

REGISTER OF ENTERPRISE AGREEMENTS

ENTERPRISE AGREEMENT NO: EA06/238

TITLE: Boral Concrete Sydney Metropolitan Drivers Enterprise Agreement 2005-2008

I.R.C. NO: IRC6/578

DATE APPROVED/COMMENCEMENT: 23 February 2006 / 23 February 2006

TERM: 36

**NEW AGREEMENT OR
VARIATION:** Replaces EA03/214.

GAZETTAL REFERENCE: 30 June 2006

DATE TERMINATED:

NUMBER OF PAGES: 9

COVERAGE/DESCRIPTION OF

EMPLOYEES: The agreement applies to all employees employed by Boral Construction Material Group Limited, who are engaged as concrete agitator drivers at its Sydney Metropolitan Concrete Plants, who fall within the coverage of the Transport Industry - Mixed Enterprises Interim (State) Award.

PARTIES: Boral Construction Materials Group Limited -&- the Transport Workers' Union of New South Wales



Boral Concrete Sydney Metropolitan Drivers Enterprise Agreement 2005 to 2008

1 Title

- 1.1 This Agreement shall be known as the Boral Concrete Sydney Metropolitan Drivers Enterprise Agreement 2005 to 2008.

2 Arrangement

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3 Anti-Discrimination

- 3.1 It is the intention of the parties bound by 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 and responsibilities as a carer.

- 3.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Agreement the 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 that, by its terms or operation, has a direct or indirect discriminatory effect.
- 3.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise a driver because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 3.4 Nothing in this clause is to be taken to affect:
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (b) offering or providing junior rates of pay to persons under 21 years of age;
 - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (d) a party to this Agreement from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- 3.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

NOTATION:

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

4 Application and Parties

- 4.1 This Agreement (and subject to clause 6 the parent award) operates to the exclusion of any other award or enterprise agreement whether made before or after the operation of this Agreement and shall apply to the drivers.
- 4.2 This Agreement shall be binding upon:
- (a) Boral;
 - (b) the drivers; and
 - (c) the Union.

5 Start Date and Period of Operation

- 5.1 This Agreement shall start to operate from the start date and shall remain in force for the nominal term and thereafter in accordance with the Act.

6 Relationship to Parent Award

6.1 This Agreement shall be read and constructed with the Parent Award. If this Agreement is inconsistent with or deals with a matter dealt with in the Parent Award, this Agreement shall prevail to the extent of the inconsistency or matter dealt with.

7 Previous Agreements

7.1 The parties have agreed to maintain certain provisions of previous enterprise agreements and they are set out in this clause.

- (a) Drivers shall produce a doctors' certificate for each sick day after 3 single day absences in each period, July to June inclusive.
- (b) Drivers shall be assessed by a qualified person (Driver Accredited Trainer) on a regular basis. This assessment is used as a training and development tool, not as a disciplinary measure.
- (c) Drivers shall assist in customer service surveys. Drivers shall distribute and collect customer service surveys at job sites, where the drivers are delivering concrete.
- (d) Rostered days off shall be taken by drivers on a date mutually agreed to with Boral. Boral expects at least one week's notice of any proposed date for consideration.
- (e) Normal hours of work are 7.00am to 3.30pm. By agreement between the company and individual driver, these times may be altered to start between 6.00am and 7.00am.
- (f) Part Time Employees
 - (i) A part-time driver is a driver who is engaged to work a regular number of hours in each week. This would normally entail a maximum of 32 ordinary hours.
 - (ii) The spread of ordinary hours shall be the same as those prescribed for full time drivers.
 - (iii) The hourly rate of pay would be the same as for other full time drivers.
 - (iv) A driver engaged on a part time basis shall be entitled to payment in respect of annual leave, long service leave, public holidays, sick leave, and compassionate leave as provided within the Parent Award on a pro-rata basis.

8 Wages

8.1 Subject to clause 9, the ordinary time weekly rate of pay to be paid to a driver shall be as set out in Schedule A, Table 1.

9 Wages Sacrifice in Return for Increased Employer Funded Superannuation

9.1 This clause has been included in this Agreement because it allows permanent drivers to elect to forgo part of their weekly ordinary time rate of pay for increased employer funded superannuation benefits on the basis that this is tax beneficial for the driver and at only minimal additional (administrative) cost to Boral.

9.2 Subject to clause 9.4, the parties acknowledge that if a permanent driver makes this election their weekly ordinary time rate of pay will be reduced (because Boral will be funding more superannuation for them).

