

FAIR WORK COMMISSION

Matter No. AM2016/32

RE *Road Transport and Distribution Award 2010*

SUBMISSIONS FOR THE TRANSPORT WORKERS' UNION OF AUSTRALIA

Introduction

1. These are the submissions of the Transport Workers' Union of Australia ("the TWU") in relation to the implementation of the decision of the Full Bench to vary the Road Transport and Distribution Award ("the Road Transport Award") to cover drivers involved in vehicle relocation. The submissions also reply to the submissions filed by Truck Moves Australia dated 24 November 2017.
2. In its decision of 6 July 2017, the Full Bench of the Fair Work Commission accepted the submission of the TWU that the Road Transport Award should be varied to cover drivers involved in vehicle relocation. The variation accepted by the Full Bench is to vary the definition of the "road transport and distribution industry" in clause 3.1 of the Award to include the following:

'(j) the distribution and/or relocation by road of new or used vehicles as described in the classifications within this award where the vehicle itself is required to be driven from one location to another for the purposes of delivery and/or relocation of the vehicle.'

3. The Full Bench concluded its consideration in relation to that question as follows (at [87]):

[87] We agree with the TWU's submission that the exclusion of drivers in the vehicle relocation industry from any modern award

coverage is anomalous. This situation is inconsistent with the requirement to ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions. We also agree that the appropriate modern award to cover the employees in question is the Road Transport Award. However, we do consider that there is an arguable case that some of the provisions of the Road Transport Award should be modified in their application to this group of employees, having regard to the particular features of their work. There may also be a case for some transitional provisions to apply in extending the coverage of the Road Transport Award to the vehicle relocation industry, given that existing contracts would have been entered into on the basis of the current arrangements. We propose to convene a conference of interested parties to explore these issues further.

4. Truck Moves submits that a new schedule should be inserted into the Award providing for very different rates of pay and hours of work arrangements to all other employees covered by the Road Transport Award. The Full Bench would not accept the submissions of Truck Moves. The TWU, in summary, makes the following submissions:
 - (a) The approach proposed by Truck Moves to the variation is inconsistent with the requirements of the Act and with the decision of the Full Bench that drivers engaged in vehicle relocation should be covered by the Road Transport Award.
 - (b) The new schedule proposed to be inserted into the Road Transport Award would provide for manifestly inadequate rates of pay and hours of work arrangements which are inconsistent with the long-standing structure and method of determination of the pay rates for drivers.
 - (c) The submissions of Truck Moves to the effect that vehicle relocation is “vastly different” to other transport work was substantially overstated and the proposed separate schedule

- does not properly reflect work undertaken by drivers employed by companies such as Truck Moves.
- (d) The Full Bench would not accept that the provisions of the Road Transport Award identified by Truck Moves are incompatible with the work of drivers involved in vehicle relocation or incapable of appropriate application to such drivers.
 - (e) The TWU does not oppose some transitional arrangements being implemented but submits that the transitional arrangements proposed by Truck Moves are excessive and unnecessary considering that operators involved in vehicle relocation have been on notice of the potential application of the Road Transport Award for some years.
5. The TWU submits that the deviations from the provisions of the Road Transport Award proposed by Truck Moves should not be accepted and the Road Transport Award should apply to employees involved in vehicle relocation in the same way as other transport workers subject to appropriate transitional arrangements.

Approach of the Full Bench

6. In undertaking the Modern Award Review process, the Full Bench will have regard to the modern awards objective set out in s 134 of the Act. For example, the Full Bench indicated in *Re 4 Yearly Review of Modern Awards — Common Issue — Award Flexibility* [2015] FWCFB 4466 at [9] that:

The modern awards objective is central to the Review. The modern awards objective applies to the performance or exercise of the Commission’s “modern award powers”, which are defined to include the Commission’s functions or powers under Pt 2-3 of the Act. The Review function in s 156 is in Pt 2-3 of the Act and so involves the performance or exercise of the Commission’s “modern award powers”. It follows that the modern awards objective applies to the Review.

7. The Full Bench has already determined, in its earlier decision, that the exclusion of drivers engaged in vehicle relocation from any award coverage was anomalous and inconsistent with the requirement of the modern awards objective. The Full Bench further determined that the situation should be addressed by the employees being covered by the Road Transport Award.
8. Truck Moves makes two submissions as to the approach which should be adopted by the Full Bench in addressing the application of the Road Transport Award to vehicle relocation:
 - (a) That the Full Bench should assess the application of rates of pay in the Road Transport Award by reference to work value considerations; and
 - (b) That the Full Bench should assess the application of the Road Transport Award to drivers engaging in vehicle relocation by reference to the first award principle.
9. The submissions should not be accepted. Firstly, the suggestion by Truck Moves that the Full Bench should, or is required to, assess the rates of pay in the Road Transport Award by reference to the work value principle are misconceived. Section 135 of the Act limits the circumstances in which the Commission can vary modern award minimum wages, including that a variation to modern award wages may be justified by work value reasons. Section 156(3) and (4) of the Act similarly make clear that the Commission may make a determination varying modern award minimum wages only if satisfied by work value reasons.
10. The present proceedings do not seek and do not involve the variation of the rates of pay in the Road Transport Award. The Full Bench has simply decided, in light of the anomalous exclusion of drivers engaged in vehicle relocation from modern award coverage, that the Road Transport Award should apply to this group of employees. There is no necessity for the Full Bench to undertake a de novo work value assessment of the work of drivers in the transport industry or drivers involved in vehicle

relocation. The rates of pay in the Road Transport Award are already properly set for professional driving work.

11. Secondly, the Full Bench would not approach the variation on the basis of the application of what historically was known as the “first award principle”. The approach traditionally adopted with respect to an application for a first award is to have regard, at least in relation to non-wage conditions of employment, to look initially to existing conditions: *Royal Australian Nursing Federation v Private Hospitals and Nursing Homes Association of Australia* (1992) 46 IR 219 at 223-224; *Construction, Forestry, Mining And Energy Union (New South Wales Branch) v Pasmaico Broken Hill Mine Pty Limited* (2001) 109 IR 75 at [200]. Those principles arose in a very different legislative context.
12. The Road Transport Award sets appropriate conditions for transport workers. The Full Bench has decided that drivers engaged in vehicle relocation should be covered by the Road Transport Award and that the finding that the Award did not previously cover employers engaged in that work resulted in the modern award system failing to provide a fair and relevant safety net of conditions. The approach advocated by Truck Moves of focusing on existing rates of pay and conditions in its business would have the effect of perpetuating the situation that relevant employees do not have access to a fair and relevant safety net. That outcome would be inconsistent with the modern awards objective set out in s 134 of the Act.
13. Furthermore, it is not correct to suggest that drivers engaged in vehicle relocation have historically not been subject to award regulation or that employers and employees involved in vehicle relocation have understood that no modern award applies to that work. For example:
 - (a) Drivers employed by a vehicle manufacturer, retailer or repairer engaged to undertake vehicle relocation work would be covered by the *Vehicle Manufacturing, Repair, Services and Retail Award* which contains specific driver classification and covers vehicle sale and distribution.

- (b) Drivers employed to transport vehicles on car carrying vehicles or by towing are already covered by the Road Transport Award and covered by the classifications depending upon the type of vehicle driven.
 - (c) Even with respect to specialist vehicle relocation businesses, it was only clear that drivers employed in such a business were not covered by the Road Transport Awards following the decision of the Full Federal Court in *Zader v Truck Moves Australia Pty Ltd* [2016] FCAFC 83. There was no prior decision suggesting that drivers involved in vehicle relocation were not covered by transport awards and, indeed, the Federal Circuit Court had previously found that such a business was covered by the Road Transport Award in *Rooth v S. Brady Industries Pty Ltd* [2014] FCCA 1435.
14. Finally, to the extent that some analogy should be drawn with the first award principle, it would not be assumed that the arrangements in other like businesses are the same as Truck Moves. It is apparent from the evidence given in the earlier proceedings before the Full Bench that Truck Moves pays the lowest rates of pay available to it and, particularly in the circumstances of long distance work, is likely to fail to ensure that its drivers receive even the federal minimum wage.
 15. Employers other than Truck Moves which are engaged in the business of vehicle relocation have been operating on the assumption that the RT&D Award applies to their operations. The TWU is party to enterprise agreements with a number of businesses engaged in vehicle relocation, including Prixcar Transport Services Pty Ltd. Those enterprise agreements have been negotiated and approved by the Commission on the basis that the RT&D Award would otherwise apply to transport employees.

Work of Drivers engaged in Vehicle Relocation

16. The submissions of Truck Moves seeking adjustments to the provisions of the Road Transport Award are primarily based upon the assertion that the work of drivers engaged in vehicle relocation work is substantially different from other transport workers. The evidence does not support a finding that the nature of work undertaken by those drivers is so substantially different as to warrant entirely different rates of pay and single classification.
17. Truck Moves' submissions amount to little more than an assertion that the drivers it employs may not perform each and every task that might be performed by a driver in the transport industry. In this respect, drivers employed by Truck Moves or other vehicle relocation business are in no different position than other drivers in the transport industry. The road transport industry is very broad and encompasses drivers who undertake a wide range of tasks and undertake very different transport operations. That there may be some variation in the precise duties of drivers involved in vehicle relocation compared to some other drivers is unremarkable.
18. In any event, the evidence of the TWU's witnesses, particularly Mr Mealin and Mr Haining, makes clear that, in addition to the core task of driving, drivers employed in vehicle relocation undertake many of the same duties as other drivers employed in the transport industry, including interaction with customers, vehicle checks, refuelling, placing trade plates and hitching trailers. The evidence of Truck Moves itself makes clear that its drivers undertake many of the duties of other drivers and skills of other drivers including having knowledge and training in fatigue management and safe operation of vehicles, completing paperwork, undertaking vehicle checks and are exposed to the same regulation under the National Heavy Vehicle Law.
19. The height of the submission appears to be that drivers employed by Truck Moves might not perform each and every function conceivably undertaken by a driver in the transport industry. All drivers in the transport industry are in the same position. A driver more generally in the

transport industry may perform some but not all of those tasks. For example, whilst some drivers may be directly engaged in loading and unloading or use of equipment on the truck, others will not. The classifications and pay scales will nonetheless have application to those drivers and can appropriately apply to drivers employed in vehicle relocation.

20. Many of the aspects of the work of a driver emphasised by Commissioner Austin in *Transport Workers (General) Award 1959* (1959) 91 CAR 344 are applicable to the work of drivers employed in vehicle relocation. For example, Commissioner Austin referred to the responsibility of drivers of the vehicle and for maintaining a schedule of work away from direct observation by the employer (at 5), carrying out all aspects of the employment singly (at 6), direct contact and interaction with clients (at 6) and problems associated with the stress and tension of driving work (at 7).
21. The work of drivers employed in vehicle relocation appropriately fits within the work covered by the Road Transport Award. This is further reflected in the fact that Truck Moves deliberately advertises for persons with transport industry driving experience and skills for its operations and advertises itself on its website as having “a team of uniquely experienced professionals” and that its services are provided only by “highly experienced drivers”. When seeking new drivers, Truck Moves invites applicants to record their transport industry experience driving various types of vehicles because it is relevant to the work of drivers employed by Truck Moves.
22. To the extent that it is suggested that the decision of the Full Federal Court supports the view that drivers involved in vehicle relocation undertake substantially different work, the submission is wrong. The focus of the decision of the Federal Court was upon whether the business of Truck Moves was within the “road transport and distribution industry” as defined. The Federal Court did not, and had no occasion to, make findings as to whether the work of drivers engaged in such a

business was different from other drivers working in the transport industry.

Provisions of the Road Transport Award

23. Truck Moves suggests that certain provisions of the Road Transport Award are incompatible with the operation of their business and suggest alternative provisions and that it be exempt from the application of certain award provisions. No case has been made out of the alternative provisions sought and the proposed provisions would set manifestly inadequate conditions and are inconsistent with the structure and intent of the Award.

(a) Rates of Pay

24. There are no grounds upon which drivers involved in vehicle relocation would not be paid in accordance with existing rates of pay in the Road Transport Award. The existing rates of pay set rates by reference to classifications which reflect the different skills, qualifications and responsibilities involved in driving different types of vehicles. Transport have long set rates of pay on that basis.

25. Truck Moves proposes a single rate of pay payable to drivers irrespective of the type or size of the vehicle being driven. The proposal is obviously unacceptable:

(a) The prescription of a single rate of pay fails to recognise the skills, qualifications and responsibilities involved in driving vehicles of different type and dimension. The proposal is fundamentally inconsistent with the basis upon which the rates of pay have been set under transport awards for decades.

(b) The rate proposed is only marginally higher than the federal minimum wage and lower than the rate presently set for a Grade 1 Transport Worker. That is, the proposal would result in a driver

of a vehicle with a vehicle with a GCM of greater than 22.4 tonnes being paid less than a general hand in a distribution facility.

26. The fact that a driver may drive different types of vehicles when involved in vehicle relocation is not a unique circumstance and is appropriately dealt with by clause 19 of the Award. To the extent it is suggested that Truck Moves says it does not know the type of vehicle being transported, the submission cannot be accepted. At the very least, once the vehicle is picked up and driven Truck Moves knows and has the means to find out the type and size of the vehicle involved. There is no difficulty in the application of the rates of pay in the Road Transport Award.

(b) Long Distance Operations

27. Truck Moves suggest different provision for long distance operations and proposes a single kilometre rate for long distance operations. The TWU does not agree that separate provision should be made for long distance work in the context of vehicle relocation work. Vehicle relocation work does not accord with the usual understanding of long distance work which involves an interstate or return journey of a specified distance. The implementation of a single kilometre rate would also fail to reflect the classification structure in the Road Transport Award or the Long Distance Operations Award.

(c) Hours of Work

28. Truck Moves proposes different provisions for ordinary hours of work for drivers engaged in vehicle relocation work. The hours of work provisions in the Road Transport Award are applied across the myriad of operations within the road transport industry. No basis has been established for an employee involved in work of that type being able to be rostered for 10 hours or 12 hours of ordinary time on a day in a manner that is inconsistent with clause 22 of the Road Transport Award.

Transitional Provisions

29. The TWU does not oppose some provision of a transitional nature consequent upon the extension of the Road Transport Award to vehicle relocation work. However, it is submitted that any transitional arrangements should operate for no longer than two years.
30. Truck Moves submits that the application of the Road Transport Award will have a financial impact upon its operations and that it operates in a competitive environment. The financial adjustment required is appropriately dealt with by the implementation of transitional arrangements. As the Road Transport Award will apply to all operators, after a transitional period, the competitive position of Truck Moves will not be disadvantaged. The allegedly competitive nature of the industry does not support any change to award conditions or a longer transitional period.
31. Furthermore, Truck Moves and other vehicle relocation businesses have been on notice on the controversy over the application of the Road Transport Award to vehicle relocation work at least since the decision of the Federal Circuit Court in *Rooth v S. Brady Industries Pty Ltd* [2014] FCCA 1435. Employers have had a number of years to consider the implications of the application of the Award to their operations. In those circumstances, transitional arrangements for a period of two years is more than adequate.

Conclusion

32. For these reasons, no case has been established for making any of the variations to the application of the Road Transport Award to drivers engaged in vehicle relocation as sought by Truck Moves. The Road Transport Award should be varied as has already been decided by the Full Bench to cover vehicle relocation work subject to reasonable transitional provisions.
33. If Truck Moves wishes to adjust the operation of particular provisions of the Road Transport Award to better suit its operations, that outcome is

properly to be achieved by it engaging in enterprise bargaining with its employees. The proper application of the modern awards objective does not permit a substantially different safety net applying to drivers working in vehicle relocation compared to all other transport workers.

Transport Workers' Union of Australia

Dated: 22 December 2017

IN THE FAIR WORK COMMISSION

Matter No. AM2016/32 and AM2014/212

**4 Yearly Review of Modern Awards – Road Transport and Distribution Award
2010**

STATEMENT OF ANTHONY CASSAR

I, Anthony Cassar of [REDACTED] state as follows:

1. I am 43 years of age.
2. I am currently employed by PrixCar Services Pty Ltd (**PrixCar**) as their Human Resources (**HR**) Manager. I have been with PrixCar since 2015.
3. Prior to working for PrixCar I was employed with (Redflex Traffic System).

My Role at PrixCar

4. Part of my role as National HR – HSEQ Manager with PrixCar requires me to negotiate enterprise agreements with the relevant trade unions on behalf of PrixCar. Included in my role has been the negotiation of an enterprise agreement with the Transport Workers' Union (**TWU**) for truck drivers engaged by PrixCar.
5. In 2016, I concluded negotiations with the TWU for the *PrixCar Transport Services Pty Ltd and Transport Workers' Union of Australia Fair Work Agreement 2016-2019 (2016 Agreement)* hereto annexed and marked **AC1**.

6. I am also responsible for the following:
 - a. EA negotiations and interpretation
 - b. Recruiting
 - c. HSEQ & compliance related activity
 - d. Strategic task

Structure and Business of PrixCar

7. There are two divisions in the PrixCar business. One division is the Vehicle Processing Centre (VPC). Prior to 2012 the business of PrixCar only involved the VPC.
8. The other is the transport division of the business. This aspect of the business commenced operation in 2012 when PrixCar purchased Toll Auto Logistics and this now makes up the transport arm of PrixCar.
9. There are a number of VPC's throughout Australia. The VPC's process new vehicles that have been bought into Australia and delivered from the relevant local Port to the VPC. At the VPC, the vehicles are processed before being transported to the customer. A customer could be the vehicle manufacturer, a motor dealership or other type of customer such as a transport and logistics company.
10. The processing of the new vehicles at the VPC involves the following:
 - a. Putting on compliance plates,
 - b. Checking that the vehicle has met the relevant Australian Design Standards;
 - c. In some cases, registering the vehicle;
 - d. Checking logbooks; and

- e. Placing trade plates on vehicles where required.
 - f. Rectification, washing, surveillance checks, storage etc.
11. Employees who work at the VPC's only process the vehicles and are not involved in the transportation of those vehicles.
 12. Prior to 2012 the business of PrixCar only had the VPC division which related to vehicle processing. The transportation of vehicles from the port to the VPC and later transportation off site was contracted to multiple transport companies.
 13. In 2012, PrixCar decided that it wanted to be a one-stop shop and to do that it had to buy or set-up a transport company. In August of 2012, it acquired Toll Auto Logistics.
 14. Today PrixCar has its own transport company that can pick up vehicles from the Port or other locations, deliver to its VPC sites and deliver to the various types of customers including manufacturers and dealerships.

The Role of Truck Drivers at PrixCar

15. The truck drivers employed within the transport division of the business collect the new vehicles from the Port and drive them to the VPC. Once processed and ready for delivery, the driver will then transport the new vehicle/s either on a car carrier or drive the vehicle itself to the next location.
16. When I say vehicle itself, I am referring to the cab chassis of a truck. New motor vehicles are transported on the back of a car carrier or some similar vehicle. Trucks can also be transported on the back of a truck where their size permits.
17. The drivers employed in the transport division can drive both trucks that are loaded with new vehicles or the cab chassis itself with a trade plate attached. The transport of vehicles can be either local or interstate.

18. Drivers employed by PrixCar are covered by the 2016 Agreement. Drivers are paid according to the size of the truck they are driving whether it is a loaded truck or just the cab chassis itself. When the driver is regularly engaged at a certain grade and ordinarily drives a certain size truck then they are paid the same rate (if it is higher) when driving the cab chassis.
19. When a driver transports a cab chassis to an interstate destination they will fly back by airplane to where they commenced their journey. The driver is paid for all hours worked, including the return journey, at rates that are significantly higher than the relevant award and that include all penalties and other sundries. These rates are set out at clause 25 of the 2016 Agreement annexed at AC1.
20. Drivers who perform long distance operations only perform that type of work and are paid the rates set out in the enterprise agreement. The enterprise agreement is underpinned by the *Road Transport (Long Distance Operations) Award 2010* which also contains the relevant classification structure.
21. Local drivers are paid the rates set out in the enterprise agreement, which is underpinned by the *Road Transport and Distribution Award 2010* and the classifications structures set out therein. Local drivers can perform both local work and long-distance operations. When they perform long distance operations they are paid the rate prescribed for long distance drivers in completing that work.
22. Drivers engaged by PrixCar in the vehicle transportation business, and particularly those drivers who are engaged to drive different types of trucks and/or truck configurations, are required to possess a high level of skill in order to do so. Many, if not most, of the drivers engaged at PrixCar have intensive industry experience that is necessary to ensure an easy transition in operating a vast number of vehicles with little or no direction as to the manner in which the vehicle operates.
23. It is my view that most of our drivers have worked in the industry for a long period of time and I would call them professional drivers. As the predominant activity, these professional drivers are engaged in is the driving task itself, this is

all we take into account when determining how that professional driver ought to be paid. To do so, we simply consider the following factors:

- a. Nature and type of vehicle to be transported (loaded car carrier or cab chassis);
- b. Licensing requirements of the professional driver; and
- c. Relevant classification set out in the applicable industrial instrument based on the distance to be travelled.

PrixCar's Position in the Industry

24. Recently, PrixCar have been finding it increasingly difficult to compete for work in the cab chassis side of the business. This is due to competition in the market that is undercutting PrixCar in both price and conditions. As we pay according to the 2016 Agreement which is above the applicable industrial instrument, the competition is able to undercut PrixCar. As I understand they do not pay according to the relevant industrial instrument.

25. One of our key competitors is Truck Moves Australia Pty Ltd (**Truck Moves**). As I understand, Truck Moves does not pay their drivers under an industrial instrument as they believed they were 'award free' and as a result, have been paying drivers less than the relevant road transport awards. The information about Truck Moves undercutting us has come from clients and our truck drivers who have talked to other drivers.

Response to Submissions and Statements made on behalf of Truck Moves

Statement of Matthew Whitnall dated 1 March 2017

26. At paragraph 46 to 60 of his statement Mr Whitnall has suggested that drivers in older age groups are attracted to work at Truck Moves due to a limited amount of physical labour compared to other sectors of the road transport industry. He has

also said that work at Truck Moves is more favourable to those age groups of 50+.

27. In response, I make the following observations:

- a. That we attract drivers of all age groups at PrixCar and employment is based on whether or not the driver is the best person for the job as well as, their physical capacity to fulfil that role.
- b. In relation to comments about drivers engaged by Truck Moves having pre-existing injuries I make the following comments....
- c. In to comments made at paragraph 60 about experience and licensing requirements I note that at PrixCar we engage drivers based on their skills and experience in the industry. These drivers need to have knowledge of the consignment and be able to undertake other activities such as engage with customers.

28. In relation to paragraph 48 regarding the role of drivers simply being required to drive from one location to the other I note that the task is nowhere near as simple as this and that many other factors must be considered including:

- a. Whether it is a new or old vehicle to be transported;
- b. Whether the vehicle is manual or automatic;
- c. The horsepower of the vehicle;
- d. The make and model of the vehicle;
- e. The size of the vehicle;
- f. The route and distance to be travelled; and
- g. New technologies on a vehicle.

29. On this basis, I ensure that safety concerns and competency are paramount. It is not a case that any driver with a license can drive any truck without training.
30. In relation to paragraph 66 about time spent travelling as opposed to driving, I note that based on the consideration set out in the preceding 2 paragraphs that the task is not simply one of driving. The tasks completed require a great deal of consideration based on skill and the vehicle to be moved.
31. In relation to comments made at paragraph 68 about drivers not completing work at night, I note that at PrixCar work is allocated based on service level requirements and not time of day. On that basis we remunerate our drivers accordingly based on the time of day that they are required to work.
32. In relation to paragraph 74, I note that there are many other factors that also require consideration. For example, there is no mention of other key road rules and regulations that must be complied with such as, the National Heavy Vehicle Law, fatigue management, roadworthiness compliance and other penalties that drivers might be exposed to if they have an accident.
33. In relation to paragraph 75, I note that Truck Moves has stated in their submission that drivers do not have to engage in various tasks. However, based on the Truck Moves submission set out at paragraph 74.10, it would appear that this is not the case. For example, drivers moving various types of vehicles may need to do the following:
- a. Inspect and ensure equipment on the vehicle is operational;
 - b. Ensure compliance with all chain of responsibility provisions;
 - c. Check truck weight and operation;
 - d. Fuel vehicles;

- e. Use mobile data technology; and
- f. Various other tasks as required.

34. In relation to paragraphs 112 to 129 about the manner in which the relevant award might apply, I have no knowledge about any assertion that the award was not designed for a transport company such as PrixCar. In fact, it was my view that the relevant awards were purpose built to address the needs of the road transport industry and their operations.

Statements of John Bradac dated 6 March 2015 and 24 November 2017

35. In relation to the wage rates increase that Truck Moves set out in these statements, whilst it may be the case that such rates may be an increase this is, in my view, the fair and equitable rate to pay workers engaged to complete the work in the industry and as such, that is how the relevant rates have been derived.

36. This then creates an unfair competitive advantage against companies like PrixCar who are doing the right thing and recognising the skills of our workforce.

Submissions for truck Moves dated 24 November 2017 and Comments on Draft Determination

37. In relation to the table set out at paragraph 59 of the outline of submissions, I note that almost all of the work and activities that Truck Moves has nominated as not being required in the vehicle relocation sector, would be required.

38. For example, almost all the training that is set out would be required to be undertaken at PrixCar excluding dangerous goods training and the like (because we do not transport new or used tankers) and loading and unloading. That being said, this training may be required at Truck Moves in circumstances where drivers are moving new or used vehicles with fit-outs including tankers, waste compactors, elevated work platforms and so on.

39. This also applies in other cases such as the table dealing with attending work depot/home base. Almost all drivers would be and at PrixCar are required to undertake inspections in relation to roadworthiness, checking fluids and so on. In doing so some bending may be required and exertion would also be required in the fitting of trade plates.

