



DECISION

Fair Work Act 2009

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

Protech Personnel (NSW) Pty Ltd
(AG2024/2163)

PROTECH PERSONNEL (NSW) PTY LTD AND CFMEU ACT DEMOLITION, CIVIL AND INFRASTRUCTURE SECTORS AGREEMENT 2022

Building, metal and civil construction industries

DEPUTY PRESIDENT ROBERTS

SYDNEY, 1 JULY 2024

*Application for approval of the Protech Personnel (NSW) Pty Ltd and CFMEU ACT
Demolition, Civil and Infrastructure Sectors Agreement 2022*

[1] An application has been made for approval of an enterprise agreement known as the *Protech Personnel (NSW) Pty Ltd and CFMEU ACT Demolition, Civil and Infrastructure Sectors Agreement 2022* (**the Agreement**). The Application was made pursuant to s.185 of the *Fair Work Act 2009* (**the Act**). It has been made by Protech Personnel (NSW) Pty Ltd (**the Applicant**). The Agreement is a single enterprise agreement.

[2] I am satisfied that each of the requirements of ss186, 187 and 188 as is relevant to this application for approval has been met.

[3] I note that Clause 6.5 of the Agreement provides that this Agreement will be read and interpreted in conjunction with the National Employment Standards (**NES**). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

[4] The Construction, Forestry and Maritime Employees Union (**CFMEU**) lodged a Form F18 statutory declaration giving notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) of the Act, I note the Agreement covers the CFMEU.

[5] The Agreement is approved and will operate in accordance with s.54 of the Act. The nominal expiry date of the Agreement is 1 November 2024.



DEPUTY PRESIDENT

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**Protech Personnel (NSW) Pty Ltd and CFMEU ACT Demolition, Civil
and Infrastructure Sectors Agreement 2022**



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Part 1—Application and Operation of the Agreement

2. Payment and Benefit Summary

2.1 Minimum hourly wage rates

Hourly rates will be paid at the rate set out in the table below:

Classification level in previous agreement (for information only)	New classification level	Prior to commencement	From Commencement	From first full pay period on or after 1 November 2022	From first full pay period on or after 1 November 2023	From first full pay period on or after 1 November 2024
New	Level 1 (NEW)	\$25.70	\$28.73	\$27.80	\$28.91	\$30.07
New	Level 2	\$27.42	\$28.51	\$29.65	\$30.84	\$32.07
New	Level 3	\$30.84	\$32.08	\$33.36	\$34.69	\$36.08
New	Level 4	\$32.34	\$33.63	\$34.98	\$36.38	\$37.83
DW1	Level 5	\$34.27	\$35.64	\$37.07	\$38.55	\$40.09
DW2	Level 6	\$35.86	\$37.29	\$38.79	\$40.34	\$41.95
DW3	Level 7	\$37.52	\$39.02	\$40.58	\$42.20	\$43.89
DW4	Level 8	\$37.63	\$39.14	\$40.70	\$42.33	\$44.02
DW5 - DW6	Level 9	\$39.47	\$41.05	\$42.69	\$44.40	\$46.17

2.2 Travel Allowance (\$ per day)

The Travel Allowance will be paid at the rate of \$35.00 per day for each day of service (including RDOs)

It is agreed that where parking costs apply, while Employees are performing work under the Agreement, the Company will reimburse Employees parking costs on production of receipts or supply parking.

2.3 Superannuation

- (a) Superannuation will be paid at the percentage of ordinary time earnings (as defined in this agreement) set out in the table below, or at the minimum amount set by Superannuation Guarantee legislation as amended from time to time, whichever is the greatest.

Date	%
1 July 2021 – 30 June 2022	10.00
1 July 2022 – 30 June 2023	10.50

1 July 2023 – 30 June 2024	11.00
1 July 2024 – 30 June 2025	11.50
1 July 2025	12.00

- (b) The definition of “Ordinary Time Earnings” for the purpose of this Agreement is contained in clause 22 of this Agreement.

2.4 ACIRT Redundancy Pay (\$ per week)

Redundancy ACIRT contributions will be paid in accordance with clause 23 of this Agreement at the rate of \$100 per week. Casual Employees will be paid contributions on a pro-rata basis. For the avoidance of doubt, casual employees shall receive a pro-rata payment, 20% of the weekly rate per day worked Monday to Friday, to a maximum of \$100 per week.

2.5 Consolidated Disability Allowance (CDA)

The Consolidated Disability Allowance is paid as an all-purpose allowance in accordance with Clause 25.1 of this Agreement at the rate of \$1.98 per hour for the life of this agreement.

The CDA is included in the rates set out in the table at 2.1 above and is payable on Annual leave, RDOs and Public Holidays. See clause 25.1 of this agreement for further information regarding the application of this allowance.

2.6 Light Rail Productivity Allowance

- (a) The Company will pay a Light Rail Productivity Allowance to each Employee (including Apprentices) for the project at the rate set out below per hour worked on the Capital Metro Light Rail Project.

Light Rail Productivity Allowance	From Commencement	From 1 November 2022	From 1 November 2023	From 1 November 2024
per hour (flat rate)	\$ 5.50	\$ 5.72	\$ 5.95	\$ 6.19

- (b) The obligation to pay the Light Rail Productivity Allowance shall replace the Company’s obligation to pay the Combined Disability Allowance under Clause 2.5 while the Employee is engaged on the Capital Metro Light Rail Project.
- (c) This allowance shall be paid weekly for each hour actually worked by an Employee on the Capital Metro Light Rail Project as a flat rate (not all-purpose) and is fixed for the life of this Agreement.

2.7 Income Protection Insurance (BUILT-PLUS)

This will not exceed \$25 per week per Employee for the life of the Agreement (see Clause 30).

2.8 Additional Meal Allowance

In lieu of the Award meal allowance provision for overtime of one and a half (1.5) hours or more, \$29.00 shall be payable. This allowance will in lieu of the first 20-minute crib payable for overtime Monday to Friday found in the Award. This amount shall replace the amount prescribed by the Award and shall remain in force without variation for the duration of the Agreement.

2.9 Construction Charitable Works

2.10 The Company will make payment of the amount set out in the table below per week per Employee to Construction Charitable Works (ABN 65 129 595 651) to allow Employees and their families access to their services.

From Commencement	From 1 March 2023	From 1 March 2024
\$2 per week	\$3 per week	\$4.00 per week

2.11 Demolition Allowance

The Demolition Allowance is paid as an all-purpose allowance at the rate set out in the table below:

Demolition Allowance per hour (all purpose)	For the life of the Agreement
	\$1.98

The Demolition allowance is in addition to the rates set out in the table at 2.1 above.

2.12 Wage Increases

In recognition of the measures contained in the Agreement, Employees shall receive wage increases as set out in the table in clause 2.1 from the date specified in accordance with the table at the summary and benefits pages.

2.13 N.B. The preceding and this page are intended as a quick reference summary. For further details on the above wages and conditions, consult the appropriate clause in the agreement.

3. Title

This Agreement shall be known as the Protech Personnel (NSW) Pty Ltd and CFMEU ACT Demolition, Civil and Infrastructure Sectors Agreement 2022.

4. Definitions

4.1 "Act" means the Fair Work Act 2009 (Cth), as varied from time to time.

4.2 "Agreement" means the Protech Personnel (NSW) Pty Ltd and CFMEU ACT Demolition, Civil and Infrastructure Sectors Agreement 2022.

4.3 "All-purpose" means, in relation to allowances, that the allowance is payable for all purposes of the Agreement and is part of the gross weekly ordinary rate of pay and must be included when calculating all payments including, but not limited to, payments for overtime, annual leave, personal leave, annual leave loading, public holidays and payments on termination.

4.4 "Apprentice" means an Employee who is employed to perform work under a contract of training for a trade level qualification.

4.5 "Approved Training Organisation" means Construction Employment Training Welfare Ltd as trustee for Creative Safety Initiative (CSI) Trust (ABN 16 827 621 177)

4.6 "Award" means the Building and Construction General On-site Award 2020, as varied from time to time.

4.7 "Company" means Protech Personnel (NSW) Pty Ltd

4.8 "Continuous Service" means the period of service of an employee notwithstanding an employee's absence from work for any of the following reasons:

- (a) Annual leave, personal leave or parental leave
- (b) Illness or accident up to a maximum of four (4) weeks after the expiration of paid sick leave;
- (c) Jury service;
- (d) Injury received during the course of employment
- (e) Where called up for military service for up to three (3) months in any qualifying period;
- (f) Long service leave; and
- (g) Any reason satisfactory to the Company. The reason will not be deemed satisfactory unless the employee has informed the Company within twenty-four (24) hours of the time when the employee was due to attend for work or as soon as practicable thereafter of the reason for the absence and probable duration thereof.

4.9 "Employee" means a person:

- (a) Employed by the Company; and

(b) Who performs Work in the Australian Capital Territory or in the City of Queanbeyan, Tumut, Palerang, Cooma-Monaro or Yass Valley local government areas, or their successor areas; and

(c) Who performs Work within a classification covered by the Agreement.

4.10 "FWC" means Fair Work Commission

4.11 "Inclement weather" means the existence of rain or abnormal climatic conditions (whether hail, extreme cold, high wind, severe dust storm, extreme high temperature or the like or any combination of these conditions), including conditions where the apparent temperature is -10 C or lower, where it is not reasonable or it is unsafe for Employees to continue working in those conditions.

4.12 "Industrial Obligations" mean:

(a) Any obligation that arises under a workplace law, as defined by the Act, which includes but is not limited to:

(i) Fair Work Act 2009 (Cth) and any subordinate legislation, order or determination

(ii) Paid Parental Leave Act 2010 (Cth)

(iii) Superannuation Guarantee (Administration) Act 1992 (Cth)

(iv) Long Service Leave Act 1976 (ACT)

(v) Long Service Leave (Portable Schemes) Act 2009 (ACT)

(vi) Work Health and Safety Act 2011 (ACT)

(vii) Workers Compensation Act 1951 (ACT)

(b) Any obligation that arises under an order, decision or determination of a court, in so far as that obligation relates to the regulation of the relationship between employers and employees and any Industrial association.

4.13 "Redundancy" or "Redundant" means a situation where an Employee ceases to be employed by an Employer to whom this Agreement applies, other than reasons of misconduct or refusal of duty.

4.14 The "Union" or CFMEU means the Construction, Forestry, Maritime, Mining and Energy Union

4.15 "Work" means work in, or in connection with the on-site building, engineering and civil construction industry.

5. Coverage of the Agreement

5.1 The Agreement shall be binding on the Company, the Union and all Employees.

6. Application

6.1 The Agreement shall apply to the Company, Employees and the Union.

- 6.2** The Agreement shall apply to work performed in the Australian Capital Territory or in the City of Queanbeyan, Tumut, Palerang, Cooma-Monaro or Yass Valley local government areas, or their successor areas.
- 6.3** The terms of the Award, as amended from time to time, are expressly incorporated into this agreement.
- 6.4** In the event of any inconsistency between the terms and conditions of this Agreement and the Award the terms and conditions of this Agreement will prevail to the extent that such inconsistency provides a greater benefit to the Employee.
- 6.5** This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.
- 6.6** Upon incorporating Award terms into the Agreement the incorporated terms are to be read as altered with the appropriate changes to make them provisions of the Agreement rather than provisions of an award: references within the Award to the 'Award' shall be read to mean this Agreement. Any rate, loading, penalty or allowance which is incorporated from the Award shall be calculated as a percentage of the rate of pay in this Agreement which is equivalent to the classification specified by the Award rather than the specified Award rate of pay.

7. Period of operation

- 7.1** The Agreement shall commence from 7 days after the Agreement is approved by Fair Work Commission as per section 54 of the Act and shall remain in force until 1 November 2024.
- 7.2** During the (3) months before the expiration of this Agreement the parties may commence discussions concerning a future agreement.
- 7.3** In any negotiations for a new Agreement Employees will be entitled to arrange contact with the Union, or any other representative, with the view to be represented by the Union, or other representative, as their Bargaining Representative.
- 7.4** Employees will be eligible to attend a paid meeting (maximum duration two (2) hours) during ordinary hours of work convened by the bargaining representative to discuss their needs and expectations in respect of any future Agreement.
- 7.5** This Agreement shall continue to apply beyond its expiration date until replaced by another agreement or cancelled in accordance with the Act.
- 7.6** For the purposes of acting as the Employees' Bargaining Representative the Company shall facilitate reasonable access to Employees for the Bargaining Representative during the course of negotiations for a future agreement. Such access will be convened at a time and place mutually convenient to the Company and the Bargaining Representative.
- 7.7** It is agreed that arising from the implementation of this Agreement, no Employee will suffer a disadvantage in respect of rates of pay and conditions of employment.
- 7.8** Existing employees that currently receive rates and/or conditions that are equal to or more beneficial than those contained in this agreement will have those rates and conditions preserved.

8. Severability

- 8.1** It is the intention of those covered by this Agreement that the Agreement contains only permitted matters under the Act.
- 8.2** The severance of any term of this Agreement that is, in whole, or in part, of has no effect by virtue of the operation of s 253 of the Act shall not be taken to affect the binding force and effect of the remainder of the Agreement.
- 8.3** To the extent it is possible, all terms should be interpreted in a manner that would make them permitted matters.

Part 2—Procurement, Compliance and Job Security Arrangements

9. Government Procurement/Code Compliance

- 9.1** The parties covered by the Agreement recognise that government clients are an important source of work and ensuring that there is a continued capacity to comply with written government purchasing guidelines will enhance the availability of work and the security of employment of Employees covered by this Agreement.
- 9.2** Where a government agency that is responsible for the monitoring of a government purchasing guideline notifies the Company in writing that the Company is, or will be, ineligible to undertake significant government work due to a term in this Agreement, the parties covered by the Agreement will seek to vary the Agreement to address the notified issue to the extent necessary for the Company to again be eligible to undertake government work.
- 9.3** The reference to government purchasing guidelines in this clause includes, but is not limited to, the Supporting Guidelines for Commonwealth Funding Entities to the Code for the Tendering and Performance of Building Work 2016 (and any subsequent amendments) and *the Government Procurement (Secure Local Jobs) Code 2019 (ACT)*.
- 9.4** The terms of any variation required under this clause may be determined under the dispute resolution procedure in this Agreement.
- 9.5** Actions taken the parties covered by this Agreement under this Clause are not an extra claim.

10. Security of Employment

- 10.1** The Company is committed to maintaining a stable and skilled workforce, recognising its contribution to the operation of the Company. Subject to the terms of this Agreement, weekly hire employment is the preferred type of employment under this Agreement.
- 10.2** The Company will take all measures to achieve employment security for the weekly hire Employees of the Company.
- 10.3** The Company agrees that it is highly important that work is performed effectively, efficiently and without undue pressure or bullying, and in a way that promotes Work Health & Safety and Equal Opportunity principles and practices in the workplace and appropriate representation of Employees should they so request. The Company will

ensure that its employment practices are consistent with the above principles and practices.

11. Sham Contracting

- 11.1** The parties to this Agreement acknowledge that sham contracting has the potential to undermine fair employment practices, erode Employee entitlements and affect the job security of Employees covered by this Agreement. A sham contracting arrangement includes where an Employer attempts to disguise an employment relationship as an independent contracting arrangement. This is usually done for the purposes of avoiding responsibility for Employee entitlements.
- 11.2** In this clause, "sham contracting" is where:
- (a)** The Company employs, or proposes to employ, an individual, representing to the individual that the contract of employment under which the individual is, or would be, employed by the Company is a contract for services under which the individual performs, or would perform, work as an independent contractor;
 - (b)** The Company dismisses, or threatens to dismiss, an individual who is an Employee of the Company and performs particular work for the Company in order to engage the individual as an independent contractor to perform the same, or substantially the same, work under a contract for services; or
 - (c)** The Company employs, or has at any time employed, an individual to perform particular work makes a statement that the Company knows is false in order to persuade or influence the individual to enter into a contract for services under which the individual will perform, as an independent contractor, the same, or substantially the same, work for the Company.
- 11.3** Clause 11.2(a) does not apply if the Company proves that, when the representation was made, the Company did not know and was not reckless as to whether the contract was a contract of employment rather than a contract for services.
- 11.4** Any use of sham contracting is a breach of this Agreement.
- 11.5** Where a sham contracting arrangement has been reasonably alleged and is unable to be resolved at the workplace level, any Party may refer the allegation directly to the FWC for conciliation and/or resolution under the dispute resolution clause of this Agreement. All Parties will cooperate with the requests of the FWC including requests to provide substantiating information or undertaking an independent audit of their arrangements. For the avoidance of doubt, an affected Employee may appoint a representative in relation to such matters.
- 11.6** Where the sham contracting allegation exists on the Company's project, the Company will make itself available to assist the disputes resolution procedure.
- 11.7** Where the FWC deems it necessary due to seriousness of the allegations and/or their findings, the Commission may refer the matter to the appropriate government authority.
- 11.8** Where it is agreed or determined by the FWC that a sham contract was in place and the person was in fact an Employee under this Agreement, the calculation for back pay will be calculated on the basis of the hourly rate contained in this Agreement plus the site allowance (if applicable), plus the multi-storey allowance and an additional 75% loading to cover entitlements other than Superannuation and ACIRT. Any

difference between the hourly rate paid to the Employee, plus any shortfall in Superannuation, ACIRT, income protection insurance and CCW will form the settlement for breach of this clause. The affected Employee will be re-inducted and fully informed of their entitlements under this Agreement and the Fair Work Act.

11.9 The Company must ensure that a person engaged to undertake building work as an Employee or as an independent contractor is lawfully entitled to be so engaged under Australian law.

12. Supplementary Labour

12.1 If the Company wishes to engage supplementary labour to perform work performed by its Employees under this Agreement, the Company must first consult in good faith with the affected Employees.

12.2 Following consultation and subject to this clause, the decision whether to engage supplementary labour is a decision of the Company alone. Any dispute as to the application of this clause will be dealt with under the disputes settlement procedure of this Agreement. The Company will ensure that all supplementary labour is engaged on lawful terms and conditions.

12.1 The parties to the agreement acknowledge that non-compliance with relevant industrial laws by contractors and labour hire companies may undermine fair employment practices, erode Employee entitlements, affect the job security of Employees covered and expose the Company to legal and reputational liability.

12.2 The Company commits to utilising only subcontractors and labour hire companies who have been able to demonstrate a proven commitment to meet their industrial and employment obligations.

12.3 The Company will require labour hire companies to provide a certificate of compliance assessment by an auditor who is on the panel of auditors authorised by the ACT government to conduct Secure Local Jobs Code audits, once every 6-month period commencing on 1 January and 1 July respectively. The purpose of this assessment is to ensure that the subcontractor is meeting all relevant legislative obligations in relation to:

- (a) Award Entitlements
- (b) Long Service Leave
- (c) Superannuation
- (d) Workers Compensation Insurance
- (e) Taxation.

12.4 If requested the Company will provide the certificate of compliance to its Employees, and any representative nominated by the Employees, in the form of a declaration made by an appropriate representative of the Company, such as a director or senior manager, under the Statutory Declarations Act 1959 (Cth). All information provided must be provided to the Employees in a manner consistent with the Privacy Act 1988 (Cth).

12.5 The Company will engage in consultation with its Employees or their nominated representatives in respect to any issues arising from the certificate, which issues may be identified by the Company, the Employees or their nominated representative.

13. Compliance with Industrial Obligations

13.1 The Company recognises that it is obliged to comply with its Industrial Obligations including those arising out of this agreement and that its adherence those obligations is a matter of significant importance for the Employees covered by this agreement.

13.2 The Company acknowledges that it is obliged by s 9 of the Code for the Tendering and Performance of Building Work 2016 to comply rigorously with its obligations to its Employees under this Agreement and that its ability to tender for, submit expressions of interest for and be awarded Commonwealth Government funded work is dependent on this. The Company notes that in these circumstances, its adherence to its obligations under this Agreement is a matter affecting the job security of its Employees. To that effect, the Company will:

- (a) Conduct a six monthly audit of its compliance with the Agreement. This audit may be conducted, at the Company's election, by an independent third party who is on the panel of auditors authorised by the ACT government to conduct Secure Local Jobs Code audits. The Company recognises that it is preferable that an independent third party conduct any audit. However, nothing in this clause requires the Company to engage an independent third party or that any particular independent third party to conduct the audit. The Company, however, recognises that an organisation of Employers registered under the *Fair Work (Registered Organisations) Act 2009 (Cth)* or any entity associated with such an organisation is not an independent third party and will not be engaged by the Company to conduct an audit under this clause.
- (b) The audit must detail in a comprehensive fashion the Company's compliance with this agreement including but not limited to its payment to Employees of all wages, allowances and other moneys due and owing to them under the Agreement.
- (c) Provide the results of the audit to its Employees, and any representative nominated by the Employees, in the form of a declaration made by an appropriate representative of the Company, such as a director or senior manager, under the *Statutory Declarations Act 1959 (Cth)*. All information provided must be provided to the Employees in a manner consistent with the *Privacy Act 1988 (Cth)*.
- (d) Engage in consultation with its Employees or their nominated representatives in respect to any issues arising from the audit, which issues may be identified by the Company, the Employees or their nominated representative.
- (e) All issues raised in respect to an audit and in relation to the Company's compliance with this Agreement may be dealt with in accordance with the dispute settlement procedure in this Agreement.

