



(1857)

SERIAL C5264

**TRANSPORT INDUSTRY - MUTUAL RESPONSIBILITY FOR ROAD
SAFETY (STATE) CONTRACT DETERMINATION**

Schedule of Contract Determination Published on 29.12.2006 and Subsequent Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol	Page
Determination	C5264	29.12.2006	On and from 2.11.2006 except Clause 3 shall operate from 1.12.2006	361	1278

DETERMINATION

1. Purposes of This Industrial Instrument

The purposes of this industrial instrument are to ensure that:

- 1.1 all parties connected with the road transport of goods, including consignors, transport operators, contract carriers and the Union take responsibility for health and safety issues;
- 1.2 long distance road transport work is carried out safely and in accordance with applicable laws and industrial instruments;
- 1.3 the performance of long distance road transport work is properly planned in order to prevent driver fatigue;
- 1.4 contract carriers are properly trained in matters relating to health and safety;
- 1.5 safety is not compromised as a result of underpayment of contract carriers; and
- 1.6 professional drug taking is eliminated from the transport industry, and contract carriers do not otherwise perform work whilst affected by drugs and alcohol.

2. Definitions

- 2.1 "Accredited official of the Union" means an officer or employee of the Union with a current instrument of authority issued under section 299 of the Act.
- 2.2 "Act" shall mean the *Industrial Relations Act 1996*.
- 2.3 "Bluecard Program" means the safety awareness program aligned to the Transport Industry National Competency Standard TDT F1 197B "Follow Occupational Health and Safety Procedures".
- 2.4 "Bluecard" means the standard-form card issued by a Bluecard Program training provider to certify that a person has completed a Blue Card Program training course.
- 2.5 "Consignor" shall mean any person, being a transport operator, who enters into a transport contract with another transport operator under which that other transport operator carries freight for the consignor. Note: the consignor may itself be subject to a contractual obligation to arrange for the carriage of the same freight.
- 2.6 "Contract carrier" shall be as defined in section 309 of the Act, and includes, where the context requires, a reference to the person driving the contract carrier's truck where the contract carrier is a corporation or a partnership.
- 2.7 "Drugs" means any drugs, whether lawfully or unlawfully taken, which affect the safe performance of work performed pursuant to a transport contract.
- 2.8 "Freight" means goods, materials and substances of all descriptions, and includes waste products, cash, livestock, and shipping and other containers (whether packed or empty).
- 2.9 "Head consignor" shall mean any person, not being a transport operator, who enters into a contract with a transport operator under which the transport operator carries freight for the head consignor. Note: the head consignor will usually be at the head of the contracting chain.
- 2.10 "Heavy vehicle" means a motor vehicle with a GVM of over 4.5 tonnes.
- 2.11 "Long distance work" means any single journey or series of journeys in any one shift of more than 500km (including the distances travelled in delivering freight and travelling after the delivery of freight) carried out in a heavy vehicle.
- 2.12 "Long haul transport contract" shall mean any transport contract pursuant to which a transport operator regularly requires any contract carrier engaged by it to perform long distance work.
- 2.13 "Principal contractor" shall be as defined in section 310 of the Act.
- 2.14 "Professional drug use" means the use of drugs by truck drivers to combat fatigue and to stay awake and alert whilst working.
- 2.15 "Regulation" means the Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999.
- 2.16 "Transport contract" shall mean any contract, arrangement or understanding between a transport operator and a consignor or head consignor under which the transport operator carries freight for the consignor or head consignor.
- 2.17 "Transport operator" shall mean any principal contractor engaged in the business of the transport of freight by road, or who engages contract carriers to transport freight by road.

- 2.18 "Union" shall mean the Transport Workers Union of New South Wales, registered under the Act as an association of contract carriers.
- 2.19 "Work" shall mean all work performed by the driver of a heavy vehicle in or in connection with long distance work, including driving work, loading and unloading work, and queueing work.

