

Workplace Relations Act 1996

IN THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

IN THE MATTER of a Certified Agreement between:-

National Transport Operations Pty Ltd
(the employer)

and

the employees and contract carriers of
National Transport Operations Pty Ltd
(the employees)

in relation to road transport.

The National Transport Operations Pty Ltd Certified Agreement 2002.

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PART 1 – PRELIMINARY

1.1 Title

This agreement is the National Transport Operations Pty Ltd Certified Agreement No 1.

1.2 Interpretation

When a word or expression (a ***term***) is being defined, it is printed in bold. A defined word or expression is printed in italics when used in its defined sense.¹

Terms defined in the dictionary² have a global definition; while *terms* defined in a particular Part or clause have a local definition only.³

Unless the context otherwise requires, all other *terms* have their plain English meaning or, if applicable, the same meaning as under *the Act* (the ***ordinary meaning***).

Words in the singular include the plural and vice versa.

Words indicating a gender include every other gender.

Other parts of speech and grammatical forms of a *term* have corresponding meanings to the defined *term*.

References to Acts include any subordinate legislation made under the Act and extend to all amending, consolidating or replacement Acts and subordinate legislation.

Footnotes are provided to expand on the meaning or intent of the relevant term or provision and form part of this agreement.

1.3 Operation

This agreement is made under Division 2 of Part VIB of *the Act* and is to operate from the date of certification until terminated in accordance with *the Act* (the ***period of operation***).⁴

This agreement applies during the *period of operation* to the parties engaged in or in connection with or incidental to any occupation or calling performed in the road transport industry in any part of Australia.

This agreement is to prevail over the *designated awards* in their entirety and over any order, determination, general rule or other award of *the Commission* to the extent of any inconsistency and over any terms and conditions of employment specified in any other State award, order, determination, general rule, law or employment agreement to the extent of any inconsistency.⁵

This agreement is not to operate so as to exclude or prevail over any subsequent AWA.⁶

This agreement may be varied during the *period of operation* as provided for under *the Act*, including where the *consultative committee* deems it appropriate due to structural changes or changes in work practices or equipment.⁷

¹ Where a defined word is not printed in italics, it has its *ordinary meaning*.

² See Schedule 1 – Dictionary.

³ A local definition overrides a global definition.

⁴ See Part VIB (Certified agreements) Division 7 (Extending, varying or terminating certified agreements) of *the Act*.

⁵ See sections 170LY (Effect of a certified agreement in relation to awards and other certified agreements) and 170LZ (Effect of a certified agreement on Commonwealth laws or State laws, awards or agreements) of *the Act*.

⁶ That is, this agreement allows for subsequent AWAs to operate to the exclusion of this agreement or to prevail over this agreement to the extent of any inconsistency.

⁷ See section 170MD (Varying a certified agreement) of *the Act*.

The *employer* may apply to *the Commission* to terminate this agreement at any time where the *employer* and a valid majority of the *employees* and *contract carriers* bound by the agreement at the time genuinely approve of its termination.⁸

The *employer* may apply to *the Commission* to terminate this agreement at any time after the *nominal expiry date*.⁹

This agreement ceases to operate if it is replaced by another certified agreement after the *nominal expiry date*.¹⁰

1.4 Persons Bound

The persons bound by this agreement are:—

- (1) the *employer*;
- (2) all *employees* of the *company* whose employment is subject to this agreement at any time during the *period of operation*; and
- (3) all *contract carriers* engaged by the *company* whose engagement is subject to this agreement at any time during the *period of operation*.

1.5 Partial Exemption

Any *employee* who is also a shareholder or officer of the *company*, and any *salaried employee*, is exempted from the following provisions of this agreement:—

- Part 5;¹¹ and
- paragraph 6.2(7)(b).¹²

1.6 Agreement Posting

A copy of this agreement must be displayed by the *employer* in such a position as to be easily accessed by *employees*.

PART 2 – EMPLOYMENT

2.1 Types of Employment

(1) Permanent

A ***permanent employee*** is one whose position is of an ongoing nature where the *employer* expects to retain the position in the long-term and employ the particular *employee* on an ongoing basis in that or some other position.

Permanents (except *long distance drivers*) accrue leave and may be *employed* on either a *full-time* or *part-time* basis.

Permanents are required to give *notice* and are normally entitled to *notice*.¹³

⁸ See section 170MG (Terminating a certified agreement where valid majority approve at any time) of *the Act*.

⁹ See section 170MHA (Terminating an agreement in a way provided under agreement after nominal expiry date) of *the Act*.

¹⁰ See section 170LX (When a certified agreement is in operation) of *the Act*.

¹¹ Part 5 – Work and Overtime.

¹² Paragraph 6.2(7)(b) – Annual Leave – Leave Loading.

¹³ See subclause 2.3(3) – Probation, paragraph 2.3(4)(b) – Termination of Employment – By the Employer and clause 2.4 – Disciplinary Procedures.

(2) Casual

A *casual employee* is one whose *employment* is not regarded as being of a long-term or ongoing nature. The *employer* is not committed to continuing to employ the *employee*.

Casuals are not required to give *notice*.

(a) Short-term Casual

A *short-term casual* is a *casual* who has not been classified by the *employer* as a *regular casual*.¹⁴

A *short-term casual* is not entitled to *notice* and does not accrue leave, but receives a *casual loading* to compensate for this.

(b) Regular Casual

A *regular casual* is a *casual* who has, in recognition of their regular engagements with the *employer*, been classified by the *employer* as a *regular casual*.

A *regular casual* may, instead of receiving *casual loading*, elect to accrue leave on the same basis as a *part-time employee*¹⁵ to be credited to their *leave bank*.

A *regular casual* is normally entitled to *notice*.¹⁶

(3) Temporary

A *temporary employee* is one who is engaged for a specified task, project or period.

Temporary employees accrue leave and may be *employed* on either a *full-time* or *part-time* basis.

Temporary employees are required to give *notice* and are normally entitled to *notice*.¹⁷

However, a *temporary employee's* engagement will automatically terminate without *notice* at the end of the task, project or period¹⁸ unless the engagement has been expressly extended or renewed by the *employer* prior to the scheduled end of the task, project or period.¹⁹

¹⁴ As an indicator, a *short-term casual* generally will be one who has not been, or is not expected to be, engaged on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months.

¹⁵ See subclause 2.2(2) – Types of Employment – Part-time.

¹⁶ See paragraph 2.3(4)(b) – Termination of Employment – By the Employer and clause 2.4 – Disciplinary Procedures.

¹⁷ See subclause 2.3(3) – Probation, paragraph 2.3(4)(b) – Termination of Employment – By the Employer and clause 2.4 – Disciplinary Procedures.

¹⁸ This means that, except for a *replacement employee* who was temporarily promoted or transferred, the *temporary employee's* employment terminates. A *replacement employee* returns to their original position.

¹⁹ To remove any doubt, this means that a *temporary employee's* engagement cannot be extended automatically or by implication. Express written agreement is required to extend or renew a *temporary employee's* engagement. Any work performed after the scheduled end of the task, project or period will, if the engagement is not so extended or renewed, be on the basis of employment of a *short-term casual*.

2.2 Types of Work

(1) Full-time

Full-time employees work an average of 40 *ordinary hours of work* per week on *ordinary working days*.²⁰

(2) Part-time

Part-time employees work an average of less than 40 *ordinary hours of work* per week on *ordinary working days*.²⁰

Part-time employees are entitled to a proportionate amount of all leave entitlements under Part 6,²¹ based on the number of *ordinary working hours* worked.²²

(3) Casual

Casual employees work on a daily hire basis of up to 12 *ordinary working hours* per day on *ordinary working days*.²⁰

Casual CPK drivers are engaged on a return trip basis.

(4) Long Distance Drivers

Long distance drivers work on a return trip basis.

A *casual long distance driver* must be engaged as a *CPK driver*.

2.3 Contract of Employment

(1) Basis of Employment

All *employees* must be expressly advised at or before the point of engagement of the basis of their employment (e.g. *casual*, *temporary* or *permanent*; *part-time* or *full-time*; or as a *CPK driver*), failing which the *employee* will be a *short-term casual* until otherwise advised in writing.

(2) Offer of Employment

Each prospective *employee* (except a *short-term casual*) must be given a written offer of employment pointing out that any contract of employment will be subject to this agreement. The letter must draw the prospective *employee's* particular attention to the provisions of subclause (4) and clause 11.1,²³ and set out the terms of the offer as follows:—

- the basis of employment;
- the date of commencement;
- the classification of the position and the *ordinary rate of pay*;
- the applicable *probation*;
- any applicable exemptions;²⁴ and
- any additional terms and conditions of employment.²⁵

²⁰ This subclause is not applicable to *CPK drivers*.

²¹ Part 6 – Leave.

²² Example – a normal *full-time employee* accrues 20 days' leave per year. A *part-time employee* who works 30% of the *full-time ordinary working hours* a week will accrue 6 days' leave after 1 year.

²³ Subclause 2.3(4) – Termination of Employment and clause 11.1 – Drugs at Work.

²⁴ See clause 1.5 – Partial Exemption.

²⁵ Any additional terms and conditions must not be inconsistent with, contrary to or in abrogation of the terms and conditions of this agreement.

The *employee* may accept the offer of employment by signing the letter in the place provided and returning it to the *employer* within 7 days, failing which the offer will lapse and no employment relationship (other than as a *short-term casual* for any work already performed) will be created or taken to exist.

(3) Probation

The appointment of all *non-casual employees* appointed after this agreement comes into operation is *probationary* for a period of 6 months (or such lesser period as is appropriate in the case of *temporary employees*) from their date of commencement (*probation*).

A *probationer* may resign at any time during the *probationary* period by giving 1 day's notice.

The *employer* may, despite clause 2.4,²⁶ terminate a *probationer* at any time during their *probation* by giving 1 week's notice.

The *employer* may, at any time during an *employee's probation*, confirm the *employee's* appointment in writing and in which case the *employee's probation* ends.

If the *employer* does not confirm a *probationer's* appointment in writing during their *probation* (as extended pursuant to clause 2.4²⁶ if applicable) the *employee's* employment will, despite paragraph (4)(b) and clause 2.4,²⁷ terminate at the end of the *probationary* period.²⁸

(4) Termination of Employment

(a) By the Employee

Any *non-casual employee*²⁹ may resign by giving notice as specified in the following schedule, or by the forfeiture of pay in lieu.

If an *employee* gives notice, the *employer* may elect to not require the *employee* to serve out all or part of their notice, in which case the *employer* must pay the *employee* pay in lieu at their *ordinary rate of pay* for any *ordinary working hours* that the *employee* is not required to serve.

If an *employee* ceases employment without giving all or part the specified notice (the *no-notice period*), the *employer* is entitled to deduct from monies payable to or on account of the *employee*³⁰ (including payment for time worked and any leave entitlements), an amount equal to the *employee's ordinary rate of pay* for any *ordinary working hours* during the *no-notice period*.