14. Industry Fund Compliance

- 14.1** The Company shall ensure that it complies with the obligations set out in this agreement in relation to registration for, and contribution to, industry schemes and funds in relation to all of its Employees who are covered by this agreement.
- 14.2** It is acknowledged that information confirming compliance (i.e. registration and contribution status) may be provided by the industry funds or schemes to the parties on request, provided that any information is provided in a manner which is consistent with the privacy policies and obligations of the relevant fund or scheme.
- 14.3** On commencement, and in accordance with each fund or scheme's procedures, the Company shall register each Employee with the relevant industry funds in accordance with the requirements set out elsewhere in this agreement. These are:
- (a) CBUS for superannuation,
 - (b) ACIRT for severance pay,
 - (c) BuiltPlus for income protection insurance,
 - (d) The ACT Long Service Leave Authority for long service entitlements, and
 - (e) CCW for EAP services.
- 14.4** It is a specific requirement that the Company shall ensure that all payments to the abovementioned funds and schemes are up to date and made in full in accordance with the relevant Trust Deed or other arrangement of the scheme or fund.
- 14.5** When an Employee or their representative raises a concern in respect of the Employee's entitlements and/or the Company's compliance with payments and/or registration with the abovementioned funds or schemes, the Company shall provide to the Employee, or their representative if requested by the Employee, all relevant information to assist in resolving any concerns and an audit may be arranged.
- 14.6 Failure to Make Payments to Industry Funds etc.**
- (a) If a person covered by this Agreement has a genuine and reasonable belief that the Company has failed to comply with any industry fund or scheme obligation set out in this Agreement, the following process will apply:
 - (i) the person or their representative must notify the Company in writing of the alleged non-compliance and what must be done to remedy it; and
 - (ii) the parties must consult in good faith in an effort to resolve the matter, and
 - (iii) to assist in the monitoring of compliance by the Company and the Employees and in resolving of a genuine and reasonable complaint a compliance audit may be arranged.
 - (b) Any disputes related to this clause shall be dealt with via the disputes settlement procedure in this Agreement. The parties are committed to resolving any genuine and reasonable disagreement about whether any amount is owing or outstanding as quickly as practicable.
 - (c) If the Company has not contributed the required amounts in accordance with this Agreement, the relevant Trust Deed and the Fund or scheme, the Company

shall be liable to make the appropriate contributions immediately upon notification of the non-compliance.

- (d) Further, in relation to superannuation, the Company shall pay the earnings on the relevant Trust Deed and the Fund or scheme that would have accrued during the period of non-payment.
- (e) The requirement for the Company to make retrospective payments shall not limit any common law action which may be available in relation to death, disablement or any other cover existing within the terms of a relevant fund.

Part 3—Workplace Culture

15. Discrimination

15.1 It is the objective of the parties to this agreement to eliminate workplace discrimination and sexual harassment, to promote equal employment opportunity and encourage affirmative action as a means to prevent discrimination.

15.2 The aim of the Company is to provide a work environment free from all types of discrimination and sexual harassment for all Employees, fully supporting the *Sex Discrimination Act 1984* and the *Anti-Discrimination Act 1977*.

15.3 The Company will comply with all applicable requirements of the federal and territory legislation on discrimination, including, but not limited to discrimination on the grounds of race, religion, national origin, marital status, gender, disability or age.

15.4 The Company will not discriminate against applicants or Employees in employment, promotion, demotion, transfer, recruitment, recruitment advertising, stand downs, termination, rates of pay and other forms of compensation, and selection for training.

15.5 The Company will train all Company personnel to promote a workplace which is inclusive and free from discrimination and harassment.

15.6 Sexual harassment

(a) Sexual harassment is unacceptable behaviour, which is not asked for and can take many forms, obvious or subtle, direct or indirect. It can include, but is not limited to: display of sexually suggestive, offensive degrading material, computer screen savers and e-mail, sexually suggestive comments or messages, wolf whistling or physical contact and indecent assault.

(b) Any alleged complaint of discrimination or sexual harassment will be handled with utmost confidentiality, fairly and expeditiously, for all those involved. Noting that the responsibility for discrimination and sexual harassment matters lies with senior management of the Company.

16. First Nations People

16.1 The Parties recognise the traditional ownership of the Ngunnawal people in the ACT. Consistent with this recognition the Parties are committed to:

- (a) the principles of Aboriginal and Torres Strait Islander self-determination, social and restorative justice, cultural affirmation; and

- (b) the active prevention of discrimination against indigenous people in the workplaces covered by this agreement.

16.2 In order to give effect to these commitments:

- (a) Site Induction procedures will include an Acknowledgment of Country in the following form:

"{Company name} acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. {Company name} wish to acknowledge and respect the continuing culture and the contribution that the Ngunnawal people and all other indigenous peoples make to the life of this city and this region."

- (b) A Welcome to Country and/or smoking ceremony will be arranged with the traditional owners and in consultation with any indigenous person working on the site, at or before the point at which the number of workers on any Project where employees covered by this agreement perform work reaches 100. Employees shall be entitled to attend the ceremony without loss of pay.

17. Women In the Construction Industry

17.1 The Parties to this Agreement recognise that the current level of women's employment in the construction industry is not consistent with our commitment to equality of opportunity or the promotion of inclusive workplaces which are free from discrimination.

17.2 The parties commit to apply this agreement in a manner that will encourage and assist women to seek and maintain employment in the construction industry including by applying each part of this agreement in a manner which supports:

- (a) The development of a workplace culture which is inclusive of women construction workers;
- (b) The removal of barriers to women's participation in the workplace including barriers in hiring practices;
- (c) Ensuring that women construction workers have access to training and skill development opportunities that will allow them to take a wide range of roles in the workplace.

Part 4—Contract of Employment

18. Contract of Employment

18.1 All Employees (other than a casual Employee) shall be engaged on a weekly hire basis. Wages shall be paid weekly.

18.2 The engagement of an Employee referred to in Clause 18.1 may only be terminated, and such Employee may only terminate his or her employment, by giving the required notice pursuant to section 117(3) of the Act or the payment of in lieu of notice (as the case may be).

- 18.3** Provided that an Employee may be dismissed at any time for serious misconduct and in such case shall only be entitled to receive payment of wages and accrued leave and RDOs due up to the time of dismissal.
- 18.4** All Employees will be notified in a contract of employment at the time of their engagement of the following:
- (a) The legal identity of the employer;
 - (b) The manager responsible for their employment;
 - (c) Their employment status (i.e. weekly hire, part-time weekly hire or casual)
 - (d) If they are an apprentice or trainee, that fact, and;
 - (e) The terms and conditions of their contract of employment including:
 - (i) The job to be performed;
 - (ii) Wage classification;
 - (iii) For casuals the actual or likely number of hours to be worked; and
 - (iv) Relevant rate of pay.
- 18.5** A copy of this Agreement is to be appended to each new Employee's contract of employment.
- 18.6** Any terms contained in the employment contract that contradicts a term of this Agreement will be void and unenforceable.
- 18.7** Employees will be advised in writing if their employment status or classification level changes.
- 18.8** The Company must pay to the Employee any unused accrued annual leave (including leave loading) and rostered day off entitlements upon termination.
- 18.9** The Company may direct an Employee to carry out such duties as are within the limits of the Employee's skill, competence and training consistent with the classification structure of this agreement provided that such duties are not designed to promote de-skilling.
- 18.10** Any direction issued by the Company shall be consistent with the Company's responsibilities to provide a safe and healthy working environment.
- 19. Part-time Employment**
- 19.1** An Employee may be engaged to work on a part-time weekly hire basis involving a regular pattern of hours which average less than 36 ordinary hours per week.
- 19.2** A part-time Employee must be engaged for a minimum of four consecutive hours on any day or shift.
- 19.3** Before commencing part-time employment, the Employee and Company must agree in writing:
- (a) On the hours to be worked by the Employee, the days on which they will be worked and the commencing and finishing times for the work; and

(b) On the classification as prescribed in the Schedule B.

- 19.4** The terms contained in Clause 19.3 may be varied by consent in writing.
- 19.5** The agreement under Clause 19.3 or any variation to it under Clause 10.4 must be retained by the Company and a copy of the Agreement and any variation to it must be provided to the Employee by the Company.
- 19.6** Except as otherwise provided in this Agreement, a part-time Employee must be paid for the hours agreed on in accordance with Clauses 19.3 and 19.4.
- 19.7** The terms of this Agreement will apply pro rata to part-time Employees on the basis that ordinary weekly hours for full-time Employees are 36.
- 19.8** A part-time Employee who is required by the Company to work in excess of the hours agreed under Clauses 19.3 and 19.4 must be paid overtime in accordance with the Award.
- 19.9** Where the part-time Employee's normal paid hours fall on a public holiday and work is not performed by the Employee, the Employee must not lose pay for the day. Where the part-time Employee works on the public holiday, the part-time Employee must be paid in accordance with Clause 40.
- 19.10** Termination of employment shall be in accordance with the Award.

20. Casual Employment

- 20.1** A casual Employee shall be engaged from day to day and shall be entitled to one day's notice or one day's pay before their engagement is terminated.
- 20.2** Where a casual Employee after engagement is directed to present for work and is informed, on arrival at the place of work for the first time, that their services are not required, they shall be paid four hours' wages.
- 20.3** A casual Employee for working ordinary hours must be paid 125% of the hourly rate prescribed in this Agreement for the Employees classification.
- 20.4** A casual Employee required to work overtime or weekend work must be entitled to the relevant penalty rates prescribed in this Agreement provided that:
- (a) Where the relevant penalty rate is time and a half the Employee must be paid 175% of the hourly rate prescribed in this Agreement for the Employee's classification and where the relevant penalty rate is double time the Employee must be paid 225% of the hourly rate prescribed in this Agreement Employee's classification.
- (b) A casual Employee required to work on a public holiday must be paid 275% of the hourly rate prescribed in this Agreement for the Employee's classification.

20.5 Casual Conversion Rights

- (a) A casual Employee may be employed by the Company on a regular and systematic basis. A casual Employee, other than an irregular casual Employee, who has been engaged by the Company for a sequence of periods of employment under this agreement for a period of greater than six weeks shall thereafter have the right to request to have their contract of employment

converted to permanent employment (full-time or part-time) if the employment is to continue beyond the conversion process.

- (b) Any request for conversion to full-time or part-time made by the casual employee must be made in writing.
- (c) The Company will provide a written response to the casual employee's request within 14 days, and if that response is a refusal, the reasons for the refusal will be stated.
- (d) If the casual employees request is refused by the company and the employee continues on a regular and systematic basis after 6 weeks the following will apply.:
 - (i) a loading of 180% will apply to the ordinary rate of pay.
 - (ii) Where the relevant penalty rate is time and a half the Employee must be paid 230% of the hourly rate prescribed in this Agreement for the Employee's classification and where the relevant penalty rate is double time the Employee must be paid 280% of the hourly rate prescribed in this Agreement Employee's classification.
 - (iii) A casual Employee required to work on a public holiday must be paid 330% of the hourly rate prescribed in this Agreement for the Employee's classification.
 - (iv) The loadings in this clause (20.5) shall not apply to a casual Employee who has been engaged by the Company to perform work on an occasional basis and whose work pattern is not regular and systematic who shall continue to receive loadings in accordance with clause 15.4.
- (e) If a casual employee chooses not to exercise his or her entitlement to request conversion to full-time or part-time employment, the employment relationship will proceed on a casual basis and the casual loading will remain at 25%.
- (f) A casual other than an irregular casual Employee who has been engaged by the Company for a period of six months on a regular basis has the right to elect, within 4 weeks of having attained the period of six months, to have their contract converted to full-time as per the Award.

21. Classification Structure

- 21.1** The skills matrix at Schedule A defines the duties and responsibilities for each classification.

Part 5—Conditions of Employment

22. Superannuation

- 22.1** Superannuation will be paid at the percentage of ordinary time earnings (as defined in this agreement) set out in the table below, or at the minimum amount set by

Superannuation Guarantee legislation as amended from time to time, whichever is the greatest.

Date	%
1 July 2021 – 30 June 2022	10.00
1 July 2022 – 30 June 2023	10.50
1 July 2023 – 30 June 2024	11.00
1 July 2024 – 30 June 2025	11.50
1 July 2025	12.00

22.2 For the purpose of all superannuation payments under this agreement or superannuation legislation "Ordinary Time Earnings" (which, for the purposes of the *Superannuation Guarantee (Administration) Act 1992*, will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the Employee receives for ordinary hours of work including the rates in 2.1 the consolidated disability allowance in Clause 25.1 } of this Agreement, and, where applicable, the following:

- (a) The Demolition Allowance
- (b) The daily fares and travel patterns allowance (in Clause 2.2 of the Agreement);
- (c) The multi-storey allowance (in Clause 23.3 of the Award);
- (d) The leading hand allowance (in Clause 19.2) of the Award);
- (e) The first aid officer allowance (in Clause 23.6 of the Award);
- (f) In charge of plant allowance (in Clause 23.9 of the Award);
- (g) Casual loadings; and
- (h) Shift loadings.

22.3 For the purpose of s 32P of the *Superannuation Guarantee (Administration) Act 1992*, the default fund for employees covered by this Agreement shall be the Construction and Building Unions Superannuation Scheme (CBUS).

22.4 In order to facilitate default fund arrangements, the Company will remain during the life of this Agreement, a participating company in the Construction and Building Unions Superannuation Scheme (CBUS).

- (a) Superannuation contributions will be made to a fund of the employee's choice, subject to the following:
 - (i) The employer will provide an employee with a copy of a form provided by CBUS which enables the employee to give written notice to the employer that CBUS is their chosen fund and provides the information necessary for the employer to make contributions to it

- 22.4.a.i.1. upon commencement of their employment;
 - 22.4.a.i.2. when the employer is notified by the ATO that the employee has a stapled fund; and
 - 22.4.a.i.3. at other times as requested.
- (ii) If the employer provides an employee with a standard choice form, the employer must specify CBUS as the employer nominated superannuation fund.
 - (iii) The employer will, as part of the induction process for all new employees, provide each new employee with written information provided by the Union and/or CBUS about superannuation, choice of fund and the specific benefits of construction industry focussed superannuation funds for employees covered by this agreement.
- 22.5** All other Award provisions shall apply.
- 22.6** From commence of this Agreement until 31 May 2024 the Company will pay superannuation contributions quarterly.
- 22.7** From 1 June 2024 the Company will pay superannuation contributions into each Employee's superannuation account on a monthly basis. Such payment is to be made by no later than the 14th day of the month after accrual.
- 22.8** No Employee shall be disadvantaged by the application of this clause.
- 22.9** Superannuation contributions are to be made for periods when Employees are on:
- (a) Pay;
 - (b) Any form of paid leave;
 - (c) Workers Compensation payments;
 - (d) ACT Long Service Leave;
 - (e) Paid parental leave;
 - (f) Paid domestic or family violence leave.
- 23. Redundancy Fund**
- 23.1** The Industry Specific Redundancy scheme from the Award is incorporated into this agreement.
- 23.2** The Company shall be a participating Company in the Australian Construction Industry Redundancy Trust (ACIRT). All eligible Employees will be enrolled in the said Fund and will be entitled to weekly redundancy payments in accordance with the amount detailed in Clause 2.4 of this Agreement.
- 23.3** An Employee who is absent from work on authorised paid leave on any ordinary working day during the normal pay week shall be deemed to have completed a complete week of eligible service and contributions shall be made in respect of that week and service entitlements shall accrue in respect of that week.

- 23.4** Redundancy ACIRT payments will be paid at pro-rata basis per day worked for casual and part-time Employees up to equivalent of permanent full time Employees' rate.
- 23.5** Service as an Apprentice will entitle an Employee to accumulate credits towards the payment of a redundancy benefit in accordance with this Clause if the Employee completes an apprenticeship and remains in employment with the Company for a further twelve months.
- 23.6** The Company bound by this agreement will use Australian Construction Industry Redundancy Trust (ACIRT) to meet all or some of the liabilities created by this Clause. The ACIRT redundancy fund contributions will be as per Clause 17 of this Agreement.
- 23.7** The Company may withhold an amount from the ACIRT contribution that is payable under this clause which is equal to the weekly ACIRT contribution divided by 5 for each day an Employee is absent from work without authorisation.
- 23.8** **Work related injury or illness**
- In the event of an Employee's absence from Work being due to work related injury or illness, contributions at the normal rate shall continue for the period of the absence provided that:
- (a) A person remains an Employee of the Company; and
 - (b) The Employee is receiving workers' compensation payments or is receiving regular payments or is receiving regular payments directly from the Company in accordance with statutory requirements or the provisions of this Agreement.
- 23.9** The Company will make payment of \$4.00 per week per Employee to the registered charity, Construction Charitable Works (ABN 65 129 595 651) to allow Employees and their families access to their services.
- 23.10** Construction Charitable Works (CCW) will provide services that include but are not limited to the following case management services and paid for referral pathways for:
- (a) General Drug and Alcohol counselling
 - (b) Drug and Alcohol Detoxification and Rehabilitation
 - (c) Grief and Loss support
 - (d) Depression and anxiety issues
 - (e) Anger management counselling
 - (f) Problem gambling support
 - (g) General counselling
 - (h) Access to short term crisis accommodation
 - (i) Trauma response services/support after workplace accidents
 - (j) Post-traumatic stress psychology and general psychology services
- 23.11** In order to ensure that this benefit is available to Employees CCW and the Company will sign the Standard CCW Service Level Agreement that will outline the services

available to the Company's workers and families and the Company's obligations to CCW.

24. Conditions for Apprentices

24.1 Apprentices shall receive conditions of employment in accordance with the Award with the exception that all Apprentice rates of pay shall be calculated as a percentage of the rate of pay in this Agreement which is equivalent to the classification specified by the Award rather than the specified Award rate of pay.

24.2 Superannuation shall be payable to Apprentices at the rate of as outlined in clause 22.1 of ordinary time earnings per week.

24.3 The redundancy contributions listed in the table below shall be payable by the Company into ACIRT for Apprentices:

Classification	Company Contribution \$ per week
1st year Apprentice	\$35.00
2nd year Apprentice	\$40.00
3rd year Apprentice	\$45.00
4th year Apprentice	\$50.00

25. Allowances

25.1 Consolidated Disability Allowance

- (a) It is agreed that from signing that the payment of site allowances shall be rationalised.
- (b) A Consolidated Disability Allowance (CDA) will be paid as an All-purpose allowance, built into the base rate for the purpose of all subsequent calculations (i.e. overtime, RDOS, superannuation, etc.) at the rate set out in the summary tables set out in clause Part 1— of this agreement and as defined in Clause 4.2 of this Agreement.
- (c) The CDA allowance is paid in compensation for specific disabilities faced whilst working on site excluding Heavy Block Allowance, Insulation Allowance, Multi Storey Allowance and Height Allowance which are paid in accordance with the Award.
- (d) For the purposes of the Agreement, it is agreed that the Multi Storey Allowance is payable on all refurbishment work.

25.2 Demolition Allowance

The Demolition allowance contained in clause 2.10 of this Agreement is applicable only to commercial, structural and demolition projects. The allowance specifically excludes the demolition of free standing domestic dwellings.

25.3 Fares & Travel Allowance

- (a) A daily fares and travel allowance will be paid as per the rate set out in Clause 2.2 of this Agreement.

- (b) Payment of the allowance shall be subject to the Employee starting and finishing work on the site at the usual starting and finishing time.
- (c) Fares and travel allowance is payable on Rostered Days Off (RDOs).
- (d) The travelling allowances prescribed in this Clause shall not be taken into account in calculating overtime, penalty rates, annual or sick leave but shall be payable for any day upon which the Employee in accordance with the Company's requirements works or reports for Work or allocation of Work.

