



Australian Government
Department of Immigration and Border Protection

24 September 2013

Mr Michael McCarthy
Email: foi+request-333-866336f5@righttoknow.org.au

In reply please quote:

FOI Request: FA13/08/00301
File Number: ADF2013/25068

Dear Mr McCarthy

Freedom of Information request – Release of documents

This letter refers to your request received on 1 August 2013 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

'We have requested a copy of the abovementioned labour agreement from my employer Aurizon/QR NATIONAL/AUSTRALIAN RAILROAD GROUP, as well as the immigration agent Julie Williams @ Migration Downunder. They are refusing to supply me with a copy, alternatively the reference number of the agreement, and I believe I and my fellow employees are entitled to it.'

Decision

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate departmental records. In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Departmental files and/or documents (identified below)
- The Information Commissioner guidelines; and
- The department's Freedom of Information handbook.

My decision is to release, in full, the documents within the scope of your request.

Documents in scope

1. Contract between The Minister for Immigration and Citizenship and Australia Western Railroad Pty Ltd

Review rights

Internal review

If you disagree with my decision, you have the right to apply for an internal review by the department of a primary decision to refuse access to documents you have requested.

people our business

If you wish to make a request for internal review this must be sent within 30 days of being notified of the decision. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by an officer other than the original decision-maker and the department must make a review decision within 30 days.

Applications for review should be sent to:

Post	FOI and Privacy Policy Section Department of Immigration and Border Protection PO Box 25 BELCONNEN ACT 2616
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Email	FOI@immi.gov.au
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Review by the Office of the Australian Information Commissioner

You may apply directly to the Australian Information Commissioner for a review of my decision.

You must apply in writing within 60 days of this notice. You can lodge your application in one of the following ways:

Post	GPO Box 2999 CANBERRA ACT 2601
or	GPO Box 5218 SYDNEY NSW 2001
Online	www.oaic.gov.au
Email	enquiries@oaic.gov.au
Fax	+61 2 9284 9666
In person	4 National Circuit BARTON ACT
or	Level 3, 175 Pitt Street SYDNEY NSW

An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision to which you are seeking review and your contact details. You should also set out why you are seeking a review of the decision.

For further information about review rights under the FOI Act please see FOI fact sheet 12 'Freedom of information – Your review rights', available online at www.oaic.gov.au.

How to make a complaint about the handling of your FOI request

You may complain to the Australian Information Commissioner if you have concerns about how the department has handled your request under the FOI Act.

Your complaint must be in writing and must specify the agency you are complaining about. You can send your complaint to the Australian Information Commissioner using the details above. A complaint form is also available at www.oaic.gov.au.

If you are unhappy with the department's decision about giving or refusing access to documents, you should ask for the decision to be reviewed, which is a separate process which has been outlined in the previous section.

Contacting the FOI section

If you wish to discuss this matter, I can be contacted using the details provided below.

Client service information

Information about our Client Service Charter and how to make a compliment, complaint or suggestion, is included in the Client Service Information attachment.

Contacting the department

You can contact us with a general enquiry in a number of ways including by email, through our website, by telephone through our Service Centres or offices around the world, or in person. In Australia you can call 13 18 81 between 8.30 am and 4.30 pm Monday to Friday. Details on contacting our offices outside Australia are available on our website at www.immi.gov.au.

Yours sincerely



Mel Heggart
PN 60008303
FOI Case Officer
FOI & Privacy Policy
Department of Immigration and Border Protection
Telephone 02 62643131
Email FOI@immi.gov.au

Attachment(s)

Client Service Information

Decision Record

Document: Contract between The Minister for Immigration and Citizenship and Australia

Western Railroad Pty Ltd

Client Service Information

CLIENT SERVICE INFORMATION

Client Service Charter

Our Client Service Charter explains our service commitment to you. We are committed to service delivery that is timely, open and accountable, and responsive to your needs. The Charter explains how you can help us and how you can provide feedback or make a complaint. You can read our Client Service Charter on our website, or in a printed copy available from any of our offices.