9.3 A permanent driver may elect to forgo receiving part of their weekly ordinary time rate of pay in return for increased employer funded superannuation by completing the election form set out in Schedule B of this Agreement.

- 9.4 When a driver has made an election in accordance with Schedule B their weekly ordinary time rate of pay shall be reduced by the same percentage of increased employer funded superannuation elected except when:
- (a) overtime is worked in which case the relevant weekly ordinary time rate of pay shall be as set out in Table 1 to this Agreement;
 - (b) calculating shift allowances in which case the relevant weekly ordinary time rate of pay shall be as set out in Table 1 to this Agreement;
 - (c) calculating annual leave loading, in which case the relevant weekly ordinary time rate of pay shall be as set out in Table 1 to this Agreement; and
 - (d) calculating payments upon termination of employment (pay in lieu of notice, accrued annual and long service leave entitlements and redundancy pay) in which case the relevant weekly ordinary time rate of pay shall be as set out in Table 1 to this Agreement.
- 9.5 Whenever a permanent driver has made an election referred to in clause 9.3 Boral shall provide the driver with employer funded superannuation contributions in the amount elected in addition to any minimum statutory contributions.
- 9.6 Having made an election in accordance with this clause a driver may cease or vary their election by completing a further election form as set out in Schedule B of this Agreement to have effect prospectively on and only on 1 January or 1 July each year.
- 9.7 Despite anything else in this clause:
- (a) should any laws governing taxation or superannuation change at any time so as to impose any additional cost or tax upon Boral than those applicable at the commencement of the operation of this clause then Boral may serve a notice upon each driver of their intention to cease the wages sacrifice for them and upon the first full pay period to commence on or after the service of the notice the wages sacrifice election shall cease to operate; and
 - (b) if a driver has made a wages sacrifice election in accordance with this clause and then enters a period of leave without pay the wages sacrifice election shall be suspended for the period of such leave.
- 9.8 During any period when a driver is injured or incapacitated and in receipt of workers' compensation payments, Boral will continue to provide the driver with employer funded superannuation contributions in the amount elected in addition to any statutory contributions while the driver is still employed by Boral, up to a maximum of 26 weeks within any continuous period of 52 weeks from the date of the driver's injury or incapacitation.
- 9.9 Despite anything else in this clause a driver must not make a sacrifice election of a percentage that when added to the minimum Superannuation Guarantee Contribution exceeds the age-based contribution limit provided for by sections 82AAC to 82AAF of the Income Tax Assessment Act 1946 (Cth).

10 Reasonable Working Hours

- 10.1 Subject to clause 10.2, Boral may require a driver to work reasonable overtime at overtime rates or as otherwise provided for in the Parent Award.
- 10.2 A driver may refuse to work overtime in circumstances where the working of such overtime would result in them working hours which are unreasonable.

- 10.3 For the purposes of clause 10.2 what is unreasonable or otherwise will be determined having regard to:
- (a) any risks to employee health and safety;
 - (b) the driver's personal circumstances including any family and carer responsibilities;
 - (c) the needs of the Boral's concrete business;
 - (d) the notice (if any) given by Boral of the overtime and by the driver of their intention to refuse it; and
 - (e) any other relevant matters.

11 Unplanned Leave Bonus

- 11.1 Boral shall pay a bonus to each full time driver calculated in accordance with the following table and paid on the first full pay period on or after 1 August each year:

Number of "Unplanned Leave" Days Taken in the receding 12 months (July to June)	Bonus Amount
0	\$600.00
1	\$500.00
2	\$400.00
3	\$300.00
4	\$200.00
5 or more	\$0.00

- 11.2 For the purposes of this clause "Unplanned Leave" includes all days that the driver is required to work Monday to Friday upon which the driver is absent from work except when the absence is on account of taking annual leave, long service leave or rostered days off.

12 Conflict Resolution Procedure

- 12.1 The parties are jointly committed to this procedure and shall promote the resolution of disputes/grievances by measures based on consultation, cooperation and discussion and avoid interruption to the performance of work and the consequential loss of production and earnings.
- 12.2 Procedures relating to grievances of individual drivers and disputes between Boral and its drivers.
- (a) The driver is required to notify the local manager as to the substance of the grievance, request a meeting with the manager for discussions and state the remedy sought.
 - (b) A grievance or a question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority. Those steps are:
 - (i) Driver to Local Manager/Area Manager
 - (ii) Driver/drivers representative to Transport Manager
 - (iii) Consultative Committee
 - (iv) If not resolved when relevant the Union and the Concrete Manager will be involved.
 - (c) Reasonable time limits must be allowed for discussion at each step.