If an *employee* gives more than the specified notice, the *employer* may regard the *employee* as having given the specified notice.³¹

²⁶ Clause 2.4 – Disciplinary Procedures.

²⁷ Paragraph 2.3(4)(b) – Termination of Employment – By the Employer and clause 2.4 – Disciplinary Procedures.

²⁸ To remove any doubt, a *probationer's* appointment cannot be confirmed automatically or by implication. Express written confirmation is required. Where a *probationer* has not been confirmed in writing but continues in employment, the *employee's* basis of employment automatically becomes that of a *short-term casual* effective from the end of the *probationary* period.

²⁹ *Casuals* are not required to give notice of their intention to terminate their employment.

³⁰ This does not include superannuation contributions.

³¹ That is, if an *employee* gives more than the specified notice, at the *employer's* discretion the length of notice given may for all purposes be taken to be the specified notice.

(b) By the Employer

The employment of any *employee* (except a *short-term casual*³²) may, subject to the provisions of subclauses (3) and (5) and clause 2.4,³³ be *terminated* by the giving of *notice* not less than that specified in the following schedule,³⁴ or by the payment of pay in lieu at the *employee's ordinary rate of pay* (or a combination of *notice* and pay in lieu), except in cases of serious misconduct³⁵ justifying instant dismissal, where the *employee* may, despite clause 2.4,³⁶ be *terminated* without *notice* and without pay in lieu.

If the *employer* gives more than the specified *notice*, the *employee* may regard the *employer* as having given the specified *notice*.³⁷

| <u>Schedule of Notice by:—</u> | <u>Employee</u> | <u>Employer</u> |
|--|-----------------|-----------------|
| • <i>Permanent and temporary employees</i> | | |
| <u>Length of service</u> | | |
| – Not more than 1 year | 1 week | 1 week |
| – More than 1 year but not more than 3 years ³⁴ | 2 weeks | 2 weeks |
| – More than 3 years but not more than 5 years | 3 weeks | 3 weeks |
| – More than 5 years | 4 weeks | 4 weeks |
| • <i>Probationers</i> | 1 day | 1 week |
| • <i>Regular casuals</i> | Nil | 1 week |

³² A *short-term casual* may be *terminated* at any time without *notice*.

³³ Subclauses 2.3(3) – Probation and 2.3(5) – Redundancy and clause 2.4 – Disciplinary Procedures.

³⁴ If the *employee* is over 45 years of age and has completed at least 2 years' continuous service with the *employer*, the *employer* will give 1 extra week's *notice*.

³⁵ That is, misconduct of such a nature that it would be unreasonable to require the *employer* to continue to *employ* the *employee* concerned during the required period of *notice*.

Serious misconduct includes:

- (a) wilful or deliberate behaviour that is inconsistent with the continuation of the contract of employment;
- (b) conduct that causes imminent and serious risk to the health or safety of a person or the reputation, viability or profitability of the *employer's* business;
- (c) the *employee* being convicted of an indictable offence, with or without the recording of a conviction, and whether dealt with summarily or not;
- (d) the *employee*, in the course of the *employee's* employment, engaging in theft, fraud or assault;
- (e) the *employee* making a material false or misleading statement or omission in their employment application;
- (f) the wilful falsification of time and wages records (see clause 2.5 – Employee Records);
- (g) where the *employee* is, or is suspected on reasonable grounds of being, *intoxicated* at work; and
- (h) the *employee* refusing to carry out a lawful and reasonable instruction that is consistent with the *employee's* contract of employment.

³⁶ Clause 2.4 – Disciplinary Procedures.

³⁷ That is, if the *employer* gives more than the specified *notice*, at the *employee's* discretion the length of *notice* given may for all purposes be taken to be the specified *notice*.

(5) Redundancy

In this subclause, *employee* excludes *casuals*.

Any *employee* who is *terminated* on account of *redundancy* is entitled in addition to the *notice* set out in subclause (4)³⁸ to redundancy pay as set out in the following schedule based on the *employee's* length of continuous service, including the period of *notice*,³⁹ at the *employee's ordinary rate of pay*.

Any *employee* who is being transferred to a lower paid classification on account of *redundancy* is entitled to notice equivalent to the *redundancy* period set out in the schedule prior to being transferred, or pay in lieu equivalent to the difference between the *employee's* pre-transfer and post-transfer *ordinary rates of pay* for the period.

Any *employee* who is being *terminated* on account of *redundancy* may request a reasonable amount of leave, including up to 2 days' leave on *full pay* for each week of *notice*, for the purpose of seeking alternate employment.

| <u>Schedule of Redundancy Pay:—</u> | <u>Employee's Age</u> | |
|---|-----------------------|-----------------------|
| | up to 45 years | 45 years or more |
| <u>Length of service</u> | <u>Redundancy Pay</u> | <u>Redundancy Pay</u> |
| – Less than 1 year | Nil | Nil |
| – Not less than 1 year but less than 2 years | 4 week | 5 weeks |
| – Not less than 2 years but less than 3 years | 7 weeks | 8.75 weeks |
| – Not less than 3 years but less than 4 years | 10 weeks | 12.5 weeks |
| – Not less than 4 years but less than 5 years | 12 weeks | 15 weeks |
| – Not less than 5 years but less than 6 years | 14 weeks | 17.5 weeks |
| – Not less than 6 years | 16 weeks | 20 weeks |

(6) Work As Directed

Employees are required to work as directed by the *employer*. The *employer* may direct an *employee* to carry out such duties and use such equipment⁴⁰ as is reasonably within the limits of the *employee's* skill, competence and training consistent with the classification structure of this agreement.

Employees may be required to work reasonable amounts of overtime.⁴¹

³⁸ Subclause 2.3(4) – Termination of Employment.

³⁹ Such an *employee* may terminate their employment during the period of *notice* without deduction from their severance pay, but subject to forfeiture of pay in lieu of *notice*.

⁴⁰ An *employee* must not operate equipment that requires a licence to operate unless the employee holds such a licence or is otherwise permitted by law to do so (e.g. while under instruction for the purpose of obtaining a licence). A breach of this requirement may lead to disciplinary procedures being taken under clause 2.4 – Disciplinary Procedures or may result in instant dismissal under paragraph 2.3(4)(b) – Termination of Employment – By the Employer as serious misconduct.

⁴¹ *Employees* may only be required to work outside *normal operating hours* with their agreement except in exceptional circumstances.

(7) Stand Down

The *employer* may stand down any *employee* without pay on any day or for part of any day,⁴² excluding *public holidays*, on which the *employee* cannot be usefully employed because of the occurrence of anything for which the *employer* is not responsible or over which the *employer* has no control.⁴³

The *employer* will make reasonable attempts to find alternate duties, or offer the use of annual leave or long service leave where applicable before standing down an *employee*.⁴⁴

The continuity of service of an *employee* who is stood down will not be broken by the stand down.

An *employee* who is stood down may take other casual employment during the stand down and may, despite paragraph (4)(a),⁴⁵ terminate their employment at any time during the stand down without *notice* and without forfeiture of pay in lieu of *notice*.

(8) Statement of Service on Termination

A former *employee* will, upon request, be given an Employment Separation Certificate and a statement of service⁴⁶ signed and dated by the *employer*.

2.4 Disciplinary Procedures

Should the *employer* consider the conduct or work performance of an *employee*⁴⁷ (except a *short-term casual*⁴⁸) to be unsatisfactory the following procedures will be followed:—

(1) Counselling

- (a) The *employer* will counsel the *employee*, clearly outlining the behaviour that is of concern, in an attempt to establish, where appropriate, the reasons for the behaviour and to determine if the *employer* can provide assistance through training or other action to avoid further instances of unacceptable behaviour.
- (b) The *employee* will be given the opportunity to offer a defence against the complaint or explain any reasons for the behaviour. The *employee* may request a representative of the *consultative committee* to be present. The *employer* must give due consideration to any matters raised.
- (c) The *employer* and the *employee* should attempt to reach agreement on any action required to rectify the problem.

⁴² Where an *employee* is notified of a stand down after commencing work on the day of stand down, or is not notified as least on the day before a whole day stand down, the *employee* will be paid for the actual hours worked at their *ordinary rate of pay*, with a minimum 4 hour call out on *full pay* being payable.

⁴³ e.g. secondary boycotts or strikes, power rationing or blackouts, computer system failures and equipment breakdowns.

⁴⁴ This provision operates despite subclause 6.2(3) – Annual Leave.

⁴⁵ See paragraph 2.3(4)(a) – Termination of Employment – By the Employee.

⁴⁶ The statement of service will include the *employee's* full name and address, a description of the positions held and the length of service in such positions; the *employee's* commencement and *termination* dates; and the address where the *employee* worked. The certificate may also, at the *employee's* request, include the reason for *termination* and/or a brief assessment of the *employee's* performance.

The *employer* is not obliged to give a reference or recommendation to a current or former *employee*.

⁴⁷ A *probationer* may be disciplined under this clause or may be *terminated* at any time during their *probation* by giving 1 week's *notice*, even if disciplinary procedures have been commenced.

⁴⁸ A *short-term casual* may be *terminated* at any time without *notice*.

- (d) The *employee* is to be advised that details of the counselling and any undertakings given by the *employee* will be placed on the *employee's* personnel file and that the *employee's* conduct or work performance may be subject to further review.⁴⁹

(2) Warning

If within 6 months of the above counselling the *employer* again considers the conduct of the *employee* to be unsatisfactory, or if the *employee's* work performance does not improve to the extent required by the *employer* within a reasonable time, the following procedures will be followed:—

- (a) The *employer* will discuss the matter with the *employee* in a disciplinary interview, clearly outlining the points of concern.
- (b) The *employee* will be given the opportunity to offer a defence against the complaint or explain any reasons for the behaviour. The *employee* may request a representative of the *consultative committee* to be present. The *employer* must give due consideration to any matters raised and should make such further investigations as are necessary.
- (c) If a warning is to be given to the *employee*, the *employer* and the *employee* should, where appropriate, attempt to reach agreement on any action required to rectify the problem.
- (d) The *employee* is to be informed that:—
- a warning has been issued for unacceptable conduct or work performance following earlier counselling, details of which will be placed on the *employee's* personnel file;⁴⁹
 - further unacceptable conduct or unsatisfactory work performance may lead to dismissal; and
 - the *employee's* conduct or work performance may be subject to further review.

(3) Final Warning

If within 6 months of the above warning the *employer* again considers the conduct of the *employee* to be unsatisfactory, or if the *employee's* work performance still does not improve to the extent required by the *employer* within a reasonable time, the *employer* will again follow the steps outlined in subclause (2) and, if a final warning is to be given, will inform the *employee* that:—

- a final warning has been issued for unacceptable conduct or work performance following previous counselling and warning, details of which will be placed on the *employee's* personnel file;⁴⁹
- further unacceptable conduct or unsatisfactory work performance may lead to dismissal; and
- the *employee's* conduct or work performance may be subject to further review.

