

BEFORE THE FAIR WORK COMMISSION

Document tendered by	<i>Minister Tudehope</i>
Received by	<i>astawe</i>
Date:	<i>4 / 3 / 2022</i>
Resolved to publish	<input checked="" type="radio"/> Yes / <input type="radio"/> No

FWC Matter No.:

Applicant: Australian Rail Tram and Bus Industry Union, NSW Branch

Respondent: Sydney Trains

WITNESS STATEMENT OF JASBIR SINGH TUMBER

I, Jasbir Singh Tumber, of 177-187 Wyndam Street Alexandria NSW 2015, Acting Chief Customer Officer, make the following statement:

Background

1. I am employed by the Government of New South Wales in the Transport Service of New South Wales and deployed to Sydney Trains in the role of Acting Chief Customer Officer. In this role I report to the Chief Executive, Sydney Trains, Matthew Longland.
2. I have been in the Acting Chief Customer Officer role since 18 December 2021. I was previously employed by RailCorp, the predecessor agency to Sydney Trains and have been continuously employed since 2010.
3. The primary duties in my current role involve:
 - (a) overseeing the provision of Sydney Trains' daily customer operations including network control functions which oversees controls for rolling stock (trains) operators, Sydney Trains, NSW Trains, freight and other third-party operators, along with the interface to other modes, such as the Metro, light rail, and ferries, and to ensure operational safety is managed effectively across the network;
 - (b) providing strong leadership focus in ensuring network control and security, and prevent or minimise service disruptions

- (c) enabling a coordinated and efficient incident management response across the network for all operational activities; and
 - (d) Lead the operational contingency Taskforce for COVID and industrial action response for the last 23 months in collaboration with operational leaders across Operations, Train Crew and Engineering & Maintenance.
4. Prior to this role, in the period between September 2019 and July 2020, I held the role of Acting Executive Director Operations in Sydney Trains. Prior to that, I worked for Sydney Trains and its predecessors for 11 years in the roles of Deputy Executive Director Fleet Maintenance, Program Director Reliability Improvement and Waratah Fleet Manager.
5. In these roles, I have led the Sydney Trains' management of special events such as New Year's Eve and major shutdowns for heavy maintenance.
6. My years of experience with Sydney Trains gives me an in-depth understanding of the potential impacts of industrial action on the operations and maintenance of the rail network and the broader impact on other transport modes across NSW including Metro, Light Rail, Buses and Roads.

Sydney Trains Operations

7. Sydney Trains operations are complex, varied and extensive but can broadly be described as operating railway passenger services and maintaining railway infrastructure.
8. On a more granular level, this includes fulfilling the following functions.
- (a) **Network Operator:** Sydney Trains is a network operator, responsible for operating the rail network and controlling the movement of trains. The network is bounded by Newcastle, Lithgow, Macarthur and Bomaderry (referred to in this statement as the "**Rail Network**").
 - (b) **Rail Infrastructure Manager:** Sydney Trains is a rail infrastructure manager, being the entity with effective control and management of the rail infrastructure in the Rail Network.
 - (c) **Rolling Stock Operator:** Sydney Trains is a rolling stock operator. This means Sydney Trains is the entity with management and control of rolling stock (trains) on rail infrastructure (track). Sydney Trains operates

electric train passenger services to the suburban Sydney area bounded by Emu Plains, Macarthur, Waterfall, Richmond and Berowra.

Current industrial climate

9. In the course of performing my role, I have become aware that:
- (a) Sydney Trains' Enterprise Agreement has a nominal expiry date of 1 May 2021;
 - (b) Sydney Trains commenced bargaining meetings on 16 June 2021 for a new enterprise agreement with various rail unions, including the Australian Rail Tram and Bus Industry Union, NSW Branch (**RTBU**); and
 - (c) the RTBU issued two notices on 9 February 2022 setting out protected industrial action to be taken primarily by Train Crew (**Notices**). Annexed and marked "**A**" is a copy of the Notices.
10. In this statement I set out what are likely to be, in my experience, the potential impacts of the proposed industrial action on network users, passengers and the community.
11. In preparing this statement, I have considered the complex nature of Sydney Trains' multiple functions, the broad scope of the industrial action proposed in the Notices and the wide-ranging impact that industrial action might have, including by way of serious and total disruption of the Rail Network. I have outlined below what I perceive, based on my knowledge and experience with Sydney Trains, to be the impact of each of the individual industrial actions on the Rail Network, and also, the total cumulative effect of each type of industrial action when taken together.
12. Based on my knowledge and experience with Sydney Trains, it is my opinion that Sydney Trains would not be able to run any metropolitan services for the period of the industrial action, if all the industrial action proposed in the Notices was taken. As I detail below in this statement, Sydney Trains has assessed the risks associated with the industrial action and concluded that the Rail Network cannot be operated for the two week period commencing on 21 February 2022.
13. I understand "Train Crew", as referred to in the Notices, refers to both Train Drivers and Train Guards. Both are required to operate a train.

Action: A ban on the manner in which work is performed in the form of a ban on Train Crew accepting altered working

14. Train Crew work to a planned roster or schedule. For any given shift, Train Crew are provided in advance with a schedule, for example, in the form of a roster, detailing their assigned work for that shift.
15. Train Crew are regularly asked during the course of a shift, to alter their working schedule. These alterations may be made for a number of reasons. For example, an alteration may be needed in order to respond to an incident on the Rail Network, such as a train breakdown or a signal failure. It may also be needed to accommodate staff shortages on a particular shift (particularly during the pandemic). Different kinds of alterations to the schedule may be made. It can include altering a Train Crew's planned work by changing their runs (that is, their designated route and schedule) or changing the depot at which they start their shift.
16. Any departure from a Train Crew's planned roster is referred to as "altered working".
17. To give a specific example, Sydney Trains sometimes needs to implement a weekend timetable on weekdays due to staff shortages leaving insufficient Train Crews to operate a standard weekday timetable. This has been a regular occurrence during the COVID-19 pandemic, which has led to staff shortages. When such an alteration occurs, this involves 100% altered working by Train Crew.
18. I understand that altered working as part of this action is "banned".
19. Multiple incidents occur on the Rail Network every day, which all require responses that include the use of altered working. Daily operation of the Rail Network requires flexibility of rostering and allocating of resources in order to respond to these incidents, which can vary in locations and in their nature, from safety issues to day-to-day operations, for example involving infrastructure, points failure, or fatalities in different parts of the Rail Network. If Train Crew do not accept altered working, Sydney Trains' ability to respond flexibly and recover from incidents that may happen on the Rail Network will be completely hindered.
20. For example, if there is an incident, at least one Train Crew (and likely many Train Crews) will be required to undertake altered working, to move trains and to operate to a different stopping pattern or running order in response to the

