



DECISION

Fair Work Act 2009

s.185 - Application for approval of a single-enterprise agreement

Hernes Linehaul Pty Ltd
(AG2014/3885)

HERNES LINEHAUL ENTERPRISE AGREEMENT 2014

Road transport industry

COMMISSIONER CARGILL

SYDNEY, 12 MARCH 2014

Application for approval of the Hernes Linehaul Enterprise Agreement 2014.

[1] An application has been made for approval of an enterprise agreement known as the *Hernes Linehaul Enterprise Agreement 2014* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act) by Hernes Linehaul Pty Ltd. The agreement is a single-enterprise agreement.

[2] The Agreement was not lodged within 14 days after it was made. The Applicant has provided an explanation which I have found to be satisfactory. Pursuant to s.185(3)(b) I consider it fair to extend the time for making this application to 4 March 2014.

[3] The Agreement does contain a consultation term however, it is not a consultation term that fully complies with s205 of the Act. Consequently the model consultation term is taken to be a term of the Agreement.

[4] I am satisfied that each of the requirements of ss186, 187 and 188 as are relevant to this application for approval have been met.

[5] The Agreement is approved and, in accordance with s.54, will operate from 19 March 2014. The nominal expiry date is four years from the date of approval.



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Note - the model consultation term is taken to be a term of this agreement and can be found at the end of the agreement.

Fair Work Act 2009
Part 2 – 4 Enterprise Agreement

Hernes Linehaul
Enterprise Agreement 2014

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PART 1 – APPLICATION AND OPERATION OF THE AGREEMENT

1. TITLE

- 1.1 This agreement shall be referred to as the Hernes Linehaul Enterprise Agreement 2014.

2. DEFINITIONS

- 2.1 “Act” means the Fair Work Act 2009
- 2.2 “Agreement” means this Enterprise Agreement made under Part 2-4 of the Act.
- 2.3 “Award” means the Awards listed at Schedule 1 of this Agreement.
- 2.4 “Employer” means Hernes Linehaul Pty. Ltd.
- 2.5 “Employee” means a person employed under this agreement in a classification shown at Schedule ‘3’ of the Agreement.
- 2.6 “National Employment Standards” means the minimum employment standards applicable to all employees under Division 2 of the Act.
- 2.7 “Ordinary hours of work” means the ordinary hours of work defined at Clauses 11 and 12 of this Agreement and paid at the applicable base hourly rate of pay, worked hourly rate or cents per kilometre rate for the employee’s classification.
- 2.8 “Parties” means the employer and employee(s).

3. INCIDENCE OF THE AGREEMENT

- 3.1 This agreement shall specify terms and conditions of employment and minimum rates of pay and other entitlements for classifications of persons listed at Schedule ‘3’ of the Agreement.

4. OPERATION OF THE AGREEMENT

- 4.1 The principles of this agreement are, to the extent that it is affordable and reasonable to do so and having regard to our operational requirements and level of resources:
- (a) To provide employment conditions that will as far as is practicable allow employees to access a level of agreed working hours and choice of roster or shifts that will provide maximum earnings and foster family friendly working arrangements;
 - (b) To document your employment conditions in a way that is simple and easy to understand;

(c) To provide employment conditions that are flexible so as to accommodate both your and our needs; and

(d) To provide employment conditions that are fair and equitable;

4.2 Where this Agreement is silent on a National Employment Standard, the standard applies in accordance Part 2-2 of the Act.

4.3 Negotiations to replace this Agreement shall be commenced three months prior to the end date of the agreement, or at such earlier date as may be agreed between the employer and employees.

4.4 Where this Agreement is silent on Award matters as defined in the Act and Regulations those matters are excluded by the operation of this Agreement.

4.5 To give effect to terms included in this Agreement, the Agreement incorporates the terms of the:

(a) National Employment Standards;

(b) Applicable Award(s);

(c) Model flexibility term under Regulation 2.08 of the Act;

(d) Model Consultation Term under Regulation 2.09 of the Act.

(e) Model term for dealing with disputes for enterprise agreements under Regulation 6.01 of the Act.

4.6 This Agreement shall come into operation seven days after it is approved by Fair Work Australia and has a nominal expiry date four years after the date of approval.

5. CLOSED AGREEMENT

5.1 The parties to this agreement undertake that for the life of the agreement there will be no further claims over matters encompassed by the agreement.

6. COVERAGE OF THE AGREEMENT

6.1 This agreement shall be binding on the employer and all persons as defined in clause 2.5 of the agreement.

6.2 The employer and employee signatories to the agreement are listed in Schedule 2 of the agreement.

PART 2 - CLASSIFICATIONS, WAGES, INCENTIVES AND STAFF RETENTION, EMPLOYMENT CATEGORIES AND RELATED MATTERS.

7. EMPLOYEE CLASSIFICATIONS

- 7.1 Employees may be employed at appropriate levels within the classifications listed in the Table of Wage Rates at Schedule '3'.
- 7.2 Where applicable junior rates of pay are paid at the age percentage rate for their classification as prescribed by the Award.

8. WAGE RATES AND ALLOWANCES

- 8.1 The wage rates shown in the tables of Schedule (3) shall apply to the levels and classifications listed in the agreement from the first full pay period following approval of the Agreement by Fair Work Australia.
- 8.2 Where an entitlement exists driver employees will be paid a living away from home allowance of \$36.60 per night.
- 8.3 To compensate for pickups, drops and splits the long distance driver cents per kilometre rate includes the above Award cents per kilometre component of:
 - (a) One cent per kilometre for Grade 4 drivers; and
 - (b) Four cents per kilometre for Grade 6 drivers
- 8.4 Long distance drivers will be paid an allowance of \$5.00 per trip leg for load restraint purposes.
- 8.5 Long distance drivers will be paid an allowance of \$70.00 when held over for 24 hours while waiting for a load on a return trip.
- 8.6 Long Distance drivers continuing to Brisbane will be paid a Top End allowance for additional pickups and drops (excluding initial load or unload at a final destination) at the rate of:
 - (a) Grade 4 \$50.00 per trip
 - (b) Grade 6 \$75.00 per trip
- 8.7 Long distance driver employees will be paid the following weekly amounts, or pro rata thereof for part time employees in lieu of 11 rostered days off (excludes accrual during 4 weeks annual leave):
 - (a) Grade 4 drivers RDO weekly payment of \$38.25
 - (b) Grade 6 drivers RDO weekly payment of \$40.20
- 8.8 Where an entitlement exists (worked hours more than 9.6 hours per day) local drivers will be paid a meal allowance of \$14.34

- 8.9 Unless otherwise provided for in this Agreement and where an entitlement exists, penalty rates and allowances not provided for in this Agreement will be paid in accordance with the Award at the employee's hourly base rate of pay.
- 8.10 Hernes Freight Services Letters of Employment will include a schedule advising individual employees of their employment status, classification, agreed hours of work, rate of pay and related employment matters.
- 8.11 Employees who are receiving or are granted rates of pay, allowances or other benefits above those provided for in this Agreement will continue to receive those rates for the life of the Agreement indexed as per applicable adjustment Clause below.
- 8.12 Commencing from 2014, the wage rates shown in Schedule 3 will be adjusted by Fair Work Australia decisions as they fall due.
- 8.13 Commencing from 2014, Award allowances referred to in the agreement will be adjusted by Fair Work Australia decisions as they fall due.

9. SUPERANNUATION

- 9.1 Superannuation for all employees will be paid in accordance with Ordinary Times Earnings definition (OTE) under the Superannuation Guarantee Act. OTE includes 38 ordinary hours of work plus applicable penalties and allowances and excludes superannuation on identifiable overtime components of worked hourly rates, and cents per kilometre rates and for all hours worked in excess of 38 ordinary hours per week as provided for in clauses 11 and 12 of this Agreement.
- 9.2 Superannuation will be paid in accordance with clause 9.1 and the Australian Taxation Office advice(s) as varied from time to time.
- 9.3 The default superannuation fund for Hernes Linehaul Pty Ltd is AMP Hernes Linehaul Corporate Superannuation Fund.

10. INCENTIVES & STAFF RETENTION MATTERS

10.1 Annual leave – cashing out

- (a) Employees may apply in writing to 'cash out' up to two weeks per year of their annual leave accruals provided that the remaining accrued entitlement is not less than four weeks.

10.2 Multi-skilling pay & labour flexibility

- (a) Where necessary employees will be provided with training and workplace familiarisation that will allow them to develop the skills required to become multi-skilled.

- (b) Subject to clause 10.2(a) the employer may ask the employee to carry out such duties as are within the limits of the employee's skill, competence and training.
- (c) Any direction issued by the employer under clause 10.2(b) will be consistent with the employer's duty of care to employees under the applicable Work Health and Safety Act; other relevant legislation; and the employer's duty of care to clients.

11. EMPLOYEE CATEGORIES

11.1 Employees may be employed as:

- (a) Full time employees working maximum ordinary hours of an average of 38 ordinary hours per week or 152 ordinary hours in any four week period.
- (b) Part time employees whose ordinary working hours shall be for not more than 38 hours per week and not less than 8 hours per week with a minimum of four hours per day on any day that they are rostered for work and who shall be paid an hourly rate at 1/38th of the weekly rate for their classification; and receive pro-rata leave and other applicable entitlements of full time employees.
- (c) Casual employees engaged on an irregular or occasional basis to cover peak workloads or the absences of full or part time employees.
 - (a) Casual local driver employees shall be paid 1/38th of the rate of pay for their classification, plus a 25% casual loading.
 - (b) Casual long distance drivers shall be paid the Cents Per Kilometre rate plus 15% with a minimum payment per day for 500 kilometres.
 - (c) For work performed on weekends or public holidays, casual employees shall be paid the hourly base rate of pay and penalty rates in accordance with their classification.
- (d) Temporary employees engaged as either full or part time employees for a designated task or period of time.

