

Submission  
No 22

**INQUIRY INTO PROCUREMENT PRACTICES OF  
GOVERNMENT AGENCIES IN NEW SOUTH WALES AND  
ITS IMPACT ON THE SOCIAL DEVELOPMENT OF THE  
PEOPLE OF NEW SOUTH WALES**

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# MAIN SUBMISSION TO INQUIRY INTO THE PROCUREMENT PRACTICES OF GOVERNMENT AGENCIES IN NEW SOUTH WALES AND ITS IMPACT ON THE SOCIAL DEVELOPMENT OF THE PEOPLES OF NEW SOUTH WALES

Igor Nossar and Luigi Amoresano 15 March 2024

## DEFINING “VALUE FOR MONEY” IN GOVERNMENT PROCUREMENT

The fundamental goal of securing “**value for money**” through government procurement can **never** justify cost reductions which are derived from (or obtained by way of) **illegality**.

Therefore, ethical government procurement practices and requirements can never encourage, condone or rely on contracting practices which profit from illegality.

Government procurement must therefore be designed around **a zero-tolerance approach to the circumvention or avoidance of legally required minimum standards of pay and conditions** for any workers throughout the supply chains performing work required to fulfill government procurement contracts.

Most especially, government procurement must be designed to **strictly avoid endangering** the health and safety of any of these workers (or any members of **the broader general public**).

Indeed, government procurement should preferably be aimed at promoting health (as well as appropriately treating illness and injury) in the most cost effective manner possible. (In parallel to these considerations of promoting health and appropriate treatment, government procurement should also aim at cost effective promotion of social, environmental and economic sustainability.) In these particular respects, attention is especially drawn to the insightful analysis contained in the following authoritative expert commentaries on the potential for healthcare sector procurement:

(\*) Graham R., Miller F. and Moloney K. (2016) ‘Value-based procurement: The tip of the iceberg’, Healthcare Management Forum, 19 September. Available at: <https://healthcaremanagementforum.wordpress.com/2016/09/19/value-based-procurement-the-tip-of-the-iceberg/>

(\*) Health Care Without Harm (HCWH) Global (2023) ‘The role of the health care sector in climate change mitigation’, 3 July. Available at: <https://noharm-global.org/articles/news/global/role-health-care-sector-climate-change-mitigation>

## **THE PROPOSED GOVERNMENT PROCUREMENT MODEL**

Government procurement strategy, policies and contractual practices will ensure appropriate, fiscally responsible **regulatory oversight** of the provision of goods and services supplied to government.

In particular, suppliers of such goods and services – and the supply chains which perform the work required for such supply – will be contractually obliged to disclose specified details (of such supply) to nominated third party agencies with a reliable interest in ensuring that the workers performing this work receive no less than the minimum legally required standards of pay, conditions and safety.

### **THE PROPOSED SYSTEM OF SUPPLY CHAIN REGULATORY OVERSIGHT**

Government procurement contracts with suppliers will oblige these suppliers to fully disclose (to these third party agencies) the relevant information which will enable these third party agencies to locate (and check on) all the people performing this work throughout each supplier's respective supply chains.

More specifically, these third party agencies will be contractually empowered to access those details of such supply which will enable these agencies to track and access the locations and records of this work (and the identities and numbers and remuneration of workers performing this work).

These third party agencies will be obliged to **report back** to government procurement authorities about pertinent unresolved (or persisting) breaches of relevant procurement contract conditions. (More specifically, these third party agencies will be obliged to report back about breaches of procurement contract conditions relating to minimum legally required standards of pay, conditions and safety.)

### **THE PROPOSED SYSTEM OF "REPORTING BACK"**

These third party agencies will be empowered in this manner in order to provide government with a "low cost/no cost" mechanism of regulatory oversight over government procurement supply chains, with the third party agencies being obliged to report back to government if they uncover any relevant breaches of legally required minimum pay/conditions standards in these supply chains.

This "report back" arrangement will provide a powerful commercial incentive for each supplier to promptly remedy any such breaches (well in advance of any costly, time consuming litigation outcomes). This "report back" mechanism will also create a powerful commercial incentive for each supplier to proactively increase cooperation with these contractually empowered third party agencies in jointly creating the necessary "culture of compliance" throughout each respective supply chain performing this procurement work.

## **THE “STEP-BY-STEP” IMPLEMENTATION OF THIS PROCUREMENT MODEL**

This regime of regulatory oversight will be trialled in pilot arrangements focused initially upon specific **Australian domestic industry sectors**, as a precursor to rolling out the regulatory oversight mechanism more widely.

These pilot trials will enable government procurement authorities – as well as the nominated third party agencies – to jointly confirm (and implement) desirable protocols for the mutually satisfactory operation of this type of supply chain regulatory oversight. Jointly agreed protocols will include procedures (and timetables) for appropriate protection of commercially sensitive information. Jointly agreed protocols will **not** constrain existing rights to pursue compliance enforcement through existing judicial avenues. (In particular, these jointly agreed protocols will **not** prohibit either the government agencies or the nominated third party agencies from pursuing compliance enforcement of minimum legal working conditions through existing judicial avenues.)

## **THE ROLE OF AUSTRALIAN TRADE UNIONS IN THE PROPOSED PROCUREMENT MODEL**

Recent investigations have conclusively exposed the repeatedly scandalous behaviour exhibited by many private sector business operators in their dealings with government – especially various private sector firms operating in the overlapping commercial sectors of consultancy and accountancy.

In the case of many of the “Big Four” firms (and many of their business competitors), numerous intractable conflicts of interest have plagued their supply of services to government authorities – resulting in massive costs, expenses and delays imposed on those same government authorities.

By contrast, Australian trade unions clearly exhibit a strong vested interest in resisting any attempt to evade compliance with minimum labour law entitlements. Accordingly, these trade unions are the obvious candidates to be contractually authorised as the nominated third party monitors of compliance with labour law minima throughout supply chains supplying government procurement contracts. (Australian trade unions could exercise this role simultaneously with the granting of parallel supply chain regulatory oversight powers to government public sector agencies.)

EXAMPLES WHERE AUSTRALIAN INDUSTRIES HAVE ALREADY CONTRACTUALLY AUTHORISED RELEVANT TRADE UNIONS TO ACT AS NOMINATED THIRD PARTY MONITORS OF COMPLIANCE WITH LABOUR LAW MINIMA THROUGHOUT CONTRACT NETWORKS (SUCH AS SUPPLY CHAINS):

- (\*) NSW Retailers / TCFUA Ethical Code of Practice Agreement, 2002
- (\*) National Retailers / TCFUA Ethical Clothing Code of Practice Agreement
- (\*) National Retailers / TCFUA / David Jones Ethical Clothing Code of Practice Agreement (2002)
- (\*) National Retailers / TCFUA / Coles Myer Stores Ethical Clothing Code of Practice Agreement (2002)
- (\*) National Retailers / TCFUA / Big W (A Division of Woolworths) Ethical Clothing Code of Practice Agreement (2002)
- (\*) Sports and Corporate Wear Ethical Clothing Deed - TCFUA and Nike Australia Pty Ltd (2003)

- (\*) (Transnational Supply Chains) Sports and Corporate Wear Ethical Clothing Deed - TCFUA and Reebok Australia Pty Ltd (2003)
- (\*) (Transnational Supply Chains) Sports and Corporate Wear Ethical Clothing Deed - TCFUA and RM Williams
- (\*) Kaine, S. and Rawling, M., 2019. Strategic ‘Co-enforcement’ in supply chains: The case of the cleaning accountability framework. *Australian Journal of Labour Law*, 31(3), pp.305-334. In particular, see pp. 323-324.
- (\*) Star Track Express Sydney Branch Enterprise Bargaining Agreement November 2002 – November 2005 [ENTERPRISE AGREEMENT NO: EA04/43]. In particular, see clause 27.0, Chain of Responsibility.
- (\*) Toll Group – TWU Enterprise Agreement 2013-2017 at cl. 33 and 45 and at Part E. In particular, see clause 33, Site inductions, and clause 45, Fleet operators, at subclause 45.1, Engagement of Fleet Operators, and at subclause 45.3, Compliance, and at subclause 45.4, Consultation, and especially at subclause 45.5, Notification and reporting. Also, in particular, see Part E, FREIGHT CARTAGE AGREEMENT CLAUSES [especially at subclause 1.Records Audit, and also at subclause 1.Compulsory Induction Training].
- (\*) Nossar, I. and Amoresano, L., 2019. Delivering “safe rates” in today’s road transport supply chains. *International Transport Workers’ Federation (ITF)*, 20. In particular, see pp. 11-12.
- (\*) Nossar, I. “The Scope for Appropriate Cross-Jurisdictional Regulation of International Contract Networks (Such as Supply Chains): Recent Developments in Australia and their Supra-National Implications”, Keynote Presentation to ‘Better Health and Safety for Suppliers’, International Labour Organisation Workshop in Toronto, Canada, 17 April 2007. [THIS PAPER IS REPRODUCED IN FULL AS AN APPENDIX TO THIS SUBMISSION.] In particular, see p.15. THIS PAPER ALSO DESCRIBES EXAMPLES OF AUSTRALIAN INDUSTRIES WHOSE CONTRACTING PRACTICES HAVE BEEN LEGISLATIVELY REGULATED TO AUTHORISE RELEVANT TRADE UNIONS TO ACT AS NOMINATED THIRD PARTY MONITORS OF COMPLIANCE WITH LABOUR LAW MINIMA THROUGHOUT CONTRACT NETWORKS (SUCH AS SUPPLY CHAINS). In particular, see Annexure A, “N.S.W. ETHICAL CLOTHING TRADES EXTENDED RESPONSIBILITY SCHEME” at section 5 (definition of “authorised person”) and section 12(3) and section 20(8) and at SCHEDULE 2 – PART A (especially at “UNDERTAKING AS TO THE EMPLOYMENT OF OUTWORKERS UNDER RELEVANT AWARD: TO BE COMPLETED IN RESPECT OF CLOTHING PRODUCTS MANUFACTURED TO RETAILER’S SPECIFICATIONS”). Also, in particular, see Annexure B; “N.S.W. TRANSPORT INDUSTRY – CASH – IN – TRANSIT (STATE) AWARD” at clause 27, Contract Work – Chain of Responsibility (especially at subclause 27.6). Also, in particular, see Annexure C: “N.S.W. OCCUPATIONAL HEALTH AND SAFETY AMENDMENT (LONG DISTANCE TRUCK DRIVER FATIGUE) REGULATION 2005” at clause 81B, Duty to Assess and manage fatigue of drivers, and at clause 81C, Duty of consignors and consignees to make inquiries as to likely fatigue of drivers, and at clause 81F, Records [especially at subclauses 81(1) and (2) and (5) and (6)].

## **PARALLEL DEVELOPMENT OF PROCUREMENT SUPPLIER “BEST PRACTICE MODELS”**

This proposed regime of pilot trials for trade union regulatory oversight over government procurement supply chains will also create the opportunity for jointly agreed development of “best practice” models for government procurement suppliers. In particular, both government procurement agencies and those relevant trade unions responsible for coverage of the trial Australian domestic industry sectors will be able to jointly develop “best practice models” for procurement suppliers who wish to obtain a preferential status in the government procurement tender process.

Such “best practice models” will be designed to proactively reinforce a productive cooperative relationship between suppliers and their third party monitors aimed at establishing (and maintaining) a “culture of compliance” throughout the procurement supply chains.

### **EXAMPLES OF AUSTRALIAN INDUSTRIES WHERE SUCH SUPPLIER “BEST PRACTICE MODELS” HAVE ALREADY BEEN DEVELOPED AND IMPLEMENTED:**

(\*) Rawling, M.J., 2014. Cross-jurisdictional and other implications of mandatory clothing retailer obligations. *Australian Journal of Labour Law*, 27(3), pp.191-215.

(\*) Rawling, M., Kaine, S., Josserand, E. and Boersma, M., 2021. Multi-Stakeholder frameworks for rectification of Non-compliance in cleaning supply chains: The case of the cleaning accountability framework. *Federal Law Review*, 49(3), pp.438-464.

(\*) Nossar, I., 2020. Protecting ‘Gig Economy’ Workers through Regulatory Innovation: Controlling Contract Networks within Digital Networks. In *The Regulation and Management of Workplace Health and Safety* (pp. 100-122). Routledge. In particular, see pp.106-112 at “Australia’s Model of Social Protection through Supply Chain Regulation”.

(\*) Johnstone, R., McCrystal, S., Nossar, I., Quinlan, M., Rawling, M. and Riley, J., 2012. Beyond employment: The legal regulation of work relationships. The Federation Press. In particular, see pp.159-162 at “*Supply Chain Regulation*”.

(\*) Star Track Express Sydney Branch Enterprise Bargaining Agreement November 2002 – November 2005 [ENTERPRISE AGREEMENT NO: EA04/43]. In particular, see clause 27.0, Chain of Responsibility.

(\*) Toll Group – TWU Enterprise Agreement 2013-2017 at cl. 33 and 45 and at Part E. In particular, see clause 33, Site inductions, and clause 45, Fleet operators, at subclause 45.1, Engagement of Fleet Operators, and at subclause 45.3, Compliance, and at subclause 45.4, Consultation, and especially at subclause 45.5, Notification and reporting. Also, in particular, see Part E, FREIGHT CARTAGE AGREEMENT CLAUSES [especially at subclause 1.Records Audit, and also at subclause 1.Compulsory Induction Training].

## **STANDARDISED GOVERNMENT PROCUREMENT CONTRACT PROVISIONS**

All of the above mentioned **features of the proposed** government procurement **model (along with contractual authorisation for the operation** of these features of the proposed model) should be incorporated into the contractual provisions of all relevant government procurement arrangements.

### EXAMPLES OF RELEVANT MODEL CONTRACTUAL CONDITIONS:

(\*) NSW Retailers / TCFUA Ethical Code of Practice Agreement, 2002. In particular, see cl.3, 4, 5 and 6.

(\*) National Retailers / TCFUA Ethical Clothing Code of Practice Agreement. In particular, see cl.3, 4, 5 and 6.

(\*) Sports and Corporate Wear Ethical Clothing Deed - TCFUA and Nike Australia Pty Ltd (2003). In particular, see cl.4.7 and 6.

(\*) (Transnational Supply Chains) Sports and Corporate Wear Ethical Clothing Deed - TCFUA and Reebok Australia Pty Ltd (2003). In particular, see cl.1 “Australasia”, 4.7 and 6.

(\*) Nossar, I. “The Scope for Appropriate Cross-Jurisdictional Regulation of International Contract Networks (Such as Supply Chains): Recent Developments in Australia and their Supra-National Implications”, Keynote Presentation to ‘Better Health and Safety for Suppliers’, International Labour Organisation Workshop in Toronto, Canada, 17 April 2007. [THIS PAPER IS REPRODUCED IN FULL AS AN APPENDIX TO THIS SUBMISSION.] In particular, see p.15. THIS PAPER ALSO DESCRIBES EXAMPLES OF AUSTRALIAN INDUSTRIES WHOSE CONTRACTING PRACTICES HAVE BEEN LEGISLATIVELY REGULATED TO AUTHORISE RELEVANT TRADE UNIONS TO ACT AS NOMINATED THIRD PARTY MONITORS OF COMPLIANCE WITH LABOUR LAW MINIMA THROUGHOUT CONTRACT NETWORKS (SUCH AS SUPPLY CHAINS). In particular, see Annexure A, “N.S.W. ETHICAL CLOTHING TRADES EXTENDED RESPONSIBILITY SCHEME” at section 5 (definition of “authorised person”) and section 12(3) and section 20(8) and at SCHEDULE 2 – PART A (especially at “UNDERTAKING AS TO THE EMPLOYMENT OF OUTWORKERS UNDER RELEVANT AWARD: TO BE COMPLETED IN RESPECT OF CLOTHING PRODUCTS MANUFACTURED TO RETAILER’S SPECIFICATIONS”). Also, in particular, see Annexure B; “N.S.W. TRANSPORT INDUSTRY – CASH – IN – TRANSIT (STATE) AWARD” at clause 27, Contract Work – Chain of Responsibility (especially at subclause 27.6). Also, in particular, see Annexure C: “N.S.W. OCCUPATIONAL HEALTH AND SAFETY AMENDMENT (LONG DISTANCE TRUCK DRIVER FATIGUE) REGULATION 2005” at clause 81B, Duty to Assess and manage fatigue of drivers, and at clause 81C, Duty of consignors and consignees to make inquiries as to likely fatigue of drivers, and at clause 81F, Records [especially at subclauses 81(1) and (2) and (5) and (6)].

(\*) Nossar, I., 2020. Protecting ‘Gig Economy’ Workers through Regulatory Innovation: Controlling Contract Networks within Digital Networks. In *The Regulation and Management of Workplace Health and Safety* (pp. 100-122). Routledge. In particular, see pp.106-114 at “Australia’s Model of Social Protection through Supply Chain Regulation” and also at “Lessons from Australia’s Model of Supply Chain Regulation”. Also, in particular, see pp. 118-120 at “Conclusion”.

(\*) Star Track Express Sydney Branch Enterprise Bargaining Agreement November 2002 – November 2005 [ENTERPRISE AGREEMENT NO: EA04/43]. In particular, see clause 27.0, Chain of Responsibility.

(\*) Toll Group – TWU Enterprise Agreement 2013-2017 at cl. 33 and 45 and at Part E. In particular, see clause 33, Site inductions, and clause 45, Fleet operators, at subclause 45.1, Engagement of Fleet Operators, and at subclause 45.3, Compliance, and at subclause 45.4, Consultation, and especially at subclause 45.5, Notification and reporting. Also, in particular, see Part E, FREIGHT CARTAGE AGREEMENT CLAUSES [especially at subclause 1.Records Audit, and also at subclause 1.Compulsory Induction Training].

### **POTENTIAL TRIAL AUSTRALIAN INDUSTRY SECTORS**

One potentially strategic pilot trial for this proposed government procurement model might focus upon the supply (to government agencies) of a single chosen category of Australian manufactured goods. This type of pilot trial would offer the opportunity to test (and develop) the proposed model for procurement of both goods **and** services. For example, such a pilot trial could involve trade union regulatory oversight **both** of the **manufacturing** process (of this particular chosen category of goods) **and also** of the consequential provision of **transport** services (whether the transport of components required for the manufacturing or the transport of the finished goods themselves).

### **POTENTIAL TRIAL OVERSEAS INDUSTRY SECTORS**

Attention has already been drawn to existing contractual arrangements which have been developed in Australia to regulate supply chains extending outside Australia, such as the Sports and Corporate Wear Ethical Clothing Deed - TCFUA and Reebok Australia Pty Ltd (2003).

There is no obvious impediment to inclusion of appropriately adopted parallel standard contractual provisions into government procurement arrangements for goods and services which originate from outside Australia.

Attention is further drawn to the existing operations of relevant Scandinavian and British public sector procurement arrangements which already incorporate parallel contractual obligations.

#### **EXAMPLES OF RELEVANT OVERSEAS MODELS WHICH HAVE ALREADY BEEN DEVELOPED AND IMPLEMENTED:**

(\*) Sustainable public procurement: a collaboration between the Swedish regions. Code of conduct for suppliers, valid from 2013. Available at: <https://www.regionstockholm.se/globalassets/6.-om-landstinget/hallbarhet/supplier-code-of-conduct.pdf> .

(\*) South-Eastern Norway Regional Health Authority. Ethical guidelines. Available at: [South-Eastern Norway Regional Health Authority - Helse Sør-Øst RHF \(helse-sorost.no\)](https://www.sorost.no) .

(\*) Jaekel, T., Swedwatch, S.A. and Santhakumar, A., 2015. Healthier procurement: improvements to working conditions for surgical instrument manufacture in Pakistan. *Stockholm: Swedwatch & British Medical Association.*



(\*) Bhutta, M.F., 2017. Time for a global response to labour rights violations in the manufacture of health-care goods. *Bulletin of the World Health Organization*, 95(5), p.314.

EXAMPLES OF PROPOSED RELEVANT MODEL CONTRACTUAL CONDITIONS:

(\*) Nossar, I. “The Scope for Appropriate Cross-Jurisdictional Regulation of International Contract Networks (Such as Supply Chains): Recent Developments in Australia and their Supra-National Implications”, Keynote Presentation to ‘Better Health and Safety for Suppliers’, International Labour Organisation Workshop in Toronto, Canada, 17 April 2007. [THIS PAPER IS REPRODUCED IN FULL AS AN APPENDIX TO THIS SUBMISSION.] In particular, see proposed ‘INTERNATIONAL ETHICAL CLOTHING SUPPLY DEED’ at pp 22-36.

# CONCLUDING Q & A

**Question 1:** Can we effectively minimize any underpayment of wages for workers producing goods or services ultimately supplied for Government procurement?

**Answer 1:** Yes we can.

**Question 2:** What kind of regulatory system do we need to produce this kind of result?

**Answer 2:** When it comes to suppliers of goods and services to the Government, we need to keep these suppliers honest.

We need access to the information which allows us to check on the actual wages and conditions provided to every worker involved in creating those goods and services. So we need the information which allows us to locate and identify every one of those workers – and to check on their real wages and conditions.

And, when that worker is not performing this work at the supplier’s premises, we need a system which can reliably track *where* the procurement work is going – so that we can track down the *locations* where that work is performed and also the *identities* of the workers and *under what conditions* they perform that work.

**Question 3:** What would this kind of a system look like?

**Answer 3:** This kind of system would involve government procurement agencies imposing standardised procurement contractual provisions embodying mandatory contractual legal obligations (upon government procurement suppliers) of the type found in the legal instruments listed (or described) as follows:

(\*) NSW Retailers / TCFUA Ethical Code of Practice Agreement, 2002. In particular, see cl.3, 4, 5 and 6.

(\*) National Retailers / TCFUA Ethical Clothing Code of Practice Agreement. In particular, see cl.3, 4, 5 and 6.

(\*) Sports and Corporate Wear Ethical Clothing Deed - TCFUA and Nike Australia Pty Ltd (2003). In particular, see cl.4.7 and 6.

(\*) Star Track Express Sydney Branch Enterprise Bargaining Agreement November 2002 – November 2005 [ENTERPRISE AGREEMENT NO: EA04/43]. In particular, see clause 27.0, Chain of Responsibility.

(\*) Toll Group – TWU Enterprise Agreement 2013-2017 at cl. 33 and 45 and at Part E. In particular, see clause 33, Site inductions, and clause 45, Fleet operators, at subclause 45.1, Engagement of Fleet Operators, and at subclause 45.3, Compliance, and at subclause 45.4, Consultation, and especially at subclause 45.5, Notification and reporting. Also, in particular, see Part E, FREIGHT CARTAGE AGREEMENT CLAUSES [especially at subclause 1.Records Audit, and also at subclause 1.Compulsory Induction Training].

(\*) Nossar, I. and Amoresano, L., 2019. Delivering “safe rates” in today’s road transport supply chains. *International Transport Workers’ Federation (ITF)*, 20. In particular, see pp. 11-12.

(\*) Rawling, M.J., 2014. Cross-jurisdictional and other implications of mandatory clothing retailer obligations. *Australian Journal of Labour Law*, 27(3), pp.191-215.

(\*) Nossar, I., 2020. Protecting ‘Gig Economy’ Workers through Regulatory Innovation: Controlling Contract Networks within Digital Networks. In *The Regulation and Management of Workplace Health and Safety* (pp. 100-122). Routledge. In particular, see pp.106-114 at “Australia’s Model of Social Protection through Supply Chain Regulation” and also at “Lessons from Australia’s Model of Supply Chain Regulation”. Also, in particular, see pp. 118-120 at “Conclusion”.

(\*) Johnstone, R., McCrystal, S., Nossar, I., Quinlan, M., Rawling, M. and Riley, J., 2012. *Beyond employment: The legal regulation of work relationships*. The Federation Press. In particular, see pp.159-162 at “*Supply Chain Regulation*”.

In order to maximise the provision of sufficient contractual sums to ensure the possibility of proper payment of legal minimum wages (and the provision of legal minimum labour standards) throughout the relevant contract networks (as well as the effective utilization of trade union expertise), the proposed kind of system should exhibit standard government procurement contractual provisions which incorporate most (if not all) of the elements of mandatory contractual legal obligations exhibited in the above mentioned legal instruments. Such proposed government contractual provision should also be combined with the development of government procurement tender “best practice models” based upon such successful examples as the TCFUA Supply Chain Strategy (SCS) and the Cleaning Accountability Framework (CAF), as described in the following scholarly reference:

(\*) Kaine, S. and Rawling, M., 2019. Strategic ‘Co-enforcement’ in supply chains: The case of the cleaning accountability framework. *Australian Journal of Labour Law*, 31(3), pp.305-334. In particular, see pp. 323-324.

The most effective arrangement for the proposed government procurement contractual arrangement might involve a two-tier relationship between the contractual mandatory legal obligations and the respective forthcoming “best practice models”, as proposed by the authors of the following scholarly reference:

(\*) Rawling, M., Kaine, S., Josserand, E. and Boersma, M., 2021. Multi-Stakeholder frameworks for rectification of Non-compliance in cleaning supply chains: The case of the cleaning accountability framework. *Federal Law Review*, 49(3), pp.438-464.

#### IN RELATION TO OVERSEAS SUPPLY CHAINS WHICH PROVIDE GOODS OR SERVICES TO NSW GOVERNMENT PROCUREMENT AGENCIES:

(\*) Sustainable public procurement: a collaboration between the Swedish regions. Code of conduct for suppliers, valid from 2013. Available at:

<https://www.regionstockholm.se/globalassets/6.-om-landstinget/hallbarhet/supplier-code-of-conduct.pdf> .

(\*) South-Eastern Norway Regional Health Authority. Ethical guidelines. Available at: [South-Eastern Norway Regional Health Authority - Helse Sør-Øst RHF \(helse-sorost.no\)](https://www.helse-sorost.no) .

(\*) (Transnational Supply Chains) Sports and Corporate Wear Ethical Clothing Deed - TCFUA and Reebok Australia Pty Ltd (2003). In particular, see cl. 4.7 and 6.

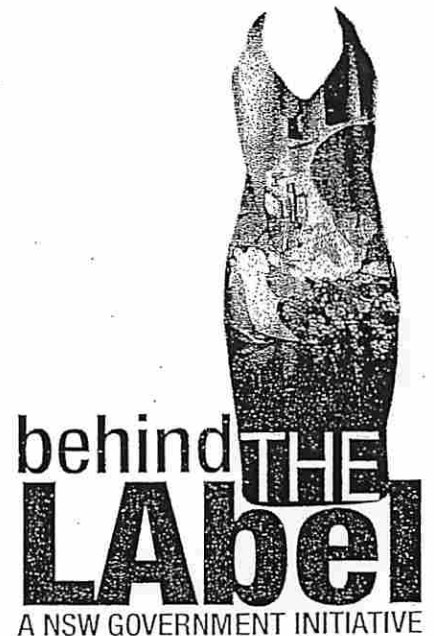
(\*) Nossar, I. “The Scope for Appropriate Cross-Jurisdictional Regulation of International Contract Networks (Such as Supply Chains): Recent Developments in Australia and their Supra-National Implications”, Keynote Presentation to ‘Better Health and Safety for Suppliers’, International Labour Organisation Workshop in Toronto, Canada, 17 April 2007.

[THIS PAPER IS REPRODUCED IN FULL AS AN APPENDIX TO THIS SUBMISSION.]  
In particular, see proposed ‘INTERNATIONAL ETHICAL CLOTHING SUPPLY DEED’ at pp 22-36.

# NSW RETAILERS/TCFUA ETHICAL CLOTHING CODE OF PRACTICE

An Agreement between the Australian Retailers Association NSW and the  
Textile, Clothing and Footwear Union of Australia, NSW Branch  
negotiated through the Ethical Clothing Trades Council as part of the  
NSW Government's *Behind the Label* Strategy

Signed on 18 September, 2002





New South Wales  
Special Minister of State  
Minister for Industrial Relations  
Assistant Treasurer  
Minister Assisting the Premier on Public Sector Management and  
Minister Assisting the Premier for the Central Coast

## Foreword by the Minister for Industrial Relations, John Della Bosca

This Agreement, which establishes a new Code of Practice for retailers on the rights of home-based outworkers, is a milestone on the road to a fairer, stronger and better NSW clothing industry.

It is a credit to the parties involved, the Australian Retailers Association NSW and the Textile Clothing and Footwear Union of Australia, NSW Branch and to the forum that brought these parties together, the Ethical Clothing Trades Council.

Established under the Government's *Behind the Label* strategy, the Council is a key element of our efforts to deliver a better deal for outworkers, some of the most vulnerable people in our workforce.

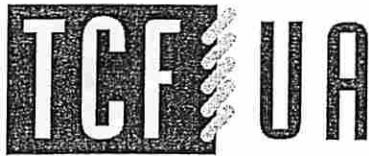
Under the Agreement, leading Australian companies such as Target, Coles Myer, Big W and David Jones are making a commitment to protecting the rights and interests of outworkers, and to giving their customers a chance to choose ethically made clothing.

These major retailers have recognised that a truly viable clothing industry in this country must be based on quality, efficiency and fair labour practices.

Through the Ethical Clothing Trades Council and *Behind the Label*, the NSW Government will do all it can to ensure that those who are genuinely committed to building an ethical industry receive the support, recognition and rewards they deserve.

This Agreement confirms that cooperation, not confrontation, can deliver real solutions to the challenges that face us as a community. I congratulate all those involved in this historic achievement.

Hon John Della Bosca MLC  
Special Minister of State  
Minister for Industrial Relations  
Assistant Treasurer



A U S T R A L I A N  
R E T A I L E R S  
A S S O C I A T I O N  
N E W S O U T H W A L E S

## N.S.W. RETAILERS/TCFUA

### ETHICAL CLOTHING CODE OF PRACTICE

#### AGREEMENT

Between **TEXTILE, CLOTHING AND FOOTWEAR UNION OF AUSTRALIA (NEW SOUTH WALES BRANCH)**  
("the TCFUA")

and **THE AUSTRALIAN RETAILERS ASSOCIATION (NEW SOUTH WALES DIVISION)**  
("the ARA")

#### PREAMBLE

This Agreement is the outcome of deliberations between the parties under the auspices of the Ethical Clothing Trades Council of New South Wales.

This Agreement between the signing parties and its endorsement by the witnessing parties will form the basis of discussions about the establishment of a parallel national code by appropriate variation of Part 1 of the TCFUA Homeworkers Code of Practice and the Homeworkers Code of Practice-Retailers and TCFUA (15 August 1997).

#### RECITALS

- A. For the benefit of its members and other workers in the clothing industry, the TCFUA wishes to ensure that employees and contractors to Suppliers are engaged upon terms and conditions no less favourable than those contained in either the Federal Award or the State Award.
- B. The ARA endorses the objective of the TCFUA set out in Recital A and has agreed to assist the TCFUA to achieve this objective by undertaking the obligations contained in this Agreement.

- C. The TCFUA has agreed to assist the ARA by providing it regularly with information and advice relating to the Federal Award and the State Award and their operation.
- D. The TCFUA has agreed to publicly acknowledge that while the ARA observes the conditions of this Agreement it will be acknowledged by the TCFUA as an Outwork Best Practice Organisation.

## AGREEMENT

### CLAUSE 1 – DEFINITIONS

In this Agreement including the Recitals:

**"Contract"** means a contract between the Retailer and a Supplier for the supply or manufacture of Goods for resale by the Retailer.

**"Exploitation"** occurs where a Supplier breaches the Federal Award or State Award or an award of an industrial tribunal or legislation in respect of the engagement of its employees and/or contractors, and such breach involves either a failure by the Supplier to comply with award obligations binding upon the Supplier to register or provide lists for notification of contracts or keep records or else (in relation to any other type of breach by the Supplier) such breach is, in all the circumstances, detrimental to those employees and contractors.

**"Federal Award"** means the Clothing Trades Award 1999 as amended from time to time, or any award replacing that Award.

**"Goods"** means:

- (a) the whole or any part of any male or female garment or of any article of wearing apparel including articles of neckwear and headwear;
- (b) handkerchief, serviette, pillowslip, pillowsham, sheets, tablecloth, towel, quilt, apron, mosquito net, bed valance, or bed curtain; and
- (c) ornamentations made of textiles, felts or similar fabrics, and artificial flowers.

**"Records"** means the documents referred to in clause 3.1.

**"Retailer"** means any retailer business which is a member of the ARA.

**"State Award"** means the Clothing Trades (State) Consolidated Award (New South Wales).

**"Supplier"** means a person, company or organisation which agrees with the Retailer to supply or manufacture or arrange the manufacture within Australia of Goods or part of Goods for resale by the Retailer under a Contract.

## **CLAUSE 2 – TERM**

This Agreement shall operate from the date of the Agreement and continue until terminated under clause 9.

## **CLAUSE 3 – RECORDS**

- 3.1 a) Each Retailer must retain for not less than 12 months full details of all Contracts entered into with Suppliers,
- b) Each Retailer must make available to the TCFUA for up to six years after they were created, those records which the Retailer is required to keep pursuant to legislation such as taxation law and corporations law and which pertain to the manufacture or supply of Goods to the Retailer by a Supplier, and
- c) In order to ensure that employees and contractors involved in the supply or manufacture of Goods are engaged upon terms and conditions no less favourable than those contained in either the Federal Award or the State Award:
- i) the TCFUA may reasonably request each Retailer to obtain any of the records or other information held by each Supplier of that Retailer in accordance with subclauses 4.3(c) or 4.3(d) of this Agreement, and



- ii) within five (5) days of such request, the Retailer will require the Supplier to make available to the Retailer such records and other information which have been requested by the TCFUA, and
- iii) the Retailer will make available to the TCFUA any such records and other information as soon as they have been provided by the Supplier to the Retailer.

3.2 The Records required to be kept under Clause 3.1(a) must contain the following:

- a) the name of the Supplier,
- b) the address of the Supplier,
- c) the date of the Contract,
- d) the date for the delivery of the goods to be made under the Contract,
- e) the number of Goods to be made,
- f) either the relevant standard product specification for that garment in accordance with the operation of Schedule 9 of Part 2 of the TCFUA Homeworkers Code of Practice or the information contained in sub-clauses (f) (i), (f) (ii) and (f) (iii) of this clause,
  - f)(i) the wholesale price or cost paid by the Retailer for each item of Goods to be made, and
  - f)(ii) the total wholesale price or cost paid by the Retailer for the Goods under the Contract, and
  - f)(iii) a description, including size, style, image or sketch drawing and any other relevant information in order to identify the Goods to be made.

3.3 Each Retailer must:

- (a) make the Records immediately available to a person properly authorised in writing by the TCFUA, after that person has given

- reasonable notice to the Retailer of a request for access to the Records; and
- (b) allow the TCFUA to make appropriate copies of the Records as reasonably required by the TCFUA.

#### **CLAUSE 4 – OBLIGATIONS OF EACH RETAILER**

- 4.1 Each Retailer must send to the National Secretary of the TCFUA the name and address of each Supplier contained in the Records as follows -
- (a) a full list of the Retailer's current Suppliers within 14 days of the signing of this Agreement, and
  - (b) a full list of the Retailer's Suppliers over the preceding six months within 14 days of 28 February and 31 August in each year.
- 4.2 Each Retailer agrees to inform all its Suppliers of the existence of this Agreement by taking the following action:
- (a) The Retailer will forward a copy of this Agreement to all its existing Suppliers immediately following signing,
  - (b) The Retailer will provide a copy of this Agreement to any new Suppliers with whom it contracts following the signing of this Agreement, and
  - (c) The Retailer agrees to advise all Suppliers that, as part of the implementation of this Agreement, the TCFUA will be making regular visits to those establishments operated by the Supplier.
- 4.3 Each Retailer agrees to use its best endeavours to amend the standard terms and conditions of trading entered into with its Suppliers so that each Contract already entered into with a Supplier prior to the signing of this Agreement contains the further following obligations on the Supplier –
- (a) the Supplier must undertake to comply with all applicable laws and regulations relating to the manufacture of the Goods,

- (b) the Supplier must warrant that it is registered pursuant to the Federal Award and the State Award for the purposes of sub-contracting out any work associated with the manufacture of the Goods,
  - (c) the Supplier undertakes to keep appropriate records of where and with whom the Supplier has further contracted the work to be performed under the Contract between the Retailer and the Supplier,
  - (d) the Supplier must retain for at least 12 months after the Contract is entered into the Supplier's product specification for each garment supplied or manufactured by the Supplier for the Retailer pursuant to that Contract,
  - (e) the Supplier must make available to the Retailer those records and product specifications referred to in sub-clauses (c) and (d) above, within five days of such a request being made by the Retailer, and
  - (f) the Supplier must acknowledge the existence of this Agreement and further acknowledge that the Retailer has entered into this Agreement which provides that the Retailer may either terminate a Contract with that Supplier (where legally possible) or refuse to enter into any future Contract with that Supplier in the event that an incident of Exploitation has been proved to exist during the course of the supply or manufacture of the Goods by that Supplier.
- 4.4 Each Retailer agrees to amend the standard terms and conditions of trading entered into with its Suppliers so that each future contract entered into with a Supplier on or after the date of the signing of this Agreement contains each of the obligations listed above in Clause 4.3(a) to (f) inclusive of this Agreement.
- 4.5 Each Retailer agrees to appoint a liaison officer for the purpose of handling all enquiries or allegations validly raised by the TCFUA for the purposes of this Agreement.
- 4.6 The name of the liaison officer (or officers if more than one) appointed by each Retailer must be provided by the Retailer to the TCFUA on the signing of this Agreement. Any changes to

the liaison officer must be advised to the TCFUA by the Retailer.

- 4.7 If any Retailer becomes aware that a Supplier has been or may be, or is using the services of sub-suppliers or contractors or sub-contractors who have been or may be engaging in Exploitation, then the Retailer agrees to immediately inform the TCFUA of this fact.
- 4.8 Each Retailer will enter into a separate Deed of Agreement with the TCFUA whereby the provisions of that separate Deed of Agreement will mirror the obligations upon each Retailer contained in Clause 1 to Clause 10.2 inclusive of this NSW Ethical Clothing Code of Practice.

#### **CLAUSE 5 – OBLIGATIONS OF THE TCFUA**

The TCFUA must:

- (a) provide the ARA with a current copy of the Federal Award and the State Award and promptly provide the ARA with any variations to those Awards;
- (b) provide reasonable assistance to each Retailer in interpreting the provisions of the Federal Award or the State Award;
- (c) promptly inform each Retailer in writing of any Exploitation or suspected Exploitation of which the TCFUA becomes aware and provide the Retailer with any material it has which supports the allegation;
- (d) upon request promptly meet with the Retailer concerned to consider any matter arising out of this Agreement; and
- (e) keep confidential the copy Records made available to it by any Retailer and not disclose their contents to any other person, company or organisation except to the Supplier specified in the Records or as required by law or in enforcement proceedings in a court or in industrial dispute resolution proceedings in an industrial tribunal without the written consent of the Retailer.

## 6. CONDUCT IN THE EVENT OF ALLEGED EXPLOITATION

- 6.1 If the TCFUA has notified any Retailer that it believes a Supplier to that Retailer is engaging in Exploitation then the Retailer agrees to immediately investigate the claims made by the TCFUA and further agrees that it will within 14 days (or such other period of time as is mutually agreed) of receipt of the notice either advise the TCFUA as follows:
- (a) that the Retailer believes that Exploitation has occurred,
  - (b) that the Retailer believes that Exploitation has not occurred, or
  - (c) that the Retailer has not been provided with sufficient information to formulate a belief as to whether or not either Exploitation has occurred, and in such event, the Retailer must request such further evidence as is reasonable from the TCFUA to enable a belief to be formulated.
- 6.2 If any Retailer believes that Exploitation has occurred, the Retailer agrees that it will take all action reasonably required by the TCFUA to remedy the Exploitation or achieve such other outcome acceptable to both parties ("Agreed Outcome") within not more than 14 days (or such other period of time as is mutually agreed) of that requirement by the TCFUA.
- 6.3 If a Supplier fails to comply with a requirement of any Retailer to remedy the Exploitation or submit to an Agreed Outcome, the Retailer must:
- (a) in relation to any Contract already entered into before the signing of this Agreement, if legally possible and without the Retailer incurring any legal liability, terminate the relevant Contract consistent with its terms and conditions; and
  - (b) in relation to any future Contract entered into on or after the date of the signing of this Agreement, terminate the relevant Contract consistent with its terms and conditions (if reasonably required by the TCFUA); and

- (c) not enter into any further Contract with that Supplier until the Retailer and the TCFUA agree that the Exploitation has been remedied.

6.4 If any Retailer advises the TCFUA that it does not believe that Exploitation by a Supplier has occurred and the TCFUA continues to assert that Exploitation has in fact occurred, then this issue must be mediated pursuant to clause 7 of this Agreement.

## CLAUSE 7 - DISPUTE RESOLUTION

7.1. It is the intention of the parties that they should co-operate with the other in good faith to resolve any differences arising under this Agreement. In order to achieve this objective the dispute settlement procedure under this clause 7 is agreed to.

7.2 The parties must meet to consider any issue if:

- (i) either party considers the obligations of the other party under this Agreement are not being performed, and the other party disagrees;
- (ii) the TCFUA considers that Exploitation is occurring and any Retailer disagrees; or
- (iii) the TCFUA believes that any Retailer has not acted reasonably in continuing to contract with the Supplier pursuant to Clause 6.3(b) of this Agreement.

7.3 (a) If agreement on any issue referred to in clause 7.2 cannot be reached or a party (or any Retailer) refuses to observe its obligations under this Agreement, and this failure to reach agreement (or to observe obligations) occurs during the life of the Ethical Clothing Trades Council of New South Wales, then the parties must enter into mediation to be conducted by the Chairman of that Council (unless both parties agree to use another mediator in relation to the dispute concerned).

- (b) the parties must each pay half the costs of the mediation, and

- (c) the mediation must be held and completed promptly.

#### **CLAUSE 8 – “NO SWEATSHOP LABEL”**

The ARA acknowledges that the Homeworkers Code of Practice Committee registers and maintains trade marks, logos and other labels, including the “No Sweatshop” label, (jointly called the “Identification Marks”) to promote compliance. Where any Goods have been provided to any Retailer pursuant to a Contract between the Retailer and a Supplier, the Retailer will not discourage that Supplier from attaching a label or a swing ticket to those Goods which incorporates any of the Identification Marks.

#### **CLAUSE 9 – TERMINATION**

Either party may terminate this Agreement:

- (a) upon no less than 3 months written notice to the other,
- (b) forthwith if the other party refuses to mediate in good faith as detailed in clause 7, or
- (c) upon the giving of 7 days notice where the other party has committed a breach of this Agreement and that breach has not been rectified within the 7 day notice period.

#### **CLAUSE 10 – ENTIRE AGREEMENT / FUTURE VARIATION**

- 10.1 This represents the entire agreement between the parties on the matters referred to in the Recitals.
- 10.2 The parties agree that should this Agreement prove incapable of achieving its objective, then the parties will negotiate in good faith to effect an appropriate variation to its terms.
- 10.3 Within twelve (12) months of the signing of this Agreement, the parties will review the operation of this Agreement.

Signed by:

.....  
(New South Wales Branch Secretary) (on behalf of the **New South Wales Branch of the Textile Clothing and Footwear Union of Australia**)

.....  
(New South Wales Division Executive Director) (on behalf of the **New South Wales Division of The Australian Retailers Association**)

Dated: ..... 18/9/02 .....

Witne

.....  
(New South Wales Minister for Industrial Relations)

.....  
(Chairperson, ~~New South Wales~~ Ethical Clothing Trades Council)

.....  
(Chairperson, Fairwear New South Wales)

.....  
(Labor Council of New South Wales)

.....  
(Australian Business Limited)

.....  
(Australian Industry Group)

.....  
(~~Australian~~ Retailers Association)





Association Act  
Authorised  
by ACCC



A U S T R A L I A N  
R E T A I L E R S  
A S S O C I A T I O N

### NATIONAL RETAILERS/TCFUA ETHICAL CLOTHING CODE OF PRACTICE

**AGREEMENT**

Between **TEXTILE, CLOTHING AND FOOTWEAR UNION OF AUSTRALIA ("the TCFUA")**

and **THE AUSTRALIAN RETAILERS ASSOCIATION ("the ARA")**

**RETAILER  
SIGNEE:** .....

.....  
.....

**RECITALS**

- A. For the benefit of its members and other workers in the clothing industry, the TCFUA wishes to ensure that employees and contractors to Suppliers are engaged upon terms and conditions no less favourable than those contained in either the Federal Award or the relevant State Award.
- B. The ARA endorses the objective of the TCFUA set out in Recital A and has agreed to assist the TCFUA to achieve this objective by undertaking the obligations contained in this Agreement.
- C. The TCFUA has agreed to assist the ARA by providing it regularly with information and advice relating to the Federal Award and the relevant State Award and their operation.
- D. The TCFUA has agreed to publicly acknowledge that while the ARA observes the conditions of this Agreement it will be acknowledged by the TCFUA as an Outwork Best Practice Organisation.

**AGREEMENT  
CLAUSE 1 – DEFINITIONS**

In this Agreement including the Recitals:

**"Contract"** means a contract between the Retailer and a Supplier for the supply or manufacture of Goods for resale by the Retailer.

**"Exploitation"** occurs where a Supplier breaches the Federal Award or State Award or an award of an industrial tribunal or legislation in respect of the engagement of its employees and/or contractors, and such breach involves either a failure by the Supplier to comply with award obligations binding upon the Supplier to register or provide lists for notification of contracts or keep records or else (in relation to any other type of breach by the Supplier) such breach is, in all the circumstances, detrimental to those employees and contractors.

**"Federal Award"** means the Clothing Trades Award 1999 as amended from time to time, or any award replacing that Award.

**"Goods"** means:

- (a) the whole or any part of any male or female garment or of any article of wearing apparel including articles of neckwear and headwear;
- (b) handkerchief, serviette, pillowslip, pillowsham, sheets, tablecloth, towel, quilt, apron, mosquito net, bed valance, or bed curtain; and
- (c) ornamentations made of textiles, felts or similar fabrics, and artificial flowers.

**"Records"** means the documents referred to in clause 3.1.

**"Retailer"** means any retailer business which is a member of the ARA.

**"State Award"** means the relevant state industrial instrument eg. Clothing Trades (State) Consolidated Award (New South Wales) or equivalent in a state jurisdiction.

**"Supplier"** means a person, company or organisation which agrees with the Retailer to supply or manufacture or arrange the manufacture within Australia of Goods or part of Goods for resale by the Retailer under a Contract.

## CLAUSE 2 – TERM

This agreement shall operate from the date of the Agreement and continue until terminated under clause 9.

## CLAUSE 3 – RECORDS

- 3.1
- a) Each Retailer must retain for not less than 12 months full details of all Contracts entered into with Suppliers,
  - b) Each Retailer must make available to the TCFUA for up to six years after they were created, those records which the Retailer is required to keep pursuant to legislation such as taxation law and corporations law and which pertain to the manufacture or supply of Goods to the Retailer by a Supplier, and
  - c) In order to ensure that employees and contractors involved in the supply or manufacture of Goods are engaged upon terms and conditions no less favourable than those contained in either the Federal Award or the relevant State Award:
    - i) the TCFUA may reasonably request each Retailer to obtain any of the records or other information held by each Supplier of that Retailer in accordance with subclauses 4.3(c) or 4.3(d) of this Agreement and,
    - ii) within five (5) days of such request, the Retailer will require the Supplier to make available to the Retailer such records and other information which have been requested by the TCFUA, and

- iii) the Retailer will make available to the TCFUA any such records and other information as soon as they have been provided by the supplier to the Retailer.

3.2 The Records required to be kept under Clause 3.1(a) must contain the following:

- a) the name of the Supplier,
- b) the address of the Supplier,
- c) the date of the Contract,
- d) the date for the delivery of the goods to be made under the Contract,
- e) the number of Goods to be made,
- f) either the relevant standard product specification for that garment in accordance with the operation of Schedule 9 of Part 2 of the TCFUA Homeworkers Code of Practice or the information contained in sub-clauses (f) (i), (ii) and (iii) of this clause,
  - (i) the wholesale price or cost paid by the Retailer for each item of Goods to be made, and
  - (ii) the total wholesale price or cost paid by the Retailer for the Goods under the Contract, and
  - (iii) a description, including size, style, image or sketch drawing and any other relevant information in order to identify the Goods to be made.

3.3 Each Retailer must:

- (a) make the Records immediately available to a person properly authorised in writing by the TCFUA, after that person has given reasonable notice to the Retailer of a request for access to the Records; and
- (b) allow the TCFUA to make appropriate copies of the Records as reasonably required by the TCFUA.

#### **CLAUSE 4 – OBLIGATIONS OF EACH RETAILER**

4.1 Each Retailer must send to the National Secretary of the TCFUA the name and address of each Supplier contained in the Records as follows –

- (a) a full list of the Retailer's current Suppliers within 14 days of the signing of this Agreement, and
- (b) a full list of the Retailer's Suppliers over the preceding six months within 14 days of 28 February and 31 August in each year.