incident. As a consequence, trains could be left stranded on the Rail Network, including at stations or at depots, because Train Crew would refuse to move them, given the ban on altered working. The standing of trains would then create further incidents, which would require additional alterations to schedules in order to rectify. However, that work would also be banned. Eventually, the incidents would compound results in the lines or the full network coming to a standstill, and Sydney Trains would have no operational ability to recover any of them. The only option, in those circumstances, would be to terminate all services.

21. If Train Crew refuse to perform altered work, this could result in many services being terminated mid-journey, with passengers in the train, as the Train Crew would refuse to perform the altered services that need to be implemented in response to an incident. This would require all passengers to leave the train if it was stopped at a platform or remain on the train until it could safely be moved to a platform which may take some time and customers such as school children, the elderly and those anxious in the current pandemic environment may not feel safe. Depending on the location, alternative transportation services may not be available, leaving customers stranded and unable to continue with their onward journey.
22. Sydney Trains will not be able to replace the crew on the stranded train because that will also be altered working. The trains stopped behind the stranded train are also stranded because Sydney Trains will not be able to provide them with altered working, nor divert those trains, because there is a ban on transpositions as another action in the Notice (please also see my statement below). Passengers could include health professionals, emergency services personnel, essential workers, the elderly and sick people and they could be waiting some time for a resolution. If the Rail Network is shut down, there would be no resolution.

A limitation on the manner in which work is performed in the form of Train Crew only signing on and off at their appointed Home Depot.

23. Train Crew have a "Home Depot", which is where they sign on at the start of their shift and board the train they have been assigned to work on from their commencement.
24. Sometimes, Train Crew will be asked to start from a depot other than their Home Depot. Any depot other than a Train Crew's Home Depot is called a "Foreign Depot". A Train Crew could be asked to sign on at a Foreign Depot due to a staff shortage at another depot, for example. In particular, a Train Crew that would ordinarily sign-on at Central may be instructed to instead sign on at Mortdale to fulfil resource needs. This is often required as a matter of urgency. For example, a staff shortage may only materialise shortly before the shift commencement. If there is a Train Crew needed at Mortdale for the start of the shift, it is imperative that an alternative Train Crew be ready and available at Mortdale at that time, so the train can depart the depot on schedule. If this does not occur, then the train timetable is immediately interrupted, and services need to be cancelled and alternate arrangements put in place (which cannot occur, given the ban on altered working and overtime).
25. If there is industrial action taken in the form of Train Crew only signing on and off at their Home Depot, this will prevent Sydney Trains from being able to operate flexibly and address issues on the Rail Network that might arise, particularly if there are staff shortages. For example, Train Crew instructed to sign-on at a Foreign Depot like Mortdale would instead go to their Home Depot first at Central, then go to Mortdale, which would at the least be wholly inefficient and at most would mean that the resourcing need at the Foreign Depot would no longer exist once the Train Crew arrived, because the service would have already needed to have been cancelled.

A limitation on the manner in which work is performed in the form of Train Crew only working to their current Master Roster

26. I understand this action to be Train Crews strictly complying with their existing Master Roster. The Master Roster is a document that was created in November 2021, and is effectively linked to the Standard Working Time Table (SWTT) which is the baseline timetable for all train services. However, The SWTT is altered to become the daily working Time Table (DWTT) to cater for infrastructure maintenance requirements, special events, test trains, freight running, empty

train movements, trial running, inspection vehicle movement as examples and therefore the SWTT is almost never fully implemented.. The Master Roster is only there as a starting point, from which amendments are made each day to create the DWTT.

27. This industrial action will have a major impact, as due to the COVID-19 pandemic, Sydney Trains has been operating on a reduced schedule of a Weekend Timetable with enhanced services since 11 January 2022. Accordingly, Sydney Trains has not been operating in accordance with the Master Roster, and even with a proposed return to a weekday timetable from 28 February 2022, that would not involve a return to the SWTT, which again, is just a standard baseline and never actually followed exactly on any given day.
28. The current Weekend Timetable is also considered "Altered Working", so given the ban on altered working, I understand that no trains will be able to be put into service based on the existing Weekend timetable, that will remain in place until 27 February 2022.
29. A Train Crew's Roster is linked to their schedule, and the schedule sets out how many trips that occur and the relevant stations. There may be several legs to each trip. The overall schedule and roster is built on these individual schedules for Train Crews.
30. If Train Crews only work Master Roster, it will have the following impact. Say a Train Crew starts at Campbelltown at 5:00 am and the Train Crew is supposed to operate the train from 6:30 am, in accordance with the current weekend roster that is being used. However, the train is scheduled under the Master Roster to depart at 7:00am. The Train Crew will refuse to perform the 6:30am run in accordance with the current schedule, because it is not in accordance with the Master Roster. No other Train Crew can replace them because it would either be considered "altered working" or they would still not work, because it was not consistent with the Master Roster. It is not clear to me what Train Crews would then do, in those circumstances. If they refuse to operate the 6:30am train in accordance with the schedule, and there is no 7:00am train to operate, it is unclear what work they would then undertake.
31. In order to respond to the changing requirements of service delivery and maintenance needs due to a wide range of issues, both foreseen and unexpected, Sydney Trains needs to be able to effectively utilise available staff and alter planned service delivery. If Train Crew will only follow the Master Roster, which is best described as the starting point which is necessarily deviated from every day,

this would significantly frustrate Sydney Trains' logistical task of moving trains, Train Crew, incident response and passengers around the network with the flexible coordination required.