Service satisfaction

The department remains committed to ensuring that all clients, both in Australia and overseas, receive not only fair and reasonable treatment, but also an efficient standard of service that is sensitive to each client's needs.

To provide a compliment, complaint or suggestion you can:

- telephone the Global Feedback Unit on 13 31 77 during business hours
- complete a feedback form online at www.immi.gov.au
- write to:
The Manager
Global Feedback Unit
GPO Box 241
Melbourne VIC 3001
Australia
- contact us directly through any of our offices.



Australian Government
Department of Immigration and Border Protection

DECISION RECORD

Client Details

FOI Request: FA13/08/00301

File Number: ADF2013/25068

Scope of the request:

'We have requested a copy of the abovementioned labour agreement from my employer Aurizon/QR NATIONAL/AUSTRALIAN RAILROAD GROUP, as well as the immigration agent Julie Williams @ Migration Downunder. They are refusing to supply me with a copy, alternatively the reference number of the agreement, and I believe I and my fellow employees are entitled to it.'

Documents in scope

1. Contract between The Minister for Immigration and Citizenship and Australia Western Railroad Pty Ltd

Information considered

I am a delegated decision maker under Section 23 of the *Freedom of Information Act 1982* (the FOI Act). In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Departmental files and/or documents (identified above);
- FOI Guidelines published by the Office of the Information Commissioner;
- Consultation with relevant areas within the department; and
- Consultation with the Australia Western Railroad Pty Ltd.

Reasons for decision

My decision is to release, in full, the documents within the scope of your request.



Australian Government

LABOUR AGREEMENT

Under the *Migration Act 1958* (Cth)

Between

The Minister for Immigration and Citizenship

and

Australia Western Railroad Pty Ltd

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LABOUR AGREEMENT

FOR THE PERMANENT ENTRY OF SKILLED OVERSEAS WORKERS

AUSTRALIA WESTERN RAILROAD PTY LTD

PREAMBLE

This Labour Agreement (the “Agreement”) is an agreed arrangement between Australia Western Railroad Pty Ltd (AWRPL) and the Minister for Immigration and Citizenship (the Minister), which allows for the permanent entry of skilled overseas workers to support and strengthen AWRPL’s capability.

The Minister is satisfied that the recruitment of Locomotive Drivers will not undermine training or employment opportunities for Australians.

1. PARTIES

This Agreement is between:

THE MINISTER FOR IMMIGRATION AND CITIZENSHIP

and

AUSTRALIA WESTERN RAILROAD PTY LTD

2. TERM OF OPERATION

Unless terminated earlier, or extended, in accordance with this Agreement, this Agreement will operate for a period of three (3) years from the date the Minister’s authorised person signs the Agreement (the “Term of Operation”).

3. PURPOSE

This Agreement provides for the recruitment and permanent entry of skilled overseas workers while aiming to:

- (i) ensure that Australian workers are not displaced;
- (ii) secure flow-on benefits to Australia; and
- (iii) ensure that skilled overseas workers are treated fairly and reasonably.

4. INTERPRETATION

- 4.1 In this Agreement, unless the context indicates a contrary intention, words and phrases in this Agreement have the same meaning attributed to them in the Migration Legislation.
- 4.2 In the event of any inconsistency between this Agreement and the Migration Legislation, the Migration Legislation will prevail.
- 4.3 In this Agreement:

Agreement means this Labour Agreement, any Schedules, attachments and any document incorporated into this Labour Agreement by reference.

AQF means Australian Qualifications Framework.

ANZSCO means the Australian and New Zealand Standard Classification of Occupations

Australian where the context so admits, means an Australian citizen (whether born in Australia or elsewhere) or a non-citizen who, being usually resident in Australia, is the holder of a permanent visa granted under the *Migration Act 1958*.

Business Day means a day on which business is generally conducted in the Australian Capital Territory, and excludes Saturdays, Sundays and public holidays.

DEEWR means the Department of Education, Employment and Workplace Relations.

Department means the Department of Immigration and Citizenship.

