



# TRANSPORT INDUSTRY - MOTOR BUS DRIVERS AND CONDUCTORS (STATE) AWARD

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## SECTION 1 WAGES AND HOURS OF EMPLOYMENT

### 2. SHORT TITLE

The short title of this award shall be the "Bus Award."

### 3. NO EXTRA CLAIMS

The union undertakes not to pursue any extra claims for the duration of the award's nominal term.

### 4. WAGES

#### (i) Full-Time Employees

The wages of full-time employees are as set out in Table 1 - Wage Rates, of Part B, Monetary Rates.

#### (ii) Dual Capacity Allowance -

(a) An employee called upon to issue tickets or collect fares shall be paid an additional amount per day as set out in Item 1 of Table 2, for each day or part thereof on which he/she so acts.

(b) The driver of an articulated bus shall be paid an additional amount per shift or part thereof as set out in Item 2 of the said Table 2 while so engaged.

(iii) Notwithstanding any other provision of this award, trainee employees whilst under the control of a driver instructor shall be paid at ordinary-time rates of pay, without any allowances or penalties to apply.

#### (iv) Bus Industry Reform Contracts – Additional Payments & Allowance:

(a) The allowances specified in Table 3 of Part B of this award shall be paid in lieu of the allowances in Table 2 of Part B of this award with respect to all employees engaged in a yard operated by an employer (including any Associated Operator) bound by this award at or from which any work pursuant to a Bus Industry reform Contract is performed, and from the date upon which the contract is signed by parties to it.

- (b) The Bus Industry Reform Allowance specified in item 1 of Table 4 of Part B of this award shall be payable from 1 April 2005 with respect to all employees engaged at a yard operated by an employer (including any Associated Operator) at or from which any work pursuant to a metropolitan Bus Industry reform Contract is performed.
- (c) To avoid doubt, the Bus Industry Reform Allowance specified in items 1 and 2 of Table 4 of Part B of this award is payable for all purposes as if it were part of the base wage.

## 5. PAYMENT OF WAGES

- (i) (a) Wages shall be paid weekly by cash, cheque or electronic funds transfer. Provided that, where there is agreement between an employer and a majority of their employees at a yard, its employees at that yard, may be paid fortnightly.
- (b) A payday shall be fixed at each place of employment, which, once established, shall not be changed except by agreement or with seven days' notice.
- (c) Employers will provide a choice of electronic funds transfer facilities where this is the chosen method of payment.
- (ii) (a) No employer shall hold more than two days' pay in hand.

- (b) Cash wages shall be paid without delay prior to the employee ceasing work on the day set as payday. In the event of the payment of cash wages being delayed more than 15 minutes beyond the employee's finishing time, all such waiting time shall be paid for at overtime rates.
  - (c) Where wages are paid direct into an employee's bank account, the wages shall be available on the day set as payday. If the wages are not available to the employee on the designated day the employee shall contact the employer, who shall arrange with the bank for the wages to be made available. If, by the day following payday, the wages are still not available, the employer shall make available to the employee the equivalent amount in cash. If the bank then deposits the money in the employee's bank account, it shall be repaid to the employer prior to the next payday.
- (iii)
  - (a) Notwithstanding anything contained within the Award and the payments set out in Table B an employee may elect, subject to the agreement of the employer, to sacrifice a specific amount of their base wage paid under this award to additional superannuation payments.
  - (b) Any salary sacrifice arrangement entered into under this clause is subject to taxation and superannuation legislation.
  - (c) Employees are responsible for seeking their own independent financial advice with respect to salary sacrifice arrangements.
- (iv) Where an employer has more than one depot, garage or picking-up place, arrangements as to the place of payment of wages shall be mutually agreed upon between the employer and the union. Failing agreement, the matter shall be referred to the Industrial Committee.
- (v) Nothing in this clause shall preclude an employer from making other arrangements as to pay day or period, as may be found convenient, but only with the consent of the union.
- (vi) Unless the employer is exempted under the provisions of section 123 of the *Industrial Relations Act 1996*, each employee shall be supplied with a pay envelope or statement in writing on which there shall be endorsed those things required by s123 of the *Industrial Relations Act 1996* and Clause 6 of the Industrial Relations (General) Regulation 1996 including:

- (a) the name of the employee;
- (b) the classification of the employee;
- (c) the date on which the payment was made;
- (d) the period of employment to which the payment relates;
- (e) the gross amount of remuneration;
- (f) the amount paid as overtime or such information as will enable the employee to calculate the amount paid as overtime;
- (g) the amount deducted for taxation purposes;
- (h) the amount deducted as employee contributions for superannuation purposes;
- (i) the particulars of all other deductions; and
- (j) the net amount paid.

## 6. CASUAL EMPLOYEES

- (i) (a) Casual employees shall be paid at the rate prescribed in this award for full-time employees, calculated on an hourly basis, plus 15 per cent for the time worked.
- (ii) Casual employees shall be paid in the following manner:
  - (a) Monday to Friday

Casual employees shall be engaged by the hour and paid for all time worked to the nearest minute, with a minimum engagement of one hour; provided that, for all time worked in excess of 38 hours per week or ten hours on any day, the rate of pay shall be time and one-half.
  - (b) Saturdays

Casual employees shall be engaged for a minimum of four hours and shall be paid for all time worked at time and one-half.
  - (c) Sundays

Casual employees shall be engaged for a minimum of five hours and shall be paid for all time worked at double time.
  - (d) Public Holidays

Casual employees shall be engaged for a minimum of five hours and shall be paid for all time worked at double time and one-half.

- (iii) Clause 11, Overtime and Other Penalty Payments, shall not apply to casual employees.

## 7. PART-TIME EMPLOYEES

Employees may be employed on a permanent basis to work regular days and regular hours less than 38 per week, provided that:

- (i) The set weekly hours for such an employee shall be determined upon engagement and committed to writing; provided that, by mutual agreement, they may be varied to enable the employee to accept any extra duties that may be offered from time to time.
- (ii) Notwithstanding subclause (i) of this clause, a minimum of three hours per day shall be worked by such an employee.
- (iii) The spread of ordinary hours allowable for such employees shall be as set out in paragraph (a) of subclause (ii) of clause 11, Overtime and Other Penalty Payments.
- (iv) The rate of pay of such employees shall be calculated on the basis of an hourly rate equal to the appropriate rate as set out in clause 4, Wages, and divided by 38.
- (v) Part-time employees shall attract pro rata entitlement to:
  - (1) annual leave;
  - (2) annual leave loading;
  - (3) sick leave;
  - (4) bereavement leave;
  - (5) long service leave;
  - (6) public holidays that fall within the four school terms;
  - (7) union picnic day; and
  - (8) carer's leave.

