

**REGISTER OF  
CONTRACT AGREEMENTS**

**CONTRACT AGREEMENT NO:** CA12/2

**TITLE: Toll Contract Carriers Agreement 2011-2013**

**I.R.C. NO:** IRC12/748

**DATE APPROVED/COMMENCEMENT:** 10 July 2012 / 1 January 2011

**TERM:** 30

**NEW AGREEMENT OR  
VARIATION:** New.

**GAZETTAL REFERENCE:** 31 August 2012

**DATE TERMINATED:**

**NUMBER OF PAGES:** 29

**COVERAGE/DESCRIPTION OF**

**EMPLOYEES:** The contract agreement applies to those carriers engaged by Toll Holdings Limited and each of its Australian wholly-owned subsidiaries, located at Level 7, 380, St Kilda Road, Melbourne Victoria 3004, who fall within the coverage of the Transport Industry - General Carriers Contract Determination.

**PARTIES:** Toll Holdings Limited -&- the Transport Workers' Union of New South Wales



Toll Contract Carriers Agreement 2011 - 2013

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## 1. Title

This Agreement will be referred to as the Toll Contract Carriers Agreement 2011 – 2013.

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## 2. Objects

The objects of this Agreement include the following:

- (a) job security, effective workplace representation and training;
  - (b) to enhance the safety of Toll's operations;
  - (c) maintaining the safety net and enhancing fair working conditions;
  - (d) to enhance the productivity and efficiency of Toll's operations.
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## 3. Definitions

**Act** means the *Industrial Relations Act 1996 (NSW)*.

**Agreement** means this agreement, and includes the Schedule.

**Blue Card Induction Program** means a safety initiative for the transport and distribution industry, based upon the Transport and Distribution ("TDT 2002") nationally recognised level 1 training competency.

**Business** means:

- (a) any one of the following businesses operated by the Group, and includes any of these businesses as renamed, consolidated or amalgamated:
  - (i) TGL – Customised Solutions;
  - (ii) NQX Freight System;
  - (iii) Toll Contract Logistics;
  - (iv) Toll Energy;

- (v) Toll Express;
- (vi) Toll Fleet;
- (vii) Toll Intermodal;
- (viii) Toll IPEC;
- (ix) Toll Liquid Distribution;
- (x) Toll Priority; and

(b) any new business acquired by Toll during the Term which engages a Carrier.

**Carrier** means a person, firm, company or any other legal entity which enters into a Contract of Carriage with Toll, and who falls within the jurisdiction of the Determination.

**Commission** means the Industrial Relations Commission of New South Wales.

**Contract of Carriage** has the meaning given to it by section 309 of the Act.

**Determination** means the Transport Industry – General Carriers Contract Determination.

**Dispute** means any dispute or grievance that arises at the workplace between a Carrier or Carriers and Toll, or between the Union and Toll, about the interpretation or application of this Agreement or in relation to any matters pertaining to the relationship between Toll and a Carrier (or Carriers).

**Drug and Alcohol Procedures** means the drug and alcohol procedures at Schedule 1 of this Agreement.

**Group** means Toll Holdings Limited and each of its related companies in Australia.

**Local Agreement** means a contract agreement between Toll and Carriers in any Business, or at any site, made under Chapter 6, Part 3 of the Act, which is specific to that Business or site.

**Operative Date** means the date on which this Agreement is approved by the Commission.

**Parties** means Toll, the Union and the Carriers.

**Schedule** means the schedule to this Agreement.

**Term** means the period described in clause 5.

**Toll** means any member of the Group which engages a Carrier in one of the Businesses.

**Union** means the Transport Workers' Union of New South Wales.

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#### **4. Coverage**

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

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#### **5. Term of Agreement**

This Agreement will commence operation on the Operative Date and will have a nominal term commencing 1 January 2011 and expiring on 31 July 2013 (Term).

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#### **6. Relationship to the Determination and Local Agreements**

- (a) This Agreement is to be read in conjunction with the Determination, and will prevail over the Determination to the extent of any inconsistency.
- (b) This Agreement is to be read in conjunction with any Local Agreement, whether made before or after the Operative Date. This Agreement will prevail over a Local Agreement to the extent of any inconsistency.

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#### **7. Conduct of the Parties**

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

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

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## **8. No extra claims**

During the Term the Carriers must not pursue any further claims in respect of any terms and conditions of engagement, including but not limited to rates of pay and allowances.

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## **9. Local Agreements**

Toll and the Carriers in any Business, or at any site, may agree to enter into a Local Agreement, which will be specific to that Business or site. Any Local Agreement must be consistent with the matters dealt with in this Agreement.

