



## DECISION

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

**National Transport Commission**  
(AG2015/7089)

### **NATIONAL TRANSPORT COMMISSION (NTC) ENTERPRISE AGREEMENT 2015 - 2018**

Commonwealth employment

COMMISSIONER LEE

MELBOURNE, 12 FEBRUARY 2016

*Application for approval of the National Transport Commission (NTC) Enterprise Agreement 2015-2018.*

[1] An application has been made for approval of an enterprise agreement known as the *National Transport Commission (NTC) Enterprise Agreement 2015-2018* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by the National Transport Commission. 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 CPSU, the Community and Public Sector 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 was approved on 12 February 2016 and, in accordance with s.54, will operate from 19 February 2016. The nominal expiry date of the Agreement is 11 February 2019.



COMMISSIONER

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# **National Transport Commission**

## **Enterprise Agreement**

**2015 – 2018**

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# **1 PREAMBLE**

## **1.1 Meaning of certain terms used in this Agreement**

- (a) If a term that is used in this Agreement is not defined in this Agreement, but is defined in or under the Fair Work Act 2009 (Cth), (FW Act) it has that defined meaning.

Note: The National Employment Standards ("NES") are Divisions 3 to 12 of Part 2-2 of the Fair Work Act 2009 (Cth). Most of the definitions applying to the NES are found in section 12 of the FW Act.

- (b) In this Agreement, a reference to continuous service is a reference to continuous service as a direct Employee of the NTC.

# **2 SCOPE**

## **2.1 Title**

This Agreement is to be referred to as the National Transport Commission (NTC) Enterprise Agreement 2015 – 2018.

## **2.2 Period of operation**

This Agreement will come into force 7 days after the date of approval of this Agreement by the Fair Work Commission ("FWC") and shall reach its nominal expiry date three years from the date of commencement.

## **2.3 Parties bound**

This Agreement is made under section 172 of the FW Act and covers:

- (a) the NTC (represented by the Chief Executive ("CE"));
- (b) Employees who are employed in the classifications set out in 'Appendix A: Classification tables' of this Agreement and employed by the NTC ("Employees").

## **2.4 Relationships to awards, policies, procedures and guidelines**

- (a) Any guidelines, policies and procedures referred to in this Agreement are not incorporated into, and do not form part of, this Agreement. A term of this Agreement prevails to the extent of any inconsistency with a guideline, policy or procedure.
- (b) The NTC and its Employees agree that such guidelines, policies and procedures will be available to all Employees and will be updated as necessary following consultation.
- (c) This Agreement is comprehensive and operates to the exclusion of an award.

# **3 ACHIEVING RESULTS THROUGH PEOPLE**

## **3.1 Performance**

- (a) Permanent full time and part time Employees who have completed their probationary period must participate in the NTC's Performance System. The performance cycle runs from 1 July to 30 June each year. Further information is in the NTC Performance and Development Policy.
- (b) The objectives of the NTC Performance System are to:
  - (i) support the achievement of the NTC's Corporate Plan, Strategic Plan and Work Program;
  - (ii) recognise and reward Employees for their performance and achievements at work;
  - (iii) support the ongoing learning needs of Employees;

- (iv) provide a "no surprises" transparent and consistent process for rating Employee performance;
  - (v) provide a tool for driving cultural change;
  - (vi) reinforce NTC values and behavioural standards and expectations;
  - (vii) encourage reciprocal honest and constructive dialogue about performance and development between Employees and their managers;
  - (viii) facilitate and support the professional development of Employees consistent with the strategic direction of the NTC;
  - (ix) effectively identify and manage underperformance.
- (c) The following performance categories will be used to assess an Employee's performance:
- (i) Unsatisfactory
  - (ii) Adequate Performance
  - (iii) Fully Delivered
  - (iv) Commendable Performance
- (d) Following the annual end of year performance review, the direct manager will rate the Employee's performance as achieving one of the categories listed under clause 3.1(ix).
- (e) Employees may be eligible for a performance-based salary increase depending on their individual performance rating outcome in accordance with clause 7.5.
- (f) Further information is in the NTC Performance and Development Policy.

### **3.2 Managing Underperformance**

- (a) Where an Employee's work performance is assessed as "unsatisfactory" (at any time throughout the performance cycle), the direct manager will advise the Employee of this in writing.
- (b) The Employee will have five working days to comment on the written notice.
- (c) Following the Employee's response, and subject to 3.2 (d)(e), the Employee's performance will be assessed following an interim assessment period of six weeks and following a final assessment period of another seven weeks (13 weeks in total).
- (d) If an Employee is unable to demonstrate a capacity to deliver at least "Adequate Performance" at the interim assessment, the assessment period may be terminated.
- (e) At the end of the assessment period:
  - (i) if the Employee's performance is assessed as "Adequate Performance" or better, the normal performance management cycle will resume.
  - (ii) if the Employee's performance is assessed as "Unsatisfactory", the CE may issue a notice of intention to:
    - a. terminate the Employment of the Employee;
    - b. assign the Employee to other duties, either at the same level or a lower level within the NTC if it is determined that the Employee is capable of performing those duties, or
    - c. take other action that may be appropriate.
  - (iii) The Employee will have five working days to make representations why the proposed action should not be taken.
  - (iv) At the end of the five working days, the CE may issue notice of their decision about the action to be taken in relation to the Employee.
- (f) Further information is in the NTC Performance and Development Policy.

