

(680)

SERIAL B4643

TRANSPORT INDUSTRY - EXCAVATED MATERIALS, CONTRACT DETERMINATION

Schedule of Contract Determination Published on 24.10.1997 and Subsequent Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol	Page
Contract Determination	B4643	24.10.1997	First pay period on and from 31.5.96 except rates in Items 1, 1A,2,2A,3,3A, 4, 4A,5,5A,7,7A,8 &8A of Part B on and from 1.7.96	301	1082
Part B	B6568	12.2.1999	First pay period on and from 10.9.1998	308	334
Part B	B8908	30.6.2000	On and from 13.9.1999	316	1066
Part B	B9945	30.3.2001	First pay period on or after 25.8.2000	323	635
Part B	C1006	28.3.2002	First pay period on or after 23.11.2001	332	506
Part B	C2340	6.2.2004	First pay period on or after 13.8.2003	343	223
Part B	C3232	26.11.2004	First pay period on or after 24.9.2004	347	538
Part B & C	C4001	27.1.2006	First full pay period on or after 12.8.2005	356	977
Part B	C5146	17.11.2006	First pay period on or after 1.7.2006	361	911
Part B	C6156	9.11.2007	First pay period on or after 16.8.2007	364	447
Part B	C6770	28.11.2008	First pay period on or after 24.9.2008	366	1463
Part C	C6880	27.2.2009	On and from 4.11.2008	367	419
Part B & C	C7159	25.12.2009	First pay period on or after 19.8.2009	369	1153
1, 3, 5, 6, 9, 13, 21, Part B & C	C8278	30.1.2015	First full pay period on or after 15.8.2014	377	160
2.3, Part B, Part C	C8787	22.06.18	On or from 12 February 2018	383	292

DETERMINATION

Arrangement

PART A

Clause No.	Subject Matter
1.	Definitions
2.	Method of Remuneration
3.	Kilometre Rates
4.	Hourly Rates
5.	Other Rates
6.	Payments Included in the Rates
7.	Suitable Vehicle and Loading
8.	Minimum Hire
9.	Personnel
10.	Insurance
11.	Cartage Records
12.	Payment of Accounts
13.	Settlement of Disputes
14.	Double Booking
15.	Breakdowns
16.	Delays
17.	Meal Breaks
18.	Role of the Union
19.	Adjustment of Rates
20.	Superannuation
21.	Area, Incidence and Duration

PART B

Rates of Remuneration

PART C

Rise and Fall Formula

1. Definitions

In this contract determination, unless the subject matter or context otherwise indicates or requires:

"The Act" means the Industrial Relations Act 1996.

"Contract Carrier" shall be as defined in the Act.

"Contract of Carriage" shall be as defined in the Act.

"Contractor" means "Principal Contractor" as defined in the Act.

"Excavation and Demolition Material" means any material that is removed from the earth at building and/or construction and/or demolition sites.

"Large Material" means material 76.2 cm gauge or over, measured at its maximum dimension (being rock, concrete, tree stumps, footings or R.S.J.s, etc.)

"Sydney City Area" means the area in Central Sydney bounded by City Road, Cleveland Street, Dowling Street, McLachlan Avenue, Waratah Street, Elizabeth Bay and Harbour foreshore to Pyrmont Bridge Road at Blackwattle Bay, and Wentworth Park Road, to Broadway.

"Union" means the Transport Workers' Union of New South Wales (registered under the Act as an Association of Contract Carriers).

2. Method of Remuneration

- 2.1 Any contract carrier performing cartage work for a contractor will be paid according to one of the following methods, as determined by the contractor:
- 2.1.1 kilometre rates as provided in clause 3, Kilometre Rates; or
 - 2.1.2 hourly rates as provided in clause 4, Hourly Rates.
- 2.2 Notwithstanding subclause 2.1 of this clause, where the contractor determines hourly rates to be the method of remuneration, but requires the contract carrier to complete a nominated minimum number of loads, then the work performed by the contract carrier will be paid for according to the kilometre rate method.
- 2.3 The contract carrier will be paid a rate based upon the number of axles in the vehicle supplied, except
- (i) for a Class 3 Truck and Dog trailer combination (as complies with the Class 3 Truck and Dog Trailer Combination Notice issued by the Roads and Maritime Authority) the rate shall be as specified for "6 axle (48t)"; and
 - (ii) for a PBS Truck and Dog trailer combination (as complies with the National Class 2 PBS Level 1 and 2A Truck and Dog Trailer Authorisation Notice 2016 (No 1)) issued by the National Heavy Vehicle Regulator, the rates shall be as specified for "PBS T&D".

