



DECISION

Fair Work Act 2009

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

Toll Holdings Limited T/A Toll (AG2022/40)

TOLL - TWU ENTERPRISE AGREEMENT 2021-2023

Road transport industry

COMMISSIONER WILSON

MELBOURNE, 9 MARCH 2022

Application for approval of the Toll - TWU Enterprise Agreement 2021 - 2023

[1] An application has been made for approval of an enterprise agreement known as the *Toll – TWU Enterprise Agreement 2021-2023* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Toll Holdings Limited T/A Toll. The Agreement is a single enterprise agreement.

[2] In order for an agreement to be approved s.186(2)(d) requires the Commission to be satisfied that it passes the better off overall test (the BOOT), the requirements for which are set out in s.193. The test requires the identification of terms which are more beneficial for an employee, terms which are less beneficial, and an overall assessment of whether an employee would be better off under the agreement. The overall assessment involves a global comparison in relation to each award covered and prospective award covered employee; *CFMEU v KAEFER Integrated Services Pty Ltd*, [2017] FWCFCB 5630, [9].

[3] The Agreement is dense and complex with layers of incorporated documents. Despite that fact and that the Agreement does not include a wages schedule I am satisfied the BOOT is nonetheless passed with me relying upon material within the Employer’s Declaration in support of the application (the Form F17) signed by Elizabeth Ferrier, the Applicant’s Employee and Industrial Relations Group Head, and dated 30 December 2021, and a statutory declaration and annexure signed by Elizabeth Ferrier and dated 7 March 2022.

[4] The Form F17 is declared on the basis of its contents being accurate and that the giving of false or misleading information within it is a serious offence. Ms Ferrier declares “yes” in response to Question 10 which asks if the Agreement contains any terms or conditions of employment that are more beneficial than equivalent terms and conditions in the reference modern awards. The statutory declaration dated 7 March 2022 is accompanied by an annexure marked A specifying the range of weekly payments that will be paid to employees on approval of the Enterprise Agreement.

[5] I accept and rely upon Ms Ferrier's declarations to the Commission as demonstrating that the wage rates paid by Toll under the Agreement are in every case appreciably higher than those payable under the reference modern awards. The undertaking sought by the Commission and provided by the Applicant which is now a term of the agreement pursuant to s.191 further confirms satisfaction that the BOOT is passed and that the Applicant's commitments are enforceable. A copy of this undertaking is attached to this decision and marked Annexure A.

[6] As a result of my consideration of the material before me I am satisfied that each of the requirements of ss.186, 187 and 188 as are relevant to this application for approval have been met.

[7] The Transport Workers' Union of Australia being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[8] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 16 March 2022. The nominal expiry date of the Agreement is 30 June 2023.



COMMISSIONER

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2022/40

Applicant:
Toll Holdings Limited

Undertaking- section 190

I, Elizabeth Ferrier, Group General Manager, Employee and Industrial Relations of Toll Holdings Limited give the following undertakings with respect to the *Toll – TWU Enterprise Agreement 2021-2023* (the Agreement):

1. The Employer undertakes to pay employees covered by the Agreement minimum wages and allowances (where applicable) of not less than the wages and allowances contained in the confidential exhibit marked as annexure A to the statutory declaration of Elizabeth Ferrier signed on 7 March 2022.
2. Where penalty rates or loadings are payable under the Agreement, such penalties and loadings will be paid by reference to the wages paid to employees in accordance with the confidential exhibit marked as annexure A to the statutory declaration of Elizabeth Ferrier signed on 7 March 2022.
3. The confidential exhibit marked as annexure A to the statutory declaration of Elizabeth Ferrier signed on 7 March 2022 will be made available to any employee covered by the Agreement and the Transport Workers' Union of Australia upon request.

Employer name: Elizabeth Ferrier

Authority to sign: Group General Manager, Employee and Industrial Relations

Signature: 

Date: 7 March 2022



Toll - TWU Enterprise Agreement 2021-2023

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of the agreement.

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PART A - GENERAL TERMS AND CONDITIONS

Section 1 - Application and Operation

1. Title

This Agreement will be referred to as the Toll - TWU Enterprise Agreement 2021-2023.

2. Objects

The objects of this Agreement include the following:

- (a) enhancing the safety and fairness of Toll's operations;
 - (b) promoting job security, skills development and recognition, effective workplace representation and training for Transport Workers;
 - (c) maintaining the safety net and enhancing fair working conditions for Transport Workers;
 - (d) enhancing the productivity, efficiency, profitability, viability and sustainability of Toll's operations; and
 - (e) subject to reasonable practical requirements, such as adequately servicing industry peaks, promoting job security through the full utilisation of full-time permanent Transport Workers for available hours of work before the engagement of part-time, casual, labour hire or outside hire workers;
 - (f) enhancing job security and the sustainability of Toll's operations by promoting safe and fair conditions for all workers in the industry and by taking positive company and industry steps to prevent the exploitation of vulnerable workers including visa holders;
 - (g) supporting diversity in the workplace; and
 - (h) ensuring that Transport Workers are protected from the importation of substandard labour practices by providing the framework for development and implementation of agreed international labour standards and recognition of relevant International Labour Organisation standards in transport to discuss, among other things, international labour standards in Toll operations.
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3. Definitions

Act means the *Fair Work Act 2009* (Cth).

Agreement means this enterprise agreement, and incorporates the Local Agreements.

Average Earnings means the applicable rate of pay (inclusive of but not limited to overtime, allowances and penalties) for the average number of hours worked per day over a 12 week period, prior to the release of the delegate or stand down of a Transport Worker.

Award means:

(a) the Road Transport and Distribution Award 2020;

the Road Transport (Long Distance Operations) Award 2020; and

Blue Card WHS Induction and Skills Passport means a work, health and safety initiative for the transport and logistics industry (TLIF1001 "Follow Work Health and Safety Procedures") nationally recognised Level 1 training competency, and other recognised national competencies as agreed.

Dispute means any dispute or grievance that arises at the workplace between a Transport Worker or Transport Workers and Toll, or between the Union and Toll, about the NES or the interpretation or application of this Agreement or in relation to any matters pertaining to the relationship between Toll and a Transport Worker (or Transport Workers), or that between Toll and the Union, including but not limited to a dispute about any condition of employment or industrial matter.

Drug and Alcohol Policy and Procedures means the global drug and alcohol policy and procedures that are, subject to clause 41, issued by Toll from time to time.

Employee means a Transport Worker.

Existing Fleet Operator means a Fleet Operator engaged by Toll as at the Operative Date.

Fleet Operator means a person, firm or company, outside Toll, that in the course of its business transports freight for another person and which:

- (a) owns or operates more than 1 vehicle; and
- (b) employs multiple drivers and/or Owner-Drivers;
- (c) offers their services to the public at large; and
- (d) is engaged by Toll for a cumulative period of 2 months or more in a 12 month period from engagement, or which Toll is contemplating to engage for a cumulative period of more than 2 months from engagement.

Fund means TWUSUPER.

FWC means the Fair Work Commission.

Instrument means any instrument originally made as an award, whether current, expired, displaced by force of legislation or otherwise, and can include the Award.

Local Agreements means the enterprise agreements, workplace agreements, certified agreements and other arrangements listed in Part B, together with any agreement made pursuant to clause 8.3.

Long Distance Work means any trip greater than 500 kilometres.

NES means the National Employment Standards contained in sections 59 to 131 of the Act. The NES contain minimum standards relating to:

- (a) maximum weekly hours;
- (b) requests for flexible work arrangements;
- (c) offers and requests for casual conversion;
- (d) parental leave and related entitlements;

- (e) annual leave;
- (f) personal/carer's leave, compassionate leave and unpaid family and domestic violence leave;
- (g) community service leave;
- (h) long service leave;
- (i) public holidays;
- (j) notice of termination and redundancy pay; and
- (k) the Fair Work Information Statement.

Nominal Term means the period from the Operative date until 30 June 2023.

Operative Date means 7 days after this Agreement has been approved by the FWC.

Outside Hire means Fleet Operators and labour hire personnel engaged through third party labour hire companies or an entity controlled by Toll providing labour but not covered by this Agreement..

Owner-Driver means:

- (a) a natural person who carries on a business of transporting goods in a single vehicle supplied by him or her and operated by him or her (whether solely or with the use of additional or relief operators);
- (b) a corporation (other than a listed public company) that carries on a business of transporting goods in a single vehicle supplied by the corporation or an officer of the corporation and operated by an officer of the corporation (whether solely or with the use of additional or relief operators); or
- (c) a partnership of persons referred to in paragraph (a).

Parties means Toll, the Union and the Transport Workers.

Permanent Part-Time Transport Worker means a Transport Worker, other than a casual Transport Worker, who is employed to work a number of hours as agreed in accordance with clause 23 which is less than 38 hours per week.

Status Quo means the arrangements in place prior to the Dispute arising. This includes the performance, operation and management of all work and rates of pay and allowances.

TEACHO means Training Education Audit Compliance Health Organisation Limited, a not-for-profit organisation whose objectives are described in clause 50.

Term means the period from the Operative Date to the date on which this Agreement no longer applies to the Transport Workers according to the provisions of the Act.

Toll means Toll Holdings Limited and each of its wholly-owned subsidiaries which employs a Transport Worker.

Transport Worker means any person who is eligible to be a member of the Union and who is employed by Toll in Australia in any of the classifications contained in the Award or in a Local Agreement that applies at the site at which the person is, or is to be, employed.

Unexpired Local Agreement means a Local Agreement that has been approved, registered, certified or otherwise formalised under industrial legislation and which has not, as at the Operative Date, passed its nominal expiry date.

Union means the Transport Workers Union of Australia.

4. Coverage

4.1 General

This Agreement applies to and is binding on Toll, all Transport Workers and the Union.

4.2 Acquisitions of businesses

- (a) This clause 4.2 will apply if Toll acquires a new business during the Term, the employees of which fall within the definition of "Transport Worker" in this Agreement.
- (b) Toll will ensure that:
 - (i) if the employees in the acquired business are or become employed by Toll to work **at an existing Toll site**, the employees receive the rates of pay and conditions of employment applicable to Transport Workers at that site, provided that the employees must not be paid a lower rate or receive less favourable conditions of employment than those that they may be entitled to receive under any enterprise agreement or similar industrial instrument applying in the acquired business; or
 - (ii) if the employees are engaged **at a separate site**, the employees receive the equivalent of the remuneration increases available under this Agreement on a pro rata basis from the date of the acquisition, provided that if any enterprise agreement or similar industrial instrument applying in the acquired business provides a greater increase for part of all of the Term then that increase will be paid for the corresponding period after which time the equivalent of the remuneration increases available under this Agreement will apply on a pro rata basis.
- (c) If clause 4.2(b)(ii) applies the parties will create a Local Agreement for that site in accordance with clause 8.3.

4.3 Tenders

- (a) This clause applies where Toll submits a tender to a customer or potential customer for work which is currently being performed by a competitor, and which, if it were performed by Toll, would be covered by this Agreement (**New Contract**).
- (b) Where agreed between Toll and the Union, Toll may tender for the New Contract at the rates being paid by the competitor to its employees (**Tender Rates**) and, subject to clause 4.4, pay the Tender Rates to:
 - (i) any Transport Worker it employs who had previously been employed by the competitor; and
 - (ii) any new Transport Worker it employs to work on the New Contract.

4.4 Consultation regarding applicable rates

- (a) Toll agrees to consult with the Union about any disparity between:

- (i) the rates of pay and conditions of employment applying to Transport Workers in the acquired business and those applying at an equivalent Toll site, arising from clause 4.2(b)(ii); or
 - (ii) the rates of pay and conditions of employment applying to Transport Workers performing work under the New Contract and those applying at an equivalent Toll site, arising from clause 4.3(b).
- (b) The powers of the FWC to deal with any Dispute between Toll and the Union arising out of the consultation referred to in clause 4.4(a) will be confined to conciliation.
- (c) Notwithstanding anything else contained in this clause 4.4, rates being paid by Toll to Transport Workers engaged in an acquired business or performing work under a New Contract will be brought into parity with those paid to Transport Workers at a comparable Toll site within 3 years after Toll acquires the new business or secures the New Contract, as the case may be.

4.5 Consolidated sites and transfers

- (a) If Toll intends to transfer a business from one site to another site which is not covered by a Local Agreement, Toll and the Union will negotiate a new Local Agreement to cover that site. In negotiating that Local Agreement the Parties will:
 - (i) base the negotiations on the terms and conditions already applying to the Transport Workers who will be transferring to the new site; and
 - (ii) ensure that the terms of the Local Agreement are no less favourable on an overall basis to those applying to existing Transport Workers who will be transferring to the new site.
- (b) If a Transport Worker transfers from one site to another site at Toll's request, the Transport Worker will be entitled to the terms and conditions applicable at the new site, provided that Toll will ensure that for the Transport Worker those terms and conditions are no less favourable on an overall basis than those which the Transport Worker previously enjoyed.

5. Term of Agreement

This Agreement will commence operation from the Operative Date and will reach its nominal expiry date on 30 June 2023.