25.4 Living Away from Home Allowance

- (a) When Employees are to be engaged on Distant Work requiring them to live away from their usual place of residence each night (see clause 25 of the Award and Schedule B this Agreement) accommodation at a standard not less than 3½ star with full board (including 3 full meals per day) shall be provided by the Company. In addition, \$9.50 shall be paid for each night the employee is required to be away from home. Alternatively, the Company shall pay the Employee \$550.00 for Monday to Friday and an additional \$110.00 per day for any weekend day. Provided that the foregoing allowances shall be increased if the Employee satisfies the Company that the Employee reasonably incurred a greater outlay than that prescribed. In the event of disagreement the matter may be dealt with in accordance with Clause 44 - Dispute Settlement Procedure contained in this Agreement.
- (b) Schedule B provides further clarification regarding this Allowance

25.5 Meal Allowance

Where an Employee works overtime of at least one and a half hours a meal allowance of \$29.00 shall be payable. This amount shall replace the amount prescribed by the Award and shall remain in force without variation for the duration of the Agreement.

26. Payment of Wages

26.1 All wages, allowances and other monies shall be paid in cash, or by cheque, bank cheque, electronic funds transfer (EFT) or similar transfer or any combination thereof, if there is agreement in writing between the Company and the Employee. An employee may choose to be represented (including by the Union or any other representative) for the purpose of reaching agreement under this clause.

26.2 For all Employees the following provisions shall apply:

- (a) Payments shall be paid and available to the Employee not later than the cessation of ordinary hours of work on Thursday of each working week.
- (b) All entitlements (including wages, CDA, ACIRT, Income Protection Insurance and Superannuation) that an Employee would receive pursuant to the Agreement will be applicable to be paid to an Employee whilst the Employee is on leave (including sick, leave, annual leave, long service leave, family leave and personal leave). Except for when an Employee is on leave without pay.
- (c) An Employee paid by other than cash shall be allowed reasonable time as agreed between the Company and the Employee, to attend the Branch of the Employees bank nearest the workplace to cash such cheques or draw upon the accounts during working hours. Failure to reach agreement on reasonable

time shall be dealt with in accordance with clause 44 - Dispute Settlement Procedure contained in this Agreement.

(d) Payments shall be paid and available to the employee not later than the cessation of ordinary hours of work on Thursday of each working week.

26.3 In any week in which a holiday falls on a Friday, wages accrued shall be paid on the previous Wednesday. When a holiday occurs on any Thursday wages accrued may be paid on the following Friday. Nothing shall prevent any alternative mutual arrangement between the Company and the Employee.

26.4 The Company shall not keep more than two days' wages in hand.

26.5 When notice is given in accordance with this Agreement all monies due to the Employee shall be paid at the time of termination.

26.6 Where, on any pay day, work ceases for the day because of inclement weather an Employee shall be paid all wages, allowances and other monies due without undue delay.

26.7 An Employee who has not received their wages on pay day after more than a quarter of an hour after the usual time of ceasing work (for reasons other than circumstances beyond the control of the Company), shall be paid at overtime rates after that quarter-hour with a minimum of a quarter of an hour, up until the wages are actually paid.

26.8 If the employee's chosen representative (which may be the Union) requests it, the Company shall provide proof of time of payment. If no proof is provided within a reasonable time, it shall be deemed that payment was made at 5PM on the day that payment was made.

26.9 Where an Employee or Company gives notice in accordance with this Agreement and monies due are not paid on termination, the Company shall have two working days to send monies due to the Employee by registered post (or where paid by EFT the monies are transferred into the Employee's account), provided that if the money is not posted (or transferred) within that time, the time spent waiting beyond the two working days shall be paid for at ordinary rates, such payment to be at the rate of eight hours' pay per day up to a week's pay when the right to waiting time shall terminate.

26.10 See Schedule D for requirements for Employee Payslips.

27. Higher Duties

Where the employment or Work involves functions of a mixed character, the minimum wages to be paid to the Employee for the day or part of a day she/he is so employed shall be calculated as if she/he performed such only of the said functions as involves the highest rate of wages under this Agreement. If so employed for any part of a day she/he shall be paid at the highest rate for the whole of the day.

28. Provision of Tool Lockers

The Company shall ensure on all construction jobs in towns and cities, and elsewhere where reasonably necessary and practicable (or if requested by the Employee), a suitable and secure waterproof lock-up, solely for the purpose of storing Employees' tools, and on multi-storey and major project jobs the Company shall provide, where

possible, a suitable lock-up for Employees' tools within a reasonable distance of the Work area of large groups of Employees.

29. First Aid Equipment

29.1 A first aid kit, such as is required by ACT First Aid Code of Practice shall be provided and maintained by the Company on each job.

29.2 The Company shall as soon as is reasonably possible supply, free of charge, a mode of transport to convey an Employee to the nearest hospital or doctor should the Employee be so seriously injured that it would not be possible for the Employee to travel independently to the nearest hospital or doctor at which, or by whom, the Employee will be treated.

30. Income Protection Insurance

30.1 The Company shall affect an agreed Income Protection Insurance policy for Employees covered by this Agreement.

30.2 Income Protection will be paid for all periods of Employees' authorised absence.

30.3 The cost of the income protection policy will not exceed \$25 per week per Employee during the nominal term of this Agreement. If the cost of the policy exceeds this amount the parties agree to consult regarding adjustments to premiums.

30.4 The Company will ensure that Employees' under this agreement will be covered by a BUILT PLUS/ Jardine Lloyd Thompson (JLT) Gold Cover Policy (the nominated policy) as the primary policy for the purposes of this Clause.

30.5 It is agreed Income Protection Insurance will be paid quarterly.

30.6 It is agreed that if the Company has not made a valid or current insurance payment the Company shall be liable for any loss of earnings or benefits that would have otherwise been given to the Employee.

30.7 In addition, where the Company has not maintained a valid or current insurance payment the Company shall be liable to pay each Employee the amount of \$30 per week for every week that the valid or current insurance policy is not maintained for that Employee.

31. Pay Roll Deductions

31.1 Where an employee provides the company with a completed deduction authorisation, the Company agrees to deduct authorised amounts from the Employee's wages and any amount so deducted will be remitted to the body authorised for the purpose of the deduction by the employee. The company is only required to provide a maximum three separate deduction arrangements per employee. Any deduction made under this clause must comply with the requirements of s 324 of the Act. For the avoidance of doubt the employee must provide any relevant deduction authorisation to the company and nothing in this clause obliges the company to provide a blank deduction authority form to the employee.

31.2 Where an employee provides and signs an appropriate authorisation, the company will advise any person authorised by the employee of the employee's banking details.

The company will comply with this request within seven days of receiving the completed authorisation. For the avoidance of doubt the employee must provide any relevant authorisation to the company and nothing in this clause obliges the company to provide a blank authority form to the employee.

32. Access to the Agreement, Award and the National Employment Standards

The Company must ensure that copies of this Agreement, the Award and the National Employment Standards are available to all Employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible or made available (whether in hard copy or through electronic means) to an Employee within a reasonable time following a request by the Employee.

33. Transmission of Business

Clause 41.7 of the Award shall apply.

34. Accident Pay

34.1 The Company shall pay an Employee accident pay where the Employee receives an injury for which weekly payments or compensation are payable by or on behalf of the company pursuant to the provisions of the relevant Workers' Compensation Legislation as amended from time to time.

34.2 Accident pay means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the Employee pursuant to the said relevant Workers' Compensation Legislation and the Employee's appropriate 36-hour Agreement rate and accrued entitlements, or where the incapacity is for a lesser period than one week, the difference between the amount of compensation and the said rate for that period.

34.3 The Company shall pay or cause to be paid accident pay as defined in Clause 34.2 during the incapacity of the Employee arising from any one injury for a total of 26 weeks (or 52 weeks in the case of an employee covered by the Mobile Crane Hiring Award 2010) whether the incapacity is in one continuous period or not.

34.4 The liability of the Company to pay accident pay in accordance with this clause shall arise as at the date of the injury or accident in respect of which compensation is payable under the said relevant workers' compensation legislation and the termination of the Employee's employment for any reason during the period of any incapacity shall in no way affect the liability of the Company to pay accident pay as provided in this clause.

34.5 In the event that an Employee receives a lump sum in redemption of weekly payments under the said relevant legislation, the liability of the Company to pay accident pay as herein provided shall cease from the date of such redemption.

Part 6—Leave and Public Holidays

35. Personal Leave

35.1 Except as provided in Clauses 22.2 and 22.3 below the provisions of Clause 32 of the Award and the NES shall apply.

35.2 Accrual of personal leave

- (a) During the first year of employment with the Company the Employee will be entitled to paid personal leave at the rate of three (3) days in the first month and then one additional day at the beginning of each of the next seven calendar months
- (b) At the beginning of the second or subsequent years of any period of service with the Company, the Employee will be credited with ten (10) days paid personal leave entitlement.
- (c) Unused personal leave shall accrue from year to year

35.3 Payment for personal leave

An Employee on paid personal leave will be paid at the Employee's normal ordinary time rate of pay.

36. Annual Leave

36.1 Annual Leave Accrual

- (a) Annual leave shall accrue in accordance with the Award and the NES.
- (b) If the Employee is a continuous shiftworker (as defined in the Award), the Employee shall accrue additional annual leave at the rate set out in the Award and the NES.

36.2 Period of Leave

Annual leave shall be accrued and taken in accordance with the NES, subject to the provisions of this clause.

36.3 Annual Leave Exclusive of Rostered Days Off

Where an Employee's rostered day off falls within an Employee's period of annual leave, payment of accrued entitlements for such RDO will be made in addition to the payment for annual leave.

36.4 Annual Leave Exclusive of Public Holidays

The period of annual leave prescribed by this Clause is exclusive of any public holidays, and if any such holiday falls within an Employee's period of annual leave and is observed on a day which in the case of that Employee would have been an ordinary working day, there will be added to the period of annual leave time equivalent to the ordinary time which the Employee would have worked if such day had not been a holiday.

36.5 Annual Leave Exclusive of Other Periods of Leave

If the period during which an Employee takes paid annual leave includes a period of any other leave (other than unpaid parental leave), or a period of absence from employment for community service leave, the Employee is taken not to be on paid annual leave for the period of that other leave of absence.

36.6 Method of Taking Leave and Christmas Closedown Period

- (a) The Company will observe the Building and Construction Industry Christmas Closedown Period. Sites will close lunchtime 22nd December (or earlier if the 22nd falls on a weekend). Sites will reopen on the second Monday of January.
- (b) The Company may request Employees to work during the Building and Construction Industry Christmas Closedown Period only where such work is essential to meet the operational needs of the business.
- (c) In the event that the Company requests an Employee to work Building and Construction Industry Christmas Closedown Period the Employee may refuse to work on any of those days, where it would be unreasonable to require the Employee to work, having regard to the following:
 - (i) any risk to employee health and safety (including but not limited to risks resulting from the number of hours worked by the employee in the previous 14-day period);
 - (ii) the employee's personal circumstances including any family responsibilities or prearranged commitments;
 - (iii) the notice (if any) given by the employer; and
 - (iv) any other relevant matter.
- (d) In recognition of the unusual nature of any requirement to perform work during the Building and Construction Industry Christmas Closedown Period, and as compensation for the loss of social participation opportunities occasioned by such requirements to work the parties have agreed that where an employee is requested to work during the Building and Construction Industry Christmas Closedown Period and does so work they shall be paid at the rate of double time and a half for any weekday worked, and triple time for any weekend or public holiday worked.
- (e) Where the Industry Christmas Closedown Period has not been observed, Employees will be required to take at least one two-week period with the balance of the four weeks being taken in any number of periods, each of any number of days, as agreed between the Company and the Employee.
- (f) Annual leave will be taken within twelve (12) months from the date the leave became due.

36.7 Annual Closedown

36.1 Annual Closedown

- (a) Where the Company closes down all or part of the Company for the purposes of allowing annual leave in conjunction with the Industry Closedown Period, if an Employee does not have sufficient accrued annual leave for the period of

the shutdown, then the Employee may agree to take leave without pay for the balance of the shutdown period for which leave is not accrued.

- (b) Where the Company closes down all or part of the Company for the purposes of allowing annual leave in conjunction with the Industry Closedown Period, if an Employee does not have sufficient accrued annual leave for the period of the shutdown, the Company and the Employee may agree to allow the Employee to take leave in advance of accrual to cover the specific period of the shutdown.
- (c) Where the Company decides to closedown at the Christmas / New Year period for the purpose of giving annual leave due to all, or the majority of Employees then qualified for such leave the Company will give at least two (2) months' notice to the Employees of the intention to close-down.

36.2 Proportionate Leave on Termination

An Employee who leaves the employment of the Company or is terminated by the Company for any reason will be paid all accrued annual leave which has not been taken including any annual leave loading.

36.3 Payment for Period of Annual Leave

- (a) Each Employee before going on leave for a period of one week or more will be paid in advance the wages due by electronic transfer directly into an account of each Employee's choice.
- (b) The Employee must be paid the amount which they would have received for working ordinary time hours if they had not been on leave.

36.4 Annual Leave Loading

During a period of annual leave an Employee will receive a loading of 17.5 per cent calculated on the Employee's normal hourly rate of pay. The loading will also apply to proportionate leave on lawful termination. Provided further that clause 31.2(c) of the Award will apply for shiftworkers.

37. Family Leave

In recognition of the family responsibilities of Employees, the Company makes provision for paid family leave. This is an entitlement in addition to that contained in the National Employment Standards. Employees are eligible to a maximum of 24 hours paid family leave each year. This time can be used to care for sick family/household members. The same notification and medical certificate requirements of the relevant personal leave provisions contained in the Agreement will apply in respect of this family leave provision. Unused family leave shall not accrue from year to year. For the avoidance of doubt this clause does not apply to casual employees.

38. Domestic and Family Violence Leave

38.1 For the purposes of this clause, family violence is:

- (a) behaviour by a person towards a family member of that person if that behaviour:

- (i) is physically or sexually abusive;
- (ii) is emotionally or psychologically abusive;
- (iii) is economically abusive; or
- (iv) is threatening; or
- (v) is coercive; or
- (vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or

(b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph 38.1(a).

38.2 For the purposes of this clause, a "family member", in relation to a person (a "relevant person"), means

- (a) a person who is, or has been, the relevant person's spouse or domestic partner; or
- (b) a person who has, or has had, an intimate personal relationship with the relevant person; or
- (c) a person who is, or has been, a relative of the relevant person; or
- (d) a child who normally or regularly resides with the relevant person or has previously resided with the relevant person on a normal or regular basis; or
- (e) a child of a person who has, or has had, an intimate personal relationship with the relevant person or
- (f) A person who is related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

38.3 For the purposes of clauses 38.2(b) and 38.2(e) a relationship may be an intimate personal relationship whether or not it is sexual in nature.

38.4 Confidentiality

The Company must take all reasonable measures to ensure personal information concerning an Employee's experience of family violence is kept confidential.

38.5 Leave

- (a) An Employee experiencing family violence will have access to 10 days per year of paid family violence leave paid at the Employee's minimum wage rate prescribed by this Agreement applicable to their classification to attend legal proceedings, counselling, and appointments with a medical or legal practitioner, relocation, the making of safety arrangements and other activities associated with the experience of family and domestic violence.
- (b) Family violence leave is in addition to any other existing leave entitlements, and may be taken as consecutive or single days or as a fraction of a day.
- (c) The Employee shall give as much notice as reasonably possible prior to taking the leave under this clause.

- (d) In addition, the Company may require the Employee to produce evidence to support the need for family violence leave such as a document issued by the police, a court, a doctor (including a medical certificate), a family violence support service, or a statutory declaration.
- (e) For the avoidance of doubt, family violence leave does not cumulate from year and is not paid out on termination of employment.

39. Long Service Leave

Long Service Leave contributions will be paid for each Employee in accordance with the requirements of the *Long Service Leave (Portable Schemes) Act 2009 (ACT)*.

40. Public Holidays and Holiday Work

40.1 Prescribed Holidays

An Employee, other than a casual Employee is entitled to payment at the Employee's normal ordinary hourly rate of pay for the following public holidays:

- (a) New Year's Day
- (b) Australia Day
- (c) Canberra Day
- (d) Good Friday
- (e) Easter Monday
- (f) Anzac Day
- (g) Reconciliation Day
- (h) Queen's Birthday
- (i) Labour Day
- (j) Christmas Day
- (k) Boxing Day or Proclamation Day
- (l) or such other day(s) proclaimed by the Holidays Act 1958 or State Proclamation in addition to or in substitution for any of the above days in which case the substituted day will be deemed to be the holiday for the purposes of this Agreement.

40.2 Payment for Work on Public Holidays

An Employee required to work on a public holiday identified in clause 40.1 or the day after Good Friday will be paid at the rate of double time and a half.

40.3 Minimum Payment

An Employee required to work on a public holiday identified in clause 40.1 or the day after Good Friday will be paid for a minimum of four (4) hours work at the rate of double time and a half.

40.4 Termination

Where an Employee is terminated by the Company except for reasons of misconduct, incompetence or refusal of duty, the Company will pay the Employee a day's ordinary wages for each holiday or each holiday in a group as prescribed in Clause 40.5, hereof which falls within ten (10) consecutive calendar days after the day of termination.

40.5 Group of Holidays

Where any two or more of the public holidays prescribed in clause 40.1 occur within a seven (7) day span such holidays will for the purpose of this Agreement be a group of holidays. If the first day of the group falls within ten (10) consecutive days after termination, the whole group will be deemed to fall within the ten (10) consecutive days. Christmas Day, Boxing Day and New Year's Day shall be regarded as a group.

41. Jury Service

41.1 An Employee required to attend for jury service during ordinary working hours will be reimbursed by the Company an amount equal to the difference between the amount paid in respect of the Employee's attendance for such jury service and the amount of wage and allowances the Employee would have received in respect of the ordinary time the Employee would have worked had the Employee not been on jury service.

41.2 An Employee is required to notify the Company as soon as possible of the date upon which the Employee is required to attend for jury service. Further, the Employee will give the Company proof of attendance, the duration of such attendance and the amount received in respect of such jury service.

Part 7—Hours of Work

42. Hours of work and Rostered Days Off

42.1 The ordinary working hours will be 36 per week, worked between 6.00 am and 6.00 pm, Monday to Friday, in accordance with the following procedure.

42.2 The ordinary working hours shall be 36 hours per week worked as 8 hours per day Monday to Friday with 0.8 of an hour per day accruing for rostered days off (RDOs) and/or the paid Saturdays referred to in this clause. Each Employee shall accumulate 0.8 of an hour of each day worked in a five-day cycle. 0.8 of an hour shall also accrue for days spent, on authorised paid leave or workers' compensation within a five-day cycle.

42.3 Employees who are required to work outside their ordinary working hours will be entitled to paid overtime in accordance with clause 29 of the Award.

(a) All overtime, including the first two hours of overtime, shall be paid at double time and all other provisions of clause 29 of the Award shall continue to apply.

42.4 The following is agreed in respect of rostered days off:

(a) The parties acknowledge the indicative calendar of standard Rostered Days Off in the Schedules to this Agreement.