⁴⁹ The *employee* is to be given a copy of the file note and may respond in writing. The *employer* must give due consideration to any matters raised in any such response.

(4) Dismissal

If at any time after an *employee* has been given a final warning the *employer* again considers the conduct of the *employee* to be unsatisfactory, or if the *employee's* work performance still does not improve to the extent required by the *employer* within a reasonable time, the *employee* may be *terminated* in accordance with paragraph 2.3(4)(b).⁵⁰

Where the conduct is of such a serious nature that it is inappropriate for all of the above steps to be followed, steps may be combined or omitted⁵¹ as the case requires.

In the case of a *probationer*, the *employer* may, in addition to the above procedures, extend the *employee's probation* by a further period or periods not exceeding 6 months in total, by the giving of written notice to the *employee*.

2.5 Employee Records

All *non-salaried employees* are to record their daily starting and ceasing times in the manner provided for by the *employer*. Such times will be used by the *employer* as the basis for calculating the wages payable to the *employee*.

Any wilful falsification by an *employee* of their own or another *employee's* starting or ceasing times will constitute serious misconduct justifying instant dismissal without *notice* and without pay in lieu.

The *employer* will keep and have available for inspection *employee* records in accordance with *the Act*.⁵²

An *employee* may request in writing that the *employer* keep confidential the *employee's* wages and personal details. In this circumstance the *employer* is, subject to the provisions of any Act, required to receive authorisation from such *employee*, in writing, before the *employer* releases such information.⁵³

PART 3 – WAGES RATES3.1 Classifications

(1) The minimum *ordinary rates of pay* for *permanent full-time senior employees* are as set out in Appendix A based on the following classifications:—

- Grade 1

Driver's assistant; general hand; filing / ticket sorting *clerk*; receptionist / switchboard operator.

- Grade 2

Loader; driver of a vehicle not exceeding 4.5t gross vehicle mass (**GVM**) and drivers of sedans, station wagons, motor cycles and other vehicles not mentioned elsewhere in this clause which do not have a **GVM** stated in a certificate of registration; EDP operator (manifesting / scanning).

⁵⁰ Paragraph 2.3(4)(b) – Termination of Employment – By the Employer.

⁵¹ For example, an *employee* may be given a combined first and final warning where appropriate.

⁵² See section 335A (Records relating to employees) of *the Act* and Part 9A (Records by employers) of the regulation.

⁵³ The *employer* will require authorisation from the *employee* before providing confirmation of employment or payroll details to a third party (e.g. a prospective financier).

- Grade 3
Forklift operator (lifting capacity up to and including 5t); driver of any rigid vehicle with a *GVM* exceeding 4.5t but not exceeding 13.9t; ticket office / customer service operator; EDP operator (revenue processing); customer service *clerk*; other *clerk*; accounts payable / receivable *clerk*; other *clerk*.
- Grade 4
Forklift operator (lifting capacity in excess of 5t); driver of a rigid vehicle with a *GVM* exceeding 13.9t, or any rigid vehicle and heavy trailer combination or any articulated vehicle with a gross combination mass (*GCM*) not exceeding 22.4t; administration *clerk*.
- Grade 5
Driver of any rigid vehicle and heavy trailer combination or articulated vehicle with a *GCM* exceeding 22.4t.
- Grade 6
Driver of any double articulated vehicle or road train not exceeding 53.4t *GCM*.

- (2) The minimum *ordinary rate of pay* for *junior employees* is the percentage of the appropriate *seniors'* rate as follows:—

| <u>Age at Start of Pay Period</u> | <u>Percentage</u> |
|-----------------------------------|--------------------|
| 15 and under 16 years of age | 70% |
| 16 and under 17 years of age | 80% |
| 17 and under 18 years of age | 90%. ⁵⁴ |

An *employee* who is called upon to perform work at a classification above their current classification for a period of more than 2 days in any week will be paid at the rate prescribed for that higher classification for the whole week.⁵⁵

3.2 Full-time Employees

The minimum hourly *ordinary rate of pay* for *full-time employees* is the weekly rate for the appropriate classification divided by 40.⁵⁶

3.3 Part-time Employees

The minimum hourly *ordinary rate of pay* for a *part-time employee* is the same as that applying to a *full-time employee* of the appropriate classification.⁵⁷

3.4 Casual Employees

(1) Short-term Casual

The minimum hourly *ordinary rate of pay* for a *short-term casual* is the same as that applying to a *full-time employee* of the appropriate classification increased by the *casual loading*.⁵⁸

(2) Regular Casual

The minimum hourly *ordinary rate of pay* for a *regular casual* is the same as that applying to a *short-term casual* of the appropriate classification.⁵⁸

⁵⁴ This sub-clause does not apply to *CPK drivers*.

⁵⁵ Work performed at a higher classification for periods of not more than 2 days in any week is regarded as training and no extra payment is payable.

⁵⁶ This clause does not apply to *CPK drivers*.

⁵⁷ This clause does not apply to *long distance drivers*.

⁵⁸ *Casual loading* is not payable when the *overtime rate of pay* applies.

However, a *regular casual* who uses the *leave bank* is not paid their loading on a weekly basis, but instead has an equivalent amount credited to their *leave bank*.

Where a *casual employee* has been requested in advance to work on a particular day, the *employer* must notify the *casual* not later than the day before the *casual* was due to work if the *casual's* services are no longer required on that day. If the *casual* is not given such notice and reports for work, the *casual* will be paid a 4-hour call out at their *ordinary rate of pay*.⁵⁹

Casuals will be paid for all *ordinary hours of work* on *ordinary working days* at their *ordinary rate of pay*.⁶⁰

This clause does not apply to *CPK drivers*.

3.5 Long Distance Drivers

Long distance drivers not engaged as *CPK drivers* will be paid at the appropriate weekly *ordinary rate of pay*, increased by the *long distance driver loading*, for all hours worked. *CPK drivers* will be paid at the appropriate *CPK rate* under Appendix A, based on their normal place of employment.

A *CPK driver* will be paid based on the scheduled distance per trip,⁶¹ or the agreed distance where there is no scheduled distance, plus loading and unloading at the appropriate hourly *ordinary rate of pay* where the driver performs loading and unloading duties.⁶²

A *non-casual CPK driver* will be paid a minimum pay on a fortnightly basis of not less than twice the applicable minimum weekly *ordinary rate of pay* less a proportionate deduction for any days where the driver is not ready, willing and available to work.

A *casual CPK driver*⁶³ will be paid a minimum 500 kilometres per engagement.⁶⁴

Long distance drivers who are unable to return home at night because of work will be reimbursed reasonable accommodation expenses where the *employer* does not provide accommodation.

This clause operates despite Part 5 and Part 6.⁶⁵

PART 4 – PAYMENT OF WAGES

4.1 Pays and Pay Slips

Wages will be paid weekly in arrears for the preceding week by electronic funds transfer (*EFT*) to the credit of the account nominated in writing by the *employee*.⁶⁶

The *employer* will issue a payslip to each *non-salaried employee*⁶⁷ for each weekly pay detailing; the calculation of the *employee's* gross pay, deductions and net pay; the date of payment; and the account to which the net pay has been credited.

⁵⁹ Where the *employee* is actually called upon to work in these circumstances, call out pay will be payable only to the extent that the hours worked are less than 4 hours (e.g. if the *employee* actually works 3 hours, he or she will be paid for the hours worked plus 1 hour's pay in lieu of notice. If the *employee* works 5 hours, no call out pay is payable).

⁶⁰ That is, a *casual* can work up to 12 *ordinary working hours* per day at the *ordinary rate of pay*, with overtime being payable after 12 *ordinary working hours* on any day or after 40 *ordinary working hours* over any 5 consecutive days.

⁶¹ See Appendix C.

⁶² *Long distance driver loading* is not payable for loading and unloading duties.

⁶³ A *casual long distance driver* is engaged on a return trip basis.

⁶⁴ Normal *casual loading* applies to loading and unloading.

⁶⁵ Part 5 – Work and Overtime and Part 6 – Leave.

⁶⁶ Payment of wages in cash is not available for security reasons.

4.2 Payday

The *employer* will make payment to the *employer's* bank on the normal *employee* payday⁶⁸ for EFT direct to the *employee's* nominated account in the normal course of the banking system.⁶⁹

4.3 Termination Payments

Upon *termination* for whatever reason, payment of any amounts payable by the *employer* will be paid as above, either:—

- where *notice* is given in accordance with subclause 2.3(4),⁷⁰ on the next banking day after the date of *termination*; or
- in any other case, within 5 banking days after the date of *termination*.

PART 5 – WORK AND OVERTIME

In the Part, *employee* excludes a *long distance driver*.

5.1 Operating Hours

Normal operating hours may extend from 3:00 a.m. to 10:00 p.m. Monday to Friday and from 6:00 a.m. to 2:00 p.m. on Saturday to meet operational requirements.

Employees may be required to work during *normal operating hours*, either as part of their *ordinary hours of work*, or as overtime.

Work performed outside the hours of 4:00 a.m. and 8:00 p.m. (the **spread of hours**), but within *normal operating hours*, may, at the *employer's* discretion, be regarded as overtime and be paid at the *overtime rate of pay*, or may be regarded as part of the *employee's ordinary hours of work* and be paid at the *time and a half penalty rate of pay*.⁷¹

5.2 Ordinary Hours of Work

The **ordinary hours of work** for *non-casual employees* will be an average of 40 hours per week, to be worked on *ordinary working days*.⁷²

The **ordinary hours of work** for *casual employees* are the *ordinary working hours* that the *casual* works on a daily hire basis up to a maximum of 40 hours per week.

The *ordinary hours of work* for all *employees* are to be performed within *normal operating hours* and are not to exceed 12 hours on any day.

Ordinary hours of work performed on a Saturday will be paid at the *time and a half penalty rate of pay*.

⁶⁷ As *salaried employees' pays* do not vary from week to week, *salaried employees* will only be provided with a payslip on request.

⁶⁸ If the *employee's* normal payday falls on a *public holiday*, payment will be made on the last banking day before the normal payday.

⁶⁹ If the *employee* banks with the same or a related financial institution as the *employer's* bankers, cleared funds will normally be available to the *employee* on the same day. If the *employee* banks with a different financial institution, cleared funds may not be available until the next working day.

The *employer* will not be held responsible for delays in the banking system.

⁷⁰ Subclause 2.3(4) – Termination of Employment.

⁷¹ That is, work outside the *spread of hours* will be paid at penalty rates where it forms part of the *ordinary hours of work*. Overtime is payable for work performed in excess of the *ordinary hours of work* or outside *normal operating hours*.