6. Relationship to the Award and the NES

- (a) This Agreement incorporates the Award, provided that Part A of this Agreement and the Local Agreements will prevail over the Award to the extent of any inconsistency. An inconsistency will not arise simply because the Award provides a more beneficial entitlement to a Transport Worker than that contained in Part A of this Agreement.
- (b) This Agreement will be read and interpreted in conjunction with the NES. Certain provisions of this Agreement or of a Local Agreement may supplement the NES but

nothing in this Agreement will operate so as to provide a detrimental outcome for Transport Workers as compared to an entitlement under the NES. Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provisions will apply to the extent of any inconsistency.

- (c) For the avoidance of doubt Toll will ensure that no Transport Worker will lose any entitlements that they may currently have arising out of any Instrument.
- (d) In particular in relation to Transport Workers employed by Toll in New South Wales as at the Operative Date:
 - (i) the commitment in clause 6(c) extends to entitlements including:
 - A. their classification;
 - B. allowances (including meal allowances);
 - C. overtime; or
 - D. shift work loadings; and
 - (ii) to the extent that any Transport Workers have such entitlements as at the Operative Date, Toll will continue to apply these entitlements at the sites where those Transport Workers work, and will extend those entitlements to Transport Workers who are employed by Toll at those sites after the Operative Date; and
 - (iii) the obligation by Toll to apply or offer those entitlements will not apply in relation to any new site or business established by Toll in New South Wales after the Operative Date.

7. Permitted matters

The provisions of this Agreement are, and are intended to be, limited to matters which are permitted matters within the meaning of section 172(1) of the Act.

8. Local Agreements

8.1 Continued effect and enforcement of Local Agreements

- (a) The Local Agreements are incorporated into this Agreement and have effect subject to this clause 8.
- (b) Part A of this Agreement prevails over the Local Agreements to the extent of any inconsistency. An inconsistency will not arise simply because a Local Agreement provides a more beneficial entitlement to a Transport Worker than that contained in Part A of this Agreement.
- (c) Clauses 8.1(a) and (b) apply to any Unexpired Local Agreement from the day that agreement passes its nominal expiry date.
- (d) For the avoidance of doubt, clauses 8.2 and 8.3 of this Agreement will be construed and applied as operating subject to Chapter 2, Part 2-4, Division 7 of the Act.

8.2 Review of Local Agreements

- (a) The Parties agree to amend the Local Agreements in order to make them more relevant, up-to-date, user-friendly and complementary with Part A of this Agreement. It is the Parties' intention to ultimately achieve a result where this Agreement and the Local Agreements reflect all of the terms and conditions of employment of the Transport Workers, and there is no longer any need to refer to Instruments (except the Award) or unwritten practices.
- (b) During the Nominal Term the Parties will conduct a review of the Local Agreements and amend them to:
 - (i) remove obsolete provisions;
 - (ii) remove terms in the Local Agreements that are inconsistent with Part A of this Agreement, except where those terms are more beneficial to the Transport Workers; and
 - (iii) incorporate terms deriving from Instruments (other than the Award).

8.3 Creation of Local Agreement where one does not exist

If a site or business does not have a written Local Agreement as at the Operative Date, the Parties will during the Nominal Term put in writing the operational terms applying at that site or business.

8.4 Continued application of terms derived from Instruments

Toll will ensure that as a result of the review or creation of a Local Agreement under clauses 8.2 and 8.3 respectively, no Transport Worker will lose any entitlements that they may currently have arising out of any Instrument.

8.5 Customs and Practices absorbed

- (a) This Agreement is not intended to alter a custom and practice applicable to Toll and Transport Workers.
- (b) As part of the review or creation of a Local Agreement under clauses 8.2 or 8.3, the Parties will include any custom and practice that applies to Toll and the Transport Workers at the site or business.
- (c) Any dispute as to whether a custom and practice applies to Toll and/or Transport Workers, or how that custom and practice should be reflected in writing in a Local Agreement, will be dealt with in accordance with the dispute resolution procedure set out in clause 15.
- (d) Once a Local Agreement has been reviewed or made under clauses 8.2 or 8.3, and subject to clause 8.5(e), no unwritten custom and practice will be regarded as existing in respect of the site or business covered by the Local Agreement.
- (e) Clause 8.5(d) will not preclude the continuing application of a custom and practice where:

- (i) the Parties have unintentionally failed to reflect the custom and practice in a Local Agreement
- (ii) The creation of a new custom and practice if that custom and practice is established after a Local Agreement has been reviewed or made under clauses 8.2 or 8.3.

8.6 Other Variations of Local Agreements

- (a) At any time after the review or creation of a Local Agreement under clause 8.2 and 8.3, the Parties may agree to vary the terms of the Local Agreement to address the needs of the site or business in accordance with this clause 8.6.
- (b) During the life of this Agreement, changes in respect of Local Agreements may be agreed between the Parties but only where endorsed by both a majority of Transport Workers at workplace/s affected and the TWU. If such agreed matters require a variation to this Agreement, the parties commit that each of them will do all things necessary to vary the Agreement.
- (c) Variation to this Agreement shall be made in accordance with section 207 of the Act and processed in accordance with section 209 of the Act and any other statutory requirements.
- (d) Agreement with the TWU in respect of changes to Local Agreements for the purposes of clause 8.6(b) above means an agreement in writing signed by the relevant Branch Secretary.
- (e) During the process of the negotiation of a Local Agreement, Toll will agree to a reasonable number of paid report back meetings of no longer the 30 minutes duration.

8.7 Terms of Local Agreements

- (a) Any Local Agreement reviewed, made or varied under this clause 8 must not:
 - (i) be inconsistent with Part A of this Agreement; or
 - (ii) contain terms that would have the effect of reducing the effectiveness of this clause.
- (b) Any Local Agreement reviewed, made or varied under this clause 8 must include terms in the Local Agreement to facilitate consultation about changes at the relevant site or business.

8.8 Approval of Local Agreements

- (a) Toll will consult with Transport Workers and the Union about any proposal Toll wishes to make to review, make or vary a Local Agreement under this clause 8.
- (b) Toll recognises that as part of the consultation process, the Union may canvass the views of the Transport Workers at the site or business as to the proposal, which may include conducting a vote of the Transport Workers on the proposal.

- (c) Nothing in this clause is intended to prevent Transport Workers from requesting the review, creation or variation of a Local Agreement under this clause 8.
- (d) To be effective, any review, creation or variation of a Local Agreement under this clause 8 must be:
 - (i) in writing;
 - (ii) approved by a majority of the Transport Workers under that Local Agreement, with such majority to be verified by the Union; and
 - (iii) signed by the relevant Toll General Manager and the Secretary of the relevant Branch of the Union.

8.9 Transport Workers to be no worse off

Toll will ensure that no Transport Worker is worse off as a result of the review referred to in clause 8.2, the creation of a new Local Agreement under clause 8.3 or the variation of a Local Agreement under clause 8.6.

8.10 Involvement of delegates

- (a) Any leave which delegates are required to take to spend in the review, creation or variation of a Local Agreement under this clause 8 will not be taken to come out of the amount of delegates leave prescribed by clauses 49.3(a) and (b).
- (b) Delegates who take leave to spend in the review, creation or variation of a Local Agreement under this clause 8.10 will be paid for each day of the leave the earnings that they would have received had the day been worked.

8.11 Review of progress regarding Local Agreements

At the end of the first year of the Nominal Term the Parties will confer with a view to assessing:

- (a) the progress that has been made to review or create Local Agreements under this clause 8; and
- (b) what if any steps may need to be taken to facilitate that process.

9. Conduct of the Parties

- (a) The Parties agree that mutual respect and good faith is necessary to achieve an efficient and mutually beneficial relationship.
- (b) Further to the Parties' aim of achieving an efficient and mutually beneficial relationship, the Parties agree to act in good faith in fulfilling their respective functions and obligations under this Agreement.
- (c) For the purposes of this Agreement, "good faith" requires the parties to:
 - (i) deal with one another honestly and genuinely, and in a manner which maintains the integrity of this Agreement;

- (ii) take an honest and genuine approach to the resolution of any Disputes arising between them;
- (iii) refrain from capricious or unfair conduct that undermines the Agreement;
- (iv) give genuine consideration to, and respond to, the positions and proposals of other Parties in relation to any Disputes;
- (v) disclose information (other than confidential or commercially sensitive information) which is relevant to any Dispute in a timely manner; and
- (vi) refrain from pursuing any variation or alteration to the terms of this Agreement other than in accordance with the terms of this Agreement.

10. No extra claims

- (a) During the Term neither Toll or Transport Workers will pursue any further claims for wages, allowances or any other terms and conditions of employment.
- (b) This clause 10 is not intended to preclude discussions under clause 8 for variations to a Local Agreement that deliver mutual benefits to the Parties.

11. Negotiation of new agreement

- (a) The Parties will commence negotiations for an agreement to replace this Agreement no less than 3 months before the nominal expiry date of this Agreement.
- (b) Those negotiations will proceed on a national basis in a single set of negotiations across all business units.
- (c) The negotiating committee will be constituted as follows:
 - (i) representatives from Toll;
 - (ii) representatives from the Union;
 - (iii) 2 metro delegates and 1 regional delegate from Queensland;
 - (iv) 2 metro delegates and 1 regional delegate from Western Australia;
 - (v) 1 delegate from South Australia;
 - (vi) 1 delegate from the Northern Territory;
 - (vii) 3 delegates from Victoria;
 - (viii) 1 delegate from Tasmania; and
 - (ix) 6 delegates from New South Wales/Australian Capital Territory.
- (d) All delegates on the negotiating committee will be determined by the Union.
- (e) To facilitate the negotiations Toll will:

- (i) consent to the Union conducting pre-survey, claim endorsement and negotiation report back meetings, following each full Committee meeting, of State delegate bodies and of all yards on paid time and local Toll management will cooperate to ensure that meetings occur in a mutually convenient but timely manner;
- (ii) release the delegate representatives to attend negotiation meetings;
- (iii) pay the delegate representatives for each day of the negotiations the amount they would have received had they been at work on those days;
- (iv) provide venues and catering for negotiations;
- (v) pay for any flights required for delegates to attend the negotiations and provide the delegate representatives with accommodation and meals (or a meal allowance); and
- (vi) pay a delegates' reasonable expenses of attending the negotiations, provided the delegate has sought permission for the expense and is able to provide documentary evidence of the expense.

Section 2 - Flexibility, Consultation and Dispute Resolution

12. Access to this Agreement

Toll will make a copy of this Agreement, any applicable Local Agreement and the NES available to a Transport Worker on request.

13. Individual flexibility arrangements

- (a) Toll and a Transport Worker may agree to make an individual flexibility arrangement to vary the effect of clause 31 of this Agreement by allowing the Transport Worker to take Blood Donors leave of up to 4 hours for a maximum of 2 days per year.
- (b) Any arrangement under clause 13(a) must genuinely be agreed to by Toll and the Transport Worker.
- (c) Toll will ensure that the terms of the individual flexibility arrangement:
 - (i) are about permitted matters under section 172 of the Act; and
 - (ii) are not unlawful terms under section 194 of the Act; and
 - (iii) result in the Transport Worker being better off overall than the Transport Worker would be if no arrangement was made.
- (d) Toll will ensure that the individual flexibility arrangement:
 - (i) is in writing; and
 - (ii) includes the name of the employer and Transport Worker; and
 - (iii) is signed by Toll and the Transport Worker and if the Transport Worker is under 18 years of age, signed by a parent or guardian of the Transport Worker; and
 - (iv) includes details of the terms of this Agreement that will be varied by the arrangement; and
 - (v) states the day on which the arrangement commences.
- (e) Toll will give the Transport Worker a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (f) Toll or the Transport Worker may terminate the individual flexibility arrangement:
 - (i) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (ii) if Toll and the Transport Worker agree in writing - at any time.

14. Consultation on workplace change

- (a) If Toll is considering workplace changes that are likely to have a significant effect on Transport Workers, it will consult with the Union and any Transport Workers who will be affected by any proposal.
- (b) As soon as practicable Toll must discuss with the Union and relevant Transport Workers the introduction of the change, the effect the change is likely to have on the Transport Workers, the number of any redundancies, the persons or class of persons likely to be affected and any reasonable alternatives to the change or redundancy. Toll must discuss measures to avert or mitigate the adverse effect of the change on the Transport Workers.
- (c) In addition to the above, where there is a proposed change to Transport Workers' regular rosters or ordinary hours of work Toll must provide information to the Transport Workers about the change and invite the affected Transport Workers to give their views about the impact of the change, including any impact in relation to their family or caring responsibilities.
- (d) Toll will give prompt and genuine consideration to matters raised by the affected Transport Workers and the Union about the changes referred to in clauses 14(a), (b) and (c).
- (e) As soon as a final decision has been made, Toll must notify the Union and the Transport Workers affected, in writing, and explain the effects of the decision.
- (f) In the event that a Dispute arises in respect to any decision, proposal or consideration to effect any change, the parties agree to follow the disputes procedure in clause 15, and until the Dispute is resolved in accordance with that procedure the status quo before the Dispute arose will be maintained and work will continue without disruption.
- (g) In order to facilitate and assist with genuine consultation with Transport Workers and the Union in accordance with this clause, Toll will:
 - i. accommodate a reasonable number of paid yard meetings during the consultation period; and
 - ii. provide leave to delegates as agreed and as reasonably required to allow the delegates to participate in the consultation process.
- (h) A reference to a change that is "likely to have a significant effect on Transport Workers" includes but is not limited to:
 - (i) the termination of the employment of Transport Workers; or
 - (ii) major change to the composition, operation or size of Toll's workforce or to the skills required of Transport Workers; or
 - (iii) the elimination or diminution of a significant number of job opportunities (including opportunities for promotion or tenure); or
 - (iv) the significant alteration of hours of work; or

- (v) the need to retrain Transport Workers; or
 - (vi) the need to relocate Transport Workers to another workplace; or
 - (vii) the restructuring of jobs;
 - (viii) "New Economy" and technological change including changes in work modes, on-demand technology and automation; or
 - (ix) any variation to the Drug and Alcohol Policy and Procedures.
- (i) With the prior approval of Toll and subject to clause 44, the Union may enter Toll's premises in order to consult with Transport Workers regarding a workplace change.
 - (j) For the purposes of the consultation outlined in this clause, a Transport Worker may appoint a representative of their choice, which may include the Union. Toll will recognise any representative appointed by a Transport Worker.