- (b) Subject to Clause 42.4(f), an agreement shall be reached by the Company and Employees as to which day shall be taken as a rostered day off when such entitlement is due. If no agreement is reached then the indicative calendar of standard Rostered Days Off will be followed, but may be varied by agreement at any time. It is agreed a Company roster system may apply.
- (c) RDOs may be banked to a maximum of six (6) days in any 12-month period. These RDOs may be taken as a group of consecutive days or any other combination subject to reasonable notice by an Employee.
- (d) Any disputes arising from this clause shall be resolved through Clause the Dispute Settlement Procedure of this Agreement.
- (e) Where more than one (1) accrued RDO is to be taken on consecutive working days, application for such paid leave shall be sought giving a reasonable period of notice.
- (f) The parties agree that one RDO will be scheduled adjacent to the following Designated Long Weekends (DLW):
 - (i) Australia Day
 - (ii) Canberra Day
 - (iii) Easter Weekend
 - (iv) ANZAC Day (or Reconciliation Day where ANZAC day falls on a Wednesday).
 - (v) Queen's Birthday
 - (vi) Labour Day
- (g) It is agreed that in the interests of providing an appropriate balance between work and family commitments, Employees will not be scheduled for work on public holidays, the adjacent Saturday, Sunday and RDO's arranged for DLW's in accordance with 42.4(f). This will allow the management and Employees of the Company to have quality paid leisure time.
- (h) An Employee may be requested to work on a public holidays or weekend listed in Clause 42.4(f) or adjacent RDO's where such work is necessary to meet the operational needs of the business.
- (i) In the event that the Company requests an Employee to work on the public holidays or weekends listed in Clause 42.4(f) or adjacent RDO's, and following consultation occurring in accordance with Clause 42.4(k) an Employee may refuse to work on any of those days, where it would be unreasonable to require the Employee to work, having regard to the following:
 - (i) any risk to employee health and safety (including but not limited to risks resulting from the number of hours worked by the employee in the previous 14-day period);
 - (ii) the employee's personal circumstances including any family responsibilities or prearranged commitments;
 - (iii) the notice (if any) given by the employer; and

- (iv) any other relevant matter.
- (j) Where an Employee works the designated RDO adjacent to a DLW, in addition to RDO accrued entitlements, the Employee will be paid at double time and a half for all hours worked.
- (k) If the Company intends to request employees to agree to work on a Designated Long Weekend, the Company will consult with the Employees and will provide sufficient written notice of any need for work on a Designated Long Weekend to allow enough time for meaningful consultation to occur (where possible this will be seven days' notice). An Employee may be represented by the representative of their choice (which may be a Union Representative) for the purpose of such consultation. The Company will advise the Employee of this right to representation in writing and allow reasonable time for the Employee to arrange to be represented before commencing consultation under this clause.
- (l) Employees can use RDO accruals and banked RDOs to receive a maximum of 14.4 hours pay if they do not work the Saturday of any of the public holiday weekends listed in Clause 42.4(f).
- (m) A new Employee will be eligible for an RDO after achieving 7.2 hours RDO accrual. However, a new Employee will be eligible to use lesser RDO accruals for the Saturdays and adjacent RDOs as stipulated in Clause 42.4(f).
- (n) Employees will be paid all unpaid RDO accruals on termination.

Part 8—Dispute Settlement

43. Dismissal

- 43.1** Prior to reaching any decision to terminate the employment of an Employee on grounds other than would justify summary dismissal, the Company will:
- (a) Advise an Employee that they have a right to be represented at every stage of this process, by a representative of their choosing, which may be a Union representative. If the Employee chooses to be represented, the Company will not proceed until that representative is able to represent the employee provided the representative is able to do so within a reasonable time. If the employee's chosen representative is not able to represent the employee within a reasonable time the employee shall be given an opportunity to choose another representative.
 - (b) Inform the Employee, and their representative, that the termination of their employment is being considered;
 - (c) Advise the Employee, and their representative, of the reasons for termination; and
 - (d) Provide the Employee, and their representative, with an opportunity to show cause why their employment should not be terminated.
- 43.2** An Employee shall be given reasonable time to respond to any allegations and shall be provided with details of any relevant material.

43.3 Any request by the Employee to meet and discuss the matter shall not be unreasonably refused.

43.4 Nothing in this clause is designed to remove or diminish the Employer's right to summarily dismiss an Employee for serious misconduct, which may include theft, fraud or another act of dishonesty, violence in the workplace or a serious breach of Company policy.

44. Dispute settlement procedure

44.1 If a dispute arises about any matter under, or in any way related to this agreement, the National Employment Standards (including subsections 65(5) or 76(4) of the Act), or any other work-related matter (including a dispute about whether a workplace right has been breached) the parties to the dispute will attempt to resolve the dispute at the workplace level. Where such discussions do not resolve the dispute the parties will attempt to resolve the dispute by further discussion with more senior levels of management.

44.2 A party may refer the dispute to FWC to settle the dispute where:

- (a) The dispute cannot be resolved at the workplace level; or
- (b) The dispute is not being progressed in a timely manner; or
- (c) There are aspects of the nature of the dispute which require the dispute to be dealt with urgently; or
- (d) The company and the other party in dispute otherwise agree to refer the dispute.

44.3 FWC may deal with the dispute using all the procedures available to it under the Act and may attempt to settle the dispute by conciliation or mediation or, where the parties agree, a recommendation or expression of opinion by FWC. If the dispute remains unresolved, FWC may settle the dispute by arbitration.

44.4 A decision of FWC under this dispute resolution procedure will bind the parties (subject to clause 44.5). Any decision of the FWC must be consistent with the Code for the Tendering and Performance of Building Work 2016.

44.5 Notwithstanding clause 44.4, either party may exercise a right of appeal against the decision to a Full Bench of FWC or superior Court.

44.6 Parties to a dispute may appoint a person or organisation of their choosing to represent them in the dispute settlement process., Union members may choose to be represented by their Union at all stages of the dispute settlement process. The Company agrees to engage with the Union, or the employee's other chosen representative, in good faith for the purposes of dispute resolution.

44.7 If a party is represented by a Union representative, or other representative, who is not present, discussions in relation to the issue in dispute will not proceed until the Union representative, or other representative, is able to represent the employee provided they are able to do so in a reasonable time. If the employee's chosen representative is not able to represent the employee within a reasonable time the employee shall be given an opportunity to choose another representative.

- 44.8** At any stage in the procedure either party or their representative may ask for, and be entitled to receive, a response from the other party or their chosen representative within 2 working days, if a response is not received the matter may be referred directly to the FWC.
- 44.9** While this dispute settlement procedure is being followed, except where a genuine occupational health and safety issue is involved, the status quo will remain. The existing situation, terms and conditions of Work and Work practices immediately prior to the subject matter of the grievance or dispute occurring will not be altered. No party will be prejudiced as to the final settlement by the continuance of Work in accordance with this clause.
- 44.10** Clause 39.10 Dispute Resolution Procedure Training Leave of the Award is expressly incorporated as a term of this agreement.

45. Inductions

- 45.1** To assist in the avoidance of the disputes the parties agree to the following procedure prior to an Employee commencing work on a project.
- (a) The parties acknowledge that it is in the interests of the Industry and the Company that all new Employees on a building project understand their obligations to the Agreement and are inducted to their jobs in a manner which will help them Work safely and efficiently.
 - (b) The induction presentation and material shall have regard to the language skills of the Employee/Company.

Part 9—Consultation

46. Consultation regarding Major Change

- 46.1** Where the Company is seriously considering, and prior to the taking of any definite decision on:
- (a) The introduction of major workplace changes that are likely to have a significant effect on Employees, or
 - (b) Proposes to introduce a change to the regular roster or ordinary hours of work of Employees.
- 46.2** An employee is entitled to be represented by the Union or other representative of their choice for the purpose of consultation under this clause.
- 46.3** The Company must notify and consult with the Employees and their Union, where the Union is the employee's chosen representative, or other representative/s and:
- (a) Discuss the introduction of the change; and
 - (b) For the purposes of the discussion—provide to the relevant Employees and their chosen representative:
 - (i) All relevant information about the change, including the nature of the change; and

- (ii) Information about what the employer reasonably believes will be the effects of the change on the Employees; and
 - (iii) Information about any other matters that the Employer reasonably believes are likely to affect the Employees; and
 - (c) 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).
- 46.4** The Company is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- 46.5** The Company must give prompt and genuine consideration to matters raised about the change by the relevant Employees and their representative.
- 46.6** In this term 'relevant employees' means the Employees who may be affected by a change referred to in subclause 46.1 of this Agreement.
- 46.7** The Company must recognise the Union, where the Union is the employee's chosen representative, (or other representative appointed by an Employee) and consult in good faith in relation to such proposed changes.
- 46.8** Provided however this Clause shall not be construed as providing any rights which are inconsistent with s 194(f) or (g) of the Act.
- 46.9** The obligation to notify and consult includes providing all relevant details to the Employees and their representative in writing about:
- (a) The nature of the changes, any proposed timing of the changes and the expected likely effect on Employees;
 - (b) Any measures the Company is proposing to take to avert or mitigate any adverse effects of such changes on Employees; and
 - (c) Any other matters related to the changes which may affect the Employees.
- 46.10** In this Clause major workplace changes that are likely to have a significant effect on Employees includes:
- (a) Termination of employment;
 - (b) Changes to composition, operation or size of the workforce or the skills required of Employees;
 - (c) Elimination or diminution of job opportunities (including promotion/tenure)
 - (d) Retraining, relocation or restructuring; and
 - (e) Changes to the legal or operational structure of the Company or business, including changes to business ownership or control.
- 46.11 Consultation about changes to rosters or hours of work**
- (a) Where the Company proposes to change an employee's regular roster or ordinary hours of work, the Company must consult with the employee or employees affected and the employee's chosen representative (which may be a Union representative) if any, about the proposed change.
 - (b) The Company must:

- (i) Provide in writing to the Employee or Employees affected and their representatives if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
 - (ii) Invite the Employee or Employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities) and allow them a reasonable time to respond; and
 - (iii) Give consideration to any views about the impact of the proposed change that are given by the Employee or Employees' concerns and/or their representatives.
- (c) The requirement to consult under this Clause does not apply where an Employee has irregular, sporadic or unpredictable working hours.
- (d) These provisions are to be read in conjunction with other provisions of this Agreement concerning the scheduling of Work and notice requirements.

47. Consultative Committee

- 47.1** It is agreed that an Enterprise Consultative Committee (ECC), appropriate to the size of the enterprise will be established to facilitate the on-going implementation of this Agreement, and to continue on with the mutually consultative and co-operative approach which is embodied in the enterprise bargaining concept.
- 47.2** Each Enterprise Consultative Committee will be constituted by equal representatives of the Company and Employee Representatives. Employee representatives may choose to request assistance from the Union, or any other representative of their choice, in relation to any Consultative Committee matter. For the avoidance of doubt nothing in this clause provides an official of the Union with a right to enter premises for a purpose which is within Part 3-4 of the Act.
- 47.3** The parties commit to conducting regular ECC meetings and to act in good faith in the setting up, planning and conduct of Consultative Committee meetings. Consultative Committee meetings shall take place in paid time.
- 47.4** In addition, where employees covered by this agreement are performing work on construction sites where a Project Consultative Committee and/or Safety Committee is in operation the employees on that site shall elect a Representative to participate in the Project Consultative Committee and /or Safety Committee. Employee Representatives shall be paid for the time they spend participating in any Project Consultative Committee or Safety Committee meeting.
- 47.5** In order to ensure the effective operation of the ECC, PCC or Safety Committee the Company's elected employee consultative committee representatives will be entitled to participate in training, which is appropriate to the Committee they are elected to, on the same basis as for Industrial Relations Training Leave set out in this Agreement. Where an employee is on a Consultative or Safety Committee and is otherwise entitled to industrial relations training leave the two training leave entitlements shall be counted separately.

47.6 Information Flow

- (a) The parties agree to develop an information flow through the Consultative Committee and meetings, in order to support the principles of co-operation and communication, which underpin this Agreement.
- (b) The principal purposes of the Committee will be to:
 - (i) Monitor the implementation of the terms of this Agreement;
 - (ii) Facilitate the process of workplace reform through consultation;
 - (iii) Ensure Employees are properly consulted in respect of issues impacting on their wages, working conditions and job security; and
 - (iv) Monitor, discuss, develop and / or recommend measures or actions in respect of, but not limited to:
 - Productivity;
 - Job Security;
 - Skills audit and training;
 - Management of quality assurance;
 - Work Health and Safety;
 - Existing and future work;
 - Removal of restrictive work practices;
 - Productive use of inclement weather downtime;
 - Rehabilitation of injured Employees;
 - Environmental protection; and
 - Redundancies.

Part 10—Employee Representation Rights

48. Employee Representative

- 48.1** This Agreement outlines rights for employee representatives when assisting employees. For clarity, each employee has the right to determine whether they wish to be represented by an employee representative or other representative of their choosing, or not at all.
- 48.2** Any such representative (or individual employee) is entitled to the protections of Division 4 of part 3-1 of the Fair Work Act 2009. In relation to their involvement in lawful industrial activities.

49. Representation

- 49.1** The Parties recognise the role of the Employees' on-site representative has in seeking to ensure industrial harmony on the site or at the workplace. Further the Parties recognise that the on-site representative is a first point of contact for an Employee who has an employment related grievance or a grievance, query or concern arising under the terms of the Agreement.
- 49.2** An Employee Representative shall, upon notification to the Employer, be recognised as an accredited representative of the employees and, if an employee seeks representation by the representative, that representative will be allowed all necessary time during working hours to submit to the Employer employment related matters affecting the employees they represent. At all other times the Employee Representative will perform productive work within their range of qualifications and competence. Further, the Employee Representative shall be allowed reasonable time during working hours to attend to such matters affecting the employees including the right to attend appropriate meetings, FWC or court hearings and the like.
- 49.3** The Parties recognise that Employee Representatives may be involved in assisting Employees where requested pursuant to the dispute resolution procedure of this Agreement.

50. Employee Representative Rights

- 50.1** Where an Employee has been elected as an Employee Representative, the Company will recognise the following rights:
- (a) the right to be treated fairly and to perform their role without any discrimination in their employment;
 - (b) For the Employee Representative to represent an Employee where requested in relation to a grievance, dispute or a discussion;
 - (c) the right to place information related to permitted matters on a notice board in a prominent location in the workplace except that the material must not breach freedom of association, privacy and other applicable laws; and
 - (d) the right to paid time to attend industrial tribunals and/or courts where they have been requested to do so by an Employee (which may include themselves) whom they represent in a particular dispute in their workplace;
 - (e) the right to paid time to assist and represent Employees who have requested them to represent them in respect of a dispute arising in their workplace; and
 - (f) the right to represent the interests of Employees who request their assistance in their workplace to the Company and industrial tribunals/courts.
 - (g) The Company will release from work without loss of pay each elected Employee Representative, Delegate and Workplace Health and Safety Representative to attend monthly meetings conducted by the Union to consult on industry related matters. Other meetings agreed by the Company and the Union will also be covered by this clause.
 - (h) Where the Company releases an Employee representative of any kind to attend a meeting the Company shall facilitate attendance by the Employee Representative at meetings, by arranging suitable job coverage for a period

when the Employee Representative is absent at meetings, should the need arise.

- (i) The right to reasonable time during normal working hours to consult and confer with Employees, Union members and officials.
- (j) The right to reasonable time to participate in the operation of the Union during normal working hours.
- (k) Where the Company is the principal contractor it is agreed the Company shall provide a facility for the use of the Employee representative/s to perform their duties and functions as the on-site representative/s of the Employees. The provision of the following facilities is to ensure that the Employee representative/s is able to effectively perform their functions in a professional and timely manner. The facilities shall include:
 - (i) a telephone in a private location;
 - (ii) a table and chairs;
 - (iii) a filing cabinet;
 - (iv) air-conditioning/heating;
 - (v) access to stationery and other administrative facilities, including use of photocopier, computer or iPad with internet access, use of e-mail (if available on site), following consultation between Employee representative and Site Management;
 - (vi) a private lockable area.
 - (vii) A suitable workplace location to conduct confidential discussions with those Employees who choose to be represented by the Employee representative
 - (viii) The Company will respect the privacy of the nominated Employee representative's use of these facilities and will not monitor communications using those facilities.
- (l) Consult with the Company including participating in any consultation process set out under this Agreement;
- (m) Be present at company induction meetings, for a reasonable period of time, for the purpose of being introduced as the Employee representative;
- (n) Attend relevant training;
- (o) Participate in any bargaining for an agreement to replace this Agreement; and
- (p) Attend Union authorised functions.
- (q) All Employees will be entitled to meet with the Employee representative on an as-needs basis.
- (r) Prior to the Company making a decision to terminate or transfer an Employee Representative, the Company shall notify the Employee Representative, and the Union where the Employee Representative has chosen to be represented

by the Union, two weeks in advance of such termination or transfer. Payment in lieu of notice may be made by agreement.

- (s) If there is not already an Employee Representative in the Company, there shall be an election for an Employee Representative. In addition, the position of Employee Representative shall be open for election every two years. The Company will not initiate, participate in or interfere in the process of electing the Employee Representative. The Company agrees to allow for a paid meeting of all Employees so that an election can be conducted.
 - (i) Where the Company is the principal contractor on more than one site the Company agrees that in addition to electing an Employee Representative for the Company as a whole, Employees shall have the right to elect a separate representative for each site with a value greater than \$30M. Where a separate site representative is elected they shall have all the rights and responsibilities given to representatives generally under this clause.
 - (ii) On any site covered by this agreement where there are more than five women engaged to perform work those women may elect from among themselves an additional Employee Representative who shall have the same rights and status of any other delegate elected for that workplace or site.
 - (iii) Where, as a result of the election of an additional Employee Representative pursuant to this clause, there is more than one delegate elected for a site or workplace those two (or more) delegates shall among themselves divide their roles and responsibilities to ensure fair distribution of work.
 - (iv) Where the Company operates more than one site with an elected Employee Representative those elected Employee Representatives shall elect from among themselves a Senior Employee Representative.
 - (v) Where the Company operates more than one site with an elected Employee Representative the Company shall convene a consultation meeting every three months to be attended by all elected Employee Representatives and appropriate representatives of Company management.
- (t) In recognition of the additional responsibilities that an Employee Representative undertakes, the Company agrees to pay one elected Employee Representative an allowance of \$50 per week.

51. Industrial Relations Training Leave

51.1 Subject to all qualifications in this Clause, an Employee elected as an Employee Representative shall, upon application in writing to the Company, be granted non-cumulative leave in accordance with Clause 51.3 with pay in each calendar year to attend courses of industrial relations training which may include courses conducted by the Union.

- (a) Such courses shall be designed and structured with the objective of promoting good industrial relations within the building and construction industry; and

(b) Consultation may take place between the parties, where appropriate, in the furtherance of this objective.

51.2 For the purposes of this clause an "Employee Representative " may include a job delegate recognised by the Company in accordance with Clause 39.10 of the Award.

51.3 The following scale shall apply:

No. of Employees covered by this agreement per year	Max no. of Employees eligible to attend per year	Max no. of days permitted
Up to 15	1	5
16 – 30	2	10
31 – 50	3	10
51 – 100	4	10
101 and over	5	10

51.4 The application for leave shall be given to the Company at least 6 weeks in advance of the date of commencement of the course. The application for leave shall contain the following details:

- (a) The name of the Employee seeking the leave;
- (b) The period of time for which the leave is sought [including course dates and the daily commencing and finishing times];
- (c) The title, general description and structure of the course to be attended and the location of where the course is to be conducted;
- (d) The Company shall advise the training provider, which may be the Union, within seven clear working days [Monday to Friday] of receiving the application as to whether or not the application for leave has been approved;
- (e) The time of taking leave shall be arranged so as to minimise any adverse effect on the Company's operations. The onus shall rest with the Company to demonstrate an inability to grant leave when an eligible Employee is otherwise entitled;
- (f) The Company shall not be liable for any additional expenses associated with an Employee's attendance at a course other than the payment of ordinary time earnings for such absence;
- (g) Leave rights granted in accordance with this Clause shall not result in an additional payment or alternative time off to the extent that the course attended coincides with the Employee's day off in the 19-day month work cycle or with any concessional leave;
- (h) The Employee on request by the Company shall provide proof of their attendance at any course within 7 days. If an Employee fails to provide such proof, the Company may deduct any amount already paid for attendance from the following week's pay or from any other monies due to the Employee;
- (i) Where an Employee is sick during a period when leave pursuant to this Clause has been granted proof of attendance at the course is not required for that

period and the Employee shall receive payment, if entitled, under the provisions of this Agreement;

- (j) Leave of absence granted pursuant to this clause shall count as service for all purposes of this Award; and
- (k) Any dispute as to any aspect of the operation of this clause shall be resolved in accordance with the Dispute Settlement Procedure contained in this Agreement.

Part 11—Flexibility Arrangements

52. Individual Flexibility Arrangements

- 52.1** The Company may agree with an Employee covered by this Agreement to an arrangement (an individual flexibility arrangement) which varies Clauses 15 or 45 of this Agreement to meet the genuine needs of the Company and Employee.
- 52.2** Where the Company wants to enter into an arrangement it must provide a written proposal to the Employee. Where the Employee's understanding of written English is limited, the Company must take measures, including translation into an appropriate language, to ensure the Employee understands the proposal.
- 52.3** Provided however, that the Company must ensure that any arrangement is genuinely agreed to by the Company and the Employee.
- 52.4** The Company must also ensure that any such arrangement is:
 - (a) In writing (including details of the terms that will be varied, how the arrangement will vary the effect of the terms, 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 the day on which the arrangement commences);
 - (b) Signed by the employer and employee, and if the Employee is under 18 years, by a parent or guardian of the Employee;
 - (c) Provided to the Employee within 14 days after it is agreed to; and
 - (d) Is able to be terminated by either party giving written notice of not more than 28 days, or at any time by both parties agreeing in writing.
- 52.5** The Company must further ensure that the terms of the individual flexibility arrangement:
 - (a) Are about permitted matters under section 172 of the Act;
 - (b) Are not unlawful terms under section 194 of the Act; and
 - (c) Results in the Employee being better off overall than the Employee would be if no arrangement was made.
- 52.6** The Company must provide copies of all flexibility arrangements made under this clause to the employee's chosen representative (which may be a Union representative), upon request.