4.2 Each Retailer agrees to inform all its Suppliers of the existence of this Agreement by taking the following action:

- (a) The Retailer will forward a copy of this Agreement to all its existing Suppliers immediately following signing,

- (b) The Retailer will provide a copy of this Agreement to any new Suppliers with whom it contracts following the signing of this Agreement, and
  - (c) The Retailer agrees to advise all Suppliers that, as part of the implementation of this Agreement, the TCFUA will be making regular visits to those establishments operated by the Supplier.
- 4.3 Each Retailer agrees to use its best endeavours to amend the standard terms and conditions of trading entered into with its Suppliers so that each Contract already entered into with a Supplier prior to the signing of this Agreement contains the further following obligations on the Supplier –
- (a) the Supplier must undertake to comply with all applicable laws and regulations relating to the manufacture of the Goods,
  - (b) the Supplier must warrant that it is registered pursuant to the Federal Award and the State Award for the purposes of sub-contracting out any work associated with the manufacture of the Goods,
  - (c) the Supplier undertakes to keep appropriate records of where and with whom the Supplier has further contracted the work to be performed under the Contract between the Retailer and the Supplier,
  - (d) the Supplier must retain for at least 12 months after the Contract is entered into the Supplier's product specification for each garment supplied or manufactured by the Supplier for the Retailer pursuant to that Contract,
  - (e) the Supplier must make available to the Retailer those records and product specifications referred to in subclauses (c) and (d) above, within five days of such a request being made by the Retailer, and
  - (f) the Supplier must acknowledge the existence of this Agreement and further acknowledge that the Retailer has entered into this Agreement which provides that the Retailer may either terminate a Contract with that Supplier (where legally possible) or refuse to enter into any future Contract with that Supplier in the event that an incident of Exploitation has been proved to exist during the course of the supply or manufacture of the Goods by that Supplier.
- 4.4 Each Retailer agrees to amend the standard terms and conditions of trading entered into with its Suppliers so that each future contract entered into with a Supplier on or after the date of the signing of this Agreement contains each of the obligations listed above in Clause 4.3(a) to (f) inclusive of this Agreement.
- 4.5 Each Retailer agrees to appoint a liaison officer for the purpose of handling all enquiries or allegations validly raised by the TCFUA for the purposes of this Agreement.
- 4.6 The name of the liaison officer (or officers if more than one) appointed by each Retailer must be provided by the Retailer to the TCFUA on the signing of this Agreement. Any changes to the liaison officer must be advised to the TCFUA by the Retailer.
- 4.7 If any Retailer becomes aware that a Supplier has been or may be, or is using the services of sub-suppliers or contractors or sub-contractors who have been or

may be engaging in Exploitation, then the Retailer agrees to immediately inform the TCFUA of this fact.

- 4.8 Each Retailer will enter into a separate Deed of Agreement with the TCFUA whereby the provisions of that separate Deed of Agreement will mirror the obligations upon each Retailer contained in Clause 1 to Clause 10.2 of this agreement.

#### **CLAUSE 5 – OBLIGATIONS OF THE TCFUA**

The TCFUA must:

- (a) provide the ARA with a current copy of the Federal Award and the relevant State Award and promptly provide the ARA with any variations to those Awards;
- (b) provide reasonable assistance to each Retailer in interpreting the provisions of the Federal Award or the relevant State Award;
- (c) promptly inform each Retailer in writing of any Exploitation or suspected Exploitation of which the TCFUA becomes aware and provide the Retailer with any material it has which supports the allegation;
- (d) upon request promptly meet with the Retailer concerned to consider any matter arising out of this Agreement; and
- (e) keep confidential the copy Records made available to it by any Retailer and not disclose their contents to any other person, company or organisation except to the Supplier specified in the Records or as required by law or in enforcement proceedings in a court or in industrial dispute resolution proceedings in an industrial tribunal without the written consent of the Retailer.

#### **CLAUSE 6 – CONDUCT IN THE EVENT OF ALLEGED EXPLOITATION**

- 6.1 If the TCFUA has notified any Retailer that it believes a Supplier to that Retailer is engaging in Exploitation then the Retailer agrees to immediately investigate the claims made by the TCFUA and further agrees that it will within 14 days (or such other period of time as is mutually agreed) of receipt of the notice either advise the TCFUA as follows:
- (a) that the Retailer believes that Exploitation has occurred,
  - (b) that the Retailer believes that Exploitation has not occurred, or
  - (c) that the Retailer has not been provided with sufficient information to formulate a belief as to whether or not either Exploitation has occurred, and in such event, the Retailer must request such further evidence as is reasonable from the TCFUA to enable a belief to be formulated.
- 6.2 If any Retailer believes that Exploitation has occurred, the Retailer agrees that it will take all action reasonably required by the TCFUA to remedy the Exploitation or achieve such other outcome acceptable to both parties ("Agreed Outcome") within not more than 14 days (or such other period of time as is mutually agreed) of that requirement by the TCFUA.

- 6.3 If a Supplier fails to comply with a requirement of any Retailer to remedy the Exploitation or submit to an Agreed Outcome, the Retailer must:
- (a) in relation to any Contract already entered into before the signing of this Agreement, if legally possible and without the Retailer incurring any legal liability, terminate the relevant Contract consistent with its terms and conditions; and
  - (b) in relation to any future Contract entered into on or after the date of the signing of this Agreement, terminate the relevant Contract consistent with its terms and conditions (if reasonably required by the TCFUA); and
  - (c) not enter into any further Contract with that Supplier until the Retailer and the TCFUA agree that the Exploitation has been remedied.
- 6.4 If any Retailer advises the TCFUA that it does not believe that Exploitation by a Supplier has occurred and the TCFUA continues to assert that Exploitation has in fact occurred, then this issue must be mediated pursuant to clause 7 of this Agreement.

#### **CLAUSE 7 – DISPUTE RESOLUTION**

- 7.1. It is the intention of the parties that they should co-operate with the other in good faith to resolve any differences arising under this Agreement. In order to achieve this objective the dispute settlement procedure under this clause 7 is agreed to.
- 7.2 The parties must meet to consider any issue if:
- (i) either party considers the obligations of the other party under this Agreement are not being performed, and the other party disagrees;
  - (ii) the TCFUA considers that Exploitation is occurring and any Retailer disagrees; or
  - (iii) the TCFUA believes that any Retailer has not acted reasonably in continuing to contract with the Supplier pursuant to Clause 6.3(b) of this Agreement.
- 7.3 (a) If agreement on any issue referred to in clause 7.2 cannot be reached or a party (or any Retailer) refuses to observe its obligations under this Agreement, the parties must enter into mediation to be conducted by the Chairperson of an Ethical Clothing Trades Council or by a mediator as agreed by both parties.
- (b) the parties must each pay half the costs of the mediation, and
  - (c) the mediation must be held and completed promptly.

#### **CLAUSE 8 – “NO SWEATSHOP LABEL”**

The ARA acknowledges that the Homeworkers Code of Practice Committee registers and maintains trade marks, logos and other labels, including the “No Sweatshop” label, (jointly called the “Identification Marks”) to promote compliance. Where any Goods have been provided to any Retailer pursuant to a Contract between the Retailer and a

Supplier, the Retailer will not discourage that Supplier from attaching a label or a swing ticket to those Goods which incorporates any of the Identification Marks.

**CLAUSE 9 – TERMINATION**

Either party may terminate this Agreement:

- (a) upon no less than 3 months written notice to the other,
- b) forthwith if the other party refuses to mediate in good faith as detailed in clause 7, or
- (c) upon the giving of 7 days notice where the other party has committed a breach of this Agreement and that breach has not been rectified within the 7 day notice period.

**CLAUSE 10 – ENTIRE AGREEMENT / FUTURE VARIATION**

- 10.1 This represents the entire agreement between the parties on the matters referred to in the Recitals.
- 10.2 The parties agree that should this Agreement prove incapable of achieving its objective, then the parties will negotiate in good faith to effect an appropriate variation to its terms.
- 10.3 Within twelve (12) months of the signing of this Agreement, the parties will review the operation of this Agreement.

Signed for and on behalf of the )  
**Textile Clothing and Footwear** )  
**Union of Australia** )  
 By an authorised officer in the )  
 Presence of )

Signature of authorised officer .....

.....  
Signature of witness

Name of authorised officer .....

Name of witness (print)

Office held .....

Signed for and on behalf of The )  
**Australian Retailers Association** )  
 By an authorised officer in the )  
 Presence of )

Signature of authorised officer .....

.....  
Signature of witness

.....  
Name of authorised officer

.....  
Name of witness (print)

.....  
Office held

Signed for and on behalf of The )  
**Textile Clothing and Footwear** )  
**Union of Australia** )  
By an authorised officer in the )  
Presence of )

.....  
Signature of authorised officer

.....  
Signature of witness

.....  
Name of authorised officer

.....  
Name of witness (print)

.....  
Office held

Signed for and on behalf of )  
**The Retailer** )  
By an authorised officer in the )  
Presence of )

.....  
Signature of authorised officer

.....  
Signature of witness

.....  
Name of authorised officer

.....  
Name of witness (print)

.....  
Office held





## SPORTS AND CORPORATE WEAR ETHICAL CLOTHING DEED

### PARTIES

#### TEXTILE, CLOTHING AND FOOTWEAR UNION OF AUSTRALIA

of 28 Anglo Road Campsie, New South Wales, 2194

("TCFUA")

AND

NIKE AUSTRALIA PTY LTD (ABN 99 055 141 743) of 28 Victoria Crescent,  
Abbotsford, Victoria, 3067

("Principal")

### RECITALS

- A For the benefit of its members and other workers in the clothing industry, the TCFUA wishes to ensure that Employees of and Contractors to Suppliers are engaged upon terms and conditions no less favourable than those contained in either the Federal Award or the State Award.
- B The Principal endorses the objective of the TCFUA set out in Recital A and has agreed to assist the TCFUA to achieve this objective by undertaking the obligations contained in this Deed.
- C The TCFUA has agreed to assist the Principal by providing it regularly with information and advice relating to the Federal Award and the State Award and their operation.
- D The TCFUA has agreed to publicly acknowledge the Principal as a signatory to this Deed.
- E The parties recognise and respect the right of all Contractors, Employees and Outworkers to join a union and to also organise and bargain collectively. The parties also state that the use of any form of forced or child labour will not be tolerated and that employees have a right to work in an environment free of discrimination, harassment and victimisation.
- F The parties note that the matters set out in Recital E flow from the ILO Standards and Fundamental principles and rights at work. These principles and rights refer to how these standards are applied under Australian law.
- G The parties acknowledge that Australian standards are intended to provide for fair minimum standards for employees in the context of living standards generally prevailing in the Australian community. The parties also acknowledge that employees must be paid at least the minimum applicable wage set out in the applicable Federal Award or State Award. Employees must also receive all entitlements due to them under the applicable Federal Award or State Award or under any relevant legislation.

- H The parties make an in-principle commitment that purchasing practices should enable and not hinder the ability of Suppliers to meet the standards set out in this Deed.
- I The parties agree that any mechanism in this Deed will not be used in any way as a punitive measure against an individual or group of workers who may raise issues of concern about their wages or work conditions.

## OPERATIVE PROVISIONS

### 1 DEFINITIONS

In this Deed including the Recitals:

**"Contract"** means a contract between the Principal and a Supplier for the supply or manufacture of Goods which have been manufactured in Australia and includes the manufacture of all of the Principal's products in Australia for resale by the Principal.

**"Contractor"** means a person, company or organisation directly or indirectly engaged by the Supplier to assist the Supplier to manufacture Goods or part of Goods for resale by the Principal.

**"Employee"** means a person employed by a Supplier and includes any person whose usual occupation is that of an employee.

**"Exploitation"** occurs where a Supplier breaches the Federal Award or State Award or an applicable award or industrial instrument of an industrial tribunal or legislation in respect of the engagement in Australia of Outworkers or Contractors who perform work outside a factory or workshop.

**"Federal Award"** means the Clothing Trades Award 1999 as amended from time to time, or any award replacing that Award.

**"Goods"** means:

- (a) the whole or any part of any male or female garment or of any article of wearing apparel including articles of neckwear and headwear;
- (b) handkerchief, serviette, pillowslip, pillowsham, sheets, tablecloth, towel, quilt, apron, mosquito net, bed valance, or bed curtain;
- (c) ornamentations made of textiles, felts or similar fabrics, and artificial flowers; and
- (d) footwear items,

- (e) but does not include imported component parts of the Goods referred to in (a) to (c) of this definition which include, but are not limited to, buttons, zips, tags and like items.

**“Manufacture in Australia”** means the process of manufacturing products in Australia or the process of altering or working on products in Australia (whether such products are imported into Australia or produced in Australia) by way of any process currently covered by either the Federal Award or the State Award or any other applicable industrial instrument.

**“Non-compliance”** occurs where a Supplier breaches the Federal Award or State Award or an applicable award or industrial instrument of an industrial tribunal or legislation in respect of the engagement of Contractors who perform work in a factory or workshop or the employment of its Employees or the engagement of Outworkers.

**“Outworker”** means a person who performs work (including making, constructing or finishing) in relation to the supply or manufacture of Goods or part of Goods ultimately on behalf of the Supplier outside the Supplier’s workshop or factory under a contract or arrangement between that person and the Supplier or that person and any other party involved in the supply or manufacture of Goods or part of Goods.

**“Persons properly authorised in writing by the TCFUA”** means those persons employed by the TCFUA who have been nominated by the Secretary of the TCFUA in each State for the purposes of clauses 3.3 and 4.7 of this Deed.

**“Records”** means the contracts referred to in clause 3.1 and the records required to be made under clause 3.2.

**“State Award”** means a Clothing Trades award or equivalent legislation that applies in each State.

**“Supplier”** means a person, company or organisation in Australia which agrees with the Principal under a Contract to manufacture or arrange for the manufacture in Australia of Goods or part of Goods for resale by the Principal.

**“TCFUA”** means the Textile, Clothing and Footwear Union of Australia.

## 2 TERM

- 2.1 This Deed shall operate from the date it is signed by the parties and continue to operate for a period of three years from the date of signing unless the term of this Deed is extended by mutual agreement of the parties or unless this Deed is terminated under clause 8.

- 2.2 The parties agree to commence negotiations about a successor to this Deed no later than three months prior to the expiry term of this Deed.

### 3 RECORDS

- 3.1 The Principal must make and retain for not less than 6 years records of all Contracts entered into with Suppliers except the sample garment referred to in clause 3.2(e) which must be kept for 12 months. The obligation on the Principal under this clause operates from the date this Deed is signed by the parties. In relation to such Records as have been maintained prior to the signing of this Deed, the Principal must retain those prior existing Records for a period of three years from the date this Deed is signed by the parties and make these Records available to the TCFUA in accordance with clause 3.3 of this Deed. This clause does not diminish any existing or future Federal Award and/or State Award and/or legislative requirements and/or other obligations to keep and maintain Records.
- 3.2 The Records must contain at least the following:
- (a) the name of the Supplier;
  - (b) the address of the Supplier;
  - (c) the date of the Contract;
  - (d) the date for the delivery of the Goods to be made under the Contract;
  - (e) either the minute sewing time for that garment in accordance with the operation of the Homeworkers Code of Practice or both a sample of the garment and a description of the nature of the work to be performed and the minute sewing time allowed for each item of Goods to be made;
  - (f) a drawing and size specification of the Goods to be made;
  - (g) the number of Goods to be made;
  - (h) the price to be paid for each item of Goods to be made;
  - (i) the total price to be paid for the Goods under the Contract; and
  - (j) a copy of the standard clause in the Contract requiring disclosure by each succeeding party (as required by Clause 6.5 of this Deed).

## 3.3 The Principal must:

- (a) make the Records available to a person properly authorised in writing by the TCFUA, after that person has given reasonable notice to the Principal of a request for access to the Records;
- (b) allow the person properly authorised in writing by the TCFUA to make appropriate copies of the Records as reasonably required by the TCFUA and provide copies of the Records copied to the relevant State Secretary and the National Secretary of the TCFUA; and
- (c) give a copy of the Records to the Supplier upon entering into a Contract or purchase order.

**4 OBLIGATIONS OF THE PRINCIPAL**

4.1 The Principal must send to the relevant State Secretary and the National Secretary of the TCFUA, the name and address of each Supplier contained in the Record in the following manner:

- (a) a full list of the Principal's current Suppliers within 10 business days of the date on which this Deed is signed by the parties; and
- (b) a full list of the Principal's Suppliers for the preceding six month period within 10 business days of the last working day of February and August in each year.

4.2 The Principal agrees to inform all Suppliers of the existence of this Deed by taking the following action:

- (a) the Principal will forward a copy of this Deed and a document setting out a brief explanation of the terms of this Deed to all Suppliers immediately following the Principal signing this Deed;
- (b) the Principal will include a copy of this Deed and a document setting out a brief explanation of the terms of this Deed in its "Information For New Suppliers" package which is provided to all new Suppliers to the Principal; and
- (c) the Principal agrees to advise all Suppliers that, as part of the implementation of this Deed, persons properly authorised in writing by the TCFUA will be making regular visits to those establishments operated by the Supplier.

- 4.3 The Principal shall require each Supplier with whom it enters into a Contract to:
- (a) keep appropriate records of where and with whom the Supplier may further contract to perform the work under the Contract between the Principal and the Supplier;
  - (b) retain a copy of the Records provided to it by the Principal under clause 3.3(c) of this Deed for a period of not less than six years. The obligation on the Supplier under this clause operates from the date this Deed is signed by the parties;
  - (c) make a copy of the Records available to the TCFUA within 5 business days of a request by the TCFUA to the Supplier for production being made;
  - (d) allow the TCFUA to make copies of the Records retained by the Supplier;
  - (e) inform the TCFUA about the address of each location where Goods are being manufactured and the identity of the parties responsible for the manufacture of the Goods at each of those locations; and
  - (f) require the Supplier to be registered under the provisions of clause 48 of the Federal Award or the relevant clause under the State Award where the Contract between the Principal and the Supplier does not prohibit the Supplier from further contracting the performance of the work under the Contract to another person, company or organisation.
- 4.4 The Principal agrees to appoint a liaison officer for the purpose of handling all enquiries or allegations validly raised by the TCFUA for the purposes of this Deed.
- 4.5 The name of the liaison officer (or officers if more than one) appointed by the Principal shall be notified to the TCFUA on the signing of this Deed. Any changes to the liaison officer must be advised to the TCFUA by the Principal.
- 4.6 If the Principal becomes aware that a Supplier has been or may be, or is using the services of Contractors or Outworkers for the manufacture of the Principal's Goods in Australia who have been or may be engaging in conduct that amounts to Exploitation or Non-compliance, then the Principal agrees to immediately inform the TCFUA of this fact.

## 4.7

- (a) The Principal shall not enter into any Contract with a Supplier unless the Supplier agrees in writing to permit persons properly authorised in writing by the TCFUA to:
- (i) after providing not less than 24 hours notice to the Supplier (or less if agreed with the Principal and the Supplier), visit any establishment operated by the Supplier (or any other establishment where Goods are being manufactured or otherwise worked on) at any time during normal working hours. Persons properly authorised by the TCFUA may visit a Supplier's premises without notice if the TCFUA reasonably considers that the requirement to give notice would defeat the purpose of the visit. If a person properly authorised by the TCFUA visits a Supplier's premises without notice, he or she must immediately notify the Supplier of his or her presence as soon as reasonably practicable after entering the premises;
  - (ii) inspect any Records between the Supplier and the Principal, together with any records at those establishments that are relevant to the manufacture (or supply or sale) under a Contract of Goods or part of Goods for resale by the Principal. Persons properly authorised by the TCFUA may also inspect at those establishments time and wage records and work records (as defined in clause 46.2 of the Federal Award) and the relevant documents that evidence superannuation contributions being made on behalf of an employee and also the currency of workers' compensation insurance (including, but not restricted to, certificates of currency for workers compensation insurance);
  - (iii) undertake an inspection at those establishments in order to determine compliance with the Federal Award, the relevant State Award and any other applicable industrial instrument and compliance with any relevant occupational health and safety legislation;
  - (iv) interview, without causing unreasonable interruption to the production process, personnel who are present at those establishments in relation to the manufacture (or supply or sale) of any such Goods; and
  - (v) interview personnel (not present at those establishments) who are in any way involved in the manufacture (or supply

or sale) of any such Goods, whether such personnel are described as Outworkers or Contractors or otherwise.

- (b) The Principal will forward to the TCFUA a clear photocopy of the agreement in writing by the Supplier.
- (c) The Principal will forward any such photocopy to the TCFUA as soon as possible after the Principal has received the original agreement in writing (or at least a clear photocopy of that agreement) from the Supplier.
- (d) Notwithstanding the provisions of clause 4.7(a)(iii) of this Deed, the Principal will continue to monitor its Suppliers, which monitoring will be conducted by the Principal's internal and independent external monitors on a periodic basis.
- (e) The Principal will not publish or otherwise distribute to any third party any copy of any pro-forma inspection sheets provided to the Principal by the TCFUA in accordance with clause 5(h) of this Deed.

4.8 The Principal will comply with all applicable provisions of the Federal Award and any relevant State Award and any other applicable industrial instruments as long as the Principal remains directly involved in the manufacture or supply of Goods (or part of Goods).

## 5 OBLIGATIONS OF THE TCFUA

The TCFUA must:

- (a) provide the Principal with a current copy of the Federal Award and any relevant State Award and promptly provide the Principal with any variations to both Awards;
- (b) provide reasonable assistance to the Principal in interpreting the provisions of the Federal Award or any relevant State Award;
- (c) promptly inform the Principal in writing of any Exploitation or suspected Exploitation or of any Non-compliance or suspected Non-compliance of which it becomes aware and provide the Principal with any material it has which supports the allegation;
- (d) upon request promptly meet with the Principal to consider any matter arising out of this Deed;
- (e) keep confidential the copy Records made available to it by the Principal and/or the Supplier and not disclose their contents to any other person, company or organisation except to the Supplier specified in the Records or



as required by law or in enforcement proceedings in a court or in industrial dispute resolution proceedings in an industrial tribunal;

- (f) promptly inform the Principal of any issues or concerns the TCFUA has concerning the Principal's or Supplier's compliance with this Deed or any related matter or any issues or concerns the TCFUA has concerning the Principal's or a Supplier's conduct (or alleged conduct) that may amount to Exploitation or Non-compliance and afford the Principal and/or Supplier an opportunity to address the issue or concern raised by the TCFUA prior to the TCFUA informing or discussing the issue with a third party. The Principal and/or Supplier has 10 business days (or a longer period as agreed between the parties) from the date it receives notice of the TCFUA's issues and concerns to address these issues or concerns. The obligation under this clause does not apply where the issue or concern relates to a bona fide occupational health and safety issue or other legal obligation, the discovery of which requires immediate rectification or notification;
- (g) report any concerns the TCFUA may have relating to a Supplier's compliance with obligations under relevant occupational health and safety legislation to the proper authorities in each State if the TCFUA is not satisfied that its concerns have been addressed after the issue has been raised with the Principal under clause 5(f) of this Deed;
- (h) as part of the inspection procedures set out in clause 10 of this Deed and in Schedule A to this Deed, record in writing on an agreed pro-forma inspection sheet (that sets out the Supplier's compliance obligations under the relevant Federal Award, State Award, other applicable award or industrial instrument of an industrial tribunal or legislation) any concerns the TCFUA have after conducting an inspection of a Supplier's premises and promptly provide a copy of the completed pro-forma inspection sheet to the Principal; and
- (i) publicly acknowledge the Principal as a signatory to this Deed when the Principal becomes a signatory and for the period while the Principal observes the terms and conditions of this Deed.

## 6 CONDUCT BETWEEN PRINCIPAL AND SUPPLIER/S

- 6.1 If the TCFUA has notified the Principal that it believes a Supplier is engaging in Exploitation or Non-compliance, then the Principal agrees to immediately investigate the claims made by the TCFUA and further agrees that it will within 10 business days (or such other period of time as is mutually agreed) of receipt of the notice advise the TCFUA as follows:

- (a) that the Principal believes that Exploitation or Non-compliance has occurred;
- (b) that the Principal believes that neither Exploitation nor Non-compliance has occurred; or
- (c) that the Principal has not been provided with sufficient information to formulate a belief as to whether or not Exploitation or Non-compliance has occurred, and in such event, the Principal must request such further evidence as is reasonable from the TCFUA to enable a belief to be formulated.

6.2 If the Principal believes that Exploitation or Non-compliance by a Supplier has occurred, the Principal agrees that it will take all action reasonably required by the TCFUA to remedy the Exploitation or Non-compliance or achieve such other outcome acceptable to both parties ("Agreed Outcome") within not more than 10 business days (or such other period of time as is mutually agreed) of that requirement by the TCFUA.

6.3 If a Supplier fails to:

- (a) comply with a requirement of the Principal to remedy the Exploitation or Non-compliance or submit to an Agreed Outcome; or
- (b) retain a copy of the Records for not less than six years (which obligation operates from the date this Deed is signed by the parties); or
- (c) make a copy of the Records available to the TCFUA within 5 business days of a request (to the Supplier) for production being made by the TCFUA; or
- (d) allow the TCFUA to make copies of the Records retained by the Supplier; or
- (e) inform the TCFUA about the address of each location where Goods are being manufactured and the identity of the parties responsible for the manufacture of the Goods at each of those locations; or
- (f) allow persons properly authorised in writing by the TCFUA to enter and inspect premises and records and to interview personnel in accordance with the agreement in writing between the Principal and the Supplier under clause 4.7 of this Deed,

the Principal must:

- (g) if the Principal becomes aware that a Supplier has not complied with the matters set out in clause 4.3(b), (c), (d), (e) or (f) of this Deed immediately inform the TCFUA about the specific nature and dates of the failure to comply and the identity of the Supplier concerned and what action the Principal will be taking in light of the Supplier's failure to comply (including whether the Principal will elect to terminate the Contract with the Supplier concerned and, if so, the specific date of any such termination);
  - (h) terminate the relevant Contract in a manner consistent with its terms and conditions or implement an alternative remedy following discussions with the TCFUA; or
  - (i) not enter into any further Contracts with that Supplier or extend the period of operation of an existing Contract with that Supplier until the Principal and the TCFUA agree that the Exploitation or Non-compliance has been remedied unless, following discussions between the parties to this Deed, it is reasonable for the Principal to enter into further Contracts with the Supplier.
- 6.4 The Principal will ensure that the ability of the Principal to terminate the relevant Contract in circumstances where a Supplier has not complied with the matters set out in clauses 4.3(b), (c), (d), (e) or (f) of this Deed is included as a term in any new Contract entered into between the Principal and a Supplier. The Principal will also request Suppliers with current Contracts entered into before the signing of this Deed to agree to such an amendment and, if the Supplier agrees, the Principal will amend the Contract to include such a clause.
- 6.5 The Principal will ensure that no current Contract entered into before the signing of this Deed continues to operate or is extended to operate beyond twelve months after the signing of this Deed without the Principal and the Supplier entering into a separate agreement or arrangement to comply with the requirements of new Contracts in accordance with clause 6.4 of this Deed.
- 6.6 Any action to be taken by the Principal in relation to the conduct of the Supplier under clause 6.3 of this Deed shall be reasonable and appropriate, taking into consideration the seriousness of the conduct of the Supplier.
- 6.7 If the Principal advises the TCFUA that it does not believe that Exploitation or Non-compliance by a Supplier has occurred and the TCFUA continues to assert that Exploitation or Non-compliance has in fact occurred, then this issue must be mediated pursuant to clause 7 of this Deed.

6.8

- (a) Every Contract between the Principal and a Supplier for the supply or manufacture of Goods for resale by the Principal must contain an enforceable (and effective) standard clause which obliges each succeeding party who is involved in the manufacture or purchase of the Goods (or who is involved in giving out orders for the manufacture or purchase of the Goods) to inform the Principal about the number and type of articles (and the wholesale price per article) to be supplied by each succeeding party.
- (b) The Principal will send to the TCFUA a copy of the standard clause referred to in clause 6.8(a) of this Deed.

## 7 DISPUTE RESOLUTION

It is the intention of the parties that they should co-operate with the other in good faith to resolve any differences arising under this Deed. In order to achieve this objective the following disputes settlement procedure is agreed:

- (a) the parties must meet to consider any issue if:
  - (i) either party considers the obligations of the other party under this Deed are not being performed, and the other party disagrees;
  - (ii) the TCFUA considers that Exploitation or Non-compliance is occurring and the Principal disagrees; or
  - (iii) the TCFUA believes that the Principal has not acted reasonably in continuing to contract with the Supplier as it may under clauses 6.3, (g), (h) and (i) of this Deed.
- (b) If agreement on the issue referred to in clause 7(a) of this Deed cannot be reached or a party refuses to observe its obligations under this Deed, the parties must enter into mediation with a mediator who has experience in the clothing industry and is agreed by the parties, or failing agreement, as appointed by LEADR;
- (c) the parties must each pay half the costs of the mediator; and
- (d) the mediation must be held and completed promptly.

## 8 TERMINATION

Either party may terminate this Deed:

- (a) upon no less than 3 months written notice to the other;

- (b) forthwith if the other party refuses to mediate in good faith as detailed in clause 7;
- (c) upon the giving of 5 business days notice where the other party has committed a breach of this Deed and that breach has not been rectified within the 5 business days notice period;
- (d) immediately by the Principal if the TCFUA breaches clause 5(f) of this Deed; or
- (e) immediately by the TCFUA if the Principal breaches either clauses 4.3 or 4.7(a) of this Deed.

**9 ENTIRE DEED / FUTURE VARIATION**

- 9.1 This Deed represents the entire agreement between the parties on the matters referred to in the Recitals.
- 9.2 The parties agree that should this Deed prove incapable of achieving its objective, then the parties will negotiate in good faith to effect an appropriate variation to its terms.
- 9.3 This Deed forms Part 3 of the Homeworkers Code of Practice and this Deed is intended to cover Principals who manufacture or arrange for the manufacture of Goods in the sports and corporate wear industry.
- 9.4 The parties agree to review and, if necessary, amend (by mutual agreement only) this Deed after the first year of this Deed's operation. The parties also agree to review the operation of this Deed when and if a mandatory code of practice for outworkers is introduced by the Ethical Clothing Trades Council under the *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW), or by the Ethical Clothing Trades Council of Victoria under the *Outworkers (Improved Protection) Act 2003* (Vic) or similar legislation that may be introduced in any other state.

**10 INSPECTION PROCEDURES**

- 10.1 The agreed principles that will govern the procedures in relation to the conduct of inspections under this Deed are set out in Schedule A to this Deed.

## 11 NIKE LICENSEE ARRANGEMENTS

- 11.1 The parties acknowledge and agree that licensees of the Principal have a relationship distinct and different to that between the Principal and a Supplier.
- 11.2 Notwithstanding clause 11.1 above, the parties agree that licensees of the Principal will be treated as Suppliers, except in relation to the obligations specified in Clause 11.3 below, and acknowledge that the records of and between both the Principal and the licensee of the Principal will not be the same type or as great in number as the Records between the Principal and its Suppliers.
- 11.3 Accordingly, clauses 3.1, 3.2 3.3, 4.3 and 6.3(b), (c), (d), (e) and (f) will not apply to licensee arrangements between the Principal and the licensee of the Principal unless and until such time as the licensee's relationship with the Principal changes to one under which the licensee of the Principal manufactures or arranges the manufacture or supply of Goods on behalf of the Principal within Australia under a Contract. At this time the licensee of the Principal will no longer be recognised by the parties as such, but will be recognised as a Supplier in which event clauses 3.1, 3.2, 3.3, 4.3 and 6.3(b), (c), (d), (e) and (f) will apply.
- 11.4 The Principal agrees to make it a contractual prerequisite to all future licensee arrangements, including any renegotiation of existing licensee arrangements between the Principal and the licensee of the Principal, that a licensee of the Principal is a current signatory to this Deed (with the exception of this Clause 11) as a Principal in its own right and in the case of a manufacturer, become accredited under Part 2 of the Homeworkers Code of Practice.
- 11.5 The Principal will use its best endeavours to have an existing licensee of the Principal sign up to this Deed as a Principal in its own right.
- 11.6 Should an existing licensee of the Principal not agree to become a Principal in its own right, then save for those clauses relating to the type of record keeping set out in clause 11.3 above, the licensee of the Principal will be treated and viewed by the parties as a Supplier for all other purposes of this Deed.

**Execution**

Executed as a deed on the 24 day of JUNE 2003.

Executed by NIKE Australia Pty Ltd (ABN 99 055 141 743) in accordance with section 127(1) of the Corporations Act by being signed by:

Signature of Director ..... Signature of Director\*/Company Secretary\*

Print full name

Print full name

\*Delete whichever is not applicable

The common seal of the Textile Clothing and Footwear Union of Australia is affixed in accordance with its Rules in the presence of: )



Secretary .....

..... President

Name of Secretary (Print) ...

Name of President (Print)

## **SCHEDULE A**

The procedures in relation to the conduct of inspections under this Deed are divided into three areas, being:

- 1 the development of a pro-forma inspection sheet;
- 2 the training of TCFUA personnel to conduct inspections under this Deed; and
- 3 the evaluation of completed inspection sheets.

The principles that will govern these matters are set out below.

### **Pro-forma inspection sheet**

The pro-forma inspection sheet to be developed by the TCFUA shall be divided into two parts with each part subdivided to maintain the distinction between Employee workforces and Contractor/Outworker workforces.

Part A of the inspection sheet will relate to employment law compliance, compliance with the Federal Award or State Award and compliance with this Deed for an Employee workforce and for a Contractor/Outworker workforce.

Part B of the inspection sheet will relate to compliance with relevant state occupational health and safety legislation for an Employee workforce and for a Contractor/Outworker workforce.

The parties recognise that some Principals/Suppliers may have a mixed workforce of Employees, Contractors and Outworkers and any issue that relates specifically to a particular category of worker can be overcome by being dealt with in the section relevant to the worker's category.

The State branches of the TCFUA should agree on a common pro-forma inspection sheet to then be provided to the Principal and following that, the pro-forma inspection sheet would be the standardised inspection sheet for the sports and corporate wear industry.

### **Training of TCFUA officials**

The objective of a training program is to ensure commonality and consistency of inspections and evaluation in all States in the sports and corporate wear industry under this Deed. The TCFUA shall undertake a training program aimed at delivering the consistent application of this Deed by union officials.

Inspection of a Supplier's and/or a Principal's workplace on occupational health and safety issues would be by TCFUA accredited officials.

Such accreditation would be consistent with that offered by WorkCover New South Wales for union officials.



**Evaluation of pro-forma inspection sheets**

The TCFUA will nominate a person in each State who has received union accreditation to evaluate the pro-forma inspection sheets in relation to suspected occupational health and safety breaches.

The TCFUA will also nominate a person in each State to evaluate the pro-forma inspection sheets to ensure consistency of inspections and reporting of potential breaches of the Deed, employment law and the Federal Award or State Award.



# DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**Toll Holdings Limited**  
(AG2013/9903)

## **TOLL GROUP - TWU ENTERPRISE AGREEMENT 2013-2017**

Road transport industry

COMMISSIONER ROBERTS

SYDNEY, 5 NOVEMBER 2013

*Application for approval of the Toll Group - TWU Enterprise Agreement 2013 - 2017.*

[1] An application has been made for approval of an enterprise agreement known as the *Toll Group - TWU Enterprise Agreement 2013-2017* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act) by Toll Holdings Limited (the Company). The agreement is a single-enterprise agreement.

[2] On 4 November 2013 undertakings were provided by the Company's Senior Legal Counsel, Mr D Sloan, in relation to clause 14 (Consultation on workplace change) and clause 15 (Dispute resolution procedure) of the Agreement. Pursuant to s.190 of the Act, I accept the undertakings of the Company. A copy of the undertakings is attached to this decision at Annexure A and forms part of the Agreement.

[3] The Transport Workers' Union of Australia, being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wishes to be covered by the Agreement. In accordance with s.201(2) of the Act, I note that the Agreement covers that organisation.

[4] I am satisfied that each of the requirements of ss.186, 187 and 188 of the Act as is relevant to this application for approval has been met.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 12 November 2013. The nominal expiry date of the Agreement is 30 June 2017.



COMMISSIONER

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Annexure A



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www.tollgroup.com

Toll Holdings Limited  
ABN 25 006 592 089

4 November 2013

Ms Rachel Wong  
Associate to Commissioner Roberts  
Fair Work Commission  
80 William Street  
EAST SYDNEY NSW 2011

By email: [Chambers.Roberts.c@fwc.gov.au](mailto:Chambers.Roberts.c@fwc.gov.au)

Dear Ms Wong

**AG2013/9903 Toll Group – TWU Enterprise Agreement 2013-2017**

Pursuant to section 190 of the *Fair Work Act 2009* (Cth), Toll Holdings Limited, for itself and each of its wholly-owned subsidiaries in Australia, gives the following undertakings:

1. For the purposes of any consultation required under clause 14 of the Agreement an employee will be entitled to the representative of their choice. This may include, but will not be limited to, representation by the Union.
2. The definition of "Dispute" in clause 3 of the Agreement will be taken to expressly include disputes about matters in relation to the National Employment Standards. By extension, the disputes resolution procedure in clause 15 of the Agreement will apply to such disputes.
3. For the purposes of the dispute resolution process under clause 15 an employee will be entitled to the representative of their choice. This may include, but will not be limited to, representation by the Union.

Yours faithfully

✓ **Damian Sloan**  
Senior Legal Counsel – Workplace Relations & Safety



Toll Group – TWU Enterprise Agreement  
2013 – 2017



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## PART A – GENERAL TERMS AND CONDITIONS

### Section 1 – Application and Operation

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#### 1. Title

This Agreement will be referred to as the Toll Group - TWU Enterprise Agreement 2013 - 2017.

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#### 2. Objects

The objects of this Agreement include the following:

- (a) promoting job security, effective workplace representation and training for Transport Workers;
  - (b) enhancing the safety and fairness of Toll's operations;
  - (c) maintaining the safety net and enhancing fair working conditions for Transport Workers;
  - (d) enhancing the productivity and efficiency of Toll's operations; and
  - (e) subject to reasonable practical requirements, such as adequately servicing industry peaks, promoting job security through the full utilisation of full-time permanent Transport Workers before the engagement of part-time, casual, labour hire or outside hire workers.
- 

#### 3. Definitions

**Act** means the *Fair Work Act 2009* (Cth).

**Agreement** means this enterprise agreement, and includes the Schedules and incorporates the Local Agreements.

**Award** means:

- (i) the Road Transport and Distribution Award 2010; and
- (ii) the Road Transport (Long Distance Operations) Award 2010.

**Blue Card Induction Program** means a safety initiative for the transport and distribution industry, based upon the Transport and Distribution ("TDT 2002") nationally recognised level 1 training competency.

**Board of Reference** means the body established in accordance with Part D.

**Dispute** means any dispute or grievance that arises at the workplace between a Transport Worker or Transport Workers and Toll, or between the Union and Toll, about the interpretation or application of this Agreement or in relation to any matters pertaining to the relationship between Toll and a Transport Worker (or Transport Workers), or that between Toll and the Union, including but not limited to a dispute about any condition of employment or industrial matter.

**Drug and Alcohol Procedures** means the drug and alcohol procedures at Part C of this Agreement.

**Employee** means a Transport Worker.

**Existing Fleet Operator** means a Fleet Operator engaged by Toll as at the Operative Date.

**Fleet Operator** means a person, firm or company, outside Toll, that in the course of its business transports freight for another person and which:

- (a) owns or operates more than 1 vehicle; and
- (b) employs multiple drivers;
- (c) offers their services to the public at large; and
- (d) is engaged by Toll for a cumulative period of 2 months or more in a 12 month period from engagement, or which Toll is contemplating to engage for a cumulative period of more than 2 months from engagement.

**Fund** means TWUSUPER.

**FWC** means the Fair Work Commission.

**Group** means Toll Holdings Limited and each of its Australian wholly-owned subsidiaries.

**Instrument** means any instrument originally made as an award, whether current, expired, displaced by force of legislation or otherwise, and can include the Award.

**Local Agreements** means the enterprise agreements, workplace agreements, certified agreements and other arrangements referred to in the Schedules, together with any agreement made pursuant to clause 8.3.

**Long Distance Work** means any trip greater than 500 kilometres.

**NES** means the National Employment Standards contained in sections 59 to 131 of the Act. The NES contain minimum standards relating to:

- (a) maximum weekly hours;
- (b) requests for flexible work arrangements;
- (c) parental leave and related entitlements;
- (d) annual leave;
- (e) personal/carer's leave and compassionate leave;

- (f) community service leave;
- (g) long service leave;
- (h) public holidays;
- (i) notice of termination and redundancy pay; and
- (j) the Fair Work Information Statement.

**Operative Date** means 7 days after written notification is received that this Agreement has been approved by the FWC.

**Owner-Driver** means:

- (a) a natural person who carries on a business of transporting goods in a single vehicle supplied by him or her and operated by him or her (whether solely or with the use of additional or relief operators);
- (b) a corporation (other than a listed public company) that carries on a business of transporting goods in a single vehicle supplied by the corporation or an officer of the corporation and operated by an officer of the corporation (whether solely or with the use of additional or relief operators); or
- (c) a partnership of persons referred to in paragraph (a).

**Parties** means Toll, the Union and the Transport Workers.

**Permanent Part-Time Transport Worker** means a Transport Worker, other than a casual Transport Worker, who is employed to work a number of hours as agreed in accordance with clause 22 which is less than 38 hours per week.

**Schedule** means a schedule to this Agreement.

**TEACHO** means Training Education Audit Compliance Health Organisation Limited, a not-for-profit organisation whose objectives are described in clause 43.

**Term** means the period from the Operative Date to the date on which this Agreement no longer applies to the Transport Workers according to the provisions of the Act.

**Toll** means Toll Holdings Limited and each of its wholly-owned subsidiaries which employs a Transport Worker.

**Transport Worker** means any person who is eligible to be a member of the Union and who is employed by Toll in Australia in any of the classifications contained in the Award or in the Local Agreements.

**Unexpired Local Agreement** means a Local Agreement that has been approved, registered, certified or otherwise formalised under industrial legislation and which has not, as at the Operative Date, passed its nominal expiry date.

**Union** means the Transport Workers Union of Australia.

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## 4. Coverage

### 4.1 General

This Agreement applies to and is binding on Toll, all Transport Workers and the Union.

### 4.2 Acquisitions of businesses

- (a) This clause 4.2 will apply if Toll acquires a new business during the Term, the employees of which fall within the definition of "Transport Worker" in this Agreement.
- (b) Toll will ensure that:
  - (i) if the employees in the acquired business are or become employed by Toll to work **at an existing Toll site**, the employees receive the rates of pay and conditions of employment applicable to Transport Workers at that site, provided that the employees must not be paid a lower rate or receive less favourable conditions of employment than those that they may be entitled to receive under any enterprise agreement or similar industrial instrument applying in the acquired business; or
  - (ii) if the employees are engaged **at a separate site**, the employees receive the equivalent of the remuneration increases available under this Agreement on a pro rata basis from the date of the acquisition, provided that if any enterprise agreement or similar industrial instrument applying in the acquired business provides a greater increase for part of all of the Term then that increase will be paid for the corresponding period after which time the equivalent of the remuneration increases available under this Agreement will apply on a pro rata basis.
- (c) If clause 4.2(b)(ii) applies the parties will create a Local Agreement for that site in accordance with clause 8.3.

### 4.3 Tenders

- (a) Unless otherwise agreed between Toll and the Union, this clause 4.3 only applies to the Toll Contract Logistics business unit.
- (b) This clause applies where Toll submits a tender to a customer or potential customer for work which is currently being performed by a competitor, and which, if it were performed by Toll, would be covered by this Agreement (**New Contract**).
- (c) Where agreed between Toll and the Union, Toll may tender for the New Contract at the rates then being paid by the competitor to its employees (**Tender Rates**) and, subject to clause 4.4, pay the Tender Rates to any Transport Worker who is engaged in the performance of the New Contract including:

- (i) any Transport Worker it employs who had previously been employed by the competitor; and
- (ii) any new Transport Worker it employs.

#### **4.4 Consultation regarding applicable rates**

- (a) Toll agrees to consult with the Union about any disparity between:
  - (i) the rates of pay and conditions of employment applying to Transport Workers in the acquired business and those applying at an equivalent Toll site, arising from clause 4.2(b)(ii); or
  - (ii) the rates of pay and conditions of employment applying to Transport Workers performing work under the New Contract and those applying at an equivalent Toll site, arising from clause 4.3(c).
- (b) The powers of the FWC to deal with any Dispute between Toll and the Union arising out of the consultation referred to in clause 4.4(a) will be confined to conciliation.
- (c) Notwithstanding anything else contained in this clause 4.4, rates being paid by Toll to Transport Workers engaged in an acquired business or performing work under a New Contract will be brought into parity with those paid to Transport Workers at a comparable Toll site within 3 years after Toll acquires the new business or secures the New Contract, as the case may be.

#### **4.5 Consolidated sites and transfers**

- (a) If Toll intends to transfer a business from one site to another site which is not covered by a Local Agreement, Toll and the Union will negotiate a new Local Agreement to cover that site. In negotiating that Local Agreement the Parties will:
  - (i) base the negotiations on the terms and conditions already applying to the Transport Workers who will be transferring to the new site; and
  - (ii) ensure that the terms of the Local Agreement are no less favourable on an overall basis to those applying to existing Transport Workers who will be transferring to the new site.
- (b) If a Transport Worker transfers from one site to another site at Toll's request, the Transport Worker will be entitled to the terms and conditions applicable at the new site, provided that Toll will ensure that for the Transport Worker those terms and conditions are no less favourable on an overall basis than those which the Transport Worker previously enjoyed.

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### **5. Term of Agreement**

This Agreement will commence operation from the Operative Date and will have a nominal term of 4 years commencing 1 July 2013 and expiring on 30 June 2017 (**Nominal Term**).

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**6. Relationship to the Award and the NES**

- (a) This Agreement incorporates the Award, provided that Part A of this Agreement and the Local Agreements will prevail over the Award to the extent of any inconsistency. An inconsistency will not arise simply because the Award provides a more beneficial entitlement to a Transport Worker than that contained in Part A of this Agreement.
- (b) This Agreement operates in conjunction with the NES. Certain provisions of this Agreement or of a Local Agreement may supplement the NES but nothing in this Agreement will operate so as to provide a detrimental outcome for Transport Workers as compared to an entitlement under the NES.
- (c) For the avoidance of doubt Toll will ensure that no Transport Worker will lose any entitlements that they may currently have arising out of any Instrument.
- (d) In particular in relation to Transport Workers employed by Toll in New South Wales as at the Operative Date:
  - (i) the commitment in clause 6(c) extends to entitlements including:
    - A. their classification;
    - B. allowances (including meal allowances);
    - C. overtime; or
    - D. shift work loadings; and
  - (ii) to the extent that any Transport Workers have such entitlements as at the Operative Date, Toll will continue to apply these entitlements at the sites where those Transport Workers work, and will extend those entitlements to Transport Workers who are employed by Toll at those sites after the Operative Date; and
  - (iii) the obligation by Toll to apply or offer those entitlements will not apply in relation to any new site or business established by Toll in New South Wales after the Operative Date.

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**7. Permitted matters**

The provisions of this Agreement are, and are intended to be, limited to matters which are permitted matters within the meaning of section 172(1) of the Act.

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## **8. Local Agreements**

### **8.1 Continued effect and enforcement of Local Agreements**

- (a) The Local Agreements are incorporated into this Agreement and have effect subject to this clause 8.
- (b) Part A of this Agreement prevails over the Local Agreements to the extent of any inconsistency. An inconsistency will not arise simply because a Local Agreement provides a more beneficial entitlement to a Transport Worker than that contained in Part A of this Agreement.
- (c) Clauses 8.1(a) and (b) apply to any Unexpired Local Agreement from the day that agreement passes its nominal expiry date.

### **8.2 Review of Local Agreements**

- (a) The Parties agree to amend the Local Agreements in order to make them more relevant, up-to-date, user-friendly and complementary with Part A of this Agreement. It is the Parties' intention to ultimately achieve a result where this Agreement and the Local Agreements reflect all of the terms and conditions of employment of the Transport Workers, and there is no longer any need to refer to Instruments (except the Award) or unwritten practices.
- (b) During the Nominal Term the Parties will conduct a review of the Local Agreements and amend them to:
  - (i) remove obsolete provisions;
  - (ii) remove terms in the Local Agreements that are inconsistent with Part A of this Agreement, except where those terms are more beneficial to the Transport Workers; and
  - (iii) incorporate terms deriving from Instruments (other than the Award).

### **8.3 Creation of Local Agreement where one does not exist**

If a site or business does not have a written Local Agreement as at the Operative Date, the Parties will during the Nominal Term put in writing the operational terms applying at that site or business.

### **8.4 Continued application of terms derived from Instruments**

Toll will ensure that as a result of the review or creation of a Local Agreement under clauses 8.2 and 8.3 respectively, no Transport Worker will lose any entitlements that they may currently have arising out of any Instrument.

