

(1547)

SERIAL B9501

**TRANSPORT INDUSTRY (GST PROTOCOL) CONTRACT
DETERMINATION**

Schedule of Consolidated Award Published on 1.12.2000 and Subsequent Variations Incorporated

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DETERMINATION

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A Purpose

- (1) The purpose of this contract determination is to facilitate the orderly implementation of the GST as it applies to principal contractors and carriers in a manner that is compliant with the GST legislation.

B Passing on of Savings

- (2) Pursuant to the GST legislation principal contractors and carriers are obliged to pass on any net cost savings to their customers that are due to:
- the abolition or reduction of existing taxes or charges under the GST legislation; and
 - the introduction of the Diesel and Alternative Fuel Grants Scheme on and from 1 July 2000.
- (3) Any actual cost savings that are realised by carriers shall be passed on in accordance with this determination and the GST legislation.

C Area, Incidence and Duration

- (4) This determination shall apply to all contracts of carriage regulated by an existing contract determination or contract agreement and all other contracts of carriage performed wholly within the New South Wales but shall exclude contracts of carriage commencing within the County of Yancowinna.

Provided that this determination shall not apply to carriers engaged by John Fairfax Holdings Limited to whom the Contract Carriers (John Fairfax Publications) Agreement applies, and to contracts of carriage regulated by the Boral GST Protocol (Facilitation and Compliance) Contract Determination.

- (5) This determination shall operate as a variation to any other contract determination that otherwise would apply, to the extent of any inconsistency.
- (6) This determination shall commence on and from 28 June 2000, and shall remain in force for a period of one year.

Provided that with respect to members of Australian Business Industrial as at 27 June 2000 who are not bound by any current contract determination or contract agreement, this determination shall operate on and from 28 July 2000.

D Rates of Remuneration Exclusive of GST

- (7) Rates of remuneration payable to carriers pursuant to contracts of carriage are exclusive of GST. Where the rates of remuneration are varied in accordance with Part E, Method of Varying the Rates of Remuneration, the new rates of remuneration shall be exclusive of GST.
- (8) A separate amount equal to 10% of the value of the remuneration payable pursuant to clause 7 shall be paid by the principal contractor to the carrier if GST applies to the contracts of carriage ("the GST amount"). The GST amount shall not be construed as an increase in the rates of remuneration.
- (9) The total fee payable to the contract carrier by the principal contractor pursuant to contracts of carriage shall be the sum of the remuneration payable and the GST amount, if GST applies.

E Method of Varying the Rates of Remuneration

- (10) Where the rates of remuneration are calculated and reviewed in accordance with some specified formula, such as a rise and fall formula, the impact of the GST legislation on the operation of that formula shall be dealt with in accordance with subclauses 10.1 to 10.3, provided that non-reviewable contracts will be dealt with in accordance with clause 13.
- 10.1 The time of the first review of the rates of remuneration to occur after the commencement of the GST legislation shall occur at the time specified in the contract determination or agreement or at an earlier time where an earlier review is necessary to conform with the requirements of the GST legislation.
- 10.2 The first rate review to occur after 1 July 2000 shall be by use of the specified formula and shall include all increases or decreases in cost components since the time the rates of remuneration were last reviewed, whether these movements are due to the new taxation system or otherwise but shall exclude the addition of the GST on cost components where the identified benchmark is an item that carries can claim an input tax credit for the purchase thereof.
- 10.3 Leave is reserved to the parties to conduct a separate review of the administration cost component to take into account the additional administrative costs borne by carriers because of the introduction of the new GST system.
- (11) Where the existing rates of remuneration are set by a contract determination or contract agreement and the contract agreement and the contract determination or contract agreement does not specify a review formula the parties to that contract determination or agreement shall hold discussions about the necessity of varying the rates of remuneration. The rates of remuneration shall not be varied until such time as the variation is approved by the Industrial Relations Commission provided that non-reviewable contracts will be dealt with in accordance with clause 13.
- (12) Where the rates of remuneration are not set by a contract determination or contract agreement and no review formula exists and the parties to the contract of carriage are in disagreement as to the impact of the GST on the rates of remuneration such agreements shall be resolved in accordance with the disputes procedure provided for in Part I, prior to any variation in the rates of remuneration provided that non-reviewable contracts will be dealt with in accordance with clause 13.
- (13) Where the rates of remuneration are contained in a non-reviewable contract the rates of remuneration may only be adjusted in accordance with the terms of that contract and the GST legislation.

F Tax Invoice Procedure

(NOTE: A carrier must provide the principal contractor with their ABN or else have the marginal rate of tax withheld by the principal contractor).

