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NEW SOUTH WALES
INDUSTRIAL GAZETTE

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NEW SOUTH WALES

INDUSTRIAL GAZETTE

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INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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INDUSTRIAL REGISTRAR

Ms M. Morgan

(1710)

SERIAL C8799**CROWN EMPLOYEES (FIRE AND RESCUE NSW FIREFIGHTING
STAFF DEATH AND DISABILITY) AWARD 2017**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by the New South Wales Fire Brigade Employees Union, Industrial Organisation of Employees and Fire and Rescue NSW.

(Case Nos. 2016/35190 & 2017/125817)

Before the Full Bench of the Commission
Chief Commissioner Kite
Commissioner Newall
Commissioner Murphy

20 December 2017

AWARD**Clause 1. Introduction, Intentions and Commitments**

- 1.1 This Award shall be known as the "Crown Employees (Fire and Rescue NSW Firefighting Staff Death and Disability) Award 2017".
- 1.2 The intentions and commitments of this Award are to:-
 - 1.2.1 Promote firefighters' health and fitness and to assist firefighters in meeting the occupational requirements of their job.
 - 1.2.2 Provide practical support, education and assistance to firefighters through structured health and fitness programs.
 - 1.2.3 Provide rehabilitation and retraining for permanent firefighters suffering partial and permanent incapacity.
 - 1.2.4 Provide benefits in the event of the death or the termination of employment of permanently incapacitated firefighters.

Clause 2. Index

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Health and Fitness Program

Clause 3. Definitions

"actuary" means an actuary appointed by the Trustee of the Death and Disability Superannuation Fund.

"compulsory employer contributions" has the same meaning as it has in section 12(1) of the *First State Superannuation Act 1992*.

"Deemed annual salary" means the "Per Week" rate of pay of a Qualified Firefighter as set out at Table 1 of Part C of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award multiplied by 52.1785.

"Deemed fortnightly salary" means the "Per Week" rate of pay of a Qualified Firefighter as set out at Table 1 of Part C of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award multiplied by 2.

"Death and Disability Superannuation Fund" means the superannuation fund established in accordance with this Award.

"Electricity Industry Superannuation Scheme" ("EISS") has the same meaning as it has in the *Superannuation Administration Act 1996*.

"FBEU" means the Fire Brigade Employees' Union of New South Wales.

"FRNSW" means Fire and Rescue New South Wales, established by the *Fire Brigades Act 1989* and as a Public Service Executive Agency under Schedule 1 of the *Government Sector Employment Act 2013*.

"firefighter" means either a permanent firefighter or a retained firefighter as defined in this clause.

"First State Superannuation Scheme" ("FSS") means the superannuation scheme established under the *First State Superannuation Act 1992*.

"Judges Pension Scheme" ("JPS") means the superannuation scheme established under the Judges' Pensions Act 1953.

"Local Government Superannuation Scheme" ("LGSS") has the same meaning as it has in the *Superannuation Administration Act 1996*.

"off duty injury" means any personal injury or disease which is not an on duty injury.

"on duty injury" means personal injury arising out of or in the course of employment as a firefighter and includes a disease which is contracted by a firefighter in the course of his/her employment as a firefighter and to which the employment was a contributing factor, and the aggravation, acceleration, exacerbation or deterioration of any disease, where his/her employment as a firefighter was a contributing factor to the aggravation, acceleration, exacerbation or deterioration but does not include a personal injury or disease arising out of or in the course of journeying to or from work subject to the proviso that a retained firefighter responding to an incident shall be considered to be on duty from the time of call.

"ordinary duties" means the full range of work that was usually performed by the firefighter immediately prior to suffering the condition, illness or injury that caused them to cease to perform, in whole or in part, such work.

"Parliamentary Contributory Superannuation Fund" ("PCSF") means the fund referred to in section 5 of the *Parliamentary Contributory Superannuation Act 1971*.

"partial and permanent incapacity" means that a firefighter is no longer fit to carry out the full range of his/her ordinary duties with FRNSW.

"PBRI" means the Police Blue Ribbon Insurance arrangements established under the Police Amendment (Death and Disability) Regulation 2011.

"permanent firefighter" has the same meaning as 'employee' under the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award.

"Police Superannuation Scheme" ("PSS") means the superannuation scheme established under the *Police Regulation (Superannuation) Act 1906*.

"retained firefighter" has the same meaning as 'employee' under the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award.

"spouse" means a person who falls within the definition of "spouse" or "de facto partner" in the *Superannuation Act 1916*.

"State Authorities Non-contributory Superannuation Scheme" ("SANCS") means the superannuation scheme established under the *State Authorities Non-contributory Superannuation Act 1987*.

"State Authorities Superannuation Scheme" ("SASS") means the superannuation scheme established under the *State Authorities Superannuation Act 1987*.

"State Superannuation Scheme" ("SSS") means the superannuation scheme established under the *Superannuation Act 1916*.

"total and permanent incapacity" means that the firefighter is unlikely, by reason of ill-health (whether physical or mental) to ever again engage in gainful employment for which the firefighter is reasonably qualified by education, training or experience.

Clause 4. Health and Fitness Program

- 4.1 The parties agree and accept the need for a compulsory health and fitness program that is underpinned by practical support, education and assistance provided by FRNSW.
- 4.2 The parties agree to develop and implement the health and fitness program in circumstances in which a member of the Industrial Relations Commission will oversight their progress and set appropriate time frames, subject to the proviso that the parties specifically agree that:
 - 4.2.1 the health and fitness program will be developed and implemented within the life of this Award;
 - 4.2.2 the health and fitness program will be developed and implemented in accordance with the principles and procedures detailed in Annexure A;
 - 4.2.3 following implementation, the health and fitness standards will remain subject to negotiation and it will be open to either party to refer any matter that is not agreed to the Industrial Relations Commission for determination and the status quo will apply in the interim; and
 - 4.2.4 the health and fitness standards will not distinguish between ranks and will apply to all firefighters. Where a firefighter is found to have a medical issue, the health risk will be assessed against the inherent requirements of that firefighter's ordinary duties; and
 - 4.2.5 A firefighter who fails to meet the prescribed health and fitness standards will be given an appropriate period of time, as determined on medical advice, to achieve the level of health and

fitness required. Subsequently, a permanent firefighter who fails the medical reassessment or who is deemed on medical advice not capable of regaining or maintaining an acceptable level of fitness will be rehabilitated to another position in accordance with Clause 12.

Clause 5. Death and Disability Superannuation Fund

- 5.1 FRNSW will maintain, with the agreement of the FBEU, a Death and Disability Superannuation Fund to pay the benefits prescribed by Clauses 9, 10 and 11 of this Award. The Fund shall operate in accordance with relevant Commonwealth legislation and the terms of the trust deed by which it is created.
- 5.2 The terms of the trust deed by which the Death and Disability Superannuation Fund is created shall provide that the Trustee of the Death and Disability Superannuation Fund is required to reduce the benefits otherwise payable from the said fund so as to offset any benefits prescribed by this Award that have previously been paid from the Death and Disability Superannuation Fund or by FRNSW pursuant to this Award.

Clause 6. Contributions to the Death and Disability Superannuation Fund

- 6.1 Subject to subclause 6.2, permanent firefighters who are less than 67 years of age and who are covered by FSS or who are contributors to SASS or who have elected under section 10 of the *First State Superannuation Act 1992* to make other arrangements shall each fortnight contribute an amount equivalent to 0.8 per cent of the Deemed fortnightly salary to the Death and Disability Superannuation Fund.
- 6.2 Permanent firefighters who contribute to SASS and who contribute for additional benefit cover shall within three months of commencing employment make an election on a "once only" basis, whether they wish to contribute to the Death and Disability Superannuation Fund. Permanent firefighters who elect to not contribute to the Death and Disability Superannuation Fund shall not be eligible to receive a pension or lump sum payment prescribed by this Award.
- 6.3 The contributions prescribed by this Award in relation to permanent firefighters who are contributors to SASS are additional to the contributions that they are required to make under the *State Authorities Superannuation Act 1987*.
- 6.4 Notwithstanding the provisions of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award and the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award, a firefighter who is required or elects to make contributions pursuant to this clause will do so by sacrificing an amount of unearned salary equivalent to the firefighter's contribution pursuant to this clause, unless they elect to contribute from their post-tax salary. Such salary sacrifice shall not be taken into account for the purpose of calculating the remuneration that the firefighter would have received in the event that no salary sacrifice had been applicable.
- 6.5 Subject to subclause 6.6, FRNSW shall each fortnight contribute an amount equivalent to 0.5 per percent of the Deemed fortnightly salary to the Death and Disability Superannuation Fund in respect of each retained firefighter who is less than 67 years of age.
- 6.6 FRNSW shall each fortnight contribute an amount equivalent to 0.2 per percent of the Deemed fortnightly salary to the Death and Disability Superannuation Fund in respect of each retained firefighter who is less than 67 years of age and who, by virtue of their primary employment, is already a member of SSS, PSS, the LGSS or EISS Division D "Defined Benefit Scheme", the JPS, PCSF, PBRI or who is a LGSS or EISS Division B "Retirement Scheme" member with additional benefit cover or who is a SASS member with additional benefit cover.
- 6.7 FRNSW shall contribute to the Death and Disability Superannuation Fund such sum as may be necessary to meet any shortfall between the Fund's reserves and that sum that it needs in order to pay the superannuation pensions and superannuation lump sum benefits prescribed by this Award (or past Awards).

- 6.8 A firefighter on any form of leave without pay shall continue to be covered by this Award and shall be required to make the contributions that he/she would otherwise have made had he/she not been on leave without pay.
- 6.9 FRNSW shall each fortnight deduct the contributions that firefighters are required or elect to make pursuant to this clause from their salaries and forward such contributions together with the contributions that FRNSW is required to make in respect of retained firefighters to the Death and Disability Superannuation Fund.

Clause 7. Other Benefits Applicable to Firefighters

The benefits conferred upon firefighters by this Award shall be in addition to those benefits otherwise payable under the FSS Scheme, the SASS scheme and/or the *Workers Compensation Act 1987* and *Workplace Injury Management and Workers Compensation Act 1998*, as varied from time to time.

Clause 8. Assessment of Fitness for Duty and Permanent Incapacity

- 8.1. The procedures set out at subclauses 8.2 to 8.5 inclusive will apply if:
- 8.1.1 FRNSW has reason to believe that:
- 8.1.1.1 a firefighter may be unfit for duty, permanently or otherwise, and that firefighter disagrees; or
- 8.1.1.2 it may be necessary to impose certain medical/physical conditions or restrictions on a firefighter, permanently or otherwise, and that firefighter disagrees with the need for some or all such conditions or restrictions; or
- 8.1.2 A firefighter has reason, supported by medical information, to believe that:
- 8.1.2.1 the firefighter may be unfit for duty, permanently or otherwise, and FRNSW disagrees; or
- 8.1.2.2 it may be necessary to impose certain medical/physical conditions or restrictions on the firefighter, permanently or otherwise, and FRNSW disagrees with the need for some or all such conditions or restrictions; or
- 8.1.3 A firefighter has already been assessed as defined at subclauses 8.6.2, 8.6.3 or 8.6.4 and subsequently obtains more contemporary information which suggests that they may be fit or that their requirements or restrictions should be changed, and FRNSW disagrees.
- 8.2 If the medical assessment is initiated by FRNSW at subclause 8.1.1 then FRNSW will advise the firefighter in writing of their need to undergo an immediate health assessment by a medical practitioner nominated by FRNSW, and its reason(s) for such referral.
- 8.3
- 8.3.1 If FRNSW believes at any point in time that a permanent firefighter's condition is such that by remaining on-duty he/she may endanger themselves, their colleagues or the public, FRNSW will, having regard to the firefighter's circumstances, either assign appropriate alternative duties for the firefighter or direct the firefighter on special leave (which is not to be deducted from any of the firefighter's leave balances) pending the determination of their condition in accordance with this Clause. A permanent firefighter who is stood down from their ordinary duties in accordance with this subclause will continue to receive their ordinary pay until such date as the Industrial Relations Commission determines that the firefighter has failed to cooperate with the reasonable directions of FRNSW under this Clause, or the assessing medical practitioner reports pursuant to subclause 8.6. To avoid doubt, a permanent firefighter's ordinary pay shall be the pay to which the permanent firefighter would have been entitled had they been on sick leave.

- 8.3.2 Subject to subclause 8.3.3, if FRNSW believes at any point in time that a retained firefighter's condition is such that by continuing to attend emergency incidents he/she may endanger themselves, their colleagues or the public, FRNSW will allow the firefighter to respond to their station, but not the incident, for all calls received by their brigade, and to attend all drills pending the determination of their condition in accordance with this Clause. A retained firefighter who is placed on non-response duties in accordance with this subclause will continue to be permitted to attend the station for calls and drills until such date as the Industrial Relations Commission determines that the firefighter has failed to cooperate with the reasonable directions of FRNSW under this Clause, or the assessing medical practitioner reports pursuant to subclause 8.6.
- 8.3.3 If FRNSW believes at any point in time that a retained firefighter's condition is such that by continuing to attend the station he/she may endanger themselves, their colleagues or the public, FRNSW will direct the firefighter to not attend their station pending the determination of their condition in accordance with this Clause. A retained firefighter who is excluded from their station in accordance with this subclause will be paid a fortnightly amount equivalent to the retained firefighter's highest fortnightly pay within the three month period immediately prior to their exclusion, and such payment shall continue until such date as the Industrial Relations Commission determines that the firefighter has failed to cooperate with the reasonable directions of FRNSW under this Clause, or the assessing medical practitioner reports pursuant to subclause 8.6.
- 8.4 Whether the medical assessment is initiated by FRNSW at subclause 8.1.1 or a firefighter at subclause 8.1.2, FRNSW will arrange for a reasonable appointment for the firefighter as soon as possible, if not with FRNSW's preferred medical practitioner then with some other suitable medical practitioner, and will notify both the firefighter and the assessing medical practitioner in writing setting out:
- 8.4.1 the time, date and location of the appointment;
- 8.4.2 the inherent requirements of the firefighter's ordinary duties and the firefighter's typical work environment(s);
- 8.4.3 the health-related issue(s), if any, which FRNSW believes may be affecting work performance;
- 8.4.4 the manner in which it is believed work performance has been/is being and/or may be affected, including evidence where available;
- 8.4.5 any specific question(s) from FRNSW. It will not be sufficient to simply request an assessment of a firefighter's "fitness to continue" or assume such question(s) would be inferred by the assessing medical practitioner from the general background information provided; and
- 8.4.6 a summary of all relevant documents in checklist format.
- 8.5 The assessing medical practitioner should take into account any and all relevant material supplied by FRNSW, the firefighter and/or the firefighter's own medical practitioner(s). FRNSW will ensure that any material provided to the assessing medical practitioner will at the same time also be provided to the firefighter and/or the medical practitioner(s) nominated by the firefighter.
- 8.6 The assessing medical practitioner's report, which will be in writing and provided to both FRNSW and the firefighter, should conclude that the firefighter is, in that medical practitioner's opinion, either:
- 8.6.1 fit to perform the firefighter's ordinary duties without any requirements or restrictions; or
- 8.6.2 fit to perform the firefighter's ordinary duties with specified requirements or restrictions; or
- 8.6.3 temporarily unfit to perform the firefighter's ordinary duties but fit to perform alternative duties, either with or without specified requirements or restrictions; or
- 8.6.4 temporarily unfit to perform any FRNSW duties; or

- 8.6.5 permanently unfit to perform the firefighter's ordinary duties.
- 8.7 FRNSW will write to the firefighter within 7 days of receipt of the assessing medical practitioner's report stating that it has either:
- 8.7.1 wholly accepted the assessing medical practitioner's report; or
- 8.7.2 partially accepted the assessing medical practitioner's report, together with the reason(s) for its non-acceptance of the relevant part(s); or
- 8.7.3 accepted none of the assessing medical practitioner's report and its reasons for same.
- 8.8 If the FRNSW determination at subclause 8.7 is that the firefighter is permanently unfit to perform the firefighter's ordinary duties then the firefighter shall be deemed for the purposes of this Award to have suffered partial and permanent incapacity until determined otherwise in accordance with this Clause. FRNSW shall inform the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed) at the earliest possible opportunity.
- 8.9 A firefighter may request by way of report that the Commissioner review the FRNSW determination at subclause 8.7 within 14 days of receipt of that written determination or within 7 days of the Department having informed the FBEU, whichever is the later. A firefighter who makes such a request shall then be allowed 28 days, or such additional time as the Commissioner may allow, in order for a medical practitioner of the firefighter's choosing to:
- 8.9.1 review all previous reports and documentation relating to the matter; and
- 8.9.2 confer with a FRNSW-nominated medical practitioner with a view to maximising the areas of agreement and minimising any areas of disagreement between them. In order to facilitate such conferences, FRNSW and the firefighter must, by no later than close of business on the next working day following the firefighter's request for a review, exchange the contact details of their respective nominated medical practitioners and in the case of the firefighter, written authorisation for their nominated medical practitioner to discuss their medical information with the FRNSW-nominated medical practitioner; and
- 8.9.3 produce a report (and, if the FRNSW-nominated medical practitioner is agreeable, a joint report) of their conclusions.
- 8.9.4 The Commissioner will consider all previous reports and documentation relating to the matter, together with any additional information (including the medical practitioner's report at subclause 8.9.3) submitted by the firefighter, and will within 14 days supply the firefighter concerned with a written and final FRNSW determination of the matter.
- 8.10 If the firefighter does not agree with the Commissioner's determination at subclause 8.9 then the matter may be referred to the Industrial Relations Commission (the Commission) for final determination of the matter, i.e. whether the firefighter is;
- 8.10.1 fit to perform the firefighter's ordinary duties without any requirements or restrictions; or
- 8.10.2 fit to perform the firefighter's ordinary duties with specified requirements or restrictions; or
- 8.10.3 temporarily unfit to perform the firefighter's ordinary duties but fit to perform alternative duties, either with or without specified requirements or restrictions; or
- 8.10.4 temporarily unfit to perform any FRNSW duties; or
- 8.10.5 permanently unfit to perform the firefighter's ordinary duties.
- 8.11 Where a dispute cannot be settled by conciliation, the parties agree in principle that the preferred method of adjudication will be by the Commission utilising the 'Bluescope model'. The 'Bluescope model' will

be adopted except where the Commission orders otherwise or where one of the parties elects not to use the Bluescope model and notifies the other party of this election as soon as practicable before or at the time the dispute is notified to the Commission.

- 8.12 A firefighter who is found to be temporarily unfit as per subclauses 8.6.3 or 8.6.4 or 8.10.3 or 8.10.4 will be given the appropriate period of time, as advised by the assessing medical practitioner, necessary for the firefighter to return to their ordinary duties.
- 8.13 A firefighter who fails to return to their ordinary duties within the appropriate period of time, or within six months from the date they last performed their ordinary duties or previous assessment (whichever occurs first) will be referred for medical re-assessment.
- 8.14 FRNSW will bear the cost of any assessment conducted by a medical practitioner pursuant to subclauses 8.4, 8.5 and 8.6, and of any independent assessment conducted at subclause 8.13, provided that in the case of any review conducted at subclauses 8.8 and 8.9 (only), the firefighter and FRNSW will each be responsible for the costs of their own nominated medical practitioner.
- 8.15 A firefighter who fails to comply with a reasonable direction to attend and participate in a medical assessment under this mechanism may be subject to disciplinary action.
- 8.16 A firefighter who has been determined as suffering partial and permanent incapacity may at any time elect to be assessed by the Death and Disability Superannuation Fund for total and permanent incapacity, in which case FRNSW will make all reasonable efforts to assist the Fund in concluding such assessment as soon as practicable.
- 8.17 The employment of a firefighter who is determined as suffering partial and permanent incapacity will be terminated in accordance with Clause 13, or otherwise upon such firefighter's consent or request.

Clause 9. "On Duty" Death Benefits

- 9.1 The benefits prescribed by this clause are payable from the Death and Disability Superannuation Fund.
- 9.2 In the event that an on duty injury results in the death of a firefighter for whom the Death and Disability Superannuation Fund is receiving contributions pursuant to subclause 6.1 or 6.5, a fortnightly pension equivalent to 40% of the Deemed fortnightly salary shall be paid to the deceased firefighter's spouse until that spouse's death.
- 9.3 Children's pensions shall be payable in addition to the spouse pension payable under subclause 9.2 on the same basis as in SSS, provided that such fortnightly pensions shall be set at a rate equivalent to 5% of the Deemed fortnightly salary in respect of each eligible child.
- 9.4 Pensions shall be able to be commuted on the same basis as in SSS.
- 9.5 The provisions of the other subclauses of this clause shall not apply in the event that an on duty injury results in the death of a firefighter who does not have a spouse at the time of his or her death. In such cases, the firefighter's death shall, for the purposes of this Award, be treated as if it was the result of an off duty injury and a lump sum payment shall be paid from the Death and Disability Superannuation Fund in accordance with the following table.

Age	Benefit as a multiple of the Deemed annual salary
59 and under	4.8
60	4.2
61	3.6
62	3.0
63	2.4
64	1.8
65	1.2
66	0.6

67	0.0
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- 9.6 A minimum guaranteed lump sum benefit is payable in the same circumstances as prescribed in section 31A of the *Superannuation Act* 1916, but the "minimum benefit" as defined in section 31A(7) will not apply and for the purposes of this Award the minimum benefit shall be the amount that would have been payable under subclause 9.5 had the firefighter not had a spouse at the time of the firefighter's death.
- 9.7 The fortnightly pensions payable under this clause shall continue to be adjusted throughout the life of each such pension in line with movements in the Deemed salary.
- 9.8 In the case of a retained firefighter for whom the Death and Disability Superannuation Fund is receiving contributions pursuant to subclause 6.6 and who suffers death as the result of an on duty injury and who, by virtue of his/her primary employment, was already a member of SSS, PSS, the LGSS or EISS Division D "Defined Benefit Scheme", the JPS, PCSF (or such other public sector defined benefit schemes as agreed between the parties), PBRI or who was a LGSS or EISS Division B "Retirement Scheme" member with additional benefit cover or who was a SASS member with additional benefit cover, the other benefits of this clause shall not be payable and a lump sum benefit equivalent to 20% of the Deemed annual salary shall instead be paid to the deceased retained firefighter's estate.

Clause 10. "On Duty" Total and Permanent Incapacity Benefits

- 10.1 The benefits prescribed by this clause are payable from the Death and Disability Superannuation Fund.
- 10.2 In the event that an on duty injury results in the total and permanent incapacity of a firefighter for whom the Death and Disability Superannuation Fund is receiving contributions pursuant to subclause 6.1 or 6.5, a fortnightly pension equivalent to 60% of the Deemed fortnightly salary shall be paid to the firefighter until his or her 67th birthday or death (whichever the earlier).
- 10.3 Pensions shall be able to be commuted at age 60 or any time thereafter, with the commuted lump sum to be determined in accordance with the table at subclause 9.5.
- 10.4 Where a former firefighter in receipt of a total and permanent incapacity pension suffers death prior to his or her 67th birthday then a lump sum amount determined in accordance with Clause 11 shall be paid to the deceased former firefighter's estate.
- 10.5 To avoid doubt, the lump sum payments under subclauses 10.3 and 10.4 shall be determined by the former firefighter's age at the time of commutation or death, as the case may be, and not their medical retirement
- 10.6 The fortnightly pensions payable under this clause shall continue to be adjusted throughout the life of each such pension in line with movements in the Deemed salary
- 10.7 In the case of a retained firefighter for whom the Death and Disability Superannuation Fund is receiving contributions pursuant to subclause 6.6 and who suffers total and permanent incapacity as the result of an on duty injury and who, by virtue of his/her primary employment, is already a member of SSS, PSS, the LGSS or EISS Division D "Defined Benefit Scheme", the JPS, PCSF (or such other public sector defined benefit schemes as agreed between the parties), PBRI or who is a LGSS or EISS Division B "Retirement Scheme" member with additional benefit cover or who is a SASS member with additional benefit cover, the other benefits of this clause shall not be payable and the retained firefighter shall instead be paid a lump sum benefit equivalent to 20% of the Deemed annual salary.

Clause 11. "Off Duty" Death and Total and Permanent Incapacity Benefits

- 11.1 The benefits prescribed by this clause are payable from the Death and Disability Superannuation Fund.
- 11.2 Subject to subclause 11.4, in the event that an off duty injury results in the death or total and permanent incapacity of a firefighter for whom the Death and Disability Superannuation Fund is receiving contributions pursuant to subclause 6.1 or 6.5, a lump sum payment in accordance with the

scale set out in subclause 11.3 shall be paid to the firefighter or his/her estate.

- 11.3 For the purposes of this subclause, a firefighter's age shall be his/her age at the time of his/her death or at the date that he/she ceases to be employed by FRNSW or at such earlier date as may be determined by the Trustee of the Death and Disability Superannuation Fund.

Age	Benefit as a multiple of the Deemed annual salary
59 and under	4.8
60	4.2
61	3.6
62	3.0
63	2.4
64	1.8
65	1.2
66	0.6
67	0.0

- 11.4 The actuary shall separately review and assess the cost of the benefits provided by this Award for both permanent firefighters and retained firefighters by 30 June each year. In the event that the actuary's review finds that the long-term cost of the off duty benefits provided by this Clause for either employee group exceeds both (a), the long-term contributions to be made by that employee group, and (b), 30% of the long-term combined cost of the benefits provided Clauses 9, 10 and 11 for that employee group, then the scale at subclause 11.3 shall be reduced for that employee group on 1 January next to the extent necessary to ensure that the long-term cost of the off duty benefits for that employee group no longer exceeds either (a) or (b). Once the scale is reduced for an employee group it shall remain subject to annual adjustment, both upwards and downwards as each review permits, until such time as the scale at subclause 11.3 is returned to provided that where any adjustment would be less than 5% then no adjustment will be made.
- 11.5 Retained firefighters for whom the Death and Disability Superannuation Fund is receiving contributions pursuant to subclause 6.6 and who suffer death or total incapacity as the result of an off duty injury and who, by virtue of their primary employment, are already members of SSS, PSS, the LGSS or EISS Division D "Defined Benefit Scheme", the JPS, PCSF (or such other public sector defined benefit schemes as agreed between the parties), PBRI or who are LGSS or EISS Division B "Retirement Scheme" members with additional benefit cover or who are SASS members with additional benefit cover shall not be entitled to the other benefits of this clause and a lump sum benefit equivalent to 20% of the Deemed annual salary shall instead be paid to such retained firefighters or their estate.

Clause 12. Rehabilitation and Retraining for Permanent Firefighters who suffer Partial and Permanent Incapacity

- 12.1 Every permanent firefighter who suffers partial and permanent incapacity (PPI) shall receive extensive rehabilitation/retraining with the objective placing them in a suitable position within FRNSW. All reasonable efforts will be made by FRNSW to ensure that a permanent firefighter who suffers PPI is so placed, including by identifying potential employment opportunities as soon as practicable and directing the firefighter's rehabilitation/retraining to that end, and in consultation with the firefighter concerned and the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed).
- 12.2 Where FRNSW believes that, notwithstanding every reasonable effort to the contrary, a suitable position may not be found for a permanent firefighter who, by reason of PPI, is undergoing rehabilitation/retraining, the firefighter concerned and the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed) shall be informed at the earliest possible opportunity.
- 12.3 The employment of a permanent firefighter who suffers PPI will not be terminated because of the lack of a suitable position within FRNSW without the firefighter's consent. In the event that the firefighter does not consent, an adequate opportunity will be given to the firefighter concerned and the FBEU (unless the firefighter expressly declines to agree to the FBEU being informed) to consider FRNSW's opinion that no suitable position is available and to put that opinion into dispute in accordance with the dispute resolution clause in this Award.

- 12.4 The parties agree that it is anticipated that the rehabilitation/retraining and associated forward planning associated will minimise the likelihood that any permanent firefighter who suffers PPI will be terminated because at the end of their rehabilitation/retraining, a suitable position is not available.

Clause 13. Partial and Permanent Incapacity Benefits

- 13.1 The partial and permanent incapacity benefits prescribed by this clause are provided and payable by FRNSW.
- 13.2 Subject to Clause 12, FRNSW may terminate the employment of a firefighter who suffers partial and permanent incapacity. Subject to subclause 13.3, a firefighter whose employment is terminated because the firefighter suffers partial and permanent incapacity shall be given the option of:
- 13.2.1 being paid a lump sum payment in accordance with this clause immediately upon termination; or
- 13.2.2 deferring a lump sum payment in accordance with this clause pending the determination of the firefighter's claim for a total and permanent incapacity benefit.
- 13.3 Subject to subclauses 13.2.2, a firefighter whose employment is terminated because the firefighter suffers partial and permanent incapacity shall be paid a lump sum payment in accordance with the scale set out below:

Age	Benefit as a multiple of the Deemed annual salary	
	for permanent firefighters	for retained firefighters
52 and under	3.08	0.308
53	2.81	0.281
54	2.53	0.253
55	2.25	0.225
56	1.95	0.195
57	1.65	0.165
58	1.34	0.134
59	1.02	0.102
60	0.69	0.069
61	0.35	0.035
62	0	0

Clause 14. Assessment of Entitlement to Benefits

- 14.1 Entitlement to the partial and permanent incapacity benefits provided by FRNSW pursuant to this Award shall be assessed through the mechanism at Clause 8.
- 14.2 Entitlement to receive a total and permanent incapacity or death benefit from the Death and Disability Superannuation Fund shall be assessed in accordance with relevant Commonwealth legislation and the terms of the trust deed by which the Fund operates.
- 14.3 To avoid doubt, a firefighter can receive either a total and permanent incapacity benefit, or a partial and permanent incapacity benefit, but not both. FRNSW shall advise the Death and Disability Fund the name of any firefighter who receives a partial and permanent incapacity lump sum payment, and of the amount so paid.
- 14.4 Subject to subclause 14.2, any dispute as to the entitlement to receive a benefit from the Death and Disability Superannuation Fund or any other dispute arising under or regarding the application of this Award may be referred to the Industrial Relations Commission of New South Wales for final determination.
- 14.5 To avoid doubt, the provision at subclauses 8.8, 12.1, 12.2 and 12.3 whereby the FBEU is to be informed "unless the firefighter expressly declines to agree to the FBEU being informed" is intended to allow the firefighter to seek the FBEU's advice before authorising or agreeing to any course of action or

signing any document associated with those subclauses and unless the firefighter does expressly decline to agree to the FBEU being informed then FRNSW will neither expect nor allow a firefighter to authorise or agree to any course of action nor sign any document associated with their rehabilitation/retraining or possible termination until such time as the FBEU has been notified in writing and been given adequate opportunity to confer with the firefighter.

Clause 15. Grievance Mechanism

If an issue gives rise to a dispute it shall be dealt with in accordance with the Dispute Avoidance Procedures in Clause 35 of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award.

Clause 16. Anti-Discrimination

- 16.1 It is the intention of the parties bound by this Award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 16.2 It follows that in fulfilling their obligations under Clause 15 of this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make an application to vary any provision of this Award, which by its terms or operation, has direct or indirect discriminatory effect.
- 16.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 16.4 Nothing in this clause is taken to affect any conduct or act which is specifically exempted from anti-discrimination legislation; offering or providing junior rates of pay to persons under 21 years of age; any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*; and/or a party to this Award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- 16.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

Clause 17. Area, Incidence, Duration and Parties Bound

- 17.1 This Award shall apply to all permanent firefighters and retained firefighters, as defined in Clause 3, Definitions, who are employed by FRNSW.
- 17.2 This Award shall rescind and replace the Crown Employees (Fire and Rescue NSW Firefighting Staff Death and Disability) Award 2015 published 27 March 2015 (377 I.G. 188).
- 17.3 This Award shall be binding upon the FBEU and FRNSW.
- 17.4 This Award shall take effect on and from 20 December 2017 and shall remain in force until 16 February 2020.

ANNEXURE A

Principles and Procedures of the Firefighters' Health and Fitness Program

1. Objectives

To promote the health and fitness of firefighters and to assist them in meeting the occupational requirements of their job.

To provide practical support, education and assistance to firefighters through a structured health and fitness program.

2. Benefits for the Firefighter

A compulsory health assessment as recommended for the firefighter on medical advice.

A comprehensive individual report.

Access to individual health and fitness counselling sessions.

Access to health and fitness resource materials.

Identification of negative lifestyle habits and risks.

Identification of some medical conditions.

Early intervention and management of medical conditions.

Health statistics over the lifetime of career as a firefighter.

Decreased risk of death, injury or disability from disease.

Increased ability to cope with the physical and emotional stresses of firefighter duties.

Heightened job performance and satisfaction.

3. General Benefits for the Employer

Supplementary to saving lives, improving performance and achieving compliance with Workplace Health and Safety legislation and Australian and international standards, it is anticipated that the health and fitness program will make a significant positive contribution to:

the number and cost of worker's compensation and death and disability claims.

payroll costs due to sick or injured workers.

identification of negative health factors (work-related or other) for FRNSW.

4. Outcomes

A healthy and fit workforce.

Increased capacity to cope with the physical and psychological demands of firefighting.

Decreased risk of injury, illness and disease, leading to a reduction in the number and cost of health related absences, workers compensation claims/premiums and Death and Disability claims.

Compliance with relevant Work Health and Safety legislation and Australian Standards.

Identification and analysis of trends for the purpose of developing firefighter specific health and safety interventions.

5. Focus Areas

Support Program - Introduction of a comprehensive program designed to support firefighters in their efforts to improve personal health outcomes.

Health and fitness checks - Introduction of a firefighter-specific health assessment program designed to identify significant health issues.

6. Principles

Broad consultation with all stakeholders in the development and delivery of programs is critical to success.

Collaboration with international, national and state initiatives is essential for a sustained and systematic approach to health promotion and injury/disease prevention.

Linking relevant programs and taking a comprehensive/holistic approach to health promotion and injury/disease prevention will provide maximum impact.

Long term 'capacity building' will prolong and multiply health gains for both firefighters and FRNSW.

7. Key Strategies

Infrastructure

Develop the physical and organisational infrastructure needed to implement program components. This includes support structure (eg. health/fitness and return to work professionals), related systems and procedures (e.g. data management, pathways for rehabilitation), resources (e.g. educational materials).

Education

Increase awareness and understanding of general and firefighter-specific health issues and provide the necessary skills to take ownership of personal health outcomes. Focus on physical activity, nutrition, smoking cessation, occupational and environmental exposures, and critical incident stress as they relate to firefighter performance, mental health, injury prevention and chronic disease development (cardiovascular disease, cancer, diabetes, etc.).

Environments

Create work environments that promote and encourage healthy lifestyle behaviours (a 'healthy' organisational culture). Focus on provision of healthy lifestyle education.

Monitoring/Evaluation

Monitor health and fitness outcomes over time to determine efficacy of programs. Including broad surveys of lifestyle changes (e.g. physical activity patterns), monitoring of injury and illness trends, participation rates for health and fitness activities, and periodic health assessment and 'Return to Work' program outcomes.

8. Health Checks and Fitness Drills

Fitness Drills

- (a) The health and fitness program will include a compulsory fitness drill, commencing in January 2018, for all firefighters who may be called upon to perform operational firefighting duties in order to enhance their personal understanding of their functional capacity. The compulsory fitness drill will be subject to negotiation and agreement or, in the absence of agreement, determination by the Industrial Relations Commission (and the status quo will apply in the interim), but will be undertaken annually, locally and when on duty by not less than two firefighters utilising readily available operational equipment.
- (b) The annual fitness drill for retained firefighters will be considered and paid for as if it is a regular drill provided that attendance at the fitness drill will not count towards the 75% regular drill attendance requirement of subclause 28.1.2 and will be additional to the two regular drills per station, per month provision of subclause 6.5.2.2.

Health Checks

- (c) The health and fitness program will also include regular health checks for firefighters by the firefighter's nominated medical practitioner in accordance with a health check pack, which will be subject to negotiation and in the event that the parties do not agree, determination by the Industrial Relations Commission, which must occur prior to 31 March 2018. Following implementation, the health check pack will remain subject to negotiation and agreement and it will be open to either party to refer any matter that is not agreed to the Industrial Relations Commission for determination and the status quo will apply in the interim. The health check pack will include the inherent requirements of the firefighter's ordinary duties and the firefighter's typical work environment(s), a template medical report and the tests to be conducted as part of the health check.
- (d) The implementation of the health and fitness checks will help to ensure:
- that firefighters are medically and physically capable of performing their required duties;
 - that the risk of injury or illness is reduced through constant monitoring of health trends and the implementation of focussed health interventions;
 - that FRNSW satisfies its statutory obligations under all relevant legislation;
 - the provision of current and accurate health/medical information for the purposes of resource allocation and planning.
- (e) The health checks will include:
- Medical examination (primary focus on cardiovascular, respiratory and musculoskeletal systems);
 - Pathology testing (general health markers; e.g. lipid profile, blood glucose level);
 - Urinalysis;
 - Twelve lead ECG;
 - Cardiac Risk Profile (risk score based on Framingham study);
 - Spirometry (lung function), if recommended by the firefighter's nominated medical practitioner;
 - Vision;
 - Audiometry (hearing), if recommended by the firefighter's nominated medical practitioner;
 - Other medical assessments as indicated.
- (f) The health checks, which will commence in July 2018, will be arranged and undertaken by each firefighter within the twelve month period following their fourth anniversary of employment, and again within the twelve month period following their ninth anniversary of employment, and so on, so that health checks are undertaken at least once every five years up until the age of 60, at which age health checks will then be arranged and undertaken by each firefighter no more than three years after their last health check until the age of 67, at which age health checks will then be arranged and undertaken by each firefighter annually.
- (g) The pathology tests, urinalysis and 12 lead ECG testing will all be undertaken on referral by the independent occupational physician prior to the health check, which will then be conducted by a local medical practitioner nominated by the firefighter having regard to the most reasonable option in terms of practicality and cost. A nominated medical practitioner who recommends spirometry and/or audiometry testing, but is unable to conduct such test(s), may refer the firefighter. FRNSW will ensure that the

health checks (including spirometry and audiometry referrals) and any consequent referrals required by FRNSW will be arranged and conducted without any cost to the firefighter.

- (h) Firefighters who attend a health check while off duty will be compensated for their attendance and travel expenses by way of a payment equivalent to 4% of the Award's deemed fortnightly salary for each such attendance, and unless transport is provided by FRNSW, payment at the Official Business rate for the actual return distance necessarily and reasonably travelled between the firefighter's normal residence or place of work and the location(s) of each health check.
- (i) The firefighter's nominated medical practitioner will forward their report on the firefighter's health check, together with the results, to both the firefighter and the independent occupational physician nominated by FRNSW. The independent occupational physician will in turn review the firefighter's health check results against the firefighters' health and fitness standard and the nominated medical practitioner's report and advise FRNSW that the firefighter is:
 - fit to perform the firefighter's ordinary duties without any requirements or restrictions; or
 - fit to perform the firefighter's ordinary duties with specified requirements or restrictions; or
 - temporarily unfit to perform the firefighter's ordinary duties but fit to perform alternative duties, either with or without specified requirements or restrictions; or
 - temporarily unfit to perform any FRNSW duties; or
 - permanently unfit to perform the firefighter's ordinary duties.
- (j) The independent occupational physician will provide no other information or advice to FRNSW concerning the firefighter's health and fitness without the firefighter's consent apart from such information regarding the specified requirements or restrictions as, in the professional opinion of the independent occupational physician, is necessary for the safe management of the firefighter. If the firefighter disagrees with the independent occupational physician's advice to FRNSW, then it will be open to the firefighter to seek a determination of their fitness for duty under Clause 8.
- (k) Where a medical issue is identified during a health check, the health risk will be assessed against the inherent requirements of the firefighter's job (safety critical).
- (l) The results of the health checks will be collected and collated by an agreed independent third party and provided to both parties to allow them to assess and respond to firefighters' health risks.
- (m) FRNSW will not cover the cost of treatment for non-compensable injuries or illness. The treatment cost associated with compensable injuries or illness will be addressed through the Workers' Compensation system.

P. KITE, Chief Commissioner.
P. J. NEWALL, Commissioner.
J. MURPHY, Commissioner.

(1710)

SERIAL C8800

CROWN EMPLOYEES (FIRE AND RESCUE NSW FIREFIGHTING STAFF DEATH AND DISABILITY) AWARD 2017

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Fire and Rescue NSW and New South Wales Fire Brigade Employees Union, Industrial Organisation of Employees.

(Case Nos. 2016/35190 & 2017/125817)

Before Commissioner Murphy

31 May 2018

VARIATION

1. Delete paragraph 4.2.4, of subclause 4.2 in clause 4, Health and Fitness Program of the award made on 20 December 2017 and insert in lieu thereof the following:

4.2.4 the health and fitness standards will not distinguish between ranks and will apply to all firefighters. Where a firefighter is found to have a medical issue, the health risk will be assessed against the inherent requirements of that firefighter's ordinary duties; and

2. Delete the table in subclause 9.5 of clause 9, "On Duty" Death Benefits and insert in lieu thereof the following:

Age	Benefit as a multiple of the Deemed annual salary
59 and under	4.8
60	4.2
61	3.6
62	3.0
63	2.4
64	1.8
65	1.2
66	0.6
67	0.0

3. Delete the table in subclause 11.3 of clause 11, "Off Duty" Death and Total and Permanent Incapacity Benefits and insert in lieu thereof the following:

Age	Benefit as a multiple of the Deemed annual salary
59 and under	4.8
60	4.2
61	3.6
62	3.0
63	2.4
64	1.8
65	1.2
66	0.6
67	0.0

4. Delete the table in subclause 13.3 of clause 13, Partial and Permanent Incapacity Benefits and insert in lieu thereof the following:

Age	Benefit as a multiple of the Deemed annual salary	
	for permanent firefighters	for retained firefighters
52 and under	3.08	0.308
53	2.81	0.281
54	2.53	0.253
55	2.25	0.225
56	1.95	0.195
57	1.65	0.165
58	1.34	0.134
59	1.02	0.102
60	0.69	0.069
61	0.35	0.035
62	0	0

5. This variation will take effect on and from 30 May 2018.

J. MURPHY, Commissioner.

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(316)

SERIAL C8792**CROWN EMPLOYEES (FIRE AND RESCUE NSW PERMANENT
FIREFIGHTING STAFF) AWARD 2017**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Fire and Rescue NSW.

(Case No. 2018/34418)

Before Chief Commissioner Kite

2 February 2018

VARIATION

1. Delete clause 14, Operational Support Positions of the award published 6 October 2017 (381 I.G. 696) and insert in lieu thereof the following:

14. Operational Support Positions**Establishment of Operational Support Positions**

- 14.1 Operational Support positions shall be identified and established as such by the Commissioner.
- 14.2 The format and content of each Position Description referred to in subclause 14.4 shall be determined by the Commissioner, but shall include, for each position:
 - 14.2.1 Title;
 - 14.2.2 Statement of duties;
 - 14.2.3 Essential qualifications, which shall for all Operational Support Level 1 and Level 2 positions include at least forty eight (48) months service from the date of commencement as a Recruit Firefighter;
 - 14.2.4 Hours of work, specifying which roster is to be worked pursuant to Clause 8 of this Award; and
 - 14.2.5 Operational Support classification, either Level 1, Level 2, Inspector or Inspector and Level 3, which shall be determined by the Commissioner following consultation with the Union.
- 14.3 A copy of each proposed new or varied Position Description will be forwarded to the Union which may elect to provide a response within 14 days, and the Commissioner shall take any response into account before making a determination. Subject to any orders of the Industrial Relations Commission, a new or varied Position Description will take effect 7 days following written notification to the Union of the Commissioner's determination.
- 14.4 A register of established Operational Support Position Descriptions shall be maintained by both parties. Once established, Position Descriptions may only be varied by the Commissioner, subject to 14.2 and 14.3.

General Conditions for Operational Support Positions

- 14.5 Appointment to Operational Support positions will be determined by merit selection and will be subject to the occurrence of a vacancy.
 - 14.5.1 Applications for Operational Support positions shall be called for from eligible employees in Commissioner's Orders, with the closing date of applications to follow four weeks thereafter.

- 14.5.2 In the event that no eligible employees apply for a ComSafe (only) Operational Support Level 1 or Level 2 position at sub-clause 14.5.1, or that the merit selection process finds those who did apply unsuitable for the ComSafe position in question, applications shall again be called for from eligible employees and, if the Commissioner elects, from all Retained Firefighters with at least 48 months service with Fire and Rescue NSW as a Retained Firefighter as of the closing date for applications in Commissioner's Orders, with the closing date of applications to follow four weeks thereafter.
- 14.6 Subject to subclause 14.11, the rates of pay for employees occupying Operational Support positions are as specified in Table 2 of Part C, Monetary Rates.
- 14.7 Unless expressly provided elsewhere within this Award, the general conditions of employment for occupants of Operational Support positions shall be the same as those applying to Operational Firefighters generally pursuant to subclauses 1.4 and 1.5 of this Award.
- 14.8 Time spent in an Operational Support position shall count for the minimum periods of service required by Clause 13 Progression and Promotion.
- 14.9 Occupants of Operational Support positions who are temporarily directed to undertake operational firefighting duties and/or attend an incident in the capacity of their substantive operational rank, not their Operational Support position, shall continue to be paid at their Operational Support position's rate of pay.
- 14.9a Occupants of Operational Support positions who request and who are permitted to temporarily resume operational firefighting duties shall revert to, and be paid at the rate of, their substantive operational rank for the duration of such resumption. Provided that this subclause shall not apply in the case of interstate and international deployments pursuant to Clause 12a.
- 14.10
- 14.10.1 Subject to subclause 14.10.2, the occupants of Operational Support Level 1, Level 2, Level 2a, Level 3 and Level 3a positions may with twenty eight days notice elect to relinquish their Operational Support position and resume operational firefighting duties at their substantive rank.
- 14.10.2 An employee who successfully applied for an Operational Support Level 1 or Level 2 position whilst employed as a Retained Firefighter pursuant to subclause 14.5.2 will be required to serve in that Operational Support position for a minimum period of three years during which the provisions of subclause 28.3.5 shall not apply, provided further that transfer to operational firefighting duties shall be subject to the satisfactory completion of the training and/or training competencies specified for progression to Qualified Firefighter.
- 14.11 Urban Search and Rescue Training (only) may be delivered by "casual" instructors, who will be paid at the Operational Support Level 2 rate of pay (plus applicable allowances) while performing USAR instructor duties and at their substantive rank's rate of pay (plus applicable allowances) at all other times.
- 14.12 The classification of Operational Support Inspector shall be restricted to applications from employees holding the rank of Leading Station Officer or Inspector, or otherwise in accordance with subclause 28.7.4 unless the Commissioner decides to advertise a particular position as both an Operational Support Inspector and Operational Support Level 3 position, in which case employees with at least 48 months service and holding the rank of Qualified Firefighter, Senior Firefighter, Leading Firefighter or Station Officer shall also be eligible to apply and shall, if successful, be appointed to the classification of Operational Support Level 3 and paid at the Operational Support Inspector rate of pay.
- 14.13 The classifications of Operational Support Levels 2 and 3 were reclassified for occupants of these positions on 14 November 2014 (only) as Operational Support Levels 2a and 3a.

- 14.14 The occupants of Operational Support Level 2a positions shall remain in place and continue to receive the Operational Support Level 2a rate of pay specified at Table 2 of Part C unless and until:
- 14.14.1 they voluntarily cease to occupy that position; or
 - 14.14.2 they are promoted to either Station Officer or Inspector and elect to remain in place, in which case they shall be reclassified as, and paid at the rate of, Operational Support Level 2; or
 - 14.14.3 they are demoted or cease employment.
- 14.15 The occupants of Operational Support Level 3a positions shall remain in place and continue to receive the Operational Support Level 3a rates of pay specified at Table 2 of Part C unless and until:
- 14.15.1 they voluntarily cease to occupy that position; or
 - 14.15.2 they are promoted to Inspector and elect to remain in place, in which case they shall be reclassified as, and paid at the rate of, Operational Support Inspector; or
 - 14.15.3 they are demoted or cease employment.
- 14.16 The occupant of an Operational Support Level 2a or Level 3a position who involuntarily ceases to hold that position because the position is deleted or because its Position Description is varied to the extent that the position is effectively deleted, shall continue to receive the Operational Support Level 2a or Level 3a rate of pay specified at Table 2 of Part C until the expiration of 12 months, or until they otherwise become entitled to a higher rate of pay, or until they cease employment, whichever occurs first.
- 14.17 Employees with at least 48 months service who otherwise satisfy the requirements of Clause 7 may perform higher duties in any Operational Support Level 1 or Level 2 position, and in any Operational Support position the Commissioner decides is both an Operational Support Inspector and Operational Support Level 3 position.
- Ad Hoc ComSafe duties
- 14.18 Off duty employees who are not occupying an Operational Support position in ComSafe and who elect to perform ComSafe duties shall be paid the hourly rate set at Item 20 of Table 3 of Part C of this Award. It is expressly provided that an off duty employee who is not occupying an Operational Support position in ComSafe cannot be directed to perform ComSafe duties.
- 14.19 The hourly rate prescribed at subclause 14.18 is an all inclusive rate and, notwithstanding anything else prescribed in this Award, employees receiving such rate shall:
- 14.19.1 only be paid for the time actually worked, subject to a minimum payment equivalent to three hours pay on each occasion and to continuous payment for work performed on any calendar day;
 - 14.19.2 be paid the accommodation allowance set at Item 7 of Table 4 of Part C for each day that the distance travelled between the employee's residence and the furthest location where the work is performed exceeds 100kms and the employee resides away from home (evidence of which may be required prior to payment), and shall not otherwise be entitled to payment or compensation for travelling time or travelling costs or meals and/or accommodation in connection with the work performed;
 - 14.19.3 not be entitled to the payment of overtime in connection with the work performed.

2. Insert after item 19 in Table 3, of Part C, Monetary Rates, the following new item 20:

20	14.18	ComSafe duties	\$ per hour	77.16	79.09	81.07
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3. This variation shall take effect on and from 15 November 2017.

P. KITE, Chief Commissioner.

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(700)

SERIAL C8793**CROWN EMPLOYEES (FIRE AND RESCUE NSW RETAINED
FIREFIGHTING STAFF) AWARD 2017**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Fire and Rescue NSW.

(Case No. 2018/34462)

Before Chief Commissioner Kite

2 February 2018

VARIATION

1. Delete subclause 6.5, Calculation of Payment for Duties Performed of clause 6, Rates of Pay and Allowances of the award published 6 October 2017 (381 I.G. 780) and insert in lieu thereof the following:

- 6.5 Calculation of Payment for Duties Performed

- 6.5.1 Employees shall be paid, subject to the provisions of subclauses 6.5.2 and 6.5.3, for the total period of time spent performing duties, which shall be calculated as follows:

- 6.5.1.1 Attendance at Scheduled Weekend Training courses - the period of attendance shall be equivalent to the scheduled training hours.

- 6.5.1.2 Major Emergencies - Periods of attendance for the purpose of calculating payment shall be calculated having regard to the provisions of subclause 29.5.

- 6.5.1.3 Attendance at Zone Conferences - the period of attendance shall be equivalent to the scheduled hours of the conference.

- 6.5.1.4 Royal Easter Show and ComSafe - periods of attendance for the purpose of calculating payment shall be calculated having regard to the provisions of subclause 6.8.2.

- 6.5.1.5 In all other instances - employees shall be paid for the period that elapses from the time the employee signed on in the occurrence book at the employee's station, until the time such employee signs off in the occurrence book at the employee's station.

- 6.5.2 The minimum periods of payment shall be as follows:

- 6.5.2.1 Attendance at an incident, hazard reduction, and unit training - a minimum payment of one hour. All subsequent time thereafter shall be paid to the half hour.

- 6.5.2.2 Regular drills (of which there shall be two per station, per month) - a minimum payment of two hours.

- 6.5.2.3 All other authorised duties (excepting Travelling Time) - a minimum payment of one hour. All subsequent time to be paid to the minute.

- 6.5.2.4 Travelling time - where an employee is entitled to travelling time in terms of this Award, all such time shall be paid to the minute.

- 6.5.2.5 Relief Duties - where an employee performs relief duties in accordance with subclause 6.7 for three hours or less, such employee shall receive a minimum

- payment of three hours for each such relief. All subsequent time thereafter shall be paid to the minute.
- 6.5.2.6 Attendance at scheduled weekend training courses and zone conferences - a minimum payment of eight hours per day spent in attendance.
- 6.5.2.7 Royal Easter Show and ComSafe - where an employee performs duties in accordance with subclauses 6.8 or 6.8a for three hours or less, such employee shall receive a minimum payment of three hours. All subsequent time thereafter shall be paid to the minute.
- 6.5.2.8 Except in the case of regular drills and authorised duties, where the purpose for which an employee was required to report for duty is completed, the employee shall be released.
- 6.5.3 An employee who attends either the station or the incident within 30 minutes of notification shall for each such attendance be entitled to payment pursuant to subclause 6.5.2.1 unless the employee was already performing duty at the time of the notification (for example, the employee had returned from a previous incident but had not signed off in the occurrence book prior to notification of the subsequent incident).
- 6.5.4 If the non-availability of retained firefighting staff at any brigade requires the Department to maintain minimum staffing with either a permanent firefighter, or a retained firefighter from another station pursuant to subclause 6.8, then only those employees who had declared their availability shall be responded until such time as the minimum staffing by that brigade's employees is restored and the permanent firefighter or retained firefighter performing relief duties has been released, whereupon the ordinary notification and response of employees attached to the brigade shall resume.
2. Delete subclause 6.8, Attendance at the Royal Easter Show of clause 6, Rates of Pay and Allowances and insert in lieu thereof the following:
- 6.8 Attendance at the Royal Easter Show
- 6.8.1 The following hourly rates shall be paid to employees working at the Royal Easter Show:
- 6.8.1.1 For Recruit Firefighter and Firefighter, the rate prescribed at Entitlement Code "RASf" of Table 2 of Part B of this Award.
- 6.8.1.2 For Deputy Captain, the rate prescribed at Entitlement Code "RASDC" of Table 2 of Part B of this Award.
- 6.8.1.3 For Captain, rate prescribed at Entitlement Code "RASC" of Table 2 of Part B of this Award.
- 6.8a Performance of ComSafe duties
- 6.8a.1 Employees who perform Comsafe duties shall be paid the hourly rate prescribed at Entitlement Code "CSD" of Table 2 of Part B of this Award.
- 6.8.2 The rates prescribed in subclauses 6.8.1 and 6.8a.1 are all incidence of employment rates and, notwithstanding anything else prescribed in this Award, employees receiving such rates shall:
- 6.8.2.1 only be entitled to be paid for the hours actually worked, subject to continuous payment for work performed on any calendar day. Provided that, if an employee cannot attend for duty at the Royal Easter Show (only) due to illness or incapacity and provides a medical certificate pursuant to subclause 16.3 then the employee shall be entitled to be paid for the hours that would have otherwise been worked.

- 6.8.2.2 not be entitled to any payment or compensation for travelling time or travelling costs in connection with the work performed;
 - 6.8.2.3 not be entitled to any payment or compensation with respect to either meals (except as provided for by subclause 6.8.4) and/or accommodation (except as provided for by subclause 6.8.2.6) in connection with the work performed;
 - 6.8.2.4 not be entitled to the payment of overtime in connection with the work performed;
 - 6.8.2.5 not be entitled to payment of downtime in connection with attendance at the Royal Easter Show;
 - 6.8.2.6 be paid the accommodation allowance set at Item 4 of Table 5 of Part B for each day that the distance travelled between the employee’s residence and the furthest location where the ComSafe work is performed exceeds 100 kms and the employee resides away from home (evidence of which may be required prior to payment).
- 6.8.3 All payments made under this subclause shall count for the purpose of any paid leave.
- 6.8.4 In the event that the employees attend an incident while working at the Royal Easter Show such employees shall be entitled to the provisions of Clause 8 - Meals and Refreshments.
- 6.8.5 Attendance at the Royal Easter Show and/or the performance of ComSafe duties shall be treated as a period of authorised absence for the purposes of subclause 28.2.
- 6.8.6 It is expressly provided that attendance at the Royal Easter Show and/or the performance of ComSafe duties are not performed as Authorised Duties.

3. Insert before clause 6.9 in Table 3, of Part C, Monetary Rates, the following new clause 6.8a.1:

6.8a.1	ComSafe duties	per hour	CSD	77.16	79.09	81.07
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4. This variation shall take effect on and from 2 February 2018.

P. KITE, Chief Commissioner.

(1307)

SERIAL C8797**CROWN EMPLOYEES (NSW POLICE FORCE POLICE BAND)
AWARD 2018**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Commissioner of Police.

(Case No. 2018/144141)

Before Chief Commissioner Kite

10 May 2018

AWARD**PART A**

Clause No. Subject Matter

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PART B**MONETARY RATES**

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PART A**SECTION 1 - FRAMEWORK****1. Title**

This award shall be known as the Crown Employees (NSW Police Force Police Band) Award 2018.

2. Definitions

- (a) "Officer" means and includes all persons employed as Musicians within the Police Band by the NSW Police Force who, as at 28 July 1997, were occupying one of such positions or who, after that date, are appointed to such a position.
- (b) "Commissioner" means the Commissioner of Police in New South Wales or any person acting in such position from time to time.

- (c) "Service" means continuous service. Future appointees shall be deemed to have the years of service indicated by the rates of pay at which they are appointed.
- (d) "Promotional position" means the positions of Senior Musician (Police Band).
- (e) "the Police Band" when used in the appropriate context may refer to all positions within the Police Band including promotional positions.
- (f) "Association" means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.
- (g) "Award" means the Crown Employees (NSW Police Force Police Band) Award 2018.
- (h) "Domestic Violence" means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

3. Disputes/Grievance Settlement Procedure

- 3.1 The resolution of or settlement of disputes and/or individual grievances of officers arising throughout the life of this award shall be dealt with in the manner prescribed hereunder:
- 3.1.1 Where a dispute/grievance arises at a particular work location, discussions including the remedy sought shall be held as soon as possible, and in any event within two working days of such notification, between the officer/s concerned and the immediate supervising officer, or other appropriate officer in the case of a grievance.
 - 3.1.2 Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the *Anti-Discrimination Act 1977*) that makes it impractical for the officer to advise their immediate supervising officer the notification may occur to the next appropriate level of management, including where required, to the Commissioner or delegate.
 - 3.1.3 Failing resolution of the issue further discussions shall take place as soon as possible, and in any event within two working days of such failure, between the individual officer/s and at their request the local delegate or workplace representative and the Commander, NSW Police Force Band or nominee.
 - 3.1.4 If the dispute/grievance remains unresolved the employee/s, local delegate or workplace representative or Commander, NSW Police Force Band may refer the matter to the Director, Public Affairs for discussion between the Director or delegate and the Association. Those discussions should take place as soon as possible and in any event within two working days of such referral.
 - 3.1.5 If the dispute is not resolved at that stage the matter is to be referred to the Employee Relations Unit of the NSW Police Force who will assume responsibility for liaising with members of the Senior Executive Service of the NSW Police Force and the Association and advise of the final position of the Commissioner of Police, including reasons for not implementing the remedy sought if such is the case.
 - 3.1.6 The matter will only be referred to the Industrial Relations Commission of NSW if:
 - (i) The final decision of the Commissioner of Police does not resolve the dispute/grievance; or
 - (ii) The final position of the Commissioner of Police is not given within five working days from the date of referral of the matter to the Employee Relations Unit, or other agreed time frame.

- 3.1.7 At no stage during a dispute that specifically relates to any industrial agreement in force may any stoppage of work occur or any form of ban or limitation be imposed.
- 3.1.8 In cases where a dispute is premised on an issue of safety, consultation between the Association and the Employee Relations Unit should be expedited. The status quo shall remain until such matter is resolved.
- 3.1.9 The whole concept of a dispute settlement procedure is to resolve disputation at the level as close as possible to the source of disputation.
- 3.1.10 This procedure has been adopted to promote full and open consultation at each step of the process in an effort to promote and preserve harmonious industrial relations.
- 3.1.11 Throughout each stage parties involved should ensure that the relevant facts are clearly identified and documented. Parties should also be committed to following the procedure with as much timeliness as possible.

4. Introduction of New Technology

The parties agree to co-operate fully in the implementation and/or trialling of new technology which may become available to assist in the provision of band services.

5. Introduction of Change

The parties agree to co-operate fully through the Police Band Consultative Committee in the implementation and/or trialling of change in respect of the employment or organisation of the Police Band with the objective of ensuring the most efficient, effective and productive use of resources.

SECTION 2 - SALARIES

6. Salaries

An officer shall, according to the position held and years of service, be paid an annual salary of not less than the amounts as set out in Table 1 - Salaries, of Part B, Monetary Rates.

7. Salary Packaging Arrangements, Including Salary Sacrifice to Superannuation

- 7.1 The entitlement to salary package in accordance with this clause is available to all officers covered by this award.
- 7.2 For the purpose of this clause:
- (a) "salary" means the salary or rate of pay prescribed for the officer's classification by clause 6, Salaries, or Part B of this Award, and any other payment that can be salary packaged in accordance with Australian taxation law.
 - (b) "post compulsory deduction salary" means the amount of salary available to be packaged after payroll deductions required by legislation or order have been taken into account. Such payroll deductions may include, but are not limited to, taxes, compulsory superannuation payments, HECS-HELP payments, child support payments, and judgement debtor/garnishee orders.
- 7.3 By mutual agreement with the Commissioner, an officer may elect to package a part or all of their post compulsory deduction salary in order to obtain:
- (a) a benefit or benefits selected from those approved by the Commissioner, and
 - (b) an amount equal to the difference between the officer's salary, and the amount specified by the Commissioner for the benefit provided to or in respect of the officer in accordance with such agreement.

- 7.4 An election to salary package must be made prior to the commencement of the period of service to which the earnings relate.
- 7.5 The agreement shall be known as a Salary Packaging Agreement.
- 7.6 Except in accordance with subclause 7.7, a Salary Packaging Agreement shall be recorded in writing and shall be for a period of time as mutually agreed between the officer and the Commissioner at the time of signing the Salary Packaging Agreement.
- 7.7 Where an officer makes an election to sacrifice a part or all of their post compulsory deduction salary as additional employer superannuation contributions, the officer may elect to have the amount sacrificed:
- (a) paid into the superannuation fund established under the *First State Superannuation Act 1992*; or
 - (b) where the employer is making compulsory employer superannuation contributions to another complying superannuation fund, paid into the same complying fund; or
 - (c) subject to NSW Police Force agreement, paid into another complying superannuation fund.
- 7.8 Where the officer makes an election to salary sacrifice, the employer shall pay the amount of post compulsory deduction salary, the subject of election, to the relevant superannuation fund.
- 7.9 Where the officer makes an election to salary package and where the officer is a member of a superannuation scheme established under the:
- (a) *Police Regulation (Superannuation) Act 1906*;
 - (b) *Superannuation Act 1916*;
 - (c) *State Authorities Superannuation Act 1987*; or
 - (d) *State Authorities Non-contributory Superannuation Act 1987*,
- the NSW Police Force must ensure that the officer's superable salary for the purposes of the above Acts, as notified to the SAS Trustee Corporation, is calculated as if the Salary Packaging Agreement had not been entered into.
- 7.10 Where the officer makes an election to salary package, and where the officer is a member of a superannuation fund other than a fund established legislation listed in subclause 7.9 of this clause, the NSW Police Force must continue to base contributions to that fund on the salary payable as if the Salary Packaging Agreement had not been entered into. This clause applies even though the superannuation contributions made by the NSW Police Force may be in excess of superannuation guarantee requirements after the salary packaging is implemented.
- 7.11 Where the officer makes an election to salary package:
- (a) subject to Australian Taxation law, the amount of salary packaged will reduce the salary subject to appropriate PAYG taxation deductions by the amount packaged; and
 - (a) any allowance, penalty rate, payment for unused leave entitlements, weekly worker's compensation or other payment, other than any payments for leave taken in service, to which an officer is entitled under this Award or any applicable Award, Act or statute which is expressed to be determined by reference to the officer's rate of pay, shall be calculated by reference to the rate which would have applied to the officer under clause 6, Salaries, or Part B of this Award if the Salary Packaging Agreement had not been entered into.
- 7.12 The NSW Police Force may vary the range and type of benefits available from time to time following discussion with the Association. Such variations shall apply to any existing or future Salary Packaging Agreement from date of such variation.

- 7.13 The NSW Police Force will determine from time to time the value of the benefits provided following discussions with the Association. Such variations shall apply to any existing or future Salary Packaging Agreement from the date of such variation. In this circumstance, the officer may elect to terminate the Salary Packaging Agreement.

8. Future Adjustments

Should there be a variation to the Crown Employees (Public Sector - Salaries 2017) Award, or an award replacing it during the term of this award by way of salary increase, this award shall be varied to give effect to any such salary increase, from the operative date of the variation of the former award or replacement award.

SECTION 3 - ATTENDANCE/HOURS OF WORK

9. Hours

9.1 General

- 9.1.1 Except as provided in clause 10, Flexible Rosters of this award, the ordinary hours of duty for officers shall be an average of 38 per week or 76 per fortnight and shall be worked from Sunday to Saturday inclusive.

The hourly rate for officers shall be calculated on the basis of 1/38th.

- 9.1.2 Ordinary hours shall not exceed 8 per day and shall be worked continuously from starting time except as provided in clause 11, Meals of this award. Officers shall not be rostered to work broken shifts except in the public interest or on reasonable request by the Commander, NSW Police Force Band.

- 9.1.3 Rostered shifts of 8 hours may be arranged on the basis of 5 rostered shifts and 2 rest days in any period of a week or 10 rostered shifts and 4 rest days in any period of 2 weeks. An officer's roster shall be arranged, as far as practicable, to allow 1 rest day on each alternate Sunday with 2 rest days comprising 1 weekend in 4.

- 9.1.4 The parties agree that changes may be made in a roster in emergent circumstances with reasonable notice and in any event with notice of at least 24 hours.

9.2 38 Hour Week Operation

- 9.2.1 The hours of duty shall be an average of 38 per week on the basis of accruing 1 day off per 20 day cycle to be taken as a block of days except where a rostered day off may be taken at the discretion of the Commissioner of Police.

- 9.2.2 The maximum accrual of days off shall be 12 working days per annum on the basis of no accrual of the 13th day during the first 4 weeks of annual leave. In order to meet NSW Police Force requirements and in the event of unforeseen circumstances arising, the day off may be deferred and taken at a suitable later time.

- 9.2.3 All paid ordinary working time and paid leave of absence goes towards the accrual of time for the rostered day off. However, where extended long service, sick leave or workers' compensation paid absences occur accrual only applies to the extent necessary to enable the rostered day off immediately following resumption to be allowed.

- 9.2.4 There will be mutual co-operation at all levels to ensure that the efficiency of the Band is maintained at the pre-existing standards without additional overtime being worked.

- 9.2.5 There shall be no payment of higher duties allowances arising from the rostered day off. There shall be no eligibility for sick leave when on rostered leave arising from the 38 hour week.

- 9.2.6 Wages and salaries will be paid into banking or other accounts.

9.2.7 All restrictive work practices are to be eliminated.

10. Flexible Rosters

- 10.1 Notwithstanding clause 9, Hours of this award the parties agree that where the majority of officers agree and the Commander, NSW Police Force Band agrees, a trial of a flexible roster system may be implemented. Such a trial shall be for a period of up to 6 months in the first instance, following which the parties may agree to the adoption of the flexible roster as an ongoing arrangement.
- 10.2 The conditions of any such trial shall be in accordance with the Parameters for Flexible Rostering, Administrative Officers and Ministerial Employees, etc.

11. Meals

- 11.1 An officer shall be allowed an unbroken period of not less than 30 minutes in the aggregate each shift for meals. Such time shall not be counted as time worked.
- 11.2 An officer shall not normally be required to work for more than 5 hours without a meal break.
- 11.3 An officer who actually incurs expense in purchasing a meal and has worked more than one half hour beyond the completion of a rostered shift shall be entitled to be compensated at the rates for the payment of meal allowances prescribed from time to time by the NSW Police Force. Provided that where actual expenditure exceeds the rates prescribed an officer shall be entitled to a refund of amounts actually and reasonably incurred upon production of receipts.

12. Lactation Breaks

- 12.1 This clause applies to officers who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.
- 12.2 A full time officer or a part time officer working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.
- 12.3 A part time officer working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- 12.4 A flexible approach to lactation breaks can be taken by mutual agreement between a officer and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the officer.
- 12.5 The Commissioner shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- 12.6 Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and officer will take place to attempt to identify reasonable alternative arrangements for the officer's lactation needs.
- 12.7 Officers experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- 12.8 Officers needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 30, or access to flexible working hours provided in clauses 9, Hours and 10, Flexible Rosters of this award, where applicable.

13. Public Holidays

- 13.1 An officer required to work on the days on which New Year's Day, Anniversary Day, Good Friday, Easter Saturday, Easter Sunday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day and Boxing Day are observed and special days appointed by proclamation as public holidays throughout the State, shall be paid at the rate of time and one half (i.e., half time in addition to the ordinary rate).
- 13.2 An officer rostered to take a public holiday as a rest day who is subsequently required to work a shift on that public holiday and who is not notified of such change of rostered duty at least 24 hours before the commencement of the altered shift, shall be paid for the performance of duty on that shift in lieu of being granted an alternate rest day at the overtime rate specified in subclause 17.1 of clause 17, Overtime.
- 13.3 For the purposes of this clause the ordinary rate excludes the 10% loading as defined in Table 1 - Salaries, of Part B, Monetary Rates.

SECTION 4 - ALLOWANCES AND OVERTIME

14. Higher Duties Allowance

- 14.1 Officers who provide relief in positions which attract a higher rate of pay will receive payment of an allowance in compensation for the period of relief provided, subject to the following conditions:
- 14.1.1 the relieving officer performs all of the duties and assumes all of the responsibilities of the higher position.
- 14.1.2 the period of relief is not less than 5 consecutive working days in duration.
- 14.1.3 where an officer performing higher duties is required to work overtime, payment will be made at the higher rate.
- 14.1.4 the supervising officer will be responsible for substantiating that payment of the allowance is justified.
- 14.1.5 there shall be no payment of higher duties allowances arising from the operation of the 38 hour week.

15. Doubling Allowance

- 15.1 Officers required to "double" on any musical instrument shall be paid an allowance per annum as set out in Item 1 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates. From 1 July 2008, the allowance shall be adjusted in accordance with the percentage increase applying to salary rates.
- 15.2 The doubling allowance shall be disregarded in computing the 10% loading prescribed in Table 1 - Salaries, of Part B, Monetary Rates, and payments for overtime worked.

16. Shift Work Allowance

- 16.1 An officer who works the full shift of not less than 8 hours shall be paid, in addition for each shift actually worked, a shift allowance as set out in Item 2 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.
- 16.2 It is agreed that shift allowances shall be subject to variation only to the extent of any variation in the same rate prescribed by the Crown Employees (Police Officers - 2017) Award from time to time.

17. Overtime

- 17.1 Subject to subclause 18.2 of clause 18, Recall to Duty, the NSW Police Force may require an officer to work reasonable overtime at overtime rates.
- 17.2 An officer may refuse to work overtime in circumstances where the working of such overtime would result in the officer working hours which are unreasonable. What is unreasonable or otherwise will be determined having regard to:
- (i) any risk to officer health and safety;
 - (ii) the officer's personal circumstances including any family responsibilities;
 - (iii) the needs of the workplace or enterprise;
 - (iv) the notice (if any) given by the Commander, NSW Police Force Band of the overtime and by the officer of his or her intention to refuse it; and
 - (v) any other relevant matter.
- 17.3 All time worked outside the ordinary hours of work prescribed by clause 10, Hours of this award, shall be paid at the rate of time and one half for the first two hours and double time thereafter, such double time to continue until the completion of the overtime work. Provided that an officer who works overtime on a public holiday as prescribed in clause 24, Public Holidays, shall be paid for such time at the rate of double time for the first two hours and double time and one half thereafter. Except as provided in this subclause, in computing overtime, each days work shall stand-alone.
- 17.4 Overtime shall be calculated to the nearest quarter hour provided that periods of less than a quarter hour shall not be counted.
- 17.5 Overtime shall be calculated on an hourly rate of pay of the annual salary. In this regard the 10% loading is not part of annual salary and shall not be taken into account when calculating payment of overtime.
- 17.6 Time spent travelling shall not be calculated as overtime.
- 17.7 Approval to work overtime shall be obtained from the Commander, NSW Police Force Band.
- 17.8 Where two or more periods of overtime are worked on one day, then only the time actually worked shall count for the determination of the commencement of the payment of double time.
- 17.9 An officer may elect, subject to the convenience of the employer, to take time off in lieu of the payment of overtime.

18. Recall to Duty

- 18.1 "Recall to duty" is the interference with the period of time off work between the arrival of an officer at home after the conclusion of one shift and the commencement of the next rostered shift caused by the necessity for an officer to perform duty.
- A recall to duty commences when the officer commences duty (excluding travel from home) and terminates when the duty is completed (excluding travel to home) or the commencement of the next rostered shift whichever is the sooner.
- 18.2 An officer recalled to duty shall be paid, subject to subclause 17.8 of clause 17, Overtime of this award, for the time worked on such recall to duty between normal rostered shifts a minimum of 3 hours at the overtime rate specified in subclause 17.3 for each time so recalled, except where such duty is continuous with the commencement of the next rostered shift.

- 18.3 An officer recalled to duty within 3 hours of the commencement of the next rostered shift shall be paid at the appropriate overtime rate from the time of recall to the time of the commencement of such shift.
- 18.4 The minimum period for the payment of overtime worked specified in subclause 17.4 shall not apply to entitlements under this clause.
- 18.5 An officer who performs the duty for which recalled within the minimum period of 3 hours shall not be required to undertake any additional duty for the remainder of the 3 hour period.
- 18.6 An officer recalled to duty whose period of duty and travel to and from the place where the duty is performed exceeds 3 hours shall, in addition to payment for the recall to duty, be compensated at the rate specified hereafter for travelling time in clause 20, for any period of travel exceeding 2 hours.
- 18.7 An officer recalled to duty during any period of annual or long service leave may elect to be re credited with a full day's leave for each day or part thereof involved in the recall to duty or to be paid a minimum of 8 hours at the rate of time and one half for each such day or part thereof.
- 18.8 Time worked in excess of 8 hours on any recall to duty during annual or long service leave shall be compensated at the rate of double time.
- 18.9 Travelling time incurred in any recall to duty from annual or long service leave which exceed the minimum 8 hours granted under subclause 20.7 of this clause shall be compensated at the rate of ordinary time.
- 18.10 An officer recalled to duty on a public holiday shall be paid in accordance with subclause 18.2 of this clause.