12. HOURS OF WORK

12.1 The ordinary hours of work for all employees including long distance driver employees is 38 per week as per the National Employment Standards. Hours worked above 38 hours per week are recognised as reasonable overtime in accordance with the National Employment Standards and applicable Fatigue Management legislation applied to long distance drivers. Ordinary hours may be arranged as follows:

- (a) 38 hours within a 7 consecutive day work cycle;
- (b) 76 hours within a 14 consecutive day work cycle;

- (c) 114 hours within a 21 consecutive day work cycle; or
- (d) 152 hours within a 28 consecutive day work cycle.

12.2 Start and finish times will be as directed by the employer to meet the business needs of the employer.

12.3 Start and finish times advised to individual employees may not be altered by employees without the prior approval of the employer.

12.4 An employee may refuse to work unreasonable overtime hours in accordance with the provisions of the NES.

12.5 Driver employees are responsible for, and must take meal and other breaks in accordance with Fatigue Management Legislation or Award provisions.

12.6 Where an employee works a shift of 6 hours or less the employer and the employee may agree in writing to forgo a meal break.

13. ORDINARY TIMES EARNINGS

13.1 Ordinary times earnings are those amounts paid for working ordinary hours inclusive of applicable shift penalties and allowances and paid at a base rate of pay or a cents per kilometre rate and exclude payment for all hours in excess of 38 ordinary hours per week.

14. ROSTERS

14.1 Employees will be rostered as required to meet the business needs of the company;

- (a) Employees may change rosters with another approved employee with the prior approval of the employer.

14.2 By agreement between the employee and the employer rosters may be altered within the standard roster period to meet unforeseen circumstances. At least 24 hours notice of such a change would be given except in extreme circumstances.

14.3 The employer will make every effort to roster the employee in a manner that is fair and equitable and which takes into account the preferences of individual employees. For example, where an employee has family or other personal commitments, the employer will attempt to accommodate these commitments.

15. OVERTIME

15.1 Reasonable overtime may be required from time to time and can only be worked by prior agreement of the employer.

- 15.2 Unless otherwise stated in this Agreement overtime will be paid at the classification base rate of pay plus applicable Award loadings for the classifications listed at Schedule 3.
- 15.3 By written agreement overtime may be taken as time off in lieu equal to the hours worked. Time off in lieu must be taken within four weeks of accrual unless agreed otherwise with the employer.

PART 3 – EMPLOYMENT POLICIES

16. EMPLOYMENT POLICIES

- 16.1 Employment policies and general conditions of employment are as contained in Hernes Freight Services Pty Ltd Personnel Policies Manual as amended from time to time. The policies or procedures in the manual are guidelines for employees or management action and are not intended to create any kind of contract, binding guarantee or agreement between the parties.
- 16.2 Employees agree to abide by the provisions contained in the manual and to conform to the requirements of any applicable legislation or procedures governing employment matters that may be referenced in the manual, provided that a policy may not override or be in conflict, or provide a lesser benefit than provided for in the NES.
- 16.3 At the date of certification of the agreement the major personnel policies and conditions of employment contained in the manual are:
- (a) Abandonment of employment
 - (b) Administration policies
 - (c) Chain of responsibility
 - (d) Cleaning of trucks / trailers
 - (e) Confidential information
 - (f) Continuous improvement
 - (g) Disciplinary procedure
 - (h) Discrimination
 - (i) Dispute resolution procedure
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- (z) Smoke free workplace
- (aa) Standards and conduct (including dress codes)
- (bb) Theft, attempted theft or removal of property
- (cc) Training – mandatory
- (dd) Workers compensation

16.4 Whilst employed by Hernes Freight Services, employees must not be engaged either directly or indirectly, in any capacity in any other employment, occupation, trade or business without the approval of the employer.

16.5 If approval is given for an employee to undertake other work, then it should not interfere with their employment with Hernes Freight Services, or result in any real or perceived conflict of interest, or present an OH&S risk.

16.6 Employees engaged in other employment at the time of approval of the agreement or subsequent to its approval must advise the employer of such employment.

17. ANNUAL LEAVE

17.1 A full time or part time employee is entitled to annual leave accrued in accordance with the National Employment Standards and paid at their base hourly rate of pay.

17.2 Annual leave shall be taken at a time mutually agreed upon by the employee and the employer and in the absence of an agreement at a time fixed by the employer after the giving of reasonable notice by the employer when directing the employee to take overdue leave.

- (a) Unless otherwise agreed employees will give at least one (1) months notice in writing in order to take annual leave. Annual leave requests may be rejected by the company because of work commitments; however the company undertakes to approve all reasonable requests for leave with or without pay.

17.3 An employee may reasonably be directed to take an amount of annual leave in accordance with the National Employment Standards when annual leave in excess of 8 weeks has been accrued unless the employer and employee agree to allow the leave to accrue for such longer period as agreed.

17.4 Annual leave shall be taken in periods by mutual consent.

17.5 A 17.5% annual leave loading will be paid to permanent employees (other than long distance drivers) for all periods of Annual Leave.

17.6 A 30% annual leave loading will be paid to long distance driver employees for all periods of annual leave.

18. PERSONAL LEAVE

18.1 Paid personal leave includes sick leave and will be available to an employee when they are absent due to personal illness or injury (sick leave); or for the purposes caring for an immediate family member as defined in the National Employment Standards (Carers leave). See the Hernes Freight Services Personnel Policies Manual for further detail.

18.2 An employee shall be entitled to ten days personal leave per year paid at the Award base rate of pay accrued in accordance with the NES.

18.3 Employees are required to notify the employer of their inability to attend for work for personal leave reason prior to the beginning of their shift or as soon as possible thereafter.

18.4 Where personal leave is for two days or more the employee shall provide a medical certificate to cover the period of personal leave.

18.5 Where personal leave is taken immediately before or after a weekend or public holiday the employee shall provide a medical certificate.

18.6 Each employee will only be entitled to 2 personal leave days per year without producing a medical or like certificate for the absence.

19. PUBLIC HOLIDAYS

19.1 With the exception of a person engaged as a casual employee, a person engaged under this agreement will be entitled to the following Public Holidays without loss of pay:

New Years Day, Australia Day, Good Friday, Easter Monday, ANZAC Day, Queens Birthday, Labour Day, Christmas Day, Boxing Day and any other day proclaimed as a Public Holiday within the State(s) of operation of the Agreement.

20. TERMINATION OF EMPLOYMENT

20.1 Notice of termination of employment is specified in the table below:

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

20.2 An employee aged over 45 years of age with at least 2 years continuous service is entitled to an additional weeks notice.

20.3 The period of notice does not apply in the case of dismissal for misconduct or to employees engaged for a specific period of time or a specific task or tasks.

20.4 The employer and the employees must give the same notice as that provided for in the table above, or pay or forfeit the required amount in lieu of notice.

20.5 On termination of employment all employee entitlements will be paid in to the employees nominated account immediately upon the return to the employer of uniform items, fuel cards, keys and other property of the employer.

21. REDUNDANCY

21.1 For permanent or part time permanent employees, redundancy payments will be made in accordance with provisions of the National Employment Standards

21.2 Redundancy payments do not apply to full or part time temporary employees engaged for a designated task or specific period of time.

PART 4 – COMMUNICATION AND RELATED MATTERS.

22. COMMUNICATION

22.1 In the workplaces covered by this agreement, consultative mechanisms and procedures to facilitate the efficient operation of the workplace shall be established and include employer and employee representatives.

22.2 The consultative mechanisms and procedures shall be appropriate to the size and structure of the workplace.

23. WORKPLACE REVIEW

23.1 During the operation of this agreement the parties commit to the ongoing review and /or implementation of:

- (a) Work practices and work organisation for all classifications covered by the Agreement, including where necessary variations to this agreement in accordance with the Act.

24. FLEXIBILITY

24.1 This clause enables the employer and an employee to agree on arrangements to meet the genuine individual needs of the employer and the employee in accordance with the Model Flexibility Agreement.

24.2 The employee and the employer may agree in writing to vary one or more of the terms of this agreement including those that are listed below:

- (a) Arrangements about when work is performed;
- (b) Overtime rates;
- (c) Penalty rates;
- (d) Allowances; and
- (e) Leave loading.

24.3 The Agreement incorporates the terms of the Model Flexibility Term where necessary to give effect to the terms included in this agreement including:

- (a) The employee not being disadvantaged under the agreement when considered as a whole as it applied at the date the flexibility was agreed;
- (b) Genuine agreement is reached between the employee and the employer without coercion or duress.
- (c) That the operation of this clause is not a condition of employment

24.4 Where an agreement is entered into under this clause, the agreed terms apply in place of the Agreement terms;

24.5 Termination of a flexibility agreement by either party on written notice of 28 days or earlier by agreement of the parties; and

24.6 That any disputes arising from the operation of this clause will be dealt with in accordance with Clause 26 of the Agreement.

25. CONSULTATION WITH EMPLOYEES

- 25.1 The employer shall discuss with employees affected, among other things the introduction of changes referred to in Clause 25.1, the effects the changes are likely to have on employees, measures to avert or mitigate any adverse effects of such changes on employees.
- 25.2 The discussion shall commence as early as practicable after a definite decision of the employer to make changes referred to in Clause 24.1.
- 25.3 For the purposes of discussion the employer shall provide in writing to the employees concerned all relevant information about the changes proposed and any expected effects of the changes on employees.
- 25.4 Employees may appoint a representative for consultation purposes.