15. Dispute resolution procedure

- (a) In the event that a Dispute arises, and subject to clause 15(b), the Parties will attempt to resolve the Dispute through consultation at the area within Toll's business at which the Dispute arises.
- (b) Clause 15(a) will not prevent a Dispute being referred directly to the FWC under clause 15(c) where the nature of the Dispute requires the FWC's immediate involvement.
- (c) If the Dispute is unable to be resolved through consultation under clause 15(a), or clause 15(b) applies, the Dispute may be submitted to the FWC for conciliation. For this purpose, the action the FWC may take includes:
 - (i) arranging conferences of the parties or their representatives at which the FWC is present; and
 - (ii) arranging for the parties or their representatives to confer among themselves at conferences at which the FWC is not present.
- (d) If the Dispute is not resolved in conciliation conducted by the FWC, the FWC will proceed to arbitrate the Dispute and/or otherwise determine the rights and/or obligations of the parties to the Dispute. In relation to such an arbitration:
 - (i) The FWC may give all such directions and do all such things as are necessary for the just resolution of the Dispute. The FWC may exercise powers of conciliation, arbitration and declaratory relief in relation to the Dispute, including all related procedural powers such as those in relation to hearings, witnesses, evidence and submissions.
 - (ii) The FWC should apply the rules of evidence that would ordinarily apply to a hearing before the FWC under the Act.
 - (iii) Before making a determination, the FWC will give the parties an opportunity to be heard formally on the matter(s) in dispute.

- (iv) In making its determination, the FWC will only have regard to the materials, including witness evidence, and submissions put before it at the hearing and will disregard any admissions, concessions, offers or claims made in conciliation.
- (e) The decision of the FWC will be binding on the Parties subject to the following:
 - (i) There will be a right of appeal to a Full Bench of the FWC against the decision, which must be exercised within 21 days of the decision being issued or within such further time as the Full Bench may allow.
 - (ii) The appeal will be conducted in accordance with the legal principles applying to an appeal in the strict sense.
 - (iii) The Full Bench, or a single member on delegation, will have the power to stay the decision pending the hearing and determination of the appeal.
 - (iv) The decision of the Full Bench in the appeal will be binding upon the parties.
- (f) Until the Dispute is resolved by agreement, conciliation or arbitration, the Status Quo will prevail. No party is to be prejudiced as to the final settlement by the continuance of work in accordance with this procedure.
- (g) For the purposes of the procedure outlined in this clause, a Transport Worker may appoint a representative of their choice, which may include the Union. Toll will recognise any representative appointed by a Transport Worker

Section 3 - Employment Relationship

16. Toll Values

The Parties will treat each other, and perform their respective rights and obligations under this Agreement, in accordance with the Toll values of:

- (a) integrity and trust;
 - (b) safety;
 - (c) continuous improvement;
 - (d) teamwork; and
 - (e) being open and transparent.
-

17. Toll commitment to job security

The Parties recognise that job security is an important issue for Transport Workers. For its part, Toll commits:

- (a) to the full-time engagement of its Transport Workers wherever possible;
- (b) subject to reasonable practical requirements, such as adequately servicing industry peaks, to promote job security through the full utilisation of full-time permanent Transport Workers/Owner-Drivers before the engagement of part-time Transport Workers/Owner-Drivers, or casual Transport Workers/Owner-Drivers or Outside Hire;
- (c) to ensure that wages and conditions applicable to third party agency workers and to casual Transport Workers placed in a business by Toll People (or any other agency or entity controlled by Toll) are no less than those of Transport Workers in the same position in that business unit;
- (d) to the training of its Transport Workers in workplace health and safety (including Blue Card WHS Induction and Skills Passport) and other professional training as agreed from time to time and the promotion of vocational training and occupational health and safety training;
- (e) to consult with the Union and affected Transport Workers if a decision is taken by Toll to outsource work;
- (f) not to use third party agencies for the purpose of circumventing this Agreement;
- (g) that all Owner-Drivers engaged by it (except those subject to a collective agreement (whether registered or unregistered)):
 - (i) will receive a labour rate equal to the applicable wage rate payable for the relevant vehicle utilised by the Owner-Driver at the site at which they are engaged, which must include a component for the following other entitlements

(Other Employment Entitlements): regular overtime, superannuation, allowances, penalties, leave entitlements and other entitlements that would be afforded to employees performing the same or similar work, in addition to the applicable base wage rate payable to the relevant employee; and

- (ii) Owner-Drivers subject to a collective agreement (whether registered or unregistered) that prescribes a rate of pay, receive the labour rate as provided by that collective agreement.
- (h) To provide cost recovery to its owner-drivers which ensures that the Owner-Drivers is able to recover their fixed and running costs to operate their vehicle. Toll will add the labour rate referred to in clause 17(g) over and above the fixed, standing and running costs of the relevant Owner-Driver's vehicle.
- (i) For the avoidance of doubt, the FWC has all powers available to it under the Disputes Procedure in order to resolve a dispute under clauses (g) and (h).

18A. Engagement of Outside Hire

- (a) The parties recognise that a reasonable use of Outside Hire is necessary to perform the work covered by this Agreement. Toll also recognises that the use of Outside Hire is of concern to Transport Workers.
- (b) Subject to commercial imperatives, Toll will seek to maintain a composition of workforce such that, from the operative date, no more than 40% of the hours worked by the workforce are worked by Outside Hire workers on a state by state basis.
- (c) Where Toll proposes to permanently change the proportion of Outside Hire to permanent Transport Workers at a site, Toll will consult with the Union in accordance with the consultation mechanism contained within this Agreement.
- (d) In accordance with clause 26(b) of this Agreement, Toll will take all reasonable steps at the relevant workplace to reduce the number of Outside Hires and casual Transport Workers before implementing any redundancies.

18. Full utilisation of permanent Transport Workers

- (a) Toll will, where practicable, prioritise the engagement of full-time permanent Transport Workers / Owner Drivers for available hours of work.
- (b) Permanent Part-time Transport Workers/Owner-Drivers, Casual Transport Workers/Owner-Drivers and Outside Hire will not be engaged to reduce the overtime hours available for full-time permanent Transport Workers/Owner-Drivers.
- (c) On Saturday and Sunday Toll will offer overtime hours to full-time permanent Transport Workers/Owner-Drivers before engaging Permanent Part-Time Transport

Workers/Owner-Drivers, casual Transport Workers/Owner-Drivers or Outside Hire to perform that work.

19. Transport Worker commitment

The Transport Workers commit:

- (a) to perform their duties faithfully and diligently;
- (b) to provide faithful service during their employment with Toll and to act in Toll's best interests at all times;
- (c) to promote Toll's interests, prosperity and reputation; and
- (d) to work cooperatively with Toll to review and update the Local Agreements in accordance with clause 8.2 or to make a Local Agreement under clause 8.3.

20. Union commitment

The Union commits:

- (a) that in exercising its representative role under this Agreement it will do so in accordance with this Agreement provided that this commitment will not preclude the Union from exercising its organisational objectives in an appropriate manner;
- (b) to work cooperatively with Toll to review and update the Local Agreements in accordance with clause 8.2 or to make a Local Agreement under clause 8.3;
- (c) to work cooperatively with Toll to enhance the standards and conditions in the markets in which Toll operates; and
- (d) to participate in regular consultative forums with senior management of Toll.

21. Probation period

- (a) All Transport Workers who are offered permanent employment by Toll after the Operative Date will serve a probation period of 3 months.

- (b) A Transport Worker will not be subject to a probation period where that Transport Worker is offered permanent employment with Toll having been:
 - (i) employed directly by Toll as a casual;
 - (ii) engaged by Toll through an external labour hire agency; or
 - (iii) engaged as an Owner-Driver,
 on a regular and systematic basis for a period of no less than 3 months.
- (c) This clause will not apply to casual Transport Workers who elect to become permanent Transport Workers under clause 22(e).

22. Casual Transport Workers

- (a) Casual Transport Workers, other than those employed in New South Wales, will receive a 25% loading on all ordinary hours worked and a 10% loading on all overtime worked.
- (b) Casual Transport Workers in New South Wales will receive a 15% loading on all hours worked plus a further one twelfth (1/12) of their ordinary rate of pay for all ordinary time hours worked.
- (c) The casual loading on overtime hours is to be paid in addition to any overtime loading to which the Transport Worker is entitled.
- (d) Casual Transport Workers will not be entitled to the benefits of clauses 25, 26, 27, 29 and 31. The casual loading is paid in lieu of and to compensate for these benefits.
- (e) Subject to clause 22(f), where a casual Transport Worker has been directly employed by Toll or engaged through a labour hire company to perform work for Toll on a regular and systematic basis for more than 6 months, the Transport Worker may elect to become a permanent Transport Worker, on a like for like basis, within the specific business unit at which the Transport Worker is engaged.
- (f) Toll will only decline a Transport Worker's election under clause 22(e) in exceptional circumstances and for legitimate business reasons. In such a case the casual Transport Worker will not lose the right to exercise the election referred to in clause 22(e) when the exceptional circumstances precluding conversion no longer apply.
- (g) Clause 22(e) does not allow a Transport Worker to elect to become a permanent employee of Toll People.

23. Permanent Part-time Transport Workers

- (a) A Permanent Part-Time Transport Worker is one who is rostered to work:
 - (i) less than 7.6 hours on a given shift; or
 - (ii) less than 38 hours in a week.

- (b) On commencement of employment, Toll and a Permanent Part-Time Transport Worker will agree on the hours and days in each week that the Transport Worker will work.
- (c) Any hours which a Permanent Part-Time Transport Worker is required to work in excess of those agreed under clause 23(b) will be paid at overtime rates.
- (d) Toll and a Permanent Part-Time Transport Worker may agree to vary the Transport Worker's hours and days of work, provided that this may not be used as a device to avoid Toll's responsibilities under clause 23(c), for example by making ad hoc or regular changes.

23A Fixed / Maximum Term employment

- (a) Toll may enter into fixed or maximum term contracts with Transport Workers for a specified period or project.
- (b) Toll will only enter into fixed / maximum term contracts where:
 - i. it is undertaking project work for a customer which is of a fixed duration;
 - ii. to cover absences of Transport Workers such as parental or long service leave, or long term absence through illness or injury; or
 - iii. as agreed between the Company and the Union.
- (c) To assist in the interpretation of this clause 23A, an example of "project work" includes work undertaken by Toll on specific mining or construction projects, where such projects have a limited or finite duration.
- (d) Any fixed / maximum term contract will be for a minimum period of 3 months and a maximum period of 2 years, unless otherwise agreed.
- (e) A fixed / maximum term contract in respect of a particular task or project will only be renewed once, unless otherwise agreed.

24. Breaks

- (a) If a Transport Worker is entitled to a crib break under the Award, they will take that crib break when operationally convenient.
- (b) The Transport Workers will use their best endeavours to ensure that their breaks under the Award or any Local Agreement coincide with those which they are obliged to take under fatigue management legislation or regulations.

25. Termination

25.1 Notice of termination by Toll

- (a) In order to terminate the employment of a Transport Worker Toll will give to the Transport Worker the following period of notice:

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

- (b) In addition to the notice in clause 25.1(a), Transport Workers over 45 years of age at the time of the giving of the notice with not less than two years continuous service are entitled to an additional week's notice.
- (c) Payment in lieu of the prescribed notice in clauses 25.1(a) and 25.1(b) will be made if Toll does not require the Transport Worker to work during the appropriate notice period. Employment may be terminated by the Transport Worker working part of the required period of notice and by Toll making payment for the remainder of the period of notice.
- (d) The payment in lieu of notice must equal or exceed the total of all amounts that, if the Transport Worker's employment had continued until the end of the required period of notice, Toll would have become liable to pay to the Transport Worker. That total must be calculated on the basis of the full rate of pay for the hours the Transport Worker would have worked had the Transport Worker continued until the end of the minimum period of notice including:
 - (i) the amounts payable to the Transport Worker in respect of those hours, including (for example) allowances, loading and penalties; and
 - (ii) any other amounts payable under the Transport Worker's contract of employment.
- (e) The period of notice in this clause does not apply:
 - (i) in cases where the Transport Worker requests a release from the employment prior to the end of the notice period;
 - (ii) in cases where the Transport Worker has engaged in conduct warranting the summary termination of their employment;
 - (iii) to Transport Workers engaged for a specific period of time or for a specific task or tasks;
 - (iv) to trainees whose employment under a traineeship agreement or an approved traineeship is for a specified period or is, for any other reason, limited to the duration of the agreement; or
 - (v) to casual Transport Workers.