⁷² This provision applies to a *part-time employee* on a proportionate basis as required.

5.3 Overtime

The *overtime rate of pay* is 1½ times the *ordinary rate of pay* (excluding *casual loading*).

All time worked in excess of the *ordinary hours of work* or outside *ordinary working hours* or *normal operating hours* will be paid at the *overtime rate of pay*.⁷³

Where overtime is worked on a Saturday, Sunday or *ordinary weekend*, the employee will be paid for a minimum of 4 hours' work per day at the *overtime rate of pay*.

However, an *employee* who uses the *leave bank* is not paid their overtime pay on a weekly basis, but instead has an equivalent amount credited to their *leave bank*.

No *employee* is authorised to work, or to be paid for any time worked, outside of their *ordinary working hours* unless specifically instructed to do so by a *supervisor*.

5.4 Posted Starting and Ceasing Times

The *employer* will nominate⁷⁴ the *posted starting and ceasing times* for all *non-salaried employees* (the *posted times*).⁷⁵ *Employees* are required to observe the *posted times*, including designated breaks, to maximise available working time.⁷⁶ Preparation for work and cleaning up of the *employee's* person after work is to be done on the *employee's* time.

Where an *employee* is unable to observe their *posted times*, they must advise their *supervisor* at the earliest possible opportunity and apply for leave⁷⁷ where appropriate.

The *posted times* for individual *employees* or groups of *employees* may be changed by the *employer* nominating new *posted times* at least 1 week in advance of the change.

The *posted times* of different *employees* may be staggered to meet the operational requirements of the *employer*.

5.5 Call Back

Any *non-salaried employee* (except a *casual*⁷⁸) recalled to work overtime after having left work after *ordinary working hours* (whether notified before or after leaving work) will be paid for a minimum of 2 hours' work at the *overtime rate of pay* for each such recall.⁷⁹

5.6 Rest Period After Work

(1) Any *non-casual employee*⁷⁸ who works such that there will not be at least 10 consecutive hours off duty between ceasing work and their *posted starting time* on the next day will be released from duty on *full pay* until the time that is 10 hours after they ceased work (the *substituted starting time*).⁸⁰

⁷³ That is, *casuals* are paid overtime if they work more than 12 hours on any day or more than 40 hours over any 5 consecutive days, while other *employees* are paid overtime if they work outside their *posted starting and ceasing times* or more than 12 hours on any day or more than 40 hours per week.

⁷⁴ This may be done individually, or by the posting of notices, or a combination of both.

⁷⁵ This clause is subject to clause 5.6 – Rest Period After Work.

⁷⁶ No provision is made for flexible working hours under this agreement. Any *employee* who wishes to vary their starting or ceasing times for personal reasons must obtain their *supervisor's* approval beforehand.

⁷⁷ Where paid leave under Part 6 – Leave is unavailable, the *employee* may be required to take unpaid leave.

⁷⁸ Each call out for a *casual* is treated as a separate engagement.

⁷⁹ The *employee* is not required to work the full 2 hours if the work is completed within a shorter period:

⁸⁰ The *employee* will be on *full pay* for any *ordinary working hours* they are not required work between their *posted starting time* and the *substituted starting time*. This does not apply where the *employee* is required to work these hours.

- (2) If, at the instruction of the *employer*, the *employee* resumes work before the *substituted starting time*, the *employee* will be paid at the *double time penalty rate of pay* for all time worked until they are next released from duty.⁸¹

Overtime worked in the circumstances specified in clause 5.5⁸² is not to be regarded as overtime for the purposes of this clause where the actual time worked is less than 2 hours on such recall or on each of such recalls.

5.7 Breaks

(1) Lunch Break

Except where otherwise agreed between the *employer* and the *employee* concerned, all *employees* who work in excess of 5 consecutive hours on any day must take an unpaid break as determined by the *employer* of a minimum of 30 minutes and a maximum of 90 minutes commencing between the third and sixth hours after their *posted starting time*.

(2) Rest Pauses

All *employees* are entitled to a 10 minute rest pause during, where applicable, the first and second halves of the ordinary working day.⁸³ Such rest pauses are paid breaks to be taken at times that do not interfere with the continuity of work.

(3) Overtime Breaks

Where an *employee* is required to work more than:—

- 2 hours' overtime before their *posted starting time*;
- 2 hours' overtime after their *posted ceasing time*;
- 1 hour beyond 8 hours from their actual time of starting work on their *ordinary weekend*; or
- any multiple of 4 additional hours' overtime after the overtime set out in this subclause,

an unpaid break of 30 minutes duration may be taken for each such instance at such time as does not interfere with the continuity of work and, where the *employee* was not advised by the previous day of the intention to work such overtime, \$10.00 meal allowance will be paid for each such instance, in addition to the overtime rates under clause 5.3.⁸⁴

Where the *employer* and a particular *employee* or a majority of the *employees* in a particular section agree,⁸⁵ the lunch break and rest pauses may be combined into 2 or more breaks to be taken in such a way that, despite the provisions of subclauses (1) and (2), the *ordinary working hours* are broken up into approximately equal length working periods.⁸⁶

⁸¹ Subclauses (1) and (2) are circular, in that an *employee* who is required to work prior to the *substituted starting time* and is therefore subject to subclause (2), will be paid at penalty rates until released from duty. The *employee* is then again subject to subclause (1) if applicable, and again if the *employee* is required to work before the new *substituted starting time*, subclause (2) applies, and so on.

⁸² Clause 5.5 – Call Back.

⁸³ That is, *employees* who work during both the first and second halves of the ordinary working day (e.g. *full-time employees*) are entitled to both rest pauses, while *employees* who do not work during both the first and second halves of the ordinary working day (e.g. *part-time employees* or *employees* who take leave for part of the working day) are entitled to appropriate rest pauses.

⁸⁴ Clause 5.3 – Overtime.

⁸⁵ A majority decision may be applied to the whole section.

⁸⁶ To reduce the risks of occupational overuse syndrome (or RSI), the work, lunch break and rest pauses for *employees* performing repetitive work (e.g. data entry) are to be arranged so as to give a break of 10 minutes every hour, by alternating between repetitive and non-repetitive tasks (e.g. filing) and using breaks and pauses.

PART 6 – LEAVE

In this Part, *employee* excludes *casuals*; and in clauses 6.1 to 6.5,⁸⁷ *employee* also excludes *long distance drivers*.⁸⁸

6.1 Public Holidays

Employees will be paid their normal pay⁸⁹ for all *public holidays*.

Non-salary employees who actually work on a *public holiday* will be paid at their *overtime rate of pay* for the time actually worked, with a minimum of 4 paid hours, in addition to their normal pay.⁹⁰

Casuals who actually work on a *public holiday* will be paid for the time actually worked, with a minimum of 4 paid hours, at their *overtime rate of pay*.⁸⁸

Any *employee terminated*⁹¹ during December in any year will be paid for any *public holidays* occurring while the *employee* was *terminated* if the *employee* was *employed* for at least 4 weeks immediately prior to being *terminated* and the *employee* is *re-employed* during the following January.

Where the *employer* and a particular *employee* or a majority of the *employees* in a particular section agree,⁹² another *ordinary working day* may be substituted for any *public holiday* except Anzac Day (a *substitute holiday*).

Where an *employee's ordinary weekend* includes a *public holiday*⁹³ (except a *public holiday* occurring on a weekend), the *employee* is entitled to a *substitute holiday* to be taken as agreed between the *employer* and the *employee*.⁹⁴

6.2 Annual Leave

- (1) Subject to this clause, *employees* are entitled to 160 hours' cumulative annual leave per annum (*leave*),⁹⁵ accumulated weekly.⁹⁶

Any *leave* taken reduces the *employee's* cumulative *leave* balance.

- (2) The *employee* and the *employer* may agree as to the time and manner in which the *employee's* *leave* is to be given and taken.

In the absence of such agreement, the *employer* must give the *employee* at least 14 days' advance notice of the date on and from which the *employee's* *leave* is to be taken and the *employee* is to comply with that notice.

⁸⁷ Were an *employee* is required to take frequent breaks from their duties on medical advice, such breaks are to be taken instead of the rest pauses provided under subclause (2).

⁸⁸ Clause 6.1 – Public Holidays, clause 6.2 – Annual Leave, clause 6.3 – Sick Leave, clause 6.4 – Carer's Leave and clause 6.5 – Leave Bank.

⁸⁹ *Casuals* and *long distance drivers* receive a loading in lieu of receiving paid leave.

⁹⁰ That is, their *ordinary rate of pay* for the *ordinary hours of work* which they would otherwise have performed on that day.

⁹¹ That is, such an *employee* working on a *public holiday* actually receives double time and a half for any time worked.

⁹² This does not include the automatic *termination* of a *temporary employee's* engagement pursuant to subclause 2.1(3) – Temporary.

⁹³ A majority decision may be applied to the whole section.

⁹⁴ This provision prevents an *employee* who does not work 'Monday to Friday' from being disadvantaged if a *public holiday* falls on a non-working day.

⁹⁵ When a *public holiday* is appointed in substitution for New Year's Day, Anzac Day, Christmas Day or Boxing Day when those days fall on a weekend (the *actual day*) and the *employee* is not required to work on the *actual day*, the *actual day* will be taken to be the *substitute holiday*.

⁹⁶ *Leave* is accrued and allowed based on the *employee's ordinary hours of work* at the relevant time.

Unpaid absences may be excluded when calculating *leave* entitlements.

- (3) Where the *employer* and *employee* agree, *leave* may be taken in advance of the *employee* becoming entitled to such leave (***advance leave***).

An *employee* who has taken *advance leave* does not become entitled to further *leave* until the advance is acquitted.

Upon *termination* for whatever reason, the *employer* is entitled, subject to the relevant provisions of *the Act*, to deduct an amount equal to any unacquitted *advance leave* from any amounts payable to the *employee*.⁹⁷

- (4) The taking of *leave* is exclusive of any *public holidays* occurring during the period.⁹⁸
- (5) Where a *non-salaried employee*⁹⁹ takes 2 or more weeks' *leave*, payment will, where practicable, be made in advance on the last payday before the *leave* commences.¹⁰⁰
- (6) Upon *termination* for whatever reason, an *employee* is entitled to pay in lieu of their accumulated *leave* plus leave loading where applicable, plus their *ordinary rate of pay* for any *public holidays* that would have occurred during such period as if the *leave* had been taken from the date of *termination*.¹⁰¹
- (7) An *employee's leave pay* will be the sum of the following:—
- (a) their *ordinary rate of pay* for the period of the *leave*; and
 - (b) Leave Loading
for *non-salaried employees*, a further amount calculated at the rate of 17½% of the amount referred to in paragraph (a).