40. This is a common theme in the table with many of the work activities not attributed to the work in the sector would in fact be required in practice such as:

- a. Safe driving;
- b. Complying with National Heavy Vehicle Laws;
- c. Truck refuelling;
- d. Using mobile data and technology monitoring streets and choosing appropriate routes;
- e. Monitoring the condition and safety of the truck while driving;
- f. Being aware of different vehicle operations;
- g. Monitoring temperatures; and
- h. Being aware of space around the vehicle.

41. I have been provided with a copy of the Draft Determination attached to Truck Moves' submissions of 24 November 2017. I note that the minimum hourly rate proposed in the Draft order is \$18.83 (with the current Australian minimum hourly rate being \$18.29). In my view, this rate does not recognise the experience, skills or classification of the individual engaged to complete the work required in the industry. This rate would also not take into account other factors such as critical mass, risks and hazards associated with the work to be completed. Companies like PrixCar pay rates as set out in the 2016 Agreement that are in

excess of the relevant award to recognise the experience and skill of the drivers who we engage and to properly remunerate them for the work they undertake. Any determination that sets out one rate for the driving of such varied vehicle types grossly undervalues the work that drivers engaged in the sector complete.



.....
Signed – Anthony Cassar

21 / 12 / 2017
.....

Date

Annexure

AC1



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Prixcar Services Pty Ltd
(AG2016/4782)

PRIXCAR TRANSPORT SERVICES PTY LTD AND TRANSPORT WORKERS UNION OF AUSTRALIA FAIR WORK AGREEMENT 2016- 2019

Road transport industry

COMMISSIONER GREGORY

MELBOURNE, 21 SEPTEMBER 2016

Application for approval of the PrixCar Transport Services Pty Ltd and Transport Workers Union of Australia Fair Work Agreement 2016-2019.

[1] An application has been made for approval of an enterprise agreement known as the *PrixCar Transport Services Pty Ltd and Transport Workers Union of Australia Fair Work Agreement 2016-2019* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Prixcar Services Pty Ltd. The Agreement is a single enterprise agreement.

[2] The Applicant has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement.

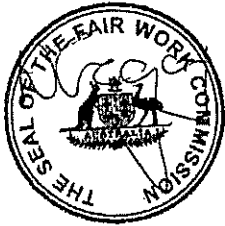
[3] The rates of pay referred to in the undertakings have been provided to and considered by the Commission. The rates will be kept confidential, as requested by the parties, on the Commission's file.

[4] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

[5] Pursuant to s.205(2) of the Act, the model consultation term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

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

[7] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 28 September 2016. The nominal expiry date of the Agreement is 30 June 2019.



COMMISSIONER

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ANNEXURE A

UNDERTAKING BY PRIXCAR TRANSPORT SERVICES PTY LTD


Re: Application for Fair Work Commission ("FWC") approval of the PrixCar Transport Services Pty Ltd and Transport Workers Union Fair Work Agreement 2016-2019 ("the Agreement")

1. This Undertaking is given by PrixCar Transport Services Pty Ltd ("PrixCar") and is taken to be a term of the Agreement.
2. PrixCar undertakes that the following provisions will apply in relation to the nominated matter in the Agreement:

Clause 41: PrixCar will nominate drivers and buddy drivers who may be required to train new employees. Nominated drivers will receive training to enable them to complete the requisite competency checklist and documentation. An allowance of \$20 per day will be paid to driver trainers at all sites when performing the training duties outlined in this clause.

Signed for and on behalf of PrixCar Transport Services Pty Ltd

Name in full: Glen DeClase

Signature: 

Position/Authority to sign: HR Project Manager

Address: 7 - 20 Horsburgh Drive, Altona North, VIC 3025

Date: Wednesday, 3 August 2016

IN THE FAIR WORK COMMISSION

APPLICATION FOR APPROVAL OF ENTERPRISE AGREEMENT

Fair Work Act 2009 – s.185

Application by Prixcar Services Pty Ltd

Agreement Title: Prixcar Transport Services Pty Ltd and Transport Workers' Union of Australia Fair Work Agreement 2016-2019

AG2016/4782

EMPLOYER UNDERTAKINGS

Fair Work Act 2009 – s.190

PURSUANT to section 190 of the *Fair Work Act 2009* Prixcar Services Pty Ltd hereby undertakes that:

1. **Dispute settlement term – clause 14**

In relation to Clause 14 of the agreement the employer provides an undertaking confirming that the dispute resolution term will cover disputes relating to the NES or the agreement and allow employees representation in accordance with s.186(6)(b) of the Act.

2. **Redundancy payment**

In relation to Clause 24(d) the employer provides an undertaking that employees covered by this agreement will not receive less than the relevant minimum entitlements under the NES.

3. **Rates of pay**

Actual pay rates for employees both within NSW and outside are attached and meet the Better Off Overall Test, as a matter of confidentiality they have not been attached in the agreement.

4. **Part-time employees and overtime**

In relation to Clause 22 the employer provides an undertaking that part-time employees will be entitled to overtime once they have worked more than 7.6 hours in a given shift or more than 38 hours in a given week.

Dated: Friday, 16th September 2016



.....
Glen DeClase, HR Manager
Prixcar Services Pty Ltd and Prixcar Transport Services Pty Ltd

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PrixCar Transport Services Pty Ltd and
Transport Workers Union
Fair Work Agreement 2016 - 2019

Note - the model consultation term is taken to be a term of this agreement and can be found at the end of the agreement.

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

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PART A – GENERAL TERMS AND CONDITIONS

Section 1 - Application and operation

1. Title

This Agreement will be referred to as the PrixCar Transport Services Pty Ltd and Transport Workers Union of Australia Fair Work Agreement 2016 - 2019.

2. Objects

The objects of this Agreement include the following:

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

3. Definitions

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

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

Award means:

- (i) the Road Transport and Distribution Award 2010; and
- (ii) the Road Transport (Long Distance Operations) Award 2010.

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. Blue Card programs compel employees to familiarise themselves with, and follow,

workplace health and safety procedures. Blue Card programs must be conducted by a registered training provider that is licensed to deliver Blue Card training.

Company means the PrixCar Services Pty Ltd – for the purposes of this agreement employees employed by PrixCar Transport Services Pty Ltd

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

Employee means a Transport Worker.

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

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

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

Fund means TWUSUPER.

FWC means Fair Work Commission.

Long Distance Work means any trip greater than 500 kilometres.

NES means the National Employment Standards contained in sections 59 to 131 of the Act.

Operative Date means 7 days after written notification is received that this Agreement has been approved by FWC.

Parties means PrixCar, the Union and the Employees.

Part-Time Employee means an Employee, other than a casual Employee, who is regularly employed to work less than 38 hours per week.

Schedule means a schedule to this Agreement.

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

Transport Worker means any person who is eligible to be a member of the Union and who is employed by PrixCar in Australia in any of the classifications contained in the Agreement.

Union means the Transport Workers Union of Australia.

4. Coverage

4.1 General

This Agreement applies to and is binding on PrixCar Transport, all Employees and the Union.

4.2 Acquisitions

- (a) This clause 4.2 will apply if PrixCar acquires a new transport business during the Term, the employees of which fall within the definition of "Employee" in this Agreement.
- (b) PrixCar will ensure that:
 - (i) if the employees in the acquired business are or become employed by PrixCar to work at an existing PrixCar site, the employees receive the rates of pay and conditions of employment applicable to Employees at that site, provided that the employees must not be paid a lower rate or receive less favourable conditions of employment than those that they may be entitled to receive under any enterprise agreement or similar industrial instrument applying in the acquired business; or
 - (ii) if the employees are engaged at a separate site, the employees receive the equivalent of the remuneration increases available under this Agreement on a pro rata basis from the date of the acquisition, provided that if any enterprise agreement or similar industrial instrument applying in the acquired business provides a greater increase for part of all of the Term then that increase will be paid for the corresponding period after which time the equivalent of the remuneration increases available under this Agreement will apply on a pro rata basis.
- (c) PrixCar agrees to consult with the Union about any disparity (arising from the application of clause 4.2(b)(ii) above) between the rates of pay and conditions of employment applying to employees in the acquired business and those applying at an equivalent PrixCar site. The parties agree that the powers of FWC to deal with any Dispute between PrixCar and the Union as to whether PrixCar should increase those

rates, or improve the conditions of employment, or as to the time over which any such increase or improvement should take place will be confined to conciliation.

5. Term of Agreement

This Agreement will commence operation from the Operative Date and will have a nominal term commencing 1st July 2016 and expiring 30th June 2019.

6. Relationship to the Award and the NES

- (a) This Agreement incorporates the Award. An inconsistency will not arise simply because the Award provides a more beneficial entitlement to an Employee than that contained in Part A of this Agreement.
- (b) This Agreement operates in conjunction with the NES. Certain provisions of this Agreement may supplement the NES but nothing in this Agreement will operate so as to provide a detrimental outcome for Employees as compared to an entitlement under the NES.

7. Permitted matters

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

8. 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.

9. No extra claims

During the Term the Employees must not pursue any further claims for wages, allowances or any other terms and conditions of employment.

10. Negotiation of new agreement

- (a) The Parties will commence negotiations for a replacement agreement(s) no less than 3 months before the nominal expiry date of this Agreement.
- (b) At the outset of those negotiations the Parties will confer for the purposes of reaching consensus on:
 - (i) whether negotiations will proceed on a national basis;
 - (ii) the conduct by the Union of any pre-survey, claim endorsement and negotiation report-back meetings of State delegate bodies and of all yards;
 - (iii) the release of delegates to attend meetings connected with the negotiations, and the terms on which they would be released;
 - (iv) the size of the negotiating committee; and
 - (v) the logistics of the negotiations, including the venue and payments for delegates to attend and take part in the negotiations.

Section 2 – Flexibility, Consultation and Dispute Resolution

11. Access to this Agreement

PrixCar must make a copy of this Agreement, and the NES available to an Employee on request.

12. Individual flexibility arrangements

- (a) PrixCar and an Employee may agree to make an individual flexibility arrangement to vary the effect of clause 31 of this Agreement by allowing the Employee to take Blood Donors leave of up to 4 hours for a maximum of 2 days per year.
- (b) Any arrangement under clause 12(a) must genuinely be agreed to by PrixCar and the Employee.
- (c) PrixCar must ensure that the terms of the individual flexibility arrangement:
 - (i) are about permitted matters under section 172 of the Act; and
 - (ii) are not unlawful terms under section 194 of the Act; and
 - (iii) result in the Employee being better off overall than the Employee would be if no arrangement was made.
- (d) PrixCar must ensure that the individual flexibility arrangement:
 - (i) is in writing; and
 - (ii) includes the name of the employer and Employee; and
 - (iii) is signed by PrixCar and the Employee and if the employee is under 18 years of age, signed by a parent or guardian of the Employee; and
 - (iv) includes details of the terms of this Agreement that will be varied by the arrangement; and
 - (v) states the day on which the arrangement commences.

- (e) PrixCar must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (f) PrixCar or the Employee may terminate the individual flexibility arrangement:
 - (i) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (ii) if PrixCar and the Employee agree in writing – at any time.

13. Consultation on workplace change

- (a) If PrixCar is genuinely considering workplace changes that are likely to have a significant effect on Employees, it must consult with the Union and any Employees who will be affected by any proposal.
- (b) As soon as practicable PrixCar must discuss with the Union and relevant Employees the introduction of the change, the effect the change is likely to have on the Employees, the number of any redundancies, the persons or class of persons likely to be affected and any reasonable alternatives to the change or redundancy. PrixCar must discuss measures to avert or mitigate the adverse effect of the change on the Employees.
- (c) PrixCar must give prompt and genuine consideration to matters raised about the change by the relevant Employees.
- (d) As soon as a final decision has been made, PrixCar must notify the Union and the Employees affected, in writing, and explain the effects of the decision.
- (e) In the event that a Dispute arises in respect to any decision, proposal or consideration to effect any change, the parties agree to follow the disputes procedure in clause 14, and until the Dispute is resolved in accordance with that procedure work will continue in accordance with the status quo.
- (f) A change is “likely to have a significant effect on employees” if it results in:
 - (i) the termination of the employment of Employees; or

- (ii) major change to the composition, operation or size of PrixCar 's workforce or to the skills required of Employees; or
 - (iii) the elimination or diminution of a significant number of job opportunities (including opportunities for promotion or tenure); or
 - (iv) the significant alteration of hours of work; or
 - (v) the need to retrain employees; or
 - (vi) the need to relocate Employees to another workplace; or
 - (vii) the restructuring of jobs.
- (g) With the prior approval of PrixCar and subject to clause 35, the Union may enter PrixCar's premises in order to consult with Employees regarding workplace change.

CONSULTATIVE COMMITTEE

The Consultative Committee will consist of the TWU delegates and one other elected representative from each area of operation covered by this agreement as well as Management and other agreed invitees. A copy of the minutes from the CCM will be forwarded to the TWU Official.

It is agreed Consultative Committee will meet monthly, or as agreed by the committee to review the operation of this Agreement, promoting a more participative culture, continuous improvement within the enterprise and ensuring that the that the spirit of the Agreement is maintained. Minutes will be posted on notice boards no later than two weeks after the meeting to which they pertain under circumstances.

14. 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 Employee(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 PrixCar 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 an employee, provided that the Union delegate is the representative of the Employee's choice.

- (c) if the matter remains in dispute, it must next be discussed with the relevant manager of PrixCar. The relevant Union State Secretary (or his/her nominee) has the right to attend at and participate in this discussion as the representative of an Employee, provided that the relevant Union State Secretary is the representative of the Employee's choice.
- (d) if the matter remains in dispute, it must next be submitted to FWC for conciliation. For this purpose, it is agreed that the action FWC may take includes:
 - (i) arranging conferences of the parties or their representatives at which the FWC is present; and
 - (ii) arranging for the parties or their representatives to confer among themselves at conferences at which FWC is not present.
- (e) if the matter is not resolved in conciliation conducted by the FWC, the Parties agree that FWC will proceed to arbitrate the Dispute and/or otherwise determine the rights and/or obligations of the parties to the Dispute. In relation to such an arbitration, the Parties agree that:
 - (i) FWC may give all such directions and do all such things as are necessary for the just resolution of the Dispute. FWC may exercise powers of conciliation, arbitration and declaratory relief in relation to the Dispute, including all related procedural powers such as those in relation to hearings, witnesses, evidence and submissions.
 - (ii) FWC should apply the rules of evidence that would ordinarily apply to a hearing before FWC under the Act.
 - (iii) Before making a determination, FWC will give the parties an opportunity to be heard formally on the matter(s) in dispute.

- (iv) In making its determination, FWC will only have regard to the materials, including witness evidence, and submissions put before it at the hearing and will disregard any admissions, concessions, offers or claims made in conciliation.
- (f) The decision of FWC 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 FWC against the decision, which must be exercised within 21 days of the decision being issued or within such further time as the Full Bench may allow.
 - (ii) The appeal will be conducted in accordance with the legal principles applying to an appeal in the strict sense.
 - (iii) The Full Bench, or a single member on delegation, will have the power to stay the decision pending the hearing and determination of the appeal.
 - (iv) The decision of the Full Bench in the appeal will be binding upon the parties.
- (g) Until the matter is resolved by agreement, conciliation or arbitration, work will continue in accordance with the status quo. No party is to be prejudiced as to the final settlement by the continuance of work in accordance with this procedure.

Section 3 – Employment Relationship

15. PrixCar Commitment

PrixCar commits:

- (a) to the full-time engagement of its Employees wherever possible;
- (b) subject to PrixCar's commercial considerations and operational requirements, wherever possible, to utilise full-time Employees and owner-drivers to their full capacity before casual or part-time Employees or owner-drivers are engaged or work is contracted out to other companies or businesses;
- (c) to the training of its Employees, in workplace health and safety (including Blue Card) and other professional training as agreed from time to time and the promotion of vocational training and workplace health and safety training.

16. Employee Commitment

The Employees commit:

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

17. Support for technological innovation

The parties to this Agreement recognise the need to keep pace with technological improvements and innovations. To this end:

- The Company may equip vehicles with mobile communications, data, transmission, satellite navigation facilities, computer equipment and external facing cameras.

- The employees must comply with the Company's lawful directions (e.g. phones when operated in vehicles must only be used in hands free mode) and any other legal requirements in use and operation of such equipment.
- Each employee will have responsibility for the security of the equipment of the equipment in his vehicle. In the case of portable or removal equipment, the units must be removed from the vehicle at all times if the vehicle cannot be secured.
- Where necessary, the company will provide appropriate training to employees for the use of new technology and equipment, which is implemented from time to time

Where, any employee is directed by the company to be available for contact on a mobile phone, the company will reimburse the employee up to \$45 per month (*paid weekly*) and up to a similar amount for employees with prepaid arrangements, after the production of an account from the telephone provider. No further payments will be made with regards to mobile phones and calls.

18. Custom and Practice

- (a) For the avoidance of doubt, this Agreement is not intended to alter a custom and practice applicable to PrixCar and the Employees provided that such a custom and practice is agreed to exist.
- (b) Where a custom and practice is agreed to exist, then it must be reduced to writing.
- (c) Any Dispute as to whether a custom and practice exists, or how that custom and practice should be reflected in writing, will be dealt with in accordance with clause 14.

19. Job Security

- (a) The Parties recognise that job security is an important issue for Employees. For its part, PrixCar intends to:
 - (i) Subject to the need to compete effectively in the prevailing business environment and engage appropriately skilled personnel, use its best endeavours to:
 - A. Ensure that job functions will be performed by permanent Employees;

- B. Ensure that it consults with the Union and affected Employees if a decision is taken to outsource work; and
 - C. Maximise the work performed by permanent Employees;
 - (ii) Utilise redundancy as a last resort; and
 - (iii) Seek to remain competitive and thereby provide Employees with an opportunity to secure satisfying and rewarding jobs.
- (b) PrixCar will ensure that labour hire workers receive the same rates of pay and conditions as received by Employees at the relevant site.
 - (c) PrixCar will ensure that all owner-drivers engaged by it receive a labour rate equal to the applicable wage rate payable for the relevant vehicle utilised by the owner-driver at the site at which they are engaged.

20. Probation Period

- (a) All Employees who are offered permanent employment by PrixCar after the Operative Date will be on a 6 month probation period.
- (b) An Employee will not be subject to a probation period where that Employee is offered permanent employment with PrixCar having been:
 - (i) employed directly by PrixCar as a casual; or
 - (ii) engaged as an owner driver,

On a regular and systematic basis for a period of no less than 6 months.
- (c) This clause will also not apply to casual Employees who elect to become permanent Employees under clause 20d.
- (d) During the probation period, PrixCar or the Employee may terminate the engagement by the giving of 1 weeks notice.

21. Casual Employees

- (a) Casual Employees, other than those employed in New South Wales, will receive a 25% loading on all ordinary hours worked and a 10% loading on all overtime worked.
- (b) Casual Employees in New South Wales will receive a 15% loading on all hours worked plus a further one twelfth (1/12) of their ordinary rate of pay for all ordinary time hours worked.
- (c) Casual Employees will not be entitled to the benefits of clauses 23, 24, 29, 30, and 31.
- (d) Where a casual Employee has been directly employed by PrixCar or engaged through a labour hire company to perform work for PrixCar on a regular and systematic basis for more than 6 months, the Employee may elect to become a permanent Employee, on a like for like basis, of PrixCar within the specific business unit at which the Employee is engaged, in accordance with the Award.

22. Part time Employees

Notwithstanding anything contained in the Award, a part-time Employee will have no entitlement to be paid at overtime rates unless they have worked:

- (a) more than 7.6 hours on a given shift; or
- (b) more than 38 hours in a given week.

23. Notice of Termination

23.1 Notice of termination by PrixCar

- (a) In order to terminate the employment of an Employee PrixCar must give to the Employee the period of notice specified in the table below:

Period of continuous service	Period of notice
1 year or less	1 week

Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

- (b) In addition to the notice in clause 23.1(a), Employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service are entitled to an additional week's notice.
- (c) Payment in lieu of the prescribed notice in clauses 23.1(a) and 23.1(b) must be made if PrixCar does not require the Employee to work during the appropriate notice period. Provided that employment may be terminated by the Employee working part of the required period of notice and by PrixCar making payment for the remainder of the period of notice.
- (d) The required amount of payment in lieu of notice must equal or exceed the total of all amounts that, if the Employee's employment had continued until the end of the required period of notice, PrixCar would have become liable to pay to the Employee because of the employment continuing during that period. That total must be calculated on the basis of the full rate of pay for the hours the Employee would have worked had the Employee continued until the end of the minimum period of notice including:
- (i) the amounts payable to the Employee in respect of those hours, including (for example) allowances, loading and penalties; and
 - (ii) any other amounts payable under the Employee's contract of employment.
- (e) The period of notice in this clause does not apply:
- (i) in cases where the Employee requests a release from the employment prior to the end of the notice period;
 - (ii) in cases where the Employee has engaged in conduct warranting the summary termination of their employment;

- (iii) to Employees engaged for a specific period of time or for a specific task or tasks;
- (iv) to trainees whose employment under a traineeship agreement or an approved traineeship is for a specified period or is, for any other reason, limited to the duration of the agreement; or
- (v) to casual Employees.

23.2 Termination by Employees

- (a) An Employee may terminate their employment with PrixCar at any time by providing (2) two weeks notice of termination.
- (b) PrixCar may make a payment in lieu of the whole or part of the notice period referred to in clause 23.2(a), in which case clause 23.1(d) will apply.

23.3 Return of property

On termination of their employment, for whatever reason, an Employee will immediately return to PrixCar all property belonging to PrixCar which is in the Employee's possession or which is under their control.

24. Redundancy

- (a) A redundancy occurs in a circumstance where PrixCar decides that it no longer requires the position that an Employee has been doing to be done by anyone and that decision leads to the termination of the Employee's employment with PrixCar Services Pty Ltd .
- (b) In a redundancy situation PrixCar :
 - (i) will undertake consultation in accordance with clause 13;
 - (ii) will explore opportunities for suitable alternative employment for the affected Employee(s).
- (c) The selection of employees for redundancies, and the criteria to be applied in making that selection, will be at PrixCar's discretion.

- (d) In the event that a redundancy occurs, the affected Employee will be entitled to a severance payment calculated at the rate of 3 weeks pay per year of service, pro rata for incomplete years of service, up to a maximum of 52 weeks pay. There will be no cap with respect to weeks for drivers currently based in Wagga. For the purposes of this clause, "weeks pay" means the Employee's base rate of pay at the time of termination.

- (e) An Employee will not be entitled to receive a severance payment if PrixCar obtains for them suitable alternative employment. For the avoidance of doubt, such suitable alternative employment can include employment with an employer other than PrixCar.

- (f) The severance payment in clause 24(d) is in addition to:
 - (i) notice or payment in lieu of notice in accordance with clause 23; and
 - (ii) payment for any accrued but untaken leave or days in lieu which are payable on termination.

Section 4 – Wages and related matters

25. Wage Increases

- (a) PrixCar will increase the wages and allowances payable to Employees as follows:
- (i) by 0% effective from 1 July 2016;
 - (ii) by 2.5% or CPI, whichever is greater, effective from 1 July 2017; and
 - (iii) by 3% or CPI, whichever is greater, effective from 1 July 2018;
 - (iv) increases will apply from the first full pay period, on or after, the effective dates.
- (b) Any increases during the Term to the rates of pay or allowances contained in the Award will be absorbed into any over-award payments made to the Employees provided that: allowances payable to Employees will not be less than those payable under the Award unless otherwise stated in this agreement.

26. Superannuation

- (a) PrixCar will make superannuation contributions on behalf of each Employee as required under the *Superannuation Guarantee (Administration) Act (Cth) 1992*.
- (b) During the life of this agreement PrixCar will make superannuation contributions at the rate of 2.50% above the legislated Superannuation Guarantee. For all new employees commencing employment after the 1st July 2016 the superannuation rate applicable for the life of this agreement will be 9.5%
- (c) Subject to clause 26(d), superannuation contributions will be made only into the Fund.
- (d) Any superannuation arrangements that are in place in respect of any Employee as at the Operative Date will be allowed to continue, provided that PrixCar will not object

to, hinder or obstruct any Employee seeking to change those arrangements so as to have future superannuation contributions paid on their behalf into the Fund.

- (e) Any changes to legislative requirements during the life of this agreement will be adopted.

27. Payroll Deductions

27.1 Union Membership

- (a) PrixCar must deduct Union membership fees (not including fines or levies) from the pay of any Employee, provided that:
 - (i) the Employee has authorised PrixCar to make such deductions in accordance with clause 27.1(b);
 - (ii) the Union has advised PrixCar of the amount to be deducted for each pay period applying at PrixCar's workplace and any changes to that amount; and
 - (iii) deduction of Union membership fees will only occur in each pay period in which payment has or is to be made to an Employee. For the avoidance of doubt, Union membership fees will not be deducted from termination payments made to an Employee unless expressly authorised by the Employee in writing.
- (b) The Employee's authorisation for the purposes of clause 27.1(a)(i) must be in writing and must authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union rules) that the Union advises PrixCar to deduct.
- (c) Monies so deducted from an Employee's weekly pay will be remitted to the Union on a monthly basis, together with all necessary information to enable the reconciliation and crediting of subscriptions to Employees' membership accounts, including, but not limited to, names, addresses and phone numbers.

- (d) The Union must advise PrixCar of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice must be in the form of a schedule of fees to be deducted specifying weekly, fortnightly, monthly or quarterly as the case may be. The Union must give PrixCar a minimum of 2 months' notice of any such change.
- (e) An Employee may at any time revoke in writing an authorisation to PrixCar to make payroll deductions of Union membership fees.
- (f) The above provisions will take effect from the beginning of the first pay period to commence on or after 2 months after the Operative Date.

