



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Foundation Civil & Mining Pty Ltd T/A Foundation Civil & Mining
(AG2023/4268)

FCM MOBILE PLANT & EARTHWORKS (LOY YANG) ENTERPRISE AGREEMENT 2023

Building, metal and civil construction industries

COMMISSIONER CONNOLLY

MELBOURNE, 5 DECEMBER 2023

Application for approval of the FCM Mobile Plant & Earthworks (Loy Yang) Enterprise Agreement 2023

[1] An application has been made for approval of an enterprise agreement known as the *FCM Mobile Plant & Earthworks (Loy Yang) Enterprise Agreement 2023* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Foundation Civil & Mining Pty Ltd T/A Foundation Civil & Mining (the Employer). The Agreement is a single enterprise agreement.

[2] The matter was allocated to my Chambers on 21 November 2023.

[3] I observe the following clauses are likely to be inconsistent with the National Employment Standards (NES). However, noting clause 1.4(c) of the Agreement, I am satisfied the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES:

- Clause 6.3(c) provides annual leave shall be taken in not more than 3 separate periods per year. However, this appears more restrictive than s.88 of the Act which provides annual leave may be taken for a period agreed between an employee and his or her employer and the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.
- Clause 2.12 states termination of employment by abandonment shall operate from the date of last attendance at work or the last day's absence in respect of which consent was granted, or the date of the last absence in respect of which notification was given to FCM whichever occurs last. However, s.117(1) of the Act provides an employee must be given notice of the day of termination, which cannot be the day before the notice is given.

- Clause 6.5 is silent on leave for the permissible occasion of miscarriage or stillbirth, as provided by s.104 of the Act.
- Clause 6.8(A)(ii) states the employee shall within eight hours of the commencement of absence inform the Employer of their inability to attend for duty. However, s.107 (2)(a) of the Act provides notice may be given after leave has started.

[4] The *notification time* for the Agreement under s.173(2) of the Act was 3 October 2023 and the Agreement was made on 31 October 2023. Accordingly, the legislative changes to the Act in relation to the *genuine agreement* provisions and the *better off overall test* (BOOT), which commenced on 6 June 2023 apply to this approval application.¹

[5] Section 193 of the Act relevantly provides, for the purposes of the BOOT, that the Commission must be satisfied, at the time the application for approval was made, that each award covered employee, and each reasonably foreseeable employee, for the agreement would be better off overall if the agreement applied to the employee than the relevant modern award.

[6] The relevant award applicable to this application is the *Building and Construction General On-Site Award 2020* (Building Award). In applying the BOOT the Commission is required by s.193A to make a global assessment of whether each employee would be better off having regard to the terms of the agreement which would be more beneficial than the Award and the terms which would be less beneficial. In making that assessment, the Commission may have regard to the patterns of work that are reasonably foreseeable at the time of the application.

[7] I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met. For the purposes of the BOOT, I have had regard to each of the matters in s.193A(2)-(7). For the purposes of s.193A(6A) I note the Mining and Energy Union (MEU) being a bargaining representative for the Agreement are of the view that the Agreement passes the BOOT.

[8] The MEU supports the approval of the Agreement and has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[9] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 days after the date of approval of the Agreement. The nominal expiry date of the Agreement is 4 December 2026.



¹ The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) made a number of changes to enterprise agreement approval processes in Part 2-4 of the Fair Work Act. Those changes broadly commenced operation on 6 June 2023, subject to various transitional arrangements that included those to effect described above.

COMMISSIONER

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**FCM MOBILE PLANT &
EARTHWORKS (LOY YANG)
ENTERPRISE AGREEMENT
2023**

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1. APPLICATION AND OPERATION

1.1 Title

This Agreement shall be known as the FCM Mobile Plant & Earthworks (Loy Yang) Enterprise Agreement 2023 ('**the Agreement**').

1.2 Parties

The parties to this Agreement are:

- (a) Foundation Civil & Mining Pty Ltd ('**FCM**'); and
- (b) Employees employed by FCM in the Mobile Plant and Earthworks business engaged to work at the Loy Yang site ('**the business**') who fall within the classifications in clause 3.2 of this Agreement ('**the Employees**').

1.3 Application, Scope and Coverage

- (a) This Agreement binds and covers:
 - (i) FCM; and
 - (ii) the Employees; and
 - (iii) the unions that apply to the Fair Work Commission to be covered by the Agreement.

1.4 Sanctity of Agreement

- (a) Subject to 1.4(b) this Agreement is stand alone and insular in nature and has been developed by the parties to reflect and accommodate the specific circumstances of the business. Unless referred to herein, this Agreement shall supersede and replace all previous Awards, Certified Agreements and all other local Agreements whether written or verbal in their entirety.
- (b) This Agreement shall incorporate the Building and Construction General On-site Award 2020 as at the date of operation of this Agreement. Where there is any inconsistency between this Agreement and the Award, this Agreement shall take precedence to the extent of the inconsistency.
- (c) 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.

1.5 Term of Agreement

This Agreement shall operate from the 7th day after the Agreement has been approved by the Fair Work Commission and shall have a nominal expiry date three years from the date of approval.

2. TERMS AND CONDITIONS OF EMPLOYMENT

2.1 Confirmation of Employment

All new employees, at the time of engagement, will be given a letter outlining their conditions of employment.

2.2 Flexibility

FCM may direct an employee to carry out any duties, which are within the limits of the employee's skill, competence and authorisation.

Any direction by FCM shall be consistent with its responsibility to provide a safe and healthy working environment.

2.3 Productivity

It is recognised by the parties that in order to achieve a viable production operation the parties to this agreement must commit themselves to improve the productivity of the business.

In particular it is recognised that FCM's success is based on achieving levels of productivity consistent with international best practice.

FCM commits to make available appropriate technical advances and to apply the necessary expertise, skills and facilities. In return the parties commit to a high level of co-operation between the production employees and management at all levels to enable production to flow freely and efficiently with an ability to accommodate changes in the work plan and varying opportunities to ensure profitability.