- (14) The following invoice procedure shall be adopted by principal contractors and carriers:
- 14.1 The principal contractor shall calculate for each pay period the remuneration payable to the carrier under the relevant industrial instrument or contract agreement.
 - 14.2 The principal contractor shall supply a written advice to the carrier that identifies the calculations referred to in 14.1;
 - 14.3 Subject to subclause 14.4 the carrier shall prepare an invoice for the remuneration payable for each relevant pay period in a GST compliant fashion. If the carriers own records as to the remuneration payable to the carrier under the relevant industrial instrument or contract agreement differ from the principal contractors written advice the carrier shall prepare the invoice in accordance with the carrier's records and not the written advice supplied by the principal contractor. Where the carrier fails to provide the principal contractor with a tax invoice in a GST compliant fashion for the relevant period, the principal contractor shall have no obligation to pay the GST Amount until such time as a GST compliant tax invoice is provided. Once the carrier provides a GST compliant tax invoice the principal contractor shall make an appropriate adjustment;
 - 14.4 The principal contractor may prepare a RCTI in accordance with ATO Ruling GSTR 2000/10 or any subsequent ATO Rulings that applies to the Road Transport Industry; and
 - 14.5 The principal contractor shall maintain records of the remuneration calculations, remuneration paid and tax invoices.

G Training in GST

(15) The principal contractor shall exhibit a copy of this contract determination in a prominent position within the workplace within 14 days of the commencement of this contract determination in a conspicuous place at those premises.

(16) Where the carrier performs contracts of carriage exclusively for a principal contractor the principal contractor shall offer training to the carrier in the GST procedures outlined in this contract determination:

Provided that a principal contractor shall not have to train the carrier if the carrier has already undertaken relevant training that covers the GST procedures outlined in this determination.

(17) The carrier shall not be required to make any monetary contribution for the cost of the GST training specified in clause 16.

(18) Leave is reserved to the parties to have this Part varied or deleted after a period of six months from the date of commencement of this determination.

H Diesel Fuel Grant Scheme

- (19) Any actual cost savings that are realised by carriers due to the introduction of the Diesel and Alternative Fuel Grants Scheme ('the scheme') will be dealt with in accordance with this Part.
- (20) If a carrier is eligible to claim a rebate pursuant to the scheme, the carrier shall apply for the rebate if requested to do so by the principal contractor in writing.
- (21) The method of passing on any actual cost savings realised by carriers pursuant to the scheme shall be agreed to by the parties at an industry or enterprise level.
- (22) Where the parties agree to adjust the rates of remuneration:
- at an industry level by varying a contract determination; or
 - at an enterprise level by varying a contract agreement or contract determination,
- to take into account any rebate capable of being received by the carrier pursuant to the scheme such adjustment shall only occur upon being approved by the Industrial Relations Commission as a variation to that contract determination or contract agreement.
- (23) Disagreements on the method of passing on any actual cost savings realised by carriers pursuant to the scheme shall be resolved in accordance with the disputes procedures contained in Part I of this determination.

I Disputes Procedure

- (24) Any disagreements or disputes arising from the implementation of this contract determination shall be resolved as follows:
- 24.1 Discussions shall occur between the principal contractor and the carriers concerned.
A carrier may request that the Secretary of the Union or his nominee represent the carrier; and
- 24.2 If these negotiations are unsuccessful the dispute shall be referred to the applicable Industrial Committee. If no Industrial Committee operates in relation to that part of the Transport Industry pertaining to the contract of carriage between the principal contractor and the carriers concerned the dispute may be referred to the Industrial Relations Commission for conciliation and/or arbitration.
- 24.3 In exercising its functions under subclause 24.2 the Industrial Committee or Industrial Relations Commission shall have regard to the GST legislation and the *Price Exploitation Code (New South Wales Act, 1999)*.

J Definitions

(25) In this contract determination, unless otherwise required by the context:

"ABN" means an Australian Business Number;

"ATO" means the Australian Tax Office;

"Agreement" means an agreement between a principal contractor and either the Union or a group of carriers;

"Carrier" means a carrier undertaking a contract of carriage, as defined by Section 309 of the *Industrial Relations Act 1996*.

"Contract Agreement" means an agreement between a principal contractor and either the Union or a group of carriers, approved by the Industrial Relations Commission of New South Wales, in accordance with the provisions of the *Industrial Relations Act, 1996*.

"Contract of Carriage" has the same meaning as defined in Section 309 of the *Industrial Relations Act, 1996*.

"GST" means the goods and services tax;

"GST Legislation" refers to *A New Tax System (Goods & Services Tax) Act 1999* (Cth.) and associated legislation;

"Non reviewable contract" refers to an agreement for the purpose of Part 3 of the *A New Tax System (Goods & Services Tax Transition) Act 1999*;

"Principal contractor" has the same meaning as defined in Section 310 of the *Industrial Relations Act 1996*.

"RCTI" means a recipient created tax invoice;

"PAYG" means Pay As You Go;

Words importing the singular number shall include the plural number and vice versa; and

Words importing the male gender shall include the female gender and words importing persons shall include corporations.

K PAYG Voluntary Agreements

- (26) Where the principal contractor and the carrier have entered into a PAYG Voluntary Agreement pursuant to Division 113 of Part 4-2 of Chapter 4 of the *A New Tax System (Goods and Services Tax) 1999*, and the principal contractor is eligible to claim a full GST input tax credit for the contract of carriage performed by the carrier on behalf of the principal contractor the following Parts and clauses of this determination shall not apply.

Part D, Clauses 8 and 9;

and Part F.