### **8.5 Customs and Practices absorbed**

- (a) This Agreement is not intended to alter a custom and practice applicable to Toll and Transport Workers.
- (b) As part of the review or creation of a Local Agreement under clauses 8.2 or 8.3, the Parties will include any custom and practice that is agreed to apply to Toll and the Transport Workers at the site or business.
- (c) Once a Local Agreement has been reviewed or made under clauses 8.2 or 8.3, and subject to clause 8.5(d), no unwritten custom and practice will be regarded as existing in respect of the site or business covered by the Local Agreement.
- (d) Clause 8.5(c) will not preclude the continuing application of a custom and practice where the Parties have unintentionally failed to reflect the custom and practice in a Local Agreement.
- (e) Any Dispute as to whether a custom and practice exists, or how that custom and practice should be reflected in writing, will be dealt with in accordance with clause 8.10.

### **8.6 Other Variations of Local Agreements**

At any time after the review or creation of a Local Agreement under clause 8.2 and 8.3, the Parties may agree to vary the terms of the Local Agreement to address the needs of the site or business.

### **8.7 Terms of Local Agreements**

- (a) Any Local Agreement reviewed, made or varied under this clause 8 must not:
  - (i) be inconsistent with Part A of this Agreement; or
  - (ii) contain terms that would have the effect of reducing the effectiveness of this clause.
- (b) Any Local Agreement reviewed, made or varied under this clause 8 must include terms in the Local Agreement to facilitate consultation about changes at the relevant site or business.

### **8.8 Approval of Local Agreements**

- (a) Toll will consult with Transport Workers and the Union about any proposal Toll wishes to make to review, make or vary a Local Agreement under this clause 8.
- (b) Toll recognises that as part of the consultation process, the Union may canvass the views of the Transport Workers at the site or business as to the proposal, which may include conducting a vote of the Transport Workers on the proposal.
- (c) Nothing in this clause is intended to prevent Transport Workers from requesting the review, creation or variation of a Local Agreement under this clause 8.



- (d) To be effective, any review, creation or variation of a Local Agreement under this clause 8 must be:
  - (i) in writing;
  - (ii) approved by a majority of the Transport Workers under that Local Agreement, with such majority to be verified by the Union; and
  - (iii) signed by the relevant Toll General Manager and the Secretary of the relevant Branch of the Union.

### **8.9 Transport Workers to be no worse off**

Toll will ensure that no Transport Worker is worse off as a result of the review referred to in clause 8.2, the creation of a new Local Agreement under clause 8.3 or the variation of a Local Agreement under clause 8.6.

### **8.10 Resolution of Disputes regarding the review, creation or variation of a Local Agreement**

Any Disputes arising in connection with the review, creation or variation of a Local Agreement under this clause 8 will be dealt with as follows:

- (a) the Parties must first attempt to resolve the Dispute in accordance with clauses 15(a), (b) and (c);
- (b) if the matter remain in Dispute it is to be referred to the Board of Reference in accordance with Part D;
- (c) if any Party remains unsatisfied after the Dispute has been dealt with by the Board of Reference, it may refer it to the FWC in accordance with clause 15(d).

### **8.11 Involvement of delegates**

- (a) Any leave which delegates are required to take to spend in the review, creation or variation of a Local Agreement under this clause 8 will not be taken to come out of the amount of delegates leave prescribed by clauses 42.3(a) and (b).
- (b) Delegates who take leave to spend in the review, creation or variation of a Local Agreement under this clause 8.11 will be paid for each day of the leave the earnings that they would have received had the day been worked.

### **8.12 Review of progress regarding Local Agreements**

At the end of the third year of the Term the Parties will confer with a view to assessing:

- (a) the progress that has been made to review or create Local Agreements under this clause 8; and
- (b) what if any steps may need to be taken to facilitate that process.

### **8.13 Wage increase connected with review and creation of Local Agreements**

- (a) Subject to the Transport Workers and the Union having actively participated in good faith in the process required by clauses 8.2 and 8.3, Toll will provide to the Transport Workers a further wage increase of 0.25% in addition to the increase referred to in clause 29.1(a)(v) from the first full pay period after 1 July 2016.
- (b) Toll will ensure that local Toll management does not hinder or unreasonably delay the review or creation of a Local Agreement.

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## **9. Conduct of the Parties**

- (a) The Parties agree that mutual respect and good faith is necessary to achieve an efficient and mutually beneficial relationship.
- (b) Further to the Parties' aim of achieving an efficient and mutually beneficial relationship, the Parties agree to act in good faith in fulfilling their respective functions and obligations under this Agreement.
- (c) For the purposes of this Agreement, "good faith" requires the parties to:
  - (i) deal with one another honestly and genuinely, and in a manner which maintains the integrity of this Agreement;
  - (ii) take an honest and genuine approach to the resolution of any Disputes arising between them;
  - (iii) refrain from capricious or unfair conduct that undermines the Agreement;
  - (iv) give genuine consideration to, and respond to, the positions and proposals of other Parties in relation to any Disputes; and
  - (v) disclose information (other than confidential or commercially sensitive information) which is relevant to any Dispute in a timely manner.

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## **10. No extra claims**

- (a) During the Term the Transport Workers will not pursue any further claims for wages, allowances or any other terms and conditions of employment.
- (b) This clause 10 is not intended to preclude discussions under clause 8 for variations to a Local Agreement that deliver mutual benefits to the Parties.

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## **11. Negotiation of new agreement**

- (a) The Parties will commence negotiations for an agreement to replace this Agreement no less than 3 months before the nominal expiry date of this Agreement.
- (b) Those negotiations will proceed on a national basis.

- (c) The negotiating committee will be constituted as follows:
- (i) representatives from Toll;
  - (ii) representatives from the Union;
  - (iii) 2 metro delegates and 1 regional delegate from Queensland;
  - (iv) 2 metro delegates and 1 regional delegate from Western Australia;
  - (v) 1 delegate from South Australia;
  - (vi) 1 delegate from the Northern Territory;
  - (vii) 3 delegates from Victoria;
  - (viii) 1 delegate from Tasmania; and
  - (ix) 6 delegates from New South Wales/Australian Capital Territory, as determined by the Union.
- (d) To facilitate the negotiations Toll will:
- (i) consent to the Union conducting pre-survey, claim endorsement and negotiation report back meetings, following each full Committee meeting, of State delegate bodies and of all yards on paid time and local Toll management will cooperate to ensure that meetings occur in a mutually convenient but timely manner;
  - (ii) release the delegate representatives to attend negotiation meetings;
  - (iii) pay the delegate representatives for each day of the negotiations the amount they would have received had they been at work on those days;
  - (iv) provide venues for negotiations;
  - (v) pay for any flights required for delegates to attend the negotiations and provide the delegate representatives with accommodation and meals (or a meal allowance); and
  - (vi) pay a delegates' reasonable expenses of attending the negotiations, provided the delegate has sought permission for the expense and is able to provide documentary evidence of the expense.

## Section 2 – Flexibility, Consultation and Dispute Resolution

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### 12. Access to this Agreement

Toll will make a copy of this Agreement, any Local Agreement and the NES available to a Transport Worker on request.

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### 13. Individual flexibility arrangements

- (a) Toll and a Transport Worker may agree to make an individual flexibility arrangement to vary the effect of clause 28 of this Agreement by allowing the Transport Worker to take Blood Donors leave of up to 4 hours for a maximum of 2 days per year.
- (b) Any arrangement under clause 13(a) must genuinely be agreed to by Toll and the Transport Worker.
- (c) Toll will ensure that the terms of the individual flexibility arrangement:
  - (i) are about permitted matters under section 172 of the Act; and
  - (ii) are not unlawful terms under section 194 of the Act; and
  - (iii) result in the Transport Worker being better off overall than the Transport Worker would be if no arrangement was made.
- (d) Toll will ensure that the individual flexibility arrangement:
  - (i) is in writing; and
  - (ii) includes the name of the employer and Transport Worker; and
  - (iii) is signed by Toll and the Transport Worker and if the Transport Worker is under 18 years of age, signed by a parent or guardian of the Transport Worker; and
  - (iv) includes details of the terms of this Agreement that will be varied by the arrangement; and
  - (v) states the day on which the arrangement commences.
- (e) Toll will give the Transport Worker a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (f) Toll or the Transport Worker may terminate the individual flexibility arrangement:
  - (i) by giving no more than 28 days written notice to the other party to the arrangement; or
  - (ii) if Toll and the Transport Worker agree in writing – at any time.

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**14. Consultation on workplace change**

- (a) If Toll is considering workplace changes that are likely to have a significant effect on Transport Workers, it will consult with the Union and any Transport Workers who will be affected by any proposal.
- (b) As soon as practicable Toll must discuss with the Union and relevant Transport Workers the introduction of the change, the effect the change is likely to have on the Transport Workers, the number of any redundancies, the persons or class of persons likely to be affected and any reasonable alternatives to the change or redundancy. Toll must discuss measures to avert or mitigate the adverse effect of the change on the Transport Workers.
- (c) Toll will give prompt and genuine consideration to matters raised about the change by the affected Transport Workers and the Union.
- (d) As soon as a final decision has been made, Toll must notify the Union and the Transport Workers affected, in writing, and explain the effects of the decision.
- (e) In the event that a Dispute arises in respect to any decision, proposal or consideration to effect any change, the parties agree to follow the disputes procedure in clause 15, and until the Dispute is resolved in accordance with that procedure the status quo before the Dispute arose will be maintained and work will continue without disruption.
- (f) A reference to a change that is "likely to have a significant effect on Transport Workers" includes but is not limited to:
  - (i) the termination of the employment of Transport Workers; or
  - (ii) major change to the composition, operation or size of Toll's workforce or to the skills required of Transport Workers; or
  - (iii) the elimination or diminution of a significant number of job opportunities (including opportunities for promotion or tenure); or
  - (iv) the significant alteration of hours of work; or
  - (v) the need to retrain Transport Workers; or
  - (vi) the need to relocate Transport Workers to another workplace; or
  - (vii) the restructuring of jobs.
- (g) With the prior approval of Toll and subject to clause 39, the Union may enter Toll's premises in order to consult with Transport Workers regarding a workplace change.

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**15. Dispute resolution procedure**

The Parties agree that any Dispute must be dealt with in the following manner:

- (a) The matter must first be discussed by the aggrieved Transport Worker(s) directly with his or her or their immediate supervisor.
- (b) If the matter remains in dispute, it must next be discussed with the supervisor's immediate superior or another representative of Toll appointed for the purpose of this procedure. The Union delegate for the worksite has the right to attend at, and participate in, this discussion as the representative of a Transport Worker, provided that the Union delegate is the representative of the Transport Worker's choice.
- (c) If the matter remains in dispute, it must next be discussed with the relevant manager of Toll. The relevant Union State Secretary (or his/her nominee) has the right to attend at and participate in this discussion as the representative of a Transport Worker, provided that the relevant Union State Secretary is the representative of the Transport Worker's choice.
- (d) If the matter remains in dispute, it must next be submitted to the FWC for conciliation. For this purpose, it is agreed that the action the FWC may take includes:
  - (i) arranging conferences of the parties or their representatives at which the FWC is present; and
  - (ii) arranging for the parties or their representatives to confer among themselves at conferences at which the FWC is not present.
- (e) If the matter is not resolved in conciliation conducted by the FWC, the Parties agree that the FWC will proceed to arbitrate the Dispute and/or otherwise determine the rights and/or obligations of the parties to the Dispute. In relation to such an arbitration, the Parties agree that:
  - (i) The FWC may give all such directions and do all such things as are necessary for the just resolution of the Dispute. The FWC may exercise powers of conciliation, arbitration and declaratory relief in relation to the Dispute, including all related procedural powers such as those in relation to hearings, witnesses, evidence and submissions.
  - (ii) The FWC should apply the rules of evidence that would ordinarily apply to a hearing before the FWC under the Act.
  - (iii) Before making a determination, the FWC will give the parties an opportunity to be heard formally on the matter(s) in dispute.
  - (iv) In making its determination, the FWC will only have regard to the materials, including witness evidence, and submissions put before it at the hearing and will disregard any admissions, concessions, offers or claims made in conciliation.

- (f) The decision of the FWC will be binding on the Parties subject to the following agreed matters:
  - (i) There will be a right of appeal to a Full Bench of the FWC against the decision, which must be exercised within 21 days of the decision being issued or within such further time as the Full Bench may allow.
  - (ii) The appeal will be conducted in accordance with the legal principles applying to an appeal in the strict sense.
  - (iii) The Full Bench, or a single member on delegation, will have the power to stay the decision pending the hearing and determination of the appeal.
  - (iv) The decision of the Full Bench in the appeal will be binding upon the parties.
- (g) Until the matter is resolved by agreement, conciliation or arbitration, the status quo before the Dispute arose will be maintained and work will continue without disruption. No party is to be prejudiced as to the final settlement by the continuance of work in accordance with this procedure.

## Section 3 – Employment Relationship

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### 16. Toll Values

The Parties agree that they will treat each other, and perform their respective rights and obligations under this Agreement, in accordance with the Toll values of:

- (a) integrity and trust;
  - (b) safety;
  - (c) continuous improvement;
  - (d) teamwork; and
  - (e) being open and transparent.
- 

### 17. Toll commitment to job security

The Parties recognise that job security is an important issue for Employees. For its part, Toll commits:

- (a) to the full-time engagement of its Transport Workers wherever possible;
- (b) subject to reasonable practical requirements, such as adequately servicing industry peaks, to promote job security through the full utilisation of full-time permanent Transport Workers/Owner-Drivers before the engagement of part-time Transport Workers/Owner-Drivers, or casual, labour hire or outside hire workers;
- (c) to ensure that wages and conditions applicable to third party agency workers and to casual Transport Workers placed in a business by Toll People (or any other agency controlled by Toll) are no less than those of Transport Workers in the same position in that business unit;
- (d) to the training of its Transport Workers, in workplace health and safety (including Blue Card) and other professional training as agreed from time to time and the promotion of vocational training and occupational health and safety training;
- (e) to consult with the Union and affected Transport Workers if a decision is taken by Toll to outsource work; and
- (f) ensure that all Owner-Drivers engaged by it receive a labour rate equal to the applicable wage rate payable for the relevant vehicle utilised by the Owner-Driver at the site at which they are engaged.



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**18. Transport Worker commitment**

The Transport Workers commit:

- (a) to perform their duties faithfully and diligently;
- (b) to provide faithful service during their employment with Toll and to act in Toll's best interests at all times;
- (c) to promote Toll's interests, prosperity and reputation; and
- (d) to work cooperatively with Toll to review and update the Local Agreements in accordance with clause 8.2 or to make a Local Agreement under clause 8.3.

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**19. Union commitment**

The Union commits:

- (a) that in exercising its representative role under this Agreement it will do so in accordance with this Agreement provided that this commitment will not preclude the Union from exercising its organisational objectives in an appropriate manner;
- (b) to work cooperatively with Toll to review and update the Local Agreements in accordance with clause 8.2 or to make a Local Agreement under clause 8.3;
- (c) to work cooperatively with Toll to enhance the standards and conditions in the markets in which Toll operates; and
- (d) to participate in regular consultative forums with senior management of Toll.

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**20. Probation period**

- (a) All Transport Workers who are offered permanent employment by Toll after the Operative Date will serve a probation period of 3 months.
- (b) A Transport Worker will not be subject to a probation period where that Transport Worker is offered permanent employment with Toll having been:
  - (i) employed directly by Toll as a casual;
  - (ii) engaged by Toll through an external labour hire agency; or
  - (iii) engaged as an Owner-Driver,on a regular and systematic basis for a period of no less than 3 months.
- (c) This clause will not apply to casual Transport Workers who elect to become permanent Transport Workers under clause 21(e).

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**21. Casual Transport Workers**

- (a) Casual Transport Workers, other than those employed in New South Wales, will receive a 25% loading on all ordinary hours worked and a 10% loading on all overtime worked.
- (b) Casual Transport Workers in New South Wales will receive a 15% loading on all hours worked plus a further one twelfth (1/12) of their ordinary rate of pay for all ordinary time hours worked.
- (c) For the avoidance of doubt, the casual loading on overtime hours is to be paid in addition to any overtime loading to which the Transport Worker is entitled.
- (d) Casual Transport Workers will not be entitled to the benefits of clauses 24, 25, 26 and 28. The casual loading is paid in lieu of and to compensate for these benefits.
- (e) Subject to clause 21(f), where a casual Transport Worker has been directly employed by Toll or engaged through a labour hire company to perform work for Toll on a regular and systematic basis for more than 6 months, the Transport Worker may elect to become a permanent Transport Worker, on a like for like basis, within the specific business unit at which the Transport Worker is engaged, in accordance with the Award.
- (f) For the avoidance of doubt, clause 21(e) does not allow a Transport Worker to elect to become a permanent Transport Worker of Toll People.
- (g) During the Term, Toll will undertake a review of its casual workforce. To the extent that it is practicable having regard to Toll's commercial and operational needs, Toll will facilitate the use of clause 21(e) with a view to converting 300 casual positions to permanent positions, on a like for like basis, in the first year of the Term.

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**22. Permanent Part-time Transport Workers**

- (a) A Permanent Part-Time Transport Worker is one who is rostered to work:
  - (i) less than 7.6 hours on a given shift; or
  - (ii) less than 38 hours in a week.
- (b) On commencement of employment, Toll and a Permanent Part-Time Transport Worker will agree on the hours and days in each week that the Transport Worker will work.
- (c) Any hours which a Permanent Part-Time Transport Worker is required to work in excess of those agreed under clause 22(b) will be paid at overtime rates.
- (d) Toll and a Permanent Part-Time Transport Worker may agree to vary the Transport Worker's hours and days of work, provided that this may not be used

as a device to avoid Toll's responsibilities under clause 22(c), for example by making ad hoc or regular changes.

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## 23. Breaks

- (a) If a Transport Worker is entitled to a crib break under the Award, they will take that crib break when operationally convenient.
- (b) The Transport Workers will use their best endeavours to ensure that their breaks under the Award or any Local Agreement coincide with those which they are obliged to take under fatigue management legislation or regulations.

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## 24. Termination

### 24.1 Notice of termination by Toll

- (a) In order to terminate the employment of a Transport Worker Toll will give to the Transport Worker the following period of notice:

Period of continuous service	Period of notice
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

- (b) In addition to the notice in clause 24.1(a), Transport Workers over 45 years of age at the time of the giving of the notice with not less than two years continuous service are entitled to an additional week's notice.
- (c) Payment in lieu of the prescribed notice in clauses 24.1(a) and 24.1(b) will be made if Toll does not require the Transport Worker to work during the appropriate notice period. Employment may be terminated by the Transport Worker working part of the required period of notice and by Toll making payment for the remainder of the period of notice.
- (d) The payment in lieu of notice must equal or exceed the total of all amounts that, if the Transport Worker's employment had continued until the end of the required period of notice, Toll would have become liable to pay to the Transport Worker. That total must be calculated on the basis of the full rate of pay for the hours the Transport Worker would have worked had the Transport Worker continued until the end of the minimum period of notice including:
  - (i) the amounts payable to the Transport Worker in respect of those hours, including (for example) allowances, loading and penalties; and

- (ii) any other amounts payable under the Transport Worker's contract of employment.
- (e) The period of notice in this clause does not apply:
  - (i) in cases where the Transport Worker requests a release from the employment prior to the end of the notice period;
  - (ii) in cases where the Transport Worker has engaged in conduct warranting the summary termination of their employment;
  - (iii) to Transport Workers engaged for a specific period of time or for a specific task or tasks;
  - (iv) to trainees whose employment under a traineeship agreement or an approved traineeship is for a specified period or is, for any other reason, limited to the duration of the agreement; or
  - (v) to casual Transport Workers.

#### **24.2 Termination by Transport Workers**

- (a) A Transport Worker may terminate their employment with Toll at any time by providing 1 weeks notice of termination.
- (b) Toll may make a payment in lieu of the whole or part of the notice period referred to in clause 24.2(a), in which case clause 24.1(d) will apply.

#### **24.3 Return of property**

On termination of their employment, for whatever reason, a Transport Worker will immediately return to Toll all property belonging to Toll which is in the Transport Worker's possession or which is under their control. Subject to the NES, Toll may withhold any monies payable to the Transport Worker on termination until Toll's property is returned provided that:

- (a) the amount withheld is proportionate to the value of the property not returned; and
- (b) Toll is able to produce evidence, if required, that the Transport Worker has been provided with the property.

#### **24.4 Recovery of overpayments on termination**

- (a) Subject to the NES, Toll may deduct from any amounts due to a Transport Worker on the termination of their employment any amounts which the Transport Worker then owes to Toll including:
  - (i) overpayments of wages;
  - (ii) any annual leave granted in advance, for which the Transport Worker has not accrued the requisite period of service; or

- (iii) loans from Toll to the Transport Worker.
- (b) Toll will not be permitted to make any deductions under clause 24.4(a) unless it raised the overpayment with the Transport Worker under clause 29.6 at least 3 months prior to the termination date and either:
  - (i) the Transport Worker had not at the time raised a Dispute in relation to the overpayment;
  - (ii) the Transport Worker had raised a Dispute in relation to the overpayment which had been resolved in accordance with this Agreement; or
  - (iii) having previously raised a Dispute in relation to the overpayment the Transport Worker agrees to the deduction.

## 25. Redundancy

- (a) A redundancy occurs in a circumstance where Toll decides that it no longer requires the position that a Transport Worker has been doing to be done by anyone and that decision leads to the termination of the Transport Worker's employment with the Group.
- (b) Toll commits to using redundancy as a last resort.
- (c) In a redundancy situation Toll will:
  - (i) undertake consultation in accordance with clause 14;
  - (ii) explore, in consultation with the affected Transport Worker(s) and the Union, opportunities for suitable alternative employment for the affected Transport Worker(s);
  - (iii) provide such re-training or outplacement support to Transport Workers as may be reasonable in the circumstances; and
  - (iv) provide Transport Workers with reasonable paid time off to seek alternative employment.
- (d) The selection of Transport Workers for redundancies, and the criteria to be applied in making that selection, will be at Toll's reasonable discretion. Selection criteria for redundancies may include:
  - (i) identification of the skill sets which Toll requires be maintained;
  - (ii) expressions of interests for volunteers for redundancy; and
  - (iii) "last on, first off".
- (e) In the event that a redundancy occurs, the affected Transport Worker will be entitled to a severance payment calculated at the rate of 3 weeks pay per year of service, pro rata for incomplete years of service, up to a maximum of 52

weeks pay. For the purposes of this clause, "weeks pay" means the Transport Worker's base rate of pay at the time of termination.

- (f) A Transport Worker will not be entitled to receive a severance payment if Toll obtains for them suitable alternative employment. For the avoidance of doubt, such suitable alternative employment can include employment with an employer other than Toll but only in circumstances where the new employer recognises all previous service of the Transport Worker with Toll and all employee entitlements are transferred with the Transport Worker to the new employer.
- (g) The severance payment in clause 25(e) is in addition to:
  - (i) notice or payment in lieu of notice in accordance with clause 24; and
  - (ii) payment for any accrued but untaken leave or days in lieu which are payable on termination.

## **26. Annual leave**

### **26.1 Toll may direct Transport Worker to take annual leave**

Toll may direct a Transport Worker to take annual leave, provided that:

- (a) the direction is reasonable having regard to Toll's business needs;
- (b) the direction takes into account, to the extent reasonably practicable, the Transport Worker's personal circumstances and wishes; and
- (c) the direction does not result in the Transport Worker having a balance of accrued annual leave of less than the amount of annual leave that the Transport Worker would accrue in 1 year.

### **26.2 Cashing out annual leave permitted**

- (a) Transport Workers may cash out accrued annual leave in accordance with the NES.
- (b) Toll and a Transport Worker may agree on reasonable conditions as to when and to what extent a Transport Worker may cash out annual leave, provided that any cashing out of annual leave must comply with the NES.
- (c) Payment in lieu of annual leave will be calculated on the full amount that would have been payable to the Employee had the Employee taken the leave in respect of which payment is made.
- (d) Toll will not place undue pressure on a Transport Worker to cash out the Transport Worker's annual leave.
- (e) Under no circumstances will Toll agree to a Transport Worker's request to cash out annual leave if it would result in the Transport Worker's accrued annual leave entitlements being less than 4 weeks.

### 26.3 Leave loading

Transport Workers in New South Wales will receive an annual leave loading of 25%. Provided that if a Transport Worker would have received a shift loading for the period for which leave is taken which is higher than 25%, the Transport Worker will receive an annual leave loading at that higher amount.

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### 27. Disaster leave

- (a) In this clause, "**Natural Disaster**" means an extreme weather event or other natural occurrence which results in the relevant government minister or authority declaring the area in which the Transport Worker lives and/or works to be a natural disaster zone.
  - (b) If a Transport Worker is unable to attend work due to a Natural Disaster, they are entitled to paid leave of up to 3 days. Payment for the leave will be at the Transport Worker's base rate of pay.
  - (c) In addition to any leave available to the Transport Worker under this clause 27, the Transport Worker will be entitled to take any accrued rostered days off or annual leave for any period for which the Natural Disaster prevents them from attending for work.
  - (d) In this clause, being "unable to attend work" includes the Transport Worker requiring time to attend to the consequences of the Natural Disaster, such as performing emergency work on their home and the like.
  - (e) Toll may request a Transport Worker to provide evidence that any absence for which leave is sought under this clause was caused by the Natural Disaster.
  - (f) A Permanent Part-time Transport Worker will be entitled to leave under this clause on a pro rata basis.
  - (g) A casual Transport Worker will not be entitled to leave under this clause 27 unless the Transport Worker:
    - (i) works an average of 38 hours per week; and
    - (ii) has been employed by Toll on a regular and systematic basis for at least 6 months.
- 

### 28. Blood Donors Leave

- (a) A Transport Worker will be entitled to be absent from work, without loss of pay, for up to 2 hours, 4 times per year, for the purposes of the Transport Worker donating blood.
- (b) Toll may request a Transport Worker to provide evidence that any absence requested under this clause is for the purpose of donating blood.

## Section 4 – Wages and related matters

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### 29. Wages and Allowances

#### 29.1 Wages

- (a) Toll will increase the wages payable to Transport Workers as follows:
  - (i) by 2% from the first full pay period on or after 1 July 2013;
  - (ii) by 2% from the first full pay period on or after 1 January 2014;
  - (iii) by 3% or CPI, whichever is greater, from the first full pay period on or after 1 July 2014;
  - (iv) by 4% or CPI, whichever is greater, from the first full pay period on or after 1 July 2015; and
  - (v) by 4% or CPI, whichever is greater, from the first full pay period on or after 1 July 2016.
- (b) For the purposes of this clause, “CPI” means the Consumer Price Index (All Groups) as published by the Australian Bureau of Statistics for the 12 months preceding each of the increases in clause 29.1(a).
- (c) Under no circumstances will a Transport Worker receive a wage that is less than 10% above the relevant wage rate in the Award for the Transport Worker's classification.

#### 29.2 Allowances

- (a) Subject to clauses 29.2(b) and (d), the amount of any allowances paid to Transport Workers will not be less than those payable under the Award. Unless an increase is necessary to maintain parity with the amount of an allowance payable under the Award, there will be no increases during the Term to any allowances paid to Transport Workers. This clause applies despite anything to the contrary in a Local Agreement, provided that any provision in a Local Agreement that allows for allowances to increase in line with the Award will continue to apply.
- (b) If a Transport Worker receives an allowance that is not provided for under the Award, it is a matter to be determined at a local level as to whether the allowances should be increased during the Term. In the event of a Dispute about any such increases, the matter will be referred to the FWC under clause 15, provided that the FWC's powers to deal with the matter will be confined to conciliation.
- (c) Transport Workers who are required to work 10 hours or more in a single shift will be entitled to receive a meal allowance.



- (d) If a Transport Worker receives a crib payment that is made up of both a labour component and an allowance component, the labour component will be increased in each year of the Term in line with the increases to wages set out in clause 29.1(a).

### **29.3 Payment of wages**

If the day on which Transport Workers are usually paid falls on a public holiday, payment of wages in that week will be made on the working day prior to the public holiday, but where this is not possible payment may be deferred until the next working day (but only where this is the day immediately after the public holiday).

### **29.4 Absorption of Award Increases**

Any increases during the Term to the rates of pay contained in the Award will be absorbed into any over-award payments made to the Transport Workers.

### **29.5 Increases relating to Local Agreements**

- (a) If an Unexpired Local Agreement expires between the dates on which wage increases are payable under clause 29.1, Transport Workers employed under that Unexpired Local Agreement will be entitled to a pro rata increase in their wages for the period from the expiry of the Unexpired Local Agreement to the date of the next increase payable under this Agreement.
- (b) The increases referred to in clause 29.1 will be absorbed into any increases that a Transport Worker receives under a Local Agreement.
- (c) If a Local Agreement provides for wage increases to be provided to Transport Workers other than on 1 July in any year, and the Transport Workers under that Local Agreement received a wage increase on the relevant date in the 12 months before 1 July 2013, the next increase payable under this Agreement will be on the anniversary of that last increase, provided that over the Term the Transport Workers have had the total benefit – either directly or pro rata – of the increases referred to in clause 29.1.

### **29.6 Recovery of overpayments to Transport Workers**

- (a) Toll may recover from a Transport Worker any overpayments as to pay or other entitlements made to the Transport Worker.
- (b) When it discovers an overpayment, Toll will provide to the Transport Worker evidence demonstrating the nature and amount of the overpayment, and give the Transport Worker a reasonable opportunity to consider that evidence and reach agreement with Toll on the repayment of the amount.

- (c) If no agreement can be reached on the repayment, Toll may deduct the overpayment periodically from the Transport Worker's pre-tax wages, provided that the rate of repayment will not exceed 7.5% of the Transport Worker's net (after tax) base wage for each pay period until the overpayment is fully remitted. Toll cannot make any deductions from a Transport Worker's annual leave or long service leave entitlements. Toll will not charge interest on any overpayments.
  - (d) The Transport Worker may notify a Dispute in relation to the alleged overpayment, in which case clause 15 will apply. If this occurs, Toll must not make any deductions from the Transport Worker's wages until the Dispute is resolved.
  - (e) This clause 29.6 does not apply to the recovery of debts on the termination of a Transport Worker's employment, in which case clause 24.4 applies.
  - (f) This clause will only apply to overpayments that are made after the Operative Date.
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### **30. Superannuation**

- (a) Toll will make superannuation contributions on behalf of each Transport Worker as required under the *Superannuation Guarantee (Administration) Act (Cth) 1992*, provided that, subject to clause 30(b), contributions will be made at the rate that is 3% above the rate required to be paid under that Act up to a maximum of 15%.
- (b) In addition to the contributions referred to in clause 30(a), but still subject to the cap of 15%, Toll will increase the rate of superannuation contributions paid to Transport Workers by a further 0.75% from the first full pay period on or after 1 July 2016 subject to the Union demonstrating, to Toll's reasonable satisfaction, that it has secured by 30 June 2016 contributions at, or an agreement to move contributions to, a rate that is at least 2% higher than the rate required to be paid under the *Superannuation Guarantee (Administration) Act (Cth) 1992*, for 50% or more of its members in the road transport sector.
- (c) Once the level of superannuation increases reaches 15%, any increases in the rate of superannuation contributions required to be made by Toll under any federal legislation or under any Instrument (including the Award) will be absorbed into, and will not operate in addition to, the rate of contribution referred to in clause 30(a).
- (d) Subject to clauses 30(e) and (h), superannuation contributions will be made into the Fund.

- (e) Notwithstanding that this Agreement comprises an effective choice of superannuation fund for the purposes of the legislation, Toll and the Union may agree to a process under which individual Transport Workers may during a period of 3 months after the Operative Date elect to have superannuation contributions paid into a superannuation fund other than the Fund provided that the other superannuation fund:
  - (i) is a complying fund; and
  - (ii) does not seek to impose additional legal requirements on Toll. In particular, Toll will not be required to make superannuation contributions to any superannuation fund that requires Toll to execute a participation agreement.
- (f) Toll will not promote to Transport Workers any superannuation fund other than the Fund or otherwise encourage Transport Workers to seek to have their superannuation contributions paid into a superannuation fund other than the Fund.
- (g) A Transport Worker may only direct Toll to make contributions to one superannuation fund at any given time, in accordance with clause 30(e).
- (h) Clause 30(d) will not operate to affect any arrangement in place at the Operative Date under which Toll is, at a Transport Worker's request, making superannuation contributions on behalf of the Transport Worker to a superannuation fund other than the Fund.
- (i) If clause 30(h) applies to a Transport Worker, then other than in accordance with any process agreed between Toll and the Union under clause 30(e), they may not nominate a fund other than the Fund into which superannuation contributions will be made on their behalf.

## **31. Payroll deductions**

### **31.1 Union Membership**

- (a) Toll must deduct Union membership fees (not including fines or levies) from the pay of any Transport Worker, provided that:
  - (i) the Transport Worker has authorised Toll to make such deductions in accordance with clause 31.1(b);
  - (ii) the Union has advised Toll of the amount to be deducted for each pay period applying at Toll's workplace and any changes to that amount; and
  - (iii) deduction of Union membership fees will only occur in each pay period in which payment has or is to be made to a Transport Worker. For the avoidance of doubt, Union membership fees will not be deducted from termination payments made to a Transport Worker unless expressly authorised by the Transport Worker in writing.

- (b) The Transport Worker's authorisation for the purposes of clause 31.1(a)(i) must be in writing and must authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union rules) that the Union advises Toll to deduct.
- (c) Monies so deducted from a Transport Worker's pay will be remitted to the Union on either a weekly, fortnightly, monthly or quarterly basis at Toll's election, together with all necessary information to enable the reconciliation and crediting of subscriptions to Transport Workers' membership accounts, including, but not limited to, names, addresses and phone numbers.
- (d) The Union must advise Toll of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice must be in the form of a schedule of fees to be deducted specifying weekly, fortnightly, monthly or quarterly as the case may be. The Union must give Toll a minimum of 2 months' notice of any such change.
- (e) A Transport Worker may at any time revoke in writing an authorisation to Toll to make payroll deductions of Union membership fees.
- (f) The above provisions will take effect from the beginning of the first pay period to commence on or after 2 months after the Operative Date.

### **31.2 Other Deductions**

- (a) All non-statutory, agreed and subsequently authorised deductions from a Transport Worker's wages will be applied to the purpose of the deduction:
  - (i) within 30 days of the deduction occurring; or
  - (ii) no later than the date when the instalment is due to be paid to the recipient institution where the recipient institution has an instalment period of longer than 30 days.
- (b) Toll must generate and maintain records of the following transactions:
  - (i) Deductions: Such deductions will appear on the Transport Worker's next pay advice; and
  - (ii) Payments to recipient institutions: The Transport Workers will be advised in writing that Toll has remitted the deduction to the recipient institution in the Transport Worker's next pay advice. Toll must provide the Transport Worker with evidence that such a payment has been made on the request of the Transport Worker.

## Section 5 – Safety and related matters

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### 32. Compliance with Obligations

- (a) Toll will:
  - (i) comply with all applicable workplace health and safety legislation (and codes of practice arising under such legislation);
  - (ii) comply with all applicable “chain of responsibility” legislation;
  - (iii) comply with any law regulating maximum driving and working hours and minimum rest times.
- (b) The Transport Workers and the Union will:
  - (i) take all reasonable steps to assist Toll meet the obligations in clause 32(a);
  - (ii) comply with any obligations imposed on them by the legislation and codes of practice referred to in clause 32(a); and
  - (iii) participate in forums convened by Toll from time to time to discuss safety matters.

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### 33. Site inductions

- (a) A new Transport Worker commencing work with Toll will receive induction training from Toll that will include:
  - (i) occupational health and safety;
  - (ii) the Drug and Alcohol Procedures;
  - (iii) the Blue Card Induction Program;
  - (iv) their rights and obligations under this Agreement; and
  - (v) the importance of supporting a culture of continuous improvement and of assisting Toll to meet its commitments to its customers.
- (b) As part of the site induction process, representatives of the Union will be given an opportunity to induct all new Transport Workers in accordance with the following procedure:
  - (i) the induction will take place on a site at which work is being performed, at the request of the Union;
  - (ii) all inductions will contain no more than 15 Transport Workers in each group;

- (iii) a room which is appropriate for inductions (such as a training room) is dedicated to that purpose;
  - (iv) 30 clear minutes will be allowed for the induction to take place;
  - (v) Transport Workers will receive no less than their usual or (where they have yet to commence work) their proposed rate of pay for the duration of the induction.
  - (vi) prior to the induction there will, at the Union's request, be posted in a prominent position accessible to all Transport Workers a Union generated notice describing the purpose of the induction and setting out any other relevant information.
- (c) To facilitate Union inductions, Toll will at a local level provide the Union with reasonable notice as to when Transport Worker inductions are to occur.
  - (d) Where Union inductions do not occur at the same time as Toll conducts a Transport Worker induction or in conjunction with other Union training, the relevant Union organiser and Toll manager will agree on a mutually suitable time for the Union induction to occur, which must be within 30 days of that discussion.

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#### **34. Health and Safety Committees**

- (a) Toll will establish Health and Safety Committees in consultation with Transport Workers and the Union, in accordance with applicable legislation.
- (b) When determining the constitution of a Work Group, who will be members of the Health and Safety Committee and the process for the election of a Health and Safety Representative (HSR) or Deputy Health and Safety Representative (DHSR) Toll will consult with Transport Workers and the Union.
- (c) Toll will ensure that all members of its Health and Safety Committees, HSRs and DHSRs are provided with the appropriate and accredited WHS training as required under applicable legislation within 3 months of their election.
- (d) Toll will ensure that all Transport Workers that perform driving duties, together with allocation staff and fleet controllers, are competent to manage fatigue, which may include, at Toll's discretion, providing the Transport Workers with the opportunity and time to attend driver fatigue management programs.
- (e) Subject to prior notification and supervisor approval, Toll will pay for the training courses and programs referred to in this clause 34 and all other reasonable expenses, which would otherwise be incurred by attendees of the course. Further, attendees will receive no less than their usual pay whilst attending such courses. For the avoidance of doubt, no training will be paid for unless prior express approval is given by Toll to the training being undertaken by relevant Transport Workers.

- (f) Following consultation with the HSRs and DHSRs, and subject to any statutory obligations binding on Toll to the contrary, it will be entirely a matter for Toll to determine what person, firm, organisation or company provides Transport Workers with any training required under this Agreement. Toll will ensure that any person appointed to provide training has expertise in the transport sector, which may but will not necessarily include the Union.
- (g) Toll will not in any way hinder or seek to pressure or influence an HSR or DHSR in the performance of their duties.

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### **35. Safe system of work**

Toll and the Transport Workers will take all reasonable steps to ensure that all work performed by Transport Workers is performed in accordance with a safe system of work which must include, where appropriate but not necessarily limited to the following:

- (a) Ensuring that all transport work is performed in accordance with documented safe scheduling plans and shift rosters that take account of the following:
  - (i) the trip to be undertaken by a driver;
  - (ii) the actual time required to perform the freight task safely;
  - (iii) the actual distance travelled to perform the freight task safely including any urban driving observance of any detour or road block;
  - (iv) fatigue-related safety concerns;
  - (v) the number and types of loads transported by the driver each trip and the time reasonably required to load and unload taking into account loading and unloading schedules and practices, delays and queuing times; and
  - (vi) the period and frequency and likelihood of mechanical interruptions.
- (b) Ensuring, where appropriate, that all transport work is performed in accordance with documented systems which manage the risk of driver fatigue including, but not limited to:
  - (i) methods for assessing the suitability of drivers;
  - (ii) systems for keeping accurate records of the start and finish times of each shift or freight task performed by a heavy vehicle driver and the relevant dates over which a shift or freight task occurs and the total number of waking hours for each driver (regardless of whether or not those hours were paid or unpaid);
  - (iii) systems for reporting hazards and incidents;
  - (iv) systems for monitoring driver's health and safety;
  - (v) training and information about fatigue that is provided to drivers;

- (vi) systems for managing loading and unloading schedules and practices, including queuing practices;
- (vii) systems for reporting accidents, near misses, possible hazards or mechanical failures and contingencies to manage the risk of driver fatigue; and
- (viii) safe driving plans and a drug and alcohol policy consistent with applicable legislation and industrial instruments.

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**36. Drug and alcohol testing**

- (a) Toll, the Union and the Transport Workers agree that, to ensure the health and safety of all Transport Workers and the general public, Toll may conduct drug and alcohol testing either:
  - (i) on a random basis; or
  - (ii) where it suspects a contravention of drug and alcohol policies by specific Transport Workers, on a targeted basis; or
  - (iii) in the event of an incident,in accordance with the Drug and Alcohol Procedures.
- (b) The Parties may at any time agree to vary the Drug and Alcohol Procedures to address any governmental, regulatory, technological or reasonable operational changes.
- (c) The Transport Workers acknowledge and agree that the Drug and Alcohol Procedures operate in conjunction with, and not in replacement of, any other drug or alcohol testing procedures that Toll is now, or may later be, required to implement as a result of governmental, regulatory or customer demands.

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**37. Uniforms and protective clothing**

- (a) Toll will provide Transport Workers with appropriate uniforms, protective clothing and personal protective equipment (PPE) for the work the Transport Workers are performing.
- (b) The Transport Workers will wear the uniforms and protective clothing provided to them.
- (c) The Transport Workers will utilise any PPE provided to them by Toll. However, if a Transport Worker has an objection to doing so, the objection will be dealt with in accordance with the dispute resolution procedure in clause 15.



- (d) Transport Workers will not alter, modify or change the appearance of uniforms, protective clothing and PPE provided to them by Toll in any manner contrary to operating instructions or training or in a manner which is likely to affect the performance of that clothing or PPE. Transport Workers will not alter, modify or change the appearance of uniforms provided to them by Toll in a manner or to an extent which would hinder or deface company identification.
  - (e) Transport Workers will keep all uniforms, protective clothing and PPE in a clean, neat and tidy condition.
  - (f) Uniforms and protective clothing will be replaced by Toll on a fair wear and tear basis. In such circumstances, new clothing will be exchanged for the worn items.
  - (g) Uniforms, protective clothing and PPE will be returned by a Transport Worker on termination of employment.
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### **38. Blue Card**

- (a) Toll will ensure that all Transport Workers undertake the Blue Card Induction Program.
- (b) All existing Transport Workers who at the Operative Date have not been trained in the Blue Card Induction Program will be trained in the Blue Card Induction Program. Such training is to occur within 12 months of the Operative Date, and will be conducted by a licensed Blue Card training provider, in conjunction with Toll and the Union.
- (c) The Parties recognise:
  - (i) that safety and induction training should where possible exceed the requirements of Blue Card; and
  - (ii) the importance of maintaining and enhancing Blue Card requirements through their involvement in TEACHO.

## Section 6 – The Toll and Union Relationship

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### 39. Union Recognition

- (a) Toll recognises the Union as the union capable of representing Transport Workers and acknowledges that the Union has the right to organise Transport Workers in the workplace.
- (b) Consistent with its recognition of the rights of Transport Workers to freely associate with the Union, Toll will provide the Union with reasonable access to Toll's premises for the purpose of holding discussions with the Transport Workers for any purpose connected with this Agreement, provided however that:
  - (i) the Union provides Toll with reasonable notice of its intention to attend the premises;
  - (ii) any attendance does not disrupt Toll's business at the premises; and
  - (iii) the Union's representative(s) comply with any reasonable request from Toll in relation to any WHS requirement that applies at the premises.
- (c) ***Nothing in this clause or in this Agreement more broadly is intended to provide a right of entry contrary to the provisions of section 194(f) and/or 194(g) of the Act.***

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### 40. Cooperative Engagement

- (a) Toll is committed to being an industry leader and employer of choice, and to working with the Union to achieve appropriate rates of pay and conditions of employment throughout the industry.
- (b) Toll recognises that the Road Safety Remuneration Tribunal provides a forum in which to seek improvements in the industry. Toll commits to consulting with the Union, including through the Advisory Forum, as to how the Road Safety Remuneration Tribunal may be used to achieve that purpose.
- (c) Toll supports the concepts contained in the 5 Star Trucking initiative. Toll will:
  - (i) support a national trial of 5 Star Trucking;
  - (ii) participate in the development of accreditation and assessment standards for the initiative.
- (d) Toll will consult with the Union, through the Advisory Forum, in relation to:
  - (i) the support that Toll will provide to TEACHO and the way in which TEACHO can be better utilised to deliver improved standards throughout the industry;

- (ii) the Safe and Fuel Efficient Driver Learning Program; and
  - (iii) the role, if any, of industry codes of practice.
- (e) Toll will give genuine consideration to any reasonable requests from the Union for the secondment of Transport Workers to the Union, on an unpaid basis, for up to 6 months.
  - (f) Toll will facilitate 6 (bi-monthly) paid yard meetings each year of 30 minutes duration at which the Union will have the opportunity to address Transport Workers. Toll and the Union will consult on organising the most effective time for yard meetings to occur. This clause will not affect any existing arrangement allowing for more frequent meetings.
  - (g) Toll will consult with the Union and Transport Workers with a view to making arrangements for Transport Workers to be indemnified for any legal or other costs incurred by them as a result of legal proceedings that are commenced against them by a third party arising out of the performance by the Transport Worker of his or her duties for Toll.

#### **41. Advisory Forum**

- (a) Toll and the Union agree to establish an Advisory Forum, comprising senior management representatives of Toll and senior officials from the Union.
- (b) The Advisory Forum is established for the purpose of identifying and discussing matters of common interest and developing joint approaches and responses.
- (c) The objectives of the Advisory Forum are to:
  - (i) establish a basis for the Parties to work cooperatively to enhance standards and conditions in the markets in which Toll operates;
  - (ii) build and improve long term relationships by:
    - A. fostering constructive engagement based on openness and mutual trust;
    - B. providing a model for constructive consultation; and
    - C. openly discussing changes in the structure of the business and their industrial implications;
  - (iii) discuss current and future issues of national significance to both Toll and the Union.
- (d) The Advisory Forum is not a venue for the escalation of site or business level disputes, which should be dealt with in accordance with clause 15 above, nor is it a forum for bargaining. However, where issues are raised which have the potential to lead to adverse impact on industrial relationships there will be no barrier to discussion.

- (e) The Advisory Forum will meet at least twice each year.
- (f) Where senior officers of Toll or the Union agree that it would be beneficial, third parties may be invited to attend meetings of the Advisory Forum for the purposes of providing information or advice on a matter to be discussed.

## **42. Union Delegates**

### **42.1 Identification of delegates**

The Union must provide Toll with a complete list of all Union delegates in the Group throughout Australia, and ensure that Toll is promptly advised of any changes to the list as required.

### **42.2 Delegates' rights and responsibilities**

- (a) Toll acknowledges that each Union delegate is entitled to:
  - (i) be treated fairly and to perform their role as Union delegate or workplace representative without any discrimination or victimisation;
  - (ii) recognition by Toll that Union delegates speak on behalf of the Union members in the workplace;
  - (iii) bargain collectively on behalf of Union members in the workplace;
  - (iv) consultation on matters affecting Union members;
  - (v) paid time off to represent the interests of members to the Company, but only where such paid time off is provided for in this Agreement;
  - (vi) address new Transport Workers about the benefits of Union membership at the time that they commence work with Toll in accordance with clause 33;
  - (vii) participate in an induction process under the Union induction clause in this Agreement in accordance with clause 33;
  - (viii) discuss Union and workplace matters with all Transport Workers at the workplace who consent to such discussions, which will take place during breaks or outside of business hours;
  - (ix) reasonable access to a telephone, facsimile, photocopying, internet and email and office facilities for the purpose of carrying out work as a delegate and consulting with workplace colleagues and the Union; and
  - (x) place Union information on a notice board in a prominent location in the workplace.

- (b) Toll acknowledges, and will in no way hinder, the following functions of Union delegates:
- (i) to provide awareness and understanding of the Union's aims and achievements whenever possible;
  - (ii) to know the profile of Union members in the workplace;
  - (iii) to recruit and involve Transport Workers in the Union and its activities;
  - (iv) to be approachable and helpful to Union members in the workplace;
  - (v) to seek out and encourage other Union members to take on roles and responsibilities;
  - (vi) to provide up to date and relevant Union information to Union members in the workplace;
  - (vii) to represent the views of the members;
  - (viii) to represent Union members fairly and accurately in negotiations and in relation to individual grievances;
  - (ix) subject to clause 42.3(f) to represent Union members in proceedings before the FWC, courts or similar tribunals; and
  - (x) to keep in regular contact with the Union Organiser and other Union representatives in the workplace about matters pertaining to the workplace.
- (c) Union delegates also have responsibilities (as do all persons engaged by Toll), which include:
- (i) acting in manner consistent with and appropriate to their role;
  - (ii) raising workplace issues in a timely fashion and working co-operatively to resolve issues;
  - (iii) dealing appropriately with all Transport Workers; and
  - (iv) using equipment made available in a manner consistent with Toll policies, provided that this commitment will not preclude a delegate from exercising his or her representational role in an appropriate manner.

### 42.3 Delegates' leave

- (a) Toll will provide Union delegates with paid leave of up to 10 days per annum to attend Union delegates' meetings, Union training or the annual Union delegates conference or other Union campaign activity which is consistent with this Agreement, provided that this commitment will not preclude the Union from exercising its organisational objectives in an appropriate manner.