### **3.3 Probationary period**

An Employee must serve a probationary period of three months during which time either the Employee or the NTC may elect to terminate their employment by giving two weeks' notice. The NTC may elect to make payment in lieu of notice for all or part of the period of notice.

### **3.4 Legal representation**

If an Employee is required to attend a court, tribunal or other similar forum, as part of the normal course of their duties for the NTC, the Employee will be provided with appropriate legal representation.

## **4 WORK HEALTH AND SAFETY**

The NTC and Employees will be governed by the provisions of the Work Health and Safety Act 2011 (Cth) (WHS Act).

## **5 EMPLOYEE CONSULTATION**

### **5.1 Consultation clause**

- (a) This term applies if the NTC:
  - (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.

### **5.2 Major change**

- (a) For a major change referred to in clause 5.1(a)(a):
  - (i) The NTC must notify the relevant Employees of the decision to introduce the major change; and
  - (ii) sub clauses 5.2 (b) to (h) apply.
- (b) The relevant Employees may appoint an Employee representative ("representative") for the purposes of the procedures in this clause.
- (c) 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 NTC of the identity of the representative;the NTC must recognise the representative.
- (d) As soon as practicable after making its decision, the NTC must:
  - (i) discuss with the relevant Employees:
    - a. the introduction of the change, and
    - b. the effect the change is likely to have on the Employees, and
    - c. measures the NTC 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:
    - a. all relevant information about the change including the nature of the change proposed; and



- b. information about the expected effects of the change on the Employees; and
  - c. any other matters likely to affect the Employees.
- (e) However, the NTC is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- (f) The NTC must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.
- (g) If a clause in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the NTC, the requirements set out in 5.2(a)(a), (ii) and 0 are taken not to apply.
- (h) In this clause 5.2, 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 NTC'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.
- (i) In this clause 5.2, relevant Employees means the Employees who may be affected by the major change.

### **5.3 Change to regular roster or ordinary hours of work**

- (a) For a change referred to in clause 5.1(a)(i):
  - (i) the NTC must notify the relevant Employees of the proposed change; and
  - (ii) sub clauses 5.3(ii) to (f) apply.
- (b) The relevant Employees may appoint a representative for the purposes of the procedures in this clause 5.3.
- (c) 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 NTC of the identity of the representative;
 the NTC must recognise the representative.
- (d) As soon as practicable after proposing to introduce the change, the NTC 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:
    - a. all relevant information about the change, including the nature of the change; and
    - b. information about what the NTC reasonably believes will be the effects of the change on the Employees; and
    - c. information about any other matters that the NTC 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).
- (e) However the NTC is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- (f) The NTC must give prompt and genuine consideration to matters raised about the change by the relevant Employees.
- (g) In this clause 5.3 relevant Employee means the Employees who may be affected by the major change.

#### **5.4 Staff Consultative Forum**

A Staff Consultative Forum will be established to facilitate discussion between the NTC and Employees regarding the operation of the Agreement and workplace relations matters at the NTC.

## **6 WORKING HOURS**

### **6.1 Ordinary hours of work and rostering**

- (a) The ordinary hours of work are:
  - (i) for a full-time Employee, 7 hours and 36 minutes per day or 38 hours per week;
  - (ii) for a part-time Employee those hours determined by an Employee's part-time work agreement and recorded in the Employee's employment agreement and as varied from time to time by agreement.
- (b) Ordinary hours may be worked over five days, Monday to Friday, between the spread of hours of 7.30 am to 6.30 pm.
- (c) Ordinary hours may only be varied via a flexible working arrangement in accordance with clause 6.5.
- (d) A full-time Employee's standard working hours are 9:00 am to 5:36 pm, inclusive of a one-hour unpaid meal break.
- (e) A full-time Employee may vary their standard working hours within the spread of hours by agreement with their manager/supervisor. Any hours worked under such an arrangement will be referred to as agreed hours.

### **6.2 Additional hours**

- (a) Additional hours are all hours worked by an Employee:
  - (i) in excess of ordinary hours;
  - (ii) on a public holiday;
  - (iii) outside the spread of hours as prescribed in clause 6.1(ii); or
  - (iv) outside the hours agreed as part of a flexible working arrangement.
- (b) The NTC may direct an Employee to work additional hours upon provision of reasonable notice to the Employee.
- (c) An Employee may only be directed to work additional hours if:
  - (i) the approximate period of time over which the requirement to work additional hours will be in place has been explained to the Employee; and
  - (ii) feasible alternative arrangements for managing the workload have been considered by the NTC.

- (d) Nothing in this clause is intended to limit an Employee's right to refuse additional hours or to work on a public holiday if the request is unreasonable in accordance with the NES.
- (e) Where Employees are directed to work additional hours, in lieu of any overtime payment, they will be entitled to Time Off In Lieu (TOIL) in accordance with clause 6.3 of this Agreement.
- (f) The NTC will keep a record of additional hours worked for the purpose of calculating an Employee's entitlement to TOIL.

### **6.3 Time Off In Lieu**

TOIL is provided by the NTC to ensure that Employees are able to have sufficient rest after working additional hours.