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## **10. Dispute resolution procedure**

The Parties agree that any Dispute must be dealt with in the following manner:

- (a) The matter must first be discussed by the aggrieved Carrier(s) directly with his or her or their immediate supervisor.
- (b) If the matter remains in dispute, it must next be discussed with the supervisor's immediate superior or another representative of Toll appointed for the purpose of this procedure. The Union delegate for the worksite has the right to attend at, and participate in, this discussion as the representative of a Carrier, provided that the Union delegate is the representative of the Carrier's choice.
- (c) If the matter remains in dispute, it must next be discussed with the relevant manager of Toll. The Union State Secretary (or his/her nominee) has the right to attend at and

participate in this discussion as the representative of a Carrier, provided that the Union State Secretary is the representative of the Carrier's choice.

- (d) If the matter remains in dispute, it must next be submitted to the Commission for conciliation. For this purpose, it is agreed that the action the Commission may take includes:
- (i) arranging conferences of the parties or their representatives at which the Commission is present; and
  - (ii) arranging for the parties or their representatives to confer among themselves at conferences at which the Commission is not present.
- (e) If the matter is not resolved in conciliation conducted by the Commission, the Parties agree that the Commission will proceed to arbitrate the Dispute and/or otherwise determine the rights and/or obligations of the parties to the Dispute. In relation to such an arbitration, the Parties agree that:
- (i) the Commission may give all such directions and do all such things as are necessary for the just resolution of the Dispute. The Commission may exercise powers of conciliation, arbitration and declaratory relief in relation to the Dispute, including all related procedural powers such as those in relation to hearings, witnesses, evidence and submissions;
  - (ii) the Commission should apply the rules of evidence that would ordinarily apply to a hearing before the Commission under the Act;
  - (iii) before making a determination, the Commission will give the parties an opportunity to be heard formally on the matter(s) in dispute; and
  - (iv) in making its determination, the Commission will only have regard to the materials, including witness evidence, and submissions put before it at the hearing and will disregard any admissions, concessions, offers or claims made in conciliation.
- (f) The decision of the Commission will be binding on the Parties subject to the following agreed matters:

- (i) there will be a right of appeal to a Full Bench of the Commission against the decision, which must be exercised within 21 days of the decision being issued or within such further time as the Full Bench may allow;
  - (ii) the appeal will be conducted in accordance with the legal principles applying to an appeal in the strict sense;
  - (iii) the Full Bench, or a single member on delegation, will have the power to stay the decision pending the hearing and determination of the appeal; and
  - (iv) the decision of the Full Bench in the appeal will be binding upon the parties.
- (g) Until the matter is resolved by agreement, conciliation or arbitration, work will continue in accordance with the status quo and without disruption. No party is to be prejudiced as to the final settlement by the continuance of work in accordance with this procedure.

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## 11. Toll commitment

Toll commits to:

- (a) the full-time engagement of its Carriers wherever possible, subject to commercial and operational considerations;
- (b) requiring, in co-operation with the Union, that Carriers, when engaged by Toll to perform work on Toll's behalf, abide by all legal obligations including, but not limited to, compliance with any applicable industrial instrument, compliance with driving hours and compliance with occupational health and safety laws. Toll will, having regard to section 127 of the Act, implement appropriate contract and invoicing requirements;
- (c) only enter into collective registered agreements with its Carriers for the Term; and
- (d) ensuring that where a Carrier takes leave and, with the prior approval of Toll, employs a relief driver to undertake the work that the Carrier would otherwise perform, the Carrier's employee is paid the rates applicable at the relevant business unit or site whilst performing that work. During such period, the Carrier will receive no more than

the amount that the Carrier would otherwise be paid for performing the work themselves.

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**12. Carrier commitment**

The Carriers commit:

- (a) to performing their duties faithfully and diligently;
- (b) to provide faithful service during their employment with Toll and to act in Toll's best interests at all times; and
- (c) to promote Toll's interests, prosperity and reputation.

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**13. Support for technological innovation**

- (a) The Parties recognise that the use of new technologies by Toll can assist Toll to:
  - (i) enhance Carrier safety and welfare;
  - (ii) enhance the safety and welfare of Toll employees and members of the public;
  - (iii) comply with its legislative obligations, including occupational health and safety and road transport legislation;
  - (iv) enhance the efficiency and profitability of its business; and
  - (v) establish a point of differentiation with its competitors.
- (b) Consistent with clause 7, the Carriers and the Union must not unreasonably object to, hinder or obstruct the introduction of new technologies by Toll.