53. Flexibility arrangements on significant, major or unusual Projects

- 53.1** The Parties are committed to working together, in a manner consistent with the terms of the Agreement, to promote productivity and ensure the elimination of any matters which may otherwise give rise to an industrial disputation. Accordingly, if the Employer requires the implementation of productivity measures specific to a significant, major or unusual Project, the Employer will consult with the affected Employee(s) and the Union and any other nominated representative, in accordance with this clause.
- 53.2** Without limiting the general intention of this clause, the Parties recognise a particular requirement to develop working arrangements that facilitate a maximum efficient movement of the workforce whilst still protecting the rights of individual Employees. During consultation under this clause, other matters that may be discussed will include:
- (a) Scheduled shutdowns;
 - (b) Safety;
 - (c) Work on RDOs; and
 - (d) Opportunities to promote employment of apprentices and diversity of employment.
- 53.3** Where the significant, major or unusual Project is in a regional area, consultation will also occur to provide opportunity for employment of local labour.
- 53.4** Consultation shall commence as soon as practicable, following the announcement of the significant, major or unusual Project. In order to facilitate consultation, the Employer will provide:
- (a) All relevant information about the significant, major or unusual Project including the nature of the significant, unusual and major Project proposed;
 - (b) Information about the expected effects of the significant, major or unusual Project on the Employees; and
 - (c) any other matter that is relevant to the significant, major or unusual Project.
- 53.5** However, the Employer is not required to disclose confidential or commercially sensitive information about the significant, major or unusual Project.
- 53.6** For the purposes of this clause 'consultation' involves the Employer proposing productivity measures for the significant, major or unusual Project and the Employees and the Union, if the Union is the employee's representative, and any other nominated representative giving prompt and genuine consideration to those proposed measures of the Employer.
- 53.7** Any Party may seek the assistance of the Fair Work Commission to facilitate consultation under this clause at any time

Part 12—Work Health and Safety and Training

54. Inclement Weather

- 54.1** Employees will be paid for all ordinary time lost due to Inclement weather.
- 54.2** The Company shall comply with the Inclement Weather policy at Schedule C of this Agreement.
- 54.3** This Clause will not apply to workplaces or work locations where temperatures are usually hot (e.g. in or adjacent to boiler rooms) or cold (e.g. cool rooms) except where those temperatures are exacerbated by Inclement weather. However, it is acknowledged that the Company has work, health and safety obligations that should be dealt with in accordance with the *Work Health and Safety Act 2011*, in those circumstances.
- 54.4** Any disputes will be handled in accordance with the Dispute Settlement Procedure contained in this Agreement.
- 54.5** It is agreed that in the event of inclement weather, consultation will be held between the Company and affected Employee(s) with a view to reaching agreement on whether Work should continue or discontinue. This consultation must take place in a timely fashion, generally within half an hour.
- 54.6** The primary emphasis of the consultation is to achieve an agreed outcome whereby:
- (a) Work can continue; and
 - (b) A safe workplace is provided and safe systems of work are employed.
- 54.7** All persons covered by this Agreement agree that all necessary steps will be taken to ensure that a full working understanding of the inclement weather procedures is achieved and maintained throughout by the Company.

55. Work Health and Safety Representatives

- 55.1** Subject to the consultation obligations set out in the *Work Health and Safety Act 2011*, the Company will facilitate the election of a company Health and Safety Representative(s) who will have capacity to represent employees on each site where employees covered by this agreement perform work.
- 55.2** Health and Safety Representatives will be drawn from Employees performing work covered by this agreement and not from Management.
- 55.3** Health and Safety Representatives will be afforded a minimum of five days training per annum at training programs approved by WorkSafe ACT, or other appropriate seminars.
- 55.4** Health and Safety Representatives elected pursuant to the *Work Health and Safety Act 2011* (ACT) will be paid their normal rate including all allowances while attending these courses.
- 55.5** Sufficient notice (at least a week or less by agreement) of the time and nature of the training/seminar shall be given to the Company to enable agreement for Health and Safety Representatives to attend these courses or seminars.

55.6 In each case the Training Provider shall be chosen by the Health and Safety Representative. Where the Health and Safety Representative chooses training provided by the Approved Training Organisation under this Agreement the Company will not object to that course of training, in addition the Company will not propose or encourage the use of any other training provider for the purpose of Health and Safety Representative training.

56. Workplace Health and Safety Committee

56.1 In a manner consistent with their obligations under the WHS Act, the Company shall establish a Workplace Health and Safety Committee.

56.2 The Workplace Health and Safety Committee shall operate according to the constitution set out at Schedule F to this Agreement.

57. Work Health and Safety Dispute Resolution Process

57.1 This procedure is an agreed procedure for the purpose of s.81(2) of the WHS Act 2011.

57.2 At any stage of this process if there is an immediate threat to health and safety then an authorised officer of the company or the HSR may direct work to cease.

57.3 Worker or their Representative initially raises WHS issue or dispute with their Supervisor

(a) If the Supervisor is not available, worker may raise issue with HSR or Project Health and Safety Committee Representative (PHSCR) who will progress the issue to the next stage.

57.4 Supervisor to resolve the WHS issue in consultation with the relevant Employees and ensure an agreeable outcome.

57.5 If the worker is not satisfied with the resolution of WHS issue, then the worker should advise their PHSCR.

57.6 The PHSCR will consult with the supervisor and the Site Manager to resolve the issue.

57.7 Where the issue is still not satisfactorily resolved the parties shall advise the Site Safety Coordinator/Manager who shall convene a meeting of the Project Health and Safety Committee (PHSC) to discuss the issue.

57.8 In conjunction with the Site Manager the PHSC is to consider the issue and make a recommendation on how to resolve the issue. Where the issue cannot be resolved at the workplace level, it may be referred to a higher level of management.

57.9 Where the matter cannot be resolved either party may make a request for assistance in accordance with s 82 of the *Work Health and Safety Act 2011*.

58. Notifiable Incidents

58.1 Where a notifiable incident (as defined in the WHS Act 2011) takes place any process adopted to deal with that incident must include:

- (a) The Union Delegate (where the Union is the chosen representative of any of the affected Employees) and any Project HSR's, shall be notified as soon as is practicable after the incident;
- (b) Suspension of work in the affected areas until all inspections can be performed and all work areas made safe;
- (c) An inspection of the affected area by the Project Health and Safety Committee (for the purpose of this clause a full meeting of the Committee does not to be convened, the requirements of this clause will be satisfied provided that all PHSC members are given reasonable opportunity to participate in the inspection); and
- (d) A meeting of workers, in the affected work area in paid time, before work recommences to discuss the incident and any outcomes arising from the investigation of the incident (a toolbox meeting is sufficient to meet the requirements of this clause.); and
- (e) This clause will be applied in a manner which recognises that an affected area may include a system of work or process, and is not limited to spatial work areas, such that it may be necessary to cease all work of a particular kind in order to comply with this clause.

59. Amenities

- 59.1** The Company will ensure that Amenities for Employees are available which are consistent with those required by the Work Health and Safety (Managing the Work Environment and Facilities) Code of Practice 2011.
- 59.2** In addition, the Company will ensure that the Amenities are cleaned as necessary. The Project Health and Safety Committee shall be consulted in relation to the frequency of cleaning and shall determine the required frequency.

60. Personal Protective Equipment (PPE) and safety footwear

- 60.1** The following clothing shall be supplied by the Company to Employees upon commencement of employment and will be replaced on a fair wear and tear basis:
 - (a) 1 pair of safety boots (replaced on a fair wear and tear basis or after 6 months in accordance with the Award);
 - (b) 5 sets of shirts and shorts/trousers, overalls or bib and brace overalls; or any combination as agreed (the Employer is only obligated to supply one of the following: a shirt and short/trouser, an overall or a bib and brace overall to an Employee who has been engaged for a period less than 6 months);
 - (c) 1 bluey/winter jacket;
 - (d) 1 safety helmet; and
 - (e) Any other PPE reasonable required for the task.
- 60.2** Employees when working on site are required to wear all footwear and all other PPE supplied.

60.3 No agreement to pay cash or allowance in lieu of supply of clothing and safety footwear is permitted under this Agreement.

60.4 When requested by Employees, the Company shall supply sun-screen lotion and sun brims to fit over safety helmets.

61. Hearing Tests

Audiometric tests will be conducted within 2 months of a person commencing employment and each 12 months after that. The Employer will be liable for the cost of the tests and if the test is taken during ordinary working hours, the Employee will not suffer any loss of pay.

62. Training and Related Matters

62.1 In order to increase the efficiency and productivity of the Company, a significant commitment to structured training and skill development is required. Accordingly, the parties commit to:

- (a) Maintaining regular training and entry level training;
- (b) Providing Employees with the opportunity to acquire additional skills through appropriate structured training based on nationally endorsed (i.e. Construction & Property Services Industry Skills Council) competency standards and curriculum;
- (c) Actively encourage Employees to seek funding through the Building and Construction Industry Training Board Fund; and
- (d) Actively encouraging Employees to seek formal recognition of their skills (i.e. recognition of prior learning).

62.2 The Company undertakes to utilise the training conducted by the Approved Training Organisation, or an alternative Registered Training Organisation, which is consistent with the following:

- (a) The Company's business requirements, relevant to the work of the Employees and consistent with the skills development of each Employee;
- (b) Training may be taken either on or off the job with all reasonable steps being taken to conduct training in normal Working hours;
- (c) If an approved training activity is undertaken during ordinary Working hours, the Employee/s concerned shall not suffer any loss of pay;
- (d) Approved training activities undertaken outside of ordinary hours will be paid at single time or will, at the Employee's option, be taken as time off in lieu of payment. Provided that the scheduling of time off must be consistent with the needs of the business and be by agreement with the Company;
- (e) Training costs of courses approved by the Company will be met by the Company. Where possible, application will be made to the Building and Construction Industry Training Fund Board;
- (f) The Company will not be asked to meet the costs of training undertaken by Employees which was not approved by the Company; and

- (g) Leave of absence granted pursuant to this clause shall count as service for all purposes of the Agreement.

63. Mandatory Training Requirements

63.1 It is agreed that all new Employees to the industry that work on Company projects will be required to complete:

- (a) the entry level industry recognised induction course, commonly known as the "White Card"; and
- (b) Asbestos Awareness; and
- (c) it is agreed that the Company will utilise the Approved Training Organisation for these purposes.

63.2 It is agreed that within 12 months of signing this Agreement, the Company will require all existing Employees to undertake the following training courses to be provided by the Approved Training Organisation:

- (a) 10830NAT the nationally accredited Course in Crystalline Silica Exposure Prevention/
- (b) Safe Respectful Workplace Training.
- (c) 10894NAT, the Nationally Accredited Course in Workplace Impairment Prevention

63.3 It is further agreed that all new Employees to the Company who have not completed the training identified in clause 63.2, will be required to do so within 12 months of commencing employment with the Company.

- (a) Training costs of courses identified in clause 63 will be met by the Company.

63.4 Where the Company wants to provide the specific training identified in clauses 63.1 and 63.2 above to the Employees covered by this agreement and that specific training is not offered by the Approved Training Organisation, the Company may:

- (a) after consultation involving the parties, including the Union where the union is the representative of the Employees, and a representative of the Approved Training Organisation to assess whether the Approved Training Organisation can develop the capacity to deliver the desired training, and where after consultation it is agreed that the Approved Training Organisation cannot deliver the training in a reasonable time,
- (b) use another equivalent Registered Training Organisation, for the purpose of that specific training requirement only.

63.5 First Aid Training

The Company agrees to meet the training costs, and provide paid time, for Employees elected as either Employee Representatives or Health and Safety Representatives to undertake First Aid training.

64. Workplace Impairment Policy

- 64.1** The parties agree to adopt the Workplace Impairment Policy attached to this Agreement at Schedule E.
- 64.2** The purpose of this policy is to minimise impairment related risk to workplace health and safety and eliminate factors that may cause impairment in the workplace.
- 64.3** The parties recognise that there are a range of factors that can contribute to the impairment of people at work, including:
- (a) Mental Health/Stress
 - (b) Fatigue
 - (c) Chemicals
 - (d) Heat
 - (e) Noise
 - (f) Alcohol and other legal drugs
 - (g) Illegal drugs
 - (h) Illness and injury
- 64.4** Adoption of the attached Workplace Impairment Policy will not contradict the fitness for work provisions of a Work Health Safety and Rehabilitation Management System established by the relevant principal contractor (including the Company) to comply with the *Building Code 2013*, as amended from time to time (WHSRMS). In the event of inconsistency between their terms, the WHSRMS will prevail over the Workplace Impairment Policy.
- 64.5** The parties will review and monitor the operation of the Workplace Impairment Policy on an ongoing basis.
- 64.6** If, prior to the making of this Agreement, there was a pre-existing Workplace Impairment Policy with application to the workplace covered by this agreement, the parties may negotiate Company specific variations to the policy set out in Schedule E.
- 64.7** Any variation negotiated pursuant to clause 64.5 of this Agreement must meet the following standards.
- (a) The policy must require that Workplace Impairment Training take place before any testing occurs: including site specific training consistent with E.8.3.No worker can be tested until they have been trained in the policy.
 - (b) Any training provider must meet the requirements of E.8.5.
 - (c) The policy must require that the Workplace Impairment Training be delivered by the Approved Training Organisation.
 - (d) The policy must provide any worker subject to the policy with due process and natural justice and apply disciplinary consequences in a non-punitive manner which is no less beneficial than E.36 of this agreement.

- (e) The policy must cover all possible sources of impairment, including heat, stress and fatigue;
- (f) The policy must provide for ongoing promotion and awareness activities rather than a single point in time promotion of the policy.
- (g) Testing methods must meet the minimum requirements of E.12.1 and E.12.2.
- (h) Testing providers must meet the minimum standards set out in E.13.1 - E.13.4.
- (i) Testing must take place in a room which meets the minimum standards set out in E.14.2.
- (j) Must allow for self-testing consistent with E.34.1(a) and E.34.1(b).
- (k) The policy must provide for engagement of an agreed rehabilitation and treatment service provider.
- (l) The policy must provide for an Company funded EAP to be available to workers on a basis which is no less beneficial than E.42.

65. Scissor Lifts and EWP

- 65.1** The parties agree that scissor lifts and EWP will not be operated in isolation and that at all times there will be a designated Employee working in the immediate vicinity who is available at all times to take steps to activate the emergency lowering mechanism should that be necessary.
- 65.2** Having regard to the non-standard nature of scissor lifts and EWP's and the different emergency procedures which apply to different models, the designated Employee must receive training in the specific emergency procedures that relate to the particular scissor lift or EWP in use.
- 65.3** Regardless of the height of the scissor lift or EWP, any employee covered by this agreement who is required to operate a scissor lift or EWP is required to hold the relevant high risk work license for the EWP being used.



66. Crystalline Silica Exposure Standard

- 66.1** The parties acknowledge that exposure to silica dust may occur as a result of many activities in the construction industry. The parties further acknowledge that workplace exposure to silica dust may lead to fatal diseases.
- 66.2** While there is no universally recognised exposure standard, the parties agree that the state of knowledge of the risks of exposure is now such that employers must control the risk of exposure where Employees are exposed to respirable silica dust.
- 66.3** Taking this into account the parties agree that during the life of this agreement:
 - (a) The company will comply with any relevant regulatory standard in relation to silica exposure.
 - (b) Where operating as a subcontractor the company will meet any standard set by the principal contractor for this purpose.

- 66.4** In order to give effect to this standard the Company must ensure that air quality monitoring takes place and that the data is available to Employees and their elected representatives. A subcontractor Company may rely upon monitoring conducted, and data provided, by a principal contractor for this purpose.
- 66.5** The parties further acknowledge that this standard may evolve, as a result of scientific and regulatory developments, during the life of this agreement and that the parties will engage in consultation in relation to this issue should the need arise.
- 66.6** In addition, noting that even for exposure levels below the standard set out in 66.3 risks to health and safety may arise, the Company will take all reasonable steps to mitigate worker exposure to Crystalline Silica including but not limited to:
- (a) providing appropriate PPE, and
 - (b) utilising dust mitigation techniques and equipment appropriate to the task (including a ban on all dry cutting with masonry or concrete saws of products containing silica on site, grinding to be wet grinding or with proper task specific dust extraction equipment, a complete ban on cutting of engineered stone products such as ceasarstone on site), and
 - (c) using crystalline silica free building products and materials where those products are reasonably available.

67. Execution

Executed as the Protech Personnel NSW Pty Ltd and CFMEU ACT Demolition Sector Agreement 2021.

Party	CFMEU	Protech Personnel NSW Pty Ltd
Signatory	Michael Hiscox	Adrian Baker
Authority to sign	ACT Branch Assistant Secretary (The Union is a bargaining representative of one or more Employees covered by this agreement).	Executive General Manager
Address	7-10/8 Cape Street, Dickson ACT 2602	Building 14, 1/2728 Logan Rd, Eight Mile Eight Mile Plains, QLD, 4113
Date of Signing	14/6/24	11 June 2024
Signature		

Schedule A – Classification Structure

Agreement Level	Award Equiv.	Indicative callings and occupations
Level 1	CW1a - CW1c	New entrants to the construction industry. Less than 6 months experience in the construction industry.
Level 2	CW1b - CW1c	Labourer with less than 12 months experience in the construction industry.
Level 3	CW1d	Labourer (including Demolition Labourer); Concrete Labourer; Trades Assistant. Trainee Plant Operator (with logbook)
Level 4	CW2	Skilled Labourer: Steelfixer, Concrete finisher, Formworker (non trade); Trainee Plant Operator (without log book).
Level 5	CW3	Tradesperson: Carpenter, Paviour, Fitter, Mechanic, Welder, etc.; Plant Operator (see below); Pipe Layer.
Level 6	CW4 - CW5	Special Class Tradesperson; Plant Operator (see below); Track laying, fixing or levelling machine (railway construction).
Level 7	CW5	Plant Operator (see below).
Level 8	CW6-7	Sub-foreperson; Plant Operator (see below).
Level 9	CW8	Supervisor/Foreperson; Carpenter-diver.

Plant Operator Level	Responsibilities
Level 5	<p><u>An employee at this level will:</u></p> <ul style="list-style-type: none"> - operates plant and machinery, including inspecting plant for conformity with established operational standards; - perform materials handling; and - work under supervision either individually or in a team environment.
Level 6	<p><u>An employee at this level will:</u></p> <ul style="list-style-type: none"> - exercise precision skills using various plant and specialised techniques at a higher level than Plant Operator (Level 5); - operates, and maintains plant and machinery, including inspecting plant for conformity with established operational standards; - provides guidance and assistance as part of a work team; - assists in the provision of training in conjunction with supervisors and trainers; - understand and implements quality control techniques; and - works under limited supervision either individually or in a team environment;
Level 7	<p><u>An employee at this level will:</u></p> <ul style="list-style-type: none"> - exercise precision skills using various plant and specialised techniques at a higher level than Plant Operator (Level 6); - operates, and maintains complex plant and machinery, including inspecting plant for conformity with established operational standards; - be able to plan complex construction sequencing; - installs, repairs and maintains, tests, modifies, commissions and/or fault finds on plant, machinery and equipment which utilises hydraulic and/or pneumatic principles and in the course of such work, is required to read and understand hydraulic and pneumatic circuitry which controls fluid power systems; - provides guidance and assistance as part of a work team; - assists in the provision of training in conjunction with supervisors and trainers; - understand and implements quality control techniques; and - works under limited supervision either individually or in a team environment;

Plant Operator Level	Responsibilities
Level 8	<p><u>An employee at this level will:</u></p> <ul style="list-style-type: none"> - exercise precision skills using various plant and specialised techniques at a higher level than Plant Operator (Level 7); - operates, and maintains complex plant and machinery, including inspecting plant for conformity with established operational standards; - develop and implement quality control techniques; - plans complex construction sequencing; - works on plant, machines or equipment which utilise complex mechanic or hydraulic and/or pneumatic circuitry and controls or a combination thereof; - provide training in conjunction with supervisors and trainers; - understand and implements quality control techniques; - prepares complex reports; - contributes to the design of work, and the application of labour; - assists in the supervision or organisation of work groups;

Schedule B- Living Away from Home – Distant Work

B.1 The following provisions will apply in lieu of clauses 25.1 and 25.2 of the Award:

B.2 Qualification.