## 8. HOURS OF EMPLOYMENT

- (i) (a) The ordinary hours of work shall not exceed 38 per week, excluding meal breaks.

- (b) Ordinary hours shall be worked on one of the following bases:
    - (1) 38 hours to be worked within a working week not exceeding seven consecutive days, allowing working hours to be reduced by minutes per day or hours per week; or
    - (2) two weeks worth of working hours (i.e., 76 hours) to be worked within a working fortnight over 14 consecutive days; or
    - (3) three weeks worth of working hours (i.e., 114 hours) to be worked within a work cycle not exceeding 21 consecutive days; or
    - (4) four weeks worth of working hours (i.e., 152 hours) to be worked within a work cycle not exceeding 28 days; or
    - (5) any other arrangement where a weekly average of 38 hours is worked.
  - (c) Employers and employees may, by agreement, defer "time off" for up to a maximum of five days with such deferred time off to be taken within a period of six months from the date on which agreement to defer was reached.
  - (d) Employers shall determine the method of implementation of reduced working hours. Different methods of implementation may occur and may even differ from employee to employee.
- (ii) The ordinary weekly hours shall be worked in four or five days; provided that, in the case of an employer employing less than nine employees, it shall be optional for such employer to work his/her employees up to six days per week. The option once exercised shall be altered only by notice posted for seven days in a prominent position in the depot, garage or picking-up place.
  - (iii)
    - (a) Where a four or five-day week is worked, the ordinary hours of rostered shifts shall be limited to ten hours of any shift of such week.
    - (b) Where a six-day week is worked, the ordinary hours of rostered shifts shall be limited to nine hours of any shift of such week.

- (c) An employee called on to work any portion of an additional shift shall be paid not less than the period of such shift or the additional hours as overtime.
- (d) An employee, other than a casual employee, called upon to work a broken shift on Monday to Friday, inclusive, shall be paid for not less than seven hours for such shift.
- (iv) (a) No broken shift shall be rostered to exceed a spread of 12 hours inclusive of meal breaks, provided that, where the roster requires, a broken shift may be rostered to a spread of 13 hours. Broken shifts in excess of 13 hours spread may be implemented only by agreement with the union.
- (b) No straight shift shall be rostered to exceed a spread of 11 and a half hours, inclusive of meal breaks.
- (c) No employee shall be required to work a broken shift on a Saturday, Sunday or public holiday except where, on regular timetabled services, such broken shifts cannot reasonably be avoided.
- (d) In particular circumstances, it shall be optional for the union and the employer to make an agreement as to broken shifts.
- (e) The break between the two sections of a broken shift, which exceeds a spread of ten hours, shall be at least one and a half hours, and only one such break shall be permitted on any such shift. Any other periods off duty during a broken shift shall be counted and paid for as time worked.
- (f) Employees may be permitted to interchange work to meet their personal convenience, provided that such change is with the consent of the employer.
- (v) An employee shall have a continuous break between the completion of a shift and the commencement of the next regular starting time of no less duration than that required by the National Driving Hours Legislation.
- (vi) Fixing Times
  - (a) The employer shall fix the starting and finishing times of each employee for each shift and also shall show all work to be performed during the shift and shall post

rosters showing such times in a prominent place in the depot, but when once fixed, the start and finish times shall not be altered unless at least three days' notice (in the case of basic route rosters) or one day's notice (in all other cases) has been posted in a prominent place in the depot for the employees to see.

- (b) All starting and finishing times shall commence from and shall cease at the recognised home depot or picking-up place of the employee. This provision shall apply in this form only in the Sydney, Newcastle and Port Kembla-Wollongong areas as defined in clause 42, Definitions, and also in the area within eight kilometres of the principal post office, Cessnock.
  - (c) Elsewhere there shall be a picking-up place which, when once fixed and decided upon by the employer, shall not be altered by the employer without the consent of the union or, in the event of disagreement, without the approval of the conciliation Committee.
  - (d) Employees shall be allowed reasonable time to perform such duties as are required by the employer before taking a bus from the recognised home depot, garage or picking-up place and after returning a bus to the finishing place. The employer shall post notices stating what duties are required.
- (vii) Payments shall be made for each shift at the rate applicable to the day on which the major portion of the work is performed.

## 8A. SECURE EMPLOYMENT

- (a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment

converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.

- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:

- (1) whether the employee will convert to full-time or part-time employment; and

- (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the Industrial Relations Act 1996 (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- (c) Occupational Health and Safety
  - (i) For the purposes of this subclause, the following definitions shall apply:
    - (1) 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.

- (2) 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.
- (ii) 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):
    - (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
    - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
    - (3) 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
    - (4) 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.
  - (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the Occupational Health and Safety Act 2000 or the Workplace Injury Management and Workers Compensation Act 1998.
- (d) 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.

- (e) 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.

## 9. MEAL AND CRIB TIMES

- (i)
  - (a) No employee shall be required to work or be on duty continuously for more than five hours without a meal or crib break.
  - (b) There shall be such flexibility in meal and crib breaks in regard to charters, relief duties, straight shifts and/or broken shifts as is reasonably necessary to assist rostering.
  - (c) The times for taking meal and crib breaks shall be consistent with National Driving Hours legislation.
- (ii) A meal break shall be not less than 30 minutes and shall not exceed one hour. A crib break shall be not less than 15 minutes and not more than 30 minutes and shall be counted as time worked.
- (iii) No duties shall be performed by an employee during his/her meal or crib break.
- (iv) Where an employee is required to take a meal or crib break away from his/her depot, it shall be the responsibility of the employer to arrange for suitable toilet facilities. Where these facilities are not arranged by the employer on a meal break only, subject to Clause 4(iv)(a), an allowance as set out in item 3 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, shall be paid.
- (v) No employee shall take a meal break unless he/she previously worked for at least three hours, unless otherwise agreed between the union and the employer.

- (vi) Where an employee is required to work for two hours or more after the usual finishing time, he/she shall be paid a meal allowance as set out in Item 4 of the said Table 2.

## 10. MIXED FUNCTIONS

- (i) An employee required by his/her employer to work for less than two hours a day on work carrying a higher rate of pay shall be paid at the higher rate for the actual time so worked and when required to work for more than two hours a day on such work he/she shall be paid as for a whole day's work.
- (ii) This clause shall not apply to actual periods of one hour or less or to interchange of work arranged between employees to meet their personal convenience.

## 11. OVERTIME AND OTHER PENALTY PAYMENTS

- (i) Maximum Penalty Payment

Subject to clause 6, Casual Employees, and clause 17, Public Holidays, when time worked is subject to more than one extra rate of payment, the employer shall not be required to pay more than the rate of double time.