19. Penalty Provisions Not Cumulative

Where two or more penalty and/or overtime provisions could apply in a particular situation, NSW Police Force shall pay only one of such provisions. Where the provisions are not identical, the higher or highest, as the case may be, shall apply.

SECTION 5 - TRAVEL ARRANGEMENTS

20. Travelling Time

- 20.1 Travelling time shall be compensated by the payment of ordinary time rates on an hour for hour basis up to a maximum of 8 hours in any period of 24 hours.
- 20.2 Travelling time shall mean a period spent in the movement of an officer from one locality to another where the primary objective of the journey is the movement of that officer to the latter locality and no specific task other than travelling is directed in advance to be performed by such officer during that period.

Provided that travelling time will not apply in respect of:

- 20.2.1 Any period of travel during the rostered shift of an officer or any period during which overtime accrues.
- 20.2.2 Any period of travel between the home of an officer and place of attachment - provided further that when an officer is directed to perform duty at a location other than at the normal place of attachment, the travelling time to and from that locality which exceeds that taken in travelling between home and the place of attachment shall be compensated in terms of subclause 20.1 of this clause.
- 20.2.3 Any period when an officer is travelling by train between the hours of 11 pm and 8 am when sleeping accommodation is provided.

20.2.4 Any period of travel by an officer recalled to duty in terms of subclause 18.1 of clause 18, Recall to Duty of this award. Provided that any officer so recalled to duty who resides at such a distance from the place to which recalled that the officer cannot reasonably travel from the place of residence, perform the duty for which recalled and return to the place of residence within the minimum of 3 hours shall be paid at ordinary time rates for all time spent travelling in connection with such recall in excess of 2 hours.

20.2.5 Any period between arrival of an officer at the destination or a place en route to the destination where accommodation is provided and departure from the destination or the place en route for the purpose of travelling to the destination or returning to the place of residence or the normal place of attachment.

Provided further that on the day of arrival of an officer at the destination and on the day of departure from the destination for the journey to the place of residence or normal place of attachment the officer will be compensated in terms of subclause 20.1 of this clause for one third of the period:

- (a) Between the time of arrival and commencement of duty or rostered shift;
- (b) Between the time of completion of duty or rostered shift and time of departure.

20.2.6 For the purpose of this subclause, any period between the hours of 6 pm and 8 am during which an officer is provided with accommodation at the destination will be disregarded.

21. Travelling Allowance

Travelling allowance provisions shall be the same as those applying to non-commissioned police officers from time to time.

22. Travelling to Distant Work

22.1 Where an officer performs duty at a place other than the normal place of attachment, the time taken travelling to and from such place in excess of normal travelling time between home and the place of attachment shall be compensated by payment at the rate of ordinary time.

22.2 An officer so employed shall be entitled to recover from the employer the cost of any fares in excess of those normally incurred in travelling between home and the place of attachment.

SECTION 6 - LEAVE

23. Leave - General Provisions

23.1 The leave provisions contained in this Award apply to all staff members other than those to whom arrangements apply under another industrial instrument or under a local arrangement negotiated between the Commissioner and the Association.

23.2 Unless otherwise specified, part-time staff members will receive the paid leave provisions of this award on a pro rata basis, calculated according to the number of hours worked per week.

23.3 Unless otherwise specified in this award a temporary employee employed under Part 6A of the *Police Act 1990* is eligible to take a period of approved leave during the current period of employment and may continue such leave during a subsequent period or periods of employment in the NSW Police Force Service, if such period or periods of employment commence immediately on termination of a previous period or periods of employment.

23.4 Where paid and unpaid leave is available to be granted in terms of this award, paid leave shall be taken before unpaid leave.

24. Absence from Work

- 24.1 A staff member must not be absent from work unless reasonable cause is shown.
- 24.2 If a staff member is to be absent from duty because of illness or other emergency, the staff member shall notify or arrange for another person to notify the supervisor as soon as possible of the staff member's absence and the reason for the absence.
- 24.3 If a satisfactory explanation for the absence, is not provided, the staff member will be regarded as absent from duty without authorised leave and the Commissioner shall deduct from the pay of the staff member the amount equivalent to the period of the absence.
- 24.4 The minimum period of leave available to be granted shall be one hour, unless local arrangements negotiated in the workplace allow for a lesser period to be taken.
- 24.5 Nothing in this clause affects any proceedings for a breach of discipline against a staff member who is absent from duty without authorised leave.

25. Applying for Leave

- 25.1 An application by a staff member for leave under this award shall be made to and dealt with by the Commissioner.
- 25.2 The Commissioner shall deal with the application for leave according to the wishes of the staff member, if the operational requirements of the NSW Police Force permit this to be done.

26. Recreation Leave

- 26.1 Full time officers shall be entitled to 6 weeks (228 hours) recreation leave per annum.
- 26.2 As a general principal recreation leave including additional leave (if applicable) will be applied for in advance and be taken in periods of a full week only. Whilst this general principle will apply, officers may in emergency circumstances apply in advance for leave of a lesser period than a week. Such applications may be approved at the discretion of the officer in charge.
- 26.3 Consistent with the Crown Employees (NSW Police Force Administrative Officers and Temporary Employees) Award 2009, the parties agree that a block of two weeks recreation leave shall be taken each leave year unless insufficient paid leave is available.
- 26.4 Limits on Accumulation and Direction to take leave
- 26.4.1 Where the operational requirements permit, the application for leave shall be dealt with by the Commissioner according to the wishes of the staff member.
- 26.4.2 The Commissioner shall notify the staff member in writing when accrued recreation leave reaches 6 weeks or its hourly equivalent and at the same time may direct a staff member to take at least 2 weeks recreation leave within 3 months of the notification at a time convenient to the NSW Police Force.
- 26.4.3 The Commissioner shall notify the staff member in writing when accrued recreation leave reaches 8 weeks or its hourly equivalent and direct the staff member to take at least 2 weeks recreation leave within 6 weeks of the notification. Such leave is to be taken at a time convenient to the NSW Police Force.
- 26.4.4 A staff member must take their recreation leave to reduce their accrual below 8 weeks or its hourly equivalent, and the NSW Police Force must cooperate in this process.

- 26.5 Conservation of Leave - If the Commissioner is satisfied that a staff member is prevented by operational or personal reasons from taking sufficient recreation leave to reduce the accrued leave below an acceptable level of between 4 and 6 weeks or its hourly equivalent, the Commissioner shall:-
- 26.5.1 Specify in writing the period of time during which the excess shall be conserved; and
- 26.5.2 On the expiration of the period during which conservation of leave applies, grant sufficient leave to the staff member at a mutually convenient time to enable the accrued leave to be reduced to an acceptable level below the 8 week limit.
- 26.5.3 The Commissioner will inform a staff member in writing on a regular basis of the staff member's recreation leave accrual.
- 26.6 Miscellaneous
- 26.6.1 Unless a local arrangement has been negotiated between the Commissioner and the Association, recreation leave is not to be granted for a period less than one (1) hour or in other than multiples of one (1) hour.
- 26.6.2 Recreation leave for which a staff member is eligible on cessation of employment is to be calculated to one (1) hour (fractions less than one (1) hour being rounded up).
- 26.6.3 Recreation leave does not accrue to a staff member in respect of any period of absence from duty without leave or without pay, except as specified in paragraph 26.6.4 of this subclause.
- 26.6.4 Recreation leave accrues during any period of leave without pay granted on account of incapacity for which compensation has been authorised to be paid under the *Workers Compensation Act 1987*; or any period of sick leave without pay or any other approved leave without pay, not exceeding 5 full time working days, or their part time equivalent, in any period of 12 months.
- 26.6.5 The proportionate deduction to be made in respect of the accrual of recreation leave on account of any period of absence referred to in paragraph 25.6.4 of this subclause shall be calculated to an exact one (1) hour (fractions less than one (1) hour being rounded down).
- 26.6.6 Recreation leave accrues at half its normal accrual rate during periods of extended leave on half pay or recreation leave taken on half pay.
- 26.6.7 Recreation leave may be taken on half pay in conjunction with and subject to the provisions applying to adoption, maternity or parental leave - see clause 35, Parental Leave of this award.
- 26.6.8 On cessation of employment, a staff member is entitled to be paid the money value of accrued recreation leave which remains untaken.
- 26.6.9 A staff member to whom paragraph 25.6.8 of this subclause applies may elect to take all or part of accrued recreation leave which remains untaken at cessation of active duty as leave or as a lump sum payment; or as a combination of leave and lump sum payment.
- 26.7 Death - Where a staff member dies, the monetary value of recreation leave accrued and remaining untaken as at the date of death, shall be paid to the staff member's nominated beneficiary.
- 26.8 Where no beneficiary has been nominated, the monetary value of recreation leave is to be paid as follows:
- 26.8.1 To the widow or widower of the staff member; or
- 26.8.2 If there is no widow or widower, to the children of the staff member or, if there is a guardian of any children entitled under this subclause, to that guardian for the children's maintenance, education and advancement; or

- 26.8.3 If there is no such widow, widower or children, to the person who, in the opinion of the Commissioner was, at the time of the staff member's death, a dependent relative of the staff member; or
 - 26.8.4 If there is no person entitled under paragraph 26.8.1, 26.8.2 or 26.8.3 of this subclause to receive the money value of any leave not taken or not completed by a staff member or which would have accrued to the staff member, the payment shall be made to the personal representative of the staff member.
- 26.9 Additional compensation for rostered work performed by shift workers on Sundays and Public Holidays - Shift workers who are rostered to work their ordinary hours on Sundays and/or Public Holidays during the period 1 December of one year to 30 November, of the following year, or part thereof, shall be entitled to receive additional annual leave or payment as provided for in subclause 27.1 of clause 27, Additional Annual Leave of this award.
- 26.10 Recreation leave does not accrue during leave without pay other than
- 26.8.1 military leave taken without pay when paid military leave entitlements are exhausted;
 - 26.8.2 absences due to natural emergencies or major transport disruptions, when all other paid leave is exhausted;
 - 26.8.3 any continuous period of sick leave taken without pay when paid sick leave is exhausted;
 - 26.8.4 incapacity for which compensation has been authorised under the *Workplace Injury Management and Workers Compensation Act 1998*; or
 - 26.8.5 periods which when aggregated, do not exceed 5 working days in any period of 12 months.
- 26.9 A staff member entitled to additional annual leave under subclause 27.1 of clause 27, Additional Annual Leave of this award, can elect at any time to cash out the additional recreation leave.

27. Additional Annual Leave

27.1 Officers shall be entitled to additional annual leave on the following basis:

Number of ordinary shifts worked on Sundays and/or Public Holidays during a qualifying period	Additional Leave
4 - 10	1 additional working day
11 - 17	2 additional working days
18 - 24	3 additional working days
25 - 31	4 additional working days
32 or more	5 additional working days

27.2 A qualifying period shall mean the period commencing 12 months from 1 December each year.

28. Extended Leave

Extended leave shall accrue and shall be granted to staff members in accordance with the provisions of Part 6 of the Police Regulation 2015.

29. Family and Community Service Leave

29.1 The Commissioner shall grant to a staff member some, or all of their accrued family and community service leave on full pay, for reasons relating to unplanned and emergency family responsibilities or other emergencies as described in subclause 29.2 of this clause. The Commissioner may also grant leave for the purposes in subclause 29.3 of this clause. Non-emergency appointments or duties shall be scheduled or performed outside of normal working hours or through approved use of flexible working arrangements or other appropriate leave.

- 29.2 Such unplanned and emergency situations may include, but not be limited to, the following:-
- 29.2.1 Compassionate grounds - such as the death or illness of a close member of the family or a member of the staff member's household;
 - 29.2.2 Emergency accommodation matters up to one day, such as attendance at court as defendant in an eviction action, arranging accommodation, or when required to remove furniture and effects;
 - 29.2.3 Emergency or weather conditions; such as when flood, fire, snow or disruption to utility services etc, threatens a staff member's property and/or prevents a staff member from reporting for duty;
 - 29.2.4 Attending to unplanned or unforeseen family responsibilities, such as attending child's school for an emergency reason or emergency cancellations by child care providers;
 - 29.2.5 Attendance at court by a staff member to answer a charge for a criminal offence, only if the Commissioner considers the granting of family and community service leave to be appropriate in a particular case.
- 29.3 Family and community service leave may also be granted for:
- 29.3.1 An absence during normal working hours to attend meetings, conferences or to perform other duties, for staff members holding office in Local Government, and whose duties necessitate absence during normal working hours for these purposes, provided that the staff member does not hold a position of Mayor of a Municipal Council, President of a Shire Council or Chairperson of a County Council; and
 - 29.3.2 Attendance as a competitor in major amateur sport (other than Olympic or Commonwealth Games) for staff members who are selected to represent Australia or the State.
- 29.4 The definition of "family or "relative" in this clause is the same as that provided in paragraph 32.4.2 of clause 32, Sick Leave to Care for Family Member of this award.
- 29.5 Existing staff members employed on and from 1 May 2018, will accrue FACS leave on full pay as follows:
- 29.5.1 2 ½ days on 1 May 2018;
 - 29.5.2 2 ½ days on 1 May 2019; and
 - 29.5.3 1 day per year (1 May) thereafter.
- 29.6 Any staff member appointed from 1 May 2018, will accrue FACS leave on full pay as follows.
- 29.6.1 2 ½ days in the staff member's first year of service;
 - 29.6.2 2 ½ days in the staff member's second year of service; and
 - 29.6.3 1 day per year thereafter.
- 29.7 If available family and community service leave is exhausted as a result of natural disasters, the Commissioner shall consider applications for additional family and community service leave, if some other emergency arises.
- 29.8 If available family and community service leave is exhausted, on the death of a family member or relative, additional paid family and community service leave of up to 2 days may be granted on a discrete, per occasion basis to a staff member.

- 29.9 In cases of illness of a family member for whose care and support the staff member is responsible, paid sick leave in accordance with clause 32, Sick Leave to Care for a Sick Family Member of this award shall be granted when paid family and community service leave has been exhausted or is unavailable.
- 29.10 The Commissioner may also grant staff members other forms of leave such as accrued recreation leave, time off in lieu, and so on for family and community service leave purposes.

30. Sick Leave

- 30.1 Illness in this clause and in clauses 31 and 32 of this award means physical or psychological illness or injury, medical treatment and the period of recovery or rehabilitation from an illness or injury.
- 30.2 Payment for sick leave is subject to the staff member:
- 30.2.1 Informing their manager as soon as reasonably practicable that they are unable to perform duty because of illness. This must be done as close to the staff member's starting time as possible; and
- 30.2.2 Providing evidence of illness as soon as practicable if required by clause 31, Sick Leave - Requirements for Evidence of Illness of this award.
- 30.3 If the Commissioner is satisfied that a staff member is unable to perform duty because of the staff member's illness or the illness of his/her family member, the Commissioner:
- 30.3.1 Shall grant to the staff member sick leave on full pay; and
- 30.3.2 May grant to the staff member, sick leave without pay if the absence of the staff member exceeds the entitlement of the staff member under this award to sick leave on full pay.
- 30.4 The Commissioner may direct a staff member to take sick leave if they are satisfied that, due to the staff member's illness, the staff member:
- 30.4.1 is unable to carry out their duties without distress; or
- 30.4.2 risks further impairment of their health by reporting for duty; or
- 30.4.3 is a risk to the health, wellbeing or safety of other staff members, NSW Police Force clients or members of the public
- 30.5 The Commissioner may direct a staff member to participate in a return to work program if the staff member has been absent on a long period of sick leave.
- 30.6 Entitlements - Any staff member appointed on or from 1 May 2018 will commence accruing sick leave in accordance with this clause immediately. Existing staff members employed as at 1 May 2018 will accrue sick leave in accordance with this clause from 1 May 2018 onwards.
- 30.6.1 At the commencement of employment with the NSW Police Force, a full-time staff member is granted an accrual of 5 days sick leave.
- 30.6.2 After the first four months of employment, the staff member shall accrue sick leave at the rate of 10 working days per year for the balance of the first year of service.
- 30.6.3 After the first year of service, the staff member shall accrue sick leave day to day at the rate of 15 working days per year of service.
- 30.6.4 All continuous service as a staff member in the NSW public service shall be taken into account for the purpose of calculating sick leave due. Where the service in the NSW public service is not continuous, previous periods of public service shall be taken into account for the purpose of calculating sick leave due if the previous sick leave records are available.

- 30.6.5 Notwithstanding the provisions of paragraph 30.6.4 of this subclause, sick leave accrued and not taken in the service of a public sector employer may be accessed in terms of the Public Sector Staff Mobility Policy.
- 30.6.6 Sick leave without pay shall count as service for the accrual of recreation leave and paid sick leave. In all other respects sick leave without pay shall be treated in the same manner as leave without pay.
- 30.6.7 When determining the amount of sick leave accrued, sick leave granted on less than full pay, shall be converted to its full pay equivalent.
- 30.6.8 Paid sick leave shall not be granted during a period of unpaid leave.
- 30.7 Payment during the initial 3 months of service - Paid sick leave which may be granted to a staff member, other than a seasonal or relief staff member, in the first 3 months of service shall be limited to 5 days paid sick leave, unless the Commissioner approves otherwise. Paid sick leave in excess of 5 days granted in the first 3 months of service shall be supported by a satisfactory medical certificate.
- 30.8 Seasonal or relief staff - No paid sick leave shall be granted to temporary employees who are employed as seasonal or relief staff for a period of less than 3 months.

31. Sick Leave - Requirements for Evidence of Illness

- 31.1 A staff member absent from duty for more than 2 consecutive working days because of illness must furnish evidence of illness to the Commissioner in respect of the absence.
- 31.2 In addition to the requirements under subclause 30.2 of clause 30, Sick Leave of this award, a staff member may absent themselves for a total of 5 working days due to illness without the provision of evidence of illness to the Commissioner. Staff members who absent themselves in excess of 5 working days in a calendar year may be required to furnish evidence of illness to the Commissioner for each occasion absent for the balance of the calendar year.
- 31.3 As a general practice backdated medical certificates will not be accepted. However if a staff member provides evidence of illness that only covers the latter part of the absence, they can be granted sick leave for the whole period if the Commissioner is satisfied that the reason for the absence is genuine.
- 31.4 If a staff member is required to provide evidence of illness for an absence of 2 consecutive working days or less, the Commissioner will advise them in advance.
- 31.5 If the Commissioner is concerned about the diagnosis described in the evidence of illness produced by the staff member, after discussion with the staff member, the evidence provided and the staff member's application for leave can be referred to the NSWPF nominated medical assessor or its successor for advice.
- 31.5.1 The type of leave granted to the staff member will be determined by the Commissioner based on the NSWPF nominated medical assessor or its successor's advice.
- 31.5.2 If sick leave is not granted, the Commissioner will, as far as practicable, take into account the wishes of the staff member when determining the type of leave granted.
- 31.6 The granting of paid sick leave shall be subject to the staff member providing evidence which indicates the nature of illness or injury and the estimated duration of the absence. If a staff member is concerned about disclosing the nature of the illness to their manager they may elect to have the application for sick leave dealt with confidentially by an alternate manager or the human resources section of the NSW Police Force.
- 31.7 The reference in this clause to evidence of illness shall apply, as appropriate:

- 31.7.1 up to one week may be provided by a registered dentist, optometrist, chiropractor, osteopath, physiotherapist, oral and maxillo facial surgeon or, at the Commissioner's discretion, another registered health services provider,
- 31.7.2 where the absence exceeds one week, and unless the health provider listed in paragraph 31.7.1 of this subclause is also a registered medical practitioner, applications for any further sick leave must be supported by evidence of illness from a registered medical practitioner, or
- 31.7.3 at the Commissioner's discretion, other forms of evidence that satisfy that the staff member had a genuine illness.
- 31.8 If a staff member who is absent on recreation leave or extended leave, furnishes to the Commissioner satisfactory evidence of illness in respect of an illness which occurred during the leave, the Commissioner may, subject to the provisions of this clause, grant sick leave to the staff member as follows:
- 31.8.1 In respect of recreation leave, the period set out in the evidence of illness;
- 31.8.2 In respect of extended leave, the period set out in the evidence of illness if such period is 5 working days or more.
- 31.9 Subclause 31.8 of this clause applies to all staff members other than those on leave prior to resignation or termination of services, unless the resignation or termination of services amounts to a retirement.

32. Sick Leave to Care for a Family Member

- 32.1 Where family and community service leave provided for in clause 29, Family and Community Service Leave of this award is exhausted or unavailable, a staff member with responsibilities in relation to a category of person set out in subclause 32.4 of this clause who needs the staff member's care and support, may elect to use available paid sick leave, subject to the conditions specified in this clause, to provide such care and support when a family member is ill.
- 32.2 The sick leave shall initially be taken from the sick leave accumulated over the previous 3 years. In special circumstances, the Commissioner may grant additional sick leave from the sick leave accumulated during the staff member's eligible service.
- 32.3 If required by the Commissioner to establish the illness of the person concerned, the staff member must provide evidence consistent with subclause 31.6 of clause 31, Sick Leave - Requirements for Evidence of Illness of this award.
- 32.4 The entitlement to use sick leave in accordance with this clause is subject to:
- 32.4.1 The staff member being responsible for the care and support of the person concerned; and
- 32.4.2 The person concerned being:-
- (a) a spouse of the staff member; or
 - (b) a de facto spouse being a person of the opposite sex to the staff member who lives with the staff member as her husband or his wife on a bona fide domestic basis although not legally married to that staff member; or
 - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent or legal guardian), grandparent, grandchild or sibling of the staff member or of the spouse or de facto spouse of the staff member; or

- (d) a same sex partner who lives with the staff member as the de facto partner of that staff member on a bona fide domestic basis; or a relative of the staff member who is a member of the same household, where for the purposes of this definition:

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

"household" means a family group living in the same domestic dwelling.

33. Sick Leave - Workers Compensation

- 33.1 The Commissioner shall advise each staff member of their rights under the *Workers Compensation Act 1987*, as amended from time to time, and shall give such assistance and advice, as necessary, in the lodging of any claim.
- 33.2 A staff member who is or becomes unable to attend for duty or to continue on duty in circumstances which may give the staff member a right to claim compensation under the *Workers Compensation Act 1987*, shall be required to lodge a claim for any such compensation.
- 33.3 Where, due to the illness or injury, the staff member is unable to lodge such a claim in person, the Commissioner shall assist the staff member or the representative of the staff member, as required, to lodge a claim for any such compensation.
- 33.4 The Commissioner will ensure that, once received by the NSW Police Force, a staff member's workers compensation claim is lodged by the NSW Police Force with the workers compensation insurer within the statutory period prescribed in the *Workers Compensation Act 1987*.
- 33.5 Pending the determination of that claim and on production of an acceptable medical certificate, the Commissioner shall grant sick leave on full pay for which the staff member is eligible followed, if necessary, by sick leave without pay or, at the staff member's election by accrued recreation leave or extended leave.
- 33.6 If liability for the workers compensation claim is accepted, then an equivalent period of any sick leave taken by the staff member pending acceptance of the claim shall be restored to the credit of the staff member.
- 33.8 If a staff member notifies the Commissioner that he or she does not intend to make a claim for any such compensation, the Commissioner shall consider the reasons for the staff member's decision and shall determine whether, in the circumstances, it is appropriate to grant sick leave in respect of any such absence.
- 33.9 A staff member may be required to submit to a medical examination under the *Workers Compensation Act 1987* in relation to a claim for compensation under that Act. If a staff member refuses to submit to a medical examination without an acceptable reason, the staff member shall not be granted available sick leave on full pay until the examination has occurred and a medical certificate is issued indicating that the staff member is not fit to resume employment.
- 33.10 If the Commissioner provides the staff member with employment which meets the terms and conditions specified in the medical certificate issued under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* and, without good reason, the staff member fails, to resume or perform such duties, the staff member shall be ineligible for all payments in accordance with this clause from the date of the refusal or failure.
- 33.11 No further sick leave shall be granted on full pay if there is a commutation of weekly payments of compensation by the payment of a lump sum pursuant to section 51 of the *Workers Compensation Act 1987*.

33.12 Nothing in this clause prevents a staff member from appealing a decision or taking action under other legislation made in respect of:

- 33.12.1 The staff member's claim for workers compensation;
- 33.12.2 The conduct of a medical examination by a Government or other Medical Officer;
- 33.12.3 A medical certificate issued by the examining Government or other Medical Officer; or
- 33.12.4 Action taken by the Commissioner either under the *Workers Compensation Act 1987* or any other relevant legislation in relation to a claim for workers compensation, medical examination or medical certificate.

34. Sick Leave - Claims other than Workers Compensation

34.1 If the circumstances of any injury to or illness of a staff member give rise to a claim for damages or to compensation, other than compensation under the *Workers Compensation Act 1987* sick leave on full pay may, subject to and in accordance with this clause, be granted to the staff member on completion of an acceptable undertaking that:-

34.1.1 Any such claim, if made, will include a claim for the value of any period of paid sick leave granted by the NSW Police Force to the staff member; and

34.1.2 In the event that the staff member receives or recovers damages or compensation pursuant to that claim for loss of salary or wages during any such period of sick leave, the staff member will repay to the NSW Police Force the monetary value of any such period of sick leave.

34.2 Sick leave on full pay shall not be granted to a staff member who refuses or fails to complete an undertaking, except in cases where the Commissioner is satisfied that the refusal or failure is unavoidable.

34.3 On repayment to the NSW Police Force of the monetary value of sick leave granted to the staff member, sick leave equivalent to that repayment and calculated at the staff member's ordinary rate of pay, shall be restored to the credit of the staff member.

35. Parental Leave

35.1 Parental leave includes maternity, adoption and "other parent" leave.

35.2 Maternity leave shall apply to a staff member who is pregnant and, subject to this clause the staff member shall be entitled to be granted maternity leave as follows:

35.2.1 For a period up to 9 weeks prior to the expected date of birth; and

35.2.2 For a further period of up to 12 months after the actual date of birth.

35.2.3 A staff member who has been granted maternity leave and whose child is stillborn may elect to take available sick leave instead of maternity leave.

35.3 Adoption leave shall apply to a staff member adopting a child and who will be the primary care giver, the staff member shall be granted adoption leave as follows:

35.3.1 For a period of up to 12 months if the child has not commenced school at the date of the taking of custody; or

35.3.2 For such period, not exceeding 12 months on a full-time basis, as the Commissioner may determine, if the child has commenced school at the date of the taking of custody.

- 35.3.3 Special Adoption Leave - A staff member shall be entitled to special adoption leave (without pay) for up to 2 days to attend interviews or examinations for the purposes of adoption. Special adoption leave may be taken as a charge against recreation leave, extended leave, time off in lieu or family and community service leave.
- 35.4 Where maternity or adoption leave does not apply, "other parent" leave is available to male and female staff who apply for leave to look after his/her child or children. Other parent leave applies as follows:
- 35.4.1 Short other parent leave - an unbroken period of up to 8 weeks at the time of the birth of the child or other termination of the spouse's or partner's pregnancy or, in the case of adoption, from the date of taking custody of the child or children;
- 35.4.2 Extended other parent leave - for a period not exceeding 12 months, less any short other parental leave already taken by the staff member as provided for in paragraph 35.4.1 of this subclause. Extended other parental leave may commence at any time up to 2 years from the date of birth of the child or the taking of custody of the child.
- 35.5 A staff member taking maternity or adoption leave is entitled to payment at the ordinary rate of pay for a period of up to 14 weeks, a staff member entitled to short other parent leave is entitled to payment at the ordinary rate of pay for a period of up to 1 week, provided the staff member:
- 35.5.1 Applied for parental leave within the time and in the manner determined set out in subclause 35.10 of this clause; and
- 35.5.2 Prior to the commencement of parental leave, completed not less than 40 weeks' continuous service.
- 35.5.3 Payment for the maternity, adoption or short other parent leave may be made as follows:
- (a) in advance as a lump sum; or
 - (b) fortnightly as normal; or
 - (c) fortnightly at half pay; or
 - (d) a combination of full-pay and half pay.
- 35.6 Payment for parental leave is at the rate applicable when the leave is taken. A member of staff holding a full time position who is on part time leave without pay when they start parental leave is paid:
- 35.6.1 at the full time rate if they began part time leave 40 weeks or less before starting parental leave;
- 35.6.2 at the part time rate if they began part time leave more than 40 weeks before starting parental leave and have not changed their part time work arrangements for the 40 weeks;
- 35.6.3 at the rate based on the average number of weekly hours worked during the 40 week period if they have been on part time leave for more than 40 weeks but have changed their part time work arrangements during that period.
- 35.7 A staff member who commences a subsequent period of maternity or adoption leave for another child within 24 months of commencing an initial period of maternity or adoption leave will be paid:
- 35.7.1 at the rate (full time or part time) they were paid before commencing the initial leave if they have not returned to work; or
- 35.7.2 at a rate based on the hours worked before the initial leave was taken, where the staff member has returned to work and reduced their hours during the 24 month period; or

35.7.3 at a rate based on the hours worked prior to the subsequent period of leave where the staff member has not reduced their hours.

35.8 Except as provided in subclauses 35.5, 35.6 and 35.7 of this clause, parental leave shall be granted without pay.

35.9 Right to request

35.9.1 A staff member who has been granted parental leave in accordance with subclause 35.2, 35.3 or 35.4 of this clause may make a request to the Commissioner to:

- (a) extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
- (b) return from a period of full time parental leave on a part time basis until the child reaches school age (Note: returning to work from parental leave on a part time basis includes the option of returning to work on part time leave without pay);

to assist the staff member in reconciling work and parental responsibilities.

35.9.2 The Commissioner shall consider the request having regard to the staff member's circumstances and, provided the request is genuinely based on the staff member's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the Commissioner's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

35.10 Notification Requirements

35.10.1 When the NSW Police Force is made aware that a staff member or their spouse is pregnant or is adopting a child, the NSW Police Force must inform the staff member of their entitlements and their obligations under the Award.

35.10.2 A staff member who wishes to take parental leave must notify the Commissioner in writing at least 8 weeks (or as soon as practicable) before the expected commencement of parental leave:

- (a) that she/he intends to take parental leave, and
- (b) the expected date of birth or the expected date of placement, and
- (c) if she/he is likely to make a request under subclause 35.9 of this clause.

35.10.3 At least 4 weeks before a staff member's expected date of commencing parental leave they must advise:

- (a) the date on which the parental leave is intended to start, and
- (b) the period of leave to be taken.

35.10.4 Staff member's request and the Commissioner's decision to be in writing

The staff member's request under paragraph 35.9.1 and the Commissioner's decision made under paragraph 35.9.2 must be recorded in writing.

35.10.5 A staff member intending to request to return from parental leave on a part time basis or seek an additional period of leave of up to 12 months must notify the Commissioner in writing as soon as practicable and preferably before beginning maternity, adoption or other parental leave. If the notification is not given before commencing such leave, it may

- be given at any time up to 4 weeks before the proposed return on a part time basis, or later if the Commissioner agrees.
- 35.10.6 A staff member on maternity leave is to notify the NSW Police Force of the date on which she gave birth as soon as she can conveniently do so.
- 35.10.7 A staff member must notify the NSW Police Force as soon as practicable of any change in her intentions as a result of premature delivery or miscarriage.
- 35.10.8 A staff member on maternity or adoption leave may change the period of leave or arrangement, once without the consent of the Commissioner and any number of times with the consent of the Commissioner. In each case she/he must give the NSW Police Force at least 14 days' notice of the change unless the Commissioner decides otherwise.
- 35.11 A staff member has the right to her/his former position if she/he has taken approved leave or part time work in accordance with subclause 35.9 of this clause, and she/he resumes duty immediately after the approved leave or work on a part time basis.
- 35.12 If the position occupied by the staff member immediately prior to the taking of parental leave has ceased to exist, but there are other positions available that the staff member is qualified for and is capable of performing, the staff member shall be appointed to a position of the same grade and classification as the staff member's former position.
- 35.13 A staff member does not have a right to her/his former position during a period of return to work on a part time basis. If the Commissioner approves a return to work on a part time basis then the position occupied is to be at the same classification and grade as the former position.
- 35.14 A staff member who has returned to full time duty without exhausting their entitlement to 12 months unpaid parental leave is entitled to revert back to such leave. This may be done once only, and a minimum of 4 weeks' notice (or less if acceptable to the NSW Police Force) must be given.
- 35.15 A staff member who is sick during her pregnancy may take available paid sick leave or accrued recreation or extended leave or sick leave without pay. A staff member may apply for accrued recreation leave, extended leave or leave without pay before taking maternity leave. Any leave taken before maternity leave ceases at the end of the working day immediately preceding the day she starts her nominated period of maternity leave or on the working day immediately preceding the date of birth of the child, whichever is sooner.
- 35.16 A staff member may elect to take available recreation leave or extended leave within the period of parental leave provided this does not extend the total period of such leave.
- 35.17 A staff member may elect to take available recreation leave at half pay in conjunction with parental leave provided that:
- 35.17.1 accrued recreation leave at the date leave commences is exhausted within the period of parental leave;
- 35.17.2 the total period of maternity, adoption or other parent leave, is not extended by the taking of recreation leave at half pay; and
- 35.17.3 when calculating other leave accruing during the period of recreation leave at half pay, the recreation leave at half pay shall be converted to the full time equivalent and treated as full pay leave for accrual of further recreation, extended and other leave at the full time rate
- 35.18 If, for any reason, a pregnant staff member is having difficulty in performing her normal duties or there is a risk to her health or to that of her unborn child the Commissioner, should, in consultation with the staff member, take all reasonable measures to arrange for safer alternative duties. This may include, but

is not limited to greater flexibility in when and where duties are carried out, a temporary change in duties, retraining, multi-skilling, teleworking and job redesign.

35.19 If such adjustments cannot reasonably be made, the Commissioner must grant the staff member maternity leave, or any available sick leave, for as long as it is necessary to avoid exposure to that risk as certified by a medical practitioner, or until the child is born whichever is the earlier.

35.20 Communication during parental leave

35.20.1 Where a staff member is on parental leave and a definite decision has been made to introduce significant change at the workplace, the NSW Police Force shall take reasonable steps to:

- (a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the staff member held before commencing parental leave; and
- (b) provide an opportunity for the staff member to discuss any significant effect the change will have on the status or responsibility level of the position the staff member held before commencing parental leave.

35.20.2 The staff member shall take reasonable steps to inform the Commissioner about any significant matter that will affect the staff member's decision regarding the duration of parental leave to be taken, whether the staff member intends to return to work and whether the staff member intends to request to return to work on a part time basis.

35.20.3 The staff member shall also notify the Commissioner of changes of address or other contact details which might affect the NSW Police Force capacity to comply with paragraph 35.20.1 of this subclause.

36. Military Leave

36.1 During the period of 12 months commencing on 1 July each year, the Commissioner may grant to a staff member who is a volunteer part-time member of the Defence Forces, military leave on full pay to undertake compulsory annual training and to attend schools, classes or courses of instruction or compulsory parades conducted by the staff member's unit.

36.2 In accordance with the *Defence Reserve Service (Protection) Act 2001* (Cth), it is unlawful to prevent a staff member from rendering or volunteering to render, ordinary defence Reserve service.

36.3 Up to 24 working days military leave per financial year may be granted by the Commissioner to members of the Naval and Military Reserve and up to 28 working days per financial year to members of the Air Force Reserve for the activities specified in subclause 36.1 of this clause.

36.4 The Commissioner may grant a staff member special leave of up to 1 day to attend medical examinations and tests required for acceptance as volunteer part time members of the Australian Defence Forces.

36.5 A staff member who is requested by the Australian Defence Forces to provide additional military services requiring leave in excess of the entitlement specified in subclause 36.3 of this clause may be granted Military Leave Top up Pay by the Commissioner.

36.6 Military Leave Top up Pay is calculated as the difference between a staff member's ordinary pay as if they had been at work, and the Reservist's pay which they receive from the Commonwealth Department of Defence.

36.7 During a period of Military Leave Top up Pay, a staff member will continue to accrue sick leave, recreation and extended leave entitlements, and the NSW Police Force is to continue to make superannuation contributions at the normal rate.

- 36.8 At the expiration of military leave in accordance with subclause 36.3 or 36.4 of this clause, the staff member shall furnish to the Commissioner a certificate of attendance and details of the staff members reservist pay signed by the commanding officer or other responsible officer.

37. Observance of Essential Religious or Cultural Obligations

- 37.1 A staff member of:
- 37.1.1 Any religious faith who seeks leave for the purpose of observing essential religious obligations of that faith; or
 - 37.1.2 Any ethnic or cultural background who seeks leave for the purpose of observing any essential cultural obligations, may be granted recreation/extended leave to credit, time off in lieu or leave without pay to do so.
- 37.2 Provided adequate notice as to the need for leave is given by the staff member to the NSW Police Force and it is operationally convenient to release the staff member from duty, the Commissioner must grant the leave applied for by the staff member in terms of this clause.
- 37.3 A staff member of any religious faith who seeks time off during daily working hours to attend to essential religious obligations of that faith, shall be granted such time off by the Commissioner subject to:
- 37.3.1 Adequate notice being given by the staff member;
 - 37.3.2 Prior approval being obtained by the staff member; and
 - 37.3.3 The time off being made up in the manner approved by the Commissioner.
- 37.4 Notwithstanding the provisions of subclauses 37.1, 37.2 and 37.3 of this clause, local arrangements may be negotiated between the NSW Police Force and the Association to provide greater flexibility for staff members for the observance of essential religious or cultural obligations.

38. Special Leave

- 38.1 Special Leave - Jury Service
- 38.1.1 A staff member shall, as soon as possible, notify the Commissioner of the details of any jury summons served on the staff member.
 - 38.1.2 A staff member who, during any period when required to be on duty, attends a court in answer to a jury summons shall, upon return to duty after discharge from jury service, furnish to the Commissioner a certificate of attendance issued by the Sheriff or by the Registrar of the court giving particulars of attendances by the staff member during any such period and the details of any payment or payments made to the staff member under section 72 of the *Jury Act 1977* in respect of any such period.
 - 38.1.3 When a certificate of attendance on jury service is received in respect of any period during which a staff member was required to be on duty, the Commissioner shall grant, in respect of any such period for which the staff member has been paid out-of-pocket expenses only, special leave on full pay. In any other case, the Commissioner shall grant, at the sole election of the staff member, available recreation leave on full pay, flex leave or leave without pay.
- 38.2 Witness at Court - Official Capacity - When a staff member is subpoenaed or called as a witness in an official capacity, the staff member shall be regarded as being on duty. Salary and any expenses properly and reasonably incurred by the staff member in connection with the staff member's appearance at Court as a witness in an official capacity shall be paid by the NSW Police Force.

- 38.3 Witness at Court - Other than in Official Capacity - Crown Witness - A staff member who is subpoenaed or called as a witness by the Crown (whether in right of the Commonwealth or in right of any State or Territory of the Commonwealth) shall:
- 38.3.1 Be granted, for the whole of the period necessary to attend as such a witness, special leave on full pay; and
- 38.3.2 Pay into the Treasury of the State of New South Wales all money paid to the staff member under or in respect of any such subpoena or call other than any such money so paid in respect of reimbursement of necessary expenses properly incurred in answer to that subpoena or call.
- 38.3.3 Association Witness - a staff member called by the Association to give evidence before an Industrial Tribunal or in another jurisdiction shall be granted special leave by the NSW Police Force for the required period.
- 38.4 Called as a witness in a private capacity - A staff member who is subpoenaed or called as a witness in a private capacity shall, for the whole of the period necessary to attend as such a witness, be granted at the staff member's election, available recreation leave on full pay or leave without pay.
- 38.5 Special Leave - Examinations -
- 38.5.1 Special leave on full pay up to a maximum of 5 days in any one year shall be granted to staff members for the purpose of attending at any examination approved by the Commissioner.
- 38.5.2 Special leave granted to attend examinations shall include leave for any necessary travel to or from the place at which the examination is held.
- 38.5.3 If an examination for a course of study is held during term or semester within the normal class timetable and study time has been granted to the staff member, no further leave is granted for any examination.
- 38.6 Return Home When Temporarily Living Away from Home - Sufficient special leave shall be granted to a staff member who is temporarily living away from home as a result of work requirements. Such staff member shall be granted sufficient special leave once a month before or after a weekend or a long weekend or, in the case of a shift worker before or after rostered days off to return home to spend two days and two nights with the family. If the staff member wishes to return home more often, such staff member may be granted recreation leave, extended leave or flex leave to credit or leave without pay, if the operational requirements allow.
- 38.7 Return Home When Transferred to New Location - Special leave shall be granted to a staff member who has moved to the new location ahead of dependants, to visit such dependants, subject to the conditions specified in the Crown Employees (Transferred Employees Compensation) Award.
- 38.8 A staff member who identifies as an Indigenous Australian shall be granted up to one day special leave per year to enable the staff member to participate in the National Aboriginal and Islander Day of Commemoration Celebrations. Leave can be taken at any time during NAIDOC week, or in the weeks leading up to and after NAIDOC week as negotiated between the supervisor and staff member.
- 38.9 Special Leave - Other Purposes - Special leave on full pay may be granted to staff members by the Commissioner for such other purposes, subject to the conditions specified in the New South Wales Public Service Commission Personnel Handbook published by the Public Service Commission on-line www.psc.nsw.gov.au. at the time the leave is taken.
- 38.10 Matters arising from domestic violence situations.

When the leave entitlements referred to in clause 40, Leave for Matters Arising from Domestic Violence, have been exhausted, the Commissioner shall grant up to five days per calendar year to be used for absences from the workplace to attend to matters arising from domestic violence situations.

39. Leave for Matters Arising from Domestic Violence

- 39.1 The definition of domestic violence is found in clause 2(h), of clause 2 Definitions, of this award.
- 39.2 Leave entitlements provided for in clause 29, Family and Community Service Leave, clause 30, Sick Leave and clause 32, Sick Leave to Care for a Family Member, may be used by staff members experiencing domestic violence.
- 39.3 Where the leave entitlements referred to in subclause 39.2 are exhausted, the Commissioner shall grant up to five days Special Leave, per calendar year, to be used for absences from the workplace to attend to matters arising from domestic violence situations.
- 39.4 The Commissioner will need to be satisfied, on reasonable grounds, that domestic violence has occurred and may require proof presented in the form of an agreed document issued by the Police Force, a Court, a Doctor, a Domestic Violence Support Service or Lawyer.
- 39.5 Personal Information concerning domestic violence will be kept confidential by the NSW Police Force.
- 39.6 An application for leave for matters arising from domestic violence under this clause will trigger the NSW Police Force response to domestic and family violence with respect to the immediate and long term protection of victims, including specific police obligations for the investigation and management of such matters. Such actions are in line with obligations under the *Crimes (Domestic and Personal Violence) Act 2007*.
- 39.7 The Commissioner, where appropriate, may facilitate flexible working arrangements subject to operational requirements, including changes to working times and changes to work location, telephone number and email address.

40. Leave Without Pay

- 40.1 The Commissioner may grant leave without pay to a staff member if good and sufficient reason is shown.
- 40.2 Leave without pay may be granted on a full-time or a part-time basis.
- 40.3 Where a staff member is granted leave without pay for a period not exceeding 10 consecutive working days, the staff member shall be paid for any proclaimed public holidays falling during such leave without pay.
- 40.4 Where a staff member is granted leave without pay which, when aggregated, does not exceed 5 working days in a period of twelve (12) months, such leave shall count as service for incremental progression and accrual of recreation leave.
- 40.5 A staff member who has been granted leave without pay, shall not engage in employment of any kind during the period of leave without pay, unless prior approval has been obtained from the Commissioner.
- 40.6 A staff member shall not be required to exhaust accrued paid leave before proceeding on leave without pay but, if the staff member elects to combine all or part of accrued paid leave with leave without pay, the paid leave shall be taken before leave without pay.
- 40.7 No paid leave shall be granted during a period of leave without pay.
- 40.8 A permanent appointment may be made to the staff member's position if:
- 40.8.1 the leave without pay has continued or is likely to continue beyond the original period of approval and is for a total period of more than 12 months; and
- 40.8.2 the staff member is advised of the Commissioner's proposal to permanently backfill their position; and

- 40.8.3 the staff member is given a reasonable opportunity to end the leave without pay and return to their position; and
- 40.8.4 the Commissioner advised the staff member at the time of the subsequent approval that the position will be filled on a permanent basis during the period of leave without pay.
- 40.9 The position cannot be filled permanently unless the above criteria are satisfied.
- 40.10 The staff member does not cease to be employed by the NSW Police Force if their position is permanently backfilled.
- 40.11 Subclause 40.8 of this clause does not apply to full-time unpaid parental leave granted in accordance with subparagraph 35.9.1(a) of clause 35, Parental Leave or to military leave.

SECTION 7 - MISCELLANEOUS

41. Trade Union Training Courses

- 41.1 The following training courses will attract the grant of special leave as specified below:-
- 41.1.1 Accredited Work Health and Safety (WH&S) courses and any other accredited WH&S training for WH&S Committee members. The provider(s) of accredited OH&S training courses and the conditions, on which special leave for such courses will be granted, shall be negotiated between the Commissioner and the Association under a local arrangement.
- 41.1.2 Courses organised and conducted by the Trade Union Education Foundation or by the Association or a training provider nominated by the Association. A maximum of 12 working days in any period of 2 years applies to this training and is subject to:
- (a) The operating requirements of the workplace permitting the grant of leave and the absence not requiring employment of relief staff;
 - (b) Payment being at the base rate, i.e. excluding extraneous payments such as shift allowances/penalty rates, overtime, etc.;
 - (c) All travelling and associated expenses being met by the staff member or the Association;
 - (d) Attendance being confirmed in writing by the Association or a nominated training provider.

42. Deduction of Union Membership Fees

At the staff member's election, the Commissioner shall provide for the staff member's Association membership fees to be deducted from the staff member's pay and ensure that such fees are transmitted to the staff member's Association at regular intervals. Alternative arrangements for the deduction of Association membership fees may be negotiated between the Commissioner and the Association as a local arrangement.

43. Anti-Discrimination

- 43.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act* 1996 to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 43.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.

43.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

43.4 Nothing in this clause is to be taken to affect:

- (i) any conduct or act which is specifically exempted from anti-discrimination legislation;
- (ii) offering or providing junior rates of pay to persons under 21 years of age;
- (iii) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
- (iv) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

43.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

44. Progression

Progression through the incremental range is dependent upon completion of 12 months satisfactory conduct and service on each step of the scale.

Provided that the first year of service shall be a probationary period and the officer's conduct and performance shall be subject to review and report at 3 monthly intervals.

Promotional positions within the Police Band will be filled by way of open competitive selection upon the occurrence of a vacancy. The following procedure stipulates the method by which officers will be appointed to promotional positions and ensures that such appointments are based on merit selection principles.

44.1 Advertisement Action

All promotional positions will be advertised in the Police Monthly. The advertisement will provide the criteria by which culling and selection will be determined.

Advertisements will clearly state the requirements of the positions and will detail essential and desirable qualifications in line with the Position Overview (formerly known as a Statement of Duties and Accountabilities). The content of the advertisement will inform applicants of the skills and abilities necessary to perform the duties of the position. The closing date for applications will be not less than three weeks following the date of publication.

44.2 Selection Committee

A selection committee of identical composition to that required for any vacant Administrative Officer position in the NSW Police Force will be established and will assume responsibility for assessing the comparative merit of each applicant and recommending the candidate with the greatest merit.

Merit is decided by reference to the abilities, qualifications, experience, standard of performance and personal qualities of an applicant relative to the position.

44.3 Convenor

A convenor of the selection committee will be nominated. The role of the convenor will include ensuring that no member of the committee has any bias toward any of the applicants, and that the selection process does not involve any unfair questioning or assessment of applicants.

The convenor will also undertake the administrative work associated with the selection process.

44.4 Culling of Applications

A cull will be conducted by the Committee based on the content of the advertisement and the Position Overview.

The purpose of the cull is to exclude applicants who on the basis of the application do not demonstrate that they satisfy the essential requirements of the advertisement or who show evidence that their qualifications and experience are not as competitive as other applicants.

44.5 Notice of Interview

Applicants will be given at least 3 clear working days notice of interview. Interviews should be held within 10 working days of the closing date of applications.

44.6 Attendance at Interview

Where an officer is rostered for work at the time of interview they shall be granted special leave without loss of pay to attend. Provided however that where an officer is rostered off duty at the time of the interview then attendance at interview shall be without pay. Every effort shall be made to roster officers on duty to facilitate their attendance at interview.

44.7 Selection Committee Report

The Selection Committee will be required to produce a written report on the selection process specifically detailing reasons for selection and non-selection.

44.8 Approving Officer

The Assistant Commissioner, Human Resources shall under delegation from the Commissioner be the Approving Officer. Notification of successful applicants to promotional positions shall be published at the earliest possible opportunity in the Police Monthly.

44.9 Services Check

A check of the conduct and services of the recommended officer will be made with their supervising officer.

45. Study Assistance

45.1 The Commissioner shall have the power to grant or refuse study time.

45.2 Where the Commissioner approves the grant of study time, the grant shall be subject to:

45.2.1 The course being a course relevant to the NSW Police Force and/or the public service;

45.2.2 The time being taken at the convenience of the NSW Police Force; and

45.2.3 Paid study time not exceeding a maximum of 4 hours per week, to accrue on the basis of half an hour for each hour of class attendance.

45.3 Study time may be granted to both full and part-time staff members. Part-time staff members however shall be entitled to a pro-rata allocation of study time to that of a full-time staff member.

45.4 Study time may be used for:

45.4.1 Attending compulsory lectures, tutorials, residential schools, field days etc., where these are held during working hours; and/or

- 45.4.2 Necessary travel during working hours to attend lectures, tutorials etc., held during or outside working hours; and/or
- 45.4.3 Private study; and/or
- 45.4.4 Accumulation, subject to the conditions specified in subclauses 45.6 to 45.10 of this clause.
- 45.5 Staff members requiring study time must nominate the type(s) of study time preferred at the time of application and prior to the proposed commencement of the academic period. The types of study time are as follows:-
- 45.5.1 Face-to-Face - Staff members may elect to take weekly and/or accrued study time, subject to the provisions for its grant.
- 45.5.2 Correspondence - Staff members may elect to take weekly and/or accrued study time, or time off to attend compulsory residential schools.
- 45.5.3 Accumulation - Staff members may choose to accumulate part or all of their study time as provided in subclauses 45.6 to 45.10 of this clause.
- 45.6 Accumulated study time may be taken in any manner or at any time, subject to operational requirements of the NSW Police Force.
- 45.7 Staff members on rotating shifts may accumulate study time so that they can take leave for a full shift, where this would be more convenient to both the staff member and the NSW Police Force.
- 45.8 Where at the commencement of an academic year/semester a staff member elects to accrue study time and that staff member has consequently foregone the opportunity of taking weekly study time, the accrued period of time off must be granted even if changed work circumstances mean absence from duty would be inconvenient.
- 45.9 Staff members attempting courses which provide for annual examinations, may vary the election as to accrual, made at the commencement of an academic year, effective from 1st July in that year.
- 45.10 Where a staff member is employed after the commencement of the academic year, weekly study time may be granted with the option of electing to accrue study time from 1st July in the year of entry on duty or from the next academic year, whichever is the sooner.
- 45.11 Staff members studying in semester based courses may vary their election as to accrual or otherwise from semester to semester.
- 45.12 Correspondence Courses - Study time for staff members studying by correspondence accrues on the basis of half an hour for each hour of lecture/tutorial attendance involved in the corresponding face-to-face course, up to a maximum grant of 4 hours per week. Where there is no corresponding face-to-face course, the training institution should be asked to indicate what the attendance requirements would be if such a course existed.
- 45.13 Correspondence students may elect to take weekly study time and/or may accrue study time and take such accrued time when required to attend compulsory residential schools.
- 45.14 Repeated subjects - Study time shall not be granted for repeated subjects.
- 45.15 Expendable grant - Study time if not taken at the nominated time shall be forfeited. If the inability to take study time occurs as a result of a genuine emergency at work, study time for that week may be granted on another day during the same week.
- 45.16 Examination Leave - Examination leave shall be granted as special leave for all courses of study approved in accordance with this clause.

45.17 The period granted as examination leave shall include:

45.17.1 Time actually involved in the examination;

45.17.2 Necessary travelling time, in addition to examination leave,

but is limited to a maximum of 5 days in any one year. Examination leave is not available where an examination is conducted within the normal class timetable during the term/semester and study time has been granted to the staff member.

45.18 The examination leave shall be granted for deferred examinations and in respect of repeat studies.

46. Public Interest

46.1 The parties agree that any provision of this Award may be suspended by the Commissioner of Police where emergency circumstances or the public interest require that they be varied temporarily.

46.2 The Commissioner of Police reserves the right to apply to vary, after first consulting with the Association, any of the provisions of the Award which the Commissioner considers are no longer appropriate when regard is had to similar provisions then applying to non-commissioned police officers.

47. NSW Police Force Police Band Consultative Committee

47.1 It is intended for the purpose of this agreement to establish a forum within which matters concerning the formation of policy and procedures may be addressed.

47.2 The parties agree that members of the Committee should include 3 representatives from the NSW Police Force (one being the Commander, NSW Police Force Band or nominee, the second being a further nominee of the Commander, NSW Police Force Band, and the third being a nominee of the Director, Public Affairs Branch); a representative of the Association and 2 delegates.

47.3 This Committee shall meet on a needs basis within one week at the request of either party, or other agreed time frame.

48. Secure Employment

48.1 Work Health and Safety

48.1.1 For the purpose of this subclause, the following definitions shall apply:

(a) A 'labour hire business' is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.

(b) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.

48.1.2 Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):

(a) consult with employees of the labour hire business and/or contract business regarding the workplace health and safety consultative arrangements;

- (b) provide employees of the labour hire business and/or contract business with appropriate work health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
- (c) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
- (d) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.

48.1.3 Nothing in this subclause 49.1 is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Work Health and Safety Act 2011* or the *Workplace Injury Management and Workers Compensation Act 1998*.

48.2 Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

48.3 This clause has no application in respect of organisations which are properly registered as Group Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

49. Area, Incidence and Duration

49.1 This Award applies to all officers defined herein.

49.2 It shall take effect on and from 1 May 2018 with the exception of the rates of pay and allowances prescribed under PART B, Monetary Rates, which shall take effect from the dates specified in that Part, or where otherwise stated in the Award.

49.3 This Award rescinds and replaces the Crown Employees (NSW Police Force Police Band) Award published 21 October 2016 (380 I.G. 1219) as varied.

This Award remains in force until varied or rescinded, the period for which it was made having already expired.

49.3 Except where inconsistent with this Award, the provisions of any other existing Agreement or Determination will continue to apply.

PART B

MONETARY RATES

Table 1 - Salaries

Effective from the first full pay period to commence on or after 1 July 2017.

In addition to the salaries prescribed in Column 1, officers shall be paid a loading in accordance with Column 2 for work performed on weekends and other incidents of employment not otherwise provided for elsewhere in this award.

(a) Musicians (Police Band)

Musicians (Police Band)	\$ per annum Column 1 Base	\$ per annum Column 2 Loading (10%)	\$ per annum Column 3 Total
1st year of service	59,097	5,910	65,007
2nd year of service	60,151	6,015	66,166
3rd year of service	61,187	6,119	67,306
4th year of service	62,305	6,231	68,536
5th year of service	65,240	6,524	71,764
6th year of service and thereafter	66,373	6,637	73,010

(b) Senior Musicians (Police Band)

Senior Musicians (Police Band)	\$ per annum Column 1 Base	\$ per annum Column 2 Loading (10%)	\$ per annum Column 3 Total
1st year of service and thereafter	68,870	6,887	75,757

Table 2 - Other Rates and Allowances

Item No.	Clause No.	Subject Matter	Amount \$ Effective from the first full pay period on or after 1.7.2017
1	9	Doubling Allowance	1096 per annum
2	13	Shift Work Allowance -	Effective from the first full pay period on or after 1.7.2017
	Shift	Shift Commencing Time	
	A	At or after 1 pm and before 4 pm	41.38
	B	At or after 4pm and before 4am	48.28
	C	At or after 10am and before 1pm	27.59
	C	At or after 4am and before 6am	27.59

P. KITE, Chief Commissioner.

Printed by the authority of the Industrial Registrar.

(1305)

SERIAL C8798**CROWN EMPLOYEES (NSW POLICE FORCE SPECIAL
CONSTABLES) (SECURITY) AWARD 2018**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Commissioner of Police.

(Case No. 2018/144129)

Before Chief Commissioner Kite

17 May 2018

AWARD**Arrangement****PART A**

Clause No. Subject Matter

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5. Introduction of Change

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48. Secure Employment
49. Area, Incidence and Duration

PART B**MONETARY RATES**

Table 1 - Wages

Table 2 - Other Rates and Allowances

PART A**SECTION 1 - FRAMEWORK****1. Title**

This award shall be known as the Crown Employees (NSW Police Force Special Constables) (Security) Award 2018.

2. Definitions

- (a) "Officer" means and includes all persons employed as Special Constables (Security) by the NSW Police Force who, as at 30 July 1997, were occupying one of such positions or who, after that date, were appointed to such a position.
- (b) "Commissioner" means the Commissioner of Police in New South Wales or any person acting in such position from time to time.

- (c) "Service" means continuous service. Future appointees shall be deemed to have the years of service indicated by the rates of pay at which they are appointed.
- (d) "Promotional position" means the positions of Senior Special Constable (Security).
- (e) "Special Constable (Security)" when used in the appropriate context may refer to all positions of Special Constables (Security) including promotional positions.
- (f) "Part Time Special Constable (Security)" means an officer employed under the provisions of clause 15, Part-time Employment, of this award.
- (g) "Casual Special Constable (Security)" means an officer employed under the provisions of clause 16, Casual Employment, of this award.
- (h) "Association" means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.
- (i) "Award" means the Crown Employees (NSW Police Force Special Constables) (Security) Award 2018.
- (j) "Domestic Violence" means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

3. Disputes/Grievance Settlement Procedure

- 3.1 The resolution of or settlement of disputes and/or individual grievances of officers arising throughout the life of this award shall be dealt with in the manner prescribed hereunder:
- 3.1.1 Where a dispute/grievance arises at a particular work location, discussions including the remedy sought shall be held as soon as possible, and in any event within two working days of such notification, between the officer/s concerned and the immediate supervising officer, or other appropriate officer in the case of a grievance.
 - 3.1.2 Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the *Anti-Discrimination Act 1977*) that makes it impractical for the officer to advise their immediate supervising officer the notification may occur to the next appropriate level of management, including where required, to the Commissioner or delegate.
 - 3.1.3 Failing resolution of the issue further discussions shall take place as soon as possible, and in any event within two working days of such failure, between the individual officer/s and at their request the local Association delegate or workplace representative and the Commander, Security Management Group or nominee.
 - 3.1.4 If the dispute/grievance remains unresolved the officer/s, local delegate or workplace representative or Commander, Security Management Group may refer the matter to Operational Communications & Information Command for discussion between the Commander or delegate and the Association. Those discussions should take place as soon as possible and in any event within two working days of such referral.
 - 3.1.5 If the dispute/grievance is not resolved at that stage the matter is to be referred to the Employee Relations Unit of the NSW Police Force who will assume responsibility for liaising with members of the Senior Executive Service of the NSW Police Force and the Association and advise of the final position of the Commissioner of Police, including reasons for not implementing the remedy sought if such is the case.
 - 3.1.6 The matter will only be referred to the Industrial Relations Commission if:
 - (a) The final decision of the Commissioner of Police does not resolve the dispute/grievance;
or

- (b) The final position of the Commissioner of Police is not given within five working days from the date of referral of the matter to the Employee Relations Unit, or other agreed time frame.
- 3.1.7 At no stage during a dispute that specifically relates to this award may any stoppage of work occur or any form of ban or limitation be imposed.
- 3.1.8 In cases where a dispute is premised on an issue of safety, consultation between the Association and the Employee Relations Unit should be expedited. The status quo shall remain until such matter is resolved.
- 3.1.9 The whole concept of a dispute settlement procedure is to resolve disputation at the level as close as possible to the source of disputation.
- 3.1.10 This procedure has been adopted to promote full and open consultation at each step of the process in an effort to promote and preserve harmonious industrial relations.
- 3.1.11 Throughout each stage parties involved should ensure that the relevant facts are clearly identified and documented. Parties should also be committed to following the procedure with as much timeliness as possible.

4. Introduction of New Technology

The parties agree to co-operate fully in the implementation and/or trialling of new technology, which may become available to assist in the provision of security services.

5. Introduction of Change

The parties agree to co-operate fully through the Special Constables (Security) Consultative Committee in the implementation and/or trialling of change in respect of the employment or organisation of Special Constables (Security) with the objective of ensuring the most efficient, effective and productive use of resources.

SECTION 2 - WAGES

6. Wages

An officer shall, according to the position held and years of service, be paid a weekly wage of not less than the amounts as set out in Table 1 - Wages, of Part B, Monetary Rates.

7. Wage Packaging Arrangements, Including Wages Sacrifice to Superannuation

- 7.1 The entitlement to wage package in accordance with this clause is available to:
- (a) full-time and part-time officers; and
 - (b) casual officers, subject to New South Wales Police Force convenience, and limited to wage sacrifice to superannuation in accordance with subclause 7.7.
- 7.2 For the purposes of this clause:
- 7.2.1 "wage" means the rate of pay prescribed for the officer's classification by clause 3, Wages, of this Award, and any other payment that can be salary packaged in accordance with Australian taxation law.
 - 7.2.2 "post compulsory deduction wage" means the amount of wage available to be packaged after payroll deductions required by legislation or order have been taken into account. Such payroll deductions may include, but are not limited to, taxes, compulsory superannuation payments, HECS-HELP payments, child support payments, and judgement debtor/garnishee orders.

- 7.3 By mutual agreement with the Commissioner, an officer may elect to package a part or all of their post compulsory deduction wage in order to obtain:
- 7.3.1 a benefit or benefits selected from those approved by the Commissioner, and
 - 7.3.2 an amount equal to the difference between the officer's wage, and the amount specified by the Commissioner for the benefit provided to or in respect of the officer in accordance with such agreement.
- 7.4 An election to wage package must be made prior to the commencement of the period of service to which the earnings relate.
- 7.5 The agreement shall be known as a Wage Packaging Agreement.
- 7.6 Except in accordance with subclause 7.7, a Wage Packaging Agreement shall be recorded in writing and shall be for a period of time as mutually agreed between the officer and the Commissioner at the time of signing the Wage Packaging Agreement.
- 7.7 Where an officer makes an election to sacrifice a part or all of their post compulsory deduction wage as additional employer superannuation contributions, the officer may elect to have the amount sacrificed:
- (a) paid into the superannuation fund established under the *First State Superannuation Act 1992*; or
 - (b) where the employer is making compulsory employer superannuation contributions to another complying superannuation fund, paid into the same complying fund; or
 - (c) subject to New South Wales Police Force agreement, paid into another complying superannuation fund.
- 7.8 Where the officer makes an election to wage sacrifice, the employer shall pay the amount of post compulsory deduction salary, the subject of election, to the relevant superannuation fund.
- 7.9 Where the officer makes an election to wage package and where the officer is a member of a superannuation scheme established under the:
- (a) *Police Regulation (Superannuation) Act 1906*;
 - (b) *Superannuation Act 1916*;
 - (c) *State Authorities Superannuation Act 1987*; or
 - (d) *State Authorities Non-contributory Superannuation Act 1987*,
- the New South Wales Police Force must ensure that the officer's superable wage for the purposes of the above Acts, as notified to the SAS Trustee Corporation, is calculated as if the Wage Packaging Agreement had not been entered into.
- 7.10 Where the officer makes an election to wage package, and where the officer is a member of a superannuation fund other than a fund established under legislation listed in subclause 7.9 of this clause, the New South Wales Police Force must continue to base contributions to that fund on the wage payable as if the Wage Packaging Agreement had not been entered into. This clause applies even though the superannuation contributions made by the New South Wales Police Force may be in excess of superannuation guarantee requirements after the wage packaging is implemented.
- 7.11 Where the officer makes an election to wage package:
- 7.11 subject to Australian Taxation law, the amount of wage packaged will reduce the salary subject to appropriate PAYG taxation deductions by the amount packaged; and

- 7.11 any allowance, penalty rate, payment for unused leave entitlements, weekly worker's compensation or other payment, other than any payments for leave taken in service, to which an officer is entitled under this Award or any applicable Award, Act or statute which is expressed to be determined by reference to the officer's rate of pay, shall be calculated by reference to the rate of pay which would have applied to the officer under clause 6, Wages, or Part B of this Award if the Wage Packaging Agreement had not been entered into.
- 7.12 The New South Wales Police Force may vary the range and type of benefits available from time to time following discussion with the Association. Such variations shall apply to any existing or future Wage Packaging Agreement from date of such variation.
- 7.13 The New South Wales Police Force will determine from time to time the value of the benefits provided following discussion with the Association. Such variations shall apply to any existing or future Wage Packaging Agreement from the date of such variation. In this circumstance, the officer may elect to terminate the Wage Packaging Agreement.

8. Future Adjustments

The parties recognise that the wages prescribed in Table 1 - Wages, of Part B, Monetary Rates, establish a wages structure for Special Constables (Security). Should there be a variation to the Crown Employees (Public Sector - Salaries 2017) Award, or any award replacing it, during the term of this award, by way of salary increase, this award shall be varied to give effect to any such salary increase from the operative date of the variation of the former award or replacement award.

SECTION 3 - ATTENDANCE/HOURS OF WORK

9. Hours

9.1 General

- 9.1.1 Except as provided in clause 15, Part Time Employment, and clause 16, Casual Employment of this award, the ordinary hours of duty for officers shall be an average of 38 per week or 76 per fortnight and shall be worked from Sunday to Saturday inclusive.

The hourly rate for officers shall be calculated on the basis of 1/38th.

- 9.1.2 The parties agree that changes may be made in a roster in emergent circumstances with reasonable notice and in any event with notice of at least 24 hours.

9.2 38 Hour Week Operation

- 9.2.1 The 38 hour week is to be worked on the basis of a rostered day off per month in each 20 working days. This means that the officer accrues 0.4 of an hour each 8 hour shift towards having the 20th day off with pay.
- 9.2.2 In order to meet NSW Police Force requirements and in the event of unforeseen circumstances arising, the day off may be deferred and taken at a suitable later time. Where there are seasonal or other considerations affecting NSW Police Force activities, rostered days off may be accrued in order to be taken in some normally less active period related to those considerations.
- 9.2.3 All paid ordinary working time and paid leave of absence goes towards the accrual of time for the rostered day off. However, where extended long service leave, sick leave or workers' compensation paid absences occur accrual only applies to the extent necessary to enable the rostered day off immediately following resumption to be allowed.
- 9.2.4 Starting and finishing times are to be strictly observed with no afternoon tea break.
- 9.2.5 Wages and salaries will be paid into banking or other accounts.

9.2.6 There shall be no payment of higher duties allowances arising from the rostered day off. There shall be no eligibility for sick leave when on rostered leave arising from the 38 hour week.

9.2.7 Where loadings are included as part of salary in respect of hours of work no increase in the quantum or percentage of the loading shall occur as a result of the reduction in working hours.

9.3 All restrictive work practices are to be eliminated.

10. Flexible Rosters

10.1 Notwithstanding clause 9, Hours of this award, the parties agree that where the majority of Special Constables (Security) in a given location or locations agree and the Commander, Security Management Group agrees; a trial of a flexible roster system may be implemented. Such a trial shall be for a period of up to 6 months in the first instance, following which the parties may agree to the adoption of the flexible roster as an ongoing arrangement.

10.2 The conditions of any such trial shall be in accordance with the Parameters for Flexible Rostering, Administrative Officers and Ministerial Employees, Etc., and the Guidelines for the Taking and Recording of Leave, Etc., Administrative Officers and Ministerial Employees, Etc.

11. Saturday and Sunday Work During Ordinary Hours

Except as provided for under clause 19, Shift Allowances - Part Time and Casual Officers of this award, full time Special Constables (Security) who are required from time to time to work their ordinary hours of employment on both Saturday and Sunday shall be paid an allowance per week as set out in Item 2 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, which shall be in addition to their ordinary rate of pay in accordance with the rates contained in this clause. Provided that where an officer is absent on Sick Leave for a Saturday or Sunday shift, the above allowance shall be reduced by one half for each shift or part of a shift so absent. Except as provided above and in clause 20, Overtime of this award, such additional sum shall be part of the ordinary rate of pay for all purposes of the employment.

12. Night Shifts

12.1. Under normal rostering practices Special Constables (Security) shall not be rostered to work more than seven (7) night shifts, (i.e., a full shift commencing at or after 4.00 pm and before 4.00 am), in any period of twenty-one (21) days, except in emergent circumstances as the roster progresses.

12.2 Where in emergent circumstances a Special Constable (Security) is required to work more than seven (7) night shifts in any period of twenty-one (21) days, no additional payment will follow.

13. Commencing Times

On the basis of long standing concession and practice, whilst ever standard 8 hour shifts are worked, the commencing times of rostered shifts will generally be 6.30 am, 2.30 pm and 10.30 pm. Provided that no additional penalties shall apply and no overtime is to accrue unless a Special Constable (Security) coming off shift is requested to remain past the usual commencing times of 7.00 am, 3.00 pm and 11.00 pm, respectively. Provided further that where the needs of the work so require, commencing times as appropriate may be required.

14. Lactation Breaks

14.1 This clause applies to officers who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this award.

14.2 A full time officer or a part time officer working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.

- 14.3 A part time officer working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.
- 14.4 A flexible approach on lactation breaks can be taken by mutual agreement between a officer and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the officer.
- 14.5 The Commissioner shall provide access to a suitable, private space with comfortable seating for the purpose of breastfeeding or expressing milk.
- 14.6 Other suitable facilities, such as refrigeration and a sink, shall be provided where practicable. Where it is not practicable to provide these facilities, discussions between the manager and officer will take place to attempt to identify reasonable alternative arrangements for the officer's lactation needs.
- 14.7 Officers experiencing difficulties in effecting the transition from home-based breastfeeding to the workplace will have telephone access in paid time to a free breastfeeding consultative service, such as that provided by the Australian Breastfeeding Association's Breastfeeding Helpline Service or the Public Health System.
- 14.8 Officers needing to leave the workplace during time normally required for duty to seek support or treatment in relation to breastfeeding and the transition to the workplace may utilise sick leave in accordance with clause 29, Sick Leave, or access to flexible working hours provided in clause 10, Flexible Rosters of this award, where applicable.

15. Part Time Employment

- 15.1 The parties agree that Special Constables (Security) may be employed on a part time basis for a period less than 38 hours in any one week.
- 15.2
- 15.2.1 Part time Special Constables (Security) shall be paid an hourly rate calculated on the following basis:
- $$\frac{\text{Weekly Rate}}{38}$$
- 15.2.2 Provided that the weekly rate on engagement shall be that applying to a First Year Special Constable (Security) as set out in Table 1 - Salaries, of Part B, Monetary Rates.
- 15.2.3 Provided further that a part time Special Constable (Security) shall be eligible to receive a pro rata (based on hours worked) of the appropriate increment as set out in Table 1 - Salaries, of Part B, Monetary Rates, subject to the completion of each 12 months of satisfactory service.
- 15.3 Shift times for part time officers and the days on which such shifts shall be worked will be set and regular.
- 15.4 Notwithstanding the provisions of subclause 15.3 of this clause, the times and days on which part time officers shall work their hours and shifts may be altered by providing 24 hours' notice to facilitate the attendance of Special Constables (Security) where required.
- 15.5 Where a Public Holiday falls on a day on which a part time officer is normally rostered for duty they may be:
- 15.5.1 Rostered on duty - and paid at the rate of time and one half (150%) in addition to the rate prescribed in subclause 15.2 of this clause.

- 15.5.2 Granted the shift free of work - such a shift shall count as one day's work for that week but no additional compensation shall apply.
- 15.6 Overtime for part time officers. In the unusual event that overtime is to be worked by a part time officer, the overtime rates prescribed in clause 20 of this award shall apply.
- 15.6.1 Overtime shall only apply to those hours worked in excess of the daily rostered hours but shall only apply in any event after 8 hours has been worked on any one day. For work on days other than the days on which the part time officer was rostered to work their usual hours, the standard hourly rate shall apply to all hours up to 8 per day, after which time overtime rates shall apply. Overtime rates shall also apply for all hours worked in excess of 38 in any rostered week.
- 15.6.2 Provided however that where the parties have agreed to the working of a flexible roster system in line with clause 10 of this award then overtime shall only be payable after the agreed standard shift hours applying to full time officers under the flexible roster have been worked.
- 15.7 Entitlements for part time officers shall be calculated on a pro rata basis.
- 15.8 Part time Special Constables (Security) are remunerated on the basis of a 38 hour per week divisor and thus will not accrue time towards the provision of a rostered day off in every 20 working day cycle in accordance with the 38 hour week agreement applying to full time Special Constables (Security).

16. Casual Employment

- 16.1 The parties agree that Special Constables (Security) may be employed on a casual basis.
- 16.2 A Casual Special Constable (Security) shall mean an officer who is engaged and paid as such.
- 16.2.1 Casual Special Constables (Security) shall be paid for each hour worked an hourly rate equal to one 38th of the rate applicable to a Special Constable (Security), 1st year of service as set out in Table 1 - Salaries, of Part B, Monetary Rates, plus a loading of 10%.
- 16.2.2 A casual officer shall in addition be paid a loading of 1/12th for all ordinary hours worked in lieu of Annual Leave.
- 16.2.3 A minimum payment of 3 hours at the appropriate rate shall be made for each engagement.
- 16.2.4 Overtime - In the unusual event that overtime is worked by a casual officer the overtime rates prescribed in clause 20 of this award shall apply. Such rates shall be calculated on the rate prescribed in paragraph 16.2.1 of this subclause. Provided that overtime shall only apply to those hours worked in excess of 8 in any one day.
- Provided however that where the parties have agreed to the working of a flexible roster system in line with clause 10, Flexible Rosters, of this award then overtime rates shall only be payable after the agreed standard shift hours applying to full time officers under the flexible roster have been worked.
- 16.2.5 A casual officer shall be paid for all hours worked and shall not with the exception of paragraph 16.2.2 of this subclause, accrue an entitlement to any form of leave.
- 16.3 The employment of existing Special Constables (Security) shall not be prejudiced by the employment of any Casual Special Constable (Security).
- 16.4 The parties agree that casuals will only be utilised in situations where a commitment to the provision of security services is in place, but the day to day requirements for such services can fluctuate or change at the instigation of the management of any such place where the security is provided, and any such change is beyond the control of the management of the Security Management Group of the NSW Police Force or the Special Constables (Security) themselves.

Provided that in any other situation where Special Constables (Security) are generally not available to work required overtime, the services of casuals may be utilised in such circumstances.