26. INTRODUCTION OF MAJOR CHANGE IN THE WORKPLACE

- 26.1 Changes in work procedures, programme organisation, structure and technology that are likely to have significant effects on employees should be notified to employees affected by the proposed changes.
- 26.2 Significant effects include termination of employment, major changes in the composition, or size of the workforce or skills required

27. DISPUTE RESOLUTION

- 27.1 It is the intention of the employer and employees covered by this agreement to eliminate disputes. It is agreed that the parties to this agreement shall confer in good faith with a view to resolving any matter by direct negotiations and consultation.
- 27.2 The parties further agree that the model term for dealing with disputes for enterprise agreements under Regulation 6.01 of the Act forms part of this Agreement.

PART 5 – AGREEMENT AND COMPLIANCE MATTERS

28. POSTING UP OF AGREEMENT

- 28.1 A copy of this agreement shall be kept and made available to prospective employees, with a copy made accessible to employees in each major work location.

29. RELATIONSHIP TO AWARDS AND LEGISLATION

- 29.1 Where this agreement is silent on any applicable condition of employment (e.g. long service leave, etc.) under relevant Federal, or State legislation, the terms, definitions or conditions of that legislation at the time of approval of the Agreement will apply.

30. AGREEMENT REPLACES ALL PREVIOUS CONTRACTS AND ARRANGEMENTS

- 30.1 This agreement replaces all previous contracts or other employment arrangements.

31. VARIATION OF AGREEMENT

- 31.1 This agreement may be varied by written agreement between the parties with that agreement, after consultation to be the subject to an application for variation under the provisions of the Act.

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Schedule 1

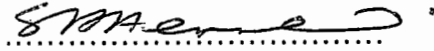
Relevant Awards and Legislation

- Road Transport (Long Distance Operations) Award 2010
- Road Transport and Distribution Award 2010
- Occupational Health & Safety Acts (Applicable State Acts)
- Vehicle Manufacturing, Repair, Services and Retail Award 2010
- Clerks Private Sector Award 2010
- NSW Long Service Leave Act
- Superannuation Guarantee Act
- Fair Work Act 2009

Schedule 2

Employer and employee signatories to the agreement

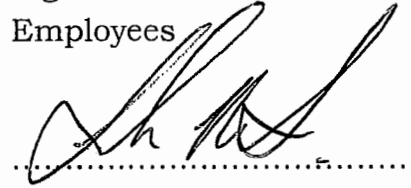
Signed for and on behalf of
Hernes Freight Services



Managing Director

Date: 3/3/14

Signed for and on behalf of
Employees



Employee Representative

Date: 2.3.14

Full name and addresses of signatories:

Name: Stuart Herne

Address: 970 Wyrallah Road

Wyrallah, NSW 2480

Name: John Meston

Address: 15 Cascade Drive

Casino, NSW 2470

SCHEDULE 3 WAGES and CLASSIFICATIONS

Driver - Long Distance	(See full classification descriptions attached as Schedule 4)	Hourly Base Rate	CPK
Driver Grade 4	Semi-trailer/Quad dog < 42.5 tonne	\$19.25	38.09
Driver Grade 6	B-double >53.4 tonne	\$20.25	42.72
Driver – Local Produce	(See full classification descriptions attached as Schedule 4)	Hourly Base Rate	Average worked rate
Driver Grade 4	Driver of rigid <4.5 tonnes /forklift	\$18.75	\$22.03
Driver – Local Top End	(See full classification descriptions attached as Schedule 4)	Hourly Base Rate	Trip Rate
Driver Grade 6	Semi-trailer/quad dog > 22.4 tonne	\$19.25	\$257.95
Driver Grade 8	B-double >53.4 tonne	\$20.25	\$311.85
Workshop	See Award Classification detail	Hourly Base Rate	Weekly Rate
Mechanic	R6 (trade qualification)	\$25.00	\$950.00
Auto Parts	R3	\$18.50	\$703.00
Tyre fitter	R2	\$17.50	\$665.00
Administration	See Award Classification detail	Hourly Base Rate	Weekly Rate
Clerk – Level 1	Trainee – basic skills	\$19.25	\$731.50
Clerk – Level 3	Preparation of accounts, wages etc. Senior	\$20.50	\$779.00
Clerk – Level 5	Clerk - management support.	\$22.50	\$855.00

Notes to table:

1. Employees will normally work their shifts on a Monday to Friday basis
2. The cents per kilometre rate is paid for ordinary hours (38 per week) and for overtime hours (to the maximum allowed under applicable Fatigue Management legislation).
3. The average worked rate for Local / Produce B-double drivers is a rate agreed as being calculated by averaging payments made during the quiet and busy periods of the year. The arrangement is in satisfaction of employees wish to even out pay rates through these periods.
4. The Brisbane trip rate for top end drivers is calculated for an average working day for Grade 6 and Grade 8 drivers.
5. The hourly base rate is the rate paid for all purposes other than a worked hourly rate or trip rate i.e. For annual leave, personal leave etc.
6. The cents per kilometre rates include an amount to cover roll back of covers or curtains, opening of doors, remove /replace of gates for all vehicle types.

SCHEDULE 4 DETAILED CLASSIFICATIONS

DEFINITIONS: LOCAL DRIVER – GRADES 1 – 8

Grade	Drivers	Description
Grade 1	Truck Wash/Gen Hand	General Hand – truck washer, yard work and occasional driving duties.
Grade 2	Vehicle<4.5 tonne	Driver of a rigid vehicle not exceeding 4.5 tonnes GVM
Grade 3	Vehicle < 13.9 tonne	Driver of a 2 axle rigid vehicle not exceeding 13.9 tonnes; forklift to 5 tonnes
Grade 4	Vehicle <13.9 tonne	Driver of three axle rigid vehicle exceeding 13.9 tonnes or forklift to 10 tonnes
Grade 5	Semi-trailer <22.4 tonne	Driver of four axle rigid vehicle or 3 axle articulated vehicle; rigid vehicle- trailer combination with total of 3 axles and a GCM < 22.4 tonnes
Grade 6	Semi-trailer >22.4 tonne	Driver of articulated vehicle or rigid vehicle and trailer combination with total of 4 or more axles and a GCM > 22.4 tonnes.
Grade 7	B-double < 53.4 tonne	Driver of double articulated vehicle including B-Doubles < 53.4 tonnes
Grade 8	B-double> 53.4 tonne	Driver of double articulated vehicle (B-double); rigid vehicle-triple trailer combinations > 53.4 tonnes

DEFINITIONS: LONG DISTANCE DRIVER – GRADES 1 – 8

Grade	Description
1	Driver of two axle rigid vehicle up to 13.9 tonnes GVM. Capacity up to eight tonnes.
2	Driver of three axle rigid vehicle over 13.9 tonnes GVM. Capacity over eight and up to 12 tonnes.
3	Driver of four axle rigid vehicle over 13.9 tonnes GVM. Driver of rigid vehicle and heavy trailer combination with GCM of less than 22.4 tonnes. Driver of articulated vehicle with GCM of less than 22.4 tonnes; Capacity over 12 tonnes.
4	Driver of rigid vehicle and heavy trailer combination with GCM over 22.4 tonnes but not more than 42.5 tonnes. Driver of articulated vehicle with GCM over 22.4 tonnes. Driver of low loader (as defined) with GCM of 43 tonnes or less. Capacity up to 24 tonnes.
5	Driver of double articulated vehicle with GCM 53.4 tonnes or less (includes B-doubles). Driver of low loader (as defined) with GCM over 43 tonnes.
6	Driver of rigid vehicle and trailer(s) or double articulated vehicle with GCM over 53.4 tonnes (includes B-doubles). Multi-axle trailing equipment up to 70 tonnes capacity.
7	Driver of road train or triple articulated vehicle exceeding 94 tonnes GCM.
8	Multi-axle trailing equipment.

Schedule 2.3—Model consultation term

(regulation 2.09)

Model consultation term

(1) This term applies if the employer:

(a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or

(b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

(2) For a major change referred to in paragraph (1)(a):

(a) the employer must notify the relevant employees of the decision to introduce the major change; and

(b) subclauses (3) to (9) apply.

(3) The relevant employees may appoint a representative for the purposes of the procedures in this term.

(4) If:

(a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

(b) the employee or employees advise the employer of the identity of the representative;

the employer must recognise the representative.

(5) As soon as practicable after making its decision, the employer must:

(a) discuss with the relevant employees:

(i) the introduction of the change; and

(ii) the effect the change is likely to have on the employees; and

(iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and

(b) for the purposes of the discussion—provide, in writing, to the relevant employees:

- (i) all relevant information about the change including the nature of the change proposed; and
- (ii) information about the expected effects of the change on the employees; and
- (iii) any other matters likely to affect the employees.

(6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

(7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

(8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.

(9) In this term, a major change is *likely to have a significant effect on employees* if it results in:

- (a) the termination of the employment of employees; or
- (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
- (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (d) the alteration of hours of work; or
- (e) the need to retrain employees; or
- (f) the need to relocate employees to another workplace; or
- (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

(10) For a change referred to in paragraph (1)(b):

- (a) the employer must notify the relevant employees of the proposed change; and
- (b) subclauses (11) to (15) apply.

(11) The relevant employees may appoint a representative for the purposes of the procedures in this term.

(12) If:

- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- (b) the employee or employees advise the employer of the identity of the representative:

the employer must recognise the representative.

(13) As soon as practicable after proposing to introduce the change, the employer must:

- (a) discuss with the relevant employees the introduction of the change; and
- (b) for the purposes of the discussion—provide to the relevant employees:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
 - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
- (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

(14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

(15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.

(16) In this term:

relevant employees means the employees who may be affected by a change referred to in subclause (1).

Collective Agreement

BETWEEN:

Primeline Contracting Pty Ltd
(the “Company”)

AND:

The LONG DISTANCE DRIVERS’
of Primeline Contracting Pty Ltd

Issued to employees’ on:

The Collective Agreement can **not** be voted on until
(insert date 7 that is days later than above).