27.2 Other Deductions

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

28. Uniforms and Protective Clothing

- (a) PrixCar will provide Employees with appropriate uniforms, protective clothing and personal protective equipment (PPE) for the work the Employees are performing.
- (b) The Employees must wear the uniforms and protective clothing provided to them.
- (c) The Employees will utilise any PPE provided to them by PrixCar. However, if an Employee has an objection to doing so, the objection will be dealt with in accordance with the dispute resolution procedure in clause 14.
- (c) Employees must not alter, modify or change the appearance of uniforms, protective clothing and PPE provided to them by PrixCar 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. Employees must not alter, modify or change the appearance of uniforms provided to them by PrixCar in a manner or to an extent which would hinder or deface company identification.
- (e) Employees must keep all uniforms, protective clothing and PPE in a clean, neat and tidy condition.
- (f) Uniforms and protective clothing will be replaced by PrixCar 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 an Employee on termination of employment.

28.2 Licences

In the event that a company drivers licence becomes due for renewal in the Sydney operation, the company will reimburse the driver the cost for the three year term offered by the New South Wales Roads and Maritime Service. This is not inclusive of the professional fees.

Section 5 – Leave and holidays

29. Annual Leave**29.1 Cashing out permitted**

- (a) The intention of this clause is to allow Employees the option to cash out accrued annual leave if it is not practical for them to reduce their leave accrual through the taking of annual leave in a timely manner.
- (b) To be eligible to cash out annual leave an Employee must have:
- (i) 8 weeks or more accrued annual leave at the time of making the application; and
 - (ii) taken a minimum of 2 weeks annual leave in the 6 months prior to making the application.
- (c) An Employee can apply to cash out annual leave according to the following table:

Amount of accrued annual leave	Amount of leave that may be cashed out
8 weeks	No more than 2 weeks
More than 8 weeks and up to 12 weeks	No more than 3 weeks
More than 12 weeks and up to 16 weeks	No more than 4 weeks
More than 16 weeks and up to 20 weeks	No more than 6 weeks
More than 20 weeks	No more than 10 weeks

- (d) PrixCar must not place undue pressure on an Employee to cash out the Employee's annual leave.
- (e) Notwithstanding clause 29.1(b), an Employee may also apply to cash out annual leave at any time for extraordinary reasons such as financial hardship. The onus will be on the Employee to demonstrate the reasons, to PrixCar's reasonable satisfaction.
- (f) Payment in lieu of annual leave will be calculated on the full amount that would have been payable to the Employee had the Employee taken the leave in respect of which payment is made.
- (g) Under no circumstances must PrixCar agree to an Employee's request to cash out annual leave if it would result in the Employee's accrued annual leave entitlements being less than 4 weeks.

30. Personal Leave

Employees will be entitled to personal leave in accordance with the NES.

An employee will be paid out 20 days of accrued personal leave upon resignation or redundancy subject to:

- i. Completion of 5 years fulltime employment with the company and;
- ii. At the time of resignation and redundancy has Personal Leave entitlements in excess of 20 days;
- iii. Will not be paid on summary dismissal.

Where an employee dies all accrued Personal Leave entitlements shall be paid out to the next of kin in accordance with the relevant Will or consistent with the direction of the Executive of the Estate.

31. Blood Donors Leave

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

Section 6 – Safety and related matters

32. Chain of Responsibility

- (a) PrixCar 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) The Employees must:
 - (i) take all reasonable steps to assist PrixCar meet the obligations in clause 32(a); and
 - (ii) comply with any obligations imposed on them by the legislation referred to in clause 32(a).
- (c) Subject to prior notification and approval, PrixCar must meet the cost of any medical or other examination, test or check (of any description), licensing or registration fee or training requirement in respect of any driver who is required by PrixCar to obtain a qualification or meet any eligibility criteria to perform non-standard driving hours in accordance with a chain of responsibility law.

33. Safe System of Work

- (a) PrixCar and the Employees will take all reasonable steps to ensure that all work performed by Employees is performed in accordance with:
- (i) any workplace health and safety (WH&S) legislation (and codes of practice arising under such legislation) and chain of responsibility legislation that is in force in a State or Territory where work is required to be performed by Employees (to the extent that any such laws are applicable to the safe performance of work by employees of PrixCar); and
 - (ii) a safe system of work in accordance with clause 33(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.

34. WH&S Committees

PrixCar will ensure that all members of its WH&S committees are provided with the appropriate and accredited WH&S training, as required under applicable legislation.

Section 7 – Union Matters

35. Union Recognition

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

36. Union Delegates

36.1 Identification of delegates

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

36.2 Delegates' powers

- (a) PrixCar 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 PrixCar that Union delegates speak on behalf of the Union members in the workplace;
 - (iii) bargain collectively on behalf of Union members in the workplace;
 - (iv) consultation on matters affecting Union members;
 - (v) paid time off to represent the interests of members to the Company, but only where such paid time off is provided for in this Agreement;
 - (vi) address new Employees about the benefits of Union membership at the time that they commence work with PrixCar in accordance with clause 37.2;
 - (vii) participate in an induction process under the Union induction clause in this Agreement in accordance with clause 37.2;
 - (viii) discuss Union and workplace matters with all Employees at the workplace who consent to such discussions, which will take place during breaks or outside of business hours;
 - (ix) reasonable access to a telephone, facsimile, photocopying, internet and email and office facilities for the purpose of carrying out work as a delegate and consulting with workplace colleagues and the Union; and
 - (x) place Union information on a notice board in a prominent location in the workplace.
- (b) PrixCar 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 Employees in the Union and its activities;
 - (iv) to be approachable and helpful to Union members in the workplace;
 - (v) to seek out and encourage other Union members to take on roles and responsibilities;
 - (vi) to provide up to date and relevant Union information to Union members in the workplace;
 - (vii) to represent the views of the members;
 - (viii) to represent Union members fairly and accurately in negotiations and in relation to individual grievances;
 - (ix) subject to clause 36.3(e) to represent Union members in proceedings before FWC, courts or similar tribunals; and
 - (x) to keep in regular contact with the Union Organiser and other Union representatives in the workplace about matters pertaining to the workplace.
- (c) Other than as expressly specified, clause 36.2(a) does not confer on Union delegates any additional remuneration, paid leave, or other employment benefit, above and beyond the remuneration, leave and benefits specified in other clauses in this Agreement.

36.3 Delegates' leave

- (a) PrixCar will provide Union delegates with paid leave of up to 8 days per annum to attend Union delegates' meetings, Union training, the annual Union delegates conference or to take part in Union campaign activity.
- (b) In addition to the leave referred to in clause 36.3(a), PrixCar will make available a total pool of 5 days paid leave, nationally, to be used by delegates to carry out their

functions, including discharging the responsibilities of any positions they hold with the Union.

- (c) To ensure the smooth running of PrixCar operations, Union delegates will be released by PrixCar for paid leave on the following basis:
- (i) for yards with 20 or fewer Employees - 1 delegate;
 - (ii) for yards with more than 21 Employees but fewer than 200 Employees - 2 delegates;
 - (iii) for yards with greater than 200 Employees - 3 delegates.
- (d) Prior to PrixCar agreeing to release a delegate, the Union must provide PrixCar with no fewer than 7 days notice in writing of such a request for the release of delegates.
- (e) In addition to the leave referred to above, delegates will be able to take paid leave to represent Union members in proceedings before FWC or similar tribunals provided that:
- (i) the request for any leave is reasonable;
 - (ii) clause 36.3(c) will not apply to the release of delegates under this clause 36.3(e); and
 - (iii) PrixCar will only release a delegate if the proceedings relate to or affect a site at which the delegate works;
 - (iv) a delegate will only be released to the extent that they are directly involved in the matter the subject of the proceedings or are required to advocate and/or provide instructions for or in respect of the matter the subject of the proceedings, or are assisting a Union member or members directly affected by the matter the subject of the proceedings; and
 - (v) a delegate will only be released for the duration of the proceedings, plus reasonable travel time in attending the proceedings.

- (f) PrixCar 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.
- (g) Delegates who take leave under this clause will be paid their average earnings for the duration of the leave.

37. Compulsory induction training and related matters

37.1 New employees

A new Employee commencing work with PrixCar will be trained in:

- (a) Workplace 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 PrixCar to meet its commitments to its customers; and
- (e) the Blue Card Induction Program.

37.2 Union Induction

- (a) In furtherance of the rights of Employees to join the Union and the rights of the Union to recruit Employees, and to inform and educate Employees about this Agreement, the Parties agree that representatives of the Union will be given an opportunity to induct all new Employees who commence with PrixCar 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, at the request of the Union;
 - (ii) all inductions will contain no more than 15 Employees in each group;

- (iii) a room which is appropriate for inductions (such as a training room) is dedicated to that purpose;
 - (iv) 30 clear minutes will be allowed for the induction to take place;
 - (v) Employees will receive no less than their usual or (where they have yet to commence work) their proposed rate of pay for the duration of the induction;
 - (vi) prior to the induction there will, at the Union's request, be posted in a prominent position accessible to all Employees a Union generated notice describing the purpose of the induction and setting out any other relevant information.
- (b) Without diminishing the intent of clause 37.2(a), PrixCar 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 PrixCar conducts Employee inductions, or in conjunction with other Union training.

37.3 Ongoing training

- (a) All Employees elected to WH&S Committees and/or as WH&S Representatives will attend a committee training course (approved under the relevant State or Territory Workplace Health and Safety legislation) as soon as practicable, but within 3 months of being elected to such a position. Further, PrixCar will establish an WH&S Committee in accordance with any requirements for establishing an WH&S committee under the relevant State or Territory Workplace Health and Safety legislation (ignoring any threshold number of workers required under the relevant statute or regulations before an WH&S committee must be so elected and established).
- (b) All existing Employees who at the Operative Date have not been trained in the Blue Card Induction Program will be trained in the Blue Card Induction Program. Such training is to occur within 3 months of the Operative Date, and will be conducted by a licensed Blue Card training provider, in conjunction with PrixCar and the Union.

- (c) PrixCar will ensure that all Employees that perform driving duties, together with allocation staff and fleet controllers, are competent to manage fatigue, which may include, at PrixCar's discretion, providing the Employees with the opportunity and time to attend driver fatigue management programs.
- (d) Subject to prior notification and supervisor approval, PrixCar will pay for the training courses and programs referred to in this clause 37.3 and all other reasonable expenses, which would otherwise be incurred by attendees of the course. Further, attendees will receive no less than their usual pay whilst attending such courses. For the avoidance of doubt, no training will be paid for unless prior express approval is given by PrixCar to the training being undertaken by relevant Employees.
- (e) Subject to any statutory obligations binding on PrixCar to the contrary, it will be entirely a matter for PrixCar to determine what person, firm, organisation or company provides Employees with any training required under this Agreement.

38. Fleet Operators

38.1 Notification

- (a) PrixCar will provide the Federal Secretary of the Union (or his nominee), on a monthly basis, a written list of all Fleet Operators PrixCar has engaged over the preceding 2 months.
- (b) When PrixCar engages a new Fleet Operator PrixCar will inform Union of:
 - (i) the name of the Fleet Operator who it is proposed will perform the work;
 - (ii) the type of work proposed to be performed by the Fleet Operator;
 - (iii) the likely number of employees the Fleet Operator may use to perform the work; and
 - (iv) the likely duration of the engagement of the Fleet Operator.
- (c) Where necessary, the Union may raise any concerns it may have with PrixCar with respect to the engagement of the Fleet Operator. Where a Dispute arises with respect

to the engagement of any Fleet Operator, clause 14 will have no application and the dispute must only be dealt with as set out below:

- (i) any concerns over the engagement of the Fleet Operator must first be discussed between the Union and the PrixCar Transport Operations Manager;
 - (ii) if the matter remains unresolved, the concerns must be discussed between the Union and the relevant PrixCar Regional Manager;
 - (iii) if the matter continues to remain unresolved, the matter must be discussed between the Union and the relevant General Manager whereby, after having considered the matters raised by the Union, the Divisional General Manager will determine the dispute, with such determination being final.
- (d) The resolution of a Dispute in accordance with clause 38.1(c) will not preclude any Party raising the subject of the dispute at one of the meetings referred to in clause 38.5.

Fleet utilisation and contracting out

Work shall be allocated in the following manner:

- a) The company/fleet/the sub-contractors currently engaged under formal contracts of carriage with Prixcar (The "sub contractors")
- b) Other independent contract carriers
- c) Other car carrying businesses

38.2 Engagement of Fleet Operators

- (a) PrixCar is committed wherever possible to only utilising Fleet Operators who utilise employee drivers. PrixCar will only engage Fleet Operators who engage non-employee drivers where it is not practicable to engage a Fleet Operator with only employee drivers.
- (b) Each new Fleet Operator will be required to execute a freight cartage agreement (FCA) with PrixCar which must contain the clauses set out in Part D of this Agreement. No

term of the FCA or any other agreement between or relating to PrixCar and the Fleet Operator must alter the operation of the clauses set out in Part D of the Agreement.

- (c) PrixCar will require that Existing Fleet Operators also execute a FCA. As long as PrixCar has pursued that requirement through and in accordance with the process set out in clause 42.4 and has reported (in accordance with clause 42.4) any failure to procure execution of a FCA, then PrixCar will be taken not to be in breach of its obligation to require execution under this clause.
- (d) Prior to any Fleet Operator commencing on site, each employee of the Fleet Operator (including Fleet Operators engaged to perform long distance work that attend on site but only in so far as is practicable for PrixCar to do so) must participate in a site induction. During that induction a Union official will be given an opportunity to address the Fleet Operator's employees for a maximum of 30 minutes.

38.3 Rates

- (a) Where PrixCar engages a new Fleet Operator, PrixCar will require that the Fleet Operator pay its employees, whilst performing work on behalf of PrixCar :
 - (i) in New South Wales – the rates of pay that would apply to them if they were Employees directly employed by PrixCar at the yard where the Fleet Operator is performing the work; and
 - (ii) elsewhere - a rate of pay that is at least 7.5% higher than the applicable Award rate.
- (b) PrixCar will ensure that all Existing Fleet Operators pay their employees the following rates of pay:
 - (i) in New South Wales - the rates of pay that would apply to them if they were Employees directly employed by PrixCar at the yard where the Fleet Operator is performing the work; and
 - (ii) elsewhere -
 - A. from 1 July 2016, 12.5% above the applicable Award rate

- (c) Nothing in clause 38.3(b) is intended to allow an Existing Fleet Operator to reduce the rates being paid to its employees, and PrixCar agrees not to allow the clause to be used for that purpose.

38.4 Compliance

- (a) As soon as practicable after the Operative Date, PrixCar will send a letter to all Existing Fleet Operators (other than those engaged solely to perform Long Distance Work):
 - (i) advising them of PrixCar's requirements of them, consistent with this clause 38;
 - (ii) enclosing a copy of the FCA for their signature and return; and
 - (iii) enclosing a questionnaire (in a form agreed between PrixCar and the Union) for them to complete and return.
- (b) PrixCar will also send the questionnaire referred to in 38.4(a)(iii) to Existing Fleet Operators who are engaged to perform Long Distance Work.
- (c) As soon as practicable after it has been able to collate the feedback received through the questionnaires referred to in clauses 42.4(a)(iii) and 38.4(b), PrixCar will provide the Union with a report on that feedback, provided that such a report will not be required to identify particular companies but must at the least contain information capable of providing a meaningful basis for the consultation process set out in 42.5. The Union will be at liberty to make that report available to delegates, and the report may be discussed at the next State meetings held pursuant to clause 38.5.
- (d) As soon as practicable after it has provided the Union with the report referred to above, PrixCar will hold a meeting in each State with the State Secretary of the Union, or his or her nominee(s), plus 1 delegate to discuss the feedback received through the questionnaires. During this meeting, which will be held on a strictly private and confidential basis:
 - (i) the State Secretary (or his or her nominee(s)) and the delegate will be provided with access to the completed questionnaires, but PrixCar will not be required to provide photocopies of them; and

- (ii) the State Secretary and delegate will be informed of which Existing Fleet Operators have not signed a FCA.
- (e) The Union undertakes to ensure that the State Secretary (or his or her nominee(s)) and the delegate in each State maintain in strictest confidence the information provided to them during the meeting referred to above, including the contents of the questionnaires.
- (f) PrixCar will report to the Union the outcome of the audits referred to in clause 38.6(c). PrixCar will also provide to the Union upon request any information and/or documents which PrixCar is authorised to provide under the terms of the FCA.
- (g) Where PrixCar becomes aware that a Fleet Operator has not, or may not have, complied with a requirement of the FCA, PrixCar will investigate the alleged non-compliance and, where necessary, take measures to have the Fleet Operator rectify any breach of the FCA. PrixCar will consult with the Union about the measures it has taken in these circumstances. Any information received by the Union during the course of such consultation will be treated in the strictest confidence by the Union if the action relates to non-compliance or potential non-compliance with one or more of the provisions of the FCA set out in Part D.

38.5 Consultation

- (a) For the purposes of allowing for consultation between PrixCar and the Union over the use of Fleet Operators and other outside hire, PrixCar will, in consultation with the Union, organise for meetings of delegates and PrixCar management to occur in each State of Australia in (or as close as is practicable to) June and October 2016, April and September 2017 and April 2018 for the purpose of reviewing:
 - (i) the compliance of the Parties in meeting the terms of this Agreement regarding PrixCar's engagement of Fleet Operators, owner drivers and labour hire personnel;
 - (ii) any issues, concerns or grievances arising from PrixCar's engagement of Fleet Operators, owner drivers and labour hire personnel; and

- (iii) any measures that may assist in improving job security, safe systems of work and productivity and efficiency that arises from PrixCar's engagement of Fleet Operators, owner drivers and labour hire personnel.
- (b) Delegates will be authorised to attend the meetings as follows:
 - (i) for one of the meetings in each year, all delegates will be able to attend; and
 - (ii) for the other meeting in that year, delegates will be released in accordance with clause 36.3(c).
- (c) The entitlements under clause 38.5(b) are in addition to those under clause 36.3.
- (d) Delegates attending the meetings referred to in clause 38.5(a) will be paid their average earnings for the duration of the leave

38.6 Application of clause

- (a) This clause 38 will only apply to Fleet Operators who carry full loads on behalf of PrixCar.
- (b) This clause 38 does not apply to Fleet Operators who are engaged on an ad-hoc basis or to other Fleet Operators as may be agreed from time to time with the relevant Branch Secretary of the Union.
- (c) Other than as expressly specified or in respect of the questionnaire referred to in clause 38.4(b), this clause 38 does not apply to Fleet Operators who are engaged solely for the purposes of performing Long Distance Work on behalf of PrixCar, provided that PrixCar undertakes to conduct random audits of such Fleet Operators to ensure that they are compliant with their Award obligations.
- (d) For the purpose of this clause 38, a reference to "*or his or her nominee(s)*" will be limited to an official or employee of the Union.

38.7 Dispute Resolution

- (a) With the exception of clause 38.1(c), where a Dispute arises between PrixCar, the Employees and the Union with respect to compliance with this clause 38, the Dispute will be dealt with in accordance with clause 14.

39. Picnic Day

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

PART D – FREIGHT CARTAGE AGREEMENT CLAUSES

40. Contractor Obligations

In performing the Services, the Contractor will:

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

F. the cumulative effects of fatigue over more than one day; and

G. the effect of time of day or night on fatigue,

and such records must be kept on a daily basis and where practicable handed to the relevant manager/supervisor at the end of each day and must be declared and signed by the Contractor as true and correct;

- (iii) all Vehicles are registered as required and all necessary insurances are in force in respect of the Vehicles;
 - (iv) it has obtained and will maintain in force all licences and permits as are required by persons engaged in its business and who perform the things it is required to do by this Agreement and will comply with the terms of all such licences and permits;
 - (v) without limiting the generality of (i) and (iv) above, it maintains a Workers' Compensation Certificate of Currency for all drivers and other relevant employees performing work related to the provision of the Services;
 - (vi) without limiting the generality of (i) above, it complies with its obligations and made all payments required under Superannuation legislation including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1992* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth);
 - (vii) has paid and will continue to pay all taxes and fees relating to the ownership or use of the Vehicles;
- (b) maintain good industrial and employee relations with its drivers, other relevant employees and industrial organisations or bodies, to ensure performance of the Services in accordance with this Agreement;

- (c) immediately inform PrixCar's representative of, and take all actions necessary to prevent or bring to an end, threatened or actual industrial action or any dispute or other matter affecting the drivers or other relevant employees, agents or contractors which may adversely impact the performance of the Services;
- (d) subject to (e), below, directly employ all of the drivers it utilises to perform work related to the Services
- (e) not engage owner drivers to perform work related to the Services unless it has the express written consent of PrixCar to do so, such consent to be given only where the Contractor is able to demonstrate to the satisfaction of PrixCar that the work cannot be practicably performed by employee drivers;
- (f) ensure that where it has received the consent required by (e), above, it engages only bona fide owner-drivers and will not permit any sham contracting arrangements and agrees that all compliance, records keeping, training and rates provisions of this agreement apply to those owner-drivers as if they were employees;
- (g) not contract out all or any part of the work related to the Services and must immediately inform PrixCar if it is unable, or has reason to believe it will become unable, to perform all or any part of the work related to the Services.

40.1 Contractors Statement

1.1 In addition to all other obligations arising pursuant to this Agreement, the Contractor must provide to PrixCar, at the time that it issues an invoice to PrixCar in accordance with this Agreement, a written statement confirming that:

- (a) all remuneration payable to the Contractor's employees and/or owner-drivers for work done under this Agreement, during the period to which the invoice relates, has been paid;
- (b) all worker's compensation insurance premiums payable by the Contractor for the work done in connection with this Agreement have been paid and that a valid and accurate Certificate of Currency (or its equivalent) has been maintained; and

- (c) the Contractor is either registered, or is not required to register, as an employer under the *Pay-Roll Tax Act* and that all payroll tax payable by the Contractor for the relevant employees and/or owner-drivers during the term of this Agreement has been paid; and
- (c) the Contractor has complied with and made all payments required by the Superannuation legislation including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1992* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth).

1.2 Where the Contractor fails to provide such a statement:

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

40.2 Records Audit

1.1 The Contractor must provide to PrixCar on request the Contractor's Records, for the purposes of enabling PrixCar to perform an audit.

1.2 The Contractor agrees that the Records may be made available by PrixCar to the Transport Workers Union of Australia, for their inspection. In such circumstances the Contractor agrees that it will take reasonable steps to ensure that its employees are made aware of the following:

- (a) the identity of PrixCar and how to contact the PrixCar Authorised Representative;
- (b) that the individual employee is able to gain access to the information;
- (c) the purpose for which the information is collected;
- (d) the organisation to which PrixCar may disclose the information;
- (e) any law that requires particular information to be collected; and

(f) the main consequences (if any) for the individual if all or part of the information is not provided.

1.3 The Contractor agrees that the primary purpose for which PrixCar is conducting the audit is to ensure that the Contractor has abided by its Award obligations in relation to the payments it makes to its employees and that it has abided by its legislative obligations including, but not limited to, the payment of superannuation, obligations arising under the relevant workplace health and safety legislation and compliance with legislative driving hours.

1.4 Where, after an inspection has been conducted by PrixCar, PrixCar is satisfied that the Contractor has not complied with one or more of its obligations pursuant to an Award, legislative obligations or any of its obligations contained in this agreement, the Contractor shall be issued with a breach notice by a PrixCar representative, requiring rectification of the breach within 7 days.

1.5 Where the Contractor continues with the breach after having been issued with the breach notice or commits a further breach, PrixCar will terminate this agreement in accordance with the relevant terms of the contract.

1.6 For the purposes of this clause:

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

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

40.3 Compulsory Induction Training

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

40.4 Site Rates

The following clause must be contained in all Freight Cartage Agreements applying to Fleet Operators (including Existing Fleet Operators) providing Services at or in connection with a PrixCar site or sites located within NSW/ACT:

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

The following clauses must be contained in all Freight Cartage Agreements applying to Fleet Operators (excluding Existing Fleet Operators) providing Services at or in connection with a PrixCar site or sites located outside of NSW/ACT:

- 1.5 The Contractor must pay employees, performing work relating to Services to be provided under this Agreement, at rates of pay that are at least 12.5% higher than those applicable under the relevant Modern Award (the "Modern Award").
- 1.6 Nothing in this clause permits the Contractor to reduce the rates paid to its employees and the Contractor agrees that it will not reduce rates paid to its employees even where such rates exceed those specified in clause 1.1 above.
- 1.7 Clause 1.1 above will not apply where the work being performed is Long Distance Work.
- 1.8 For the purposes of this clause Long Distance Work means any trip greater than 500 kilometres.

41. Licences and Training

All employees shall possess appropriate licenses and be trained in all aspects relevant to the performance of their work tasks. Such training shall be at the company's expense.

The company will provide employees with an allowance of up to \$432.60 (indexed as per wage % increases) per annum to pay for work related expenses such as licences and professional fees. That allowance will be payable only upon production of receipts were verifiable by management.

Drivers who are workplace health and safety delegates will be entitled to attend training In Work Health & Safety (WH&S) of up to 2 days per annum. Such an entitlement will not derogate from any rights held under state legislation.

42. Weekend Coverage

The nature of this operation requires continuous utilisation of assets and such the employee base has agreed to schedule the requirements to suit the company's needs equitably, ensuring adherence of fatigue management and quality of lifestyle. If for any reason either party needs to change the previously agreed schedule, then a 24 hr notification period is required.

43. Rostered Days Off

RDO's in excess of (10) ten days will be paid out twice a year in July and December.

PrixCar will provide 48 hours' notice in the event of:

- Industrial action directly outside the control of PrixCar that impedes our customer's ability to provide freight

Or

- An act (or acts) of terrorism that directly impede our customers ability to provide freight.

Flexibility with RDO's during extraordinary shut down at our customer's plants i.e. – one day RDO, one day work or as otherwise mutually agreed between both parties.

Issues associated with the payment of RDOs can be pursued through a local agreement to apply within a single state.

44. Employment Commitment to Quality

PrixCar and the employees covered by this Agreement commit to the process of providing a continuous quality service to customers. The parties agree that it is an important part of the employee's job function to ensure that the Company presents itself well to customers and the general public at all times.