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**14. Probation period**

- (a) All Carriers who are offered Contracts of Carriage by Toll after the date this Agreement comes into force will be on a 3 month probation period. Toll will decide, prior to the

expiration of the probation period, whether the Carrier is to be offered further Contracts of Carriage.

- (b) During the probation period, Toll or the Carrier may terminate the engagement by the giving of 1 weeks notice.

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## 15. Rates

- (a) Toll will ensure that each Carrier receives a labour component equal to the applicable wage rate payable for the relevant vehicle used by the Carrier at the site at which they are engaged.
- (b) Without limiting clause 15(a), Toll will increase the labour rate payable to each Carrier as follows:
- (i) by 4% effective from 1 January 2011;
  - (ii) by 4% effective from 1 January 2012; and
  - (iii) by 2% effective from 1 January 2013.
- (c) For the avoidance of doubt, clauses 15(b)(i) and (ii) do not require Toll to pay any increase to a Carrier who has already received the required percentage increases for 2011 and 2012.
- (d) The labour component referred to in this clause will absorb any increases:
- (i) awarded by the Commission by way of an increase to the rates of pay contained in the Determination; or
  - (ii) contained in a Local Agreement; or
  - (iii) contained in any other site- or Business-specific contract or arrangement, whether registered or otherwise.
- (e) Notwithstanding anything contained in a Local Agreement, there will be no increases during the Term to any allowances paid to Carriers. For the avoidance of doubt there will be no reduction in allowances paid to Carriers.

- (f) The running and fixed cost component of the Carriers' remuneration will be varied in accordance with movements, excluding labour, in the Determination.

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## 16. Alternative payment arrangements

- (a) Toll may choose to remunerate a Carrier by way of piece rate or other incentive rate system of payment.
- (b) Where Toll remunerates a Carrier by way of a method as described in clause 16(a), the Carrier will receive:
- (i) a labour component equal to the applicable wage rate payable at the site at which the Carrier is engaged for the type of vehicle operated by the Carrier; and
  - (ii) subject to clause 16(c), a total remuneration which is no less than what the Carrier would otherwise have earned for work performed had the Carrier been remunerated in accordance with the Determination.
- (c) For the purposes of clause 16(b)(ii), the Carrier's remuneration can be averaged over a 3 month period as follows:
- (i) January, February and March;
  - (ii) April, May and June;
  - (iii) July, August and September; or
  - (iv) October, November and December.
- (d) For the avoidance of doubt, any alternative payment method adopted by Toll under clause 16(a) can be designed to incorporate the applicable labour component as well as any running and fixed costs provided for in the Determination.

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## 17. Uniforms and protective clothing

- (a) Toll may provide Carriers with uniforms, protective clothing and personal protective equipment (PPE).

- (b) The Carriers must wear any uniforms and protective clothing provided to them.
- (c) The Carriers will utilise any PPE provided to them by Toll.
- (d) Carriers must not alter, modify or change the appearance of uniforms, protective clothing and PPE provided to them by Toll in any manner contrary to operating instructions or training or in a manner which is likely to affect the performance of that clothing or PPE. Carriers must not alter, modify or change the appearance of uniforms provided to them by Toll in a manner or to an extent which would hinder or deface company identification.
- (e) Carriers must keep all uniforms, protective clothing and PPE in a clean, neat and tidy condition.
- (f) Uniforms and protective clothing will be replaced by Toll on a fair wear and tear basis. In such circumstances, new clothing will be exchanged for the worn items.
- (g) Uniforms, protective clothing and PPE must be returned by a Carrier on the termination of their engagement.

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## **18. Chain of Responsibility**

- (a) Toll will comply with:
  - (i) all applicable "chain of responsibility" legislation; and
  - (ii) any law regulating maximum driving and working hours and minimum rest times.
- (b) Each Carrier must:
  - (i) take all reasonable steps to assist Toll meet the obligations in clause 18(a); and
  - (ii) comply with any obligations imposed on them by the legislation referred to in clause 18(a).