32. The differences between following the Master Roster, and the updated schedules for any given day, would with each unmet need cause a domino effect of grinding the network to a halt. Following the Master Roster, and not deviating in any way including through altered working, would involve Train Crew arriving to board a service that was not going to run without providing any other flexibility.

A ban on the manner in which work is performed in the form of a ban on Train Crew accepting transposition slips

33. As a train leaves its depot, it has a stopping pattern (for example, Strathfield, Redfern, Burwood and so on). The stopping pattern is operated by the train driver and the train guard. "Transposition" denotes a change in the stopping pattern if something occurs on the train network. For example, an incident on the network may mean that a service needs to skip stations it was previously scheduled to stop at, or that it needs to stop at stations where it previously was not scheduled to stop.
34. When transposition is required, instructions are given to a particular station, and that station will issue a transposition slip to the driver and the guard.
35. If a ban is placed on issuing transpositions slips, station staff will not issue the slip or Train Crew will not accept it. That would mean the station staff will continue on original stopping pattern and may exacerbate delay and disruption to the service and the Rail Network generally.
36. A number of things could happen on the Sydney Trains network that will require transpositions. This could include fatalities, delays, maintenance and end of night stabling (so that Trains can be ready for morning services). That is, at night the Trains need to be balanced and put in the right locations for the services in the morning. This means that the right train needs to be in the right location. Not all Train Crews are qualified or certified to operate all types of Train sets. Therefore, it is imperative that the right train is at the right location at the end of the night for services in the morning, otherwise that service cannot be operated or there will be significant delays in the morning.
37. To illustrate, with the ban in place, if the transposition slip is issued stating that a Train Crew operating a particular service are to skip certain stations, they may

just keep going and keep stopping at the scheduled stations. This prevents Sydney Trains from taking the corrective action necessary in response to the incident that necessitates amendments being made to the scheduled journey.

38. This will worsen the situation together with the ban on altered work – for example if there was a delay it would make the delays longer as it will delay the trains behind and may result in further stranded trains due to the other bans and limitations as set out in the Notice.
39. In the last 4 weeks, an average of 700 transpositions per day were required. An example of a recent incident caused by a staff shortage for the Revesby signalling panel involved more than 5000 transpositions on the day in order to manage the alternate working of trains and utilising busses for customer services. This caused significant disruption initially to the T8 line and if we didn't have the ability to transpose services we would have severely impacted the majority of sector 3 which is TT2, T3 and T5 causing trains to stand or large gaps in services.

A periodic ban on the issuing of transpositions

40. The impact of a ban on the issuing of transpositions is the same as the ban on accepting transposition slips, as described above.

A ban on the manner in which work is performed in the form of a ban on Regional Drivers working to changes to current timetabled stopping patterns.

41. Whilst there are a fewer Regional services through the Sydney Trains network, this could potentially cause an impact where there are changes to timetabled stopping patterns for a number of reasons or result in the regional service being cancelled. However, I consider this will have only a minor operational impact on the Rail Network.

A periodic ban on the performance of Foreign Depot working for Train Crew

42. An impact of a ban on the performance of Foreign Depot working would be similar in nature to "altered working" as the trains would only be signing on and off at "Home Depot".
43. Workers refusing to perform Foreign Depot working means that there will be no way for Train Crew to relieve other crew where irregular operations occur such as incidents or due to late running of Trains. It effectively means that, if there is an incident requiring a Train Crew at a Foreign Depot, or a staff shortage at a Foreign Depot, Sydney Trains cannot re-arrange Train Crews to address those issues. The consequence is that services would need to be cancelled, rather than re-arranged.

A periodic ban on Overtime

44. During the period of industrial action taking place from 6 February 2022 to 21 February 2022, signallers were deemed exempt from any overtime ban. I understand a similar commitment has not been received from the unions relating to the Protected Industrial Action scheduled to commence on 21 February 2022.
45. The impact of a ban on overtime would entail requiring closure of signalling panels during the period of the industrial action.
46. Due to resource constraints with COVID 19 Signal Boxes currently rely on overtime to cover the signalling master roster that enables the 24/7 operation of the network. Signallers skills are based on competencies within specific "panels" or areas of network control, limiting the ability to transfer employees between locations or "panels" to cover any resource deficits. Authorised protected action including an Overtime ban will likely result in Signal Box Panel closures if Signallers participate across the board in an unpredictable manner due to loss of resources through COVID related sickness.
47. That would have the potential to impact both freight movements and passenger services on the Sydney Trains network. In the event that a panel cannot be operated for the afternoon or evening shift periods, trains will be required to terminate mid-run across the network, particularly as transpositions cannot be utilised to return the Trains to depots/stabling yards, given the ban on that work. This will impact upon wider network operations. The ban on transpositions will mean that the network will be unable to recover from such bans, as Sydney Trains will not be able to implement corrective measures to alleviate the flow-on

effects for the Rail Network arising from a line being shut down for a period of time.

48. The closure of Signal Box panels would result in the closure of sections of lines, lines or the entire network in an unpredictable manner. The Revesby incident I refer to at [39] above is an example of this.

A periodic ban on working with non-Sydney Trains / NSW Trains direct hire employees

49. A ban on working with non-Sydney Trains and NSW Trains employees or contractors will significantly impact on fleet/train availability.
50. I understand this action to mean that Train Crew will refuse to work on any Trains that have been prepared or in any way has been "worked on" by external contractors.
51. Around 75% of all rolling stock operated by Sydney Trains are maintained and cleaned by contractors. As I understand this industrial action, Train Crews will refuse to work on these trains or put them into service.
52. As I understand it, Train Crew will not go into any facility operated by contractors such as the Auburn Maintenance Facility. Auburn alone would impact on 6 services per day for the current weekend timetable. Furthermore, The Contractor would need to remove technicians and cleaners from Sydney Trains maintenance and stabling yards which would result in defects not fixed and meeting the minimum operating standards or trains not cleaned and meeting the minimum cleaning standards and causing further cancellations. This would cause further timetabling and network issues, which could not be addressed by Sydney Trains given the other industrial action I have referred to above.
53. In short, if contractors were asked to cease work, it would significantly reduce the number of Trains that would be ready for services in the morning due to capacity.