An Employee shall be entitled to the provisions of this Clause when employed on a job or construction work at such a distance from his usual place of residence that he cannot reasonably return to that place each night under the following conditions:

B.2.1 The Employee is not in receipt of Relocation Benefits.

B.2.2 The Employee is maintaining a separate place of residence to which it is not reasonable to expect him/her to return each night; and

B.2.3 The Employee on being requested by the Company informs the Company, at the time of engagement, that he/she maintains either a usual place of residence or is alternatively maintaining a separate place of residence from the address recorded on the job application.

B.2.4 The phrase "usual place of residence" and "maintaining a separate place of residence" is to be given their natural meaning having regard to the context and intent of the allowance. The parties acknowledge that an Employee cannot reside in two places simultaneously. As such an Employee cannot reside in a place that is at distance from his/her work and also, at the same time, reside at a place that is near to his work.

B.2.5 The Company acknowledges that it is required by law to properly determine the residential status of an Employee and will require documentary proof such as those listed in Clause C3.4 below to determine the Employee's proper place of residency.

B.2.6 The parties agree that should there be an inconsistency between addresses contained on Company records and an address contained on the types of documents contained in Clause C3.4 below, the address contained on the types of documents contained in Clause C3.4 will prevail.

B.3 Employee's Address.

B.3.1 The Company shall require and the proposed Employee shall provide the Company with the following information, in writing, at the time of engagement –

- (a) The address of the place of residence at the time of application; and
- (b) The address of the separately maintained residence, if applicable.

B.3.2 The Company shall not exercise undue influence or duress, for the purpose of avoiding its obligations under the Award, in persuading the proposed Employee to insert a false address.

B.3.3 No subsequent change of address shall entitle an Employee to the provisions of this Clause unless the Company agrees.

B.3.4 Documentary proof of address such as a long service leave registration card, driver's licence, energy bills, bank statements and electoral role may be accepted by a Company as proof of the Employee's usual place of residence.

- B.3.5** The address of the Employee's usual place of residence and not the place of engagement shall determine the application of this Clause.
- B.3.6** Any dispute arising in respect of this Clause shall be referred to Clause 26 - Dispute Settlement Procedure.
- B.4** The following additional provisions shall apply:
- B.5** **Camp Accommodation.**
- B.5.1** Where an Employee is engaged on the construction of projects which are located in areas where suitable accommodation is not available, or where the size of the work force is in excess of the available accommodation or where continuous concrete pour requirements of the projects or the working shifts necessitate camp accommodation and where, because of these circumstances, it is necessary to house the employees in a camp, such camp shall be constructed and maintained in accordance with the following provision.
- B.5.2** Where Employees are required to live in camp at any one site, the Company will provide:
- (a) All board and accommodation free of charge and without deduction from the Employee's wages, and
 - (b) Accommodation in accordance with the following minimum standard:
 - (c) Where such accommodation is of the hut, demountable or transportable type, such accommodation shall:
 - (i) be designed to house workers in individual rooms, each room not less than 9 square metres in area;
 - (ii) be lined and sealed with such material as facilitates the washing of walls and ceiling;
 - (iii) have floor coverings of vinyl or like material;
 - (iv) have weather proof windows and doors, all fitted with insect screens and curtains;
 - (v) have a door which can be locked;
 - (vi) have corridors between units which shall be roofed and shall have a concrete or wooden floor;
 - (vii) be connected to electricity and each room shall be independently fused;
 - (viii) be twin cycle air-conditioned in each room;
 - (ix) have two power points in each room to which electrical appliances can be connected.
 - (d) In addition, such accommodation shall contain in each room for each Employee:
 - (i) a single bed with head and foot boards (complete with rubber foam or innerspring mattress, with a pillow and loose detachable washable covers for mattress and pillow);

- (ii) wardrobe, dressing table unit with mirror, chest of drawers, table and chair;
 - (iii) four coat hooks on the wall and a towel rail;
 - (iv) a ceiling light;
 - (v) a reading light;
 - (vi) a waste basket;
 - (vii) a linen ration.
- (e) Ablution/laundry facilities with all necessary plumbing, drainage and electrical fittings; hot and cold water supplies; sufficient water closets, showers, basins, laundry troughs, washing machines, tumble dryers, ironing boards and sundry fittings.
- (f) Recreational facilities including an air conditioned fully enclosed and sealed area suitable for use by up to twenty persons with sufficient chairs, tables, lighting and other appropriate facilities.
- (g) Kitchen and dining facilities with all the necessary equipment, utensils, cutlery and crockery.
- (h) **Messing system**
- (i) The Company shall provide a qualified cook for a gang of ten or more. Where the gang is ten or less the Company shall provide reimbursement for food purchased by the gang for its own use or shall reimburse each gang member for meals consumed in the nearest recognised centre.
 - (ii) In camps over 30 people the Company shall employ a camp attendant, and in all other camps the Company shall provide labour, for the purpose of maintaining the camp in a clean and hygienic condition.
 - adequate external lighting;
 - reasonable facilities for the adequate posting and receipt of mail;
 - radio and/or telephone contact;
 - adequate fire protection equipment including chemical extinguishers;
 - adequate means for getting injured or sick workers to the nearest qualified medical centre;
 - a system of covered pathways shall link accommodation with facilities-in-common;
 - a system of low level lighting shall illuminate facilities-in-common;
 - children's playground facilities with special care given to shade.
 - (iii) Where the Company has established a camp site and provides facilities for employees living in their own caravan or provides caravans for Employees, and having regard to the peculiarities of caravan living, the additional provisions below shall apply:

- The area allocated to caravan sites shall not exceed 39% of the entire caravan park;
- Each van site shall be of no less than twelve metres by 10 metres;
- A van area of not less than 3 metres wide of gravel surface;
- An annex area of not less than 2.4 metres by 6 metres of concrete surface;
- An open area of grass;
- Each van site shall have an individual sullage collection point suitable for connecting sink wastes by direct piping from the van;
- No van site shall be closer than five metres to the park perimeter;
- A system of covered concrete pathways shall link the van site to the ablutions area;
- Access roads shall be sealed;
- The park perimeter shall be fenced;
- Carwash and maintenance areas surfaced and with water provided.

Schedule C - Inclement Weather Policy

- C.1** The parties agree that the purpose of this policy is to set the procedures and processes which must apply concerning the suspension of work in areas exposed to inclement weather.
- C.2** When temperatures reach 35 degrees C as measured by the nearest automatic Bureau of Meteorology Monitoring Station to the project it will be deemed that the project is affected by inclement weather and Employees will be consulted.
- C.2.1** For the avoidance of doubt the term "nearest automatic Bureau of Meteorology Monitoring Station" means the station which is geographically closest to the site as the crow flies. In order to avoid any doubt about this the site management and Project Health and Safety Committee should confer and reach agreement about which station to use at the start of the job.
- C.2.2** It is agreed that after consultation with the affected Employee(s), the Company can transfer Employees to an unaffected area of the project or other sites not affected by inclement weather. If employees are not able to be relocated to an unaffected area or transferred to another site, those affected employees will be shedded up.
- C.2.3** For the purpose of determining whether an area of the project is not affected by inclement weather the Company may use an onsite wet bulb thermometer. This clause does not require the company to use wet bulb thermometers. A wet bulb thermometer is one option which may be adopted for the purpose of assessing whether or not an area is affected by inclement weather. The company and HSR may choose to consult and reach agreement on this question without use of thermometers.
- C.2.4** For the purpose of this clause an area is not affected by inclement weather if the temperature measured by wet bulb thermometer in that area is less than 35 degrees Celsius.
- C.2.5** Wet bulb thermometers must be used in accordance with Australian standards.
- C.2.6** Temperatures shall be monitored on an ongoing basis by the PCBU's Site Manager, WHS Committee Chairperson and Deputy Chairperson.
- C.3** When the temperature reaches 37 degrees as measured by the nearest automatic Bureau of Meteorology Monitoring Station then employees will be withdrawn from site and work discontinued unless the employees can be relocated to an area where the temperature is less than 35 degrees in accordance with clause C.2 above.
- C.4** If Employees complain of heat stress before the agreed temperatures have been reached it is the Project Health and Safety Committee and Head Contractors' obligations to move those workers into a cooler environment.
- C.5** Through the consultative process work may be arranged for early morning starts to beat the heat. If this process is agreed, then no more than 8 hours in the day shall be worked.
- C.6** Fresh, cold drinking water must be made available throughout the day to ensure fluid intake for Employees in warmer conditions. Provision of water bubblers will meet the requirements of this clause provided that the water temperature is consistent with the Work Health and Safety (Managing the Work Environment and Facilities) Code of Practice 2011, which specifies that water must be at or below 24 degrees Celsius.

- C.7** During periods of hot weather, work in air conditioned environments shall continue as normal. Employees will walk a reasonable distance through the open to and from amenities, (amenities must be air-conditioned) and the air-conditioned work space, provided it does not pose a serious threat to their health and safety. In order to avoid doubt about what is a reasonable distance for the purpose of this clause, site management and Project Health and Safety Committee should confer in relation to this issue at the start of the job and reach an understanding about what is reasonable.
- C.8** The Company will not require Employees to work in the open in the rain except where the need arises to maintain safety or in emergency situations. In those circumstances, the Company will provide appropriate wet weather clothing. For those who are required to continue work in the open during the period of inclement weather, they will be paid at the rate of double time.
- C.9 Work In Cold Weather**
- C.9.1** Where the Apparent Temperature published by the Bureau of Meteorology as the "Feels Like" temperature is -10 degrees centigrade:
- (a) Work will not commence or continue; and
 - (b) Employees will be relocated to appropriately heated areas.
- C.9.2** The apparent temperature reading should be taken from the nearest BOM station, to be determined in the manner set out above. For the avoidance of doubt all updated Canberra area temperature and apparent temperature data are published at the following location: <http://www.bom.gov.au/act/observations/canberra.shtml>.
- C.10** All Employees affected by inclement weather shall be provided with personal protective clothing as required by the appropriate OH&S guidelines.
- C.10.1** If after consultation it is agreed that work be discontinued then only the Employees so affected by the inclement weather (of any kind), who cannot be transferred to an unaffected area or site, will be allowed to go home and will not suffer any loss of pay.
- (a) In relation to occasions when work is discontinued due to inclement weather there is no "minimum sit down period", and employees may be sent home at any stage after consultation in relation to the inclement weather.
 - (b) In addition, clause 24 of the Award prescribes a maximum period of four hours that an employee can be required to remain on site during inclement weather, which continues to apply in conjunction with this clause.

Schedule D - Payroll Requirements

D.1 Particulars of details of payment to each Employee shall be provided to the Employee electronically, and shall contain the following information:

- name of the Employee;
- classification of the Employee in accordance with the Agreement;
- date of payment;
- period covered by such payment;
- the ordinary hourly rate;
- the number of hours employed in the period at the ordinary rate;
- the amount of the payment made at the ordinary rate;
- any overtime rates;
- the number of hours employed at the overtime rates;
- the amount of the payment at overtime rates;
- any allowances or special rates not included in the hourly rate paid and the nature thereof;
- the gross amount of the payment;
- the net amount of the payment;
- the amount and purpose of any deductions made;
- the name, or the name and number of the fund or account into which the amount of the deduction was paid;
- the amount of each superannuation contribution made during the period;
- the fund into which the superannuation contributions were made and the Employee number;
- the Employee's long service leave registration number;
- annual holiday payments; and
- payment due on termination, including payment for annual leave, rostered day off accumulation, and public holidays.

Schedule E–Workplace Impairment Policy

E.1 Principles

- E.1.1** The health, wellbeing and safety of Employees are of paramount importance to the Employer, Employees and their representatives (Including their Unions). This policy is part of a broad work, health and safety (WHS) program to secure the highest level of health and safety in the workplace.
- E.1.2** The policy adopts a WHS approach that involves identifying, assessing and controlling all workplace hazards, using the hierarchy of control, and then reviewing these controls to ensure ongoing improvements.
- E.1.3** The focus of this policy is on the WHS risks associated with impairment and should be read in conjunction with other Company policies concerning health and safety, particularly in relation to fatigue management, risk management and safe systems of work.
- E.1.4** This policy is intended to be applied in a manner that is non-punitive and supportive of Employees. This policy shall not be used in a discriminatory manner. Anti-Discrimination Law protects against discrimination on the basis of addiction and may also protect against discrimination on the basis of impairments caused by drug and alcohol addiction or use.
- E.1.5** The policy and procedures adopt a peer based intervention approach based on fairness and equity for all Employees.

E.2 Scope

- E.2.1** Because the presence of an impaired worker in the workplace represents a risk to the health and safety of all Employees this policy will apply to all persons in the workplace (including managers and supervisors), contractors and labour hire staff. The policy applies to these groups at all times when they are engaged in Company business, whether on or off site and when driving Company vehicles.

E.3 Structure

- E.3.1** The Impairment Policy is set out to reflect the intended order of implementation:
- (a) Training and Awareness- extensive research has shown training and awareness of impairment related issues provides the most effective means of behavioural change and encourages better decision making. There are two types of training in accordance with this policy:
 - (i) Workplace Impairment Training (WIT)- all workers onsite will do this training.
 - (ii) Preliminary Impairment Assessment (PIA)- HSR's, delegates and the PC's safety staff will get this training.
 - (b) Testing- testing for drugs and alcohol is used to support and measure the results of the education and awareness program.

- (c) Support services- rehabilitation, counselling and Employee Assistance Programs (EAP's). Support is strictly non- punitive, and can be accessed at any time (self-identification of the need for help is strongly encouraged).

E.4 Objectives

E.4.1 The objectives of this policy are as follows:

- (a) To provide a safe and healthy working environment for all workers.
- (b) To work collaboratively in the implementation and co-ordination of this policy with Employees, Employers and their elected representatives to achieve the objectives of this policy.
- (c) To eliminate and control risks which may lead to Impairment affecting health and safety in the workplace.
- (d) To ensure that there is a mechanism for managing Impairment at work that is transparent, objective and in accordance with the purpose of this policy.
- (e) To ensure that all persons are provided with adequate information and education on the health and safety issues surrounding Impairment, and on the operation of this policy.
- (f) To ensure that Employees have access to rehabilitation support and counselling of their choice on a voluntary basis that is independent, professional and confidential, without jeopardising their employment.
- (g) To ensure confidentiality of information concerning the application of this policy to a worker is maintained.

E.5 Responsibilities

E.5.1 The Employer shall:

- (a) Provide a work environment that is safe and without risks to health and safety.
- (b) Provide information about the testing requirements to all existing Employees, contractors and labour hire staff and to all new staff at the point of induction.
- (c) Ensure that this policy is implemented fairly and equitably across all sections of the workforce.
- (d) Comply with the four policy implementation steps outlined below.
- (e) Have adequate resources (e.g., a room that allows for confidential Impairment assessments to be discussed, or if necessary, suitable transport to safely remove Impaired Employees from the workplace) to be able to meet the objectives of this policy.

E.5.2 Employees shall:

- (a) Co-operate reasonably with the Employer in the implementation of this policy.
- (b) If they reasonably believe that any person on the site may be a health and safety risk to themselves or others, inform their Employer and their relevant Preliminary Impairment Assessor (PIA) of this belief.

- (c) Not possess, consume, or be under the influence of, alcohol or other drugs while working.
- (d) Ensure that they do not work if they believe that they may be Impaired.
- (e) Consult their doctor or pharmacist about possible side effects of using prescribed or over-the-counter medication.
- (f) Inform their Employer and their Preliminary Impairment Assessor (PIA), and Employee Representative (who may be the Union Delegate, if the Union is the chosen representative of the Employee) if they have been made aware by their treating doctor or pharmacist of possible impairment as a side effect of medication, or if they feel Impaired by medication.

E.6 Policy Implementation

E.6.1 Policy implementation will involve the following steps.

- (a) The Employer and Union (where the Union is the chosen representative of the Employees) shall agree on a policy start date.
- (b) Engagement of an agreed training and rehabilitation/ treatment service providers.
- (c) Provision of on-going Impairment Awareness (WIT) and Preliminary Impairment Assessor training (PIA).
- (d) Ongoing promotion of the policy.

E.6.2 A purpose of the policy and procedure is to provide protocols and procedures for workplace alcohol and other drug testing that are evidence-based, consistent with best practice, comply with relevant Australian Standards, and contribute to workplace safety and worker wellbeing.

E.6.3 The following drug and alcohol testing programs will be adopted:

- (a) Self-testing
- (b) Random testing
- (c) For-cause testing
- (d) Post-incident testing
- (e) Reasonable concern testing (including return to work testing).

E.6.4 Any Employee who is assessed as being impaired shall be advised to contact the rehabilitation/ treatment provider.

E.6.5 The Employee will be permitted to take accrued personal leave entitlements for the period of time they are accessing the treatment provider.

E.6.6 With the endorsement/acceptance of this Impairment Policy the Employer will undertake to not pass the implementation and cost of drug and alcohol testing to its subcontractors.

E.6.7 The Employer will also ensure compliance with this policy as follows:

- (a) Subcontractors will be contractually required to comply with this procedure.

- (b) All direct Employees as a condition of their employment must agree to adhere to the terms and conditions of this Impairment Policy/Fitness for Work policy.

E.6.8 Notwithstanding anything else contained in the policy, the costs of all testing contained within this policy shall be borne by the Company unless otherwise specified in this document.

E.7 Definition of a Worker

E.7.1 Anyone who carries out work for a Person Conducting a Business or Undertaking, such as:

- (a) an Employee (either salaried or wages);
- (b) a contractor or subcontractor;
- (c) an Employee of a contractor or subcontractor;
- (d) an Employee of a labour hire Company;
- (e) an apprentice or trainee;
- (f) a student gaining work experience;
- (g) an outworker;
- (h) a volunteer;
- (i) a visitor to a workplace.

E.8 Training

E.8.1 The agreed training provider shall be Creative Safety Initiatives.

E.8.2 Impairment awareness training sessions will be delivered to all workers (including principle contractor workers), sub- contractors and labour hire workers at least once every two years.

E.8.3 In addition to the training course outlines specified below, the Employer will be required to develop a site specific information session to be delivered as part of the site induction outlining their Drug and Alcohol testing procedures for the site.

E.8.4 The training requirements below will be audited on an annual basis.

E.8.5 Requirements for an approved training provider:

- (a) Must be registered Training Organisation with ASQA (Australian Skills Quality Authority)
- (b) Must have previous experience delivering Impairment Awareness Training
- (c) Must consult with professional organisations to develop all training courses
- (d) Must be able to demonstrate a continuous improvement plan for each training course
- (e) Trainers must have the following qualifications:
 - (i) Cert IV in WHS

(ii) **Cert IV in Training and Assessing (TAE)**

- (f) All training must be delivered face to face.

E.9 Workplace Impairment Training (WIT)

E.9.1 WIT course must be a minimum of 2 hours' length and must cover the following topics:

- (a) Australian Workplace Health and Safety construction statistics
- (b) Overview of the Workplace Health and Safety Act, state specific
- (c) Mental Health- discussing at length stress, anxiety and depression
- (d) Fatigue- overview of causes and coping mechanisms
- (e) Illness and Injury- management of it, legal requirements and rehabilitation process
- (f) Chemicals, Heat, Cold, and Noise and their abilities to cause Impairment at work
- (g) Legal/Illegal Drugs and Alcohol- statistics on current usage, potential negative consequences to the workplace, workplace deaths and accidents associated with drug and alcohol use
- (h) Harm related to drug and alcohol use
- (i) Understanding what is a standard drink and how long it stays in your system
- (j) Detection rates for illegal drugs
- (k) Administering self-alcohol and drug tests
- (l) Information about EAP and the services they offer

E.10 Preliminary Impairment Assessor (PIA) Training

E.10.1 PIA training must be a minimum of 4 hours in length and must cover the following topics:

- (a) Understanding the signs of Impairment
- (b) Conflict resolution
- (c) Skills to conduct an Impairment Assessment
- (d) Overview of what a PIA is
- (e) What are possible Impairment factors
- (f) Causes and symptoms of Impairment
- (g) Investigative skills

E.10.2 Training: General provisions

- (a) Training is not to be conducted in a lunchroom unless there are multiple lunchrooms on site and the training session will not interfere with workers

wanting to use the room for smoko or lunch; or the training session will not be interfered with by workers wanting to use the room in general,

- (b) No worker can be tested for drugs and/or alcohol unless they have been trained in the policy.

E.11 Preliminary Impairment Assessment

E.11.1 Preliminary impairment assessment conducted by a Preliminary Impairment Assessor (PIA)

E.11.2 Where there is a reasonable belief that an Employee may be impaired, a preliminary assessment should be conducted by the PIA team. The PIA team will consist of two PIAs, who have received appropriate impairment assessor training. At least one of the PIA team must be an Employee elected representative. The initial preliminary assessment will be non-intrusive and observation based.