South Australian Management Support
17 Wirriga Street
REGENCY PARK SA 5010
Ph: (08) 8445 9777

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PRIMELINE CONTRACTING PTY LTD

This is a Collective Agreement as provided by Part 8 of the *Workplace Relations Act 1996* (“the Act”)

The parties to this legal agreement shall be:

Primeline Contracting Pty Ltd (“the Company”)

ABN 74 117 144 706

of 50-52 Athol Street, ATHOL PARK, SA, 5012 (“the Company address”)

and:

The Heavy Vehicle Employees’ of the Company.

The aim of this Agreement is to strike a complementary balance between the enhancement of Employees’ wages and conditions and the enhancement of the Company’s competitiveness and viability.

1. AGREEMENT TITLE

The title of this Collective Agreement is the **PRIMELINE CONTRACTING PTY LTD LONG DISTANCE DRIVERS COLLECTIVE AGREEMENT 2009.**

2. APPLICABILITY OF AWARD

This Agreement shall operate to the exclusion of any and all other Agreements or Awards, including but not limited to the Transport Workers Award 1998 and the Transport Workers (Long Distance Drivers) Award 2000 as applicable.

3. DEFINITIONS

For the purpose of this Agreement the following definitions shall apply:

- 3.1. **Home base** shall be the Company's depot from which the Employee normally operates. The Company may change the Employee’s home base as needed for operational reasons.
- 3.2. **Long distance operation** means any journey that is at least 200km one-way across state/territory borders or at least 500km return within a state/territory.
- 3.3. **Local Work** means any journey that is not a Long Distance Operation.

4. DISPUTE RESOLUTION

In relation to any matter that may be in dispute between the Company and the Employee relating to this Agreement, the Company and Employee will attempt to resolve the matter in accordance with the following Dispute Resolution process:

- 4.1. Step 1 - Employee and their supervisor shall discuss and seek to resolve the matter at the workplace level.
- 4.2. Step 2 – If Step 1 does not resolve the matter, the Employee and their supervisor shall seek the assistance of a senior manager of the Company to resolve the matter.

- 4.2.1. The Company and the Employee may each appoint, in writing, another person to represent, or assist them in settling the matter at the workplace level as part of Step 2 or Step 3.
- 4.3. Step 3 - If Step 2 does not resolve the matter at the workplace level, then:
 - 4.3.1. If both parties agree, the dispute may be referred to external mediation and/or arbitration by a mutually agreed independent person or organisation.
 - 4.3.2. If a matter is referred to mediation and/or arbitration, both parties must participate in the mediation and arbitration process in good faith and a willingness to settle and both parties must accept any arbitrated resolution.
- 4.4. During the Dispute Resolution process the Company and Employee will continue to work according to the Agreement unless the Employee has a reasonable concern about an immediate risk to their health or safety.
- 4.5. Despite the Employee's "reasonable concern" under Clause 4.4 and subject to relevant provisions of any State or Territory occupational health and safety law, the Employee must not unreasonably fail to comply with an instruction by the Company to perform other available work, which:
 - 4.5.1. May be at the same workplace or another reasonably accessible workplace.
 - 4.5.2. Must be safe and appropriate for the Employee to perform.
- 4.6. During the term of the dispute, the parties agree not to commence legal action under the Act and/or this Agreement, other than an action to enforce the Dispute Settlement provisions.
- 4.7. During the Dispute Settlement process the Employee will not take strike action and the Company will not lock out Employees.

5. DATE OF COMMENCEMENT AND NOMINAL EXPIRY DATE

The Agreement shall commence on the seventh day after the date that the Workplace Authority issues its approval notice and the nominal expiry date of the agreement shall be the third anniversary of the date on which it commenced.

6. NO FURTHER CLAIMS

- 6.1. It is expressly agreed that for the duration of this Agreement, no further claims or demands whatsoever will be made by one party against the other.
- 6.2. If the Base Weekly and Base Hourly rates of pay set out in the table in clause 9.1 are adjusted from time to time through Federal Minimum Wage Increases such that they exceed the rates payable under this Agreement, then the rates payable under this Agreement shall be increased to match these rates.

7. EMPLOYMENT CONTRACT

- 7.1. The Employees are engaged by the Company on either a Full-time or Part-time basis and each employee shall be advised by the Company in writing of their employment status in his/her letter of Appointment by the Company. The employees shall be advised in writing by the Company of any change in their employment status from Full-time to Part-time or vice-versa.

8. CLASSIFICATION STRUCTURE

Level	Description
1	General Hand: greaser, cleaner, yard person, vehicle washer/detailer, driver's assistant, loader, courier.
2	Loader-freight forwarder, driver of a rigid vehicle up to 44.5 tonne gross vehicle mass.
3	Driver of two axle rigid vehicle up to 13.9 tonnes GVM. Capacity up to eight tonnes. Driver of fork lift up to 5 tonnes capacity
4	Driver of three axle rigid vehicle over 13.9 tonnes GVM. Capacity over eight and up to 12 tonnes. Driver of fork lift with capacity between 5 and 10 tonnes.
5	Driver of four axle rigid vehicle over 13.9 tonnes GVM. Driver of rigid vehicle and heavy trailer combination with GCM of 22.4 tonnes or less. Driver of articulated vehicle with GCM of 22.4 tonnes or less. Capacity over 12 tonnes. Driver of fork lift with capacity between 10 and 34 tonnes.
6	Driver of rigid vehicle and heavy trailer combination with GCM over 22.4 tonnes but not more than 42.5 tonnes. Driver of articulated vehicle with GCM over 22.4 tonnes. Driver of low loader (as defined) with GCM of 43 tonnes or less. Capacity up to 24 tonnes. Driver of fork lift with capacity over 34 tonnes. Driver of a mobile crane with up to 25 tonnes capacity.
7	Driver of double articulated vehicle with GCM 53.4 tonnes or less (includes B-doubles). Driver of low loader (as defined) with GCM over 43 tonnes.
8	Driver of rigid vehicle and trailer(s) or double articulated vehicle with GCM over 53.4 tonnes (includes B-doubles). Multi-axle trailing equipment up to 70 tonnes capacity.
9	Driver of road train or triple articulated vehicle exceeding 94 tonnes GCM.
10	Multi-axle trailing equipment.

9. RATES OF PAY

- 9.1. The Employee's rates of pay under this Agreement are as set out in the table below, which sets out the Agreement rates of pay for Long Distance Drivers

	Base Rates		Agreement Long Distance Rates	
	Base Weekly Agreement	Base Hourly	Agreement Cpk Rates	Loading & Unloading Hourly Rates \$
Grade 6	\$627.40	\$16.51	35.16	\$20.39
Grade 8 (B-Double)	\$656.10	\$17.27	36.77	\$21.32
Grade 8 (Road Train)	\$656.10	\$17.27	37.77	\$21.32

- 9.2. The Agreement Long Distance Kilometre Rates of pay set out in the table in clause 9.1 are inclusive of payment for an employee's Rostered Days Off (RDO's), Public Holiday Ordinary Hours, Annual Leave and Leave Loading.
- 9.2.1. The Agreement Long Distance Kilometre Rates of pay set out in the table in clause 9.1 are inclusive of a 20% overtime component and a 30% Disability allowance as payment for Overtime hours and Shift penalty rates in addition to the Base hourly rates of pay.
- 9.3. Guaranteed Minimum Fortnightly Wage Payment
A full-time Employee shall be entitled to a guaranteed minimum fortnightly payment which shall be twice the Base Weekly Agreement Rate of pay set out in the table in clause 9.1 for the Employee's Classification Level. To be entitled to this payment, the Employee must be ready, willing and able to perform their duties under this Agreement.
- 9.4. Long Distance Driving Rates of Pay
- 9.4.1. The Employee will be paid for the driving component of a particular long distance journey at the Agreement Long Distance Cents per Kilometre rates set out in Table in clause 9.1 for the Employee's Classification Level.
- 9.4.1.1. The distances for all Long Distance journeys shall be as specified in the Company's Operational Schedules as set out from time to time by the Company.
- 9.4.1.2. The Long Distance Cents Per Kilometre Rates set out in the table in clause 9.1 are inclusive of payment for the occasional pick-up or delivery at the start, end or en-route of an employee's journey, but excludes actual time spent physically loading and/or unloading as per clause 9.5.
- 9.5. Long Distance Loading or Unloading Rates of Pay
- 9.5.1. The Employee will be paid for loading or unloading duties, at the Agreement Loading and Unloading Rates of pay set out in the Table in clause 9.1 for the routine number of Loading/Unloading hours set out in the Company's Operational Schedules from time to time.
- 9.5.2. "Loading or unloading" means being physically engaged in the loading or unloading of the vehicle and includes tarping but excludes opening or closing tautliner curtains and installing or removing gates.
- 9.5.2.1. Loading and Unloading a Refrigerated van includes physically unloading the whole load with a pallet jack, but excludes restraining the load, opening van doors and/or unloading at a dock or ramp .
- 9.6. Two-Up Driving
If an employee is required to complete a Two-Up Long Distance trip, the employee shall be paid 75% of the Long Distance Cents Per Kilometre rates set out in the table in clause 9.1, for the employee's classification level.
- 9.6.1. Two-Up drivers will accrue 75% of the 1.5cpk included in the Agreement Cents Per Kilometre Rates as payment for Annual Leave and Leave Loading.
- 9.7. Higher Functions
The Employee may be required to perform work at a higher classification than the Employee's Level and they shall be paid for that day at that higher Level provided that they perform work at that higher Level for at least two hours on that day.

9.8. Transfer to Lower Duties

The Employee may be transferred, temporarily or permanently, to a lower Classification Level than that at which the Employee is usually employed where the Company does not require the Employee to work at the higher Level for that period of time. In this event, the Employee shall be paid in accordance with the Classification Level to which they have been transferred.

9.9. Casual Loading

If the Employee is a casual they shall receive the following Casual Loading in addition to the Base Rates of pay set out in this agreement.