Cumulative Impacts

54. The Executive Leadership Team at Sydney Trains, of which I am part along with Matthew Longland, Chief Executive Officer of Sydney Trains, Hayden Donoghue, Executive Director for Train Crew, and others, has carefully assessed the bans and limitation on work. A risk assessment was undertaken by Bryce Dalton,

Senior Manager Risk, Risk and Assurance, Safety, Environment, Quality and Risk for Sydney Trains. That risk assessment was submitted to the Executive Leadership Team where it was considered. A copy of the risk assessment is annexed to this statement marked "B".

55. As set out in detail in the risk assessment, Sydney Trains has concluded that the cumulative impact on the Sydney Trains network and operations means there would be unsafe, unreliable and unpredictable environment to customers and staff arising from the following:
- (a) fleet would not be available and possible Trains not meeting operating standards;
 - (b) significant cancellations on the day due to train crew unavailability due to refusal to undertake altered working or strictly working to Master Roster;
 - (c) unpredictable signalling panel closures due to ban on overtime;
 - (d) further compounded by the inability to respond and recover the network resulting in trains stranded on the network and lines/network closure due to the bans operating together; and
 - (e) This will also result in an unsafe and unpredictable environment for our customers.
56. The view formed by the Executive Leadership Team is that Sydney Trains would not be able to operate safely in compliance with, and be able to discharge its duties under, the Work Health and Safety laws and Rail Safety National Law. The Executive Leadership Team (and I) formed this view with reference to the impacts of the proposed industrial action that I have detailed above, as well as the risks set out in the risk assessment.
57. Whilst a number of steps would be explored to mitigate these impacts, Sydney Trains has made the decision that operations cannot be safely and reliably maintained for the period of the industrial action. Accordingly, if the industrial action proceeds, the Executive Leadership Team of Sydney Trains has decided that it can not safely and effectively operate the metropolitan Rail Network for the two week period commencing on 21 February 2022.
58. In my opinion, if the industrial action in the Notices was amended, such that Train Crews did not work strictly to the Master Roster, the 'altered work' ban was removed, OT ban for signallers and transpositions were permitted, then even if the remaining industrial action was all taken, sufficient mitigation steps could be taken to operate the Rail Network safely. This is not to say the remaining industrial action would not be disruptive. It would still cause significant disruption

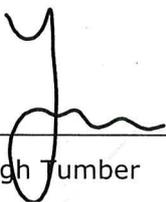
to the Rail Network and the transportation network in Sydney generally. However, I do not consider Sydney Trains would need to cease operations in those circumstances.

Length of time to undertake assessment

59. The Notice issued by the RTBU was quite complex given none of the protected industrial action involved an actual stoppage, rather it involved limitations and bans on the performance of work. This required Sydney Trains to first understand the impacts on key functional areas such as Train Crewing, Engineering and Maintenance and Operations. Following an understanding of the impacts, Sydney Trains then looked at the risk to services and potential mitigation which involved changes to operation, including through the risk assessment to which I refer at [55].
60. Since receiving the Notices, I am aware that conversations were held by Sydney Trains and Transport for NSW with the RTBU to better understand the protected industrial action set out in the Notices. Sydney Trains and Transport for NSW sought to articulate to the RTBU the significant impact of the protected industrial action on the operation of the Rail Network and whether the RTBU would be prepared to consider withdrawing some of the actions.
61. This all occurred prior to the final view being formed that the protected industrial action would result in Sydney Trains not being able to operate the Rail Network safely and effectively.
62. On In particular, on 11 February 2022, I am aware that the Executive Director, Train Crew had conversations with the RTBU to highlight and articulate the significant impact of the industrial action.
63. On 15 February 2022, I am aware of further conversations between Sydney Trains and Transport for NSW, with the RTBU, where it was clearly articulated that there would be a network stoppage as a result of the industrial action.
64. I am aware that a further meeting was held on 16 February 2022, between the Chief Executives of Sydney Trains and NSW Trains with RTBU.
65. On 17 February 2022, the RTBU confirmed by text message to Toby Warnes, Director of Organising RTBU that they would continue to support freight movements. That will alleviate some of the impact of industrial action on freight, but will do nothing to alleviate the impacts on movement of passengers as detailed above.

66. The risk assessment at annexure "B" to this statement was not finalised while these discussions between Sydney Trains and NSW Trains, and the RTBU, were on foot, as Sydney Trains and NSW Trains were hopeful of achieving a resolution whereby some or all of the proposed industrial action would not be taken. However, by 17 February 2022, in circumstances where the RTBU had made no commitment to do anything other than proceed with all nine forms of protected industrial action commencing on 21 February 2022 for a two-week period, the risk assessment document was then finalised on the basis that all the protected industrial action would be taken.
67. Accordingly, on 17 February 2022, in view of the finalised risk assessment, the Executive Leadership Team made the decision that the Rail Network could not be operated for the two-week period commencing 21 February 2022.

Signed:



Jasbir Singh Tumber

Dated:

18/02/2022



Rail, Tram & Bus Union

(NSW Branch)

9 February 2022

John Mcauliffe
Director of Workplace Relations
Sydney Trains

Jasmin Streimer
Director of Transformation
NSW Trains

By email: john.mcauliffe@transport.nsw.gov.au
jasmin.streimer@transport.nsw.gov.au

Dear John and Jasmin

Notice of Protected Industrial Action

Pursuant to Section 414 of the *Fair Work Act 2009* and in conjunction with the Orders made in B2021/455 (**the Orders**), we provide Sydney Trains and NSW Trains (**the Employers**) with notice of protected industrial action to be undertaken by RTBU members as follows:

Nature of action:	A periodic ban on the performance of Foreign Depot working for Train Crew
Day on which action commences:	12:01am on 21 February 2022 continuing to 12:01am on 7 March 2022.
Nature of action:	A periodic ban on Overtime
Day on which action commences:	12:01am on 21 February 2022 continuing to 12:01am on 7 March 2022.
Nature of action:	A periodic ban on working with non-Sydney Trains / NSW Trains direct hire employees.
Day on which action commences:	12:01am on 21 February 2022 continuing to 12:01am on 7 March 2022.
Nature of action:	A periodic ban on the issuing of transpositions
Day on which action commences:	12:01am on 21 February 2022 continuing to 12:01am on 7 March 2022.