- (ii) Overtime
  - (a) Rostered overtime shall be paid for at the rate of time and one-half for the first two hours and double time thereafter, for all rostered time worked in excess of 38 hours.
  - (b) Non-rostered overtime shall be paid for at the rate of time one-half for the first two hours and double time thereafter, and shall stand alone on a daily basis.
  - (c) Overtime rates shall be paid for all time worked between the hours of midnight and 5.00 a.m., subject to subclause (i) of clause 13, Nightride Shifts.
  - (d) Overtime rates shall be paid for all time worked in excess of nine hours where a six-day week is worked, or in excess of ten hours where a four or five-day week is worked.
  - (e) An employee who is rostered to work a straight shift of a spread of 11 and one-half hours, inclusive of meal

breaks, shall be paid at double time for all time worked in excess of the rostered shift.

- (f) Employees requested to do non-rostered overtime, prior to the start of their normal shift, shall be paid at overtime rates up to the normal shift starting time; provided that, when such overtime does not extend up to the employee's normal starting time, a minimum of two hours pay at overtime rates shall be paid whether worked or not.
  - (g) For all time worked on Saturdays and Sundays, clause 12, Saturday and Sunday Work, shall apply.
  - (h) The employer may require employees to work reasonable overtime at the rate prescribed and such overtime shall be allocated as equally as possible, bearing in mind the nature of the job and the suitability of the driver.
  - (i) Where different overtime rates are applicable to the same hours of work, the rate most favourable to the employee shall be paid.
  - (j) By agreement with the employee, non-rostered overtime may be taken as time off in lieu. Such time shall accrue at overtime rates and be taken within six months.
- (iii) Broken Shift Penalty Payments
- (a) All time worked on a broken shift after nine and one half hours from the time first signed on shall be paid for at the rate of time and one-half.
  - (b) An employee who works a broken shift which finishes later than 10.00 p.m. shall be paid, in addition to his/her earnings for that shift, the sum as set out in Item 5 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates.
  - (c) Subject to subclause (i) of this clause, all broken shift penalties under this clause shall stand alone for the purpose of calculation of wages.
- (iv) Recall

An employee who has left the premises and who is requested to return to work to perform extra duties shall be paid at overtime rates, with a minimum paid period of four hours.

(v) Night Work

An employee rostered to work ordinary hours of duty commencing prior to 6.00 a.m. and/or finishing after 6.00 p.m. shall, subject to clause 4(iv) (a), be paid an additional penalty as set out in item 6 of the said Table 2.

## 12. SATURDAY AND SUNDAY WORK

- (i) All ordinary time worked on Saturday shall be paid for at the rate of time and one-half, and all time on Sunday shall be paid for at the rate of double time.
- (ii) An employee called upon to work on a Saturday shall be guaranteed and/or paid for not less than four hours work at the appropriate rate.
- (iii) An employee called upon to work on a Sunday shall be guaranteed and/or paid for not less than five hours work at the appropriate rate.

## 13. NIGHTRIDE SHIFTS

A nightride shift is a shift the majority of the ordinary hours of which is taken up by work pursuant to a contract entered into by the employer to provide timetable services for the replacement of train services between midnight and 5.00 a.m.

The wage rate applicable to such shifts:

- (i) worked on Monday to Saturday (inclusive) shall be time and a half;
- (ii) worked on Sunday shall be double time;
- (iii) worked on a public holiday shall be double time and a half.

Notwithstanding anything contained herein, each shift shall be paid for at the rate applicable to the day on which the major portion of the ordinary time of the shift is worked.

## 14. RAILWAY WORK

An employee required to drive a bus in substitution for a railway timetable service during scheduled railway maintenance work shall be paid at the rate applicable to the day, under this award, whilst performing such work.

## 15. SPECIAL HIRINGS

### (i) Special Hirings Not Exceeding Two Days

The following provisions shall apply to special hirings not exceeding two days duration, which do not form part of the ordinary rostered work of employees. "Not exceeding two days" shall be deemed to mean not exceeding two calendar days, falling between midnight and midnight.

- (a) An employee offered the job of a special hiring may, at his/her option, accept or reject such offer, but if he/she accepts then he/she shall work the job and, where practicable, seven days notice shall be given of such hiring.
- (b) The provisions of this award, other than clause 17, Travelling Time, shall not apply to special hirings.
- (c) The employee shall, subject to Clause 4(iv)(a) be paid a meal allowance as set out in Item 7 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, except where a suitable meal is provided.
- (d) The duration of the job shall be from the time of signing on to the time of signing off but shall not exceed 13 hours; provided that, in cases where an employee is unable to complete a special hiring in 13 hours, all time in excess shall be paid for at the rate of double time.
- (e) The employee shall be paid for the duration of the job at the ordinary hourly rate fixed under clause 4, Wages, for the first eight hours and at the rate of time and a half thereafter, but shall not be paid less than eight hours pay.
- (f) For special hirings of less than four hours, the following provisions shall apply:
  - (1) Paragraphs (c) (e) and (i) of this subclause shall not apply to such special hirings.
  - (2) Time worked on such special hirings shall be paid at:
    - (A) time and a half for Monday to Friday, inclusive;

- (B) double time for Saturday and Sunday;
- (C) double time and a half for public holidays.
- (3) On days when the special hiring is the only duty, the employee shall be paid for a minimum engagement of two hours.
- (4) If such special hiring is an extension of rostered duty, it shall be treated as overtime. All such time shall stand-alone.
- (g) Employees shall be supplied with a time sheet for all special hirings for the purpose of recording the starting and finishing times of such hirings, plus any other information required by the employer.
- (h) Where a special hiring exceeds one day but does not exceed two days, the following provisions shall apply:
  - (1) The employee shall have a rest period of at least eight hours after the completion of each daily shift.
  - (2) The employee shall be reimbursed by his/her employer for expenses reasonably incurred in obtaining satisfactory meals and hotel or other suitable accommodation.
- (ii) Where a special hiring is cancelled and the employee engaged for the job is not given at least eight hours notice of the cancellation, he/she shall be paid two hours pay at the ordinary rate.

(iii) Special Hirings Exceeding Two Days

In the case of special hirings exceeding two days duration, the wages paid shall be assessed in accordance with the other clauses of this award, including clauses 4, Wages; 11, Overtime and Other Penalty Payments; 12, Saturday and Sunday Work, and 18, Public Holidays.