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**19. Safe system of work**

- (a) Toll and each Carrier will take all reasonable steps to ensure that all work performed by the Carrier is performed in accordance with:
  - (i) any occupational health and safety legislation (and codes of practice arising under such legislation) and chain of responsibility legislation that is in force in New South Wales (to the extent that any such laws are applicable to the safe performance of work by Carriers of Toll); and
  - (ii) a safe system of work in accordance with clause 19(b).
- (b) For the purposes of this Agreement, a safe system of work must include, where appropriate (but is not necessarily limited to), the following:
  - (i) Ensuring that all transport work is performed in accordance with documented safe scheduling plans and shift rosters that take account of the following:
    - A. the trip to be undertaken by a driver;
    - B. the actual time required to perform the freight task safely;
    - C. the actual distance travelled to perform the freight task safely including any urban driving observance of any detour or road block;
    - D. fatigue-related safety concerns;
    - E. the number and types of loads transported by the driver each trip and the time reasonably required to load and unload taking into account loading and unloading schedules and practices, delays and queuing times; and
    - F. the period and frequency and likelihood of mechanical interruptions.

- (ii) Ensuring, where appropriate, that all transport work is performed in accordance with documented systems which manage the risk of driver fatigue including, but not limited to:
- A. methods for assessing the suitability of drivers;
  - B. systems for keeping accurate records of the start and finish times of each shift or freight task performed by a heavy vehicle driver and the relevant dates over which a shift or freight task occurs and the total number of waking hours for each driver (regardless of whether or not those hours were paid or unpaid);
  - C. systems for reporting hazards and incidents;
  - D. systems for monitoring driver's health and safety;
  - E. training and information about fatigue that is provided to drivers;
  - F. systems for managing loading and unloading schedules and practices, including queuing practices;
  - G. systems for reporting accidents, near misses, possible hazards or mechanical failures and contingencies to manage the risk of driver fatigue; and
  - H. safe driving plans and a drug and alcohol policy consistent with applicable legislation and industrial instruments.

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## **20. Drug and alcohol testing**

- (a) The Union and the Carriers agree that, to ensure health and safety in the workplace, Toll may conduct drug and alcohol testing either:
- (i) on a random basis; or
  - (ii) where it suspects a contravention of drug and alcohol policies by specific Carriers, on a targeted basis; or

(iii) in the event of an incident,

at its absolute discretion, in accordance with the Drug and Alcohol Procedures.

(b) The Carriers acknowledge and agree that the Drug and Alcohol Procedures operate in conjunction with, and not in replacement of, any other drug or alcohol testing procedures that Toll is now, or may later be, required to implement as a result of governmental, regulatory or customer demands.

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## **21. Union Recognition**

Toll recognises the Union as capable of representing the Carriers and acknowledges that the Union has the right to manage its own affairs and to organise Carriers in the workplace.

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## **22. Union Delegates**

### **22.1 Identification of delegates**

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

### **22.2 Delegates' role**

(a) Toll acknowledges that each Union delegate is entitled to:

- (i) be treated fairly and to perform their role as Union delegate or workplace representative without any discrimination or victimisation;
- (ii) formal recognition by Toll that Union delegates speak on behalf of the Union members in the workplace;
- (iii) bargain collectively on behalf of Union members in the workplace;
- (iv) consultation on matters affecting Union members;
- (v) address new Carriers about the benefits of Union membership at the time that they commence work with Toll in accordance with clause 23.2;
- (vi) participate in an induction process in accordance with clause 23.2;

- (vii) discuss Union and workplace matters with all Carriers at the workplace who consent to such discussions, which will take place during breaks or outside of business hours;
  - (viii) reasonable access to a telephone, facsimile, photocopying, internet and email and office facilities for the purpose of carrying out work as a delegate and consulting with workplace colleagues and the Union; and
  - (ix) place Union information on a notice board in a prominent location in the workplace.
- (b) Toll acknowledges, and will in no way hinder, the following functions of Union delegates:
- (i) to provide awareness and understanding of the Union's aims and achievements whenever possible;
  - (ii) to know the profile of Union members in the workplace;
  - (iii) to recruit and involve Carriers in the Union and its activities;
  - (iv) to be approachable and helpful to Union members in the workplace;
  - (v) to seek out and encourage other Union members to take on roles and responsibilities;
  - (vi) to provide up to date and relevant Union information to Union members in the workplace;
  - (vii) to represent the views of the members;
  - (viii) to represent Union members fairly and accurately in negotiations and in relation to individual grievances;
  - (ix) to keep in regular contact with the Union organiser and other Union representatives in the workplace about matters pertaining to the workplace.

- (c) Union delegates will be allowed such reasonable time during working hours, as may be agreed between Toll and the delegates, to attend to the functions outlined above.
- (d) Other than as expressly specified, this clause 22.2 does not confer on Union delegates any additional remuneration, paid leave, or other benefit, above and beyond the benefits specified in other clauses in this Agreement.