6.3 Sick Leave

- (1) Subject to this clause, *employees* are entitled to 64 hours' cumulative sick leave on *full pay (leave)* per annum,¹⁰² accumulated weekly.¹⁰³

Leave up to the *employee's* current entitlement plus any *advance leave* is available for any absence during *ordinary working hours* on account of illness or injury, excluding absences that are covered by workers' compensation (***illness***).

Any *leave* taken reduces the *employee's* cumulative *leave* balance.

- (2) An *employee* is required to produce a medical certificate (or other evidence to the satisfaction of the *employer*) from a suitably qualified medical practitioner in order to receive paid *leave*.

However, an *employee* is not required to produce a certificate for any absence on account of *illness* not exceeding 1 day except where:—

- the absence is on the day before and/or the day after their *ordinary weekend*, or on the *ordinary working day* before and/or after a long weekend, annual leave or a *public holiday*; or

⁹⁷ This does not include superannuation contributions.

⁹⁸ That is, a *public holiday* occurring during a period of *leave* is treated as a paid *public holiday* and not as *leave*.

⁹⁹ *Salaried employees* must request payment in advance.

¹⁰⁰ Payment for *leave* of less than 2 weeks will be made weekly in arrears on the *employee's* normal payday unless the *employee* requests payment in advance. Where insufficient notice of the taking of *leave* is given to allow an advance payment to be made, payment will be made weekly in arrears on the *employee's* normal payday.

This subclause operates despite clause 4.1 – Pays and Pay Slips.

¹⁰¹ Payment will be made in accordance with clause Part 4 – Payment of Wages.

¹⁰² *Leave* is accrued and allowed based on the *employee's ordinary hours of work* at the relevant time.

¹⁰³ Unpaid absences may be excluded when calculating leave entitlements.

- 16 or more hours' *leave* has been taken during any calendar year without production of a certificate.¹⁰⁴
- (3) Where the *employer* and *employee* agree, *leave* (including *carer's leave*) may be taken in advance of the *employee* becoming entitled to such *leave* (***advance leave***).

An *employee* who has taken *advance leave* does not become entitled to further *leave* until the advance is acquitted.

Upon *termination* for whatever reason, the *employer* is entitled, subject to the relevant provisions of *the Act*, to deduct an amount equal to any unacquitted *advance leave* from any amounts payable to the *employee*.¹⁰⁵

- (4) An *employee* must, if practicable, promptly notify the *employer* of any *illness* and the likely duration of the absence.

If it is not practicable for the *employee* to notify the *employer* before taking *leave*, the *employee* must notify the *employer* at the first reasonable opportunity.¹⁰⁶

- (5) A former *employee* who is *re-employed* within 13 weeks of their *termination* will have their former *leave* entitlement reinstated upon being *re-employed*.

6.4 Carer's Leave

Employees may use their sick leave entitlements to care and support *family members* or members of the *employee's* household when they are ill (***carer's leave***).¹⁰⁷

The *employer* may require the production of satisfactory evidence of the *employee's* relationship to the member and a medical certificate or statutory declaration evidencing that the member is or was ill with an illness requiring care by the *employee* before paying *carer's leave*.

6.5 Leave Bank

In this clause, ***employee*** includes a *regular casual*.

A *regular casual* may, instead of being paid *casual loading* on a weekly basis, elect to have an equivalent amount credited to their *leave bank*.¹⁰⁸

Where the *employer* and *employee* agree, an *employee* may, instead of being paid for overtime at the *overtime rate of pay*, elect to have an equivalent amount credited to their *leave bank*.¹⁰⁹

An *employee* may convert some or all of their *leave bank* entitlement to annual leave or sick leave entitlements to be taken in accordance with clause 6.2 or clause 6.3.¹¹⁰

Upon *termination* for whatever reason an *employee* is entitled to pay in lieu of their *leave bank* entitlement, paid at their *ordinary rate of pay* (excluding *casual loading*).¹¹¹

This clause operates despite clause 4.1.¹¹²

¹⁰⁴ This amount is reduced proportionately if the *employee* has been *employed* for less than 1 year.

¹⁰⁵ This does not include superannuation contributions.

¹⁰⁶ This subclause also applies to *leave* taken as *carer's leave* (see clause 6.4 – Carer's Leave).

¹⁰⁷ Note that subclause 6.3(4) requires the *employee* to notify the *employer* of the need to take *leave*.

¹⁰⁸ That is, instead of being paid *casual loading* on a weekly basis, the *employee's leave bank* is credited with their weekly *ordinary working hours* multiplied by the *casual loading rate*.

¹⁰⁹ That is, instead of being paid overtime on a weekly basis, the *employee's leave bank* is credited with their overtime hours multiplied by the *overtime rate of pay rate*.

¹¹⁰ Clause 6.2 – Annual Leave and clause 6.3 – Sick Leave. On conversion to annual leave, *leave bank* entitlements will be multiplied by 85.11% in the case of an *employee* who will receive leave loading when the converted leave is taken to take account of the payment of leave loading.

¹¹¹ Payment will be made in accordance with clause 4.3 – Termination Payments.

¹¹² Clause 4.1 – Payment of Wages.

6.6 Parental Leave

Employees (including *regular casuals*¹¹³) are entitled to **parental leave** as provided for under Part VIA — Division 5 of *the Act*.¹¹⁴

6.7 Bereavement Leave

Employees are entitled to bereavement leave on *full pay (leave)* on the death in Australia of a *family member* or a member of the *employee's* household, up to and including the day after the funeral of such person.¹¹⁵

Employees are entitled to up to 2 days' *leave* on the death outside Australia of a member of the *employee's immediate family*.

The *employer* may require the production of satisfactory proof of death and evidence of the relationship to the deceased before paying *leave*.

6.8 Long Service Leave

Employees are entitled to long service leave in accordance with the provisions of the relevant legislation.

PART 7 – WORKERS' COMPENSATION

In this Part, *employee* means a *worker*.

All *employees* are entitled to workers' compensation in accordance with the relevant legislation for any work related injury or illness.

Any *employee* suffering from a work related injury or illness must, as soon as practicable:—

- notify the *employer* of the nature and extent of the injury or illness and the probable duration of any absence from work;
- enter the details of the injury or illness in the register of injuries; and
- complete a workers' compensation claim form.¹¹⁶

PART 8 – OCCUPATIONAL SUPERANNUATION

In this Part, *employee* means an *eligible employee*.

8.1 Application

Employees are entitled to occupational superannuation subject to the provisions of this Part.

8.2 Nominated Funds

The funds nominated for the purposes of clause 8.3 (the ***nominated funds***) are:—

- (1) Sunsuper Pty Ltd;
- (2) any employer-sponsored *approved fund*;
- (3) any industry, multi-industry or other *approved fund* which has been nominated in any award of *the Commission* or a State industrial body; and

¹¹³ *Parental leave* is available to *regular casuals* under this agreement despite the definitions of 'employee' in Schedule 14 of *the Act* and Part 5A — Division 2 of the regulation.

¹¹⁴ Schedule 14 of *the Act* and Part 5A — Division 2 of the regulation are reproduced as Attachment A.

¹¹⁵ A maximum of 5 days' *leave* applies in the case of *immediate family* members. A maximum of 2 days' *leave* applies to other *family members* or members of the *employee's* household.

¹¹⁶ Failure to notify the *employer* on a timely basis or complete the register of injuries and a claim form may adversely effect the *employee's* entitlement to workers' compensation.

- (4) any *approved fund* as is agreed between the *employer* and an *employee* where membership of the *selected fund* would be in conflict with the conscientious religious beliefs of the *employee*, such fund to be the *selected fund* for that *employee*.

8.3 Fund Selection

- (1) The *employees* may determine by a majority decision which of the *nominated funds* is to be the *selected fund*.

Unless otherwise determined in accordance with this subclause, Sunsuper Pty Ltd will be the *selected fund*.

If the *selected fund* ceases at any time to be an *approved fund*, a new selection must be made.

- (2) The selection of a fund does not preclude a subsequent decision by the majority of *employees* in favour of another *nominated fund* where the long-term performance of the *selected fund* is clearly disappointing.

Where this provision has been utilised and another *nominated fund* is selected, a further re-appraisal for the purpose of selecting yet another fund may not be made for a period of 3 years.

8.4 Enrolment

- (1) The *employer* must, as soon as practicable after an *employee* becomes eligible:—
- notify the *employee* of their entitlement to occupational superannuation;
 - take all reasonable steps to ensure that the *employee* receives, completes, signs and returns the necessary application form provided by the *employer* to enable that *employee* to become a member of the *selected fund*; and
 - submit all completed application forms and any other relevant material to the trustees of the *selected fund*.
- (2) Each *employee* upon becoming eligible must complete the application form and return it to the *employer* within 28 days of receipt in order to be entitled to the benefit of the contributions prescribed in clause 8.5.¹¹⁷
- (3) Where the *employer* has complied with subclause (1) but the *employee* has failed to comply with subclause (2), the *employer* must advise the *employee* in writing of the non-receipt and further advise the *employee* that failure to complete the form and return it to the *employer* within a further period of 14 days could jeopardise the *employee's* entitlement to the occupational superannuation.

8.5 Contributions

The *employer* will contribute the percentage of the *employee's* OTE under Appendix A to the *selected fund*, or such other *approved fund* as is agreed between the *employer* and a particular *employee*, on behalf of each *employee*.¹¹⁸

The *employer* will pay such contributions to the credit of each *employee* monthly, or more frequently where required by the *selected fund's* trust deed.

¹¹⁷ Clause 8.5 – Contributions.

¹¹⁸ *Casual CPK drivers' OTE* equals the monthly paid kilometres divided by 500 multiplied by their daily OTE rate. Other *employees' OTE* is based on *ordinary working hours*.

However, where an *employee* fails to complete and return the application form within the further period of 14 days provide for in subclause 8.4(3),¹¹⁹ the *employer* will be under no obligation to make contributions in respect of the *employee* for the period up to when a completed form is received by the *employer*.

If the *employer* breaches subclause 8.4(1),¹¹⁹ the *employer* must make contributions as from the date the *employee* became eligible, provided the *employee* completes and returns the application form within 28 days of receiving same.¹²⁰

Contributions will continue to be paid during any absence on *full pay*, but the *employer* is not required to pay contributions for unpaid absences.

However, in the case of absences on workers' compensation, the *employer* will contribute in accordance with this clause while the *employee* is receiving workers' compensation at such a rate as to remain an *eligible employee*.

The *employer* must not be required to pay any amounts for the establishment, administration, management or any other charges in connection with a fund other than the remission of contributions.

The *employer* must not be required to make contributions to more than 1 fund, except in the case of *employees* where subclause 8.2(4)¹²¹ applies.

8.6 Unpaid Contributions

Should it be established that the *employer* has failed to comply with the requirements of clause 8.5¹²² in respect of any *employee*, the *employer* will be liable to make the appropriate contributions retrospectively to the date of eligibility of the *employee*, plus an amount equivalent to the rate of return those contributions would have attracted in the relevant fund had they been paid on the due dates.