2.4 Individual Flexibility Arrangement

- (a) FCM and an employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if the Agreement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
- (b) the arrangement meets the genuine needs of FCM and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
- (c) the arrangement is genuinely agreed to by FCM and employee.
- (d) FCM must ensure that the terms of the individual flexibility arrangement:
 - (i) are about permitted matters under section 172 of the Fair Work Act 2009 (**'the FW Act'**);
 - (ii) are not unlawful terms under section 194 of the FW Act;
 - (iii) result in the employee being better off overall than the employee would be if no arrangement was made.
- (e) FCM must ensure that the individual flexibility arrangement:

- (i) is in writing; and
- (ii) includes the name of FCM and the employee; and
- (iii) is signed by FCM and the employee (and if the employee is under 18 years of age, signed by a parent or guardian of the employee); and
- (iv) includes details of:
 - (A) the terms of the Agreement that will be varied by the arrangement; and
 - (B) how the arrangement will vary the effect of the terms; and
 - (C) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- (v) states the day on which the arrangement commences.
- (f) FCM must give the employee a copy of the individual flexibility arrangement within fourteen (14) days after it is agreed to.
- (g) FCM or the employee may terminate the individual flexibility arrangement:
 - (i) by giving no more than twenty eight (28) days written notice to the other party to the arrangement; or
 - (ii) if FCM and the employee agree in writing — at any time.

2.5 Probationary Employment

All new employees other than casuals shall have a probationary period of three months. During the probationary period the employee's service will count for the purposes of accruing entitlements and benefits, which apply under this Agreement.

During the probationary period, FCM or the employee may terminate employment by giving one week's notice.

2.6 Weekly Employment

All employees shall be engaged on a weekly basis unless specifically engaged as a casual or seasonal worker.

2.7 Casual Employees

- (a) A casual employee is an employee employed on an occasional basis and whose work pattern is not regular and systematic. When a person is engaged for casual employment the employee will be informed in writing that the employee is to be employed as a casual, the job to be performed, the classification level, the actual or likely length of engagement including number of hours to be worked per week, and the relevant rate of pay.
- (b) A casual employee shall be entitled to all the applicable rates and conditions of employment prescribed in this Agreement except

annual leave, personal leave, jury service and public holidays.

- (c) On each occasion a casual employee is required to attend work the employee shall be entitled to payment for a minimum of four hours work plus the relevant fares and travel allowance.
- (d) A casual employee for working ordinary hours shall be paid 125 percent of the hourly rate prescribed in this Agreement for the employees' classification.
- (e) A casual employee required to work overtime or weekend shall be entitled to the relevant penalty rates prescribed in this Agreement.
- (f) A casual employee (if eligible) may seek that their casual employment be converted to full time or part time employment in accordance with the provisions of the relevant award.
- (g) Termination of all casual employment shall require one hours' notice on either side or the payment or forfeiture of one hours pay, as the case may be.

2.8 Seasonal Workers

- (a) Seasonal workers may be employed during the dry months of the year, usually November to May.
- (b) Seasonal workers will be paid the hourly rate prescribed in this Agreement for the employee's classification for each hour worked.
- (c) Banked RDO's when paid out will be paid at the rate at which the entitlement was accrued.

2.9 Counselling and Discipline Procedure

FCM's Counselling and Discipline Procedure is a structured approach to handling employee discipline matters. It will be invoked in cases where unacceptable employee performance and/or conduct requires disciplinary action.

Performance and conduct related matters shall be resolved by the application of the FCM Counselling and Discipline procedure outlined in the table below.

Employees have the right to involve a witness which may include an employee representative of their choice, at any stage in the process.

After a period of twelve (12) months an employee with a warning will have that warning commuted and if they have more than one warning they will be moved back one step in the process. Where an employee invokes the grievance procedure the discipline process will be on hold until the grievance is resolved.

Steps	Who's Involved	Records
1. Oral Warning	Employee Team Leader Employee Representative notified of	Diary note. Note to file <u>only if</u> reaction to the disciplinary action by the employee is

	disciplinary action if requested	unacceptable
2. First Written Warning	Employee Team Leader Employee Representative or Witness if requested	Note to file, signed by both employee and Team Leader, detailing the reason for the disciplinary action.
3. Final Written Warning	Employee Team Leader Employee Representative or Witness if requested Line Manager	Note to file, signed by both employee and Team Leader, detailing the reason for the disciplinary action.
4. Dismissal	As above plus Senior Manager and if requested by the employee the Union at District level or other representative of the Employees choice.	Note to file detailing the reasons for dismissal.

This clause does not prevent summary dismissal on account of serious and willful misconduct.

2.10 Termination

(a) Notice of Termination by FCM

- (i) In order to terminate the employment of an employee FCM shall give to the employee the following notice:

Employee's Period of Continuous Service with FCM	Period of Notice
Less than one year	At least 1 week
One year and not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

- (ii) In addition to the notice in sub-paragraph 2.10(a)(i),

employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, shall be entitled to an additional week's notice.

- (iii) Payment in lieu of the notice prescribed in sub-clause 2.10(a)(i) and 2.10(a)(ii) shall be made if the appropriate notice period is not given. Such payment shall be calculated in accordance with the FW Act.
- (iv) The period of notice in this clause shall not apply in the case of termination of casual employees, apprentices, or employees engaged for a specific period of time or for a specific task or tasks.
- (v) FCM will have the right to dismiss any employee without notice for conduct that justifies instant dismissal. In such cases the wages shall be paid up to the time of dismissal only.

(b) Notice of Termination by the Employee

The notice of termination of employment required to be given by an employee shall be the same as that required of FCM, except that there

shall be no additional notice based on the age of the employee concerned.

2.11 Employment Security & Redundancy

(a) Obligation to Consult

- (i) Where FCM has made a definite decision that it no longer wishes the job an employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, management shall hold discussions with the employee/s directly affected and if requested an employee representative of their choice throughout the process.
- (ii) The discussions shall take place as soon as is practicable after FCM has made a definite decision which will invoke the provisions of sub-clause 2.10(a)(i) hereof and shall cover any reasons for the proposed termination.

(b) Severance Pay

(i) Non Seasonal Employees

Upon commencement of this Agreement, \$140.00 per week shall be paid into each employee's account with Incolink for each week of service. This amount will increase by 4% on:

- 1 July 2024; and
- 1 July 2025.

(ii) Seasonal Employees

Upon commencement of this Agreement, Seasonal employees shall accrue severance pay at the equivalent rate of \$3.50 per hour worked to a maximum of 38 hours per week for the first 28 weeks each season.

This amount will increase by 4% on:

- 1 July 2024; and
- 1 July 2025.

This amount will be deposited into employees Incolink accounts on a monthly basis.. Beyond 28 weeks until the end of the season severance pay will only accrue at the Incolink industry weekly rate until the season finishes.