- 16.5 Casual officers are entitled to unpaid parental leave under section 54, Entitlement to Unpaid Parental Leave, in accordance with the *Industrial Relations Act 1996*. The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996*.

The Commissioner must not fail to re-engage a regular casual officer (see section 53(2) of the Act) because:

- (a) the officer or officer's spouse is pregnant; or
- (b) the officer is or has been immediately absent on parental leave.

The rights of the Commissioner in relation to engagement and re-engagement of casual officers are not affected, other than in accordance with this clause.

- 16.6 Personal Carer's entitlement for casual officers

16.6.1 Casual officers are entitled to not be available to attend work, or to leave work if they need to care for a family member who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out in paragraph 16.6.4 of this subclause, and the notice requirements set out in paragraph 16.6.2 of this subclause.

16.6.2 The Commissioner and the casual officer shall agree on the period for which the officer will be entitled to not be available to attend work. In the absence of agreement, the officer is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual officer is not entitled to any payment for the period of non-attendance.

16.6.3 The Commissioner of Police must not fail to re-engage a casual officer because the officer accessed the entitlements provided for in this clause. The rights of the Commissioner to engage or not to engage a casual officer are otherwise not affected.

16.6.4 The casual officer shall, if required,

- (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (ii) establish by production of documentation acceptable to the Commissioner or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the officer.

In normal circumstances, a casual officer must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- 16.7 Bereavement entitlements for casual officers

16.7.1 Casual officers are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence.

16.7.2 The Commissioner and the casual officer shall agree on the period for which the officer will be entitled to not be available to attend work. In the absence of agreement, the officer is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual officer is not entitled to any payment for the period of non-attendance.

16.7.3 The Commissioner must not fail to re-engage a casual officer because the officer accessed the entitlements provided for in this clause. The rights of the Commissioner to engage or not engage a casual officer are otherwise not affected.

17. Volunteer Duty

- 17.1 The parties agree that in situations where casual officers would otherwise be used to meet staffing requirements, full time officers may volunteer to perform additional duty in lieu of such casual engagements. Provided that:
- 17.2 Officers at or below the rank of Special Constable (Security) First Class who are on rest days or who are available to work extra duty at the completion of a shift or prior to the commencement of a shift may volunteer to perform additional duty as required.
- 17.3 Provided that an officer shall not be eligible to perform additional duty under the terms of this clause, where the performance of such work would prevent them from having a full 8 hours free of duty between their normal rostered shifts.
- 17.4 When an officer performs additional duty under the provisions of this clause they shall be paid for all hours worked on such duty at the rate of single time.
- 17.5 An officer performing additional duty under the provisions of this clause shall not be entitled to the provisions of clauses 11, 18, 20 and 22 of this award for any work so performed.
- 17.6 Where full time officers volunteer and are available to perform additional duty within the terms of this clause the parties agree that they shall be utilised in preference to casual officers.
- 17.7 The parties further agree that the provisions of this clause are an innovative arrangement, which is implemented for the life of this award.

SECTION 4 - ALLOWANCES AND OVERTIME

18. Shift Work Allowance

Except as provided for under clause 19, Shift Allowances - Part Time and Casual Officers of this award, full time Special Constables (Security) who are required from time to time to work their ordinary hours of employment from 3.00 pm to 7.00 am Monday to Friday, shall be paid an allowance per week in addition to their ordinary rate of pay in accordance with the rates set out in Item 1 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates. Provided that where an officer is absent on Sick Leave for a Monday to Friday shift, the above allowance shall be reduced by 1/5th for each shift or part of a shift so absent. Except as provided above and in clause 20, Overtime of this award, such additional sum shall be part of the ordinary rate of pay for all purposes of the employment.

19. Shift Allowances, Part Time and Casual Officers

- 19.1 Part time and Casual officers engaged under clause 15, Part Time Employment, and clause 16, Casual Employment of this award, shall in lieu of the allowances prescribed in clauses 11 and 18 of this award, be paid the following shift loadings for the ordinary hours so worked.
- 19.2 Shifts Monday to Friday
- | | | |
|--------------|------|---|
| 10% loading | (i) | A shift commencing at or after 4.00 am and before 6.00 am; or |
| | (ii) | A shift commencing at or after 10.00 am and before 1.00 pm. |
| 12½% loading | | A shift commencing at or after 1.00 pm and before 4.00 pm. |
| 15% loading | | A shift commencing at or after 4.00 pm and before 4.00 am. |

19.3 Weekends and Public Holidays

Irrespective of the time a shift commences on a Saturday, Sunday or Public Holiday, the hours worked on an ordinary shift on such days will attract loadings as follows:

50% loading For all time worked between midnight Friday and midnight Saturday

75% loading For all time worked between midnight Saturday and midnight Sunday.

150% loading For all time worked on a Public Holiday.

19.4 Shift, weekend and public holiday loadings are not cumulative.

19.5 The above loadings shall be disregarded in computing payments for overtime under clause 20 of this Award.

20. Overtime

20.1 Subject to subclause 20.2 of this clause, the NSW Police Force may require an officer to work reasonable overtime at overtime rates.

20.2 An officer may refuse to work overtime in circumstances where the working of such overtime would result in the officer working hours which are unreasonable. What is unreasonable or otherwise will be determined having regard to:

- (a) any risk to officer health and safety;
- (b) the officer's personal circumstances including any family responsibilities;
- (c) the needs of the workplace or enterprise;
- (d) the notice (if any) given by the Commander, Security Management Unit of the overtime and by the officer of his or her intention to refuse it; and
- (e) any other relevant matter.

20.3 With the exception of work performed under the provisions of clause 17, Volunteer Duty of this award, all work performed outside the ordinary rostered hours of duty shall be paid as follows:

- (a) For all work performed outside the ordinary rostered hours the rate of pay shall be time and one half for the first two hours and double time thereafter. Provided that in computing overtime each days work shall stand alone.
- (b) All overtime worked on Sundays shall be paid for at the rate of double time.
- (c) All overtime worked on a Public Holiday shall be paid for at the rate of double time and one half.
- (d) Provided that the allowances prescribed in clauses 11, 18 and 19 of this award shall be disregarded in computing payments for overtime worked.
- (e) Meal Allowance - after working ordinary hours an officer required to work overtime in excess of one hour shall be paid an amount as set out in Item 3 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, for a meal as set out in the said Item 3 for a subsequent meal after the officer has worked a further 4 hours overtime, unless notice of work has been given to such officer on or before the termination of the previous shift or day worked as the case may be.

21. Mixed Functions

- 21.1 Where a Special Constable (Security) is directed to and performs the duties of a promotional position which attracts a higher rate of pay for at least two hours on any day or shift they shall be paid the higher rate for such day or shift; provided that where an officer is engaged in the performance of higher duties for less than two hours on any one day or shift, payment shall be at the higher rate for the time so worked. The higher rate applicable shall be that which applies at the first year rate of pay for such promotional positions.
- 21.2 Any officer who is required to perform work temporarily for which a lower rate is paid, shall not suffer any reduction in wages whilst so employed. There shall be no payment of higher duties allowances arising from the operation of the 38 hour week.

22. Public Holidays

Full time Special Constables (Security) shall be paid for Public Holidays as follows:

- 22.1 Where a Public Holiday occurs on an officer's rest day off duty and -
- 22.1.1 they are not required to work on that day, one day extra shall be added to the annual leave of the officer or at the officer's election they shall be paid 8 hours ordinary pay in respect of such day;
 - 22.1.2 they are required to work on that day such officer shall be paid double time and one half for such overtime.
- 22.2 Where a Public Holiday occurs on an officers rostered day on duty they may be -
- 22.2.1 required to work - in which case they shall be paid at the rate of time and a half extra calculated on the ordinary base rate of pay or half time extra and be granted one day extra to be added to their annual leave;
 - 22.2.2 granted the shift free of work - such a shift will count as one day's work for that week but no additional compensation shall apply.

SECTION 5 - LEAVE

23. Leave - General Provisions

- 23.1 The leave provisions contained in this Award apply to all staff members other than those to whom arrangements apply under another industrial instrument or under a local arrangement negotiated between the Commissioner and the Association.
- 23.2 Unless otherwise specified, part-time staff members will receive the paid leave provisions of this award on a pro rata basis, calculated according to the number of hours worked per week.
- 23.3 Unless otherwise specified in this award a temporary employee employed under Part 6A of the *Police Act 1990* is eligible to take a period of approved leave during the current period of employment and may continue such leave during a subsequent period or periods of employment in the NSW Police Force, if such period or periods of employment commence immediately on termination of a previous period or periods of employment.
- 23.4 Where paid and unpaid leave is available to be granted in terms of this award, paid leave shall be taken before unpaid leave.

24. Absence from Work

- 24.1 A staff member must not be absent from work unless reasonable cause is shown.

- 24.2 If a staff member is to be absent from duty because of illness or other emergency, the staff member shall notify or arrange for another person to notify the supervisor as soon as possible of the staff member's absence and the reason for the absence.
- 24.3 If a satisfactory explanation for the absence, is not provided, the staff member will be regarded as absent from duty without authorised leave and the Commissioner shall deduct from the pay of the staff member the amount equivalent to the period of the absence.
- 24.4 The minimum period of leave available to be granted shall be one hour, unless local arrangements negotiated in the workplace allow for a lesser period to be taken.
- 24.5 Nothing in this clause affects any proceedings for a breach of discipline against a staff member who is absent from duty without authorised leave.

25. Applying for Leave

- 25.1 An application by a staff member for leave under this award shall be made to and dealt with by the Commissioner.
- 25.2 The Commissioner shall deal with the application for leave according to the wishes of the staff member, if the operational requirements of the NSW Police Force permit this to be done.

26. Recreation Leave

- 26.1 Full time officers shall be entitled to five (5) weeks recreation leave per annum.
- 26.2 Part time officers engaged under clause 15 of this award and who normally work Monday to Saturday shall receive a pro rata of four (4) weeks recreation leave per annum based on hours worked. Those part time officers who normally work Monday to Sunday and whose services are normally required on public holidays shall receive a pro rata of five (5) weeks recreation leave per annum based on hours worked. Any change to the part time arrangement will result in a change of entitlement.
- 26.3 As a general principle recreation leave will be applied for in advance and be taken in periods of a full week only. Whilst this general principle will apply, officers may in emergency circumstances apply in advance for leave of a lesser period than a week. Such applications may be approved at the discretion of the officer in charge.
- 26.4 Consistent with the Crown Employees (NSW Police Administrative Officers and Temporary Employees) Award 2009, the parties agree that a block of two weeks recreation leave shall be taken each leave year unless insufficient paid leave is available.
- 26.5 Limits on Accumulation and Direction to take leave
- 26.5.1 Where the operational requirements permit, the application for leave shall be dealt with by the Commissioner according to the wishes of the staff member.
- 26.5.2 The Commissioner shall notify the staff member in writing when accrued recreation leave reaches 6 weeks or its hourly equivalent and at the same time may direct a staff member to take at least 2 weeks recreation leave within 3 months of the notification at a time convenient to the NSW Police Force.
- 26.5.3 The Commissioner shall notify the staff member in writing when accrued recreation leave reaches 8 weeks or its hourly equivalent and direct the staff member to take at least 2 weeks recreation leave within 6 weeks of the notification. Such leave is to be taken at a time convenient to the NSW Police Force.
- 26.5.4 A staff member must take their recreation leave to reduce their accrual below 8 weeks or its hourly equivalent, and the NSW Police Force must cooperate in this process.

- 26.6 Conservation of Leave - If the Commissioner is satisfied that a staff member is prevented by operational or personal reasons from taking sufficient recreation leave to reduce the accrued leave below an acceptable level of between 4 and 6 weeks or its hourly equivalent, the Commissioner shall:-
- 26.6.1 Specify in writing the period of time during which the excess shall be conserved; and
- 26.6.2 On the expiration of the period during which conservation of leave applies, grant sufficient leave to the staff member at a mutually convenient time to enable the accrued leave to be reduced to an acceptable level below the 8 week limit.
- 26.6.2 The Commissioner will inform a staff member in writing on a regular basis of the staff member's recreation leave accrual.
- 26.7 Miscellaneous
- 26.7.1 Unless a local arrangement has been negotiated between the Commissioner and the Association, recreation leave is not to be granted for a period less than one (1) hour or in other than multiples of one (1) hour.
- 26.7.2 Recreation leave for which a staff member is eligible on cessation of employment is to be calculated to one (1) hour (fractions less than one (1) hour being rounded up).
- 26.7.3 Recreation leave does not accrue to a staff member in respect of any period of absence from duty without leave or without pay, except as specified in paragraph 26.7.4 of this subclause.
- 26.7.4 Recreation leave accrues during any period of leave without pay granted on account of incapacity for which compensation has been authorised to be paid under the *Workers Compensation Act 1987*; or any period of sick leave without pay or any other approved leave without pay, not exceeding 5 full time working days, or their part time equivalent, in any period of 12 months.
- 26.7.5 The proportionate deduction to be made in respect of the accrual of recreation leave on account of any period of absence referred to in paragraph 26.7.4 of this subclause shall be calculated to an exact one (1) hour (fractions less than one (1) hour being rounded down).
- 26.7.6 Recreation leave accrues at half its normal accrual rate during periods of extended leave on half pay or recreation leave taken on half pay.
- 26.7.7 Recreation leave may be taken on half pay in conjunction with and subject to the provisions applying to adoption, maternity or parental leave - see clause 34, Parental Leave of this award.
- 26.7.8 On cessation of employment, a staff member is entitled to be paid the money value of accrued recreation leave which remains untaken.
- 26.7.9 A staff member to whom paragraph 26.7.8 of this subclause applies may elect to take all or part of accrued recreation leave which remains untaken at cessation of active duty as leave or as a lump sum payment; or as a combination of leave and lump sum payment.
- 26.8 Death - Where a staff member dies, the monetary value of recreation leave accrued and remaining untaken as at the date of death, shall be paid to the staff member's nominated beneficiary.
- 26.9 Where no beneficiary has been nominated, the monetary value of recreation leave is to be paid as follows:
- 26.9.1 To the widow or widower of the staff member; or
- 26.9.2 If there is no widow or widower, to the children of the staff member or, if there is a guardian of any children entitled under this subclause, to that guardian for the children's maintenance, education and advancement; or

26.9.3 If there is no such widow, widower or children, to the person who, in the opinion of the Commissioner was, at the time of the staff member's death, a dependent relative of the staff member; or

26.9.4 If there is no person entitled under paragraph 26.9.1, 26.9.2 or 26.9.3 of this subclause to receive the money value of any leave not taken or not completed by a staff member or which would have accrued to the staff member, the payment shall be made to the personal representative of the staff member.

26.11 Recreation leave does not accrue during leave without pay other than

26.11.1 military leave taken without pay when paid military leave entitlements are exhausted;

26.11.2 absences due to natural emergencies or major transport disruptions, when all other paid leave is exhausted;

26.11.3 any continuous period of sick leave taken without pay when paid sick leave is exhausted;

26.11.4 incapacity for which compensation has been authorised under the *Workplace Injury Management and Workers Compensation Act 1998*; or

26.11.5 periods which when aggregated, do not exceed 5 working days in any period of 12 months.

27. Extended Leave

Extended leave shall accrue and shall be granted to staff members in accordance with the provisions of Part 6 of the Police Regulation 2015.

28. Family and Community Service Leave

28.1 The Commissioner shall grant to a staff member some, or all of their accrued family and community service leave on full pay, for reasons relating to unplanned and emergency family responsibilities or other emergencies as described in subclause 28.2 of this clause. The Commissioner may also grant leave for the purposes in subclause 28.3 of this clause. Non-emergency appointments or duties shall be scheduled or performed outside of normal working hours or through approved use of flexible working arrangements or other appropriate leave.

28.2 Such unplanned and emergency situations may include, but not be limited to, the following:-

28.2.1 Compassionate grounds - such as the death or illness of a close member of the family or a member of the staff member's household;

28.2.2 Emergency accommodation matters up to one day, such as attendance at court as defendant in an eviction action, arranging accommodation, or when required to remove furniture and effects;

28.2.3 Emergency or weather conditions; such as when flood, fire, snow or disruption to utility services etc., threatens a staff member's property and/or prevents a staff member from reporting for duty;

28.2.4 Attending to unplanned or unforeseen family responsibilities, such as attending child's school for an emergency reason or emergency cancellations by child care providers;

28.2.5 Attendance at court by a staff member to answer a charge for a criminal offence, only if the Commissioner considers the granting of family and community service leave to be appropriate in a particular case.

- 28.3 Family and community service leave may also be granted for:
- 28.3.1 An absence during normal working hours to attend meetings, conferences or to perform other duties, for staff members holding office in Local Government, and whose duties necessitate absence during normal working hours for these purposes, provided that the staff member does not hold a position of Mayor of a Municipal Council, President of a Shire Council or Chairperson of a County Council; and
 - 28.3.2 Attendance as a competitor in major amateur sport (other than Olympic or Commonwealth Games) for staff members who are selected to represent Australia or the State.
- 28.4 The definition of "family or "relative" in this clause is the same as that provided in paragraph 31.4.2 of clause 31, Sick Leave to Care for Family Member of this award.
- 28.5 Existing staff members employed on and from 1 May 2018, will accrue FACS leave on full pay as follows:
- 28.5.1 2 ½ days on 1 May 2018;
 - 28.5.2 2 ½ days on 1 May 2019; and
 - 28.5.3 1 day per year (1 May) thereafter.
- 28.6 Any staff member appointed from 1 May 2018, will accrue FACS leave on full pay as follows.
- 28.6.1 2 ½ days in the staff member's first year of service;
 - 28.6.2 2 ½ days in the staff member's second year of service; and
 - 28.6.3 1 day per year thereafter.
- 28.7 If available family and community service leave is exhausted as a result of natural disasters, the Commissioner shall consider applications for additional family and community service leave, if some other emergency arises.
- 28.8 If available family and community service leave is exhausted, on the death of a family member or relative, additional paid family and community service leave of up to 2 days may be granted on a discrete, per occasion basis to a staff member.
- 28.9 In cases of illness of a family member for whose care and support the staff member is responsible, paid sick leave in accordance with clause 31, Sick Leave to Care for a Sick Family Member of this award shall be granted when paid family and community service leave has been exhausted or is unavailable.
- 28.10 The Commissioner may also grant staff members other forms of leave such as accrued recreation leave, time off in lieu, and so on for family and community service leave purposes.

29. Sick Leave

- 29.1 Illness in this clause and in clauses 30 and 31 of this award means physical or psychological illness or injury, medical treatment and the period of recovery or rehabilitation from an illness or injury.
- 29.2 Payment for sick leave is subject to the staff member:
- 29.2.1 Informing their manager as soon as reasonably practicable that they are unable to perform duty because of illness. This must be done as close to the staff member's starting time as possible; and
 - 29.2.2 Providing evidence of illness as soon as practicable if required by clause 30, Sick Leave - Requirements for Evidence of Illness of this award.

- 29.3 If the Commissioner is satisfied that a staff member is unable to perform duty because of the staff member's illness or the illness of his/her family member, the Commissioner:
- 29.3.1 Shall grant to the staff member sick leave on full pay; and
 - 29.3.2 May grant to the staff member, sick leave without pay if the absence of the staff member exceeds the entitlement of the staff member under this award to sick leave on full pay.
- 29.4 The Commissioner may direct a staff member to take sick leave if they are satisfied that, due to the staff member's illness, the staff member:
- 29.4.1 is unable to carry out their duties without distress; or
 - 29.4.2 risks further impairment of their health by reporting for duty; or
 - 29.4.3 is a risk to the health, wellbeing or safety of other staff members, NSW Police Force clients or members of the public
- 29.5 The Commissioner may direct a staff member to participate in a return to work program if the staff member has been absent on a long period of sick leave.
- 29.6 Entitlements - Any staff member appointed on or from 1 May 2018 will commence accruing sick leave in accordance with this clause immediately. Existing staff members employed as at 1 May 2018 will accrue sick leave in accordance with this clause from 1 May 2018 onwards.
- 29.6.1 At the commencement of employment with the NSW Police Force, a full-time staff member is granted an accrual of 5 days sick leave.
 - 29.6.2 After the first four months of employment, the staff member shall accrue sick leave at the rate of 10 working days per year for the balance of the first year of service.
 - 29.6.3 After the first year of service, the staff member shall accrue sick leave day to day at the rate of 15 working days per year of service.
 - 29.6.4 All continuous service as a staff member in the NSW public service shall be taken into account for the purpose of calculating sick leave due. Where the service in the NSW public service is not continuous, previous periods of public service shall be taken into account for the purpose of calculating sick leave due if the previous sick leave records are available.
 - 29.6.5 Notwithstanding the provisions of paragraph 29.6.4 of this subclause, sick leave accrued and not taken in the service of a public sector employer may be accessed in terms of the Public Sector Staff Mobility Policy.
 - 29.6.6 Sick leave without pay shall count as service for the accrual of recreation leave and paid sick leave. In all other respects sick leave without pay shall be treated in the same manner as leave without pay.
 - 29.6.7 When determining the amount of sick leave accrued, sick leave granted on less than full pay, shall be converted to its full pay equivalent.
 - 29.6.8 Paid sick leave shall not be granted during a period of unpaid leave.
- 29.7 Payment during the initial 3 months of service - Paid sick leave which may be granted to a staff member, other than a seasonal or relief staff member, in the first 3 months of service shall be limited to 5 days paid sick leave, unless the Commissioner approves otherwise. Paid sick leave in excess of 5 days granted in the first 3 months of service shall be supported by a satisfactory medical certificate.
- 29.8 Seasonal or relief staff - No paid sick leave shall be granted to temporary employees who are employed as seasonal or relief staff for a period of less than 3 months.

30. Sick Leave - Requirements for Evidence of Illness

- 30.1 A staff member absent from duty for more than 2 consecutive working days because of illness must furnish evidence of illness to the Commissioner in respect of the absence.
- 30.2 In addition to the requirements under subclause 29.2 of clause 29, Sick Leave of this award, a staff member may absent themselves for a total of 5 working days due to illness without the provision of evidence of illness to the Commissioner. Staff members who absent themselves in excess of 5 working days in a calendar year may be required to furnish evidence of illness to the Commissioner for each occasion absent for the balance of the calendar year.
- 30.3 As a general practice backdated medical certificates will not be accepted. However, if a staff member provides evidence of illness that only covers the latter part of the absence, they can be granted sick leave for the whole period if the Commissioner is satisfied that the reason for the absence is genuine.
- 30.4 If a staff member is required to provide evidence of illness for an absence of 2 consecutive working days or less, the Commissioner will advise them in advance.
- 30.5 If the Commissioner is concerned about the diagnosis described in the evidence of illness produced by the staff member, after discussion with the staff member, the evidence provided and the staff member's application for leave can be referred to the NSWPF nominated medical assessor or its successor for advice.
- 30.5.1 The type of leave granted to the staff member will be determined by the Commissioner based on the NSWPF nominated medical assessor or its successor's advice.
- 30.5.2 If sick leave is not granted, the Commissioner will, as far as practicable, take into account the wishes of the staff member when determining the type of leave granted.
- 30.6 The granting of paid sick leave shall be subject to the staff member providing evidence which indicates the nature of illness or injury and the estimated duration of the absence. If a staff member is concerned about disclosing the nature of the illness to their manager they may elect to have the application for sick leave dealt with confidentially by an alternate manager or the human resources section of the NSW Police Force.
- 30.7 The reference in this clause to evidence of illness shall apply, as appropriate:
- 30.7.1 up to one week may be provided by a registered dentist, optometrist, chiropractor, osteopath, physiotherapist, oral and maxillo facial surgeon or, at the Commissioner's discretion, another registered health services provider,
- 30.7.2 where the absence exceeds one week, and unless the health provider listed in paragraph 30.7.1 of this subclause is also a registered medical practitioner, applications for any further sick leave must be supported by evidence of illness from a registered medical practitioner, or
- 30.7.3 at the Commissioner's discretion, other forms of evidence that satisfy that the staff member had a genuine illness.
- 30.8 If a staff member who is absent on recreation leave or extended leave, furnishes to the Commissioner satisfactory evidence of illness in respect of an illness which occurred during the leave, the Commissioner may, subject to the provisions of this clause, grant sick leave to the staff member as follows:
- 30.8.1 In respect of recreation leave, the period set out in the evidence of illness;
- 30.8.2 In respect of extended leave, the period set out in the evidence of illness if such period is 5 working days or more.

- 30.9 Subclause 30.8 of this clause applies to all staff members other than those on leave prior to resignation or termination of services, unless the resignation or termination of services amounts to a retirement.

31. Sick Leave to Care for a Family Member

- 31.1 Where family and community service leave provided for in clause 28, Family and Community Service Leave of this award is exhausted or unavailable, a staff member with responsibilities in relation to a category of person set out in subclause 31.4 of this clause who needs the staff member's care and support, may elect to use available paid sick leave, subject to the conditions specified in this clause, to provide such care and support when a family member is ill.
- 31.2 The sick leave shall initially be taken from the sick leave accumulated over the previous 3 years. In special circumstances, the Commissioner may grant additional sick leave from the sick leave accumulated during the staff member's eligible service.
- 31.3 If required by the Commissioner to establish the illness of the person concerned, the staff member must provide evidence consistent with subclause 30.6 of clause 30, Sick Leave - Requirements for Evidence of Illness of this award.
- 31.4 The entitlement to use sick leave in accordance with this clause is subject to:

31.4.1 The staff member being responsible for the care and support of the person concerned; and

31.4.2 The person concerned being:-

- (a) a spouse of the staff member; or
- (b) a de facto spouse being a person of the opposite sex to the staff member who lives with the staff member as her husband or his wife on a bona fide domestic basis although not legally married to that staff member; or
- (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent or legal guardian), grandparent, grandchild or sibling of the staff member or of the spouse or de facto spouse of the staff member; or
- (d) a same sex partner who lives with the staff member as the de facto partner of that staff member on a bona fide domestic basis; or a relative of the staff member who is a member of the same household, where for the purposes of this definition:

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

"household" means a family group living in the same domestic dwelling.

32. Sick Leave - Workers Compensation

- 32.1 The Commissioner shall advise each staff member of their rights under the *Workers Compensation Act* 1987, as amended from time to time, and shall give such assistance and advice, as necessary, in the lodging of any claim.
- 32.2 A staff member who is or becomes unable to attend for duty or to continue on duty in circumstances which may give the staff member a right to claim compensation under the *Workers Compensation Act* 1987, shall be required to lodge a claim for any such compensation.

- 32.3 Where, due to the illness or injury, the staff member is unable to lodge such a claim in person, the Commissioner shall assist the staff member or the representative of the staff member, as required, to lodge a claim for any such compensation.
- 32.4 The Commissioner will ensure that, once received by the NSW Police Force, a staff member's workers compensation claim is lodged by the NSW Police Force with the workers compensation insurer within the statutory period prescribed in the *Workers Compensation Act 1987*.
- 32.5 Pending the determination of that claim and on production of an acceptable medical certificate, the Commissioner shall grant sick leave on full pay for which the staff member is eligible followed, if necessary, by sick leave without pay or, at the staff member's election by accrued recreation leave or extended leave.
- 32.6 If liability for the workers compensation claim is accepted, then an equivalent period of any sick leave taken by the staff member pending acceptance of the claim shall be restored to the credit of the staff member.
- 32.8 If a staff member notifies the Commissioner that he or she does not intend to make a claim for any such compensation, the Commissioner shall consider the reasons for the staff member's decision and shall determine whether, in the circumstances, it is appropriate to grant sick leave in respect of any such absence.
- 32.9 A staff member may be required to submit to a medical examination under the *Workers Compensation Act 1987* in relation to a claim for compensation under that Act. If a staff member refuses to submit to a medical examination without an acceptable reason, the staff member shall not be granted available sick leave on full pay until the examination has occurred and a medical certificate is issued indicating that the staff member is not fit to resume employment.
- 32.10 If the Commissioner provides the staff member with employment which meets the terms and conditions specified in the medical certificate issued under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* and, without good reason, the staff member fails, to resume or perform such duties, the staff member shall be ineligible for all payments in accordance with this clause from the date of the refusal or failure.
- 32.11 No further sick leave shall be granted on full pay if there is a commutation of weekly payments of compensation by the payment of a lump sum pursuant to section 51 of the *Workers Compensation Act 1987*.
- 32.12 Nothing in this clause prevents a staff member from appealing a decision or taking action under other legislation made in respect of:
- 32.12.1 The staff member's claim for workers compensation;
 - 32.12.2 The conduct of a medical examination by a Government or other Medical Officer;
 - 32.12.3 A medical certificate issued by the examining Government or other Medical Officer; or
 - 32.12.4 Action taken by the Commissioner either under the *Workers Compensation Act 1987* or any other relevant legislation in relation to a claim for workers compensation, medical examination or medical certificate.

33. Sick Leave - Claims Other Than Workers Compensation

- 33.1 If the circumstances of any injury to or illness of a staff member give rise to a claim for damages or to compensation, other than compensation under the *Workers Compensation Act 1987* sick leave on full pay may, subject to and in accordance with this clause, be granted to the staff member on completion of an acceptable undertaking that:-

- 33.1.1 Any such claim, if made, will include a claim for the value of any period of paid sick leave granted by the NSW Police Force to the staff member; and
- 33.1.2 In the event that the staff member receives or recovers damages or compensation pursuant to that claim for loss of salary or wages during any such period of sick leave, the staff member will repay to the NSW Police Force the monetary value of any such period of sick leave.
- 33.2 Sick leave on full pay shall not be granted to a staff member who refuses or fails to complete an undertaking, except in cases where the Commissioner is satisfied that the refusal or failure is unavoidable.
- 33.3 On repayment to the NSW Police Force of the monetary value of sick leave granted to the staff member, sick leave equivalent to that repayment and calculated at the staff member's ordinary rate of pay, shall be restored to the credit of the staff member.

34. Parental Leave

- 34.1 Parental leave includes maternity, adoption and "other parent" leave.
- 34.2 Maternity leave shall apply to a staff member who is pregnant and, subject to this clause the staff member shall be entitled to be granted maternity leave as follows:
- 34.2.1 For a period up to 9 weeks prior to the expected date of birth; and
- 34.2.2 For a further period of up to 12 months after the actual date of birth.
- 34.2.3 A staff member who has been granted maternity leave and whose child is stillborn may elect to take available sick leave instead of maternity leave.
- 34.3 Adoption leave shall apply to a staff member adopting a child and who will be the primary care giver, the staff member shall be granted adoption leave as follows:
- 34.3.1 For a period of up to 12 months if the child has not commenced school at the date of the taking of custody; or
- 34.3.2 For such period, not exceeding 12 months on a full-time basis, as the Commissioner may determine, if the child has commenced school at the date of the taking of custody.
- 34.3.3 Special Adoption Leave - A staff member shall be entitled to special adoption leave (without pay) for up to 2 days to attend interviews or examinations for the purposes of adoption. Special adoption leave may be taken as a charge against recreation leave, extended leave, time off in lieu or family and community service leave.
- 34.4 Where maternity or adoption leave does not apply, "other parent" leave is available to male and female staff who apply for leave to look after his/her child or children. Other parent leave applies as follows:
- 34.4.1 Short other parent leave - an unbroken period of up to 8 weeks at the time of the birth of the child or other termination of the spouse's or partner's pregnancy or, in the case of adoption, from the date of taking custody of the child or children;
- 34.4.2 Extended other parent leave - for a period not exceeding 12 months, less any short other parental leave already taken by the staff member as provided for in paragraph 34.4.1 of this subclause. Extended other parental leave may commence at any time up to 2 years from the date of birth of the child or the taking of custody of the child.
- 34.5 A staff member taking maternity or adoption leave is entitled to payment at the ordinary rate of pay for a period of up to 14 weeks, a staff member entitled to short other parent leave is entitled to payment at the ordinary rate of pay for a period of up to 1 week, provided the staff member:

- 34.5.1 Applied for parental leave within the time and in the manner determined set out in subclause 34.10 of this clause; and
- 34.5.2 Prior to the commencement of parental leave, completed not less than 40 weeks' continuous service.
- 34.5.3 Payment for the maternity, adoption or short other parent leave may be made as follows:
- (a) in advance as a lump sum; or
 - (b) fortnightly as normal; or
 - (c) fortnightly at half pay; or
 - (d) a combination of full-pay and half pay.
- 34.6 Payment for parental leave is at the rate applicable when the leave is taken. A member of staff holding a full time position who is on part time leave without pay when they start parental leave is paid:
- 34.6.1 at the full time rate if they began part time leave 40 weeks or less before starting parental leave;
- 34.6.2 at the part time rate if they began part time leave more than 40 weeks before starting parental leave and have not changed their part time work arrangements for the 40 weeks;
- 34.6.3 at the rate based on the average number of weekly hours worked during the 40 week period if they have been on part time leave for more than 40 weeks but have changed their part time work arrangements during that period.
- 34.7 A staff member who commences a subsequent period of maternity or adoption leave for another child within 24 months of commencing an initial period of maternity or adoption leave will be paid:
- 34.7.1 at the rate (full time or part time) they were paid before commencing the initial leave if they have not returned to work; or
- 34.7.2 at a rate based on the hours worked before the initial leave was taken, where the staff member has returned to work and reduced their hours during the 24 month period; or
- 34.7.3 at a rate based on the hours worked prior to the subsequent period of leave where the staff member has not reduced their hours.
- 34.8 Except as provided in subclauses 34.5, 34.6 and 34.7 of this clause, parental leave shall be granted without pay.
- 34.9 Right to request
- 34.9.1 A staff member who has been granted parental leave in accordance with subclause 34.2, 34.3 or 34.4 of this clause may make a request to the Commissioner to:
- (a) extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (b) return from a period of full time parental leave on a part time basis until the child reaches school age (Note: returning to work from parental leave on a part time basis includes the option of returning to work on part time leave without pay);
- to assist the staff member in reconciling work and parental responsibilities.
- 34.9.2 The Commissioner shall consider the request having regard to the staff member's circumstances and, provided the request is genuinely based on the staff member's parental responsibilities, may

only refuse the request on reasonable grounds related to the effect on the workplace or the Commissioner's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

34.10 Notification Requirements

- 34.10.1 When the NSW Police Force is made aware that a staff member or their spouse is pregnant or is adopting a child, the NSW Police Force must inform the staff member of their entitlements and their obligations under the Award.
- 34.10.2 A staff member who wishes to take parental leave must notify the Commissioner in writing at least 8 weeks (or as soon as practicable) before the expected commencement of parental leave:
- (a) that she/he intends to take parental leave, and
 - (b) the expected date of birth or the expected date of placement, and
 - (c) if she/he is likely to make a request under subclause 34.9 of this clause.
- 34.10.3 At least 4 weeks before a staff member's expected date of commencing parental leave they must advise:
- (a) the date on which the parental leave is intended to start, and
 - (b) the period of leave to be taken.
- 34.10.4 Staff member's request and the Commissioner's decision to be in writing
- The staff member's request under paragraph 34.9.1 and the Commissioner's decision made under paragraph 34.9.2 must be recorded in writing.
- 34.10.5 A staff member intending to request to return from parental leave on a part time basis or seek an additional period of leave of up to 12 months must notify the Commissioner in writing as soon as practicable and preferably before beginning maternity, adoption or other parental leave. If the notification is not given before commencing such leave, it may be given at any time up to 4 weeks before the proposed return on a part time basis, or later if the Commissioner agrees.
- 34.10.6 A staff member on maternity leave is to notify the NSW Police Force of the date on which she gave birth as soon as she can conveniently do so.
- 34.10.7 A staff member must notify the NSW Police Force as soon as practicable of any change in her intentions as a result of premature delivery or miscarriage.
- 34.10.8 A staff member on maternity or adoption leave may change the period of leave or arrangement, once without the consent of the Commissioner and any number of times with the consent of the Commissioner. In each case she/he must give the NSW Police Force at least 14 days' notice of the change unless the Commissioner decides otherwise.
- 34.11 A staff member has the right to her/his former position if she/he has taken approved leave or part time work in accordance with subclause 34.9 of this clause, and she/he resumes duty immediately after the approved leave or work on a part time basis.
- 34.12 If the position occupied by the staff member immediately prior to the taking of parental leave has ceased to exist, but there are other positions available that the staff member is qualified for and is capable of performing, the staff member shall be appointed to a position of the same grade and classification as the staff member's former position.

- 34.13 A staff member does not have a right to her/his former position during a period of return to work on a part time basis. If the Commissioner approves a return to work on a part time basis then the position occupied is to be at the same classification and grade as the former position.
- 34.14 A staff member who has returned to full time duty without exhausting their entitlement to 12 months unpaid parental leave is entitled to revert back to such leave. This may be done once only, and a minimum of 4 weeks' notice (or less if acceptable to the NSW Police Force) must be given.
- 34.15 A staff member who is sick during her pregnancy may take available paid sick leave or accrued recreation or extended leave or sick leave without pay. A staff member may apply for accrued recreation leave, extended leave or leave without pay before taking maternity leave. Any leave taken before maternity leave ceases at the end of the working day immediately preceding the day she starts her nominated period of maternity leave or on the working day immediately preceding the date of birth of the child, whichever is sooner.
- 34.16 A staff member may elect to take available recreation leave or extended leave within the period of parental leave provided this does not extend the total period of such leave.
- 34.17 A staff member may elect to take available recreation leave at half pay in conjunction with parental leave provided that:
- 34.17.1 accrued recreation leave at the date leave commences is exhausted within the period of parental leave;
 - 34.17.2 the total period of maternity, adoption or other parent leave, is not extended by the taking of recreation leave at half pay; and
 - 34.17.3 when calculating other leave accruing during the period of recreation leave at half pay, the recreation leave at half pay shall be converted to the full time equivalent and treated as full pay leave for accrual of further recreation, extended and other leave at the full time rate
- 34.18 If, for any reason, a pregnant staff member is having difficulty in performing her normal duties or there is a risk to her health or to that of her unborn child the Commissioner, should, in consultation with the staff member, take all reasonable measures to arrange for safer alternative duties. This may include, but is not limited to greater flexibility in when and where duties are carried out, a temporary change in duties, retraining, multi-skilling, teleworking and job redesign.
- 34.19 If such adjustments cannot reasonably be made, the Commissioner must grant the staff member maternity leave, or any available sick leave, for as long as it is necessary to avoid exposure to that risk as certified by a medical practitioner, or until the child is born whichever is the earlier.
- 34.20 Communication during parental leave
- 34.20.1 Where a staff member is on parental leave and a definite decision has been made to introduce significant change at the workplace, the NSW Police Force shall take reasonable steps to:
 - (a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the staff member held before commencing parental leave; and
 - (b) provide an opportunity for the staff member to discuss any significant effect the change will have on the status or responsibility level of the position the staff member held before commencing parental leave.
 - 34.20.2 The staff member shall take reasonable steps to inform the Commissioner about any significant matter that will affect the staff member's decision regarding the duration of

parental leave to be taken, whether the staff member intends to return to work and whether the staff member intends to request to return to work on a part time basis.

- 34.20.3 The staff member shall also notify the Commissioner of changes of address or other contact details which might affect the NSW Police Force capacity to comply with paragraph 34.20.1 of this subclause.

35. Military Leave

- 35.1 During the period of 12 months commencing on 1 July each year, the Commissioner may grant to a staff member who is a volunteer part-time member of the Defence Forces, military leave on full pay to undertake compulsory annual training and to attend schools, classes or courses of instruction or compulsory parades conducted by the staff member's unit.
- 35.2 In accordance with the *Defence Reserve Service (Protection) Act 2001* (Cth), it is unlawful to prevent a staff member from rendering or volunteering to render, ordinary defence Reserve service.
- 35.3 Up to 24 working days military leave per financial year may be granted by the Commissioner to members of the Naval and Military Reserve and up to 28 working days per financial year to members of the Air Force Reserve for the activities specified in subclause 35.1 of this clause.
- 35.4 The Commissioner may grant a staff member special leave of up to 1 day to attend medical examinations and tests required for acceptance as volunteer part time members of the Australian Defence Forces.
- 35.5 A staff member who is requested by the Australian Defence Forces to provide additional military services requiring leave in excess of the entitlement specified in subclause 35.3 of this clause may be granted Military Leave Top up Pay by the Commissioner.
- 35.6 Military Leave Top up Pay is calculated as the difference between a staff member's ordinary pay as if they had been at work, and the Reservist's pay which they receive from the Commonwealth Department of Defence.
- 35.7 During a period of Military Leave Top up Pay, a staff member will continue to accrue sick leave, recreation and extended leave entitlements, and the NSW Police Force is to continue to make superannuation contributions at the normal rate.
- 35.8 At the expiration of military leave in accordance with subclause 35.3 or 35.4 of this clause, the staff member shall furnish to the Commissioner a certificate of attendance and details of the staff members reservist pay signed by the commanding officer or other responsible officer.

36. Observance of Essential Religious or Cultural Obligations

- 36.1 A staff member of:
- 36.1.1 Any religious faith who seeks leave for the purpose of observing essential religious obligations of that faith; or
- 36.1.2 Any ethnic or cultural background who seeks leave for the purpose of observing any essential cultural obligations,
- may be granted recreation/extended leave to credit, time off in lieu or leave without pay to do so.
- 36.2 Provided adequate notice as to the need for leave is given by the staff member to the NSW Police Force and it is operationally convenient to release the staff member from duty, the Commissioner must grant the leave applied for by the staff member in terms of this clause.

- 36.3 A staff member of any religious faith who seeks time off during daily working hours to attend to essential religious obligations of that faith, shall be granted such time off by the Commissioner subject to:
- 36.3.1 Adequate notice being given by the staff member;
 - 36.3.2 Prior approval being obtained by the staff member; and
 - 36.3.3 The time off being made up in the manner approved by the Commissioner.
- 36.4 Notwithstanding the provisions of subclauses 36.1, 36.2 and 36.3 of this clause, arrangements may be negotiated between the NSW Police Force and the Association to provide greater flexibility for staff members for the observance of essential religious or cultural obligations.

37. Special Leave

37.1 Special Leave - Jury Service

- 37.1.1 A staff member shall, as soon as possible, notify the Commissioner of the details of any jury summons served on the staff member.
- 37.1.2 A staff member who, during any period when required to be on duty, attends a court in answer to a jury summons shall, upon return to duty after discharge from jury service, furnish to the Commissioner a certificate of attendance issued by the Sheriff or by the Registrar of the court giving particulars of attendances by the staff member during any such period and the details of any payment or payments made to the staff member under section 72 of the *Jury Act 1977* in respect of any such period.
- 37.1.3 When a certificate of attendance on jury service is received in respect of any period during which a staff member was required to be on duty, the Commissioner shall grant, in respect of any such period for which the staff member has been paid out-of-pocket expenses only, special leave on full pay. In any other case, the Commissioner shall grant, at the sole election of the staff member, available recreation leave on full pay, flex leave or leave without pay.

37.2 Witness at Court - Official Capacity - When a staff member is subpoenaed or called as a witness in an official capacity, the staff member shall be regarded as being on duty. Salary and any expenses properly and reasonably incurred by the staff member in connection with the staff member's appearance at Court as a witness in an official capacity shall be paid by the NSW Police Force.

37.3 Witness at Court - Other than in Official Capacity - Crown Witness - A staff member who is subpoenaed or called as a witness by the Crown (whether in right of the Commonwealth or in right of any State or Territory of the Commonwealth) shall:

- 37.3.1 Be granted, for the whole of the period necessary to attend as such a witness, special leave on full pay; and
- 37.3.2 Pay into the Treasury of the State of New South Wales all money paid to the staff member under or in respect of any such subpoena or call other than any such money so paid in respect of reimbursement of necessary expenses properly incurred in answer to that subpoena or call.
- 37.3.3 Association Witness - a staff member called by the Association to give evidence before an Industrial Tribunal or in another jurisdiction shall be granted special leave by the NSW Police Force for the required period.

37.4 Called as a witness in a private capacity - A staff member who is subpoenaed or called as a witness in a private capacity shall, for the whole of the period necessary to attend as such a witness, be granted at the staff member's election, available recreation leave on full pay or leave without pay.

37.5 Special Leave - Examinations -

37.5.1 Special leave on full pay up to a maximum of 5 days in any one year shall be granted to staff members for the purpose of attending at any examination approved by the Commissioner.

37.5.2 Special leave granted to attend examinations shall include leave for any necessary travel to or from the place at which the examination is held.

37.5.3 If an examination for a course of study is held during term or semester within the normal class timetable and study time has been granted to the staff member, no further leave is granted for any examination.

37.6 Return Home When Temporarily Living Away from Home - Sufficient special leave shall be granted to a staff member who is temporarily living away from home as a result of work requirements. Such staff member shall be granted sufficient special leave once a month before or after a weekend or a long weekend or, in the case of a shift worker before or after rostered days off to return home to spend two days and two nights with the family. If the staff member wishes to return home more often, such staff member may be granted recreation leave, extended leave or flex leave to credit or leave without pay, if the operational requirements allow.

37.7 Return Home When Transferred to New Location - Special leave shall be granted to a staff member who has moved to the new location ahead of dependants, to visit such dependants, subject to the conditions specified in the Crown Employees (Transferred Employees Compensation) Award.

37.8 A staff member who identifies as an Indigenous Australian shall be granted up to one day special leave per year to enable the staff member to participate in the National Aboriginal and Islander Day of Commemoration Celebrations. Leave can be taken at any time during NAIDOC week, or in the weeks leading up to and after NAIDOC week as negotiated between the supervisor and staff member.

37.9 Special Leave - Other Purposes - Special leave on full pay may be granted to staff members by the Commissioner for such other purposes, subject to the conditions specified in the New South Wales Public Service Commission Personnel Handbook published by the Public Service Commission on-line www.psc.nsw.gov.au. at the time the leave is taken.

37.10 Matters arising from domestic violence situations.

When the leave entitlements referred to in clause 38, Leave for Matters Arising From Domestic Violence, have been exhausted, the Commissioner shall grant up to five days per calendar year to be used for absences from the workplace to attend to matters arising from domestic violence situations.

38. Leave for Matters Arising from Domestic Violence

38.1 The definition of domestic violence is found in clause 2(j), of clause 2 Definitions, of this award.

38.2 Leave entitlements provided for in clause 28, Family and Community Service Leave, clause 29, Sick Leave and clause 31, Sick Leave to Care for a Family Member, may be used by staff members experiencing domestic violence.

38.3 Where the leave entitlements referred to in subclause 39.2 are exhausted, the Commissioner shall grant up to five days Special Leave, per calendar year, to be used for absences from the workplace to attend to matters arising from domestic violence situations.

38.4 The Commissioner will need to be satisfied, on reasonable grounds, that domestic violence has occurred and may require proof presented in the form of an agreed document issued by the Police Force, a Court, a Doctor, a Domestic Violence Support Service or Lawyer.

38.5 Personal information concerning domestic violence will be kept confidential by the NSW Police Force.

- 38.6 An application for leave for matters arising from domestic violence under this clause will trigger the NSW Police Force response to domestic and family violence with respect to the immediate and long term protection of victims, including specific police obligations for the investigation and management of such matters. Such actions are in line with obligations under the *Crimes (Domestic and Personal Violence) Act 2007*.
- 38.7 The Commissioner, where appropriate, may facilitate flexible working arrangements subject to operational requirements, including changes to working times and changes to work location, telephone number and email address.

39. Leave Without Pay

- 39.1 The Commissioner may grant leave without pay to a staff member if good and sufficient reason is shown.
- 39.2 Leave without pay may be granted on a full-time or a part-time basis.
- 39.3 Where a staff member is granted leave without pay for a period not exceeding 10 consecutive working days, the staff member shall be paid for any proclaimed public holidays falling during such leave without pay.
- 39.4 Where a staff member is granted leave without pay which, when aggregated, does not exceed 5 working days in a period of twelve (12) months, such leave shall count as service for incremental progression and accrual of recreation leave.
- 39.5 A staff member who has been granted leave without pay, shall not engage in employment of any kind during the period of leave without pay, unless prior approval has been obtained from the Commissioner.
- 39.6 A staff member shall not be required to exhaust accrued paid leave before proceeding on leave without pay but, if the staff member elects to combine all or part of accrued paid leave with leave without pay, the paid leave shall be taken before leave without pay.
- 39.7 No paid leave shall be granted during a period of leave without pay.
- 39.8 A permanent appointment may be made to the staff member's position if:
- 39.8.1 the leave without pay has continued or is likely to continue beyond the original period of approval and is for a total period of more than 12 months; and
 - 39.8.2 the staff member is advised of the Commissioner's proposal to permanently backfill their position; and
 - 39.8.3 the staff member is given a reasonable opportunity to end the leave without pay and return to their position; and
 - 39.8.4 the Commissioner advised the staff member at the time of the subsequent approval that the position will be filled on a permanent basis during the period of leave without pay.
- 39.9 The position cannot be filled permanently unless the above criteria are satisfied.
- 39.10 The staff member does not cease to be employed by the NSW Police Force if their position is permanently backfilled.
- 39.11 Subclause 39.8 of this clause does not apply to full-time unpaid parental leave granted in accordance with subparagraph 34.9.1(a) of clause 34, Parental Leave or to military leave.

SECTION 6 - MISCELLANEOUS

40. Trade Union Training Courses

40.1 The following training courses will attract the grant of special leave as specified below:-

40.1.1 Accredited Work Health and Safety (WH&S) courses and any other accredited WH&S training for WH&S Committee members. The provider(s) of accredited OH&S training courses and the conditions, on which special leave for such courses will be granted, shall be negotiated between the Commissioner and the Association under a local arrangement.

40.1.2 Courses organised and conducted by the Trade Union Education Foundation or by the Association or a training provider nominated by the Association. A maximum of 12 working days in any period of 2 years applies to this training and is subject to:

- (a) The operating requirements of the workplace permitting the grant of leave and the absence not requiring employment of relief staff;
- (b) Payment being at the base rate, i.e. excluding extraneous payments such as shift allowances/penalty rates, overtime, etc.;
- (c) All travelling and associated expenses being met by the staff member or the Association;
- (d) Attendance being confirmed in writing by the Association or a nominated training provider.

41. Deduction of Union Membership Fees

At the staff member's election, the Commissioner shall provide for the staff member's Association membership fees to be deducted from the staff member's pay and ensure that such fees are transmitted to the staff member's Association at regular intervals. Alternative arrangements for the deduction of Association membership fees may be negotiated between the Commissioner and the Association as a local arrangement.

42. Anti-Discrimination

42.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.

42.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award, which, by its terms or operation, has a direct or indirect discriminatory effect.

42.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

42.4 Nothing in this clause is to be taken to affect:

- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
- (b) offering or providing junior rates of pay to persons under 21 years of age;
- (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;

- (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

42.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

43. Progression

Progression through the incremental range is dependent upon completion of 12 months satisfactory conduct and service on each step of the scale.

Provided that the first year of service for Special Constables (Security) shall be a probationary period and the officer's conduct and performance shall be subject to review and report at 3 monthly intervals.

The positions of Senior Special Constable (Security) are promotional positions, which will be filled by way of open competitive selection upon the occurrence of a vacancy. The following procedure stipulates the method by which Special Constables (Security) will be appointed to promotional positions and ensures that such appointments are based on merit selection principles.

43.1 Advertisement Action

All promotional positions will be advertised on iworkfor.nsw.gov.au. The advertisement will provide the criteria by which culling and selection will be determined.

Advertisements will clearly state the requirements of the positions and will detail essential and desirable qualifications in line with the Role Description (formerly known as a Position Overview). The content of the advertisement will inform applicants of the skills and abilities necessary to perform the duties of the position. The closing date for applications will be not less than three weeks following the date of publication.

43.2 Selection Committee

A selection committee of identical composition to that required for any vacant Administrative Officer position in the NSW Police Force will be established and will assume responsibility for assessing the comparative merit of each applicant and recommending the candidate with the greatest merit.

Merit is decided by reference to the abilities, qualifications, experience, standard of performance and personal qualities of an applicant relative to the position.

43.3 Convenor

A convenor of the selection committee will be nominated. The role of the convenor will include ensuring that no member of the committee has any bias toward any of the applicants, and that the selection process does not involve any unfair questioning or assessment of applicants. The convenor will also undertake the administrative work associated with the selection process.

43.4 Culling of Applications

A cull will be conducted by the Committee based on the content of the advertisement and the Position Overview.

The purpose of the cull is to exclude applicants who on the basis of the application do not demonstrate that they satisfy the essential requirements of the advertisement or who show evidence that their qualifications and experience are not as competitive as other applicants.

43.5 Notice of Interview

Applicants will be given at least 3 clear working days' notice of interview. Interviews should be held within 10 working days of the closing date of applications.

43.6 Attendance at Interview

Where an officer is rostered for work at the time of interview they shall be granted special leave without loss of pay to attend. Provided however that where an officer is rostered off duty at the time of the interview then attendance at interview shall be without pay. Every effort shall be made to roster officers on duty to facilitate their attendance at interview.

43.7 Selection Committee Report

The Selection Committee will be required to produce a written report on the selection process specifically detailing reasons for selection and non-selection.

43.8 Approving Officer

The Assistant Commissioner, Human Resources, shall under delegation from the Commissioner be the Approving Officer. Notification of successful applicants to promotional positions shall be published at the earliest possible opportunity in the Police Monthly.

43.9 Services Check

A check of the conduct and services of the recommended officer will be made with their supervising officer.

44. Training and Development

44.1 The parties recognise the professional obligations of all Special Constables (Security) to ensure that they remain abreast of changes and developments in the security field as they relate to their duties. To this end the NSW Police Force will provide a comprehensive training program for Special Constables (Security) generally and for those occupying promotional positions.

44.2 All officers will be actively encouraged to participate in other staff development courses to improve their own development and individual competencies.

45. Study Assistance

45.1 The Commissioner shall have the power to grant or refuse study time.

45.2 Where the Commissioner approves the grant of study time, the grant shall be subject to:

45.2.1 The course being a course relevant to the NSW Police Force and/or the public service;

45.2.2 The time being taken at the convenience of the NSW Police Force; and

45.2.3 Paid study time not exceeding a maximum of 4 hours per week, to accrue on the basis of half an hour for each hour of class attendance.

45.3 Study time may be granted to both full and part-time staff members. Part-time staff members however shall be entitled to a pro-rata allocation of study time to that of a full-time staff member.

45.4 Study time may be used for:

45.4.1 Attending compulsory lectures, tutorials, residential schools, field days etc., where these are held during working hours; and/or

45.4.2 Necessary travel during working hours to attend lectures, tutorials etc., held during or outside working hours; and/or

45.4.3 Private study; and/or

- 45.4.4 Accumulation, subject to the conditions specified in subclauses 45.6 to 45.10 of this clause.
- 45.5 Staff members requiring study time must nominate the type(s) of study time preferred at the time of application and prior to the proposed commencement of the academic period. The types of study time are as follows:-
- 45.5.1 Face-to-Face - Staff members may elect to take weekly and/or accrued study time, subject to the provisions for its grant.
- 45.5.2 Correspondence - Staff members may elect to take weekly and/or accrued study time, or time off to attend compulsory residential schools.
- 45.5.3 Accumulation - Staff members may choose to accumulate part or all of their study time as provided in subclauses 45.6 to 45.10 of this clause.
- 45.6 Accumulated study time may be taken in any manner or at any time, subject to operational requirements of the NSW Police Force.
- 45.7 Staff members on rotating shifts may accumulate study time so that they can take leave for a full shift, where this would be more convenient to both the staff member and the NSW Police Force.
- 45.8 Where at the commencement of an academic year/semester a staff member elects to accrue study time and that staff member has consequently foregone the opportunity of taking weekly study time, the accrued period of time off must be granted even if changed work circumstances mean absence from duty would be inconvenient.
- 45.9 Staff members attempting courses which provide for annual examinations, may vary the election as to accrual, made at the commencement of an academic year, effective from 1st July in that year.
- 45.10 Where a staff member is employed after the commencement of the academic year, weekly study time may be granted with the option of electing to accrue study time from 1st July in the year of entry on duty or from the next academic year, whichever is the sooner.
- 45.11 Staff members studying in semester based courses may vary their election as to accrual or otherwise from semester to semester.
- 45.12 Correspondence Courses - Study time for staff members studying by correspondence accrues on the basis of half an hour for each hour of lecture/tutorial attendance involved in the corresponding face-to-face course, up to a maximum grant of 4 hours per week. Where there is no corresponding face-to-face course, the training institution should be asked to indicate what the attendance requirements would be if such a course existed.
- 45.13 Correspondence students may elect to take weekly study time and/or may accrue study time and take such accrued time when required to attend compulsory residential schools.
- 45.14 Repeated subjects - Study time shall not be granted for repeated subjects.
- 45.15 Expendable grant - Study time if not taken at the nominated time shall be forfeited. If the inability to take study time occurs as a result of a genuine emergency at work, study time for that week may be granted on another day during the same week.
- 45.16 Examination Leave - Examination leave shall be granted as special leave for all courses of study approved in accordance with this clause.
- 45.17 The period granted as examination leave shall include:
- 45.17.1 Time actually involved in the examination;

- 45.17.2 Necessary travelling time, in addition to examination leave, but is limited to a maximum of 5 days in any one year. Examination leave is not available where an examination is conducted within the normal class timetable during the term/semester and study time has been granted to the staff member.

45.18 The examination leave shall be granted for deferred examinations and in respect of repeat studies.

46. Special Constable (Security) Consultative Committee

- 46.1 It is intended for the purpose of this award to establish a forum within which matters concerning the formation of policy and procedures may be addressed.
- 46.2 The parties agree that members of the Committee should include a representative from the Security Management Group; Operational Communications & Information Command, a representative of the Association and one delegate.
- 46.3 This Committee shall meet on a needs basis within one week at the request of either party, or other agreed time frame.

47. Uniforms

Suitable uniforms of good quality as approved by the Commissioner of Police shall be provided to all Special Constables (Security) on the following basis:

47.1 Initial Issue Full Time Officers

All full time Special Constables (Security) recruited to the NSW Police Force shall be issued with the following items of uniform:

Male Officers	Female Officers
One (1) set of Basket Weave Leather Gear	One (1) Set of Basket Weave Leather Gear
One (1) Leather Duty Jacket	One (1) Leather Duty Jacket
Two (2) Jumpers	Two (2) Jumpers
Four (4) Pairs of Trousers	One (1) Raincoat
Eight (8) Shirts	Four (4) Pairs of Culottes
Two (2) Ties	Two (2) Pairs of Slacks
Two (2) Pairs of Boots	Eight (8) Blouses
One (1) Wide-brimmed Hat	One (1) Wide-brimmed Hat
One (1) Wide-brimmed Hat Cover	One (1) Wide-brimmed Hat Cover
One (1) Antron Cap	Two (2) Pairs of Boots
One (1) Raincoat	One (1) Dress Hat
One (1) Cap Cover	One (1) Dress Hat Cover
Seven (7) Pairs of Socks	Two (2) Ties
	Three (3) Pairs of Socks

(a) Annual Issue

All full time male Special Constables (Security) shall be issued in their second and subsequent years of service, with seven (7) pairs of socks. All full time female Special Constables (Security) shall be issued, in their second and subsequent years of service, with three (3) pairs of socks.

(b) Stocking Allowance

All full time female Special Constables (Security) shall, in addition to the uniform issued above, be paid a stocking allowance equal to that paid to female Police Officers under clause 65.8 of the Crown Employees (Police Officers - 2017) Award.

47.2 Initial Issue Part Time Officers

All part time Special Constables (Security) recruited to the NSW Police Force shall be issued with the following items of uniform:

Male Officers	Female Officers
One (1) set of Basket Weave Leather Gear	One (1) Set of Basket Weave Leather Gear
One (1) Leather Duty Jacket	One (1) Leather Duty Jacket
One (1) Jumper	One (1) Jumper
Two (2) Pairs of Trousers	One (1) Raincoat
Four (4) Shirts	Two (2) Pairs of Culottes
Two (2) Ties	One (1) Pair of Slacks
Two (2) Pairs of Boots	Four (4) Blouses
One (1) Wide-brimmed Hat	One (1) Wide-brimmed Hat
One (1) Wide-brimmed Hat cover	One (1) Wide-brimmed Hat cover
One (1) Antron Cap	Two (2) Pairs of Boots
One (1) Raincoat	One (1) Dress Hat
One (1) Cap Cover	One (1) Dress Hat Cover
Five (5) Pairs of Socks	Two (2) Ties
	Two (2) Pairs of Socks

(a) Annual Issue

All part time male Special Constables (Security) shall be issued in their second and subsequent years of service, with five (5) pairs of socks. All part time female Special Constables (Security) shall be issued, in their second and subsequent years of service, with two (2) pairs of socks.

(b) Stocking Allowance

All part time female Special Constables (Security) shall, in addition to the uniform issued above, be paid a stocking allowance equal to a pro rata (based on days worked) of that paid to female Police Officers under clause 65.8 of the Crown Employees (Police Officers - 2017) Award.

47.3 Initial Issue Casual Officers

All casual Special Constables (Security) recruited to the NSW Police Force shall be issued with the following items of uniform:

Male Officers	Female Officers
One (1) set of Basket Weave Leather Gear	One (1) Set of Basket Weave Leather Gear
One (1) Leather Duty Jacket	One (1) Leather Duty Jacket
One (1) Jumper	One (1) Jumper
Two (2) Pairs of Trousers	Two (2) Pairs of Culottes
Three (3) Shirts	One (1) Pair of Slacks
One (1) Tie	Three (3) Blouses
One (1) Pair of Boots	One (1) Pair of Boots
One (1) Antron Cap	One (1) Dress Hat
Three (3) Pairs of Socks	One (1) Ties
	Two (2) Pairs of Socks

(a) Annual Issue

All casual male Special Constables (Security) shall be issued in their second and subsequent years of service, with three (3) pairs of socks. All casual female Special Constables (Security) shall be issued, in their second and subsequent years of service, with two (2) pairs of socks.

(b) Stocking Allowance

All casual female Special Constables (Security) shall, in addition to the uniform issued above, be paid a stocking allowance equal to a pro rata (based on days worked) of that paid to female Police Officers under clause 65.8 of the Crown Employees (Police Officers - 2017) Award.

47.4 Condemnation

Except for the annual issue of socks, all items of uniform will be replaced on condemnation only.

47.5 Plain Clothes Allowance

Officers who are required to work in plain clothes as a result of the unavailability of uniforms or pregnancy, shall be paid while so required to work an allowance equal to a pro rata (based on days/hours worked in plain clothes) of the allowance prescribed in clause 65.9 of the Crown Employees (Police Officers - 2017) Award.

Provided that such an allowance shall not be payable prior to the officer receiving the initial issue of clothing provided for in subclauses 47.1, 47.2 and 47.3 of this clause.

48. Secure Employment

48.1 Work Health and Safety

48.1.1 For the purposes of this subclause, the following definitions shall apply:

- (i) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
- (ii) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.

48.1.2 Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):

- (i) consult with employees of the labour hire business and/or contract business regarding the workplace health and safety consultative arrangements;
- (ii) provide employees of the labour hire business and/or contract business with appropriate work health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
- (iii) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and

- (iv) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.

48.1.3 Nothing in this subclause 48.1 is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Work Health and Safety Act 2011* or the *Workplace Injury Management and Workers Compensation Act 1998*.

48.2 Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

- 48.3 This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

49. Area, Incidence and Duration

- 49.1 This Award applies to all officers defined herein.
- 49.2 It shall take effect on and from 1 May 2018 with the exception of the rates of pay and allowances prescribed under PART B, Monetary Rates, which shall take effect from the dates specified in that Part, or where otherwise stated in the Award.
- 49.3 This Award rescinds and replaces the Crown Employees (NSW Police Force Special Constables) (Security) Award as varied.

This Award remains in force until varied or rescinded, the period for which it was made having already expired.

- 49.3 Except where inconsistent with this Award, the provisions of any other existing Agreement or Determination will continue to apply.

PART B

MONETARY RATES

Table 1 - Wages

Effective from the first full pay period to commence on or after 1 July 2017.

An officer shall according to rank held and years of service be paid a weekly wage of not less than the following:

- (a) Special Constable (Security)

	Per Week \$
1st year of service	987.90
2nd year of service	1,004.90
3rd year of service and thereafter	1,024.30

Progression to the 2nd and 3rd year rate shall be dependent upon completion of 12 months satisfactory service at the previous year's rate of pay and satisfactory conduct.

(b) Special Constable (Security) First Class

1st year of service and thereafter	\$ 1,042.30
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Providing that for progression to the position of Special Constable (Security) First Class the officer has completed 12 months satisfactory service at the 3rd year Special Constable (Security) level and the Commissioner is of the opinion that the value of the work performed, the results achieved and the manner in which the duties are performed warrant such progression.

(c) Senior Special Constable (Security)

1st year of service	\$ 1,115.60
2nd year of service and thereafter	\$ 1,140.20

(d) Special Constable (Security), Field Supervisor

1st year of service	\$ 1,275.80
2nd year of service and thereafter	\$ 1,303.30

The parties agree that the final numbers and locations of promotional positions is recognised as a management prerogative of the Commissioner of Police.

The parties agree that confirmation of appointment to the rank of Senior Special Constable (Security) shall be subject to the successful completion of an appropriate supervisory course.

Table 2 - Other Rates and Allowances

Item No.	Clause No.	Subject Matter	Amount \$ Effective from the first full pay period on or after 1.7.2017
1	10	Full time Special Constables (Security), Monday to Friday Shift Allowance	67.40 per week
2	11	Full time Special Constables (Security), Saturday and Sunday Shift Allowance	190.40 per week
			Effective from the first full pay period on or after 30.7.1997
3	15.3(e)	Meal Allowance Subsequent Meal Allowance after further 4 hours overtime	6.00 per meal 5.50 per meal

P. KITE, Chief Commissioner.

**CROWN EMPLOYEES (OFFICE OF ENVIRONMENT AND
HERITAGE – NATIONAL PARKS AND WILDLIFE SERVICE) FIELD
OFFICERS AND SKILLED TRADES SALARIES AND CONDITIONS
2018 AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Office of Environment and Heritage.

(Case No. 52427 of 2018)

Before Chief Commissioner Kite

6 March 2018

AWARD

PART A

1. Arrangement

PART A

Clause No.	Subject Matter
1.	Arrangement
2.	Title
3.	Definitions
4.	Parties
5.	Salaries
6.	Salary Packaging Arrangements, Including Salary Sacrifice to Superannuation
7.	Allowances
8.	Standby Arrangements - Including Standby associated with Declared Incident
9.	Allowance for Temporary Assignments to Higher Roles
10.	Assignment
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12.	Project Teams
13.	Hours of Work
14.	Variation of Hours
15.	Overtime - General
16.	Meal Breaks
17.	Rest Breaks
18.	Temporary, Casual and School Based Apprentices Work Arrangements
19.	Part-Time Work Arrangements
20.	Job Sharing
21.	Public Holidays
22.	Leave
23.	Recreation Leave and Annual Leave Loading
24.	Family and Community Service Leave and Leave arising from Domestic Violence
25.	Excess Travel Time
26.	Contact with Employees on Parental and Maternity Leave

27. Incident Conditions
28. Working From Home
29. Dependent Care
30. Families and Field Work
31. Training and Development
32. Study Assistance
33. Training Competency
34. Engagement of Contractors
35. Anti-Discrimination
36. Redundancy Entitlements
37. Outplacement Services
38. Workplace Environment
39. Housing
40. Industrial Grievance Procedure
41. Deduction of Union Membership Fees
42. Saving of Rights
43. No Extra Claims
44. Area, Incidence and Duration

PART B

MONETARY RATES AND CLASSIFICATIONS

Table 1 - Salary Schedule for Skilled Trades Classification

Table 2 - Salary Schedule for Field Officer Classification

2. Title

This award shall be known as Crown Employees (Office of Environment and Heritage - National Parks and Wildlife Service) Field Officers and Skilled Trades Salaries and Conditions 2018 Award.

3. Definitions

"Accommodation" means - Home, place of abode or residential address, Commercial: hotel/motel/guest house, or an Established/Non Established camp.

"Act" means *Government Sector Employment Act 2013*, any successor or replacement legislation.

"Allocated Days Off" means the day/s that the employee who works set patterns of hours as detailed in this award has off each settlement period as a result of that employee accruing the necessary hours.

"Area Manager", means the employee who manages the parks, resources and employees of an Area and reports to a Branch Director.

"Award" means an award as defined in the *Industrial Relations Act 1996*.

"Campaign" means those incidents where shift work is introduced by the Incident Controller.

"Casual Employee" means any employee engaged in terms of section 43(4) of the *Government Sector Employment Act 2013* and any guidelines issued thereof or as amended from time to time.

"Chief Executive" means the head of the Office of Environment and Heritage.

"Contract hours" for the day for a full-time employee, means one fifth of the full-time 35 hours, as defined in this Award. For a part-time employee, contract hours for the day means the hours usually worked on the day.

"Crew" means a group of up to five employees assigned under the control of a Crew Leader to undertake incident management duties.

"Crew Leader" means an employee responsible for leading a crew to implement a strategy. The Crew Leader ensures the work is undertaken efficiently and safely, and is responsible for managing and recording the crew's operations.

"Crew Member" means an employee diverted from their day-to-day activities to undertake work associated with the management of an incident.

"Dependent" means a partner, including same sex partner, husband, wife, child, elderly parent or family member with a disability.

"Chief Executive" means Chief Executive of the Office of Environment and Heritage.

"Dispute" is a disagreement between an employee or employees and the OEH concerning employment matters.

"Division Commander" means an officer who is under the direction of an Operations Officer and who is responsible for a number of sectors to which specific work tasks are allocated under incident conditions.

"Duty Officer" means an employee either rostered for duty, or assigned on standby to serve as a divisional, branch or regional after hours contact, and to monitor and coordinate both OEH responses and other responses to a variety of situations including, but not limited to, escalating fire weather conditions, wildfires, search and rescue, marine mammal strandings, security alarms, asset damage, risks to visitor safety. The responsibilities of a Duty Officer are outlined in the Fire Management Manual and NPWS State Incident Plan.

"Employee" means and includes all persons employed from time to time under the provisions of the *Government Sector Employment Act 2013*.

"Employer for Industrial Purposes" means the Industrial Relations Secretary.

"Employer for all purposes other than Industrial" means the Chief Executive of the Office of Environment and Heritage.

"Family" means a group of persons of common ancestry, or all persons living together in one household or a primary social group consisting of parents and their offspring.

"Fieldwork" refers to work undertaken in the field in an area away from an employee's normal work location, and which precludes the employee from returning to his normal place of abode at the conclusion of each shift.

"Field Officer (Bush Fire Management Program) Classifications" are for the Bush Fire Management Funding Program.

Field Officer General Operations are Monday to Friday workers. Staff employed in this classification will perform the functions described in Appendix A

Field Officer Grade 1-2 are Monday to Friday workers.

"Grievance" is any workplace problem that is a concern, complaint or allegation raised internally by an employee against another employee and requires resolution.

"Incident" means an unscheduled activity such as wildfire suppression, wildlife rescue, flood and storm relief, search and rescue, cetacean stranding, accident and substance spill attendance, or as otherwise approved by the Chief Executive or delegate. (NB. Does not include hazard reductions).

"Incident duties" means all work involved in emergency incidents effort in which there is OEH participation from when an event is declared an incident until it is declared over by the Incident Controller. Duties may include: the initial reporting, reconnaissance, organisation of resources, control, mop-up, patrol to completion of incident duties, and may involve office duties in the organisation and direction of the emergency response as well as work at the scene.

"Monday to Friday Workers" are NPWS employees whose ordinary hours of work are from Monday to Friday inclusive within the bandwidth hours of 6:00 a.m. to 8:00:p.m.

"NPWS" means the National Parks and Wildlife Service of the Office of Environment and Heritage.

"Nominated working place" means the location where an employee normally commences work.

"Ordinary working hours" means the average number of hours the employee is required to work each week.

"Branch Director" means the employee who manages the parks, resources and employees of a Region and reports to a Branch Director of NPWS.

"Rostered Day Off" means a day off in a four week roster period, taken at a time which is operationally convenient to the OEH, except those days that are taken as approved leave including time in lieu or as an allocated day off.

"School Based Apprentice" means an employee who is undertaking an apprenticeship under a training contract while also enrolled in the Higher School Certificate.

"Secretary" means the Industrial Relations Secretary, as established under the *Government Sector Employment Act 2013*.

"Settlement Period" is the 4 week roster period.

"Seven Day Roster Workers" are employees whose ordinary hours of work may be worked on any day, Monday to Sunday (inclusive) within the bandwidth of 6:00 a.m. to 8:00 p.m.

"Standby" means an approved period of time outside normal working hours, when employees, including Duty Officers, have been directed by the Chief Executive, or delegate, to be readily contactable and to immediately respond as required.

"Supervisor" means the employee's immediate supervisor or manager or any other employee authorised by the Chief Executive to fulfil the role of a supervisor or manager, other than a person engaged as a consultant or contractor.

"Temporary Employee" means any employee engaged in terms of section 43(3) of the *Government Sector Employment Act 2013* and any guidelines issued thereof or as amended from time to time.

"Unions" mean the Australian Workers' Union - New South Wales Branch and the Electrical Trades Union.

4. Parties

4.1 The "Parties" to this Award are:

- (i) Industrial Relations Secretary for the Office of Environment and Heritage (OEH);
- (ii) The Australian Workers Union - New South Wales Branch;
- (iii) The Electrical Trades Union

5. Salaries

5.1 The salary rates paid to employees covered by this Award are specified in Tables 1 and 2 in this Award.

5.2 The salaries prescribed in Part B Monetary Rates, Table 1 reflect increases to the salaries of Skilled Trades Officers and Apprentices and Table 2 reflect increases to the salaries of Field Officer classifications

Any wage related allowances will be adjusted in line with the increases to the rates of pay.

5.3 The salary rates are all inclusive of the following allowances:

- (i) Diving
- (ii) Kosciusko
- (iii) Dry Cleaning
- (iv) Flying

All allowances cited in Schedule A of the Crown Employees Wages Staff (Rates of Pay) Award 2015 as applying to the Crown Employees (Skilled Trades) Award have been included in salary rates for trades employees under this Award, with the exception of:

- (i) Asbestos allowance
- (ii) Tool allowance (electrician)

6. Salary Packaging Arrangements, Including Salary Sacrifice to Superannuation

6.1 The entitlement to salary package in accordance with this clause is available to:

- (i) ongoing full-time and part-time employees;
- (ii) temporary employees, subject to OEH convenience; and
- (iii) casual employees, subject to OEH convenience, and limited to salary sacrifice to superannuation in accordance with sub-clauses 6.7 - 6.9.

6.2 For the purposes of this clause:

"salary" means the salary or rate of pay prescribed for the employee's classification shown in Part B - Monetary Rates, of this Award, and any other payment that can be salary packaged in accordance with Australian taxation law.