- a) Both the interior and the exterior of the vehicle allocated to the employee should be clean neat and tidy. The employees accept that it is his/her responsibility to perform the interior cleaning of their normally allocated vehicle on each trip for CPK paid drivers as well as clean the exterior of the vehicle weekly or as deemed necessary. Trucks that operate on hours and overtime will be allocated time for cleaning both interior and exterior as deemed necessary.
- b) This clause gives specific recognition to the customer service requirements and PrixCar's policy for the presentation of clean vehicles in all our operations.
- c) All drivers and yard persons are to wear the issued uniform during work time, including weekends.
- d) It is the responsibility of all drivers and yard persons to ensure paperwork standards are met.
- e) Commitment to ensure all customers vehicles is surveyed to protect the company from all potential liabilities. Assist Company to identify and eliminate the root cause of transit damage. All damages to vehicles conveyed and/or equipment must be reported in writing on the appropriate form to the operations office no later than the day following the occurrence.
- f) All drivers shall possess a current Drivers license relevant to the type of vehicle used to perform their duties for the Company. License checks will be conducted twice weekly.
- g) All yard persons shall possess the appropriate training to be competent in the driving functionality of vehicles within the yard and so comply with the Workplace Health and Safety Act.
- h) Observe and Adhere to all Company policies detailed in the Driver Handbook.
- i) All employees have a role in ensuring the safety and reliability of their allocated truck. Prior to commencing each trip all drivers are required to carry out a pre-trip check as follows:
 - Check fuel, oil and water levels.
 - Check tyres and visually check wheel nuts.
 - Check lights, indicators and horns.
 - Check brakes
 - Steering
 - Overhead and trailer structure.
 - Check windscreen washers and wipers.
 - Check all documentation and tools required for the job available.
 - Check that the load is secure and all securing mechanisms are intact
 - (All items are required under the Truck safe industry Accreditation)
- j) Commit to the process of maintaining accreditation for:
 1. The Trucksafe Accreditation program
 2. National Fatigue/Mass Management, Self – Accreditation Programs.
 3. Australian Standard ISO 9001.
 4. Environmental System Standard of ISO14001.
 5. Total PrixCar Business Systems.

45. Anti-Discrimination

It is the intention of the parties to this agreement to seek to achieve the object in section 3 (F) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, Transgender identity and age.

Paragraph (B) only applies where the agreement contains a dispute resolution procedure:

B) It follows that in fulfilling their obligations under the dispute resolution procedure set out in this agreement parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this agreement 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 agreement which, by its terms of 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 have been involved in a complaint of unlawful discrimination or harassment.

D) Nothing in this clause will be taken to affect

- Any conduct or act which is specifically exempted from anti-discrimination legislation;
- Offering or providing junior rates of pay to persons under 21 years of age;
- Any act or practice of a body established to propagate religion which is exempted under section 56 (d) of the Anti – Discrimination Act 1977;
- A party to this agreement 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.

46. NSW Allowance

In addition to a NSW Regional and Linehaul allowance of \$25 per week including RDOs but excluding annual leave, sick leave and work cover leave will be payable to NSW drivers completing long distance work

47. Breakdown

In the event of vehicle breakdown payment will be made after one hour and with a maximum of 8 hours in a 24-hour period, only if the trip has been lost.

Trip Cancellation

If a driver presents at the start of a shift and that shift is subject to cancellation, the following will apply:

- a) A casual driver will be paid a four- hour call out fee.
- b) A permanent driver shall be paid as per the PrixCar Heads of agreement and the Transport Industry (state) Awards

Waiting Time

- a) In the event of a vehicle break down payment will be made after one hour and with a maximum of 8 hours in a 24hour period, only if the trip has been lost. (For example: if a driver is delayed in his trip by 5 hours, and ultimately finishes his trip, then he shall be paid for the trip plus the 5 hours payment.
- b) Where an employee is waiting to start a trip they shall be paid an hourly rate for the following with the maximum of 8 hours:
 - i. Wait for more than 1 hour after a pre-ordained changeover time that has been confirmed by his/ her driver manager prior to trip departure.

48. Hours of Work

48.1 Spread of hours

The ordinary hours of work shall be an average of 38 per week to be worked between the hours of 5.00am and 7:00pm Monday to Friday.

Each employee shall have a fixed starting time, which are only be vary by one weeks notice, provided that an employee's starting time for any day maybe varied without penalty by:

- Agreement of the employer and employee or;
- The employer by up to 1 hour either side of the fixed starting time provided notice is giving at the earliest possible opportunity to the employee prior to completing work on the previous day.

48.2 Five days work in four

Clause 49.2 only applies to operations conducted solely in the state of Western Australia. Where any employee and an employer agree, an employee may work up to 10 ordinary hours (exclusive of meal breaks) on any four days within a normal working week (Monday to Friday) in addition an employee for working each day of 10 ordinary hours, plus 2 hours overtime, shall receive a meal allowance.

Should an employee agree to work four 10hour days within a normal working week as per the above clause, then there shall be no obligations on the employer to provide work or pay wages to the employee for the fifth day.

If by agreement of the employer and the employee the employee works for such fifth day as described in this sub clause then the payment of such wages for such fifth day shall be paid at the rate of time and one half for the first eight hours and thereafter at double time. Work required on any fifth day shall be offered in the first instance to permanent employees.

48.3 Meal time and overtime meal break

Meal times are to meet operational circumstances; All employees agreed to forego provisions of sub clause 36.1.1 B 36.1.1 C and 36.1 .3of the 98 award.

It is accepted that each employee will take a meal break each day they work of a duration of 30 minutes which shall be unpaid (this does not apply to bona fide the shift workers).

Staggered meal breaks, commencement times and periods of lunch breaks will be determined by the employee and supervisor depending on work constraints i.e. completion of current job function in conjunction with the stipulated times.

Overtime meal breaks - employees forego the provisions of clause 36.2, 36.2.1, 36.2.2 of the award and will be paid a \$17.50 meal allowance.

48.4 Rest period after overtime

For yard duties only, the employer and employee have the right to reduce the minimum 10 hours break, subject to Workplace Health & Safety standard in legislation or regulations, between the termination of work on one day and commencement of work on the next day to an 8 hours Minimum, and waive the existing conditions contained in clause 37.3 of the award, provided that:

- Need a party felt a lesser period was unreasonable or unsafe
- Both parties fully agreed to a lesser period
- Either party retain the right to reduce a lesser period to be taking
- The employer could not insist on an employee taking a lesser period; and – in employee could not insist on taking a lesser period.

Should complete Conformance not be reached on any of the above-mentioned conditions, and each occasion would stand-alone and be determined on its merits, the provisions of clause 37.3 of the award would apply fully and without variation.

49. Counselling

An employee whose behaviour or performance is considered unacceptable or requiring improvement shall be counselled as to the company's expectations. Any such counselling may constitute a verbal discussion which is recorded on the employee's personal file or constitute a formal first written warning at which point the employee may wish to have a delegate or representative present during the discussion.

In general, employees will receive at least one written warning prior to receipt of a final warning.

The manager, employee and the employee representative should sign the warning letter. Copies may be kept on the employees personal file. Except in unusual circumstances the letter will cease to have an effect after 12 months.

Prior to any dismissal, an employee will be given a final warning in writing and advised of the consequences of the employee refusing to rectify the situation, including all possible actions of management, such as termination of employment.

Summary dismissal – the employer reserves the right to dismiss any employee without notice for gross – serious misconduct and in such cases any entitlements are to be paid up to and including the time of dismissal only as defined in the relevant award.

Great/serious misconduct includes: a breach of contract amounting to repudiation of the contract, dishonesty, malingering, inefficiency and neglect of duty, verbal or physical abuse of other parties, intentional damages to company or customer property, intoxication or drug abuse while on duty, or any unlawful act.

At the discretion of the company an employee involved in misconduct (other than acts of dishonesty) maybe stood aside on base rates pending investigation.

50. Previous Agreements Rescinded and/or Varied

1. This Agreement shall replace and rescind all previous Agreements covering the parties to this Agreement.
2. This Agreement provides a complete and final resolution of all claims, whether specifically covered in /by this Agreement or not, relating to terms and conditions of all employment for

all Employees employed under the terms of this Agreement. It is not open to any Party to this Agreement to raise additional matters relating to employment and employment conditions during the life of this Agreement.

3. This Agreement shall replace, subject to the provision of the Act, any other workplace agreement between the Company and the Union, which has effect in relation to the Employees.

51. Relationship to the Awards & National Employment Standards

1. This agreement incorporates the terms of the Road Transport and Distribution Award 2010 (the RT&D Award) & the Road Transport (Long Distance Operations) Award 2010 (The LDO Award).
2. In incorporating the abovementioned Award terms into this agreement they are to be read as altered to incorporate necessary changes resulting from them being provisions of an agreement rather than provisions of an award. For example, the words "this award" would become "this Agreement".
3. Where there is any inconsistency between a term in this Agreement and a term in the Awards referred to in 51.1, which have been incorporated, the term in this Agreement shall take precedence to the extent of the inconsistency.
4. This agreement shall be read in conjunction with the National Employment Standards (NES), and nothing in this agreement operates to provide an entitlement less than the NES.

52. Intent, Change and Continuous Improvement

It is the intent of the Parties to achieve fundamental and ongoing reform of the Company's employment arrangements and to ensure this agreement or any other general employment arrangement does not impede the process of ongoing change to continuously improve the viability efficiency and productivity of the Company. The parties are committed to pursue all opportunities to adopt the world's best practices through modern technology and continuous improvement to all aspects of Company operations. Nothing in this agreement shall impede the process of ongoing change to continuously improve the viability, efficiency and productivity of the Company.

It is recognized by the Company that job security, career paths, potential high earning capacity, communications/Employee involvement, co-operation, non discrimination, equal employment opportunity, equitable, transparent and safe employment arrangements and relationship are standards expected by Employees and the Union which the Company will strive to achieve at all times.

53. Workplace Health Safety & Environment

The company and its employees will ensure that the health, safety and welfare of employees are area of primary concern and through consultative processes will continue to work towards:

- Safe working conditions
- Observance of all legal requirements, codes of practice and regulations.

SIGNATORIES TO THE AGREEMENT

The following organisations and their members are parties to this Agreement: -

Signed on behalf of PrixCar Transport Services Pty Ltd by its authorised representative (ACN 158 361 721)

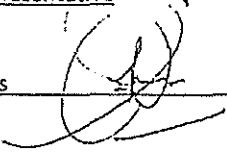
Full name of authorised representative FRANK SCARANO

Position of authorised representative C.E.O.

Address of authorised representative 7-20 HORSBURGH DRIVE
ALTONA NORTH 3025 VIC.

In the presence of:

Signature of representative F. Scarano

Name of witness  Date 22nd JULY 2016.

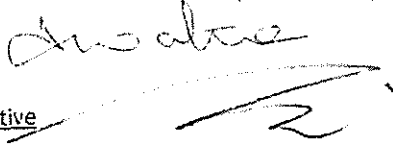
Signed on behalf of the TWU - (Transport Workers Union) National Office

Full name of authorised representative MICHAEL KANE

Position of authorised representative ASST. NATIONAL SECRETARY


Address of authorised representative LVL 2, 388 390 SUSSEX ST,
SYDNEY

In the presence of:

Signature of representative 

Name of witness THERESE WALTON Date 28/7/16

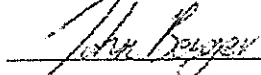
Signed for and on behalf of the TRANSPORT
WORKERS UNION
SA-NT Branch



RAY WYATT
NAME of Signatory

28/07/16
Date

Signed for and on behalf of the TRANSPORT
WORKERS UNION
Vic-Tas Branch

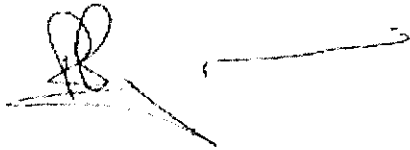


JOHN BERGER
NAME of Signatory

26/07/2016
Date



VIC/TAS BRANCH



Signed for and on behalf of the TRANSPORT
WORKERS UNION
Qld Branch

Peter Biagini

NAME of Signatory

27th July 2016

_____ Date


Signed for and on behalf of the TRANSPORT
WORKERS UNION
NSW Branch



RICHARD OLSEN
NAME of Signatory

26-7-16
Date

Signed for and on behalf of the TRANSPORT
WORKERS UNION
WA Branch



TIMOTHY DAWSON.
NAME of Signatory

26-07-2016
Date

Schedule 2.3—Model consultation term

(regulation 2.09)

Model consultation term

- (1) This term applies if the employer:
 - (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
 - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

- (2) For a major change referred to in paragraph (1)(a):
 - (a) the employer must notify the relevant employees of the decision to introduce the major change; and
 - (b) subclauses (3) to (9) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;the employer must recognise the representative.
- (5) As soon as practicable after making its decision, the employer must:
 - (a) discuss with the relevant employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the employees; and
 - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and

- (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the change on the employees; and
 - (iii) any other matters likely to affect the employees.
- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- (9) In this term, a major change is *likely to have a significant effect on employees* if it results in:
 - (a) the termination of the employment of employees; or
 - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
 - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - (d) the alteration of hours of work; or
 - (e) the need to retrain employees; or
 - (f) the need to relocate employees to another workplace; or
 - (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

- (10) For a change referred to in paragraph (1)(b):
 - (a) the employer must notify the relevant employees of the proposed change; and
 - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.

- (12) If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.
- (13) As soon as practicable after proposing to introduce the change, the employer must:
- (a) discuss with the relevant employees the introduction of the change; and
 - (b) for the purposes of the discussion—provide to the relevant employees:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
 - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
 - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:
- relevant employees* means the employees who may be affected by a change referred to in subclause (1).

UNDERTAKING BY PRIXCAR TRANSPORT SERVICES PTY LTD


Re: Application for Fair Work Commission ("FWC") approval of the PrixCar Transport Services Pty Ltd and Transport Workers Union Fair Work Agreement 2016-2019 ("the Agreement")

1. This Undertaking is given by PrixCar Transport Services Pty Ltd ("PrixCar") and is taken to be a term of the Agreement.
2. PrixCar undertakes that the following provisions will apply in relation to the nominated matter in the Agreement:

Clause 41: PrixCar will nominate drivers and buddy drivers who may be required to train new employees. Nominated drivers will receive training to enable them to complete the requisite competency checklist and documentation. An allowance of \$20 per day will be paid to driver trainers at all sites when performing the training duties outlined in this clause.

Signed for and on behalf of PrixCar Transport Services Pty Ltd

Name in full: Glen DeClase

Signature: 

Position/Authority to sign: HR Project Manager

Address: 7 - 20 Horsburgh Drive, Altona North, VIC 3025

Date: Wednesday, 3 August 2016

IN THE FAIR WORK COMMISSION**APPLICATION FOR APPROVAL OF ENTERPRISE AGREEMENT***Fair Work Act 2009 – s.185*

Application by Prixcar Services Pty Ltd

Agreement Title: Prixcar Transport Services Pty Ltd and Transport Workers' Union of Australia Fair Work Agreement 2016-2019

AG2016/4782

EMPLOYER UNDERTAKINGS*Fair Work Act 2009 – s.190*

PURSUANT to section 190 of the *Fair Work Act 2009* Prixcar Services Pty Ltd hereby undertakes that:

1. Dispute settlement term – clause 14

In relation to Clause 14 of the agreement the employer provides an undertaking confirming that the dispute resolution term will cover disputes relating to the NES or the agreement and allow employees representation in accordance with s.186(6)(b) of the Act.

2. Redundancy payment

In relation to Clause 24(d) the employer provides an undertaking that employees covered by this agreement will not receive less than the relevant minimum entitlements under the NES.

3. Rates of pay

Actual pay rates for employees both within NSW and outside are attached and meet the Better Off Overall Test, as a matter of confidentiality they have not been attached in the agreement.

4. Part-time employees and overtime

In relation to Clause 22 the employer provides an undertaking that part-time employees will be entitled to overtime once they have worked more than 7.6 hours in a given shift or more than 38 hours in a given week..

Dated: Friday, 16th September 2016

.....
Glen DeClase, HR Manager
Prixcar Services Pty Ltd and Prixcar Transport Services Pty Ltd

7-20 Horsburgh Drive
Altona North VIC 3025 Australia
PO Box 234
Altona North VIC 3025 Australia

IN THE FAIR WORK COMMISSION

Matter No. AM2016/32

**4 Yearly Review of Modern Awards – Road Transport and Distribution Award
2010**

STATEMENT OF GLEN DECLASE

I, Glen DeClase of [REDACTED] in the State of Victoria state as follows:

1. I am 65 years of age.
2. I am currently employed by LEDified as a Human Resources (**HR**) Manager. I have been in this position since 1st July 2016
3. Prior to working for LEDified I was employed with PrixCar Services Pty Ltd (**PrixCar**) for 13 ½ years as their HR Manager.

My Role in the Sector

4. Part of my role as HR Manager with PrixCar required me to negotiate enterprise agreements with the relevant trade unions on behalf of PrixCar. When I left my employment with PrixCar in June 2016, I had been negotiating an enterprise agreement with the Transport Workers Union (**TWU**) for truck drivers.
5. PrixCar asked me to continue those negotiations on their behalf on a consultancy basis. The parties reached agreement in 2016 and the Fair Work Commission approved the agreement in 2016 that is currently known as the *PrixCar Transport Services Pty ltd and Transport Workers Union of Australia Fair Work Agreement 2016 – 2019 (2016 Agreement)*. A copy of the 2016 Agreement has been annexed and marked GD1.

Structure and Business of PrixCar

6. There are two divisions of the business of PrixCar. One division is the Vehicle Processing Centre (VPC) and the other is the transport division of the business. Prior to 2012, the business of PrixCar only involved the VPC. In 2012 PrixCar purchased Toll Auto Logistics, which now makes up the transport arm of PrixCar.
7. There are a number of VPC's throughout Australia. The VPC's process new vehicles that have been bought into Australia and delivered from the Port to the VPC. At the VPC the vehicles are processed before being transported to the customer, which could be a manufacturer, dealership or any other type of customer such as a one of service to a trucking company or other business.
8. The processing of the new vehicles at the VPC involves:
 - a. Putting on compliance plates;
 - b. Checking that the vehicle has met the Australian Design Standards;
 - c. In some cases, PrixCar may register the vehicle; and
 - d. Check logbooks and place trade plates on vehicles where required.
9. Employees who work at the VPC's only process the vehicles and are not involved in the transportation of those vehicles.
10. Prior to 2012 the business of PrixCar only had the VPC division involving vehicle processing. The transportation of vehicles from the Port to the VPC and later transportation off the VPC site was contracted a number of different companies based on vehicle location and size amongst other things.

11. In 2012 PrixCar decided that it wanted to be a one-stop shop, and to do that it had to buy or establish a transport company. In August of 2012, PrixCar acquired Toll Auto Logistics. In doing so, PrixCar now had its own transport company that could pick up vehicles from the Port, deliver to its VPC sites and then also deliver to the various types of customers including manufacturers and dealerships.

Truck Driver Role at PrixCar

12. The truck drivers employed within the transport division of the business collect the new vehicles from the Port and drive them to the VPC. Once processed and ready for delivery, the driver will then transport the new vehicle/s either on the back of a truck/car carrier or drive the vehicle itself.

13. When I say the vehicle itself, I am referring to the cab chassis of a truck. New motor vehicles are transported on the back of a truck/car carrier. Trucks can also be transported on the back of a truck but this really depends on the cab chassis size.

14. Cab chassis' are generally driven from the Port to our sites and smaller units are transported on our trucks. How a cab chassis is transported is based on the height of cab chassis' as tall vehicles do not fit on our trucks and in this event, are driven to the company sites and also to the respective clients.

15. The drivers employed in the transport division drive both trucks that are loaded with new vehicles and the cab chassis itself.

16. Essentially, they are transporting new vehicles to a customer either on the back of a truck or they transport the vehicle itself by driving it with a trade plate attached. The transport of vehicles can be either local or interstate.

17. Drivers employed by PrixCar are covered by the 2016 Agreement. Drivers are paid according to the size of the truck they are driving whether it is a loaded truck/car carrier or just the cab chassis itself. If the driver is at a certain grade

ordinarily driving a certain size truck then they are paid the same rate when driving the cab chassis.

18. When a driver transports a cab chassis to an interstate destination they will be flown back to where they commenced their journey. The driver is paid for all hours worked including the return journey & accommodation if required.
19. Drivers who perform long distance operations only perform that type of work and are paid the rates set out in the enterprise agreement. The enterprise agreement is underpinned by the *Road Transport (Long Distance Operations) Award 2010*.
20. Local drivers are paid the rates set out in the 2016 Agreement, which is underpinned by the *Road Transport and Distribution Award 2010 (RTD Award)*. Local drivers can perform both local work and long-distance operations. When they perform long distance operations they are paid the rates for long distance drivers underpinned by the 2016 Agreement and the *Road Transport (Long Distance Operations) Award 2010 (LDO Award)*.
21. When PrixCar acquired Toll Auto Logistics the Toll Agreement covered the drivers employed by Toll. There was a transmission of business and the drivers were subsequently employed by PrixCar and covered by the Toll Agreement until it expired in 2013. A new enterprise agreement was replaced with the Toll agreement in 2013. I was also responsible for negotiating that agreement with the TWU. This agreement had substantially the same terms and conditions as that which were set out in the previous applicable Toll enterprise agreement.
22. The main driver duties at PrixCar for those engaged to move the cab chassis itself are as follows:
 - a. Pickup new cab chassis from VPC, check vehicle for any damages etc. plus (normal driver checks prior to start of shift) collect trade plates and affix to cab;
 - b. Deliver vehicle to the nominated destination;

- c. Ensure cab chassis is roadworthy and secured (no loose items)
- d. Check all fluid levels, hazard lights all requirements as per a normal truck driver;
- e. Inspection of the cab chassis both at pickup from VPC and drop-off at dealership or customer;
- f. Complete all documentation ensuring dealership / customer is in receipt of the vehicle; and
- g. Various other tasks as necessary to complete the work.

23. The main driver duties for those engaged by PrixCar to transport vehicles by truck and/or car carrier are as follows:

- a. Pickup new vehicles from the Ports conduct "vehicle survey" for damages and transport them directly to the Dealerships or directly to VPC;
- b. On arrival at VPC unload vehicle and park in the allocated 'incoming' lanes;
- c. Complete all necessary documentation required;
- d. Various other tasks as necessary to complete the work.

24. It is my view that most the drivers that PrixCar engaged have worked in the industry for a long period of time and I would call them professional drivers. As the predominant activity, these professional drivers are engaged in is the driving task itself, this is all we take into account when determining how that professional driver ought to be paid. To do so, we simple consider the following factors:

- a. Nature and type of vehicle to be transported (loaded car carrier or cab chassis);

- b. Licensing requirements of the professional driver; and
- c. Relevant classification set out in the applicable industrial instrument based on the distance to be travelled.

25. Further, I know that there has been some speculation about the age of the PrixCar workforce and other drivers engaged in the vehicle relocation sector. From PrixCar's perspective the reason that we engaged older drivers was because they had the requisite knowledge and experience to be able to drive a variety of different vehicles without any necessary training on that vehicle. It is this factor that attracts PrixCar to the engagement of an older and more experienced workforce that can drive both new and old vehicles with minimal training on the specific operation of that vehicle. Further, it is also likely that they will be able to drive loaded vehicles or vehicles with different trailer configurations and so on because of that knowledge.

Competition in the Vehicle Relocation Sector

26. Since late 2013, PrixCar has been finding it increasingly difficult to compete for work in the cab chassis side of the business. This I understand was due to competition in the market that was undercutting us in prices and conditions. As we pay according to our enterprise agreement which is above the RTD Award or LDO Award the competition is able to undercut PrixCar. As I understand they do not pay according to the relevant award.

27. Names of these competitors kept coming up such as Truck Moves Australia Pty Ltd (**Truck Moves**). As I understand Truck Moves did not pay their drivers under an award, as they believed they were 'award free' and paying drivers less than the road transport awards. The information about Truck Moves undercutting us came from the clients and our truck drivers who talked to other drivers.

28. I was always of the view that truck drivers who were transporting all types of vehicles as described in my statement were covered by the road transport awards. It came as a shock to me when I was advised by the TWU that Truck Moves was in fact found to be award free by the Federal Court.

29. When PrixCar acquired Toll Auto Logistic the business model was the same as the transport arm of PrixCar, that is the business involved both the relocation of vehicles on the back of a truck or relocation of the cab chassis itself. When PrixCar first acquired the business, it was fairly competitive in the marketplace until around the end of 2013. This could be because the competition had not been tendering for the same clients as PrixCar was.

Response to Submissions and Statements made on behalf of Truck Moves

Statement of Matthew Whitnall dated 1 March 2017

30. In relation to paragraph 20 and requisite driver training I make the following observations about driver responsibility and training requirements. The new cab chassis' from different manufacturers have different configurations in relation to; starting, driving, parking, using the gearbox, instrument panels and so on. This all requires the driver to be trained in using this particular piece of equipment. With changing technology and sophisticated systems, drivers are constantly learning & being trained in how to operate these new pieces of equipment.

31. At paragraph 46 to 60 of his statement Mr Whitnall has suggested that drivers in older ages groups are attracted to work at Truck Moves due to a limited amount of physical labour compared to other sectors of the road transport industry. He has also said that work at Truck Moves is more favourable to those age groups of 50+.

32. In response, I note that whilst the industry does attract older drivers, this is based more on the high level of experience and knowledge they possess about the industry rather than any focus on such drivers being engaged to complete less strenuous work.

33. In to comments made at paragraph 60 about experience and licensing requirements I make the following observation that newer cab chassis have technology changes that many drivers have to be trained to ensure their proper operation and this includes requirements for pre-checks prior to going out on the

highway.

34. In relation to paragraph 48 regarding the role of drivers as simply being required to drive from one location to the other I note that except for picking up & setting down vehicles, the drivers in the vehicle relocation industry must adhere to all requirements of other truck drivers including legislative and compliance requirements. They also often have the same or similar duties and responsibilities when completing their work.