(iii) Casual Employees

Casual employees shall be entitled to a pro rata entitlement (based on the non-seasonal employee entitlement – see (i) above) that shall be paid into the employee's Incolink account. The pro-rata entitlement will be based on the number of ordinary hours a casual employee works each week, up to total ordinary time of 36 hours per week. To avoid doubt, the maximum weekly contribution will not exceed \$80.00 (indexed for movement in industry agreements).

(c) Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in 2.11(a)(i) hereof may terminate employment during the period of notice, and if so, shall be entitled to the same benefits and payments under this clause had the employee remained with FCM until the expiry of such notice, provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

(d) Time Off During Notice Period

- (i) During the period of notice of termination given by FCM, an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (ii) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of FCM, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose, a statutory declaration will be sufficient.

(e) Notice to Centrelink

- (i) Where a decision has been made to terminate 15 or more employees in the circumstances outlined in sub-clause 2.11(a), FCM will notify Centrelink as soon as practicable after making the decision by giving written notice about the proposed terminations.

(f) Employees Exempted (Ancillary Employees)

Clause 2.11 shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specified task or tasks or to seasonal workers (with the exception, in respect of Seasonal Workers, of clause 2.11(b)(ii)).

2.12 Abandonment

The absence of any employee from work for a continuous period exceeding three (3) working shifts without the consent of FCM and without notification to FCM shall be prima facie evidence that the employee has abandoned their employment. During such period, FCM will make every reasonable attempt to contact an employee prior to terminating their employment.

Termination of employment by abandonment shall operate from the date of last attendance at work or the last day's absence in respect of which consent was granted, or the date of the last absence in respect of which notification was given to FCM whichever occurs last.

2.13 Stand Down

Subject to this clause, FCM has the right to stand down an employee(s) for part or all of a day for serious misconduct or where industrial action occurs.

FCM has the right to stand down an employee if the employee cannot be usefully employed after three (3) or more days because of major breakdowns in machinery or equipment or any stoppage of work for which FCM cannot reasonably be held responsible. Alternative available work, training and leave taking opportunities shall be considered before stand-downs occur.

Prior to any stand downs occurring due to major breakdowns or other stoppages (excluding industrial action), the consultative processes in this Agreement will be applied.

Any employee who is stood down under this clause shall be treated for all purposes (other than payment of wages) as having continuity of service and employment.

2.14 Dispute Grievance Procedure

In the event of any dispute arising as to the interpretation or application of this Agreement or the NES the procedure outlined below will apply.

The aim of the Dispute/Grievance Procedure is to:

- (a) Provide a mechanism to assist in the avoidance of grievances and or disputes;
- (b) Provide a mechanism to process grievances and or disputes in an orderly way;
- (c) Enable both parties to process disputes expeditiously and without disruption to normal work or prejudice to the final settlement; and
- (d) Provide a mechanism to resolve disputes over the disciplinary procedure.

In the event of an individual, their employee representative (which may, if the employee chooses, include a union) or FCM raising a dispute or grievance the following actions shall be taken.

- Step 1** In the event of an employee having a grievance or dispute, the employee shall in the first instance attempt to resolve the matter with his/her immediate supervisor, who shall respond to the matter as soon as reasonably practicable under the circumstances.
- Step 2** If the grievance or dispute is not resolved by the immediate supervisor, the dispute/grievance shall be referred to the relevant site manager, and at the employee's request a representative of their choice.
- Step 3** If the grievance/dispute remains unresolved the matter shall, at the employee's request, be referred to another representative, which may, if the employee chooses, include a District Official of a union.

On request by an employee, their Employee Representative may be present during any stage of the grievance procedure, subject to any right of entry, where applicable, being strictly in accordance with Part 3-4 of the FW Act.

Whilst these procedural steps are being followed, in accordance with sensible time limits, Employees who are parties to a dispute must, while the dispute is being resolved:

- (a) Continue to work in accordance with their contract of employment, unless the employee has a reasonable concern about an imminent risk to their safety; and
- (b) Comply with any reasonable direction given by FCM to perform other available work within the same locality.

Notwithstanding the provisions of (a) and (b) immediately above, where matters have been discussed under the provisions of clause 7.1 (Consultation) and where FCM proposes to implement a change to a work practice or working arrangement as a result of those discussions, FCM must:

- (a) Notify employees of the change; and,
- (b) Give employees a minimum of three (3) days' notice prior to the date of the implementation of the change.

In the event that FCM is notified that employees dispute the change prior to the date of implementation, the change will not be implemented. Work will continue in the way it was performed prior to the proposed change until the steps in the Dispute Grievance Procedure are completed and/or the dispute is resolved.

If FCM is not notified of a dispute during the three (3) day notice period, the change will be implemented on the proposed implementation date.

If, after discussions between the parties, in accordance with the steps outlined in this procedure, a dispute remains unresolved, either party may make application to Fair Work Commission for assistance in the form of Conciliation and/or Arbitration or any other means the Fair Work Commission considers appropriate. Any arbitration decision must be consistent with any applicable legislative obligations and any applicable

Building and Construction codes of practice including the Code for Tendering and Performance of Building Work 2016 or the Victorian Code and Guidelines.

3. WAGES AND ALLOWANCES

3.1 Sign on Bonus

Upon commencement of this Agreement, existing Employees employed by FCM and covered by this Agreement shall be paid by EFT transfer the sum of \$2,000, taxed as applicable.

3.2 Classifications and Rates of Pay

- (a) Classifications and skill levels as described in this clause are to cover all aspects of FCM's operations at the Loy Yang site which are not covered by separate FCM Enterprise Agreements.
- (b) Employees shall be classified and paid the following hourly all purpose base rates:

(i)	Group 1— Labourer, Spotter, Fuel Tanker Driver/Greaser, Trainee Plant Operator	
<u>\$48.08</u>	Effective first full pay period after	1 July <u>2023</u>
<u>\$50.00</u>	Effective first full pay period after	1 July <u>2024</u>
<u>\$52.00</u>	Effective first full pay period after	1 July <u>2025</u>
(ii)	Group 1a— Servicemen (New Entrant)	
<u>\$48.77</u>	Effective first full pay period after	1 July <u>2023</u>
<u>\$50.72</u>	Effective first full pay period after	1 July <u>2024</u>
<u>\$52.75</u>	Effective first full pay period after	1 July <u>2025</u>
(iii)	Group 2— General Plant Operator And Accredited Serviceman	
<u>\$50.81</u>	Effective first full pay period after	1 July <u>2023</u>
<u>\$52.84</u>	Effective first full pay period after	1 July <u>2024</u>
<u>\$54.96</u>	Effective first full pay period after	1 July <u>2025</u>
(iii)	Group 3 — Plant Operator — Excavator Operator (under 60 Tonnes), Accredited Dozer And Grader	
<u>\$51.26</u>	Effective first full pay period after	1 July <u>2023</u>
<u>\$53.31</u>	Effective first full pay period after	1 July <u>2024</u>
<u>\$55.44</u>	Effective first full pay period after	1 July <u>2025</u>