- (d) At the conclusion of the discussion, Boral must provide a response to the driver grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
- 12.3 There shall be a commitment by the parties to adhere to this procedure. This should be facilitated by the earliest possible advice by one party to the other of any issue or problem, which may give rise to a grievance or dispute.
- 12.4 Sensible time limited shall be allowed for the completion of the various stages of the discussions.
- 12.5 Emphasis shall be placed on a negotiated settlement. However, if the negotiation process is exhausted without the dispute being resolved, the parties shall jointly or individually refer the matter to the Industrial Relations Commission of New South Wales for assistance in resolving the dispute.
- 12.6 In order to allow for the peaceful resolution of grievances and disputes the parties shall be committed to avoid industrial action including, stoppages of work, lockouts or any other bans or limitations on the performance of work while the above procedure is being followed. All work shall continue normally while a grievances or dispute is being resolved.
- 12.7 The Company shall ensure that all practices applied during the operation of the procedure are in accordance with their obligations under the Occupational Health and Safety Act 2001 (NSW) and consistent with the established custom and practice at the workplace.

13 No Extra Claims

- 13.1 Subject to clause 16 this Agreement the Union and its members shall not make any claims for improvements in wages or conditions of employment for the nominal term of this Agreement.

14 Union Recognition

- 14.1 The Union is recognised, subject to the limits of their constitution rule, to be the relevant industrial organisations of employees for the drivers.
- 14.2 Nothing stated above is to be construed to confer a right of preference of employment in favour of a member of an industrial organisation of employees over a person who is not a member of an industrial organisation of employees.

15 Savings Clause

- 15.1 The Federal Government has announced on 26 May 2005 certain reforms to industrial relations generally in Australia. One such reform suggests that the NSW State Industrial Relations Commission could discontinue operating and be absorbed into a new national system (the Reform) the transitional arrangements for which have not yet been drafted. If this occurs the parties are committed to ensuring that:
 - (a) the drivers' employment conditions (arising from this Agreement and subject to this Agreement the parent award) are maintained;
 - (b) any Boral operational flexibilities (arising from this Agreement and subject to this Agreement the parent award) are maintained,as a result of the Reforms for the nominal term of this Agreement.
- 15.2 To give affect to clause 15.1 the parties will, if required, consent to this Agreement being varied or make such other registered industrial agreements to ensure that the said maintenance occurs.

16 Leave Reserve

- 16.1 Notwithstanding any other provision of this Agreement it is agreed by the parties that Leave Reserve will apply in relation to the wage rates applicable as of FFPP on or after 1 July 2008 if and only if the consumer price index (CPI, All Groups, Sydney, Index Numbers) as calculated by the ABS is more than 4% for the preceding 12 months.
- 16.2 To avoid any doubt this means that the parties may exercise their rights pursuant to the Industrial Relations Act 1996 in regard to these matters during the nominal term of this Agreement.

17 Training

- 17.1 Boral is committed to ensuring that its drivers are assessed as competent to perform their work as assessed to relevant nationally recognised industry standards. Consistent with this commitment Boral will work towards having all drivers assessed, as a minimum, to Certificate 1 Transport & Distribution during the nominal term of this agreement.
- 17.2 The drivers will co-operate with and use their best endeavours to successfully complete any such assessment process.

18 Dictionary

- 18.1 In this Agreement the following words in the left hand column of the dictionary shall have the meaning given to them by the right hand column of the dictionary: -

Agreement	Boral Concrete – Sydney Metropolitan Drivers Enterprise Agreement 2005 to 2008
Boral	Boral Construction Materials Group Limited
Driver (s)	A driver of Boral employed at one of the Sydney Metropolitan Concrete Plants operated by Boral Resources (NSW) Pty Ltd as a concrete agitator truck driver
Start Date	The date upon which this Agreement is ratified by the Industrial Relations Commission of NSW in accordance with the Act
Nominal Term	The period of three years commencing from the start date
Union	The Transport Workers' Union of NSW
Parent Award	Transport Industry Mixed Enterprises (State) Award
Act	The Industrial Relations Act 1996

SCHEDULE A – RATES & ALLOWANCES

Table 1 Weekly Ordinary Time Rate of Pay (based on average 38 hour week) - Operative From The First Full Pay Period On Or After The Stated Date:

Classification	1/07/2005	1/07/2006	1/07/2007	1/07/2008
6 Wheeler Vehicle Driver	\$641.82	\$667.49	\$694.19	\$721.96
8 Wheeler Vehicle Driver	\$667.17	\$693.85	\$721.61	\$750.47