- (a) TOIL will accrue in relation to all additional hours worked by an Employee at the rate of one hour of TOIL for each additional hour worked.
- (b) An Employee with TOIL credits should apply to take accrued TOIL as soon as practicable after it is accrued. The application must be approved by the Employee's direct manager prior to the Employee taking the accrued TOIL.
- (c) TOIL will, subject to operational requirements, be granted as soon as practicable after it is accrued and this should be facilitated by an Employee's manager/supervisor.
- (d) An Employee's manager/supervisor may authorise an Employee who has accrued TOIL credits to be absent from work during the Employee's ordinary hours or agreed hours (as applicable) without deduction from pay.
- (e) An Employee may only accumulate and bank a maximum TOIL credit equal to five days work at any given time. If an Employee has banked five days of TOIL, the NTC may direct the Employee to take a period of TOIL.
- (f) An Employee may not accrue more than 10 days of TOIL over a 12 month period unless by mutual agreement between an Employee and their direct manager, and by Human Resources or Executive approval.
- (g) Managers should provide opportunities for Employees to use their accrued TOIL hours, particularly where the Employee has resigned or has received notice of termination. Employees should also take all reasonable steps to use their TOIL hours. Where any TOIL hours are outstanding at the cessation of employment for any reason, these will be paid to the Employee at the Employee's ordinary time rate of pay as at the termination date.

### **6.4 Travelling for work purposes**

- (a) Travel for work purposes should be undertaken during an Employee's ordinary hours, agreed hours (if applicable), or flexible working arrangement hours (if applicable) unless otherwise agreed between the Employee and their direct manager.
- (b) Where time spent in work related travel, together with an Employee's ordinary hours or agreed hours (as applicable), amounts to more than 10 hours in one day, all hours in excess of ordinary hours will be considered additional hours and accrue TOIL credits in accordance with clause 6.3 of this Agreement subject to the following:
  - (i) in the case of Employees undertaking travel involving an overnight stay, TOIL will not accrue in respect of travel between the Employee's accommodation and their work destination;
  - (ii) in the case of air travel, TOIL, if applicable, will begin to accrue in relation to work related travel 30 minutes prior to the flight's departure and will cease accruing 30 minutes after the flight's arrival at its destination.

## **6.5 Flexible working arrangements**

- (a) An Employee may request flexible working arrangements in accordance with section 65 of the FW Act and the provisions of this clause 6.5.
- (b) If the circumstances referred to in section 65 of the FW Act do not apply to an Employee, the Employee may make a request for a flexible working arrangement under this clause 6.5. The formal requirements and requirements relating to agreeing to the request laid out in section 65 of the FW Act, as well as (b), (c) and (d) below will apply to requests made under this clause 6.5(b).
- (c) Flexible working arrangements established under this clause 6.5 will be subject to periodic reviews undertaken by the NTC to ensure the arrangements continue to be suitable for the Employee and the NTC's reasonable business requirements.
- (d) If a periodic review reveals that the flexible working arrangement is no longer supportable due to changes in the NTC's reasonable business requirements, the NTC may provide the Employee with 4 weeks' notice in writing of the flexible working arrangement's cessation. The written notice must provide details of the reasonable business requirements which mean the flexible working arrangement is no longer supportable.
- (e) Should an Employee wish to terminate a flexible working arrangement, they must provide the NTC with 4 weeks written notice.

## **6.6 Working from home or other locations**

- (a) Employees are to undertake their duties principally at the registered address of the NTC, or at any other location that an Employee and the NTC agree on.
- (b) An Employee and direct manager may agree to the Employee working from home on either a temporary or intermittent basis. For more information please refer to the NTC Working From Home Arrangements Policy.

# **7 SALARY AND CLASSIFICATION**

## **7.1 Salary**

- (a) A full-time Employee's salary is calculated on the basis of ordinary hours.
- (b) A part-time Employee or an Employee who is subject to a flexible working arrangement will be paid a pro-rata salary calculated on an hourly rate by reference to the annual rates set out in the applicable classification in 'Appendix A: Classification tables' and will accrue annual and personal/carers leave on a pro-rata basis based on ordinary hours of part-time work. A part-time Employee or an Employee subject to a flexible working arrangement will receive their standard payment for any public holiday that falls on a day that is a normal allocated work day during that period.
- (c) A casual Employee is an employee engaged as such. A casual employee will be paid a pro rata hourly rate calculated by reference to the bottom rate set out in the applicable classification in 'Appendix A: Classification tables' plus a 25 percent loading. The loading is paid instead of entitlements to leave and other matters from which the casual are excluded by the terms of this Agreement and the NES.
- (d) For the purposes of this Agreement, a reference to an Employee's total remuneration at any time is a reference to annual salary plus superannuation.
- (e) Employees will receive a salary increase of:
  - (i) 2% on commencement of this Agreement
  - (ii) 2% 12 months after commencement
  - (iii) 2% 24 months after commencement.

## **7.2 Classification table**

'Appendix A: Classification tables' sets out the rates of pay for Employees covered by this Agreement.

## **7.3 Superannuation**

The NTC will make superannuation contributions on an Employee's behalf in accordance with the relevant legislation. Payment will be made into a complying superannuation fund or scheme chosen by the Employee.