(iv)	Group 4 — Excavator Operator (Over 60 Tonnes), Heavy Earthmoving Plant Mechanic — New Entrant	
<u>\$53.05</u>	Effective first full pay period after	1 July 2023
<u>\$55.17</u>	Effective first full pay period after	1 July 2024
<u>\$57.37</u>	Effective first full pay period after	1 July 2025
(v)	Group 5 — Special Class, Attainable After Accredited Training	
<u>\$55.59</u>	Effective first full pay period after	1 July 2023
<u>\$57.81</u>	Effective first full pay period after	1 July 2024
<u>\$60.12</u>	Effective first full pay period after	1 July 2025

3.3 Payment of Wages

All monies payable pursuant to this Agreement shall be paid weekly by electronic transfer of funds into an account nominated by the employee with a bank or other financial institution recognised by FCM.

3.4 Higher Duties

Where an Employee is required to temporarily operate plant which attracts a higher rate of pay, that Employee will be paid at the higher rate for the full day (7.2 hours) the Employee operated such plant.

3.5 Allowances

Employees engaged by FCM shall be entitled to the following allowances.

(a) Fares & Travelling

Employees will be paid the following allowance for fares and travelling for each day an employee attends for work:

<u>\$42.19</u>	Effective first full pay period after 1 July 2023
<u>\$43.88</u>	Effective first full pay period after 1 July 2024
<u>\$45.63</u>	Effective first full pay period after 1 July 2025

Fares and Travelling allowance shall be paid on rostered days off.

(b) Disability Allowance

An hourly all purpose disability allowance will be paid as follows:

<u>\$3.20</u>	Effective first full pay period after 1 July 2023
<u>\$3.33</u>	Effective first full pay period after 1 July 2024
<u>\$3.46</u>	Effective first full pay period after 1 July 2025

(c) FCM Mobile Plant Business Allowances

An hourly all purpose allowance titled The FCM Mobile Plant Business Allowance shall be paid as follows:

\$2.89	Effective first full pay period after 1 July 2023
\$3.00	Effective first full pay period after 1 July 2024
\$3.12	Effective first full pay period after 1 July 2025

(d) Track Shifting Allowance

The following non all purpose allowance will be paid to those dozer operators engaged on rolling track during track shifting operations. This allowance will be paid for all hours on the days where track shifting occurs:

\$2.26/hour	Effective first full pay period after 1 July 2023
\$2.35/hour	Effective first full pay period after 1 July 2024
\$2.44/hour	Effective first full pay period after 1 July 2025

(e) Leading Hand Allowances

A weekly all purpose allowance shall apply to those carrying out Leading Hand duties as follows:

\$67.84	Effective first full pay period after 1 July 2023
\$70.55	Effective first full pay period after 1 July 2024
\$73.38	Effective first full pay period after 1 July 2025

(f) First Aid Allowance

A stand alone allowance will be paid to First Aiders appointed by FCM who hold a current First Aid Certificate as follows:

\$3.36/day	Effective first full pay period after 1 July 2023
\$3.49/day	Effective first full pay period after 1 July 2024
\$3.63/day	Effective first full pay period after 1 July 2025

3.6 Tool Allowance

A non all purpose tool allowance will be paid to Earthmoving Plant Fitters covered by this Agreement as follows:

\$35.93/week	Effective first full pay period after 1 July 2023
\$37.37/week	Effective first full pay period after 1 July 2024
\$38.86/week	Effective first full pay period after 1 July 2025

3.7 Superannuation

- (a) Subject to the Superannuation Guarantee Legislation:
 - (i) From the first full pay period after the commencement of this Agreement, FCM shall contribute the minimum superannuation benefits at the appropriate level as determined by the relevant Superannuation legislation into the employee's C+Bus Superannuation fund.
- (b) FCM will make deductions from the wages of employees who so authorise such deductions for voluntary contributions to the fund with the consent of the trustee in accordance with the trust deed.

3.8 Salary Packaging

The employee's ordinary time earnings and appropriate allowances shall be used for the purposes of superannuation salary. Salary sacrificing shall not reduce the ordinary time earnings and appropriate allowances that are used for the purposes of superannuation or other benefits or entitlements.

To the extent allowable by the Australian Taxation Office, employees may elect to salary sacrifice a portion of their salary to cover:

- (a) Personal superannuation contribution;
- (b) For permanent weekly Employees, novated and/or associate leasing of motor vehicles through an agreed leasing company; or
- (c) Union Membership Fees.

3.9 After Hours Phone Allowance

Employees will be paid an allowance of \$55 for each 24-hour period they are directed to be 'On Call'. 'On Call' is when an Employee is rostered to respond to any phone calls on the Company's mobile phone after the Employee has finished their normal rostered hours of work.

All onsite Supervision including Leading Hands are to be expected to be part of the On Call roster as part of their employment.

Employees will be asked to request for availability duty on public holidays as per NES.

(a) After Hours Phone Allowance - Public Holiday or RDO

An Employee rostered for availability duty on a public holiday or RDO shall receive, in addition to his or her on call allowance, payment at the rate of double time (in-lieu of normal time).

4. HOURS OF WORK

4.1 Hours of Work – Day Work

- (a) The ordinary hours of work shall be an average of 36 per week exclusive of lunch break. Operators shall be available to commence work and cease work at the crib sheds adjacent to the car park at the prescribed start and finish times and at the job location as directed within the operating areas of the Loy Yang site.
- (b) The ordinary hours of work prescribed on any day shall be worked continuously, except for meal breaks, at the discretion of FCM

between

6.00 am and 6.00 pm Monday to Friday.

4.2 Hours of Work – Shift Work

FCM, under normal circumstances, will require shift work to maintain unimpeded production.

(a) Definitions — for the purpose of this clause:

- (i) Afternoon Shift means any shift finishing after 6.00 pm and at or before midnight.
- (ii) Continuous Work means work carried on with consecutive shifts of people throughout the 24 hours of each of at least five consecutive days without interruption, except during breakdowns or meal breaks or due to unavoidable causes beyond the control of FCM.
- (iii) Night Shift means a shift finishing after midnight and at or before 8.00 am.
- (iv) Rostered Shift means a shift of which the employee concerned has had at least 24 hours' notice.