- (f) Any Transport Worker who is stood down to allow for the completion of an investigation into the allegations concerning their conduct, capacity or performance will receive their Average Earnings for the duration of the stand down period.

25.2 Termination by Transport Workers

- (a) A Transport Worker may terminate their employment with Toll at any time by providing 1 week's notice of termination.
- (b) Toll may make a payment in lieu of the whole or part of the notice period referred to in clause 25.2(a), in which case clause 25.1(d) will apply.

25.3 Return of property

On termination of their employment, for whatever reason, a Transport Worker will immediately return to Toll all property belonging to Toll which is in the Transport Worker's possession or which is under their control. Subject to the NES, Toll may withhold any monies payable to the Transport Worker on termination until Toll's property is returned provided that:

- (a) the amount withheld is proportionate to the value of the property not returned; and
- (b) Toll is able to produce evidence, if required, that the Transport Worker has been provided with the property.

25.4 Recovery of overpayments on termination

- (a) Subject to the NES, Toll may deduct from any amounts due to a Transport Worker on the termination of their employment any amounts which the Transport Worker then owes to Toll including:
 - (i) overpayments of wages;
 - (ii) any annual leave granted in advance, for which the Transport Worker has not accrued the requisite period of service; or
 - (iii) loans from Toll to the Transport Worker.

- (b) Toll will not be permitted to make any deductions under clause 25.4(a) unless it raised the overpayment with the Transport Worker under clause 34.5 at least 3 months prior to the termination date and either:
 - (i) the Transport Worker had not at the time raised a Dispute in relation to the overpayment;
 - (ii) the Transport Worker had raised a Dispute in relation to the overpayment which had been resolved in accordance with this Agreement; or
 - (iii) having previously raised a Dispute in relation to the overpayment the Transport Worker agrees to the deduction.

26. Redundancy

- (a) A redundancy occurs in a circumstance where Toll decides that it no longer requires the position that a Transport Worker has been doing to be done by anyone and that decision leads to the termination of the Transport Worker's employment with Toll.
- (b) Toll will use redundancy as a last resort. This will include Toll taking all reasonable steps at the relevant workplace to reduce the number of Outside Hires and casual Transport Workers before implementing any redundancies.
- (c) In a redundancy situation Toll will:
 - (i) undertake consultation in accordance with clause 14;
 - (ii) explore, in consultation with the affected Transport Worker(s) and the Union, opportunities for suitable alternative employment for the affected Transport Worker(s);
 - (iii) provide such re-training or outplacement support to Transport Workers as may be reasonable in the circumstances; and
 - (iv) provide Transport Workers with reasonable paid time off to seek alternative employment.
- (d) The selection of Transport Workers for redundancies, and the criteria to be applied in making that selection, will be at Toll's reasonable discretion, and will include the following considerations:
 - (i) Toll will call for expressions of interest for voluntary redundancy. Toll will give genuine consideration to accommodating expressions of interest for voluntary redundancy;
 - (ii) identification and facilitating maintenance of the skill sets which Toll requires be maintained; and
 - (iii) "last on, first off".

- (e) Where Toll is required to make a choice between Transport Workers as to which will be selected for redundancy then, all other things being equal, Toll will select Transport Workers who have expressed an interest in being so selected.
- (f) In the event that a redundancy occurs, and subject to any greater requirement that the NES requires, the affected Transport Worker will be entitled to a severance payment calculated at the rate of 3 weeks pay per year of service, pro rata for incomplete years of service, up to a maximum of 52 weeks pay. For the purposes of this clause, "weeks pay" means the Transport Worker's base rate of pay at the time of termination.
- (g) A Transport Worker will not be entitled to receive a severance payment if Toll obtains for them suitable alternative employment. Such suitable alternative employment can include employment with an employer other than Toll but only in circumstances where the new employer recognises all previous service of the Transport Worker with Toll and all employee entitlements are transferred with the Transport Worker to the new employer.
- (h) The severance payment in clause 26(f) is in addition to:
 - (i) notice or payment in lieu of notice in accordance with clause 25; and
 - (ii) payment for any accrued but untaken leave or days in lieu which are payable on termination.

27. Annual leave

27.1 Toll may direct Transport Worker to take annual leave

Toll may direct a Transport Worker to take annual leave, provided that:

- (a) the direction is reasonable having regard to Toll's business needs;
- (b) the direction takes into account, to the extent reasonably practicable, the Transport Worker's personal circumstances and wishes; and
- (c) the direction does not result in the Transport Worker having a balance of accrued annual leave of less than the amount of annual leave that the Transport Worker would accrue in 1 year.

27.2 Cashing out annual leave permitted

- (a) Transport Workers may cash out accrued annual leave in accordance with the NES.
- (b) Toll and a Transport Worker may agree on reasonable conditions as to when and to what extent a Transport Worker may cash out annual leave, provided that any cashing out of annual leave must comply with the NES.
- (c) Payment in lieu of annual leave will be calculated on the full amount that would have been payable to the Transport Worker had the Transport Worker taken the leave in respect of which payment is made.

- (d) Toll will not place undue pressure on a Transport Worker to cash out the Transport Worker's annual leave.

27.3 Leave loading

Transport Workers in New South Wales will receive an annual leave loading of 25%. Provided that if a Transport Worker would have received a shift loading for the period for which leave is taken which is higher than 25%, the Transport Worker will receive an annual leave loading at that higher amount.

28. Long service leave

Transport Workers will be entitled to accrue and to take long service leave in accordance with applicable State legislation. However, despite anything to the contrary contained in that legislation a Transport Worker can, at their request, take long service leave in blocks of no less than 1 week.

29. Parental leave

Permanent Transport Workers with more than 1 years' service will be entitled to the benefits of Toll's Paid Parental Leave Policy, as amended from time to time.

30. Disaster leave

- (a) In this clause, "**Natural Disaster**" means an extreme weather event or other natural occurrence which results in the relevant government minister or authority declaring the area in which the Transport Worker lives and/or works to be a natural disaster zone.
- (b) If a Transport Worker is unable to attend work due to a Natural Disaster, they are entitled to paid leave of up to 3 days. Payment for the leave will be at the Transport Worker's base rate of pay.
- (c) In addition to any leave available to the Transport Worker under this clause 30, the Transport Worker will be entitled to take any accrued rostered days off or annual leave for any period for which the Natural Disaster prevents them from attending for work.
- (d) In this clause, being "unable to attend work" includes the Transport Worker requiring time to attend to the consequences of the Natural Disaster, such as performing emergency work on their home and the like.
- (e) Toll may request a Transport Worker to provide evidence that any absence for which leave is sought under this clause was caused by the Natural Disaster.
- (f) A Permanent Part-time Transport Worker will be entitled to leave under this clause on a pro rata basis.
- (g) A casual Transport Worker will not be entitled to leave under this clause 30 unless the Transport Worker:
 - (i) works an average of 38 hours per week; and
 - (ii) has been employed by Toll on a regular and systematic basis for at least 6 months.

31. Blood Donors Leave

- (a) A Transport Worker will be entitled to be absent from work, without loss of pay, for up to 2 hours, 4 times per year, for the purposes of the Transport Worker donating blood.
 - (b) Toll may request a Transport Worker to provide evidence that any absence requested under this clause is for the purpose of donating blood.
-

32. Family and Domestic Violence

- (a) Family and Domestic Violence is any violent, threatening or other abusive behaviour by an individual(s) against a person or a person's family or household. This includes physical, sexual, financial, verbal or emotional abuse.
- (b) Toll recognises that Transport Workers sometimes face situations of Family and Domestic Violence in their personal life that may affect their attendance or performance at work. Toll is committed to providing support to Transport Workers that experience Family and Domestic Violence.
- (c) Toll will provide an Employee Assistance Program, which will provide professionals, or refer Transport Workers to professionals, that are specifically trained in dealing with Family and Domestic Violence.
- (d) Toll will nominate a contact person to provide support for Transport Workers experiencing Family and Domestic Violence and notify Transport Workers of the name of the nominated contact person. The nominated contact person must be trained in relation to family and domestic violence and privacy issues relevant to the workplace.
- (e) A Transport Worker experiencing family and domestic violence may raise the issue with the nominated contact person, his or her immediate supervisor, Health and Safety Representative or their Union delegate.
- (f) Where requested by Transport Worker, the contact person will liaise with the Transport Worker's supervisor on the Transport Worker's behalf and will make a recommendation on the most appropriate form of support.
- (g) Toll will ensure that any personal information provided by the Transport Worker to Toll concerning a Transport Worker's experience of Family and Domestic Violence is kept confidential. Confidential information relating to Family or Domestic Violence will not be kept on a Transport Worker's personnel file.
- (h) Transport Workers are entitled to 3 days' paid leave per annum (non-cumulative) for the purpose of attending counselling, medical or legal appointments and legal proceedings.
- (i) In addition to the above, the Transport Worker will be entitled to to 5 days of unpaid family and domestic violence leave in accordance with the terms of the NES.

- (j) A Transport Worker experiencing Family and Domestic Violence may also utilise accrued annual leave, personal leave or rostered days off for the purpose of attending counselling, medical or legal appointments and legal proceedings.
- (k) If a Transport Worker has exhausted all unpaid family and domestic violence leave and accrued leave as set out in clause 32(i) they may apply for further leave without pay, which will not be unreasonably refused by Toll.
- (l) The Transport Worker will give Toll notice as soon as reasonably practicable of their request to take leave under clause 32(h) and 32(i).
- (m) If in Toll's reasonable opinion it is necessary, the Transport Worker must provide evidence that would satisfy a reasonable person that the leave is for the purpose set out in this clause. This evidence may be in the form of a document issued by the police service, a court, a doctor, a domestic violence support service or lawyer.
- (n) Toll will not unreasonably refuse any reasonable request from a Transport Worker experiencing Family and Domestic Violence for:
 - (i) changes to their span of hours or pattern or hours and/or shift patterns;
 - (ii) job redesign or changes to duties;
 - (iii) relocation to suitable employment within Toll;
 - (iv) a change to their telephone number or email address to avoid harassing contact; or
 - (v) any other appropriate measure including those available under existing provisions for family friendly and flexible work arrangements.

32A. Pandemic Management

32A.1 COVID-19 Pandemic

- (a) The parties recognise the impact of the COVID-19 on Toll and Transport Workers.
- (b) In recognition of these impacts, Toll has taken measures to manage and mitigate the risks posed by the COVID-19 pandemic on Transport Workers. These measures include support for Transport Workers to obtain vaccination, as well as leave in circumstances where a Transport Worker is required to self-isolate. These arrangements do not constitute terms of this Agreement.
- (c) Where Toll proposes to alter arrangements, Toll will consult with the Union and Transport Workers in accordance with clause 14 of this Agreement.

32A.2 Other Pandemic

Toll will consult with the Union and Transport Workers in the event of the declaration of any Global Pandemic. Such consultation will include but not be limited to appropriate measures taken to manage and mitigate risk to Transport Workers and the impact on Toll's operations.

33. Indemnity for drivers

- (a) Toll will indemnify permanent Transport Workers who are drivers against any legal costs incurred by them as a result of legal proceedings that are commenced against them by a third party arising out of any work-related incident in which the Transport Worker is involved which results in the death or serious injury of a person.
- (b) The indemnity in clause 33(a) will apply in all instances except those in which the Transport Worker is guilty of serious and wilful misconduct. This will include but will not be limited to a breach by the Transport Worker of the Drug and Alcohol Policy and Procedures.
- (c) The indemnity in clause 33(a) will be limited in quantum to the amount available with an annual premium base of \$250 per driver.

33A Mental Health

- (a) Toll maintains a Mental Health in the Workplace Plan and recognises that a mentally healthy workplace has many benefits for Toll and its employees.
- (b) Toll is committed to taking steps to reduce any negative stigma which might be associated with mental health issues arising within its workforce. This includes developing the overall skill level of Transport Workers to provide initial mental health first aid.
- (c) Further to clause (b) above, Toll will continue to implement structured programmes aimed at increasing mental health awareness and addressing mental health issues in the workplace. This will include the provision of training aimed at providing skills to transport workers to facilitate their understanding of:
 - (i) The signs and symptoms of common mental health issues;
 - (ii) How to provide initial help to colleagues;
 - (iii) how to obtain professional help; and
 - (iv) how to provide first aid in a crisis situation.

Section 4 - Wages and related matters

34. Wages and Allowances

34.1 Wages

- (a) Toll will increase the wages payable to Transport Workers as follows:
 - (i) by 2.75% from the first full pay period on or after 1 July 2021; and
 - (ii) by 2.75% from the first full pay period on or after 1 July 2022.
- (b) If in the year commencing 1 July 2022 CPI is greater than the sum of the percentage increase referred to in clause 34.1(a)(ii), then in addition to the wage increase in clause 34.1(a)(ii), Toll will increase the wages payable to Transport Workers for that year by the difference, provided that the total increase paid will not exceed 4%.

Explanatory example: In the financial year commencing 1 July 2022 Transport Workers are entitled to a wage increase of 2.75%. If CPI for the preceding year is more than 2.75% Toll will apply that percentage difference to the Transport Workers' wages, over and above the increase of 2.75%, subject to a cap of 4% to the increase.

