entrant</td>
<td>$24.95</td>
<td>$25.50</td>
<td>$26.06</td>
<td>$26.63</td>
</tr>
<tr>
<td>Level 1A New Entrant (Experienced)</td>
<td>$26.92</td>
<td>$27.51</td>
<td>$28.12</td>
<td>$28.74</td>
</tr>
<tr>
<td>Level 2 Supporting Hand</td>
<td>$28.89</td>
<td>$29.53</td>
<td>$30.18</td>
<td>$30.84</td>
</tr>
<tr>
<td>Level 3 Supervised Operator</td>
<td>$31.67</td>
<td>$32.37</td>
<td>$33.08</td>
<td>$33.81</td>
</tr>
<tr>
<td>Level 4 Experienced Operator</td>
<td>$33.06</td>
<td>$33.79</td>
<td>$34.53</td>
<td>$35.29</td>
</tr>
<tr>
<td>Level 5 Leading Hand / Second In Charge</td>
<td>$34.45</td>
<td>$35.21</td>
<td>$35.98</td>
<td>$36.78</td>
</tr>
<tr>
<td>Level 6 Foreman</td>
<td>$37.78</td>
<td>$38.61</td>
<td>$39.46</td>
<td>$40.33</td>
</tr>
</tbody>
</table>
IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2020/980

Applicant:
Downer EDI Works Pty Ltd

Section 185 – Application for approval of a single enterprise agreement

Undertaking- Section 190

I, Craig Hartley, State Manager – Victoria Pipelines for Downer EDI Works Pty Ltd (Company) give the following undertaking with respect to the Downer Water & Pipelines Rehabilitation Enterprise Agreement 2020 – 2022 (Agreement):

1. I have the authority given to me by the Company to provide this undertaking in relation to the application for approval of the Agreement before the Fair Work Commission.

2. For the purpose of clause 7.6(d) of the Agreement, an employee whose continuous service is less than one year and whose employment is terminated by reason of redundancy, shall be entitled to a redundancy payment of 1.75 hours per week of service.

3. This undertaking provided on the basis of an issue raised by the Fair Work Commission in the application before the Fair Work Commission.

____________________________
Signature

23/04/2020

____________________________
Date