E.11.3 If it is the view of the PIA team that the Employee is impaired, they will not be permitted to continue working on that day and should be encouraged to voluntarily leave the workplace. If the Employee agrees to leave the workplace, the Employer will be informed of the incident and will provide appropriate assistance to the Employee to ensure their safe return to their local place of residence.

E.11.4 The Employee will be paid as per normal for the duration of their shift.

E.11.5 If the Employee refuses to voluntarily leave the workplace, the Employer or Employer representative will be informed and may direct the Employee to leave the workplace. The Employer or Employee representative will ensure the impaired Employee is transported safely off site and to their local place of residence. Every effort must be made to ensure an impaired Employee does not operate a vehicle.

E.11.6 In circumstances where the impaired Employee voluntary offers, or is asked to leave the workplace, the Employer will pay all reasonable transportation costs incurred for the Employee to be transported directly home.

E.11.7 If the Employee refuses to leave the worksite and a Work Health and Safety (WHS) representative is of the opinion that there is any activity, occurring or about to occur, which involves or will involve an immediate risk to the health or safety of any person, they may remove Employees until the matters which gave or will give rise to the risk are remedied.

E.11.8 If indicators of impairment due to alcohol or other drug use are detected, an alcohol and/or drug test may be requested. Where this occurs the test will be carried out in accordance with the Alcohol and Other Drug Testing Protocols and Procedures.

E.11.9 The Employee will be removed from the worksite and taken to a safe and private location where testing can occur. An alcohol or drug test will not be undertaken if the Employee can provide evidence that the impairment is likely to be due to prescribed or over the counter medication. Subject to the preliminary assessment, an Employee whose impairment is related to prescription or over the counter medication may be offered the opportunity to perform alternative duties involving low levels of safety risk.

E.11.10 In the event of a PIA Team deadlock in reaching agreement in determining Employee impairment, a third trained PIA will become involved. If the assessment is of a site Employee, the third person shall be an elected representative.

E.11.11 At any stage during the PIA process an Employee is entitled to seek representation from the representative of their choice, which may be a Union representative, where the Union is the chosen representative of the employee.

E.11.12 If further evidence is required for the preliminary investigation, then testing maybe done at this point and in this order:

- (a) Fatigue
- (b) Drugs and Alcohol
- (c) Employee Assistance and Rehabilitation
- (d) Employee Awareness, Training & Education

E.11.13 Preliminary Investigation – Cause of Impairment

- (a) The PIA Team shall conduct a preliminary investigation into the factors causing the impairment.
- (b) The PIA Team must determine the cause/s of the impairment.
- (c) A written report of the investigation and determination shall be sent to the WHS Committee and the Impaired Employee.
- (d) In the event that the affected Employee's conduct is identified as a cause of impairment, the Employee shall be provided with procedural fairness throughout this process, and provided the full opportunity to present evidence to defend themselves. An affected Employee shall have the right at any stage to seek advice and be represented by the representative of their choice which may be a Union representative.

E.11.14 Counselling and Disciplinary Process

- (a) Where a preliminary investigation has found that the cause of impairment is related to alcohol or other drugs, the Employee will be counselled and the following procedure shall apply.
- (b) If the impairment was caused by prescription or over-the-counter medication, as prescribed by a medical practitioner or in accordance with the manufacturer's recommended dosages, this clause shall not apply.
- (c) Following any incident of impairment related to alcohol or drugs, the affected Employee will be interviewed by their Employer/supervisor where they will be counselled about their conduct. During this process the affected Employee shall have the right at any stage to seek advice and be represented by the representative of their choice, who may be a union representative.
- (d) During the interview details of the Impairment Issues should be outlined and the Employee provided with a copy of the PIA report. The Employee should be provided with a copy of the impairment policy and reminded of the implications of alcohol and drug use for workplace health and safety.
- (e) The affected Employee should be provided with the details of the available EAP or alcohol and drug counselling/treatment program and advised to take remedial action. The Employee should be further assured of confidentiality in applying for such assistance. The Employee should also be advised that further incidents of alcohol or drug related impairment may ultimately lead to dismissal

and that participation in an EAP or alcohol and drug program is a rehabilitative process.

- (f) A first assessment of impairment related to alcohol or drugs will not attract a written warning, however, where a similar assessment occurs within 12 months a first written warning may be issued. A written warning may be issued at all subsequent interviews associated with impairment related to alcohol or drugs. Where an Employee accumulates three written warnings within twelve months, the Employer's usual disciplinary process will apply. Each written warning expires 12 months after it is issued and cannot be used for disciplinary purposes thereafter.

E.12 Testing Methods

E.12.1 Alcohol Testing Method

- (a) Alcohol testing must only be done by use of an Accredited Breath Test device. The device must be calibrated and meet the minimum requirements of AS3547.

E.12.2 Drug Testing Method

- (a) Drug testing may only be done by oral fluid testing
- (b) The equipment used to perform the test shall be used, tested and calibrated to the manufacturer's instructions and certified to AS 4760 (Process for specimen collection and the detection and quantitation of drug in oral fluid)
- (c) The drug testing shall be conducted by an accredited person, following all of the chain of custody provisions.
- (d) The test must be performed in accordance with AS 4760 (Procedures for specimen collection and the detection and quantitation of drugs in oral fluid).

E.12.3 As part of this policy with regards to Drug and Alcohol testing the following substances must be tested for:

- (a) Alcohol;
- (b) Opiates;
- (c) THC;
- (d) Cocaine;
- (e) Benzodiazepines;
- (f) Amphetamine; and
- (g) Methamphetamine

E.13 Testing Provider

E.13.1 Must be NATA Accredited

E.13.2 Must have accreditation AS4760:2006 Procedures for specimen collection and the detection and quantitation of drug abuse in oral fluid.

E.13.3 Must be agreed upon by the Employer and the Union (where the Union is the chosen representative of the Employees).

E.13.4 Minimum standards that the testing Company must meet are as follows:

- (a) competent and trained staff
- (b) appropriate equipment and instruments
- (c) proper management and storage of test kits and reagents
- (d) secure and controlled storage and management of samples
- (e) comprehensive record keeping; and
- (f) clear and precise reporting.

E.13.5 Before the authorised testing agent is engaged to be the sample collector all relevant stakeholders must be engaged to make sure there is no conflict of interest and that they are totally independent. If a conflict of interest exists or should arise the authorised testing agent must report it immediately.

E.14 Room Requirements

E.14.1 Each workplace shall have a room nominated for use to undertake drug and alcohol testing consistent with this procedure. This room will not normally be the first aid room at a workplace unless a workplace has multiple first aid rooms and the use of a first aid room for the purpose of drug and alcohol testing will not affect the ability of the workplace to respond to a first aid incident.

E.14.2 The room selected for use must so far as reasonably practicable:

- (a) Provide privacy for the Worker being tested including but not limited to:
- (b) Have a closing door
- (c) Not allow for casual visual observation of the testing process by other Workers external to the room e.g. through glass windows.
- (d) Not allow conversations to be casually overheard by other workers.
- (e) Be clean and hygienic
- (f) Be free from interruption whilst testing is being undertaken
- (g) Include discrete entry and exit

E.15 Testing Requirements-

E.15.1 Code compliant workplaces

- (a) On workplaces where the value of the Commonwealth's contribution to the project that includes the building work is at least \$5,000,000, and represents at least 50% of the total construction project value or the Commonwealth's contribution to the project that includes the building work is at least \$10,000,000 (irrespective of its proportion of the total construction project value) the following minimum testing requirements must be adhered to.
 - (i) Frequency of testing: as a minimum frequent periodic testing (at least once per month where required by law, or at intervals required by the client, or by mutual agreement by the PC/Employer and the Union (where

the union is the representative of Employees) of the workforce (both construction Workers and site office Workers).

- (ii) **Alcohol:** on the day of testing all workers onsite shall be required to submit a breath sample i.e. blanket testing.
 - (iii) **Drugs:** As a minimum, testing numbers will be as follows:
 - (i) where there are less than 30 Workers at a workplace – at least 10% of the workforce;
 - (ii) where there are 30 to 100 Workers at a workplace – a minimum of 5 Workers; and
 - (iii) where there are greater than 100 Workers at a workplace – a minimum of 10 Workers.
- (b) The frequency of testing and the number of workers selected shall be increased in line with the escalation below where test results meet the criteria indicated:

E.16

E.17 Number of Workers	E.18 Criteria	E.19 Action
E.20 Less than 30 Workers at a workplace	E.21 Confirmed Positive results in 2 consecutive tests at the same workplace	E.22 Testing of 20% of workforce
E.23 30 to 100 Workers at a workplace	E.24 Confirmed Positive results for 3 or more workers in 2 consecutive testing rounds at the same workplace	E.25 Testing of 10 workers
E.26 Greater than 100 Workers at a workplace	E.27 Confirmed Positive results for 6 or more workers in 2 consecutive testing rounds at the same workplace	E.28 Testing of 20 workers

E.29

E.30 The increased testing requirements shall continue until no Confirmed Positive test results are recorded for 2 consecutive testing periods.

E.30.1 Other Jobs

- (a) On jobsites/workplaces where there is no Commonwealth contribution testing frequency will be agreed upon by mutual consent by the Employer and the Union (where the Union is the representative of the Employees). Testing requirements will remain the same for all jobsites i.e. blanket alcohol and code requirements for drug testing.

E.31 Prescribed Medications

E.31.1 Workers that are taking Prescribed Drugs or Pharmacy Only Drugs that they believe could register a positive test result should tell the Authorised Testing Agent prior to undergoing any requested test

- E.31.2** If a Worker fails to declare that they are taking Prescribed Drugs or Pharmacy Only Drugs before being tested and they record a Non Negative Result Initial Test result, a post test declaration will not be considered relevant to the result and the Worker will be excluded from duty for the remainder of the shift, subject to a Confirmatory Test.
- E.31.3** Workers who record a Non Negative Result Initial Test result will be excluded from their work duties and the workplace until a Confirmatory Test result has been received.
- E.31.4** If that confirmatory result is a Positive Result Confirmatory Test, then: The terms and conditions of the applicable industrial agreement shall be observed in relation to consultation and consequence management action.
- E.31.5** When a confirmatory test result is negative or the result recorded is less than the target level or is consistent with a level expected from therapeutic use of a Prescribed Drug or Pharmacy Only Drug, which was advised by the Worker, then the test result shall be considered a Negative Result Initial Test for the purpose of any consequence management action
- E.31.6** Where a Worker is excluded from the workplace as a result of a Non Negative Result Initial Test for Drugs and the confirmatory test is positive for a Pharmacy Only or Prescription Drug, the following factors would normally be considered in deciding when it is appropriate to allow a worker to return to the workplace and/or return to normal duties:
- (a) Whether the worker declared the medication during the pre-test interview with the Designated Collector or Authorised Organisation;
 - (b) The level of the medication detected is consistent with therapeutic use;
 - (c) Written advice from the worker's doctor advising that the medication is required to treat a medical condition; and
 - (d) The medication will not affect the worker's ability to perform the inherent requirements of their job - i.e. they are fit for work
 - (e) If the worker is assessed as not fit for their normal work role, the Employer will be expected to actively explore any opportunity to temporarily re-deploy the worker into alternate suitable duties that may be available at the time. In the event that there are no suitable alternative duties available, leave entitlements should be made available to the worker.
- E.32 Special Circumstances for Prescription Medication**
- E.32.1** A Worker participating in a treatment plan for a medical condition, managed by a Registered Medical Practitioner and involving a Prescribed Drug/Only Drug could result in a Non-Negative Result Initial Test if they are selected for Drug and Alcohol testing.
- E.32.2** If in the above circumstance a Non Negative Result Initial Test occurs, and provided that the Worker has:
- (a) Declared their use of the Prescribed Drug/Pharmacy Only Drug in a letter less than 12 months old from a Registered Medical Practitioner before the commencement of testing; and

- (b) Declared their use of the Prescribed Drug/Pharmacy Only Drug to the Authorised Organisation or Designated Collector before the commencement of testing;
- (c) Then the Non-Negative Result Initial Test result shall be recorded at the workplace and a second sample of oral fluid shall be taken and sent for confirmatory testing. The worker shall be allowed to remain at work but must be precluded from high risk construction work activity until the result of the confirmatory test is known.
- (d) Where the results of the confirmatory test identify the Prescribed Drug/Pharmacy Only Drug declared and the levels are consistent with that prescribed by the Prescribed Medical Practitioner, then a Negative Result shall be recorded and no results retained.
- (e) Where the results of the confirmatory test identify the Prescribed Drug/Pharmacy Only Drug declared and the levels are not consistent with that prescribed by the Registered Medical Practitioner or another drug(s) type is recorded then a Positive Result Confirmatory Test shall be recorded.
- (f) Where the Worker has not provided both declarations contained within this part then the Worker shall be excluded from the workplace until the results of the confirmatory test are known.

E.33 Testing Results

E.33.1 Alcohol

- (a) a worker who returns a negative alcohol test will be allowed to return to work with no record of the test kept.
- (b) A worker who returns a positive result for alcohol (above 0.00mg/ml) will be deemed not fit work and will not be permitted to return to work.
- (c) When a worker tests positive to alcohol in their system the worker's BAC may be decreasing or it may be increasing. In the interests of safety, they will be directed to remain within the testing vicinity and they will be re-tested no sooner than 60 minutes after the original test.
- (d) If the second test result is 0.000% the test will be regarded as negative and the Worker may return to normal duties. A Positive Result Confirmatory Test will not be recorded in these circumstances.
- (e) If the later confirmatory test indicates a BAC of greater than 0.000% a Positive Result Confirmatory Test will be recorded.
- (f) Alcohol testing shall be carried out by an Authorised Organisation agreed upon by the PC/Employer and the Union (where the Union is the chosen representative of the Employees). The following steps shall be undertaken:
 - (i) Details of the identity of the Worker to be tested shall be recorded including the workplace name, work area and their Employer will be listed on a drug and alcohol testing record form by the independent Authorised Organisation.
 - (ii) Workers with a BAC of greater than zero (greater than 0.000%) shall discontinue any work activities and shall be directed to undertake a

second test sixty (60) minutes after the first test and the results recorded on a drug and alcohol testing record form by the independent Authorised Organisation.

- (iii) Where the second test indicates a level greater than 0.00% BAC the Worker will be further excluded from work duties for the remainder of the shift;
 - (iv) Where a Worker is to be sent home using their own transport this shall only be permitted if the blood alcohol concentration test result is below that prescribed by applicable road transport legislation and has been determined as not rising for that Worker.
- (g) Note: If the Worker's blood alcohol concentration result is greater than or equal to 0.05% BAC, all reasonable assistance is to be afforded to ensure an affected Worker can make their way from the Workplace to a safe location without harm (e.g. taxi, lift from a friend or Supervisor). The Employer will pay all reasonable transportation costs incurred for the Employee to be transported directly home.
- (h) Contractors will be responsible for the management / arrangements for their Employees in accordance with their own employment arrangements.
- (i) Any Worker that is excluded from work duties for the remainder of a shift or sent home, must before commencing work for their next shift undertake an alcohol breath test prior to commencing that shift. If the results are negative (0.00mg/ml) the Worker shall be allowed to commence work, if the Worker returns a positive test they will not be allowed to commence work and Alcohol-d), from page 12 of this document will apply.

E.33.2 Drugs

- (a) A worker who returns a negative test will be allowed to return to work.
- (b) A worker who returns a non-negative test result from their initial test (equal to or above the relevant cut-off levels of the substances referred to in AS 4760) will be deemed not fit for work and will not be allowed to return to work. Benzodiazepine level to be provided by the prescribed testing laboratory.
- (c) Drug testing will be administered by the collection and analysis of an oral fluids specimen (saliva). Before conducting a drug test, the process used by the independent Authorised Organisation must be explained to the Worker providing the saliva sample.
- (d) Collecting and testing of saliva specimens shall be carried out by an Authorised Organisation, agreed upon by the Employer and the Union (where the union is the chosen representative of the Employees), and confirmatory testing is to be carried by a NATA accredited laboratory.
- (e) A Confirmatory Test will be required where a Non Negative Result Initial Test is recorded at the initial test. The handling of specimens taken for confirmatory testing is detailed in the process used by the Authorised Organisation and must be done to Australian Standards.
- (f) Any worker attending the workplace under the influence of drugs or alcohol will be prohibited from entry. A worker returning to the workplace following their exclusion for a Positive Result Confirmatory test will be required to submit to a

Drug and Alcohol test prior to commencing work and receive a Negative Result Initial Test for Drugs or Alcohol prior to commencing work.

- (g) If a worker returns a Non-Negative Test result all reasonable assistance is to be afforded to ensure an affected Worker can make their way from the Workplace to a safe location without harm (e.g. taxi, lift from a friend or Supervisor). The Employer will pay all reasonable transportation costs incurred for the Employee to be transported directly home.
- (h) Workers who produce a positive confirmatory test result should be provided with a written copy of the test result and advised of counselling and treatment options.

E.34 Forms of Testing

E.34.1 Self-Testing

- (a) The Employer shall be required to provide sufficient self-testing facilities for alcohol and/or drugs for up to 10% of the workforce.
- (b) Where self-test facilities are made available voluntary or self-testing for Alcohol will be available for Workers prior to presenting for work. A wall mounted breathalyser (optional) will be located in an area that provides for discrete privacy for the worker whilst completing the test such that the test results cannot be inadvertently observed and disclosed to other parties.
- (c) A Worker undertakes self-testing at their own accord therefore no test details are recorded. However, all Workers have obligations under the Work Health and Safety Act or equivalent occupational health and safety or occupational safety and health legislation in other states or territories and must not wilfully place at risk their health and safety or the health and safety of other Workers or people at the workplace by commencing work if they believe they're impaired.

E.34.2 Random Shift Testing

- (a) In terms of Random Shift Testing is imperative that the Employer does not know on what day, or at what time the Authorised Testing Organisation will conduct the tests.
- (b) It is a condition of entry for all Workers at any workplace to comply with any request to participate in random Drug and Alcohol testing as a condition of employment or contract. This means that all Workers attending or seeking to attend a workplace will be eligible for testing.
- (c) Testing for Alcohol or other Drugs for Workers shall be mandatory and will be undertaken at any time throughout the Worker's hours of work (including overtime) or at any time while at the workplace.
- (d) Individual Workers will be selected for drug testing using a simple random selection process. A random draw will be conducted using an Authorised Organisations independent software to randomise the selection of Workers for testing.
- (e) The random selection process includes the selection of Workers from across the entire workplace subject to the testing.

- (f) A Worker selected for testing will be required to present themselves for testing within a Reasonable Time. Random shift testing shall be conducted in a room which provides for privacy for the selected worker during testing; the requirements for this room are outlined in the Room Requirements section of this policy.

E.34.3 For Cause Testing

- (a) An Employer may only request an Employee to undertake for cause testing if the following criteria is met:
 - (i) The Employee has been involved in an accident or incident, or had the potential to, cause:
 - (i) serious and major damage to mobile plant or property; or
 - (ii) an injury to themselves or other individual(s); or
 - (ii) Participation in a relevant and specific industry focus area when the worker is undertaking High Risk Work as identified by the Employer and consistent with OHS legislation. Workers will be selected for testing using a random selection process nominated by the Employer following a consultation process in line with OHS legislation.

E.34.4 Post Incident Testing

- (a) After the occurrence of a Significant Incident event at a workplace, all Workers involved in the incident may be required to undergo an Initial Drug and Alcohol test.
- (b) Where a Worker(s) is to be tested following a significant incident event they shall be supervised by an Employer Representative and Employee Representative continually from the time of the incident until they have completed all testing required.
- (c) Post Incident Testing will be conducted as soon as practical after the incident event and when it is safe to do so.
- (d) An injured Worker who requires immediate medical attention may only be tested when it is appropriate and safe to do so. This will be determined by the Construction Manager, the HSR, Delegate (where the Union is the chosen representative of the Employee) and the relevant PIA in consultation with the attending medical practitioner. In such cases, where testing can be conducted while under medical care, a saliva testing process will be used.

E.34.5 Reasonable Concern Testing

- (a) An Employer may only request an Employee to undertake reasonable concern testing if the following criteria is met:
 - (i) An observable phenomenon occurs, which is:
 - (i) the direct observation of the Employee of use of, and/or the physical behavioural symptoms of being impaired by, alcohol and/or
 - (ii) Unusual and/or inexplicable actions by the Employee

(iii) There is evidence that the Employee is involved in the use or possession of alcohol and/or other drugs while working; or

(iv) The Employee has breached safety precautions or procedures.