16. DAYS OFF

- (i) All full time employees shall be allowed at least one day off in each week and shall not be worked on such day off, except in the case of an emergency.
- (ii) Where an employee is required to work on any day rostered off, time worked thereon shall stand alone and shall be paid for at the rate of double time if a Sunday, or at the rate of time and three-quarters if a Saturday, or at the rate of time and one-half if any other day.
- (iii) An employee required to work on any day rostered off shall be guaranteed and/or paid for not less than four hours work at the appropriate rate Monday to Saturday, and for not less than five hours work at the appropriate rate on a Sunday.

17. TRAVELLING TIME

- (i) Wherever the employee commences or finishes duty other than at his/her home depot, he/she shall be entitled to payment at ordinary rates for the additional time, if any, reasonably occupied in journeying to and from his/her home as compared with the time ordinarily occupied by him/her in journeying from his/her depot to his/her home and also shall be reimbursed for reasonable fares incurred.
- (ii) (a) Subject to agreement between the union and the Association in areas outside Sydney, Newcastle and Port Kembla-Wollongong, as defined in clause 42, Definitions, and outside the area within eight kilometres of the principal post office, Cessnock, subclause (i) of this clause shall not apply in respect of regular timetabled services and employees working on such services may be signed on and off places other than their home depots, subject to a meal allowance per meal as set out in Item 8 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, being paid; provided, however, that this exception shall not apply to

special hirings or any work outside of regular timetabled services; provided also that an employee ceasing duty at a place other than at his/her home depot who is required to remain overnight shall be reimbursed by the employer for expenses reasonably incurred in providing himself/herself with meals and hotel or other suitable accommodation.

- (b) In the event of their failing to agree, either the union or the Association may refer any matter arising under this subclause to the Industrial Committee for decision.

## **SECTION II PUBLIC HOLIDAYS AND PAID LEAVE**

### **18. PUBLIC HOLIDAYS**

- (i) (a) The days on which New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day and Boxing Day are observed, together with special days appointed by proclamation as public holidays throughout the State, shall be recognised as holidays. When taking any of the said holidays, an employee shall receive payment for the ordinary hours of their rostered shift and any rostered overtime they would have earned had they not taken a holiday, but shall not receive any daily allowances, loadings, penalties or premiums they would otherwise have earned.
  - (b) Where any of the said public holidays are observed (Monday to Friday, inclusive) during an employee's period of annual leave, an additional paid day shall be added to the annual leave period for each such holiday so occurring.
  - (c) Where any of the said public holidays fall (Monday to Friday, inclusive) on an employee's rostered day off, then the employee shall be entitled to an additional paid day added to his/her annual leave period or shall be paid, in addition to his/her wages for that week, seven hours 36 minutes pay for such public holiday.
- (ii) Where an employee is required to work any such holiday and he/she fails to work as required, no payment shall be made to the employee for the holiday; provided that this subclause shall not preclude payment of sick leave entitlement in respect of any employee who is unable to work on a public holiday because of

illness. Such employee shall be entitled to payment in accordance with clause 20, Sick Leave.

- (iii) All time worked by employees on a public holiday shall be paid for at the rate of double time and a half, with a guarantee of five hours work for each employee.
- (iv) Where, in a week in which a public holiday falls, an employee's ordinary rostered day off is altered so as to coincide with the public holiday, he/she shall be paid, in addition, at the ordinary rate for the number of hours he/she would have worked according to his/her normal roster had the day not been a holiday or, as alternatives, equivalent time off shall be allowed within one month or added to the employee's annual leave.
- (v) In a week in which a public holiday falls, the employer shall not be allowed to make up an employee's ordinary week with an overtime shift which, under the normal weekly roster, the employee would have worked had it not been a public holiday.
- (vi) In any week in which a public holiday occurs, the time for which the employee would normally be rostered to work but for the public holiday and for which the employee does not attend because of the public holiday shall be deemed to be time worked for the purpose of determining whether rostered overtime is payable pursuant to paragraph (a) of subclause (ii) of clause 11, Overtime and Other Penalty Payments.
- (vii) When an employee is absent from employment on the working day before or the working day after a public holiday without reasonable excuse or without the consent of the employer, the employee shall not be entitled to payment for such holiday unless the employee has worked on such holiday.

## 19. UNION'S PICNIC DAY

- (i) Easter Saturday shall be recognised as the union's picnic day.
- (ii) In addition to all other payments due to him/her, a financial member of the union, other than a casual employee, shall, upon proof thereof, be paid an additional day's pay in the pay period in which Easter Saturday falls.
- (iii) For the purpose of this clause "financial member of the union" shall mean an employee who is, at the time of the picnic day, a financial member or who was a financial member of the union as at 31 December of the preceding year.

## 20. SICK LEAVE

- (i) An employee, other than a casual employee, with not less than three months continuous service with the employer, who is unable to attend for duty during ordinary working hours by reason of personal illness or incapacity (excluding illness or incapacity resulting from injury under the *Workers' Compensation Act 1998*) and not due to misconduct, shall be paid for such sick leave for the ordinary hours of their rostered shift and any rostered overtime they would have earned had they not taken sick leave, but shall not receive any daily allowances, loadings, penalties or premiums they would otherwise have earned, subject to the following conditions and limitations:
- (a) The employee shall, unless it is not reasonably practicable so to do (proof whereof shall be on the employee), make every effort to notify the employer of his/her absence two hours before his/her normal starting time on the first day of his/her absence, but in any circumstances within 24 hours of his/her normal starting time.
  - (b) The employee shall notify the employer by 4.00 p.m. on the day prior to his/her return to duty of his/her availability to return to normal duties.
  - (c) He/She shall furnish to the employer such evidence as the employer may reasonably desire that he/she was unable, by reason of such illness or injury, to attend for duty on the day or days for which sick leave is claimed.
  - (d)
    - (1) An employee in the first year of his/her employment shall be entitled to paid sick leave up to a maximum of 38 hours of ordinary time.
    - (2) An employee after the first year of his/her employment shall be entitled to paid sick leave up to a maximum of 60 hours and 48 minutes of ordinary time.
- (ii) The rights under this clause shall accumulate from year to year, so long as the employment continues with the employer, so that any part of the leave entitlement which has not been allowed in any year may be claimed by the employee and shall be allowed by the employer, subject to the conditions prescribed by this clause, in a subsequent year of continued employment.

- (iii) If an award holiday occurs on a Monday to Friday, inclusive, during the employee's absence on sick leave, then such award holiday shall not be counted as sick leave.
- (iv) Service before the date of coming into force of this clause shall be counted as service for the purpose of assessing the sick leave entitlement in any year pursuant to subclause (i) of this clause but shall be taken into consideration in arriving at the period of accumulated leave; provided that the increase in sick leave allowance after the first year of service pursuant to subclause (i) of this clause, shall only commence from the date of operation of this clause.
- (v) Accumulated sick leave at the credit of an employee at the date of coming into force of this clause shall not be affected nor reduced by the operation of this clause.
- (vi) Claims for paid sick leave for single day absences where sick leave has already been paid for two or more single day absences in the same year must be substantiated with a medical practitioner's certificate.
- (vii) In any week in which an employee takes sick leave, the time for which the employee would normally be rostered to work but for the absence on sick leave shall be deemed to be time worked for the purpose of determining whether rostered overtime is payable pursuant to paragraph (a) of subclause (ii), of clause 11, Overtime and Other Penalty Payments.