- (b) In addition to the leave referred to in clause 42.3(a), Toll will make available a total pool of 100 days paid leave, nationally, to be used by delegates to carry out their functions, including discharging the responsibilities of any positions they hold with the Union.
- (c) To ensure the smooth running of Toll operations, Union delegates will be released by Toll for paid leave on the following basis:
  - (i) for yards with 20 or fewer Transport Workers - 1 delegate;
  - (ii) for yards with more than 21 Transport Workers but fewer than 200 Transport Workers - 2 delegates;
  - (iii) for yards with greater than 200 Transport Workers - 3 delegates.
- (d) The limitations in clause 42.3(c) will not apply in respect of the Union's annual conference or for enterprise agreement report back meetings connected with the negotiations for the agreement to replace this Agreement.
- (e) Prior to Toll agreeing to release a delegate, the Union will provide Toll with no fewer than 7 days notice in writing of such a request for the release of delegates.
- (f) In addition to the leave referred to above, delegates will be able to take paid leave to represent Union members in proceedings before the FWC or similar tribunals provided that:
  - (i) the request for any leave is reasonable;
  - (ii) clause 42.3(c) will not apply to the release of delegates under this clause 42.3(f); and
  - (iii) Toll will only release a delegate if the proceedings relate to or affect a site at which the delegate works;
  - (iv) a delegate will only be released to the extent that they are directly involved in the matter the subject of the proceedings or are required to advocate and/or provide instructions for or in respect of the matter the subject of the proceedings, or are assisting a Union member or members directly affected by the matter the subject of the proceedings; and
  - (v) a delegate will only be released for the duration of the proceedings, plus reasonable travel time in attending the proceedings.
- (g) Toll will not be required to release a delegate to attend more than 2 delegates' meetings per quarter provided that delegates may attend up to 2 delegates meetings in addition to the annual delegates conference in the quarter in which such conferences are held.
- (h) Delegates who take leave under this clause will be paid for each day of the leave the earnings that they would have received had the day been worked.

#### 42.4 Delegates' training

Toll will give genuine consideration to requests for delegates to undergo Certificate IV training, at Toll's cost, on a case by case basis. Any approval for such training may be conditional on such terms as Toll may reasonably impose, including the ability to recover the cost of the training from the delegate if they leave Toll's employ soon after completing the training. Toll will consult with the Union on these terms.

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#### 43. TEACHO

- (a) The objectives of TEACHO include but are not limited to:
  - (i) training in vocational, occupational health and safety and industrial rights;
  - (ii) job security, safety and sustainability through industrial rights compliance initiatives; and
  - (iii) retraining assistance where required.
- (b) Toll has agreed to make a contribution to TEACHO for the benefit of Transport Workers. The amount of the contribution, and the conditions on which it will be made, will be (for commercial-in-confidence reasons) the subject of a separate written agreement between Toll and the Union.
- (c) Toll has also agreed, subject to endorsement by TEACHO, to maintain a seat on the board of TEACHO.

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#### 44. Union Picnic Day

- (a) Permanent Transport Workers in New South Wales will be entitled to one paid picnic day each year.
- (b) This clause will also apply to casuals, provided however that:
  - (i) such casuals work no fewer than 38 ordinary hours per week; and
  - (ii) such casuals have worked full time for a period of no fewer than 3 months in the period immediately leading up to the date of the picnic day.
- (c) Notwithstanding the above, the picnic day will not apply to Transport Workers who are receiving an alternative benefit in lieu of the picnic day.
- (d) To be eligible to receive the picnic day, the Transport Worker must purchase a picnic day ticket from the relevant Picnic Day Committee and provide a copy of that ticket to Toll.

## Section 7 – Fleet Operators

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### 45. Fleet operators

#### 45.1 Engagement of Fleet Operators

- (a) Toll is committed wherever possible to only utilising Fleet Operators who utilise employee drivers. Toll will only engage Fleet Operators who engage non-employee drivers where it is not practicable to engage a Fleet Operator with only employee drivers.
- (b) Each new Fleet Operator will be required to execute a freight cartage agreement (FCA) with Toll which must contain the clauses set out in Part E of this Agreement. No term of the FCA or any other agreement between or relating to Toll and the Fleet Operator must alter the operation of the clauses set out in Part E of the Agreement.
- (c) Toll will require that Existing Fleet Operators also execute a FCA. As long as Toll has pursued that requirement through and in accordance with the process set out in clause 45.3 and has reported (in accordance with clause 45.3) any failure to procure execution of a FCA, then Toll will be taken not to be in breach of its obligation to require execution under this clause.
- (d) Prior to any Fleet Operator commencing on site, each employee of the Fleet Operator (including Fleet Operators engaged to perform long distance work that attend on site but only in so far as is practicable for Toll to do so) must participate in a site induction. During that induction a Union official will be given an opportunity to address the Fleet Operator's employees for a maximum of 30 minutes.

#### 45.2 Rates

- (a) Toll will require that all Fleet Operators pay their employees, whilst performing work on behalf of Toll:
  - (i) in New South Wales – the rates of pay that would apply to them if they were Employees directly employed by Toll at the yard where the Fleet Operator is performing the work; and
  - (ii) elsewhere - a rate of pay that is at least 10% higher than the applicable Award rate.
- (b) Nothing in clause 45.2(a) is intended to allow a Fleet Operator to reduce the rates being paid to its employees, and Toll agrees not to allow the clause to be used for that purpose.



### 45.3 Compliance

- (a) As soon as practicable after the Operative Date, Toll will send a letter to all Existing Fleet Operators (other than those engaged solely to perform Long Distance Work):
  - (i) advising them of Toll's requirements of them, consistent with this clause 45; and
  - (ii) enclosing a copy of the FCA for their signature and return.
- (b) As soon as practicable after the Operative Date Toll will send a questionnaire (in a form agreed between Toll and the Union) to Existing Fleet Operators who are engaged to perform Long Distance Work, for them to complete and return.
- (c) As soon as practicable after it has been able to collate the feedback received through the questionnaires referred to in clause 45.3(b), Toll will provide the Union with a written summary of that feedback, provided that such a summary will not be required to identify particular companies but must at the least contain information capable of providing a meaningful basis for the consultation process set out in 45.4. The Union will be at liberty to make that summary available to delegates, and it may be discussed at the next State meetings held pursuant to clause 45.4.
- (d) After the summary referred to in clause 45.3(c) has been provided to the Union, Toll will hold a meeting in each State with the State Secretary of the Union, or his or her nominee(s), plus 1 delegate. During this meeting, which will be held on a strictly private and confidential basis:
  - (i) the parties will discuss the feedback received through the questionnaires;
  - (ii) the State Secretary and delegate will be informed of which Existing Fleet Operators have not signed a FCA;
  - (iii) the parties will discuss any issues arising from these matters; and
  - (iv) the parties will confer about which Existing Fleet Operator(s) should receive a questionnaire.
- (e) Where questionnaires are issued following the consultation referred to in clause 45.3(d)(iv), Toll will collate the feedback from those questionnaires and provide a summary of that feedback to the Union consistent with clause 45.3(c).
- (f) The Union undertakes to ensure that the State Secretary (or his or her nominee(s)) and the delegate in each State maintain in strictest confidence the information provided to them during the meeting referred to above, including the contents of the questionnaires.

- (g) Where Toll becomes aware that a Fleet Operator has not, or may not have, complied with a requirement of the FCA, Toll will as soon as practicable notify the Union at the site level and will investigate the alleged non-compliance and, where necessary, take measures to have the Fleet Operator rectify any breach of the FCA. Toll will consult with the Union about the outcome of the investigation, including the nature of any breaches discovered and the steps taken to rectify those breaches. Toll will provide the Union with access to such documents as it has in its possession to verify these matters provided that it will not be required to disclose confidential or commercially sensitive material. Any information received by the Union during the course of such consultation will be treated in the strictest confidence by the Union if the action relates to non-compliance or potential non-compliance with one or more of the provisions of the FCA set out in Part E.
- (h) Clause 45.3(g) does not limit the ability of the Union to access the records of Fleet Operators under the terms of the FCA set out in Part E.

#### 45.4 Consultation

- (a) Toll's engagement of Fleet Operators, owner drivers and labour hire personnel will be an agenda item at each meeting of the Advisory Forum referred to in clause 41.
- (b) For the purposes of allowing for consultation between Toll and the Union over the use of Fleet Operators and other outside hire, Toll will, in consultation with the Union, organise for meetings of delegates and Toll management to occur in each State of Australia in (or as close as is practicable to) April and September in each year of the Term (**Consultation Meetings**).
- (c) The purpose of the Consultation Meetings is to review:
  - (i) the compliance of the Parties in meeting the terms of this Agreement regarding Toll's engagement of Fleet Operators, owner drivers and labour hire personnel;
  - (ii) any issues, concerns or grievances arising from Toll's engagement of Fleet Operators, owner drivers and labour hire personnel; and
  - (iii) any measures that may assist in improving job security, safe systems of work and productivity and efficiency that arises from Toll's engagement of Fleet Operators, owner drivers and labour hire personnel.
- (d) Delegates will be authorised to attend the meetings as follows:
  - (i) for one of the meetings in each year, all delegates will be able to attend; and
  - (ii) for the other meeting in that year, delegates will be released in accordance with clause 42.3(c).

- (e) The entitlements under clause 45.4(d) are in addition to those under clauses 42.3(a) and (b).
- (f) Delegates attending the Consultation Meetings will be paid the earnings that they would have received had the day been worked.
- (g) Toll will investigate any issues, concerns or grievances raised during a Consultation Meeting arising from Toll's engagement of Fleet Operators, owner drivers and labour hire personnel. It will inform the Union of the outcome of that investigation, including the nature of any breaches discovered and the steps taken to rectify those breaches.

#### **45.5 Notification and reporting**

- (a) In March and August of each year in the Term Toll will provide to the Union a written list of all Fleet Operators then engaged by Toll including:
  - (i) the names of the Fleet Operators;
  - (ii) the business unit(s) in which each Fleet Operator is engaged;
  - (iii) the site at which each Fleet Operator works; and
  - (iv) the number of drivers employed by each Fleet Operator who are performing work for Toll.
- (b) Toll will notify the Union of the outcome of the audits referred to in clause 45.7(c).
- (c) Toll will provide to the Union upon request any information and/or documents which Toll is authorised to provide under the terms of the FCA.

#### **45.6 Disputes over Toll's engagement of Fleet Operators**

- (a) The Union may raise any concerns it may have with Toll with respect to Toll's engagement of a Fleet Operator.
- (b) Where a Dispute arises with respect to the engagement of any Fleet Operator, clause 15 will have no application and the Dispute will be dealt with as follows:
  - (i) any concerns over the engagement of the Fleet Operator must first be discussed between the Union and the Toll Branch Manager;
  - (ii) if the matter remains unresolved, the concerns must be discussed between the Union and the relevant Toll State Manager;
  - (iii) if the matter continues to remain unresolved, the matter must be referred to the Board of Reference in accordance with Part D, which will determine the Dispute.
- (c) The resolution of a Dispute in accordance with clause 45.6(b) will not preclude any Party raising the subject of the Dispute at one of the Consultation Meetings or in the Advisory Forum.

- (d) For the avoidance of doubt, any Disputes that arise between the Parties arising out of this clause 45 which do not fall under clause 45.6(a) and (b) will be resolved in accordance with clause 15.

**45.7 Application of clause**

- (a) This clause 45 will only apply to Fleet Operators who carry full loads on behalf of Toll.
- (b) This clause 45 does not apply to Fleet Operators who are engaged on an ad-hoc basis or to other Fleet Operators as may be agreed from time to time with the relevant Branch Secretary of the Union.
- (c) This clause 45 does not apply to Fleet Operators who are engaged solely for the purposes of performing Long Distance Work on behalf of Toll, provided that Toll undertakes to conduct random audits of such Fleet Operators to ensure that they are compliant with their Award obligations.

## PART B – SCHEDULES

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### Schedule 1 – Toll Global Logistics - Contract Logistics

The Local Agreements operating at TGL - Contract Logistics are:

- (a) Toll Contract Logistics Coles Group Union Collective Agreement 2007;
- (b) Toll Contract Logistics, Kraft Enterprise Agreement 2007;
- (c) The Extra Transport Enterprise Agreement (Victoria) 2008/2009/2010;
- (d) Toll Logistics, Contract Logistics Division, Woolworths Western Australia Enterprise Agreement 2009;
- (e) Toll Logistics – Contract Logistics Division, Western Australia and Subsidiary Enterprise Agreement 2008;
- (f) Toll Logistics, Contract Logistics Division, Coles Western Australia Enterprise Agreement 2008;
- (g) Toll Logistics, Contract Logistics Division, Multi User Western Australia Enterprise Agreement 2008;
- (h) Toll Logistics - Contract Logistics Division, Foster's Contract South Australia Union Collective Workplace Agreement 2006;
- (i) Toll Contract Logistics (Wodonga – Woolworths Contract) Enterprise Agreement 2006;
- (j) Agreement between Toll Contract Logistics and Long Distance Drivers operating from Woolworths Distribution Centre, Wodonga 2012;
- (k) Toll Logistics - Contract Logistics Division, Paper & Packaging - MWS Enterprise Agreement 2005;
- (l) Patrick Logistics (Hastings) Certified Agreement 2006;
- (m) Toll Logistics, Contracts Logistics Division Cement Australia (Victoria) Workplace Agreement 2006;
- (n) Enterprise Agreement for Toll Bluescope Steel Brisbane 2005;
- (o) Toll Logistics – Contract Logistics Division, South Australia Multi User and Subsidiary Sites Union Collective Agreement 2006;
- (p) Toll Logistics – Contract Logistics Dandenong (Victoria) Enterprise Agreement 2004/2007;
- (q) Toll Logistics – Contract Logistics Division, Pilkington, Amcor & Multi User Warehouse Enterprise Agreement 2005;
- (r) Toll Contract Logistics Fosters Sites Annexure; and

- (s) Toll Contract Logistics (ABA Linehaul – Coffs Harbour) Enterprise Agreement 2007;
- (t) Toll Logistics, Beverage Division, Carlton & United Contract, Newcastle Enterprise Agreement 2000;
- (u) Toll Resources Certified Agreement 2005; and
- (v) Toll Contract Logistics – Minchinbury, Yennora, Erskine Park – Site Agreement 2012.

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**Schedule 2 – Toll Global Logistics - Customised Solutions**

The Local Agreements operating at TGL - Customised Solutions are:

- (a) In2Store (Canberra Distribution Centre) Enterprise Agreement 2005;
- (b) In2Store Contract Distribution (Altona) Agreement 2008;
- (c) Toll Chemical Logistics (Fitzgerald Road) Union Collective Workplace Agreement 2007;
- (d) Toll Chemical Logistics (Welshpool) Union Collective Agreement 2008;
- (e) Patrick Logistics (Arndell Park) Enterprise Agreement 2004;
- (f) Patrick Logistics (Whyte Island) Enterprise Agreement 2005;
- (g) Patrick Logistics Queensland Drivers Enterprise Agreement 2005;
- (h) Toll AutoLogistics – Components National Workplace Agreement 2009;
- (i) Toll AutoLogistics – Components South Australia Agreement 2006;
- (j) Toll AutoLogistics – Components Victoria Agreement 2006;
- (k) Toll AutoLogistics – Components (LOC, Victoria) Agreement 2007.

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**Schedule 3 – Toll Energy**

The Local Agreement operating at Toll Energy is the Toll Energy Dampier Collective Agreement 2008.



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**Schedule 4 – Toll Express**

The Local Agreements operating at Toll Express are:

- (a) Toll Express Altona Agreement 2005;
- (b) Toll Express Perth International Airport Enterprise Agreement 2008;
- (c) Toll Express Brisbane Agreement 1997;
- (d) Toll Express, Berrimah Agreement 2008; and
- (e) Toll Express, Regency Park Agreement 2008.

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**Schedule 5 – Toll Fast**

There are no Local Agreements operating at Toll Fast.

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**Schedule 6 – Toll Intermodal**

The Local Agreements operating at Toll Intermodal are:

- (a) Toll SPD Agreement 2005/2006/2007;
- (b) Toll SPD, Perth WA Agreement 2008;
- (c) Toll SPD, Regency Park Agreement 2005;
- (d) Transport Workers Union and Toll Regional Transport (CJ Deans) Business Agreement;
- (e) QRX & Toll Refrigerated (Queensland) Certified Agreement 2005;
- (f) Deed of Understanding QRX Terminal Operations;
- (g) Toll SPD (Laverton Cherry Lane) Certified Agreement 2008;
- (h) Toll Regional (CJ Deans) Site Agreement 2011;
- (i) Toll Intermodal Chullora Site Agreement 2012;
- (j) Toll Intermodal (Port Kembla) and Transport Workers Union Local Agreement 2012-2013;
- (k) Toll Refrigerated (Wagga) Site Agreement 2011;
- (l) Transport Workers Union and Toll Regional Transport (Refrigeration) Business Agreement;
- (m) QRX Refrigeration Enterprise Agreement incorporating the alternative reward project "Bury the Bundy" 31/10/97 - 31/10/99;
- (n) Toll SPD Port Pirie Agreement 2008;
- (o) Transport Workers Union of Australia (Queensland Branch) & Toll North Pty Limited t/as Toll Refrigerated Memorandum of Agreement; and
- (p) Transport Workers Union of Australia (Queensland Branch) & Toll North Pty Limited t/as Toll Refrigerated Memorandum of Understanding on the working of public holidays by permanent Transport Workers at Toll Refrigerated, Lytton Road Morningside.

**Variations**

The Toll SPD (Laverton Cherry Lane) Certified Agreement 2008 is amended by deleting the reference to "30 June 2011" in clause 4.1 and replacing it with "31 December 2010".

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**Schedule 7 – Toll IPEC**

The Local Agreements operating at Toll IPEC are:

- (a) Toll IPEC Fashion Retail Agreement 2007;
- (b) Toll Ipec (Adelaide) Enterprise Bargaining Agreement 2003;
- (c) Toll IPEC – Altona North (Transport Workers) Agreement 2006;
- (d) Toll IPEC – (Canberra) Transport Workers Agreement 2001;
- (e) Toll Ipec Linehaul Collective Workplace Agreement 2007;
- (f) Toll Ipec Pty Ltd (Perth) Enterprise Bargaining Agreement 2008.

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**Schedule 8 – Toll Linehaul & Fleet Services**

The Local Agreements operating at Toll Linehaul & Fleet Services are:

- (a) Toll Linehaul Enterprise Agreement 2004;
- (b) Toll Linehaul Maintenance Centre Altona Enterprise Agreement 2005; and
- (c) Transport Workers Union NSW Branch and Toll Fleet Management (Wagga Wagga) Site Agreement 2005.

**Variations**

The Toll Linehaul Enterprise Agreement 2004 is amended as follows:

- (a) Delete the existing clause 9.3 and replace it with the following:

**9.3 Travelling Allowance**

*In addition to the kilometre rate shown in Table 9.1, a Transport Worker engaged in long distance driving operations, as defined in clause 6.19, will be paid a travelling allowance as shown in Table 9.7. The travelling allowance is to cover meal and incidental expenses.*

- (b) Delete from Table 9.7 the reference to "LAFHA" and replace it with "Travelling".

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**Schedule 9 – Toll Liquids**

The Local Agreements operating at Toll Liquids are:

- (a) Toll Liquid Distribution and TWU Brisbane Metro Enterprise Agreement 2005;
- (b) Toll Liquid Distribution Linehaul Enterprise Agreement 2005/2007;
- (c) Transport Workers/Toll Liquid Distribution Victorian Agreement 2005;
- (d) Transport Workers/Toll Liquid Distribution South Australian Agreement 2005;
- (e) Toll Liquid Distribution and TWU Sydney Metro Fuel/BOC Cryogenics Contract Site Agreement;
- (f) Toll Liquid Distribution Brisbane BOC Site Agreement 2011;
- (g) Toll Liquid/BOC Compressed Distribution Torrensville Site Agreement; and
- (h) Toll Liquids – Perth, Western Australia Site Agreement 1 May 2011.

**Variations**

The Toll Liquid Distribution and TWU Sydney Metro Fuel/BOC Cryogenics Contract Site Agreement is to be amended by removing the existing clause 4 and replacing it with the following:

“This Agreement applies to Toll Liquid Distribution's dangerous goods operations at BOC Port Kembla and Newcastle.”

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**Schedule 10 – Toll Marine Logistics**

The Local Agreement operating at Toll Marine Logistics is the Perkins Shipping Terminals Agreement 2010.

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**Schedule 11 – Toll Mining Services**

The Local Agreements operating at Toll Mining Services are:

- (a) Toll North Pty Limited t/as R&H Transport (New South Wales) Enterprise Agreement 2005;
- (b) Toll Resources Certified Agreement 2005;
- (c) Patrick Port Logistics (Northern NSW Region) Transport Worker Collective Workplace Agreement
- (d) Mitchell Helidon Pty Ltd Enterprise Agreement Helidon Operations;
- (e) Mitchell West Kalgoorlie Operations Specialized Drivers Transport Worker Collective Agreement 2008;
- (f) Mitchell West North West Operations Agreement 2009;
- (g) Mitchell West Pty Ltd Goldfields Operations Emulsion Drivers Transport Worker Collective Agreement 2009;
- (h) Mitchell West Pty Ltd Kewdale Operations Fuel Drivers Enterprise Agreement 2010;
- (i) Mitchell West Pty Ltd Kewdale Operations Specialized Drivers Agreement 2008;
- (j) Mitchell West Pty Ltd Mid West Operations Enterprise Agreement 2009;
- (k) Mitchell West Pty Limited Goldfields Operations Fuel Drivers Transport Worker Collective Agreement 2008; and
- (l) Toll Global Resources Botany Site Arrangement 2011.



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**Schedule 12 – Toll NQX**

The Local Agreements operating at Toll NQX are:

- (a) NQX Freight System Certified Agreement 2005;
- (b) NQX Townsville and Transport Workers Union Certified Agreement 2005;
- (c) NQX Freight System Mackay 24/7 Shift Agreement 2006;
- (d) NQX Freight System Holt Street Terminal Afternoon Shift Agreement;
- (e) NQX Holt Street and Transport Workers Union Certified Agreement 2004;
- (f) NQX Freight System Melbourne Terminal AM Shift Agreement;
- (g) NQX Freight System Darwin Terminal PM Shift Agreement;
- (h) NQX Freight System Cloncurry Terminal Site Agreement 2011;
- (i) NQX Freight System Gladstone Terminal Site Agreement 2011; and
- (j) Toll NQX (GPS in Victoria) Site Arrangement 2012.

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**Schedule 13 – Toll People**

There are no Local Agreements operating at Toll People.

**Specific requirements**

- (a) Part A of this Agreement will only apply to the extent that Toll People places Transport Workers into a business operated by Toll.
- (b) If Toll People places a Transport Worker into a business outside the Group, it will use its best endeavours to ensure that the Transport Worker receives the rates of pay and conditions payable to Transport Workers in that business.

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**Schedule 14 – Toll Priority**

The Local Agreements operating at Toll Priority are:

- (a) Toll Priority – Western Australia (Transport Workers) Enterprise Agreement 2008;
- (b) Toll Priority Port Melbourne Clerical Transport Workers Enterprise Agreement 2005;
- (c) Toll Priority, Port Melbourne (Transport Workers) Enterprise Agreement 2005;
- (d) Toll Priority – Transport Workers Agreement 2005;
- (e) Toll Pty Limited t/as Toll Priority DX Solutions Company Driver, Dock Hand and Mail Sorters Enterprise Agreement 2005; and
- (f) Toll Priority Redcliffe Mailroom Transport Workers Enterprise Agreement 2010.

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**Schedule 15 – Toll Shipping**

The Local Agreement operating at Toll Shipping is the Toll Shipping Road Transport Agreement 2006.

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**Schedule 16 – Toll Tasmania**

The Local Agreements operating at Toll Tasmania are:

- (a) Toll Tasmania State Agreement 2005;
- (b) Toll Tasmania Webb Dock Agreement 2005/2006/2007; and
- (c) Edwards Transport Webb Dock Agreement 2002.

## **PART C – DRUG AND ALCOHOL POLICY AND PROCEDURES**

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### **1. Introduction**

#### **1.1. Purpose**

The purpose of these Procedures is to ensure that there is no adverse impact on:

- (a) the health, safety and environment of any Worker, Visitor or of any member of the public; or
- (b) Toll's assets and business,

as a consequence of a Worker being Impaired by, or in possession of, Drugs or alcohol at work.

#### **1.2. Policy**

These Procedures are made in accordance with the Policy.

#### **1.3. Responsibilities**

- (a) Toll management is responsible for ensuring that:
  - (i) the Policy is displayed at all Work Sites; and
  - (ii) the Policy and these Procedures are implemented and adhered to at all Work Sites.
- (b) All Workers must comply with and abide by the Policy and these Procedures.

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## **2. Definitions**

The following definitions apply to these Procedures:

**Drug** means any pharmaceutical, medicinal or narcotic substance.

**Employee** means any person who is employed by Toll in Australia, including managers and staff personnel.

**Equipment** includes any plant or vehicle supplied by Toll which an Worker is required to operate in the course of his or her duties.

**First Test** means the initial test conducted as part of drug or alcohol testing under clause 4.3.

**Fleet Operator** means a means a person, firm or company that in the course of its business transports freight for another person and which:

- (a) owns or operates multiple vehicles; and
- (b) employs or engages multiple drivers; and

- (c) offers their services to the public at large.

**FWA** means Fair Work Australia.

**Group** means the Toll Group of Companies, whose parent company is Toll Holdings Limited.

**Illegal Drug** means:

- (a) any Drug which it is unlawful to possess, consume or sell within Australia, or in the State in which an individual Worker works; or
- (b) a Prescription Drug that has been obtained other than by prescription from a registered medical practitioner, or which has been taken in a manner contrary to that prescription.

**Impaired** means being under the influence of a Drug or alcohol to the extent of being unfit to efficiently or safely undertake the Worker's prescribed duties, including exceeding the Prescribed Limit.

**Legal Drug** means:

- (a) a Drug that may lawfully be taken without a prescription from a registered medical practitioner; or
- (b) a Prescription Drug that has been prescribed by a registered medical practitioner.

**Policy** means the Toll Group Drug & Alcohol Policy signed by the Managing Director of Toll in or about August 2008.

**Positive Result** means the finding by a suitably qualified person that a Worker is Impaired.

**Prescribed Limit** means:

- (a) for alcohol – the limit legally permissible for the duty required to be performed;
- (b) for Legal Drugs – a level up to but not exceeding:
  - (i) the cut-off level identified in AS/NZS 4760:2006 for oral fluid (saliva) testing; or
  - (ii) the permissible level if the Drug were used strictly in accordance with either the manufacturer's recommended dosage rate or the prescription given by a registered medical practitioner; and
- (c) for Illegal Drugs – a level up to but not exceeding the cut-off level identified in AS/NZS 4760:2006 for oral fluid (saliva) testing.

**Prescription Drugs** means Drugs which may lawfully be taken if they have been prescribed by a registered medical practitioner.

**Procedures** means the drug and alcohol procedures contained in this document.

**Rehabilitation Process** means the process described in clauses 5.2 and 5.3.

**Toll** means any member of the Group which employs or engages a Worker.

**Visitor** means any person, other than a Worker, who is on a Work Site with Toll's authority or approval.

**Work Site** means any premises operated, owned or controlled by Toll at which Workers are required to work.

**Worker** means any person who is engaged by Toll to perform work on its behalf including:

- (a) Employees;
- (b) Owner-Drivers;
- (c) labour hire workers; and
- (d) employees of, or drivers engaged through, Fleet Operators.

### **3. Prohibitions**

- (a) Workers must not:
  - (i) report for work, or remain at work, whilst they are Impaired;
  - (ii) operate any Equipment whilst they are Impaired;
  - (iii) possess or consume Illegal Drugs at any Work Site, whilst in control of any Equipment or otherwise whilst performing their duties for Toll;
  - (iv) consume alcohol whilst in control of any Equipment;
  - (v) unless authorised to do so, possess or consume alcohol at any Work Site or whilst performing their duties for Toll;
  - (vi) sell or supply any Drugs or alcohol at any Work Site;
  - (vii) otherwise possess, consume, sell or supply Drugs or alcohol in any way which might injure Toll's reputation or damage its relations with the public.
- (b) Toll may direct a Worker not to work and to leave any Work Site if the Worker's supervisor or manager is reasonably of the opinion that the Worker is Impaired.
- (c) A breach of clauses 3(a)(i) and (ii) will result in the commencement of the Rehabilitation Process and/or disciplinary action in accordance with clause 6, depending on the circumstances.
- (d) A breach of clauses 3(a)(iii), (iv), (v), (vi) and (vii) will be regarded as serious misconduct and will result in disciplinary action being taken against the Worker. This action may include the summary dismissal of the Worker.



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## 4. Drug and Alcohol Testing

### 4.1. Testing permitted

Toll is entitled to undertake drug and/or alcohol testing of its Workers, in accordance with these Procedures.

### 4.2. Standards and method

Drug and alcohol testing will be conducted in accordance with AS/NZS 4760:2006.

### 4.3. When testing may be undertaken

- (a) **Random testing** – Toll may undertake random drug and alcohol testing of its Workers in accordance with these Procedures. In relation to random testing the following conditions will apply:
  - (i) Toll may determine the shifts or days of work on which the testing will be carried out.
  - (ii) Testing can be undertaken at any Work Site on any day of the year on which Workers work at that Work Site.
  - (iii) Testing is not confined to Work Sites, but can be carried out at any place at which a Worker performs work for Toll. Toll will decide when a Worker who is not on a Work Site is to be tested.
  - (iv) Where testing takes place at a Work Site, Toll will decide which Worker or Workers at the Work Site will be tested.
- (b) **Incident response** – Toll may require an Worker to undergo drug and alcohol testing if the Worker has been involved in an incident involving actual, or the potential for, loss of life or injury to any person, or damage to property, including Equipment.
- (c) **Referral** – Toll may require an Worker to undergo drug and alcohol testing where another Worker, or the Worker's supervisor or manager, is reasonably of the opinion that the Worker may be Impaired. In this event, the person referring the Worker for testing must complete a Toll Australia Group – Observation Record (see Appendix A) prior to the referral.

### 4.4. Workers must attend tests

- (a) Workers must take part in drug and alcohol testing as directed.
- (b) Workers may be required to confirm with their supervisors or managers that they have attended any scheduled tests.

### 4.5. First Test – Drugs

The First Test for Drugs will be undertaken by saliva samples from Workers.

#### **4.6. First Test – Alcohol**

- (a) The First Test for alcohol will be a breath test of Workers.
- (b) If a breath test indicates that a Worker may be Impaired by alcohol, the Worker will be immediately required to provide, and must provide, a saliva sample.

#### **4.7. Frequency of testing**

- (a) Toll must monitor the number of tests to which any Worker is subjected.
- (b) Toll will endeavour to ensure that no Worker is subjected to excessive drug and alcohol testing.

#### **4.8. Worker's rights to test samples**

At any time a Worker can request and arrange for the independent analysis of any sample taken during a drug or alcohol test. The costs of having that independent analysis conducted will be the Worker's responsibility.

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### **5. Rehabilitation Process**

#### **5.1. General**

The Rehabilitation Process set out in this clause will apply where a Worker returns a Positive Result following a First Test.

#### **5.2. Laboratory Confirmation**

- (a) The sample obtained at the First Test will be referred to a suitably accredited laboratory for the purposes of confirming (or disproving) the Positive Result.
- (b) Until the results of the laboratory assessment are known, the Worker may not commence or continue work, but will be suspended with pay.
- (c) If the laboratory assessment disproves the Positive Result, the Worker will immediately be entitled to return to work.
- (d) If the laboratory assessment confirms the Positive Result, clause 5.3 will apply.

#### **5.3. Positive Results**

- (a) This clause 5.3 is subject to the rights Toll has under clause 6.
- (b) The process outlined in this clause 5.3 will generally only apply where the Worker has not previously returned a Positive Result. Toll may decide whether this process, as opposed to disciplinary action under clause 6, will be followed in the event of a Worker returning a second or subsequent Positive Result.
- (c) Once the laboratory assessment has confirmed the Positive Result, the Worker will remain on suspension but will not be entitled to be paid wages. If the Worker is a Toll Employee, the Worker will be able to access any accrued annual leave, long service leave or rostered days off. The Worker will also be

able to access accrued sick leave, provided that the Worker provides Toll with a medical certificate verifying that the Worker is unable to attend work due to a medical condition related to drugs or alcohol.

- (d) The Worker will be provided with the opportunity to explain the Positive Result.
- (e) The Worker may be required to undertake appropriate drug or alcohol counselling, to be paid for by Toll.
- (f) The Worker may not resume work until he or she is certified by a registered medical practitioner to be fit to return to work. For the avoidance of doubt, this certification may require more than a finding that the Worker is no longer Impaired.

#### **5.4. Follow-up testing**

- (a) A Worker who has returned a Positive Result but has resumed work must, at any time within 12 months of returning to work, undergo a drug and alcohol test to determine whether they are Impaired (Follow-Up Test).
- (b) A Positive Result at the Follow-Up Test may result in disciplinary action being taken against the Worker in accordance with clause 6.2.
- (c) A finding at the Follow-Up Test that the Worker is not Impaired will result in the conclusion of the Rehabilitation Process.

#### **5.5. Testing during Rehabilitation Process**

The conduct of the Rehabilitation Process does not limit Toll's ability to undertake testing in accordance with clause 4.3.

#### **5.6. Testing after completion of Rehabilitation Process**

If a Worker returns a Positive Result after having previously been through the Rehabilitation Process, they will be subject to disciplinary action in accordance with clause 6.2.

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### **6. Disciplinary matters**

#### **6.1. Positive Result**

A Worker who returns a Positive Result may be subject to disciplinary action.

#### **6.2. Counselling and treatment**

As a part of any disciplinary action taken against a Worker which does not involve dismissal, Toll may require the Worker to undertake appropriate counselling, or take part in any appropriate treatment program, as a condition of the Worker returning to and remaining at work.

### **6.3. Refusal to undergo testing**

- (a) A Worker who refuses to undergo drug and alcohol testing without a reasonable excuse may not commence or continue work, and will be suspended without pay.
- (b) In addition, the Worker will be subject to disciplinary action, which may include termination of employment.

### **6.4. Falsification of test**

A Worker who attempts to falsify the outcome of a drug or alcohol test, or to tamper with his or her samples, will be subject to disciplinary action, which may include termination of employment.

### **6.5. Malicious accusations**

A Worker who falsely, mischievously or maliciously causes another Worker to be accused of being Impaired, or tested on the basis of being Impaired, will be subject to disciplinary action, which may include termination of employment.

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## **7. Use of the assistance program**

- (a) Toll will, if requested by a Worker to do so, provide an assistance program comprised of:
  - (i) confidential medical services; and
  - (ii) confidential counselling services.
- (b) Toll provides a Chaplain in all Australian States (except Tasmania, which is covered through Victoria), and otherwise provides the Employee Assistance Program and Employee Counselling Services to offer Workers the services of professionally trained counsellors to assist Workers in the treatment of drug or alcohol abuse problems.
- (c) Toll will display the names and contact details of these services at all Work Sites.
- (d) Workers experiencing problems with drugs or alcohol are urged to seek assistance to resolve these problems before they become serious enough to warrant disciplinary action.
- (e) Workers whose job performance deteriorates may be referred to one of the counselling services for diagnosis of the cause of the performance problems.
- (f) Participation by a Worker in a program for the treatment of a drug or alcohol problem will not, of itself, jeopardise the Worker's employment. Rather, successful treatment will be viewed positively. However, participation in such a program will not relieve a Worker of the responsibility of complying with these Procedures.

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## **8. Toll commitment**

Toll will ensure that:

- (a) details of participation by a Worker in any assistance program;
- (b) details of participation by a Worker in drug and alcohol testing; and
- (c) the results of drug and alcohol testing,

are kept confidential and that the Worker's privacy is maintained.

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## **9. Training and awareness**

- (a) Toll will ensure that all new Workers receive training in relation to the Policy and these Procedures as part of their induction.
  - (b) At that induction, new Workers will be provided with a copy of the Policy and these Procedures, and must be required to sign an acknowledgment of having received those documents and of understanding the requirements they impose.
  - (c) Toll must maintain attendance records to verify the induction of new Workers into the Policy and these Procedures.
  - (d) Toll will undertake further awareness training of existing Workers into the Policy and the Procedures. Toll must maintain attendance records for any such training sessions.
  - (e) Toll must provide copies of attendance sheets for any training and awareness sessions conducted pursuant to this clause to the relevant OHS Committees and union delegate.
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## **10. Resolution of disputes**

Any disputes as to the interpretation or implementation of these Procedures will be dealt with in accordance with the following procedure:

- (a) The matter must first be discussed by the aggrieved Worker(s) directly with his or her or their immediate supervisor.
- (b) If the matter remains in dispute, it must next be discussed with the supervisor's immediate superior or another representative of Toll appointed for the purpose of this procedure. The union delegate for the worksite has the right to attend at, and participate in, this discussion as the representative of an employee, provided that the union delegate is the representative of the Worker's choice.
- (c) If the matter remains in dispute, it must next be discussed with the relevant manager of Toll. The relevant union State Secretary (or his/her nominee) has the right to attend at and participate in this discussion as the representative of a Worker, provided that the relevant union State Secretary is the representative of the Worker's choice.

- (d) If the matter remains in dispute, it must next be submitted to FWA for conciliation. For this purpose, the action FWA may take includes:
  - (i) arranging conferences of the parties or their representatives at which the FWA is present; and
  - (ii) arranging for the parties or their representatives to confer among themselves at conferences at which FWA is not present.
- (e) If the matter is not resolved in conciliation, FWA will proceed to arbitrate the Dispute and/or otherwise determine the rights and/or obligations of the parties to the Dispute. In relation to such an arbitration:
  - (i) FWA may give all such directions and do all such things as are necessary for the just resolution of the Dispute. FWA may exercise powers of conciliation, arbitration and declaratory relief in relation to the Dispute, including all related procedural powers such as those in relation to hearings, witnesses, evidence and submissions.
  - (ii) FWA should apply the rules of evidence that would ordinarily apply to a hearing before FWA under the *Fair Work Act 2009*.
  - (iii) FWA will give the parties an opportunity to be heard formally on the matter(s) in dispute, before making any determination.
  - (iv) In making its determination, FWA will only have regard to the materials, including witness evidence, and submissions put before it at the hearing and will disregard any admissions, concessions, offers or claims made in conciliation.
- (f) The decision of FWA will be binding on the parties subject to the following:
  - (i) There will be a right of appeal to a Full Bench of FWA against the decision, which must be exercised within 21 days of the decision being issued or within such further time as the Full Bench may allow.
  - (ii) The appeal will be conducted in accordance with the legal principles applying to an appeal in the strict sense.
  - (iii) The Full Bench, or a single member on delegation, will have the power to stay the decision pending the hearing and determination of the appeal.
  - (iv) The decision of the Full Bench in the appeal will be binding upon the parties.
- (g) Until the matter is resolved by agreement, conciliation or arbitration, the status quo before the Dispute arose will be maintained and work will continue without disruption. No party is to be prejudiced as to the final settlement by the continuance of work in accordance with this procedure.

## **PART D – BOARD OF REFERENCE**

### **Establishment of Board of Reference**

1. The Parties agree to the establishment of a Board of Reference, in accordance with this Agreement.
2. The Board of Reference is established on a trial basis, and there is no commitment from any Party to maintain the operation of the Board of Reference beyond the Term.

### **Composition of Board of Reference**

3. The Board of Reference will be composed of the following:
  - a. a Chairman, appointed by agreement between Toll and the Union;
  - b. a management employee from Toll, appointed by Toll; and
  - c. an official or delegate of the Union, appointed by the Union.
4. The representatives of Toll and the Union on the Board of Reference will be independent, in the sense that they will not previously have been involved or concerned in the matter before the Board of Reference, and must not be from the same Toll business unit in which the matter arose.

### **Board of Reference Jurisdiction**

5. The Board of Reference is empowered to deal with, but can only deal with, Disputes arising:
  - a. in connection with the review, creation or variation of a Local Agreement under clause 8, including any Disputes regarding customs and practices under clause 8.5(e); and
  - b. with respect to the engagement of any Fleet Operator under clause 45.6.

### **Board of Reference Procedure**

6. The referral to the Board of Reference of a Dispute under clauses 8 or 45.6 may be made by Toll, the Transport Worker or the Union, as the case may be, advising the relevant State Manager (or equivalent) of their wish for the Dispute to be referred to the Board of Reference.
7. The Board of Reference must convene to consider the Dispute or appeal as soon as practicable after it is notified of the matter.
8. In performing its functions, the Board of Reference:
  - a. will conduct itself having regard to the principles of natural justice and procedural fairness;
  - b. can inform itself in respect of the matters in dispute in such manner as it considers appropriate;

- c. may convene a hearing in respect of any Dispute at which the parties to the Dispute can have an opportunity to address the Board of Reference; and
- d. may allow the parties to call evidence in support of their respective positions.

**Powers of the Board of Reference**

- 9. In considering a Dispute, the Board of Reference may give directions and/or recommendations for the resolution of the Dispute.
- 10. Clause 9 does not preclude the Board of Reference determining a Dispute under clause 45.6 regarding the engagement of Fleet Operators.

**Consultation regarding the Board of Reference**

- 11. During the Term the Parties will consult with each other about the operation of the Board of Reference, including options such as an expansion of the jurisdiction of the Board of Reference.



## PART E – FREIGHT CARTAGE AGREEMENT CLAUSES

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### 1. Contractor Obligations

In performing the Services, the Contractor will:

- (a) comply with all relevant statutes and regulations relating to the performance of work under this Agreement and with all relevant statutes and regulations relating to the Vehicles, its drivers and other relevant employees, and the performance of work, including without limitation by ensuring that:
  - (i) it complies with all agreements, awards, determinations and orders applicable to its drivers and other relevant employees;
  - (ii) without limiting the generality of (i) above, it complies with all its obligations under relevant occupational health and safety laws dealing with fatigue and does everything necessary to comply with or demonstrate compliance with such obligations, including but not limited to the preparation and maintenance of a driver fatigue management plan (referred to in this Agreement as a "Safe Driving Plan") which addresses the issues set out below, the recording of such details on a daily basis concerning the provision of the Services under this Agreement as Toll reasonably requires and the provision to Toll of such records, which shall include, but not be limited to, the following:
    - A. start times;
    - B. rest breaks which must be taken in accordance with the legislative requirements with respect to the limitation on driving hours stoppages and/or delays suffered and the reasons why;
    - C. arrival and departure times for journey performed;
    - D. finishing time;
    - E. total hours worked;
    - F. the cumulative effects of fatigue over more than one day; and
    - G. the effect of time of day or night on fatigue,and such records must be kept on a daily basis and where practicable handed to the relevant manager/supervisor at the end of each day and must be declared and signed by the Contractor as true and correct;
  - (iii) all Vehicles are registered as required and all necessary insurances are in force in respect of the Vehicles;
  - (iv) it has obtained and will maintain in force all licences and permits as are required by persons engaged in its business and who perform the things

it is required to do by this Agreement and will comply with the terms of all such licences and permits;

- (v) without limiting the generality of (i) and (iv) above, it maintains a Workers' Compensation Certificate of Currency for all drivers and other relevant employees performing work related to the provision of the Services;
  - (vi) without limiting the generality of (i) above, it complies with its obligations and made all payments required under Superannuation legislation including the Superannuation Guarantee (Administration) Act 1992 (Cth), the Superannuation Guarantee Charge Act 1992 (Cth), the Superannuation Industry (Supervision) Act 1992 (Cth) and the Superannuation (Resolution of Complaints) Act 1993 (Cth);
  - (vii) has paid and will continue to pay all taxes and fees relating to the ownership or use of the Vehicles;
- (b) maintain good industrial and employee relations with its drivers, other relevant employees and industrial organisations or bodies, to ensure performance of the Services in accordance with this Agreement;
  - (c) immediately inform Toll's representative of, and take all actions necessary to prevent or bring to an end, threatened or actual industrial action or any dispute or other matter affecting the drivers or other relevant employees, agents or contractors which may adversely impact the performance of the Services;
  - (d) subject to (e) below, directly employ all of the drivers it utilises to perform work related to the Services;
  - (e) not engage owner-drivers to perform work related to the Services unless it has the express written consent of Toll to do so, such consent to be given only where the Contractor is able to demonstrate to the satisfaction of Toll that the work cannot be practicably performed by employee drivers;
  - (f) ensure that where it has received the consent required by (e), above, it engages only bona fide owner-drivers and will not permit any sham contracting arrangements and agrees that all compliance, records keeping, training and rates provisions of this agreement apply to those owner-drivers as if they were employees;
  - (g) not contract out all or any part of the work related to the Services and must immediately inform Toll if it is unable, or has reason to believe it will become unable, to perform all or any part of the work related to the Services.

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## 1. Contractors Statement

- 1.1 In addition to all other obligations arising pursuant to this Agreement, the Contractor must provide to Toll, at the time that it issues an invoice to Toll in accordance with this Agreement, a written statement confirming that:

- (a) all remuneration payable to the Contractor's employees and/or owner-drivers for work done under this Agreement, during the period to which the invoice relates, has been paid;
- (b) all worker's compensation insurance premiums payable by the Contractor for the work done in connection with this Agreement have been paid and that a valid and accurate Certificate of Currency (or its equivalent) has been maintained; and
- (c) the Contractor is either registered, or is not required to register, as an employer under the Pay-Roll Tax Act and that all payroll tax payable by the Contractor for the relevant employees and/or owner-drivers during the term of this Agreement has been paid; and
- (d) the Contractor has complied with and made all payments required by the Superannuation legislation including the Superannuation Guarantee (Administration) Act 1992 (Cth), the Superannuation Guarantee Charge Act 1992 (Cth), the Superannuation Industry (Supervision) Act 1992 (Cth) and the Superannuation (Resolution of Complaints) Act 1993 (Cth).

1.2 Where the Contractor fails to provide such a statement:

- (a) Toll will be entitled to withhold payment of any monies owed to the Contractor until such time as the Contractor provides Toll with such a statement; and
- (b) the Contractor must indemnify and keep indemnified Toll from all suits, actions, claims, demands and other liabilities that a third party may have resulting either directly or indirectly from the failure of the Contractor as described in this paragraph.

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## 1. Records Audit

- 1.1 The Contractor must provide to Toll on request the Contractor's Records, for the purposes of enabling Toll to perform an audit.
- 1.2 The Contractor agrees that the Records may be made available by Toll to the Transport Workers Union of Australia, for their inspection. In such circumstances the Contractor agrees that it will take reasonable steps to ensure that its employees are made aware of the following:
  - (a) the identity of Toll and how to contact the Toll Authorised Representative;
  - (b) that the individual employee is able to gain access to the information;
  - (c) the purpose for which the information is collected;
  - (d) the organisation to which Toll may disclose the information;
  - (e) any law that requires particular information to be collected; and
  - (f) the main consequences (if any) for the individual if all or part of the information is not provided.

- 1.3 The Contractor agrees that the primary purpose for which Toll is conducting the audit is to ensure that the Contractor has abided by its Award obligations in relation to the payments it makes to its employees and that it has abided by its legislative obligations including, but not limited to, the payment of superannuation, obligations arising under the relevant occupational health and safety legislation and compliance with legislative driving hours.
- 1.4 Where, after an inspection has been conducted by Toll, Toll is satisfied that the Contractor has not complied with one or more of its obligations pursuant to an Award, legislative obligations or any of its obligations contained in this agreement, the Contractor shall be issued with a breach notice by a Toll representative, requiring rectification of the breach within 7 days.
- 1.5 Where the Contractor continues with the breach after having been issued with the breach notice or commits a further breach, Toll will terminate this agreement.
- 1.6 For the purposes of this clause:

**"Award"** means an award, enterprise agreement or other industrial agreement which has been made or approved by the Fair Work Commission or other state industrial tribunal.

**"Records"** means, but is not limited to, records required to be kept in accordance with this Agreement or any legislation or Award and/or any records required to show compliance with the Agreement or any legislation or Award including records relating to the remuneration of employees or other records relating to the employees that are required to be kept by the Contractor by under this Agreement or under the Fair Work Act, (as amended from time to time), or under an industrial instrument, or any other records which Toll may request from time to time as evidence of proof of payment to an employee of his or her wages, records which must be kept by the employer which evidence compliance with driving hours legislation, OHS legislation, including evidence of **"Safe Driving Plans"** or the like and records relating to insurance policies, Workers Compensation and Superannuation, which are required to be kept in accordance with this Agreement or any other legislation.

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## 1. Compulsory Induction Training

- 1.1 The Contractor, prior to commencing work with Toll at the applicable site, must participate in compulsory induction training.
- 1.2 The Contractor will not be allowed to perform any work for Toll until such training has been completed by all of its employees who will be working at the relevant Toll site.
- 1.3 The Contractor must also ensure that all of its employees who will perform work for Toll are Blue Card accredited by participating in the Blue Card Program.