### **22.3 Delegates' meetings**

- (a) Carrier delegates will be entitled to attend Union delegates meetings subject to the conditions set out below.
- (b) Delegates meetings will be conducted, as far as practicable, at a time that has the least operational inconvenience for Toll.
- (c) The Union must provide Toll with at least 7 days notice in writing of a delegates meeting.
- (d) Toll will not be required to release a delegate to attend more than 2 delegates' meetings per quarter provided that delegates may attend up to 2 delegates meetings in addition to the annual delegates conference in the quarter in which such conferences are held.
- (e) The number of delegates attending at delegates meetings will be restricted to no more than 2 delegates from each business unit or contract where Toll engages more than 20 Carriers. Where fewer than 20 carriers are engaged only 1 delegate will be released.
- (f) Delegates who are released to attend meetings under this clause will be paid in accordance with the custom and practice applying to their site or business, or as a minimum payment at their applicable hourly labour rate for the time spent at the meetings and the time reasonably spent travelling to and from work to the meetings.

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## **23. Compulsory induction training and related matters**

### **23.1 New Carriers**

A new Carrier commencing work with Toll will be trained in:

- (a) occupational health and safety;
- (b) the Drug and Alcohol Procedures;
- (c) their rights and obligations under this Agreement;
- (d) the importance of supporting a culture of continuous improvement and of assisting Toll to meet its commitments to its customers; and
- (e) the Blue Card Induction Program.

### **23.2 Union Induction**

- (a) Representatives of the Union will be given an opportunity to induct all new Carriers who commence with Toll after the Operative Date in accordance with the following procedure:
  - (i) the induction will take place on a site at which work is being performed;
  - (ii) a room which is appropriate for inductions (such as a training room) is dedicated to that purpose;
  - (iii) 30 clear minutes will be allowed for the induction to take place;
  - (iv) prior to the induction there will, at the Union's request, be posted in a prominent position accessible to all Carriers a Union generated notice describing the purpose of the induction and setting out any other relevant information.
- (b) Toll and the Union will consult on organising the most effective time for Union inductions to occur. Where possible, Union inductions will occur at the same time as Toll conducts Carrier inductions, or in conjunction with other Union training.

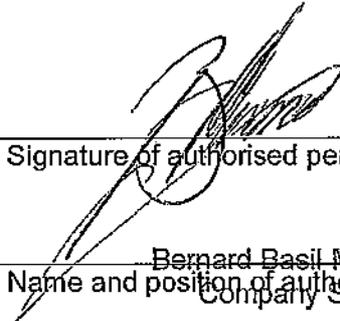
**23.3 Ongoing training**

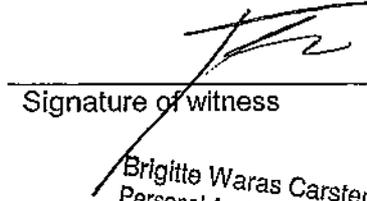
- (a) Toll will provide existing Carriers with the opportunity and time to attend a two hour safety course, such course to be determined by Toll, conducted on site or other agreed place at an agreed time. Such training will be conducted within a reasonable time of signing this Agreement.
- (b) Toll will enrol and provide existing Carriers with the opportunity and time to attend driver fatigue management programs as appropriate.
- (c) Carriers attending training under this clause 23.3 will be paid in accordance with the custom and practice applying to their site or business, or as a minimum payment their applicable labour rate for the time spent at the training plus the time reasonably spent travelling to and from work to attend the training.
- (d) Subject to any statutory obligations binding on Toll to the contrary, it will be entirely a matter for Toll to determine what person, firm, organisation or company provides Carriers with any training required under this Agreement.

**23.4 Delegates Training**

- (a) The Union may request that a delegate be released to attend training. Any request must be made at least 7 days before the intended training.
- (b) Toll will not unreasonably refuse a request to release a delegate for training.
- (c) Delegate training must be organised in a manner that does not effect site operating efficiency.
- (d) Delegates attending training under this clause 23.4 will be paid in accordance with the custom and practice applying to their site or business, or as a minimum payment their applicable labour rate for the time spent at the training plus the time reasonably spent travelling to and from work to attend the training.