Local Work		Long Distance	
Ordinary Hours	Overtime	Load/Unload	Driving
25%	10%	25%	15%

10. ALLOWANCES

10.1. **Living Away From Home Allowance**

When the Employee is on a long distance journey and is unable to return home to take the sleep break required by the Driving Hours laws in a 24 hour period and therefore sleeps away from their home, they shall be paid the sum of **\$31.99**. The Employee shall not be entitled to this allowance where the Company provides suitable accommodation. Suitable accommodation includes Company houses and bunk-houses, hotels and motels and any other accommodation away from the truck.

10.2. Dangerous Goods Allowance

Dangerous Goods Allowance is not payable except as provided in this Clause. If the Employee's work frequently and routinely involves the transportation of bulk dangerous goods, as defined in the Australian Dangerous Goods Code, or in carting explosives in accordance with the Australian Explosives Code, they shall receive an allowance of \$14.26 on each day that they perform such work. This allowance is not payable in respect of occasional journeys involving the ad hoc transportation of Dangerous Goods or explosives.

11. DUTIES

- 11.1. The Company may direct the Employees' to carry out such duties as are within the limits of the Employees skill, competence and training consistent with the Employees Classification Level and the Employees are required to follow all such lawful directions or they may be subject to disciplinary action, including possible dismissal.
- 11.2. The Employees may be asked by the Company to undertake Long Distance or Local work and shall not unreasonably refuse any such request.
- 11.3. The Employees must comply with the Company's policies and procedures, which the Company may vary from time to time at its discretion.
- 11.4. The Employees must comply with the laws and regulations that govern heavy vehicle operations, including in relation to Driving Hours, Speed, Mass Limits, Vehicle Dimension and Load Restraint.
- 11.5. The Employees must ensure that their paperwork relating to each trip is completed correctly and submitted to the Company office in accordance with the Company's procedures at the time. Failure to do so may result in a delay in the processing of an Employee's pay for the trips involved.

12. ARTICLES OF CLOTHING/UNIFORM

- 12.1. Where the Company provides uniforms and protective clothing the Employees must, whilst on duty, comply with the Company's clothing and uniform policies.
- 12.2. The Company will provide the Employees with an initial uniform upon employment with the Company. If an Employee requires a replacement uniform due to wilful neglect by the employee it will be at the Employee's own expense, but the uniform will still be the property of the Company.
- 12.3. Return of Property & Uniform
 - 12.3.1. Upon the cessation of an Employee's employment by the Company for any reason, the Employee must immediately return all property belonging to the Company; including keys, Company manuals, documentation, phones and any information relating to the Company. The Employee must destroy any records of any information relating to the Company which is unable to be returned to the Company immediately.
 - 12.3.2. The Employee's final payment of wages and entitlements may be delayed until the Employee has returned all Company property, equipment and uniforms in accordance with this Agreement. The Company may deduct the replacement costs of any such equipment that is not returned by the Employee from the Employee's final payment of wages and entitlements.

13. STARTING AND FINISHING TIME

- 13.1. The scheduling of starting times and finish times shall be as advised by the Company from time to time. The Employees accept that the Company may need to alter start and finish times at short notice for operational reasons.
- 13.2. An Employee will not be paid for any unauthorised time worked prior to their scheduled starting time or after their scheduled finish time unless the Company is satisfied by the Employee's reason for starting earlier or finishing later.

14. REASONABLE HOURS TO BE WORKED

- 14.1. The Company may require the Employee to work reasonable hours of work at the rates of pay provided by this Agreement, which, if a Full-Time employee, are based upon an average of 38 Ordinary Hours per week, averaged over a 12 month period, plus reasonable additional hours and which include provision for payment of Overtime and Shift penalties. The Employee shall work those hours required by the Company unless the hours are unreasonable when the factors listed in section 226(4) of the Act, including the operational needs of the Company, are taken into account. Hours which are permitted under the State or Federal legislation and Regulations regulating the Driving and Working Hours of Heavy Vehicle drivers shall not be considered unreasonable.

15. ABSENCE FROM DUTY: LOSS OF PAY

- 15.1. Where an Employee is absent from duty (other than on Annual Leave, Long Service Leave, Public Holidays, Sick Leave, Carer's Leave, Workers Compensation, Bereavement Leave Or Jury Service) the Employee shall not be paid for that day.
- 15.2. Where an Employee is so absent for part of a day they shall not be paid for the hours that they are absent.

16. MEAL BREAKS

- 16.1. The Employees will be flexible in the timing of their Meal Breaks so as to ensure that work is not unduly delayed. In particular, where necessary and subject to the relevant State and Federal legislation and Regulations regulating Driving and Working Hours of Heavy vehicle drivers, Meal Breaks shall be taken early or late so as to avoid delays in loading and unloading activities. Where possible, Meal Breaks will be taken whilst waiting for loading/unloading to begin or be completed.

17. PUBLIC HOLIDAYS

- 17.1. Permanent Full-Time employees are entitled to the prescribed Public Holidays and will be paid for their Public Holiday Ordinary Hours as part of the Agreement Cents Per Kilometre Rates set out in the table in clause 9.1 for the employee's classification level.
- 17.2. The Company may request that an employee work on Public Holidays and, in accordance with the Act, the employee shall not unreasonably refuse that request. When an employee works on a Public Holiday in addition to payment under clause 17.1, they will:
- 17.2.1. be paid an additional amount of up to 7.6 hours at Time and a Half of the Base Hourly Rates, except in the case of Good Friday and Christmas Day where they will be paid the additional amount at Double Time of the Base Hourly Rates.
- 17.3. If an employee, without the consent of the employer and without reasonable cause, is absent from duty on the day before or the day after a Public Holiday, they are not entitled to payment for that holiday.

18. ROSTERED DAYS OFF

- 18.1. Full-Time employees shall accrue one Rostered Day Off (RDO) in respect of each month of work performed.
- 18.1.1. The Employees are paid in lieu of their accrued RDO's as part of the Agreement Cents Per Kilometre Rates set out in the table in clause 9.1.
- 18.1.2. The employee will not accrue RDO's whenever the Company's operations are closed or while the employee is on Annual, Sick, Personal or Long Service Leave.

19. ANNUAL LEAVE

- 19.1. The Employees will accrue Annual leave in accordance with the Act; namely at the rate of 1/13th of their nominal hours. As such, a Permanent Full-Time employee will accrue 4 weeks paid Annual Leave for each completed year of service and a Permanent Part-Time employee will accrue a pro-rata proportion of that amount. Annual Leave can not generally be taken until the Employee has completed 12 months of continuous service, except where the Company agrees to allow the Employee to take Annual Leave in advance of this.
- 19.2. The Cents Per Kilometre rates set out in the table in clause 9.1, include 1.5cpk as payment for an employee's Annual Leave and Leave Loading. This amount is higher than the Award Entitlement and has been rounded up to 1.5cpk. The Company will withhold the 1.5cpk from the Employee's weekly wage and the Employee will be paid this amount for their Annual Leave and Leave Loading at the time they take it.

- 19.3. An employee shall be paid any unused accrued Annual Leave when their employment ceases, provided that they have had at least one month of continuous service and that they were not dismissed as a result of their behaviour or performance before completing 12 months continuous service. Leave Loading is not payable on unused Annual Leave entitlements when they are paid out at the end of the employees' employment.
- 19.4. The Employees must, subject to the Act, take at least half of their Annual Leave accrual each year but they may choose, entirely at their instigation and in writing, to cash-out up to half of the Annual Leave that they accrue in any one year, subject to the Company's agreement. The maximum amount of Annual Leave that can be cashed-out in any one year is two weeks for a full-time employee. Cashed-out Annual Leave will be paid at the Annual Leave rate of pay applicable at the time that the Employee makes the election to cash-out that amount of Annual Leave. If the Employee chooses to cash-out some Annual Leave under this Clause, this payment will be made to the Employee within a reasonable time that is agreed between the Company and the Employee at the time that the Employee makes the election to cash-out that amount of Annual Leave.
- 19.5. The Company may require an Employee to take some or all of their accrued Annual Leave, in accordance with the Act, as and when nominated by the Company provided that the Company gives the Employee at least 14 days notice.

20. FITNESS FOR WORK

The Employees are required to ensure that they are fit for work at all times before commencing work and during work. This means that an Employee must advise the Company whenever the Employee considers that they are not fit for work, whether due to not having had the required rest/sleep breaks, ill-health, injury, or for any other reason the Employee is unfit for work. In addition, should the Company have concerns about the Employee's fitness for work at any point in time, the Company may require the Employee, at the Company's expense, to undergo an appropriate medical check before starting or continuing work.

21. DISCLOSURE

New Employees engaged under this Agreement, must declare that all information provided by them to the Company prior to appointment is accurate and complete. Failure to disclose any relevant information on engagement may result in the termination of the Employee's employment.

22. SEVERABILITY

If any provision of this Agreement is declared or determined to be illegal or invalid by final determination of any court or tribunal of competent jurisdiction, the validity of the remaining parts, terms or provisions of this Agreement shall not be affected, and the illegal or invalid part, term or provision shall be deemed not to be part of this Agreement.

23. PERSONAL, CARERS AND BEREAVEMENT LEAVE

- 23.1. Permanent Full-Time employees are entitled to 10 days of Personal/Carer's Leave in respect of each completed year of service.
- 23.1.1. Permanent Part-Time employees will accrue a pro-rata proportion of that amount, based on an employee's nominal hours; ie divide the employee's nominal hours by 26 to calculate the employee's hours of Personal Leave accrual per week.