Industrial Instrument means an instrument in force under a law of the Commonwealth or the State/Territory that regulates workplace relations and prescribes terms and conditions of employment between employers and employees including, but not limited to, an award or agreement made under the Commonwealth Fair Work (Registered Organisations) Act 2009, an award or agreement made under a relevant state court or tribunal or any order made by means of a general test case by a relevant court or tribunal.

International English Language Testing System (IELTS)	IELTS is the International English Language Testing System which is designed to assess the language ability of candidates who need to study or work where English is the language of communication.
Legislative Instrument	has the meaning given in the <i>Legislative Instruments Act 2003</i> .
Letter of Offer	means a letter provided by the organisation to the skilled overseas worker specifying the skilled overseas worker's terms and conditions of employment as required under this Agreement and related legislation.
Migration Legislation	means the <i>Migration Act 1958</i> and the regulations made under that Act, including the <i>Migration Regulations 1994</i> , as in force from time to time.
Nomination	means a nomination under the labour agreement of a Primary Visa Applicant for a permanent Regional Sponsored Migration Scheme (RSMS) Subclass 187 visa
Notify/Notifying/Notified/Notification	means to give notice, make a request or other communication in accordance with Clause 9.
Primary Visa Applicant/Primary Visa Holder	means a skilled overseas worker Nominated under this Agreement in his or her capacity as a visa applicant or visa holder respectively and who seeks to satisfy, or has satisfied the primary criteria for the grant of an RSMS Subclass 187 visa.
Recent Australian Graduates	means Australians who completed higher education (University) in the last two years.
Registered Training Organisation	means an organisation registered by an Australian State or Territory recognition authority to deliver training and/or conduct assessments and issue nationally recognised qualifications in accordance with AQF. Registered Training Organisations (which may only be registered for the purposes of delivering endorsed training packages) include TAFE colleges and institutes, higher education institutions, commercial and enterprise training providers, industry bodies and other organisations meeting the registration requirements.

Report	means information provided by AWRPL to demonstrate its compliance with its obligations under this Agreement and in a format determined by the Department to be fit for this purpose.
Scholarship	means financial contribution by the organisation to a Scholarship, prize, bursary or award administered by an organisation which is acceptable to the Department and which is targeted at Australians completing courses appropriate to employment in the occupation(s) covered by this Agreement.
Secondary Visa Applicant/Secondary Visa Holder	means the member of the family unit as defined in the Migration Legislation, of the Primary Visa Applicant or Primary Visa Holder.
Structured Training	means all training activities which have a specified content or predetermined plan designed to develop employment related skills and competencies. It includes, without limitation, instruction or a combination of instruction and monitored and assessed practical work such as workshops, lectures, tutorials and seminars; computer-assisted training (including on-line training); training by correspondence and monitored self-paced training.
TAFE	means technical and further education
Term of Operation	means the period of time from and including the start date of the Agreement to and including the end date of the agreement, during which AWRPL may recruit overseas workers.
WH&S	means work health and safety
Workforce	means all permanent and contract workers with the organisation including Australians, skilled overseas workers.

5. ADMINISTRATION OF THE AGREEMENT

- 5.1 This Agreement will be administered for the Minister by the Department. All references to any government department or agency, including the Department, in the Agreement, includes a reference to any successor department or agency.
- 5.2 The Labour Agreements Section of the Department's National Office will administer this Agreement (refer to Clause 16 for contact details).
- 5.3 The Department's Perth's Business Centre will process Nominations and associated Visa Applications.
- 5.4 The Vice President, Human Resources, of AWRPL will manage the Agreement on behalf of AWRPL.
- 5.5 In this Agreement, unless the contrary intention appears:
- (i) words importing a gender include any other gender;
 - (ii) words in the singular include the plural and words in the plural include the singular;
 - (iii) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
 - (iv) words importing a person include a partnership and a body whether corporate or otherwise;
 - (v) all references to dollars are to Australian dollars;
 - (vi) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of such legislation or legislative provision;
 - (vii) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and
 - (viii) a reference to writing means any representation of words, figures or symbols, whether or not in visible form.