"post-compulsory deduction salary" means the amount of salary available to be packaged after payroll deductions required by legislation or order have been taken into account. Such payroll deductions may include, but are not limited to, taxes, compulsory superannuation payments, HECS payments, child support payments, and judgement debtor/garnishee orders.

6.3 By mutual agreement with the Chief Executive, an employee may elect to package a part or all of their post-compulsory deduction salary in order to obtain:

6.3.1 a benefit or benefits selected from those approved by the Secretary; and

6.3.2 an amount equal to the difference between the employee's salary, and the amount specified by the Secretary for the benefit provided to or in respect of the employee in accordance with such agreement.

6.4 An election to salary package must be made prior to the commencement of the period of service to which the earnings relate.

6.5 The agreement shall be known as a Salary Packaging Agreement.

6.6 Except in accordance with sub-clause 6.7, a Salary Packaging Agreement shall be recorded in writing and shall be for a period of time as mutually agreed between the employee and the Chief Executive at the time of signing the Salary Packaging Agreement.

- 6.7 Where an employee makes an election to sacrifice a part or all of their post-compulsory deduction salary as additional employer superannuation contributions, the employee may elect to have the amount sacrificed:
- 6.7.1 paid into the superannuation fund established under the *First State Superannuation Act 1992*; or
 - 6.7.2 where OEH is making compulsory employer superannuation contributions to another complying superannuation fund, paid into the same complying fund; or
 - 6.7.3 subject to OEH's agreement, paid into another complying superannuation fund.
- 6.8 Where the employee makes an election to salary sacrifice, OEH shall pay the amount of post-compulsory deduction salary, the subject of election, to the relevant superannuation fund.
- 6.9 Where the employee makes an election to salary package and where the employee is a member of a superannuation scheme established under the:
- 6.9.1 *Police Regulation (Superannuation) Act 1906*;
 - 6.9.2 *Superannuation Act 1916*;
 - 6.9.3 *State Authorities Superannuation Act 1987*; or
 - 6.9.4 *State Authorities Non-contributory Superannuation Act 1987*;
- the OEH must ensure that the employee's superable salary for the purposes of the above Acts, as notified to the SAS Trustee Corporation, is calculated as if the Salary Packaging Agreement had not been entered into.
- 6.10 Where the employee makes an election to salary package, and where the employee is a member of a superannuation fund other than a fund established under legislation listed in sub-clause 6.9 of this clause, the OEH must continue to base contributions to that fund on the salary payable as if the Salary Packaging Agreement had not been entered into. This clause applies even though the superannuation contributions made by the OEH may be in excess of superannuation guarantee requirements after the salary packaging is implemented.
- 6.11 Where the employee makes an election to salary package:
- 6.11.1 subject to Australian Taxation law, the amount of salary packaged will reduce the salary subject to appropriate PAYG taxation deductions by the amount packaged; and
 - 6.11.2 any allowance, penalty rate, payment for unused leave entitlements, weekly worker's compensation or other payment, other than any payments for leave taken in service, to which an employee is entitled under this Award or any applicable Award, Act or statute which is expressed to be determined by reference to the employee's rate of pay, shall be calculated by reference to the rate of pay which would have applied to the employee under Part B - Monetary Rates of this Award if the Salary Packaging Agreement had not been entered into.
- 6.12 The OEH may vary the range and type of benefits available from time to time following discussion with the Unions. Such variations shall apply to any existing or future Salary Packaging Agreement from date of such variation.
- 6.13 The Secretary will determine from time to time the value of the benefits provided following discussion with the Unions. Such variations shall apply to any existing or future Salary Packaging Agreement from the date of such variation. In this circumstance, the employee may elect to terminate the Salary Packaging Agreement.

7. Allowances

7.1 Allowances payable in terms of sub-clauses 7.2, 7.3 and 7.4 listed in this clause shall be adjusted on 1 July each year in line with the increases in the Consumer Price Index for Sydney during the preceding year (March quarter figures).

7.2 Boot Allowance

A boot allowance is payable to any employee who works in the field where suitable boots are not provided by the OEH. The allowance is to be a maximum of \$171.20 per pair of boots, on condemnation of the previous pair, endorsed by the Area Manager or Branch Director of NPWS.

7.3 Field Allowance

7.3.1 This allowance replaces camping allowance contained in the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 or any successor instrument to that Award.

7.3.2 This allowance is payable when an employee is required to stay overnight at a place other than their place of abode or commercial accommodation.

7.3.3 The amounts payable per day of 24 hours, or part thereof (which must involve an overnight stay), are:

- (i) where meals are provided by OEH, \$74.88 or \$3.12 per hour
- (ii) where meals are not provided by the OEH \$119.62 or \$4.98 per hour

7.3.4 OEH will provide the necessary equipment.

7.3.5 In the exceptional circumstances where equipment is not supplied, no additional allowance is payable.

7.4 Remote Area Allowance

7.4.1 The remote area allowance seeks to compensate employees for increased costs of living, the climatic conditions of areas designated "remote" and the level of disturbance to partners and family.

7.4.2 Remote area means the area of the State of N.S.W. situated on or to the west of a line starting from the right bank of the Murray River opposite Swan Hill and then passing through the following towns or localities in the following order, namely, Conargo, Coleambally, Hay, Rankins Springs, Marsden, Condobolin, Peak Hill, Nevertire, Gulargambone, Coonabarabran, Wee Waa, Moree, Warialda, Ashford and Bonshaw, and includes a place situated in any such town. It also includes Nadgee, Montague Island and Lord Howe Island.

7.4.3 The allowances specified in paragraph 7.4.5 Table 1 of this clause, will be paid to those employees who meet the criteria set out in the Personnel Handbook and who live in a remote area as defined in paragraph 7.4.5 Table 2 of this clause.

7.4.4 The allowance replaces the Commonwealth allowance paid to employees on Lord Howe Island.

7.4.5 The rates of the allowances will be:

Table 1

Grade	With Dependents	Without Dependents
A	\$4,493.26	\$3,144.81
B	\$5,991.02	\$4,193.49
C	\$7,488.79	\$5,242.16

To be paid from the first full pay period to commence on or after 1 July 2016.

Table 2

Grade "A"	All locations in remote areas, as defined, except those specified as Grade B or C and including Nadgee.
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For the purpose of this Award the following locations will be included in Grades "B" and "C".

Grade "B"	is payable to employees living in the following locations: Angledook, Barrigun, Bourke, Brewarrina, Clare, Engonia, Goodooga, Ivanhoe, Lake Mungo, Lightning Ridge, Louth, Mungindi, Pooncarie, Redbank, Walgett, Wanaaring, Weilmoringle, White Cliffs, Wilcannia, Willandra, and including Menindee, Kinchega, Macquarie Marshes and Gunderbooka
Grade "C"	is payable to employees living in the following locations: Fort Grey, Mutawintji, Mount Wood, Nocolche, Olive Downs, Tibooburra, Yathong and including Witta Brinna, Tarawi, Irymple, Lord Howe Island and Montague Island

7.4.6 Should employees be located in other remote locations not specified in this Award, the grading for payment will be determined in consultation with the Unions.

7.5 On Call Allowance for Skilled Tradespersons in Kosciusko National Park Municipal Services Managed by NPWS

7.5.1 A weekly allowance of \$190 per week (of 7 days) shall be paid to skilled tradespersons who are directed to be on call.

7.5.2 The payment shall cover all time outside the normal working hours that the skilled tradesperson is required to be available for contact and immediate response to a call.

7.5.3 Only in exceptional circumstances would OEH require a skilled tradesperson to be on call for a period of less than 7 days. Where a period of on call is for less than 7 days, a pro-rata to a minimum of one day will apply for each day the employee is required to be on call. The daily allowance will equate to \$27.14 per day.

7.5.4 Where the call results in the skilled tradesperson returning to work or performing more than minor follow-up work (i.e. where two or more further calls are required and this takes more than 15 minutes), the skilled tradesperson shall be entitled to overtime for the actual time spent responding to the call or a minimum of 3 hours overtime, whichever is the greatest.

7.5.5 The allowance shall compensate the skilled tradesperson for minor follow up work that may result from the call.

7.5.6 Where a skilled tradesperson is required to return to work again after the initial call out, the skilled tradesperson shall be paid for the actual time spent attending the second and subsequent call outs.

8. Standby Arrangements - Including Standby Associated With Declared Incidents

- 8.1 Standby roles - employees may be directed to be on standby as a:
- (i) Duty Officer - either for general standby or associated with a declared incident (refer to clause 3 - Definitions); or
 - (ii) General standby - an employee assigned on standby to respond to after hours duty as required.
- 8.2 Standby duties - employees directed to be on standby must be readily contactable by telephone, radio or mobile phone where one has been issued, during the standby period and be prepared to respond immediately to duty as required. Employees who are not readily contactable and available for immediate response to duty as required will not be entitled to standby payments.
- 8.3 Duty Officer support - a Duty Officer may have access to OEH's after hours contact lists, an OEH vehicle (with radio) and mobile phone dependent on the requirements of the duty to be performed;
- 8.4 Standby hours - the time an employee can be directed to be on standby is:
- (i) 24 hours on a rostered day off; or
 - (ii) all hours between the finishing time and starting time of the next day on rostered days on; or
 - (iii) for an approved period of time to meet operational requirements with the minimum period being 3 hours.
- 8.5 Standby rates
- 8.5.1 An employee required to be on standby will be paid at the rate of one third their standard hourly rate (not including any loading) or maximum rate for Clerk Grade 8 as varied from time to time plus \$1.00, whichever is the lesser, for the time they are required to be on standby outside their normal rostered working hours.
- 8.5.2 Payment of the standby rates for a Duty Officer directed to be on standby for a declared incident, will be charged to the respective declared incident and the overtime barrier will not apply (except for SES officers) for the duration of the declared incident.

9. Allowance for Temporary Assignments to Higher Roles

- 9.1 Employees who relieve in a higher role for a period of at least 5 consecutive work days will be paid a proportion (from 50-100%) of the difference between the substantive salary rate of the occupant of the higher role and the employee's salary. The proportions shall depend on the range and level of duties performed in the role. Where the role is vacant, an employee relieving in the role shall be paid a proportion (from 50%-100%) of the difference between step one of the grading of the vacant role and the employee's substantive salary rate. The proportions shall depend on the range of the level of duties performed in the roles.
- 9.2 The terms and conditions of the Allowance for Temporary Assignments to Higher Roles apply for the duration of the relieving period.
- 9.3 The duties and the proportion of the Allowance for Temporary Assignments to Higher Roles shall be mutually agreed to prior to the relieving period.

10. Assignment

- 10.1 Assignment to a vacant role will be by way of competitive selection based on the merit principle and in accordance with the provisions of the *Government Sector Employment Act 2013*.

- 10.2 Assignment to a higher starting salary point within the grade will be determined by way of competency progression or incremental progression arrangements as set out in Annexures 1 and 4.

11. Progression

11.1 General

11.1.1 Progression within levels, grades or classes shall be by annual increment unless otherwise specified in Part B.

11.1.2 Increments shall be processed by supervisors within one (1) month of receipt

11.1.3 If increments are not processed within two (2) months of the due date, the increments will be processed automatically, and payment backdated to the due date.

11.1.4 Progression to a higher level, grade or class shall be by competitive selection for an advertised vacancy, unless the role is banded across a number of levels, grades or classes.

11.2 Progression and competency applications for Field Officer classification.

11.2.1 Progression and competency applications shall be processed by supervisors within three (3) months of receipt.

12. Project Teams

12.1 The Chief Executive or nominee may request employees to perform work in a designated project team.

12.2 An employee may decline an offer to work in a designated project team.

12.3 When undertaking work in a designated project team, the employee shall be paid:

12.3.1 the rate for the job as determined by job evaluation; or

12.3.2 at least one salary level higher than their substantive rate.

12.4 An employee working in a designated project team on a full-time basis will not be required to carry out the duties of their substantive role in addition to the project duties.

12.5 Project team jobs may be either full-time or part-time.

13. Hours of Work

13.1 The organisation of work and ordinary hours will optimise work effectiveness and the fulfilment of the reasonable needs of employees.

13.2 The standard hours of work will be those necessary for the completion of routine work and this clause sets out the ordinary hours and conditions attached (other than declared incidents).

13.3 General

13.3.1 Except as otherwise provided, ordinary hours of work will be an average of 35 per week, over a settlement period, to be worked between 6:00 a.m. and 8:00 p.m.

13.3.2 Employees, except those in roles under the Field Officer classification, may only be rostered to work ordinary hours between 6:00 p.m. and 8:00 p.m., when the officer agrees.

13.3.3 The standard coretime shall be between the hours of 9:30 a.m. and 3:30 p.m. excluding the lunch break, unless other arrangements have been negotiated under a local

- arrangement in terms of clause 10 - Local Arrangements, of Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009.
- 13.3.4 The Guarantee of Service is the specified period during the day between the hours of 8:30 a.m. and 4:30 p.m. on a weekday when an appropriate level of service is maintained in NPWS work locations.
- 13.3.5 Pattern of hours is the way hours are worked each settlement period; e.g. start/finish times and days of the week for 7 day roster workers.
- 13.3.6 The pattern of hours will be agreed to between the employees and management of the area with regard to the needs of the OEH, the needs of employees and the provision of services to the OEH's customers.
- 13.3.7 A roster of hours and days must be set and agreed to in writing 2 weeks before the settlement period starts.
- 13.3.8 Hours of work for roles and/or classifications will be as set out in sub-clause 13.4.
- 13.3.9 No employee will be able, or be required (other than in incidents) to work more than 10 ordinary hours per shift (exclusive of travelling time).
- 13.3.10 Permanent changes to the pattern of hours for an employee are subject to consultation with the employee and/or the Union.
- 13.4 Ordinary hours of work may be organised as follows:
- 13.4.1 Monday to Friday Workers
- Ordinary hours to be worked from Monday to Friday (inclusive).
- Except as otherwise provided, all approved work performed outside the bandwidth, on weekends or public holidays is to be paid as overtime in accordance with the provisions of clause 15 - Overtime - General, of this Award.
- 13.4.2 Defining Monday to Friday Workers
- (i) A Review Committee will be established for the purpose of determining the number, if any, of roles to be reclassified from Seven Day Roster roles to Monday to Friday Day roles in each region based on principles agreed between the parties including operational needs.
 - (ii) Following the original determination in 13.4.2 (i) above, the Review Committee will meet to review that determination within 12 months.
 - (iii) Subsequent to the review in 13.4.2 (ii) above, any further changes will be the subject of consultation between the local delegate and manager based on principles agreed between the parties including operational needs.
 - (iv) New employee(s) will only be offered a Monday to Friday Roster role if a vacancy exists in this category as determined in paragraphs 13.4.2 (i) and (iii).
 - (v) Disputes arising from the process will be dealt with pursuant to clause 39 - Industrial Grievance Procedure.

- 13.4.3 Conversion from Monday to Friday to Seven Day Roster Worker
- (i) The determination of a role being reclassified from Monday to Friday to a Seven Day Roster role will be made by the OEH on the basis that:
 - (a) Where an employee employed in a Monday to Friday role performs work on more than:
 - 23 weekend days and/or public holidays (total) in a calendar year in the case of employees who receive a 17% loading; or
 - 11 weekend days and/or public holidays (total) in a calendar year in the case of employees who receive an 8.5% loading,
 the employee will have the option of choosing to remain a Monday to Friday Day Worker or make a claim to the OEH (and the OEH will not unreasonably withhold agreement) to have the role converted to a Seven Day Roster Worker role that attracts the loading; or
 - (b) By agreement between the local manager and delegate, a Monday to Friday Day role is converted to a Seven Day Roster role.
 - (ii) Nothing in this clause is intended to derogate from the rights of employees' opt in/opt out rights in paragraph 13.4.6 below.
- 13.4.4. Temporary Field Officer - Bushfire Management Program
- (i) This clause contains temporary arrangements for the Enhanced Bush Fire Management Program. These arrangements will apply for a limited period and may be extended for a defined period by agreement between the AWU and management.
 - (ii) Field Officers - Bushfire Management Program, Senior Field Officers - Bushfire Management Program, Field Supervisors - Bushfire Management Program and Senior Field Supervisors- Bushfire Management Program are specific classifications directly connected to the Enhanced Bush Fire Management Program. These employees will be entitled to the same rate of pay and conditions, with the exception of the shift loading, as employees in the Field Officer, Senior Field Officer, Field Supervisor and Senior Field Supervisor classifications.
 - (iii) All employees employed in Field Officer - Bushfire Management Program classifications (as defined in paragraph 13.4.4(ii)) are classified as Monday to Friday Workers including current employees that transfer to these classifications.
 - (iv) Employees in Hazard Reduction classifications as defined in paragraph 13.4.4(ii) can be converted to a Seven Day Roster Worker role in accordance with paragraph 13.4.3.
 - (v) When an employee who has worked in a Hazard Reduction classification returns to their previous substantive role as a Seven Day Roster Worker, they will be entitled to loading pursuant to paragraphs 13.4.5 (vii) -or (viii) from the date of return.
 - (vi) New employees that are employed to backfill Seven Day Roster roles vacated by employees who transfer to Field Officer - Hazard Reduction classifications will be employed as Seven Day Roster Workers.
- 13.4.5 Field Officer General Operations
- (a) The Field Officer - General Operations will perform the functions contained at Appendix A of this award. The Field Officer General Operations will be a Monday to Friday worker and shall be remunerated by the rates contained in this award in Table 2.

13.4.6 Field officer Grade 1-2

- (a) Field Officer Grade 1-2 will be a Monday to Friday classification. All employees engaged in this classification will be Monday to Friday workers.

13.4.7 Seven Day Roster Workers

- (i) Seven Day roster worker is the default category of employment for the classifications listed in paragraph 13.4.7 (ii) except where paragraphs 13.4.2, 13.4.3, 13.4.4, 13.4.5 and 13.4.6 apply.
- (ii) Seven day roster workers include the following classifications; Field Officers, Senior Field Officers, Field Supervisors and Senior Field Supervisors. This list is not exhaustive. Identification of additional roles will be done in consultation with the union.
- (iii) Seven Day Roster Worker employees who were employed prior to 30 August 2010 and who receive the relevant loading under the Award will continue to be entitled to the loading until the employee chooses to opt out and their proposal is agreed to by the local manager pursuant to paragraph 13.4.6. Current employees will retain the loading should they transfer or win a promotion to another role as defined in the default employment category.
- (iv) Ordinary hours for employees are to be worked from Monday to Sunday (inclusive) within the bandwidth of 6:00 a.m. to 8:00 p.m., unless otherwise agreed to between the OEH and the employee concerned.
- (v) Employees shall not be rostered to work more than two consecutive weekends (i.e. Saturday and Sunday), unless the officer agrees to do so.
- (vi) Employees working this pattern of hours are to have at least two consecutive rostered full days off per week, unless otherwise agreed to between the OEH and the employee concerned.
- (vii) A loading of 17% of annual base salary is payable to Field Officers, Senior Field Officers and tradespersons required to work up to a maximum of 45 combined weekend days (i.e. Saturdays or Sundays) and 5 Public Holidays and is paid in lieu of all other penalty rates.
- (viii) A loading of 8.5% of annual base salary is payable to Field Supervisors and Senior Field Supervisors who hold designated Seven Day Roster roles for working up to a maximum of 22 combined weekend days (i.e. Saturdays or Sundays), and 3 Public Holidays and is in lieu of all other penalty rates.
- (ix) If an employee agrees to work more than the maximum specified in sub-clauses (vii) or (viii) of this clause, no additional payments or day in lieu shall be made.
- (x) Employees referred to in (vii) or (viii) of this paragraph who are directed to work more weekend days and public holidays than those prescribed for their role, will be paid penalty rates as follows:

Table 3

(a)	Saturdays	a 50% loading for each additional day worked
(b)	Sundays	a 75% loading for each additional day worked
(c)	Public Holidays	a 150% loading for each additional day worked

- (xi) The loading specified in (vii) and (viii) of this paragraph will be paid for the purposes of superannuation and all paid leave, other than where such leave is for a period of over 3 months.

13.4.8 Opt Out and Opt in

- (i) Where Seven Day Roster employees choose not to be rostered in accordance with Seven Day Roster provisions in the Award and where management can manage the locations concerned without these employees being on the Seven Day Roster, then such employees may opt out of being on a Seven Day Roster subject to:
 - (a) paragraph 13.4.2 being satisfied; and,
 - (b) with written approval from the OEH.
- (ii) Prior to externally advertising a vacant Seven Day Roster role of the same classification that attracts the loading, the role will:
 - (a) in the first instance, be offered to employees from the same Area or Unit that have previously opted out of their entitlement to the loading; and
 - (b) if no employees that have previously opted out accept the offer to opt back in, the role will be offered to employees that are Monday to Friday workers in the same Area or Unit as a result of new employment.

13.4.9 Set Pattern of Hours

- (i) These provisions apply to employees who work a set pattern of hours within each 4 week roster period.
- (ii) The set pattern of hours will be decided and agreed to by the employee and their supervisor at the time each 4 week roster is determined.
- (iii) The starting and finishing times set for the roster period will be within the bandwidth of 6:00 a.m. and 8:00 p.m. (Monday to Sunday) inclusive.
- (iv) The set pattern of ordinary hours of work, exclusive of meal breaks, can be worked as:
 - (a) five 7 hour 22 minute days with 22 minutes per day accruing towards one allocated day off each 4 week roster period; or up to
 - (b) Four 9 hour 20 minute days with 35 minutes accruing towards 5 allocated days off each 4 week roster period.
- (v) The working of four 9 hour 20 minute days per week can only occur with the Area Manager's approval and must be by mutual agreement. Two (2) weeks' notice prior to the commencement of this arrangement shall be given to the Branch Director where possible, and 2 weeks' notice of its cessation.
- (vi) Any paid leave, e.g. recreation leave, sick leave or Family and Community Service leave occurring during the settlement period, shall be a day worked for accrual of an allocated day off.
- (vii) Days taken as leave without pay do not accrue any time towards an allocated day off.

14. Variation of Hours

- 14.1 Where OEH directs that the set starting and finishing times and/or days to be worked be changed, employees shall be given at least 2 weeks' notice (This requirement does not apply in incidents).
- 14.2 Where the hours and/or days are varied by mutual agreement between OEH and the employees within the bandwidth, no penalty is paid.

- 14.3 Where the OEH provides 2 weeks' notice that the hours and/or days are to be varied, and the variation is within the bandwidth, no penalty shall apply.
- 14.4 Where the OEH does not provide 2 weeks' notice that the hours and/or days are to be varied, and the variation is within the bandwidth, a 25% loading on base salary, based on a 7 hour shift, shall apply either until the elapse of the 2 week notice period or the variation to days/hours ceases, whichever comes first.
- 14.5 Where the employee requests a variation to hours and/or days and this is agreed by the OEH, no loading shall be paid.
- 14.6 In respect of Hazard Reduction Burns, there is a period of two months in each calendar year where the daily bandwidth of hours will be 6:00 a.m. to 10:00 p.m. The Branch Director in consultation with the local delegates will determine the designated period or 2 periods each calendar year where employees, during these designated period/s, may be called upon to work on Hazard Reduction Burns on 24 hours' notice without the payment of the additional 25% loading penalty.

15. Overtime - General

15.1 General

15.1.1 General overtime conditions of employees under this Award shall be regulated in accordance with the provisions contained within the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 or any successor instrument to that Award.

15.1.2 Overtime is payable for all approved time worked:

- (i) in excess of 7 hours per day or the daily contract hours, whichever is appropriate, where such work is at the direction of OEH; or
- (ii) outside the bandwidth, except where such work is associated with incidents as defined.

15.1.3 If overtime is taken as time in lieu, it must be taken within six months of accruing.

15.2 Overtime at Home

15.2.1 Employees covered by this Award may work overtime from home where the nature of work allows for it.

15.2.2 No meal allowance is paid when working overtime at home.

16. Meal Breaks

16.1 Unpaid meal break

16.1.1 An unpaid meal break of at least 30 minutes shall be taken no later than 5 hours after the commencement of work.

16.1.2 In some cases, due to the nature of the work, the meal break shall be for a set period of time. In these cases, employees shall be allowed at least 30 minutes.

16.2 Paid meal break

16.2.1 Meal breaks taken whilst working overtime shall be paid at single time rates

16.2.2 A meal break of 30 minutes shall be taken no later than two (2) hours after the commencement of overtime.

16.2.3 If overtime continues, an additional meal break of 30 minutes shall be taken after the completion of each 5 hours worked

17. Rest Breaks

- 17.1 There must be a break of at least ten (10) consecutive hours between an employee's normal finishing time and normal start time.
- 17.2 Employees required to continue work after their normal finishing time, except where the hours have been varied, are required to have a rest break of at least 10 consecutive hours before again commencing work, and be paid for any time lost.
- 17.3 Where an employee is directed to commence work without having had their required rest break, they will be paid overtime rates until they are released from duty.
- 17.4 Where an employee is recalled to work after their finishing time, and works for a total of less than 4 hours, they are entitled to a rest break of at least 7 consecutive hours before their next start time, and are entitled to be paid for any time lost. If they are directed to return to work and have not had their rest break, they are to be paid at overtime rates until they are released from duty.
- 17.5 Where an employee is recalled to work after their finishing time, and works for a total of more than 4 hours, they are entitled to a 10 hour rest break and shall be paid for any time lost. Where the employee is directed to commence work without having had their required rest break, they will be paid overtime rates until they are released from duty.

18. Temporary, Casual and School Based Apprentices Work Arrangements

- 18.1 Temporary employees and casual employees will be employed by the OEH in accordance with the provisions of the *Government Sector Employment Act 2013*.
- 18.2 Temporary Employees
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- 18.2 Temporary Employees
- 18.2.1 All temporary employment will be in accordance with the *Government Sector Employment Act 2013*, or Regulations and Rules arising from this legislation from time to time.
- 18.2.2 Temporary employees shall be entitled to uniforms (if the position requires such use), Annual PWG Entry Permits (if employed in excess of twelve months), training and staff development opportunities.
- 18.2.3 In accordance with the Superannuation Guarantee legislation, temporary officers are entitled to employer based contributions to their nominated superannuation fund.
- 18.2.4 Temporary officers employed for a period in excess of three months are entitled to the accrual of leave. In the case of temporary officers employed for less than three months, no leave accrual is available, however, payment of 4/48ths in lieu of recreation leave will be made on termination of employment.
- 18.3 Casual Employees
- 18.3.1 Casual employees shall be engaged by the OEH on an irregular and intermittent basis and shall be paid fortnightly or at the termination of engagement, whichever is the earlier, for the number of hours worked.

18.3.2 The casual hourly rate is determined by the following formulae:

- (i) Annual salary of the role divided by 260.8929 divided by 7 = Base hourly rate
- (ii) Rate for Monday to Friday = base hourly rate plus 25%
- (iii) Rate for Saturday = base hourly rate plus 58%
- (iv) Rate for Sunday = base hourly rate plus 83%
- (v) Rate for Public Holidays = base rate plus 158%

The rate of pay for casual employees shall be set in recognition of the skills and experience of the employee which is relevant to the work to be performed.

18.3.3 The casual hourly rates of pay are inclusive of all forms of leave, including recreation leave, except for long service leave entitlements which accrue according to the provisions of the *Long Service Leave Act 1955*.

18.3.4 Casual employees are entitled to be paid overtime for time worked in excess of their normal daily contract hours to the next quarter hour.

18.3.5 Overtime payments for casual employees are calculated on the ordinary base hourly rate (the 25% loading is not included).

18.3.6 Except as otherwise provided for in this clause, casual employees shall also receive the benefit of leave entitlements in accordance with sub-clauses 12 (iv); (v); and (vi) of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 or any successor instrument to that Award.

18.3.7 Casual employees shall be engaged and paid for a minimum of three consecutive hours for each day worked.

18.4 School Based Apprentices

18.4.1 Wages

- (i) The hourly rates for full-time apprentices as set out in this Award shall apply to school based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- (ii) For the purposes of paragraph 18.4.2 (i) of this clause, where a school based apprentice is a full-time school student, the time spent in off the job training for which the school based apprentice is paid is deemed to be 25 per cent of the actual hours worked on the job each week.
- (iii) The wages paid for training time may be averaged over the school term or year.
- (iv) Where this Award specifies a weekly rate for full-time apprentices, the hourly rate shall be calculated by dividing the applicable weekly rate by 38.

18.4.2 Progression through the Wage Structure

- (i) School based apprentices progress through the wage scale at the rate of 12 months' progression for each two years of employment as an apprentice.
- (ii) The rates of pay are based on a standard apprenticeship of four years. The rate of progression reflects the average rate of skill acquisition expected from the typical

combination of work and training for a school based apprentice undertaking the applicable apprenticeship.

18.4.3 Conversion from a school based apprentice to a full-time apprenticeship

- (i) Where an apprentice converts from a school based to a full-time apprenticeship, all time spent as a full-time apprentice counts for the purpose of progression through the wage scale set out in this Award. This progression applies in addition to the progression achieved as a school based apprentice.

18.4.4 Conditions of Employment

- (i) Except as provided by this clause, school based apprentices are entitled to pro rata entitlements of all other conditions of employment contained in this Award.

19. Part-Time Work Arrangements

19.1 Part-time work may be available to:

19.1.1 ongoing and temporary employees who wish to work part-time in an existing role;

19.1.2 existing full-time or part-time employees applying for promotion or transfer if they are willing to work the approved hours of the role;

19.1.3 employees recruited and assigned to a role where the approved hours are less than full-time.

19.2 The decision to work part-time is voluntary. No employee shall be directed or placed under any duress to move from full-time to part-time employment or vice versa.

19.3 Employees employed on a part-time basis may elect to work full-time at any time, subject to the appropriate work being available for the classification and level, grade or class of the role.

19.4 Return to full-time employment before the expiry of an agreed period of part-time work is subject to availability of work and adequate period of notice.

19.5 Employees employed on a part-time basis shall not be expected to carry out all of the responsibilities of a full-time job in part-time hours.

19.6 Employees employed on a part-time basis shall not be subjected to pressure to be available for work outside their usual part-time hours. Where the nature of work may from time to time require them to work outside of agreed part-time hours any arrangements to alter the existing part-time work arrangement need to be negotiated and agreed to at the outset.

20. Job Sharing

20.1 The parties to this Award confirm a commitment to providing flexible work conditions through job sharing.

20.2 OEH will support employees sharing a role provided that the:

20.2.1 arrangement is fair and equitable to the employees involved;

20.2.2 employees involved in the job sharing arrangement agree to the arrangement;

20.2.3 arrangement can be on an ongoing or temporary basis;

20.2.4 arrangement is in the best interests of the smooth functioning of the OEH, ensuring that customer/client OEH relationship is maintained.

- 20.3 The days each employee shall work should be consecutive, and negotiated and agreed to by all parties involved before commencement of employment.
- 20.4 Some examples are: 2 days one week and 3 days the next week; Thursday to Wednesday worked on alternate weeks; Monday, Tuesday, alternate Wednesday and alternate Wednesday, Thursday, Friday.
- 20.5 The employees involved in the job share arrangement should maintain close contact to ensure continuity of work completed by them.

21. Public Holidays and Public Service Holiday

21.1 General

21.1.1 Unless directed to attend for duty by the Secretary or delegate, an employee is entitled to be absent from duty on any day which is:

- (i) a declared public holiday throughout the State;
- (ii) a declared local holiday in the part of the State at or from which the employee performs duty; and
- (iii) a Public Service Holiday in accordance with any directives issued by the Secretary (this replaces the Union Picnic Day).

21.1.2 If a declared local holiday falls during an employee's absence on leave, the employee is not to be credited with the holiday.

21.2 Monday to Friday Workers

21.2.1 Those employees required to work on a declared public holiday shall be paid overtime in accordance with clause 15 - Overtime - General.

21.2.2 Employees who are required to work on a Public Service Holiday will be able to take a day off in lieu within 12 months at a time agreed between the employee and their supervisor.

21.3 Seven Day Roster Workers

21.3.1 Employees covered by this Award may be required to perform their ordinary hours on a declared public holiday, a declared local holiday, or a public service holiday as per clause 13 - Hours of Work.

21.3.2 Payment for time worked on a declared public holiday will be in accordance with the provisions of clause 13 - Hours of Work, or clause 15 - Overtime - General, as is appropriate.

21.3.3 Provisions of paragraph 21.3.2 do not apply to an employee who is required to work on a Public Service Holiday and this day is in addition to the specified number of public holidays for which the loading is paid as per clause 14 - Variation of Hours, of this Award. The employee will be entitled to take a day off in lieu within 12 months at a time agreed between the employee and their supervisor.

22. Leave

22.1 General

22.1.1 General leave conditions of employees under this Award shall be regulated in accordance with the provisions contained within:

the Act and Regulation, and

Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 or any successor instrument to that Award, and

OEH's policies as agreed and reviewed from time to time.

- 22.2 Employees employed on a part-time basis will accrue any leave on a pro-rata basis, which will be determined on the number of approved contract hours worked in a pay period.

23. Recreation Leave and Annual Leave Loading

23.1 Recreation Leave

23.1.1 For Monday to Friday Workers paid recreation leave accrues at the rate of 20 working days per year,

23.1.2 For Seven Day Roster Workers paid recreation leave accrues at the rate of 30 days per year.

23.2 Annual Leave Loading

23.2.1 Annual Leave loading for Skilled Trades Officers who are Monday to Friday Workers is 17.5% on the monetary value of up to 4 weeks of recreation leave accrued in a leave year.

23.2.2 Annual Leave loading for Skilled Trades Officers who are 7 Day Roster Workers is 17.5% on the monetary value of up to 5 weeks of recreation leave accrued in a leave year.

- 23.3 The annual salary paid to Field Officer classifications is inclusive of annual leave loading.

24. Family and Community Service Leave and Leave Arising from Domestic Violence

- 24.1 The application of Family and Community Service Leave for employees covered by this Award shall be in accordance with clause 71 of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 or any successor instrument to that Award.

- 24.2 The application of Leave for Matters Arising from Domestic Violence for employees covered by this Award shall be in accordance with clause 84A of the Crown Employees (Conditions of Employment) Reviewed Award 2009 or any successor instrument to that Award.

25. Excess Travel Time

- 25.1 Excess Travel Time shall be regulated in accordance with the provisions of Clause 27 of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 or any successor instrument to that Award.

26. Contact with Employees on Parental and Maternity Leave

- 26.1 All parties agree to implement the NPWS Parental/Maternity Leave Contact Policy which aims to maintain contact with employees specifically in the context of workplace change, restructuring and office relocations and attendance at relevant training courses.

- 26.2 It is recognised that some employees may not wish to keep in contact with the OEH while they are on leave.

27. Incident Conditions

27.1 General

- 27.1.1 The following conditions apply in circumstances where an incident is declared and approved by the Branch Director until such time as the declaration of the incident is lifted.

27.1.2 Set Patterns of Hours and bandwidths will be suspended at the time of the incident being declared for those employees involved in the incident.

27.1.3 Adjustments to hours will be carried forward to the next settlement period.

27.1.4 On successful completion of basic fire fighting training all employees will be issued with appropriate personal protective and other equipment in accordance with the OEHL's Fire Management Manual as varied from time to time.

27.1.5 Employees directed to return from annual leave to attend an Incident will be compensated for pre-paid accommodation, and return travel from their leave destination to home at either First Class Rail Travel or economy air travel for themselves and any dependents or at Official Business Rate if a Private Vehicle is used. Employees will be further compensated by single hourly rate for all hours travelled. Such employees will have the same option as employees called from an Allocated Day Off as in paragraph 27.2.5.

27.1.6 "Incident Controller" within this clause means an employee responsible for incident activities including the development and implementation of strategic decisions and for approving the ordering and releasing of resources.

27.2 Conditions

27.2.1 For the purpose of calculating payment for incident duty, the salary rate shall be the employee's substantive salary or as prescribed in sub-clause 27.5 Incident Responsibility Rates, whichever is the greater.

27.2.2 Call out to attend an Incident will be paid at a minimum of three (3) hours overtime, or by mutual agreement, time in lieu at overtime rates.

27.2.3 All travel to and from an incident will be paid as if part of the Incident.

27.2.4 If an employee is away from their own Area for the purposes of attending an Incident, and are not required to work and it is not possible to return to their home, seven hours normal pay will be paid per day until they return home or their usual place of work, whichever is the sooner.

27.2.5 Employees required to work on their Allocated Day Off/Rostered Day Off will receive either:

- (i) overtime for the whole shift in addition to the normal pay for the day; or
- (ii) overtime for the whole shift (minus the normal days pay) plus a day off in lieu of the rostered day off to be taken at a mutually agreed time.

This must be marked clearly on time sheets or the assumption will be that the rostered day off has been deferred.

27.3 Start and Finish Times:

27.3.1 On a normal rostered day on, start will be from normal workplace and finish will be on return to normal workplace plus 30 minutes.

27.3.2 On a Rostered Day Off, start will be on leaving place of abode and finish will be on return to place of abode plus 30 minutes.

27.3.3 Where it is not possible to return to place of abode or normal workplace, start will be on leaving accommodation and finish will be on return to accommodation plus 30 minutes.

27.3.4 Where an employee is called to an Incident from their place of abode after the completion of a normal shift, starting time will be at the time of the call, and finishing time will be on return to accommodation or place of abode plus 30 minutes.

27.4 Shift Arrangements During Incidents:

27.4.1 A normal shift is seven hours, however, employees may only be required to work a maximum of twelve hours on site. However, the initial shift following the declaration of an Incident may extend to a maximum of sixteen hours on site. (The intention of this Award is to allow flexibility in exceptional circumstances; e.g. new crews arriving late, unforeseeable worsening of the Incident).

27.4.2 A minimum eight hour break, not including travelling time, must be taken between shifts, and where possible a ten hour break is recommended.

27.4.3 After completion of three consecutive shifts on incident duties or five consecutive shifts carrying out support functions in connection with incidents (such as catering teams and Administrative Assistance) a twenty-four hours break with payment at single time rates, shall be provided before continuing with incident duties or support functions or to return to normal duties. Where employees are required to take rest break days additional to those referred to above, such days shall also be paid at the single time rate. Employees shall not be required to take Allocated Days Off or use any other leave entitlement in order to have the required rest breaks after performance of incident duties or support functions in connection with incidents.

27.4.4 It is the responsibility of the Incident Controller or Delegate to ensure that reasonable shift and rest periods are adhered to.

27.5 Incident Responsibility Rates

27.5.1 The level and grading of Incident Positions, prescribed by the Australian Inter-Service Incident Management System shall be determined in line with the Department OEH's job evaluation process. Only those persons assigned to roles identified as Incident Positions shall be paid incident responsibility rates from the date of the making of this Award.

Table 4

Role	2.5% increase effective from the first full pay period on or after 1 July 2017 \$	2.5% increase effective from the first full pay period on or after 1 July 2018 \$	2.5% increase effective from the first full pay period on or after 1 July 2019 \$
Crew Member	62,623	64,189	65,802
Crew Leader	70,359	72,118	73,921
Sector Commander	78,107	80,060	82,062
Divisional Commander	88,459	90,670	92,937
Operations Officer	94,978	97,352	99,786
Planning Officer	94,978	97,352	99,786
Logistics Officer	117,623	120,564	123,578
Incident Controller	130,358	133,617	136,957
Deputy Incident Controller			
Safety Officer			
Situation Officer			
Situation Unit Leader			
Resource Officer			
Resource Unit Leader			
Air Attack Supervisor			
Air Operations Manager			
Air Observer			
Airbase Manager			

- 27.5.2 Employees with specific skills assigned to work in any of the identified Incident Roles listed in Table 4 will be paid at their substantive hourly rate or at incident responsibility rate, whichever is the greater. For employees receiving the Allowance for Temporary Assignments to Higher Roles the substantive hourly rate will be the hourly rate they were paid when the incident was declared for the duration of their relieving period.
- 27.5.3 Where the level and grading of any new or additional Incident Roles has not been determined employees will be paid their substantive hourly rate or for employees receiving the Allowance for Temporary Assignments to Higher Roles the hourly rate that they were paid when the incident was declared for the duration of their relieving period.
- 27.5.4 The overtime barrier rate does not apply to incident situations, except for officers of the SES.
- 27.5.5 Employees must be assigned to or exercise the responsibilities of an incident responsibility position for a minimum of three hours to receive incident responsibility rates. Those required to undertake responsibility for less than three hours have the opportunity to develop experience.
- 27.5.6 When new Incident Roles are created they will be evaluated to determine the appropriate salary and existing Incident Roles may be reviewed at the same time.
- 27.5.7 Incident responsibility rates will move in line with the Crown Employees (Public Sector - Salaries 2015) Award or any successor instrument to that Award.
- 27.6 Payment associated with Incidents
- 27.6.1 This replaces the provisions of Clause 15 - Overtime, in relation to overtime worked in respect of incidents.
- 27.6.2 Payment will be calculated as follows:
- (i) Double time for all hours from start of incident regardless of day, night, Saturday, Sunday or Public Holidays.
- 27.6.3 No employee shall have time deducted from pay for meal breaks unless they are actually relieved of Incident Duties for the period of the break and clean up time; e.g. 30-45 minutes. Where meals are provided to an employee on the ground and eaten in conjunction with incident duties, no deduction will be made from pay.
- 27.7 Family and Dependent Care During Incident Conditions
- 27.7.1 OEH will compensate employees for additional dependent care expenses (receipts must be provided) relating to time worked during the incident. This must be arranged with the Incident Controller as soon as practical and each case will be assessed by the Incident Controller.
- 27.7.2 OEH will notify a nominated family member or friend as to the whereabouts of employees when extended shifts are required.
- 27.8 Provision of meals and accommodation whilst working on Incident
- 27.8.1 OEH will generally provide meals including breakfast, lunch, and dinner, and provide supper for employees working night shift.
- 27.8.2 Employees commencing at their normal workplace will provide their first meal where the meal break falls within their normal seven hour shift.
- 27.8.3 If no meal is supplied, a payment of \$15.24 per meal is made.
- 27.8.4 Wherever possible employees will be allowed to return home or the OEH will provide accommodation in a hotel or motel.

27.8.5 Where returning home or to other accommodation is not possible or practical and the employees are required to camp, they will be paid the Field Allowance set out in Clause 7 - Allowances, of this Award.

27.9 Standby Associated with Incidents

27.9.1 When an incident is declared appropriately trained and qualified employees may be required to be on standby outside normal rostered working hours.

28. Working from Home

28.1 Supervisors may allow employees to work from home: however, working from home is not to be a routine arrangement.

28.2 Employees covered by this Award may be given approval to work from home from time to time.

28.3 Greater access to working from home is to be given to employees where:

28.3.1 family members are sick; or

28.3.2 a project/report requires urgent completion and for productivity reasons working from home will achieve this;

28.3.3 for weekend and night emergency incident management; and

28.3.4 the nature of the work allows for it.

28.4 In some cases where family members are sick, employees may work from home and combine this with their entitlement to family and community service leave (where available and appropriate).

28.5 When working at home, employees must ensure that they are contactable by their office.

28.6 Employees are covered by workers' compensation where prior approval has been given to the employer to work from home.

29. Dependent Care

29.1 Where dependents of the employee are sick and require care, the OEH will continue to support the employee in the following ways:

29.1.1 In accordance with Clause 75 - Parental Leave of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 or any successor instrument to that Award;
or

29.1.2 Where circumstances allow, an employee may negotiate with their supervisor to work at home.

29.2 In circumstances where an employee with a sick dependent is required to attend to work that cannot be completed from home (e.g. an urgent meeting) assistance will be available to pay for additional costs associated with in home care for the dependent, subject to the provision of receipts.

29.3 OEH will meet the additional costs involved in before or after school care, where an employee is required to work beyond their regular hours, resulting in additional cost to the employee for child care, in an accredited child care program, subject to the provision of receipts.

Each application will be determined on its merits.

29.4 The parties reaffirm their commitment to providing dependent care assistance:

29.4.1 To enable employees to attend residential training and development activities.

29.4.2 To employees required to work during emergency situations.

29.4.3 To ensure that employees are able to perform their duties in relation to incidents knowing their dependents are safe and cared for in a similar manner to that which they would provide themselves.

29.5 OEH will compensate the employee for additional dependent care expenses relating to hours worked during the incident.

30. Families and Field Work

30.1 Employees covered by this Award from time to time will be required to undertake either field work or to work away from their normal headquarters.

30.2 Employees who wish to be accompanied by a family member on single day trips, must obtain approval from their supervisor or Reporting Officer prior to the trip for the purpose of insurance coverage.

30.3 Employees who wish to be accompanied by a family member on working trips of more than one day must obtain approval from their Area Manager or Branch Director.

31. Training and Development

31.1 The parties to this Award confirm a commitment to skill development for officers of the OEH.

31.2 The training and development of employees covered by this Award will be linked to the Performance Development and Feedback system or any replacement Performance Management System agreed to by the parties. Performance, Development and Feedback Plans will be established through the system and be relevant to the employee's current role and their future career path.

31.3 All training and development will be managed and conducted in accordance with the OEH's Learning and Development Framework as varied from time to time.

31.4 Dependent care assistance (by way of payment for dependent care) may be provided to enable employees with dependent responsibilities to pursue residential training and development opportunities.

32. Study Assistance

32.1 The OEH will support employees gaining additional skills through formal study and who are progressing through their course in a consistent way based on the timeframe indicated by the providing institution. Where a subject is failed an intention to catch-up must be demonstrated.

32.2 Employees are entitled to apply for study time and study leave in accordance with the provisions Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 or any successor instrument to that Award 32.2.1. The following costs associated with courses:

- (a) Higher Education Contribution Help scheme Fee; or
- (b) TAFE compulsory fees; or
- (c) Compulsory post-graduate fees; or
- (d) Compulsory full fee paying course fees;

will be reimbursed by the OEH in accordance with the guidelines following.

- 32.3 The proportion of fees to be reimbursed where the employee's application for study assistance has been approved under these guidelines, and:
- (i) is their first qualification as an employee of the OEH: 100% to a maximum of \$4,000 per annum refunded where the resultant qualification is directly relevant to OEH operations or needs and is approved as such by the Chief Executive; or
 - (ii) is their second or successive qualification as an employee of the OEH: 50% refunded to a maximum of \$2,000 per annum where the resultant qualification is directly relevant to OEH operations or needs and is approved as such by the Chief Executive.
- 32.4 Approval for assistance will be considered annually and refunds will be paid for a maximum of six annual approvals up to a total amount of \$24,000 in respect of paragraph 32.3(i) or \$12,000 in respect of paragraph 32.3 (ii) of this clause, where other requirements have been met as in sub-clause 32.6 below.
- 32.5 At the discretion of the Chief Executive and where the Chief Executive determines that it is in the interests of the OEH, approval may be given for a maximum of eight annual approvals as set out in sub-clause 32.4 above.
- 32.6 To be eligible to receive a refund, an employee must:
- (i) have been employed in the OEH prior to the final examination in the academic period under consideration and also be in employment on the date reimbursement is requested;
 - (ii) produce evidence of having successfully completed a full stage of an approved course (or the subjects enrolled in at the start of a semester/year); and
 - (iii) produce receipts substantiating payments made for compulsory fees or HECS fee incurred.
- 32.7 Employees who receive prior approval for study assistance for a particular course, or qualification under the NPWS policies that existed prior to the implementation of this Award, shall continue to receive their financial assistance in accordance with those policies and their current approval for that specific course or qualification. Any new course of study and new application to study will be dealt with under paragraph 32.3 (ii).
- 32.8 Where there is no break in the continuity of study and given successful completion of approved study under paragraph 32.3(i) any subsequent application for study assistance will be treated as a second application under paragraph 32.3 (ii) of this clause.
- 32.9 The costs associated with courses as outlined in paragraph 32.2.1 above are based on current 2006 costs. The parties to this Award agree, where there is a significant increase in costs the parties shall seek to resolve any increase in the listed amounts in paragraphs 32.3 (i) and (ii) above. Where no agreement is reached leave is reserved to seek the assistance of the Industrial Relations Commission.

33. Training Competency

- 33.1 The parties agree to an ongoing commitment to the development and implementation of appropriate competencies based on the relevant skill and qualification requirements at each level. Such competencies shall be developed having regard to National Training Competency standards.

34. Engagement of Contractors

- 34.1 OEH is committed to establishing a consultative process regarding the use, including supervision, of contractors by the Department OEH. The parties agree that the engagement of contractors will occur in limited circumstances and in accordance with all applicable policies of the Public Service Commission, as varied from time to time.
- 34.2 Supervisors should, where appropriate, be from the same vocational group as the work being contracted, or be an appropriately qualified person. The parties will consult on the level of supervision required.

35. Anti-Discrimination

- 35.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age, and responsibilities as a carer.
- 35.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 35.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 35.4 Nothing in this clause is to be taken to affect:
- (i) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (ii) offering or providing junior rates of pay to persons under 21 years of age;
 - (iii) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (iv) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- 35.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.
- 35.6 Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- 35.7 Section 56(d) of the *Anti-Discrimination Act 1977* provides:
- "Nothing in the Act affects any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

36. Redundancy Entitlements

- 36.1 Redundancy provision payments will be made in accordance with the Managing Excess Employees Policy, as varied from time to time.

37. Outplacement Services

- 37.1 OEH agrees to provide outplacement services to employees declared excess and who are subject to the Managing Excess Employees Policy. A panel of suitable outplacement service providers will be agreed between OEH and AWU.

38. Workplace Environment

- 38.1 OEH will ensure that all employees are provided with a work environment that at least meets minimum acceptable standards. All workshops will meet the requirements of the *Work Health and Safety Act 2011*.
- 38.2 While there are no requirements for office workplaces, the OEH agrees to provide employees covered by this Award with reasonable conditions and space.

38.3 Smoking is prohibited at all indoor NPWS workplaces and in OEH vehicles.

39. Housing

39.1 The parties agree to consult on future issues related to OEH-owned housing including the preparation of briefs for valuers.

39.2 All employees occupying an OEH house will be required to sign a tenancy agreement.

40. Industrial Grievance Procedure

40.1 General

40.1.1 The aim of this procedure is to ensure that, during the life of this Award, industrial grievances, (including grievances within the meaning of the *Anti-Discrimination Act 1977*) or disputes are prevented or resolved as quickly as possible at the level they occur in the workplace.

40.1.2 The parties agree that whilst the procedures contained in this clause are being followed, there is an expectation that normal work will continue.

40.1.3 In seeking a resolution to any industrial dispute or industrial grievance, OEH may be represented by an industrial organisation of employers, and the employees of OEH may be represented by an industrial organisation of employees.

40.1.4 Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the *Anti-Discrimination Act 1977*) that makes it impractical for the employee to advise their immediate manager the notification may occur to the next appropriate level of management, including where required, to the Chief Executive or delegate.

40.2 Steps to Resolve Industrial Grievances or Disputes

40.2.1 When a dispute or grievance arises, or is considered likely to occur, the following steps are to be followed:

Step 1. The matter is discussed between the employee(s) and the Reporting Officer or other appropriate employee concerned and addressed within one week.

The employee(s) concerned may discuss the matter with the Union delegate, if so desired.

Step 2. If, after a week since the matter was discussed with the Union delegate and the Reporting Officer the matter remains unresolved, the) employee(s) concerned may discuss the matter with the Union delegate and the Branch Director. If the matter remains unresolved follow Step 3.

Step 3. If, after a week since the matter was discussed with the Union delegate and the Branch Director, the matter is still unresolved, the employee(s) concerned may discuss the matter with the Branch Director, a representative of the Employee Relations Branch and a Union delegate and/or official.

Where it is agreed by the parties, and the matter is of an urgent nature, the employee may go to Step 3 immediately. In the event that the parties agree to go to Step 3 immediately, no more than a week should elapse since the matter was first raised until Step 4 is followed.

Step 4. The matter is discussed between senior representatives of OEH and the relevant Union. The parties agree to exhaust the process of conciliation before considering Step 5 below.

It is agreed that the parties will not deliberately frustrate or delay these procedures. All efforts are to be made to resolve the matter promptly. The conciliation process should take no longer than one month, unless the parties agree to a longer period.

Step 5. If no resolution is found, the matter may be referred to the Industrial Registrar in order for the Industrial Relations Commission or Industrial Court to exercise their functions under the *Industrial Relations Act 1996*.

41. Deduction of Union Membership Fees

- 41.1 Each Union shall provide OEH with a schedule setting out the Union's fortnightly membership fees payable by members of the Union in accordance with its rules of membership.
- 41.2 The Union(s) shall advise OEH of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of Union fortnightly membership fees payable shall be provided to the OEH at least one month in advance of the variation taking effect.
- 41.3 Subject to sub-clauses 41.1 and 41.2 above, the Department OEH shall deduct Union fortnightly membership fees from the pay of any employee who is a member of the Union in accordance with its rules of membership, provided that the employee has authorised the OEH to make such deductions.
- 41.4 Monies so deducted from the employee's pay shall be forwarded regularly to the Union (s) together with all necessary information to enable the Union (s) to reconcile and credit subscriptions to employee's Union membership accounts.
- 41.5 Unless other arrangements are agreed by the OEH and the Union (s), all Union membership fees shall be deducted on a fortnightly basis.
- 41.6 Where an employee has already authorised the deduction of Union membership fees from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to continue.

42. Saving of Rights

- 42.1 No employee covered by this Award will suffer a reduction in his or her rate of pay or any loss or diminution in his or her conditions of employment as a consequence of making this Award.

43. No Extra Claims

- 43.1 The No Extra Claims clause (clause 8) contained in the Crown Employees (Public Sector - Salaries 2015) Award shall apply to employees covered by this Award.

44. Area, Incidence and Duration

- 44.1 This Award will apply to employees in classifications covered by the Australian Workers Union and to Skilled Tradespersons employed within the National Parks and Wildlife Service of the Office of Environment and Heritage.
- 44.2 This Award will not apply to employees:
- (i) that transferred to the OEH where these employees occupied positions which are the subject of any other awards under Administrative Order of 2 April 2007 and subsequent Orders which established Department OEH of Environment and Climate Change effective 27 April 2007; or
 - (ii) that are employed in the Senior Executive Service (SES); or
 - (iii) that are employed in the Botanic Gardens Trust; or
 - (iv) whose conditions of employment are determined by the Crown Employees (Office of Environment and Heritage - Parks and Wildlife Group) Conditions of Employment 2015 Award or any successor instrument to that Award including employees who are occupying Field Officer classifications where the role description specifies the role's location as a facility that principally

services the employer’s operations at Kosciuszko National Park which bounds are prescribed by the Government Gazette of NSW (or any successors thereto); or

- (v) whose conditions and entitlements are determined by the Flight Officers Enterprise Agreement 2015 or any successor instrument to that Agreement.

44.3 Where this Award is silent provisions contained in the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009, or any successor instrument to that Award apply to employees covered by this Award.

44.4 The Award shall take effect on and from 6 March 2018 and shall remain in force nominally until 30 June 2020.

44.5 This award rescinds and replaces the Crown Employees (Office of Environment and Heritage - Parks and Wildlife Group) Field Officers and Skilled Trades Salaries and Conditions 2016 Award published 29 July 2016 (380 I.G. 136).

44.6 The parties have agreed that negotiations for a new Award will commence 6 months prior to the nominal expiry date of this Award and that these discussions will include consideration of the following issues:

The creation of a stand-alone Award

The insertion of a consultation clause that provides for regular meetings between union delegates and local managers to discuss local issues

Whether any employee-related cost savings have been achieved during the nominal term of this Award

PART B

MONETARY RATES AND CLASSIFICATIONS

Table 1 - Salary Schedule for Skilled Trades Classification

CLASSIFICATION/ GRADE/YEAR	2.5% increase effective from the first full pay period on or after 01.07.17 Per annum \$	2.5% increase effective from the first full pay period on or after 01.07.18 Per annum \$	2.5% increase effective from the first full pay period on or after 01.07.19 Per annum \$
TRADESPERSON			
Tradesperson Level 1	63,323	64,906	66,529
Tradesperson Level 2	65,308	66,941	68,615
Tradesperson Level 3	67,598	69,288	71,020
Tradesperson Level 4	71,130	72,908	74,731
Tradesperson Level 5 Year 1	72,039	73,840	75,686
Tradesperson Level 5 Year 2	75,972	77,871	79,818
Electronics Tradesperson	79,770	81,764	83,808
TRADES APPRENTICE YEAR (PERCENTAGE)			
1st Year (50%)			
2nd Year (60%)			
3rd Year (75%)			
4th Year (85%)			

COMPETENCY CRITERIA FOR SKILLED TRADES	
Level 1 Base trade. Appointees Employees at this level must have appropriate trade qualifications.	
Level 2 Base trade plus the ability to perform general park maintenance duties, when required	
Level 3 A tradesperson who is able to: - work with the minimum amount of supervision; - work with the minimal amount of technical direction; - solve technical problems; - meet deadlines; - ensure quality control of work; and - perform general park maintenance duties when required.	- - - - - -
Level 4 Senior Tradesperson is a tradesperson who possesses the skills, knowledge, qualifications and competencies that are so superior to those required by a tradesperson Level 3; or supervises the work of other tradespersons, including setting work priorities and allocating tasks.	
Level 5 Assignment to a role at this level is by competitive selection to advertised vacancies. This level includes the Maintenance Supervisor role, which is responsible for the Field Officers of a district. A trade role which is evaluated at this level will be filled by competitive selection. Payment at this level recognises all skills, knowledge, competencies, licences, registrations and experience necessary for a role at this level.	

Table 2 - Salary Schedule for Field Officer Classification

	2.5% increase effective from the first full pay period on or After 01.07.17 Per annum \$	2.5% increase effective from the first full pay period on or After 01.07.18 Per annum \$	2.5% increase effective from the first full pay period on or after 01.07.19 Per annum \$
CLASSIFICATION/GRADE/YEAR			
Field Officer General Operations - Monday to Friday			
Field Officer General Operations	40,293	41,300	42,333
AWU classification - Officers employed from 4/8/05			
Field Officer Base Grade 1/2 - AWU - Monday to Friday			
Field Officer Base Grade 1 Year 1- AWU	47,465	48,652	49,868
Field Officer Base Grade 1 Year 2- AWU	48,664	49,881	51,128
Field Officer Base Grade 2 Year 1- AWU	49,786	51,031	52,307
Field Officer Base Grade 2 Year 2- AWU	52,108	53,411	54,746
Field Officer Grade 1/4			
Field Officer Grade 1 Year 1	47,465	48,652	49,868
Field Officer Grade 1 Year 2	48,664	49,881	51,128
Field Officer Grade 2 Year 1	49,786	51,031	52,307
Field Officer Grade 2 Year 2	52,108	53,411	54,675
Field Officer Grade 3A Year 1	59,459	60,940	62,464
Field Officer Grade 3A Year 2	60,507	62,020	63,570

Field Officer Grade 4A Year 1	62,201	63,756	65,350
Field Officer Grade 4A Year 2	63,323	64,906	66,529
AWU classification - Existing officers employed prior to 4/8/05			
Field Officer Grade 1/4			
Field Officer Grade 1 Year 1	54,877	56,249	57,655
Field Officer Grade 1 Year 2	55,904	57,302	58,735
Field Officer Grade 2 Year 1	56,743	58,162	59,616
Field Officer Grade 2 Year 2	57,829	59,274	60,756
Field Officer Grade 3A Year 1	59,459	60,945	62,469
Field Officer Grade 3A Year 2	60,507	62,020	63,570
Field Officer Grade 4A Year 1	62,201	63,572	65,350
Field Officer Grade B3/B4			
Field Officer Grade 3B Year 1	59,459	60,945	62,469
Field Officer Grade 3B Year 2	60,507	62,020	63,570
Field Officer Grade 4B Year 1	62,201	63,756	65,350
Field Officer Grade 4B Year 2	63,323	64,906	66,529
Senior Field Officer/Senior Field Officer (Plant) Grade 1/2			
Senior Field Off/SFO (Plant) Grade 1 Year 1	64,731	65,950	67,599
Senior Field Off/SFO (Plant) Grade 1 Year 2	65,831	67,478	69,165
Senior Field Off/SFO (Plant) Grade 2 Year 1	67,162	68,441	70,152
Senior Field Off/SFO (Plant) Grade 2 Year 2	68,568	70,282	72,039
Field Supervisor Grade 1/2			
Field Supervisor Grade 1 Year 1	70,920	72,693	74,150
Field Supervisor Grade 1 Year 2	72,545	74,359	76,218
Field Supervisor Grade 2 Year 1	74,171	76,025	77,926
Field Supervisor Grade 2 Year 2	75,798	77,693	79,635
Senior Field Supervisor Grade 1/2			
Senior Field Supervisor Grade 1 Year 1	82,234	84,290	86,397
Senior Field Supervisor Grade 1 Year 2	84,254	86,360	88,519
Senior Field Supervisor Grade 2 Year 1	86,276	88,433	90,644
Senior Field Supervisor Grade 2 Year 2	88,296	90,503	92,766
Senior Field Supervisor Grade 3			
Senior Field Supervisor Grade 3 Year 1	105,409	108,044	110,745
Senior Field Supervisor Grade 3 Year 2	108,373	111,082	113,859
Senior Field Supervisor Grade 3 Year 3	112,797	115,167	117,470
Senior Field Supervisor Grade 3 Year 4	116,157	119,061	122,038

Progression

Tradespersons may progress from Level 1 to Level 4 based on the attainment of skills and competencies.

Progression to the next level will be upon completion of 3 additional training modules.

The schedule of appropriate training modules will be developed with agreement of the unions and form part of this agreement.

De-Skilling

The classification structure for tradespersons is not designed to promote deskilling of tradespersons.

As such, tradespersons will generally only be asked to perform general park maintenance duties when there is no trade work available.

Table 2 - Salary Schedule for Field Officer Classification

Progression Criteria for Field Officer Classification

Progression Criteria

Field Officers

Other than Field Officer General Operations and Field Officer 1-2 Grade all other Field Officer roles shall be at the level of Field Officer Grade 1-4. Field Officers shall progress by annual increment subject to meeting the required progression criteria and competency levels as specified in this Annexure.

Where a Field Officer fails to progress, it shall be the responsibility of the Area Manager to discuss the reasons for the decision with the employee concerned. The discussion should also identify areas of where additional competencies or necessary training, where appropriate.

Progression Criteria for Field Officer 1-4

Field Officer Grade 1

Assignment to a role at this grade shall be subject to competitive selection for advertised vacancies.

Assignment to a role at this grade shall also be subject to:

- (a) possession of a current drivers licence; and
- (b) the employee having demonstrated the essential competencies from the Field Officer's competency schedule for Field Officer Grade 1.

Field Officer Grade 2

Progression to the level of Field Officer Grade 2 shall be subject to:

- (a) 12 months satisfactory service at Field Officer Grade 1;
- (b) possession of a current drivers licence; and
- (c) the employee having demonstrated the essential competencies from the Field Officer competencies schedule for Field Officer Grade 2, as certified by the direct supervisor and the Branch Director.
- (d) employees engaged in the Field Officer Grade 1-2 role shall not progress into the Field officer 1-4 classification unless through merit based selection in accordance with the *Government Sector Employment Act 2013*.

Field Officer Grade 3

Progression to the level of Field Officer Grade 3 shall be subject to:

- (a) 12 months satisfactory service at Field Officer Grade 2;
- (b) drivers licence; and

- (c) the employee having demonstrated the essential competencies from the Field Officers Competency Schedule for Field Officer Grade 3 as certified by the direct supervisor and Branch Director.

In addition, joint assessment and certification by the Branch Director and the direct supervisor that the employee is competent at performing the range of work required of a Field Officer Grade 3 and is also able to demonstrate the efficient application of the skills/qualifications attained.

Field Officer (Plant) Grade 3

This is an established role for a full-time plant operator.

Assignment to this role shall be subject to:

- (a) the employee having demonstrated the essential competency from the Field Officer Competency schedule and these competencies being certified by the direct supervisor and Branch Director; and
- (b) the employee possessing the relevant certificates of competency from the Work Cover Authority.

Provided further that assignment to a role of Field Officer (Plant) shall be subject to competitive selection for advertised vacancies or by way of transfer.

Field Officer Grade 4

Progression to Field Officer Grade 4 shall be subject to:

- (a) 12 months satisfactory service of Field Officer Grade 3; and
- (b) all the essential and 10 desirable competency requirements for a Field Officer Grade 3 from the Field Officer competencies schedule as certified by direct supervisor and Branch Director.

Field Officer (Plant) Grade 4

Progression to this classification has ceased.

Senior Field Officer Grade 1

Assignment to the role of Senior Field Officer Grade 1 shall be subject to:

- (a) competency requirements for assignment to Field Officer Grade 4.

The Senior Field Officer Grade 1 is the minimum classification for employees responsible for direct supervision of National Parks and Wildlife Service employees, volunteers and contractors.

Senior Field Officer (Plant) Grade 1

Assignment to the role of Senior Field Officer (Plant) Grade 1 shall be subject to:

- (a) competency requirements for assignment to Field Officer (Plant) Grade 4; and
- (b) the employee having demonstrated all the essential competencies as certified by direct supervisor and Branch Director.

Provided further that assignment to the role of Senior Field Officer Grade 1 and Senior Field Officer (Plant) Grade 1, shall be subject to competitive selection for advertised vacancies.

Senior Field Officer Grade 2

Progression to the role of Senior Field Officer Grade 2 shall be subject to:

- (a) 12 months satisfactory service at Senior Field Officer Grade 1
- (b) the employee meeting the competency requirements for assignment to Senior Field Officer Grade 1; and
- (c) the employee having demonstrated all essential and 5 desirables for Senior Field Officer Grade 2, as certified by the direct supervisor and the Branch Director.

Senior Field Officer (Plant) Grade 2

Progression to the role of Senior Field Officer (Plant) Grade 2 shall be subject to:

- (a) 12 months satisfactory service at Senior Field Officer (Plant) Grade 1;
- (b) competency requirements for assignment to Senior Field Officer Grade 1 (Plant); and
- (c) the employee having demonstrated all essential and 5 desirable competencies for Senior Field Officer Grade 2 (Plant), as certified by direct supervisor and Branch Director.

Field Supervisor Grade 1

Assignment to the role of Field Supervisor Grade 1 shall be subject to:

- (a) competency requirements for assignment to Field Supervisor Grade 1. Senior Field Officer (Plant) are also eligible for assignment but must demonstrate the wider skills required for general Senior Field Officer classification; and
- (b) the employee having demonstrated the appropriate level of competency for Field Supervisor Grade 1, as certified by direct supervisor and Branch Director.

Field Supervisor Grade 2

Assignment to the role of Field Supervisor Grade 2 shall be subject to:

- (a) 12 months satisfactory service at Field Supervisor Grade 1; and
- (b) competency requirements for assignment to Field Supervisor Grade 2 as certified by direct supervisor and Branch Director. Senior Field Officers (Plant) are also eligible for assignment but must demonstrate the wider skills required for general Senior Field Officers competencies.

Senior Field Supervisor Grade 1/2

Assignment to the level of Senior Field Supervisor shall be subject to:

- (a) the employee demonstrating all essential competency requirements for assignment to Field Supervisor Grade 2, as certified by direct supervisor and Branch Director.

Assignment to a role at this classification shall be subject to competitive selection for advertised vacancies.

Senior Field Supervisor Grade 3

Assignment to a role at this classification shall be subject to competitive selection for all advertised vacancies.

APPENDIX A

Functions of the Field Officer General Operations

The Field Officer General Operation will have within the classifications scope of duties the following functions:

Basic upkeep of the estate, including mowing lawns and cleaning of visitor facilities, cleared grounds, gardens, pathways, toilets, BBQs, shelters, picnic furniture, camping areas, short stay accommodation sites, visitor centres, parking areas, playgrounds, depots and offices to ensure safe use and maintain asset condition.

1. Collects rubbish, replenishes consumables and removes graffiti at picnic grounds, toilets, camping areas, short stay accommodation sites, visitor centres, depots, offices and other infrastructure.
2. Conducts basic maintenance of walking tracks, mountain bike and horse riding trails, including trimming vegetation, clearing drains and culverts and basic road maintenance such as filling potholes.
3. Performs weed control tasks this may involve the use of herbicides subject to training and certifications.
4. Participates as a crew member only in hazard reduction and wildfire management programs subject to training and certifications.
5. Assists in the transport and handling of materials and equipment, activation of advisory signs and other basic tasks.
6. Records and reports in a timely manner any issue or incident impacting on the park or visitors and alerts supervisors to potential risks to the safety of visitors and staff.
7. Operates minor plant and equipment including utility vehicles, whipper snippers, pressure washers, weed spraying units, chainsaws and conditionally licensed vehicles (excluding major plant).

P. KITE, Chief Commissioner

Printed by the authority of the Industrial Registrar.

(1576)

SERIAL C8795

**CROWN EMPLOYEES (STATE EMERGENCY SERVICE) LEARNING
AND DEVELOPMENT OFFICERS AWARD 2012**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by State Emergency Service.

(Case No. 2018/76523)

Before Chief Commissioner Kite

19 March 2018

ORDER OF RESCISSION

The Industrial Relations Commission of New South Wales orders that the Crown Employees (State Emergency Service) Learning and Development Officers Award 2012 published 15 January 2016 (378 I.G. 1441) as varied, be rescinded on and from 19 March 2018.

P. KITE, Chief Commissioner.

Printed by the authority of the Industrial Registrar.

(094)

SERIAL C8794

**CROWN EMPLOYEES (STATE EMERGENCY SERVICE) REGION
STAFF AWARD 2018**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by State Emergency Service.

(Case No. 2018/74402)

Before Chief Commissioner Kite

19 March 2018

AWARD

PART A

Clause No.	Subject Matter
1.	Title
2.	Definitions
3.	General Conditions of Employment
4.	Salaries
5.	Working Hours and Flexible Leave Entitlement
6.	Operational Overtime
7.	Grievance and Dispute Settling Procedures
8.	Anti-Discrimination
9.	Area, Incidence and Duration
10.	Motor Vehicle
11.	No Extra Claims

PART B

MONETARY RATES

Table 1 - Salary Schedule

PART A

1. Title

- 1.1 This award will be known as the Crown Employees (State Emergency Service) Region Staff Award 2018.

2. Definitions

- 2.1 "Act" means - the *Government Sector Employment Act 2013*.
- 2.2 "Association" means - the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.
- 2.3 "Award" means - this Crown Employees (State Emergency Service) Region Staff Award 2018.
- 2.4 "Commissioner" means - the Commissioner of the State Emergency Service
- 2.5 "Industrial Relations Secretary" means the Secretary of the Treasury who is the employer for industrial purposes under the provision of Part 4, *Government Sector Employment Act 2013*.

- 2.6 "Region Staff" means - an officer employed temporarily or in an ongoing capacity in an SES Region either as a full-time or part-time employee, in any capacity under the provisions of Division 5, Section 43 of the *Government Sector Employment Act 2013* and guidelines issued thereof or as amended from time to time. The term Region staff is comprised of the following roles:
- a. Region Controller
 - b. Deputy Region Controller
 - c. Business Manager
 - d. Community Engagement Co-ordinator
 - e. Volunteer Support Officer
 - f. Region Learning and Development Officer
- 2.7 "Role" means - a position, both full-time and part-time, pursuant to Section 43 of the *Government Sector Employment Act 2013*
- 2.8 "Salary Rates" means - the ordinary time rate of pay for the Region Employee's grading excluding allowance for "After Hours Duty Officer" and all other allowances not regarded as salary.
- 2.9 "SES" means - the State Emergency Service as described in the *State Emergency Service Act 1989*.
- 2.10 "SES Act" means - the *State Emergency Service Act 1989*.

3. General Conditions of Employment

- 3.1 Conditions of employment for all Region Staff shall be in accordance with the provisions of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 except where varied by this Award and with the following Awards and Agreements as varied from time to time:
- Crown Employees (Transferred Employees Compensation) Award
- 3.2 The provisions of this award are to apply to part-time workers on a pro-rata basis.

4. Salaries

- 4.1 Region Staff will be remunerated in accordance with the Crown Employees (Public Sector - Salaries 2017) Award as varied or an award replacing it. An extract from that Award is contained in Part B of this award for convenience only.
- 4.2 Appointment of Region Staff shall be in accordance with the *Government Sector Employment Act 2013*.
- 4.3 A flexible and adaptable approach to working hours shall be adopted to meet peak demands, unit and volunteer demands, and the personal circumstances of the officer. Much of the work performed is during the evening or on weekends. The parties agree that the requirements will be no more than 40 days of weekend and public holiday work per annum and 80 occasions of evening work. The parties recognise that there could be variations to these requirements from time to time.
- 4.4 An allowance of 15% of the Region Staff member's gross annual salary will be paid in lieu of non-operational overtime and in recognition of the pattern of work. No non-operational overtime is anticipated.

5. Working Hours and Flexible Leave Entitlement

- 5.1 Region Staff will be able to accumulate flexitime credits beyond their contract hours. Flexitime entitlements will be the same as the current flexible working arrangements of the Department, i.e.

Region Staff will be able to take up to 5 flexidays per flex period and can carry over up to 21 hours credit per flex period. There will be no bandwidth or core-time. Contract hours of 35 hours per week will be worked on any day Monday to Sunday and will include travel time.

- 5.2 Region Staff will receive credit hours of one fifth of their normal weekly hours for each public holiday day. When required to work on a public holiday, a Region Staff member should credit the hours worked to flexitime and take the equivalent time off at a later date.
- 5.3 Region Staff will not be required to work more than 5 days in a row without at least 1 day off.
- 5.4 Part time Region Staff working on projects for State Headquarters will be paid additional hours from the project sponsors budget. The number of hours will be negotiated with the project sponsor on a case by case basis.

6. Operational Overtime

- 6.1 Access to overtime can only occur during operations when flexitime has been suspended.
- 6.2 Region Staff who are required to work operational overtime will be paid at the normal rate of pay including the 15% loading for the first seven hours, and overtime thereafter, excluding the 15% loading and meal breaks. When flexitime is suspended rest days are deemed to be Saturdays and Sundays.
- 6.3 Part time Region Staff who are required to work during operations may work full time and be paid additional hours for the period of the operation.
- 6.4 If a Region Staff member is required to perform duty as the after hours duty officer the following payments will be applicable:

Weekdays 2/9ths of a day's salary including loading.

Weekends 1/3rd of a day's salary including loading.

- 6.4.1 Subject to paragraph 6.4.2, the SES may require a Region Staff member to work reasonable overtime at overtime rates.
- 6.4.2 Region Staff may refuse to work overtime in circumstances where the working of such overtime would result in the officer working hours which are unreasonable.
- 6.4.3 For the purposes of paragraph 6.4.2 what is unreasonable or otherwise will be determined having regard to:
 - 6.4.3.1 any risk to Region Staff health and safety;
 - 6.4.3.2 the Region staff member's personal circumstances including any family and carer responsibilities;
 - 6.4.3.3 the needs of the workplace or enterprise;
 - 6.4.3.4 the notice (if any) given by the SES of the overtime and by the Region Staff member of his or her intention to refuse it; and
 - 6.4.3.5 any other relevant matter.