## **21. STATE PERSONAL/CARER'S LEAVE CASE - AUGUST 1996**

- (1) Use of Sick Leave
  - (a) An employee, other than a casual employee, with responsibilities in relation to a class of person as set out in subparagraph (ii) of paragraph (c) of this clause who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement provided for in clause 20, Sick Leave, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

- (b) The employee shall, if required, 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. In normal circumstances, an employee must not take carer's leave under this subclause where another person has taken leave to care for the same person.
- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
  - (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being:
    - (A) a spouse of the employee; or
    - (B) a de facto spouse who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
    - (C) a child or an adult child (including an adopted child, a stepchild, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
    - (D) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
    - (E) a relative of the employee who is a member of the same household where, for the purposes of this subparagraph:
      - (1) **"relative"** means a person related by blood, marriage or affinity;
      - (2) **"affinity"** means a relationship that one spouse, because of marriage,

has to blood relatives of the other;  
and

(3) **"household"** means a family group living in the same domestic dwelling.

(F) An employee shall, wherever practicable, give the employer notice, prior to the absence, of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(2) Unpaid Leave for Family Purpose

(a) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in subparagraph (ii) of paragraph (c) of subclause (1) who is ill

(3) Annual Leave

(a) An employee may elect with the consent of the employer, subject to the *Annual Holidays Act 1944*, to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.

(b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.

(c) An employee and employer may agree to defer payment of the annual leave loading in respect of single-day absences until at least five consecutive annual leave days are taken.

(4) Time Off in Lieu of Payment for Overtime

(a) For the purpose only of providing care and support for a person in accordance with subclause (1) of this clause, and despite the provisions of paragraph (j) of subclause

(ii) of clause 11, Overtime and Other Penalty Payments, the following provisions shall apply:

- (b) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.
- (c) Overtime taken as time off during ordinary-time hours shall be taken at the ordinary-time rate, that is, an hour for each hour worked.
- (d) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the 12-month period or on termination.
- (e) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.

(5) Make-up Time

- (a) An employee may elect, with the consent of the employer, to work "make-up time" under which the employee takes time off ordinary hours and works those hours at a later time during the spread of ordinary hours provided in the award, at the ordinary rate of pay.
- (b) An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate, which would have been applicable to the hours taken off.

(6) Rostered Days Off

- (a) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (b) An employee may elect, with the consent of the employer, to take rostered days off in part-day amounts.
- (c) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
- (d) This subclause is subject to the employer informing each union, which is both party to the award and which has members employed at the particular enterprise, of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations

## 22. BEREAVEMENT LEAVE

- (i) An employee shall, on the death within Australia of the wife, husband, father, mother, father-in-law, mother-in-law, brother, sister, child or stepchild of the employee, be entitled to leave up to and including the day of the funeral of such relation. Such leave shall be for a period not exceeding two days without loss of any ordinary pay, which the employee would have earned if he/she had not been on such leave.

- (ii) The right to such leave, shall be dependent on compliance with the following conditions:
  - (a) The employee shall give the employer notice of his/her intention to take such leave as soon as reasonably practicable after the death of such relation.
  - (b) The employee shall furnish proof of such death to the satisfaction of the employer.
  - (c) The employee shall not be entitled to leave under this clause during any period in respect of which he/she has been granted any other leave.
- (iii) For the purpose of this clause, the words wife and husband shall not include a wife or husband from whom the employee is separated but shall include a person who lives with the employee as a de facto wife or husband.

## 23. ANNUAL LEAVE

- (i) See *Annual Holidays Act 1944*.
- (ii) An employee, at the time of his/her entering upon a period of annual leave, in accordance with the said Act, shall be entitled to an additional payment calculated on the basis of 25 per cent of the holiday pay for that period of annual leave. Should circumstances arise where an employee has received an annual leave loading to which he/she is not entitled, then such payment shall be deducted from any monies due at termination.
- (iii) Before proceeding on annual holidays, an employee shall be advised by his/her employer of the shift on which he/she is to work immediately upon his/her return to duty. Notification of any change of shift shall be given to the employee by the employer at least 24 hours before the employee is scheduled to commence duty, either directly or by written notification delivered to the employee's home.

## 24. LONG SERVICE LEAVE

See *Long Service Leave Act 1955*.

25. PARENTAL LEAVE

See *Industrial Relations Act 1996*

**SECTION III INDUSTRIAL RELATIONS**

26. UNION DELEGATE

- (i) An employee appointed as union delegate in the yard, depot or garage shall, upon notification thereof to the employer by the branch or sub-branch Secretary of the union, be recognised as the accredited representative of the union.
- (ii) Any matter arising in the yard, depot or garage affecting members of the union may be investigated by the delegate and discussed with the employer or his/her representative. The delegate shall, at his/her request, be allowed a reasonable opportunity to carry out such duties at a time reasonably convenient to himself/herself and the employer.
- (iii) If a matter in dispute is not settled, the delegate shall, on request, be allowed access to a telephone for a reasonable opportunity of notifying the union branch or sub-branch concerned in order to implement the disputes procedure (see clause 29, Disputes Procedure).

27. UNION NOTICE BOARD

The employer shall supply a notice board of reasonable dimensions to be erected or to be placed in a prominent position in the yard, depot or garage, upon which accredited representatives of the union shall be permitted to post formal union notices signed by the representative or representatives.

28. UNION RECOGNITION

The Transport Workers' Union of Australia, New South Wales Branch, is recognised by the parties to this award as a party to this award and as a representative of its members covered by this award.

29. DISPUTES PROCEDURE

- (i) Subject to the *Industrial Relations Act 1996*, any dispute will be dealt with in the following manner:

- (a) In the event of an industrial dispute, the representative of the union on the job and the Transport Supervisor shall attempt to resolve the matters in issue in the first place.
  - (b) In the event of a failure to resolve the dispute at job level, the matter shall be subject to discussions between an organiser of the union and senior management.
  - (c) Should the dispute still remain unresolved, the Secretary of the union or his/her representative will confer with the Executive Director of the association or his/her representative or a representative of the appropriate employer organization.
  - (d) In the event of no agreement being reached at this stage, the dispute will be referred to the Industrial Relations Commission of New South Wales for resolution.
- (ii) All work shall continue normally while these negotiations are taking place.
- (iii) Individual Grievance:
- (a) The employee is required to notify (in writing or otherwise) the employer as to the substance of the grievance, request a meeting with the employer for bilateral discussions and state the remedy sought.
  - (b) A grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at a higher level of authority.
  - (c) Reasonable time limits must be allowed for discussion at each level of authority.
  - (d) At the conclusion of the discussion, the employer must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
  - (e) While a procedure is being followed, normal work must continue.
  - (f) The employee may be represented by an industrial organization of employees.