6. THOSE AUTHORISED TO RECRUIT SKILLED OVERSEAS WORKERS UNDER THIS AGREEMENT

- 6.1 AWRPL is authorised by the Minister in his absolute discretion to be a Party to this Agreement to recruit skilled overseas workers. AWRPL must have provided the Department with details of their commitment to training Australians and demonstrated the following to the satisfaction of the Minister:
- (i) they require skilled overseas workers, with skills and experience not readily available within the Australian labour market;
 - (ii) they have a satisfactory record of training Australians;
 - (iii) they have a record of compliance with Commonwealth and State/Territory workplace relations provisions;

- (iv) the Letter Of Offer to be provided to each skilled overseas worker specifies that the skilled overseas worker's conditions of service are as per Clause 7.5.3;
 - (v) the number of Nominations appropriate to Clause 7.3.5; and
 - (vi) that they can meet their obligations under this Agreement.
- 6.2 AWRPL is authorised by the Minister in his absolute discretion to be a Party to this Agreement, if AWRPL has demonstrated to the satisfaction of the Department that the arrival and stay of the skilled overseas workers will be in the community's best interest.

7. OBLIGATIONS OF AWRPL

7.1 GENERAL

AWRPL must:

- (i) comply with any reasonable request by the Department to enable the Department to meet its obligations under Clause 8 of this Agreement; and
- (ii) agree to information concerning AWRPL which is relevant to the operation of this Agreement being shared between the relevant Commonwealth agencies, including the Department, DEEWR, Fair Work Australia, the Office of the Fair Work Ombudsman, the Australian Taxation Office and the Australian Federal Police.

7.2 RECRUITMENT OF SKILLED OVERSEAS WORKERS

7.2.1 AWRPL may make Nominations in accordance with this Agreement as specified in Annexure 2.

7.2.2 In making Nominations, if AWRPL uses the services of a migration agent, the migration agent must be registered with the Migration Agents Registration Authority (MARA) and must not have been the subject of disciplinary action under section 303 of the *Migration Act 1958*.

7.2.3 AWRPL acknowledges that it has been advised by the Department that workers in certain countries may be required by overseas agents to pay money to secure the opportunity for recruitment as a skilled overseas worker.

7.2.4 AWRPL must, for the life of the Agreement:

- (i) notify the Department immediately where the requirement is made, for bona fide WH&S reasons, to provide an employee, recruited under this agreement, with restricted duties consistent with existing medical opinion;
- (ii) notify the Department immediately when any period of restricted duties exceeds one week;
- (iii) submit a report to the Department, at the end of each year of the Agreement, on the number of employees, recruited under this Agreement, who performed duties pursuant to Clause 7.2.4(i) and to provide such supporting information as is reasonably requested by the Department; and

- (iv) ensure that Clauses in relation to remuneration would be unaffected by an employee, recruited under this Agreement performing duties pursuant to Clause 7.2.4(i).

7.3 NOMINATIONS AND OCCUPATIONS

- 7.3.1 AWRPL must lodge all Nominations online at www.immi.gov.au/e_visa/ens-rsms.htm
- 7.3.2 AWRPL must only lodge Nominations for skilled overseas workers who are to work directly for them and must not use third parties, including labour hire companies, as interposed employment entities.
- 7.3.3 Skilled overseas workers who are Nominated in accordance with this Agreement may be granted a Subclass 187 visa if they satisfy the criteria for the grant of that visa as set out in the Migration Legislation. AWRPL may only nominate skilled overseas workers for the occupations listed in **Annexure 2**.
- 7.3.4 **English language competency requirement** - AWRPL must ensure that all skilled overseas workers Nominated under this Agreement meet, at visa application stage, the IELTS level required for registration purposes as described in **Annexure 2**.

Where registration requirements do not specify an IELTS level, the applicant must:

- meet at least IELTS 6 in each test component (reading, writing, speaking and listening); or
 - hold a valid passport from one of the following countries:
 - Canada;
 - New Zealand;
 - The Republic of Ireland;
 - The United Kingdom; or
 - The United States.
- 7.3.5 **The maximum number of Nominations** is negotiated for each year of the agreement. Visas granted under this Agreement will be Subclass 187 and will allow for the entry and stay in Australia of skilled overseas workers.