- 23.2. Payment for Personal, Carer's and Bereavement Leave will be paid at the rate of 1/5th of the Base Weekly rate set out in the Table in Clause 9.1 in respect of each day of such leave or 1/38th of the Base Weekly rate set out in the Table in Clause 9.1 in respect of each hour of such leave.
- 23.3. Unused Personal/Carer's Leave entitlements will accumulate from year to year but will not be paid out when an employee's employment with the Company ends.
- 23.4. An employee may be required by the employer to provide Medical Certificates or other acceptable evidence to justify Personal Leave, Carer's Leave or Bereavement Leave.

24. TERMINATION OF EMPLOYMENT

- 24.1. The Company may terminate the employment of an Employee, or an Employee may resign from employment, by giving a period of notice in line with the Workplace Relations Act 1996.
- 24.2. The Company may pay an Employee the Ordinary Hour wages for the required period of notice, instead of giving the Employee that period of notice. The Employee will forfeit an amount of wages equal to their Ordinary Hours for the required period of notice, if they fail to give that period of notice when they resign and the Company may deduct this amount from the Employee's outstanding entitlements.
- 24.3. Ending Employment Without Notice
 - 24.3.1. The Company may end the employment of the Employee without notice if the Employee is guilty of serious misconduct.
 - 24.3.2. The type of conduct by the Employee that may allow the Company to end their employment without notice, after consideration of the circumstances, includes but is not limited to:
 - 24.3.2.1. Breaching the zero Blood Alcohol laws governing Heavy Vehicle operations or being under the influence of illegal drugs whilst on duty.
 - 24.3.2.2. Stealing, fraud, assault or other criminal behaviour.
 - 24.3.2.3. Sexual harassment and other offensive or harassing behaviour.
 - 24.3.2.4. Not carrying out health and safety obligations.
 - 24.3.2.5. Refusing to carry out a lawful and reasonable instruction given by the Company.
 - 24.3.2.6. Not carrying out the Employee's duty;
 - 24.3.2.7. Abandonment of the vehicle being operated by the Employee.
 - 24.3.2.8. Driving a Heavy Vehicle in an unsafe or irresponsible manner.
 - 24.3.2.9. Failure to inform the company as soon as practicable of any en-route incident(s); including accidents; actual or potential breaches of Mass, Dimension, Load Restraint, Driving Hours or speeding or other laws; on-road enforcement events that may or will result in infringements against the vehicle, the company or the Employee; and any other event that may affect the operations of the company and/or the Employee's ability to perform their duties legally and safely.
 - 24.3.2.10. Where the Employee is found to have tampered with company vehicles or equipment for any reason without authorisation from the Company, the Employee may be liable for the costs incurred by the company in rectifying the situation, including the payment of any fines arising from the tampering.

- 24.3.3. The type of conduct by the Company that may allow the Employee to end their employment without notice, after a consideration of the circumstances, includes but is not limited to:
- 24.3.3.1. Assault or other criminal behaviour.
 - 24.3.3.2. Sexual harassment and other offensive or harassing behaviour.
 - 24.3.3.3. Not carrying out health and safety obligations.
 - 24.3.3.4. Requiring the Employee to carry out an unlawful and unreasonable instruction.

25. MAINTENANCE OF LICENCE REQUIREMENTS AND OBLIGATIONS

- 25.1. When requested, an Employee shall provide the Company with proof of the validity of their driving licence for the class of Heavy Vehicle which the Employee operates on behalf of the Company, which may include a full Driver's Licence Check with the Registrar of Motor Vehicles.
- 25.2. An Employee must immediately advise the Company if they are disqualified or suspended from holding that class of driving licence. Failure to do so may result in disciplinary action being taken by the Company; including the possibility of the termination of the Employee's employment.
- 25.3. The Company may stand down an Employee if they are unable to perform their normal duties due to loss or suspension of their driver's licence. Alternatively, the Employee may be required to take unused Annual Leave or Long Service Leave or they may be redeployed to other suitable duties for which they shall be paid the relevant rate of pay for that Classification Level.
- 25.4. The Employees are responsible for meeting the costs of securing the appropriate Driver's Licence and other qualifications and Medical Certificates that may be required as a driver of a Heavy Vehicle.

26. TRAFFIC INFRINGEMENTS AND FINES

- 26.1. An Employee shall be responsible for paying any fines relating to traffic infringements issued to the Employee whilst driving a Company vehicle.
- 26.2. The Employees must advise the Company of the details of any traffic infringements they incur whilst driving a Company vehicle, as soon as possible and upon their next arrival at a company depot at the latest.

27. WORK OUTSIDE OF EMPLOYMENT

Whilst employed by the Company, the Employees may not take up work with another employer without the Company's approval. The Company will not withhold its approval unless it is satisfied that the additional work would interfere with an employee's capacity to perform their work safely, legally and efficiently or that it would adversely affect the interests of the Company. The Employee must advise the Company of the nature and hours of any such proposed external work and of any changes to such work and hours that occur after the Company has given its approval.

28. PROBATIONARY PERIOD

All new permanent Employees engaged under this Agreement shall be engaged on a 6-month probationary basis. During this probationary period the Company and the Employee are free to terminate the contract of employment at any time with one hour's notice, subject to the payment/forfeiture of one day's Ordinary Hours wages.

29. CONFIDENTIAL INFORMATION

- 29.1. An Employee must not reveal or make personal use of any confidential information which becomes known to the Employee during their employment, including trade secrets and customer lists, unless it is for the Company's purposes.
- 29.2. An Employee's obligation to maintain confidentiality continues after the Employee's employment with the Company ceases.
- 29.3. Nothing in this section or in this Agreement will in any way restrict the disclosure of details of this Agreement by the Company or Employee.

30. INTELLECTUAL PROPERTY

Any new idea, invention, improvement or work that could be registered as copyright, that the Employee creates, develops or helps to develop whilst on duty with the Company, will be taken to have been made during employment and belong to the Company.

31. REDUNDANCY

31.1. Definitions

- 31.1.1. **Redundancy** occurs where The Employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and that decision leads to the termination of employment of the employee, except where this is due to the ordinary and customary turnover of labour.
- 31.1.2. **Transmission** includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and **transmitted** has a corresponding meaning.
- 31.1.3. **Week's pay** means the base Weekly Agreement Rate of pay as set out in Clause 9.1 for the employee concerned and excludes:
 - overtime;
 - penalty rates;
 - disability allowances;
 - shift allowances;
 - special rates;
 - fares and travelling time allowances;
 - bonuses; and
 - any other ancillary payments of a like nature.

31.2. Transfer to Lower Paid Duties Due to Redundancy

Where the employee is transferred to lower paid duties by reason of redundancy the same period of notice must be given as the employee would have been entitled to if the employment had been terminated. Alternatively, the employer may decide to pay the employee an amount equal to the difference between the former ordinary rate of pay and the new ordinary time rate for the number of weeks of notice still owing.

31.3. Severance pay

- 31.3.1. If made redundant, the employee is entitled to an amount of severance pay in line with the applicable termination provisions of Clause 14.3 of the Transport Workers 1998 Award and Clause 15.3 of the Transport Workers (LDD) Award, except in the case of transmission of business, based upon the length of the employee's continuous period of service with the employer.

- 31.3.2. If the Employer has less than 15 employees at the time the employee is made Redundant, the employee's severance pay shall be limited to 8 weeks.
- 31.3.3. This clause does not apply if the employee is dismissed for serious misconduct or whilst on probation. In these events the employee is only entitled to be paid for the time worked up to the time of dismissal.
- 31.3.4. If the employee would otherwise have retired within the period for which severance pay is due, then the employee's severance pay period shall end on that retirement date.

31.4. Alternative employment

If the employer obtains acceptable alternative employment for the employee who has been made redundant (except in the case of transmission of Business), the employee shall only be entitled to the redundancy payment for the period set out in clause 31.3.1 or for the period between the cessation of employment with the employer and the commencement of the alternative employment, which ever is the lesser.

32. TRAINING

- 32.1. The employees may be required by the Company to undertake training to enhance their competency and relevant knowledge/skills.
- 32.2. The cost of all training courses or refresher courses that the Company requires an employee to undertake shall be paid by the Company.
- 32.3. Where the training which the Company requires an employee to undertake is conducted during working hours, the employee will be paid for their time at the Ordinary Hourly Rate set out in Table 9.1. Where the training is conducted after hours, the employee will not be paid.
- 32.4. Where an employee wishes to undertake training that is not required by the Company, the Company may, at its discretion, allow the employee time off from work and the Company will decide whether this shall be without pay, or with pay.

33. SUPERANNUATION

- 33.1. The employee will be paid 9% Superannuation in line with the Superannuation Guarantee Act.
- 33.2. Superannuation shall be paid in to an employee's nominated Super Fund. If an employee does not nominate a Super Fund, the Company will pay the employee's Superannuation contributions into the Company's Superannuation Fund.

Constitutional Matters

B- Doubles operating Between Prescribed Places

In the matter of RMS V Robert Leslie Bell Case no. 2015/00191374, I was charged under s 315 Heavy Vehicle National Law (NSW)

It has been accepted by The Court and The Prosecution that I was driving a B-Double on an interstate journey at the time and date of the alleged offence.

The HVNL (NSW) is state law, whilst it is been maintained by myself throughout these proceedings that I was covered exclusively by Federal law whilst operating a B- Double on interstate journeys.

The Interstate Road Transport Act 1985 (Cth) maintains exclusive jurisdiction over such vehicles and journeys through s 12C

INTERSTATE ROAD TRANSPORT ACT 1985 - SECT 12C

Operating requirements for B-doubles

In spite of any law of a State relating to the operation of articulated vehicles, it is lawful, subject to this Act, for a B-double that is operated in accordance with this Act and the regulations to be operated on a road in a State in the carriage of passengers or goods between prescribed places or for any purpose that is incidental to carriage of that kind.