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

  
Signature of authorised person  
Bernard Basil McINERNEY  
Name and position of authorised person in full  
Company Secretary

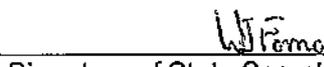
  
Signature of witness  
Brigitte Waras Carstensen  
Name of witness in full  
Personal Assistant to Co. Secretary

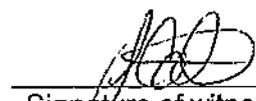
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Ph: (03) 9694 2888 Fx: (03) 9694 2880  
Address

Toll Document No: 12TG000348  
Date: 12 / 6 / 2012  
Address

Date of signing:

Signed for and on behalf of  
**Transport Workers' Union of New South Wales**  
in the presence of:

  
Signature of State Secretary  
Wayne Forno  
Name of State Secretary  
31 Cowper Street  
Parramatta NSW 2150  
Address

  
Signature of witness  
Suzana Hall  
Name of witness in full  
31 Cowper Street  
Parramatta NSW 2150  
Address

Date of signing: 25/5/12

## **SCHEDULE 1 - DRUG AND ALCOHOL POLICY AND PROCEDURES**

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### **1. Introduction**

#### **1.1 Purpose**

The purpose of these Procedures is to ensure that there is no adverse impact on:

- (a) the health, safety and environment of any Worker, Visitor or of any member of the public; or
- (b) Toll's assets and business,

as a consequence of a Worker being Impaired by, or in possession of, Drugs or alcohol at work.

#### **1.2 Policy**

These Procedures are made in accordance with the Policy.

#### **1.3 Responsibilities**

- (a) Toll management is responsible for ensuring that:
  - (i) the Policy is displayed at all Work Sites; and
  - (ii) the Policy and these Procedures are implemented and adhered to at all Work Sites.
- (b) All Workers must comply with and abide by the Policy and these Procedures.

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## **2. Definitions**

The following definitions apply to these Procedures:

**Drug** means any pharmaceutical, medicinal or narcotic substance.

**Employee** means any person who is employed by Toll in Australia, including managers and staff personnel.

**Equipment** includes any plant or vehicle supplied by Toll which an Worker is required to operate in the course of his or her duties.

**First Test** means the initial test conducted as part of drug or alcohol testing under clause 4.3.

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

- (a) owns or operates multiple vehicles; and
- (b) employs or engages multiple drivers; and
- (c) offers their services to the public at large.

**Group** means the Toll Group of Companies, whose parent company is Toll Holdings Limited.

**Illegal Drug** means:

- (a) any Drug which it is unlawful to possess, consume or sell within Australia, or in the State in which an individual Worker works; or
- (b) a Prescription Drug that has been obtained other than by prescription from a registered medical practitioner, or which has been taken in a manner contrary to that prescription.

**Impaired** means being under the influence of a Drug or alcohol to the extent of being unfit to efficiently or safely undertake the Worker's prescribed duties, including exceeding the Prescribed Limit.

**Legal Drug** means:

- (c) a Drug that may lawfully be taken without a prescription from a registered medical practitioner; or
- (d) a Prescription Drug that has been prescribed by a registered medical practitioner.

**Policy** means the Toll Group Drug & Alcohol Policy signed by the Managing Director of Toll in or about August 2008.

**Positive Result** means the finding by a suitably qualified person that a Worker is Impaired.

**Prescribed Limit** means:

- (a) for alcohol – the limit legally permissible for the duty required to be performed;
- (b) for Legal Drugs – a level up to but not exceeding:
  - (i) the cut-off level identified in AS/NZS 4760:2006 for oral fluid (saliva) testing; or
  - (ii) the permissible level if the Drug were used strictly in accordance with either the manufacturer's recommended dosage rate or the prescription given by a registered medical practitioner; and
- (c) for Illegal Drugs – a level up to but not exceeding the cut-off level identified in AS/NZS 4760:2006 for oral fluid (saliva) testing.

**Prescription Drugs** means Drugs which may lawfully be taken if they have been prescribed by a registered medical practitioner.

**Procedures** means the drug and alcohol procedures contained in this document.

**Rehabilitation Process** means the process described in clauses 5.2 and 5.3.

**Toll** means any member of the Group which employs or engages a Worker.

**Visitor** means any person, other than a Worker, who is on a Work Site with Toll's authority or approval.

**Work Site** means any premises operated, owned or controlled by Toll at which Workers are required to work.

**Worker** means any person who is engaged by Toll to perform work on its behalf including:

- (d) Employees;
- (e) Carriers and owner-drivers;
- (f) labour hire workers; and
- (g) employees of, or workers engaged through, Fleet Operators.