Year 1	Subclass 187	50
Year 2	Subclass 187	TBC
Year 3	Subclass 187	TBC

- 7.3.6 Before the second year of the Term of Operation of the agreement commences, AWRPL may negotiate with the Commonwealth the ceiling for the second year of the agreement. The Commonwealth reserves the right to make the final decision as to the maximum number of Nominations.
- 7.3.7 Before the third year of the Term of Operation of the agreement commences, AWRPL may negotiate with the Commonwealth the ceiling for the third year of the Agreement. The Commonwealth reserves the right to make the final decision as to the maximum number of Nominations for the third year of the Agreement.

- 7.3.8 In the event that an increase to the maximum number of Nominations is sought, AWRPL should provide a business case for increasing the maximum number of Nominations.
- 7.3.9 The Commonwealth retains the right to set the maximum number of Nominations or to bar AWRPL for a specified period from making further Nominations under this Agreement should AWRPL breach the terms of this Agreement.

7.4 AGE, SKILLS, QUALIFICATIONS AND EXPERIENCE

- 7.4.1 Persons who have turned 50 - 55 years of age may be employed under this agreement if they can demonstrate to the Minister's satisfaction, why they should be considered suitable for the Nominated appointment despite not satisfying the benchmark age requirement. See **Annexure 2**.
- 7.4.2 AWRPL must ensure that skilled overseas workers recruited under this Agreement have the skills, qualifications and experience specified in this agreement at **Annexure 2** for the Nominated occupation.
- 7.4.3 AWRPL must ensure that skilled overseas workers recruited under this Agreement will be employed in the position as specified at **Annexure 2** to which they are Nominated.
- 7.4.4 AWRPL must ensure that skilled overseas workers recruited under this agreement perform a significant proportion of the tasks listed for the Nominated occupation unless the skilled overseas worker is required, for bona fide WH&S reasons, to perform restricted duties consistent with existing medical opinion.
- 7.4.5 AWRPL must ensure the integrity of the Subclass 187 visa program by:
- (i) ensuring registration and/or licensing requirements are met; and
 - (ii) complying with any Department request for AWRPL to obtain an independent audit at AWRPL expense, by an independent authority specified by the Department, to verify that the requirements of Clause 7.4.5 continue to be met.

7.5 SALARY AND CONDITIONS OF SERVICE

- 7.5.1 AWRPL must ensure that all skilled overseas workers granted Subclass 187 visas in accordance with this Agreement are offered conditions of service for a minimum of two (2) years, which, for the purpose of this Agreement, will be in accordance with the decisions of the Australia Western Railroad (Western Australia) Rail Operations Enterprise Agreement 2011 – contains updated rates – effective from 1 July 2012).
- 7.5.2 AWRPL must ensure that skilled overseas workers are employed in accordance with all relevant Commonwealth and State/Territory workplace laws and practices.
- 7.5.3 AWRPL must ensure the terms and conditions relating to the employment of skilled overseas workers satisfy the following requirements:
- (i) the conditions of service for a skilled overseas workers are no less favourable than the conditions of service for an equivalent Australian worker doing the same work at the same location;

- (ii) the skilled overseas worker is provided with full-time employment, as defined in the conditions of service;
- (iii) salary is paid in Australia and in Australian dollars and at least fortnightly (unless Australia Western Railroad (Western Australia) Rail Operations Enterprise Agreement 2011 – contains updated rates – effective from 1 July 2012). provides for payment on a weekly or monthly basis);
- (iv) the skilled overseas worker is not responsible for costs associated with their recruitment including AWRPL recruitment costs and migration agent fees associated with recruitment under this labour agreement; and
- (v) the skilled overseas worker is to be provided with the Commonwealth Government's HelpLine details specified at Clause 17.

7.5.4 Where a skilled overseas worker is injured and receives workers' compensation payments during their convalescence, the workers' compensation payments received by the worker shall be deemed to form part of their salary.

