

(1645)

SERIAL C1320

TRANSPORT INDUSTRY WASTE COLLECTION AND RECYCLING CONTRACT
DETERMINATION

Schedule of Consolidated Award Published on 30.8.2002 and Subsequent Variations Incorporated

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AWARD

Arrangement

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PART A

1. Definitions

In this Contract Determination unless the subject matter or context otherwise indicates or requires:

"Contract of carriage" has the meaning given to that expression by the *Industrial Relations Act 1996* ("the Act").

"Carrier" means a natural person, partnership or body corporate that enters into a contract of carriage, as defined in Section 309(1) of the Act.

"Contract Carrier" has the same meaning as "Carrier".

"DECA" means DECA Training, a registered training organisation and includes TETA (Transport Education and Training Australia).

"Delegate" means union delegate of Contract Carriers based at a depot and includes co-delegate.

"Excess kilometres" shall mean all kilometres over and above 100.

"Motor Vehicle" has the same meaning as in the *Traffic Act 1909*.

"Principal Contractor" means the person for whom the Carrier under a contract of carriage agrees to transport goods to which the contract relates, as defined in Section 310 of the Act.

"Starting place" in its application to a Contract Carrier means the place at which the Contract Carrier is instructed by the Principal Contractor to report ready to commence work.

"The Act" means the *Industrial Relations Act 1996*

"Union" means the Transport Workers' Union of Australia, New South Wales Branch.

"Vehicle" means a vehicle used by a Contract Carrier for the purpose of a contract of carriage.

Words importing the singular number shall include the plural number and words importing the plural number shall include the singular number.

Words importing the masculine gender shall include females and words importing persons shall include corporations.

2. Annual Leave

A Contract Carrier who regularly performs contracts of carriage for a Principal Contractor shall be entitled to four weeks' annual leave without payment (such payment being provided for in the schedules of rates of remuneration attached hereto) which shall fall due each year on the anniversary of the beginning of the first contract of carriage entered into by the Contract Carrier with the Principal Contractor before or after the date of commencement of this determination. Such leave shall be taken by the Contract Carrier within 6 months of the leave falling due (or within such extended time as the Contract Carrier and the Principal Contractor may agree) and at a time mutually convenient to the Contract Carrier and the Principal Contractor and if the leave is not taken within the time provided for in this clause, the entitlement to the leave shall lapse.

3. Uniforms

If the approved driver of the vehicle is required by the Principal Contractor to wear a special uniform when undertaking work for the Principal Contractor, the uniform shall be supplied by the Principal Contractor at no cost to the Contract Carrier. The uniform shall remain the property of the Principal Contractor and an item forming part of the uniform shall be replaced by the Principal Contractor when required by fair wear and tear; provided that should loss or damage to an item forming part of the uniform occur due to the negligence of the Contract Carrier, the item shall be repaired or replaced by the Contract Carrier at his cost. Where a uniform is so provided, the Contract Carrier shall ensure that it is worn by the approved driver at all times while undertaking work for the Principal Contractor.

4. Lunch Break

Each Contract Carrier shall be entitled to take a half hour lunch break on each day that the Carrier is performing work of more than four hours in duration for a Principal Contractor.

5. Obligations of the Contract Carrier

The Contract Carrier shall:

- (1) Undertake work as directed by the Principal Contractor.
- (2) Comply with all Acts, Ordinances, Regulations and By-laws relating to the registration, third party insurance and general operation of the vehicle within New South Wales.
- (3) Pay all legal costs, such as tax and duty, payable in respect of the vehicle and keep the vehicle in a mechanically sound, road-worthy and clean condition.
- (4) Carry waste and recycling material as the Principal Contractor shall specify from time to time.
- (5) Hold at all times and on request produce for the inspection of the Principal Contractor a current driver's licence appropriately endorsed or issued in respect of a motor vehicle of the class of the Contract Carrier's vehicle and immediately notify the Principle Contractor if the licence is suspended or cancelled.
- (6) Supply at the request of the Principal Contractor, notice of any encumbrances, liens or bills of sale affecting the vehicle of the Contract Carrier.
- (7)
 - (a) Not engage or allow any person to drive his vehicle other than the approved driver when he is performing work for the Principal Contractor unless the approved driver is unable to perform work for a period of more than one week for any reason other than annual leave. It will then be the responsibility of the Contract Carrier to arrange for the services of a driver to operate his vehicle for a period not to exceed three months from the date of commencement of the disability. If the disability continues beyond a period of three months, the Contract Carrier, after review by the Principal Contractor, may be terminated.
 - (b) Not engage or use the services of a driver for his vehicle, other than the approved driver without prior approval from the Principal Contractor. The approval may be withdrawn by the Principal Contractor if the driver commits misconduct or fails to comply with a provision of this determination appropriate to be complied with by a driver of a Contract Carrier's vehicle.
- (8) If the approved driver is not the driver of the vehicle, ensure that the driver complies with those provisions of this determination which are appropriate to be complied with by the driver and ensure that the driver does not commit misconduct.
- (9) Report to the Principal Contractor non-attendance at the starting place by normal starting time on each of the days on which he may be required to undertake work and is unable to attend.
- (10) Advise the Principal Contractor as early as possible of any commitments affecting his ability to perform work.
- (11) Not cease performing work on any day without notifying the operations supervisor of the Principal Contractor in person, by two-way radio or by telephone.
- (12) Ensure the driver of the vehicle is of neat appearance.
- (13) Maintain contact with the Principal Contractor by radio if installed in the vehicle and immediately inform the Principal Contractor when a radio unit installed in the vehicle requires servicing or repair.
- (14) Inform the Principal Contractor immediately if he is unable to effect collection and disposal of waste and recyclable materials.
- (15) Ensure that all driver's work sheets and any other document reasonably required by the Principal Contractor are correctly completed and given to the Principal Contractor .
- (16) At the completion of each day's work, each Contract Carrier shall hand in all worksheets. Contract Carriers who fail to do so shall not be paid for work detained on such worksheets unless:

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- (a) such action was agreed by the Principal Contractor; or
 - (b) illness precluded the Contract Carrier from returning to the terminal.
- (17)
- (a) Obtain and maintain a public liability insurance policy for an amount of \$5,000,000 in respect of any liability incurred by the Contract Carrier in the performance of work for the Principal Contractor.
 - (b) Obtain and maintain a comprehensive motor insurance policy over the vehicle including cover for an amount of \$10,000,000 for third party property damage in respect of any one accident.
 - (c) Whenever the driver of the vehicle is or is deemed to be for the purpose of the Workers' Compensation Act an employee of the Contract Carrier, take out and maintain at all times a workers' compensation insurance policy to cover the driver with an extension unlimited in amount indemnifying the Contract Carrier and the Principal Contractor against their respective liabilities at common law to the driver.
 - (d) Produce for inspection by the Principal Contractor a copy of all insurance policies required to be effected by the Contract Carrier under this determination and receipts for current premiums.
 - (e) Ensure that each such policy includes an indemnity of the Principal Contractor for any action of the Contract Carrier to which the policy applies.
- (18) Immediately report any accident to the operations staff of the Principal Contractor and attend to any legal requirements at the scene of the accident.
- (19) Observe the necessity for civility to the Principal Contractor's customers.
- (20) Not make alterations to equipment of the Principal- Contractor without the, consent of the Principal Contractor.
- (21) Upon termination, promptly return to the Principal Contractor all equipment and signs supplied by the Principal Contractor.
- (22) Carry out any instructions of the Principal Contractor as to the order in which he picks up waste and disposes of such.

6. Obligations of the Principal Contractor

The Principal Contractor shall:

- (1) Arrange whenever practicable for a representative of the Principal Contractor to attend accidents involving substantial load or equipment damage or personal injury.
- (2) At his option supply and fit to the vehicle of a Contract Carrier a mobile radio or phone at the Principal Contractor's expense. Maintenance and repairs to the radio will be the responsibility of the Principal Contractor except where repairs are due to negligence of the Contract Carrier or caused by water leaking into the vehicle. In such case, the cost of repair shall be paid by the Contract Carrier to the Principal Contractor or borne by the Contract Carrier by way of adjustment to the remuneration of the Contract Carrier. Where the Contract Carrier changes his vehicle prior to the completion of twelve months' continuous work for the Principal Contractor, the cost of transferring the radio shall be paid by the Contract Carrier to the Principal Contractor or borne by the Contract Carrier by way of adjustment to the remuneration of the Contract Carrier.
- (3) At his option, paint and sign write the Contract Carrier's vehicle in the Principal Contractor's colours at the Principal Contractor's expense.
- (4) At his option, repaint the Contract Carrier's vehicle. The work shall be carried out by the Principal Contractor's workshop or by outside contractors nominated by the Principal Contractor.
- (5) Pay the Contract Carrier the remuneration due to him not later than the fifth day after the close of the pay period observed by the Principal Contractor, which shall not exceed two weeks' duration.
- (6) Bear the cost of removing all equipment and signs supplied by the Principal Contractor and make good the affected areas of the vehicle in the case of a Contract Carrier ceasing to perform work for the Principal Contractor. Provided that this clause shall not apply where the Contract Carrier has been terminated under subclause 21 of clause 5, Obligations of the Contract Carrier, hereof, or where the Contract Carrier has not completed a period of three continuous years of work for the Principal Contractor.
- (7) Specify the starting place or places for a Contract Carrier with whom he enters into contracts of carriage, unless otherwise agreed between the Principal Contractor and the Contract Carrier.
- (8) Wherever the Contract Carrier is or is deemed to be for the purposes of the Workers' Compensation Act a worker, take out and maintain at all times a worker's workers' compensation insurance policy in respect of the Contract Carrier.