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### **3. Prohibitions**

- (a) Workers must not:
  - (i) report for work, or remain at work, whilst they are Impaired;
  - (ii) operate any Equipment whilst they are Impaired;
  - (iii) possess or consume Illegal Drugs at any Work Site, whilst in control of any Equipment or otherwise whilst performing their duties for Toll;
  - (iv) consume alcohol whilst in control of any Equipment;
  - (v) unless authorised to do so, possess or consume alcohol at any Work Site or whilst performing their duties for Toll;
  - (vi) sell or supply any Drugs or alcohol at any Work Site;
  - (vii) otherwise possess, consume, sell or supply Drugs or alcohol in any way which might injure Toll's reputation or damage its relations with the public.
- (b) Toll may direct a Worker not to work and to leave any Work Site if the Worker's supervisor or manager is reasonably of the opinion that the Worker is Impaired.
- (c) A breach of clauses 3(a)(i) and (ii) will result in the commencement of the Rehabilitation Process and/or disciplinary action in accordance with clause 6, depending on the circumstances.

- (d) A breach of clauses 3(a)(iii), (iv), (v), (vi) and (vii) will be regarded as serious misconduct and will result in disciplinary action being taken against the Worker. This action may include the summary dismissal of the Worker.

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## **4. Drug and Alcohol Testing**

### **4.1 Testing permitted**

Toll is entitled to undertake drug and/or alcohol testing of its Workers, in accordance with these Procedures.

### **4.2 Standards and method**

Drug and alcohol testing will be conducted in accordance with AS/NZS 4760:2006.

### **4.3 When testing may be undertaken**

- (a) **Random testing** – Toll may undertake random drug and alcohol testing of its Workers in accordance with these Procedures. In relation to random testing the following conditions will apply:
  - (i) Toll may determine the shifts or days of work on which the testing will be carried out.
  - (ii) Testing can be undertaken at any Work Site on any day of the year on which Workers work at that Work Site.
  - (iii) Testing is not confined to Work Sites, but can be carried out at any place at which a Worker performs work for Toll. Toll will decide when a Worker who is not on a Work Site is to be tested.
  - (iv) Where testing takes place at a Work Site, Toll will decide which Worker or Workers at the Work Site will be tested.

- (b) **Incident response** – Toll may require an Worker to undergo drug and alcohol testing if the Worker has been involved in an incident involving actual, or the potential for, loss of life or injury to any person, or damage to property, including Equipment.
- (c) **Referral** - Toll may require a Worker to undergo drug and alcohol testing where another Worker, or the Worker's supervisor or manager, is reasonably of the opinion that the Worker may be Impaired. In this event, the person referring the Worker for testing must complete a Toll Australia Group – Observation Record (see Appendix A) prior to the referral.

#### **4.4 Workers must attend tests**

- (a) Workers must take part in drug and alcohol testing as directed.
- (b) Workers may be required to confirm with their supervisors or managers that they have attended any scheduled tests.

#### **4.5 First Test - Drugs**

The First Test for Drugs will be undertaken by saliva samples from Workers.

#### **4.6 First Test – Alcohol**

- (a) The First Test for alcohol will be a breath test of Workers.
- (b) If a breath test indicates that a Worker may be Impaired by alcohol, the Worker will be immediately required to provide, and must provide, a saliva sample.

#### **4.7 Frequency of testing**

- (a) Toll must monitor the number of tests to which any Worker is subjected.
- (b) Toll will endeavour to ensure that no Worker is subjected to excessive drug and alcohol testing.

#### **4.8 Worker's rights to test samples**

At any time a Worker can request and arrange for the independent analysis of any sample taken during a drug or alcohol test. The costs of having that independent analysis conducted will be the Worker's responsibility.

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### **5. Rehabilitation Process**

#### **5.1 General**

The Rehabilitation Process set out in this clause will apply where a Worker returns a Positive Result following a First Test.

#### **5.2 Laboratory Confirmation**

- (a) The sample obtained at the First Test will be referred to a suitably accredited laboratory for the purposes of confirming (or disproving) the Positive Result.
- (b) Until the results of the laboratory assessment are known, the Worker may not commence or continue work, but will be suspended with pay.
- (c) If the laboratory assessment disproves the Positive Result, the Worker will immediately be entitled to return to work.
- (d) If the laboratory assessment confirms the Positive Result, clause 5.3 will apply.

#### **5.3 Positive Results**

- (a) This clause 5.3 is subject to the rights Toll has under clause 6.
- (b) The process outlined in this clause 5.3 will generally only apply where the Worker has not previously returned a Positive Result. Toll may decide whether this process, as opposed to disciplinary action under clause 6, will be followed in the event of a Worker returning a second or subsequent Positive Result.
- (c) Once the laboratory assessment has confirmed the Positive Result, the Worker will remain on suspension but will not be entitled to be paid wages. If the Worker is a Toll Employee, the Worker will be able to access any accrued annual leave, long service

leave or rostered days off. The Worker will also be able to access accrued sick leave, provided that the Worker provides Toll with a medical certificate verifying that the Worker is unable to attend work due to a medical condition related to drugs or alcohol.