7.5.5 AWRPL must ensure that skilled overseas workers are informed of their conditions of service, and that they may be provided with a copy of this Agreement.

7.5.6 AWRPL must ensure that it does not displace Australian workers for the purpose of replacing them with skilled overseas workers.

7.6 TRAINING AND EMPLOYER RECORDS

7.6.1 AWRPL must over the Term of Operation of this Agreement continue to demonstrate a commitment to the provision of employment, training and career progression opportunities to Australians. This may include, but is not limited to:

- (i) the provision of a Structured Training strategy, with a focus on accredited training enabling Australians to progress from less-skilled to skilled and managerial positions, thereby reducing the level of reliance on overseas workers. Structured Training will include but is not limited to accredited in-house and external training courses, financial assistance to undertake training relevant to employment;
- (ii) recruitment campaigns (in newspapers, television, professional journals, the Internet, including through social media and career open days) for the positions covered by this Agreement; and
- (iii) participation in employment services and labour market programs implemented by DEEWR or its contracted employment services providers.

7.6.2 AWRPL must ensure for each year of the Term of Operation that:

- (i) a minimum of two (2) per cent of the AWRPL payroll is expended on payments allocated to an Australian industry training fund; or
- (ii) a minimum of one (1) per cent of the AWRPL payroll is expended on the provision of training to its Australian employees.

7.6.3 AWRPL may count expenditure on the following initiatives as meeting the required training benchmark:

- (i) payment for a formal course of study for Australians at TAFE or university;
- (ii) funding for a Scholarship in a formal course of study approved under the AQF for Australians at TAFE or university;

- (iii) the salaries of Australian Apprentices or Trainees and associated training expenditure;
- (iv) the salaries of Recent Australian Graduates for the time they undergo training;
- (v) employment of a person who, as a key part of their job, trains Australian employees of AWRPL; and
- (vi) payment to external providers to deliver training to Australian employees of AWRPL.

7.8 COMMUNITY IMPACT MANAGEMENT

AWRPL must use its best endeavours to assist the skilled overseas worker to establish links with the broader community, especially with respect to:

- (i) services of health professionals, schools and libraries; and
- (ii) relevant religious organisations, parents' groups, child care providers and migrant support services.

7.9 REPORTING REQUIREMENTS

7.9.1 From time to time, the Department will seek confirmation from AWRPL that the organisation has met its commitments under this Agreement. The Department will ask AWRPL to report on:

- (i) the implementation of training commitments made by AWRPL under this Agreement;
- (ii) the number of skilled overseas workers by submitting a staffing profile that identifies the positions held by skilled overseas workers recruited under this Agreement and the number of Australians in those positions;
- (iii) the total workforce of AWRPL which identifies the number of Australians and the number of temporary visa holders; and
- (iv) details of AWRPL's involvement in other training initiatives.

7.9.2 AWRPL must provide such Reports as are reasonably requested by the Department. AWRPL must respond to any request for such additional Reports in accordance with any reasonable timetable set by the Department.

7.10 CHANGE OF CIRCUMSTANCES

AWRPL shall Notify the Department within 10 Business Days where:

- (i) it is or may become non-compliant with any of its obligations under this Agreement;
- (ii) any change in circumstances occurs that may substantially affect its capacity to meet its commitments under this Agreement;
- (iii) the skilled overseas worker ceases employment with AWRPL within 12 months of commencing employment with AWRPL, or
- (iv) the skilled overseas worker did not commence employment with AWRPL.