## **7.4 Salary sacrifice**

An Employee may elect to salary sacrifice. For more information please refer to the NTC Salary Sacrifice Policy.

## **7.5 Performance reward**

- (a) An Employee is entitled to a performance-based increase on 1 July 2016, 1 July 2017 and 1 July 2018 depending on the outcome of the Employee's performance rating for the previous 12 months in accordance with the following table:

<b>Performance rating</b>	<b>Performance increase (% of annual base salary)</b>
Unsatisfactory	0%
Adequate Performance	0%
Fully Delivered	1-2%
Commendable Performance	3-5%

- (b) The amount of Employees that can be awarded a 'Commendable Performance' rating will be limited to 12% of Employees in any given 12 month period.
- (c) Eligibility for a performance increase is limited to permanent Employees who have completed a minimum of six months of employment during the performance cycle, inclusive of a probationary period, and will be applied on a pro-rata basis.
- (d) Subject to sub-clauses 7.5(d) and (e), any performance-based increase that is payable to an Employee in accordance with this clause will be applied as an increase to an Employee's salary.
- (e) An Employee whose salary has reached the top of the salary range for their classification will have their performance-based increase paid as a bonus payment. The amount of bonus payment will be equal to the performance-based increase outlined in 7.57.5.
- (f) Where the application of an Employee's performance-based increase would result in an Employee's salary exceeding the top of the salary range, the Employee's salary will be increased up to the top of the applicable salary range. The remainder of the increase will be paid as a bonus payment.

## **7.6 Individual flexibility arrangements**

- (a) The NTC and Employees covered by this Agreement may agree to make an individual flexibility arrangement ("IFA") to vary the effect of any of the terms of this Agreement, where the arrangement meets the genuine needs of the Employee and the NTC.
- (b) The NTC must ensure that an IFA agreed under this clause:
- (i) is about permitted matters under section 172 of the FW Act, and
  - (ii) does not include unlawful terms under section 194 of the FW Act, and
  - (iii) is signed by both the Employee and the NTC, and, if the Employee is under 18, is signed by their parent or guardian, and

- (iv) is able to be terminated by either the Employee or the NTC giving not more than 28 days written notice, or at any time by agreement between the Employee and the NTC in writing, and
- (v) is given to the Employee within 14 days after it is agreed to.
- (c) An IFA must be genuinely agreed between the Employee and the NTC.
- (d) The written agreement will include:
  - (i) the terms of this Agreement that will be varied by the arrangement;
  - (ii) how the arrangement will vary the effect of the terms;
  - (iii) how the Employee will be better off overall in relation to the terms and conditions of their employment as a result of the arrangement; and
  - (iv) the day on which the arrangement commences.

## **8 ALLOWANCES**

### **8.1 Work related travel**

- (a) Employees are entitled to reimbursement of the reasonable costs of travel and incidental expenses they incur in carrying out their duties subject to submission of receipts to the NTC.
- (b) Where an Employee requests pre-payment of reasonable out-of-pocket expenses, the NTC will pay the Employee subject to:
  - (i) arrangements having been made for NTC to pre-pay booked expenses, such as accommodation; and
  - (ii) within a reasonable period upon return from travel, the Employee submitting receipts for all expenses and returning any unspent payment to the NTC.

### **8.2 Professional memberships and accreditation**

Where the NTC requires an Employee to maintain a professional membership or accreditation for the purposes of fulfilling their role in the organisation, the NTC and the Employee will make appropriate arrangements to cover the cost and time to undertake the professional membership or accreditation.

### **8.3 Higher duties**

- (a) The NTC may provide an Employee with the opportunity to perform duties above his/her current classification or role for the purposes of professional development and to meet an organisational need. An Employee may agree at any time during the term of this Agreement to perform duties of a higher classified position ("Higher Duties"). Subject to this clause, an Employee who agrees to perform Higher Duties will receive a Higher Duties payment.
- (b) An Employee will be eligible for a Higher Duties payment if:
  - (i) they demonstrate, or are ready to demonstrate, the necessary skills and competencies to perform the Higher Duties, and
  - (ii) they are prepared to assume the additional responsibilities of the Higher Duties; and
  - (iii) they are requested to work at least ten consecutive working days on Higher Duties (or in the case of a part time Employee, the Employee's ordinary hours in a two week period)
- (c) Subject to clause 8.3(c), where an Employee is required to perform Higher Duties, the Employee will be paid an amount equivalent to the difference between the Employee's base salary and the lowest base salary point for the higher classification for the agreed period that the Higher Duties are performed.

- (d) Where an Employee's salary is above the base point of the Higher Duties salary, the responsible executive officer will decide an appropriate Higher Duties payment.

#### **8.4 Meal allowance and taxi voucher**

- (a) Where an Employee is requested to work additional hours before 7.30 am or after 7pm, the NTC will provide the Employee with a taxi voucher.
- (b) Where an Employee is requested to work additional hours after 7pm the NTC will reimburse the Employee for any reasonable meal expenses incurred as a result of additional hours.