3. Kilometre Rates

- 3.1 Loading Rate - Every time the contract carrier's vehicle is loaded by the contractor, the contract carrier will be paid the rate in Item 1 of Part B, Rates of Remuneration.
- 3.2 Loading Rate - Extra Capacity - In addition to the rates payable under subclause 3.1 of this clause, the contract carrier will be paid the rate in Item 1A of the said Part B for every cubic metre (or part thereof) carried in excess of the truck's minimum capacity as specified in subclause 7.1 of clause 7, Suitable Vehicle and Loading.
- 3.3 Kilometre Rates - For each kilometre travelled by the contract carrier while working for the contractor, the contract carrier will be paid as follows:
- 3.3.1 0-8 kilometres Item 2 of Part B
 - 3.3.2 Each additional kilometre
over 8 kilometres Item 3 of Part B
 - 3.3.3 Each additional kilometre
over 25 kilometres Item 4 of Part B
 - 3.3.4 Half kilometres - to be paid pro rata.
- 3.4 Kilometre Rates - Extra Capacity - In addition to the rates payable under subclause 3.2 of this clause, the contract carrier will be paid the following rates for each kilometre travelled for each cubic metre (or part thereof) carried in excess of the truck's minimum capacity as specified in subclause 7.1 of the said clause 7:
- 3.4.1 0-8 kilometres Item 2A of Part B
 - 3.4.2 Each additional kilometre
over 8 kilometres Item 3A of Part B
 - 3.4.3 Each additional kilometre
over 25 kilometres Item 4A of Part B
 - 3.4.4 Half kilometres - to be paid pro rata.
- 3.5 Wet Weather - Where the contract carrier is prevented from commencing work due to wet weather, the contract carrier shall be paid one hour's appearance money at the hourly rate referred to in subclause 4.1 of clause 4, Hourly Rates. If the contract carrier is asked by the contractor to remain on-site during site preparation, the contract carrier will be paid waiting time at the same hourly rates.
- 3.6 Loading Time -
- 3.6.1 When loading time, being from the time of arrival on-site by the contract carrier to the time of departure from site, exceeds ten minutes, the excess time shall be compensated for at the hourly rates referred to in the said subclause 4.1.
 - 3.6.2 This paragraph does not apply to the commencement of the day's work or to the recommencement of work after the meal break.
- 3.7 Delays - All time spent by the contract carrier on the sites at the instruction of contractors will be paid for at the hourly rate referred to in subclause 4.1.

4. Hourly Rates

- 4.1 For each hour the contract carrier spends carrying excavated and demolition material (including returning to a site unloaded), the contract carrier will be paid the hourly rate in Item 6 of Part B, Rates of Remuneration.
- 4.2 In addition to the rates payable under subclause 4.1 of this clause, the contract carrier will be paid the rate in Item 6A of the said Part B for every cubic metre (or part thereof) carried in excess of the truck's minimum capacity as specified in subclause 7.1 of clause 7, Suitable Vehicle and Loading.
- 4.3 Travelling Time - The contract carrier will be paid one hour travelling time at the hourly rate referred to in subclause 4.1.
- 4.4 Wet Weather - When the contract carrier is prevented from commencing work by wet weather no payments shall be made, except for the payment of one hour travelling time as per subclause 4.2 of the said clause 4. This also applies to work suspended owing to wet weather.
- 4.5 Delays - All time spent by the contract carrier on the sites at the instruction of contractors will be paid for at the hourly rate referred to in subclause 4.1.