I take this opportunity to remind you that the Employers are prohibited by law from taking adverse action or in any way hindering our members from exercising their workplace right to take protected industrial action in accordance with the Orders.

Yours sincerely,

Toby Warnes
Director of Organising

Australian Rail, Tram & Bus Industry Union (NSW Branch) ABN 55 090 785 801

Level 4, 321 Pitt Street, Sydney NSW 2000 **T** (02) 92642511 **F** (02) 9261 1342 **E** nswwho@rtbu-nsw.asn.au **W** www.rtbu-nsw.asn.au



Rail, Tram & Bus Union

(NSW Branch)

9 February 2022

John Mcauliffe
Director of Workplace Relations
Sydney Trains

Jasmin Streimer
Director of Transformation
NSW Trains

By email: john.mcauliffe@transport.nsw.gov.au
jasmin.streimer@transport.nsw.gov.au

Dear John and Jasmin

Notice of Protected Industrial Action

Pursuant to Section 414 of the *Fair Work Act 2009* and in conjunction with the Orders made in B2022/26 (**the Orders**), we provide Sydney Trains and NSW Trains (**the Employers**) with notice of protected industrial action to be undertaken by RTBU members as follows:

Nature of action:	A ban on the manner in which work is performed in the form of a ban on Train Crew accepting altered working
Day on which action commences:	12:01am on 21 February 2022 continuing to 12.01am on 7 March 2022.
Nature of action:	A limitation on the manner in which work is performed in the form of Train Crew only signing on and off at their appointed Home Depot.
Day on which action commences:	12:01am on 21 February 2022 continuing to 12.01am on 7 March 2022.
Nature of action:	A limitation on the manner in which work is performed in the form of Train Crew only working to their current Master Roster
Day on which action commences:	12:01am on 21 February 2022 continuing to 12.01am on 7 March 2022.
Nature of action:	A ban on the manner in which work is performed in the form of a ban on Train Crew accepting transposition slips
Day on which action commences:	12:01am on 21 February 2022 continuing to 12.01am on 7 March 2022.

Australian Rail, Tram & Bus Industry Union (NSW Branch) ABN 55 090 785 801

Level 4, 321 Pitt Street, Sydney NSW 2000 **T** (02) 92642511 **F** (02) 9261 1342 **E** nswho@rtbu-nsw.asn.au **W** www.rtbu-nsw.asn.au

ORGANISING WORKERS IN THE TRANSPORT INDUSTRY
PROTECTING AND BUILDING RIGHTS AT WORK

Nature of action:

A ban on the manner in which work is performed in the form of a ban on Regional Drivers working to changes to current timetabled stopping patterns.

Day on which action commences:

12:01am on 21 February 2022 continuing to 12.01am on 7 March 2022.

I take this opportunity to remind you that the Employers are prohibited by law from taking adverse action or in any way hindering our members from exercising their workplace right to take protected industrial action in accordance with the Orders.

Yours sincerely,



Toby Warnes
Director of Organising

Annexure "B"

OFFICIAL: Sensitive - NSW Government

Briefing Note: Matt Longland – Chief Executive
Sydney Trains, Dale Merrick – A/Chief Executive
NSW TrainLink



Transport
for NSW

Operational impacts associated with Protected Industrial Action scheduled between 21 February 2022 and 07 March 2022

Issue

To provide an overview of the operational impacts associated with the Protected Industrial Action notified to take place from 21 February 2022 to 07 March 2022

Background

On 09 February 2022, the RTBU provided Sydney Trains and NSW TrainLink with the following notice of protected industrial action:

Pursuant to Section 414 of the Fair Work Act 2009 and in conjunction with the Orders made in B2021/455 (the Orders), we provide Sydney Trains and NSW Trains (the Employers) with notice of protected industrial to be undertaken by RTBU members as follows:

1. Nature of action: A periodic ban on the performance of Foreign Depot working for Train Crew

Day on which action commences: 12:01am on 21 February 2022 continuing to 12.01am on 7 March 2022

2. Nature of action: A periodic ban on Overtime

Day on which action commences: 12:01am on 21 February 2022 continuing to 12.01am on 7 March 2022

3. Nature of action: A periodic ban on working with non-Sydney Trains / NSW Trains direct hire employees

Day on which action commences: 12:01am on 21 February 2022 continuing to 12.01am on 7 March 2022

OFFICIAL: Sensitive - NSW Government

OFFICIAL: Sensitive - NSW Government

4. Nature of action: A periodic ban on the issuing of transpositions

Day on which action commences: 12:01am on 21 February 2022 continuing to 12.01am on 7 March 2022

5. Nature of action: A ban on the manner in which work is performed in the form of a ban on Train Crew accepting altered working

Day on which action commences: 12:01am on 21 February 2022 continuing to 12.01am on 7 March 2022

6. Nature of action: A limitation on the manner in which work is performed in the form of Train Crew only signing on and off at their appointed Home Depot

Day on which action commences: 12:01am on 21 February 2022 continuing to 12.01am on 7 March 2022

7. Nature of action: A limitation on the manner in which work is performed in the form of Train Crew only working to their current Master Roster

Day on which action commences: 12:01am on 21 February 2022 continuing to 12.01am on 7 March 2022

8. Nature of action: A ban on the manner in which work is performed in the form of a ban on Train Crew accepting transposition slips

Day on which action commences: 12:01am on 21 February 2022 continuing to 12.01am on 7 March 2022

9. Nature of action: A ban on the manner in which work is performed in the form of a ban on Regional Drivers working to changes to current timetabled stopping patterns