30. RIGHT OF ENTRY

See the *Industrial Relations Act 1996*.

31. DRIVER MONITORING PROGRAM

The following procedures are to occur in the monitoring of customer service and driving performance:

(a) Customer Service:

- (i) All complaints received are to be validated by establishing the complainant's name and telephone number or address.
- (ii) The employee is to receive details of the validated complaint and supply to the employer written responses to the complaint.
- (iii)
  - (1) If the complaint is not established, no further action shall be taken and notations are not to be made on the driver's employment file.
  - (2) If the complaint is established, then the employer is to counsel the employee with a company and employee representative in attendance. This shall be considered as a verbal warning.
- (iv) Should there be a further established complaint regarding customer service, the employee shall receive further counselling and a written warning.
- (v) Further established customer service complaints shall result in a final counselling session and a final written warning issued by senior management.
- (vi) A further established complaint regarding customer service shall lead to termination of employment.

(b) Driving Performance:

- (i) All complaints are to be validated by establishing the complainant's telephone number or address.
- (ii) The employee is to receive details of the validated complaint and supply to the employer a written response to the complaint.

- (iii) (1) If the complaint is not established, no further action shall be taken and notations are not to be made on the driver's employment file.
  - (2) If the complaint is established, then the employer is to counsel the employee with a company and employee representative in attendance. This shall be considered as a verbal warning.
  - (iv) Should there be a further established complaint regarding driving performance, the employee shall receive further counselling, a driving assessment by the company's driver trainer and a written warning.
  - (v) A further established complaint regarding driving performance shall lead to counselling and a final written warning issued by senior management.
  - (vi) A further established complaint regarding driving performance shall lead to termination of employment.
- (c) Suspension from Duties

At the employer's discretion, there shall be a "once only" opportunity for the employee to be suspended from duties for a period of ten working days without pay as an alternative to termination as described in paragraph (vi) of subclauses (a) and (b) of this clause.

- (d) Nothing in this procedure will affect the right of the employer to dismiss an employee without notice where the employee is guilty of serious misconduct.

## **SECTION IV OCCUPATIONAL SUPERANNUATION**

### **32. PERMISSIBLE FUNDS**

For the purposes of this Section, "a fund" shall mean the T.W.U. Superannuation Fund established by Trust Deed and Articles on 4 October 1984 or the Bus and Coach Association Superannuation Scheme established by Trust Deed on 2 July 1987.

### **33. CONTRIBUTIONS**

- (i) Any employer employing employees under the terms of this award shall be a participating employer in a fund.

- (ii) Superannuation Legislation
  - (a) The subject of superannuation is dealt with extensively by Federal legislation including the *Superannuation Guarantee (Administration) Act* 1992 (Cth), the *Superannuation Industry (Supervision) Act* 1993 (Cth), and s124 of the *Industrial Relations Act* 1996 (NSW). This legislation as varied from time to time, governs the superannuation rights and obligations of the parties.
  - (b) In accordance with the superannuation legislation, employers are required to pay to the trustee of the fund, as at the date of the making of this award, a contribution at the rate of 9% of ordinary time earnings.
- (iii) Each participating employer shall inform new employees and any other employees who are not members of the fund of the provisions of this clause and shall provide such employees with the forms necessary to become a member of the fund and shall, upon completion of the forms by such employees, send them forthwith to the administrators of the fund.
- (iv) The parties to this award note that award obligations on employers to pay occupational superannuation have existed since 25 June 1987.

## **SECTION V GENERAL**

### **34. UNIFORMS**

- (i) Where an employee is required to wear a distinctive dress the same shall be provided, free of cost, by the employer and it shall be the duty of the employee to retain same in reasonable condition. Such distinctive dress shall remain the property of the employer.

Caps, tunics, trousers, shirts and ties, for the purpose of this clause, shall be deemed distinctive dress; provided that an employer shall not be required to supply more than four shirts to an employee in any one year.

- (ii) Where an employee is called upon to work in or about the yard, garage or depot or to perform duties other than those of a driver or conductor, he/she shall be supplied with suitable overall or protective clothing, free of cost, by the employer.

- (iii) An employee shall sign a receipt for all items of uniform received from the employer. Upon ceasing employment, he/she shall return to the employer any items of uniform less than 12 months old.

### 35. LIMITATION OF DRIVING HOURS

See National Driving Hours Legislation.

### 36. DEFECTIVE VEHICLES

No employee shall drive a vehicle, which contravenes the Road Transport or Traffic Management Legislation, other than for the purpose of completing a journey already commenced.

### 37. DRIVERS' DUTIES

- (i) Where required by the employer, drivers' duties shall include minor repairs such as changing tail lights and each driver shall be ready, willing and able to perform minor roadside repairs. Drivers may also be required to perform other incidental or peripheral duties such as cleaning buses.
- (ii) An employer may direct an employee to carry out such duties as are within an employee's limits of skill, competence and training.

### 38. TERMS OF EMPLOYMENT

- (i) In the case of full time employees, seven days notice, expiring on any day, shall be required on either side or a week's pay shall be given or forfeited in lieu of such notice, except in cases of misconduct.
- (ii) In the case of termination of employment, all monies due to the employee shall be paid not later than the termination of services and, in the event of payment of wages or other monies due to the employee being delayed more than 15 minutes beyond the employee's finishing time, all such waiting time shall be paid for at overtime rates.

### 39. AMENITIES

The following amenities shall be available at all depots where employees are employed under the provisions of this award:

- (i) A change room or area for employees to change their clothes.
- (ii) A suitable lockable locker for each employee.
- (iii) Hot and cold water for washing purposes.
- (iv) Where employees are required to have their meals at the depot, a dining room or area with adequate seating and table accommodation and facilities for boiling water and heating food.
- (v) Lavatory facilities.
- (vi) Appropriate arrangements for rosters to be posted and for employees to sign on and off.