5. Other Rates

- 5.1 Should the contractor direct the contract carrier to alternative work, then the contractor shall pay to the contract carrier travelling time in the manner provided by subclause 4.2 of clause 4, Hourly Rates.

6. Payments Included in the Rates

Both the kilometre rates and the hourly rates have been calculated to include the following payments:

20 days annual leave;

five days leave loading;

all paid public holidays as provided for by applicable legislation;

34.8 hours long service leave per annum;

64 hours sick leave per annum; and

rostered industry day off.

7. Suitable Vehicle and Loading

- 7.1 The contract carrier shall supply a vehicle with a minimum body size of the appropriate capacity specified below:

Truck Type (No. of Axles) (Cubic Metres)	Loading Capacity
Two-axle Trucks	5.78	
Three-axle Trucks	9	
Four-axle Trucks	10.93	
Five-axle Trucks (Articulated)	17	
Six-axle Trucks (Articulated)	19	
Seven-axle Trucks (Articulated)	21.93	

- 7.2 In other respects, the contract carrier will supply and keep serviceable a vehicle that is suitable to the contractor. The contract carrier will obtain the approval of the contractor as to the type and condition of the vehicle before it is brought into service.
- 7.3 Loading - All reasonable efforts shall be taken by the contractor and the contract carrier not to overload any contract carrier's vehicle.

8. Minimum Hire

- 8.1 When contract carriers engaged on hourly or kilometre rates are prevented from working for reasons other than wet weather, a minimum of four hours at the hourly rate referred to in subclause 4.1 of clause 4, Hourly Rates, plus one hour paid travelling time, as provided for in subclause 4.2 of the said clause 4, will be paid to the contract carrier; provided if for work performed a higher amount would be payable if the kilometre rates in clause 3, Kilometre Rates, were applied, then that higher amount will be paid to the contract carrier.
- 8.2 The payment of the minimum hire is on the condition that the contract carrier is not given alternative work by the original contractor who engaged the contract carrier for that day.

9. Personnel

- 9.1 The contract carrier shall not employ any persons without prior approval being obtained from the contractor.
- 9.2 Drivers employed by contract carriers pursuant to clause 8.1 - Minimum Hire, must be employed at least under the minimum terms and conditions (whether governed by legislation or industrial instrument) that apply to the driver's employment.

10. Insurance

10.1 The contract carrier must, in all circumstances, be covered by the following insurance policies:

Motor Vehicle Third Party (Personal);
Motor Vehicle Third Party (Property); and
workers' compensation, where required by law;
personal sickness and accident;
public risk liability.

The contract carrier will obtain and bear the expense of the above insurance policies.

10.2 The insurance policies referred to in subclause 10.1 of this clause are to be submitted to the contractor for perusal and return prior to the commencement of work at any site. The contractor shall keep such copies of these insurance policies as is necessary to prove their currency upon request by the union. The contractor shall not allow any contract carrier who does not have such insurance policies current to commence work. The contractor shall request further perusal of the policies thereafter at regular intervals and may do so at any time. The policies are to be renewed whenever required so that they remain current at all times.

11. Cartage Records

The contract carrier is required to undertake to prepare their accounts according to the reasonable requirements of the contractor to whom they are contracted and to submit these accounts to the contractor every seven days, or as requested.

12. Payment of Accounts

- 12.1 The contractor is required to pay accounts for work performed pursuant to this determination within 14 days of the end of the month in which the work was done.
- 12.2 The contractor shall reimburse the contract carrier for all bridge/expressway tolls and like charges incurred as a result of such contract carrier in the performance of work for the contractor following a route nominated or approved by the contractor.

13. Settlement of Disputes

- 13.1 It is understood and accepted by all parties to this determination that work shall continue normally while the settlement of disputes procedure provided for in this clause is followed.
- 13.2 The procedure of the settlement of disputes will be as follows:
- 13.2.1 When there is a disagreement, the contract carrier shall attempt to resolve the matter by negotiating with the contractor or a representative of the contractor on-site.
 - 13.2.2 Where the matter remains unresolved, the union delegate or representative on-site will attempt to resolve the matter by negotiating with the contractor or a representative of the contractor on-site.
 - 13.2.3 If the matter remains unresolved, it shall then be discussed between an official of the union or any other person authorised to represent the union and the contractor, who may be accompanied or represented by officers or representatives of any association of employing contractors or other employer association of which the contractor is a member.
 - 13.2.4 If the matter remains unresolved, notification may be made to the Industrial Relations Commission of New South Wales by either party under the terms of the Act.