(b) Hours — Continuous Work Shifts

This sub-clause shall apply to shift workers on continuous work as hereinbefore defined. The ordinary hours of shift workers shall average 36 per week or shorter as agreed inclusive of crib time which shall be taken between the 5th and 6th hour after commencement so as not to impede production.

(c) Afternoon and Night Shift Allowances

A shift worker whilst on afternoon or night shift shall be paid for such shift at 30% more than the ordinary rate for ordinary time hours.

(d) Public Holiday Shifts

Shift workers on continuous work on rostered shift, the major portion of which is performed on a public holiday, shall be paid at the rate of double time and a half.

(e) Where the major portion of a shift which falls on a public holiday, that shift shall be regarded as the holiday shift.

(f) Shift Rosters

- (i) Mobile plant crews may be required by FCM to work two rotating shifts, 6 days per week as directed. Overtime hours will be paid at the appropriate penalty.
- (ii) Every endeavour will be made to post shift rosters 72 hours in advance of their implementation. However FCM reserves the right to change rosters with a minimum of 48 hours' notice without incurring penalty.

4.3 Rostered Days Off

(a) RDO Rosters

- (i) RDO rosters shall be prepared for the site prior to the

commencement of each year. Rosters shall be prepared in consultation with the workplace representatives.

- (ii) It is recognised that this site requires Monday to Friday coverage (10-day coverage) and as a result the RDO roster will identify workgroups for the purpose of taking their RDOs on alternate Mondays.
- (b) Banking and Pay Out of RDO's
 - (i) Subject to sub clause (ii), Day Work and Shift Work employees will be able to bank rostered days off.
- (c) Where an employee has banked RDO's to his/her credit, such RDO's will be paid out at the rate at which the RDO's were accrued. RDO balances will be converted prior to each wage increment.
- (d) Day work
 - (i) Employee may take the banked RDOs at a mutually acceptable time on the understanding that RDO balances will be cleared prior to taking annual leave.
 - (ii) In the event that an employee is required to work on their scheduled RDO the payment for that work will be at Saturday rates and a day off in lieu will be provided.
- (e) Shift work

The working of a thirty-six (36) hour week or shorter as agreed, must provide maximum flexibility in respect of working requirements. The maintenance crew will stagger its rostered days off such that the maximum number of maintenance personnel is available for work when the production crew is absent. Employees will have the ability to bank their rostered days off, in accordance with clause 4.3(c), and will take them at a mutually acceptable time on the understanding that RDO balances will be cleared prior to taking annual leave balances.

4.4 Breaks

The working of a 36 hour week or shorter as agreed, must provide maximum flexibility in respect of working requirements. The maintenance crew will stagger its rostered days off such that the maximum number of maintenance personnel is available for work when the production crew is absent. Employees will have the ability to bank their rostered days off, in accordance with clause 4.3(c), and will take them at a mutually acceptable time on the understanding that RDO balances will be cleared prior to taking annual leave balances.

- (a) Meal breaks shall be for a period of 30 minutes. The time during which a meal break is taken may be varied to meet special work conditions. The duration and commencement time of meal breaks may be varied by the site consultative committee.
- (b) The time of taking a scheduled meal break or smoko breaks by one or more employees may be altered by FCM if it is necessary to do so in order to meet a requirement for continuity of operations. Smoko breaks shall be taken at the work location provided that suitable amenities are available.

- (c) FCM may stagger the time of taking a meal and rest break to meet operational requirements.
- (d) Subject to the provisions of sub-clause 4.4(a) hereof, an employee employed as a regular maintenance employee shall work during meal breaks at the ordinary rates or pay whenever instructed to do so for the purpose of making good breakdown of plant or upon routine maintenance of plant which can only be done while such plant is idle.

4.5 Maximum Hours of Work

Except for an emergency no employee shall be required to work more than 16 hours on any one day or shift.

5. OVERTIME

5.1 Day Workers

Subject to sub-clause 5.4 of this Agreement, for all time worked in excess of the ordinary hours prescribed by this Agreement, the rate of pay for a day-worker shall be double time until the completion of the overtime work.

5.2 Shift Workers

Shift workers shall, for all time worked in excess of the ordinary working hours prescribed by this Agreement, be paid at the rate of double time.

5.3 Requirement to Work Reasonable Overtime

FCM may require any employee to work reasonable overtime as demonstrably required by the task at hand having regard to the personal requirements of the employee.

5.4 Rest Period after Overtime

- (a) When overtime is necessary it shall, wherever reasonably practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive days.
- (b) An employee who works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day that the employee has not had at least ten consecutive hours off duty between those times shall, subject to this sub-clause, be released after completion of such overtime until the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (c) If on the instructions of FCM such an employee resumes or continues work without having had such ten consecutive hours off duty, payment shall be at double time until released from duty for such period and the employee shall then be entitled to be absent until the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (d) The provisions of this sub-clause shall apply in the case of shift workers with eight hours being substituted for ten hours when

overtime is worked:

- (i) For the purpose of changing shift rosters; or
- (ii) Where a shift worker does not report for duty and a day worker or a shift worker is required to replace such shift worker; or
- (iii) Where a shift is worked by arrangement between the employees themselves.

5.5 Call Back

An employee called back to work overtime after leaving FCM's premises (whether notified before or after leaving the premises) shall be paid for a minimum of four hours' work, or where the employee has been paid for standing by in accordance with sub-clause 5.7 shall be paid for a minimum of three hours' work at the appropriate rate for each time recalled; provided that:

- (a) except in the case of unforeseen circumstances arising, the employee shall not be required to work the full three or four hours as the case may be if the job the employee was recalled to perform is completed within a shorter period;
- (b) overtime worked in the circumstances specified in this sub-clause shall not be regarded as overtime for the purpose of sub-clause 5.4 of this clause when the actual time worked is less than three hours on such recall or on each of such recalls;
- (c) this sub-clause shall not apply in cases where it is customary for an employee to return to FCM's premises to perform a specific job outside ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

5.6 Saturday Work

A day worker required to work overtime on a Saturday shall be afforded at least four hour's work or paid for four hours at the appropriate rate, except where such overtime is continuous with overtime commenced on the day previously.

5.7 Standing By

An employee required to hold himself in readiness to work after ordinary hours shall, until released, be paid standing-by time at ordinary rates from the time which the employee is told to hold in readiness.