35. In relation to paragraph 66 about time spent travelling as opposed to driving, I note that this depends on where the vehicle is delivered to. That is, if it is a local delivery then the driver will deliver and return to the depot but in the case of interstate or long distance intrastate journeys, the driver has to drive the vehicle to its destination whilst at the same time taking into consideration and adhering to rest breaks and fatigue rules.

36. In relation to paragraph 75, I make the following comment the vehicles must be completely checked by the driver before being driven onto the road. Drivers must:
 - a. Ensure there are no loose items;

 - b. Check tyre pressures;

 - c. Check and monitor fuel levels;

 - d. Check and monitor oil, water and other fluid levels;

 - e. Ensure they know where key safety functions on the vehicles are located such as hazard lights; and

 - f. Various other work activities as necessary including paperwork.

37. In relation to paragraph 76, I note that loading and unloading is only one part of vehicle movements and should not be addressed as a key or most significant part

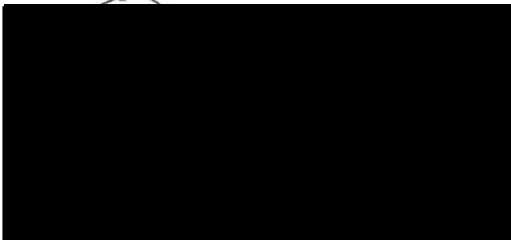
of driver duties.

38. In relation to paragraph 78 I refer to my comments throughout this statement and note that all drivers are responsible for many factors including road safety, safe driving; legislative and regulatory compliance including fatigue management, completion of paperwork and various other activities. It is unclear how it might be suggested that drivers in the vehicle relocation industry are not required to engage in such tasks.

39. In relation to paragraphs 112 to 129 about the manner in which the relevant award might apply, I have no knowledge of the instrument not being designed for a transport company. In fact, it was my view that the relevant awards were purpose built to address the needs of the road transport industry and their operations.

Truck Moves Draft Determination

40. I have been provided with a copy of the Draft Determination attached to Truck Moves' submissions of 24 November 2017. I note that the minimum hourly rate proposed in the Draft order is \$18.83 (when the current Australian minimum hourly rate being \$18.29). In my view, this rate does not recognise the experience, skills or classification of the individual engaged to complete the work required in the industry. Companies like PrixCar pay rates as set out in the 2016 Agreement that are in excess of the relevant award to recognise the experience and skill of the drivers who we engage and to properly remunerate them for the work they undertake. Any determination that sets out one rate for the driving of such varied vehicle types grossly undervalues the work that drivers engaged in the sector complete.



...THURSDAY... 21st DECEMBER... 2017
Dated

Annexure

GD1



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Prixcar Services Pty Ltd
(AG2016/4782)

PRIXCAR TRANSPORT SERVICES PTY LTD AND TRANSPORT WORKERS UNION OF AUSTRALIA FAIR WORK AGREEMENT 2016- 2019

Road transport industry

COMMISSIONER GREGORY

MELBOURNE, 21 SEPTEMBER 2016

Application for approval of the PrixCar Transport Services Pty Ltd and Transport Workers Union of Australia Fair Work Agreement 2016-2019.

[1] An application has been made for approval of an enterprise agreement known as the *PrixCar Transport Services Pty Ltd and Transport Workers Union of Australia Fair Work Agreement 2016-2019* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Prixcar Services Pty Ltd. The Agreement is a single enterprise agreement.

[2] The Applicant has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement.

[3] The rates of pay referred to in the undertakings have been provided to and considered by the Commission. The rates will be kept confidential, as requested by the parties, on the Commission's file.

[4] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

[5] Pursuant to s.205(2) of the Act, the model consultation term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

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

[7] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 28 September 2016. The nominal expiry date of the Agreement is 30 June 2019.



COMMISSIONER

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ANNEXURE A

UNDERTAKING BY PRIXCAR TRANSPORT SERVICES PTY LTD


Re: Application for Fair Work Commission ("FWC") approval of the PrixCar Transport Services Pty Ltd and Transport Workers Union Fair Work Agreement 2016-2019 ("the Agreement")

1. This Undertaking is given by PrixCar Transport Services Pty Ltd ("PrixCar") and is taken to be a term of the Agreement.
2. PrixCar undertakes that the following provisions will apply in relation to the nominated matter in the Agreement:

Clause 41: PrixCar will nominate drivers and buddy drivers who may be required to train new employees. Nominated drivers will receive training to enable them to complete the requisite competency checklist and documentation. An allowance of \$20 per day will be paid to driver trainers at all sites when performing the training duties outlined in this clause.

Signed for and on behalf of PrixCar Transport Services Pty Ltd

Name in full: Glen DeClase

Signature: 

Position/Authority to sign: HR Project Manager

Address: 7 - 20 Horsburgh Drive, Altona North, VIC 3025

Date: Wednesday, 3 August 2016

IN THE FAIR WORK COMMISSION

APPLICATION FOR APPROVAL OF ENTERPRISE AGREEMENT
Fair Work Act 2009 – s.185

Application by Prixcar Services Pty Ltd

Agreement Title: **Prixcar Transport Services Pty Ltd and Transport Workers' Union of Australia Fair Work Agreement 2016-2019**

AG2016/4782

EMPLOYER UNDERTAKINGS
Fair Work Act 2009 – s.190

PURSUANT to section 190 of the *Fair Work Act 2009* Prixcar Services Pty Ltd hereby undertakes that:

1. **Dispute settlement term – clause 14**

In relation to Clause 14 of the agreement the employer provides an undertaking confirming that the dispute resolution term will cover disputes relating to the NES or the agreement and allow employees representation in accordance with s.186(6)(b) of the Act.

2. **Redundancy payment**

In relation to Clause 24(d) the employer provides an undertaking that employees covered by this agreement will not receive less than the relevant minimum entitlements under the NES.

3. **Rates of pay**

Actual pay rates for employees both within NSW and outside are attached and meet the Better Off Overall Test, as a matter of confidentiality they have not been attached in the agreement.

4. **Part-time employees and overtime**

In relation to Clause 22 the employer provides an undertaking that part-time employees will be entitled to overtime once they have worked more than 7.6 hours in a given shift or more than 38 hours in a given week.

Dated: Friday, 16th September 2016



.....
Glen DeClase, HR Manager
Prixcar Services Pty Ltd and Prixcar Transport Services Pty Ltd

7-20 Horstburgh Drive
Altona North VIC 3025 Australia
PO Box 234
Altona North VIC 3025 Australia

PrixCar Transport Services Pty Ltd and
Transport Workers Union
Fair Work Agreement 2016 - 2019

Note - the model consultation term is taken to be a term of this agreement and can be found at the end of the agreement.

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

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PART A – GENERAL TERMS AND CONDITIONS

Section 1 - Application and operation

1. Title

This Agreement will be referred to as the PrixCar Transport Services Pty Ltd and Transport Workers Union of Australia Fair Work Agreement 2016 - 2019.

2. Objects

The objects of this Agreement include the following:

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

3. Definitions

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

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

Award means:

- (i) the Road Transport and Distribution Award 2010; and
- (ii) the Road Transport (Long Distance Operations) Award 2010.

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. Blue Card programs compel employees to familiarise themselves with, and follow,

workplace health and safety procedures. Blue Card programs must be conducted by a registered training provider that is licensed to deliver Blue Card training.

Company means the PrixCar Services Pty Ltd – for the purposes of this agreement employees employed by PrixCar Transport Services Pty Ltd

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

Employee means a Transport Worker.

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

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

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

Fund means TWUSUPER.

FWC means Fair Work Commission.

Long Distance Work means any trip greater than 500 kilometres.

NES means the National Employment Standards contained in sections 59 to 131 of the Act.

Operative Date means 7 days after written notification is received that this Agreement has been approved by FWC.

Parties means PrixCar, the Union and the Employees.

Part-Time Employee means an Employee, other than a casual Employee, who is regularly employed to work less than 38 hours per week.

Schedule means a schedule to this Agreement.

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

Transport Worker means any person who is eligible to be a member of the Union and who is employed by PrixCar in Australia in any of the classifications contained in the Agreement.

Union means the Transport Workers Union of Australia.

4. Coverage

4.1 General

This Agreement applies to and is binding on PrixCar Transport, all Employees and the Union.

4.2 Acquisitions

- (a) This clause 4.2 will apply if PrixCar acquires a new transport business during the Term, the employees of which fall within the definition of "Employee" in this Agreement.
- (b) PrixCar will ensure that:
 - (i) if the employees in the acquired business are or become employed by PrixCar to work at an existing PrixCar site, the employees receive the rates of pay and conditions of employment applicable to Employees at that site, provided that the employees must not be paid a lower rate or receive less favourable conditions of employment than those that they may be entitled to receive under any enterprise agreement or similar industrial instrument applying in the acquired business; or
 - (ii) if the employees are engaged at a separate site, the employees receive the equivalent of the remuneration increases available under this Agreement on a pro rata basis from the date of the acquisition, provided that if any enterprise agreement or similar industrial instrument applying in the acquired business provides a greater increase for part of all of the Term then that increase will be paid for the corresponding period after which time the equivalent of the remuneration increases available under this Agreement will apply on a pro rata basis.
- (c) PrixCar agrees to consult with the Union about any disparity (arising from the application of clause 4.2(b)(ii) above) between the rates of pay and conditions of employment applying to employees in the acquired business and those applying at an equivalent PrixCar site. The parties agree that the powers of FWC to deal with any Dispute between PrixCar and the Union as to whether PrixCar should increase those

rates, or improve the conditions of employment, or as to the time over which any such increase or improvement should take place will be confined to conciliation.

5. Term of Agreement

This Agreement will commence operation from the Operative Date and will have a nominal term commencing 1st July 2016 and expiring 30th June 2019.

6. Relationship to the Award and the NES

- (a) This Agreement incorporates the Award. An inconsistency will not arise simply because the Award provides a more beneficial entitlement to an Employee than that contained in Part A of this Agreement.
- (b) This Agreement operates in conjunction with the NES. Certain provisions of this Agreement may supplement the NES but nothing in this Agreement will operate so as to provide a detrimental outcome for Employees as compared to an entitlement under the NES.

7. Permitted matters

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

8. 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.

9. No extra claims

During the Term the Employees must not pursue any further claims for wages, allowances or any other terms and conditions of employment.

10. Negotiation of new agreement

- (a) The Parties will commence negotiations for a replacement agreement(s) no less than 3 months before the nominal expiry date of this Agreement.
- (b) At the outset of those negotiations the Parties will confer for the purposes of reaching consensus on:
 - (i) whether negotiations will proceed on a national basis;
 - (ii) the conduct by the Union of any pre-survey, claim endorsement and negotiation report-back meetings of State delegate bodies and of all yards;
 - (iii) the release of delegates to attend meetings connected with the negotiations, and the terms on which they would be released;
 - (iv) the size of the negotiating committee; and
 - (v) the logistics of the negotiations, including the venue and payments for delegates to attend and take part in the negotiations.

Section 2 – Flexibility, Consultation and Dispute Resolution

11. Access to this Agreement

PrixCar must make a copy of this Agreement, and the NES available to an Employee on request.

12. Individual flexibility arrangements

- (a) PrixCar and an Employee may agree to make an individual flexibility arrangement to vary the effect of clause 31 of this Agreement by allowing the Employee to take Blood Donors leave of up to 4 hours for a maximum of 2 days per year.
- (b) Any arrangement under clause 12(a) must genuinely be agreed to by PrixCar and the Employee.
- (c) PrixCar must ensure that the terms of the individual flexibility arrangement:
 - (i) are about permitted matters under section 172 of the Act; and
 - (ii) are not unlawful terms under section 194 of the Act; and
 - (iii) result in the Employee being better off overall than the Employee would be if no arrangement was made.
- (d) PrixCar must ensure that the individual flexibility arrangement:
 - (i) is in writing; and
 - (ii) includes the name of the employer and Employee; and
 - (iii) is signed by PrixCar and the Employee and if the employee is under 18 years of age, signed by a parent or guardian of the Employee; and
 - (iv) includes details of the terms of this Agreement that will be varied by the arrangement; and
 - (v) states the day on which the arrangement commences.

- (e) PrixCar must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (f) PrixCar or the Employee may terminate the individual flexibility arrangement:
 - (i) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (ii) if PrixCar and the Employee agree in writing – at any time.

13. Consultation on workplace change

- (a) If PrixCar is genuinely considering workplace changes that are likely to have a significant effect on Employees, it must consult with the Union and any Employees who will be affected by any proposal.
- (b) As soon as practicable PrixCar must discuss with the Union and relevant Employees the introduction of the change, the effect the change is likely to have on the Employees, the number of any redundancies, the persons or class of persons likely to be affected and any reasonable alternatives to the change or redundancy. PrixCar must discuss measures to avert or mitigate the adverse effect of the change on the Employees.
- (c) PrixCar must give prompt and genuine consideration to matters raised about the change by the relevant Employees.
- (d) As soon as a final decision has been made, PrixCar must notify the Union and the Employees affected, in writing, and explain the effects of the decision.
- (e) In the event that a Dispute arises in respect to any decision, proposal or consideration to effect any change, the parties agree to follow the disputes procedure in clause 14, and until the Dispute is resolved in accordance with that procedure work will continue in accordance with the status quo.
- (f) A change is “likely to have a significant effect on employees” if it results in:
 - (i) the termination of the employment of Employees; or

- (ii) major change to the composition, operation or size of PrixCar 's workforce or to the skills required of Employees; or
 - (iii) the elimination or diminution of a significant number of job opportunities (including opportunities for promotion or tenure); or
 - (iv) the significant alteration of hours of work; or
 - (v) the need to retrain employees; or
 - (vi) the need to relocate Employees to another workplace; or
 - (vii) the restructuring of jobs.
- (g) With the prior approval of PrixCar and subject to clause 35, the Union may enter PrixCar's premises in order to consult with Employees regarding workplace change.

CONSULTATIVE COMMITTEE

The Consultative Committee will consist of the TWU delegates and one other elected representative from each area of operation covered by this agreement as well as Management and other agreed invitees. A copy of the minutes from the CCM will be forwarded to the TWU Official.

It is agreed Consultative Committee will meet monthly, or as agreed by the committee to review the operation of this Agreement, promoting a more participative culture, continuous improvement within the enterprise and ensuring that the that the spirit of the Agreement is maintained. Minutes will be posted on notice boards no later than two weeks after the meeting to which they pertain under circumstances.

14. 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 Employee(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 PrixCar 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 an employee, provided that the Union delegate is the representative of the Employee's choice.

- (c) If the matter remains in dispute, it must next be discussed with the relevant manager of PrixCar. The relevant Union State Secretary (or his/her nominee) has the right to attend at and participate in this discussion as the representative of an Employee, provided that the relevant Union State Secretary is the representative of the Employee's choice.
- (d) If the matter remains in dispute, it must next be submitted to FWC for conciliation. For this purpose, it is agreed that the action FWC may take includes:
 - (i) arranging conferences of the parties or their representatives at which the FWC is present; and
 - (ii) arranging for the parties or their representatives to confer among themselves at conferences at which FWC is not present.
- (e) If the matter is not resolved in conciliation conducted by the FWC, the Parties agree that FWC will proceed to arbitrate the Dispute and/or otherwise determine the rights and/or obligations of the parties to the Dispute. In relation to such an arbitration, the Parties agree that:
 - (i) FWC may give all such directions and do all such things as are necessary for the just resolution of the Dispute. FWC may exercise powers of conciliation, arbitration and declaratory relief in relation to the Dispute, including all related procedural powers such as those in relation to hearings, witnesses, evidence and submissions.
 - (ii) FWC should apply the rules of evidence that would ordinarily apply to a hearing before FWC under the Act.
 - (iii) Before making a determination, FWC will give the parties an opportunity to be heard formally on the matter(s) in dispute.

- (iv) In making its determination, FWC will only have regard to the materials, including witness evidence, and submissions put before it at the hearing and will disregard any admissions, concessions, offers or claims made in conciliation.
- (f) The decision of FWC 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 FWC against the decision, which must be exercised within 21 days of the decision being issued or within such further time as the Full Bench may allow.
 - (ii) The appeal will be conducted in accordance with the legal principles applying to an appeal in the strict sense.
 - (iii) The Full Bench, or a single member on delegation, will have the power to stay the decision pending the hearing and determination of the appeal.
 - (iv) The decision of the Full Bench in the appeal will be binding upon the parties.
- (g) Until the matter is resolved by agreement, conciliation or arbitration, work will continue in accordance with the status quo. No party is to be prejudiced as to the final settlement by the continuance of work in accordance with this procedure.

Section 3 – Employment Relationship

15. PrixCar Commitment

PrixCar commits:

- (a) to the full-time engagement of its Employees wherever possible;
- (b) subject to PrixCar's commercial considerations and operational requirements, wherever possible, to utilise full-time Employees and owner-drivers to their full capacity before casual or part-time Employees or owner-drivers are engaged or work is contracted out to other companies or businesses;
- (c) to the training of its Employees, in workplace health and safety (including Blue Card) and other professional training as agreed from time to time and the promotion of vocational training and workplace health and safety training.

16. Employee Commitment

The Employees commit:

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

17. Support for technological innovation

The parties to this Agreement recognise the need to keep pace with technological improvements and innovations. To this end:

- The Company may equip vehicles with mobile communications, data, transmission, satellite navigation facilities, computer equipment and external facing cameras.

- The employees must comply with the Company's lawful directions (e.g. phones when operated in vehicles must only be used in hands free mode) and any other legal requirements in use and operation of such equipment.
- Each employee will have responsibility for the security of the equipment of the equipment in his vehicle. In the case of portable or removal equipment, the units must be removed from the vehicle at all times if the vehicle cannot be secured.
- Where necessary, the company will provide appropriate training to employees for the use of new technology and equipment, which is implemented from time to time

Where, any employee is directed by the company to be available for contact on a mobile phone, the company will reimburse the employee up to \$45 per month (*paid weekly*) and up to a similar amount for employees with prepaid arrangements, after the production of an account from the telephone provider. No further payments will be made with regards to mobile phones and calls.

18. Custom and Practice

- (a) For the avoidance of doubt, this Agreement is not intended to alter a custom and practice applicable to PrixCar and the Employees provided that such a custom and practice is agreed to exist.
- (b) Where a custom and practice is agreed to exist, then it must be reduced to writing.
- (c) Any Dispute as to whether a custom and practice exists, or how that custom and practice should be reflected in writing, will be dealt with in accordance with clause 14.

19. Job Security

- (a) The Parties recognise that job security is an important issue for Employees. For its part, PrixCar intends to:
 - (i) Subject to the need to compete effectively in the prevailing business environment and engage appropriately skilled personnel, use its best endeavours to:
 - A. Ensure that job functions will be performed by permanent Employees;

- B. Ensure that it consults with the Union and affected Employees if a decision is taken to outsource work; and
- C. Maximise the work performed by permanent Employees;
 - (ii) Utilise redundancy as a last resort; and
 - (iii) Seek to remain competitive and thereby provide Employees with an opportunity to secure satisfying and rewarding jobs.
- (b) PrixCar will ensure that labour hire workers receive the same rates of pay and conditions as received by Employees at the relevant site.
- (c) PrixCar will ensure that all owner-drivers engaged by it receive a labour rate equal to the applicable wage rate payable for the relevant vehicle utilised by the owner-driver at the site at which they are engaged.

20. Probation Period

- (a) All Employees who are offered permanent employment by PrixCar after the Operative Date will be on a 6 month probation period.
- (b) An Employee will not be subject to a probation period where that Employee is offered permanent employment with PrixCar having been:
 - (i) employed directly by PrixCar as a casual; or
 - (ii) engaged as an owner driver,

On a regular and systematic basis for a period of no less than 6 months.
- (c) This clause will also not apply to casual Employees who elect to become permanent Employees under clause 20d.
- (d) During the probation period, PrixCar or the Employee may terminate the engagement by the giving of 1 weeks notice.

21. Casual Employees

- (a) Casual Employees, other than those employed in New South Wales, will receive a 25% loading on all ordinary hours worked and a 10% loading on all overtime worked.
- (b) Casual Employees in New South Wales will receive a 15% loading on all hours worked plus a further one twelfth (1/12) of their ordinary rate of pay for all ordinary time hours worked.
- (c) Casual Employees will not be entitled to the benefits of clauses 23, 24, 29, 30, and 31.
- (d) Where a casual Employee has been directly employed by PrixCar or engaged through a labour hire company to perform work for PrixCar on a regular and systematic basis for more than 6 months, the Employee may elect to become a permanent Employee, on a like for like basis, of PrixCar within the specific business unit at which the Employee is engaged, in accordance with the Award.

22. Part time Employees

Notwithstanding anything contained in the Award, a part-time Employee will have no entitlement to be paid at overtime rates unless they have worked:

- (a) more than 7.6 hours on a given shift; or
- (b) more than 38 hours in a given week.

23. Notice of Termination

23.1 Notice of termination by PrixCar

- (a) In order to terminate the employment of an Employee PrixCar must give to the Employee the period of notice specified in the table below:

Period of continuous service	Period of notice
1 year or less	1 week

Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

- (b) In addition to the notice in clause 23.1(a), Employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service are entitled to an additional week's notice.
- (c) Payment in lieu of the prescribed notice in clauses 23.1(a) and 23.1(b) must be made if PrixCar does not require the Employee to work during the appropriate notice period. Provided that employment may be terminated by the Employee working part of the required period of notice and by PrixCar making payment for the remainder of the period of notice.
- (d) The required amount of payment in lieu of notice must equal or exceed the total of all amounts that, if the Employee's employment had continued until the end of the required period of notice, PrixCar would have become liable to pay to the Employee because of the employment continuing during that period. That total must be calculated on the basis of the full rate of pay for the hours the Employee would have worked had the Employee continued until the end of the minimum period of notice including:
- (i) the amounts payable to the Employee in respect of those hours, including (for example) allowances, loading and penalties; and
 - (ii) any other amounts payable under the Employee's contract of employment.
- (e) The period of notice in this clause does not apply:
- (i) in cases where the Employee requests a release from the employment prior to the end of the notice period;
 - (ii) in cases where the Employee has engaged in conduct warranting the summary termination of their employment;

- (iii) to Employees engaged for a specific period of time or for a specific task or tasks;
- (iv) to trainees whose employment under a traineeship agreement or an approved traineeship is for a specified period or is, for any other reason, limited to the duration of the agreement; or
- (v) to casual Employees.

23.2 Termination by Employees

- (a) An Employee may terminate their employment with PrixCar at any time by providing (2) two weeks notice of termination.
- (b) PrixCar may make a payment in lieu of the whole or part of the notice period referred to in clause 23.2(a), in which case clause 23.1(d) will apply.

23.3 Return of property

On termination of their employment, for whatever reason, an Employee will immediately return to PrixCar all property belonging to PrixCar which is in the Employee's possession or which is under their control.

24. Redundancy

- (a) A redundancy occurs in a circumstance where PrixCar decides that it no longer requires the position that an Employee has been doing to be done by anyone and that decision leads to the termination of the Employee's employment with PrixCar Services Pty Ltd .
- (b) In a redundancy situation PrixCar :
 - (i) will undertake consultation in accordance with clause 13;
 - (ii) will explore opportunities for suitable alternative employment for the affected Employee(s).
- (c) The selection of employees for redundancies, and the criteria to be applied in making that selection, will be at PrixCar's discretion.

- (d) In the event that a redundancy occurs, the affected Employee will be entitled to a severance payment calculated at the rate of 3 weeks pay per year of service, pro rata for incomplete years of service, up to a maximum of 52 weeks pay. There will be no cap with respect to weeks for drivers currently based in Wagga. For the purposes of this clause, "weeks pay" means the Employee's base rate of pay at the time of termination.
- (e) An Employee will not be entitled to receive a severance payment if PrixCar obtains for them suitable alternative employment. For the avoidance of doubt, such suitable alternative employment can include employment with an employer other than PrixCar.
- (f) The severance payment in clause 24(d) is in addition to:
 - (i) notice or payment in lieu of notice in accordance with clause 23; and
 - (ii) payment for any accrued but untaken leave or days in lieu which are payable on termination.

Section 4 – Wages and related matters

25. Wage Increases

- (a) PrixCar will increase the wages and allowances payable to Employees as follows:
- (i) by 0% effective from 1 July 2016;
 - (ii) by 2.5% or CPI, whichever is greater, effective from 1 July 2017; and
 - (iii) by 3% or CPI, whichever is greater, effective from 1 July 2018;
 - (iv) increases will apply from the first full pay period, on or after, the effective dates.
- (b) Any increases during the Term to the rates of pay or allowances contained in the Award will be absorbed into any over-award payments made to the Employees provided that: allowances payable to Employees will not be less than those payable under the Award unless otherwise stated in this agreement.

26. Superannuation

- (a) PrixCar will make superannuation contributions on behalf of each Employee as required under the *Superannuation Guarantee (Administration) Act (Cth) 1992*.
- (b) During the life of this agreement PrixCar will make superannuation contributions at the rate of 2.50% above the legislated Superannuation Guarantee. For all new employees commencing employment after the 1st July 2016 the superannuation rate applicable for the life of this agreement will be 9.5%
- (c) Subject to clause 26(d), superannuation contributions will be made only into the Fund.
- (d) Any superannuation arrangements that are in place in respect of any Employee as at the Operative Date will be allowed to continue, provided that PrixCar will not object

to, hinder or obstruct any Employee seeking to change those arrangements so as to have future superannuation contributions paid on their behalf into the Fund.

- (e) Any changes to legislative requirements during the life of this agreement will be adopted.