8 THE RIGHTS AND OBLIGATIONS OF THE COMMONWEALTH

- 8.1 The rights and obligations of the Commonwealth in this Clause 8 are in addition to the rights and obligations provided elsewhere in this Agreement.
- 8.2 The Department may at any time arrange for an audit to be undertaken of AWRPL to determine AWRPL's compliance with the terms and conditions of this Agreement and any relevant Commonwealth laws. AWRPL will cooperate with the Department for the purpose of such audits.
- 8.3 AWRPL acknowledges that:
- (i) the rights of the Commonwealth under this Agreement are in addition to any relevant power, right or entitlement of the Auditor-General or the Privacy Commissioner; and
 - (ii) nothing in this Agreement reduces, limits, restricts or derogates from in any way any relevant function, power, right or entitlement of the Auditor-General or the Privacy Commissioner.
- 8.4 AWRPL will allow:
- (i) the Department;
 - (ii) the Australian National Audit Office; and
 - (iii) the Ombudsman's Office,
- to access AWRPL premises at all reasonable times and to inspect and copy all relevant documentation and records, however stored, in AWRPL's possession or control, with respect to AWRPL's performance of its obligations under the Agreement.
- 8.5 The Commonwealth's rights in the preceding clauses are subject to:
- (i) the provision of reasonable prior notice to AWRPL;
 - (ii) compliance with AWRPL's reasonable security procedures;
 - (iii) each party bearing its own cost arising out of or in connection with any access, audit or inspection except where provided elsewhere in the Agreement; and
 - (iv) if appropriate, entering into a deed of confidentiality relating to non-disclosure of AWRPL's confidential information.
- 8.6 The Department will investigate with priority any allegations of non-compliance by AWRPL with the terms and conditions of this Agreement. AWRPL will be provided with an opportunity to respond to any evidenced allegations.
- 8.7 The Department will continue to assess that AWRPL's access to skilled overseas workers remains demonstrably in Australia's best interests.
- 8.8 The Department will:
- (i) determine the number of Nominations for skilled overseas workers available to AWRPL in each successive 12 month period of the term of the Agreement;
 - (ii) assess all Nominations and visa applications on their merits. A skilled overseas worker will be granted a Subclass 187 visa only if they satisfy the criteria for grant of the relevant visa as set out in the *Migration Legislation*;
 - (iii) undertake overseas and domestic integrity checks and site visits;

- (iv) rely on its option to determine AWRPL's compliance with its obligations under this Agreement;
- (v) take any one or more of the actions specified in Clause 13 where AWRPL has failed to comply with any of the terms and conditions of this Agreement;
- (vi) reasonably require AWRPL to provide any information relevant to the operation of, and its performance under, this Agreement at any time in accordance with any applicable laws; and
- (vii) consider any request by AWRPL for a variation to the Agreement.

9 NOTIFICATION

- 9.1 Any notice, request or other communication to be given in respect of this Agreement must be in writing and addressed and forwarded to the relevant Contact Person at the postal or email address shown at Clause 16.
- 9.2 Any notice, request or other communication given in accordance with Clause 9.1 will be deemed to be received:
- (i) if by email, upon electronic receipt that the recipient has received the email, except where the sender receives an 'out of office' message then the email is not considered to be received;
 - (ii) if in the form of a letter by pre-paid ordinary post within Australia, upon expiration of five Business Days after the date shown on the postmark; and
 - (iii) if by facsimile transmission, upon the sender's facsimile machine recording that the facsimile has been properly transmitted if that transmission is made within business hours on a Business Day, otherwise at 9.00am Eastern Standard Time on the next Business Day.

10 BREACHES

Where requested by the Department, AWRPL must rectify any breaches of its obligations under this Agreement within any reasonable timeframe specified by the Department.

11 DISPUTE RESOLUTION

- 11.1 The Parties must deal with any dispute arising during the course of this Agreement as follows:
- (i) firstly, the Party claiming that there is a dispute must Notify the other Parties of the details of the dispute;
 - (ii) secondly, the Parties must try to resolve the dispute by direct negotiation;
 - (iii) thirdly, the Parties must allow twenty-eight business days from Notification of the dispute to reach a resolution or to agree to select some alternative dispute resolution procedure; or
 - (iv) if there is no resolution or agreement then any Party may terminate this Agreement.

- 11.2 The Parties note that the Migration Review Tribunal has the jurisdiction to review certain decisions to refuse to grant a visa. This Agreement does not abrogate any rights of review to the Migration Review Tribunal.

12 APPLICABLE LAW

The laws applicable in the Australian Capital Territory govern this Agreement.