14. Double Booking

Contract carriers who accept two or more jobs and who thereby fail to fulfil their obligations to at least one job, causing extensive costs for individual contractors in idle equipment and labour, shall be reported to the union which shall, after investigating the circumstances of the matter, take action against such contract carrier.

15. Breakdowns

The contractor shall not be responsible for any loss incurred by the contract carrier resulting from breakdowns of vehicles. Vehicles that continually break down must be replaced by the contract carrier in accordance with subclause 7.2 of clause 7, Suitable Vehicle and Loading.

16. Delays

Delays on sites beyond the control of the contractor (e.g., late arrivals of employees or plant breakdowns) shall not attract any penalty payment for the contract carrier.

17. Meal Breaks

Contract carriers shall take their meal breaks at the same time as employees on the site to which they are contracted. Only one half hour meal break per shift is to be taken by the contract carrier.

18. Role of the Union

The role of the Transport Workers' Union of Australia, New South Wales Branch, and its Tip Truck Section, as the representative of the industrial interests of contract carriers, is recognised by the parties to this determination.

19. Adjustment of Rates

The rates as set out in Part B - Rates of Remuneration, shall be adjusted every 12 months in accordance with the cartage rate formula as set out in Part C - Rise and Fall Formula.

20. Superannuation

All contract carriers will have a current superannuation policy into which are paid, by the contract carrier, payments at least equal to current statutory or award superannuation entitlements applicable to an employee driving the same class of vehicle as that driven by the contract carrier. Proof of this superannuation policy is to be submitted to the contractor for perusal and return prior to the commencement of work at any site. The contractor may request further perusal of the proof of the policy thereafter at any time.

21. Area, Incidence and Duration

This determination applies to all contracts of carriage of excavated and demolition material and to all contractors and contract carriers engaged in or in connection with such work in the State of New South Wales, provided that it will not apply to persons covered by the former Industrial Agreement No. 7743, between the union and the Roads and Maritime Services, or any agreement succeeding or replacing that agreement.

This determination rescinds and replaces the Transport Industry - Excavated Materials Contract Determination published 9 July 1986 (242 I.G. 89), as varied. It shall commence on and from 31 May 1996, except for the rates in Items 1, 1A, 2, 2A 3, 3A 4, 4A, 5, 5A, 7, 7A, 8 and 8A of Part B, Rates of Remuneration, which shall take effect on and from 1 July 1996. This determination shall remain in force thereafter for a period of three years.

FOR EFFECTIVE DATE PLEASE REFER TO SCHEDULE OF AWARD VARIATIONS TABLE.

PART B

RATES OF REMUNERATION

ITEM	2 Axles \$	3 Axles \$	4 Axles \$	5 Axles \$	6 Axles \$	6 Axles \$	7 Axles \$	PBS T&D \$
1. Loading Rate	18.029	28.073	34.096	40.568	43.687	46.794	47.466	50.573
1A. Extra Capacity (per cubic metre)	3.107	3.107	3.107	3.107	3.107	x	3.107	x
2. Kilometre rate (0-8 km)	4.534	7.063	8.577	10.206	10.988	11.77	11.941	12.723
2A. Extra Capacity (per cubic metre)	0.782	0.782	0.782	0.782	0.782	x	0.782	x
3. Kilometre Rate (8 - 25 km)	4.195	6.534	7.938	9.443	10.172	10.896	11.052	11.776
3A. Extra Capacity (per cubic metre)	0.724	0.724	0.724	0.724	0.724	x	0.724	x
4. Kilometre Rate (over 25 km)	3.30	3.30	3.30	3.30	3.30	3.972	3.30	3.972
4A. Extra Capacity (per cubic metre)	0.672	0.672	0.672	0.672	0.672	x	0.672	x
6. Hourly Rate	59.112	92.044	111.831	132.956	143.187	153.412	162.926	173.151
6A. Extra Capacity (per cubic metre)	10.225	10.225	10.225	10.225	10.225	x	10.225	x