27. Payroll Deductions

27.1 Union Membership

- (a) PrixCar must deduct Union membership fees (not including fines or levies) from the pay of any Employee, provided that:
 - (i) the Employee has authorised PrixCar to make such deductions in accordance with clause 27.1(b);
 - (ii) the Union has advised PrixCar of the amount to be deducted for each pay period applying at PrixCar's workplace and any changes to that amount; and
 - (iii) deduction of Union membership fees will only occur in each pay period in which payment has or is to be made to an Employee. For the avoidance of doubt, Union membership fees will not be deducted from termination payments made to an Employee unless expressly authorised by the Employee in writing.
- (b) The Employee's authorisation for the purposes of clause 27.1(a)(i) must be in writing and must authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union rules) that the Union advises PrixCar to deduct.
- (c) Monies so deducted from an Employee's weekly pay will be remitted to the Union on a monthly basis, together with all necessary information to enable the reconciliation and crediting of subscriptions to Employees' membership accounts, including, but not limited to, names, addresses and phone numbers.

- (d) The Union must advise PrixCar of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice must be in the form of a schedule of fees to be deducted specifying weekly, fortnightly, monthly or quarterly as the case may be. The Union must give PrixCar a minimum of 2 months' notice of any such change.
- (e) An Employee may at any time revoke in writing an authorisation to PrixCar to make payroll deductions of Union membership fees.
- (f) The above provisions will take effect from the beginning of the first pay period to commence on or after 2 months after the Operative Date.

27.2 Other Deductions

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

28. Uniforms and Protective Clothing

- (a) PrixCar will provide Employees with appropriate uniforms, protective clothing and personal protective equipment (PPE) for the work the Employees are performing.
- (b) The Employees must wear the uniforms and protective clothing provided to them.
- (c) The Employees will utilise any PPE provided to them by PrixCar. However, if an Employee has an objection to doing so, the objection will be dealt with in accordance with the dispute resolution procedure in clause 14.
- (d) Employees must not alter, modify or change the appearance of uniforms, protective clothing and PPE provided to them by PrixCar 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. Employees must not alter, modify or change the appearance of uniforms provided to them by PrixCar in a manner or to an extent which would hinder or deface company identification.
- (e) Employees must keep all uniforms, protective clothing and PPE in a clean, neat and tidy condition.
- (f) Uniforms and protective clothing will be replaced by PrixCar 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 an Employee on termination of employment.

28.2 Licences

In the event that a company drivers licence becomes due for renewal in the Sydney operation, the company will reimburse the driver the cost for the three year term offered by the New South Wales Roads and Maritime Service. This is not inclusive of the professional fees.

Section 5 – Leave and holidays

29. Annual Leave
29.1 Cashing out permitted

- (a) The intention of this clause is to allow Employees the option to cash out accrued annual leave if it is not practical for them to reduce their leave accrual through the taking of annual leave in a timely manner.
- (b) To be eligible to cash out annual leave an Employee must have:
- (i) 8 weeks or more accrued annual leave at the time of making the application; and
 - (ii) taken a minimum of 2 weeks annual leave in the 6 months prior to making the application.
- (c) An Employee can apply to cash out annual leave according to the following table:

Amount of accrued annual leave	Amount of leave that may be cashed out
8 weeks	No more than 2 weeks
More than 8 weeks and up to 12 weeks	No more than 3 weeks
More than 12 weeks and up to 16 weeks	No more than 4 weeks
More than 16 weeks and up to 20 weeks	No more than 6 weeks
More than 20 weeks	No more than 10 weeks

- (d) PrixCar must not place undue pressure on an Employee to cash out the Employee's annual leave.
- (e) Notwithstanding clause 29.1(b), an Employee may also apply to cash out annual leave at any time for extraordinary reasons such as financial hardship. The onus will be on the Employee to demonstrate the reasons, to PrixCar's reasonable satisfaction.
- (f) Payment in lieu of annual leave will be calculated on the full amount that would have been payable to the Employee had the Employee taken the leave in respect of which payment is made.
- (g) Under no circumstances must PrixCar agree to an Employee's request to cash out annual leave if it would result in the Employee's accrued annual leave entitlements being less than 4 weeks.

30. Personal Leave

Employees will be entitled to personal leave in accordance with the NES.

An employee will be paid out 20 days of accrued personal leave upon resignation or redundancy subject to:

- i. Completion of 5 years fulltime employment with the company and;
- ii. At the time of resignation and redundancy has Personal Leave entitlements in excess of 20 days;
- iii. Will not be paid on summary dismissal.

Where an employee dies all accrued Personal Leave entitlements shall be paid out to the next of kin in accordance with the relevant Will or consistent with the direction of the Executive of the Estate.

31. Blood Donors Leave

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

Section 6 – Safety and related matters

32. Chain of Responsibility

- (a) PrixCar 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) The Employees must:
 - (i) take all reasonable steps to assist PrixCar meet the obligations in clause 32(a); and
 - (ii) comply with any obligations imposed on them by the legislation referred to in clause 32(a).
- (c) Subject to prior notification and approval, PrixCar must meet the cost of any medical or other examination, test or check (of any description), licensing or registration fee or training requirement in respect of any driver who is required by PrixCar to obtain a qualification or meet any eligibility criteria to perform non-standard driving hours in accordance with a chain of responsibility law.

33. Safe System of Work

- (a) PrixCar and the Employees will take all reasonable steps to ensure that all work performed by Employees is performed in accordance with:
 - (i) any workplace health and safety (WH&S) legislation (and codes of practice arising under such legislation) and chain of responsibility legislation that is in force in a State or Territory where work is required to be performed by Employees (to the extent that any such laws are applicable to the safe performance of work by employees of PrixCar); and
 - (ii) a safe system of work in accordance with clause 33(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.

34. WH&S Committees

PrixCar will ensure that all members of its WH&S committees are provided with the appropriate and accredited WH&S training, as required under applicable legislation.

Section 7 – Union Matters

35. Union Recognition

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

36. Union Delegates

36.1 Identification of delegates

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

36.2 Delegates' powers

- (a) PrixCar 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 PrixCar that Union delegates speak on behalf of the Union members in the workplace;
 - (iii) bargain collectively on behalf of Union members in the workplace;
 - (iv) consultation on matters affecting Union members;
 - (v) paid time off to represent the interests of members to the Company, but only where such paid time off is provided for in this Agreement;
 - (vi) address new Employees about the benefits of Union membership at the time that they commence work with PrixCar in accordance with clause 37.2;
 - (vii) participate in an induction process under the Union induction clause in this Agreement in accordance with clause 37.2;
 - (viii) discuss Union and workplace matters with all Employees at the workplace who consent to such discussions, which will take place during breaks or outside of business hours;
 - (ix) reasonable access to a telephone, facsimile, photocopying, internet and email and office facilities for the purpose of carrying out work as a delegate and consulting with workplace colleagues and the Union; and
 - (x) place Union information on a notice board in a prominent location in the workplace.
- (b) PrixCar 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 Employees in the Union and its activities;
 - (iv) to be approachable and helpful to Union members in the workplace;
 - (v) to seek out and encourage other Union members to take on roles and responsibilities;
 - (vi) to provide up to date and relevant Union information to Union members in the workplace;
 - (vii) to represent the views of the members;
 - (viii) to represent Union members fairly and accurately in negotiations and in relation to individual grievances;
 - (ix) subject to clause 36.3(e) to represent Union members in proceedings before FWC, courts or similar tribunals; and
 - (x) to keep in regular contact with the Union Organiser and other Union representatives in the workplace about matters pertaining to the workplace.
- (c) Other than as expressly specified, clause 36.2(a) does not confer on Union delegates any additional remuneration, paid leave, or other employment benefit, above and beyond the remuneration, leave and benefits specified in other clauses in this Agreement.

36.3 Delegates' leave

- (a) PrixCar will provide Union delegates with paid leave of up to 8 days per annum to attend Union delegates' meetings, Union training, the annual Union delegates conference or to take part in Union campaign activity.
- (b) In addition to the leave referred to in clause 36.3(a), PrixCar will make available a total pool of 5 days paid leave, nationally, to be used by delegates to carry out their

functions, including discharging the responsibilities of any positions they hold with the Union.

- (c) To ensure the smooth running of PrixCar operations, Union delegates will be released by PrixCar for paid leave on the following basis:
 - (i) for yards with 20 or fewer Employees - 1 delegate;
 - (ii) for yards with more than 21 Employees but fewer than 200 Employees - 2 delegates;
 - (iii) for yards with greater than 200 Employees - 3 delegates.
- (d) Prior to PrixCar agreeing to release a delegate, the Union must provide PrixCar with no fewer than 7 days notice in writing of such a request for the release of delegates.
- (e) In addition to the leave referred to above, delegates will be able to take paid leave to represent Union members in proceedings before FWC or similar tribunals provided that:
 - (i) the request for any leave is reasonable;
 - (ii) clause 36.3(c) will not apply to the release of delegates under this clause 36.3(e); and
 - (iii) PrixCar will only release a delegate if the proceedings relate to or affect a site at which the delegate works;
 - (iv) a delegate will only be released to the extent that they are directly involved in the matter the subject of the proceedings or are required to advocate and/or provide instructions for or in respect of the matter the subject of the proceedings, or are assisting a Union member or members directly affected by the matter the subject of the proceedings; and
 - (v) a delegate will only be released for the duration of the proceedings, plus reasonable travel time in attending the proceedings.

- (f) PrixCar 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.
- (g) Delegates who take leave under this clause will be paid their average earnings for the duration of the leave.

37. Compulsory induction training and related matters

37.1 New employees

A new Employee commencing work with PrixCar will be trained in:

- (a) Workplace 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 PrixCar to meet its commitments to its customers; and
- (e) the Blue Card Induction Program.

37.2 Union Induction

- (a) In furtherance of the rights of Employees to join the Union and the rights of the Union to recruit Employees, and to inform and educate Employees about this Agreement, the Parties agree that representatives of the Union will be given an opportunity to induct all new Employees who commence with PrixCar 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, at the request of the Union;
 - (ii) all inductions will contain no more than 15 Employees in each group;

- (iii) a room which is appropriate for inductions (such as a training room) is dedicated to that purpose;
 - (iv) 30 clear minutes will be allowed for the induction to take place;
 - (v) Employees will receive no less than their usual or (where they have yet to commence work) their proposed rate of pay for the duration of the induction;
 - (vi) prior to the induction there will, at the Union's request, be posted in a prominent position accessible to all Employees a Union generated notice describing the purpose of the induction and setting out any other relevant information.
- (b) Without diminishing the intent of clause 37.2(a), PrixCar 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 PrixCar conducts Employee inductions, or in conjunction with other Union training.

37.3 Ongoing training

- (a) All Employees elected to WH&S Committees and/or as WH&S Representatives will attend a committee training course (approved under the relevant State or Territory Workplace Health and Safety legislation) as soon as practicable, but within 3 months of being elected to such a position. Further, PrixCar will establish an WH&S Committee in accordance with any requirements for establishing an WH&S committee under the relevant State or Territory Workplace Health and Safety legislation (ignoring any threshold number of workers required under the relevant statute or regulations before an WH&S committee must be so elected and established).
- (b) All existing Employees who at the Operative Date have not been trained in the Blue Card Induction Program will be trained in the Blue Card Induction Program. Such training is to occur within 3 months of the Operative Date, and will be conducted by a licensed Blue Card training provider, in conjunction with PrixCar and the Union.

- (c) PrixCar will ensure that all Employees that perform driving duties, together with allocation staff and fleet controllers, are competent to manage fatigue, which may include, at PrixCar's discretion, providing the Employees with the opportunity and time to attend driver fatigue management programs.
- (d) Subject to prior notification and supervisor approval, PrixCar will pay for the training courses and programs referred to in this clause 37.3 and all other reasonable expenses, which would otherwise be incurred by attendees of the course. Further, attendees will receive no less than their usual pay whilst attending such courses. For the avoidance of doubt, no training will be paid for unless prior express approval is given by PrixCar to the training being undertaken by relevant Employees.
- (e) Subject to any statutory obligations binding on PrixCar to the contrary, it will be entirely a matter for PrixCar to determine what person, firm, organisation or company provides Employees with any training required under this Agreement.

38. Fleet Operators

38.1 Notification

- (a) PrixCar will provide the Federal Secretary of the Union (or his nominee), on a monthly basis, a written list of all Fleet Operators PrixCar has engaged over the preceding 2 months.
- (b) When PrixCar engages a new Fleet Operator PrixCar will inform Union of:
 - (i) the name of the Fleet Operator who it is proposed will perform the work;
 - (ii) the type of work proposed to be performed by the Fleet Operator;
 - (iii) the likely number of employees the Fleet Operator may use to perform the work; and
 - (iv) the likely duration of the engagement of the Fleet Operator.
- (c) Where necessary, the Union may raise any concerns it may have with PrixCar with respect to the engagement of the Fleet Operator. Where a Dispute arises with respect

to the engagement of any Fleet Operator, clause 14 will have no application and the dispute must only be dealt with as set out below:

- (i) any concerns over the engagement of the Fleet Operator must first be discussed between the Union and the PrixCar Transport Operations Manager;
 - (ii) if the matter remains unresolved, the concerns must be discussed between the Union and the relevant PrixCar Regional Manager;
 - (iii) if the matter continues to remain unresolved, the matter must be discussed between the Union and the relevant General Manager whereby, after having considered the matters raised by the Union, the Divisional General Manager will determine the dispute, with such determination being final.
- (d) The resolution of a Dispute in accordance with clause 38.1(c) will not preclude any Party raising the subject of the dispute at one of the meetings referred to in clause 38.5.

Fleet utilisation and contracting out

Work shall be allocated in the following manner:

- a) The company/fleet/the sub-contractors currently engaged under formal contracts of carriage with Prixcar (The "sub contractors")
- b) Other independent contract carriers
- c) Other car carrying businesses

38.2 Engagement of Fleet Operators

- (a) PrixCar is committed wherever possible to only utilising Fleet Operators who utilise employee drivers. PrixCar will only engage Fleet Operators who engage non-employee drivers where it is not practicable to engage a Fleet Operator with only employee drivers.
- (b) Each new Fleet Operator will be required to execute a freight cartage agreement (FCA) with PrixCar which must contain the clauses set out in Part D of this Agreement. No

term of the FCA or any other agreement between or relating to PrixCar and the Fleet Operator must alter the operation of the clauses set out in Part D of the Agreement.

- (c) PrixCar will require that Existing Fleet Operators also execute a FCA. As long as PrixCar has pursued that requirement through and in accordance with the process set out in clause 42.4 and has reported (in accordance with clause 42.4) any failure to procure execution of a FCA, then PrixCar will be taken not to be in breach of its obligation to require execution under this clause.
- (d) Prior to any Fleet Operator commencing on site, each employee of the Fleet Operator (including Fleet Operators engaged to perform long distance work that attend on site but only in so far as is practicable for PrixCar to do so) must participate in a site induction. During that induction a Union official will be given an opportunity to address the Fleet Operator's employees for a maximum of 30 minutes.

38.3 Rates

- (a) Where PrixCar engages a new Fleet Operator, PrixCar will require that the Fleet Operator pay its employees, whilst performing work on behalf of PrixCar :
 - (i) in New South Wales – the rates of pay that would apply to them if they were Employees directly employed by PrixCar at the yard where the Fleet Operator is performing the work; and
 - (ii) elsewhere - a rate of pay that is at least 7.5% higher than the applicable Award rate.
- (b) PrixCar will ensure that all Existing Fleet Operators pay their employees the following rates of pay:
 - (i) in New South Wales - the rates of pay that would apply to them if they were Employees directly employed by PrixCar at the yard where the Fleet Operator is performing the work; and
 - (ii) elsewhere -
 - A. from 1 July 2016, 12.5% above the applicable Award rate

- (c) Nothing in clause 38.3(b) is intended to allow an Existing Fleet Operator to reduce the rates being paid to its employees, and PrixCar agrees not to allow the clause to be used for that purpose.

38.4 Compliance

- (a) As soon as practicable after the Operative Date, PrixCar will send a letter to all Existing Fleet Operators (other than those engaged solely to perform Long Distance Work):
 - (i) advising them of PrixCar's requirements of them, consistent with this clause 38;
 - (ii) enclosing a copy of the FCA for their signature and return; and
 - (iii) enclosing a questionnaire (in a form agreed between PrixCar and the Union) for them to complete and return.
- (b) PrixCar will also send the questionnaire referred to in 38.4(a)(iii) to Existing Fleet Operators who are engaged to perform Long Distance Work.
- (c) As soon as practicable after it has been able to collate the feedback received through the questionnaires referred to in clauses 42.4(a)(iii) and 38.4(b), PrixCar will provide the Union with a report on that feedback, provided that such a report will not be required to identify particular companies but must at the least contain information capable of providing a meaningful basis for the consultation process set out in 42.5. The Union will be at liberty to make that report available to delegates, and the report may be discussed at the next State meetings held pursuant to clause 38.5.
- (d) As soon as practicable after it has provided the Union with the report referred to above, PrixCar will hold a meeting in each State with the State Secretary of the Union, or his or her nominee(s), plus 1 delegate to discuss the feedback received through the questionnaires. During this meeting, which will be held on a strictly private and confidential basis:
 - (i) the State Secretary (or his or her nominee(s)) and the delegate will be provided with access to the completed questionnaires, but PrixCar will not be required to provide photocopies of them; and

- (ii) the State Secretary and delegate will be informed of which Existing Fleet Operators have not signed a FCA.
- (e) The Union undertakes to ensure that the State Secretary (or his or her nominee(s)) and the delegate in each State maintain in strictest confidence the information provided to them during the meeting referred to above, including the contents of the questionnaires.
- (f) PrixCar will report to the Union the outcome of the audits referred to in clause 38.6(c). PrixCar will also provide to the Union upon request any information and/or documents which PrixCar is authorised to provide under the terms of the FCA.
- (g) Where PrixCar becomes aware that a Fleet Operator has not, or may not have, complied with a requirement of the FCA, PrixCar will investigate the alleged non-compliance and, where necessary, take measures to have the Fleet Operator rectify any breach of the FCA. PrixCar will consult with the Union about the measures it has taken in these circumstances. Any information received by the Union during the course of such consultation will be treated in the strictest confidence by the Union if the action relates to non-compliance or potential non-compliance with one or more of the provisions of the FCA set out in Part D.

38.5 Consultation

- (a) For the purposes of allowing for consultation between PrixCar and the Union over the use of Fleet Operators and other outside hire, PrixCar will, in consultation with the Union, organise for meetings of delegates and PrixCar management to occur in each State of Australia in (or as close as is practicable to) June and October 2016, April and September 2017 and April 2018 for the purpose of reviewing:
 - (i) the compliance of the Parties in meeting the terms of this Agreement regarding PrixCar's engagement of Fleet Operators, owner drivers and labour hire personnel;
 - (ii) any issues, concerns or grievances arising from PrixCar's engagement of Fleet Operators, owner drivers and labour hire personnel; and

- (iii) any measures that may assist in improving job security, safe systems of work and productivity and efficiency that arises from PrixCar's engagement of Fleet Operators, owner drivers and labour hire personnel.
- (b) Delegates will be authorised to attend the meetings as follows:
 - (i) for one of the meetings in each year, all delegates will be able to attend; and
 - (ii) for the other meeting in that year, delegates will be released in accordance with clause 36.3(c).
- (c) The entitlements under clause 38.5(b) are in addition to those under clause 36.3.
- (d) Delegates attending the meetings referred to in clause 38.5(a) will be paid their average earnings for the duration of the leave

38.6 Application of clause

- (a) This clause 38 will only apply to Fleet Operators who carry full loads on behalf of PrixCar.
- (b) This clause 38 does not apply to Fleet Operators who are engaged on an ad-hoc basis or to other Fleet Operators as may be agreed from time to time with the relevant Branch Secretary of the Union.
- (c) Other than as expressly specified or in respect of the questionnaire referred to in clause 38.4(b), this clause 38 does not apply to Fleet Operators who are engaged solely for the purposes of performing Long Distance Work on behalf of PrixCar, provided that PrixCar undertakes to conduct random audits of such Fleet Operators to ensure that they are compliant with their Award obligations.
- (d) For the purpose of this clause 38, a reference to "*or his or her nominee(s)*" will be limited to an official or employee of the Union.

38.7 Dispute Resolution

- (a) With the exception of clause 38.1(c), where a Dispute arises between PrixCar, the Employees and the Union with respect to compliance with this clause 38, the Dispute will be dealt with in accordance with clause 14.

39. Picnic Day

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

PART D – FREIGHT CARTAGE AGREEMENT CLAUSES

40. Contractor Obligations

In performing the Services, the Contractor will:

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

F. the cumulative effects of fatigue over more than one day; and

G. the effect of time of day or night on fatigue,

and such records must be kept on a daily basis and where practicable handed to the relevant manager/supervisor at the end of each day and must be declared and signed by the Contractor as true and correct;

- (iii) all Vehicles are registered as required and all necessary insurances are in force in respect of the Vehicles;
 - (iv) it has obtained and will maintain in force all licences and permits as are required by persons engaged in its business and who perform the things it is required to do by this Agreement and will comply with the terms of all such licences and permits;
 - (v) without limiting the generality of (i) and (iv) above, it maintains a Workers' Compensation Certificate of Currency for all drivers and other relevant employees performing work related to the provision of the Services;
 - (vi) without limiting the generality of (i) above, it complies with its obligations and made all payments required under Superannuation legislation including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1992* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth);
 - (vii) has paid and will continue to pay all taxes and fees relating to the ownership or use of the Vehicles;
- (b) maintain good industrial and employee relations with its drivers, other relevant employees and industrial organisations or bodies, to ensure performance of the Services in accordance with this Agreement;

- (c) immediately inform PrixCar's representative of, and take all actions necessary to prevent or bring to an end, threatened or actual industrial action or any dispute or other matter affecting the drivers or other relevant employees, agents or contractors which may adversely impact the performance of the Services;
- (d) subject to (e), below, directly employ all of the drivers it utilises to perform work related to the Services
- (e) not engage owner drivers to perform work related to the Services unless it has the express written consent of PrixCar to do so, such consent to be given only where the Contractor is able to demonstrate to the satisfaction of PrixCar that the work cannot be practicably performed by employee drivers;
- (f) ensure that where it has received the consent required by (e), above, it engages only bona fide owner-drivers and will not permit any sham contracting arrangements and agrees that all compliance, records keeping, training and rates provisions of this agreement apply to those owner-drivers as if they were employees;
- (g) not contract out all or any part of the work related to the Services and must immediately inform PrixCar if it is unable, or has reason to believe it will become unable, to perform all or any part of the work related to the Services.

40.1 Contractors Statement

1.1 In addition to all other obligations arising pursuant to this Agreement, the Contractor must provide to PrixCar, at the time that it issues an invoice to PrixCar in accordance with this Agreement, a written statement confirming that:

- (a) all remuneration payable to the Contractor's employees and/or owner-drivers for work done under this Agreement, during the period to which the invoice relates, has been paid;
- (b) all worker's compensation insurance premiums payable by the Contractor for the work done in connection with this Agreement have been paid and that a valid and accurate Certificate of Currency (or its equivalent) has been maintained; and

- (c) the Contractor is either registered, or is not required to register, as an employer under the *Pay-Roll Tax Act* and that all payroll tax payable by the Contractor for the relevant employees and/or owner-drivers during the term of this Agreement has been paid; and
- (d) the Contractor has complied with and made all payments required by the Superannuation legislation including the *Superannuation Guarantee (Administration) Act 1992 (Cth)*, the *Superannuation Guarantee Charge Act 1992 (Cth)*, the *Superannuation Industry (Supervision) Act 1992 (Cth)* and the *Superannuation (Resolution of Complaints) Act 1993 (Cth)*.

1.2 Where the Contractor fails to provide such a statement:

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

40.2 **Records Audit**

1.1 The Contractor must provide to PrixCar on request the Contractor's Records, for the purposes of enabling PrixCar to perform an audit.

1.2 The Contractor agrees that the Records may be made available by PrixCar to the Transport Workers Union of Australia, for their inspection. In such circumstances the Contractor agrees that it will take reasonable steps to ensure that its employees are made aware of the following:

- (a) the identity of PrixCar and how to contact the PrixCar Authorised Representative;
- (b) that the individual employee is able to gain access to the information;
- (c) the purpose for which the information is collected;
- (d) the organisation to which PrixCar may disclose the information;
- (e) any law that requires particular information to be collected; and

(f) the main consequences (if any) for the individual if all or part of the information is not provided.

1.3 The Contractor agrees that the primary purpose for which PrixCar is conducting the audit is to ensure that the Contractor has abided by its Award obligations in relation to the payments it makes to its employees and that it has abided by its legislative obligations including, but not limited to, the payment of superannuation, obligations arising under the relevant workplace health and safety legislation and compliance with legislative driving hours.

1.4 Where, after an inspection has been conducted by PrixCar, PrixCar is satisfied that the Contractor has not complied with one or more of its obligations pursuant to an Award, legislative obligations or any of its obligations contained in this agreement, the Contractor shall be issued with a breach notice by a PrixCar representative, requiring rectification of the breach within 7 days.

1.5 Where the Contractor continues with the breach after having been issued with the breach notice or commits a further breach, PrixCar will terminate this agreement in accordance with the relevant terms of the contract.

1.6 For the purposes of this clause:

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

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

40.3 Compulsory Induction Training

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

40.4 Site Rates

The following clause must be contained in all Freight Cartage Agreements applying to Fleet Operators (including Existing Fleet Operators) providing Services at or in connection with a PrixCar site or sites located within NSW/ACT:

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

The following clauses must be contained in all Freight Cartage Agreements applying to Fleet Operators (excluding Existing Fleet Operators) providing Services at or in connection with a PrixCar site or sites located outside of NSW/ACT:

- 1.5 The Contractor must pay employees, performing work relating to Services to be provided under this Agreement, at rates of pay that are at least 12.5% higher than those applicable under the relevant Modern Award (the "Modern Award").
- 1.6 Nothing in this clause permits the Contractor to reduce the rates paid to its employees and the Contractor agrees that it will not reduce rates paid to its employees even where such rates exceed those specified in clause 1.1 above.
- 1.7 Clause 1.1 above will not apply where the work being performed is Long Distance Work.
- 1.8 For the purposes of this clause Long Distance Work means any trip greater than 500 kilometres.