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## 1. Site Rates

*The following clause must be contained in all Freight Cartage Agreements applying to Fleet Operators (including Existing Fleet Operators) providing Services at or in connection with a Toll site or sites located **within NSW/ACT**:*

- 1.1 The Contractor must pay employees performing work relating to Services to be provided under this Agreement, the same rates of pay which would otherwise apply to Toll's employees engaged at the relevant site at or in connection with which the Contractor's employees are performing work.

*The following clauses must be contained in all Freight Cartage Agreements applying to Fleet Operators (excluding Existing Fleet Operators) providing Services at or in connection with a Toll site or sites located **outside of NSW/ACT**:*

- 1.1 The Contractor must pay employees performing work relating to Services to be provided under this Agreement, at rates of pay that are at least 10% higher than those applicable under the relevant Modern Award (the "**Modern Award**").
- 1.2 Nothing in this clause permits the Contractor to reduce the rates paid to its employees and the Contractor agrees that it will not reduce rates paid to its employees even where such rates exceed those specified in clause 1.1 above.
- 1.3 Clause 1.1 above will not apply where the work being performed is Long Distance Work.
- 1.4 For the purposes of this clause Long Distance Work means any trip greater than 500 kilometres.

Signed for Toll Holdings Limited and each of its Australian wholly-owned subsidiaries:

_____ Signature of authorised person	_____ Signature of witness
Brian Gordon KRUGER Director	Basil McINERNEY Company Secretary
_____ Name and position of authorised person in full	_____ Name of witness in full
_____ Address	_____ Address
	Toll Document No: <u>13TC003646</u>
	Date: <u>24/10/2013</u>
_____ Date of signing	_____ Date of signing

Signed for and on behalf of the Transport Workers Union of Australia in its capacity as a bargaining representative:

_____ Signature of bargaining representative	_____ Signature of witness
_____ Name and position of bargaining representative in full	_____ Name of witness in full
_____ Address	_____ Address
_____ Date of signing	_____ Date of signing

**Signed for Toll Holdings Limited and each of its Australian wholly-owned subsidiaries:**

Signature of authorised person	Signature of witness
Name and position of authorised person in full	Name of witness in full
Address	Address
Date of signing	Date of signing

**Signed for and on behalf of the Transport Workers Union of Australia in its capacity as a bargaining representative:**

Signature of bargaining representative	Signature of witness
Name and position of bargaining representative in full	Name of witness in full
Address	Address
Date of signing	Date of signing

Signed by Jeremy Czoloszynski as an Employee Representative:

Signed by Steve Den Ridder as an Employee Representative:

\_\_\_\_\_  
Signature of Employee Representative

\_\_\_\_\_  
Signature of Employee Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date of signing

\_\_\_\_\_  
Date of signing

Signed by Barry Faucett as an Employee Representative:

Signed by Graham Grant as an Employee Representative:

\_\_\_\_\_  
Signature of Employee Representative

\_\_\_\_\_  
Signature of Employee Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date of signing

\_\_\_\_\_  
Date of signing



Signed by Ken Griffin as an Employee Representative:

Signed by Margaret Harvey as an Employee Representative:

\_\_\_\_\_  
Signature of Employee Representative

\_\_\_\_\_  
Signature of Employee Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date of signing

\_\_\_\_\_  
Date of signing

Signed by Don McPherson as an Employee Representative:

Signed by Rick Milich as an Employee Representative:

\_\_\_\_\_  
Signature of Employee Representative

\_\_\_\_\_  
Signature of Employee Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

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Date of signing

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Date of signing

**Signed by Kevin Moore as an Employee Representative:**

**Signed by Steve Newton as an Employee Representative:**

\_\_\_\_\_  
Signature of Employee Representative

\_\_\_\_\_  
Signature of Employee Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date of signing

\_\_\_\_\_  
Date of signing

**Signed by Steve Phillpott as an Employee Representative:**

**Signed by Wayne Price as an Employee Representative:**

\_\_\_\_\_  
Signature of Employee Representative

\_\_\_\_\_  
Signature of Employee Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date of signing

\_\_\_\_\_  
Date of signing

Signed by John Rowe as an Employee Representative:

Signed by Mark Trevillian as an Employee Representative:

Signature of Employee Representative

Signature of Employee Representative

Address

Address

Date of signing

Date of signing

Signed by Mark Walker as an Employee Representative:

Signed by Jon Wenitong as an Employee Representative:

Signature of Employee Representative

Signature of Employee Representative

Address

Address

Date of signing

Date of signing

Signed by Adam Winters as an Employee Representative:

\_\_\_\_\_  
Signature of Employee Representative

\_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date of signing



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Toll Holdings Limited  
ABN 25 006 592 089

4 November 2013

Ms Rachel Wong  
Associate to Commissioner Roberts  
Fair Work Commission  
80 William Street  
EAST SYDNEY NSW 2011

By email: [Chambers.Roberts.c@fwc.gov.au](mailto:Chambers.Roberts.c@fwc.gov.au)

Dear Ms Wong

**AG2013/9903 Toll Group – TWU Enterprise Agreement 2013-2017**

Pursuant to section 190 of the *Fair Work Act 2009* (Cth), Toll Holdings Limited, for itself and each of its wholly-owned subsidiaries in Australia, gives the following undertakings:

1. For the purposes of any consultation required under clause 14 of the Agreement an employee will be entitled to the representative of their choice. This may include, but will not be limited to, representation by the Union.
2. The definition of "Dispute" in clause 3 of the Agreement will be taken to expressly include disputes about matters in relation to the National Employment Standards. By extension, the disputes resolution procedure in clause 15 of the Agreement will apply to such disputes.
3. For the purposes of the dispute resolution process under clause 15 an employee will be entitled to the representative of their choice. This may include, but will not be limited to, representation by the Union.

Yours faithfully

**Jamian Sloan**  
Senior Legal Counsel – Workplace Relations & Safety

## ABSTRACT

**TITLE:** THE SCOPE FOR APPROPRIATE  
CROSS – JURISDICTIONAL REGULATION  
OF INTERNATIONAL CONTRACT NETWORKS  
(SUCH AS SUPPLY CHAINS):  
Recent Developments in Australia and their  
Supranational Implications

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**POSITION:** Chief Advocate  
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(NSW / SA / Tas)

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**ABSTRACT:** Extensive contract networks (such as supply chains) are already regulated by modern business practice. However, the existing type of modern business supply chain regulation takes the form of contractual ‘governance structures’ imposed throughout supply chains by the effective business controllers of those supply chains. This existing form of private supply chain regulation by means of contract differs from the more recognisable traditional form of public regulation by way of legislation.

The paper examines the scope for appropriately harnessing these private contractual ‘governance structures’ in order to achieve public regulatory outcomes, such as improved occupational health and safety.

**NOTE:** This paper is an edited version of the author’s keynote presentation at the ILO Workshop “*Better Health and Safety for Suppliers*” held in Toronto (Canada) on Tuesday 17<sup>th</sup> April 2007.

This keynote presentation was based upon an extensively revised adaptation of the author’s earlier contribution to the “*Labour Law, Equity and Efficiency: Structuring and Regulating the Labour Market for the 21<sup>st</sup> Century*” Conference delivered in Melbourne (Australia) on 8<sup>th</sup> July 2005.

**THE SCOPE FOR APPROPRIATE CROSS-JURISDICTIONAL  
REGULATION OF INTERNATIONAL CONTRACT NETWORKS (SUCH AS  
SUPPLY CHAINS): Recent Developments in Australia and their Supranational  
Implications**

Igor Nossar

## 1. INTRODUCTION

In recent decades, modern industrial market economies have experienced “[T]he growth of precarious or insecure employment”. Within these economies, “[T]he growth of elaborate supply chains and flexible work arrangements (along with changes to regulatory protection) has been linked to the emergence or expansion of low-wage sectors/working poor (with substantial hidden costs to the community) and more intensive work regimes”<sup>1</sup>. This trend is increasingly evident in Australia today.

These developments have been coterminous with other long term trends manifested in such economies during the preceding quarter century – notably, the reduction of direct state intervention into private sector economic activity, in conjunction with the parallel development of a body of scholarly inquiry into “regulation theory” (especially within the USA and the UK). The pronounced scepticism towards active state regulatory intervention which characterises much of this developing academic literature has been iconically embodied in the emerging “[T]ruism that ‘regulatory failure’ will flow from the traditional ‘command and control’ mode of government: that unintended adverse consequences will arise when inflexible, centralised, rule-obsessed government agencies try to intervene in market relations ...”<sup>2</sup>

This observed tendency for modern regulation theory to focus upon the perceived intrinsic limitations inherent in traditional public regulatory endeavour has perhaps been most notably embodied in the theoretical construct of the “regulatory trilemma”, with its implicit suggestion of an inevitably problematic outcome for any regulatory attempt to simultaneously achieve the three goals of regulatory effectiveness, social responsiveness and legal doctrinal coherence – at least in relation to “command and control” regulation mandated by the state.<sup>3</sup>

The focus upon regulatory deficiencies in any analysis of active state intervention has also characterised much of the increasingly common application of modern regulation theoretical analysis to the more specific subject of the state’s particular regulation of the labour market. Such “encroachment” by scholars of modern regulation theory upon what had earlier been the traditional preserve of labour law scholarship has disclosed an apparent potential for productive interaction between these disciplines

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1. Quinlan, M. “Contextual Factors Shaping the Purpose of Labour Law: A Comparative Historical Perspective” in Christopher Arup et al (eds), *Labour Law and Labour Market Regulation: Essays on the Construction, Constitution and Regulation of Labour Markets and Work Relationships*, Federation Press Sydney, 2006 at 33.  
 2. Murray, J. “The Sound of One Hand Clapping? The ‘Ratcheting Labour Standards’ Proposal and International Law” (2001) 14 *Australian Journal of Labour Law* 306 at 307 to 310.  
 3. Teubner, G. “Juridification: Concepts, Aspects, Limits, Solutions”, in G. Teubner, editor, *Juridification of Social Spheres: A Comparative Analysis in the Areas of Labour, Corporate, Antitrust and Social Welfare Law*, Walter de Gruyter, Berlin, 1987 at 3 to 48.

(as demonstrated in relation to the specific field of occupational health and safety law)<sup>4</sup>. It has been suggested that the increasing convergence of these formerly disparate academic disciplines potentially poses significant challenges “[F]or the conceptualisation of labour law in terms of both practice and scholarship. For example, what becomes of the traditional Anglo-Saxon view of labour law as a system designed to create a countervailing labour power to that of the employer?”<sup>5</sup>

By contrast, however, this paper argues that the same converging combination of theoretical and policy frameworks relating to the issue of labour market regulation can just as readily be utilised to reverse the direction of this implicit theoretical challenge. More specifically, it is contended that a close critical analysis of modern regulation theory – and its application to the study of existing legal regulatory systems other than traditional state regulatory modes – can serve to successfully subvert the general underlying antipathy displayed by much modern regulatory discourse towards any type of “command and control” regulation mandated by the state.

In this respect, attention is drawn to Hugh Collins’ seminal study of the private law of contract as a system of regulation.<sup>6</sup> This paper will explore the implications of Collins’ study for the potential theoretical validation – within the framework of modern regulation theory – of innovative “command and control” regulatory mechanisms based upon a somewhat novel integration of existing (state and non-state) regulatory approaches. This exploration of innovative regulatory mechanisms will focus upon the development of innovative regulatory roles for trade unions (and other NGOs) as well as for governmental regulatory authorities (such as labour and health and safety inspectorates).

In particular, this paper examines the role available to be played by trade unions in the labour market regulation of commercial contractual arrangements which can in no way be characterised as traditional employment relationships.

The first part of the paper analyses the theoretical context for development of this role in the form of an extended notional dialogue with certain important insights offered by scholars of regulation theory in relation to the private law of regulating contracts.

The latter portion of this paper examines some more concrete manifestations of the potential practical application of these insights, as an illustration of the scope available for appropriate and effective active public regulatory intervention into increasingly predominant forms of business organisation.

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4. Collins, H. “Review of Gunningham and Johnstone, *Regulating Workplace Safety: Systems and Sanctions*” (2000) *Comparative Labor Law and Policy Jnl* 523.

5. Murray, above n.2.

6. Collins, H., *Regulating Contracts* (Oxford University Press, Oxford, 1999).

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## 2. THE THEORETICAL CONTEXT: APPLYING REGULATION THEORY TO THE PRIVATE LAW OF CONTRACT WITHIN THE FRAMEWORK OF MODERN BUSINESS PRACTICE

Collins has surveyed the performance of the private law of contract in regard to each of the “[T]hree horns of the regulatory trilemma”<sup>7</sup> and he particularly concludes that it is only in relation to just one of these three goals – namely, the goal of regulatory effectiveness (which he terms “implementation”) - that the private law of contract “[P]oses for itself major structural weaknesses”.<sup>8</sup>

### *Deficiencies in the Regulatory Efficacy of Private Contract Law:*

Not only does Collins repeatedly identify the failure of the private law of contract to achieve effective public regulatory outcomes from a social, “welfarist” perspective, but he also draws attention to the often inadequate private regulatory outcomes obtained under private law resulting from (inter alia) the relative “poverty of sanctions” available even to the aggrieved contracting parties themselves.<sup>9</sup>

In the course of describing this preponderance of efficacy inadequacies, Collins probes further into the “deeper” structural factors which together so frequently render the private law of contract “ineffective” as a “regulatory technique”, pinpointing “[T]he difficulties for private law in establishing an effective mechanism for the monitoring of compliance with standards and the enforcement of standards” – observations which themselves raise the more fundamental issue of “[T]he formulation of standards for guiding participants in markets”. Collins addresses this more fundamental issue in greater detail by explicitly identifying “several structural weaknesses” from which “[T]he private law of contract suffers ... [including] the difficulties of incorporating externalities in setting standards, the problems of setting standards with an adequate degree of specificity in order to provide effective guidance” through to “[T]he lack of expertise in choosing between standards”.<sup>10</sup> (In regard to problems concerning adequacy of “specificity”, Collins more generally suggests inter alia that the “[P]roblem of insufficient specificity for the purposes of regulatory efficacy can be tackled most fruitfully by the development of default rules to supplement self-regulation ... The solution at this point for private law is to develop the idea that some supplementary rules can not be waived at all”<sup>11</sup> as one particularly promising direction for development amongst a number of potential alternatives.)

These specific constraints upon effective “standard setting” are accompanied by parallel problems in the “[M]onitoring of compliance with standards” that have been successfully set, not least being the “[P]roblems of proof [which] do occur frequently in contractual contexts” in relation to the intention of parties.

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7. Gahan, P. and Brosnan, P. “The Repertoires of Labour Market Regulation” in Arup et al. (op. cit.) at 137.

8. Collins, above n.6 at 67 to 69.

9. EG. Collins (1999), *ibid* at 90 to 93 and at 117 to 123 and at 284 and at 299 to 301.

10. Collins (1999), *ibid* at 69.

11. Collins (1999), *ibid* at 78 to 79.

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(At this point of his exposition, Collins offers the intriguing insight that one “[S]olution to the problem of detection is to transfer the burden of proving compliance onto the alleged violator ... The capacity of private law to detect failures of regulatory compliance turns crucially on ... techniques for the reversal of the burden of proof.”)<sup>12</sup> While private contract law arguably establishes an “inexpensive monitoring system” by allocating to “[P]urchasers ... the task of inspecting their purchases”, difficult problems still arise in relation to “[T]he kinds of latent defects which might only be detected as a result of inspection by persons with technical expertise. The inexpensive monitoring system of private law can only achieve blunt determinations of whether the goods [or services purchased] achieve satisfactory or acceptable standards, because either it lacks the sophistication to police detailed technical standards or the monitoring costs for complex standards are prohibitive.”<sup>13</sup>

The comparative lack of regulatory effectiveness so often demonstrated by the private law of contract not only stems from such evident “[D]ifficulties with respect to setting standards” and the consequent “monitoring” of these standards (once set), but is also further exacerbated by a host of “difficulties” in securing the “enforcement” of these (set) standards.<sup>14</sup> Some of these enforcement “difficulties” are linked to key longstanding principles of private contract law as developed within Anglo-Saxon jurisdictions, according to which “[N]o damages may be awarded” in the absence of “[S]ome identifiable loss to a particular individual ... As a limitation upon the scope for regulation, however, this emphasis upon the need for harm precludes private law from tackling certain kinds of sharp practice in dealings...”<sup>15</sup> In addition, “[A] fundamental weakness of the private law regulation of contracts consists in the subordinate role played by third parties whose interests may be affected by the self-regulated transaction ...”<sup>16</sup> owing to the operation of the doctrine of privity of contract. Other enforcement “difficulties” are essentially variations of the (previously mentioned) relative “poverty of sanctions” available under private contract law, not least being the “[Lack of ] a mechanism for the escalation of [legal] sanctions that is designed to provide a credible threat against systematic or persistent deviation from its standards ... Again this represents a substantial structural weakness in the remedies available in private law to provide incentive for regulatory compliance.”<sup>17</sup>

By contrast with this multitude of efficacy deficiencies, Collins clearly implies that the private law of contract can successfully - in a “productive” manner - achieve the two regulatory goals of social responsiveness and the maintenance of doctrinal coherence.<sup>18</sup> More specifically, he clearly points to the potential for retaining doctrinal coherence by means of integrating the pre-existing scheme of private law principles with aspects of the newer discourse of welfarist regulation to produce

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12. Collins (1999), *ibid* at 89 to 90.

13. Collins (1999), *ibid* at 93.

14. Collins (1999), *ibid* at 75.

15. Collins (1999), *ibid* at 75.

16. Collins (1999), *ibid* at 70.

17. Collins (1999), *ibid* at 90 to 91.

18. Collins (1999), *above* n.12.

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doctrinally coherent “hybrid forms of legal discourse”.<sup>19</sup>

***Exploring The Regulatory Terrain Of “Hybridity” in the Context of Private Contract Law:***

Within his overall study of private contract law, Collins’ attention to the concept of “hybrid forms of legal discourse” represents just one facet of a more broadly interesting subsidiary project which he pursues, in the shape of his general exploration of (what may be termed as) the regulatory terrain of “hybridity” – a terrain located at the interface between different regulatory systems where a host of diverse hybrid regulatory phenomena has emerged from the novel integration of previously disparate conceptual frameworks, organizational arrangements and regulatory approaches.

In addition to his discussion about “hybrid forms of legal discourse”<sup>20</sup>, Collins also explores hybrid forms of regulatory practice – together with hybrid forms of business organisation – as both being possibly fruitful sites for the elucidation of a range of potential specific solutions to what he identifies as the key regulatory deficiency of private contract law – namely, the many sided failure of the private law of contract to achieve the goal of regulatory effectiveness.

The many ongoing weaknesses of private law in relation to regulatory efficacy have cumulatively set the stage for “[T]he creation of modern styles of public regulation.”<sup>21</sup> In turn, the coexistence (upon varying terms) of the pre-existing private law of contract with its public “welfarist” regulatory successors has effected a hybridisation of regulatory forms of practice. Collins has surveyed the range of differing interactions between public regulatory measures (operating through the activity of state agencies) and the private legal system for regulating contracts. In the course of this survey, he has distinguished between a number of different hybrid forms of regulatory practice differentiated according to their respectively varying degrees of direct state involvement into private contracting processes.

On the one hand, Collins has described less direct forms of state intervention into the otherwise wholly private sector operation of contractual arrangements. Such hybrid forms of regulatory practice often originate with the problematic operation of a distinctly private contractual process between private sector parties. Where the private law of contract fails to produce an effective regulatory outcome in this situation, “a public regulatory agency” external to that contracting process may intervene – as a regulatory *deus ex machina* – in order to secure just such an effective outcome by means of persuasion and negotiation.

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19. For a fuller exposition of Collins’ analysis concerning the potential problems and prospects for the private law of contract in relation to retention of its doctrinal coherence, see Nossar, I. (2005) “The Role of Trade Unions in Labour Market Regulation of Commercial Contractual Arrangements Beyond the Traditional Employment Relationship”, in “*Labour Law, Equity and Efficiency: Structuring and Regulating the Labour Market for the 21<sup>st</sup> Century*” Conference Proceedings: Melbourne (8 July 2005).

20. Also see Collins, above n.6, *ibid* at 271 to 274.

21. Collins (1999), above n.8.

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By contrast, Collins also considers the hybrid forms of regulatory practice which emerge from direct economic involvement by the state as a party to a private contracting process. When the state contracts directly with other parties, it need no longer rely only upon its persuasive capacity as an agency external to the contracting process, but rather it can seek to achieve the multiplicity of its regulatory objectives by direct exercise of its commercial power – as an immediate participant in the contracting process – by its willingness to forego any contractual relations except on the basis of contract conditions which it can effectively prescribe by virtue of the substantial commercial consequences of the state’s budgetary clout.<sup>22</sup>

In this latter context of direct contractual dealings between the state (or its agencies) and private contractors, the previously discussed deficiencies of private contract law in relation to “standard setting” and enforcement threaten to become particularly acute since, “[I]n the absence of direct hierarchical control over performance by the contractor, the contract has to achieve quality by setting detailed standards in the terms of the contract and establishing appropriate incentive systems.”<sup>23</sup> Consequently, in its role as a direct contracting party, the state has a clear interest in minimising the difficulties arising from “standard setting” (and enforcement) by means of maximising its degree of “[D]irect hierarchical control over performance by the contractor”. Thus, by invoking its substantial commercial power during the course of contracting out its services, the state ends up by creating a supply chain arrangement within which it can potentially exercise a decisive (private) regulatory role as the “effective business controller” of that supply chain.<sup>24</sup>

The increasing prevalence of such “government by contract” is the immediate consequence of the trend towards privatisation of government services.<sup>25</sup> It can readily be observed that the resultant trend towards government contracting out of services is merely one particular manifestation of a broader economic phenomenon encompassing the range of diverse arrangements for outsourcing, subcontracting, linked transfer or franchising which Collins has (elsewhere in his study) collectively characterised as “hybrid business organisations” composed of “[I]maginative combinations of contractual obligations ... creat[ing] business associations which straddle the divide between market and hierarchy ... Hybrids mimic the supervisory and monitoring powers of principal and agency relations, and achieve equivalent powers of unilateral regulation to those found [with]in formal organisations.”<sup>26</sup>

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22. Collins (1999), *ibid* at 305.

23. Collins (1999), *ibid* at 311.

24. Nossar, I., Johnstone R. and Quinlan, M. “Regulating Supply Chains To Address the Occupational Health and Safety Problems Associated with Precarious Employment: The Case of Home-Based Clothing Workers in Australia” (2004) 17 *Australian Journal of Labour Law* 137 at 145 to 146 and at 151.

25. Collins, above n.6 at Chapter 13.

26. Collins (1999), *ibid* at 250 to 252.

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***The Scope of Existing Regulatory Practice within Hybrid Forms of Business Organisations:***

Such hybrid business organisations constitute an illustration of “[R]egulation ... by private commercial [contractual] means, in the commercial interests of the [effective business controllers], rather than in the more recognisably traditional form of public regulation through legislation ...”<sup>27</sup> This type of private contractual regulation is exercised by effective business controllers “[P]repared to use their market power to secure exactly what they want (in the form of price, quality control and turnaround time)” by means of standardised contractual arrangements which entrench the right (of these controllers) to substantially control the supply process (by which services are to be provided or goods manufactured) and their complementary right to inspect premises where work is to be performed under the relevant contracts<sup>28</sup>. Effective business controllers impose such standardised contractual conditions throughout their respective hybrid business organisations within the context of broader contractual arrangements which provide a potent combination of legal indemnities and non-legal sanctions calculated to effect the will of these effective business controllers. In this context, formal contractual provisions regularly delineate “precise, onerous ... indemnities” designed to inspire contracting parties to ensure the fulfilment of the commercial objectives of the effective business controllers.<sup>29</sup>

Yet even such apparently daunting formal contractual indemnities frequently pale into relative insignificance in comparison with the potential commercial impact of non-legal sanctions available to be deployed within hybrid business organisations. “The effectiveness of non-legal sanctions depends upon their potential to impose economic loss on a party to a contract who causes disappointment or betrayal. The sanction of a refusal to do business with a person in breach of contract in the future will be very powerful, for instance, where the deceiver [or the party otherwise in breach] derives much of its business or income from the other contractor ... Perhaps the key incentive to perform contracts faithfully, particularly with regard to quality, derives from the greater benefits to be achieved from the income from a stream of future sales rather than one-off benefits from defaults.”<sup>30</sup>

Effective business controllers operating at the apex of hierarchically organised modern supply chain arrangements are therefore well placed to wield such potent non-legal sanctions over the other contracting parties involved in these types of hybrid business organisations. Thus, for instance, in Australia today the “[M]ajor retailers [sector] is characterised by a highly oligopolistic concentration of market share (and market power)” which ensures that a wide range of supplier businesses are keen to secure the custom of these major retailers on a continuing long term basis. This observation applies equally to the supply chain structures responsible for the provision of clothing manufactured in Australia<sup>31</sup> and also to those responsible for the

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27. Nossar, Johnstone and Quinlan, above n.24.

28. Nossar, I. (2000) *Briefing Paper: ‘Behind the Label’: the New South Wales Government Outworker Strategy – the Importance of the Strategy and Prerequisites for its Success*, Textile, Clothing and Footwear Union of Australia: Sydney at 3.

29. Ibid.

30. Collins, above n.6 at 114.

31. Nossar, I. *Proposals for the Protection of Outworkers from Exploitation*, Textile, Clothing and Footwear Union of Australia: Sydney, June 1999, at 2.

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provision in Australia of long haul road freight transportation services (given that “[M]ajor retailer consignors occupy a position of predominant commercial power in this supply chain structure” as well).<sup>32</sup>

In the case of long haul freight transportation, for example, major retailers operating in Australia are in a position to wield just such powerful non-legal sanctions so as “[T]o effectively control at least two separate aspects of freight transportation in Australia” – namely, the “[M]aximum payment available for each kilometre of required transport” of the retailer consignor’s freight (since “[T]he price paid by the major retailer consignor to the transport operator will impose a transport cost discipline throughout the remainder of the [relevant] supply chain structure”) and also the “[M]aximum time available” for such required transport (since “[T]he entire subsequent supply chain arrangement is necessarily bound by those directed delivery time constraints” laid down in each major retailer’s contract with each major transport operator).<sup>33</sup> “These specific aspects of control by major retailer consignors (over [the ultimately performed] individual truck journeys) are simply particular examples of the general contractual power – and legal authority – exercised by consignors to determine precisely under what conditions their freight is to be transported ... In other words, any consignor is free to nominate – by way of contractual conditions – the specific terms and arrangements which must apply to the transportation of that consignor’s goods ... In the abstract, any major transport operator is free to decline acceptance of any contract [offer] subject to such conditions. However, the overwhelming commercial power (and the existing legal authority) of major retailer consignors ensures that the contractual conditions specified by these consignors will in effect be imposed throughout long haul transportation supply chains”.<sup>34</sup>

In this way, the phenomenon of hybrid business organisations dramatically illustrates the validity of the more general observation that “[C]ontractualization permits the formation of a particular type of power relation. Although the imagery of freedom of contract presents an egalitarian picture of two people negotiating the terms of their agreement, in practice many contracts constitute the opportunity for one party to create unilaterally a system of rules and governance structures for the relation ... The standard form of consumer contract imposed on a ‘take it or leave it’ basis by businesses represents only the tip of an iceberg of these governance structures. Contracts can incorporate whole regulatory systems ... [so that these contracts] simulate the form of an agreement, but they really represent the exercise of **discretionary economic power** by one party to the contract over the other backed up by a system of economic sanctions specific to that relation, such as ... the disqualification of a contractor. **Contracts therefore create ‘governance’ structures, which are private in the sense that they are only indirectly supported by state power. Markets and hierarchies are therefore not opposites, as they are sometimes presented, but rather markets create their own hierarchies through contracts.**”<sup>35</sup>

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32. Nossar, I. *Briefing Paper: Consequential Amendments to Occupational Health and Safety Amendment (Long Distance Road Freight Transport) Regulation Draft*, Textile, Clothing and Footwear Union of Australia: Sydney, November 2004, at 2.

33. Ibid.

34. Nossar (November 2004), *ibid* at 4.

35. Collins, above n.6 at 24. (Emphasis added).

Within each hybrid business organisation, these governance structures are entrenched by the effective business controllers through the exercise of their commercial power and legal authority. **These governance structures can empower effective business controllers to potentially shape many aspects of commercial activity throughout their respective hybrid business organisations – regardless as to whether or not the effective business controller directly contracts with the “distinct units of capital”<sup>36</sup> (actively involved within the hybrid business organisation) which engage in that particular commercial activity (for the joint purposes of that hybrid “network”<sup>37</sup>).** Thus, the effective business controller of such a hybrid “network” may have no *direct* dealings of any kind with any actual worker who ends up ultimately performing some of the work which is required to be undertaken in fulfilment of the commercial objective of that controller. Yet the very same effective business controller may still be in a position to practically determine key parameters of that actual worker’s occupational situation, such as payment levels or working time, by means of the ‘governance’ structures contractually entrenched throughout the respective hybrid “network” contractual arrangements.

Indeed, the effective business controller of a particular “network” may not even be physically located within the same geographical jurisdiction as the ultimate workers over whose working conditions the controller can wield such decisive influence. In summary, therefore, the contractually entrenched ‘governance’ structures characteristic of such business “hybrids” constitute powerful instruments for effectively regulating a wide range of economic determinants – including working conditions – throughout hybrid business organisations, potentially irrespective of geographical jurisdictional boundaries.<sup>38</sup>

***Implications for Developing Effective Public Regulation of Business “Hybrids”:***

The immediately preceding observations describe the current scope for *private* regulation of business “hybrids” in the commercial interests of their effective business controllers. At the same time, these very observations also imply that adaptations of these “network” governance structures may equally be capable of being utilised to regulate business “hybrids” for *public* purposes as well. More specifically, this latter implication foreshadows opportunities for the successful development of effective public regulation of the contracting practices within business “hybrids”, whereby the relevant (contractually entrenched) “network” governance structures can be harnessed by means of public legislative regulatory prescription to create “contractually entrenched forms of regulation” (C.E.F.O.R.) in furtherance of public regulatory purposes.<sup>39</sup>

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36. Collins (1999), above n.26.

37. Collins (1999), *ibid* at 248.

38. Nossar, Johnstone and Quinlan (2004), above n.24 at 153. The accuracy (and relevance) of these observations about the scope for feasible private transnational contractual regulation (even in furtherance of public purposes) has now been explicitly confirmed by one of the world’s largest effective business controllers operating as a major retailer, when Wal-Mart Stores announced that the corporation operated “[T]he world’s largest overseas monitoring program” whereby (during last year alone) “Wal-Mart cut off 1,200 factories for at least 90 days” as an interim incentive for non-complying suppliers while “Another 108 factories were permanently banned, primarily because of child-labor violations.” See Steven Greenhouse ‘Suit Says Wal-Mart is Lax on Labor Abuses Overseas’ *New York Times* Wednesday 14 September 2005.

39. Nossar, I. (2005) “THE NEXT STEP FORWARD – ‘REGIME CHANGE’ BY WAY OF C.E.F.O.R.: Regulatory Intervention into the Contractual Links which Constitute Chains of Production, Supply and Outsourcing”, in “*Supply Chain Strategies: At the Frontiers of Regulatory and Labour Organising Initiatives*” *Conference Proceedings*: Sydney (10 February 2005).

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After all, these “network” governance structures are simply particular expressions of one specific form of private regulation secured by means of effectively compulsory standardised terms entrenched in formal contractual provisions. Accordingly, these “network” governance structures represent merely one facet of the phenomenon of private regulation by means of standard form contracts which are (more or less) “[I]ssued on a take it or leave it” basis by the relevant controlling contracting party (such as the effective business controller of a hybrid “network”). This phenomenon of private regulation by means of standard form contracts encompasses a broad range of contractual scenarios, extending also to “[M]ass [c]ontracts” – between a single controlling business and the (relatively atomised) mass of consumers of its products (or services). These business contracts with consumers are of the type commonly referred to as ‘adhesion contracts’<sup>40</sup> which share key features with “network” governance structures. In particular, “network” governance structures of the types already discussed and mass ‘adhesion’ contracts are both characterised within their formal provisions by “[A] pattern in which the risks are allocated routinely onto the [other parties contracting with the controlling business, such as the] consumer”, with this (essentially unidirectional) allocation of risks contractually secured “[B]y extensive use of disclaimers and exclusion clauses” which are supplemented (in the case of the previously discussed hybrid “network” governance structures) by extensive supply process control (and auditing) powers underpinned by means of “precise, onerous ... indemnities”<sup>41</sup>. **“The effect of such clauses is that the [controlling] business retains a discretion to perform the contract and to determine how it should be performed**, whereas the consumer [in the case of mass ‘adhesion’ contracts] is bound to make payment, except perhaps in the event of complete failure of performance by the [controlling] business”<sup>42</sup> while – in the case of hybrid “network” governance structure provisions – the other parties contracting with the effective business controller are bound to shoulder the overwhelming burden of any risks associated with the supply process. These diverse – yet parallel – examples of the use of standard form contracts are, in turn, simply part of a broader continuum of “[C]ontracts [which] often establish power relations” – a continuum also encompassing “principal and agent relations” - which together represent various manifestations of private regulation by entrenchment in contractual provisions of (what are effectively) “compulsory terms”. Collins considers as appropriate the adoption of such private regulatory “[M]easures designed to enhance the efficiency of the governance structure of the contract by means of inserting additional default rules or compulsory terms”.<sup>43</sup>

The earlier discussion of the regulatory efficacy deficiencies of private contract law focussed upon the structural weaknesses of private law in relation to setting standards, monitoring compliance with the (set) standards and enforcing them. In light of this earlier analysis, it would seem that one vital prerequisite for “[E]nhanc[ing] the efficiency of the governance structure” of hybrid “networks” must surely be the adoption of effective measures to audit contractual performance and standards compliance throughout these “networks”, especially if the auditing agency adopted

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40. Collins (1999), above n.6 at 228 to 229.

41. Nossar (2000), above n.28.

42. Collins (1999), above n.40. (Emphasis added.)

43. Collins (1999), above n.40.

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has a strong vested interest in securing such compliance. In the particular subsidiary subset of supply chain arrangements wherein retailers play the role of effective business controllers, the specific desirability of an “[I]ncentive for the manufacturer [or provider of services] to produce an efficient level of quality ... may be addressed by the possibility of liability rules along the chain of production”, which render the retailer liable for the product (or service) sold and also empower “[T]he retailer [to] pass on this cost by a claim against the manufacturer [or provider of services]” – thereby both assisting in the establishment of more precisely defined common compliance standards (inter alia for quality) throughout “the chain of production” and simultaneously offsetting any additional “administrative costs of private law liability” by substantially enhancing the potential for effective enforcement of those standards throughout that supply chain since “[T]he retailer may be in a more powerful position than [any other party in the supply chain] to threaten to use non-legal sanctions, such as an unwillingness to stock a particular product in future, so that the liability rule [throughout the supply chain] has a powerful supplement”.<sup>44</sup>

In regard to the precise configuration of such supply chain liability rules, attention is drawn to Collins’ (previously discussed) insightful observation that the “[C]apacity of private law to detect failures of regulatory compliance turns crucially on ... techniques for the reversal of the burden of proof”, since the “[T]ransfer [of] the burden of proving compliance onto the alleged violator” offers an important “[S]olution to the problem of detection”.

In addition to this foreshadowed combination of such appropriately designed “[L]iability rules along the chain of production” in conjunction with auditing by those parties with strong vested interests in effecting compliance, attention is also drawn to the previously discussed critique by Collins of “[T]he subordinate role played by third parties whose interests may be affected by the self-regulated transaction” – an aspect of contract law which Collins has quite acutely characterised as a “[F]undamental weakness of the private law regulation of contracts”. Collins has expanded on these concerns by focussing on “[T]he power constructed by contracts that affect the interests of third parties, but who can not mount an action in contract to redress or to challenge a decision”, as well as the impact of “[C]ontractual relations [which] can restrict legal responsibilities to third parties or other members of the network, thereby creating a position of power to act unimpeded by social responsibilities .... These issues mirror the discussion of the social responsibility of corporations, that is the requirement of collective groups to respect the objectives of democratic legislative institutions. These considerations apply to contracts which create looser kinds of organization without vertical integration. The legal problem of regulating power in such instances has to be addressed by granting third parties derivative rights under contracts and by attributing legal responsibilities to [business] hybrids and other multi-party associations ....”<sup>45</sup>

In light of the preceding analysis, it is clearly arguable that effective regulation of supply chain arrangements could be substantially promoted by attributing legal responsibilities to the effective business controllers within the overall framework of liability rules throughout each supply chain. Further more, the regulatory

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44. Collins (1999), *ibid* at 301.

45. Collins (1999), *ibid* at 255.

effectiveness of such a measure could only be enhanced by identifying third parties which have interests that are affected by those supply chain arrangements and then focussing upon the relevant third parties with a strong vested interest in standards compliance by the supply chain participants. Once identified, these third parties would seem to be obviously potential candidates for the grant of derivative rights as third party auditors of the supply chains – a development which would result in third party monitoring of supply chain behaviour by institutions external to the supply chain, thus effectively creating “[A] countervailing ... power to that of the” effective business controllers in a manner simultaneously “[D]esigned to enhance the efficiency of the governance structure of the” relevant business “hybrid”, if one is to accept at face value the oft repeated public pronouncements of high profile effective business controllers about (what they claim to be) their own conceptions concerning the “efficiency” and “best practice” orientations of their respective hybrid “networks”.

The adoption simultaneously of such supply chain liability rules – along with the proposed countervailing third party auditing arrangements – could proceed within the confines of the private law of contract “[B]y means of inserting additional default rules or compulsory terms”, as in the form of compulsory *standardised* terms of the type already utilised (for private commercial interest) in mass ‘adhesion’ contracts and in the standard form contracts currently imposed by effective business controllers. “Public regulation also has the potential to impose compulsory standardised terms in market sectors, or to provide pre-contractual clearance of standard forms”<sup>46</sup> – including those sectors already characterised by the current active involvement of the effective business controllers of hybrid “networks” and their active utilisation of precisely such standard forms. The public regulatory imposition of this type of compulsory standardised terms could also accrue the additional benefit of further enhancing regulatory effectiveness by virtue of the recognized comparative advantage of public regulation (when compared with private contractual regulation simpliciter) in relation to the formulation of sufficiently specific contractual performance standards.<sup>47</sup>

Indeed, in regard to the specific issue of occupational conditions for those labouring in connection with business “hybrids”, the existence of relatively well developed labour law minimum entitlements would seem to comprehensively solve most outstanding concerns about the prospects for “standard setting”. This latter observation also points to the associated advisability of granting trade unions derivative rights to act as third party monitors of supply chains in relation to their compliance with labour law minima, given the obvious strong vested interest of trade unions in resisting any attempts to evade compliance with those minimum labour legal entitlements.

The following portion of this paper will set out some very recent public regulatory interventions – within three quite different industries – designed precisely to implement the latter recommendations for innovative trade union regulatory roles, and thereby “[C]reate a countervailing labour power to that of the employer” by regulating contracts which are *not* traditional employment relationships through an innovative integration of existing (state and non-state) regulatory approaches within a somewhat novel development of “command and control” regulation mandated by the state.

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46. Collins (1999), above n.17.

47. Collins (1999), *ibid* at 93.

### 3. OPPORTUNITIES FOR INNOVATION IN THE SCOPE OF THE ROLE PLAYED BY TRADE UNIONS AS REGULATORS OF HYBRID BUSINESS ORGANISATIONS (IN RELATION TO THE SUPPLY OF GOODS AND SERVICES)

#### *Innovative Historical Developments in Trade Union Approaches to the Regulatory Oversight of Retail Business Practices Within Australia:(The Supply of Goods):*

Australia has a federal system of government, characterised by a division of legislative powers between the (national) “federal” jurisdiction and the respective (provincial level) “state” jurisdictions. Until very recently, the minimum pay and industrial working conditions for almost all workers in Australia have been set down – by a range of (various federal and state) industrial tribunals – in the form of (respectively federal and state jurisdiction) industrial awards.

Since the mid-1980s trade union and community groups have campaigned for legal mechanisms that establish minimum hours and rates of pay – in addition to reasonable working conditions and OHS and workers’ compensation entitlements – for clothing outworkers. (The term “outworkers” refers to those workers labouring in their own homes to perform work for others.) This pressure led the federal industrial tribunal, in 1987 and 1988, to adopt novel award provisions designed, *inter alia*, to permit regulatory agencies, including the relevant trade union, to *track the contracting process* from the level of principal manufacturers, and fashion houses, down to the industrial outworkers themselves. In addition, this package of award provisions established the legal right of clothing outworkers to receive pay rates and, in general, conditions no less than the legal minimum entitlements of factory-based clothing workers. These important provisions were supplemented by an equally significant federal industrial tribunal decision in 1995 giving regulatory agencies full legal access to contract details of *pricing* at each level of the contracting process. However, unavoidable issues of industrial legal jurisdiction enabled the most significant players in the contracting process – the major retailers – to escape the scope of these new award provisions. Further, these new award developments were isolated to the realm of ‘industrial relations law’, so that the potential advantages of these novel industrial award provisions remained unavailable in relation to the equally pressing concerns about the OHS of clothing outworkers and the lack of their insurance coverage for workers’ compensation. The effective enforcement of OHS provisions and workers’ compensation coverage for outworkers is equally dependent upon the knowledge of regulatory agencies about the *location* of these outworkers and the *conditions* (including payment rates and hours of work) under which they labour. In addition, the past inability of governmental regulatory agencies to provide sufficient resources for enforcement ensured that real compliance with such formal legal provisions remained sporadic at best.

In response to these deficiencies, further trade union and community pressure led in 1995 and 1996 to the adoption of voluntary codes of practice by retailers and manufacturing employers aimed at securing these entitlements for outworkers. Predictably, however, such voluntary schemes tended to place the more ethical retailers at substantial commercial disadvantage, since less ethical retailers who refused to volunteer could consequently benefit commercially from the exploitation of outworkers that more ethical retailers had agreed to forego. Only one major retailer adopted a form of voluntary retailer code that facilitated effective enforcement. The retailer was obliged, by that particular code of practice, to comply with parallel obligations for contractual disclosure and the provision of regular supply lists. This

particular voluntary code of practice also created a specific commercial incentive mechanism for the *effective commercial remedy* of supply chain failures to comply with outworkers' entitlement obligations. The retailer was obliged to designate a specific corporate officer to whom the relevant signatory trade union could bring specific instances of outworker exploitation, and was also obliged to respond to proven instances of outworker exploitation by means of a range of commercial disciplinary measures aimed at the relevant supplier of clothing. In particular, this innovative voluntary code of practice obliged the signatory major retailer to consider discipline of the relevant supplier by terminating the contract for supply between that retailer and that supplier, and by refusing to enter into further contracts of supply, if the supplier failed to remedy the disclosed breaches of the outworker legal protections.

A range of integrated proposals was put forward by the author in June 1999 to deal with the remaining deficiencies in the legal system of protection for outworkers in general (as opposed to merely clothing outworkers in particular).<sup>48</sup> The first Australian state jurisdiction to act in response to this set of proposals has been New South Wales, where the enactment of both the *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW) and more recent provisions such as the addition of the new s 175B into the *Workers' Compensation Act 1987* (NSW) have together combined to achieve the three following key outcomes.

First, they impose liability almost throughout the entire supply chain (for example, upon principal manufacturers) for outworker entitlements, and create a highly innovative recovery mechanism for outworkers. Under this recovery mechanism, clothing outworkers are entitled to serve a claim for unpaid industrial entitlements upon any entrepreneur throughout the relevant clothing supply chain up to, and including, the level of the principal manufacturers themselves. The form of the claim is cheap and simple. Once served with such a claim, the principal clothing manufacturer effectively experiences a reversal of the traditional onus of proof for civil law recovery. In other words, unless the principal manufacturer could prove that the outworker serving the claim had not done the work or that the claim calculation was erroneous, the principal manufacturer served with such a claim would thereupon be obliged to pay that claim within a relatively short fixed period of time, regardless of how many entrepreneurial parties had intervened in the succession of contractual arrangements between the principal manufacturer and the clothing outworker who ended up performing the work.

Second, under s175B of the NSW *Workers' Compensation Act*, obligations have been imposed upon principals generally (that is, not only in the clothing industry) either fully and accurately to disclose full details of supply chain subcontracting or else bear the liability for any unpaid workers' compensation insurance premiums throughout that supply chain. This provision contains elements that are very similar to the novel statutory recovery mechanism contained in the newly adopted ss 127A to 127G created by schedule 2 of the *Industrial Relations (Ethical Clothing Trades) Act 2001* (NSW).

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48. Nossar (June 1999), above n.31 at 1 to 28.

Third, in relation to major retailer obligations, these statutory provisions created a tripartite stakeholder consultation process with a fixed timetable triggering the potential exercise of ministerial statutory powers unilaterally to proclaim mandatory retailer obligations. These powers were not confined to consideration of industrial legal entitlements alone: rather, any such mandatory retailer obligations were to be predicated on the delivery of all relevant employment protections for outworkers, both in relation to industrial legal entitlements and also explicitly in relation both to OHS obligations and also access to workers' compensation insurance.

Even before the expiry of the timetable for this tripartite process, the dynamic created by these statutory provisions (and most notably by the limited timetable prior to potential proclamation of mandatory retailer obligations) rapidly produced, in the private sector, a new improved voluntary retailer code of practice – now promptly embraced by most major Australian retailers – and also a separate, new corporate wear (and sportsgoods) code of practice, along with separate auditing arrangements authorised as an Australian state government tender requirement by a public sector effective business controller.

Following protracted negotiations conducted by the author and others, high profile transnational clothing firms such Nike and Reebok and (more locally in Australia) R.M. Williams have become signatories to this new Australian corporate wear and sportsgoods code of practice. This new corporate wear and sportsgoods regime entrenches targeted compliance auditing and enforcement measures by requiring the effective business controllers of the relevant clothing supply chains to contractually secure both identification of all sites of production (without exception) and also access by the relevant trade union to those sites, without any requirement for prior notification of inspections. These contractually secured measures are underpinned by the potential loss of supply contracts for any suppliers who attempt to avoid compliance. (The author had first proposed this package of targeted compliance auditing and enforcement measures to an agency of the New South Wales government, during the government's review of implementation guidelines concerning government purchase of textile, clothing and footwear products.)

The tripartite stakeholder consultation process in New South Wales culminated in a decision to recommend that the relevant minister unilaterally proclaim mandatory retailer obligations which specifically incorporate targeted compliance auditing and enforcement measures of the type to be found in the new corporate wear and sportsgoods code of practice. It should be noted that this recommendation was supported by five out of the (total of) six stakeholder organisations represented in this tripartite consultation process. More specifically, this recommendation was supported by the stakeholder organisations representing both the retailers and a segment of the manufacturing employers.<sup>49</sup>

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49. Nossar, Johnstone and Quinlan (2004), above n.24 at 149 to 150 and at 155 to 158. The text of this can be found at <<http://www.industrialrelations.nsw.gov.au/resources/ethicalclothingtcouncil.pdf>> under the title 'New South Wales Ethical Clothing Trades Council (Twelve Month Report) 2003' as 'Recommendation One' from pages 36 to 52. The author of this paper served in the capacity of stakeholder organisation representative on the New South Wales Ethical Clothing Trades Council throughout its deliberations, in the course of which he designed and drafted the relevant Council recommendation.

This recommendation has now been effectively adopted by the relevant ministers and the resulting mandatory retailer obligations were proclaimed by order in gazette as a delegated legislative instrument entitled the “*Ethical Clothing Trades Extended Responsibility Scheme*”. This legislative instrument took effect in New South Wales on 1<sup>st</sup> July 2005. (See Annexure A.) Attention is particularly drawn the legal obligations owed by retailers to the relevant trade union by virtue of clauses 11, 12(3), 12(4), and 20 – especially 20(8).

It should be noted that these provisions together empower the relevant trade union to exercise effective regulatory oversight over the entire clothing supply chain in relation to compliance with labour law minimum standards. While these provisions are legislated by an instrument pursuant to New South Wales state industrial relations legislative capacity, it should be noted the resulting trade union regulatory powers permit the relevant trade union to effect compliance with workers compensation (as well as occupational health and safety) legal obligations – in addition to compliance with industrial relations legal obligations.<sup>50</sup>

More specifically, these provisions together require all clothing retailers to **proactively** inform the relevant trade union about all parties with whom the retailers contract for the supply of clothing products. In addition, these provisions also empower the relevant trade union to have complete access to all details of the consequent contracts. In summary, these provisions together now empower the relevant trade union to track down all sites of clothing production throughout Australia, even though (at the time of writing) these provisions have only been legislatively adopted in just one Australian State jurisdiction so far – namely, the state jurisdiction of New South Wales.

The effective cross-jurisdictional consequences of this novel type of public regulatory instrument are particularly evident in clause 19, Obligations of suppliers who carry on business outside the state. This particular provision interacts with the provisions in clause 5, Definitions, which define “agreement” and “lawful entitlements” (by inter alia reference to “other legislation”) and “manufacture” and “manufactured”, as well as defining the key terms “relevant industrial instrument” and “retailer” and “supply” and “transfer”. Together with clause 19, these definitional provisions represent the practical embodiment of the potential inherent within “contractually entrenched forms of regulation” (C.E.F.O.R.) to overcome the regulatory obstacle of geographical jurisdiction.