7. Selling of Vehicles

No circumstances shall exist where a vehicle is sold with work. No Contract Carrier shall be engaged to perform work that does not supply a vehicle approved by the Principal Contractor or who, personally, is not approved by the Principal Contractor.

8. Corporations and Partnerships

When the Contract Carrier is a corporation or a partnership, then for the purposes of this determination any act, default or misconduct by any person performing work on behalf of the corporation or partnership under a contract of carriage to which the corporation or partnership is a party shall be deemed to be the act, default or misconduct of the Contract Carrier.

9. Disputes Procedure

In the event of a question, dispute or difficulty arising:

- (a) The delegate shall negotiate with the responsible manager of the Principal Contractor.
- (b) If the question, dispute or difficulty is not resolved, the union organiser shall take the matter up with the Principal Contractor.
- (c) If negotiations are unsuccessful, the parties shall take the matter to the Industrial Commission of New South Wales.
- (d) At all times, whilst these steps are being pursued, work shall continue normally.

10. Savings Clause

Nothing in this determination shall be construed so as to require the reduction or alteration of more advantageous rates and conditions to which a Contract Carrier may be entitled under an existing agreement with a Principal Contractor.

11. Remuneration

- (1)
 - (a) The Principal Contractor shall pay a Contract Carrier remuneration for work performed pursuant to this determination of an amount no less than the hourly rate of remuneration for each hour or part thereof of work performed as set out in Table 1 of Part B of this determination for the applicable vehicle configuration.
 - (b) Notwithstanding anything contained in paragraph (a) of this subclause a principal contractor may chose to pay a contract carrier remuneration based on a system of bin, unit or other rates provided that over each pay period observed by the principal contractor such a system does not result in the carrier receiving less remuneration than the carrier would have received had the carrier been paid the hourly rate prescribed in said paragraph (a).
 - (c) In the event of any short fall occurring as between the system of remuneration chosen by the principal contractor pursuant to paragraph (b) of this subclause and the hourly rate prescribed in Table 1 the principal contractor shall pay the contract carrier the shortfall at the same time as all other remuneration is due to be paid, as per subclause (6) and (7) of this clause.
- (2) The Principal Contractor shall pay a Contract Carrier an excess kilometre rate of as set in Table 3 of Part B of this determination for the applicable vehicle configuration for every kilometre travelled above 100 kilometres travelled per day between collection points, tips or transfer stations.
- (3) A Contract Carrier who, in order to perform a contract of carriage, is required to supply and have installed onto the Carrier's vehicle a garbage compactor shall be reimbursed by the principal contractor for the expense incurred. Reimbursement shall calculated by averaging the total cost involved in supplying and installing the garbage compactor over the life of the head contract between the Principal Contractor and the relevant Local Government Council. Reimbursement shall in all cases be no less than the daily allowance contained in Table 2 of Part B of this determination for the applicable vehicle configuration. Reimbursement shall be made for each day a Carrier is engaged and paid at the same time as all other remuneration is due, as per subclause (6) and (7) of this clause.
- (4) If a Principal Contractor requires the Contract Carrier to be incorporated the Contract Carrier shall be reimbursed for all costs associated with incorporation and all ongoing expenses associated with remaining a body corporate (such expenses include but are not limited to Australian Securities Commission fees and charges, Workers Compensation Insurance, Accounting and Administration fees).
- (5) All tipping fees incurred will be met by the Principal Contractor.
- (6) If an offsider or relief driver is employed by the Contract Carrier the Carrier shall pay such employee wages as specified in the Transport Industry - Waste Collection and Recycling (State) Award. In the case of the employment of offsiders the Principal Contractor shall reimburse the Contract Carrier for the expense of employment.
- (7) It is expressly noted that the rates of remuneration contained in Part B have accounted, and include payment, for the following factors:
 1. Wages based on appropriate classification .as per the Transport Industry -Waste Collection and Recycling (State) Award.
 2. Overtime in excess of 38 hours each week.
 3. Annual Leave.
 4. Long Service Leave.
 5. Public Holidays.