- (c) For the purposes of this clause, "CPI" means the Consumer Price Index (All Groups) as published by the Australian Bureau of Statistics for the 12 months preceding the increase in clause 34.1(a)(ii).
- (d) Under no circumstances will a Transport Worker receive a wage that is less than 10% above the relevant wage rate in the Award for the Transport Worker's classification.

34.2 Allowances

- (a) Subject to clauses 34.2(b) and (d), the amount of any allowances paid to Transport Workers will not be less than those payable under the Award. Unless an increase is necessary to maintain parity with the amount of an allowance payable under the Award, there will be no increases during the Term to any allowances paid to Transport Workers. This clause applies despite anything to the contrary in a Local Agreement, provided that any provision in a Local Agreement that allows for allowances to increase in line with the Award will continue to apply.

- (b) If a Transport Worker receives an allowance that is not provided for under the Award, it is a matter to be determined at a local level as to whether the allowances should be increased during the Term. In the event of a Dispute about any such increases, the matter will be referred to the FWC under clause 15, provided that the FWC's powers to deal with the matter will be confined to conciliation.
- (c) Transport Workers who are required to work 10 hours or more in a single shift will be entitled to receive a meal allowance.
- (d) If a Transport Worker receives a crib payment that is made up of both a labour component and an allowance component, the labour component will be increased in each year of the Term in line with the increases to wages set out in clause 34.1(a).

34.3 Payment of wages

If the day on which Transport Workers are usually paid falls on a public holiday, payment of wages in that week will be made on the working day prior to the public holiday, but where this is not possible payment may be deferred until the next working day (but only where this is the day immediately after the public holiday).

34.4 Absorption of Award Increases

Any increases during the Term to the rates of pay contained in the Award will be absorbed into any over-award payments made to the Transport Workers.

34.5 Recovery of overpayments to Transport Workers

- (a) Toll may recover from a Transport Worker any overpayments as to pay or other entitlements made to the Transport Worker.
- (b) When it discovers an overpayment, Toll will provide to the Transport Worker evidence demonstrating the nature and amount of the overpayment, and give the Transport Worker a reasonable opportunity to consider that evidence and reach agreement with Toll on the repayment of the amount.
- (c) If no agreement can be reached on the repayment, Toll may deduct the overpayment periodically from the Transport Worker's pre-tax wages, provided that the rate of repayment will not exceed 7.5% of the Transport Worker's net (after tax) base wage for each pay period until the overpayment is fully remitted. Toll cannot make any deductions from a Transport Worker's annual leave or long service leave entitlements. Toll will not charge interest on any overpayments.
- (d) The Transport Worker may notify a Dispute in relation to the alleged overpayment, in which case clause 15 will apply. If this occurs, Toll must not make any deductions from the Transport Worker's wages until the Dispute is resolved.
- (e) This clause 34.5 does not apply to the recovery of debts on the termination of a Transport Worker's employment, in which case clause 25.4 applies.
- (f) This clause will only apply to overpayments that are made after the Operative Date.

34.6 Payment for work on Sundays

Notwithstanding anything contained in the Award, a Transport Worker must be paid at 200% of the ordinary hourly rate for all work (including overtime) that is performed on a Sunday.

35. Superannuation

- (a) Subject to clause 35(b), Toll will make superannuation contributions on behalf of each Transport Worker as required under the *Superannuation Guarantee (Administration) Act (Cth) 1992 (SG Act)*.
- (b) The rate of contributions made by Toll will be 15% from the first full pay period on or after 1 July 2021.
- (c) Any increases in the rate of superannuation contributions required to be made by Toll under any federal legislation or under any Instrument (including the Award) will be absorbed into, and will not operate in addition to, the rate of contribution referred to in clause 35(b).
- (d) Toll will make superannuation contributions to a complying superannuation fund of the Transport Worker's choice by the Transport Worker completing a Super Choice Form in accordance with the SG Act. Where a Super Choice Form is not provided, Toll will make contributions to the super fund advised by the Australian Taxation Office (ATO).
- (e) If no super fund details are provided by the ATO, Toll will make superannuation contributions to the Fund.
- (f) Toll and the Union have agreed to make and may make, specific arrangements in relation to superannuation contributions with regards to oil, fuel and gas drivers employed by Toll in Victoria.
- (g) Toll will not promote to Transport Workers any superannuation fund other than the Fund or otherwise encourage Transport Workers to seek to have their superannuation contributions paid into a superannuation fund other than the Fund.

36. Payroll deductions

36.1 Union Membership

- (a) Toll must deduct Union membership fees (not including fines or levies) from the pay of any Transport Worker, provided that:
 - (i) the Transport Worker has authorised Toll to make such deductions in accordance with clause 36.1(b);
 - (ii) the Union has advised Toll of the amount to be deducted for each pay period applying at Toll's workplace and any changes to that amount; and
 - (iii) deduction of Union membership fees will only occur in each pay period in which payment has or is to be made to a Transport Worker. For the avoidance of doubt, Union membership fees will not be deducted from termination payments made

to a Transport Worker unless expressly authorised by the Transport Worker in writing.

- (b) The Transport Worker's authorisation for the purposes of clause 36.1(a)(i) must be in writing and must authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union rules) that the Union advises Toll to deduct.
- (c) Monies so deducted from a Transport Worker's pay will be remitted to the Union on either a weekly, fortnightly, monthly or quarterly basis at Toll's election, together with all necessary information to enable the reconciliation and crediting of subscriptions to Transport Workers' membership accounts, including, but not limited to, names, addresses and phone numbers.
- (d) The Union must advise Toll of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice must be in the form of a schedule of fees to be deducted specifying weekly, fortnightly, monthly or quarterly as the case may be. The Union must give Toll a minimum of 2 months' notice of any such change.
- (e) A Transport Worker may at any time revoke in writing an authorisation to Toll to make payroll deductions of Union membership fees.
- (f) The above provisions will take effect from the beginning of the first pay period to commence on or after 2 months after the Operative Date.

36.2 Other Deductions

- (a) All non-statutory, agreed and subsequently authorised deductions from a Transport Worker's wages will be applied to the purpose of the deduction:
 - (i) within 30 days of the deduction occurring; or
 - (ii) no later than the date when the instalment is due to be paid to the recipient institution where the recipient institution has an instalment period of longer than 30 days.
- (b) Toll must generate and maintain records of the following transactions:
 - (i) Deductions: Such deductions will appear on the Transport Worker's next pay advice; and
 - (ii) Payments to recipient institutions: The Transport Workers will be advised in writing that Toll has remitted the deduction to the recipient institution in the Transport Worker's next pay advice. Toll must provide the Transport Worker with evidence that such a payment has been made on the request of the Transport Worker.

Section 5 - Safety and related matters

37. Compliance with Obligations

- (a) Toll will:
 - (i) comply with all applicable workplace health and safety legislation (and codes of practice arising under such legislation);
 - (ii) comply with all applicable "chain of responsibility" legislation;
 - (iii) comply with any law regulating maximum driving and working hours and minimum rest times.
 - (b) The Transport Workers and the Union will:
 - (i) take all reasonable steps to assist Toll meet the obligations in clause 37(a);
 - (ii) comply with any obligations imposed on them by the legislation and codes of practice referred to in clause 37(a); and
 - (iii) participate in forums convened by Toll from time to time to discuss safety matters.
-

38. Site inductions

- (a) A new Transport Worker and workers engaged by Outside Hire commencing work with Toll will receive induction training from Toll that will include:
 - (i) occupational health and safety;
 - (ii) the Drug and Alcohol Policy and Procedures;
 - (iii) the Blue Card WHS Induction and Skills Passport;
 - (iv) their rights and obligations under this Agreement; and
 - (v) the importance of supporting a culture of continuous improvement and of assisting Toll to meet its commitments to its customers.
- (b) As part of the site induction process or at another suitable time, representatives of the Union will be given an opportunity to induct into the Union all new Transport Workers, Outside Hire workers, and existing Transport Worker/Outside Hire workers who have not previously been inducted into the TWU, in accordance with the following procedure:
 - (i) the induction will take place on a site at which work is being performed, at the request of the Union;
 - (ii) all inductions will contain no more than 15 participants in each group;

- (iii) a room which is appropriate for inductions (such as a training room) is dedicated to that purpose;
 - (iv) 30 clear minutes will be allowed for the induction to take place;
 - (v) Transport Workers will receive no less than their usual or (where they have yet to commence work) their proposed rate of pay for the duration of the induction.
 - (vi) prior to the induction there will, at the Union's request, be posted in a prominent position accessible to all Transport Workers a Union generated notice describing the purpose of the induction and setting out any other relevant information.
- (c) To facilitate Union inductions, Toll will at a local level provide the Union with reasonable notice as to when Transport Worker inductions are to occur.
 - (d) Where Union inductions do not occur at the same time as Toll conducts a Transport Worker induction or in conjunction with other Union training, the relevant Union organiser and Toll manager will agree on a mutually suitable time for the Union induction to occur, which must be within 30 days of that discussion.

39. Health and Safety Committees

- (a) Toll will establish Health and Safety Committees in consultation with Transport Workers and the Union, in accordance with applicable legislation.
- (b) When determining the constitution of a Work Group, who will be members of the Health and Safety Committee and the process for the election of a Health and Safety Representative (HSR) or Deputy Health and Safety Representative (DHSR) Toll will consult with Transport Workers and the Union.
- (c) Toll will ensure that all members of its Health and Safety Committees, HSRs and DHSRs are provided with the appropriate and accredited WHS training as required under applicable legislation within 3 months of their election.
- (d) Toll will ensure that all Transport Workers that perform driving duties, together with allocation staff and fleet controllers, are competent to manage fatigue, which may include, at Toll's discretion, providing the Transport Workers with the opportunity and time to attend driver fatigue management programs.
- (e) Subject to prior notification and supervisor approval, Toll will pay for the training courses and programs referred to in this clause 39 and all other reasonable expenses, which would otherwise be incurred by attendees of the course. Further, attendees will receive no less than their usual pay whilst attending such courses. For the avoidance of doubt, no training will be paid for unless prior express approval is given by Toll to the training being undertaken by relevant Transport Workers.
- (f) Following consultation with the HSRs and DHSRs, and subject to any statutory obligations binding on Toll to the contrary, it will be entirely a matter for Toll to determine what person, firm, organisation or company provides Transport Workers with any training required under this Agreement. Toll will ensure that any person appointed to provide

training has expertise in the transport sector, which may but will not necessarily include the Union.

- (g) Toll will not in any way hinder or seek to pressure or influence an HSR or DHSR in the performance of their duties.

40. Safe system of work

Toll and the Transport Workers will take all reasonable steps to ensure that all work performed by Transport Workers is performed in accordance with a safe system of work which must include, where appropriate but not necessarily limited to the following:

- (a) Ensuring that all transport work is performed in accordance with documented safe scheduling plans and shift rosters that take account of the following:
 - (i) the trip to be undertaken by a driver;
 - (ii) the actual time required to perform the freight task safely;
 - (iii) the actual distance travelled to perform the freight task safely including any urban driving observance of any detour or road block;
 - (iv) fatigue-related safety concerns;
 - (v) the number and types of loads transported by the driver each trip and the time reasonably required to load and unload taking into account loading and unloading schedules and practices, delays and queuing times; and
 - (vi) the period and frequency and likelihood of mechanical interruptions.
- (b) Ensuring, where appropriate, that all transport work is performed in accordance with documented systems which manage the risk of driver fatigue including, but not limited to:
 - (i) methods for assessing the suitability of drivers;
 - (ii) systems for keeping accurate records of the start and finish times of each shift or freight task performed by a heavy vehicle driver and the relevant dates over which a shift or freight task occurs and the total number of waking hours for each driver (regardless of whether or not those hours were paid or unpaid);
 - (iii) systems for reporting hazards and incidents;
 - (iv) systems for monitoring driver's health and safety;
 - (v) training and information about fatigue that is provided to drivers;
 - (vi) systems for managing loading and unloading schedules and practices, including queuing practices;
 - (vii) systems for reporting accidents, near misses, possible hazards or mechanical failures and contingencies to manage the risk of driver fatigue; and

- (viii) safe driving plans and a drug and alcohol policy consistent with applicable legislation and industrial instruments.
- (c) Implementing and maintaining a Subcontractor Fleet Equipment Standard that will set out Toll's position on suitable Fleet Operator Equipment.

41. Toll's global drug and alcohol testing standards

- (a) Subject to Toll undertaking consultation in accordance with clause 14(h)(ix), Toll may vary the Drug and Alcohol Policy and Procedures to address any governmental, regulatory, technological or reasonable operational changes.
- (b) The Transport Workers acknowledge and agree that the Drug and Alcohol Policy and Procedures operate in conjunction with, and not in replacement of, any other drug or alcohol testing procedures that Toll is now, or may later be, required to implement as a result of governmental, regulatory or customer demands.