Attention is also drawn to the contractually entrenched form of regulation (C.E.F.O.R.) legislated in Schedule 2 (Part B) as the compulsory standard contractual provision entitled “UNDERTAKING AS TO THE EMPLOYMENT OF OUTWORKERS UNDER RELEVANT AWARD”. (The innovative regulatory scheme described above has now been adopted by other Australian State jurisdictions, where the scope of the relevant legislative obligations has now been broadened to potentially encompass all domestic Australian supply chains involved in the production of goods or the performance of clerical work – and not merely those supply chains in the textile clothing and footwear industries. Particularly noteworthy

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50. See the definition of “lawful entitlements” – in particular, the reference to “other legislation” – within Clause 5, Definitions, of the New South Wales *Ethical Clothing Trades Extended Responsibility Scheme*

are the recently amended provisions of the South Australian Fair Work Act 1994 – especially in the amendments to sections 4 and 5 and the addition of the newly enacted Chapter 3, Part 3A, Outworkers.)<sup>51</sup>

This legislative instrument was one of a number in relation to whose design, negotiation and final drafting the author of this paper played a leading role. Two other such instruments are discussed below.

***Related Developments within Industrial Relations Law: (The Supply of Services):***

While the supply chain regulatory model discussed above arose first in the Australian textile clothing and footwear (TCF) industries, key features of this innovative regulatory regime have begun to appear in other Australian industrial sectors also characterised by supply chain structures.

For example, major financial institutions have contracted out the transportation of cash and valuables to high profile security firms which have in turn further subcontracted out the same work to small (often under resourced) security businesses. In recent years, New South Wales witnessed a spate of armed robberies resulting in the tragic killing of cash transit security guards, whose occupational health and safety had seemingly been ignored by each successive business in the relevant supply chains.

Campaigning around this issue by the relevant trade union led the NSW state industrial tribunal to grant an interim award covering this hazardous work, an industrial instrument later made permanent in 2002 as the “Transport Industry – Cash - In – Transit (State) Award” in New South Wales. **(See Annexure B.)** Attention is particularly drawn to clause 27, Contract Work – Chain of Responsibility, with specific focus upon the disclosure obligations owed by supply chain principal contractors to the relevant trade union by virtue of clause 27.1. This entire clause is an adaptation of parallel industrial award provisions contained in the relevant New South Wales state clothing award.<sup>52</sup> In this respect, further attention is drawn to the innovative principal contractor liability rule contained within subclause 27.8 – which represents an adaptation of the novel “second person clause” which originated in the respective Federal and New South Wales state clothing awards.

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51. Rawling, M. “A Generic Model of Regulating Supply Chain Outsourcing” in Arup et al. (op. cit.) at 520 ET SEQ. This particular scholarly work provides perhaps the most detailed analysis of the key relevant historical developments throughout Australia concerning the legislative regulation of domestic Australian supply chains. For more recent developments within Australia, see Rawling M. “The Regulation of Outwork and the Federal Takeover of Labour Law” (2007) 20 *Australian Journal of Labour Law* 189.

52. Nossar (June 1999), above n.31 at 10 to 11 and at 14 to 18.

***Further Developments in the Field of Occupational Health and Safety Law:  
(The Supply of Services):***

The recurring tragedy of road deaths involving trucks engaged in long haul road freight transportation led to the establishment in April 2000 of an inquiry by the NSW Motor Accidents Authority. The inquiry, chaired by Professor Michael Quinlan, gathered testimony and expert evidence, notably from Professor Richard Johnstone.

The inquiry also investigated the role played by the industry's supply chain structure in permitting such a gruesome outcome.

In its final report<sup>53</sup>, the inquiry recommended an impressive range of remedial measures, including the imposition of relevant legal obligations throughout transport supply chains. During the subsequent period of consideration for the inquiry's recommendations, the author of this paper put forward a range of specific proposals for the design and content of relevant legal obligations to apply to major retailer consignors and consignees which acted as effective business controllers.<sup>54</sup>

Consequently, the "*Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005*" in New South Wales was proclaimed on 10<sup>th</sup> June 2005, to commence on 1<sup>st</sup> March 2006. (See **Annexure C.**)

Attention is particularly drawn to the retailer legal obligations contained in the clauses 81B(3), Duty to assess and manage fatigue of drivers and 81C, Duty of consignors and consignees to make inquiries as to likely fatigue of drivers and 81E, Application of Part to consignors and consignees and their agents. Attention is also drawn to retailer obligations to provide full details of contracts to the relevant trade unions by virtue of clause 81F, Records -- in particular, sub clauses 81F(1) (b) and 81F(2) and 81F(5) and 81F(6).

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53. Quinlan, M. *Report of Inquiry into Safety in the Long Haul Trucking Industry* (Motor Accidents Authority of New South Wales, Sydney, 2001) available at [http://www.maa.nsw.gov.au/default.aspx?Menu\\_ID=189](http://www.maa.nsw.gov.au/default.aspx?Menu_ID=189).

54. Nossar (November 2004), above n.32.

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#### **4. IMPLICATIONS FOR REGULATION BY STATE (AND PROVINCIAL) GOVERNMENTS WITHIN FEDERAL SYSTEMS:**

The preceding discussion and the instruments discussed provide theoretical and practical justification for effective labour law regulation of business “hybrids”. In particular, the legislative instruments discussed demonstrate how this particular approach can potentially overcome regulatory obstacles such as geographical jurisdiction in a manner which simultaneously offers the potential to transcend the previously restrictive approach to regulation theory and its central concepts – most notably, the conceptual construct of the “regulatory trilemma”.

In so doing, the preceding discussion and the instruments discussed in this paper illustrate precisely why “[T]he actual contracting arrangements imposed by [effective business controllers of hybrid “networks”] should be the locus of more active public regulatory intervention”.<sup>55</sup>

This paper has sought to describe a variety of practical adaptations of the regulatory strategy developed by the author of this paper over the preceding half decade or so – a strategic approach described elsewhere as “supply chain regulation”.<sup>56</sup> Perhaps the most intriguing prospect for immediate further adaptation (and adoption) of this approach lies in the obvious scope for extension of this “supply chain regulation” model into the fair trading jurisdiction of Australian state legislatures.

In this regard, there seems little doubt about the legislative capacity of these state legislatures to impose valid disclosure requirements upon all retailers operating within their respective geographical jurisdictions. The existing obligations for retailer disclosure to consumers can be readily confirmed by any shopper while surveying the wide range of label details (concerning such matters as net weights as well as ingredients and locations of manufacture) which proliferate across the face of modern retail packaging.

There seems no obvious impediment preventing the relatively straightforward extension of this oft repeated, everyday exercise of legislative capacity so as to further require additional retailer disclosure – both in relation to the precise location at which the relevant work (either of manufacture or service provision) has been performed in the course of supplying the retail article concerned and also in relation to certain specified aspects of the actual conditions under which that same work was performed, aspects such as payments made and working time expended.

In other words, retailers across the board can already be compelled to disclose (upon retail packaging) a host of details about the articles on sale such as ingredients of manufacture and country of production, with clear consequential impacts upon the behaviour of those supplying the retailers-even where that supplier behaviour (such as product packaging) occurs beyond the traditional geographical jurisdiction of the relevant Australian legislature (and perhaps outside Australia altogether).

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55. Nossar, Johnstone and Quinlan (2004), *ibid* at 152.

56. Rawling (2006), above n.51.

There seems no obvious obstacle hindering the extension of this existing Australian state legislative capacity in order to simply require additional retailer disclosure concerning particular key aspects of manufacture (or supply), such disclosure to be made to specified regulatory agencies, with the corollary further requirements that retailer supplier contracts be compulsorily structured both to ensure provision of the obligatory information – and even to ensure third party auditing by specified relevant regulatory authorities, regardless of the ultimate location of sites of manufacture (or supply).

The adoption of such retailer requirements for compulsory contractual structuring in order to ensure disclosure – and auditing – has been described elsewhere as “regime change by way of C.E.F.O.R.”.<sup>57</sup> The legislative adoption of such “regime change by way of C.E.F.O.R.” (by the exercise of fair trading jurisdictional capacity) would necessarily prevent access to the relevant Australian retail markets by any supply chain which failed to comply with the (newly adopted) disclosure (and contract structuring) obligations, thereby rendering irrelevant any speculative scholarly digressions concerning the relative commercial power of Australian retailer effective business controllers in comparison with their counterparts in (say) North America or Europe (or in relation to supply chains for retail products other than garments).

The preceding discussion clearly suggests that state jurisdictions can exercise their existing regulatory powers in order to effect extraterritorial – indeed, potentially supranational – regulatory outcomes. There seems to be no general reason in principle which might prevent the same type of regulatory powers being similarly exercised by state (or provincial) authorities within other Federal systems of government around the world today.

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57. Nossar (2005), above n.39.

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## **5. CONCLUDING SUGGESTIONS: A PRACTICAL ILLUSTRATION OF SUPRANATIONAL REGULATORY INSTRUMENTS:**

To sum up: there seems to be no obvious impediment which might prevent more generalised adaptation of the type of regulatory measures and instruments discussed above – specifically, adaptation in order to achieve supranational regulatory outcomes. The cross – jurisdictional regulation of contract networks (such as supply chains) already falls within the existing regulatory powers of governments at all levels: national governments; state (or provincial) governments; and even potentially local (or municipal) governments.

In essence, the power to effect such cross – jurisdictional regulation rests upon a simple glaring reality: governments at all levels currently possess a variety of legal powers to regulate the supply contracting practices of business entities which in any way operate within (or through) the respective geographical jurisdictions of those governments. In other words, governments at all levels currently possess sufficient intra – jurisdictional power in order to effect cross – jurisdictional regulatory outcomes. That cross – jurisdictional use of intra – jurisdictional public regulatory power clearly extends to mandating a wide range of disclosures to be made by any business entity which is characterised by the requisite jurisdictional connection. Furthermore, governments already have the legal power to legislatively require such a business entity to forego involvement with any relevant contract network unless mandated disclosure requirements have been contractually imposed throughout the relevant contract network.

Finally, in conclusion, it is important to note that public regulatory authorities can impose such regulation of contract networks either across the board by legislative fiat or (alternatively) upon the suppliers (to government) of goods (or services) by way of standardised government contracts.

The following proposed “International Ethical Clothing Supply Deed” has been designed by the author as an illustration of a generic type of binding legal arrangement which can be entered into between a regulatory authority (such as a trade union or other NGO or a governmental labour inspectorate) on the one hand and (on the other hand) an effective business controller of a transnational supply chain.

Indeed, the adoption of this type of proposed arrangement might well be mandated by law – perhaps within a legislative framework similar to that found in Annexure A. This type of mandatory legal obligations could equally be applied to all retailers of the relevant goods or to all business purchasers of the relevant services. (In regard to such services, a legislative framework similar to that found in Annexures B or C might serve as a particularly appropriate alternative template for the form of mandatory legal obligations, especially if such a legislative framework adopted mandatory obligations in relation to business supply contracting practices of the type embodied in clause 27 – and especially 27.8 – of Annexure B.) The author invites readers to comment or suggest improvements in relation to the following proposed legal instrument (and the manner of its utilisation):

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## INTERNATIONAL ETHICAL CLOTHING SUPPLY DEED

### **PARTIES**

**Union** [Full Name]  
of [Full Address]

("Union")

**AND PRINCIPAL BUSINESS** [Full Name]  
of [Full Address]

("Principal")

### **RECITALS**

- A For the benefit of its members and other workers in the clothing industry, the Union wishes to ensure that Employees of and Contractors to Suppliers are engaged upon terms and conditions no less favourable than those prescribed by the minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply.
- B The Principal endorses the objective of the Union set out in Recital A and has agreed to assist the Union to achieve this objective by undertaking the obligations contained in this Deed.
- C The Union has agreed to assist the Principal by providing it regularly with information and advice relating to the minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply and their operation.
- D The Union has agreed to publicly acknowledge the Principal as a signatory to this Deed.
- E The parties recognise and respect the right of all Contractors, Employees and Outworkers to join a union and to also organise and bargain collectively. The parties also state that the use of any form of forced or child labour will not be tolerated and that employees have a right to work in an environment free of discrimination, harassment and victimisation.
- F The parties note that the matters set out in Recital E flow from the ILO Standards and Fundamental principles and rights at work. These principles and rights refer to how these standards are applied under the law in the relevant country.
- G The parties acknowledge that standards in the relevant country are intended to provide for fair minimum standards for those performing work in the context of living standards generally prevailing in the community in the relevant country. The parties also acknowledge that employees must be paid at least the minimum applicable wage set out in the applicable minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply. Those performing work must also receive all entitlements due to them under the applicable minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply or under any relevant legislation.

- H The parties make an in-principle commitment that purchasing practices should enable and not hinder the ability of Suppliers to meet the standards set out in this Deed.
- I The parties agree that any mechanism in this Deed will not be used in any way as a punitive measure against an individual or group of workers who may raise issues of concern about their wages or work conditions.

## OPERATIVE PROVISIONS

### 1 DEFINITIONS

In this Deed including the Recitals:

**"Contract"** means a contract between the Principal and a Supplier for the supply or manufacture of Goods which have been manufactured in the relevant country and includes the manufacture of all of the Principal's products in the relevant country for resale by the Principal.

**"Contractor"** means a person, company or organisation directly or indirectly engaged by the Supplier to assist the Supplier to manufacture Goods or part of Goods for resale by the Principal.

**"Employee"** means a person employed by a Supplier and includes any person whose usual occupation is that of an employee.

**"Exploitation"** occurs where a Supplier breaches the minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply or an applicable award or industrial instrument of an industrial tribunal or legislation in respect of the engagement in the relevant country of Outworkers or Contractors who perform work outside a factory or workshop.

**"Federal Award in Australia"** means the Clothing Trades Award 1999 as amended from time to time, or any award replacing that Award.

**"Goods"** means:

- (a) the whole or any part of any male or female garment or of any article of wearing apparel including articles of neckwear and headwear;
- (b) handkerchief, serviette, pillowslip, pillowsham, sheets, tablecloth, towel, quilt, apron, mosquito net, bed valance, or bed curtain;
- (c) ornamentations made of textiles, felts or similar fabrics, and artificial flowers; and
- (d) footwear items,
- (e) but does not include imported component parts of the Goods referred to in (a) to (c) of this definition which include, but are not limited to, buttons, zips, tags and like items.

**"Manufacture in the relevant country"** means the process of manufacturing products in the relevant country or the process of altering or working on products in the relevant country (whether such products are imported into the relevant country or produced in the relevant country) by way of any process currently covered by either the minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing

products or in relation to contracting for such supply or any other applicable industrial instrument in the relevant country.

**“Non-compliance”** occurs where a Supplier breaches the minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply or an applicable award or industrial instrument of an industrial tribunal or legislation in respect of the engagement of Contractors who perform work in a factory or workshop or the employment of its Employees or the engagement of Outworkers.

**“Outworker”** means a person who performs work (including making, constructing or finishing) in relation to the supply or manufacture of Goods or part of Goods ultimately on behalf of the Supplier outside the Supplier’s workshop or factory under a contract or arrangement between that person and the Supplier or that person and any other party involved in the supply or manufacture of Goods or part of Goods.

**“Persons properly authorised in writing by the Union”** means those persons employed or otherwise authorised by the Union who have been nominated by the National Secretary of the Union for the purposes of clauses 3.3 and 4.7 of this Deed.

**“Records”** means the contracts referred to in clause 3.1 and the records required to be made under clause 3.2.

**“Supplier”** means a person, company or organisation in The relevant country which agrees with the Principal under a Contract to manufacture or arrange for the manufacture in the relevant country of Goods or part of Goods for resale by the Principal.

**“The relevant country”** means

.....

**“Union”** means

.....

## 2 TERM

This Deed shall operate from the date it is signed by the parties and continue to operate for a period of three years from the date of signing unless the term of this Deed is extended by mutual agreement of the parties or unless this Deed is terminated under clause 8.

The parties agree to commence negotiations about a successor to this Deed no later than three months prior to the expiry term of this Deed.

## 3 RECORDS

3.1 The Principal must make and retain for not less than 6 years records of all Contracts entered into with Suppliers except the sample garment referred to in clause 3.2(e) which must be kept for 12 months. The obligation on the Principal under this clause operates

from the date this Deed is signed by the parties. In relation to such Records as have been maintained prior to the signing of this Deed, the Principal must retain those prior existing Records for a period of three years from the date this Deed is signed by the parties and make these Records available to the Union in accordance with clause 3.3 of this Deed. This clause does not diminish any existing or future minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply and/or legislative requirements and/or other obligations to keep and maintain Records.

3.2 The Records must contain at least the following:

- (a) the name of the Supplier;
- (b) the address of the Supplier;
- (c) the date of the Contract;
- (d) the date for the delivery of the Goods to be made under the Contract;
- (e) either the minute sewing time for that garment in accordance with the agreed operation of the General Sewing Database (as agreed between the Principal and the Union) or both a sample of the garment and a description of the nature of the work to be performed and the minute sewing time allowed for each item of Goods to be made;
- (f) a drawing and size specification of the Goods to be made;
- (g) the number of Goods to be made;
- (h) the price to be paid for each item of Goods to be made;
- (i) the total price to be paid for the Goods under the Contract; and
- (j) a copy of the standard clause in the Contract requiring disclosure by each succeeding party (as required by Clause 6.7 of this Deed).

3.3 The Principal must:

- (a) make the Records available to a person properly authorised in writing by the Union, after that person has given reasonable notice to the Principal of a request for access to the Records;
- (b) allow the person properly authorised in writing by the Union to make appropriate copies of the Records as reasonably

required by the Union and provide copies of the Records copied to the relevant National Secretary of the Union; and

- (c) give a copy of the Records to the Supplier upon entering into a Contract or purchase order.

#### **4 OBLIGATIONS OF THE PRINCIPAL**

- 4.1 The Principal must send to the relevant National Secretary of the Union, the name and address of each Supplier contained in the Record in the following manner:
  - (a) a full list of the Principal's current Suppliers within 10 business days of the date on which this Deed is signed by the parties; and
  - (b) a full list of the Principal's Suppliers for the preceding six month period within 10 business days of the last working day of February and August in each year.
- 4.2 The Principal agrees to inform all Suppliers of the existence of this Deed by taking the following action:
  - (a) the Principal will forward a copy of this Deed and a document setting out a brief explanation of the terms of this Deed to all Suppliers immediately following the Principal signing this Deed;
  - (b) the Principal will include a copy of this Deed and a document setting out a brief explanation of the terms of this Deed in its "Information For New Suppliers" package which is provided to all new Suppliers to the Principal; and
  - (c) the Principal agrees to advise all Suppliers that, as part of the implementation of this Deed, persons properly authorised in writing by the Union will be making regular visits to those establishments operated by the Supplier.
- 4.3 The Principal shall require each Supplier with whom it enters into a Contract to:
  - (a) keep appropriate records of where and with whom the Supplier may further contract to perform the work under the Contract between the Principal and the Supplier;
  - (b) retain a copy of the Records provided to it by the Principal under clause 3.3(c) of this Deed for a period of not less than six years. The obligation on the Supplier under this clause operates from the date this Deed is signed by the parties;



- (c) make a copy of the Records available to the Union within 5 business days of a request by the Union to the Supplier for production being made;
- (d) allow the Union to make copies of the Records retained by the Supplier;
- (e) inform the Union about the address of each location where Goods are being manufactured and the identity of the parties responsible for the manufacture of the Goods at each of those locations; and
- (f) require the Supplier to be registered under any minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply where the Contract between the Principal and the Supplier does not prohibit the Supplier from further contracting the performance of the work under the Contract to another person, company or organisation.

4.4 The Principal agrees to appoint a liaison officer for the purpose of handling all enquiries or allegations validly raised by the Union for the purposes of this Deed.

4.5 The name of the liaison officer (or officers if more than one) appointed by the Principal shall be notified to the Union on the signing of this Deed. Any changes to the liaison officer must be advised to the Union by the Principal.

4.6 If the Principal becomes aware that a Supplier has been or may be, or is using the services of Contractors or Outworkers for the manufacture of the Principal's Goods in the relevant country who have been or may be engaging in conduct that amounts to Exploitation or Non-compliance, then the Principal agrees to immediately inform the Union of this fact.

4.7

- (a) The Principal shall not enter into any Contract with a Supplier unless the Supplier agrees in writing to permit persons properly authorised in writing by the Union to:
  - (i) after providing not less than 24 hours notice to the Supplier (or less if agreed with the Principal and the Supplier), visit any establishment operated by the Supplier (or any other establishment where Goods are being manufactured or otherwise worked on) at any time during normal working hours. Persons properly

authorised by the Union may visit a Supplier's premises without notice if the Union reasonably considers that the requirement to give notice would defeat the purpose of the visit. If a person properly authorised by the Union visits a Supplier's premises without notice, he or she must immediately notify the Supplier of his or her presence as soon as reasonably practicable after entering the premises;

- (ii) inspect any Records between the Supplier and the Principal, together with any records at those establishments that are relevant to the manufacture (or supply or sale) under a Contract of Goods or part of Goods for resale by the Principal. Persons properly authorised by the Union may also inspect at those establishments time and wage records and work records (as defined in clause 46.2 of the Federal Award in Australia ) and the relevant documents that evidence superannuation contributions being made on behalf of an employee and also the currency of workers' compensation insurance (including, but not restricted to, certificates of currency for workers compensation insurance);
  - (iii) undertake an inspection at those establishments in order to determine compliance with the minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply and any other applicable industrial instrument and compliance with any relevant occupational health and safety legislation;
  - (iv) interview, without causing unreasonable interruption to the production process, personnel who are present at those establishments in relation to the manufacture (or supply or sale) of any such Goods; and
  - (v) interview personnel (not present at those establishments) who are in any way involved in the manufacture (or supply or sale) of any such Goods, whether such personnel are described as Outworkers or Contractors or otherwise.
- (b) The Principal will forward to the Union a clear photocopy of the agreement in writing by the Supplier.

- (c) The Principal will forward any such photocopy to the Union as soon as possible after the Principal has received the original agreement in writing (or at least a clear photocopy of that agreement) from the Supplier.
- (d) Notwithstanding the provisions of clause 4.7(a)(iii) of this Deed, the Principal will continue to monitor its Suppliers, which monitoring will be conducted by the Principal's internal and independent external monitors on a periodic basis.
- (e) The Principal will not publish or otherwise distribute to any third party any copy of any pro-forma inspection sheets provided to the Principal by the Union in accordance with clause 5(h) of this Deed.

4.8 The Principal will comply with all applicable provisions of the minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply and any other applicable industrial instruments as long as the Principal remains directly involved in the manufacture or supply of Goods (or part of Goods).

## **5 OBLIGATIONS OF THE UNION**

The Union must:

- (a) provide the Principal with a current copy of the Federal Award in Australia and any minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply and promptly provide the Principal with any variations to any minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply;
- (b) provide reasonable assistance to the Principal in interpreting the relevant provisions of the Federal Award in Australia or any relevant minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply;
- (c) promptly inform the Principal in writing of any Exploitation or suspected Exploitation or of any Non-compliance or suspected Non-compliance of which it becomes aware and provide the Principal with any material it has which supports the allegation;
- (d) upon request promptly meet with the Principal to consider any matter arising out of this Deed;

- (e) keep confidential the copy Records made available to it by the Principal and/or the Supplier and not disclose their contents to any other person, company or organisation except to the Supplier specified in the Records or as required by law or in enforcement proceedings in a court or tribunal or in industrial dispute resolution proceedings in an industrial tribunal;
- (f) promptly inform the Principal of any issues or concerns the Union has concerning the Principal's or Supplier's compliance with this Deed or any related matter or any issues or concerns the Union has concerning the Principal's or a Supplier's conduct (or alleged conduct) that may amount to Exploitation or Non-compliance and afford the Principal and/or Supplier an opportunity to address the issue or concern raised by the Union prior to the Union informing or discussing the issue with a third party. The Principal and/or Supplier has 10 business days (or a longer period as agreed between the parties) from the date it receives notice of the Union's issues and concerns to address these issues or concerns. The obligation under this clause does not apply where the issue or concern relates to a bona fide occupational health and safety issue or other legal obligation, the discovery of which requires immediate rectification or notification;
- (g) report any concerns the Union may have relating to a Supplier's compliance with obligations under relevant occupational health and safety legislation to the proper authorities in each relevant country if the Union is not satisfied that its concerns have been addressed after the issue has been raised with the Principal under clause 5(f) of this Deed;
- (h) as part of the inspection procedures set out in clause 10 of this Deed and in Schedule A to this Deed, record in writing on an agreed pro-forma inspection sheet (that sets out the Supplier's compliance obligations under the relevant minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply or industrial instrument of an industrial tribunal or legislation) any concerns the Union have after conducting an inspection of a Supplier's premises and promptly provide a copy of the completed pro-forma inspection sheet to the Principal; and
- (i) publicly acknowledge the Principal as a signatory to this Deed when the Principal becomes a signatory and for the period while the Principal observes the terms and conditions of this Deed.

## **6 CONDUCT BETWEEN PRINCIPAL AND SUPPLIER/S**

- 6.1 If the Union has notified the Principal that it believes a Supplier is engaging in Exploitation or Non-compliance, then the Principal agrees to immediately investigate the claims made by the Union and further agrees that it will within 10 business days (or such other

period of time as is mutually agreed) of receipt of the notice advise the Union as follows:

- (a) that the Principal believes that Exploitation or Non-compliance has occurred;
- (b) that the Principal believes that neither Exploitation nor Non-compliance has occurred; or
- (c) that the Principal has not been provided with sufficient information to formulate a belief as to whether or not Exploitation or Non-compliance has occurred, and in such event, the Principal must request such further evidence as is reasonable from the Union to enable a belief to be formulated.

6.2 If the Principal believes that Exploitation or Non-compliance by a Supplier has occurred, the Principal agrees that it will take all action reasonably required by the Union to remedy the Exploitation or Non-compliance or achieve such other outcome acceptable to both parties ("Agreed Outcome") within not more than 10 business days (or such other period of time as is mutually agreed) of that requirement by the Union.

6.3 If a Supplier fails to:

- (a) comply with a requirement of the Principal to remedy the Exploitation or Non-compliance or submit to an Agreed Outcome; or
- (b) retain a copy of the Records for not less than six years (which obligation operates from the date this Deed is signed by the parties); or
- (c) make a copy of the Records available to the Union within 5 business days of a request (to the Supplier) for production being made by the Union; or
- (d) allow the Union to make copies of the Records retained by the Supplier; or
- (e) inform the Union about the address of each location where Goods are being manufactured and the identity of the parties responsible for the manufacture of the Goods at each of those locations; or
- (f) allow persons properly authorised in writing by the Union to enter and inspect premises and records and to interview personnel in accordance with the agreement in writing

between the Principal and the Supplier under clause 4.7 of this Deed,

the Principal must:

- (g) if the Principal becomes aware that a Supplier has not complied with the matters set out in clause 4.3(b), (c), (d), (e) or (f) of this Deed immediately inform the Union about the specific nature and dates of the failure to comply and the identity of the Supplier concerned and what action the Principal will be taking in light of the Supplier's failure to comply (including whether the Principal will elect to terminate the Contract with the Supplier concerned and, if so, the specific date of any such termination);
- (h) terminate the relevant Contract in a manner consistent with its terms and conditions or implement an alternative remedy following discussions with the Union; or
- (i) not enter into any further Contracts with that Supplier or extend the period of operation of an existing Contract with that Supplier until the Principal and the Union agree that the Exploitation or Non-compliance has been remedied unless, following discussions between the parties to this Deed, it is reasonable for the Principal to enter into further Contracts with the Supplier.

- 6.4 The Principal will ensure that the ability of the Principal to terminate the relevant Contract in circumstances where a Supplier has not complied with the matters set out in clauses 4.3(b), (c), (d), (e) or (f) of this Deed is included as a term in any new Contract entered into between the Principal and a Supplier. The Principal will also request Suppliers with current Contracts entered into before the signing of this Deed to agree to such an amendment and, if the Supplier agrees, the Principal will amend the Contract to include such a clause.
- 6.5 The Principal will ensure that no current Contract entered into before the signing of this Deed continues to operate or is extended to operate beyond twelve months after the signing of this Deed without the Principal and the Supplier entering into a separate agreement or arrangement to comply with the requirements of new Contracts in accordance with clause 6.4 of this Deed.

Any action to be taken by the Principal in relation to the conduct of the Supplier under clause 6.3 of this Deed shall be reasonable and appropriate, taking into consideration the seriousness of the conduct of the Supplier.

6.6 If the Principal advises the Union that it does not believe that Exploitation or Non-compliance by a Supplier has occurred and the Union continues to assert that Exploitation or Non-compliance has in fact occurred, then this issue must be mediated pursuant to clause 7 of this Deed.

6.7

- (a) Every Contract between the Principal and a Supplier for the supply or manufacture of Goods for resale by the Principal must contain an enforceable (and effective) standard clause which obliges each succeeding party who is involved in the manufacture or purchase of the Goods (or who is involved in giving out orders for the manufacture or purchase of the Goods) to inform the Principal about the number and type of articles (and the wholesale price per article) to be supplied by each succeeding party.
- (b) The Principal will send to the Union a copy of the standard clause referred to in clause 6.7(a) of this Deed.

## 7 **DISPUTE RESOLUTION**

It is the intention of the parties that they should co-operate with the other in good faith to resolve any differences arising under this Deed. In order to achieve this objective the following disputes settlement procedure is agreed:

- (a) the parties must meet to consider any issue if:
  - (i) either party considers the obligations of the other party under this Deed are not being performed, and the other party disagrees;
  - (ii) the Union considers that Exploitation or Non-compliance is occurring and the Principal disagrees; or
  - (iii) the Union believes that the Principal has not acted reasonably in continuing to contract with the Supplier as it may under clauses 6.3, (g), (h) and (i) of this Deed.
- (b) If agreement on the issue referred to in clause 7(a) of this Deed cannot be reached or a party refuses to observe its obligations under this Deed, the parties must enter into mediation with a mediator who has experience in the clothing industry and is agreed by the parties, or failing agreement, as appointed by the Fair Labor Association;
- (c) the parties must each pay half the costs of the mediator; and
- (d) the mediation must be held and completed promptly.

## 8 **TERMINATION**

Either party may terminate this Deed:

- (a) upon not less than 3 months written notice to the other;
- (b) forthwith if the other party refuses to mediate in good faith as detailed in clause 7;

- (c) upon the giving of 5 business days notice where the other party has committed a breach of this Deed and that breach has not been rectified within the 5 business days notice period;
- (d) immediately by the Principal if the Union breaches clause 5(f) of this Deed; or
- (e) immediately by the Union if the Principal breaches either clauses 4.3 or 4.7(a) of this Deed.

## **9 ENTIRE DEED / FUTURE VARIATION**

- 9.1 This Deed represents the entire agreement between the parties on the matters referred to in the Recitals.
- 9.2 The parties agree that, should this Deed prove incapable of achieving its objective, then the parties will negotiate in good faith to effect an appropriate variation to its terms.
- 9.3 This Deed is intended to cover Principals who manufacture or arrange for the manufacture of Goods in the sports and corporate wear industry.
- 9.4 The parties agree to review and, if necessary, amend (by mutual agreement only) this Deed after the first year of this Deed's operation. The parties also agree to review the operation of this Deed when and if any mandatory code of practice for clothing retailers is introduced in the relevant country.

## **10 INSPECTION PROCEDURES**

- 10.1 The agreed principles that will govern the procedures in relation to the conduct of inspections under this Deed are set out in Schedule A to this Deed.





## **SCHEDULE A**

The procedures in relation to the conduct of inspections under this Deed are divided into three areas, being:

- 1 the development of a pro-forma inspection sheet;
- 2 the training of Union personnel to conduct inspections under this Deed; and
- 3 the evaluation of completed inspection sheets.

The principles that will govern these matters are set out below.

### **Pro-forma inspection sheet**

The pro-forma inspection sheet to be developed by the Union shall be divided into two parts with each part subdivided to maintain the distinction between Employee workforces and Contractor/Outworker workforces.

Part A of the inspection sheet will relate to employment law compliance, compliance with the minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply and compliance with this Deed for an Employee workforce and for a Contractor/Outworker workforce.

Part B of the inspection sheet will relate to compliance with relevant state occupational health and safety legislation for an Employee workforce and for a Contractor/Outworker workforce.

The parties recognise that some Principals/Suppliers may have a mixed workforce of Employees, Contractors and Outworkers and any issue that relates specifically to a particular category of worker can be overcome by being dealt with in the section relevant to the worker's category.

The Union should provide a pro-forma inspection sheet to the Principal and following that, the pro-forma inspection sheet would be the standardised inspection sheet for the clothing industry.

### **Training of Union officials**

The objective of a training program is to ensure commonality and consistency of inspections and evaluation in all relevant countries in the clothing industry under this Deed. The Union shall undertake a training program aimed at delivering the consistent application of this Deed by union officials.

Inspection of a Supplier's and/or a Principal's workplace on occupational health and safety issues would be by Union accredited officials.

Such accreditation would be consistent with that offered by WorkCover New South Wales in Australia for union officials.

### **Evaluation of pro-forma inspection sheets**

The Union will nominate a person in each relevant country who has received union accreditation to evaluate the pro-forma inspection sheets in relation to suspected occupational health and safety breaches.

The Union will also nominate a person in each relevant country to evaluate the pro-forma inspection sheets to ensure consistency of inspections and reporting of potential breaches of the Deed, employment law and the minimum legal obligations imposed in the relevant country in relation to the engagement of persons for the performance of work or in relation to the supply of clothing products or in relation to contracting for such supply.

# **ANNEXURE A**

## **N.S.W. ETHICAL CLOTHING TRADES EXTENDED RESPONSIBILITY SCHEME**

**INDUSTRIAL RELATIONS (ETHICAL CLOTHING TRADES) ACT 2001****ORDER UNDER SECTION 12****ETHICAL CLOTHING TRADES EXTENDED RESPONSIBILITY SCHEME**

I, REBA PAIGE MEAGHER, Minister Assisting the Minister for Commerce, in pursuance of section 12 of the *Industrial Relations (Ethical Clothing Trades) Act 2001*, and after considering a report of the Ethical Clothing Trades Council made under section 9 of that Act (Report on implementation of ethical clothing industry practices), do, by this my Order, make the 'Ethical Clothing Trades Extended Responsibility Scheme', contained in the Schedule below, being a code of practice for the purpose of ensuring that outworkers in the clothing trades receive their lawful entitlements, and I specify 1 July 2005 as the date on which the code will take effect.

Dated this Fifteenth day of December, 2004.

REBA PAIGE MEAGHER, M.P.,

Minister Assisting the Minister for Commerce

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**SCHEDULE****ETHICAL CLOTHING TRADES****EXTENDED RESPONSIBILITY SCHEME**

Made under Part 3 of the *Industrial Relations (Ethical Clothing Trades) Act 2001 (NSW)*.

**Part 1 Preliminary****1. Name of code**

This code is the Ethical Clothing Trades Extended Responsibility Scheme.

**2. Commencement**

This code takes effect on 1 July 2005, being the date specified in the Minister's order as published in the Gazette on 17 December 2004.

**3. Objectives**

- (1) This code is intended to ensure outworkers in the clothing trades receive their lawful entitlements under the Clothing Trades (State) Award (as published in the NSW Industrial Gazette on 19 October 2001) and under any other industrial instrument enforceable under the Industrial Relations Act 1996.
- (2) The code will:
  - (a) aid in monitoring the use of outworkers in the manufacture of clothing products for retail sale within New South Wales; and
  - (b) prescribe practices and standards that will aid in compliance with, and prevent avoidance of, the Clothing Trades (State) Award and other industrial instruments with respect to the engagement and performance of work by outworkers in the supply of clothing products for retail sale within New South Wales; and
  - (c) prescribe reporting practices and conduct to prevent the use of legal structures and other commercial arrangements as a means of avoiding the payment of remuneration and other lawful entitlements to outworkers in the clothing trades; and
  - (d) facilitate and complement initiatives by the Government of New South Wales to prevent circumvention and contraventions of laws regarding the employment conditions of outworkers in the clothing trades; and
  - (e) complement and encourage compliance with the Homeworkers Code of Practice by signatories to that code.

**4. Regulatory framework**

- (1) This code is made under Part 3 of the *Industrial Relations (Ethical Clothing Trades) Act 2001*.
- (2) This code is to be read in conjunction with the *Industrial Relations (Ethical Clothing Trades) Act 2001*, the *Industrial Relations Act 1996* and the State Award.

## 5. Definitions

In this code, unless the context suggests otherwise:

**‘agreement’** includes an arrangement or understanding:

- (a) whether formal or informal or partly formal and partly informal; and
- (b) whether written or oral or partly written and partly oral; and
- (c) whether or not having legal or equitable force within the State; and
- (d) whether or not based on legal or equitable rights enforceable within the State,

between a retailer and a supplier for the supply of clothing products, the whole or part of which are to be offered for retail sale within the State whether by the retailer, or another person on consignment or commission of the retailer.

**‘associate’ of a person** means:

- (a) a relative of the person; or
- (b) a partner of the person; or
- (c) a trustee of a trust in which the person is a beneficiary; or
- (d) a beneficiary of a trust in which the person is a trustee; or
- (e) where the associate is a body corporate:
  - (i) an officer of the body; or
  - (ii) a related body corporate; or
  - (iii) an officer of a related body corporate.

**‘assumption’**, in relation to rights or obligations under an agreement, includes any conduct resulting in a person assuming the rights or obligations under an agreement:

- (a) with or without the consent of the retailer or supplier, and
- (b) whether or not the conduct has legal force within the State; and
- (c) whether or not the conduct is based on legal or equitable rights enforceable within the State.

**‘authorised person’** means:

- (a) an officer or employee of the TCFUA who holds an instrument of authority issued by the Industrial Registrar under section 299 of the *Industrial Relations Act 1996*; and
- (b) an inspector.

**‘capacity to control’** includes a power or control:

- (a) that is indirect; and
- (b) that is, or can be, exercised as a result of, by means of, or by the revocation or breach of:
  - (i) a trust; or
  - (ii) a contract; or
  - (iii) a practice; or
  - (iv) any combination of (i), (ii) or (iii);whether or not enforceable within or outside the State; and
- (c) that is, or can be made, subject to restraint or restriction; and
- (d) whether express, informal, exercised alone or jointly with someone else.

**‘charitable organisation’** means any charitable institution, however formed, that is carried on solely for charitable purposes and not for pecuniary profit.

**‘clothing factory’** means any building or place (registered under the *Occupational Health and Safety (Clothing Factory Registration) Regulation 2001* and approved under the *Local Government Act 1993*) in which:

4 or more persons are engaged directly or indirectly in any handicraft or process in or incidental to the making, altering, preparing, ornamenting or finishing of any clothing, fabrics, hats, buttons or related products for trade, sale or gain, or

- (a) mechanical power is used in aid of any handicraft or process in or incidental to the making, altering, preparing, ornamenting or finishing of any clothing, fabrics, hats, buttons or related products for trade, sale or gain.

**‘clothing products’** includes:

- (a) any male or female garment or wearing apparel; and
- (b) any part of a garment or wearing apparel; and
- (c) handkerchiefs, serviettes, pillowslips, pillowshams, sheets, tablecloths, towels, quilts aprons, mosquito nets, bed valances or bed curtains; and
- (d) clothing ornamentations; and
- (e) a permanent label attached to an item referred in paragraphs (a), (b), (c) or (d) indicating any or all of the following:
- (i) a trade mark,
  - (ii) a fashion house design
  - (iii) the country of origin,
  - (iv) the style of garment or wearing apparel,
  - (v) the size of the garment or wearing apparel; or
  - (vi) the washing and ironing instructions,

manufactured in Australia from material of any description, but does not include second hand clothing products.

**‘code’** means the Ethical Clothing Trades Extended Responsibility Scheme.

**‘contractor’** means:

- (a) a contractor who is engaged by a supplier, a continuing entity or transferee; and
- (b) a subcontractor of a contractor referred to in paragraph (a),

for the supply of clothing products for delivery to a retailer.

**‘Director-General’** means the Director-General of the NSW Department of Commerce.

**‘employer’** of an outworker has the same meaning as given under the Act.

**‘entered into’**, in relation to an agreement, includes any act (whether or not legally binding) that results in the renewal or extension of an existing agreement.

**‘holding company’** in relation to a body corporate means a body corporate in which the first body corporate is a subsidiary.

**‘industrial relations legislation’** has the same meaning as it has in the *Industrial Relations Act 1996*.

**‘Inspector’** means a person appointed as an inspector under Part 4 of Chapter 7 of the *Industrial Relations Act 1996* as applied by section 15 of the Act.

**‘lawful entitlements’** of an outworker means the entitlements conferred on the outworker by law, including any entitlements conferred by or under industrial relations legislation, other legislation and the State Award.

**‘manufacture’** or **‘manufactured’**, in relation to clothing products, means the process of:

- (a) manufacturing clothing products in Australia; and
- (b) altering or working on clothing products in Australia (whether the products are imported into Australia or produced in Australia),

which is covered by a relevant industrial instrument.

**‘officer’** of a body corporate means:

- (a) a director or secretary of the body; or
- (b) a person:
  - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part of the business of the body; or
  - (ii) who has the capacity to affect significantly the body's financial standing; or
  - (iii) in accordance with whose instructions or wishes the directors of the body are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the body); or
- (c) a receiver, or receiver and manager, of the property of the corporation; or
- (d) an administrator of the body within the meaning of section 9 of the *Corporations Act 2001*; or
- (e) an administrator of a deed of company arrangement executed by the corporation; or
- (f) a liquidator of the body; or
- (g) a trustee or other person administering a compromise or arrangement made between the body and someone else.

**‘outworker’** means any person (not being the occupier of a factory) who performs outside a factory any work in the clothing trades or in the manufacture of clothing products, whether directly or indirectly, for the occupier of a factory or a trader who sells clothing by wholesale or retail.

**‘record’** includes:

- (a) anything on which there is writing, or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
- (d) a map, plan, drawing or photograph,

that is required to be given or kept under this code.

**‘related body corporate’** has the same meaning as it has under section 50 of the *Corporations Act 2001*.

**‘relative’** means a spouse, parent or more remote lineal ancestor, son, daughter or more remote issue, or brother or sister of the supplier.

**‘relevant award’** includes the State Award and any other industrial instrument made under the *Industrial Relations Act 1996* that regulates the conditions of employment of outworkers and applies to the performance of work by an outworker.

**‘relevant industrial instrument’** includes a relevant award and any federal or interstate award or industrial instrument that regulates the conditions of employment of outworkers and applies to the performance of work by an outworker.

**‘relevant person’** means:

- (a) a supplier; or
- (b) a contractor; or
- (c) a supplier’s continuing entity; or
- (d) a transferee.

**‘retailer’** means:

- (a) any person, wherever domiciled, who sells clothing products by retail within the State; and

(b) any person, wherever domiciled, who:

- (i) is an associate of; and
- (ii) has a commercial relationship with,

a person referred to in paragraph (a) as to the retail sale of clothing products within the State.

**‘second hand clothing products’** means clothing products that:

- (a) have been worn or used; and
- (b) are represented by a retailer as being used products.

**‘subsidiary’**, in relation to a related body corporate, has the same meaning as given under section 46 of the *Corporations Act 2001*.

**‘supplier’** means any person, wherever domiciled, who enters into an agreement with a retailer for the supply of clothing products within the State.

**‘supplier’s continuing entity’ or ‘continuing entity’** means:

- (a) a relative of a supplier; or
- (b) a body corporate in which a supplier is an officer or has the capacity to control; or
- (c) a related body corporate of a body corporate in which a supplier is an officer or has the capacity to control; or
- (d) a trust in which a supplier:
  - (i) is a trustee; or
  - (ii) is beneficiary; or
  - (iii) is able to appoint or remove the trustee; or
  - (iv) has the capacity to control the decision making of the trustee; or
- (e) partnership in which a supplier:
  - (i) is partner; or
  - (ii) has the capacity to control the decision making of the partnership; and
- (f) any combination of (a), (b) (c) (d) or (e) in which a supplier has a capacity to control.

**‘supply’**, means:

- (a) to supply manufactured clothing products; and
- (b) to manufacture clothing products; and
- (c) to arrange the manufacture of clothing products; and
- (d) to arrange the supply of manufactured clothing products; and
- (e) to do any combination of (a), (b), (c) or (d).

**‘TCFUA’** means the Textile Clothing and Footwear Union of Australia, NSW Branch.

**‘the Act’** means the *Industrial Relations (Ethical Clothing Trades) Act 2001*.

**‘the State’** means the State of New South Wales.

**‘the State Award’** means the Clothing Trades (State) Award as published on 19 October 2003 in the NSW Industrial Gazette as subsequently amended.

**‘transfer’** includes arrangement, understanding, plan, proposal, course of action or course of conduct to confer an obligation or right under an agreement:

- (a) whether or not having legal force within or outside the State; and
- (b) whether or not based on legal or equitable rights enforceable within or outside the State



**‘transferee’** means any person to whom a supplier or continuing entity has transferred an obligation or right under an agreement by way of a bona fide commercial arrangement, but does not include a person who is a continuing entity of the supplier.

**‘work’** means:

- (a) hand or machine sewing or fusion of material in the construction of clothing products; and
- (b) hand or machine sewing in the affixing of labels to clothing products,

## **6. Scope and interpretation of the code**

- (1) In the interpretation of a provision of this code, a construction that would promote the objectives underlying the code is to be preferred to a construction that would not promote those objectives.
- (2) In this code a reference to:
  - (a) a person engaging in conduct is to be read as a reference to doing or refusing to do any act, including the making of, or the giving effect to a provision of, an agreement; and
  - (b) a retailer or relevant person entering into an agreement within the State is to be read as a reference to an agreement which is made under, or subject to, the law of NSW; and
  - (c) a retailer or relevant person includes a reference to an employee, agent or officer of a retailer or relevant person.
- (3) To remove doubt regarding the application of this code to an external administrator of a body corporate, a reference to a person includes a reference to an administrator, liquidator, or receiver and manager of a body corporate.
- (4) In the event of an inconsistency between the provisions of this code and the provisions of a relevant industrial instrument, the provisions of the relevant industrial instrument that are applicable to outworkers in the clothing trades will prevail to the extent of the inconsistency.
- (5) An agreement between a retailer and a supplier will be deemed to be for the supply of clothing products for retail sale within the State, where:
  - a) the retailer has outlets for the retail sale of clothing products within the State; or
  - b) the agreement is made within the State or is subject to the law of NSW; or
  - c) the retailer has indicated in records kept under this code that the clothing products are for retail sale within the State; or
  - d) the agreement stipulates that the whole, or part of, the clothing products are to be delivered to an address within the State; or
  - e) the supplier, or contractor of the supplier, manufactures the clothing products within the State; or
  - f) the supplier, or contractor of the supplier, engages outworkers who are domiciled within the State to perform work on the clothing products,

unless the retailer is able to establish a contrary intention.

## **Part 2 Application and Operation of the Code**

### **7. Obligations under the code**

- (1) The provisions of this code are mandatory and apply to persons (other than charitable organisations) engaged in the manufacture of clothing products in Australia, including but not limited to:
  - (a) retailers and suppliers; and
  - (b) contractors and subcontractors; and
  - (c) continuing entities of suppliers; and
  - (d) transferees,as defined under the code, in respect of the supply of those products for retail sale in the State.

- (2) A person specified in subclause (1) who fails, without reasonable excuse, to adopt any standard of conduct or practice set out in this code is guilty of an offence as provided under section 13 of the Act.

**Note: Section 13 of the *Industrial Relations (Ethical Clothing Trades) Act 2001* prescribes a maximum penalty of 100 penalty units for a contravention of the Code.**

- (3) Subject to clause 8 of this code, a person who contravenes a provision of this code will be deemed to have failed to adopt the standard of conduct or practice specified in the contravened provision.

## 8. Compliance with code

- (1) A person engaged in the clothing industry, or a sector of the clothing industry, specified or described in this code must comply fully with the code, but a failure to comply with a provision of the code will be deemed to be a reasonable excuse if the person establishes that the failure was due to:
- (a) a reasonable mistake (not being a mistake based on a lack of knowledge of the provisions of this code) and without intent to evade the provisions of this code; or
  - (b) a reasonable reliance on information supplied by another person; or
  - (c) an act or failure to act of another person, or an accident or some other cause beyond the person's control, provided that the person took reasonable precautions and exercised due diligence to avoid the failure; or
  - (d) an act done under duress or undue influence; or
  - (e) the person being a signatory to, or accredited under, the Homeworkers Code of Practice and acting in compliance with that Code.
- (2) Subject to the operation of section 399 of the *Industrial Relations Act 1996*, as applied under section 15 of the Act, proceedings for contraventions of this code may be instituted by:
- (a) an inspector; or
  - (c) where specified in this code – by an authorised officer or employee of the TCFUA.

## 9. Application of code to agreements

The provisions of this code apply to agreements for clothing products that are entered into on or after the commencement date of the code.