5.8 Meal Times on Overtime

- (a) When an employee is required to work overtime after the usual ceasing time of the day or shift for two hours or more, the employee shall be allowed to take, without deduction of pay, a crib time of twenty minutes in duration immediately after such ceasing time and thereafter, after each four hours of continuous work, (also without deduction of pay), a crib time of 30 minutes in duration. In the event of an employee remaining at work after the usual ceasing time without taking the crib time of twenty minutes and continuing at work for a period of two hours or more, the employee shall be

regarded as having worked twenty minutes more than the time worked and be paid accordingly.

- (b) Where a day worker is required to work on a Saturday or Sunday the first prescribed crib time will be paid at the appropriate rate.

5.9 Meal Allowance

An employee required to work overtime for at least one and one half hours after working ordinary hours shall be paid an amount of \$15.81 to meet the cost of a meal.

6. LEAVE AND STATUTORY HOLIDAYS

6.1 National Employment Standards

Part 6 of this Agreement describes the NES entitlements and may also provide terms that supplement or are ancillary to the entitlements in the NES.

The parties acknowledge that the clauses contained in Part 6 only apply to the extent that they are not detrimental to an employee when compared with the NES.

6.2 Taking of Leave

Unless otherwise specified under this clause, leave entitlements shall be taken to meet the needs of the business and the individual.

6.3 Annual Leave

(a) Entitlement

- (i) Full time employees will be entitled to four (4) weeks (144 hours) annual leave.
- (ii) Employee's annual leave accrues progressively during a year of service according to an employee's ordinary hours of work and accumulates from year to year.

(b) Additional Annual Leave Entitlements

In addition to the annual leave entitlements, a continuous shift worker (as defined in the FW Act) will be entitled to an additional week of annual leave. Such additional leave will accrue on a pro-rata basis.

(c) Requirement to take Annual Leave

- (i) Annual leave shall be taken in not more than 3 separate periods per year.
- (ii) Where FCM shuts down its plant or sections thereof for the purposes of allowing annual leave to all or the bulk of the employees on the project, it may do so by giving not less than one month's notice of its intention to do so.
- (iii) FCM may close down its plant for two or three separate periods per year for the purpose of granting annual leave in accordance with this clause.

(d) Payment of Annual Leave

Annual leave will be paid at the employee's all purpose base rate plus a 17.5% loading.

(e) **Payment on Termination**

Payment of annual leave and proportionate leave on termination shall be at the rate of ordinary time earnings (applied to the accrued hours) plus 17.5% loading.

6.4 Long Service Leave

Long service leave entitlements for each employee will accrue with the Coinvest (construction industry long service leave fund) scheme. FCM will contribute into the Coinvest scheme at the agreed industry rate.

6.5 Compassionate Leave

- (a) An employee on weekly employment shall be entitled to a maximum of two days without loss of pay on each occasion when a member of the employee's immediate family or household dies or contracts or develops a personal illness that poses a serious threat to his or her life or sustains a personal injury that poses a serious threat to his or her life. Employees must provide evidence for such leave.
- (b) The FW Act defines immediate family or household as the employee's husband, wife, father, mother, brother, sister, child, stepchild, grandfather, grandmother or parents-in-law. For the purpose of this clause, the words "wife" and "husband" shall include defacto wife or husband, and the words "father" and "mother" shall include foster father or mother and stepfather or mother.

6.6 Public Holidays

- (a) A full time employee shall be entitled to the following public holidays without loss of pay:
 - (i) New Years Day
 - (ii) Australia Day
 - (iii) Labour Day
 - (iv) Good Friday
 - (v) Easter Saturday
 - (vi) Easter Sunday
 - (vii) Easter Monday
 - (viii) Anzac Day
 - (ix) Queen's Birthday
 - (x) Friday before the AFL Grand Final
 - (xi) Melbourne Cup
 - (xii) Christmas Day
 - (xiii) Boxing Day
 - (xiv) Any other gazetted public holiday by the Victorian government

- (b) With the exception of Easter Saturday and Easter Sunday, where any of the above public holidays fall on a Saturday or Sunday, the following working day will be the public holiday.
- (c) Seasonal workers will be entitled to any of the above public holidays that fall during the term of their engagement.
- (d) Where an employee is absent from their employment on the working day before or after a public holiday without reasonable excuse or without consent of FCM, the employee shall not be entitled to payment for such holiday.

6.7 Picnic Day

Employees will be granted time off without loss of ordinary pay to attend the annual picnic day. The picnic day each year will be determined between FCM and a majority of employees.

Casual employees will be entitled to payment for picnic day if they attend work on the day before or after the nominated picnic day.

6.8 Personal Leave

Weekly employees shall accrue ten days (72 hours) of personal sick and carer's leave for each year of continuous service. In accordance with the FW Act all personal/carer's leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year. Personal leave balances will be shown on each employee's payslip.

(a) Sick Leave

- (i) An employee on weekly employment who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay subject to the following conditions and limitations. The employee shall not be entitled to paid leave of absence for any period in respect of which the employee is entitled to workers' compensation.
- (ii) The employee shall, as soon as reasonably practicable and within eight hours of the commencement of such absence inform FCM of inability to attend for duty, and as far as practicable, state the estimated duration of the absence.
- (iii) The employee shall prove to the satisfaction of FCM that the employee was unable on account of such illness or injury to attend for duty on the day or days for which sick leave is claimed. In the absence of a doctor's certificate a statutory declaration may be accepted as evidence.

(b) Carer's Leave

- (i) Employees may use their personal leave accrued in accordance with the NES or the purposes of caring for household members or immediate family (including adult child), spouse (including de facto spouse), parent, grandparent, grandchild or sibling of the employee or

his or her spouse.

- (ii) Where an employee has no accrued personal leave, that employee may apply for annual leave or leave without pay to care for family/household members.
- (iii) They may also swap rostered days off, provided this is consistent with operational requirements and has the approval of the appropriate manager, to care for family/household members.
- (iv) Employees shall, if required by FCM, establish by the production of a medical certificate or statutory declaration, the illness of the household or immediate family member concerned and that the illness is such as to require care by another.

(c) **Single Day Absences**

In the case of an employee who claims to be allowed paid sick leave in accordance with this clause for an absence of one day only, such employee, if in the year the employee has already been allowed paid leave on more than one occasion for one day only, shall not be entitled to payment for the day claimed unless a doctor's certificate is provided or other evidence as FCM may require. Nothing in this sub-clause shall limit FCM's rights under sub-clause 6.8(a)(iv).