3. Safe Driving Plans

- 3.1 A transport operator must prepare a safe driving plan in relation to any work performed by its contract carriers pursuant to a long haul transport contract to which the transport operator is a party.
- 3.2 A safe driving plan must:
- (i) identify the name and address of the relevant transport operator, and of the consignor or head consignor party to the relevant long haul transport contract;
 - (ii) identify the period in which work is required to be performed under the long haul transport contract to which the safe driving plan applies;
 - (iii) identify the relevant pick up and delivery locations;
 - (iv) demonstrate how the work to be performed is to be remunerated in accordance with any applicable industrial instrument;
 - (v) identify the remuneration method chosen (having regard to the health and safety of relevant contract carriers, and the rate);
 - (vi) identify the system(s) by which the effect of the chosen method of remuneration on driver fatigue may be monitored and measured;
 - (vii) identify the means by which the amount of hours and work to be performed by contract carriers is to be limited in order to prevent driver fatigue occurring and excessive hours being worked, and the means by which such limitations are to be enforced;
 - (viii) set out how the work is to be performed and rest breaks taken in a manner consistent with the Regulation and any provisions of any applicable industrial instrument concerning hours of work, limitations upon hours of work, meal breaks, rest breaks, crib breaks and like matters;
 - (ix) identify the means by which the transport operator will ensure that any persons performing the work will be doing so free of drugs and alcohol (which shall include but not be limited to the transport operator's drug and alcohol policy implemented in accordance with clause 7 of this Contract Determination);
- 3.3 A safe driving plan must, as far as practicable, be prepared in consultation with the contract carriers who are to perform the work the subject of the safe driving plan, and each such contract carrier performing work the subject of the safe driving plan is to be supplied with a copy of it.
- 3.4 A safe driving plan must be reviewed regularly and updated when there is any change to the circumstances applicable to the work.
- 3.5 A copy of the safe driving plan must be provided to the consignor or head consignor party to the long-haul transport contract.
- 3.6 A consignor which is provided with a copy of a safe driving plan pursuant to subclause 3.5 hereof shall send a copy of such safe driving plan to any head consignor who has sub-contracted the cartage of the freight the subject of the safe driving plan.
- 3.7 Where the cartage of freight is to be sub-contracted by any consignor, it must be a condition of the sub-contracting arrangement that a safe driving plan applying to the cartage of such freight which conforms with the requirements of subclause 3.2 above has been provided to such consignor prior to the performance of any cartage work.

- 3.8 Nothing in this clause is intended to affect or detract from any obligation or responsibility upon an employer under the Occupational Health and Safety Act 2000 or the Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005.
- 3.9 The transport operator may use a form consistent with that appearing in Annexure A provided that the use of the form complies with the terms of this Contract Determination.

4. Records and Inspection of Safe Driving Plans

- 4.1 A transport operator who is required to prepare a safe driving plan, and any consignor who is required to be provided with a copy of a safe driving plan pursuant to subclause 3.5 above shall keep a copy of the safe driving plan during the period in which the cartage of the freight the subject of the safe driving plan is being carried out, and for 6 years thereafter.
- 4.2 An accredited official of the Union is entitled to inspect a safe driving plan at the premises of any transport operator or consignor, which is required to maintain a copy of such safe driving plan under subclause 4.1 above upon the provision of 24 hours written notice.