#### **8.5 Financial support for approved study**

- (a) The NTC will provide the following financial support to permanent Employees for any higher professional qualification that it approves (including tertiary and HECS-HELP courses):
  - (i) Contribution of up to 50% of course fees to a maximum limit of \$2,500 per calendar year.
  - (ii) Up to five days paid study leave per calendar year to attend examinations, course work and lectures, subject to approval by the direct manager.
  - (iii) Permanent part-time Employees will be eligible for financial support and pro-rata study leave.
- (b) For more information please refer to the NTC Further Education and Study Leave Policy.

#### **8.6 Motor vehicle allowance**

When a direct manager authorises an Employee to use a private motor vehicle for official purposes, the Employee will receive a Motor Vehicle Allowance in accordance with the per kilometre car expenses rates determined by the Australian Taxation Office.

#### **8.7 Public transport tickets**

- (a) NTC can arrange for Employees to purchase yearly public transport metropolitan rail/tram/bus tickets.
- (b) The yearly tickets are purchased by the NTC and are reimbursed by Employees through deductions from their fortnightly pay. If an Employee leaves the NTC before full payment of yearly tickets are reimbursed the Employee must pay the total balance owing back to the NTC before their departure.

#### **8.8 Additional costs assistance and allowances**

In addition to determining salary levels, the NTC may also determine payment rates for additional costs including but not limited to travel, living away from home allowance, additional child care costs arising from operational requirements, and other employment related allowances.

### **9 LEAVE**

#### **9.1 Annual leave**

- (a) Full-time Employees are entitled to annual leave accruing at the rate of 20 days per year of service. Annual leave for part-time Employees is accrued on a pro rata basis.
- (b) Annual leave accrues from the commencement date of employment.
- (c) Annual leave entitlement accrues progressively during each year.
- (d) An Employee may request leave at any time during the year. The time of taking leave is subject to the approval of the Employee's direct manager (or delegate). Leave will not be unreasonably refused.

- (e) If an Employee accrues unused annual leave in excess of 40 days, the NTC may with one month's notice, require the Employee to take up to a quarter of that leave within a three month timeframe. The NTC will not direct an Employee to take leave where the Employee is able to demonstrate that special circumstances exist and the Employee agrees to arrangements that will reduce the leave balance within an agreed timeframe.
- (f) On termination of employment from the NTC, an Employee will be paid for annual leave accrued but untaken at the time of termination.

## **9.2 Annual leave at half pay**

On request by an Employee, the NTC may agree at its absolute discretion to provide annual leave to an Employee at half pay. Where annual leave at half pay is approved, the amount deducted from the Employee's accrued annual leave will also be halved. For example, where two weeks of annual leave at half pay is taken by an Employee, only one week of annual leave will be deducted from the Employee's accrued annual leave.

## **9.3 Long service leave**

- (a) Employees are entitled to 13 weeks long service leave after 10 years of recognised employment and will continue to accrue long service leave on a pro rata basis at the rate of 1.3 weeks per year.
- (b) An Employee may access this entitlement, on a pro rata basis, after an initial seven years of continuous service.
- (c) Where an Employee ceases employment as a consequence of death, permanent disability, redundancy or retirement and the Employee completed more than 1 year of continuous service at the time of termination, the Employee, or the Employee's estate, will receive payment of unused pro rata Long Service Leave as part of his/her final pay. For the purpose of applying this clause "retirement" means an Employee who is sixty (60) years of age, or over, and has provided the NTC with written notice of intention to retire from his or her employment.
- (d) To the extent permitted by the Long Service Leave Act 1992 (Vic.)(LSL Act), sub clauses 9.39.3 to (b) are intended to provide entitlements greater than those set out in the LSL Act. In all other respects the LSL Act applies to the calculation of entitlements to long service leave, and to the taking of that leave.

## **9.4 Paid personal/carer's leave**

- (a) Full-time Employees are entitled to paid personal/carer's leave of 15 days per year of service. Part-time Employees accrue personal/carer's leave on a pro rata basis.
- (b) Employees may only take the leave:
  - (i) if unfit for work because of a personal illness, or a personal injury, or
  - (ii) to provide care or support for a member of the Employee's immediate family, or a member of their household, who requires care or support due to illness, injury or an unexpected emergency affecting her or him.

Note: Section 12 of the FW Act states that members of an Employee's immediate family include a spouse, de facto partner, child, parent, grandparent, grandchild or sibling; and a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner.

- (c) Personal/carer's leave accrues from the commencement date of employment.
- (d) Leave accrues progressively throughout the year. Untaken leave accumulates indefinitely, but no payment for unused leave will be made to an Employee upon cessation of their employment.
- (e) An Employee must ensure that NTC has been advised of an absence including details of the expected duration of absence, due to personal illness/injury or carer's leave as soon as reasonably practicable.



- (f) In the case of an absence in excess of three consecutive working days, an Employee is required to supply a medical certificate or other reasonable evidence in relation to the absence.
- (g) Entitlement to any additional day's leave under (e) in relation to that absence ceases unless the Employee complies with the request for reasonable evidence.
- (h) Where reasonable suspicion exists of a misuse of personal/carer's leave, the NTC may seek suitable evidence to support any future absences. In such circumstances, the NTC will provide in writing the reasons for the suspected misuse as well as details of the duration of time the Employee is to provide suitable evidence to support any future absences.
- (i) An Employee may be granted up to an additional five days paid leave in a calendar year if the Employee:
  - (i) has completed more than 12 months continuous service
  - (ii) has exhausted all other forms of paid leave; and
  - (iii) provides written advice from their medical practitioner certifying that the Employee has a serious illness requiring hospital treatment or medical procedures that causes the Employee to be unfit for work.