PART C

Rise and Fall Formula

1. The rates prescribed in Part B may be adjusted each year upon application to the Industrial Relations Commission of New South Wales.
2. Application for adjustment shall be made by reference to the weighted movement in the following benchmarks for each cost component, calculated as at the end of the full quarter immediately preceding the variation, with each adjustment application based upon the rates and amounts in the immediately preceding variation.

Component Current	Benchmark	Current Index	Weighting
Wages	Road Transport and Distribution Award 2010, Grade Three Transport Worker	763.80	3408
Capital	ABS Consumer Price Index (CPI), Motor Vehicles, Australia	93.3	19.1
Insurances	ABS CPI Insurance and Financial Services Motor vehicle repair and servicing in Sydney"	124.9	5.9
Registration	ABS CPI, Transportation Group, Other Services in respect of motor vehicles.	126.8	3.5
Repairs & Maintenance	ABS CPI, Transportation Group, Maintenance and Repair of Motor and Repair of motor vehicles	108.9	17.9
Tyres	ABS CPI, Transportation Group, Spare Parts and Accessories for motor vehicles	109.5	4.9
Fuel AIP NSW State	Average for the Retail Price of diesel (excluding GST), calculated by determining the average of the weekly figures between the end of the quarter relating to the last variation and the end of the quarter prior to any new variation.	111.68	10.4
Administration	ABS CPI, All Groups, Sydney	112.5	3.5
Total			100.00

3. If the cost components, excepting fuel, change such that it causes an increase in the total remuneration of 2 percent or more from the date of the last variation, an interim adjustment may be made. An application to vary rates of remuneration for changes in the price of fuel may be made at any time, provided that the date upon which any 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.
4. Each cost component will be re-weighted after each adjustment.
5. Parties to this Determination will confer with a view to reaching agreement on any application for adjustment on any application for adjustment. In the absence of agreement the rates and amounts shall be determined by the IRC.
6. Notwithstanding anything contained in this Part, a variation shall not be retrospective in operation but shall operate from a date not earlier than the date upon which it is made.

NOTE: Price is the total retail price inclusive of GST and excluding all discounts.

Tyres: Goodyear Tyre Co. Head Office recommended retail price for A steer 11R22.5 tyre only.

Quotes: Quotes for vehicles and tyres should be from the same source and be the same model number and if not possible the closest equivalent model.

Depreciation: Index based on the average of the recommended retail price of two cheapest vehicles - as per specification details below.

The index is the total of the prices.

Rigid Three Axle Bogie

Manufacturer:	Hino, Ford, Volvo or International
Differential:	40,000 pounds
Gearbox:	15 speed minimum
Horsepower:	300 hp
Carrying Capacity:	9 cubic metres minimum
Insurance:	Miller & Associates quote of the average of the two vehicles selected for the index
Registration and Third Party:	Roads and Traffic Authority
Interest:	Westpac, Prime Overdraft Rate
Sundries:	Based on Increase of CPI

B. Weightings for Cost Components

Cost Component	Percentage of Total Cost
Repairs and Maintenance	16.2
Fuel	12.5
Tyres	6.3
Insurance	5.3
Registration	2.5
Depreciation	14.4
Labour	31.7
Interest	7.8
Sundries	3.3
Total:	100

C. 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 on the following basis:
 - (a) an application to vary rates of remuneration for changes in the price of fuel may be made at any time, provided that the date upon which any rate adjustment is sought to occur is at least one calendar month after the last occasion upon which a 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 be one which exceeds 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. 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 the making of a consent application to have the Industrial Relations Commission of New South Wales hear and determine any such application within 48 hours from the initial listing of the application.
- (4) The fuel index, reflecting current rates, is 156.6 cents. This is exclusive of GST.