7. Grievance and Dispute Settling Procedures

- 7.1 All grievances and disputes relating to the provisions of this award shall initially be dealt with as close to the source as possible, with graduated steps for further attempts at resolution at higher levels of authority within the appropriate Agency, if required.

- 7.2 An employee is required to notify in writing their immediate manager, as to the substance of the grievance, dispute or difficulty, request a meeting to discuss the matter, and if possible, state the remedy sought.
- 7.3 Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the *Anti Discrimination Act 1977*) that makes it impractical for the employee to advise their immediate manager the notification may occur to the next appropriate level of management, including where required, to the Commissioner or delegate.
- 7.4 The immediate manager, or other appropriate officer, should convene a meeting in order to resolve the grievance, dispute or difficulty within two (2) working days, or as soon as practicable, of the matter being brought to attention.
- 7.5 If the matter remains unresolved with the immediate manager, the employee may request to meet the appropriate person at the next level of management in order to resolve the matter. This manager shall respond within two (2) working days, or as soon as practicable. The employee may pursue the sequence of reference to successive levels of management until the matter is referred to the Commissioner.
- 7.6 The Commissioner may refer the matter to the Industrial Relations Secretary for consideration.
- 7.7 If the matter remains unresolved, the Commissioner shall provide a written response to the employee and any other party involved in the grievance, dispute or difficulty, concerning action to be taken, or the reason for not taking action, in relation to the matter.
- 7.8 An employee, at any stage, may request to be represented by the Association.
- 7.9 The employee or the Association on their behalf, or the Commissioner may refer the matter to the New South Wales Industrial Relations Commission if the matter is unresolved following the use of these procedures.
- 7.10 The employee, Association, and the Agency shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.
- 7.11 Whilst the procedures outlined in subclauses 7.1 to 7.10 of this clause are being followed, normal work undertaken prior to notification of the dispute or difficulty shall continue unless otherwise agreed between the parties, or, in the case involving work health and safety, if practicable, normal work shall proceed in a manner which avoids any risk to the health and safety of any employee or member of the public.

8. Anti-Discrimination

- 8.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 8.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 8.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 8.4 Nothing in this clause is to be taken to affect:

any conduct or act which is specifically exempted from anti- discrimination legislation;

offering or providing junior rates of pay to persons under 21 years of age;

any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;

a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

9. Motor Vehicle

Regional Staff are provided with access to an Agency motor vehicle and standing approval for limited personal use that does not preclude availability for operational response in accordance with relevant NSW Government and SES Policy.

10. Area, Incidence and Duration

10.1 The award will apply to all Region Staff employed in the State Emergency Service as defined under 2.6 of this award.

10.2 This Award is made under Section 10 of the *Industrial Relations Act 1996* (NSW) and rescinds and replaces the Crown Employees (State Emergency Service) Region Controllers Award 2012 published 15 January 2016 (378 I.G. 1446). The new award will take effect on and from 19 March 2018.

10.3 This Award will remain in force for one year.

11. No Extra Claims

The parties agree that, during the term of this award, there will be no extra wage claims, claims for improved conditions of employment or demands made with respect to the employees covered by the award and, further, that no proceedings, claims or demands concerning wages or conditions of employment with respect to those employees will be instituted before the Industrial Relations Commission or any other industrial tribunal. The terms of the preceding paragraph do not prevent the parties from taking any proceedings with respect to the interpretation, application or enforcement of existing award provisions.

PART B

MONETARY RATES

Table 1 - Salary Schedule

Salary of Full Time Region Staff

Effective from the beginning of the first pay period to commence on or after 1 July 2017

Classification	Fpp 1.7.17 Per annum \$
Full Time Region Controllers - Clerk Grade 9/10	
1st year of service	105,409
2nd year of service	108,373
3rd year of service	112,797
Thereafter	116,157
Deputy Region Controller - Clerk Grade 7/8	
1st year of service	92,470
2nd year of service	95,235

3rd year of service	99,204
Thereafter	102,359
Business Manager - Clerk Grade 5/6	
1st year of service	81,369
2nd year of service	83,935
3rd year of service	87,225
Thereafter	89,781
Community Engagement Officer - Clerk Grade 5/6	
1st year of service	81,369
2nd year of service	83,935
3rd year of service	87,225
Thereafter	89,781
Volunteer Support Officer - Clerk Grade 3/4	
1st year of service	68,929
2nd year of service	71,008
3rd year of service	73,224
Thereafter	75,476
Region Learning and Development Officer - Clerk Grade 5/6	
1st year of service	81,369
2nd year of service	83,935
3rd year of service	87,225
Thereafter	89,781

P. KITE, Chief Commissioner.

Printed by the authority of the Industrial Registrar.

(1816)

SERIAL C8796

HANSON CONSTRUCTION MATERIALS PTY LIMITED CONCRETE CARRIERS CONTRACT DETERMINATION

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by The Australian Industry Group New South Wales Branch.

(Case No. 2018/23946)

Before Chief Commissioner Kite

30 January 2018

CONTRACT DETERMINATION

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1. General Terms and Conditions

1.1 Definitions

In this Determination, unless the contrary intention appears:

- (a) "Age of Truck" will be measured from the date of manufacture as per the compliance plate affixed to the truck.
- (b) "applicable utilisation " means, subject to clause 4.2, the number of loads paid in relation to a twelve (12) month period,
- (c) "business day" means a day other than Sunday or a public holiday in the state in which the carrier operates.
- (d) "concrete" means a mixed, blended or batched product that, regardless of any other constituent, contains:
 - (i) cement, aggregate, sand and water;
 - (ii) mortar containing cement sand and water;
 - (iii) grout containing cement, sand and water;
 - (iv) slurry containing cement and water; or
 - (v) binders containing cement and sand,
 - (vi) individual sand or aggregates items

regardless of the method of production, laying or description of the finished product in which that product is to be used.
- (e) "customer" means a customer of Hanson or associated companies.

- (f) "Carrier" shall mean a single operator owner driver trading as an incorporated body (where the operator owner driver is a director and controlling shareholder of the incorporated body) who is engaged under a contract of carriage with the Principal Contractor as defined.
- (g) "Carrier's Representative" means in respect of The Carrier, the nominated driver of the vehicle owned by the Carrier or such other person as is agreed to in writing by the Carrier and Hanson from time to time.
- (h) "cartage services" means the loading, cartage and discharge of concrete or other product, by the Carrier, at the direction of Hanson or its duly authorised employees, or agents.
- (i) Contractor shall mean the Principal Contractor as defined in the Act. The Principal Contractor in this Contract Determination is Hanson Construction Materials Pty Ltd.
- (j) "Defined Distance" means the distance specified in Appendix C/D which is the distance to which the Standard Load rate applies, without incurring an extra distance payment.
- (k) "Extra Distance Payment" means an additional payment to the Standard Load Rate for deliveries that exceed the defined distance and is paid in set increments as specified in Appendix B.
- (l) "Fleet" means all trucks engaged by Hanson, either company owned or operated under the control of this contract to cart concrete or concrete related products
- (m) "GST" means a Goods and Services Tax or like tax payable in respect of a supply under this Contract
- (n) "Hanson" means Hanson Construction Materials Pty Limited (ABN 90 009 679 734).
- (o) "Hanson's Representative" means the person, or the nominee of the person, for the time being acting as Regional Logistics Manager of Hanson, or such other officer as Hanson nominates.
- (p) "Mixer" shall also mean Agitator and vice versa.
- (q) "Nominated Driver" means the person who is both the controlling shareholder and a director of the Carrier and is nominated in writing by the Carrier and approved by Hanson to be the driver of the vehicle specified by the Carrier and approved by Hanson to provide cartage services under this Contract.
- (r) "person" includes a firm, body corporate, unincorporated association or a government body, and a reference to a group of persons includes all of them collectively, any 2 or more of them collectively and each of them individually.
- (s) "plant" means the batching plant from which a load of concrete or other related material is despatched.
- (t) "procedure" means a lawful method, system or manner of working to be employed in performing work under this Contract which has been communicated to the Carrier by or on behalf of Hanson by way of one of the following methods; Email (where available), Memo posted on drivers notice boards or as recorded in plant meeting minutes.
- (u) "quarter" means a period of three calendar months
- (v) "Relief Driver" is a driver engaged to operate a Carriers truck under clause 6.9.2
- (w) "standard hours" means the hours between 06:00 and 16:00 on weekdays and 06:00 and 13:00 on Saturdays.

- (x) "Standard Load Rate" means a fixed payment calculated in accordance with Appendix B made for the cartage of a load under this Contract for any distance up to and including the defined distance, irrespective of load size.
- (y) "Table of Rates" means the Table of Rates shown in Appendix D.
- (z) "truck" means a prime mover of a type or model (howsoever specified) approved by Hanson.
 - (aa) "vehicle" means a truck (as defined) approved by Hanson to be utilised by the Carrier to provide cartage services.
 - (bb) "Written Authority" means any document that bears the signature of Hanson's Representative or the Carrier's Representative as the case may be.
 - (cc) "workday" is a day on which work is usually done, being Monday through to Saturday inclusive, but excluding Public Holidays.
 - (dd) The singular includes the plural and vice versa.
 - (ee) A reference to a person (including a party) includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
 - (ff) A reference to a thing (including a payment) is a reference to the whole or any part of it.
 - (gg) If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day.
 - (hh) A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.

1.2 Term of Determination

- (a) Subject to earlier termination in accordance with the terms of this Determination, this Determination commences on the day it is approved by the Industrial Relations Commission of NSW and consistent with section 319 of the *Industrial Relations Act* 1996 shall have a nominal term of three years. The Parties have provided a commitment that it will recognise this Determination as remaining in force for a term of 10 years from date of agreement, expiring on 31 December 2027.
- (b) Where the Carrier exercises its right to assign its cartage contract granted hereunder the assignee of that cartage contract will be subject to the contract expiry date in (a).

1.3 Acknowledgement

The parties acknowledge that immediately prior to the making of this Determination the Carrier(s):

- (a) Has made its own inquires and obtained independent advice on all aspects of this Determination.
- (b) Understands that Hanson does not guarantee to provide continuous or regular work.
- (c) Understands that the amount of any profit or return to the Carrier is wholly dependent on the state of the concrete market and the consistency and professionalism with which the Carrier provides cartage services to Hanson.
- (d) Is aware that Hanson has not provided any legal or taxation advice to the Carrier.
- (e) Has familiarised itself with the range of loading and unloading conditions likely to prevail at all concrete loading and discharge points and with the type and duration of the minor delays which are common throughout the concrete industry.

- (f) Understands that, throughout the term of this Determination it would be prudent for the Carrier to make its own assessment of the benefits arising from this Determination.
- (g) Understands and accepts that the applicable standard load rate is the rate payable to the Carrier for any concrete delivery up to the Defined Distance, irrespective of load size.
- (h) The Carrier, its Nominated or Relief Driver
 - i. are not the legal representative, agent, Joint Venture, Partner or Employee of Hanson for any purpose whatsoever.
 - ii. has no right or authority to assume or create any obligations of any kind or to make any representations or warranties, wether express or implied on behalf of Hanson or to bind in any respect whatsoever or to represent that it is an employee servant or agent of Hanson.
- (i) It is acknowledged and agreed by the parties that any Carrier engaged hereunder is an independent contractor and that nothing in this Determination shall be construed as constituting the Carrier as an agent or partner of Hanson or as constituting a Nominated or Relief Driver as an employee of Hanson.

2. Hanson Policies and Procedures

2.1 Policies and Directives

The Carrier shall comply with all relevant Directives and Policies notified to the Carrier from time to time. Failure by The Carrier to adhere to this clause will be deemed as a Breach as defined in clause 15 of this contract. Any dispute that arises in regard to a policy and or directive will be dealt with in accordance with the dispute procedure contained at clause 16 of this Determination.

2.2 Management Procedures

Hanson is committed to developing or has developed various Management Policies and Practices and full participation in and compliance with these, including induction courses, is expected of all Drivers. These include:

- a. Enhanced safety programs that include commitment to fatigue management.
- b. A commitment to excellence exemplified by programs for the continuous improvement of performance and total cost reduction.
- c. A Total Quality Management approach including management systems to achieve and maintain Australian Standards quality accreditation.
- d. Environment management including conformance with relevant environment protection legislation, energy efficiency and aesthetically well-presented equipment.
- e. A commitment to the maintenance of the health and safety of all Hanson employees, Carriers, suppliers and visitors to Hanson sites.

2.3 Company Initiatives

The Carrier will participate in all Company initiatives as directed.

3. Insurance and Risk

3.1 General

Upon the request of Hanson, The Carrier must make available within seven (7) days, copies of all insurance policies and certificates of currency in relation to those policies referred to in clause 3.2.

3.2 Required Policies

The Carrier must ensure that it at all times and at its own expense maintains in force the following insurances in respect of all vehicles and drivers:

- (a) Compulsory third party personal insurance for the truck as required by any relevant State or Federal Law.
- (b) Comprehensive insurance for the truck for its market value and third party property insurance for each vehicle for a sum value of \$20,000,000, or a higher sum as Hanson may require from time to time for each claim or occurrence.
- (c) Comprehensive cover for loss and/or damage to the agitator. Such insurance must cover the cost of a new mixer supplied and installed, including applicable driver waiting time, should the mixer be damaged.
- (d) Public liability insurance for claims in respect of loss or damage to real or personal property and/or personal injury or death of any person arising from the provision of cartage services under this Determination of not less than \$20,000,000 (or such higher sum as Hanson may require from time to time) for each claim or occurrence.

Extensions are required to the public liability insurance to cover:

- (i) Damage caused by an agitator fitted to a vehicle; and
- (ii) Damage due to incorrect product delivery.
- (e) Workers' compensation insurance as required by any relevant state legislation with extensions to cover
 - (i) The Carrier liability at common law, and
 - (ii) Hanson's liability (if any) in respect of persons engaged or employed by the Carrier.
- (f) Hanson strongly recommends that any Carrier engaged hereunder takes appropriate professional advice concerning the maintenance of twenty four hour personal accident and illness insurance for employees of the Carrier an appropriate level of cover taking into account the financial obligations of the Carrier under this Contract.
- (g) Hanson is to be listed as an Interested Party in all insurance policies.
- (h) All insurances are to be held in the name of the Carrier's incorporated company.

Hanson may review the above insurance during the term of this Determination and if it thinks fit may, by written notice to the Carrier, alter the types and/or the amounts of insurance required by the Carrier under this clause. The altered insurances will be deemed to be the insurances required by this clause.

3.3 Insured's Obligations

In respect of each insurance policy referred to in clause 3.2, the Carrier must:

- (a) Pay all insurance premiums as and when they fall due;
- (b) Comply with all terms of the insurance and all requirements of insurers including in particular those relating to the operation of the vehicle by any substitute Nominated Driver and those relating to disclosure;
- (c) Give immediate notice in writing both to the insurer and to Hanson of anything of which notice is required under any policy;
- (d) Make available to Hanson on demand all policies, certificate of currency, correspondence and other papers relating to the insurance;
- (e) At all times be responsible for any damage sustained to public and private property through their action or in-action;
- (f) Commence a process calculated to resolve any damages claim from members of the public, including customers, within 10 working days of receiving notice of the claim;
- (g) Resolve, all claims professionally, courteously and in a timely manner;
- (h) Communicate with Hanson regarding the progress of any claims at such times and in such manner as is requested by Hanson from time to time.

4. Rates and Payments

4.1 Rates Payable

Subject to clause 4.3, Hanson shall pay the Carrier for each load of concrete carted by the Carrier, irrespective of size of load, up to the defined distance an amount calculated in accordance with the "Table of Rates" in Appendix D under the applicable utilisation rate, calculated as per Appendix B. A Rise and Fall mechanism will be used as per clause 4.2 to reflect new rates.

Distance is measured as the shortest route for a heavy vehicle as calculated by Hanson Electronic Mapping Information or physical distance where electronic mapping data is not valid or available. Distance will be rounded up to the nearest whole kilometre. Should disputes occur they will be handled through the cartage adjustment process.

4.2 Rise and Fall Rate Adjustments

At the end of each six month period Hanson shall adjust the values contained in the Table for rise and fall in accordance with the provisions of Appendix A and notify the results in writing to the Carrier. Prior to amendments being made Hanson will provide the representatives the adjustment details. The overtime component in Appendix A under Salary will be based on the Table in Appendix G to this Contract Determination.

Utilisation rates will be calculated based on the preceding 12 months loads paid and will then form the basis of the new rate which will become effective from the beginning of 1 February and 1 August each year in Metro. The utilisation rates applicable for Country carriers will be reviewed each quarter and adjusted in accordance with the February and August review adjustments arising from the Metropolitan rates review.

4.3 Method of Payment

On or before the fifteenth day of the month next following any month during which The Carrier provided cartage services under this Determination, Hanson shall:

- (a) Prepare and submit to the Carrier a Recipient Created Tax Invoice (RCTI) showing the full details of the deliveries and any other activities and the amounts to which the Carrier shall be

entitled for that accounting period and any amount that Hanson is entitled to recover under this Determination or to deduct in accordance with the written directions of the Carrier;

- (b) Pay the Carrier, by electronic funds transfer into such account of a recognised financial institution as is nominated in writing to Hanson by the Carrier.
- (c) Account discrepancies relating to the preceding pay period will be settled within the next pay period as long as Hanson is notified in writing fourteen (14) days prior to the next payment, other discrepancies will be settled within thirty (30) days of agreement.
- (d) Where The Carrier utilises a fuel purchase card supplied by Hanson, or accesses Hanson bulk fuel, Hanson may deduct from the Carrier's cartage payments an amount equal to the value of the fuel or related products purchased.
- (e) When The Carrier is overpaid, Hanson shall supply appropriate details in writing to the Carrier who then has fourteen (14) days to object to the deduction of the amount of the overpayment from the next payment due to the Carrier.

If an overpayment greater than 2 times the preceding months earnings is made to The Carrier then the Carrier must refund the overpayment to Hanson within fourteen (14) days.

- (f) No other deduction can be made from the Carrier's account without the prior written authority of the Carrier or as otherwise authorised in this Determination.

5. Adjustments

5.1 General

Additional charges and/or corrections to payments may be due and payable. These charges will be based on rates specified in Appendix B.

5.1.1 Mixer breakdown/Agitator in Workshop

If due to mixer breakdown the truck is unavailable for work from 7am on the 2nd full workday (excluding the day of breakdown) after notification to appropriate Hanson Representative, the Carrier will be paid at truck and driver standby rate for every completed hour the truck is unavailable after that period for a maximum of 8 hours per day.

Example: if breakdown occurs on Monday at 9am, then if the truck is not available at 7am on Wednesday then the Carrier will be entitled to payment of the standby rate per completed hour.

Where a carrier is required to wait for his vehicle they will be paid a stand by rate per hour or part thereof. If he is not required to wait a means will be provided by the contractor at the Contractor's cost to convey the Carrier to his place of residence and return him to the workshop as required.

5.1.2 Payments for deliveries greater than the defined distance

Hanson will pay the Carrier for any load based on shortest distance from plant to Point of discharge that exceeds the defined distance. Distance paid is determined by Hanson's Electronic Mapping Information, measured from the plant to the point of delivery in one direction.

5.1.3 Stand-By

Where the Carrier commences a shift in standard hours but is required to remain at a plant outside standard hours Hanson will pay the Carrier a stand-by payment for all completed whole hours where the Carrier waits for more than 1 hour before receiving their first out of hours load. After a load has been completed any other stand-by time is deemed to be covered by the outside hours surcharge (5.1.4). Stand-by payments shall be paid in accordance with Appendix B.

5.1.4 After Hours Surcharge

For loads loaded outside standard hours an outside hours surcharge will be paid in accordance with Appendix B. If the Carrier commences a shift outside standard hours the Carrier will be paid for a minimum of 2 loads (Standard Load Rate plus outside hours surcharge).

If the Carrier cannot legally achieve a minimum shift of 4 hours either the day prior or the day following working outside hours at Hanson's request then a minimum payment of 8 hours standby is paid.

5.1.5 Diversion

Where a diversion occurs after the carrier has left the yard, then the Carrier will be paid the standard load rate for the 1st load (without extra distance payment), plus the standard load rate for the second load plus any associated km increment for 2nd load; i.e. plant to site 2 only.

Example: original delivery (Load A) is 20km from the plant, the Carrier is diverted to a job that is 18km from the plant (Load B). The Carrier's payment will be:

Load A - 1x Standard Load Rate (no extra distance payment).

Load B - Standard load rate plus extra distance payment as applicable.

If the diversion occurs before the truck has left the yard then only load B will be paid.

5.1.6 Waiting Time

The Carrier shall be paid a waiting time fee per minute for time spent on site in excess of 45 minutes, taken from the time of arrival on site to the time of leaving site. The waiting time charges will be paid in accordance with Appendix B.

No waiting time will be payable if the Carrier does not adhere in full to docket completion requirements as per clauses 7.1

5.1.7 Transfer fee

(a) Metropolitan Areas

For Transfer in the metro area if a truck is required to transfer at the start of day to a plant that is not their usual starting location they will be paid a fee equal to a "transfer percentage" of the standard load rate for each defined distance increment or part thereof. For Example if the defined distance is 15 km and the transfer percentage is 25% the transfer payment would be as follows:

<15km = 25% of the Standard Load Rate

16-30km = 50% of the Standard Load Rate

31-45km = 75% of the Standard Load Rate

46-60km = 100% of the Standard Load Rate

61-75km = 125% of the Standard Load Rate

Etc.

If a Carrier undertakes its last load of a day from a plant which is not its base plant, and that Carrier has not received a Transfer fee at the start of that day, then the Carrier will be

entitled to be paid a fee equal to a "transfer percentage" of the standard load rate for each defined distance increment or part thereof.

(b) Country Areas

If a Country Carrier is transferred outside the Metropolitan Area without a load, a transfer fee of \$1.65 per km shall be paid.

5.1.8 Dump Fee

Any concrete that requires offsite dumping as directed by Hanson shall be paid at the current Standard Load Rate including extra distance payments for the distance travelled to dump the load.

5.1.9 Blow Back

If The Carrier is required to undertake a blow back then they shall be paid as per clause 5.1.6 in relation to waiting time measured from the time they arrive on site, until the time the blow back is completed. If the left over concrete is required to be transported away from site to be dumped then the Carrier will also be paid a dump fee as per clause 5.1.8

5.1.10 Plant Mix Fee

Where the Carrier is required to load, mix and discharge concrete, or related product for Hanson's own use within the plant the Carrier shall be paid the Standard Load Rate.

5.1.11 Material Transfer Fee

Where The Carrier is required to transfer water or other material using their vehicle then the Carrier will be paid the Standard Load Rate for the appropriate distance travelled to the drop off point.

5.1.12 Multiple Discharge Points

The following shall apply if the Carrier is required to discharge at multiple locations.

- (a) Same customer; payment will be made for a single load and will include all extra distance payments based on total travel to the final point of discharge. Waiting time will commence from the time of arrival at the first discharge point.
- (b) Multiple Customers or multiple dockets; each delivery will be treated for the purpose of cartage as a separate delivery.

6. The Carrier's Obligations

6.1 The Carrier's Obligations to Provide a Truck

The Carrier must provide a truck at all times during the life of this Contract. The Carrier must advise Hanson in writing of their intention to introduce a vehicle into the fleet; no vehicle shall be brought into service without prior approval in writing by Hanson.

All vehicles must be available to provide work under this Contract:

- (a) during all standard hours,
- (b) at such other times as Hanson specifies by reasonable notice, being not less than 48 hours notice.

Carriers operating in the Sydney Metropolitan Area, Doyalson, Morisset, Goulbourn, Bathurst or Orange must provide a truck with a GVM of not less than 28t within 18 months of the

commencement of this determination. Failure to adhere to this clause will be deemed a Material Breach and the contract will be terminated pursuant to clause 17.4.

Carriers operating at other locations must provide a truck with a GVM not less than 23t. Carriers based at Bass Point, Wollongong, Nowra and Wagga Wagga are required to provide trucks with a GVM of not less than 28t within 18 months of written notice of plant upgrade.

The Carrier must ensure that its age of truck remains less than 10 years at all times during the term of its cartage contract. If the Carrier's truck becomes more than 10 years old at any stage during the term of the Determination Hanson may in its absolute discretion, terminate the contract immediately. Recognised contracts operating in NSW as at 1 November 2017, which number 84 contracts, will be subject to a 14 year age of truck limit with truck numbers under those contracts identified in Appendix F to this Contract Determination.

The Carrier may apply to Hanson's Representative in writing requesting that the Carrier be exempt from this clause for a maximum period of 12 months (per application) to continue to perform services for Hanson under the terms of this Determination; In reaching a decision to accept or reject the application, Hanson's Representative's will consider a number of factors including but not limited to:

Reliability of the Truck

Availability of the truck

The Mechanical Condition of the truck

The appearance and presentation of the truck

Hanson's decision will be final. Initial applications must be submitted prior to the vehicle becoming 9.5 years old.

Should a carrier be required to introduce a truck at a point in time in this contract to a plant capable of loading trucks with a GVM of 28t, then they will be required to provide such truck at that point in time.

In circumstances where a truck is introduced that is less than 18 months old at the start of this contract the Regional Logistics Manager or nominated representative may issue a letter to a Carrier declaring their truck is deemed to satisfy the life of the contract.

Any new truck brought into the fleet by the Carrier must meet all Hanson truck specifications (excluding mixer) refer Appendix E:

6.2 Availability of Truck & Driver

The Carrier shall, as a fundamental condition of this Determination, be available to provide cartage of concrete for Hanson at such times as Hanson may require so as to meet the demand of Hanson's customers 52 weeks per year during the term of this Determination.

All Benefits and Entitlements under the award including Leave Entitlements of 20 days Annual leave, 10 days personal leave and up to 13 RDO's are deemed as entitlements included within this document. All leave applications must be approved by Hanson prior to leave being taken.

In periods when demand is low, Hanson in its absolute discretion may grant permission to the Carrier to take leave without the need for the provision of a relief driver.

Hanson will measure availability specifically for each Carrier. Should The Carrier's availability not meet specified availability requirements for the fleet as defined by Hanson, Hanson at its discretion may terminate the contract pursuant to the disciplinary process set out in clause 15.

Hanson's Representative may request Medical Certificates or proof of breakdown, repair of truck or equipment if the truck is not made available for loading, failure to provide requested documentation may result in Hanson enacting disciplinary procedure.

The Carrier and /or driver shall act in the best interest of Hanson at all times.

6.3 Mass Management

The Carrier engaged hereunder acknowledges and agrees that it must meet various regulatory requirements to achieve the maximum GVM allowed under State or National guidelines. The Carrier must comply and be accredited with:

NHVAS for Mass Management

Hanson reserves the right to alter these requirements from time to time if the State or National guidelines or regulations change and affect the GVM or carrying capacity of the Carrier's truck.

6.4 Fatigue Management

The Carrier must comply with all State and Federal regulatory requirements and with any reasonable requirements of Hanson in relation to fatigue management, as may apply from time to time during the term of this Contract.

This obligation on the part of the Carrier shall include the completion and retention of all records as required under State and Federal regulations. The Carrier is to utilise Hanson's Daily log book for the recording of all records in relation to Fatigue Management, and must be able to present these when requested by Hanson.

The Carrier shall ensure that it's Nominated Driver and any Relief Drivers observe Hanson's policies and practices designed to manage driver fatigue. The Carrier acknowledges as part of its cartage contract that it must operate the truck in strict accordance of all State and Federal laws with respect to fatigue management.

The Carrier is responsible for ensuring its Nominated Driver and any Relief Driver obeys the current National Driving Hours Regulations.

6.5 Road Laws

The Carrier must:

- (a) ensure that its nominated driver operates the truck approved to provide cartage services to Hanson only on roads on which such a truck is legally permitted to travel and otherwise in accordance with applicable road laws and regulations;
- (b) observe and comply with and ensure that its nominated driver observes and complies at all times with the provisions of all acts, rules and regulations relevant to the cartage services provided including the Chain of Responsibility created by State and Federal legislation and OH&S Laws;
- (c) notify Hanson within 24hours of any traffic related infringements which will or potentially preclude them from legally performing their duties under this Determination'.

6.6 Truck Maintenance

The Carrier must ensure that the truck is maintained and kept in a roadworthy condition and comply with all relevant statutory legislation.

The Carrier is to utilise the Hanson Driver's Daily Log Sheet to record all daily vehicle checks.

At any time during the term of this Determination Hanson's Representative has the right to require the Carrier to produce copies of any relevant documentation within seven days, to demonstrate that the Carrier is complying with the provisions of this clause. Failure by the Carrier to provide documentation will be dealt with in accordance with clause 15.

6.7 Navigation

The Carrier is responsible for providing a street directory or other navigation equipment to enable deliveries to be completed in an efficient manner.

6.8 No liability for loss of profits or opportunity

Except in reference to clause 5.1.1, Hanson has no liability whatsoever to the Carrier for loss of profits by the Carrier or loss of opportunity for the Carrier resulting from plant, agitator or vehicle breakdowns which are beyond the reasonable control of Hanson.

If the Contractor knowingly requires a Carrier to provide his vehicle at a plant which has a substantially reduced production capability for a period of not less than one (1) hour, then the Carrier will be entitled to Stand By payment per hour or part thereof following the first hour - i.e. the first hour is not paid.

6.9 Only Nominated or approved Relief Drivers to make deliveries

The Carrier agrees that:

- (a) cartage services provided by it under this Contract:
 - (i) may only be carried out by a person, who, at the time of the delivery, is a Nominated or Relief Driver; and
 - (ii) must be carried out in accordance with the provisions of this Contract; and
- (b) that any breach of the provisions of this Contract by the Carrier, or Nominated Driver shall constitute a breach by the Carrier of the terms of this contract between Hanson and the Carrier.

6.9.1 Nominated Drivers

It is a fundamental condition of this Contract that the Nominated Driver will be both the controlling shareholder and a director of the Carrier.

6.9.2 Relief Drivers

Where the Carrier wishes to use a relief driver, then the Carrier must obtain the prior written approval of Hanson to allow that relief driver to become a Driver and must ensure that the driver complies with the terms of this Contract (including its Appendices). Hanson has the absolute discretion to revoke approval for any Relief Driver for any reason.

The parties agree that such Relief Drivers will only be engaged in the event of:

- (i) Leave;
 - (ii) Sickness; or
 - (iii) Other, as approved by Hanson,
- and provided that the driver is a person who:
- (a) is approved in writing by Hanson and meets Hanson's standards concerning:
 - (i) Customer service focus;

- (ii) Driver experience;
 - (iii) Driver professionalism
 - (iv) Safety
 - (v) any other matter or thing notified to the Carrier by Hanson in writing;
- (b) holds a current Written Authority from Hanson to operate any trucks at Hanson's premises; and
- (c) has been certified by Hanson as being able to satisfactorily complete a training program covering Hanson's operating methods, use of equipment and administration procedure, which program will take up to two full days for a person new to the industry to complete, comprised of four units as follows:
- (i) A general introduction to the industry.
 - (ii) Hanson's specific requirements, and covers such requirements as personal presentation, unloading, customer dealings, administration procedures and cash handling.
 - (iii) Specifics of equipment operation and emergency procedures, fire evacuation procedures and safe operating regulations.
 - (iv) A comprehensive Medical examination including drug tests.
- (d) has been satisfactorily assessed by a Hanson Driver Assessor

6.10 Training Courses

The Carrier shall ensure that its Nominated Driver participates in such designated plant meetings, inductions and training courses as Hanson may determine. The cost to the Carrier of any training held on Hanson Sites is deemed to be included in the cartage rates. Where training is held offsite the Carrier will be paid at the Hourly labour rate. Any travel expenses will be paid at the Rate of 75 cents per kilometre.

6.11 Fully Licensed and Trained

The Carrier shall ensure that its Nominated Driver and any Relief Drivers are fully licensed and trained in the operation of the truck and its equipment. In the event that the licence of a Nominated or Relief Driver is suspended or cancelled, the Carrier must immediately inform Hanson in writing.

The Carrier agrees that Hanson as required has the right to perform driver licence checks, via the relevant authority.

Incoming Nominated and Relief drivers will spend a nominated period of training with Company employed drivers. Where a Company employed driver is not available, it will be the responsibility of the outgoing Carrier to conduct training.

All Nominated drivers will undertake annual development reviews aimed at improving customer service and fleet efficiencies.

6.12 Drug and Alcohol Testing

The Carrier's Nominated or Relief driver may at any time whilst engaged under this Determination be required by Hanson to submit to random drug and alcohol testing in accordance with Hanson's Policy and Procedures.

Upon Hanson's request, the Carrier engaged hereunder will require its Nominated Driver or Relief Driver to submit to a Hanson Fitness for Duty medical on an annual basis.

The Carrier agrees that any failure by the Nominated Driver to submit to a drug and alcohol test or to a Hanson Fitness for Duty medical shall constitute a Breach of procedure for the purposes of Clause 15.

6.13 Reporting of Defects, Loss or Theft

The Carrier shall fully and properly inform Hanson immediately upon becoming aware of any matter of which Hanson could reasonably expect to be advised including, but not limited to, breakdowns, accidents, damage to, defect in, loss or theft of the Carrier, Hanson or customer plant or equipment.

7. Responsibility for Load and Slump Control

- (a) The Carrier shall comply with the appropriate Hanson Policies, Directives, Work Methods, Operational Guidelines. Copies will be available at each concrete plant and online.
- (b) The Carrier must visually inspect each load prior to leaving the plant and shall immediately advise Hanson of any apparent omissions or unusual features of the load which may have occurred due to batching error, plant failure or contamination. Failure to report any obvious unusual feature arising from visual inspection may result in the Carrier not receiving payment for the load and if the load is subsequently dumped the Carrier will be required to refund to Hanson the cost of the Bill of Materials (BOM).
- (c) The Carrier shall ensure that the load is properly mixed as required by Hanson's Work Methods and that the slump of the concrete will be in accordance with current Australian Standards or other applicable specification limits immediately prior to discharge. These limits are currently:

Slump < 60mm - a tolerance of ± 10 mm;

Slump (60mm or 80mm) - a tolerance of ± 15 mm;

Slump > 80mm or (110mm) - a tolerance of ± 20 mm;

Slump > 110mm or (150mm) - a tolerance of ± 30 mm;

Slump > 150mm - a tolerance of ± 40 mm.

- (d) The slump requirements are based on the premise that the Carrier has at all times from the time of batching to the point of discharge, the ability to adjust the slump of the load to the above specifications. Where the Carrier does not have the ability to adjust the slump for reasons such as customer restrictions, and other than pursuant to clause 7 (b), or where the slump is so grossly out of specification (i.e. two times the tolerance) that they have failed in their duty of care, the Carrier may be absolved of responsibility for the load.
- (e) Where an additive is added by a third party after batching, the Carrier will not be responsible for the slump of the load however should make all endeavours to ensure accuracy. Any additive added by a third party must be recorded clearly on the delivery docket.
- (f) The concrete specification as shown on the delivery docket cannot be changed by any party after batching.
- (g) The agitator drum must be kept turning at all times when it contains concrete other than kerb maker or low slump concrete.
- (h) When a load is rejected at a job site because the slump is outside the nominated tolerance or because the Carrier has not complied with the requirements of this clause, the Carrier will not be paid for the cartage.

- (i) In the case of a delivery of concrete to a kerb-making machine, the Carrier assumes no responsibility for the slump of the load if it is delivered in an "as batched" condition. However the Carrier will remain responsible for the detection of obvious problems such as high slump or complete absence of cement.
- (j) If the customer requests the addition of an amount of water that takes the slump of the load outside the specified slump tolerance, the Carrier shall note the quantity of water added and the estimated final slump of the load and obtain the name and signature of the customer or their nominated representative on all copies of the delivery docket, authorising such addition of water to the load prior to the water being added.
- (k) The Carrier shall submit all relevant copies of the signed delivery docket to the batcher immediately on returning to the plant following each delivery.
- (l) Slump control is the responsibility of the Carrier. If the Carrier and/or a Relief Driver engaged at the time by the Carrier has 3 slump violations in 6 months he will be required to spend the first half of a day retraining in the practising slumping on the slump stand. At Hanson's discretion the Carrier will also need to attend a slump retraining course. Hanson will not be liable for any compensation to The Carrier for the time to undertake retraining. Repeat occurrences will result in a written warning. (See clause 15.1) i.e. A further 3 violations in a six month period will result in a written warning.
- (m) The Carrier will be responsible for all fees and costs associated with cleaning of concrete spills caused by the Carrier, except in circumstances where mixer or mixer control failure is proven to be the cause. Upon becoming aware of any such spill the Carrier must immediately notify Hanson of the spill and await instructions.

7.1 Delivery Ticket

The Carrier shall ensure that each load is accompanied by a delivery docket and:

- (a) Will not depart from the plant with any materials loaded into the agitator without first obtaining a delivery docket from Hanson's plant batcher.
- (b) Ensure that the materials loaded into the agitator comply with the details on the delivery docket.
- (c) Ensure that no details entered on any delivery docket are altered.
- (d) Ensure that no additional water or other substance is added to the Materials at the customer's request unless the customer signs an appropriate authority.
- (e) Follow all other Hanson Docket completion processes as instructed by Hanson.
- (f) The Carrier shall ensure the following details are noted on all copies of every delivery docket:

time ex plant

time of arrival on site

time of completing unloading

whether water was added on site or not, to bring the load up to the specified slump, and if so, the quantity added

any additives added by the customer

amount of waiting time and customer name and signature, if

applicable

whether there was any unused or leftover concrete, and if so, the estimated quantity

name and signature of customer or their nominated representative.

Any other information as required by the contractor from time to time

Where the above is not completed in full the Carrier may not be paid for the load.

Failure to ensure all of the information listed above is recorded on all copies is resultant in a claim from a customer, then Hanson will reclaim any payment the Carrier has received from that delivery.

7.2 Payment Withheld

When a load is rejected at a job site because:

- (a) the slump is outside the slump limits specified in clause 7 (c);
or
- (b) The Carrier has not visually inspected the load prior to leaving the plant;
or
- (c) the load was delivered to the wrong address
or
- (d) the Carrier has not followed clear instructions printed on the delivery docket

Hanson will not pay the Carrier for the cartage to the job site or place of disposal.

Where the load is dumped because the slump is grossly outside the nominated tolerance (ie two times the tolerance) that the Carrier has failed in his duty of care the Carrier shall refund the Contractor the cost of the Bill of Materials (BOM).

Where the Carrier delivers concrete to the wrong address and if the load is subsequently dumped the Carrier will be required to refund to Hanson the cost of the Bill of Materials (BOM). Hanson may, after investigating any mitigating circumstances, consider these actions as a Breach as per clause 15.

Any concrete not accepted at a job site shall be delivered to and / or disposed of as directed by an authorised Hanson representative.

7.3 Returned Concrete

Concrete in excess of customer requirements (returned concrete) shall be delivered to and/or disposed of as directed by an authorised Hanson representative. Returned concrete shall always remain the property of Hanson.

If the Carrier has a quantity of unused or left over concrete in excess of 0.8m, then on returning to the plant the customer service centre or plant batcher have the discretion to reuse this concrete in a following delivery by immediately reloading the Carrier without regard to the next truck intended to be loaded.

The Carrier shall not be entitled to any cartage payment for returning any leftover concrete ie part of the initial load, to the plant it was loaded from.

If however, after returning to the plant, the Carrier is then directed to dump or dispose of the left over concrete at a site outside the plant or diverted direct from site to a dump location outside of the plant,

then the Carrier shall be paid a new Standard Load Rate and applicable Extra Distance Payment pursuant to clause 5.1.8.

It is the obligation of the Carrier to note on the Delivery Docket details in relation to the authorisation for any disposal. If any Carrier is found disposing of unused or left over concrete in a manner not authorised by Hanson, then Hanson may at its discretion terminate this Determination immediately without payment of compensation to the Carrier.

7.4 Spillages and Site Cleaning

The Carrier shall at its own cost and to the satisfaction of Hanson:

- (a) During the performance of any cartage services clean up and properly remove from Hanson premises, roadways and Hanson customers premises any surplus material such as concrete or related products, or products such as oils or other items arising from the cartage services and caused by the negligence of the Carrier
- (b) Promptly report to Hanson any clean up required and any damage caused by the surplus material.
- (c) The Carrier will be liable for any charges or costs incurred in cleaning up any spillage, including 3rd party claims arising from such spillages except in circumstances where mixer or mixer control failure is proven to be the cause.

Failure to report a concrete spill will be considered as a serious environmental breach

7.5 Cash on Delivery (COD)

- (a) Collection of COD

The Carrier shall endeavour to collect COD money from COD customers for all concrete charges, including waiting time (if applicable) in accordance with Hanson Cash Sale policies and procedures.

All moneys collected shall be submitted in full (as soon as possible) to the plant manager or plant batcher, who shall immediately issue the Carrier with a receipt.

The Carrier is not required to carry a float for the purpose of providing a change facility.

Payment for Cash collection is included in the rates payable

- (b) COD Dispute

The Carrier shall immediately advise Hanson when a COD payment is not collected or a dispute arises between the Carrier and the customer.

- (c) Due Care

The Carrier shall take all due care for any money collected and is responsible for these monies until a Hanson staff member has signed a receipt for these monies.

7.6 Breakdowns

It shall be the responsibility of the Carrier to advise Hanson of a matter of urgency when a truck or mixer breakdown occurs. Should a truck or mixer breakdown occur, then the Carrier will co-operate fully with Hanson in order to avoid any damage to the mixer, but Hanson will have the principal liability. The Carrier shall not have any responsibility for the removal of any hardened concrete from the agitator.

If the Carrier's truck breaks down the Carrier shall be responsible for repairing the truck urgently. Such repair will be at the Carrier's expense.

8. Loading

8.1 Size of Load

The Carrier shall accept for delivery to a customer any load offered by Hanson that does not exceed the legal capacity of the vehicle or the rated capacity of the agitator.

8.2 Loading Order

(a) Rosters

Hanson shall implement starting, loading and vehicle transfer rosters designed to maximise the efficiency of the delivery fleet. These rosters may change from time to time in consultation with Carrier Representatives without prejudice to any individual Carrier, however the intent is to ensure that all vehicles are assigned a fair share of deliveries subject to fleet limitations or customer requests.

(b) Commencement Time and Place

The daily initial loading time of the Carrier's vehicle and the initial plant from which such loading shall take place will be notified by Hanson to the Carrier. It is the Carrier's responsibility to obtain and adhere to start times, this may require the Carrier to call a toll free number after a set time each night to obtain the start time of the next day.

Hanson agrees to operate rosters in order to ensure, so far as is reasonably possible in all the circumstances, utilisation of all carriers utilised from time to time by Hanson is effective for all concerned in cartage of product and does not prejudice any individual truck operator, be they Hanson a subsidiary of Hanson or the Carrier.

(c) The initial daily starting order will be in accordance with a cyclic roster which is:

- i. A roster made up of truck numbers, which determines the selection of a particular truck for a load or function and is based on a cycle from the first truck number to the last.
- ii. When the cyclic roster has been fully exhausted by each truck in that roster being allocated a load or function the roster then changes so that the truck number that was first becomes last. Each truck number is moved up one position in turn, and so on - except following days where plant does not open for production.
- iii. Each Carrier will start the day, when not rostered off, in order of a single cyclic roster and thereafter in order of return to plant.
- iv. Trucks will then be loaded in the order of their return to the plant (First In First Out) subject to breaks.
- v. Where trucks are required to transfer to another yard at the commencement of any business day, trucks at the bottom of the roster will be transferred first. Where a driver fails to transfer then it will be considered as a Breach subject to clause 15.
- vi. Subject to truck type or property requirements, where a truck that is not a carrier under this contract, or a Hanson truck or subsidiary of Hanson then that truck will be rostered to start after the above trucks, and subject to truck type or property will be first to be rostered off at the end of day.

The above will apply with the exception of:

- vii. Single load or Balance load greater than the mixer capacity or legal carrying capacity of the truck next in line. The single load may be assigned to the 1st available truck capable of carrying the load in a single load.
- viii. To satisfy Customer requirements such as load size, truck type or property.
- ix. Trucks with returned concrete greater than 0.8m³.
- x. To gain over all efficiencies of the fleet, by eliminating unnecessary loads with the loading of high capacity Hanson Company Owned vehicles during times of peak production.

8.3 Legal Load Limits

The Carrier will assume responsibility for any breaches in vehicle legal limits in relation to re-used concrete as Hanson has given the Carrier the discretion to dump any concrete from the topped-up load that The Carrier may deem to place them in breach of his vehicle's legal load limit.

8.4 Use of Despatch, Communication and GPS Technology

Hanson will use GPS and or other technology to optimise the performance of the fleet. This may from time to time require the fitting of additional equipment to the Carrier's truck, and this equipment will remain the property of Hanson. The Carrier shall take due care to ensure adequate protection of the equipment and Hanson will be responsible for the maintenance of such equipment.

The equipment fitted is to be operated and appropriate procedures are to be followed by the Carrier as laid down by Hanson.

The Carrier consents to Hanson recording communication made via this technology.

8.5 Scheduling and Despatch

Hanson has policies and procedures in place to ensure that the Carrier schedules are planned so that the Carrier is not induced or encouraged to break any law in respect of speed or driving hours.

9. Safety

The Carrier shall ensure that it's Nominated Driver and any Relief Driver engaged by the Carrier follow and abide by all work procedures, incident reporting and safety directives of Hanson. The Carrier and its Nominated Driver and any Relief Driver must be available to attend all safety training that Hanson may deem necessary.

The Carrier must fully co-operate and participate in any incident investigations.

Failure to abide by work procedures and safety directives may be regarded as a Breach.

9.1 Hazardous Site

(a) Rights

The Carrier shall not be required to deliver a load where the Carrier reasonably considers the delivery site to be unsafe or hazardous. If such a situation is encountered the Carrier will immediately notify the Customer Service Centre or Plant Despatch who will initiate the procedure to remedy the situation. No following trucks are permitted to enter the site until such time as the reporting Carrier or Hanson manager has deemed the site safe.

9.2 Bogged Vehicles

(a) Salvage

If the Carrier proceeds beyond the kerb to complete a delivery and the vehicle becomes bogged or otherwise rendered inoperative as a consequence of such attempted delivery, Hanson will arrange the services of an experienced salvage operator to extricate the vehicle as soon as possible and will bear all costs for those arrangements, except in circumstances where the operator has failed to inspect the ground first, or has not followed marked path or direction. The Carrier will make no claim against Hanson for time taken to extract their vehicle, except in situations where the carrier is able to demonstrate that they have been prevented from exercising their duty of care (e.g. where a third party has given the Carrier poor directions, or prohibited them from inspecting the ground) which resulted in their vehicle becoming bogged, or where the Carrier is able to demonstrate they have duly notified the customer of the risk.

(b) Appropriate Insurance

Hanson shall ensure that the salvage operator selected under paragraph (a) above is covered by the appropriate insurance policy to rectify any damage that the salvage operator may cause to a vehicle during the extrication process.

9.3 Injury and / or Damage

Except in situations where the carrier is able to demonstrate that they have been prevented from exercising their duty of care (e.g. where a third party has given the Carrier poor directions, or prohibited them from inspecting the ground first), or where the Carrier has duly notified the customer of the risk of damage, then The Carrier shall be responsible for any injury and / or damage to property, equipment or vehicle(s) arising from any off-kerb delivery. So as to ensure good customer and community relations, any damage costs payable to third parties by the Carrier shall be settled without delay.

10. Uniforms

10.1 Driver Presentation and Protective Clothing

The Carrier shall ensure that all Nominated Drivers and Relief Drivers when performing work under this Contract will:

- (a) Wear an appropriate Hanson Uniform as provided (including high visibility shirts, trousers and jackets as issued);
- (b) Wear steel toed lace-up safety boots;
- (c) Wear Personal Protective Equipment as required by Hanson or Customer Policy Procedures or instructions;
- (d) At all times maintain a professional level of service and presentation of both personnel and equipment which is consistent with Hanson's own standards of service and presentation.

10.2 Hanson Provision

Hanson shall provide the following clothing per vehicle:

- (a) 6 days standard uniform (Trousers, Shirts and Winter Jacket) will be issued at commencement of contract. Uniforms will then be replaced on a reasonable wear & tear basis.
- (b) Safety equipment as required to undertake the role safely.

11. Painting and Signage

11.1 Hanson Requirements

It is the Carrier's responsibility to ensure that any vehicle introduced within 5 years of the commencement date of this contract is painted at their expense in accordance with Hanson branding requirements prior to entering service. Thereafter if any vehicle is introduced to satisfy the age requirements of clause 6.1 of this contract then Hanson will arrange, on a one-off basis, to Paint the truck at their expense. It will be the responsibility of the Carrier to Paint vehicles introduced for any other reason according to Hanson Branding requirements. Signage and paint colour codes will be provided by Hanson upon request.

Before The Carrier sells or disposes of their truck for any reason, or where their contract has been terminated, they will present their truck for removal of signage by Hanson.

11.2 Re-painting

If for reasons of fleet presentation, Hanson's Representative requires the vehicle to be re-painted then the Carrier shall at their expense, paint the vehicle to a standard that is acceptable to Hanson. Fleet presentation criteria is assessed against other trucks within the fleet of similar age.

If Hanson changes its fleet colours or signage during the term of this Determination, Hanson shall bear all costs associated with any repainting of vehicles that it requests.

12. Provision of Agitator

12.1 Supply

Hanson shall give the Carrier the right of use of an agitator for each vehicle with a rated mixing capacity of not less than 7 cubic metres, in the Metro Area, and not less than 5 cubic metres in Country Areas.

12.2 Safe Fitting

Hanson shall ensure the safe and proper fitting of an agitator to the vehicle in accordance with the specifications of the vehicle and agitator manufacturers.

12.3 Removal

If an agitator is required by Hanson to be removed or replaced at any time the total cost of removal and of replacement shall be borne by Hanson.

12.4 On-Going

The Carrier shall be responsible for an agitator being properly secured to the vehicle after the initial installation.

12.5 Ownership

Agitators shall remain the property of Hanson. The Carrier will not utilise the Agitator for any purpose other than that directed by Hanson.

12.6 Cleaning of Agitators and Vehicles

(a) General

The Carrier will ensure that it keeps all vehicles and agitators clean and tidy to the satisfaction of Hanson.

Hanson will monitor the presentation and image of all vehicles and agitators and may from time to time issue such reasonable instructions as it thinks are necessary to ensure that the appropriate standard of vehicle image and presentation maintained, which instructions shall be complied with by the Carrier.

(b) Daily

During each working day an agitator shall be thoroughly washed out by the Carrier and all external surfaces of the Agitator and Prime Mover cleaned down and treated as to Hanson's Satisfaction in preparation for the next days work.

(c) Cleaning Materials

All cleaning materials and equipment necessary for the cleaning of an agitator shall be supplied by Hanson free of charge and the Carrier shall ensure, and be responsible for, compliance with any and all statutory requirements and regulations relating to the use of these cleaning materials.

12.7 Maintenance

(a) Reporting of Faults

The Carrier shall report any and all apparent requirements for maintenance of agitators to Hanson.

(b) Servicing of Mixer

Hanson shall be responsible for the cost of servicing the Mixer. The Carrier shall make the mixer available for servicing. Where a carrier is required to wait for his vehicle they will be paid a stand by rate per hour or part thereof. If he is not required to wait a means will be provided by the contractor at the Contractor's cost to convey the Carrier to his place of residence and return him to the workshop as required.

(c) Major Maintenance

Hanson shall be responsible for all major maintenance to an agitator, in accordance with an agitator manufacturer's recommendation.

When required by Hanson, the Carrier shall have an agitator conveyed to a workshop for repairs and/or maintenance.

All work shall be completed as soon as possible and without delay.

A means will be provided by Hanson at Hanson's cost to convey The Carrier to the plant where the days work began and return to the workshop as and when required.

(d) Minor Maintenance

The Carrier shall carry out minor maintenance, oil level checks and regular greasing as per the manufacturers requirements. All materials required to carry out minor maintenance and greasing, including oil and grease will be supplied by Hanson.

The Carrier will be responsible for all maintenance and replacement of clearance lights, globes and mud-flaps.

Mud flaps shall be supplied to the Carrier by Hanson free of charge and it shall be the responsibility of the Carrier to have them fitted to each vehicle.

(e) Damage to Mixer

The Carrier shall be responsible for damage to a mixer through their negligence, deliberate action or failure of their equipment.

(f) Build up

If the Carrier presents a mixer for repairs and maintenance with hardened concrete build up on the outside of the mixer or its components and the service agent is required to remove the said hardened concrete to enable such repairs and maintenance to be carried out, the cost of removal will be deducted from money's due to the Carrier under this Contract.

(g) Alterations to Mixer

The Carrier may not make any alterations to the mixer without written consent from Hanson (eg hooks, removal of ladder etc.).

12.8 De-Dagging

(a) Responsibility

Hanson is responsible for the removal of hardened concrete build-up from the inside of an agitator.

(b) Provision and Cost

Hanson will provide a maintenance agreement at its cost for up to two agitator de-dagging per 12-month period. This agreement will cover the removal of up to 1.0 tonne of build-up in a 12 month period.

Any subsequent de-dagging deemed necessary by Hanson shall be arranged for by Hanson and the costs will be charged to the Carrier at the rate charged.

(c) Hours

All de-dagging will be conducted outside standard hours unless otherwise as agreed between the Carrier and Hanson.

12.9 Transfer of Mixer

The carrier will be paid for transfers to and from the workshop at the standard transfer rate.

13. Contract Administration

13.1 Contract Administration Personnel

Hanson and the Carrier will provide to each other, and maintain, a listing of prime personnel and their responsibilities involved in the ongoing administration and performance of the cartage services required under this Contract. This list will include names and contact details as appropriate.

13.2 Superannuation and Workers' Compensation

The Carrier acknowledges that it is responsible for compliance with all aspects of the law with regard to any employees engaged by the Carrier in connection with cartage services. The Carrier agrees that Hanson has no liability in respect of wages, accruals, superannuation or workers compensation in respect of any employee of the Carrier.

13.3 Proper Law and Jurisdiction

This Determination is governed by, and to be interpreted in accordance with, the laws of the New South Wales and where applicable the laws of the Commonwealth of Australia and the parties agree to submit to the jurisdiction of the Courts of New South Wales and if applicable the Commonwealth of Australia.

13.4 Confidential Information

The Carrier acknowledges that all information relating to past, current or future business interests, methodology, Hanson customer and supplier details or affairs of Hanson is and will remain the sole and exclusive property of Hanson. The Carrier shall keep all such information confidential (except where such information is in the public domain) and in particular will not disclose such information to any other person except as required by law or with the written consent of Hanson during or for a period of two years after termination of this Contract

13.5 Notices

Where a provision of this Contract requires or allows a matter to be communicated by the Carrier to Hanson then that communication shall be addressed to the Concrete Transport Manager or the person delegated by the Concrete Transport Manager or Regional Logistics Manager.

13.6 Plant Storage - the Carrier's Equipment

Where possible Hanson will provide space for the storage of the Carrier's equipment that is reasonably necessary for the Carrier to efficiently and effectively provide the cartage services required under this Contract. Storage of the equipment is at the Carrier's risk and Hanson shall not be liable for any loss or damage to the Carriers equipment whilst stored or left at any plant.

13.7 Tax Invoices

Hanson as "Recipient" and the Carrier as "Supplier" agree that in relation to supplies made pursuant to this Contract:

- (a) The Recipient can issue tax invoices in respect of the supplies;
- (b) The Supplier will not issue tax invoices in respect of the supplies;
- (c) The Supplier acknowledges that it is registered for GST at all times during the life of the cartage contract between the parties and that it will notify the Recipient if it ceases to be registered;
- (d) The Recipient acknowledges that it is registered for GST at the date of commencement of this Contract and that it will notify the Supplier if it ceases to be registered for GST or if it ceases to satisfy any of the requirements of any Contracts or rulings issued in relation to recipient created tax invoices.

13.8 GST

All payments to be made by Hanson hereunder are calculated without regard to GST unless otherwise stated.

If a supply made by one party ("the Supplier") to the other ("the Recipient") is subject to GST, the Recipient agrees to pay to the Supplier an additional amount equal to the Amount of the Consideration for the supply multiplied by the prevailing GST rate.

The additional amount is payable at the same time and in the same manner as the consideration for the supply to which the additional amount relates.

The Supplier agrees to:

- (a) comply with Part VB of the *Trade Practices Act 1974*; and
- (b) refund any overpayment made by the Recipient under this clause promptly after the actual amount of the overpayment is ascertained.

In this clause:

"Amount of the Consideration" means:

- (i) the amount of any payment for a supply; and
- (ii) in relation to non-monetary consideration, the GST exclusive market value of that consideration.

13.9 Indemnity

The Carrier indemnifies Hanson against any loss, liability or damage, whether direct or indirect, suffered or incurred by Hanson, including any claims, losses, damages and costs, arising from or in connection with the negligent or intentional act or omission, or breach of this Determination by the Carrier or its officers, employees, agents or contractors.

13.10 Privacy

The Carrier hereby authorises Hanson to collect such information from the Carrier as Hanson requires for the business of Hanson.

Hanson agrees that it will treat such information collected as confidential and will only make disclosure of that information as is required by law or as is reasonably necessary for the prudent and efficient carriage of the business of Hanson.

14. Fleet Size

Subject to the terms of this Contract, Hanson shall have the discretion to vary its fleet size, make up and location in any manner and for any reason. Hanson shall consult with Contract Carrier representatives at the earliest opportunity in regard to any proposal to change the fleet size.

15. Disciplinary Procedure

The Carrier shall ensure that the nominated driver and all employees of the Carrier work in a safe manner and follow all Policies, Procedures, Management Direction and contractual obligations. Failure to do so will constitute a breach. Matters not outlined elsewhere in this determination that may also be considered as a breach include, but are not limited to, performing designated work poorly, refusal to carry out reasonable directions, lateness or chronic absenteeism, abusive or discourteous communication with manager/supervisor of the business or another employee or Carrier, or presenting to work in a condition rendering the Carrier incapable of performing their designated tasks.

Subsequent to an investigation by Hanson into any breach not considered a Material Breach the following process shall be implemented:

15.1 Warning Process

- (a) First Breach

Written warning from Hanson to the Carrier.

(b) Second Breach

Written warning from Hanson to the Carrier.

(c) Third Breach

If a third breach occurs Hanson will have the right to terminate the cartage contract between the parties immediately without the payment to the Carrier of any compensation.

16. Disputes

16.1 Dispute Resolution

The following procedure for the avoidance and settlement of disputes shall apply to all matters covered by this Contract other than matters which are the subject of proceedings under clause 15.

The objective of the procedure is to prevent disputes and to promote the resolution of disputes by measures based on consultation, co-operation and discussion, to avoid interruption to the provision of cartage services and the consequential loss of production and the cartage earnings of the Carrier. Emphasis shall be placed on a negotiated settlement.

16.2 Procedure for Dispute Resolution

It is understood and accepted by all parties to this Contract that cartage services shall continue normally during all negotiations and any necessary proceedings. Until the matter is resolved, and/or determined, work will continue as normal, or as agreed by the parties; alternatively as pursuant to an interim determination of the commission. Neither party will be prejudiced as to the final settlement by the continuation of work; subject to a Contract Carrier's rights regarding health and safety issues in accordance with the Act

Where a dispute arises the aggrieved party shall notify the other in writing. The following procedure shall apply:

- (a) When there is a disagreement, the Carrier shall attempt to resolve the matter by negotiating with the authorised Hanson representative on site.
- (b) In the event of the dispute not being resolved under clause 16.2 (a) within 7 days of the receipt of the notice the following shall apply:
 - (i) Discussions involving the Carrier's Representative and Hanson's Representative shall take place. If requested the Carrier and Hanson may have independent legal or other professional representation.
 - (ii) Either party shall be entitled to alter its representation. Notwithstanding the existence of a dispute or difference each party shall continue to honour their respective obligations under this Contract.
- (c) If the matter is still not settled, it may be submitted by one of the Parties to the Commission which may conciliate the matter.
- (d) The Commission may make a determination, which is binding on the Parties, where there is no likelihood that within a reasonable period conciliation or further conciliation will result in agreement. Any outcome imposed shall not be in breach of the National Code of Practice for the Construction Industry and Industry Guidelines as well as any legislative obligations
- (e) The above steps do not preclude reference of a dispute to the Commission at any stage of this procedure if one of the Parties believes it necessary. In these circumstances, the Commission will retain its discretion to refer the Parties back to a continuation of this procedure where the Commission considers that course appropriate.

- (f) Should the New South Wales Industrial Relations Commission cease to exist or for whatever reason be unable to carry out conciliation and or arbitration functions the parties agree to seek an alternate provider to conduct conciliation and arbitration functions pursuant to the above clause.

17. Termination or Assignment of Contract

17.1 Assignment of Contracts of Carriage/Determination

The Carrier must not assign this Determination to another party without obtaining the prior written consent of Hanson, which consent may be given or withheld in Hanson's absolute discretion.

Permission will not be granted to a Carrier to assign a contract where the vehicle operated by the Carrier does not meet the requirements set out under the contract.

In the event that Hanson does not approve the assignment of contract, the Carrier has the option to cancel the contract, or continue to fulfil his contractual obligations. Where the Carrier decides to cease his service and does not elect to assign the Contract pursuant to the terms contained in this Determination, the Carrier shall provide Hanson's no less than one months' notice of their intention to terminate the Contract. Hanson will arrange for the removal of all Hanson owned equipment and signage; the Determination will terminate at that point in time with no penalty cost to either party.

Where the Carrier assigns their contract on the open market, Hanson and the Carrier acknowledge that there is no Goodwill or other Premium included in the contract.

Any third party assignee introduced by the Carrier must be approved by Hanson. The proposed nominated driver of the assignee will be required to pass a pre-engagement medical and submit to a check of their relevant history.

Should Hanson introduce new carriers to the fleet after the commencement of this contract then those carriers will not be able to assign their contract on the open market.

17.2 Termination upon Insolvency

Hanson may, by notice in writing, terminate the cartage contract of the Carrier immediately if the Carrier becomes insolvent within the meaning of the *Corporations Act 2001*.

17.3 Termination of Contracts of Carriage for Commercial Reasons

If Hanson for any reason other than under the terms of this contract decides to terminate a contract of carriage of a Carrier then a termination payment on the following scale will be made to the Carrier and the Contract shall terminate forthwith.

- (a) 0 - 12 months from commencement of contract Hanson shall pay \$66,000
- (b) 13 - 24 months from commencement of contract Hanson shall pay \$55,000
- (c) 25 - 36 months from commencement of contract Hanson shall pay \$44,000
- (d) Thereafter Hanson will make payment of the equivalent of 66% of 16 weeks earnings averaged over the preceding 12 months of operation.

For carriers introduced to the fleet after the commencement of this contract, only (d) applies.

17.4 Termination of Contracts of Carriage for Material Breach or Serious Misconduct

Notwithstanding clause 15.1, in the event of a breach by the Carrier or any of its Nominated Drivers of any safety or other operational procedure notified by Hanson which is a Material Breach, or amounts to serious misconduct, Hanson retains the right to terminate the cartage contract between the parties immediately and without payment of monetary compensation to the Carrier. This right may be exercised

by Hanson following an investigation of the breach by Hanson during which the Carrier may be stood down with or without compensation during the period of the investigation.

Examples of serious misconduct include, but are not limited to:

Violent or threatening behaviour to customers, Hanson employees, or other Carriers;

Engaging in conduct that causes, or is likely to cause, in the reasonable opinion of Hanson, damage to the business or reputation of Hanson;

A serious safety breach;

A serious environmental breach;

Theft of money, product or property;

Being in possession of drugs of intoxication in the workplace;

Being under the influence of drugs of intoxication or alcohol while in the workplace;

Refusal of Drug & Alcohol test.

18. Amenities

All amenities are to comply with relevant legislation and to be not less than those enjoyed by an employee under the award. The appropriate facilities should be maintained and kept thoroughly clean and hygienic at all times by the Contractor. Carriers will conduct themselves in a tidy and appropriate manner.

19. Safety Net

- (a) An earnings safety net and guaranteed minimum earnings of \$100,498 per annum during the term of the Contract of Carriage will apply.

The safety net will be administered on an annual basis, in accordance with sub clause (iv) below, i.e. there will be adjustments up or down from quarter to quarter, as appropriate. Reviews will occur as part of each Rise & Fall review. As at 1 January 2014 the current annual net earnings level below which a safety net payment will be due is \$100,498.

- (i) A Carrier who earns less than \$25,124 in a quarter is entitled to a make-up payment for that quarter so that the earnings of the Carrier will equate to \$25,124.
- (ii) The make-up payment will be made in the pay period following the end of the relevant quarter.
- (iii) When a Carrier has been paid a make-up payment under this Safety Net Scheme then the Carrier is obliged to refund the make-up payment to the Contractor if the Carrier earns more than the minimum level of earnings in the following quarter or quarters. However at the end of the financial year (i.e. 30 June) the calculation ceases and then a new year is deemed to begin. Calculations are not carried forward to successive years. The contractor is duly authorised to deduct such safety net make-up payments from the carrier's remittance where applicable.
- (iv) The amount referred to in (a) (i) above as the annual net earnings level will be adjusted annually in accordance with movements in the rise and fall formula.
- (b) When a Carrier is "unavailable" (as explained in clause 19 (c) his safety net will be reduced by \$350.00 per day for each day he is unavailable in that quarter to a maximum of \$25,124 per quarter (as adjusted as aforesaid in accordance with movements in the rise and fall formula contained in Appendix A.

- (c) A Carrier will not be deemed unavailable for the purposes of safety net adjustment if
- (i) The agitator is unserviceable, except through damage by the Carrier
 - (ii) The Carrier is on a period of approved Leave
 - (iii) The Carrier is notified prior to the commencement of work that he is not required to be rostered off at the discretion of the Contractor
 - (iv) The Carrier takes a Gazetted public holiday

Appendix A

UTILISATION & RISE AND FALL CALCULATION

Period	1st January 2014 - 31st July 2014	
Regional Information		Amount
Lead		10.4
Utilisation		1000
KM Travelled		20840
Cost Category		Amount (totals \$ p.a.)
Ownership		\$24,640.00
	Truck Purchase Price	\$154,000.00
	Depreciation	
	80% of Purchase Price	\$123,200.00
	Depreciation 10% p.a. flat rate	\$12,320.00
	Interest	
	Finance Cost	8%
	Interest paid p.a. flat rate	\$12,320.00
Fuel		\$21,384.68
	Fuel Cost (\$/L) excl GST	\$1.48
	Rebate On Road Use (\$/L)	\$0.12
	Rebate Off Road Use (\$/L)	\$0.14
	On Road Fuel Consumption (%)	60%
	Off Road Fuel Consumption (%)	40%
	Fuel Consumption Rate (km/L)	1.3
	Litres Used p.a.	16031
Tyres		\$3,030.75
	Current Single Tyre Cost (SP350A)	\$484.77
	Current Cost for 12 Tyres	\$5,817.18
	Expected Tyre Life (Km)	40,000
	% of Tyre Life Used	52%
Insurance		\$10,864.17
	Comprehensive (\$ p.a.)	\$7,223.72
	Public Liability (\$ p.a.)	\$659.45
	Compulsory Third Party (\$ p.a.)	\$2,981.00
Workers Compensation		\$2,113.27
Annual Inspection		\$0.00
Registration		\$1,393.44

Repair and Maintenance		\$10,000.00
	Payments per Loads	\$10.00
Salary		\$52,561.49
	Hourly rate (grade 5 RT&D award)	\$20.22
	Weekly Salary (38hrs)	\$768.36
	Annual Salary (52 weeks p.a.)	\$39,954.72
	Superannuation %	9%
	Superannuation \$	\$3,695.81
Overtime		
	Overtime per week (hours)	5.65
	Overtime at time and a half p.a. (hours)	293.8
	Overtime paid at time and a half p.a.	\$8,910.95
	Overtime at double time p.a. (hours)	0
	Overtime paid at double time p.a.	\$0.00
		\$8,910.95
Admin and Management Fees		\$3,500.00
Profit		\$7,121.83
	Total costs	\$129,487.80
	Agreed Profit Rate	5.50%
Total Running Costs per Truck		\$137,609.63
Total # Deliveries per Truck		1000
Standard Load Rate		\$136.610
Extra Distance Payment (increment per 5km, avg. 2.5km)		\$19.484
	Km's Travelled per Truck p.a. (loaded)	10420
	Annual Salary	\$52,561.49
	Total tyre replacement cost p.a.	\$3,030.75
	Total fuel cost p.a.	\$21,384.68
	Cost per km	\$7.79

APPENDIX B

Additional Charges and Corrections

Appendix B			
Effective	1st January 2014 - 31st July 2014		
Item		6W	8W
A	Standard Load Rate (SLR)	130.36	136.61
B	Extra Distance Payment (EDP)	18.64	19.48
C	Agitator in Workshop	31.89	32.69
D	Stand-By Rate	30.33	30.33
E	Outside Hours Surcharge	65.18	68.31
F	Waiting Time	1.08	1.10
G	Transfer Fee Metro (per 15km)	32.59	34.15
H	Transfer Fee Country	\$1.44	\$1.65
	Safety Net Per Annum	\$90,002.13	\$91,572.37
	Safety Net per Quarter	\$22,500.53	\$22,893.09

APPENDIX C**Rise and Fall Adjustment Definitions, Frequency and Methodology**

Rise and Fall Element	Review Freq.	Definition	Method of Review / Calculation
Lead	fixed	Typical lead from plant to job as defined at the commencement of Contract	N/A
Utilisation	6 monthly	The average number of loads carted per truck over the preceding 12 months	<ul style="list-style-type: none"> • The utilisation rate is calculated only on the performance of trucks which have been located in the fleet in question for the twelve (12) months prior to the calculation being performed. • Trucks which are transferred between fleets will not be included in the calculation until those trucks have been in that fleet for twelve (12) months.
Km's Travelled per Truck	Calculated	distance travelled by the truck in a year based on lead & number of loads, including return run	2 x Defined lead x Utilisation
OWNERSHIP			
Hanson LOD Purchase Price (GST excl)	Fixed	Hanson LOD purchase price for standard specified truck at the commencement of Contract	Price set at start of Contract
Depreciation			
80% of Purchase Price	Fixed Calculation		based on a 20% residual value - used for depreciation calculations
Depreciation 10% p.a. flat rate	Fixed Calculation		10% straight line depreciation
Finance Cost			
Finance rate	Fixed	8% long term average	
Interest paid p.a. flat rate	Fixed Calculation		Finance rate x Hanson LOD Purchase Price
FUEL			
Fuel Cost (\$/L) incl GST	3 monthly	Price of Diesel Fuel as available to Hanson as defined by their primary supplier net of GST & diesel fuel rebate or other rebate	Where bulk fuel is available to the entire fleet bulk fuel rates will apply. Where bulk fuel is not available Hanson Starcard or equivalent supplier card rate will apply.
Fuel Cost (\$/L) excl GST	Fixed Calculation		
Rebate (\$/L)	6 monthly	Rebate \$/litre	Defined Government Rebates

Fuel Consumption Rate (km/L)	Fixed	Fuel usage km/litre	Engine Manufacturer Specified Fuel Consumption for specified Truck
Litres Used p.a.	Fixed Calculation	Fuel Consumed per year based on kilometres travelled	KM travelled per truck/Fuel Consumption rate
TYRES			
Single Tyre Cost (SP350A or equivalent)	6 Monthly	Hanson tyre rate from preferred supplier	Obtain price from preferred supplier
Cost for 12 Tyres	Fixed Calculation		12 x single tyre cost
Expected Tyre Life (Km)	Fixed	typical expected life of tyre	Set at start of contract
% of Tyre Life Used	Fixed Calculation	amount of tyre wear based on KM travelled	KM travelled/expected tyre life (KM)
INSURANCES			
Comprehensive (\$ p.a.)	Annual	Insurance premium for 80% of Hanson LOD truck cost with 5 year no claim	quotes through agreed insurance broker
Public Liability (\$ p.a.)	Annual	Cost of premium as per required amount incl agi extension and wrong delivery)	quotes through agreed insurance broker
Compulsory Third Party (\$ p.a.)	Annual	Cost of Third Party insurance as required	quotes through agreed insurance broker
WORKERS COMPENSATION	Annual	Cost of Workers Compensation insurance	From WorkCover
ANNUAL INSPECTION	Annual	Annual Cost of Roadworthy Inspection	
REGISTRATION	Annual	Cost of registration for specified truck type	Contact registration authority for cost for 4 axle rigid with GVM for Hanson Specified truck
REPAIRS AND MAINTENANCE	Calculation	allowance for annual cost of repairs and maintenance - will vary dependant on utilisation.	fixed rate per load x number of loads
Payment per Loads	Fixed	per load allowance for annual cost of repairs and maintenance - averaged over the life of the contract	Fixed at start
WAGES			
Hourly rate (grade 5 RT&D award)	6 monthly	Hourly rate for Grade 5 Road Transport and Distribution Award	
Weekly Salary(38hrs)	calculation	weekly wages based on 38 hour week	38 x hourly rate
Annual Salary(52 weeks p.a.)	calculation	Annual Salary	52 x weekly salary
Superannuation %	6 monthly	Statutory Superannuation contribution levels	Is dependent on the current Superannuation Contribution Guarantee rate
Superannuation \$	calculation	Superannuation cost per annum based on ordinary time earnings	

OVERTIME			
Overtime per week (hours)	calculation	hours overtime worked per week	scale based on utilisation fixed at start of contract
Overtime at time and a half p.a. (hours)	calculation	number of time and a half hours worked p.a.	first 12 hours of overtime worked x 52
Overtime paid at time and a half p.a.	calculation	overtime cost based on time and a half hours worked	number time and half hours p.a. x 1.5 x hourly rate
Overtime at double time p.a. (hours)	calculation	number of double time hours worked p.a.	overtime hours worked less 12 x 52
Overtime paid at double time p.a.	calculation	overtime cost based on time and a half hours worked	overtime hours worked at double time p.a. x 2 x hourly rate
Total Overtime paid p.a.	calculation	Total overtime cost based on all overtime hours	overtime paid at time and a half + overtime paid at double time
ADMIN AND MANAGEMENT FEES	Fixed	Allowance for all management and administration costs incurred - postage, accounting etc.	Fixed allowance agreed at start of contract
PROFIT	Calculation	Profit component	Profit rate x total costs
Total costs	Calculation	Annual cost of operating truck as per this rise and fall	Sum of all cost components in this rise and fall
Profit Rate	Calculation		% of total ownership and running costs on sliding scale based on utilisation

APPENDIX D

Utilisation Rates

GVM 23 Ton

Regional Information	Loads per Truck Scenarios																
	Amount																
Defined Lead	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	
Utilisation	400	500	600	700	800	900	1000	1100	1200	1300	1400	1500	1600	1700	1800	1900	2000
Defined Distance	8336	10420	12504	14588	16672	18756	20840	22924	25008	27092	29176	31260	33344	35428	37512	39596	41680
Total Running Costs per Truck	\$101,657.67	\$105,032.51	\$109,897.76	\$114,763.01	\$119,628.26	\$124,576.32	\$130,889.91	\$137,257.73	\$143,679.76	\$150,240.40	\$157,732.03	\$166,308.81	\$174,958.22	\$183,680.25	\$193,626.22	\$203,655.34	\$213,767.59
Total # Deliveries per Truck	400	500	600	700	800	900	1000	1100	1200	1300	1400	1500	1600	1700	1800	1900	2000
Load Rate	\$254.14	\$210.07	\$183.16	\$163.95	\$149.54	\$138.42	\$130.89	\$124.78	\$119.73	\$115.57	\$112.67	\$110.87	\$109.35	\$108.05	\$107.57	\$107.19	\$106.88
Km Payment per 5km	\$32.92	\$27.50	\$24.49	\$22.33	\$20.72	\$19.48	\$18.76	\$18.18	\$17.71	\$17.33	\$17.17	\$17.20	\$17.23	\$17.27	\$17.47	\$17.65	\$17.83

Utilisation rates

GVM > 28 Ton

Regional Information	Loads per Truck Scenarios																
	Amount																
Defined Lead	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42	10.42
Utilisation	400	500	600	700	800	900	1000	1100	1200	1300	1400	1500	1600	1700	1800	1900	2000
Defined Distance	8336	10420	12504	14588	16672	18756	20840	22924	25008	27092	29176	31260	33344	35428	37512	39596	41680
Total Running Costs per Truck	\$104,923.96	\$108,703.19	\$113,972.82	\$119,242.46	\$124,512.10	\$129,864.54	\$136,609.63	\$143,412.79	\$150,274.02	\$157,277.70	\$165,216.23	\$174,243.76	\$183,347.77	\$192,528.25	\$202,936.53	\$213,431.80	\$224,014.06
Total # Deliveries per Truck	400	500	600	700	800	900	1000	1100	1200	1300	1400	1500	1600	1700	1800	1900	2000
Load Rate	\$262.31	\$217.41	\$189.95	\$170.35	\$155.64	\$144.29	\$136.61	\$130.38	\$125.23	\$120.98	\$118.01	\$116.16	\$114.59	\$113.25	\$112.74	\$112.33	\$112.01
Km Payment per 5km	\$33.64	\$28.22	\$25.21	\$23.05	\$21.44	\$20.20	\$19.48	\$18.91	\$18.44	\$18.06	\$17.90	\$17.94	\$17.97	\$18.02	\$18.22	\$18.41	\$18.59

Transitional

Hanson will use data from the 12 month period prior to the commencement of this Contract to calculate the number of loads delivered per truck. These loads shall be incorporated into a MAT sheet which will be used to calculate the average number of loads for the fleet and will apply for the first term of this Determination and thereafter until 12 months has elapsed.