The making of such contributions satisfies the requirements of this Part but does not preclude any common law action that may otherwise be available in relation to death, disablement or any similar cover that would have been provided by the relevant fund.

8.7 Record Keeping

The *employer* must keep and have available for inspection records of payments made under this Part.

PART 9 – EFFICIENCY, TRAINING AND FLEXIBILITY

9.1 Structural Efficiency

A *consultative committee* will be maintained to enhance :—

- effective implementation of structural efficiency and enterprise flexibility;
- the job security and work satisfaction of the *employees* and their career opportunities within the industry; and
- the efficiency, productivity and competitiveness of the *company*.

Committee meetings are to be held on a quarterly or as required basis and scheduled so as to minimise any disruption to work.

The management of the *company* and the determination of its aims and directions is the prerogative of management and the *consultative committee* is to function within this framework.

¹¹⁹ Clause 8.4 – Enrolment.

¹²⁰ Where the *employee* fails to complete and return the form within 28 days, subclause (3) will apply.

¹²¹ Clause 8.2 – Nominated Funds.

¹²² Clause 8.5 – Contributions.

9.2 Training and Flexibility

Employees are to undertake training as required for a wider range of duties and for access to higher classifications. Training will, where necessary, be provided by the *employer* to ensure that *employees* are capable of meeting the *employer's* requirements in relation to the quality and accuracy of the work assigned to them.

Where an *employee* undertakes a course of training or retraining at the request of the *employer*, such training may be undertaken either on or off the job and will, whenever possible, be conducted during *ordinary working hours*.

An *employee* undertaking training will receive *full pay* and, in addition, the *employer* will pay for (or reimburse the *employee* for) the following costs associated with such training:—

- prescribed course fees;
- prescribed text books and course materials; and
- travel costs exceeding those normally incurred by the *employee* in travelling to and from work.

Despite Part 5,¹²³ where such training is undertaken at a time either partially or wholly outside of the *employee's ordinary working hours*, the *employee* will be allowed time off in lieu of overtime at a mutually acceptable time, on a time for time basis without any allowance for overtime rates and allowances.

PART 10 – DISPUTE PREVENTION AND SETTLEMENT

In the event of an *employee* having a dispute or grievance in relation to any matter covered by this agreement or any other industrial matter, the following procedures are to be followed:—

- (1) The *employee* must in the first instance, raise the matter dispute with their immediate *supervisor*.

However, if the dispute involves the *employee's* immediate *supervisor*, another *supervisor* should be approached.

- (2) If the matter is not resolved, or if the *employee* is not satisfied with the determination of the *supervisor*, the *employee* must discuss the matter with senior management.

Such discussions should, if possible, take place within 2 *ordinary working days* of the request by the *employee*.

A member of the *consultative committee* may act as the representative of the *employee* involved in such discussions.

- (3) If, after the discussions set out in subclause (2), the dispute remains unresolved after the *employer* and the *employee* have genuinely attempted to achieve a settlement, then notification of the existence of the dispute is to be given under the relevant provisions of *the Act*.

- (4) The *employer* and the *employee* must give due consideration to matters raised or any suggestion or recommendation made by *the Commission* with a view to achieving the prompt settlement of the dispute.

- (5) Any order of *the Commission* (subject any right of appeal under *the Act*) will be final and binding on all parties to the dispute.¹²⁴

- (6) Until the matter is determined in accordance with the above procedure work must continue normally.

¹²³ Part 5 – Work and Overtime

¹²⁴ This provision operates despite clause 1.3 – Operation.

However, if the dispute involves a bona fide health and safety issue work shall not proceed until the safety issue is resolved.

- (7) No party is to be prejudiced as to the final settlement by the continuance of work in accordance with this Part.

PART 11 – MISCELLANEOUS

11.1 Drugs at Work

- (1) In the interests of health and safety and the well being of others, smoking is not permitted in any enclosed areas or on the dock/depot floor.
- (2) It is *company* policy that no person affected to any degree by intoxicating liquor or drugs (including prescription medicines) is authorised or permitted to operate, drive or be in charge of *company* vehicles or machinery.

The *company* considers a breach of this policy during working hours that puts persons or property at risk of injury or damage to be serious misconduct justifying instant dismissal.¹²⁵

Put simply, any *employee* who drives a *company* vehicle or operates *company* machinery (e.g. a forklift) while under the influence of intoxicating liquor or drugs thereby risking serious injury to themselves and others or damage to property will be subject to instant dismissal.¹²⁵

- (3) It is *company* policy that where any *employee* reports for or is on duty, or is suspected on reasonable grounds of reporting for or being on duty, under the influence of intoxicating liquor or drugs, the *employee* may be:—
 - (a) required to immediately take leave and absent themselves from work for any *ordinary hours of work* occurring until they are not so effected; and
 - (b) given a first and final disciplinary warning that any repetition of such conduct at any time in the future may be regarded as serious misconduct justifying dismissal.¹²⁶

11.2 No Extra Claims

It is a term of this agreement that the *employees* bound by this agreement will not pursue any extra claims, award or over-award, during the *period of operation*, including increases arising from award variations or decisions of the *Commission*, other than increases that are provided for by this agreement.

11.3 Uniforms

The *employer* will provide uniforms as follows free of charge to *permanent* operations staff:—

- 3 shirts
- 3 shorts.¹²⁷

An *employee* supplied with uniforms is required to wear them at work and is responsible for laundry and keeping the uniforms in a neat and tidy condition. The *employer* will replace uniforms on each anniversary of supply.

¹²⁵ See clause 2.3(4)(b) – Termination of Employment – By the Employer.

¹²⁶ See clause 2.4(3) – Final Warning.

¹²⁷ *Temporary employees, probationers and casuals* may be supplied uniforms at the *employer's* discretion.

PART 12 – CONTRACT CARRIERS

12.1 Application

The provisions of this agreement, except as specifically provided for in this Part or unless the context otherwise requires, apply to *contract carriers* as if the term '*contract carrier*' was substituted for the term '*employee*' and the term '*company*' was substituted for the term '*employer*' and the term '*engagement*' was substituted for the term '*employment*'.

12.2 Exclusions

The following provisions do not apply to *contract carriers*:—

- clause 2.2 – Types of Work;
- subclause 2.3(5) – Redundancy;
- clause 2.5 – Employee Records;
- Part 3 – Wages;
- clause 4.1 – Pays and Pay Slips;
- Part 5 – Work and Overtime;
- Part 6 – Leave;
- Part 7 – Workers' Compensation; and
- Part 8 – Occupational Superannuation.

12.3 Terms and Conditions of Engagement

The *contract carrier* is responsible, at the *contract carrier's* cost, for:—

- the supply of a *suitable vehicle* (the **vehicle**) and *suitable driver* (the **driver**);
- the maintenance and running costs of the *vehicle*;
- the provision of a substitute *vehicle* in the event of the regular *vehicle* being unavailable for any reason;
- the provision of a substitute *driver* in the event of the regular *driver* being unavailable for any reason;
- maintenance of a workers' compensation policy in accordance with the relevant legislation to cover any *workers* of the *contract carrier*, including the *driver* and any driver's assistants and any substitute *drivers* provided by the *contract carrier* in accordance with this Part, including cover for the maximum amount provided for under the legislation indemnifying the *contract carrier* and the *company* against their respective liabilities at law to the *driver*;
- maintenance of a personal sickness and accident, or earnings protection, insurance policy where the *driver* is not, or is deemed to not be, a *worker*, providing cover for not less than the value of the labour costs component;
- maintenance of a comprehensive motor vehicle insurance policy covering the *vehicle* (and any substitute *vehicle*) including cover for third party property damage of not less than 5 million dollars for any 1 incident and including indemnity of the *company* for any action of the *contract carrier* or *driver* to which the policy applies;
- maintenance of public liability cover of not less than 5 million dollars for any 1 incident and including indemnity of the *company* for any action of the *contract carrier* or *driver* to which the policy applies;
- payment of all wages and occupational superannuation payable to the *contract carrier's* employees, including the *driver* and any driver's assistants and any substitute *drivers* provided by the *contract carrier* in accordance with this Part, together with any superannuation guarantee levy charges plus any other government charges taxes levies or imposts due or relating to the employment of the *contract carrier's* employees;

- supply and maintenance of any necessary handling equipment and sufficient ropes, angles, tarps etc to provide adequate protection to the freight; and
- supply and maintenance of a digital mobile phone to facilitate communication with the *driver*.

The *contract carrier* may sell the *vehicle* “with work” to any purchaser who is acceptable to the *company* and who agrees to be bound by this agreement.¹²⁸

The *contract carrier* may replace the *vehicle* with another *suitable vehicle* at any time.

The *contract carrier* must replace the *vehicle* with a *suitable vehicle* within 30 days of being notified in writing by the *company* where the *vehicle* ceases to be a *suitable vehicle*. If the *contract carrier* fails or refuses to comply with the notice then, despite any other provision of this agreement, the *contract carrier’s* engagement will, without further notice, be *terminated* at the end of the 30-day notice period.

The *contract carrier* shall not have any lien over the freight.

The *company* may require a *contract carrier* to be or become incorporated.

Where the *contract carrier* is not an individual, any act, default or misconduct by any individual acting for or on behalf of the *contract carrier*, including the *driver*, shall be deemed to be the act, default or misconduct of the *contract carrier*.

An engagement by the *company* of a *contract carrier* to undertake work under a contract of carriage does not commit the *company* to enter into further contracts of carriage with the *contract carrier* or guarantee any minimum hours of work.

Despite anything contained in this agreement, or any presumption or rule of law to the contrary, and despite the fact that the *contract carrier* is performing the same or similar work to that performed by *employees* of the *company*, the relationship between the *contract carrier* and the *company* shall be that of independent contractors and not master and servant.

12.4 Obligations of the Contract Carrier

The *contract carrier* (including the *driver* where applicable) must:—

- undertake pickups, deliveries and associated tasks as directed by the *company* and advise the *company* as early as practicable of any inability to attend or perform as directed;
- comply with all Acts, ordinances, regulations and local laws relating to the registration, third party insurance and operation of the *vehicle*;
- report any motor vehicle accident or incident involving the *vehicle* to the *company* and attend to any legal requirements at the scene;
- keep the *vehicle* in a mechanically sound, roadworthy and clean condition;
- employ such *drivers* plus any driver’s assistants and substitute *drivers* as are necessary and comply with all awards, orders, determinations, general rules, laws and employment agreements applicable to the employment of such *drivers* by the *contract carrier*;¹²⁹
- not engage or use the services of a driver other than the *driver* without the prior approval of the *company*;

¹²⁸ The *company* must not be a party to any such contract and offers no warranty as to the suitability or otherwise of the *vehicle* or the continued engagement of the purchaser beyond the terms and conditions of this agreement. Neither the *company* nor any *employee* may receive any payment, commission or consideration of any kind in consequence of any such contract or sale.