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6. Picnic Day.
 7. Sick Leave.
 8. Return on capital invested.
 9. Depreciation.
 10. Lease Costs.
 11. Registration and compulsory third party insurance.
 12. Comprehensive insurance.
 13. Public liability insurance.
 14. Personal accident insurance.
 15. Administrative overheads.
 16. Fuel.
 17. Oil.
 18. Tyres.
 19. Repairs and maintenance of the vehicle's cabin and chassis.
 20. Industry specific allowances.
 21. Association membership.

12. General

- (1) Subject to the provisions contained in this clause hereof, the Principal Contractor has the right to specify the class of vehicle which he requires to be used by the Contract Carrier in undertaking work for the Principal Contractor. the Principal Contractor also has the right to specify the vehicle age.
- (2) The Contract Carrier shall not replace the vehicle he is using to undertake work for the Principal Contractor without obtaining the prior consent of the Principal Contractor. Where it is agreed between the Principal Contractor and the Contract Carrier that a vehicle in use by the Contract Carrier needs to be replaced then the Principal Contractor shall have the right to specify the class and age of the vehicle which he requires to be used by the Contract Carrier in undertaking work for the Principal Contractor.
- (3) In the case of contracts of carriage entered into for the first time subsequent to this determination coming into operation the Principal Contractor shall have the right to specify the class and age of the vehicle which he requires to be used by the Contract Carrier in undertaking work for the Principal Contractor.
- (4) If the Principal Contractor at any time considers that the vehicle of the Contract Carrier being used to undertake work for the Principal Contractor is not acceptable for undertaking further work he may give to the Contract Carrier three month's notice that the vehicle is to be replaced.
- (5) Where there arises any question, dispute or difficulty between the Principal Contractor and the Contract Carrier with regard to the provisions contained in this clause, the provisions of clause 9, Disputes Procedure, shall apply.

13. Induction Training

- (1) Prior to a new contract carrier commencing work with a principal contractor the carrier shall be trained in:

Occupational health and safety;

Vocational skills;

Other professional training; and

Industrial rights.

Provided that a carrier who has previously undertaken an approved course pursuant to subclause (1) or (2) shall not be required to undertake a further induction course.

- (2) Such training shall be by way of a six-hour induction course. Subject to subclause (3) such course shall be:

(a) paid for by the principal contractor; and

(b) conducted by DECA or other equivalent accredited training provider.

- (3) Disagreements about the operation of this clause may be referred to the Waste Industry - Collection, Transportation, Recycling and Disposal (State) Industrial Committee or progressed in accordance with Clause 9, Disputes Procedure.

14. Area, Incidence and Duration

- (1) This Contract Determination shall apply in respect of contracts of carriage for the collection and transportation by motor vehicle of domestic waste and domestic recycling material of all descriptions within New South Wales, provided that it shall not apply to contracts of carriage:

where the principal contractor is a body established under the *Local Government Act* (1993);

let by Wagga Wagga City Council until 31 March 2004;

let by Ashfield Municipal Council until 2 August 2005.
- (2) This Contract Determination shall be binding on all Principal Contractors and Contract Carriers with respect to the performance of Contracts of Carriage of the Class as contained in subclause (1) of this clause.
- (3) This Contract Determination shall take effect from the beginning of the first pay period to commence on or after 9 May 2002 and shall remain in force for a period of 12 months.

15. Leave Reserved

- (1) Leave is reserved to the Union to make application with respect to compulsory Superannuation payments by principal contractors on behalf of contract carriers.
- (2) Leave is reserved to the Union to make application to provide that the principal contractor shall pay for the repair and maintenance costs of the garbage compactor body.