- (d) The Worker will be provided with the opportunity to explain the Positive Result.
- (e) The Worker may be required to undertake appropriate drug or alcohol counselling, to be paid for by Toll.
- (f) The Worker may not resume work until he or she is certified by a registered medical practitioner to be fit to return to work. For the avoidance of doubt, this certification may require more than a finding that the Worker is no longer Impaired.

#### **5.4 Follow-up testing**

- (a) A Worker who has returned a Positive Result but has resumed work must, at any time within 12 months of returning to work, undergo a drug and alcohol test to determine whether they are Impaired (**Follow-Up Test**).
- (b) A Positive Result at the Follow-Up Test may result in disciplinary action being taken against the Worker in accordance with clause 6.2.
- (c) A finding at the Follow-Up Test that the Worker is not Impaired will result in the conclusion of the Rehabilitation Process.

#### **5.5 Testing during Rehabilitation Process**

The conduct of the Rehabilitation Process does not limit Toll's ability to undertake testing in accordance with clause 4.3.

#### **5.6 Testing after completion of Rehabilitation Process**

If a Worker returns a Positive Result after having previously been through the Rehabilitation Process, they will be subject to disciplinary action in accordance with clause 6.2.

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## **6. Disciplinary matters**

### **6.1 Positive Result**

A Worker who returns a Positive Result may be subject to disciplinary action.

### **6.2 Counselling and treatment**

As a part of any disciplinary action taken against a Worker which does not involve dismissal, Toll may require the Worker to undertake appropriate counselling, or take part in any appropriate treatment program, as a condition of the Worker returning to and remaining at work.

### **6.3 Refusal to undergo testing**

- (a) A Worker who refuses to undergo drug and alcohol testing without a reasonable excuse may not commence or continue work, and will be suspended without pay.
- (b) In addition, the Worker will be subject to disciplinary action, which may include termination of employment.

### **6.4 Falsification of test**

A Worker who attempts to falsify the outcome of a drug or alcohol test, or to tamper with his or her samples, will be subject to disciplinary action, which may include termination of employment.

### **6.5 Malicious accusations**

A Worker who falsely, mischievously or maliciously causes another Worker to be accused of being Impaired, or tested on the basis of being Impaired, will be subject to disciplinary action, which may include termination of employment.

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**7. Use of the assistance program**

- (a) Toll will, if requested by a Worker to do so, provide an assistance program comprised of:
  - (i) confidential medical services; and
  - (ii) confidential counselling services.
- (b) Toll provides a Chaplain in all Australian States (except Tasmania, which is covered through Victoria), and otherwise provides the Carrier Assistance Program and Carrier Counselling Services to offer Workers the services of professionally trained counsellors to assist Workers in the treatment of drug or alcohol abuse problems.
- (c) Toll will display the names and contact details of these services at all Work Sites.
- (d) Workers experiencing problems with drugs or alcohol are urged to seek assistance to resolve these problems before they become serious enough to warrant disciplinary action.
- (e) Workers whose job performance deteriorates may be referred to one of the counselling services for diagnosis of the cause of the performance problems.
- (f) Participation by a Worker in a program for the treatment of a drug or alcohol problem will not, of itself, jeopardise the Worker's employment. Rather, successful treatment will be viewed positively. However, participation in such a program will not relieve a Worker of the responsibility of complying with these Procedures.

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**8. Toll commitment**

Toll will ensure that:

- (a) details of participation by a Worker in any assistance program;
- (b) details of participation by a Worker in drug and alcohol testing; and
- (c) the results of drug and alcohol testing,

are kept confidential and that the Worker's privacy is maintained.

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## **9. Training and awareness**

- (a) Toll will ensure that all new Workers receive training in relation to the Policy and these Procedures as part of their induction.
- (b) At that induction, new Workers will be provided with a copy of the Policy and these Procedures, and must be required to sign an acknowledgment of having received those documents and of understanding the requirements they impose.
- (c) Toll must maintain attendance records to verify the induction of new Workers into the Policy and these Procedures.
- (d) Toll will undertake further awareness training of existing Workers into the Policy and the Procedures. Toll must maintain attendance records for any such training sessions.
- (e) Toll must provide copies of attendance sheets for any training and awareness sessions conducted pursuant to this clause to the relevant OHS Committees and union delegate.

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## **10. Resolution of disputes**

Any disputes as to the interpretation or implementation of these Procedures will be dealt with in accordance with clause 10 of the Agreement (above).