Day on which action commences: 12:01am on 21 February 2022 continuing to 12.01am on 7 March 2022

There is a significant number of ongoing actions from the various unions. Of particular note are the actions which have been notified by the following unions and will be applicable to the above notified actions:

- **ASU:** Indefinite bans on performing work which is subject to protected action bans by any or all of RTBU, APESMA, ETU, CFMMEU, PTEU, AWU or AMWU members (indefinite ban)
- **AMWU:** An unlimited number of indefinite bans on performing work which is subject to protected action bans by any or all of RTBU, APESMA, ETU, CFMMEU, AWU or ASU members (indefinite ban)
- **ETU:** Bans on performing work which is subject to protected action bans by any or all of RTBU, APESMA, AMWU, CFMMEU, AWU, or ASU members (indefinite ban)
- **Professionals Australia:** A ban on performing work which is subject to protected action bans by any or all of ASU, RTBU, AMWU, ETU, CFMMEU, PTEU or AWU members (recurring notification of ban).

The following operational impact assessment has been developed through consultation with the key stakeholders and subject matter experts within Sydney Trains and NSW TrainLink.

Current Position

The impacts from the above stoppages have been summarised with the associated risks, mitigations and exposure level for each of the following key workgroups or functions:

Network Operations

During the period of industrial action taking place from 06 February 2022 to 21 February 2022, signal box workers were deemed exempt from any overtime ban. A similar commitment has not been received from the unions relating to the Protected Industrial Action scheduled to commence on 21 February 2022.

If an overtime ban exemption is not granted then it is anticipated that closure of panels will be required during the period of the industrial action that has the potential to impact both freight movements and passenger services for ST and NSWTL. In the event that a panel cannot be operated for the afternoon or evening shift periods, trains will be required to terminate mid-run across the network as transpositions cannot be utilised to return the sets to depots. This will impact upon wider network operations and not the sole panel that is closed. The ban on transpositions will mean that the network will be unable to recover from such incidents.

Network Controllers (e.g. Network Incident Manager and Train Service Delivery Manager) are critical roles in the response to network incidents within the Command and Control Structure. In the event that the Command and Control Structure and incident response requirements cannot be maintained network closures will be required to be undertaken.

Short Term Risk Exposure	UNACCEPTABLE
--------------------------	--------------

Degraded Network Operations

A ban on transpositions along with the ban on Train Crew accepting altered working will have a significant impact upon the ability of Network Operations to respond to any incident that may result in degraded operations. In such a circumstance severe network impacts will be encountered and the ability to recover operations will be limited and will cause significant crowding on trains, stations along with exacerbating the COVID risk.

Short Term Risk Exposure	UNACCEPTABLE
--------------------------	--------------

Fleet Maintenance

The ability to mitigate the impact of the Protected Industrial Action is limited due to mitigation that has been undertaken for the Protected Industrial Action period between 06 February 2022 and 21 February 2022. A return to a full weekday timetable associated with the master roster within Train Crewing and the removal of the enhanced weekend timetable will mean that out of timetable runs cannot be operated. This will severely restrict the ability of Fleet Maintenance to be able to provide required set availability. Delivery of maintenance sets will be unable to be run live due to the timetabling, transposition and altered working restrictions.

Contracted fleet maintainers would be unable to be used around the period of the industrial action. This is likely to result in an inability to return rollingstock maintained at the Auburn Maintenance Centre (AMC) to the operational network during the period of the industrial action. During normal operations a total of eight sets per day would be subject to maintenance at AMC, and over the period of the industrial action there is the potential that a number of sets may become unavailable due to requiring maintenance. As soon as a train enters the AMC and is worked on during this period, it will be unable to be returned to service. Any defective set will require to be taken out of service as it will not be possible to return to service due to work being undertaken by contractors.

An enhanced weekend timetable (for a minimum of two weeks) will be required at the end of the identified Protected Industrial Action period to ensure that the fleet maintenance backlog issues arising can be addressed. In the event that an enhanced weekend timetable is not operated following the identified action, then impacts will be experienced on the normal operational timetable.

Short Term Risk Exposure

UNACCEPTABLE

Fleet Maintenance – Fleet Cleaning Arrangements

The key risk associated with this action, would be the potential inability to move trains in/out of maintenance centres affecting services due to inadequate cleaning. It should also be recognised that there are likely to be increased customer complaints during the period. COVID-19 infection rates remain in the community and customer expectations regarding cleaning are high.

Resourcing assessment has confirmed that there is sufficient Sydney Trains employed resources to ensure minimum operating cleaning requirements can be achieved. Minimum operating standards and COVID-19 touch cleans can be achieved on weekday services however, resources will not be available for replacement of green sit-here/ stand-here decals, major cleans or normal cleans. If the current high standard is required, then resourcing challenges are likely to be experienced. Planned mitigation would be to apply normal procedure of closing specific carriages of concern, however, this is likely to be significantly noticeable by the end of the proposed period of Protected Industrial Action. There is anticipated to be a degradation to overall cleaning standards as a result of only meeting minimum operating standards. This may result in public reputational impact as a result of the current COVID-19 transmission rates. It is anticipated that with the planned mitigation there will be short term operational impacts associated with this specific industrial action should any contracted cleaning staff work at Sydney Trains depot locations. No cleaning activities will be undertaken at weekends. There is also an increased likelihood that Train Crew would not accept into services from a perception that the sets do not meet the required cleanliness levels.

Short Term Risk Exposure

UNACCEPTABLE

Network Maintenance and Major Works

In Network Maintenance, routine maintenance rely heavily on overtime and as such compliance activities may be impacted. Defect removals may not go ahead due to insufficient staffing and this is likely to be further impacted by COVID-19 sickness levels and isolation requirements. The ban on transpositions will result in a significant loss of maintenance windows. This has the ability to impact upon the ability to certify that assets are safe to operate. This can result in network assets being booked out and result in closures or operating restrictions being placed across the network. Incident response timeframes are also likely to be impacted for on-call responses if the issue is not deemed safety critical. Mitigation is being undertaken to reduce scoping of work to ensure overtime is only required in relation to emergency response activities.