### 40. TRAINING OF EMPLOYEES

- (i) When it is the intention of the employer to employ an applicant who has been passed in a driving test by the employer or his/her representative, any time that is occupied by the new employee at the direction of the employer or his/her representative, such as learning the route, timetables and other routines, shall be paid in accordance with the classification under this award.
- (ii) The union and the Association shall establish a joint industry training program in relation to changes to industry practice and/or award conditions at the enterprise level.
- (iii) It is the intention of the union and the association to work towards the establishment and implementation of a joint industry training programme for employees and employers designed to assist in the prevention and management of threatening behaviour, before, during and after an incident. Such training will be conducted by an accredited training provider and shall include training relating to customer service and the management of school student behaviour on buses.
- (iv) All time spent on industry training specified in subclause (i) – (iii) of this clause shall be paid for at ordinary time.
- (v) Any employer (including any Associated Operator) bound by this award shall, in relation to a yard at or from which any work pursuant to a Bus Industry Reform Contract is performed, comply with the following provisions:

- (a) The employer shall allow an authorised workplace delegate of the Union (or for any workplace that does not have an authorised workplace delegate of the Union, an officer of or person otherwise authorised by the Union) to provide:
- (i) each existing employee with a presentation of at least 30 minutes duration (in groups of no more than 15) within 6 months of the employer becoming bound by (or, in the case of an Associated Operator, obliged to perform work in accordance with) the terms of a Bus Industry reform Contract; and
  - (ii) any new employee with a presentation of at least 30 minutes duration as part of the formal induction program to be provided by the employer to that employee under the Staff Development and Training Standard, and the employer acknowledges that any such presentations by the Union may include the following topics:
    - (iii) employee rights under relevant awards;
    - (iv) explanation of specific provisions (including rosters, short pays and meal breaks); and
    - (v) the requirements of national driving regulations, in particular driver fatigue management and medical assessment issues; and
    - (vi) the organisation, structure and role of the Union and the role of the Union delegates.
- And may include an offer of membership of the Union to the employee consistent with freedom of association requirements.
- (b) Any additional topics to be covered in the presentation referred to in paragraph (a) of this subclause must first be agreed between the employer and the Union.
- (c) The employer shall:
- (i) provide a suitable venue for any formal induction program for employees under the Staff Development and Training Standard and for any presentation by the Union under paragraph (a) of this subclause.
  - (ii) provide the Union at least five (5) business days written notice of any formal induction program to be provided by the employer to any employee under the

Staff Development and Training Standard, along with information on the timeslot available for the presentation by the Union under sub-paragraph (ii) of paragraph (a) of this subclause and the number of employees attending; and

- (iii) consult with the Union to establish a timetable for presentation made pursuant to sub-paragraph (i) of paragraph (a) of this subclause.
- (d) provided it has received written notice in accordance with paragraph (g) of this subclause the employer shall allow one authorised workplace delegate of the Union (as nominated to the employer by the Union) (Delegate) from each depot leave of eight (8) hours on twelve (12) occasions in each calendar year to attend union meetings or otherwise participate in authorised union business.
- (e) Leave under paragraph (d) of this subclause may:
  - (i) in addition to being taken in a block of eight (8) hours, be taken in blocks of four (4) hours on two (2) separate days; and
  - (ii) be taken on consecutive days to the maximum of the leave available under paragraph (d) of this subclause.
- (f) Leave under paragraph (d) of this subclause may only be used for the purposes set out in that paragraph and shall not entitle the Delegate to any payment on termination of that Delegate's employment with the employer if leave has not been taken as at the date of that termination.
- (g) The notice from the Union required under paragraph (d) of this subclause must:
  - (i) request the release of the Delegate in accordance with the principles set out in paragraph (d) of this subclause;
  - (ii) be in writing and signed by either the Delegate, an authorised signatory of the Union or other Union nominee; and
  - (iii) provide the following notice period:
    - (A) as soon as practicable but in any event, no less than four (4) weeks for leave of more than one (1) consecutive day;

- (B) as soon as practicable but, in any event, no less than five (5) business days for any leave for which the Delegate has more than five (5) business days notice; and
  - (C) as soon as practicable but, in any event, no less than one (1) complete business day for any other leave.
- (h) In the event that the Union requests the release on leave of a Delegate for union activity in any circumstances, other than those set out in paragraph (d) of this subclause, the Employer may, in its absolute discretion, agree or not agree to such leave.
  - (i) Paragraphs (d) to (h) of this subclause do not apply for as long as there are no elected workplace delegates or nominees of the Union in the workplace.
  - (j) The employer shall pay all wages payable (including penalty rates and allowances) and other entitlements payable in the normal course of their employment , of:
    - (i) any employee participating (including as a presenter) in any induction program or presentation pursuant to this subclause, for the time spent by that employee in such induction program or presentation; and
    - (ii) any delegate taking leave in accordance with this subclause, for the time spent by that delegate on such leave.
  - (k) Subject to paragraph (1) of this subclause, the parties to this award agree that the provisions of this subclause will be reviewed in the manner specified by parallel provisions in the Bus Industry Reform Contracts, and the parties further agree that they shall apply for variations to this subclause to give effect to any changes determined by that review.
  - (l) The review specified in paragraph (k) of this subclause will commence no later than 12 months after the making of this Award and, notwithstanding varying commencement dates of individual Bus Industry Reform Contracts, will be the one and only such review of the provisions of this subclause.

**NB**

The parties acknowledge that the objectives of this clause are to promote cooperative productive workplaces:

- (i) where employees are properly briefed on safety issues and their industrial rights; and
- (ii) workplace issues can be resolved at a local level and in accordance with Clause 29 – Disputes Process

The parties also acknowledge that:

- (iii) consistent with the principles of Charter 5, Part 1 of the *Industrial Relations Act 1996* (NSW), the freedom of association rights of each employee are not affected by the operation of paragraph (a) of this subclause; and
- (iv) paragraph (a) of this subclause provided a mechanism to formalise the Union's access to the workplace and the provision of information to employees consistent with the principles of section 297 of the *Industrial Relations Act 1996* (NSW).

#### 41. DEFINITIONS

- (i) **"Associated Operator"** means an employer providing services (that the Operator would otherwise be obliged to perform under a Bus Industry reform Contract) under a subcontracting arrangement with the Operator which has been approved in accordance with, or is permitted under, a Bus Industry Reform Contract.
- (ii) **"Association"** means the Bus and Coach Industrial Association of New South Wales.
- (iii) **"Bus Industry Reform Contract"** means a Bus System Contract between an Operator and the Director – General of the Ministry of Transport entered into under Division 3 of Part 3 of the *Passenger Transport Act 1990*.
- (iv) **"Industrial Committee"** means the Transport Industry Motor Drivers and Conductors (State) Industrial Committee
- (v) **"Casual Employee"** means an employee who is engaged by the hour and paid for all time worked to the nearest minute, with a minimum engagement of one hour.
- (vi) **"Industrial Committee"** means the Transport Industry Motor Bus Drivers and Conductors (State) Industrial Committee.
- (vii) **"Depot"** means a place nominated as the normal yard, depot or garage.