¹²⁹ This provision operates despite Clause 1.3 - Operation.

- ensure the *driver* holds at all times a current driver's licence appropriately issued or endorsed in respect of the class of the *vehicle*; is of neat appearance; observes the necessity for civility to the *company's* customers, servants, agents and other *contract carriers*; and complies with those provisions of this agreement which are appropriate to be complied with by the *driver* and ensure that the *driver* does not commit misconduct;
- produce for inspection by the *company* any licence or policy or certificate of currency for any policy required to be kept by the *contract carrier* or *driver*, and immediately notify the *company* if such licence or policy expires or is suspended, cancelled or endorsed;
- notify the *company* of any encumbrance, lien or bill of sale affecting the *vehicle*;
- not load freight onto the *vehicle* or remove freight from the depot unless the freight is to be delivered in the *contract carrier's* delivery area and the freight has been checked off against the appropriate consignment note or worksheet;¹³⁰
- exercise all reasonable care and diligence in the carriage and safe keeping of the freight;
- use every endeavour to obtain the receiver's signature for freight delivered and note any damage or shortage at the time of pickup or delivery;
- not deliver freight without obtaining the receiver's signature and other details required to be completed on the consignment note or worksheet unless authorised by the *company*;
- hand in all consignment notes and worksheets on a daily basis or as otherwise directed by the *company*; and
- pay to the *company* the amount of any claim, loss or expense incurred by the *company* in consequence of freight in the charge of the *contract carrier* being lost or damaged if the *company*, or a person for whose actions the *company* is responsible, is so liable at law.

12.5 Payment

- (1) *Contract carriers* performing parcel work in accordance with the terms and conditions set out in clause 12.3¹³¹ using a *suitable vehicle* will be paid minimum rates of remuneration in accordance with Appendix B, based on their normal place of engagement.

Where a *contract carrier* provides a vehicle which is not a *suitable vehicle*, or does not comply with the terms and conditions set out in clause 12.3¹³¹ and as a result the *contract carrier* does not incur a cost accounted for in the rates set out in Appendix B or the *company* incurs additional costs as a result of the non-compliance, the rates payable to the *contract carrier* may be reduced accordingly.

- (2) *Contract carriers* performing taxi truck or courier work will be paid at the rates as agreed from time to time between the *company* and the *contract carrier*, based on chargeable hours on a per job basis, with such rates being not less favourable to the *contract carrier* than the rates payable to *contract carriers* performing parcel work under subclause (1) after allowance is made for the ad hoc nature of the engagement.
- (3) Payment will be made on a weekly basis, two weeks in arrears.¹³²

¹³⁰ A breach of this provision will be considered serious misconduct justifying instant dismissal.

¹³¹ Clause 12.3 – Terms and Conditions of Engagement.

¹³² That is, payment for work performed in one week will be made on the normal *contract carrier* payday of the week that is two weeks after the week in which the work was performed.

Appendix A

A.1 Wages

The minimum *ordinary rate of pay* for the classifications under clause 3.1 - Classifications¹³³ are as follows:—

| | NSW | | NT | | Other | |
|---------|--------|-----|--------|-----|--------|-----|
| | Weekly | CPK | Weekly | CPK | Weekly | CPK |
| Grade 1 | \$ | | \$ | | \$ | |
| Grade 2 | \$ | | \$ | | \$ | |
| Grade 3 | \$ | ¢ | \$ | ¢ | \$ | ¢ |
| Grade 4 | \$ | ¢ | \$ | ¢ | \$ | ¢ |
| Grade 5 | \$ | ¢ | \$ | ¢ | \$ | ¢ |
| Grade 6 | \$ | ¢ | \$ | ¢ | \$ | ¢ |

The above rates will be varied annually with effect from the first pay period commencing after the *review date* to give a flow-on of 110% of any National Wage Case decisions handed down by *the Commission* since the last *review date*.¹³⁴

A.2 Salaries

Annual salaries will be renegotiated before the *review date* each year, with any changes to be effective from the first pay period commencing after the *review date*:

A.3 Superannuation

Superannuation contributions will be paid at a rate not less than the appropriate superannuation guarantee charge percentage rate.¹³⁵

¹³³ Clause 3.1 – Classifications.

¹³⁴ This provision operates despite clause 1.3 – Operation.

¹³⁵ See *Superannuation Guarantee (Administration) Act 1992*.

Appendix B

B.1 Contract Carrier Rates - Parcel

The following minimum working day (5 working days) rates of remuneration will apply to *contract carriers* performing parcel work in accordance with the terms and conditions set out in clause 12.3¹³⁶ using a *suitable vehicle*. Such rates have accounted for and include payment for wages based on the applicable classification under clause 3.1,¹³⁷ overtime in excess of *ordinary working hours*, leave,¹³⁸ occupational superannuation benefits, return on capital invested, depreciation, lease costs, registration and compulsory third party insurance, comprehensive insurance, public liability insurance, personal accident insurance, workers' compensation insurance, administrative overheads, fuel, oil, tyres, repairs, maintenance, and industry-specific allowances.

The labour cost component is based on an average 9 hour working day, including *casual loading* and overtime at the appropriate *overtime rate of pay*, based on the applicable classification as set out in clause 3.1.¹³⁷

Contract carriers engaged on an hourly hire basis will be paid at one-ninth of the appropriate daily rate for all hours worked.

| Payload | NSW & VIC | NT | OTHER |
|--------------------------------|----------------------|-----------|--------------|
| up to 1 tonne | \$ | \$ | \$ |
| over 1 tonne & up to 2 tonne | \$ | \$ | \$ |
| over 2 tonne & up to 3 tonne | \$ | \$ | \$ |
| over 3 tonne & up to 4 tonne | \$ | \$ | \$ |
| over 4 tonne & up to 6 tonne | \$ | \$ | \$ |
| over 6 tonne & up to 8 tonne | \$ | \$ | \$ |
| over 8 tonne & up to 10 tonne | \$ | \$ | \$ |
| over 10 tonne & up to 12 tonne | \$ | \$ | \$ |

The above rates are exclusive of GST.

The above rates will be varied annually with effect from the first pay period commencing after the *review date* to give a full flow-on of any increases in the applicable wage rates as set out in Appendix A.

The above rates will be varied not less than annually to take account of rises and falls in fixed and variable operating costs since the last variation.¹³⁹

¹³⁶ Clause 12.3 – Terms and Conditions of Engagement.

¹³⁷ Clause 3.1 – Classifications.

¹³⁸ See Part 6 – Leave.

¹³⁹ To remove doubt, *contract carrier* rates can fall where overall operating costs fall.

Appendix C**C.1 Schedule of Distances**

| <u>From</u> | <u>To</u> | <u>Route</u> | <u>Km</u> |
|-------------|---------------|-----------------------------|-----------|
| Adelaide | Alice Springs | Stuart Highway | 1531 |
| Adelaide | Darwin | Stuart Highway | 3021 |
| Adelaide | Perth | Eyre/Great Eastern Highway | 3206 |
| Brisbane | Cairns | Bruce Highway | 1697 |
| Brisbane | Coffs Harbour | Pacific Highway | 427 |
| Brisbane | Coolangatta | Pacific Highway | 99 |
| Brisbane | Darwin | Roma | 3399 |
| Brisbane | Mackay | Bruce Highway | 979 |
| Brisbane | Melbourne | Newell Highway | 1686 |
| Brisbane | Mount Isa | Warrego Highway | 1803 |
| Brisbane | Rockhampton | Bruce Highway | 642 |
| Brisbane | Sydney | New England Highway | 978 |
| Brisbane | Sydney | Pacific Highway | 982 |
| Brisbane | Toowoomba | Warrego Highway | 125 |
| Brisbane | Townsville | Bruce Highway | 1351 |
| Melbourne | Adelaide | Princess Highway | 936 |
| Melbourne | Adelaide | Western/Dukes Highway | 725 |
| Melbourne | Canberra | Albury/Hume Highway | 653 |
| Melbourne | Perth | Western/Dukes/Eyre/GE H'way | 3931 |
| Melbourne | Sydney | Hume Highway/SW Freeway | 873 |
| Melbourne | Sydney | Princes Highway | 1037 |
| Sydney | Adelaide | Hume/Sturt Highways | 1424 |
| Sydney | Canberra | Federal/Hume Highway | 286 |
| Sydney | Newcastle | Pacific Highway | 179 |

Schedule 1 – Dictionary

In this agreement:—

advance leave means leave taken in advance of an entitlement.

approved fund means any fund approved by the Australian Prudential Regulation Authority while it remains a complying fund.¹⁴⁰

carer's leave has the meaning given to it in clause 6.4.¹⁴¹

casual has the meaning given to it in subclause 2.1(2).¹⁴²

casual loading means the 25% loading payable to a *casual* in lieu of receiving leave and other entitlements accruing to *permanents*.

clerk includes any person *employed* to perform clerical duties by means of any process (e.g. word processing or electronic data processing) and includes a receptionist, telephonist and secretary.

company means National Transport Operations Pty Ltd, A.C.N. 097 597 272, trading in its own name and under any registered business name, and any *related corporation*, trading in its own name and under any registered business name, carrying on a *single business* with the *company*.

consultative committee means a committee comprised of between 1 and 4 duly elected *employee* representatives and 1 *employer* representative.

contract carrier means any partnership, corporation, firm, person or association of persons engaged by the *company* as such that provides a vehicle for the provision of transport services to the *company* on a regular basis, but excluding *outside hire*.

CPK driver means a *long distance driver* paid at the *CPK rate*.

CPK rate means the cents per kilometre payable to *CPK drivers*. The *CPK rate* is a flat rate inclusive of leave, overtime and industry disability allowances to compensate for leave and the nature and timing of the work and the lack of amenities available to *long distance drivers*.

designated awards means the *Transport Workers Award 1998*; the *Transport Workers' (Long Distance Drivers) Award 1993*; the *Transport Workers (Northern Territory) Award 1973*; the *General Clerks (Northern Territory) Award 2000*; the *Transport Workers (Australian Capital Territory) Award 1982*; the *Clerks (A.C.T.) Award 1998*; the *Transport and Storage Industry Sector – Minimum Wage Order – Victoria 1997*; the *Transport Industry (State) Award (N.S.W.)*; the *Clerical and Administrative Employees (State) Consolidated Award (N.S.W.)*; the *Transport Industry – General Carriers Contract Determination (N.S.W.)*; the *Transport Industry – Courier and Taxi Trucks Contract Determination (N.S.W.)*; the *Transport Industry – Interstate Carriers Consolidated Contract Determination (N.S.W.)*; the *Transport Workers (South Australia) Award (S.A.)*; the *Clerks' (S.A.) Award (S.A.)*; the *Transport Workers' (General) Award (W.A.)*; the *Clerical Employees Award – State (Qld)*; the *Transport, Distribution and Courier Industry Award – Southern Division (Qld)*; the *Carting Trade Award – Northern and Mackay Divisions (Qld)*; the *Carriers Award (Tas)*; the *Transport Workers General Award (Tas)*; the *Clerical and Administrative Employees (Private Sector) Award (Tas)*; any common rule award applying to employees engaged in the transport, storage and distribution industry and any award which replaces or supersedes a *designated award*

double time penalty rate of pay means 2 times the *ordinary rate of pay*.