41. Licences and Training

All employees shall possess appropriate licenses and be trained in all aspects relevant to the performance of their work tasks. Such training shall be at the company's expense.

The company will provide employees with an allowance of up to \$432.60 (indexed as per wage % increases) per annum to pay for work related expenses such as licences and professional fees. That allowance will be payable only upon production of receipts were verifiable by management.

Drivers who are workplace health and safety delegates will be entitled to attend training In Work Health & Safety (WH&S) of up to 2 days per annum. Such an entitlement will not derogate from any rights held under state legislation.

42. Weekend Coverage

The nature of this operation requires continuous utilisation of assets and such the employee base has agreed to schedule the requirements to suit the company's needs equitably, ensuring adherence of fatigue management and quality of lifestyle. If for any reason either party needs to change the previously agreed schedule, then a 24 hr notification period is required.

43. Rostered Days Off

RDO's in excess of (10) ten days will be paid out twice a year in July and December.

PrixCar will provide 48 hours' notice in the event of:

- Industrial action directly outside the control of PrixCar that impedes our customer's ability to provide freight

Or

- An act (or acts) of terrorism that directly impede our customers ability to provide freight.

Flexibility with RDO's during extraordinary shut down at our customer's plants i.e. – one day RDO, one day work or as otherwise mutually agreed between both parties.

Issues associated with the payment of RDOs can be pursued through a local agreement to apply within a single state.

44. Employment Commitment to Quality

PrixCar and the employees covered by this Agreement commit to the process of providing a continuous quality service to customers. The parties agree that it is an important part of the employee's job function to ensure that the Company presents itself well to customers and the general public at all times.

- a) Both the interior and the exterior of the vehicle allocated to the employee should be clean neat and tidy. The employees accept that it is his/her responsibility to perform the interior cleaning of their normally allocated vehicle on each trip for CPK paid drivers as well as clean the exterior of the vehicle weekly or as deemed necessary. Trucks that operate on hours and overtime will be allocated time for cleaning both interior and exterior as deemed necessary.
- b) This clause gives specific recognition to the customer service requirements and PrixCar's policy for the presentation of clean vehicles in all our operations.
- c) All drivers and yard persons are to wear the issued uniform during work time, including weekends.
- d) It is the responsibility of all drivers and yard persons to ensure paperwork standards are met.
- e) Commitment to ensure all customers vehicles is surveyed to protect the company from all potential liabilities. Assist Company to identify and eliminate the root cause of transit damage. All damages to vehicles conveyed and/or equipment must be reported in writing on the appropriate form to the operations office no later than the day following the occurrence.
- f) All drivers shall possess a current Drivers License relevant to the type of vehicle used to perform their duties for the Company. License checks will be conducted twice weekly.
- g) All yard persons shall possess the appropriate training to be competent in the driving functionality of vehicles within the yard and so comply with the Workplace Health and Safety Act.
- h) Observe and Adhere to all Company policies detailed in the Driver Handbook.
- i) All employees have a role in ensuring the safety and reliability of their allocated truck. Prior to commencing each trip all drivers are required to carry out a pre-trip check as follows:
 - Check fuel, oil and water levels.
 - Check tyres and visually check wheel nuts.
 - Check lights, indicators and horns.
 - Check brakes
 - Steering
 - Overhead and trailer structure.
 - Check windscreen washers and wipers.
 - Check all documentation and tools required for the job available.
 - Check that the load is secure and all securing mechanisms are intact
 - (All items are required under the Truck safe industry Accreditation)
- j) Commit to the process of maintaining accreditation for:
 1. The Trucksafe Accreditation program
 2. National Fatigue/Mass Management, Self – Accreditation Programs.
 3. Australian Standard ISO 9001.
 4. Environmental System Standard of ISO14001.
 5. Total PrixCar Business Systems.

45. Anti-Discrimination

It is the intention of the parties to this agreement to seek to achieve the object in section 3 (F) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, Transgender identity and age.

Paragraph (B) only applies where the agreement contains a dispute resolution procedure:

B) It follows that in fulfilling their obligations under the dispute resolution procedure set out in this agreement parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this agreement 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 agreement which, by its terms of 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 have been involved in a complaint of unlawful discrimination or harassment.

D) Nothing in this clause will be taken to affect

- Any conduct or act which is specifically exempted from anti-discrimination legislation;
- Offering or providing junior rates of pay to persons under 21 years of age;
- Any act or practice of a body established to propagate religion which is exempted under section 56 (d) of the Anti – Discrimination Act 1977;
- A party to this agreement 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.

46. NSW Allowance

In addition to a NSW Regional and Linehaul allowance of \$25 per week including RDOs but excluding annual leave, sick leave and work cover leave will be payable to NSW drivers completing long distance work

47. Breakdown

In the event of vehicle breakdown payment will be made after one hour and with a maximum of 8 hours in a 24-hour period, only if the trip has been lost.

Trip Cancellation

If a driver presents at the start of a shift and that shift is subject to cancellation, the following will apply:

- a) A casual driver will be paid a four- hour call out fee.
- b) A permanent driver shall be paid as per the PrixCar Heads of agreement and the Transport Industry (state) Awards

Waiting Time

- a) In the event of a vehicle break down payment will be made after one hour and with a maximum of 8 hours in a 24hour period, only if the trip has been lost. (For example: if a driver is delayed in his trip by 6 hours, and ultimately finishes his trip, then he shall be paid for the trip plus the 5 hours payment.
- b) Where an employee is waiting to start a trip they shall be paid an hourly rate for the following with the maximum of 8 hours:
 - i. Wait for more than 1 hour after a pre-ordained changeover time that has been confirmed by his/ her driver manager prior to trip departure.

48. Hours of Work

48.1 Spread of hours

The ordinary hours of work shall be an average of 38 per week to be worked between the hours of 5.00am and 7:00pm Monday to Friday.

Each employee shall have a fixed starting time, which are only be vary by one weeks notice, provided that an employee's starting time for any day maybe varied without penalty by:

- Agreement of the employer and employee or;
- The employer by up to 1 hour either side of the fixed starting time provided notice is giving at the earliest possible opportunity to the employee prior to completing work on the previous day.

48.2 Five days work in four

Clause 49.2 only applies to operations conducted solely in the state of Western Australia. Where any employee and an employer agree, an employee may work up to 10 ordinary hours (exclusive of meal brakes) on any four days within a normal working week (Monday to Friday) in addition an employee for working each day of 10 ordinary hours, plus 2 hours overtime, shall receive a meal allowance.

Should an employee agree to work four 10hour days within a normal working week as per the above clause, then there shall be no obligations on the employer to provide work or pay wages to the employee for the fifth day.

If by agreement of the employer and the employee the employee works for such fifth day as described in this sub clause then the payment of such wages for such fifth day shall be paid at the rate of time and one half for the first eight hours and thereafter at double time. Work required on any fifth day shall be offered in the first instance to permanent employees.

48.3 Meal time and overtime meal break

Meal times are to meet operational circumstances; All employees agreed to forego provisions of sub clause 36.1.1 B 36.1.1 C and 36.1 .3of the 98 award.

It is accepted that each employee will take a meal break each day they work of a duration of 30 minutes which shall be unpaid (this does not apply to bona fide the shift workers).

Staggered meal breaks, commencement times and periods of lunch breaks will be determined by the employee and supervisor depending on work constraints I.e. completion of current job function in conjunction with the stipulated times.

Overtime meal breaks - employees forego the provisions of clause 36.2, 36.2.1, 36.2.2 of the award and will be paid a \$17.50 meal allowance.

48.4 Rest period after overtime

For yard duties only, the employer and employee have the right to reduce the minimum 10 hours break, subject to Workplace Health & Safety standard in legislation or regulations, between the termination of work on one day and commencement of work on the next day to an 8 hours Minimum, and waive the existing conditions contained in clause 37.3 of the award, provided that:

- Need a party felt a lesser period was unreasonable or unsafe
- Both parties fully agreed to a lesser period
- Either party retain the right to reduce a lesser period to be taking
- The employer could not insist on an employee taking a lesser period; and – in employee could not insist on taking a lesser period.

Should complete Conformance not be reached on any of the above-mentioned conditions, and each occasion would stand-alone and be determined on its merits, the provisions of clause 37.3 of the award would apply fully and without variation.

49. Counselling

An employee whose behaviour or performance is considered unacceptable or requiring improvement shall be counselled as to the company's expectations. Any such counselling may constitute a verbal discussion which is recorded on the employee's personal file or constitute a formal first written warning at which point the employee may wish to have a delegate or representative present during the discussion.

In general, employees will receive at least one written warning prior to receipt of a final warning.

The manager, employee and the employee representative should sign the warning letter. Copies may be kept on the employees personal file. Except in unusual circumstances the letter will cease to have an effect after 12 months.

Prior to any dismissal, an employee will be given a final warning in writing and advised of the consequences of the employee refusing to rectify the situation, including all possible actions of management, such as termination of employment.

Summary dismissal – the employer reserves the right to dismiss any employee without notice for gross – serious misconduct and in such cases any entitlements are to be paid up to and including the time of dismissal only as defined in the relevant award.

Great/serious misconduct includes: a breach of contract amounting to repudiation of the contract, dishonesty, malingering, inefficiency and neglect of duty, verbal or physical abuse of other parties, intentional damages to company or customer property, intoxication or drug abuse while on duty, or any unlawful act.

At the discretion of the company an employee involved in misconduct (other than acts of dishonesty) maybe stood aside on base rates pending investigation.

50. Previous Agreements Rescinded and/or Varied

1. This Agreement shall replace and rescind all previous Agreements covering the parties to this Agreement.
2. This Agreement provides a complete and final resolution of all claims, whether specifically covered in /by this Agreement or not, relating to terms and conditions of all employment for

all Employees employed under the terms of this Agreement. It is not open to any Party to this Agreement to raise additional matters relating to employment and employment conditions during the life of this Agreement.

3. This Agreement shall replace, subject to the provision of the Act, any other workplace agreement between the Company and the Union, which has effect in relation to the Employees.

51. Relationship to the Awards & National Employment Standards

1. This agreement incorporates the terms of the Road Transport and Distribution Award 2010 (the RT&D Award) & the Road Transport (Long Distance Operations) Award 2010 (The LDO Award).
2. In incorporating the abovementioned Award terms into this agreement they are to be read as altered to incorporate necessary changes resulting from them being provisions of an agreement rather than provisions of an award. For example, the words "this award" would become "this Agreement".
3. Where there is any inconsistency between a term in this Agreement and a term in the Awards referred to in 51.1, which have been incorporated, the term in this Agreement shall take precedence to the extent of the inconsistency.
4. This agreement shall be read in conjunction with the National Employment Standards (NES), and nothing in this agreement operates to provide an entitlement less than the NES.

52. Intent, Change and Continuous Improvement

It is the intent of the Parties to achieve fundamental and ongoing reform of the Company's employment arrangements and to ensure this agreement or any other general employment arrangement does not impede the process of ongoing change to continuously improve the viability efficiency and productivity of the Company. The parties are committed to pursue all opportunities to adopt the world's best practices through modern technology and continuous improvement to all aspects of Company operations. Nothing in this agreement shall impede the process of ongoing change to continuously improve the viability, efficiency and productivity of the Company.

It is recognized by the Company that job security, career paths, potential high earning capacity, communications/Employee involvement, co-operation, non discrimination, equal employment opportunity, equitable, transparent and safe employment arrangements and relationship are standards expected by Employees and the Union which the Company will strive to achieve at all times.

53. Workplace Health Safety & Environment

The company and its employees will ensure that the health, safety and welfare of employees are area of primary concern and through consultative processes will continue to work towards:

- Safe working conditions
- Observance of all legal requirements, codes of practice and regulations.



SIGNATORIES TO THE AGREEMENT

The following organisations and their members are parties to this Agreement: -

Signed on behalf of PrixCar Transport Services Pty Ltd by its authorised representative (ACN 158 361 721)

Full name of authorised representative FRANK SCARANO
Position of authorised representative C.E.O.
Address of authorised representative 7-20 HORSBURGH DRIVE
ALTONA NORTH 3025 VIC.

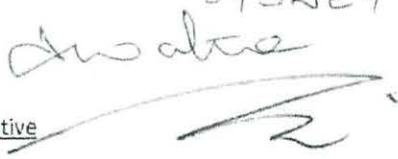
In the presence of:

Signature of representative 
Name of witness  Date 22nd JULY 2016.

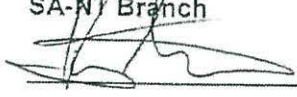
Signed on behalf of the TWU – (Transport Workers Union) National Office

Full name of authorised representative MICHAEL KANE
Position of authorised representative ASST. NATIONAL SECRETARY
Address of authorised representative LVL 2, 388-390 SUSSEX ST.,
SYDNEY

In the presence of:

Signature of representative 
Name of witness THERESE WALTON Date 28/7/16

Signed for and on behalf of the TRANSPORT
WORKERS UNION
SA-NT Branch



RAY WYATT
NAME of Signatory

28/07/16
Date

Signed for and on behalf of the TRANSPORT
WORKERS UNION
Vic-Tas Branch



JOHN BERGER
NAME of Signatory

26/07/2016
Date



VIC/TAS BRANCH



Signed for and on behalf of the TRANSPORT
WORKERS UNION
Qld Branch

Peter Biagini

NAME of Signatory

27th July 2016

_____ Date

Signed for and on behalf of the TRANSPORT
WORKERS UNION
NSW Branch



RICHARD OLSEN
NAME of Signatory

26-7-16
Date

Signed for and on behalf of the TRANSPORT
WORKERS UNION
WA Branch



TIMOTHY DAWSON.
NAME of Signatory

26-07-2016

Date

Schedule 2.3—Model consultation term

(regulation 2.09)

Model consultation term

- (1) This term applies if the employer:
 - (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
 - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

- (2) For a major change referred to in paragraph (1)(a):
 - (a) the employer must notify the relevant employees of the decision to introduce the major change; and
 - (b) subclauses (3) to (9) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;the employer must recognise the representative.
- (5) As soon as practicable after making its decision, the employer must:
 - (a) discuss with the relevant employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the employees; and
 - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and

- (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the change on the employees; and
 - (iii) any other matters likely to affect the employees.
- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- (9) In this term, a major change is *likely to have a significant effect on employees* if it results in:
 - (a) the termination of the employment of employees; or
 - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
 - or
 - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - (d) the alteration of hours of work; or
 - (e) the need to retrain employees; or
 - (f) the need to relocate employees to another workplace; or
 - (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

- (10) For a change referred to in paragraph (1)(b):
 - (a) the employer must notify the relevant employees of the proposed change; and
 - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.

- (12) If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.
- (13) As soon as practicable after proposing to introduce the change, the employer must:
- (a) discuss with the relevant employees the introduction of the change; and
 - (b) for the purposes of the discussion—provide to the relevant employees:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
 - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
 - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:
- relevant employees* means the employees who may be affected by a change referred to in subclause (1).

UNDERTAKING BY PRIXCAR TRANSPORT SERVICES PTY LTD

Re: Application for Fair Work Commission ("FWC") approval of the PrixCar Transport Services Pty Ltd and Transport Workers Union Fair Work Agreement 2016-2019 ("the Agreement")

1. This Undertaking is given by PrixCar Transport Services Pty Ltd ("PrixCar") and is taken to be a term of the Agreement.
2. PrixCar undertakes that the following provisions will apply in relation to the nominated matter in the Agreement:

Clause 41: PrixCar will nominate drivers and buddy drivers who may be required to train new employees. Nominated drivers will receive training to enable them to complete the requisite competency checklist and documentation. An allowance of \$20 per day will be paid to driver trainers at all sites when performing the training duties outlined in this clause.

Signed for and on behalf of PrixCar Transport Services Pty Ltd

Name in full: Glen DeClase

Signature:



Position/Authority to sign: HR Project Manager

Address: 7 - 20 Horsburgh Drive, Altona North, VIC 3025

Date: Wednesday, 3 August 2016

IN THE FAIR WORK COMMISSION**APPLICATION FOR APPROVAL OF ENTERPRISE AGREEMENT***Fair Work Act 2009 – s.185*

Application by Prixcar Services Pty Ltd

Agreement Title: **Prixcar Transport Services Pty Ltd and Transport Workers' Union of Australia Fair Work Agreement 2016-2019**

AG2016/4782

EMPLOYER UNDERTAKINGS*Fair Work Act 2009 – s.190*

PURSUANT to section 190 of the *Fair Work Act 2009* Prixcar Services Pty Ltd hereby undertakes that:

1. Dispute settlement term – clause 14

In relation to Clause 14 of the agreement the employer provides an undertaking confirming that the dispute resolution term will cover disputes relating to the NES or the agreement and allow employees representation in accordance with s.186(6)(b) of the Act.

2. Redundancy payment

In relation to Clause 24(d) the employer provides an undertaking that employees covered by this agreement will not receive less than the relevant minimum entitlements under the NES.

3. Rates of pay

Actual pay rates for employees both within NSW and outside are attached and meet the Better Off Overall Test, as a matter of confidentiality they have not been attached in the agreement.

4. Part-time employees and overtime

In relation to Clause 22 the employer provides an undertaking that part-time employees will be entitled to overtime once they have worked more than 7.6 hours in a given shift or more than 38 hours in a given week..

Dated: Friday, 16th September 2016

.....
Glen DeClase, HR Manager
Prixcar Services Pty Ltd and Prixcar Transport Services Pty Ltd

7-20 Horsburgh Drive
Altona North VIC 3025 Australia
PO Box 234
Altona North VIC 3025 Australia

IN THE FAIR WORK COMMISSION

Matter No. AM2016/32

**4 Yearly Review of Modern Awards – Road Transport and Distribution Award
2010**

STATEMENT OF DENNIS MEALIN

I, Dennis Mealin of [REDACTED] state as follows:

1. I am 60 years of age.
2. I am currently employed by Oz Wide Heavy Vehicle Deliveries as a truck driver.
3. I am the holder of both a Heavy Rigid (HR) and Heavy Combination (HC) driver's licence.
4. I am a member of the Transport Workers' Union of Australia (TWU).

Experience in the Industry

5. I have worked as a truck driver in the road transport industry for the majority of my working life. I have worked in various sectors of the road transport industry as a truck driver having performed both local work and long-distance operations.
6. My first job as a truck driver was when I was in my 20's. I worked with Qantas driving ground equipment around the airport. At times, I was also required to drive trucks outside the airport. I worked for Qantas as a driver for about 10 years.

7. I do not recall whether an Award or an Agreement covered my terms of conditions however I believe one or the other covered me. At the time, I was a delegate with the Transport Workers' Union of Australia (TWU).
8. Following my employment with Qantas I worked with various employers in the road transport industry transporting goods such as building supplies, landscaping supplies and gravel. These jobs involved both local work and interstate operations.
9. In my experience in the industry I have also gained a broad range of experience driving many different types of vehicles in multiple sectors of the industry. Some of the vehicles I have driven prior to working in the vehicle location sector of the industry include:
 - a. Ground equipment and machinery at the airport;
 - b. Heavy rigid vehicles with tippers in the building and landscaping sector;
 - c. Heavy vehicle combination of a truck and dog with a four-axle tipper in the gravel sector;
 - d. Agitators/cement mixers;
 - e. Fuel and gas tankers;
 - f. Garbage compactors;
 - g. Car carriers;
 - h. Buses;
 - i. Elevated work platforms; and
 - j. Liquid waste vehicles.

10. I have some photographic examples of different vehicle and vehicle configurations that I have driven in the vehicle relocation industry hereto annexed and marked **DM1**.

11. In addition to having completed work on many types of vehicles, I also have experience on a broad range of makes and models including Kenworth, Mercedes Benz, and Freightliner in particular.

Overview of work history in the vehicle relocation sector of the transport industry

Truck Moves

12. In March 2012, I commenced employment with Truck Moves Australia Pty Ltd (**Truck Moves**) as a casual truck driver. My role as a driver involved relocating new and used vehicles. I performed both local and long-distance work. I worked for Truck Moves for about 3 years.

13. When I started at Truck Moves I was asked about my abilities including the following:

- a. Whether I had experience with AdBlue and manual burn vehicles;
- b. If I was prepared to drive to any State in Australia;
- c. To provide all my license history and medical checks;
- d. Whether I would obtain an MSIC for the Port of Brisbane;
- e. Could I drive a number of vehicle combinations including; B-Double tankers, agitators, truck and dogs, elevated work platforms, compactors and loaded pantechs;
- f. Have experience with a wide range of load variations;

- g. Comfortable with plane travel;
- h. Be available at short notice; and
- i. Competent telephone communication skills.

14. I started off as a local driver for them so I did short moves within the local industry from the Port of Brisbane to different vehicle builders and dropped those vehicles off. Then those vehicles would have a body fitted and I would go back and pick up that vehicle and take it to somebody else like an electrician or people that installed signals. I often took one particular vehicle to three different people for different things, including smaller things like to mechanics to have bull-bars installed or to get the suspension modified. Lots of varying different people but predominantly, I moved on from there to interstate work because that was more suitable for me with the location I live in.

15. During the period that I worked for Truck Moves, I drove vehicles of various makes, models, sizes with varying gross vehicle mass (**GVM**). However, for the majority of the time I drove prime movers completing long distance operations interstate.

16. When I commenced employment with Truck Moves I performed mainly local work for the first few months then moved to doing primarily long-distance operations.

17. My job as a driver with Truck Moves involved driving new and used vehicles from one location to another. When I drove new vehicles, the job could involve just driving the cab chassis or a fully assembled truck where the body had been fitted. The assembled trucks I drove were both loaded and unloaded depending on the job and the client.

18. When I drove used vehicles, these vehicles could be the cab chassis only or fully constructed vehicles. In certain cases, such as the cartage of fuel tankers, there

was residual loads on board to consider. I also moved other vehicles, such as cars and buses, whilst engaged by Truck Moves.

19. The clients that I delivered new and used trucks to included manufacturers and dealerships. This included taking vehicles to body builders where I would drop off the cab chassis and at a later date collect the vehicle once it had been fitted with the body, deliver it back to the yard and then on to the customer.
20. During the period that I worked for Truck Moves, most of the jobs I did involved relocating vehicles that had been assembled with the body attached. An example of this type of delivery would be where I would pick up a truck out of assembly and deliver it to the dealership which could be anywhere in Australia.
21. A typical job with Truck Moves would be to commence at the Brisbane depot (my local depot), where I would be driven to the airport by a chase car or by taxi. I would then board a plane and fly to the destination for pick-up and then travel to the manufacturer or dealership by taxi, wait for the vehicle to be collected. I would then drive the vehicle to its destination before flying back to Brisbane or to another destination to collect and relocate another vehicle.
22. Another aspect of my work for Truck Moves was collecting and relocating new trailers. For example, a trip might involve picking up a truck from Bayswater in Melbourne, driving it to Dandenong in Victoria to pick up a trailer or trailers and then deliver the trailers to another location before then delivering the truck to a further location.
23. When I performed local driving work I was paid an hourly rate, which as I understand was based on the minimum wage and not on an Award. When performing local work, I could clock my time for a breakdown, waiting for a truck that wasn't ready and Truck Moves would then charge that time to the customer.
24. When I performed a long-distance operation as outlined in paragraph 18, I was paid a trip rate. The rates were not based on kilometres travelled which I understand because I often completed work that might be many extra kilometres

but would receive no difference in pay despite the extra time involved in my completing that work. For example, I might have completed a trip from Brisbane to Melbourne and received a flat rate of \$450. In the same week, I might then have completed another trip from Brisbane to Adelaide, which is an additional 400 kilometres, and I would only receive an extra \$15 or so to complete that extra work.

25. I was not paid waiting time or travelling time for the hours that I was directed by Truck Moves to travel to the location where I would collect the truck. For example, I could be flown to Perth and not get paid for the hours that it took me to travel from the Truck Moves base to Perth.
26. When I collected and delivered trailers I received the same trip rate that I would have received when performing a long-distance operation plus an additional trailer allowance if moving a trailer, which depended on the vehicle I was driving.
27. If I were driving a vehicle that required a dangerous goods licence, I would be paid an allowance for having such a licence.
28. The business of Truck Moves involved more than the relocation of the cab chassis or trucks that did not have a load. I often moved vehicles with loads for clients such as Toll. For example, I have flown from Brisbane to Townsville and collected B Doubles for Toll that were fully loaded and driven back to Brisbane. The loads included general goods and dangerous goods.
29. Another example of the type of work I did for Toll involved delivering a new truck to one of their depots where at some stage it would be loaded. Then Truck Moves would send a driver to collect the loaded truck and deliver it to its destination.
30. Another type of work I did was collecting and delivering promotional vehicles for clients of Truck Moves. For example, I collected promotional vehicles for Mercedes Benz from Melbourne and delivered them to Brisbane where they would be placed on display at the truck show. The truck would be loaded with

promotional goods such as motor vehicles that Mercedes Benz was displaying at the show. When the show was finished I would transport the promotional vehicle back to Melbourne.

31. Another example of the work I carried out involved moving heavy vehicles with machinery loaded on the back. Driving these vehicles required the possession of a HR licence. One of the clients we moved trucks for was Mid Coast Trucks.
32. My role as a driver did not simply involve driving a truck from one location to another. My duties also included a number of non-driving tasks associated with the transport task. These non-driving tasks included vehicle checks, refueling, and paperwork, placing of trade plates on to vehicles, hitching trailers and tying down loads.
33. The trips I carried out did not always involve flying from one location to another. There could be a series of destinations before I ended up back in Brisbane. For example, I recall one trip where I collected a prime mover from Kenworth in Brisbane and delivered it to Rockhampton. The manager contacted me and asked me to take a truck from Rockhampton to Darwin. When I delivered the truck to Darwin I was flown to Melbourne where I collected a truck and drove back to Brisbane. When I arrived at Brisbane I was flown back to Perth where I collected a truck and drove it back to Brisbane.
34. When I did the trip described in the preceding paragraph I was on the road travelling and driving for just under 2 weeks. Although I worked continuously for more than 6 days, this didn't breach the heavy fatigue management regulations, which require that a heavy vehicle driver must have a break on the 7th day. On these types of trips, I would be travelling and driving vehicles where I did not have to fill out a logbook.
35. I predominantly worked through weekends all the time. I felt that if I knocked back some weekend work that I would be punished by not getting any work at all or being called. Then once I started agreeing to weekend work again I was busy as anything. For this reason, even though we are casuals, we don't have as much flexibility as might be suggested in the sector.