APPENDIX E

Truck Specifications

The below table sets out the minimum specifications for 8x4 agitators

Minimum Concrete Truck Specification			
Cabin	Cabin certified to cabin crash rating ECE R29 External cabin sun visor ISRI air suspended driver's seat with integrated lap/sash seatbelt & adjustable lumbar support Air conditioning with pollen filter Electric windows Heated & motorized mirrors AM/FM Radio/CD Player 12 volt auxiliary outlet or lower centre console Engine hour meter Park brake alert system (horn sounds when door opened & park brake not applied) Amber rotating light mounted on cabin roof In-cabin fire extinguisher Cruise control Emergency triangle set Air ride cabin	Fuel System	Single no less than 250ltr or greater 300ltr, geometric shaped alloy, no less than 25 litre to no more than 35 litre Adblue tank
		Electrical System	Type 12 volt, negative to earth Alternator - 130 Amp Batteries - 3 x 12 volt, 550 Amp CCA Body/equipment installer's air & electrical connections in cab Tail lights mounted on chassis for body builder fitment Reverse alarm Electronic Road Speed limiter
		Wheels	Alloy wheels
		Paint	Cabin & front bumper factory painted into Hanson Mineral Blue Chassis & wheel hubs & drums factory painted into standard black Chassis anti-corrosion treatment including sealing of chassis at mounts and waxing
Exhaust	Exhaust must be above drivers head height		
Engine	Power: No less than 280hp (209 kW) Torque: No less than 776 ft/lbs (1055 Nm) Engine idle timer	Accessories	Safety triangles Kerb & Channel mode function Transmission breather extension
Transmission	6 speed automatic transmission with PTO transmission oil temperature gauge	Warranty	Extended warranty no less than to 3 years/600,000 km/9,000 hours bumper to bumper 100% parts and labour. Parts Dept will provide parts discount structure for Hanson
Suspension Front	Airbag or equivalent for driver comfort Capacity: 13.4 tonne	Tare	No greater than 7,800 kg Tare weight with 180L fuel, all oils, fluid, no driver

Suspension Rear	Must have power divider Rubber block Capacity: 18.0 tonne	Additions	
Brakes	ABS & ATC Lightweight Centrifuse brake drums front and rear Park brakes acting on all rear wheels and second steer axle Manual brake slack adjusters Brake exhaust mufflers Engine exhaust brake fitted Brake air drier		
Chassis	High tensile heat treated alloy steel channel Heavy duty centrally mounted front towing pin		
Steering	Power steering Tilting and telescoping steering column		

The abovementioned TARE weight requirements may be varied if either State or Federal legislation mandates such change after the date of commencement of this Contract.

Any truck introduced to the fleet must be of the paint work specified by the Company.

Should it be a requirement that additional equipment be fitted to The Carriers truck that was not necessary when the truck was first introduced to the fleet, either owing to customer requirements, safety requirements or changes to Hanson truck specifications; items shall be fitted at Hanson’s discretion with costs split on a 50:50 basis.

Ownership of the items will rest with the Carrier. Hanson may elect to pay 100% of costs with item ownership remaining with Hanson.

Intentional disconnection or tampering with any special fixture or communications equipment fitted to The Carriers truck will be considered a serious breach and Hanson may at its discretion terminate this Determination immediately without payment of compensation to the Carrier.

APPENDIX F

Contracts operating in NSW as of 1st November 2017

Truck ID	Region	Area	Fleet Type
PLC2021	ER Metro	Sydney	LOD
PLC2267	ER Metro	Sydney	LOD
PLC2601	ER Metro	Sydney	LOD
PLC2603	ER Metro	Sydney	LOD
PLC2607	ER Metro	Sydney	LOD
PLC2608	ER Metro	Sydney	LOD
PLC2609	ER Metro	Sydney	LOD
PLC2610	ER Metro	Sydney	LOD
PLC2611	ER Metro	Sydney	LOD
PLC2613	ER Metro	Sydney	LOD
PLC2614	ER Metro	Sydney	LOD
PLC2616	ER Metro	Sydney	LOD
PLC2618	ER Metro	Sydney	LOD
PLC2619	ER Metro	Sydney	LOD
PLC2620	ER Metro	Sydney	LOD
PLC2621	ER Metro	Sydney	LOD
PLC2624	ER Metro	Sydney	LOD
PLC2625	ER Metro	Sydney	LOD
PLC2626	ER Metro	Sydney	LOD
PLC2627	ER Metro	Sydney	LOD
PLC2628	ER Metro	Sydney	LOD
PLC2630	ER Metro	Sydney	LOD
PLC2631	ER Metro	Sydney	LOD
PLC2632	ER Metro	Sydney	LOD
PLC2636	ER Metro	Sydney	LOD
PLC2637	ER Metro	Sydney	LOD
PLC2638	ER Metro	Sydney	LOD
PLC2639	ER Metro	Sydney	LOD
PLC2642	ER Metro	Sydney	LOD
PLC2646	ER Metro	Sydney	LOD
PLC2647	ER Metro	Sydney	LOD
PLC2649	ER Metro	Sydney	LOD
PLC2650	ER Metro	Sydney	LOD
PLC2651	ER Metro	Sydney	LOD
PLC2652	ER Metro	Sydney	LOD
PLC2653	ER Metro	Sydney	LOD
PLC2654	ER Metro	Sydney	LOD
PLC2655	ER Metro	Sydney	LOD
PLC2656	ER Metro	Sydney	LOD
PLC2658	ER Metro	Sydney	LOD
PLC2659	ER Metro	Sydney	LOD
PLC2660	ER Metro	Sydney	LOD
PLC2662	ER Metro	Sydney	LOD
PLC2665	ER Metro	Sydney	LOD
PLC2666	ER Metro	Sydney	LOD
PLC2667	ER Metro	Sydney	LOD
PLC2668	ER Metro	Sydney	LOD
PLC2669	ER Metro	Sydney	LOD
PLC2671	ER Metro	Sydney	LOD
PLC2672	ER Metro	Sydney	LOD
PLC2675	ER Metro	Sydney	LOD
PLC2676	ER Metro	Sydney	LOD
PLC2677	ER Metro	Sydney	LOD

PLC2679	ER Metro	Sydney	LOD
PLC2682	ER Metro	Sydney	LOD
PLC2684	ER Metro	Sydney	LOD
PLC2685	ER Metro	Sydney	LOD
PLC2687	ER Metro	Sydney	LOD
PLC2688	ER Metro	Sydney	LOD
PLC2717	ER Metro	Sydney	LOD

Truck ID	Region	Area	Fleet Type
PLC2201	ER Country	Southern	LOD
PLC2204	ER Country	Southern	LOD
PLC2213	ER Country	Southern	LOD
PLC2230	ER Country	Western	LOD
PLC2231	ER Country	Hunter/Central Coast	LOD
PLC2239	ER Country	Western	LOD
PLC2245	ER Country	Northern	LOD
PLC2248	ER Country	Northern	LOD
PLC2252	ER Country	Hunter/Central Coast	LOD
PLC2254	ER Country	Hunter/Central Coast	LOD
PLC2260	ER Country	Hunter/Central Coast	LOD
PLC2271	ER Country	Hunter/Central Coast	LOD
PLC2274	ER Country	Hunter/Central Coast	LOD
PLC2280	ER Country	Hunter/Central Coast	LOD
PLC2715	ER Country	Hunter/Central Coast	LOD
PLC2718	ER Country	Hunter/Central Coast	LOD
PLC2719	ER Country	Hunter/Central Coast	LOD
PLC2720	ER Country	Hunter/Central Coast	LOD
PLC2737	ER Country	Hunter/Central Coast	LOD
PLC2738	ER Country	Hunter/Central Coast	LOD
PLC2739	ER Country	Hunter/Central Coast	LOD
PLC2741	ER Country	Southern	LOD
PLC2745	ER Country	Southern	LOD
PLC2857	ER Country	Southern	LOD

APPENDIX G

Hours Work Calculation Sheet

O/T Rate Table					
Loads	Overtime				
400	0.00	770	3.70	1150	9.40
410	0.00	780	3.80	1160	9.65
420	0.00	790	3.90	1170	9.90
430	0.00	800	4.00	1180	10.15
440	0.00	810	4.10	1190	10.40
450	0.00	820	4.20	1200	10.65
460	0.00	830	4.30	1210	10.90
470	0.00	840	4.40	1220	11.15
480	0.00	850	4.50	1230	11.40
490	0.00	860	4.60	1240	11.65
500	1.00	870	4.70	1250	11.90
510	1.10	880	4.80	1260	12.15
520	1.20	890	4.90	1270	12.40
530	1.30	900	5.05	1280	12.65
540	1.40	910	5.20	1290	12.90
550	1.50	920	5.35	1300	13.15
		930	5.50	1310	13.40

560	1.60	940	5.65	1320	13.65
570	1.70	950	5.80	1330	13.90
580	1.80	960	5.95	1340	14.15
590	1.90	970	6.10	1350	14.40
600	2.00	980	6.25	1360	14.65
610	2.10	990	6.40	1370	14.90
620	2.20	1000	6.55	1380	15.15
630	2.30	1010	6.70	1390	15.40
640	2.40	1020	6.85	1400	15.65
650	2.50	1030	7.00	1410	15.90
660	2.60	1040	7.15	1420	16.15
670	2.70	1050	7.30	1430	16.40
680	2.80	1060	7.45	1440	16.65
690	2.90	1070	7.60	1450	16.90
700	3.00	1080	7.75	1460	17.15
710	3.10	1090	7.90	1470	17.40
720	3.20	1100	8.15	1480	17.65
730	3.30	1110	8.40	1490	17.90
740	3.40	1120	8.65	1500	18.15
750	3.50	1130	8.90	1510	18.40
760	3.60	1140	9.15	1520	18.65

P. KITE, Chief Commissioner.

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(1930)

SERIAL C8791

HEALTHSHARE NSW PATIENT TRANSPORT OFFICERS' SALARIES (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Health Services Union NSW.

(Case No. 2018/75870)

Before Chief Commissioner Kite

19 March 2018

AWARD

PART A

1. Arrangement

Clause No.	Subject Matter
1	Arrangement
2	Definitions
2.	Definitions
3	Conditions of Employment
4	Classifications
5	Rates of Pay
6	Anti-Discrimination
7	No Extra Claims
8	Area, Incidence and Duration

2. Definitions

- 2.1 Employer means the Secretary of the Ministry of Health exercising employer functions on behalf of the Government of NSW (and includes a delegate of the Secretary).
- 2.2 Patient Transport Officer means an employee of HealthShare NSW who is appointed to an approved Patient Transport Officer position.
- 2.3 Trainee Patient Transport Officer means an employee of HealthShare NSW who is undertaking the necessary and relevant training and work experience as determined by the Service to become a Patient Transport Officer.
- 2.4 Union means the Health Services Union New South Wales.

3. Conditions of Employment

- 3.1 The following awards as varied or replaced from time to time shall apply except in so far as any term of any of those awards are inconsistent with this award:

Health Employees Conditions of Employment (State) Award, as varied from time to time, except for:

Clause 3 (xii) and (xiii) - the meal break and tea break provisions do not apply; and

Clause 14 (i) and (vi) - do not apply, and

Health Employees (State) Award as varied from time to time, and,

Health Industry Status of Employment (State) Award.

In the event of any inconsistency between awards, this award shall apply.

4. Classifications

- 4.2 A Trainee Patient Transport Officer is an employee who is undertaking the necessary and relevant training and work experience as determined by HealthShare NSW to become a Patient Transport Officer and who is appointed to an approved Trainee Patient Transport Officer position.

This category of employee will be involved in routine and non-emergency patient transport utilising basic life support skills. Inter alia, this category of employee will receive training and certification in work health and safety, first aid, driver training, patient handling, oxygen administration, equal employment opportunity, anti-discrimination and anti-harassment.

- 4.3 A Patient Transport Officer is an employee who has successfully completed the necessary and relevant training and work experience as determined by the Service to become a Patient Transport Officer and who is appointed to an approved Patient Transport Officer position. Provided that such an employee shall be required to undertake and successfully complete further instruction/in-service courses necessary for Patient Transport Officers as determined by the Service.

This category of employee will be involved in routine and non-emergency patient transport utilising basic life support skills. This category of employee will not be utilised to crew ambulances engaged in emergency/casualty response.

Provided that such an officer shall be required to undertake and successfully complete further instruction/in service courses and certification examinations as required by HealthShare NSW.

5. Rates of Pay

- 5.1 This Award grants a 2.5% increase in existing rates of pay to employees within its area, incidents, and duration.
- 5.2 Employees shall be paid not less than as set out in Table 1 of Part B, Monetary Rates.

6. Anti-Discrimination

- 6.1 It is the intention of the parties bound by this Award to seek to achieve the object of section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity and age.
- 6.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory effects. It will be consistent with the fulfilment of these obligations for the parties to make an application to vary any provisions of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 6.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 6.4 Nothing in this clause is to be taken to affect:
- i Any conduct or act which is specifically exempt from anti-discrimination legislation.
 - ii Offering or providing junior rates to a person under 21 years of age.
 - iii Any act or practice of a body established to propagate religion which is exempted under Section 56(d) of the *Anti-Discrimination Act 1977*.

- iv A party to this award from pursuing matters of unlawful discrimination in a State or federal jurisdiction.
- 6.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

Notes:

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides: ‘Nothing in this Act affects any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion’.

7. No Extra Claims

- 7.1 Other than as provided for in the *Industrial Relations Act 1996* and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014, there shall be no further claims/demands or proceedings instituted before the Industrial Relations Commission of New South Wales for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the employees covered by the Award that take effect prior to 30 June 2017 by a party to this Award.
- 7.2 Nothing in this award shall prevent the Award of existing claims commencing and operating on or after 1 July 2017.

8. Area, Incidence and Duration

- 8.1 This Award shall apply to employees New South Wales Health Service, employed within HealthShare NSW in the classifications in clause 4, Classifications under Section 115(1) of the *Health Services Act 1997*, or any successors, assignees or transmittes.
- 8.2 The Award shall take effect from the first full pay period on or after 1 July 2016 and shall remain in force for a period of one year.

PART B

Table 1 - Rates of Pay

Classification	Rate effective first full pay period on or after 1/7/2015 (\$)	Rate from first full pay period on or after 1/7/2016 (includes increase of 2.5%) (\$)
Trainee Patient Transport Officer	945.40	969.00
Patient Transport Officer	987.50	1012.20

P. KITE, Chief Commissioner.

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(1929)

SERIAL C8790

METROMIX PTY LIMITED MAXI CONCRETE CARTAGE CONTRACT DETERMINATION

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Metromix Pty Ltd.

(Case No. 11000 of 2017)

Before Commissioner Newall

6 December 2017

CONTRACT DETERMINATION

Clause No.	Subject Matter
1.	AREA INCIDENCE AND DURATION
1.1	Application
1.2	Stand Alone
1.3	Commencement and Nominal Term
2.	CARTAGE WORK AND RATES
2.1	General
2.2	Payment
2.3	GST
2.4	Method of Payment
2.5	Account Discrepancies - Potential Underpayment
2.6	Account Discrepancies - Potential Overpayment
2.7	Review of Rates
3.	SAFETY NET
3.1	Entitlement
3.2	Calculation
3.3	Working Week for Purpose of Calculation
4.	SURCHARGES
4.1	Standby Time outside Normal Trading Hours
4.2	Standby Time within Normal Trading Hours
4.3	Delivery within Yard
4.4	Living Away from Home Allowance
4.5	Road and Bridge Tolls
4.6	Unloaded Kilometres
4.7	Multiple Discharge Points
4.8	Diverted Loads
4.9	Returned and Dumped Concrete
4.10	Delivery outside Normal Hours
4.11	Call Back
4.12	Waiting Time
4.13	Transport Materials other than Concrete
4.14	Night Shift, Sundays and Public Holidays

5. PRIME MOVER AND AGITATOR
 - 5.1 Supply and Suitability First 18 Months
 - 5.2 Supply and Suitability of New Prime Mover and New Agitator
 - 5.3 Metromix Discretion to Allow Extension of Time
 - 5.4 Exception
 - 5.5 Registration
 - 5.6 Running Expenses
 - 5.7 Maintenance and Repair
 - 5.8 Cease Using Prime Mover and/or Agitator
 - 5.9 Painting and Logo
 - 5.10 Mass Management
 - 5.11 Maximum Age for a Prime Mover and Agitator
6. COMMUNICATION EQUIPMENT
 - 6.1 Provision and Operation
 - 6.2 Payment
 - 6.3 Communication Equipment - Custody
 - 6.4 Communication Equipment - Damage or Loss
 - 6.5 Cease Using Communication Equipment
 - 6.6 Return of Communication Equipment
7. NOMINATED DRIVER
 - 7.1 Nominated Plant
 - 7.2 No One else to Drive Vehicle
 - 7.3 Substitute Driver
 - 7.4 Procurement of Consent
 - 7.5 Valid Driving License and Permits
 - 7.6 Change of Address
 - 7.7 Medicals and Fitness
 - 7.8 Compliance with Employment Law
 - 7.9 Notification of Absence
 - 7.10 Leave Entitlements
 - 7.11 Leave
8. USE OF THE VEHICLE
 - 8.1 Operating Condition
 - 8.2 Driving of Vehicle
 - 8.3 Cleaning of Vehicle
 - 8.4 Fines
 - 8.5 Salvage Rights
 - 8.6 Inspections and Tests
 - 8.7 Road Worthiness and Fit for Purpose
 - 8.8 Tare Weight
9. ROSTERING
 - 9.1 Rosters
 - 9.2 Own Fleet etc.
 - 9.3 Notification for Next Day
 - 9.4 Variation and Compliance and Consultation

10. VEHICLE TRANSFERS
 - 10.1 Periodic Transfer
 - 10.2 Daily Transfer
 - 10.3 Mandatory Periodic Transfers

11. LOADING AND DELIVERY OF CONCRETE
 - 11.1 Plant
 - 11.2 Metromix to Nominate Load
 - 11.3 Loading Order
 - 11.4 No Loading
 - 11.5 No Alteration to Docket
 - 11.6 Slump
 - 11.7 Shortest Practicable Route
 - 11.8 Change of Ingredients
 - 11.9 Rejection of Load
 - 11.10 Additives
 - 11.11 Mixing and Transit
 - 11.12 Job Site Entry
 - 11.13 Unloading
 - 11.14 Unsafe Unloading
 - 11.15 Signatures for Delivery
 - 11.16 Bogged Vehicles
 - 11.17 Return
 - 11.18 Damage On Site

12. SITE CLEANING
 - 12.1 Contract Carrier Obligations
 - 12.2 Metromix's Obligation

13. SUPERVISION
 - 13.1 The Contract Carrier must Supervise its Personnel

14. TRAINING
 - 14.1 Cost and Amount
 - 14.2 Driver Training

15. CONTRACTOR MANAGEMENT SYSTEM
 - 15.1 Provision of Documents and Inductions

16. CONTRACT CARRIER'S SPARE TYRES
 - 16.1 Storage
 - 16.2 No Liability

17. WORKPLACE HEALTH AND SAFETY
 - 17.1 Safety Meetings
 - 17.2 Safety Inductions

18. UNIFORMS AND PERSONAL PROTECTIVE EQUIPMENT
 - 18.1 Uniform Supply

- 18.2 Personal Protective Equipment
- 18.3 Replacement

- 19. EMERGENCIES AND INCIDENTS
 - 19.1 Contract Carrier to follow Metromix Procedures
 - 19.2 Reporting Incidents
 - 19.3 Investigation
 - 19.4 Reporting Defects, Loss or Theft

- 20. INSURANCE, WARRANTY AND INDEMNITY
 - 20.1 Vehicle, Workers Compensation
 - 20.2 Insurance Policies
 - 20.3 Premiums
 - 20.4 Not to Prejudice Insurance
 - 20.5 Payment of Excess
 - 20.6 No Guarantee
 - 20.7 Implied Warranties
 - 20.8 Indemnity
 - 20.9 Not Liable

- 21. CONTRACTOR FLEET SIZE
 - 21.1 Right to Increase Contractor Numbers
 - 21.2 Right to Decrease Contractor Numbers

- 22. USE OF OTHER VEHICLES
 - 22.1 Right
 - 22.2 No Improper Conduct

- 23. DISPUTES PROCEDURE
 - 23.1 Application of Procedure
 - 23.2 Appointment of Representative
 - 23.3 Procedure
 - 23.4 Notification to Commission
 - 23.5 Continue to Perform Cartage Work

- 24. KATOOMBA
 - 24.1 Operative Provisions

- 25. ADDITIONAL TERMS
 - 25.1 Contract Carrier's who commenced before 1 October 2017
 - 25.2 New Contract Carriers
 - 25.3 New Contract Carriers - Plant Embargo
 - 25.4 New Contract Carriers - No 'Gazumping'

- 26. NOTICES
 - 26.1 Delivery
 - 26.2 Receipt
 - 26.3 Proper Address

27. CONSULTATION

- 27.1 Committee
- 27.2 Meeting
- 27.3 Information
- 27.4 Payment
- 27.5 Annual Verification

28. DELEGATES

- 28.1 Appointment
- 28.2 Opportunity to Meet
- 28.3 Use of Notice Board
- 28.4 Release of Delegates

29. DICTIONARY

- Schedule 1 - Cartage Rates
- Schedule 2 - Utilisation reviews
- Schedule 3 - Surcharges
- Schedule 4 - Insurances
- Schedule 5 - 6 Wheeler Prime Mover Specification
- Schedule 6 - 8 Wheeler Prime Mover Specification
- Schedule 7 - 6.5m³ Agitator Specification
- Schedule 8 - 7.5m³ Agitator Specification
- Schedule 9 - Rise and Fall
- Schedule 10 - Forms
- Schedule 11 - Katoomba
- Schedule 12 - Katoomba Rise and Fall
- Schedule 13 - New Contract Carriers
- Schedule 14 - Contract carriers and their Permitted Assignees
who commenced before 1 October 2017
- Annexure A - Assignment
- Annexure B - Deed of Assignment
- Annexure C - Termination Payment
- Schedule 15 - Exception List
- Schedule 16 - Embargo Plant List

1. Area Incidence and Duration

1.1 Application

This Contract Determination will operate with respect to contracts of carriage between Metromix and its Contract Carriers operating (other than a Mini Vehicle) engaged at Concrete Plants in New South Wales.

1.2 Stand Alone

This Contract Determination applies to the exclusion of any other Contract Determination whether made before or after this Contract Determination is made.

1.3 Commencement and Nominal Term

This Contract Determination:

- (a) Rescinds and replaces the Transport Industry - Metromix Concrete Haulage Contract Determination published 8 April 2005 (349 I.G. 1025); and

- (b) Operates in accordance with its terms from 1 January 2018 and has a nominal term of three (3) years.

Notation: This Contract Determination has been negotiated to be read alongside a Maxi Cartage Contract.

Notation: If required by the Union, the parties to this Contract Determination shall meet every 6 months during the nominal term to discuss any issues associated with the implementation of this Contract Determination.

Should any issue arise that requires the assistance of the NSW Industrial Relations Commission, either party may apply to the NSW Industrial Relations Commission to as they see fit.

2. Cartage Work and Rates

2.1 General

The Contract Carrier shall perform the Cartage Work and do everything connected with it:

- (a) in accordance with this Contract Determination;
- (b) with due care and skill and in a proper, co-operative and professional manner;
- (c) safely, and in accordance with Metromix's safety requirements;
- (d) in accordance with the day to day operational directions given by Metromix;
- (e) in accordance with any direction, policy, procedure or specifications provided by Metromix;
- (f) using best efforts to promote Metromix's business;
- (g) in good faith and without jeopardising or damaging Metromix's business; and
- (h) in compliance with all relevant laws.

2.2 Payment

Subject to this Contract Determination, Metromix must:

- (a) pay the Contract Carrier by the 10th day of the next month for the Cartage Work performed in the month in accordance with the Cartage Rates set out in Schedule 1 and the Surcharges set out in Schedule 3; and
- (b) provide the Contract Carrier with a statement itemising the payments made to the Contract Carrier.

2.3 GST

- (a) Metromix will issue recipient created tax invoices in respect of the Cartage Work.
- (b) The Contract Carrier must not issue Metromix with tax invoices in respect of the Cartage Work.
- (c) The Contract Carrier must be registered for GST and must notify Metromix of the date of the effect of any cancellation of GST registration.
- (d) All amounts referred to in this Contract Determination are exclusive of GST unless expressly stated otherwise.

2.4 Method of Payment

Metromix will pay the Contract Carrier by electronic funds transfer to the Contract Carrier's nominated account from a recognised financial institution.

2.5 Account Discrepancies - Potential Underpayment

- (a) Where the Contract Carrier forms the view that the calculation of payments paid to the Contract Carrier for an Accounting Period contains an error, the Contract Carrier must advise Metromix in accordance with clause 2.5(b) of the nature of the error and the value of the error within thirty (30) days of receipt of the payment.
- (b) The Contract Carrier must submit details of the alleged error on a Cartage Adjustment Request Form (CAR).
- (c) If the alleged error relates to missing payments such as but not limited to, Returned Concrete and Waiting Time, the Contract Carrier must provide a copy of any relevant delivery docket and the relevant docket(s) must be properly signed and completed.
- (d) Metromix and the Contract Carrier must use their best endeavours to resolve the issue within thirty (30) days from the date of notification of the alleged error.
- (e) If Metromix and the Contract Carrier agree that an additional payment is due to the Contract Carrier, that payment will be made in the next Accounting Period immediately following the date on which the error is rectified.
- (f) Despite clause 2.5(e) if the additional payment is in excess of \$250.00, Metromix will endeavour to pay the Contract Carrier within five (5) working days from the date Metromix and the Contract Carrier agree that the additional payment is due.

2.6 Account Discrepancies - Potential Overpayment

- (a) Where Metromix reasonably determines that the Contract Carrier has been overpaid, the amount of overpayment will be deducted from the next payment due for the Accounting Period to the Contract Carrier.
- (b) Where the Contract Carrier's Maxi Cartage Contract has been terminated, the Contract Carrier must reimburse Metromix within thirty (30) days of the date of notification of the overpayment.

2.7 Review of Rates

Metromix must review the Cartage Rates and Surcharges in accordance with Schedule 2 and Schedule 9.

3. Safety Net

3.1 Entitlement

Should a Contract Carrier's earnings be less than the Annual Earnings Safety Net at the completion of the last Quarter of the calendar year, Metromix must pay the Contract Carrier the difference between the Contract Carriers actual earnings and the Annual Earnings Safety Net.

3.2 Calculation

The Annual Earnings Safety Net payment is specified in Schedule 1 and is subject to variation in accordance with Schedule 2 and 9.

3.3 Working Week for Purpose of Calculation

- (a) The normal working week for the purpose of calculation of Annual Earnings Safety Net payment is six (6) consecutive days, Monday to Saturday inclusive, to a total of 268 days per annum. Any Annual Earnings Safety Net payment payable to the Contract Carrier will be reduced by 268ths per day for each day the Contract Carrier is deemed to be unavailable. The Contract Carrier will be deemed to be unavailable if:
- (i) the Contract Carrier fails to provide services to Metromix as obliged by this Contract Determination;
 - (ii) the Contract Carrier is in persistent breach of an obligation under this Contract Determination which the Contract Carrier has previously been notified of as a breach by Metromix; or
 - (iii) the Contract Carrier is not having its Vehicle loaded with Concrete by Metromix for any of the reasons referred to in any of clauses 5.8, 8.3(d), 11.4 or 15.1.
- (b) Unavailability will not arise if:
- (i) the Contract Carrier has previously been notified by Metromix that the Contract Carrier is not required to perform Cartage Work on the relevant day;
 - (ii) Force Majeure has occurred; or
 - (iii) the Nominated Driver is otherwise on a period of Authorised Absence.

4. Surcharges

4.1 Standby Time outside Normal Trading Hours

- (a) Subject to clause 4.1(b), the Contract Carrier is entitled to a standby time payment at the rate specified in Schedule 3 where Metromix requests the Contract Carrier to remain at a Plant for the purpose of taking a delivery to a customer at a time outside Metromix's Normal Trading Hours. The Contract Carrier will be entitled to the standby time payment whether or not the delivery is ultimately required.
- (b) The Contract Carrier will not be entitled to a standby time payment if the Contract Carrier is required to wait for less than one (1) hour outside Metromix's Normal Trading Hours.

4.2 Standby Time within Normal Trading Hours

- (a) Subject to clause 4.2(b), the Contract Carrier is entitled to a standby time payment at the rate specified in Schedule 3.
- (b) The Contract Carrier will not be entitled to a standby time payment if the Contract Carrier is required to wait for less than one (1) hour.

4.3 Delivery within Yard

Where a Contract Carrier is required to cart Concrete or materials other than Concrete within the confines of a Plant owned and/or operated by Metromix then the Contract Carrier must be paid the Cartage Rate specified in Schedule 1 for the load size, calculated with a minimum of three (3) cubic meters and a maximum distance of three (3) kilometres.

4.4 Living Away From Home Allowance

Where a Contract Carrier is required by Metromix to work from a location, which precludes the Driver from returning to his normal place of residence:

- (a) Metromix will pay to the Contract Carrier, the Driver's reasonable costs for accommodation, breakfast and dinner as nominated by Metromix for each night required; and
- (b) the period shall be no more than one (1) week or such longer period as may be agreed.

4.5 Road and Bridge Tolls

- (a) Where payment of a road or bridge toll is required for either or both the outward and return journeys, Metromix will issue the Contract Carrier with an electronic tag or equivalent cash money or a toll card.
- (b) Any electronic tag or equivalent cash money or a toll card issued by Metromix to the Contract Carrier, remains the property of Metromix and must only be used by the Contract Carrier whilst performing the Cartage work.
- (c) Any electronic tag or equivalent cash money or a toll card issued must be returned to Metromix on termination or expiration of the Contract Carrier's Maxi Cartage Contract (or earlier upon request by Metromix).

4.6 Unloaded Kilometres

- (a) Unloaded kilometres travelled by the Contract Carrier's Vehicle at Metromix's request to relocate from the one Plant to another Plant to load will attract a payment at the rate specified in Schedule 3. The forward and return journeys are to be considered as separate journeys.
- (b) In the case of a journey where a load has been dispatched to a customer's site and the Contract Carrier is directed to return to another Plant to load, the Contract Carrier will only be entitled to a payment at the rate specified in Schedule 3 for the kilometres in excess of the kilometres that are already paid for the delivery of the Concrete to the original customer's site.

4.7 Multiple Discharge Points

- (a) Should the Contract Carrier make multiple discharge points for the same customer the Contract Carrier will be paid a Cartage Rate for the total distance travelled from the Plant where loaded to the final discharge point for that customer.
- (b) Should the Contract Carrier make deliveries to multiple customers from one (1) load of Concrete the Contract Carrier will be issued a separated delivery docket for each customer.

4.8 Diverted Loads

- (a) Where a load is diverted on route to a customer's site, the Contract Carrier will be paid a Cartage Rate covering the total distance travelled from initial departure from the Plant where loaded, to the final delivery point.
- (b) Where a load is diverted by having the Vehicle return to a Plant before being dispatched to another delivery site, the Contract Carrier will be paid a Cartage Rate covering the total distance travelled from initial departure from the Plant where loaded, to the final delivery point.
- (c) Where a load is diverted on route to an external dump site the Contract Carrier will be paid a Cartage Rate covering the total distance from the initial departure from the Plant where loaded to the dump site.

4.9 Returned and Dumped Concrete

- (a) All Returned Concrete remains the property of Metromix. The Contract Carrier is to contact Dispatch for instructions as to where Returned Concrete is to be taken prior to or immediately after leaving a customer's site.
- (b) Where Returned Concrete less than one (1) cubic meter is directed to another Plant or customer's site or an external dump site, the Contract Carrier will be paid the Kilometre Running Rate for the returned quantity designated on the delivery docket for the distance travelled in excess of the kilometres already paid for the delivery.
- (c) Where Returned Concrete of one (1) cubic meter or more is directed to another Plant or customer's site or an external dump site by Metromix the Contract Carrier will be paid the Kilometre Running Rate for the returned quantity designated on the delivery docket for the distance travelled in addition to the distance already paid for the delivery.
- (d) Where Returned Concrete of (1) cubic meter or more is returned to the plant at which the Concrete was batched the Contract Carrier will be paid the Kilometre Running Rate for the returned quantity designated on the delivery docket for the kilometres already paid for the delivery.
- (e) No payment will be made to the Contract Carrier when Returned Concrete is dumped within one (1) kilometre of the delivery site at which the Concrete became Returned Concrete or Returned Concrete less than one (1) cubic meter is returned to the Plant at which the Concrete was batched.
- (f) If the Contract Carrier is instructed by Metromix to return to a Plant with Returned Concrete and then after returning to the Plant the Contract Carrier is directed by Metromix to an external dump site the Contract Carrier will be paid the Kilometre Running Rate for the returned quantity designated on the delivery docket for the distance travelled in addition to the distance already paid for the delivery.
- (g) Metromix will meet all dump costs for Concrete, which is dumped at Metromix's direction.
- (h) For the purpose of this clause 4.9(b), (c), (d) and (f) a minimum quantity of three (3) cubic meters is payable.
- (i) The Contract Carrier must be paid the Waiting Time rate in Schedule 3 for time spent onsite at an external dump site in excess of the time that must be allowed for the delivery of that load. Time spent travelling to and from an external dump site must not be counted as time spent onsite.
- (j) The Contract Carrier must ensure that all workings for Returned Concrete:
 - (i) are completed in full in the appropriate section of the delivery docket; and
 - (ii) appear on all copies.
- (k) Where a customer's signature and printed name is not obtainable, the Contract Carrier must contact Dispatch prior to or immediately after leaving the customer's site to obtain a control number and this must be written in the appropriate section of the docket and appear on all copies.
- (l) Despite this clause 4.9, a Contract Carrier shall not be paid for Returned Concrete if a Contract Carrier fails to adhere to clause 4.9(j) or 4.9(k) or clause 11.15(a) to 11.5(e).

4.10 Delivery outside Normal Hours

Where a load is ticketed outside Metromix's Normal Trading Hours then the Contract Carrier will be entitled to the relevant Surcharge, in addition to the normal Cartage Rate payable to the Contract Carrier, as specified in Schedule 3 which must be paid per cubic meter for a minimum of three (3) cubic meters:

- (a) Surcharge 2
 - (i) between 5pm - 6am Monday - Friday.
- (b) Surcharge 3
 - (i) between 1pm Saturday through to 6am Monday; and
 - (ii) Night Shift.
- (c) Surcharge 4
 - (i) Public Holidays.

4.11 Call Back

- (a) A Contract Carrier having finished performing Cartage Work and having left the Plant and then called back to perform Cartage Work outside Metromix's Normal Trading Hours is entitled to a call back fee as specified in Schedule 3.
- (b) The call back fee surcharge shall not apply if the rostered work is cancelled no later than 1.00pm on the day (or the day prior) it is to commence.

4.12 Waiting Time

- (a) Subject to this clause, Metromix shall pay a Contract Carrier Waiting Time in accordance with Schedule 3 for time spent on-site to unload (calculated from the time of arrival on-site to the time the Vehicle finishes discharging the entire load or is released by the customer) in excess of the period calculated as 7 minutes per cubic meter or part thereof or a minimum of 30 minutes whichever is the greater.
- (b) The Contract Carrier must ensure that all workings for Waiting Time:
 - (i) are completed in full in the appropriate section of the delivery docket; and
 - (ii) appear on all copies.
- (c) Where a customer's signature and printed name is not obtainable the Contract Carrier must contact Dispatch prior to or immediately after leaving the customer's site to obtain a control number and this must be written in the appropriate section of the docket and appear on all copies.
- (d) Despite clause 4.12(a), a Contract Carrier shall not be paid for Waiting Time if a Contract Carrier fails to adhere to clause 4.12(b) or 4.12(c) or clause 11.15(a) to 11.5(e).
- (e) All Waiting Time charged by the Contract Carrier will be subject to verification by Metromix via the use of the GPS status data or similar technology transmitted by the Contract Carrier's Vehicle. Should any discrepancies arise the Contract Carrier will only be entitled to a Waiting Time payment for excess time onsite in accordance with clause 4.12(a) as verified by GPS status data or similar technology.

4.13 Transport Materials Other Than Concrete

Where the Contract Carrier's Vehicle is required to cart materials other than Concrete, the Cartage Rates as outlined in Schedule 1 will apply. The equivalent Concrete volumes will be converted by using the following conversion rates:

- (a) Aggregate - 1.5 tonne = 1m³ Concrete
- (b) Sand - 1.7 tonne = 1m³ Concrete

- (c) Slurry/Water - 1000 litres = 1m³ Concrete

4.14 Night Shift, Sundays and Public Holidays

- (a) Subject to clause 4.14(b) and (c), when a Contract Carrier is rostered to work a Night Shift, Sunday or Public Holiday the Contract Carrier must be paid no less than the Night Shift, Sunday and Public Holiday Minimum Surcharge in Schedule 3 for the Night Shift, Sunday or Public Holiday irrespective of the Cartage Work performed.
- (b) The Night Shift, Sunday and Public Holiday Minimum Surcharge will not apply if:
 - (i) the Night, Sunday or Public Holiday Shift is cancelled the day prior to its commencement; or
 - (ii) the Night shift is cancelled by 1:00pm on the day it is to commence.
- (c) A Contract Carrier shall only receive one Minimum Surcharge for any continuous period of work or shift.

5. Prime Mover and Agitator

5.1 Supply and Suitability First 18 Months

Subject to clause 5.2:

- (a) the Contract Carrier must supply the Prime Mover which must be approved in writing by Metromix; and
- (b) Metromix will continue to provide a serviceable Agitator for use with the Prime Mover on the same terms as operated before the commencement of this Contract Determination.
- (c) Further to clause 5.1(b), whilst Metromix provides a serviceable Agitator, Metromix must pay the Contract Carrier:
 - (i) at the rate specified in Schedule 3 for any Unloaded Kilometres travelled to a location (as directed by Metromix) for the installation, repair or removal of the Agitator;
 - (ii) at the rate specified in Schedule 3 for any Standby Time for time spent in excess of 1 hour whilst awaiting installation, repair or removal of the Agitator; and
 - (iii) a Demurrage payment at the rate specified in Schedule 3 should any repairs, installation or removal exceed 5.5 Working Days.

5.2 Supply and Suitability of New Prime Mover and New Agitator

Subject to clause 5.3 and 5.4, the Contract Carrier must supply a New Prime Mover and a New Agitator no later than 18 months after the commencement of this Contract Determination which must:

- (a) meet the Prime Mover and Agitator specifications;
- (b) be accompanied with a weighbridge certificate (obtained at the Contract Carrier's own expense); and
- (c) be approved in writing by Metromix.

5.3 Metromix Discretion to Allow Extension of Time

Metromix (acting reasonably) may allow a Contract Carrier a period in excess of 18 months to provide a New Prime Mover and Agitator if there are exceptional unforeseen circumstances.

5.4 Exception

- (a) Metromix has authorised a limited number of Contract Carriers to delay the introduction of a New Prime Mover. Set out in Schedule 15 is a list of these Contract Carriers.
- (b) Metromix may approve a Contract Carrier to utilise an Agitator that is not a New Agitator in circumstances where:
 - (i) Metromix has sold the Agitator to the Contract Carrier; and
 - (ii) the Agitator is no more than 2 years of age.

5.5 Registration

The Contract Carrier must at their own expense register the Contract Carrier's Prime Mover.

5.6 Running Expenses

The Contract Carrier must pay all of the running costs associated with the Contract Carrier's Prime Mover and Agitator.

5.7 Maintenance and Repair

The Contract Carrier must mechanically maintain and repair the Contract Carrier's:

- (a) Prime Mover at its own expense and ensure the Vehicle is returned to service to perform Cartage Work as soon as practicable; and
- (b) (Subject to clause 5.1) Agitator at its own expense and ensure the Vehicle is returned to service at the Plant it is assigned to as soon as practicable.

5.8 Cease Using Prime Mover and/or Agitator

The Contract Carrier must stop using the Contract Carrier's Prime Mover (or any part of it) and/or Agitator (or any part of it) if Metromix so directs because in Metromix's opinion that is appropriate pending the carrying out of any repairs, maintenance, inspection or testing.

5.9 Painting and Logo

- (a) The Contract Carrier must paint the Contract Carrier's New Prime Mover and Agitator in colours approved by Metromix in a quality of paint to Metromix's specification.
- (b) The Contract Carrier must reasonably maintain the colours and paints as specified by Metromix in a satisfactory condition.
- (c) Subject to the Contract Carrier complying with clause 5.9 (b), if Metromix requires the Prime Mover and/or Agitator to be painted, Metromix will:
 - (i) undertake the painting at its expense; and
 - (ii) pay the Contract Carrier a Demurrage payment at the rate specified in Schedule 3 for the period during which the Prime Mover is unavailable to perform the Cartage Work unless Metromix provide the Contract Carrier a reasonable replacement Prime Mover at no cost.
- (d) The Contract Carrier shall properly maintain Metromix's mud flaps and logos on the Contract Carrier's Prime Mover.
- (e) Metromix must provide, install and remove, at its expense, all mud flaps and logos.

5.10 Mass Management

- (a) Subject to clause 5.10(c), the Contract Carrier must meet any relevant regulatory or maintenance requirements to achieve the maximum GVM legally allowed for their Vehicle.
- (b) Subject to clause 5.10(c) and 5.10(d), the Contract Carrier must do all things required and necessary to be accredited and remain accredited under Metromix's NHVAS mass management scheme (or any scheme replacing this).
- (c) Metromix may alter the requirements set out in clause 5.10 (a) and/or (b) above by direction to the Contract Carrier if any State or national guideline, regulation or law change and affect the GVM or carrying capacity of the Contract Carrier's Vehicle.
- (d) Metromix, at its expense will register the Contract Carrier's Vehicle under Metromix's NHVAS mass management scheme.

5.11 Maximum Age for a Prime Mover and Agitator

Despite anything else in this Contract Determination, at any time 18 months after the commencement of this Contract Determination, or such longer period as is determined in accordance with clause 5.3 above, a Contract Carrier's Prime Mover and/or Agitator must not be older than 12 years of age (evidenced from the manufacturer's plate).

6. Communication Equipment

6.1 Provision and Operation

Metromix must supply, install and maintain in the Contract Carrier's Prime Mover the Communication Equipment required by Metromix and the Contract Carrier must operate it efficiently.

6.2 Payment

Unless the installation, repair or removal arises because of damage or theft that the Contract Carrier is at fault for, Metromix must pay the Contract Carrier:

- (a) at the rate specified in Schedule 3 for any Unloaded Kilometres travelled to a location (as directed by Metromix) for the installation, repair or removal of the Communication Equipment; and
- (b) at the rate specified in Schedule 3 for standby time for time spent in excess of 1 hour whilst awaiting installation, repair or removal of the Communication Equipment.

6.3 Communication Equipment - Custody

The Contract Carrier has full responsibility for the safe custody of the Communication Equipment. The Contract Carrier must:

- (a) not add to, alter, modify, or disconnect the Communication Equipment; and
- (b) not, without the prior written permission of Metromix, use the Communication Equipment for anything but the Cartage Work.

6.4 Communication Equipment - Damage or Loss

Except in circumstances where the Contract Carrier's Vehicle is at a Metromix Plant or a location approved by Metromix, where the Communication Equipment is damaged or lost and the Contract Carrier is at fault for the damage or loss, the Contract Carrier must:

- (a) repair at the Contract Carrier's cost any damage to the Communication Equipment; and

- (b) replace at the Contract Carrier's cost lost Communication Equipment.

6.5 Cease Using Communication Equipment

The Contract Carrier must stop using the Communication Equipment (or any part of it) if Metromix so directs because in Metromix's opinion that is appropriate pending the carrying out of any repairs, maintenance, inspection or testing.

6.6 Return of Communication Equipment

Immediately upon the ending or termination of a Contract Carrier's Maxi Cartage Contract they must return the Communication Equipment to Metromix in good order and condition, fair wear and tear only excepted and Metromix will make good any damage caused by the instillation or removal of the Communication Equipment.

7. Nominated Driver

7.1 Nominated Plant

- (a) A Contract Carrier shall normally work from a Nominated Plant provided that Metromix may change a Contract Carrier's Nominated Plant to meet its business needs by giving them 14 days notice of the change having:
 - (i) first attempted to meet those needs on a voluntary basis; and then
 - (ii) changed the Nominated Plant of all other Contract Carrier's (in a Contract Carrier's Nominated Plant and with the same Configuration Vehicle) who have been at that Nominated Plant for a shorter period of time.

7.2 No One Else to Drive Vehicle

Except as expressly provided in this Contract Determination the Contract Carrier must:

- (a) only use a Nominated Driver who is approved (such approval not to be unreasonably withheld) by Metromix having satisfactorily undertaken any pre-engagement assessment to determine their suitability to be a Nominated Driver; and
- (b) make sure that no one except the Nominated Driver drives the Contract Carrier's Vehicle for the Cartage Work or operates the Agitator.

7.3 Substitute Driver

If the Nominated Driver cannot drive because of illness or for other good reason, the Contract Carrier must provide a Substitute Driver but the Contract Carrier must:

- (a) first obtain Metromix's approval for (such approval not to be unreasonably withheld) the Substitute Driver;
- (b) comply with any condition Metromix sees fit to impose including the length of time for use of the Substitute Driver; and
- (c) make sure that before commencing work the Substitute Driver satisfactorily undergoes any pre-engagement training at the Contract Carrier's own expense provided that the Contract Carrier must not be charged for the cost of any test or assessment.

7.4 Procurement of Consent

The Contract Carrier must procure from its proposed Nominated Driver (and any Substitute Driver) any form of consent required by Metromix to receive and review personal information relating to the

proposed Nominated Driver (and any Substitute Driver) so as not to place either the Contract Carrier or Metromix in breach of any relevant privacy legislation.

7.5 Valid Driving License and Permits

The Contract Carrier must:

- (a) make sure that the Nominated Driver (and any Substitute Driver) is at all times the holder of a:
 - (i) current and active driver's licence appropriately endorsed or issued in respect of the Contract Carrier Vehicle; and
 - (ii) licence or permit of any other kind needed from time to time; and
- (b) immediately notify Metromix if a licence or permit is cancelled or suspended for any reason; and
- (c) present any such license or permit to Metromix upon request.

7.6 Change of Address

The Contract Carrier must notify Metromix in writing immediately of any change in the Contract Carrier address or in the address of the Nominated Driver (and any Substitute Driver).

7.7 Medicals and Fitness

- (a) The Contract Carrier must:
 - (i) ensure that the Nominated Driver (and any Substitute Driver) is at all times medically fit to perform the Cartage Work;
 - (ii) if requested, supply Metromix with a medical report confirming that the Nominated Driver (and any Substitute Driver) is medically fit to perform the Cartage Work; and
 - (iii) be reimbursed for the cost of any such medical report after producing evidence of a paid invoice.
- (b) Metromix may nominate the medical practitioner for the purposes of this clause, provided that they pay the costs for the medical consultation and any medical report.

7.8 Compliance with Employment Law

The Contract Carrier must:

- (a) comply with the provisions of any relevant law (including but not limited to) concerning income tax, workers' compensation, annual leave, long service leave or any award, order, determination or agreement of a competent industrial tribunal; and
- (b) indemnify Metromix and keep Metromix indemnified against any claims made by any of the Contract Carrier employees in respect of any such legislation, award, order, determination or agreement with which the Contract Carrier are required to comply.

7.9 Notification of Absence

Where the Contract Carrier's Vehicle is unavailable to perform the Cartage Work under this Contract Determination, the Contract Carrier must notify Dispatch at the earliest possible time of the reason and the anticipated period of absence.

7.10 Leave Entitlements

Contract Carriers are entitled to leave consisting of the following:

- (a) 12 days leave where a Substitute Driver is required to operate the Vehicle;
- (b) 10 days leave where the Contract Carrier is not required to provide the Vehicle to perform the Cartage Work; and
- (c) Subject to prior written approval from Metromix such other period of leave provided that the Contract Carrier provides a Substitute Driver in accordance with clause 7.3.

7.11 Leave

- (a) If the Contract Carrier's Nominated Driver wishes to take leave, they must apply to Metromix. The leave may be taken subject to Metromix's approval.
- (b) Metromix may require the Contract Carrier to provide a Substitute Driver during any period of leave for the Nominated Driver.
- (c) The Contract Carrier must provide Metromix with at least two (2) weeks' notice of the date on which the Nominated Driver is intending to take leave, which in Metromix's absolute discretion may or may not be approved, and this must be submitted to Metromix in writing via the Contract Carriers Leave Application Form.

8. Use of the Vehicle

8.1 Operating Condition

The Contract Carrier must use the Vehicle for the Cartage Work strictly in accordance with the terms and conditions of this Contract Determination.

8.2 Driving of Vehicle

The Contract Carrier must:

- (a) not overload the Vehicle;
- (b) not use or operate the Vehicle in a careless, reckless or dangerous manner; and
- (c) make sure that the Vehicle is not driven by any person under the influence of alcohol, prohibited drug or of a drug which might adversely affect driving performance.

8.3 Cleaning of Vehicle

- (a) Cleaning brushes, detergents, Concrete de-scaler and buckets necessary for cleaning the exterior surfaces of the Vehicle will be supplied by Metromix.
- (b) The Contract Carrier must ensure the Vehicle is kept clean and tidy to the satisfaction of Metromix.
- (c) Where Metromix considers the presentation of the Vehicle is not to an appropriate standard, the Contract Carrier will be notified in writing that the Vehicle must be cleaned to a standard acceptable to Metromix within four (4) days of the date of the notice.
- (d) If after the four-day notice period Metromix deems the Vehicle's presentation unacceptable, Metromix may refuse to load the Vehicle until such time as its presentation becomes acceptable to Metromix.

8.4 Fines

The Contract Carrier is responsible for any fines or other penalties imposed on the Contract Carrier:

- (a) if the maximum legal pay load carried with the Contract Carrier Vehicle is exceeded at any time;
or
- (b) for any breach of any relevant laws.

8.5 Salvage Rights

If there is a breakdown or accident the Contract Carrier must take all available and reasonable steps to assist Metromix to deliver the load or remove the load from the Agitator.

8.6 Inspections and Tests

The Contract Carrier must make the Vehicle available for inspection or testing as and when reasonably required by Metromix.

8.7 Road Worthiness and Fit for Purpose

- (a) The Contract Carrier must provide to Metromix at least two (2) weeks' notice of the date on which their Vehicle is to be inspected by the relevant State Authority or approved inspection centre for road worthiness. This must be submitted to Metromix in writing via the Contract Carriers Leave Application Form.
- (b) The Contract Carrier must provide to Metromix quarterly a copy of the service and maintenance history for the Prime Mover and Agitator in accordance with OEM requirements.
- (c) The Contract Carrier must at its own expense, obtain and supply to Metromix an annual roadworthy certificate for their Vehicle.

8.8 Tare Weight

- (a) Provided that Metromix reimburse the Contract Carrier, on a bi-annual basis or as required by Metromix, the Contract Carrier must provide Metromix with a copy of a registered weighbridge certificate for the Vehicle.
- (b) The Vehicle must be weighed with the Nominated Driver in the driver's seat with fuel, oil and water tanks filled to full capacity and all Agitator chutes attached.
- (c) Despite clause 8.8 (a), Metromix may require the Contract Carrier to weigh their Vehicle at any time and under Metromix's supervision, as part of any program which Metromix has in place for the purposes of ensuring statutory compliance.

9. Rostering

9.1 Rosters

Subject to this clause 9, Metromix may establish and operate a:

- (a) Cyclic Start Roster;
- (b) Roster Off Roster (subject to operational requirements);
- (c) Periodic Transfer Roster;
- (d) Daily Transfer Roster;

- (e) a voluntary Night Shift Roster; and
- (f) such other rosters as required by Metromix to operate its business.

9.2 Own Fleet etc.

- (a) Metromix owned Vehicles will form part of all rosters and will not be rostered in any way to unfairly disadvantage either Metromix or its Contract Carriers.
- (b) Any Fleet Owner Vehicle may form part of a roster and if so will not be rostered in any way to unfairly disadvantage either Metromix or its Contract Carriers.

9.3 Notification for Next Day

It is the responsibility of the Contract Carrier to contact Dispatch to ascertain the initial time and Plant to which they are to load. Metromix will make available starting times and locations by 3pm Monday to Friday and by 11am Saturday for the next Working Day.

9.4 Variation and Compliance and Consultation

- (a) Metromix may determine or vary any roster, in its opinion, to meet Customer Service Levels or Operational Requirements;
- (b) the Contract Carrier must comply with all rosters determined or varied by Metromix; and
- (c) Metromix will not make any significant change to any roster or introduce any new roster without first consulting with the Contract Carrier's affected.

10. Vehicle Transfers

All transfer rosters will be based on a Cyclic Start Roster to ensure all Vehicles are made subject to all transfers.

10.1 Periodic Transfer

Metromix may transfer the Contract Carrier's Vehicle from one Plant to another Plant:

- (a) for satisfaction of Customer Service Levels or Operational Requirements; or
- (b) for compliance with clause 10.3; and
- (c) for a period of two (2) weeks or for such other period as Metromix determines appropriate in a Periodic Transfer Roster.

10.2 Daily Transfer

Metromix may transfer the Contract Carrier's Vehicle from one Plant to another Plant:

- (a) for satisfaction of Customer Service Levels or Operational Requirements; and
- (b) for up to one (1) Working Day in a Daily Transfer Roster.

10.3 Mandatory Periodic Transfers

In the event any individual Plant's average monthly productivity volume is more than two hundred (200) cubic meters below the average monthly Utilisation Group productivity volume, Metromix will do the following:

- (a) initiate periodic transfers pursuant to clause 10.1 into higher productivity volume Plant(s);

- (b) monitor productivity volumes on a monthly basis, and
- (c) maintain periodic transfers until such time the productivity volume of an individual Plant(s) is less than two hundred (200) cubic meters below the average monthly Utilisation Group productivity volume.

11. Loading and Delivery of Concrete

11.1 Plant

Subject to this Contract Determination, the Contract Carrier must report available for Cartage Work with their Vehicle and be ready to load at the times and Plants that Metromix directs.

11.2 Metromix to Nominate Load

Metromix may nominate the load size for each load to be carried from a Plant.

11.3 Loading Order

- (a) Metromix must use its reasonable endeavours to load Vehicles including Vehicles owned or engaged by Metromix having regard to the following:
 - (i) at the start of each Working Day, in accordance with the Cyclic Start Roster; and
 - (ii) during the Working Day, after each Vehicle has received its initial load, in accordance with the order of return to that Plant.
- (b) Metromix may change the loading order at each Plant by varying the Cyclic Start Roster or loading order for reasons including but not limited to:
 - (i) to satisfy Customer Service Levels or Operational Requirements;
 - (ii) if the next load (or loads) required to be taken is (or are) greater than the Load Capacity of the Vehicle next in line;
 - (iii) to comply with Chain of Responsibility obligations;
 - (iv) Vehicles carrying Returned Concrete; or
 - (v) Mini Vehicles.

11.4 No Loading

Metromix may refuse to load the Contract Carrier's Vehicle if:

- (a) it is unregistered;
- (b) if it is uninsured;
- (c) the Nominated Driver (and any Substitute Driver) does not hold a valid and active drivers licence;
- (d) the Nominated Driver (and any Substitute Driver) fails to sign in daily;
- (e) in Metromix's reasonable opinion, the Contract Carriers Vehicle is defective so as to render its operation unsafe;
- (f) the Contract Carriers is suspected of being in breach of its obligations under this Contract Determination or a Maxi Cartage Contract; or

- (g) for any of the reasons referred to in any of 5.8, 8.3(d) or 15.1.

11.5 No Alteration to Docket

The specification of each load of Concrete shown on the Concrete delivery docket issued by Metromix must not be changed by the Contract Carrier after batching.

11.6 Slump

- (a) Before leaving the Plant to deliver a load, the Contract Carrier must:
 - (i) ensure the load is properly mixed in accordance with the written instructions provided by Metromix, which may be varied from time to time; and
 - (ii) ensure that immediately prior to discharge, the Slump of the Concrete complies/conforms with the latest issue of Australian Standard and any Cartage Work instructions issued by Metromix.
- (b) Metromix will endeavour to batch each load with the intent that it is batched to within 10% of the total batch water required for the load to meet the relevant slump specification.
- (c) The Contract Carrier must notify the batcher of the quantity of water added at the slump stand and batch water will be adjusted upon continuing feedback from the Contract Carrier.
- (d) If the customer requests the addition of an amount of water that takes the Slump of the load outside the specified Slump tolerance, the Contract Carrier must:
 - (i) note the quantity of water added and the estimated final Slump of the load; and
 - (ii) obtain the name and signature of the customer or their nominated representative on all copies of the delivery docket.

11.7 Shortest Practicable Route

The Contract Carrier must take the shortest practicable route whilst performing the Cartage Work given the time of day.

11.8 Change of Ingredients

Metromix must provide the Contract Carrier, whenever practicable, with advice of any major changes to the source of Concrete mix ingredients which are likely to affect the visual assessment of the Slump.

11.9 Rejection of Load

- (a) If a Contract Carrier makes an addition of water to a load without the signed consent of the customer or their nominated representative, and the load is rejected because the Slump of the Concrete is outside the nominated tolerance as specified in clause 11.6, or because the Contract Carrier had not complied with that clause, the Contract Carrier will:
 - (i) not be paid for the delivery of the load or any applicable Surcharge/s; and
 - (ii) (if the load cannot be salvaged) have deducted from their next month's cartage payment the sum calculated to be 50% of the cost of all ingredient materials in the load to a maximum of \$500.
- (b) However, if Metromix has restricted the Contract Carrier's ability to adjust the Slump of a load on the job site and:

- (i) the Contract Carrier is requested by a customer or a customer's representative to add water to the load;
- (ii) Metromix approves such adjustment after discussion with the Contract Carrier; and
- (iii) the load is subsequently rejected on the basis of water addition or non-compliance with the nominated tolerance,

then Metromix will pay the Contract Carrier the Cartage Rate for the load as if the load had not been rejected and any applicable Surcharges.

- (c) Where the Contract Carrier is requested by Metromix to adjust or maintain the Slump of a load at a tolerance closer than that specified in the current issue of Australian Standard and the load is rejected on the basis of non-compliance with the nominated tolerance, then Metromix will pay the Contract Carrier the Cartage Rate for the load as if the load had not been rejected and any applicable Surcharges.
- (d) In the case of a delivery of Kerb-Maker, it is the responsibility of the Contract Carrier to carry the load in an "as batched" condition. The Contract Carrier will not be responsible for the Slump unless the Contract Carrier has attempted to adjust the Slump either at the Plant or onsite pursuant to clause 11.9(a), in which case clause 11.9(a)(i) and 11.9(a)(ii) shall apply.
- (e) In the case of delivery of a load of Wet Piling Grout the Contract Carrier must:
 - (i) ensure the load is completely mixed;
 - (ii) adjust the water to the load at the Slump stand so it visually represents Wet Piling Grout; and
 - (iii) immediately notify the batcher of any unusual features of the load which may lead to non-conformity including lack of or excessive water.
- (f) Provided the Contract Carrier has complied with clause 11.9(e) then the Contract Carrier will no longer be responsible for the consistency should the load be subject to a Flow Cone Test.

11.10 Additives

- (a) Subject to the Contract Carrier's compliance with clause 11.10(b), where Metromix adds an additive to the Concrete after the Contract Carrier has adjusted the Slump of the load, or where an additive is added at the customer's request, the Contract Carrier will no longer be responsible for the Slump of that load.
- (b) The Contract Carrier and the Nominated Driver (and any Substitute Driver) are not permitted to add any additives to the Concrete.

11.11 Mixing and Transit

The Contract Carrier must take reasonable care of the Slump after the Vehicle has left the plant. Except where Metromix has notified the Contract Carrier that the customer has instructed that no water is to be added after leaving the plant, the Contract Carrier may add water to the Concrete as the Contract Carrier think fit but the Contract Carrier must:

- (a) keep the Agitator drum turning at all times when it contains Concrete at a minimum of two (2) revolutions per minute; and
- (b) mix the Concrete for at least the minimum mixing time for mixing Concrete under the current Australian Standard which is:

- (i) 4 minutes at the mixer manufacturers rated mixing speed (approximately 16 revolutions per minute) at the Plant; and
- (ii) a minimum re-mix of 1 minute at the rated mixing speed (approximately 16 revolutions per minute) after addition of water or additives or to customers' requirements before discharging on site.

11.12 Job Site Entry

- (a) The Contract Carrier must comply with any job site entry procedure determined by Metromix from time to time.
- (b) The Contract Carrier has the right to refuse to enter a job site, which it reasonably considers unsafe.
- (c) The Contract Carrier must notify the Metromix Representative at the Plant of the unsafe or hazardous job site and of the Contract Carrier's unsuccessful attempt to enter the site. The Representative will attend the site as soon as practical after notification in order to determine the action to be taken.
- (d) If the Metromix Representative assesses the site access to be unsafe or hazardous, the Contract Carrier will be paid the Cartage Rate as if the delivery had been successful and any applicable Surcharges.
- (e) Despite anything else in this clause, the Nominated Driver (or any Substitute Driver) may refuse to enter a job site if it would cause serious and imminent risk to their health or safety and the Contract Carrier will be paid the Cartage Rate as if the delivery had been successful and any applicable Surcharges.

11.13 Unloading

The Contract Carrier must discharge the Concrete at the delivery site in the manner and position reasonably directed by the customer. The Contract Carrier must use every reasonable effort at the delivery site to:

- (a) obtain directions from the customer concerning the manner and position to discharge the Concrete; and
- (b) obtain from the customer's the signatures required by Metromix.

11.14 Unsafe Unloading

- (a) If the unloading of the Concrete at any delivery site is unsafe for any reason, the Contract Carrier must immediately notify Metromix prior to unloading the Concrete to obtain directions.
- (b) If, in complying with Metromix's directions, the Contract Carrier Vehicle becomes bogged or causes damage to the site (unless the bogging or damage is caused by the Contract Carrier negligence or a breach of this Contract Determination) Metromix must:
 - (i) pay all reasonable costs to remove the Contract Carriers Vehicle and effect any repairs caused by the bogging or removal; and
 - (ii) indemnify the Contract Carrier for any damage or claims caused on the site.

11.15 Signatures for Delivery

- (a) The Contract Carrier must use their reasonable endeavours to obtain a customer signature and printed name for the delivery of a load and any additional Surcharges or the addition of water.

- (b) The Contract Carrier must sign and print their name on the delivery docket and record their time of arrival and departure at site.
- (c) All signatures, printed names or other required information must be in the appropriate section of the delivery docket and appear on all copies.
- (d) The Contract Carrier must not surrender the customer copy of the delivery docket until discharge is complete or released by the customer.
- (e) The Contract Carrier must return the completed delivery docket to the Plant or otherwise as directed upon return after each load.
- (f) Where Waiting Time, Returned Concrete or any other Surcharges are applicable the Contract Carrier, prior to leaving site, must contact Dispatch to obtain the Surcharge amount and new total to be collected and ensure this appears on all copies of the delivery docket.
- (g) Despite anything else in this Contract Determination, if the provisions of this clause are not complied with Metromix is not required to pay the Contract Carrier for the relevant load.

11.16 Bogged Vehicles

- (a) Where the Contract Carrier enters a job site beyond the road kerb line to complete a delivery and the Vehicle becomes bogged or is otherwise rendered inoperative as a consequence of such attempted delivery, Metromix will arrange the services of an experienced salvage contractor to extract the Vehicle as soon as possible and must bear all costs for those arrangements.
- (b) The Contract Carrier is to notify the Metromix Representative at the Plant as soon as the Vehicle becomes bogged or inoperative and await instruction from Metromix.
- (c) Metromix will ensure that the salvage contractor selected is covered by the appropriate insurance policy to rectify any damage that the salvage contractor may cause to the Vehicle during the extraction process.
- (d) Metromix accepts no liability for damage or loss caused where the Contract Carrier utilises its own salvage contractor or means for the extraction.
- (e) Clauses 11.16(a) and (c) will not apply where the Vehicle becomes bogged or inoperative as a direct result of the Contract Carrier's or its Nominated Driver's (or Substitute Driver's) negligence or any deliberate act by the Contract Carrier's Nominated Driver (or Substitute Driver).

11.17 Return

After discharging the load the Contract Carrier must report to whatever Plant Metromix instructs.

11.18 Damage On Site

Subject to this clause 11, the Contract Carrier must pay for any damage caused by the Contract Carrier whilst entering on or exiting the site provided that Metromix has undertaken an investigation of the matter.

12. Site Cleaning

12.1 Contract Carrier Obligations

- (a) The Contract Carrier must immediately report to Metromix any Concrete or Vehicle spillage.

- (b) Subject to clause 12.2(b), the Contract Carrier must pay for:
 - (i) any costs associated with the clean-up of any spillage; and
 - (ii) the removal of any Concrete or Vehicle spillage.
- (c) The Contract Carrier must pay for any fines associated with any spillage.

12.2 Metromix's Obligation

- (a) Metromix must arrange for the clean-up of any Concrete or Vehicle spillage.
- (b) Metromix must pay for the removal of any Concrete or Vehicle spillage for one (1) clean-up activity per calendar year for a Contract Carrier to a maximum cost of \$500.

13. Supervision

13.1 The Contract Carrier Must Supervise its Personnel

The Contract Carrier must ensure that the Nominated Driver (and any Substitute Driver):

- (a) performs the Cartage Work and does everything connected with it as is required of the Contract Carrier by this Contract Determination; and
- (b) does not do or omit anything that gives rise to a breach by the Contract Carrier of this Contract Determination.

14. Training

14.1 Cost and Amount

- (a) Metromix may require the Contract Carrier or their Nominated Driver (and any Substitute Driver) to attend training sessions each year in relation to any topic deemed relevant by Metromix provided that the Contract Carrier must not be charged for the cost of providing the training.
- (b) The Contract Carrier or their Nominated Driver (and any Substitute Driver)'s attendance will be at no cost to Metromix and will be limited to twelve (12) hours per annum.
- (c) Any training the Contract Carrier or their Nominated Driver (and any Substitute Driver) attends which exceeds twelve (12) hours per annum will be entitled to a standby time payment as specified in Schedule 3 for each half hour or part thereof the Contract Carrier or their Nominated Driver (and any Substitute Driver) attends.

14.2 Driver Training

- (a) All existing approved Nominated Drivers (and any Substitute Driver) are required to undertake an annual (or as deemed appropriate by Metromix) driver and Agitator operational assessment carried out by a qualified driver trainer and Agitator operational assessor nominated by Metromix. Any associated cost of this will be the responsibility of Metromix.
- (b) Each new Nominated Driver employed by the Contract Carrier, is required to spend a minimum of two (2) weeks' training in how to operate the Vehicle and in managing Slump control of Concrete.
- (c) This training will include a period of at least one (1) day in Metromix's nominated Quality Control Laboratory under the supervision of a Metromix nominated tester, and at least one (1) day in Dispatch to understand Dispatch requirements.

- (d) Metromix will provide appropriate equipment (excluding the Vehicle) for the purpose of providing the training.
- (e) At the conclusion of the two (2) week training period, the Nominated Driver will be required to undertake a driver and Agitator operational assessment carried out by a qualified driver and Agitator operational trainer nominated by Metromix in respect of the Nominated Driver's performance and technical ability. Any costs for the driver trainer will be the responsibility of Metromix.

15. Contractor Management System

15.1 Provision of Documents and Inductions

- (a) The Contract Carrier must maintain and keep up to date any documentation and inductions required by Metromix's contractor management system.
- (b) Metromix must ensure that such documentation is securely held and not used for any improper purpose by an employee or officer of Metromix.
- (c) Metromix may at times request the originals or copies of documents.
- (d) The Contract Carrier will allow Metromix to take copies of these documents if required.
- (e) Should the Contract Carrier not be able to sign in due to out of date documentation or inductions, the Contract Carrier's Vehicle will not be available to load until such time as the out of date documentation and induction is renewed and verified.

16. Contract Carrier's Spare Tyres

16.1 Storage

- (a) Subject to Metromix's prior approval and availability of space at the Nominated Plant, Metromix will provide to the Contract Carrier at their Nominated Plant space for the storage of up to two (2) spare usable tyres for their Vehicle.
- (b) Any stored tyres must be marked with the fleet number of the Contract Carrier's Vehicle.
- (c) In circumstances where Metromix cannot identify ownership of stored tyres, Metromix reserves the right to remove the unidentified equipment and to dispose of it appropriately.
- (d) No other equipment is to be stored by the Contract Carrier on Metromix premises.

16.2 No Liability

Despite clause 16.1, Metromix will not be liable to the Contract Carrier for any loss or damage to anything stored by the Contract Carrier at a Plant or other Metromix premises.

17. Workplace Health and Safety

17.1 Safety Meetings

- (a) The Contract Carrier or their Nominated Driver must attend and constructively participate in each safety meeting or "tool box talk" as required by Metromix.
- (b) The Contract Carrier or their Nominated Driver is not obliged to attend if they are on approved leave or not able to attend work for that entire day.
- (c) Attendance to the abovementioned meetings will be at no cost to Metromix.

17.2 Safety Inductions

The Contract Carrier or their Nominated Driver (any Substitute Driver) must attend safety inductions and safety training as required by Metromix. Attendance will be in accordance with clause 14.

18. Uniforms and Personal Protective Equipment

18.1 Uniform Supply

Metromix must supply a Nominated Driver and any Substitute Driver with a uniform in accordance with Metromix's uniform policy and the uniform must be worn.

18.2 Personal Protective Equipment

Metromix must supply a Nominated Driver and any Substitute Driver with personal protective equipment in accordance with Metromix's personal protective equipment policy and the personal protective equipment must be worn. The Contract Carrier is responsible for supplying any Substitute Driver with approved safety footwear.

18.3 Replacement

Replacement of uniforms and personal protective equipment will be at the discretion of Metromix on the basis of return of used items.

19. Emergencies and Incidents

19.1 Contract Carrier to Follow Metromix Procedures

The Contract Carrier must comply with any emergency procedures specified by Metromix.

19.2 Reporting Incidents

- (a) The Contract Carrier must immediately advise the Metromix Representative at the Plant of any incident, near misses, safety observations or hazards.
- (b) All incidents must be entered in to Metromix's online register as soon as practicable.

19.3 Investigation

The Contract Carrier must provide all necessary assistance to Metromix in relation to any Metromix investigation.

19.4 Reporting Defects, Loss or Theft

A Contract Carrier must report to Metromix immediately any damage, defect, loss or theft that has occurred.

20. Insurance Warranty and Indemnity

20.1 Vehicle, Workers Compensation

The Contract Carrier must obtain the insurances set out in Schedule 4 and maintain them at the Contract Carrier's expense at all times.

20.2 Insurance Policies

The Contract Carrier must make sure that:

- (a) each insurance policy is placed with an insurer approved by Metromix (who must not unreasonably withhold its approval) and is for such amounts and covers such risks and contains such conditions, endorsements and exclusions as are reasonably acceptable to or reasonably required by Metromix; and
- (b) despite clause 20.2(a), unless Metromix agrees otherwise or unless any relevant law precludes this each policy must be endorsed to:
 - (i) extend to provide indemnity to Metromix as principal; and
 - (ii) contain a cross liability clause.

20.3 Premiums

The Contract Carrier must punctually pay all premiums for policies and renewals of policies and must provide on request at any time proof of payment and renewal to Metromix's satisfaction.