#### **9.5 Unpaid carer's leave**

If an Employee has used all of their paid personal/carer's leave entitlement, the Employee may take up to 2 days unpaid carer's leave on each occasion to care for or support a member of the Employee's immediate family or household who requires the care or support due to illness, injury or an unexpected emergency affecting him or her. The same notification procedures regarding personal/carer's leave apply.

#### **9.6 Compassionate leave**

- (a) An Employee may take three days paid compassionate leave on each occasion when a member of the Employee's household or immediate family contracts or develops a personal illness that poses a serious threat to his or her life; or sustains a personal injury that poses a serious threat to his or her life; or dies.
- (b) If there are reasonable grounds to do so, the NTC may request the Employee to provide reasonable evidence that the leave was for a reason set out in clause 9.69.6.
- (c) If an Employee has used the entitlement to the leave under clause 9.69.6 in respect of the death, illness or injury of a particular person, and further time off is required in respect of that same person, up to a further three days unpaid leave may be taken.

#### **9.7 Parental leave and related entitlements**

- (a) Employees are entitled to unpaid parental leave and associated entitlements in accordance with the provisions of the FW Act as amended from time to time.
- (b) In addition to the unpaid parental leave and other associated benefits provided by the FW Act, if an Employee has at least 12 months of continuous service with the NTC, the following entitlements apply:
  - (i) If the Employee is the primary care giver, up to 16 weeks paid parental leave; or
  - (ii) If the Employee's spouse or de facto partner is the primary care giver, up to two weeks paid parental leave.
- (c) The paid parental leave outlined in clause 9.7(a) does not extend the period of unpaid parental leave that an Employee is entitled to beyond the leave provided by the FW Act and must be taken concurrently with the Employee's statutory entitlement.
- (d) The payment in respect of parental leave will be made in line with the NTC pay cycle. Employees who are eligible for paid parental leave may elect to have the payment spread over a maximum of 32 weeks at a rate of no less than half normal salary.

Where payment is spread over a period longer than 16 weeks, only 16 weeks of the leave period will count as service.

**9.8 Purchased leave**

In June or December of any 12 month period an Employee who has completed their probationary period may apply to purchase either two or four weeks leave. Purchased leave will count for service for all purposes. The Employee's salary for superannuation purposes is their salary adjusted by the relevant purchased leave arrangement. The granting of purchased leave applications is at the discretion of the NTC subject to reasonable business requirements. For more information please refer to the NTC Purchased Leave and Leave without Pay Policy.

**9.9 Leave without pay**

- (a) Employees may apply for leave without pay for a period of up to a maximum of 12 months upon completing one year of service.
- (b) The granting of leave without pay will be at the discretion of the NTC.
- (c) Staff will accrue Long Service Leave during the period of leave without pay in accordance with the Long Service Leave Act 1992 (Vic).
- (d) For more information please refer to the NTC Purchased Leave and Leave without Pay Policy.

**9.10 Jury service leave**

If an Employee is called for jury service (including attendance for the purpose of jury selection) under a Commonwealth, state or territory law, they may take jury service leave on the following terms:

- (a) the Employee is entitled to be paid for the period of their absence on jury service;
- (b) the Employee must take all necessary steps to obtain any amount of jury service pay to which they are entitled for that period;
- (c) the Employee must advise the NTC in writing of the total amount (if any) of jury service pay that they have been, or are entitled to be, paid for that period; and
- (d) the amount the Employee will be paid by the NTC for jury service leave will be reduced by the amount (if any) referred to in clause 9.10(c).

**9.11 Community service leave**

- (a) Employees are entitled to be paid for absence to carry out a voluntary emergency management activity or an activity prescribed by regulations made for the purposes of Division 8 of the NES if their absence is reasonable in all the circumstances. An Employee's absence under this clause encompasses any period in which they engage in the activity, reasonable travelling time associated with the activity, and reasonable rest time immediately following the activity, as agreed with the Employee's direct manager.
- (b) Employees wanting to undertake activities for an approved charity can draw on their current annual leave or long service leave entitlements. Where annual leave or long service leave entitlements have been exhausted, the NTC may grant a request for leave without pay for the purposes of undertaking a reasonable amount of approved charity work, subject to operational requirements and as agreed by their direct manager.

**9.12 Public holidays**

- (a) Employees are entitled to observe all public holidays gazetted by the Victorian Government, and are entitled to be paid for that absence. An applicable public holiday is based on that Employee's place of work and not the location of their residence.

- (b) If an Employee is based for employment purposes in a state or territory other than Victoria, they will be entitled to be paid for their absence on all public holidays declared by the applicable state or territory government.
- (c) In accordance with the NES, an Employee is not taken to be on annual leave or personal/carer's leave on a public holiday. Therefore, any public holidays that fall within a period of leave will be observed as public holidays and no deduction of leave days will be made.

#### **9.13 Christmas close down period**

NTC will be closed for normal business and Employees will not be required to perform normal duties on the working days between Christmas and New Year's Day. Employees will be paid for the close down period based on their ordinary or agreed hours.