Quick Shift Vehicle Relocations

36. I left Truck Moves on or around the end of 2014. I was off work for some time due to illness before applying for a driving job with Quick Shift Vehicle Relocations as a casual driver. I worked for Quick Shift for about 10 months and occasionally complete some ad hoc work for them now.
37. The type of work that I did for Quick Shift was similar to that of Truck Moves. The work involved relocating vehicles for manufacturers and dealerships for key companies such as Isuzu, Volvo and Mack. We also had other types of companies who may require their vehicles to be transported from one location to another such as Energex.
38. Quick Shift was a much smaller operation than Truck Moves. I performed the long-distance operations for Quick Shift but was paid differently to how Truck Moves paid me. Rather than a trip rate I received a flat hourly rate for all time worked which included the time spent travelling to and from a location as well as driving time. However, this rate did not include additional allowances for pulling a trailer or other types of allowances that may be applicable under an award. There were also no penalty rates based on the time of day I worked or overtime.
39. That being said, when I did work for Quick Shift the company did cover other expenses such as my meals. To cover the cost, they would ask me to provide the bill and then they would reimburse me instead. However, there was a \$40 limit on meals that could be purchased.

Oz Wide Heavy Vehicle Deliveries

40. After Quick Shift, I got a job with Oz Wide Heavy Vehicle Deliveries (**Oz Wide**) where I performed similar driving work to that of Truck Moves and Quick Shift. The clients are similar with the exception of Brown & Hurley who only used Truck Moves to relocate their vehicles.

41. The payment method with Oz Wide is similar to that of Truck Moves in that they pay a trip rate for long-distance operations and a flat hourly rate for local work. However, the trip rates are better than that of Truck Moves plus they pay an hourly rate for waiting time. This is generally \$20 an hour. Oz Wide does not pay any penalty rates or meal breaks.
42. As stated earlier, when I worked for Truck Moves I was paid an hourly rate for local work and a set trip rate for long distance work, which was determined by Truck Moves and not referable to any award.
43. At Oz Wide I moved a broad range of vehicles including cab chassis', garbage compactors and buses. I also complete a lot of relocation work in mines that are winding up or closing down and their capital needs to be transported from one site to another.

Response to Materials Submitted by Truck Moves

44. I have had the benefit of reviewing the following materials tendered by Truck Moves:
- a. Outline of submissions dated 24 November 2017;
 - b. Further statement of Matthew Whitnall dated 24 November 2017;
 - c. Statement of Matthew Whitnall dated 1 March 2017;
 - d. Further statement of John Bradac dated 24 November 2017; and
 - e. Statement of John Bradac dated 6 March 2015.
45. At paragraph 59 of Truck Moves' outline of submission, a table has been included that consolidates various information of the statements of both Matthew Whitnall and John Bradac. I set out my response to both this table and other comments made by Truck Moves below.

Interaction with Clients

46. When I started doing interstate work the prime mover was always delivered to the end customer unlike local work, where you may complete lots of local deliveries to and from the yard while a vehicle was fit-out. Our deliveries were not always delivered to the customer locally but on occasion they were.
47. Truck Moves asked me to communicate with the customer on a lot of occasions. These interactions included notifying the customer of my delivery time so they could be available to accept the vehicle or to make them aware what time the vehicle was arriving because I knew they are waiting on the vehicle.
48. I also often had to discuss the vehicle itself with the customer to be informed if there were any issues with the driving of the vehicle, if it was loaded and various other matters. As I was delivering vehicles that I had never driven before, a problem might arise with the vehicle as it is being driven that the customer would be able to talk through with me or inform me of.
49. I also regularly had to speak to other agents working on the vehicle as it was being processed including mechanics to ascertain finish times so that I could complete my work for the day.
50. Customers also regularly ask me questions about the vehicle itself. They might ask if I had any problems with the vehicle or if different features worked okay. For example, it might be a new model vehicle and a customer would ask how did that vehicle went or if the cruise control work. They don't usually worry about fuel consumption, how much you know whether it was heavy or whatever on fuel that's, but they just generally ask the general condition of the vehicle. If it is a second-hand vehicle the customer would ask even more questions because a lot of those customers have purchased these vehicles from auctions and they haven't had anyone test drive them so they want to know whether there's anything that needs to be fixed. For example, one customer that I regularly delivered to is Mid Coast Trucks. They would often ask a varying range of questions.

51. I would also need to notify the customer if a vehicle had a fault. For example, if the vehicle had a faulty gearbox I would notify the customer for safety reasons. I also may then have been required to return that vehicle as well to the auction house. I have always had a responsibility and discretion to make those decisions and have those discussions which I didn't have when I worked in other sectors of the industry.
52. These issues can also occur on some of the new trucks. I've driven brand new Kenworths and then they've broken down even though I have been closely watching all the gauges (fuel, temperature, etc.). Just because it's a brand-new vehicle doesn't mean someone hasn't missed something. Someone might have forgotten to put oil in the diff, as an example, so I will be watching the diff temperature gauges and see it is hot. I then have to pull over and notify the manufacturer and they send a representative out. If you're not experienced then you may not know to look and could cause more damage.

Training in Practice

53. In the material, it has been suggested that drivers in the vehicle relocation industry only require basic WHS training, fatigue management training, basic fueling training and training on the use of trade plates. A comparison is then made with the freight or general transport industry where training is also required on the Heavy Vehicle National Law, heavy vehicle regulations, EWHS training, environmental laws, load restraint training and so on.
54. I disagree that drivers in the vehicle relocation industry do not require advanced training and I would say that we do need to know and be aware of all those things. I am still driving a heavy vehicle and I occasionally drive loaded vehicles with weight requirements. I drive interstate and I have to pass through all the relevant weigh bridges that I am asked to pull into. I have to negotiate border crossings, including going into Western Australia and I have all the relevant laws and regulations to abide by that apply in each different interstate.

55. It's not as simple for drivers in the vehicle relocation industry as it is for a car driver who might just jump into a car and take off. I still have most of the same requirements as the interstate drivers carrying loaded vehicles do and I feel we have a lot of other obligations and added responsibilities because of the nature of our work.
56. I have a lot of varying roles because I drive different types of vehicles on a regular basis that I have to jump between all the time. One day I could be in a bus and the next day I could be pulling a road train or a B-double before next driving a vehicle fitted with an elevated work platform that weighs 33 tonne. I have the necessary permits on me and show them to the Police or the Department of Transport if required.
57. My work is not as simple as jumping in a truck and taking off without looking at the vehicle itself. I need to know all these laws, including the NHVL, and abide by them otherwise I will be fined. A fine is not the only implication. If I drive overweight or do anything that is in breach of a law or regulation or if I were to become involved in a fatality or an accident whilst in breach of any law then I am liable.
58. I have to comply with OHS laws and all of my logbook requirements, particularly when I am doing interstate work.
59. I also comply with environmental laws. For example, if you get in the truck and it's exceeding the exhaust emissions well then, I have to be responsible and say that I won't drive that vehicle. Or, if I am driving a vehicle and there's a possibility of freight or rubbish falling out of it I also need to consider them. This does not happen all the time as vehicles are not often loaded but we are required to have knowledge of these requirements.
60. In relation to load restraint training, one of the questions asked of me during my interview was if I had experience with loading and was give work when I started at Truck Moves that was commensurate with my experience. There were other

drivers with a lot less experience and they were not given trailers or loads because they didn't have experience in that work.

61. The drivers with more experience tended to get more of the trucks that were loaded and more of the B-doubles or full trucks – that is vehicles that were harder to drive. For example, I've driven fuel trucks with fuel in them and I've driven gas trucks with gas in them. Even if they're empty they still have gas in them and that is still deemed to be a load and if I'm driving a truck with gas in it is a dangerous goods vehicle as well.
62. Also, Truck Moves provided me with my dangerous goods license and paid for the actual licence. Truck Moves wanted me to get the dangerous goods licence. I've picked up vehicles from the gas yards. When I did that work I signed paperwork to receive that vehicle and at that stage the customer tells you if the vehicle is empty or if the vehicle is not fully empty.
63. There are also drivers who have other licenses to complete work for Truck Moves and other companies like it. For example, drivers picking up the vehicles from any Port in Australia have to have a Maritime Security Identification Card (**MSIC**).
64. It is the same situation in my work at Oz Wide who also require drivers to obtain an MSIC. I have been asked to obtain mine at Oz Wide as well and although I have not obtained the MSIC yet, when I do Oz Wide will pay for it.
65. All drivers require training in refueling. Most of the vehicles are diesel trucks or diesel vehicles. When I pick up a vehicle the first thing I do is check the fuel gauge to make sure I'm not going to run out of the fuel or you may need to access fuel as soon as possible and that's most likely the case particularly when collecting a vehicle from the Ports.
66. Vehicles moved from the Port have the minimum amount of fuel in them and so the first thing you do is go to the fuel station. When transporting by sea manufacturers and seafarers don't want vehicles full of fuel as they're an added fire hazard. I still have experience with moving vehicles from the Port because I

wait outside the Port and then the MSIC drivers bring the vehicles out of the Port where I then jump in and will take the vehicle to be get fuel because those trucks in particular are always in the red. I was always told they have 40 or 50 litres in them but it's not going to make it very far.

67. Further when travelling interstate, I have got to fuel a lot more regularly and this also depends on the capacity of the actual truck. How many tanks it has, how many tanks are open or how many tanks are available to be used. And the size of the tanks. Some trucks are day cabs and the manufacturer only puts small fuel tanks in them because they're used for daily use and they just fuel them up every day. But when I run a vehicle like that interstate it might have a 70 or 90 litre tank and if it's a heavy rigid vehicle or a tandem, it's going to use a lot of fuel so I am stopping every couple of hundred kilometres to fuel for what could be over a four and a half thousand kilometre journey say across to Perth or say Townsville to Perth or Melbourne up to Darwin. That's a lot of fuel stops.

68. Another key thing I need to be trained on and then put into practice is considerations about vehicle height. Most trucks normally have a sticker somewhere on the vehicle that would tell me this and it is important for me to know so that if I approach a bridge or other overhead structure I maneuver it appropriately.

Driver Experience is Key in the Vehicle Relocation Sector

69. I also need to have knowledge and experience to get into different trucks and be able to work them appropriately. Every vehicle has different alarms and switches and there is certain driving expertise that must be applied. For example, if I need to engage the power take off (PTO) and raise stabilisers, I might also need to put the bucket in its correct position and tie it down properly because the sensor hasn't been disengaged properly. I have to physically do that and tie it down.

70. Or for another example, garbage compactors. Compactors often have problems with the lid that lifts the bucket up to put the bin and if they're not properly stowed away then I have got to engage the PTO and put them in. If I do not know

how to do that I may need to contact the customer and ask them to talk it through with me.

71. If I am carting a concrete agitator then I need to put them in transit mode. This requires me to engage the PTO, which are often either computerized or have got really different types of controls. Because I have agitator experience I don't have any trouble with it but another less experienced driver would need to gain experience or ask questions. In the case of the concrete agitator the bowl needs to spin at all times. If you deliver the vehicle and that bowl isn't turning and it's not in transit mode, the customer is not going to be happy and they're possibly going to claim against the company because that bowl could be damaged. This is because if the bowl is not spinning as it's going over bumps it's continually hitting in the one spot and will actually dent the bowl and require repair.

72. It's really never as easy as just getting in a truck and driving it. Not every truck's the same, every truck has different systems. I need to know where isolator switches are located. Fuel and gas trucks have roll over switches that turn off all electricity of there is a roll over. All of these small details are very important.

73. Other key things to consider when jumping into different vehicles are as follows:

- a. Handbrake placement;
- b. Park brake placement;
- c. Automatic controls (some of those are on the dash and they may be just a pushbutton but they can also be in various other places including under armrests); and
- d. Twin steer vehicles where the controls are set on the left-hand side of the vehicle (such as high beam or cruise control).

74. It is not as simply as me just getting in the truck and driving it. I have to adjust to a different configuration, operation and control every time I go to do a job and I need to do so quickly.
75. Drivers who drive the same truck everyday have been fully trained in that truck. Those drivers often do the same run every day. As a driver who has worked in both fashions, it is much harder when you are constantly driving different vehicles to various different locations with no consistency.

Work Activities

76. It has also been suggested that my only administrative duties are to collect trade plates, be shuttled to the appropriate location and then commence work with rudimentary inspection and sign-off for the vehicle. This is simply not the case.
77. When I go to a customer for pick-up I need to complete paperwork, inspect the vehicle ensuring there is no damage and its roadworthiness. If I find any defects or damage to that vehicle then I must note it on the delivery docket and ask the customer to come and look at it and check the vehicle. I am fairly thorough and often take photos of the vehicle if necessary.
78. I always check the liquids on a vehicle because I don't want to have problems whilst I am driving – particularly on long-distance runs. I have had a lot of occasion where the coolant level has been too low or the header tanks been too low and warning lights have come on or the vehicle has leaked coolant out.
79. I also move a lot of second-hand vehicles for other trucking companies like Toll, Linfox and for the Pickles auctions. These trucks are not guaranteed to be in brand new condition and of course I need to make necessary checks when relocating them. The person selling the vehicle is not going to check to see if it's got enough oil, water or fuel in it as it's not their responsibility. I sign for the vehicle and I take it away. And I sign for it in the condition it is in because it is an auctioned off vehicle and second-hand. I mark off all the damage on it and get a signature for it and make sure the vehicle is roadworthy checking certain key safety issues such

as the tires. I have quite often had to contact the customer that is buying the vehicle and tell them it has bald tyres or needs other repairs completed to make the vehicle roadworthy.

80. In relation to inductions on sites. I am often required to complete inductions particularly. On work sites at the mines. If I don't then I am unable to deliver the vehicle.

81. For example, I often deliver to mines four wheel drives, powder trucks, water trucks as well as a varying range of different trucks to them. I cannot move within the gate of their site without completing a site induction. The induction can sometimes take an hour.

82. We also do the following tasks:

- a. Review consignment notes;
- b. Wear appropriate protective clothing (such as hard hats in mines, steel cap boots and high-vis-vets); and
- c. Complete a broad range of bending and squatting when doing checks or having issues with a vehicle.

83. I also sometimes need to tend to load or unloading as well – this all just depends on the job I am doing. I also need to consider vehicle configuration and weight as part of this because I do have to sometimes stop on weigh bridges as does any other driver. I have to consider these things whether I am driving a cab chassis or a loaded vehicle because ultimately, I've picked up that truck and I've signed for it. To me, that means I have accepted responsibility for that vehicle when I cart it from Location A to Location B.

Licensing

84. Also, truck Moves and other companies in the vehicle relocation industry expect us to hold all necessary licenses. To drive at Truck Moves I had to have a minimum of Heavy Rigid and I was told that it was advantageous for me to hold a Heavy Combination and Multi-Combination license. I was also asked if I held an MSIC and a dangerous goods license.

Logbooks and BFM

85. Another issue which I would like to raise is any suggestion that we do not need to company with Basic Fatigue Management (**BFM**) or logbook requirements. As a driver, I must comply with these requirements including all necessary paperwork to complete my logbook.

86. When I was at Truck Moves I've been asked to do particular work that I could not have done in the allotment time frame if I complied with logbook requirements. The time frames often did not include minimum rest breaks or other factors such as the type of terrain to be travelled.

87. When I was asked to complete this work and declined, I was often then not given work for long periods of time by Truck Moves. It took my having to have a very long and direct discussion about these issues with management before Truck Moves stop asking me to do these runs. However, I have always been concerned because another driver who is not in the same situation as me may be forced to accept the run because they need the money.

88. When I did raise concerns some of the reasons Truck Moves gave me including saying that it is a non-logbook truck. Or to get over minimum break requirements they might require the driver to do some local work before they could drive on the logbook again.

89. Truck Moves also didn't count time taken to travel to pick up a vehicle in transit on a plane or in a taxi as time worked and as I mentioned, did not pay me for that

travel. However, this is an issue because I may have already been travelling for many hours before I am expected to jump in the vehicle and just take off on the run.

Truck Moves' Safety Record

90. When I worked at Truck Moves there were several safety issues including a fatality, workplace incidents and other breaches. Some examples include:

- a. Trucks being written off;
- b. Drivers injuring their head
- c. Fatalities (one driver in particular fell asleep on his run and hit a tree near Kempsey and died); and
- d. Fatigue issues (one driver fell asleep at the wheel on a Melbourne to Brisbane run and ended up in a swamp).

91. Also, when I was working at Truck Moves I was advised by management that the Department of Transport are looking into breaches at Truck moves including logbook infringements. I cannot recall anything ever came of it.

Why I Work in the Vehicle Relocation Industry

92. I could gain employment in another sector of the industry and earn a lot more money than what I do but I like the challenge of the work I do and the flexibility that I have. When I was a young driver who had a family to support and a house to pay off I would not have earned enough money. I believe that it is the poor way we are paid for the experience that we have that is half the problem in the vehicle relocation sector. I do not think it attracts an older workforce because of anything other than older drivers, like myself, being in a better financial situation and when the driver is younger and picks up work, he has to compete to get as much work as he can because what is on offer is very ad hoc.

93. Also, believe older drivers are attractive because they can drive almost anything. For example, I can jump in all different types of vehicles including the old crash boxes. Now a lot of drivers couldn't drive a crash box vehicle, which is just an old road ranger box which is much harder to drive than the modern road ranger gearbox.

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Signed

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Dated

ANNEXURE

DM1

















































IN THE FAIR WORK COMMISSION

Matter No. AM2016/32

**4 Yearly Review of Modern Awards – Road Transport and Distribution Award
2010**

STATEMENT OF DARRELL RICHARD HAINING

I, Darrell Richard Haining of [REDACTED]
state as follows:

1. I am 63 years of age.
2. I am currently employed by PrixCar Services (**PrixCar**) as a long distance truck driver.
3. My terms and conditions of employment are covered by the *PrixCar Transport Services Pty Ltd and Transport Workers' Union of Australia Fair Work Agreement 2016-2019 (2016 Agreement)*.
4. The 2016 agreement is underpinned by the *Road Transport (Long Distance Operations) Award 2010 (the Award)*.
5. I am currently classified and paid as a Grade 8 in accordance with the classification structure contained in the Award.
6. I am the holder of a Heavy Combination (HC) driver's licence.
7. I am a member of the Transport Workers' Union of Australia (**TWU**).

Experience in the Industry

8. I have worked as a truck driver in the road transport industry for the past 34 years. I have been in my current position for the past 26 years having been employed with Finemores then Toll who were taken over by Prixcar.
9. Throughout my career as a truck driver I have worked in various sectors of the road transport industry doing both local work and long-distance operations.
10. During my time in the transport industry I have driven a range of vehicles of varying sizes, makes and models. In my current position I predominately drive what could be termed a specialized vehicle where I do all the luxury and test cars and all the high-end type of equipment.
11. I have undertaken a number of training courses throughout my career including a 7-day defensive driving course. Other training includes fuel economy, vehicle load restraints and occupational health and safety.

Truck Drivers at PrixCar

12. Truck drivers with Prixcar transport vehicles either on a car carrier or by driving the vehicle itself. In my position with PrixCar I predominately drive a car carrier transporting other vehicles.
13. However, in the course of my employment I may be required to deliver a new vehicle to the manufacturer. Last week my truck was not in operation and I was asked to deliver a new truck for IVEKO.
14. On Tuesday of last week I attended IVEKO, which is a truck manufacturer at Dandenong. I was taken by car to IVEKO by a driver from our depot to inspect the truck.

15. When I arrived I had to inspect the truck for any damages. I also inspected the inside of the truck for books, keys and any ancillaries that go with the truck. Inspecting the inside of the truck included checking the interior condition. During the inspection I also attached the trade plates to the truck. This took 15 to 20 minutes.
16. I then drove the truck to a nearby service station to fuel the truck, which took 300 litres of fuel and 40 litres of Adblue. The time taken to fuel up was about 15 minutes. I then drove the truck back to our depot at Altona. All up with the traffic the time spent from leaving the depot and returning took approximately 2 hours.
17. By the time I arrived back at the depot I was on overtime rates for the time taken to inspect and bring the vehicle back to the depot.
18. For this work I was paid my normal hourly rate which is approximately \$28 per hour
19. The following morning I arrived at the depot at approximately 4.45 am, inspected the truck again and then drove the truck to Adelaide leaving at 5 am. The trip is 790 kilometres and took approximately 8.5 hours plus a 15 minutes rest break. The payment for the trip was approximately \$355.
20. After delivering the truck I took a taxi to the airport and flew back to Melbourne. I arrived back at the depot then went home which was around 6.50 pm.
21. For the above trip I was paid my CPK rate of 0.45 cents based on my classification of a Grade 8 driver. In addition I was paid the 2 hours standard waiting time at my hourly rate.

Response to Materials Submitted by Truck Moves

22. I am aware of a company by the name of Truck Moves and its business model in that it moves and delivers vehicles to its clients. Truck Moves employs drivers to drive the vehicle itself from location to location.

23. Over the years I have spoken to truck drivers employed by Truck Moves. Whilst performing long distance operations I have seen drivers from Truck Moves driving trucks, quite often for Kenworth, as I am aware they do a lot of work for Kenworth.
24. I have also been offered employment with Truck Moves. About 8 years ago whilst I was at Kenworth at Laverton I was approached by a person from Truck Moves and asked whether I would be interested in working for them. During the conversation I was asked about my general experience, my experience in the long distance sector and general questions about the work that I had done.
25. At the end of the conversation I was told that I would be a good fit for their company. I did not take up the offer and had I been aware of the rates they paid I would have thought it was a joke considering the low rates of pay that I am now aware of that they pay their drivers.
26. I have had the benefit of reviewing the following materials tendered by Truck Moves:
- a. Outline of submissions dated 24 November 2017;
 - b. Further statement of Matthew Whitnall dated 24 November 2017;
 - c. Statement of Matthew Whitnall dated 1 March 2017;
 - d. Further statement of John Bradac dated 24 November 2017; and
 - e. Statement of John Bradac dated 6 March 2015.
27. At paragraphs 64 and 65 of Truck Moves' outline of submissions, it is suggested that the special skills and responsibilities of drivers engaged in the transport industry are absent from drivers in the vehicle relocation industry. It is further suggested that their task is simply to drive a vehicle from one location to another.

28. I disagree with these assertions and would say that there is little difference in the skills and responsibilities required of a driver in the transport industry and that of a driver in what is termed the vehicle relocation industry.
29. Indeed the responsibility of a driver in the vehicle relocation industry is at times higher than a driver transporting goods.
30. In the course of my driving I see a lot of trucks being transported by companies such as Truck Moves. Many of these trucks are brand new prime movers, the value of which would be in excess of \$300,000.
31. The responsibility to deliver a new vehicle to a customer is quite high, particularly when companies such as Truck Moves would be required to pay for any damage.
32. They are still out on the road, they have a responsibility to deliver that vehicle to the customer with no damage, and to do so in a safe manner as is required by all truck drivers whether they are transporting goods or not.
33. The skills required by a driver transporting a brand new vehicle are no different to that of mine. That driver still has the responsibility to perform his or her duties the same as I do whether or not they are carrying a load or have a trailer.
34. The driver still has to know what to do out on the road, and in particular has to take extra care when it rains as the truck has no weight so that if you don't control the vehicle properly there is the risk of running off the road. There is a particular skill in driving trucks such as those driven by drivers for companies such as Truck Moves.
35. They are doing a job that is similar to what we are doing. They are still out on the road and still have a responsibility for the truck itself as drivers have responsibility for a load. Technically they are both a cargo.

36. In his statement of 1 March 2017 John Bradac at paragraph 27 says drivers for Truck Moves drive different vehicles throughout the day. In my view this is a particular skill in itself to be able to drive a wide variety of different vehicles.
37. As discussed earlier in my statement, part of the business of PrixCar is to move new vehicles. It is the responsibility of the driver to explain to the customer upon delivery the reasons for any damage or mechanical failure that may have occurred.
38. As discussed earlier in my statement, all drivers performing a long distance operation have to comply with HVNL. I am on Basic Fatigue Management (BFM), which is 14 hours per day, which includes driving time and waiting time.
39. From the materials supplied to me in making this statement, I have made the assumption that drivers performing long distance operations for Truck Moves would be on Standard Fatigue Management, which is 12 hours per day.
40. I note that in the statement of Matthew Whitnall dated 24 November 2017, at paragraph 44 he states that drivers work up to 12 hours a day for long distance trips.
41. However, at paragraph 21 of the statement of John Bradac dated 24 November 2017 he makes an assumption that a driver takes 10 hours to travel from Melbourne to Sydney and then takes 3 hours for to fly back. This is a 13 hour day and is in excess of what is allowed under standard fatigue management.
42. Drivers performing long distance operations for companies such as Truck Moves still have to comply with Heavy Vehicle National Laws (HVNL) in relation to fatigue management, which includes regular rest breaks.
43. When performing a long distance operation, regardless of whether the vehicle is carrying a load or not, there are still logbook requirements.

44. Drivers still have to go into weighbridges where the GVM is relevant regardless of load. This requirement is not dependent on the load you are carrying but the GVM of your vehicle

45. In the statement of John Bradac dated 1 March 2017 at paragraph 30 he refers to the transfer of concrete mixers without a bowl. I disagree with this assertion that they only move mixers without a bowl as I have seen completed concrete mixers on the road around the country with a trade plate.

46. I am also aware of drivers employed by Truck Moves doing a trade plate move from Melbourne to Brisbane and on the return journey drive back a big concrete pump truck or a bus. The buses I have seen driven by Truck Moves drivers are complete.



Signed: Darrell Haining

Dated: 21 December 2017