42. Uniforms and protective clothing

- (a) Toll will provide Transport Workers with appropriate uniforms, protective clothing and personal protective equipment (**PPE**) for the work the Transport Workers are performing.
- (b) The Transport Workers will wear the uniforms and protective clothing provided to them.
- (c) The Transport Workers will utilise any PPE provided to them by Toll. However, if a Transport Worker has an objection to doing so, the objection will be dealt with in accordance with the dispute resolution procedure in clause 15.
- (d) Transport Workers will not alter, modify or change the appearance of uniforms, protective clothing and PPE provided to them by Toll in any manner contrary to operating instructions or training or in a manner which is likely to affect the performance of that clothing or PPE. Transport Workers will not alter, modify or change the appearance of uniforms provided to them by Toll in a manner or to an extent which would hinder or deface company identification.
- (e) Transport Workers will keep all uniforms, protective clothing and PPE in a clean, neat and tidy condition.
- (f) Uniforms and protective clothing will be replaced by Toll on a fair wear and tear basis. In such circumstances, new clothing will be exchanged for the worn items.
- (g) Uniforms, protective clothing and PPE will be returned by a Transport Worker on termination of employment.

43. Blue Card WHS Induction and Skills Passport

- (a) Toll will ensure that all Transport Workers and Outside Hire workers undertake the Blue Card WHS Induction and Skills Passport Program.

- (b) All existing Transport Workers who at the Operative Date have not been trained in the Blue Card WHS Induction and Skills Passport Program will be trained in the Blue Card WHS Induction and Skills Passport Program. Such training is to occur within 12 months of the Operative Date, and will be conducted by a licensed Blue Card WHS Induction and Skills Passport training provider, in conjunction with Toll and the Union.
- (c) Toll will take all necessary steps to ensure that Outside Hire workers who at the Operative Date have not been trained in the Blue Card WHS Induction and Skills Passport Program will be trained in the Blue Card WHS Induction and Skills Passport Program. Such training is to occur within 12 months of the Operative Date and will be conducted by a licensed Blue Card WHS Induction and Skills Passport training provider, in conjunction with Toll and the Union.
- (d) The Parties recognise:
 - (i) That the Blue Card is an entry level WHS training program that should be promoted throughout the transport industry;
 - (ii) That a Blue Card operates as a "Skills Passport" that allows for other competencies and qualifications to be recorded on the Blue Card;
 - (iii) that safety and induction training should where possible exceed the requirements of Blue Card WHS Induction and Skills Passport; and
 - (iv) the importance of maintaining and enhancing Blue Card requirements through their involvement in TEACHO.

Section 6 - The Toll and Union Relationship

44. Union Recognition

- (a) Toll recognises the Union as the union capable of representing Transport Workers and acknowledges that the Union has the right to organise Transport Workers in the workplace.
 - (b) Consistent with its recognition of the rights of Transport Workers to freely associate with the Union, Toll will provide the Union with reasonable access to Toll's premises for the purpose of holding discussions with the Transport Workers for any purpose connected with this Agreement, provided however that:
 - (i) the Union provides Toll with reasonable notice of its intention to attend the premises;
 - (ii) any attendance does not disrupt Toll's business at the premises; and
 - (iii) the Union's representative(s) comply with any reasonable request from Toll in relation to any WHS requirement that applies at the premises.
 - (c) Nothing in this clause or in this Agreement more broadly is intended to provide a right of entry contrary to the provisions of section 194(f) and/or 194(g) of the Act.
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45. Cooperative Engagement

- (a) Toll is committed to being an industry leader and employer of choice, and to working with the Union to achieve appropriate rates of pay and conditions of employment throughout the industry.
- (b) Toll recognises that regulatory reform in the transport industry has the potential to improve safety and sustainability within the industry. Toll will have constructive discussions with the Union and lawmakers in respect of any such proposed regulatory reforms.
- (c) Toll recognises that specialist government institutions and regulators may provide a forum in which to seek improvements in the industry. Toll commits to consulting with the Union, including through the Advisory Forum, as to how such institutions and regulators may be used to achieve that purpose.
- (d) The Parties commit to working together to pursue the following improvements in the industry:
 - (i) Implementation of legislation designed at improving safety and conditions within the transport industry;
 - (ii) Enforceable safe and fair rates and conditions for all workers in all parts of the transport industry (including "New Economy" workers);

- (iii) planning requirements for the safe, fair and legal performance of work before the driver gets behind the wheel;
 - (iv) 30 day maximum payment terms for Fleet Operators and Owner-Drivers;
 - (v) the implementation of, and application by Toll, of appropriate cost recovery criteria to ensure at least cost recovery and sustainable operations for Fleet Operators, together with fair and appropriate tendering processes;
 - (vi) enforceable supply chain accountability;
 - (vii) readily accessible and binding dispute provisions including powers to make binding determinations in respect of supply chain participants;
 - (viii) effective enforcement of both proactive obligations and breaches; and
 - (ix) preventing the exploitation of non-resident visa workers (including workers holding student visas) by requiring that Fleet Operators:
 - i. prioritise the training and utilisation of local workers;
 - ii. ensuring that any workers holding non-resident visas receive the same entitlements as local workers.
- (e) Toll supports the concepts contained in the 5 Star Trucking initiative. Toll will:
- (i) support a national trial of 5 Star Trucking; and
 - (ii) participate in the development of accreditation and assessment standards for the initiative.
- (f) Toll and the Union will collaborate on means to achieve a harmonisation of fatigue management laws and regulations applying across Australia.
- (g) Toll will engage constructively with the Union on changes that might be made to the Award or the award system (and any legislative reform necessary to make such applications), to provide for fairer, safer rates and conditions for all workers in the industry and appropriate supply chain accountability.
- (h) Toll will engage constructively with the Union on removing any potential barriers that may exist within competition laws, that may prevent the parties from being able to establish obligations and guidelines that provide for safe and fair conditions for Owner-Drivers and Outside Hire operators.
- (i) Toll will give genuine consideration to any reasonable requests from the Union for the secondment of Transport Workers to the Union, on an unpaid basis, for up to 6 months.
- (j) Toll will facilitate 6 (bi-monthly) paid yard meetings each year of 30 minutes duration at which the Union will have the opportunity to address Transport Workers. Toll and the Union will consult on organising the most effective time for yard meetings to occur. This clause will not affect any existing arrangement allowing for more frequent meetings.

46. Advisory Forum

- (a) Toll and the Union agree to establish an Advisory Forum, comprising senior management representatives of Toll and senior officials from the Union.
- (b) The Advisory Forum is established for the purpose of identifying and discussing matters of common interest and developing joint approaches and responses.
- (c) The objectives of the Advisory Forum are to:
 - (i) establish a basis for the Parties to work cooperatively to enhance standards and conditions in the markets in which Toll operates;
 - (ii) build and improve long term relationships by:
 - A. fostering constructive engagement based on openness and mutual trust;
 - B. providing a model for constructive consultation; and
 - C. openly discussing changes in the structure of the business and their industrial implications;
 - D. discuss current and future issues of national significance to both Toll and the Union.
- (d) The Advisory Forum is not a venue for the escalation of Disputes, which should be dealt with in accordance with clause 15, nor is it a forum for bargaining. However, where issues are raised which have the potential to lead to adverse impact on industrial relationships there will be no barrier to discussion.
- (e) The Advisory Forum will meet at least twice each year.
- (f) Where senior officers of Toll or the Union agree that it would be beneficial, third parties may be invited to attend meetings of the Advisory Forum for the purposes of providing information or advice on a matter to be discussed.

47. Consultative meetings**47.1 Site Consultative Committee**

- (a) Where requested by employees or the Union, Toll will set up a local consultative committee at the branch / site level. The Consultative Committee will be made up of Union Delegates, relevant Union Officials and local management.
- (b) The consultative committee will meet as regularly as agreed but at least once a quarter.
- (c) The purpose of the consultative committee will be to consult at branch level regarding:
 - (i) Lifting performance at the branch;
 - (ii) The operation of this Agreement;

- (iii) Operating, cultural and efficiency standards within the branch;
- (iv) The engagement of Outside Hire, including:
 - a. Inductions of Outside Hire workers;
 - b. Auditing of Fleet Operators to ensure compliance with obligations under this Agreement;
 - c. Hours of work performed by Outside Hire, Transport Workers and directly hired Owner-Drivers;
 - d. Blue Card WHS Induction and Skills Passport; and
- (v) Proactively dealing with any work-related issues as they arise.

47.2 State delegates meetings

- (a) For the purposes of facilitating consultation between Toll and the Union, Toll will make relevant managers available to attend meetings with the Union and delegates in each State of Australia in (or as close as is practicable to) April and September in each year of the Term (**State Consultation Meetings**).
- (b) The purpose of the State Consultation Meetings is to allow for a free exchange of information and suggestions, and to allow for the resolution of grievances. The State Consultation Meetings will also review:
 - (i) the compliance of the Parties in meeting the terms of this Agreement regarding Toll's engagement of Outside Hire;
 - (ii) hours of work performed by Outside Hire, Transport Workers and directly hired Owner-Drivers;
 - (iii) any issues, concerns or grievances arising from Toll's engagement of Outside Hire; and
 - (iv) any measures that may assist in improving job security, safe systems of work and productivity and efficiency that arises from Toll's engagement of Outside Hire.
- (c) Delegates will be authorised to attend the State Consultation Meetings as follows:
 - (i) for one of the meetings in each year, all delegates will be able to attend; and
 - (ii) for the other meeting in that year, delegates will be released in accordance with clause 49.3(c).
- (d) The entitlements under clause 47.1(c) are in addition to those under clauses 49.3(a) and (b).
- (e) Delegates attending the State Consultation Meetings will be paid their Average Earnings.
- (f) Toll will investigate any issues, concerns or grievances raised during a State Consultation Meeting, including those arising from Toll's engagement of Outside Hire. It will inform

the Union of the outcome of that investigation, including the nature of any breaches discovered and the steps taken to rectify those breaches.

47.3 National negotiating committee

- (a) In each year of the Nominal Term Toll will convene 2 meetings of the Union's national negotiating committee as constituted by clauses 11(c) to (e) (**National Consultation Meetings**), at which it will arrange to have members of Toll's senior executive attend.
- (b) Where possible National Consultation Meetings will follow the holding of State Consultation Meetings to facilitate a better flow of information between each level.
- (c) At least 1 week prior to a National Consultation Meeting the Parties will exchange a list of the matters that they wish to have on the agenda at the meeting.

48. Ensuring fair labour practices

Toll will work with the TWU to establish a framework for the development of agreed international standards for Toll operations to ensure that substandard practices and systems do not undermine standards in Australia including the following:

- (a) international safety standards and culture;
- (b) international labour standards in Toll operations based on International Labour Organisation (**ILO**) standards (including, where agreed, support for international application of standards consistent with ILO Guidelines on the Promotion of Decent Work and Road Safety in Transport);
- (c) dispute settlement procedures and consultation;
- (d) pursuit of an ILO "safety and health in road transport" convention; and
- (e) international sharing of information about industry developments, including "new economy" issues.

49. Union Delegates

49.1 Identification of delegates

The Union must provide Toll with a complete list of all Union delegates in Toll throughout Australia, and ensure that Toll is promptly advised of any changes to the list as required.

49.2 Delegates' rights and responsibilities

- (a) Toll acknowledges that each Union delegate is entitled to:
 - (i) be treated fairly and to perform their role as Union delegate or workplace representative without any discrimination or victimisation;
 - (ii) recognition by Toll that Union delegates speak on behalf of the Union members in the workplace;
 - (iii) bargain collectively on behalf of Union members in the workplace;

- (iv) consultation on matters affecting Union members;
 - (v) paid time off to represent the interests of members to the Company, but only where such paid time off is provided for in this Agreement;
 - (vi) address new Transport Workers about the benefits of Union membership at the time that they commence work with Toll in accordance with clause 38;
 - (vii) participate in an induction process under the Union induction clause in this Agreement in accordance with clause 38;
 - (viii) discuss Union and workplace matters with all Transport Workers at the workplace who consent to such discussions, which will take place during breaks or outside of business hours;
 - (ix) reasonable access to a telephone, facsimile, photocopying, internet and email and office facilities for the purpose of carrying out work as a delegate and consulting with workplace colleagues and the Union; and
 - (x) place Union information on a notice board in a prominent location in the workplace.
- (b) Toll acknowledges, and will in no way hinder, the following functions of Union delegates:
- (i) to provide awareness and understanding of the Union's aims and achievements whenever possible;
 - (ii) to know the profile of Union members in the workplace;
 - (iii) to recruit and involve Transport Workers in the Union and its activities;
 - (iv) to be approachable and helpful to Union members in the workplace;
 - (v) to seek out and encourage other Union members to take on roles and responsibilities;
 - (vi) to provide up to date and relevant Union information to Union members in the workplace;
 - (vii) to represent the views of the members;
 - (viii) to represent Union members fairly and accurately in negotiations and in relation to individual grievances;
 - (ix) subject to clause 49.3(f) to represent Union members in proceedings before the FWC, courts or similar tribunals; and
 - (x) to keep in regular contact with the Union Organiser and other Union representatives in the workplace about matters pertaining to the workplace.
- (c) Union delegates also have responsibilities (as do all persons engaged by Toll), which include:
- (i) acting in manner consistent with and appropriate to their role;

- (ii) raising workplace issues in a timely fashion and working co-operatively to resolve issues;
 - (iii) dealing appropriately with all Transport Workers; and
 - (iv) using equipment made available in a manner consistent with Toll policies, provided that this commitment will not preclude a delegate from exercising his or her representational role in an appropriate manner.
- (d) For the avoidance of doubt, Union delegates at a particular site are entitled to represent any Toll People casuals who are engaged at that site.
- (e) Any reference to Union delegates in this clause, includes co-delegates.