(d) **Seasonal Employees**

- (i) Seasonal employees who are employed on a weekly basis will accrue personal leave in accordance with the provisions for weekly employees.
- (ii) Where an employee ceases to be employed as a seasonal employee and is engaged as a casual employee they will cease to accrue personal leave during the period of casual employment.
- (iii) Any personal leave entitlements accrued as a seasonal employee will be maintained as long as there is no break in an employee's continuity of employment with FCM for a period of more than 12 months.

6.9 Family and Domestic Violence Leave

Family and domestic violence will be in accordance with the FW Act save that personal leave will be made available for use by victims of family and domestic violence.

6.10 Parental Leave

Parental leave will be in accordance with the FW Act.

6.11 Jury Service and Crown Witness Leave

An employee required to attend for jury service or is subpoenaed to appear by the Crown as a Crown Witness during ordinary working hours shall be reimbursed by FCM an amount equal to the difference between the amount paid in respect of their attendance and the amount the employee would have received in respect of their roster or prescribed working hours,

provided that the employee:

- (a) Notifies FCM as soon as possible of the date upon which the employee is required to attend and any relevant evidence of the required attendance;
- (b) Does all things necessary to obtain payment, as per the relevant legislation, for their attendance; and
- (c) Provides FCM with proof of attendance, the duration of such attendance, and the amount received in respect of such attendance.

6.12 Accident and Injury Benefits

- (a) FCM 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 FCM pursuant to the provisions of the workers' compensation legislation as amended from time to time.
- (b) "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 workers' compensation legislation and the employees appropriate 36 hour rate and accrued entitlements prescribed by clauses 3 and 4.1 and 4.2 where the incapacity is for a lesser period than ten days the difference between the amount of compensation and the said agreement rate for that period.
- (c) FCM shall pay or cause to be paid accident pay as defined during the incapacity of the employee arising from any one injury for a total of one hundred and thirty (130) weeks whether the incapacity is in one continuous period or not.
- (d) The liability of FCM 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 FCM to pay accident pay as provided in this clause.
- (e) In the event that an employee receives a lump sum in redemption of weekly payments under the said relevant legislation, the liability of FCM to pay accident pay as herein provided shall cease from the date of such redemption.
- (f) For the purpose of this clause journey accidents will be compensable and subject to make-up pay. Entitlements to compensation from the Transport Accident Commission shall be pursued by the employee prior to seeking compensation from FCM under this clause.

6.13 Trauma Accident Insurance

FCM will contribute \$19.05 per week per current employee to the cost of a trauma accident insurance policy. This will be indexed in line with industry movements.

7. CONSULTATION

7.1 Introduction of Change

- (a) This clause applies if FCM:
 - (i) Has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise; and
 - (ii) The change is likely to have a significant effect on Employees of the enterprise; or
 - (iii) Proposes to introduce a change to the regular roster or ordinary hours of work of employees
- (b) The relevant employees may appoint a representative for the purposes of the procedures set out in this clause. If a relevant employee/s appoint a representative for the purposes of consultation and advises FCM of the identity of the representative, FCM must recognise the representative.

Major change

- (c) For a major change referred to in sub-clause 7.1(a)(i)&(ii), sub-clauses 7(b) to 7(h) apply.
- (d) As soon as practicable FCM must discuss with the relevant Employees and at their request, the relevant employee representatives (which may include a Union) or the consultative committee, the introduction of the change, and the effect the change is likely to have on the Employees. FCM must discuss measures to avert or mitigate the adverse effect of the change on the Employees.
- (e) For the purposes of the discussion FCM will provide the relevant Employees and at their request, the relevant employee representatives:
 - (i) Relevant information about the change including the nature of the change proposed;
 - (ii) Information about the expected effects of the change on the Employees; and
 - (iii) Other matters likely to affect the Employees. Provided that FCM shall not be required to disclose commercial in confidence or confidential information.
- (f) FCM must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.
- (g) As soon as a final decision has been made, FCM must notify the Employees affected and at their request the relevant employee representatives, in writing, and explain the effects of the decision.
- (h) FCM, and the relevant employee representatives must act in good faith in relation to the consultation process provided in this clause.
- (i) In this clause, a major change is likely to have a significant effect on Employees if it results in:
 - (i) The termination of the employment of employees in

- accordance with clause 2.10; or
- (ii) Major change to the composition, operation or size of FCM's workforce or to the skills required of Employees; or
- (iii) The elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (iv) The alteration of hours of work or rosters; or
- (v) The need to retrain Employees; or
- (vi) The need to relocate Employees to another workplace; or
- (vii) The restructuring of jobs.

Change to regular roster or ordinary hours of work

- (j) For a change referred to in paragraph 7(a)(iii), subclauses 7(i) to 7(n) apply.
- (k) As soon as practicable FCM must discuss with the relevant Employees and at their request, the employee representative, of the proposed change and the effect the change is likely to have on the relevant Employees.
- (l) For the purposes of discussion, FCM will provide the relevant Employees and at their request, the employee representative:
 - (i) Relevant information about the change including the nature of the change proposed;
 - (ii) Information about the expected effects of the change on the relevant Employees; and
 - (iii) Other matters likely to affect the relevant Employees. Provided that FCM shall not be required to disclose commercial in confidence or confidential information.
- (m) FCM will invite the relevant Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (n) FCM must give prompt and genuine consideration to matters raised about the proposed change by the relevant Employees.
- (o) As soon as a final decision has been made, FCM must notify the Employees affected and at their request, the employee representative.

In this clause, **relevant employees** means the employees who may be affected by the major change.

7.2 Consultative Committee

- (a) The consultative committee is seen as an integral and important part of the organisation of work at the project. For this reason, it is imperative that members of the committee are available at all times to resolve matters of mutual interest and that they carry out their duties in a responsible and timely manner.
- (b) Consultative Committee Guidelines
 - (i) These guidelines have been produced to assist in creating a stable and cooperative environment within

FCM. It is not the objective of the parties to this Agreement that the committee would usurp the function and responsibility of management or unions.