The IRTA effectively covers the field for B-Doubles operating on interstate journeys. If there is to be any doubt of the effect of the Federal Act upon State laws, further clarification can be found in s 52

INTERSTATE ROAD TRANSPORT ACT 1985 - SECT 52 Effect of this Act and regulations on State laws

INTERSTATE ROAD TRANSPORT ACT 1985 - SECT 52

Effect of this Act and regulations on State laws

(1) It is the intention of the Parliament that this Act (except sections 12A and 12C) and the regulations shall not, subject to [subsection](#) (2), apply to the exclusion of a law of a State.

(2) [Subsection](#) (1) does not apply to a law of a State in so far as that law has the effect of:

(a) requiring a motor vehicle or trailer that is registered under this Act and operating as mentioned in [subsection](#) 8(1) to be registered under a law of a State;

(b) requiring compliance, in respect of a registered motor vehicle or trailer, with requirements that are directly inconsistent with requirements prescribed for the purposes of [subsection 12B\(1\)](#) or [section 13, 37 or 39](#), or conditions determined under [subsection 43A\(2\)](#);

(c) requiring a person who holds a federal operator's licence and is carrying on long distance interstate road transport business to hold a licence or other authority under a law of a State authorising the person to carry on long distance interstate road transport business generally or, except in such circumstances as are prescribed, long distance interstate road transport business specified in that law or long distance interstate road transport business included in a class of long distance interstate road transport business specified in that law; or

(d) requiring:

(i) a person who does not hold a federal operator's licence and is operating a registered motor vehicle or trailer as mentioned in [subsection 8\(1\)](#); or

(ii) a person who holds a federal operator's licence and is operating a registered motor vehicle or trailer (other than a motor vehicle, or a motor vehicle and attached trailer, that is a heavy motor vehicle as defined in [subsection 3\(1\)](#) as mentioned in [subsection 8\(1\)](#);

to hold a licence or other authority under a law of a State authorising that operation, being a licence or authority specified in the regulations or a licence or authority included in a class of licences or authorities specified in the regulations.

INTERSTATE ROAD TRANSPORT AMENDMENT ACT 1991 No. 128 of 1991 - SECT 8 Effect of this Act and regulations on State and Territory laws

INTERSTATE ROAD TRANSPORT AMENDMENT ACT 1991 No. 128 of 1991 - SECT 8

Effect of this Act and regulations on State and Territory laws

8. Section 52 of the Principal Act is amended:

(a) **by omitting from subsection (1) "section 12A" and substituting "sections 12A and 12C";**

(b) by omitting from paragraph (2) (b) all the words from and including "prescribed" and substituting the following:
"prescribed for the purposes of subsection 12B (1) or section 13, 37 or 39, or conditions determined under subsection 43A (2)".

If there can be any doubt as the Parliaments (CTH) intention regarding exclusive jurisdiction of B-Doubles, then by amending the IRTA in 1991 to include s 12c in s 52 is a clear indication.

The Roads and Maritime Service, as the Prosecuting Authority in this matter, have been made aware of this legislation through correspondence from myself. They are also defined as a regulatory authority under the IRTA though sect 53 Transport Administration Act 1988 (NSW)

TRANSPORT ADMINISTRATION ACT 1988 - SECT 53

Miscellaneous functions of RMS

53 MISCELLANEOUS FUNCTIONS OF RMS

(1) Without limiting any other functions conferred or imposed on it, RMS may:

(a) conduct any business, whether or not related to its activities under this or any other Act, and for that purpose use any property or the services of any staff of RMS, and

(b) make and enter into contracts or arrangements for the carrying out of works or the performance of services or the supply of goods or materials, and

(c) appoint agents, and act as agent for other persons, and

(d) perform, in accordance with the [Interstate Road Transport Act 1985](#) of the Commonwealth, the functions of a Regulatory Authority under that Act, and

(e) exercise any functions conferred on RMS for the purposes of the Heavy Vehicle National Law (whether conferred by delegation under that Law or under an agreement entered into by RMS for that purpose).

(2) RMS may exercise its functions within or outside New South Wales.

It is contended that LCM Williams erred in his judgement on this issue dated 31/10/2016, when he stated that some of the regulations made under the IRTA indicate that some compliance with state legislation is potentially required. Notwithstanding that contention, the fact of law remains that the Act, not the regulations, are overriding in the application of jurisdiction.

Therefore, Commonwealth Constitution Act 1901 (CTH) s 109 renders this prosecution and conviction *void ab initio*

COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT - SECT 109

Inconsistency of laws

When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Demerit Points

This matter was raised as an interlocutory constitutional issue before LCM Williams. His judgement dated 31/10/2016 seemed to infer that The Court did not have the jurisdiction to decide on the matter as it did not directly impose a demerit point penalty or forfeiture.

The Prosecuting Authority, RMS, does maintain a demerit points register for state of NSW, and that register, and the demerit points allocated to offences is maintained under the Road Transport Act 2013 (NSW) s 31, 32, 37, 42, 43, 43a. These sections listed are not an exhaustive compilation relevant to demerit points in NSW but are sufficient in relevance to this point of law. The application of The Road Transport Act 2013 (NSW) in regard to B- Doubles and other Fatigue Related Vehicles is explored in separate submissions.

The issue in question here is that demerit points, whilst an extra curial penalty, are still aligned with the Statute relative to the charge. It is the "Parent" Act for the Road Rules 2014 (NSW) and it is used in relation to evidence admissibility and obtaining identification details etc in HVNL matters.

it is undoubtedly intertwined with prosecutions and penalties imposed upon Heavy Vehicles drivers in the jurisdiction of NSW Courts.

NSW, through legislation, allows Professional (Heavy Vehicle) drivers an extra demerit point allocation by virtue of their status and the distances travelled in comparison to other types of licence holders. To be eligible for this concession, a Professional Driver has to hold a NSW Licence. Professional Drivers from other jurisdictions are not eligible for this demerit point concession, even though they potentially operate in NSW a large majority of their time and operations.

Therefore, Heavy Vehicles drivers from other jurisdictions such as myself, are subject to a disability or discrimination as opposed to Heavy Vehicle driver's resident or domiciled in NSW.

The Roads and Maritime Service NSW maintain a demerit points register irrespective of residence, and regularly impose restrictions on travel throughout NSW they significantly impact upon an interstate driver's ability to make a living, or in effect restrict interstate trade.

COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT - SECT 117

Rights of residents in States

A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

This in effect, makes the issuing of demerit points potentially invalid till such time the State legislates to rectify this discrimination and/or disability.

RMS Corporate (or Otherwise) Structure

1. Statute created the Roads and Maritime Service, that statute being The Transport Legislation Amendment Act 2011 (NSW)
2. This Act introduced a raft of amendments to the Transport Administration Act 1988 (NSW)
3. Whilst most of those changes were amendments to existing structures, the Amendment Act also created an entirely new entity, being the Roads and Maritime Service (RMS). This is distinct from its predecessor, The Road Transit Authority (RTA)
4. The Transport Legislation Amendment Act 2011 (NSW) is at this date, fully repealed and no longer has any force or effect.
5. When an Act creates an entity, and the creating act is repealed, does the created entity continue to exist?
6. In any case, The RMS is a State Owned Statutory Corporation, with all the characteristics of a Constitutional Trading Corporation, see Commonwealth Constitution Act 1901 (Cth) s 51 (xx)
7. As a Corporation, it would have to be Incorporated or a Body Corporate, to have any legal personality.
8. Without referring to all the individual sections within the Transport Administration Act 1988 (NSW) that pertain to the operation of the RMS, Parliament intended that the RMS would operate as corporate entity. It is neither a Government department or Authority, instead being an Agency of Government
9. This can be evidenced by the current listing in ABN Lookup, An Australian Government website.

Entity type:	State Government Statutory Authority
Goods & Services Tax (GST):	Registered from 09 Sep 2011
Main business location:	NSW 2060

Business name(s) help	
Business name	From
TheBrushlovers Art Studio ⓘ	01 Mar 2017
NorthConnex ⓘ	19 Mar 2014
NSW MARITIME ⓘ	09 Sep 2011

Trading name(s) help	
Trading name	From
RMS	09 Sep 2011

10. The most recent business name registered to the RMS Australian Business Number (ABN) is TheBrushlovers Art Studio. This is peculiar to say the least, and criminal connotations may be read in to this fact.

- 11.** The Australian Securities Investment Commission (ASIC) is the federal regulator of business names throughout Australia, and it also captures entity characteristics.

12. The RMS is listed as an UNINCORPORATED ENTITY (emphasis added)

Business Names[Hide all details](#)

NSW MARITIME ABN 76 236 371 088

Business Name Summary

Business name: NSW MARITIME
Status: Registered
Registration date: 29/06/2004
Renewal date: 29/06/2013
Cancelled date:
Cancellation under review:

Address for service of documents: RMS Maritime Division 33 James Craig Rd Rozelle NSW 2039
Principal place of business: James Craig Rd Rozelle NSW 2039

Holder(s) details: **Holder Name:** [ROADS AND MARITIME SERVICES](#)
Holder Type: Other Unincorporated Entity
ABN: [76 236 371 088](#)

Debtor representative(s): not applicable
Notified successor(s): not applicable
Regulator: Australian Securities and Investments Commission

Former State/Territory registration details
Former identifier: BN98069067
Former State/Territory: NSW

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TheBrushlovers Art Studio ABN 76 236 371 088

Business Name Summary

Business name: TheBrushlovers Art Studio
Status: Registered
Registration date: 1/03/2017
Renewal date: 1/03/2020
Cancelled date:
Cancellation under review:

Address for service of documents: 4/188 Penshurst St Penshurst NSW 2222
Principal place of business: 4/188 Penshurst St Penshurst NSW 2222

Holder(s) details: **Holder Name:** [ROADS AND MARITIME SERVICES](#)
Holder Type: Other Unincorporated Entity
ABN: [76 236 371 088](#)

Organisational representative(s): **Name:** Lingfeng Xu
Start Date: 28/02/2017

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- 13.** The definitions and caselaw surrounding unincorporated entities are recognised throughout the legal fraternity. It needs no further explanation in this submission.
- 14.** The Roads and Maritime Service is a non-legal entity, formed by the mutual understanding of its members, consisting of nothing more than the aggregate of all its members at a particular time: *Leahy v A-G(NSW) (1959) 101 CLR 611*;
- 15.** The RMS has no legal standing or personality. These facts put the validity of any past, current or future prosecutions into question.