49.3 Delegates' leave

- (a) Toll will provide Union delegates with paid leave of up to 10 days per annum (in addition to two days' paid leave to attend the annual union delegates' conference and attendance at enterprise agreement report back meetings) to attend Union delegates' meetings, Union training or the annual Union delegates conference or other Union campaign activity which is consistent with this Agreement, provided that this commitment will not preclude the Union from exercising its organisational objectives in an appropriate manner.
- (b) In addition to the leave referred to in clause 49.3(a), Toll will make available a total pool of 100 days paid leave, nationally, to be used by delegates to carry out their functions, including discharging the responsibilities of any positions they hold with the Union.
- (c) To ensure the smooth running of Toll operations, Union delegates will be released by Toll for paid leave on the following basis:
 - (i) for yards with 20 or fewer Transport Workers - 1 delegate;
 - (ii) for yards with more than 21 Transport Workers but fewer than 200 Transport Workers - 2 delegates;
 - (iii) for yards with greater than 200 Transport Workers - 3 delegates.
- (d) The limitations in clause 49.3(c) will not apply in respect of the Union's annual conference or for enterprise agreement report back meetings connected with the negotiations for the agreement to replace this Agreement.
- (e) Prior to Toll agreeing to release a delegate, the Union will provide Toll with no fewer than 7 days' notice in writing of such a request for the release of delegates.
- (f) In addition to the leave referred to above, delegates will be able to take paid leave to represent Union members in proceedings before the FWC or similar tribunals provided that:
 - (i) the request for any leave is reasonable;

- (ii) clause 49.3(c) will not apply to the release of delegates under this clause 49.3(f); and
- (iii) Toll will only release a delegate if the proceedings relate to or affect a site at which the delegate works;
- (g) Toll will not be required to release a delegate to attend more than 2 delegates' meetings per quarter provided that delegates may attend up to 2 delegates meetings in addition to the annual delegates conference in the quarter in which such conferences are held.
- (h) Delegates who take leave under this clause will be paid their Average Earnings for each day of the leave.

49.4 Delegates' training

Toll will give genuine consideration to requests for delegates to undergo Certificate IV training, at Toll's cost, on a case by case basis. Any approval for such training may be conditional on such terms as Toll may reasonably impose, including the ability to recover the cost of the training from the delegate if they leave Toll's employ soon after completing the training. Toll will consult with the Union on these terms.

50. TEACHO

- (a) The objectives of TEACHO include but are not limited to:
 - (i) Improve training and compliance in vocational, health (including mental health), well-being and safety, industrial rights and research for the benefit of transport workers and the sustainability of the industry;
 - (ii) The administration of the Blue Card program;
 - (iii) commissioning important industry research, including research regarding the so-called 'gig' economy and the regulation that should be introduced in order to ensure the safety, fairness and job security of all workers in the transport industry;
 - (iv) job security, safety and sustainability through industrial rights compliance initiatives; and
 - (v) retraining assistance where required.
- (b) On or before 31 December in each of the years 2021 and 2022 Toll will make a contribution to TEACHO for the benefit of Transport Workers. The amount of the contribution will be as agreed between Toll and the rank and file negotiating committee in the negotiations for this Agreement.
- (c) Toll will, subject to endorsement by the board of TEACHO, maintain a seat on that board.

51. Union Picnic Day

- (a) Permanent Transport Workers in New South Wales will be entitled to one paid picnic day each year.

- (b) This clause will also apply to casuals, provided however that:
 - (i) such casuals work no fewer than 38 ordinary hours per week; and
 - (ii) such casuals have worked full time for a period of no fewer than 3 months in the period immediately leading up to the date of the picnic day.
- (c) Notwithstanding the above, the picnic day will not apply to Transport Workers who are receiving an alternative benefit in lieu of the picnic day.
- (d) To be eligible to receive the picnic day, the Transport Worker must purchase a picnic day ticket from the relevant Picnic Day Committee and provide a copy of that ticket to Toll.

Section 7 - Fleet Operators

52. Fleet operators

52.1 Engagement of Fleet Operators

- (a) Toll is committed wherever possible to only utilising Fleet Operators who utilise employee drivers.
- (b) Toll will only engage Fleet Operators that engage non-employee drivers where it is not practicable to engage a Fleet Operator with only employee drivers, for example in sites in a remote area where appropriate Fleet Operators cannot be engaged.
- (c) Toll must ensure that any Fleet Operator utilised by Toll engages Owner-Drivers only with the express written consent of Toll. Where a Fleet Operator does engage Owner-Drivers, Toll must advise the Union and Toll must provide information to the Union to demonstrate why it is not practicable for Toll to engage a Fleet Operator who engages employees to perform the relevant work.
- (d) When a new Fleet Operator is being engaged at a site during the operation of this Agreement, Toll will inform the Union.
- (e) Each new Fleet Operator will be required to execute a freight cartage agreement (**FCA**) with Toll which must contain the clauses set out in Part C of this Agreement. No term of the FCA or any other agreement between or relating to Toll and the Fleet Operator must alter the operation of the clauses set out in Part C of this Agreement.
- (f) Toll will require that Existing Fleet Operators also execute a FCA within 3 months of the Operative Date. As long as Toll has pursued that requirement through and in accordance with the process set out in clause 52.3 and has reported (in accordance with clause 52.3) any failure to procure execution of a FCA, then Toll will be taken not to be in breach of its obligation to require execution under this clause.
- (g) Prior to any Fleet Operator commencing on site, each worker of the Fleet Operator (including Fleet Operators engaged to perform long distance work that attend on site but only in so far as is practicable for Toll to do so) must participate in a site induction. During that induction a Union official will be given an opportunity to address the Fleet Operator's workers for a maximum of 30 minutes.

52.2 Rates

- (a) Toll will require that all Fleet Operators (other than those that perform Long Distance Work) pay their employees, whilst performing work on behalf of Toll:
 - (i) in New South Wales - the rates of pay that would apply to them if they were Employees directly employed by Toll at the yard where the Fleet Operator is performing the work; and
 - (ii) elsewhere - a rate of pay that is at least 10% higher than the applicable Award rate.

- (iii) Toll must ensure that by 30 June 2023, Fleet Operators who are engaged to perform Long Distance Work on behalf of Toll pay their employees a rate of pay that is at least 10% higher than the applicable Award rate.
- (b) Nothing in clause 52.2(a) is intended to allow a Fleet Operator to reduce the rates being paid to its employees, and Toll agrees not to allow the clause to be used for that purpose.

52.3 Compliance

- (a) As soon as practicable after the Operative Date, Toll will send a letter to all Existing Fleet Operators:
 - (i) advising them of Toll's requirements of them, consistent with this clause 52; and
 - (ii) enclosing a copy of the FCA for their signature and return.
- (b) Where:
 - (i) the Union informs (on reasonable grounds) Toll; or
 - (ii) Toll becomes aware,

that a Fleet Operator has not, or may not have, complied with a requirement of the FCA or other obligations, Toll will as soon as practicable:

 - (i) investigate the alleged non-compliance; and
 - (ii) where necessary, take measures to have the Fleet Operator rectify the breach.
- (c) Toll will consult with the Union about the outcome of the investigation, including the nature of any breaches discovered and the steps taken to rectify those breaches.
- (d) Toll will, where practicable, complete the investigation within 30 days of notification by the Union.
- (e) Toll will provide the Union with access to such documents as it has in its possession to verify these matters provided that Toll will not be required to disclose confidential or commercially sensitive material. Any information received by the Union during the course of such consultation will be treated in the strictest confidence by the Union. Such information may include runsheets provided by the Fleet Operator or other information necessary to complete the investigation.
- (f) Clause 52.3(e) does not limit the ability of the Union to access the records of Fleet Operators under the terms of the FCA set out in Part C.

52.4 Notification and reporting

- (a) In March and September of each year in the Term Toll will provide to the Union a written list of all Fleet Operators then engaged by Toll at each site including:
 - (i) the names of the Fleet Operators;
 - (ii) the business unit(s) in which each Fleet Operator is engaged;
 - (iii) the site at which each Fleet Operator works;
 - (iv) the number of drivers employed by each Fleet Operator who are performing work for Toll;
 - (v) whether any workers are non-employees;
 - (vi) Whether any Fleet Operator has previously been identified as being in breach of any obligations arising under this Agreement or any other instruments and whether they have executed a Freight Cartage Agreement; and
 - (vii) which Existing Fleet Operators have not signed an FCA.
- (b) Toll will provide to the Union upon request any information and/or documents which Toll is authorised to provide under the terms of the FCA.

52.5 Disputes over Toll's engagement of Fleet Operators

- (a) The Union may raise any concerns it may have with Toll with respect to Toll's engagement of a Fleet Operator.
- (b) Where a Dispute arises with respect to the engagement of any Fleet Operator, only clauses 15(a) and (g) will apply. If the Dispute is not resolved through that process the General Manager of the relevant business unit will determine the Dispute, with such determination being final.
- (c) The resolution of a Dispute in accordance with clause 52.5(b) will not preclude any Party raising the subject of the Dispute at one of the Consultation Meetings convened under clause 47 or in the Advisory Forum.

52.6 Application of clause

- (a) This clause 52 will only apply to Fleet Operators who carry full loads on behalf of Toll.
- (b) This clause 52 does not apply to Fleet Operators who are engaged on an ad-hoc basis or to other Fleet Operators as may be agreed from time to time with the relevant Branch Secretary of the Union.

PART B - LOCAL AGREEMENTS

Global Logistics

Resources & Industrials	Toll Contract Logistics - Chemical Services Victoria Operations Local Agreement
Resources & Industrials	Toll Energy Chevron - BWI Local Agreement
Resources & Industrials	Toll Energy Chevron - Perth Local Agreement
Resources & Industrials	Toll Energy Dampier Collective Agreement 2008
Resources & Industrials	Toll Energy Inpex Supply Base Local Agreement 2017
Resources & Industrials	Toll Energy South Australia Local Agreement - Infield
Resources & Industrials	Toll Industrial Services Chevron - BWI Local Agreement
Resources & Industrials	Toll Liquids Adelaide Viva Contract Local Agreement
Resources & Industrials	Toll Liquids Brisbane Metro Local Agreement
Resources & Industrials	Toll Liquids Goldfields BP and Viva Local Agreement
Resources & Industrials	Toll Liquids Linehaul Local Agreement
Resources & Industrials	Toll Liquids Mid West Quadrant BHP & Viva Local Agreement
Resources & Industrials	Toll Liquids North West Local Agreement
Resources & Industrials	Toll Liquids - Perth, Western Australia Site Agreement 1 May 2011
Resources & Industrials	Toll Liquids South West Local Agreement
Resources & Industrials	Toll Liquids Sydney Metro Local Agreement
Resources & Industrials	Transport Workers-Toll Liquid Distribution Victorian Agreement 2005

Resources & Industrials	Patrick Logistics (Arndell Park) Enterprise Agreement 2004
Resources & Industrials	Patrick Logistics (Hastings) Certified Agreement 2006
Resources & Industrials	Patrick Logistics (Whyte Island) Warehouse Enterprise Agreement 2005
Resources & Industrials	Patrick Logistics Queensland Drivers Enterprise Agreement 2005
Resources & Industrials	Toll Contract Logistics - Chemical Services Victoria Valspar Operations Local Agreement
Resources & Industrials	Toll Contract Logistics - Chemicals - Western Australian Local Agreement
Resources & Industrials	Toll Contract Logistics Port Kembla Local Agreement
Resources & Industrials	Toll Liquid Distribution Brisbane BOC Site Agreement 2011
Resources & Industrials	Toll Liquids BOC Bulk Distribution Torrensville Site Local Agreement
Resources & Industrials	Toll Liquids BOC Compressed Distribution Torrensville Site Local Agreement
Resources & Industrials	Toll Liquids BOC Port Kembla & Newcastle Local Agreement
Resources & Industrials	Toll Logistics - Contract Logistics Dandenong (Victoria) Enterprise Agreement 2004/2007
Resources & Industrials	Toll Logistics - Contract Logistics Division, Paper & Packaging - MWS Enterprise Agreement 2005
Resources & Industrials	Toll Logistics - Contract Logistics Division, Pilkington, Amcor & Multi User Warehouse Enterprise Agreement 2005
Resources & Industrials	Toll Logistics - Contract Logistics Division, South Australia Multi User and Subsidiary Sites Union Collective Agreement 2006
Resources & Industrials	Transport Workers Union and Toll Regional Transport (Refrigeration) Business Agreement
Resources & Industrials	Mitchell Helidon Pty Ltd Enterprise Agreement Helidon Operations
Resources & Industrials	Toll Mining Services Goldfields Local Agreement Emulsion and Specialised Drivers
Resources & Industrials	Toll Mining Services South West Local Agreement - Specialised