OFFICIAL: Sensitive - NSW Government

Works in the possessions require electrical switching teams that rely heavily on overtime and as such possession handback may be at risk. It is anticipated that the consequences of the bans impacting upon other directorates will have a significant secondary impact on the ability of Network Maintenance to undertake required works.

Possession handbacks are also at risk within Major Works as a result of the Protected Industrial Action. Any reduction in resources is to be mitigated through reduced work to ensure work can be completed within rostered hours only. This will result in associated delays and additional costs to the delivery of programs. It is estimated that current impact to Sydney Trains from the inability to complete works due to electrical switching limitations will be in the region of \$250m in abortive works by the end of the financial year if the current actions continue until the end of the existing Financial Year. This has arisen as a result of existing bans from the RTBU and ETU in relation to working with non-ST and NSW TL staff, overtime bans and the ability to mirror protected industrial action from other unions. Based on current projections for the month of February alone this is estimated to be just short of \$40m and projected for \$60m in March 2022.

The RTBU has confirmed that the RTBU Infrastructure Division members will not be applying the overtime ban from 21/2/21 for two weeks. No clarity has been provided in relation to whether the ban on working with contractors extends to working with protection officers.

External projects that may be impacted from the Protected Industrial Action within Major Works and Network Maintenance include the rescheduling of some key milestones and additional possessions being required on the TfNSW MTMS2 South Program. The Metro program works are not thought likely to be impacted based on the RTBU Infrastructure Division Bulletin as outlined above, however, works may be impacted if individuals deem the ban extends to working with a contracted Protection Officer. The external project exposure is deemed tolerable to the RTBU associated industrial action. It should be noted however, that Metro works have been, and continue to be heavily impacted by the existing ETU Protected Industrial Action and significant impact/project delay has been encountered around High Voltage isolations. This action may be further impacted should the ETU participate in the actions identified by the RTBU.

Short Term Risk Exposure	UNACCEPTABLE
Financial Risk Exposure	UNACCEPTABLE

Train Crewing

OFFICIAL: Sensitive - NSW Government

Train Crewing is expected to be extensively impacted as a result of the Protected Industrial Action scheduled to take place from 21 February 2022 until 07 March 2022. The impact upon master rosters, transpositions, altered working, ban on foreign depot working and the requirement to only sign-on at the home depot will mean that the Daily Working Time Table cannot be maintained. This will have significant levels of service disruption that will occur for the duration of the notified Protected Industrial Action period.

The requirement to operate to the master roster that was published in November 2021 will prevent Train Crewing from being able to operate the current enhanced weekend timetable, requiring the reversion to a timetable that is now unable to be implemented due to geography changes that have occurred to support the new Metro line. Furthermore, the limitations from the ban in relation to transpositions and altered working will result in the loss of available maintenance windows across the working. In the event of an incident that results in degraded operations then there will no capacity within Train Crewing to be able to adequately respond to incidents resulting in significant network outages.

Train Crewing is further likely to be impacted as a result of a ban on front-line staff working with senior management provided at crewing depot locations. This has the potential that front-line train crew will refuse to follow reasonable and lawful direction from senior management as a result of not being a direct Sydney Trains hire. Similarly, a number of individuals within scheduling and rostering are also employed directly to TfNSW and as such there is the potential that there may be an impact as a result of employees not following instruction or direction. A refusal to work under direction during a network incident may result in difficulties to allow Train Crewing to activate their business continuity plans. Previously, assurances have been provided by the RTBU that in the event of an incident that no issues will be encountered in relation to activating any Command and Control requirements. Subject to views on approaching the RTBU, this arrangement can be confirmed.

Service impacts are expected to be exacerbated in the event of increased staff absenteeism arising out of sickness (e.g. COVID-19). Work is currently being undertaken to limit the requirement for foreign depot working and to limit the overtime requirements, however, the extent of the action notified means that the mitigation measures will be extremely limited. The Protected Industrial Action is to be undertaken over two rostering periods with Train Crewing's ability to revert to a Master Roster for the period of the PIA impacted as one of the rostering periods has already been published further complicating the ability to mitigate.

It is deemed that due to timeframe and resource constraints that it is not possible to revert safely to operating a master roster timetable. Timetabling and rostering impacts associated with such changes are extensive, and it is known that there is no realistic ability to maintain such operations. It is anticipated that there would be extensive network cancellations shortly after commencement of the industrial action, and any impacts associated with changes to the operational timetable as a result of staff shortages in signalling or train crewing will result in runs being cancelled mid-run. As

this would require a transposition to move the train from the impacted location, it is deemed that a number of sets will be unable to be moved for the duration of the industrial action resulting in extensive network blockages. It is possible that sets may be stranded mid-section which will require detrainment of staff and customers resulting in extensive negative media coverage and increased likelihood of minor customer injuries from slips, trips and falls. In the event of a need to detrain mid-section, there will be a need to place adjacent lines at stop which will result in significant network impacts and a closure of a line. Transpositions would be required to recover the network in this scenario which will not be an available mitigation under the proposed protected industrial action.

Short Term Risk Exposure	UNACCEPTABLE
--------------------------	--------------

Service Experience

Limited impact is anticipated within Service Experience due to the anticipated low take up of industrial action associated with limitations of overtime working. In the event that individuals refuse to undertake overtime working, it is likely that other members of staff will seek to utilise overtime opportunities. Mitigations are also in place that in the event that there is a shortfall of staffing numbers to be able to meet overall requirements, that the staffing of an identified 107 key station locations will be prioritised to maintain an acceptable minimum standard of service experience.

Short Term Risk Exposure	TOLERABLE
--------------------------	-----------

NSW TrainLink

Service impacts are expected to be encountered as a result of the overtime ban and this may be exacerbated in the event of increased staff absenteeism arising out of sickness (e.g. COVID-19). Work is currently being undertaken to limit the requirement for foreign depot working and to limit the overtime requirements, however this will still result in a moderate level of InterCity service cancellations. The ban on overtime significantly impacts the availability of regional drivers and onboard staff resulting in the potential for a large number of regional rail cancellations and replacement with road coaches. A significant poor customer outcome is expected.