5. Compliance With Safe Driving Plans and Applicable Laws

- 5.1 Consignors shall enter into long haul transport contracts with transport operators on the basis that strict compliance with applicable safe driving plans, the Regulation and relevant industrial instruments is a condition of the contract.
- 5.2 Consignors and transport operators must ensure that all work undertaken pursuant to a long haul transport contract to which they are party is carried out in conformity with the applicable safe driving plan, the Regulation, and any applicable industrial instrument.
- 5.3 Contract carriers must comply with any safe driving plan applicable to the work they are required to perform. If any circumstances arise which make compliance with a safe driving plan impracticable, they shall notify their principal contractor as soon as possible.
- 5.4 Where a consignor becomes aware that a transport operator it has contracted with under a long haul transport contract has breached any applicable safe driving plan, the Regulation, or any applicable industrial instrument, the consignor must take such action as is necessary to ensure that such a breach is rectified and is not repeated. Such action may include termination of the long haul transport contract.
- 5.5 Consignors must take pro-active steps to monitor compliance by transport operators carrying freight put out to consignment by the consignor with the relevant safe driving plan, the Regulation and any applicable industrial instruments.
- 5.6 Where the Union becomes aware of any breach by a transport operator party to a long haul transport contract of any applicable safe driving plan, the Regulation, or any applicable industrial instrument, it shall notify the transport operator, the consignor, and the head consignor, of such breach, with such notification to include the necessary particulars, and shall advise of what action it thinks is necessary to ensure such breach is rectified and not repeated.
- 5.7 Where any dispute arises between the Union and a transport operator or a consignor about whether a breach of any applicable safe driving plan, the Regulation, or any applicable industrial instrument has occurred, or about what action is necessary to ensure that any such breach is rectified and not repeated, the disputes procedure set out in clause 8 of this Contract Determination shall be followed.

6. Bluecard

- 6.1 All new and existing contract carriers engaged by transport operators, unless currently in possession of a valid Bluecard, shall undertake a Bluecard Program paid for by the transport operator, and conducted by a licensed Bluecard Program training provider in conjunction with the transport operator. Existing contract carriers will be so trained within 3 months of the date of operation of this Contract Determination.
- 6.2 All, contract carriers shall be paid no less than their usual rate of pay whilst attending a Bluecard Program training course, and shall also be reimbursed for any expenses reasonably incurred in attending such a course.
- 6.3 From 3 months after the date of operation of this Contract Determination, no contract carrier shall be permitted by a transport operator to perform work under a long haul transport contract unless in possession of a valid Bluecard.

7. Drug and Alcohol Policy

- 7.1 All transport operators shall, within six months of the date of operation of this Contract Determination, develop and implement a written drug and alcohol policy which is designed to ensure that:
- (i) professional drug-taking amongst its contract carriers is entirely eliminated; and
 - (ii) no contract carrier performs work whilst impaired by the effects of drugs or alcohol;
- and which otherwise conforms with the requirements of this clause.
- 7.2 The drug and alcohol policy to be developed and introduced by a transport operator shall:
- (i) be tailored to correlate with the transport operator's size, resources, and the nature of its operations;
 - (ii) make provision for the implementation of a fair and transparent system for testing for the presence of drugs and alcohol in contract carriers;
 - (iii) specify what procedure shall apply if a positive test result is recorded and verified;
 - (iv) provide for paid training of contract carriers in relation to the requirements of the policy and safety issues associated with drug and alcohol use generally, with such training being carried out in conjunction with a Union representative; and
 - (v) be integrated with any safe driving plans developed pursuant to clause 3 of this Contract Determination.
- 7.3 The drug and alcohol policy to be developed and introduced by a transport operator shall be consistent with the following principles:
- (i) Professional drug use (as defined in clause 2.14 of this Contract Determination) is the major cause of impairment to the driving and general work performance of employees, contract carriers and labour hire employees in the transport industry, and its elimination must therefore be the primary focus of the policy to be developed.
 - (ii) Professional drug use occurs because of driver fatigue, so that to eliminate professional drug use it is necessary to ensure that employees, contract carriers and labour hire employees are not required to, and do not, perform work in such a way or to such an extent that driver fatigue occurs.
 - (iii) Alcohol and/or drug problems arising from recreational use should be dealt with as health problems, with an emphasis on education and rehabilitation.
 - (iv) Transport operators should provide training and guidance to their managers and supervisors to ensure that they:
 - (a) do not impose work pressure on contract carriers which may lead to professional drug use;
 - (b) recognise when contract carriers are becoming fatigued to the extent that professional drug use may become necessary; and
 - (c) know how to satisfactorily and fairly deal with contract carriers whose work performance or conduct is affected by alcohol or drugs.
 - (v) Transport operators, managers, supervisors, and contract carriers must all comply with the policy once it is in place and must cooperate with each other to prevent incidents arising from the consumption or use of alcohol and other drivers.