Resources & Industrials	Toll North Pty Limited t/as R&H Transport (New South Wales) Enterprise Agreement 2005
Resources & Industrials	Patrick Logistics (Cavan) Certified Agreement 2006
Resources & Industrials	Toll Contract Logistics (Chemical and Agriculture Services) BOC Transport NSW Local Agreement
Resources & Industrials	Toll Contract Logistics - Plastics Services (NSW) Local Agreement 2016
Resources & Industrials	NSW Paper (Orora Botany) - Local Agreement
Resources & Industrials	Global Logistics - Industrials (Chemical) BOC Transport QLD Local Agreement
Resources & Industrials	Toll Contract Logistics - Plastics Services (VIC) Local Agreement 2016
Resources & Industrials	Toll Mermaid Logistics Broome EA 2014-2018
Resources & Industrials	Toll Contract Logistics - Chemicals - Western Australian Local Agreement
Retail/Consumer/Auto	Global Logistics Retail/Consumer/Healthcare Asahi (Perth) Local Agreement
Retail/Consumer/Auto	Toll AutoLogistics - Components Victoria Agreement 2006
Retail/Consumer/Auto	Toll AutoLogistics - Components South Australia, Agreement 2006
Retail/Consumer/Auto	Toll AutoLogistics - Components National Workplace Agreement 2009
Retail/Consumer/Auto	Toll Logistics, Beverage Division, Carlton & United Contract, Newcastle Enterprise Agreement 2000
Retail/Consumer/Auto	Toll Logistics - Contract Logistics Division, Foster's Contract South Australia Union Collective Workplace Agreement 2006
Retail/Consumer/Auto	Toll Logistics - Contract Logistics Division, Western Australia and Subsidiary Enterprise Agreement 2008
Grocery	Toll Contract Logistics Coles Group Union Collective Agreement 2007
Grocery	Toll Contract Logistics - Minchinbury, Yennora, Erskine Park - Site Agreement 2012
Grocery	Toll Logistics, Contract Logistics Division, Coles Western Australia Enterprise Agreement 2008

Grocery	Toll Global Logistics - Woolworths Warnervale 2021 Local Agreement
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Operational Services

Linehaul	Toll Linehaul and Fleet Services (Western Australia Energy) Local Agreement 2016
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Toll People	<p><i>There are no Local Agreements operating at Toll People. Part A of this Agreement will only apply to the extent that Toll People places Transport Workers into a business operated by Toll. If Toll People places a Transport Worker into a business outside the Group, it will use its best endeavours to ensure that the Transport Worker receives the rates of pay and conditions payable to Transport Workers in that business.</i></p>
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PART C - FREIGHT CARTAGE AGREEMENT CLAUSES

1. Contractor Obligations

In performing the Services, the Contractor will:

- (a) comply with all relevant statutes and regulations relating to the performance of work under this Agreement and with all relevant statutes and regulations relating to the Vehicles, its drivers and other relevant employees, and the performance of work, including without limitation by ensuring that:
 - (i) it complies with all agreements, awards, determinations and orders applicable to its drivers and other relevant employees;
 - (ii) without limiting the generality of (i) above, it complies with all its obligations under relevant occupational health and safety laws dealing with fatigue and does everything necessary to comply with or demonstrate compliance with such obligations, including but not limited to the preparation and maintenance of a driver fatigue management plan (referred to in this Agreement as a "Safe Driving Plan") which addresses the issues set out below, the recording of such details on a daily basis concerning the provision of the Services under this Agreement as Toll reasonably requires and the provision to Toll of such records, which shall include, but not be limited to, the following:
 - A. start times;
 - B. rest breaks which must be taken in accordance with the legislative requirements with respect to the limitation on driving hours stoppages and/or delays suffered and the reasons why;
 - C. arrival and departure times for journey performed;
 - D. finishing time;
 - E. total hours worked;
 - F. the cumulative effects of fatigue over more than one day; and
 - G. the effect of time of day or night on fatigue,

and such records must be kept on a daily basis and where practicable handed to the relevant manager/supervisor at the end of each day and must be declared and signed by the Contractor as true and correct;
 - (iii) all Vehicles are registered as required and all necessary insurances are in force in respect of the Vehicles;
 - (iv) it has obtained and will maintain in force all licences and permits as are required by persons engaged in its business and who perform the things it is required to do by this Agreement and will comply with the terms of all such licences and permits;

- (v) without limiting the generality of (i) and (iv) above, it maintains a Workers' Compensation Certificate of Currency for all drivers and other relevant employees performing work related to the provision of the Services;
 - (vi) without limiting the generality of (i) above, it complies with its obligations and made all payments required under Superannuation legislation including the Superannuation Guarantee (Administration) Act 1992 (Cth), the Superannuation Guarantee Charge Act 1992 (Cth), the Superannuation Industry (Supervision) Act 1992 (Cth) and the Superannuation (Resolution of Complaints) Act 1993 (Cth);
 - (vii) has paid and will continue to pay all taxes and fees relating to the ownership or use of the Vehicles;
- (b) maintain good industrial and employee relations with its drivers, other relevant employees and industrial organisations or bodies, to ensure performance of the Services in accordance with this Agreement;
 - (c) immediately inform Toll's representative of, and take all actions necessary to prevent or bring to an end, threatened or actual industrial action or any dispute or other matter affecting the drivers or other relevant employees, agents or contractors which may adversely impact the performance of the Services;
 - (d) subject to (e) below, directly employ all of the drivers it utilises to perform work related to the Services;
 - (e) not engage owner-drivers to perform work related to the Services unless it has the express written consent of Toll to do so, such consent to be given only where the Contractor is able to demonstrate to the satisfaction of Toll that the work cannot be practicably performed by employee drivers;
 - (f) ensure that where it has received the consent required by (e), above, it engages only bona fide owner-drivers and will not permit any sham contracting arrangements and agrees that all compliance, records keeping, training and rates provisions of this agreement apply to those owner-drivers as if they were employees;
 - (g) not contract out all or any part of the work related to the Services and must immediately inform Toll if it is unable, or has reason to believe it will become unable, to perform all or any part of the work related to the Services.

1. Contractors Statement

- 1.1 In addition to all other obligations arising pursuant to this Agreement, the Contractor must provide to Toll, at the time that it issues an invoice to Toll in accordance with this Agreement, a written statement confirming that:
 - (a) all remuneration payable to the Contractor's employees and/or owner-drivers for work done under this Agreement, during the period to which the invoice relates, has been paid;

- (b) all worker's compensation insurance premiums payable by the Contractor for the work done in connection with this Agreement have been paid and that a valid and accurate Certificate of Currency (or its equivalent) has been maintained; and
- (c) the Contractor is either registered, or is not required to register, as an employer under the Pay-Roll Tax Act and that all payroll tax payable by the Contractor for the relevant employees and/or owner-drivers during the term of this Agreement has been paid; and
- (d) the Contractor has complied with and made all payments required by the Superannuation legislation including the Superannuation Guarantee (Administration) Act 1992 (Cth), the Superannuation Guarantee Charge Act 1992 (Cth), the Superannuation Industry (Supervision) Act 1992 (Cth) and the Superannuation (Resolution of Complaints) Act 1993 (Cth).

1.2 Where the Contractor fails to provide such a statement:

- (a) Toll will be entitled to withhold payment of any monies owed to the Contractor until such time as the Contractor provides Toll with such a statement; and
- (b) the Contractor must indemnify and keep indemnified Toll from all suits, actions, claims, demands and other liabilities that a third party may have resulting either directly or indirectly from the failure of the Contractor as described in this paragraph.

1. Records Audit

- 1.1 The Contractor must provide to Toll on request the Contractor's Records, for the purposes of enabling Toll to perform an audit.
- 1.2 The Contractor agrees that the Records may be made available by Toll to the Transport Workers Union of Australia, for their inspection. In such circumstances the Contractor agrees that it will take reasonable steps to ensure that its employees are made aware of the following:
 - (a) the identity of Toll and how to contact the Toll Authorised Representative;
 - (b) that the individual employee is able to gain access to the information;
 - (c) the purpose for which the information is collected;
 - (d) the organisation to which Toll may disclose the information
 - (e) any law that requires particular information to be collected; and
 - (f) the main consequences (if any) for the individual if all or part of the information is not provided.
- 1.3 The Contractor agrees that the primary purpose for which Toll is conducting the audit is to ensure that the Contractor has abided by its Award obligations in relation to the payments it makes to its employees and that it has abided by its legislative obligations including, but not limited to, the payment of superannuation, obligations arising under the relevant occupational health and safety legislation and compliance with legislative driving hours.

- 1.4 Where, after an inspection has been conducted by Toll, Toll is satisfied that the Contractor has not complied with one or more of its obligations pursuant to an Award, legislative obligations or any of its obligations contained in this agreement, the Contractor shall be issued with a breach notice by a Toll representative, requiring rectification of the breach within 7 days.
- 1.5 Where the Contractor continues with the breach after having been issued with the breach notice or commits a further breach, Toll will terminate this agreement.
- 1.6 For the purposes of this clause:

"Award" means an award, enterprise agreement or other industrial agreement which has been made or approved by the Fair Work Commission or other state industrial tribunal.

"Records" means, but is not limited to, records required to be kept in accordance with this Agreement or any legislation or Award and/or any records required to show compliance with the Agreement or any legislation or Award including records relating to the remuneration of employees or other records relating to the employees that are required to be kept by the Contractor by under this Agreement or under the Fair Work Act, (as amended from time to time), or under an industrial instrument, or any other records which Toll may request from time to time as evidence of proof of payment to an employee of his or her wages, records which must be kept by the employer which evidence compliance with driving hours legislation, OHS legislation, including evidence of **"Safe Driving Plans"** or the like and records relating to insurance policies, Workers Compensation and Superannuation, which are required to be kept in accordance with this Agreement or any other legislation.

1. Compulsory Induction Training

- 1.1 The Contractor, prior to commencing work with Toll at the applicable site, must participate in compulsory induction training.
- 1.2 The Contractor will not be allowed to perform any work for Toll until such training has been completed by all of its employees who will be working at the relevant Toll site.
- 1.3 The Contractor must also ensure that all of its employees who will perform work for Toll are Blue Card WHS Induction and Skills Passport accredited by participating in the Blue Card WHS Induction and Skills Passport Program.

1. Site Rates

*The following clause must be contained in all Freight Cartage Agreements applying to Fleet Operators (including Existing Fleet Operators) providing Services (other than those performing Long Distance Work) at or in connection with a Toll site or sites located **within NSW/ACT**:*

- 1.1 The Contractor must pay employees performing work relating to Services to be provided under this Agreement, the same rates of pay which would otherwise apply to Toll's employees engaged at the relevant site at or in connection with which the Contractor's employees are performing work.

*The following clauses must be contained in all Freight Cartage Agreements applying to Fleet Operators (excluding Existing Fleet Operators) providing Services (other than those performing Long Distance Work) at or in connection with a Toll site or sites located **outside of NSW/ACT**:*

- 1.1 The Contractor must pay employees performing work relating to Services to be provided under this Agreement, at rates of pay that are at least 10% higher than those applicable under the relevant Modern Award (the "**Modern Award**").

The following clauses must be contained in all Freight Cartage Agreements applying to Fleet Operators (excluding Existing Fleet Operators) providing Services that are Long Distance Work at or in connection with a Toll site or sites:

- 1.2 The Contractor must pay employees performing work relating to Services to be provided under this Agreement, at rates of pay that are at least 10% higher than those applicable under the relevant Modern Award (the "**Modern Award**").
- 1.3 Nothing in this clause permits the Contractor to reduce the rates paid to its employees and the Contractor agrees that it will not reduce rates paid to its employees even where such rates exceed those specified in clause 1.1 above.
- 1.4 For the purposes of this clause Long Distance Work means any trip greater than 500 kilometres.

Signed for Toll Holdings Limited and each of its
Australian wholly-owned subsidiaries:



Signature of authorised person

Elizabeth Ferrier,
Group Head,
~~Employee and Industrial Relations~~

Name and position of authorised person in full



Signature of witness

David Russell, Senior Employee Relations Manager

Name of witness in full

Level 12, 32 Walker st, North Sydney, NSW

Address

24 December 2021

Date of signing

Level 12, 32 Walker Street, North Sydney NSW 2060

Address

24 December 2021

Date of signing

**Signed for and on behalf of the Transport Workers
Union of Australia** in its capacity as a bargaining
representative:



Signature of bargaining representative

Michael Kaine, National Secretary, TWU

Name and position of bargaining representative in
full

388-390 Sussex Street

Sydney NSW 2000

Address

22 December 2021

Date of signing



Signature of witness

Gavin Webb

Name of witness in full

388-390 Sussex St

Sydney NSW 2000

Address

22 December 2021

Date of signing

IN THE FAIR WORK COMMISSION

FWC Matter No.:

AG2022/40

Applicant:

Toll Holdings Limited

Undertaking- section 190

I, Elizabeth Ferrier, Group General Manager, Employee and Industrial Relations of Toll Holdings Limited give the following undertakings with respect to the *Toll – TWU Enterprise Agreement 2021-2023* (the **Agreement**):

1. The Employer undertakes to pay employees covered by the Agreement minimum wages and allowances (where applicable) of not less than the wages and allowances contained in the confidential exhibit marked as annexure A to the statutory declaration of Elizabeth Ferrier signed on 7 March 2022.
2. Where penalty rates or loadings are payable under the Agreement, such penalties and loadings will be paid by reference to the wages paid to employees in accordance with the confidential exhibit marked as annexure A to the statutory declaration of Elizabeth Ferrier signed on 7 March 2022.
3. The confidential exhibit marked as annexure A to the statutory declaration of Elizabeth Ferrier signed on 7 March 2022 will be made available to any employee covered by the Agreement and the Transport Workers' Union of Australia upon request.

Employer name: Elizabeth Ferrier

Authority to sign: Group General Manager, Employee and Industrial Relations

Signature: 

Date: 7 March 2022