E.35 Refusal to Test

E.35.1 If a Worker refuses to participate in workplace Drug and Alcohol testing the following will apply;

- (a) The Employer, will inform the Worker and the workers chosen representative, that the refusal will have the same consequences as a non-negative result, i.e. that the Employee will be deemed to be unfit for work due to the presence of alcohol or drugs.
- (b) If the worker still refuses, the Employer and the PIA, shall consult with the worker and the worker's chosen representative, regarding the requirements, process and consequences of refusing to test and encourage them to partake in the test. This would be the second request to be tested.
- (c) If the worker still refuses, the refusal will be treated as a confirmed positive result, and will be subjected to the relevant consequences of such. All reasonable assistance is to be offered to ensure the Employee can make their way from the workplace to a safe location without harm (i.e. Taxi, lift from a friend or fellow worker). An agreed leave of absence arrangement is to apply for the duration of their absence.

E.36 Disciplinary Action

E.36.1 The following sets out the action which may be taken when a worker returns a confirmed positive result to an alcohol or drug test.

E.36.2 First Occasion- A worker who has received a first confirmed positive test for alcohol or drugs (other than by self-testing) will be:

- (a) Required to attend the Support referred to in this policy;
- (b) Informed of the consequences of testing positive and their obligations to present for work, or remain, in a fit state;
- (c) Informed of further disciplinary action and testing requirements should they have a confirmed positive result (alcohol or drug) within the next 12 months.

E.36.3 Second occasion- A worker who has received a second confirmed positive test for alcohol or drugs (other than by self-testing) within any 12-month period will be:

- (a) Required to re-attend the Support referred to in this policy
- (b) Required to participate in a rehabilitation program referred to in "Support" in this policy
- (c) Informed of the consequences of testing positive and their obligations to present, or remain in a fit state;
- (d) Given a verbal warning with a diary entry placed on file; and
- (e) Informed of further disciplinary action and testing requirements should they have a confirmed positive result (alcohol or drug) within the next 12 months.

E.36.4 A worker who has received three confirmed positive test results for alcohol or drugs which has been detected in a 12-month period may be disciplined under the Employer's disciplinary processes.

E.36.5 A worker who fails to attend EAP sessions may be disciplined under this policy in accordance with principles of natural justice.

E.36.6 No disciplinary action will be taken in respect of positive test results from a self- test.

E.37 Support

E.37.1 The Employer will make available support to workers in respect of drug and alcohol issues. This will include:

- (a) allowing access to any Union support programs (if the Employee chooses to access those programs); and
- (b) provide an Employer funded Employee Assistance Provider (EAP) to be available to workers.

E.37.2 The worker will be allowed to access any support program and/or EAP counselling during normal working hours and without loss of pay, or any form of Employer retribution.

E.38 Self- Declaration

E.38.1 Workers will not be disadvantaged for self-disclosure and therefore will be supported through counselling and rehabilitation processes and provided with the Support contained in this policy. In such cases the worker will be required to take accrued leave and may return to work when fit for duty.

E.38.2 The worker may be suspended from any work, with pay, with immediate effect in order for an assessment to be made of the duties they are able to perform safely and a drug and alcohol test is to be taken as soon as reasonably practicable.

E.39 Privacy

E.39.1 Drug and Alcohol testing results shall remain confidential and will only be used for the purpose of compliance with this Procedure in the manner required by the *Privacy Act 1988* (Cth). Any information provided or declared by a Worker regarding:

- (a) Prescribed Drug and Pharmacy Only Drug consumed
- (b) Medical conditions or the like
- (c) Their proposed return to the workplace following exclusion by this procedure
- (d) will also remain confidential and managed in accordance with the *Privacy Act 1988* (Cth).

E.39.2 Similarly, where a Worker supplies information regarding the use, sale or supply of Drugs or Alcohol at a workplace, unless the Worker otherwise agrees or as otherwise required by law, the Worker's identity will be kept confidential.

E.39.3 All Positive Results or Confirmatory Tests will be maintained on the relevant Worker's personnel records located at the workplace.

E.40 Protections from Worker Deoxyribonucleic Acid (DNA) Misuse

E.40.1 Workers selected for testing shall have their personal DNA protected by:

- (a) In the case of unintended collection of a Worker's DNA during the collection of an oral saliva sample for an Initial Test, by the worker being offered the used collection cartridge upon completion of the Initial Test.
- (b) In the case of unintended collection of a Workers DNA during the collection of an oral saliva sample for testing at a NATA approved laboratory for an Initial Non Negative Result Initial Test, by ensuring that the documentation that accompanies the collection cartridge to the NATA approved laboratory does not include the workers name or address but contains only that information sufficient to comply with AS4760 e.g. test report number and date of birth.

E.40.2 These protections will be notified to Workers during training.

E.41 Consultation

E.41.1 If a party believes that an amendment to the Impairment Policy is required, they shall request and organise a consultation meeting involving the Employer, the Union (where the Union is the chosen representative of the Employees) and any other relevant stakeholders.

E.41.2 The attendees shall seek to reach agreement on any proposed amendments

E.41.3 No amendments shall be implemented unless agreement is reached by the Employer, the Union (where the Union is the chosen representative of the Employees) and the relevant stakeholders.

E.42 Employment Assistance Program (EAP)

E.42.1 The Employment Assistance Program (EAP) is an agreed independent, professional and confidential service that aims to provide Employees with assistance when affected by personal or job related problems.

E.42.2 To have a successful Impairment policy at the workplace the policy must address how those at the workplace, including Employees of the principal contractor, subcontractors and their Employees and others, will be required to comply with the Impairment policy.

E.42.3 The below requirements will be audited on an annual basis:

- (a) Must be able to provide EAP support in all states, territories and regional areas of Australia
- (b) Must outline in their Impairment policy how workers who attend for work affected by drugs or alcohol will be counselled and assisted, apart from any disciplinary process that might apply.
- (c) Must have a memorandum of understanding (MOU) with relevant stakeholders within treatment support areas.
- (d) Provide support for their workers and their immediate families

E.42.4 Must be able to provide treatment services which must include the following:

- (a) General counselling
- (b) Drug and Alcohol counselling

- (c) Drug and Alcohol detoxification services
- (d) Drug and Alcohol rehabilitation services
- (e) Case Management services
- (f) Psychology services

E.42.5 Must have a history of delivering support services to the Building and Construction Industry

E.42.6 Must be able to develop and Implement a plan to promote the Impairment Policy within the workplace

Schedule F- Workplace Health and Safety Committee Constitution

F.1 Application

F.1.1 This Constitution is to be adopted for all Workplace Health and Safety Committees (WHSC) on sites covered by this agreement.

F.1.2 The following is noted:

- (a) Whereas references are made to the *Work Health and Safety Act 2011 (ACT)*, the same provisions are mirrored in the *Work Health and Safety Act 2011 (NSW)*.
- (b) 'Project' means building and construction works performed on a site or combination of sites:
 - (i) for an enterprise or undertaking planned to achieve a particular result; and
 - (ii) with a clearly established entity or entities that exercise control over its development; and
 - (iii) contains a scope sufficiently definable at any given point during the project to enable its proper definition and costing.

F.1.3 The Committee may agree to adopt site specific protocols in relation to the operation of the Committee, provided that these protocols do not restrict, avoid or diminish any of the provisions of this Model Constitution.

F.2 Functions and Aims of the Committee

F.2.1 The functions of a Health and Safety Committee are defined by s 77 of the *Work Health and Safety Act 2011 (ACT)*.

F.2.2 The aims of the Committee shall include:

- (a) To keep under review, the measures taken to ensure the health and safety of persons at the place of work, for the duration of the project.
- (b) To promote a safe working culture for the benefit of person's working on or visiting the project.
- (c) To maintain and encourage a high level of safety and environmental awareness for Employees and subcontractors.
- (d) To investigate any matter that may be a risk to health and safety at the place of work
- (e) To assist in resolving any health and safety and environmental issues that may arise but, if unable to do so, to request an investigation by an Inspector for that purpose.
- (f) To advise and assist management and make recommendations regarding health and safety and environmental issues where necessary
- (g) To perform regular and systematic workplace inspections to monitor adherence to WHS legislation and standards.

- (h) To distribute relevant WHS information.
- (i) To provide a forum for facilitating consultation and co-operation between management, subcontractors and workers at the workplace.

F.2.3 The Committee is empowered to adopt standards, rules and procedures relating to health and safety that are to be followed or complied with at the Project.

F.3 Composition of the Committee

F.3.1 The Committee shall have a minimum of six (6) members and a maximum of fifteen (15) members comprising of both Worker and Management Representatives.

F.3.2 The number of Management Representatives shall not exceed 50% of the total number of Committee members.

F.3.3 The Principal Contractor, HSR(s), and the Union (where the Union is the chosen representative of the Employees), shall confer and reach agreement before the establishment of the Committee with respect to the number of Worker and Management Representatives to be appointed or elected.

F.3.4 This Committee will comprise of members drawn and released over the life of the project. All members are to be on the project at all times whilst their Company are undertaking works. The parties agree that it is desirable that all high risk trades are represented on the Committee.

F.3.5 All members of the Committee shall have the following responsibilities:

- (a) To elect Chairman for the Committee
- (b) Actively participate in site safety inspections and Committee meetings
- (c) Be prepared to undertake any training as required
- (d) To support and assist Chairperson and fellow members of the Committee
- (e) To ensure required training been attained
- (f) To be present at Committee meetings on time and as required
- (g) To contact the Chairperson with reasonable notice if member is unable to attend and/or member's Employer is to notify Chairperson if member is absent and arrange for temporary replacement
- (h) Comply with the Work Health & Safety Act

F.4 Management Representatives

F.4.1 The Principal Contractor in control of the Project shall appoint a number of Management Representatives to the Committee.

F.4.2 Management Representatives may include Directors, Managers, Superintendents, Supervisors, Foremen, Engineers, HR/IR Managers and Safety Managers engaged by the Principal Contractor or by a Subcontractor engaged on the Project.

F.4.3 Where there is a Site Safety Manager or other management safety representative appointed in relation to the Project that Manager should be appointed to the Committee as a Management Representative.

F.4.4 The Principal Contractor shall also appoint a senior management representative who is engaged on the Project (such as a Project Manager or Site Manager) as a Management Representative. This person must be a person who has authority to make decisions in relation to WHS on the site.

F.4.5 The Principal Contractor may change the composition of the Management Representatives during the life of the Committee provided they do not constitute more than 50% of the Committee.

F.5 Worker Representatives

F.5.1 Any HSR's and Deputy HSR's (if elected) for the Project shall automatically be Worker Representatives on the Committee.

F.5.2 Any Employee Representatives elected for the Project (who are not also HSR's or Deputy HSR's) shall automatically be further Worker Representatives on the Committee.

F.5.3 A number of other workers who are engaged on that Project either as Employees of the Principal Contractor or Employees of a Subcontractor engaged on the Project shall be elected to the Committee in accordance with the following process:

- (a) A meeting of all the workers engaged on the Project shall be convened. The purpose of this meeting is to call for nominations for Worker Representatives on the Committee.
- (b) The HSR, or in their absence and if one is elected the Deputy HSR, shall chair the meeting.
- (c) Where the number of nominations exceeds the number of positions a ballot shall occur. The HSR or Deputy HSR shall act as Returning Officer.
- (d) The result of the election shall be recorded in writing and notified to all workers on the site by being prominently placed on site noticeboards.

F.5.4 A Worker Representative position may be declared vacant in the event of prolonged absence, transfer to another workplace or retrenchment. An election for a new Workers Representative shall be held within one week of a member's position being declared vacant using the above process.

F.5.5 Management shall not discriminate against or in any way impede any Employee by reason of the fact that the Employee is a member, or has an interest in, the Committee.

F.5.6 Worker Representatives are entitled to the following:

- (a) To spend reasonably necessary paid work time attending meetings, attending training and carrying out their functions as members of the Committee. Any time that a Worker Representative spends for these purposes must be with such pay as they would otherwise be entitled to receive for performing their normal duties during that period.
- (b) To have access to all information that the PCBU has in relation to hazards, risk assessments and the health and safety of workers of workers on that Project, including but not limited to:
 - (i) SWMS or Task Risk Assessments for work being performed on the Project;

- (ii) induction records; and
- (iii) sign-offs by any relevant expert
- (c) To have access to a copy of the applicable WHS legislation (including Regulations), Codes of Practice and guidance notes for construction work.
- (d) Worker Representatives shall be provided with paid time during normal working hours to consult with and report back to Employees in their designated area of work on issues discussed at the Committee. The Committee will determine by consensus the timing and duration of consultation and report back to Employees.

F.6 Training

F.6.1 All Committee members must complete the recognised HSR Training within three months of taking their position in a manner consistent with clause 54 of this agreement.

F.6.2 This training will be valid for a period of two years.

F.7 Committee Chairperson

F.7.1 The Project HSR shall chair meetings of the Committee.

F.7.2 If the Project HSR is absent, the Deputy HSR (if one is elected) shall chair the meeting.

F.7.3 If there are multiple Project HSR's then they shall decide between themselves who shall chair each meeting.

F.7.4 In the event that both the Project HSR and Deputy HSR are absent or unavailable to chair the meeting, the Committee shall elect one of the Worker Representatives to chair that meeting.

F.7.5 The Committee Chairperson shall also have the following responsibilities:

- (a) Schedule times for safety walks and committee meetings.
- (b) Ensure adequate participation from committee members
- (c) Suggest objectives and work priorities for the Committee
- (d) Advise management of safety and environmental inspections and meeting times etc.
- (e) Take notes at meetings to be used to compile minutes of Safety Committee meetings
- (f) Organise the final draft of Safety and environmental Reports/Committee Meeting minutes prior to printing
- (g) Ensure all Safety and Environmental Reports/Committee Meeting minutes are distributed to required stakeholders
- (h) Communicate with management/subcontractors as required
- (i) Follow up required actions

- (j) Recommend training for members of the Committee.
- (k) Support and assist Committee members
- (l) Comply with the Work Health and Safety Act

F.8 Site Inspections

- F.8.1** Site inspections shall take place weekly at a time agreed by the Committee. Inspections shall be co-ordinated to allow Chairperson to attend any relevant meetings scheduled for each week.
- F.8.2** The site inspection agenda to be discussed at informal meeting at start of inspection
- F.8.3** Issues identified during site inspections shall be prioritised and management and/or contractors notified of major/significant safety and environmental issues immediately. If there is an immediate threat to health and safety, then work must stop in the affected area.
- F.8.4** Extra-ordinary inspections may be conducted at the discretion of the Chairperson, the Principal Contractor or on the request of the regulator.
- F.8.5** The Committee shall also conduct an inspection before work recommences after work has ceased due to:
 - (a) Inclement weather, including icy decks.
 - (b) Workplace accident or Incident
 - (c) A natural disaster including but not limited to severe rain event, flood, earthquake, fire or severe wind.

F.9 Meetings of the Committee

- F.9.1** The Committee meeting will be held after the weekly Site Inspection established at sub-clause F.8.1.
- F.9.2** Quorum for the meeting shall be 50% of the Worker Representatives and at least one (1) of the Management Representatives.
- F.9.3** All members of the Committee shall be allowed to be heard on a matter before the Committee.
- F.9.4** The Principal Contractor shall be responsible for taking minutes of each meeting of the Committee and producing a copy of those minutes at the next meeting of the Committee. Minutes of the Committee should be displayed on a noticeboard at a prominent location on the Project for the two weeks following that meeting.
- F.9.5** The Committee Chairperson and Principal Contractor shall be responsible for producing an agenda before each meeting of the Committee. Any member of the Committee may submit matters to be included on the agenda.
- F.9.6** The following default agenda may be adopted:
 - (a) Attendance
 - (b) Apologies
 - (c) Minutes of previous meeting

- (d) Review of the safety rectification required from the last Safety Inspection
- (e) Review of Incident and dangerous occurrences
- (f) Review of any significant site environment changes
- (g) Review of SWMS contents and implementation on site
- (h) Review of any OHS and Environmental procedure (Site Safety Plan) required
- (i) Review of any safety purchase required
- (j) Review of any audit findings and resulting corrective actions required
- (k) General business
- (l) Date of next meeting
- (m) Closure

F.9.7 Decisions of the Committee will be determined by a simple majority of the Committee using a show of hands.

F.9.8 Where there are fewer Worker Representatives than Management Representatives present at a meeting, the Chairperson will nominate a number of Management Representatives to abstain from voting sufficient to ensure that at least 50% of votes cast are by Worker Representative.

Schedule G -- RDO Calendar 2021

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- Public Holiday
- 36 hour week RDO
- Designated Long Weekend
- School Holiday
- 38 hour week RDO

Schedule H – RDO Calendar 2022

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18	19	20	21	22	23	24
25	26	27	28	29	30	31

- Public Holiday
- School Holiday

- 36 hour week RDO
- 38 hour week RDO

- Designated Long Weekend



Schedule I – RDO Calendar 2023

January							February							March						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7				1	2	3	4				1	2	3	4
8	9	10	11	12	13	14	5	6	7	8	9	10	11	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25	19	20	21	22	23	24	25
29	30	31					26	27	28					26	27	28	29	30	31	

April							May							June						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
						1		1	2	3	4	5	6					1	2	3
2	3	4	5	6	7	8	7	8	9	10	11	12	13	4	5	6	7	8	9	10
9	10	11	12	13	14	15	14	15	16	17	18	19	20	11	12	13	14	15	16	17
16	17	18	19	20	21	22	21	22	23	24	25	26	27	18	19	20	21	22	23	24
23	24	25	26	27	28	29	28	29	30	31				25	26	27	28	29	30	
30																				

July							August							September						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
						1			1	2	3	4	5						1	2
2	3	4	5	6	7	8	6	7	8	9	10	11	12	3	4	5	6	7	8	9
9	10	11	12	13	14	15	13	14	15	16	17	18	19	10	11	12	13	14	15	16
16	17	18	19	20	21	22	20	21	22	23	24	25	26	17	18	19	20	21	22	23
23	24	25	26	27	28	29	27	28	29	30	31			24	25	26	27	28	29	30
30	31																			

October							November							December						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7				1	2	3	4						1	2
8	9	10	11	12	13	14	5	6	7	8	9	10	11	3	4	5	6	7	8	9
15	16	17	18	19	20	21	12	13	14	15	16	17	18	10	11	12	13	14	15	16
22	23	24	25	26	27	28	19	20	21	22	23	24	25	17	18	19	20	21	22	23
29	30	31					26	27	28	29	30			24	25	26	27	28	29	30
														31						

-  Public Holiday
-  36 hour week RDO
-  Designated Long Weekend
-  School Holiday
-  38 hour week RDO

Schedule J- RDO Calendar 2024

January							February							March						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6					1	2	3						1	2
7	8	9	10	11	12	13	4	5	6	7	8	9	10	3	4	5	6	7	8	9
14	15	16	17	18	19	20	11	12	13	14	15	16	17	10	11	12	13	14	15	16
21	22	23	24	25	26	27	18	19	20	21	22	23	24	17	18	19	20	21	22	23
28	29	30	31				25	26	27	28	29			24	25	26	27	28	29	30
														31						

April							May							June						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6				1	2	3	4							1
7	8	9	10	11	12	13	5	6	7	8	9	10	11	2	3	4	5	6	7	8
14	15	16	17	18	19	20	12	13	14	15	16	17	18	9	10	11	12	13	14	15
21	22	23	24	25	26	27	19	20	21	22	23	24	25	16	17	18	19	20	21	22
28	29	30					26	27	28	29	30	31		23	24	25	26	27	28	29
														30						

July							August							September						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6					1	2	3	1	2	3	4	5	6	7
7	8	9	10	11	12	13	4	5	6	7	8	9	10	8	9	10	11	12	13	14
14	15	16	17	18	19	20	11	12	13	14	15	16	17	15	16	17	18	19	20	21
21	22	23	24	25	26	27	18	19	20	21	22	23	24	22	23	24	25	26	27	28
28	29	30	31				25	26	27	28	29	30	31	29	30					

October							November							December						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5						1	2	1	2	3	4	5	6	7
6	7	8	9	10	11	12	3	4	5	6	7	8	9	8	9	10	11	12	13	14
13	14	15	16	17	18	19	10	11	12	13	14	15	16	15	16	17	18	19	20	21
20	21	22	23	24	25	26	17	18	19	20	21	22	23	22	23	24	25	26	27	28
27	28	29	30	31			24	25	26	27	28	29	30	29	30	31				

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