¹⁴⁰ See *Superannuation Guarantee (Administration) Act 1992*.

¹⁴¹ Clause 6.4 – Carer's Leave.

¹⁴² Subclause 2.1(2) – Casual.

eligible employee means any *employee* who has been paid a minimum of \$450.00¹⁴³ in *OTE* in any calendar month.

employee means an individual *employed* by the *employer*.

employed means employed by the *employer*, and **re-employed** means re-employed by the *employer*.

employer means the *company* and any person acting with the authorisation of the *company* in the performance of any function usually performed by the *employer*.

family member means the *employee's immediate family* and any foster child or sibling of the *employee* and any parent, grandparent, or sibling of the *employee's spouse* and such other person as the *employer* may determine.

full pay means payment in full at the *ordinary rate of pay* for the *ordinary hours of work* that an *employee* is absent.

full-time has the meaning given to it in subclause 2.2(1).¹⁴⁴

immediate family means the *employee's spouse* and any child, ex-nuptial child, stepchild, adopted child, parent, grandparent or grandchild of the *employee*.

intoxicated — for the purposes of paragraph 2.3(4)(b),¹⁴⁵ an *employee* is taken to be *intoxicated* if the *employee's* faculties are, by reason of the *employee* being under the influence of intoxicating liquor or a drug (except a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), so impaired that the *employee* is unfit to be entrusted with the *employee's* duty or with any duty that the *employee* may be called upon to perform.

junior means any *employee* who is under the age of 18 years.

leave bank is a system whereby an *employee* may accumulate leave entitlements in lieu of being paid *casual loading* or overtime pay. *Leave bank* entitlements may be taken as annual leave, sick leave or *carer's leave*.

loader means a person whose duties include either exclusively or principally the loading or unloading of freight and related tasks.

long distance driver means a driver performing interstate or long distance operations involving a return journey exceeding 500 kilometres.

long distance driver loading means the 56% loading payable to a *non-CPK driver* which includes overtime and industry disability allowances to compensate for the nature and timing of the work and the lack of amenities available to *long distance drivers*.

nominal expiry date means 31st December 2003.

normal operating hours has the meaning given to it in clause 5.1.¹⁴⁶

notice means notice of *termination* of employment.

ordinary hours of work has the meaning given to it in clause 5.2.¹⁴⁷ The weekly **ordinary hours of work** for *non-casual CPK drivers* and *long distance drivers* not paid at the *CPK rate* is 40.

¹⁴³ This amount will be varied to equal to the amount set out from time to time in section 27(2) of the *Superannuation Guarantee (Administration) Act 1992*.

¹⁴⁴ See subclause 2.2(1) – Full-time.

¹⁴⁵ Paragraph 2.3(4)(b) – Termination of Employment – By the Employer.

¹⁴⁶ Clause 5.1 – Operating Hours.

¹⁴⁷ Clause 5.2 – Ordinary Hours of Work.

ordinary rate of pay means the actual hourly rate of pay the *employee* receives for their *ordinary hours of work*, including any payment in excess of the minimum rates under Appendix A, plus *casual loading*. **Ordinary rate of pay** in the case of a *salaried employee* means their salary. **Ordinary rate of pay** in the case of a *long distance drive* not paid at the *CPK rate* means their *ordinary rate of pay*, excluding *long distance driver loading*. **Ordinary rate of pay** in the case of a *CPK driver* means their *CPK rate*.

ordinary time earnings (OTE) means the *ordinary rate of pay* the *employee* (excluding a *CPK driver*) receives for their *ordinary hours of work*. Weekly **OTE** for *non-casual CPK drivers* equals the appropriate minimum weekly *ordinary rate of pay*. Daily **OTE** for *casual CPK drivers* equals the appropriate minimum weekly *ordinary rate of pay*, plus *casual loading*, divided by 5. **OTE** does not include overtime, penalty rates for work actually performed on *public holidays* or weekends, *long distance driver loading*, annual leave loading, bonus payments, lump sum payments made as a consequence of *termination*, fringe benefits, fares, travelling allowances and any other extraneous payments of a like nature.

ordinary working days for any particular *employee* means the days of the week, Monday to Saturday inclusive, on which the *ordinary hours of work* are performed and **ordinary weekend** means the other days of the week. **Ordinary working days** may be worked on not more than 5 days, while the *ordinary weekend* must be made up of at least two consecutive days.¹⁴⁸

ordinary working hours means the working hours, exclusive of unpaid breaks and overtime.

outside hire means any partnership, corporation, firm, person or association of persons engaged by the *company* as such for the provision of transport services to the *company* for specific loads or tasks or specific types of loads or tasks or on an irregular, infrequent or ad hoc basis or for the provision of transport services not normally provided by the *company's contract carriers*.

overtime rate of pay has the meaning given to it in clause 5.3.¹⁴⁹

parental leave has the meaning given to it in clause 6.6.¹⁵⁰

part-time has the meaning given to it in subclause 2.2(2).¹⁵¹

permanent has the meaning given to it in subclause 2.1(1).¹⁵²

period of operation has the meaning given to it in clause 1.3.¹⁵³

posted starting and ceasing times means the regular or normal times, within *normal operating hours*, for starting, ceasing and taking breaks as advised by the *employer*.

probation has the meaning given to it subclause 2.3(3).¹⁵⁴

probationer means any *employee* who is subject to *probation*.

public holiday means any day appointed as such under any Act in the locality where the *employee* is working or any *substitute holiday*.

redundancy occurs where the *employer* decides that an *employee's* position is redundant and the work the *employee* has been doing is no longer going to be done by any *employee*, or is to be absorbed into another position, whether of the same or a different classification.

¹⁴⁸ For example, an *employee* may work their 40 *ordinary hours of work* as a half day on Monday and 12 hours per day on Tuesday, Thursday and Friday, having Wednesday, Saturday and Sunday as their *ordinary weekend*.

¹⁴⁹ Clause 5.3 – Overtime.

¹⁵⁰ Clause 6.6 – Parental Leave.

¹⁵¹ Subclause 2.2(2) – Types of Employment – Part-time.

¹⁵² Subclause 2.1(1) – Types of Employment – Permanent.

¹⁵³ Clause 1.3 – Operation.

¹⁵⁴ Subclause 2.3(3) – Probation.

regular casual has the meaning given to it in paragraph 2.1(2)(b).¹⁵⁵

related corporation means a related corporation for the purposes of subsection 170LB(2) of the Act.¹⁵⁶

replacement employee means any *employee* specifically engaged, temporarily promoted or transferred as a result of another *employee* proceeding on *parental leave* whose engagement, promotion or transfer will automatically terminate without *notice* at the end of the other *employee's parental leave*.

review date means 1st July in any year.

salaried employee means any *supervisor* or manager who is remunerated on the basis of an annualised salary which incorporates all allowances and penalties and just compensation for the nature and extent of the work performed and for the performance of work in excess of the *ordinary hours of work*, and any *employee* whose *ordinary rate of pay* exceeds the minimum rates determined in accordance with Part 3¹⁵⁷ where applicable by 15% or more.

senior means any *employee* who is 18 years of age or older.

short-term casual has the meaning given to it in paragraph 2.1(2)(a).¹⁵⁸

single business means a single business pursuant to section 170LB of the Act.¹⁵⁶

spouse includes a de facto spouse, including a spouse of the same sex as the *employee*.

spread of hours has the meaning given to it in clause 5.1.¹⁵⁹

supervisor means any *employee* who has been delegated the right to determine the order and priority of the performance of work on a day-to-day basis and supervise the work of other *employees* and the right, subject to any limitations imposed by the *employer*, to engage or terminate the employment of such supervised *employees*.

suitable driver means a driver suitable to and approved by the *company*.

suitable vehicle means a vehicle as follows with a sufficient carrying capacity to handle the freight. The vehicle must be configured as specified by the *company*. The vehicle must be not more than five years old at any time. The cabin and pan must be painted white. There must not be any advertising, painting or markings on the vehicle that are unacceptable to the *company*.

terminated means terminated by the *employer*, while **termination** includes resignation.

temporary employee has the meaning given to it in clause 2.1(3).¹⁶⁰

term employee means a *temporary employee* engaged for a predetermined period.

the Act means the *Workplace Relations Act 1996*.

the Commission means the Australian Industrial Relations Commission.

time and a half penalty rate of pay means 1½ times the *ordinary rate of pay*.

worker means a worker as defined in the relevant workers' compensation legislation and includes a person deemed to be a worker.

¹⁵⁵ Paragraph 2.1(2)(b) – Types of Employment – Regular Casual.

¹⁵⁶ See section 170LB (Single business and single employer) of the Act.

¹⁵⁷ Part 3 – Wages.

¹⁵⁸ Paragraph 2.1(2)(a) – Types of Employment – Short-term Casual.

¹⁵⁹ Clause 5.1 – Operating Hours.

¹⁶⁰ Subclause 2.1(3) – Types of Employment – Temporary.

Schedule 2 – Related Corporations

| <u>Company Name</u> | <u>A.C.N.</u> |
|----------------------------------|---------------|
| Cairns Distribution Pty Ltd | 097 596 373 |
| Capital Distribution Pty Ltd | 100 222 268 |
| Capricorn Distribution Pty Ltd | 069 415 783 |
| Flinders Freight Express Pty Ltd | 068 424 153 |
| Knights Distribution Pty Ltd | 100 222 259 |
| Malcorp Holdings Pty Ltd | 059 629 300 |
| Malcorp Management Pty Ltd | 059 888 023 |
| Newnet Express Pty Ltd | 075 030 974 |
| Range West Distribution Pty Ltd | 072 089 788 |
| Stuart Distribution Pty Ltd | 071 620 561 |
| Sunshine Freight Express Pty Ltd | 069 414 919 |
| Tasports Distribution Pty Ltd | 073 616 083 |
| XL Express Pty Ltd | 098 743 901 |
| XL Express (NSW) Pty Ltd | 068 423 067 |
| XL Express (SA) Pty Ltd | 075 030 956 |
| XL Express (VIC) Pty Ltd | 073 440 712 |
| XL Express (WA) Pty Ltd | 067 739 879 |
| XL Express (QLD) Pty Ltd | 059 663 124 |