## **10 DISPUTE RESOLUTION**

- (a) If a dispute relates to:
  - (i) a matter arising under the Agreement, or
  - (ii) the National Employment Standards
 this clause 10 sets out procedures to settle the dispute.
- (b) An Employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this clause 10.
- (c) In the first instance, the parties to any dispute must genuinely attempt to resolve the dispute at the workplace level by discussions between the Employee or Employees and relevant supervisors and/or management. For further information please refer to NTC's Grievance and Dispute Settlement Policy.
- (d) In instances where the dispute has not been resolved in accordance with 10(b), a party to the dispute may refer the matter to the Fair Work Commission ("FWC").
- (e) The FWC may deal with the dispute in 2 stages:
  - (i) The FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - (ii) arbitrate the dispute; and
  - (iii) make a determination that is binding on the parties.

*Note:* If the FWC arbitrates the dispute, it may also use the powers that are available to it under the FW Act. A decision that Fair Work Australia makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.
- (f) While the parties are trying to resolve the dispute using the procedures in this clause 10:
  - (i) an Employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
  - (ii) an Employee must comply with a direction given by the NTC to perform other available work at the same workplace, or at another workplace, unless:
    - a. the work is not safe, or
    - b. applicable work health and safety legislation would not permit the work to be performed, or
    - c. the work is not appropriate for the Employee to perform, or

- d. there are other reasonable grounds for the Employee to refuse to comply with the direction.
- (g) The parties to the dispute agree to be bound by a decision made by FWC in accordance with this clause 10.
- (h) This clause 10 does not apply in relation to disputes relating to termination of employment and such disputes are to be addressed through provisions under the FW Act.
- (i) Subject to the FW Act, the NTC reserves the right to be legally represented for all matters referred to the FWC under this clause.

## 11 TERMINATION, REDEPLOYMENT AND REDUNDANCY

### 11.1 Notice to terminate employment

- (a) The NTC may at any time terminate an Employee's employment without notice if they are found to have engaged in serious misconduct.  
Note: **Serious misconduct** is defined in regulation 1.07 of the *Fair Work Regulations 2009* (Cwlth).
- (b) An Employee may terminate their employment at any time by providing two weeks' notice if employed for less than one year and four weeks' notice if employed for more than one year. Alternative notice periods may be negotiated.
- (c) The NTC may at any time terminate an Employee's employment by giving the following amount of notice, or payment in lieu of notice for all or part of the period of notice for the following period:

Period of continuous service at the end of the day the notice is given	Period of notice
not more than 1 year	2 weeks
more than 1 year	4 weeks
more than 2 years, and the Employee is over 45 years old (if this applies)	5 weeks

### 11.2 Redundancy

- (a) A position may be redundant in such circumstances as (but not limited to):
  - (i) a position being deemed by the NTC to be in excess of its operational requirements (for operational reasons);
  - (ii) the position is no longer required due to the introduction of workplace change (including technology changes); or
  - (iii) changes resulting from a review and subsequent restructure of functions within the organisation (including the position[s] being transferred to a different locality).
- (b) For the purpose of consultation, redundancy is considered to be a significant workplace change and as such clause 5.2 (Major change) of this Agreement will apply. The following consultation shall occur, as a minimum, in relation to a proposed redundancy:
  - (i) The NTC will hold discussions with Employees directly affected by the proposed redundancy, and any chosen Employee representatives, as soon as possible after the NTC has determined that the positions are to be made redundant.
  - (ii) The nature of the discussions will be to consult on redeployment opportunities, the potential number of terminations resulting from the

redundancy, the categories of Employees affected and, if applicable, any measures that may minimise the number of terminations.

- (c) An Employee whose employment is terminated on account of redundancy ("Retrenchment") shall be provided advice in writing of the pending retrenchment including the exit date and estimate of final payment.
- (d) The NTC may elect to make payment in lieu of notice in place of the Employee working through the notice period.
- (e) In addition to any payment the Employee may be entitled to under sub clause 11.2(c), the NTC must make a severance payment to the Employee of the following pro rata amounts of their total remuneration:

Period of continuous service	Amount of severance pay
1 year or less	2 weeks
1 year and up to the completion of 2 years	4 weeks
2 years and up to the completion of 3 years	6 weeks
3 years and up to the completion of 4 years	7 weeks
4 years and over	2 weeks for each year of service up to a maximum of 24 years of service (48 Weeks)

- (f) The payments in sub clause 11.2 (e) will not apply if the NTC or another employer in a transfer of business situation offers the Employee alternative employment on terms that are substantially similar to, and, considered on an overall basis, no less favourable than, the terms that applied to the job that is no longer to be done by anyone, and the Employee rejects the offer.
- (g) If the NTC terminates an Employee's employment under this clause 11.2, it will offer the Employee career transition services as provided for in clause 11.4.