20.4 Not to Prejudice Insurance

The Contract Carrier must not do, permit or omit any act, matter or thing which might prejudice any insurance or make it void or voidable.

20.5 Payment of Excess

The Contract Carrier must pay any deductible or excess applying to any claim made by Metromix as principal against any insurance policy held by the Contract Carrier.

20.6 No Guarantee

Except as expressly provided for in this Contract Determination, Metromix makes or gives no representation, warranty or guarantee as to the quantity, quality, regularity or profitability of the Cartage Work.

20.7 Implied Warranties

Any warranty, condition, term or provision on the part of Metromix which might be implied by the general law is expressly excluded, and to the extent permitted by law, all statutory implied warranties on the part of Metromix are excluded altogether or (if complete exclusion is prohibited by law) limited to the payment of:

- (a) in the case of goods, the lesser of the cost of having the goods repaired and the cost of replacing the goods or of acquiring equivalent goods; or
- (b) in the case of services, the cost of having the services supplied again.

20.8 Indemnity

- (a) The Contract Carrier shall indemnify Metromix, and keep Metromix indemnified from and against any loss or claim in connection with any death or injury to any person or any loss of or damage to property directly or indirectly caused by or in connection with or arising from:
 - (i) the Cartage Work;
 - (ii) their operations or business;
 - (iii) the use of any Vehicles, plant or equipment (including without limitation the Vehicle) used or to be used in connection with their operations or business; or
 - (iv) any breach by them of this Contract Determination.

- (b) To avoid any doubt, it is expressly noted that the indemnities given by a Contract Carrier in clauses 20.8(a)(i) to 20.8(a)(iv) excludes circumstances where the loss or claim in connection with any death or injury to any person or any loss of or damage to property is directly or indirectly caused by negligent or unlawful acts by Metromix in performing its obligations under this Contract Determination.

20.9 Not Liable

Metromix is not liable to the Contract Carrier for any loss or claim:

- (a) for consequential loss or loss of use or loss of profit; or
(b) arising out of wet weather, accident, breakdown, or delay.

21. Contractor Fleet Size

21.1 Right to Increase Contractor Numbers

Metromix may at any time engage more Contract Carrier Vehicles to perform the Cartage Work to meet its business needs.

21.2 Right to Decrease Contractor Numbers

Metromix may at any time reduce the number of Contract Carriers engaged to perform the Cartage Work to meet its business needs.

22. Use of Other Vehicles

22.1 Right

Subject to clause 25.3, and to avoid any doubt, Metromix may utilise:

- (a) its own Vehicles; or
(b) Vehicles from a Fleet Owner,

for the Cartage Work to meet its business needs.

22.2 No Improper Conduct

To avoid any doubt, Metromix may exercise its rights to utilise its own Vehicles or Vehicles from a Fleet Owner as it sees fit in its own commercial interest, but must not abuse the right to obtain an improper collateral benefit or objective.

23. Disputes Procedure

23.1 Application of Procedure

Any dispute that arises between a Contract Carrier and Metromix shall be dealt with in accordance with this clause.

23.2 Appointment of Representative

A Contract Carrier who is a party to a dispute may appoint a representative for the purposes of this clause which may include the Union.

23.3 Procedure

In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level.

23.4 Notification to Commission

If the dispute remains unresolved it may be referred to the Industrial Relations Commission of NSW.

23.5 Continue to Perform Cartage Work

Whilst the parties are trying to resolve the dispute using the procedure set out in this clause:

- (a) a Contract Carrier must continue to perform Cartage Work as they normally would do unless the Nominated Driver (or any Substitute Driver) hold a reasonable concern about an imminent risk to their health or safety; and
- (b) a Contract Carrier must comply with a direction given by Metromix to perform other available Cartage Work, unless:
 - (i) the Cartage Work is not safe; or
 - (ii) applicable workplace health and safety legislation would not permit the Cartage Work to be performed; or
 - (iii) the Cartage Work is not appropriate for the Contract Carrier to perform; or
 - (iv) there are other reasonable grounds for the Contract Carrier to refuse to comply with the direction.

24. Katoomba

24.1 Operative Provisions

Set out in Schedule 11 of this Contract Determination are provisions specific to Cartage Work performed from Metromix's Katoomba Plant. Clauses set out in Schedule 11 substitute for clauses set out in this Contract Determination in the terms as stated in Schedule 11 of this Contract Determination.

25. Additional Terms

25.1 Contract Carrier's who commenced before 1 October 2017

- (a) A Contract Carrier who commenced being engaged by Metromix before 1 October 2017 shall be engaged and perform the Cartage Work and anything connected with it under the terms set out in Schedule 14.
- (b) Schedule 14 shall apply to any permitted assignee of the Contract Carrier.

25.2 New Contract Carriers

Despite anything in this clause, if Metromix introduces a new Contract Carrier into its fleet then they shall be engaged and perform the Cartage Work and anything connected with it under the terms set out in Schedule 13.

25.3 New Contract Carriers - Plant Embargo

- (a) Despite clause 7.1 and subject to clause 25.3 (b), Metromix shall not designate a Plant to be the Nominated Plant of a new Contract Carrier if that Plant is set out in Schedule 16.
- (b) Clause 25.3 (a) shall cease to operate two years after the commencement date of this Contract Determination.

25.4 New Contract Carriers - No 'Gazumping'

If a Contract Carrier issues Metromix with a notice pursuant to clause 3 of Annexure A of Schedule 14, Metromix must not offer the company that the Contract Carrier proposes to assign their contractual arrangement to an opportunity to become a new Contract Carrier to prevent them completing the proposed assignment.

26. Notices

26.1 Delivery

If either Metromix or the Contract Carrier gives a notice, consent, approval or other communication (each a "notice") under this Contract Determination it shall be signed by them or on their behalf, addressed to the other party and:

- (a) delivered to the other party's address;
- (b) sent by pre-paid mail to the other party's address;
- (c) transmitted by facsimile to the other party's address; or
- (d) transmitted by email to the other party's email address.

26.2 Receipt

A notice given in accordance with this clause is treated as having been given and received:

- (a) if delivered to the other party's address, on the day of delivery if a Working Day, otherwise on the next Working Day;
- (b) if sent by pre-paid mail, on the third Working Day after posting;
- (c) if transmitted by facsimile and a correct and complete transmission report is received, on the day of transmission if a Working Day, otherwise on the next Working Day; or
- (d) if transmitted by email and a correct and complete receipt reply email is received, on the day of transmission if a Working Day, otherwise on the next Working Day.

26.3 Proper Address

For the purpose of this clause the addresses are the addresses which from time to time a party gives notice of to the other party.

27. Consultation

27.1 Committee

Metromix shall convene a Consultative Committee made up of Metromix representatives and the members of the "Metromix LOD Committee".

27.2 Meeting

The Consultative Committee shall meet as agreed or otherwise monthly to discuss:

- (a) any agreed matters; and/or
- (b) Contract Carrier utilisation.

27.3 Information

- (a) Metromix shall provide the Contract Carrier members relevant Contract Carrier utilisation data at least 2 Working Days prior to the relevant Consultative Committee meeting.
- (b) The utilisation data is to be treated as commercial in confidence by the recipient and is not to be copied or shared in any manner and with any person without the express written consent of Metromix.
- (c) The utilisation data will include m3 carted, average loads, average leads but will not include earnings.

27.4 Payment

Metromix will pay the Contract Carrier a Demurrage payment at the rate specified in Schedule 3 for the time one hour prior to and then attending a Consultative Committee meeting up to the Contract Carrier's rostered finish time for that day.

27.5 Annual Verification

Within the first three months after the commencement of this Contract Determination and thereafter every 12 months:

- (a) Metromix shall provide the Consultative Committee with a list of the Contract Carriers, their Nominated Drivers and any Substitute Drivers;
- (b) the Contract Carrier representatives shall verify whether the list is correct; and
- (c) if the list is not correct Metromix shall make such inquiries and take such actions as are appropriate to ensure they hold a correct and verified list.

28. Delegates

28.1 Appointment

A Contract Carrier appointed as a Delegate in a yard in which they are a Contract Carrier will, upon notification to Metromix be recognised as the accredited representative:

- (a) for that Yard; and
- (b) (if the Contract Carrier is a member of the Union) of the Union for that Yard.

28.2 Opportunity to Meet

An accredited delegate will be allowed a reasonable opportunity to meet the relevant Metromix manager and Contract Carriers to discuss matters affecting Contract Carriers whom they represent.

28.3 Use of Notice Board

Accredited delegates will be permitted to put notices on a notice board, signed or countersigned by the representative posting it.

28.4 Release of Delegates

A yard delegate will be released by Metromix on a reasonable basis to attend authorised (lawful) Union activity provided that Metromix is provided reasonable notice of the absence.

29. Dictionary

6 Wheeler means a Prime Mover with three (3) axles and six (6) wheel positions.

8 Wheeler means a Prime Mover with four (4) axles and eight (8) wheel positions.

10 Wheeler means a Prime Mover with five (5) axles and ten (10) wheel positions.

Accounting Period means a calendar month unless varied by notice from Metromix.

Act means the *Industrial Relations Act 1996* (NSW).

Agitator means the mixing equipment necessary to mix and transport Concrete by a Prime Mover.

Annual Earnings Safety Net means the payment referred to, and calculated in accordance with, clause 3.2, 3.3 and Schedule 1.

Average Group Productivity means the moving annual total paid cubic meters carried by a group of Contract Carriers in an Utilisation group.

Australian Standard means any relevant Australian Standard as applies from time to time.

Authorised Absence means any absence expressly authorised by this Contract Determination including but not limited to those outlined in clause 3.3(b), 7.10, 27.2 and 28.

CAR means a manual Cartage Adjustment Request Form.

Cartage Adjustment Request Form means the form located in Schedule 8.

Cartage Rates means the rates located in Schedule 1.

Cartage Work means the cartage of Concrete as and when required by Metromix.

Communication Equipment means equipment such as but not limited to global positioning systems (GPS), two way radio, safety cameras etc.

Contract Determination means this contract determination as varied or replaced from time to time.

Concrete means pre-mixed Concrete manufactured by Metromix and any other materials that can be delivered in a Vehicle as may be designated by Metromix.

Configuration means the classification of a Vehicle by reference to its Load Capacity as follows:

- (a) 6 Wheeler Truck;
- (b) 8 Wheeler Truck;
- (c) 10 Wheeler Truck or
- (d) any other classifications designated by Metromix from time to time.

Consultative Committee means the committee structure in operation prior to the commencement of this Contract Determination.

Contract Carrier means a Contract Carrier engaged by Metromix pursuant to a Maxi Cartage Contract to cart pre-mixed Concrete in the Operational Area.

Contract Carriers Leave Application Form means the form located in Schedule 8.

Control Number means a sequence of number or letters or both given solely by Dispatch.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer Service Levels means the provision of efficient, timely and competitive service to meet customers' expectations and requirements.

Cyclic Start Roster means a start of day roster based on a "first out yesterday, second out today" system with the effect that each Vehicle will move through the cycle from starting first to starting last and, on successive days, all points in between, subject but not limited to Customer Service requirements.

Daily Transfer Roster means the roster determined in accordance with clause 10.

Demurrage means the rate specified in Schedule 3.

Dispatch means the Customer Service Centre or in the event the Customer Service Centre is closed or unavailable, the Plant.

Driver means the Nominated Driver or a Substitute Driver.

Fleet Owner means a provider of transport services other than a Contract Carrier.

Flow Cone Test means a flow cone test in accordance with Australian Standards.

Force Majeure means an act, omission or circumstance beyond a party's control, including:

- (e) acts of God;
- (f) fire, flood, storm, earthquake, explosion or accident;
- (g) hostile or warlike action in time of peace or war; or
- (h) insurrection, rebellion, revolution, civil war, sabotage, civil disobedience, usurped power or action taken by government authority in hindering, combating or defending against such occurrence,

but only to the extent that the act, omission or circumstance could not have been avoided or foreseen through the exercise of reasonable skill and care that a diligent person in the position of the affected party would have exercised.

Kerb-Maker means a Concrete mix "nil Slump" used specifically for the construction of kerb and gutter.

Kilometre Running Rate means the rate paid per kilometre as itemised in Schedule 1.

Load Capacity means the lesser of:

- (a) the maximum legal carrying capacity of the Contract Carrier's Vehicle; and
- (b) the manufacturer's nominated maximum capacity of the Agitator.

MAT means moving annual total.

Maxi Cartage Contract means the contractual arrangement under which the Contract Carrier is engaged by Metromix to perform the Cartage Work.

Metromix means Metromix Pty. Limited of Level 4, 107 Phillip St Parramatta, NSW, 2150.

Metromix Concrete Cartage Cost Model means one of the following excel models: Metromix Concrete Cartage Cost Model - Metropolitan 8 Wheeler + Agitator; Metromix Concrete Cartage Cost Model - Katoomba 6 Wheeler + Agitator.

Metromix's Normal Trading Hours means 6:00 am to 5:00 pm Monday to Friday and from 6:00 am to 1:00 pm Saturday or as otherwise varied by Metromix.

Metromix Representative means the Metromix Plant Manager or his/her delegate.

Mini Vehicles means a vehicle with a carrying capacity less than a 6 Wheeler.

New Prime Mover means a Prime Mover that is (a) less than one (1) year of age from the year of manufacture which will be measured from the date of manufacture as per the compliance plate affixed to the Vehicle and (b) is an 8 wheel Prime Mover or such other configuration as Metromix may determine.

New Agitator means a 7.6m³ Agitator that is less than six (6) months of age from the year of manufacture which will be measured from the date of manufacture as per the compliance plate affixed to the Agitator.

Night Shift means a shift where a Contract Carrier is rostered to work outside Metromix's Normal Trading Hours and has been given prior notice of the shift (to avoid any doubt this does not include an early start or late finish outside of Metromix's Normal Trading Hours).

Night Shift Minimum means the rates set out in Schedule 3.

Nominated Driver means the person nominated by the Contract Carrier and approved by Metromix as such.

Nominated Plant means the plant that a Contract Carrier will normally be based at, as directed by Metromix.

Operational Requirements means all factors which may, in Metromix's opinion, affect the operating efficiency, volume or quality of Concrete produced, profitability of one or more Plants or otherwise affect in any way one or more Plants or any aspect of Metromix's Concrete and related businesses.

Periodic Transfer Roster means the roster determined in accordance with clause 10.1.

Plant means a batching plant where Concrete and similar batched materials are manufactured for delivery in a Vehicle.

Prime Mover means the prime mover supplied by the Contract Carrier to perform the Cartage Work.

Public Holiday means a day declared and gazetted as such for the Operational Area.

Quality Control Laboratory means Metromix' quality control laboratory.

Quarter means each three-month period ending on 31 March, 30 June, 30 September and 31 December each year.

Rejected Concrete means Concrete that does not meet the product specification detailed on the delivery docket and is unacceptable for delivery.

Returned Concrete means Concrete that is excess to a particular customer's requirements.

Roster Off Roster means the period during which the Contract Carrier's services are not required by Metromix.

Slump means a measure of consistency of Concrete as determined in accordance with Australian Standard.

State Authority means the RMS or such other agency that is authorised to inspect the Vehicle.

Substitute Driver means any driver of the Vehicle authorised as such in accordance with clause 7.3 of this Contract Determination.

Surcharge/s means those payments specified in Schedule 3.

Unloaded Kilometres is given the definition in clause 4.6.

Utilisation Cartage Rates means the Cartage Rates paid for various annualised levels of Vehicle productivity measured in cubic meters per Vehicle per year (m³/Vehicle/year) as set out in Schedule 1.

Unavailable Day(s) means any day(s) other than that of a Working Day.

Unauthorised Absence means any absence not expressly authorised by this Contract Determination.

Union means the Transport Workers Union, New South Wales.

Utilisation Group means a group of Concrete Trucks of the same Configuration including the Contract Carrier's Vehicle, excluding those at the Katoomba site.

Vehicle means a Prime Mover and Agitator used to transport and deliver pre-mixed Concrete.

Waiting Time is given the meaning in clause 4.12.

Wet Piling Grout means a Concrete mix used for the construction of piles or piers.

Working Day means a day which is not a Sunday or Bank or Public Holiday.

SCHEDULE 1 - CARTAGE RATES

1. Cartage Rates

1.1 The Cartage Rates are:

- (a) (for a Contract Carrier who has not yet introduced a New Prime Mover and Agitator in accordance with clause 5 Prime Mover and Agitator) the Cartage Rates subject to the Utilisation and Rise and Fall reviews that operated immediately prior to this Contract Determination commencing; and
- (b) (for a Contract Carrier who has introduced a New Prime Mover and Agitator in accordance with clause 5 Prime Mover and Agitator) ascertained from "RATE SCH Prime Mover & Agitator" of the relevant "Metromix Concrete Cartage Cost Model" (being one of the following: Metromix Concrete Cartage Cost Model - Metropolitan 8 Wheeler + Agitator or the Metromix Concrete Cartage Cost Model - Katoomba 6 Wheeler + Agitator) as at the date this Contract Determination commences to operate and then as varied from time to time in accordance with this Contract Determination.

SCHEDULE 2 - UTILISATION REVIEWS

1. Utilisation Review

1.1 Process

- (a) On a quarterly basis, Metromix will undertake a utilisation review in accordance with this Schedule to determine the value for the red inputs "Volume, Average Load (where present in the model) and Average Lead" in the "Key Variables & Price Sheet" of the "Metromix Concrete Cartage Cost Model".
- (b) The review must determine the value for the inputs referred to in clause 1.1 as at:
 - (i) 31 March;
 - (ii) 30 June;
 - (iii) 30 September; and
 - (iv) 31 December.

Notation: The 30 September utilisation review is undertaken with relevant rise and fall reviews.

1.2 Adjustment of Model

- (a) Having determined the value for the input "Volume, Average Load (where present in the model) and Average Lead" Metromix shall enter it into the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model".
- (b) Having undertaken the step in clause 1.2 (a), Metromix shall refresh the Model.

1.3 New Rates

Following the process in clause 1.2, the new cartage rates and surcharges shall be the cartage rates and surcharges ascertained from the following sheets of the relevant "Metromix Concrete Cartage Cost Model":

- (a) RATE SCH Prime Mover & Agitator; and
- (b) Prime Mover + Agi Surcharges.

1.4 Operative Date

Any new Cartage Rates and Surcharges arising from clause 1.3 shall be operative as of:

- (a) 1 May;
- (b) 1 August;
- (c) 1 November; and
- (d) 1 February.

1.5 Volume (Average Group Productivity)

- (a) This clause sets out how the value for the red input "Volume: in the relevant "Metromix Concrete Cartage Cost Model" is determined.
- (b) The "Volume" (Average Group Productivity) calculated on a MAT basis (using the relevant Metromix MAT model), will measure the annual average volume of adjusted paid meters carted by Contract Carriers in the Utilisation Group. This calculation will be rounded to the nearest 100 m³.
- (c) In calculating the "Volume" (Average Group Productivity), Metromix will have regard to:
 - (i) the paid meters carted per month during the relevant Quarter by all Contract Carriers in the Utilisation Group;
 - (ii) the number of Contract Carriers' Vehicles in the Utilisation Group per month during the relevant Quarter;
 - (iii) the number of Working Days for the month;
 - (iv) the number of Unavailable Days as a result of Authorised and Unauthorised Absence for all Contract Carriers in the Utilisation Group per month during the relevant Quarter; and
 - (v) the MAT of adjusted paid meters carted per month for the relevant Quarter.
- (d) The following formula must be used to calculate adjusted paid meters carted per month:

$$M3/(N - (U/W)) = \text{ADJUSTED M3 PAID PER MONTH PER TRUCK}$$

Where:

N = Number of Vehicles in the Utilisation Group

U = Unavailable Days per Month

W = Working Days per Month

M3 = Total paid meters per month for Vehicles in a Utilisation Group

- (e) Unavailability will not arise where:
- (i) the Contract Carrier has previously been notified by Metromix that the Contract Carrier is not required to perform Cartage Work on the relevant day; or
 - (ii) Force Majeure has occurred; or
 - (iii) the Nominated Driver is otherwise on a period of Authorised Absence.

1.6 Utilisation Groups

All Utilisation Groups will be determined by Metromix, having regard to the needs of the business. There will be no changes to a Utilisation Group once determined, without prior consultation with the Consultative Committee.

1.7 Consultation

Prior to undertaking the steps in clause 1.3 of this schedule, the Consultative Committee shall meet to consult on the adjusted model arising from clause 1.2 of this schedule.

SCHEDULE 3 - SURCHARGES

1. Surcharges

- 1.1 The Surcharges are ascertained from the "Prime Mover + Agi Surcharges" of the relevant "Metromix Concrete Cartage Cost Model" as at the date this Contract Determination commences to operate and then as varied from time to time in accordance with this Contract Determination.
- 2.1 The Surcharges are:
- (a) (for a Contract Carrier who has not yet introduced a New Prime Mover and Agitator in accordance with clause 5 Prime Mover and Agitator) the Surcharges subject to the Utilisation and Rise and Fall reviews that operated immediately prior to this Contract Determination commencing; and
 - (b) (for a Contract Carrier who has introduced a New Prime Mover and Agitator in accordance with clause 5 Prime Mover and Agitator) ascertained from "Prime Mover + Agi Surcharges" of the relevant "Metromix Concrete Cartage Cost Model" as at the date this Contract Determination commences to operate and then as varied from time to time in accordance with this Contract Determination.

SCHEDULE 4 - INSURANCES

The Contract Carrier must obtain the following insurance and maintain them at the Contract Carrier expense at all times:

- (a) compulsory third party insurance for the Vehicle as required by any relevant law;

- (b) comprehensive motor Vehicle insurance covering personal injury and property damage arising from the use of the Vehicle for \$10,000,000 (or such higher sum as Metromix requires from time to time) for each claim or occurrence;
- (c) public and products liability covering legal liability to any third party for personal injury and/or property damage arising from the Contract Carrier business, this Contract Determination or the Contract Carrier breach of this Contract Determination for \$20,000,000 (or such higher sum as Metromix requires from time to time) for each claim or occurrence with extension to cover:
- (d) wrongful delivery of Concrete;
- (e) workers' compensation insurance as required by any relevant law;
- (f) insurance covering the Agitator (transit mixer and barrel);
- (h) solidification of Concrete insurance; and
- (i) personal accident and sickness insurance.

SCHEDULE 5 - 6 WHEELER PRIME MOVER SPECIFICATION

1. Specification

- 1.1 Subject to this Schedule, Metromix may determine the specification from time to time.
- 1.2 If Metromix change a specification it must:
 - (a) consult with the Consultative Committee; and
 - (b) provide each Contract Carrier with a copy of the specification.
- 1.3 Unless the specification is for a New Vehicle, if Metromix change a specification and in so doing the Contract Carrier is required to retro fit their Vehicle, Metromix must:
 - (a) pay for the retro fit; or
 - (b) adjust the relevant "Metromix Concrete Cartage Cost Model" to reflect to cost of the retro fit.
- 1.4 Any adjustment arising from 1.3 shall be operative from the next review (after the adjustment) arising from Schedule 9.

SCHEDULE 6 - 8 WHEELER PRIME MOVER SPECIFICATION

1. Specification

- 1.1 Subject to this Schedule, Metromix may determine the specification from time to time.
- 1.2 If Metromix change a specification it must:
 - (a) consult with the Consultative Committee; and
 - (b) provide each Contract Carrier with a copy of the specification.
- 1.3 Unless the specification is for a New Vehicle, if Metromix change a specification and in so doing the Contract Carrier is required to retro fit their Vehicle, Metromix must:
 - (a) pay for the retro fit; or
 - (b) adjust the relevant "Metromix Concrete Cartage Cost Model" to reflect to cost of the retro fit.

- 1.4 Any adjustment arising from 1.3 shall be operative from the next review (after the adjustment) arising from Schedule 9.

SCHEDULE 7 - 6.5M3 AGITATOR SPECIFICATION

1. Specification

- 1.1 Subject to this Schedule, Metromix may determine the specification from time to time.
- 1.2 If Metromix change a specification it must:
- (a) consult with the Consultative Committee; and
 - (b) provide each Contract Carrier with a copy of the specification.
- 1.3 Unless the specification is for a New Agitator, if Metromix change a specification and in so doing the Contract Carrier is required to retro fit their Vehicle, Metromix must:
- (a) pay for the retro fit; or
 - (b) adjust the relevant "Metromix Concrete Cartage Cost Model" to reflect to cost of the retro fit.
- 1.4 Any adjustment arising from 1.3 shall be operative from the next review (after the adjustment) arising from Schedule 9.

SCHEDULE 8 - 7.5M3 AGITATOR SPECIFICATION

1. Specification

- 1.1 Subject to this Schedule, Metromix may determine the specification from time to time.
- 1.2 If Metromix change a specification it must:
- (a) consult with the Consultative Committee; and
 - (b) provide each Contract Carrier with a copy of the specification.
- 1.3 Unless the specification is for a New Agitator, if Metromix change a specification and in so doing the Contract Carrier is required to retro fit their Vehicle, Metromix must:
- (a) pay for the retro fit; or
 - (b) adjust the relevant "Metromix Concrete Cartage Cost Model" to reflect to cost of the retro fit.
- 1.4 Any adjustment arising from 1.3 shall be operative from the next review (after the adjustment) arising from Schedule 9.

SCHEDULE 9 - RISE AND FALL

1. Annual Cost Model Review

- 1.1 Review Process
- (a) Subject to clause 1.1 (d), each year, Metromix shall review the green inputs set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model".
 - (b) The review must determine the value for the green inputs as at 30 September in that year.

- (c) The value is to be determined by Metromix from enquiries of the sources and methodology used (and if not available a reasonable like source and methodology) to build the relevant "Metromix Concrete Cartage Cost Model".
- (d) Despite clause 1.1 (a), the inputs set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model" in the left hand column set out in the table below shall only be subject of review in accordance with period set out in the right hand column set out in the table below:

8 Wheeler Prime Mover RRP	The review occurring on 30 September 2018 and thereafter every 10 years.
8 Wheeler Agitator RRP	The review occurring on 30 September 2018 and thereafter every 10 years.
8 Wheeler Barrel No.1	On each occasion the fleet average volume determined utilising the same principles set out in Schedule 2 reaches the input for "Barrel Life in m3" set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model"

1.2 Consultation on Inputs

Metromix shall consult with the Consultative Committee (refer to clause 27 of this Contract Determination) about the outcome of the review before finalising the values referred to in clause 1.1.

1.3 Adjustment of Model

- (a) Having determined the values of the green inputs set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model", Metromix shall enter any changes to the values for the blue inputs (refer to clause 1.1((d)) into the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model".
- (b) Having undertaken the step in clause 1.3 (a), Metromix shall refresh the Model.

1.4 New Rates

Following the process in clause 1.3, the new cartage rates and surcharges shall be the cartage rates and surcharges ascertained from the following Sheets of the relevant "Metromix Concrete Cartage Cost Model":

- (a) RATE SCH Prime Mover & Agitator; and
- (b) Prime Mover + Agi Surcharges.

1.5 Operative Date

Any new Cartage Rates and Surcharges arising from clause 1.4, shall be operative from the first of November following the Review.

2. Periodic Fuel Review

2.1 Process

- (a) Subject to clause 2.1(b), each year Metromix shall review the red inputs for "Fuel - Exc GST, Diesel Fuel Rebate - Off Road Use, Diesel Fuel Rebate - On Public Road and Fuel Additive set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model".
- (b) The review must determine the value for the inputs referred to in clause 2.1 (a) as at:

- (i) 31 March;
- (i) 30 June;
- (ii) 30 September; and
- (iii) 31 December.

Notation: The 30 September review of fuel is undertaken in conjunction with the Annual Cost Model Review set out in clause 1 of this Schedule.

- (c) The value is to be determined by Metromix from enquiries of the sources and methodology used (and if not available a reasonable like source and methodology) to build the relevant "Metromix Concrete Cartage Cost Model".

2.2 Consultation on Inputs

Metromix shall consult with the Consultative Committee (refer to clause 27 of this Contract Determination) about the outcome of the review before finalising the values referred to in clause 2.1.

2.3 Adjustment of Model

- (a) Having determined the values for the red inputs "Fuel - Exc GST, Diesel Fuel Rebate - Off Road Use, Diesel Fuel Rebate - On Public Road and Fuel Additive set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model", Metromix shall enter those values into the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model".
- (b) Having undertaken the step in clause 2.3 (a), Metromix shall refresh the Model.

2.4 New Rates

Following the process in clause 2.3, the new cartage rates and surcharges shall be the cartage rates and surcharges ascertained from the following Sheets of the relevant "Metromix Concrete Cartage Cost Model":

- (a) RATE SCH Prime Mover & Agitator; and
- (b) Prime Mover + Agi Surcharges.

2.5 Operative Date

Any new Cartage Rates and Surcharges arising from clause 2.4 shall be operative as of:

- (a) 1 May;
- (b) 1 August;
- (c) 1 November; and
- (d) 1 February.

SCHEDULE 10 - FORMS

Such forms as Metromix reasonably determine from time to time.

SCHEDULE 11 - KATOOMBA

The following clauses of this Contract Determination will be substituted, replaced or deleted as follows:

Clause of Contract Determination	
10.3 - Mandatory Periodic Transfers	Delete Clause.
29 - Dictionary	<p>New Prime Mover Replace the definition with the following definition:</p> <p>New Prime Mover means a Prime Mover that is (a) less than five (5) years of age from the year of manufacture which will be measured from the date of manufacture as per the compliance plate affixed to the Vehicle and (b) is a 6 wheel Prime Mover.</p> <p>New Agitator Replace the definition with the following definition:</p> <p>New Agitator means a 6.5m³ Agitator that is less than five (5) years of age from the year of manufacture which will be measured from the date of manufacture as per the compliance plate affixed to the Agitator.</p> <p>Utilisation Group Delete the words, "excluding those at the Katoomba site". After the words, "a group of Concrete Trucks" insert the words, "at the Katoomba site."</p>
Schedule 1 - Cartage Rates	The Cartage Rates are ascertained from the "RATE SCH Prime Mover & Agitator" of the relevant "Metromix Concrete Cartage Cost Model" as at the date this Contract Determination commences to operate and then as varied from time to time in accordance with this Contract Determination.
Schedule 3 - Surcharges	The Surcharges are ascertained from the "Prime Mover + Agi Surcharges" of the relevant "Metromix Concrete Cartage Cost Model" as at the date this Contract Determination commences to operate and then as varied from time to time in accordance with this Contract Determination.
Schedule 9 - Rise and Fall	Schedule 12 - Katoomba Rise and Fall

SCHEDULE 12 - KATOOMBA RISE AND FALL**1. Annual Cost Model Review****1.1 Review Process**

- (a) Subject to clause 1.1 (d), each year, Metromix shall review the green inputs set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model".
- (b) The review must determine the value for the green inputs as at 30 September in that year.
- (c) The value is to be determined by Metromix from enquiries of the sources and methodology used (and if not available a reasonable like source and methodology) to build the relevant "Metromix Concrete Cartage Cost Model".

- (d) Despite clause 1.1 (a), the inputs set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model" in the left hand column set out in the table below shall only be subject of review in accordance with period set out in the right hand column set out in the table below:

6 Wheeler Prime Mover RRP	The review occurring on 30 September 2018 and thereafter every 10 years.
6 Wheeler Agitator RRP	The review occurring on 30 September 2018 and thereafter every 10 years.
6 Wheeler Barrel No.1	On each occasion the fleet average volume determined utilising the same principles set out in Schedule X reaches the input for "Barrel Life in m3" set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model".

1.2 Consultation on Inputs

Metromix shall consult with the Consultative Committee about the outcome of the review before finalising the values referred to in clause 1.1.

1.3 Adjustment of Model

- (a) Having determined the values of the green inputs set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model", Metromix shall enter those values for the blue inputs (refer to clause 1.1(d) of this schedule) into the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model".

- (b) Having undertaken the step in clause 1.3 (a), Metromix shall refresh the Model.

1.4 New Rates

Following the process in clause 1.3, the new cartage rates and surcharges shall be the cartage rates and surcharges ascertained from the "RATE SCH Prime Mover & Agitator" Sheet of the relevant "Metromix Concrete Cartage Cost Model".

1.5 Operative Date

Any new cartage rates and surcharges arising from clause 1.4, shall be operative from the first of October following the Review.

2. Periodic Fuel Review

2.1 Process

- (a) Subject to clause 2.1(b), Metromix shall review the red inputs for "Fuel - Exc GST, Diesel Fuel Rebate - Off Road Use, Diesel Fuel Rebate - On Public Road and Fuel Additive set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model".

- (b) The review must determine the value for the inputs referred to in clause 2.1 (a) as at:

- (i) 31 March;
- (ii) 30 June;
- (iii) 30 September; and
- (iv) 31 December.

Notation: The 30 September review of fuel is undertaken in conjunction with the Annual Cost Model Review set out in clause 1 of this Schedule.

- (c) The value is to be determined by Metromix from enquiries of the sources and methodology used (and if not available a reasonable like source and methodology) to build the relevant "Metromix Concrete Cartage Cost Model".

The value is to be determined by Metromix from enquiries of the sources and methodology used (and if not available a reasonable like source and methodology) to build the relevant "Metromix Concrete Cartage Cost Model".

2.2 Consultation on Inputs

Metromix shall consult with the Consultative Committee about the outcome of the review before finalising the values referred to in clause 2.1.

2.3 Adjustment of Model

- (a) Having determined the values for the red inputs "Fuel - Exc GST, Diesel Fuel Rebate - Off Road Use, Diesel Fuel Rebate - On Public Road and Fuel Additive set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model", Metromix shall enter those values into the "Key Variables & Price Sheet" of the "Metromix Concrete Cartage Cost Model".

- (b) Having undertaken the step in clause 2.3 (a), Metromix shall refresh the Model.

2.4 New Rates

Following the process in clause 2.3, the new cartage rates and surcharges shall be the cartage rates and surcharges ascertained from the following Sheets of the relevant "Metromix Concrete Cartage Cost Model":

- (a) RATE SCH Prime Mover & Agitator; and
(b) Prime Mover + Agi Surcharges.

2.5 Operative Date

Any new Cartage Rates and Surcharges arising from clause 2.4 shall be operative as of:

- (a) 1 May;
(b) 1 August;
(c) 1 November; and
(d) 1 February.

SCHEDULE 13 - NEW CONTRACT CARRIERS

1. Assignment

- 1.1 The Contract Carrier must not Assign or Dispose of, or purport to Assign or Dispose of the contractual arrangement under which they are engaged by Metromix to perform the Cartage Work or any rights under it.

2. Termination without Compensation and Notice

- 2.2 Metromix may terminate the Contract Carrier's engagement immediately and without compensation to the Contract Carrier if:
- (a) the Contract Carrier does not pay within one month of demand any monies payable to Metromix;
 - (b) Metromix gives the Contract Carrier a notice requiring repairs to the Contract Carrier's prime mover and/or agitator within a time which is reasonable having regard to the required repairs and the Contract Carrier does not comply with that notice;
 - (c) the Contract Carrier does not comply with any provision of the Contract Determination, and the Contract Carrier fails to remedy (and keep remedied) that default within fourteen (14) days (or such other period as may be agreed in writing) of written notice from Metromix requiring the default to be remedied;
 - (d) the Contract Carrier Assigns or Disposes of, or purports to Assign or Dispose of the contractual arrangement under which they are engaged by Metromix to perform the Cartage Work or any rights under it;
 - (e) except when the Contract Carrier's prime mover and/or agitator is undergoing required repairs within a time which is reasonable having regard to the required repairs (proof of such reasonableness shall lie with the Contract Carrier) the Contract Carrier's Vehicle is unavailable to perform the Cartage Work without Metromix's authorisation; or
 - (f) the Nominated Driver commits an act that were they an employee of Metromix the act would constitute serious misconduct.

3. Termination without Compensation but with Notice

- 3.1 Despite clause 2, Metromix may terminate the Contract Carrier's engagement without cause and without compensation, upon 3 months' written notice to the Contract Carrier.

Notation: In some circumstances the Transport Industry - Redundancy (State) Contract Determination might apply.

4. Termination by Contract Carrier

- 4.1 The Contract Carrier may terminate their engagement by providing Metromix with three (3) months' written notice.

5. Dictionary

- 5.1 In this Schedule 13, words have the meaning given to them in clause 29 of this Contract Determination and in this dictionary unless the context requires otherwise.

**Assign or
Dispose of** includes:

- (a) cause or permit a Change in Control of the Contract Carrier;
- (b) subcontract to another person performance of some or all of the Cartage Work;
- (c) let or part with possession of the Vehicle, except as a consequence of the purchase of a new Vehicle; or
- (d) cause or permit the Nominated Driver to be directly or indirectly employed by a person other than the Contract Carrier in relation to the Cartage Work.

Change in Control (without limitation) is taken to have occurred in relation to the Contract Carrier if without Metromix's prior written consent:

- (a) a person who is not a director of the Contract Carrier becomes such a director;
- (b) a person ceases to be, or becomes, the natural person who directly or indirectly controls the Contract Carrier;
- (c) a person ceases to hold, or to own beneficially, or becomes the holder or the beneficial owner of, a majority of the voting shares (as defined in the Corporations Law) in the Contract Carrier;
- (d) a person ceases to have, or commences to have, the capacity to appoint a majority of the directors of the Contract Carrier; or
- (e) a person who is a director of the Contract Carrier ceases to be such a director; or
- (f) in relation to any trust entitled to any income flowing from, or to any shares in, the Contract Carrier;
 - (i) a person ceases to be, or becomes, a beneficiary or discretionary object of the trust;
 - (ii) a distribution of, or an appointment of, such income under the trust is made in favour of a person who has not previously been the subject of a distribution or appointment of such income; or
 - (iii) any such share is included in property the subject of a distribution or appointment of capital from or under the trust.

Claims includes actions, causes of action, potential causes of action, investigations, prosecutions, suits, legal proceedings, disputes, differences, rights, duties, obligations, liabilities, responsibilities, accounts, interests, costs (whether or not the subject of a court order) and demands.

Confidential Information means all information and materials in any form concerning Metromix, its customers or suppliers, and includes without limitation, information regarding Metromix's business or financial activities, pricing or quoting structures or any other information which Metromix indicates to be Confidential Information, but does not include materials which are in the public domain other than by way of unauthorised disclosure.

Corporations Act means the *Corporations Act 2001* (Cth).

Insolvency Event means:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven (7) days;
- (e) a receiver or receiver and manager is appointed in respect of any property of a corporation;

- (f) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members, or a moratorium involving any of them;
- (i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven (7) days or a person presents a petition against himself or herself;
- (j) a person presents a declaration of intention under section 54A of the *Bankruptcy Act* 1966 (Cth); or
- (k) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

SCHEDULE 14 - CONTRACT CARRIERS AND THIER PERMITTED ASSIGNEES WHO COMMENCED BEFORE 1 OCTOBER 2017

1. Assignment

- 1.1 The Contract Carrier must not Assign or Dispose of, or purport to Assign or Dispose of the contractual arrangement under which they are engaged by Metromix to perform the Cartage Work or any rights under it except in accordance with Annexure A to this Schedule 14.

2. Termination without Compensation and Notice

- 2.1 Metromix may terminate the Contract Carrier's engagement immediately and without compensation to the Contract Carrier if:
- (a) the Contract Carrier does not pay within one month of demand any monies payable to Metromix;
 - (b) Metromix gives the Contract Carrier a notice requiring repairs to the Contract Carrier's prime mover and/or agitator within a time which is reasonable having regard to the required repairs and the Contract Carrier does not comply with that notice;
 - (c) the Contract Carrier does not comply with any provision of the Contract Determination, and the Contract Carrier fails to remedy (and keep remedied) that default within fourteen (14) days (or such other period as may be agreed in writing) of written notice from Metromix requiring the default to be remedied;
 - (d) the Contract Carrier Assigns or Disposes of, or purports to Assign or Dispose of the contractual arrangement under which they are engaged by Metromix to perform the Cartage Work or any rights under it except in accordance with Annexure A to this Schedule 14;
 - (e) except when the Contract Carrier's prime mover and/or agitator is undergoing required repairs within a time which is reasonable having regard to the required repairs (proof of such reasonableness shall lie with the Contract Carrier) the Contract Carrier's Vehicle is unavailable to perform the Cartage Work without Metromix's authorisation; or
 - (f) the Nominated Driver commits an act that were they an employee of Metromix the act would constitute serious misconduct.

3. Termination with Compensation and Notice

- 3.1 Despite clause 2, Metromix may terminate the Contract Carrier's engagement without cause by providing:
- (a) 3 months' written notice to the Contract Carrier; and
 - (b) a payment (if any is required) of the Termination Payment set out in Annexure C to this Schedule 14.

4. Termination by Contract Carrier

- 4.1 The Contract Carrier may terminate their engagement by providing Metromix with three (3) months' written notice.

5. Dictionary

- 5.1 In this Schedule 14, words have the meaning given to them in clause 29 of this Contract Determination and in this dictionary unless the context requires otherwise.

**Assign or
Dispose of** includes:

- (a) cause or permit a Change in Control of the Contract Carrier;
- (b) subcontract to another person performance of some or all of the Cartage Work;
- (c) let or part with possession of the Vehicle, except as a consequence of the purchase of a new Vehicle; or
- (d) cause or permit the Nominated Driver to be directly or indirectly employed by a person other than the Contract Carrier in relation to the Cartage Work.

Change in Control (without limitation) is taken to have occurred in relation to the Contract Carrier if without Metromix's prior written consent:

- (a) a person who is not a director of the Contract Carrier becomes such a director;
- (b) a person ceases to be, or becomes, the natural person who directly or indirectly controls the Contract Carrier;
- (c) a person ceases to hold, or to own beneficially, or becomes the holder or the beneficial owner of, a majority of the voting shares (as defined in the Corporations Law) in the Contract Carrier;
- (d) a person ceases to have, or commences to have, the capacity to appoint a majority of the directors of the Contract Carrier; or
- (e) a person who is a director of the Contract Carrier ceases to be such a director; or
- (f) in relation to any trust entitled to any income flowing from, or to any shares in, the Contract Carrier:
 - (i) a person ceases to be, or becomes, a beneficiary or discretionary object of the trust;
 - (ii) a distribution of, or an appointment of, such income under the trust is made in favour of a person who has not previously been the subject of a distribution or appointment of such income; or

- (iii) any such share is included in property the subject of a distribution or appointment of capital from or under the trust.

Claims includes actions, causes of action, potential causes of action, investigations, prosecutions, suits, legal proceedings, disputes, differences, rights, duties, obligations, liabilities, responsibilities, accounts, interests, costs (whether or not the subject of a court order) and demands.

Confidential Information means all information and materials in any form concerning Metromix, its customers or suppliers, and includes without limitation, information regarding Metromix's business or financial activities, pricing or quoting structures or any other information which Metromix indicates to be Confidential Information, but does not include materials which are in the public domain other than by way of unauthorised disclosure.

Corporations Act means the *Corporations Act 2001* (Cth).

Insolvency Event means:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven (7) days;
- (e) a receiver or receiver and manager is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members, or a moratorium involving any of them;
- (i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven (7) days or a person presents a petition against himself or herself;
- (j) a person presents a declaration of intention under section 54A of the *Bankruptcy Act 1966* (Cth);
or
- (k) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

ANNEXURE A - ASSIGNMENT

1. Entitlement

Subject to clause 3 of this Schedule 14, the Contract Carrier may assign the contractual arrangement under which they are engaged by Metromix to perform the Cartage Work to a company:

- (a) which provides a driver whom:
 - (i) possesses an appropriate current driver's licence; and
 - (ii) before commencing work, satisfactorily undergoes Metromix's then current pre-engagement criteria and attends and satisfactorily completes any training program (to be held at Metromix's closest available facility) relevant to the performance of the Cartage Work that Metromix reasonably requires; and
- (b) proved by the Contract Carrier to Metromix's reasonable satisfaction that they have a prime mover suitable for the Cartage Work without any modifications or rebuilding (unless those modifications or rebuilding are carried out at the Contract Carrier's expense); and
- (c) approved by Metromix in writing (such approval not to be unreasonably withheld) after and only after:
 - (i) Metromix has interviewed the principal(s) of the said company and explained:
 - A the contents and operation of our Maxi Cartage Contract;
 - B the content and meaning of the Deed of Assignment (Annexure B); and
 - C generally the operation of Metromix's business as it relates to Contract Carriers; and
 - (ii) the company has confirmed in writing which if require by Metromix shall be in a Statutory Declaration) to Metromix's reasonable satisfaction its understanding of the representations made at the interview; and
 - (iii) executed a Certificate of Financial Advice and a Certificate of Legal Advice.

2. Deed of Assignment

The approved assignee shall execute (no sooner than seven days and no later than 21 days after being approved in writing in accordance with clause 1(c) of this Annexure) a Deed of Assignment in the form (and only in the form) set out Annexure B to Schedule 14.

3. Notice to Assign and First Option

- (a) Whenever the Contract Carrier intends to assign the contractual arrangement under which they are engaged by Metromix to perform the Cartage Work in accordance with this Annexure, they must first notify Metromix in writing of their intention.
- (b) Despite anything else in this Annexure A (or Schedule 14) Metromix and the Contract Carrier may agree on an arrangement (on such terms as the parties in their absolute discretion determine) to terminate the contractual arrangement rather than proceed with any assignment.

ANNEXURE B - DEED OF ASSIGNMENT

Deed of Assignment

DEED OF ASSIGNMENT made the _____ of _____ 20__ in _____
(the "Deed of Assignment")

BETWEEN:

- (1) METROMIX PTY LIMITED of, NSW ("Metromix"); and
- (2) [insert Company executing this Deed of Assignment as an Assignor Contract Carrier] (the "Outgoing Contract Carrier"); and
- (3) [insert Company executing this Deed as an Assignee Contract Carrier] (the "Incoming Contract Carrier").

RECITALS:

- A. Metromix carries on the business of the manufacture and sale of Concrete in New South Wales.
- B. The Outgoing Contract Carrier desires to assign to the Incoming Contract Carrier the Maxi Cartage Contract and all its rights and other obligations under it.

THE PARTIES AGREE AND DECLARE as follows:

1. Interpretation

- 1.1 In this Deed of Assignment, expressions used or defined in clause 29 and Schedule 14 of the Contract Determination have the same meaning in this Deed and in addition:

"Assignment Date" means the day upon which this Deed of Assignment is executed.

"Maxi Cartage Contract" means the contractual arrangement under which the Outgoing Contract Carrier is engaged by Metromix to perform the Cartage Work a true copy of which is annexed to this Deed of Assignment.

2. Assignment

- 2.1 With effect from the Assignment Date:
 - (a) Metromix engages the Incoming Contract Carrier as a Contract Carrier to perform the Cartage Work instead of the Outgoing Contract Carrier;
 - (b) the Incoming Contract Carrier agrees with Metromix to perform the Cartage Work on the terms and conditions of the Maxi Cartage Contract; and
 - (c) the Incoming Contract Carrier becomes a party to the Maxi Cartage Contract.

3. Release

- 3.1 Metromix and the Outgoing Contract Carrier confirm their obligations to make payments arising from the performance of their obligations under the Maxi Cartage Contract and/or Contract Determination up to and including the Assignment Date which they now agree to be set out in the Schedule attached to this Deed of Assignment.

Schedule - Payment Details

Notation: In accordance with clause 3.1, insert here any outstanding payments to be made to the Outgoing Contract Carrier

Annexure - True Copy of the Maxi Cartage Contract Being Assigned

Attach True Copy

ANNEXURE C - TERMINATION PAYMENT**1. Termination Payment**

1.1 The Termination Payment is an amount calculated from the formula below less:

- (a) any amount that Metromix is required to pay the Contractor in accordance with the Transport Industry Redundancy (State) Contract Determination as varied or replaced from time to time; and/or
- (b) any other termination or severance payment required to be paid to the Contractor in accordance with another contract determination made by the Industrial Relations Commission of NSW from time to time.

1.2 The formula is:

- (a) During the ten year period from the day upon which this Contract Determination commenced operation:

\$15,000 or, if greater, the amount calculated as:

$\$140,000 \times (A/B)$

A = The number of whole months between the termination date and the day that falls 10 years after the day upon which this Contract Determination commenced operation.

B = 120.

- (b) After the ten year period from the day upon which this Contract Determination commenced operation:

\$15,000

SCHEDULE 15 - EXCEPTION LIST**1. New Prime Mover and Agitator**

1.1 List

For the purpose of clause 5.4(a), the Contract Carriers identified in the table below are not required to introduce a New Prime Mover and Agitator within 18 months of the commencement of this Contract Determination but are instead required to do so by the date set out in the table.

Contract Carrier	Prime Mover Configuration	Date for the introduction of the New Prime Mover and Agitator
Polecrete Pty Ltd	6 wheeler	1 September 2025
Darvic Holdings Pty Ltd	8 wheeler	1 September 2022
Arawood Pty Ltd	8 wheeler	1 September 2022
Perigo Cartage Pty Ltd	6 wheeler	1 September 2022

Peak Empire Pty Ltd	8 wheeler	1 July 2019
Fraters Transport Pty Ltd	8 wheeler	1 July 2019
AK Koleski Pty Ltd	6 wheeler	1 December 2020
Eastern Suburbs Sheetmetal Pty Ltd	6 wheeler	1 December 2019
N J Tait Pty Ltd	6 wheeler	1 October 2022
ABP Services Pty Ltd	6 wheeler	1 September 2020
Tony Kelly Pty Ltd	6 wheeler	1 September 2020

2. Cromer Plant

2.1 Plant Upgrade Exception

A Contract Carrier whose Nominated Plant is the Cromer Plant:

- (a) must comply with clause 5.2 if the Cromer Plant upgrade is completed within the 12 month period following the commencement of this Contract Determination; or
- (b) if the Cromer Plant upgrade is not completed in this period the Contract Carrier must:
 - (i) within six months of the Cromer Plant upgrade being completed, supply a New Prime Mover and a New Agitator which must:
 - A meet the Prime Mover and Agitator specifications;
 - B be accompanied with a weighbridge certificate (obtained at the Contract Carrier's own expense); and
 - C be approved in writing by Metromix.

SCHEDULE 16 - EMBARGO PLANT LIST

1. Embargo Plants

1.1 List

The Plants listed in the table below are the Plants for the purposes of clause 25.3 (a).

Plant Name	Plant Address
Cromer	158 South Creek Rd Cromer
Seven Hills	34 Powers Rd Seven Hills
Silverwater	24 Stanley St Silverwater
Katoomba	19 Twynam St Katoomba

P. J. NEWALL, Commissioner

Printed by the authority of the Industrial Registrar.

METROMIX PTY LIMITED MINI CONCRETE CONTRACT DETERMINATION

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Metromix Pty Ltd.

(Case No. 10996 of 2017)

Before Commissioner Newall

6 December 2017

CONTRACT DETERMINATION

Clause No.	Subject Matter
1.	AREA INCIDENCE AND DURATION
1.1	Application
1.2	Stand Alone
1.3	Commencement and Nominal Term
2.	CARTAGE WORK AND RATES
2.1	General
2.2	Payment
2.3	GST
2.4	Method of Payment
2.5	Account Discrepancies - Potential Underpayment
2.6	Account Discrepancies - Potential Overpayment
2.7	Review of Rates
3.	SAFETY NET
3.1	Entitlement
3.2	Calculation
3.3	Working Week for Purpose of Calculation ⁹
4.	SURCHARGES
4.1	Standby Time outside Normal Trading Hours
4.2	Standby Time within Normal Trading Hours
4.3	Delivery within Yard
4.4	Living Away from Home Allowance
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5.4	Agitator Repair or Removal

- 5.5 Registration
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- 5.8 Cease Using Prime Mover
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- 5.11 Maximum Age for a Prime Mover

- 6. COMMUNICATION EQUIPMENT
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 - 6.3 Communication Equipment - Custody
 - 6.4 Communication Equipment - Damage or Loss
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- 7. NOMINATED DRIVER
 - 7.1 Nominated Plant
 - 7.2 No One else to Drive Vehicle
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 - 7.11 Leave

- 8. USE OF THE VEHICLE
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 - 13.1 The Contract Carrier must Supervise its Personnel

- 14. TRAINING
 - 14.1 Cost and Amount
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- 21. CONTRACTOR FLEET SIZE
 - 21.1 Right to Increase Contractor Numbers

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 - Annexure A - Assignment
 - Annexure B - Deed of Assignment
 - Annexure C - Termination Payment
 - Schedule 12 - Embargo Plant List

1. Area Incidence and Duration

1.1 Application

This Contract Determination will operate with respect to contracts of carriage between Metromix and its Contract Carriers operating a Mini Vehicle engaged at Concrete Plants in New South Wales.

1.2 Stand Alone

This Contract Determination applies to the exclusion of any other Contract Determination whether made before or after this Contract Determination is made.

1.3 Commencement and Nominal Term

This Contract Determination:

- (a) rescinds and replaces the Transport Industry - Metromix Concrete Haulage Contract Determination published 8 April 2005 (349 I.G. 1025); and
- (b) operates in accordance with its terms from 1 January 2018 and has a nominal term of three (3) years.

Notation: This Contract Determination has been negotiated to be read alongside a Mini Cartage Contract.

Notation: If required by the Union, the parties to this Contract Determination shall meet every 6 months during the nominal term to discuss any issues associated with the implementation of this Contract Determination.

Should any issue arise that requires the assistance of the NSW Industrial Relations Commission, either party may apply to the NSW Industrial Relations Commission as they see fit.

2. Cartage Work and Rates

2.1 General

The Contract Carrier shall perform the Cartage Work and do everything connected with it:

- (a) in accordance with this Contract Determination;
- (b) with due care and skill and in a proper, co-operative and professional manner;
- (c) safely, and in accordance with Metromix's safety requirements;
- (d) in accordance with the day to day operational directions given by Metromix;
- (e) in accordance with any direction, policy, procedure or specifications provided by Metromix;
- (f) using best efforts to promote Metromix's business;
- (g) in good faith and without jeopardising or damaging Metromix's business; and
- (h) in compliance with all relevant laws.

2.2 Payment

Subject to this Contract Determination, Metromix must:

- (a) pay the Contract Carrier by the 10th day of the next month for the Cartage Work performed in the month in accordance with the Cartage Rates set out in Schedule 1 and the Surcharges set out in Schedule 3; and
- (b) provide the Contract Carrier with a statement itemising the payments made to the Contract Carrier.

2.3 GST

- (a) Metromix will issue recipient created tax invoices in respect of the Cartage Work.
- (b) The Contract Carrier must not issue Metromix with tax invoices in respect of the Cartage Work.
- (c) The Contract Carrier must be registered for GST and must notify Metromix of the date of the effect of any cancellation of GST registration.
- (d) All amounts referred to in this Contract Determination are exclusive of GST unless expressly stated otherwise.

2.4 Method of Payment

Metromix will pay the Contract Carrier by electronic funds transfer to the Contract Carrier's nominated account from a recognised financial institution.

2.5 Account Discrepancies - Potential Underpayment

- (a) Where the Contract Carrier forms the view that the calculation of payments paid to the Contract Carrier for an Accounting Period contains an error, the Contract Carrier must advise Metromix in accordance with clause 2.5(b) of the nature of the error and the value of the error within thirty (30) days of receipt of the payment.
- (b) The Contract Carrier must submit details of the alleged error on a Cartage Adjustment Request Form (CAR).
- (c) If the alleged error relates to missing payments such as but not limited to, Returned Concrete and Waiting Time, the Contract Carrier must provide a copy of any relevant delivery docket and the relevant docket(s) must be properly signed and completed.
- (d) Metromix and the Contract Carrier must use their best endeavours to resolve the issue within thirty (30) days from the date of notification of the alleged error.
- (e) If Metromix and the Contract Carrier agree that an additional payment is due to the Contract Carrier, that payment will be made in the next Accounting Period immediately following the date on which the error is rectified.
- (f) Despite clause 2.5(e) if the additional payment is in excess of \$250.00, Metromix will endeavour to pay the Contract Carrier within five (5) working days from the date Metromix and the Contract Carrier agree that the additional payment is due.

2.6 Account Discrepancies - Potential Overpayment

- (a) Where Metromix reasonably determines that the Contract Carrier has been overpaid, the amount of overpayment will be deducted from the next payment due for the Accounting Period to the Contract Carrier.

- (b) Where the Contract Carrier's Mini Cartage Contract has been terminated, the Contract Carrier must reimburse Metromix within thirty (30) days of the date of notification of the overpayment.

2.7 Review of Rates

Metromix must review the Cartage Rates and Surcharges in accordance with Schedule 2 and Schedule 8.

3. Safety Net

3.1 Entitlement

Should a Contract Carrier's earnings be less than the Annual Earnings Safety Net payment at the completion of the last Quarter of the calendar year, Metromix must pay the Contract Carrier the difference between the Contract Carriers actual earnings and the Annual Earnings Safety Net.

3.2 Calculation

The Annual Earnings Safety Net payment is specified in Schedule 1 and is subject to variation in accordance with Schedule 2 and 8.

3.3 Working Week for Purpose of Calculation

- (a) The normal working week for the purpose of calculation of Annual Earnings Safety Net payment is six (6) consecutive days, Monday to Saturday inclusive, to a total of 268 days per annum. Any Annual Earnings Safety Net payment payable to the Contract Carrier will be reduced by 268ths per day for each day the Contract Carrier is deemed to be unavailable. The Contract Carrier will be deemed to be unavailable if:
 - (i) the Contract Carrier fails to provide services to Metromix as obliged by this Contract Determination;
 - (ii) the Contract Carrier is in persistent breach of an obligation under this Contract Determination which the Contract Carrier has previously been notified of as a breach by Metromix; or
 - (iii) the Contract Carrier is not having its Vehicle loaded with Concrete by Metromix for any of the reasons referred to in any of clauses 5.8, 8.3(d), 11.4 or 15.1.
- (b) Unavailability will not arise if:
 - (i) the Contract Carrier has previously been notified by Metromix that the Contract Carrier is not required to perform Cartage Work on the relevant day;
 - (ii) Force Majeure has occurred; or
 - (iii) The Nominated Driver is otherwise on a period of Authorised Absence.

4. Surcharges

4.1 Standby Time outside Normal Trading Hours

- (a) Subject to clause 4.1(b), the Contract Carrier is entitled to a standby time payment at the rate specified in Schedule 3 where Metromix requests the Contract Carrier to remain at a Plant for the purpose of taking a delivery to a customer at a time outside Metromix's Normal Trading Hours. The Contract Carrier will be entitled to the standby time payment whether or not the delivery is ultimately required.
- (b) The Contract Carrier will not be entitled to a standby time payment if the Contract Carrier is required to wait for less than one (1) hour outside Metromix's Normal Trading Hours.

4.2 Standby Time within Normal Trading Hours

- (a) Subject to clause 4.2(b), the Contract Carrier is entitled to a standby time payment at the rate specified in Schedule 3.
- (b) The Contract Carrier will not be entitled to a standby time payment if the Contract Carrier is required to wait for less than one (1) hour.

4.3 Delivery within Yard

Where a Contract Carrier is required to cart Concrete or materials other than Concrete within the confines of a Plant owned and/or operated by Metromix then the Contract Carrier must be paid the Cartage Rate specified in Schedule 1 for the load size, calculated with a maximum distance of three (3) kilometres.

4.4 Living Away from Home Allowance

Where a Contract Carrier is required by Metromix to work from a location, which precludes the Driver from returning to his normal place of residence:

- (a) Metromix will pay to the Contract Carrier, the Driver's reasonable costs for accommodation, breakfast and dinner as nominated by Metromix for each night required; and
- (b) the period shall be no more than one (1) week or such longer period as may be agreed.

4.5 Road and Bridge Tolls

- (a) Where payment of a road or bridge toll is required for either or both the outward and return journeys, Metromix will issue the Contract Carrier with an electronic tag or equivalent cash money or a toll card.
- (b) Any electronic tag or equivalent cash money or a toll card issued by Metromix to the Contract Carrier, remains the property of Metromix and must only be used by the Contract Carrier whilst performing the Cartage work.
- (c) Any electronic tag or equivalent cash money or a toll card issued must be returned to Metromix on termination or expiration of the Contract Carrier's Mini Cartage Contract (or earlier upon request by Metromix).

4.6 Unloaded Kilometres

- (a) Unloaded kilometres travelled by the Contract Carrier's Vehicle at Metromix's request to relocate from the one Plant to another Plant to load will attract a payment at the rate specified in Schedule 3. The forward and return journeys are to be considered as separate journeys.
- (b) In the case of a journey where a load has been dispatched to a customer's site and the Contract Carrier is directed to return to another Plant to load, the Contract Carrier will only be entitled to a payment at the rate specified in Schedule 3 for the kilometres in excess of the kilometres that are already paid for the delivery of the Concrete to the original customer's site.

4.7 Multiple Discharge Points

- (a) Should the Contract Carrier make multiple discharge points for the same customer the Contract Carrier will be paid a Cartage Rate for the total distance travelled from the Plant where loaded to the final discharge point for that customer.
- (b) Should the Contract Carrier make deliveries to multiple customers from one (1) load of Concrete the Contract Carrier will be issued a separated delivery docket for each customer.

4.8 Diverted Loads

- (a) Where a load is diverted on route to a customer's site, the Contract Carrier will be paid a Cartage Rate covering the total distance travelled from initial departure from the Plant where loaded, to the final delivery point.
- (b) Where a load is diverted by having the Vehicle return to a Plant before being dispatched to another delivery site, the Contract Carrier will be paid a Cartage Rate covering the total distance travelled from initial departure from the Plant where loaded, to the final delivery point.
- (c) Where a load is diverted on route to an external dump site the Contract Carrier will be paid a Cartage Rate covering the total distance from the initial departure from the Plant where loaded to the dump site.

4.9 Returned and Dumped Concrete

- (a) All Returned Concrete remains the property of Metromix. The Contract Carrier is to contact Dispatch for instructions as to where Returned Concrete is to be taken prior to or immediately after leaving a customer's site.
- (b) Where Returned Concrete less than one half (0.5) cubic meter is directed to another Plant or customer's site or an external dump site, the Contract Carrier will be paid the Kilometre Running Rate for the returned quantity designated on the delivery docket for the distance travelled in excess of the kilometres already paid for the delivery.
- (c) Where Returned Concrete of one half (0.5) cubic meter or more is directed to another Plant or customer's site or an external dump site by Metromix the Contract Carrier will be paid the Kilometre Running Rate for the returned quantity designated on the delivery docket for the distance travelled in addition to the distance already paid for the delivery.
- (d) Where Returned Concrete of one half (0.5) cubic meter or more is returned to the plant at which the Concrete was batched the Contract Carrier will be paid the Kilometre Running Rate for the returned quantity designated on the delivery docket for the kilometres already paid for the delivery.
- (e) No payment will be made to the Contract Carrier when Returned Concrete is dumped within one (1) kilometre of the delivery site at which the Concrete became Returned Concrete or Returned Concrete less than one half (0.5) cubic meter is returned to the Plant at which the Concrete was batched.
- (f) If the Contract Carrier is instructed by Metromix to return to a Plant with Returned Concrete and then after returning to the Plant the Contract Carrier is directed by Metromix to an external dump site the Contract Carrier will be paid the Kilometre Running Rate for the returned quantity designated on the delivery docket for the distance travelled in addition to the distance already paid for the delivery.
- (g) Metromix will meet all dump costs for Concrete, which is dumped at Metromix's direction.
- (h) For the purpose of this clause 4.9(b),(c)(d) and (f) a minimum quantity of one (1) cubic meter is payable.
- (i) The Contract Carrier must be paid the Waiting Time rate in Schedule 3 for time spent onsite at an external dump site in excess of the time that must be allowed for the delivery of that load. Time spent travelling to and from an external dump site must not be counted as time spent onsite.
- (j) The Contract Carrier must ensure that all workings for Returned Concrete:
 - (i) are completed in full in the appropriate section of the delivery docket; and

- (ii) appear on all copies.
- (k) Where a customer's signature and printed name is not obtainable, the Contract Carrier must contact Dispatch prior to or immediately after leaving the customer's site to obtain a control number and this must be written in the appropriate section of the docket and appear on all copies.
- (l) Despite this clause 4.9, a Contract Carrier shall not be paid for Returned Concrete if a Contract Carrier fails to adhere to clause 4.9(j) or 4.9(k) or clause 11.15(a) to 11.15(e).

4.10 Delivery outside Normal Hours

Where a load is ticketed outside Metromix's Normal Trading Hours then the Contract Carrier will be entitled to the relevant Surcharge, in addition to the normal Cartage Rate payable to the Contract Carrier, as specified in Schedule 3 which must be paid per load:

- (a) Surcharge 2
 - (i) between 5pm - 6am Monday - Friday.
- (b) Surcharge 3
 - (i) between 1pm Saturday through to 6am Monday; and
 - (ii) Night Shift.
- (c) Surcharge 4
 - (i) Public Holidays.

4.11 Call Back

- (a) A Contract Carrier having finished performing Cartage Work and having left the Plant and then called back to perform Cartage Work outside Metromix's Normal Trading Hours is entitled to a call back fee as specified in Schedule 3.
- (b) The call back fee surcharge shall not apply if the rostered work is cancelled no later than 1.00pm on the day (or the day prior) it is to commence.

4.12 Waiting Time

- (a) Subject to this clause, Metromix shall pay a Contract Carrier Waiting Time in accordance with Schedule 3 for time spent on-site to unload (calculated from the time of arrival on-site to the time the Vehicle finishes discharging the entire load or is released by the customer) in excess of the period calculated as 7 minutes per cubic meter or part thereof or a minimum of 20 minutes whichever is the greater.
- (b) The Contract Carrier must ensure that all workings for Waiting Time:
 - (i) are completed in full in the appropriate section of the delivery docket; and
 - (ii) appear on all copies.
- (c) Where a customer's signature and printed name is not obtainable the Contract Carrier must contact Dispatch prior to or immediately after leaving the customer's site to obtain a control number and this must be written in the appropriate section of the docket and appear on all copies.
- (d) Despite clause 4.12(a), a Contract Carrier shall not be paid for Waiting Time if a Contract Carrier fails to adhere to clause 4.12(b) or 4.12(c) or clause 11.15(a) to 11.15(e).

- (e) All Waiting Time charged by the Contract Carrier will be subject to verification by Metromix via the use of the GPS status data or similar technology transmitted by the Contract Carrier's Vehicle. Should any discrepancies arise the Contract Carrier will only be entitled to a Waiting Time payment for excess time onsite in accordance with clause 4.12(a) as verified by GPS status data or similar technology.

4.13 Transport Materials other than Concrete

Where the Contract Carrier's Vehicle is required to cart materials other than Concrete the Cartage Rates as outlined in Schedule 1 will apply. The equivalent Concrete volumes will be converted by using the following conversion rates:

- (a) Aggregate - 1.5 tonne = 1m³ Concrete
- (b) Sand - 1.7 tonne = 1m³ Concrete
- (c) Slurry/Water - 1000 litres = 1m³ Concrete

4.14 Night Shift, Sundays and Public Holidays

- (a) Subject to clause 4.14(b) when a Contract Carrier is rostered to work a Night Shift, Sunday or Public Holiday the Contract Carrier must be paid no less than the Night Shift, Sunday and Public Holiday Minimum Surcharge in Schedule 3 for the Night Shift, Sunday or Public Holiday irrespective of the Cartage Work performed.
- (b) The Night Shift, Sunday and Public Holiday Minimum Surcharge will not apply if:
 - (i) the Night, Sunday or Public Holiday Shift is cancelled the day prior to its commencement; or
 - (ii) the Night Shift is cancelled by 1:00pm on the day it is to commence.
- (c) A Contract Carrier shall only receive one Minimum Surcharge for any continuous period of work or shift.

5. Prime Mover and Agitator

5.1 Supply and Suitability

Subject to clause 5.2:

- (a) the Contract Carrier must supply the Prime Mover which must be approved in writing by Metromix; and
- (b) Metromix will continue to provide a serviceable Agitator for use with the Prime Mover.

5.2 Supply and Suitability of New Prime Mover and New Agitator

- (a) Subject to clause 5.2(b), the Contract Carrier must:
 - (i) (if their Prime Mover is more than 10 years of age) supply a New Prime Mover no later than 18 months after the commencement of this Contract Determination; or
 - (ii) (if their Prime Mover is 10 years of age or less) supply a New Prime Mover no later than 18 months after their existing Prime Mover reaches 10 years of age; and
 - (iii) the age of a Prime Mover must be evidenced from the manufacturers plate.

- (b) Any New Prime Mover must:
 - (i) meet the Prime Mover specifications; and
 - (ii) be of the same configuration as the Contract Carriers current vehicle or such configuration as mutually agreed by both parties;
 - (iii) subject to clause 5.2(b)(ii) any Contract Carrier who currently has a 1.0m³ Prime Mover must upgrade to a minimum 2.0m³ Prime Mover or such configuration as mutually agreed by both parties;
 - (iv) be accompanied with a weighbridge certificate (obtained at the Contract Carrier's own expense); and
 - (v) be approved in writing by Metromix.

5.3 Metromix Discretion to Allow Extension of Time

Metromix (acting reasonably) may allow a Contract Carrier a period in excess of 18 months to provide a New Prime Mover if there are exceptional unforeseen circumstances.

5.4 Agitator Repair or Removal

- (a) Metromix must pay the Contract Carrier:
 - (i) at the rate specified in Schedule 3 for any Unloaded Kilometres travelled to a location (as directed by Metromix) for the installation, repair or removal of the Agitator;
 - (ii) a standby payment at the rate specified in Schedule 3 for time spent in excess of 1 hour whilst awaiting installation, repair or removal of the Agitator; and
 - (iii) a Demurrage payment at the rate specified in Schedule 3 should any repairs, installation or removal exceed 5.5 working days; and
- (b) Metromix must:
 - (i) pay for any expenses associated with fitting or removing the Agitator to the Contract Carriers Prime Mover; and
 - (ii) at its own expense, mechanically maintain and repair the Agitator; and
 - (iii) at its own expense, de-dag the Agitator drum once a year.
- (c) The Contract Carrier must:
 - (i) assume full responsibility for the safe custody of the Agitator; and
 - (ii) not add to, alter or modify the Agitator; and
 - (iii) grease and lubricate the Agitator (grease and lubricants must be supplied by Metromix); and
 - (iv) thoroughly wash out the Agitator drum daily or as directed by Metromix; and
 - (v) with exception to clause 5.4 (b)(iii), pay for any additional de-dagging (except for extenuating circumstances); and
 - (vi) pay for any installation, removal or repair to the Agitator because of damage that the Contract Carrier is at fault.

5.5 Registration

The Contract Carrier must at their own expense register the Contract Carrier's Prime Mover.

5.6 Running Expenses

The Contract Carrier must pay all of the running costs associated with the Contract Carrier's Prime Mover.

5.7 Maintenance and Repair

The Contract Carrier must mechanically maintain and repair the Contract Carrier's Prime Mover at its own expense and ensure the Vehicle is returned to service to perform Cartage Work as soon as practicable.

5.8 Cease using Prime Mover

The Contract Carrier must stop using the Contract Carrier's Prime Mover (or any part of it) and/or Agitator (or any part of it) if Metromix so directs because in Metromix's opinion that is appropriate pending the carrying out of any repairs, maintenance, inspection or testing.

5.9 Painting and Logo

- (a) The Contract Carrier must paint the Contract Carrier's New Prime Mover in colours approved by Metromix in a quality of paint to Metromix's specification.
- (b) The Contract Carrier must reasonably maintain the colours and paints as specified by Metromix in a satisfactory condition.
- (c) Subject to the Contract Carrier complying with clause 5.9 (b), if Metromix requires the Prime Mover and/or Agitator to be painted, Metromix will:
 - (i) undertake the painting at its expense;
 - (ii) if Metromix determines to remove the Agitator for repairs or replacement, Metromix must inspect the Prime Mover chassis rails and if Metromix deems it necessary sandblast and paint the Contract Carriers chassis rails at Metromix's expense; and
 - (iii) pay the Contract Carrier a Demurrage payment at the rate specified in Schedule 3 for the period during which the Prime Mover is unavailable to perform the Cartage Work unless Metromix provide the Contract Carrier a reasonable replacement Prime Mover at no cost.
- (d) The Contract Carrier shall properly maintain Metromix's mud flaps and logos on the Contract Carrier's Prime Mover.
- (e) Metromix must provide, install and remove, at its expense, all mud flaps and logos.

5.10 Mass Management

- (a) Subject to clause 5.10(c), the Contract Carrier must meet any relevant regulatory or maintenance requirements to achieve the maximum GVM legally allowed for their Vehicle.
- (b) Subject to clause 5.10(c) and 5.10(d), the Contract Carrier must do all things required and necessary to be accredited and remain accredited under Metromix's NHVAS mass management scheme (or any scheme replacing this).
- (c) Metromix may alter the requirements set out in clause 5.10 (a) and/or (b) above by direction to the Contract Carrier if any State or national guideline, regulation or law change and affect the GVM or carrying capacity of the Contract Carrier's Vehicle.

- (d) Metromix, at its expense will register the Contract Carrier's Vehicle under Metromix's NHVAS mass management scheme.

5.11 Maximum Age for a Prime Mover

Despite anything else in this Contract Determination, at any time 18 months after the commencement of this Contract Determination, or such longer period as is determined in accordance with clause 5.3 above, a Contract Carrier's Prime Mover must not be older than 12 years of age (evidenced from the manufacturer's plate).

6. Communication Equipment

6.1 Provision and Operation

Metromix must supply, install and maintain in the Contract Carrier's Prime Mover the Communication Equipment required by Metromix and the Contract Carrier must operate it efficiently.

6.2 Payment

Unless the installation, repair or removal arises because of damage or theft that the Contract Carrier is at fault for, Metromix must pay the Contract Carrier:

- (a) at the rate specified in Schedule 3 for any Unloaded Kilometres travelled to a location (as directed by Metromix) for the installation, repair or removal of the Communication Equipment; and
- (b) at the rate specified in Schedule 3 for standby time for time spent in excess of 1 hour whilst awaiting installation, repair or removal of the Communication Equipment.

6.3 Communication Equipment - Custody

The Contract Carrier has full responsibility for the safe custody of the Communication Equipment. The Contract Carrier must:

- (a) not add to, alter, modify, or disconnect the Communication Equipment; and
- (b) not, without the prior written permission of Metromix, use the Communication Equipment for anything but the Cartage Work.

6.4 Communication Equipment - Damage or Loss

Except in circumstances where the Contract Carrier's Vehicle is at a Metromix Plant or a location approved by Metromix, where the Communication Equipment is damaged or lost and the Contract Carrier is at fault for the damage or loss, the Contract Carrier must:

- (a) repair at the Contract Carrier's cost any damage to the Communication Equipment; and
- (b) replace at the Contract Carrier's cost lost Communication Equipment.