- (ii) The scope of discussions will include any reasonable subject falling within stated committee functions.
- (iii) The committee shall consist of no fewer than 4 members, all of whom shall be employees of FCM, as follows:
 - (A) Two management representatives including the project manager or his nominee;
 - (B) Two employees.
 - (C) Committee members shall hold office for a period of 12 months, with no limitation on the number of terms.
 - (D) The committee shall meet at least quarterly in accordance with the calendar prepared by FCM and shall be chaired initially (for six months) by a management representative, with the chair alternating every six months with an employee or the committee may decide who shall be chairman by mutual consent.
 - (E) A quorum shall consist of two management representatives and two of employee representatives.
 - (F) The agenda shall be drafted and circulated to all committee members one week before the due meeting date, which shall be established by the previous meeting. All committee members shall have the right to submit matters for the agenda. The agenda shall be produced and circulated by management in consultation with one nominated employee representative.
- (iv) Operation of Committee
 - (A) Co-opting to the committee shall be with the consent of all members of the committee but co-opted persons shall not have the right to vote.
 - (B) The committee may also request the assistance of other FCM employees on specific issues on the agenda.
 - (C) Agendas and notes of meetings will be circulated without delay. Agendas and notes of meetings will be circulated to all parties.
- (c) Functions of the committee will include:
 - (i) To receive from management representatives reports on the affairs of FCM, including such matters as:
 - (A) project manpower and skill requirements;

- (B) proposed technological or other significant changes and their anticipated effects as defined in this agreement;
 - (C) any problems that have not been resolved at a shop floor level.
- (ii) To consider any matter placed on the agenda by committee members.
- (iii) To increase understanding of FCM's objectives and plans and to promote a more co-operative approach to resolving the problems on the project.
- (iv) To obtain and discuss the views and concerns of the employees.
- (v) To discuss management proposals and the effects of proposed changes on employees.
- (vi) To identify problems and work co-operatively to develop solutions in all areas of FCM's operations.
- (vii) To provide and discuss information and reports on particular areas of FCM's operations including aspects such as:
 - (A) work practices and performance;
 - (B) quality evaluations;
 - (C) other matters of concern to management or employees.
- (viii) To receive and publish information and reports from other consultative committees such as the occupational health and safety committee.
- (ix) To promote improved industrial relations through consultation and discussion including the negotiated settlement of particular and appropriate issues with a view to minimising unnecessary lost time through industrial disputation.
- (d) Both parties accept that certain information could be considered as commercially sensitive or subject to security restrictions. Every effort will be made by both parties to respect such considerations of confidentiality while making available as much information as possible.
- (e) The committee shall also produce a regular bulletin for distribution to all employees which contains reports on its activities and in which both management and employee perspectives can be accommodated on particular issues.

7.3 Annual Review of Workload and Labour Requirements

- (a) A review of the workload and labour requirements of the Business for the following calendar year will be carried out by FCM in early November of each year.
- (b) The consultative committee will be advised of the outcomes of the

reviews.

8. WORKPLACE REPRESENTATIVES

8.1 Workplace Representatives

- (a) FCM recognises, upon notification, the role of elected Employee Representatives, whether Union representatives or not. Employee Representatives will be provided with reasonable time to represent Employees at the workplace on matters that pertain to the employment relationship between FCM and Employees covered by this Agreement.
- (b) Subject to approval by their Supervisor, Employee Representatives will be released from normal duties without loss of pay to:
 - (i) Attend enterprise agreement negotiations;
 - (ii) Consult with other employees or their union in relation to any matter arising out of this agreement or any matter arising in connection with their employment with FCM;
 - (iii) Prepare for and attend Fair Work Commission proceedings relevant to matters associated with this agreement or any matter arising on the course of their employment with FCM; and
 - (iv) Attend consultative dispute / grievance, counselling / disciplinary meetings (when requested) or FCM approved communication meetings of employees on site.

9. CONTRACTORS

Contractors will be used by the Business to carry out work at FCM's facilities and off-site at other facilities as required.

10. MISCELLANEOUS PROVISIONS

10.1 Workplace Training

FCM will ensure that all Employees are suitably trained to carry out the functions and duties, which FCM requires them to perform, and that qualifications gained are suitably recognised. Training will be carried out subject to the following criteria:

- (a) National accreditation;
- (b) Portability;
- (c) Competencies based on a career path;
- (d) Fairness; and
- (e) PDP: All Employees shall be offered the opportunity to participate in structuring a personal development plan outlining the employee's training and career development over the life of this agreement. This will take into account the needs of FCM and the Employee and will also include performance feedback.

Furthermore, FCM supports the principle of providing opportunities for traineeships and apprenticeships.

10.2 Health, Safety and Environment

The health and safety of all persons employed by FCM is considered to be of the utmost importance. Appropriate resources shall be made available to ensure compliance with all relevant Acts, Regulations and Codes of Practice to make the workplace safe and without risk to health.

It is a prime responsibility of all people employed by FCM to ensure that their jobs are performed safely and without injury or damage to themselves or their workmates, to the environment or equipment.

10.3 Protective Clothing

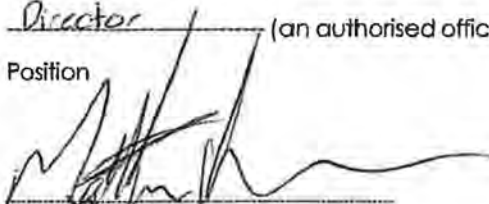
- (a) FCM shall provide suitable protective equipment. On commencement of employment and on the first anniversary of employment, FCM will issue each employee:
 - (i) 4 shirts;
 - (ii) 4 trousers or 4 overalls; and
 - (iii) 2 pairs of safety footwear
- (c) Following the first anniversary of employment, FCM will only replace protective equipment or clothing on a fair wear and tear and exchange basis.
- (d) On commencement of this Agreement, any existing employee who has not received the protective equipment as above will receive a top up allocation to the full amounts as above.
- (e) Appropriate wet weather gear, if required in their work place, will be issued and will only be replaced on a fair wear and tear and exchange basis.
- (f) A "bluey jacket" or approved equivalent will be issued once to all employees between 1st May and 31st August and will be replaced on a fair wear and tear basis. The employee shall utilise all protective equipment in such a way and at such times as to achieve the purposes for which it is supplied.

11. SUPPORT OF THE PARTIES

Signed for and on behalf of FCM by:


Matthew Weddell of PO Box 1204, Traralgon
Name Address

Director (an authorised officer of FCM)
Position


Signature

In the presence of:


Karen Akers of PO Box 1204, Traralgon
Name Address

 on 10/11/2023
Signature Date

Signed for and on behalf of the employees by:

ANDY SMITH of 5 LIGNITE CRT
Name Address 3840 VIC

INDUSTRIAL
ORGANISER (an authorised representative of employees)
Position


Signature

In the presence of:

HAZDEN STEPHENS of 5 LIGNITE CRT
Name Address 3840 VIC

 on 10/11/2023
Signature Date