- (vi) Transport operators have an obligation to respond to and investigate any information provided to them which suggests that either its contract carriers are engaging in professional drug use, or that work pressures on contract carriers are such as to make it likely that professional drug use will occur.
- (vii) Personal information received from or about contract carriers as a result of self disclosure, testing, counselling, treatment and/or rehabilitation shall be treated with the strictest confidence.
- (viii) Drug and alcohol testing shall be carried out in a way which:
 - (a) is either responsive to signs of impairment on the part of the contract carrier, and/or is genuinely random;
 - (b) permits consensual and non-consensual testing;
 - (c) respects the privacy of the person being tested;
 - (d) is as least personally invasive as possible (e.g. by use of saliva testing, but may also involve urine testing);
 - (e) conforms with accepted scientific standards;
 - (f) involves a secure chain of custody procedure with respect to any samples taken;
 - (g) allows a second sample to be provided to the contract carrier to allow independent testing to be carried out if necessary.
- (ix) Contract carriers who voluntarily disclose professional drug use or a personal drug or alcohol use problem shall not be subject to disciplinary action but shall be provided with counselling, training, and if necessary, treatment and rehabilitation.

7.4 Transport operators shall develop their drug and alcohol policies in consultation with contract carriers and the Union. Where there is a dispute about any aspect of the drug and alcohol policy being developed, the policy shall not be implemented until the dispute has been resolved in accordance with the disputes procedure of this industrial instrument.

8. Disputes Procedure

- 8.1 In the event of any dispute arising in relation to the obligations imposed by this Contract Determination (including the matters referred to in clause 5.7 and 7.4 above), senior representatives of the Union and of the transport operator or consignor (as relevant) shall meet to discuss the dispute.
- 8.2 If such discussions do not resolve the dispute, it shall be referred to the Industrial Relations Commission of New South Wales for conciliation and, if necessary, arbitration.

9. Area, Incidence and Duration

- 9.1 This Contract Determination shall apply to:
- (i) all transport operators operating wholly or partly in New South Wales and to all contract carriers engaged by such transport operators in their businesses; and
 - (ii) all consignors party to transport contracts which require the cartage of freight partly or wholly within New South Wales.
- 9.2 This Contract Determination shall commence on and from 2 November 2006, except in relation to clause 3, Safe Driving Plans, which shall operate from 1 December 2006, and shall remain in force thereafter for a period of 3 years.

Annexure A - Safe Driving Plan (Example)

Operator/Consignor Identification	Delivery Period and PUD Details	Remuneration
		How Work is Remunerated having regard to health and safety Kilometre rates for driving and hourly rate for loading/unloading/queuing time

Consignor:	XYZ <Address>	Pick Up Location: Toll Minchinbury Distribution Centre	Remuneration Method and Rate: Transport Industry (State) Award - Grade 7 Long Distance Rates (29.54 cents per km) plus Hourly rate of (\$17.25 base) for all time loading/unloading/queuing.
Transport Operator:	Toll <Address>	Delivery Location: Wagga Wagga XYZ's Store	Remuneration Monitoring/Measuring Systems: GPS, On Board Computer, Auditing cross checks of pay, log book, timesheet, consignment note, GPS & Engine Records, SDP
		Period: 12.30 pm Delivery Window	Means to Limit Work Hours and Work Contact with manager (<insert phone number>) for reporting unexpected delays and rescheduling journey if necessary

Planned Application of Hours	
Planned Total Trip Time: 11.75 hours 7am - 15 minute pre-trip inspection 7.15 am to 12.00pm (Minchinbury - Wagga Wagga) 4.45 hrs driving 30 minutes break prior to unloading 12.30-1.30 pm loading unloading 1.30pm to 4.15pm (Wagga Wagga/Marulan) 30 minutes Marulan (4.45pm) 4.45 - 6.45 Marulan - Minchinbury 2 hours	
Confirmation that driver has been inducted and trained in OHS policy	
Confirmation that driver has been inducted and trained in company D&A policy	