### Part 3 Responsibilities of Retailers

#### 10. Retailer to take reasonable steps to ascertain compliance with code

- (1) A retailer must, before entering into an agreement with a supplier:
- (a) ascertain from the supplier whether the services of an outworker will be engaged under a relevant award by the supplier or a contractor of the supplier to perform work in connection with the agreement; and
  - (b) request the supplier to provide information in respect of the matters specified under Part B of Schedule 2 of this code.
- (2) Where an outworker is to be engaged under a relevant award by the supplier, or a contractor of the supplier, or both, to perform work on clothing products, a retailer must, before entering into an agreement with the supplier:
- (a) obtain an undertaking from the supplier that:
    - (i) the engagement of the outworker by the supplier, or contractor, or both will be under conditions that are no less favourable than those prescribed under the relevant industrial instrument; and
    - (ii) the addresses where work on the clothing products is to be performed is to be disclosed; and
  - (b) inform the supplier that a breach of the undertaking by the supplier, or the contractor, or both will be taken to be a breach of an essential term of the agreement and grounds for the agreement's termination.

- (3) A retailer must not enter into an agreement with a supplier in contravention of this clause.
- (4) A breach of subclause (3) does not affect the validity of an agreement.

#### **11. Retailers must report less favourable conditions**

- (1) Where a retailer becomes aware that a relevant person is intending to engage, or has engaged, an outworker on less favourable terms than the conditions prescribed under a relevant award or other relevant industrial instrument, the retailer must report the matter in writing to the TCFUA or to the Director-General.
- (2) A retailer will be taken to contravene subclause (1) if the retailer:
  - (a) has information provided under this code; or
  - (b) has knowledge based on previous dealings or commercial arrangements with or through a relevant person; or
  - (c) has information arising from an inspection of premises where work is or has been performed by outworkers,

that would lead a reasonable person in the position of the retailer to be so aware that the outworkers have been, or will be, employed on less favourable terms and conditions than that prescribed under the relevant award or other relevant industrial instrument.

#### **12. Keeping of records by retailers**

- (1) A retailer must keep a record of the following details when entering into an agreement with a supplier:
  - (a) the name of the supplier of clothing products; and
  - (b) if applicable – the supplier’s ACN or ARBN and ABN; and
  - (c) the registered office or principal place of business of the supplier; and
  - (d) if applicable - the registered number of the supplier, and title of the relevant industrial instrument which authorises the supplier to give work out to be performed outside the supplier’s premises; and
  - (e) where the work is, or has been, undertaken by or through a contractor of the supplier:
    - (i) the name of the contractor; and
    - (ii) if applicable – the contractor’s ACN or ARBN and ABN; and
    - (iii) the registered office or principal place of business of the contractor; and
    - (iv) if applicable - the registered number of the contractor, and title of the relevant industrial instrument which authorises the contractor to give work out to be performed outside the contractor’s premises; and
  - (f) the address or addresses of where the work has, or is to be, performed:
    - (i) by the supplier; and
    - (ii) by the contractor;  
and if applicable, the registration number for each address in accordance with the provisions of the *Occupational Health & Safety (Clothing Factory Registration) Regulation 2002*.
  - (g) the date of the agreement and (if applicable) the giving out of the work;
  - (h) the date for the delivery (completion of order) of the clothing products to be supplied under the agreement;
  - (i) a description, including specification, size, style, image or sketch drawing and any other relevant information in order to identify the clothing products to be supplied and the material used; and
  - (j) the number of clothing products to be supplied under the agreement;
  - (k) the wholesale price or cost paid by the retailer for each item of clothing products supplied under the agreement;

- (1) the wholesale price or cost paid by the retailer for the clothing products supplied under the agreement;
- where the clothing products, or some of the products, are to be offered for retail sale within the State whether by the retailer, or another person on consignment or commission of the retailer.
- (2) A retailer will be taken to comply with this clause if the retailer retains a completed copy of Parts A and B of the form provided under clauses 13 and 15 of this code, and retains copies of any other forms or written information required under this code to be submitted by a relevant person to the retailer, in relation to each agreement for the supply of clothing goods.
- (3) A retailer must provide to the Director-General, and to the TCFUA, from records required to be kept by the retailer under subclause (1), a full and accurate extract of particulars in or to the effect of Schedule 1 of this code regarding agreements entered into with suppliers:
- (a) during the three months preceding each of the following periods ending on:
- (i) 4 February; and
  - (ii) 28 April; and
  - (iii) 21 July; and
  - (iv) 11 November,
- of each year; or
- (b) if the retailer elects to do so and notifies the Director-General in writing of that election - during the 6 months period ending on:
- (i) 28 February; and
  - (ii) 31 August;
- of each year.
- (4) An extract of particulars provided under subclause (3) must be submitted within 28 days of the dates specified in that subclause.

### **13. Retailer to provide documents to suppliers**

- (1) A retailer must, before entering into an agreement with a supplier, provide to the supplier a form in or to the effect of Schedule 2 of this code (including a completed copy of Part A of the form).
- (2) A retailer must:
- (a) at the time of providing the form under subclause (1) insert a common identifying number on the top of each page of the form; and
  - (b) keep a copy of the form for a period of 6 years from the date of providing the form to the supplier.

## **Part 4 Responsibilities of the Supplier, Continuing Entity and Contractor**

### **14. Supplier to provide sufficient Information**

A supplier must provide to the retailer sufficient information to enable the retailer to comply with clauses 10, 12 and 13 of this Code.

### **15. Obligations of suppliers to provide information**

- (1) A supplier must, when showing samples of clothing or offering for sale ready made items of clothing, indicate to the retailer whether any or all of the clothing items will be, or have been manufactured in Australia.
- (2) A supplier must indicate on each invoice for the supply of clothing products to a retailer which of the clothing products supplied have been manufactured in Australia.
- (3) A supplier must include with the invoice for the supply of clothing products a completed copy of the Part B provided by the retailer under clause 13.

- (4) A retailer must retain a copy of each invoice for clothing products and the Part B provided by a supplier under this clause for a period of six years.

**16. Details of agreement to be provided by supplier and contractor**

- (1) A supplier must:
- (a) at the time of engaging a contractor, provide to the contractor a copy of the form issued by the retailer to the supplier under clause 13(1) (containing particulars provided by the retailer and supplier under Parts A and B of the form); and
  - (b) keep a copy of the form for a period of 6 years from the date of providing a copy of the form to the contractor.
- (2) A contractor must:
- (a) at the time of engaging a subcontractor, provide to the subcontractor a copy of the form (including the completed Parts A and B) issued by the retailer under clause 13(1); and
  - (b) keep a copy of the form for a period of 6 years from the date of providing a copy of the document to the subcontractor.

**17. Relevant person must inform retailer of any changes to details provided by retailer under this code**

- (1) A relevant person has an obligation under this code to assist a retailer to maintain accurate records in respect of an agreement with the retailer for the supply of clothing products:
- (a) to facilitate compliance with, and prevent avoidance of, a relevant award with respect to the engagement and performance of work by outworkers in the supply of clothing products for retail sale within New South Wales; and
  - (b) to prevent the use of legal structures and other commercial arrangements as a means of avoiding the payment of remuneration and other lawful entitlements to outworkers in the clothing trades.
- (2) A relevant person must inform a retailer in writing of any false or misleading information, or changes to particulars, provided to the retailer under clause 15(3) of this code within 14 days of the relevant person becoming aware of the information or change.

**18. Supplier's continuing entity to provide information to retailer**

- (1) A supplier's continuing entity must give written notice to a retailer that the continuing entity has or intends:
- (a) to assume:
    - (i) all or any of the supplier's obligations; or
    - (ii) any of the rights of the supplier (without assuming obligations) including, but not limited to, a claim for any remuneration or other benefit payable to the supplier; or
    - (iii) all of the supplier's rights and obligations; and
  - (b) transfer:
    - (i) all or any of the supplier's obligations; or
    - (ii) any of the rights of the supplier (without assuming obligations) including, but not limited to, a claim for any remuneration or other benefit payable to the supplier; or
    - (iii) all of the supplier's rights and obligations

under an agreement made within the State between the retailer and supplier.

- (2) A supplier's continuing entity must:
- (a) on the assumption of an obligation or right, under an agreement made within the State; and

(b) if an outworker is, or has been, engaged under the State Award to perform work in respect of the supply of clothing products under the agreement;

provide to the retailer details of arrangements for the payment of the outworker lawful entitlements by the supplier or the continuing entity, or both, as the case may be.

(3) The provisions of:

- (a) subclause (1) are satisfied if the supplier's continuing entity lodges with the retailer a declaration in or to the effect of:
  - (i) in the case of the assumption of an obligation or right under an agreement – Schedule 3 of this code; or
  - (ii) in the case of the transfer of an obligation or right - Schedule 4 of this code, and
- (b) subclause (2) are satisfied if the continuing entity lodges with the retailer a declaration in or to the effect of Schedule 5 of this code,

within 14 days of the assumption, exercise or assignment of the obligation or right.

- (4) Notwithstanding the application of subclauses (1) and (2) to agreements made within the State, a supplier's continuing entity must not cause or permit a retailer to keep records within the State that fail to disclose any of the matters prescribed in those subclauses in respect of the continuing entity's assumption or transfer of an obligation, or right, under an agreement made outside the State.
- (5) A supplier's continuing entity may inspect any records kept by a retailer within the State relating to the continuing entities assumption or transfer of a right or obligation, or right and obligation, under an agreement.

#### **19. Obligations of suppliers who carry on business outside the state**

- (1) A supplier must assist a retailer to maintain accurate records within the State in relation to agreements with the retailer for the supply of clothing products by:
  - (a) the supplier; and
  - (b) a contractor of the supplier; and
  - (c) the supplier's continuing entity, and
- (2) A supplier must not cause or permit a retailer to keep within the State:
  - (a) a copy of the form provided to the supplier under clause 13(1) that:
    - (i) does not include a copy of the Part B completed by the supplier; or
    - (ii) includes a copy of the Part B which is incomplete; or
    - (iii) includes a copy of the Part B which contains false or misleading information; and
  - (b) records that fail to disclose information required to be provided by the supplier under clause 15.
- (3) A supplier may inspect any records kept by a retailer within the State relating to an agreement for the supply of clothing products by the supplier.
- (4) For the purposes of this clause a reference to a supplier means a supplier who carries on business outside the State

#### **Part 5 General**

#### **20. Notice may be given to retailers to produce records**

- (1) An authorised person may, by written notice, require a retailer to produce:
  - (a) for the examination by the officer or other authorised person indicated in the notice ; and
  - (b) on such date and at such time and place (other than the retailer's registered office or principal place of business),as the authorised person may specify in the notice,

- any record required to be kept under this code for the purpose of investigating possible contraventions of the relevant award (whether on complaint or by way of routine investigation).
- (2) A record produced by a retailer under subclause (1) may be retained by the authorised person for such reasonable period as may be necessary to take copies of or extracts from it.
- (3) A notice under this clause:
- (a) must be in or to the effect of Schedule 6 of this code; and
  - (b) may be given personally or served by post at:
    - (i) the registered office; or
    - (ii) the principal place of business; or
    - (iii) the address of the nominated agent,of a retailer within the State.
- (4) An authorised person must provide a receipt to the retailer on the production of documents under this clause which must indicate the time, date, place and nature of documents produced.
- (5) An authorised person must keep confidential the contents of any record made available under subclause (1).
- (6) Subclause (5) does not operate to prevent the disclosure of information if that disclosure is:
- (a) made in connection with the administration or enforcement of the industrial relations legislation, or the provisions of this code or a relevant award; or
  - (b) made with the prior permission of the Minister; or
  - (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing.
- (7) A retailer must not produce to an authorised person a record containing inaccurate or false information, with intent:
- (a) to mislead or deceive the authorised person; or
  - (b) to evade any of the provisions of this code; or
  - (c) to avoid obligations under a relevant industrial instrument; or
  - (d) to facilitate, or aid in, a relevant person evading any of the provisions of this code or a relevant industrial instrument.
- (8) Where a notice is issued by an authorised officer or employee of the TCFUA, a contravention of subclauses (1) and (7) may be enforced by the authorised officer or employee on behalf of the TCFUA.

**Note: Clause 19(8) is subject to compliance with the requirements of section 399(1)(a) of the *Industrial Relations Act 1996* as applied under section 15 of the *Industrial Relations (Ethical Clothing Trades) Act 2001*.**

- (9) A reference in this clause to a record includes a reference to any document (including an extract of a document or record) that is required to be kept under this code and to any particulars contained in the document.

**21. Suppliers and other relevant persons to be registered under a relevant industrial instrument**

A retailer must not knowingly:

- (a) enter into an agreement with a supplier involving the engagement of an outworker unless the supplier, and each contractor used by the supplier, are registered under a relevant industrial instrument to give out work out to be performed outside the supplier's or contractor's premises; and
- (b) accept clothing products under an agreement from a relevant person where work has been performed on the goods by an outworker, unless the relevant person is registered under a relevant industrial instrument to give out work out to be performed outside the relevant person's premises.

**22. Person making declarations under code taken to have authority**

- (1) A person on whose behalf a declaration is made, or information has been provided, under this code, is taken to have authorised the making of the declaration or the provision of the information if the declaration or information is made or provided by:
  - (a) a person who has the capacity to control the first-mentioned person; or
  - (b) any person who is held out by the first-mentioned person to have that authority; or
  - (c) where the first-mentioned person is a body corporate - an officer of that body; or
  - (d) a person who has received a benefit directly or indirectly from the first-mentioned person for the making of the declaration or provision of the information.
- (2) Notwithstanding the provisions of subclause (1)(b) and (c), a person will not be taken to be liable under those provisions if the person can show:
  - (a) that the declaration or provision of information was done without authority of the person; and
  - (b) that in the circumstances it would be unreasonable for the person to be held liable for the declaration or the provision of the information, as the case may be.

**23. Misleading or deceptive information**

A retailer or relevant person must not:

- (a) knowingly engage in conduct that is misleading or deceptive, or likely to mislead or deceive an outworker regarding the outworker's:
  - (i) entitlements under a relevant award; or
  - (ii) civil liability to an employer or other relevant person; and
- (b) make, order or allow to be made any entry or erasure in, or any omission from records or other document that is, produced, delivered or kept for the purposes of this code, with intent to falsify them or it, or to evade any of the provisions of this code.

**24. Aiding in or facilitating the evasion of the code or outworker entitlements**

- (1) A retailer or relevant person must not aid or facilitate another person to evade, or attempt to evade:
  - (a) the provisions of this code; or
  - (b) the payment of outworker entitlements under a relevant award.
- (2) A retailer or relevant person will be taken to have contravened subclause (1) if the retailer or relevant person engages in any conduct:
  - (a) which would lead a reasonable person in the position of the retailer or relevant person to believe that the conduct would aid or facilitate a person to evade:
    - (i) any provision of this code; or
    - (ii) the payment of entitlements to an outworker under a relevant award; or
  - (b) that is performed outside the State, but which has the effect of negating or restricting:
    - (i) the implementation or operation of this code; or



- (ii) enforcement of, and compliance with, this code; or
  - (iii) obligations under this code,  
within the State in respect of a person, or class of persons, engaged in the manufacturing of clothing products.
- (3) A person must not by intimidation or duress or undue influence bring about an act whereby a person in the clothing industry fails to comply with any provision of this code.
- (4) Nothing in this clause is to be interpreted as affecting or removing lawful rights and entitlements which a retailer or relevant person has under a law of the State, Commonwealth or another State or Territory.

**25. Schedules of code to be completed in accordance with directions**

A form contained in a Schedule, or part of a Schedule, to this code must be completed in accordance with the directions and instructions specified in the form.

**26. Keeping of records within the state**

- (1) All records required to be kept by a person under this code (including extracts of records provided, under clause 12), must:
- (a) be kept in the State:
    - (i) at the person's registered office or principal place of business; or
    - (ii) at the address of a nominated agent of the person,for a period of 6 years from the date of the making of the document, unless otherwise stated in this code; and
  - (b) during normal business hours be made available to an inspector on request.
- (2) Records kept in accordance with subclause (1) may be stored or recorded electronically if a written reproduction of the stored or recorded document is available for inspection or production in accordance with this code.

**27. General requirements for documents**

A document or form required to be given under this code must:

- (a) be on white or light pastel colour paper;
- (b) of international A4 size; and
- (c) of medium weight and good quality; and
- (d) contain information which is clearly printed or written in black or dark blue ink in a manner that is permanent and will make possible a reproduction, by photographic, computerised or other electronic means; and
- (e) not be a carbon copy or a copy reproduced by any spirit duplication method.

**Ethical Clothing Trades Extended Responsibility Scheme**

**SCHEDULE 1**

(Clause 12(3))

SCHEDULE OF SUPPLIERS' PARTICULARS  
 RELATING TO THE PERIOD ENDING ..... 20....

<b>Supplier's name</b> (including ABN/ ARBN and CRN)	<b>Supplier's address</b> (registered office or principal place of business)	<b>Date of agreement</b>	<b>Engagement of outworkers</b>
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO

.....

Name of Retailer

.....

Registered Office/Principal place of business of retailer in NSW

.....

Date of Return

.....

Signature

.....

Designation

---

**Ethical Clothing Trades Extended Responsibility Scheme**

No: 20.../.....

Year      Retailer's identification number

**SCHEDULE 2 - Part A**

(Clause 13)

**Details to be provided by retailer to supplier:**

**1. Details of Agreement**

Name of retailer.....

Agreement for the supply of clothing products by.....(Supplier)

ACN/ARBN .....ABN .....

of.....(Supplier's address)

dated on \_\_\_\_/\_\_\_\_/\_\_\_\_

**2. Manufacture of clothing products**

Are the clothing products to be manufactured to retailer's specifications?     YES     NO

If no, go to question 3.

If yes, provide a description (including size, style, image or sketch drawing) and any other relevant information in order to identify the clothing products to be supplied by the supplier

.....

A description of the nature of the work to be performed (e.g., overlocking, machine fusing, etc.,)

.....

**3. General information regarding supply of clothing products**

Has the supplier provided a copy of the order form for the clothing products?     YES     NO

If yes, the order form must be attached with the copy of this document that is kept by the retailer.

**4. Commencement of agreement**

Agreement to commence on:

the date on which details are provided by the supplier to the retailer under Part B of this form; or

the date of this form

(Whichever is later)

dated on \_\_\_\_/\_\_\_\_/\_\_\_\_

.....

.....

Signature

Designation

Ethical Clothing Trades Extended Responsibility Scheme

(Clause 15)

Details to be provided by supplier to retailer:

1. Details of Agreement

Agreement for the supply of clothing products to.....(name of retailer)
ACN/ARBN..... (Retailer) ABN.....
of..... (Retailer's address)
dated on \_\_\_/\_\_\_/\_\_\_

2. Supplier's particulars

Name of the supplier of the clothing products.....
ACN/ARBN ..... ABN.....
Address of the supplier's principal place of business
.....
Address where the work is to be performed
.....

If the work is to be performed in a factory, provide details of the registered factory number/approval and the legislation under which the registration /approval is effected
.....

If outworkers are to be used in the supply of clothing products, provide details of:

- (a) the registration number and the name of the relevant industrial instrument under which the supplier is authorised to give out work to be performed outside the supplier's premises
.....
(b) the name and address of each outworker
.....
(c) the name and address of the employer of the outworkers
.....

3. Contractor's particulars

Name of each contractor to be engaged by the supplier
1).....
ACN/ARBN ..... ABN.....
Address of each contractor's registered office or principal place of business
2).....
Address where the work is to be performed
.....

If the work is to be performed in a factory, provide details of the registered factory number/approval and the legislation under which the registration /approval is effected
.....

If outworkers are to be used in the supply of clothing products, provide details of:

(a) the registration number and the name of the relevant industrial instrument under which each contractor is authorised to give out work

.....

(b) the name and address of each outworker

.....

(c) the name and address of the employer of the outworkers

.....

**4. Details of clothing products supplied under agreement**

The number of and type of clothing products to be made under the agreement

.....

Address where clothing products are to be delivered to the retailer

.....

Date of supply \_\_\_/\_\_\_/\_\_\_

**UNDERTAKING AS TO THE EMPLOYMENT OF OUTWORKERS UNDER RELEVANT AWARD  
TO BE COMPLETED IN RESPECT OF CLOTHING PRODUCTS MANUFACTURED TO  
RETAILER'S SPECIFICATIONS**

I.....of.....do hereby agree

- (1) that the engagement of outworkers by \*me/us and by \*my/our contractors will be under conditions that are no less favourable than those prescribed under....., the relevant award; and
- (2) that all addresses where work is performed on the clothing products (whether at a factory or at the residential address of an outworker) will be disclosed to the retailer; and
- (3) that a breach of this undertaking by \*me/us and \*my/our contractors will be taken to be breach of an essential term of the agreement referred to in Part A of this form, and will be grounds for termination of the agreement.

Date of supplier providing details \*and undertaking to retailer \_\_\_/\_\_\_/\_\_\_

.....

Signature

Designation

\*Strike out words which are not applicable

Note: A supplier who carries on business outside NSW must not cause or permit the retailer to keep within NSW a copy of this Part B which is incomplete, or which contains insufficient information or information that is false or misleading, in relation to details of the supplier or a contractor of the supplier.



**Ethical Clothing Trades Extended Responsibility Scheme**

**SCHEDULE 3**

(Clause 18(3)(a)(i))

**DECLARATION BY SUPPLIER'S CONTINUING ENTITY**

(ASSUMPTION OF OBLIGATIONS AND/ OR RIGHTS)

To.....

NAME OF RETAILER

of.....

ADDRESS OF RETAILER

\*I/we.....

NAME/S OF CONTINUING ENTITY/IES

of.....and

ADDRESS

being a supplier's continuing entity within the meaning the Ethical Clothing Trades - Extended Responsibility Scheme, do hereby declare that:

\*I/we intend to assume/have assumed from .....the obligations \*and/or

dated on \_\_\_/\_\_\_/\_\_\_

rights of .....

SUPPLIER'S NAME

in the performance of an agreement dated .....between

you and the supplier in respect of the delivery of clothing products on \_\_\_/\_\_\_/\_\_\_

Obligations \*and/or rights assumed or to be assumed are:

.....

\*I/We are authorised to make this declaration.

dated on \_\_\_/\_\_\_/\_\_\_

.....

Signature

.....

Designation

\*Strike out words which are not applicable

Ethical Clothing Trades Extended Responsibility Scheme

SCHEDULE 4

(Clause 18(3)(a)(ii))

DECLARATION BY SUPPLIER'S CONTINUING ENTITY
(TRANSFER OF OBLIGATIONS AND/ OR RIGHTS)

To.....
NAME OF RETAILER

of.....
ADDRESS OF RETAILER

\*I/we.....
of.....and.....,
ADDRESS OF CONTINUING ENTITY/IES

being a supplier's continuing entity within the meaning the Ethical Clothing Trades - Extended Responsibility Scheme, do hereby declare that:

\*I/we intend to transfer/have transferred
to.....of.....
.....from.....

the obligations \*and/or rights of .....(the supplier)
in the performance of an agreement dated .....

between you and the supplier in respect of the supply of clothing products on \_\_\_/\_\_\_/\_\_\_

Obligations \*and/or rights to be transferred, or which have been transferred, under the agreement are:

.....

\*I/We are authorised to make this declaration.

dated on \_\_\_/\_\_\_/\_\_\_

.....

Signature

.....

Designation

\*Strike out words which are not applicable

**Ethical Clothing Trades Extended Responsibility Scheme**

**SCHEDULE 5**

(Clause 18(3)(b))

**DECLARATION BY SUPPLIER'S CONTINUING ENTITY  
(ENGAGEMENT OF OUTWORKERS)**

To.....

NAME OF RETAILER

of.....

ADDRESS OF RETAILER

\*I/we.....

NAME/S OF CONTINUING ENTITY/IES

of.....and.....

ADDRESS OF CONTINUING ENTITY/IES

being a supplier's continuing entity within the meaning the Ethical Clothing Trades - Extended Responsibility Scheme, do hereby declare that:

1. in respect of an agreement between the supplier and you dated .....

work *\*is to be/has been* performed by outworkers engaged

by ..... under the provisions

NAME OF PERSON ENGAGING OUTWORKERS

of .....

AWARD OR OTHER STATUTORY INSTRUMENT

being the State Award; and

2. the following arrangements have been made by.....

PERSON ENGAGING OUTWORKERS

for the payment of lawful entitlements to outworkers:

.....

\*I/We are authorised to make this declaration.

dated on \_\_\_/\_\_\_/\_\_\_

.....

Signature

.....

Designation

\*Strike out words which are not applicable



**Ethical Clothing Trades Extended Responsibility Scheme**

**SCHEDULE 6**

**NOTICE TO RETAILER TO PRODUCE RECORDS**

(Clause 20)

To: .....(name of retailer)

You are hereby required under clause 20 of the Ethical Clothing Trades – Extended Responsibility Scheme (the Code) to produce to me or \* another Inspector/ authorised industrial officer or employee of the TCFUA, NSW Branch on *(date)* at *(time)* at *(full details of place)* the records referred to in the Schedule to this notice that are required to be kept by you under the Code.

**Please note the provisions of section 13 of the Industrial Relations (Ethical Clothing Trades) Act 2001 prescribes a maximum penalty of 100 penalty units for a contravention of the Code.**

**SCHEDULE**

.....

Signature of Person giving the Notice

.....

Print Name (\*An inspector/Authorised industrial officer or employee of the TCFUA)

.....

Date of issue of Notice

\* Strike out words which are not applicable

# **ANNEXURE B**

**N.S.W. TRANSPORT**

**INDUSTRY – CASH – IN – TRANSIT**

**(STATE) AWARD**

## TRANSPORT INDUSTRY - CASH-IN-TRANSIT (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by the Transport Workers' Union of New South Wales, an industrial organisation of employees.

(No. IRC 4296 of 2001)

Before The Honourable Justice Marks

24 December 2002

### AWARD

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## PART A

### SECTION I - WAGES, ALLOWANCES AND HOURS OF EMPLOYMENT

#### 1. Wages

- 1.1 Employees shall be paid the weekly rates of pay set out in Table 1 - Wages, of Part B, Monetary Rates.
- 1.2 For the purpose of computing wages, overtime, etc., the additional amounts referred to in subclauses 2.1 and 2.2 of clause 2, Allowances, form part of the award rate for and when the work is performed.

#### 2. Allowances

- 2.1 An employee required by an employer to carry keys to two key safes or possess and use knowledge of vault combinations shall be paid an additional amount as set out in Item 1 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.
- 2.2 Each member of the crew performing mobile cash units (M.C.U.) country work shall be paid an additional amount as set out in Item 2 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.
- 2.3 ATM Work

- 2.3.1 An employee rostered to hold him/herself in readiness to perform work associated with off-site automatic telling machines outside ordinary working hours in accordance with a condition of contract between the employer and the automatic telling machine proprietor shall be paid a standby allowance as set out in Item 3 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.
- 2.3.1.1 Provided that, where the major portion of the standby roster falls on a Saturday, Sunday or public holiday, the higher rate shall be paid.
- 2.3.2 Where an employee so rostered to standby is recalled to work, normal award recall provisions shall apply. Such payment shall apply in lieu of the allowance contained in paragraph 2.3.1 of this subclause.
- 2.3.3 Further, where an employee on recall provided his/her own vehicle and uses it in the performance of his/her duties, an allowance as set out in Item 4 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, shall be paid and shall be calculated on a home-to-home basis. Such allowance is paid on the understanding that the employee is responsible for all comprehensive and third party insurance associated with the use of that vehicle.
- 2.4 An employee appointed by the employer to perform first-aid duty shall be paid an amount as set out in Item 5 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, in addition to his/her ordinary rate during such appointment.
- 2.5 Employees engaged on Reserve Bank work shall be paid an additional amount as set out in Item 6 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

### **3. Hours of Employment**

- 3.1 The ordinary hours of work for all employees shall not exceed 38 hours per week or 76 hours per fortnight or 114 hours per 3 weeks or 152 hours per 4 weeks and shall be worked between Monday and Friday inclusive.
- 3.2 The ordinary hours of work prescribed in subclause 3.1 of this clause may also be worked upon a Saturday; provided that:
- 3.2.1 The number of ordinary hours to be worked on a Saturday shall not be less than 7.6 or more than 8;
- 3.2.2 Employees working ordinary hours on a Saturday shall be paid an additional 50% of the rates prescribed for their respective classifications for the ordinary hours worked on that day;
- 3.2.3 Any permanent employee employed as at 18 December 1998 by an employer under the Transport Industry - Armoured Cars &c. (State) Award published 14 June 1978 (209 I.G. 3791), and reprinted 22 February 1984 (232 I./G. 1242) who, prior to 18 December 1998, regularly worked ordinary hours Monday to Friday and overtime Saturday and, as a result of this award, is required to work Saturday as an ordinary day, shall receive not less than the amounts shown in Table 3 - Income Protection on 6-day Rosters, of Part B, Monetary Rates, for the relevant classification for ordinary hours worked; provided that this restriction shall not apply where an employee elects to forego income which exceeds the employee's base rate of pay in return for an alternative benefit (e.g. time off in lieu of overtime, increased leisure time, etc.), or otherwise where the union agrees that it shall not apply. "Regularly" in this context means at least 2 weeks in 4. The amounts referred to in Table 3 are only payable in a pay week in which the employee actually worked Saturday as an ordinary day.
- 3.2.4 Any employee required to work ordinary hours on a Saturday will be given a minimum of 7 days' notice; and

- 3.2.5 The employee must have Sunday and Monday as days off (unless they are worked as overtime).
- 3.3 The ordinary hours of work for all employees shall not exceed 8 hours per day, exclusive of meal breaks, and shall be worked between the hours of 6:00 a.m. and 6:00 p.m.
- 3.4 The 38-hour week may be worked under one of the following methods:
  - 3.4.1 Rostered Day Off in a 4-week Cycle
    - 3.4.1.1 Employees shall work to a roster drawn up in each workplace providing for 19 days each of 8 hours over a continuous 4-week period.
    - 3.4.1.2 Each employee shall take a rostered day off in accordance with the roster.
    - 3.4.1.3 Rostered days off may be accumulated to a maximum of 10 days over a 40-week period. Rostered days off may be credited to and be taken by an employee in advance to a maximum of 5 days.
    - 3.4.1.4 In those arrangements where rostered days off are not accumulated, an employer may, due to operational requirements, require an employee not to take a rostered day off during the period it accrues. In this event a replacement rostered day off shall be taken on the following basis:
      - 3.4.1.4.1 Where the rostered day off not taken was either a Friday or Monday, the next practicable Friday or Monday shall be taken as a replacement rostered day off.
      - 3.4.1.4.2 Where the rostered day off not taken was a Tuesday, Wednesday or Thursday, the replacement rostered day off shall be taken on the first practicable day available for the taking of such replacement rostered day off.
    - 3.4.1.5 Otherwise, an employee's normal rostered day off may be changed during the currency of a roster period by agreement between the employer and such employee. In the absence of such agreement, 48 hours' notice of such alteration shall be given to the employee.
    - 3.4.1.6 Calculation of Payment

Payment shall be for 7 hours 36 minutes per day with accrual as entitlement for a rostered day off being made on the basis of a 19-day period where an employee works 152 hours within a work cycle not exceeding 28 consecutive days at 24 minutes per day.
    - 3.4.1.7 An employee whose rostered day off occurs on a pay day shall be paid wages on the next ordinary working day following the rostered day off.
    - 3.4.1.8 Where an employer is required to service a particular industry or plant or section thereof and there has been a cessation of operations resulting from annual closedown, such employer may require employees to take a rostered day or days off to coincide with the day or days that the operations are closed. In this event, a rostered day or days off which would normally become due to the employee shall not become so due for the number of days taken pursuant to the provisions of this paragraph; provided however, that where an employee is disadvantaged in terms of leisure time by a rostered day or days off normally falling on a Friday or Monday being required to be taken on a Tuesday, Wednesday or Thursday, such employee shall be rostered to take a Friday or Monday day off on the earliest practicable opportunity upon the normal roster being resumed.

- 3.4.1.9 Where an employee works an ordinary day on a Saturday pursuant to subclause 3.2 of this clause, such employee's rostered day off must not be rostered to occur on a Saturday.
- 3.4.2 Other than a Rostered Day Off in a 4-week Cycle
  - 3.4.2.1 Where an employer is required to service a particular industry or plant or section thereof which is operating under arrangements for a reduced working week other than that provided for in paragraph 3.4.1 of this subclause, the employer may arrange the hours of work of an employee to be applicable to that particular industry or plant, or section thereof; provided that such hours shall not be in excess of the normal hours of work permitted by this clause.
  - 3.4.2.2 The employer may require employees to work ordinary hours over 5 days, Monday to Friday inclusive, which shall not exceed 38 hours, which may be worked over 4 days of 8 hours each and one day of 6 hours. On the day on which 6 hours is worked, those 6 hours may be worked continuously without a meal break.
  - 3.4.2.3 The employer may require employees to work ordinary hours over a 2-week period (10 working days) Monday to Friday inclusive of not more than 76 hours. To achieve this, the employer may roster employees off half a day (4 hours) on one of the days in one of those normal working weeks.
- 3.5 More than one of the methods of implementation of an average 38-hour working week referred to in this clause may be simultaneously implemented for different groups of workers in the one workplace; provided that agreement shall be reached with the majority of employees so affected.
- 3.6 Methods of implementation of an average 38-hour working week other than those referred to in this clause may be instituted by arrangement with the Union.
- 3.7 In response to changed requirements of the employer's clients, the employer may alter the method(s) by which a 38-hour week is worked in the workplace; provided that the altered method(s) so chosen shall comply with the requirements of this clause.
- 3.8 Start and Finish Times
  - 3.8.1 Within the limits prescribed in this clause, each employer shall fix the time and place at which each employee shall be in attendance at the workplace or other agreed starting place ready to commence work in ordinary working hours and work shall be deemed to have commenced, for each employee in attendance, at the time and place so fixed.
  - 3.8.2 Working in ordinary working hours shall be deemed to have finished, for those employees in attendance, when a period of 8 hours, exclusive of a break for a meal, calculated from the fixed starting time, has elapsed.
  - 3.8.3 Different starting times within the span of ordinary hours may apply to different groups of employees in a workplace.
  - 3.8.4 Any employee who is not in attendance at the workplace or other agreed starting place ready to commence work at the fixed starting time or who fails to attend for 8 hours from that time shall be paid only for the actual hours worked.
  - 3.8.5 The employer may only alter the time and place fixed in accordance with paragraph 3.8.1 of this subclause by notice posted for 7 days at the workplace or other agreed starting place; provided that the start time may be changed where it is necessary for reasons

beyond the employer's control by notification before the end of the previous day's work or with 24 hours' notice where work has not been performed the previous day.

### 3.9 Part-time Employees

- 3.9.1 A part-time employee shall be one who is employed to work regular days and regular hours, either of which are less than the number of days or hours worked by permanent full-time employees, but such days shall not be less than 3 per week and such hours shall not be less than 20 per week.
- 3.9.2 The spread of hours of a part-time employee shall be as set out in subclause 3.1 of this clause or in clause 4, Shift Work, depending upon the system of work applicable to the employee in question.
- 3.9.3 The rate of pay for a part-time employee shall be commensurate with the applicable minimum weekly rate of pay for a permanent full-time employee proportionate to the number of hours worked by the part-time employee.
- 3.9.4 Notwithstanding anything else contained in this award, the provisions of this award with respect to annual leave, annual leave loading, sick leave, jury service, bereavement leave and public holidays shall apply to part-time employees.
- 3.9.5 Part-time employment may be offered on a fully voluntary basis to any existing employee, permanent or casual, as well as to new or intending employees.
- 3.9.6 Part-time employees may be offered additional work up to 38 hours per week at ordinary pay; provided that overtime rates are paid after 8 hours' work in any one day.

## 4. Shift Work

- 4.1 Employees may be required to work shift work in order to carry out the duties of and associated with the transportation of cash or valuables or to provide any other goods or services, the subject of this award, at the discretion of the employer.

Provided that:

- 4.1.1 Permanent employees engaged at the time of the insertion of this clause into the Transport Industry - Armoured Cars &c. (State) Award shall have the option of rejecting any initial offer so to do.
- 4.1.2 All other employees shall perform shiftwork where so required by the employer.

### 4.2 Definitions

"Afternoon shift" means any shift which commences after 10:00 a.m. and at or before 4:00 p.m.

"Night shift" means any shift which commences after 4:00 p.m. and at or before 4:00 a.m.

"Morning shift" means any shift which commences between 4:00 a.m. and 6:00 a.m.

"Day shift" means any shift which commences at or after 6:00 a.m. or before 10:00 a.m.

"Rostered shift" means a shift of which the employee concerned has had at least 48 hours' notice.

"Permanent shift" means a shift which does not rotate with another shift or shifts or day work and which continues for a period of at least 4 consecutive weeks.

"Rotating shift" means a morning, afternoon or night shift which rotates with another shift or day shift so at least one third of working time is on an alternative shift.



"7-day shift worker" means an employee who is rostered to work regularly on Saturdays, Sundays and public holidays.

"Shift work" shall mean all work performed on shifts extending for at least 4 consecutive weeks.

#### 4.3 Hours

The ordinary hours of work for shift workers shall not exceed 38 hours per week over the full cycle of the relevant work roster. Ordinary hours shall not exceed:

4.3.1 8 during any consecutive 24 hours' period; or

4.3.2 152 in any 28 consecutive days.

Provided that the ordinary hours of work for shift workers and the definition times for afternoon, night and morning shift may be the subject of an alternative agreement between the employer and the employees where business requirements fall outside those set out in this subclause and subclause 4.2 of this clause. In any case, the maximum daily hours shall be 10 hours.

Any such discussions will involve the Union delegate or an authorised representative of the Union and any agreement reached shall be notified to the Union secretary.

#### 4.4 Shift Work Allowances

4.4.1 An employee required to work shift shall be paid an extra percentage loading on his/her minimum weekly rate of pay for ordinary hours as follows:

Monday to Friday inclusive.

Afternoon shift - 17.5%.

Night shift - 30%.

Morning shift - 12.5%.

Rotating shift morning/afternoon shifts - 15%.

Rotating shift night shift with another shift - 25%.

Provided that, where a lower shift rate is currently being paid, the Union and the employer concerned shall meet to discuss appropriate procedures for transition to the new rates.

#### 4.4.2 Weekend Work and Public Holidays

Saturday (between midnight Friday and midnight Saturday) - paid at the rate of time and a half for all ordinary time worked.

Sunday (between midnight Saturday and midnight Sunday) - paid at the rate of double time.

Public holidays (between midnight the previous day and midnight on the public holiday) - paid in accordance with clause 16, Public Holidays.

The rates prescribed in this paragraph for weekend work and public holidays shall apply instead of the shift loadings in paragraph 4.4.1 of this subclause.

4.4.3 All overtime worked between midnight Friday and midnight Sunday shall be paid for at double the ordinary time rate.

#### 4.5 Meal Breaks and Crib Time

4.5.1 No employee shall be required to work for more than 5 hours without a meal break (crib time) except in the case of an employee who is required to continue work after the normal finishing time for less than 2 hours; provided that an employee may work for up to 6 hours without a meal break (crib time) with the consent of the Union. The said 5 hours is to be calculated from time of starting work or from the end of the previous meal break or crib time, whichever applies.

4.5.2 An employee shall have a 20-minute paid meal break during each ordinary shift.

#### 4.6 Overtime

Overtime at the rate of time and one half for the first 2 hours and double time thereafter shall be paid to all shift workers as follows:

4.6.1 For all time worked before the starting time or after the finishing time fixed for each shift.

4.6.2 For all time worked in excess of the daily limitation of the hours of each shift.

4.6.3 For all time worked in excess of the ordinary hours of work per week arrived at in accordance with paragraphs 4.3.1 and 4.3.2 of subclause 4.3 of this clause.

4.6.4 On the computation of overtime, each day or shift shall stand alone and portions of hours shall be taken to the nearest one tenth of an hour.

4.6.5 The rates prescribed in this paragraph shall apply instead of the shift loadings in paragraph 4.4.1 of subclause 4.4 of this clause.

#### 4.7 Meal Allowance and Overtime Crib Break

An employee who is required to work overtime on any day for a period of 2 hours or more after their normal finishing time shall be allowed a paid crib break of 20 minutes.

This break shall be taken at a time fixed by the employer not later than 5 hours after the end of the previous meal break; provided that an employee may work for up to 6 hours without a meal break with the consent of the Union.

Where an employee is not notified at least 24 hours in advance that overtime would be required, such employee shall be paid a meal allowance of the amount set out in Item 7 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

Meal breaks or crib times may, at the discretion of the employer, be staggered in such a way as to permit continuity of operations.

In accordance with business requirements an employee may be needed to work through their usual meal break until such time as it is practical to take a break.

#### 4.8 Shift Rosters

4.8.1 Shift rosters shall specify the commencing and finishing times of ordinary hours of respective shift. A copy of such shift roster shall be kept posted in a prominent place. Such roster shall not be altered unless 48 hours' notice is given.

Overtime rates shall apply to work performed outside the ordinary shift hours where such notice is not given.

In cases of changes necessitated outside the control of the employer, 24 hours' notice shall apply in lieu of 48 hours' notice.

- 4.8.2 The method of working shifts and the time of commencing and finishing shifts may be varied by agreement between the employer and the branch secretary of the Union (or his/her nominee) and the accredited representative of the Union at the employer's establishment to suit the circumstances of the establishment.

4.9 Rostered Day Off Falling on Holiday (Shift Workers)

An employee whose rostered day off falls on a public holiday prescribed under this award to which a day worker (whose ordinary hours are worked Monday to Friday inclusive) is entitled without loss of pay as provided in this award, and who is not required to work, shall receive 8 hours' ordinary pay in addition to his/her weekly wage.

Where an employee with 12 months' continuous service is engaged for part of the 12-month period as a 7-day shift worker, he/she shall be entitled to have the annual leave prescribed in clause 11, Annual Leave, increased by one day for each 36 ordinary shifts worked as a 7-day shift worker.

## 5. Overtime

- 5.1 Overtime at the rate of time and one half for the first 2 hours and at the rate of double time thereafter shall be paid to all employees as follows:

5.1.1 For all time worked between the earliest and latest times mentioned in clause 3, Hours of Employment, in excess of 38 hours in any one week or in excess of the ordinary hours of work in any holiday week.

5.1.2 For all time worked between such earliest and latest times in excess of the daily limitations prescribed in the said clause 3 or before the usual commencing or after the usual finishing time.

5.1.3 For all time worked before the said earliest time and for all time worked after the said latest time.

5.1.4 For the purpose of the computation of overtime, each day shall stand alone; provided that any overtime shall not be paid twice for the same hours worked.

5.1.5 Casual - In the case of casual employees, the overtime rate shall be calculated on the casual rate of pay.

- 5.2 Where an employee has been notified that he/she is required to work overtime, not being overtime commencing immediately after the completion of his/her ordinary hours of work, and the requirement to work such overtime subsequently is cancelled, the following shall apply:

5.2.1 Where at least 6 hours' notice of cancellation is given, no payment shall be made.

5.2.2 Where less than 6 hours' and at least 3 hours' notice is given, 2 hours at the appropriate rate shall be paid.

5.2.3 Where less than 3 hours' notice is given, 4 hours at the appropriate rate shall be paid.

## 6. Limitation of Overtime

- 6.1 An employee who is required to work for any period amounting to 12 hours or more from the time of commencing work shall be granted a respite from and shall be entitled to absent him/herself from work until he/she has had 10 consecutive hours off duty, without loss of pay, for ordinary working time occurring during such absence.

- 6.2 In the cases of emergency, as herein defined, the said 10 hours referred to in subclause 6.1 of this clause may be exceeded by not more than one hour. "Emergency" in this subclause shall mean periods in which excess cash or bullion, which has been delayed by circumstances beyond the control of the employer, needs to be transported within limited period of time and where extra labour is not available to carry out the necessary work.
- 6.3 Except in the case of accident or circumstances over which the employer has no control, an employee shall not work and an employer shall not require an employee to work more than a total of 20 hours overtime in any one week exclusive of unpaid intervals allowed for meals.

## **7. Saturday and Sunday Work**

### **7.1 Saturday Work**

7.1.1 An employee required to work on a Saturday (where it is not an ordinary day pursuant to subclause 3.2 of clause 3, Hours of Employment) shall be paid at the rate of time and one half for the first 2 hours and double time thereafter for all time worked, with a minimum payment of 4 hours at the appropriate rate of pay, whether an employee works for that period or not.

7.1.2 An employee (other than an employee working an ordinary shift) who is required to commence work on a Saturday at 12 noon or thereafter shall be paid at double time.

### **7.2 Sunday Work**

7.2.1 An employee required to work on a Sunday shall be paid double time for all time worked, with a minimum payment of 4 hours at the appropriate rate of pay, whether the employee works for that period or not.

## **8. Casual Employment**

- 8.1 The minimum hourly rates of pay for casual employees shall, subject to the other provisions of this award, be one thirty-eighth of the weekly rate prescribed by this award for the appropriate type of work which is performed plus 17.5 % (not inclusive of annual leave entitlements).
- 8.2 The casual loading in this award is 2.5% higher than in the Transport Industry (State) Award published 20 April 2000 (315 I.G. 192) in acknowledgement of the fact that this award does not contain a permanent to casual ratio.
- 8.3 Employers must take all reasonable steps to maximise the proportion of permanent full-time and part-time as opposed to casual employees engaged.

## **9. Payment of Wages**

- 9.1 Subject to subclause 9.6 of this clause, all wages shall be paid weekly in cash or by electronic funds transfer, on Tuesday or Wednesday, as determined by the employer, and the day, on being fixed, shall not be altered more than once in 3 months. Where a public holiday falls on a Tuesday or Wednesday (being a pay day), the payment of wages that week shall, as far as practicable, be made on the preceding workday. Provided that wages may be paid by cheque with the agreement of a majority of employees at each yard.
- 9.2 No employee should have the pay day changed unless given at least 7 days' notice.
- 9.3 Except as otherwise provided for in this clause, no employer shall hold more than 2 days' wages in hand.
- 9.4 Where an employer holds less than 2 days' wages in hand, payment for any overtime worked after the normal finishing time on the last day of the pay week shall be paid to the employee on the next succeeding pay day.

- 9.5 Casual employees shall be paid at the end of each day or at the termination of their casual employment.
- 9.6 Where wages are paid in cash, they shall be paid to the employee at the workplace or other agreed starting place or otherwise by agreement between the employer and the employee or employees concerned.
- 9.7 Where wages are paid in cash, wages shall be paid without unnecessary delay after the employee ceases work on pay day. An employee kept waiting for wages on pay day for more than a quarter of an hour after ceasing work shall be paid at overtime rates after that quarter of an hour with a minimum payment equal to one fifth of an hour.
- 9.8 In the case of an employee whose services are terminated on other than a pay day, such employee shall be paid all wages due either prior to or immediately upon cessation of work on the final day of employment.
- 9.9 An employee, other than a casual employee, who desires to terminate employment on a day other than pay day shall give notice to the employer on commencing work in the morning, in which case the employee shall be paid all wages due when the employee has finished the day's work; otherwise, wages may be paid on the following working day at a time stipulated by the employer but not later than 12 midday.
- 9.10 Each employee shall be supplied with a pay envelope or statement in writing on which shall be endorsed those things required by clause 6 of the Industrial Relations (General) Regulation 1996, including the following:
- 9.10.1 the name and classification of the employee;
- 9.10.2 the gross amount of wages, inclusive of overtime and other earnings;
- 9.10.3 the amount paid as overtime or such information as will enable the amount paid as overtime to be calculated by the employee;
- 9.10.4 the amount deducted for taxation purposes;
- 9.10.5 particulars of all other deductions or the total amount of such deductions; and
- 9.10.6 the net amount paid.

#### **10. Meal Breaks**

- 10.1 On the days Monday to Friday, inclusive, each employee shall be entitled to a meal break. In the case of employees who are required to remain in the vehicle during the meal break, the break shall be for a period of 45 minutes unless the reasonable requirements of the business otherwise require, when it shall be not less than 30 minutes. In either case, an allowance equal to 45 minutes' pay at the ordinary rate for a weekly employee shall be paid to such employee on each such occasion. In the case of employees who take the meal break at the yard, depot or garage, the meal break shall be for a period of not less than 45 minutes nor more than one hour. Meal breaks must be taken no later than 5 hours after the commencement of the employee's shift. An employee shall not be required to take a meal break before a period of 4 hours, calculated from the normal starting time, has elapsed.
- 10.2 When an employee is called upon to work before 6:15 a.m., he shall be allowed a crib time of 15 minutes between 8:00 a.m. and 9:00 a.m.; and, when an employee is required to work on a Saturday beyond 1:00 p.m., he/she shall be allowed 30 minutes' crib time; and, when called upon to work up to 8:00 p.m. on any one day, he/she shall be allowed 30 minutes' crib time. The foregoing crib times shall be counted as time worked.