13 SANCTIONS

If the Department is satisfied that AWRPL has failed to comply with any of the terms and conditions of this Agreement, the Department may, at its absolute discretion and to the extent applicable to AWRPL:

- (i) bar AWRPL for a specified period from making further Nominations under this Agreement; or
- (ii) terminate this Agreement.

14 AMENDMENT

The terms and conditions of this Agreement may be varied by written agreement between the Parties.

15 TERMINATION

This Agreement may be terminated by any Party, with effect 28 business days after written notice is given to the other Party.

16 CONTACT

All correspondence in relation to the terms, conditions and interpretation of this Agreement should be sent to:

The Director
Labour Agreements Section
Department of Immigration and Citizenship
PO Box 25 BELCONNEN ACT 2616
Email: Labour.Agreement.Section@immi.gov.au

All correspondence in relation to the terms, conditions and interpretation of this Agreement should be addressed to AWRPL contact as follows:

Gary Mansfield
Vice President
Human Resources
Australia Western Railroad Pty Ltd
2 – 10 Adams Drive
WELSHPOOL WA 6106
Gary.Mansfield@qrnational.com.au

17 HELPLINES

The Department of Immigration and Citizenship - Phone: 131 881
Office of The Fair Work Ombudsman - Phone: 131 394

Signing page

Signed on behalf of, and under the
written authority of, the Minister for
Immigration and Citizenship:

PETER SPELOEWIND

A/G FAS MIGRATION + VISA POLICY

Print name and details of Authorised Person

Anna Pulciani

Signature of Witness

ANNA PULCIANI

Print name of Witness

Date of signing: 20 / 11 / 2012

Signed for and on behalf of

Australia Western Railroad Pty Ltd
ABN: 39 094 792 275

GARY MANSFIELD - VICE PRESIDENT HUMAN RESOURCES

Print name and details of Authorised Person

Anna Pulciani

Signature of Witness

Anna Appleby - Human Resources Projects Manager

Print name of Witness

Date of signing: 15 / 11 / 12

Annexure 1 – Supporting Documents

Information

1. Business case from AWRPL in support of an Agreement.
2. Confirmation of a commitment to the employment and training of Australians.

Documents¹

1. Labour Agreement Submission from AWRPL.

¹ Describe each document attached to the Agreement (for example: “The Sponsor’s template Letter of Offer for proposed visa holders”).

Annexure 2

Occupations covered under this agreement

The occupation covered under this agreement includes Locomotive Driver.

Locomotive Driver (Skill level 4)___ANZSCO 731311

Train Driver Alternative Title: Locomotive Driver.

Drives a train to transport passengers and freight on railways.

A skilled overseas worker recruited to a Locomotive Driver position is required to have:

- A qualification equivalent to AQF Certificate III and at least 5 year's relevant experience.
- Registration or licensing may be required. AWRPL is required to abide by all legislative requirements and ensure that their employees are accredited, obtain and hold relevant qualifications.

Future change in duties as a result of promotion within AWRPL, will not constitute termination of employment for the purpose of the RSMS cancellation provision under section 137Q, provided those duties are in the related field to the original occupation in the same ANZSCO unit group 7313.

Nominations covered under this agreement

Permanent nominations under this labour agreement will only be available for temporary overseas employees who have been sponsored by AWRPL for a minimum of two years through their current labour agreement (Permission Request 795534055) valid to 9 February 2014.

English language Requirements

AWRPL must ensure that all skilled overseas workers who will be Nominated under this permanent visa labour agreement meet competent English at the IELTS level agreed to in their temporary visa labour agreement (Permission Request 795534055) valid to 9 February 2014.

A person has *competent English* if:

- (a) the person undertook an IELTS language test, and
- (b) the test was conducted in the 3 years immediately before the day on which the application was made; and
- (c) the person achieved a score of IELTS 6 in all four test components of speaking, reading, writing and listening.

Age Requirements

At the time of application those persons employed by AWRPL, sponsored under the temporary visa labour agreement (Permission Request 795534055) valid to 9 February 2014, who have turned up to 55 years of age by 31 December 2012 may be employed under this agreement.