### 11.3 Redeployment

- (a) The NTC will provide an Employee whose position has been made redundant an opportunity to be considered for an alternative position(s) within the organisation during the consultation period provided for in clause 11.1(b). Redeployment may be to either a role that is considered on an overall basis to be a "suitable alternative position" or an "alternative position".
- (b) A "suitable alternative position" means a position that on an overall basis draws upon the Employee's skills, competencies, behaviours and experience without diminishing work capacity, status, income or equivalent career progression. This could also include a position where an Employee, with up to three months training will have the skills and competencies to undertake the position.
- (c) An "alternative position" means any position that the NTC offers and the Employee elects to accept and is not limited to a "suitable alternative position" and will have the skills and competencies to do so with reasonable training.
- (d) Where an alternative position is paid at a lower classification level, the Employee shall continue to receive her/his existing salary (including existing penalties and/or allowances) for a period of 12 months from the date of transfer. After 12 months, his/her salary will revert to the lower classification level, should he/she remain in the alternative position or any subsequent alternative position.
- (e) Should the NTC require an Employee to move his/her household to a new locality as a consequence of redeployment within the NTC the Employee will be reimbursed for reasonable expenses incurred from the move. Payment of these expenses will be mutually agreed prior to the redeployment being finalised.

### 11.4 Career transition services

- (a) In the case of retrenchment under clause 11.2, the NTC will, at the Employee's request, provide the affected Employee career transition services from a suitably

qualified and independent provider to a maximum of \$2,500. Career transition services will include:

- (i) résumé preparation
  - (ii) career counselling
  - (iii) interview skills, and
  - (iv) job search.
- (b) An Employee will be provided with paid leave to attend career transition activities and/or interviews for alternative employment during the notice period provided for in clause 11.2(ii).

#### **11.5 Exclusion of probationers from this clause 11**

Employees in their probationary period are excluded from the provisions laid out in this clause 11 and will be entitled to notice in accordance with the FW Act.

## **12 CASUALS**

- (a) For the avoidance of doubt, the provisions of clauses 3.3 (Probationary period), 6 (Working Hours), 7.5 (Performance Reward), 8.5 (Financial support for approved study), 9.1 (Annual leave), 9.2 (Annual Leave at half pay), 9.4 (Paid personal/carer's leave), 9.7 (Paid Parental Leave), 9.8 (Purchased Leave), 9.12 (Public Holidays) and 11 (Termination, Redeployment and Redundancy) do not apply to casual Employees
- (b) The provisions of clauses 9.6 (Compassionate Leave), 9.10 (Jury Service Leave), 9.11 (Community Service Leave) and clause 9.13 (Christmas Close Down Period) apply to casual Employees, save that any leave taken under these provisions will be unpaid.

## Appendix A: Classification tables

Table 1

Classification	Annual salary range (\$) as at commencement of Agreement (excluding superannuation)	
	Bottom	Top
Manager Policy	\$104,965	\$140,675
Manager Corporate	\$81,159	\$124,444
Senior Policy Analyst/Advisor	\$77,913	\$102,802
Policy Analyst/Advisor	\$61,680	\$76,830
Executive Assistance/Administrator	\$49,777	\$63,845
Project/Administration Assistant	\$40,182	\$45,000

Table 2

Classification	Annual salary range (\$) as at 12 months after commencement of Agreement (excluding superannuation)	
	Bottom	Top
Manager Policy	\$107,064	\$143,489
Manager Corporate	\$82,783	\$126,933
Senior Policy Analyst/Advisor	\$79,471	\$104,858
Policy Analyst/Advisor	\$62,914	\$78,367
Executive Assistance/Administrator	\$50,773	\$65,122
Project/Administration Assistant	\$40,986	\$45,900

Table 3

Classification	Annual salary range (\$) as at 24 months after commencement of Agreement (excluding superannuation)	
	Bottom	Top
Manager Policy	\$109,206	\$146,359
Manager Corporate	\$84,438	\$129,472
Senior Policy Analyst/Advisor	\$81,060	\$109,955
Policy Analyst/Advisor	\$64,172	\$79,934
Executive Assistance/Administrator	\$51,788	\$66,424
Project/Administration Assistant	\$41,805	\$46,818

## FORMAL ACCEPTANCE OF AGREEMENT AND SIGNATORIES

### Employer

Signed for, and on behalf of, the National Transport Commission by the Chief Executive and Commissioner:

Signed

  
\_\_\_\_\_

Full name Paul Retter AM

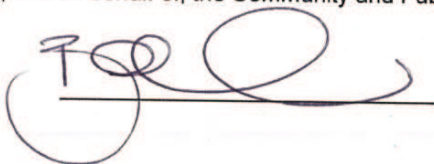
Employer National Transport Commission

Address Level 15, 628 Bourke Street, Melbourne VIC 3000

### Bargaining Representative: Community and Public Sector Union

Signed for, and on behalf of, the Community and Public Sector Union:

Signed

  
\_\_\_\_\_

Full name Beth Vincent – Pietsch,

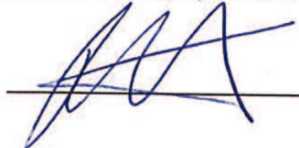
Position Deputy Secretary, Community and Public Sector Union (CPSU)

Address 1/40 Brisbane Avenue, Barton ACT 2600

### Bargaining Representative: Employee

Signed for, and on behalf of employees as an employee nominated bargaining representative:

Signed

  
\_\_\_\_\_

Full name Peter Halligan

Address (Work address) Level 15, 628 Bourke Street, Melbourne VIC 3000