Conversion To Ordinary Time Hourly Rate:

Classification	1/07/2005	1/07/2006	1/07/2007	1/07/2008
6 Wheeler Vehicle Driver	\$16.890	\$17.566	\$18.268	\$18.999
8 Wheeler Vehicle Driver	\$17.557	\$18.259	\$18.990	\$19.749

Table 2 Allowances - Operative From The First Full Pay Period On Or After The Stated Date:

Description	Payment Period	1/07/2005	1/07/2006	1/07/2007	1/07/2008
Slump Allowance	per week	\$18.57	\$19.31	\$20.09	\$20.89
After 5.30pm Meal Allowance		\$9.72	\$10.11	\$10.51	\$10.93
Cash Pick Up	\$30 to \$150 per week	\$4.59	\$4.77	\$4.96	\$5.16
Cash Pick Up	\$151 to \$250 per week	\$6.46	\$6.72	\$6.99	\$7.27
Cash Pick Up	\$251 to \$400 per week	\$9.26	\$9.63	\$10.02	\$10.42
Cash Pick Up	\$401 to \$600 per week	\$13.57	\$14.11	\$14.68	\$15.26
Cash Pick Up	more than \$600 per week	\$18.01	\$18.73	\$19.48	\$20.26
First Aid	per day	\$1.97	\$2.05	\$2.13	\$2.22
Travel	per kilometre	\$0.75	\$0.78	\$0.81	\$0.84

Schedule B – Wages Sacrifice Election Form

Pursuant to clause 9 of the Boral Concrete Sydney Metropolitan Drivers Enterprise Agreement 2005 to 2008 a driver may elect to forgo part of their weekly ordinary time rate of pay as set out in Schedule A Table 1, in return for increased employer funded superannuation to an equivalent amount.

Having taken my own independent financial and taxation advice on the matter, I [insert employee name] classified as [insert classification] elect in accordance with clause 9 of the Boral Concrete Sydney Metropolitan Drivers Enterprise Agreement 2005 to 2008 to forgo the amount circled in the table below of my weekly ordinary time of pay as set out in Schedule A Table 1 in return for increased employer funded superannuation contributions equal to this amount.

1 July 2005

Classification	1% Election	3% Election	5% Election	7% Election	10% Election	15% Election	20% Election
6 Wheeler Vehicle Driver	\$6.42	\$19.25	\$32.09	\$44.93	\$64.18	\$96.27	\$128.36
8 Wheeler Vehicle Driver	\$6.67	\$20.01	\$33.36	\$46.70	\$66.72	\$100.07	\$133.43

1 July 2006

Classification	1% Election	3% Election	5% Election	7% Election	10% Election	15% Election	20% Election
6 Wheeler Vehicle Driver	\$6.67	\$20.02	\$33.37	\$46.72	\$66.75	\$100.12	\$133.50
8 Wheeler Vehicle Driver	\$6.94	\$20.82	\$34.69	\$48.57	\$69.39	\$104.08	\$138.77

1 July 2007

Classification	1% Election	3% Election	5% Election	7% Election	10% Election	15% Election	20% Election
6 Wheeler Vehicle Driver	\$6.94	\$20.83	\$34.71	\$48.59	\$69.42	\$104.13	\$138.84
8 Wheeler Vehicle Driver	\$7.22	\$21.65	\$36.08	\$50.51	\$72.16	\$108.24	\$144.32

1 July 2008

Classification	1% Election	3% Election	5% Election	7% Election	10% Election	15% Election	20% Election
6 Wheeler Vehicle Driver	\$7.22	\$21.66	\$36.10	\$50.54	\$72.20	\$108.29	\$144.39
8 Wheeler Vehicle Driver	\$7.50	\$22.51	\$37.52	\$52.53	\$75.05	\$112.57	\$150.09

In making this election, the elected percentage when added to the minimum Superannuation Guarantee Contribution does not exceed the age-based contribution limit provided for by sections 82AAC to 82AAF of the Income Tax Assessment Act 1946 (Cth).

Notation:

For the 2004/2005 tax year these were:

<i>Under 35 Years of age</i>	<i>35 to 49 Years of age</i>	<i>Over 50 Years of age</i>
\$13,934	\$38,702	\$95,980

Signed by [insert employee name].....

Confirmed by Boral [insert name].....

Date.....

SIGNED ON BEHALF OF THE Transport Workers Union of New South Wales

..... Date

Tony Sheldon
(Secretary)

SIGNED ON BEHALF OF Boral

..... Date

L De Carvalho
(General Manager)