(viii) "**Districts**" for the purpose of this award shall mean:

**"Sydney"** - the district within 32 kilometres of the General Post Office, Sydney. For the boundaries of the Sydney district, see Industrial Gazette, Vol. 52, page 783.

**"Newcastle"** - the district within 32 kilometres of the General Post Office, Newcastle. For the boundaries of the Newcastle district, see Industrial Gazette, Vol 52, page 783.

**"Port Kembla-Wollongong"** - For the boundaries of the Port Kembla-Wollongong district, see Industrial Gazette, Vol. 52, page 783.

**"Elsewhere"** - the district within the boundaries of the State of New South Wales, excluding the three districts above defined and the County of Yancowinna.

(viii) "**Emergency**," wherever used in this award, is intended to apply only to cases of sickness of an employee, to the default of an employee, to cases of accident, or other matter or thing outside the control of the employer.

(ix) "**Metropolitan Bus Company Reform Contract**" means a Bus Industry Reform Contract relating to the Sydney Metropolitan Bus Contract Area.

(x) "**Operator**" means an employer signatory to a Bus Industry Reform Contract.

(xi) "**Outer Metropolitan Area**" means all of the area North, West and South of the Sydney Metropolitan Bus Contract Area up to and including: Newcastle and the Central Coast; the Blue Mountains; and the greater Wollongong Area, and any other area deemed by the Director-General to be part of the Outer Metropolitan Area.

(xii) "**Out Metropolitan Bus Company Reform Contract**" means a Bus Industry Reform Contract relating to the Outer Metropolitan Area

(xiii) "**Part-time Employee**" means an employee who works regular days and regular hours less than 38 per week.

(xiv) "**Rural and Regional Bus Service Contract**" means a Bus Industry Reform Contract relating to rural and regional NSW

- (xv) "**Sydney Metropolitan Bus Contract Area**" has the meaning specified in the Government Gazette of the State of NSW, Number 77, published Friday 24 June 2005 at pages 3136 and 3137.
- (xvi) "**Time Worked**" includes waiting and standing-by time, if such waiting or standing-by time is at the direction of the employer or the employer's agents and the employee is at call all the time.
- (xvii) "**Union**" means the Transport Workers' Union of Australia, New South Wales Branch.
- (xviii) "**Full Time Employee**" means an employee, other than a casual or part-time employee, who at the time of engagement is guaranteed at least a week's work.
- (xix) "**Roster**" sets out the aggregate of the daily shifts worked in each pay period. Each employee's roster is posted a minimum of three days in advance in a prominent place at each depot.
- (xx) "**Shifts**" sets out the rostered daily work of an employee.

#### 42. LEAVE RESERVED

Leave is reserved to the Parties to apply as they see fit in relation to:

- (i) Casual Employees
- (ii) Railway work
- (iii) Clause 44 – Area, Incidence and Duration

#### 43. ANTI-DISCRIMINATION

- (a) It is the intention of the parties bound by this award to seek to achieve the objective 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 and age.
- (b) 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.

- (c) 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.
- (d) 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.
- (e) 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.

NOTATION:

- (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 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”*

#### 44. AREA, INCIDENCE AND DURATION

This award rescinds and replaces the Motor Bus Drivers and Conductors (State) Award published 16 November 2001 (329 I.G. 661) and all variations thereof. It shall apply from the first full pay period to commence on or after 1 July 2005 and shall have a nominal term of three years.

It shall apply to all motor bus drivers and conductors, other than regular drivers of tourist, parlour and service coaches or cars in the

State, excluding the County of Yancowinna, within the jurisdiction of the Transport Industry Motor Drivers and Conductors (State) Industrial Committee.

#### **45. SECURE EMPLOYMENT**

##### **(a) Objective of the Clause**

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

##### **(b) Casual Conversion**

- (i) A casual engaged by a particular employer on a regular and systemic basis, as defined hereunder, for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full – time employment or part – time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this subclause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this sub clause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has the right to elect under paragraph (b) (i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.

- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (v) Once a casual has elected to become and been converted to a full-time or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
  - (1) Whether the employee will convert to full-time or part-time employment; and
  - (2) If it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award pursuant to a part-time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996 (NSW)*;

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (vii) An agreement with respect to a conversion to part-time employment under the part-time provisions of this award must be in accordance with clause 7, part-time employees, except that
  - (1) In the case of conversion of a casual employee who has predominantly been performing school run work, his or her hours of work as a part-time employee may be averaged over 52 weeks if it is envisaged that the employee will continue to perform predominantly school run work and provided that a minimum of three hours is worked in each rostered working day during school term.

- (2) Subclause (iii) (d) of clause 8, Hours of Employment, shall not be applicable.
- (3) Any hours worked in addition to the base number of agreed hours shall:

Be worked only by mutual agreement between employer and the employee, and there shall be no circumstances in which the employer can require the employee to work additional hours.

Shall, except in the case of special hirings (to which clause 15 applies), be paid at the ordinary – time rate of this award for up to 10 hours per day or 38 hours per week for all work performed (including base hours), and thereafter shall be paid at overtime penalty rates.

Be taken into account in the calculations of pro rata leave entitlements (except where paid at overtime penalty rates)

- (viii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full –time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (ix) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.

(c) Occupational Health and Safety

- (i) For the purposes of this sub clause, the following definitions shall apply:
- (1) 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.

- (2) 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 employers own employees.
- (ii) 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)
- (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangement;
  - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (3) 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
  - (4) 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.
- (iii) Nothing in this sub clause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*

(d) 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 dispute settlement procedure of this agreement.

- (e) 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.

**Transport Industry Motor Drivers and Conductors (State)  
Industrial Committee Industries and callings.**

Motor drivers and conductors employed on motor coaches, cars, omnibuses and all passenger motor vehicles for hire or plying for hire, and all motor vehicles used for the purpose of carrying passengers or workmen notwithstanding such vehicles are not for hire or plying for hire, provided that such vehicles, whether or not for hire or plying for hire, are normally capable of carrying eight or more sitting passengers or persons, other than motor wagons which are not used for the purpose of conveying passengers or workmen, in the State, excluding the County of Yancowinna;

excepting

Employees who are not engaged in business or trade;

All persons employed by Sydney Electricity, trading as Pacific Power;  
Employees of the State Rail Authority of New South Wales and  
State Transit Authority of New South Wales;  
Employees of the Council of the City of Newcastle;  
Employees of the Australian Gas Light Company;  
Employees of the Commissioner for Motor Transport.