Long-distance drivers - OTE

- <https://www.ato.gov.au/Business/Super-for-employers/In-detail/Ordinary-time-earnings/Long-distance-drivers---OTE/>
- Last modified: 27 Jul 2016
- QC 44710

Long-distance drivers – OTE

The definition of ordinary time earnings (OTE) for long-distance drivers is the same as it is for other employees. However, some employers may not be calculating OTE correctly because they are using a now-outdated definition.

The Road Transport (Long Distance Operations) Award 2010 defines 'ordinary hours of work', effective from the first pay period commencing on or after 19 March 2012. For drivers covered by the award, the ordinary hours of work are 38 hours per week. These may be determined as an 'average' of not more than 28 consecutive days.

You can calculate super guarantee (SG) for long-distance drivers using one of three methods:

- minimum-guaranteed-wage method (cannot be used when the driver's wages paid is more than the minimum under one of the other two methods).
- hourly-driving-rate method
- cents-per-kilometre method.

The following examples show how to calculate SG by each of the three methods, for two periods:

- [since 19 March 2012](#) (when the award was amended)
- [between 1 July 2009 and 18 March 2012](#) (that is, from when our *Super guarantee ruling 2009/2* came into effect until the award was amended).

The amendment made to the award does not automatically amend the terms in existing enterprise agreements. Some enterprise agreements may still not set out what the ordinary hours of work are. The examples that follow are based on the terms in the award. Employers should seek advice if the terms of their enterprise agreement vary from that of the award.

Calculating super guarantee (since 19 March 2012)

Example 1: Minimum-guaranteed-wage method

Mary is a long-distance driver, Grade 6, working under the Road Transport (Long Distance Operations) Award 2010. The award stipulates a minimum guaranteed wage payment of \$767 per week from 1 July 2014, regardless of how little Mary actually drives. As Mary only receives this minimum payment under the award, her employer calculates the OTE using that amount.

Super guarantee

= OTE x SG rate

= \$767.00 x 9.5%

= \$72.86 per week

Example 2: Hourly-driving-rate method

Sean is a long distance driver, Grade 6, working under the Road Transport (Long Distance Operations) Award 2010. He is paid under the hourly-driving-rate method.

The hourly driving rate of \$29.91 for full-time employees (from 1 July 2014) includes two components:

- an industry disability allowance of 1.3 times a base rate
- an overtime allowance of 1.2 times a base rate.

Although the hourly rate includes a component referred to as an overtime allowance, the allowance is not deducted from the total when calculating OTE because the whole hourly driving rate is paid for what are defined to be ordinary hours of work (except where in excess of 38 hours).

Sean has worked his ordinary hours of 38 hours in each of the last three weeks. This week Sean works 50 hours.

Super guarantee

= OTE x SG rate

= ordinary hours x hourly rate x SG rate

= 38 hours (as defined in the award) x \$29.91 x 9.5%

= \$107.97

Example 3: Casual employee using hourly-driving-rate method

Rosie is a long distance driver, Grade 6, working under the Road Transport (Long Distance Operations) Award 2010. She is a casual employee and paid under the hourly-driving-rate method.

The hourly driving rate for full-time employees is \$29.91 (from 1 July 2014). Casual employees are paid an additional 15%. The rate includes two components:

- an industry disability allowance of 1.3 times a base rate
- an overtime allowance of 1.2 times a base rate.

Although the hourly rate includes a component referred to as an overtime allowance, the allowance is not deducted from the total when calculating OTE because the whole hourly driving rate is paid for what are defined to be ordinary hours of work (except where in excess of 38 hours).

Rosie has worked her ordinary hours of 38 hours in each of the last three weeks. This week Rosie works 45 hours.

Super guarantee

= OTE x SG rate

= ordinary hours x hourly rate x SG rate

= 38 hours (as defined in the award) x \$34.40 (\$29.91+15%) x 9.5%

= \$124.18

Example 4: Cents-per-kilometre method

Jack, a Grade 6 long distance driver, travelled from Melbourne to Darwin via the Stuart/Western Highway (3,749 km) and was paid using the cents-per-kilometre method under the Road Transport (Long Distance Operations) Award 2010. The cents-per-kilometre rate – 39.88c/km for full-time employees (from 1 July 2014) – includes two components:

- an industry disability allowance of 1.3 times a base rate
- an overtime allowance of 1.2 times a base rate.

Although the rate includes a component referred to as an overtime allowance, the allowance is not deducted from the total when calculating OTE because the whole cents-per-kilometre rate is paid for what are defined to be ordinary hours of work (except where in excess of 38 hours).

Jack received $39.88\text{c/km} \times 3,749\text{km} = \$1,495.10$.

As this amount is in excess of the minimum guaranteed payment stipulated in the award, Jack's employer uses his ordinary hours to work out his OTE.

For the purposes of simplicity, the ATO allows for the cents-per-kilometre rate to determine the amount of kilometres driven during 'ordinary hours of work' with reference to an average driving speed of 75 kilometres per hour.

Therefore, a reasonable method of calculating the distance travelled during ordinary hours of work would be:

$38 \text{ hours} \times 75 \text{ km} = 2,850 \text{ km}$

The calculation to determine the minimum amount of SG required is therefore:

Super guarantee

= OTE x SG rate

= $\text{c/km} \times 2,850 \text{ km} \times \text{SG rate}$

= $39.88\text{c/km} \times 2,850 \text{ km} \times 9.5\%$

= \$107.97

Calculating super guarantee (before 19 March 2012)

The following examples show you how to work out SG amounts for pay periods that started within the period 1 July 2009 to 18 March 2012, using each of the three methods. During this time the SG rate was 9%.

Example 5: Minimum-guaranteed-wage method

Anne was a long distance driver, Grade 6, working under the Road Transport (Long Distance Operations) Award 2010. The award stipulated a minimum guaranteed wage payment of \$705.30 per week (from 1 July 2011), regardless of how little Anne actually drove. As Anne only received this minimum payment under the award, her employer calculated the OTE

using that amount.

Super guarantee

= OTE x SG rate

= minimum wage x SG rate

= \$705.30 x 9%

= \$63.47 per week

Example 6: Hourly-driving-rate method

Aaron was a long distance driver, Grade 6, working under the Road Transport (Long Distance Operations) Award 2010. He was paid under the hourly-driving-rate method.

The hourly driving rate of \$27.51 for full-time employees (from 1 July 2011) included two components:

- an industry disability allowance of 1.3 times a base rate
- an overtime allowance of 1.2 times a base rate.

As Aaron worked for 50 hours in a week and the award at that time did not define what ordinary hours of work were, his employer calculated the OTE as the amount earned under the hourly driving rate for the 50 hours actually worked, less the overtime allowance (as that component was not considered to be a payment for ordinary hours of work).

Super guarantee

= OTE x SG rate

= hourly rate earnings (less overtime allowance) x SG rate

= 50 hours x \$27.51 hourly rate x 9%

= 123.80

To remove the overtime allowance, divide this amount by 1.2

= 123.80 ÷ 1.2

= \$103.16

Example 7: Cents-per-kilometre method

Joe, a Grade 6 long distance driver, travelled from Melbourne to Darwin via the Stuart/Western Highway (3,749 km) and was paid using the cents-per-kilometre method under the Road Transport (Long Distance Operations) Award 2010. The cents-per-kilometre rate – 36.68c/km for full-time employees (from 1 July 2011) – includes two components:

- an industry disability allowance of 1.3 times a base rate
- an overtime allowance of 1.2 times a base rate.

Joe received $36.68\text{c/km} \times 3,749\text{km} = \$1,375.13$.

As this amount was in excess of the minimum guaranteed payment stipulated in the award, Joe's employer used his remuneration to work out his OTE. They removed the overtime allowance from the calculations as that component was not considered to be a payment for ordinary hours of work. The calculation to determine the minimum amount of SG required was therefore:

Super guarantee

= OTE x SG rate

= cents per km earnings (less overtime allowance) x SG rate

= $\$1,375.13 \times 9\%$

= 123.76

To remove the overtime allowance, divide this amount by 1.2

= $123.76 \div 1.2$

= \$103.13

Example 8: Casual employee, using the cents-per-kilometre method

Tom, a casual Grade 6 long distance driver, travelled from Perth to Adelaide via the Eyre Highway (2,677km) and was paid using the cents-per-kilometre method under the Road Transport (Long Distance Operations) Award 2010. The cents-per-kilometre rate was 36.68c/km for full-time employees (from 1 July 2011). Casual employees are paid an additional 15%. The rate

included two components:

- an industry disability allowance of 1.3 times a base rate
- an overtime allowance of 1.2 times a base rate.

Joe received 42.18c/km (36.68c/km + 15%) x 2,677km = \$1,129.16

As this amount was in excess of the minimum guaranteed payment, Joe's employer used his remuneration to work out his OTE. They removed the overtime allowance from the calculations as that component was not considered to be a payment for ordinary hours of work. The calculation to determine the minimum amount of SG required was therefore:

Super guarantee

= OTE x SG rate

= cents per km earnings (less overtime allowance) x SG rate

= \$1,129.16 x 9%

= 101.62

To remove the overtime allowance, divide this amount by 1.2

= 101.62 ÷ 1.2

= \$84.68

See also:

- [Super for employers – How much to pay](#)

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