- 10.3 If 8 hours are worked on a Saturday or Sunday, the usual week day meal hours shall be allowed and the provisions prescribed in subclause 10.2 of this clause with relation to crib time shall not apply.
- 10.4 No employee shall work nor shall be required to be on duty for a period exceeding 5 hours without a meal or crib break. Such time shall be calculated from the completion of the last preceding break. Provided that an employee may work for up to 6 hours without a meal break with the consent of the Union. All meal breaks of a lesser period than 30 minutes shall be included as time worked.
- 10.5 An employee who is required to work overtime on any weekday for a period of two and one half hours or more after his normal finishing time shall be paid a meal break allowance of the amount as set out in Item 8 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.

## **SECTION II - LEAVE ENTITLEMENTS AND PUBLIC HOLIDAYS**

### **11. Annual Leave**

- 11.1 See the *Annual Holidays Act 1944*.
- 11.2 An employee at the time of his/her entering upon a period of annual leave in accordance with section 3 of the *Annual Holidays Act 1944* shall be entitled to an additional payment in respect of the period of employment to which the said leave is referable, calculated on the basis of three and one third hours' ordinary pay for each month.
- 11.3 In addition to the leave provided for by subclause 11.1 of this clause, 7-day shift workers (that is, shift workers who are rostered to work regularly on Sundays and holidays) shall be allowed one week's leave; provided that, if during the year of employment an employee has served for only a portion of it as a 7-day shift worker, the additional leave shall be one day for each 36 ordinary shifts worked as a 7-day shift worker. In this subclause, reference to one week and one day shall include holidays and non-working days.

### **12. Long Service Leave**

See the *Long Service Leave Act 1955*.

### **13. Sick Leave**

- 13.1 "Year" shall mean the period of 12 months measured for each employee from the date of commencement of the employee's current period of employment. Notwithstanding anything contained herein to the contrary, for an employee who commenced employment prior to 1 December 1998, "year" shall mean the period from 1 July to 30 June next following.
- 13.2 An employee, other than a casual employee, with not less than 3 months' continuous service as such in the industry covered by this award, who is absent from his/her work by reason of personal illness or injury not being illness or injury arising from the employee's misconduct or from an injury arising out of or in the course of employment, shall be entitled to leave of absence, without deduction of pay, subject to the following conditions and limitations:
  - 13.2.1 He/she shall, unless it is not reasonably practicable so to do (proof of which shall be on the employee), before his/her ordinary starting time on the first day of his/her absence, and in any event within 24 hours, inform the employer of his/her inability to attend for duty and, as far as practicable, state the nature of the illness or injury and the estimated duration of the absence.
  - 13.2.2 He/she shall furnish to the employer such evidence as the employer may reasonably desire that he/she was unable, by reason of such illness or injury, to attend for duty on the day or days for which sick leave is claimed.

- 13.2.3 Except as hereinafter provided, he/she shall not be entitled in any year (as defined), whether in the employ of one employer or several in the industry in such year, to leave in excess of 40 hours of ordinary working time; provided that:
- 13.2.3.1 If his/her employment continues with the one employer after the first year, his/her leave entitlement shall increase to a maximum of 64 hours of ordinary working time, at which figure it shall remain for any subsequent years of continued employment.
- 13.2.3.2 If the employment of an employee who has become entitled to leave in accordance with subparagraph 13.2.3.1 of this paragraph is terminated for any reason, he/she shall not be entitled in the employ of any employer in the industry, in that year, to leave excess of 40 hours of ordinary working time.
- 13.3 For the purpose of administering paragraph 13.2.3 of subclause 13.2 of this clause, an employer, within one month of this award coming into operation or within 2 weeks of the employee entering his/her employment, may require an employee to make a statutory declaration or other written statement as to what paid leave of absence he/she has had from any employer during the then current year and upon such statement the employer shall be entitled to rely and act.
- 13.4 The rights under this clause shall accumulate from year to year, so long as his/her employment continues with the one employer, so that any part of the leave entitlement which has been allowed in any year may be claimed by the employee and shall be allowed by that employer, subject to the conditions prescribed by this clause, in a subsequent year of continued employment.
- 13.5 If an award holiday occurs during an employee's absence on sick leave, such award holiday shall not be counted as sick leave.
- 13.6 Service before the date of coming into force of this clause shall be counted as service for the purpose of assessing the sick leave entitlement in any year under paragraph 13.2.3 of subclause 13.2 of this clause, but shall not be taken into consideration in arriving at the period of accumulated leave.
- 13.7 Accumulated sick leave at the credit of an employee at the commencement of this award shall not be affected nor reduced by the operation of this clause.

#### **14. State Personal/Carer's Leave**

- 14.1 Use of Sick Leave
- 14.1.1 An employee, other than a casual employee, with responsibilities in relation to a class of person set out in subparagraph 14.1.3.2 of paragraph 14.1.3 of this subclause who needs the employee's care and support shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement provided for at clause 13, Sick Leave, for absences to provide care and support for such persons when they are ill. Such leave may be taken for part of a single day.
- 14.1.2 The employee shall, if required, establish, either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person. In normal circumstances, an employee must not take carer's leave under this subclause where another person has taken leave to care for the same person.
- 14.1.3 The entitlement to use sick leave in accordance with this subclause is subject to:
- 14.1.3.1 the employee being responsible for the care of the person concerned; and
- 14.1.3.2 the person concerned being:

- 14.1.3.2.1 a spouse of the employee; or
- 14.1.3.2.2 a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first-mentioned person who lives with the first-mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
- 14.1.3.2.3 a child or an adult child (including an adopted child, a stepchild, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
- 14.1.3.2.4 a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- 14.1.3.2.5 a relative of the employee who is a member of the same household where, for the purposes of this subparagraph:
  - 14.1.3.2.5.1 "relative" means a person related by blood, marriage or affinity;
  - 14.1.3.2.5.2 "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
  - 14.1.3.2.5.3 "household" means a family group living in the same domestic dwelling.

An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

#### 14.2 Unpaid Leave for Family Purpose

- 14.2.1 An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in subparagraph 14.1.3.2 of paragraph 14.1.3 of subclause 14.1 of this clause who is ill.

#### 14.3 Annual Leave

- 14.3.1 An employee may elect with the consent of the employer, subject to the *Annual Holidays Act 1944*, to take annual leave not exceeding 5 days in single-day periods or part thereof, in any calendar year at a time or times agreed by the parties.
- 14.3.2 Access to annual leave, as prescribed in paragraph 14.3.1 of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.
- 14.3.3 An employee and employer may agree to defer payment of the annual leave loading in respect of single-day absences until at least 5 consecutive annual leave days are taken.

#### 14.4 Time Off in Lieu of Payment for Overtime

- 14.4.1 An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.



- 14.4.2 Overtime taken as time off during ordinary-time hours shall be taken at the ordinary-time rate, that is, an hour for each hour worked.
  - 14.4.3 If, having elected to take time as leave in accordance with paragraph 14.4.1 of this subclause, the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the 12-month period or on termination.
  - 14.4.4 Where no election is made in accordance with paragraph 14.4.1, the employee shall be paid overtime rates in accordance with the award.
- 14.5 Make-up Time
- 14.5.1 An employee may elect, with the consent of the employer, to work "make-up time", under the employee takes time off ordinary hours and works those hours at a later time during the spread of ordinary hours provided in the award, at the ordinary rate of pay.
  - 14.5.2 An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time) at the shift work rate which would have been applicable to the hours taken off.
- 14.6 Rostered Days Off
- 14.6.1 An employee may elect, with the consent of the employer, to take a rostered day off at any time.
  - 14.6.2 An employee may elect, with the consent of the employer, to take rostered days off in part-day amounts.
  - 14.6.3 An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or employer.
  - 14.6.4 This subclause is subject to the employer informing the Union where it has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the Union to participate in negotiations.

## **15. Bereavement Leave**

- 15.1 An employee, other than a casual employee, shall be entitled to up to 2 days' bereavement leave without deduction of pay on each occasion of the death of a person prescribed in subclause 15.3 of this clause. An employee, other than a casual employee, shall be entitled to up to 2 days' bereavement leave without deduction of pay on each occasion of the death of a person prescribed in subclause 15.3 of this clause, where such employee travels outside of Australia to attend the funeral.
- 15.2 The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will provide to the satisfaction of the employer proof of death.
- 15.3 Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph 14.1.3.2 of paragraph 14.1.3 of subclause 14.1 of clause 14, State Personal/Carer's Leave; provided that, for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.

- 15.4 An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- 15.5 Bereavement leave may be taken in conjunction with other leave available under subclauses 14.2, 14.3, 14.4, 14.5 and 14.6 of clause 14, State Personal/Carer's Leave. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

## **16. Public Holidays**

- 16.1 The days on which New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Six-hour Day, Christmas Day and Boxing Day are observed in the areas concerned, together with all public holidays that hereafter may be proclaimed by the Governor and which are observed for the areas covered by this award, and the Picnic Day of the Transport Workers' Union of New South Wales, which shall be held on Easter Saturday of each year, shall be recognised as holidays without deduction from weekly employees' wages.
- 16.2 All work performed on any of the above-mentioned days, except Christmas Day and Good Friday, shall be paid for at the rate of time and one half extra for the actual time worked; for all work performed on Christmas Day and Good Friday, the rate of double time extra shall be paid. For all work done by casual employees on any of the holidays prescribed by subclause 16.1 of this clause, double overtime rates shall be paid. An employee called upon to work on an award holiday shall be guaranteed 4 hours' work or shall be paid for 4 hours at the appropriate rate.
- 16.3 In any week during which a holiday is observed on any day, Monday to Friday inclusive, the ordinary working time of such week shall be reduced by 8 hours for each holiday occurring.
- 16.4 A weekly employee, whose services are dispensed with within 7 days of the commencement of any week in which one or more holidays occur and who is re-engaged by the same employer within 7 days of the said week, shall be paid an ordinary day's pay for each holiday so occurring at the rate prescribed for the class of work performed by him/her prior to his/her services being dispensed with.
- 16.5 An employee who, without permission of an employer or without reasonable cause, absents him/herself from duty on the working day immediately preceding or the working day immediately succeeding any award holiday shall not be entitled to payment for such holiday.

## **SECTION III - INDUSTRIAL RELATIONS AND THE UNION**

### **17. Dispute Resolution Procedure**

- 17.1 Subject to the *Industrial Relations Act* 1996, any dispute shall be dealt with in the following manner:
- 17.1.1 Affected employees and, at his/her/their request, the representative of the Union on the job, shall attempt to resolve the matters in issue in the first place with the appropriate supervisor.
- 17.1.2 In the event of failure to resolve the dispute at job level, the matter shall be the subject of discussions between an organiser of the Union and the workplace manager.
- 17.1.3 Should the dispute still remain unresolved, the secretary of the Union or a representative will confer with senior management.

- 17.1.4 In the event of no agreement being reached at this stage, the dispute will be referred to the Industrial Relations Commission of New South Wales for resolution.

Note: Paragraphs 17.1.2 and 17.1.3 of this subclause do not apply where none of the affected employees are Union members and none has requested Union assistance.

- 17.2 All work shall continue normally while these negotiations are taking place.

### **18. Union Delegate**

- 18.1 An employee appointed as Union delegate to the workplace shall, upon notification to the employer by the secretary/treasurer or sub-branch secretary of the Union, be recognised as the accredited representative of the Union.
- 18.2 Any matter arising in the workplace affecting members of the Union may be investigated by the delegate and discussed with the employer or a representative. The delegate shall, upon request, be allowed a reasonable opportunity to carry out such duties at a time reasonably convenient to the delegate and the employer.
- 18.3 If a matter in dispute is not settled, the delegate shall, upon request, be allowed access to a telephone for a reasonable opportunity of notifying the Union branch or sub-branch concerned.

### **19. Notice Board**

The employer shall provide a notice board of reasonable dimensions to be erected or to be placed in a prominent position in the workplace, upon which accredited representatives of the Union shall be permitted to post formal Union notices signed by the representative or representatives.

### **20. Right of Entry**

See Part 7 of Chapter 5 of the *Industrial Relations Act* 1996. (Note: This provides that a duly accredited representative of the Union shall have the right to enter any work place or premises for the purpose of interviewing employees and investigating suspected breaches of awards or agreements or the *Industrial Relations Act* 1996 and in such investigations inspect time and pay sheets, so long as this does not unduly interfere with the work being performed by any employee during working time).

### **21. Union Picnic Day**

- 21.1 Easter Saturday shall be recognised as the Union's Picnic Day.
- 21.2 In addition to all other payments due to him/her, a financial member of the Union, other than a casual employee, shall, upon proof thereof, be paid an additional day's pay in the pay period in which Easter Saturday falls.
- 21.3 A financial member of the Union who is required to work on Easter Saturday shall be paid at the rate of time and a half for the actual time worked and, in addition, ordinary time for the actual time worked up to a maximum of 8 hours' pay at ordinary time.
- 21.4 Notwithstanding subclauses 21.1, 21.2 and 21.3 of this clause, where an employer observes a paid Picnic Day for the whole of its employees, such a day shall be regarded as a holiday in lieu of the Picnic Day prescribed herein and accordingly such employer shall be exempted from paying the prescribed extra day's pay in the pay period in which Easter Saturday falls and from the other provisions of this clause with respect of payment for work performed on that day.
- 21.5 For the purpose of this clause "financial member of the Union" shall mean an employee who is, at the time of the Picnic Day, a financial member, or who was a financial member, of the Union at 31 December of the preceding year.

## SECTION IV - OTHER PROVISIONS

### 22. Safety Standards

- 22.1 The appropriate crewing of a vehicle, whether a particular operation will be conducted by armoured vehicles or non-armoured vehicles, and other safety requirements of the work shall be determined and implemented by reference to the following:
- 22.1.1 Security assessments of the sites to be serviced, undertaken by an appropriately qualified person.
  - 22.1.2 The requirements of the *Occupational Health and Safety Act 2000* and the *Occupational Health and Safety Regulation 2001*.
  - 22.1.3 The WorkCover Code of Practice for the Cash-in-Transit Industry.
  - 22.1.4 The established safe operating procedures of the employer.
  - 22.1.5 The availability of personal safety equipment for crew members and relevant vehicle safety features.
  - 22.1.6 The availability of suitably qualified employees, holding all relevant licences, and having received training appropriate to the work to be performed.
- 22.2 Issues of crewing and whether particular operations may be conducted by armoured vehicles or non-armoured will be dealt with at each workplace through a consultative process:
- 22.2.1 At each workplace there shall be a consultative committee which shall, as a minimum, consist of two employee representatives (one of whom shall be the branch delegate of the Union, where such delegate exists, and one of whom shall be the occupational health and safety representative) and two representatives of the employer.
  - 22.2.2 Any dispute in relation to crewing or vehicle type shall be progressed in accordance with clause 17, Dispute Resolution Procedures. While the disputes procedure is being followed, the status quo shall apply.
  - 22.2.3 The provision in this subclause will not affect crewing provisions in registered enterprise agreements or enterprise awards existing at the time of the making of this award. However, the provision of this subclause must be taken into account when making further enterprise agreements or enterprise awards.
- 22.3 Cash limits for armoured vehicles shall be dealt with in accordance with subclause 22.1 of this clause.
- 22.4
- 22.4.1 Notwithstanding anything contained in this or any other award, employees performing any work covered by this award in non-armoured vehicles shall not carry cash as defined in paragraph 22.4.5 of this subclause in excess of, or with a value in excess of, the amounts specified in Schedule 2 to this award.
  - 22.4.2 An employer bound by this award may make a confidential application to the Commission to vary the amounts specified in Schedule 2 to this award with respect to work carried out by direct employees of the employer. The employer:
    - (a) shall serve the application on the Transport Workers' Union of New South Wales and the WorkCover Authority, each of which shall have the opportunity to call evidence and make submissions to the Commission about the matter;

- (b) must establish to the satisfaction of the Commission that there is no detriment to the safety of its employees performing the work by varying the cash limits.

Where the employer can demonstrate a capacity to perform work safely with higher limits, the Commission, taking into account all relevant circumstances, may approve and grant by separate and confidential order varied cash limits for that employer. Any variation granted to an employer in accordance with clause 9, Cash Limits, of the Cash Transportation (Non-Armoured Vehicles) Interim Award No. 2 published 21 December 2001 (330 I.G. 679) shall continue to apply for the purposes of this award.

- 22.4.3 The contents of Schedule 2 to this award, or an order pursuant to paragraph 22.4.2 of this subclause, shall be kept confidential and must not be published or disseminated by any person for any reason or purpose other than in connection with the operation of business activities covered by this award. A breach of this paragraph shall ipso facto be a breach of this award. The provisions of this paragraph are intended to apply to all persons and entities whether or not bound by this award, to the extent possible in law.
- 22.4.4 On application to the Industrial Registrar, the contents of Schedule 2 to this award may be disclosed to an authorised representative of the Transport Workers' Union of New South Wales, or any person or entity who satisfies the Industrial Registrar that he, she or it has established or is genuinely trying to establish a business the activities of which will be regulated wholly or in part by this award. Disclosure may also be made to a duly authorised representative of the Department of Industrial Relations or the WorkCover Authority.
- 22.4.5 Cash, for the purposes of this subclause, shall mean cash as defined in paragraph 36.1.6 of subclause 36.1 of clause 36, Definitions, but excluding coin.
- 22.5 Notwithstanding anything contained in this or any other award, employers shall comply with the following requirements:
  - All pick up and deliveries performed by means of a non-armoured vehicle shall involve a single carry only between the vehicle and the premises. The maximum amount which may be transported during this one carry is that specified in Schedule 2 to this award.
- 22.6 Notwithstanding anything contained in this or any other award, employers shall comply with the following requirements:
  - 22.6.1 An employer shall not transport any cash for or on behalf of a financial institution by means of a non-armoured vehicle to or from the premises of a financial institution.
  - 22.6.2 ATMs (or equivalent technology) are not to be serviced by non-armoured vehicles where such service requires the transportation of cash.
  - 22.6.3 Servicing or maintenance of ATMs (or equivalent technology) not requiring the transportation of cash, performed within the urban or demographic areas set out in Schedule 1 to this award, is to be performed by a two-person crew. This subclause does not apply to the servicing or maintenance of ATMs (or equivalent technology) where cash is not exposed.

- 22.7 Any application made by an employer under section 17 of the *Industrial Relations Act 1996* to vary the terms of subclause 22.6 of this clause as they relate to that employer's operations may be made on a confidential basis.

#### **22A. Vehicle Standards**

- 22A.1 Non-armoured vehicles used for the purpose of cash-in-transit work must include the safety features for such vehicles set out in the WorkCover Code of Practice for the Cash-in-Transit Industry.
- 22A.2 An employer must provide the appropriate vehicle required to perform any cash-in-transit work under this award.
- 22A.3 An employee must not be required to provide a vehicle for the performance of cash-in-transit work under this award.
- 22A.4 An employer must not enter into an agreement with an employee which requires the employee to provide a vehicle for the performance of cash-in-transit work under this award.

#### **23. Jury Service**

- 23.1 An employee required to attend for jury service during his/her ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his/her attendance for such jury service and the amount of wages he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on jury service.
- 23.2 An employee shall notify his/her employer as soon as possible of the date upon which he/she is required to attend for jury service. Further, the employee shall give his/her employer proof of his/her attendance, the duration of such attendance and the amount received in respect of such jury service.

#### **24. Anti-Discrimination**

- 24.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 24.2 It follows that, in fulfilling their obligations under the dispute resolution procedure prescribed by this award, the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 24.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 24.4 Nothing in this clause is to be taken to affect:
- 24.4.1 any conduct or act which is specifically exempted from anti-discrimination legislation;
  - 24.4.2 offering or providing junior rates of pay to persons under 21 years of age;
  - 24.4.3 any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*; or

24.4.4 a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.

24.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

#### NOTES

(a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.

(b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

### 25. Terms of Employment

25.1 An employer must not terminate an employee's employment unless the employee has been given the required period of notice, or payment in lieu of that period of notice, such period to be worked out as follows:

25.1.1 first work out the period of notice using the table at the end of this subsection; and

25.1.2 then increase the period of notice by one week if the employee:

25.1.2.1 is over 45 years old; and

25.2.2.2 has completed at least 2 years of continuous service with the employer.

Employee's Period of Continuous Service with the Employer	Period of Notice
Not more than 1 year	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

25.2 The required amount of compensation in lieu of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of employment continuing during that period.

25.3 That total must be worked out on the basis of:

25.3.1 the employee's ordinary hours of work (even if they are not standard hours); and

25.3.2 the amounts ordinarily payable to the employee in respect of those hours, including (for example) allowances, loading and penalties; and

25.3.3 any other amounts payable under the employee's contract of employment.

25.4 The above provisions of this clause do not apply where the employee is guilty of serious and wilful misconduct.

25.5 Permanent employees must give at least one week's notice of an intention to terminate their employment.

- 25.6 Subject to the provisions of this award, an employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award; provided that such duties are not designed to promote de-skilling.

## **26. Insurance and Accident Pay for Employees**

- 26.1 In recognition of the fact that employees working under the provisions of this award are exposed to the hazard of armed assault upon them by persons armed with lethal weapons (because the principal function of their employment is the handling and carriage of money, bullion and the like), the employer shall arrange an insurance policy to cover each employee so engaged against the risk of such armed assault. Such insurance policy shall provide benefits not less favourable than those prescribed in the policies arranged by the companies and in force as at 13 September 1982.
- 26.2 In the event that an employee sustains an injury which entitles him/her to be paid and he/she is paid benefits prescribed by the Workers' Compensation Legislation (see clause 36, Definitions) and the incapacity arising out of such injury continues for a period in excess of 26 weeks, the employer shall pay to any such employee the difference between his/her current minimum weekly rate of pay as prescribed by clause 1, Wages, and the weekly benefit paid to the employee in accordance with the provisions of the Workers' Compensation Legislation.
- 26.2.1 Provided that the payment prescribed by this subclause shall not commence to be paid until the twenty-seventh week of incapacity arising from injury as aforesaid and shall cease to be payable when the payment to the employee of workers' compensation benefits ceases or at the end of a period of 13 weeks, whichever event first occurs.
- 26.2.2 Provided further that the employee shall not be entitled to receive the benefits prescribed by this subclause if he/she fails to comply with a request by the employer to give to the employer:
- 26.2.2.1 an undertaking that, if the employee obtains a verdict for damages against his/her employer in respect of any injury or is paid an amount in settlement of any claim for damages that he/she has made against his/her employer in respect of such injury, he/she will immediately upon payment to him/her or his/her agent of such verdict for damages or amount in settlement of a claim therefore repay to his/her employer the amount of the benefits prescribed by this subclause which the employer has paid or may pay in respect of such injury; and an authority for the employer alternatively to deduct the amount of the benefits prescribed by this subclause from any money owing or which may become owing from the employer to the employee under such verdict or settlement; and
- 26.2.2.2 an undertaking that, where the injury was caused in circumstances creating a liability in a third party to pay damages in respect thereof and the employee obtains a verdict for damages or is paid an amount of money in settlement of any claim for damages he/she has made against that third party, he/she will out of such verdict or amount of money repay to the employer the amount of the benefits prescribed by this subclause which the employer has paid or may pay in respect of the injury; and
- 26.2.2.3 an irrevocable authority addressed to any third party requiring such third party out of any verdict which may be obtained by the employee against such third party or any amount of money payable to the employee in settlement of any claim for damages made against such third party to pay to the employer the amount of the



benefits prescribed by this subclause which the employer has paid or may pay to the employed.

### **27. Contract Work - Chain of Responsibility**

- 27.1 An employer may, under certain circumstances set out below, give out work to:
- 27.1.1 another employer, whose employees will carry out all of the work so given;
  - 27.1.2 another employer, whose employees will not carry out any or all of the work so given;
  - 27.1.3 another entity that does not engage employees which will not carry out any or all of the work so given;
  - 27.1.4 another person or other persons, who alone will personally carry out all of the work so given;
  - 27.1.5 another person or other persons, who will not personally carry out any or all of the work so given.
- 27.2 An employer must not give out work to that other employer, entity or person(s) (as provided in paragraphs 27.1.1 to 27.1.5 of subclause 27.1 of this clause) unless the employer giving out the work makes a record in writing of the following details:
- 27.2.1 The name of the other employer (or the other entity or person(s)) to whom the work is given and the Australian Business Number and/or Australian Company Number of the other employer (or the other entity or person(s)) to whom the work is given.
  - 27.2.2 The address of the other employer (or the other entity or person(s)) to whom the work is given.
  - 27.2.3 The date of giving out the work and the date for completion or cessation of the contract or arrangement under which the work is performed.
  - 27.2.4 A description of the nature of the work to be performed, in particular the destination from which the cash and valuables are to be transported and the destination to which the cash and valuables are to be transported and the value of the cash and valuables to be transported.
- Where an employer gives out work to more than one employer, entity or person(s), the employer must keep an up to date consolidated list of those employers, entities or persons which contains all of the information required to be kept by this subclause.
- 27.3 Where the work is given out to an employer whose employees will not carry out any or all of the work (as provided in paragraph 27.1.2 of subclause 27.1 of this clause), a copy of any record kept in accordance with subclause 27.2 of this clause shall be given to each person who performs part or all of the work given out, unless the person who performs part or all of the work given out is an employee of the employer or person who has been given the work as provided in paragraph 27.1.2 of subclause 27.1 of this clause.
- 27.4 Where the work is given out to another entity or person(s) who will not carry out any or all of the work (as provided in paragraphs 27.1.3 and 27.1.5 of subclause 27.1 of this clause), a copy of any record kept in accordance with subclause 27.2 of this clause shall be given to each person who performs part or all of the work given out.
- 27.5 Where the work is given out to another person or other persons who alone will personally carry out the work (as provided in paragraph 27.1.4 of subclause 27.1 of this clause), a copy of any record kept in accordance with subclause 27.2 of this clause shall be given to that person or those persons doing the work.

- 27.6 Where work has been given out to another employer, entity or person(s) (as provided in paragraphs 27.1.1 to 27.1.5 of subclause 27.1 of this clause), any record kept in accordance with subclause 27.2 of this clause shall be available for inspection by a person duly authorised as if it was a record permitted to be inspected and copied under Part 7 of Chapter 5 of the *Industrial Relations Act 1996*.
- 27.7 If an employer contracts with another person or persons who alone will carry out the work (as provided in paragraph 27.1.4 of subclause 27.1 of this clause), the employer shall contract to provide and shall provide conditions that are the same as those prescribed by this award.
- 27.8 An employer must not enter into a contract or arrangement with another employer, entity or person(s) (hereinafter called "the second person") as provided in paragraphs 27.1.2, 27.1.3 or 27.1.5 of subclause 27.1 of this clause unless:
- 27.8.1 the contract or arrangement contains a term which provides that any work performed by a person other than the second person is carried out pursuant to a written agreement between the second person and the person who will actually perform the work; and
  - 27.8.2 the written agreement specifies each of the matters set out in paragraphs 27.2.1 to 27.2.5 of subclause 27.2 of this clause; and
  - 27.8.3 the written agreement provides for conditions that are the same as those prescribed this award.

For the purposes of this subclause, a "contract or arrangement" means a contract or arrangement for the performance of work as provided in paragraphs 27.1.2, 27.1.3 or 27.1.5 of subclause 27.1 of this clause.

## **28. Amenities**

- 28.1 The following facilities shall be available at all yards, depots or garages where employees are engaged under the provisions of this award:
- 28.1.1 Proper dressing rooms with adequate washing facilities, including at least one shower with both hot and cold water.
  - 28.1.2 Proper lock-up clothing lockers.
  - 28.1.3 Where employees are required to partake of meals at the employer's yard, depot or garage, a dining room with adequate seating and table accommodation for the partaking of meals and also facilities for boiling water and heating food.
  - 28.1.4 Proper lavatory facilities.
- 28.2 Leave is reserved to the applicant Union to apply for an allowance for employees whose employers fail to make available the facilities prescribed by this clause.
- 28.3 Leave also is reserved to the parties and any employer affected by this award to apply generally in respect of this clause.
- 28.4 First-aid Outfit

A first-aid outfit shall be provided by the employer at each establishment, yard, depot and garage. Such outfit is to comprise a First-aid Ambulance Chest which shall:

- 28.4.1 be of wood or metal, be dust-proof and be distinctively marked with a white cross upon green ground;
- 28.4.2 be so equipped and maintained as to contain at least the articles and appliances specified by the first-aid regulations under the *Factories, Shops and Industries Act 1962*. (Note: The employer shall display a copy of the appropriate Schedule, above referred to, on or adjacent to the First-aid Ambulance Chest);
- 28.4.3 contain nothing except requisite articles and appliances for first aid;
- 28.4.4 be readily accessible to the persons employed in the establishment, yard, depot and garage; and
- 28.4.5 be placed under the charge of a responsible person or persons who or one of whom shall always be readily available during working hours. A clearly legible notice stating the name or names of the person or persons in charge of the ambulance chest shall be affixed in a conspicuous position on or adjacent to the chest.

### **29. Uniforms and Wet Weather Clothing**

- 29.1 Where an employee is required to wear a distinctive uniform, it shall be provided free of cost by the employer.
- 29.2 Wet weather clothing shall be provided for employees required to work in the rain.

### **30. Redundancy**

See the Transport Industry - Redundancy (State) Award published 8 September 2000 (318 I.G. 458).

### **31. Superannuation**

See the Transport Industry - (State) Superannuation Award (No. 2) award published 19 October 2001 (328 I.G.1056).

### **32. Mixed Functions**

- 32.1 An employee required by an employer to work for less than half a day on work carrying a higher rate of pay shall be paid at the rate as for a half-day's work and, when required to work for 2 hours or more but less than a whole day on such work, he/she shall be paid as for a whole day's work.
- 32.2 This clause shall not apply to actual periods of one hour or less or to interchange of work arranged between employees to meet their personal convenience.

### **33. Unauthorised Persons Riding on Vehicles**

An employee shall not permit any unauthorised person to accompany him/her on his/her vehicle nor permit any such person to assist him/her in the delivery of anything carried in a vehicle unless such person has been engaged as an employee or is the owner thereof or is the agent or representative of such owner.

### **34. Recall**

- 34.1 An employee recalled for work shall be guaranteed and shall be paid for at least 4 hours' work for each start at the appropriate rates of pay, whether he/she works for that period of time or not.
- 34.2 This clause shall also apply to any employee called upon to work before his/her normal starting time and whose overtime work does not continue up to such starting time.

### **35. Commitment to Training**

The parties to this award recognise that, in order to increase the efficiency, productivity and competitiveness of the security industry and armoured vehicle operations generally, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:

- 35.1 developing a more highly skilled and flexible workforce;
- 35.2 providing employees with career opportunities through appropriate training to acquire additional skills;
- 35.3 removing barriers to the utilisation of skills acquired.

### **36. Definitions**

#### 36.1 General

- 36.1.1 "Armoured vehicle" shall mean a vehicle specially designed for the transportation of cash as defined. The design shall include armour plate and the windscreen, windows and the body specifications shall be constructed to withstand armed attack from ordinary hand-held weapons. Such vehicle is to be fitted with air-conditioning and two-way radio.

Where a two-person crew operation is utilised, an armoured vehicle shall have an accessible partitioned secure area in which containers may be placed, allowing the crew members to access and leave that secure area without exposing the armoured vehicle operator or the remainder of the load.

All vehicles purchased or leased shall have an adequate temperature-controlled system installed. Such a system shall be maintained in all vehicles currently operating.

A temperature-controlled system shall be deemed to be an air-conditioning unit.

- 36.1.2 "Non-armoured vehicle ("soft skin") shall mean a vehicle other than an armoured vehicle.
- 36.1.3 "Cash-in-transit" shall mean the transport of cash.
- 36.1.4 "ATM work" shall mean work performed in relation to the servicing or maintenance of automatic teller machines or equivalent technology including, for example, removal of empty cartridges and inserting filled cartridges, clearing deposits lodged, purged notes and captured cards.
- 36.1.5 "Mobile cash unit" shall mean an armoured vehicle with note counting facilities, utilised out of metropolitan areas for servicing country locations.
- 36.1.6 "Cash" shall mean cash, securities and other financial instruments, other than executed non-negotiable cheques and executed bank cheques, and shall also include valuables such as gold and jewels and other commercially negotiable articles and/or transactions.

#### 36.2 Employees

- 36.2.1 "Cash transportation worker" shall mean an employee within the scope of this award who performs work in any of the following capacities for which the employee is appropriately qualified and trained:

Armoured vehicle operator.  
Non-armoured vehicle operator.  
Escort.  
Despatch hand.  
Turret hand.

"Armoured vehicle operator" shall be an employee who is qualified to drive and who holds the relevant licences, including appropriate security and firearm licences, and has completed all required training. An armoured vehicle operator who has completed the required training may also perform escort duties. An operator will be appointed at company discretion and will be qualified and available to perform non-driving duties and, subject to clause 22, Safety Standards, non-armoured vehicle duties.

"Non-armoured vehicle operator" shall be an employee who is qualified to drive and who holds the relevant licences, including appropriate security and firearm licences, and has completed all required training. A non-armoured vehicle operator who has completed the required training may also perform escort duties. An operator will, subject to clause 22, Safety Standards, be appointed at company discretion and will be qualified and available to perform non-driving duties and armoured vehicle duties.

- 36.2.2 "Casual employee" shall mean an employee engaged and paid as such.
- 36.2.3 "The Union" shall mean the Transport Workers' Union of New South Wales.
- 36.2.4 "Workers' Compensation Legislation" means the *Workers' Compensation Act* 1987 and the *Workplace Injury Management Act* 1998 and related Acts and instruments.

### **37. Leave Reserved**

Leave is reserved to the parties to apply in respect of:

Casual employment  
Chain of responsibility

### **38. Area, Incidence and Duration**

This award replaces and rescinds the Transport Industry - Armoured Cars &c. (State) Award published 23 November 2001 (329 I.G. 810), and all variations thereof. The award also replaces and rescinds those aspects of the Transport Industry (State) Award published 20 April 2000 (315 I.G. 192), and all variations thereof, that apply to the operation of non-armoured vehicles used for the transportation of cash.

It shall apply to employees of the classifications referred to herein whose primary and substantial work function is, or is in connection with, the transportation of cash in the state of New South Wales. This award will also apply to employees performing ATM work who are employed by employers whose primary and substantial business function is the transportation of cash.

The award shall take effect on and from 24 December 2002 and shall remain in force for a period of 12 months.

## **PART B**

### **MONETARY RATES**

**Table 1 - Wages**

(See subclause 1.1 of clause 1, Wages.)

Classification	Rate \$	
Cash transportation worker excluding non-armoured vehicle operator	\$567.05	
Non-armoured vehicle operator	Rate A Effective from the date of the making of the award  \$537.50	Rate B Effective from the day before the expiry of the nominal term of the award \$567.05

**Table 2 - Other Rates and Allowances**

Item No.	Clause No.	Brief Description	Former Amount per day \$	New Amount per day \$
1	2.1	Carry keys to two key safes or possess and use knowledge of vault combinations	2.31	2.61
2	2.2	Performing mobile cash units (MCU) country work	4.66	5.26
3	2.3.1	Readiness to work with off-site automatic teller machines outside ordinary hours - Monday to Friday inclusive Saturday, Sunday and public holidays	14.55 36.37	16.40 41.02
4	2.3.3	Using own vehicle when on recall	0.36 per km	0.40 per km
5	2.4	First aid	1.72	1.94
6	2.5	Employees engaged on Reserve Bank work	8.37	9.44
7	4.7	Meal allowance	8.20	10.00
8	10.5	Meal allowance	7.65	9.35

**Table 3 - Income Protection on 6-day Rosters**

(See paragraph 3.2.3 of subclause 3.2 of clause 3, Hours of Employment.)

Classification	Amount per Week
Armoured vehicle operator	\$614.20
Despatch hand	\$614.20
Armoured vehicle escort	\$598.20

**Schedule 1 - Specified Urban and Demographic Area**

(See paragraph 22.6.3 of subclause 22.6 of clause 22, Safety Standards.)

Greater Sydney Metropolitan Area  
Gosford and Central Coast  
Blue Mountains  
Greater Newcastle Metropolitan Area  
Greater Wollongong Metropolitan Area  
Wagga Wagga  
Albury

Tamworth  
Armidale  
Port Macquarie  
Lismore  
Dubbo  
Nowra  
Bathurst  
Orange  
Lithgow  
Grafton  
Tweed Heads  
Coffs Harbour

**Schedule 2 - Confidential Schedule**

NOTE: NOT REPRODUCED - see paragraphs 22.4.3 and 22.4.4 of subclause 22.4 of clause 22, Safety Standards.

F. MARKS *J.*

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Printed by the authority of the Industrial Registrar.

# **ANNEXURE C**

**N.S.W. OCCUPATIONAL HEALTH  
AND SAFETY AMENDMENT**

**(LONG DISTANCE TRUCK DRIVER FATIGUE)**

**REGULATION 2005**





# Government Gazette

OF THE STATE OF  
NEW SOUTH WALES

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## SPECIAL SUPPLEMENT



New South Wales

# Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005

under the

Occupational Health and Safety Act 2000

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Occupational Health and Safety Act 2000*.

JOHN DELLA BOSCA, M.L.C.,  
Minister for Commerce

### Explanatory note

The object of this Regulation is to reduce the fatigue of drivers of heavy trucks. In order to do this, this Regulation imposes obligations on an employer whose employee drives a heavy truck that transports freight long distance. Such an employer is required to assess the risk of harm from fatigue to the driver's health and safety and to take steps to eliminate or control that risk. However, the employer is only required to eliminate or control risks to the extent that the employer's activities contribute to that risk. A similar obligation is placed on head carriers and certain consignors and consignees of freight (including their agents and persons acting on their behalf) who enter into a contract with a self-employed carrier for the transportation of freight long distance by means of a heavy truck. Those persons on whom the obligation is placed are also required to prepare driver fatigue management plans for certain drivers and to make those plans available to those drivers.

This Regulation also requires certain consignors and consignees of freight (including their agents and persons acting on their behalf) not to enter a contract with a carrier for the transport of freight long distance by means of a heavy truck unless they are satisfied that the delivery timetables are reasonable and that each driver who will transport the freight long distance under the contract is covered by a driver fatigue management plan.

This Regulation also requires certain documents to be retained for up to 5 years and to be made available to an inspector or an authorised representative of a driver.

This Regulation is made under the *Occupational Health and Safety Act 2000*, including sections 33 (the general regulation-making power), 34 and 39.

Clause 1 Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005

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## **Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005**

under the

Occupational Health and Safety Act 2000

### **1 Name of Regulation**

This Regulation is the *Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005*.

### **2 Commencement**

This Regulation commences on 1 March 2006.

### **3 Amendment of Occupational Health and Safety Regulation 2001**

The *Occupational Health and Safety Regulation 2001* is amended as set out in Schedule 1.

Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005

Amendments

Schedule 1

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## Schedule 1 Amendments

(Clause 3)

[1] **Chapter 4 Work premises and working environment**

Omit “This Chapter is divided into 4 Parts.” from the note following the heading to the Chapter.

Insert instead “This Chapter is divided into 5 Parts.”.

[2] **Chapter 4, Note**

Insert “Part 4.5 deals with long distance truck driver fatigue.” at the end of the note following the heading to the Chapter.

[3] **Chapter 4, Part 4.5**

Insert after Part 4.4:

### Part 4.5 Long distance truck driver fatigue

#### 81A Definitions

In this Part:

**activities** of a person include anything done or omitted to be done by the person, anything done or omitted to be done under the terms of a contract to which the person is a party, anything done or omitted to be done by the person’s employee or agent in the course of his or her employment or agency and anything done or omitted to be done in accordance with a work practice over which the person has control.

**carrier** means a person who in the course of the person’s business (including a business carried on under a franchise or other arrangement) transports freight for another person by means of a motor vehicle.

**combination** means a group of vehicles consisting of a motor vehicle connected to one or more vehicles.

**consignee** means a person to whom a consignment of freight is to be delivered, being a person who carries on business of which a substantial part is prescribed business.

**consignor** means a person from whom a consignment of freight is to be delivered, being a person who carries on business of which a substantial part is prescribed business.

**contract** includes a series of contracts.

Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005

Schedule 1 Amendments

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**driver fatigue management plan** means a plan that sets out how the person required to prepare the plan will meet its obligations under the Act and this Regulation in relation to any risk associated with the fatigue of drivers that transport freight long distance.

**freight** includes goods, materials, livestock or any other things, but does not include persons.

**GVM** has the same meaning as in the *Road Transport (Vehicle Registration) Act 1997*.

**head carrier** means a carrier other than a self employed carrier.

**heavy truck** means:

- (a) a motor vehicle with a GVM over 4.5 tonnes, or
- (b) a motor vehicle forming part of a combination if the total of the GVMs of the vehicles in the combination is over 4.5 tonnes.

**motor vehicle** means a vehicle that is built to be propelled by a motor that forms part of the vehicle.

**prescribed business** means business that falls within one or more of the following Divisions recognised in the *Australian and New Zealand Standard Industrial Classification (ANZSIC)*, 1993 edition (Australian Bureau of Statistics publication, Catalogue No 1292.0):

- (a) Agriculture, Forestry and Fishing (Division A),
- (b) Mining (Division B),
- (c) Manufacturing (Division C),
- (d) Construction (Division E),
- (e) Wholesale Trade (Division F),
- (f) Retail Trade (Division G),
- (g) Accommodation, Cafes and Restaurants (Division H),
- (h) Transport and Storage (Division I),
- (i) Communication Services (Division J),
- (j) Property and Business Services (Division L),
- (k) Cultural and Recreational Services (Division P).

**self-employed carrier** means:

- (a) a partnership that carries on business as a carrier, being a business in which any heavy truck used for the transport of freight is driven only by a partner of the business, or

Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005

Amendments

Schedule 1

- 
- (b) a body corporate that carries on business as a carrier, being a business in which any heavy truck used for the transport of freight is driven only by:
    - (i) a director of the body corporate or a member of the family of a director of the body corporate, or
    - (ii) a person who, together with the members of his or her family, has a controlling interest in the body corporate, or
    - (iii) a member of the family of a person who, together with the members of his or her family, has a controlling interest in the body corporate, or
  - (c) an individual who carries on business as a carrier, being a business in which any heavy truck used for the transport of freight is driven only by the individual.

**Note.** The classes of persons that are taken to be self-employed carriers for the purposes of this Part are based on those specified in section 309 of the *Industrial Relations Act 1996*.

**transport freight long distance** means transport freight by means of a heavy truck (whether by means of a single journey or a series of journeys) more than 500 kilometres, including any part of the journey or journeys where no freight is transported because the heavy truck is being driven to collect freight or to return to base after transporting freight.

**81B Duty to assess and manage fatigue of drivers**

- (1) An employer must not cause or permit any of its employees to transport freight long distance unless:
  - (a) the employer has assessed the risk of harm from fatigue to the employee's health or safety in doing so, and
  - (b) to the extent to which the employer's activities contribute to that risk:
    - (i) the employer has eliminated the risk, or
    - (ii) if elimination of the risk is not reasonably practicable, the employer has controlled the risk.

Maximum penalty: Level 4.

**Note.** Employers of drivers are also covered by clauses 10 and 11 of this Regulation. Clause 11 provides that an employer must eliminate any reasonably foreseeable risk to the health or safety of any employee of the employer or if it is not reasonably practicable to eliminate the risk, then the employer must control the risk.

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- (2) A head carrier must not enter into a contract with a self-employed carrier under which the self-employed carrier undertakes to transport freight long distance unless:
- (a) the head carrier has assessed the risk of harm from fatigue to the health or safety of any driver who transports freight long distance under the contract, and
  - (b) to the extent to which the head carrier's activities contribute to that risk:
    - (i) the head carrier has eliminated the risk, or
    - (ii) if elimination of the risk is not reasonably practicable, the head carrier has controlled the risk.

Maximum penalty: Level 4.

- (3) A consignor or consignee must not enter into a contract with a self-employed carrier under which the self-employed carrier undertakes to transport freight long distance unless:
- (a) the consignor or consignee has assessed the risk of harm from fatigue to the health or safety of any driver that transports freight long distance under the contract, and
  - (b) to the extent to which the consignor or consignee's activities contribute to that risk:
    - (i) the consignor or consignee has eliminated the risk, or
    - (ii) if elimination of the risk is not reasonably practicable, the consignor or consignee has controlled the risk.

Maximum penalty: Level 4.

**81C Duty of consignors and consignees to make inquiries as to likely fatigue of drivers**

A consignor or consignee must not enter a contract with a head carrier for the transport of freight long distance unless the consignor or consignee has satisfied itself on reasonable grounds:

- (a) that any delivery timetable is reasonable as regards the fatigue of any driver transporting freight long distance under the contract, taking into account industry knowledge of a reasonable time for the making of such a trip (including loading, unloading and queuing times), and
- (b) that each driver who will transport freight long distance under the contract is covered by a driver fatigue management plan.

Maximum penalty: Level 4.

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**81D Driver fatigue management plans**

- (1) An employer (other than a self-employed carrier) must prepare a driver fatigue management plan for all its employees who are drivers who, in the course of their employment, transport freight long distance.  
Maximum penalty: Level 3.
- (2) A head carrier that enters into a contract with a self-employed carrier under which the self-employed carrier undertakes to transport freight long distance must prepare a driver fatigue management plan for all drivers who transport freight long distance under the contract.  
Maximum penalty: Level 3.
- (3) A consignor or consignee that enters into a contract with a self-employed carrier under which the self-employed carrier undertakes to transport freight long distance must prepare a driver fatigue management plan for all drivers who transport freight long distance under the contract.  
Maximum penalty: Level 3.
- (4) A driver fatigue management plan prepared under this clause must address each of the following matters to the extent to which they may affect driver fatigue:
  - (a) trip schedules and driver rosters, taking into account the following:
    - (i) times required to perform tasks safely,
    - (ii) times actually taken to perform tasks,
    - (iii) rest periods required to recover from the fatigue effects of work,
    - (iv) the cumulative effects of fatigue over more than one day,
    - (v) the effect of the time of day or night on fatigue,
  - (b) management practices, including the following:
    - (i) methods for assessing the suitability of drivers,
    - (ii) systems for reporting hazards and incidents,
    - (iii) systems for monitoring driver's health and safety,
  - (c) work environment and amenities,
  - (d) training and information about fatigue that is provided to drivers,
  - (e) loading and unloading schedules, practices and systems, including queuing practices and systems,

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- (f) accidents or mechanical failures.
  - (5) A person who is required to prepare a driver fatigue management plan may amend or replace the plan at any time.
  - (6) A person who is required to prepare a driver fatigue management plan:
    - (a) must consult in accordance with Division 2 of Part 2 of the Act during the preparation of the plan and at each time the person proposes to amend or replace the plan (except if the proposed amendment or replacement would only change the effect of the plan in a minor way), and
    - (b) must ensure that the person's activities are consistent with that plan, and
    - (c) must make a copy of the plan available to each driver covered by the plan.

Maximum penalty: Level 1.

**81E Application of Part to consignors and consignees and their agents**

- (1) Clauses 81B (3), 81C and 81D (3) apply to an agent or other person acting on behalf of a consignor or consignee in the same way as they apply to a consignor or consignee.
- (2) If an offence under clause 81B (3), 81C or 81D (3) is committed by an agent or other person acting on behalf of a consignor or consignee, the consignor or consignee is also guilty of the offence.
- (3) Clauses 81B (3), 81C and 81D (3) do not apply to or in respect of either of the following:
  - (a) a consignor or consignee that employs fewer than 200 employees (including persons carrying out work for the consignor or consignee under labour hire arrangements),
  - (b) an agent or other person acting on behalf of a consignor or consignee referred to in paragraph (a).

**81F Records**

- (1) A person who is required to prepare a driver fatigue management plan is to keep the following documents:
  - (a) all driver fatigue management plans prepared by the person,
  - (b) all contracts entered into in the course of the person's business (including any contracts of employment) that relate to the transportation of freight long distance,



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- (c) all trip schedules, delivery timetables and driver rosters prepared by or on behalf of the person or to which the person has access, but only for those drivers for whom the person was required to prepare a driver fatigue management plan,
- (d) any risk assessments made by or on behalf of the person that relate to the fatigue of drivers of heavy trucks.
- Maximum penalty: Level 1.
- (2) A person who is required to be satisfied of the matters set out in clause 81C is to keep all documents that the person relied on to be satisfied of those matters including the relevant contract and any relevant trip schedules, delivery timetables and driver rosters to which the person has access.
- Maximum penalty: Level 1.
- (3) Despite subclauses (1) and (2), a person:
- (a) is not required to keep a driver fatigue management plan or a contract for more than 5 years after the plan or contract ceases to have effect, and
- (b) is not required to keep a trip schedule, delivery timetable or driver roster for more than 5 years after the end of the period covered by the schedule, timetable or roster, and
- (c) is not required to keep a risk assessment for more than 5 years after the assessment is made, and
- (d) is not required to keep any document that is required to be kept under subclause (2) for more than 5 years after the relevant contract ceases to have effect.
- (4) For the purposes of this clause, if a document is amended in a material way, each version of the document as amended is to be dealt with as a separate document.
- (5) A person who is required to keep documents under this clause must make those documents available for inspection by an inspector or an authorised representative in accordance with a request by the inspector or authorised representative and, in any event, no later than 7 days after the date of the request.
- Maximum penalty: Level 1.
- (6) In this clause:  
***authorised representative*** means an authorised representative within the meaning of Division 3 of Part 5 of the Act who is exercising functions under that Division.

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