NSW TrainLink uses the contract services of GJK cleaning at Sydenham Maintenance Centre, Eveleigh Maintenance Centre and OSCar Maintenance Centre. Based on previous PIA of a similar nature in 2021, NSWTL are confident that the current PIA will not impact on the cleaning of fleet at the 3 maintenance centres. Additionally, Gate Gourmet provide all the catering needs associated with regional rail services, and as

there is no comparable service provision within the Transport cluster, NSWTL are again confident that the proposed PIA will not impact provision of catering.

Short Term Risk Exposure

UNACCEPTABLE

Freight Operations

The protected industrial action will impact the ability to provide the required freight train paths and the supply chain across Australia will be impacted. Partner agencies such as ARTC, John Holland and CRN will have insufficient time to replan expected paths. This is likely to result in a misalignment of timetables impacting upon delivery windows (e.g. port windows). Line blockages that may arise out of the operational and train crewing impacts may result in line blockages occurring resulting in an inability to provide clear paths for freight movements.

Significant reputational risk is expected from both freight companies and their customers with this issue expected to be escalated due to the potential impacts on supply chains across Australia during this period.

Short Term Risk Exposure

UNACCEPTABLE

Senior Leadership Fatigue

Sydney Trains is dependent on a number of roles and functions that are under increasing pressure due to the ongoing period of short-term planning and delivery required to maintain operational requirements. This has led to a significant workload being undertaken by employees within management, operational planning, engineering and maintenance and front-line customer operational areas of the business. Activities have often been required at short-notice with extensive levels of resources being required to maintain timetable delivery requirements. It is deemed that current workload levels are unsustainable with further loss of staff expected if work demands are not changed.

Key areas of concern include operational planning (day of operations and network incident management), maintenance planning and engineers (Network Maintenance, Fleet Maintenance and Major Works), electrical (HV and switching) and scheduling and rostering within Train Crewing. Significant impact is also being experienced at management levels across Sydney Trains that have been required to support the dynamic response that has been required for an extended period of time in relation to both COVID-19 pandemic and Protected Industrial Action.

Short Term Risk Exposure	UNACCEPTABLE
--------------------------	---------------------

OVERALL POSITION

	Area at Risk	Risk Exposure
1.	Network Operations	Unacceptable
2.	Degraded Network Operations	Unacceptable
3.	Fleet Maintenance	Unacceptable
4.	Fleet Maintenance – Cleaning Arrangements	Unacceptable
5.	Network Maintenance and Major Works	UNACCEPTABLE
6.	Network Maintenance and Major Works Financial Impact	Unacceptable
7.	Train Crewing	Unacceptable
8.	Service Experience	Tolerable
9.	NSW TrainLink	Unacceptable
10.	Freight	Unacceptable
11.	Senior Leadership Fatigue	Unacceptable

Based on the above determinations made by Senior Management in Sydney Trains and NSW TrainLink, the short-term risk exposure to Sydney Trains and NSW Train Link is deemed **UNACCEPTABLE** due to the operational disruption and level of financial impact.

Service options:

1. If the enhanced weekend timetable is operated, as it does not align with the train crew master roster so no services will operate on the network from 12.01am 21st February 2022.
2. If a SWTT was implemented, then the combination of all the PIAs would result in
 - a. fleet not available and possible infrastructure out of compliance
 - b. significant cancellations on the day due to train crew unavailability
 - c. unpredictable signalling panel closures
 - d. further compounded by the inability to respond and recover the network resulting in trains stranded on the network and lines/network closure
 - e. This will also result in an unsafe and unpredictable environment for our customers

Summary and Recommendations:

OFFICIAL: Sensitive - NSW Government

- Either timetable option will result in line/network closures but leaving the enhanced weekend TT is a planned and safe closure of the network
- This approach is in line with the Ministers public commitment to uplift the Sydney Trains TT on 28th Feb
- This is in alignment with NSWTL approach to run an enhanced weekend TT
- **Recommendation:** The recommendation is to leave the enhanced weekend TT and progress a suspension of action through the fair work commission.

Note: Please refer to “Attachment A” which provides an overview of the basis on which the risk exposure has been assessed using the Sydney Trains Enterprise Risk Ranking criteria.

Recommendations

Sydney Trains and NSW TrainLink Executives to note the operational impact to the Sydney Trains and NSW TrainLink services and operations as a result of the industrial action and confirm operational response to planned Protected Industrial Action.

Internal approvals

Name Title Division Approved Not approved Date:	Name Title Division Approved Not approved Date:
Name Title Division Approved Not approved Date:	Name Title Division Approved Not approved Date:

Prepared by: Bryce Dalton, Senior Manager Risk

Attachment A – Sydney Trains Enterprise Risk Management Risk Ranking Table

Reputational and Customer Experience and Operational Risk Rating

Negative Consequences						Rating
C1	C2	C3	C4	C5	C6	
C	B	B		A	A	L6
C	C	B	B	A	A	L5
D	C	C	B	B	A	L4
D	D	C	C	B	B	L3
D	D	D	C	C	B	L2
D	D	D	D	C	C	L1

 = Residual Risk Rating

The above matrix shows Sydney Trains ERM Risk Scoring Criteria. Based upon the operation this assessment would be determined as an 'A Rated undesirable risk (based on likelihood rating of L6, and a customer experience and operational performance consequence of C4 and a reputational impact of C4).

Financial Risk Rating

Negative Consequences						Rating
C1	C2	C3	C4	C5	C6	
C	B	B	A	A	A	L6
C	C	B	B	A		L5
D	C	C	B	B	A	L4
D	D	C	C	B	B	L3
D	D	D	C	C	B	L2
D	D	D	D	C	C	L1

 = Residual Risk Rating

OFFICIAL: Sensitive - NSW Government

The above matrix shows Sydney Trains ERM Risk Scoring Criteria. Based upon the operation this assessment would be determined as an 'A Rated undesirable risk (based on likelihood rating of L6, and a financial impact of greater than \$50m resulting in a rating of C6).