6.5 Cease Using Communication Equipment

The Contract Carrier must stop using the Communication Equipment (or any part of it) if Metromix so directs because in Metromix's opinion that is appropriate pending the carrying out of any repairs, maintenance, inspection or testing.

6.6 Return of Communication Equipment

Immediately upon the ending or termination of a Contract Carrier's Mini Cartage Contract they must return the Communication Equipment to Metromix in good order and condition, fair wear and tear only

excepted and Metromix will make good any damage caused by the instillation or removal of the Communication Equipment.

7. Nominated Driver

7.1 Nominated Plant

- (a) A Contract Carrier shall normally work from a Nominated Plant provided that Metromix may change a Contract Carrier's Nominated Plant to meet its business needs by giving them 14 days notice of the change having:
 - (i) first attempted to meet those needs on a voluntary basis; and then
 - (ii) changed the Nominated Plant of all other Contract Carrier's (in a Contract Carrier's Nominated Plant and with the same Configuration Vehicle) who have been at that Nominated Plant for a shorter period of time.

7.2 No One else to Drive Vehicle

Except as expressly provided in this Contract Determination the Contract Carrier must:

- (a) only use a Nominated Driver who is approved (such approval not to be unreasonably withheld) by Metromix having satisfactorily undertaken any pre-engagement assessment to determine their suitability to be a Nominated Driver; and
- (b) make sure that no one except the Nominated Driver drives the Contract Carrier's Vehicle for the Cartage Work or operates the Agitator.

7.3 Substitute Driver

If the Nominated Driver cannot drive because of illness or for other good reason, the Contract Carrier must provide a Substitute Driver but the Contract Carrier must:

- (a) first obtain Metromix's approval for (such approval not to be unreasonably withheld) the Substitute Driver;
- (b) comply with any condition Metromix sees fit to impose including the length of time for use of the Substitute Driver; and
- (c) make sure that before commencing work the Substitute Driver satisfactorily undergoes any pre-engagement training at the Contract Carrier's own expense provided that the Contract Carrier must not be charged for the cost of any test or assessment.

7.4 Procurement of Consent

The Contract Carrier must procure from its proposed Nominated Driver (and any Substitute Driver) any form of consent required by Metromix to receive and review personal information relating to the proposed Nominated Driver (and any Substitute Driver) so as not to place either the Contract Carrier or Metromix in breach of any relevant privacy legislation.

7.5 Valid Driving License and Permits

The Contract Carrier must:

- (a) make sure that the Nominated Driver (and any Substitute Driver) is at all times the holder of a:
 - (i) current and active driver's licence appropriately endorsed or issued in respect of the Contract Carrier Vehicle; and

- (ii) licence or permit of any other kind needed from time to time; and
- (b) immediately notify Metromix if a licence or permit is cancelled or suspended for any reason; and
- (c) present any such license or permit to Metromix upon request.

7.6 Change of Address

The Contract Carrier must notify Metromix in writing immediately of any change in the Contract Carrier address or in the address of the Nominated Driver (and any Substitute Driver).

7.7 Medicals and Fitness

- (a) The Contract Carrier must:
 - (i) ensure that the Nominated Driver (and any Substitute Driver) is at all times medically fit to perform the Cartage Work;
 - (ii) if requested, supply Metromix with a medical report confirming that the Nominated Driver (and any Substitute Driver) is medically fit to perform the Cartage Work; and
 - (iii) be reimbursed for the cost of any such medical report after producing evidence of a paid invoice.
- (b) Metromix may nominate the medical practitioner for the purposes of this clause, provided that they pay the costs for the medical consultation and any medical report.

7.8 Compliance with Employment Law

The Contract Carrier must:

- (a) comply with the provisions of any relevant law (including but not limited to) concerning income tax, workers' compensation, annual leave, long service leave or any award, order, determination or agreement of a competent industrial tribunal; and
- (b) indemnify Metromix and keep Metromix indemnified against any claims made by any of the Contract Carrier employees in respect of any such legislation, award, order, determination or agreement with which the Contract Carrier are required to comply.

7.9 Notification of Absence

Where the Contract Carrier's Vehicle is unavailable to perform the Cartage Work under this Contract Determination, the Contract Carrier must notify Dispatch at the earliest possible time of the reason and the anticipated period of absence.

7.10 Leave Entitlements

Contract Carriers are entitled to leave consisting of the following:

- (a) 12 days leave where a Substitute Driver is required to operate the Vehicle;
- (b) 10 days leave where the Contract Carrier is not required to provide the Vehicle to perform the Cartage Work; and
- (c) Subject to prior written approval from Metromix such other period of leave provided that the Contract Carrier provides a Substitute Driver in accordance with clause 7.3.

7.11 Leave

- (a) If the Contract Carrier's Nominated Driver wishes to take leave, they must apply to Metromix. The leave may be taken subject to Metromix's approval.
- (b) Metromix may require the Contract Carrier to provide a Substitute Driver during any period of leave for the Nominated Driver.
- (c) The Contract Carrier must provide Metromix with at least two (2) weeks' notice of the date on which the Nominated Driver is intending to take leave, which in Metromix's absolute discretion may or may not be approved, and this must be submitted to Metromix in writing via the Contract Carriers Leave Application Form.

12. Use of the Vehicle

8.1 Operating Condition

The Contract Carrier must use the Vehicle for the Cartage Work strictly in accordance with the terms and conditions of this Contract Determination.

8.2 Driving of Vehicle

The Contract Carrier must:

- (a) not overload the Vehicle;
- (b) not use or operate the Vehicle in a careless, reckless or dangerous manner; and
- (c) make sure that the Vehicle is not driven by any person under the influence of alcohol, prohibited drug or of a drug which might adversely affect driving performance.

8.3 Cleaning of Vehicle

- (a) Cleaning brushes, detergents, Concrete de-scaler and buckets necessary for cleaning the exterior surfaces of the Vehicle will be supplied by Metromix.
- (b) The Contract Carrier must ensure the Vehicle is kept clean and tidy to the satisfaction of Metromix.
- (c) Where Metromix considers the presentation of the Vehicle is not to an appropriate standard, the Contract Carrier will be notified in writing that the Vehicle must be cleaned to a standard acceptable to Metromix within four (4) days of the date of the notice.
- (d) If after the four-day notice period Metromix deems the Vehicle's presentation unacceptable, Metromix may refuse to load the Vehicle until such time as its presentation becomes acceptable to Metromix.

8.4 Fines

The Contract Carrier is responsible for any fines or other penalties imposed on the Contract Carrier:

- (a) if the maximum legal pay load carried with the Contract Carrier Vehicle is exceeded at any time; or
- (b) for any breach of any relevant laws.

8.5 Salvage Rights

If there is a breakdown or accident the Contract Carrier must take all available and reasonable steps to assist Metromix to deliver the load or remove the load from the Agitator.

8.6 Inspections and Tests

The Contract Carrier must make the Vehicle available for inspection or testing as and when reasonably required by Metromix.

8.7 Road Worthiness and Fit for Purpose

- (a) The Contract Carrier must provide to Metromix at least two (2) weeks' notice of the date on which their Vehicle is to be inspected by the relevant State Authority or approved inspection centre for road worthiness. This must be submitted to Metromix in writing via the Contract Carriers Leave Application Form.
- (b) The Contract Carrier must provide to Metromix quarterly a copy of the service and maintenance history for the Prime Mover in accordance with OEM requirements.
- (c) The Contract Carrier must at its own expense, obtain and supply to Metromix an annual roadworthy certificate for their Vehicle.

8.8 Tare Weight

- (a) Provided that Metromix reimburse the Contract Carrier, on a bi-annual basis or as required by Metromix, the Contract Carrier must provide Metromix with a copy of a registered weighbridge certificate for the Vehicle.
- (b) The Vehicle must be weighed with the Nominated Driver in the driver's seat with fuel, oil and water tanks filled to full capacity and all Agitator chutes attached.
- (c) Despite clause 8.8 (a), Metromix may require the Contract Carrier to weigh their Vehicle at any time and under Metromix's supervision, as part of any program which Metromix has in place for the purposes of ensuring statutory compliance.

Rostering

9.1 Rosters

Subject to this clause 9, Metromix may establish and operate a:

- (a) Cyclic Start Roster;
- (b) Roster Off Roster (subject to operational requirements);
- (c) Periodic Transfer Roster;
- (d) Daily Transfer Roster;
- (e) a voluntary Night Shift Roster; and
- (f) such other rosters as required by Metromix to operate its business.

9.2 Own Fleet etc.

- (a) Metromix owned Vehicles will form part of all rosters and will not be rostered in any way to unfairly disadvantage either Metromix or its Contract Carriers.

- (b) Any Fleet Owner Vehicle may form part of a roster and if so will not be rostered in any way to unfairly disadvantage either Metromix or its Contract Carriers.

9.3 Notification for Next Day

It is the responsibility of the Contract Carrier to contact Dispatch to ascertain the initial time and Plant to which they are to load. Metromix will make available starting times and locations by 3pm Monday to Friday and by 11am Saturday for the next Working Day.

9.4 Variation and Compliance and Consultation

- (a) Metromix may determine or vary any roster, in its opinion, to meet Customer Service Levels or Operational Requirements;
- (b) the Contract Carrier must comply with all rosters determined or varied by Metromix; and
- (c) Metromix will not make any significant change to any roster or introduce any new roster without first consulting with the Contract Carrier's affected.

10. Vehicle Transfers

All transfer rosters will be based on a Cyclic Start Roster to ensure all Vehicles are made subject to all transfers.

10.1 Periodic Transfer

Metromix may transfer the Contract Carrier's Vehicle from one Plant to another Plant:

- (a) for satisfaction of Customer Service Levels or Operational Requirements; and
- (b) for a period of two (2) weeks or for such other period as Metromix determines appropriate in a Periodic Transfer Roster.

10.2 Daily Transfer

Metromix may transfer the Contract Carrier's Vehicle from one Plant to another Plant:

- (a) for satisfaction of Customer Service Levels or Operational Requirements; and
- (b) for up to one (1) Working Day in a Daily Transfer Roster.

10.3 Voluntary Productivity Transfer

In the event any individual Plant(s) Individual Utilisation Group(s) average monthly productivity volume is more than 75 loads below the average monthly Utilisation Group productivity volume, Metromix will do the following:

- (a) On a voluntary basis initiate periodic transfers pursuant to clause 10.1 into higher productivity volume Plant(s);
- (b) monitor productivity volumes on a monthly basis, and

maintain periodic transfers until such time the individual Utilisation Group(s) productivity volume of an individual Plant(s) is less than 75 loads below the average monthly Utilisation Group productivity volume.

11. Loading and Delivery of Concrete

11.1 Plant

Subject to this Contract Determination, the Contract Carrier must report available for Cartage Work with their Vehicle and be ready to load at the times and Plants that Metromix directs.

11.2 Metromix to Nominate Load

Metromix may nominate the load size for each load to be carried from a Plant.

11.3 Loading Order

- (a) Metromix must use its reasonable endeavours to load Vehicles including Vehicles owned or engaged by Metromix having regard to the following:
 - (i) at the start of each Working Day, in accordance with the Cyclic Start Roster; and
 - (ii) during the Working Day, after each Vehicle has received its initial load, in accordance with the order of return to that Plant.
- (b) Metromix may change the loading order at each Plant by varying the Cyclic Start Roster or loading order for reasons including but not limited to:
 - (i) to satisfy Customer Service Levels or Operational Requirements;
 - (ii) if the next load (or loads) required to be taken is (or are) greater than the Load Capacity of the Vehicle next in line;
 - (iii) to comply with Chain of Responsibility obligations; or
 - (iv) Vehicles carrying Returned Concrete.

11.4 No Loading

Metromix may refuse to load the Contract Carrier's Vehicle if:

- (a) it is unregistered;
- (b) if it is uninsured;
- (c) the Nominated Driver (and any Substitute Driver) does not hold a valid and active drivers licence;
- (d) the Nominated Driver (and any Substitute Driver) fails to sign in daily;
- (e) in Metromix's reasonable opinion, the Contract Carriers Vehicle is defective so as to render its operation unsafe;
- (f) the Contract Carriers is suspected of being in breach of its obligations under this Contract Determination or a Mini Cartage Contract; or
- (g) for any of the reasons referred to in any of 5.8, 8.3(d) or 15.1.

11.5 No Alteration to Docket

The specification of each load of Concrete shown on the Concrete delivery docket issued by Metromix must not be changed by the Contract Carrier after batching.

11.6 Slump

- (a) Before leaving the Plant to deliver a load, the Contract Carrier must:
 - (i) ensure the load is properly mixed in accordance with the written instructions provided by Metromix, which may be varied from time to time; and
 - (ii) ensure that immediately prior to discharge, the Slump of the Concrete complies/conforms with the latest issue of Australian Standard and any Cartage Work instructions issued by Metromix.
- (b) Metromix will endeavour to batch each load with the intent that it is batched to within 10% of the total batch water required for the load to meet the relevant slump specification.
- (c) The Contract Carrier must notify the batcher of the quantity of water added at the slump stand and batch water will be adjusted upon continuing feedback from the Contract Carrier.
- (d) If the customer requests the addition of an amount of water that takes the Slump of the load outside the specified Slump tolerance, the Contract Carrier must:
 - (i) note the quantity of water added and the estimated final Slump of the load; and
 - (ii) obtain the name and signature of the customer or their nominated representative on all copies of the delivery docket.

11.7 Shortest Practicable Route

The Contract Carrier must take the shortest practicable route whilst performing the Cartage Work given the time of day.

11.8 Change of Ingredients

Metromix must provide the Contract Carrier, whenever practicable, with advice of any major changes to the source of Concrete mix ingredients which are likely to affect the visual assessment of the Slump.

11.9 Rejection of Load

- (a) If a Contract Carrier makes an addition of water to a load without the signed consent of the customer or their nominated representative, and the load is rejected because the Slump of the Concrete is outside the nominated tolerance as specified in clause 11.6, or because the Contract Carrier had not complied with that clause, the Contract Carrier will:
 - (i) not be paid for the delivery of the load or any applicable Surcharge/s; and
 - (ii) (if the load cannot be salvaged) have deducted from their next month's cartage payment the sum calculated to be 50% of the cost of all ingredient materials in the load to a maximum of \$500.
- (b) However, if Metromix has restricted the Contract Carrier's ability to adjust the Slump of a load on the job site and:
 - (i) the Contract Carrier is requested by a customer or a customer's representative to add water to the load;
 - (ii) Metromix approves such adjustment after discussion with the Contract Carrier; and
 - (iii) the load is subsequently rejected on the basis of water addition or non-compliance with the nominated tolerance,

then Metromix will pay the Contract Carrier the Cartage Rate for the load as if the load had not been rejected and any applicable Surcharges.

- (c) Where the Contract Carrier is requested by Metromix to adjust or maintain the Slump of a load at a tolerance closer than that specified in the current issue of Australian Standard and the load is rejected on the basis of non-compliance with the nominated tolerance, then Metromix will pay the Contract Carrier the Cartage Rate for the load as if the load had not been rejected and any applicable Surcharges.
- (d) In the case of a delivery of Kerb-Maker, it is the responsibility of the Contract Carrier to carry the load in an "as batched" condition. The Contract Carrier will not be responsible for the Slump unless the Contract Carrier has attempted to adjust the Slump either at the Plant or onsite pursuant to clause 11.9(a), in which case clause 11.9(a)(i) and 11.9(a)(ii) shall apply.
- (e) In the case of delivery of a load of Wet Piling Grout the Contract Carrier must:
 - (i) ensure the load is completely mixed;
 - (ii) adjust the water to the load at the Slump stand so it visually represents Wet Piling Grout; and
 - (iii) immediately notify the batcher of any unusual features of the load which may lead to non-conformity including lack of or excessive water.
- (f) Provided the Contract Carrier has complied with clause 11.9(e) then the Contract Carrier will no longer be responsible for the consistency should the load be subject to a Flow Cone Test.

11.10 Additives

- (a) Subject to the Contract Carrier's compliance with clause 11.10(b), where Metromix adds an additive to the Concrete after the Contract Carrier has adjusted the Slump of the load, or where an additive is added at the customer's request, the Contract Carrier will no longer be responsible for the Slump of that load.
- (b) The Contract Carrier and the Nominated Driver (and any Substitute Driver) are not permitted to add any additives to the Concrete.

11.11 Mixing and Transit

The Contract Carrier must take reasonable care of the Slump after the Vehicle has left the plant. Except where Metromix has notified the Contract Carrier that the customer has instructed that no water is to be added after leaving the plant, the Contract Carrier may add water to the Concrete as the Contract Carrier think fit but the Contract Carrier must:

- (a) keep the Agitator drum turning at all times when it contains Concrete at a minimum of two (2) revolutions per minute; and
- (b) mix the Concrete for at least the minimum mixing time for mixing Concrete under the current Australian Standard which is:
 - (i) 4 minutes at the mixer manufacturers rated mixing speed (approximately 16 revolutions per minute) at the Plant; and
 - (ii) a minimum re-mix of 1 minute at the rated mixing speed (approximately 16 revolutions per minute) after addition of water or additives or to customers' requirements before discharging on site.

11.12 Job Site Entry

- (a) The Contract Carrier must comply with any job site entry procedure determined by Metromix from time to time.
- (b) The Contract Carrier has the right to refuse to enter a job site, which it reasonably considers unsafe.
- (c) The Contract Carrier must notify the Metromix Representative at the Plant of the unsafe or hazardous job site and of the Contract Carrier's unsuccessful attempt to enter the site. The Representative will attend the site as soon as practical after notification in order to determine the action to be taken.
- (d) If the Metromix Representative assesses the site access to be unsafe or hazardous, the Contract Carrier will be paid the Cartage Rate as if the delivery had been successful and any applicable Surcharges.
- (e) Despite anything else in this clause, the Nominated Driver (or any Substitute Driver) may refuse to enter a job site if it would cause serious and imminent risk to their health or safety and the Contract Carrier will be paid the Cartage Rate as if the delivery had been successful and any applicable Surcharges.

11.13 Unloading

The Contract Carrier must discharge the Concrete at the delivery site in the manner and position reasonably directed by the customer. The Contract Carrier must use every reasonable effort at the delivery site to:

- (a) obtain directions from the customer concerning the manner and position to discharge the Concrete;
- (b) obtain from the customer's the signatures required by Metromix; and
- (c) collect money from cash on delivery customers for all Concrete discharged.

11.14 Unsafe Unloading

- (a) If the unloading of the Concrete at any delivery site is unsafe for any reason, the Contract Carrier must immediately notify Metromix prior to unloading the Concrete to obtain directions.
- (b) If, in complying with Metromix's directions, the Contract Carrier Vehicle becomes bogged or causes damage to the site (unless the bogging or damage is caused by the Contract Carrier negligence or a breach of this Contract Determination) Metromix must:
 - (i) pay all reasonable costs to remove the Contract Carriers Vehicle and effect any repairs caused by the bogging or removal; and
 - (ii) indemnify the Contract Carrier for any damage or claims caused on the site.

11.15 Signatures for Delivery

- (a) The Contract Carrier must:
 - (i) use their reasonable endeavours to obtain a customer signature and printed name for the delivery of a load and any additional Surcharges or the addition of water; and
 - (ii) obtain any information ascertained in accordance with clause 11.18(d).

- (b) The Contract Carrier must sign and print their name on the delivery docket and record their time of arrival and departure at site.
- (c) All signatures, printed names or other required information must be in the appropriate section of the delivery docket and appear on all copies.
- (d) The Contract Carrier must not surrender the customer copy of the delivery docket until discharge is complete or released by the customer.
- (e) The Contract Carrier must return the completed delivery docket to the Plant or otherwise as directed upon return after each load.
- (f) Where Waiting Time, Returned Concrete or any other Surcharges are applicable the Contract Carrier, prior to leaving site, must contact Dispatch to obtain the Surcharge amount and new total to be collected and ensure this appears on all copies of the delivery docket.
- (g) Despite anything else in this Contract Determination, if the provisions of this clause are not complied with Metromix is not required to pay the Contract Carrier for the relevant load.

11.16 Bogged Vehicles

- (a) Where the Contract Carrier enters a job site beyond the road kerb line to complete a delivery and the Vehicle becomes bogged or is otherwise rendered inoperative as a consequence of such attempted delivery, Metromix will arrange the services of an experienced salvage contractor to extract the Vehicle as soon as possible and must bear all costs for those arrangements.
- (b) The Contract Carrier is to notify the Metromix Representative at the Plant as soon as the Vehicle becomes bogged or inoperative and await instruction from Metromix.
- (c) Metromix will ensure that the salvage contractor selected is covered by the appropriate insurance policy to rectify any damage that the salvage contractor may cause to the Vehicle during the extraction process.
- (d) Metromix accepts no liability for damage or loss caused where the Contract Carrier utilises its own salvage contractor or means for the extraction.
- (e) Clauses 11.16(a) and (c) will not apply where the Vehicle becomes bogged or inoperative as a direct result of the Contract Carrier's or its Nominated Driver's (or Substitute Driver's) negligence or any deliberate act by the Contract Carrier's Nominated Driver's (or Substitute Driver's).

11.17 Return

After discharging the load the Contract Carrier must report to whatever Plant Metromix instructs.

11.18 Cash on Delivery

- (a) The Contract Carrier will ensure all payments are collected from those customers designated by Metromix as cash on delivery for all Concrete charges including Waiting Time and/or Returned Concrete.
- (b) The Contract Carrier is only responsible for collecting cash amounts no greater than the invoiced total plus any surcharge amounts for that particular load.
- (c) The Contract Carrier must take reasonable care of any money collected and submit in full to the Metromix Representative as soon as possible on return to the Plant. The Metromix Representative will sign the Contract Carrier's copy of the delivery docket as recognition of receipt of money at which point the Contract Carrier will be no longer responsible for the moneys.

- (d) Where Waiting Time, Returned Concrete or any other Surcharges are applicable the Contract Carrier, prior to leaving site must contact Dispatch to obtain the Surcharge amount and new total to be collected.
- (e) The Contract Carrier will immediately advise Metromix if the collection of cash is not able to be obtained prior to leaving site and await Metromix's direction.

11.19 Damage On Site

Subject to this clause 11, the Contract Carrier must pay for any damage caused by the Contract Carrier whilst entering on or exiting the site provided that Metromix has undertaken an investigation of the matter.

12. Site Cleaning

12.1 Contract Carrier Obligations

- (a) The Contract Carrier must immediately report to Metromix any Concrete or Vehicle spillage.
- (b) Subject to clause 12.2(b), the Contract Carrier must pay for:
 - (i) any costs associated with the clean-up of any spillage; and
 - (ii) the removal of any Concrete or Vehicle spillage.
- (c) The Contract Carrier must pay for any fines associated with any spillage.

12.2 Metromix's Obligation

- (a) Metromix must arrange for the clean-up of any Concrete or Vehicle spillage.
- (b) Metromix must pay for the removal of any Concrete or Vehicle spillage for one (1) clean-up activity per calendar year for a Contract Carrier to a maximum cost of \$500.

13. Supervision

13.1 The Contract Carrier must Supervise its Personnel

The Contract Carrier must ensure that the Nominated Driver (and any Substitute Driver):

- (a) performs the Cartage Work and does everything connected with it as is required of the Contract Carrier by this Contract Determination; and
- (b) does not do or omit anything that gives rise to a breach by the Contract Carrier of this Contract Determination.

14. Training

14.1 Cost and Amount

- (a) Metromix may require the Contract Carrier or their Nominated Driver (and any Substitute Driver) to attend training sessions each year in relation to any topic deemed relevant by Metromix provided that the Contract Carrier must not be charged for the cost of providing the training.
- (b) The Contract Carrier or their Nominated Driver (and any Substitute Driver)'s attendance will be at no cost to Metromix and will be limited to twelve (12) hours per annum.

- (c) Any training the Contract Carrier or their Nominated Driver (and any Substitute Driver) attends which exceeds twelve (12) hours per annum will be entitled to a standby time payment as specified in Schedule 3 for each half hour or part thereof the Contract Carrier or their Nominated Driver (and any Substitute Driver) attends.

14.2 Driver Training

- (a) All existing approved Nominated Drivers (and any Substitute Driver) are required to undertake an annual (or as deemed appropriate by Metromix) driver and Agitator operational assessment carried out by a qualified driver trainer and Agitator operational assessor nominated by Metromix. Any associated cost of this will be the responsibility of Metromix.
- (b) Each new Nominated Driver employed by the Contract Carrier, is required to spend a minimum of two (2) weeks' training in how to operate the Vehicle and in managing Slump control of Concrete.
- (c) This training will include a period of at least one (1) day in Metromix's nominated Quality Control Laboratory under the supervision of a Metromix nominated tester, and at least one (1) day in Dispatch to understand Dispatch requirements.
- (d) Metromix will provide appropriate equipment (excluding the Vehicle) for the purpose of providing the training.
- (e) At the conclusion of the two (2) week training period, the Nominated Driver will be required to undertake a driver and Agitator operational assessment carried out by a qualified driver and Agitator operational trainer nominated by Metromix in respect of the Nominated Driver's performance and technical ability. Any costs for the driver trainer will be the responsibility of Metromix.

15. Contractor Management System

15.1 Provision of Documents and Inductions

- (a) The Contract Carrier must maintain and keep up to date any documentation and inductions required by Metromix's contractor management system.
- (b) Metromix must ensure that such documentation is securely held and not used for any improper purpose by an employee or officer of Metromix.
- (c) Metromix may at times request the originals or copies of documents.
- (d) The Contract Carrier will allow Metromix to take copies of these documents if required.
- (e) Should the Contract Carrier not be able to sign in due to out of date documentation or inductions, the Contract Carrier's Vehicle will not be available to load until such time as the out of date documentation and induction is renewed and verified.

16. Contract Carrier's Spare Tyres

16.1 Storage

- (a) Subject to Metromix's prior approval and availability of space at the Nominated Plant, Metromix will provide to the Contract Carrier at their Nominated Plant space for the storage of up to two (2) spare usable tyres for their Vehicle.
- (b) Any stored tyres must be marked with the fleet number of the Contract Carrier's Vehicle.
- (c) In circumstances where Metromix cannot identify ownership of stored tyres, Metromix reserves the right to remove the unidentified equipment and to dispose of it appropriately.

- (d) No other equipment is to be stored by the Contract Carrier on Metromix premises.

16.2 No Liability

Despite clause 16.1, Metromix will not be liable to the Contract Carrier for any loss or damage to anything stored by the Contract Carrier at a Plant or other Metromix premises.

17. Workplace Health and Safety

17.1 Safety Meetings

- (a) The Contract Carrier or their Nominated Driver must attend and constructively participate in each safety meeting or "tool box talk" as required by Metromix.
- (b) The Contract Carrier or their Nominated Driver is not obliged to attend if they are on approved leave or not able to attend work for that entire day.
- (c) Attendance to the abovementioned meetings will be at no cost to Metromix.

17.2 Safety Inductions

The Contract Carrier or their Nominated Driver (and any Substitute Driver) must attend safety inductions and safety training as required by Metromix. Attendance will be in accordance with clause 14.

18. Uniforms and Personal Protective Equipment

18.1 Uniform Supply

Metromix must supply a Nominated Driver and any Substitute Driver with a uniform in accordance with Metromix's uniform policy and the uniform must be worn.

18.2 Personal Protective Equipment

Metromix must supply a Nominated Driver and any Substitute Driver with personal protective equipment in accordance with Metromix's personal protective equipment policy and the personal protective equipment must be worn. The Contract Carrier is responsible for supplying any Substitute Driver with approved safety footwear.

18.3 Replacement

Replacement of uniforms and personal protective equipment will be at the discretion of Metromix on the basis of return of used items.

19. Emergencies and Incidents

19.1 Contract Carrier to Follow Metromix Procedures

The Contract Carrier must comply with any emergency procedures specified by Metromix.

19.2 Reporting Incidents

- (a) The Contract Carrier must immediately advise the Metromix Representative at the Plant of any incident, near misses, safety observations or hazards.
- (b) All incidents must be entered in to Metromix's online register as soon as practicable.

19.3 Investigation

The Contract Carrier must provide all necessary assistance to Metromix in relation to any Metromix investigation.

19.4 Reporting Defects, Loss or Theft

A Contract Carrier must report to Metromix immediately any damage, defect, loss or theft that has occurred.

20. Insurance Warranty and Indemnity

20.1 Vehicle, Workers Compensation

The Contract Carrier must obtain the insurances set out in Schedule 4 and maintain them at the Contract Carrier's expense at all times.

20.2 Insurance Policies

The Contract Carrier must make sure that:

- (a) each insurance policy is placed with an insurer approved by Metromix (who must not unreasonably withhold its approval) and is for such amounts and covers such risks and contains such conditions, endorsements and exclusions as are reasonably acceptable to or reasonably required by Metromix; and
- (b) despite clause 20.2(a), unless Metromix agrees otherwise or unless any relevant law precludes this each policy must be endorsed to:
 - (i) extend to provide indemnity to Metromix as principal; and
 - (ii) contain a cross liability clause.

20.3 Premiums

The Contract Carrier must punctually pay all premiums for policies and renewals of policies and must provide on request at any time proof of payment and renewal to Metromix's satisfaction.

20.4 Not to Prejudice Insurance

The Contract Carrier must not do, permit or omit any act, matter or thing which might prejudice any insurance or make it void or voidable.

20.5 Payment of Excess

The Contract Carrier must pay any deductible or excess applying to any claim made by Metromix as principal against any insurance policy held by the Contract Carrier.

20.6 No Guarantee

Except as expressly provided for in this Contract Determination, Metromix makes or gives no representation, warranty or guarantee as to the quantity, quality, regularity or profitability of the Cartage Work.

20.7 Implied Warranties

Any warranty, condition, term or provision on the part of Metromix which might be implied by the general law is expressly excluded, and to the extent permitted by law, all statutory implied warranties on

the part of Metromix are excluded altogether or (if complete exclusion is prohibited by law) limited to the payment of:

- (a) in the case of goods, the lesser of the cost of having the goods repaired and the cost of replacing the goods or of acquiring equivalent goods; or
- (b) in the case of services, the cost of having the services supplied again.

20.8 Indemnity

- (a) The Contract Carrier shall indemnify Metromix, and keep Metromix indemnified from and against any loss or claim in connection with any death or injury to any person or any loss of or damage to property directly or indirectly caused by or in connection with or arising from:
 - (i) the Cartage Work;
 - (ii) their operations or business;
 - (iii) the use of any Vehicles, plant or equipment (including without limitation the Vehicle) used or to be used in connection with their operations or business; or
 - (iv) any breach by them of this Contract Determination.
- (b) To avoid any doubt, it is expressly noted that the indemnities given by a Contract Carrier in clauses 20.8(a)(i) to 20.8(a)(iv) excludes circumstances where the loss or claim in connection with any death or injury to any person or any loss of or damage to property is directly or indirectly caused by negligent or unlawful acts by Metromix in performing its obligations under this Contract Determination.

20.9 Not Liable

Metromix is not liable to the Contract Carrier for any loss or claim:

- (a) for consequential loss or loss of use or loss of profit; or
- (b) arising out of wet weather, accident, breakdown, or delay.

21. Contractor Fleet Size

21.1 Right to Increase Contractor Numbers

Metromix may at any time engage more Contract Carrier Vehicles to perform the Cartage Work to meet its business needs.

21.2 Right to Decrease Contractor Numbers

Metromix may at any time reduce the number of Contract Carriers engaged to perform the Cartage Work to meet its business needs.

22. Use of Other Vehicles

22.1 Right

Subject to clause 24.3, and to avoid any doubt, Metromix may utilise:

- (a) its own Vehicles; or
- (b) Vehicles from a Fleet Owner,

for the Cartage Work to meet its business needs.

22.2 No Improper Conduct

To avoid any doubt, Metromix may exercise its rights to utilise its own Vehicles or Vehicles from a Fleet Owner as it sees fit in its own commercial interest, but must not abuse the right to obtain an improper collateral benefit or objective.

23. Disputes Procedure

23.1 Application of Procedure

Any dispute that arises between a Contract Carrier and Metromix shall be dealt with in accordance with this clause.

23.2 Appointment of Representative

A Contract Carrier who is a party to a dispute may appoint a representative for the purposes of this clause which may include the Union.

23.3 Procedure

In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level.

23.4 Notification to Commission

If the dispute remains unresolved it may be referred to the Industrial Relations Commission of NSW.

23.5 Continue to Perform Cartage Work

Whilst the parties are trying to resolve the dispute using the procedure set out in this clause:

- (a) a Contract Carrier must continue to perform Cartage Work as they normally would do unless the Nominated Driver (or any Substitute Driver) hold a reasonable concern about an imminent risk to their health or safety; and
- (b) a Contract Carrier must comply with a direction given by Metromix to perform other available Cartage Work, unless:
 - (i) the Cartage Work is not safe; or
 - (ii) applicable workplace health and safety legislation would not permit the Cartage Work to be performed; or
 - (iii) the Cartage Work is not appropriate for the Contract Carrier to perform; or
 - (iv) there are other reasonable grounds for the Contract Carrier to refuse to comply with the direction.

24. Additional Terms

24.1 Contract Carrier's who commenced before 1 October 2017

- (a) A Contract Carrier who commenced being engaged by Metromix before 1 October 2017 shall be engaged and perform the Cartage Work and anything connected with it under the terms set out in Schedule 11.
- (b) Schedule 11 shall apply to any permitted assignee of the Contract Carrier.

24.2 New Contract Carriers

Despite anything in this clause, if Metromix introduces a new Contract Carrier into its fleet then they shall be engaged and perform the Cartage Work and anything connected with it under the terms set out in Schedule 10.

24.3 New Contract Carriers - Plant Embargo

- (a) Despite clause 7.1 and subject to clause 24.3(b), Metromix shall not designate a Plant to be the Nominated Plant of a new Contract Carrier if that Plant is set out in Schedule 12.
- (b) Clause 24.3(a) shall cease to operate two years after the commencement date of this Contract Determination.

24.4 New Contract Carriers - No 'Gazumping'

If a Contract Carrier issues Metromix with a notice pursuant to clause 3 of Annexure A of Schedule 11, Metromix must not offer the company that the Contract Carrier proposes to assign their contractual arrangement to an opportunity to become a new Contract Carrier to prevent them completing the proposed assignment.

25. Notices

25.1 Delivery

If either Metromix or the Contract Carrier gives a notice, consent, approval or other communication (each a "notice") under this Contract Determination it shall be signed by them or on their behalf, addressed to the other party and:

- (a) delivered to the other party's address;
- (b) sent by pre-paid mail to the other party's address;
- (c) transmitted by facsimile to the other party's address; or
- (d) transmitted by email to the other party's email address.

25.2 Receipt

A notice given in accordance with this clause is treated as having been given and received:

- (a) if delivered to the other party's address, on the day of delivery if a Working Day, otherwise on the next Working Day;
- (b) if sent by pre-paid mail, on the third Working Day after posting;
- (c) if transmitted by facsimile and a correct and complete transmission report is received, on the day of transmission if a Working Day, otherwise on the next Working Day; or
- (d) if transmitted by email and a correct and complete receipt reply email is received, on the day of transmission if a Working Day, otherwise on the next Working Day.

25.3 Proper Address

For the purpose of this clause the addresses are the addresses which from time to time a party gives notice of to the other party.

26. Consultation

26.1 Committee

Metromix shall convene a Consultative Committee made up of Metromix representatives and the members of the "Metromix LOD Committee".

26.2 Meeting

The Consultative Committee shall meet as agreed or otherwise monthly to discuss:

- (a) any agreed matters; and/or
- (b) Contract Carrier utilisation.

26.3 Information

- (a) Metromix shall provide the Contract Carrier members relevant Contract Carrier utilisation data at least 2 Working Days prior to the relevant Consultative Committee meeting.
- (b) The utilisation data is to be treated as commercial in confidence by the recipient and is not to be copied or shared in any manner and with any person without the express written consent of Metromix.
- (c) The utilisation data will include loads carted and average leads but will not include earnings.

26.4 Payment

Metromix will pay the Contract Carrier a Demurrage payment at the rate specified in Schedule 3 for the time one hour prior to and then attending a Consultative Committee meeting up to the Contract Carrier's rostered finish time for that day.

26.5 Annual Verification

- (a) Within the first three months after the commencement of this Contract Determination and thereafter every 12 months:
- (b) Metromix shall provide the Consultative Committee with a list of the Contract Carriers, their Nominated Drivers and any Substitute Drivers;
- (c) the Contract Carrier representatives shall verify whether the list is correct; and

if the list is not correct Metromix shall make such inquiries and take such actions as are appropriate to ensure they hold a correct and verified list.

27. Delegates

27.1 Appointment

A Contract Carrier appointed as a Delegate in a yard in which they are a Contract Carrier will, upon notification to Metromix be recognised as the accredited representative:

- (a) for that Yard; and
- (b) (if the Contract Carrier is a member of the Union) of the Union for that Yard.

27.2 Opportunity to Meet

An accredited delegate will be allowed a reasonable opportunity to meet the relevant Metromix manager and Contract Carriers to discuss matters affecting Contract Carriers whom they represent.

27.3 Use of Notice Board

Accredited delegates will be permitted to put notices on a notice board, signed or countersigned by the representative posting it.

27.4 Release of Delegates

A yard delegate will be released by Metromix on a reasonable basis to attend authorised (lawful) Union activity provided that Metromix is provided reasonable notice of the absence.

28. Dictionary

1.0m³ Vehicle means a Vehicle with a nominal loading capacity of 1.2m³.

2.0m³ Vehicle means a Vehicle with a nominal loading capacity of 2.4 m³.

3.0m³ Vehicle means a Vehicle with a nominal loading capacity of 3.0 m³.

Accounting Period means a calendar month unless varied by notice from Metromix.

Act means the *Industrial Relations Act 1996* (NSW).

Agitator means the mixing equipment necessary to mix and transport Concrete by a Prime Mover.

Annual Earnings Safety Net means the payment referred to, and calculated in accordance with, clause 3.2, 3.3 and Schedule 1.

Average Group Productivity means the moving annual total paid loads carried by a group of Contract Carriers in an Utilisation Group.

Australian Standard means any relevant Australian Standard as applies from time to time.

Authorised Absence means any absence expressly authorised by this Contract Determination including but not limited to those outlined in clause 3.3(b), 7.10, 26.2, and 27.

CAR means a manual Cartage Adjustment Request Form.

Cartage Adjustment Request Form means the form located in Schedule 9.

Cartage Rates means the rates located in Schedule 1.

Cartage Work means the cartage of Concrete as and when required by Metromix.

Communication Equipment means equipment such as but not limited to global positioning systems (GPS), two way radio, safety cameras etc.

Contract Determination means this contract determination as varied or replaced from time to time.

Concrete means pre-mixed Concrete manufactured by Metromix and any other materials that can be delivered in a Vehicle as may be designated by Metromix.

Configuration means the classification of a Vehicle by reference to its Load Capacity as follows:

- (a) 1.0m³ Vehicle;
- (b) 2.0m³ Vehicle;
- (c) 3.0m³ Vehicle; or
- (d) any other classifications designated by Metromix from time to time.

Consultative Committee means the committee structure in operation prior to the commencement of this Contract Determination.

Contract Carrier means a Contract Carrier engaged by Metromix pursuant to a Mini Cartage Contract to cart pre-mixed Concrete in the Operational Area.

Contract Carriers Leave Application Form means the form located in Schedule 9.

Control Number means a sequence of number or letters or both given solely by Dispatch.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer Service Levels means the provision of efficient, timely and competitive service to meet customers' expectations and requirements.

Cyclic Start Roster means a start of day roster based on a "first out yesterday, second out today" system with the effect that each Vehicle will move through the cycle from starting first to starting last and, on successive days, all points in between, subject but not limited to Customer Service requirements.

Daily Transfer Roster means the roster determined in accordance with clause 10.2.

Demurrage means the rate specified in Schedule 3.

Dispatch means the Customer Service Centre or in the event the Customer Service Centre is closed or unavailable, the Plant.

Driver means the Nominated Driver or a Substitute Driver.

Fleet Owner means a provider of transport services other than a Contract Carrier.

Flow Cone Test means a flow cone test in accordance with Australian Standards.

Force Majeure means an act, omission or circumstance beyond a party's control, including:

- (e) acts of God;
- (f) fire, flood, storm, earthquake, explosion or accident;
- (g) hostile or warlike action in time of peace or war; or
- (h) insurrection, rebellion, revolution, civil war, sabotage, civil disobedience, usurped power or action taken by government authority in hindering, combating or defending against such occurrence, but only to the extent that the act, omission or circumstance could not have been avoided or foreseen through the exercise of reasonable skill and care that a diligent person in the position of the affected party would have exercised.

Kerb-Maker means a Concrete mix "nil Slump" used specifically for the construction of kerb and gutter.

Kilometre Running Rate means the rate paid per kilometre as itemised in Schedule 1.

Load Capacity means the lesser of:

- (a) the maximum legal carrying capacity of the Contract Carrier's Vehicle; and
- (b) the manufacturer's nominated maximum capacity of the Agitator.

MAT means moving annual total.

Metromix means Metromix Pty. Limited of Level 4, 107 Phillip St, Parramatta, NSW, 2150.

Metromix Concrete Cartage Cost Model means one of the following excel models: Metromix Concrete Cartage Cost Model - 3.0m³ Able Prime Mover Only; Metromix Concrete Cartage Cost Model - 2.0m³ Able Prime Mover Only; Metromix Concrete Cartage Cost Model - 1.0m³ Able Prime Mover Only.

Metromix's Normal Trading Hours means 6:00 am to 5:00 pm Monday to Friday and from 6:00 am to 1:00 pm Saturday or as otherwise varied by Metromix.

Metromix Representative means the Metromix Plant Manager or his/her delegate.

Mini Cartage Contract means the contractual arrangement under which the Contract Carrier is engaged by Metromix to perform the Cartage Work.

Mini Vehicles means a vehicle with a nominal carrying capacity of 3.0m³ or less.

New Prime Mover means a Prime Mover that is (a) less than one (1) year of age from the year of manufacture which will be measured from the date of manufacture as per the compliance plate affixed to the Vehicle and (b) is a 3.0m³, 2.0m³ or 1.0m³ Prime Mover or such other configuration as Metromix may determine.

Night Shift means a shift where a Contract Carrier is rostered to work outside Metromix's Normal Trading Hours and has been given prior notice of the shift (to avoid any doubt this does not include an early start or late finish outside of Metromix's Normal Trading Hours).

Night Shift Minimum means the rates set out in Schedule 3.

Nominated Driver means the person nominated by the Contract Carrier and approved by Metromix as such.

Nominated Plant means the plant that a Contract Carrier will normally be based at, as directed by Metromix.

Operational Requirements means all factors which may, in Metromix's opinion, affect the operating efficiency, volume or quality of Concrete produced, profitability of one or more Plants or otherwise affect in any way one or more Plants or any aspect of Metromix's Concrete and related businesses.

Periodic Transfer Roster means the roster determined in accordance with clause 10.1.

Plant means a batching plant where Concrete and similar batched materials are manufactured for delivery in a Vehicle.

Prime Mover means the prime mover supplied by the Contract Carrier to perform the Cartage Work.

Public Holiday means a day declared and gazetted as such for the Operational Area.

Quality Control Laboratory means Metromix' quality control laboratory.

Quarter means each three-month period ending on 31 March, 30 June, 30 September and 31 December each year.

Rejected Concrete means Concrete that does not meet the product specification detailed on the delivery docket and is unacceptable for delivery.

Returned Concrete means Concrete that is excess to a particular customer's requirements.

Roster Off Roster means the period during which the Contract Carrier's services are not required by Metromix.

Slump means a measure of consistency of Concrete as determined in accordance with Australian Standard.

State Authority means the RMS or such other agency that is authorised to inspect the Vehicle.

Substitute Driver means any driver of the Vehicle authorised as such in accordance with clause 7.3 of this Contract Determination.

Surcharge/s means those payments specified in Schedule 3.

Unloaded Kilometres is given the definition in clause 4.6.

Utilisation Cartage Rates means the Cartage Rates paid for various annualised levels of Vehicle productivity measured in loads per Vehicle per year (loads/Vehicle/year) as set out in Schedule 1.

Unavailable Day(s) means any day(s) other than that of a Working Day.

Unauthorised Absence means any absence not expressly authorised by this Contract Determination.

Union means the Transport Workers Union, New South Wales.

Utilisation Group means a group of Concrete Trucks of the same Configuration including the Contract Carrier's Vehicle.

Vehicle means a Prime Mover and Agitator used to transport and deliver pre-mixed Concrete.

Waiting Time is given the meaning in clause 4.12.

Wet Piling Grout means a Concrete mix used for the construction of piles or piers.

Working Day means a day which is not a Sunday or Bank or Public Holiday.

SCHEDULE 1 - CARTAGE RATES

1. Cartage Rates

1.1 The Cartage Rates are:

(for a Contract Carrier who has not yet introduced a New Prime Mover in accordance with clause 5 Prime Mover) the Cartage Rates subject to the Utilisation and Rise and Fall reviews that operated immediately prior to this Contract Determination commencing; and

(for a Contract Carrier who has introduced a New Prime Mover in accordance with clause 5 Prime Mover) ascertained from "RATE SCH Prime Mover Only" of the relevant "Metromix Concrete Cartage Cost Model" (being one of the following: Metromix Concrete Cartage Cost Model - 3.0m³ Able Prime Mover Only; Metromix Concrete Cartage Cost Model - 2.0m³ Able Prime Mover Only; Metromix Concrete Cartage Cost Model - 1.0m³ Able Prime Mover Only) as at the date this Contract Determination commences to operate and then as varied from time to time in accordance with this Contract Determination.

SCHEDULE 2 - UTILISATION REVIEWS

1. Utilisation Review

1.1 Process

On a quarterly basis, Metromix will undertake a utilisation review in accordance with this Schedule to determine the value for the red inputs "Volume, Average Load (where present in the model) and Average Lead" in the "Key Variables & Price Sheet" of the "Metromix Concrete Cartage Cost Model".

(a) The review must determine the value for the inputs referred to in clause 1.1 as at:

- (i) 31 March;
- (ii) 30 June;
- (iii) 30 September; and
- (iv) 31 December.

Notation: The 30 September utilisation review is undertaken with relevant rise and fall reviews.

1.2 Adjustment of Model

(a) Having determined the value for the input "Volume, Average Load (where present in the model) and Average Lead" Metromix shall enter it into the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model".

(b) Having undertaken the step in clause 1.2 (a), Metromix shall refresh the Model.

1.3 New Rates

Following the process in clause 1.2, the new cartage rates and surcharges shall be the cartage rates and surcharges ascertained from the following sheets of the relevant "Metromix Concrete Cartage Cost Model":

- (a) RATE SCH Prime Mover Only; and
- (b) Prime Mover Only Surcharges.

1.4 Operative Date

Any new Cartage Rates and Surcharges arising from clause 1.3 shall be operative as of:

- (a) 1 May;
- (b) 1 August;
- (c) 1 November; and
- (d) 1 February.

1.5 Volume (Average Group Productivity)

(a) This clause sets out how the value for the red input "Volume: in the relevant "Metromix Concrete Cartage Cost Model" is determined.

- (b) The "Volume" (Average Group Productivity) calculated on a MAT basis (using the relevant Metromix MAT model), will measure the annual average volume of adjusted paid loads carted by Contract Carriers in the Utilisation Group. This calculation will be rounded to the nearest 50 loads.
- (c) In calculating the "Volume" (Average Group Productivity), Metromix will have regard to:
- (i) the paid loads carted per month during the relevant Quarter by all Contract Carriers in the Utilisation Group;
 - (ii) the number of Contract Carriers' Vehicles in the Utilisation Group per month during the relevant Quarter;
 - (iii) the number of Working Days for the month;
 - (iv) the number of Unavailable Days as a result of Authorised and Unauthorised Absence for all Contract Carriers in the Utilisation Group per month during the relevant Quarter; and
 - (v) the MAT of adjusted paid loads carted per month for the relevant Quarter.

- (d) The following formula must be used to calculate adjusted paid meters carted per month:

$$M3/(N - (U/W)) = \text{ADJUSTED LOADS PAID PER MONTH PER TRUCK}$$

Where:

N = Number of Vehicles in the Utilisation Group

U = Unavailable Days per Month

W = Working Days per Month

M3 = Total paid meters per month for Vehicles in a Utilisation Group

- (e) Unavailability will not arise where:
- (vi) the Contract Carrier has previously been notified by Metromix that the Contract Carrier is not required to perform Cartage Work on the relevant day;
 - (vii) Force Majeure has occurred; or
 - (viii) The Nominated Driver is otherwise on a period of Authorised Absence.

1.6 Utilisation Groups

All Utilisation Groups will be determined by Metromix, having regard to the needs of the business. There will be no changes to a Utilisation Group once determined, without prior consultation with the Consultative Committee.

1.7 Consultation

Prior to undertaking the steps in clause 1.3 of this schedule, the Consultative Committee shall meet to consult on the adjusted model arising from clause 1.2 of this schedule.

SCHEDULE 3 - SURCHARGES

1. Surcharges

- 1.1 The Surcharges are ascertained from the "Prime Mover Only Surcharges" of the relevant "Metromix Concrete Cartage Cost Model" as at the date this Contract Determination commences to operate and then as varied from time to time in accordance with this Contract Determination.
- 2.1 The Surcharges are:
- (a) (for a Contract Carrier who has not yet introduced a New Prime Mover in accordance with clause 5 Prime Mover) the Surcharges subject to the Utilisation and Rise and Fall reviews that operated immediately prior to this Contract Determination commencing; and
 - (b) (for a Contract Carrier who has introduced a New Prime Mover in accordance with clause 5 Prime Mover) ascertained from "Prime Mover Only Surcharges" of the relevant "Metromix Concrete Cartage Cost Model" as at the date this Contract Determination commences to operate and then as varied from time to time in accordance with this Contract Determination.

SCHEDULE 4 - INSURANCES

The Contract Carrier must obtain the following insurance and maintain them at the Contract Carrier expense at all times:

- (a) compulsory third party insurance for the Vehicle as required by any relevant law;
- (b) comprehensive motor Vehicle insurance covering personal injury and property damage arising from the use of the Vehicle for \$10,000,000 (or such higher sum as Metromix requires from time to time) for each claim or occurrence;
- (c) public and products liability covering legal liability to any third party for personal injury and/or property damage arising from the Contract Carrier business, this Contract Determination or the Contract Carrier breach of this Contract Determination for \$20,000,000 (or such higher sum as Metromix requires from time to time) for each claim or occurrence with extension to cover:
- (d) wrongful delivery of Concrete;
- (e) workers' compensation insurance as required by any relevant law;
- (f) insurance covering the Agitator (transit mixer and barrel);
- (g) solidification of Concrete insurance; and
- (h) personal accident and sickness insurance.

SCHEDULE 5 - 1.0M3 MOVER SPECIFICATION

1. Specification

- 1.1 Subject to this Schedule, Metromix may determine the specification from time to time.
- 1.2 If Metromix change a specification it must:
- (a) consult with the Consultative Committee; and
 - (b) provide each Contract Carrier with a copy of the specification.

- 1.3 Unless the specification is for a New Vehicle, if Metromix change a specification and in so doing the Contract Carrier is required to retro fit their Vehicle, Metromix must:
- (a) pay for the retro fit; or
 - (b) adjust the relevant "Metromix Concrete Cartage Cost Model" to reflect to cost of the retro fit.
- 1.4 Any adjustment arising from 1.3 shall be operative from the next review (after the adjustment) arising from Schedule 8.

SCHEDULE 6 - 2.0M3 PRIME MOVER SPECIFICATION

1. Specification

- 1.1 Subject to this Schedule, Metromix may determine the specification from time to time.
- 1.2 If Metromix change a specification it must:
- (a) consult with the Consultative Committee; and
 - (b) provide each Contract Carrier with a copy of the specification.
- 1.3 Unless the specification is for a New Vehicle, if Metromix change a specification and in so doing the Contract Carrier is required to retro fit their Vehicle, Metromix must:
- (a) pay for the retro fit; or
 - (b) adjust the relevant "Metromix Concrete Cartage Cost Model" to reflect to cost of the retro fit.
- 1.4 Any adjustment arising from 1.3 shall be operative from the next review (after the adjustment) arising from Schedule 8.

SCHEDULE 7 - 3.0M3 PRIME MOVER SPECIFICATION

1. Specification

- 1.1 Subject to this Schedule, Metromix may determine the specification from time to time.
- 1.2 If Metromix change a specification it must:
- (a) consult with the Consultative Committee; and
 - (b) provide each Contract Carrier with a copy of the specification.
- 1.3 Unless the specification is for a New Agitator, if Metromix change a specification and in so doing the Contract Carrier is required to retro fit their Vehicle, Metromix must:
- (a) pay for the retro fit; or
 - (b) adjust the relevant "Metromix Concrete Cartage Cost Model" to reflect to cost of the retro fit.
- 1.4 Any adjustment arising from 1.3 shall be operative from the next review (after the adjustment) arising from Schedule 8.

SCHEDULE 8 - RISE AND FALL

1. Annual Cost Model Review

1.1 Review Process

- (a) Subject to clause 1.1 (d), each year, Metromix shall review the green inputs set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model".
- (b) The review must determine the value for the green inputs as at 30 September in that year.
- (c) The value is to be determined by Metromix from enquiries of the sources and methodology used (and if not available a reasonable like source and methodology) to build the relevant "Metromix Concrete Cartage Cost Model".
- (d) Despite clause 1.1 (a), the inputs set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model" in the left hand column set out in the table below shall only be subject of review in accordance with period set out in the right hand column set out in the table below:

1.0m3 Prime Mover RRP 2.0m3 Prime Mover RRP 3.0m3 Prime Mover RRP	The review occurring on 30 September 2018 and thereafter every 10 years.
---	--

1.2 Consultation on Inputs

Metromix shall consult with the Consultative Committee (refer to clause 27 of this Contract Determination) about the outcome of the review before finalising the values referred to in clause 1.1.

1.3 Adjustment of Model

- (a) Having determined the values of the green inputs set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model", Metromix shall enter any changes to the values for the blue inputs (refer to clause 1.1((d)) into the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model".
- (b) Having undertaken the step in clause 1.3 (a), Metromix shall refresh the Model.

1.4 New Rates

Following the process in clause 1.3, the new cartage rates and surcharges shall be the cartage rates and surcharges ascertained from the following Sheets of the relevant "Metromix Concrete Cartage Cost Model":

- (a) RATE SCH Prime Mover Only; and
- (b) Prime Mover Only Surcharges.

1.5 Operative Date

Any new Cartage Rates and Surcharges arising from clause 1.4, shall be operative from the first of November following the Review.

2. Periodic Fuel Review

2.1 Process

- (a) Subject to clause 2.1(b), each year Metromix shall review the red inputs for "Fuel - Exc GST, Diesel Fuel Rebate - Off Road Use, Diesel Fuel Rebate - On Public Road and Fuel Additive set

out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model".

(b) The review must determine the value for the inputs referred to in clause 2.1 (a) as at:

- (i) 31 March;
- (i) 30 June;
- (ii) 30 September; and
- (iii) 31 December.

Notation: The 30 September review of fuel is undertaken in conjunction with the Annual Cost Model Review set out in clause 1 of this Schedule.

(c) The value is to be determined by Metromix from enquiries of the sources and methodology used (and if not available a reasonable like source and methodology) to build the relevant "Metromix Concrete Cartage Cost Model".

2.2 Consultation on Inputs

Metromix shall consult with the Consultative Committee (refer to clause 27 of this Contract Determination) about the outcome of the review before finalising the values referred to in clause 2.1.

2.3 Adjustment of Model

(a) Having determined the values for the red inputs "Fuel - Exc GST, Diesel Fuel Rebate - Off Road Use, Diesel Fuel Rebate - On Public Road and Fuel Additive set out in the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model", Metromix shall enter those values into the "Key Variables & Price Sheet" of the relevant "Metromix Concrete Cartage Cost Model".

(b) Having undertaken the step in clause 2.3 (a), Metromix shall refresh the Model.

2.4 New Rates

Following the process in clause 2.3, the new cartage rates and surcharges shall be the cartage rates and surcharges ascertained from the following Sheets of the relevant "Metromix Concrete Cartage Cost Model":

- (a) RATE SCH Prime Mover Only; and
- (b) Prime Mover Only Surcharges.

2.5 Operative Date

Any new Cartage Rates and Surcharges arising from clause 2.4 shall be operative as of:

- (a) 1 May;
- (b) 1 August;
- (c) 1 November; and
- (d) 1 February.

SCHEDULE 9 - FORMS

Such forms as Metromix reasonably determine from time to time.

SCHEDULE 10 - NEW CONTRACT CARRIERS

1. Assignment

- 1.1 The Contract Carrier must not Assign or Dispose of, or purport to Assign or Dispose of the contractual arrangement under which they are engaged by Metromix to perform the Cartage Work or any rights under it.

2. Termination without Compensation and Notice

- 2.1 Metromix may terminate the Contract Carrier's engagement immediately and without compensation to the Contract Carrier if:
- (a) the Contract Carrier does not pay within one month of demand any monies payable to Metromix;
 - (b) Metromix gives the Contract Carrier a notice requiring repairs to the Contract Carrier's prime mover within a time which is reasonable having regard to the required repairs and the Contract Carrier does not comply with that notice;
 - (c) the Contract Carrier does not comply with any provision of the Contract Determination, and the Contract Carrier fails to remedy (and keep remedied) that default within fourteen (14) days (or such other period as may be agreed in writing) of written notice from Metromix requiring the default to be remedied;
 - (d) the Contract Carrier Assigns or Disposes of, or purports to Assign or Dispose of the contractual arrangement under which they are engaged by Metromix to perform the Cartage Work or any rights under it;
 - (e) except when the Contract Carrier's prime mover is undergoing required repairs within a time which is reasonable having regard to the required repairs (proof of such reasonableness shall lie with the Contract Carrier) the Contract Carrier's Vehicle is unavailable to perform the Cartage Work without Metromix's authorisation; or
 - (f) the Nominated Driver commits an act that were they an employee of Metromix the act would constitute serious misconduct.

3. Termination without Compensation but with Notice

- 3.1 Despite clause 2, Metromix may terminate the Contract Carrier's engagement without cause and without compensation, upon 3 months' written notice to the Contract Carrier.

Notation: In some circumstances the Transport Industry - Redundancy (State) Contract Determination might apply.

4. Termination by Contract Carrier

- 4.1 The Contract Carrier may terminate their engagement by providing Metromix with three (3) months' written notice.

5. Dictionary

- 5.1 In this Schedule 10, words have the meaning given to them in clause 29 of this Contract Determination and in this dictionary unless the context requires otherwise.

Assign or

Dispose of includes:

- (a) cause or permit a Change in Control of the Contract Carrier;
- (b) subcontract to another person performance of some or all of the Cartage Work;
- (c) let or part with possession of the Vehicle, except as a consequence of the purchase of a new Vehicle; or
- (d) cause or permit the Nominated Driver to be directly or indirectly employed by a person other than the Contract Carrier in relation to the Cartage Work.

Change in Control (without limitation) is taken to have occurred in relation to the Contract Carrier if without Metromix's prior written consent:

- (a) a person who is not a director of the Contract Carrier becomes such a director;
- (b) a person ceases to be, or becomes, the natural person who directly or indirectly controls the Contract Carrier;
- (c) a person ceases to hold, or to own beneficially, or becomes the holder or the beneficial owner of, a majority of the voting shares (as defined in the Corporations Law) in the Contract Carrier;
- (d) a person ceases to have, or commences to have, the capacity to appoint a majority of the directors of the Contract Carrier; or
- (e) a person who is a director of the Contract Carrier ceases to be such a director; or
- (f) in relation to any trust entitled to any income flowing from, or to any shares in, the Contract Carrier;
 - (i) a person ceases to be, or becomes, a beneficiary or discretionary object of the trust;
 - (ii) a distribution of, or an appointment of, such income under the trust is made in favour of a person who has not previously been the subject of a distribution or appointment of such income; or
 - (iii) any such share is included in property the subject of a distribution or appointment of capital from or under the trust.

Claims includes actions, causes of action, potential causes of action, investigations, prosecutions, suits, legal proceedings, disputes, differences, rights, duties, obligations, liabilities, responsibilities, accounts, interests, costs (whether or not the subject of a court order) and demands.

Confidential Information means all information and materials in any form concerning Metromix, its customers or suppliers, and includes without limitation, information regarding Metromix's business or financial activities, pricing or quoting structures or any other information which Metromix indicates to be Confidential Information, but does not include materials which are in the public domain other than by way of unauthorised disclosure.

Corporations Act means the *Corporations Act 2001* (Cth).

Insolvency Event means:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;

- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven (7) days;
- (e) a receiver or receiver and manager is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members, or a moratorium involving any of them;
- (i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven (7) days or a person presents a petition against himself or herself;
- (j) a person presents a declaration of intention under section 54A of the *Bankruptcy Act* 1966 (Cth); or
- (k) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

SCHEDULE 11 - CONTRACT CARRIERS AND THIER PERMITTED

ASSIGNEES WHO COMMENCED BEFORE 1 OCTOBER 2017

1. Assignment

- 1.1 The Contract Carrier must not Assign or Dispose of, or purport to Assign or Dispose of the contractual arrangement under which they are engaged by Metromix to perform the Cartage Work or any rights under it except in accordance with Annexure A to this Schedule 11.

2. Termination without Compensation and Notice

- 2.1 Metromix may terminate the Contract Carrier's engagement immediately and without compensation to the Contract Carrier if:
- (a) the Contract Carrier does not pay within one month of demand any monies payable to Metromix;
 - (b) Metromix gives the Contract Carrier a notice requiring repairs to the Contract Carrier's prime mover within a time which is reasonable having regard to the required repairs and the Contract Carrier does not comply with that notice;
 - (c) the Contract Carrier does not comply with any provision of the Contract Determination, and the Contract Carrier fails to remedy (and keep remedied) that default within fourteen (14) days (or such other period as may be agreed in writing) of written notice from Metromix requiring the default to be remedied;

- (d) the Contract Carrier Assigns or Disposes of, or purports to Assign or Dispose of the contractual arrangement under which they are engaged by Metromix to perform the Cartage Work or any rights under it except in accordance with Annexure A to this Schedule 11;
- (e) except when the Contract Carrier's prime mover is undergoing required repairs within a time which is reasonable having regard to the required repairs (proof of such reasonableness shall lie with the Contract Carrier) the Contract Carrier's Vehicle is unavailable to perform the Cartage Work without Metromix's authorisation; or
- (f) the Nominated Driver commits an act that were they an employee of Metromix the act would constitute serious misconduct.

3. Termination with Compensation and Notice

- 3.1 Despite clause 2, Metromix may terminate the Contract Carrier's engagement without cause by providing:
- (a) 3 months' written notice to the Contract Carrier; and
 - (b) a payment (if any is required) of the Termination Payment set out in Annexure C to this Schedule 11.

4. Termination by Contract Carrier

- 4.1 The Contract Carrier may terminate their engagement by providing Metromix with three (3) months' written notice.

5. Dictionary

- 5.1 In this Schedule 11, words have the meaning given to them in clause 29 of this Contract Determination and in this dictionary unless the context requires otherwise.

Assign or

Dispose of includes:

- (a) cause or permit a Change in Control of the Contract Carrier;
- (b) sub contract to another person performance of some or all of the Cartage Work;
- (c) let or part with possession of the Vehicle, except as a consequence of the purchase of a new Vehicle; or
- (d) cause or permit the Nominated Driver to be directly or indirectly employed by a person other than the Contract Carrier in relation to the Cartage Work.

Change in Control

(without limitation) is taken to have occurred in relation to the Contract Carrier if without Metromix's prior written consent:

- (a) a person who is not a director of the Contract Carrier becomes such a director;
- (b) a person ceases to be, or becomes, the natural person who directly or indirectly controls the Contract Carrier;
- (c) a person ceases to hold, or to own beneficially, or becomes the holder or the beneficial owner of, a majority of the voting shares (as defined in the Corporations Law) in the Contract Carrier;

- (d) a person ceases to have, or commences to have, the capacity to appoint a majority of the directors of the Contract Carrier; or
- (e) a person who is a director of the Contract Carrier ceases to be such a director; or
- (f) in relation to any trust entitled to any income flowing from, or to any shares in, the Contract Carrier;
 - (i) a person ceases to be, or becomes, a beneficiary or discretionary object of the trust;
 - (ii) a distribution of, or an appointment of, such income under the trust is made in favour of a person who has not previously been the subject of a distribution or appointment of such income; or
 - (iii) any such share is included in property the subject of a distribution or appointment of capital from or under the trust.

Claims includes actions, causes of action, potential causes of action, investigations, prosecutions, suits, legal proceedings, disputes, differences, rights, duties, obligations, liabilities, responsibilities, accounts, interests, costs (whether or not the subject of a court order) and demands.

Confidential Information means all information and materials in any form concerning Metromix, its customers or suppliers, and includes without limitation, information regarding Metromix's business or financial activities, pricing or quoting structures or any other information which Metromix indicates to be Confidential Information, but does not include materials which are in the public domain other than by way of unauthorised disclosure.

Corporations Act means the *Corporations Act 2001* (Cth).

Insolvency Event means:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven (7) days;
- (e) a receiver or receiver and manager is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members, or a moratorium involving any of them;

- (i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven (7) days or a person presents a petition against himself or herself;
- (j) a person presents a declaration of intention under section 54A of the *Bankruptcy Act 1966* (Cth); or
- (k) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

ANNEXURE A - ASSIGNMENT

1. Entitlement

Subject to clause 3 of this Schedule 11, the Contract Carrier may assign the contractual arrangement under which they are engaged by Metromix to perform the Cartage Work to a company:

- (a) which provides a driver whom:
 - (i) possesses an appropriate current driver's licence; and
 - (ii) before commencing work, satisfactorily undergoes Metromix's then current pre-engagement criteria and attends and satisfactorily completes any training program (to be held at Metromix's closest available facility) relevant to the performance of the Cartage Work that Metromix reasonably requires; and
- (b) proved by the Contract Carrier to Metromix's reasonable satisfaction that they have a prime mover suitable for the Cartage Work without any modifications or rebuilding (unless those modifications or rebuilding are carried out at the Contract Carrier's expense); and
- (c) approved by Metromix in writing (such approval not to be unreasonably withheld) after and only after:
 - (i) Metromix has interviewed the principal(s) of the said company and explained:
 - A the contents and operation of our Mini Cartage Contract;
 - B the content and meaning of the Deed of Assignment (Annexure B); and
 - C generally the operation of Metromix's business as it relates to contract carriers; and
 - (ii) the company has confirmed in writing which if require by Metromix shall be in a Statutory Declaration) to Metromix's reasonable satisfaction its understanding of the representations made at the interview; and
 - (iii) executed a Certificate of Financial Advice and a Certificate of Legal Advice.

2. Deed of Assignment

The approved assignee shall execute (no sooner than seven days and no later than 21 days after being approved in writing in accordance with clause 1(c) of this Annexure) a Deed of Assignment in the form (and only in the form) set out Annexure B to Schedule 11.

3. Notice to Assign and First Option

- (a) Whenever the Contract Carrier intends to assign the contractual arrangement under which they are engaged by Metromix to perform the Cartage Work in accordance with this Annexure, they must first notify Metromix in writing of their intention.

- (b) Despite anything else in this Annexure A (or Schedule 11) Metromix and the Contract Carrier may agree on an arrangement (on such terms as the parties in their absolute discretion determine) to terminate the contractual arrangement rather than proceed with any assignment.

ANNEXURE B - DEED OF ASSIGNMENT

Deed of Assignment

DEED OF ASSIGNMENT made the _____ of _____ 20__ in _____

(the "Deed of Assignment")

BETWEEN:

- (1) METROMIX PTY LIMITED of, NSW ("Metromix"); and
- (2) [insert Company executing this Deed of Assignment as an Assignor Contract Carrier] (the "Outgoing Contract Carrier"); and
- (3) [insert Company executing this Deed as an Assignee Contract Carrier] (the "Incoming Contract Carrier").

RECITALS:

- A. Metromix carries on the business of the manufacture and sale of Concrete in New South Wales.
- B. The Outgoing Contract Carrier desires to assign to the Incoming Contract Carrier the Mini Cartage Contract and all its rights and other obligations under it.

THE PARTIES AGREE AND DECLARE as follows:

1. Interpretation

- 1.1 In this Deed of Assignment, expressions used or defined in clause 29 and Schedule 11 of the Contract Determination have the same meaning in this Deed and in addition:

"Assignment Date" means the day upon which this Deed of Assignment is executed.

"Mini Cartage Contract" means the contractual arrangement under which the Outgoing Contract Carrier is engaged by Metromix to perform the Cartage Work a true copy of which is annexed to this Deed of Assignment.

2. Assignment

- 2.1 With effect from the Assignment Date:

Metromix engages the Incoming Contract Carrier as a Contract Carrier to perform the Cartage Work instead of the Outgoing Contract Carrier;

the Incoming Contract Carrier agrees with Metromix to perform the Cartage Work on the terms and conditions of the Mini Cartage Contract; and

the Incoming Contract Carrier becomes a party to the Mini Cartage Contract.

3. Release

3.1 Metromix and the Outgoing Contract Carrier confirm their obligations to make payments arising from the performance of their obligations under the Mini Cartage Contract and/or Contract Determination up to and including the Assignment Date which they now agree to be set out in the Schedule attached to this Deed of Assignment.

3.2 Except as provided in clause 3.1, with effect from the Assignment Date:

Metromix and the Outgoing Contract Carrier release each other from performance of any obligation under the Mini Cartage Contract and/or Contract Determination falling due for performance after the Assignment Date; and

Metromix and the Outgoing Contract Carrier release each other from any claim arising directly or indirectly under or in connection with the Mini Cartage Contract and/or Contract Determination.

4. Acknowledgement by Incoming Contract Carrier

4.1 The Incoming Contract Carrier acknowledges that:

- (a) they were not required by Metromix to pay any goodwill, premium, fee paid for introductions to work or other similar consideration however termed and further Metromix does not request or desire such payment to be made when engaging the Incoming Contract Carrier; and
- (b) the Contract Carrier’s engagement may be terminated in accordance with clause 2, 3, 4 of Schedule 11 or clause 3 of Annexure A - Schedule 11.

EXECUTED as a Deed on the date hereinbefore mentioned

EXECUTION BY METROMIX OF THE DEED OF ASSIGNMENT:

SIGNED, SEALED AND DELIVERED)
 FOR AND ON BEHALF OF)
 METROMIX PTY LIMITED)
 By its duly authorised officer)

.....
 Name: Witness:

EXECUTION BY THE OUTGOING CONTRACT CARRIER OF THE DEED OF ASSIGNMENT:

SIGNED, SEALED AND DELIVERED)
 for and on behalf of)
 [insert Outgoing Contract Carrier])

.....
 by its authorised officer in Authorised Officer
 the presence of: Name (printed):

.....
 Witness
 Name (printed):

EXECUTION BY THE INCOMING CONTRACT CARRIER OF THE DEED OF ASSIGNMENT:

SIGNED, SEALED AND DELIVERED)
for and on behalf of)
[insert Incoming Contract Carrier])

.....
by its authorised officer in Authorised Officer

the presence of: Name (printed):

.....
Witness
Name (printed):

Schedule - Payment Details

Notation: In accordance with clause 3.1, insert here any outstanding payments to be made to the Outgoing Contract Carrier

Annexure - True Copy of the Mini Cartage Contract Being Assigned

Attach True Copy

ANNEXURE C - TERMINATION PAYMENT

1. Termination Payment

1.1 The Termination Payment is an amount calculated from the formula below less:

- (a) any amount that Metromix is required to pay the Contractor in accordance with the Transport Industry Redundancy (State) Contract Determination as varied or replaced from time to time; and/or
(b) any other termination or severance payment required to be paid to the Contractor in accordance with another contract determination made by the Industrial Relations Commission of NSW from time to time.

1.2 The formula is:

During the ten year period from the day upon which this Contract Determination commenced operation:

\$7,500 or, if greater, the amount calculated as:

\$70,000 x (A/B)

A = The number of whole months between the termination date and the day that falls 10 years after the day upon which this Contract Determination commenced operation.

B = 120.

After the ten year period from the day upon which this Contract Determination commenced operation:

\$7,500

SCHEDULE 12 - EMBARGO PLANT LIST**1. Embargo Plants**

1.1 List

The Plants listed in the table below are the Plants for the purposes of clause 24.3(a).

Plant Name	Plant Address
Able Hornsby	11 Salisbury Rd Hornsby

P. J. NEWALL, Commissioner

Printed by the authority of the Industrial Registrar.

(680)

SERIAL C8787

TRANSPORT INDUSTRY - EXCAVATED MATERIALS, CONTRACT DETERMINATION

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Transport Workers' Union of New South Wales, Industrial Organisation of Employees.

(Case No. 354626 of 2017)

Before Commissioner Murphy

12 February 2018

VARIATION

1. Delete subclause 2.3 of clause 2, Method of Remuneration of the contract determination published 24 October 1997 (301 I.G. 1082), and insert in lieu thereof the following:
- 2.3 The contract carrier will be paid a rate based upon the number of axles in the vehicle supplied, except
 - (i) for a Class 3 Truck and Dog trailer combination (as complies with the Class 3 Truck and Dog Trailer Combination Notice issued by the Roads and Maritime Authority) the rate shall be as specified for "6 axle (48t)"; and
 - (ii) for a PBS Truck and Dog trailer combination (as complies with the National Class 2 PBS Level 1 and 2A Truck and Dog Trailer Authorisation Notice 2016 (No 1)) issued by the National Heavy Vehicle Regulator, the rates shall be as specified for "PBS T&D".

2. Delete Part B, Rates of Remuneration, and insert in lieu thereof the following:

PART B

RATES OF REMUNERATION

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

3. Delete Part C - Rise and Fall Formula, and insert in lieu thereof the following:

PART C

RISE AND FALL FORMULA

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

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

3. If the cost components, excepting fuel, change such that it causes an increase in the total remuneration of 2 percent or more from the date of the last variation, an interim adjustment may be made. An application to vary rates of remuneration for changes in the price of fuel may be made at any time, provided that the date upon which any rate adjustment is sought to become operative is at least one calendar month after the last occasion upon which a fuel rate adjustment became operative.
4. Each cost component will be re-weighted after each adjustment.
5. Parties to this Determination will confer with a view to reaching agreement on any application for adjustment on any application for adjustment. In the absence of agreement the rates and amounts shall be determined by the IRC.
6. Notwithstanding anything contained in this Part, a variation shall not be retrospective in operation but shall operate from a date not earlier than the date upon which it is made.
4. This variation shall take effect on and from 12 February 2018.

J. MURPHY, Commissioner