PART B

Table 1 - Hourly Rate

Vehicle Configuration	Amount (per hour) \$
Single Drive Axle Rear Loading	68.33
Single Drive Axle Side Loading	69.05
Bogie Drive Axle Rear Loading	86.72
Bogie Drive Axle Side Loading	87.46

Table 2 - Garbage Compactor Allowance

Vehicle Configuration	Amount (per day) \$
Single Drive Axle Rear Loading	69.45
Single Drive Axle Side Loading	91.27
Bogie Drive Axle Rear Loading	74.51
Bogie Drive Axle Side Loading	93.08

Table 3 - Excess Kilometre Rate

Vehicle Configuration	Amount (per kilometre) \$
Single Drive Vehicle	1.76
Bogie Drive Vehicle	2.17

PART C

Procedure and Time for Adjustment of Rates and Allowances

- (1) The rates prescribed in Part B may be adjusted with effect from 1 October each year upon application to the Industrial Relations Commission on or after 1 July each year.
- (2) Adjustment to rates shall be calculated from the date the preceding review was calculated and shall take into account all movement in the cost components since that date.
- (3) Applications for adjustment to the excess kilometer rate contained in subclause (2) of Clause 11 shall be made by reference to movements in the Australian Institute of Petroleum NSW State weekly average for the retail price of diesel for the week ending immediately prior to the date of filing the application, excluding GST pursuant to the provisions of clause 8 of the part.
- (4) Applications for adjustment of rates contained in Table 1 of Part B shall be made by reference to movements in the following benchmarks for each cost component:

Labour	Average percentage change of Items 9 and 10 of Table 1, Part B of the Transport Industry - Waste Collection and Recycling (State) Award
Capital	Average percentage variation in the prices of an IVECO (6x4) F2350G/260 Distributor and an IVECO RWD F2350G/260 Distributor as per the "Red Book"
Insurances	ABS CPI, Financial and Insurance Services, Insurance Services
Registration	ABS CPI, Transportation Group, Other Motoring Charges
Repairs and Maintenance	ABS CPI, Transportation Group, Motor Vehicle Repair and Servicing
Tyres	ABS CPI, Transportation Group, Motor Vehicle Parts and Accessories
Administration	ABS CPI, All Groups, Sydney
Fuel	AIP NSW weekly average for the retail price of diesel, excluding GST.

- (5) In the calculation of adjustments pursuant to subclause (4) of this clause, each cost component shall have the following weightings:

Labour	30.67
Capital	28.37
Registration	3.50
Insurance	11.49
Administration	1.77
Repairs and Maintenance	9.88
Tyres	1.78
Fuel	12.53
TOTAL	100

Each cost component shall be re-weighted after each adjustment.

- (6) If the benchmark for the cost components of insurances, tyres and repairs and maintenance increases between adjustments to the extent that it causes an increase to the total hourly rates contained in Table 1 of Part B of 2% or more, then an interim adjustment may be applied for.
- (7) Applications for adjustment to the Garbage Contractor Allowance in Table 2 of Part B shall be made by reference to the percentage increase in the supply and installation of such compactor bodies by MacDonald Johnston Engineering Company Pty Ltd.

- (8) Cost Recovery for variations in the Price of fuel:
- (1) The parties to this determination recognise that, due to the changed nature of the pricing of fuel, including recent significant fluctuations in the price of fuel, it is necessary that variations to rates of remuneration to take into account changes in the price of fuel occur in a timely and efficient manner.
 - (2) Notwithstanding any other provisions of this determination, the parties to this determination agree that any party to this determination may make an application to the Industrial Relations Commission of New South Wales to vary rates of remuneration to account for changes in the price of fuel only, on the following basis:
 - (a) an application to vary rates of remuneration for changes in the price of fuel only may be made at any time, provided that the date upon which any fuel rate adjustment is sought to become operative is at least one calendar month after the last occasion upon which a fuel rate adjustment became operative;
 - (b) subject to paragraphs (c) and (d) below, the rates of remuneration shall vary using the existing rise and fall formula for the price of fuel in this determination;
 - (c) it is not a requirement of any such application that the rate adjustment sought for fuel only be one which is either below or above any minimum threshold amount; and
 - (d) the agreed benchmark for the price of fuel shall be the Australian Institute of Petroleum NSW weekly average for the retail price of diesel for the week ending immediately prior to the date of filing the application, excluding GST. Should the agreed benchmark become unavailable the parties shall determine an alternative appropriate benchmark.
 - (3) The parties to this determination shall take all necessary steps to enable an application made pursuant to subclause (2) hereof to be heard and determined at the earliest possible time, including but not limited to, consenting to have the Industrial Relations Commission of NSW hear and determine any such application within 48 hours from the initial listing of the application.
 - (4) The fuel index, reflecting current rates, is 138 cents per litre. This index is exclusive of GST.
- (9) Applications for adjustment to the Garbage Compactor Allowance in Table 2 of Part B shall be made by reference to the percentage increase in the supply and installation of such compactor bodies by MacDonald Johnston Engineering Company Pty Ltd.